



NEAR EAST UNIVERSITY

GRADUATE SCHOOL OF SOCIAL SCIENCES

MASTER OF LAWS IN INTERNATIONAL LAW PROGRAMME (LL.M)

MASTER'S THESIS

PROTECTION OF JOURNALISTS IN TIMES OF ARMED
CONFLICT

Renas Ih-san Karam

NICOSIA

2016



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Thesis Defence

PROTECTION OF JOURNALISTS IN TIMES OF ARMED CONFLICT

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Abstract

The recent wars going on in the Middle East countries, especially after Iraq's independence in 2003 and the emergence of new terrorist organizations, in particular the organized terror as {The Islamic State in Iraq and Sham) is a good example illustrates the growing danger faced by journalists working in conflict zones, highlighting the importance of advocacy again to pay attention to attacks against journalists at a global level in general.

The International Humanitarian Law protects journalists in times of armed conflict, whether this conflict is international or non-international and it is different in times of peace because in such times international human rights law protects journalists where the protection mechanisms of human rights state in many international conventions such as the International Convention on Civil and Political Rights and others, while there are particular mechanisms in international humanitarian law to protect journalists in accordance with the Hague Conventions in 1864 and 1907, the Geneva Convention 1929, the Four Geneva Conventions in 1949 and additional protocols in 1977.

The international humanitarian law distinguishes between two types of journalists; the first is a war correspondent who is adopted by the armed forces, which is stipulated in the 1949 Geneva Conventions, while the second type is the journalists who are doing tasks of dangerous profession in an armed conflict which is stipulated in article 79 of the First Additional Protocol of 1977 relating to international armed conflict zones.

The legal status of the war correspondent in the event of his arrest is the status of the war prisoner in accordance with the third Geneva Convention of 1949, while the legal status of journalists who do dangerous tasks is the legal status of civilians in accordance with article 79 of the First Protocol.

The journalists in the Kurdistan region of Iraq are protected in accordance with the law of the work of journalists in the Kurdistan number 35 of 2007. It is worth mentioning that the Kurdistan region was able to provide a good support for journalists to do their jobs successfully and in legal terms was able to proceed a number of laws to regulate the work of journalists in Kurdistan, and in the field aspect in the war against ISIS, the military leadership of Peshmerga was able to deal flexibly with journalists in covering the events of the war with ISIS.

ÖZET

Ortado u ülkelerinde meydana gelen çatı malar, gazetecilerin ve muhabirlerin i gördükleri çatı ma bölgelerinde ne kadar büyük tehlikeli ortamlarda çalı malarına iyi örnek temsil etmektedir. Özellikle terör örgütü çıkmasından(Irak ve am slam Devleti) Bu çatı ma bölgelerinde çalı an gazetecilerin kar ıla tı ı artan tehlikeyi gösterir ve genel olarak küresel düzeyde geri gazetecilere yönelik saldırıların endi e ça_rısı önemini vurgulamak için iyi bir örnektir.

Uluslararası insan yasaları, yerli> ve uluslararası silahlı çatı malar durumlarında muhabirleri korumaktadır. Fakat barı süreleri esnasında durum farklıdır çünkü koruma mekanizmaları, 1989, 1907 ve 1929 ile 4. Cenevre toplantılarında ile 1949 ve 1977 yılında kararla tırılan protokoller gibi uluslararası yasalarda belirtilmi tir.

Uluslararası insancıl kanunu iki çe it gazeteci ayırt etmektedir. Birinci çe it, silahlı kuvvetler tarafından tayin edilen muhabirlerdir ve 1949 tarihli Cenevre toplantısında belirtilmi tir. kinci tür ise, 1977 yılına ait ek protokolün 79. maddede belirtilen silahlı çatı malar esnasında tehlikeli görevler yere getiren gazetecilerdir.

Sava muhabirlerinin yasal durumuna göre, tutuklandıkları zaman, üçüncü Cenevre toplantısına göre sava esiri sayılırlar. Fakat barı durumunda riskli görevler yapan gazetecinin yasal durumu, 1. protokolün 79. maddesinde belirtilmi tir.

Kürdistan bölgesinde gazeteci koruma meselesine gelince, 2007 yıl 35 sayılı Kürdistan Bölgesi gazeteci koruma yasası gere ince gazeteciler himaye edilmektedirler. Bizim de erlendirmemize göre, gazetecilerin i ini ba ariyla yapabilmeleri için Kürdistan Bölgesi iyi destek verebilmi tir. Yine aynı zamanda yasal açıdan bakılınca, gazetecilerin Kürdistan'da çalı malarını düzenleyen birçok yasa yaslanmı tir. Meydanı tatbikat bakımından, Pe mergenin askeri liderli i, gazetecilerin DAE 'e kar ı sava ı belgellemeleri konusunda yeterince esneklik göstermi tir.

DEDICATION

I sincerely dedicate this work to the soul of my late father whose advice is still in echoing in my head and brightening my way.

I would like to dedicate this thesis to those who devoted their lives in order to provide me with the opportunity to improve myself; to my wonderful and great family and especially (my mother, my wife, all brothers and sisters,) who gave me a great support, encouragement and patience.

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I would first like to express my deepest and great appreciations to Almighty and Gracious Allah for giving me the ability and patience to complete this work.

My sincere thanks go to my thesis advisor Assist. Prof. Dr. Derya Aydin Okur for her professional advice, support and encouragement. Without her support, this thesis would have never been completed, and I want thanks to department of law especially Assist. Prof. Dr. Volkan Resat Gunel for his support me.

Many thanks are offered to my family; especially my parents who believed in me and gave me enough love and support that brought me to this point. I also would like to thank my mother; her encouragements and sacrifices through this long process stimulated me to finish this work. Also I thank my wife, for her love and encouragement continuous for my study . and thanks for all my brothers and sisters. Special thank goes to my friends who supported me to finish this thesis.

TABLE OF CONTENT

ABSTRACT	iii
ÖZET	iv
DEDICATION	v
ACKNOWLEDGEMENTS	vi
TABLE OF CONTENT.....	vii
LIST OF ABBREVIATIONS	ix
INTRODUCTION.....	1
CHAPTER 1: DEF N T ON OF JOURNAL STS UNDER INTERNAT ONAL HUMANİTARIAN LAW	3
1.1.What is International humanitarian law	3
1.1.1.Definition of International Humanitarian Law	4
1.1.2. Evolution of International Humanitarian Law	6
1.1.3.Distinguish Between International Humanitarian Law and International Human Rights Law	13
1.2.What are journalists in International Humanitarian Law	17
1.2.1.Journalist Definition.....	17
1.2.2.Types of Journalists	19
1.2.3.The Obligations of Journalists in Armed Conflicts.....	22
CHAPTER 2:STATUS JOURNAL STS DUR NG ARMED CONFL CTS	26
2.1 .Protection Journalists During International Armed Conflicts.....	26
2.1.1.The Concept of International Armed Conflict	26
2.1.2. Protection of Journalists Under International Conventions in International Armed Conflicts	27
2.2.Protect Journalists During Non-International Armed Conflicts.....	31
2.2.1.The Concept of Non-International Armed Conflict	31
2.2.2 Protection of Journalists Under International Conventions and Treaties in Non-International Armed Conflicts.....	33
2.3.The Loss of Protection for Journalists	36
CHAPTER 3:MECHAN SMS FOR THE PROTECT ON OF JOURNAL STS N ARMED CONFL CTS	40
3.1. Preventive Mechanisms to Protect Journalists	40
3.1.1. Joining The Relevant International Conventions	40
3.1.2. States' Commitment to Agreements of International Humanitarian Law	41
3.1.3. Obligation to Issue The Necessary Legislation to Implement International Humanitarian Law	43
3.1.4. Obligation to Publish the Rules of International Humanitarian Law	45
3.2. The Mechanics of Implementation and Supervision to Protect Journalists	46

3.2.1. The Role of The International Committee of The Red Cross	46
3.2.2.The Role of International Media Organizations	49
3.3. Deterrent Mechanisms to Protect Journalists	51
3.3.1. The Definition of The UN Security Council	51
3.3.2. The Role of The Security Council on The Protection of Journalists	52
CHAPTER 4: JOURNALISTS IN IRAQ'S KURDISTAN REGION	54
4.1. Relationship Between International Law and National Law	54
4.2. The Extent of The Right of The Iraq's Kurdistan Region in The legislation of laws	56
4.3. Legislations to Protect Journalists in Kurdistan Region of Iraq	58
4.4. The Reality of The Journalists During The Kurds War Against Islamic State in Iraq and Sham in Kurdistan Region of Iraq	63
CONCLUSION:	67
RECOMMENDATIONS	68
REFERENCES	69

List of Abbreviations

ML	International Humanitarian Law
ffIRL	International Human Rights Law
UNSC	United Nations Security Council
KRG	Kurdistan Regional Government
ISIS	Islamic state in Iraq and Sham
ICRC	International Committee of the Red Cross
SPJ	Society of Professional Journalists
RSF	Reporters Without Borders
GCIII	Geneva Convention (III) relative to the Treatment of Prisoners of War (1949)
GCIV	Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949)
AP I	First Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts
AP II	Second Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts.

Introduction

Humanity known in its history levels, wars that had disastrous effects on the life of father, where the worst atrocities and violations were committed to human dignity, then wises put rules inspired by human feeling and designed to protect people in the event of war, thus, practices that condemn acts that do not respect the human personality had gradually established, and put habits to regulate wars and conflicts derived from morality, religion and the principles of natural law. The Geneva conventions of 1949 came with the hope to have a binding effect which aims to maintain human dignity in times of war and pledged to respect basic human rights in armed conflicts, then the both additional Protocols of Geneva conventions of 1977 came to confirm this volition, and formed the rules that stipulated in the conventions and Protocols what is known as international humanitarian law. But that the world is moving away more and more from achieving the desired peace and alleviating the scourge of war that suffered by the victims of armed conflict, rather than to be more civilized, and more committed to the application of the provisions of international humanitarian law at a time when the dominant forces on the world claim that they are seeking to make the world more secure and peaceful, although their immediate causing in suffering millions of security as a result of their intransigence and insistence on staying away of all the provisions of international legitimacy.

If the wars are considered ongoing phenomenon adopted by States as an instrument of their national policy, it cannot be halted permanently. The statistics have proven that the duration of the wars that the nations lived is much more than the period of peace, especially in the lands of Kurdistan region of Iraq where the permanent war lasts more than 90 years. The military machine has become targeting the lives of civilians wholesale and it doesn't differentiate between small and large nor between fighters and civilians, even the civilians have become the largest number of victims of an armed conflict in modern times.

Among those victims, there is a class cause the violation because of the nature of their work which are often unintended violations, but it is different from other civilians, they throw themselves into the battlefield and always are in the first rows of the fighting ranks that occur between the warring parties, not to participate in this conflict, nor spreading propaganda in favor of one party or another, but the primary motive is to follow the war and its ways, and to transfer what is happening in the

battlefields to the world, to find out the violations of the provisions of international humanitarian law in these conflicts. Despite of such rules, which controls the international norms and conventions established by the international community, it is noticeable that the war has only violated those rules and provisions, also that the warring parties may ignore or neglect these rules in the hostilities. These rules have played a role in reducing the effects of armed conflicts and military operations by obliging states to respect and abide them to take international responsibility of for the irregularities committed in this area.

Despite the journalists play a role in proving that responsibility including certificates and photographs during the armed conflict and transferring what is happening in the battlefield to the world, they care about communicating with these wars in details, but the international humanitarian law gave the journalists civilians character, despite the fundamental difference between them towards the armed conflict, as the journalist hurls himself into the battlefield to search the news, while the second seeks to escape from the battlefield to search deliverance, thus journalists should be provided with special and distinctive protection because of the urgent need for such work and their role in detecting crimes committed during the wars .

Thus the issue of protection of Journalists in times of armed conflicts is one of the topics that deserve research and attention in order to draw attention to put legal mechanism more effective to protect this group which is not involved in the conflict.

It is important to study at the present time because of the large number of wars and conflicts, and increasing the effectiveness of international criminal justice in the prosecution of international criminals in many parts of the world. The journalists are considered a mean of pressure and powerful to parties to the conflict, which led to targeting them directly by the parties to the conflict, as well as the international Criminal Court appeared in the late nineties of the past century, despite of the clear deterrent element of those courts, the violation of international humanitarian law is still so much, this study is also considered as a great importance for the parties to the conflict for taking it as an evidence of its armed strength to stop targeting journalists while they are in their duties in the field of conflict.

Chapter 1: Definition of journalists under International Humanitarian Law

The journalists play an important role at the international level, where they enable the audience to watch all events lively and degree of influence except after several major developments through the history, the world since creation started to knowledge and the means of transferring this knowledge is differed through times. So some tried to prevent the transmission of the truth and reaches people because of what they may show violations committed against civilians contrary to international humanitarian law.

1.1. What is International humanitarian law

The war is an old reality, it showed itself to humanity where the war was known as a tool for settling disputes, since the early epochs of human existence. If we go back to the history books and old manuscripts, we will find enormous figures of the numbers of wars that the human mind cannot believe it. Statistics provide us that about 14,000 wars were took place during 5 thousand years of history, about 5 billion people lost their lives, during (3400) of the last years, the world saw only 250 years of peace. In the First World War 10 million people killed in addition to 21 million people died as a result of epidemics left by the war, and in World War II about 40 million people killed, half of them were civilians¹

Despite connecting humanity - after a bitter conflict - to the principle of prohibition force or threat to use force in international relations in accordance with article 2/4 of the Charter of the United Nations², which was established in 1945 and despite the success of humanitarian tremendous to reach the Fourth Geneva Convention of 1949 and its Protocols of 1977 which has worked to emphasize the prohibition of war and worked to ease its pain and restrict its effects in the narrowest possible scope, but all that did not prevent the outbreak of wars and conflicts but also increased wars recently after the end of the cold war in many places around the world³,

¹ Ismail Abdul Rahman, The Initial Foundations Of International Humanitarian Law From The Book Of International Humanitarian Law Provide: Dr. Ahmed Fathi Sorour - First Edition (Cairo: The Independent Arab House, 2003) P. 15.

² Charter Of The United Nations (1945).

³ Kate Mackintosh, The Principles Of Humanitarian Action In International Humanitarian Law, Study 4 In: The Politics Of Principle (United Kingdom: Humanitarian Policy Group, 2000), P.3.

With the growing of international and internal wars and attempts by many provinces that are trying to secede from the motherland to declare the insurgency and take up arms as in Balkans and the countries of Soviet Union previously, also circled wars in Iraq, Afghanistan, Palestine, Lebanon and other disputes. The urgent need underscores for international humanitarian law and respect for the Geneva Conventions, which applied to take a new curve after the signing of the Rome Statute in 1998 and establishing the International Criminal Court, which has become a competent punishment for violations of international humanitarian law, that increased International crimes⁴.

1.1.1. Definition of International Humanitarian Law

It is also called «Law of Armed Conflict» or «law of war», is a set of rules that protects persons in wartime who are not participating in the hostilities, or who are no longer participating in its, also restricts the use of methods and means of warfare, its basic aim is the reduction of human suffering and prevention in times of armed conflict, Not only limiting the commitment by the rules of law on the government and its armed forces, but also extends to armed opposition groups and other parties to conflicts. The Fourth Geneva Conventions of 1949 and the additional Protocols of 1977 are the basic humanitarian law instruments. There is a number of other provisions of humanitarian law, including «Geneva» protocol to prohibit the use of gases⁵, the UN Convention of 1980 on Certain traditional weapons and «Ottawa» Convention about landmines.

There are many definitions regarding the international humanitarian law (International humanitarian law is a branch of modern public international law; this law aims to protect people in an emergency which is a circumstance of armed conflict)⁷.

The International Committee of the Red Cross has adopted a definition of international humanitarian law, which it considered that this law consists of (a set of international rules derived from the conventions and customs, which aims in particular to solve humanitarian problems arising directly

⁴ Ahmed Abu Al-Wafa, The Mediator In The Public International Law, Third Edition (Cairo: Arab Renaissance Publishing House, 2001) P.27.

⁵ Amanda Alexander, A Short History Of International Humanitarian Law, The European Journal Of International Law Vol. 26 No.1, 2015, P.109.

⁶ Antoine Bouvier, International Humanitarian Law And The Law Of Armed Conflict, Second Edition (Peace Operations Training Institute, 2012) P.13.

⁷ Ramesh Thakur, Global Norms And Int, Humanitarian Law Interview Of Red Cross, Vol. 83, No. 841, Geneva, 2000. P. 19.

from international armed conflicts or non-international which restrict the humanitarian reasons⁸, the right of parties to the conflict in using methods of warfare and methods that appeal to them, or protect people and property at risk, or those who can be exposed to the dangers of the conflict)⁹,

The IHL is also considered as part of the Human Rights, it is identified as (that part of the Human Rights law which applies in armed conflicts and regulates the relationship with the enemy)¹⁰!

Some scholars defined it in other words that it (the set of principles and rules agreed internationally, which aims to limit the use of violence at a time of armed conflict by protecting personnel involved in hostilities or those who stopped participating, the wounded, prisoners and civilians, as well as by making the violence in military battles limited to those necessary actions to achieve a military objective)¹¹.

IHL is part of international law which governs relations between countries. The international law represents in the conventions concluded by the countries¹², and the international custom of the practices of countries which is acceptable for its part as a mandatory requirement, as well as general principles of law¹³.

Inventing the term (international humanitarian law), which we have dealt with definitions above, goes back to the law known as (Max Huber) who held the presidency of the International Committee of the former Red Cross for several years, this term didn't appear till it was adopted by many scholars, and it is almost officially codeword at the international level today¹⁴.

In definitions above and others, we can conclude that IHL is a set of international rules aimed at protecting two main things; first, to protect the human person, which is the fundamental goal of this law and other laws, second, to protect objects and property belong to this man. But what human being

⁸ Mawlod A. Musleh, The Relationship Between International Humanitarian Law And International Human Rights Law, Master Thesis Submitted To The Council Of The Faculty Of Law And Politics In The Arab Open Academy In Denmark, 2008, P.15.

⁹ Mohammed Majzoub, Public International Law, Fifth Edition (Beirut: Halabi Legal Publications, 2004) P. 762.

¹⁰ Hans Peter, International Humanitarian Law On The International Red Cross An Crescent Movement, Hans Hans, Bernn, Stuttgart Vienna, 1991, P.508.

¹¹ Mawlod A. Musleh, 2008, P.16.

¹² Marco Sassoli And Antoine A. Bouvier, How Does Law Protect In War?, Available At: <https://www.icrc.org/eng/assets/files/publications/icrc-0739-part-I.pdf>. Accessed In: 19/6/2016.

¹³ Naji Qtana, The Relationship Between International Humanitarian Law And International Human Rights Law, Search Higher Diploma, Damascus University, Faculty Of Law, 2005/2006 Kp.13.

¹⁴ Zidane Mribot, The Entrance To The International Humanitarian Law, Second Volume Of The Human Rights (Beirut: House Of Science, 1988) P. 100.

is meant by the protection of this law? What types of the property of this man is protected by this law? Is every individual covered by the protection of this law? And is everything covered by this protection?

In fact, that IHL means humans and objects in time of war, the human covered in this care is the common man at war and the man who is unable to continue to participate in the war. An example of the first case, civilians in general with the exception of those who are involved in combat operations, and the example of the second case, the prisoners and the wounded. As for the objects and property protected or what is called civilian objects, they are all targets that are not military targets by the military sense, and military objectives should bear military service purpose and should be militarily protected!¹⁵,

1.1.2. Evolution of International Humanitarian Law

The birth of the old rules of the laws of Hammurabi, king of Babylon, issued a famous law that bears his name in order to protect the vulnerable in his society from the injustice thousands of years ago and the introduction of this law begins with this phrase (I established these laws to prevent strong on the weak from oppression)¹⁶:

The old Indian groups had some of the rules mainly from humanitarian considerations, these kinds of rules called (Manu) Group, an ancient Indian which includes rules forbidding fighter from killing enemy if he surrendered or captured. And who is asleep or lost his weapon is considered of non-combatant of pacifists¹⁷ ..

In Greek civilization it was found thinkers who condemn and reject wars, and the Greek cities wars were defensive ones, the idea of arbitration between Greek cities was the result of the convergence in civic culture between these cities and the cities had signed numerous non-aggression treaties among themselves¹⁸. While the Roman wars were draconian and absolute from all side, but had a good

¹⁵ Articles (50, 52) Of The First Additional Protocol Of 1977 For Geneva Conventions 1949.

¹⁶ Salah Al-Din Amer, An Introduction To The Study Of The Law Of Armed Conflict, First Edition (Cairo: Dar Arab Thought, 1976) P.12.

¹⁷ Sadiq Abdul Rahman Hassan, Exercise The Right Of Self-Determination In The Light Of The Rules Of International Humanitarian Law, Master Thesis Submitted To The Faculty Of Law And Politics At The University Of Dohuk, 2009, P.6.

¹⁸ Omar Makhzoumi, International Humanitarian Law In The Light Of The International Criminal Court, First Edition (Amman: The House Of Culture For Publishing And Distribution, 2008) P. 29.

military organization which was a good effect in creating some of the organizational rules and because of the empire to expand to include other places¹⁹.

If the expression of IHL is very modern expression, where some of this law goes back to the seventies of the last century, the birth of its rules is old, where we find it in the writings of philosophers, and advocated by the heavenly religions including Christianity where it helped in forming International custom related to armed conflicts, many factors. Including the idea of military honor shown by veterans and knights in the Middle Ages, where the wars in their thoughts as an honest struggle governed by special rules concerning the treatment of the wounded and sick and avoid subjecting non-combatants of the enemy population. The grace in the development of this trend with the Knights, who was a key element in the equestrian system, goes back to the principles of the Christian religion, which calls for love and good treatment for everyone, whether they are enemies or friends. The most prominent equestrian images were showing care to the wounded and ensure them treatment by the palaces' parents themselves and this tradition became common among knights' enemies who often made truces for the purpose of burying their dead, perform funeral Christianity and treat patients²⁰,

Examples are influenced by the behavior of the belligerents by idea of military honor that made by the hands of the Knights of the Middle Ages and continues to guide and rule the behavior of the enemies in the war, what happened in 1745 at the Battle of Fontenoy in Belgium, between the French troops led by Louis XV, the forces of England and the Netherlands, where the notion of military honor and the equestrian system took into account²¹, all the injured were cured with good medical services secured by both parties as 'Yell as mutual appreciation, which appeared in the behavior of the leaders of that war by showing mutual salute before the war began.

Also, Islamic law established rules which had a significant impact on the behavior of Muslim rule during wars that they participated in, where they were affected by the rules of Islamic law²², and

¹⁹ Sadiq A. Rahman Hassan, Op.Cit, P.7.

²⁰ Jean Galayrman, The Contribution Of Doctors Armies In The Genesis Of International Humanitarian Law, Research Published In The International Review Of The Red Cross (ICRC), The Publisher Of The International Committee Of The Red Cross, Geneva, For The Second Year, The Eighth Issue, July / August / 1989, P. 234

²¹ See: Search Saad Al-Otaibi, International Humanitarian Between Commitment And Ignored, Published In The Journal Of The Arab Forces Of The Saudi Armed Law, Year 31, No. 89.1993, P. 54

²² Maha W. Sayed, The Application Of Jus Bellum And Jus In Bello To The Conflict In International Human Rights Law, Department Of Political Science, The American University In Cairo, 2002, P.41.

orders that the Muslims received from the Prophet Muhammad (peace be upon him), as well as the orders from Caliphs after him. The leaders of the Islamic armies had a role in the change and the removal of customs, inhuman traditions and brutality that were followed in the wars before Islam, also it influenced in return on the enemy inside the war with the Islamic state armies because of its distinctive treatment and rules with its followers who are under the hands of the Islamic armies²³.

Allah the Highest says: (And fight them on until there is no more Tumult or oppression, and there prevail justice and faith in Allah; but if they cease, let there be no hostility except to those who practice oppression), also the Messenger of Allah, peace and blessings be upon him, said to his army, "Go forward in the name of Allah, with Allah, and upon the religion of the Messenger of Allah. Do not kill the elderly, children, young people, or women. Do not steal from the spoils but collect them, and behave righteously and in the best manner. Verily, Allah loves those who behave in the best way"²⁴.

Thus, we find that Islam has developed a strict system for the war. These principles have moved and had a great impact in the writings and calls of many religious singers to ease the brutal wars, like Vitoria and Suarez and then Grotius. Thus, the sources of international humanitarian law go back in its origins to the rules rooted in ancient civilizations and religions, so wars have always been submitted to some of the laws and norms²⁵.

The IHL passed several stages of the development at the international level, starting with the presence of international norms include principles, development to the existence of an international rules and a convention includes these principles. The first convention has been ratified in 1864 after prepared by the International Committee of the Red Cross, which was founded in 1863 and adopted to prepare the mission of international humanitarian law. Although this convention was an important leap in the scope of this law and the starting point for the part of the written convention, this convention was marred by a lot of shortages, prompting to modify it several times in the years 1906 and 1929 under the consideration of the Geneva conventions to improve the fate of the victims of war²⁶.

²³ Nagham I. Zaya, A Study Of The International Humanitarian Law And International Human Rights Law, A Doctoral Dissertation Submitted To The Faculty Of Law, University Of Mosul In 2004,P.17.

²⁴ Sadiq Rahman Hassan,Op.Cit,P.7.

²⁵ Muhammad A. Shukri - The History Of International Humanitarian Law And Nature Within A Book, Studies In International Humanitarian Law, To Provide: Dr.. Mufid Shehab, (Beirut: The Future Of The Arab House, 2000) P. 16

²⁶ Sadiq Rahman Hassan,Op.Cit,P.8.

On the other hand, the Hague Conventions of 1899 and reviewed in 1907 made the Geneva principles keep up with the Marine of the war, and after World War II and because of the great tragedies suffered to human beings from the military and civilians as a result of that war, in 1949 the Fourth Geneva Convention was signed and its objective was to determine the status of the civilian population in time of war, in addition to that, there was a great need to improve the conditions of previous conventions²⁷, so the first convention related to the protection of wounded and sick soldiers in the field was decided, The second convention was related to the wounded, sick and shipwrecked naval forces, and the third convention related to prisoners of war but because of the continuation of humanitarian tragedies and the wars that erupted after 1949 the search continues for new solutions to avoid this reality and resulted in the creation of Protocols (I and II) of 1977, as an addendum to the Geneva Conventions of 1949, where the first protocol came to support humanitarian principles like Geneva Conventions, especially for the missing, wounded and sick. While the second was identified and supported the international protection for the victims of non-international conflicts²⁸.

Also the convention of 1980 related to certain traditional weapons and its four Protocols. Then the 1993 Convention on chemical weapons, the Ottawa treaty of 1997 on anti-personnel mines and the optional Protocol of 2000 relating to the convention on the rights of children in armed conflict²⁹.

It is worth mentioning that the writings of intellectuals and their opinions was the main motivation for the emergence of modern international humanitarian law, especially the thinkers of the Enlightenment like (Jan Jack Russo and Vattel) it is also mentioned by Professor "(Stanislav Anhlek) in book (an outline of international humanitarian law).

The rules of this law appeared as well, in the works of Christian writers, advocates of mercy and avoid cruelty such as ((Vitoria and Suarez)), who were called to mitigate the brutality of war, And the followers of compassion and kindness as they brought the religious systems on war (such as the Peace of the Lord) and (truce Lord). During the thirty years of war that engulfed Europe (1618-1648) between the Catholic and Protestant, the jurist Grotius appeared with his known work (the law of war and peace) where he called for the impact of this war to adjust the behavior of the combatants, where

²⁷ See: <http://www.humanrights.ch/en/standards/international-humanitarian-law/history/> Accessed 9/6/2016.

²⁸ Mawlod A. Musleh, Op.Cit, P.13.

²⁹ See: <https://www.icrc.org/eng/who-we-are/history/since-1945/history-ihl/overview-development-modern-international-humanitarian-law.htm> Accessed 8/6/2016.

he called for avoid killing the vanquished only in exceptional cases, and property may not be the destroyed only for military reasons necessary".

It is found in the introduction to this book, it reflects the shame and horror that caused him as a Christian about the worsening armed conflict in his age when he said: (I've noticed everywhere in the Christian world a reckless, barbarians bowed their heads to him in the war, I have seen people carrying arms for trivial reasons, or without apparent reason, and I found that when the weapon speaks, the divine law or humanitarian law is not showing any respect any longer, everything is going on as if the public outburst free hands under the common decree to commit crimes).

Also Jan Jack Russo cleared in his book "The Social Contract" issued in 1752 that the war is not "a relation between man to a man, but a relation between a country to a country, individuals are not enemies only by accident, not as human beings, not even as citizens, but as soldiers, not as members of the nation, but as defenders of it" ³¹. He stressed that the end of the war will be the elimination of enemy state so ((It is our right to kill its defenders as long as the weapon is in their hands/but if they lay down their arms, surrender and stop being enemies or instruments of the enemy, they become again only human, we have no right to their lives)) Thus, we find that Russo put the principles and rules of a revolutionary which are new in the behavior of the belligerents. If it is pursued by the warring parties it would led to a reduction of the victims of these conflicts to a large extent, if it is due to Grotius ideas to the influence of the principles and concepts of the Christian religion, also influenced by the principles of Islamic Law. Russo's ideas return to logic and reason as one of the philosophers of his time³².

In the battle of Solferino³³ The battle of Solferino considered as an important turning point in the march of human movement. During the sixteen hours of the fighting, forty thousand of dead and wounded fell in the battle field. On that day, the Swiss citizen arrived to this region ((HenirDonan)) is not a fighter, but as a civilian came on a working visit, there he witnessed the legacy of war, a huge number of wounded and dead, where the soldiers come with pains and wounds, and dying from

³⁰ Muhammad A. Shukri, Op.Cit,P.16.

³¹ Muhammad A. Shukri, Ibid ,P.17.

³² Omar Makhzoumi,Op.Cit,P.34.

³³ Solferino: A City Locates North Of Italy, A Battle Occurred Between The French Army Led By ((Napoleon III)) And The Austrian Army Led By ((Maximilian)) In 1859, It Ended To The French Army's Victory) Is Considered As An Important Turning Point In The March Of Human Movement. During The Sixteen Hours Of The Fighting, Forty Thousand Of Dead And Wounded Fell In The Battle Field, See (Souvenir Solferino)

bleeding their blood without a savior to save them, then he appealed to locals to help him in caring the wounds by simple and primitive means, to reduce their suffering³⁴.

Upon his return to Switzerland, he authored his famous book (A Memory of Solferino) and published in 1862. This book had a great role in the development of human movement, where he offered two suggestions:

The first: he calls for forming relief societies in peacetime, including nurses ready to care for the wounded in wartime.

The second: he calls for recognizing those volunteers who have to help members of the army's medical services, and protect them under an international convention.

In the 1863 a charity committee was formed known as (Geneva Association for the public benefit), a committee consisted of five members, their mission was to convert Dunan's ideas into reality, and its members were ((Gustav Moigny - Guillaume Henri Dufour - Lowe Appiah - Theodore Monowar- in addition to Dunan himself)), this committee established International Committee for Relieving the wounded, which later became the International Committee of Red Cross (ICRC)³⁵.

Hence, we find that the credit for establishing this committee returns to the Swiss ((Dunant)) for his deep humanitarian feeling. It is a humanitarian impartial, neutral and independent institution born in the middle of war for more than 140 years. It acts as a neutral intermediary between the warring parties. It seeks to provide protection and assistance to victims of armed conflicts, internal disturbances and other situations of internal violence".

As for its humanitarian mission=ir relief, it will proceed during the international armed conflict according to Geneva conventions of 1949 (common articles 9,10 from the first three conventions and articles 10,11 of the Fourth Convention) and also according to the additional Protocol I (Article 5), where the works of relief militaries, wounded, sick, shipwrecked, visiting prisoners of war and helping the civilians proceed, and generally provide protection and assistance to victims of armed conflict, by the agreement of the parties to the conflict³⁷.

³⁴ Ahmed Attia, Protect The Civilian Population And Civilian Objects During Armed Conflicts, A Comparative Study Of Islamic Law, Edition I(Cairo: Arab Renaissance Publishing House, 1998) P. 21.

³⁵ Malcolm N. Shaw, International Law, Fifth Edition (United Kingdom: Cambridge University Press, 2004) P.1057.

³⁶ Maha W. Sayed, Op.Cit, 2002, P.46.

³⁷ The International Committee Of The Red Cross Publications, International Humanitarian Law, Answers To Questions, Third Edition (March 2005) Pp. 2,6.

As in non-international armed conflicts its mission proceeds according to common article 3 of the Fourth Geneva Conventions and Second Protocol (Article 18) where it proceeds relief works and visiting detained for reasons related to the conflict. In cases of violence that do not reach the level of armed conflict (Internal disturbances) the Committee proceed its mission according to article (5) of the basic system of the while their role in developing the rules of humanitarian international law, is larger and more important in it.

Since its inception, it took upon themselves to develop the rules of this law, the Geneva Convention I for the Amelioration of the military wounded in the field of 1864 returns to the initiative of the (Geneva Commission) of 1863, where it was supported by the Swiss federal government, and called for an intergovernmental conference led to signing this Convention, which is considered the starting point in the legalization of the rules of this law³⁸.

As a result of ICRC's presence in the field, and monitoring things closely, it has allowed them to identify the problems faced by victims Of armed conflict, and also allowed them to identify the loopholes in the rules of international humanitarian law, which makes them take the lead in the development of the rules of this law. Thus the International Committee of Red Cross always works to fill the loopholes and complete the lacks in the rules of humanitarian international law which works on outlining international conventions and participate in drafting of these conventions, including the Fourth Geneva Conventions of 1949 and the additional Protocols of 1977³⁹.

Finally, a project established to reaffirm international humanitarian law and developed it in 2002, this project is aimed at one is sufficient, to provide a framework for both internal reflection and external consultations on current issues and the future of international humanitarian law. The Committee also recently conducted a study on the level of the whole world about the customary international rules, the study that ended in 2004, identified topics which may be accepted to be practicable at the present time, to complete the laws and treaties written. Through this brief presentation, we note the importance of the role played by the International Committee of the Red Cross (ICRC). Whether in the field of humanitarian relief, or in the development of the rules of international humanitarian law,

³⁸ Mohamed Sharif, The Law Of War And International Humanitarian Law, Edition 1(Cairo: The Modern Egyptian Library,2002) P.109.

³⁹ Mawlod A. Musleh,Op.Cit,P.16.

to ensure the implementation of the rules, disseminate them through publications that issued and conferences which call for holding it⁴⁰.

1.1.3.Distinguish Between International Humanitarian Law and International Human Rights Law

it can be read through some of the views and the basis of legal and international aspects of the evidence that confirms the differences as follows:

A. Difference in Their Concepts:

We have already mentioned this difference with a kind of detail in the first point of this thesis, which demonstrate that both laws are independent branches of international law in concept, but in terms of form both of them are regulated by international charters and reflect their subjectivity⁴¹. The two concepts variation complete if we know that IHL is based on the alleviation of human suffering during armed conflicts, as it combines its concept between two different ideas in nature, the first is legal and the second is moral. While the international human rights law is an expression of international legal obligations to respect the rights; freedom of individuals and peoples, and enable to live in luxury⁴².

B. The difference in Terms of The Scope of Application:

In spite of what idealists see that the peace is the basic principle in the international relations, and war is the exception, but the statistical readings indicate the contrary. It was found that during the 185 generations, people did not enjoy the temporary peace between them only in ten generations, and whatever the case may be⁴³, this difference in determining the state of origin or exception in international relations, the legal reality indicates the existence of a fundamental difference in legal terms between the application of both laws⁴⁴.

⁴⁰ International Committee Of The Red Cross, Known As The International Committee Of The Red Cross, Geneva, 2005, P.16.

⁴¹ Tom Hadden And Colin Harvey, Crisis And Internal Conflict Law, International Review Of The Red Cross, To Prepare A Number Of Selections (Geneva, 1999) P.26.

⁴² Omar Saadallah, The Entrance To The International Human Rights Law (Algeria: The Office Of University Publications, 2003) P.50.

⁴³ Muhammad A. Shukri Op.Cit, P.11.

⁴⁴ Ibrahim Ahmed, Uncle Of Violations Of International Liability Rules Of International Humanitarian Law, First Edition (Alexandria, Faculty Knowledge, 2009) P.74.

The IHL applies in time, at the beginning of the armed conflict, but in terms of the physical extent it applies to each case takes a description of the armed conflict whether it is international or non-international, while in terms of personal scale, it gives protection for the two categories; they are victims of armed conflict: the wounded, the dead, prisoners and civilians. While international human rights law applies basically in peacetime, or on natural situations of countries and it stops working with some of its provisions in the exceptional circumstances of countries in accordance with article 4 of the international covenant on civil and political rights. This article did not specify "state of war" in its paragraphs as an exceptional case.⁴⁵

C. The difference in Terms of Some Of The Rights Protected:

The difference between the two laws at this point shows in many things, which We'll bring out the most important in the following:

- The right to life: There are prominent differences at first glance between the two laws regarding the right to life; in the international law of human rights, the right to life is capable of detracting which occupies the forefront in the system of human rights; but this argument does not preclude that this right is not absolute where it is subject to the right to use deadly force in the legal executions or in the case of self-defense ⁴⁶, while the international humanitarian law recognizes the right of the fighters to shoot and kill in combat once they see them and without a prior notice.

⁴⁵ Rights related to the trial and detention: The difference between the two laws here is in terms of usual standard; in IHRL, there is no deprivation of liberty only after a fair trial as a punishment for a criminal act, or the right to a fair trial is protected, while international humanitarian law, it protects the right in detention of combatants without trial as prisoners of war, as well as gives the occupying state a power to arrest civilians and prosecuted through the court, which it should meet certain conditions and the most important one is that this court should be military and non-political. It may take advantage of common article 3 of the Fourth Geneva Conventions and of additional Protocol II, the right trial and punishment of those involved in the internal armed conflict, subject to the necessary minimum standards for a fair trial⁴⁷.

⁴⁵ Mufid Shehab, Studies In International Humanitarian Law, First Edition(Cairothe: Future Of The Arab House,2000) P.89.

⁴⁶ Tom Hadden And Colin Harvey, Crisis And Internal Conflict Law,Op.Cit,P.31.

⁴⁷ T. Buergental, International Human Rights (West Publishing Co., St. Paul, 1995), P.20.

- The right to freedom of movement: IHRL guarantees the right to freedom of movement, subject to the usual restrictions for national security and public system, and the possibility of compromise during emergencies, while IHL contains explicit prohibition stating prevent displacement of civilians during armed conflicts for other reasons of war necessity, there is also an explicit ban on some forms of evacuation by military force where it is considered as a war crime and a crime against humanity⁴⁸.

Though the subjects of controversy at the point of difference in terms of some of the protected rights are many, but we will limit ourselves in this amount of difference between the two laws from the standpoint of the protected rights, that we will discuss more in other lines of this thesis.

D • The Difference in Terms of The Provisions of The Addressee:

If the addressee is essential of the provisions of IHL are the militaries and the politicians who have an active role in the martial and military operations management regardless to their position or affiliation of states or international organizations or rebels in the country or the rebels in the occupied territories⁴⁹, the addressee is the essence of provisions and rules of IHRL of the state represented by the authorities or agencies involved in the management of the affairs of everyone in the territory of the state, or "the population of the region," the constitutional concept of the term",

E. The Difference in Terms Mechanisms of Monitoring Implementation:

Monitoring works of the provisions of IHL is made through a private international mechanisms owned organizations, intergovernmental bodies and non-governmental organizations in order to protect people affected by the military operations and may result in the occupation of the wars. The most important of these organizations is the ICRC which its name linked to honest guard of the humanitarian international law since its establish". They started to take it upon themselves tasks of humanitarian character by virtue of the rich experience gained throughout the period of their work, in addition to the important role played - as non-governmental humanitarian neutral that enjoys

⁴⁸ Roopam Verma, Humanitarian Laws And Human Rights Law Analysis Of Existing Differences And Similarities, Available At <http://Law.Bepress.Com/Cgi/Viewcontent.Cgi?Article=4770&Context=Expresso>. Accessed In 19/6/2016.

⁴⁹ Masaad Zidane Qasim, United Nations Intervention In Armed Conflicts Not Of An International Character (Egypt: Dar New University For Publication- The University Of Alexandria, 2003) P.415.

⁵⁰ Ahmed Abou Al-Wafa, The General Theory Of International Humanitarian Law, First Edition (Cairo: Arab Renaissance Publishing House, 2013) P.27.

⁵¹ Nizar Ayoub, International Humanitarian Law And International Human Rights Law, The Palestinian Independent Commission For Citizens' Rights (Ramallah: A Series Of Legal Studies, 2003) P.37.

international legal status to make them more like intergovernmental organizations - to intervene with armed conflicts through putting procedures that contribute to the activation of protection for those involved, also through their role in the field to send and distribute relief materials and team that carried out⁵².

In addition to the ICRC, there are other special mechanisms to monitor the application exclusively as a "garrison state" or to investigate serious violations of IHL, this task entrusted by the framers of the first additional Protocol, and by article 90 of it "the International Committee for Fact-Finding ". Also many legislators of international humanitarian law look a sense of optimism for the potential role of the permanent international Criminal Court after entering Rome system into force in 2001, which we conclude from it that the nature of these mechanisms; is partly preventive, and the other part has a nature of repressive or deterrent⁵³.

In international human rights law, the international community insist to approve the means and mechanisms of international protection of human rights, as well as the internal protection means established under the national law of the countries - which are often characterized by insufficiency - therefore, the international and regional conventions have ensured mechanisms to monitor the respect of different countries to the commitments imposed by the international conventions on human rights, according to the provisions of the Charter of the United Nations in articles 2/62 and. 68 that the economic and social council of the United Nations and its various subsidiary bodies play an important role in the field of human rights⁵⁴. In order to carry out the tasks entrusted to it, the council mentioned above form both of the following committees: the human rights commission, the commission on the status of women and the sub-commission to prevent discrimination and protect minorities, these committees, which are generally studying the periodic reports sent by the states, in addition to the study of the complaints. These mechanisms have gained very effective in the world today where respecting human rights became something looks like the primary and essential condition for the acceptance of the state in the international environments⁵⁵.

⁵² United Nations, International Legal Protection Of Human Rights In Armed Conflict, (New York: United Nations,2011) P.7.

⁵³ Extract From ICRC Publication "International Humanitarian Law: Answers To Your Questions" Available At: <https://www.icrc.org/eng/resources/documents/misc/skzmuy.htm> , Accessed At 17/3/2016

⁵⁴ 62.68 Articles In The Charter OfThe United Nations.

⁵⁵ Samer A. Musa, The Relationship Between International Humanitarian Law And International Human Rights Law, Available At <http://www.ahewar.org/debat/show.art.asp?aid=100903> , Accessed At 21.4/2016

1.2.What are journalists in International Humanitarian Law

The international agreements that dealt with the protection of journalists did not mention the definition of journalists, and the special calendars of customs and regulations of war annexed to the two Hague conventions of 1899 and 1907 didn't define who are the newspapers reporter without giving any definition, as a third Geneva convention stipulated in article 4-p on the war correspondents who accompany the armed forces without being part of them, and the article 79 of the first additional protocol didn't set out the concept of journalists⁵⁶.

Journalists are the ones who are working in newspapers, magazines, radio, TV stations and news agencies from the media journalists take in the courtyard of war to import news of military hostilities media they work for⁵⁷.

1.2.1.Journalist Definition

There are many definitions of journalists that explain its concept and describe the essence and nature of the work being done and probably most of them launched from the exercise of a person to the profession of press. the laws governing this job of the level of national laws of each state then the international laws and treaties intended to identify the journalists to denote them within a legal basis mode.

A : The Linguistic Definition of Journalists

The journalists is defined in language as that person engaged in the job of gathering news and views and publish them in a periodically newspaper or magazine⁵⁸.

B. The Journalists Definition by Law

⁵⁶ Dawood Ibrahim, International Regulations For The Protection Of Journalists Armed Conflicts Between The Text And The Time Of Application, The First International Conference, Faculty Of Law, University Of Aleppo (Protection Of Journalists During Armed Conflicts), August 2008, P.3

⁵⁷ Nazareth, Fenner Hassan, International Humanitarian Law And Its Application To The Iraqi Armed Conflict Iran, First Edition (Baghdad,Iraq: Dar Pubic Cultural Affairs,1998) P.70.

⁵⁸ Ashraf F. Al-Rayi, Freedom Of The Press In The Legislation And Harmonization Of International Standards, (A Comparative Study), Second Edition (Amman, Jordan: The House Of Culture For Publishing And Distribution,2014) P.59.

Each issue is printed by one name periodically in organized or non organized dates if it has the periodical condition , so it is each periodical publication issued by one name and expresses the idea by writing saying or picture and issued periodically⁵⁹.

we conclude that this is considered a journalist who practiced the press job primarily and regularly in a daily or periodical newspaper, we can say that the journalist is that person who took press as essential job and as main source of livelihood . there for not any person wrote an essay or publish a speech can be a journalist, cut out and commitment of press determines the sort of press identity as the feature of journalist is not limited to those who issue a newspaper or write an article or news, but it include all of people participated by his art or competence in a section of the press industry that have a role in issued publications, thus the little of journalists is the editor informer , photographer-or painter and all who have a role in issuing and disturbing of newspapers⁶⁰,

C. The Idiosyncratic Definition Of Journalist

The jurisprudence and jurists disagree about the meaning of journalist, and this disagreement is due to differences on the concept of press and journalists especially In the range of international humanitarian law, the jurisprudence has split in to two directions :

1- Narrow Direction:

The owners of this trend believe that the concept press meant newspapers in various forms whether daily or periodically, as well as books, advertisements and all forms of publications, they confine the meaning of press and journalist in written articles only they focus on the material without its people so it include press work regardless of who does it, but in a narrows range it is the newspaper with the former meaning⁶¹.

2- The Broad Direction:

The owners of this tend believe that the meaning of press is not limited to the written newspaper , but it extends to include television, radio, theatre, movie and other various media . some researches criticized the two trends⁶², but the draft of UN convention which had been prepared according to the

⁵⁹ Basin Asaf, *The Protection Of Journalists During Armed Conflicts*, First Edition (Jordan: Dar Zahran For Publishing And Distribution, 2010) P.48.

⁶⁰ Mabtosh Haj, *Protection Of Journalists In Armed Conflicts* (Alexandria: House The New University, 2014) P. 85.

⁶¹ Basin Asaf, *Op.Cit*, P.45.

⁶² Ruay Khaled, *Legal Protection For Journalists During Armed Conflicts, The Study In Light Of Domestic And International Laws*, Master Thesis Submitted To The Faculty Of Law And Political Science At The University Of Karkuk ,20015,P.12.

recommendation of the general assembly of UN for submission to the governmental experts conference then to the diplomatic conference which was founded to affirm and develop the international humanitarian law during 1974-1977. This conference has pointed to accept this trend where the definition of journalists include in article 2-P which provided that ((the journalists term refers to each correspondent, and informer, investigator, photographer and their technical assist outs in newspaper, radio and television and those who practice this activity as an original work⁶³.

While in the international dictionary under armed conflicts, the journalist is meant every person seeking information or comment on them or use them in order to publish them in the press, radio or television , so we tend to that the meaning of journalist should be in its wide meaning to include correspondents of various newspapers Correspondents of new agencies, televisions and radio and all who work in this great media sector but definitely the member of armed forces is not considered a journalist and does not have protection because his destiny is like all other members of the military⁶⁴.

Although all of the above about the concept of the journalist we can consider the journalist as : that person who practice any media activity and seek to find news and editorial articles and get information and comment on them and prepare them to become appropriate for publications in the media according to the law of his state and to practice one of these activities as an original work⁶⁵.

1.2.2.Types of **Journalists**

Before we define the types of journalists in areas of armed conflict , we should explain an important thing namely to the concept of the journalist and war correspondents and the way to cover the armed conflict has been developed at the level of the means and competence and it has associated with progress of science and technology of media, and which witness a great development over the past years and last decade⁶⁶.

⁶³ Commentary On The Additional Protocols Of 8 June 1977 On The Geneva Conventions Of August 1949, ICRC, Dipoible: www.icrc.org, P.921.

⁶⁴ Ahmad S. Ali, The Protection Of Journalists In Armed Conflicts In The Light Of The Rules Of International Humanitarian Law, Journal Of The Academy Of Social And Humanistic Studies, Second Issue, The University Of Chlef: Algeria, 2009, P.62.

⁶⁵ Mahmoud Daoud, International Protection For Journalists In International Humanitarian Law And Islamic Jurisprudence With The Signal Applied To The Events Of The American Aggression On Iraq(2003)P.14.

⁶⁶ Mohammad Juma, Protection Of Journalists And Media Outlets During The Wars And Armed Conflicts In The Light Of International Law, Master Thesis Submitted To The Faculty Of Law At The University Of Al-Azhar, 2014,P.

At the beginning of rationing rules to protect the victims of armed conflicts, the concept of war correspondents didn't exceed reporters of newspapers and news agencies attached to the military sectors after obtaining permission from authority , and they were subject to specific controls imposed by armies .which often imposes them to wear custom-outfit for members of these sectors and comply with regulations and order imposed by army⁶⁷. This is the situation of most correspondents as most of the law of states provide that e military areas cannot be entered without special permissions these laws stipulate that there are no taboo subjects, but when it related to sensitive information, they should give correspondents some technical instructions regarding how to deal with it and correspondents often move freely across wide areas except the military which requires special permission and specific measures are imposed on the correspondents⁶⁸.

Given the evolution of technology of using satellites and internet and other modem means and systems in communications and the use of media, and its widely spread over large areas of armed conflicts, there is a need for more technicians and cadres to help the correspondent to send his media message whether news or analytical or follow up for what is happening in the areas of armed conflicts, in addition to that the paradigm shift is not limited to the means of communications but it exceeded it to a great development in the weapons used in wars and armed conflicts, which would result in a significant operations. of war in to cities⁶⁹.

All these led to a fundamental change in all surrounding circumstances of wars and battles and armed conflicts in term of their means and tools of journalists who cover these battles, and the nature and moves of their works, which opened the door for other types of journalists to work on and cover these battles in isolation from these military sectors without obtaining permission?" , nowadays they make up the majority of journalists working in wars and armed conflicts areas, especially after the war of the ISIS against humanity especially in Kurdistan region, Iraq, Syria .

Journalists can be divided to three types each of them has its own situation in terms of the range of protection :

A. Independent Journalists

⁶⁷ Jamil Hussein, International Responsibility For The Violation Of The Protection Of Journalists And Media During Armed Conflicts In The Light Of The Provisions Of International Law, House Legal Books, Egypt,P35-36.

⁶⁸ Magazine Journalists, Issued By The Egyptian Journalists Syndicate, The Diagnosis Of The State Of French Egyptian Press, Second Edition, March, 1990, P. 53.

⁶⁹ Jamil Hussein, Op.Cit,P.36.

⁷⁰ Sharif Atlem & Mohamed Abdel Wahed, Encyclopedia Of International Humanitarian Law Conventions, Sixth Edition (Cairo: International Committee Of The Red Cross 2002) P.312.

They are correspondents of international news agencies scattered everywhere they cover wars and events and have a great role in revealing truths of war, which promoted the warring parties to respect the humanitarian rules that apply in times of armed conflicts and use the international public opinion as an exert pressure on the warring parties, this type of journalists are called non-accredited and move freely in isolation from military sectors, and they are not considered parts of them⁷¹ and way from the influence and limitations of armed forces which impose on journalists accredited there to this type is considered civilian according to the provisions of the fourth Geneva convention 1949 and to additional protocols of 1977 for non international conflicts and the resolution no. 1738 of 2008 of security council⁷²,

B. Journalists Attached To The Armed Forces (War Correspondent)

They are civilian journalists accompanying the military without being a part of it according to a formal permission from the forces who accompanied and follow introductions of these forces, they move with them and adhere to the restrictions imposed on them. This type of journalists enjoy the status of war prisoners if captured according to the provisions of article 13 of 1907 Hague convention and article 81 of the Geneva convention 1929 and article 4A4 of the third Geneva convention and paragraph 2 of article of the first protocol in 1979⁷³.

The same definitions applies to the new phenomenon in modern wars which is the phenomenon of correspondents attached to the army which emerged clearly during the war of liberating Iraq and the collapse of Saddam Husain regime at 2003⁷⁴ and the Kurds war against ISIS at 2014.

C. Military Journalists

They are military personnel work in the field of media activity of the army and apply to them what apply to members of the army and they do not have any specific immunity because they are considered as a part of the army follow the chambers of war media and military media offices which are formal military sectors⁷⁵, but this description does not apply to civilian employees in the media

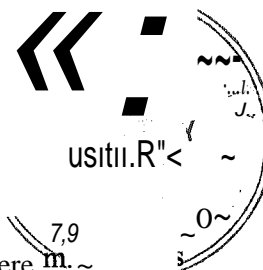
⁷¹ Tang, Hong, Protection Of Journalists In Situations Of Armed Conflict : Enhancing Legal Protection Under International Law, (Golden Gate University School Of Law 2008), P.41.

⁷² Alain Modoux, International Humanitarian Law And Journalists, Mission, Extract From The International Review Of The Red Cross (1983) P.19.

⁷³ Hilde Farthofer, Journalists In Armed Conflicts, Protection Measures In The International Humanitarian Law, Paper Presented At The SGIR 7th Pan-European International Relations Conference, Stockholm, 9-11 September 2010, P.3.

⁷⁴ Christiane Eilders, Media Under Fire: Fact And Faction In Conditions Of War, (IRRC), Vol .87, No 860, 2005, Pp.640-648.

⁷⁵ Alexandre Balguy-Gallois-The Protection Of Journalists And News Media Personnel In Armed Conflict-International Review Of The Red Cross, Vol. 86, No. 853, March 2004, Pp. 37-67.



institutions such as governmental newspaper and televisions and radios of state⁷⁶, where⁷⁹ have civilian media foundations (radio, TV and public edification institutions), and those who work in those foundations are civilian people, it may happen that these foundations order them to accompany military sectors as a part of the state media effort in armed conflicts, these people remain as civilians moving with the military sectors, they should be treated as accredited journalists⁷⁷

1.2.3.The Obligations of Journalists in Armed Conflicts

The warring parties have specific commitments to the protection of civilians from the direct effects of hostilities. The International humanitarian law requires that all civilians including journalists should have protection from violence. Journalists have the obligation not to use media in publicity for the incitement of war and they are also prohibited from participating in fighting and hostilities, in addition to providing all the necessary equipment for the prevention of war.

A. Ban The Participation of Journalists in The Hostilities

Journalists enjoy the protection afforded by the international humanitarian law, however this applies if the primary condition that journalists do not act in ways that adversely affect their status as civilians⁷⁸ and this includes contributing to the hostilities or to participate directly in hostilities. It also gives reporters parameters and guidelines for media coverage during war, it prohibited them from taking any role in the hostilities. Any journalist going against this ban entails serious legal consequences beginning with loss of the journalist's right to protection, and this gives the state the right to prosecute the journalists on the criminal charges of treachery⁷⁹

But it must be emphasized that this prohibition does not extend to duties included as the usual performance of the journalist's mission like presence in the field, or interviews, or to take notes or take photographs or make recordings of sounds, or imaging video cameras and mobile devices, and broadcast to the newspaper or agency or channel. There is a need to prove that the journalist has exceeded professionally imposed boundaries, or participated in military action. There is also need to

⁷⁶Reporteurs Sans Frontières, Hand Book For Journalists Guide De Pratique Analyses (Edition Unesco,2005)P 4.

⁷⁷ Abdulkadir B. Hobah,Op.Cit,P.57.

⁷⁸Article 79/2 Of The First Additional Protocol To The Geneva Conventions Of 12 / August / 1949, Relating To The Protection Of International Armed Conflicts, 1977

⁷⁹Article 37 / A, Of Protocol 1, On The Protection Of International Armed Conflicts.

establish a connection between the journalist's behavior and the effects of this behavior on the hostility actions",

Also, the journalists should take the necessary precautions not to be subjected to the risk of hostilities, or charged to contribute to the hostilities, for example the independent journalists who doesn't accompany troop should not wear military uniforms, journalists should also not travel with personal security guards because that represents a threat to the journalist, as exemplified on April 13, 2003 in an incident involving the American CNN team ⁸⁰.

The media team was accompanied by a guard from a private security company during their coverage of the war in Tikrit, northern Iraq, when their vehicle came under fire at the entrance of the town, the guard returned fire, This was considered an adherent contrast to all professional rules. The use of a private security firms whose members will not hesitate to fight, will not only increase the confusion between reporters and combatants⁸². The warring parties should not expect all media vehicles are armed therefore this incident should not be used as an excuse to violate the protection of journalists and media during armed conflicts.

B. Obligation of Using The Distinctive Badge and Identity card

A journalist to commit to use the distinctive badge to distinguish him from non journalists in conflict zones, he is also obliged to show the identity card, as follows:

1.Obligation to The Distinctive Badge:

The journalists must use the distinctive badge in the conflict zones, so the warring parties can distinguish them from members of the opposing forces. The badge should not provoke the suspicion (not resemble badges used by the warring forces). The badge must also be easily visible on their uniforms. Their uniform should also be easily distinguished from that of the armed forces. Their occupational badges should also be displayed on their vehicles and this logo shall not be the flags at their headquarters in the conflict zone⁸³.

2.Owning a Private Journalist Identity Card:

They may obtain an identity card similar to the model in Annex II of this Protocol. This card, which shall be issued by the government of the State of which the journalist is a national or in whose territory he resides or in which the news medium employing him is located. The identity card should attest to his

⁸⁰ R. Gutman, Crimes Of War - What The Public Should Know, (New York/London: Norton And Company 1999) P.171.

⁸¹ Maher Jamil, The Protection Of Journalists And Media During Armed Conflicts (Arab Renaissance Publishing House:2008) P.78.

⁸² Maher Jamil,Ibid,P.78.

⁸³ Mabtosh Ha], Protection Of Journalists In Armed Conflicts,Op.Cit,P.275.

status as a journalist, this text refers to an identity card that the competent authorities may give it to a journalist in order to attest to his status and function when exposed to troubles during his work⁸⁴.

Here an important question rises, is holding a download card a condition for the right of protection?

It can be said accordance with Article 1/79, the journalist be protected as a civilian and non-participant in the fighting without any consideration to his job, therefore they did not a special establish law for journalist otherwise the card would be a requirement to enjoy the advantages of this situation⁸⁵. As long as the journalist is being protected as a civilian the identification card is not a condition to have this protection, but rather a distinguishing factor.

There for journalists it must be respected, whether they have or don't have identity card to prove they are journalists are charged with dangerous assignments, as the card certifies that they are journalists and not civilians because they originally are journalists⁸⁶.

Albeit the identity card has practical use it only in the event of a journalist has been captured by parties to the conflict, having this ID card is a presumption in his favor that he is a journalist non-combatant needs to be released unless he commit a hostile act.

However, in the case of losing the card for any reason the press is protected in accordance with Article 2/5 of the Third Geneva Convention on the treatment of prisoners of war in 1949, which allows to keeps the journalist under protection until a competent court decide on the position after confirming his identity⁸⁷.

It is also equal, the provision of Article 79 protects accredited journalists and independent journalists who work individually and then as civilians persons in an armed conflict zone by the expansion of the circle of Protecting Journalists⁸⁸.

C. Providing The Required means for Protection

The duty of the editors is providing the safety equipment of good quality for reporters working in armed conflict zones and dangerous areas, such as bulletproof jackets, helmets, armored vehicles if available,

⁸⁴ Sharif Atlem & Mohamed Abdel Wahed, Encyclopedia Of International Humanitarian Law Conventions, Sixth Edition (Cairo: International Committee Of The Red Cross 2002) P.312.

⁸⁵ Mahmoud Daoud, International Protection For Journalists In International Humanitarian Law And Islamic Jurisprudence With The Signal Applied To The Events Of The American Aggression On Iraq (2003) P.14.

⁸⁶ Gasser H. Peter, The Protection Of Journalists Engaged In Dangerous Professional Missions, Op.Cit, P.14.

⁸⁷ Mabtosh Haj, Protection Of Journalists In Armed Conflicts, Op.Cit, P.277.

⁸⁸ Alexandre Balguy-Gallois-The Protection Of Journalists And News Media Personnel In Armed Conflict-International Review Of The Red Cross, Vol. 86, No. 853, March 2004, Pp. 37-67.

they must also provide other communications equipment to locate the presence as well as equipment to help survive and first aid⁸⁹.

D. Commitment to The Ethics and Decency of The Profession of Journalism

Doing the profession of journalism is through principles and ethics the journalist must commit and works to achieve them, because the press has a social role, and a national message as well as it's role emphasizing on the rule of law and supporting justice as addressed by the judiciary with the need to adhere to accuracy, objectivity and professionalism and the journalist must avoid using his career in order to achieve personal gains, the commitment of journalists to these principles achieve their ability to constructive criticism, for the benefit of communities and protecting the public from any bad usage of the press in order to achieve certain purposes promotion and advertising⁹⁰,

The protection of sources is the cornerstone in the field of journalism, protection is gaining extraordinary significance when news coverage of specific topics such as violent crime, national security and armed conflicts under which expose the sources to legal or physical risks and independent journalists in particular should know that this burden located primarily on their shoulders, and a journalist should not make a promise to maintain confidentiality before estimating the potential consequences if the journalist gave the media Foundation promise of confidentiality, this promise creates a moral obligation⁹¹.

⁸⁹ Charter Of The Safety Of Journalists Working In Armed Conflicts And Dangerous Areas Of The Organization Reporters Without Borders Regions, Adopted In Paris In March, 2002, P. 2.

⁹⁰ Ruay Khaled, Legal Protection For Journalists During Armed Conflicts (The Study In Light Of Domestic Laws And International) Op.Cit, P.24-25.

⁹¹ Frank Smith, The Committee To Protect Journalists To The Security Of Journalists, News Coverage In The World Is Dangerous And Variable Guide, The Committee To Protect Journalists, P.12.

Chapter 2: Status Journalists During Armed Conflicts

Despite of the protection provided by rules of international humanitarian law to journalists during being in the armed conflict areas, in spite of the confirmation of the session which was allocated by UN human rights council June /4/2010 in Geneva to discuss the protection of journalists in areas of armed conflicts, that the current laws provide realistic and powerful protection for journalists, therefore to cover the vocabularies of this chapter of all its aspects, we have decided to divide this chapter into:

Protection Journalists during international armed conflicts

Protection Journalists during non-international armed conflicts

2.1. Protection Journalists During International Armed Conflicts

To adequately understand the rules established for the protection of journalists in international armed conflicts, necessitates that first define the concept of international armed conflict.

2.1.1. The Concept of International Armed Conflict

The concept of international armed conflicts is illustrated through two points, the first is its definition then explain the applicable law accordance with the international legislations.

A. The Definition of International Armed Conflict

It meant an armed conflicts between states or between a state and a recognized national liberation movement, as it came in the first article of the first additional protocol to the Geneva convention of 1949⁹². It meant also restoring to armed violence between two states or more whether with a former announcement or not. The contracting warring sides should apply the provisions of the international humanitarian law, whether they admitted the conflict or not and must apply these provision in situations of occupations⁹³.

B. The Existing Laws to Protect Journalists Under International Armed Conflict

⁹²Michel Cyr Djiena Wembou & Daouda Fall, International Humanitarian Law: General Theory And African Reality, (France: Harmattan, 2000) P.78. And Paragraph 4 Of Article 1 Of The First Additional Protocol

⁹³Laura M. Fournier, The Protection Of Journalists In Armed Conflict, Master Thesis Of The Law, Faculty Of Law Ghent University, 2014, P.13.

The range of international humanitarian law focus on avoiding non-participating people or those people who stopped participating in direct hostile actions which are unnecessarily. Thus it applies to international armed conflicts especially the four Geneva conventions and the first additional protocol, where they put basic rules for granted protections for journalists when they found themselves in the context of an armed conflict. Journalists were mentioned in international humanitarian law treated in two deferent ways⁹⁴. First in the third Geneva convention relative to the treatment of war prisoners which include war correspondents, and the Second is in the first additional protocol to the Geneva conventions of 1977 which deals specifically with journalists who do some dangerous tasks in armed conflict areas, and both treaties apply to international armed conflicts⁹⁵.

2.1.2. Protection of Journalists Under International Conventions in International Armed Conflicts

The definition of journalists has come in the draft of international conventions for protecting journalists in article 2 where is stipulated the definition of journalists for the purposes of application of this agreement. This convention tries to recognize the rules that authorize protection and promote respect for journalists. And considering the article 4 of the third Geneva convention and article 79 of the first additional protocol, it is clear that journalists enjoy some kind of protection afforded to civilians in international armed conflict which will be explained in the pro points of this section".

The Geneva convention in 1864 did not address the protection of journalists despite it being the cornerstone on which the conflict of international humanitarian law is based.

A.The Protection of Journalists Under The Hague Convention of 1899-1907

There was no any attention of protecting civilians during the fighting and any of the previous conventions before the fourth convention of Hague of 1949 didn't include any direct protection for civilians and this protection remained subjected to general principles established by martins, and in the second Hague convention of 1899 and the fourth of 1907 which include (Civilians remains in

⁹⁴ Mohamed Daoud, Protect The Security Of Civilians Under Occupation In International Humanitarian Law (Egypt: He National Library And The National Archives,2008) P. 37.

⁹⁵ Mohammed Thamer, International Protections For Journalists During Armed Conflicts Empirical Study On Iraq News, Available In: <https://www.dorar-alirag.net/threads/174001> . 25/4/2016

⁹⁶ Muammar Al Naimi, The Protection Of Journalists In Armed Conflicts,Op.Cit,P.29.

cases that do not provide for written texts, in protecting the principles of humanity and the dictates of public conscience)⁹⁷.

While the Hague convention of 1907, the article 13 stipulates that (treats Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers contractors, who fall into the enemy's hands, and whom the latter think fit to detain, have a right to be treated as prisoners of war, provided they can produce a certificate from the military authorities of the army they were accompanying)⁹⁸. With this text the calend had recognized the situation and position of reporters and editors of newspaper as civilian personal follow the army without being actually a part of it, it had considered them a part of civilian citizens and non-combatants and therefore they don't have warrior character, they enjoy protection as civilian⁹⁹, so it is illegal act to attack them or be subjected by the enemy forces whether the war correspondent is one of the citizens of a warring state or foreign. The journalists according to these texts are a part of a undefined class, accompany the army forces without belonging to them, and as such they should be treated when captured as war prisoners with retaining at the same time their civilian status under one condition if they carry a permission issued by the military authorities of their countries¹⁰⁰.

B. The Protection of Journalists Under The Geneva Convention of 1929

This convection which was concluded on 27/7/1929 is considered the first convection that specialized to prison of war. In July representatives of 47 stats met in Geneva at the invitation of Swiss government in order to make some improvement to the laws that protect fighters in the armed conflicts, this conference resulted to write two agreements, the first related to improve the condition of soldiers, wounded and sick in the field. And the second related the treatments of war prisoner which provided the human treatments with war prisoners, where there are many rules relating to protection of prisoners¹⁰¹.

Recording the situation of journalist the seventh section of Geneva convention of 1929 included a text dealing with providing with kind of protection for journalists in article 81 (Persons who accompany

⁹⁷Musa Mohammed Jamil Hand, Op.Cit.P.44.

⁹⁸ Article 13 Of The Hague Convention, Dated 18 /October / 1907, Relating To The Institution Of The Ground War.

⁹⁹Mohammed Abdul Rahman, The International Protection Of Journalists During Armed Conflicts In International Humanitarian Law And Islamic Jurisprudence, Op.Cit.P.153.

Nizar Jassim, The Legal Status Of The Sender Of The War In Light Of The Law Of War, The Iraqi Journalists Syndicate, (Baghdad:1983) P. 23

¹⁰⁰ Mabtosh Haj, Protection Of Journalists In Armed Conflicts, Op.Cit,P.160.

¹⁰¹Mohammad Shalaldeh, International Humanitarian Law, The Entity Knowledge (Alexandria:2005) P.51.

the armed forces without being affiliated to them directly, correspondents, or informants journalists, or contractors, or contractors who fall in the hands of the enemy, the enemy believes that it is appropriate detention shall be entitled to be treated, prisoners of war, provided that it is in possession of a statement from the armed military authorities that they were traveling with)¹⁰²

According to this text the journalists are a part of a undefined class, accompany the army forces without belonging to them, and as such they should be treated when captured as war prisoners with retaining at the same time their civilian status under one condition if they carry a permission issued by the military authorities of their countries¹⁰³.

C. The Protection of Journalists Under The Geneva Convention of 1949

It emphasized on the legal protection for journalists in the third Geneva convention provides the treatment of war prisoners, as the journalist who is being captured and arrested is considered a war prisoner has the legal situation war prisoners, but the journalists must play a role similar to the role of the soldier, it makes a presumption, and in case there is any doubt of someone's situation, they should give him the legal status of war prisoner and that person enjoy the legal protection according to Geneva convention of 1949 until the decision of a competent court is issued¹⁰⁴.

The article 4-a of the third Geneva convention of 1949 provides to identify the categories of war prisoners, and the journalist is provided in article (4/A4) (Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labor units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model)¹⁰⁵.

While article 5 of the third Geneva convention provides (The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation. Should any doubt arise as to whether persons having committed a belligerent act and having fallen into the hands of the enemy belong to any of the categories

¹⁰²Article 81 Of The Geneva Convention 1929, relative to the Treatment of Prisoners of War.

¹⁰³omar Saad Allah, The Development Of International Humanitarian Law, First Edition (Beirut: Dubai Media Incorporated West, 1997) P. 101

¹⁰⁴ Stephen R.Sarnoski, The Status Under International Law Of Civilian Persons Serving With Or Accompanying Armed Forces In The Field Army Lawyer, July 1994, P.32.

¹⁰⁵Article (4 A 4) Of The Third Geneva Convention Relating To The Treatment Of Prisoners Of War Of 12 / August 1949

enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal¹⁰⁶.

The journalists and war correspondents enter the classification that is not specified or identified relating to the individual attaching the army without being part of them. The previous convention was limited to protect the accredited journalist by the army they accompany and hold a badge or permit of army¹⁰⁷.

D. The Protection of Journalists Under The Provisions of The First and Second Additional Protocol of 1977

In the 1970 and most notably during the Vietnam War, the international community concerned itself for the first time specifically with the physical protection of independent journalists. On 9 December 1970, the United Nations General Assembly ('UNGA') adopted Resolution 2673 (XXV), directing the Economic and Social Council to draft a convention on the protection of journalists engaged in dangerous missions in areas of armed conflict. This was done through the Human Rights Commission and resulted in the 1975 Draft UN Convention which commenced as an initiative of the UNGA. The draft was reviewed at the diplomatic conference as the reaffirmation and development of International Humanitarian Law applicable in Armed Conflicts (1974-1977). The ad hoc working group of committee I of this conference decided to incorporate the existing IHL instruments instead of creating a separate convention to address the special status for journalists. Upon approval by the UNGA, Article 79 AP I was introduced as a special provision relating to journalists¹⁰⁸.

The effort in the diplomatic conference aimed to provide the best protection of journalists from the dangers of wars, and adopted a specific rule of the first additional protocol of 1977 relating to international armed conflicts which represented in article 79 about the measure of protecting journalists, where the article provides¹⁰⁹:

- 1- Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Article 50, paragraph 1.
- 2- They shall be protected as such under the Conventions and this Protocol, provided that they take no action adversely affecting their status as civilians, and without prejudice to the right of war

¹⁰⁶Article 5 Of The Third Geneva Convention Relative To The Treatment Of Prisoners Of War, Of 12 / August / 1949

¹⁰⁷Alexandre Balguy- Gallois, Op.Cit ,P.39.

¹⁰⁸ Abdulkadir B. Hobah, Op.Cit, P.47.

¹⁰⁹Article 79 Of The First Additional Protocol 1977, Dated 12 / August / 1949 On The Protection Of International Armed Conflicts.

correspondents accredited to the armed forces to the status provided for in Article (4 A 4) of the Third Convention¹¹⁰.

3- They may obtain an identity card similar to the model in Annex II of this Protocol. This card, which shall be issued by the government of the State of which the journalist is a national or in whose territory he resides or in which the news medium employing him is located, shall attest to his status as a journalist.

Despite of the lack of reference to the protection of journalists in the internal conflicts in the second protocol, but the humane treatment enshrined in the common third article and the second protocol, and the stipulated in this protocol provides for this class of people some minimum guarantees in the internal wars. It means that the journalist enjoy full protection guaranteed by the international humanitarian law to the civilians during both international or internal wars. And thus the journalists can get the same protection for non-competent people¹¹¹.

The second additional protocol of 1977 which provides to protect the victims of non-international armed conflicts, didn't put any kind of special protection for journalists, and in this case the journalists are being protected implicitly just like other people, on the other hand the article 37 of the second protocol states that (the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances)¹¹².

2.2.Protect Journalists During Non-International Armed Conflicts

We will try to show prescribed protection for journalists in non-international armed conflicts, and also explain the concept of non-international armed conflict and the applicable laws:

2.2.1.The Concept of Non-International Armed Conflict

The concept of internal armed conflicts has become a very important issue because of it's ambiguity and attachment to the old fashioned principle of sovereignty. There overlaps between the two as well as severe range diversity. It is very difficult to distinguish between them. There is no doubt that the

¹¹⁰ Emily Crawford, The International Protection Of Journalists In Times Of Armed Conflict And The Campaign For A Press Emblem, Legal Studies Research Paper No. 12/61, 2012, P.16.

¹¹¹ Omar Albzor, For Some Categories In The Protection Of International Humanitarian Law, (Children Women Reporters), A Complementary Study Of The Requirements For Obtaining A Master's Degree In Public Law, Faculty Of Graduate Studies, An-Najah National University, Nablus, 2012, P. 73.

¹¹² Muammar Al Naimi, The Protection Of Journalists In Armed Conflicts, Op.Cit, P.31.

ambiguity of the boundaries between internal armed conflict and sovereignty is a result of their link to the long-standing theory of conventional warfare.

The phenomenon of internal armed conflicts is considered a chronic phenomena which is hardly devad year without leaving behind it a dispute fierce. some internal armed conflicts are long term despite their narrow scope and the other last only a few days or a few weeks, but in both cases the outcome is very heavy losses in lives and money and vandalism of dozens of civilian objects. Civil armed conflict is disease that still threatens humanity the research in the concept of non-international armed conflicts includes a lot of details and things that need to be a lengthier searched, especially if dealt from the position of international Jurisprudence and judgment of this subject. Wewill try to release the concept of non-international armed conflicts in the light of the definition of non-international armed conflict and existing laws to protect journalists under a non-international armed conflict¹¹³.

A. Definition of Non-International Armed Conflict

Article 3 common between four Geneva Conventions is considered the most important articles on the considerations on the non-international armed.conflicts field. Some have even called the designation a "mini-treaty". The article deals the kinds of conflicts-which have no international character, through a set of criteria that can be determined from which-the concept of armed conflict, including¹¹⁴:

- To identify to the parties of the conflict were possible such that, these parties should have and exhibit a set minimum of organizational structure and sequence of leadership.
- That the armed conflict is kept up to a minimum of intensity level. It is assumed in general that parties resort to the armed forces, or using military means, depending on the time lapse during which the violence continues and other additional element may be taken into account.

The meaning of the international armed conflict is that the internal conflict is taking place in the parameters of a single state inhabited by both armed groups. This definition entells that there is no legal personal description of the state or between such groups to each other¹¹⁵. The phrase, internal

¹¹³ Frits Kalshoven & Liesbeth Zegveld, Constraints On The Waging Of War An Introduction To International Law, Fourth Edition (New York:Cambridge University Press, 2011) P.104.

¹¹⁴ Laura M. Fournier,Op.Cit,P.14.

¹¹⁵ Frida Lindström,Asymmetric Warfare And Challenges For International Humanitarian Law,Master's Thesis In Public International Law,Department Of Law Uppsala University,2012,P.25.

armed conflict refers to a fight happening within the territory of a State between the regular armed forces and armed groups that can not be differentiated¹¹⁶

B.The Existing Laws to Protect Journalists Under a non-International Armed Conflict

Protection for journalists here is intended to be applied in a non-international armed conflicts, It is therefore, the international humanitarian law postural applied in non-international conflicts time, and expressed on bases in Common Article Three of the Geneva Conventions of 1949, and in the second additional protocol the 1977¹¹⁷ law which under the common Article 3 made important changes in the international law by using the phrase, (each party of the conflict). This phrase gives non-international armed conflict a humanitarian character because it's obligations urges the current government to face the conflict and includes the rebellious party in the legislation, who were previous considered outside the framework of international law.

The Common Article 3 was the cornerstone of international humanitarian law applicable to this law which was the result of great efforts and long discussions at the diplomatic conference in Geneva in 1949. Prior to the conference there was preparatory work that preceded the conference, in an attempt to provide the minimum humanitarian requirements in non-international conflicts. This conference was followed by the establishment of the second additional Protocol to the four Geneva Conventions, adopted on the eighth of July 1977 which specifically applies to certain cases involving internal conflicts and also aided in the enhancement of protection beyond the minimum set in article 3 common standards. This protocol does not apply unless ratified by the State¹¹⁸

What we note here is that despite the seriousness of journalistic tasks in internal conflicts, it is not mentioned in the second Protocol. However, the humane treatment envisioned in Common Article 3 of Protocol II and general protection of civilians, includes journalists among the population granted minimum protection guarantees which are indispensable in non-international conflicts.

2.2.2 Protection of Journalists Under International Conventions and Treaties in Non-International Armed Conflicts

The rules governing the non-international armed conflicts which sometimes called internal conflicts are represented in the common article three of Geneva convention of 1949 and the second additional

¹¹⁶Essam Abdel Fattah , International Humanitarian Law, (Its Sources, Principles, And The Most Important Rules), (Egypt: The New University Publishing House And Distribution,2008) PI 11.

¹¹⁷ Abdulkadir B. Hobah, Op.Cit.P.101.
^{us} International Committee Of The Red Cross, Promote Respect For International Humanitarian Law In Armed Conflicts And International Guy, The First Arabic Edition, May /2008, P. 9

protocol of 1977, so we will discuss the range of protection of journalists in the common article three in one point and in second point the range of this protection under the second additional protocol and ending in the third point the protection of journalists during internal disturbances and tensions.

A. The Protection of Journalists Under Common Article Three of the Geneva Conventions of 1949

The common article three of the four Geneva convention, is the only article relating to non-international armed conflicts, even it s been described as a mini convention or mini treaty, where it was decided for the first time to protect the victims of this kind of conflicts and established a legal basis for the intervention of neutral humane bodies, the international committee of the red cross¹¹⁹. The final approval of the formula was adopted by the international committee of red cross and read as follows.

1- Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons¹²⁰:

- a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture
- b) taking of hostages.
- c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2- The wounded and sick shall be collected and cared for¹²¹.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

¹¹⁹ Emily Crawford, Op.Cit, P.19.

¹²⁰ Article 3 Common To The Four Geneva Conventions Of 1949.

¹²¹ Françoise Bouchet-Saulnier, The Practical Guide To Humanitarian Law, 3th Edition (Rowman & Littlefield Publishers, 2013) P.320.

The application of the preceding provisions shall not affect the legal status of the parties to the conflict.

We note that the common article three used the return armed conflicted instead of the known traditional term like revolution, rebellion and civil war, and this is what prevent giving a clear definition to this armed conflict¹²².

B.The Protection of Journalists Under The Second Additional Protocol of 1977

This protocol of was signed during the diplomatic conference of 1977 of the beginning the international committee of red cross had provided a flexible and public draft of project in order to be able to apply. it's provisions on all kinds of internal armed conflicts, and didn't put an kind of specific protection for journalists but the journalists fall within the category of protected civilian people according to this protocol which pay a special attention to civilians, where it provided in the part IV. Article 13 as follows¹²³:

1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.
2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
3. Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.

Then it provides a public principle requires that all persons whether participated re didn't in the hostilities actions, where deprived of their liberty or didn't , they have the right to be respected and treaded humane treatments without any adverse distinction. The second paragraph adds a range of acts that are forbidden to direct them to people mentioned in the first paragraph like act of terror¹²⁴. Hostages taking, aggression life. Health. Physical, or mental safety, especially killing, brutal treatments, torture, mutilation and violence against human dignity in particular insulting and

¹²² Ammar Jababli, The Field Of Application Of International Protection To Victims Of Non-International Armed Conflicts, Memo Master Allocates Humanitarian International Law, Faculty Of Law, University Of Batna, Algeria, 2008/2009, P.51.

¹²³Article 13 Of Second Additional Protocol , Supplement To The Geneva Conventions Of 12 / August / 1949, Relative To The Protection Of Victims Of Non-International Armed Conflicts, 1977.

¹²⁴ Joanne M. Lisosky, Jennifer Henrichsen, War On Words: Who Should Protect Journalists?, (United States: ABC-CLIO, 2011) P.57

degrading treatment of human dignity, rape, enforced slavery as well as robbing, steal or treats to commit one of the acts.

C. The Protection of Journalists in Light of Internal Disturbances and Tensions

disturbances are those cases involving serious or continuous internal confrontations. The authorities may use in such cases a large police forces or even the army to restore order in the country, and may adopt an exceptional legislative measures which grant the police or the army more authority. Indeed what distinguishes the internal unrest from internal armed conflict is that disestablishment of organized and coordinated armed forces able to carry out sustained and coordinated operations in cases of internal disturbance¹²⁵. Although the possibility of having organized and coordinate groups, however the international humanitarian law does not apply on it except the principle mentioned in the common article three of the four Geneva contention of 1949.¹²⁶

With regards to internal tensions, they are more dangerous than the turmoil, and are done, with high level of streets such as political, religious, racial, ethnics, social, economical, these tension remain all the periods of conflicts and the force used by authorities in times of internal tension, a force with preventive nature. The ICRC see that these situations usually have continuous arrest of dangerous persons against the security of state without any violence actions- the internal tension results to rise the number of political prisoners- the possibility of ill-treatment of detained people, allegations of disappearance of people, announcement of emergency state¹²⁷. Respect with this situation, the article 1P2 of the second additions protocol provides that (This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts), according to this text there would be cases that international humanitarian law does apply and therefore the victims of these cases don't enjoy the protection of these law¹²⁸.

2.3. The Loss of Protection for Journalists

We already dealt with the legislation on the protection of journalists in areas of armed conflict and in this section examines how journalists can lose the protection granted by international legislation.

¹²⁵ Sulinih Françoise Bouchet, Dictionary Of The International Law Of Armed Conflict, Trs. Ahmad Masood (Beirut, Lebanon: Dar Flag Of Millions, 2005) P.24.

¹²⁶ Abdulkadir B. Hobah, Op.Cit, P.108.

¹²⁷ Rqya Awaharih, The Protection Of Civilians And Civilian Objects In Non-International Armed Conflicts, Phd Thesis, University Eye Of The Sun, Faculty Of Law, 2001, P.41.

¹²⁸ Abdulkadir B. Hobah, Op.Cit, P.109.

The following are case and exceptions where journalists are stripped of their right to protection:

1. If the journalist has a direct involvement in military operations that takes place between the parties. The journalists who are directly involvement in hostilities or combat lose the protection prescribed by the law for the duration of his involvement in this action. This act by the journalist is considered as a waiver of his role as a journalist, and his enrollment to act as a fighter. This means that he is no longer a civilian and thus the protection prescribed by law for protecting journalist does not apply to the individual anymore¹²⁹

In cases which journalists participate in military hostilities or when they have an active part in the hostilities, they lose their protection during the period that they remain involved those hostilities. The international legal protections granted to them as civilians not involved in acts of war and to enable them to perform the dangerous tasks of reporting news from warzones. If they waived their role of neutrality towards the conflict of war, which granted them legal protection, they will no longer enjoy the protection of the law. However, this exception is confined to hostilities only, which is a wide concept that includes not only the military actions, but also includes all that can be described as hostility from the point of view of the opposing side. the journalist who follows the armed forces as a soldier or does any of intelligence tasks, or one who assigned to act as a soldier in addition to his work as a journalist is not include in the population of journalists who are guaranteed protection of international law¹³⁰

Journalist who takes photos and movies of interviews and meetings for illegal purposes like spying to transfer information to the other party also loses protection and immunity for their works can be described as hostile actions.

2. presence in legitimate target areas in order to protect those areas:

If the presence of the journalist in the areas may be allowed to prevent target and attack it in order to protect these places from the other party attacks. The intentions of journalists exposed to these attacks and cannot be distinguished between civil and military objectives¹³¹,

The first Geneva Protocol in 1977 has dealt with a similar situation where the allegation of the presence of civilians is used to shield points or certain areas from military operations, particularly in an effort against this attack. This protocol obliged all concerned parties to make sufficient effort during military operations to prevent exposure to civilians, among them journalists. This Protocol is

¹²⁹ Mabtosh Raj, Protection Of Journalists In Armed Conflicts, Op.Cit, P.150.

¹³⁰ Mahmoud Daoud, International Protection For Journalists, Op.Cit, P.407.

¹³¹ Stuart Casey-Maslen, The War Report: 2012, First Edition (United States: OUP Oxford, 2013) P.358.

based on the general principle of the inadmissibility of the international legal topple for journalists even in cases of protection against armed hostile ¹³²

3. In case of necessity of loss protection: cases in which they are dropping and stopping the international legal protection of journalists as a manner of necessity. What is the state of necessity ¹³³

The general rule that have applied to armed conflicts over the years, allowed the armed forces the possibility using violence, distress and threat against the enemy but to the necessary extent to achieve the desired purpose. This is meant to destroy the enemy's military capabilities, eliminate of morale and weaken the combat capabilities. There fore, the violence may not be a intended to harm the civilians but to prevent the use violence by civilians and intensity of the military action is limited to that need to thwart the insurgency¹³⁴

Already we pointed out that journalists are positioned to protect the civilians and provide them with the necessary immunity against hostilities during armed conflicts. International conventions have worked to find a privileged position for reporters in terms of proving their identities internationally and that they enjoy international protection against the insurgency. To this effect, journalists are charged to protect themselves by carrying their identity card at all times and places, ang. show it to each military group encountered as required of them. If the journalist does not show or cannot show identity for are a son the campaign or the group's military should deal, and do the necessary proceedings unto him as a civilian. They mustmake every needed and possible effort to recognize the identity of that person as a journalist, if there is information that confirms the fact of this status, then the journalist should have the protection prescribed in the relating covenants. There fore hiding or failure or inability of the journalist to prove his identity as a journalist always submit him to cases of loss of protection and immunity. which can be prevented if he can prove his identity¹³⁵

Generally, the journalists, regardless of their nationalities should enjoy international legal protection during armed conflict, whether they have their IDs to prove their status or not, and this should be the basic matter, even if the journalist is a national of an enemy state because the protection enjoyed by journalist stems from his description as a journalist and not from the State nationality even if they were enemy state. Thus the international protection for journalists takes an international dimension in every situation and is more highlighted in the context of the international legal protection for

¹³²Alexandre Balguy-Gallois, Op.Cit, P.252.

¹³³Mahmoud Daoud, International Protection For Journalists, Op.Cit, P.407.

¹³⁴Mabtosh Haj, Protection Of Journalists In Armed Conflicts, Op.Cit, P.150.

¹³⁵Mabtosh Haj, Protection Of Journalists In Armed Conflicts, Ibid, P.154.

journalists during the internal armed conflict, whether it deals with national journalists or foreign journalists or foreign media, protection is the result of the job. The status enjoyed by the journalist has not any relation with nationality or membership or reference.

Therefore, exceptions that may deprive journalists of the international legal protection that is closely related to his status as a journalist are the behavior of the journalist which clearly affects their role and nature of the function as well as duties. This deems the journalist's behavior, making them unworthy to receive the protection granted journalists by international legislation because they have been proven to have been involved in hostile acts or participated directly or indirectly in any hostile military action. These journalists no longer fit the description of press as a profession in its own traditions and objectives¹³⁶.

The reality on the ground that the journalists have to work in these armed conflict zone raises many difficulties and the process generates significant entanglement between what could be considered in accordance with detrimental to the profession of journalism and what is permissible and legitimate does not harm the development of press. These are important considerations as they determine the violation of his protection conditions of the work of journalism that are decided upon by the international humanitarian law¹³⁷.

4. If the journalist is wearing similar clothing as the military or approaching the army closely following a military unit that the military units constitute a legitimate target of the enemy so they can be bombed at any time of the armed conflict in addition. In this situation it is not reasonable to demand the parties in conflict on the battlefield to avoid targeting people who do not show as protected persons¹³⁸.

In conclusion of this chapter, the aim is to find out what the protection afforded by international law for journalists who are doing their professional work in the armed conflict zones. Warring parties are required to provide protection for this category either as civilians or as military reporters attached to military forces, or as journalists performing a dangerous profession in areas of conflict with clarification on cases of loss of this protection.

¹³⁶ Jean-Marie Henckaerts And Others, Op.Cit, P.116.

¹³⁷ Rqya Awaharih, The Protection Of Civilians And Civilian Objects In Non-International Armed Conflicts, Op.Cit, P.82.

¹³⁸ Hans Peter, Op.Cit, P.17.

Chapter 3: Mechanisms for the protection of journalists in armed conflicts

The increasing dangers that threaten the life of journalists and rising of violations indicator which happen to this category and their headquarters assures us that the mere enactments of laws and sanction is not enough to protect journalists, but there is a need of strong foundations and bodies overseen the implementation of those rules. The four Geneva convention and the two traditional protocols provided a set of mechanisms allow the implementation and respecting their rules before, during and after the armed conflicts. In this chapter we will study the preventive mechanisms and mechanisms of implementation and supervision to protect journalists.

3.1. Preventive Mechanisms to Protect Journalists

Preventive mechanisms are considered very important for the implementation of international humanitarian law, so the state has to join and commit to humanitarian contentions and modify its legislation in accordance with the international law, and then the state should publish the rules of this law as broadly as possible, we will discuss all that as follows :

3.1.1. Joining The Relevant International Conventions

The international conventions related to protect the journalists are represented in all conventions related to protect the civilian in general, and those related to protect journalists in particular, some will study the joining of the state to the four Geneva conventions of 1949 and the two additional protocols of 1977 and then the invitation of states to join the draft of international convention for the protection of journalists in areas on armed conflicts of 2007 .

A. States' Joining to The Four Geneva Conventions of 1949 and The two Additional Protocols 1977

The state's joining to these conventions and protocols is considered essential guarantee for protecting the journalists in the areas of armed conflicts. In fact the four Geneva conventions are among the international law conventions the most joinable by the international community and states, where

numbers of states that ratified the first additional protocol were 168 states and the second additional protocol were 162 states until a year 2009¹³⁹.

Many rules of IHL set out in the for Geneva conventions and the two additional protocol are originally customary rules and this was confirmed by the international court of justice in a lot of their consulting views. The article 79 of the first additional protocol has been adopted unanimously and didn't score any reservations this rule is mentioned in several military manuals such as the German, Argentina, China, France¹⁴⁰.

B. Inviting States to Join the Draft of International Convention for The Protection of Journalists in 2007

The press logo organization prepared a preliminary draft of the international conventions for protecting journalists in armed conflicts in 2004, where they made a logo for the protection of journalists in armed conflicts, the draft include an introduction and 13 articles, and there was a new draft in 2007 for international conventions to protecting journalists in areas of armed conflicts¹⁴¹, this draft affirmed to protect the journalist as a civilian person, and affirmed the right of war correspondents to have the status of war prisoners in case of being captured by enemy forces. The text of the draft of the convention in provides in article 12 (entry the force) by five states and the assets of this treaty were placed in the UN¹⁴².

So we can say that the new conventions is a new brick in the international legal system, especially as it related to the protection of journalists in times of armed conflicts, but the state joining to the related convention is not enough if it does not with the commitment of these states to respect and ensure the respecting its provisions and work on implementation of its obligations .the state's commitment to international humanitarian laws convention.

3.1.2. States' Commitment to Agreements of International Humanitarian Law

The commitment of state to the international humanitarian laws convention of after joining these conventions one of the most national guarantees to implement this laws, and in doing so we will

¹³⁹Declaration For: Philip Spoerri, Director Of International Law - The International Committee Of The Red Cross, 12/08/2009

¹⁴⁰Jean-Marie Henckaerts&Louise Doswald-Beck, Customary International Humanitarian Law Volume I: Rules, (New York: Cambridge University Press, 2005) P.115.

¹⁴¹See The Draft International Convention For The Protection Of Journalists In 2007

¹⁴²See The Organization's Website (Campaign Slogan Press) Available In: <http://www.presseemblee.ch/5037.html> Accessed ,12.4.2016

study the text of the common first article among the four Geneva conventions and the first additional protocol from one side and then the article 80 of the first additional protocol from another side.

A. The Text of the First Article Common to The Four Geneva Conventions and First Additional Protocol.

The first common article read as follows (The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances)¹⁴³

This article provides two principle of general principle namely respect and ensure respect the first additional protocol included the some text, it just changed the phrase (this agreements) to (this protocol), in addition to that the protocol subject to general principle like the four agreements for its complementary to them.¹⁴⁴

The first common article included (the high contracting parties phrase) to (respect), so that once it becomes a party of the treaty it means to be commitment to implements it in good faith from the moment of entry into force. This rule is essential in the international laws, it was emerged in the customary law in according to the base (pacta contractors, this article include (and ensure to respect), so what is mean by (ensure to respect) the duty to respect means that the civilian and military authorities ensure to respect, and that mean that they don't just implement the international humanitarian law, but they should oversee this implementation according to what stipulation in article 80 of the first additional protocol¹⁴⁵.

Generally, the best guarantee for the application of international humanitarian law is the principle of (loyalty) (pact sunt servant). Because when states officially adopt the four Geneva conventions and joining of some states to the two additional protocol, they already have promised to ensure respecting these treaties within their authorities regardless of any expression determined about this subject in the conventions¹⁴⁶

¹⁴³Atlam Sharif & Abdel Wahed Mohamed Maher, Encyclopedia Of International Humanitarian Law Conventions, The International Committee Of The Red Cross Cairo, Sixth Edition, 2002, P.66.

¹⁴⁴ Commentary On The Additional Protocols Of 8 June 1977 On The Geneva Conventions Of August 1949, ICRC, P.34. Available In: www.icrc.org. 15/4/2016

¹⁴⁵Hamdi Ahmad, Studies In Public International Law (Algeria: Publications ELGA, Bataath, 2002) P.108.

¹⁴⁶ Istitut Henry- Dunant, Unesco, International Dimensions Of Humanitarian Law (Brill: 1988) P108.

B. Implementation Measures

The article 80 of the first additional protocol is related to the procedures of implementation where it provides that the high contractor parties and sides of conflicts should take all necessary measures to implement their obligations according to the conventions, the first paragraph of this article establishes the principle of obligations on all parties to take all necessary measures that have been strength and more accurately¹⁴⁷

Carrying out the task would require the participation of many government institutions and other organization outside the public administration. To study and prepare the necessary measure, it may be useful to entrust it to involvements the red crescents societies and the national committees of red cross and the state. There is an important point should be mentioned which is if a violation of the rules of international humanitarian laws occur, the state should investigate about it and if it is provide the violations must be terminated and punish its perpetrators¹⁴⁸.

We can say that the start of implementation includes all measures should have been taken to ensure full respect of the rules of international humanitarian law, it is not necessary that these rules require in case of beginning of fights where it also must take measures outside the combat areas whether in times of Peace or war. In fact taking these measures is indispensable to ensure that all civilians and military provides all necessary for the implementation of IHL including legal text and crew staff besides preventing irregularities and violation and deter and punish when necessary.¹⁴⁹

3.1.3. Obligation to Issue The Necessary Legislation to Implement International Humanitarian Law

This is done by the adoption of rules of IHL into the local law. According to the text of the first common article between the four Geneva, the contracting parties should admit the rules of IHL into the national law through taking the necessary legislation measures to impose effective penal sanction for persons committee or ordering to commit the violation mentioned in this convention, and this cannot be done only by merging these rules in domestic law. Through including them in the military justice system and the penal law.

¹⁴⁷ Commentary On The Additional Protocols, Op.Cit, P.930.

¹⁴⁸ Ahmed Abou El Wafa, Op.Cit, 2006, P. 121.

¹⁴⁹ Abdulkader B. Hobah, Protection Of Journalists And Media During Armed Conflicts, Analytical Study In The Light Of The Provisions Of International Humanitarian Law, The House Of Culture For Publishing And Distribution, The First Edition 2012, P.156

1. Including the Rules of International Humanitarian Law and the Geneva Conventions in The Code of Military Justice

Considering that the rules of war address the armed forces directly, which is preferred in implementation of the four Geneva Conventions. This therefore represents a nation complying with the law and customs of war, these include the laws concerning the protection of civilians and health care for war prisoners and the wounded and sick, and especially not targeting them in the aggression or exposing them to danger¹⁵⁰.

Although the rules of the international humanitarian law have been reported in the agreements which are directly applicable in domestic law once they are ratified, legislators have to be careful to include those rules in the Code of Military Justice, because the armed forces are concerned in carrying out of these laws. The most serious violations of international humanitarian law are done by armed forces therefore the line between their duty to defend their country and the duty of non-aggression against journalists, civilians and non-combatants should be clear to them. This is applicable even if the journalists or citizens are enemy nation nationals, their duty remains to protect them and provide them with material and health assistance¹⁵¹.

2. Criminalize Violations Against Journalists in the Penal Law

It is not enough for a state to be a party to an international treaty until its members are committed to keeping the rules contained in the treaty, but in some cases the relevant authorities must take appropriate measures to incorporate those international laws into the national law, the criminal law by including humanitarian law obligations of States and violations in the Penal Code¹⁵².

The member states should aim to expand the scope of criminalization and punishment to include to all communities, whether military or otherwise in achieving the principle of legality. This principle states that no crime and no punishment should be judged on except by law, and the accused should be given a chance in national jurisdiction in the fight against these crimes. This means both trial and punishment should not be handed over to the Prosecutor especially the International Criminal Court

¹⁵⁰ Anzi R. Hamad, Guantanamo Detainees Between International Humanitarian Law And The Logic Of Force, Journal Of Law, Kuwait University, No. 4, P. 45.

¹⁵¹ Frits Kalshoven, Yves Sandoz And Other, Implementation Of International Humanitarian Law, (London: Martinus Nijhoff, 1989) P.121.

¹⁵² Anzi R. Hamad, The Trial Of War Criminals Under The Rules Of International Law, Journal Of Law, Kuwait University, 1991, P. 352.

against the citizens of the country, especially the leaders and officials unless the national judiciary is unable to judge the perpetrators on international crimes charges¹⁵³

3.1.4. Obligation to Publish the Rules of International Humanitarian Law

The publishing of the international humanitarian law is a commitment to agreements based on international conventions, where this approach is reflected in an old agreement from the Hague Convention of the land war in 1899 where the first article obligates Contracting States (to issue instructions to their land forces) as provided in Regulation annexed to the Convention. This approach was demonstrated in greater way in 47,48,127,144 materials in the four Geneva Conventions of 1949, respectively, which is a joint text to publish their rules on a larger scale during both peacetime and war times. Article 83 of the first Protocol provides (The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the Conventions and this Protocol as widely as possible in their respective countries and, in particular, to include the study thereof in their programmes of military instruction and to encourage the study thereof by the civilian population, so that those instruments may become known to the Armed forces and to the civilian population)¹⁵⁴

As manifested in the first Protocol as article 80 emphasizes the duty of Contracting States in particular states that are parties in international armed conflicts to take all the necessary steps for the implementation of their obligations and issue instructions to ensure the respect for agreements and work to carry out the implementation. Article 83 of the first additional Protocol provides the same commitment through the deployment of international humanitarian law regarding the protection of journalists and the media at the military level by addressing the fighters to adhere to the law by not targeting civilians or targeting their headquarters as a civilian object. The military personnel should also be educated on the treatment of journalist in the event of their arrest, which should be according to the terms of the fourth Geneva Convention, especially articles 75, 135¹⁵⁵.

Texts on the agreement, declarations and international recommendations formed the legal basis for the publishing of laws on international armed conflict and non-international. Publishing shows that the work is binding work for all countries. It is obviously clear that this commitment to publish on the general scope is a fundamental commitment, in addition to that there is a reciprocal obligation on the

¹⁵³ Michael Bothe, Thomas Kurzidem And Other, National Implementation Of International Humanitarian Law, (London: Martinus Nijhoff, 1990) P.74.

¹⁵⁴ Article 83/1 Of The Additional Protocol, Op.Cit.

¹⁵⁵ Ahmad Ali, The Protection Of Journalists In Armed Conflicts In The Light Of The Rules Of International Humanitarian Law, Academic Publications Social And Human Studies, P. 67.

states for the publication and enhancement of national legislation to contain international humanitarian law in its national legal system and also the obligation to exchange translations of the agreements and first protocol.

Building on this each State must publish and teach the rules of international humanitarian law, both at the military level and on the civilian level through the curriculum, the press and media circles or through special training courses attended by journalists. This knowledge is therefore not only for the literate but for the informing of general military personnel and the general public in the attainment to the country's objective of defining of the rules of international humanitarian law for every citizen¹⁵⁶

3.2. The Mechanics of Implementation and Supervision to Protect Journalists

It is not enough to take the preventive mechanisms in order to ensure properly applied the rules of international humanitarian law, if there are no mechanisms of implementation and supervision built into this contextual situation. The International Committee of the Red Cross plays an important and leading role in ensure respect for humanitarian international law and the international media organizations, non-governmental role is also important in the protection of journalists and media information in areas of armed conflict, in the following section we will deal with the role of the International Committee of the Red Cross and the role of the international media organizations NGO.

3.2.1. The Role of The International Committee of The Red Cross

The ICRC is considered an effective international guarantee for protecting journalists during armed conflicts, where it mainly works to protect and help the civilian and military victims in areas of armed conflicts, so we will study the essence of this committee in first branch and its role in the implementation of the rules of IHL in the second branch.

A. What is International Committee of The Red Cross

The conditions of the emergence of ICRC returns to the Swiss citizen (Henry Dunant) who witnessed the battle of Solferino, Italy in 1859, he wrote what he saw in the battles including dead and wounded people and their suffering in his book (Memories of Solferino) in 1863¹⁵⁷, which he directed two appeals, in the first he called for the formation of relief societies in peace time includes orderlies and

¹⁵⁶ Abdulkader B. Hobah, Op.Cit, P, 168.

¹⁵⁷ David P. Forsythe, The Humanitarian: The International Committee Of Red Cross, Cambridge University, 2005, P.15.

nurses to take care of the wounded in times of war, who have helped the medical services of the army and protect them according to the international agreement.

After that the Geneva association of public interest headed by the lawyer (Gustav Monnier) discussed Dunant's proposals , and a committee of five members was formed to study the possibility of transforming Dunant idea into reality, includes Gustav Monnier, Guillaunce, Henry Dufour, Louis Ahia, Theodore Monowar, as well as Dunant himself, this committee formed the international committee for relieving the wounded, which later was named ICRC¹⁵⁸.

The ICRC is a Swiss non-governmental organization under the Swiss civil code and have a legal status, but the Geneva conventions had entrusted it to play an international, and we can say that this committee is not a subject of international law because it had not been formed according to a treaty which its parties are states. This committee in order to do their functions had signed about forty agreements between states, and their work like other intergovernmental organizations ¹⁵⁹.

B. The Role of The International Committee of the Red Cross in The Implementation of The Rules of International Humanitarian Law

The role of ICRC is represented insuring the application of conventions, it inform the concerned parties to be occurred, and mediate between the fighting parties and receive complains and contribute to develop the IHL, and the commission doesn't participate in any alleged violations because this may harm their activities in the field of providing protection an assistance¹⁶⁰, As result the ICRC doesn't involve in any investigations except in the case that all concerned parties agree, and then we can summarize the role of ICRC as follows:

First: Reminding parties of the Provisions of International Humanitarian Law

once the outbreak of armed conflict, the ICRC work to remind the parties of the conflict about the necessity of respecting the rules of IHL, and in the event of violations of these rules it tried to avoid or protect these violations and correct them through cooperation with the parties of the conflict, and if this remaining didn't lead to positive results, the ICRC interfere with the parties of the conflict in order to apply and respect the rules of IHL which the parties have approved. The representative of

¹⁵⁸ Learn The International Committee Of The Red Cross, Second Edition (The International Committee Of The Red Cross Publication, 2003) P.2.

¹⁵⁹ Rqyya Awaharih , The Protection Of Civilians And Civilian Objects In Non-International Armed Conflicts, Phd Thesis, University Eye Of The Sun, Faculty Of Law, 2001, P.67.

¹⁶⁰ Andrew Clapham And Others, The 1949 Geneva Conventions: A Commentary Oxford Commentaries On International Law, First Edition (Oxford University Press, 2015) P.525.

ICRC protect directly before the responsible sides of these violations and these protects can be oral remarked or a detailed report from the chief of ICRC to the concerned authorities. It should be noted that all these procedures done by the ICRC shall be confidential in nature according to the commitments it made to that side which authorized the ICRC to do their task so as not to lose the confidence of the disputants¹⁶¹.

The principle of secrecy adopted by the international committee in its work is not absolute, where in cases of serious are repeated violates it can direct an appeal to the international community and declare these violations in order to demand an end for them. The ICRC had broken the silence in conflicts in Somalia, Rwanda and former-Yugoslavia.

Second: The Receive Complaints

the ICRC receives complaints regarding the violation of rules of the IHL from different sides from parties of the conflicts from third parties (governmental or non-governmental organization, national Red Crescent societies)¹⁶².

in the field of protecting journalists in areas of conflicts, the purpose of the round table organization under the supervision of ICRC on 23-24 April 1985 is to estimate the dangers faced by journalists. The representatives of media have sought from the ICRC work in protecting and assisting civilians some concrete suggestions in cases of arrest, loss, detention of journalists, in order to permit the professional associations and editorial offices to contact the ICRC in the of the journalists being changer.

The ICRC setup a hotline in the central tracing agency of the ICRC which work since October 1985 over 24 hour. And this hotline can be called in cases of arrest, detention or loss of journalists ¹⁶³.

Third: Contribute to The Development of The Rules of International Humanitarian Law

The ICRC played a direct role in preparing the four Geneva conventions in 1949, in addition to that it has participated in the diplomatic conference regarding the promotion and development of the rules of IHL 1974-1977 which enhanced the protections of victims of armed conflict including journalists who have been provided by the text of article 79 from the additional protocol of 1977. The ICRC had a great role in the negotiations of establish the statute of the permanent international criminal court which entered into force in 2002.

¹⁶¹Security And Protection Of Journalists And Fed Them And International Humanitarian Law And Media Coverage, Is Available On The Internet Available In <https://www.icrc.org/>. 29/4/2016

¹⁶² Raqya Awaharih, OP.Cit, P.378.

¹⁶³ Sylvie Boiton -Malherbe, The Protection Of Journalists On Dangerous Assignments In Armed Conflict Zones (Paris: 1986) P.221.

The ICRC is the entity that put together the Geneva Conventions and worked on the development of the provisions of international humanitarian law that provides protection to civilians and civilian objects, including journalists, but there are other parties who effectively contributed to the establishment of the protection of journalists and contributed to building up the International Committee and integrate the international media organizations. This is what will be addressed in demand pro¹⁶⁴

3.2.2.The Role of International Media Organizations

many international NGOs, spread through the world. Which are effective means work on protecting journalists during peace or war times. The international NGOs are the new actor in the field of international relations. And the fact that the international relations do not enjoy stability of ten and haunted by many conflicts. so the international is no longer limited to states only, but the NGO make a big role in interference operations in order to protect individuals according to humane security perspective, the past decades have seen a growing number of victims among journalists in area conflicts, which promote the international media organization such as reporters without borders organization, and we will discuss this organization in the second branch and the international institute of the safety of journalists in the third branch.

A. Reporters Without Borders

RSF is an international NGO defending the press freedom similar to the committee of protecting journalists which was found in 1985 in Montpellier - France by its formed secretary general Robert Menard, Rony Brayman and Jean Claude the journalists. It aimed in the beginning to upgrade the alternative press, and just before their project was failed, a lack of understanding occurred between its founders and finally Robert Menard stayed alone and became is secretary general, then he changed the goal of this organization to become a NGO of freedom of the press¹⁶⁵.

The organization inspired their work from the text of article 19 of universal declaration of human rights of 1948, which provides these right of freedom of opinion and expression, and also the right to import and receive information and ideas regardless of borders¹⁶⁶. Many conventions and declarations around the world reconfirmed these rights such as the article 19 of the international covenant on civil

¹⁶⁴ Abdulkader B. Hobah, Op.Cit, P.184.

¹⁶⁵ Abdulkader B. Hobah, Ibid, P.185.

¹⁶⁶ Charter Of The Safety Of Journalists Working In Armed Conflicts And Dangerous Areas Of The Organization Reporters Without Borders Regions, Adopted In Paris In March, 2002, P. 7.

and political rights, and the article 10 of the European convention of human rights and fundamental freedoms, and article 13 of the American convention on human rights, and Article 9 of the African charter on human and people's rights¹⁶⁷.

The situation in Iraq in 2003 pushed the organization to issue a declaration of safety of journalists working in conflict and danger areas, which had developed a set of principles that all parties should be commitment in order to reduce the risk faced by journalists, it has been opened for signature on the declaration 20 January 2003 and revised on 8 January 2004 in the light of event of Iraq¹⁶⁸, this declaration confirmed on the protection of journalists as civilian individuals, the organization has also contributed it the preventive side by issuing several books aimed to spread awareness an feeling of the dangers faced by journalists in the world, it's also contributed in collaboration with UNESCO in dangerous areas besides that it was behind issuing the UN security council resolution.No.1738 on December 25, 2006 relating the protection of journalists in areas of armed conflicts¹⁶⁹.

B. The International Institute for The Safety .of Media Men

The international institute for the safety of media men is a NGO specialized to the safety of journalists and the media and is committed to fight against the persecution of journalists everywhere, the institute is formed from alliance between media organization, group of freedom of press union and syndicates of humanitarian campaign which work to create a culture of safety in the media around the world, the institute works on achieving the following goals¹⁷⁰:

1. Providing support and development of programs of assistance and safety for journalists including independence and especially those who work in conflicts areas or who work regularity in missions involve risks.
2. Encouraging the agreement covering affairs of health, safety, training on awareness of risks, courses of first aids among the organizations and bodies of media including agreements with syndicates and associations.
3. Disseminating (using internet and traditional means) information through modem training and consulting manuals, and manuals for journalists in the dangerous areas .
4. Enhancing tenacity on the best practicing through being accustomed on the pattern of training and assistance that have been developed within the scope of press.

¹⁶⁷ Unesco, Reporters Sans Frontiers, Guide Pratique Du Journaliste, 2003, P.11.

¹⁶⁸ Marwan Taqya, Op.Cit, P.15.

¹⁶⁹ Abdulkader B. Hobah, Op.Cit, P.185.

¹⁷⁰ See The International Institute For The Safety Of Media Men Site, Are Available [Www.Newssafety.Com](http://www.Newssafety.Com)

5. Establishment of network of international organizations work in all over the world that entrusted to reduce the risks in the work of the media .

C. International Federation of Journalists

It was found in 1926, it is the largest global organization for journalists, represented nowadays by more than 500,000 members in more than 100 states, this federation works on upgrading the international to defend the press freedom and social justice through independent, active and free journalists unions. The international federation condemn all kind of discriminations, the international federation has established an international safety fund in order to help journalists, the federation's policy is determined through the conference which meets once every three years¹⁷¹.

3.3. Deterrent Mechanisms to Protect Journalists

The UN security council is an effective guarantee in the framework of international legal system, it has many deterrence means which enable it to be a real guarantee for protecting the rules of IHL, it has issued several decisions in the field of protection of civilians in general and journalists in particular. So we will discuss the definition of security council in a branch and its role in protecting journalists in a second branch.

3.3.1. The Definition of The UN Security Council

The UN security council is one of the main UN organs and had the authority to issue binding decisions and the authority to intervene regardless of approval or disapproval of concerned states, the states that are commitments with main consequences in affairs of imposing international peace and security¹⁷².

The UN security council consists of 15 members, of the five permanent members which are (USA, Britain, France, Russia and China) and ten non-permanent members, each member has one vote, the unimportant procedural decisions are taken by approval of 9 states with specifying whether they are permanent or not, while the important decisions are taken by the approval of 9 members and must be among them five permanent members together, if one permanent state refused the decision, so that decision doesn't be issued, thus is so-called the right of veto¹⁷³.

¹⁷¹ Ruay Khaled, Legal Protection For Journalists During Armed Conflicts (The Study In Light Of Domestic Laws And International),20015,P.118.

¹⁷² Suhail Hussein Vlavy, Encyclopedia Of International Organizations, The UN /Devices As The United Nations, C 2, First Edition (Jordan:Dar Al-Hamed Publishing,2001) P.73.

¹⁷³ Abdulkader B. Hobah,Op.Cit,P.189.

3.3.2. The Role of The Security Council on The Protection of Journalists

The UN security council has issued a number of decisions relating the protection of civilians, it has issued the resolution No. 1265 on 17 September 1999, which it condemned targeting civilians and confirmed the need to respect IHL. At the 4130 session in 19 April 2000, it issued the resolution No.1296 which re-condemned targeting civilians and other protected persons in situations of armed conflict and stressed that targeting these civilian groups may constitute a threat to the international peace and security¹⁷⁴.

On April 28, 2006 the UN security council in its session No.5430 issued the resolution No.1674 relating the protection of civilian in times of armed conflicts and reconfirmed on what came in the two former (resolutions No.1265 of 1999 and resolutions No.1296 of 2000), this resolutions called on the party states the need to respect the rules of IHL and called on the states that didn't ratified the instruments of IHL to do so and take the necessary legislative, judicial and administrative measure to fulfill its international obligations under those agreements.

If all those decisions are related to civilians, so the journalists fall under these decisions, but as result for the frequent crimes against journalists in particular, the UN security council has played a major role in the protection of journalists through resolution 1738/2006 through the condemnation of attack of journalists and media staff and their head quarters¹⁷⁵. The resolution called on the parties of their conflict to respect civilian status of journalists, their crews and their facilities, which was approved by the four Geneva conventions and the two additional protocols, the resolution called on contracting states to take all necessary measures to judge the responsible of these attacks on journalists unless they act contrary with being civilians. The 9th section of this resolution confirmed the readiness of security council to intervene if necessary to take appropriate measure to stop the huge violations of civilians and journalists in general according to the terms of reference assigned to it.

The UN security council discussed exclusively the issue of protection journalists in the statements issued on February 12, 2014. Titled ((protection of civilians in armed conflicts, the statement stressed the point contained in the above- mentioned resolution, it also called on all states and parties of Conflicts to take all necessary means and measures to comply with the rules of IHL including respect

¹⁷⁴ Security Council Resolutions, No. 1265 Dated 17 /9 / 1999 And No. 1296 Dated 19 /4/ 2000.

¹⁷⁵ Security Council Resolution No. 1738 Dated 25/ 12 /2006

for the civilians situation which was approved by the Geneva conventions for journalists and media staff and their facilities¹⁷⁶

These resolutions concerning the protection of civilians as well as journalists in the areas of armed conflicts constitutes mainly a base that the security council can depend on it in case of condemning any party violated these rules, it can enable the security council to form a committee to investigate crimes committed against journalists, it may transmit any party violated these rules to the international criminal court under 7th chapter relating to the crimes mentioned in article 5 as stipulated in article 13 of the statute of the permanent international criminal justice is considered a guarantee for the protection of civilians in general and journalist in particular!".

Despite of the issuance of all these decisions, journalists are still subjects to kill, kidnap, or betray detention in areas of armed conflicts.

¹⁷⁶ Marwan Taqya, Op.Cit, P.17.

¹⁷⁷ Abdulkader B. Hobah, Op.Cit, P.191

Chapter 4: Journalists in Iraq's Kurdistan Region

Today, Journalism in Kurdistan region of Iraq ¹⁷⁸ has a great importance and a bright future of freedom is ahead, especially nowadays as Kurdistan Region of Iraq region is facing a severe war with the largest terrorist organization of ISIS, so it is very necessary to protect journalists legally to inform the state the reality of events. The region provides them with freedom clearly to expressing their viewpoints freely for an active participation, especially in hostilities to play a great rule in transferring the views of the war, in this chapter we will try to be addressed:

- Relationship Between International Law and National Law
- The extent of the right of the Kurdistan Region to enact laws
- Legislations to Protect Journalists in Kurdistan
- The reality of the journalists during the Kurds war against ISIS in Kurdistan

4.1. Relationship Between International Law and National Law

International law is a branch of the common law, which is meant to organize the relations between sovereign states, between them and international organizations, or between international organizations themselves. On the other hand, the national law is considered the legal group that regulates relations between the state and citizens, or between citizens themselves. But it may happen that the state concludes agreements and treaties with other countries, in this context, a kind of paradox may occur, or dispute between national rules which legislated by the state under the national legislative system, and between the international rules approved by the state. In this case, the situation of the state in front of this situation is wondered about ¹⁷⁹.

On this doctrinal issue, two theories appeared: the theory of dual international and national laws, and the theory of the unity of the two laws.

First: The Theory of Double Laws

¹⁷⁸ Kurdistan-Iraq Region Within The Federal State Of Iraq, Its Political System Democratic Parliamentary Republican Political Pluralism And The Principle Of Separation Of Powers And Devolution Of Power Depends Peacefully Through Direct General Elections, Secret And Periodic.

¹⁷⁹ William E. Butler, International Law And The International System, (Brill: Martinus Nijhoff, 1987) P.93.

The double laws theory implements that the international law and national law are independent and separated from each other, the supporters of this trend justify their point of view with a variety of reasons are:

1. Different the source of both laws and way of legislation, the national laws rely on the legislative system of the state, while the rules of law depend on the common will of member states¹⁸⁰
2. Difference in the nature of relations in both laws, the international law regulates between states, international organizations and other subjects of the international law, while the national law regulates the legal relationships between individuals.
3. Difference in legal and regulatory structure of each of the national and international community, in national community there is legislative, judicial and executive authority, while it is noted that the organizational structure of the international community in the field of international law based on conferences, conventions and international treaties¹⁸¹.

However, this theory has been criticized, where the state implements both laws in a manner which is independent of the other, it doesn't allow to transfer any legal rule between the international and national law. In addition, this theory rejects the application of the national judiciary for any norm of international law or the interpretation¹⁸².

Second; The Theory of The Unity of Both Laws

It is based on a correlation between international and national law, that the owners of this trend see that the law is one and has branches. This theory has found itself in front of the situation of the trade-offs between laws in the event of a conflict or disagreement between the rules of international law and the rules of national law¹⁸³, as a result two teams appeared, the first team claims that in case of conflict, the national law should be prior, where the relationship between both laws was interpreted according to the doctrine of voluntary basis in compliance with the rules of international law.

¹⁸⁰ Taleb Rashid, General Principles Of International Law, First Edition (Arbil: Mukrayani Press, 2009) P.41.

¹⁸¹ David T. Bjorgvinsson, The Intersection Of International Law And Domestic Law: A Theoretical And Practical Analysis, (USA: Edward Elgar, 2015) P.34.

¹⁸² R. Jennings And Sir A. Watts, International Humanitarian Law (Berlin: 1992) P.53

¹⁸³ H. Lauterpacht. International Law And Human Rights, London. 1950

This theory also subjected to criticism, and the most important thing in it, it disputes the historical facts, where the international law came before the national law¹⁸⁴

4.2.The Extent of The Right of The Iraq's Kurdistan Region in The legislation of laws

Kurdistan Region of Iraq is an area that has a permanent war, whether in the old era or at recent time, but at the time of the Baath Party Authority led by dictator Saddam Hussein committed the biggest crimes against the Kurds in Iraqi Kurdistan as a result killed over 182,000 in the Anfal in 1988, 8000 men from Barzan clan in 1983 and 5000 men, women, children and old men in Halabcha with chemical weapons in 1988, but the Kurdish people continued in their struggle and after the Kurdish people's uprising in 1991 the Iraqi government withdrew in the Kurdish areas in Erbil, Sulaymaniyah and Dohuk, this withdrawal caused administrative and political vacuum filled by Kurdish leaders espousing self-management style of the region, especially after cutting ties with the Iraqi government and the absence of all its institutions in the region¹⁸⁵

There is no doubt that the March uprising in 1991, is a shift in the Kurdistan Region of Iraq in many fields. The media is one of those fields where it was developed and expanded, and the use of various means widely with all kinds. This was something affordable, due to the openness of the region to the outside world, which has seen a tremendous development in the field of media, means of communication, electronics, printing and publishing technology. Perhaps relative (intellectual, political and economic) freedoms that have emerged in the region after 1991, with the ease of communication to the outside world was one of the main reasons of this media demonstration in the region¹⁸⁶. Kurdish people resorted to organized free local elections in 19/05/1992, which all factions and popular sectors involved, in addition to the political parties and organizations to award the new administration the legitimate for supporting the folk.

Those elections were served as the first free and democratic experience waged by Kurdish people in their history, it was a unique experience in history of modern Iraq, which resulted the establishment of the first elected free parliament, away from the eyes of the power and control, it represents the sons of the Kurdish people, other nationalities and ethnic groups that inhabit in the region, then a local

¹⁸⁴ Kelsen.H, Principles Of International Law, Second Edition (New York: 1966) Pp. 557-559

¹⁸⁵ Renas Sargali, At A Time When The Authority Of The Baath Party In The Biggest Disaster For The Kurds A Time, Jomal Brin, Duhok, No.3.

¹⁸⁶ Reber Fattah Mohammed, The Media's Role In Economic Development (Dohuk: The Printing Press Khani, 2012) P.70.

government was announced called the Kurdistan regional Government. Since that date, the Kurdish local administration endures the responsible for the conduct of the affairs of the inner life of the territory mentioned, depending on the potential of self-modest, it works hard in order to build a new society in which freedom and democratic values prevail through the issuance of decisions and legislation of new laws or modify the Iraqi laws in force in line with the new situation. It translates the philosophy of the Kurdistan Region of Iraq legislator that renounces violence¹⁸⁷, fights for individual authoritarianism, and the common values of human rights are provided with working on the success of the experiment kits.

After the uprising of march 1991, Kurdistan region of Iraq has issued laws directly and legal through Kurdistan parliament to Kurdistan govern the region of Iraq, on 9-4-2003 the dictatorial regime has been eliminated, and the new permanent constitution of 2005 in article (141) provides that (Legislation enacted in the region of Kurdistan since 1992 shall remain in force, and decisions issued by the government of the region of Kurdistan, including court decisions and contracts, shall be considered valid unless they are amended or annulled pursuant to the laws of the region of Kurdistan by the competent entity in the region, provided that they do not contradict with the Constitution)¹⁸⁸

However Kurdistan region of Iraq is still a part of Iraq, but the laws that issued by Iraqi parliament are not valid in Kurdistan Region of Iraq unless the Kurdistan parliament Region of Iraq verified these laws. if we want to study the legislation of laws in the region we have to go back to the constitution of Iraq in 2005 in article (121) which provides that (The regional powers shall have the right to exercise executive, legislative, and judicial powers in accordance with this Constitution, except for those authorities stipulated in the exclusive authorities of the federal government) which means that each region has the right to govern their internal affairs and issue relevant laws that don't contradict with the central laws.

This means that under draft of Kurdistan region of Iraq constitution. The region has the right to issue laws that do not contradict with the exclusive rights of central government, so the region to some extents has the right to issue laws to identify the rights and duties of individuals and to organize the government affairs and administration system¹⁸⁹

Kurdistan Parliament of Iraq a major source of legislation laws, it was established by laws no (1) of 1992 by Kurdistan Region of Iraq front for election of parliament and the leader of Kurdistan Region

¹⁸⁷ See The [Http://www.perleman.org/uploads/pdf/about-kurdistan.pdf](http://www.perleman.org/uploads/pdf/about-kurdistan.pdf). Accessed:3/5/2016

¹⁸⁸ Article (141) Of The Constitution Of Iraq In 2005.

¹⁸⁹ See: [File:///E:/Master/About-The-Parliament.Pdf](file:///E:/Master/About-The-Parliament.Pdf). Accessed:25/4/2016.

of Iraq liberation movement, it had its first sitting in 1992-6-4, it was consist of 105 member, five of them are quota for minorities in Kurdistan , the first speaker of it was Gahwar Namiq, it passed three sessions and now consist of 111 members and its four session, it is considered the main reference of issue laws and monitoring the government.

It holds meeting with attendance of (50% plus one) of its members , it issues law by simple majority and in case of a national decision it recourses majority of 2/3 and it sent its laws to the president of Kurdistan region of Iraq to be ratified, and all laws are issue by name of people ¹⁹⁰.

4.3. Legislations to Protection Journalists in Kurdistan Region of Iraq

The issue of protecting journalists' rights is no longer advocated by writers and scholars at the international level, but became a real protection and reality, there's no doubt that the global and regional interest in this issue has affected the national interest as it has been stipulated in the constitutions and laws governing human rights within countries. If the international treaties related to the humanitarian international law in general also the rights and protection of journalists in particular, are not implemented and not bound by its terms, they become just perfect slogans, as the states are obliged to ratify on special treaties in this field.

In Iraq, the permanent Iraqi Constitution of 2005, referred to article 38 (freedom of the press, printing, media and publishing)¹⁹¹ that this article step forward in promoting development of expression freedom in Iraq, but this step is with the absence of legal legislation, security reality, anxiety and attempts at intervention by officials is not sufficient to ensure the protection of journalists. As it was supposed to find the issuance of legal legislation to protect journalists and media men in prompting the Journalists' Syndicate and through practical reality for journalists in Iraq, it didn't apply what is stipulated in international treaties where the central government placed many restrictions on freedom of the press, such as record of the license system in issuing newspapers, the record of the previous censorship to publish in the newspaper, punitive restrictions on the freedom of publication and drawback political. The use of the law by politicians' officials to prosecute journalists

¹⁹⁰ Michael J. Kelly, The Kurdish Regional Constitution Within The Framework Of The Iraqi Federal Constitution, Penn State Law Review, Vol. 114:3, 2010, Pp. 715-720.

¹⁹¹ Article 38 Of Iraq's Permanent Constitution In 2005.

for publishing their critical views of government policy, is considered a major political obstacle to the exercise of the work of journalists ¹⁹².

The situation of journalists in the Kurdistan Region of Iraq? Through the government of Kurdistan Region of Iraq to devote activating the agreements on human rights in general and issuing legislations to facilitate the journalist work in accordance with Law No. (10) of 1993, the Publications Law, Law No. (4) relating to the formation of the Journalists' Syndicate, Law No. (13) of 2001 Journalist Pension Law and Law No. (35) of 2007, journalist labor law.

We will try to talk about Law No. 35 of 2007: The work of journalists Law in Kurdistan

The Law was issued, including fourteen articles; each one contains several paragraphs, spread over five chapters and final provisions are handled by two articles which are thirteen and fourteen, the law discussed the reasons behind issuing it. The main issues of this law can be summarized in:

1: The Definitions Contained in The Law

The first Article of this law dedicated paragraphs (4 and 5) to the definition of each journalism's profession and the person who exercised (journalist), the press in accordance with paragraph (4) is (the practice of journalistic work through various media), and the journalist in accordance with paragraph (5) is (someone practicing the journalist profession) ¹⁹³.

It showed in the last definition of journalist that it is approached to the international norms which recognize the freedom of journalist work, and it can be seen here that the direction of the Kurdistan Region of Iraq legislator is about adopting the liberal perspective of the press. The definition gave the way to any person, regardless of the party or media channel in which it operates in order to acquire the status of a journalist without taking into account the identity and the type of channel that carry out work in order not to be the will of the journalist and his departure are subject to the will of the point of an influential group it was or party or governing authority. Thereby the law freed this profession and its employees from any limitation due to determining the media work paths in front of the journalist, especially

¹⁹² Saatli Khatib, Legal Restrictions On Freedom Of The Press, First Edition (Beirut: Publications Halabi Rights, 2006)

P.91.

¹⁹³ Article (1) Of The Law Of The Work Of Journalists In The Kurdistan Region No.35 Of 2007

since the second article came to reinforce the viewpoint of the legislator in establishing the foundations of press are free and not restricted, also keeping it¹⁹⁴.

away from the evils of the intellectual and political tendencies or self-interest of the political decision which sometimes are affected by the media institutions in some countries, especially the underdeveloped ones. Where the first paragraph of article II affirmed that the press is free and uncensored, the freedom of expression and publication is guaranteed to every citizen in the framework of respect for the rights and freedoms of individuals. Thus, the direction of the Kurdistan's Region of Iraq legislator was about to give an independent and outstanding personality to the journalist where he can enjoy freedom, independence of opinion and self-confidence through it, also he can move across all directions as he deems are appropriate with his personal mood, his convictions of intellectual and religious, and the interests as he deems are consistent with his ambitions, aspirations and creativity, without taking into account the public interests, or through respecting the rights and freedoms of others to the law restrictions and taking into account the principles and ethics of journalism cited by (paragraph, don't cause harm or prejudice to the freedom of self-journalist as long as they come through realizing this freedom, because the real freedom is committed to the limits laid down by the community, the legislator of Kurdistan has realized here this issue as a representative for the society and referred to it¹⁹⁵.

2: Freedom of The Journalist and his Work Guarantees

The freedom of the journalist in accordance with article 2, showed clearly that the journalist has the right to do his work normally without (the press is free and no censorship shall be imposed on it. Freedom of expression and publication shall be guaranteed to every citizen within the framework of respect for personal rights, liberties and the privacy of individuals in accordance with the law, as well as being committed to the principles of ethics in the Bordeaux Declaration of principles on the Conduct of Journalists, adopted by the 1954 World Congress of the International Federation of Journalists, amended in 1986, and annexed hereto)

A. journalist's rights

¹⁹⁴ Khalid Saeed Tawfiq, A Few Notes On The Law No. 35 Of 2007, A Journalist In Kurdistan Labor Law (Arbil, 2010), P.10.

¹⁹⁵ Khalid Saeed Tawfiq, A Few Notes On The Law No. 35 Of 2007, Op.Cit, P.11.

The highlights reported in article (7) in the chapter four in the law summarize the rights of the journalist in¹⁹⁶:

1- A journalist is free and there is no power over him in the performance of his work except the

law.

2- The journalist the right to refrain from continuing to work in a certain newspaper when he does not find himself in a conviction or saw no reason to continue with it, especially when he discovers that the newspaper is changed radically in its policy which is not consistent with his self will and not Consistent with his views, thoughts and opinions.

3- Guarantee his rights to health guarantee and treatment when exposed to any injury or illness prevented him from doing his work.

4- Compensation for accumulated vacations or work permits in the public holidays, all these references in the text of the law form a good package of rights the legislature referred to them in order to protect the character of journalist and protects his independence.

At this point, the journalist frees from puritanical restrictions' or unilateral and domineering thoughts, then it allows him to choose the work that corresponds to his intellectual convictions and political inclinations because the journalist is a human being in which he carries tendencies and influences by reality, everyone should respect his character, he should not be harnessed as amenable tool within the journalist work. Therefore, when a journalist asks to terminate the contract or to break ties with the journalistic entity within the journalistic work rules that govern the relationship between the two parties, the other party (journalistic) shouldn't slam the door to him, and fulfill previous commitments with a guarantee of intellectual and administrative rights also preserve his dignity humanity¹⁹⁷.

B. Immunities of Journalist

Through the continuation of those rights within the legal previous trend, the article 8 of the law, fortifies the journalist from any arbitrary action taken against him in case of accusing him with an actively related to exercising his work only after a court decision to the subject of the complaint filed criminally against him as a result of that activity, at this point, the article necessitated to provide him some guarantees, including¹⁹⁸:

¹⁹⁶ Article (7), Of The Law Of The Work Of Journalists In The Kurdistan Region No. 35 Of 2007

¹⁹⁷ Khalid Saeed Tawfiq, Op.Cit, (2010), P.15

¹⁹⁸ Proceedings Of Kurdistan, Number 91, 10.20.2008, P. 23.

1. To inform the syndicate which he belongs so that the latter through their representatives to follow up the investigation, which exposed him after the issuance of a judicial decision.

2. Immunity of the journalist in arbitrariness use of a person, who holds a public office (administrative officer or the public prosecutor employees)¹⁹⁹ legal position or powers against the journalist who published a news about one of them, according to real evidence, which affect their business or public positions.

This article encourages the journalist to do acceptable hard media to detect flaws that pervades the work of administrative bureaucracies here and there, and gives him, one way or another, immunity in performing vocational media duty towards the society and the country away from accusation, as the watchful eye of the people to follow the negative phenomena²⁰⁰, which without it, administrations may slip into the abyss of corruption that infects and gnaws the body of several institutions if they are safe and far away from the control of the media.

This article stipulates at inviting indirectly from the national legislator of Kurdistan region of Iraq and ask the administrative system and institutions generally not to stand in the way of the journalist or any media operators when they want to get a certain information, it is also an indirectly invitation, for the establishment of transparency with the journalist and not to harm him if he publishes what is related to his activities working within institutions. Thus, the journalist's immunity within this field gives him the right to access to information or disclose when he serves the public interest, as a part of the right of any citizen²⁰¹, which emphasizes the foundations of the Democratic People's systems is to develop access to information sources of all citizens as the ability of hard pursuit of the truth that serves this interest is justified to enjoy such immunity. The right of access to information is a legitimate right of every citizen, it agrees with the approach and behavior of all political systems that have followed seriously the path of democracy, this right is confirmed in the national constitutions and domestic laws to a few countries in the world. This right has become the prerequisites for any popular and successful government, it will also provide protection against the processes of corruption and abuse of position or drift towards poor management, it is also within the concept of the fundamental human rights recognized by international charters of rights

¹⁹⁹ See: Kurdistan Journalists Syndicate Available In <http://Kurdjs.Com/Index.Php/En/The-Law-Of-Journalism-In-Kurdistan.Html>, Accessed, 8/5/2016.

²⁰⁰ Susan Rose Ackerman: Corruption And Governance, (Trs. Fuad Srouji) (Amman: 2003) P.295.

²⁰¹ David Banisar, Freedom Of Information And Access To The Recorded Laws Of Government Around The World (Beirut: The National Democratic Institute For International Affairs, 2004) P.9.

In spite of this support to journalists and press, but the Kurdistan Region of Iraq legislature never referred to the rights and duties of war correspondent, In won times ,they involved obviously and directly their committed to the international laws and treaties regarding human rights and the global covenant and all the international connections that Iraq had ratified them, thus the military forces have to obligate the texts of the four Geneva conventions and the two additional protocols.

4.4. The Reality of The Journalists During The Kurds War Against Islamic State in Iraq and Sham in Kurdistan Region of Iraq

The history of Kurdish journalism had begun 118 years ago with issuance and publishment the first newspaper called (Kurdistan) at 1898-4-22 in Cairo by Miqdad Madhet Badirkhan .It.is.clear that Kurdish journalism faced many restrictions and obstruction that affected its progress in being undeveloped²⁰². But it is pleasant matter during lost years by the opportunity of using the development and rapidity of the transmission of information's, the media and press have seen a great advance, and the press in Kurdistan Region Of Iraq have been developed in compare with other countries in the region, the media and press have witnessed a magnificent situation in the field of freedom and lack of restriction and instructions for such people that still struggle and fight to teach their rights²⁰³, now there are about (8124) journalists and (959) media including T.V, radio, newspaper/magazines, work in Kurdistan region of Iraq²⁰⁴ .

On 2014-8-2 the terrorist organization called ISIS attacked Kurdistan Region of Iraq very advanced weapons and munitions, it also attacked the Kurdish areas outside the administration of Kurdistan regional government of Iraq, at the beginning ISIS gain some relative victories and occupied some cities²⁰⁵, and the journalists and media had an important and critical role in these fights, the accompanied peshmarga everywhere to cover and import the news and the transmitted reports and news to their T.V that not just the audience in Kurdistan Region of Iraq watched their reports but it became a main source of news for other foreign media, especially channels like Rudaw²⁰⁶.

²⁰² The Ministry Of Education And The Province Of Kurdistan, The Kurds And The Date Of The New Contemporary, Arbil, 2004, P.124.

²⁰³ The message of Masoud Barzani president of Iraq's Kurdistan region on the occasion of 118 anniversary of the day of journalism in Kurdistan, 22/4/2016.

²⁰⁴ Archive Of Kurdistan Syndicate Of Journalists.

²⁰⁵ Heliz Saleem, The Martyr Sheikh Ahmed Geli Roman Falcon Desert, First Edition (Dohuk: Press Khani, 2015) P.15.

²⁰⁶ Afshin Ismaeli, The Role Of The Media In Developing Democracy In Kurdistan: A Study Of Rudaw Journalists' Perspectives, Notions And Attitudes, Master Thesis Submitted To The University Of Oslo, Department Of Media And Communication, 2015, P.10.

Although that this is the first time that Kurdish correspondents has a chance to cover and impart news battlefields, yet they are not out of criticism for they sometimes forgot their main job and made mistakes. Ayden white the former secretary of the international union of safety of the journalists says (we prefer that the journalists impart the stories and news of war rather than to be a part of stories)²⁰⁷ If we would have a view to the Kurdish journalists we would see that some of them are heroes though being a hero is not something new for many of them , they have witnessed the ISIS attacks with very advanced weapons and munitions, they accompanied there brothers of peshmarga to defend-the honor and dignity of.Kurdish people and to protect.their borders against the biggest terrorisnorganization in the world.

They are more subjective .The Kurdish journalists wonder how to be a correspondent and not to be a peshmarga, they witnessed how the peshmarga fought and died as martyrs but they didn't go back. The Kurdish journalists believed that they shouldn't fear like their brothers of peshmarga how they face their fate with great Morales and spirits, they sang and danced while going toward to the fight fields . most of Kurdish journalists were members of political parties, if their parties needed them to fight they would replace their pens and cameras with guns and without any hesitation they would go to fight²⁰⁸.

What concerning to the dealing of peshmarga. With journalists, commander of peshmarga forces in Shingal (Sarbast Lazgeer²⁰⁹) said: from long times ago the Kurdish people had protected the human rights and never involve in culture and mentality oki.killing and damaging. during the two.Kurdish revolutions September and may against the regimess of Bagdad, whenever the peshmarga knew that their military operations would cause some victims among civilians they wouldn't do their operations for example during September revolution some commanders of peshmarga told (the spiritual father of kurdish people Mullah Mustafa Barzani²¹⁰) the leader of kurds that they are preparing to conquer the city of Rawandiz, they would easily capture the city and they might kill or capture many Iraqi army leaders, although that controlling this area is a big military gain but Mullah Mustafa Barzani refused

²⁰⁷Mustafa Kemal, A Duty Of The War Correspondent,

Available at http://www.knwe.org/Direje.aspx?Jimare=281_85&Cor=2&Besh=Witar, Accessed: 2/5/2016

²⁰⁸ Sapan, War Correspondent and Disputed Areas, Available at <http://www.rozhamawany.com/?p=1748>,

Accessed on 7/5/2016.

²⁰⁹ Sarbast Lazgeen: In 2014-8-2 When ISIS Attacked Kurdistan Region He Joined The Peshmarga And Involved In All Battles Against ISIS And Now He Is The Commander Of Forces Peshmarga In Shingal ,He Was Interviewed on 9/4/2016 In Shingal.

²¹⁰ Mullah Mustafa Barzani, president of KDP 1946 to 1979, in 1961 he initiated a revolution September against Iraqi government which was considered the biggest Kurdish revolution that lasted till 1975, for more than information see (Masoud Barzani, The Kurdish liberation movement)

that because this would cause an embargo over the area and people of this area would get hurt, thus was as peshmarga must not be the reason of hurting civilian people. also in march 1991 uprising thousands of Iraqi soldiers who participated in bombing and killing Kurdish people, these soldiers had been taken as prisoners of war by peshmarga but they dealt with them in humanitarian way and nobody humiliated or tortured these soldiers .

Nowadays by virtue of martyrs blood and peshmarga struggle we have a parliament, government and administrate institutions, we have good relationships with some states and international organizations, so we are committed to Laos and customs of war. in spite of that all of the world are aware of the brutal, savage and terrorist ideology, but peshmarga helped war correspondents to import and cover the news of war without an censorship ,they rather gave safety instructions to these journalists correspondents, the peshmarga in many times supplied them with food, water and shelter for rest, the peshmarga even had given some information to those journalists and media in order to import their news in time, the peshmarga forces were committed to give information to every journalist or channel. We adopted a policy to simulate journalist to act according to ethics and manner of professional press but in condition that these news never be a source to our enemy . the peshmarga T.V. now didn't do any action led to Prevent journalists from doing their work.

(Azad Gahwar²¹¹) a journalist in Kurdistan Satellite Channel says:(It was the first time that we involved in covering and importing news in battlefields, we became as war correspondents, we accompanied Peshmarga forces, we had a good relations and co-operations with Peshmarga, we applied the instructions of Peshmarga during fights for our own safety. in several times we wanted to cover or photo some fight areas but the Peshmarga prevented us for our safety or they accompanied us to guide and protect us. The Peshmarga were very helpful and co-operative with us they even gave us food and water and shelter. we noticed that the opponent side ISIS as they are terrorists they didn't distinguished between Peshmarga Journalists and civilian people)

In my point of view there may be some oversteps and restrictions to the press work due to their un commitment and the lack of press equipment, which are as follow:

1- The lack of information and co-ordination centre under supervision of ministry of Peshmarga and syndicate of journalists to inform either journalist or military leader about the details and datum of

²¹¹ Azad Gahwar, He Worked As A Correspondent Of Kurdistan T.V. In Zakho, Who Was Experienced In Preparing News , Reports , Photos ,Documentaries And Montages , At 2014-8-4 He Started Covering Battlefield Especially In Zumar Area, When Peshmarga Liberated Shingal He Spent 6 Days There Covering The Battlefields . ,He Was Interviewed At 4/5/2016 In Zakho.

battlefield. also to balance between the professional press and the national security and military secrets.

2- Most of the journalists who covered the battlefields didn't have sufficient information about how to work and cover areas of war , they sometimes exceeded the professionalism and their reports became sources of information to the ISIS such as declaring the zero hour which are the most important military secrets .

3- The coverage of some journalists of some battlefields depended on their relations with Peshmarga leaders or due to their political parties . they were not organized by ministry of Peshmarga and army units and this caused a dangerous threaten to their lives ,in additional to that those journalists didn't have an experience or training in covering battlefields .

4-The disuse of war equipment like channel logo, press shirts ,head piece and armor

5-The lack of geographic information and datum such as the distance and nearness of positions of ISIS or Peshmarga .

Conclusion

Lack of journalist definition in all conventions relating to the IHL in addition to the failure to clarify these conventions the concept of dangerous professional task, if the article 79 of the First Protocol of 1977 has recognized the task of dangerous professional task of journalist, but it has not indicate the meaning of task, which opens the discussion to conflict views in this regard, in spite of the seriousness of journalism tasks in internal conflicts, there is no reference to that in the second Protocol. International law protects journalists in two phases in armed conflict areas where the first is related to protect the attaché journalist of the armed forces (war correspondent) and the second stage, to protect journalists in charge of the dangerous professional task according to article 79 of the first Protocol and the applicability of all provisions relating to the protection of civilians in. In the case of armed conflicts on journalists in charge of dangerous professional task as well as war correspondents as civilians and the lack of special protection for journalists except the war correspondent whose rights are reserved as in article 79 of the first additional Protocol of 1977 where the rights of war correspondents are kept and the journalist who is in charge of dangerous professional-task considered as civilians, therefore, he has the general protection of civilians and his identity card does not create a special legal status for him, it is not compulsory, even in the absence of this card, the journalist remains enjoy general protection of civilians.

Journalists protection is not absolute, but it loses when the journalist participates in the hostilities, or his existence in areas that are legitimate to target or if he wears a uniform look like military uniforms, he loses the right of protection as a civilian.

International law is not enough to protect journalists but the states need to issue legislation and work out, also criminalize violations against journalists. But in Kurdistan Region of Iraq, the parliament issued many laws governing the work of journalists, this is a very important factor for the work of journalists but without any statements on war correspondent.

In Kurdistan Region of Iraq, respect was given to the work of journalist, and the Peshmerga leaders gave much support to journalists during their duties at war, also gave them information and results of war. War correspondent couldn't go to areas under the authority of ISIS, for transferring news and views of war.

Recommendations

- 1- The need for a clear definition and specific journalists and media persons in areas of armed conflict on the levels of international humanitarian law and legislation within the countries including legislation Iraqi Kurdistan region of Iraq, also need to identify a list of Civilian Persons in the first Additional Protocol .
- 2- The need to clarify what was meant by 'professional job dangerous' so it should when reviewing the Geneva Conventions of 1949 and the Additional Protocols of 1977 to address this problem.
- 3- To support international efforts to protect journalists in armed conflict areas through authentication states to draft international convention on the protection of journalists made by the Organization (the press slogan campaign) being built in Geneva in 2007. Which is waiting for approval by the five countries to enter into force.
- 4- Develop and strengthen the rules that protect journalists against attacks in armed conflicts.
- 5- Support the efforts of the level of preventive mechanisms and supervisory and parish valuable field of activating the international protection of journalists in armed conflict. working in cooperation with States government varicose organizations and non-governmental and regional organizations and internal organizations and countries to support laws and legislation related to the rights of journalists during armed conflicts.
- 6- It is necessary to amend the law of journalists in Kurdistan Region of Iraq NO. 35 for the year 2007 and referring in the texts to the rights of the war correspondent.
- 7- The establishment of an international commission to be its duty to monitor the parties to the conflict's commitment to protecting journalists, documenting attacks against them, and can be attached to the United Nations or the International Committee of the Red Cross, which operates in areas of armed conflict
- 8- The formation of a joint commission from the Ministry of Peshmerga in the Kurdistan region of Iraq and the Kurdistan Syndicate of journalists and the duty of this committee to follow up in the media fronts covering the attacks and the war against ISIS.

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