

INTERNATIONAL HUMANITARIAN LAW FOR JOURNALISTS



NEW ZEALAND
RED CROSS
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An ICRC delegate discusses international humanitarian law with soldiers. PHOTO: ICRC

FRONT COVER

Baghdad. Woman and child in front of the remains of a warehouse destroyed by coalition forces bombing. PHOTO: ICRC

WHAT IS INTERNATIONAL HUMANITARIAN LAW?

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

IHL doesn’t address the legality of a State’s rationale for engaging in armed conflict - its focus is on regulating the actions of parties during armed conflict. IHL regulates:

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

IHL applies to situations of international and non-international armed conflict, as well as to situations of belligerent occupation (where the armed forces of a State have taken effective control over part or all of the territory of another State). It does not apply to situations falling below this threshold, such as riots, internal disturbances and tensions.

IHL applies from the start of an armed conflict until peace is restored.



Food is distributed to internally displaced persons and residents in Aw Dheegle by ICRC and the Somalian Red Crescent. PHOTO: ICRC

HOW CAN IHL PROTECT MEDIA PROFESSIONALS?

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

Unlike, for example, certain medical or religious personnel, media professionals are not entitled to special protection over and above their civilian status. IHL does not ensure journalists' freedom of speech or give journalists the right to enter a territory without permission of the State.

Media must not 'directly participate' in hostilities

The following activities are **likely to be a direct participation in** hostilities and may cause a media professional to **lose their protection**:

- Acts of war, including taking up arms or using violence that is not self-defence
- Engaging in a broadcast or publication that specifically incites and facilitates violence against civilians or a party to a conflict (as opposed to general propaganda in support of one side)
- Passing on tactical information
- Engaging in espionage/spying.

The following activities are **unlikely to amount to a direct participation** in hostilities:

- Using force in self-defence and carrying small weapons for defensive use
- Reporting on and publishing news and information from or about a conflict
- Refusing to assist a party to a conflict
- Providing medical assistance, including first aid.

When can a media professional be interned or detained?

While all detained journalists are protected under IHL, their legal status dictates whether they are held as **civilians** or **prisoners of war (POWs)**. These come with different protections.

A party to an international conflict can lawfully intern foreign media professionals as **civilians** on 'security grounds'. The following rules regulate such internment:

- Foreign media professionals cannot be interned by an adversary's forces unless it is 'absolutely necessary' to do so for security reasons
- Interned media professionals have the right to receive prompt information about the reasons for their internment and immediate and periodic review of their internment
- When a media professional is interned, the interning authorities must inform the State of which they are a national, their family and the International Committee of the Red Cross (ICRC) of their internment
- When reason for internment no longer exists, the media professional must be released.

A party to a conflict can lawfully detain authorised war correspondents - **who accompany the armed forces of an adversary and are entitled to prisoner of war status** - upon capture. This is regulated by the following rules:

- At the end of hostilities, POWs must be released and repatriated without delay
- War correspondents may mail a 'capture card' to their family from detention
- Detaining authorities must inform the State of which the war correspondent is a national and the ICRC of the detention.

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

Treatment while interned or detained

All media professionals are **protected from torture and other forms of ill treatment** and must be treated humanely during internment and detention in both international and non-international armed conflict. This protection applies regardless of whether a media professional is detained for legitimate or illegitimate reasons.

Media professionals in detention and internment are entitled to:

- Be treated humanely and with dignity in all circumstances
- Be held in premises removed from the combat zone
- Be protected against any violence, including sexual, as well as intimidation, insults, public curiosity



An ICRC delegate speaking to the media after the release of a hostage by the Revolutionary Armed Forces of Colombia. The ICRC acted as a neutral intermediary. PHOTO: ICRC

- Minimum conditions of detention (i.e. accommodation, food, clothing, hygiene, medical care)
- Medical attention
- Access to religious, educational and recreational facilities
- Separate accommodation (or sanitation facilities) for females.

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

Media professionals also have the right to contact the outside world, including through correspondence with their families and employers, although this may be subject to censorship by detaining authorities.

Media professionals detained or interned in international armed conflict have the right to personal and confidential communication with ICRC, including the receipt of visits by an ICRC delegate. In non-international armed conflict there is no absolute right for ICRC to visit.

WHAT IHL RESPONSIBILITIES DO MEDIA PROFESSIONALS HAVE?

Under international law, media professionals not only benefit from protection, but they also have **obligations and responsibilities**. The rules and obligations under IHL apply to any person or party to a conflict who is in a position to violate them.

What are a media professional's responsibilities when gathering information during an armed conflict?

Media professionals have responsibilities under IHL when gathering information in an armed conflict. This includes when they undertake investigations and witness events, when they interview people, and when they photograph or film people, especially when those people are in detention or internment.

Media professionals have a responsibility not to participate directly in hostilities. If a media professional gathers information for a party to a conflict and passes it on to that party or allows a party to use their communications equipment for military purposes, they may be accused of directly participating in hostilities.

Media professionals who witness war crimes are under no IHL obligation to report the crime. However, if a media professional is called before a court to give evidence of a crime they have witnessed and fails to attend or answer questions they may be found in contempt of court.

Interviewing and photographing or filming people

Media professionals (and media organisations) have responsibilities when reporting on and publishing or broadcasting material about an armed conflict to ensure that their work does not contribute to the ill-treatment of the victims of armed conflict, *especially those in internment or detention*. They must ensure that their work respects the dignity and honour of such individuals.

In particular, media professionals should not engage in conduct which exposes internees or detainees to insults and/or public curiosity. Media professionals (and their employers) have a responsibility normally not to publish images or report stories about prisoners of war (POWs) or civilian internees (as well as any person in detention in a non-international armed conflict) that:

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

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

Can media professionals use the red cross, red crescent and red crystal emblems?

Media professionals **may not use the red cross or other distinctive emblems as a symbol of protection**. They may not:

- Use or wear an imitation of an emblem
- Use the emblems as a sign of protection
- Use the emblems to help disguise military objectives such as troops, weapons or military vehicles.

A media professional may use the emblems when:

- Publishing or broadcasting images of persons and objects which are permitted to use the emblem, such as military medics or volunteers working for Red Cross or Red Crescent organisations. In New Zealand, New Zealand Red Cross is able to provide advice on the correct depiction of the emblems in such circumstances
- A media professional is also a member of an organisation authorised to use the emblems (for example, a first aid volunteer for a Red Cross Society) and is not acting as a media professional at the time of use.



In harm's way: Who can assist you?

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

- ICRC Hotline: **+41 79 217 32 85**, email: **press@icrc.org**
- Reporters Without Borders: SOS press hotline: **+33 1 4777 7414**


The ICRC can act rapidly to provide protection and assistance for a journalist who has been captured or arrested or has disappeared if it is given all details as quickly as possible.

The ICRC maintains a permanent presence in more than 60 countries via its network of delegations and is currently conducting operations in about 80 countries. This network allows it to carry out humanitarian activities in virtually all of today's armed conflicts.

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