



INTERNATIONAL CONVENTION ON THE SAFETY AND INDEPENDENCE OF JOURNALISTS AND OTHER MEDIA PROFESSIONALS

Briefing paper

January 2018

There are already lots of resolutions and recommendations on safety and impunity. Why are we campaigning for further action?

Despite many protocols, guidelines and proposals journalists still face a daily threat – and impunity continues to make the situation worse.

Between 2012 and 2016 at least 530 journalists have been killed according to UNESCO. Nine in 10 cases remain unpunished. Impunity reigns. Hundreds of journalists are imprisoned and on a daily basis journalists are attacked, beaten, detained, harassed and threatened. There are growing threats to digital safety with cyber-attacks, hacking, online harassment, especially of women journalists, all creating a safety crisis for news professionals.

Behind every statistic is also human tragedy – a death, a kidnapping, a family left without a mother, father, a brother or sister. Behind every statistic is a country or community left without information, denied the human right to be properly informed.

It is this – and a growing frustration with a lack of action and in too many cases a lack of will to tackle the crisis of impunity - which has driven the IFJ to launch this proposal.

Is this proposal in competition with other initiatives like the UN Plan of Action on the Safety of Journalists?

No! The IFJ welcomed the UN Plan of Action - and we will continue to do all we can to make it work. But there is clearly a case for us to do more – to take a complementary course of action.

The assumption underpinning the Plan of Action was that international law already has relevant and sufficient safeguards for journalists' rights and that efforts should concentrate on implementation.

But important weaknesses in the existing international legal regime still persist, and the IFJ is intent on promoting an instrument *specific* to the situation of journalists to ensure more effective implementation of international law.

Is the existing international humanitarian law not sufficient?

In the current international legal framework there are no binding norms establishing safeguards for media workers specifically.

In principle, journalists reporting from conflict zones benefit from the same protections afforded by **international humanitarian law** to civilians.

Common article 3 to the four *Geneva Conventions 1949* establishes a minimum standard of treatment for persons who do not take an active part in the hostilities. *Additional Protocol I*

lays down further obligations for the belligerent parties: to distinguish civilians from legitimate military targets (art 48), to refrain from attacks resulting in excessive incidental loss of civilian life or injury to civilians (art 51(5)(b)) and to exercise precaution, minimising danger to civilians (art 57(2)(a)(iii)). Protocol I contains an express recognition of the civilian status of journalists (art 79).

However, it is a body of law which **fails to acknowledge that journalists face greater risks** when compared to other civilians. There is a **strategic advantage to be gained from targeting the media** - for what former UN Special rapporteur on freedom of expression Frank La Rue described as belligerents' concern 'to win the war of images'. Those who wish to prevent the dissemination of information and international scrutiny deliberately target journalists.

Journalists' deliberate proximity to any conflict makes them especially vulnerable: unlike other civilians, journalists do not avoid conflict areas. In the words of former Red Cross legal adviser Robin Geiss, "instead of fleeing combat, they seek it out".

And there are **loopholes in humanitarian law**. Warring parties are allowed to target so-called '**dual-purpose objectives**', that is, civilian facilities which also have a military function. A party may claim that a broadcasting facility assists the enemy's military communications; the bombing of the Serbian TV and Radio Station by the 1999 NATO campaign is a tragic illustration of this ambiguity.

Furthermore, the limits of legitimate '**collateral damage**' are not clearly defined and lend themselves to abuse. Lastly, Geneva law concedes that a person may **lose 'civilian status'** if they engage in activities supporting the other party to the conflict. There is thus a risk of miscategorising the act of reporting as dissemination of information to the hostile party, war propaganda or espionage.

Thus, the **combatants' obligation to pay attention to journalists' physical safety lacks visibility** under humanitarian law, notwithstanding the higher risks to which they are exposed. The fact that the UN Security Council had to reiterate, in its *Resolution 1738 (2006)*, that journalists must be treated as civilians, is a worrisome indicator of this gap.

In addition, there is **no enforcement mechanism for individuals** in connection with violations of the Geneva obligations.

But what about international human rights law?

International human rights law is equally silent on the position of journalists. Whilst every **individual** is entitled to the protection of their right to life, personal liberty, security, freedom from torture, freedom of expression and an effective remedy when their rights have been infringed, *general* human rights instruments **fail to reflect the systemic effect of attacks against journalists on societies**.

These rights are guaranteed to everyone under the *UN Covenant on Civil and Political Rights* and its regional counterparts (the *European Convention*, the *EU Charter*, the *American Convention*, the *African* and the *Arab Charters*).

This existing human rights framework also raises, however, a number of concerns. First, general human rights instruments **fail to reflect the systemic effect of attacks against journalists on societies**. Unlike most violations, attacks on journalists' life or physical integrity have an impact on the public's right to information, contribute to a decline of democratic control and have a chilling effect on everyone's freedom of expression.

They lead directly to self-censorship.

Despite this, there is no independent course of action for members of the public or other media workers in cases of violations of the rights of a journalist to lodge an application for the case to be heard in an international procedure.

The current human rights regime also **fails to take into account the risks associated with the journalistic profession**. Whilst everyone's right to free speech is protected, the exercise of freedom of expression by media professionals is distinct: they are involved in the circulation of information and ideas on a regular basis, with a much wider impact on mass audiences, hence providing a greater incentive to target them by those who wish to censor unfavourable speech. This public dimension of journalistic speech is under-recognised. Unsurprisingly perhaps, cases of violence against journalists have been treated by the European Court of Human Rights as violations of an individual's right to life and personal security rather than free speech violations. Judgments have missed the opportunity to raise awareness on the consequences of violence against the person of journalists on the rights of the citizenry at large.

So why do we need a dedicated instrument focusing on journalists and media workers?

The international community has already acknowledged the **limited capacity of generally applicable rules**. Even though women, children or disabled persons are protected as human beings under general instruments, specific conventions (*on the Elimination of Discrimination against Women*, *on the Rights of the Child*, *on the Rights of Persons with Disabilities*) have been adopted, as a reaction to the fact that *general* instruments are insufficient. These conventions consolidate and further specify obligations otherwise owed to every individual; they are not redundant, even though the rights might be implicit in the general instruments.

Journalists are a vulnerable category targeted on account of their profession, and a dedicated instrument would enhance their protection and attach particular stigma to violations, increasing pressure on States to both prevent and punish violations, which is at the core of compliance with international law.

To date, International law addressing the situation of journalists is limited to what are called soft law instruments of a declarative or recommendatory nature, simply calling on States to end impunity.

These include the 2009 Human Rights Council Resolution 12/16 on 'Freedom of opinion and expression', UNESCO Resolution 29 'Condemnation of violence against journalists' (1997) and the 2007 Medellin Declaration Securing the Safety of Journalists and Combating Impunity, as well as a number of regional declarations (Resolution 1535 (2007) of the Council of Europe Parliamentary Assembly on 'Threats to the lives and freedom of expression of journalists', the declarations of principles on freedom of expression of the Inter-American Commission (2000) and of the African Commission (2002)).

The IFJ is clear that **a new *binding* international instrument dedicated to the safety of journalists**, including a specific enforcement mechanism, would improve the effectiveness of the international response.

There has been a recent trend towards recognising that media workers face a different situation and may require a category-specific solution. According to *UN Security Council Resolution 2222*, the work of media professionals "puts them at specific risk of intimidation, harassment and violence in situations of armed conflict".

The 2016 Recommendation of the Committee of Ministers of the Council of Europe on guidelines for the protection of journalism acknowledged an increase in attacks against journalists "because of their investigative work, opinions and reporting".

What would be the purpose of a new Convention?

A **Convention on the Safety of journalists and Media Professionals**, would systematise and detail existing obligations.

It would facilitate the understanding of international legal standards by domestic decision-makers and law-enforcement authorities; it would enhance the visibility of journalists' precarious position, as well as increasing peer pressure. Currently the scope of the relevant human rights provisions can be found in the case law of various international bodies rather in the treaties, and in multiple texts rather than one single, comprehensive instrument, accessible to non-jurists.

The new instrument would provide a helpful **codification of all applicable rules** in one instrument, bringing together both human rights and humanitarian law provisions. It would include: the obligation to protect journalists against attacks on their life, arbitrary arrest, violence and intimidation campaigns, the obligation to protect against forced disappearances and kidnapping (by state agents or private actors), the obligation to carry out effective investigations into alleged interferences and bring the perpetrators to justice; in the context of armed conflict, the obligation to treat media workers and facilities as civilians (and hence illegitimate targets) and to conduct military operations with due diligence.

How can this be achieved?

The process could begin via a **Declaration of principles** contained in a UN General Assembly resolution, summarising the obligations of States emerging from a multiplicity of international texts and jurisprudence.

Albeit non-binding, it would clarify the law, express the determination of the international community to counter impunity for attacks against journalists and lay the foundations for the adoption of a binding instrument in future. In fact, all UN sectoral conventions on the rights of women, children, disabled people, have been preceded by General Assembly declarations.

How can such a convention improve implementation?

In terms of **enforcement**, we have proposed a committee on the safety of journalists be established.

Our preferred option would be setting up of a **body of independent experts** (rather than State representatives) specifically entrusted with monitoring compliance with the new instrument. This would be similar to the treaty-based committees established under several UN conventions like the Committee Against Torture.

This body should ideally have mandatory competence to receive individual or group complaints, to conduct inquiries and issue reasoned decisions (whether or not technically binding). The main advantages of a dedicated body would be that it provides a more **expedite procedure** in case of alleged violations and it avoids the loss of political pressure ensuing from the fragmentation of international avenues for redress.

Are there other options?

We believe establishing a body of independent experts is the best means to achieve action to tackle impunity.

However, there are other possible avenues – for example to **expand the role of existing bodies**.

The **UN Human Rights Committee** is already in charge of a quasi-judicial procedure under the ICCPR and issues highly authoritative (albeit non-binding) reports on whether there has been a violation and if an individual is entitled to a remedy. The new convention could establish a **special procedure** for individual communications concerning violations of media workers' rights and a group of Committee members (a **Sub-Committee on Media Freedom**) may be entrusted with such complaints on a regular basis.

Another option might be the creation of a **specialist sub-Committee within the Human Rights Council**, gathering an equal number of government agents and representatives of

media workers' NGOs (modelled after the International Labour Conference delegations). This mixed subcommittee could be empowered to report to the Council on individual/ NGOs/ State communications and issue recommendations to the States concerned.

Another candidate would be **the Intergovernmental Council of UNESCO's International Programme for the Development of Communication**. Its mandate could be amended to include annual sessions examining communications on consistent patterns of violation of the obligations expounded in the new instrument, and issuing recommendations to the State concerned, as well as the power to set up commissions of inquiry to undertake country visits. Albeit revolving around a political body rather than a body of independent legal experts, this solution would present the advantage of creating an international focal point for complaints regarding journalists' rights.

How would such a Convention help to tackle impunity and promote safety?

A new international instrument dedicated to the safety of journalists would make an important statement. It would acknowledge their distinctiveness, stemming from the risks to which they are routinely exposed and the value of journalistic work to society. It would intensify international scrutiny over attacks against journalists as well as assisting national authorities in understanding their international obligations, currently fragmented in several treaty provisions and case law.

Such a momentous initiative would make the safety of journalists and everyone's right to information a clear priority for the international community.

So what happens now?

From today, the IFJ and its affiliates – on behalf of all the victims of those who seek to silence the messenger - commit ourselves to this cause.

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I still have questions. Who can I speak to?

Contact us at ifj@ifj.org and we will do our best to respond to your question as soon as possible. We want this to be a Convention which meets the needs and wins the support of the journalistic community and press freedom campaigners – we are keen to share, discuss, debate and act together at every opportunity.

Notes:

The draft Convention can be found at http://www.ifj.org/fileadmin/documents/Draft_Convention_Journalists_E.pdf

It was drafted by Dr Carmen Draghici, Senior Lecturer in Law, City University. Her main research interests concern the judicial interpretation of the European Convention on Human Rights and the responsibility of States and international organisations for breaches of human-rights obligations