

# ALL THE NEWS THAT'S WORTH THE RISK: IMPROVING PROTECTION FOR FREELANCE JOURNALISTS IN WAR ZONES

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**Abstract:** Although war journalism has existed for centuries, changes in the nature of armed conflict and its coverage have put the danger for modern journalists at an all time high. The traditional war correspondent has been replaced in recent years by the independent freelance journalist. While the former receives the full protection and financial backing of his respective news organization and the American military, the latter works on his own, often living in dangerous war zones with little or no training, insurance, or equipment. This new mode of journalism has proved especially dangerous in the current conflict in Syria, where terrorist organizations such as the Islamic State intentionally capture journalists for use as propaganda pieces and bargaining chips. The U.S. government and news organizations worldwide have issued policies and entered into agreements aimed at offering better protection to journalists reporting from dangerous conflict zones. Recently, many voices have advocated for legislative amendments to the Geneva Convention that would establish new protections such as a press emblem or a special status. This will not solve the problem, however, as the major players in current conflicts systematically ignore codified law. The most feasible action to mitigate danger and reduce targeted attacks against journalists is to put an end to the impunity that has allowed the Islamic State and other violent military groups to carry out these acts unprosecuted.

## INTRODUCTION

Outfitted in a now infamous orange jumpsuit, American freelance journalist James Wright Foley looked directly into the camera lens on August 19, 2014 and delivered his final words.<sup>1</sup> Instructed to kneel in an unknown, desert expanse

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<sup>1</sup> Rukmini Callimachi, *Before Killing James Foley, ISIS Demanded Ransom from U.S.*, N.Y. TIMES (Aug. 20, 2014), [www.nytimes.com/2014/08/21/world/middleeast/isis-pressed-for-ransom-before-killing-james-foley.html?\\_r=0](http://www.nytimes.com/2014/08/21/world/middleeast/isis-pressed-for-ransom-before-killing-james-foley.html?_r=0) [https://perma.cc/6QJ5-9HUY] [hereinafter Callimachi, *Killing James Foley*]; Rukmini Callimachi, *The Horror Before the Beheadings: ISIS Hostages Endured Torture and Dashed Hopes, Freed Cellmates Say*, N.Y. TIMES (Oct. 25, 2014), <http://www.nytimes.com/2014/10/26/world/middleeast/horror-before-the-beheadings-what-isis-hostages-endured-in-syria.html> [https://perma.cc/67QF-52TD] [hereinafter Callimachi, *Horror Before the Beheadings*]; *IS Beheads Captured American James Wright Foley, Threatens to Execute Steven Joel Sotloff*, SITE INTELLIGENCE GROUP (Sept. 3, 2014), <https://news.siteintelgroup.com/Jihadist-News/is-beheads-captured-american-james->

somewhere in northern Syria, Foley was brutally beheaded at the hands of ISIS.<sup>2</sup> Almost two years earlier, in November 2012, Foley had just finished uploading footage from an Internet café in Binesh, Syria when he stepped outside to hail a cab.<sup>3</sup> He and fellow journalist John Cantlie intended to return to Turkey—a twenty-five-mile drive from the café—but they would never reach the Turkish border.<sup>4</sup> The men were captured miles into the journey, forced out of the car and onto the ground at gunpoint by masked militants.<sup>5</sup> Foley remained in captivity for almost two years before his highly publicized death, living in a cell with as many as twenty-two other Western prisoners and enduring torture that included frequent beatings, waterboarding, and mock executions.<sup>6</sup> The video of his death shocked the world as it circulated the Internet, intended as propaganda for the Islamic State and retaliation against President Obama and the United States for targeted airstrikes in Iraq.<sup>7</sup>

In 2015, at least fifty journalists were murdered in direct retaliation for their work reporting in war zones.<sup>8</sup> In Syria alone, at least eighty-five journalists have

foley-threatens-to-execute-another.html [https://perma.cc/5VRX-N3D7]. The last sentence spoken by Foley in a short, presumptively scripted speech captured in the video was, “I guess all in all, I wish I wasn’t an American.” Chelsea J. Carter, *Video Shows ISIS Beheading U.S. Journalist James Foley*, CNN (Aug. 20, 2014, 11:17 AM), <http://www.cnn.com/2014/08/19/world/meast/isis-james-foley/> [https://perma.cc/WY65-UZBR]; *IS Beheads Captured American*, *supra*. The orange jumpsuit Foley and other prisoners wore in numerous videos was intended to mimic the clothing worn by prisoners at Guantanamo Bay. Callimachi, *Killing James Foley*, *supra*.

<sup>2</sup> Callimachi, *Horror Before the Beheadings*, *supra* note 1. The ISIS militant who appears to slit Foley’s throat on camera is believed to be Mohammed Emwazi, born in Kuwait and raised in London. Dominic Casciani, *Islamic State: Profile of Mohammed Emwazi aka ‘Jihadi John’*, BBC NEWS (Nov. 13, 2015), [www.bbc.com/news/uk-31641569](http://www.bbc.com/news/uk-31641569) [https://perma.cc/C]. Emwazi is commonly referred to as “Jihadi John” because of his association with a group of Britons—named after the Beatles—who are believed to be fighting with ISIS. Lizzie Dearden, *‘Jihadi John’: Identity of ISIS Militant Who Beheaded Steven Sotloff and James Foley Remains a Mystery*, INDEPENDENT (Sept. 3, 2014), [www.independent.co.uk/news/world/middle-east/jihadi-john-identity-of-isis-militant-who-beheaded-steven-sotloff-and-james-foley-still-a-mystery-9708001.html](http://www.independent.co.uk/news/world/middle-east/jihadi-john-identity-of-isis-militant-who-beheaded-steven-sotloff-and-james-foley-still-a-mystery-9708001.html) [https://perma.cc/T3KE-J89H]. Emwazi was killed on November 12, 2015, by a targeted air strike in Raqqa, Syria carried out by U.S. drone. Ashley Southall, *ISIS Magazine Confirms ‘Jihadi John’ Death*, N.Y. TIMES (Jan. 19, 2016), [http://www.nytimes.com/2016/01/20/world/middleeast/isis-magazine-confirms-jihadi-john-was-killed.html?\\_r=0](http://www.nytimes.com/2016/01/20/world/middleeast/isis-magazine-confirms-jihadi-john-was-killed.html?_r=0) [https://perma.cc/S3B6-E6W7].

<sup>3</sup> Callimachi, *Horror Before the Beheadings*, *supra* note 1.

<sup>4</sup> *Id.*

<sup>5</sup> Callimachi, *Killing James Foley*, *supra* note 1.

<sup>6</sup> Callimachi, *Horror Before the Beheadings*, *supra* note 1.

<sup>7</sup> NINA BURRI, BRAVERY OR BRAVADO? THE PROTECTION OF NEWS PROVIDERS IN ARMED CONFLICT 3 (2015); Callimachi, *Killing James Foley*, *supra* note 1.

<sup>8</sup> *50 Journalists Murdered in 2015*, COMMITTEE TO PROTECT JOURNALISTS, <https://www.cpj.org/killed/2015/murder.php> [https://perma.cc/DU5N-MBG2]. Since 2003, 110 journalists have been murdered in Iraq. *111 Journalists Murdered in Iraq since 1992*, COMMITTEE TO PROTECT JOURNALISTS, <https://www.cpj.org/killed/mideast/iraq/murder.php> [https://perma.cc/UF24-KDDF]. In the past five years, seventeen journalists have been murdered in Syria. *17 Journalists Murdered in Syria Since 1992*, COMMITTEE TO PROTECT JOURNALISTS, <https://www.cpj.org/killed/mideast/syria/murder.php> [https://perma.cc/6DVQ-LDQ7].

died since 2011 and more than ninety have been captured.<sup>9</sup> Modern pressures on the traditional journalism model and the nature of conflict in the Middle East have led to the recent proliferation of freelance journalism.<sup>10</sup> Alongside this change in conflict coverage, the Syrian civil war has produced a historic rise in the intentional targeting of journalists who are taken for ransom and used in anti-American propaganda.<sup>11</sup> In these conditions, protection for journalists is paramount, primarily in the form of aid and support from the agencies that employ them and the national and global organizations dedicated to their protection.<sup>12</sup> Despite assistance from non-state actors and media organizations, the fate of journalists continues to lie in the hands of combatants who routinely disregard international humanitarian law.<sup>13</sup> Thus, the biggest challenge facing freelance journalists in modern conflict zones is not the current status of the law, but the vicious cycle of impunity that allows those legal protections to be consistently neglected.<sup>14</sup>

Part I of this Note discusses the traditional mode of journalism from the Civil War–era through the twenty-first century, the development of the modern freelance journalist, and the rise in intentional targeting and capture of journalists in the current Syrian conflict. Part II delves into the protections freelance journalists in war zones receive and the industry standards regarding journalist capture. This Part also explores the development of international humanitarian law from sole recognition of war correspondents to resolutions encouraging protection for freelance journalists. In Part III, this Note argues that the current protections for journalists are sufficient but not well understood, particularly with the explosion of freelance journalism and the growing threat of deliberate media targeting seen in the current conflict in Syria. Finally, this Part concludes that the most effective road to increasing safety for freelance journalists reporting in war zones is to end the impunity that has allowed those who take journalists hostage to continue the enterprise unprosecuted.

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<sup>9</sup> Robert Mahoney, *A Year After James Foley and Steven Sotloff Murders, More Awareness of Risks*, COMMITTEE TO PROTECT JOURNALISTS (Aug. 17, 2015, 2:38 PM), <https://www.cpj.org/blog/2015/08/a-year-after-james-foley-and-steven-sotloff-murder.php> [https://perma.cc/5KYQ-AAHL] [hereinafter Mahoney, *More Awareness of Risks*].

<sup>10</sup> See Brent Crane, *War Reporting in the New Media Landscape*, AM. INT. (May 3, 2014), <http://www.the-american-interest.com/2014/05/03/war-reporting-in-the-new-media-landscape/> [https://perma.cc/WXP3-W727].

<sup>11</sup> Mahoney, *More Awareness of Risks*, *supra* note 9.

<sup>12</sup> *Id.*

<sup>13</sup> See Antonella Notari, *The Role of the Red Cross and Crescent in Protecting Journalists During Conflicts*, in PRESS FREEDOM: SAFETY OF JOURNALISTS AND IMPUNITY 28, 31, 33 (Barry James ed., 2007), available at <http://unesdoc.unesco.org/images/0015/001567/156773e.pdf> [https://perma.cc/57QN-694].

<sup>14</sup> See *id.* at 31.

## I. BACKGROUND

### A. *The Traditional War Correspondent*

On the morning of March 16, 1861, the city of New York rose in the distance as the steamship *Arabia* concluded its thirteen-night journey across the Atlantic.<sup>15</sup> Among her passengers was William Howard Russell, special correspondent for the *London Times*, sent to America to cover the developing conflict between the North and the South.<sup>16</sup> He was, perhaps, the first war correspondent of his time—famous first for his unparalleled coverage of the Crimean War before his brief stint in America.<sup>17</sup> Far from heading into battle, however, Russell traveled instead to Washington where he enjoyed a personal audience with President Lincoln.<sup>18</sup> He spent the remainder of his time in America travelling the eastern states by ferry and train, reporting news of the war while enjoying meals with politicians and overnight stays at quaint inns.<sup>19</sup>

War reporters, much like Russell, were first embedded with troops during the Mexican War in the 1840s.<sup>20</sup> The Civil War continued this trend, but journalists also began to embrace secrecy, often dressing in military uniforms and transmitting their work via military telegraphs.<sup>21</sup> In 1898, Kit Coleman became the first female war correspondent accredited by the Army, travelling to Cuba to report on the Spanish American War.<sup>22</sup> All correspondents were monitored closely as they travelled from Tampa to Cuba, declared themselves to Spanish officials, and received passes that dictated their access.<sup>23</sup> Press guidelines issued at

<sup>15</sup> WILLIAM HOWARD RUSSELL, *MY DIARY NORTH AND SOUTH* 1, 7 (1863).

<sup>16</sup> Louis P. Masur, *The Special Correspondent*, N.Y. TIMES: OPINIONATOR (Mar. 24, 2011, 8:30 PM), <http://opinionator.blogs.nytimes.com/2011/03/24/the-special-correspondent/> [<https://perma.cc/92AB-9R3A>].

<sup>17</sup> *See id.*

<sup>18</sup> RUSSELL, *supra* note 15, at 39. According to Russell, President Lincoln told him, “The London ‘Times’ is one of the greatest powers in the world,— in fact, I don’t know anything which has much more power,—except perhaps the Mississippi.” *Id.*

<sup>19</sup> *See id.* at 76, 87, 93.

<sup>20</sup> Mitchell Roth, *Role of the Media: War Correspondents*, PBS, [http://www.pbs.org/keras/mexicanwar/war/war\\_correspondents.html](http://www.pbs.org/keras/mexicanwar/war/war_correspondents.html) [<https://perma.cc/UX3M-QD4A>]; Robert Siegel, *All Things Considered: History of War Journalism*, NPR (Mar. 28, 2003, 12:00 AM), <http://www.npr.org/templates/story/story.php?storyId=1211831> [<https://perma.cc/5RYU-FBFV>]. These men were often able to return their information to Washington before they received the Army’s official reports, using transportation methods that included horses, trains, steamboats and telegraph wires. Siegel, *supra*.

<sup>21</sup> Siegel, *supra* note 20.

<sup>22</sup> BARBARA M. FREEMAN, *KIT’S KINGDOM: THE JOURNALISM OF KATHLEEN BLAKE COLEMAN* 107–08 (1989); Ella Hassett, *This Galway Woman Became the First Accredited Female War Correspondent*, THE JOURNAL (Apr. 9, 2015, 4:45 PM), <http://www.thejournal.ie/readme/kit-coleman-irishwoman-journalist-war-correspondent-2035235-Apr2015/> [<https://perma.cc/YD6V-7G8P>].

<sup>23</sup> MARY S. MANDER, *PEN AND SWORD: AMERICAN WAR CORRESPONDENTS, 1898–1975*, at 24 (2010).

the time equated the reporter with the civilian—both were subject to the rules of war.<sup>24</sup>

When the United States entered World War I, President Woodrow Wilson and his advisors sought a way to maintain military security while keeping the American public informed.<sup>25</sup> The Press Censorship Division, part of the Intelligence Section of the Army, controlled reporters, and President Wilson established the Committee on Public Information (CPI) to release war news from various sources.<sup>26</sup> Almost immediately, media organizations sought accreditation for their correspondents to accompany General Pershing, commander of the American Expeditionary Force.<sup>27</sup> The American military's regulations during World War I reflected stricter policies than those imposed on reporters during the Spanish-American War.<sup>28</sup> Correspondents were now required to obtain certification of their physical fitness, were given strict guidelines on appropriate clothing, and received a list of regulations governing their behavior as commissioned officers.<sup>29</sup> Additionally, accredited reporters lived with the army in specially equipped housing.<sup>30</sup> World War I was one of the safest for war reporters; none of the accredited correspondents were killed during the conflict.<sup>31</sup>

During World War II, Public Relations Officers managed the well being of correspondents and ensured they were provided adequate food, transportation, and facilities in which to live and transmit the news.<sup>32</sup> Correspondents received frequent briefings as well as courses on battlefield survival that included everything from tent-pitching to the best way to move around while maintaining cover.<sup>33</sup> World War II also represented the first conflict to be reported by radio, the newest and most widely used source for information and entertainment in the west.<sup>34</sup>

In the Vietnam War, as in World War II, American journalists travelled with the military, wearing uniforms and approaching the front lines with U.S. troops.<sup>35</sup> All war correspondents traveling to Vietnam were required to receive

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<sup>24</sup> *Id.* at 25.

<sup>25</sup> *Id.* at 45.

<sup>26</sup> *Id.* at 45–6. Editors resented the CPI—run by George Creel and commonly known as the Creel Committee—because they believed it to control the news and falsify information. *Id.*

<sup>27</sup> *Id.* at 47.

<sup>28</sup> *Id.* at 48.

<sup>29</sup> MANDER, *supra* note 23, at 48.

<sup>30</sup> *Id.* at 49. A second group of reporters, known as visiting correspondents, lived at their own expense but were periodically allowed to join the American military. *Id.*

<sup>31</sup> JOANNE M. LISOSKY & JENNIFER R. HENRICHSEN, WAR ON WORDS: WHO SHOULD PROTECT JOURNALISTS? 16 (2011). The same cannot be said for Great Britain, which lost at least fifteen of 115 correspondents in the warzone. *Id.*

<sup>32</sup> MANDER, *supra* note 23, at 58.

<sup>33</sup> *Id.* at 59.

<sup>34</sup> LISOSKY & HENRICHSEN, *supra* note 31, at 17–18.

<sup>35</sup> Greg Myre, *Why War Reporters Go Solo, Despite the Risks*, NPR (Feb. 23, 2012, 3:42 PM), <http://www.npr.org/2012/02/23/147290996/for-war-reporters-the-risks-of-going-solo> [<https://perma>

accreditation from the Joint U.S. Public Affairs Office.<sup>36</sup> Accredited journalists gained access to all U.S. military facilities, including military transportation, commissary stores, and press facilities.<sup>37</sup> Compared to previous conflicts, these restrictions were minimal, making the Vietnam War the most accessible in American history.<sup>38</sup> Another fundamental difference existed between the war in Vietnam and previous conflicts: the television set.<sup>39</sup>

Nearly twenty years later, the forty-three-day Persian Gulf War became the first conflict characterized by round-the-clock television broadcasts.<sup>40</sup> The immediacy of the coverage was unprecedented, but the access given to journalists had begun to shrink.<sup>41</sup> Over 1400 journalists travelled to Saudi Arabia to cover the conflict, acquiring their information primarily from large press briefings and pooled activity.<sup>42</sup> Frustrated by the surplus of government controlled reporters, CBS News reporter Bob Simon and his three-man crew broke away from the group on the fifth day of the conflict in search of a unique narrative.<sup>43</sup> They were captured by Iraqi soldiers in Kuwait and taken to Baghdad where they were interrogated and tortured until their release forty days later.<sup>44</sup> As a result of extensive campaigning by CBS executives, Soviet President Gorbachev ultimately intervened.<sup>45</sup> His connections in Baghdad proved strong enough to free the journalists.<sup>46</sup>

Following the invasion of Iraq in 2003, the U.S. government introduced a new program for media members covering the war, known as embedding.<sup>47</sup>

cc/DZZ6-L22M]. Correspondents in Vietnam in the early 1960s from major news organizations included Homer Bigart for the *New York Times*, Peter Arnett and Malcolm Browne for the Associated Press, and Mert Perry for *Time*. CLARENCE R. WYATT, *THE WAR THAT NEVER ENDS: NEW PERSPECTIVES ON THE VIETNAM WAR* 272 (David L. Anderson & John Ernst eds., 2007). More than 600 people held accredited correspondent status at the height of U.S. involvement in the war. *Id.* at 279.

<sup>36</sup> WYATT, *supra* note 35, at 279.

<sup>37</sup> *Id.*

<sup>38</sup> See Bill Mitchell, *When a Journalist Goes to War*, POYNTER (Dec. 9, 2002), <http://www.poynter.org/2002/when-a-journalist-goes-to-war/4295/> [<https://perma.cc/EMS7-8THY>].

<sup>39</sup> Siegel, *supra* note 20. According to retired Navy Captain Brayton Harris, American film was most often flown from the battlefields in Vietnam to Tokyo where it was processed before being broadcast in the United States. *Id.*

<sup>40</sup> See Eric Schmitt, *Five Years Later, the Gulf War Story Is Still Being Told*, N.Y. TIMES (May 12, 1996), <http://www.nytimes.com/1996/05/12/arts/television-five-years-later-the-gulf-war-story-is-still-being-told.html?pagewanted=all> [<https://perma.cc/ZK5F-HHD6>]. The correspondents who saw this conflict first hand include Christiane Amanpour and Wolf Blitzer of CNN and Bob Simon of CBS. *Id.*

<sup>41</sup> WYATT, *supra* note 35, at 285; Schmitt, *supra* note 40.

<sup>42</sup> LISOSKY & HENRICHSEN, *supra* note 31, at 43.

<sup>43</sup> Jane Hall, A 'Most Searing Experience': Television: Bob Simon Relives His 40 Days as Iraq's Hostage During the Gulf War in New Book, L.A. TIMES (May 11, 1992), [http://articles.latimes.com/1992-05-11/entertainment/ca-1182\\_1\\_gulf-war](http://articles.latimes.com/1992-05-11/entertainment/ca-1182_1_gulf-war) [<https://perma.cc/D5BW-UGFH>].

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> LISOSKY & HENRICHSEN, *supra* note 31, at 44.

Journalists who signed up to be embedded with the military were supplied with food, transportation, medical attention, and escorts, but were required to remain with an assigned unit for the entirety of their stay.<sup>48</sup> The program has since been criticized for a perceived lack of objectivity from reporters who became directly connected with the military.<sup>49</sup> On the other hand, proponents of the program point to the safety of journalists who were embedded with troops.<sup>50</sup> Following the collapse of Saddam Hussein's government, the number of embedded journalists fell drastically.<sup>51</sup> Six years later, in December 2011, the embed program ended entirely when the United States pulled almost all remaining ground troops from Iraq.<sup>52</sup>

### B. Modern Freelance Journalism

Years later, as the conflict in Syria worsens, the traditional mode of journalism is simply no longer feasible.<sup>53</sup> Newspapers and television networks suffer tightening budgets while facing the endlessly growing demand for 24-7 news coverage ushered in by the Internet.<sup>54</sup> Without the funds to ship out full time war correspondents, news organizations rely on freelancers who operate at their own expense.<sup>55</sup> This new generation of war reporters receives none of the benefits seen in previous wars, such as security, insurance, transportation, or commissary and expense accounts.<sup>56</sup> With such little pay, freelancers are often forced to take extra risks to get their stories.<sup>57</sup> Making as little as seventy dollars per article,

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 44–45.

<sup>50</sup> *Id.* at 45.

<sup>51</sup> David Vaina, *The Vanishing Embedded Reporter in Iraq*, PEW RES. CTR. (Oct. 26, 2009), <http://www.journalism.org/2006/10/26/the-vanishing-embedded-reporter-in-iraq/> [<https://perma.cc/H8R9-YTTQ>]. By 2005, only forty-eight embedded reporters remained in Iraq. *Id.*

<sup>52</sup> Dan Lamothe, *If the U.S. Military Is Expanding in Iraq, Why Isn't It Embedding Journalists?*, WASH. POST (Dec. 2, 2014), <https://www.washingtonpost.com/news/checkpoint/wp/2014/12/02/if-the-u-s-military-is-expanding-in-iraq-why-isnt-it-embedding-journalists/> [<https://perma.cc/59XB-LCM5>].

<sup>53</sup> Crane, *supra* note 10.

<sup>54</sup> WYATT, *supra* note 35, at 285; Crane, *supra* note 10.

<sup>55</sup> Dashiell Bennett, *The Life of a War Correspondent Is Even Worse Than You Think*, THE WIRE (July 10, 2013), <http://www.thewire.com/global/2013/07/life-war-correspondent/67038/> [<https://perma.cc/G2YV-N89E>].

<sup>56</sup> *Id.*

<sup>57</sup> See Francesca Borri, *Woman's Work: The Twisted Reality of an Italian Freelancer in Syria*, COLUM. JOURNALISM REV., [http://www.cjr.org/feature/womans\\_work.php?page=all](http://www.cjr.org/feature/womans_work.php?page=all) [<https://perma.cc/N84W-F5NA>]. Borri, a female freelancer reporting on the Syrian civil war, says of the convoluted finances facing freelancers, "for example, sleeping in this rebel base, under mortar fire, on a mattress on the ground, with yellow water that gave me typhoid, costs \$50 per night; a car costs \$250 per day." *Id.*

freelancers simply cannot afford the exorbitant cost of insurance.<sup>58</sup> Translators and drivers are equally unaffordable.<sup>59</sup>

These newly developed gig journalists, or stringers, are self-sufficient and self-funded and often produce quicker, more efficient journalism.<sup>60</sup> The impetus to report as a freelance journalist often stems from the interdependent ideas of independence and truth—concepts fundamental to both freedom of expression and the journalism industry as a whole.<sup>61</sup> Major news outlets receive minute-to-minute coverage at a fraction of the sum once spent to train, equip, and support one or more correspondents at war.<sup>62</sup> As costs to the news outlets decline, however, the risks faced by the freelancers supplying their stories skyrocket.<sup>63</sup>

### C. Intentional Targeting of Journalists

Seconds after James Foley's throat is slit, the video of his murder cuts to another man, American freelance journalist Steven Sotloff, kneeling in the same arid landscape and dressed in the same orange jumpsuit.<sup>64</sup> A masked figure, presumed to be the same man who murdered Foley, holds Sotloff by the neck and speaks into the camera: "The life of this American citizen, Obama, depends on your next decision."<sup>65</sup> Two weeks later, the Islamic State released a video bearing striking similarity to the Foley video, this time showing the graphic beheading of Sotloff himself.<sup>66</sup> Like Foley and many others, Sotloff was captured in August 2013 after crossing the Turkish border into Syria.<sup>67</sup>

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Erica Fry, *Freelancers on the Front Lines* (Apr. 17, 2012), [http://www.cjr.org/behind\\_the\\_news/freelancers\\_on\\_the\\_front\\_lines.php](http://www.cjr.org/behind_the_news/freelancers_on_the_front_lines.php) [<https://perma.cc/B6DW-SNDS>].

<sup>61</sup> See LISOSKY & HENRICHSEN, *supra* note 31, at 45.

<sup>62</sup> See Martin Chulov, *James Foley and Fellow Freelancers: Exploited by Pared-Back Media Outlets* (Aug. 21, 2014, 3:40 PM), <http://www.theguardian.com/media/2014/aug/21/james-foley-freelance-journalists-exploited-media-outlets> [<https://perma.cc/U87Z-P24M>].

<sup>63</sup> See *id.*; Anna Therese Day, *We Are Freelancers—Expect Us* (Aug. 10, 2013, 3:51 PM), [http://www.huffingtonpost.com/anna-therese-day/freelancer-journalists\\_b\\_3394507.html](http://www.huffingtonpost.com/anna-therese-day/freelancer-journalists_b_3394507.html) [<https://perma.cc/8FDE-R4ND>].

<sup>64</sup> Callimachi, *Killing James Foley*, *supra* note 1.

<sup>65</sup> Dearden, *supra* note 2; *IS Beheads Captured American*, *supra* note 1.

<sup>66</sup> Mark Landler & Eric Schmitt, *ISIS Says It Killed Steven Sotloff After U.S. Strikes in Northern Iraq*, N.Y. TIMES (Sept. 2, 2014), <http://www.nytimes.com/2014/09/03/world/middleeast/steven-sotloff-isis-execution.html> [<https://perma.cc/4CMZ-Q7CL>]. The video included a scripted speech similar to Foley's. Dan Lamothe, *Here's the Transcript of the Video Showing Steven Sotloff's Reported Execution* (Sept. 2, 2014), <https://www.washingtonpost.com/news/checkpoint/wp/2014/09/02/heres-the-transcript-of-the-video-showing-steven-sotloffs-reported-execution/> [<https://perma.cc/E67V-DX2L>]. Before the beheading, the executioner states, "We take this opportunity to warn those governments that enter this evil alliance of America against the Islamic State to back off and leave our people alone." *Id.*

<sup>67</sup> *Steven Sotloff*, COMMITTEE TO PROTECT JOURNALISTS, <https://www.cpj.org/killed/2014/steven-sotloff.php> [<https://perma.cc/2PPV-447B>]. As a freelance journalist, Sotloff wrote primarily for *Time* and *Foreign Policy*. *Id.*

Kidnapping Western reporters has become a lucrative business for Al Qaeda, the Islamic State, and associated groups.<sup>68</sup> Few Western prisoners have survived capture, due largely to the continued refusal of the U.S. government to pay ransoms.<sup>69</sup> Still, American journalists like James Foley and Steven Sotloff are captured because of their value as bargaining chips and propaganda pieces in rehearsed threats to America and the western world.<sup>70</sup> The shock value of each American murder is worth as much to the kidnapers as million-dollar ransoms for European prisoners.<sup>71</sup>

According to the Committee to Protect Journalists (CPJ), 2012 was one of the worst years for journalists reporting from war zones.<sup>72</sup> Since then, more than sixty journalists have been killed each year in direct retaliation for their work at war.<sup>73</sup> For the past five years in a row, Syria has been declared the most deadly country in the world for war reporters.<sup>74</sup> The Islamic State views the murder of journalists as a mechanism for exerting control over the news, while instilling fear in and spreading its message to the outside world.<sup>75</sup> Though this trend has been developing throughout the past decade, the violence reached a high point in 2015.<sup>76</sup> For years, the blue flak jacket or the words “press” or “TV” provided virtual immunity in conflict areas.<sup>77</sup> Now, journalists in Syria face one of the most dangerous war zones in history, while receiving little to no institutionalized protection.<sup>78</sup> While continuing to fearlessly search for the story, they have also become it.<sup>79</sup>

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<sup>68</sup> See Rukmini Callimachi, *Paying Ransoms, Europe Bankrolls Qaeda Terror*, N.Y. TIMES (July 29, 2014), <http://www.nytimes.com/2014/07/30/world/africa/ransoming-citizens-europe-becomes-alqaedas-patron.html?r=0> [<https://perma.cc/EA3R-AD4B>].

<sup>69</sup> *Id.*

<sup>70</sup> Mahoney, *More Awareness of Risks*, *supra* note 9.

<sup>71</sup> *See id.*

<sup>72</sup> *See 74 Journalists Killed in 2012/Motive Confirmed*, COMMITTEE TO PROTECT JOURNALISTS, <https://www.cpj.org/killed/2012/> [<https://perma.cc/9YWF-3GAC>].

<sup>73</sup> *See 61 Journalists Killed in 2014/Motive Confirmed*, COMMITTEE TO PROTECT JOURNALISTS, <https://www.cpj.org/killed/2014/> [<https://perma.cc/3D5D-83CB>]; *72 Journalists Killed in 2015/Motive Confirmed*, COMMITTEE TO PROTECT JOURNALISTS, <https://www.cpj.org/killed/2015/> [<https://perma.cc/KJ2Q-6R8J>]; *73 Journalists Killed in 2013/Motive Confirmed*, COMMITTEE TO PROTECT JOURNALISTS, <https://www.cpj.org/killed/2013/> [<https://perma.cc/L8UF-HC2X>].

<sup>74</sup> Jason Stern, *The Militarization of the Press in Syria*, COMMITTEE TO PROTECT JOURNALISTS (Dec. 29, 2015, 12:01 AM), <https://cpj.org/blog/2015/12/militarization-of-the-press-in-syria-journalists-killed.php> [<https://perma.cc/RV9J-87WU>].

<sup>75</sup> *Killing the Messenger 2015*, INT’L NEWS SAFETY INST. 2, [http://newssafety.org/fileadmin/user\\_upload/Killing\\_the\\_Messenger\\_2015\\_final.pdf](http://newssafety.org/fileadmin/user_upload/Killing_the_Messenger_2015_final.pdf) [<https://perma.cc/LN3A-ET42>].

<sup>76</sup> *See id.* (“One thing is startlingly clear from the 2015 list of journalist casualties—journalists are now primary targets as extremists wage a war on freedom of expression.”).

<sup>77</sup> *See* Ed Caesar, *Shooting the Messengers*, GQ (Aug. 22, 2014), <http://www.gq-magazine.co.uk/article/war-reporting> [<https://perma.cc/LZ4P-RV2W>].

<sup>78</sup> *See* Chulov, *supra* note 62; Stern, *supra* note 74.

<sup>79</sup> Mahoney, *More Awareness of Risks*, *supra* note 9.

## II. DISCUSSION

### A. Industry Protections for Freelance Journalists

In February 2015, an alliance of major news organizations convened at Columbia Journalism School to endorse the Global Safety Principles and Practices—new freelance protection standards for journalists worldwide.<sup>80</sup> The idea for the new safety principles was born during a meeting of the American Society of News Editors in September 2014, shortly after the gruesome beheading videos of James Foley and Steven Sotloff circled the globe.<sup>81</sup> Signatories to the guidelines include ABC News, The Associated Press, CBS News, CNN, NBC News, and almost eighty additional media companies and journalism organizations.<sup>82</sup> The guidelines promote safety by providing a list of practices that should be implemented both by journalists on assignment in war zones and the news organizations that purchase their work.<sup>83</sup>

Under the guidelines, journalists are encouraged to assess risks and develop travel strategies in advance, carry and wear proper equipment, seek medical insurance, and establish a daily check-in schedule with a colleague or editor.<sup>84</sup> In addition, news organizations are asked to consider training, financing, and protecting freelancers as they would staffers at home.<sup>85</sup> Members of the coalition

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<sup>80</sup> *Freelance Journalist Safety Principles*, DART CTR. FOR JOURNALISM & TRAUMA (Feb. 12, 2015), [http://dartcenter.org/content/global-safety-principles-and-practices#.VhJ\\_HPIVhHw](http://dartcenter.org/content/global-safety-principles-and-practices#.VhJ_HPIVhHw) [<https://perma.cc/7HJZ-3DYM>] (“We call on governments, combatants and groups worldwide to respect the neutrality of journalists and immediately end the cycle of impunity surrounding attacks on journalists. At the same time, the kidnapping and murder of reporters James Foley and Steven Sotloff brought to light the growing risks faced by international freelance journalists.”); see Robert Mahoney, *A First Step Toward Better Safety for Freelancers*, COMMITTEE TO PROTECT JOURNALISTS (Feb. 13, 2015, 3:24 PM), <https://cpj.org/blog/2015/02/a-first-step-toward-better-safety-for-freelancers.php> [<https://perma.cc/BLQ5-CAPC>] [hereinafter Mahoney, *A First Step*].

<sup>81</sup> Mahoney, *A First Step*, *supra* note 80.

<sup>82</sup> *Freelance Journalist Safety Principles*, *supra* note 80; Sotloff Foundation, *Four U.S. TV Networks Sign onto Safety Principles*, DART CTR. FOR JOURNALISM & TRAUMA (Oct. 6, 2015), <http://dartcenter.org/content/sotloff-foundation-and-four-us-television-networks-sign-onto-safety-principles> [<https://perma.cc/N8TM-J6LW>] (“This initiative marks a turning point . . . The combined efforts of such an experienced and diverse group, with its clear aim and concrete objectives, will have a significant effect on the future safety of freelance journalists. After 20 years of helping freelancers in dangerous situations, we are very excited by this.”) (internal quotation marks omitted).

<sup>83</sup> See *Freelance Journalist Safety Principles*, *supra* note 80.

<sup>84</sup> *Id.* (“We encourage all journalists to complete a recognized news industry first aid course, to carry a suitable first-aid kit and continue their training to stay up-to-date on standards of care and safety both physical and psychological. Before undertaking an assignment in such zones, journalists should seek adequate medical insurance covering them in a conflict zone or area of infectious disease.”).

<sup>85</sup> *Id.* (“News organizations and editors should endeavor to treat journalists and freelancers they use on a regular basis in a similar manner to the way they treat staffers when it comes to issues of safety training, first aid and other safety equipment, and responsibility in the event of injury or kidnap. Editors and news organizations should be aware of, and factor in, the additional costs of training, insurance and safety equipment in war zones.”).

seek to have these contemporary standards adopted worldwide.<sup>86</sup> They have since launched additional initiatives to subsidize safety training, share security information, and reduce freelance insurance costs.<sup>87</sup>

Certain signatories to the Global Safety Principles and Practices are organizations that were dedicated to journalistic protections even before the Foley and Sotloff murders.<sup>88</sup> Photojournalist Sebastian Junger launched Reporters Instructed in Saving Colleagues (RISC) following the death of his friend and colleague Tim Hetherington in Libya in 2011.<sup>89</sup> The organization is dedicated to training journalists to treat wounds on the battlefield and provides courses at no cost for freelancers who cannot afford to pay for the training out of pocket.<sup>90</sup> Additionally, it provides medical packs to freelance journalists actively reporting from conflict zones that mimic those worn by military combat medics.<sup>91</sup>

Founded in 2004, the International News Safety Institute (INSI) is run by working journalists and news executives who have experienced the problem of journalist safety first hand.<sup>92</sup> The INSI offers real-time safety information to journalists around the world as well as tailor-made training programs that target the individual needs of freelancers in specific conflict zones.<sup>93</sup> The INSI Safety

<sup>86</sup> See *id.* A number of well-respected newspapers, which depend largely on freelancers to produce their content, have yet to sign on to the safety principles. Mahoney, *More Awareness of Risks*, *supra* note 9.

<sup>87</sup> See *Sotloff Foundation*, *supra* note 82. As part of the new initiatives, *BuzzFeed* agreed to create a private group where U.S. news organizations can share security information with other organizations and freelancers in the field; Reporters Without Borders committed to distributing information to journalism schools that includes locations for journalistic training, insurance, and grants; and Agence France Press agreed to conduct the first-ever worldwide census of freelance reporters. *Id.*

<sup>88</sup> See, e.g., *FAQs*, INT'L NEWS SAFETY INST., <http://www.newssafety.org/about-insi/faqs/> [<https://perma.cc/856N-M5ZB>]; *Mission*, FRONTLINE FREELANCE REG., <http://www.frontlinefreelance.org/mission> [<https://perma.cc/NVZ3-X5N8>].

<sup>89</sup> Juli Weiner, *Sebastian Junger Launches RISC, Reporters Instructed in Saving Colleagues*, VANITY FAIR (Mar. 21, 2012, 2:30 PM), <http://www.vanityfair.com/news/2012/03/Sebastian-Junger-Launches-RISC-Reporters-Instructed-in-Saving-Colleagues> [<https://perma.cc/54XX-NHXM>]. Junger was told by a combat medic at Hetherington's funeral that he may have survived if a journalist nearby had been able to staunch the bleeding from his shrapnel wound long enough for him to reach the hospital. Michael Calderone, *Sebastian Junger Launches Medical Training Program for Freelance Journalists in War Zones*, HUFFINGTON POST (Mar. 20, 2012, 3:01 PM), [http://www.huffingtonpost.com/2012/03/20/sebastian-junger-risc-freelance-journalists-tim-hetherington\\_n\\_1367429.html](http://www.huffingtonpost.com/2012/03/20/sebastian-junger-risc-freelance-journalists-tim-hetherington_n_1367429.html) [<https://perma.cc/3M26-8MDC>].

<sup>90</sup> *RISC Is Dedicated to Promoting the Safety of Freelance Journalists in Combat Zones*, REPS. INSTRUCTED IN SAVING COLLEAGUES, <http://risctraining.org/> [<https://perma.cc/R62J-D233>].

<sup>91</sup> *RISC Graduates on the Frontlines*, RISC, <https://risctraining.org/graduates/> [<https://perma.cc/K9G8-NZLE>]. The organization raised \$126,640 in 2015 from a combination of grants, donations from news agencies and individuals, events, earned revenue, and non-media corporate gifts. *RISC 2015: A Year in Review*, RISC, <http://risctraining.org/annual-report/2015/> [<https://perma.cc/7ZPS-BWUS>].

<sup>92</sup> *About INSI*, INT'L NEWS SAFETY INST., <http://www.newssafety.org/about-insi/> [<https://perma.cc/2SCY-RRR6>]; *What We Do*, INT'L NEWS SAFETY INST., <http://www.newssafety.org/about-insi/what-we-do/> [<https://perma.cc/HUW3-6L4X>].

<sup>93</sup> *FAQs*, *supra* note 88; *What We Do*, *supra* note 92. The INSI training program includes specific courses for women reporting in hostile environments. *What We Do*, *supra* note 92.

Code largely mirrors the Global Safety Principles and Practices, advocating for training and financial support for freelancers from major news organizations.<sup>94</sup> After the Foley and Sotloff murders, the INSI issued an advisory and held a workshop designed to advise journalists on how to act during, and potentially survive, a kidnap.<sup>95</sup>

Global Journalist Security, another Global Safety Principles and Practices signatory, has been providing consulting services and safety training since its inception in 2011.<sup>96</sup> The Frontline Freelance Register (FFR), a leading proponent of the creation of the Global Safety Principles and Practices, seeks to address the danger of freelancing by providing journalists organized representation and a unified voice with which they may seek out additional institutionalized protections.<sup>97</sup> As part of the FFR, freelancers have sought the protections and fair compensation provided to staff reporters.<sup>98</sup>

The CPJ, another organization dedicated to journalist safety, was one of the negotiators and primary architects of the Global Safety Principles and Practices.<sup>99</sup> Founded in 1981, the group seeks “to take action when journalists are censored, harassed, threatened, jailed, kidnapped, or killed for their work.”<sup>100</sup> It accomplishes this goal through detailed reporting on the status of journalists in the field, case documentation, advocacy, and support.<sup>101</sup>

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<sup>94</sup> See *INSI Safety Code*, INT’L NEWS SAFETY INST., <http://www.newssafety.org/about-insi/insi-safety-code/> [<https://perma.cc/J9FV-NBPS>] (“Employers must provide efficient safety equipment and medical and health safeguards appropriate to the threat to all staff and freelancers assigned to hazardous locations. All journalists should be afforded personal insurance while working in hostile areas, including cover against personal injury and death. There should be no discrimination between staff and freelancers.”).

<sup>95</sup> *Advisory: Surviving an Abduction*, INT’L NEWS SAFETY INST. (Nov. 7, 2014), <http://www.newssafety.org/safety/advisories/safety-advisory/detail/advisory-surviving-an-abduction-1504/> [<https://perma.cc/4M4S-3R7X>]. The advisory recommends the captive make specific observations of the captors and all surroundings upon kidnap. *Id.* It also offers advice on the creation of a relationship with a captor and how to keep track of time and maintain physical and mental activity during a prolonged stay in captivity. *Id.*

<sup>96</sup> *About Global Journalist Security*, GLOBAL JOURNALIST SECURITY, <https://www.journalistsecurity.net/about-global-journalist-security/#mission> [<https://perma.cc/UGZA-CQ7U>]; *Freelance Journalist Safety Principles*, *supra* note 80.

<sup>97</sup> *ACOS Alliance (A Culture of Safety Alliance)*, FRONTLINE FREELANCE REG., <http://www.frontlinefreelance.org/content/call-global-safety-principles-and-practices> [<https://perma.cc/W4GW-KUVX>]; *Mission*, *supra* note 88.

<sup>98</sup> Mahoney, *A First Step*, *supra* note 80.

<sup>99</sup> *Id.*

<sup>100</sup> *Frequently Asked Questions: How Does CPJ Protect Journalists?*, COMMITTEE TO PROTECT JOURNALISTS, <https://www.cpj.org/about/faq.php#5> [<https://perma.cc/X4N7-GBXH>].

<sup>101</sup> *Id.*

### B. International Legal Protections for War Reporters

Protection of journalists was first cited under international humanitarian law in The Hague Convention of 1899.<sup>102</sup> The relevant provisions, which addressed treatment of war correspondents and their prisoner of war status, were adopted in the Geneva Convention of 1929.<sup>103</sup> The 1929 Convention specified that journalists should be treated as prisoners of war—the same treatment afforded to captured members of the military.<sup>104</sup> To receive prisoner of war status under the 1929 Convention, journalists reporting from war zones were required to carry an identity card that could be shown to the enemy upon capture.<sup>105</sup>

This standard was relaxed under the Geneva Convention of 1949 to account for correspondents who may have lost the card during hostilities.<sup>106</sup> Though carrying the card is no longer specifically required to prove authorization and receive the protection of the law, its use remains the same: to create the presumption of prisoner of war status.<sup>107</sup> Under the text of the 1949 Convention, journalists fall into a category of persons who follow the military but are not part of the military, receiving civilian protections, while also gaining prisoner of war status upon capture.<sup>108</sup> In 1948, the Universal Declaration of Human Rights provided in Article 19 that all people have the right to freedom of expression through the media.<sup>109</sup> Thus, the international community reassured journalists of their freedom to communicate information and news from anywhere at any time.<sup>110</sup>

In the 1970s, the U.N. General Assembly requested the draft of a provision from the Economic and Social Council and the Human Rights Commission that would create extra protection for journalists.<sup>111</sup> The Human Rights Commission in turn asked the International Committee of the Red Cross (ICRC) to participate

<sup>102</sup> LISOSKY & HENRICHSEN, *supra* note 31, at 53.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* (“Persons who follow the armed forces without directly belonging thereto, such as correspondents, newspaper reporters, sutlers [vendors], or contractors, who fall in the hands of the enemy, and whom the latter think fit to detain, shall be entitled to be treated as prisoners of war, provided that they are in possession of an authorisation from the military authorities of the armed forces which they are following.”) (alteration in original).

<sup>105</sup> Hans-Peter Gasser, *The Protection of Journalists Engaged in Dangerous Professional Missions*, INT’L REV. RED CROSS 5 (1983).

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *See id.* Prisoner of war status under the 1949 Convention included the right to remain silent during an interrogation and the right to “prompt medical treatment” if sick or wounded. LISOSKY & HENRICHSEN, *supra* note 31, at 53.

<sup>109</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 19 (Dec. 10, 1948) (“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”).

<sup>110</sup> LISOSKY & HENRICHSEN, *supra* note 31, at 54.

<sup>111</sup> *Id.*

in the discussion and suggest its own provisions.<sup>112</sup> The Human Rights Commission eventually submitted a draft convention to the General Assembly based on guidelines recommended by the ICRC.<sup>113</sup> This draft suggested two distinct protections: an identity card and an armband specific to journalists.<sup>114</sup> By suggesting these identifiers, the ICRC intended to grant journalists status similar to the Red Cross and other medical and religious staff.<sup>115</sup> Conflict arose over the provisions, however, when it was suggested that journalists could only receive protection if they wore protective gear and displayed the orange armband.<sup>116</sup> Discussions finally ceased without any special status granted to conflict reporters.<sup>117</sup>

Eventually, an updated provision—Additional Protocol I—was added to the Geneva Convention of 1949 to address journalists in armed conflict zones.<sup>118</sup> Adopted in June 1977, Article 79 of Additional Protocol I states specifically that journalists are to be considered civilians as defined in the Geneva Convention.<sup>119</sup> This status is granted to freelance journalists under the condition that they do not take any adverse action.<sup>120</sup> Additionally, Article 79 provides for the use of an identity card issued by the government of the freelance journalist that attests to his status.<sup>121</sup> All together, this provision provides that journalists should not be considered combatants, but rather should be considered civilians and granted all the rights due to civilians in international war zones.<sup>122</sup> The United States has signed Additional Protocol I, but has never ratified it.<sup>123</sup> Nevertheless, in *Hedges v. Obama* the government stated in its reply brief that the United States “supports

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 55.

<sup>118</sup> Gasser, *supra* note 105, at 7.

<sup>119</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 79, June 8, 1977, 1125 U.N.T.S. 3 (“Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Article 50, paragraph 1.”).

<sup>120</sup> *See id.* (“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 correspondents accredited to the armed forces to the status provided for in Article 4 A (4) of the Third Convention.”).

<sup>121</sup> *See id.* (“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.”).

<sup>122</sup> *See LISOSKY & HENRICHSEN, supra* note 31, at 56.

<sup>123</sup> Tracey Begley, *Is It Time to Ratify Additional Protocol I?*, INT’L COMMITTEE OF THE RED CROSS: INTERCROSS BLOG (July 6, 2015), <http://intercrossblog.icrc.org/blog/d9r104eqyjqgma49v1apmk6a9167i#sthash.ngojbLds.dpbs> = [https://perma.cc/Q47N-93AT]. One hundred seventy-four states including China, France, and Russia have ratified Additional Protocol I. *Id.*

and respects” the proposition in Additional Protocol I that journalists are to be protected as civilians.<sup>124</sup>

Under Additional Protocol I, journalists captured in war zones fall into two separate categories: accredited correspondents, who gain prisoners of war status upon capture, or freelance journalists.<sup>125</sup> When a freelance journalist is taken hostage in enemy territory he may be prosecuted if he has committed an offense, but must otherwise be released.<sup>126</sup> Journalists of a third-party state who are captured by a party to the conflict may be held only if the capturing power has charges against them.<sup>127</sup> They are entitled to communicate with representatives of the detaining power, as well as their own family, and representatives of their home country.<sup>128</sup> Additionally, the armed forces always maintain the right to detain a civilian—including a freelance journalist—if done in the interest of that person’s safety.<sup>129</sup>

In 2010, President Obama took action on the issue of journalist safety by signing into law the Daniel Pearl Freedom of the Press Act.<sup>130</sup> The act seeks to further promote the role of free press in a democratic society by requiring additional review of news media restrictions in the annual State Department report of human rights in every country.<sup>131</sup> In addition, the act calls for a global survey of intimidation tactics used against the press.<sup>132</sup> In 2015, the Department of Defense released the Law of War Manual, a sweeping document that applies to all branches of the military.<sup>133</sup> The document generally provides prisoner of war status to war correspondents captured during armed conflict, and states that all journalists—freelance or embedded—hold the same general status as civilians.<sup>134</sup> There is a caveat in the manual, however, which states that journalists in

<sup>124</sup> Reply Brief at 11, *Hedges v. Obama*, 724 F.3d 170 (2nd Cir. 2013) (No. 12-cv-331) (“As an initial matter, it is an established law of war norm, which is reflected in Article 79 of Additional Protocol I to the Geneva Conventions, that ‘journalists’ are generally to be protected as ‘civilians.’ Although the United States is not a party to Additional Protocol I, it supports and respects this important principle.”).

<sup>125</sup> Gasser, *supra* note 105, at 15.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 15–16.

<sup>129</sup> *Id.* at 15.

<sup>130</sup> LISOSKY & HENRICHSEN, *supra* note 31, at 7. Daniel Pearl, the law’s namesake and former correspondent for the *Wall Street Journal*, was murdered shortly after the terrorist attacks of September 11, 2001. *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *See id.*

<sup>133</sup> DEP’T OF DEF., LAW OF WAR MANUAL 173–74 (2015), available at [http://www.dod.mil/dodgc/images/law\\_war\\_manual15.pdf](http://www.dod.mil/dodgc/images/law_war_manual15.pdf) [<https://perma.cc/6GN3-5BS8>]; Wendy Benjaminson, *New DoD Manual Allows Journalists to Be Held as ‘Unprivileged Belligerents,’* HUFFPOST MEDIA (Aug. 28, 2015, 3:40 AM), [http://www.huffingtonpost.com/entry/new-dod-manual-journalists\\_us\\_55dd6b14e4b0a40aa3acc576](http://www.huffingtonpost.com/entry/new-dod-manual-journalists_us_55dd6b14e4b0a40aa3acc576) [<https://perma.cc/X8JD-NCLH>].

<sup>134</sup> DEP’T OF DEF., *supra* note 133, at 173–74 (“In general, independent journalists and other media representatives are regarded as civilians; *i.e.*, journalism does not constitute taking a direct part

certain situations could be considered unprivileged belligerents.<sup>135</sup> If given this status, a military commander could detain a reporter without charges.<sup>136</sup> Though the Department of Defense claims this provision is meant only to apply to spies acting as reporters, concerns have arisen that other countries may use this provision to mistreat reporters working within their borders.<sup>137</sup>

Although all of these sources of international humanitarian law provide no additional protection beyond the acknowledgement that journalists should be treated as regular citizens in conflict zones, policymakers have introduced several resolutions that seek to bolster the existing law.<sup>138</sup> For example, U.N. Security Council Resolution 1738, unanimously adopted in December 2006, denounces violence against journalists and calls for an end to deliberate attacks on reporters and an end to impunity for those who carry them out.<sup>139</sup> In early 2015, the Security Council adopted Resolution 2222 in response to the sharp global increase in attacks on journalists.<sup>140</sup> The Council expressed distress at the growing danger facing journalists, and condemned impunity for actors that carry out the attacks.<sup>141</sup> Resolution 2222 builds on the calls to action contained in Resolution 1738 by requesting the immediate release of all journalists currently held as hostages in areas of armed conflict, encouraging increased efforts to provide education and training, and stressing the need for global cooperation.<sup>142</sup>

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in hostilities such that such a person would be deprived of protection from being made the object of attack.”).

<sup>135</sup> *Id.* at 173 (“In general, journalists are civilians. However, journalists may be members of the armed forces, persons authorized to accompany the armed forces, or *unprivileged belligerents*.”) (emphasis added); Benjaminson, *supra* note 133.

<sup>136</sup> Benjaminson, *supra* note 133.

<sup>137</sup> *See id.*

<sup>138</sup> *See* LISOSKY & HENRICHSEN, *supra* note 31, at 57.

<sup>139</sup> Press Release, Security Council, Security Council Condemns Attacks Against Journalists in Conflict Situations, Unanimously Adopting Resolution 1738, U.N. Press Release SC/8929 (Dec. 23, 2006) (“[The Security Council] [c]ondemns intentional attacks against journalists, media professionals and associated personnel . . . in situations of armed conflict, and calls upon all parties to put an end to such practices . . .”).

<sup>140</sup> Press Release, Security Council, In All-Day Debate, Security Council Voices Alarm at Growing Threats to Journalists, Unanimously Adopting Resolution 2222, U.N. Press Release SC/11908 (May 27, 2015) (“*Expressing deep concern* at the growing threat to the safety of journalists, media professionals, and associated personnel posed by terrorist groups and *strongly condemning* incidents of killings, kidnapping and hostage taking committed by terrorist groups for any purpose, including raising funds or gaining political concessions, and expressing its determination to prevent kidnapping and hostage taking committed by terrorist groups and to secure the safe release of hostages without ransom payments or political concessions, in accordance with applicable international law . . .”).

<sup>141</sup> *Id.*

<sup>142</sup> *See id.*

### III. ANALYSIS

#### A. No Concessions Policy

Over a year after James Foley was captured, his family began to receive emails from the Islamic State requesting \$133 million in exchange for his release.<sup>143</sup> Though negotiations never progressed, Foley's family has stated that they were advised by officials not to take their story to the media and threatened with prosecution if they attempted to make the payment.<sup>144</sup> The United States has a long-standing no concessions policy, which prevents the government from paying ransoms for hostages.<sup>145</sup> The policy is intended to mitigate the target placed on Americans by groups such as the Islamic State that are funded largely through ransoms.<sup>146</sup> In December 2014, partly in response to the beheadings of Foley and Sotloff, President Barack Obama initiated a review of U.S. policy on hostage taking.<sup>147</sup>

Though the no concessions policy remains in place, Presidential Policy Directive 30, U.S. Nationals Taken Hostage Abroad and Personnel Recovery Efforts (PPD 30), now allows the U.S. government to communicate with hostage-takers abroad.<sup>148</sup> Additionally, President Obama has stated that the government will not prosecute families who pay ransoms in order to secure the freedom of their loved ones.<sup>149</sup> The newly updated policy under PPD 30 is equally as important as the traditional no concessions policy, first because it represents a di-

<sup>143</sup> Karen DeYoung & Adam Goldman, *After Foley Killing, U.S. Defends Refusal to Pay Ransom to Terrorist Groups That Kidnap*, WASH. POST (Aug. 21, 2014), [https://www.washingtonpost.com/world/national-security/after-foley-killing-us-defends-refusal-to-pay-ransom-to-terrorist-groups-that-kidnap/2014/08/21/99b5867c-2971-11e4-8593-da634b334390\\_story.html](https://www.washingtonpost.com/world/national-security/after-foley-killing-us-defends-refusal-to-pay-ransom-to-terrorist-groups-that-kidnap/2014/08/21/99b5867c-2971-11e4-8593-da634b334390_story.html) [<https://perma.cc/E9ZM-ZPWU>].

<sup>144</sup> Greg Botelho & Catherine E. Shoichet, *James Foley's Mother 'Appalled' by U.S. Government Handling of Case*, CNN (Sept. 12, 2014, 6:40 PM), <http://www.cnn.com/2014/09/11/us/james-foley-mother/> [<https://perma.cc/7KGN-UY58>]. The White House later revealed that a secret mission in the summer of 2014 had tried but failed to bring Foley and multiple other American hostages home. Callimachi, *Killing James Foley*, *supra* note 1.

<sup>145</sup> See *Fact Sheet: U.S. Government Hostage Policy*, THE WHITE HOUSE: BRIEFING ROOM (June 24, 2015), <https://www.whitehouse.gov/the-press-office/2015/06/24/fact-sheet-us-government-hostage-policy> [<https://perma.cc/V9R8-RQ5B>] [hereinafter *Fact Sheet*].

<sup>146</sup> See *id.* In the past five years, Al Qaeda and its affiliates have made at least \$125 million in ransom payments from European nations. Callimachi, *Killing James Foley*, *supra* note 1.

<sup>147</sup> See *Fact Sheet*, *supra* note 145.

<sup>148</sup> *Id.* ("PPD-30 reaffirms the 'no concessions' policy, but makes clear for the first time that 'no concessions' does not mean 'no communication.' The U.S. Government may itself communicate with hostage-takers, their intermediaries, interested governments, and local communities to attempt to secure the safe recovery of the hostage. The U.S. Government may also assist private efforts to communicate with hostage-takers to secure the safe recovery of a hostage, whether directly or through public or private intermediaries . . ."); see Jeremy Diamond & Sunlen Serfaty, *White House Says More Than 30 Americans Held Hostage Abroad*, CNN (June 24, 2015, 4:44 PM), <http://www.cnn.com/2015/06/23/politics/hostage-policy-review-changes-white-house/> [<https://perma.cc/8FDA-LADU>].

<sup>149</sup> Diamond & Serfaty, *supra* note 148.

rect acknowledgement by the executive branch of the recent rise in hostage taking that has greatly affected the journalism industry.<sup>150</sup> Second, it offers an additional layer of assurance to journalists reporting from the field, as well as their families, that the U.S. government will make every effort to bring them home.<sup>151</sup> Though it may have failed journalists like James Foley whose government will not—and family cannot—pay a ransom to secure their return, it protects every journalist out in the field who is even slightly safer as a result.<sup>152</sup>

With the exception of Great Britain, U.S. hostage policy is inconsistent with that of most European countries, which have routinely secured the return of their citizen-hostages by paying the ransoms requested by Al Qaeda, its affiliates, and most recently, the Islamic State.<sup>153</sup> American officials have consistently suggested that hostage taking increases in response to ransom payments made.<sup>154</sup> Despite this, the vast difference in ransom policies between the United States and Britain and the remainder of Europe directly contributes to the danger for American journalists captured abroad.<sup>155</sup> The largest drawback of the no concessions policy is that it puts American hostages at a disadvantage compared to their European counterparts.<sup>156</sup> Regardless, an American policy that allowed for the payment of ransoms would only serve to fund the terrorist activities of the Islamic State and other jihadist groups.<sup>157</sup> Thus, in addition to continued support for the no concessions policy, the best course of action for the U.S. government is to encourage other European countries to adopt a similar response.<sup>158</sup> The surest

<sup>150</sup> See *Fact Sheet*, *supra* note 145.

<sup>151</sup> See *id.* (“[T]he Government’s handling of these hostage cases—and in particular its interaction and communication with families whose loved ones have been taken hostage—must improve.”).

<sup>152</sup> See David S. Cohen, *Why the U.S. Does Not Pay Ransoms for Americans Kidnapped by Terrorists*, NEWSWEEK (Aug. 23, 2014, 10:39 AM), <http://www.newsweek.com/why-us-does-not-pay-ransoms-americans-kidnapped-terrorists-266315> [<https://perma.cc/L85W-X4YB>].

<sup>153</sup> See Callimachi, *Killing James Foley*, *supra* note 1. The Islamic State released at least four French and three Spanish hostages after ransoms were paid in 2014. *Id.*

<sup>154</sup> See William Saletan, *Never Pay a Ransom: We Shouldn’t Play by ISIS’s Rules*, SLATE (Aug. 21, 2014, 4:07 PM), [http://www.slate.com/articles/news\\_and\\_politics/foreigners/2014/08/the\\_united\\_states\\_was\\_right\\_to\\_reject\\_isis\\_s\\_ransom\\_demands\\_for\\_james\\_foley.html](http://www.slate.com/articles/news_and_politics/foreigners/2014/08/the_united_states_was_right_to_reject_isis_s_ransom_demands_for_james_foley.html) [<https://perma.cc/XR8F-A2NX>]. The highest reported payment for a hostage is \$10 million. *Id.* Ten years ago the average price was \$200,000 per hostage. *Id.*

<sup>155</sup> See David Rohde, *Did America’s Policy on Ransom Contribute to James Foley’s Killing?*, REUTERS (Aug. 20, 2014), <http://blogs.reuters.com/david-rohde/2014/08/20/did-american-policy-help-kill-james-foley/> [<https://perma.cc/5M7J-CUHB>]; Saletan, *supra* note 154.

<sup>156</sup> See Rohde, *supra* note 155 (“A consistent response to kidnapping by the U.S. and Europe is desperately needed. The current haphazard approach is failing.”); Saletan, *supra* note 154.

<sup>157</sup> See DeYoung & Goldman, *supra* note 143 (quoting Marie Harf); Barack Obama, Statement by the President on the U.S. Government’s Hostage Policy Review (June 24, 2015) (transcript available at <https://www.whitehouse.gov/the-press-office/2015/06/24/statement-president-us-governments-hostage-policy-review> [<https://perma.cc/R3E5-7FJB>]) (“I firmly believe that the United States government paying ransom to terrorists risks endangering more Americans and funding the very terrorism that we’re trying to stop. And so I firmly believe that our policy ultimately puts fewer Americans at risk.”).

<sup>158</sup> See Cohen, *supra* note 152; Rohde, *supra* note 155.

way to end the capture of journalists is to eliminate the reward from the United States and European governments alike.<sup>159</sup>

### B. Assistance from Non-State Actors

Nongovernmental organizations such as the CPJ and the INSI are powerhouses of activity that are constantly researching and compiling facts, disseminating information about the threats facing journalists, supporting and sometimes funding increased training efforts for war journalists, and defending journalists who may be censored or persecuted.<sup>160</sup> They work tirelessly to advocate for journalists reporting from across the globe.<sup>161</sup> For years these organizations have been at the forefront of the “name and shame” movement, which seeks to prevent attacks on journalists by publicizing those that occur.<sup>162</sup>

The safety and crisis training provided to journalists by these organizations is desperately needed in an era where journalism is largely produced by freelancers lacking any institutionalized training.<sup>163</sup> Additionally, the reports and research routinely presented by organizations such as CPJ and INSI are crucial in forcing the issue of journalistic safety into the public eye and maintaining upward momentum.<sup>164</sup> Each organization on its own deserves applause for steadfast efforts to promote a common mission.<sup>165</sup> An improvement could be made only through continued efforts to work together to promote initiatives such as the Global Safety Principles and Practices that provide even greater visibility to the cause.<sup>166</sup>

Where independent organizations are making strides, however, they do so to fill in gaps left by major news and media organizations that have failed to provide adequate protection.<sup>167</sup> Recognizing the growing danger for reporters in the Middle East, twenty major newspapers and media organizations shuttered their foreign bureaus between 1998 and 2010, fostering their reliance on free-

<sup>159</sup> See Cohen, *supra* note 152 (“[T]he obligation to deprive terrorists of the financial means to plan, develop, and execute their deadly attacks demands that we find a way to deny terrorists access to ransom payments. That includes, in our view, adopting and implementing a policy of refusing to pay ransoms. That may be easier said than done, but it can be done, if we build the consensus and capacity necessary to do it together.”).

<sup>160</sup> See LISOSKY & HENRICHSEN, *supra* note 31, at 74.

<sup>161</sup> See *id.* at 74–75.

<sup>162</sup> See Joel Simon, *Attacks on the Press 2009: Introduction*, COMMITTEE TO PROTECT JOURNALISTS (Feb. 16, 2010, 12:58 AM), <https://cpj.org/2010/02/attacks-on-the-press-2009-introduction.php#more> [<https://perma.cc/VYH3-B4KU>].

<sup>163</sup> See LISOSKY & HENRICHSEN, *supra* note 31, at 92.

<sup>164</sup> See *id.* at 79.

<sup>165</sup> See *id.* at 81.

<sup>166</sup> See *id.*

<sup>167</sup> See Allison Shelley, *The Dangerous World of Freelance Journalism*, L.A. TIMES (Sept. 6, 2014, 5:00 AM), <http://www.latimes.com/opinion/op-ed/la-oe-shelley-freelance-journalists-foley-sotloff-20140907-story.html> [<https://perma.cc/TX2Y-AXQX>].

lance journalists in the Middle East.<sup>168</sup> These organizations intentionally maintain an arms-length relationship with freelancers in order to escape potential liability and force the freelancers themselves to bear the financial burden of training, equipment, and insurance.<sup>169</sup> For a major publication, sending an experienced correspondent to Syria would result in increased insurance costs and the potential that the organization would face payment of a large ransom if the reporter were captured.<sup>170</sup> To avoid this, news and media organizations receive work from freelancers who they pay as little as seventy dollars for a story, while shouldering none of the costs.<sup>171</sup>

Recently, news organizations have initiated policies requiring them to disclose upfront that they will take stories or photos from freelancers only upon their safe return.<sup>172</sup> This alone, however, does not remedy the exploitive nature of the relationship between large media groups and individual freelancers.<sup>173</sup> A few major organizations, such as Reuters, do provide safety training and other benefits to conflict reporters, and only send freelancers to locations where they would also send staff members.<sup>174</sup> Nevertheless, Reuters, like many other media groups, continues to accept material from freelancers who are already working in dangerous war zones such as Syria, thus perpetuating the cycle of freelancers who lack sufficient funds or protections.<sup>175</sup> Major news organizations made an important step toward better practices in February 2016, when 200 senior media editors and journalists met in Paris to police their own actions and encourage government leaders to think about additional protections as safeguards of the freedom of expression that makes journalism possible.<sup>176</sup>

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<sup>168</sup> See Ellen Shearer, *In Syria, Freelancers like James Foley Cover a Dangerous War Zone with No Front Lines*, WASH. POST (Aug. 22, 2014), [https://www.washingtonpost.com/opinions/in-syria-freelancers-like-james-foley-cover-a-dangerous-war-zone-with-no-front-lines/2014/08/22/25e4bfd4-295b-11e4-86ca-6f03cbd15c1a\\_story.html](https://www.washingtonpost.com/opinions/in-syria-freelancers-like-james-foley-cover-a-dangerous-war-zone-with-no-front-lines/2014/08/22/25e4bfd4-295b-11e4-86ca-6f03cbd15c1a_story.html) [<https://perma.cc/5K89-KEER>].

<sup>169</sup> See Robert Mahoney, *Journalist Beheadings in Syria Reignite Debate Over Risk and Safety for Freelancers*, COMMITTEE TO PROTECT JOURNALISTS (Sept. 26, 2014, 11:03 AM), <https://cpj.org/blog/2014/09/journalist-beheadings-in-syria-reignite-debate-ove.php> [<https://perma.cc/XS6M-9VRP>] [hereinafter *Journalist Beheadings*].

<sup>170</sup> See Kara Bloomgarden-Smoke, *From Syria, on Spec: Wary of Staff in Harm's Way, Editors Leave War Coverage to \$70 Stringers*, OBSERVER (Sept. 24, 2013, 9:30 PM), <http://observer.com/2013/09/syria/> [<https://perma.cc/5X3V-JCT4>].

<sup>171</sup> See *id.*

<sup>172</sup> See *id.*; Robert Mahoney, *Going It Alone: More Freelancers Means Less Support, Greater Danger*, COMMITTEE TO PROTECT JOURNALISTS (Apr. 27, 2015, 11:01 AM), <https://cpj.org/2015/04/attacks-on-the-press-more-freelancers-less-support-greater-danger.php> [<https://perma.cc/ABL6-WVGZ>] [hereinafter Mahoney, *Going It Alone*].

<sup>173</sup> See Bloomgarden-Smoke, *supra* note 170.

<sup>174</sup> See Mahoney, *Going It Alone*, *supra* note 172.

<sup>175</sup> See *id.*; Bloomgarden-Smoke, *supra* note 170.

<sup>176</sup> See Paul Colford, *Calling on Governments to Create 'A Culture of Safety for Journalism,'* ASSOCIATED PRESS: THE DEFINITIVE SOURCE (Feb. 5, 2016), <https://blog.ap.org/industry-insights/calling-on-governments-to-create-a-culture-of-safety-for-journalism> [<https://perma.cc/C7DC-SKR3>]; William Horsley, *Big Media 'Must Do More' to Protect Journalists*, CTR. FOR FREEDOM OF THE ME-

The Global Safety Principles and Practices, introduced in 2015, represents an important compromise between independent organizations committed to journalistic safety and news organizations that have contributed directly to the rise of freelance journalism in dangerous and increasingly unstable warzones.<sup>177</sup> Perhaps the most important provision is the suggestion that news organizations provide fair pay to freelancers.<sup>178</sup> At a minimum, news organizations should be required to pay for freelance safety training.<sup>179</sup> In addition, fair compensation for freelancers' work would allow those reporters to afford better equipment, while also taking other safety precautions such as hiring drivers and paying for insurance.<sup>180</sup> Though current signatories must continue working to execute the measures in the Global Safety Principles and Practices, it is also crucial for other newspapers, networks, and online media groups to join in recognizing the need for better standards.<sup>181</sup>

### C. Increasing Legal Protections

In a sense, the promotion of increased rights for journalists under international humanitarian law represents the need for recognition of the basic universal right to freedom of expression.<sup>182</sup> The challenge facing lawmakers and news organizations alike is how to protect freelance journalists who are in many ways the purveyors and primary benefactors of this right.<sup>183</sup>

#### 1. The Press Emblem

One potential solution to the lack of protection for journalists in war zones is the implementation of a press emblem.<sup>184</sup> Created in 2004 in direct response to the wars in Iraq and Afghanistan, the Press Emblem Campaign (PEC) proposes that journalists wear an internationally recognized symbol or badge, such as those worn by members of the Red Cross, that would denote their status as jour-

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DIA (Feb. 8, 2016), <http://www.cfom.org.uk/2016/02/big-media-must-do-more-to-protect-journalists/> [<https://perma.cc/J5UY-LYK6>].

<sup>177</sup> See Mahoney, *A First Step*, *supra* note 80; Robert Mahoney, *Syria Anniversary Shows Need for More News Outlets to Step Up*, COMMITTEE TO PROTECT JOURNALISTS (Mar. 19, 2015, 12:55 PM), <https://cpj.org/blog/2015/03/syria-anniversary-shows-need-for-more-news-outlets.php#more> [<https://perma.cc/JV5R-LX4S>] [hereinafter Mahoney, *Syria Anniversary*].

<sup>178</sup> See Mahoney, *Syria Anniversary*, *supra* note 177.

<sup>179</sup> See LISOSKY & HENRICHSEN, *supra* note 31, at 188.

<sup>180</sup> See Mahoney, *Syria Anniversary*, *supra* note 177.

<sup>181</sup> See *id.* (“[I]n the news industry post-ISIS, it can never again be business as usual.”); Gary Pruitt, President & CEO, Associated Press, *Dying in Pursuit of the News* (Mar. 30, 2015) (transcript available at <http://www.ap.org/Content/Press-Release/2015/Dying-in-pursuit-of-the-news> [<https://perma.cc/9J56-UA6H>]); Mahoney, *More Awareness of Risks*, *supra* note 9.

<sup>182</sup> See LISOSKY & HENRICHSEN, *supra* note 31, at 49.

<sup>183</sup> See *id.*

<sup>184</sup> See *id.* at 88.

nalists in war zones.<sup>185</sup> In light of the recent rise in freelancing from conflict zones, the emblem is impractical and unlikely to make conditions safer for journalists reporting from places like Syria.<sup>186</sup> In fact, opponents of the emblem agree that it would almost surely enlarge the target already placed on journalists in that conflict.<sup>187</sup>

A solution similar to the press emblem was debated before the addition of Additional Protocol I to the Geneva Convention in 1977.<sup>188</sup> The International Committee of the Red Cross (ICRC) then suggested a distinctive armband, which ultimately failed in front of the U.N. General Assembly because many believed it would create additional danger for journalists by making them even more conspicuous to combatants.<sup>189</sup>

The same can be said with even more conviction about the use of a press emblem by freelancers in the Middle East.<sup>190</sup> Proponents of the emblem believe it would force states to protect journalists and monitor abuses against them.<sup>191</sup> It is unclear, however, how the press emblem would avoid the same issues that have plagued the current provisions in the Geneva Convention—the lack of education and disregard for the current law displayed by the combatants.<sup>192</sup> The emblem does not create any additional legal consequences beyond increasing the visibility of freelancers in the field.<sup>193</sup> Additionally, the press emblem would have to be issued by a licensing authority that would be tasked with determining who does and does not qualify as a journalist.<sup>194</sup> This could potentially lead to restrictions on the press that would put universal freedom of expression at risk.<sup>195</sup>

## 2. Special Status for Freelancers in War Zones

The fundamental issue at the heart of journalistic protection is the distinction between civilians and journalists.<sup>196</sup> The debate over special status for journalists has also persisted since the discussions preceding the adoption of Addi-

<sup>185</sup> *See id.*

<sup>186</sup> *See Who Kills Journalists and Why? Report by the Committee to Protect Journalists to the Committee of Inquiry*, COMMITTEE TO PROTECT JOURNALISTS (May 23, 2005, 12:00 PM), <https://www.cpj.org/2005/05/who-kills-journalists-and-why-report-by-the-commit.php> [<https://perma.cc/Q8BH-EVV7>] [hereinafter *Who Kills Journalists?*].

<sup>187</sup> *See id.*

<sup>188</sup> *See LISOSKY & HENRICHSEN, supra* note 31, at 54–55.

<sup>189</sup> *See id.* at 54.

<sup>190</sup> *See id.* at 54, 89.

<sup>191</sup> *See id.* at 90.

<sup>192</sup> *See id.*

<sup>193</sup> *See BURRI, supra* note 7, at 345–46.

<sup>194</sup> *See Who Kills Journalists, supra* note 186.

<sup>195</sup> *See id.*

<sup>196</sup> *See LISOSKY & HENRICHSEN, supra* note 31, at 68.

tional Protocol I.<sup>197</sup> At the time, it was suggested that journalists be granted a special status similar to that held by religious and medical staff.<sup>198</sup> This tactic is consistent with other uses in international humanitarian law, and therefore appears fairly basic on its face.<sup>199</sup> In practice, however, it may weaken the protective value of special protections already granted to other individuals, while posing risks similar to the press emblem by making journalists readily identifiable.<sup>200</sup>

In remarks delivered at the Hong Kong Foreign Correspondents Club in 2015, Gary Pruitt, President and CEO of the Associated Press, suggested that the current legal framework is not enough to protect journalists.<sup>201</sup> According to Pruitt, there should be an additional protocol to the Geneva Convention that specifically designates it a war crime to take a journalist hostage.<sup>202</sup> This logic, unfortunately, faces the same downfall as most plans to increase journalistic protection—those who are responsible for the violence do not abide by the law.<sup>203</sup>

#### *D. Impunity and the Futility of Change*

Regardless of any increased assistance by non-state actors and media organizations, or updates to current American or U.N. policy, the fate of journalists continues to lie in the hands of combatants who do not know or desire to understand international humanitarian law.<sup>204</sup> The notion persists among combatants that journalists are not of value except as instruments of potential monetary gain and fear mongering.<sup>205</sup> Thus, the biggest challenge facing improved journalistic protection is not the current status of the law, but the insufficiency of the response to attacks on journalists.<sup>206</sup> Rarely, if ever, have states made specific inquiries into attacks on their media personnel that have resulted in prosecution of the perpetrators as war criminals.<sup>207</sup> If impunity for these crimes continues, changes to international humanitarian law will be futile and those who kill journalists will be further empowered to continue their illegal acts.<sup>208</sup>

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<sup>197</sup> See *id.* at 54–55.

<sup>198</sup> See *id.* at 54.

<sup>199</sup> See Gasser, *supra* note 105, at 10.

<sup>200</sup> See *id.*

<sup>201</sup> See Pruitt, *supra* note 181 (“The nature of both war and media have changed dramatically in recent years, and it is clear that existing protocols no longer address the increasingly perilous challenges facing journalists.”).

<sup>202</sup> See *id.*

<sup>203</sup> See *id.*

<sup>204</sup> See Notari, *supra* note 13, at 31.

<sup>205</sup> See LISOSKY & HENRICHSEN, *supra* note 31, at 103.

<sup>206</sup> See Notari, *supra* note 13, at 31.

<sup>207</sup> See *id.*

<sup>208</sup> See Pruitt, *supra* note 181.

According to the CPJ, of the 370 journalists murdered in the past decade, there were no convictions in ninety percent of those cases.<sup>209</sup> In the organization's Global Impunity Index, Syria ranks third for attacks on journalists that are met with complete impunity.<sup>210</sup> Reasons for this consistent lack of justice include a lack of political will and weak or entirely absent law enforcement during armed conflict.<sup>211</sup> Additionally, when even a single act escapes prosecution it creates a vicious cycle that weakens the rule of law and promotes continued acts of injustice.<sup>212</sup> Despite growing attention to the issue, the CPJ has concluded that based on the number of convictions, little progress has been made.<sup>213</sup>

Thus, it is perhaps not a large reworking of journalistic status under the law, or an addition of more specific provisions, that would improve protections for journalists and limit hostage taking in war zones.<sup>214</sup> Rather, it is greater compliance with existing law that will have the most powerful impact.<sup>215</sup> Accomplishing this goal requires education both of freelance journalists travelling to war zones and the combatants committing crimes against them in those areas of conflict.<sup>216</sup> Organizations such as the CPJ have already made great strides in accomplishing the former.<sup>217</sup>

Regarding the latter, combatants will learn that they are violating the law only through prosecution.<sup>218</sup> To that end, the vicious cycle of impunity must be replaced by large-scale efforts on the part of the United States and other countries to impose consequences on violators of international law.<sup>219</sup> The U.N. has named November 2 the International Day to End Impunity for Crimes against Journalists in an attempt to bring attention to this issue.<sup>220</sup> The resolution estab-

<sup>209</sup> *Global Campaign Against Impunity*, COMMITTEE TO PROTECT JOURNALISTS, <https://cpj.org/campaigns/impunity/> [<https://perma.cc/8YYR-CWWX>].

<sup>210</sup> *Getting Away with Murder*, COMMITTEE TO PROTECT JOURNALISTS (Oct. 8, 2015, 12:01 PM), <https://cpj.org/reports/2015/10/impunity-index-getting-away-with-murder.php#3> [<https://perma.cc/7A25-YGRP>]. In the numerical ranking, Syria follows Somalia and Iraq, respectively. *Id.* Iraq's presence on the list is believed to be due, at least in part, to attacks carried out by militants in the portions of the country controlled by the Islamic State. *Id.*

<sup>211</sup> *See The Road to Justice: Breaking the Cycle of Impunity in the Killing of Journalists*, COMMITTEE TO PROTECT JOURNALISTS (Oct. 28, 2014, 12:01 PM), <https://cpj.org/reports/2014/10/the-road-to-justice-killing-journalists-impunity.php> [<https://perma.cc/SS3Y-9DSV>].

<sup>212</sup> *See* Alice Bah Kuhnke & Irina Bokova, *End Impunity for Murderers of Journalists Now*, AL JAZEERA (Nov. 2, 2015), <http://www.aljazeera.com/indepth/opinion/2015/11/impunity-murderers-journalists-151101101039343.html> [<https://perma.cc/G5EV-THCH>].

<sup>213</sup> *See Getting Away With Murder*, *supra* note 210.

<sup>214</sup> *See* LISOSKY & HENRICHSEN, *supra* note 31, at 70.

<sup>215</sup> *See id.*

<sup>216</sup> *See id.* at 71.

<sup>217</sup> *See id.*

<sup>218</sup> *See id.*

<sup>219</sup> *See id.* at 196.

<sup>220</sup> *International Day to End Impunity for Crimes Against Journalists*, UNITED NATIONS, <http://www.un.org/en/events/journalists/> [<https://perma.cc/ASN3-PMCA>]; *see* G.A. Res. 68/163, *The Safety of Journalists and the Issue of Impunity* (Feb. 21, 2014). The date commemorates the murder of

lishing the day recognizes that impunity is one of the largest barriers to achieving greater protection for—and an end to—deliberate attacks on reporters.<sup>221</sup> It follows therefore, that in order to protect both freedom of expression and freelance journalists reporting in war zones, the Islamic State and other violent militant groups must be held accountable and brought to justice.<sup>222</sup>

## CONCLUSION

Although war journalism has existed since the days of the telegram, the danger faced by the men and women who report from war zones has never been greater. In recent years, the traditional war correspondent has been replaced by the modern freelance journalist. The former receives the full protection, training, and financial backing of his respective news organization. The latter operates on his own, trekking through dangerous territory oftentimes without insurance, adequate equipment, or proper training. In addition, the current conflict in Syria has proven to be the most dangerous conflict in history for journalists. Terrorist groups such as the Islamic State have begun to deliberately target journalists for use in propaganda videos that threaten the United States and instill fear in the general public. The no concessions policy adopted by the U.S. government is intended to reduce the targeting of American journalists, but it alone is not enough to solve the problem. Organizations committed to the protection of journalists aid in the effort by providing training, funds, and advocacy in an attempt to mitigate the failure of large media organizations to protect the freelancers whose stories they pay for. Their efforts have brought greater attention to their cause, but they too can do more.

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two French journalists on November 2, 2013. *International Day to End Impunity for Crimes Against Journalists*, *supra*.

<sup>221</sup> See G.A. Res. 68/163, *supra* note 220 (“Bearing in mind that impunity for attacks against journalists constitutes one of the main challenges to strengthening the protection of journalists . . . Urges Member States to do their utmost to prevent violence against journalists and media workers, to ensure accountability through the conduct of impartial, speedy and effective investigations into all alleged violence against journalists and media workers falling within their jurisdiction and to bring the perpetrators of such crimes to justice and ensure that victims have access to appropriate remedies . . .”).

<sup>222</sup> See Pruitt, *supra* note 181. John Daniszewski, senior managing editor for international news at the Associated Press stated in an interview:

It is vital that journalists witness and tell the story of the Syrian civil war. However, the impunity with which journalists are attacked and kidnapped in this conflict means that we must be doubly cautious. It is not an arena for novices, and extreme care needs to be exercised to obtain the news. At the same time, actors in the civil war must acknowledge and protect the right of journalists to cover it fairly and accurately as a basic human right.

Zeina Karam, *Journalists in Syria Face Growing Risk of Kidnap*, ASSOCIATED PRESS (Nov. 9, 2013, 5:59 PM), <http://bigstory.ap.org/article/journalists-syria-face-growing-risk-kidnap> [<https://perma.cc/E7RG-PHSD>].

Since the debates that preceded Additional Protocol I, many voices have advocated for additional legal protections for journalists. These suggestions have ranged from the creation of a press emblem to a declaration that taking a journalist hostage is a war crime. Amending the language of the Geneva Convention will not solve the problem, however, when the conflict zone is in effect an extrajudicial state where law is not recognized despite its codification. The most feasible action to limit danger and end crimes against journalists is to put an end to impunity—a pronouncement that has been made most recently by both the president of the Associated Press and the U.N. Security Council. Making strides to end impunity will require cooperation among many nations, all of whom are dedicated to the same cause: freedom of the press.