

VIOLENCE AGAINST JOURNALISTS AND CRIMES AGAINST HUMANITY

Report prepared by Professor Nicholas Tsagourias, School of Law, University of Sheffield [N.Tsagourias@sheffield.ac.uk]

February 2014

Summary and Recommendations

Although acts of violence against journalists are widespread, a culture of impunity has been allowed to develop, due to institutional inability or unwillingness to prosecute those responsible for such acts. In order to counter this climate of impunity, the UN has launched its Plan of Action on the Safety of Journalists and the Issue of Impunity. The present report addresses the question of whether violence against journalists can be categorised as a crime against humanity. It concludes that murder, torture, rape or other sexual attacks, imprisonment, disappearances, persecution or other grave inhumane acts committed against journalists as part of a widespread or systematic attack against any civilian population, and committed with knowledge of, or in furtherance of, the attack, does indeed amount to a crime against humanity. Prosecution of the perpetrators can take place before national courts on the basis of the nationality or territoriality principle or before international courts (such as the International Criminal Court) if the referent jurisdictional criteria are fulfilled. However, there are many obstacles in exercising criminal jurisdiction, one of which is the institution of immunities attached to public officials who are often the main perpetrators of such crimes. In order to counter impunity, the report makes the following recommendations:

1. *adoption of a comprehensive international convention criminalising attacks on journalists*

2. *adoption by the Security Council of a legislative resolution criminalising attacks on journalists*
3. *adoption of a declaratory resolution by the Security Council or the General Assembly on the safety of journalists*
4. *inclusion of the protection of journalists in the mandate of peacekeeping operations*
5. *raising awareness of the ICC Prosecutor on the plight of journalists*
6. *supporting states in building their capacity to investigate and prosecute crimes against journalists*

VIOLENCE AGAINST JOURNALISTS AND CRIMES AGAINST HUMANITY

I. Introduction

1. Although the number of deliberate attacks or acts of violence against journalists and other media professionals is on the increase,¹ remedies are incremental, ineffective or, in certain situations, non-existent. It has been reported that nine out of ten cases of crimes against journalists, media workers and social media producers go unpunished.² It is for this reason that many institutions or NGOs speak of a climate of impunity surrounding crimes committed against journalists.
2. Impunity is detrimental not only to the victim of the crime but also to the moral, political, legal, and institutional fabric of the referent society and of the international society at large.³ Moreover, knowledge of impunity encourages further violence against journalists and media professionals.
3. The question that inevitably arises is whether international law offers any protection to journalists and, by implication, whether there are any international law mechanisms to bring to justice the perpetrators of such attacks as well as those that have ordered them.

¹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/65/284 (2010). See also Amnesty International's Report *Shooting the Messenger: Journalists targeted by all sides in Syria* (2013)

² General Assembly OBV/1214, PI/2054 2 May 2013

³ ICTY, *Prosecutor v. Brdjanin and Talic*, Decision on Motion to set aside confidential subpoena to give evidence, Decision of 7 June 2002; ICTY, *Prosecutor v. Radoslav Brdjanin and Monir Talic*, Decision on interlocutory appeal, 11 December 2002

4. Various international law regimes apply to journalists guaranteeing their life, personal security and professional activities. The most relevant are those of human rights, international humanitarian law, and international criminal law. Each regime has its own standards and guarantees as well as its own enforcement mechanisms which may be judicial and binding, or non-judicial and non-binding.
5. Although the existing legal regimes and their enforcement mechanisms offer protection, the system is fragmented and its effectiveness varies. There is no legal regime addressing specifically the personal safety and professional needs of journalists.
6. The United Nations has recognised the dangers facing journalists, particularly in situations of armed conflict, and the Security Council adopted resolution 1738 (2006) which reminded parties to armed conflicts of their obligations to protect journalists, those working in the media and associated personnel, and to prevent acts of violence and retribution. It also urged States and all other parties to an armed conflict to do their utmost to prevent violations of international humanitarian law against civilians, including journalists, media professionals and associated personnel, and emphasised the responsibility of States to comply with the relevant obligations under international law to end impunity and to prosecute those responsible for serious violations of international humanitarian law. On 17 July 2013, the Security Council held an open debate on the protection of journalists where the speakers almost unanimously stressed the need for protection.⁴

⁴ See S/PV.7003 (17 June 2013)

7. The Human Rights Council in resolution A/HRC/21/L.6 (2012) condemned all acts of violence against journalists; expressed its concerns for acts of violence committed against journalist by non-state actors; and called upon all parties to armed conflict to respect journalists' human rights, and relevant humanitarian law obligations towards them. It also called upon states to ensure accountability and bring those responsible for the attacks to justice.⁵
8. UNESCO has been actively engaged with the topic. The *Decision on the Safety of Journalists and the Issue of Impunity* adopted by the International Programme for the Development of Communication (IPDC) Intergovernmental Council (2010) contemplates the possibility of 'formulating a comprehensive, coherent and action-oriented approach to the safety of journalists and the issue of impunity'. In 2012 it launched the *UN Plan of Action on the Safety of Journalists and the Issue of Impunity*. One of the objectives of the Implementation Strategy 2013-14⁶ is to 'support Member States in guaranteeing the right to freedom of expression and press freedom, as well as in their efforts to strengthen the safety of journalists and deal with the problem of impunity, particularly in countries and regions directly affected'.
9. Action to end impunity involves legislative, judicial and institutional measures to prevent and repress attacks on journalists and to hold those responsible accountable. International criminal law can play an important role in this regard. Whilst an attack on journalists during an armed conflict which constitutes a violation of international humanitarian law is definitely a war

⁵ See also Human Rights Council Res 12/16 (2009); Res 16/4 (2011) and Res 15/21 (2010). See also 'The promotion and protection of human rights in the context of peaceful protests', A/HRC/22/L.10 (2013)

⁶ 2nd UN Interagency Meeting, 22-23 November 2012, Vienna

crime, giving rise to individual criminal responsibility,⁷ the question is whether attacks on journalists can also constitute a crime against humanity (CAH). Indeed, there have been reports of cases where attacks on journalists have been characterised as such.⁸

10. The present report will focus on the question of whether acts of violence against journalists can constitute crimes against humanity. Section II contains a legal analysis of the material and subjective elements of CAH; section III presents the different avenues that exist in holding the perpetrators of such crimes criminally responsible; and section IV identifies the legal or other impediments that exist in bringing those responsible to justice. The report concludes by offering a number of specific recommendations to enhance the protection afforded to journalists by international criminal law.

II. Crimes against humanity (CAH)

11. The definition of crimes against humanity is contained in Article 7 of the Rome Statute of the International Criminal Court (ICC). This definition reflects customary international law. It is important to note that CAH can be committed not only during an armed conflict but also in non-conflict situations, that is during peacetime.

⁷ See SC Res. 1738 (2006) and Article 8 of the Statute of the International Criminal Court

⁸ In Colombia, the Chief Prosecutor's office has classified the kidnap and subsequent torture and sexual assault of journalists as a crime against humanity. See for instance ABColombia, September 2012, 'Judge declares kidnap of Jineth Bedoya crime against humanity'

<http://www.abcolombia.org.uk/subpage.asp?subid=478&mainid=23>; and CPJ Colombia, <http://www.cpj.org/2013/02/attacks-on-the-press-in-2012-colombia.php>.

See also Reporters without Borders, Bringing Predators of Freedom of Information to Justice http://en.rsf.org/IMG/pdf/note_comite_juridique_v1_gb.pdf

12. According to Article 7 ICC Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender (as defined in paragraph 3), or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to bodily or mental or physical health.

13. It is the context within which any of the acts listed above takes place that elevates it to a CAH; otherwise, the act would be a conventional crime, to be

dealt with by national criminal law. It is therefore very important to explain the contextual element of CAH; namely, what constitutes ‘a widespread or systematic attack directed against any civilian population’.

14. The term ‘attack’ refers to any prohibited conduct, for example, murder, rape, torture and so on. The term ‘any civilian population’ refers to a large number of civilians. During an international armed conflict, the principle of distinction applies according to which civilians are those who are not combatants, including those that are *hors de combat*. In a non-international armed conflict civilians are those who are not members of the armed forces or of organised armed groups. It follows that attacks against civilians thus defined will constitute a crime against humanity. During peacetime, everyone is a civilian; thus attacks on civilians will constitute a crime against humanity.

15. An attack is ‘widespread’ when it is large-scale in its scope or in the number of victims involved. ‘Systematic’ means an attack that is organised, follows a regular pattern on the basis of a common policy, and involves substantial resources. The background attack can be either ‘widespread’ or ‘systematic’ which means that these criteria are disjunctive and not cumulative.

16. Concerning the ‘prohibited acts’, they have been enumerated in paragraph 12 of this report. This paragraph will provide a definition of those acts which mostly affect journalists. They include:

- (a) murder, which is the intentional and unlawful killing of a human being;
- (b) extermination, which is the killing of one or more persons as part of a mass killing of members of a civilian population, and can include the infliction of conditions of life calculated to bring about the destruction of part of a population;

- (c) imprisonment or other severe deprivation of physical liberty, which is the arbitrary deprivation of the freedom of one or more persons;
- (d) torture, which is the infliction of severe physical or mental pain or suffering upon one or more persons;
- (e) rape, which is the non-consensual penetration, however slight, of any part of the body of the victim with a sexual organ or an instrument;
- (f) sexual violence, which is the commission of an act of a sexual nature against one or more persons, or causing such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent;
- (g) persecution, which is the deprivation, contrary to international law, of the fundamental rights of one or more persons on political, racial, national, ethnic, cultural, religious, gender or other grounds, such deprivation being universally recognized as impermissible under international law;
- (h) enforced disappearance of persons, which is the arrest, detention or abduction of one or more persons or refusal to acknowledge the arrest, detention or abduction, or to give information on the fate or whereabouts of such person or persons and such arrest, detention or abduction was followed or accompanied by a refusal to acknowledge that deprivation of freedom or to give information on the fate or

whereabouts of such person or persons; or such refusal was preceded or accompanied by that deprivation of freedom;

- (i) other inhumane acts, which include the infliction of great suffering, or serious injury to bodily or to mental or physical health.

17. Concerning the crime against humanity of persecution, some further clarifications are in order. This crime requires the commission of one of the listed acts or of any other prohibited act – for example a war crime – with discriminatory intent in the context of a widespread or systematic attack against a civilian population. The prohibited discriminatory grounds, according to the ICC Statute, are political, racial, national, ethnic, cultural, gender, religious or any other ground universally recognised under international law. Consequently, the murder of a journalist because of his/her political affiliations in the context of a widespread or systematic attack against a civilian population will constitute the CAH of persecution.

18. Concerning the mental element for CAH, the perpetrator needs to have the requisite mental element for the particular act, for example the intent to commit murder, but also knowledge of the broader context in which his/her actions occur; that is, knowledge of the widespread or systematic attack against the civilian population.

19. It follows from the above that the commission of any of the listed acts against journalists – for example, murder – which takes place in the context of a widespread or systematic attack against any civilian population and is committed with knowledge of the background attack or in furtherance of the attack, will constitute a CAH.

20. It is on this basis that the murder of two journalists in Colombia has been classified by the Public Prosecutor as a crime against humanity.⁹ As far as Syria is concerned, to the extent that the attacks on the civilian population in Syria are not only widespread but also systematic, involving governmental resources and planning, the finding that crimes against humanity are being committed is correct¹⁰ and the commission of any of the prohibited acts against journalists will be a CAH.

III. Prosecution

21. Having established that attacks against journalists may constitute a CAH, the immediate question is whether those responsible can be brought to justice. In contrast to the crime of genocide or to war crimes, there is no specific international convention on CAH. Instead, CAH are included in the Statutes of certain international criminal courts and tribunals such as the Statute of the ICC. Such courts and tribunals can exercise jurisdiction over CAH in accordance with the rules laid down in their respective Statutes. The jurisdiction of such international courts and tribunals is limited over state parties which are obligated to initiate prosecution or, if they fail to do so, to render the accused person to the international court or tribunal. In order to implement the relevant Statute, state parties may be required to enact domestic legislation.¹¹

⁹ See above, note 6

¹⁰ Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/S-17/2/Add.1, 23 November 2011 and UN Doc A/HRC/RES/S-16/1, 4 May 2011

¹¹ For example the United Kingdom incorporated CAH in its domestic law through the International Criminal Court Act 2001 (c. 17). For Canada see the Crimes Against Humanity and War Crimes Act (2000)

22. The International Criminal Court (ICC) can exercise jurisdiction over CAH¹² if certain conditions are satisfied. First, because the ICC's jurisdiction is complementary to that of national courts, the ICC can exercise its powers over state parties only if the state which should have exercised criminal jurisdiction is unable or unwilling to investigate or prosecute.¹³ Second, in order for the ICC to exercise jurisdiction, the crimes should have been committed on the territory of a state party or by a national of a state party.¹⁴ The ICC cannot exercise jurisdiction if there is no link with one of its state parties. For instance, in the case of Syria, the ICC cannot exercise jurisdiction over CAH being committed there because Syria is not a state party to the ICC, unless a jurisdictional link is established; for example, if a CAH is committed in Syria by a national of a state party to the ICC. Thirdly, the ICC's jurisdiction needs to be triggered by another state party, by the ICC Prosecutor *proprio motu* or by the Security Council (SC) in a resolution adopted under Chapter VII of the UN Charter (being thus subject to veto).¹⁵ Referral by the SC can extend the ICC's jurisdiction to states that are not parties to the ICC Statute. For example, since Syria is not a state party to the ICC, CAH being committed in Syria can be investigated by the ICC Prosecutor only if the SC agrees to refer the situation of Syria to the ICC. That having been said, referrals do not bind the ICC Prosecutor who will decide as to whether to proceed with an investigation

¹² Article 7 ICC St.

¹³ Article 17 ICC St

¹⁴ Article 12 ICC St

¹⁵ Article 13 ICC St

and prosecution on the merits of each case.¹⁶ No referral of individual persons is permitted: it is only situations that can be referred to the ICC.

23. In addition to international jurisdictions, CAH can also be prosecuted before national courts. This is because CAH constitute customary law and as such they are prosecutable offences regardless of whether a state is party to any specific treaty prosecuting CAH.¹⁷ If the state has no such legislation or the existing legislation is inadequate, the obligation of the state shifts to the duty to extradite the accused person to another requesting state.

24. National courts can prosecute those having committed CAH on the basis of the nationality or territoriality principle. Under the territoriality principle, a state can exercise jurisdiction over all crimes committed on its territory; whereas under the nationality principle, a state can exercise jurisdiction only over their own nationals. Another head of jurisdiction is that of passive personality, according to which a state can assert its jurisdiction over crimes committed against its nationals whilst abroad. For example the US uses this principle in relation to terrorist offenses¹⁸ and, although controversial, the passive personality principle is widely accepted in relation to international crimes such as war crimes.¹⁹ Since CAH are international crimes, the passive personality jurisdiction can very well apply to them.

25. Any prosecution at the state level will take place according to national laws which in many respects reflect treaty and/or customary law on CAH. In many jurisdictions, no statute of limitation applies to the prosecution of CAH and

¹⁶ Article 53 ICC St

¹⁷ For the status of customary law in the USA, see *The Paquete Habana*, 175 U.S. at 700

¹⁸ *US v. Yunis* (1991) 30 ILM 403

¹⁹ *Rohring, Brunner and Heinze* (1950) ILR 393

the defence of superior orders is not accepted. Moreover, national courts are competent to prosecute state officials but, in most cases and as will be explained in the next section, they are prevented from prosecuting or trying foreign officials due to the institution of immunity, unless the state of nationality of the foreign official agrees to waive immunities.

26. It has been contended that CAH or international crimes in general give rise to universal jurisdiction. Universal jurisdiction allows any state to exercise jurisdiction over certain serious crimes irrespective of any link with the crime or with the perpetrator; it is a contested head and states that employ versions of universal jurisdiction subject it to certain limitations. Universal jurisdiction should be distinguished from international jurisdiction, according to which a treaty regime confers jurisdiction on all state parties to the treaty to prosecute and try nationals of any other state party. For example, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) allows state parties to prosecute and try nationals of other state parties.

IV. Impediments to the exercise of criminal jurisdiction

27. It is often the case that international crimes are committed by state officials, who enjoy immunity from the criminal jurisdiction of foreign courts.

28. There are two types of immunity: personal immunity and material immunity. Personal immunity is attached to high-ranking state officials (for example Heads of State) and is absolute. It covers all crimes, including international ones, but is granted only to a small number of state officials during their time

in office.²⁰ Material immunity protects official acts, and is therefore wider in scope and is permanent. Personal immunity is reduced to material immunity when the state official relinquishes office. There is some debate as to whether international crimes are covered by material immunity,²¹ but if the role of immunity is to prevent national courts from trying foreign officials, it acts as a procedural impediment to the exercise of jurisdiction.

29. Immunity does not apply between state parties to the ICC.²² This means that a claim of immunity will not bar the prosecution and trial by the ICC of state officials who have committed CAH involving journalists. If a situation arises involving a state party to the ICC and an official of a non-state party, immunity will be allowed unless the ICC secures a waiver from the non-state party.²³ If a situation has been referred to the ICC by the Security Council, Article 27 ICC St will apply because the referred state will become a ‘quasi-state’ party to the ICC. Immunities will however apply in the relations between the referred state and all other states that are not parties to the ICC unless the SC in a binding resolution relinquishes the exercise of immunities *erga omnes*.

30. For example, Syrian officials enjoy immunity vis-à-vis the ICC because Syria is not a party to the Statute. If the situation in Syria is referred to the ICC by the Security Council, Article 27 will apply, removing the immunity of Syrian

²⁰ *Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium)* ICJ Rep (2002)

²¹ ILC, Third report on immunity of State officials from foreign criminal jurisdiction, A/CN.4/646 (2011)

²² Article 27 ICC St. According to paragraph 2 ‘immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person’

²³ Article 98 ICC St

officials in the relations between Syria, the ICC, and all state parties to the ICC. However, Syrian officials will continue to enjoy immunity vis-à-vis third states that are not parties to the ICC, unless Syria waives those immunities or the Security Council decides in a binding resolution to repudiate the immunities of Syrian officials *erga omnes*.

31. From the preceding paragraphs, it transpires that unless the territorial state or the state of nationality exercises jurisdiction over CAH committed against journalists, other national or international jurisdictions encounter many difficulties. However, it is often the case that it is states that perpetrate crimes against journalists. CAH against journalists may also be committed by rebel forces, in particular by those that control part of a state's territory. In this case, prosecution is even more difficult because the territorial state, lacking control over its territory, cannot apprehend and try the perpetrators of the crimes. As a result, CAH in general and against journalists in particular may go unpunished because the state may lack the capacity or willingness to investigate and prosecute or because international prosecutions face jurisdictional obstacles and are often dependent on state cooperation.

V. Recommendations

32. A number of recommendations will be made in order to counter impunity.

- (i) **Negotiation and conclusion of an international convention on the protection of journalists from criminal acts.**

33. Such a convention should contain a definition of who is a ‘journalist’ for the purposes of the Convention;²⁴ list and define the prohibited acts; mandate states to proscribe the prohibited acts in their domestic laws; and also allocate jurisdiction between state parties. Primary jurisdiction should be exercised by the territorial state and complementary jurisdiction by the state of nationality of the victim or by any other state party to the convention. In this regard, the convention should adopt the *aut dedere aut judicare* principle: extradite or prosecute. A convention providing for the criminal prosecution of those committing crimes against journalists would also overcome the jurisdictional impediment of immunities. Such a convention should be binding on all state parties and, depending on the number of them, it might even attain universal membership. Finally, it could be negotiated in the context of the General Assembly or UNESCO.
34. The advantages of a single and comprehensive convention on the safety of journalists are many: it would systematise and unify the law; clarify the obligations incumbent on states; cater for the specific needs of journalists; forge compliance; and achieve effective enforcement. This is because state parties, having negotiated the rules and agreed on them, would be predisposed towards compliance. The disadvantages are that negotiations might become protracted and that the number of signatories might be limited. Moreover, if the convention does not provide for independent and supranational enforcement mechanisms, its effectiveness in providing protection would be impaired.

²⁴ Definitions vary and may be based on occupation, association or function.

35. In international jurisprudence, there are examples of conventions having been adopted in order to deal with a specific issue of concern. The 1994 Convention on the Safety of United Nations and Associated Personnel²⁵ is one such convention concluded quite expeditiously in order to address the problem of attacks on peacekeepers. The Draft Convention on the Criminal Accountability of United Nations Officials and Experts on Mission²⁶ is concerned with the issue of accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations. On a more general level, there are conventions that deal with specific groups of persons. The Convention on the Rights of the Child (1989) adopted in the context of UNICEF is such a convention, to which an additional optional protocol on the involvement of children in armed conflict was added. Another convention is that on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly.
36. States might be willing to conclude an international convention when they realise the seriousness of a problem, the ineffectiveness or inadequacy of existing laws and of mechanisms to address that problem, and also recognise the effects that attacks on journalists have in fulfilling their role in democratic societies.

(ii) **Security Council resolution criminalising attacks on journalists.**

37. This would be a legislative resolution adopted under Chapter VII of the UN Charter mandating states to criminalise in their domestic systems violent acts

²⁵ Available at <http://www.un.org/law/cod/safety.htm>

²⁶ <http://www.un.org/en/ga/sixth/62/CrimAcc.shtml>

against journalists, similar to an international convention but enacted unilaterally by the SC.

38. In order for the Security Council to adopt such a resolution, it should determine that attacks on journalists constitute a threat to international peace and security. In resolution 1738 (2006) the Security Council has already indicated that the deliberate targeting of civilians and other protected persons, and the commission of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict might constitute a threat to international peace and security, and has reaffirmed its readiness to consider such situations and, where necessary, to adopt appropriate steps.

39. The advantages of this route are that the obligations will be binding on all states by virtue of Article 25 of the UN Charter, action will be swift – avoiding thus the delays attached to multilateral negotiations – and criminalisation will be uniform. The disadvantages are that Security Council members may fail to reach agreement in view of the poor record of certain permanent members concerning the treatment of journalist; and that the resolution, although legal, may lack legitimacy because of its deliberative deficit.

40. Examples of SC legislative resolutions are SC Res 1373 (2001) with regard to the financing of terrorism and SC Res 1540 (2001) with regard to the proliferation of weapons of mass destruction

(iii) **Declaration of principles by the Security Council or the General Assembly.**

41. Both organs can adopt declarative resolutions setting out standards of state conduct.
42. These resolutions are not binding but are persuasive and may mould state action. They may also contribute to the crystalization of specific rules on the safety of journalists to the extent that such declarations can influence state practice.
43. On 18 December 2013, the General Assembly adopted without a vote a draft resolution which calls upon States to promote a safe and enabling environment for journalists to perform their work independently and without undue interference, including legislative measures; awareness-raising in the judiciary and among law enforcement officers and military personnel, as well as among journalists and in civil society, regarding international human rights and humanitarian law obligations and commitments relating to the safety of journalists; the monitoring and reporting of attacks against journalists; publicly condemning attacks; and dedicating the resources necessary to investigate and prosecute such attacks.²⁷

(iv) **Safety of journalists as part of the mandate of peacekeeping missions.**

44. Currently, most peacekeeping missions include a mandate to protect civilians in armed conflict²⁸ and to this end they are often authorised to use force.

²⁷ A/68/456/Add.2 pp.123/222. See also http://www.unesco.org/new/en/media-services/single-view/news/un_general_assembly_adopts_resolution_on_journalist_safety_and_proclaims_2_november_as_international_day_to_end_impunity/#.Uwy82ieesYs

²⁸ See for example SC Res 1674 (2006)

45. Although journalists can be protected as civilians, identifying them as a special category of persons that should be protected will increase awareness and extend such protection to non-local journalists.
46. The United Nations Secretary-General has highlighted the plight of journalists in his reports on the protection of civilians.²⁹ The role of the United Nations Secretary-General is critical in this regard. In his reports on peacekeeping operations or his specific reports on the protection of civilians he can monitor and report attacks on journalists and recommend measures for their protection which can then feed into the mandate of the operation.
47. Combating the culture of impunity for crimes committed against journalists should also become part of the mandate of peacekeeping operations involved in post-conflict reconstruction (see paragraph 50).

(v) **Raising awareness among existing bodies.**

48. One such body is the ICC Office of the Prosecutor. Although the ICC Prosecutor is independent and operates on the basis of set criteria, awareness of the plight of journalists and the surrounding climate of impunity may be taken into account when making decisions as to whether the requirements for the commencement of an investigation are fulfilled.³⁰ Other international bodies include the Human Rights Commission, the Human Rights Committee, the Office of the High Commissioner for Human Rights, the Department for Peacekeeping Operations, and the United Nations Secretariat.

²⁹ Report of the Secretary-General on the protection of civilians in armed conflict, S/2012/376 (2012), paras 14-15

³⁰ Article 53 ICC St

(vi) **International action to support states to build their own national capacity to investigate and prosecute.**

49. This will involve financial, technical and other expert assistance and advice to national authorities in order to address the culture of impunity. Capacity-building may require institutional, legislative or judicial intervention and reform to improve investigations, prosecution and trials. To this end, states can work closely with international organisations such as the UN and its agencies and with NGOs or make such commitment in the context of other multilateral fora such as the G8.

50. International support for capacity-building is particularly important in post-conflict situations when state institutions have collapsed or are weak. Coordination with other agencies involved in democracy, human rights and rule of law reforms is important, not only to address the issue of impunity, but also the root causes of attacks on journalists.

51. Capacity-building is one of the tasks of peacekeeping operations involved in post-conflict situations and it is for the UN Secretary-General and the Security Council to highlight the plight of journalists in the mandates of such operations.

VI. Conclusion

52. There is no legal impediment in characterising attacks on journalists as crimes against humanity. As a matter of fact, attacks on journalists often take place in the context of widespread attacks against a civilian population. What is difficult is to hold those responsible to account, and the recommendations included in the present report aim at combating that impunity.

