NOTES

REMAKING THE PEN MIGHTIER THAN THE SWORD: AN EVALUATION OF THE GROWING NEED FOR THE INTERNATIONAL PROTECTION OF JOURNALISTS

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A. Saoman Conteh

On May 8, 2000, in Freetown, Sierra Leone, Saoman Conteh, a journalist working for the independent newspaper *New Tablet*, was covering a demonstration outside the residence of Revolutionary United Front (RUF) leader Foday Sankoh. Sankoh's bodyguards fired on the crowd, hitting Conteh twice. The injured journalist fell to the ground, where he was trampled by the stampede of people fleeing the gunfire. Suffocated, his body was left on the street for twenty-four hours before he was taken to Connaught Hospital in Freetown, where doctors pronounced him dead. A reporter for nearly 30 years, Conteh, 48, was survived by his wife and their three daughters.

B. Kurt Shork

A little over two weeks later, on May 24, 2000, Kurt Shork, a correspondent covering the war for Reuters, was traveling through Rogberi Junction, Sierra Leone with a group of other journalists and Sierra Leone army soldiers. Members of the RUF opened fire on the caravan, killing Shork and Miguel Gil Moreno de Mora, a cameraman and producer working for the Associated Press. Two other journalists were also injured in the attack.

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1 See 24 Journalists Killed in 2000 (last visited Jan. 22, 2002), at http://www.cpj.org/killed/killed00.htm. This alarming article contains details of every killing of a journalist identified by the Committee for the Protection of Journalists, an organization dedicated to the physical protection of journalists. The Committee to Protect Journalists engages in extensive research to determine their statistics. When reports emerge that a reporter has been killed, CPJ extensively investigates those reports and determines the circumstances of the journalist's death and whether the journalist was killed because of his or her profession. See id.

2 See id.

3 See id.

4 Id.

5 Id.

6 See id.

7 Id.

8 See id.
C. Slavko Curuvija

On April 11, 1999, publisher Slavko Curuvija and his wife, Branka Prpa, were brutally attacked by two men dressed in leather jackets. During what was apparently a professional assassination, the gunmen pistol-whipped Prpa and fired several bullets into Curuvija’s back and head, killing the journalist. The publisher had recently visited the United States and spoke to Congress in regard to the oppressive regime of Slobodan Milosevic. Just prior to the murder, the Serbian state television station broadcasted accusations against the publisher alleging that he had supported NATO’s attack on the country.

D. Volker Kraemer and Gabriel Gruener

Two German journalists, photographer Volker Kraemer and reporter Gabriel Gruener, both of the German magazine Stern, were killed by sniper fire in Kosovo. The attack on the journalists occurred as they were passing south of Pristina while returning to Macedonia by car. Their interpreter, Senol Alit, was also killed in the attack.

E. Violence in an Increasingly Dangerous World

These four examples demonstrate the all-too-common dangers posed to journalists covering war-town and transitional regions in the fractured modern world. According to the Committee to Protect Journalists (CPJ), a body that both monitors and protests violence against journalists, twenty-four journalists were killed in 2000. The CPJ also recently reported that thirty-seven journalists were killed in 2001. Furthermore, such violence was not

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9 See id.
10 See id.
11 See id.
12 See id.
14 See id.
15 See id.
16 See 24 Journalists Killed in 2000, supra note 1. This statistic includes journalists specifically targeted for killing and those caught in the crossfire while covering combat. If it cannot be confirmed whether the death was in fact related to the journalist’s work, that death is not counted. Id.
INTERNATIONAL PROTECTION OF JOURNALISTS

restricted to a few countries currently facing military conflict, but occurred throughout the world, from Brazil to Russia to Sri Lanka.  

Unfortunately, the quantity of violence directed toward the media is not the only troubling aspect of such violence in recent years; there is also the increasing chaos of the world stage. In Sierra Leone, reporters have been targeted and brutally murdered by both sides of the civil war, the Sierra Leone Army and the rebel organization, the Revolutionary United Front (RUF). A United Nations Educational, Scientific, and Cultural Organization (UNESCO) publication entitled *The Protection of Journalists* best expressed the particularly dangerous nature of journalists’ work over the past few years.

Journalists are exposed to danger not only in covering armed conflicts, but everywhere. Since the development of acts of terrorism and violence throughout the world, the journalist invariably runs the same risks in exercising his profession, no matter where he may be. He is threatened, arrested, harassed, tortured, maltreated, beaten, kidnapped, imprisoned and even murdered. The entire world has become one huge area of conflict. The journalist is not free to work in peace and security anywhere, and often has no protection whatsoever. Everyone, his readers, listeners and television audience expect him to write, speak and show the honest and unadulterated truth. But at what price?

Furthermore, violence against journalists affects more than the journalists themselves. Each and every human right is most endangered and most often neglected or destroyed in these war-torn regions, and journalists remain the primary source of accurate information about such occurrences. The private journalist has the unmatched ability to develop a deep, detailed understanding

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18 See 24 Journalists Killed in 2000, supra note 1. One journalist, Zezinho Cazuza, a reporter with Radio Xingo FM, was killed in Brazil. Three journalists were killed in Russia, all three covering that country’s conflict with Chechene rebels. Two journalists were killed in Sri Lanka, both by a suicide bomber during an election rally. *Id.*

19 See *id.*

20 See TIMOTHY G. BROWN, INTERNATIONAL COMMUNICATIONS GLOSSARY 69-70 (1984). UNESCO was one of the first specialized agencies of the United Nations formed after World War II. It is comprised of representatives from nearly every country in the world, as well as members from other organizations and U.N. agencies. *See id.*

of a particular event and give an accurate reporting thereof. Reporters are the story tellers without whom the world can never really be seen or understood. In fact, much of this violence occurs for exactly this reason. The soldiers committing these atrocities often know exactly who they are killing. Silence is the murderers’ and the soldiers’ best friend, perhaps their only friend. As a result, this light that shines across the world must not be allowed to diminish nor dim, or the world will be a poorer and a darker place.

It is the goal of this note to explore this problem with a particular emphasis on potential methods by which the international community can work to protect the press. In order to better understand this problem as it exists today, this note begins with a historical analysis of the development of international efforts to remedy and prevent it. This analysis is not meant to be comprehensive, but merely to provide some insight into the historical development of this problem on the international stage. In the interest of continuity, this historical analysis is organized with an overall topical structure as opposed to a strictly chronological one. This note then addresses a variety of methods by which the international community could take action to protect journalists in the future. It is ultimately the goal of this note to generate workable suggestions for a future regime, both preventative and punitive. Although it remains unclear what can be done in the aftermath of one of the single most lethal years for journalists in the history of the profession, it is deadly clear that something must be done.

II. HISTORICAL DEVELOPMENT

A. Early History

Although violence against journalists is likely an ancient phenomenon, coherent international attempts to address the problem have been comparatively late in developing. The first international attempt to address problems of the press in general occurred in the late nineteenth century. These early attempts were not undertaken by individual governments or by collaborations among governments, but by large-scale professional organizations of journalists. The first and most important of these meetings were the two International Congresses of the Press, at Chicago in 1893 and Belgium the next...
These meetings addressed a variety of issues, including freedom of the press, the improvement of working conditions and the role of the press in the international arena. Although these discussions were comprehensive, helpful and long overdue, they failed to result in the development or application of coherent, international solutions.

B. League of Nations

Once World War I ended and peace was established, efforts to protect the press continued. In fact, the political changes in response to the world provided a powerful new actor for international concerns in general: the League of Nations. The most important attempt by the League to address the protection of the press was the Conference of Press Experts held in 1927, which adopted a number of resolutions for consideration by its member states. These resolutions addressed a variety of broad issues, including the treatment of foreign journalists and censorship, but also addressed important proposals for the prevention of violence against the press such as identity cards for journalists. Unfortunately, none of the proposals for the protection of the press were successful and these efforts ended as the world became engulfed in World War II.

C. World War II (WWII) & the Geneva Convention

The Geneva Conventions, a group of international treaties designed to establish firm rules for the treatment of different classes of people during wartime, were established as a result of WWII. After consideration, the

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24 Id.
25 See id.
26 See id.
28 See Conference of Press Experts, League of Nations Doc. A.34 1927 G.Q.8 (1927). The Conference of Press Experts was attended by sixty-three experts, twenty assessors and thirty-five technical advisers from thirty-eight countries. These included newspaper proprietors, news agencies, press bureaus and journalists. Id.
29 See id.
30 See Geneva Convention for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field of Aug. 12, 1949, 75 U.N.T.S. 970; the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of Aug. 12, 1949, 75 U.N.T.S. 971; the Geneva Convention Relative to the Treatment of
conventions ultimately classified journalists as civilians. Civilians, those people taking no active part in the hostilities, are provided with a great deal of protection. "Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely." The convention specifically proscribes particular acts done toward civilians. Conduct condemned by the convention comprise violence, including murder, torture and cruel treatment. It also proscribes humiliating and degrading treatment and the carrying out of sentences or executions not ordered by a regularly constituted court. Although these protections are wide and extremely important, they fail to address the particular difficulties facing journalists, who are typically more directly involved with the conflict than are ordinary civilians. Many commentators and journalists have felt the failure to provide journalists with special status under the Geneva Conventions was a lost opportunity to provide an added level of protection to journalists.

D. The United Nations

Another direct result of WWII was the formation of the United Nations. A thorough description of the United Nations is absolutely beyond the scope of this essay. However, a few brief facts are important to note. The U.N. charter was signed at San Francisco on June 26, 1945 and entered into force on October 24, 1945. See LOUIS B. SOHN & THOMAS BUERGENTHAL, BASIC DOCUMENTS ON INTERNATIONAL PROTECTION OF HUMAN RIGHTS (1973). Organized largely in response to public outcry at the incredible human rights violations perpetrated by the Nazis during WWII, the U.N. was founded with humanitarian principles in mind. See id. In fact, the charter makes it an explicit purpose of the organization to "achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms." U.N. CHARTER art. 1, para. 3.
In drafting the convention to create the organization, several articles were proposed that would have provided special protection to journalists. Proposed Article 2(a) of the draft sought the issuance of special identity cards issued by national authorities. Proposed Article 10 of the convention mandated that parties to a conflict should do everything in their power to protect journalists. Further, the article mandated that parties grant journalists a reasonable amount of protection against the dangers inherent in the conflict, that parties warn journalists to keep away from dangerous zones and that parties grant identical treatment to journalists held in internment.

In the midst of the new international regime ushered in by the United Nations, new initiatives to protect the press were organized. These initiatives were in large part motivated by studies prepared by various international non-governmental organizations (NGOs). One of the first major NGO attempts, undertaken by the International Federation of Editors-in-Chief, discussed the issue at its congress in 1957 and then performed an in-depth investigation of the issue of journalists' safety. The Federation was ultimately unable to reach a definite conclusion, however, and referred the issue to the International Commission of Jurists (ICJ) in 1967.

E. The Montecatini Draft

The Secretary-General of the ICJ, Sean MacBride, agreed to address the issue of protection of the press. The ICJ prepared a draft international convention for the protection of journalists. The draft was examined and amended at a seminar held in Geneva in April, 1968. Members of the journalistic profession as well as members of other organizations such as the International Committee of the Red Cross (ICRC) were allowed to provide their comments throughout the meeting. This effort culminated in the

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40 See Odulanmi, supra note 37.
41 See id.
42 See id.
43 See Protection of Journalists, supra note 21, at 30.
44 See id.
45 See id. The International Federation of Editors-in-Chief largely concluded that it did not have the power to make pragmatic progress in this area and that any such progress could only be achieved by international governmental authorities.
46 See id.
47 See id.
48 See id.
49 Id.
50 See id.
Congress of the International Federation of Editors-in-Chief held in Montecatini, France in May, 1968.51

At the meeting, the Preliminary Draft Convention for the Protection of Journalists on Dangerous Missions (Montecatini Draft) was adopted.52 The draft proposed the formation of an International Committee for the Protection of Journalists on Dangerous Missions.53 Further, it specified that the committee would be an independent body made up of press organizations and placed under the authority of the United Nations.54 It was to be composed of five to seven members chosen by the United Nations Secretary-General from a list submitted by the designated press organizations.55 The primary responsibility of the committee was the issuing of an official identification card to all registered journalists.56 The card would show the journalist’s photograph and state his name, age, nationality, occupation and the name of the press organization for which he worked.57 Independent journalists were also entitled to receive these cards after applying to the committee and demonstrating their professional qualifications.58 Any journalist proceeding on a dangerous mission was supposed to inform the committee. While on such a mission, a journalist was required to carry the identification and also to present it upon request.59 Furthermore, in particularly hazardous situations the journalist was expected to wear a recognizable emblem distinguishing him as a journalist.60

The draft convention expressly proscribed both the arrest and detainment of journalists for professional activities and prohibited all physical attacks on journalists, including molestation or harassment.61 As for enforcement, the convention mandated that the committee itself would intercede and approach the de facto authorities in the region where a journalist's rights had been violated.62 It also mandated that parties to the convention adopt any legislative or regulatory measures which proved necessary for establishing appropriate

51 See id. at 30-31.
52 For the complete text of the draft, see id. at 31-37.
53 See id. at 33.
54 See id.
55 See id.
56 See id. at 34.
57 See id.
58 See id.
59 See id.
60 See id.
61 See id. at 35.
62 See id. at 34-35.
penalties for such behavior.\textsuperscript{63} Although the Montecatini draft was well-considered and thought out, it was never forwarded to the U.N. for consideration.\textsuperscript{64}

\textbf{F. The Safety Committee}

The next major NGO attempt to address journalists' safety occurred in response to an international tragedy: seventeen journalists disappeared in Cambodia in 1970.\textsuperscript{65} That same year, the International Press Institute (IPI) convened two meetings.\textsuperscript{66} In attendance at the meetings, in addition to a variety of press organizations,\textsuperscript{67} were representatives from the International Association of Democratic Lawyers, UNESCO, and the International Institute of Human Rights.\textsuperscript{68} The meetings led to the creation of an International Professional Committee for the Safety of Journalists (hereinafter The Safety Committee).\textsuperscript{69} The Safety Committee had the immediate goal of issuing identity cards for journalists on dangerous missions, similar to the plan devised in the Montecatini Draft, but explicitly limited both by time and location: the card was only to be issued in Southeast Asia.\textsuperscript{70} Along with identity cards, the Safety Committee also proposed the creation and maintenance of a centralized file of the journalists most frequently sent on dangerous missions by the member organizations.\textsuperscript{71} Journalists participating in the identification card

\textsuperscript{63} See id. at 35.
\textsuperscript{64} See Amit Mukherjee, The Internationalization of Journalists' "Rights": An Historical Analysis, 4 J. INT'L L. & PRAC. 87, 101 (1995).
\textsuperscript{65} See Protection of Journalists, supra note 21, at 38.
\textsuperscript{66} See id. at 38-41. The stated goal of the IPI is to create an environment in which governments will hesitate to take action against journalists, either through political or physically violent means. The organization specializes in independent research on the topics of news sources, foreign news reporting and the general flow of news throughout the world. The research results in occasional studies of international problems with journalism. For more information on the organization, see generally Brown, supra note 20.
\textsuperscript{67} See id. at 38. Press organizations in attendance at these meetings were the International Federation of Journalists, the International Organization of Journalists, the International Federation of Newspaper Publishers, the International Federation of Editors-in-Chief and the International Press Institute.
\textsuperscript{68} Id.
\textsuperscript{69} See id. at 39. The Safety Committee, headquartered at the “Palais de Nations” in Geneva, was comprised of one delegate and a deputy from each of the founding organizations. Professor Urs Schwarz, former president of the International Press Institute, was named Secretary-General of the Committee.
\textsuperscript{70} See id.
\textsuperscript{71} See id. at 47.
program were required to sign a statement that they would only use the card
on professional assignments, they would not participate in hostilities, and they
would neither bear arms nor wear a uniform. The Safety Commission
planned to broaden the scope of the identification card program for use
throughout the world as soon as practical but, faced with the extensive task of
communicating with the various authorities in the region to ensure the
understanding and respect for the identity cards, the plan was suspended in
1975 due to the lack of consensus among the countries.

G. Further United Nations Consideration

The disappearance of the seventeen journalists in Cambodia likewise
brought the issue of the protection of the press to prominence at the United
Nations in 1970, following an appeal by the Secretary-General. On
December 9, 1970, the United Nations General Assembly (UNGA) adopted a
resolution on the protection of journalists engaged in dangerous missions.
The resolution, in essence, acknowledged the need for further study and work
on the issue. It noted the extant sections of the Geneva Conventions that
could be interpreted to grant physical protection to the press and urged all
states and authorities to respect those sections. Substantively, the resolution
requested that Human Rights Commission consider the possibility of preparing
a draft international agreement on the protection of journalists.

Following that resolution, a preliminary draft convention for the protection
of journalists, created largely by the professional journalists' organizations,
was submitted to the Human Rights Commission. The commission
recommended that the resolution be forwarded to the UNGA for further
discussion. In 1973, the UNGA expressed the desire to adopt a convention
on this question and requested the Secretary-General to transmit the draft
convention to the Diplomatic Conference on the Reaffirmation and Develop-

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72 See id. at 40.
76 See id. at 44-45.
77 See id. at 43.
78 See id. at 44.
79 See id.
80 See Protection of Journalist, supra note 21, at 2.
81 See id.
ment of International Humanitarian Law Applicable in Armed Conflicts for consideration. In considering the issue, the Diplomatic Conference proposed a new article to be included in the Draft Additional Protocol I to the Geneva Conventions. Although the new article did not change the status of journalists as civilians under the Geneva Conventions, it did mandate the implementation of an identity card program to ensure that journalists are recognized as journalists and treated as civilians. The question was examined at the twenty-ninth and thirtieth sessions of the United Nations. Unfortunately, that consideration marked the end of this phase of consideration of this issue by the United Nations.

H. Sadi Resolution

The United Nations made no attempt to address this issue again for nearly two decades. Finally, in 1989, the Sub-Commission on Prevention of Discrimination and Protection on the Minorities addressed the issue. One member of the sub-commission, Waleed Sadi, introduced draft resolution addressing the protection of the press (Sadi Resolution). The resolution included several statements supporting the work of the press in war-torn regions and requesting that governments around the world go to greater lengths to protect them. Further, the resolution urged journalists to continue their difficult work with maximum neutrality and objectivity. Most importantly, the resolution recommended a special study be done on the subject of press protection to examine the possibility of extending additional protection and assistance to journalists in their endeavor to expose gross human rights' violations with objectivity and fairness. The sub-commission approved the Sadi Resolution at its thirty-sixth meeting. The version

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82 See G.A. Res. 3008, UN GAOR, 27th sess. (1972); see also Protection of Journalists, supra note 21, at 3.
83 See Protection of Journalists, supra note 21, at 3.
84 See id. at 3, 61.
85 Id.
86 See id.
88 See id.
89 See id.
90 See id.
91 See id.
92 See Summary Record of the 36th Meeting, U.N. ESCOR, Sub-Commission on Prevention
supported in the final vote had been altered and slightly weakened from the original resolution and simply requested that Sadi study the feasibility of performing additional studies on potential means to extend additional international protection to the press.  

The Sadi Resolution was completed and submitted to the forty-second session of the sub-commission in 1990. The final report focused on the importance of the press to human rights in general and noted that attacks on journalists had become an all too frequent phenomenon. Concluding, it declared that the sub-commission is “duty bound to accord them special attention and protection in a form that has yet to be articulated and formulated.”

Following Sadi’s drafting of the feasibility report, the sub-commission proposed that he prepare a preliminary study on additional protection for journalists. The resolution prepared by the sub-commission requested specifically that Sadi address a few particular issues. First, the resolution requested Sadi analyze the types of violations most frequently made against journalists. Second, it directed Sadi to draft specific guarantees necessary for the protection of journalists. Third, the resolution recommends measures that the United Nations could take to protect the well-being of journalists working in dangerous and war-torn regions. Unfortunately, the sub-commission never enacted the draft resolution. Consideration was deferred until the next session of the sub-commission. That deferral marked the last time the sub-

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95 See id.
96 Id.
97 See Mukherjee, supra note 64, at 109.
98 See id.
99 See id.
100 See id.
commission addressed that particular draft resolution. The deferral also marked the last time an official sub-commission under the auspices of the United Nations addressed the issue of press protection.

I. UNESCO and the Protection of Journalists

In addition to those initiatives undertaken by the UNGA itself described above, the issue of the physical protection press has also been undertaken by UNESCO. The issue was first brought to the attention of UNESCO by the organization’s Director-General Amadou-Mahtar M’Bow at press conferences during the nineteenth session of UNESCO’s General Conference held in Nairobi in 1976. UNESCO first officially addressed the issue at a colloquium held in Florence in April, 1977. The meeting, focusing on communications and information flow in general, discussed the protection of journalists within that context. In particular, the working document drafted in that meeting stated that "protection should be ensured for journalists on dangerous missions in zones of armed conflict." UNESCO next addressed the issue at the twentieth session of its General Assembly held in 1978. At that meeting, the assembly adopted The Declaration on Fundamental Principles concerning the Contribution of the Mass Media. In Article II, paragraph 4 of the document, the assembly stated that, “it is essential that journalists and other agents of the mass media, in their own country or abroad, be assured of protection guaranteeing them the best conditions for the exercise of their profession.” The assembly further concluded that such a goal was primarily the responsibility of the international

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102 See id.
103 See id.
104 See Brown, supra note 20, at 69-70.
105 See Protection of Journalists, supra note 21, at 7.
107 See id.
108 Id.
110 See id.
111 Id.
community and that UNESCO itself was uniquely placed to contribute toward the goal.112

UNESCO continued its attention to this goal at a consultative meeting between representatives of the International Organization of Journalists and the International Federation of Journalists113 in Paris on January 21-22, 1980.114 Prior to that meeting, both organizations undertook studies to examine press problems around the world.115 As a result of a comparison of the two studies, a single document was drafted by the two groups working together at the meeting.116 The document itself contained a thorough investigation of the problem of the protection of press working in dangerous regions and a series of suggestions toward dealing with this important issue. These suggestions include the establishment of a World Press Institute to provide a forum for further investigation, periodic international conferences to evaluate the position of journalists in foreign countries, and the future drawing of international instruments to more effectively address the issue.117 Unfortunately, the document failed to list specific suggestions for the form or content of any such instruments.118

Following the Paris meeting, another meeting of journalists’ organizations was held in April, 1980 in Mexico.119 This meeting, organized by the Latin American Federation of Journalists (FELAP) and attended by the IOJ, the IFJ and the Confederation of ASEAN Journalists (CAJ), considered the document drafted by the earlier consultative meeting and made some particular recommendations for its application.120 The meeting participants urged the United Nations General Assembly to determine why earlier attempts to address

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112 See id.
113 The IFJ is currently the world’s largest organization of journalists representing 450,000 journalists in more than 100 countries. See International Federation of Journalists, http://www.ifj.org. (last visited Jan. 20, 2001). The IFJ works for both the cultural and political freedom of the press and for the physical protection of journalists. Toward that end, the IFJ has drafted an International Code of Practice for the Safe Conduct of Journalism which provides minimum standards for its member press organizations in the equipping of journalists working in dangerous regions. Also toward that end, the IFJ has established an International Safety Fund to provide humanitarian aid for journalists in need. To contribute to the Safety Fund, please send donations to: A/C 611-0122022-66, Deutsche Bank, Ave Marnix 17, 1000 Brussels, Belgium.
114 Protection of Journalists, supra note 21, at 10.
115 See id.
116 See id. at 11-19.
117 See id. at 15-18.
118 See id. at 18.
119 Id. at 19.
120 See id. at 19-21.
the issue by that organization had failed so that new, updated and corrected attempts might be made.\textsuperscript{121} The participants also called for the immediate establishment of an international professional commission for the Protection of Journalists under the auspices of UNESCO.\textsuperscript{122}

\textit{J. MacBride Commission}

The International Commission for the Study of Communication Problems, frequently referred to as the MacBride Commission, was established by the Director-General of UNESCO, Amadou Mahtar M'Bow, in December, 1977.\textsuperscript{123} Composed of sixteen experts, the stated purpose of the commission was to “study the totality of communications problems in the modern world” and draft a report that would remedy the problems.\textsuperscript{124} Within that ambitious scope, the Commission addressed the issue of press protection. From December, 1977 to November, 1979, the Commission held eight meetings.\textsuperscript{125}

The issue of press protection garnered much attention from the Commission during its fifth meeting in New Delhi, India held March 25-30, 1979.\textsuperscript{126} During that meeting, Chairman MacBride told the Commission about two meetings he had personally convened in Paris to address the issue protecting the press.\textsuperscript{127} These meetings were organized without the knowledge of the Commission and apparently funded outside of the Commission’s budget.\textsuperscript{128} Prior to those meetings, Mr. MacBride drafted an international instrument addressing the issue of press protection. The instrument cited the dangers frequently faced by journalists working in dangerous regions and confirmed the need for further protection, but contained few concrete, effective

\textsuperscript{121} See id. at 19-20.
\textsuperscript{122} See id. at 20.
\textsuperscript{123} See Brown, supra at note 20. The MacBride Commission, remembered as one of the most important documents ever drafted under UNESCO authority, was also one of the most controversial. Although the report drafted by the Commission did praise the idea of press freedom, it also contained a variety of recommendations that seemingly supported the communications goals of the communist and developing nations of the time. These included the subordination of the press to the immediate goals of the governments and opposition to private ownership of news media. For an in-depth and up-close examination of the work of The MacBride Commission, see William G. Harley, Creative Compromise: The MacBride Commission (1993).
\textsuperscript{124} Harley, supra note 123, at 1.
\textsuperscript{125} For an invaluable and thorough description of these proceedings, see id. at 48-88.
\textsuperscript{126} See id. at 114-19.
\textsuperscript{127} See id. at 116.
\textsuperscript{128} See id.
suggestions for the implementation of such protection. One of the few concrete suggestions made was for the establishment of a round table for further discussion of such issues. Of particular controversy were statements contained in the document referring to the responsibilities of journalists for accurate reporting. Apparently the result of an attempt to compromise and build support for controversial issues, the paper discussed both a code for the protection of journalists and an international code of journalistic ethics that mandated the licensing of journalists. Both the code of ethics and the licensing scheme were particularly distrusted by members of developed nations who saw them as attempts to develop governmental control over the press in developing countries. While some members felt the document ought to focus specifically on press protection, others felt that protection could not be treated separately from responsibilities.

At the conclusion of the meetings, the MacBride Commission drafted a final report, a document of approximately 135,000 words that was later published as a book of 275 pages. The report declared that communication is a basic individual right as well as a collective one, but further stressed that the diversity of societies around the world necessitates a variety of solutions, each adapted to the social, economic and cultural life of each individual country. As to the physical protection of journalists, a goal towards which Chairman MacBride worked strenuously, the Commission declined the opportunity to take a strong and effective stance. The Commission was in fact explicitly wary of taking such a stance, concluding that special protection may result in journalists being shepherded by members of the local government.

129 See The Protection of Journalists; document published by the International Commission for the Study of Communication Problems, No. 90, Annex II. For the full text of the document, see Protection of Journalists, supra note 21, at 129-36.
130 See Protection of Journalists, supra note 21, at 136.
131 See id. at 131-33.
132 See id. at 131-35.
134 See Harley, supra note 123, at 116-17.
135 See SEAN MACBRIDE, UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, MANY VOICES, ONE WORLD: COMMUNICATION'S SOCIETY, TODAY & TOMORROW REPORT BY THE INTERNATIONAL COMMISSION FOR THE STUDY OF COMMUNICATION PROBLEMS (1980).
136 See id. at 253.
137 See id. at 274.
138 See id. at 236.
"[Journalists will be truly protected when everyone's rights are fully recognized."

The Commission did make one positive recommendation along these lines, however. Recommendation 51 of the report calls for UNESCO to hold a series of round tables for media personnel to address issues of protection and to propose additional measures by which the press may be protected. The final report, along with a lengthy analysis provided by Director-General M'Bow, was submitted to the twenty-first UNESCO General Conference that met in Belgrade during September and October 1980. Unfortunately, at the start of the conference, Director-General M'Bow announced that the MacBride Commission report had been prepared for his own personal use and was not on the official agenda. M'Bow reportedly made this astonishing move in order to avoid the combustion of the already high tensions.

K. Conclusion of Historical Investigation

The history sketched is certainly a dramatic one. One conclusion that can be clearly drawn is that, notwithstanding the obvious need for such protection and the many attempts to address the issue, little was ever actually accomplished. As William Shakespeare once wrote, though assuredly not addressing the issue of international humanitarian law: "[I]t is a tale told by an idiot, full of sound and fury, [s]ignifying nothing."

III. INTERNATIONAL METHODS FOR THE PROTECTION OF JOURNALISTS

Meanwhile, the tragedy of violence against the press continues unabated. With this in mind, this note continues with a discussion of potential, real methods for the protection of the press and specific ways in which such measures could be carried out. Like the prior historical analysis, this prospective analysis is organized on a topical basis.

139 See id.
140 See id. at 265.
141 See Harley, supra note 123, at 155.
142 See id.
143 See id.
144 WILLIAM SHAKESPEARE, MACBETH, Act 5, Scene 5.
A. Identification Cards

The first potential method by which journalists working in war-torn regions could be protected is the provision of identification cards, cards clearly designating the presence of its carrier as a certified member of the press. This method has frequently been considered and just as frequently criticized on one ground or another. As discussed above, this method was suggested as a workable means for protecting the press from violence as early as the Conference of Press Experts held in Geneva in 1927 under the auspices of the League of Nations. In the seventy years since that meeting, the issuance of identity cards has been proposed at nearly every major meeting or conference dedicated to the issue of protecting the press. The effectiveness of this method has never been fully tested, with the brief, but notable exception of the Safety Committee in the early 1970s, an attempt that failed in the face of the incredible practical complexities of such an effort. Still, this method is frequently considered and proposed to the present day. For example, recent consideration of this controversial topic occurred at a media workshop held in Lagos, Nigeria by the Nigerian Red Cross Society in conjunction with the International Committee of the Red Cross.

The most prominent criticism leveled at identity card proposals is that the programs simply will not work, primarily because it is unclear how such cards would actually prevent violence toward journalists. More to the point, many journalists have argued that they would actually be counterproductive. This argument is supported to a great extent by the particularly egregious nature of recent violence. On January 9, 1999, members of the Revolutionary United Front entered Freetown, Sierra Leone with target lists of journalists and hunted down four journalists. If one of the journalists murdered in cold blood had been provided with an identification card, it would not have protected him. In fact, by providing clear and convenient proof that he was, in fact, a journalist, the card would have done little more than serve as his death warrant. Although it serves as an extreme example, the violence in Sierra Leone clearly belies the preventative value of an identification card.

146 See Protection of Journalists, supra note 21, at 39.
147 See id.
148 See Odunlami, supra note 37. The workshop addressed the issue of identity cards within a broader discussion of providing special status for journalists. See id.
149 See id.
150 See id.
151 See 34 Journalists Killed in 1999, supra note 13.
system. Identification card systems have been similarly criticized as providing governments with an easy means of controlling the press, a criticism leveled at licensing schemes in general.\(^{152}\)

B. International Criminalization of Violence Against Journalists

The second potential method discussed is to explicitly criminalize the conduct as a war crime within the investigative and punitive authority of international authorities. This action would tell soldiers worldwide that the intimidation and murder of journalists as a military tactic will not easily be permitted. Such a statement is clearly necessary in the increasingly violent world stage.

Of course, the deterrent effect of such a law would hinge largely on the effectiveness of its enforcement. A guerilla fighter in Serbia is not likely to alter his behavior because his plans violate a law if he knows he will never be charged. Unfortunately, the issue of enforcement is both critical and particularly troublesome. Thus, determining methods by which such a law could be enforced is an important aspect of this investigation.

C. Temporary United Nations Tribunals

The first method of enforcement arises from the simplest context involving the war-criminalization of violence against journalists: the listing of such violence as a war crime under the jurisdiction of the United Nations, either within the context of the Geneva Conventions or as a more recently invoked addition to the United Nations charter. By either method, the results would presumably be the same. The most typical method of enforcement by the United Nations is the establishment of a temporary international criminal tribunal to investigate and prosecute war crimes.\(^{153}\)

Such tribunals have a relatively long history in the realm of international humanitarian rights. As the saying goes, those who cannot remember the past are condemned to repeat it.\(^{154}\) Thus, any attempt to establish an effective tribunal must begin with an analysis of the successes and failures of those in the past.

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\(^{152}\) See Odunlami, supra note 37.


\(^{154}\) George Santayana, Reason in Common Sense, in LIFE OF REASON, ch. 12 (1905-06).
D. The Nuremberg Trial

One of the earliest and perhaps the most famous example of a temporary military tribunal was the International Military Tribunal (IMT) at Nuremberg founded by the international community, before the creation of the United Nations itself, to investigate and try Nazi war criminals in the aftermath of the unprecedented atrocities of WWII. The decision to try the Nazi war criminals was made pursuant to the United Nations' Moscow Declaration drafted on November 1, 1943. The IMT was established under the London Accord on August 8, 1945. The London Accord provided the IMT with jurisdiction over three general areas: war crimes, crimes against peace and crimes against humanity. After extensive investigation and debate, the IMT decided to prosecute twenty-four defendants. Of those, twenty-two were actually tried, twelve were sentenced to death, three to life in prison, three were acquitted and the remaining four received ten to twenty years.

155 See Resolution by Allied Governments Condemning German Terror and Demanding Retribution (Jan. 13, 1942), reprinted in 44 Brit. & Foreign Papers, 1940-1942, at 1072 (Her Majesty's Stationary Office, 1952).
156 See id.
157 See Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279. The charter that established the International Military Tribunal was annexed to the London Agreement. 82 U.N.T.S. 279, at 284.
158 See id. Article 6 of the IMT Charter provides:
(a) Crimes against Peace: namely, planning, preparation, initiation, or waging of a war of aggression, or a war in violation of international treaties, agreements, or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;
(b) War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment, or deportation to slave labor for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity;
(c) Crimes against Humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Id.
159 See Prinz, supra note 153, at 559.
160 Id.
the primary problems with the IMT was its self-imposed limitation to crimes that occurred only after the formal outbreak of the war in 1939. The limitation was imposed in order to avoid criticism and perhaps later legal attack as enforcing laws ex post facto. Although those concerns are certainly valid, the decision to limit consideration resulted in the exclusion of many potential defendants. Thus, while the IMT provided a strong framework for the prosecution of war criminals, broader protection is necessary for effective deterrence. Despite that limitation, however, the IMT did succeed in demonstrating to the world that war criminals need fear retribution from the international community.

E. International Criminal Tribunal for Yugoslavia

A more recent example of a temporary military tribunal is the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia Since 1991 (ICTY). The ICTY faced a strong challenge to the legality of its existence and jurisdiction as a direct result of its first attempted prosecution, that of Dusko Tadic, the perpetrator of alleged war crimes in connection with the operation of several prisoner camps. In response to the challenge to the ICTY’s establishment, the trial chamber concluded that the U.N. Security Council’s actions in establishing the ICTY were a valid exercise of power under Chapter VII of the U.N. Charter. In the second challenge, Tadic’s attorneys argued that the ICTY was in effect violating the rights of individual countries to try war criminals who committed crimes within their borders. The court first stated that it did not have authority to review the question, but went on to hold that Tadic did not have standing to raise the issue. Finally, and most germane to the future enforcement of violence against journalists, the court addressed Tadic’s claim

161 See id. at 558-59.
162 See id.
163 See id. at 561.
164 See id.
168 See Prinz, supra note 153, at 567.
169 See Prosecutor v. Tadic, 105 I.L.R. 419. See also Prinz, supra note 153, at 567.
that the ICTY lacked subject-matter jurisdiction over the alleged crimes because they occurred in an internal, as opposed to an international, conflict. In response to this argument, the court first concluded that Article 2, concerning grave breaches of the 1949 Geneva conventions, applied to both internal and international conflicts. The court further held that claims brought pursuant to Article 3, which covers violations of the law or customs of war, applied to both international and internal conflicts. Finally, the court held that Article 5 crimes against humanity likewise applied to internal

170 See Prinz, supra note 153, at 567.

171 See ICTY Statute at http://www.un.org/icty/basic/statut/stat2000_com.htm (last visited Mar. 2, 2002). Article 2, Grave Breaches of the Geneva Conventions of 1949 states: The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (a) willful killing; (b) torture or inhuman treatment, including biological experiments; (c) willfully causing great suffering or serious injury to body or health; (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; (e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power; (f) willfully depriving a prisoner of war or a civilian of the rights of a fair and regular trial; (g) unlawful deportation or transfer or unlawful confinement of a civilian; (h) taking civilians as hostages.

Id. See Prinz, supra note 153, at 567-68.

172 See ICTY Statute, supra note 171, art. 3. It states: The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to: (a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering; (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity; (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings; (d) seizure of, destruction or willful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science; (e) plunder of public or private property.

Id. See Prinz, supra note 153, at 568.

174 See ICTY Statute, supra note 171, art. 5. It states: The international Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population: (a) murder; (b) extermination; (c) enslavement; (d) deportation; (e) imprisonment; (f) torture; (g) rape; (h) persecutions on political, racial and religious grounds; (i) other inhumane acts.
conflicts. Thus, before addressing any of the substantive issues relating to the alleged war crimes of its first defendant, the ICTY managed to extend the concept of war crimes prosecution for every major type of war crime to the purely internal conflict.

Having successfully addressed the procedural difficulties of the case, the ICTY then moved on to the fairly intricate substantive difficulties. First, the court determined that a state of armed conflict existed in the region at all times relevant to the case. Further, the court concluded that all of the allegations against Tadic were regarding actions taken within the context of the armed conflict. In so concluding, the court focused on the organization and intensity of the conflict and on the indicative fact that the U.N. Security Council itself had become so involved.

The ICTY then addressed the allegations in turn. As to the Article 2 violations, the court concluded that the article could only apply to crimes against people specifically protected under the provisions of the Geneva Conventions. Further, the court found that the victims were civilians, such that Geneva Convention IV, article 4, would apply. To be considered protected persons, the court concluded the civilians must have been captives of a party to the conflict, and not nationals of an occupying party. Applying this standard to the situation in the former Yugoslavia required a difficult analysis. The ICTY had to determine whether Tadic’s soldiers were operating as de facto organs of the Federal Republic of Yugoslavia or simply as allies. The court ultimately found that the groups were independent allies and, as a result, that the civilians were not protected persons under the applicable statute. Thus, the court found Tadic not guilty of eleven of the charges against him.

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Id. See Prosecutor v. Tadic, supra note 167, para. 140. This decision adopted a much broader victim than that reached by the Nuremberg Tribunal. See id. In so deciding, ICTY concluded that modern international and humanitarian law was no longer limited by the traditional nexus requirement between crime and conflict. See id.

176 See id. para. 70.
177 See id. para. 578.
178 See id.
179 See id.
180 See Prosecutor v. Tadic, 105 I.L.R. 419, supra note 167 para. 81.
181 See Prosecutor v. Tadic, supra note 166 para. 578.
183 See id. para 584.
184 See id. para 607.
185 See id. para 608.
The most recent use of a temporary criminal tribunal occurred in Rwanda following the systematic slaughter of somewhere between half a million and one million Rwandans over a three month period. In response to news of the tragedy, the U.N. Security Council established a Commission to investigate the situation. Based on the Commission’s findings, the Security Council decided to establish the International Criminal Tribunal for Rwanda (ICTR).

One of the most interesting aspects of the operation of the ICTR is its cooperation with the Rwandan national court system, an affiliation made necessary by the extremely large number of alleged war criminals facing prosecution. In order to address more efficiently the large number of prosecutions necessary, Rwanda passed national legislation to govern the responsibilities of the national court system in bringing the war criminals to justice. This cooperation is interesting for two reasons. Primarily, it would seem that a cooperative agreement between a country and an international tribunal would provide an extremely efficient enforcement method. In addition, a joint condemnation from both sources should demonstrate the conviction of the national government to investigate and enforce the crime, perhaps minimizing the potential for criminals to flaunt the international laws as examples of outwardly imposed morality. As such, it should work as a particularly effective deterrent.

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186 See Prinz, supra note 153, at 578. The disaster began when the Presidential Guard murdered their political opponents including the Prime Minister and the President of the Rwandan Supreme Court. Id. at 577-78. The massacre followed in the footsteps of the deaths of Rwandan President Habyarimana and President Ntaryamira of Burundi in a plane crash that may have been shot down by political opponents. Id. at 577. The unfortunate crash occurred just eight months after the signing of the Arusha Peace Accords which were intended to bring an end to decades of fighting between the Hutu and Tutsi ethnic groups.


188 See id. (requesting the Security-General to establish a commission to investigate Rwandan Massacre).


190 See id. at 358 (citing Organization of Prosecutions for Offenses Constituting the Crime of Genocide or Crimes Against Humanity Committed Since October 1, 1990, Organic Law No. 08/96 (Aug. 30, 1996), in Official Journal of the Republic of Rwanda (Sept. 1, 1996)). It organizes all the defendants into one of four categories depending on the severity of their alleged crimes. Id. The defendants in the most egregious category, consisting of leaders and those involved in particularly heinous murders, were subject to the death penalty and not permitted to plea bargain. Id. In order to maximize the court’s efficiency, defendants in all three of the other groups were allowed and encouraged to plea bargain to receive lower sentences. Id.
As promising as this aspect of the ICTR was, it was not without difficulties. One of the main potential problems with any national government taking an active role in the enforcement of international human rights is the perception of discriminatory treatment.\(^{191}\) In Rwanda itself, the government is dominated by the Tutsis.\(^{192}\) Any government effort to investigate crimes will either actually be discriminatory against the Hutus or at least perceived to be so.\(^{193}\)

Of course, this difficulty is largely a result of the particular situation in Rwanda itself and, thus, is not likely to be that critical in other contexts. However, it may prove a critical limitation in the context of the protection of the press. As we have seen, often times violence against journalists can be traced back to the government of the nation in which it occurred.\(^{194}\) Thus, while governmental cooperation, similar to that in Rwanda, could be a positive factor in any international human rights scheme for the protection of journalists, the international tribunal involved would also need the ability to act independently and in direct opposition to the interests of the national government should the need arise.

In addition to the particular problems associated with the attempt at cooperation, the ICTR suffered from many of the jurisdictional difficulties also associated with the ICTY. In fact, these problems ultimately led the Rwandan government itself to vote against the creation of the tribunal.\(^{195}\) In doing so, the government cited several substantial limitations.\(^{196}\) Chief among these objections was the fact that the organizing ICTR’s jurisdiction was limited to crimes occurring during the time period between January 1 and December 31, 1994.\(^{197}\) The Rwandan government also objected to the relatively small size of the ICTR and its inability to give the death penalty.\(^{198}\) These criticism of the ICTR, like the similar ones levied against the ICTY, provide a real world example of the limitations inherent in the use of temporary tribunals for the enforcement of international human rights. Of course, such limitations would

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\(^{191}\) See Prinz, supra note 153, at 581.

\(^{192}\) See id.

\(^{193}\) See id. Since the tragedy in Rwanda was the result of ethnic tensions between the Tutsis and Hutus, any perceived discrimination in the investigation and punishment of the war crimes could potentially lead to further estrangement between the two ethnic groups and, as a result, further atrocities.

\(^{194}\) See 24 Journalists Killed in 2000, supra note 1. The article describes examples of violence against journalists on the part of both the government in the form of the army and on the part of the leading rebel group. Id.

\(^{195}\) See Prinz, supra note 153, at 579.

\(^{196}\) See id.

\(^{197}\) See id.

\(^{198}\) See id.
be even more severe in the context of press protection. Although a great deal of press violence occurred in Rwanda and Yugoslavia and, as such, could be addressed by the tribunals enacted to deal with both situations, press violence often occurs independently of any larger upheaval.\textsuperscript{199} Thus, any effective enforcement method would necessitate a tribunal with the ability to respond quickly to a situation in which the violence against journalists is the sole criminal act at issue.

\textbf{G. International Criminal Court}

Although the temporary tribunals have been an important and often effective tool in the enforcement of international law, each tribunal has been plagued with difficulties, most notably, severe and frequently self-imposed limitations to their jurisdiction. It is largely because of these limitations that proponents of international protection of human rights have argued for the creation of a permanent tribunal to investigate and prosecute war crimes, an institution first proposed by the United Nations in 1947.\textsuperscript{200} A committee was established to explore this acknowledged need in 1948.\textsuperscript{201} The committee then completed a report and Draft Statute in 1951.\textsuperscript{202} After receiving comments and further guidance from the United Nations General Assembly, the Committee composed and submitted a revised Draft Statute in 1953.\textsuperscript{203} Due to difficulty resulting from the Cold War, the 1953 statute marked the end of its formal consideration by the United Nations for several decades.\textsuperscript{204}

The idea of a criminal court once again received official consideration in 1989 after Trinidad and Tobago expressed concern to the United Nations about the rampant drug trade in their region and the potential of establishing an

\textsuperscript{199} See 24 Journalists Killed in 2000, supra note 1. The article cites examples of violence against the press occurring in Bangladesh, Brazil, Spain and other countries not currently engaged in war or other major upheavals. \textit{Id}.


\textsuperscript{201} \textit{See G.A. Res. 260 B (III) (1948)}.

\textsuperscript{202} \textit{G.A. Res. 489 (V) (1950). The Committee on International Criminal Jurisdiction was comprised of members representing Australia, Brazil, China, Cuba, Denmark, Egypt, France, India, Iran, Israel, the Netherlands, Pakistan, Peru, Syria, the United Kingdom, the United States and Uruguay. See id}.


international criminal court to more effectively deal with the issue. As a result of Trinidad and Tobago's interest, the United Nations requested that the International Law Commission (ILC) consider the establishment of such a tribunal. In 1993, in the midst of the establishment of the ICTY, the ILC completed a Draft Statute for the proposed International Criminal Court and submitted it to the General Assembly. After receiving comments from the United Nations member states, the ILC adopted a revised, Draft Statute for an International Criminal Court in 1994 (Draft Statute). In 1994, the General Assembly created an ad hoc committee to evaluate the Draft Statute and propose revisions. The committee met for two two-week sessions in 1995 and concluded that more work was needed to draft a workable framework for an international criminal court. Later that same year, the General Assembly created a new committee to address the creation of an international criminal tribunal and draft the text for an appropriate convention doing so. The Preparatory Committee, in 1998, drafted the text of a statute establishing an international criminal court (Rome Statute). At a diplomatic conference held in Rome from June 15 to July 17, 1998, the member states voted to accept the draft treaty and establish the court by a vote of 120-7.

The International Criminal Court, as established and defined by the Rome Statute, has a potential to combat violence against journalists unequaled by prior international, humanitarian tribunals for several reasons. Primarily, the Rome Statute gives the International Court jurisdiction over individuals who commit the crimes listed under Article 5 of the statute. This jurisdiction extends to people accused of crimes in a wide variety of situations. First, accused people are subject to the jurisdiction of the court if they are citizens

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206 See id.
210 See id.
211 See G.A. Res. 50/46 (1995) (noting that the United Nations Preparatory Committee on the Establishment of an International Criminal Court was composed of representatives from more than 120 countries).
213 See id. (noting that the total vote was 120-7, with 21 abstentions).
214 See id. art. 25.
of a party state or if the alleged crime occurred in a party state.\textsuperscript{215} Secondly, the court has jurisdiction over crimes committed by citizens of states that are non-parties but have formally accepted the jurisdiction of the court.\textsuperscript{216} Finally, the court has jurisdiction over any Article 5 crime that the United Nations Security Council has referred to the prosecutor.\textsuperscript{217}

In addition to this broad, general jurisdiction, the court’s jurisdiction has been extended by the Rome Statute by a variety of specific measures, as well. The court’s jurisdiction extends to individuals who are indirectly responsible for a crime, either by ordering, soliciting, aiding or abetting the commission of the crime.\textsuperscript{218} Also, the court retains jurisdiction over alleged wrongdoers regardless of their official capacity as a politician, elected official or military officer.\textsuperscript{219} The Rome Statute further states that a person accused of a listed crime cannot avoid the jurisdiction of the court by claiming that the actions at issue were taken as a result of military orders to do so.\textsuperscript{220} Thus, jurisdictionally at least, the Rome Statute of the International Criminal Court provides an unprecedented ability to enforce international, humanitarian law. It does so, practically regardless of the nationality of the alleged criminal. Or the political situation of the country in which the alleged crimes occurred.

The International Criminal Court is not without its critics, however. Although the United States played a vocal role in calling for the implementation of such a court, in recent years U.S. opposition has been the single most effective obstacle to the implementation of the court.\textsuperscript{221} This opposition culminated in the United States’ decision to vote against the creation of the court at the Rome Conference in 1998, one of only seven countries to take such a stance.\textsuperscript{222} Among the criticisms leveled at the court by the United States include the general fear that the court will override national sovereignty and prosecute U.S. citizens or servicemen for acts in which the United States itself has determined the alleged wrongdoer has no liability.\textsuperscript{223} An additional

\textsuperscript{215} See id. art. 12(2).

\textsuperscript{216} See id. art. 12(3).

\textsuperscript{217} See id. art. 13(b).

\textsuperscript{218} See id. art. 25(3)(b)(c).

\textsuperscript{219} See id. art. 27-28.

\textsuperscript{220} See id. art. 33.


\textsuperscript{222} See id. at 87.

\textsuperscript{223} See id. at 92. In response to this particular concern, the treaty negotiators added a provision to the treaty requiring the prosecutor to notify the involved state of his or her interest
criticism leveled by U.S. negotiators is that the definitions of crimes punishable by the court are overly vague. Much of the opposition to the criminal court has come from U.S. Senator Jesse Helms, Chairman of the Senate Foreign Relations Committee, who has described the statute as a monster that needs to be slain.

H. Regional Human Rights Tribunals

Another method by which laws protecting journalists could be enforced is by the human rights organizations that have been developed creating and applying international humanitarian law to particular regions of the world. Essentially, such an approach may be more effective simply because the people on whom the laws will be imposed may view them as being self-imposed rather than imposed by other countries with differing world views and different goals. Such an approach, focusing on each region's own conception of its values, appears particularly important when one looks back at the failures of the United Nations' and UNESCO attempts to protect journalists and press freedom. These failures were due largely to third world objections over the imposition of world values, as discussed above.

I. African Commission

One of these regional organizations that could take a lead role in the protection of journalists is the African Commission on Human and Peoples' Rights (African Commission). The African Commission grew out of an effort by the member states of the Organization of African Unity (OAU) to take a stronger role in fostering and protecting human rights. First drafted in 1979, the second draft of the Charter of the African Commission (African Charter) went into effect on October 21, 1986, having been ratified by fifty of the fifty-five member states. The country, then, has the option of investigating the matter itself, a decision that the prosecutor can only override if it can convince the Pre-Trial Chamber of the court that the state is failing to investigate adequately. See id.

224 See id. at 96.
225 See id. at 99.
226 See Clement Nwankho, The OAU and Human Rights, 4 J. DEMOCRACY 50-51 (1993). The OAU charter was adopted in 1963 in the aftermath of decolonization to wipe out the vestiges of colonialism and develop political unity among the African nations. A significant criticism of the OAU has been its failure to focus on individual human rights and its reluctance to interfere with the internal affairs of its member countries. The African Commission thus arose in an attempt to remedy the criticized aspects of the OAU. See id.
three OAU member countries. The charter itself is a particularly strong statement in favor of human rights. It guarantees a wide variety of rights, including equal protection, freedom from ex post facto laws, the right to self determination, the right to work and the right to education. The charter is nearly unique among such international compacts in its focus on such a broad range of human rights.

The enforcement of the rights guaranteed by the charter is effected, not by a court, but by the African Commission itself. Aggrieved states or individuals can submit petitions to the commission for acts by member States in violation of the Charter. The commission is charged with the responsibility to evaluate the petition, determine if it meets the requirement of an admissible complaint and then work with both parties to reach a consensus, and ultimately prepare a report denoting its findings. Once a decision is reached on the issue, however, the commission has no authority to bind the parties to the decision.

The lack of a judicial body with international jurisdiction may seem a severe weakness of the Charter but was in fact a considered and rational decision by the drafters to embrace a strategy of enforcement based on negotiation as opposed to confrontation, a strategy which the drafters saw as more representative of a traditional African means for solving disputes. Although this limitation is severe, it does not necessarily preclude the commission from playing a critical role in the future protection of the press. Hope remains because of Article 66 of the Charter, which provides that the charter may be amended or supplemented by special agreements. Thus, the charter could be amended to provide for the establishment of a court with proper jurisdiction to enforce the Charter’s goals. The method by which the

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229 See OAU Doc. CAB/LEG/67/3, Rev. 5, supra note 227.
230 See id. arts. 1-26.
231 See id.
232 See id. art. 30.
233 See id. art. 47.
234 See id. arts. 52, 56-57.
235 See id. art. 58-59.
237 See OAU Doc. CAB/LEG/67/3, Rev. 1. art. 66. Stating that “special protocols or agreements may, if necessary, supplement the provisions of the present charter.” Id.
238 See id.
African Commission could play a significant role in the protection of journalists working in war-torn regions in Africa therefore is clear. First, the Charter would have to be amended to include violence against journalists as a crime receivable by the commission. If that were done, then an aggrieved individual or non-governmental organization could bring a written complaint about such violence to the Secretary of the Commission. The commission then would have the responsibility of investigating the complaint. For such a system to be effective, however, an African court with sufficient jurisdiction to enforce the commission’s decrees would have to be established, as discussed supra.

Furthermore, the charter basically limits the jurisdiction of the commission to acts committed by the governments of member states. Thus, violence against journalists would only be punishable if it could be attributed to the government of a member state. Thus, to be a truly effective force for justice in this area, the charter would have to be further amended to extend the commission’s jurisdiction to actions taken by rebel groups, other independent organizations and even individuals themselves.

J. Inter-American Court of Human Rights

Another regional human rights organization that could play a pivotal role in a future effort to physically protect the press is the Inter-American Court of Human Rights (Inter-American Court). The Inter-American Court was created by the Inter-American Commission of Human Rights with the drafting of the American Convention on Human Rights in San Jose, Costa Rica, on November 22, 1969. The primary purpose of the court, as defined by the court’s founding statute, is to apply the humanitarian rules listed in the Inter-American Convention on Human Rights through both advisory and adversarial, contentious jurisdiction.

239 See id. art. 66.
240 See id. art. 55.
241 See id.
242 See id. art. 47.
243 See OAU Doc. CAB/LEG/67/3, Rev. 5, supra note 227, art. 47.
245 See id. pt. 2, ch. 8. The advisory jurisdiction is prospective and is designed to allow the court to avoid future disputes. The contentious jurisdiction, on the other hand, is designed to resolve current conflicts. As such, it is the contentious jurisdiction which will play a more significant role in the protection of journalists and thus it is that jurisdiction with which this note is particularly concerned. Id.
The Inter-American Court begins its application of contentious jurisdiction when an aggrieved party brings a complaint that a member has breached the obligations of the Inter-American Commission. The judicial process itself occurs in the form of a public hearing which ends in the presentment of an unappealable opinion. If the court finds a violation has occurred, it can then order reparations be made. A particularly interesting aspect of the Inter-American system is its enforcement provisions, which are much more extensive than most humanitarian regimes.

Of course, for the Inter-American Court to play a pivotal role in the protection of the press, the Commission would have to be amended to include press violence as a prohibited activity. The method for doing so is relatively easy, however, and the amendment process was evidenced in 1985 when the General Assembly of the OAS approved the Protocol of Cartagena of Indias and thus amended the charter to more effectively prevent and punish torture. The protocol provided a detailed definition of the offense of torture and established an improved scheme for its investigation and punishment. The new protocol entered into force on February 28, 1987, thirty days after the second member state ratified the language. It's first application in a criminal trial occurred in 1998. An amendment to include violence against journalists would likely be very similar in form and function to the torture protocol.

K. The European Court of Human Rights

A third regional human rights organization that could play an important role in the protection of the press is the European Court of Human Rights (European Court). Established in 1959 by the European Convention on

246 See id. art 48-50.
247 See id. art 67.
248 See id. art. 68.
249 See id. The statute mandates that member states will comply with the judgements of the court. Id. Further, the statute allows that compensatory damages judgements may be executed in the country concerned in accordance with that country’s domestic procedure governing the execution of judgements against the state. Id.
250 See Inter-American Convention to Prevent and Punish Torture, Dec. 9, 1985, O.A.S.T.S. No. 67, 25 I.L.M. 519. The Convention was adopted in Cartagena de Indias, Colombia at the fifteenth regular session of the OAS General Assembly. See id.
251 See id.
252 See id.
the original intent of the court was to put teeth behind the rights enumerated in the European Convention. Under the terms of the convention, a claim may be brought in two ways. First, a claim may be brought to the attention of the commission by any state party to the convention. Secondly, a complaint may be brought to the commission by any person, non-governmental organization or group of individuals that claim to be aggrieved by a violation of the convention. Once the commission has agreed to accept a complaint brought through one of these two processes, it is directed to begin an investigation into the facts of the complaint. The states involved with the decision are directed to furnish all facilities necessary for the effective conduct of the investigation. In investigating and attempting to resolve the complaint, the commission’s first goal is to attempt to secure a friendly settlement. Failing that, the commission must then write a report containing an opinion as to whether a breach has occurred. Then, the commission report is transmitted to the Committee of Ministers.

After the Committee of Ministers receives the commission report, one of two things may happen. First, within a period of three months after the transmission, the issue may be referred to the European Court of Human Rights (European Court). Each case brought before the European Court will be considered by a chamber composed of seven judges, including an ex officio member who is either a national of a concerned state party or a judge chosen by the member state. The chamber then evaluates the complaint to

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254 See Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature Nov. 4, 1950, E.T.S. No. 5 (Council of Europe). The European Convention was the first international alliance to provide for the protection of human rights in treaty form.

255 See id. The rights guaranteed by the Convention include freedom of thought, religion, the right of respect for his privacy and the right to be free from torture and slavery.

256 See id. art. 24. The state party may refer the complaint to the Commission through the Secretary General of the Council of Europe.

257 See id. art. 25. According to the terms of the agreement, such complaints must be deposited with the Secretary General of the Council of Europe who shall and transmit copies publish the complaint and to each of the state members of the convention.

258 See id. art. 28.

259 See id.

260 See id.

261 See id. art. 32.

262 See id.

263 See id. art. 48. The European Court consists of one judge from each member state. The members are elected by the Consultative Assembly from a list of persons nominated by the Member states of the Council. See id.

264 See id. art. 43.
determine whether a violation has occurred. If it concludes that a violation has occurred, the court will then give a final judgement, binding on the member states, that will be executed under the supervision of the Committee of Ministers. If the case is not referred to the European Court, the Committee of Ministers must then decide by a two-thirds vote whether a violation of the convention has occurred. If they find that a violation has occurred, the Committee of Ministers can prescribe measures that are binding on states that are parties to the convention.

Although the convention appears to provide an extensive and effective method for the enforcement of the rights enumerated therein, it is plagued by a number of fairly severe limitations. One limitation on the jurisdiction of the European Commission is that it may only address complaints that are brought to the commission after all domestic remedies have been exhausted. Another limitation is that the language of the convention apparently limits relief to violations that are the result of decisions or measures taken by authority of a member state of the Council. As we have seen in other contexts, such a limitation would effectively prevent the European Court from protecting many journalists, as much of the violence is the result of individuals or groups not attributable to a member state.

In order to make the European Court a significant force for the protection of journalists, the first step would be an amendment to the European Convention listing violence against journalists as an explicitly proscribed act. Unfortunately, there is no language in the convention itself which refers to an amendment process. The means by which the convention has been historically amended is through the addition of protocols. Since the ratification of the original treaty, four protocols have been added. The

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265 See id.
266 See id. arts. 51-54.
267 See id. art. 32.
268 See id. The Committee of Ministers is also enabled to provide a specific time period during which the party must take the prescribed measures.
269 See id. art. 26. Furthermore, complaints must be brought within six months from the date on which the final domestic decision was made.
270 See id. art. 50.
272 See id.
273 See id.
274 See id. at app. 1-4. The First and Fourth Protocols deal with the enumeration of protected rights in addition to those listed in the convention. The Second Protocol confers on the European Court the competence to give advisory opinions. The Third Protocol makes a series of specific amendments to the convention.
process of amendment by protocol is far from easy, however. It requires ratification by a significant number of the member states of the convention.\textsuperscript{275} For the European Court to protect journalists, a Fifth Protocol delineating the particular acts prohibited would have to be drafted and sufficiently ratified to enter into force.

IV. Conclusion

The primary conclusion of this investigation is simply that there is no current adequate international scheme for the protection of journalists working in dangerous regions. All too frequently, the perpetrators of these horrible crimes go unpunished. As a result, it appears that many military groups seem to view such violence as a legitimate method to silence criticism and forward their cause.

That said, the good news is that there exists a basic enforcement infrastructure, consisting of currently extant regional human rights tribunals and the United Nations. These organizations have the potential, at least, to play a major role in the protection of journalists. Further, shifting these tribunals into this new role would require, as a general matter, a relatively small number of changes to the current schemes. Amending the treaties underlying the various international organizations is typically a straightforward process. In many cases, amendments expanding the rights covered by the treaties have already been proposed and accepted. Such additions provide blueprints for the sort of expansion necessary for the adequate protection of the press.

What such an alteration would require, however, is the desire on the part of the international community to address the current problems facing journalists throughout the globe. Although various organizations such as the Committee to Protect Journalists and the Red Cross are working to publicize the issue, it has been a long while since the international community has addressed it in a formal manner. Since journalists are frequently the sole source of reliable information on the successful implementation of every international humanitarian goal, the importance of this goal cannot be overstated.

Of the particular methods for the enforcement of international human rights addressed throughout this investigation, the clear necessity is for some form of a permanent international tribunal. In a perfect world, an International

\textsuperscript{275} See id. at app. 2. The actual number of ratifications required is determined by the language of the protocol itself. For example, Article 6 of the First Protocol states that the protocol will enter into force after the deposit of ten instruments of ratification.
Criminal Court would work hand-in-hand with the several regional criminal tribunals to provide a balanced, world-wide enforcement scheme that can address particular regional issues with flexibility and effectiveness. Such a scheme would better ensure that journalists could ply their trade in peace and safety, no matter where they are working. That is not to say, of course, that the current proposed incarnation of the International Criminal Court is not without its problems. However, the absolute necessity of a permanent tribunal certainly counsels for further cooperation until the United States and the international community can work out their differences and agree on a comprehensive, effective tribunal. Failing that, the responsibility would necessarily fall on the regional tribunals alone to step up and protect journalists working in their respective regions. While not perfect, such a scheme would certainly be an improvement to the current practice.

While working as a journalist in war-torn and transitional regions will remain a dangerous profession, such action will ensure that journalists everywhere will know that their critical work is respected and appreciated by the international community. More importantly, military groups throughout the world will act knowing that there will be consequences for their actions. When the pen is once again made mightier than the sword, the world will be a brighter, freer place.