



ASF – World

MEMORANDUM

Are TV Stations or any media facilities legitimate military targets under International Humanitarian Law?

During the NATO bombing campaign against the Federal Republic of Yugoslavia in the spring of 1999, NATO launched a missile attack on the RTS (*Radio Televizije Srbije*) TV and Radio Station in Belgrade on April 23rd. As a consequence of the attack, 16 people died and 16 people were injured, all of them technical staff.

This case raises the question whether TV Stations or any other media facilities are to be considered legitimate military targets in an international armed conflict. This memo will not be able to fully answer this question, but will try to shed some light on the legal aspects of this issue.

I. General rules

With regard to the media in general, the Geneva Conventions and the Additional Protocols only contain provisions on the protection of journalists and war correspondents. Art. 79(1) of Protocol I states that a journalist who is engaged in a professional mission in an armed conflict is entitled to the same protection as a civilian, as long as the journalist does not engage in military action.¹ Art. 79(2) states that if a war correspondent is accredited to the armed forces of one of the parties to the armed conflict, he is entitled to the status of a Prisoner of War, if captured, according to Art. 4, A, (4) of the Third Geneva Convention.²

However, the Geneva Conventions and the Additional Protocols do not mention whether the technical facilities that journalists need to carry out their work enjoy equal protection.

Therefore it is necessary to take recourse to the general rules of Protocol I.

Art. 48 Basic Rule

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflicts shall at all times distinguish between the civilian

¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, 1125 U.N.T.S. 609 - 699; see Annex for the full text of Art. 79

² Geneva Convention (III) Relative to the Treatment of Prisoners of War, of 12 August 1949, 75 U.N.T.S. 135 - 285

population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

Prior to the creation of Protocol I the International Committee of the Red Cross had compiled a list of objectives considered to be of generally recognized military importance within the meaning of Art. 48, including also “the installations of broadcasting and television stations”.³ As it became soon clear that an exhaustive list would raise additional problems, this list was dropped in favor of the abstract rule of Art. 52(2).⁴

Art. 52

General protection of civilian objects

1. Civilian Objects shall not be the object of attacks or reprisals. Civilian objects are all objects which are not military objects as defined in paragraph 2.

2. Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

3. In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.

II. Military Use of media facilities

1. Media facilities as military objects

According to Art. 52(2) media facilities can become military targets if they make an effective contribution to the military action of one side and if their destruction brings a definite military advantage for the other side.

The remaining question is in which cases media facilities can actually be considered to meet these requirements.

With regard to the RTS Station, NATO stated that in Serbia TV Stations and Radio relay stations were also used as communication facilities for the military. At a press conference on April 23rd, NATO stated that the RTS Building also housed a large multi - purpose communications satellite antenna dish, and that radio relay control buildings and towers were

³ COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949 (Yves Sandoz et al. eds., 1987), p. 632 - 633

⁴ id. at p. 638

targeted in the ongoing campaign to degrade the FRY's command, control and communications network.⁵ At a later press conference on April 27th, NATO officials stressed the dual use of communication systems, saying that civilian television is "heavily dependent on the military command and military traffic is also routed through the civilian system".⁶ In a letter to Amnesty International, NATO said that RTS facilities were used as radio relay stations and transmitters to support the activities of the FRY military and special police forces, and therefore they represent legitimate military targets.⁷ In another communication to Amnesty International, NATO stated that Operation Allied Force "target[ed] military targets only and television and radio towers are only struck if they were integrated into military facilities" and that "there is no policy to strike television and radio transmitters as such".⁸

Assuming that NATO's findings as to the military use were accurate, the RTS TV Station was obviously of technical importance to the military and thus a military target.

2. Rules to be observed when attacking a military object

However, a lawful attack of a military target requires the observance of certain principles embodied in Protocol I.

Art. 57(1) states that "[i]n the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects".⁹ Art. 57(2)(a)(iii) says that the attacking party shall "refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated".¹⁰ Thus every attack has to be proportional, taking into account the military advantage gained versus the loss of civilian lives or the destruction of civilian objects. Art. 51(4) prohibits indiscriminate attacks on the civilian population. According to Art. 51(5)(b) an attack that is not proportional with regard to the civilian population is also regarded as an indiscriminate attack.¹¹ It is debatable whether the attack against the RTS Station based on its military use was proportional, especially as the TV broadcast resumed only hours after the attack.¹² The Committee Established to Review the NATO Bombing Campaign ("the Committee"), established by the Prosecutor of the ICTY, however, declared the number of civilian casualties unfortunately high, but not clearly disproportionate.¹³

The legality of NATO's attack is furthermore questionable because there was apparently no adequate forewarning of the attack as required under Art. 57(2)(c). This article states that

⁵ FINAL REPORT TO THE PROSECUTOR BY THE COMMITTEE ESTABLISHED TO REVIEW THE BOMBING CAMPAIGN AGAINST THE FEDERAL REPUBLIC OF YUGOSLAVIA, para. 73, available at <http://www.un.org/icty/pressreal/nato061300.htm>

⁶ id. at para. 72

⁷ AMNESTY INTERNATIONAL REPORT, NATO / FEDERAL REPUBLIC OF YUGOSLAVIA: VIOLATIONS OF THE LAW OF WAR BY NATO DURING OPERATION ALLIED FORCE, (June 2000) p. 42

⁸ id.

⁹ Protocol I supra note 1; see Annex for full text of Art. 57

¹⁰ id.

¹¹ id. Art. 51, see Annex for full text

¹² Final Report supra note 7, para. 78

¹³ id. at para. 77

“effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit”.¹⁴ Apparently, Western journalists were forewarned of the attack and thus avoided the RTS building that night. The Committee said that it appeared that some of the Yugoslav officials might have expected that the building would be struck that night. However, it also stated that knowledge on the Yugoslav side did not divest NATO of its obligation to forewarn the civilian population. Nevertheless the Committee concludes “[...] it may nevertheless imply that the Yugoslav authorities may be partially responsible for the civilian casualties resulting from the attack and may suggest that the advance notice given by NATO may have in fact been sufficient under the circumstances”.¹⁵ However, taking into consideration that 32 technicians were present at the time of the attack, it is debatable as to whether an alleged advance warning was sufficient.

II. The broadcast of propaganda as a justification for an attack

The second argument made by NATO was that TV stations in general were a vital part of Slobodan Milosevic’s propaganda machinery.

As „propaganda“ is one of the terms that is often used without being fully aware of its meaning one should begin the legal analysis with defining propaganda.

Propaganda is defined as “doctrines, ideas, arguments, facts or allegations spread by deliberate effort through any medium of communication in order to further one’s cause or to damage an opposing cause”¹⁶ or “[a]lmost any attempt to influence public opinion, including lobbying, commercial advertising, and missionary work, can be broadly construed as to be propaganda. Generally, however, the term is restricted to the manipulation of political beliefs”¹⁷. Thus almost all forms of broadcasts are likely to be regarded as propaganda under these definitions.

With regard to the Yugoslav media it was said that

“[We need to] directly strike at the very central nerve system of Milosevic’s regime. This of course are those assets which are used to plan and direct and to create the political environment of tolerance in Yugoslavia in which these brutalities can not only be accepted, but even condoned. [...] Strikes against TV transmitters and broadcast facilities are part of our campaign to dismantle the FRY propaganda machinery which is a vital part of President Milosevic’s control mechanism.”¹⁸

NATO also announced that Serbian television stations would be attacked, unless they broadcast six hours per day of Western media reports: ‘If President Milosevic would provide equal time for Western news broadcasts in its programs without censorship 3 hours a day between noon and 1800 and 3 hours between 1800 and midnight, then his TV could be an

¹⁴ Protocol I supra note 1

¹⁵ Final Report supra note 7, para. 77

¹⁶ WEBESTER’S THIRD INTERNATIONAL DICTIONARY 1817 (1981 ed.)

¹⁷ THE NEW COLUMBIA ENCYCLOPEDIA 2225 (1975)

¹⁸ Final Report supra note 7 at para. 74

acceptable instrument of public information'.¹⁹ It also stated that the Serbian media was used 'entirely to incite hatred and propaganda'.²⁰

1. Legal Analysis by the Committee Established to Review the NATO Bombing Campaign

The Committee based its legal analysis of this issue on the following legal precedents.

a. The Radio Télévision Libre des Milles Collines

The International Criminal Tribunal for Rwanda stated in the *Ruggiu* decision that

[t]he media, particularly Radio *Télévision Libre des Milles Collines*, was a key tool used by extremists within the political parties to mobilize and incite the population to commit the massacres. RTLM had a large audience in Rwanda and became an effective propaganda instrument. The Accused [Georges Ruggiu] who was a journalist and broadcaster with the RTLM, played a crucial role in the incitement of ethnic hatred and violence, which RTLM vigorously pursued. In his broadcasts at the RTLM he encouraged setting up roadblocks and congratulated perpetrators of massacres of the Tutsis at these roadblocks. In his broadcasts, he continued to call upon the population, particularly the military and the interahamwe militia, to finish off the 1959 revolution. His broadcasts incited massacres of the Tutsi population.²¹

Georges Ruggiu admitted that RTLM broadcasters, managerial and editorial staff bear full responsibility for the 1994 massacre of Tutsi and Hutu opposition members.²² He was found guilty of the direct and public incitement of genocide and crimes against humanity.²³

b. The Julius Streicher Decision by the International Military Tribunal

The ICTR referred to the Julius Streicher decision by the International Military Tribunal in Nuremberg as an important legal precedent for the Ruggiu Case.

Julius Streicher was the publisher of "Der Stürmer", an anti-Semitic, private weekly newspaper that called for the extermination of all Jews in Germany and Europe. The Tribunal held that "Streicher's incitement to murder and extermination, at the time when Jews in the East were being killed under the most horrible conditions, clearly constitutes persecution on political and racial grounds in connection with War Crimes as defined by the Charter, and

¹⁹ id.

²⁰ id. at para 76

²¹ The United Nations, International Criminal Tribunals for Rwanda, Case No. ICTR - 97 - 32 - 1, The Prosecutor v. Georges Ruggiu, (June 1st, 2000), para. 50

²² id. at para. 44

²³ id.

constitutes a Crime Against Humanity“.²⁴ The Tribunal regarded the case as relevant, because “Streicher, like the accused had infected people’s minds with ethnic hatred and persecution“.²⁵

The Committee concluded with regard to these two cases that the media itself is a legitimate military target if it uses propaganda to incite crimes.²⁶

The Committee stated that the Yugoslav media had in fact not been used to incite the commission of crimes, but rather to disseminate propaganda in support of the war effort.²⁷ Thus, the Committee had to deal with the question whether the broadcast of propaganda in order to generate support of the war effort renders the media a military target.

c. The Fritzsche Decision by the International Military Tribunal

The Committee referred to the decision of the International Military Tribunal of Nuremberg in the “Fritzsche Case“. Hans Fritzsche was a radio commentator with his own weekly radio show before becoming the head of the Radio Division of the German Propaganda Ministry in 1942. The Prosecution claimed that he had incited and encouraged the commission of war crimes by deliberately falsifying news. Fritzsche was indicted for the Commission of Crimes against Peace, War Crimes and Crimes against Humanity. The Tribunal however, found that although Fritzsche made statements of propagandistic nature in his broadcasts, these broadcasts were not intended to incite the commission of war crimes. The Court held that his aim was rather to generate support for Hitler and the German war effort. Fritzsche was subsequently acquitted on all counts.²⁸ The Court thus held that mere propaganda intended to generate the support for a war does not constitute a war crime.

The Committee concluded with regard to all three cases that media facilities that broadcast propaganda supportive of a war effort do not constitute a legitimate military target, while media facilities that are used to incite the commission of crimes constitute legitimate military targets. According to the Committee’s findings, the RTLTM would have been a legitimate target.²⁹

2. Legal Analysis by Avocats Sans Frontières

The Committee’s findings can be considered as accurate, although some points need clarification. Contrary to the Committee’s findings, the requirements of Art. 52(2) would not have been met as Art. 52(2) requires that the attack offers a “definite military advantage“and not just “potential or indeterminate advantages“³⁰. The genocide in Rwanda did not contribute to the “war effort“of the parties to the armed conflict taking place in Rwanda. Furthermore

²⁴ THE TRIAL OF MAJOR GERMAN WAR CRIMINALS, PROCEEDINGS OF THE INTERNATIONAL MILITARY TRIBUNAL SITTING AT NUREMBERG, GERMANY, Part 22, 502 (1950)

²⁵ The Prosecutor v. Ruggiu, supra note 19 para. 19

²⁶ Final Report supra note 7 at para. 47

²⁷ id. at para. 76

²⁸ AM J. INT’L L. 41 (1947), 326, 328; THE TRIAL OF MAJOR GERMAN WAR CRIMINALS, PROCEEDINGS OF THE INTERNATIONAL MILITARY TRIBUNAL SITTING AT NUREMBERG, GERMANY, Part 22, 525 - 526 (1950)

²⁹ Final Report supra note 7, para. 47

³⁰ Commentary on the Additional Protocols supra note 3, p. 636

the genocide was mostly carried out by civilians that were not taking part in the armed conflict. The destruction of the RTLM would have saved many lives, but it would not have had any effect on the armed conflict. In general, the commission of war crimes or genocide has only little or no effect on the military actions. Especially WWII showed that e. g. the indiscriminate bombings of civilian objects did not prove to be successful from a military point of view.³¹

This, of course, does not mean that the media facilities that are used to organize or to incite the commission of crimes against humanity or genocide are immune from attacks. Art. 52(2) has to be interpreted in the broader system of the International Criminal Justice system. It is necessary to take into account that e. g. the states that have ratified the Genocide Convention are obliged to prevent genocide.

As a consequence an attack on a media facility may be justified if it is an effective and proportional mean to prevent the commission of genocide and crimes against humanity. The destruction of RTLM could have been justified in this case. Nevertheless, this decision has to be made on a case by case basis.

Additionally, the individual perpetrators may be held personally accountable. The above-mentioned cases showed how individuals had abused the media for the commission of crimes and were subsequently held personally accountable.

The Committee's finding's with regard to propaganda that is aimed at generating support for the war is accurate, as this form of propaganda, too, does not contribute effectively to military action. Any other understanding would lead to severe consequences, as the term propaganda is too broadly defined. The definition encompasses all form of broadcasts and would thus make all national media facilities military targets for the other party to the conflict and vice versa. One should not forget that propaganda in war time is mainly a political issue. The International Law of Armed Conflicts however, is strictly based on military activities and not political activities. Hence propaganda that is aimed at generating public support for the war effort does not render the media a legitimate military target.

Since this legal analysis is mainly based on Art. 52(2) the next important question is whether this provision can be considered to bind all states. Protocol I has been ratified by 137 states out of 191, while 54 states, among them the United States³², are not state parties to it.³³

Protocol I might not have been universally accepted yet like the Geneva Conventions, but one can nevertheless assume that Protocol has acquired the status of International Customary Law over the last years.

The ICRC stated that "this treaty has not yet been universally accepted. But considering that there are 137 states party, customary international humanitarian law certainly cannot be determined [only] by the behavior of 54 states that are not yet bound by it".³⁴ The Swedish Committee of the Red Cross once compiled a list of all the provisions of Protocol I that are

³¹ The aerial bombardments of the civilian population as such, that would be illegal under present International Humanitarian Law, even had an adverse effect as it did not weaken but actually strengthened the population's morale.

³² MARCO SASSOLI & ANTOINE A. BOUVIER; HOW DOES LAW PROTECT IN WAR (1999), p. 603

³³ id. at 465

³⁴ id.

likely to have codified Customary International Law.³⁵ The Committee also stated that the definition of military objects in Protocol I reflects Customary International Law.³⁶ Prof. Eric David considers the Geneva Conventions and the Additional Protocols as *jus cogens*.³⁷ Furthermore one has to take into consideration that the distinction between military and civilian objects as embodied in Art. 48 is considered International Customary Law.³⁸ As most states agree on the importance of this distinction it is also not far-fetched to assume that the definition of a military target as in Art. 52(2) has become International Customary Law.

Based on this legal analysis ASF offers the following guidelines to parties of an international armed conflict:

- 1. Media facilities in general are civilian objects and thus entitled to the protection of Protocol I to the Geneva Conventions.**
- 2. Media facilities can only become military targets if they are used for strictly military purposes like (military communication, et. c.) pursuant to Art. 48 and 52 of Protocol I**
- 3. The broadcast of propaganda does not render a media facility a military target.**
- 4. The use of broadcast with the purpose of inciting and organizing genocide and crimes against humanity can render a media facility a legitimate military target, if an attack is an effective and proportionate mean of prevention of such crimes.**
- 5. It is for the attacking party to prove that media facilities are used for military purposes or constitute a military target according to point 4.**

³⁵ id. at p. 601

³⁶ Final Report supra note 7, para. 42

³⁷ ERIC DAVID, PRINCIPES DE DROIT DES CONFLITS ARMES, 91 (Bruylant 1999) (1994)

³⁸ Sassoli & Bouvier supra note 31 at p. 601, 1025 f.

Annex

Art. 79

Measures for protection of journalists

- 1. Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Art. 50, paragraph 1.**
- 2. They shall be protected as such under the Convention and this Protocol, provided that they take no action adversely affecting their status as civilians, and without prejudice to the right of war correspondents accredited to the armed forces to the status provided for in Art. 4 A(4) of the Third Convention [Relative to the Treatment of Prisoners of War]**
- 3. They may obtain an identity card similar to the model in Annex II of this Protocol. This card, which shall be issued by the government of the State of which the journalist is a national or in whose territory he resides or in which the news medium employing him is located, shall attest to his status as a journalist.**

Art. 48 Basic Rule

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflicts shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

Art. 52

General protection of civilian objects

- 1. Civilian Objects shall not be the object of attacks or reprisals. Civilian objects are all objects which are not military objects as defined in paragraph 2.**

2. Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

3. In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.

Art. 57

Precautions in attack

1. In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects,

2. With respect to attacks, the following precautions shall be taken:

(a) those who plan or decide upon an attack shall:

(i) Do everything feasible to verify that the object to be attacked are neither civilians nor civilian objects and are not subject to special protection, but are military objects within the meaning of paragraph 2 of Art. 52 and that it is not prohibited by the provisions of Protocol to attack them;

(ii) Take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury

to civilians, damage to civilian objects;

(iii) Refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct

military advantage anticipated;

(b) An attack shall be canceled or suspended or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(c) Effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit.

3. When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected shall be that the attack on

which may be expected to cause the least danger to civilian lives and to civilian objects.

4. In the conduct of military operations at sea or in the air, each Party to the conflict shall, in conformity with its rights and duties under the rules of International Law applicable in armed conflict, take all reasonable precautions to avoid losses of civilian lives and damage to civilian objects.
5. No provision of this article may be construed as authorizing any attacks against the civilian population, civilians or civilian objects.

Art. 51

1. The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law shall be observed in circumstances.
2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
3. Civilians shall enjoy the protection awarded by this Section , unless and for such time as they take a direct part in hostilities.
4. Indiscriminate attacks are prohibited: Indiscriminate attacks are:
 - (a) Those which are not directed at a specific military objective;
 - (b) Those who employ a method or means of combat which cannot be directed at a specific military objective;
 - (c) Those which employ a method or means of combat the effects of which cannot be limited as required by this protocol; and consequently, in each such case are of a nature to strike military objectives and civilians or civilian objects without distinction.
5. Among others, the following types of attacks are to be considered as indiscriminate:
 - (a) An attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and
 - (b) An attack which may be expected to cause incidental loss of civilian life, injury to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.