

IS THE BOMBING OF A TV-BUILDING A VIOLATION OF THE INTERNATIONAL HUMANITARIAN LAW?

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INTRODUCTION

This question refers to the bombing of the Serbian TV-building which occurred during the Kosovo crisis in April 1999. Since the international law is to be considered as relative and subject to interpretations, we cannot deal with this question without replace it in a concrete context. Each situation has to be analysed case-by-case, in its context. So we will answer at the question, in the case of the U.S. bombing of the Serbian TV-building one year ago.

Before beginning to answer the question it could be useful to recall the basis of the international humanitarian law. The "laws of war" (term also used to mean "international humanitarian law" or "laws relating to armed conflicts") were codified first at the Hague Conferences of 1899 and 1907. The Hague Conventions lay down some basic principles that still form the basis of the existing rules. A series of other Conventions followed all along the century. The most important ones are the Geneva Conventions of 1949 which essence is "*the principle that persons not actively engaged in warfare should be treated humanely*"¹. These Conventions were developed by the two Additional Protocols of 1977.

In this essay, I will argue that the bombing of a TV-building is a violation of the international humanitarian law. But since the international law is subject to interpretations, it could be possible to argue the opposite... The arguments, which are currently used by the U.S.A. and the North-Atlantic Treaty Organization (N.A.T.O.), are the following. They insist on the fact that the Serbian government is considered as a racist one, ruled by criminals. The Serbians have set up an ethnic cleansing in the Kosovo, which has been qualified as a "threat to the peace" by the United Nations Security Council². They argue that the Radio Television of Serbia (R.T.S.) is closely linked to the racist government and that they contribute effectively to the military actions thanks to their strong propaganda against the Kosovars and the N.A.T.O. So, the TV-building is not a civilian target and has not to be spared as such. As for the civilian people who were killed, they argue that the commitment to not kill civilians is conditioned by the necessities of the warfare. It has been argued 50 years ago that the bombing of a city in order to weaken the enemy military forces killed several civilians but that it was the unavoidable consequence of the warfare³. Moreover, the article 57 of the Protocol I ban the military attacks that could kill civilians only if the number of civilians' death would be too high in comparison with the military gains.

¹ SHAW Malcom N., *International Law*, 3rd edition, Cambridge, Grotius, 1991, p. 730

² S/RES/1199 (1998), 23 September 1998, <<http://www.un.org/Docs/scres/1998/sres1199.htm>> and S/RES/1203 (1998), 24 October 1998, <<http://www.un.org/Docs/scres/1998/sres1203.htm>>

³ U.S. International Military Tribunal of Nuremberg, 10 april 1948, *Ohlendorf* case, cited in DAVID Eric, *Principes de droit des conflits armés*, 2nd edition, Brussels, Bruylant, 1999, p. 227

But my choice is to advocate the protection of civilians, within the international law, as often as possible. In order to be clear in my argumentation, I will use the "judicial syllogism" to structure my stance. So in a first part I will recall the facts that effectively occurred, then in a second part I will expose the rules applicable in this case and finally I will draw a conclusion.

1. THE FACTS

April 23, 1999, the United State Air Force, within the N.A.T.O. framework, bombed the Serbian TV-building, without any authorization of the U.N. Security Council. Moreover, the U.S. Air Force did not prove that it was a military target and did not ask the civilians to get out off the building. This public service had an information and entertainment function vis-à-vis the inhabitants of Serbia and did not take part in the conflict. It did not effectively help the Serbian armed forces and therefore the peoples working in the TV-building could not be considered as participating directly or non-directly to the conflict. This armed intervention is actually a destruction of a civilian building that was non-proportionate. And worse, it killed several civilians (TV workers and peoples in the neighbourhood) and yet it did not bring to a precise and useful military advantage in the armed conflict.

2. THE RULES

First of all, the use of force is banned by the U.N. Charter as stipulated in the article 2§4:

"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

The use of force is authorized only in certain conditions. Since it is not the purpose of this paper we will not go further with it but just mention the exceptions: legitimate defence and authorization by the U.N. Security Council (articles 51 and 53 of the U.N. Charter).

The rules concerning the behaviour during the war (*jus in bello*) are included in the 4th Geneva Convention of 1949⁴ (GC4) and its 1st Protocol⁵ Additional of 1977 (Protocol I). They ban the destruction of any civilian object and the attack of civilian persons. The fact that the Republic of Serbia-Montenegro has not yet ratified the Protocol I is not a valuable argument because the clauses concerned *in casu* have been recognized as customary law. It has been recognized in the advisory opinion of the International Court of Justice in the case *Legality of the threat or use of nuclear weapons*⁶. It states that these rules should be considered as

⁴ Geneva Convention relative to the Protection of Civilian Persons in Time of War - Adopted on 12 August 1949 - Entry into force 21 October 1950 - <<http://www.unhchr.ch/html/menu3/b/92.htm>>

⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts - Adopted on 8 June 1977 - entry into force 7 December 1979 - <<http://www.unhchr.ch/html/menu3/b/93.htm>>

⁶ ICJ, *Legality of the threat or use of nuclear weapons* - Advisory Opinion of 8 July 1996 - <<http://www.icj-cij.org/icjwww/idecisions/isummaries/iunanaummary960708.htm>>, §§ 74-87; see also ICTY, Chamber II, case IT-94-I-T, 7 May 1997, *Tadic*, <<http://www.un.org/icty/tadic/trialc2/jugement-e/tad-tj970507e.htm>>, §577

"a corpus of treaty rules the great majority of which had already become customary and which reflected the most universally recognized humanitarian principles"

As for the civilian objects, the article 52 of the Protocol I states:

"1. Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives 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 of 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." (emphasis added)

So there are two cumulative conditions that have to be fulfilled in order to allow the attack of a civilian good: an effective contribution to military action and that this attack offers a definite military advantage. The doctrine considers that we cannot interpret these clauses *lato sensu* but rather restrictively in order to ban any preventive destruction of a civilian object on the ground that it **could** have a military function⁷. Moreover, the 3rd § of the article 52 cited above states that in case of doubt the attack is to be avoided.

The civilian persons are protected by the articles 51 and 57 of the Protocol I which are too long to be quoted here but which lay down a general protection of civilian persons in any circumstance. The case law confirmed these rules as fundamental ones⁸. The civilian persons cannot be the target of any attack and have to be spared in any circumstance:

"...in some situations there will be no room for doubt, while in other situations there may be reason for hesitation. In such situations the interests of the civilian population should prevail"⁹

⁷ DAVID Eric, *Principes de droit des conflits armés*, op. cit., p. 244

⁸ ICJ, *Legality of the threat or use of nuclear weapons*, op.cit., §78

⁹ Commentary of Protocol I, art. 51, < <http://www.icrc.org/ihl>>, §1979

3. CONCLUSION

Consequently, since the TV-building was not a military target and since the civilian persons had to be spared from any attack, the useless bombing of this building by the U.S. Air Force (via the N.A.T.O.) has to be considered as a violation of the international humanitarian law. This has to be added to the fact that the use of force in itself was a violation of the laws of war, since it was not an attack done in the framework neither of a legitimate defence nor of an authorization of the U.N. Security Council.

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