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ATTACKS DIRECTED AT MEDIATIC SOURCES DURING ARMED CONFLICTS: AN ANALYSIS OF THE BOMBING OF THE RTS STATION IN THE FORMER YUGOSLAVIA UNDER INTERNATIONAL HUMANITARIAN LAW

Ataques Dirigidos a los Medios De Comunicación Durante los Conflictos Armados: un análisis del bombardeo de la estación rts en la ex yugoslavia según el derecho internacional humanitario

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ABSTRACT: This text debates the possibility of media stations being considered legitimate targets that may be attacked in the midst of hostilities. Hence, a monographic study regarding the case of the bombing conducted by the North Atlantic Treaty Organization troops on Serbian Radio and Television Station during the 1999 Kosovo war is done, using as an analytical basis the I Additional Protocol of 1977 rules, and the interpretations from international tribunals. Methodologically, the deductive approach model and the descriptive, explanatory and critical methods regarding the analysis of the objectives are used, just as the bibliographic and documentary techniques.

Keywords: International Humanitarian Law, Media Stations, International Crimes, Imperiality, RTS.

RESUMEN: Este artículo analiza la posibilidad de que los medios de comunicación sean considerados objetivos legítimos, capaces de ser atacados en medio de las hostilidades. Por ello, se realiza un estudio monográfico sobre el caso del bombardeo realizado por tropas de la Organización del Tratado del Atlántico Norte a la emisora de radio y televisión serbia durante la guerra de Kosovo en 1999, utilizando como base analítica las normas del I Protocolo Adicional, y a las interpretaciones de tribunales internacionales. Metodológicamente se sigue el modelo de enfoque deductivo y los métodos descriptivos, explicativos y críticos para el análisis de los objetivos, así como lastécnicas de investigación bibliográfica y documental.

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Palavras-chaves: Derecho Internacional Humanitario, Medios de Comunicación, Crímenes Internacionales, Imperialidad, RTS.

1. INTRODUCTION

International Humanitarian Law (IHL), a branch of Law designed to regulate the conduct of parties in the midst of hostilities, plays a very important role in protecting the human person. Since its emergence in the 19th century (CARDOSO, 2013, p. 199), it imposes the obligation on those involved in armed conflicts to control their actions and minimize the impact that these may eventually cause to the human person, functioning as a true limiter of war practices.

However, even with its constant development, its existence did not prevent harmful activities from being carried out during conflicts, a traditional example being the violations committed by Axis troops in the context of the Second World War. After all, there were already international standards signed in Saint Petersburg, Brussels, Geneva and The Hague (BORGES, 2006) that limited a series of atrocities carried out by German, Italian and Japanese troops between 1939 and 1945. Despite this, IHL continued to develop, having Its normative culmination was the creation of the four Geneva Conventions of 1949, to which were later added its two Additional Protocols of 1977 and, more recently, the Rome Statute of 1998, with the creation of the International Criminal Court.

Among such rules, for the purposes of this text, we can highlight the rules aimed at advertising sources (media outlets, such as television, radio, billboards, printed publications, etc.) in the midst of conflicts, whether to protect or limit them. them. With regard to its protection, it deals with ensuring the continuity of its activities; As for restrictions, one considers the limits of their activities in the midst of hostilities, which, if transgressive, could lead to their transformation into a military target, liable to be attacked during the conflict, if aimed at preserving the minimum rights of people involved in the warlike situation.

It is precisely in this context that the situation of Radio and Television of Serbia (RTS), a civilian state broadcaster located in Belgrade, today the capital of Serbia, which was bombed by troops of the North Atlantic Treaty Organization (NATO) on April 23, fits into this context. 1999, during the war in Kosovo, victimizing employees working there and leaving it off the air for a few hours (BBC, 1999; BBC, 2001a; AMNESTY INTERNATIONAL, 2000). The bombing, the consequences of which were questioned by some of the victims' families at the European Court of Human Rights (JOFFE, 2001; BBC, 2001b), was based on the broadcaster's failure to cover the violations perpetrated by Serbian troops on the Albanian population in Kosovo (JOFFE, 2001). It is precisely around this situation that the present study is developed.

Based on this research, we intend to examine the legality of the aforementioned bombing in light of IHL, reflecting on the existing international norms and precedents on the subject, in addition to bringing about a reflection, in the end, on the imperialist project under which the Law Internacional is settled. Therefore, structurally, it is divided into two parts, the first being focused on the study of IHL rules and the possibility of considering media stations as military objectives capable of being attacked in the midst of war; and the second aimed at

analyzing the case of the NATO bomber on the RTS, specifically whether there were reasonable grounds for carrying out such an attack due to its supposed propagandistic nature.

And for this purpose, methodologically, a qualitative study is carried out, following the deductive model of approach and using descriptive, explanatory and critical methods of analysis. Besides, both bibliographic and documentary techniques regarding the procedures of research are used, in particular, when mentioning the bombing carried out against the RTS by NATO.

2. MEDIA STATIONS AS LEGITIMATE MILITARY OBJECTIVES DURING A MILITARY OPERATION

During periods of armed conflict, IHL establishes that only legitimate military objectives may be subject to direct attack by parties to a conflict. The I Additional Protocol to the 1977 Geneva Conventions determines that:

> Art. 52 – General protection of civilian objects. (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 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. (CICV, 1977, art. 52).

Indeed, as a rule, within the scope of International Law, it has been recognized that media stations can contribute to military action, when they are part of a command, control and communication network (traditionally known as "C3"), and that, as a consequence , could be considered legitimate military targets, under certain conditions (DWORKIN, 2003). In this sense, although it is not possible to state that media stations are legitimate military objectives per se, an analysis of each case individually would be crucial, seeking to understand whether or not there is a contribution to the military communications system (HENDERSON, 2009).

Furthermore, and definitely more controversial, there are also attacks justified based on the propagandistic value of the media station. These are carried out based on allegations that propaganda would constitute direct support for military action (AMNESTY INTERNACIONAL, 2000, p. 45). There are those who even claim that because a government's popular support can be a center of gravity, attacking objects that affect this popular support (such as radio stations, television, etc.) offers a concrete and direct military advantage (DUNLAP, 2001, p. 15). However, when the justification for targeted attacks on stations is their military value as a source of propaganda, questions regarding their legitimacy arise.

In this regard, Amnesty International (2000, p. 46) has already stated that, although stopping government propaganda can help undermine the morale of the population and the armed forces, justifying an attack on a civilian installation for such reasons extends the meaning of "effective contribution to military action" and "definite military advantage" beyond acceptable limits of interpretation. Moreover, Ronzitti (2000, p. 1023) states that if used only

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for propaganda, the stations do not offer a "definite military advantage". However, there are two streams of justification that propose to legitimize attacks on propaganda sources during armed conflicts, which, as a result, deserve detailed discussion.

2.1. MEDIA STATIONS AS THE "NERVOUS SYSTEM" THAT KEEPS A WAR-MONGER IN POWER

In its report to the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia (ICTY), the committee established to review the NATO bombing campaign against the Former Yugoslavia, took the opportunity to ascertain the legality of the bombing about the station served as RTS radio and television. In this, the committee pointed out that if the media is "merely disseminating propaganda to generate support for the war effort, it is not a legitimate target" (ICTY, 2000, para. 47).

However, a few paragraphs later, the committee states that "[i]f the media is the nervous system that maintains a *war-monger*[1] in power and thus perpetuates the war effort, it may fall within the definition of a legitimate military objective" (ICTY, 2000, para. 55). In other words, in a controversial move, the committee draws a very fine line between the media that constitute the "nervous system that keeps a *war-monger* in power" and those that do not. It turns out that the first could be considered a legitimate target to be bombed during a military incursion, while the second could not.

In this sense, Henderson (2009, p. 136) constructs an interesting reasoning. Based on the logic of the report, for example, State A and State B are at war, and State A, a democracy, would hold elections. The two main competing parties in State A, Party C and Party L, have divergent views regarding the continuation of the war. While C started the conflict and wants to continue it, L opposed the country's entry into the conflict and supports ending it. If Media Station M, a supporter of Party C and its involvement in the battle, were attacked, would it be a legitimate target for, in the terms of the report, supporting a "*war-monger*"? The author considers that this conclusion would be erroneous, both in principle and in Law, and that exactly this illustrates the lack of rigor in the committee's conclusion.

In fact, the reasoning reached by Henderson illustrates the obscurity of the conclusion reached by the committee. Despite this, it must be said that the author's analogy partially disregards the main point made by the committee, namely, that the media can be the nervous system of the regime.

In turn, for Laursen (2002, p. 783), the report was ambiguous in finding that the legality of the attack on RTS was questionable due to the justification for the bombing being that the target, the media station, was a source of advertising. In view of this, it is important to state that 'propaganda' is a very broad concept and what some would classify as 'propaganda', for others, would not be.

One proposed approach would be not to attempt to determine whether the use in themselves of radio and television stations for propaganda by the rulers of a state at war makes them military objectives, but rather to decide whether the use of the station to disseminate a type of specific message, makes it a legitimate military target (HENDERSON, 2009, p. 134). However, regardless of the nature of the propaganda broadcast by the station, the practical application of the committee's statement remains nebulous and this passage seems to be another of several obscure points in the report (RONZITTI, 2006, p. 1020).

[1] Someone who promotes, instigates, war.

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2.2. MEDIA STATIONS AS PROMOTERS OF INTERNATIONAL CRIMES

A second justification for attacks targeting propaganda sources would be when they are being used to encourage the commission of War Crimes, Crimes against Humanity or Genocide. The report to the ICTY Prosecutor also discusses this possibility, although, once again, it is vague in doing so. While the committee states that "if the media is used to incite crimes, as in Rwanda, it becomes a legitimate target" (ICTY, 2000, para. 47 – our translation), it also states that "if the media is used to incite crimes, as in Rwanda, it can become a legitimate military objective" (ICTY, 2000, para. 55 – our translation).

In view of this, the interpreters of the report are left with the task of understanding the source of this right to attack media stations that incite crimes, to the point of making them legitimate targets, without going through the characterization as legitimate military objectives as stipulated in article 52(2) of I Additional Protocol of 1977.

To this end, it is vital to resume discussions about encouraging the commission of international crimes by the media present in Nuremberg and Rwanda. In this way, it will be possible to understand that, based on the precedents constructed by these courts, to determine whether the activity promoted by the media station makes it a legitimate target, what must be analyzed is whether the propaganda amounts to a war crime/crime against humanity, or whether it merely constitutes support for the nation's "war effort".

Within the scope of the Nuremberg International Military Tribunal (NIMT), two emblematic cases regarding the encouragement and encouragement of the commission of war crimes deserve investigation. Hans Fritzsche, a member of the Nazi party, radio host and head of the government's wireless news service, and Julius Streicher, a journalist, author of the newspaper Der Stürmer, were accused, inter alia, of committing the crime against humanity of "incitement". and encourage the commission of war crimes (SALTER; McGUIRE; EASTWOOK, 2013, p. 20 and 34-35). The two Nuremberg trials illustrate well, to a certain extent, the duality between propaganda equivalent to a war crime, and that which amounts to, solely, support for the "war effort". This happens because, while Streicher was included in the first hypothesis – and convicted – Fritzsche was included in the second – and acquitted.

The trial that acquitted Hans Fritzsche, although surrounded by controversy, offers a legal basis for understanding what would not constitute illegal propaganda and, consequently, that it could not, prima facie, be sufficient to transform the media station that broadcast it into a possible target. lawful. In the Fritzsche case, the prosecution alleged that the defendant had actively taken part in the "Jewish Question" in his radio broadcasts and that this had a causal impact on anti-Semitic atrocities (SALTER; McGUIRE; EASTWOOK, 2013, p. 37). Moreover, the prosecutor sought to cast Fritzsche as a propagandist who worked within and for the Nazi party, having "help[ed] substantially to tighten the Nazi grip on the German people [...] and coldly incite[d] the humble Germans to blind fury against people who were told, by Fritzsche, that they were subhuman and guilty of all of Germany's suffering" (NIMT, 1946, p. 66 – our translation).

In his defense, Fritzsche claimed that he had been deceived by Goebbels and other Nazi leaders and that, therefore, he did not know about the atrocities that happened to the Jews (NIMT, 1946, p. 168), much less had anti-Semitic intentions (NIMT, 1946, p. 166). In short, Fritzsche sought to eliminate both the causal link between his actions and the Jewish genocide, and his subjective intent in perpetrating the crimes for which he was accused. In the final

sentence, the Court acquitted Fritzsche due to the lack of the subjective element, that is, the specific intention to incite acts of genocide (SALTER; McGUIRE; EASTWOOK, 2013, p. 41-44).

Furthermore, and relevant to this article, the NIMT distinguished generic war propaganda, which does not specifically incite the commission of atrocities, from direct forms of participation in acts of persecution defined as ramifications of crimes against humanity (SALTER; McGUIRE; EASTWOOK, 2013, p. 43). In effect, the Court established, indirectly, the prioritization of the element of "intent" to incite genocide over any objective assessment of the damage caused by hate speech (SALTER; McGUIRE; EASTWOOK, 2013, p. 43).

In this sense, it is possible to state that, based on the Fritzsche precedent, for media stations to be legitimately attacked because they are local incitements to commit international crimes, it is necessary to demonstrate the subjective element (intent) of their perpetrators.

In contrast, in the Streicher case, the Court understood that the anti-Semitic articles published in his newspaper "Der Stürmer", in which Streicher, on several occasions, called for the extermination of the Jews, amounted to incitement of crimes against humanity and war crimes (NIMT, 1946, pp. 501-502 and 529-530). And once again, the Court focused on the subjective nature of Streicher's acts rather than trying to establish a causal link between his publications and any specific act of murder (GORDON, 2004, p. 144). In this regard, NIMT scored:

> Streicher's incitement to murder and extermination, during a period when Jews in the East were being murdered under the most appalling of conditions, clearly constitutes persecution for political and racial reasons in connection with War Crimes, as defined by the [NIMT] Charter, and constitutes a Crime against Humanity (TMIN, 1946, p. 501-502 – our translation).

The precedent established by the Streicher case influenced, years later, the decision taken by the International Criminal Tribunal for Rwanda (ICTR) when asked to decide several cases involving incitement to commit international crimes through a media station in the country, during the civil war. In line with the Convention on the Prevention and Suppression of the Crime of Genocide (UN, 1948), the ICTR was called upon to judge, *inter alia*, the crime of incitement to commit genocide.

In Rwanda, the Court had the opportunity to develop its vision on the topic and produced a modern analysis, which was in line with other international human rights instruments, such as the International Covenant on Civil and Political Rights (UN, 1966) and the European Convention on Rights Human Rights (COUNCIL OF EUROPE, 1950), and with decisions related to the right to freedom of expression (GORDON, 2004, p. 170-173).

Under the ICTR, the defendants were connected to the extremist radio station, *Radio Television Libre de Mille Collines* (RTLM), and the extremist newspaper Kangura, both of which played an active role in the Rwandan genocide. By way of illustration, in one of its publications, the newspaper Kangura had the following headline on its cover: "how about relaunching the Bahutu revolution of 1959 so that we can conquer the Inyenzi-Ntusi [...] what weapons should we use to conquer the Inyenzi once and for all?" (ICTR, 2003, para. 160). Next to the message, there was a photo of a machete (ICTR, 2003, para. 160; GORDON, 2004, p. 157 – our translation).

Specifically, regarding the definition of the crime of inciting the commission of genocide, the Court stated: "[t]he chamber notes that the causal relationship is not a requirement for it to be considered incitement. It is the potential that communication has to cause genocide that makes it an incitement" (ICTR, 2003, para. 1015 – our translation).

Therefore, it is noted that the debate focused on the result that the use of the media produced (*actus reus*) alongside the *mens rea* of the accused, thus dialoguing with the evolution of human rights in the 20th century.

In fact, having established the two main precedents of International Law regarding the crime of incitement carried out through media stations, a question that needs to be addressed is: even when proven to be used for the perpetuation of international crimes, whether through the subjective element only, whether by the will of the agent added to the potential effects of his conduct, what would be the normative basis to justify an attack on media stations other than that contained in article 52(2) of the I Additional Protocol of 1977?

After all, as seen previously, the report to the ICTY Prosecutor stated that, when used to incite crimes, stations, while becoming legitimate targets, can become legitimate military objectives. However, as Laursen (2002, p. 785 – our translation) points out, "even if the definition of a military objective found in Additional Protocol I is accepted as correct, it is very difficult to fit institutions that incite genocide within this definition".

This happens because, as Henderson (2009, p. 137) puts it, it is not enough to abhor war crimes and, consequently, believe that armies can be used to prevent not only the commission of these crimes, but also their incitement. More than that, there must be not only a moral conclusion, but a legal justification (HENDERSON, 2009, p. 137) for this.

Therefore, if the media station does not offer an effective contribution to the enemy's military activities and, consequently, its destruction does not bring a definitive military advantage, under the terms of the second part of art. 52(2) of the I Additional Protocol of 1977, the legality of its destruction would necessarily emanate from another basis. In this sense, Fenrick (2001, p. 496 – our translation) suggests that:

> [...] a facility that is being used to incite the commission of a serious violation of international humanitarian law, or to provide a venue for the commission of such an offense, could be lawfully attacked even if it did not meet the criteria for a military objective [...] because of a generalized right to prevent the continued commission of crimes.

However, as stated by Laursen (2002, p. 787), concepts such as "a generalized right" are difficult to conceptualize and, therefore, used to justify, for example, an attack on a radio or television station. In fact, while it can be stated that the morally legitimate objective of interrupting genocides overcomes the problems related to legal conceptualization (LAURSEN, 2002, p. 787), this definition is, to say the least, controversial.

Seeking to reflect on this, Laursen (2002) indicates a possible interpretation based on the theory of *maiore ad minus*, according to which what is valid for a general aspect must necessarily be valid for the specific context, and can be useful in justifying these attacks on media stations amid humanitarian interventions. This would therefore use *jus ad bellum* criteria (general one), as the justification for using force, when interpreting *jus in bellum* (IHL – specific criteria), which stipulates unavailable targets and their exceptions, legitimizing specific attacks, based on the initial justification for the use of force. Indeed, Laursen (2002, p. 788 – our translation), when trying to understand the nature of the aforementioned "generalized right" reflects: "[i]f it is possible to justify a sustained bombing campaign to interrupt a genocide, it would seem that, fortiori, it would be justifiable to take measures to curb incitement to genocide, such as that propagated by a radio or television station".

In view of this, it is noted that the IHL rules that deal with the possibility of attacking media stations as sources of propaganda and/or incitement of international crimes are not as clear as they seem. Even though a superficial reading of art. 52(2) brings the possibility for this to occur (effective contribution plus military advantage), the way in which the use of media stations for propagandistic purposes was interpreted by the International Criminal Courts leaves the topic quite open, depending largely on the reading made by the party that seeks to attack.

In light of this debate, we then turn to the analysis of the situation specifically involving the NATO bombing of the Yugoslav radio and television station RTS, which took place in April 1999.

3. NATO BOMBING OF THE SERBIAN RADIO AND TELEVISION STATION: AN ANALYSIS FROM IHL

NATO Member States conducted a bombing campaign referred to as Operation Allied Force against the Former Yugoslavia from 24 March to 9 June 1999. During the campaign, 38,004 NATO aircraft were flown, including 10,484 directed to attack. During these attacks, 23,614 aerial munitions were dropped. Of the more than 23,000 bombs and missiles used during the operation, 35% were precision guided (FENRICK, 2001, p. 489).

Although NATO declared that its Air Campaign was "the most precise and with the least collateral damage in history" (COHEN; SHELTON, 1999 apud AMNESTI INTERNACIONAL, 2000, p. 1 – our translation), serious concerns were raised regarding extent to which NATO forces adhere to IHL standards in the conduct of hostilities.

On April 23, 1999, at 2:20 am, NATO intentionally bombed the central studio of the state broadcasting corporation, Serbian Radio and Television Station (RTS). The building was occupied by technicians and other production staff who were working at the time of the bombing (BBC, 1999). There were at least 120 civilians working in the building at the time of the attack (AMNESTY INTERNACIONAL, 2000, p. 44). As a result, a newspaper broadcast was interrupted, but RTS resumed broadcasts around three hours after the bombing. The report to the ICTY Prosecutor concluded that between 10 and 17 people were killed (ICTY, 2000, para. 71), although Amnesty International (2000, p. 44) states that at least 16 civilians were killed.

The United Nations, after establishing the ICTY to analyze violations committed in the conflict, was highly criticized for acting with bias and not considering the (alleged) crimes committed by NATO officers, but only prosecuting Yugoslav war criminals (BASSO, 2019, pp. 146-150). This is because, when the ICTY was established, it was not considered to submit soldiers from the permanent members of the United Nations Security Council to its jurisdiction (RONZITTI, 2000, p. 1018). Furthermore, the report to the ICTY Prosecutor concluded that there were insufficient reasons to institute proceedings against people responsible for the NATO bombing campaign against the Former Yugoslavia, although some consider its conclusions to be quite controversial and obscure (BOTHE, 2001, p. 531).

By considering that the case of the RTS bombing did not deserve investigation, the committee failed to identify NATO's justification for carrying out the attack (ICTY, 2000, para 75). At the same time that the report stated that the attack would be "legally acceptable to the extent that it actually sought to disrupt the communications network" (ICTY, 2000, para. 75 – our translation), which were seen as central to the actions of Milosevic aimed at "directing and controlling the repressive activities of his army" in Kosovo (BENVENUTI, 2001, p. 524), he also

declared that the legality of this act would be "questionable" if it were justifiable just because the RTS was a propaganda (ICTY, 2000, para. 76; LAURSEN, 2002, p. 790). Furthermore, as Bothe (2001, p. 534) highlights, no concrete facts that would support the argument that the station was used as part of the Serbian military communication infrastructure were presented, as stipulated in art. 57(2)(a) of the I Additional Protocol of 1977.[2]

In view of this, considering the committee's inability to ascertain the real legal basis for the bombing of the RTS station by NATO, paying attention to the conclusions reached in the first part of this text, we now analyze whether there were reasonable grounds for accepting and /or refute the attack carried out against RTS for its supposed propagandistic nature.[3]

3.1. RTS AS THE NERVOUS SYSTEM THAT KEPT A *WAR-MONGER* IN POWER AND AS AN INSTIGATOR OF INTERNATIONAL CRIMES

As stated previously, one of the conclusions present in the report formulated by the committee set up to analyze the NATO campaign against the RFI was that, "if the media is the nervous system that keeps a war-monger in power and thus perpetuates the war effort, it may fall within the definition of a legitimate military objective" (ICTY, 2000, para. 55 – our translation). Therefore, even leaving aside all the controversies surrounding this understanding, for RTS to be a legitimate military objective, the nature and propagandistic strength of the station would need to be such that it could be considered the nervous system that kept Milosevic in power.

Indeed, after the bombing of the station, NATO officials pointed out on several occasions their intentions to suppress the propaganda of the Yugoslav Government. Amnesty International (2000, p. 45) revealed that in a meeting with NATO officials in Brussels, they stated that the attack had occurred because the RTS was a propaganda body for Serbian actions and that propaganda was a direct support for the action military. Furthermore, in the review of the air campaign carried out by the U.S. Department of Defense, the bombing was justified based on the characterization of the media station as an "installation used for propagandistic purposes" (BBC, 2001a; AMNESTY INTERNATIONAL, 2000, p. 45).

In this context, after the attack, family members of some victims went to the European Court of Human Rights seeking reparations, in what became known as "*Bankovic and others vs. Belgium and others*" (JOFFE, 2001; BBC, 2001b). Although the Court recognized that it did not have jurisdiction to hear the case (ECHR, 2001, para. 84), in their petition, the authors pointed out that "there was not, nor is there any evidence that the RTS building in Belgrade was, in at

[2] Art. 57(2) of the I Additional Protocol of 1977 provides, regarding attacks to be perpetrated, that some measures must be carried out before carrying them out, which are: "(i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of Article 52 and that it is not prohibited by the provisions of this 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 and 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" (CICV, 1977, art. 57[2]). For an interpretation of these rules, *see* ICRC, s/d.

[3] Regarding the supposed military nature of the station, which could justify the bombing, it should be noted that, as it is beyond the scope of this text, this topic will be analyzed on another occasion. Anyway, for a debate about this, check out the one discussed by Colangelo (2003, p. 1411-1417).

any time, part of Milosevic's 'war machine'" (ECHR, 1999, para. 20 *apud* LAURSEN, 2002, p. 789 – our translation).

Therefore, even considering that the statement made by the committee is nebulous and controversial, it is difficult to see a scenario in which NATO's allegations proved that the RTS could be considered the nervous system that kept Milosevic in power. While former British Prime Minister Tony Blair declared in an interview that the media would be "the apparatus that would keep him [Milosevic] in power" (BLAIR, 1999 – our translation), it should be mentioned that this statement alone does not satisfy legal requirements nor does it characterize the station as a legitimate military objective, denoting a lack of evidence.

Therefore, although the disruption of government propaganda may help to undermine the morale of the population and the armed forces, justifying an attack on a civilian installation on these bases goes beyond the acceptable limits of interpretation of article 52(2) (AMNESTY INTERNATIONAL, 2000, p. 45-46).

As regards the justification for attacking RTS for inciting international crimes, factually, as confirmed by the report to the ICTY Prosecutor, it was not suggested that RTS had been used to openly incite violence as occurred with Radio Milles Collines during the Rwandan genocide, so the attack on the station could not be justified in those terms. Furthermore, by referring to the case of Hans Fritzsche, the report reaffirmed this position:

> At worst, the Yugoslav Government was using the broadcast networks to broadcast propaganda supporting its war effort: a circumstance that does not in itself constitute a war crime (see in this sense the judgment of the Nuremberg International Military Tribunal in 1946 in the Hans Fritzsche case [...]) (ICTY, 2000, para. 76 – our translation).

In this sense, the propaganda carried out by the RTS was not equivalent to international crimes as, for example, found in Rwanda, but only constituted support for the nation's "war effort", demonstrating its achievements in the Kosovo region (BBC, 2001a), there being neither *actus reus* nor *mens rea* on the part of the broadcaster.

Therefore, it can be seen that the RTS Station, even leaving aside the existing controversies surrounding the two possibilities discussed here, could not be considered a military objective due to its propagandistic nature. First, because it does not offer, as a media station, a definitive military advantage under the terms of article 52(2), final part, due to its use for propaganda purposes and, second, because it does not fit into the propositions of both currents discussed here, that is, for not being the nervous system that kept Milosevic in power, nor for instigating international crimes.

3.2. THE BOMBING OF RTS AS AN ACT OF ATROCITY PREVENTION

Another possibility raised to legitimize the attack perpetrated by NATO on RTS, as an instigator of international crimes, would be that the bomber was conducted with humanitarian objectives, justifiable through the theory of *maiori ad minus* (LAURSEN, 2002, p. 787). This argument presupposes the objectives of a humanitarian intervention, which, according to Kolb (2003, p. 119 – our translation),

> [i]n the legal sense, it is a form of forced [unilateral] foreign intervention, which can be defined as the use of force aimed at preventing or opposing massive violations of human rights (especially mass murder and genocide) in a third state, provided that the victims are not nationals of the intervening State[s] and

> there is no legal authorization granted by a competent international organization, such as, in particular, the United Nations through the Security Council.

In other words, humanitarian intervention presupposes a "moral duty" that all States would have to protect any citizens from the most serious abuses of their dignity, regardless of where they are, especially when the State that should do so declines such conduct. or instigates its realization. Also known as *responsibility to protect* (from which the acronym R2P emerges), precisely because it protects the human person from atrocities, this "new form of intervention"[4] admits the use of force against the transgressive State, "it is not possible for it to obtain protection of International Law under sovereignty" (SQUEFF; SCIPPA, 2019, p. 541).

Hence, considering the humanitarian assumptions for the use of force, it would not be up to IHL to restrict its use, but to agree with it. Therefore, the bombing of RTS could have been considered legitimate, regardless of any analysis regarding art. 52(2) of the I Additional Protocol of 1977.

Not only that, this thesis, in a way, seeks to understand the legal nature of the other highlighted above by Fenrick (2001, p. 496), namely, the existence of a "generalized right to prevent" international crimes, so that , if there is minimally a connection between the media station and the commission of genocide, crime against humanity, war crime or crime of aggression, it would already be capable of being attacked, disregarding the provisions of IHL as long as the legality of the target and even though it exists at the international level, there is a whole debate about the illegality surrounding the use of force in a preventive manner[5]. For this line of reasoning, therefore, there is at the international level "a deficient ability to predict the risk of atrocities", so that the preventive use of force could, indeed, be used to save lives (CARNEIRO, 2019, p. 397).[6]

Furthermore, it should be emphasized that this third way is not only controversial, as it not only excludes the application of IHL rules, which, in itself, is already quite controversial insofar as its use must take place at the moment that hostilities begin (PICTET, 1952, p. 32)

[4] Traditional humanitarian intervention presupposes authorization obtained from the Security Council under the terms of art. 42 of the Charter of the United Nations to enter a third State, especially when to reaffirm the assumptions of that Organization, namely, the maintenance of peace, international security and the protection of human rights, being included in the list of exceptions to the prohibition of the use of force – *ius ad bellum* – contained in art. 2(4) also of the United Nations Charter (*see* BÖHLKE, 2011).

[5] "The claim to preemptive self-defense is a claim to entitlement to use unilaterally, without prior international authorization, high levels of violence to arrest an incipient development that is not yet operational or directly threatening, but that, if permitted to mature, could be seen by the potential preemptor as susceptible to neutralization only at a higher and possibly unacceptable cost to itself. Preemptive self-defense differs from anticipatory self-defense [also called preventive self-defense] in that those contemplating the latter can point to a palpable and imminent threat [like the one described in the Caroline doctrine]. Thus, anticipatory self-defense (which was, in our view, not in the contemplation of the drafters of the Charter, though claimed by many to have been grafted thereon by subsequent practice) is at least akin to the armed attack requirement of Charter Article 51, because there may be palpable evidence of an imminent attack" (RESIMAN; ARMSTRONG, 2006, p. 526). *See* also MURPHY, 2005

[6] The author uses as an example the case of East Timor, in which R2P was used to contain the violations carried out by pro-Indonesian militias, arguing that, "[t]he preventive deployment of peacekeepers would have saved hundreds of lives" (CARNEIRO, 2019, p. 397).

based on their *low threshold*[7], but also denotes the imperialist foundations on which International (Humanitarian) Law is based. As Ramina and Hdiefa explain (2020, p. 173),

> [...] IHL has historically justified and legitimized the oppression of non-European peoples through the concept of 'civilizing mission', which operates by characterizing these peoples as the 'other', that is, the barbaric, the backward, the violent, the non-white, the non-Western." These 'others' are those who need to be civilized, [...] being those who must be suppressed by more intense violence, legitimately administered by the colonial power.

And even though colonial power no longer exists today, coloniality is still a reality, since, even after the formal political domination exercised by the Global North over the countries of the South through the colony system has ended, "the universal logic remains and monotopic – from the left and right – from Europe (or the North Atlantic) outwards", in which nations located on the margins merely occupy a passive place in contemporary international relations (MIGNOLO, 2004, p. 34). In other words, these marginalized States are mere recipients of norms internationally conceived by Europeans[8], not participating in their conception, interpretation or discussion of their (il)legality, including IHL.[9]

Even though there are authors in the doctrine who defend today's IHL as a product of international society as a whole[10], the difference in interpretation perceived in the case of the RTS in relation to the NATO bombing, especially when considering the report to the ICTY Prosecutor, denotes the existence of double standards at the international level regarding the need to observe the *ius in bello*: one for nations located in the South and another for countries in the Global North.

As Ramina and Hdiefa (2020, p. 178) add, due to Northern imperiality[11] "it is inevitable that [IHL] governs only specific forms of violence. This means that it will not apply to all actors

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[7] Especially when compared to acts that may give rise to the use of force, whose threshold is quite high. As Rays (2014, p. 159) explains, "[t]he prohibition of the use of force covers all physical force which surpasses a minimum threshold of intensity and that only very small incidents lie below this threshold, for instance the targeted killing of single individuals, forcible abductions of individual persons, or the interception of a single aircraft. Other types of acts that have sometimes been characterized as insufficiently 'grave' include operations aimed at rescuing individuals abroad, hot pursuit operations, small-scale counterterrorism operations abroad, and localized hostile encounters between military units".

[8] "[T]he first generation of specialists working in IHL [International humanitarian Law] contributed to the formulation of Western concepts and standards, which came out in response to Western problems. Its legal formulation used a global language instead a local or regional one, so the law of European military relations became a locus for the process of integration within the international legal system and dressed in universal clothing" (RAMINA; HDIEFA, 2020, p. 187).

[9] See, for example, the attempt to create the responsibility to protect (RWP) thesis by Brazil, in 2011, within the scope of the United Nations General Assembly (SQUEFF; SCIPPA, 2019, p. 554).

[10] This is what Kolb (2003, p. 121 – emphasis added) argues, for example: "Acts of humanitarian intervention were a frequent occurrence in the nineteenth century. There is little doubt that a permissive custom of intervention existed at the time, condoned by the powers in Europe and thus rooted in the *jus publicum europaeum*. It is important to recall that customary law of the nineteenth century was not the democratic concept it is today, premised as it now is on universal practice (or at least tolerance) and a correspondingly universal *opinio juris*, but was an elitist notion".

[11] "Imperiality refers to a right, privilege and feeling of an imperial being or the defense of an imperial way of life, in which the geopolitical invasion of Western power is legitimized or desired. It is reflected in an imperial ethos of perceived care in attempts to bring progress, civilization and democracy to other societies with a certain gratitude or consent." In this step, if "colonialism can be understood as a result of imperialism, coloniality must

who produce violence, but only to some of them" (RAMINA; HDIEFA, 2020, p. 178). Thus, if the idea of intervention based on the defense of humanity observes the interpretation of IHL according to the wishes of the Global North, it culminates in the consideration of this region as the "guardian" of basic international precepts, allowing it, simply, to say which situations can- if an attack on a media station is considered legitimate, regardless of what the rule itself prescribes, including ruling out any questions regarding its conduct[12].

It is precisely because of this that the lack of attribution of responsibility to the NATO members who carried out the bombing in RTS is criticized based on a more objective reading of IHL norms, given that all the doubt surrounding the interpretation of article 52(2) of the I Additional Protocol of 1977 can lead not only to legal uncertainty, but also to the support of the Western imperialist project under which International Law is based, which, at the same time that it imposes its style of combat, it may deny the "Other" its use under the same terms (RAMINA; HDIEFA, 2020, p. 184).

4. CONCLUSION

The case of the bombing of RTS carried out by NATO troops in the context of the Kosovo war is one of the most striking events of this humanitarian intervention. This is because it allows us to consider a fundamental issue of *ius in bello*, namely, the use of media stations as targets subject to attack during a conflict. This is considered a critical point in today's International Law, as the fourth power is gaining more and more space in society and the improper use of the media can actually end up inciting society to commit international crimes, as has already been seen. if in the past not so obsolete (World War II and Rwandan Civil War).

Despite this, as it was possible to notice from this study, this topic still deserves academic attention, since its use in the context of the former Yugoslavia led to more doubts than certainties, especially due to the opinion addressed to the ICTY Prosecutor, who did not make it clear how the RTS was legally bombed by NATO. After all, the existing rule in the I Additional Protocol of 1977 provided, as it was clear, strong bases for allowing – or not – an attack on a media station. And around this debate, this text externalized the possibilities of considering such an offensive legitimate.

First, when considering RTS as a nervous system that kept a *war-monger* in power, that is, Milosevic remained in power due to the actions carried out within the broadcaster; and second, the RTS as an instigator of international crimes, in addition to the subjective elements (*mens rea*), involving the intentions of the agents, and/or objectives (*actus reus*), related to the results obtained from the acts of incitement. Despite this, it was also pointed out that these possible grounds for legitimizing NATO's conduct do not fully reflect the letter of art. 52(2) of the I Additional Protocol of 1977, denoting all the obscurity surrounding the attack carried out in 1999, and, even if they had spoken, they were not present.

In fact, in the end, it was also pointed out that such obscurities remain even more evident when analyzing other possibilities raised by the doctrine to justify NATO's conduct,

be understood as a result of imperiality, [that is], the logic of imperialism, in modernity" (BALLESTRIN, 2017, p. 520 and 522)

[12] Consider the situations in which the United States and the United Kingdom, for example, were not investigated due to the illicit acts perpetrated in other interventions carried out by the countries after the entry into force of the 1998 Rome Statute, creating the Criminal Court International. See, for example, the case of Afghanistan (in the first instance) and Iraq, respectively, in: ADAMCZY, 2019; and STAFF, 2020.

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such as the need to protect humanity from suffering serious violations. Furthermore, it was argued that this argument would be even more tortuous insofar as it greatly looms large over the Western imperialist project existing in International Law, on the basis of which IHL has been structured over the years[13] and which tends to exclude interpretations that are not favorable to the Global North.

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[13] It is important to clarify that this does not mean that IHL is, in its entirety, subject to disregard. "There is no doubt that IHL has achieved many accomplishments and benefits, but its global expansion and the legal organizations that it brought about in the management of wars and armed conflicts were culturally violent, and it was expressed as a result of Western imperial and military phenomena" (RAMINA; HDIEFA, 2020, p. 185), what denotes the imperiality inherent to this branch of International Law, which can, indeed, lead to interpretations that are more favorable to one side (North) than to the other (South).

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