

## Extract

### **Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia**

<https://www.icty.org/x/file/Press/nato061300.pdf>

76. If, however, the attack was made because equal time was not provided for Western news broadcasts, that is, because the station was part of the propaganda machinery, the legal basis was more debatable. Disrupting government propaganda may help to undermine the morale of the population and the armed forces, but justifying an attack on a civilian facility on such grounds alone may not meet the "effective contribution to military action" and "definite military advantage" criteria required by the Additional Protocols (see paras. 35-36, above). The ICRC Commentary on the Additional Protocols interprets the expression "definite military advantage anticipated" to exclude "an attack which only offers potential or indeterminate advantages" and interprets the expression "concrete and direct" as intended to show that the advantage concerned should be substantial and relatively close rather than hardly perceptible and likely to appear only in the long term (ICRC Commentary on the Additional Protocols of 8 June 1977, para. 2209). While stopping such propaganda may serve to demoralize the Yugoslav population and undermine the government's political support, it is unlikely that either of these purposes would offer the "concrete and direct" military advantage necessary to make them a legitimate military objective. NATO believed that Yugoslav broadcast facilities were "used entirely to incite hatred and propaganda" and alleged that the Yugoslav government had put all private TV and radio stations in Serbia under military control (NATO press conferences of 28 and 30 April 1999). However, it was not claimed that they were being used to incite violence akin to *Radio Mille Collines* during the Rwandan genocide, which might have justified their destruction (see para. 47 above). At worst, the Yugoslav government was using the broadcasting networks to issue propaganda supportive of its war effort: a circumstance which does not, in and of itself, amount to a war crime (see in this regard the judgment of the International Military Tribunal in Nuremberg in 1946 in the case of Hans Fritzsche, who served as a senior official in the Propaganda ministry alleged to have incited and encouraged the commission of crimes. The IMT held that although Fritzsche clearly made strong statements of a propagandistic nature, it was nevertheless not prepared to find that they were intended to incite the commission of atrocities, but rather, were aimed at arousing popular sentiment in support of Hitler and the German war effort (*American Journal of International Law*, vol. 41 (1947) 328)). The committee finds that if the

attack on the RTS was justified by reference to its propaganda purpose alone, its legality might well be questioned by some experts in the field of international humanitarian law. It appears, however, that NATO's targeting of the RTS building for propaganda purposes was an incidental (albeit complementary) aim of its primary goal of disabling the Serbian military command and control system and to destroy the nerve system and apparatus that keeps Milosević in power. In a press conference of 9 April 1999, NATO declared that TV transmitters were not targeted directly but that "in Yugoslavia military radio relay stations are often combined with TV transmitters [so] we attack the military target. If there is damage to the TV transmitters, it is a secondary effect but it is not [our] primary intention to do that." A NATO spokesperson, Jamie Shea, also wrote to the Brussels-based International Federation of Journalists on 12 April claiming that Operation Allied Force "target[ed] military targets only and television and radio towers are only struck if they [were] integrated into military facilities ... There is no policy to strike television and radio transmitters as such" (cited in Amnesty International Report, *ibid*, June 2000).