

THE VIOLATIONS OF THE PROPORTIONALITY PRINCIPLE IN APPLYING FORCE IN NATO AIR RAIDS ON YUGOSLAVIA

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Abstract. *The NATO aggression on Yugoslavia, in addition to the indisputable violations of the Charter of the United Nations, abounds in violations of international law of armed conflicts. Nearly all rules of international law of armed conflicts have been violated, but particularly drastic were violations of rules of war and, particularly, violations of obligations to employ unavoidable and necessary force to the extent enough to achieve military objectives. Those violations are so serious that it may be concluded that NATO has employed force with the intention to cause as large destructions as possible, applying a long ago forbidden and left concept of "total war" intended to frighten and torture the civilian population.*

Key words: *international law of armed conflicts, rules of war, customary law, Geneva Conventions, Additional Protocols, proportionality of employment of force, military facilities.*

In the course of air raids of NATO on Yugoslavia many rules of international law of armed conflicts have been violated. However, the violations of the rules of war, that is, that group of rules by means of which the procedures in war are regulated show and prove in the best possible way a worrying determination of the NATO pact; the determination to wage an inconsiderate war, a war intended to cause as much losses as possible and destructions, without any military need, and often without any military logic as well.

The general frame of the rules of war has been stipulated under the Convention on Laws and Customs of War on Land of 1907 and the Rules on Laws and Customs of War on Land to this Convention.¹

It is quite clear from the Introduction to the Convention that the intention of the High Contracting Parties was to "alleviate the evils of war as much as military needs permit", so that the provisions of the Convention as well as of the Rules are intended to serve as a

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¹ For texts of the Conventions and Rules see: *Izvori međunarodnog humanitarnog prava*, Beograd, 1999, pp. 268-278.

general rule of conduct of participants in a war.

Starting from that purpose, pointed out in the Rules is that the belligerent powers have no unlimited right of choice of the means of war.²

That provision was made concrete in Article 23 of the Rules, under which, among many other prohibitions stipulated in other conventions, specifically listed were prohibitions of certain procedures in war. From the point of view of the subject being discussed here, that is, in reference with the rules of war, relevant point is g) which prescribes that it is prohibited "to destroy or plunder the enemy's property, except in cases when those destructions and plunders would be imperatively prescribed by the military needs".

The only correct and the only possible interpretation of this provision is that it is intended to prevent any nonessential and needless destructions. Namely, the right of the people to a military facilities is not principally called in question. But the degree of destruction and annihilation even of a military facilities cannot be unlimited and is subject to severe criteria; it may be destroyed only if that destruction is imperatively prescribed by the military needs. It means that destruction of whatever facilities, including those military facilities, must be proportional to the military advantage accomplished by that destruction. If a military need does not imperatively demand destruction of facilities, that is, if destruction of facilities does not result in any military advantage, then the attack to such facilities and particularly its destruction cannot be deemed as permitted.

Such interpretation results from the provisions of the Protocol I³ under which military facilities are defined (Article 52 paragraph 2). According to those provisions, a military facilities is defined as that which "by its nature, location, purpose or use effectively contributes to a military action and the complete or partial destruction, occupation or neutralization of which under the conditions governing at that time offer certain military advantage". Logically and linguistically interpreted, this provision means that it is not enough that some facilities by its nature, location, purpose or use effectively contributes to the military action, but that it is necessary that "at that time" its complete or partial destruction offers a certain military advantage. Consequently, if there is any military advantage to be accomplished by destructing certain facilities, even if they were military, there is no justification to attack and destroy them.

The same standpoint is advocated by the International Committee of Red Cross. It is pointed out in the Commentary to the Additional Protocols⁴ that the military facilities in the sense of Protocol I is in question only when there exist both elements at the same time.

The obligation of respecting the principle of proportionality of power has been clearly stipulated under the provisions of Protocol I in which preventive measures in the attack are prescribed. Article 57, paragraph 2a, expressly prescribes the obligation of the attacker to take all measures to establish that military facilities is in question in the sense of

² Article 22 of the Rules. ³rd Additional Protocols of June 8, 1977 to the Geneva Convention of 12 August, 1949, on protection of victims of international armed conflicts. – Sources of international humanitarian law, Beograd, 1999, pp. 181-246.

³ Additional Protocols of 8 June, 1977 to the Geneva Convention of 12 August, 1949 on protection of victims of international armed conflicts. – Sources of international humanitarian law, Beograd, 1999, pp. 181-246.

⁴ Commentary on the Additional Protocols of 8 June, 1949, to the Geneva Convention of 12 August, 1949, Geneva 1987, p. 635, note 2018.

Article 52, paragraph 2 i. It means that the attacker is obligated to establish not only that the military facilities is in question, but the the other, aforementioned, condition is fulfilled as well: that its destruction or damage results in a military advantage. Even more precisely stated is the obligation prescribed in paragraph 2 iii: the attacker shall be obliged to abstain from any attack which is supposed to cause collaterally lost human lives, injuries to the civilians, damages to the civilian installations, or a combination thereof, that would be disproportionately great with reference to the anticipated concrete or direct military advantage.

Even an attack underway must be stopped if established that, among other things, it may be expected to cause collaterally lost human lives, injuries to the civilians, damage to the civilian facilities, or a combination thereof, that would be disproportionately great with reference to the anticipated concrete or direct military advantage.⁵

Finally, when a choice among several military installations is possible, which will result in the same military advantage, those facilities will be selected the attack on which is supposed to cause the least danger to human lives and damages to the civilian installations.⁶

Having all the aforementioned in mind, it is quite clear that it was already under the customary law, contained in the Hague Rules, and then approved in the contractual international law, clearly prescribed that the force employed, even when military facilities are in question, must be proportional to the military advantage to be accomplished by that destruction. The proportionality principle determines the boundaries of the permitted force used and helps maintain the balance between the military need principle and the humanity principle; it is a confirmation of the very essence of international law of armed conflicts, which is on the whole and in its essence a compromise of these two principles.

It is clear, therefore, that violation of the proportionality principle, that is, excessive use of force unadmissibly disturbs the balance, already established by the customary law and is a drastic violation of international law of armed conflicts. The violation of that principle deprives the armed conflict of any sense and brings it back to distant past, transforming it into inappropriate and senseless destruction and annihilation without any need and without any control.

It is quite clear from the actions in the course of the air raids on the Federal Republic of Yugoslavia that the determination of the NATO pact was exactly to cause as much losses and destruction as possible, without any military need, even without any military logic. That determination, although it can be seen on the whole from these actions, is expressed to the best in destroying bridges and communications as well as in actions against electric facilities.

Destroyed or heavily damaged, that is, ruined for traffic in the Federal Republic of Yugoslavia were in total 41 bridges and four overpasses of different kind and nature, different sizes and purpose.

The Bridge of Varadin over the Danube in Novi Sad was destroyed on 1 April, 1999, at 4.45 A.M. with two missiles.⁷

⁵ Article 57, paragraph 2b, of Protocol I.

⁶ Article 57, paragraph 3, of Protocol I.

⁷ NATO CRIMES in Yugoslavia; Documentary Evidence, 24 March – 14 April, 1999, Belgrade, May 1999, pp. 233-234

The bridge over the Danube on the Belgrade-Novı Sad highway, near Beška, was heavily damaged and ruined for traffic on 1 April, 1999, at 5.05 A.M.⁸

The Bridge of Freedom, over the Danube, in Novi Sad, the masterpiece of modern architecture, was destroyed on 3 April, 1999, at 7.50 P.M.⁹

The "May 25" Bridge, over the Danube, near Bačka Palanka, was damaged in the raid carried out on 3 April, 1999, at 8.05 P.M.¹⁰

The bridge over the Jezgovići Lake, on the road Kosovska Mitrovica - Ribarice, was destroyed on 4 April, 1999¹¹, at 11.15 P.M.

The bridge in Biljanovac, on the Ibar main road between Raška and Kraljevo, was damaged in the raid carried out on 4 April, 1999, at 11.35 P.M.¹²

The railway bridge in Novi Sad, over the Danube, was damaged in the raid carried out on 5 April, 1999, at 9.15 P.M.¹³

The bridge over Ibar, at the village Brvenik, was also destroyed on 6 April, 1999, at 3.30 A.M.¹⁴

Also destroyed was the bridge near the village Lozno, on the railway line Kraljevo-Raška.¹⁵

Particularly drastic was the the air raid carried out against the bridges near Grdelica, when the railway bridge and the bridge on the highway Niš-Skoplje above the former were hit. Hit on the railway bridge was the international passenger train on which 12 civilians were killed, while 3 civilians are still considered lost. The "Sarajevo" bridge on the highway was again bombed several times and completely pulled down in the fourth attack.¹⁶

Another bridge at Biljanovac, over the Ibar, on the main road Kraljevo-Raška, was bombed and damaged in the raid carried out on 13 April, 1999.¹⁷

The railway bridge near the Limsko Lake, on the railway line Beograd-Bar, was destroyed in the raid carried out on 14 April, 1999.¹⁸

The bridge over the Danube, on the road Smederevo-Kovin, was destroyed in the raid carried out on 15 April at 10.45 P.M.¹⁹

The railway bridge over the Sava, on the railway line Surčin-Ostružnica, was bombed two times: on 21 April, 1999, at 1.40 P.M. and on 23 April, 1999, at 2.06 A.M. The bridge was partially destroyed, being heavily damaged on the remaining part.²⁰

The Žeželj Bridge, the last bridge in Novi Sad, was destroyed in a bombing raid car-

⁸ Ibid., pp. 233, 235.

⁹ Ibid., pp. 233, 236-241.

¹⁰ Ibid., pp. 242-243.

¹¹ Ibid., pp. 242, 244.

¹² Ibid., pp. 242, 244.

¹³ Ibid., pp. 242, 246

¹⁴ Ibid., pp. 242, 247.

¹⁵ Ibid., p. 250.

¹⁶ Ibid., pp. 257-312; NATO CRIMES in Yugoslavia, Documentary Evidence, 25 April – 10 June, 1999, Vol. II, Belgrade, July 1999, p. 337.

¹⁷ NATO CRIMES, 24 March – 24 April, 1999, op. cit., 313, 314-315.

¹⁸ Ibid., pp. 313, 316.

¹⁹ Ibid., pp. 313, 317-318.

²⁰ Ibid., pp. 320-321.

ried out on 26 April, 1999, (it was the second attack on this bridge).²¹

A new bridge over the Sava near Ostružnica, still not opened to traffic, that is, not fully completed, was destroyed in a bombing raid on 29 April, 1999. Nebojša Arsić was killed on the bridge.²²

Even two bridged were destroyed in the village Podina: the railway bridge and the road bridge in several raids carried out on 29 April, 1999.²³

The bridge over the Zapadna Morava, in Trstenik, was destroyed in a bombing raid carried out on 30 April, 1999. Nadežda Petričković was killed on that occasion.²⁴

The bridge over the Lab, at Lužane, on the road Priština-Niš was bombed on 1 May, 1999, at 1.40 P.M., while there was an bus full of passengers on it. 39 passengers were killed and 13 seriously injured.²⁵

The railway bridge near Vatin, on the railway line to Romania, was destroyed in the raid carried out on 6 May, 1999, at 2.30 A.M.²⁶

The Stone Bridge downtown Niš was damaged on 8 May, 1999.²⁷

The bridge over Velika Morava, on the highway Belgrade-Niš, was destroyed in the raid of 8 May, 1999. Damaged in that raid was a Romanian Red Cross vehicle, which was on the highway at the moment of the bombing; the passengers suffered minor injuries.²⁸

The overpass near Horgoš, on the international road Belgrade-Budapest, was damaged on 11 May, 1999, at 10.40 P.M.²⁹

A bridge in a small Montenegrin town Murino was destroyed in a bombing raid on 11 May, 1999 at 2.00 A.M.³⁰

A bridge in Vrbas, in the urban area, was destroyed on 13 May, 1999.³¹

The overpass near Trupalske šume (the Trupale Forrests), on the railway line Belgrade-Skoplje, was pulled down on 14 May, 1999.³²

A bridge over Južna Morava, in the centre of Vladičin Han, was destroyed on 18 May, 1999.³³ On that occasion Milan Ignjatović was killed.

The Cekavica Bridge on the river Jablanica, on the road Bošnjace-Cekavica, in the community Lebane, was destroyed on 27 May, 1999. On that occasion Veselka Spasić and Branka Stanković were killed.³⁴

The Djenovac Bridge on the river Jablanica, in the village Djenovac, on the road Lebane- Leskovac, was bombed on 29 May, 1999.³⁵ On that occasion Stanoje Stojmeno-

²¹ NATO CRIMES, Vol. II, pp. 327-329.

²² *Ibid.*, pp. 330-334.

²³ *Ibid.*, pp. 338-339.

²⁴ *Ibid.*, p. 340.

²⁵ *Ibid.*, pp. 341-346.

²⁶ *Ibid.* pp. 354-355.

²⁷ *Ibid.*, p. 360.

²⁸ *Ibid.*, p. 361.

²⁹ *Ibid.*, p. 368.

³⁰ *Ibid.*, pp. 370-371.

³¹ *Ibid.*, p. 372.

³² *Ibid.*, p. 374.

³³ *Ibid.*, pp. 375-377.

³⁴ *Ibid.*, pp. 385-386.

³⁵ *Ibid.*, pp. 387-388.

vić was killed.

As inconsiderate and as tragic in consequences was the attack on the bridge in Varvarin, carried out on 30 May, 1999, between 1.05 and 1.15 P.M. Bombing was done at noon, on a religious holiday, and the marker day, when over 2000 people were nearby the bridge. Nine people were killed on that occasion.³⁶

In addition to bridges, however, destroyed and annihilated were also other facilities of the road and railway traffic.

The railway line Kraljevo-Lapovo was bombed on 6 April, 1999, at 3.30 A.M. on the part passing through Vitanovac.³⁷

The bus station in Priština have been bombed several times and nearly destroyed.³⁸

The Čačak roundabout road was bombed on 10 May, 1999. A truck was annihilated and the driver and his assistant were killed.³⁹

The railway line at the village Popovac nearby Niš was bombed and destroyed on 27. May, 1999.⁴⁰

The road Prizren-Brezovica was bombed on 30 May, 1999, at 4.30 P.M. when a group of foreign journalists was on the road. The driver of a vehicle was killed, and two persons were injured.⁴¹

The tunnel on the road Sremska Kamenica-Novi Sad was bombed on 30 May, 1999, and 31. May, 1999.⁴²

Sure that bridges, tunnels, overpasses, roads may in principle be military targets. But, that they should be military targets, other aforementioned conditions should also be fulfilled; that their annihilation is a certain military advantage in the times they are exposed to attacks.

If closer look is given to the above examples of annihilation and destruction, it will be perfectly clear that the cited examples were not fulfilled.

First of all, the NATO bombing was commenced under the pretext of "humanitarian intervention" caused by the "humanitarian catastrophe" in Kosovo and Metohia. Only a cursory glance to the stated examples will clearly show that bridges all over Yugoslavia, that is, Serbia and Montenegro, were annihilated and destroyed. Moreover, the greatest number of bridges was annihilated in the central Serbia and Vojvodina. Particularly drastic case of destruction of bridges is that in Novi Sad, over the Danube, more than 500 kilometers far from Kosovo and Metohia. All of the three bridges in the city of Novi Sad were pulled down, which were of no significance for the NATO operations and not used by the Yugoslav Army either. The destruction of those bridges cannot be justified for the reason of disabling the movements of the Yugoslav Army. Namely, there were no movements of the Yugoslav Army units in that part of the country that would require it, even if they were, no military purpose was accomplished because there remained the possibility

³⁶ Ibid., pp. 400-413.

³⁷ NATO CRIMES, 24 March-24 April, 1999, op. cit., p. 252.

³⁸ Ibid., p. 256.

³⁹ NATO CRIMES, Vol. II, pp. 365-366.

⁴⁰ Ibid., p. 390.

⁴¹ Ibid., pp. 393-399.

⁴² Ibid., pp. 414-415.

of movements along other parallel directions. Actually, the purpose of the bridges in Novi Sad was, first of all, to serve for the communication between the two parts of the city, particularly in the course of NATO attacks.

There is no any military purpose to justify the attacks and destruction of bridges in certain towns like Vladičin Han, Niš, Murino, Vrbas. They are all bridges in the centre of those towns. From the military point of view destruction of those bridges is perfectly senseless. Those were the bridges the destruction of which only made normal life and movement of people difficult in those towns because it was possible only a few tens or hundreds meters to go around those places. Thus, fulfilment of any of the above mentioned criteria is out of question; there is no any military benefit in destructing them, particularly at the moment of their destruction.

That neither a well-thought warfare nor respect for limitations imposed by the military needs are in question is also perfectly clear from the example of the destruction of bridges on the very borders with the neighbouring countries: the bridge near Bačka Balanka and the bridge at Bogojevo on the way to the Republic of Croatia; the overpass near Horgoš on the way to the Republic of Hungary; the bridge nearby Vatin on the way to the Republic of Romania, etc. Destroyed were the bridges leading towards the neighbouring countries that cannot be said to have been particularly friendly towards the Federal Republic of Yugoslavia at that time, the less to have been considered allies.

Besides, even if the aforementioned criteria had been satisfied, it would have been allowed to employ only the force necessary and sufficient to make the targets unfit for use. Everything else is the violation of international law of armed conflicts. When bridges of great length are in question, such as those in Novi Sad, it would have been enough to destroy one of the piers or a span of the bridge to make it unfit for the traffic. Instead, those bridges were not made unfit for the traffic, but literally annihilated by destroying all the spans and piers.

Particularly drastic, in this regard, is the example of destroying the railway bridges in the Gorge of Ibar on the line Kraljevo-Raška; destroyed or seriously damaged were all the bridges, although destruction of only one of them would have been enough to make the railway line unfit for the traffic.

Finally, it is quite easy, based on the cited examples, to conclude that the aggressors have not taken even the minimum of preventive measures prior to the attacks, obligated to which they were according to the quoted provision of Article 57, paragraph 2 iii, of the Protocol I. Because of that omission, a great number of victims was caused in several cases of attacks on the bridges: in the attack on the bridge at Lužani, near Priština, when a civilian bus was hit that at the moment was on the bridge; in the case of the attack on the railway bridge in Grdelica, at the moment when the international train was crossing the bridge on which occasion 12 passengers were killed and three are still considered lost.

Inconsideration of warfare and violations of the rules of war, that is, the proportionality principle, are also proved by the actions against electric power plants in the Federal Republic of Yugoslavia.

Thermoelectric power station "Nikola Tesla" in Obrenovac was bombed on 2 May, 1999, by contact threads cluster bombs. The bombs hit the transformer plant and the dis-

tribution installations, so that a short circuit was caused resulting in power failure over a great part of Yugoslavia.⁴³

Thermoelectric power station at Veliki Crljeni near Lazarevac was hit on 22 May, 1999, at 2.30 A.M. with three missiles; a complete distribution system was destroyed as well as turbo generator and electric control of the 110 KV block.⁴⁴

Thermoelectric power station plant at Urovci near Obrenovac was hit on 23 May, 1999, and made unfit for operation.⁴⁵

Electrical installations of "Elektroistok" based in Niš were hit 23 May, 1999, and the 110 kV overhead power line was destroyed.⁴⁶

Transformer station "Novi Sad 3" in Novi Sad was destroyed on 24 May, 1999. The same installations were bombed again on 31 May, 1999, and in that attack the remaining usable equipment after the first attack was destroyed, although it was inoperative due to damages the station had already suffered.⁴⁷

Electrical installations at Bežanijska Kosa in Belgrade were destroyed in the attack carried out on 27 May, 1999, resulting in a failure to distribute electric power to a great part of Belgrade.⁴⁸

Electrical installations at Leštani were also destroyed on 27 May, 1999, resulting in a failure to distribute electric power to another great part of Belgrade.⁴⁹

There is no any military need to justify the destruction of electric power plants all over Yugoslavia. It is clear as day to every layman that each army is, if at least a serious armed force, autonomous regarding the supply of electricity under the war conditions, when the military units are permanently in movement and cannot rely upon stable sources of electricity. In spite of that, contact bombs were used several times to, first temporarily, damage the electricity transfer system and, then, bombing the standing facilities within the system: transformer stations, control centres and the like. Those were quite unproportional attacks which were neither accomplishing nor could have been supposed to accomplish any military purpose.

Although the aforementioned examples of violations of the proportionality principle are the most striking examples, actions against other targets provide equally striking arguments on the determination of the aggressor to employ inconsiderate warfare.

Of such character are even the attacks to some targets that certainly are not military facilities such as certain military headquarters, military schools and even barracks. Those are targets that may be attacked, but by a proportional force and in that case it is hard to deny legitimacy of such attacks. But if they were hit in the first attack and made unfit for use, any subsequent attack may not be legitimate because it does not provide any military benefit, but its primary objective is to cause as much damage as possible. An illustrative example in that sense is the attack on the premises of the Ministry of Internal Affairs of the Republic of

⁴³ Ibid., p. 362.

⁴⁴ Ibid., pp. 492-494.

⁴⁵ Ibid., p. 495.

⁴⁶ Ibid., p. 496.

⁴⁷ Ibid., pp. 497, 503.

⁴⁸ Ibid., p. 498.

⁴⁹ Ibid., p. 499.

Serbia and the Federal Ministry of Internal Affairs downtown Belgrade. It was already in the first attack on these premises, already emptied at the moment of the attack, that they were damaged to the extent so as to be unfit for further use. The attacker seemed to have not had enough of it; in keeping with the intention to cause as much damages as possible, the same targets were hit again and almost completely destroyed causing serious damages to the neighbouring, mainly civilian premises including a hospital as well.

The same characteristics feature the attack on the building of the General Staff of the Yugoslav Army and the Federal Ministry for Internal Affairs also downtown Belgrade.

The same line of neglecting the proportionality principle of the force employed in armed attacks as well as neglecting of compulsory preventive measures can clearly be noticed in actions against other targets; the greatest number of destroyed or damaged structures during the two-month bombing of the Federal Republic of Yugoslavia were the structures which did not meet the criteria to be considered military ones.

The room and the purpose of this paper do not allow for all structures to be mentioned, but only some aggregate data is sufficiently striking to prove these intentions.

For example, over 300 educational institutions of different kinds such as elementary, secondary, higher schools and faculties were destroyed in the course of bombing. Also destroyed were the hotels, television relay systems, economic plants and factories. A great number of health and cultural institutions were also seriously or partly damaged all over Yugoslavia.

All the aforementioned examples prove that NATO, in the air raids on the Federal Republic of Yugoslavia, has deliberately and intentionally decided to wage inconsiderate war, to use unproportional force for the purpose of causing as much destructions and sufferings as possible. Thus, the overall actions actually mean terror over the civilian population and intention to terrify that population.

Having determined to wage such war, according to the "total war" concept criticized by the civilized world a long time ago, serious violations of almost all rules of international law of armed conflicts have been committed by NATO, but quite certainly and undoubtedly the rules of warfare and the proportionality principle have also most drastically been violated.

POVREDE PRINCIPA PROPORCIONALNOSTI PRIMENE SILE U VAZDUŠNIM NAPADIMA NATO NA JUGOSLAVIJU

Miodrag Starčević

Agresija NATO na Jugoslaviju, pored nesporne povrede Povelje Ujedinjenih nacija, obiluje i povredama međunarodnog prava oružanih sukoba. Povredjena su gotovo sva pravila i, posebno, obaveza da se primenjuje samo nužna i neophodna sila, dovoljna za postizanje vojnih ciljeva. Te povrede su toliko ozbiljne da se može zaključiti da je NATO primenjivao silu sa namerom da izazove što je moguće veća razaranja, primenom davno zabranjenog i napuštenog koncepta "totalnog rata", usmerenog na zastrašivanje i torturu civilnog stanovništva.

Ključne reči: *međunarodno pravo oružanih sukoba, pravila ratovanja, običajno pravo, Ženevske konvencije, Dopunski protokoli, proporcionalnost upotrebe sile, vojni objekt.*