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**ATTACK ON THE 'VOICE OF TIGERS' RADIO STATION: IS IT  
LEGITIMATE UNDER INTERNATIONAL HUMANITARIAN LAWS?**

***MAHALINGAM SUTHARSHAN***

**WORKING PAPER 11**

**POINT PEDRO INSTITUTE OF DEVELOPMENT  
POINT PEDRO, SRI LANKA.**



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*Attack on the 'Voice of Tigers' Radio Station: Is it  
Legitimate under International Humanitarian Laws?*

*Mahalingam Sutharshan*

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## **Abstract**

Sri Lanka Air Force bombed the 'Voice of Tigers' (VOT) radio station in the outskirts of Kilinochchi town on November 26, 2007, the day prior to the annual heroes' day speech by the leader of the LTTE. The UNESCO condemned this attack on the ground that it was a civilian target and therefore against International Humanitarian Laws governing armed conflicts. Drawing parallels from similar attacks on enemy communication and propaganda facilities in other conflicts around the world this paper argues that the aerial attack on the VOT was legitimate under International Humanitarian Laws.

## I. INTRODUCTION <sup>1</sup>

International Humanitarian Law (IHL) is said 'to represent in some measure minimum standards of civilization'<sup>2</sup> intended to 'minimise human sufferings without undermining the effectiveness of military operations'<sup>3</sup> by balancing the tension between military necessity and humanitarian considerations.<sup>4</sup> For this purpose, it declares that the parties to the armed conflict should not target the civilian objects. Ascertaining whether a particular target is a civilian or military object is a highly challenging task. It is indeed more problematic when the particular object, for example a media station, plays a dual role, i.e. civilian and military roles. The attack on the Serbian state television and radio (RTS) by the North Atlantic Treaty Organisation (NATO)<sup>5</sup> and the attack on the Hezbollah's satellite radio station, *Al Manar*<sup>6</sup> by Israel raised important questions about selection of military targets in relation to media stations. George H. Aldrich argues that the NATO attack on RTS was not in line with the accepted principles of IHL.<sup>7</sup> On the other hand, Andrew Exum points out that the attack on *Al Manar* by the Israelis was legitimate under the rules of IHL.<sup>8</sup>

In this instance, the attack on the Voice of Tigers (VOT) radio station of the Liberation Tigers of Tamil Eelam (LTTE), by the Sri Lankan Air Force (SLAF) on 27 November 2007 augmented the prevalent debate on justifiability of attacks on media stations during armed conflicts. The Government of Sri Lanka (GOSL) claimed that the attack on the radio station was legitimate under International Law.<sup>9</sup> On the other hand, several international and the local media watch groups criticised the attack and highlighted that the attack violated the principles of IHL.<sup>10</sup> The objective of this essay is to analyse the factual context of the above attack in light of the rules of IHL and to examine the legality of the attack under the rules of IHL.

In order to ascertain the legitimacy of the attack, the analytical answers need to be found for ensuing questions: (1). What is exactly a military objective? (2) When does a radio station become an appropriate and legal target? (3) Was the attack on the VOT legal under the IHL? (4) Did the SLAF violate any international legal obligation by attacking the VOT? By answering the above research questions, the essay argues that the VOT was a legitimate military target and therefore, the attack on that radio station is legitimate under the rules of IHL.

<sup>1</sup> Corrections, comments and suggestions are welcome to [u4432492@anu.edu.au](mailto:u4432492@anu.edu.au)

<sup>2</sup> Major Daniel M. Vadnais, Law of Armed Conflict and information warfare: How does the rule regarding reprisals apply to information warfare attack <<http://www.fas.org/irp/threat/cyber/97-0116.pdf>> at 10 April 2008.

<sup>3</sup> Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (1st ed, 2004) 17.

<sup>4</sup> Ibid.

<sup>5</sup> United Nations, Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia <<http://www.un.org/icty/pressreal/nato061300.htm>> at 10 April 2008.

<sup>6</sup> Andrew Exum, Illegal Attack or Legitimate Target? Al Manar, International Law, and the Israeli War in Lebanon (2007) *Arab Media & Society* <<http://www.washingtoninstitute.org/opedsPDFs/45f6c5d5b3f57.pdf>> at 25 March 2008.

<sup>7</sup> George H. Aldrich, 'Yugoslavia's Television Studios as Military Objectives' (1999) 1 *International Law Forum* 149.

<sup>8</sup> Above n 5.

<sup>9</sup> The Government of Sri Lanka, 'Sri Lanka registers protest with UNESCO' (Press Release, 05 December 2007)

<[http://www.priu.gov.lk/news\\_update/Current\\_Affairs/ca200712/20071205sl\\_registers\\_strong\\_protest\\_over\\_unesco.htm](http://www.priu.gov.lk/news_update/Current_Affairs/ca200712/20071205sl_registers_strong_protest_over_unesco.htm)> at 10 April 2008.

<sup>10</sup> Reporters Sans Frontiers, International Federation of Journalist, UNESCO and the local media watch group, the Free Media Movement criticised the attack.



## II. FACTUAL BACKGROUND OF THE ATTACK ON THE 'VOT'

The LTTE,<sup>11</sup> proscribed as a terrorist organisation in a number of countries including the United States<sup>12</sup>, the European Union<sup>13</sup> and the United Kingdom<sup>14</sup>, is fighting for a separate state in Sri Lanka. It was founded by Mr.V.Pirapaharan<sup>15</sup> in 1976 and rapidly grew up as result of alleged discriminatory treatment to the Tamil minority in the country by the successive governments.<sup>16</sup> It is one of the deadliest terrorist groups<sup>17</sup> in the world which is reportedly accused for committing serious human rights violations including conscription of child soldiers, unlawful killings, torture, and murdering its political opponents.<sup>18</sup> At present, it keeps control over certain areas of the Northern Province of Sri Lanka and has established numerous institutions<sup>19</sup> including their official radio station, Voice of Tigers (*Pulikalinkura*).

On November 27, 2007 at 4.20 p.m the SLAF carried out an attack on the VOT radio station located in the District of Kilinochchi in the Northern Province of Sri Lanka which is under the control of the LTTE.<sup>20</sup> According to the Reporters Sans Frontiers (RSF), nine civilians including three employees were killed and twelve individuals sustained injuries in the attack.<sup>21</sup> The Director-General of the United Nations Economic, Social and Cultural Organisation (UNESCO) Kochiro Matsuura criticised the attack and said "...regardless of the content of the broadcasts aired by the Voice of Tigers, there can be no excuse for military strikes on civilian media. Such action contravenes the Geneva Convention, which requires the military to treat media workers as civilians..."<sup>22</sup> The RSF went further to claim that the SLAF had committed a "war crime".<sup>23</sup> The Free Media Movement, a local media watch dog in Sri Lanka also issued a statement condemning this act of the SLAF.<sup>24</sup> On the other hand, the Government of Sri Lanka resolutely justified the attack claiming that the radio station was an integral part of the terrorist movement and therefore the VOT cannot be categorised as a civilian object but as a military object.<sup>25</sup>

11. Ministry of Defence, Sri Lanka, The Terrorists' War against Sri Lanka, <<http://www.defence.lk/ppls/waragainst.pdf>> at 10 April 2008. .
12. Office of the Coordinator for Counterterrorism, U.S.A., 'Foreign Terrorist Organizations (Press Release, 08 April 2008) , <<http://www.state.gov/s/ct/rls/fs/08/103392.htm>> at 10 April 2008.
13. European Union, EU Annual Report on Human Rights, 2006 <[http://ec.europa.eu/external\\_relations/human\\_rights/doc/report\\_06\\_en.pdf](http://ec.europa.eu/external_relations/human_rights/doc/report_06_en.pdf) at 80> at 10 April 2008.
14. The Home Office of the UK, Proscribed terrorist groups <<http://www.homeoffice.gov.uk/security/terrorism-and-the-law/terrorism-act/proscribed-groups/>> at 10 April 2008
15. The Interpol has issued a red notice to arrest Mr.V.Pirabhakaran for committing 'crimes against life and health, organized crime /transnational crime, terrorism, terrorism conspiracy' See, Interpol, Wanted <[http://www.interpol.int/public/Data/Wanted/Notices/Data/1994/54/1994\\_9054.asp](http://www.interpol.int/public/Data/Wanted/Notices/Data/1994/54/1994_9054.asp)> at 10 April 2008.
16. David M. Rothenberg 'Negotiation and dispute resolution in the Sri Lankan context: lessons from the 1994-1995 peace talks' (1998) 22 *Fordham International Law Journal* 505.
17. Amy Waldan, 'Masters of Suicide Bombing: Tamil Guerrillas of Sri Lanka', New York Times New York), 14, January 14, 2003 <<http://query.nytimes.com/gst/fullpage.html?res=9E06E1DB1231F937A25752C0A9659C8B63&scp=1&sq=Masters+of+Suicide+Bombing%3A+Tamil+Guerrillas+of+Sri+Lanka&st=nyt>> at 10 April 2008.
18. United States, US State Department Human Rights Report 2003, (2003) <<http://www.state.gov/g/drl/rls/hrrpt/2003/27951.htm> >at 10 April 2008, Human Rights Watch, Briefing Paper ( 2003) <<http://hrw.org/backgrounder/asia/srilanka080603.htm>> at 10 April 2008,
19. Krstian Stokke, (2006), 'Building the Tamil Eelam State: Emerging State Institutions and Forms of Governance in LTTE-controlled Areas in Sri Lanka', (2006) 27(6) *Third World Quarterly*, 1019.
20. Reporters Sans Frontiers, 'Reporters Without Borders says air strike on rebel radio station is a "war crime"', (Press Release 28 November 2007) <[http://www.rsf.org/article.php?3?id\\_article=24535](http://www.rsf.org/article.php?3?id_article=24535)> at 10 April 2008.
21. Ibid
22. UNESCO, 'Director-General condemns bombing of rebel radio station in northern Sri Lanka', (Press Release 03 December 2007). <[http://portal.unesco.org/ci/en/ev.php-URL\\_ID=25672&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/ci/en/ev.php-URL_ID=25672&URL_DO=DO_TOPIC&URL_SECTION=201.html)> at 10 April 2008.
23. Reporters Sans Frontiers , above n 19.
24. International Freedom of Expression Exchange, 'Air strike kills five at rebel radio station' (Press Release, 04 December 2007) <<http://www.ifex.org/en/content/view/full/88184/>> at 10 April 2008.
25. The Government of Sri Lanka, above n 08.



### III. THE LEGITIMACY OF THE ATTACK ON THE 'VOT'

Internationally accepted legal rules with regard to military objectives obligate the military commanders to direct their attack only against military objectives<sup>26</sup> and to ensure that the attack would not cause excessive collateral damages to the concrete and direct military advantage anticipated.<sup>27</sup> It further requires that the losses to the civilian population and the damages to civilian objects must not be disproportionate to the above military advantage.<sup>28</sup> If the above rules are not adhered, then the attack would be treated as unlawful. Hence, the rules with regard to military objective play a crucial role in determining the legitimacy of the attack.

#### A. What is exactly a legitimate military objective?

##### 1. Evolution of the principle of 'military objective'

The concept of military objective is derived<sup>29</sup> and intrinsically linked to the concept of 'distinction'<sup>30</sup>. It requires the parties to the conflict to distinguish between military objectives and civilian population or civilian objects during military operations.<sup>31</sup> This principle was not explicitly incorporated in treaty instruments until 1977.<sup>32</sup> The implicit reference to the concept of distinction can be traced back to late 19<sup>th</sup> and early 20<sup>th</sup> centuries<sup>33</sup> such as in the famous proclamation of Rousseau the 'social contract'.<sup>34</sup> It received its formal implicit recognition in the Lieber Code.<sup>35</sup> The preamble to the 1868 St Petersburg Declaration, the Final Protocol of the Brussels Conference of 1874, the Oxford Manual of 1880 and the Hague Convention No.IX 1907, Respecting Bombardment by Naval Forces also recognised the above principle.<sup>36</sup>

Article 24 (1) of the Draft Hague Rules of Air Warfare 1923 explicitly included the principle of military objective<sup>37</sup> for the first time which is, as stated above, an inherent element of the concept of distinction. Further, the Conference Resolution XXVIII of the XIX International Conference of the Red Cross in 1957, the United Nations General Assembly Resolution 2675 (XXV)<sup>38</sup> and the Edinburg Resolution of 1969 affirmed the principles of 'distinction' and 'military objective'.<sup>39</sup> Finally, for the first time, these principles were incorporated into the treaty instrument in 1977.<sup>40</sup> In addition to this, the Rome Statute of the International Criminal Court also recognises the above principle.<sup>41</sup>

26. United Nations, above n 04.

27. Squadron Leader Cathrine Wallis, 'Legitimate Targets of attack: Considerations when targeting in a coalition' (2004) *Army Lawyer* 44.

28. United Nations, above n 04.

29 Major Newton, 'Principle 2: Distinction', (1998) *Army Lawyer* 35.

30. Horace B. Robertson, 'The Principle of the Military Objective in the Law of Armed Conflict' (1997-1998) 8 *Journal of Legal Studies* 35.

31. *Ibid.*

32. Newton, above n 28.

33. Robertson, above n 29.

34. *Ibid.*

35. See, Article 22 of the Lieber Code, Robertson, above n 29.

36. Robertson, above n 29.

37. This instrument never adopted into as a treaty. See, Robertson, above n 29.

38. Robertson, above n 29.

39. *Ibid.*

40. Article 52 Of the API.

41. *Statute of the International Criminal Court article 8 (2).*



## (a) Definition of a 'military objective'

Articles 48 and 52 of the First Protocol Additional to the Geneva Convention 1977 (API) make explicit reference to the above principles.<sup>42</sup> Article 52 (1) of API prohibits attack on civilian objects. Article 52 (2) stipulates that the attack should be limited to military objectives<sup>43</sup> and defines military objectives as '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'. It provides a dual test, which is somewhat restrictive than the criteria provided by the Institute of International Law<sup>44</sup> and shifted the 'decision makers from list oriented approach to situation-dependant, criterion- oriented approach'.<sup>45</sup> Under this approach, an object becomes a military objective if it satisfies the both two-pronged criteria provided in Article 52 (2).

First, the 'object' in order to be regarded as a military object must "by its nature, location, purpose or use" make 'an effective contribution' to military action. The said object need not have a direct connection to military action in order to be regarded as a military object.<sup>46</sup> It should be noted that some objects such as military flights, navy ships and military ammunition, in spite of their location, purpose or use fall into the category of military objectives generally by their nature.<sup>47</sup> However, the majority of the objects, especially the objects that serve dual purpose, fall into the category of military objects not due to their nature but owing to their location, use or purpose.<sup>48</sup> For instance, a civilian object may become a military object if it is used for military purpose. According to Dinstein a military objective is determined either by its (inherent) or by its (de facto) use'.<sup>49</sup> Further, the selected military object must provide an effective contribution to the military operation under the circumstances ruling at the given time and not at a 'hypothetical future time'.<sup>50</sup> The term effective contribution does not require a direct connection<sup>51</sup> to military action or 'war fighting'<sup>52</sup>, but a 'proximate nexus to military action'.<sup>53</sup>

Second, even if the above criterion is satisfied, an object cannot be categorised as a military objective unless the second test provided in Article 52 (2) is satisfied.<sup>54</sup> Accordingly, an object must not only provide effective contribution but also its destruction, capture or neutralisation in the circumstances ruling at the relevant time, provide a definite military advantage. The term 'a definite military advantage' means 'a concrete and perceptible military advantage rather than a hypothetical and speculative one'<sup>55</sup> and refers to military advantage that is foreseeable by the

42. The formulation of Article 52 was influenced by the Edinburg Resolution of the Institute of International Law 1969 . Michael Bothe, Karl Josef Partsch, and Waldemar A. Solf, *New rules for victims of armed conflicts : commentary on the two 1977 protocols additional to the Geneva Conventions of 1949* (1982 ) 321.

43. Dinstein, above n 3, 84.

44. See Bothe, Karl Josef Partsch, and Waldemar A. Solf, above n 41, 323, Robertson ,above n 29.

45. W.J Fenrick, ' Targeting and proportionality during the NATO Bombing Campaign against Yugoslavia' (2001) 12 *European Journal of International Law* 489.

46. See Bothe, Karl Josef Partsch, and Waldemar A. Solf, above n 41, 324, Dinstein, above n 3, 87, Robertson ,above n 29.

47. Robertson ,above n 29.

48. Ibid.

49. Dinstein, above n 3, 89.

50. Bothe, Karl Josef Partsch, and Waldemar A. Solf, above n 41, 324.

51. Dinstein above n 3, 87.

52. Ibid.

53. Ibid.

54. Henry Shue and David Wipman, 'Limiting attacks on dual-use facilities performing indispensable civilian functions' (2002) 35 *Cornell International Law Journal* 559.

55. Dinstein, above n 3, 86, Bothe, Karl Josef Partsch, and Waldemar A. Solf, above n 41, 326.



perpetrator at the relevant time'.<sup>56</sup> Further, the military advantage gained by the attack on the object must be military and not political<sup>57</sup> at the time of the attack.

According to the above analysis, the following focal points shall be established. First, only a military objective may be targeted in a military operation. Second, the selected target should have provided an effective contribution to military action depends on its nature, location, purpose or use. Third, the military operation should achieve a definite and concrete military advantage. If the above conditions are satisfied, then the selected object may fall within the ambit of military objectives, which could be legitimately attacked. However, in practice, determining the status of the object and the legitimacy of the attack is not that simple and will become more intricate if the objects are used for dual use such as a media station.

(b) Is VOT a legitimate military object?

Under customary international law any attack directed against journalists and the news media would be declared unlawful even if the media is used for propaganda purposes.<sup>58</sup> The reason is that the journalists are regarded as civilians and the media is treated as a civilian object<sup>59</sup> under the rules of IHL.<sup>60</sup> The journalists enjoy this civilian protection because they work in the 'public interest' and 'play a vital role in bringing to the attention of the international community the horrors and reality of conflict'.<sup>61</sup>

This civilian protective cover to the media station is not always uniform. For example, Article 8 (1) (a) of the Hague Convention for the Protection of Cultural property in the event of Armed Conflict of 1954 included broadcasting stations as legitimate military objectives. The non-adopted Draft list of the International Committee of the Red Cross (ICRC) on military objectives included media installations as military objectives.<sup>62</sup> However, the adoption of API in 1977 extends civilian protective cover to journalists.<sup>63</sup> In addition to this, the UN Security Resolution 1738 of 2006 reaffirms the above principle<sup>64</sup>

Hence, at present, media stations which are not used for military action will enjoy the civilian protective cover provided in Article 52 (2) of API.<sup>65</sup> Hendry, Shue and David Wippman argue that Article 52 (2) can be interpreted to include 'every dual use facility as a potential military objective'.<sup>66</sup> Therefore, if a media station serves dual purpose, namely, civilian and military, then it may be regarded as a military object. Accordingly, if a media station is used, even a part of its air time, to serve a military purpose such as intelligence gathering or communicate orders then it would lose its civilian character and may become a legitimate military objects.<sup>67</sup> In addition to this, if the media components are part of the C3 (command, control and communications) network of the military, then they will be regarded as military objectives<sup>68</sup>. Even if they are not part of that network, they may become military objectives depending upon

56. Eric Jaworski, 'Military Necessity' and "Civilian Immunity": Where Is the Balance?' (2003) 2 *Chinese Journal of International Law* 175.

57. Dinstein, above n 3, 86.

58. Alexandre Balguy-Gallois, 'The protection of journalists and news media personnel in armed conflict' (2004) 86 *International Review of the Red Cross* 37.

59. Ibid.

60. See API art 79.

61. Gallois, above n 57, API art 79.

62. Andreas Laursen, 'NATO, the war over Kosovo, and the ICTY investigation' (2002) 17 *American University International Law Review* 765.

63. API art 79.

64. SC Res 1738 UN SCOR, 5613th mtg., UN Doc S/RES/1738(2006).

65. Gallois, above n 57.

66. Henry Shue and David Wippman, above n 53.

67. Aldrich, above n 6.

68. Laursen, Above n 61.



their use.<sup>69</sup> Gallois notes that this explanation is in line with the spirit of Article 52 (2). On this basis, to determine whether the VOT was a military object or a civilian object, one must apply the two threshold criteria provided in Article 52 (2).

According to the criteria provided in Article 52 (2) if the nature, purpose or the use of the VOT provided an 'effective contribution to military action' to the LTTE then, the VOT would fall under the category of military objectives. The VOT is an official radio station of the LTTE that is situated in close proximity to the headquarters of the LTTE.<sup>70</sup> The head of the radio station is Mr. Thamilanban, a military commander of the LTTE.<sup>71</sup> Further, the employees of the VOT were also drawn from the LTTE. This claim could be substantiated by the fact that in the photographs of employees killed in the SLAF attack, published by the LTTE, the employees were in the LTTE military uniform confirming that they are members of the LTTE.<sup>72</sup> Further, the photographs released by the LTTE on the one month commemoration of the attack give strong evidence as to the extent of the control of the LTTE on VOT. For instance, senior members including one of the senior most members of the LTTE, Mr.V.Balakumaran, attended this commemoration organised by the radio station.<sup>73</sup> Another photograph shows that the head of the VOT wearing a hand gun on his waistband during this event.<sup>74</sup> This gives an indication that the VOT is run by the LTTE<sup>75</sup> and therefore establishes a direct link between the LTTE. Furthermore, it proves that the VOT is part of the C3 network of the LTTE.

The Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia claims that, if a media station is used as an armed forces transmitter, then it will become a military target.<sup>76</sup> Based on this, the US justified its attack on the Arab television *Al-Jazeera* in Kabul where the Taliban and *Al-Qaeda* maintained their offices.<sup>77</sup> If this same justification applied to the scenario in Sri Lanka, the attack on the VOT would be justified on the ground that the LTTE military commanders such as Mr. Thamilanban, the head of the VOT, use it as an office.

Further, the VOT is used for propaganda purposes of the LTTE promoting war. However, the rules of IHL clearly state that mere propaganda purpose will not be sufficient to justify an attack on a media station.<sup>78</sup> For example, the Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign against the Federal Republic of Yugoslavia has clearly asserted that a media station cannot be regarded as a legitimate target merely because it is used for propaganda purposes supporting the war or boosting the morale of the population.<sup>79</sup> The British defence Doctrine of 1996<sup>80</sup>, the Volker Kroning report submitted to the NATO Parliamentary Assembly in 1999<sup>81</sup> and the Amnesty International in 2000 also endorsed this position.<sup>82</sup> Nevertheless, under certain circumstances, a media station,

69. Ibid.

70. Human Rights Watch, *Sri Lanka: Rebels and Government Should Cease Attacks on Civilians*, (2007) <[http://hrw.org/english/docs/2007/11/30/slanka17448\\_txt.htm](http://hrw.org/english/docs/2007/11/30/slanka17448_txt.htm)> at 18 April 2008.

71. 'VoT will rebound from attack -Thamizhanpan', *Tamilnet* (16 December 2007) <<http://www.tamilnet.com/art.html?catid=13&artid=24019>> at 10 April 2008.

72. 'VoT bombing victims remembered in Kilinochchi', *Tamilnet* (30 December 2007) <http://www.tamilnet.com/art.html?catid=13&artid=24125> at 10 April 2008.

73. Voice of Tigers, 'Tamilleelavanoli' <<http://www.pulikalinkural.com/>> at April 2008.

74. Ibid.

75. Human Rights Watch, above n 69.

76. United Nations, above n 4, Gallois, above n 57.

77. Gallois, above n 57.

78. Ibid.

79. United Nations, above n 04.

80. Gallois, above n 57.

81. Ibid.

82. Ibid.



which is used for propaganda purposes may fall into the category of military object and lose its civilian protective cover, if the media station is used for inciting people to commit grave breaches of international humanitarian law such as genocide or violence.<sup>83</sup>

The crucial question here is, whether the VOT is used as a propaganda organ to incite violence and international crimes. The propaganda songs of the VOT instigate the ultra nationalist feeling in the people and incite them to take arms in order to commit international crimes such as genocide.<sup>84</sup> Most of these songs glorify their leader and praise their military campaign against the 'Sinhala' government. In one of the songs the permission of their leader was sought to commence the war and states that 'if his permission was granted the people will go to war and win it for him'.<sup>85</sup> Another songs states 'Pirapaharan instills fear on the Sinhalese people just like a storm and kills and destroys the Sinhalese'.<sup>86</sup> Another war mongering song notes that 'if Pirapaharan gets enraged the whole capital city of Colombo would turn into ashes and requests the youth to join the LTTE to burn the Sinhalese forces'.<sup>87</sup> Above lyrics of the propaganda songs that are frequently broadcast over the VOT clearly instigate violence and incite genocide saying that the Colombo city will be destroyed into ashes. Hence, it may be regarded as a call to the Tamil people to commit mass destruction, indiscriminate killing and to encourage genocide. Article 3 of the 1948 Genocide Convention declares that if a speech is a "[d]irect and public incitement to commit genocide" then it is punishable under international law.<sup>88</sup> Here, the songs that are direct and public incitement to commit genocide are punishable under the international law.

In addition to this, the LTTE uses this radio station to intimidate people with death threats. For example, in one instance via the VOT, the LTTE sent a final warning to the civilians asking them not to travel by sea and warned them that they would attack any civilian ship voyaging through the northern territorial water of Sri Lanka.<sup>89</sup> Further, the LTTE had ordered for mass expulsion of people through this radio station in two instances.<sup>90</sup> While the Customary international humanitarian law obligates the parties to the conflict not to order civilians to leave their places unless imperative military reasons demand<sup>91</sup>, the Rome Statute declares such expulsion as a 'war crime'.<sup>92</sup> Hence, the VOT had committed a war crime as well.

The VOT apart from inciting genocide and violence is also used as an instrument to commit another international crime of child conscription. The plight of child soldiers has generated global awareness in the recent past, which culminated in the adoption of the UN Security Resolution 1612 in 2005.<sup>93</sup> The Rome Statute of the International Criminal Court declares that conscription or enlisting children of less than 15 years of age into armed groups or using them to participate actively in hostilities as war

83 Ibid.

84. Voice of Tigers above n 72.

85 .Ibid.

86 .Ibid.

87. Ibid.

88. *Convention on the Prevention and Punishment of the Crime of Genocide*, opened for signature 09 December 1948, 260 A (III) (entered into force 12 January 1951).

89. See, Amantha Perera 'Tigers warn civilians against using sea route' *Morning Leader* (Colombo), 7 March 2007. <<http://www.themorningleader.lk/20070307/news.html>> at 10 April 2008.

90 Nirupama Subramanian, 'LTTE triggers mass exodus in Vavuniya' *Indian Express* (New Delhi), 12 November 1999. <http://www.indianexpress.com/res/web/ple/ie/daily/19991112/ige12039.html> at 28 March 2008, Inter-Agency Standing Committee, *Conflict-Related Internal Displacement in Sri Lanka: A study on Forced Displacement, Freedom of Movement, Return and Relocation* (2007) <<http://www.unhcr.lk/protection/docs/IASC%20Paper%20on%20Conflict-Related%20Displacement%20in%20Sri%20Lanka.pdf>> at 10 April 2008.

91 Henckaerts, Jean-Marie, and Louise Doswald-Beck, *Customary International Humanitarian Law*, (International Committee of the Red Cross and Cambridge University Press, Cambridge 2005) (customary international humanitarian law), Vol. 1, Rule 128.

92 *Rome Statute of the International Criminal Court*, art. 8(2)(e)(viii).

93. UN SC Res 1612, UN SCOR, 5235th meeting, UN Doc S/RES/1612 (2005)



crime.<sup>94</sup> The LTTE uses the VOT as a successful propaganda tool to recruit children into their military and formed their elite fighting group known as 'Leopard Brigade'.<sup>95</sup> These evidences show that the LTTE is using the VOT as a propaganda radio station to commit international crimes, which would remove the civilian protective, generally afforded to a media station.

Though, the VOT provides 'effective contribution' to the LTTE, it cannot be regarded as a military objective unless the attack provides a 'definite and concrete military advantage'. The destruction of the recruitment chain would provide a 'definite and concrete military advantage. Further, at the time of the attack the LTTE was making all arrangements to air the speech of Mr.V.Pirabaharan. It is a practice of Mr.Pirabaharan to deliver his annual speech via the VOT on November 27 each year. Hence, there was a foreseeable definite military advantage by attacking the VOT with the intention to kill Mr.V.Pirabaharan. Further, the fact that the radio station had recommenced its broadcasting activities after a few hours cannot be taken as a justifiable ground to nullify the military advantage of the attack, because the broadcasting was recommenced from a fall back facility.<sup>96</sup> The above facts show that the attack had definite and concrete military advantages. Hence, the above analysis establishes that the VOT is not a civilian object but a military object.

## 2. The Principle of Proportionality

Under the international law 'civilians do not enjoy absolute immunity and their presence will not render military objects the immunity from attacks due to the mere reason that it is impossible to bombard them without causing injury to the non-combatants'.<sup>97</sup> For example, Article 28 of the Fourth Geneva Convention specifically states that 'the presence of a protected person may not render certain points or areas immune from military operations'. The principle of 'proportionality' requires an acceptable relation between the legitimate destructive effect and undesirable collateral effects.<sup>98</sup> It is included in Article 51(5) and Article 57 (2) of the Protocol. While Article 51 (5) protects the civilian population from indiscriminate attacks, Article 57 necessitates prior warning. The above two articles attempt to minimise the collateral damage caused by the war. The principle of proportionality may be assessed from different viewpoints.<sup>99</sup> For example, if the objective is a dual characteristic object, then the attack must strike a balance between military advantage and the potential civilian casualties. In addition, the method and the means of the attack also should be evaluated to determine the potential consequences of the attack.<sup>100</sup> Moreover, the conduct of attack itself should not be carried out with total negligence in order to avoid unnecessary civilian casualties.<sup>101</sup>

Now the question arises whether the attack on the VOT had caused excessive damages by failing to balance the effects of legitimate destruction and unnecessary collateral damages. According to the RSF nine people were killed and ten more sustained injuries in the attack. Further, the head of VOT Mr.Thamilanban claimed that out of eighteen bombs dropped by the SLAF, only two fell in the neighbourhood

94 *Statute of the International Criminal Court art e 8 (2)*.

95. Human Rights Watch, *Living in fear: Child Soldiers and the Tamil Tigers in Sri Lanka* (2004) [05] <<http://www.hrw.org/reports/2004/srilanka1104/srilanka1104.pdf>> at 10 April 2008, Amnesty International, 'Sri Lanka: Tamil Tigers beating up families to recruit child soldiers' (Press Release) <<http://www.amnesty.org/en/library/asset/ASA37/002/2004/en/dom-ASA370022004en.html>> at 10 April 2008.

96. 'SLAF bombs VoT radio station in Vanni, 11 killed, 15 wounded', *Tamilnet* (Colombo), 27 November 2007, <<http://www.tamilnet.com/art.html?catid=13&artid=23871>> at 10 April 2008.

97 Oppenheim, *International Law- A Treatise Vol.II*, (7th ed, 1952) 412-417.

98 United Nations, above n 04.

99. Ibid.

100. Ibid.

101. Ibid.



and the balance sixteen fell within the compound of the VOT damaging sixty percent of the buildings of the VOT.<sup>102</sup> This is an indication to the accuracy of the attack and the minimal damage caused to the civilian objects. On assessing the attack in terms of its military value the civilian casualties are minimal and the attack prevented the VOT from instigating further violence and war while protecting the children being exploited in the war. Even if the civilian casualties were high, the attack may not have been disproportionate if the attack was a part of an integrated strategy of targeting the LTTE's command and control network as a whole.<sup>103</sup> Certainly, the aim of the attack includes targeting and destroying the propaganda tool of recruitment, and targeting the senior military commanders of the LTTE including Mr. Pirapaharan and destroying the clandestine terrorist activities of the LTTE.<sup>104</sup> Hence, by applying the principle discussed above, it can be established that the attack on the VOT was not disproportionate and the attack satisfied one of the elements of the principle of proportionality provided in Article 51 (5).

In addition to being inline with Article 51 (5), the attack also should satisfy the element of precaution provided in Article 57 (2). Article 57 (2) while recognising the potential casualties to the civilian population during an attack on military object, requires the parties to the conflict to take some precautionary measures before launching an attack. According to the above Article the warring parties should

- (a) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects but are military objectives;
- (b) take all feasible precautions in the choice of means and methods of attack with a view to avoiding or minimizing incidental loss of civilian life, injury to civilians and damage to civilian objects; and
- (c) give effective advance warning of attacks that may affect the civilian population, unless circumstances do not permit.

The GOSL claimed that their intelligence unit had verified that the VOT was used to advocate the terrorist activities of the LTTE and have been used for clandestine armed activities to target the Sri Lankan security forces and other vulnerable citizens.<sup>105</sup> Hence, it shows that the SLAF had done sufficient groundwork to verify the object as a military objective. Further, the attack on VOT precisely targeted the VOT premises as claimed by the head of the VOT. Hence, it illustrates the fact that the SLAF had taken the precautions during their aerial military operation. Furthermore, as far as the requirement for advance warning is concerned there is no clear evidence that it had been given. The requirement of advance warning is not an absolute requirement as it may be waived if the circumstances permit. The ICRC Commentaries on the Additional Protocols states the requirement of providing a warning could be waived if 'suddenness of the attack is a condition of its success'.<sup>106</sup> The GOSL claimed that the VOT was used for clandestine terrorist activities. Further, on that particular day of the attack, Mr. Pirabakaran, an obvious military target of the GOSL, was planning to make his annual speech via this radio station. In this specific situation, providing a prior warning could be waived off as the suddenness of the attack is a condition of its success.

102. 'VoT will rebound from attack -Thamizhanpan', *Tamilnet* (16 December 2007)

< <http://www.tamilnet.com/art.html?catid=13&artid=24019>> at 10 April 2008.

103 United Nations, above n 05, Tania Voon, 'Pointing the finger: civilian casualties of NATO bombing in the Kosovo conflict', (2001) 16 *American University International Law Review* 1083.

104. Ministry of Defence of Sri Lanka, 'MoD rejects charge of war crime on VoT attack' ( Press Release, 01 December 2007)

< [http://www.priu.gov.lk/news\\_update/Current\\_Affairs/ca200712/20071201mod\\_rejects\\_charge\\_of\\_war\\_crime\\_vo\\_t\\_attack.htm](http://www.priu.gov.lk/news_update/Current_Affairs/ca200712/20071201mod_rejects_charge_of_war_crime_vo_t_attack.htm)> at 10 April 2008.

105. *Ibid.*

106 International Committee of the Red Cross *Commentary on the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*.

#### IV. CONCLUSION

The forgoing analysis illustrates that under the rules of the IHL the civilian protective cover extends to media stations as well. However, as noted above, if the particular media station exceeds the boundary line provided under Article 52 and engages in active military activities, this protection will be removed and it may become a legitimate military target. If that particular station is attacked while observing the principle of proportionality the attack may be justified under the rules of the IHL. The VOT had surpassed its limit as a civilian object as it actively engaged in providing effective military contribution to the LTTE. Furthermore, it is used as a tool to promote and incite international crimes such as genocide and child recruitment. These factual scenarios justify the attack on the VOT as legitimate.



## About the Author

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