

XII Seminar
for Legal Advisors of the Armed Forces

GCSP, Geneva, 19 June 2019 

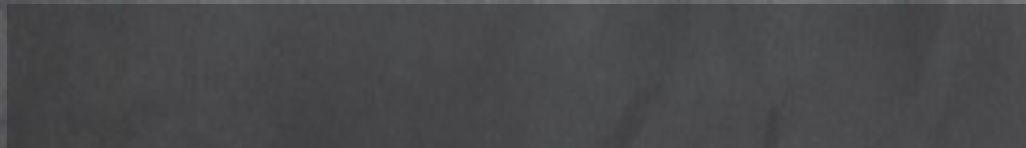


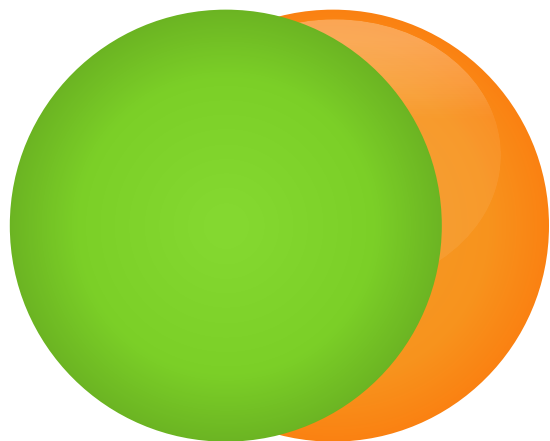
Hague Law Interpretation:

New Issues or Old Issues Unresolved?



*It's all about
implementation...*

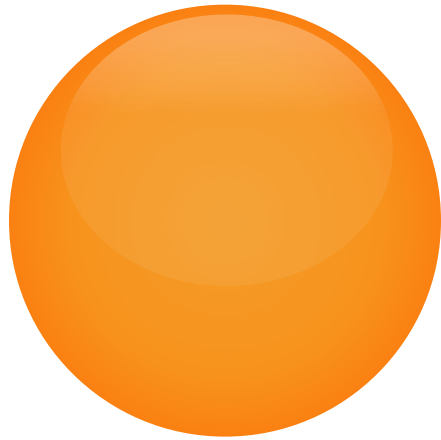




“Built on the realities of conflict, the rules of IHL are not ambiguous.”

ICRC President Peter Maurer (May 2019)

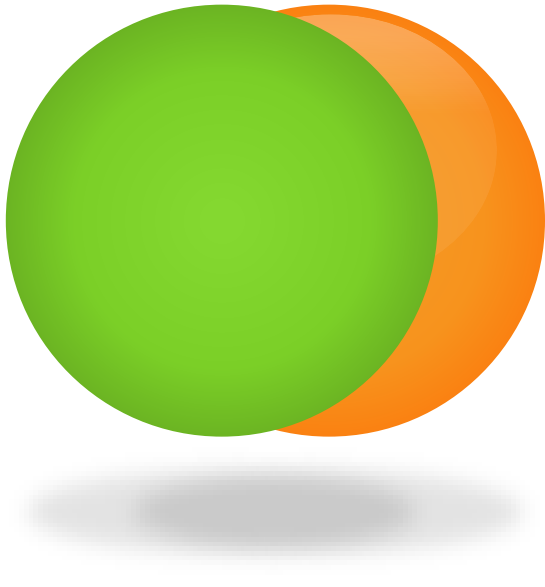




“All NATO missions are conducted in accordance with applicable international law, which may include international human rights law and international humanitarian law, as applicable.”

NATO Policy for the Protection of Civilians (2016)



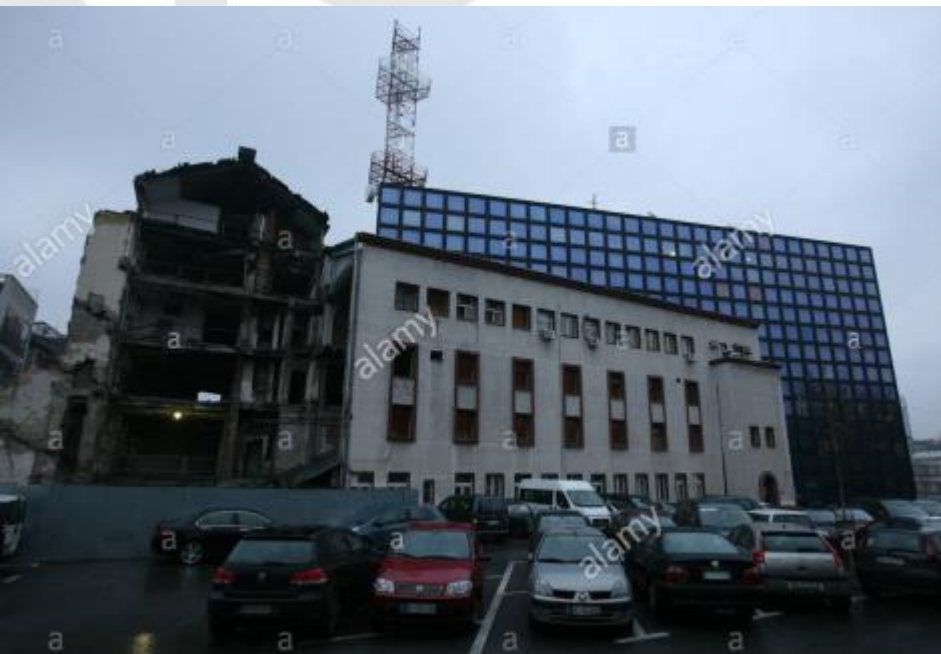


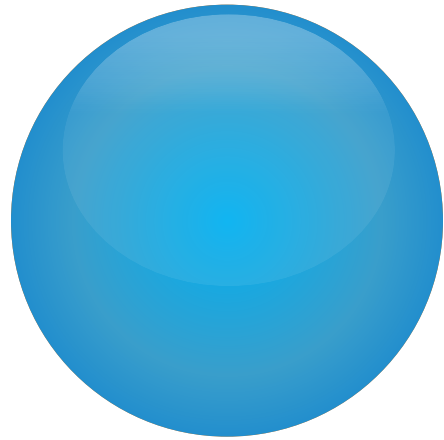
“Broadening the understanding of existing rules, including the Geneva Conventions and their additional protocols, along with providing training for armed forces and non-State armed groups on how to respect humanitarian law, is vital.”

Mark Lawcock, UN Emergency Relief Coordinator (2019)



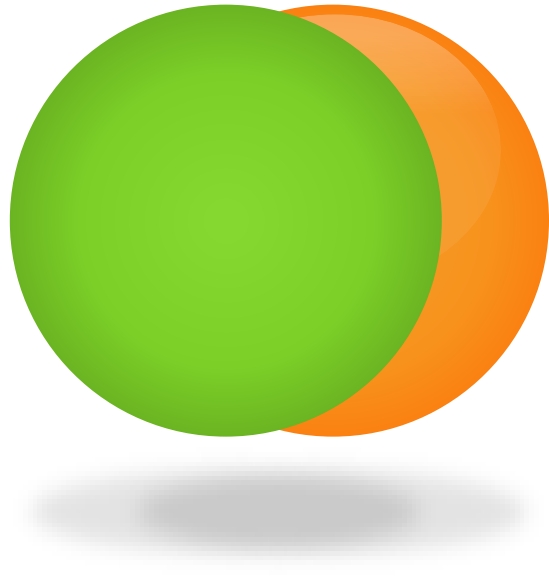
Which one is the lawful military objective?





But context is everything...

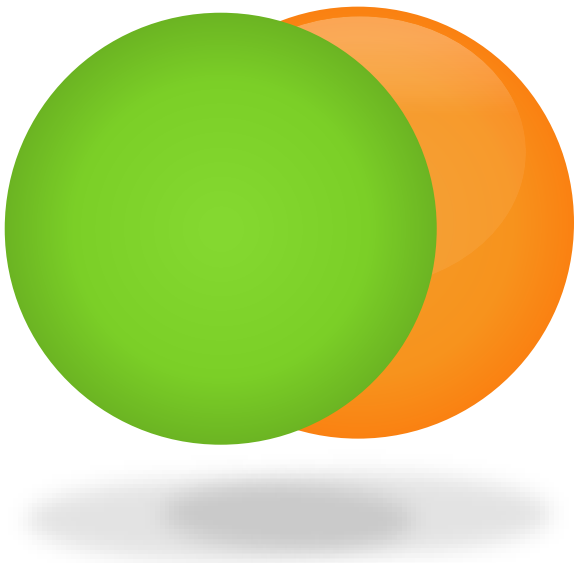
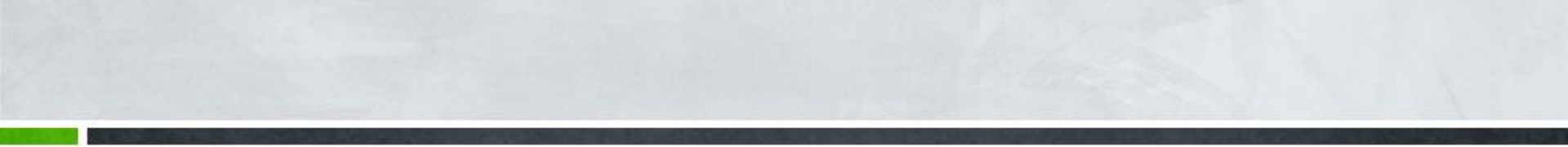




Both are television station buildings.

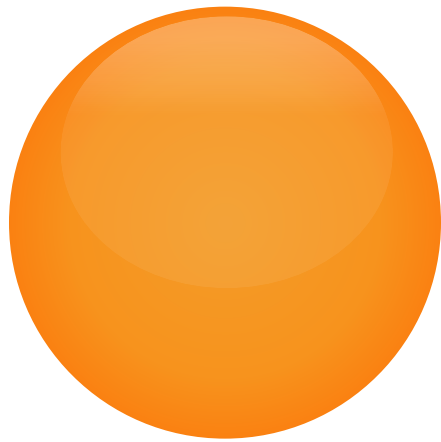
Both are in the Balkans.

Both were bombed in the 1990s.



But one bombing was held to be a war crime and the other one wasn't.

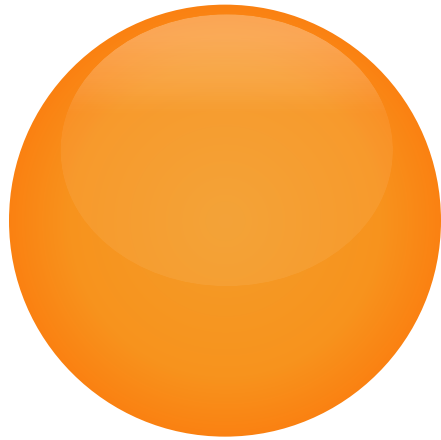




“President Milosevic’s propaganda machine consists of transmitters but also the studios from which the information is transmitted. That makes it part of the overall military structure. Both elements have to be attacked.”

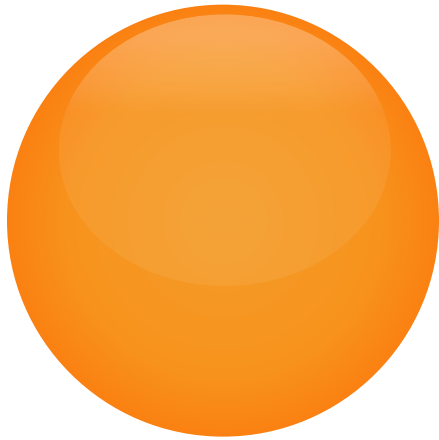
Admiral Sir Ian Garnett, Chief of joint Operations, UK Ministry of Defence (1999)





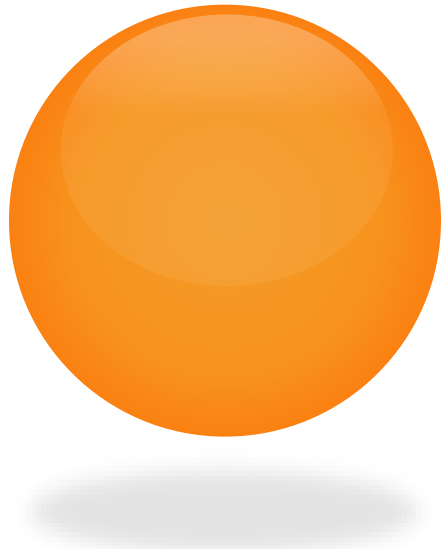
“Strikes against TV transmitters and broadcast facilities are part of our campaign to dismantle the FRY propaganda machinery which is a vital part of President Milosevic’s control mechanism.”

NATO Statement (1999)



“If President Milosevic would provide equal time for Western news broadcasts in its programmes without censorship 3 hours a day between noon and 1800 and 3 hours a day between 1800 and midnight, then his TV could be an acceptable instrument of public information.”

NATO Statement (1999)



“Our artillery forces are responding with precision to the Muslim artillery attacks. In one such response on 28 June (1995) they hit the BH radio and television centre, the centre of media lies against the just struggle of the Serbian people.”

Dragomir Milošević, Commander of Bosnian Serb forces above Sarajevo (1995)

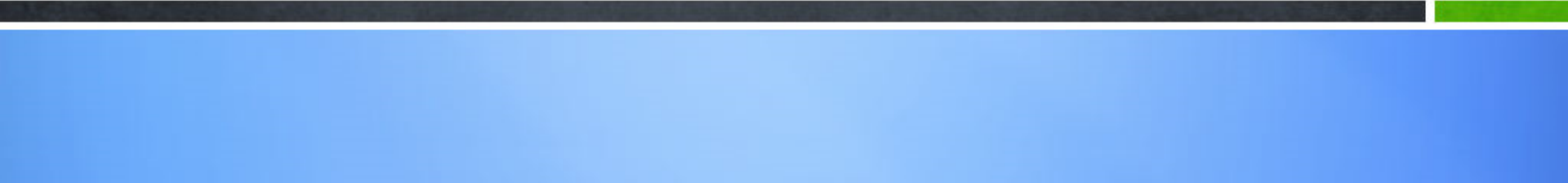


Indiscriminate attacks and indiscriminate weapons





How accurate do you need to be to comply with the rule of distinction in attack?



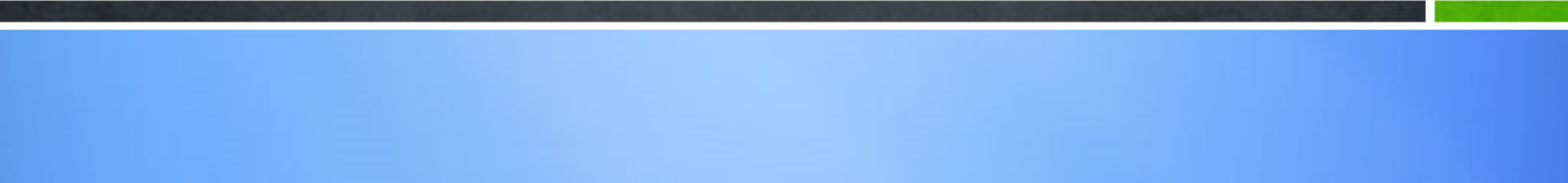
The Trial Chamber in the *Gotovina* case suggested 200 metres in an urban environment.


The *amicus curiae* for Gotovina's appeal suggested 400 metres.

The Appeals Chamber in the *Gotovina* case decided it wasn't 200 metres.

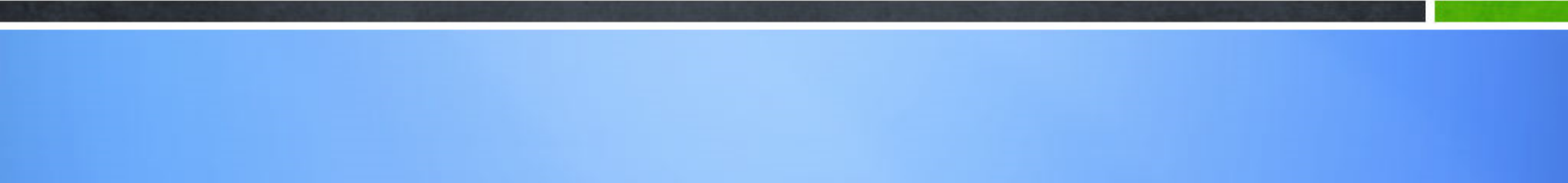


Indiscriminate weapons are those that normally miss their targets by 1,000 metres or more.

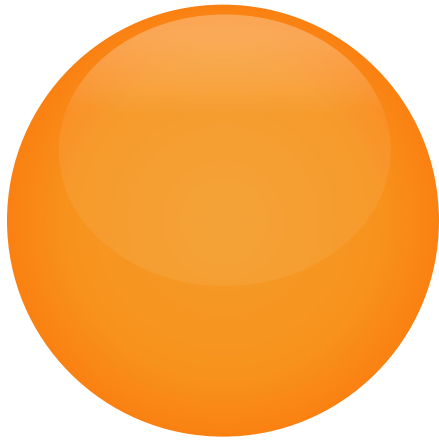




Whether a weapon is used indiscriminately depends on a number of factors, including:

- The type of weapon
 - Circumstances of its use
 - Its accuracy (1 CEP? 3 CEP?)
- 

So it's all just about implementation.



There's no lack of clarity on the law except
- *when* Hague Law rules apply,
- *where* they apply, and
- *how* they apply.

**These problems are especially acute in
non-international armed conflicts.**





Thanks for your attention

