

# LESSONS FROM INTERNATIONAL COURTS FOR DOCUMENTERS OF ATTACKS ON MEDICAL FACILITIES IN SYRIA



**SAMS**

## ABOUT THIS REPORT

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### Cover:

General shoot of the Destruction at Idlib central hospital - SAMS © 2020, Idlib governorate

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# SAMS

Syrian American Medical Society

## **The Syrian American Medical Society (SAMS) was founded in**

1998 as a professional society to provide networking and educational opportunities to medical professionals of Syrian descent across the United States. The charitable arm of SAMS, SAMS Foundation, was launched in 2007. With the eruption of the conflict in Syria, SAMS Foundation has become one of the most active medical relief organizations working on the frontlines of crisis relief in Syria, neighboring countries, and beyond.

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### **OUR MISSION...**

is dedicated to delivering life-saving services, revitalizing health systems during crisis, and promoting medical education via a network of humanitarians in Syria, the US, and beyond

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### **OUR VISION...**

is to strengthen the future of Syria's healthcare, delivering dignified medical relief where needed, fortified by a dedicated medical community.

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# INTRODUCTION

## THE LAW ON HEALTH CARE IN CONFLICT <sup>1</sup>

The law of armed conflict, or international humanitarian law (“IHL”), has long protected medical personnel and facilities.<sup>2</sup> The first article of the 1864 Geneva Convention protected the neutrality of ambulances and hospitals.<sup>3</sup> The 1907 Hague Convention directs that “in sieges and bombardments all necessary steps must be taken to spare, as far as possible,... hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes...”<sup>4</sup> More recently, attacks on hospitals have been identified as one of six “grave violations” which particularly impact children.<sup>5</sup>

Contemporary IHL’s protections for medical care can be broken down into two principles:

- ▶ First, medical workers exclusively assigned to medical duties and medical facilities are protected. They are entitled to be treated as neutral; spared from direct attack; and to have their work facilitated where possible.
- ▶ Second, if medical workers participate in hostilities or medical facilities are used for military purposes, they lose their protection and may be attacked.<sup>6</sup>

As such, attacks and threats of attack against hospitals and against protected persons in relation to hospitals (such as medical workers and patients) are violations of IHL unless that legal protection has been forfeited.<sup>7</sup> These core principles have been further defined through trials and written judgments at international courts.<sup>8</sup>

International organizations have applied these principles to allegations of violations in Syria. Among others, the United Nations Security Council has demanded warring parties “allow the delivery of... medical assistance”, “respect the principle of medical neutrality and facilitate” medical assistance, and “demilitarize medical facilities”

to avoid having military targets located in or near them such that lawful strikes might impact them.<sup>9</sup> The Secretary-General has included both ISIS and Syrian government-aligned forces on his list of shame for perpetrators of violations related to children and armed conflict as a result of actions including “attacks on schools and/or hospitals”.<sup>10</sup>

While not all IHL violations are war crimes, IHL principles are essential to assessing war crimes allegations<sup>11</sup> and violations of these particular provisions have been criminalized, as set forth below. We outline those lessons and review one case study, in which a Trial Chamber at ICTY analyzed evidence related to the use of a “modified air bomb” which hit a medical facility in Sarajevo, Bosnia and Herzegovina, on 16 June 1995. The report relies upon publicly available information, such as analysis and findings contained in public versions of trial judgements from international courts. Professionals who have worked on such cases in various capacities at various international courts were informally consulted in the preparation of this report. No court or branch thereof has any involvement in or responsibility for the contents of this report. Quantitative data regarding attacks on health in Syria came from SAMS archive covering the period between 2015-2021<sup>12</sup>.

## CASELAW REVIEW

International criminal law related to armed conflict has been honed through litigation over the past 30 years. In the process, international courts and tribunals have developed areas of law relevant to attacks on medical facilities. This project explored lessons from cases which have already been litigated in international courts and tribunals which might shape documenters' work on attacks on medical facilities. For instance, previous cases can help documenters identify the tipping point issues where cases are won or lost, and so help guide their own investigative work.<sup>13</sup>

While we have not located an international case in which an accused person was charged only with attacks on medical facilities, such attacks have been included in several cases at the international tribunals.<sup>14</sup> In one of the only five cases in which the International Criminal Court has secured convictions to this point, the judges' findings included a conviction for attacking a medical facility in Sayo, Democratic Republic of Congo.<sup>15</sup> At ICTY, several of the Sarajevo cases<sup>16</sup> (including *Prosecutor v. Galić*, *Prosecutor v. Dragomir Milošević*, and relevant parts of *Prosecutor v. Karadžić* and *Prosecutor v. Mladić*) significantly featured such attacks.<sup>17</sup>

Other cases involved crimes against patients at hospitals. In *Brima*, the Special Court for Sierra Leone found civilians taken from Good Shepard Hospital in Kissy were murdered by juntas.<sup>18</sup> In *Ntaganda*, the ICC found patients in a hospital were murdered.<sup>19</sup> At ICTY, the judges in *Prosecutor v. Mrkšić et al*, sometimes referred to as the "Vukovar Hospital" case, found crimes against people taken from a hospital, approximately 200 of whom they found were subsequently murdered.<sup>20</sup> Judges have distinguished between attacks on medical facilities as such and attacks on patients in those facilities,<sup>21</sup> so such cases fall outside the scope of this report. As long as patients were civilians or *hors de combat*, however, they would remain protected from direct attack under IHL.

Courts have also had occasion to consider the gravity of attacks on medical facilities. For instance, though the *Ntaganda* judges noted that "crimes against property are generally of lesser gravity than crimes

against the life and/or bodily integrity of persons", they nonetheless concluded attacks on medical facilities were "of significant gravity."<sup>22</sup> They reasoned:

The fact that such objects play a special role (e.g. for the treatment of wounded persons), or portray a special value, both during peace time and during an armed conflict, makes the crime as such graver than the directing of an attack against objects that are protected as regular civilian objects. Especially in times of armed conflict and during ongoing hostilities, when as a result of the fighting more persons become injured or wounded, the protection of medical facilities must be respected. Attacking such structures disrupts the ability of medical personnel to care for the sick and wounded.<sup>23</sup>

Medical facilities also fall into two broader categories which provide further insights for those documenting attacks on them.

- First, they are part of a broader category of facilities protected from direct attack under IHL (together with, for instance, cultural monuments and facilities dedicated to religion or education), and attacks on which may incur criminal liability.<sup>24</sup> As a result, the outcome of cases involving attacks<sup>25</sup> on other protected facilities – like buildings dedicated to religion, education, or culture – can also inform documenters' work.<sup>26</sup>
- Second, many attacks on particular medical facilities fall into a category that might broadly be referred to as "shelling cases" – involving the firing of a small number of rounds from sophisticated weapons, often at targets located far away from the firing party.<sup>27</sup> As a result, documenters' work can be informed by lessons from earlier shelling cases.<sup>28</sup>



The "swiss cheese hospital" in Sarajevo (Koševo Hospital), with many windows missing. Prosecutor v. Radovan Karadžić, Case No. IT-95-5/18-T, Exhibit P01526

# KEY LESSONS

## 1. CRIMINAL ACCOUNTABILITY FOR ATTACKS ON MEDICAL FACILITIES IS POSSIBLE

«Everywhere we went, when we carried out an investigation, it was the same thing. The hospitals had been destroyed».<sup>29</sup>

During armed conflicts, directing attacks against civilian objects – that is, objects which do not by their nature, location, purpose, or use make a contribution to military operations – is a violation of IHL.<sup>30</sup> Some civilian objects such as medical facilities, schools, and religious or cultural property are also entitled to protection due to their specific status, beyond the general protections afforded to civilian objects.<sup>31</sup> These additional protections may be important for criminal accountability. For instance, the Rome Statute criminalizes destroying enemy property and directing attacks against civilian persons, the civilian population at large, *and specially protected facilities* in both international and non-international armed conflicts, but criminalizes directing attacks against civilian objects (such as houses) only in international armed conflicts, not non-international armed conflicts.<sup>32</sup>

International criminal tribunals have convicted defendants for the crime of attacks on medical facilities.<sup>33</sup> They have also drawn broader conclusions from such attacks on medical facilities, using them to show perpetrators intentionally made civilians the targets of military operations and to illustrate patterns of unlawful conduct. For instance:

- ▶ In *Prosecutor v. Dragomir Milošević*, the Prosecution began the shelling section of its pre-trial brief by emphasizing attacks on medical facilities in each of the first two paragraphs;<sup>34</sup>
- ▶ In *Prosecutor v. Galić* the Chamber found attacks on medical facilities were “examples of the campaign of attacks on civilians;”<sup>35</sup>
- ▶ In *Prosecutor v. Karadžić*, the judges

deemed the pattern of targeting medical facilities sufficiently relevant to justify an entire section of the judgment<sup>36</sup> even though only one specific bomb which hit a hospital was charged in the Indictment.<sup>37</sup> This emphasis suggests the pattern of hospital attacks was relevant to the Chamber’s conclusion that there had been a campaign of shelling and sniping directed at terrorizing Sarajevo’s civilian population;<sup>38</sup> and

- ▶ In *Prosecutor v. Mrkšić et al.*, the Chamber noted the shelling of the Vukovar hospital in the course of finding a widespread and systematic attack against Vukovar’s civilian population.<sup>39</sup>

As these examples reflect, evidence of attacks on medical facilities may facilitate accountability for other crimes by helping prove an accused person’s *mens rea* or contextual elements of crimes.<sup>40</sup> For instance, the *Mrkšić* judges found:

The hospital in Vukovar, a multi-story building, suffered extensive damage. Virtually all windows were shattered and the roof was nearly destroyed. There were huge holes in the building, caused by projectiles... shells from both artillery and tanks, aircraft bombs, mortar shells and rockets from multi-barreled launchers... the Vukovar hospital suffered attacks on almost a daily basis.<sup>41</sup>

They then cited a paragraph containing findings about attacks on the hospital in concluding that a widespread and systematic attack had been directed against Vukovar’s civilian population.<sup>42</sup>

At ICTY, defendants in cases involving attacks on medical facilities were charged with murders, attacks on civilian populations, and/or the war crime of terror.<sup>43</sup> The ICTY Statute omitted medical institutions from its codification of protected institutions, referencing “institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science”.<sup>44</sup> The Rome Statute of the ICC went beyond ICTY’s statute and explicitly criminalized targeting medical facilities.<sup>45</sup> While medical care has been legally protected in conflict since the first Geneva Convention more than 150 years ago,<sup>46</sup>

this was the first time targeting medical

facilities had been included as its own independent crime in the statute of a court responsible for atrocity crime cases.

The Rome Statute has subsequently been followed in this and other respects in the laws on the Kosovo Specialist Chambers<sup>47</sup> and the Iraqi High Tribunal<sup>48</sup> and the Transitional Administrator's Regulation establishing special panels to hear allegations of war crimes, crimes against humanity, and genocide in East Timor.<sup>49</sup> This trend towards including attacks on medical facilities in the jurisdiction of courts adjudicating allegations of atrocity crimes reflects increased, and overdue, international attention to holding accountable those who unlawfully target medical care during conflict. More recently:

- ▶ the Security Council repeatedly called for accountability and an end to impunity in the course of condemning attacks on medical facilities during conflict;<sup>50</sup>
- ▶ the Secretary General established a Board of Inquiry to investigate attacks on a small number of protected facilities in Syria;<sup>51</sup>
- ▶ a pending ICC investigation in Ukraine<sup>52</sup> seems likely to include attacks on medical facilities;<sup>53</sup>
- ▶ the Libya Fact-Finding Mission concluded "there are reasonable grounds to believe [two] attacks" on medical facilities in Libya "amounted to IHL violations and war crimes", calling for "further investigations ... to establish the responsibility for these attacks and for other similar attacks",<sup>54</sup> and
- ▶ a recent expert report on allegations Armenian forces violated IHL during last year's conflict with Azerbaijan cited damage to medical facilities.<sup>55</sup>

Nonetheless, criminal accountability for attacks on medical facilities is not automatic. Several cases discussed in this report demonstrate how challenging it is for investigators to exclude the possibility that a shell was fired at a lawful target. Even in cases where accused persons were convicted, Karadžić was charged with only one of the many attacks which the trial judgment indicates had been unlawfully

directed at Sarajevo's hospitals and none of the brigade commanders whose units were involved in the shelling of Sarajevo have been charged with related crimes.<sup>56</sup> Ntaganda was convicted of only one attack on a health centre despite evidence that "***Everywhere we went... the hospitals had been destroyed.***"<sup>57</sup> And prosecutors still must prove attacks were not directed at lawful targets. For instance, *Prosecutor v. Prlić et al.* involved an overlap between protection of cultural property and of medical services. The Stari Most, an ancient and culturally important bridge, was shelled and destroyed during the war. The bridge was used to transport medical supplies, among other things. However, the defendants were acquitted of this charge (though they were convicted of others) on the basis that the bridge was also used for military purposes and so constituted a lawful target.<sup>58</sup>

To achieve accountability for attacks on medical facilities, such attacks must not be minor details in a larger investigation. They must be prioritized and professionally investigated, and teams assigned to them must have sufficient resources to carry out their work.



A broken wheelchair after the attack on AlShifaa hospital in Afrin- SAMS © 2021, Aleppo governorate

## 2. INTENTIONS, NOT IMPACT SITES, ARE CRITICAL TO LIABILITY

**«If the military hospital falls into the hands of the enemy, I am for the destruction of the Koševo Hospital so that the enemy has nowhere to go for medical help».<sup>59</sup>**

Attacks which impact medical facilities in Syria may violate three primary legal prohibitions:

- ▶ The prohibition on attacks the primary purpose of which is to spread terror among the civilian population, the central charge in the ICTY's Sarajevo cases;<sup>60</sup>
- ▶ The prohibition on directing attacks against medical facilities which are not being used for military purposes;<sup>61</sup> and
- ▶ The prohibition on directing attacks against civilians or civilian populations.<sup>62</sup>

In particular contexts, such attacks may also violate prohibitions on indiscriminate<sup>63</sup> or disproportionate attacks<sup>64</sup>; serve as the *actus reus* of forcible displacement;<sup>65</sup> or constitute persecution if carried out with discriminatory intent.<sup>66</sup> Warring parties are also prohibited from attacking facilities marked with the distinctive emblem of the ICRC to connote that they are medical facilities.<sup>67</sup> However, usage of the distinctive emblem by medical facilities has not been common in the Syrian context.<sup>68</sup>

For each type of violation, ICC for instance requires attacks be carried out intentionally and/or knowingly in order to incur liability.<sup>69</sup> Consequently, one consistent factor in those prohibitions is that there must be a prohibited purpose at the time an attack is launched. An attack on a lawful target which has the effect of terrorizing nearby civilians is not a violation.<sup>70</sup> A shot precisely aimed at a military barracks, which due to an unexpected gust of wind hits a nearby civilian hospital, is a tragedy but likely not a violation of IHL (and certainly not a violation of the rules against directing attacks at civilians or at medical facilities, each of which have intent requirements).<sup>71</sup>

A shot aimed at a medical facility which is not being used for military purposes, whose path is unexpectedly intercepted by an enemy warplane which it hits and destroys, may nonetheless violate IHL (though it may be difficult to prove).<sup>72</sup>

Proving intent may be difficult generally,<sup>73</sup> particularly for documentation groups: in most cases, non-governmental organizations documenting such attacks will not have access to the internal communications of the party which carried out an attack which impacted a medical facility. As a result, circumstantial evidence will be necessary to show where the attack was directed. Four types of circumstantial evidence have been particularly important.

- ▶ First, statements by leaders in the firing party about medical facilities may assume a significant role in supporting a conclusion that those facilities were in fact targeted. For instance, ICTY Chambers relied upon statements by Bosnian Serb political and military leaders expressing their intent to target medical facilities under certain circumstances, like the one at the beginning of this section.<sup>74</sup> In *Al Mahdi* (a guilty plea case), the ICC relied on the Accused's own statements in concluding that he had directed an attack against buildings which were protected both as religious buildings and as historic monuments.<sup>75</sup>
- ▶ Second, forensic evidence about the munitions used, assessed by ballistics experts and combined with evidence about what lawful military targets may be in the area, can provide significant assistance in determining a firing party's intent, as described in more detail below.
- ▶ Third, as in many leadership-level cases, a "consistent pattern" of criminal incidents may serve as "an important basis to infer higher responsibility."<sup>76</sup> In attacks on medical facilities as well as other international crimes, a consistent pattern may assist investigators in determining whether attacks were intentional or accidental and, if they were intentional, whether they were a product of organizational policy. In *Karadžić*, for instance, the judges relied

upon evidence about “the general nature and pattern of the SRK’s sniping and shelling practices in the city” in determining that those who controlled the sniping and shelling intended to spread terror.<sup>77</sup> They further concluded the fact that this pattern of conduct “continued for over three years means that it cannot have been an accident or the work of ‘rogue’ SRK soldiers.”<sup>78</sup>

- ▶ Finally, it is essential to establish that the attackers knew the impacted facility was a medical facility. For instance, in Ntaganda, the International Criminal Court relied on a statement by a member of the attacking force to find the attackers knew they were targeting a building which served a medical purpose.<sup>79</sup>

In Syria, some hospitals have been hidden out of fear they will be targeted. This may complicate attempts to prove an attacker knew where a hospital was located.<sup>80</sup> However, evidentiary options persist. One potential source of evidence that a firing party knew a facility was a medical facility is the Humanitarian Notification System in Support of Access and Protection in Syria,<sup>81</sup> more commonly known as the “deconfliction list”. This list included 288 health facilities that were progressively registered by the UNOCHA by December 2021<sup>82</sup>. This list of medical facilities and other infrastructure critical to the survival of the civilian population is provided to certain<sup>83</sup> warring parties.<sup>84</sup> If such lists were functioning properly, they would significantly assist in demonstrating that a warring party knew that a building it was firing on was a medical facility. Indeed, SAMS explained when it joined the deconfliction mechanism that it was seeking to “deter future attacks, and to potentially implement a process for investigating every alleged attack on health care throughout Syria in the future.”<sup>85</sup> PHR has emphasized the inclusion of facilities on the deconfliction list – as well as the well-known, public nature of other facilities – in concluding they were intentionally targeted.<sup>86</sup> Recent data from SAMS also showed that there were 27 direct attacks that were carried out on deconflicted facilities. These attacks affected a total of 22 facilities. Five facilities that were on the deconflicted list were attacked directly more than once. In the scenario where the alleged

perpetrators were States or their allies, Certain States have obtained access to knowledge that these medical facilities were protected.

27

**Direct attacks on  
deconflicted  
facilities**



8

**Deconflicted facility  
where damage was  
moderate**



Figure 1: the number and the impact of attacks on the deconflicted health facilities

### 3. INVESTIGATIVE TEAMS NEED SPECIFIC EXPERTISE

**«A prosecution team... that employs a multi-disciplinary approach to investigations should develop a great deal of in-house expertise».<sup>87</sup>**

International criminal investigations require a variety of highly specific expertise. For instance, as noted above, many attacks on medical facilities are “shelling incidents”. Teams working on such incidents need lawyers, investigators, and analysts with specific technical knowledge, as well as staff who can work in the original language of most evidence. Those teams must work under the overall leadership of an experienced IHL attorney.<sup>88</sup>

To properly conduct such investigations, team members may need to educate themselves on technical skills like using crater analysis to make azimuthal calculations and evaluate the direction of fire of a particular round from a particular weapon.<sup>89</sup> This allows investigators and courts to draw conclusions about the origin of fire and use other evidence about the location of confrontation lines, unit deployment, and other military facts to help determine which warring party fired a particular shell. To do this properly, team members must be familiar with the specifications of individual weapons used in the Syrian conflict and associated with particular attacks on particular facilities. For instance, at ICTY, firing tables for particular weapons were admitted into evidence to assist in the judges' deliberations on incidents in which those weapons were allegedly used.<sup>90</sup> Early in the Syrian conflict, organizations like the Commission for International Justice and Accountability trained activists to "measur[e] the size of the shell crater and the angle" to help attribute responsibility for particular strikes.<sup>91</sup>

ICTY's manual on developed practices also refers to three broad categories of analysis that may facilitate investigations of international atrocity crime cases: military analysis; political analysis; and criminal analysis.<sup>92</sup> Each may assist documenters in Syria- in understanding the military context of operations in which facilities are impacted, identifying those who must authorize the use of particular weapons, understanding the political context in which such operations are carried out, and developing a deep understanding of individual criminal incidents.

Teams must also have cultural expertise specific to the Syrian context. This is important to properly and sensitively interviewing witnesses<sup>93</sup> and making informed evaluations of evidence.<sup>94</sup>

Finally, like any other international criminal investigation, teams investigating attacks on medical facilities must have experience and expertise in fundamental principles of international investigations such as collecting, analyzing, and storing evidence and interviewing witnesses.<sup>95</sup>

## 4. EVIDENCE MUST BE COLLECTED PROPERLY AND STORED RELIABLY

**«Insufficient regard to [procedural norms governing the collection and storage of evidence] is likely to damage the justice process, and can undermine the long-term goal of strengthening international criminal justice».**<sup>96</sup>

Evidence does not improve over time. Consequently, rapidly collecting and authenticating it is critical. Witnesses' memories may fade and physical evidence, including craters established in the ground by the impact of projectiles, may degrade.<sup>97</sup>

As such, it is essential for documenters to work with organizations with contemporaneous or near-contemporaneous access to impact sites to acquire authenticable contemporaneous evidence of such locations. Ballistics experts should have prompt access to sites to conduct forensic investigations. While this may be challenging in some Syrian locations, multiple organizations have investigated specific hospital attacks.<sup>98</sup> Involving technical experts early on will enable such organizations to maximize the value of their evidence.

Evidence then must be collected in accordance with international procedural norms. Obtaining information in a way that calls its reliability into question, or could damage the integrity of proceedings, can lead to the exclusion of evidence or severely limit its probative value.<sup>99</sup>

Collected evidence then must be stored reliably. For instance, a failure to properly document the chain of custody of collected evidence may be "catastrophic"<sup>100</sup> and risks "dramatically lowering [the evidence's] probative value and preventing it from being used as evidence."<sup>101</sup> Outside court, clear documentation labeling can help address Syrians' skepticism about the provenance of pieces of written evidence and so allow documenters to maximize the value of evidence for reconciliation and building shared understandings of what happened during the conflict.<sup>102</sup>

As noted earlier, it is unclear which courts will have jurisdiction or what procedural rules they will use. As a result, documenters must have sufficient experience and expertise to make good decisions about evidence collection, evaluation, and storage in an environment of legal uncertainty and maximize the likelihood that evidence is admissible and assists an eventual court in coming to a fair and accurate judgment.<sup>103</sup>

## 5. THE OUTCOME IS IN THE DETAILS

Evidentiary details have determined what findings a court has been able to make. One interlocutor we spoke with broke down the types of issues that should guide a shelling investigation (like most medical facility attacks in Syria) into six big questions:

**What was the projectile that impacted?**

**What type of weapon fires that projectile?**

**How is it fired?**

**Who decides to fire?**

**Where did it impact and what was happening there at the time?**

**Who was harmed?**

Answering each of these questions requires incident-specific evidence.<sup>104</sup>

### ► First, what was the projectile that impacted?

By determining what type of projectile landed at the impact site, investigators can cross-reference other publicly available information to determine which warring parties and what units had that projectile.<sup>105</sup> They can also find identifying information on the projectile such as manufacturer markings identifying where and when it was produced which may assist in determining which warring parties had access to that projectile. For instance, the *Karadžić* judges explained that a marking on a stabilizer indicated it had been produced in a specific factory in Serbia<sup>106</sup> and noted that the serial number of a shell which impacted a marketplace in Sarajevo indicated both when and where it was produced, and consequently indicated which warring party would have had access to it and could have fired it.<sup>107</sup>

### ► Second, what type of weapon fires that projectile?

Particular types of weapons and launchers are used to fire particular types of projectiles. As with projectiles themselves, courts may be able to cross-reference other information to figure out what party fired a particular shot based on knowing who possessed particular types of weapons. This is, naturally, easier for some weapons than others.

To take one example, imagine a conflict where only one warring party had an air force. If documenters investigating a specific incident identified a projectile as an air-to-surface missile that must have been fired from an airplane, that would significantly assist in identifying the party which fired the weapon. By contrast, documenters might identify a projectile as fireable from a shoulder-mounted weapon commonly used by several different parties to a conflict, in which case other information would be necessary to identify the firing party.

### ► Third, how is it fired?

Documenters need to understand a weapon's purpose (e.g., what it is fired at); its modalities (e.g., how users have been trained to aim and fire it); and the geometric conclusions which can be drawn from those modalities such as its range of use (how far away from a target it can be used to engage that target) and range of error (e.g., by approximately how far to one side or another it may miss a target at which it is aimed).

#### ● Purpose

Once the projectile and weapon are identified, documenters can identify the purpose of that projectile and that weapon based on expert ballistics evidence, informed by the way a weapon is used in a particular circumstance.<sup>108</sup> That information may inform documenters' analysis of what the weapon was targeting. For instance, to take two examples which require minimal technical training, a single bullet fired into the door of a building is vanishingly unlikely to destroy that building. This is sufficiently obvious that it is unlikely someone trying to destroy that building would simply order one soldier to fire one bullet into the door. Indeed, the ICC's *Ntaganda* Trial Chamber noted bullets had been fired into the walls of a hospital in Bambu, Democratic Republic of Congo, but concluded this did not mean an attack was "directed against" the hospital; instead, it found that available evidence indicated the attack was directed against patients.<sup>109</sup> By contrast, where "projectiles [were fired] at the health centre" in Sayo, DRC, it entered a conviction.<sup>110</sup>

On the opposite extreme, it is unlikely a warring party would use a nuclear weapon to target a single armed enemy soldier who had positioned himself in a civilian building in a large, highly-populated city where no other enemy forces were located, because the collateral consequences for civilians would be so great.

Importantly, while the excessive collateral consequences would raise proportionality issues, in this extreme situation they would also strongly suggest that the single isolated soldier had not been the true target of the weapon used.

#### ● Technical modalities: manual and tables

Many weapons have users' manuals and firing tables to assist parties in accurately utilizing them in combat. In international cases, courts have received evidence about how a warring party would use these tools to calculate how to fire at particular targets.<sup>111</sup> Courts have also considered whether a weapon can only be fired with a direct line of sight or can be used for indirect fire based on such calculations, and drawn conclusions on that basis.<sup>112</sup>

#### ● Range of use and error

A particular weapon may be able to fire a particular projectile only from a particular distance, or range of distances.<sup>113</sup> If the time of impact and range of fire can be confirmed, it may be possible to use other evidence to determine where the confrontation lines between different warring parties were located and determine on that basis that a projectile was fired from territory controlled by a particular party.<sup>114</sup>

The accuracy of the fired weapon helps determine the firing party's intention because it limits the universe of what the firing party might have been aiming at. For instance, the use of a "highly indiscriminate and inaccurate weapon" may suggest an attack was directed at civilians or primarily sought to terrorize civilians.<sup>115</sup> The use of "accurate weapons" may suggest an attack was directed where it impacted, even if it impacted a civilian site like a medical facility.<sup>116</sup> In cases where a weapon has a recognized range of error, Trial Chambers have successfully excluded potential targets on the basis of that range of error.<sup>117</sup>

The central importance of a rigorous definition of a weapon's accuracy is underscored in the *Gotovina et al.* case. There, an ICTY Appeals Chamber overturned a Trial Chamber's assessment of the range of error of particular weapons used during attacks on defended towns. The Appeals Chamber concluded that it consequently could not uphold findings that shells had been fired at unlawful targets. As a result, two defendants' convictions were overturned.<sup>118</sup>

To illustrate how these principles might apply to attacks on medical facilities in Syria, imagine a situation where a number of medical personnel standing outside a medical facility are struck by a particular shell. A building 400 meters away is a militia headquarters and thus is a lawful military target. However, video reflects no military units or activity or other identifiable targets on the street at the time. Documenters might consider (i) the range of error of that type of shell, to determine if it could have missed its target by 400 meters so that the lawful target might have been the shell's real target; and (ii) whether that type of shell is what the attacking party would have used to attack the lawful target – that is, if it had sufficient destructive power to impact the building the firing party was allowed to seek to destroy. A court might also consider the attacking party's subsequent behavior, for instance whether the attacking party ceased firing after impacting the medical personnel or continued attempting to hit the nearby building, as one might expect if the building was the real target of the attack.<sup>119</sup> Illustrating this approach, SAMS and Physicians for Human Rights analyzed an attack on al-Atareb hospital on 21 March 2021. Having identified the weapon used, SAMS and PHR noted where it was produced; that it had been used in Syria before; and that it was “extremely accurate” and “laser-guided”.<sup>120</sup> Those factors assisted in identifying who fired it and supported a conclusion that it was aimed at the hospital where it impacted.

#### ► Fourth, who decides to fire?

International tribunals' fundamental rules often direct that prosecutions should focus on those “most responsible” for atrocity crime.<sup>121</sup> Shelling cases may be particularly conducive to making such determinations accurately because military doctrine or practice may require that the use of a specific weapon be approved at a particular level of command. If that weapon is then approved for illegal use (for instance to target a medical facility), the requirement of command approval may significantly assist documenters in efficiently evaluating how far up the chain of command they can ascribe responsibility for the unlawful attack.

For instance, ICTY Chambers found that the firing of modified air bombs had to be approved at high levels of command and relied on this doctrinal rule in holding senior figures accountable for their use.<sup>122</sup> Ntaganda was convicted of attacking a medical facility in the context of an attack on Sayo village. The Judges had previously found that he oversaw the attack on Sayo<sup>123</sup> and that during the operation which included that attack, he and one other commander gave orders regarding the use of heavy weapons and what objects should be fired at.<sup>124</sup>



Damages in an ambulance car in Irbin hospital SAMS © 2018, Dmascus governorate



قافلة | AMBU

## ► Fifth, where did the projectile impact and what was happening there?

Documenters will need to record the address and GPS coordinates and the specific position of the impact. For many projectiles, identifying and subsequently analyzing the specific impact site will enable forensic ballistic analysis to assist in determining where the projectile originated.<sup>125</sup>

It is also essential for documenters to develop a detailed understanding of what was happening where a shell fell, when it fell. For instance, an ICTY Appeals Chamber noted evidence that military targets were sometimes present on the grounds of a Sarajevo hospital which was shelled during the siege. However, it concluded that in the absence of warnings to the hospital and in the context of other evidence that suggested hospitals were intentionally targeted, only shots which immediately responded to fire from hospital grounds were lawful.<sup>126</sup> The Commission of Inquiry (“Col”) has similarly emphasized the lack of warnings in Syria, concluding:

The lack of warnings and the absence of military objectives within and near hospitals demonstrate that pro-Government forces deliberately target medical infrastructure as part of their war strategy, which constitutes the war crime of intentionally targeting protected objects. Furthermore, deliberate attacks against medical staff and ambulances constitute the war crimes of intentionally attacking medical personnel and medical transport.<sup>127</sup>

Both the presence (or, in this case, absence) of contemporaneous military objectives and the attacking party’s other actions (particularly its choice not to provide the warnings required in most circumstances by IHL) were essential to the Col’s determination. Documenters must seek to identify similar information in order to facilitate reliable findings by international institutions. For instance, in concluding the SAMS-supported Kafr Zeita Cave Hospital was deliberately

targeted, PHR emphasized that it had been built away from existing structures so there simply were no other likely targets in the area.<sup>128</sup>

## ► Sixth, who was harmed?

In proving some charges – such as murder – it may be essential to establish that persons who were not legitimate targets were harmed by shelling.<sup>129</sup> In other instances, it may be practically important to do so in order to establish the gravity of an offense.<sup>130</sup> Regardless, at the investigation stage, it is an essential element of due diligence. Identifying those who were harmed facilitates properly acknowledging and memorializing victims of unlawful attacks. It also enables documenters to identify potential factors in a firing party’s intent; for instance, if a shell landed near a hospital but injured five people and all were members of the same armed group, that may prompt additional lines of investigation.

Subject to medical privacy laws in relevant jurisdictions, attacks on medical facilities may be particularly conducive to documenters quickly and reliably collecting evidence identifying immediate victims and their injuries. People injured may have been located in the same place they received treatment, without intervening transportation, and it may be particularly likely that all victims wounded by the projectile’s impact were treated in the same facility. This can significantly simplify the evidence-gathering process. However, it is essential that documenters cover all details. For instance, even if wounded persons were all treated in the attacked facility, it may be that due to the exigencies of responding to the attack autopsies on killed persons were *not* conducted there, and autopsy evidence must be identified from other locations.

Just from incidents that SAMS has collected, a total of 480 civilians have been killed from attacks on healthcare systems, 178 of whom were killed in incidents related specifically to SAMS facilities - 123 of those were medical personnel. At minimum 18 of those were female. Outside of SAMS data, one study has shown that 930 health personnel have been killed in Syria as of June 2021.<sup>131</sup>

In the course of the conflict, more than 92 SAMS facilities have been impacted 2015 and 2021, SAMS also documented another 159 health facilities for other NGOs that were impacted by incidents during the same period.

At least 123 health workers have been killed and more than 318 have been injured.

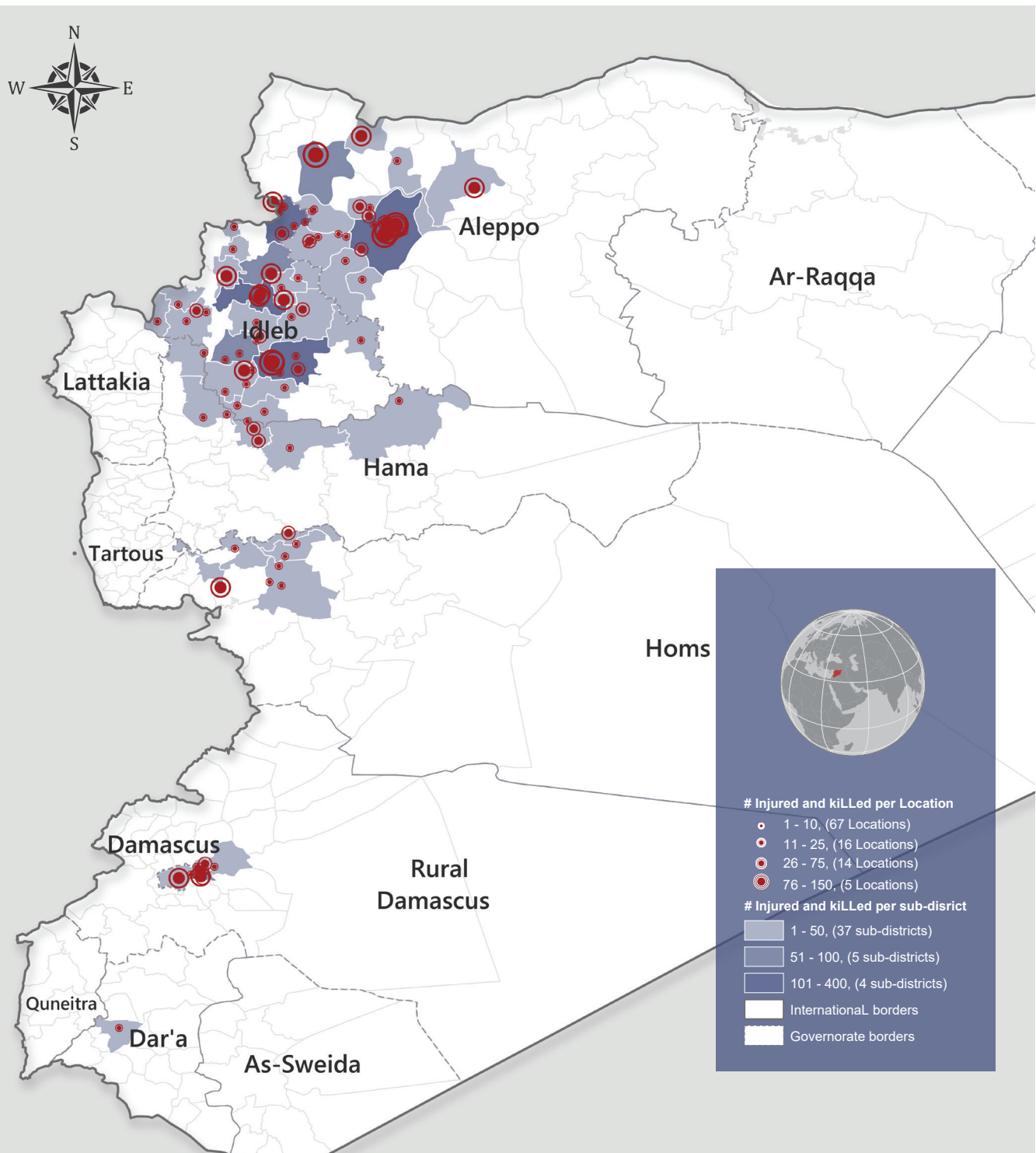


Figure 2: Distribution of injured and killed persons during the attacks on health facilities that were documented by SAMS between 2015 and 2021

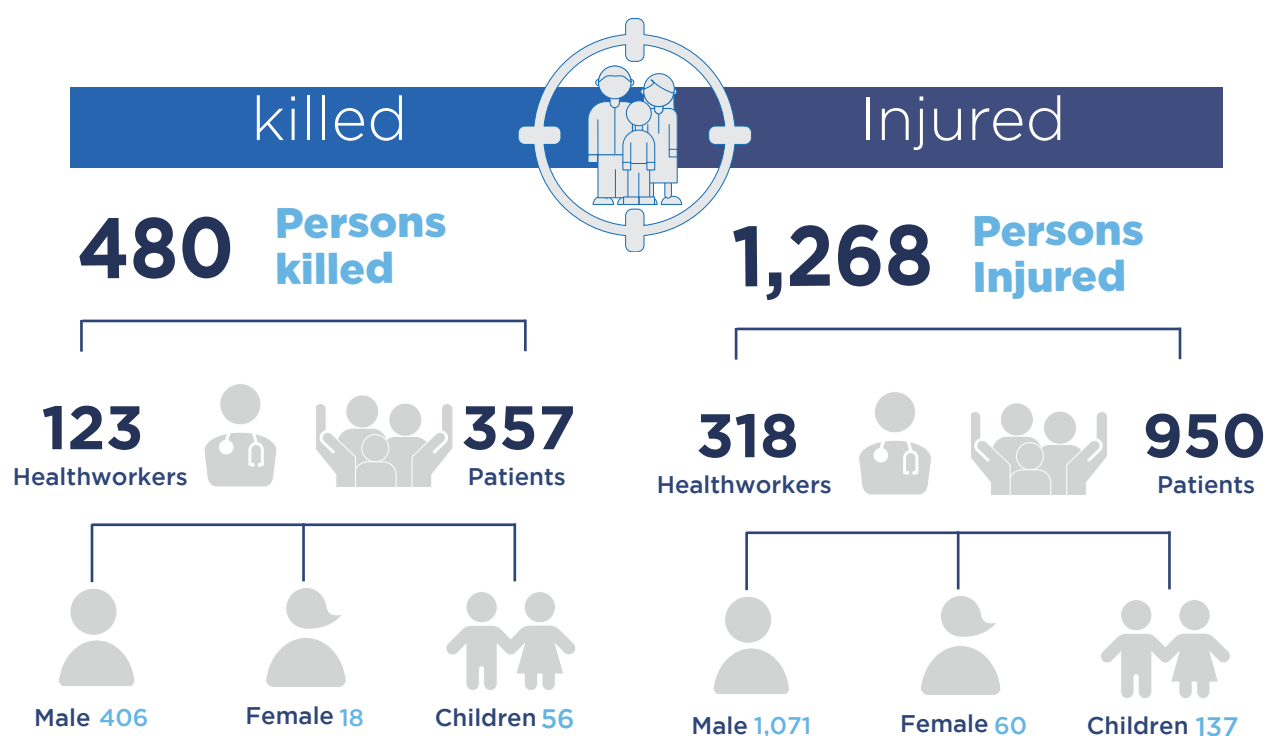


Figure 3: Total number of killed and injured from all of the incidents in SAMS database.

Moreover, in attacks on medical facilities, those victimized<sup>132</sup> go far beyond those injured by the projectile that immediately hit the facility. A 2018 SAMS report noted several categories of challenges created by attacks on medical facilities:

- ▶ disruptions in service provision,
- ▶ challenges in providing quality services due to the high volume of cases and fewer intact and functioning facilities,
- ▶ limited access to supplies,
- ▶ staff shortages, and
- ▶ psychological burdens for remaining staff due to trauma.<sup>133</sup>

These impacts have been very visible in

Syria. Indeed, reportedly at least 70% of Syria's health workforce has fled the country.<sup>134</sup> 78% of health workers surveyed in a recent sample had experienced at least one attack on a medical facility, and almost half (43%) knew colleagues who had been injured or killed in such an attack.<sup>135</sup>

The assessment of the infrastructural damage to health care systems extracted from a set of 674 attacks documented by SAMS suggest that over 61% of attacks resulted in the healthcare systems being partially damaged, whilst over 6% of the incidents – a total of 31 – resulted in the healthcare system being totally damaged or destroyed.

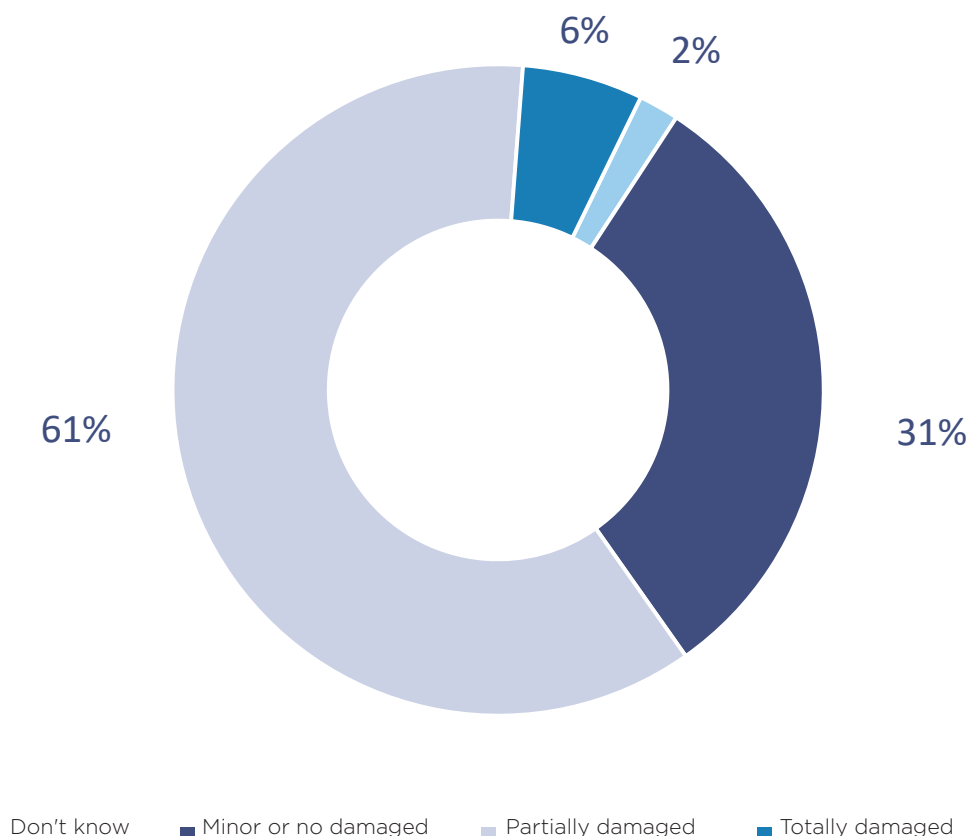


Figure 4: Damage impact on the health facilities

All told, experts estimate “millions” have been left “to suffer without adequate medical care” as a result of attacks on medical facilities in Syria.<sup>136</sup> More than half of those in northwest Syria recently surveyed reported they had been impacted by attacks on medical care; more than half reported they would be afraid to live near a medical facility; almost half were afraid to access medical care; and 24% had been unable to receive medical treatment due to an attack.<sup>137</sup>

For instance, SAMS-supported al-Shifaa hospital in Afrin was hit by two missiles on 12 June of this year.<sup>138</sup> People, including SAMS staff, were killed and others injured.<sup>139</sup>

It was closed for two weeks thereafter. SAMS records indicate about 5,000 people would have otherwise received medical services at al-Shifaa during the period when it was closed. Some may have suffered serious health consequences, or even died due to lack of treatment. While it is harder to identify such persons than injured persons who received treatment as a result of an attack, it is essential: documenters must work to provide solid evidence of the consequences of the loss of medical services for a community.



Inside the physiotherapy department, showing the effects of destruction after the attack on AlShifaa hospital in Afrin- SAMS © 2021, Aleppo governorate

The ICC judges in *Ntaganda* acknowledged the harm an attack on a medical facility may do to nearby civilians generally in considering the reparations award for victims in that case.

According to the Second Expert Report, the attack on the health centre in Sayo not only damaged its physical structures, but also caused harm to its service provision and exacerbated the vulnerability and suffering of the civilian population. After the attack, the centre ceased services, regaining functionality soon after, but at reduced capacity. To date, the number of beds is still reduced, and there is still a lack of skilled personnel.<sup>140</sup>

Similarly, the ICTY judges in *Karadžić* underscored the impact on Sarajevo's community, noting that "shelling negatively impacted the functioning of the State Hospital", meaning it could only admit patients with life-threatening injuries<sup>141</sup> and that attacks on hospitals "affected their capacity to provide adequate medical care to their patients."<sup>142</sup>

These harms do not, in themselves, render an attack unlawful if a facility is used for military operations and receives proper warnings. As *Prlić* illustrates, a lawful target is a lawful target.<sup>143</sup> Nonetheless, quantifying the harms of such attacks and amplifying local perspectives about appropriate remedies for them is essential. For instance, in *Ntaganda*, an expert on reparations for victims suggested reparations for the health centre attack should include a memorial garden for victims of the attack and other crimes at the centre; psychological counselling for staff present when the health centre was attacked; and a "collective program on improving local actors' commitment to protecting healthcare".<sup>144</sup> Documenters in Syria should similarly work to memorialize those lost in attacks on medical facilities; support all those who suffered from the attacks;<sup>145</sup> and provide increased protection for medical care going forwards, as well as rebuilding the enormous medical infrastructure which has been lost during the conflict.<sup>146</sup>

## CASE STUDY

One example of the detailed investigation and litigation required by a shelling attack which impacts a medical facility is Scheduled Incident G-14 in *Prosecutor v. Radovan Karadžić*.<sup>147</sup> Among other incidents, Karadžić was charged with responsibility for an incident on 16 June 1995<sup>148</sup> wherein:

A modified aircraft bomb was fired from VRS/SRK-held territory in the northwest. The bomb landed and exploded on the building of the UMC and Oncology Department at Dositejeva street 4-a. There was substantial damage, and 3 persons were slightly injured. After having received medical attention, the victims were sent home.<sup>149</sup>



Damage to the first floor of the UMC Sarajevo as a result of a modified air bomb impact on 16 June 1995. *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Exhibit P01526.[link](#)

In adjudicating the incident, the Trial Chamber considered several different types of evidence, including:

- ▶ Contemporaneous reports of investigations by local authorities;<sup>150</sup>
- ▶ Witness evidence from locals and international staff present in the city;<sup>151</sup>
- ▶ Technical scientific evidence from investigators and experts called by both parties;<sup>152</sup>
- ▶ Intercepted communications by the party which allegedly fired the weapon, the Sarajevo-Romanija Corps of the Bosnian Serb Army (“VRS”);<sup>153</sup>
- ▶ Internal reports by both the VRS and the Army of Bosnia-Herzegovina at the relevant time;<sup>154</sup>
- ▶ Evidence from VRS officers present at alleged firing sites;<sup>155</sup> and
- ▶ Because the same incident had been adjudicated in the case against Sarajevo-Romanija Corps Commander Dragomir Milosevic, facts previously adjudicated at ICTY.<sup>156</sup>

The Trial Chamber used these diverse types of evidence to evaluate four core issues:

The military context, including:

- the existence of combat and its location relative to the incident;<sup>157</sup>
- the locations of alleged military targets in the general area where the bomb landed;<sup>158</sup> and
- the use of another similar weapon later in the day;<sup>159</sup>
- ▶ The type of weapon used, including its nature, purpose, and technical specifications;<sup>160</sup>
- ▶ Whether the weapon was fired at a legitimate military target, including allegations that the University Medical Centre in Sarajevo was itself being used for military purposes at the time;<sup>161</sup> and

- ▶ Which warring party fired it.

The Chamber was able to generally identify the weapon as a “highly destructive modified air bomb” mounted with “three rocket motors” even though it could not specifically confirm the weight of the weapon.<sup>162</sup> Notably, the Chamber had conducted a detailed analysis about this type of weapon earlier in its Judgment.<sup>163</sup> It concluded modified air bombs were “inherently inaccurate”, “not capable of targeting specific targets but only large areas,”<sup>164</sup> and were “extremely destructive.”<sup>165</sup> Later, in concluding Serb Assembly President Momčilo Krajišnik and two senior VRS figures, Main Staff commander Ratko Mladić and Sarajevo-Romanija Corps Commander Dragomir Milošević, shared the intent for and significantly contributed to crimes against the citizens of Sarajevo, the Chamber relied upon their involvement in the procurement and use of modified air bombs, along with other evidence.<sup>166</sup> The Karadžić Chamber and others have considered the use of weapons they found to be indiscriminate, in specific circumstances, to be attacks on civilian populations and/or to help establish the primary purpose of a campaign was to terrorize civilians.<sup>167</sup>

On the basis of witness testimony, previously adjudicated facts, and internal VRS communications, the Karadžić Chamber concluded the bomb had been fired from SRK-controlled territory. The Chamber declined to resolve some of the inconsistent scientific evidence about the direction of fire - all the evidence put the origin of fire in SRK territory and in the case directly before it, the defendant would have been responsible for any SRK unit which fired the shell based on the Chamber’s other findings.<sup>168</sup> It considered evidence of lawful targets in and around the UMC Building, finding witnesses who testified such targets were present in the building itself not to be credible and determining that nearby lawful targets were not the real target because after the first bomb missed there was no follow-up attempt.<sup>169</sup> It also considered evidence about modified air bombs themselves, concluding (i) only the VRS had such weapons in the Sarajevo theater and (ii) such weapons were “*inherently inaccurate*.”<sup>170</sup>

In light of the evidence above, the Chamber concluded the bomb was “launched into a

generally residential area”, rejected claims it had been fired at a military target, and concluded those firing it “should have been aware that such an attack would create great damage to civilian objects and result in civilian casualties.”<sup>171</sup> The Chamber cited the use of a modified air bomb in this incident to support its conclusion that perpetrators intended to terrorize Sarajevo’s civilian population<sup>172</sup> and noted that the use of such weapons had to be approved by the Main Staff, the highest level of military command in the VRS.<sup>173</sup> It ultimately concluded the UMC attack was an indiscriminate attack and was directed against civilians, and that the perpetrators’ intent to attack indiscriminately was supported by the fact they had used a modified air bomb.<sup>174</sup> It held this attack and other shelling incidents Karadžić was charged with were part of a campaign of shelling and sniping with the primary purpose of terrorizing Sarajevo’s civilian population.<sup>175</sup>

Notably, Karadžić was charged with an unlawful attack and the crime of terror related to Incident G.14 – not with carrying out a direct attack on a medical facility.<sup>176</sup> By contrast, ICC lacks jurisdiction over the crime of terror, but has jurisdiction to charge an attack on a medical facility.<sup>177</sup> While this report does not focus on the issue, it is certainly possible that the “inherently inaccurate” nature of the modified air bomb would have created difficulties in proving that it was fired *at* the UMC. Nevertheless, this incident illustrates well how different types of evidence intersected to prove the perpetrators of the attack.

One leading scholar has analogized ICTY’s findings on modified air bombs to the barrel bombs used in Syria.<sup>178</sup> This incident might thus be particularly instructive for incidents where Syrian medical facilities have been hit by barrel bombs. Healthcare facility attacks documented by SAMS have been impacted by barrel bombs on more than 84 occasions, such as an impact on a SAMS-supported facility in Aleppo on 28 April 2015.<sup>179</sup>



Destruction In the surgery room after attack with Barrel bomb on, al-Sakhour hospital-- SAMS © 2017, Aleppo governorate

# WHAT DOES THIS MEAN FOR SYRIA?

It is important to understand how these scenarios may help us better understand searches for accountability in the Syrian context. Of course, attacks on medical facilities have been a prominent part of the Syrian conflict. Additionally, Syria's long-term stability will necessitate a search for accountability for crimes committed that violated international law. Experts have noted an *"extraordinarily high level of deliberate violence against health workers and facilities"*<sup>180</sup> and concluded attacks have been carried out "systematically and deliberately."<sup>181</sup> Physicians for Human Rights (PHR) have identified more than 600 such attacks.<sup>182</sup>

Observers have also considered transitional justice in Syria essential for peace: *"Syria's long-term stability requires accountability for war crimes."*<sup>183</sup> Syrians generally also support criminal accountability for war crimes, though they disagree about who should conduct trials.<sup>184</sup> In 2016, the Syria Justice and Accountability Centre (SJAC) called on *"future transitional justice mechanisms"* to *"dedicate special attention to addressing the complex issue of hospital destruction and damage since 2011."*<sup>185</sup> As of this writing, however, justice for attacks on medical facilities remains far away and has not been a prominent focus of the transitional justice discussions in Syria.

That distance impacts Syrian documenters' work: they must operate in an atmosphere of legal uncertainty arising from Syria's role as a *de facto* laboratory for a challenging *"new sequential model of international criminal justice – public-private evidence collection followed by the creation [or identification] of appropriate jurisdictions"*.<sup>186</sup> Because Syria is not a state party to the Rome Statute, the International Criminal Court ("ICC") lacks jurisdiction over these attacks unless the United Nations Security Council refers the situation in Syria to the Court or Syria voluntarily accepts ICC jurisdiction.<sup>187</sup>

There are also other options. A special tribunal will be set up - which is a criminal court set up on an ad-hoc basis by the United Nations where it tries crimes in a specific conflict.<sup>188</sup> A hybrid international court could be an option - which is a court of mixed composition and jurisdiction, encompassing both national and international aspects, usually operating within the jurisdiction of where the crimes occurred. As a result, it is unclear what courts will eventually use Syrian documenters' evidence. At present, the only ongoing prosecutions are opportunistic cases in domestic systems with universal jurisdiction statutes, such as Germany.<sup>189</sup>

The UN-established International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since 2011 ("IIIM") is an evidentiary clearinghouse, but not a court with authority to issue warrants or indictments or conduct trials.<sup>190</sup> However, it is the most substantial current mechanism in Syria that is collecting evidence that could be used in future processes, and evidence of attacks against healthcare facilities have been submitted to them.

The lack of indication as to what type of accountability mechanism could be established creates two additional layers of uncertainty.

**First**, what specific crimes can be prosecuted may vary from court to court. Whatever court has jurisdiction, an accused person may only be prosecuted for crimes as to which they could have reasonably predicted they would be prosecuted under national or international law.<sup>191</sup> In Syria this would likely mean acts which at the time they were carried out constituted crimes under customary international law, a treaty to which Syria is a party, or Syrian law.<sup>192</sup> However, the jurisdiction of different international courts is defined by the international agreements or Security Council decisions establishing them, and the scope of domestic universal jurisdiction statutes may vary.

For instance, the Rome Statute endows the ICC with jurisdiction over slightly different war crimes in the context of an international armed conflict and of a non-international armed conflict.<sup>193</sup> It is clear there has been an armed conflict in Syria for many years.<sup>194</sup> However, the conflict in Syria is predominantly non-international in character,<sup>195</sup> so an ICC referral – if one ever occurred – would provide jurisdiction only over IHL violations criminalized in non-international armed conflicts under the Rome Statute.

**Second**, procedural rules governing the admission of evidence vary from court to court and country to country, so documenters unsure where any future cases would be heard must make informed judgements about how to collect evidence to maximize its value and ensure as best they can that in whatever court it is eventually offered into evidence, it will satisfy the requirements for admission.<sup>196</sup>

Therefore, it is essential to learn from the examples given in this paper that attacks on healthcare are a fast-developing component of crimes tried at international courts, to advocate for this in the Syria context. Exactly what processes could be followed is yet, however, to be clear.



# CONCLUSION

As SAMS has previously observed:

The pervasive violence inflicted on health facilities in Syria has destroyed hospitals, killed health workers, patients and others, and severely impeded the provision of health care.<sup>197</sup>

While compensation is a popular solution for violations of the law of armed conflict in Syria, Syrians also support criminal accountability.<sup>198</sup> International courts and tribunals have demonstrated these acts of “*pervasive violence*” are such violations and international law recognizes criminal accountability as an appropriate remedy.

No obvious path to accountability in Syria exists yet for these attacks or other international crimes. However, international courts have also demonstrated that accountability is possible and provided key tools for achieving it – including detailed forensic analysis, understanding of munitions used, and exclusion of possible military targets.

Documenters should apply these lessons; assemble teams with the necessary experience and expertise to build cases against those most responsible for these very serious violations of IHL; and be attentive to the details which have decided the outcome of similar incidents in *Galić*, *Karadžić*, *Ntaganda*, and other cases. Organizations working on attacks directed at civilians in Syria more generally should take note of *Galić*, *Karadžić*, and *Mrkšić* and ensure attacks on medical facilities are included in their work both because of the widespread harm such attacks impose on affected communities and because of their value in proving the attacking party intended to target civilians.

Finally, documenters should properly identify all those harmed by attacks on medical facilities and craft solutions that memorialize killed victims; provide support for medical workers traumatized by repeated attacks on them and their coworkers; promote compliance with rules of IHL which protect medical facilities during the conflict; and rebuild access to medical services for communities which have lost access to them.

## ENDNOTES

1. IHL applies only in the context of armed conflicts.
2. E.g. Convention for the Amelioration of the Condition of the Wounded on the Field of Battle, 22 Stat. 940, Treaty Series 377, 22 August 1864, available at [https://avalon.law.yale.edu/19th\\_century/geneva04.asp](https://avalon.law.yale.edu/19th_century/geneva04.asp).
3. Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, 22 Stat. 940, Treaty Series 377, Art. I, available at [https://avalon.law.yale.edu/19th\\_century/geneva04.asp](https://avalon.law.yale.edu/19th_century/geneva04.asp).
4. Convention (IV) respecting the Laws and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land, 18 October 1907, Regulation 27, available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=3C43C56CFC87D4E3C-12563CD005167AA>.
5. E.g. S/RES/1261 (1999), para.2, available at [https://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/1261%20\(1999\)](https://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1261%20(1999)).
6. E.g. ICRC International Humanitarian Law Database, Customary IHL, Rule 25, Medical Personnel, available at [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule25](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule25); Rule 28, Medical Units, available at [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule28](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule28); U.S. Department of Defense, Law of War Manual, §§7.8, 7.10-7.14, 7.17-7.19 (IAC), 17.7, 17.15 (NIAC), available at <https://dod.defense.gov/Portals/1/Documents/pubs/DoD%20Law%20of%20War%20Manual%20-%20June%202015%20Updated%20Dec%202016.pdf?ver=2016-12-13-172036-190>.
7. S/RES/1998 (2011), para.3, available at <http://www.securitycouncilreport.org/atf/cf/%7b65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7d/CAC%20S%20RES%201998.pdf>. See Secretary-General's Special Representative for Children and Armed Conflict, Protect Schools and Hospitals: Guidance Note on Security Council Resolution 1998, Sec.3.3.2, available at <https://childrenandarmedconflict.un.org/publications/AttackonSchoolsHospitals.pdf>.
8. Many of the relevant principles are codified in sources which focus on international armed conflicts (such as most of the text of the four primary Geneva Conventions) or to which Syria is not a state party (like Additional Protocol II to the Geneva Conventions). As a result, those rules which have become customary international law apply most clearly in Syria.
9. S/RES/2139 (2014), available at <http://unscr.com/en/resolutions/2139>.
10. United Nations General Assembly Security Council, Seventy-Fourth Session, Children and Armed Conflict: Report of the Secretary-General, UN Doc A/74/845-S/2020/525, 9 June 2020, paras.177, 183 and pp.35-36, available at [https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S\\_2020\\_525\\_E.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2020_525_E.pdf).
11. E.g. Steven Kay, Drea Becker, and Joshua Kern, Armenia-Azerbaijan Nagorno-Karabakh Conflict, 20 July 2021, available at <https://armenia-azerbaijan-conflict.com/report/>.
12. A heavy price to pay, attacks on health care systems in Syria 2015-2021, May 2022, available at : [https://www.sams-usa.net/wp-content/uploads/2022/05/202205-SAMS-A-heavy-price-to-pay\\_Final\\_Version\\_En-1.pdf](https://www.sams-usa.net/wp-content/uploads/2022/05/202205-SAMS-A-heavy-price-to-pay_Final_Version_En-1.pdf)
13. International courts are not bound by other international courts' articulations of the law, so these cases do not control the outcome of Syrian cases in the same way they might in a unitary system with a strong principle of stare decisis. However, they may significantly impact the outcome of subsequent cases, for instance by shaping or reflecting the state of customary international law.
14. Many cases at international tribunals are against senior figures in military, political, or other institutions charged with a large number of crimes. For instance, Radovan Karadžić was charged with participation in four separate joint criminal enterprises, each of which itself entailed a number of criminal incidents. See Prosecutor v. Karadžić, Case No. IT-95-5/18-PT, Prosecution's Marked-up Indictment, 19 October 2009 available at [https://www.icty.org/x/cases/Karadzic/ind/en/markedup\\_indictment\\_091019.pdf](https://www.icty.org/x/cases/Karadzic/ind/en/markedup_indictment_091019.pdf) ("Karadžić Indictment").
15. Prosecutor v. Ntaganda, Case No. ICC-01/04-02/06, Judgement (Trial), paras.1134-1148, [https://www.icc-cpi.int/CourtRecords/CR2019\\_03568.PDF](https://www.icc-cpi.int/CourtRecords/CR2019_03568.PDF) ("Ntaganda TJ").
16. Attacks on hospitals in Sarajevo were notorious

- during the conflict. E.g. John F. Burns, A Sarajevo Hospital works in 'Horror Beyond Anything', New York Times, 18 October 1992, available at <https://www.nytimes.com/1992/10/18/world/a-sarajevo-hospital-works-in-horror-beyond-anything.html>; Peter Maass, Noon Visiting Hours Prove Deadly as Serbs Target Sarajevo Hospital, Washington Post, 10 March 1993, available at <https://www.washingtonpost.com/archive/politics/1993/03/10/noon-visiting-hours-prove-deadly-as-serbs-target-sarajevo-hospital/27c81bdd-1866-4f83-bf05-748e28866c7e/>;
17. While *Prosecutor v. Perišić* also featured significant Sarajevo allegations, attacks on medical facilities are not treated prominently in the Trial or Appeal Judgments.
  18. *Prosecutor v. Brima et al.*, Case No. SCSL-04-16-T, Judgement (Trial), 20 June 2007, available at <http://rscsl.org/Documents/Decisions/AFRC/613/SCSL-04-16-T-613s.pdf>, paras.928-930.
  19. E.g. *Ntaganda TJ*, para.1143.
  20. *Prosecutor v. Mrkšić et al.*, Case No. IT-95-13/1-T, Judgment (Trial), 27 September 2007, paras.494-495, available at <https://www.icty.org/x/cases/mrksic/tjug/en/070927.pdf> ("Mrkšić TJ").
  21. E.g. *Ntaganda TJ*, para.1143 (distinguishing between attacks on patients and attacks on medical facilities and finding that attacks on patients do not fall within Art. 8(2)(e)(iv) of the Rome Statute).
  22. *Prosecutor v. Ntaganda*, Case No. ICC-01/04-02/06, Sentencing Judgment, 7 November 2019, paras. 136, 138, available at [https://www.icc-cpi.int/CourtRecords/CR2019\\_06674.PDF](https://www.icc-cpi.int/CourtRecords/CR2019_06674.PDF) ("Ntaganda Sentencing Judgment").
  23. *Ntaganda Sentencing Judgment*, para.138. The ICTY Judges in *Galić* also noted that attacks in Sarajevo impacted people at hospitals in evaluating the gravity of the crimes for which *Galić* was convicted. *Prosecutor v. Galić*, Case No. IT-98-29-T, Judgment (Trial), 5 December 2003, para.764, <https://www.icty.org/x/cases/galic/tjug/en/gal-tj031205e.pdf> ("Galić TJ").
  24. E.g. Rome Statute, available at [https://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome\\_Statute\\_English.pdf](https://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf), Art. 8(2)(b)(ix) ("Rome Statute") (for international armed conflicts, defining as war crimes "Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives"); Art. 8(2)(e)(iv) (for non-international armed conflicts, defining as war crimes "Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives"). Attacks on facilities bearing the distinctive emblem of the ICRC are also criminalized. Rome Statute,
  25. The definition of "attack" at ICC is unsettled. Earlier this year, an Appeals Chamber confronted with the question in the context of cultural property came out deeply divided. *Prosecutor v. Ntaganda*, Case No. ICC-01/04-02/06 A A2, Judgement (Appeal), para. 1164, [https://www.icc-cpi.int/CourtRecords/CR2021\\_03027.PDF](https://www.icc-cpi.int/CourtRecords/CR2021_03027.PDF).
  26. For instance, the *Kupreškić* judgement at ICTY uses the use of a civilian hospital for military purposes as an example of "abuse of their rights by civilians" as a result of which "international rules operate to lift that protection which would otherwise be owed to them." *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-T, Judgment (Trial), 14 January 2000, available at <https://www.icty.org/x/cases/kupres-kic/tjug/en/kup-tj000114e.pdf>, para.523.
  27. For instance, 83% of attacks on schools or hospitals in Syria reported by the Secretary-General's 2020 Report on Children and Armed Conflict were defined as either airstrikes (which share many investigative features with shelling incidents) or shelling incidents. United Nations General Assembly Security Council, Seventy-Fourth Session, Children and Armed Conflict: Report of the Secretary-General, UN Doc A/74/845-S/2020/525, 9 June 2020, para.177, available at [https://www.securitycouncilreport.org/atf/cf/%7B65BF-CF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S\\_2020\\_525\\_E.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BF-CF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2020_525_E.pdf).
  28. Of course, documenters must also follow good

investigative practices applicable to any type of international violation in interviewing witnesses, establishing the chain of custody of evidence, and carrying out other core investigative functions. More general lessons from the experience of international courts, like the need to pursue justice at a variety of judicial levels, are not addressed here. See e.g. Jennifer Trahan, *An Overview of Justice in the former Yugoslavia and Reflections for Accountability in Syria*, 23 *ILSA Journal of Int'l and Comparative Law* 2 (2017), available at <https://nsuworks.nova.edu/cgi/viewcontent.cgi?article=1949&context=ilsajournal>.

29. *Prosecutor v. Ntaganda*, Case No. ICC-01/04-02/06, Transcript of 3 February 2017, Testimony of Witness P-317, p.44, available at [https://www.icc-cpi.int/Transcripts/CR2017\\_00805.PDF](https://www.icc-cpi.int/Transcripts/CR2017_00805.PDF).
30. ICRC International Humanitarian Law Database, Customary IHL, Rule 7, The Principle of Distinction between Civilian Objects and Military Objectives, available at [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule7](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule7).
31. E.g. Rome Statute, Arts. 8(2)(e)(iv) (NIAC) and 8(2)(b)(ix) (IAC). See *Ntaganda Sentencing Judgment*, para.138.
32. See Rome Statute, Art.8.
33. *Ntaganda TJ*, paras.1134-1148.
34. *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-PT, *Prosecutor's Pre-Trial Brief* pursuant to Rule 65ter(E), 31 January 2006, paras.18-19, available at <https://ucr.irmct.org/Search/PreviewPage/?link=http%253A//icr.icty.org/LegalRef/CMSDocStore/Public/English/Brief/NotIndexable/IT-98-29%25231/MS5455R0000142536.TIF>.
35. *Galić TJ*, para.509.
36. *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, *Judgment (Trial)*, 24 March 2016, available at [https://www.icty.org/x/cases/karadzic/tjug/en/160324\\_judgement.pdf](https://www.icty.org/x/cases/karadzic/tjug/en/160324_judgement.pdf) ("Karadžić TJ"), paras. 4520-4544.
37. See *Karadžić Indictment*, Incident G.14.
38. The Chamber noted the hospitals themselves were "deliberately targeted or, at the very least, hit as a result of indiscriminate fire onto the city" and that even when military targets were present at hospitals, SRK firing on the hospitals was "often disproportionate and indiscriminate, targeting the hospital complex as a whole." *Karadžić TJ*, paras. 4543-4544.
39. *Mrkšić TJ*, paras.466, 472.
40. Acts may only constitute crimes against humanity – and so may only be prosecuted in an international court with jurisdiction over atrocity crimes – if they are committed in the context of a widespread and systematic attack directed against a civilian population. E.g. Rome Statute, Art. 7.
41. *Mrkšić TJ*, paras.58-59. While the hospital was shelled, neither *Mrkšić* nor other ICTY cases where Vukovar was charged in the Indictment, including the *Slobodan Milošević*, *Dokmanović*, *Šešelj*, and *Hadžić* cases, included charges specifically related to attacks on the hospital.
42. *Mrkšić TJ*, para. 472 and fn.1740.
43. E.g. *Karadžić Indictment*, para.65 and counts 9-10; *Prosecutor v. Galić*, Case No. IT-98-29-I, *Indictment*, available at [http://www.haguejusticeportal.net/Docs/Court%20Documents/ICTY/Galic\\_indictment.pdf](http://www.haguejusticeportal.net/Docs/Court%20Documents/ICTY/Galic_indictment.pdf); *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-PT, *Prosecutor's Submission of Amended Indictment* pursuant to Rule 50 and Trial Chamber's Decision dated 12 December 2006, available at [http://haguejusticeportal.net/Docs/Court%20Documents/ICTY/milosevic\\_dragomir\\_case\\_indictment.pdf](http://haguejusticeportal.net/Docs/Court%20Documents/ICTY/milosevic_dragomir_case_indictment.pdf).
44. ICTY Statute, Art. 3(d), available at [https://www.icty.org/x/file/Legal%20Library/Statute/statute\\_sept09\\_en.pdf](https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf).
45. Rome Statute, Arts. 8(2)(e)(iv) and 8(2)(b)(ix).
46. E.g. Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, 22 Stat. 940, Treaty Series 377, available at [https://avalon.law.yale.edu/19th\\_century/geneva04.asp](https://avalon.law.yale.edu/19th_century/geneva04.asp).
47. Law on the Kosovo Specialist Chambers, Law No. 05/L-053, Arts. 14(1)(b)(ix), 14(1)(d)(ii), available at [https://www.scp-ks.org/sites/default/files/public/05-l-053\\_a.pdf](https://www.scp-ks.org/sites/default/files/public/05-l-053_a.pdf).
48. Law of the Supreme Iraqi Criminal Tribunal, 18 October 2005, Arts. 13(2)(J), 13(4)(B), available at <http://gjpi.org/wp-content/uploads/2009/02/iraqstatuteengtrans.pdf>.
49. United Nations Transitional Administration in East Timor, Regulation No. 2000/15 on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences, 6 June 2000, Sections 6.1(b)(ix), 6.1(e)(ii).
50. S/RES/2286 (2016), available at <http://unscr.com/en/resolutions/2286>.
51. E.g. Summary by the Secretary-General of the report of the United Nations Headquarters Board of Inquiry into certain incidents in north-

west Syria since 17 September 2018 involving facilities on the United Nations deconfliction list and United Nations supported facilities, available at [https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/NWS\\_BOI\\_Summary\\_06\\_April\\_2020.pdf](https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/NWS_BOI_Summary_06_April_2020.pdf)

52. ICC's Office of the Prosecutor has concluded that the preconditions to investigate have been satisfied, but has postponed formally opening an investigation due to resource constraints. E.g. International Criminal Court Office of the Prosecutor, Statement of the Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination in the situation in Ukraine, 11 December 2020, available at <https://www.icc-cpi.int/Pages/item.aspx?name=201211-otp-statement-ukraine>.
53. See ICC Office of the Prosecutor Report on Preliminary Examination Activities (2018), 5 December 2018, para.86, available at <https://www.icc-cpi.int/itemsDocuments/181205-rep-otp-PE-ENG.pdf>; ICC Office of the Prosecutor Report on Preliminary Examination Activities (2019), 5 December 2019, para.279, available at <https://www.icc-cpi.int/itemsDocuments/191205-rep-otp-PE.pdf>; ICC Office of the Prosecutor Report on Preliminary Examination Activities (2020), 13 December 2020, para.280, available at <https://www.icc-cpi.int/itemsDocuments/2020-PE/2020-pe-report-eng.pdf>.
54. Report of the Independent Fact-Finding Mission on Libya, A/HRC/48/83, 1 October 2021, para.37, available at [https://www.ohchr.org/EN/HRBodies/HRC/FFM\\_Libya/Pages/Index.aspx](https://www.ohchr.org/EN/HRBodies/HRC/FFM_Libya/Pages/Index.aspx).
55. Steven Kay, Drea Becker, and Joshua Kern, Armenia-Azerbaijan Nagorno-Karabakh Conflict, 20 July 2021, available at <https://armenia-azerbaijan-conflict.com/report/>.
56. E.g. Albina Sorguc, Sarajevo Siege: Brigade Chiefs' Role in Terrorizing City Ignored, BIRN, 6 April 2020, available at <https://balkaninsight.com/2020/04/06/sarajevo-siege-brigade-chiefs-role-in-terrorising-city-ignored/>.
57. Prosecutor v. Ntaganda, Case No. ICC-01/04-02/06, Transcript of 3 February 2017, Testimony of Witness P-317, p.44, available at [https://www.icc-cpi.int/Transcripts/CR2017\\_00805.PDF](https://www.icc-cpi.int/Transcripts/CR2017_00805.PDF).
58. Prosecutor v. Prlić et al., Case No. IT-04-74-A, Judgment (Appeal), 29 November 2017, paras.411, 414, 426, available at <https://www.icty.org/x/cases/prlic/acjug/en/171129-judgment-vol-1.pdf>. Indeed, the Prosecutor did not charge the defendants with destruction of a protected site, either medical or cultural, but with an attack which was disproportionate due to the psychological harm of destroying the site. See Timothy William Waters, The Persecution of Stones: War Crimes, Law's Autonomy and the Co-optation of Cultural Heritage, 20 Chicago J. Int'l L. 1, Article 2, available at <https://chicagounbound.uchicago.edu/cjil/vol20/iss1/2>.
59. Dragan Kalinić, Republika Srpska Minister of Health, at the 16th Session of the Bosnian Serb Assembly on 12 May 1992. See Prosecutor v. Mladić, Case No. IT-09-92-T, Exhibit P00431, p.23, available at <https://ucr.irmct.org/Search/PreviewPage/?link=http%253A//icr.icty.org/LegalRef/CMSDocStore/Public/English/Exhibit/NotIndexable/IT-09-92/AC-E136523R0000507903.TIF>.
60. E.g. Prosecutor v. Galić, Case No. IT-98-29-A, Judgement (Appeal), 30 November 2006, available at <https://www.icty.org/x/cases/galic/acjug/en/gal-acjud061130.pdf> ("Galić AJ"), paras. 86-87, 90, 98; ICRC IHL Database, Customary IHL, Rule 2, Violence Aimed at Spreading Terror among the Civilian Population, available at [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule2](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule2).
61. E.g. Rome Statue, Arts. 8(2)(e)(iv) (NIAC) and 8(2)(b)(ix) (IAC), ICRC IHL Database, Customary IHL, Rule 28, Medical Units, available at [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule28](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule28).
62. E.g. Rome Statue, Arts. 8(2)(e)(i) (NIAC) and 8(2)(b)(i) (IAC); ICRC IHL Database, Customary IHL, Rule 1, The Principle of Distinction between Civilians and Combatants, available at [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule1](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule1).
63. ICRC IHL Database, Customary IHL, Rule 11, Indiscriminate Attacks, available at [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule11](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule11); ICRC IHL Database, Customary IHL, Rule 12, Definition of Indiscriminate Attacks, available at [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule12](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule12). Indiscriminate attacks may be considered to be directed against civilians. E.g. Judgement, Case File No. 001/18-07-2007/ECCC/TC, 26

July 2010, para.310, available at [https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/20100726\\_Judgement\\_Case\\_001\\_ENG\\_PUBLIC.pdf](https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/20100726_Judgement_Case_001_ENG_PUBLIC.pdf).

64. ICRC IHL Database, Customary IHL, Rule 14, Proportionality in Attacks, available at [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule14](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule14). Notably, the Rome Statute does not criminalize disproportionate attacks in non-international armed conflicts. Proportionality is calculated in relation to the anticipated military advantage, not the force used by an opposing party.
65. E.g. Georgetown Law Human Rights Institute, No Choice: Attacks on Health as a Driver of Forced Displacement in Syria, May 2021, pp.2, 32, available at [https://www.law.georgetown.edu/human-rights-institute/wp-content/uploads/sites/7/2021/06/No-Choice-Report\\_web.pdf](https://www.law.georgetown.edu/human-rights-institute/wp-content/uploads/sites/7/2021/06/No-Choice-Report_web.pdf). See Rome Statute, Arts. 7(1)(d); 8(2)(a)(vii); 8(2)(e)(viii).
66. Persecution is a crime against humanity rather than a war crime. While other listed offenses are criminalized only if committed during and with a nexus to an armed conflict, for conduct to constitute the crime of persecution it must be committed in the context of a widespread and systematic attack directed against a civilian population.
67. E.g. Rome Statute, Arts. 8(2)(e)(ii) (NIAC) and 8(2)(b)(xxiv) (IAC) ; ICRC IHL Database, Customary IHL, Rule 30, Persons and Objects Displaying the Distinctive Emblem, available at [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule30](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule30).
68. See U.N. Doc. A/HRC/37/72, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 1 February 2018, para.73, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/022/82/PDF/G1802282.pdf?OpenElement>. SJAC, Documenting Attacks on Medical Facilities in Syria, February 23, 2016, <https://syriaaccountability.org/updates/2016/02/23/documenting-attacks-on-medical-facilities-in-syria/>.
69. Rome Statute, Art. 30. See Ntaganda TJ, para.1147 (holding that in order to justify a conviction for an attack on a medical facility it would need to be proved that the perpetrator “must have been aware that he or she was attacking a hospital or place where the wounded and sick were collected”).
70. The ICTY Appeals Chamber required that the civilian population be made “the object” of attacks in order for those attacks to constitute the crime of terror. E.g. Prosecutor v. Dragomir Milošević, Case No. IT-98-29/1-A, Judgment (Appeal), 12 November 2009, available at [https://www.icty.org/x/cases/dragomir\\_milosevic/acjug/en/091112.pdf](https://www.icty.org/x/cases/dragomir_milosevic/acjug/en/091112.pdf), paras.38-39 (“Milošević AJ”). Similarly, on the facts of the case before it the Appeals Chamber held that defendants could not be convicted of forcibly displacing civilians who had fled from lawful shelling. Prosecutor v. Gotovina and Markač, Judgment (Appeal), 16 November 2012, para.115, available at [https://www.icty.org/x/cases/gotovina/acjug/en/121116\\_judgement.pdf](https://www.icty.org/x/cases/gotovina/acjug/en/121116_judgement.pdf).
71. Secretary-General’s Special Representative for Children and Armed Conflict, Protect Schools and Hospitals: Guidance Note on Security Council Resolution 1998, p.8, available at <https://childrenandarmedconflict.un.org/publications/AttackonSchoolsHospitals.pdf>; ICC Elements of Crimes, pp.34, 36, available at <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>. Similarly, a U.S. strike which impacted a medical facility in Kunduz, Afghan, which those involved in the strike mistakenly believed to be a Taliban position was found by investigators to be a tragic mistake but not a crime. E.g. U.S. Central Command, April 29: CENTCOM releases investigation into airstrike on Doctors Without Borders trauma center, Release No. 20160429-10, 29 April 2016, available at <https://www.centcom.mil/MEDIA/PRESS-RELEASES/Press-Release-View/Article/904574/april-29-centcom-releases-investigation-into-airstrike-on-doctors-without-borde/>. Italian soldiers who fired on an ambulance which refused to stop when warned and sped at their position were also acquitted of charges. E.g. International Commission of the Red Cross and Red Crescent, Italy, Use of force against ambulances in Iraq, available at <https://casebook.icrc.org/case-study/italy-use-force-against-ambulances-iraq>.
72. ICC law holds that an attack directed at a legally protected facility need not actually damage that facility to give rise to criminal responsibility. Ntaganda TJ, para. 1136 (citation omitted).
73. Secretary-General’s Special Representative for Children and Armed Conflict, Protect Schools and Hospitals: Guidance Note on Security Council Resolution 1998, Sec.3.3.1, available at <https://childrenandarmedconflict.un.org/publications/AttackonSchoolsHospitals.pdf>.

- 74.E.g. Galić AJ, para.350; Galić TJ, para.502; Karadžić TJ, para.4541.
- 75.Prosecutor v. Al Mahdi, Case No. ICC-01/12-01/15, Judgment and Sentence, 27 September 2016, paras.45-48, available at [https://www.icc-cpi.int/CourtRecords/CR2016\\_07244.PDF](https://www.icc-cpi.int/CourtRecords/CR2016_07244.PDF).
- 76.Xabier Agirre Aranburu, The Role of Analysis Capacity, Ch. 2 in Historical Origins of International Criminal Law, Volume V, p.85, available at [https://www.academia.edu/33539435/The\\_role\\_of\\_Analysis\\_Capacity\\_Ch\\_2\\_in\\_Historical\\_Origins\\_of\\_International\\_Criminal\\_Law\\_Volume\\_5?email\\_work\\_card=view-paper](https://www.academia.edu/33539435/The_role_of_Analysis_Capacity_Ch_2_in_Historical_Origins_of_International_Criminal_Law_Volume_5?email_work_card=view-paper).
- 77.Karadžić TJ, para.4634.
- 78.Karadžić TJ, para.4648.
- 79.Ntaganda TJ, para.1147 and fn.1474.
- 80.E.g. SAMS, Saving Lives Underground: The Case for Underground Hospitals in Syria, <https://www.sams-usa.net/reports/saving-lives-underground-case-underground-hospitals-syria/>; SJAC, Documenting Attacks on Medical Facilities in Syria, 23 February 2016, <https://syriaaccountability.org/updates/2016/02/23/documenting-attacks-on-medical-facilities-in-syria/>.
- 81.E.g. Humanitarian Notification System Supporting Access and Protection Standard Operating Procures for humanitarian actors on the notification process in Syria, April 2020, available at [https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/humanitarian\\_notification\\_-\\_syria\\_-\\_sop.pdf](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/humanitarian_notification_-_syria_-_sop.pdf), cited in International Rescue Committee, A Decade of Destruction: Attacks on health care in Syria, 3 March 2021, pp.4, 20-21, available at <https://www.rescue.org/article/decade-destruction-attacks-health-care-syria>.
- 82.E.g. UN-OCHA Syrian Arab Republic: Humanitarian Notification System (HNS): Notified Humanitarian Static Sites and Movements As of 31 December 2021, available at : <https://reliefweb.int/report/syrian-arab-republic/syrian-arab-republic-humanitarian-notification-system-hns-notified>
- 83.E.g. Summary by the Secretary-General of the report of the United Nations Headquarters Board of Inquiry into certain incidents in northwest Syria since 17 September 2018 involving facilities on the United Nations deconfliction list and United Nations supported facilities, para.25, available at [https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/NWS\\_BOI\\_Summary\\_06\\_April\\_2020.pdf](https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/NWS_BOI_Summary_06_April_2020.pdf) (noting that at the time, information from the deconfliction mechanism would be shared with Turkey, the Russian Federation, and the United States; that the Russian Federation was expected to share deconfliction information with the Syrian government; and that armed opposition groups did not directly receive deconfliction information). Russia exited the deconfliction mechanism in 2020. E.g. TASS, Some UN deconfliction mechanism's facilities used by terrorists – Russian envoy, 29 June 2020, available at <https://tass.com/politics/1172955>.
- 84.E.g. SAMS Press Release, SAMS and 11 Humanitarian Organizations share Hospital Coordinates, 4 April 2018, available at [https://www.sams-usa.net/press\\_release/sams-11-humanitarian-organizations-share-hospital-coordinates/](https://www.sams-usa.net/press_release/sams-11-humanitarian-organizations-share-hospital-coordinates/).
- 85.E.g. SAMS Press Release, SAMS and 11 Humanitarian Organizations share Hospital Coordinates, 4 April 2018, available at [https://www.sams-usa.net/press\\_release/sams-11-humanitarian-organizations-share-hospital-coordinates/](https://www.sams-usa.net/press_release/sams-11-humanitarian-organizations-share-hospital-coordinates/).
- 86.E.g. Physicians for Human Rights, The Destruction of Hospitals – a Strategic Component in Regime Military Offensives, 22 May 2019, available at <https://syriamap.phr.org/#/en/case-studies/5>.
- 87.ICTY Manual on Developed Practices, 2009, para.80, available at [https://www.icty.org/x/file/About/Reports%20and%20Publications/ICTY\\_Manual\\_on\\_Developed\\_Practices.pdf](https://www.icty.org/x/file/About/Reports%20and%20Publications/ICTY_Manual_on_Developed_Practices.pdf) (“ICTY Manual”).
- 88.E.g. Peter McCloskey, Leadership and Control of Investigations, Ch.10 in Historical Origins of International Criminal Law, Volume V, p.207, available at [https://www.academia.edu/33539435/The\\_role\\_of\\_Analysis\\_Capacity\\_Ch\\_2\\_in\\_Historical\\_Origins\\_of\\_International\\_Criminal\\_Law\\_Volume\\_5?email\\_work\\_card=view-paper](https://www.academia.edu/33539435/The_role_of_Analysis_Capacity_Ch_2_in_Historical_Origins_of_International_Criminal_Law_Volume_5?email_work_card=view-paper); Hildegard Uertz-Retzlaff, Prosecutor-Directed Investigations, Ch. 23 in Historical Origins of International Criminal Law, Volume V, pp.401-402, available at [https://www.academia.edu/33539435/The\\_role\\_of\\_Analysis\\_Capacity\\_Ch\\_2\\_in\\_Historical\\_Origins\\_of\\_International\\_Criminal\\_Law\\_Volume\\_5?email\\_work\\_card=view-paper](https://www.academia.edu/33539435/The_role_of_Analysis_Capacity_Ch_2_in_Historical_Origins_of_International_Criminal_Law_Volume_5?email_work_card=view-paper); Clint Williamson, On Charging Criteria and Other Policy Concerns, Ch. 24 in Historical Origins of International Criminal Law, Volume V, p.413, available at [https://www.academia.edu/33539435/The\\_role\\_of\\_Analysis\\_Capacity\\_Ch\\_2\\_in\\_Historical\\_Origins\\_of\\_International\\_Criminal\\_Law\\_Volume\\_5?email\\_work\\_card=view-paper](https://www.academia.edu/33539435/The_role_of_Analysis_Capacity_Ch_2_in_Historical_Origins_of_International_Criminal_Law_Volume_5?email_work_card=view-paper).

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- 89.E.g. Prosecutor v. Dragomir Milošević, Case No. IT-98-29/1-T, 23 April 2007, Testimony of Richard Higgs, Transcript Page 4995, available at [https://www.icty.org/x/cases/dragomir\\_milosevic/trans/en/070423IT.htm](https://www.icty.org/x/cases/dragomir_milosevic/trans/en/070423IT.htm).
- 90.E.g. Prosecutor v. Mladić, Case No. IT-09-92-T, Exhibit P07547, available at <https://ucr.irmct.org/Search/PreviewPage/?link=http%253A//icr.icty.org/LegalRef/CMSDocStore/Public/English/Exhibit/NotIndexable/IT-09-92/AC-E138507R0000512734.pdf>.
- 91.Melinda Rankin, The Future of International Criminal Evidence in New Wars? The Evolution of the Commission for International Justice and Accountability, *Journal of Genocide Research* 20:3 (2018) 392, 396, available at <https://www.tandfonline.com/doi/abs/10.1080/14623528.2018.1445435?journalCode=cjgr20>.
92. ICTY Manual, paras. 95-106. See also Xabier Agirre Aranburu, The Role of Analysis Capacity, Ch. 2 in *Historical Origins of International Criminal Law, Volume V*, pp.78-93, available at [https://www.academia.edu/33539435/The\\_role\\_of\\_Analysis\\_Capacity\\_Ch\\_2\\_in\\_Historical\\_Origins\\_of\\_International\\_Criminal\\_Law\\_Volume\\_5?email\\_work\\_card=view-paper](https://www.academia.edu/33539435/The_role_of_Analysis_Capacity_Ch_2_in_Historical_Origins_of_International_Criminal_Law_Volume_5?email_work_card=view-paper); Clint Williamson, On Charging Criteria and Other Policy Concerns, Ch. 24 in *Historical Origins of International Criminal Law, Volume V*, p.414, available at [https://www.academia.edu/33539435/The\\_role\\_of\\_Analysis\\_Capacity\\_Ch\\_2\\_in\\_Historical\\_Origins\\_of\\_International\\_Criminal\\_Law\\_Volume\\_5?email\\_work\\_card=view-paper](https://www.academia.edu/33539435/The_role_of_Analysis_Capacity_Ch_2_in_Historical_Origins_of_International_Criminal_Law_Volume_5?email_work_card=view-paper).
- 93.E.g. ICTY Manual Annex 3; Xabier Agirre Aranburu, The Role of Analysis Capacity, Ch. 2 in *Historical Origins of International Criminal Law, Volume V*, p.63, available at [https://www.academia.edu/33539435/The\\_role\\_of\\_Analysis\\_Capacity\\_Ch\\_2\\_in\\_Historical\\_Origins\\_of\\_International\\_Criminal\\_Law\\_Volume\\_5?email\\_work\\_card=view-paper](https://www.academia.edu/33539435/The_role_of_Analysis_Capacity_Ch_2_in_Historical_Origins_of_International_Criminal_Law_Volume_5?email_work_card=view-paper).
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- 97.E.g. Prosecutor v. Mladić, Case No. IT-09-92-T, Transcript of 8 November 2013, Pages 19026-19027, Testimony of Richard Higgs, available at <https://www.icty.org/x/cases/mladic/trans/en/131108ED.htm>.
- 98.E.g. Summary by the Secretary-General of the report of the United Nations Headquarters Board of Inquiry into certain incidents in north-west Syria since 17 September 2018 involving facilities on the United Nations deconfliction list and United Nations supported facilities, [https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/NWS\\_BOI\\_Summary\\_06\\_April\\_2020.pdf](https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/NWS_BOI_Summary_06_April_2020.pdf). Syrian Network for Human Rights, the Most Notable Human Rights Violations in Syria in the First Half of 2021, [https://sn4hr.org/wp-content/pdf/english/The\\_Most\\_Notable\\_Human\\_Rights\\_Violations\\_in\\_Syria\\_in\\_the\\_First\\_Half\\_of\\_2021\\_en.pdf](https://sn4hr.org/wp-content/pdf/english/The_Most_Notable_Human_Rights_Violations_in_Syria_in_the_First_Half_of_2021_en.pdf), pp.4, 29; Physicians for Human Rights, No Place is Safe for Health Care – the Attack on Syria’s al-Atareb Hospital, <https://syriamap.phr.org/#/en/case-studies/9>; Atlantic Council, #BreakingAleppo: M2 Hospital, 12 February 2017, <https://www.youtube.com/watch?v=3CJ-KKLzyBU>.
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- 100.White and Case, *Chains of Evidence*, 2020 *Global Citizenship Review*, available at <https://www.whitecase.com/publications/story/chains-evidence>.
- 101.Sarah MacIntosh, Pursuing Justice for Mass

- Atrocities: A Handbook for Victims' Groups, U.S. Holocaust Memorial Museum, 2021, p.83, available at <https://www.ushmm.org/m/pdfs/USHMM-Pursuing-Justice-for-Mass-Atrocities.pdf>.
- 102.E.g. SJAC, Truth Beyond Prosecution: Re-assessing Documentation and Truth-Seeking in the Syrian Conflict, p.26, September 2021, available at [https://syriaaccountability.org/wp-content/uploads/FOR-WEB-ENG\\_SJAC-Truth-Report\\_final.pdf](https://syriaaccountability.org/wp-content/uploads/FOR-WEB-ENG_SJAC-Truth-Report_final.pdf).
- 103.Andras Vamos-Goldman, The Importance of Professional Expertise in Gathering Evidence of Mass Atrocities, Just Security, 27 October 2017, available at <https://www.justsecurity.org/46355/rules-govern-evidence-gathering-conflict-zones/>.
- 104.Some examples of relevant types of incident-specific evidence are set out below. See also Secretary-General's Special Representative for Children and Armed Conflict, Protect Schools and Hospitals: Guidance Note on Security Council Resolution 1998, Sec. 3.3.1, available at <https://childrenandarmedconflict.un.org/publications/AttackonSchoolsHospitals.pdf>.
- 105.E.g. Karadžić TJ, paras.4201, 4258, 4369, among others.
- 106.E.g. Karadžić TJ, para.4275 (explaining that a marking on a stabilizer indicated it had been produced in a specific factory in Serbia).
- 107.E.g. Karadžić TJ, para.4343.
- 108.E.g. Prosecutor v. Mladić, Case No. IT-09-92-T, Transcript of 4 November 2013, Page 18757, Testimony of Richard Higgs, available at <https://www.icty.org/x/cases/mladic/trans/en/131104ED.htm>.
- 109.Ntaganda TJ, para.1143. See para.587. The Chamber concluded the patients were murdered as a matter of law. Id., para.1000. The Ntaganda Chamber also concluded the war-time pillage of a hospital did not constitute an "attack" for purposes of the ICC Statute. See id. at para.762; Prosecutor v. Ntaganda, Case No. ICC-01/04-02/06 A A2, Judgement (Appeal), para. 1164, [https://www.icc-cpi.int/CourtRecords/CR2021\\_03027.PDF](https://www.icc-cpi.int/CourtRecords/CR2021_03027.PDF).
- 110.Ntaganda TJ, paras.506, 922, 1147-1148.
- 111.E.g. Prosecutor v. Strugar, Case No. IT-01-42-T, Transcript of 10 May 2004, Pages 6166-6172, 6204-6207, Testimony of Jozef Poje, available at <https://www.icty.org/x/cases/strugar/trans/en/040510IT.htm>.
- 112.Prosecutor v. Strugar, Case No. IT-01-42-T, Judgment (Trial), 31 January 2005, para.212, available at <https://www.icty.org/x/cases/strugar/tjug/en/str-tj050131e.pdf>.
- 113.Additional technical evidence, such as the charge used or angle of descent, may further assist in identifying the possible range of fire.
- 114.E.g. Karadžić TJ, para.4163 (holding that the minimum firing distance for shells – based on the use of at least charge three – “places the origin of fire firmly within” territory controlled by one party to the conflict).
- 115.E.g. Prosecutor v. Dragomir Milošević, Case No. IT-98-29/1-T, Judgment (Trial), 12 December 2007, available at [https://www.icty.org/x/cases/dragomir\\_milosevic/tjug/en/071212.pdf](https://www.icty.org/x/cases/dragomir_milosevic/tjug/en/071212.pdf), paras.912, 948, 970 (“Milošević TJ”). An ICTY Appeals Chamber rejected the “purported targeting of military objects” on the basis that it found the weapon used was indiscriminate. Prosecutor v. Martić, Case No. IT-95-11-A, Judgment (Appeal), 8 October 2008, para.261, available at <https://www.icty.org/x/cases/martiacjug/en/mar-aj081008e.pdf>.
- 116.Milošević TJ, para.913.
- 117.E.g. Prosecutor v. Perišić, Case No. IT-04-81-T, Judgment (Trial), 6 September 2011, para.415, available at [https://www.icty.org/x/cases/perisic/tjug/en/110906\\_judgement.pdf](https://www.icty.org/x/cases/perisic/tjug/en/110906_judgement.pdf).
- 118.Prosecutor v. Gotovina and Markač, Judgment (Appeal), 16 November 2012, available at [https://www.icty.org/x/cases/gotovina/acjug/en/121116\\_judgement.pdf](https://www.icty.org/x/cases/gotovina/acjug/en/121116_judgement.pdf), paras.59-61, 64-67.
- 119.E.g. Karadžić TJ, para.4086 (concluding that an atomic shelter was not the true target of two mortar shells because more than two shells would have been required to destroy it), 4109 (“had the command post been the intended target, the SRK soldiers, having missed it, would presumably have fired again until it was hit and destroyed”).
- 120.See Physicians for Human Rights, No Place is Safe for Health Care – the Attack on Syria’s al-Atareb Hospital, <https://syriamap.phr.org/#/en/case-studies/9>.
- 121.E.g. Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, NS/RKM/1004/006, Art.2, available at [https://www.eccc.gov.kh/sites/default/files/legal-documents/KR\\_Law\\_as\\_amended\\_27\\_Oct\\_2004\\_Eng.pdf](https://www.eccc.gov.kh/sites/default/files/legal-documents/KR_Law_as_amended_27_Oct_2004_Eng.pdf); Statute of the Special Court for Sierra Leone, Art. 1, available at <http://www.rscsl.org/Documents/scsl-statute.pdf>; Decision pursuant to Article 15 of the Rome Statute on

the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire, 3 October 2011, para.204, available at <https://legal-tools.org/doc/7a6c19/pdf>; Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the alleged crimes committed by ISIS, 8 April 2015, available at <https://www.icc-cpi.int/Pages/item.aspx?name=otp-stat-08-04-2015-1>; S/RES/1534 (2004), 26 March 2004, para.5, available at [https://www.icty.org/x/file/Legal%20Library/Statute/statute\\_1534\\_2004\\_en.pdf](https://www.icty.org/x/file/Legal%20Library/Statute/statute_1534_2004_en.pdf); International Criminal Court Office of the Prosecutor, Strategic Plan 2019-2021, 17 July 2019, p.19, available at <https://www.icc-cpi.int/itemsDocuments/20190726-strategic-plan-eng.pdf>.

- 122.E.g. Karadžić TJ, paras.4499, 4652; Prosecutor v. Mladić, Case No. IT-09-92-T, Judgment (Trial), 22 November 2017, para.4792, available at [https://www.icty.org/x/cases/mladic/tjug/en/171122-4of5\\_1.pdf](https://www.icty.org/x/cases/mladic/tjug/en/171122-4of5_1.pdf).
- 123.Ntaganda TJ, para.500.
- 124.E.g. Ntaganda TJ, para.491 (“Salumu Mulenda and Mr Ntaganda gave orders, either in person or over the radio, to fire the heavy weapons, and decided which objects were to be shot at”) (citations omitted).
- 125.E.g. Karadžić TJ, para.4005 (summarizing crater analysis for mortars).
- 126.Galić AJ, para.344. Some sources refer more specifically to “heavy fire from a hospital” as justifying an immediate response, albeit not in the specific context of criminal accountability. E.g. U.S. Department of Defense, Law of War Manual, §7.17.1.2 (in the context of international armed conflicts), available at <https://dod.defense.gov/Portals/1/Documents/pubs/DoD%20Law%20of%20War%20Manual%20-%20June%202015%20Updated%20Dec%202016.pdf?ver=2016-12-13-172036-190>. See also Prosecutor v. Strugar, Case No. IT-01-42-T, Transcript of 12 May 2004, Page 6417, Testimony of Jozef Poje, available at <https://www.icty.org/x/cases/strugar/trans/en/040512IT.htm>.
- 127.United Nations, “Report of the Independent International Commission of Inquiry on the Syrian Arab Republic,” A/HRC/37/72, 1 February 2018, para.74, [undocs.org/A/HRC/37/72](https://undocs.org/A/HRC/37/72), cited in Aron Lund, The UN Made a List of Hospitals in Syria. Now They’re Being Bombed, Century Foundation, 13 June 2019, <https://tcf.org/content/report/un-made-list-hospitals-syria-now-theyre-bombed/?session=1>.
- 128.Physicians for Human Rights, Repeated Attacks on Underground Facility Demonstrate

Deliberate Targeting, available at <https://syria-map.phr.org/#/en/case-studies/4>.

- 129.ICTY Chambers have held some, but not all, other relevant violations require proving civilians were concretely harmed. For instance, the Appeals Chamber has held that for an attack to be deemed unlawfully directed at civilians, it “must have caused deaths and/or serious bodily injuries within the civilian population or extensive damage to civilian objects.” Prosecutor v. Kordić and Cerkez, Case No. IT-95-14/2-T, Judgment (Appeal), 26 February 2001, para.328, available at [https://www.icty.org/x/cases/kordic\\_cerkez/tjug/en/kor-tj010226e.pdf](https://www.icty.org/x/cases/kordic_cerkez/tjug/en/kor-tj010226e.pdf).  
By contrast, one Trial Chamber held that the crime of terror requires “causing death or serious injury to body or health within the civilian population.” Milošević TJ, paras. 875, 876, 880. Other judgments considered any grave consequences (not just death or physical injury) could satisfy this requirement. Milošević AJ, paras.32-33; Karadžić TJ, para.461. However, because both Milošević and Karadžić involved deaths and serious injuries as part of many of the incidents which comprised the terror charges, it is not yet clear what other consequences would be grave enough to satisfy the legal requirements for terror. The Rome Statute’s Elements of Crimes are silent as to whether the crime of attacks directed at hospitals requires a particular result, such as harm to persons or facilities. ICC Elements of Crimes, pp.23, 36, available at <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOf-CrimesEng.pdf>. See William Schabas, The International Criminal Court: A Commentary on the Rome Statute, p.237, available at [https://books.google.co.uk/books?id=ilbAkLRWPUg-C&printsec=frontcover#v=onepage&q=8\(2\)\(e\)\(iv\)&f=false](https://books.google.co.uk/books?id=ilbAkLRWPUg-C&printsec=frontcover#v=onepage&q=8(2)(e)(iv)&f=false) (noting that the drafters of the Rome Statute rejected proposals both to include and to exclude result requirements in the elements of the crime of attacking protected objects) (citation omitted). ICC judges have held no result is required. Ntaganda TJ, para. 1136.
- 130.E.g. International Criminal Court Office of the Prosecutor, Policy Paper on Preliminary Examinations, November 2013, para. 62 (citations omitted) (noting the number of victims and extent of bodily or psychological harm

to victims impacts the gravity of an offense), available at [https://www.icc-cpi.int/iccdocs/otp/otp-policy\\_paper\\_preliminary\\_examinations\\_2013-eng.pdf](https://www.icc-cpi.int/iccdocs/otp/otp-policy_paper_preliminary_examinations_2013-eng.pdf).

131. This is reflected in a report by Chatham House, Attacks on Healthcare in the Syrian Conflict, 2021, access at <https://www.chathamhouse.org/2021/11/attacks-healthcare-syrian-conflict> and a report by PHR, Medical Personnel are Targeted in Syria, access at <https://phr.org/our-work/resources/medical-personnel-are-targeted-in-syria>
132. ICC's Rules of Procedure and Evidence define victims as including "natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court". ICC Rules of Procedure and Evidence, Rule 85(1), available at <https://www.icc-cpi.int/iccdocs/PIDS/legal-texts/RulesProcedureEvidenceEng.pdf>. Institutions or organizations whose protected buildings (such as hospitals) have sustained harms may also qualify as victims. Id., Rule 85(2).
133. Johns Hopkins Bloomberg School of Public Health, International Rescue Committee, and SAMS, Reality Makes Our Decisions: Ethical Challenges in Humanitarian Health in Situations of Extreme Violence, pp.20-25, available at <https://www.sams-usa.net/reports/reality-makes-our-decisions-ethical-challenges-in-humanitarian-health-in-situations-of-extreme-violence/>
134. U.N. Office of the Coordinator of Humanitarian Affairs, 6 March 2020, Syria anniversary press release, available at <https://reliefweb.int/report/syrian-arab-republic/syria-anniversary-press-release-6-march-2020>; Georgetown Law Human Rights Institute, No Choice: Attacks on Health as a Driver of Forced Displacement in Syria, May 2021, pp.2, 32, available at [https://www.law.georgetown.edu/human-rights-institute/wp-content/uploads/sites/7/2021/06/No-Choice-Report\\_web.pdf](https://www.law.georgetown.edu/human-rights-institute/wp-content/uploads/sites/7/2021/06/No-Choice-Report_web.pdf).
135. International Rescue Committee, A Decade of Destruction: Attacks on health care in Syria, 3 March 2021, pp.4, 20-21, available at <https://www.rescue.org/article/decade-destruction-attacks-health-care-syria>.
136. Roger Lu Phillips and Layla Abi-Falah, Criminal Responsibility for the COVID-19 Pandemic in Syria, 52 Columbia H.R.L. Rev. 523, 530-531, available at [http://hrllr.law.columbia.edu/files/2021/02/523\\_Abi-Falah.pdf](http://hrllr.law.columbia.edu/files/2021/02/523_Abi-Falah.pdf). See International Rescue Committee, A Decade of Destruction: Attacks on health care in Syria, 3 March 2021, p.12, available at <https://www.rescue.org/article/decade-destruction-attacks-health-care-syria>.
137. International Rescue Committee, A Decade of Destruction: Attacks on health care in Syria, 3 March 2021, p.2, available at <https://www.rescue.org/article/decade-destruction-attacks-health-care-syria>.
138. See Syrian American Medical Society Foundation, Two Staff Killed, Eleven Injured in an Attack on al-Shifaa Hospital in Afrin, 12 June 2021, available at [https://www.sams-usa.net/press\\_release/two-staff-killed-eleven-injured-in-an-attack-on-al-shifaa-hospital-in-afrin/](https://www.sams-usa.net/press_release/two-staff-killed-eleven-injured-in-an-attack-on-al-shifaa-hospital-in-afrin/); Syrian Network for Human Rights, the Most Notable Human Rights Violations in Syria in the First Half of 2021, [https://sn4hr.org/wp-content/pdf/english/The\\_Most\\_Notable\\_Human\\_Rights\\_Violations\\_in\\_Syria\\_in\\_the\\_First\\_Half\\_of\\_2021\\_en.pdf](https://sn4hr.org/wp-content/pdf/english/The_Most_Notable_Human_Rights_Violations_in_Syria_in_the_First_Half_of_2021_en.pdf), pp.4, 29.
139. See Syrian American Medical Society Foundation, Two Staff Killed, Eleven Injured in an Attack on al-Shifaa Hospital in Afrin, 12 June 2021, available at [https://www.sams-usa.net/press\\_release/two-staff-killed-eleven-injured-in-an-attack-on-al-shifaa-hospital-in-afrin/](https://www.sams-usa.net/press_release/two-staff-killed-eleven-injured-in-an-attack-on-al-shifaa-hospital-in-afrin/); World Health Organization, WHO condemns attacks on Afrin, Northwest Syria, 13 June 2021, available at <https://reliefweb.int/report/syrian-arab-republic/who-condemns-attacks-hospital-afrin-northwest-syria>.
140. Prosecutor v. Ntaganda, Case No. ICC-01/04-02/06, Reparations Order, 8 March 2021, para.159, available at [https://www.icc-cpi.int/CourtRecords/CR2021\\_01889.PDF](https://www.icc-cpi.int/CourtRecords/CR2021_01889.PDF). E.g. Prosecutor v. Ntaganda, Expert Report on Reparations for Victims of Rape, Sexual Slavery, and Attacks on Health Care, Dr. Sunneva Gimore, paras.160-162, 168, available at [https://www.icc-cpi.int/RelatedRecords/CR2020\\_05970.PDF](https://www.icc-cpi.int/RelatedRecords/CR2020_05970.PDF).
141. Karadžić TJ, para.4524.
142. Karadžić TJ, para.4542.
143. Prosecutor v. Prlić et al., Case No. IT-04-74-A, Judgment (Appeal), 29 November 2017, paras.411, 414, 426, available at <https://www.icty.org/x/cases/prlic/acjug/en/171129-judgement-vol-1.pdf>.
144. Gilmore Report at para.175. A fourth recommendation was redacted.
145. On the psychological impacts for medical staff present during and/or impacted by attacks on facilities, see e.g. Johns Hopkins Bloomberg

School of Public Health, International Rescue Committee, and SAMS, Reality Makes Our Decisions: Ethical Challenges in Humanitarian Health in Situations of Extreme Violence, pp.24-25, available at <https://www.sams-usa.net/reports/reality-makes-our-decisions-ethical-challenges-in-humanitarian-health-in-situations-of-extreme-violence/>.

146. See also SJAC, Documenting Attacks on Medical Facilities in Syria, February 23, 2016, <https://syriaaccountability.org/updates/2016/02/23/documenting-attacks-on-medical-facilities-in-syria/>.
147. Karadžić was charged with responsibility for several broad patterns of criminal activity. "Scheduled Incidents" was a term used to refer to illustrative examples of such activity identified in the annexes to the Indictment.
148. Perhaps reflecting the many challenges of prosecuting shelling incidents, Karadžić was not charged with another incident on the same day when a shell hit the Koševo Hospital and killed two persons. E.g. Associated Press Archive, Bosnia – Direct Hit on Sarajevo Hospital, 16 June 1995, available at <http://www.aparchive.com/metadata/Bosnia-Direct-Hit-On-Sarajevo-Hospital/ef1b52a97e60a8343cc469a7cb4ddb6?query=sarajevo&current=5&orderBy=Relevance&hits=53&referrer=search&search=%2f-search%3fstartd%3d06%252F11%252F199-5%26endd%3d06%252F21%252F1995%26all-Filters%3d06%252F11%252F1995-06%252F21%252F1995%253A-Date%26query%3dsarajevo%26adv-searchStartDateFilter%3d06%252F11%-252F1995%26advsearchEndDateFilter%3d06%252F21%252F1995%-26searchFilterHdSDFormat%3dAll%26searchFilterDigitized%3dAll%26searchFiltercolor-Format%3dAll%26searchFilteraspectratioFormat%3dAll&allFilters=06%2f11%2f1995-06%2f21%2f1995%3aDate&productType=Included-Products&page=1&b=4ddb6>.
149. Karadžić Indictment, available at [https://www.icty.org/x/cases/Karadzic/ind/en/markedup\\_indictment\\_091019.pdf](https://www.icty.org/x/cases/Karadzic/ind/en/markedup_indictment_091019.pdf), Incident G.14.
150. Karadžić TJ, paras.4459-4461.
151. Karadžić TJ, para.4461-4463.
152. Karadžić TJ, paras.4461-4462, 4465-4467.
153. Karadžić TJ, paras.4468, 4469.
154. Karadžić TJ, paras.4468, 4470.
155. Karadžić TJ, paras.4470, 4471.
156. Karadžić TJ, para.4472. See Milošević TJ, pa-

ras.538-539.

157. Karadžić TJ, para.4468.
158. Karadžić TJ, paras.4463, 4467, 4468.
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160. Karadžić TJ, para.4460-4462, 4465, 4466.
161. Karadžić TJ, para.4468.
162. Karadžić TJ, para.4473.
163. Karadžić TJ, pages 1751-1772.
164. Karadžić TJ, para.4379.
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167. E.g. Karadžić TJ, para.4600; Milošević AJ, para.273; Galić AJ, paras.131-132; Prosecutor v. Martić, Case No. IT-95-11-A, Judgment (Appeal), 8 November 2008, paras.260-261, available at <https://www.icty.org/x/cases/martic/acjug/en/mar-aj081008e.pdf>.  
The ICTY rule that indiscriminate targeting may be considered to be "directed at" a civilian population rather than a violation of the proportionality rule has been criticized. See Jens David Ohlin, Targeting and the Concept of Intent, 35 Mich. J. Int'l L. 79 (2013), available at [https://repository.law.umich.edu/mjil/vol35/iss1/4/?utm\\_source=repository.law.umich.edu%2Fmjil%2Fvol35%2Fiss1%2F4&utm\\_medium=PDF&utm\\_campaign=PDFCoverPages](https://repository.law.umich.edu/mjil/vol35/iss1/4/?utm_source=repository.law.umich.edu%2Fmjil%2Fvol35%2Fiss1%2F4&utm_medium=PDF&utm_campaign=PDFCoverPages). Had an ICTY Chamber instead considered indiscriminate targeting a violation of proportionality, this would have had little impact, since disproportionate attacks were within the Tribunal's jurisdiction. However, ICC lacks jurisdiction over disproportionate attacks in the context of non-international armed conflicts, so an ICC Chamber applying Ohlin's proposed rule would only have jurisdiction over the use of indiscriminate weapons in an international armed conflict. Moreover, "Legal decisions on proportionality are extremely rare... because they require second-guessing the military evaluations of field commanders..." David Luban, Demystifying Political Violence: Some Bequests of ICTY and ICTR, 110 AJIL Unbound 251, 257 (2016), available at <https://www.asil.org/sites/default/files/Luban%2C%20Some%20Bequests%20of%20ICTY%20and%20ICTR.pdf>.
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### Contact Us

—  
[info@sams-usa.net](mailto:info@sams-usa.net)

(202) 930-7802

(866) 809-9039

DC Office:

—  
1012 14th ST. NW, Suite 1500 Washing-  
ton, DC 20005

Mailing Address:

—  
P.O. Box 34115 Washington, DC 20043

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