

THE USE OF INDISCRIMINATE WEAPONS IN SYRIA



SEP 2022



SAMS

ABOUT THIS REPORT

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Cover:

Doctor near the hole in the ground caused by a barrel bomb on Nawa hospital- SAMS ©2015 , Daraa governorate

September , 2022

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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

OUR VISION...

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



SAMS

Syrian American Medical Society

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INTRODUCTION

International organizations have regularly condemned warring parties for carrying out indiscriminate warfare in Syria, including by using allegedly indiscriminate weapons. This report seeks to frame the issues courts might consider in evaluating allegations that the use of such weapons violated international humanitarian law in a way that justifies criminal accountability.

Means and methods of warfare used in Syria which some sources have alleged to be indiscriminate include barrel bombs; improvised explosive devices; improvised homemade launchers, such as the “hell cannons” used by some armed groups; chemical weapons; and cluster munitions.

One particularly critical example is barrel bombs. Barrel bombs have reportedly been used by other forces in other conflicts but

have been a subject of particular controversy in Syria. SAMS data have identified a total of 84 incidents of barrel bombs have impacted healthcare systems, all allegedly by the Government of Syria

The Security Council has referred to barrel bombs in the context of condemning indiscriminate attacks. The head of the UN’s Commission of Inquiry on Syria has referred to “the use of barrel bombs” as indiscriminate and “amounting to area bombardment.” Commission reports have found barrel bombs “could not be accurately targeted” in urban areas. However, OHCHR has opined “it is unlikely that [barrel bombs] could be classified as being, by their nature, indiscriminate”, concluding that the dispositive issue under IHL is how those bombs are used.



An unexploded barrel bomb that landed near Omar Bin Abdulaziz hospital - SAMS ©2015, Aleppo governorate

ABOUT BARREL BOMBS

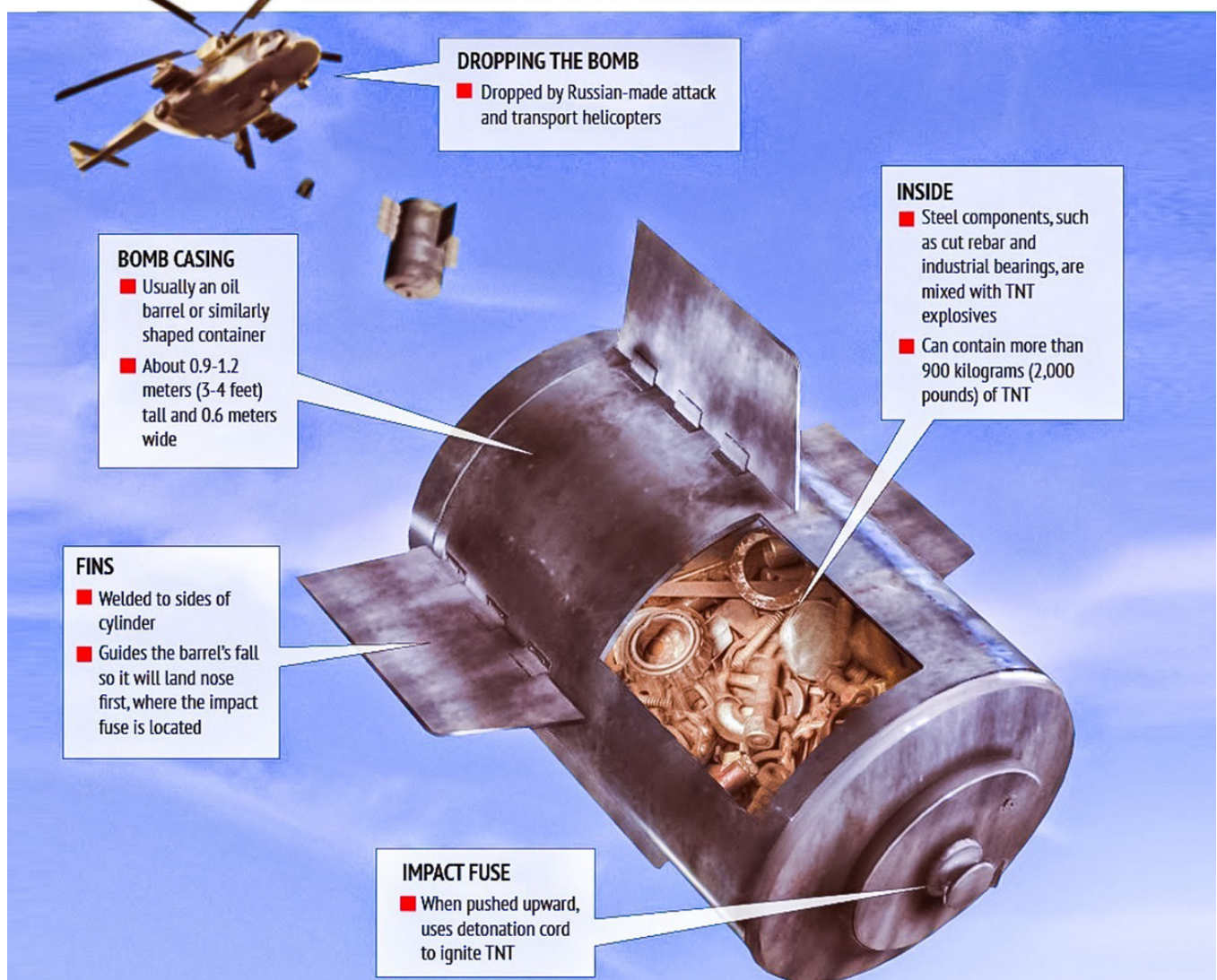
'Barrel bombs are the most horrible and hurtful weapon... [We deal with] multi-trauma, so many amputations, intestines out of the body, it's too horrible'

A barrel bomb is a makeshift aerial explosive device, an improvised unguided bomb, sometimes described as a flying IED (improvised explosive device). That is dropped from the air by a helicopter or airplane, they are typically made from a large barrel-shaped metal container that has been filled with high explosives, metal shrapnel, and possibly oil, gasoline, chemicals. They weigh over 1000 Kg in average.

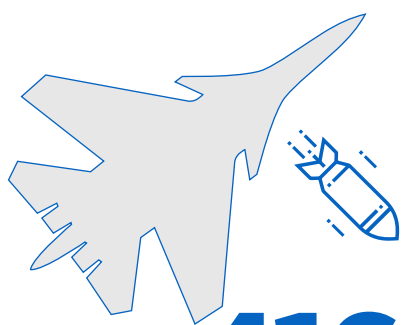
Barrel bombs are highly destructive due to the large amount of explosives that can be packed into the receptacle. Because of their lack of accuracy and indiscriminate use in populated areas, barrel bombs are also arbitrary in their killing. Their widespread use against civilian populations and neighborhoods in cities like Aleppo and Damascus have left homes, streets, and basic infrastructure destroyed. This has made daily life unlivable in many areas.

Barrel bombs have been used by the Syrian air force throughout the country with devastating consequences for civilians and civilian objects in areas under rebel control. The Syrian air force increasingly employed barrel bombs to reduce the cost of the protracted aerial campaigns while increasing its ability to extend them over more restive areas. It also allowed them to expand the fleet of aircraft used in assault operations to include transport helicopters.

CONSTRUCTION OF A TYPICAL BARREL BOMB



SAMS data have reported the barrel bombs were used **87 times** in reported incidents on health facilities between **2014-2021** as:



416

Air Attack



87

Barrel Bombing

8

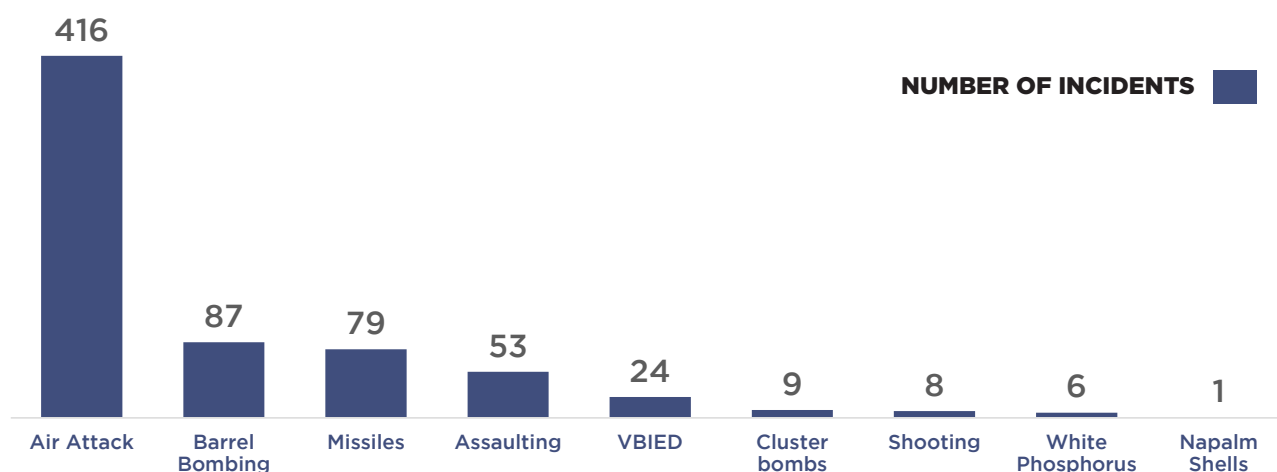


Figure 1 : Distribution of the indiscriminate attacks on health facilities by the type of weapon, between 2014-2021 as documented by SAMS

While armed opposition groups have relied on VBIED, mortars, artillery shells, and homemade rockets to conduct indiscriminate attacks, aerial attacks, and barrel bombs in particular were remarkably utilized by the Syrian Air force.

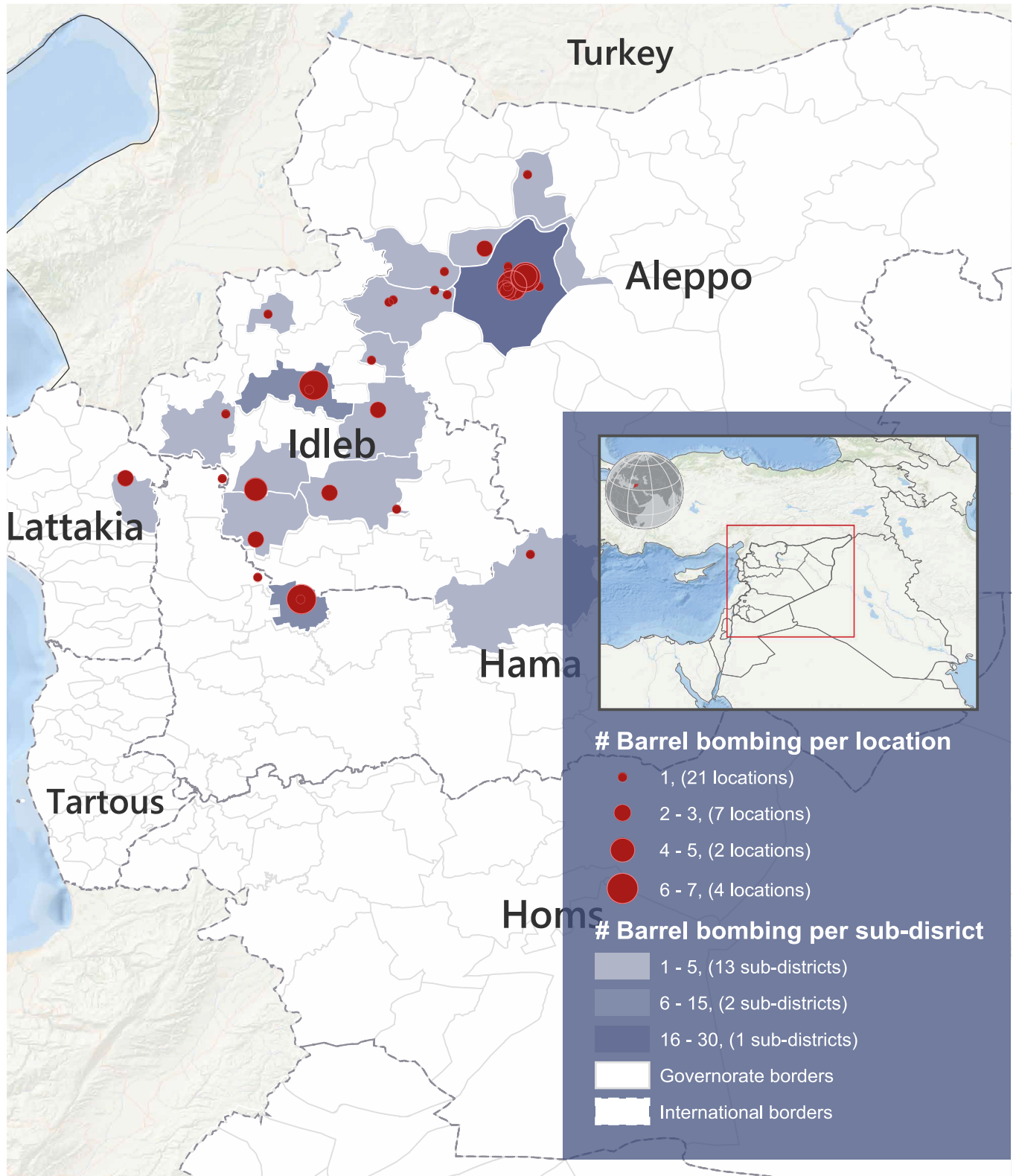
Focusing on Barrel bombs, in particular, the majority of health facilities that SAMS were able to document who was subject to barrel bombing were located in Aleppo city.

Governorate	2014	2015	2016	2017	2018	2019	Grand Total
Lattakia		2					2
Rural Damascus					1		1
Dar'a		1	1				2
Homs		7			2		9
Hama		8	1			1	10
Aleppo	3	15	23				38
Idleb		18	1	1		2	22
Grand Total	3	51	26	1	3	3	87

Figure 2 : Distribution of the indiscriminate attacks on health facilities by the governorate between 2014-2021 as documented by SAMS

Other reports have highlighted the large-scale usage of such indiscriminate weapons across the country. The Syrian network for human rights were able to document nearly 81,916-barrel bomb dropped by the Syrian air force, resulting the killing of more than 11,087 civilians, including 1,821 children and 1,780 women in Syria since 2012.

A Human Rights Watch report for instance stated that between February 2014 and January 2015 – less than one year – they determined 450 major site damages that were consistent with barrel bomb destruction.



Map 1. Distribution of documented barrel bomb attacks on health facilities

RELEVANT LAW

One of the most fundamental rules in the law of armed conflict is the principle of distinction. This principle directs that an attacker must distinguish between military and civilian persons and objects, and may direct force only at military objectives. One of the applications of this principle is that customary international law bans the use of weapons which are “indiscriminate.” While there is “no agreed-upon precise definition of an indiscriminate weapon,” the most commonly used test holds a weapon is legally indiscriminate if

- ▶ it cannot be directed at a specific military objective or
- ▶ its effects cannot be limited as required by IHL.

An attack carried out by such methods is an indiscriminate attack. The use of any weapon in an indiscriminate manner is also an indiscriminate attack. In determining whether a weapon has been used indiscriminately, courts have considered both its technical aspects and the type of area where it was used. Courts have specifically condemned the use of particular types of weapons in urban areas.

The ICRC has identified biological weapons, chemical weapons, and blinding laser weapons as generally banned under customary international law. It appears at least biological weapons and chemical weapons also carry criminal liability. However, relatively few other generally banned weapons have been identified. Indeed, the drafters of the Rome Statute criminalized three specific types of weapons - poisoned weapons; gases; and bullets which expand or flatten inside the human body in both international and non-international armed conflicts. Otherwise, they did not criminalize indiscriminate weapons generally in a way that would allow for findings at trial, but only the use of weapons which were “the subject of a comprehensive prohibition and included in an amendment to this Statute, by an amendment in accordance with the relevant provisions” and even then only in international armed conflicts.

However, international law includes a number of criminal prohibitions of general applicability which may be violated by the use of indiscriminate weapons:

- ▶ The prohibition on attacks the primary purpose of which is to spread terror among the civilian population;
- ▶ The prohibition on directing attacks against civilians or civilian populations;
- ▶ The prohibition on directing attacks against certain types of protected facilities which are not being used for military purposes;
- ▶ The prohibition on disproportionate attacks; and
- ▶ The prohibition on indiscriminate attacks.

Using indiscriminate weapons may also constitute persecution, if done with a discriminatory motivation and in the context of a widespread and systematic attack directed at a civilian population, and may constitute the actus reus of forcible displacement by depriving people of any genuine choice but to flee.

The conflict in Syria is primarily a non-international armed conflict. While there have at times been international armed conflicts, most attacks impacting medical facilities have done so in the context of non-international armed conflicts between government or government-aligned forces and anti-government forces, or between different non-government armed groups.

Most of the acts listed above would violate customary international law in non-international armed conflicts as well as international armed conflicts. However, in Syria it is unclear what court will eventually have jurisdiction over documented crimes. It must be foreseeable to a potential defendant that they would be prosecuted for their conduct at the time they engage in it in order for prosecution to comply with human rights norms. As Syria is not a State Party to the ICC, customary international law may be treated as more generally foreseeable than provisions of the Rome Statute which have not attained customary status, and consequently may provide a more secure basis for the subject-matter jurisdiction of any further proceedings. In any event, sources opine that the Rome Statute provides less restrictions than customary law in non-international armed conflicts.

Recent international courts have concluded particular weapons were indiscriminate in several cases. For instance:

- ▶ In *Prosecutor v. Karadžić*, an ICTY Trial Chamber concluded modified air bombs used by the Bosnian Serb Army (VRS) were “not capable of targeting specific targets but only large areas”. It relied upon
 - The lack of sufficient testing of the weapons,
 - The lack of firing tables to facilitate calculating and aiming them at a particular target,
 - Witness testimony, including from “insider” witnesses, and
 - Internal VRS documentation.
- ▶ In *Prosecutor v. Perišić*, a different ICTY Trial Chamber reached the same conclusion about modified air bombs, noting inter alia that
 - the weapon’s designer testified it was inappropriate for use in an urban environment and
 - it lacked a guiding system.
- ▶ In *Prosecutor v. Martić*, a third ICTY Trial Chamber concluded an M-87 Orkan cluster munition was “by virtue of its characteristics and firing range in this specific instance... incapable of hitting specific targets” and thus was “an indiscriminate weapon” inappropriate for use in “densely populated civilian areas”. It considered the nature of the M-87, which it found was a “non-guided high-dispersion weapon” with a dispersion error of approximately one kilometer in any direction at the range it was fired from and which would spread lethal pellets over an area of two hectares or 10,000 square meters. The Martić judges also noted evidence from military officers that the Orkan was only capable of area targeting and that it would have been “easy” to figure out the consequences of using it in an urban area.

Each case thus required technical ballistic analysis, evidence from inside the firing party about its internal processes such as testing and whether there were firing tables, and/or situation-specific analysis such as the fact that all three cases occurred in urban areas filled with large numbers of civilian targets along with smaller numbers of lawful military targets, and the *Martić* Chamber’s reliance on the fact that the Orkan was fired from its extreme maximum firing range.

By contrast, ICTY’s Office of the Prosecutor concluded that cluster munitions were not legally precluded and that where evidence did not show they were used as antipersonnel weapons, against cities as such, attached to inaccurate weapons, no investigation into their use was justified. Similarly, the Ethiopia-Eritrea Claims Commission found Eritrea had not taken sufficient precautions to protect civilians from the effects of cluster munitions but did not question Eritrea’s use of those munitions to attack its chosen target, an airport which housed military aircraft.



Barrel bomb which pierces of the tow high floors of Kafr Zita hospital from another angle - SAMS © 2015, Hama governorate

INITIAL FACTUAL ISSUES

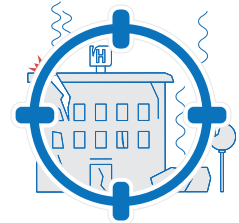
Challenging questions always arise in evaluating an alleged violation of targeting law. Cases reveal several additional factual issues that are central to determining whether a weapon is legally indiscriminate, either inherently or in the specific circumstances of its use.

1. HOW IMPRECISE IS THE WEAPON?

There is no legal requirement that weapons be perfectly precise. Instead, the level of imprecision is dispositive. For instance, various ICTY Trial Chambers concluded that mortars had ranges of error of around 200 meters without concluding such a range of error rendered them legally indiscriminate (though in several cases, Trial Chambers found mortars had been used in a manner which violated the principle of distinction). However, when the *Martić* judges found that a weapon used in an urban area had an 800-1,000 meter range of error, they concluded that militated in favor of finding the weapon indiscriminate.

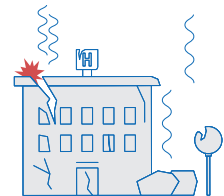
46

Direct attacks on Health facilities

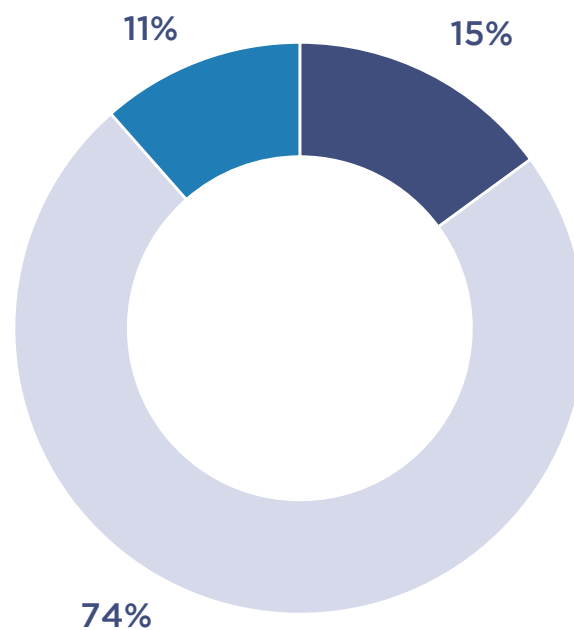


38

Indirect attacks on Health facilities



13



■ Minor or no damaged ■ Partially damaged ■ Totally damaged

Figure 4: Damage impact on the health facilities



Destruction of Nawa hospital at Al-Ma'ara Hospital- SAMS ©2017, Daraa governorate



2. WHAT DID THE FIRING PARTY KNOW ABOUT IT?

Whether an attack is indiscriminate must be assessed in light of “the perspective of the commander based on the information available to him/her at the time of the attack.” Similarly, for an act to constitute a war crime, it must generally have been committed either intentionally or knowingly. Consequently, courts have analyzed what firing parties knew about the weapons they were using - such as whether a weapon had gone through the normal testing process and whether the use in question was consistent with their doctrine, as well as whether the firing party continued to use imprecise weapons after the impacts on civilians were notorious.

3. WHERE WAS IT FIRED FROM?

A weapon’s firing location may be important to evaluating its precision. For instance, the *Martić* Chamber considered that a M-87 Orkan was fired from its maximum range, which increased its range of error, in concluding it had been legally indiscriminate in the context in which it was used. Similarly, arms experts have reported that in Syria, barrel bombs were initially dropped from low altitudes, and then gradually used at higher altitudes. At higher altitudes they are reportedly significantly less precise.

4. HOW WAS IT CONTROLLED?

Courts have relied on the lack of a guidance system to conclude both modified air bombs and Orkan cluster munitions were indiscriminate in the context of the specific uses at issue. Similarly, the ICRC has noted that the inaccuracy of weapons raises serious concerns, “especially when using unguided munitions, as well as unguided air-delivered bombs.”

5. WHAT TYPE OF AREA WAS IT FIRED AT?

Much of the Syrian conflict has been fought in cities. Urban warfare is the most challenging context for military forces. It is particularly challenging to distinguish between military and non-military persons and objects in crowded urban areas when making targeting decisions. Moreover, because civilians are concentrated together in urban areas, the harm which can be caused by a military either choosing to target civilians or committing a good-faith error in targeting is also significantly greater than in other operational environments. Consequently, the urban context also impacts how precise a weapon must be in order to comply with regulations on the means and methods of warfare: because of all the civilian targets in an urban area, weapons may be inappropriate for use there even if they are appropriate in other settings (for instance if fired at an isolated military base).

An important note to consider too in these types of analysis is how often a healthcare system has been targeted. For instance, one hospital was attacked in Jebel Saman, Aleppo, 19 times in two years, by a variety of weapons including barrel bombs, missiles and cluster bombs (7 times).

Facility Name	Governorate	2014	2015	2016	2017	2018	2019	Grand Total
Al Sakhour Hospital	Aleppo	2	4	3				9
Omar Bin Abdulaziz Hos- pital	Aleppo		2	4				6
Kafr Zeita Specialized Hospital	Hama		4	1				5
Al Quds Hospital	Aleppo	1	1	2				4
Ar-Rastan Hospital	Homs		4					4
Zafarana Hospital	Homs		3			1		4
Al Zarzour Hospital	Aleppo		1	2				3
Baghdad Hospital	Aleppo		2	1				3
Idleb Central Hospital	Idleb		3					3
Kiwan Hospital	Idleb		3					3
Al Amal Orthopedic Sur- gery Hospital (Idleb)	Idleb		2					2
Al Hakim Hospital	Aleppo			2				2
Aleppo Blood Bank	Aleppo		1	1				2
Tarmia Hospital	Idleb						2	2
Grand Total		3	30	16	0	1	2	52

Figure 5 : List of hospitals in SAMS documentation attacked more than two times

The ICTY Trial Chambers in *Martić*, *Perišić*, and *Karadžić* all considered that weapons were fired at urban areas (indeed, highly-populated capital cities) in holding they were used indiscriminately. As this reflects, whether a particular weapon can be directed at a specific military objective may depend on the circumstances of its use.

For instance, a weapon with a high range of error but which has effects only at the time and place of impact might be usable against a remote military base with no civilians nearby, since even if it missed its target by a significant distance it would be unlikely to cause collateral damage to civilians. However, use of the same weapon might constitute “area bombardment” in an urban area full of civilians.

6. WHO DID IT HURT?

As we have noted elsewhere, figuring out who was harmed by the use of a weapon may be essential to proving some charges – like murder, where people are killed, or directing attacks against civilians. It is also essential to properly memorialize victims

and, in systems like ICC, STL, and KSC, ensure that all victims have the right to participate in trials and seek reparations. In data SAMS alone collected, Attacks with barrel bombs were responsible for the killing 59 and injury of 282 persons. facilities were moderately or totally damaged due to these attacks.

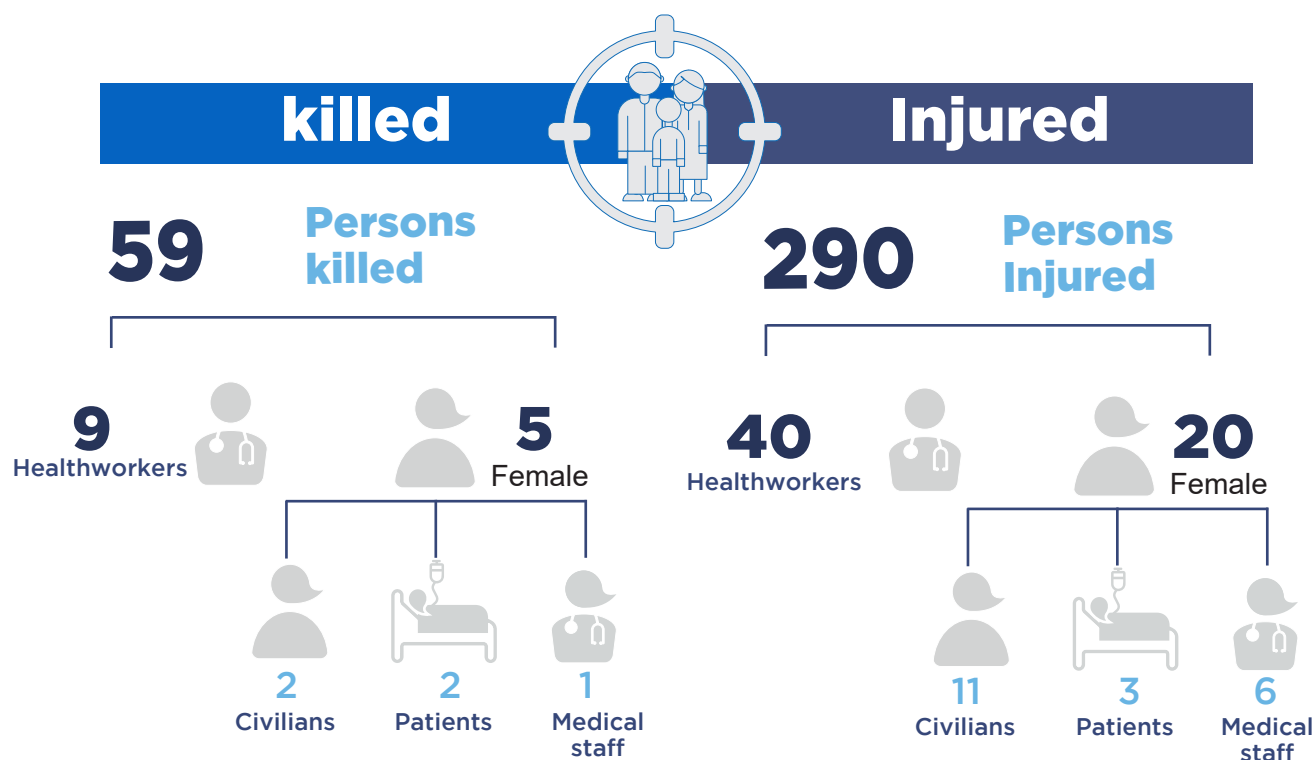


Figure 6 : Total number of killed and injured from all of the incidents in the SAMS



A barrel bomb pierces of the tow high floors of Kafr Zita hospital - SAMS © 2015, Hama governorate

INITIAL LEGAL ISSUES

1. WHAT TYPE OF CONFLICT WAS THE WEAPON USED IN?

IHL applies in armed conflicts. As noted above, some sources of conventional international law criminalize different conduct in international and non-international armed conflicts. The extent to which these distinctions were reflected in a particular court's governing law will impact the scope of criminal charges which might apply to the use of these weapons.

2. WHAT DOES THE WEAPON'S IMPRECISION INDICATE ABOUT THE TARGET OF THE ATTACK?

Depending on the degree of imprecision of a weapon and the circumstances of its use, imprecision may impact what documenters can prove about its target in two different ways.

First, a weapon's imprecision may suggest its use was directed at civilians. For instance, different ICTY Chambers found "modified air bombs" were indiscriminate weapons and then concluded that, in context, their use supported the conclusion that attacks were directed at civilians. This will require detailed scientific analysis and may raise difficult legal questions about particular weapons. For instance, ICTY and the Ethiopia-Eritrea Claims Commission came to different conclusions (in different circumstances) about whether different types of cluster bombs were legally indiscriminate. ICTY concluded that a M-87 Orkan cluster munition was indiscriminate as it was used in an attack on targets in Zagreb, while the Claims Commission chose not to "question ... the Eritrean Air Force's ... choice of weapons."

Second, imprecision may make it harder to prove an attack was directed at a protected object like a house of worship or a school. Simple common sense directs that the less precise a weapon is, the less its impact site will serve to indicate what it was aimed at.

3. WHAT DOES THE WEAPON'S IMPRECISION INDICATE ABOUT THE PROPORTIONALITY OF THE ATTACK?

Imprecision may significantly increase the relative likelihood of civilian harm, particularly in urban areas full of civilians. This may make an attack more likely to be disproportionate. Since proportionality is assessed in light of the information available to the commander who chooses to use the weapon (as noted above), to properly assess the impact of a weapon's imprecision on proportionality it will be essential to answer the question listed earlier about what the firing party knew about the weapon.

4. WHAT DOES THE WEAPON'S IMPRECISION INDICATE ABOUT THE PURPOSE OF THE ATTACK?

Imprecision may suggest the primary purpose of an attack was not to hit a specific target but to accomplish some other objective. If an attacker chose a weapon which could not be reliably aimed at a military target, the theory would go, either harming civilians or at least terrifying them into surrender by making daily life unbearable are the most likely strategic benefits for the attacker. For instance, courts have found the use of imprecise weapons indicated an intent to terrorize civilians, in violation of customary international law.



Destruction of ambulance cars after attacked by barrel bombs in AlAnsar hospital in Kafr Hanna
-©2022 , Aleppo governorate



NEXT STEPS IN RESOLVING LEGAL AND FACTUAL ISSUES

A review of international cases reveals several critical next steps for documenters:

- ▶ First, identify weapons which are reported to be inaccurate and which have been broadly used – like the barrel bombs, cluster munitions, hell cannons, and IEDs mentioned above;
- ▶ Second, develop an understanding of the technical aspects of those weapons with assistance from ballistics experts and IHL experts;
- ▶ Third, collect information about the weapons available to the parties using them – such as firing tables, manuals, or other explanations of the weapons' use;
- ▶ Fourth, identify and collect statements from firing parties about weapons they have used such as the recent statement in which a member of the Assad family allegedly said barrel bombs were “good. Useful for ridding the world of these insects”;
- ▶ Fifth, obtain as much information as possible about the incidents where these weapons were used; and
- ▶ Finally, evaluate state practice as to the use of that weapon, particularly in circumstances like the attacks in question. Since customary international law is the most likely law to be binding on parties to the Syrian conflict, state practice is particularly essential to determining what the parties' legal obligations were.

By doing so, documenters can provide a strong foundation for assessing the legality of particular weapons used in Syria and make good choices about how to focus their collection of evidence.

ENDNOTES

1. General Condemns Air Assault, Indiscriminate Shelling Targeting Aleppo, Calls on All Sides in Syria Conflict to Halt Attacks against Civilians, SG/SM/18282, 20 November 2016, available at <https://www.un.org/press/en/2016/sgsm18282.doc.htm>. See generally ICRC, IHL Database, Customary IHL, Rule 71, Weapons that are by Nature Indiscriminate, available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule71; Office of the High Commissioner on Human Rights, Indiscriminate Attacks and Indiscriminate Weapons in International Humanitarian Law, March 2016, available at https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/indiscriminate_weapons_legal_note_-_final_new_format_-_en_3.pdf.
2. E.g. S/RES/2139 (2014), para.3, available at <http://unscr.com/en/resolutions/2139>; S/RES/2165 (2014), available at <http://unscr.com/en/resolutions/2165>; The use of barrel bombs and indiscriminate bombardment in Syria: the need to strengthen compliance with international humanitarian law, Statement by Paulo Sérgio Pinheiro, Chair of the Independent International Commission of Inquiry on the Syrian Arab Republic, 12 March 2015, available at <https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/CoISyriaIndiscriminateBombardment12032015.pdf>.
3. E.g. S/RES/2365 (2017), 30 June 2017, para.2, available at <http://unscr.com/en/resolutions/2365>; UN Doc. 2/2017/81, Final Report of the Panel of Experts on Yemen, 31 January 2017 ("Yemen Experts Report"), para.90, available at https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2017_81.pdf.
4. E.g. Syrian Justice and Accountability Centre, Armed Opposition's Indiscriminate Attacks in Aleppo, 30 April 2014, available at <https://syriaaccountability.org/updates/2014/04/30/armed-oppositions-indiscriminate-attacks-in-aleppo/>. But see Bellinccat, Hell Cannons: From Minor Nuisance to Major Threat – The Evolution of Syrian Opposition Siege Artillery, 21 August 2015, available at <https://www.bellingcat.com/news/mena/2015/08/21/hell-cannons-from-minor-nuisance-to-major-threat-the-evolution-of-syrian-opposition-siege-artillery/> (asserting hell cannons are roughly as accurate as conventional mortars).
5. Chemical weapons are in any event specifically banned by the Chemical Weapons Convention. E.g. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Arts. 1(a), 1(b) (by which States Parties bind themselves not to produce, stockpile, or use, among other things, chemical weapons), available at <https://www.opcw.org/chemical-weapons-convention>. Syria is a state party to the Convention. E.g. ICRC, Treaties, States Parties, and Commentaries, Syrian Arab Republic, available at https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=SY.
6. Syria is not a party to the Convention on Cluster Munitions or the Convention on Certain Conventional Weapons. See United Nations Treaty Collection, Convention on Cluster Munitions, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-6&chapter=26&clang=_en; United Nations Office of Disarmament Affairs, High Contracting Parties and Signatories CCW, available at <https://www.un.org/disarmament/the-convention-on-certain-conventional-weapons/high-contracting-parties-and-signatories-ccw/>. The ICRC notes some states consider cluster munitions indiscriminate, but it does not appear there is an international consensus that their use is unlawful more generally. See Improvised and Indiscriminate Weapons; ICRC, IHL Database, Customary IHL, Rule 71, Weapons that are by Nature Indiscriminate, available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule71; Office of the High Commissioner on Human Rights, Indiscriminate Attacks and Indiscriminate Weapons in International Humanitarian Law, March 2016 ("OHCHR Indiscriminate Weapons Report"), p.4, available at https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/indiscriminate_weapons_legal_note_-_final_new_format_-_en_3.pdf.
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12. Quote from a surgeon in Aleppo, Syria. See Amnesty International, The Circle of Hell: Barrel Bombs in Aleppo, Syria, 18 May 2020, available at <https://www.amnesty.org.uk/circle-hell-barrel-bombs-aleppo-syria>.
13. Statement by Mr. Paulo Sérgio Pinheiro, Chair of the Independent International Commission of Inquiry on the Syrian Arab Republic, 12 March 2015, available at: <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/ColSyria/ColSyriaIndiscriminateBombardment12032015.pdf>
14. IBID
15. Syrian network for human rights : In Nine Years, the Syrian Regime Has Dropped Nearly 82,000 Barrel Bombs, Killing 11,087 Civilians, Including 1,821 Children , 15 April 2021 , available at : <https://snhr.org/blog/2021/04/15/56121/>
16. Human Rights Watch, Syria 2015: Government Attacks on Civilians, Indiscriminate Use of Weapons, 2015, access at <https://www.hrw.org/world-report/2016/country-chapters/syria>
17. Under some circumstances, such as if they become members of organized armed groups or directly participate in hostilities, persons who are not members of military forces may be legitimate military targets.
18. An object is a military objective if by its nature, location, purpose, or use it makes a contribution to military operations. 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.
19. 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.
20. ICRC, IHL Database, Customary IHL, Rule 71, Weapons that are by Nature Indiscriminate, available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule71.
21. Office of the High Commissioner on Human Rights, Indiscriminate Attacks and Indiscriminate Weapons in International Humanitarian Law, March 2016, p.3, available at https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/indiscriminate_weapons_legal_note_-_final_new_format_-_en_3.pdf.
22. ICRC, IHL Database, Customary IHL, Rule 71, Weapons that are by Nature Indiscriminate, available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule71.
23. 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.
24. E.g. Office of the High Commissioner on Human Rights, Indiscriminate Attacks and Indiscriminate Weapons in International Humanitarian Law, March 2016, p.4, available at https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/indiscriminate_weapons_legal_note_-_final_new_format_-_en_3.pdf.
25. ICRC, IHL Database, Customary IHL, Rule 73, Biological Weapons, available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule73; ICRC, IHL Database, Customary IHL, Rule 74, Chemical Weapons, available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule74; ICRC, IHL Database, Customary IHL, Rule 86, Bleeding Laser Weapons, available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule86. The IHL database is a thorough compendium of rules of customary

- international law based on ICRC's analysis but not in itself a source of legal obligations.
26. ICRC, IHL Database, Customary IHL, Rule 73, Biological Weapons, available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule73.
 27. ICRC, IHL Database, Customary IHL, Rule 74, Chemical Weapons, available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule74.
 28. E.g. Office of the High Commissioner on Human Rights, Indiscriminate Attacks and Indiscriminate Weapons in International Humanitarian Law, March 2016, p.4, available at https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/indiscriminate_weapons_legal_note_-_final_new_format_-_en_3.pdf.
 29. Rome Statute, Art. 8(2)(e)(xiii), (xiv), (xv); 8(2)(b)(xvii), (xviii), (xix).
 30. Rome Statute, Art. 8(2)(b)(xx).
 31. E.g. Prosecutor v. Gali, 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> ("Gali 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.
 32. E.g. Rome Statute, 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.
 33. E.g. Rome Statute, 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.
 34. ICRC IHL Database, Customary IHL, Rule 14, Proportionality in Attacks, available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule14. Proportionality is calculated in relation to the anticipated military advantage, not the force used by an opposing party. Notably, the Rome Statute does not criminalize disproportionate attacks in non-international armed conflicts.
 35. ICRC IHL Database, Customary IHL, Rule 11, Indiscriminate Attacks, available at 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.
 36. E.g. Rome Statute, Arts. 7(1)(d); 8(2)(a)(vii); 8(2)(e)(viii).
 37. E.g. Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 21 January 2021, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/014/36/PDF/G2101436.pdf?OpenElement>, para.4; Geneva Academy of International Law, Rule of Law in Armed Conflicts, Non-International Armed Conflicts in Syria, <https://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-syria>; Roger Lu Phillips and Layla Abi-Falah, Criminal Responsibility for the COVID-19 Pandemic in Syria, 52 Columbia H.R.L. Rev. 523, 567-568, http://hrllr.law.columbia.edu/files/2021/02/523_Abi-Falah.pdf; Beth van Schaak, Mapping the Law that Applies to War Crimes in Syria, Just Security, 1 February 2016, <https://www.justsecurity.org/29083/mapping-law-applies-war-crimes-syria/> (citing ICRC Operational Update: Syria: ICRC and Syrian Arab Red Crescent maintain aid effort amid increased fighting, 17 July 2012, available at <https://www.icrc.org/en/doc/resources/documents/update/2012/syria-update-2012-07-17.htm>, and Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 16 August 2012, available at https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-50_en.pdf).
 38. E.g. Beth van Schaak, War Crimes and the use of Improvised and Indiscriminate Weapons in Syria, Just Security, 8 March 2016, available at <https://www.justsecurity.org/29801/war-crimes-improvised-indiscriminate-weapons-syria/> ("Improvised and Indiscriminate Weapons").
 39. E.g. Caroline Fehrl and Eliška Mocková, Chasing Justice for Syria, Peace Research Institute Frankfurt Spotlight, May 2017, available at https://www.hsfr.de/fileadmin/HSFK/hsfk_publicationen/Spotlight0517.pdf
 40. Prosecutor v. Abd-Al-Rahman, Case No. ICC-02/05-01/20 OA8, Judgment on the Appeal of Mr. Abd-Al-Rahman against the Pre-Trial Chamber II's "Decision on the Defence 'Exception d'Incompétence', 1 November 2021, para.1, available at https://www.icc-cpi.int/CourtRecords/CR2021_09905.PDF ("Abd-Al-

Rahman Decision”).

41. E.g. ICC Assembly of States Parties, The States Parties to the Rome Statute, available at https://asp.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx.
42. Abd-Al-Rahman Decision, paras.86-87.
43. See generally Rome Statute Art.8; Improvised and Indiscriminate Weapons.
44. Prosecutor v. Karadžić, Case No. IT-95-5/18-T, Judgment (Trial), 24 March 2016, paras. 4379-4380, available at https://www.icty.org/x/cases/karadzic/tjug/en/160324_judgement.pdf (“Karadžić TJ”).
45. E.g. Prosecutor v. Perišić, Case No. IT-04-81-T, Judgment (Trial), 6 September 2011, paras.324, 1103, available at https://www.icty.org/x/cases/perisic/tjug/en/110906_judgement.pdf (“Perišić TJ”). The Mladić judges also cited the lack of a guidance system in concluding modified air bombs were “highly inaccurate.” Prosecutor v. Mladić, Case No. IT-09-92-T, Judgment, 22 November 2017, para.1913, available at https://www.icty.org/x/cases/mladic/tjug/en/171122-2of5_1.pdf (“Mladić TJ”).
46. Prosecutor v. Martić, Case No. IT-95-11-T, Judgment (Trial), 12 June 2007, paras.462-463, available at <https://www.icty.org/x/cases/martic/tjug/en/070612.pdf> (“Martić TJ”). The Perišić Chamber also concluded the Orkan was indiscriminate, relying on “its characteristics, including its high dispersion pattern.” Perišić TJ, para. 590.
47. Martić TJ, fn.1248.
48. ICTY Office of the Prosecutor, Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign against the Federal Republic of Yugoslavia, para.27, available at <https://www.icty.org/en/press/final-report-prosecutor-committee-established-review-nato-bombing-campaign-against-federal#IVA3>. OTP evaluated whether an investigation was justified in light of whether credible evidence supported the alleged facts and whether the facts, if proven, would show a violation of a “well-established” principle of IHL. Id., para.5.
49. Partial Award-Ethiopia’s Claim 2, 43 I.L.M. 1275 (Eritrea-Ethiopia Claims Comm’n 28 April 2004), paras. 107-113, available at <https://pcacases.com/web/sendAttach/754> (“Claim 2”).
50. E.g. Ethiopia-Eritrea Claims Commission, Partial Award – Western Front, Aerial Bombardment, and Related Claims, 19 December 2005, para. 92, available at <https://pcacases.com/web/sendAttach/757>.
51. Martić TJ, paras.462-463. The Perišić Chamber also concluded the Orkan was indiscriminate, relying on “its characteristics, including its high dispersion pattern. Perišić TJ, para. 590.
52. ICRC, International Humanitarian Law and the Challenges of Contemporary Armed Conflicts, 2015, 32IC/15/11, p.50, available at <https://www.icrc.org/en/download/file/15061/32ic-report-on-ihl-and-challenges-of-armed-conflicts.pdf> (“IHL Contemporary Challenges”).
53. E.g. Rome Statute, Art. 30.
54. Karadžić TJ, paras.4379-4380.
55. E.g. Perišić TJ, paras.324, 1103.
56. Martić TJ, para.463; Prosecutor v. Martić, Case No. IT-95-11-A, Judgment (Appeal), 8 November 2008, para.257, available at <https://www.icty.org/x/cases/martic/acjug/en/mar-aj081008e.pdf>.
57. Martić TJ, paras.462-463.
58. E.g. Tilman Rodenhäuser, The Use of ‘Do it yourself’ Barrel Bombs under International Law, EJIL: Talk!, 10 April 2014, available at <https://www.ejiltalk.org/the-use-of-do-it-yourself-barrel-bombs-under-international-law/>; Robert Lloyd, Syria’s Barrel Bomb Technology Relative to Aleppo Syria Attacks – The Good, The Bad, and the Ugly, 22 December 2013, available at <http://brown-moses.blogspot.com/2013/12/syrias-barrel-bomb-technology-relative.html>.
59. E.g. Lloyd, supra.
60. Perišić TJ, paras.324, 1103; Mladić TJ, para.1913; Martić TJ, paras.462-463.
61. IHL Contemporary Challenges, p.51.
62. E.g. Syrian Justice and Accountability Centre, Documenting Attacks on Medical Facilities in Syria, February 23, 2016, <https://syriaaccountability.org/updates/2016/02/23/documenting-attacks-on-medical-facilities-in-syria/>.
63. E.g. ICRC, Reducing Civilian Harm in Urban Warfare: A Commander’s Handbook, 2021, pp.4, 6, available at <https://www.icrc.org/en/publication/4569-reducing-civilian-harm-urban-warfare-commanders-handbook-0>; Laurent Gisel, Pilar Gimeno Sarciada, Ken Hume, and Abby Zeith, Urban warfare: an age-old problem in need of new solutions, 27 April 2021, available at <https://blogs.icrc.org/law-and-policy/2021/04/27/urban-warfare/>.
64. E.g. Laurent Gisel, Pilar Gimeno Sarciada, Ken Hume, and Abby Zeith, Urban warfare: an

- age-old problem in need of new solutions, 27 April 2021, available at <https://blogs.icrc.org/law-and-policy/2021/04/27/urban-warfare/>.
65. E.g. ICRC, *Reducing Civilian Harm in Urban Warfare: A Commander's Handbook*, 2021, pp.9-10, 20-21, 36, 50, available at <https://www.icrc.org/en/publication/4569-reducing-civilian-harm-urban-warfare-commanders-handbook-0>.
 66. Marti TJ, paras.462-463 and fn.1248; Periši TJ, paras. 324, 1103, 1819; Karadži TJ, paras. 4371, 4374, 4397.
 67. See p.3. See also ICRC IHL Database, Customary IHL, Rule 13, Area Bombardment, available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule13; IHL Contemporary Challenges, pp.47, 51.
 68. CITE TO INTERNATIONAL COURTS REPORT.
 69. 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, paras.912, 948, 970; Karadži TJ, fn.15527 and para.4626; Mladi TJ, para.3200. One leading scholar has analogized modified air bombs to barrel bombs. E.g. *Improvised and Indiscriminate Weapons*.
 70. Virgil Wiebe, *For Whom the Little Bells Toll: Recent Judgements by International Tribunals on the Legality of Cluster Munitions*, 35 Pepp. L. Rev. Iss. 4 (2008), available at <https://digitalcommons.pepperdine.edu/plr/vol35/iss4/2>. See 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>; Claim 2, paras. 107-110. Martić dealt with a particular type of cluster munition and limited its holding to “this specific instance” in a “densely populated civilian area.” Martić, TJ, paras.462-463.
 71. ICC lacks jurisdiction over disproportionate attacks in non-international armed conflicts. 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>.
 72. E.g. Mladi TJ, para.3201; Karadži TJ, para.4633.
 73. Asia News, *An Assad acknowledges the use of barrel bombs against human ‘insects’*, 18 November 2021, available at <http://www.asianews.it/news-en/An-Assad-acknowledges-the-use-of-barrel-bombs-against-human-insects-54529.html>.
 74. Customary international law is established by near-universal state practice done out of a sense of legal obligation. E.g. International Law Commission, *Draft conclusions on identification of customary international law*, with commentaries, 2018, p.124 Conclusion Two, available at https://legal.un.org/ilc/texts/instruments/english/commentaries/1_13_2018.pdf.



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