

The armed conflict in Syria

A. 'Death From the Skies, Deliberate and Indiscriminate Air Strikes on Civilians'

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[**Source:** 'Death From the Skies, Deliberate and Indiscriminate Air Strikes on Civilians', Human Rights Watch, 2013, available at: <http://www.hrw.org/reports/2013/04/10/death-skies> Footnotes omitted]

I. Background: From Protests to Armed Conflict

[1] [...] As demonstrations spread throughout the country in 2011, Syrian government forces, primarily the notorious security services, regularly used force, often lethal, against largely peaceful demonstrators. Security forces also launched a massive campaign of arrests, arbitrarily detaining hundreds of protesters across the country, routinely failing to acknowledge their detention or provide information on their whereabouts [...]. Summary and extrajudicial executions of defecting soldiers, opposition fighters, opposition supporters, as well as civilians who appeared to have had no part in the confrontation with the authorities other than being residents of opposition strongholds, also became part of the government's attempt to stop the demonstrations.

Unable to quell the protest movement, the Syrian army launched a military assault on Dar`a in April, 2011, in Tal Kalakh in May, and in Baniyas and Latakia along Syria's coast in May and August respectively. The army succeeded in taking control of Dar`a, but this was followed by even more protests in other parts of the country, and elements of the opposition increasingly took up arms against the government in September

2011, further militarizing the conflict. Syrian authorities launched another major offensive in February 2012, when its forces started using artillery, sometimes large-caliber, to bombard civilian neighborhoods in Homs and other areas under the control of opposition groups. The army deployed tanks in large numbers as it moved to retake control of Hama. [...] The military attacks forced increasing numbers of Syrians to seek refuge in neighboring countries.

[2] By May 2012, Human Rights Watch found that the fighting in some parts of Syria had reached the level of an armed conflict [...].

[3] The conflict in Syria entered a new stage during the summer of 2012, when opposition forces solidified control over significant territory in the north and conducted military operations in Damascus and Deir al-Zor in eastern Syria. [...]

[4] In July 2012, armed opposition forces launched attacks in Damascus in an operation termed the "Damascus Volcano and Syrian Earthquake." The height of this operation was a bomb attack on the National Security headquarters on July 18 that immediately killed three senior officials [...].

[5] Following losses in Damascus in July 2012, opposition fighters concentrated efforts in northern Syria, particularly in Aleppo governorate, where fighting continues at the time of writing, as the opposition struggles to gain and maintain control over territory.

[...]

[6] As fighting has intensified, the humanitarian situation in Syria has deteriorated, and the number of refugees has climbed. [...] In February 2013 the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) estimated that two million people were internally displaced, many living in intolerable conditions [...]. According to OCHA, aid delivery continues to be encumbered by high levels of insecurity.

[...]

Unlawful Air Strikes

[7] [...] The frequency of government air strikes in Syria that have struck only civilians and civilian objects with high-explosive munitions in populated areas indicates that those ordering the air strikes have been acting deliberately or recklessly.

[8] The rebel Free Syrian Army (FSA) themselves have unlawfully contributed to civilian casualties by deploying headquarters and other military objectives in densely populated areas. However, such deployments do not give license to the Syrian government forces to conduct unlawful attacks. [...]

[9] All of the attacks documented in this report appear to have been carried out with unguided munitions dropped without precision by jets and helicopters. [...]

[10] [...] Destruction from such weapons can be so extensive in highly populated areas that even attacks that hit a military objective will still cause indiscriminate or disproportionate harm to civilians and civilian property.

[11] Human Rights Watch found the use in towns of OFAB 250-270 unguided, high-explosive bombs, which can cause injury to people in a 155-meter radius from where it strikes. [...].

[12] Even though Human Rights Watch itself has not documented remnants of bombs larger than the 250-kilogram sized weapons like the OFAB-250-270, videos posted on YouTube show that the government has used larger bombs in populated areas, such as fuel-air explosives (FAEs), popularly known as “vacuum bombs,” which are more powerful than conventional high-explosive munitions of comparable size, and more likely to kill and injure people over a wide area. [...]

[13] The lack of capacity of the Syrian Air Force to conduct precise air strikes against military objectives in populated urban areas was apparent in Human Rights Watch’s interviews with four Syrian Air Force defectors. [...] For example, a brigadier general who said that he served in the Ministry of Defense at a military airport near Damascus until he defected in August 2012 told Human Rights Watch that pilots did not have accurate spotting technology, but that from the Syrian government’s perspective, inaccurate strikes served their purpose. Discussing strikes in Aleppo, he said:

[14] “It is difficult [for the pilots] to know where they are hitting. Their strike range is maybe 300 to 400 meters from a target. From their perspective it is okay because they find a spot where the FSA is and hit it, give or take a few hundred meters. They [the commanders] want people to be afraid. They want people to move out of Aleppo”.

[15] A second brigadier general, who said that he served for 40 years in the air force defense section of the Ministry of Defense before defecting, told Human Rights Watch that “the point of the strikes is to get people to hate the FSA.”

[...]

III. Deliberate Attacks on Bakeries

[16] Through site visits, Human Rights Watch documented eight air strikes on four bakeries in Aleppo city, al-Bab, and Mare`, which killed at least thirty-five civilians who were waiting in line for bread. [...] The pattern and number of these attacks suggest that government forces deliberately targeted civilians at the bakeries and breadlines.

[...]

[17] According to witnesses and Human Rights Watch's site visits, there were no Free Syrian Army bases in the vicinity of these attacks. Free Syrian Army (FSA) members in the vicinity appear to have been carrying out policing operations and not directly participating in hostilities.

[...]

[18] FSA members have been organizing and maintaining order at bread lines. Even if such individuals are armed, under these circumstances, they would be considered to be carrying out a policing function, and thus not subject to attacks. Were such individuals to be regular FSA fighters and thus valid military targets, attacking them by air strike in a crowded area would still amount to an unlawful disproportionate attack.

IV. Attacks on Hospitals

[19] Human Rights Watch documented repeated attacks on two hospitals in the areas visited. In Aleppo city, jets and helicopters launched at least eight attacks on a clearly marked hospital, Dar al-Shifa, in the course of four months, eventually destroying significant parts of the hospital building so that the hospital could not continue to function. [...]

[20] The repeated attacks on [...] hospitals suggest that government forces deliberately targeted these places because they were hospitals. Information about the presence of opposition fighters in or near the hospital in Aleppo city indicates the need for an inquiry into whether the hospital was being used by opposition for military operational purposes. In any event, no warning was given before the attack, and the attacks caused disproportionate civilian harm beyond any expected military gain, and thus violated the laws of war.

Dar al-Shifa Hospital in Aleppo City

[21] Between August 12 and November 21, aircraft struck on or in the immediate vicinity of the Dar al-Shifa hospital, the main emergency hospital in the opposition-controlled area in Aleppo city [...]. In addition, government forces launched at least one artillery attack at or in the vicinity of the hospital.

[22] On August 14, Human Rights Watch visited the hospital about one hour after a jet had struck the upper floors of the hospital with at least three rockets, and examined the destruction and remnants from rockets used in the attack. Human Rights Watch also documented a similar attack on the hospital on August 12.

[23] During the August 14 visit to the hospital, doctors told Human Rights Watch that because aircraft had attacked the hospital in the past, they had limited the use of the upper floors to emergency surgery. One of the doctors told Human Rights Watch: "We had just finished surgery and moved to the second floor when the rockets hit. If they had hit just minutes before, we would have all been dead." After the August 14 attack

brought further destruction to the upper floors of the building, hospital staff were forced to receive the wounded and conduct emergency operations on only the two lower floors.

[24] Upon return to the hospital on August 24, Human Rights Watch documented a similar attack on the hospital on August 21. The three attacks on the hospital documented by Human Rights Watch killed four civilians and injured five, including three nurses.

[25] Around 3 p.m. on August 24, while two Human Rights Watch researchers were visiting the hospital, a jet struck a building 50 meters away on a parallel street to the hospital. [...] As a result of the attack, the building collapsed, injuring several children. The Human Rights Watch researchers had walked past the house approximately five minutes before the strike. The only Free Syrian Army (FSA) presence they saw in the vicinity at the time of the attack was two armed persons in front of the hospital who appeared to be guarding the hospital. [...] Human Rights Watch did not see any FSA fighters injured in the attack.

[26] In addition to the four attacks documented by Human Rights Watch, international journalists working in Aleppo city as well as local activists reported that government forces struck the hospital or its immediate vicinity four more times. On November 21, in the last attack, a jet dropped a bomb that leveled a contiguous building, part of the hospital and rendered the rest unusable. According to witnesses, up to 40 people were killed, including a doctor, a nurse, and two security guards at the hospital.

[27] [...] The hospital is an established medical facility and clearly marked with a Red Crescent emblem on the front. [...]

[28] Commenting on the November 21 attack, the Syrian government news agency, SANA, reported that Syrian “armed forces ... carried out operations targeting terrorist hideouts in...Dar al-Shifa Hospital in al-Sha`ar area....[This and other] operations resulted in the death of tens of terrorists and the destruction of their weapons and equipment.” [O]ne person with knowledge of the situation in the hospital interviewed in January 2013, told Human Rights Watch that he had seen what appeared to be opposition commanders meeting in the hospital on several occasions after August.

[...]

V. Cluster Bomb Attacks

[29] Human Rights Watch site visits, interviews with witnesses, and videos posted on YouTube show that the Syrian Air Force has dropped cluster bombs in populated areas [...].

[30] A majority of the world’s nations have comprehensively banned the use of cluster munitions in all circumstances through the Convention on Cluster Munitions [...]. Syria is not a party to the convention and

did not participate in the 2007-2008 Oslo Process that led to the creation of the treaty, which bans the use of cluster munitions and requires destruction of stockpiles, clearance of areas contaminated with unexploded submunitions, and assistance to victims.

[31] Given the international standard being established by the ban convention, Human Rights Watch opposes any use of cluster munitions by any party at any time. From a legal perspective, for those that have not joined the convention and continue to use cluster munitions, Human Rights Watch presumes cluster munition strikes in or near civilian population centers to be indiscriminate. [...]

[32] Thus even for those countries that have not joined the ban convention, when used in populated areas, cluster munitions should be presumed indiscriminate in violation of international law.

[...]

[33] For some of these attacks, Human Rights Watch was able to interview victims, residents and activists who filmed the cluster munitions to confirm the location and circumstances of the attacks. In each video, Human Rights Watch identified cluster bombs or bomblets that had been dropped by aircraft, including helicopters.

[...]

[34] In the three cluster bomb attacks Human Rights Watch researched through site visits, Human Rights Watch researchers or local residents discovered unexploded bomblets after the attack. [...] In November 2012, [...] one man was killed and one injured when they tried to remove a bomblet that was stuck in the ground in a town in Homs governorate. [...]

VI. Other Unlawful Air Strikes

[...]

Failure to Take All Feasible Precautions

[35] [...] On September 14, 2012, a jet struck the Halima Sa`dia school in al-Bab with two bombs. At the time, the civilian council was using the school, according to civilian council members interviewed by Human Rights Watch. In October, a jet hit a building that the civilian council had designated as a new location for the council, and which, they believed, might have been known to the Syrian forces and prompted the attack. On November 4, 2012, a jet struck another school with four bombs where the civilian council had moved after the September 14 attack, according to civilian council members. One of the bombs in the November 4 attack, identified by a military expert on the ground as an OFAB 250-270, did not explode.

[36] The laws of war obligate warring parties to do everything feasible to verify that the persons or objects to be attacked are military objectives and not civilians or civilian objects, and only attack military objectives. In al-Bab, there appears to be a clear separation between the FSA and the local civilian council. Human Rights Watch visited the civilian council both in August when it was located in the Halima Sa`dia school, and in December in its new location. Members of the civilian council appeared to be civilian: they wore civilian clothes and did not carry arms. They said they were responsible for issues such as schooling, collection of garbage, and humanitarian assistance. [...] While there were some armed men in the neighborhood of the buildings used by the civilian council during Human Rights Watch's visits, there appeared to be no significant armed presence or FSA fighters on the territory of the buildings used by the civilian council. Witnesses interviewed by Human Rights Watch said that there were no FSA fighters or vehicles in the vicinity of the buildings at the time of the attacks.

B. Report of the independent international commission of inquiry on the Syrian Arab Republic

[Source: Report of the independent international commission of inquiry on the Syrian Arab Republic, A/HRC/25/65, presented to the 25th Session of the Human Rights Council on 12 February 2014, and published on 5 March 2014 .Available online at <http://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/IndependentInterna...>]

[...]

15. Connectivity among armed groups improved across the country, leading to the establishment of permanent or temporary coordination and integration mechanisms, including coalitions and operation rooms. These realignments were based on common tactical objectives, shared ideologies, pressure from external backers or simply operational necessity. In this context, local Islamic coalitions, such as the Islamic Front, have marginalized the non-ideological and moderate groups, partly owing to the selective financial support provided by certain Governments and their nationals.

16. To describe this complex landscape, non-State armed groups can be classified into four broad, non-exclusive umbrellas:

- Syrian moderate nationalists organised in a conglomeration of armed groups affiliated to the internationally backed Supreme Military Council, fighting the Government and calling for the formation of a democratic and pluralistic State. [...]
- Syrian Islamic armed groups bringing together fighters aimed at the ousting of the Government and militating for the institution of sharia law as the framework of an Islamic State in the country. [...]
- Radical Jihadist groups, including the two major Al-Qaeda affiliates, Jabhat Al-Nusra, and the Islamic State of Iraq and Al-Sham (ISIS), recruited from Salafi jihadist fighters and with the substantial presence and influence of foreign fighters. A rift has grown between the two groups, as the former remained engaged alongside other rebel groups in fighting government forces, while ISIS prioritized the

consolidation of its territorial control against all encroachments.

- Kurdish armed groups, mainly the Popular Protection Units (YPG), who have taken charge of protecting and governing territory, benefiting from a unified command, disciplined members and popular support. They reinforced their control of Kurdish regions after engaging in combat against other armed groups, in particular Al-Qaida affiliates in Aleppo, Ar Raqqa and Al Hasakah governorates.

[...]

18. In this intricate context, internal strife among rebel groups from all categories has escalated over the control of territories and resources, including roads, border crossings, smuggling routes and natural resources. Recently, long-brewing tensions between ISIS and other rebel groups, including the Islamic Front, culminated in violent hostilities extending across northern and northeastern governorates.

[...]

IV. Violations concerning the conduct of hostilities

[...]

104. Armed groups exploded car and suicide bombs in Al-Hasakah, Ar Raqqa, Homs, Aleppo and Damascus governorates [...].

105. On 15 August, ISIS exploded a bomb at a train station in Ar Raqqa, near the headquarters of the Ahfad Al-Rasoul Brigades. On 4 November, a suicide bombing targeted a Hizbullah office in Al-Thabiytiya (Homs). These attacks, while directed at military objectives, resulted in a loss of civilian life and injury to civilians, which was disproportionate in relation to the military advantage anticipated.

106. On 19 September, armed groups remotely detonated landmines placed along a bypass road between Jabourin and Homs city. Three civilian vehicles were hit and nine civilians killed. On 26 November, armed groups exploded a bomb in Al-Sumariyah main station (Damascus), killing dozens of civilians. These three attacks appeared designed to target civilians, a war crime. [...]

[...]

C. 'Squeezing the life out of Yarmouk, War crimes against besieged civilians'

[Source: 'Squeezing the life out of Yarmouk, War crimes against besieged civilians', Amnesty International, 2014, available at: <http://www.amnestyusa.org/research/reports/syria-squeezing-the-life-out-of-yarmouk-war-crimes-against-besieged-civilians>]

1. Introduction

[...]

[1] Yarmouk, located some 8km from the centre of Damascus, and Eastern Ghouta, on the city's eastern edge, have both been subjected to repeated attacks and prolonged sieges by troops loyal to President Bashar al-Assad, as have parts of Homs, Syria's third largest city, and al-Hassaka in the north-east. Fighters opposed to the government have besieged the central prison in the northern city of Aleppo, Syria's most populous city, and the nearby villages of Zahraa and Nobl, whose inhabitants they perceive as supporting the government.[...] Yarmouk is situated on the south side of Damascus. Its residents include Palestinians and Syrians; the former are refugees, Palestinians and their descendants who fled or were expelled from their homes during the 1948 conflict that saw the creation of the State of Israel or the subsequent war of 1967 when Israel invaded and occupied the West Bank and Gaza Strip. When the current crisis began in Syria, Yarmouk was home to the country's largest Palestinian refugee community. It was a densely populated area that resembled a residential district rather than a refugee camp. [...] Once the conflict took hold, thousands of people displaced by fighting in other parts of Syria arrived to seek shelter in Yarmouk, while thousands of its existing residents left to seek shelter elsewhere, some as refugees and others who remain internally displaced within Syria.

[2] Government forces besieged Yarmouk in December 2012. In July 2013 they began to prevent all access to Yarmouk. Since then, with the exception of some intermittent distribution since 18 January 2014, the Syrian army has prevented the entry of all people, and all food and goods, including medical supplies, into Yarmouk. The civilians who remain [...] include many who are elderly and sick and families with young children. Scores of civilians are reported to have died in Yarmouk as a direct result of the siege or have been killed in attacks by Syrian government forces. [...] Starvation, lack of adequate medical care and shooting by snipers are the three main causes of death reported to Amnesty International. [...] Within the context of the siege, Syrian security forces have also arrested scores of Yarmouk residents, many of whom they have subjected to enforced disappearance. [...]

[3] [...] Almost two thirds of Syria's 530,000 Palestinian refugees have once again been displaced. Approximately 270,000 Palestinians are internally displaced in Syria. More than 50,000 are reported to have fled to Lebanon, 11,000 to Jordan, 6,000 to Egypt, 1,000 to Libya, 1,000 to Gaza and others to Turkey, Malaysia, Thailand and Indonesia and other countries. [...]

2. The siege

2.1 Overview

[4] [...] On 6 June 2011, some 21 people were reported killed when armed members of the Popular Front for

the Liberation of Palestine – General Command (PFLP-GC) and Syrian security forces fired on a procession of angry people in Yarmouk. The PFLP-GC had provoked anger by not participating in a demonstration lamenting the killing of people, including individuals from Yarmouk, by the Israeli military at the border with Israel the previous day. Resentment against both the government and the PFLP-GC increased further when Yarmouk came under heavy shelling, apparently by government forces, in August and September 2012, reportedly killing at least 20 people. Soon after this, fighters belonging to armed opposition groups linked to the opposition umbrella group known as the Free Syrian Army (FSA) established a presence in Yarmouk. They recruited a number of local residents into their ranks and engaged in armed clashes with Syrian government forces and the PFLP-GC.

[5] On 16 December 2012, a Syrian government MiG warplane carried out raids on Yarmouk, bombing a number of civilian targets [...]. The next day, government forces shelled Yarmouk again and, assisted by the PFLP-GC, began the siege that has remained in force ever since. [...]

[6] In the weeks surrounding the beginning of the siege at least 140,000 Palestinian refugees as well as tens of thousands of Syrians reportedly fled Yarmouk. Others, however, remained: [...] they included many of [...] those who had least possibilities to seek alternative shelter, including many Palestinian refugees, for whom it is more difficult to find shelter in other parts of Syria and who face greater obstacles than Syrians in obtaining refuge in neighbouring countries.

[7] Initially, Syrian forces allowed the residents to receive a trickle of food supplies, such as small bags of vegetables, though too little to meet their needs. But as resistance continued they progressively tightened their noose around Yarmouk, allowing in only meagre supplies of food and water. In or around April 2013, government forces cut the main electricity power supply [...]. The lack of a power supply has directly affected the functioning of the area's hospitals and treatment centres [...]. In July 2013 the Syrian army began to prevent the entry of all people and all food and goods, including medical supplies, into Yarmouk.

[8] The actions of armed opposition groups that established a presence in Yarmouk – allegedly against the wishes of most Yarmouk residents, who hoped to preserve their “neutrality” amid the Syrian unrest and conflict – added to the problems faced by the besieged civilians. In particular, fighters from some armed groups are reported to have raided medical stores and removed medicines and medical supplies from Yarmouk's hospitals and clinics [...].

[9] As FSA-linked fighters moved out, fighters belonging to other armed groups moved in and used Yarmouk as a base from which to attack the Syrian army. They included fighters belonging to Jabhat al-Nusra and the Islamic State in Iraq and al-Sham (ISIS). Members of these armed groups engaged in fierce fighting with Syrian government forces in July 2013, capturing a number of positions from the Syrian army and forcing it to relinquish ground, but prompting a further tightening of the siege of Yarmouk by government forces, the PFLP-GC and members of a Shi'a pro-government armed group, the Abu Fadl al-Abbas Brigade, many of whom are said to be Iraqi, Lebanese and Iranian.

[...]

2.3 Starvation

[...]

[10] With the Syrian army and its armed allies blocking the entry of all food supplies, Yarmouk's markets and shops have run out of stocks. [...]

[11] As the impact of the siege took hold, local people had to resort to increasingly desperate measures. First, when there was no more flour to make bread, families baked substitutes using lentils and then crushed bulgur wheat. Then, these supplies too were exhausted or became too expensive [...].

[12] For months residents survived scouring the area for anything that might be edible, including cactus leaves, dandelion leaves and other plants. Hunger has driven many to expose themselves to government snipers while searching for food. [...]

2.4 Medical workers, medical services and the health of the besieged

[...]

[13] Among at least scores of individuals arrested during the siege, at least 12 are medical workers. [...] Medical workers in Yarmouk told Amnesty International that many of their colleagues left Yarmouk during this period, fearing arrest. Lack of medical personnel inevitably impacted the services available and put lives of injured and sick patients at greater risk. [...]

[14] Other medical professionals who were among those detained include Mohammed Najma, the owner of a medical supplies company who assisted the group of volunteer medical scouts (al- Kashafa al-Tibbiya) of the PLO. They acted as a first response team when rockets fell and people were injured, helping the wounded into ambulances and access emergency medical care. A senior medical worker told Amnesty International that government security officials from the Palestine Branch of Military Intelligence detained Mohammed Najma on 1 September 2013 at his company office, after first beating him with his laptop computer, and then took him away. He was released in or around late November 2013.

[...]

[15] The Palestine Hospital, run by the Palestinian Red Crescent Society (PRCS), is the main hospital in Yarmouk that continues to function, although it has been damaged by bombing, has lost many of its staff and

its capacity has been reduced as a result of the siege.

[...]

[16] According to one PRCS health worker, three women and five newborn babies died due to complications during pregnancy and childbirth in December 2013 and January 2014 because the hospital was unable to give them the medical treatment they required.

[...]

[17] One medical worker told Amnesty International that he witnessed the armed men removing the store of medical supplies provided by the PRCS [...]. The same armed opposition group is also reported to have been responsible for seizing the Palestine Hospital's entire fleet of five ambulances.

[...]

[18] Since 18 January 2014, conditions have been alleviated somewhat by the government's agreement that many seriously ill residents could leave the besieged area. On 14 February, a PRCS health worker told Amnesty International that "most of those suffering from serious illnesses have left, approximately 450 individuals." Many were accompanied by family members and were expected to receive treatment at Damascus hospitals. However, not all survived the exodus. [...] A PRCS-S volunteer [...] told Amnesty International [...] that the medical assessments for those being evacuated from the camp are made at the Palestine Hospital, but must then be approved by the PFLP-GC and the Syrian government security forces managing the crossing point. On 13 February, they finally agreed to the exit of a pregnant woman whose passage they had denied for four days. [...]

Discussion

I. Qualification of the situation and applicable law

1. (*Document A, paras. 1 – 2; Document B, paras. 15 – 18; Document C, para. 9*)

- a. When does a non-international armed conflict begin? Is there a threshold beneath which Art. 3 common to the Conventions does not apply? Is it necessary for a rebel group to control territory in order for Common Art. 3 to apply? In order to determine if the group is sufficiently organized? In order to determine whether the group is a party to the conflict?
- b. Is it possible to have a non-international armed conflict only in part of State's territory? When, where and to whom would IHL apply in this case?
- c. If Syria had been a party to it, would AP II have applied? Is it customary law? Assuming AP II is customary law, would it be binding to all the parties involved in the conflict?
- d. Are armed groups and States' armed forces bound by exactly the same rules? In the field of IHL? Of

international criminal law? Of international human rights law (IHRL)?

- e. When the rules provided by the IHL of NIAC are insufficient, should reference be made to the rules of IAC by analogy or, instead, to IHRL?

II. Conduct of hostilities - General

- a. Is the qualification of the conflict relevant for the applicability of the law on the conduct of hostilities?
- b. Are the obligations to take precautionary measures and to respect the proportionality principle as prescribed in Art. 57 of AP I the same in international and non-international armed conflicts? Why? Because they can be derived from the actual practice of belligerents? Because they are necessary in order to comply with the substantive provisions?

3.

How would you explain Section IX of the ICRC Interpretive Guidance on the Notion of Direct Participation in Hostilities (i.e. whenever possible, capture should be preferred to killing)? Do you agree with this approach, considering the general situation in Syria? [See ICRC, Interpretive Guidance on the Notion of Direct Participation in Hostilities]

4. (*Document A, para. 4*)

Are the National Security Headquarters in Damascus a legitimate military objective? Why? (CIHL, Rules 7 – 10; P I, Art. 52)

5. (*Document A, paras. 16 – 18*)

How is a bakery protected under IHL? Under what conditions, if ever, can such a building become a legitimate target? Were the bakeries in the present case legitimate targets? Are FSA members carrying out policing functions legitimate targets? What is your assessment of the legality of the attacks on the bakeries in the present case? [See ICRC, Interpretive Guidance on the Notion of Direct Participation in Hostilities] (CIHL, Rules 1, 7, 11-21; P I, Arts 48, 51, 52 and 57)

6. (*Document A, paras. 19 – 20*)

What protection do hospitals enjoy under IHL? Can they become military targets? If yes, under what conditions? (CIHL, Rules 25, 27 and 30; P II, Art. 11; GC I, Arts. 19 and 21; GC IV, Arts 18 and 19; P I, Arts. 12, 13)

7. (*Document A, paras. 21 – 28*)

Was the attack on the Dar al-Shifa Hospital in Aleppo City lawful? Does it make a difference whether the

hospital was displaying the red crescent emblem? Can the attack amount to a grave breach? (CIHL, Rules 7-10, 28, 30 and 151; P II, Art. 11; GC I, Arts. 19 – 22, 42, 50; GC IV, Arts. 18 – 19, 147; P I, Arts 12 – 13, 85)

8. (*Document A, paras. 35 – 36*)

How are schools protected under IHL? Under what circumstances, if ever, can such buildings become legitimate targets? Were the schools described in para. 42 – 43 legitimate targets? Was it lawful to attack them as described in the case? (CIHL, Rules 1, 7, 11-21; P I, Arts 48, 51, 52 and 57)

9. (*Document A, paras. 35 – 36*)

- a. In this case, what were the obligations of the Syrian armed forces regarding precautions in attack? Under what circumstances should a warning be given? What do “feasible” and “effective” in Art. 57 P I mean? Is a warning effective only if civilians heed it? What kind of warning could have been given in relation to the attacks on schools?
- b. What precautions must a defender take to protect the civilian population against the effects of attacks? Is it always possible to avoid locating military targets in populated areas? Is this a strict obligation under IHL? In light of Art. 51 (7) P I? (CIHL, Rule 23; P I, Art. 58)

10. (*Document C, para. 4*)

Is holding a city under siege a legitimate method of warfare? Does IHL prohibit siege or simply limit it? If the latter, how? Is your answer the same for both IAC and NIAC? If so, do the same rules apply in both cases?

III. Conduct of hostilities - Weapons

11. (*Document A, paras. 7 – 15*)

- a. Are high explosive weapons unlawful? Do you agree with this statement: “The frequency of government air strikes in Syria that have struck only civilians and civilian objects with high-explosive munitions in populated areas indicates that those ordering the air strikes have been acting deliberately or recklessly”? Why/Why not?
- b. If a party uses high-explosive weapons in densely populated areas, is it under an obligation to use precision guided munition, or smart munitions?

12. (*Document A, paras. 29 – 34*)

Are cluster bombs unlawful weapons? Is it necessarily prohibited to use them in densely populated areas? In what circumstances, if ever, can cluster bombs be used by states not parties to the Convention on Cluster munitions? [See Convention on Cluster munitions] (CIHL, Rule 17; P I, 51 (4) and 57 (2) (a) (ii))

13. (*Document A, para. 34*)

Considering that some casualties resulted from unexploded devices, do you think that, when assessing the proportionality of an attack, the expected civilian harm should also encompass casualties and harm over time? Even casualties and harm expected to occur after the end of the conflict? Does the law require the possibility of future civilian harm to be taken into account when evaluating the proportionality of an attack? (CIHL, Rule 14; P I, Art. 51 (5) (b))

III. Conduct of hostilities – Starvation

14. (*Document C, paras. 2, 10 – 12*)

- a. Is starvation an inevitable consequence of armed conflicts? How can one determine whether starvation of a besieged town comprising fighters and civilians constitutes prohibited starvation as a method of warfare against civilians? If a party uses starvation of civilians as a method of warfare, does it thereby commit a war crime? Would your response to the previous question change depending on whether a conflict is international or non-international in character? (CIHL, Rule 54; P II, Art. 14; P I, Art. 54; ICC Statute, Art. 8 (2) (b) (xxv); See The International Criminal Court)
- b. Even if starvation as a method of warfare is not specifically directed at civilians, how may actions resulting in famine constitute a violation of IHL? In the context of the Syrian conflict?

15. (*Document A, paras. 2 and 10*)

Can a party to a conflict deny humanitarian organizations access to victims of war, in particular those suffering the effects of famine, without violating IHL? Can it deny the ICRC access to the victims? Can it deny other humanitarian organizations access? How do your responses to the above relate to the present case? (GC I – IV, Art. 3; P II, Art. 18 (2); GC IV, Arts 23, 55 and 59-63; P I, Arts 69, 70 and 81).

IV. Status of the wounded and of medical personnel

16. (*Document C, paras. 13 – 14*)

What protection do medical workers enjoy in the present case? Is their capture always unlawful under IHL? In the present case? If they are captured in order to give treatment to wounded and sick fighters? (CIHL, Rule 25; GC I – IV, Art. 3; P II, Arts. 9 – 10; GC I, Art. 28; GC III, Art. 33)

17. (*Document C, paras. 15 – 25*)

What are the parties' obligations in relation to the treatment of wounded or sick people in the present case? Does IHL provide protection to women in this regard? (CIHL, Rules 110 and 134; GC I-IV, common Art. 3(2)) In light of what it is stated in para. 16, what are your considerations in relation to the situation of women in

armed conflicts? Is it a case where the so-called “special protection” would be needed? Is IHL adequate in this regard?

V. Conduct of Hostilities - Displacement

18. (*Document A, paras. 1 and 6, Document C, para. 3*)

- a. How would you qualify the displacement of civilians that occurred since 2012 under IHL? Does it make a difference legally whether the population fled to escape from the hostilities or because it was forcibly expelled? If it was because of the conduct of hostilities, does it matter whether IHL was respected or not in conducting those hostilities? Would it make a difference whether the population was forced to leave by the Syrian armed forces or by the rebels? Was the Syrian government bound by the prohibition of forced displacements? (CIHL, Rule 129; P II, Art 17)
- b. What is the protection afforded by IHL to displaced persons? What other legal frameworks could be relevant in this regard?

VI. Conduct of Hostilities - Pillage

19. (*Document C, paras. 10, 17 and 24*)

- a. Did armed opposition groups that looted premises, stole medical supplies and seized the Palestine Hospital's fleet of five ambulances commit violations of IHL? War crimes? (CIHL, Rule 52; GC IV, Art. 33)
- b. Does the prohibition of pillage apply to armed groups? How is the applicability of this prohibition in non-international armed conflicts problematic?