

Syria, Report by UN Commission of Inquiry (March 2017)

INTRODUCTORY TEXT: In this report by the Independent International Commission of Inquiry on the Syrian Arab Republic, the conduct of a number of parties to the conflict is analysed, and possible violations of international human rights law and international humanitarian law are highlighted.

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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: “Human rights abuses and international humanitarian law violations in the Syrian Arab Republic, 21 July 2016- 28 February 2017”, Conference room paper of the Independent International Commission of Inquiry on the Syrian Arab Republic, 10 March 2017, UN Doc. No. A/HRC/34/CPR.3, Available at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session34/Pages/ListReports.aspx> (footnotes omitted)]

[...]

I. INTRODUCTION

[...]

A. Challenges

[...]

B. Methodology

[...]

II. CONFLICT DYNAMICS

7. The conflict in the Syrian Arab Republic will soon enter its seventh year. Despite a general reduction in violence achieved by the nation-wide ceasefire agreed by the Russian Federation and Turkey on 30 December, armed violence persists on a number of frontlines. The ceasefire agreement, which came on the heels of the capture of Aleppo city by pro-Government forces, was buttressed by the adoption of Security Council resolution 2336 (2016), which commended Turkish and Russian political efforts and called for an immediate resumption of the political process.

8. Turkey, Iran and Russia sponsored talks in Astana, ostensibly aimed at capitalising on the post-Aleppo battlefield developments by reinforcing the ceasefire. In the final joint communique, the sponsors called for the creation of a trilateral ceasefire monitoring mechanism and for the effective separation of armed groups from United Nations recognised terrorist entities Jabhat Fatah al-Sham (previously Jabhat al-Nusra) and the Islamic State of Iraq and the Levant (ISIL). [...]

9. The outcome of the Astana talks also had important consequences for the armed groups, particularly in Idlib and western Aleppo governorates. Terrorist group Jabhat Fatah al-Sham considered the final communique of the talks as a declaration of war against it, and proceeded to attack the depots and checkpoints of armed groups that participated in the Astana meeting. Fearing further attacks by Jabhat Fatah al-Sham, many of the Astana associated armed groups joined the Ahrar al-Sham armed group, for protection and formed a new group under its umbrella. In response, the terrorist group united with a number of extremist factions under the name Hay'et Tahrir al Sham (HTS). So far, infighting has led to hundreds of military casualties and is having serious repercussions on the general armed groups' ability to mount offensive operations against government forces.

[...]

12. On 24 August 2016, Turkey initiated a military operation in northern Syria against ISIL. Since then, Turkish troops and affiliated Free Syrian Army (FSA) groups pushed through areas of northern Aleppo governorate as part of the cross-border operation "Euphrates Shield". On 23 February, these forces gained control of the strategic town of al-Bab from ISIL. In eastern Aleppo governorate, Syrian government forces continued to make swift advances at the expense of ISIL successfully connecting to territory controlled by the Kurdish dominated Syrian Democratic Forces (SDF) around the town of Minbij to the west of the Euphrates River. A reported military agreement with the SDF has allowed the entry of Syrian government forces to the vicinity of Minbij thus overtaking a number of villages to the west of the town and effectively facing the Turkish forces to the south. On a different front, SDF forces continue their rapid

advance through the northern ar-Raqqa governorate towards the self-proclaimed “capital” of ISIL reaching the outer limits of the city at the time of this writing.

13. Facing multiple actors on a number of fronts, ISIL continued to lose territory particularly in the governorates of Aleppo, Homs and ar-Raqqah. Subsequently to the reporting period, on 3 March, government forces regained control of Palmyra (Homs) for the second time in less than a year. The terrorist group’s defences also appear to have significantly weakened in eastern Aleppo governorate and to the north of ar-Raqqah. In a major development, SDF forces with the support of international coalition airstrikes, established control of parts of the road connecting ar-Raqqah city to Dayr az-Zawr thus severing one of the last vital supply lines for the terrorist group.

14. During the reporting period, external actors continued to provide material and financial support to the parties inside the Syrian Arab Republic contributing to the protraction of the conflict and with it the suffering of civilians. Involvement of external actors in the war has led to further fragmentation of the political and military landscapes and has contributed to an increase in levels of violence and extremism. While the war on ISIL has achieved tangible results, civilians continue to bear the brunt of the conflict throughout areas investigated by the Commission. The multiplication of active military actors on the ground or groups supported by proxy continues and could become a formidable obstacle to achieving a coherent political settlement.

III. GOVERNMENT AND PRO-GOVERNMENT FORCES

A. Attacks against civilian infrastructure

(i). Hospitals

[...]

(ii). Schools

[...]

(iii). Water Sources

32. On 22 December, Government forces launched an offensive on Wadi Barada (Damascus countryside), an area besieged since November 2013. Home to three water springs, including al-Feijeh spring which provides 70 per cent of all Damascus water, Wadi Barada is of high strategic value for the Government and the opposition. Throughout the siege, armed groups threatened to cut off water on several occasions effectively using control over the springs to prevent attacks by pro-Government forces. On one occasion, in July 2015, the Wadi Barada Shura Council cut off the water supply in reaction to a Government military operation in Zabadani (Damascus countryside), at the time also under siege. One interviewee indicated that as a rule armed group fighters were present in al-Feijeh spring to

protect it from Government attacks.

33. On the second day of the offensive, 23 December, an aircraft bombed the al-Feijeh spring. Both sides blamed each other for the attack, which inflicted extensive damage to the structures of the spring and killed at least one armed group fighter. Also on 23 December, the Damascus Water Authority announced it had cut off water supplies because armed groups had contaminated the water with fuel. As a consequence, 5.5 million people were left without regular access to water. In Wadi Barada, people resorted to water from the river and agricultural wells; in Damascus, the Government used backup wells, which provided 30 per cent of the daily water needs of Damascus.

34. Negotiations between the two sides in early January 2017 to allow repairs to the water structure collapsed after a chief opposition mediator was killed; again both sides traded accusations. The al-Feijeh water structure was eventually repaired in early February after an agreement between the warring parties ended the Wadi Barada siege.

35. The Commission investigated the allegation that the water was deliberately contaminated as well as the bombing of al-Feijeh. Regarding the first, there are no reports of people suffering from symptoms of water contamination on or before 23 December nor other indications that the water was contaminated prior to this date. On the contrary, interviewees say that Wadi Barada residents used water up until the bombing of 23 December and no one experienced any symptoms of contamination. Several interviewees, including a person who went to al-Feijeh after the bombing, recalled that shrapnel damaged the storages of fuel and chlorine, which contaminated the water. It is therefore concluded that the water was not intentionally contaminated by either side.

36. The information examined by the Commission confirms that the bombing of al-Feijeh spring was carried out by the Syrian Air Force. A review of videos of the attack, photographs of the weapons used and damage to the facility, as well as pre and post-strike satellite imagery confirm the damage was caused by at least two airstrikes. Some entry holes in one of the facilities as well as physical damage to the structure are all consistent with high-explosive aerial bombs. Public reports that armed groups destroyed the facility with demolition charges are inconsistent with observable physical evidence. Witness testimony also supports the conclusion the attack was the result of airstrikes: one interviewee who was in the vicinity of the spring at the time of the attack recalled how airstrikes continuously bombed the area throughout the day. At around 10am, he heard an explosion and went to the spring where he saw that the structure had been hit and was severely damaged.

37. The al-Feijeh spring was struck multiple times by the Syrian Air Force, which indicates the spring was purposely targeted. While the presence of armed group fighters at al-Feijeh spring constituted a military target, the extensive damage inflicted to the spring had a devastating impact on more than five million civilians in both Government and opposition controlled areas who were deprived of regular access to potable water for over one month. It is therefore concluded that the damage caused to al-Feijeh spring was grossly disproportionate to the military advantage anticipated or achieved. The attack amounts to the war crime of attacking objects indispensable for the survival of the civilian population, and further violated the principle of proportionality in attacks.

B. Attacks directed against humanitarian relief personnel and objects

[...]

C. Prohibited weapons

[...]

IV. ARMED GROUPS

A. Indiscriminate attacks

[...]

B. Local governance and justice systems

67. Civilians continue to suffer due to the behaviour of armed groups in control of territory in which they reside, primarily throughout the stronghold of Idlib and northern Hama governorates. During the reporting period, Syrian men and women expressed their desire to begin sharing control over local governance with armed groups on an array of matters relating to daily life. Residents in Kafr Nbuda, northern Hama, for example, quarrelled with members of Ahrar al-Sham over local governance mechanisms in an attempt to obtain more rights and autonomy through power-sharing. A number of civilians further staged demonstrations during the period under review throughout both localities, with some calling for the withdrawal of armed groups who they increasingly view as imposing rules inconsistent with the needs of the civilian population, and whose presence they feel is increasingly responsible for airstrikes in civilian inhabited areas.

68. Residents living in Idlib also described the variety of “shari’a courts” located throughout the governorate, operated by nearly all armed group factions. Civilians in Idlib explained attending whichever religious court they felt was most suitable to adjudicate their concerns on a given issue relating to either civil disputes or criminal matters. In addition, residents further relayed how a given town in Idlib may have more than one shari’a court entrusted with the capacity to judge an individual when armed groups share control of the town. For example, in Ariha, two separate shari’a courts belonging to both Jabhat Fatah al-Sham and Jund al-Sham operate concurrently. The terrorist group uses the government’s previous political branch offices in Ariha as a shari’a court and prison. Such parallel justice systems in Idlib fail to respect due process rights, lack fair trial standards and often result in executions.

C. Summary executions

[...]

D. Arbitrary arrest, detention, torture and enforced disappearance

[...]

V. JABHAT FATAH AL-SHAM

A. Summary executions

[...]

B. Recruitment and use of child soldiers

[...]

VI. ISLAMIC STATE OF IRAQ AND THE LEVANT (ISIL)

A. Disproportionate attacks

[...]

B. Executions, corporal punishments and detention

77. Throughout the reporting period, ISIL continued to carry out executions and to impose severe corporal punishments against those perceived to violate its strict religious rules, with the harshest punishment, the death penalty, given to women accused of adultery and men accused of sodomy. These practices, which discriminate against victims based on their gender and sexual orientation, have been a hallmark of the group's rule since its inception but are more strictly enforced during the holy month of Ramadan.

78. By July 2016, numerous reports of killings of women and boys continued to emerge from areas throughout ISIL-held ar-Raqqah. One interviewee described how a 16-year-old boy was arrested by al-Hisbah, the ISIL branch responsible for identifying infringers of the group's rules, on charges of smoking. Two weeks after being detained, the boy was accused of sodomy and killed as punishment by being thrown off a building. One interviewee described how also during Ramadan he was detained for smoking and having no beard and lashed 10 times as a result.

[...]

80. ISIL continues to punish women accused of breaching the group's strict dress code that requires them to wear a niqab in public. An ar-Raqqah resident describes this rule as being so strict that women are not even allowed to lift an eye piece of the niqab to look at goods in the market. Women are also required to be accompanied by a male relative when out in public, with punishments raging from fines to corporal punishments.

81. These group's rules for women are enforced by patrols, which in the beginning of ISIL's rule were composed solely of men but overtime have come to be composed of women too. In one instance, one of these patrols insulted and chased a woman in the streets of ar-Raqqa because she was not wearing socks. The woman tried to escape but was arrested by the patrol. In another instance, in Hazima village (ar-Raqqa countryside), a bride was arrested by al-Hisbah because her cloak was considered too short. She was arrested and detained for one week, after which her husband divorced her because he believed she had been raped.

C. Human shields

[...]

D. Destruction of cultural property

[...]

VII. KURDISH PEOPLE'S PROTECTION UNITS (YPG)

A. Internal displacement

86. During the period under review, strategic areas in northern Aleppo countryside continued to serve as flashpoints for control between warring parties. On 31 May, the SDF, with the support of coalition air cover, launched an offensive to capture Minbij city from ISIL, which borders the western bank of the Euphrates River. The offensive lasted until mid-August, when the SDF succeeded in capturing the city.

87. The Minbij offensive was preceded in late December 2015 by a similar SDF offensive to take the Tishreen Dam from ISIL. Both offensives were characterised by waves of mass displacement, whereby SDF forces ordered residents to leave their villages [...]. At least 3,000 residents were displaced to the Abu Qalqal sub-district from the Tishreen Dam area, some 15 kilometres from their homes. Thousands of others have been displaced from Minbij city.

88. By late August, SDF troops began permitting displaced civilians to return to certain villages [...]. Others, however, continue to remain internally displaced, living under dire humanitarian conditions. While some individuals managed to stay with relatives in Abu Qalqal, others continue to live in simple tents. Families with children describe being particularly affected.

89. Residents displaced to Abu Qalqal also express fears of looting of their personal belongings left in their homes. In one instance, a witness described how SDF forces demolished a number of houses near Shash (al-Bo Banna) village, and cut down olive trees to use as firewood. Other residents who were able to briefly sneak back into their villages echoed how some SDF troops had pillaged their property.

90. Since mid-2015, the Commission has noted the indiscriminate presence of antipersonnel landmines, improvised explosive devices and booby traps in civilian inhabited areas captured from ISIL by YPG or the SDF, including in houses and vehicles. Such concealed, improvised bombs continue to be laid by ISIL as part of its withdrawal strategy, with devastating effect. Shortly after the SDF launched operations to seize the Tishreen Dam from ISIL in late December, ISIL militants began laying landmines on roads leading to villages surrounding the dam, as well as in neighbouring areas leading to Minbij. Inhabitants recalled ISIL militants telling them that the plan was “to prevent Kurdish troops from advancing to Minbij, in case the Tishreen Dam fell.” Witnesses further detailed how ISIL used young boys as escorts to lay the mines, in an effort to camouflage their movements. Young boys were made to look like shepherds leading livestock, and at least one boy aged 12 years died as a result of a landmine detonation. The SDF began demining areas throughout Minbij shortly after capturing the town in mid-August.

91. The presence of concealed bombs laid by ISIL justifies ordering the temporary displacement of civilians from the Tishreen Dam and Minbij areas, but only for such time required for SDF troops to take steps necessary to safeguard the security of civilians. Moreover, SDF authorities bore the responsibility to ensure that any temporary displacements were carried out in satisfactory conditions of shelter, hygiene, health, safety and nutrition, and that members of the same family were not separated. Displaced individuals did not receive adequate assistance from SDF or YPG authorities in this regard.

92. Further allegations of displacement continue to be received. On 6 November, the SDF, supported by coalition air cover, attacked the ISIL-held village of Heisha, in ar-Raqqah. Witnesses described how residents were ordered to leave the area by SDF troops, some of whom went house to house demanding that civilians leave on threat of punishment. Families displaced from Heisha village continue to live in dire conditions, lacking even basic necessities. In May 2015, YPG forces overtook Suluk, a town in the Tel Abyad district of ar-Raqqah. Though residents in Suluk and neighbouring villages described fleeing in advance of clashes between YPG and ISIS, they have since been prevented by YPG forces from returning to their homes, as the areas have collectively been declared a military zone by YPG forces who erected barricades and checkpoints. The displacement of Suluk and its environs has also had an impact on access to education, as many schools including one in Roufa village, al-Hasakah, are now being used to house internally displaced persons.

93. Though allegations of “ethnic cleansing” continued to be received during the period under review, the Commission found no evidence to substantiate claims that YPG or SDF forces ever targeted Arab communities on the basis of ethnicity, nor that YPG cantonal authorities systematically sought to change the demographic composition of territories under their control through the commission of violations directed against any particular ethnic group.

B. Violations and abuses

[...]

VIII. INTERNATIONAL COALITION

96. The Commission continues to take note of airstrikes carried out by the international coalition that impacted civilians in Syria that raise concerns regarding distinction, proportionality, and precautions in attacks under international humanitarian law.

97. For example, on 4 October in Taltana village, Aleppo Governorate, a United States coalition aircraft targeted ISIL fighters killing up to 25 people. Multiple sources reported that up to 13 of those killed were civilians, including nine children while only between two and four ISIL fighters were killed. Local sources reported that ISIL fighters had forced local people to gather to watch the implementation of a punishment when the airstrike occurred. In the Combined Joint Task Force - Operation Inherent Resolve Monthly Civilian Casualty Report published on 1 December 2016, the coalition “assessed that one civilian was inadvertently killed as a result of the blast following the strike.” Although the casualty figures are disputed, the Commission acknowledges the public reporting effort of the coalition, while noting that this airstrike raises concerns regarding the proportionality, and precautions in attacks under international humanitarian law.

98. Likewise, in a series of airstrikes in early February 2017, international coalition aircraft likely conducted a series of airstrikes on bridges and infrastructure around Raqqa city, cutting transport routes for both ISIL fighters and civilians alike. Operation Inherent Resolve claimed in its daily “Strike Release” press statements between 2 and 10 February that dozens of airstrikes impacted 36 different “supply routes”, corresponding to the information provided by witnesses and affected residents. The Commission notes that while bridges and other transportation routes may be legitimate military targets, the decision to target such infrastructure must be based on military necessity and should not be disproportionate in relation to the impact on the civilian population.

IX. OBLIGATIONS OF STATES

99. As the conflict in the Syrian Arab Republic continues to evolve, it has resulted in the active intervention of a number of Member States through both direct actions on the territory of Syrian Arab Republic in support of and in opposition to the Government and through the provision of logistic, material, and financial support to non-state armed groups. The Commission notes that neither the Syrian Arab Republic nor the major third party states providing support to the Syrian Government or to groups opposed to the Government are party to the 2014 Arms Trade Treaty which [provides] for specific restrictions on the transfer of arms on the basis of respect for international humanitarian law and international human rights law.

100. The Commission recalls however, that all states have an obligation under Article 1 Common to the Four Geneva Conventions “to respect and to ensure respect for the present Convention in all circumstances”. As Article 3 Common to the Four Geneva Conventions is part of each of the four “present” Conventions as well, this obligation extends as a matter of treaty obligation to the minimum guarantees provided in Common Article 3 in situations of “armed conflict not of an international character occurring in the territory of one of the High Contracting Parties.” The ICRC Commentary to Common Article 1 of 1952 as well as the updated ICRC

Commentary of 2016 indicate that the High Contracting Parties' obligations "to respect and ensure respect for" the Conventions are required both in respect to their own forces as well as the forces of other parties to a conflict in situations of both international and non-international armed conflict.

101. The obligation to ensure respect by others, according to the ICRC Commentary of 2016 entails both positive and negative obligations. The positive obligations require High Contracting Parties to take actions to prevent violations of international humanitarian law by other parties to a conflict, within the confines of the United Nations Charter. The negative obligations require High Contracting Parties to refrain from encouraging, aiding, or assisting other parties in the commission of violations of international humanitarian law, including through the provision of funding and arms when there is an expectation that the funding or arms may be used to perpetrate violations.

102. Thus, in addition to the specific obligations under international humanitarian law of all parties engaged in the conduct of hostilities on the territory of the Syrian Arab Republic, the Commission reiterates that every state providing arms, funding, and other forms of support is required to refrain from providing such support if there is an expectation based on past conduct of the recipients that it will encourage the commission of violations of international humanitarian law.

103. The Commission also notes that situations of occupation under international humanitarian law apply in "all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance" under Article 2 Common to the Geneva Conventions. The Commission therefore reminds States of the obligations under the 1907 Hague Regulations, the Fourth Geneva Convention, Additional Protocol I to the Geneva Conventions, and customary international humanitarian law.

X. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

[...]

B. Recommendations

[...]

Annex

Map of the Syrian Arab Republic

[...]

Discussion

I. Classification of the Conflict and Applicable Law

1. (*Paras 7 – 14 and 99 - 103*)

- a. How would you classify the situation in Syria at the time of the incidents at issue in the case? Does it constitute one armed conflict or are there several armed conflicts in Syria? From the information provided in this report, who are the parties to the conflict(s)? What is the applicable law? Does IHL bind all the parties to the conflict? Does international human rights law bind all the parties to the conflict? In your opinion, does IHL apply to the whole territory of Syria, or only to certain regions? (GC I-IV, Art. 3; GC I-IV, Art. 2; Hague Regulations, Art. 42)
- b. If Syria had been a party to it, would Additional Protocol II have applied? Is it customary law? Assuming Protocol II is customary law, would it be binding to all the parties involved in the conflict?
- c. (*Paras 14 and 99*) If non-state armed groups are provided with material and financial support from external actors, how does this affect the nature of the conflict? Does the degree of support provided matter? If the provision of support went beyond the provision of financial and logistical support, to training, planning and conduct of operations, would your response remain the same? [**See:** ICJ, *Nicaragua v. United States*, paras 80 – 122; ICTY, *The Prosecutor v. Tadić*, Appeals Chamber, Merits (Document C) paras 87 – 145 and ICJ, *Bosnia and Herzegovina v. Serbia and Montenegro* (Document D in Tadic Case), paras 396 - 407]
- d. (*Paras 12 and 103*) Is Turkey an occupying power in Syria? Even if it obtained control of territory in fighting ISIL and not Syrian government forces? If it constitutes an occupation, is this a case of occupation with or without armed resistance? Does it matter whether Turkey controls territory jointly with local SDF forces? (Hague Regulations, Art. 42; GC IV, Arts 2 and 47)
- e. If support provided by a third State is insufficient to make it a party to the conflict or to turn the conflict into an IAC, do supporting States still have obligations under IHL linked to the support they provide?

II. Conduct of Hostilities

2. (*Para. 32*)

- a. The report mentions a number of areas that are “besieged” or “under siege”. What does this tactic involve? Is this a prohibited method of warfare under IHL? Are there circumstances that determine whether sieges are prohibited? Is your answer different for IACs and NIACs? (CIHL Rule 53; P I, Art. 54 (1); P II, Art. 14)
- b. In your opinion, do the threats by the armed groups to cut off water supply from Wadi Barada violate IHL? What rules do you think would be violated? (CIHL Rule 54; P I, Art. 54 (2); P II, Art. 13 (2); P II, Art. 14)

3. (*Paras 32 – 37*)

- a. Under IHL, what objects constitute legitimate military targets? (CIHL, Rule 8; P I, Arts 52 (2) and (3))
- b. How does IHL describe objects such as the al-Feijeh spring? May such objects be targeted? Under what circumstances? Why do you think IHL accords protection to such objects? Do you think the attack on the spring was legitimate? (P I, Arts 52, 54, 56, and 57)
- c. Is the fact that fighters of armed groups were stationed in al-Feijeh spring to protect it from Government attack relevant under IHL? Does the fact that the fighters were present release the Syrian government from its obligations with respect to the spring?
- d. If the water sources at Wadi Barada had been intentionally contaminated with fuel (as opposed to attacked from the air), would this have constituted a violation of IHL? What rules would have been violated? (CIHL Rule 54; P I Art. 54 (2); P II, Art. 14)
- e. Do you think the parties to the conflict have an obligation under IHL to repair the damage to the spring? To pursue negotiations in good faith in order that repair is completed as soon as possible? On what legal provisions do you base your arguments?
- f. (*Para. 37*) The Commission of Inquiry concludes that the attack on the al-Feijeh spring was carried out by

the Syrian Air Force, and finds violations of IHL. What principles of the conduct of hostilities does the Commission believe have been violated in this attack? (CIHL Rule 14; CIHL Rule 54; P I, Art. 51 (5) (b); P I, Art. 57; P II, Art. 14)

g. (*Para. 37*) Do you agree with its conclusion that the reverberating or knock-on effects of the attack rendered the damage “grossly disproportionate to the military advantage anticipated or achieved”? What elements had to be balanced/weighed against each other in this case? Do you think that IHL requires reverberating effects of attacks to be included in proportionality calculations? Even if they affect civilians under the control of the attacker? The Commission of Inquiry refers to “military advantage *anticipated or achieved*” (emphasis added). To what extent is this a correct interpretation of the rule on proportionality in attacks? (CIHL Rule 14; P I, Art. 51 (5) (b); P I, Art. 57)

h. (*Para. 97*) What elements had to be balanced/weighed against each other in applying the proportionality principle to the attack on Taltana village? If 13 civilians were killed and only between two and four ISIL fighters, does this indicate that the proportionality principle was violated? (CIHL Rule 14; P I, Art. 51 (5) (b); P I, Art. 57)

III. Armed Groups: Local Governance and Justice Systems

4. (Paras 67-68 and 77-81)

- a. Is an armed group obliged to take care of the civilian population within territory it controls?
- b. What guarantees must a court fulfil under GC I-IV, Art. 3? What does the requirement for a fair trial entail? Could these conditions be satisfied by a court established by an armed group? What particular requirements would be difficult for courts established by armed groups to fulfill?
- c. What alternative legal system could be applied to areas controlled by armed groups? Could IHL of military occupation be applied by analogy in such a situation? (GC IV, Arts 64 and 66)
- d. How are P II, Art. 6 (2) and P I, Art. 75 different from Common Article 3 as concern the guarantees a court must fulfil? Do these provisions apply to the situation in Syria?
- e. Could a court established by an armed group ever try a civilian? A Government soldier? A fighter of another armed group? Under what circumstances might a court sentence in such a case be legitimate?
- f. Bringing enemies to trial presupposes that they have been detained. Are non-state armed groups entitled to detain civilians or enemy soldiers/fighters? Does IHL authorize armed groups to detain enemies, or does it simply foresee that such detention will occur as it does in IACs (GC IV, Art. 78) when it regulates treatment of detainees? (GC I-IV, Art. 3 and P II, Art. 5)
- g. What rules of IHL are violated by the corporal punishments, executions and discriminatory practices mentioned in the report?

IV. Displacement of the Civilian Population

5. (Paras 86 - 93)

- a. Are the rules on displacement of the civilian population the same in IAC and NIAC? (CIHL Rule 129; CIHL Rule 131; CIHL Rule 132; CIHL Rule 133; P II, Art. 17; GC IV, Art. 49; GC IV, Art. 147; P I, Art. 85 (4) (a); ICC Statute, Art. 8(2)(e)(viii))
- b. Are there certain circumstances in which IHL obliges parties to a conflict to evacuate the civilian population on the territory under their control? (CIHL Rule 129; P II, Art. 17; ; GC IV, Art. 147; P I Art. 85 (4) (a); ICC Statute, Art. 8(2)(e)(viii))
- c. For how long may an evacuation of the civilian population be ordered? Once the reasons for evacuation no longer exist, do civilians have a right to return to their homes? (CIHL Rule 129; CIHL Rule 132; P II, Art. 17;

GC IV, Art. 49)

d. Does IHL foresee protection of the property of civilians who have been displaced as a result of the conflict? (CIHL Rule 133)

e. Based on the information in the report, do you think the SDF complied with IHL? The YPG?

V. Obligations of involved states

6. (Paras 96 - 103)

a. (*Paras 96 – 98*) Is there an obligation incumbent on the coalition forces to investigate reports of excessive civilian casualties? If so, who bears the obligation? The coalition as a whole? All the states involved in the coalition? The state(s) carrying out the airstrikes in question?

b. (*Paras 99 – 103*) According to the report, what obligations do the states involved in the conflict have? Do you agree? Are there additional obligations that should be mentioned?

c. Do you agree with the Commission's claim that the obligation to respect and ensure respect for the Geneva Conventions, found in Common Art. 1, also applies in times of non-international armed conflict? What are arguments for and against such a view? (GC I-IV, Art. 1; GC I-IV, Art. 3)

d. Are states that are not involved in the conflict also bound by Common Art. 1? If so, are they bound by an obligation of means or of result to "ensure respect" for IHL? What kinds of actions does this obligation, if it exists, require such states to undertake?

e. Is knowledge that arms supplied in the past were used to violate IHL sufficient to find a violation of GC I-IV, Art. 1? Or does Art. 16 of the ILC Articles on State Responsibility require an intent to assist in violations of IHL?

f. Would a State that was a party to the ATT have additional obligations as compared with a State that was only bound by the obligations under GC I-IV, Art. 1? (Arms Trade Treaty, Arts 6 and 7)