

## Syria, the Battle for Aleppo

*INTRODUCTORY TEXT: The battle for control over Aleppo involved horrible suffering for civilians on both sides. To force armed groups holding Eastern Aleppo to surrender, pro-Government forces encircled eastern Aleppo city in late July 2016. Civilians were left without adequate food or medical supplies. In this report, the Independent International Commission of Inquiry on the Syrian Arab Republic documents the numerous violations of IHL and IHRL committed by the parties to the conflict during the battle for Aleppo between 21 July and 22 December 2016.*

**N.B. As per the disclaimer <sup>[1]</sup>, 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.

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## **Report of the Independent International Commission of Inquiry on the Syrian Arab Republic**

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[<sup>2</sup>] (footnotes omitted)]

[...]

### **I. INTRODUCTION**

[...]

### **II. METHODOLOGY**

[...]

### **III. POLITICAL CONTEXT**

[...]

9. The encirclement and siege of eastern Aleppo by pro-Government forces in July presaged further escalation of hostilities although the cessation of hostilities agreement of 9 September 2016, reached among the United States of America, the Russian Federation and the co-chairs of the International Syria Support Group, provided civilians much-needed respite from violence. The collapse of that agreement on 19 September was followed by a

prolonged and intense Syrian and Russian aerial campaign over eastern Aleppo and a resumption of shelling by armed groups on western Aleppo. In October, a high-level meeting in Lausanne, attended by representatives of the Russian Federation, the United States of America and influential regional powers failed to renew the agreement.

10. In November, the Special Envoy of the Secretary-General called for an immediate pause in fighting and for the terrorist group Jabhat Fatah al-Sham (previously known as Jabhat al-Nusra) to leave Aleppo city in order to allow humanitarian assistance to be delivered to the besieged area. The Government of the Syrian Arab Republic rejected the Special Envoy's proposal for local administrations in eastern Aleppo to be kept intact, and a pause in fighting did not materialize.

11. The recapture of eastern Aleppo city by pro-Government forces on 22 December 2016 had an impact on conflict dynamics countrywide. While the ceasefire declared on 29 December 2016 succeeded in reducing levels of violence and was generally holding at the time of writing, it could introduce new dynamics affecting developments on the ground. [...]

#### IV. WEAPONRY AND CAPABILITIES OF WARRING PARTIES

12. Warring parties had varied capabilities, a fact that helped in the attribution of responsibility for specific incidents. The types of weapons and how they were used was also indicative of strategy and intent. The choices of methods and means of combat selected by warring parties in Aleppo governorate overall suggest a wilful disregard by all sides for international humanitarian law rules with regard to proportionality and distinction, or for the requirement to take all feasible precautions to avoid incidental loss of human life, injury or damage to civilian objects.

13. Throughout the period under review, the skies over Aleppo city and its environs were jointly controlled by Syrian and Russian air forces. The Russian Federation and the Syrian Arab Republic use predominantly the same aircraft and weapons, thus rendering attribution impossible in many cases. Although the international coalition also operated over Aleppo city, it did not conduct any offensive missions during the period under review. Armed

groups lacked manned aircraft and were incapable of conducting conventional air strikes. While they did operate unmanned aerial vehicles (drones), only a handful were armed, and the majority failed to operate as intended.

14. Syrian and Russian air forces conducted daily air strikes in Aleppo throughout most of the period under review, exclusively employing, as far as the Commission could determine, unguided air-delivered munitions. These included aerial bombs, air-to-surface rockets, cluster munitions, incendiary bombs and improvised air-delivered munitions (barrel bombs), and weapons delivering toxic industrial chemicals, including chlorine. The Syrian air force has limited capability to conduct operations at night; most night operations were therefore conducted by the more capable Russian air force. [...].

15. The use of air-delivered cluster munitions increased during the period under review. Cluster munitions disperse smaller submunitions, which kill and injure over a wide area. In the case of some of the munitions observed, each cluster bomb dispersed more than 500 submunitions. As a result, Aleppo is now contaminated with significant quantities of unexploded ordnance.

[...]

19. Armed groups, which were not in control of the skies, used an array of improvised mortars. Many of these, including a common spigot mortar widely referred to as Jahannam or the “hell” cannon, employ cooking gas pressure vessels as projectiles. Broadly speaking, these mixtures are capable of producing blasts equivalent to 22 to 33 kilograms of TNT. A typical example may produce a fatal blast pressure up to 15 metres from the site of detonation, and injurious blast effects extending up to 40 metres. Most projectiles from these weapons travel 400 to 600 metres.

20. Armed groups also frequently employed indirect fire [Footnote 2: Direct fire relies on a direct line of sight to the target, while indirect fire does not. To be accurate, indirect fire should employ an observer to correct fires], primarily by artillery systems. In numerous cases, these weapons were used to attack targets located amid concentrations of civilians, amounting to indiscriminate attacks. In other cases, armed groups intentionally applied

indirect fire against enemy held territory without targeting specific military objectives. The use by Syrian forces and armed groups of guided munitions in Aleppo appears to have been limited to anti-tank guided missiles to attack buildings and vehicles.

## V. EASTERN ALEPPO CITY

### A. Establishment of a siege

21. Once the country's economic capital and most-populated city, Aleppo remained of major strategic importance to all parties. In 2012, the city was effectively divided in two when armed groups captured the eastern swathe, while the west remained under Government control. Mostly self-governed by local councils, eastern Aleppo remained a key opposition stronghold, and the battle for its control was widely regarded as potentially decisive for the broader Syrian conflict.

22. After three years of military impasse, in September 2015 the Russian Federation began to bolster government forces on several key battlefronts, and offered a realistic opportunity to break the deadlock, including in Aleppo, where air strikes were used with the overarching goal of besieging eastern Aleppo city. Across Aleppo and Idlib governorates, air strikes in the last months of 2015 forced armed group elements out of eastern Aleppo and into the countryside, weakening the city's defences. In early 2016, air strikes on the towns of Nubul and Zahra, north of Aleppo city, cut off an essential supply line from Turkey and prevented the reinforcement of armed groups. Throughout that period, eastern Aleppo city experienced constant aerial bombardment, which destroyed hospitals, schools, mosques, bakeries and homes.

23. Air strikes alone were not sufficient, however, for pro-Government forces to besiege eastern Aleppo. Success of the encirclement was equally dependent on the Government mobilizing sufficient manpower on the ground. Lacking enough troops, the Syrian army, including the 4th Mechanized Division, turned to national militias, such as the Ba'ath Brigades, the Tiger Forces and the Liwa al-Quds Brigade, as well as members of foreign militias, to increase its ground offensive capacity. These included the Army of the

Guardians of the Islamic Revolution (Iran Revolutionary Guards Corps) al-Quds Force, Hezbollah, Afghan militias and the Iraqi al-Nujabaa and al-Fatimiyoona militias (pro-Government forces). These groups led the ground-offensive to besiege eastern Aleppo city.

24. Armed with at least 5,000 fighters on the ground and strong air support, pro-Government forces had the necessary resources to encircle eastern Aleppo city. By mid-July 2016, the only remaining supply line into the city, the Castello road in the north, was captured by pro-Government forces. Using a combination of air and artillery strikes, pro-Government forces bombed the road daily, killing and injuring those who attempted to use it. When pro-Government forces gained control of the Castello road on 17 July, eastern Aleppo city was effectively besieged. In August, armed groups broke the siege by opening a route in the southern district of Ramouseh through a counter-offensive by pro-Government forces in early September retook the supply line and re-established the siege, which lasted until the recapture of eastern Aleppo in December.

## B. Attacks on civilian infrastructure

### 1. Impact on civilian life

25. On both sides of the city, civilians paid the highest price for the brutality of violence that assailed Aleppo. In eastern Aleppo, pro-Government forces pummelled vital civilian infrastructure, with disastrous consequences. Day after day, hospitals, markets, water stations, schools and residential buildings were razed to the ground. Fearing bombardments, civilians avoided hospitals, including pregnant women, who increasingly gave birth at home without medical assistance or opted for caesareans to avoid hours in labour in hospital. In western Aleppo, civilians lived in fear of indiscriminate and deliberate shelling by armed groups. Throughout Aleppo, bombardments of residential buildings disproportionately affected those who typically spent more time at home: women and children.

26. Even prior to the siege, civilians in Eastern Aleppo city lacked sufficient food, medication and fuel. The permanent severing of supply routes resulted in exorbitant food prices, which made it impossible for many families to purchase more than rice and bulghur.

Bombardment of water stations forced the population in the east to drink water from boreholes, risking the contraction of waterborne diseases.

27. Launched on 23 September 2016, the aerial bombardment campaign of eastern Aleppo drastically increased civilian casualties. Approximately 300 people – including 96 children – were killed in the first four days of the offensive alone. By mid-October, a lack of resources and medical supplies forced doctors to amputate limbs, which might have otherwise been saved.

[...]

29. Conditions significantly worsened in December, when all hospitals were bombed out of service. Residents were concentrated in ever-shrinking territory, where they lived under aerial attacks, and with insufficient food, water and heating. Without medical facilities, several families had no choice but to leave the bodies of their dead and injured relatives in the streets. Many suffer from trauma and guilt for having survived the violence.

## **2. Hospitals**

30. Between July and November, air strikes repeatedly struck health-care facilities in eastern Aleppo, continuing the pattern observed in the first half of 2016 [...]. By the time pro-Government forces recaptured the city in late December, no hospitals were left functioning. The majority of attacks were conducted in two waves: between late September and mid-October, and in mid-November. The attacks assessed below were carried out by either the Russian air force or the Syrian air force, or both.

31. Hospitals, ambulances and medical personnel are afforded special protection under international humanitarian law [...]. While they may be made the object of attack when used for military purposes, such attacks require prior warning [...]. In the incidents investigated by the Commission, however, there was no indication of the presence of military targets or of warnings being issued prior to attack. The display of an emblem to signify a location's protected status is not required in conflicts where hospitals are deliberately targeted [...].

32. Repeated bombardments, lack of warnings and the absence of military presence in the vicinity of the health-care facilities strongly suggest the deliberate and systematic targeting of medical infrastructure as part of a strategy to compel surrender, amounting to the war crime of intentionally targeting protected objects [...]. Furthermore, deliberate attacks against medical staff and ambulances amount to the war crimes of intentionally attacking medical personnel and transport [...].

33. Located next to the Khalid Ibn Waleed mosque, the M10 hospital in al-Sakhour district served as the largest trauma hospital. Air strikes hit the hospital on four occasions between late September and mid-October, putting it out of service. [...]  
[...]

38. Between July and November, Syrian or Russian forces launched a series of air strikes on a square in al-Shaar district, where al-Hakim paediatric hospital, al-Zahra women's hospital, al-Bayan hospital, al-Daqaq clinic and the central blood bank were located. As the only children's hospital in eastern Aleppo, multiple air strikes on al-Hakim hospital had a devastating impact on children's access to health care. On 23 July, an air strike damaged the building and caused a power cut, that led to the death of four newborns in incubators. In an attempt to protect patients, the hospital was moved underground. Until this point, all hospitals in al-Shaar had been clearly marked, after which emblems were removed out of fear of being targeted.

39. On 30 September, at around 5.30 a.m., at least one air strike hit the vicinity of al-Hakim, destroying an ambulance and killing an ambulance driver. Another air strike on 16 November partially destroyed the hospital and killed 27 people in the area. Two days later, on 18 November, the hospital was struck again while patients of a suspected chlorine attack in the Ard al-Hamra district were being treated. A "double-tap" attack [Footnote 4: A "double-tap" air strike is one in which a second attack on a target/area follows shortly after the first, having the effect of killing and injuring those who came to provide aid to, mourn or remove the bodies of the victims of the first attack] was carried out within minutes, forcing the hospital to cease operating [...].

40. Medical staff confirmed there were no military installations in the area of al-Hakim hospital. One source admitted that wounded fighters received medical treatment in the same hospitals as civilians, but denied the presence of military targets around the hospital. The treatment of wounded fighters does not render a hospital a valid military objective [...].

### **3. Food sources**

[...]

### **4. Water sources**

[...]

### **5. Schools**

[...]

## **C. USE OF PROHIBITED WEAPONS**

[...]

## **D. ATTACKS BEHIND THE FRONTLINE**

[...]

63. Shortly after the siege was laid, some armed groups began to confiscate and hide food items that had previously been available throughout most districts. While many civilians, including those sympathetic to armed groups, were aware that they were stockpiling food, most felt powerless to confront them. Residents recounted a surge in prices for items still available for purchase in shops. Some armed groups distributed food and aid preferentially to those within their ranks, their family members and confidants over civilians. For the remaining population, minimal food assistance was occasionally circulated. Some residents believed that, by mid-September, armed groups had rejected the possibility of United

Nations aid for political gain, in protest against a ceasefire agreement brokered between the United States of America and the Russian Federation that did not include the input of armed groups. By December, when pro-Government forces recaptured Aleppo city, a number of storage sites where armed groups kept and guarded stockpiles of foodstuffs were discovered.

[...]

65. Through intimidation, certain armed groups prevented civilians from leaving hotly contested districts, including al-Firdous, during the siege. By preventing civilians from leaving, armed groups attempted to render parts of al-Firdous immune from further attack by using civilians as human shields [...]. Residents recounted how women were prevented from leaving al-Firdous on threat of being killed. One young woman recalled how armed group fighters had killed her husband when he tried to leave in late September.

66. In October, as part of a humanitarian pause brokered by the United States of America and the Russian Federation, government forces began circulating details on television and via loudspeakers about a potential evacuation for civilians and fighters. Some armed group members warned civilians that the eight humanitarian corridors proposed were a pretext for the Syrian army to forcibly conscript new recruits into their ranks; for example, residents of al-Firdous district insisted that fear inhibited civilians from leaving, as armed group fighters coexisted with civilians and were “everywhere in the streets”. By late October, armed groups attempted to impose an 8 p.m. curfew on civilians in various districts throughout eastern Aleppo city in an effort to control their movements and to prevent their escape after dark. Civilians who decided to stay feared either retribution for attempting to flee or revenge by government forces once they reached areas under their control.

[...]

68. Throughout the duration of the siege, armed groups established offices in civilian homes and complexes, and regularly appropriated residences left abandoned by civilians who either been able to flee eastern Aleppo or who had passed away.

## VI. WESTERN ALEPPO CITY

### **Rockets and mortar attacks**

[...]

## VII. SHEIKH MAQSUD DISTRICT

### **Rockets and mortar attacks**

[...]

## VIII. ALEPPO COUNTRYSIDE

### **Attack on humanitarian convoy**

79. On 19 September, in Orum al-Kubra (western Aleppo governorate), a United Nations/SARC [Syrian Arab Red Crescent] convoy was attacked by air, killing at least 14 civilian aid workers and injuring at least 15 others. The attack also destroyed 17 trucks and, with them, food, medicine, children's clothes and other supplies destined for families in western Aleppo governorate controlled by armed groups [...]. The attack began shortly after the General Command of the Syrian Armed Forces issued a statement declaring an end to the ceasefire in place since 12 September. After the attack, the United Nations announced the suspension of all aid convoys in the Syrian Arab Republic.

80. The 31-truck convoy had travelled from Government-controlled areas with the knowledge and permission of government authorities, and arrived in the early afternoon at the SARC warehouse in Ourm al-Kubra, a town controlled by armed groups. [...] As there was not enough space for all trucks in the warehouse, some parked along the road. Several witnesses recalled that armed group fighters used the road for transportation, although none were aware this had been the case on the day of the attack. All witnesses denied that armed group vehicles had accompanied the convoy.

[...]

82. At sunset, at approximately 6.30 p.m., aid workers were warned via walkie-talkie [...] of the presence of aircraft in the area. The workers subsequently learned that helicopters were heading towards the warehouse. The aerial attack began shortly afterwards, at approximately 7.10 p.m.

83. Accounts from survivors and others present in the vicinity consistently described the attack as comprising three stages. First, helicopters dropped barrel bombs, which struck the warehouse and a family home nearby. Immediately thereafter, people rushed to the scene to assist the wounded, but were forced to retreat and seek cover when the helicopters returned and dropped a second round of barrel bombs [...]. Subsequently, planes, described by several witnesses as Sukhoi jets, carried out attacks, killing several aid workers. Lastly, the aircraft fired machine guns at survivors.

84. Survivors described scenes of panic as workers were killed and maimed in the dark. The attack lasted at least 30 minutes. Those who could escape fled to nearby locations, although almost nobody was left unscathed. After the attack, rescuers rushed to the scene to find several bodies; some were charred beyond recognition, while others were missing limbs. The recovery of bodies continued throughout the following day.

85. The claim made by victims that the attack was the result of an air strike is corroborated by a site assessment, including analysis of remnants of aerial bombs and rockets documented at the site, as well as satellite imagery showing impact consistent with the use of air-delivered munitions.

86. The munitions employed were particularly appropriate for attacking unarmoured vehicles and individuals. Photographs provided by witnesses indicate that several S-5CB unguided air-to-surface anti-personnel rockets produced in the Soviet Union, at least one RBK-500 series air-delivered cluster bomb carrying hundreds of sub-munitions, and at least two OFAB 250-270 unguided aerial bombs were used. The Syrian air force possesses all of these weapons in its arsenal. S-5CB rockets, loaded with flechettes, are intended for use against soft-skinned vehicles and personnel. Use of sub-munitions against a wide area

target such as a convoy is also consistent with a planned attack targeting dispersed vehicles. Improvised air-delivered munitions and OFAB series munitions are suitable for targeting individuals, unarmoured vehicles and buildings. It appears that once aircraft had exhausted their weapon stores they continued to press the attack with guns, thus prolonging the attack and maximising civilian harm.

[...]

88. The types of munitions used, the breadth of the area targeted and the duration of the attack strongly suggest that the attack was meticulously planned and ruthlessly carried out by the Syrian air force to purposefully hinder the delivery of humanitarian aid and target aid workers, constituting the war crimes of deliberately attacking humanitarian relief personnel, denial of humanitarian aid and targeting civilians.

## IX. RECAPTURE OF EASTERN ALEPPO

### **Rockets and mortar attacks**

89. 27 November marked the beginning of territorial gains by pro-Government forces in eastern Aleppo. Upon taking control of northern districts, pro-Government forces separated women from men, with the latter subjected to screenings and those identified as fighters transferred to detention centres. Syrian forces conscripted many of the remaining men [...], and transferred some 5,000 people to a camp in Jibreen. People were again screened in Jibreen, and at least one man was subsequently arrested. His whereabouts remains unknown [...].

90. Reports of violations continued to emerge in early December as internally displaced persons crossed into Government-controlled areas. Humanitarian workers and medical and civil defence staff reported a greater risk of arrest for being perceived as a supporter of an armed group. In early December, pro-Government forces arrested three humanitarian workers and several Jabal Bedro residents perceived to be supporters of armed groups. On 13 December, a doctor and his wife were arbitrarily arrested at a checkpoint. Reports of forced conscription continued to emerge; the single largest recruitment took place on 11

December, when a group of approximately 200 men aged between 19 and 25 were forcibly conscripted after crossing with their families into western Aleppo.

91. From late November until evacuations were completed in December, some pro-Government forces carried out executions in reprisal. These included cases of Syrian soldiers killing their own relatives who were supporters of armed groups. Pro-Government forces also executed an armed group commander's wife and daughter while they attempted to cross into western Aleppo. In December, relatives of fighters of the Free Syrian Army, including women and elderly, were reportedly killed in Bustan al-Qasr.

92. During the mid-December evacuations, pro-Government forces stopped and handcuffed three armed group fighters rendered hors de combat. A fourth fighter fired shots as they tried to apprehend him, prompting the soldiers to shoot all four men. During the evacuations, some pro-Government forces again conscripted men and boys as young as 16 years [...], and pillaged evacuee property, including money, jewellery, laptops and mobile phones [...].

93. After the Government reached an evacuation agreement with armed groups in mid-December, residents of eastern Aleppo were transported from the city in government buses and private vehicles to Idlib, while others fled to western Aleppo. None had the option to remain in their home. As part of the agreement, more than 1,000 people were evacuated from Foah and Kafraya and went to Aleppo, Tartous, Homs and Latakia governorates. As warring parties agreed to the evacuation of eastern Aleppo for strategic reasons – and not for the security of civilians or imperative military necessity, which permit the displacement of thousands - the Aleppo evacuation agreement amounts to the war crime of forced displacement [...].

## X. CONCLUSION

94. Parties to the battle for Aleppo committed serious violations of international human rights law and international humanitarian law amounting to war crimes. As pro-Government forces and armed groups fought for control of eastern Aleppo city, civilians caught in the fighting were increasingly left vulnerable to repeated violations by all sides.

95. Resorting to a concerted aerial campaign coupled with ground forces that encircled eastern Aleppo city, government forces and their allies employed brutal tactics to force the armed groups to surrender. The siege simultaneously deprived civilians of freedom of movement and prevented basic commodities, including food and medical supplies, from entering the city. Widely used throughout the conflict, the use of this “surrender or starve” tactic by the pro-Government forces has proven disastrous for civilians but successful for overtaking opposition-held territory.

96. While the deprivation of supplies might have ultimately forced armed groups to surrender, the achievement of this result was accelerated by daily Syrian and Russian air strikes, which claimed hundreds of lives and destroyed vital civilian infrastructure. Chief among these were the bombardments that destroyed or otherwise rendered all hospitals in eastern Aleppo out of service by December. In none of the incidents investigated by the Commission were military targets identified as being present in or around the vicinity of a hospital, nor were warnings given prior to any given attack as required by international humanitarian law. Furthermore, the fact that the same hospitals were repeatedly bombarded within two specific time frames – late September to mid-October and mid-November 2016 – strongly suggests that pro-Government forces committed the war crimes of intentionally targeting protected objects, medical personnel and transport.

[...]

99. Syrian and/or Russian air forces pervasively used cluster munitions, which killed and injured civilians. Given the large number of sub-munitions that each cluster bomb releases, their use in such a densely populated area as eastern Aleppo city amounts to the use of an inherently indiscriminate weapon, constituting the war crime of indiscriminate attacks in a civilian populated area.

[...]

104. After the recapture of eastern Aleppo, the Government and armed groups reached an agreement that led to the evacuation of the remaining population. Under the terms of the

agreement, which follows previous similar agreements, including those applied to Darayya and Moadamiyah in August 2016, civilians had no option to remain. Many were permitted to move to western Aleppo, while others were transported to Idlib, where they live without adequate living conditions and in fear of future attacks. Such agreements amount to the war crime of forced displacement of the civilian population.

## XI. RECOMMENDATIONS

[...]

Annex I

### **Applicable law**

#### A) Background

1. During the period under review, the Commission notes that the intensity and duration of the conflict continued to meet the legal threshold for a non-international armed conflict. [...]

#### B) Legal regimes in effect

2. The applicability of international humanitarian law (IHL) does not replace existing obligations under international human rights law (IHRL). Rather both regimes remain in force and are generally considered as complementary and mutually reinforcing. Where both IHL and IHRL apply, and can be applied consistently, parties to a conflict were obligated to do so. In situations where IHL and IHRL were both applicable, the commission deferred to the application of IHL under the principle of *lex specialis*. The specific applicability of each regime is briefly reviewed below.

#### C) International human rights law

[...]

5. Non-state actors and IHRL: Non-state actors (“armed groups”) cannot formally become parties to international human rights treaties. Armed groups were nevertheless obligated to

respect the fundamental human rights of persons forming customary international law, in eastern Aleppo city, where such actors exercised de facto control. The Commission therefore examined allegations of human rights violations committed by the Syrian Government as well as abuses of customary international human rights norms perpetrated by armed groups operating in eastern Aleppo city.

#### D) International humanitarian law

6. Throughout the reporting period, IHL remained binding on all warring parties. [...]

7. The Syrian Arab Republic is a party to the Geneva Conventions and its Protocol I, as well as to several other IHL instruments concerning weaponry and mercenaries. The Syrian Arab Republic has not, however, ratified Protocol II to the Geneva Conventions which is specifically applicable during non-international armed conflicts. A number of provisions of customary IHL nevertheless apply to non-international armed conflict and must be respected when the threshold of non-international armed conflict is met. The Commission took note that a non-international armed conflict developed in the Syrian Arab Republic during February 2012 which triggered the applicability of Common Article 3 as well as customary law relevant to non-international armed conflict.

[...]

#### E) Violations

[...]

#### **Sieges**

33. While the laying of sieges with the aim of compelling surrender does not, in and of itself, constitute a violation under IHL, the use of the military tactic must comport with other IHL rules, including allowing for vital foodstuffs and other essential supplies to be delivered to the besieged civilian population.

34. The delivery of vital foodstuffs and other essential supplies to the besieged civilian population must be granted. Parties to a conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control. The use of starvation of the civilian population as a method of warfare is prohibited.

35. Moreover, as the freedom of movement of humanitarian relief personnel is essential to the exercise of their functions, warring parties must ensure the freedom of movement of authorised humanitarian relief personnel unless imperative military necessity requires their movements be temporarily restricted. Civilian humanitarian relief personnel must be respected and protected and are specifically protected against attack by the principle of distinction. Objects used for humanitarian relief operations such as humanitarian aid convoys must be respected and protected. Attacking, destroying, removing or otherwise rendering useless objects which are indispensable to the survival of a besieged civilian population is further prohibited.

[...]

### **Hospitals, medical units, and medical personnel**

36. Hospitals, medical units, and medical personnel are afforded “special protection” under IHL as a result of their specific humanitarian function, and parties to a conflict must take additional, specific measures prior to targeting, directly or indirectly, such objectives.

37. Medical personnel exclusively assigned to medical duties must be respected and protected in all circumstances. Medical personnel lose their protection if act outside their humanitarian function, for example by taking a direct participation in hostilities. Punishing an individual for performing his/her medical duties compatible with medical ethics, such as committing acts of reprisal on doctors, is further prohibited. Common Article 3 requires that the wounded and sick, including fighters rendered hors de combat, are collected and cared for, and specifically protects such persons from violence to life, while customary IHL requires that parties to a non-international armed conflict may only treat injured persons differently based on medical grounds.

38. Medical units exclusively assigned to medical purposes must be respected and protected in all circumstances, however lose their protected status if they used outside their humanitarian function to commit acts harmful to the enemy. Medical transports assigned exclusively to medical transportation such as ambulances must be respected and protected in all circumstances. Medical transports also lose their protection when being used outside their humanitarian function to commit acts harmful to the enemy.

39. Attacks directed against medical personnel and objects displaying the distinctive emblems of the Geneva Conventions in conformity with international law are prohibited. The display of a distinctive emblem to signify the protected status of a location is not required however in conflicts where hospitals are deliberately targeted. Stated another way, the emblem is not a compulsory condition for the right to protection. While medical personnel as well as hospitals, medical units, and transport may be made the object of attack when used outside their humanitarian function for military purposes. Protection only ceases after a warning has been given, with a reasonable time-limit where appropriate, and after such warning has remained unheeded.

[...]

### **Forced displacement**

50. Parties to a non-international armed conflict may not order the displacement of a civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.

51. The United Nations Economic and Social Council's Guiding Principles on Internal Displacement provide secondary obligations including by noting that national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction. The authorities undertaking displacement must further ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the

same family are not separated.

Annex II

### **Map of the Syrian Arab Republic**

[...]

Annex III

### **Map of Aleppo city and environs**

[...]

Annex IV

### **Map of Aleppo City**

[...]

## **Discussion**

### **I. Classification of the Conflict and Applicable Law:**

1. (*Paras 8 - 11; 21 – 24; Annex I, paras 1-7*)

a. How would you classify the situation in Syria at the time of the incidents at issue in the case? From the information provided in this report, who are the parties to the conflict? 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? (GC I-IV, Art. 3 <sup>[3]</sup>; P II, Art. 1 <sup>[4]</sup>)

b. (*Para. 23*) Would the Syrian army's use of national militias for ground operations have affected the nature of the conflict? How would you classify such militia groups? Do they remain independent armed groups, or would you consider them de-facto organs/agents of the Syrian Government?

c. If anti-government 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*]

[5], paras 80 – 122; ICTY, *The Prosecutor v. Tadić*, Appeals Chamber, Merits (Document C) [6] paras 87 – 145 and ICJ, *Bosnia and Herzegovina v. Serbia and Montenegro* (Document D in *Tadić Case*) [6], paras 396 - 407]

d. (*Para. 11*) Did the conflict in Aleppo end with its recapture by Government forces? With the declaration of a ceasefire? When does IHL of non-international armed conflicts cease to apply to a given situation?

## II. Conduct of Hostilities – Weapons

2. (*Paras 14 -15*) Syria is not a party to the 2008 Convention on Cluster Munitions [7].

Do you think its use of cluster munitions is compatible with its international obligations? (CIHL Rule 11 [8]; CIHL Rule 12 [9]; CIHL Rule 71 [10]; P I, Art. 51 (4) [11])

3. (*Para. 86*) Is the use of flechettes compatible with international humanitarian law?

What principle of the conduct of hostilities is at stake?

4. (*Paras 19 – 20*) As the conflict is asymmetrical, the capabilities of armed groups as regards means of warfare cannot compare with those of States involved in the conflict.

Does this exonerate armed groups from complying with IHL rules on conduct of hostilities. What principles of IHL do the weapons referred to in *paras 19 and 20* risk violating? Would your answer be different if the conflict was not taking place in the context of a densely populated area? (CIHL Rule 2 [12]; CIHL Rules 7 – 15 [13]; CIHL Rule 71 [10]; P I, Arts 48 [14], 51 [11], 52 [15] and 57 [16])

## III. Conduct of Hostilities - Siege:

5. (*Paras 22-24, 63 - 66, 68, 95 and 96; Annex I, paras 33 – 35*)

a. Is holding a city under siege a prohibited method of warfare? If not, which limits does IHL prescribe? Is your answer the same for both IAC and NIAC? If so, do the same rules apply in both cases? (CIHL, Rule 53 [17]; GC I - IV, Art. 3 [3]; P II, Art. 14 [18]; P I, Art. 54 [19])

b. In your opinion, does the Government's siege of Eastern Aleppo amount to the imposition of a collective punishment on the civilians there? (CIHL Rule 103 [20]; P II; Art. 4 (2) b [21])

c. What obligations do the besieging forces have towards the civilian population in the areas to which they have laid siege? Under IHL? Under IHRL? Do states and armed groups have different obligations under IHRL towards the civilian

population in territories under their control?

d. What violations of IHL can you identify from the behaviour of the parties listed in the paragraphs cited?

e. Does the provision of humanitarian assistance require the consent of the territorial state? Even if the assistance is to be delivered to areas controlled by the enemy? (CIHL, Rule 55 [22]; GC I - IV, Art. 3 [23]; GC IV, Arts 23 [24] and 59 [25]; P I, Arts 69 [26] and 70 [27]; P II, Art. 18 (2) [28])

f. Is a state confronted with a NIAC on its territory free to give or withhold its consent? When, if ever, does the withholding of consent violate IHL? (CIHL, Rule 55 [22]; GC I - IV, Art. 3 [23]; P II, Art. 18 (2) [28])

g. Does IHL prohibit an arbitrary withholding of consent? When is withholding of consent arbitrary? (CIHL, Rule 55 [22]; GC IV, Arts 23 [24] and 59 [25]; P I, Arts 69 [26] and 70 [27]; P II, Art. 18 (2) [28])

h. Under IHL, is Syria under an obligation to allow access by international aid organizations to all those in need? To allow access to the ICRC? Would Syria be under an obligation to allow access to international aid organizations in situations where the government is unable to meet the humanitarian needs of the population? (CIHL, Rule 55 [22]; GC I - IV, Art. 3 [23]; P II, Art. 18 (2) [28])

i. Is the deliberate starving of civilians forbidden by IHL? In non-international armed conflicts? In the present case? Is it a war crime? A crime against humanity? (CIHL, Rule 53 [17]; GC I - IV, Art. 3 [29]; P II, Art. 14 [30]; P I, Art. 54 [31])

j. Must a besieger allow supplies to be brought into a besieged area? Only for the benefit of the civilian population? May the besieger insist upon control of the distribution of relief to ensure that it only benefits to the civilian population? What if the besieged party does not agree with such control? (CIHL, Rule 55 [22]; GC IV, Art. 23 [24]; P I, Art. 70 [27]; P II, Art. 18 (2) [28])

k. (*Para. 20*) May the Special Envoy of the Secretary-General call for an armed group to leave Aleppo city in order to allow humanitarian assistance to be delivered to the besieged area? May the besieger formulate such a condition?

l. May a besieged party prevent civilians from fleeing a besieged area?

m. Are the IHL rules on humanitarian assistance to besieged areas realistic? What rules would you suggest?

#### **IV. Conduct of Hostilities - Attacks on Medical Personnel and Facilities**

6. (*Paras 25 – 33, 38 – 40, 96; Annex I, paras 36 - 39*) Does IHL of NIAC specifically protect medical personnel, facilities and transports? (CIHL, Rule 25 <sup>[32]</sup>, 26 <sup>[33]</sup>, 28 <sup>[34]</sup> and 29 <sup>[35]</sup>; P II, Arts 9 <sup>[36]</sup>, 10 <sup>[37]</sup> and 11 <sup>[38]</sup>)

7. (*Paras 30-40, 96*) May hospitals be targeted in military operations? Under what circumstances might this be allowed? Where these circumstances fulfilled in the present case? Would your answer remain the same if the hospitals were also used to treat wounded opposition combatants? (CIHL, Rule 28 <sup>[34]</sup>; P II, Art. 11(2) <sup>[38]</sup>; P I, Arts 12 <sup>[39]</sup> and 13 <sup>[40]</sup>)

8. (*Para. 32*) What are the legal consequences of intentionally directing attacks against protected objects, such as medical units and transports, and protected medical personnel?

9. (*Paras 31 and 38*) The report describes how hospitals stopped displaying internationally recognised symbols to identify themselves as medical facilities after sustained attacks. What emblems are protected by IHL? What is the purpose of the emblem? Who or what objects can display the emblem? Could these hospitals have been marked with the emblem? Under what conditions? Do civilian hospitals have an obligation to display the emblem? By omitting to display the emblem, does a civilian hospital lose its special protection or general protection as a civilian object? Is the answer different if we are dealing with a military medical unit? Do you agree with the authors of the report when they claim that “[t]he display of an emblem to signify a location’s protected status is not required in conflicts where hospitals are deliberately targeted?” Why/Why not? (GC I, Art. 38 <sup>[41]</sup>, 39 <sup>[42]</sup>, 40 <sup>[43]</sup>, 41 <sup>[44]</sup>, 42 <sup>[45]</sup> and 44 <sup>[46]</sup>; GC II, Art. 41 <sup>[47]</sup>, 42 <sup>[48]</sup> and 43 <sup>[49]</sup>; GC IV, Art. 18 <sup>[50]</sup>, 20 <sup>[51]</sup>, 21 <sup>[52]</sup> and 22 <sup>[53]</sup>; P I, Art. 18 <sup>[54]</sup>; P II, Art. 12 <sup>[55]</sup>; CIHL, Rule 30 <sup>[56]</sup>)

10. (*Para. 39*) What specific rules of IHL risk being violated by so-called “double tap attacks”? Do you think these attacks are always necessarily unlawful? (CIHL Rules 1, <sup>[57]</sup>7 <sup>[58]</sup>, 10 <sup>[59]</sup>, 14 - 19 <sup>[13]</sup>, 25 <sup>[60]</sup>, 28-30 <sup>[13]</sup>, 109-111 <sup>[61]</sup>; P II, Arts 7-11 <sup>[62]</sup> and 13 <sup>[63]</sup>).

#### **V. Conduct of Hostilities – Attack on Humanitarian Convoy**

11. (*Para. 79*) What does the term “humanitarian aid” include? Do the objects described in the paragraph referred to fall under the definition of the term? (CIHL Rule 32; <sup>[64]</sup> GC IV, Arts 59-63 <sup>[65]</sup>; P II, Art. 18 <sup>[66]</sup>)

12. What characteristics must humanitarian aid fulfil? Whom may it benefit? (P II, Art. 18 [66]; GC IV, Arts 59-63 [65]; P I, Arts 70-71 [67])

13. When may humanitarian organisations provide assistance to persons affected by armed conflicts? What kind of assistance may be provided? To what categories of beneficiaries? (CIHL, Rule 55 [22]; GC I - IV, Art. 3 [68]; GC IV, Arts 23 [24] and 59 [25]; P I, Arts 69 [69] and 70 [70]; P II, Art. 18 (2) [28])

14. (*Para. 80*) Does the provider of humanitarian aid require permission to deliver aid? In IACs? In NIACs? In NIACs, does the entity have to ensure the consent of the territorial state or of the rebel group(s) in question? Of both? Only of the belligerent controlling the territory in question? (GC I-IV, Art 3 [3]; P II, Art. 18 [66]; CIHL, Rule 55 [71])

15. (*Para. 80*) May humanitarian convoys be accompanied by military forces? Does this make them legitimate targets? Does the fact that the same road was occasionally used by armed group fighters for transportation affect your answer? (CIHL, Rule 1 [72]; P I, Art. 51 [73])

16. (*Paras 83 – 88*) Do you agree with the conclusion of the Commission? Are there any other pieces of information that you would require in order to determine whether IHL violations have been committed?

## VI. The Evacuation of Eastern Aleppo

17. (*Paras 26-31, 38, 50, 63-4*) Are there certain circumstances in which IHL obliges parties to a conflict to evacuate the civilian population on the territory under their control? Are the rules on displacement the same for IACs and NIACs? (CIHL Rule 129 [74]; P II, Art. 17 [75]; GC IV, Art. 49 [76]; GC IV, Art. 147 [77]; P I Art. 85 (4) (a) [78]; ICC Statute, Art. 8(2)(e)(viii) [79])

18. 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?

19. Does IHL foresee protection of the property of civilians who have been displaced as a result of the conflict?

20. (*Para. 104; Annex I, paras 50 and 51*) The Commission of Inquiry came to the conclusion that the evacuation of Aleppo amounted to the war crime of “forced displacement”.

a. With the information acquired through reading the report, would you come to the

same conclusion? Give arguments for and against.

b. If this evacuation constituted a war crime, was a humanitarian organization facilitating the negotiation of an evacuation agreement or the evacuation itself complicit in a war crime? What arguments are available to the organization through which it might justify its participation in the evacuations?

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