

CIVILIANS UNDER ATTACK IN SYRIA

TOWARDS PREVENTING FURTHER CIVILIAN HARM



RESIDENTS WALK THROUGH THE RUBBLE, EASTERN ALEPPO, 20 JANUARY 2017 (AP PHOTO/HASSAN AMMAR)

INDEPENDENT INTERNATIONAL COMMISSION OF INQUIRY ON THE
SYRIAN ARAB REPUBLIC

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Introduction

The lack of respect for international humanitarian and human rights law and the lack of accountability hitherto for grave violations, war crimes and crimes against humanity committed in the context of the conduct of hostilities have been the hallmark of the conflict in Syria, bringing immense suffering countrywide for the past ten years.

Despite the current relatively static frontlines, violations of international humanitarian law in the context of conduct of hostilities have continued unabated even as the means and methods of warfare have varied as the conflict progressed. The risk of renewed escalation requires consistent attention and efforts to prevent repetition of violations and crimes and otherwise mitigate civilian harm. Given that accountability has largely remained elusive for crimes committed in Syria, including in the context of warfare, more needs to be done to address the impunity gap. Moreover, sponsors and enablers of the warring parties also carry a degree of responsibility for perpetuating the violations and crimes that are being committed and should take action to dissuade or prevent their recurrence.

Background

The immediate roots of the conflict in the Syrian Arab Republic are well known, originating from the initially peaceful protests in February 2011 that were met with brutal repression that subsequently fuelled the emergence of anti-government armed groups.¹ The intensity and duration of the conflict, combined with the increased organizational capabilities of anti-government armed groups, met the legal threshold for a non-international armed conflict as of February 2012.² Member States and private individuals provided support to various armed groups with competing interests and ideologies, funnelling funds, weapons and materiel to divergent actors and encouraging the fragmentation, competition and shifting alliances and enmities among armed groups. Similar support provided by other Member States and non-state armed groups to the Government's military and security apparatus likewise encouraged the continued militarization of the crisis that goes on to the present.

Earlier in the conflict, ground operations and house raids by Government forces entailed violations such as arbitrary detention and ensuing enforced disappearances, torture and executions on a massive scale.³ As armed groups proliferated and acquired heavy weaponry, Government forces instead prioritised the use of artillery and airstrikes, thus decreasing direct interaction between Government troops and the wider population, and reducing the likelihood of casualties among their own forces – as opposed to among civilians. The Russian Federation and States of the US-led international coalition adopted similar warfare tactics,⁴ supporting partner ground forces from a distance, often through manned or unmanned aerial vehicles such as warplanes and drones.

¹ For an overview of the conflict, see e.g. A/HRC/46/54 and other reports available at www.ohchr.org/coisyria.

² See e.g. A/HRC/21/50, annex II, paras. 1–3. With that determination, the Commission applied international humanitarian law, including article 3 common to the four Geneva Conventions of 12 August 1949, as well as customary international humanitarian law alongside international human rights law.

³ See e.g. A/HRC/31/CRP.1 and A/HRC/46/55.

⁴ See e.g. <https://tass.com/defense/1023714> and <https://www.defense.gov/casualty.pdf> regarding military casualties.

The conduct of hostilities, the way sieges were laid and the widespread destruction of urban areas and civilian infrastructure - including schools and medical facilities - through shelling and airstrikes, have led to the killing and maiming of hundreds of thousands⁵ and the displacement of more than half of the pre-conflict population. An estimated one third of Syria's housing stock has been destroyed or damaged.⁶ Families have been torn apart and children grown under sieges and bombardments. Much of Syria's irreplaceable cultural heritage has been looted or destroyed.⁷ The psychological trauma caused by the conflict has likely impacted nearly every Syrian. The conflict has ravaged the economy, and amplified the impact of other international crises such as the COVID-19 pandemic, the Lebanese liquidity crisis and the war in Ukraine, leaving an unprecedented 90 per cent of the population below the poverty line and 14.6 million Syrians dependent on humanitarian assistance.⁸

At the time of writing, military tensions remain high, with Government forces, non-State armed groups, including United Nations-designated terrorist groups, and at least five foreign armies⁹ active in Syrian territory, in some cases exercising effective control over parts thereof.¹⁰ The Syrian Government and associated militias, with the support of Iranian and Russian forces, have recaptured large swathes of territory, including major strategic cities such as Aleppo, Homs and Hama, leaving towns and villages in ruins as operations progressed.¹¹ Parts of north, northwest, and northeast Syria remain outside of Government control. In Idlib and western Aleppo governorates, armed groups and United Nations-designated terrorist entities continue to vie for control over pockets of territory as they tighten their grip over civilian populations, often restricting the basic human rights of many. In north and northeast Syria, fighting between the Turkey-backed Syrian National Army and the US-backed Syrian Democratic Forces continues to damage civilian infrastructure, while the frequent and often deadly use of improvised explosive devices in densely populated areas spreads fear amongst inhabitants. While lines of control have remained stable for some time (see annexed map), armed conflict continues to kill and maim civilians, with parties routinely violating international humanitarian law and committing war crimes, and further undermining human rights in the process.

⁵ See <https://www.ohchr.org/en/statements/2021/09/oral-update-extent-conflict-related-deaths-syrian-arab-republic>. Most observers consider this to be a significant underrepresentation of the true toll.

⁶ Already by 2017, the World Bank estimated that 27 per cent of the housing stock had been either destroyed or damaged, see www.worldbank.org/en/country/syria/brief/the-toll-of-war-economic-and-social-impact-analysis-esia-of-the-conflict-in-syria-key-facts. As large-scale ground and aerial offensives continued over the ensuing years in Aleppo, northern Homs, Damascus, Rif Damascus, Dar'a and Idlib governorates, damage and destruction correspondingly increased since.⁷ Aside from deliberate destruction by Da'esh or other armed actors of cultural heritage sites, they have also suffered as a result of the conduct of hostilities. See e.g.,

https://www.unitar.org/sites/default/files/media/publication/doc/UNESCO_UNITAR-5-years-conflict.pdf.

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⁸ See <https://gho.unocha.org/syrian-arab-republic> and Report of the Secretary-General on the Implementation of Security Council resolution 2139 et.seq., S/2022/330, para. 6.

⁹ These are Iran (Islamic Republic of), Israel, the Russian Federation, Turkey and the United States of America. Smaller contingents of other foreign forces allied to various national and international conflict actors, including as part of the international counter-Da'esh coalition, are also present on the ground or operating in Syrian airspace (A/HRC/49/77, para. 4, footnote 6).

¹⁰ See e.g. A/HRC/34/CRP.3, para. 103, A/HRC/45/31, paras. 67-68, and A/HRC/46/54, para. 18, footnote 26.

¹¹ See e.g. A/HRC/44/61, para. 5-10 and A/HRC/56/54 Annex II, Estimated area of influence maps, 2013-2020.

Key aspects of the conduct of hostilities that amount to war crimes

Indiscriminate attacks on densely populated areas by Government forces have been a key feature of the conflict since its inception. These were routinely conducted with the use of artillery shelling, mortars, rockets, tanks, and airstrikes but also often through unguided munitions, including helicopter-released improvised “barrel bombs”, improvised rocket-assisted munitions, cluster munitions, thermobaric bombs, and other high explosive munitions with wide area effects - causing superfluous injury or unnecessary suffering.¹² Following the Russian Federation’s intervention on the side of the Government in September 2015, both the Syrian military and the Russian Aerospace Forces attacked civilian neighbourhoods, including crowded markets during the day, killing and injuring scores of civilians.¹³ There are reasonable grounds to believe that pro-government forces,¹⁴ on multiple occasions, committed the war crimes of launching indiscriminate attacks resulting in death or injury to civilians, or damage to civilian objects, including medical facilities, as well as, the crimes against humanity of murder and other inhumane acts¹⁵ and forcible transfer of populations through airstrikes and artillery shelling of civilian areas.¹⁶

The three core principles of international humanitarian law

The **principle of distinction** provides that parties to an armed conflict “must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians”. (ICRC Rule 1)

The **principle of proportionality** prohibits “launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”. (ICRC Rule 14)

The **principle of precaution** maintains that “the parties to the conflict must take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks”. (ICRC Rule 22)

¹² A brief analytical summary of the Commission’s findings on the use of various weapons in the Syrian conflict until the beginning of 2015 is available as part of the Geneva Academy’s Weapons Law Encyclopaedia project available at: <http://www.weaponslaw.org/cases/hrc-coi-on-syria-2011>. Since that publication in 2015, the Commission has further documented the use of numerous other weapon systems, including: GBU-39 bombs and Hellfire missiles in A/HRC/36/55, paras. 55-57, RBK-250 and RBK-500; cluster bombs in A/HRC/37/72, para. 56; improvised rocket assisted munitions in A/HRC/39/65, para. 40; OFAB-250/KAB-500 bombs in A/HRC/43/57, Annex II, paras. 15-16; OTR-21 “Tochka” ballistic missiles in A/HRC/43/57, Annex II, para. 19; BM-21 Grad multiple-barrel rocket launcher systems in A/HRC/44/61, paras. 39 and 87 and A/HRC/45/31 para. 40; Uragan 9M27K-type cluster munitions fired from a BM-30 “Smerch” multiple-barrel rocket launcher system in A/HRC/44/61, para. 53; and Krasnopol-type guided artillery in A/HRC/49/77, paras. 58, 60 and Annex IV, among other more general analysis of weapons and weapon systems in use in the Syrian Arab Republic throughout its public reporting.

¹³ See e.g. A/HRC/25/65, para. 86; A/HRC/28/69, para. 228; and A/HRC/43/57, paras. 24–25.

¹⁴ The term “pro-government forces” is used by the Commission when there are multiple allied actors operating in the same battlespace and disambiguation to the Commission’s standard of proof is not possible. The term may, but does not always, include regular Syrian military, police and intelligence forces, pro-government militia, both foreign and domestic, and elements of foreign allied forces, such as Iranian Republican Guard forces or elements of Lebanese Hezbollah or other groups operating with the acquiescence of Syrian State authorities. In relation to airstrikes, where it was not clear whether an aerial attack was conducted by the Syrian Air Force or Russian Aerospace Defence Forces were responsible for a specific attack, responsibility has been attributed to pro-government forces (see e.g. A/HRC/46/54, para. 19, footnote 27).

¹⁵ See e.g. A/HRC/21/50, para. 57 and A/HRC/44/61, paras. 80–81.

¹⁶ See e.g. A/HRC/44/61, paras. 80–81.

Armed groups, including but not limited to Da'esh, Hay'at Tahrir Al-Sham and the Kurdish People's Protection Units, also launched numerous indiscriminate attacks causing civilian deaths and injuries using mortars and rockets, and improvised munitions.¹⁷ Such attacks rarely appeared to target, or to be in a position to target, military objectives. The Commission also documented the indiscriminate use of improvised explosive devices by numerous actors in civilian populated areas, also amounting to war crimes, most recently in the north-eastern part of the Syrian Arab Republic.¹⁸

The United States-led coalition also conducted airstrikes that caused civilian deaths and injuries and damage to civilian objects.¹⁹ The conduct of the aerial campaign to retake Raqqah city damaged or destroyed up to 80 per cent of buildings there,²⁰ reportedly killing and injuring thousands of civilians and leaving major parts of the city uninhabitable, displacing nearly the entire population and raising concerns that the widespread destruction wrought upon Raqqah city included indiscriminate attacks and other serious violations of international humanitarian law.²¹

Direct attacks on civilians through airstrikes, shelling, and the use of improvised explosive devices, often deliberately, have also been a particularly abhorrent feature. Pro-government forces were found to have deliberately attacked specifically protected objects as well as objects indispensable to the survival of the civilian population, including medical facilities and water stations. The clear pattern of pro-government forces targeting hospitals and clinics has been clearly documented beginning in 2012²² and accelerating in 2016,²³ amounting to the war crimes of intentionally targeting protected objects and medical personnel and transport. In parallel, pro-government forces have also directed attacks at humanitarian aid convoys,²⁴ school facilities and civilians,²⁵ displaced persons in camps,²⁶ civilians in their neighbourhoods,²⁷ and spread terror amongst besieged civilian populations²⁸ through shelling and airstrikes. Non-state armed groups and designated terrorist groups have also engaged in deliberate attacks on civilians, including through shelling civilian areas for the purpose of spreading terror among civilians residing in Government-held areas in Damascus city and Rif Damascus,²⁹ and through deliberate attacks on

¹⁷ See e.g. A/HRC/28/69, annex II, para. 242 (Da'esh); A/HRC/27/60, annex IV, para. 68 (Jabhat al-Nusra/Hay'at Tahrir al Sham); and A/HRC/39/65, para. 89 (Kurdish People's Protection Units), A/HRC/34/64, paras 71 and 73 (other non-state armed groups).

¹⁸ See e.g. A/HRC/45/31, paras. 41–45, A/HRC/48/70 section V and A/HRC/49/77, section V.

¹⁹ See e.g. A/HRC/36/55, paras. 52-61 and A/HRC/42/51, paras. 26-31.

²⁰ <https://reliefweb.int/report/syrian-arab-republic/ar-raqqah-city-strategic-response-plan-july-2018>. It is noteworthy that the rate of destroyed, or damage buildings was similar to that of east Aleppo, which was subjected to a documented campaign of indiscriminate attacks. See https://reliefweb.int/sites/reliefweb.int/files/resources/reach_thematic_assessment_syrian_cities_damage_atlas_march_2019_reduced_file_size_1.pdf

²¹ See A/HRC/39/65, para. 95 and A/HRC/46/54, para. 31.

²² "Assault on medical care in Syria", A/HRC/24/CRP.2.

²³ See e.g. A/HRC/33/55, paras. 44–49; A/HRC/34/64 para 96.

²⁴ See e.g. A/HRC/34/64 para. 97.

²⁵ See e.g. A/HRC/34/CRP.3, para. 31.

²⁶ See e.g. A/HRC/49/77, para. 57 and 65.

²⁷ See e.g. A/HRC/27/60, Annex IV, para 64- 65.

²⁸ See e.g. A/HRC/38/CRP.3, para. 43.

²⁹ See e.g. A/HRC/38.CRP3, para. 53-57.

civilians using improvised explosive devices (IEDs).³⁰ In Raqqah, Dayr Az-Zawr and Aleppo governorate, Da'esh deliberately inflicted terror on the civilian population.³¹

Both the Syrian Government and non-State armed groups have also resorted to **unlawful means and methods of warfare** throughout the conflict, further exacerbating the suffering of the Syrian population. In terms of prohibited weapons, dozens of attacks with chemical weapons have been documented by the Commission, the large majority of which were attributed to Syrian government forces, while one of them was attributed to Da'esh.³²

Pro-government forces also imposed **sieges** in the course of the conflict. Although siege warfare is not in itself prohibited under international humanitarian law, the laying of sieges must be in conformity with all relevant IHL rules. The methods employed in Syria to carry out sieges have however, as documented by the Commission since 2012, entailed multiple violations, including collective punishment through denial of freedom of movement, indiscriminate bombardment, denial of access to humanitarian aid, food, water, and medicine.³³ Once local truces were implemented, and hostilities had ceased, pro-government forces required certain individuals to undergo reconciliation agreements as a condition to remain in the area, while fighters and an unspecified number of civilians were evacuated to other locations, including Idlib governorate, in an act amounting to the war crime of forced displacement of civilians.³⁴ In the case of eastern Ghoutah, acts perpetrated by pro-government forces, including the deliberate starvation of the civilian population as a method of warfare, amounted to the crime against humanity of inhumane acts causing serious mental and physical suffering.³⁵ Non-State armed groups, such as Hay'at Tahrir Al-Sham and Da'esh, also resorted to protracted sieges, further undermining civilians' basic human rights.³⁶

Moreover, non-State armed groups in particular have been found to have **failed to adequately distinguish their own forces from the civilian population**.³⁷ In the cases of sieges, terrorist groups and armed groups were found to have prevented civilians from leaving areas under their control, in particular in urban combat situations, for the purpose of rendering objectives immune from attack, thereby committing the war crime of using them as human shields.³⁸ Allegations of hospitals and medical centres being used to shield armed group fighters from attack have been persistently made by pro-government forces to justify their targeting, although the Commission has found no information to support such a premise. Furthermore, the fact that such facilities may have also treated fighters does not in and of itself render such facilities legitimate military objectives under international humanitarian law.³⁹

³⁰ See e.g. A/HRC/36/55, para. 43.

³¹ See e.g. A/HRC/27/CRP.3, para. 31, see also para. 45, 65 and 77.

³² See e.g. A/HRC/46/54, para. 32; see also A/HRC/39/65, paras. 36 and 92.

³³ Commission of Inquiry on the Syrian Arab Republic, "Sieges as a weapon of war: Encircle, starve, surrender, evacuate", Policy Paper, 2018 and A/HRC/34/64 section X.

³⁴ Commission of Inquiry on the Syrian Arab Republic, "Sieges as a weapon of war: Encircle, starve, surrender, evacuate", Policy Paper, 2018, para. 24, with references.

³⁵ See e.g. A/HRC/38/CRP.3, para. 75.

³⁶ Commission of Inquiry on the Syrian Arab Republic, "Sieges as a weapon of war: Encircle, starve, surrender, evacuate", Policy Paper, 2018, paras. 14-17.

³⁷ See e.g. A/HRC/22/59, Annex XI, para. 111.

³⁸ For Da'esh in Menbij see A/HRC/34/CRP.3, para. 110, and in Raqqah see, A/HRC/37/72, para. 48., for other armed groups in Aleppo, see A/HRC/34/64, para 102 and in eastern Ghouta see A/HRC/38/CRP.3, para. 77.

³⁹ See ICRC Customary IHL Study, Rule 26, <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>.

In some cases the Commission did not have sufficient elements to determine that specific attacks were unlawful based on the principle of distinction or proportionality. It nevertheless documented a systematic **failure to take all precautions** to spare civilians from harm,⁴⁰ in violation of international humanitarian law. Such failure was apparent in the conduct of the Government, pro-government forces, non-State armed groups, as well as almost all other Member States intervening militarily on Syrian territory. For the most part, however, parties to the conflict have opted to either not address publicly their failures to take precautions, or placed blame on opposing forces for putting civilians in harm's way (see also above). Other parties have claimed that their attacks or operations have impacted no civilians at all or have only recognised implausibly low casualties.⁴¹ Among the major States involved in the Syrian conflict, neither of the Government of Syria itself, the Russian Federation nor the Republic of Turkey have made information public concerning their processes to mitigate or prevent civilian harm in Syria.⁴² While the United States and United States-led Coalition have commendably made some information public on civilian harm caused by their operations, they too have dismissed allegations of wrongdoing and generally accepted far lower numbers of civilian deaths and injuries compared to the Commission's documentation.⁴³

The way forward

More than ten years into the Syrian conflict, a path to a sustainable peace remains elusive. Action to bring an end to rights violations and war crimes remains as urgent as ever. Below, the Commission examines three areas where concrete action could be taken today that would enhance

⁴⁰ In many incidents involving significant civilian deaths and injuries, as well as damage or destruction of key civilian infrastructure, the Commission has been unable to conclude whether a violation of international humanitarian law or an international crime occurred, whether because of the possible presence of a legitimate target or claims of such by parties to the conflict, or incomplete information available on the incident itself. Further, certain means and methods of warfare employed by parties to the Syrian conflict may be considered technically lawful under current international humanitarian law, but nevertheless entail a substantial risk of civilian harm or lasting consequences for the civilian population. Examples include the use of siege-like tactics and of unguided weapons in certain circumstances; the lack of patience in monitoring targets; as well as the increased reliance on drone or other remote surveillance devices for targeting coupled with a lack of familiarity with local patterns of civilian life.

⁴¹ See e.g., Russian Defence Ministry commented on briefing of Amnesty International and summed up results of operation carried out by the Russian Aerospace Forces in Syria on December 18-23, available at https://eng.mil.ru/en/news_page/country/more.htm?id=12072315@egNews and QA-8, 8 February 2015, Statement of the Spokesperson of the Ministry of Foreign Affairs, Mr. Hami Aksoy, in response to a statement made by the Minister of Foreign Affairs of France claiming that Operation Olive Branch constitutes a violation of the international law by Turkey, available at https://www.mfa.gov.tr/sc_-8_-disisleri-bakanligi-sozcusunun-fransa-dbnin-turkiyenin-zeytin-dali-harekatiyla-uluslararasi-hukuku-ihlal-etmekte-old-yon-ifadeleri-hk-sc_en.en.mfa.

⁴² See e.g. A/HRC/46/54, paras. 74 and 77.

⁴³ By way of example, the Commission had reported on such incidents in Baghuz during the final stages of the United States' campaign against Da'esh over numerous reports (see e.g. A/HRC/36/55, paras. 52-61 and for Baghuz see A/HRC/42/51, paras. 26-31). It was only after a series of newspaper reports, based primarily on whistle-blower information in late 2021, however, that the United States announced a public review and that it would complete a Department of Defense Instruction on Civilian Harm Mitigation and Response to be informed by a Civilian Harm Mitigation and Response Action Plan (CHMRAP), see <https://www.defense.gov/News/Releases/Release/Article/2914764/department-of-defense-releases-memorandum-on-improving-civilian-harm-mitigation/>. The CHMRAP was to be completed by the end of April 2022, with the Department of Defense Instruction to follow 90 days later. The public memo on the outcome of the United States' review into the 2019 airstrike in Baghuz, which found no fault in relation to that strike but contained directives to be included in the future CHMRAP, was dated 19 May 2022, raising concerns that both the plan and the instruction are behind schedule.

protection for civilians in Syria through prevention of violations and mitigation of civilian harm; achieving accountability; and encouraging respect for international law.

Measures to cease and prevent violations of international humanitarian law and mitigate civilian harm

Compliance with obligations by parties to the conflict in Syria under international humanitarian law and international human rights law have been at the core of every recommendation made by the Commission to promote the rights of Syrians and bring an end to violations, abuses, and crimes committed against them. The Government and other States parties to the conflict have long claimed combating terrorism as a justification for military action. The Commission has repeatedly recalled that, while States have an obligation to defend their citizens from terrorism, they must do so in full compliance with international human rights law and, if applicable, international humanitarian law.⁴⁴ While it underscores again the need to cease violations in line with its past recommendations, given the lack of compliance by parties to the conflict over the past decade, the Commission wishes to stress the following practical actions that can be taken now to avoid placing yet more civilians in harm's way going forward.

All parties to the conflict in Syria, including non-state groups, at a minimum, should make use of existing good practices for **civilian harm mitigation**, including tactical patience, tactical alternatives, timing of attack, and precautionary measures, such as adequate object verification and effective advance warning and ensure that “no strike lists” are accurate, up to date and respected. In the interest of humanity, those good practices must be shared as widely as possible, in particular with partnered forces.

All States, and non-state groups with sufficient capacity, should also conduct prompt, transparent, independent, impartial, thorough, credible, effective and gender-sensitive **investigations** into all incidents entailing civilian casualties in which their forces are implicated, and strengthen the processes of such investigations, including by ensuring that staff conducting such investigations are trained and resourced, have access to all relevant records, are functionally independent of the chain of command responsible for targeting decisions and are able to interview witnesses, and make the findings of such investigations public.⁴⁵

All parties to the conflict should avail themselves of **training** opportunities available, including through independent impartial humanitarian actors providing such services, while also recognizing that training alone will not suffice to end violations of international humanitarian law and violations and abuses of international human rights law.

In addition to the above, the Commission urges **the Government of Syria** to review rules of engagement and targeting processes to ensure that they are in line with international humanitarian law rules, and that they are fully implemented. At the very least, this must include enforcing special protection regulations granted to protected facilities, such as hospitals and schools; and banning the use of certain weapons in densely civilian populated areas (e.g. cluster and blast weapons that are unguided or have wide-area effects and are indiscriminate when used in certain settings) as well

⁴⁴ See e.g. A/HRC/46/54, para 22.

⁴⁵ See e.g. A/HRC/49/77.

as the use of illegal weapons, including chemical weapons. The Government must also remove or render harmless any landmines it has placed where conflict is no longer active.⁴⁶ These steps are long overdue.

The Commission further recommends that all **non-State armed groups** adopt, publicly announce and abide by rules of conduct that are in line with international humanitarian law and human rights law standards.⁴⁷ They must ban the recruitment and use of children in hostilities and cease the use of weapons that are inherently indiscriminate, such as anti-personnel mines and booby traps – and remove the latter without delay. Further, other weapons that are often employed indiscriminately such as improvised explosive devices and improvised mortars and rockets must be curtailed and only used in situations where they can be effectively directed at a military objective.

Other States conducting military operations impacting Syrian territory, whether through ground or aerial operations, must also review rules of engagement and targeting processes to ensure that they are fully in line with international humanitarian law. Such States should ensure in particular that appropriate personnel familiar with patterns of life, local custom, and geographic and contextual familiarity are involved in pre and post action reviews.⁴⁹

Strengthening accountability for conduct of hostilities violations

In the continued absence of a Security Council referral to the International Criminal Court (ICC), laudable efforts have been undertaken outside Syria to hold perpetrators to account, e.g. for crimes committed in the context of detention by the Government of the Syrian Arab Republic, Da'esh and other non-State armed groups.⁵⁰ The time has come to also invest similar efforts in pursuing accountability for crimes committed during ground and aerial operations carried out by parties to the conflict. While the Commission is cognizant of the myriad challenges associated with domestic jurisdictions adjudicating battlefield evidence, delaying the investigations of egregious violations and crimes committed disavows accountability for countless deaths and injuries in a war with no clear end in sight. The Commission therefore recommends that Member States pursuing prosecutions based on the principle of **universal jurisdiction** expand their investigations to include persons and groups implicated in violations related to the conduct of hostilities⁵¹ and that they invest in effective legislative, investigative, judicial and prosecutorial infrastructure for that purpose.⁵² Further, jurisdictions and entities engaged in structural investigations are encouraged to share to the maximum extent possible relevant evidence and practices across jurisdictions to assist in the prosecution of conduct of hostilities and ensure their probes encompass individuals from all parties to the conflict where evidence support such allegations. The Commission reiterates its readiness to assist in this regard, in close cooperation with the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011.

⁴⁶ See ICRC Customary IHL Study, Rule 83, <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>.

⁴⁷ See e.g. A/HRC/21/50.

⁴⁹ See e.g. A/HRC/49/77; A/HRC/37/72, A/HRC/42/51, A/HRC/43/57.

⁵⁰ See e.g. A/HRC/46/54 section III. C and D.

⁵¹ See e.g. A/HRC/28/69.

⁵² See e.g. A/HRC/44/61, A/HRC/48/70.

The Commission notes the Government's numerous allegations, including in publicly available letters,⁵³ of war crimes and/or crimes against humanity committed by both State (United States, Turkey, and Israel) and non-State forces in Syria during the conduct of hostilities. Given that the persons responsible for the conduct alleged are primarily outside of Syrian Government-controlled territory, the Commission reiterates its recommendation for the Syrian Arab Republic to either ratify the Rome Statute, or accept the **ICC's jurisdiction** pursuant to Art. 12(3) of the Rome Statute – as Ukraine has done.⁵⁴ This would allow the ICC to undertake investigations of alleged crimes committed in Syrian territory by all parties, including those referred to in the Government's letters. In either case, a declaration allowing for retroactive effect should accompany any instrument of ratification or declaration to allow past conduct to be appropriately investigated.

International humanitarian law requires that States and non-State actors must hold perpetrators within their own forces accountable for war crimes. Such internal processes must respect the fundamental due process guarantees of both the accused, and survivors and witnesses. All actors should also ensure that reparations or compensation is provided to victims and survivors, and measures to ensure non-repetition are put into place. However, hitherto, no warring party in Syria has thus far proven able to hold perpetrators within their own ranks accountable for war crimes in proceedings compliant with international standards.⁵⁵ Parties' repeated assertions that either no civilian casualties occurred or that, despite egregious civilian casualty incidents, no violation or war crime was committed highlight the need for **significant changes in both policy and practice around accountability** for violations during the conduct of hostilities, including those not amounting to war crimes. The Commission recommends that States that support armed actors must also proactively support such entities on the fulfilment of such obligations, and as noted immediately below, link any support to meaningful, rights-respecting progress in this area.

Responsibilities of States supporting parties to the conflict

The Commission is aware that the violations by warring parties in Syria have been enabled by the financial and material support such parties have been receiving. It therefore calls on **Member States supporting or otherwise influencing the parties** to the conflict, to take action to ensure rights-respecting and law-compliant action by their own forces and those of the parties they support, deterring their commission of violations – in line with their obligations under customary international humanitarian law and Article 1 Common to the Four Geneva Conventions and other relevant treaties, such as the 2013 Arms Trade Treaty. Such measures could include: (i) conditioning any support to the parties' public announcement and respect of rules of conduct that are in line with international human rights law and international humanitarian law standards; (ii) refraining from providing arms, military support, funding or other forms of support to parties to

⁵³ See Identical Letters sent since 2011 from the Permanent Representative of the Syrian Arab Republic to the United Nations to the Secretary-General and the President of the Security Council, all available in the UN official document system www.ods.un.org; recently e.g. in relation to the United States Coalition's air attacks in Raqqa in the letter dated 18 April 2022, A/76/806-S/2022/322,, in relation to Israeli airstrikes in Rif Damascus in the letter dated 10 March 2022 (S/2022/213) and in relation to Turkish military activity impacting the Aluk water station in the letter dated 12 August 2020 (S/2020/714).

⁵⁴ See <https://www.icc-cpi.int/ukraine>.

the conflict when there are reasonable grounds to believe that such party has committed violations of international humanitarian law, including war crimes, or where there is an expectation that such support may be used to commit or enable further violations of international humanitarian law;⁵⁶ (iii) ensuring that any support to parties is conditioned to verifiable internal measures of compliance with international humanitarian law, such as the provision of training in international humanitarian law and the conduct of effective investigations, within the scope of holding their own forces accountable (see also above); and other [practical measures](#).⁵⁷

State parties to the conflict and Member States otherwise influencing or supporting conflicting parties should also **reinforce the international legal framework on civilian protection**, including by ratifying relevant treaties, such as the Convention on Cluster Munitions, the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, the Arms Trade Treaty, and Additional Protocol II to the Geneva Conventions.⁵⁸

Conclusion

In order to prevent further deterioration and continued violations and abuses, the Commission has provided the above recommendations that can be summarized as follows:

Warring parties must at a minimum conduct a meaningful review of their military practices, procedures, and rules with a view to strengthening civilian protection and respect for the law and implement meaningful reforms. The results of such reviews and process on the implementation of any reforms should be made public.

Further, both state and non-state actors must take meaningful steps to increase accountability within their own structures. Despite steps taken by some parties to protect civilians, the failure to hold perpetrators accountable for conduct of hostilities crimes by those actors themselves allowed cultures of impunity to flourish and the continuous infliction of harm on civilians. Relatedly, more progress is required in national jurisdictions outside of Syria through the use of principles of universal jurisdiction for crimes related to the conduct of hostilities.

Finally, the Commission encourages all States supporting parties to the conflict to redouble efforts to ensure that the parties they support, train, arm, and finance adhere to international humanitarian law and increase efforts to reduce civilian harm.

The long-standing lack of respect for fundamental human rights and international humanitarian law norms and principles throughout the Syrian Arab Republic continues not only to undermine the international system for protection, but further serves to erode the very essence of the system itself. Indeed, over 70 years after the adoption of the Geneva Conventions of 1949 and more than a century since the adoption of The Hague Conventions of 1899 and 1907, the concerted use of prohibited means and methods of warfare in Syria have done nothing more than to cause devastating harm to countless Syrian women, men and children and to cripple key civilian

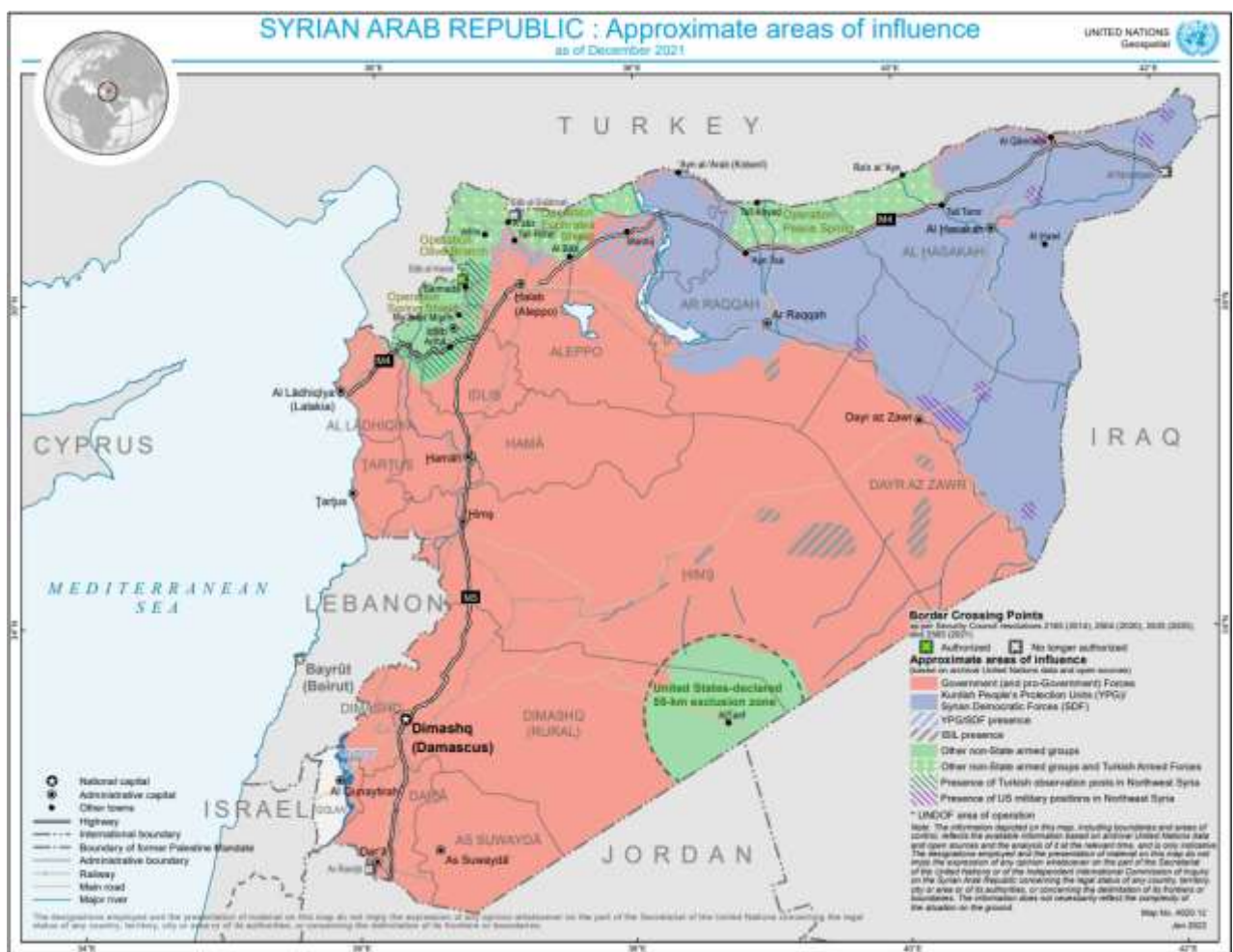
⁵⁶ See e.g. A/HRC/34/CRP.3; A/HRC/36/55; A/HRC/42/51; A/HRC/46/55 para. 113.

⁵⁷ See ICRC on Support Relationships in Armed Conflict: <https://sri.icrc.org/en/practical-measures>.

⁵⁸ See e.g. A/HRC/34/64.

infrastructure. The lack of accountability has encouraged parties to other conflicts to replicate such unlawful conduct beyond the borders of the Syrian Arab Republic. The failure to take action to strengthen respect for the applicable international legal framework can no longer be tolerated.

Annex: Estimated areas of influence, December 2021⁵⁹



⁵⁹ The representation of approximate areas of influence is limited to data relevant for the human rights situation in the Syrian Arab Republic and in relation to the mandate and findings of the Commission of Inquiry on the Syrian Arab Republic.