



## 人权理事会

## 第三十四届会议

2017年2月27日至3月24日

议程项目 4

需要理事会注意的人权状况

## 阿拉伯叙利亚共和国问题独立国际调查委员会的报告\*

## 概要

在对阿勒颇市控制权的争夺战中，上演了无情的暴力，双方平民均成为各方犯下的战争罪行的受害者。作为迫降战略的一部分，亲政府部队于7月下旬对阿勒颇市东部实施围困，导致平民缺乏粮食和医疗用品。2016年7月至12月，叙利亚和俄罗斯部队每天进行空袭，导致数百人丧生，医院、学校和市场成为一片瓦砾。叙利亚部队还在住宅区使用氯弹，造成数百名平民伤亡。

武装团体持续炮击阿勒颇市西部的平民。这些团体使用简易武器，经常在袭击中胡乱扫射，造成数十人死伤，包括妇女和儿童。在无明确军事目标的情况下，这些攻击意在给平民造成恐惧。由于阿勒颇东部局势恶化，人们尽一切办法逃离，一些武装团体予以暴力阻止，并把他们用作人盾。

在一次特别令人震惊的袭击中，叙利亚空军将阿勒颇郊外的一个人道主义援助车队作为目标，造成十多名援助工作者死亡，并摧毁了拟送给有需要平民的重要用品。该车队得到了阿拉伯叙利亚共和国政府的授权，在袭击发生时，政府知道它的位置。这次袭击导致阿拉伯叙利亚共和国各地的援助车队暂停，使平民无法获得基本的物品。

\* 本报告附件不译，原文照发。



由于亲政府部队在 12 月收复了阿勒颇市东部，一些部队处决了丧失战斗能力的作战人员和被认为是武装团体支持者的人员。几百名男子和男孩与家人分离，被叙利亚军强征入伍。其他人的命运仍然不明。

从阿勒颇市东部的疏散相当于被迫流离失所，使成千上万的平民处于危险境地。虽然许多平民被允许移居到阿勒颇西部，但其他人被运到伊德利卜，在那里，他们缺乏适足的生活条件，并害怕将来遭到攻击，因为交战各方继续为控制领土而战。

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## 一. 引言

1. 阿拉伯叙利亚共和国问题独立国际调查委员会根据人权理事会第 31/17 号和 S-25/1 号决议向理事会提交本报告。理事会在 S-25/1 号决议中，请委员会按照其任务规定，对阿勒颇发生的事件开展全面、独立的特别调查，在可能情况下查明所有有合理理由认为对被指称违反和践踏国际人权法的行为负有责任的人。<sup>1</sup>

2. 委员会的理解是，S-25/1 号决议要求它调查 2016 年 7 月 21 日至 12 月 22 日据称交战各方在阿勒颇市及其周围实施的违反国际人权法和国际人道主义法的行为。

## 二. 方法

3. 委员会采用的方法基于各调查委员会和实况调查团的最佳做法。

4. 本报告是根据 291 次访谈编写的，包括与阿勒颇市和省的居民进行的远程访谈，以及在该区域和日内瓦进行的面谈。

5. 委员会在调查期间面临许多挑战。由于围困，对阿勒颇市东部居民的访谈很少能面对面进行。远程访谈经常受到持续的冲突和其他问题的干扰，包括没有电、电话和互联网连接不良以及保护问题等。

6. 委员会收集、审查并分析了卫星图像、照片、录像和医疗记录。各国政府和非政府组织的来文以及联合国报告是调查的一部分。

7. 当委员会获得可靠的信息，认为有合理理由相信事件如所述那样发生，并且所确认的交战方实施了违反行为时，证据标准即得到满足。

## 三. 政治背景

8. 自 2016 年 7 月以来，阿勒颇市的冲突严重军事化，为政治操控留下的空间非常有限。交战各方和有关国家的军事考虑取代了旨在减少暴力和提供人道主义救济的政治倡议。尽管受到重大限制，秘书长叙利亚问题特使斯塔凡·德米斯图拉仍继续敦促采取行动制止暴力，使援助能够抵达阿勒颇东部。

9. 7 月份，亲政府武装包围了阿勒颇东部，导致敌对行动进一步升级——尽管美利坚合众国、俄罗斯联邦和叙利亚国际支持小组联合主席 2016 年 9 月 9 日达成的停止敌对行动协议使平民在暴力中有喘息的机会，而这是他们所急需的。该协

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<sup>1</sup> 委员会委员为 Paulo Sérgio Pinheiro (主席)、Carla Del Ponte 和 Karen Koning AbuZayd。Vítit Muntarbhorn 委员 2016 年从委员会辞职，担任禁止基于性取向和性别认同的暴力和歧视问题独立专家。

议于 9 月 19 日崩溃后，叙利亚和俄罗斯在阿勒颇东部进行了长时间的空中激烈交战，武装团体也恢复了对阿勒颇西部的炮击。10 月，在洛桑举行了一次高级别会议，俄罗斯联邦、美利坚合众国和有影响力的区域强国代表出席了会议，但未能恢复该协议。

10. 11 月，秘书长特使呼吁立即停止战斗，并呼吁恐怖主义集团“沙姆法塔赫阵线”(以前称“支持阵线”)离开阿勒颇市，使人道主义援助能够抵达被围困地区。阿拉伯叙利亚共和国政府拒绝了特使关于保持阿勒颇东部地方行政当局完整性的建议，暂停战事的想法未能实现。

11. 亲政府武装在 2016 年 12 月 22 日重新占领阿勒颇市东部，对全国的冲突动态产生了影响。虽然 2016 年 12 月 29 日宣布的停火成功降低了暴力程度，并在编写本报告时得到普遍维持，但它可能产生影响当地事态发展的新动态。俄罗斯联邦和土耳其正在调解阿拉伯叙利亚共和国政府与反对派军事代表在阿斯塔纳举行的会谈，特使将参加这些会谈。伊朗伊斯兰共和国代表团也将出席。阿斯塔纳会谈旨在加强全国停火，达成关于向被围困地区提供人道主义援助的协议，并为联合国推动、定于 2017 年 2 月在日内瓦举行的会谈奠定基础。

#### 四. 交战各方的武器和能力

12. 交战各方能力不同，这有助于确定具体事件的责任归属。武器的类型和使用方式也能表明战略和意图。阿勒颇省交战各方选择的战斗方法和手段总体上表明，各方故意无视有关相称性和区分的国际人道主义法规则，或关于采取一切可行预防措施避免意外的人员丧生、受伤或对民用物体的损害。

13. 在本报告所述期间，阿勒颇市及其周围上空由叙利亚和俄罗斯空军联合控制。俄罗斯联邦和阿拉伯叙利亚共和国使用的飞机和武器基本相同，因此在许多情况下无法确定责任归属。虽然国际联盟也在阿勒颇市采取行动，但在本报告所述期间没有发动任何攻击。武装团体缺乏载人飞机，不能进行常规空袭。虽然他们操作无人驾驶飞行器(无人机)，但只有少数装备了武器，大多数无法按预期操作。

14. 叙利亚和俄罗斯空军在本报告所述期间的大部分时间内，每天在阿勒颇进行空袭，并据委员会确定，全部使用无制导空投炸弹。其中包括空中炸弹、空对地火箭、集束弹药、燃烧弹和简易空投炸弹(桶式炸弹)以及载有毒工业化学品(包括氯)的武器。叙利亚空军的夜间作战能力有限；因此，大多数夜间行动由能力更强的俄罗斯空军进行。阿勒颇省的主要空袭是在阿勒颇、霍姆斯和拉塔基亚发动的。例如，9 月 23 日，俄罗斯飞机进行了 42 次空中飞行，对阿勒颇市东部至少发动 28 次经确认的空袭。

15. 在本报告所述期间，空投集束弹药的使用有所增加。集束弹药可发散较小的子弹药，在大片地区造成伤亡。在所观察到的一些弹药中，每个集束弹药发散了 500 多个子弹药。因此，阿勒颇现在受到大量未爆炸弹药的污染。

16. 受害者和证人经常报告利用“地堡”炸弹进行空袭，这种炸弹在技术上称为混凝土穿透性弹药。使用的这类炸弹很少。所用的其他高爆炸性武器，特别是那些装有延时引信的武器，具有类似的效果，很容易被外行人误认为是地堡炸弹。

17. 2016 年全年，叙利亚空军使用氯弹在阿勒颇市东部发动空袭。没有资料支持关于俄罗斯军队曾在阿拉伯叙利亚共和国使用任何化学武器的说法。虽然接触氯的平民可能表现出类似于接触糜烂性毒剂如硫芥子气的那些症状，但在一些情况下，氯气被确定为最有可能使用的毒剂。

18. 叙利亚军队和武装团体都使用简易和手工制造的武器。诸如空投炸弹(包括桶式炸弹)、火箭助推炸弹和迫击炮等简易武器较不准确和精确，并往往具有高爆炸性。只有叙利亚空军使用了大型的简易空空投炸弹。简易火箭助推炸弹和迫击炮主要由武装团体使用。两者的使用造成了大量平民伤亡。

19. 没有制空权的武装团体使用了各种简易迫击炮。其中有许多普遍被称为 Jahannam 或“地狱”大炮的常见迫击炮，使用煤气压力容器作为射弹。广泛而言，这些混合物能产生相当于 22 至 33 千克 TNT 当量的爆炸力。一个典型的例子是，可在距离爆炸现场最远 15 米处产生致命的爆炸压力，有害爆炸效应可达 40 米。这些武器发射的大多数弹丸可行进 400 至 600 米。

20. 武装团体还经常使用间接射击，<sup>2</sup> 主要是火炮系统。在许多情况下，这些武器被用来攻击位于平民居住区的目标，构成不分青红皂白的攻击。在另一些情况下，武装团体蓄意对敌方控制区进行间接射击，而不是针对具体军事目标。叙利亚军和武装团体在阿勒颇使用制导武器的情况似乎仅限于使用反坦克导弹攻击建筑物和车辆。

## 五. 阿勒颇市东部

### A. 实施围困

21. 阿勒颇一度是国家的经济中心和人口最多的城市，对各方仍然具有重要战略意义。2012 年，武装团体占领东部地区，而西部仍在政府控制之下，该市实际上被一分为二。阿勒颇东部主要实行地方议会自治，依然是一个重要的反对派据点，对其控制权的争夺被广泛认为可能对叙利亚更大范围的冲突具有决定性影响。

22. 在三年的军事僵局之后，2015 年 9 月，俄罗斯联邦开始在几个关键战场上支持政府部队，并提供了打破僵局的现实机会，包括在阿勒颇，在该市使用空袭

<sup>2</sup> 直接射击依赖于对目标的直接瞄准，间接射击则非如此。间接射击若想准确，应当使用观测仪来纠正射击方向。

的首要目标是包围其东部。在阿勒颇和伊德利卜省，2015 年最后几个月的空袭迫使武装团体人员撤出阿勒颇省东部，进入农村地区，从而削弱了该市的防御能力。2016 年初，对阿勒颇以北 Nubul 和 Zahra 两镇的空袭切断了土耳其的一条重要供应线，阻止了武装团体的加强。在这段期间，阿勒颇市东部不断遭到空中轰炸，摧毁了医院、学校、清真寺、面包店和住宅。

23. 但空袭尚不足以使亲政府部队包围阿勒颇东部。要成功包围，同样还取决于政府在实地调动足够的人力。因缺乏足够的部队，叙利亚军，包括第四机械化师，转向以国内民兵和外国民兵来增加地面进攻能力，前者如 Ba'ath 旅、“老虎部队”和 Liwa al-Quds 旅，后者包括伊斯兰革命军队圣城旅、真主党、阿富汗民兵和伊拉克 al-Nujabaa 和 al-Fatimiyyoon 民兵(亲政府部队)。这些团体带头发起了对阿勒颇市东部的地面攻势。

24. 亲政府部队在地面有至少 5,000 架战斗机，再加上强大的空中支援，因此拥有包围阿勒颇市东部所需的必要资源。2016 年 7 月中旬，通往该市唯一的供应线，即北部的卡斯特罗路被亲政府部队占领。亲政府部队利用空袭和炮击，每天对这条道路进行轰炸，使试图使用者非死即伤。亲政府部队于 7 月 17 日取得了卡斯特罗路控制权，对阿勒颇市东部实现了实际包围。8 月，武装团体在 Ramouseh 南部地区开辟了一条路线，打破了包围，但亲政府部队 9 月初发动反攻，恢复了对这一供应线的控制，并重新实行包围，直到 12 月再次占领阿勒颇东部。

## B. 对民用基础设施的攻击

### 1. 对平民生命的影响

25. 阿勒颇发生的野蛮暴力使该市两边的平民付出了最高昂的代价。在阿勒颇东部，亲政府部队摧毁了重要的民用基础设施，造成了灾难性后果。医院、市场、水站、学校和住宅建筑一天天地被夷为平地。害怕轰炸的平民避免前往医院，包括孕妇在内，她们越来越多地在无医疗援助的情况下在家里分娩，或选择剖腹产以避免在医院进行数小时的分娩。在阿勒颇西部，平民害怕遭到武装团体不分青红皂白的蓄意炮击。在整个阿勒颇，对住宅建筑的轰炸严重影响到在家时间更多的人，即妇女和儿童。

26. 甚至在围困之前，阿勒颇市东部的平民就缺乏足够的粮食、药物和燃料。供应线的长期切断导致粮价过高，使许多家庭无法购买稻米和高粱以外的粮食。对水站的爆炸迫使东部居民冒着感染水传播疾病的危险去喝井里的水。

27. 2016 年 9 月 23 日发动的对阿勒颇东部的空中轰炸大大增加了平民伤亡人数。近在空袭的头四天，就有约 300 人死亡，包括 96 名儿童。到 10 月中旬，资源和医疗用品的缺乏迫使医生进行本来可以避免的截肢。

28. 据称，11月14日，政府炮击 Salah al-Din 区一所有 50 名儿童的孤儿院，造成两名男孩受伤，分别为 11 岁和 14 岁。孩子们随后被转移到地下室，并在那里呆了几个星期。经几次尝试，他们于 12 月 19 日被疏散。

29. 12 月情况严重恶化，所有医院都因轰炸而停止服务。居民集中在不断缩小的领土上，生活在空袭之下，食物、水和供暖不足。由于没有医疗设施，一些家庭别无选择，只能将死亡和受伤的亲人留在大街上。许多人受到心理创伤，因在暴力中得以幸存而感到内疚。

## 2. 医院

30. 7 月至 11 月，阿勒颇东部的保健设施一再遭到空袭，继续 2016 年上半年的情况(A/HRC/33/55, 第 44-49 段)。12 月下旬，亲政府部队夺回了这座城市，医院无一能够运转。大多数袭击分两波进行：9 月下旬至 10 月中旬，以及 11 月中旬。下文评论的袭击由俄罗斯或叙利亚空军进行，或两者一同进行。

31. 国际人道主义法规定，应向医院、救护车和医务人员提供特别保护(见附件一，第 36 段)。虽然它们在被用于军事目的时可能成为袭击目标，但这种袭击需要事先警告(同上，第 39 段)。然而，在委员会调查的事件中，没有迹象表明存在军事目标或在袭击之前发出了警告。在蓄意以医院为目标的冲突中，无需标志来表明某一地点的受保护状态(同上)。

32. 一再的狂轰滥炸、缺乏警告和卫生保健设施附近没有军事存在，都有力地表明了作为迫降战略的一部分而将医疗基础设施作为目标的蓄意性和有计划性，构成故意针对受保护物体的战争罪(同上，第 36-39 段)。此外，蓄意攻击医务人员和救护车构成故意攻击医务人员和医疗运输工具的战争罪(同上，第 39 段)。

33. al-Sakhour 区的 M10 医院在 Khalid Ibn Waleed 清真寺附近，是最大的创伤医院。9 月下旬至 10 月中旬发动的空袭有四次击中该医院，致其停止服务。9 月 28 日上午 4 时左右，一次空袭发生在 M10 附近，炸死了一名 12 岁的男孩，并炸伤了他的父亲。空袭损坏了重症监护室，并摧毁了发电机、燃料储存罐和水箱。据证人描述，使用了桶式炸弹，有一个巨大的弹坑被认为是地堡炸弹造成的。事后录像显示有两个未爆炸的 ShOAB-0.5 子弹药，从而表明使用了 RBK-500 型空投集束炸弹。

34. 10 月 1 日上午 11 时左右，一系列桶式炸弹袭击了 M10 医院，迫使 100 多人(包括病人和医务人员)躲到该医院的地下室。有两名病人死亡，至少 13 人受伤。这次袭击还摧毁了一辆救护车，并导致医院暂停服务。据称袭击中使用了一个地堡炸弹，并使用了集束弹药和氯气。证人描述有一个直径 20 米的弹坑，他们认为这是由地堡炸弹造成的，卫星图像证实了与空投炸弹相符的弹坑。<sup>3</sup> 阿勒

<sup>3</sup> 见委员会网页上联合国训练研究所业务卫星应用项目的卫星图像分析：  
[www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx](http://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx)。



颇各地其他空袭的性质，包括后来影响到 M10 医院的一次空袭，为证人关于连续使用多种类型弹药的说法提供了支持。

35. 关于 10 月 1 日使用化学品(可能是氯气)的进一步指控也得到受害者证词的支持。一名救护车工作人员描述了他和其他人在一枚带有“强烈气味”的炸弹被投下后所感到的呼吸困难情况。其他人说看到黄色粉末，这与氯残留物相一致。事后图像显示了由一个 RBK-500 型集束炸弹携带、含有 268 个子弹药的 PTAB-1M 集束弹药的残余物。携带化学有效载荷的简易空投炸弹的存在有力地表明，袭击是政府部队发动的。除了蓄意针对受保护物体的战争罪行外，这种袭击还构成不分青红皂白攻击平民的战争罪(见附件一，第 20-23 段)。

36. 10 月 3 日，M10 医院因一枚空中投下的近失弹而受到进一步损害。由于 10 月 1 日的袭击，该医院仍在停止服务，尽管工人已在现场开展修理工作。下午 2 时至 3 时 30 分，一枚高爆炸弹击中医院入口处的街道，炸死三名维修工人，炸伤四名医务人员，并摧毁了产房。目击者描述有一个直径 20 米的弹坑。对主要弹坑的分析表明，很可能使用了 500 至 1000 公斤级或者更大的炸弹。当与延时引信一起使用时，这些炸弹可产生大弹坑以及与现场观察到的情况相一致的大范围爆炸破坏。

37. 10 月 14 日，M10 医院被第四次击中。大约下午 2 时，多枚高爆性单弹头空投炸弹袭击了医院的入口，两名医生和一名药剂师被严重烧伤。当时在场的一名医务人员回忆说，袭击导致储存在地下室的氧气瓶着火。

38. 7 月至 11 月期间，叙利亚或俄罗斯部队对 al-Shaar 区的一个广场发动一系列空袭，al-Hakim 儿科医院、al-Zahra 妇女医院、al-Bayan 医院、al-Daqaq 诊所和中央血库均位于该区。al-Hakim 医院是阿勒颇东部唯一的儿童医院，对它的多次空袭给儿童获得医疗保健造成了破坏性影响。7 月 23 日，空袭炸毁了该建筑物，造成断电，导致暖箱中的四名新生儿死亡。为了保护病人，医院被转移到地下。直到此时，al-Shaar 区的所有医院都有明确的标记，之后，因害怕成为目标，标记被清除。

39. 9 月 30 日上午 5 时 30 分左右，至少有一次空袭击中 al-Hakim 医院附近地区，炸毁了一辆救护车，并造成一名救护车司机死亡。11 月 16 日的另一次空袭部分摧毁了该医院，造成该地区 27 人死亡。两天后的 11 月 18 日，在怀疑受到氯攻击的 Ard al-Hamra 区病人正在接受治疗时，该医院被再次击中。在几分钟内，发动了“双头”攻击，<sup>4</sup> 迫使医院停止运作(见附件一，第 49 段)。

<sup>4</sup> “双击”空袭是指对某一目标/地区的第二次袭击发生在第一次袭击后不久，造成前来援助、哀悼或转移第一次袭击受害者遗体的人被炸死炸伤。

40. 医务人员证实，al-Hakim 医院地区没有军事设施。一名提供消息人士承认伤员与平民在同一医院接受治疗，但否认医院周围有军事目标。治疗伤员不会使医院成为有效的军事目标(同上，第 37 段)。

### 3. 粮食来源

41. 对市场、面包店和平民维持生命不可或缺的其他粮食来源的屡次攻击，是长期围困阿勒颇市东部的一个特点，侵犯了经常、长期和不受限制地获得充足粮食的权利(见附件一，第 11 段)。在本报告所述期间，遭到空袭的市场和面包店的总数表明，亲政府部队通过以民用基础设施为目标，蓄意侵犯这一权利，以迫使武装团体投降(同上，第 35 段)。

42. 9 月 28 日大约凌晨三点，在晨祷前不久，叙利亚或俄罗斯空军发动的一次空袭击中了 al-Maadi 区的一家面包店，当时居民正在排队购买面包。这家曾服务于两个街区，供应近 6,000 个家庭的面包店被完全被毁。8 名平民，包括一名店主在袭击中丧生，至少 19 人受伤。两天后的 9 月 30 日，Azizi 面包店遭到空袭，al-Haydaria 区 15 名平民被炸死。同样，该面包店的店主也在袭击中丧生。到 10 月中旬，在 al-Maadi、al-Magayer 和 al-Mashhad 区的面包店被炸毁后，遭围困的阿勒颇东部还剩 7 个运营中的面包店。

43. 8 月 12 日下午 4 时至 5 时，叙利亚或俄罗斯军空袭了 al-Firdous 区 Firdous 蔬菜市场所在的一个十字路口。该市场已经五次遭到空袭。袭击后大约五分钟，亲政府部队返回，进行了“双击”空袭(同上，第 49 段)。20 名平民在袭击中丧生，另有几十人受伤。10 月 13 日，大约在中午，al-Firdous 市场再次遭到空袭，造成 15 名平民丧生，其中包括至少一名儿童，另有至少 30 人受伤。由于袭击发生在中午祷告时分，大多数受害者是成年男性。爆炸入地三米之深，损坏了一个水管，影响了 al-Firdous 区平民的用水。

### 4. 水源

44. 在本报告所述期间，缺乏饮用水大大减少了叙利亚男子、妇女和儿童获得环境卫生和个人卫生服务的机会，增加了感染传染病和水传播疾病的风险。水权是有过上尊严的生活所不可或缺的，是实现所有其他人权的基本前提(见附件一，第 12 段)。

45. 7 月 31 日冲突加剧，破坏了提供向阿勒颇市东部和西部抽水所用电力输电的输电站。尽管技术人员在 8 月 4 日安装了一个支流输电线路，但该线路在第二天即被损坏。到 8 月 9 日和一段炎热时期内，整个阿勒颇市约有 170 万人无法获得自来水。

46. 9 月 22 日，叙利亚或俄罗斯空军发动的一次或多次空袭击中了阿勒颇市东部 Bab al-Nayrab 区的水变电站，致其停止服务，使 20 万平民无法获得饮用水。由于当时该地区的冲突强度，不能确定攻击是否是故意的。虽然该变电站于 9 月 30 日由地方当局修复，不久即恢复服务，但阿勒颇东部的平民回忆说，他们不

得不采集高度污染的井水供家庭使用。虽然叙利亚阿拉伯红新月会(叙利亚红新月会)提供了用于对从钻孔获得的污染水进行灭菌的净化片,但政府在 7 月之后完全封锁援助物资,导致这种药片非常缺乏。此外,本打算用于 11 月和 12 月取暖的燃料被改用于从井中抽水。

47. 9 月 23 日,位于东部的 Suleiman al-Halabi 泵站被关闭,使阿勒颇市西部地区的 150 万人口无法获得水源。9 月 26 日,阿勒颇东部的水和污水处理局发表声明,否认参与了它认为是“电气系统失灵”的事件。不过,在此期间,阿勒颇西部的平民得以使用地下水井,这些井提供了一个安全、临时的替代水源。

## 5. 学校

48. 在本报告所述期间,叙利亚和俄罗斯军的空袭对阿勒颇省东部各地教育机构产生了不同的影响,该地区有三分之一的人口是儿童(见附件一,第 13 至 15 段)。只有在学校被用于军事目的时才能对其发动袭击,而且这种袭击在学校位于人口密集的平民区时需要事先警告(同上,第 22 段)。

49. 8 月 19 日下午 5 时左右,叙利亚或俄罗斯空袭了 Salah al-Din 区的 Abdulqader Shasho 学校和及其附属的一个清真寺。Salah al-Din 区在当时是一个交战激烈的前线,约有一半地区由武装团体控制,另一半由政府控制。虽然 Abdulqader Shasho 学校当时没有开学,但有四名成年人在袭击中受伤。学校的天花板受到部分破坏,清真寺则被夷为平地。学校在此后一段时间内保持运作,学生被转到地下教室。9 月份,该校在 Salah al-Din 区内进行了搬迁,以确保学生的安全。

50. 9 月初,搬迁后的 Abdulqader Shasho 学校遭到空袭。当时授课班级为 1 至 9 年级,低年级学生正在上上午课。9 名小学生在袭击中丧生,数十人受伤。

## C. 使用违禁武器

51. 从 9 月份起,涉及违禁武器的事件数量增加到新水平,报告最多的是关于使用氯、集束弹药和燃烧弹的指控。在轰炸医院的同时,这些武器越来越多的使用对平民造成了巨大影响,因为受害者的伤痛无法得到充分治疗。

52. 委员会调查了许多指控直升机投放简易氯弹、造成平民伤亡的事件。在所审查的事件中,收集的信息并未表明俄罗斯军参与了任何事件。鉴于所报告事件均是空投炸弹的结果,因此可以认为,这些袭击是叙利亚空军发动的。叙利亚军使用氯气的模式与 2014 年和 2015 年观察到的相同(见 S/2016/738)。

53. 除了违反《关于禁止发展、生产、储存和使用化学武器及销毁此种武器的公约》(见附件一,第 40 段)外,在住宅区使用化学武器,包括不能区分民用和军事目标的氯弹,还构成战争罪(同上,第 41-42 段)。

54. 9月6日下午1时左右，向 al-Sukkari 区空投了一枚简易氯弹。一名男子和一个13岁的女孩因窒息而死亡，另有80多名平民受到吸入氯气的影响。炸弹落下时，目击者看到直升机悬停天空中，而附近的人开始呼吸困难，眼睛很快变红。证人进一步称，闻到类似家用洗涤剂的强烈气味。现有录像显示包括妇女、儿童和一位老人在内的人正在吸氧，并显示了简易化学炸弹的残留物。这次袭击是叙利亚军发动的。

55. 12月8日至12日，每天都有关于在 al-Kalasa 街区发现有毒化学品的报告。对12月8日袭击 Al-Kalasa 事件的受害者进行治疗的一名医生回忆说，当天他还治疗了 Bustan al-Qasr 和 al-Firdous 区的病人。目击者在下午4点左右看到直升机投掷炸弹，一种黄色的气体从桶中泄漏出来。还报告伴有刺激性气味。据称有包括妇女和儿童在内的35名受害者出现与吸入氯气相符的症状，包括缺氧、支气管痉挛和呼吸衰竭。

56. 12月9日中午左右，向 Al-Kalasa 和 Bustan al-Qasr 投下了两枚装有氯气的简易炸弹。30名平民受到与接触氯气相符的影响，而获得的录像证实儿童因呼吸短促而挣扎，并且眼睛流泪。12月10日，医生报告对有类似症状的 Bustan al-Qasr 区患者进行了治疗。这次直接对 al-Hayat 诊所使用了简易化学炸弹，该诊所过去几天一直在治疗氯气袭击的受害者。医务人员和患者出现与接触氯气相符的症状，所评估的录像和图像也与空投的简易氯弹相一致。

57. 自9月以来，还报告了数量惊人的涉及集束弹药的事件。虽然阿拉伯叙利亚共和国不是《集束弹药公约》的缔约国，但在人口密集地区使用集束弹药本质上属于滥用(因为通常散布广、哑弹率高，这种情况在停止敌对行动后数年内仍然危及平民)，因此为习惯国际人道主义法所禁止。出于这个原因，它们在阿勒颇东部等城市的使用构成在平民居住区不分青红皂白的攻击这一战争罪(同上，第44段)。

58. Karm al-Qaterji 区的一位居民报告说10月14日凌晨4时左右被爆炸声吵醒。他和他的兄弟来到外面，发现建筑物着火了。在帮助扑灭火灾时，他们看到一架飞机投了一枚炸弹，该炸弹“在空中爆炸”，并释放了一些子弹药，其中一个子弹药炸死了该居民的兄弟。证人提供的残留物照片显示，这是俄罗斯一枚携带565个子弹药的 RBK-500 系列集束炸弹中的一个 ShOAB-0.5 子炸弹。

59. 叙利亚和/或俄罗斯军还在阿勒颇东部使用集束燃烧弹。虽然阿拉伯叙利亚共和国尚未批准《禁止或限制使用某些可被认为具有过分伤害力或滥杀滥伤作用的常规武器公约》及其禁止使用燃烧武器的第三项议定书，但在平民居住区使用这种武器构成不分青红皂白攻击的战争罪，以及造成意外生命损失的战争手段和方法(同上，第45段)。除了国际人道主义法规定的义务外，俄罗斯联邦自1982年以来一直是《公约》的缔约国，因为苏联批准了该公约。

60. al-Mashhad 街区的一位居民描述了9月25日一架飞机向他居住的街道投放三枚弹药的情况。第一枚弹药被投放后，造成“金属球”在200米的范围内四溅

喷射。这一证词与证人提供的残留物照片相一致，被确定为属于携带 565 个子弹药的 RBK-500 集束炸弹散出的一个 ShOAB-0.5 子炸弹。这次袭击的另一张照片显示了苏联 ZAB-2.5SM 型燃烧子弹药的残留物。

#### D. 对阵地后方的攻击

61. 在本报告所述期间，阿勒颇城市东部各地的居民回顾了他们在武装团体控制下生活所亲眼目睹的侵权行为，这些团体包括 Harakat Nour al-Din al-Zenki, Jaish al-Mujahdeen, Aljabha al-Shamiya, Failaq al-Sham, Ahrar as-Sham, Fastaqim Kama Umirt Union 和 Sultan Murad Brigade 等派别。它们的全部力量在 6,000 至 8,000 架战斗机之间。来自沙姆法塔赫阵线的恐怖主义集团战斗人员有 150 至 200 名武装分子，但由于他们行动能力强，再加上其他团体对他们的恐惧，其实际影响力较大。所提指控包括人道主义援助的分配有所偏袒，对解决争端采取宗亲做法，剥夺行动自由，使用人盾，将民用建筑用于军事目的，以及总体、普遍和不断担心遭到武装团体的报复等。

62. 实施围困期间，在阿勒颇市东部活动的各武装团体之间似乎没有任何单一的指挥链。虽然各武装派别在 2015 年 4 月建立了一个名为“阿勒颇法塔赫”的行动室，但它很少运作。武装团体之间的协调减少，士气减弱，而且随着政府军逐步收复失地，内斗也在增加。到 12 月 1 日，即亲政府部队收复阿勒颇东部前夕，阿勒颇东南部地区的其余武装团体宣布了一项新的合并，以 Jaysh Halab 取代了阿勒颇法塔赫。但这次合并是短暂的，因为武装团体经过五个月的消耗战后，于 12 月 13 日放弃了阿勒颇市东部。

63. 围困结束后不久，一些武装团体开始没收和藏匿以前在大多数地区提供的食品。虽然许多平民，包括同情武装团体的人在内，都知道他们在储存粮食，但大多数人感到无力对付他们。居民们说，仍可在商店买到的商品价格飙升。一些武装团体优先向其队伍中的官兵、其家属和信任他们的人、而不是向平民提供粮食和援助。对于其余人口，偶尔会分发最低限度的粮食援助。一些居民认为，9 月中旬，武装团体为了政治利益而排除了联合国援助的可能性，以抗议美利坚合众国和俄罗斯联邦之间签署的未征求武装团体意见的停火协定。到 12 月，当亲政府部队重新占领阿勒颇市时，发现了一些武装团体保管和守卫的储存粮食的仓库。

64. 为了治理阿勒颇市东部的居民，武装团体实行了一种制度，可在战斗人员指定的地点登记投诉。居民们提到解决争端的临时和宗亲做法，在这种做法中，相对于无充分联系的平民的关切而言，同情者和战斗人员亲属的关切得到优先处理。

65. 某些武装团体在围困期间，通过恐吓阻止平民离开交战激烈的地区，包括 al-Firdous。武装团体以阻止平民离开的方式，试图通过使用平民作为人盾来使 al-Firdous 的部分地区免遭进一步攻击(同上，第 46-47 段)。居民叙述了以杀死她

们相威胁来阻止妇女离开 al-Firdous 的情况。一位年轻妇女回顾说，武装团体战斗人员 9 月底在她丈夫试图离开时打死了他。

66. 10 月，作为由美利坚合众国和俄罗斯联邦调解的人道主义停火的一部分，政府军开始在电视上和通过扬声器传播可能疏散平民和战斗人员的详细情况。一些武装团体成员警告平民，所提议的八个人道主义走廊是叙利亚军队强行征募新兵的借口；例如，al-Firdous 区的居民坚持认为，恐惧阻碍了平民离开，因为武装团体战斗人员与平民共处，并且“遍街都是”。10 月下旬，武装团体试图对阿勒颇市东部各地区的平民实施晚 8 时宵禁，以控制他们的行动并防止他们在天黑后逃跑。决定留下来的平民害怕因试图逃跑而遭到严厉处罚，或害怕到政府军控制区后遭到政府军的报复。

67. 11 月下旬，在叙利亚军收复 Masaken Hanano 之前，沙姆法塔赫阵线的恐怖分子积极阻止平民离开该地区。恐怖主义团伙任意逮捕了至少两名试图就平民的退出能力进行谈判的平民，指控他们煽动人们反对恐怖主义团伙。这两名平民的下落仍然未知(同上，第 24-30 段)。这一事件对其他平民造成恐吓，没有人试图离开 Masaken Hanano，直到叙利亚军在 11 月 26 日重新占领该区。

68. 在整个围困期间，武装团体在民用住宅和建筑内设立了办事处，并经常占用得以逃离阿勒颇东部或已去世平民所遗弃的住所。

## 六. 阿勒颇市西部

### 火箭和迫击炮攻击

69. 在本报告所述期间，有包括境内流离失所者在内的约 150 万居民居住在政府控制的阿勒颇市西部人口稠密的地区。7 月下旬阿勒颇东部被围困之后不久，反政府武装团体发起了一系列反击，从南方、Ramousseh 区军事学院及其周围地区打破围困，取得了有限的成功。9 月初，亲政府部队重新形成并加固了围困。面对长期的人道主义灾难，被围困的武装团体开始了在接下来的三个月炮击阿勒颇西部街区的协调行动。攻击的主要特点是不分青红皂白地对人口密集的城市地区进行间接炮击，并且往往没有明显的合法军事目标，给阿勒颇市西部的居民造成了恐吓。

70. 武装团体用来对阿勒颇市西部实施远程攻击的武器中，最常见的是间接火力炮系统，包括多桶火箭发射器以及简易和手工制作的火箭。还使用了简易和手工制作的迫击炮(“地狱大炮”)。武装团体可以获得数量有限的直接射击武器，包括无后坐力炮、大炮和有限的反坦克制导武器。鉴于从被围困区到阿勒颇西部的潜在目标地区没有清晰的瞄准线，直接射击武器通常只在前线及其周围小片范围内使用。

71. 8月初,武装团体和政府部队在对 Al-Hamadaniyah 区南部边缘“1070 公寓项目”实行领土控制方面的冲突大大加剧。8月10日上午约10时30分,在 Ibn al-Bitar 高中附近的 Al-Hamadaniyah 街区,武装团体发射的不明武器击中了一辆运送学生到阿勒颇大学的小型巴士;24名乘客中有13人被当场炸死,包括汽车司机和他的助手,35名平民受伤,包括乘客、购物者和摊贩。Al-Hamadaniyah district 区有阿萨德军事学院、军官住所和军用停车场,距 Ibn al-Bitar 高中约1.5公里。军事设施没有遭袭。小型巴士被袭的 Ibn al-Bitar 高中与 al-Hamadaniyah 区军事设施之间的距离表明,在“1070 公寓项目”附近作战的武装团体发射了一个无制导火箭,这构成在平民居住区不分青红皂白攻击的战争罪(同上,第23-23段)。

72. 9月30日大约中午,在 Al-Midan 区,从 Bustan al-Pasha 发射、被认为是无制导火箭的不明弹药袭击了人口稠密的别墅区圣母玛利亚 al-Adra 教堂附近的一个小型超市,这是 Al-Midan 区最繁忙的一个商业中心。两名男孩和一名妇女中弹片死亡,男孩的母亲轻伤。Bustan al-Pasha 和 Al-Midan 区相距约1.5公里。袭击时别墅区及其周围没有军事存在,该区住着基本中立的亚美尼亚少数民族。袭击的性质和缺乏军事存在表明武装团体犯下了对平民人口实施攻击的战争罪(同上,第20段)。

73. 10月6日中午祷告后不久,从 Bustan al-Qasr 区发射了几枚被认为是地狱大炮的不明弹药,击中了 Al-Midan 区 Al-Jamiliyah 居民区 İskenderun 街上的公共商店和餐馆市场。Bustan al-Qasr 和 Al-Midan 区之间的距离大约为5公里。这次袭击造成12名平民死亡,包括一位妇女和一名儿童。另有70多名平民受伤,许多商店被毁。地狱大炮是较为不准确和不精确的武器,发射爆炸半径约为40米的无制导气弹。虽然政府防空情报局的总部位于 Al-Midan 区北部,在邻近的 Bastan al-Pasha 区,但从距离被围困地区5公里远的地方使用地狱大炮构成在平民住宅区不分皂白攻击的战争罪(同上,第20-23段)。

74. 与阿勒颇市东部一样,在本报告所述期间,阿勒颇市西部的许多教育机构和学生也遭到不分青红皂白的攻击。11月2日,武装团体向 Al-Furqan 区的阿勒颇大学人文学院发射间接迫击炮,至少炸死两名女生。11月20日上午近11时,位于 Bustan al-Qasr 的武装团体战斗人员向 Al-Furqan 区发射了非制导火箭,袭击了 Furqan 小学的后院和建筑物,造成至少7名儿童死亡,1名女童受伤。11月28日,武装团体袭击了 Maamoun 学校和附近 Al-Jamiliyah 的一所学校。至少一名18岁学生因结肠、肝脏和肺部中弹片而死亡。

## 七. 谢赫·马克苏德区

### 火箭和迫击炮攻击

75. 阿拉伯叙利亚共和国发生暴乱后不久，2012 年政府部队撤出了该国北部主要是库尔德人居住的地区，而重点应对随后的冲突。自那以来，位于阿勒颇市北部边缘的山顶地区谢赫·马克苏德一直处在库尔德人民保卫部队(人民保卫部队)的控制之下。2016 年 4 月，库尔德区大部被来自北部、东部和西部的反政府武装团体包围，随后遭到一系列攻击。由于亲政府部队为争夺控制权，围困了阿勒颇市东部，谢赫·马克苏德遭到驻扎在阿勒颇西部农村地区的团体及阿勒颇市东部属于阿勒颇法塔赫(见上文第 62 段)的团体的蓄意攻击。除了对平民居住区的火箭攻击外，阿勒颇市东部武装团伙阵地的狙击手用精确步枪射击，造成许多伤亡。库尔德人占领的飞地的总体局势仍然危险；水电严重短缺，大多数人口依靠发电机和水井生活。

76. 8 月 9 日，阿勒颇法塔赫行动室指挥官 Yasser Abd ar-Rahim 少校发表声明，该表示武装团体联盟将对谢赫·马克苏德的库尔德人进行“报复”，指出他们将“在阿勒颇死无葬身之地”。Abd-Rahim 少校指控人民保卫部队杀害武装团体战斗人员，并在整个夏季与亲政府部队进行了合作。本报告所述期间，对谢赫·马克苏德的攻击减少(与这一年早些时候相比，由于围困的原因)，在这一背景下，武装团体故意攻击库尔德飞地的平民居民区，致数十名平民死亡和伤残。这些行为构成了攻击平民人口的战争罪(见附件一，第 20 段)。

77. 9 月 7 日近午时，一名男医生在回家的路上，一排七枚无制导火箭弹袭击了谢赫·马克苏德。其中两枚击中了一条住宅街道，另外五枚则摧毁了附近的建筑物。人民保卫部队的人后来告知该医生，火箭弹很可能飞行了很远的距离，是 Kafr Hamra 武装团体在离受影响街区约七公里的阿勒颇农村地区发射的。第二名男医生，也是当时谢赫·马克苏德唯一的小儿外科医生，胸部多处中弹，随后在去往邻近政府控制区治疗的途中死亡。另有三人受了中度非致命伤。被袭击地区位于 Yasin Yasin 学校和西部市场附近，性质上属于住宅区，距离最近的前线至少有一公里，这里没有人民保卫部队的军事存在。

78. 10 月 8 日凌晨大约 4 点，一枚无制导火箭弹击中了谢赫·马克苏德西部 10 号街上一个蔬菜市场附近大楼里一个六口之家的公寓，并落在其中一间房屋内。据认为，火箭弹来自阿勒颇市东部的 Bustan al-Pasha 或 Huluk 地区。一个男孩和他的姨妈被弹片击中头部，当场死亡。丧生的还有男孩的妹妹。母亲和祖母也受了重伤，但两人后来康复。地方当局告知一名证人，所使用的火箭长度为一米。该街区没有军事据点。



## 八. 阿勒颇农村地区

### 对人道主义车队的袭击

79. 9月19日, 联合国/叙利亚红新月会的车队在 Orum al-Kubra(阿勒颇省西部)遭到空袭, 至少造成 14 名文职援助工作者死亡, 15 人受伤。这次袭击还摧毁了 17 辆卡车及其运载的粮食、药品、童装和其他用品, 这些物品是要送给由 Atarib 和 Ibbeen 等武装团体控制的阿勒颇省西部的家庭。袭击是在叙利亚武装部队总司令发表声明、宣布结束 9 月 12 以来的停火后不久进行的。袭击发生后, 联合国宣布暂停阿拉伯叙利亚共和国境内的所有援助车队。<sup>5</sup>

80. 由 31 辆卡车组成的车队在政府控制地区经过, 政府当局对此知情并准许通行, 车队于午后抵达位于武装团体控制的 Orum al-Kubra 镇的叙利亚红新月会仓库。该仓库设在 Atarib 与阿勒颇之间的道路上, 距离 Orum al-Kubra 大约一公里。由于仓库不能为所有卡车提供足够的停车位, 有些卡车停在了路边。几名证人回顾说, 武装团体战斗人员利用该道路进行运输, 但没有人知道袭击那天会发生这种情况。所有证人都否认车队有武装团体车辆护送。

81. 在大约下午 1 时 30 分到达仓库时, 42 名叙利亚红新月会工作人员和其他工作者开始从卡车卸载货物, 并将其分类以便发放。袭击的幸存者回忆, 在该地区看到了飞机, 但他们继续工作, 因为他们认为飞机是在监测停火情况。俄罗斯联邦后来发布了录像, 显示俄罗斯无人机在监测车队。

82. 大约下午 6 点半日落时分, 援助工作者通过对讲机(通常用于传送即将发生的袭击警报的手段)收到关于该地区有飞机的警告。他们随后获悉, 直升机正朝仓库飞来。不久, 即大约下午 7 时 10 分, 空袭开始。

83. 幸存者和附近其他人一致将袭击描述为三个阶段。首先, 直升机投掷桶式炸弹, 击中仓库和附近的家庭住宅。其后, 人们立即赶到现场救助伤员, 但当直升机返回并投掷第二轮桶式炸弹时, 他们被迫撤退并寻求遮蔽(见附件一, 第 49 段)。随后, 几位证人描述的苏霍伊飞机开始了攻击, 炸死了几名援助工作者。最后, 飞机向幸存者进行了机枪扫射。

84. 幸存者描述了工作者在黑暗中被炸死炸伤所造成的恐慌景象。袭击至少持续了 30 分钟。那些能逃跑的人都逃到附近的地方, 几乎所有人都受了伤。袭击后, 救援人员赶到现场找到了一些尸体; 有些尸体被烧焦无法辨认, 另一些则四肢不全。第二天继续进行寻找尸体的工作。

<sup>5</sup> 2016 年 12 月 17 日, 秘书长任命的调查人道主义车队遭袭事件的委员会发布了其调查结果摘要, 可查阅 <https://dpa-ps.atavist.com/summary-of-un-headquarters-board-of-inquiry-report>。

85. 受害者称，关于这次袭击是空袭，得到了现场评估的证实，包括对现场的空投炸弹和火箭残余物进行的分析以及卫星图像，图像显示所产生的结果与使用空投炸弹相一致。<sup>6</sup>

86. 所使用的弹药特别适合攻击非武装车辆和个人。证人提供的照片表明，使用了由苏联生产的若干 S-5CB 无制导空对地杀伤人员火箭，至少一个携带数百个子弹药的 RBK-500 系列空投集束炸弹和至少两个 OFAB 250-270 无制导空投炸弹。叙利亚空军的武库拥有所有这些武器。装有火箭弹的 S-5CB 火箭旨在用于攻击软皮车辆和人员。对诸如车队等大范围目标使用子弹药也与针对分散车辆的有计划的攻击相一致。简易空投弹药和 OFAB 系列弹药适用于攻击个人、非武装车辆和建筑物。在飞机用尽所携带的所有武器后，他们似乎继续用枪支攻击，从而延长了攻击时间并给平民造成最大伤害。

87. 预警报告、卫星图像、证人证言、在现场收集的法医证据和会员国提供的的数据等，都符合使用空投弹药的特征，并说明叙利亚部队参与了攻击。袭击发生时，叙利亚苏-24M 攻击机和至少一架和可能两架叙利亚 Mi-8 攻击直升机正在 Orum al-Kubra 及其周围地区飞行。联盟飞机没有在攻击地点 50 公里范围内使用武器，攻击期间附近没有俄罗斯攻击机。

88. 所使用的弹药类型、所针对地区的广度和攻击的持续时间强有力地表明，这次攻击是由叙利亚空军精心策划并无情实施的，目的是阻止提供人道主义援助，并以援助工作者为目标，构成蓄意攻击人道主义救援人员、阻挠人道主义援助和针对平民的战争罪(见附件一，第 34-35 段)。

## 九. 收复阿勒颇东部

89. 11 月 27 日是亲政府部队在阿勒颇东部收复领土的开始。在控制北部各区后，亲政府部队将妇女与男子分开，后者受到检查，被确定为战斗人员的则被转移到拘留中心。叙利亚部队征召了其余的许多男子(见附件一，第 52 段)，并将约 5 000 人转移到 Jibreen 的一个营地。人们在 Jibreen 再次被检查，至少有一个人随后被捕。他的下落仍然不明(同上，第 28-30 段)。

90. 12 月初，由于境内流离失所者穿越政府控制地区，不断有关于侵权行为的报告。人道主义工作者及医疗和民防工作人员报告说，被认为是武装团体的支持者而遭到逮捕的风险加大。12 月初，亲政府部队逮捕了三名人道主义工作者和几名被认为是武装团体支持者的 Jabal Bedro 居民。12 月 13 日，一名医生和他的妻子在检查站被任意逮捕。继续有关于强行征募的报告；其中最大的一次征募发

<sup>6</sup> 见委员会网页上卫星应用项目的卫星图像分析：  
[www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx](http://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx)。

生在 12 月 11 日，大约有 200 名 19 至 25 岁的男子在与家人进入阿勒颇西部时被强行征兵。

91. 从 11 月下旬到 12 月疏散完成，一些亲政府部队进行了报复性处决。其中包括叙利亚士兵杀害自己亲属中的武装团体支持者的案件。一名武装团体指挥官的妻子和女儿在试图穿过阿勒颇西部时遭亲政府部队处决。12 月，自由叙利亚军战斗人员的亲属，包括妇女和老人在内，据称在 Bustan al-Qasr 被杀。

92. 在 12 月中旬疏散期间，亲政府部队拦下三名失去战斗能力的武装团体战斗人员，并给其戴上手铐。第四名武装团体战斗人员向试图逮捕他的士兵开枪射击，导致士兵射杀了所有四个人。在疏散期间，一些亲政府部队再次征募男子和甚至只有 16 岁的男孩(同上，第 53 段)，并抢劫被疏散者的财产，包括金钱、首饰、笔记本电脑和手机(同上，第 31 段)。

93. 12 月中旬，政府与武装团体达成疏散协定后，阿勒颇东部的居民被政府公共汽车和私人车辆运往伊德利卜，其他人则逃到阿勒颇西部。无人可以选择留在家里。作为协定的一部分，有 1,000 多人从 Foah 和 Kafraya 被疏散，前往阿勒颇、塔尔图斯、霍姆斯和拉塔基亚等省。由于交战各方同意出于战略原因，而不是出于平民的安全需要或军事上的必要性来疏散阿勒颇东部，造成数千人流离失所——阿勒颇撤离协定构成了强迫流离失所的战争罪(同上，第 50-51 段)。

## 十. 结论

94. 阿勒颇交战各方严重违反了国际人权法和国际人道主义法，构成了战争罪。由于亲政府部队和武装团体为控制阿勒颇东部展开拉锯战，使被卷入战斗的平民越来越容易一再遭到各方侵犯。

95. 政府部队及其盟友采取协调一致的空中行动，配合包围阿勒颇市东部的地面部队，采用残酷的手段迫使武装团体投降。围困同时剥夺了平民的行动自由，并阻止该市获得包括粮食和医疗用品在内的基本物品。亲政府部队在整个冲突期间广泛使用的这种“要么投降要么挨饿”策略给平民造成了灾难性后果，但成功收复了反对派控制的领土。

96. 虽然剥夺生活用品最终可能会迫使武装团体投降，但叙利亚和俄罗斯每天的空袭加快了投降速度，空袭夺去了数百人的生命，并摧毁了重要的民用基础设施。其中最主要是通过轰炸，摧毁或以其他方式使阿勒颇东部的所有医院在 12 月之前停止运转。委员会对事件的调查发现，医院附近根本不存在军事目标，也没有按照国际人道主义法的规定，在任何攻击之前发出警告。此外，同一医院在两个特定时限内(即 2016 年 9 月下旬至 10 月中旬和 11 月中旬)反复遭到轰炸，这一事实强有力地表明，亲政府部队实施了故意针对受保护物体、医务人员和运输工具的战争罪。

97. 在本报告所述期间进行的一次最令人发指的袭击中，一个人道主义车队遭到空袭，15名援助工作者被炸死，并摧毁了急需的援助物资。所使用的手段和方法以及攻击的情况表明，叙利亚部队企图故意阻挠人道主义援助的提供。根据国际人道主义法，援助工作者得到保护，不得成为袭击的对象。通过使用空投弹药，并在知晓人道主义援助工作者在该地点行动的情况下，叙利亚部队实施了故意攻击人道主义救援人员、阻挠人道主义援助和攻击平民的战争罪。

98. 据报告，指控叙利亚部队在围困阿勒颇东部期间使用氯的数量令人震惊。至少在两起事件中，叙利亚部队空投了氯弹，造成平民伤亡，其中许多是儿童。不论是否存在有效的军事目标，习惯国际人道主义法以及《禁止发展、生产、储备和使用化学武器及销毁此种武器的公约》都禁止使用氯，阿拉伯叙利亚共和国是该公约的缔约国。叙利亚部队继续使用氯的行为表明其公然无视国际法律义务，并构成不分青红皂白地攻击平民人口的战争罪。

99. 叙利亚和/或俄罗斯空军普遍使用集束弹药，造成平民伤亡。鉴于每个集束炸弹释放的大量子弹药，它们在人口密集地区如阿勒颇市的使用等于使用了一种本质上具有滥杀滥伤作用的武器，构成在平民居住区不分青红皂白地进行攻击的战争罪。

100. 政府部队围困阿勒颇市后不久，阿勒颇西部农村和阿勒颇东部的武装团体轰炸了谢赫·马克苏德区，其意图是对这里的主要居民库尔德人进行报复。一系列故意攻击造成平民伤亡，构成蓄意攻击平民的战争罪。

101. 在围困阿勒颇东部的整个期间，武装团体不断使用大多是无精确制导的武器，如火箭和迫击炮轰炸阿勒颇西部。最常用的武器之一是所谓的“地狱大炮”。所用武器的性质和多数被审查的案件中并不存在军事目标的情况给阿勒颇西部居民造成恐吓，违反了国际人道主义法的区分原则。因此，这些袭击构成不分青红皂白地攻击平民人口的战争罪。

102. 一些武装团体还犯下阻挠向受其控制的被围困人口发放人道主义援助物资的战争罪，大力剥夺公民的行动自由，使用平民作为人盾，进行任意逮捕，并将民用建筑用于军事目的。

103. 重新占领阿勒颇东部后进行了报复，其中最严重的是亲政府部队人员对武装团体丧失战斗能力的人员及其平民家庭成员进行了处决和谋杀。对涉嫌支持武装团体的人员，包括医生和人道主义工作者进行了任意逮捕，并强征男子和男孩入伍。

104. 在收复阿勒颇东部后，政府和武装团体达成了一项协议，对其余人口进行疏散。该协议仿照了以前的类似协议，包括2016年8月适用于达赖亚和莫阿达米耶的协议，根据其条件，平民不能选择留下。许多人被允许移居到阿勒颇西部，其他人则被运到伊德利卜，在那里，他们缺乏适足的生活条件，并害怕将来遭到攻击。这些协议构成强迫平民人口流离失所的战争罪。

## 十一. 建议

105. 委员会根据调查结果，提出以下建议。

106. 委员会建议交战各方：

(a) 遵守国际人权法和国际人道主义法规定的义务，包括避免一切不加区分和不成比例的攻击；

(b) 结束所有围困和相关战略，包括断绝粮食和阻挠获得人道主义援助，如主要影响平民的食品、水和药品；

(c) 避免将来达成为军事利益强迫平民流离失所的疏散协议；

(d) 对各自部队的行为进行调查，并公布调查结果。

107. 委员会建议阿拉伯叙利亚共和国政府：

(a) 为目前居住在政府控制区阿勒颇东部的被疏散人员提供充足和安全的生活条件；

(b) 对那些选择返回阿勒颇东部家园的人，允许其安全返回，并维护其所有财产权，使其不必担心遭到报复或歧视；

(c) 根据安理会第 2165(2014)号、第 2191(2014)号、第 2258(2015)号和第 2328(2016)号决议，确保被围困的社区能够获得人道主义援助；

(d) 停止对援助工作者和人道主义设施，包括医务人员、医院和运输工具的所有攻击。

108. 委员会建议武装团体：

(a) 将极端分子清除出去，并实施有效手段遵守国际法；

(b) 允许生活在其控制领土内的社区成员拥有行动自由，包括不使用平民作为人盾；

(c) 停止对平民居住区的狂轰滥炸。

109. 委员会建议国际社会：

(a) 促进确保问责的努力，包括根据大会第 71/248 号决议，积极支持设立公正和独立的国际机制，协助调查和起诉对 2011 年 3 月以来在阿拉伯叙利亚共和国境内犯下的国际法所列最严重罪行负有责任的人；

(b) 呼吁独立机制一旦运行，应将收集关于委员会在本报告中所述罪行的进一步证据和资料作为优先事项；

(c) 限制向交战各方供应武器，并限制这些武器的扩散，特别是集束弹药和燃烧武器，这类武器在平民居住区使用时具有滥杀滥伤作用，并且在敌对行动停止多年后仍对平民构成威胁；

(d) 促请各会员国加强有关平民保护的<sup>10</sup>国际法律框架，包括批准有关条约，例如《集束弹药公约》和《禁止或限制使用某些可被认为具有过分伤害力或滥杀滥伤作用的常规武器公约》；

(e) 支持继续进行旨在结束叙利亚冲突的政治进程和谈判，特别是秘书长叙利亚问题特使为根据安全理事会第 2254(2015)号决议规定的路线图举行政治会谈而做出的努力。

## 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.<sup>1</sup> With this determination, the Commission applied international humanitarian law, including article 3 common to the four Geneva Conventions of 12 August 1949 (“Common Article 3”), in its assessment of the actions of the warring parties during hostilities in Aleppo between 21 July 2016 and 22 December 2016.

#### 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*.<sup>2</sup> The specific applicability of each regime is briefly reviewed below.

#### C. International human rights law

3. At all times relevant to this report the Syrian Arab Republic was party to the major United Nations human rights treaties and a number of optional protocols.<sup>3</sup> The Syrian

<sup>1</sup> See, e.g., ICTY, *The Prosecutor v. Dusko Tadic*, Judgment, IT-94-1-T, 7 May 1997, at paras. 561-568; see also ICTY, *The Prosecutor v. Fatmir Limaj*, Judgment, IT-03-66-T, 30 November 2005, para. 84.

<sup>2</sup> See *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996 [hereinafter “ICJ Nuclear Weapons”]. The International Court of Justice ruled that IHL is *lex specialis* vis-à-vis IHRL during armed conflicts. The parties must therefore abide by the legal regime which has a more specific provision on point. The analysis is fact specific and therefore each regime may apply, exclusive of the other, in specific circumstances. The Human Rights Committee generally concurs with this view as set out in the General Comment No. 31 to the ICCPR. “The Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.”

<sup>3</sup> The International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights were ratified by the Syrian Arab Republic in 1969, the same year it ratified the Convention on the Elimination of All Forms of Racial Discrimination. The Syrian Arab Republic is also party to the Convention on the Elimination of Discrimination against Women which it ratified in 2003, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment in 2004 and the Convention on the Rights of Child in 1993. The Syrian Arab Republic ratified the Optional Protocol to the Convention on the Rights of Child on the involvement of children in armed conflict in 2003. The Syrian Arab Republic has not ratified the Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

Government did not declare a state of emergency nor otherwise seek to derogate from any of the aforementioned obligations which consequently remained in effect throughout the battle for control over Aleppo city, irrespective of the applicability of other legal regimes.<sup>4</sup>

4. All branches of the Syrian Government were therefore bound to respect, protect, promote and fulfil the human rights of all persons within its jurisdiction. The obligation included the right to afford an effective remedy to those whose rights were violated including the provision of reparations and to investigate and bring to justice perpetrators of particular violations.<sup>5</sup> The Syrian Arab Republic was also bound by relevant rules of IHRL which form a part of customary international law, such as the absolute prohibition against torture.

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.<sup>6</sup> 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.<sup>7</sup> Its applicability had been triggered when hostilities met the threshold criteria of “armed conflict.”<sup>8</sup> IHL comprises the four Geneva Conventions of 12 August 1949 as well as its Protocols I and II and an array of other instruments and customary principles that protect

<sup>4</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 178, paras. 105-106, “[t]he protection offered by human rights conventions does not cease in case of armed conflict.” See also *ICJ Nuclear Weapons*, statements concerning IHL as *lex specialis*, supra note 2, at para. 25.

<sup>5</sup> See Human Rights Committee, General Comment No. 31 on The Nature of the General Legal Obligation Imposed on State Parties to the Covenant (2004), at paras. 15-19. In this General Comment, the Human Rights Committee considered that the duty to bring perpetrators to justice attaches in particular to violations that are criminal under domestic or international law, torture and similar cruel, inhuman and degrading treatment, summary and arbitrary killing and enforced disappearance; see also the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in December 2005, and the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (which were recognised in a consensus resolution of the Commission on Human Rights in 2005).

<sup>6</sup> For a more expansive view of the application of IHRL, see Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford, Oxford University Press, 2006). To similar effect, see Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka, 31 March 2011, para. 188, available at [http://www.un.org/News/dh/infocus/Sri\\_Lanka/POE\\_Report\\_Full.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf).

<sup>7</sup> “[I]t is well settled that all parties to an armed conflict, whether States or non-State actors, are bound by international humanitarian law, even though only States may become parties to international treaties.” See *Prosecutor v. Sam Hinga Norman*, Special Court for Sierra Leone, case SCSL-2004-14-AR72(E) (31 May 2004), at para. 22. Common Article 3 of the Geneva Conventions itself states that “each party . . . shall be bound”.

<sup>8</sup> The Commission first determined the existence of a non-international armed conflict in the Syrian Arab Republic beginning in February 2012. See, e.g., A/HRC/21/50.



civilians and other categories of persons from deliberate targeting and seek to limit the effects of armed conflict on the most vulnerable.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>

8. As the Security Council underlined in Resolution 1325 (2011), it is essential for all States to apply fully the relevant norms of IHL and IHRL to women and girls, and to take special measures to protect women and girls from gender-based violence during armed conflict.<sup>12</sup>

## E. Violations

### The right to life

9. Various treaties, resolutions, conventions, and declarations adopted by United Nations bodies contain provisions relating to specific types of violations of the right to life. Under IHRL, the right to life is most prominently recognised in article 3 of the Universal Declaration of Human Rights, noting that “[e]veryone has the right to life, liberty and security of person.” Article 6 of the International Covenant on Civil and Political Rights (“ICCPR”) also recognises the inherent right of every person to life, noting that the right “shall be protected by law” and that “no one shall be arbitrarily deprived of life.” The right to life of persons under the age of 18 and the obligation of States to guarantee the enjoyment of this right to the maximum extent possible are both specifically recognized in article 6 of the Convention on the Rights of the Child.

<sup>9</sup> One repository of the principles of customary IHL can be accessed in *Customary International Humanitarian Law* (3 vols.), by Jean-Marie Henckaerts and Louise Doswald-Beck for the International Committee of the Red Cross, (Cambridge, Cambridge University Press, 2005) (ICRC Study).

<sup>10</sup> The Syrian Arab Republic is a party to the following treaties: The Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare (1925); the Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (1929); the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) and its Protocol (1954); the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989).

<sup>11</sup> See supra note 8.

<sup>12</sup> See Security Council resolution 1820 (2008).

10. Moreover, the ICCPR provides that exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify derogation from the right to life and security of person.<sup>13</sup>

### **The right to food**

11. With respect to right to food, the legal obligations of states are set out in the International Covenant on Economic, Social and Cultural Rights (“ICESCR”).<sup>14</sup> The Committee on Economic, Social and Cultural Rights in General Comment No. 12 also defined the obligations that States parties have to fulfil in order to implement the right to adequate food at the national level. The obligation to respect existing access to adequate food requires states not to take any measures that result in preventing such access; the obligation to protect requires measures by the state to ensure that enterprises or individuals do not deprive individuals of their access to adequate food; the obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people’s access to and utilisation of resources and means to ensure their livelihood, including food security; and whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly. This obligation also applies for persons who are victims of natural or other disasters.

### **The right to water**

12. The human right to water is explicitly and widely recognised through several international human rights treaties, declarations, and numerous other standards.<sup>15</sup> As noted in General Comment No. 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), “[t]he human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.” One-hundred and twenty-two UN member states acknowledged the right to water in GA resolution A/64/292.<sup>16</sup> Intentionally attacking, destroying, removing or otherwise rendering useless objects which are indispensable to the survival of a besieged civilian population, including water stations, is prohibited under IHL.<sup>17</sup>

### **Education**

13. As defined by General Comment No. 13 of the United Nations Committee on Economic, Social and Cultural Rights, “education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.”

<sup>13</sup> International Covenant on Civil and Political Rights, United Nations, *Treaty Series*, vol. 999, p. 171 [hereinafter “ICCPR”], at art. 4, para. 2.

<sup>14</sup> International Covenant on Economic, Social and Cultural Rights, United Nations, *Treaty Series*, vol. 993, p. 3 [hereinafter “ICESCR”], at art. 2.

<sup>15</sup> See, e.g., Human Rights Council resolution 18/1 on the human right to safe drinking water and sanitation.

<sup>16</sup> General Assembly resolution 64/292 on the human right to water and sanitation.

<sup>17</sup> International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, 2005, Volume I: Rules [hereinafter “ICRC Rule”], at Rule 54.

14. The legal obligations of Governments concerning the right to education consist of: (i) the duties found in article 2.1 of the ICESCR; and (ii) the more specific obligations to recognise, respect, protect and fulfil this and other rights. The obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide.

15. Moreover, under IHL, schools may only be the object of attack by warring parties when used for military purposes, and such attacks require prior warning when the school is located in a densely populated civilian area.<sup>18</sup>

### **Unlawful killing**

#### *(a) Arbitrary deprivation of life*

16. IHRL strictly prohibits the arbitrary taking of life, a restriction that bars state actors from killing a person outside a legitimate and legal basis for doing so. Outside of situations of armed conflict, those legitimate bases are twofold. First, when a fully-fledged judicial process in line with international standards has been followed, or second, in the most narrow of circumstances, where a person's life is under imminent threat.

17. Moreover, a state-sponsored deprivation of life will be arbitrary in the legal sense unless it is both necessary and proportionate. Therefore, when a state actor employs lethal force it must be in order to protect life (i.e., it must be proportionate) and there must also be no other means available, such as capture or incapacitation, to curtail that threat to life (i.e., it must be necessary). Only under these limited circumstances could the resort to lethal force by the State be deemed legal.

18. In situations of armed conflict, whether the taking of life is considered arbitrary is determined by the application of the *lex specialis*, namely IHL.<sup>19</sup> Any deprivation of life therefore deemed unlawful under IHL and does not meet the criteria set out above also constitutes a violation of the right to life.

#### *(b) Murder as a war crime*

19. In specific circumstances, killing another person during an armed conflict constitutes the war crime of murder. The war crime of murder is a recognised offense under customary international law and during a non-international armed conflict has been codified in the Rome Statute.<sup>20</sup> Murder is committed upon the intentional killing of a protected person in the context of an armed conflict when the perpetrator is aware of the circumstances of the victim and the conflict itself.

### **Attacks on protected persons and objects; indiscriminate attacks**

20. IHL prohibits the intentional targeting of civilians in both international and non-international armed conflicts. Parties to the conflict in Aleppo city had an obligation to distinguish at all times between those taking part in hostilities and the civilian population, and to only direct attacks against military objectives. Referred to as the "principle of distinction", this principle has been recognised as "intransgressible" under customary international law.<sup>21</sup>

<sup>18</sup> Ibid. at Rule 20.

<sup>19</sup> See *ICJ Nuclear Weapons*, supra note 2, at para. 79.

<sup>20</sup> General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, at art. 8 (2) (c) (i)-1.

<sup>21</sup> *ICJ Nuclear Weapons*, supra note 2, at para. 25.

21. Attacks on places where both civilians and fighters may be found are prohibited if they are not directed at a specific military objective, or if they use methods or means of combat which cannot be directed at a specific military objective.<sup>22</sup> It is prohibited to launch an attack which may be expected to cause incidental loss of civilian life, injury to civilians, and/or damage to civilian objects which would be excessive in relation to the anticipated concrete and direct military advantage.<sup>23</sup>

22. Customary IHL establishes that all “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.”<sup>24</sup> Each party to the conflict must, to the extent feasible, avoid locating military objectives within or near densely populated areas.<sup>25</sup> Each party to the conflict must, to the extent feasible, remove civilian persons and objects under its control from the vicinity of military objectives.<sup>26</sup>

23. Customary IHL also incorporates specific protections for places of worship, including mosques. It is prohibited to commit an act of hostility directed against places of worship which constitute the cultural or spiritual heritage of peoples.<sup>27</sup>

### Arbitrary arrest and unlawful detention

24. Article 9 of the ICCPR prohibits arbitrary arrest or detention of individuals, providing that that “no one shall be deprived of liberty except on such grounds in accordance with such procedures as are established by law.” Persons arrested are to be informed at the time of arrest of the reasons for the arrest and promptly informed of any charges.<sup>28</sup> Anyone arrested or detained on a criminal charge is to be brought promptly before a judge or other officer authorised by law to exercise judicial power and is entitled to trial within a reasonable period or release.<sup>29</sup> Persons have a right to take proceedings before a court for the purposes of reviewing the lawfulness of detention and to be released if the detention is unlawful.<sup>30</sup> The term “arbitrary” must be considered in terms of appropriateness, proportionality, and reasonableness.<sup>31</sup> Lawfulness of detention is to be considered as both lawfulness under domestic law and lawfulness under international law.<sup>32</sup>

25. The Commission notes the conditions of detention provided for in the Syrian Arab Republic’s domestic law. Article 4 of the State of Emergency Act authorises the Military Governor to impose, through oral or written orders, “restrictions on the rights of people to the freedom of assembly, residence, transport, and movement, and to arrest suspected people or those threatening public security on a temporary basis, and to authorize

<sup>22</sup> ICRC Rule 12.

<sup>23</sup> Ibid. at Rule 14.

<sup>24</sup> Ibid. at Rule 22.

<sup>25</sup> Ibid. at Rule 23.

<sup>26</sup> Ibid. at Rule 24.

<sup>27</sup> Ibid. at Rule 38.

<sup>28</sup> ICCPR, art. 9(2).

<sup>29</sup> Ibid., art. 9(3).

<sup>30</sup> The ICCPR also provides for a right of compensation for unlawful arrest or detention.

<sup>31</sup> *A v Australia*, Human Rights Committee, Communication No. 560/1993, CCPR/C/59/D/560/1993, para. 9.2. In considering unlawful remand, the Committee has also highlighted that factors of inappropriateness, injustice and lack of predictability that may render arbitrary an otherwise lawful detention; see *Van Alphen v The Netherlands*, Human Rights Committee, Communication No.305/1988, CCPR/C/39/D/305/1988.

<sup>32</sup> See, e.g., *A v Australia*, Human Rights Committee, Communication No. 560/1993, CCPR/C/59/D/560/1993, at para.9.5.

investigations of persons and places at any time, and to allow any person to perform any task.”<sup>33</sup>

26. The State of Emergency Act also provides for the detention of suspects for “crimes committed against State security and public order” and “crimes committed against public authorities”.<sup>34</sup> The Commission observes that these crimes do not appear to be further defined in the Syrian Arab Republic’s domestic laws. The State of Emergency Act also permits the security forces to hold suspects in preventive detention without judicial oversight for indefinite periods.

27. The Commission observes that in April 2011, the Syrian Arab Republic’s Code of Criminal Procedure – which previously required suspects to be brought before a judicial authority within 24 hours of arrest or else be released<sup>35</sup> – was amended to allow suspects to be held for up to seven days, pending investigation and the interrogation of suspects for certain crimes. This period is renewable up to a maximum of 60 days.<sup>36</sup>

### **Enforced disappearance**

28. While the Syrian Arab Republic is not party to the specialised convention concerning enforced disappearances,<sup>37</sup> it is a party to the ICCPR which also prohibits the practice of enforced disappearance.<sup>38</sup> Such action violates a person’s right to recognition as a person before the law,<sup>39</sup> to liberty and security and freedom from arbitrary detention, including the right to be brought promptly before a judge or other official for review of the lawfulness of detention. Disappearance may also be associated with torture and other forms of cruel, inhuman or degrading treatment and extrajudicial execution, in violation of the right to life, prohibition on torture and other forms of cruel, inhuman or degrading treatment.<sup>40</sup> enforced disappearances may also lead to violations of the right to life.<sup>41</sup>

29. Customary IHL also prohibits arbitrary deprivation of liberty<sup>42</sup> and require parties to the conflict to keep a register of persons deprived of their liberty,<sup>43</sup> respect detainees’ family life, to permit detainees to receive visitors, especially near relatives to the degree practicable and allow correspondence between detainees and their families.

30. Parties to a conflict must take all feasible measure to account for persons reported missing as a result of the conflict and efforts must be made to provide family members with any information the Party has on their fate. The practice of enforced disappearance also may be a gateway to other violations such as torture, murder or extra judicial executions. The combined effect of particular IHL obligations leads to the conclusion that the practice

<sup>33</sup> While the state of emergency was lifted on 21 April 2011, the Government did not abolish it, and it remains in force under Syrian domestic law.

<sup>34</sup> State of Emergency Act, art. 6

<sup>35</sup> Code of Criminal Procedure, Law No. 112 of 1950 as amended, arts. 104 (1) and (2).

<sup>36</sup> Legislative Decree No. 55/2011, amending article 17 of the Code of Criminal Procedure.

<sup>37</sup> International Convention on the Protection of all Persons from Enforced Disappearance, 2006.

<sup>38</sup> See General Comment No. 31, supra note 5, at para. 18.

<sup>39</sup> ICCPR, at art. 16.

<sup>40</sup> The Human Rights Committee has recognised that safeguards against torture include having provisions against incommunicado detention, granting detainees suitable access to persons such as doctors, lawyers and family members, ensuring detainees are held in places that are officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends. See Human Rights Committee, General Comment No. 20 (1992) on art. 7 of the ICCPR, at para. 11.

<sup>41</sup> ICCPR, at art. 6.

<sup>42</sup> ICRC Rule 99.

<sup>43</sup> ICRC Rule 123.

of disappearance is prohibited by customary IHL. Integral to the finding of a crime of “enforced disappearance” is a refusal to acknowledge the arrest, detention or abduction, or to give information on the fate or whereabouts of such person or persons.<sup>44</sup>

### Pillaging

31. By definition pillage (or plunder) is theft within the context of, and in connection with, an armed conflict. The prohibition of pillage is a long-standing rule of customary and treaty-based international law. The pillaging of personal belongings of persons deprived of their liberty amounts to a war crime.<sup>45</sup>

### Destruction of personal property

32. International human rights law protects an individual’s home from interference by the State. Article 17 of the ICCPR prohibits arbitrary or unlawful interference with a person’s home or correspondence. The Human Rights Committee has interpreted this provision to mean that no interference can take place except in cases envisaged by the law, and that law must comport with the objectives of the ICCPR.<sup>46</sup> Article 11 of the ICESCR commits States Parties to providing everyone “an adequate standard of living for himself and his family, including housing, and to the continuous improvement of living conditions.”

### 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.<sup>47</sup> The use of starvation of the civilian population as a method of warfare is prohibited.<sup>48</sup>

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.<sup>49</sup> Civilian humanitarian relief personnel must be respected and protected and are specifically protected against attack by the principle of distinction.<sup>50</sup> Objects used for humanitarian relief operations such as humanitarian aid

<sup>44</sup> International Criminal Court (ICC), *Elements of Crimes*, 2011, at art. 7(1)(i).

<sup>45</sup> ICRC Rule 122. See also the *Jelisić* case before the International Criminal Tribunal for the former Yugoslavia, where the accused was charged under art. 3(e) of the Tribunal’s Statute with the plunder of private property. The defendant pled guilty to the offence of having stolen money, watches, jewellery, and other valuables from detainees upon their arrival at Luka camp in Bosnia and Herzegovina. ICTY, *Jelisić* case, Initial Indictment and Judgment at §280.

<sup>46</sup> Human Rights Committee, General Comment No. 16 to the ICCPR, at art. 3.

<sup>47</sup> ICRC Rule 55. Moreover, through its resolutions 2165 (2014), 2191 (2014), and 2258 (2015), the Security Council has authorised the unconditional delivery of humanitarian assistance including medical assistance throughout the Syrian Arab Republic to besieged and hard-to-reach communities countrywide.

<sup>48</sup> ICRC Rule 53.

<sup>49</sup> *Ibid.* at Rule 56.

<sup>50</sup> *Ibid.* at Rules 1 and 31.

convoys must be respected and protected.<sup>51</sup> Attacking, destroying, removing or otherwise rendering useless objects which are indispensable to the survival of a besieged civilian population is further prohibited.<sup>52</sup>

### **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.<sup>53</sup> Medical personnel lose their protection if act outside their humanitarian function, for example by taking a direct participation in hostilities.<sup>54</sup> Punishing an individual for performing his/her medical duties compatible with medical ethics, such as committing acts of reprisal on doctors, is further prohibited.<sup>55</sup> 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,<sup>56</sup> while customary IHL requires that parties to a non-international armed conflict may only treat injured persons differently based on medical grounds.<sup>57</sup>

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.<sup>58</sup> 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.<sup>59</sup>

39. Attacks directed against medical personnel and objects displaying the distinctive emblems of the Geneva Conventions in conformity with international law are prohibited.<sup>60</sup> 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.<sup>61</sup> 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.<sup>62</sup>

<sup>51</sup> Ibid. at Rule 32.

<sup>52</sup> Ibid. at Rule 54.

<sup>53</sup> Ibid. at Rule 25.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid. at Rule 26.

<sup>56</sup> See Article 3 Common to the Geneva Conventions, available in, e.g., International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 at Art. 3.

<sup>57</sup> ICRC Rule 110.

<sup>58</sup> Ibid. at Rule 28.

<sup>59</sup> Ibid. at Rule 29.

<sup>60</sup> Ibid. at Rule 30.

<sup>61</sup> Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, 17 October 1987, at ¶4742, available at [www.loc.gov/r/frd/Military\\_Law/pdf/Commentary\\_GC\\_Protocols.pdf](http://www.loc.gov/r/frd/Military_Law/pdf/Commentary_GC_Protocols.pdf). The Commission has determined that “Government forces targeted hospitals and medical clinics in areas not under their control” in Aleppo city. See A/HRC/31/68, at para. 60.

<sup>62</sup> ICRC Rule 28.

## Prohibited weapons

### (a) *Chemical weapons*

40. The Syrian Arab Republic ratified the Chemical Weapons Convention (CWC) in 2013, following findings by the Organisation for the Prohibition of Chemical Weapons that Government forces had used chlorine bombs at an earlier phase in the conflict.

41. The use of chemical weapons are prohibited in both international and non-international conflicts as they cause superfluous injury and unnecessary suffering and are by their very nature indiscriminate because the effects cannot be limited in time and space.<sup>63</sup>

42. The use of weapons in densely-populated areas which are by nature indiscriminate and whose effects cannot be limited as required by international humanitarian law is prohibited.<sup>64</sup> As the dispersal pattern of gas found in chlorine bombs cannot be controlled, their use throughout residential areas in eastern Aleppo city amounts to the war crime of indiscriminate attacks in a civilian populated area. Certain state practice further prohibits the use of chemical weapons as being of a nature to cause superfluous injury or unnecessary suffering.<sup>65</sup>

### (b) *Cluster munitions*

43. Cluster munitions are defined as “a conventional munition that is designed to disperse or release explosive sub-munitions each weighing less than 20 kilograms, and includes those explosive sub-munitions.”<sup>66</sup> Such weapons typically have a wide dispersal pattern and high dud rate which continues to endanger civilians years after a cessation of hostilities.

44. Neither the Syrian Arab Republic nor the Russian Federation are states party to the Convention on Cluster Munitions. Nevertheless, the use of cluster munitions in civilian-populated, urban areas violates customary IHL principles of distinction<sup>67</sup> and proportionality,<sup>68</sup> due to the wide dispersal pattern and high dud rate noted above. When used in densely-populated areas such weapons are inherently indiscriminate.<sup>69</sup>

### (c) *Incendiary munitions (including incendiary cluster munitions)*

45. The anti-personnel use of incendiary weapons is prohibited, unless it is not feasible to use a less harmful weapon to render a person hors de combat.<sup>70</sup> Particular care must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians, and damage to civilian objects when incendiary weapons are used in armed conflict.<sup>71</sup>

<sup>63</sup> Ibid. at Rule 74.

<sup>64</sup> Ibid. at Rules 12 and 71.

<sup>65</sup> Ibid. at Rule 70.

<sup>66</sup> Convention on Cluster Munitions, CCM/7, Dublin, 30 May 2008, at art. 2, available at [http://www.unog.ch/80256EDD006B8954/\(httpAssets\)/CE9E6C29A6941AF1C12574F7004D3A5C/\\$file/ccm77\\_english.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/CE9E6C29A6941AF1C12574F7004D3A5C/$file/ccm77_english.pdf).

<sup>67</sup> ICRC Rules 1 and 7.

<sup>68</sup> Ibid. at Rule 14

<sup>69</sup> Ibid. at Rules 11, 12, and 71. See also the United Nations Sub-Commission on Human Rights, Res. 1996/16 and UN Secretariat, Existing rules of international law concerning the prohibition or restriction of use of specific weapons, Survey, at § 380.

<sup>70</sup> ICRC Rule 85.

<sup>71</sup> ICRC Rule 84.



### Human shields

46. The use of human shields has been defined as “the placement or detention of persons in areas where they may be exposed to combat operations, for the purpose of rendering certain areas or activities immune from military operations or armed attack . . .”<sup>72</sup> Notably “[t]he prohibition of the use of human shields is not dependent on actual harm or attack,”<sup>73</sup> but only that the perpetrator must intend to shield a military objective from attack or shield, favour, or impede military operations.<sup>74</sup>

47. The deliberate violation of the obligation to take all feasible precautions against the effects of attacks is often related to the use of human shields. With respect to non-international armed conflicts, such practice is prohibited by the requirement that 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.<sup>75</sup> In addition, international case law has confirmed the obligation under international human rights law to take positive steps to protect life.<sup>76</sup> While IHRL does not explicitly prohibit the use of human shields, this practice would constitute, among other violations, a violation of the right to not be arbitrarily deprived of the right to life.

### Use of civilian buildings for military purposes

48. Warring parties are required, to the extent feasible, to avoid locating military objectives within or near densely populated civilian areas.<sup>77</sup>

### Treatment and Care of the Wounded and Sick

49. A “double-tap” airstrike 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 bodies of the victims of the first attack. Double-tap airstrikes may therefore violate the IHL obligation to collect and care for the wounded and sick.<sup>78</sup> The presence of humanitarian aid workers carrying out their humanitarian function during a “double-tap” airstrike may also constitute a violation of the obligations to respect and protect civilian humanitarian relief personnel,<sup>79</sup> as well as to respect and protect objects used for humanitarian relief operations such as humanitarian aid convoys.<sup>80</sup>

### 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.<sup>81</sup>

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

<sup>72</sup> ICTY, *Prosecutor v. Radovan Karadžić*, Judgement - Four volumes compiled, IT-95-5/18-T, 24 Mar 2016, at p. 199, para. 525 (internal citations omitted).

<sup>73</sup> Ibid. (internal citations omitted).

<sup>74</sup> Ibid. at para. P. 199-200, para 526 (internal citations omitted).

<sup>75</sup> ICRC Rule 22.

<sup>76</sup> See, e.g., Ibid. at Commentary to Rule 97.

<sup>77</sup> Ibid. at Rule 23.

<sup>78</sup> Ibid. at 110; see also Common Art. 3.

<sup>79</sup> Ibid. at Rules 1 and 31.

<sup>80</sup> ICRC Rule 32.

<sup>81</sup> Ibid. at Rule 129(b).

to internally displaced persons within their jurisdiction.<sup>82</sup> 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.<sup>83</sup>

### **Forced conscription**

#### *(a) Adults*

52. The Constitution of the Syrian Arab Republic in its article 46 states that “[c]ompulsory military service shall be a sacred duty and is regulated by a law” for all men over the age of 18 years. Syrian women are not required to perform compulsory service, though they may volunteer to serve. Conscientious objection to military service is based on the right to freedom of thought, conscience and religion, set out in the Universal Declaration of Human Rights and the ICCPR.<sup>84</sup> The right to conscientious objection to military service is a right implicitly derived from an interpretation of the right to freedom of thought, conscience and religion, and the Human Rights Committee has interpreted the right to freedom of thought, conscience, and religion and its application to in relation to conscientious objection to military service.<sup>85</sup> Forced conscription may therefore violate this right.

#### *(b) Minors*

53. The Convention on the Rights of the Child (“CRC”), to which the Syrian Arab Republic is a state party, generally defines a child as any person under the age of 18.<sup>86</sup> With respect to armed conflict, however, the Convention draws its language from the Protocols to the Geneva Conventions, and consequently sets the lower age of 15 as the minimum for recruitment or participation in armed forces, though, when between 15 and 18 years, states parties shall endeavour to give priority to those children who are oldest.<sup>87</sup> The Optional Protocol to the CRC, which the Syrian Arab Republic adopted in 2003, sets – without reservation – 18 years the minimum age for direct participation in hostilities, for recruitment into armed groups, and for compulsory recruitment by governments.

<sup>82</sup> See Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement, Annex, Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, at Principle 3.

<sup>83</sup> *Ibid.* at Principle 7(2).

<sup>84</sup> Universal Declaration of Human Rights, 10 December 1948, 217 A (III), at art. 18; see also ICCPR at art. 18.

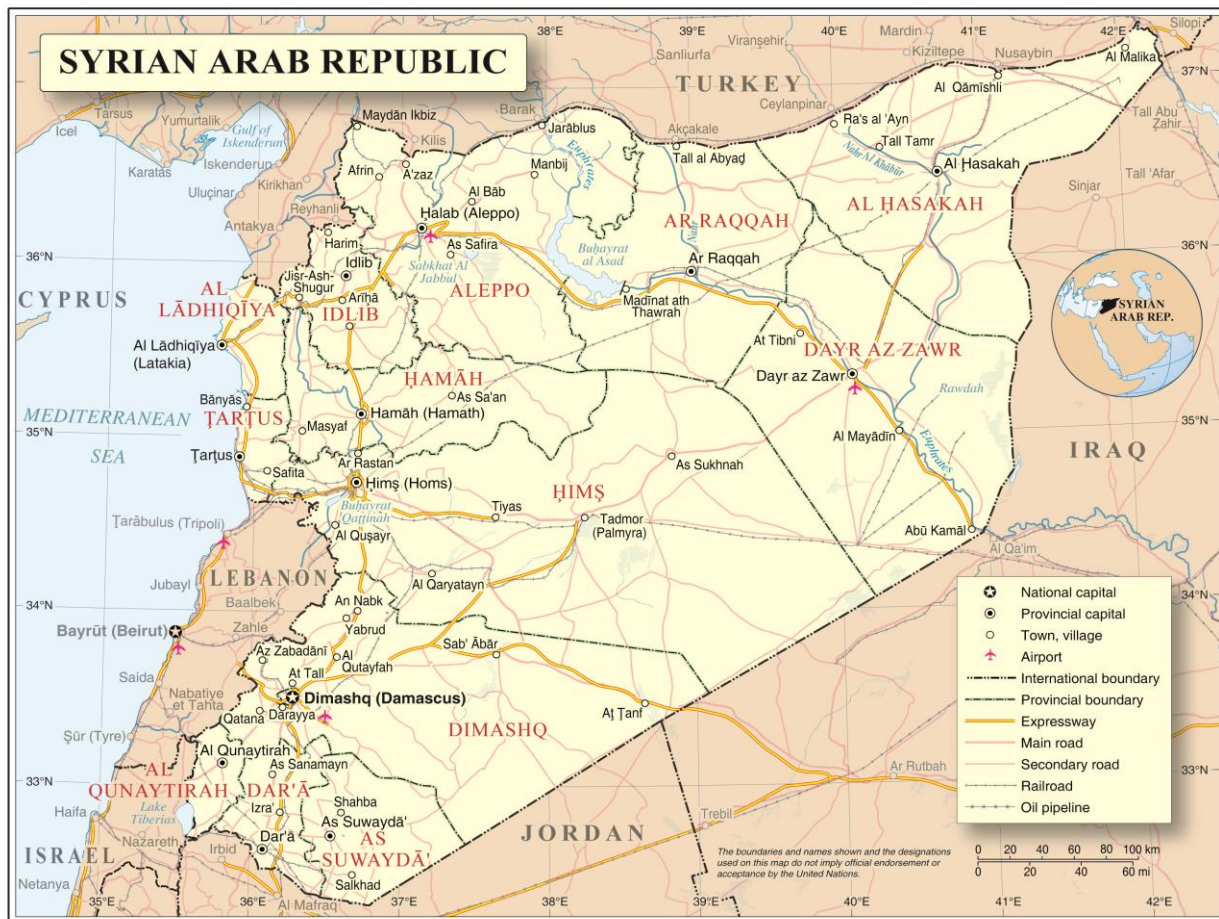
<sup>85</sup> In General Comment No. 22 (1993), at para. 11, the Human Rights Committee stated “[t]he Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief.”

<sup>86</sup> Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49, at art. 1.

<sup>87</sup> *Ibid.* at art. 38(3).

Annex II

Map of the Syrian Arab Republic

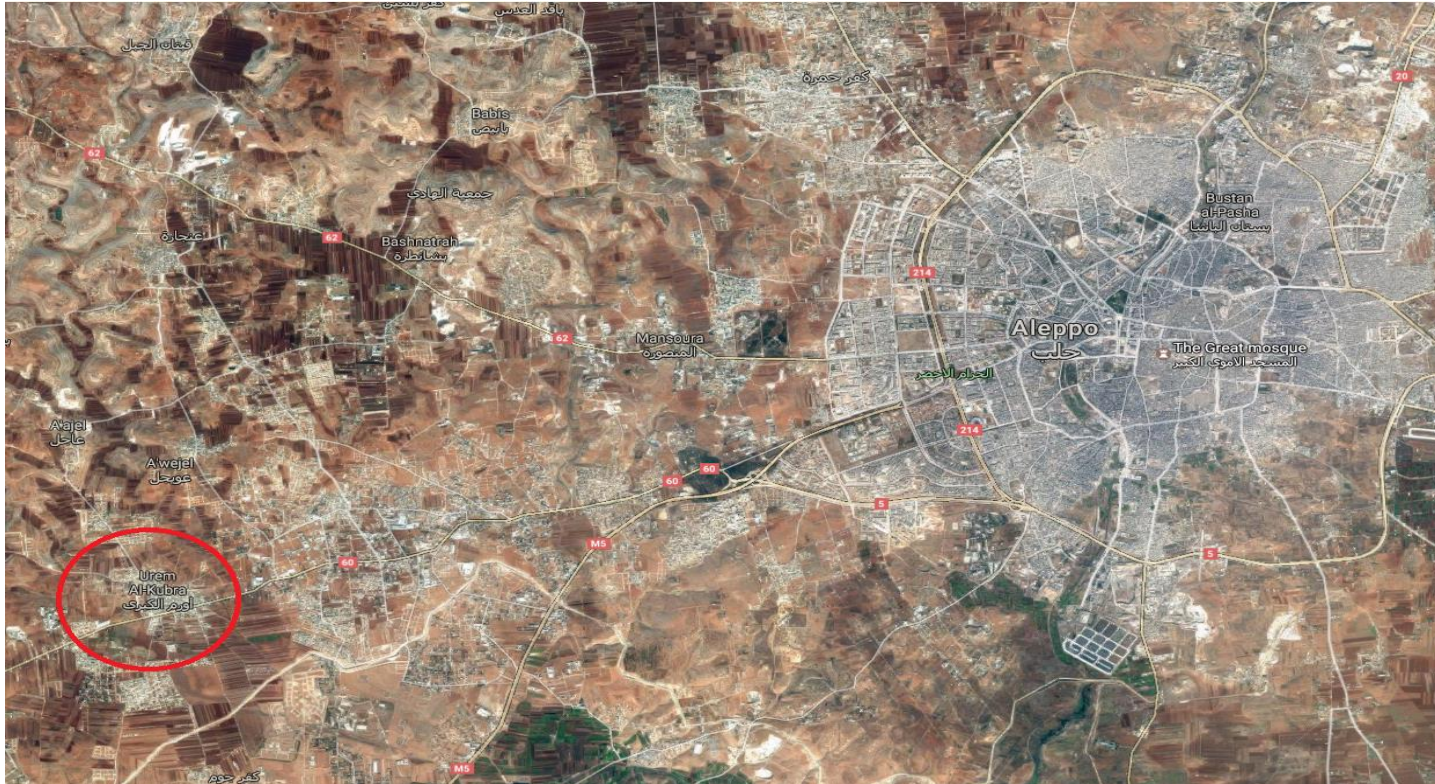


Map No. 4204 Rev. 3 UNITED NATIONS  
April 2012

Department of Field Support  
Cartographic Section

Annex III

Map of Aleppo city and environs



# Annex IV

## Map of Aleppo city

