

Silent Sectarian Cleansing

Iranian Role
in Mass Demolitions
and Population
Transfers in Syria

Foreword

This report focuses on two specific war crimes and crimes against humanity committed repeatedly in certain parts of Syria since March 2011, namely the unlawful destruction and appropriation of civilian property and the forcible displacement and transfer of civilian population.

Together they constitute what appears to be a state policy of sectarian cleansing, driven by a combination of mafia-style war profiteering linked to the inner circle of the Syrian regime and a Shi'atisation programme pushed and financed by the Iranian regime and implemented with the help of Hezbollah Lebanon.

There has been a lot of talk among Syrians about these two subjects over the past two years. But not many people, to our knowledge, are working on documenting and analysing them in a systematic and legally useful way. The majority of what is published and circulated in this regard is often mere rumours, unconfirmed reports or inconsistent information.

The primary aim of this report, therefore, is to raise the alarm on what appears to be a very serious issue for the future of Syria. The report does not claim or aim to provide detailed evidence of specific instances of the crimes in question. It simply provides a few examples and indicators that would need further examination and investigation by specialised bodies. We hope that the legal framework and discussion provided will stimulate and provide some guidance for such efforts.

This report was produced by the Research and Advocacy Team of the campaign group *Naame Shaam*.

Naame Shaam is a group of Iranian, Syrian and Lebanese activists that focuses on uncovering the role of the Iranian regime in Syria. For more details, see www.naameshaam.org.

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Executive Summary

This report argues that the grossly careless and malicious destruction and appropriation of civilian property and the forcible displacement and transfer of civilian population taking place in Syria since March 2011 amount to war crimes and crimes against humanity as defined by international humanitarian law.

It further argues that both types of crime appear to be part of a systematic policy of sectarian cleansing being carried out in certain parts of the country.

The policy appears to be driven by a combination of mafia-style war profiteering linked to the inner circle of the Syrian regime and a Shiatisation programme pushed and financed by the Iranian regime.

The report focuses on certain parts of Syria, such as Homs and Damascus, and argues that the aim of destroying and reconstructing these areas is to create loyalist zones and strategic military corridors. The task of conquering and securing them was assigned primarily to sectarian, Iranian-controlled militias (Hezbollah Lebanon, Iraqi and Afghan Shia militias, etc.), which were seen as more reliable and better organised than the regular Syrian army.

The ultimate aim of this scheme, which arguably amounts to sectarian cleansing and to a foreign occupation, appears to be securing the Damascus–Homs–Coast corridor along the Lebanese border in order to both provide a geographical and demographic continuity of regime-held areas and secure arms shipments to Hezbollah in Lebanon, while at the same time cutting off those of the rebels coming from or through eastern Lebanon.

Indeed, the main reason behind the Iranian regime's uncompromising determination to save Bashar al-Assad's regime and take over control at any cost is to maintain its ability to ship arms to Hezbollah in Lebanon via Syria. This will ensure maintaining a strong deterrent against any possible Israeli and/or Western attack on Iran's nuclear facilities. This 'line of defence' is meant to secure the Iranian regime's survival. If the Assad regime falls, Iranian arms shipments to Hezbollah are likely to stop and Hezbollah would no longer be the threatening deterrence against Israel that it is now.

The Iranian regime would therefore feel more vulnerable and would not be able to negotiate from a strong

position during nuclear talks with Western powers, as it is doing now. It may even have to give up its nuclear dreams once and for all. That is why Iran has been mobilising all available resources (human, economic, military) to achieve the strategic aim of building nuclear bombs without fearing a massive military retaliation on its soil.

The authors review previous reports documenting the destruction in Syria, including those produced by the United Nations Institute for Training and Research (Unitar), and conclude that further research is needed to contextualise the figures and maps used in such reports against reliable news reports and witness statements about what was happening at the time and in the attacks' aftermath. This is necessary to establish who the perpetrators were and whether or not the destruction was justified by the 'necessities' of the war as defined by international law.

They also review reports on planned demolitions, including a 2014 report by Human Rights Watch (HRW) titled *"Razed to the Ground: Syria's Unlawful Neighborhood Demolitions in 2012-2013."* The authors agree with HRW's finding that the cases of demolition documented in the report were in violation of international humanitarian law because they either served no necessary military purpose and appeared to intentionally punish the civilian population or caused disproportionate harm to civilians.

However, the authors argue that the demolitions examined by HRW and other similar cases are linked to the armed conflict in two other ways (not just collective punishment and disproportionate harm).

Firstly, the targeting and destruction of certain areas appears to have been intended to not only punish the communities supporting the revolution or the armed rebels, the majority of which happened to be Sunni, but also to 'cleanse' those areas of all 'unwanted elements' and prevent them from returning home in the future. The result is changing both the political alliances and the demographic composition of those areas.

Secondly, at least in some areas, it appears that the war has been utilised as an excuse or a cover to implement long-term or pre-existing plans of sectarian cleansing and demographic change.

To achieve this double aim of cleansing rebel areas and implementing long-term plans of demographic change in those areas, destruction and demolitions had to be followed by 'reconstruction' projects.

To prove these claims, the report examines the Syrian regime's policies and presidential decrees in recent years concerning 'urban planning' of 'unauthorised' residential housing areas. It shows that, in a number of cases, there had already been plans for 'reconstructing' the whole area well before the current conflict started.

For example, the demolitions in al-Mazze in Damascus appear to be a continuation of a long-standing plan of creating an 'Iranian zone' in the area similar to the Hezbollah stronghold in the southern suburb of Beirut (*al-Dahiyeh*). The plan was simply accelerated because of or under the cover of the war. And the Iranian embassy in Damascus appears to be at the heart of this plan.

The authors conclude that, in addition to the wanton destruction of civilian property (i.e. grossly careless and malicious), these urban planning schemes amount to an unlawful appropriation of civilian property not justified by military necessity, even though they took place in the context of the armed conflict.

Various Iranian officials appear to be implicated in these schemes, including the Iranian ambassador to Syria, the Iranian mediator in Homs known as Haji Fadi, Iranian businessmen and Sepah Pasdaran commanders with responsibilities in Syria. The main Iranian official that would be implicated is General Qassem Soleimani, the head of Sepah Qods, the foreign arm of Iran's Revolutionary Guards (Sepah Pasdaran).

The report also examines media reports about the Syrian and the Iranian regimes buying – either directly or through agents – property *en masse* in Homs, Damascus and, to a lesser extent, in Aleppo. It also examines reports of 'legally stealing' property by falsifying official documents.

However, more concrete evidence is needed of fraudulent or coercive measures linked to the armed conflict that are allegedly being employed by the Iranian regime or its agents to acquire property in these areas.

More evidence is also needed to show that the practice has been widespread or systematic enough so as to reflect a state policy (or that of a *de facto* authority). Only then can it be said that these property purchases amount to unlawful appropriation of civilians' or the enemy's property tantamount to a war crime, as defined by international law.

The report then examines various 'reconstruction' projects being implemented by old-new mafias linked to the inner circles of the Syrian and Iranian regimes as part of these alleged schemes of sectarian cleansing.

Particular focus is given to Rami Makhlouf's company Cham Holding, Iyad Ghazal's Cartel Group, the Damascus and Homs City Councils, Sepah Pasdaran's construction and engineering arm Khatam al-Anbia, as well as other Iranian cement and construction companies.

The authors argue that the ongoing war and the mass destruction it has brought about present a golden opportunity for many Iranian companies that already have contracts in Syria to expand their business there. The new market also presents an opportunity for Iran to not only evade international sanctions but to also consolidate its economic and political power in Syria.

In other words, such plans are more political than economic. They are based on the assumption that investments in Syria will, in the long term, give the investors or partners significant leverage in how the country is governed, even if the investments do not return financial profit in the short term.

The authors recommend that all the above-mentioned Iranian and Syrian entities involved in the construction business, as well as many others that have not been mentioned in this report, should be investigated. If any links are found to unlawful activity, such as using the war as a means or a cover to further dubious reconstruction projects, they should be sanctioned and their owners punished accordingly. This should include their role in facilitating, aiding, abetting or providing the means for the commission of the above-mentioned war crimes and crimes against humanity.

The report then examines two aspects of what appears to be a *silent and slow demographic change* taking

Executive Summary

place in Syria: the forced displacement of millions of Syrian civilians, most of whom happen to be Sunnis, and the importation and settlement of foreign nationals of Shia origin.

While it is no longer a secret that Shiatisation in Syria is on the rise, both on a popular and on a state policy levels, much of the coverage of such phenomena tends to be sectarian, conflating the religious and cultural with the political. The only issue that should concern us here is whether there is sufficient evidence to accuse the Syrian and the Iranian regimes of changing, or attempting to change, the demographic composition of certain parts of Syria using unlawful means.

In this regard, the authors examine reports about the Syrian Ministry of Religious Endowments (*Awqaf*) appropriating land and property surrounding historic Sunni shrines and tombs and giving or selling them, along with the shrines, to Iranians, who then claim the sites belong to historic Shia personalities and build new structures on site. It also examines reports and rumours about the Syrian authorities' granting or planning to grant Syrian citizenship to thousands of foreign Shias.

However, the population transfer prohibited under international law concerns civilians, not combatants. Furthermore, the majority of the Shia militiamen fighting in Syria are not Iranian nationals; they are mostly Iraqi, Lebanese and Afghan. This means that, in the majority of these cases, Iran cannot in theory be accused of transferring its own civilian population to Syria. It is argued, however, that the Iranian authorities, particularly Sepah Pasdaran, exercise *de facto* authority over these Shia fighters.

In any case, more reliable evidence is needed to determine the truthfulness and scale of these alleged population transfer schemes. There are, however, enough indications and leads to warrant a systematic international investigation by specialised bodies into this serious issue.

While the violence and destruction committed by Syrian and Iranian regime forces and militias against civilians and civilian objects have been largely indiscriminate in many cases, especially in big cities, there is evidence that, at least in certain areas, they have had a sectarian character. And there are a number of reasons for this.

Soon after the outbreak of the revolution in March 2011, with an increasing number of regular army soldiers defecting and joining the Free Syrian Army, the Syrian and the Iranian regimes resorted to largely sectarian militias, both old and new, to fill this gap. Thus, even if the aim was political (to suppress mass popular protests), the discourse used to mobilise and recruit for these militias in Syria, Lebanon, Iraq and Iran was sectarian (protecting Alawis and Shia from Sunni fundamentalists and so on). It is no surprise, then, that many crimes committed by these militias were sectarian-motivated – at least in the minds of the militiamen – as evidenced by countless videos and comments posted by them on social media.

It is true that not all members of the Syrian National Defence Forces (NDF), known among Syrians as *shabbiha*, are Alawis, as they are often portrayed in Western or Syrian opposition media reports. In certain areas, however, such as Homs and south Damascus, the militias fighting alongside or on behalf of the regime have been largely Alawi or Shia. It is in these areas that most of the crimes that are the focus of this report occurred and continue to occur.

Mass destruction and demolitions were also often preceded, followed or accompanied by other, related crimes committed by Iranian-controlled militias, such as pillage and destroying or seizing the enemy's property without that being demanded by the necessities of the war.

In this regard, the report highlights the role of the NDF, the paramilitary force which was created by Sepah Qods and the Syrian regime for the sole purpose of doing the "dirty work" of suppressing peaceful anti-regime protests at the beginning of the revolution in early 2011. As such, it can be safely argued that the NDF has been acting with a common *criminal purpose*, as defined by the Rome Statute, and that the highest levels of the Syrian regime, as well as Iranian and Hezbollah Lebanon commanders, were well aware of this criminal purpose and those criminal activities, but have done nothing to stop or punish them.

Furthermore, the Iranian regime, particularly Sepah Qods, played an essential role in creating, arming and training the NDF, which was modelled on the Iranian Basij force. This role, provided with knowledge and

intent, amounts to “furthering the criminal activity or criminal purpose of the group,” according to Article 25 of the Rome Statute.

The authors therefore argue that Iranian commanders and leaders are also implicated in the war crimes and crimes against humanity committed by these militias by way of their superior or command responsibility for these crimes. A detailed discussion of superior responsibility and the notion of ‘effective control’ – which is not limited to formal ranks or positions but encompasses both *de jure* and *de facto* command – is provided to support this claim.

The report concludes with a call to all concerned Syrian and international bodies, including the International Criminal Court (ICC) in The Hague, the UN’s Independent International Commission of Inquiry on the Syrian Arab Republic in Geneva, as well as the US and the EU’s sanctions committees, to investigate the above-mentioned crimes and all their perpetrators and facilitators.

Naame Shaam particularly calls upon the ICC’s Prosecutor to initiate an investigation into these crimes of her own initiative (*proprio motu*) on the basis of this report and other information that the ICC has received in this regard.

The crimes discussed in this report clearly fall within the jurisdiction of the ICC, as the second chapter explains, and the Prosecutor should use the powers bestowed upon her by the Rome Statute to initiate an international investigation into them, even if this is vetoed by Russia and China in the Security Council.

Naame Shaam also appeals to the ICC Prosecutor to accept an offer made public in March 2015 by the chairman of the UN’s Independent International Commission of Inquiry on the Syrian Arab Republic. Mr. Paulo Pinheiro said the Commission was “ready to share” names and details from its “secret lists” of suspects with any prosecution authorities preparing cases. The lists apparently include military and security commanders, the heads of detention facilities and commanders of insurgent groups. The aim of this move was reportedly to sidestep the UN Security Council, where Russia and China have prevented the issue being referred to the ICC for prosecution. The ICC Prosecutor should therefore demand to have

access to these lists to assist an ICC investigation.

To assist such legal efforts, the second chapter of the report outlines the legal framework of investigating the types of crime that are the focus of this report in the Syrian context, with in-depth discussions of various relevant legal questions. These include the definitions of wanton and unlawful destruction or appropriation of civilian property and of forcible displacement or transfer of civilian population, and whether those committed in Syria amount to war crimes and crimes against humanity that fall within the jurisdiction of the ICC.

The report discusses various legal avenues available for trying those responsible for these crimes, and elaborates on the issue of whether the conflict in Syria should be treated as an international or non-international armed conflict, which had been discussed at length in a previous Naame Shaam report about the role of Iran in Syria.

The authors conclude that the ongoing war in Syria should be treated as an international armed conflict that involves a foreign occupation by the Iranian regime and its militias and a liberation struggle by the Syrian people against this foreign occupation.

Yet, even without it being recognised as such, international law governing armed conflicts should still apply to the Syrian case, particularly in light of the high unlikelihood that the Syrian and Iranian governments will ever be willing to initiate independent, impartial investigations and prosecutions that are not masquerades aimed at shielding the real culprits from criminal responsibility for the crimes in question.

I. Rumours, Reports, Evidence



Syrian civilians searching through the debris of destroyed buildings in the aftermath of a strike by Syrian regime forces, in the neighborhood of Jabal Bedro, Aleppo, on 19 February 2013

© Aleppo Media Center

I. Rumours, Reports, Evidence



United Nations Institute for Training and Research

UNOSAT

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SYRIA
Monsie
Beirut
Damascus
Jobar
Report Location

SITUATION UPDATE FOR DAMASCUS, SYRIAN ARAB REPUBLIC

Based on Satellite Imagery Acquired 3 November and 27 September



3 NOVEMBER 2014

Roadblock

Destroyed Buildings

Roadblock

Center Coordinates:
36°20'33.89"E 33°31'35.55"N

The image shows destruction in a portion of the city of Damascus in the Jobar neighborhood. Several buildings appear destroyed or heavily damaged, and roadblocks are visible on the main street.

This report provides an overview of the situation in the capital city of Damascus as of 3 November 2014, using high resolution imagery collected by the Pleiades satellite and compared with WorldView-2 satellite imagery collected 27 September. In support of the implementation of UN Security Council resolutions 2139 (2014) and 2165 (2014), UNOSAT reviewed the town for indicators of damage and destruction and signs of ongoing fighting and displaced civilians. Imagery shows widespread damage around the city and numerous destroyed and severely damaged structures and others caused by munitions impacts (figure 1). Roadblocks were detected and vehicle traffic is almost entirely absent in the southern-eastern part of the town (figures 2 and 3). This is a preliminary analysis and has not yet been validated in the field. Please send ground feedback to UNITAR / UNOSAT.

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Satellite Data (1): Pleiades
Imagery Date: 3 November 2014
Resolution: 50 cm
Copyright: Airbus Defence and Space
Source: Airbus Defence and Space
Satellite Data (2): WorldView-2
Imagery Date: 27 September 2014
Copyright: DigitalGlobe, Inc.

Source: European Space Imaging, US Department of State, Humanitarian Information Unit, NextView License
Resolution: 50 cm
Other Data: USGS, UNCS, NASA, NGA
Analysis: UNITAR / UNOSAT
Production: UNITAR / UNOSAT
Analysis conducted with ArcGIS v10.2
Coordinate System: WGS 1984 UTM Zone 37N

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Destruction in the Jobar neighborhood, Damascus. Satellite Imagery made on 3 November 2014.

Source: The Operational Satellite Applications Programme (UNOSAT) of the United Nations Institute for Training and research (Unitar).

Source: http://maps.unosat.org/SY/CE20130604SYR/UNOSAT_A4_Report_Damascus_20141103.pdf

There has been a lot of talk about various measures being taken by the Syrian and the Iranian regimes that allegedly indicate a deliberate policy of ethnic or sectarian cleansing in certain parts of Syria.¹ But there has been little systematic effort to gather substantiated details and produce concrete evidence of such allegations. This report does not aim to provide such conclusive evidence. It simply provides a few examples, pointers and arguments that will hopefully encourage and assist further investigations.

1. Destruction

The scale of destruction in Syria is quite well documented. It is estimated that over half of the country's housing units have been completely or partially destroyed since March 2011. In April 2013, the UN Economic and Social Council for Western Asia (ESCWA) reported that one-third of all real estate in Syria (1.2 million houses) had been destroyed by shelling: 400,000 houses were completely destroyed, 300,000 partially destroyed and 500,000 had damaged infrastructure.²

But very few attempts have been made to identify the actual perpetrators of and participants in these alleged war crimes and to distinguish between destruction caused by war hostilities and that carried out for other reasons under the cover of the war.

The Operational Satellite Applications Programme (UNOSAT) of the United Nations Institute for Training and Research (Unitar) has produced a number of reports based on satellite imagery assessing the state of damage and destruction in various Syrian cities,³ in support of the implementation of UN Security Council resolutions 2139 and 2165 of 2014.⁴ The reports typically review “indicators of damage and destruction and signs of ongoing fighting and displaced civilians.”

One of the reports, from November 2014, provides an overview of the situation in the capital Damascus.⁵ Satellite imagery shows “widespread damage around the city and numerous destroyed and severely damaged structures and craters caused by munitions impacts.” One of the images shows the north-eastern parts of the neighborhood of Jobar, where several buildings had

been destroyed or severely damaged “possibly by air strikes and/or barrel bombing.”

Another report, also published in November 2014,⁶ documents “numerous severely damaged buildings” in the neighborhoods of ‘Ayn al-Tal, Owaija, Haydariyeh, Hanano and al-‘Urqub in Aleppo caused by the “ongoing fighting.” Few destroyed buildings located in the Ba’aie-din neighborhood showed damages “similar to those observed from air strikes or barrel bombing.” Images of Hanano show buildings that appear to be “severely damaged,” possibly by “artillery and direct fire from tanks and other armored vehicles.”

In another, city-wide satellite analysis of Aleppo,⁷ the agency documented a total of 8,510 affected structures, of which 1,543 were destroyed, 4,847 severely damaged and 2,120 moderately damaged. While much of the city had been damaged by the previous analysis in September 2013, 7,937 structures were newly damaged and 17 structures experienced an increase in damage between that date and 23 May 2014.

¹ There have been countless articles and commentary pieces by Syrians about this subject over the last two years. Just as an example, Syrian opposition figure Burhan Ghalyoun talked in an interview on *Al-Jazeera* on 8 December 2014 about “demographic change in Syria through forcible displacement and population transfer.” Available in Arabic: <http://goo.gl/Z4MrvA>.

² See: <http://reliefweb.int/sites/reliefweb.int/files/resources/Syria%20Humanitarian%20Bulletin%20-%20Issue%2022.pdf>. For more on methodology and how losses are quantified, see, for example, these two local studies: <http://www.hic-mena.org/arabic/news.php?id=pW5rZA==#.Ueprf9KmHdk> and <http://hlrn.org/img/documents/New%20Microsoft%20Office%20Word%20Document.pdf>.

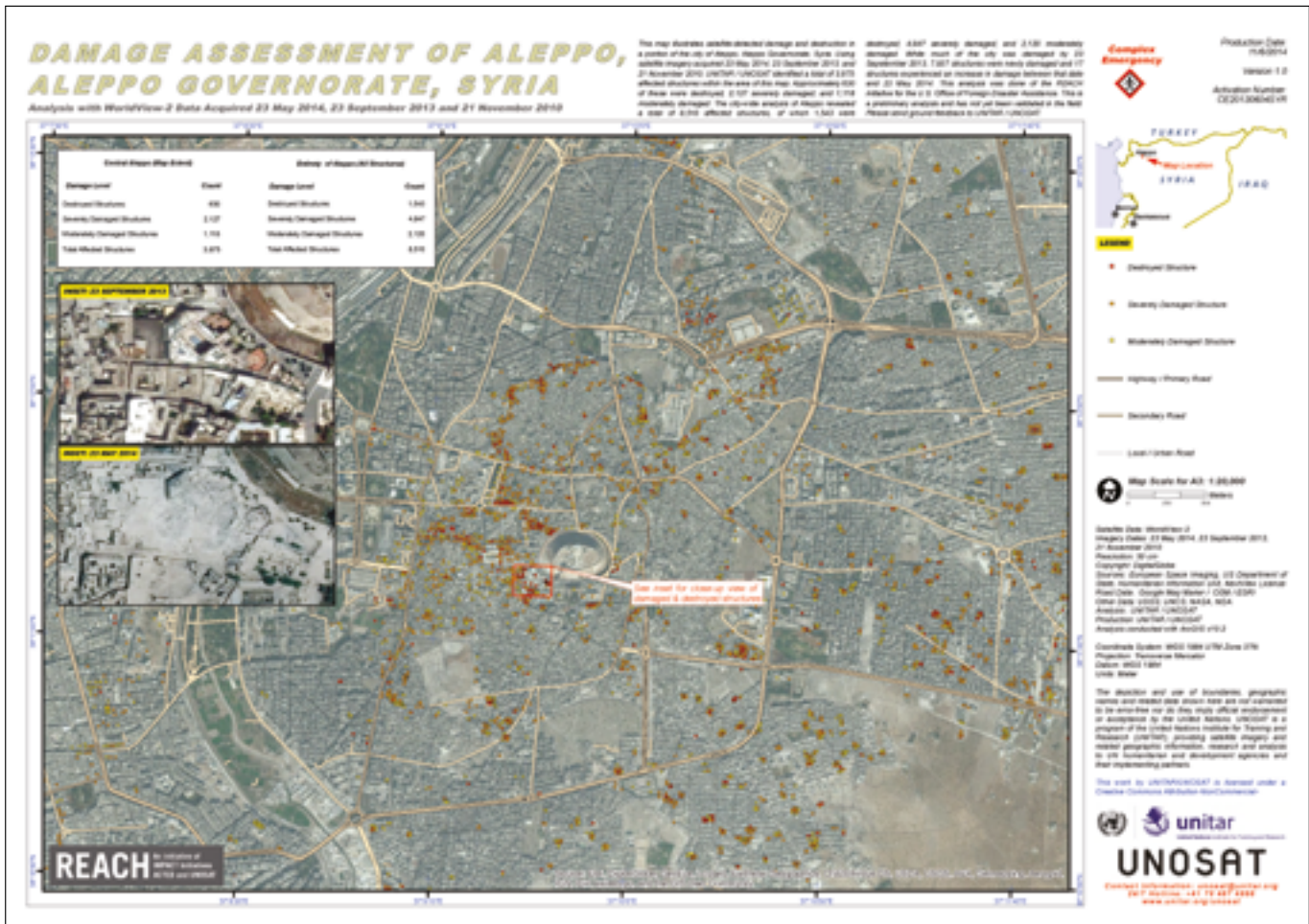
³ Available: <http://www.unitar.org/unosat/maps/SYR>.

⁴ Resolution 2139 called on all parties to immediately cease attacks against civilians, facilitate aid delivery and lift the siege of populated areas, including in the embattled Old City of Homs. See: <http://www.un.org/press/en/2014/sc11292.doc.htm>. Resolution 2165 authorised aid delivery across conflict lines and through border crossings, but without enforcement powers under chapter VII. See: <http://www.un.org/press/en/2014/sc11473.doc.htm>.

⁵ Available: http://maps.unosat.org/SY/CE20130604SYR/UNOSAT_A4_Report_Damascus_20141103.pdf.

⁶ Available: http://maps.unosat.org/SY/CE20130604SYR/UNOSAT_A4_Report_Aleppo_6Nov_opt.pdf.

⁷ Available: http://maps.unosat.org/SY/CE20130604SYR/UNOSAT_A3_Landscape_CE20130604SYR_Aleppo_20141106.pdf.



Source: http://unosat-maps.web.cern.ch/unosat-maps/SY/CE20130604SYR/UNOSAT_A3_Landscape_CE20130604SYR_Aleppo_20141106.pdf

A similar map of parts of Homs⁸ identifies a total of 13,778 affected structures, of which 3,082 were destroyed, 5,750 severely damaged and 4,946 moderately damaged. Again, while much of the city had been damaged by September 2013, 4,109 structures were newly damaged and 221 structures experienced an increase in damage between that September 2013 and April 2014.

While these and other maps reveal what appears to be a consistent pattern of widespread and indiscriminate targeting and destruction of civilian structures, using artillery, air strikes and barrel bombs, they do not tell us much about the context and the possible reasons of the destruction. To establish that, one needs to contextualise these figures and maps against reliable news reports or witness statements about what was happening at the time and in the attacks' aftermath. This would help

determine who the perpetrators were and whether or not the destruction was justified by the 'necessities' of the war as defined by international law. Only then can we talk about war crimes and crimes against humanity.

For instance, was the destruction of whole neighbourhoods of Homs (two thirds of the city, according to some estimates⁹) simply the result of months of siege and fighting between rebel and government forces?

⁸ Available: http://unosat-maps.web.cern.ch/unosat-maps/SY/CE20130604SYR/UNOSAT_A3_Portrait_CE20130604SYR_Homs_20141106.pdf.

⁹ See, for example, this report by *Al-Jazeera* (in Arabic) from July 2013: <http://goo.gl/X5zkUv>.

DAMAGE ASSESSMENT OF HOMS, HOMS GOVERNORATE, SYRIA

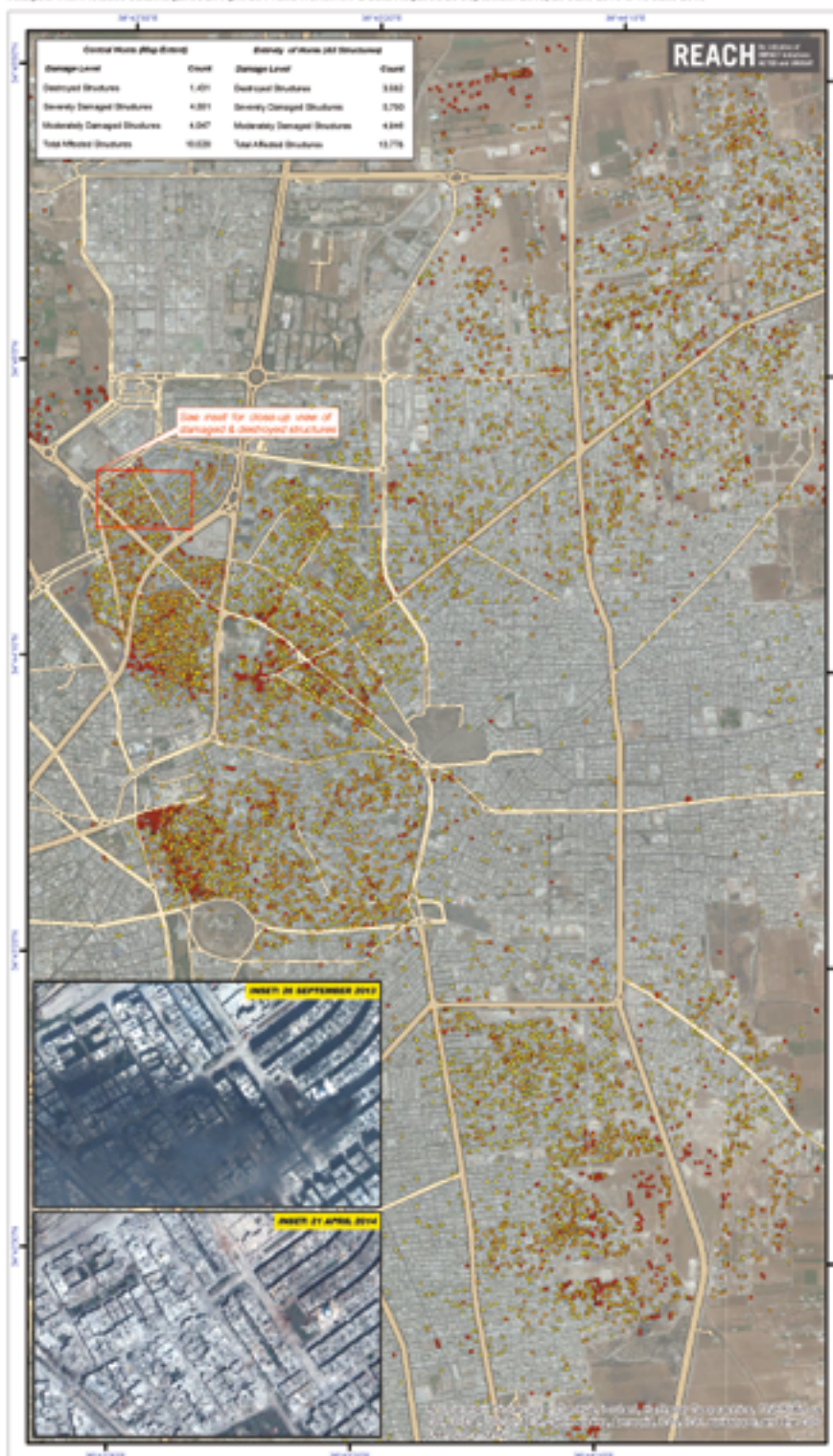
Analysis with Pleiades Data Acquired 21 April 2014 and WorldView-2 Data Acquired 26 September 2013, 29 June 2010 & 19 June 2010

Complex
Emergency

Production Date
10/05/2014

Version 1.0

Disc Number
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This map illustrates satellite-detected damage and destruction in a portion of the city of Homs, Homs Governorate, Syria. Using satellite imagery acquired 21 April 2014, 26 September 2013, 29 June 2010, and 19 June 2010, UN/WHO/UNOSAT identified a total of 10,029 affected structures within the area of this map. Approximately 1,401 of these were destroyed, 4,301 severely damaged, and 4,047 moderately damaged. The citywide analysis of Homs revealed a total of 14,478 affected structures, of which 3,882 were destroyed, 5,750 severely damaged, and 4,846 moderately damaged. While most of the city was damaged by 26 September 2013, 4,109 structures were newly damaged and 201 structures experienced an increase in damage between that date and 21 April 2014. This analysis was done of the REACH initiative for the U.S. Office of Foreign Disaster Assistance. This is a preliminary analysis and has not yet been validated in the field. Please send ground feedback to UN/WHO/UNOSAT.

Legend

- Destroyed Structure
- Severely Damaged Structure
- Moderately Damaged Structure

Highway/Primary Road

Secondary Road

Local/Urban Road

Map Scale for A3: 1:20,000

0 200 400 meters

Satellite Data (1) Pleiades
Imagery Date: 21 April 2014
Resolution: 30 cm
Copyright: CNES 2014, Distribution Airbus Defense and Space
Source: Airbus Defense and Space
Satellite Data (2) WorldView-2
Imagery Date: 26 September 2013, 29 June 2010, 19 June 2010
Resolution: 30 cm
Copyright: DigitalGlobe
Source: DigitalGlobe Space Imaging
Road Data: Google Map Maker / OpenStreetMap
Other Data: USGS, UNOSAT, UNOSAT, UNOSAT
Analysis: UN/WHO/UNOSAT
Production: UN/WHO/UNOSAT
Analysis conducted with ArcGIS v10.2

Coordinate System: WGS 1984 UTM Zone 37N
Projection: Transverse Mercator
Datum: WGS 1984
Units: Meter

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As most of the rebels withdrew from the city's old quarters, in an Iranian-brokered deal in May 2014,¹⁰ was the new damage and destruction documented there after that date related to something else? The following sections will show that this may have indeed been the case.

The destruction of Ancient Aleppo

A satellite-based damage assessment by UNOSAT of Aleppo's old city from November 2014¹¹ documents the total destruction of 22 "heritage locations", the severe damage of 48 ones, the moderate damage of 33, and the possible damage of 32. Of the 210 locations examined, almost half had sustained damage, while roughly a fifth were completely destroyed.

The study examined "key structures and locations" in Aleppo's Ancient City, inscribed as "world heritage property" in 1986 and listed by UNESCO in 2013 as "world heritage in danger."¹² The sites included the city's citadel, the city walls and gates, 73 historic buildings, 83 religious buildings, as well as the city's historical markets (*souqs*).

All that the study says about the causes of the destruction is "visible evidence of severe structural damage from shelling impacts and from fire."

Yet, many of the attacks that caused the damage and destruction are well documented by Syrian opposition and independent media outlets. The Aleppo Media Center alone, for example, has produced tens of videos and pictures of such attacks.¹³ More systematic research is needed to collect, organise and contextualise such evidence.

Most of the aerial attacks on Aleppo were clearly related to the ongoing armed conflict, even though many of these historical sites were reportedly not being used for military purposes by the rebels. Even if they were, the attacks appear to have been disproportionate and indiscriminate. They were widespread and appear to be *part of a state policy of reckless aerial bombardment of all rebel-held or rebel-sympathetic areas in Aleppo*. As such, they arguably amount to unlawful, wanton destruction of civilian objects, which is considered a war crime, as detailed in the next chapter. They also arguably amount to a war crime of "intentionally directing attacks against buildings dedicated to religion, education, art, science

or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives."¹⁴

2. Demolitions

One of the few attempts to contextualise satellite images and maps of destruction in Syria was a 2014 report by Human Rights Watch (HRW) titled *"Razed to the Ground: Syria's Unlawful Neighborhood Demolitions in 2012-2013."*¹⁵ The report documents seven cases of large-scale demolitions of thousands of residential buildings in Damascus and Hama in 2012 and 2013 by the Syrian authorities, using explosives and bulldozers in violation of international law.¹⁶

The 38-page report is based on detailed analysis of 15 high-resolution satellite images, which were compared to the witness accounts of 16 interviewees, as well as a review of media reports, government decrees and videos of the destruction and its aftermath posted on YouTube.

Syrian regime officials and pro-regime media outlets claimed at the time that the demolitions were part of "urban planning" schemes concerning "illegally constructed buildings" (more on this below). However, the report points out that the demolitions were supervised by military forces and often followed fighting in the areas between government and opposition forces. Indeed, all of the seven neighborhoods examined in the report were widely considered by the authorities and by witnesses interviewed by HRW to be "opposition strongholds." In addition, there had been no similar demolitions in areas loyal to the regime, even when many houses in those areas were illegal too.

A *Wall Street Journal* article from November 2012 observed, "based on several extended visits to Damascus and vicinity last month – some of which coincided with demolition by military authorities – the destruction appears to be occurring only in areas where opposition fighters have been active."¹⁷ In fact, some of owners of the demolished houses interviewed by HRW claimed that they did possess all the necessary permits and documents for their houses. Moreover, none of the victims received adequate notice, consultation or compensation.



Source: Human Rights Watch Report "Razed to the Ground - Syria's Unlawful Neighborhood Demolitions in 2012-2013", January 2014, <http://www.hrw.org/sites/default/files/reports/syria0114webwcover.pdf>

The report therefore concludes that the demolitions were in violation of international law because they "either served no necessary military purpose and appeared to intentionally punish the civilian population or caused disproportionate harm to civilians."

The cases examined by HRW seem to fall into two categories: "punitive" and "anticipatory." Some of the demolitions appear to have served no necessary military purpose and were merely intended to punish the civilian population for past actions. This is the case with the Masha' al-Arb'een and Wadi al-Joz neighbourhoods in Hama and the Tadamoun and Qaboun neighborhoods in Damascus. Under international law, undefended or demilitarised areas are considered civilian objects, and should not therefore be targeted. International law also prohibits the punitive destruction of property.

Others appear to have been prompted by military considerations (areas close to military or strategic sites that

10 For more on this, see: <http://www.nameshaam.org/report-iran-in-syria/2-foreign-militias/#homs>.

11 Available: <http://unosat.web.cern.ch/unosat/unitar/downloads/chs/Aleppo.pdf>. For a more comprehensive report on the destruction of cultural heritage sites throughout Syria, see: <http://www.unitar.org/unosat-report-damage-cultural-heritage-sites-syria-calls-scaled-protection-efforts>.

12 Aleppo is one of the oldest continuously inhabited cities in the world, with some 7,000 years of known settlement history. Due to its long history of occupation, a large number of buildings in and around the original city of Aleppo are "of great historical significance." *Ibid.*

13 See the group's website at <http://www.amc-sy.net>.

14 See Article 8(2)(b)(ix) of the Rome Statute, available: <http://www.un.org/law/icc/index.html>.

15 Available: <http://www.hrw.org/reports/2014/01/30/razed-ground>.

16 The neighbourhoods examined in the report are: the Masha' al-Arb'een and Wadi al-Joz neighborhoods in Hama, and the Qaboun, Tadamoun, Barzeh, Mezzeh military airport, and Harran Al-'Awamid neighborhoods in and near Damascus.

17 Available: <http://www.wsj.com/articles/SB10001424052970204707104578092113759746982>.



Demolitions in Qaboun district, Damascus. Approximate dates of demolitions: 12 July-October 2012 and June-July 2013. Estimated area demolished: 18 hectares.

Source: Human Rights Watch Report "Razed to the Ground - Syria's Unlawful Neighborhood Demolitions in 2012-2013", January 2014, <http://www.hrw.org/sites/default/files/reports/syria0114webwcover.pdf>

BUILDING DEMOLITION IN QABOUN CAUGHT ON VIDEO

Photo mosaic of individual frames extracted from video of demolition posted to YouTube on July 28, 2012. Comparing the photo mosaic to satellite imagery indicates that the demolition in the video takes place near the M1 highway in the Qaboun neighborhood.



1. Excavators demolish a building compound.
2. Main battle tank is positioned in close proximity to heavy equipment.
3. Matching zone of building demolition within satellite imagery.
4. Electrical substation.

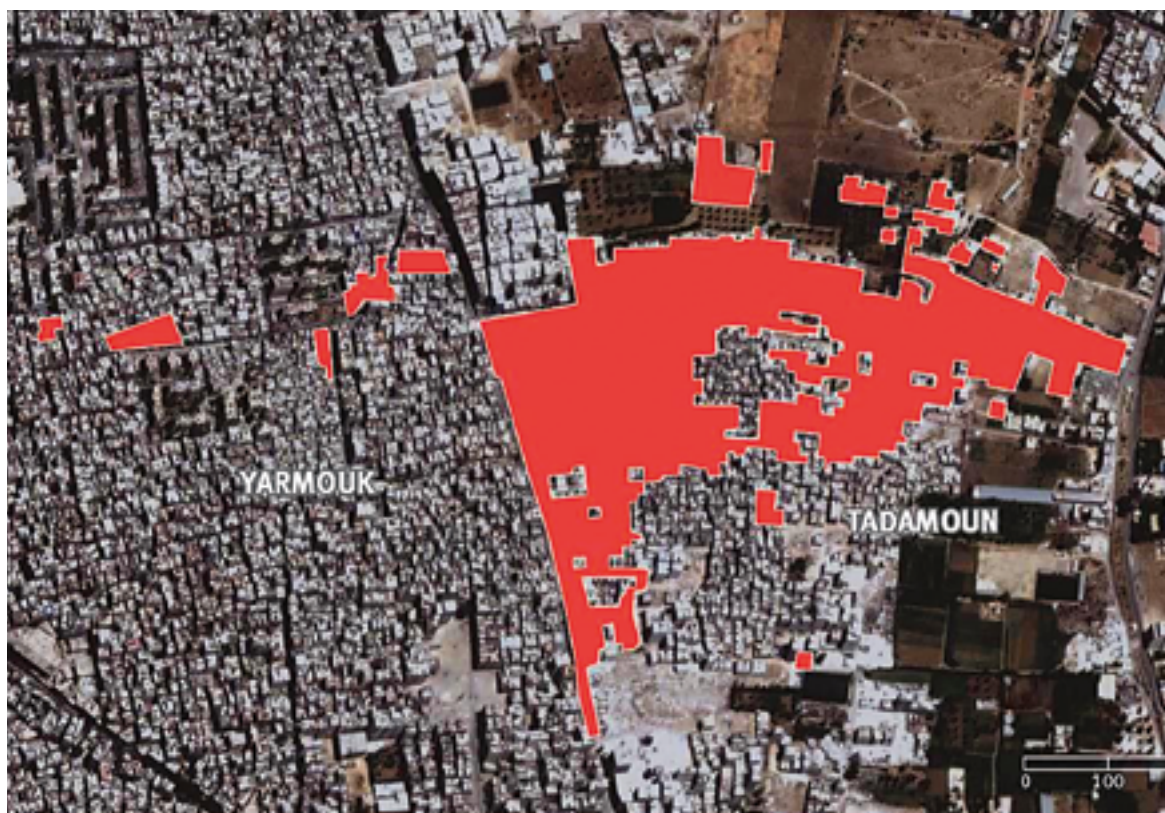


Approximate dates of demolitions: 12 July-October 2012 and June-July 2013. Estimated area demolished: 18 hectares.



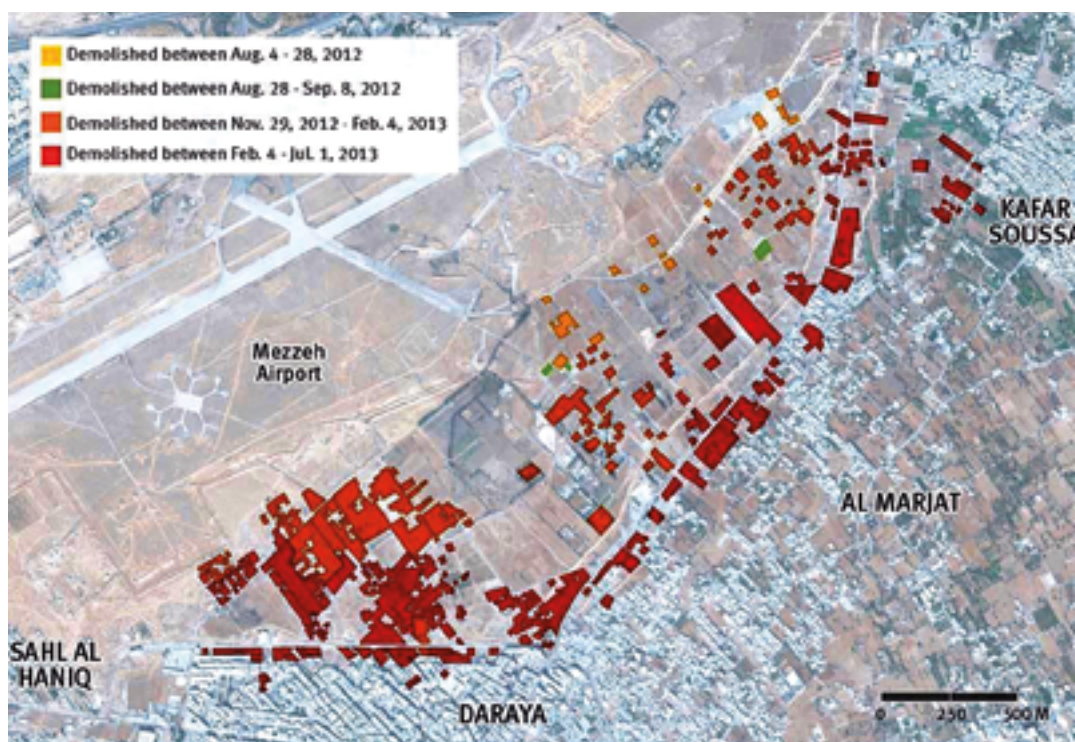
Demolitions in Qaboun neighborhood, Damascus. Approximate dates of demolitions: 12 July-October 2012 and June-July 2013. Estimated area demolished: 18 hectares.

Source of both photos: Human Rights Watch Report "Razed to the Ground - Syria's Unlawful Neighborhood Demolitions in 2012-2013", January 2014, <http://www.hrw.org/sites/default/files/reports/syria0114webwcover.pdf>



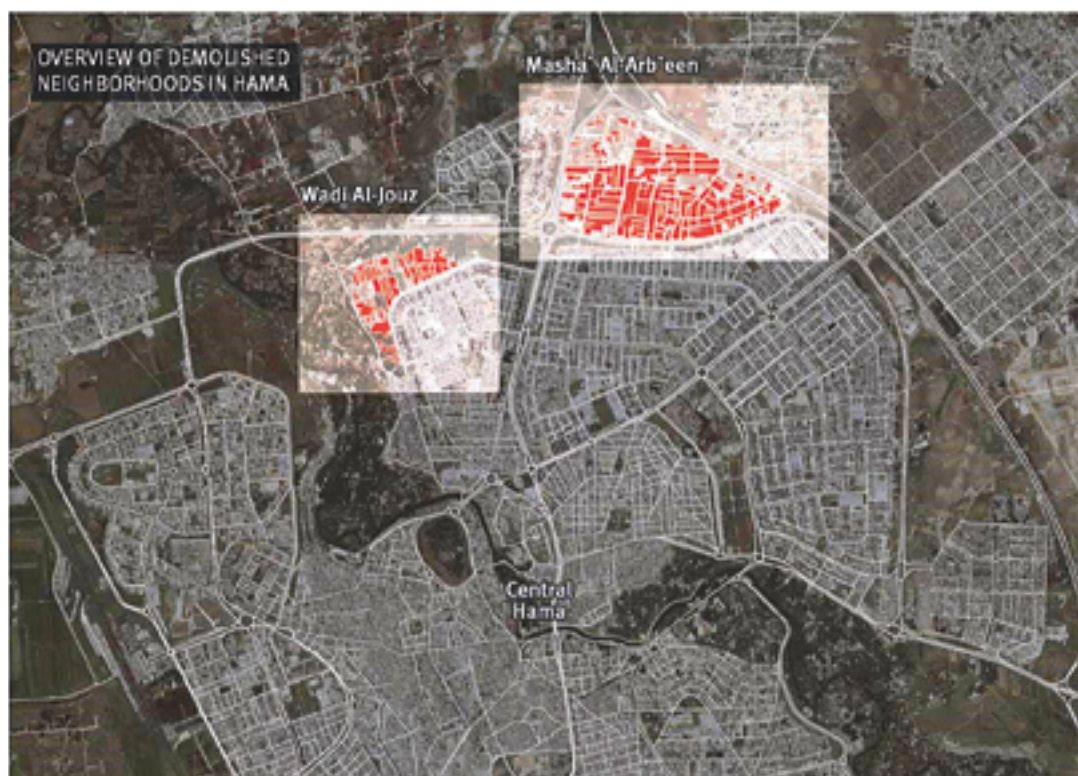
Demolitions in Tadamoun district, Damascus. Dates of demolitions: 8 September-29 November 2012. Estimated area of destructions: 15.5 hectares.

Source of both photos: Human Rights Watch Report "Razed to the Ground - Syria's Unlawful Neighborhood Demolitions in 2012-2013", January 2014, <http://www.hrw.org/sites/default/files/reports/syria0114webwcover.pdf>

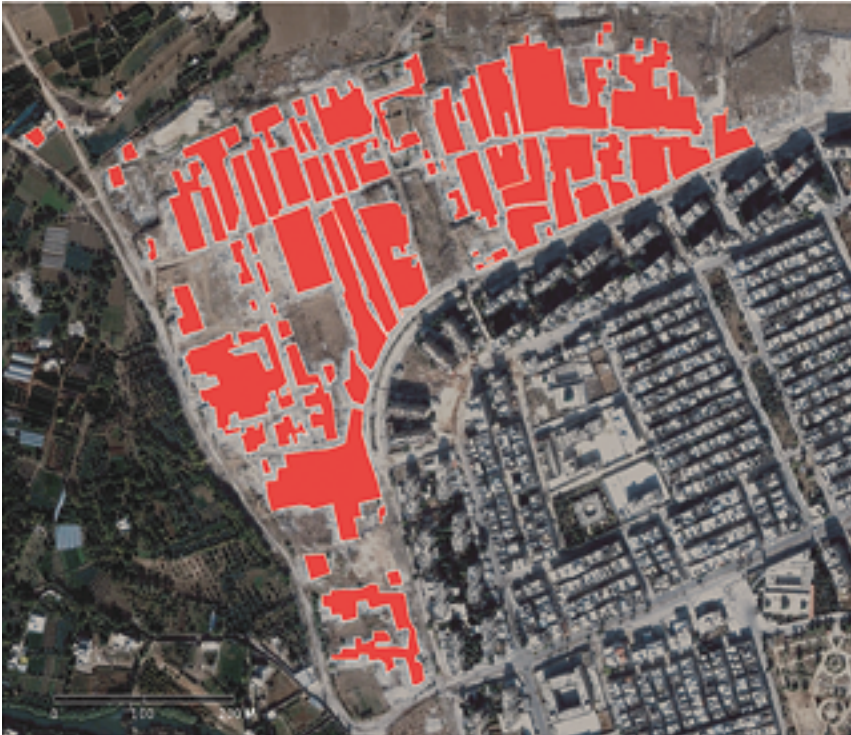


Demolitions around Mezzeh airport, Damascus. Dates of demolition: August 2012 and December 2012-March 2013. Estimated demolished area: 41.6 hectares.

Source: Human Rights Watch Report "Razed to the Ground - Syria's Unlawful Neighborhood Demolitions in 2012-2013", January 2014, <http://www.hrw.org/sites/default/files/reports/syria0114webwcover.pdf>



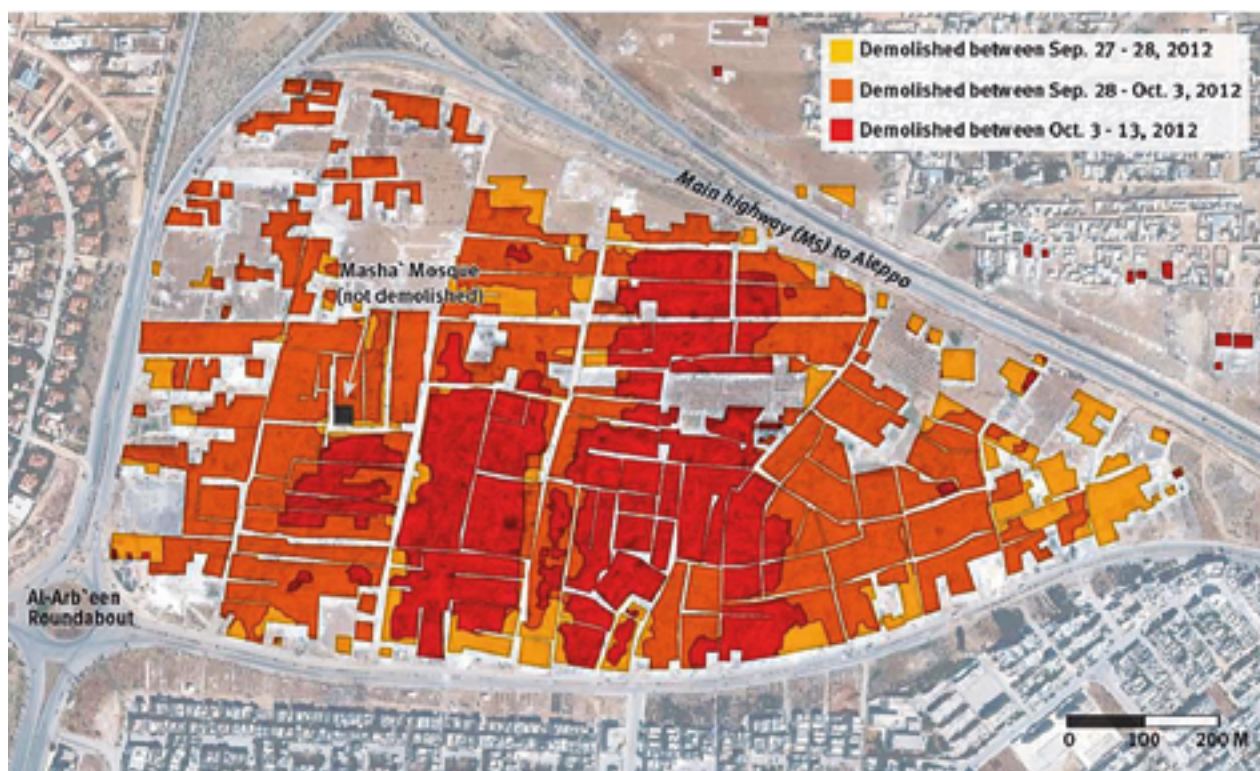
Source: Human Rights Watch Report "Razed to the Ground - Syria's Unlawful Neighborhood Demolitions in 2012-2013", January 2014, <http://www.hrw.org/sites/default/files/reports/syria0114webwcover.pdf>



Demolition in Wadi al-Jouz district, Hama. Date of demolitions: 30 April-15 May 2013. Estimated area demolished APRIL 10 hectares. Source: Human Rights Watch Report "Razed to the Ground - Syria's Unlawful Neighborhood Demolitions in 2012-2013", January 2014, <http://www.hrw.org/sites/default/files/reports/syria0114webwcover.pdf>



Destruction visible via satellite, 2013



Demolition in Masha' al-Arb'een district, Hama. Estimated destruction area: 40 hectares.

Source: Human Rights Watch Report "Razed to the Ground - Syria's Unlawful Neighborhood Demolitions in 2012-2013", January 2014, <http://www.hrw.org/sites/default/files/reports/syria0114webwcover.pdf>



Destruction visible via satellite on October 3, 2012



Aleppo residents inspect an unexploded barrel bomb in Aleppo, 19 January 2014.
© Aleppo Media Center.



A regime helicopter drops two barrel bombs in Aleppo, Syria, 2 February 2014.
© Aleppo Media Center



Aleppo residents watching an air raid over Aleppo by regime forces. Source: Daily Telegraph, 2 February 2014. © Reuters/Saad Abobrahim

opposition forces had either attacked or could attack). This is the case of the areas surrounding the Mazzeh military airport, the Damascus international airport and the Tishreen military hospital. But while the authorities may have been “justified in taking some targeted measures to protect these military or strategic locations,” the report argues that the destruction of hundreds of residential buildings, in some cases kilometers away, were disproportionate and in violation of international law.

The authors of this report would argue that the demolitions examined by HRW and other similar cases are linked to the armed conflict in two other ways (not just collective punishment and disproportionate harm).

Firstly, the targeting and destruction of certain neighbourhoods appears to have been intended to not only punish the communities supporting the revolution or the armed rebels, the majority of which happened to be Sunni, but also to ‘cleanse’ those areas of all ‘unwanted elements’ and prevent them from coming back in the future and repeating the same story again. The result is changing both the political alliances and the *demographic composition* of those areas. Homs is a good example of this.¹⁸

In its ninth report,¹⁹ released in February 2014, the UN Independent International Commission of Inquiry on Syria outlines the pattern that often preceded planned demolitions:

9. By late 2012, government forces had changed tactics and rarely engaged in ground attacks. This appeared motivated by the fact that ground attacks provided the infantry, which was majority Sunni, with opportunities to defect and by the increased capacity of armed groups to attack government units.

10. Nevertheless, the mainstays of government attacks on restive areas have remained static. They include (a) the encirclement of an area, including the setting up of checkpoints at all access points; (b) the imposition of a siege, including preventing the flow of food, medical supplies, and sometimes water and electricity, into the town or area; (c) the shelling and aerial bombardment of the besieged area; (d) the arrest, and often disappearance, of wounded persons attempting to leave the besieged area to seek medical treatment no longer available inside

and of those attempting to break the siege, usually by smuggling in food and medical supplies. Victims have often described the Government's strategy as that of "tansheef al bahar", or draining the sea to kill the fish. [...]

13. The Government's use of indiscriminate shelling and aerial bombardment has been informed by its use of a variety of weaponry. The Government began hostilities by employing artillery shells, mortars and rockets against restive and sometimes besieged areas. By mid-2012, the use of cluster munitions, thermobaric bombs and missiles was documented, often used against civilian objectives, such as schools and hospitals. The Government has also used incendiary weapons.

14. The first reported use of barrel bombs was in August 2012 in Homs city. It was not, however, until mid-2013 that government forces began an intense campaign of barrel bombing of Aleppo city and governorate. [...]

Secondly, at least in some areas, it appears that the war was utilised as an excuse or *a cover to implement long-term or pre-existing plans of sectarian cleansing and demographic change*.

In most of the cases examined by HRW, there was often a second wave of demolitions following the initial one, not justified by the war and not linked to the hostilities. Satellite imagery often showed neat piles of rubble, indicating that the demolitions were carried out in a "controlled and professional manner." More importantly, at least in some cases, there had already been plans to 'reconstruct' the area for political purposes, as the following sections will show. The Mazzeh area in Damascus provides a good example of this.

To achieve this double aim of cleansing rebel areas and implementing long-term plans of demographic change in those areas, destruction and demolitions had to be followed by 'reconstruction' projects. The following sections will outline how these were planned and carried out.

3. 'Urban planning'

In September 2012, Syrian president Bashar al-Assad issued a presidential decree authorising the creation of two urban planning zones within the governorate of Damascus as part of a "general plan for the city of Damascus to develop the areas of unauthorised residential housing [slums]."²⁰ The first zone is situated in the south-east of al-Mazzeah, encompassing the real estate departments of al-Mazzeah and Kafarsouseh. The second stretches south of the Southern Highway, encompassing the departments of al-Mazzeah, Kafarsouseh, Qanawat, Basateen, Darayya and Qadam.

The decree prohibited the trading in any property within these zones or authorising any new construction projects. It also required the City Council to put together a list of all the property owners in these areas within a month, and required all property owners in the area to publicly declare their ownership of their properties and gave them a choice of selling their stakes in the property. The decisions of the "committee of experts" created by the decree were to be "final and unappealable."

Commenting on the decree, the Minister of Local Administration Ibrahim Ghalawanji said Decree 66 "came as a response to the government's priorities and its vision for overcoming the repercussions of the crisis that Syria is going through, and as a first step in the reconstruction of illegal housing areas, especially those targeted by armed terrorist groups, through rebuilding those areas to high development standards..."²¹

Daraya, Moadamiya and other towns in this part of the Damascus countryside were strong revolution hotbeds and, later, armed opposition strongholds. Like in

¹⁸ See, for example, <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/10195849/Bashar-al-Assads-militias-cleansing-Homs-of-Sunni-Muslims.html>.

¹⁹ Available: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A.HRC.28.69_E.doc.

²⁰ The text of Decree 66 of 2012 is available in Arabic: <http://www.champress.net/index.php?q=ar/Article/view/7769>.

²¹ *Ibid.*

other parts of Syria, initial peaceful protests turned into armed opposition and many Free Syrian Army fighters used bases in the area to stage attacks on government targets, including the Mazzeh military airport and regime checkpoints. In August 2012, regime forces launched a massive offensive against the two towns. The offensive was one of the deadliest regime attacks up until that point. This was followed by another offensive in December 2012, following an opposition attack on a regime checkpoint on 25 November.

The Mazzeh destruction and subsequent demolitions were therefore clearly linked to the armed conflict. Indeed, when asked by the *Wall Street Journal* about the motives behind the demolitions, Hussein Makhoul, the governor of the Damascus Countryside and a relative of al-Assad, said they were “essential to drive out terrorists.”²²

According to HRW’s satellite images, a total of 41.6 hectares of buildings was demolished around the Mazzeh military airport, mainly between December 2012 and July 2013. This is arguably widespread and systematic enough to satisfy the requirements of the war crime of unlawful destruction of civilian property. And it was clearly part of a *state policy*, as indicated by the presidential decree.

However, to say that the Mazzeh demolitions may have been militarily justified by the armed opposition’s attacks on regime targets, even if the demolitions were excessive and disproportionate, seems to miss another, important part of the story, namely, that there had already been plans to ‘reconstruct’ the whole area well before the current conflict started. And the Iranian embassy in Damascus, which is located on al-Mazzeh Highway and is within the area designated by Decree 66, appears to be at the heart of this plan.

It is widely known that, back in 1991, former Syrian President Hafez al-Assad ordered the Damascus City Council to scrap law no. 60 concerning seven real estate departments in al-Mazzeh which had been appropriated by the Council. The ownership was transferred to members of the Assad family. The land was subsequently ‘given’ to the Iranian embassy in Damascus, and it is there that the new embassy building was built.

Syrian opposition sources claim the operation was overseen by the then head of the Permits Department within the Damascus Council, Bassam Kheirbek, the nephew of Mohammad Nasif Kheibek.²³ The latter was the former deputy director of Syria’s General Security Directorate and later the vice-president for security affairs. Mohammad Nasif Kheibek is known to have been the main ‘interlocutor’ between the Syrian and the Iranian regimes and the main contact for many Iranian-backed militias.²⁴ A leaked US diplomatic cable described him as Syria’s “point-man for its relationship with Iran.”²⁵ Later on, the sources claim, an engineer called Ahmad al-Dali, the head of the Antiques Department in the Council, was tasked with purchasing properties around the new embassy building, behind al-Razi hospital, on behalf of the embassy (more on this below).

The demolitions in al-Mazzeh appear to be a continuation of a long-standing plan of creating an ‘Iranian zone’ in al-Mazzeh similar to the Hezbollah stronghold in the southern suburb of Beirut (*al-Dahiyyeh*). The plan was simply accelerated because of or under the cover of the war.

It is also worth noting that the strategic road going from southern Damascus to Lebanon (*al-Mutahalleq al-Janoubi*, the city’s southern motorway) goes right through the area designated by Decree 66. Since the UN Security Council Resolution 1701 of 2006 stopped arms shipments via Lebanese ports, all Iranian arms shipments to Hezbollah Lebanon go through land routes in Syria.

Similar stories were repeated in other strategic areas across the country, such as Homs. In June 2014, the governor of Homs, Talal al-Barazi, discussed with members of the Homs City Council a proposed project to “reconstruct the neighborhoods of Baba Amr, al-Sultaniyeh and Jobar.”²⁶ During the “exceptional session,” the governor pointed out the Council’s intention to cancel decree no. 26 concerning the Baba Amr neighborhood and to “include it in decree no. 66.” The project was reportedly proposed by Dr. Mzahem Zain-Eddin, the Dean of the Faculty of Architecture.²⁷ Baba Amr had seen some of the fiercest fighting and deadliest sieges by Syrian regime and Hezbollah forces in 2012 and 2013.²⁸

In addition to the unlawful, wanton destruction of civilian property, these urban planning schemes arguably amount to an unlawful appropriation of civilian property not justified by military necessity, even though they took place in the context of the armed conflict. Both the designers of these schemes and those who ordered and carried them out must have been aware of this context. Moreover, the schemes were extensive and systematic and appear to have been carried out wantonly, even though both their designers and those who ordered and carried them out must have been aware that the properties and their owners were protected under domestic and international law, as evidenced by the fraudulent or violent means with which they were implemented (the following section will shed more light on this). Finally, various Iranian officials appear to be implicated in these schemes, including the Iranian ambassador to Syria, the Iranian mediator in Homs known as Haji Fadi, Iranian businessmen and Sepah Pasdaran commanders with responsibilities Syria.

4. Appropriation

Mass destruction and demolitions were often preceded, followed or accompanied by three other, related processes: pillage, purchase and appropriation of civilian property in those areas.

Pillage

There have been countless reports, witness statements, pictures and videos of one particular type of 'routine crimes' committed by members of the Syrian regime's paramilitary force known as the National Defence Forces, or the *shabbiha*, namely looting.

Unlike regular army soldiers, NDF members are allowed, and even encouraged, to loot houses and shops and take 'spoils' after battles, which they then sell on the black market in regime-held areas or in Lebanon (these have come to be known as 'Sunni markets' as the majority of the looted houses belong to Sunnis and the majority of the *shabbiha* are Alawis, at least in popular perception). The opportunity to loot has been used by the regime as an incentive to recruit for the NDF, as a number of captured NDF members have testified.²⁹

As explained in the next chapter, these practices amount to pillage, which is considered a war crime during armed conflicts. And they appear to be widespread and systematic enough to deduce a state policy. But they are arguably about more than just pillage.

After almost every military campaign conducted by the Syrian army and the militias fighting alongside it, such as Hezbollah Lebanon, NDF or *shabbiha* members would storm the newly captured town or village, looting residents' homes and often setting them on fire, with the apparent aim of ensuring that the owners have nothing left to return to. As the majority of NDF members appear to be Alawi, and the majority of the targeted towns and neighbourhoods appear to be Sunni, it has been argued that this amounts to a *sectarian cleansing* of the targeted areas.³⁰

²² <http://www.wsj.com/articles/SB10001424052970204707104578092113759746982>.

²³ Note posted by Dr Zakwan Baaj, from Syria Freeman Conference, on his personal Facebook page on 5 February 2015, based on information leaked from the inside the City Council. Available (in Arabic): <https://ar-ar.facebook.com/zakwan.baaj/posts/10205027066849999>.

²⁴ 'Factbox: Syrian President Bashar al-Assad's inner circle', Reuters, 4 May 2011, available: <http://uk.reuters.com/article/2011/05/04/us-syria-assad-circle-idUSTRE7433TN20110504>.

²⁵ 'Treasury Team's Damascus consultations on financial sanctions', Cable ID: 07DAMASCUS269_a, Wikileaks, 15 March 2007, available: https://www.wikileaks.org/plusd/cables/07DAMASCUS269_a.html.

²⁶ 'Homs Governorate discusses reconstruction of Baba Amro neighborhood', SANA, 1 July 2014, available: <http://www.sana.sy/en/?p=5006>.

²⁷ *Ibid.*

²⁸ For more on the fighting in Homs and the strategic importance of this city for Hezbollah Lebanon and the Iranian regime, see: <http://www.nameshaam.org/report-iran-in-syria/2-foreign-militias/#leading>.

²⁹ See, for example, Erika Solomon, 'Insight: Battered by war, Syrian army creates its own replacement', *Reuters*, 21 April 2013, available: www.reuters.com/article/2013/04/21/us-syria-crisis-paramilitary-insight-idUSBRE93K02R20130421.

³⁰ For an example of this argument, see: Ruth Sherlock, 'Bashar al-Assad's militias 'cleansing' Homs of Sunni Muslims', *The Telegraph*, 22 July 2013, available: <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/10195849/Bashar-al-Assads-militias-cleansing-Homs-of-Sunni-Muslims.html>

The history and practices of the *shabbiha* have been discussed by the authors at length in another Naame Shaam report.³¹ For the purposes of this report, it suffices to point out a couple of well-established facts.

The NDF was created by the Syrian regime for the sole purpose of doing the “dirty work” of the regime in suppressing peaceful anti-regime protests at the beginning of the revolution in early 2011.³² As such, it can be safely argued that the militia has been acting with a common criminal purpose, as defined by Article 25(3)(d) of the Rome Statute, and that the highest levels of the Syrian regime are well aware of this criminal purpose and those criminal activities, but have done nothing to stop or punish them.

The Iranian regime, particularly Sepah Pasdaran, played an essential role in creating, arming and training the NDF, which was modelled on the Iranian Basij force.³³ This role, provided with knowledge and intent, amounts to “furthering the criminal activity or criminal purpose of the group,” according to Article 25 of the Rome Statute.

Renting ‘empty’ property

In May 2014, the Syrian Ministry of Justice published a proposal for a “comprehensive revision” of Rental Law No. 1 of 2006, allowing the authorities to “open houses abandoned by their owners and renting them to other Syrian citizens under the supervision of a special governmental committee.”³⁴

The proposal was presented by pro-regime media as stemming “out of concern for providing safe accommodation and alleviating the suffering of many Syrians who have become homeless and whose houses had been destroyed,” in the words of judge Kamal Jinniyyat, the head of the special committee formed by the Ministry of Justice to study and implement the proposal.

But the reality, many contend, is that the targeted properties belong to opposition activists and rebels killed, arrested or wanted by the regime. The real aim therefore is to appropriate such properties so that their owners, who appear to be mainly Sunni, have nothing to return to in the future. The proposal has been described by Syria opposition media as “playing with the country’s demographics.”³⁵

Even if the concerned property belonged to ‘the enemy’ rather than civilians, the seizure of the enemy’s property has to be “imperatively demanded by the necessities of war,” according to Article 8 of the Rome Statute. This does not appear to be the case and the scheme, if implemented, could therefore amount to a war crime.

Buying property

There have been numerous, often unsubstantiated media reports about the Syrian and the Iranian regimes buying – either directly or through agents – property *en masse* in Homs, Damascus and, to a lesser extent, in Aleppo. Often the implication is that both regimes are attempting to establish a loyalist corridor stretching from Damascus to the coastal region, along the border with Lebanon.

For instance, since mid-2012, Syrian opposition media have frequently reported about Iranian, Lebanese and Iraqi Shia buying houses and land in Homs for extortionate prices, including property destroyed or burnt by shelling, exploiting the residents’ need for money or their desire to flee due to the prolonged siege and fighting.³⁶ The aim, they often claim, is to “empty Homs” of its Sunni or anti-regime residents in a “systematic process of ethnic cleansing.” The story of Zionists buying Palestinians’ land before the establishment of Israel in 1948 is often cited as an alarm bell.

While the purchase of property, whether by Syrians or foreigners, is not unlawful in itself, the context and the manner in which it is allegedly being carried out in Homs appears to be dubious. For instance, various media reports have claimed that people are sometimes forced to sell their property, or that the ownership of property is sometimes transferred to the new owners without their presence or approval, and so on and so forth.³⁷

On 1 July 2013, in what appears to have been an attempt to cover up such unlawful practices, the Land Registration Office in Homs was set on fire and destroyed.³⁸ The National Coalition of Syrian Revolution and Opposition Forces issued a statement condemning the “intentional” burning of the Land Register and considering the act to be “part of the regime’s efforts to change the demographic composition of the city.”³⁹

In Damascus, similar media reports claim that the Iranian embassy and Iranian businessmen have been buying up property in old and central Damascus, exploiting residents' economic or security needs.⁴⁰ The embassy has reportedly purchased several hotels and buildings in the al-Bahsa area, near the Iranian Cultural Centre, as well as a large number of houses and restaurants in the old city, stretching from the Umayyad Mosque to Bab Touma. It has also allegedly been buying vast swaths of property along the Mazzeh highway, where the embassy is located.

In June 2014, *Now TV* reported, quoting an anonymised source from the Land Registry Unit in the Syrian Ministry of Housing, that the ownership of 6,746 properties had been transferred to Syrian, Iraqi and Iranian Shia.⁴¹

In the first half of 2014 alone, 3,267 properties were allegedly transferred, at a rate of around 500 properties per month. The properties ranged from houses and shops to hotels and hospitals, concentrated mostly in the areas of al-Mazzeah, al-Maliki and Baghdad Street in central Damascus and in al-Shaghour, al-Midan and al-Amara in old Damascus.

The majority of the transferred properties belonged to Syrians who had fled the country for security or economic reasons, the source added. The transfer of ownership was allegedly carried out by the Land Register through falsifying documents and producing new ones signed and stamped by the Minister of Housing, all under the supervision of the Iranian embassy. As to known opposition figures and activists, their citizenship was withdrawn and their property confiscated and reclaimed as state property, then 'sold' to the new owners.⁴²

In November 2014, *Al-Arabiya* quoted a Syrian businessman claiming that Iranians had offered him buying all his property in Damascus "for whatever price he wanted," adding that there was "a big property purchase movement" in Damascus, which he described as "legal occupation" by Iran.⁴³ The businessman also claimed that the Iranian ambassador in Damascus enjoyed "great facilitation" by Syrian security services and used agents on the ground who contacted businesspeople and offered them money. Some of them, he added, threatened those who refused to sell their property or forced them to do so.

A number of estate agents in Damascus have confirmed to Naame Shaam's correspondents that there has indeed been "a relatively strong movement" in the property market in certain parts of the city, roughly corresponding to the areas mentioned in the *Now* report above. Given the security situation in the city, this can only be explained by big investors buying and selling property.

Syrian sources also told Naame Shaam that houses were being "legally stolen" all over the capital city, with a focus on the districts of Old Damascus, Bab Msalla, al-Hamra and Sayyeda Zaynab. Sunnis in these areas are "becoming a minority", they added, and could only live there if they received a security clearance from the local militiamen ruling the area. Checkpoints securing these areas are reportedly manned by Hezbollah and Iranian Revolutionary Guards.

31 See: <http://www.naameshaam.org/report-iran-in-syria/1-sepah-pasdaran-advisers/>. For a case study about the *shabbiha* of Homs, see: <http://www.naameshaam.org/report-iran-in-syria/1-sepah-pasdaran-advisers/#homs>.

32 For more on how and why the NDF was created, see: <http://www.naameshaam.org/report-iran-in-syria/1-sepah-pasdaran-advisers/#creating>.

33 For more on the Iranian role in creating the NDF, see: <http://www.naameshaam.org/report-iran-in-syria/1-sepah-pasdaran-advisers/#connection>.

34 'Opening safe and closed houses and renting them for sums that will be preserved for their owners' (in Arabic), *Al-Ba'th newspaper*, 22 May 2014, available: <http://ncro.sy/baathonline/?p=6300>.

35 See, for example, http://www.orient-news.net/?page=news_show&id=79227 and <http://goo.gl/9kv8yw> (in Arabic).

36 Here is a typical example: <http://www.all4syria.info/Archive/88264>.

37 See, for example, <http://www.alaan.tv/news/world-news/118426/iran-owns-lands-syrian-cities-change-demography>.

38 See: <https://www.zamanalwsl.net/readNews.php?id=39421>.

39 Available: <http://goo.gl/malRBZ>.

40 Here is a typical example: <http://www.all4syria.info/Archive/80489>.

41 'Special source to Now News: Systematic Shi'atization of Damascus through property purchase' (in Arabic), *Now*, 28 June 2014, available: <http://www.alaan.tv/news/world-news/108081/funeral-damascus-the-purchase-real-estate-syria>.

42 *Ibid.*

43 'Iran buys land in Syrian cities to change demography' (in Arabic), *Al-Arabiya*, 18 November 2014, available: <http://goo.gl/AA5xQB>.

The only mentions in Iranian media of Iranians buying property in Syria seem to relate to Iranian efforts to ‘rebuild’ holy Shia shrines in Damascus. As part of these ‘reconstruction’ efforts, the Iranian government has been reportedly buying large swaths of land surrounding these shrines in order to “expand” them.⁴⁴ Similar Iranian efforts in Iraq, especially in Samarra and Karbala, over the last decade are widely documented.

For instance, in August 2014, the head of the Iranian Department of Reconstruction of Holy Shrines, Hossein Palarak, said a new *masla* (place of prayer) named after Imam Khomeini was to be built next to the Sayyeda Zaynab shrine in Damascus.⁴⁵ The new, three-story building was expected to be ready in two years. According to media reports, the project will cost 300 billion Rials (about 10.8 million USD).

Significantly, Palarak was also quoted saying: “The urban planning of the area near Sayyeda Zaynab is to be revised. A new model is being prepared now and we are buying the properties around the shrine.” “After the Syrian election [in June 2014],” he added, “we will continue the reconstruction in a more effective manner.”⁴⁶

On another occasion, Palarak was quoted by the media saying: “Expanding the Sayyeda Zaynab shrine is high on our department’s agenda. We hope to prepare the maps and finish the procurement of the properties by the end of this year [2014] so that the pilgrims to Sayyeda Zaynab would have a better security.”⁴⁷

Similar stories are repeated about Homs, Aleppo and the coastal region, though even less details are provided.⁴⁸ The crucial point here is whether it can be proved that fraudulent or coercive measures linked to the armed conflict were employed by the Iranian regime or its agents to acquire these properties, and whether there is sufficient evidence to show that the practice has been widespread or systematic enough so as to reflect a state policy (or that of a *de facto* authority). Only then can it be said that these property purchases amount to unlawful appropriation of civilians’ or the enemy’s property tantamount to a war crime.

5. The reconstruction business

In June 2014, the World Bank estimated the cost of reconstructing Syria at about 200 billion USD, while the Economic and Social Commission of Western Asia (ESCWA) put the figure at 140 billion.⁴⁹ But while this is often presented as a ‘business opportunity’, crucial aspects of how exactly this business will be conducted are often overlooked.

For instance, ESCWA’s assessments of the destruction in Syria⁵⁰ and its controversial reconstruction plans for the country⁵¹ are drawn up primarily by the agency’s Deputy Executive Secretary Abdullah Dardari. Dardari was brought in by Bashar al-Assad in 2000s to ‘reform’ Syria’s economy, first as the head of the State Planning Commission and then as Deputy Prime Minister for Economic Affairs. He became famous for the country’s 10th Five Year Plan, seen as a “blueprint for economic reform.” He was removed from office in 2011, allegedly due to a conflict with al-Assad’s cousin and Syria’s biggest business mogul, Rami Makhlouf.⁵²

Prior to the high-profile ESCWA event in Beirut in September 2014,⁵³ in which the agency presented its above-mentioned assessment and plan, Dardari is said to have visited Syria and met with the government to “sell his reconstruction plan,” which revolves mainly around providing the billions needed for reconstruction projects through loans from international funds, such as the IMF, which usually impose controversial ‘readjustment’ conditions.⁵⁴

In any case, it appears that the Syrian regime was not very interested in Dardari’s proposals and had other plans involving its inner circles and its long-standing allies (Iran, Hezbollah, etc.). In February 2014, for example, Bashar al-Assad told a Jordanian delegation that his government had been planning a “comprehensive scheme to reconstruct all of Syria” and that American, Western and Gulf companies “would not have any role whatsoever in this plan.”⁵⁵

In November 2014, Damascus hosted a two-day conference on the “reconstruction of Syria” under the patronage of the Syrian prime minister. Participants presented a “road map for rebuilding what the ongoing war

in Syria has destroyed.” A three-day trade fair focusing on reconstruction was also held in Damascus, featuring “tens of local and foreign companies specialised in construction.”⁵⁶

Organising conferences and events about reconstruction may seem absurd when the war and destruction are still ongoing. In its 2014 *Doing Business* report,⁵⁷ the World Bank ranked Syria last in terms of “dealing with construction permits,” which measures the procedural and financial barriers to the implementation of business projects. But this only applies to ‘normal’ or outside investors. It also overlooks the fact that ‘reconstruction’ efforts in Syria are actually part and parcel of the war.

It is important to understand that such plans are more political than economic. They are based on the assumption that investments in Syria now will give the investors or partners significant leverage in how the country is governed later, even if the investments do not pay off in financial terms in the short term.⁵⁸

A good example of this strategy is Iran’s investments in Iraq after the fall of Saddam Hussein in 2003 and in South Lebanon after Hezbollah’s war with Israel in 2006. In January 2012, during a conference on youth and the ‘Islamic awakening’ in Tehran, the chief of Sepah Qods, General Qassem Soleimani, remarked that, as a result of such investment, “in south Lebanon and Iraq, the people are under the effect of the Islamic Republic’s way of practice and thinking.”⁵⁹

Old-new mafias

Around the same time as ESCWA’s publication of its assessment, the Damascus City Council established a holding company to redevelop the designated areas around al-Mazzeah mentioned above. The funding for the project was to purportedly come from the state-owned Real Estate Bank.⁶⁰ But the announcement is likely to be a smokescreen. The real money and real protagonists are to be found in the same usual suspects.

Syrian opposition sources claim that Rami Makhoul’s company Cham Holding has already put its hands on much of the areas designated by Decree 66, particularly the area stretching from the Mazzeah Highway to Kafar-souseh. Cham Holding already has major investments in real estate in Syria through its arm Bena Properties.

44 See, for example, ‘A technical force of 16 to rebuild the shrine of Hazrat Zainab’, *Department of Construction of Shrines*, available: <http://bit.ly/1vv7LkP>.

45 ‘Construction of new *haram* named after Sayyed al-Shohada will be completed by the end of the year’ (in Persian), SNN, 4 August 2014, available: <http://snn.ir/textversion/detail/news/337202/80>.

46 *Ibid.*

47 ‘The first group of experts dispatched to Syria for Holy Shrines reconstruction - Expansion of Zaynab shrine project has begun’, Haj News, 26 May 2014, available: <http://www.hajnews.ir/Default.aspx?tabid=89&ID=2423>.

48 See, for example, this article: http://syrianelector.com/index.php?option=com_content&task=view&id=383&Itemid=84.

49 ‘Report: 140 Billion Dollars Cost of Syria Reconstruction’, Syrian Economic Forum, 26 June 2014, available: <http://www.syrianef.org/En/?p=3615>.

50 See: http://www.escwa.un.org/information/publications/edit/upload/E_ESCWA_EDGD_14_WP-2_E.pdf.

51 See: <http://www.escwa.un.org/sites/ESAR/project.asp?ProjectTitle=The%20National%20Agenda%20for%20the%20Future%20of%20Syria>.

52 ‘Syria on the Edge of the Abyss: Assad’s Regime Escalates Crackdown on Protesters’, *Der Spiegel*, 25 April 2011, available: <http://www.spiegel.de/international/world/syria-on-the-edge-of-the-abyss-assad-s-regime-escalates-crackdown-on-protesters-a-758905.html>.

53 See: <http://www.escwa.un.org/information/meetingdetails.asp?referenceNum=3514E>.

54 For more details, see: ‘Reconstruction of Syria: A war in waiting’, *The Syrian Observer*, 9 December 2013, available: <http://www.syrianobserver.com/EN/News/26282/Reconstruction+of+-Syria+A+War+in+Waiting>. See also <http://landtimes.landpedia.org/newsdes.php?id=pGhm&catid=ow==&edition=qQ> and <http://english.al-akhbar.com/node/16041>.

55 ‘What did Bashar al-Assad tell the Jordanian delegation that recently met him’ (in Arabic), *Al-Alam*, 12 February 2014, available: <http://www.alalam.ir/news/1565113>.

56 ‘Damascus hosts Syria reconstruction conference’, *Press TV*, 25 November 2014, available: <http://edition.presstv.ir/detail/387414.html>.

57 Available: <http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Annual-reports/English/DB14-Full-Report.pdf>.

58 For an example of this argument, see: Adam Heffez and Noam Raydan, ‘The Syrian Marshall Plan’, *Foreign Affairs*, 27 August 2014, available: <http://www.foreignaffairs.com/articles/141940/adam-heffez-and-noam-raydan/the-syrian-marshall-plan>.

59 ‘Iran general’s remarks on south Lebanon draw March 14 ire’, *Daily Star*, 21 January 2012, available: <http://www.dailystar.com.lb/News/Politics/2012/Jan-21/160604-iran-generals-remarks-on-south-lebanon-draw-march-14-ire.ashx>.

60 ‘State bank expected to fund reconstruction of Mazzeah district’, *The Syria Report*, 29 December 2014, available: <http://www.syria-report.com/news/real-estate-construction/state-bank-expected-fund-reconstruction-mazzeah-district>.

A note posted by Dr Zakwan Ba'aj from Syria Freeman Conference on his personal Facebook page on 5 February 2015,⁶¹ based on information leaked from inside the Damascus City Council, claims that "a group of thieves" from the Council, working under the supervision of Makhoul and "his man in the Council," the governor of Damascus Bishr al-Sabban, has been buying and selling property in this area "to Iranians" and "in direct coordination with the Iranian intelligence."

According to the note, the "gang" includes Ayman al-Zheili, a former member of the Council's Executive Committee; his business partner Hassan Baydoun, also a member of the Council's Executive Committee; a Lebanese person with the surname of al-Mufti, as well as a number of estate agents based in Lebanon, including Abbas al-Hamed, who allegedly owns a large number of properties in the Kafarsouseh area.

Al-Zheili and Baydoun had allegedly embezzled large sums of money from never-implemented Council projects, and each now owns a cement business after working at the state-owned cement factories for years. The two men are said to be tasked with running Makhoul's real estates, some of which are allegedly registered in al-Sabban's name. Many of these have allegedly been sold to the Iranian embassy, or its agents, through the head of the Antiques Department in the Council Ahmad al-Dali, as already mentioned.

Another frequently cited name is As'ad Mhanna, the former director of al-Sabban's office, who was killed in a car bomb in March 2013.⁶² Mhanna was known for his close ties with Makhoul and was allegedly involved in organising the *shabbiha* in Damascus to suppress early peaceful demonstrations. One of his team members was Adnan al-Hakim, a Shiite from Damascus who was allegedly the group's contact person with Hezbollah and Sepah Pasdaran.

The authors of this report have not been able to independently verify any of these allegations.

A relatively new 'rival' to Cham Holding is a real estate company based in Sharjah, the United Arab Emirates, called Cartel Group.⁶³ It is owned by the former governor of Homs, Iyad Ghazal, and run by his brother Ziyad since 1989.

Following mass protests in Homs demanding the resignation of the corrupt governor, Ghazal was removed from post by a presidential decree in April 2011, in an attempt to appease the angry protesters.⁶⁴ He was apparently placed under house arrest by Hisham Bikhtyar, then head of the National Security Office, until he left the country in September 2011.

According to Syrian investigative journalist Nizar Nayouf, Ghazal was smuggled out of the country by officers from the Presidential Palace on the direct orders of Bashar al-Assad.⁶⁵ He was allegedly given three suitcases full of dollars, accompanied by official documents issued by the governor of the Central Bank Adib Mayyaleh to facilitate his passage through Dubai airport. He subsequently became an official partner in the Cartel Group, with al-Assad's money, and opened branches in Damascus, Aleppo and Beirut.⁶⁶

According to Nayouf, one of Ghazal's partners in Syria is Azmi Shalhoub, the head of the Register Office in the Damascus Countryside governorate. Shalhoub has allegedly unlawfully transferred the ownership of thousands of properties belonging to arrested, disappeared and killed Syrians in the Damascus countryside area, especially in al-Tall and Saidnaya, to regime officials and officers.

Nayouf's account of Ghazal's departure is corroborated by another Syrian source who posted a very similar story anonymously online, citing a senior employee at Cartel as a source.⁶⁷ This latter account adds that Ghazal left with 50 million dollars, withdrawn from the Syrian presidential account with the Central Bank, and that he met al-Assad through his private secretary Salim Abu Da'boul, who made him sign a document proving that he owes 50 million, along with the due interests, to al-Assad.

The allegations could not be independently verified by the authors. However, on 3 June 2014, the day of the sham presidential elections in Syria, Iyad Ghazal, who had been granted Lebanese citizenship along with other regime officials,⁶⁸ appeared on Syrian state TV alongside the country's mufti, Ahmad Badr Hassoun.⁶⁹ In mid-2012, Syria opposition media also reported, quoting a source from Damascus, that Ghazal was back in Syria and living "a decadent life."⁷⁰ The short report added that he was also working on a "big touristic project in the capital city."

In addition to corruption and unpopular projects, Ghazal is known among the residents of Homs for expropriating and destroying people's property, including historic buildings, to facilitate the implementation of his unpopular projects, with inhabitants often evacuated by force and not compensated.⁷¹

Ghazal's successor as the governor of Homs, Talal al-Barazi, also owns a number of real estate companies in the Gulf. According to Syrian opposition media reports, al-Barazi is a partner of Bashar al-Assad and Rami Makhoul in a number of front real estate companies set up by the latter two specifically for the new reconstruction market.⁷² One particular company, al-Bawadi, is said to be 25% owned by al-Barazi and 65% by Makhoul. It was established in 2012 with an initial capital of 50 million Syrian pounds. While specialising in construction and real estate, its license also allows it to represent other foreign companies in tenders and so on.

Iranian connections

In June 2014, Syrian Prime Minister Wael al-Halqi called upon the Iranian private sector to be a "partner in the reconstruction" of Syria.⁷³ "Iranian companies are Syria's main partners in the reconstruction of our country," he added during a meeting with an Iranian parliamentary delegation in Damascus. The delegation also met with President Bashar al-Assad and discussed bilateral ties, regional developments and the recent sham presidential election in the country. After congratulating the president on his "landslide victory," the chairman of the Iranian Parliament's National Security and Foreign Policy Committee, Alaeddin Boroujerdi, underlined "the necessity of forming a joint committee to rebuild Syria."

A few days before, parliamentary delegations from around 30 countries were in Tehran to discuss the situation in Syria at the second "Friends of Syria" conference.⁷⁴ Some of them flew with the Iranian delegation to Syria to "monitor the elections."

An article published on the website of Sepah's political office on 18 December 2014⁷⁵ revealed that Syrian officials had traveled to Iran on several occasions during 2014 to "ask for Iran's help" in industry, electricity, oil and health care. An Iranian convoy also traveled to Syria to study the "general financial situation" in the country.

Various Iranian companies, both private and state-owned, already have contracts in Syria, most notably in the construction of oil refineries in Homs and Banyas, electricity and water projects throughout the country, and glass and car factories.⁷⁶ A number of industrial and trade memorandums of understanding already exist between the two countries.⁷⁷

The ongoing war and the mass destruction it has brought about present a golden opportunity for many of these companies to expand their business in Syria. The

⁶¹ Available: <https://ar-ar.facebook.com/zakwan.baaj/posts/10205027066849999>.

⁶² See: http://www.aksalser.com/?page=view_articles&id=d1d-bab02dc59286309a1feea9b6905c4&ar=384870819.

⁶³ <http://www.cartelgc.com>.

⁶⁴ See, for example, <http://archive.aawsat.com/details.asp?section=4&article=616294&issueno=11819>.

⁶⁵ Private email to the author.

⁶⁶ There is also a company registered under the name of Cartel in Damascus since 2010. Its initial capital was 50 million Syrian pounds, 10% owned by the UAE-based Cartel, 80% by Ziyad Ghazal and 10% by Lina Shibli. See: <http://www.technical-news.com/pdf/38.pdf>.

⁶⁷ Available: <http://www.shababsy.org/vb/printthread.php?t=70755&pp=10&page=17>.

⁶⁸ See, for example, http://www.aksalser.com/?page=view_articles&id=3bb236cfce82636bac778f4e03903d1.

⁶⁹ See, for example, http://orient-news.net/?page=news_show&id=79439.

⁷⁰ See, for example, <https://www.zamanawsl.net/readNews.php?id=27246>.

⁷¹ For more on Iyad Ghazal, see this *Le Monde* blog in French: <http://syrie.blog.lemonde.fr/2012/06/07/on-a-retrouve-iyad-ghazal-en-syrie-et-il-va-bien-merci/>.

⁷² 'Al-Assad gangs begin implementing their 'Solidere' project: Makhoul establishes real estate company al-Bawadi to 'reconstruct' Homs and other governorates soon' (in Arabic), *Syrian Angels*, 17 July 2013, available: <http://goo.gl/t56H9a>.

⁷³ 'Al-Halqi calls for Iran's help to reconstruct Syria', *Fars News*, 5 June 2014, available: <http://english.farsnews.com/newstext.aspx?nn=13930315000481>.

⁷⁴ *Ibid.*

⁷⁵ Available: <http://goo.gl/BXxtsj>.

⁷⁶ For a list of all (public) Iranian contracts in Syria, see: <http://www.irancons.com/en-projects.htm>.

⁷⁷ See, for example, this one: <http://www.mathaba.net/news/?x=563921?disqus>.

new market also presents an opportunity for Iran to not only evade international sanctions but to also consolidate its economic and political power in this country.

Indeed, in February 2015, media reports claimed, quoting Egyptian officials, that the Iranian regime had expressed its willingness to give up on Bashar al-Assad on two conditions: keeping the “privileges” that Iran had gained in Syria over the past few years and maintaining all the agreements signed between Tehran and Damascus.⁷⁸ The first condition allegedly included “all the properties and land that Iran had bought” in Syria.

One particular area where Iranian companies are likely to play a key role is cement, as they have been doing in Iraq. Iran is the fourth-largest manufacturer of cement in the world and the largest in the Middle East, with a production capacity of 70 million tons a year.⁷⁹ According to a Syrian economist, the demand for cement in Syria will surge at least threefold compared to pre-war levels,⁸⁰ at a time when the production of cement by Syrian state plants has declined by more than 50 percent.⁸¹

A number of Iranian cement companies already have contracts in Syria. For example, Ehdas Sanat built the Hama cement factory under two contracts worth 196 and 90 million USD. Another company, MANA, also contributed to the project under a contract worth 34.4 million USD.⁸²

There are also more new partnerships between Syrian and Iranian construction companies, such as the one signed in May 2014, during an Iranian international technology fair called INOTEX, between Syrian Real Sorab and Pars Garima, an Iranian construction company.⁸³

While systematic investigations to monitor which companies will win which contracts in Syria are needed as a matter of principle,⁸⁴ one particular area to keep a close eye on is whether such companies have any links to the Iranian regime, particularly to Sepah Pasdaran. Because it is very likely that companies such as Iran Bon, which built the Iranian embassy building in Damascus under a contract worth 13 million USD, will be the ones to win the majority of the future contracts in Syria.

It is no secret that the Iranian construction industry is largely controlled by Sepah Pasdaran. Back in 2007, media reports revealed that the force had ties to more

than 100 companies, with contracts worth 12 to 15 billion USD.⁸⁵ The figures are likely to have increased since then, but exact details are difficult to obtain, partly because Sepah Pasdaran reports directly to Iran’s Supreme Leader, Ayatollah Ali Khamenei, and many of its activities are not subject to parliamentary oversight.

One of the most notorious and best known construction companies affiliated with Sepah Pasdaran is the force’s construction and engineering arm, Khatam al-Anbia. Also known as Ghorb, it is one of nine Sepah-affiliated entities that have been on the US Treasury’s Iran sanctions list since 2007.⁸⁶ It was also sanctioned by the EU in 2008 and by the UN Security Council in 2010.⁸⁷

Set up during the Iran-Iraq war as Sepah Pasdaran’s headquarters of reconstruction, Qarargah Sazandegi Khatam Alanbia, often abbreviated in English as KAA, has evolved into a giant holding company, with more than 800 registered subsidiaries inside and outside Iran. It has many fingers in many pies and is involved in numerous civil and military construction projects.⁸⁸ In 2012, KAA received 1,700 government contracts worth billions of dollars.

Despite Iran’s struggling economy and falling oil prices, Iranian President Hassan Rouhani announced at the end of 2014 a 50 percent increase in Sepah Pasdaran’s budget, taking the force’s total annual spend to over 5 billion euros.⁸⁹ That is more than half of Iran’s total defense budget, which was itself increased by 33 percent. Buried in the small print of the budget was a further 2.5 billion euros that will go directly to Khatam al-Anbia.⁹⁰

All the above-mentioned Iranian and Syrian entities involved in current and future construction projects in Syria, as well as many others that have not been mentioned in this report, should be investigated. If any links are found to unlawful activity, such as using the war as a means or a cover to further dubious reconstruction projects, they should be sanctioned and their owners punished accordingly. This should include their role in facilitating, aiding, abetting or providing the means for the commission of the above-mentioned war crimes.

The same should apply to companies and governments helping these Iranian and Syrian entities evade scrutiny and sanctions, especially those based in countries known to tolerate or overlook the activities of the Iranian and the Syrian regimes, such as the United Arab Emirates.⁹¹

This is particularly important in light of what appears to be concerted efforts by the current US administration to relief some of the sanctions imposed on Iran and Syria in the hope of reaching a nuclear deal with Iran. In July 2013, the US government amended its Iran and Syria sanctions regulations to expand the potential for US and other companies to export and re-export certain items to Iran and Syria under the justification of “assisting the ordinary people of these countries who have suffered under the current governmental regimes.”

Items eligible for potential export under the new regulations include commodities related to *construction and engineering*. Previously only the export of food and medicine was allowed.⁹²

6. Forced displacement and population transfer

There are two aspects to the *demographic change* taking place in Syria: the forced displacement of millions of Syrian civilians, the majority of whom happen to be Sunnis, and the importation and settlement of foreign nationals of Shia origin.

It is estimated that over half of the Syrian population has been displaced by the ongoing war, either inside or outside Syria. The issue is well documented by various Syrian and international organisations, including UN agencies, so there is no need to repeat the details here. Suffice to say that the widespread and systematic displacement of millions of people was often the result of coercive measures (violence or fear of violence by regime forces and militias) and that many of those displaced have no homes to return to because they have been either destroyed, demolished or ‘reconstructed’ in an unlawful and wanton manner. Moreover, in the majority of these cases, the displacement was not justified by a clear military necessity or carried out for the security of

78 ‘Two Iranian conditions to give up on al-Assad’ (in Arabic), *Al-Watan*, 1 February 2015, available: http://alwatan.com.sa/Politics/News_Detail.aspx?ArticleID=213486. See also this article in Al-Hayat from around the same time: <http://goo.gl/7s5FDa>.

79 See, for example, ‘Iran a force in cement industry’, *The Hill*, 7 January 2015, available: <http://thehill.com/blogs/congress-blog/foreign-policy/228643-iran-a-force-in-cement-industry>.

80 ‘Demand for cement to surge threefold post conflict’, *The Syria Report*, 13 May 2013, available: <http://www.syria-report.com/news/real-estate/demand-cement-surge-threefold-post-conflict>.

81 ‘Cement output continues to drop at state plants’, *The Syria Report*, 11 November 2013, available: <http://www.syria-report.com/news/real-estate-construction/cement-output-continues-drop-state-plants>.

82 See: <http://www.irancons.com/en-projects.htm>.

83 ‘13 agreements and commercial contracts signed between Iran and neighbouring countries’ (in Persian), *Hitna*, 25 May 2014, available: <http://bit.ly/16IZyTL>.

84 For all Syrian construction tenders, see for example, http://www.cwctenders.com/construction_tenders_syria.htm.

85 See, for example, ‘Iran’s \$12-billion enforcers’, *Los Angeles Times*, 26 August 2007, available: <http://articles.latimes.com/2007/aug/26/world/fg-guards26>. For some background to Sepah’s commercial activities, see, for example, <http://content.time.com/time/world/article/0,8599,1659039,00.html> and <http://www.rand.org/pubs/monographs/MG821.html>.

86 US Department of the Treasury, ‘Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism’, 25 October 2007, available: <http://www.treasury.gov/press-center/press-releases/pages/hp644.aspx>. See also: <http://www.treasury.gov/press-center/press-releases/Pages/tg539.aspx>.

87 ‘Security Council imposes additional sanctions on Iran’, UN, 9 June 2010, available: <http://www.un.org/press/en/2010/sc9948.doc.htm>.

88 See, for example, ‘The financial power of the Revolutionary Guards’, *The Guardian*, 15 February 2010, available: <http://www.theguardian.com/world/2010/feb/15/financial-power-revolutionary-guard>.

89 For more details, see: ‘Paris attack: Jihadi cancer has its roots in Tehran’, *The Diplomat*, 9 January 2015, available: <http://thediplomat.com/2015/01/paris-attack-jihadi-cancer-has-its-roots-in-tehran/>.

90 *Ibid.*

91 For an example of an UAE-based company found to have been helping the Syrian regime evade sanctions, see: <http://www.bis.doc.gov/index.php/regulations/federal-register-notices/102-about-bis/newsroom/press-releases/press-releases-2013>.

92 Electronic Code of Federal Regulations, 15(B)(VII)(C) (746), available: <http://www.ecfr.gov/cgi-bin/retrieveECFR?g-p=&SID=49b738cb17f48dec1ed29b71fedac2e3&r=SECTION&n=15y2.1.3.4.30.0.1.9>. For more details, see: http://www.kirkland.com/siteFiles/Publications/Alert_080113.pdf.

those displaced. As such, the majority of these cases arguably amount to war crimes and, in some cases, crimes against humanity.

The other aspect (the transfer of Shia foreign nationals into Syria) is more controversial and more difficult to establish.

It is no longer a secret that Shiatisation in Syria is on the rise. A concerted programme of spreading the Iranian version of Shia Islam, which had begun during Hafez al-Assad's reign and continued at a faster pace during Bashar al-Assad's years,⁹³ took dangerous turns with the current war. Mass Shia processions during Ashura; new Shia mosques, shrines and hawzas; Shia books and symbols on book stalls... all have become common scenes in traditionally Sunni areas in Damascus and other Syrian cities. And all are clearly tolerated, and even encouraged, by the Syrian authorities.

On a state policy level, Bashar al-Assad issued in 2014 a decree allowing the teaching of the Shia doctrine in Syrian schools alongside the Sunni one, coupled with the opening of the first-ever Shia state school in the country in September 2014 (al-Rasoul al-A'tham school on the outskirts of Jableh).⁹⁴

About 40 smaller private Shia schools had been opened in Damascus, mainly in the districts of al-Amin, Bab Msalla and al-Hamra. Shia hussayniyahs (religious meeting rooms and halls devoted to Imam Hussein) have mushroomed in Damascus and elsewhere in regime-held areas.⁹⁵

Unfortunately much of the coverage of such phenomena tends to be sectarian, conflating the religious and cultural with the political. Shiism or Shiatisation are not a crime in themselves. Freedom of religion, which includes religious teaching, is a fundamental human right. The only issue that should concern us here is whether there is sufficient evidence to accuse the Syrian and the Iranian regimes of changing, or attempting to change, the demographic composition of certain parts of Syria using unlawful means.

In this regard, there have been many, often unsubstantiated reports about the Syrian Ministry of Religious Endowments (Awqaf) appropriating land and property surrounding historic Sunni shrines and tombs and giving or selling them, along with the shrines, to Iranians, who then claim the sites belong to historic Shia personalities

and build new structures on site.⁹⁶ More reliable evidence, such as details and documents from land registry offices in the concerned areas, are needed to determine the truthfulness and extent of these allegations.

There have also been many reports and rumours about the Syrian authorities' granting or planning to grant Syrian citizenship to thousands of foreign Shias. The best known of these is a widely circulated report from 2013 claiming that Bashar al-Assad had "opened the door for naturalising 40 thousand people [in al-Swaida], mostly Shia followers of Hezbollah, both the Lebanese and Iraqi branches, who had been fighting alongside the Assad forces, as well as civilians from the same sect." "Those who will be granted Syrian citizenship," the report adds, "will be given known Durzi family names. The authorities have already embarked on the project since about a week."

On 15 July 2013, a number of Syrian activists from al-Swaida issued a statement condemning the project, describing it as "playing with the demographics of the area," which is inhabited by a Druze majority.⁹⁷

The allegations appear to originate from two similar articles that appeared in two Saudi and Kuwaiti newspapers, *al-Sharq al-Awsat* and *al-Qabas*, on 13 July 2013.⁹⁸ The allegations could not be independently verified by the authors of this report, nor is it clear where the 40,000 figure came from. Even if the allegations were true, it is likely that the figure is exaggerated. At the time when the articles were published, there were reportedly only 2,400 Shia fighters in al-Swaida, all accommodated in the city's football stadium.⁹⁹

It is no secret that the Syrian and Iranian regimes have brought in thousands of Shia fighters from Lebanon, Iraq, Iran, Afghanistan and elsewhere to fight alongside and on behalf of the Assad forces, under the pretext of defending Shia shrines.¹⁰⁰ Many of them are the children of poor Afghans refugees who had fled their country to Iran during the Soviet occupation in the 1980s.

It is plausible that some of these fighters have since then brought their families to Syria and settled in the areas occupied by these militias (there have been frequent reports of foreign Shia families settling in certain neighbourhoods of Damascus and Homs, such as Sayyeda Zaynab, Darayya, al-Qusayr and so on¹⁰¹).

However, as explained in the next chapter, the population transfer prohibited under international law concerns civilians and not combatants. Article 8(b)(viii) of the Rome Statute prohibits “the transfer, directly or indirectly, by the Occupying Power of parts of its *own civilian population* into the territory it occupies” (emphasis added). Similarly, Article 49 of the Fourth Geneva Convention provides that “The Occupying Power shall not deport or transfer parts of its *own civilian population* into the territory it occupies.”

Furthermore, the majority of the Shia fighters in question are not Iranian nationals – they are mostly Iraqi, Lebanese and Afghan. This means that, in the majority of these cases, Iran cannot be accused to transferring its *own* civilian population to Syria. It could be argued, however, that the Iranian authorities, particularly Sepah Pasdaran, exercise *de facto* authority over these Shia fighters, as argued in a previous Naame Shaam report.¹⁰²

In any case, more reliable evidence is needed to determine the scale of these alleged population transfer schemes. There are, however, enough indications and leads to warrant an international investigation by specialised bodies into this serious issue.

It is worth noting that, according to the Syrian nationality law,¹⁰³ the president has powers to grant foreigners Syrian citizenship but this can only be done on an individual, case-by-case basis and the applicant must have been a resident in the country for at least five consecutive years.¹⁰⁴ Thus, the alleged projects of naturalising thousands of foreign Shia *en masse* would be unlawful under Syrian law, especially as most of the persons concerned would have come to Syria in the past four years (with the exception of a small number of Iraqis and Iranians who had been living in Syria prior to the outbreak of the revolution in March 2011).

Furthermore, the applicant must be “of good conduct” and have “no criminal record.” In other words, the Syrian citizenship acquired by foreign fighters can be revoked in the future on this basis if it can be established by a qualified authority or court that they have committed criminal acts in Syria.

Article 20 of the above-mentioned law also states that anyone found to have acquired citizenship by misrepresentation or fraud shall be deprived of it by a judicial

ruling. This would apply to the allegations of falsifying identity documents, such as in Homs and Damascus, but more concrete evidence of falsification is needed.

Finally, the acquired citizenship can also be revoked if the concerned person is found to be serving military service in another country without prior authorisation from the Syrian Minister of Defence. This is likely to be the case of many foreign fighters fighting in Syria, particularly Iranians.

93 The best known studies of Shiatization in Syria before 2011 are perhaps the following three: *The Shiitization Process in Syria 1985-2006: A Socio-statistic Paper*, National Council for Truth, Reconciliation and Justice in Syria, 2006, unavailable online; Khalid Sindawi, *The Shiite Turn in Syria*, Hudson Institute, 2009, available: <http://www.hudson.org/research/9894-the-shiite-turn-in-syria->; *The Shiite Resurrection in Syria 1919-2007* (in Arabic), International Institute for Syrian Studies, 2009, available: <http://www.creativity.ps/library/datanew/cre4/38.pdf>.

94 ‘Opening of first special school teaching Jafari Shiism in Syria’, *Shia News*, 30 September 2014, available: <http://goo.gl/Hbzuj5>.

95 See, for example, this video from early 2015 showing a Shia ceremony inside the Umayyad Mosque in Damascus, which many Sunnis regarded as a provocation: <http://goo.gl/2dDUss>.

96 Here is an example of such reports: <http://www.elaphjournal.com/Web/News/2014/10/949230.html?entry=Syria>.

97 See: http://orient-news.net/?page=news_show&id=79227.

98 ‘News of preparations by al-Assad to naturalise thousands of Shias in order to change demographics in Swaidaa’ (in Arabic), *al-Sharq al-Awsat*, 13 July 2013, available: <http://archive.aawsat.com/details.asp?section=4&article=735992&issueno=12646>. ‘Hunger sneaks into Homs.. and Damascus is hit with surface-to-surface missile’ (in Arabic), *al-Qabas*, available: <http://alqabas-kw.com/Temp/Pages/2013/07/13/14412.pdf>, p.41.

99 *Ibid.*

100 For more on this, see: <http://www.naameshaam.org/report-iran-in-syria/2-foreign-militias/>.

101 See, for example, this report (in Arabic) by Siraj Press from 12 January 2014: <http://goo.gl/E6VG3U>; and this one by All4Syria from 13 June 2014: <http://all4syria.info/Archive/152302>.

102 See: <http://www.naameshaam.org/report-iran-in-syria/2-foreign-militias/>.

103 Legislative Decree 276 of 1969, available in English: <http://www.refworld.org/pdfid/4d81e7b12.pdf>.

104 In September 2013, the Syrian Council of Ministers passed a law waiving the 5-year period only for stateless Syrian Kurds who had been granted citizenship under Decree no. 49 of 2011. See: <http://www.souriatnapress.net/?p=4254>.



Jdeideh district, Aleppo, 20 February 2013. © Reuters/George Ourfalian



Karam Al-Tarrab neighborhood, near Aleppo International Airport, 15 February 2013.
© Reuters/Malek el Shemali



Aleppo, 21 April 2014. © Aleppo Media Center

7. Sectarian cleansing?

Although it is being thrown about too casually in the Syrian context, the term ‘ethnic cleansing’ or ‘sectarian cleansing’ has a strict legal definition. It usually refers to “a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas.”¹⁰⁵

In other words, they refer to the mass displacement of civilian population from their homes, using coercive and unlawful means, with the intent of changing the ethnic or sectarian character of the area. The homes of the displaced are often destroyed so that they cannot return to them, and new population of another, rival ethnicity or sect usually settle in their place.

In addition to other crimes, this is considered discrimination on the basis of racial, ethnic or religious grounds. In armed conflicts such as that in Syria, the practice is likely to constitute a war crime and, depending on the circumstances, may also amount to a crime against humanity (it would probably not amount to genocide).

Shiism, Alawism and Sunnism are of course not ethnicities or races. They are, however, religious beliefs that designate identifiable groups of people associated with these beliefs. Sectarian cleansing is therefore more accurate to describe what is allegedly taking place in certain parts of Syria.

Significantly, it is sufficient that a group or community subjected to an alleged crime of sectarian cleansing is identifiable either based on an objective criteria or *in the mind of the accused*. Thus, in addition to the subjective and objective requirements necessary to establish war crimes and crimes against humanity discussed in the next chapter, the crime of ethnic or sectarian cleansing must be committed *with a discriminatory intent*, which differentiates it from other war-related crimes.

While the violence and destruction committed in Syria by Syrian and Iranian regime forces and militias against civilians and civilian objects have been largely indiscriminate in many cases, especially in big cities, there is evidence that, at least in certain areas, they have had a sectarian

character. The massacres of al-Houla, al-Bayda and Baniyas are the best known examples.¹⁰⁶ And there are a number of reasons for this.

Soon after the outbreak of the revolution in March 2011, with an increasing number of regular army soldiers defecting and joining the Free Syrian Army, the Syrian and the Iranian regimes resorted to largely sectarian militias, both old and new, to fill this gap. Thus, even if the aim was political (to suppress mass popular protests), the discourse used to mobilise and recruit for these militias in Syria, Lebanon, Iraq and Iran was sectarian (protecting Alawis and Shia from Sunni fundamentalists and so on).

It is no surprise, then, that many crimes committed by these militias were sectarian-motivated – at least in the minds of the militiamen – as evidenced by countless videos and comments posted by them on social media. In the words of one commentator, “Unlike the Syrian Army, which has claimed to be fighting a nationalist battle against foreign-backed interests, these armed proxies make no pretense about their true objective: to ethnically cleanse Syria’s Sunni population in the strategically vital western corridor of the country.”¹⁰⁷

It is true that not all *shabbiha* members are Alawis, as they are often portrayed in Western or Syrian opposition media reports. They also include Sunnis, Druze and other ethnic and religious backgrounds depending on the region. In Aleppo, for example, many *shabbiha* come from powerful local families, the most notorious of which being the Sunni Berri family, which is known for drugs and arms smuggling and its close ties to the regime. In Rukin al-Deen in Damascus, many belong to Damascene-Kurdish families; in Deir al-Zor, to Arab Sunni families and clans... and so on and so forth.¹⁰⁸ *In certain areas, however, such as Homs and south Damascus, the militias fighting alongside or on behalf of the regime have been largely Alawi or Shia.*

It is in these areas that most of the crimes that are the focus of this report occurred and continue to occur. This is because, after the battle of al-Qusayr in April-June 2013, there was a noticeable shift in the Iranian regime’s military strategy in Syria: conceding, or perhaps losing interest in, the possibility of regaining control of the eastern and northern parts of the country that were now under the rebels’ control. Instead, the focus from 2013 on would

be on defending and consolidating the Syrian and Iranian regimes’ control in Damascus and its surroundings, Homs and its surroundings (which connect the first with the coastal region) and the Qalamon region (which connects the first two and connects both with Lebanon).¹⁰⁹

To achieve this, the leading role in key, strategic battles in these areas was assigned to these sectarian militias (Hezbollah and other Iranian-backed militias), which were seen as more loyal, more reliable and better organised than the regular Syrian army. At the same time, loyalist zones or corridors had to be created and secured. And the ‘easiest’ way to achieve this, it seems, was to *change the demographic composition* of those areas, that is, to empty them of all ‘wanted elements’, who happened to be Sunni, and replace them with loyal ones, namely Alawis and Shia militants and civilians, both local and foreign. The mass destruction and appropriation of civilian property and the forcible displacement and transfer of civilian population discussed in this report appear to be part of this policy.

The ultimate aim of this scheme, which arguably amounts to sectarian cleansing and to a foreign occupation, appears to be securing the Damascus–Homs–Coast-Lebanon corridor in order to both provide a *geographical and demographic continuity of regime-held areas and secure arms shipments to Hezbollah in Lebanon*, while at the same time cutting off those of the rebels coming from or through eastern Lebanon.

105 See: <https://www.icrc.org/casebook/doc/glossary/ethnic-cleansing-glossary.htm>.

106 For more on these massacres, see: <http://www.naameshaam.org/report-iran-in-syria/1-sepah-pasdar-an-advisers/#houla>. See also: <http://sn4hr.org/blog/2013/05/10/blatant-ethnic-cleansing-in-syria/>.

107 Michael Weiss, ‘Rise of the militias’, Now, 17 May 2013, available: <https://now.mmedia.me/lb/en/commentaryanalysis/rise-of-the-militias>.

108 For more on this, see for example: Yassin al-Haj Saleh, ‘On the shabbiha and tashbeeh and their state’ (in Arabic), Kalamon 5, Winter 2012, available: <http://www.kalamon.org/articles-de-tails-122#axzz3BIVV8l9Q>. An English translation is available: <http://lb.boell.org/en/2014/03/03/syrian-shabiha-and-their-state-state-hood-participation>.

109 For more on this, see: <http://www.naameshaam.org/report-iran-in-syria/2-foreign-militias/#leading>.



Sites of killing in Bayda, May 2013.



Bayda. Screenshot from report aired by al-Manar TV (a Hezbollah Lebanon channel), aired on 2 May 2015.

Source of both photos: Human Rights Watch report "No One's Left – Summary Executions by Syrian Forces in al-Bayda and Baniyas", September 2013, http://www.hrw.org/sites/default/files/reports/syria0913webwcover_0.pdf



Bodies lying in a street in Baniyas after a sectarian massacre by pro-Assad forces.

Source: <http://www.dailymail.co.uk/news/article-2319734/Harrowing-image-ethnic-cleansing-Syria-militia-loyal-Assad-blamed-deaths-women-children.html>

There may also be other, long-term geostrategic goals, such as building and securing a pipeline that would transport gas from Iran's South Pars, the world's largest gas field, through Iraq to the Syrian coast on the Mediterranean, with a possible line to Lebanon.¹¹⁰ But further research and more concrete evidence is needed to establish this.

Ironically, it was the Syrian and the Iranian regimes that have been scaremongering from the beginning about Sunni fundamentalists planning to ethnically cleanse the Alawis and Shia of Syria.¹¹¹

But while some of the most extreme Sunni Islamist armed groups fighting in Syria have indeed carried out sectarian-motivated human rights violations and possibly massacres, as documented by Amnesty International, Human Rights Watch and others, many such acts ap-

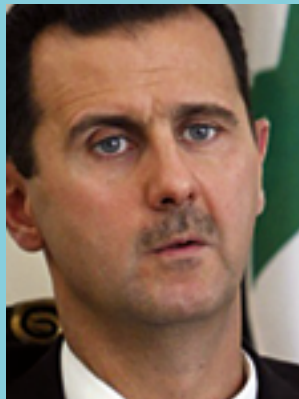
pear to have been reactions to the deliberately sectarian policies and practices employed by the Syrian and the Iranian regimes.¹¹²

110 Syria, Iraq and Iran signed a tripartite MoU to this effect in in July 2011. The commissioning of the pipeline with a design capacity of 110 million cubic meters per day and a cost of \$10 billion was scheduled for 2016. For more details, see: http://russiancouncil.ru/en/inner/?id_4=3580#top and <http://www.rebuildingiraq.net/iran-commences-of-the-construction-of-iran-iraq-syria-gas-pipeline/>.

111 Here is a typical example: <http://www.presstv.com/detail/2014/02/10/350085/militants-seek-ethnic-cleansing-in-syria/>.

112 See, for example, <http://www.reuters.com/article/2012/06/11/us-syria-crisis-massacres-idUSBRE85A1DY20120611> and <http://www.nytimes.com/2012/03/29/world/middleeast/refugees-say-neighbor-shoots-neighbor-in-syrian-crackdown.html>.

II. Legal Framework



President Bashar Assad



General Qassem Soleimani



Sayyed Hassan Nasrallah

II. Legal Framework

The unlawful destruction and appropriation of civilian property and the forcible displacement and transfer of civilian population are considered serious war crimes and/or crimes against humanity under international law. This chapter outlines the legal framework of investigating these two types of crime in the Syrian context, discussing various relevant legal questions. Examining these two crimes together is intended to show that there may be a policy of sectarian cleansing being carried out in certain parts of the country.

1. Destruction and appropriation of property

Since the concept of war crimes was introduced by Article 228 of the Peace Treaty of Versailles, and developed later by the charters of the international military tribunals at Nuremberg and Tokyo, international humanitarian law prohibits the war crime of excessive destruction and appropriation of civilian property during armed conflicts when not justified by ‘military necessity’.

Grave breach

The four Geneva Conventions of 1949¹¹³ did not use the term ‘war crimes’. Instead, the term ‘grave breaches’ was used. However, Protocol I Additional to the Conventions, adopted in 1977, considered these grave breaches to be war crimes (Article 85(5)). And so did the Rome Statute of the International Criminal Court (ICC) of 1998,¹¹⁴ bringing these breaches within the jurisdiction ICC.

One of these grave breaches of the Geneva Conventions (I, II and IV) is the *extensive destruction or appropriation of property, not justified by military necessity and carried out unlawfully and wantonly*.

‘Wanton’ means grossly careless and malicious. Wanton destruction therefore implies a reckless disregard for the grave consequences of one’s action for the safety of people or property. It differs from gross negligence in that it is the result to a wilful act. It is in a way the opposite of the principle of precaution contained in Article 58(c) of Additional Protocol I, which states that the parties to a conflict shall, to the maximum extent feasible, “take

the other necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations.”

The rule of military necessity was first defined in the Lieber Code in 1863 as “the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.”¹¹⁵ According to the International Committee of the Red Cross (ICRC), the “four foundations” of military necessity are “urgency, measures which are limited to the indispensable, the control (in space and time) of the force used, and the means which should not infringe on an unconditional prohibition.”¹¹⁶ In other words, while granting military commanders considerable autonomy regarding the appropriate tactics for carrying out a military operation, military necessity cannot be used by warring parties to justify violations of the laws of war and other international legal obligations, including the prohibition of unlawful destruction or appropriation of civilian property.

War crime

Article 8(2)(a)(iv) of the Rome Statute lists a number of war crimes that fall under the jurisdiction of the ICC, in particular when committed “as part of a plan or policy or as part of a large-scale commission of such crimes.” These include grave breaches of the Geneva Conventions, including the “Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”

As the Article specifically references the Geneva Conventions, the person(s) or property concerned must be protected under the corresponding Convention (I, II or IV). For instance, in the First Convention (Articles 33 to 36), the crime only applies to the destruction of buildings or material belonging to medical units. In the Fourth Convention, it applies to civilian hospitals and property in occupied territory. Thus, only the destruction of these property protected by the Conventions can be considered a grave breach, and therefore a war crime, under the Rome Statute.

Civilian objects

However, in Article 8(b)(i) and (ii), the Statute also considers intentional attacks against civilian population and

civilian objects in general as a war crime:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives.

These are violations of the laws and customs regulating international armed conflicts and reflect two basic rules in Protocol I Additional to the Geneva Conventions contained in Articles 51(2), 52 and 85(3)(a).

Civilian objects are defined by Article 52(2) as “all objects which are not military objectives,” which are in turn defined as “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”¹¹⁷ Roads, bridges, railways and the likes are usually considered military objective as they can be used by the parties to a conflict for military purposes.

Thus, in order to be considered a crime under international law, the destroyed or appropriated property must be civilian (not contributing to military action) and the attack not justified by military necessity (gaining military advantage). A civilian object may become a military objective only when it makes an effective contribution to military action and its destruction in the circumstances ruling at the time provides a definite military advantage. This advantage cannot be potential or indeterminate; it must be “concrete and perceptible” and “not hypothetical and speculative.”

It should be noted that this provision also includes undefended and demilitarised areas, e.g. after ceasefires or withdrawals:

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives.

This is because, due to the cessation of military action, such places no longer make an effective contribution to military efforts and should not therefore be military objectives.

The provision develops previous ones contained in Article 25 of the Hague Regulations, Article 2 of the Hague Convention No. IX, and Articles 14 and 15 of the Fourth Geneva Convention. Indeed, the word ‘civilian’ includes not only people not taking active part in the hostilities but also fighters who have surrendered their arms and no longer take part in the hostilities.¹¹⁸

Excessive attacks

The prohibition of attacks against civilian objects should be particularly observed when such attacks are indiscriminate and carried out with the knowledge that they will cause clearly excessive loss or damage, which is a violation of the proportionality principle contained in Article 85(3)(b) and (c) of Additional Protocol I and Article 8(b)(iv) of the Rome Statute:

Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.

The proportionality has to be measured on a case-by-case basis against the “concrete and direct military advantage anticipated” by a “reasonable military commander.” Although the Rome Statute adds the word “overall”, the military advantage must still be direct.

113 Geneva Conventions and Protocols are available at: <https://www.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp>.

114 The Rome Statute is available at <http://www.un.org/law/icc/index.html>.

115 Article 14. Available: <http://www.civilwarhome.com/liebercode.htm>.

116 ICRC, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, 1987*, available: <https://www.icrc.org/eng/resources/documents/publication/p0421.htm>.

117 For more on the definition of military and civilian objects, see: https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule8 and https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule9.

118 For more on the definition of ‘civilians’, see: https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule5.

Other war crimes

The same article of the Rome Statute also considers as war crimes:

(xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

(xvi) Pillaging a town or place, even when taken by assault.

Both of these provisions are based on the Hague Regulations (Article 23(g) and Article 28 respectively). "Pillage" is defined by the Rome Statute and by Article 33 of the Fourth Geneva Convention as the "appropriation of property for private, personal use." It should therefore be distinguished from the 'official' destruction or appropriation of property discussed above.

As to the enemy's property, Article 53 of the 1907 Hague Regulations provides that "An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations."

Non-international conflicts

Finally, it is important to note that paragraphs (2)(c) and (e) of Article 8 of the Rome Statute contain provisions applicable in armed conflicts not of an international character that are almost identical to those provided for in relation to international armed conflicts (see below for a discussion on international and non-international armed conflicts). These include:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(v) Pillaging a town or place, even when taken by assault;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.

Like those occurring in international armed conflicts, the Rome Statute considers these acts to also constitute serious violations of the laws and customs applicable in armed conflicts, and therefore war crimes. But while these provisions reflect those contained in Article 13(2) of Protocol II Additional to the Geneva Conventions, which deals with non-international armed conflicts, they neither mention the protection of civilian objects nor the proportionality principle. However, it is generally accepted that the general protections provided in Article 13(1) and (2) include civilian objects by implication.

Summary

The wanton and unlawful destruction and appropriation of civilian property is considered a grave breach of the Geneva Conventions, and therefore a war crime that falls under the jurisdiction of the ICC. The following chapter will provide various examples indicating that such acts have been committed by the Syrian and the Iranian regimes in certain parts of Syria in an extensive and excessive manner in the meaning of Rome Statute and other relevant international instruments.

Furthermore, they have often been committed alongside other war crimes, such as deliberate attacks on civilians and civilian objects, pillage and destroying or seizing the enemy's property without that being demanded by the necessities of the war.

Finally, it does not matter much whether the conflict in Syria is considered international or non-international, as the Rome Statute covers both situations, even though the authors of this report would argue that the war in Syria should be treated as an international armed conflict (see below).

2. Deportation and population transfer

Since the Nuremberg trials, various international tribunals have dealt with the crime against humanity of forcible deportation of civilian population. For instance, in the 1995 case of *Nikolić*, the International Criminal Tribunal for former Yugoslavia (ICTY) ruled that deportation could be qualified as both a grave breach of the Geneva Conventions and a crime against humanity.

Crime against humanity

Article 7 of the Rome Statute lists a number of crimes against humanity that fall under the jurisdiction of the ICC, in particular when committed “as part of a wide-spread or systematic attack directed against any civilian population.” The crimes listed include the “*Deportation or forcible transfer of population*” (Article 7(1)(d)).

“Attack directed against any civilian population” here means “a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.”

“Deportation or forcible transfer of population” is defined as the “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.” Deportation is generally distinguished from transfer if the concerned civilians are forcibly transported across the border to the territory of another state.

For a crime to be considered a crime against humanity, it must be large-scale or systematic, i.e. of sufficient gravity so as to warrant international concern. Random or isolated acts of violence against civilians or civilian property are therefore not considered crimes against humanity. It is sufficient to prove one of the two criteria (large-scale or systematic) for the attack to be considered a crime against humanity. However, this rather broad scope is counterbalanced by including a policy element in the definition of attacks against civilian population. In other words, the crime must also be part of a state policy or practice, or of that of an entity exercising *de facto* authority over the territory. Finally, it must be connected to an armed conflict, whether internal or international. In the case of forcible transfers, the civilians concerned must have also been lawfully present in the area prior to the transfer.

The notion of ‘lawfully presence’ has not been sufficiently scrutinized by international criminal tribunals. However, in the 2010 cases of *Popović*, the ICTY ruled that, *The clear intention of the prohibition against forcible transfer and deportation is to prevent civilians from being uprooted from their homes and to guard against the wholesale destruction of communities. In that respect, whether an individual has lived in a location for a sufficient period of time to meet the requirements for residency or*

*whether he or she has been accorded such status under immigration laws is irrelevant. Rather, what is important is that the protection is provided to those who have, for whatever reason, come to “live” in the community – whether long term or temporarily. Clearly the protection is intended to encompass, for example, internally displaced persons who have established temporary homes after being uprooted from their original community. In the view of the Trial Chamber, the requirement for lawful presence is intended to exclude only those situations where the individuals are occupying houses or premises unlawfully or illegally and not to impose a requirement for “residency” to be demonstrated as a legal standard.*¹¹⁹

Significantly, the policy “need not be formalized and can be deduced from the way in which the acts occur,” as the ICTY ruled in the 1995 case of *Tadić*.

The Tribunal also ruled that, “It would be sufficient to prove that the crime was committed in the course of or as part of the hostilities in, or occupation of, an area controlled by one of the parties.”

In its 2010 decision on the authorization of an investigation into the situation in the Republic of Kenya,¹²⁰ the Pre-Trial Chamber of the ICC stated that a state policy “does not necessarily need to have been conceived at the highest level of the State machinery.” Thus, a policy adopted by regional or even local organs of the state, or of an entity exercising *de facto* authority over the territory, could satisfy the requirement of a state policy.

Finally, it should also be noted that the term “deported or forcibly transferred” is interchangeable with “forcibly displaced”, and that the term “forcibly” is not restricted to physical force but may include “threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.”¹²¹

¹¹⁹ For a more discussion of this, see: <http://www.refworld.org/pdfid/4e09a5622.pdf>.

¹²⁰ Available: <http://www.iclklamberg.com/Caselaw/Kenya/PTCII/ICC-01-09-19-corr.pdf>.

¹²¹ See the Elements of the Crime for Article 7(1)(d).

War crime

Article 8(b)(viii) of the Rome Statute also prohibits a related war crime, namely:

The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory.

This crime only appears in the Fourth Geneva Convention (Article 49) in relation to the transfer of civilian population into and out of occupied territories. Thus, for the article to apply, it must first be established that the territory concerned is occupied and that the context within which the population transfer took place is an international armed conflict. Article 49 states:

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.

[...]

The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

In contrast to crimes against humanity, plan, policy or scale are not required elements of war crimes. One single act may constitute a war crime. However, it is unlikely that a single act would meet the gravity threshold required by the Rome Statute, as already

indicated. The act should be committed “as part of a plan or policy or as part of a large-scale commission of such crimes.”

Non-international conflicts

Article 8(b)(viii) of the Rome Statute and Article 49 of the Fourth Geneva Convention only concern occupied territory. However, paragraph (e)(viii) of the same Rome Statute Article lists as a war crime a similar “serious and systematic” violation of the international law in armed conflicts not of an international character:

Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.

This provision is inspired by Article 17 of Additional Protocol II, which concerns non-international armed conflicts:

1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

We will shortly present a case for treating the ongoing war in Syria as an international armed conflict and regime-controlled areas of Syria as territory occupied by the Iranian regime and the militias it controls. But even without this, the Rome Statute and Protocol II prohibit the forcible displacement and transfer of civilian population and consider it a war crime.

Summary

The forcible displacement or transfer of civilian population, whether in international or non-international armed conflicts, is considered as both a crime against humanity and a war crime. Both can be applied concurrently to the Syrian case. The following chapter will provide various examples indicating that such acts have been committed by the Syrian and the Iranian regimes repeatedly in certain parts of Syria.

3. Individual and superior responsibility

Individual responsibility

One of the fundamental principles of criminal law is the individual responsibility for crimes, meaning no person should be punished for an offence that he or she has not personally committed.¹²²

According to its Statute, the ICC has jurisdiction over all “natural persons” aged 18 and above, regardless of their official capacity and of any protections provided for under national law (Article 27 deals with the “irrelevance of official capacity” and Article 29 with the “non-applicability of statute of limitations”). In other words, state officials are by no means exempt from criminal responsibility under this Statute. Neither should special immunities, whether under national or international law, prevent the ICC from exercising its jurisdiction.¹²³

Individual criminal responsibility is dealt with in Article 25 of the Rome Statute. Paragraphs 3(a)-(e) list various forms of perpetration of and participation in international crimes within the ICC’s jurisdiction, and any person committing any of these acts is considered “criminally responsible and liable for punishment.” The acts include:

(a) *Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;*

(b) *Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;*

(c) *For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;*

(d) *In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:*

(i) *Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or*

(ii) *Be made in the knowledge of the intention of the group to commit the crime.*

To sum up, an international crime may be *perpetrated* either directly by an individual, jointly with another person or a group of people, or through another person or group. A person may also be criminally responsible if he or she has *participated* in the crime, whether by ordering, soliciting, inducing, aiding, abetting or otherwise assisting the attempt, commission or facilitation of the crime, including providing the means for its commission.

An important feature of the Rome Statute is the above provision on the co-responsibility of a group “acting with a common purpose,” usually a criminal one. This requires certain objective and subjective elements of the crime, which will be discussed shortly.

It should be noted that criminal responsibility also includes *attempts* to commit a crime but the crime did actually take place due to circumstances independent of the person’s intentions.

However, if a person abandons the effort to commit a crime or otherwise prevents its completion, then he or she should not be liable for punishment under the Statute for the attempt to commit the crime, provided that he or she “completely and voluntarily gave up the criminal purpose” (Article 25(f)). This is different from the classic notion of ‘conspiracy’ in common law, where it does not matter whether the crime has been actually committed or not.

Defences

The Rome Statute lists a number of defences, or “grounds for excluding criminal responsibility,” available to the accused, which are dealt with in Article 31. These include suffering from a mental illness or intoxication that “destroy that person’s capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity

¹²² For more on this, see: https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule102.

¹²³ See also the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, available: <https://www.icrc.org/ihl/INTRO/435?OpenDocument>.

to control his or her conduct to conform to the requirements of law.” They also include reasonable self-defence and duress resulting from a threat of imminent death or imminent serious bodily harm.

Self-defence includes the defence of property “which is essential for the survival of the person” and the defence of another person or property “which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected.” However, the fact that the person is involved in a defensive operation conducted by the force that he or she is part of does not in itself constitute a ground for excluding criminal responsibility.

Another related and important defence that is likely to be invoked by the Syrian and Iranian governments is that contained in paragraph 3 of Article 8, which states that none of the war crimes listed in this Article “shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.”

This is inspired by Article 3 of Protocol II Additional to the Geneva Conventions, which deals with non-intervention and the sovereignty of states. However, both provisions should not be interpreted in a way that frustrates the purposes of these treaties. In other words, they are not meant to grant states a free hand to use whatever means they wish to maintain law and order or defend national unity. The means must be *legitimate* under international law.

Mental elements

To establish individual criminal responsibility for war crimes and crimes against humanity, the Rome Statute requires the satisfaction of not only the objective or material elements mentioned above (*actus reus*), but also two subjective or mental elements (*mens rea*), namely intent and knowledge. Article 30 states that “a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.”

Intent is defined as “mean[ing] to engage in the conduct” or “mean[ing] to cause that consequence or [being] aware that it will occur in the ordinary course of events.”

Knowledge is defined as the “awareness that a circumstance exists or a consequence will occur in the ordinary course of events.”

In addition to this general rule, the Rome Statute is supplemented with detailed “elements of the crime” for each of the crimes within the ICC’s jurisdiction, in order to “assist the Court in the interpretation and application of articles 6, 7 and 8.”¹²⁴ For instance, the elements of the war crime of “extensive destruction and appropriation of property” contained in Article 8(2)(a)(iv) are given as follows:

1. *The perpetrator destroyed or appropriated certain property.*
2. *The destruction or appropriation was not justified by military necessity.*
3. *The destruction or appropriation was extensive and carried out wantonly.*
4. *Such property was protected under one or more of the Geneva Conventions of 1949.*
5. *The perpetrator was aware of the factual circumstances that established that protected status.*
6. *The conduct took place in the context of and was associated with an international armed conflict.*
7. *The perpetrator was aware of factual circumstances that established the existence of an armed conflict.*

Similarly, the elements of the crime against humanity of “deportation or forcible transfer of population” contained in Article 7(1)(d) are given as follows:

1. *The perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts.*
2. *Such person or persons were lawfully present in the area from which they were so deported or transferred.*
3. *The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.*
4. *The conduct was committed as part of a widespread or systematic attack directed against a civilian population.*
5. *The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.*

The mental element of international crimes should not be interpreted, as various international tribunals have ruled, as requiring proof that the perpetrator had knowledge of all the specific details of the crime or of the plan. The

mental element is generally satisfied if the perpetrator intended to further the attack and was aware of the broader context of the act, as demonstrated by elements 5 and 7 in the first list above and elements 3 and 5 in the second list. Moreover, the knowledge element only relates to facts, not to a legal evaluation. The perpetrator therefore need only be aware of the *factual* circumstances rather than the legal status of the concerned persons or property.

It should also be noted that the mental element required in the case of facilitation of such crimes (aider, abettor, etc.) is a 'double intent', one related to the facilitator's own conduct and the other to that of the crime perpetrator(s). In other words, the facilitator must have known as well as wished that his or her assistance would facilitate the commission of the crime.

In regard to crimes committed by "a group acting with a common purpose," the intentional contribution of the members must be either "made with the aim of furthering the criminal activity or criminal purpose of the group" or "made in the knowledge of the intention of the group to commit the crime." In other words, it may relate to the crime itself or the criminal purpose of the group more generally.

Superior responsibility

Having dealt with individual criminal responsibility, we now turn to the responsibility of commanders and other superiors, which is of particular significance for the purposes of this report.

Since the controversial case of Tomoyuki Yamashita, the Japanese general whose forces tortured and murdered thousands of civilians in Manila, the Philippines in 1945, the concept of superior or command responsibility has become an integral part of international law as well as many domestic laws.¹²⁵

For instance, Articles 86 and 87 of Protocol I Additional to the Geneva Conventions – which should be read together – established the responsibility of states to "take measures necessary to suppress all other breaches of the Conventions or of this Protocol which result from a failure to act when under a duty to do so," as well as requiring military commanders to "prevent and, where necessary, to suppress and to report to compe-

tent authorities breaches of the Conventions and of this Protocol." Article 86 adds:

The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.

The Rome Statute, and various international criminal tribunals before it, developed the doctrine further by establishing international criminal responsibility rather than contending with disciplinary procedures by states, and by extending this responsibility to *de facto* commanders as well as civilian superiors. Article 28 of the Statute states:

A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces.

In other words, a military commander, whether official or *de facto*, bears a double responsibility or liability: a direct one for his or her own action (failure to exercise proper supervision, which is considered a serious omission or negligence) and an indirect one for the criminal conduct of his subordinates (thereby creating a risk of the crime occurring, as well as a risk of future crimes if the first one went unpunished).

A military commander can therefore be held responsible for international crimes committed by forces under his or her command if it can be established that 1) he or she was

¹²⁴ The Elements of the Crimes are available at <http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9D-E73D56/0/ElementsOfCrimesEng.pdf>.

¹²⁵ See, for instance, https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter43_rule152 and https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter43_rule153.

in effective control of his or her subordinates accused of committing the crime and 2) that this control could or would have prevented the crime had it been exercised properly.

The notion of ‘effective control’ – which is not limited to formal ranks or positions but encompasses both *de jure* and *de facto* command – is particularly relevant in cases where multiple chains of command coexist, such as the case in Syria today. Indeed, evidence suggests that it is often Iranian or Hezbollah commanders who are in effective or *de facto* control on the ground in certain parts of Syria, as the following chapter will show.

To determine whether a group qualifies as an organisation exercising *de facto* authority, a number of considerations should be taken into account, including:

1. *whether the group is under a responsible command or has an established hierarchy;*
2. *whether the group possesses the means to carry out a widespread or systematic attack against a civilian population;*
3. *whether the group exercises control over part of the territory of a state;*
4. *whether the group has criminal activities against the civilian population as a primary purpose;*
5. *whether the group articulates, explicitly or implicitly, an intention to attack a civilian population;*
6. *whether the group is part of a larger group which fulfils some or all of the above-mentioned criteria.*¹²⁶

Mental elements

The subjective or mental elements required for superior responsibility are often more controversial and more difficult to establish than the objective elements mentioned above. Article 28 of the Rome Statute defines them as follows:

- (i) *That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and*
- (ii) *That military commander or person failed to take all necessary and reasonable measures within his or her*

power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

The first point – whether the standard should be actual, positive knowledge (knew) or presumed or constructed knowledge (should have known) – has been the subject of extensive debate and disagreement. But it is now generally accepted – following the ICTY judgment in *Delalić* and the ICTR in *Akayesu*, among others – that a theoretical or general presumption of knowledge is not sufficient to satisfy the mental element. However, the establishment of such knowledge on the basis of circumstantial evidence is permitted.

In other words, the subjective element would be satisfied if it can be shown that the commander had clear information or mechanisms that could have enabled him or her to conclude, in the circumstances at the time, that his or her subordinates have committed, or were going to commit, an international crime, but he or she did not take all the necessary measures within his or her power to prevent or punish it, i.e. deliberately ignored the information. This negligence – variously called ‘wanton disregard’, ‘willful blindness’, etc. – is so serious, it is argued, that it amounts to malicious or criminal intent.

The source and form of information – whether direct reports by subordinates, media reports, witness accounts, etc. – do not matter much as long as they are clear and reliable enough for the commander to have acted upon them. And it should be remembered that the crimes in question are meant to be of systematic or widespread nature.

As to the what these “necessary and reasonable measures” are, this has been dealt with by various judges and commentators. They often include such things as ensuring that subordinates are aware of their responsibilities under international law, having an effective monitoring and reporting system in place, investigating and punishing alleged breaches and so on. The important thing is that they have to be within the commander’s *de facto* power. Thus, if a commander reports to his or her superior(s), or to the concerned or competent authorities, about the crime concerned, asking for the matter to be investigated or punished, then he or she may no

longer be held responsible for that crime, because this is considered a reasonable measure taken to prevent or repress the crime.

Paragraph (b) of Article 28 repeats similar provisions for other, non-military superiors (civilian officials belonging to a 'policy level'). It replaces "effective command and control" with "effective authority and control" and adds that the crime should concern "activities that were within the effective responsibility and control of the superior" (i.e. their area of competence). However, the standard for the knowledge element is higher: the superior must have either known or consciously disregarded information; there is no "should have known" option.

Individual vs. superior responsibility

Superior responsibility often goes hand in hand with criminal orders. But more often than not, direct orders to commit specific crimes are difficult to prove, so superior responsibility is, to a certain extent, a way around this obstacle. Various commanders may also be responsible for the same crime committed by one subordinate, depending on the chain of command.

Superior responsibility is also closely linked to the "obedience to superior orders" defence ("I am not guilty because I was only obeying the orders of my superior"). However, individual and superior responsibility are not mutually exclusive; they simply reflect different ways of participating in the same crime.

As Article 33 of the Rome Statute clearly states, superior orders or laws do not relieve a perpetrator of an international crime from individual criminal responsibility unless the person

(a) was under a legal obligation to obey orders of the government or the superior in question;

(b) did not know that the order was unlawful; and

(c) the order was not manifestly unlawful (Article 33).

Orders to commit war crimes and crimes against humanity are manifestly unlawful.

Thus, if there are any cases where the perpetrator(s) have invoked the superior order defence, this can be used as evidence against their superior(s).

Nor does it absolve the superior from responsibility to delegate his or her powers or duties, because the duty of proper supervision is still ultimately the responsibility of the superior (proper selection of the delegates, ensuring they are fulfilling their duties and so on). It could be a valid defence only when the delegation is "partial, precise and specific" and the delegates are competent enough to properly fulfill the tasks delegated to them.

The following chapter will attempt to demonstrate that there is sufficient evidence to try the Iranian military and political leaderships, as well as the commanders of the various militias controlled by them which are fighting in Syria, for their superior responsibility for the war crimes and crimes against humanity that are the focus of this report. And this should be distinguished from their role as accomplices in some of these crimes (co-perpetration) and in instigating or providing the means for other ones (indirect perpetration), which will also be discussed.

4. International and non-international conflicts

International humanitarian law distinguishes between international and non-international armed conflicts. International armed conflicts are defined by Article 2 common to the Geneva Conventions as follows:

all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties [states], even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

126 See: <http://www.iclklamberg.com/Caselaw/Kenya/PTCII/ICC-01-09-19-corr.pdf>.

Non-international armed conflicts are defined by Article 1 of Additional Protocol II, which developed and supplemented Common Article 3, as follows:

armed conflicts... which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

Common Article 3 requires all parties to a non-international conflict to be bound by certain provisions concerning the humane treatment of all persons not taking an active role in the armed conflict, including combatants who have laid down their arms. Neither Common Article 3 nor Additional Protocol II apply to situations of “internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.” These are not considered armed conflicts.

In a previous Naame Shaam report about the role of Iran in Syria, published in November 2014,¹²⁷ the authors argued for treating the ongoing war in Syria as an international armed conflict that involves a foreign occupation by the Iranian regime and its militias and a liberation struggle by the Syrian people against this foreign occupation. The argument was based on the following observations:

1. The Iranian intervention in Syria has not been confined to supporting the Syrian government and its armed forces, which legal experts argue is not sufficient to render an armed conflict into an international one. The Iranian regime, especially Sepah Pasdaran (the Iranian Revolutionary Guards) has also been arming, training and directing irregular Syrian paramilitary forces (the shabbiha and the National Defence Forces, IDF), as well as Iran’s own paramilitary forces fighting in Syria (Sepah Qods and Basij) and all the Iranian-backed foreign militias that have assumed a leading role in major military operations in certain parts of Syria (Hezbollah Lebanon, the Iraqi militias and so on).

2. Other states (the US, Turkey, Saudi Arabia, Qatar, etc.) have also intervened in Syria on the side of Syrian rebels. They have all played a role in “organizing, coordinating or planning the military actions of a non-state armed group.” This, according to the ICTY judgment in the 1995 case of Tadić, among others, is sufficient to internationalise a conflict.

3. The Syria war is no longer geographically confined to the territory of Syria; it has occasionally and increasingly spilled over to other neighbouring countries, especially Lebanon and Iraq.

4. The Iranian and other outside interventions have not been solely directed at non-state armed groups and their military operations or infrastructure; it has also deliberately targeted and affected Syrian civilians and civilian infrastructure. This, according to experts, renders the conflict into an international one.

5. Vast areas of the regime-controlled parts of Syria are now under the effective control of the Iranian armed forces and the militias directed by the Iranian regime. This arguably amounts to a belligerent occupation, as defined by the 1907 Hague Regulations and the Fourth Geneva Convention.

6. The Syrian war could also be treated as an international conflict under Article 1(4) of Additional Protocol, I because it now involves people, represented by a recognised authority (the Syrian opposition umbrella groups), fighting against the “colonial domination and alien occupation” of the Iranian regime and its militias.

On the basis of these observations, the authors argued that the current war in Syria should be regarded as an international armed conflict or, at least, as both internal and international at the same time. Alternatively, it could be treated as what is sometimes called “occupation with an indigenous government in post.”

Yet, even without it being recognised as such, international law governing armed conflicts should still apply to the Syrian case, as will be argued below, bearing in mind a few technical and legal issues, which will be addressed in the next section.

Considering that violations of international law governing armed conflicts in cases of conflicts of a non-international nature may also constitute war crimes is of relatively recent origin. It was the ICTY that first developed the concept of war crimes in times of non-international conflicts on the basis of customary international law, overcoming objections by member states on the basis of the state sovereignty argument when drafting the Geneva Conventions.

Two years later, the ICTR considered that violations of Article 3 common to the Geneva Conventions and Protocol II also fell under its jurisdiction (the conflict in Rwanda in the 1990s was generally regarded to be a non-international armed conflict within the meaning of Common Article 3 and Additional Protocol II).

This was ultimately codified in the Rome Statute, which also “applies to armed conflicts not of an international character, and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.”

The Syrian conflict is clearly “protracted” – it has been going on since March 2011. “Organized armed groups” are defined, as already mentioned, in Article 1 of Protocol II as “groups which, under responsible command, exercise such control over a part of [the state’s] territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.” This clearly applies to the vast majority of the Syrian opposition armed groups fighting against the Syrian regime forces.

It is our argument, therefore, that the Rome Statute and all relevant case law and treaties, including the four Geneva Conventions and their Additional Protocols, should *in principle* be applied to the Syrian conflict. They should be applied particularly in light of the high unlikelihood that the Syrian and Iranian governments will ever be willing to initiate independent, impartial investigations and prosecutions that are not masquerades aimed at shielding the real culprits from criminal responsibility for the crimes in question (see Article 17 of the Rome Statute).

And we say “in principle” because these instruments can often only be applied if the conflicting parties have signed and ratified them. This is the subject of the next section.

5. Legal avenues

The ICC

Culminating the *ad hoc* international criminal tribunals at Nuremberg, Yugoslavia and Rwanda, the Rome Statute of 1998 established the International Criminal Court (ICC) to deal with “the most serious crimes of concern to the international community as a whole” (Article 5). These include crimes against humanity, war crimes, the crime of genocide and the crime of aggression.¹²⁸

The crimes discussed in this report fall under the first two. They are therefore within the ICC’s jurisdiction in principle. “In principle” because neither Syria nor Iran are party to the Statute, so the Court cannot exercise jurisdiction over crimes committed in Syria unless the case is referred to it by the UN Security Council.

There are four ways, set out in Articles 12 and 13 of the Statute, in which the ICC can initiate proceedings in respect of one or more of the four types of crimes under its jurisdiction:

1. *A state which is, or becomes, a party to the Statute refers the alleged crime(s) to the Prosecutor;*
2. *A state which is not party to the Statute accepts the Court’s jurisdiction by means of a unilateral declaration lodged with the Registrar;*
3. *The Prosecutor initiates an investigation of his or her own initiative (proprio motu) on the basis of information*

¹²⁷ Naame Shaam, *Iran in Syria*, Chapter II, September 2014, available: <http://www.naameshaam.org/report-iran-in-syria/ii-syria-under-military-occupation/>.

¹²⁸ The crime of aggressions was recognised as an international crime at the Rome Conference but the second step allowing the Court to act could only be taken after certain conditions, set out in Articles 121 and 123, are met. There must be a near-consensus agreement on a definition of aggression and the relationship between the ICC and the Security Council has to be clarified. As a third and final step, the proposed new definition and clarification will only be considered for adoption at an amendment conference that will not take place until more than seven years have elapsed since the Rome Statute came into effect (in 2002) and following ratification by at least sixty nations. The new provisions require a two-thirds majority and acceptance by seven-eighths of the Parties. The issue is currently under discussion between States in the Special Working Group on the Crime of Aggression.

that he or she receives concerning crimes within the jurisdiction of the Court;

*4. The case is referred to the Prosecutor by the Security Council under Chapter VII of the Charter of the United Nations.*¹²⁹

In the first three scenarios, the alleged crime(s) must not only be within the Court's jurisdiction in terms of the qualification and gravity of the crime, they must also have been committed on the territory of or by nationals of a state that is party to the Rome Statute (or a non-party state that has agreed to the ICC exercising its jurisdiction in regard to crimes committed by its nationals or over its territory). This is not a requirement in the fourth scenario.

Neither Syria nor Iran are parties to the Rome Statute (Iran signed it in 2000 but has not ratified it), and neither of them is likely to make a unilateral declaration allowing the ICC to exercise its jurisdiction in respect of war crimes and crimes against humanity committed on Syrian soil by Syrian and/or Iranian nationals. It follows that such crimes are not technically within the ICC's jurisdiction, unless the case is referred to the Prosecutor by the Security Council, as it did in the cases of Darfur in 2005 and Libya in 2011. But this also seems unlikely at the moment due to the almost-certain Russian and/or Chinese veto.

Indeed, in May 2014, France proposed a draft Security Council resolution¹³⁰ that would give the ICC a mandate over crimes against humanity and war crimes committed in Syria. Russia and China vetoed the resolution despite a majority of the 15 Security Council members backing it, arguing that the referral was "ill-timed", "counterproductive" and "not a good idea." This was the fourth time that Russia and China had jointly vetoed resolutions on Syria.

58 countries had issued a statement calling on the Security Council to adopt the French resolution, as did over 100 NGO's from around the world. The UN High Commissioner for Human Rights has also, on multiple occasions, recommended a Security Council referral to the ICC.

There may be, however, two ways around this impasse. The first relates to crimes committed in Syria by nationals of states that are parties to the Rome Statute. There are

tens of thousands of foreign militiamen fighting in Syria alongside the Syrian regime forces and under Iranian command. Many of them would have probably committed war crimes and crimes against humanity there, and some of them are nationals of states that are parties to the Rome Statute or may agree to the ICC exercising its jurisdiction over its nationals. Afghan Shia militiamen are a good example (Afghanistan is a signatory).

Of course this requires gathering and submitting concrete and reliable evidence related specifically to such nationals, and it may restrict the investigation to these people and these crimes – unless superior responsibility is also considered as part of the investigation, as discussed above.

The other possibility is for a Syrian opposition body, such as the National Coalition of Syrian Revolutionary and Opposition Forces, that is recognised as a legitimate representative of the Syrian people, to join the Rome Statute and refer the case to the ICC Prosecutor.

The National Coalition – or any other Syrian opposition umbrella group, for that matter – is not a conventional government, but the ICC may nonetheless accept its membership as a legitimate representative of the Syrian people, as it did with the Palestinian Authority in early 2015 (more on this below).

It should be noted, however, that even if the Syrian opposition were to be accepted as a party to the Rome Statute, the ICC can exercise its jurisdiction only with respect to crimes committed *after* the entry into force of this Statute for that party (Article 11).

The Geneva Conventions

As mentioned above, Article 1(4) of Protocol I Additional to the Geneva Conventions provides that conflicts shall be qualified as international when they occur between a state and an authority representing a people "fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination."¹³¹

This is arguably the case in Syria. However, to trigger the application of this Article – i.e. to recognise the conflict in Syria as an international conflict between a foreign occupation and a people struggling for freedom and independ-

ence – a recognised authority representing the Syrian people who are struggling for freedom and independence, such as the Syrian National Coalition or any other Syrian opposition umbrella group, needs to make a formal, unilateral declaration addressed to the Swiss Federal Council (the official depositary of the Geneva Conventions) to this effect, expressing its willingness to sign and ratify the Protocol and the four Geneva Conventions.¹³²

Such a declaration, upon its receipt by the depositary, would have the following effects, set out in Article 96 of Additional Protocol I, in relation to the conflict in question: (a) *the Conventions and this Protocol are brought into force for the said authority as a Party to the conflict with immediate effect;*

(b) *the said authority assumes the same rights and obligations as those which have been assumed by a High Contracting Party to the Conventions and this Protocol; and*

(c) *the Conventions and this Protocol are equally binding upon all Parties to the conflict.*

It should be noted that Iran has signed but not ratified Protocol I, which means it is not legally bound by it. Syria has, however, and both countries are parties to the four Geneva Conventions. Moreover, Article 99 of Additional Protocol I provides that:

1. In case a High Contracting Party should denounce this Protocol, the denunciation shall only take effect one year after receipt of the instrument of denunciation. If, however, on the expiry of that year the denouncing Party is engaged in one of the situations referred to in Article 1, the denunciation shall not take effect before the end of the armed conflict or occupation and not, in any case, before operations connected with the final release, repatriation or re-establishment of the persons protected by the Conventions or this Protocol have been terminated.

Regarding the question of representativeness, in its resolution no. 67/262 on 15 May 2013, the UN General Assembly

welcome[d] the establishment of the National Coalition for Syrian Revolutionary and Opposition Forces on 11 November 2012 in Doha as effective representative interlocutors needed for a political transition, as well as its commitment, expressed in its communiqués dated 15

and 23 February 2013 and 20 April 2013, to the principle of a political transition leading to a civil, democratic and pluralistic Syrian Arab Republic... (emphasis added).

The fourth Ministerial Meeting of the Friends of the Syrian People group, representing some 130 states, had already recognised the National Coalition as “the legitimate representative of the Syrian people.” The North Atlantic Treaty Organisation (NATO) and the European Union (EU) soon followed suit, as did many other countries. The question of whether the National Coalition is recognised as the *only* legitimate representative remains a matter of dispute.

National courts

There may be easier ways of bringing lawsuits against Syrian and Iranian officials complicit in war crimes and crimes against humanity than going to the International Criminal Court in The Hague.

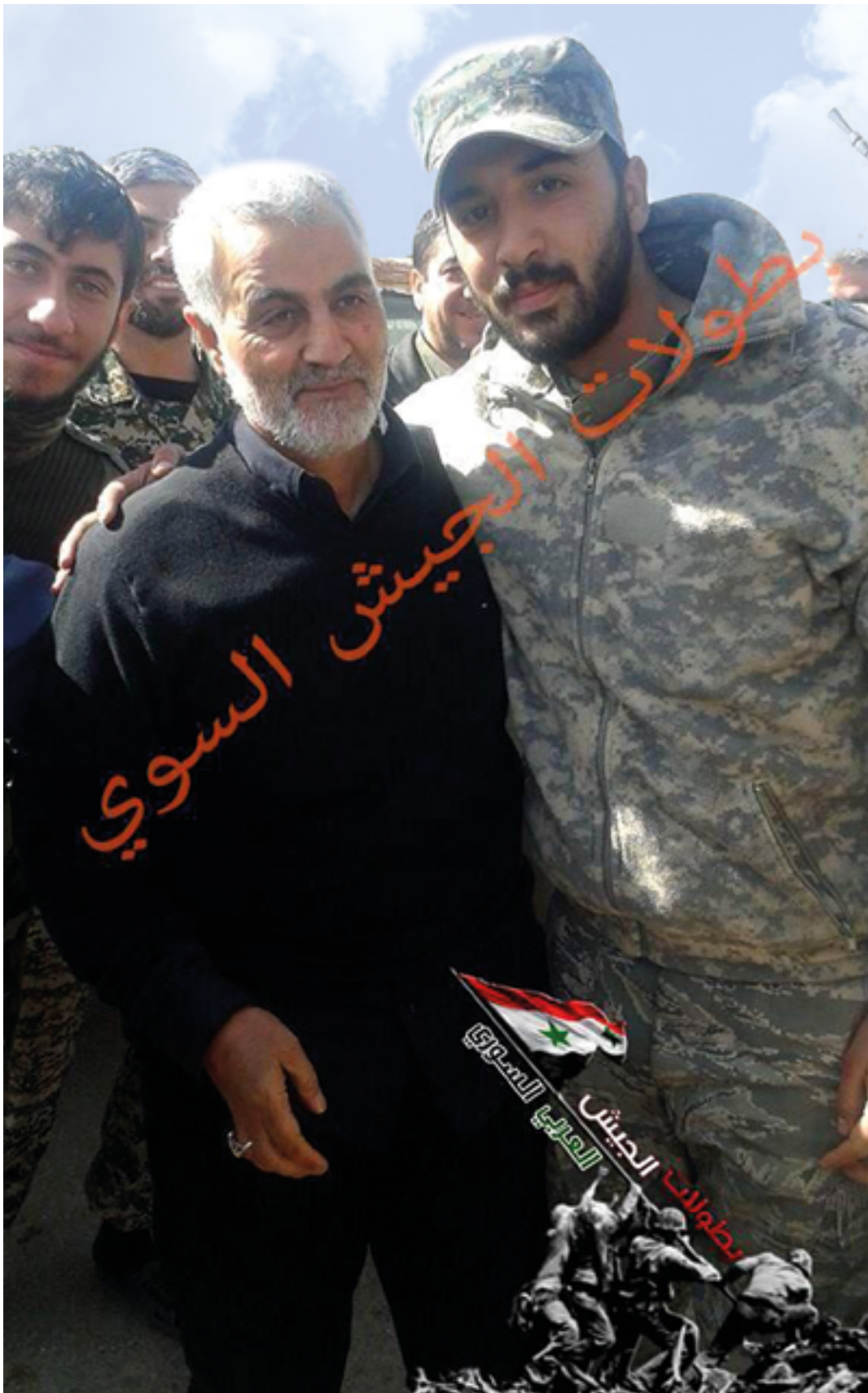
For instance, any European citizen or resident who had been a victim of any specific human rights violation or crime against humanity in Syria may bring a lawsuit in European domestic courts under universal jurisdiction, which allows the prosecution of people regardless of where the alleged crime was committed and regardless of the accused’s nationality and country of residence. Or they may bring a lawsuit against certain low-level soldiers or militiamen who allegedly committed the crime and attempt to prove their link to higher-ranking commanders and even the Syrian or Iranian regime’s top leadership, using the arguments of complicity, aiding and abetting, direct orders, superior responsibility and so on.

129 In contrast to the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), the ICC is not an organ of the United Nations. Therefore the General Convention of Privileges and Immunities of the UN (1945) does not apply. On 4 October 2004, the Negotiated Relationship Agreement between the International Criminal Court and the United Nations was adopted and entered into force.

130 Available: <http://un-report.blogspot.fr/2014/05/french-draft-resolution-on-icc-syria-in.html>.

131 Available: <https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=6C86520D7EFAD527C-12563CD0051D63C>.

132 An example of such a declaration can be found at <https://www.icrc.org/casebook/doc/case-study/philippines-ihl-ndfp-case-study.htm>.



General Qassem Suleimani (center), the head of Sepah Qods, in an undisclosed location in southern Syria (in or near the town of Deraa) in January or February 2015. He is surrounded by Syrian regime soldiers who were participating in battles.

The Arabic text in the middle says, "The heroic acts of the Syrian Army". The Arabic text below, with Syrian soldiers holding a regime flag, says, "The heroic acts of the Syrian Arab Army".

Sites close to the Syrian regime published this photo in early February 2015.

Source: http://www.aksalser.com/?page=view_articles&id=b-8f096397189fcec5e070977f22d89f1



Destruction in residential area in Syria: district of Jouret al-Shayah, Homs. 2 February 2013. © Reuters/Mazen Homsy



General Qassem Suleimani (center), the head of Sepah Qods, attends a remembrance ceremony for "martyrs" from that unit of Iran's Sepah Pasdaran (Revolutionary Guards Corps). Somewhere in Iran, 20 October 2014. Several Sepah Qods have died in Syria while leading Syrian regime forces in battles. Source: <http://www.rferl.org/content/iran-suleiman-is-us-dooms-failure-syria/26646726.html>



Destruction in residential area in Syria: Deir al-Zor. 3 March 2013. © Reuters/Khalil Ashawi



The picture is of a banner seen in Damascus in 2013, offered by a trader called Ahmad Jamil al-Soleiman. You see (from left to right) Hassan Nasrallah of Hezbollah Lebanon, Iranian President Hassan Rouhani, Syrian President Bashar Assad and Russian President Vladimir Putin. The text says, "Men who only bow before Allah".

Source: <http://www.nameshaam.org/iranian-regime-to-monitor-syrian-presidential-elections/>



Destruction in a residential area of Homs and Syrian President Bashar Assad with his wife, Asma. Photomontage made by The Sunday Times, 19 August 2012

Source: http://www.thesundaytimes.co.uk/sto/culture/books/non_fiction/article1103993.ece