

The Evacuation of Eastern Aleppo: Humanitarian Obligation or War Crime?

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On March 1, the UN Independent International Commission of Inquiry on the Syrian Arab Republic (“the Commission”) released [a report](#) on the horrific events that unfolded in Aleppo last year until it was captured by the Syrian governmental forces. The Aleppo report covers acts which may amount to violations of international human rights law or international humanitarian law (IHL), committed by all warring parties between 21 July and 22 December 2016. The Commission, whose reports will be instrumental for ongoing and [future efforts](#) to hold perpetrators accountable, should be commended for collecting and analyzing such an impressive amount of information in so little time.

The Aleppo report contains an appalling catalogue of allegations of egregious violations, including attacks against civilian infrastructures, hospitals, a UN/SARC humanitarian convoy and the use of chemical weapons. One allegation in particular caught the attention of [the media](#): the Commission argues that the evacuation of eastern Aleppo amounts to the war crime of forced displacement. The Commission’s claim may at first seem astonishing not only because it stands in stark contrast with the then prevailing narrative of a *humanitarian* evacuation designed to alleviate human suffering, but also because the evacuation was based on an agreement between the warring parties – which means that opposing parties would have jointly committed a war crime. This post examines, on the basis of publicly available information, the legal foundation of this serious allegation.

The evacuation agreement

The evacuation of the rebel-held parts of the eastern districts of Aleppo was agreed between the warring parties as part of a cease-fire deal brokered by Russia and Turkey on 15 December 2016. The fall of this key rebel stronghold marked a major victory for the government forces, but it also offered rebels a safe passage into other rebel-held areas elsewhere in Syria. By 22 December, [more than 35,000 people](#) had been evacuated from the besieged areas of Aleppo to Idlib province (for the most part) or to western Aleppo.

The evacuation was mainly portrayed as a humanitarian undertaking, designed to end, at long last, [months of deprivation](#) and suffering for the desperate residents of the besieged city. In fact, if the siege had the effect of starving the civilian population, the government forces were even under a [legal duty](#) to allow access to humanitarian relief – either by allowing civilians to leave the area or by allowing the free passage of foodstuffs and other essential supplies into the city.

Yet, the Commission describes the evacuation deal in strikingly different terms:

“None had the option to remain in their home. As warring parties agreed to the evacuation of eastern Aleppo for strategic reasons – and not for the security of civilians or imperative military necessity... – the Aleppo evacuation agreement amounts to the war crime of forced displacement” (para. 93)

Forced displacement in non-international armed conflicts

The evacuation of eastern Aleppo took place in the framework of a non-international armed conflict (NIAC) – or rather several NIACs – between the Syrian forces and different armed groups (the existence of a parallel international armed conflict (IAC) involving the US-led coalition in Syria is immaterial because these forces were not involved in the Aleppo events, so we can accept that NIAC law prevails over IAC law). In NIAC, ordering the displacement of *civilians* is prohibited under [Article 17\(1\) APII](#) and a corresponding customary rule. Only the latter

applies to the Aleppo events because Syria is not a party to APII. This rule ([Rule 129 B](#) of the ICRC Study on Customary IHL) provides that:

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

Under Article 8(2)(e)(viii) of the ICC Statute, a violation of this rule may amount to the war crime of forced displacement, along the same wording.

On this basis, the displacement of civilians is prohibited in NIAC if 1) they are *forcibly* displaced, as opposed to voluntarily evacuated and 2) their displacement is not demanded by their own security or imperative military reasons. As a third consideration, one could add that 3) the displacement must not be *required* by another IHL rule, such as the obligation to evacuate wounded and sick.

An order to displace?

Whether displacement of civilians is prohibited under IHL revolves primarily around the delicate issue of its forcible character. Although not explicitly mentioned in Art. 17 APII and its corresponding customary rule, this condition derives from the reference to an “order to displace”. Three elements must be taken into consideration.

First, determining whether displacement is forced can only be made on an individual basis: “what matters is the *personal* consent or wish of an individual, as opposed to collective consent as a group, or a consent expressed by official authorities” ([Simic Trial Judgement](#), para. 128). In this regard, it is important to clarify that the adoption of an “agreement” between the warring parties has no impact on the voluntary nature of the displacement: the parties cannot consent on behalf of the individual ([Naletilic Trial Judgement](#), para. 523) (and [recent surveys](#) highlight the feeling of many Syrians that the terms of local truces, such as the one concluded in Aleppo, are imposed on them). This being said, in Aleppo, the evacuation seems, by all accounts, to have triggered “[mixed feelings](#) among residents”. For instance it is probable that relatives of rebels, who were given the possibility to move to other rebel-held areas, made the conscious choice to be evacuated with them. The Commission’s statement that “[n]one had the option to remain” thus needs to be considered very carefully. If a war crime of forced displacement occurred in Aleppo, it was committed only *in relation to those individuals who were ordered to leave*.

The second difficulty lies in the meaning of “forcible” in the inherently coercive context of war. As is well established in case law and in the ICC Elements of Crimes, the term “‘forcibly’... may include threat of force or coercion, such as that caused by fear of violence... or by taking advantage of a coercive environment”. Thus, whether civilians left Aleppo voluntarily or forcibly must be evaluated against the background of a five-month siege, which [pushed people towards starvation](#), depriving them of the most basic resources, including access to medical care in a city hit by daily bombardments. When faced with a choice (real or perceived) between leaving your house and all your belongings, or having virtually no chance of survival, can one really speak of a voluntary decision to leave? From that perspective, the living conditions imposed upon eastern Aleppo by the parties – and, in the first place, by the regime forces enforcing the siege as part of a “starve or surrender” tactic – can reasonably be considered to have led to forcible displacement.

However, and this is the third difficulty, in order to constitute a violation and, a fortiori, a war crime in an NIAC, displacement must not just be forced, it must be “ordered”. The requirement of an order is specific to NIAC law (compare art. 17 APII with [art. 49\(2\) GCIV](#), its rough equivalent in IACs) and is generally understood as entailing something more than the IAC prohibition of forcible displacement (see [OUP Commentary](#), p. 1206). This being said, there are [convincing arguments](#) in favor of a broader interpretation on the basis of the object and purpose of IHL, according to which Art. 17 APII and Rule 129B prohibit forced displacement regardless of whether it was ordered or

not. However, similar arguments are more delicate for the *war crime* of forced displacement in NIACs. The ICC Elements of crimes indeed make clear that Art. 8(2)(e)(viii) requires that “[t]he perpetrator *ordered* a displacement of a civilian population” and “was in a position to effect such displacement *by giving such order*” (emphasis added). In this respect, it will be crucial to clarify the exact content of the Aleppo evacuation agreement and how an order may have been communicated to civilians (according to the Commission: “Under the terms of the agreement... civilians had no option to remain”, para. 104).

In any case, the role of humanitarian organisations has no bearing on the lawful or unlawful nature of the displacement (see e.g. [Simic Trial Judgement](#), para 127). Humanitarian evacuation operations are clearly distinct, materially and temporarily, from the unlawful *ordering* of displacement by the parties. Humanitarian organisations help meet the most urgent humanitarian needs of civilians during their displacement; their neutral and impartial presence is also instrumental in reducing the risk that secondary violations (such as acts of violence) take place during the evacuation.

If the facts confirm the existence of an order to displace Aleppo’s civilians, could it fall under one of the two exceptions to the prohibition?

Displaced for imperative military reasons or for their own security?

The first exception to the prohibition is if “imperative military reasons” so demand. This would include exceptional cases where the presence of civilians pose an impediment to military operations such that there is no other alternative than removing them temporarily. In Aleppo, no publicly available information suggests the existence of such overriding military considerations on the part of the regime or rebel forces. In fact, as the logical result of the deal was that Assad’s forces would regain full control of Aleppo – which they [reportedly](#) did immediately after the evacuation – it is unlikely that any of the parties were anticipating major combat operations (and it would be difficult to argue that the evacuation was absolutely necessary for them to enter these parts of the city which were by then virtually emptied of most rebels).

Could it be argued that the evacuation of civilians was required for their own security? This can be the case for instance if “[an area is in danger](#) as a result of military operations or is liable to be subjected to intense bombing”. In such circumstances, removing civilians from military objectives located in the city would even be *required* by [Art. 58\(a\) API](#). Again, it is doubtful that the parties had reasons to believe that fighting would continue after the deal was concluded. Another argument on the part of rebel groups could be that they ordered the displacement of civilians to protect them from violent acts of reprisals from regime forces once the city would have fallen in their hands. However, this argument cannot be validly invoked by regime forces: as they were expecting to regain control over the eastern part of the city, they cannot justify forcible displacement on the basis of potential criminal activity by their own troops (for a similar reasoning see [Stakic, Appeals Judgement](#), para 287). (Note that temporary displacement of civilians may be lawfully ordered to protect them from mines planted by the enemy, as found by the Commission in relation to the displacement of civilians from the Tishreen Dam and Minbij areas ordered by the SDF, see [Conference room paper](#) released on 13 March, at para. 91).

The *obligation* to evacuate wounded and sick v. the prohibition of forced displacement

Aleppo’s ceasefire deal included the evacuation of the [wounded and sick](#). Their case raises an even more delicate legal question as parties have an *obligation to evacuate them under IHL*. Should some of the wounded or sick civilians be considered to have been *forcibly* evacuated (in the broad understanding of the term) how should the obligation to evacuate wounded and sick be reconciled with the prohibition to forcibly displace civilians? The obligation to evacuate wounded and sick is absolute so there is an argument to be made that, although due consideration should always be given to the patient’s will, the duty to evacuate wounded and sick – which forms the bedrock of IHL – would prevail over the prohibition to forcibly displace (including because making evacuations dependent on patients’ will could easily be abused by belligerents to escape their obligations). This would be the case only for genuine *medical* evacuations, i.e. undertaken exclusively in order to care for the patient, and on the

condition that his/her repatriation is effectuated as soon as feasible.

Conclusion

The Commission's allegation must be taken very seriously, not only for accountability purposes if it is proven, but also because there is a real risk that such a finding will dissuade warring parties from concluding humanitarian evacuation agreements in the future (as encouraged, and even sometimes required, by IHL). Proving that the evacuation of eastern Aleppo constituted a war crime, at least in relation to those civilians who forcibly left the city, would require a prosecutor to prove the existence of an *order* to displace. This will be no easy task, but if the facts confirm this, there seems to be no reason justifying an exception to the prohibition – except arguably for rebel groups on the ground that it was required for the security of civilians. Most importantly, whether they were lawfully displaced or not, civilians have a [right to return](#) as soon as the reasons for their displacement cease. It will be important to monitor whether the parties comply with the clear terms of this legal obligation – especially because it may be an indicator of the criminal nature of the displacement itself.