

**CALL OF ACTION
AGAINST THE WAR CRIMES
COMMITTED BY THE TURKISH ARMY
IN AFRIN, NORTHERN SYRIA**



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Since the 20th January 2018 the Turkish Army and radical Islamist armed groups, so called Free Syrian Army (FSA) have been increasingly attacking Afrin Region in Northern Syria. As a result, we are facing irreversible outcomes such as civilian casualties, destruction of civilian settlements, and destruction of cultural-historical heritage.

Before assessing the latest developments taking place in Afrin Region through a legal perspective we urge;

1. An immediate termination of the attacks conducted by the Turkish government and armed groups on Afrin,
2. The crimes against the civilian population should be investigated by expert organisations such as Red Crescent and documented, following a fact finding mission to the affected areas,
3. UN, NATO, CoE should to take an immediate action in order to stop these attacks and to protect the civilian population in the region.

According to the official statements, on the 20th January with the participation of 72 warplanes an airstrike was launched against Afrin Region, following which the region was bombed with heavy howitzer artillery, ranged 30-40 kms. Borders of Afrin were violated on several fronts on the Turkish borders while the city was heavily attacked from Azez front which lies within the Syrian borders.

As it was covered by the Turkish Press, in the course of the attacks from Azez, the FSA militants played an active role in the offensive, who had been openly carried to the region with around 20 Turkish busses. According to some allegations, residents of some refugee camps in Turkey were either voluntarily or by force carried to Afrin region in order to fight.

Since the beginning of the offensive the civilian settlements have been systematically targeted and as a result many civilians including children were killed and many others were heavily injured. Some of this civilian population which were targeted are those

Arab IDPs who had to flee and take refuge in Afrin due to ongoing clashes in their hometowns, such as Idlib.

There are no numbers or footages regarding civilian casualties other than the ones provided by the Turkish press and sources. The Turkish Press is being forced to follow a 15-Article-Guideline provided by the Turkish Prime Minister Binali Yildirim while reporting on the Afrin offensive. Thus Turkish newspapers and TV stations report in a warmongering militarist language, almost as if they all belong the same outlet. Moreover, within two days after the beginning of military offensive on the 20th January 2018 more than 300 persons were detained due to their anti-war and critical social media posts against ongoing Afrin offensive and many of them have been arrested. In just two weeks the number of the persons detained due to their social media post reached up to 449. In addition to that, Central Executive Board of the Turkish Medical Association (TTB) was targeted by the President Erdogan for its statement "War is first of all a public health issue." Following the targeting statements of the president the Public Prosecutor's Office launched a criminal investigation against the TTB and eventually on the 30th January members of the Executive Board were detained after their houses were raided by the security forces. Against those who supported the TTB Executive Board publicly, including lawyers, an arrest warrant has also been issued.

In a country where truthful reporting about the war or opposing the war is subjected to a heavy attack and arbitrary criminal investigations it is not realistic to expect an objective reporting about civilian casualties. Therefore, it is crucial that an independent mission composed of experts observe and investigate these allegations on the ground and find out the truth about civilian casualties.

Herewith we would like to draw your attention to some facts regarding Afrin offensive which costs increasingly civilian deaths day by day:

1. The Turkish government has been keeping an offensive against Afrin in its agenda, both in its public statements and in bilateral meetings and negotiations with other states behinds closed doors. During this entire time, Turkey alleged Afrin constituting a threat to the Turkish state. For instance, in a letter to the United Nations Security Council dated 20th January 2018, Turkey claimed that Afrin was a threat to its borders; that artillery attacks on

Hatay and Kilis provinces allegedly carried out from Afrin causing both civilian and military casualties; that the aim of the operation was ensuring its border security, neutralizing “terrorists” in Afrin and saving the “brotherly” Syrians. Turkish Government also claimed that it has taken all necessary precautions to avoid collateral damage and this measure had been essential in order to ensure the border security of Turkey and its national security based on the right to self-defence, as defined in Article 51 of the Charter, but also within the context of the responsibility attributed to Member States in the fight against terrorism, including through Security Council resolutions. Yet the Turkish government failed to provide any evidence or reference with regard to alleged attacks and casualties.¹

In fact, on the contrary the reality in Afrin presents itself in a much different way. First of all, Afrin has been one of the calmest and peaceful areas in Syria since the beginning of the civil war. Radical Salafist forces, particularly ISIS has failed to infiltrate Afrin and the region could defend itself. Unlike other parts of Syria, during the war the residents of Afrin did not leave their towns in order to take refuge in other cities, on the contrary Afrin has provided several hundred thousand of the civilians fleeing Idlib and Aleppo regions with shelter and established refugee camps for them, despite all the difficulties and shortcomings the city of Afrin suffers itself.

In predominantly Kurdish region of Afrin Ezidis, Arabs, Assyrians, Armenians and Turkomans live together. During the hardest time of the war the population established a joint administration and have become a part of the decision making mechanisms with regard to their everyday life and tried to survive the war with as little damage as possible. In middle of this extraordinary difficult area and a war zone Afrin managed to become quasi a peace island and a peaceful oasis.

¹ <https://gpil.jura.uni-bonn.de/2018/01/difficulties-assessing-illegality-turkish-intervention-syria>

2. Before the beginning of the Turkish offensive on Afrin there have been no reports in the Turkish media with regard to any attacks from Afrin region. Despite the fact that there have been occasionally harassment fires such as artillery attack on Afrin by the Turkish army as a result of which civilian casualties occurred there has been no retaliation from Afrin region. Just the day before the launch of the offensive such reports were published in the Turkish press shortly after which the Turkish air forces started its air strike on Afrin.

It is public knowledge that after the military offensive some missiles hit Turkish territory and caused damage to the civilians. Yet there have been no evidence and basis indication that those missiles had been fired from Afrin. As a matter of fact, Mevlut Dudu, an MP of the opposition party CHP representing Hatay Province, claimed in this statement that having considered the range of the missiles they have reached the conclusion that the missiles must have been fired within the Turkish territory. Moreover, it is rather curious that even after that Turkish Army entered Syrian territory these missiles were able to be launched. Then again, it is worth remembering what the Head of the Turkish National Intelligence Service (MIT) Hakan Fidan said in an interview back in 2014: "If it is necessary I can send 4 guys to Syria and make them launch 8 missiles on Turkey, thus I can produce a casus belli for the war." ²

Under the Article 51 of the UN Charta certain conditions should be met in order to be able to invoke the right to self-defence. These conditions can be summarised as follows:

The asserted attacks would have needed to surpass a threshold of gravity in scale and effect; the means of self defence need to be necessary and the means of self defence should be proportional to the asserted attacks. When one of these conditions is not met then the consent of the country in question presents itself as important element of legitimation. It is also controversial

² http://www.cumhuriyet.com.tr/haber/turkiye/54767/Bomba_ses_kaydi_Secim_icin_savas_plani.html

whether armed attacks of a non-state actor, suffice to trigger self-defence in terms of Article 51 UN Charter and underlying customary law.³

In the light of the above mentioned conditions the Turkish government lacks a basis for its self defence claims. Security of borders or so called “terrorism” threats do not fall within the scope of the legitimate self-defence defined under the Article 51 of the UN charter and thus cannot be considered as a legitimate cause for an offensive. Besides, Turkey seeks a legal cover as late as after launching the offensive on Afrin.

The Turkish argument of its border security being at danger is baseless. Even assuming that the missiles in questions were fired from Afrin would not change the fact, as it is obviously against the proportionality principal that the Turkish government is using almost its entire military personnel and armed forces in order to retaliate a limited number of alleged missile attacks. In addition, the statements of the Turkish officials indicate that their objective is not to prevent this “fabricated” threat or self defence but to settle in Afrin and have their military presence there for good. Therefore, the air strikes targeted civilian settlements particularly the refuge camps in order to force the civilians to flee and depopulate the area by creating an atmosphere of fear and panic. From the statements of the the Turkish government and the FSA officials it is clear that their goal is to force the native inhabitants of Afrin and replace them with the Syrian Arab refugees currently residing in Turkey and other Arab IDPs coming out of Afrin region. Even this project itself refutes the Turkish argument of self defence. It also shows that the main goal is an ethnic cleansing and forced displacement of the local population which constitute a clear breach of the international law.

3. Turkish Government clearly violates Article 2/4 of the UN Charta. Under this article: *‘All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United*

³ <https://www.ejiltalk.org/the-turkish-operation-in-afrin-syria-and-the-silence-of-the-lambs/>

Nations". Besides, the Syrian Government by sending two different letters to the UN Secretary General and the Presidency of Security Council denounced Turkish offensive by describing it as an attack against its sovereignty, against its territorial integrity and its people.⁴

The Turkish offensive cannot be justified under the Article 51 of UN Charta as it was claimed in the letter sent by the Turkish Government to the Security Council.⁵ Besides, before any missile or any other attack took place against the Turkish soil the Turkish government had already the invasion of Afrin in its agenda. The Turkish President Recep Tayyip Erdogan had repeatedly given signals of this attack in his public statements by saying that "We can turn out in the middle of the night any time". Moreover, in the application submitted by the Syrian government it is stated that the Turkish offensive on the Syrian soil cannot be justified under the UN Security Council Resolutions numbered 1373, 1624, 1170, 1178.

In addition to this clear protest of the Syrian government and the fact that the Turkish offensive was launched before informing the UN Security Council, the Turkish offensive cannot be justified as a self defence based on any UN Treaty or Resolution. On the contrary, several countries, particularly the USA which have technical and military facilities in the region confirm that there has not been any attack on the Turkish soil from that region.

4. As mentioned above, the Turkish offensive on Afrin lacks a legitimation under the international law. The Turkish offensive constitute a clear breach of the fundamental principals of the international law. With regard to this matter several references can be given under the international law. For instance,

⁴ <https://sana.sy/en/?p=126100>

⁵ **Article 51-** Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

the Nuremberg principles created by the International Law Commission of the United Nations in accordance with the Resolution 177 (II) of the UN General Assembly. Under the Principle VI. (a) defining the crimes against Peace “(i) *Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances*” are defined as a crime liable to punishment under the international law.

The adopted amendments to the Rome Statute define the crime of aggression. Although it cannot be seen as a practical example- as it has not come into force- yet it can be considered as a legal reference in terms of the implementation and the interpretation of the crime of aggression. Under the Article 8 *bis* added to the Statute in 2010 the definition of "crime of aggression" is stated as follows:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

In the light of the both of these international documents it can be said that, the Turkish offensive on Afrin violates the relevant clauses and constitute the crime of aggression. Although Turkey has not signed the Rome Statute and is not a party to the International Criminal Court therefore cannot be held responsible under the positive law this would not change the existence and

the character of this gross violation. On the other hand, despite the fact that Turkey is not a party to the Rome Statute there are still other remedies and means for a criminal trial under the international law.

5. Several independent resources confirm that the main goal of the Turkish offensive on Afrin is the civilian population in the area. Although it is difficult to receive up-to-date and reliable information there are plenty of reports and news:

Rober Fisk, the senior Middle East correspondent for the Independent, reported on Afrin Maabatli and his observations reveal the civilian casualties.⁶

The Syrian Observatory for Human Rights (SOHR) reported that as of 30 January civilian deaths reached 67, 20 of which are children. It is underlined in the report, that these civilian casualties were results of air strikes.⁷ Similarly, on the 26 January 2018 the UNICEF reported the number of the children killed in the region as 11.⁸ The Organisation has not published any reports regarding the civilian casualties since then. Stephane Dujarric, the Spokesperson for the United Nations Secretary-General, without going into details confirms the civilian casualties.⁹ Similarly, the Syrian official News Agency also confirms the civil casualties.¹⁰ The report published by the Kurdish Red Crescent on the 2nd February also indicates names and details of the civilian casualties including children.¹¹

Information and visual material provided by the local sources clearly show that the Turkish warplanes target civilian settlements. The public hospital in Afrin reported that, within the first 13 days of the offensive 104 civilians were killed and 156 were injured.¹² The reports also indicate that, health services in the

⁶ <http://www.independent.co.uk/news/world/middle-east/afrin-turkey-invasion-syria-enclave-kurds-ypg-airstrike-war-civil-a8182266.html>

⁷ <http://www.syriahr.com/en/?p=84005>

⁸ <https://www.unicef.de/informieren/aktuelles/presse/2018/syrien-afrin-statement-unicef/158348>

⁹ <https://www.un.org/press/en/2018/db180123.doc.htm>

¹⁰ <https://sana.sy/en/?p=125848>

¹¹ <http://hskurd.org/en/2018/02/03/efrin-humanitarian-situationlocationhistory-and-victims/>

¹² <http://tr.hawarnews.com/efrinde-13-gunde-104-sivil-katledildi/>

regions were impaired and ambulances carrying wounded civilians are also being targeted by the Turkish forces.¹³

Delil Suleyman of the Agence France Presse (AFP) reported on the ancient historical site of Ain Dara Temple which was destroyed in the course of the Turkish airstrikes. Similarly, Salih El Din Senno of the Afrin Historical Sites Directorate, stated that almost 40- 50% of Ain Dara Temple has been destroyed.¹⁴ In the same report it is also stated that Maamun Abdulkerim, the head of the Syrian Historical Heritage Directorate defines this destruction of the history as: “It is a disaster for the entire world. A 3-thousand-year civilisation was destroyed in an air strike.”

6. The unjustifiable and illegitimate Turkish offensive on Afrin is not only an act of invasion but also composes war crimes as it targets civilians, especially due to incidents mentioned herewith above. Article 8 of the Rome statute regulates war crimes:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Wilful killing;

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(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;

¹³ <http://www.heyvasor.com/en/denge-xwe-bilind-bikin-ji-dagirkeriye-re-bejin-na/>

¹⁴ http://www.bbc.com/turkce/haberler-dunya-42893070?ocid=socialflow_twitter

(iv) 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;

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

(ix) 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;

(xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(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;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) 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;

Local sources also claim that in the course of the Turkish offensive chemical weapons are also being. The only way to clarify these claims would be to test the samples collected from corpses in an equipped laboratory. The first report regarding the use of chemical weapons was published by the Kurdish Red Crescent. On the 2nd February, 5 members of the local police force who were taking refuge in a cave during an airstrike suffered nausea, vomiting and apnoea after a missile hit an area close to the cave. Based on the symptoms, the medical professionals suspect a chemical attack.¹⁵ If this claim can be confirmed then it will be a grave war crime. The Rome Statute Article 8, 2 (b) states that the use of forbidden chemical materials is liable to punishment.

(xvii) Employing poison or poisoned weapons;

(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

In a video published by the media outlets and it was confirmed by the SOHR as authentic it is seen how the body of a female militant being disintegrated by the Islamist militants backed by Turkey. This approach of the Turkish government and the militants taking part in the invasion under Turkish command constitutes a clear war crime. In the Article 8 2 (b) of the Rome Statute this kind of action is defined as war crime:

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

Regardless how the character of the war in Afrin is defined, the Turkish offensive causing so many civilians casualties can be named as a war crime.

¹⁵ <http://hskurd.org/en/2018/02/03/efrin-humanitarian-situationlocationhistory-and-victims/>

These crimes fall within the scope of the jurisdiction of the ICC in The Hague. Therefore, any state party, thus also the Federal Republic of Germany, may refer to the Prosecutor 'a situation' in which one or more crimes within the jurisdiction of the Court appear to have been committed, ... in accordance with the Article 14; (Article 13 of the ICC). In that case, the Prosecutor may start an independent investigation based on the information presented.

7. The Turkish offensive on Afrin which has been going on since the 20th January 2018 and causing heavy civilian casualties also cause gross human rights violations in terms of international human rights law. Again in terms of humanitarian law various reports and visual material confirm ongoing war crimes committed by the Turkish state. We as human rights defenders, academics, lawyers and legal institutions urge the international community to take a legal and diplomatic action against civil casualties, destruction of infrastructure in Afrin.

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