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LEGAL BRIEFING

TURKISH AIRSTRIKES ON YAZIDIS IN NORTHERN IRAQ

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A. EXECUTIVE SUMMARY

1. Since August 2016, Turkey has conducted, through its own armed forces and together with Turkish-backed non-state armed groups, military operations and airstrikes in and against northern Syria and northern Iraq. The focus of this legal briefing is on Turkey's military operations, and specifically the conduct of airstrikes, in northern Iraq.
2. There are strong grounds to conclude that Turkey, as part of its military operations, has targeted and/or conducted indiscriminate attacks, including airstrikes, against Yazidi civilians and civilian objects in northern Iraq.
3. There is a real and serious concern that these lethal attacks against civilians and civilian objects, which are continuing, constitute grave violations of international law.
4. These attacks, and in particular the airstrikes, are not conducted as part of an armed conflict and constitute violations of international human rights law, including the right to life, the right to be free from torture, and the right to an effective remedy. Even if it were concluded that the airstrikes are committed as part of an armed conflict, such attacks constitute violations of international humanitarian law and the prohibition of direct or indiscriminate attacks against civilians (and, in any event, violations of international human rights law).
5. The Yazidis are in an extremely vulnerable and precarious position in Iraq, Syria and Turkey because of ongoing threats from the Islamic State Group in Iraq and Syria ("ISIS"), continued prohibited acts of genocide being committed against them by ISIS, and attacks by non-State actors not affiliated with ISIS (some of which claim to be affiliated with the Turkish military operations in Iraq and/or Syria). They also remain an at-risk group because of a failure to take measures to protect them by State authorities and/or regional governments (either because they are unable or unwilling).
6. Accountability Unit, through the support of City, University London, has filed a communication to relevant UN Special Rapporteurs on this matter together with commissioners at relevant organisations asking them to take specific actions including asking for the urgent, and immediate, cessation of all attacks against Yazidi civilians and civilian objects.

B. INTRODUCTION

1. Accountability Unit has prepared this legal briefing to bring to the attention of the international community the continuing violations of international humanitarian law and international human rights law committed by the Republic of Turkey ("Turkey") in the course of its ongoing armed attacks (aerial bombardment or airstrikes) in the Sinjar region in the north of the Republic of Iraq ("Iraq"). Accountability Unit writes on behalf of a group of Yazidi survivors/victims who may wish to be identified in due course. It also writes in the public interest and in order to ensure the international rule of law is upheld.
2. Since August 2016, Turkey has conducted, through its own armed forces and together with Turkish-backed non-State armed groups, military operations and airstrikes in and against northern Syria and northern Iraq.¹ This military action has been justified by Turkey as being part of the ongoing

counter-terrorism operation against the Kurdistan Workers' Party ("PKK").² The focus of this briefing is on Turkey's military operations in northern Iraq, and specifically the conduct of airstrikes in that region.

3. Turkey's latest military operation, Operation Winter Eagle, was launched on 2 February 2022 and involves airstrikes against the Derik, Sinjar and Karachak regions of northern Iraq.³ There are strong grounds to conclude that, as part of these military operations, Turkey has targeted and/or conducted indiscriminate attacks against civilians and civilian objects in northern Iraq, including against the UN-sponsored Makhmour refugee camp on 14 June 2020, 5 June 2021, 3 September 2021 and 2 February 2022, and Sikiye Medical Clinic on 17 August 2021.
4. There are strong grounds to conclude that these lethal attacks against civilians and civilian objects, and the failure to investigate these attacks, and ensure that the victims of these attacks have access to reparation and redress, constitute grave violations of international human rights law ("IHRL") including: arbitrary deprivations of the right to life, contrary to the substantive and procedural duties under Article 6 of the International Convention on Civil and Political Rights 1966 ("ICCPR"); and the right to an effective remedy (Article 2(3), ICCPR) read in conjunction with Article 6.
5. As explained below, whereas there are strong grounds to conclude that Turkey's use of force in and against the territory of Iraq is unlawful and in violation of Article 2(4) of the UN Charter, there is insufficient evidence to support the conclusion that the attacks were carried out in the context of an armed conflict between Turkey and Iraq and/or Turkey and the Sinjar Resistance Units ("YBS"), to which the rules of international humanitarian law ("IHL") would also apply.⁴ Nevertheless, even if there were sufficient grounds to conclude that Turkey's use of lethal force in Iraq, was and is conducted as part of an on-going armed conflict, these airstrikes, committed against civilians, persons *hors de combat*, and civilian objects constitute serious violations of the rules of IHL.
6. The gravity of these violations of international law by Turkey is compounded by the fact that the Turkish military operations, particularly since the launch of its series of airstrikes on 25 April 2017 on Mount Sinjar, Iraq,⁵ have increasingly targeted Yazidis, many of whom have sought to return to their homeland after the genocide against them in Iraq and Syria at the hands of the Islamic State in Iraq and Syria ("ISIS") beginning in 2013 and ongoing to the present day.⁶
7. It is a matter of grave concern that Turkey's airstrikes against Iraq have not yet been publicly and unequivocally condemned by the international community. Some of the attacks have been partly condemned publicly by Iraq which has avowedly not permitted any of the airstrikes on its territory, although reports suggest possible consent of the Iraqi government.⁷ The Iraqi government has been careful in its public condemnation of Turkey's use of lethal force on its territory. From publicly available information, Iraq has neither explicitly protested against the intervention nor has any such protest been made by Iraqi State officials, agents or organs that are entitled to give or withdraw any formal or tacit consent (if given). On one occasion Iraq condemned military action in Sinjar, without directly naming Turkey.⁸ In effect, Turkey has been permitted to act with impunity.
8. We call upon all relevant stakeholders to condemn Turkey's actions as grave violations of IHL and IHRL. Furthermore, in the light of the ongoing genocide of the Yazidis in northern Iraq, we ask relevant stakeholders to call upon Turkey to fulfil its obligations to use all means reasonably available to prevent the ongoing genocide and to immediately cease its attacks against Yazidi civilians and civilian objects and indeed the avowed targeting of the YBS, a militia whose mandate is to protect the Yazidis in northern Iraq.

C. FACTUAL BACKGROUND

1. Military operations "Claw-Eagle", "Claw-Eagle 2", joint-operation "Claw-Lightning" and "Claw-Thunderbolt", and "Winter Eagle" were launched by Turkish armed forces against purported

terrorists in northern Iraq in June 2020, February 2021, April 2021, and February 2022 respectively. At the time of writing, Operations Claw-Lightning and Claw-Thunderbolt, and Winter Eagle were ongoing. The principal groups that Turkey is claiming to target, or are relevant to the areas in which Turkish airstrikes are conducted, include:

- i. the Kurdistan Worker's Party ("PKK"), who are a Kurdish guerrilla movement in Turkey, and are designated as a terrorist organisation by the US, the EU and Turkey.
 - ii. the People's Defense Units ("YPG"), who are the armed wing of the Kurdish Democratic Union Party ("PYD") operating in Syria.⁹
 - iii. the Women's Protection Units ("YPJ"), who are an all-female militia that emerged from the YPG operating in Syria.¹⁰
 - iv. the Sinjar Resistance Units ("YBS"), who are a Yazidi defence force comprising members from both Iraq and Syria, deployed in Sinjar.¹¹
 - v. the Peshmerga, who are part of the Iraqi Security Forces, but fall under the jurisdiction of the Kurdistan Regional Government, as the military forces of the Kurdistan region.¹²
 - vi. the Kurdistan Democratic Party ("KDP"), who are one of two main parties in the Kurdistan Regional Government.¹³
 - vii. the Freedom and Democracy Party of Yazidis ("PADE"), who are a political party recognised by Iraq, formerly known as Free Democratic Movement.¹⁴
9. The military operations have consisted of airstrikes against Sinjar, Qandil, Karacak, Derik, Zap, Avasin-Basyan and Hakurk. Turkey has sought to justify its use of lethal force on Iraq's and Syria's territory on the basis that it is acting in self-defence and as counter-terrorism.¹⁵ Conduct by Turkish armed forces during Operation Claw-Eagle in June 2020, justified by Turkey on the basis that the attacks targeted strongholds of the PKK, has involved: airstrikes on ostensible civilian objects in Sinjar, including the Sikeniyeh Medical Clinic on 17 August 2021,¹⁶ and the UN sponsored Makhmour refugee camp on 14 June 2020,¹⁷ 5 June 2021,¹⁸ and 2 February 2022.¹⁹
10. In 2016, Turkish President Recep Tayyip Erdogan already warned that Turkey "would not allow Sinjar to become the 'new Qandil'".²⁰ On 25 April 2017, Turkey carried out a series of airstrikes on Mount Sinjar in Iraq where Yazidis sought refuge and Mount Karachok in Syria.²¹ The only medical clinic treating Yazidi civilians on Mount Sinjar was destroyed during the attack.²² There were no civilian casualties.²³ Another attack was launched on the YPG headquarters, including a media centre, a radio station and communications facilities, in Mount Karachok near Derik in Rojava which resulted in the deaths of 20 Kurdish fighters, eight YPG militants, and 12 members of the YPJ. A Peshmerga base located close to the site of the airstrikes was also hit, resulting in the deaths of five Peshmerga members, including a Yazidi.²⁴ The attacks were condemned by the Iraqi government's media office in muted terms as a violation of sovereignty.²⁵ In a statement, the Iraqi government warned Turkey against repeating "unjustified transgression, which could lead to escalating steps that affect the efforts of Iraq and the international community in the war against terrorism".²⁶ Iraq's private position on the attacks and whether it provided consent are not clear. The attacks have been justified by Turkey on the basis that the two targeted regions had allegedly become "terror hubs" and that it was "obliged to take measures".²⁷ It has been reported that Turkey offered condolences to the Peshmerga, claiming that they were killed by accident.²⁸ There is no information to suggest that the Peshmerga, YPG or YPJ were parties to an armed conflict with Turkey, or posed an imminent threat of attack against Turkey at the time of the attacks.
11. On 15 August 2018, the fourth anniversary of the Kocho massacre, drones and F-16s of the Turkish Armed Forces ("TSK") and its National Intelligence Organization ("MIT") hit a Yazidi convoy in Sinjar killing İsmail Özden, also known as Mam Zaki Shingali, as the convoy was returning from a memorial ceremony commemorating the massacres carried out by ISIS against the Yazidis in Kocho on 15 August 2014.²⁹ It is reported that Shingali belonged to the Yazidi Chilka tribe and was a

senior member of the PKK.³⁰ According to Matthew Barber, former executive director of the Yazidi diaspora organization Yazda, Shingali was not fighting against Turkey at the time of the attack or at all: "He was a civilian and a leadership figure in the political wing of the PKK".³¹ During the attack, four members of the YBS were killed and Haval Mazlum, general commander of the YBS in Sinjar, was wounded.³² The YBS, formerly known as "King Peacock", emerged in 2007 in the wake of attacks by Muslim insurgents and took part in protecting the Yazidi community during ISIS' takeover of Sinjar in 2014.³³

12. On 14 June 2020, Turkey's Defence Ministry announced the launch of "Operation Claw-Eagle", allegedly targeting the strongholds of the PKK in Qandil, near the Iranian-Turkish border, as well as Zap, Avasin and Hakurk, Sinjar and Makhmour.³⁴ Turkish warplanes carried out airstrikes against Makhmour refugee camp as well as civilian settlements and Serdest hospital located in Sinjar.³⁵ On this occasion, there were no civilian casualties, but several civilians were injured.³⁶
13. Turkey has sought to justify the airstrikes on Makhmour refugee camp on the basis that it is a (purported) haven for the PKK.³⁷ Makhmour refugee camp has a population of approximately 12,000 pre-dominantly Kurdish refugees. A day before the second attack on Makhmour refugee camp on 5 June 2021, US Ambassador to the United Nations, Ambassador Thomas-Greenfield, had warned Turkish officials that "any attack targeting civilians at Makhmour refugee camp would be a violation of international and humanitarian law".³⁸ The attack resulted in the killing of Selman Bozkir, a senior official of the PKK, and the general manager of the camp, and two others.³⁹ The strike on the camp took place three days after President Erdogan warned Iraq that Turkey would "clean up" Makhmour.⁴⁰ On 3 September 2021, Turkey targeted Makhmour refugee camp again.⁴¹ On that occasion there were no civilian casualties.
14. After launching "Operation Winter Eagle" on 1 February 2022, Makhmour refugee camp was again targeted by Turkish armed forces.⁴² The operation resulted in eight casualties and 17 wounded; among the victims were PKK militants and five civilians.⁴³ The attack on Makhmour refugee camp was publicly condemned by an Iraqi government media office in muted terms, calling on Turkey to halt attacks on Iraqi territory.⁴⁴
15. On 16 August 2021, a Turkish drone killed Yazidi leader Hassan Saeed and his nephew and wounded three civilians in Sinjar.⁴⁵ Mr Saeed was scheduled to meet with Iraqi Prime Minister, Mustafa Khadimi, that same day.⁴⁶ Mr Saeed was commander of the YBS and a former member of the Ezidi Freedom and Democracy Party ("PADE").⁴⁷
16. On 17 August 2021, a Turkish airstrike, this time using F-16 jets, targeted and destroyed the Sikeniyeh Medical Clinic in Sinjar, killing eight people.⁴⁸ It is reported that the medical clinic was subjected to multiple strikes.⁴⁹ Of those killed, four were healthcare workers, and four were YBS members; among them were seven Yazidis and one Arab.⁵⁰ Turkish media claimed that a senior PKK official, Mazloun Roj, had been hospitalised at the clinic and that ten members of the PKK were present in the building.⁵¹ The clinic was one of six medical facilities operated by the YBS, that also served the civilian population.⁵² It has been reported that Mazloun Roj was being treated in the clinic after he was wounded in the airstrike against Hassan Saeed the previous day.⁵³ The United Nations Assistance Mission for Iraq ("UNAMI") condemned the loss of life caused by the airstrike against the Sikeniyeh Medical Clinic.⁵⁴
17. Turkey has sought to justify its targeting of the YBS on the ground that it is an offshoot of the PKK, and labels those targeted as "terrorists".⁵⁵ In its report of the attack against the Sikeniyeh Medical Clinic on 18 August 2021, the Turkish Ministry of Defence stated on Twitter: "10 PKK terrorists detected in Sinjar in the north of Iraq were neutralised with an air operation. Wherever they are, we have destroyed the lairs of terrorists, we are destroying them and we will continue to destroy them".⁵⁶ The Turkish Ministry of Defence denied that a hospital was hit⁵⁷ and did not acknowledge that at least four of those killed were civilians, and health workers at the clinic.⁵⁸ Following the

attacks in February 2022, Turkey's Ministry of Defence confirmed that its armed forces carried out airstrikes in the Sinjar Mountains, Karacak region and Derik against the PKK, YPG and other groups.⁵⁹ Again, Turkey sought to justify its use of lethal force against these targets on the basis of counter-terrorism and its right to self-defence.⁶⁰

18. There is no reasonable basis upon which it can be alleged that the YBS engages in acts of terrorism that pose an imminent threat to Turkey or persons in Turkey. Indeed, Turkey does not allege that the YBS itself poses an imminent threat. The YBS, formed in order to protect Yazidis in Iraq has played, and continues to play, a particularly important role in protecting the Yazidis in light of the prohibited acts of genocide that occurred to the community at the hands of ISIS from early 2014 onwards. The YBS is registered as part of the Iraqi government's Popular Mobilisation Units ("PMU"), also referred to as Popular Mobilisation Forces ("PMF") or al-Hashd al Shaabi, and is operating as the government's "80th Regiment".⁶¹ Since 2016, the PMU are formally and legally part of the State's security apparatus.⁶² The YBS maintains that it is independent of the PKK and poses no threat to Turkey.⁶³
19. Turkey's failure to distinguish the YBS with the PKK is deeply concerning. It is notable that Turkey does not allege that YBS has participated in, or is responsible for, any terrorist or other armed attacks against Turkey, or that YBS poses an imminent threat to Turkey. It appears that Turkey is targeting the YBS based on the YBS' purported affiliation with the political ideology of the PKK,⁶⁴ and not on the basis of any direct and imminent threat posed by the YBS, a separate entity to the PKK, to Turkey.
20. The Yazidis are in an extremely vulnerable and precarious position in Iraq, Syria and Turkey because of ongoing threats from ISIS, continued prohibited acts being committed against them by ISIS as well as non-State actors not affiliated with ISIS (some of which claim to be affiliated with the Turkish military operations in Iraq and/or Syria). This is compounded by a failure to take measures to protect them by State authorities or regional governments (either because they are unable or unwilling). Just in respect of ISIS, in 2020, it was estimated that there were more than 10,000 Da'esh fighters in Iraq and Syria combined.⁶⁵ The Yazidi people remain under a continuing threat of genocide as determined by UN organisations, including the United Nations Investigative Team for Accountability of Da'esh/ISIL ("UNITAD") in 2021.⁶⁶
21. Moreover, Turkey's airstrikes have taken place in the context of targeted harassment and persecution of Yazidis in Afrin, Syria, by Turkish-backed militant groups.⁶⁷ The Yazidis have suffered from forced conversion to Islam, rape of women and girls, humiliation and torture, arbitrary incarceration, and forced displacement as well as destruction of religious sites.⁶⁸ The US Commission on International Religious Freedom ("USCIRF"), a bipartisan federal government body, has accused Turkish armed forces and their proxies in Syria of committing ethnic and religious cleansing.⁶⁹

D. LEGAL FRAMEWORK

1. To be lawful, the attacks by Turkey in Iraq's territory must comply with the law regulating inter-State use of force (*jus ad bellum*), IHL and IHRL.

Inter-State Use of Force

2. Article 2(4) of the UN Charter prohibits the threat or use of force by one State against the territorial integrity or political independence of another State. There are three exceptions to the prohibition on the use of force: (i) where a State consents to another State's use of force in its territory, (ii) where the use of force is authorised by the UN Security Council (UNSC) under Chapter VII of the UN

Charter and (iii) where, pursuant to Article 51 of the UN Charter, the use of force is in exercise of the inherent right of individual or collective self-defence against an armed attack. Turkish actions in Iraq which have targeted the Yazidis do not fall within any of these exceptions.

3. Iraq has condemned, somewhat mutedly and in public, Turkey's use of force in and against its territory as "a flagrant violation" of its sovereignty, although it is noted that there has not been a formal protest by relevant organs, agents or officials of the Iraqi State.⁷⁰
4. There is no UNSC resolution that authorises Turkey's use of force in and against the territory of Iraq, and there is no evidence that Iraq has committed or threatened to commit an armed attack against Turkey, in violation of Article 2(4) of the UN Charter.
5. There are strong grounds to conclude, therefore, that Turkey's use of force in and against the territory of Iraq is unlawful.
6. Even if Turkey was able to justify the armed attacks in and against Iraq's territory as a lawful use of force, this would not justify or excuse the use of lethal force against individuals in violation of IHRL, and, where applicable, IHL.

Legal Regimes Governing Use of Force Against Individuals

7. The lawfulness of the use of force by Turkey against individuals, property and infrastructure in Iraq is governed by IHL (*jus in bello*) and/or IHRL.
8. The targeting of members of the YBS, and the targeting of, and indiscriminate attacks against Yazidi civilians and civilian objects by Turkey may fall within one of two legal paradigms: (i) the law enforcement paradigm, governed by principles of IHRL; and (ii) the hostilities paradigm, governed by principles of IHL and of IHRL.
9. The existence of a situation of armed conflict is important to the activation and application of IHL. However, as affirmed by the International Court of Justice ("ICJ"), IHRL continues to apply in situations of armed conflict and in respect of "acts done by a State in the exercise of its jurisdiction outside its own territory".⁷¹ In situations of armed conflict, in which both IHL and IHRL will apply, the relationship between the two regimes will depend on whether lethal force is used within "a zone of hostilities".⁷² Outside the zone of hostilities, and with respect to the use of lethal force, the law enforcement paradigm is presumed to operate. Which legal regime or regimes govern Turkey's use of lethal force against individuals, property and infrastructure, will depend, therefore, on the existence of situation of armed conflict between Turkey and the YBS and/or Iraq. In situations of armed conflict, the interplay between IHL and IHRL will depend on whether the attacks are conducted within "a zone of hostilities" between the parties to the conflict.⁷³
10. The question of the existence of an armed conflict between Turkey and the YBS and/or Iraq is addressed below.

International Human Rights Law

11. The use of lethal force in counter-terrorism operations will be governed by IHL alone if used in a situation of armed conflict (either international or non-international), and in participation in hostilities. In all other circumstances, the use of lethal force will be governed by IHRL and the "law enforcement paradigm".
12. Right to Life. According to the Human Rights Committee, a State's obligation to respect and ensure respect for the right to life under the ICCPR extends to "all persons located outside any territory effectively controlled by the State whose right to life is nonetheless impacted by its military or other activities in a direct and reasonably foreseeable manner".⁷⁴

13. The right to life is a fundamental right that is well-established in international law through custom, treaties, and as a general principle of international law. The right not to be arbitrarily deprived of one's life is a *jus cogens* right, and is non-derogable, even in situations of armed conflict and public emergencies.⁷⁵ In situations of armed conflict, IHL and IHRL are both applicable. In these circumstances, the principles of IHL are applied to determine whether the deprivation of life is "arbitrary" within the meaning of Article 6 ICCPR.⁷⁶ Lethal force used in accordance with IHL will not ordinarily amount to an arbitrary deprivation of an individual's right to life. However, lethal force used in breach of IHL will always amount to an arbitrary deprivation of the right to life under IHRL.
14. Under IHRL, intentional killing is unlawful unless used as a measure of last resort and in self-defence, in circumstances where it is strictly necessary and proportionate in order to protect against an imminent threat to life (which means threat of death, serious bodily injury, or to prevent a crime involving grave threat to life).⁷⁷ In any case, in respect of a survivor/victim who has been targeted, past actions cannot justify a killing outside the trial process under IHRL. As for prevention, unless it is claimed that there is evidence of a particular imminent threat, a primary claim founded upon membership of a terrorist organisation does not justify a killing under IHRL. There is simply no basis for it.⁷⁸
15. This position is supported by the International Committee of the Red Cross ("ICRC"), that holds the view that a person in a non-belligerent State is not a legitimate target for the purposes of IHL.⁷⁹ In these circumstances, the use of force is governed by IHRL.⁸⁰ This is a view endorsed by the former Special Rapporteur on extrajudicial, summary or arbitrary executions, Dr Agnès Callamard.⁸¹
16. The Human Rights Committee has stated that "[d]eprivation of life is, as a rule, arbitrary if it is inconsistent with international law or domestic law".⁸² The Human Rights Committee further notes that Article 6 arbitrariness "is not to be fully equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality".⁸³ The right to life, as guaranteed by Article 6 ICCPR, requires States to take all necessary measures intended to prevent arbitrary deprivations of life. Such measures include the prompt independent and impartial investigation of lethal and other life-threatening incidents, and, where appropriate, the taking of action against those allegedly responsible, in accordance with domestic and international law.⁸⁴
17. Furthermore, the Human Rights Committee has affirmed that States may be held to have violated their responsibilities under Article 2(3) ICCPR, read together with Article 6, for failing to investigate possible violations of the right to life and to provide victims of violations of the rights and freedoms guaranteed by the ICCPR with an effective remedy.⁸⁵ In circumstances where State actors use lethal force against individuals there is, therefore, a question as to whether the State has fulfilled its procedural obligations both before and after doing so. These procedural obligations necessarily entail the conduct of due diligence before lethal force is used, and the investigation, and, where appropriate, prosecution of perpetrators, leading to possible conviction and sentence.
18. Right Not to Be Subjected to Cruel, Inhuman or Degrading Treatment. Article 7, ICCPR states that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Article 7 ICCPR does not provide a definition of torture or other cruel, inhuman or degrading treatment or punishment. The Human Rights Committee has said that it does not "consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied".⁸⁶
19. Cruel, inhuman or degrading treatment or punishment is also prohibited by Article 16 of the UN Convention against Torture ("UNCAT").

20. The prohibition on torture or other cruel, inhuman or degrading treatment or punishment is a fundamental right that is well-established in international law through custom, treaties, and as a general principle of international law. Article 7 ICCPR and Article 16 UNCAT bring into ambit psychological harm suffered by those in regions where targeting by airstrikes is frequent (and no doubt amplified where frequent targeting is of the same protected group).⁸⁷ Thus, the use of airstrikes which have an ancillary impact on others than those directly targeted, if indeed airstrikes are not indiscriminate, may constitute violations of Article 7 ICCPR and Article 16 UNCAT. Article 4(2) ICCPR provides that no derogation may be made from Article 7 ICCPR in any circumstances. This includes in time of “public emergency which threatens the life of the nation”.
21. Right to effective remedy. The obligation to respect and ensure respect for the rights guaranteed by IHRL (and IHL), requires States to (i) take appropriate legislative, administrative and other measures to prevent violations; (ii) to investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those responsible for violations in accordance with domestic and international law; (iii) provide victims with equal and effective access to justice and reparation, irrespective of who may be the bearer of responsibility for the violation in question; and (iv) provide effective remedies.⁸⁸
22. The right of survivors/victims of violations of the ICCPR to an effective remedy is guaranteed by Article 2(3) ICCPR, read together with Article 6 ICCPR. The right to remedy includes the right to equal and effective justice, to adequate, effective and prompt reparation for harm suffered, and access to relevant information concerning violations and reparation mechanisms.⁸⁹

International Humanitarian Law

23. In all circumstances, the use of lethal force in all situations of armed conflict must be guided by principles of IHL, which form part of customary international law: the principle of distinction, a “cardinal principle”;⁹⁰ proportionality; and/or precaution.⁹¹ The use of lethal force in violation of the principles of distinction, proportionality, and precaution, could constitute war crimes incurring individual criminal responsibility under domestic and/or international law.
24. The principle of distinction requires that the parties to a conflict distinguish between civilians and combatants and/or civilians directly participating in hostilities. Direct attacks and indiscriminate attacks against civilians and members of armed forces who are *hors de combat* “by sickness, wounds, detention, or any other cause”⁹² and civilian objects, are always strictly prohibited in all situations of armed conflict.⁹³
25. Not all civilian deaths that result from armed conflict will be unlawful. IHL recognises that in certain circumstances civilian deaths will be unavoidable. However, as a rule of customary IHL, “launching an attack which may be expected to cause incidental loss of civilian life, [or] injury to civilians... that is excessive to the concrete and direct military advantage anticipated is prohibited”.⁹⁴
26. The application of IHL to Turkey’s use of lethal force in Sinjar and other areas of northern Iraq will depend on whether the situation amounts to one of armed conflict.

Existence of a Situation of International Armed Conflict

27. The Rule of Law in Armed Conflicts (“RULAC”) initiative⁹⁵ concludes that Turkey has been engaged in an international armed conflict with Iraq since 2007, on the basis of the ongoing airstrikes carried out by Turkey against the PPK in northern Iraq, reportedly without Iraq’s consent.⁹⁶
28. However, Iraq and Turkey are not engaged in active hostilities against one another in northern Iraq, and Sinjar in particular, or at all. Although, Iraq has condemned, somewhat mutedly and in public, Turkey’s use of force in and against its territory as “a flagrant violation” of its sovereignty there has

been no military retaliation or even formal protest by relevant organs, agents or officials of the Iraqi State, and no retaliation.⁹⁷ At the least, Iraq appears to have acquiesced in Turkey's military intervention in its territory.

Existence of a Situation of Non-International Armed Conflict

29. For a situation to constitute an armed conflict the fighting between a State and a non-State armed group must reach a requisite level of intensity, and the armed group must be sufficiently organised to constitute a party to the conflict.⁹⁸
30. The RULAC initiative⁹⁹ concludes that Turkey has been engaged in a non-international armed conflict with the PKK in northern Iraq since July 2015.¹⁰⁰
31. Turkey's targeting is ostensibly against, in its view, non-governmental individuals, entities and objects. However, the information available does not support the view that a separate non-international armed conflict exists between Turkey and the YBS. There is no indication that Turkey and the YBS are engaged in armed confrontations, involving the exchange of fire, that meet the intensity threshold required of a situation of non-international armed conflict between Turkey and the YBS, or at all.

Conclusion

32. There are no reasonable grounds to conclude that Turkey is engaged in non-international armed conflict with the YBS. It is arguable that Turkey's airstrikes against individuals and locations in Iraq have triggered an international armed conflict between the two States. Nevertheless, even if one were to conclude that Turkey's airstrikes are conducted as part of an international and/or non-international armed conflict, the airstrikes have taken place in locations where there is no military activity or engagement in hostilities between Turkey and/or Iraq and/or the YBS. There are no grounds upon which it can be reasonably concluded that YBS is a part of the PKK or acting on behalf of, or in coalition with, the PKK and is currently engaged in a non-international armed conflict with Turkey.
33. Accordingly, it is reasonable to conclude that Turkey's use of lethal force against persons in northern Iraq, and against civilian objects that include the Sikeniyeh Medical Clinic and Makhmour refugee camp, is governed by principles of IHRL alone.
34. There is no reasonable basis upon which it may be concluded that the use of lethal force against the persons targeted by Turkey in its airstrikes in northern Iraq, and persons located in the Sikeniyeh Medical Clinic and Makhmour refugee camp, posed an imminent threat to life, or that the use of lethal force against these persons and facilities was necessary in order to protect against an imminent threat to life of persons in Turkey or elsewhere. Turkey has not provided any justification for the use of force, other than the targeting of "terrorists".
35. The use of lethal force in these circumstances is unlawful and constitutes an arbitrary deprivation of life, contrary to Article 6 ICCPR. Moreover, any ancillary psychological harm on the Yazidis in Sinjar, resulting from the threat and use of airstrikes, may constitute violations of Article 7 ICCPR and Article 16 UNCAT.
36. Even if one were to conclude that the airstrikes were carried out in the context of an armed conflict (international and/or non-international), there are strong grounds to conclude that the attacks were committed in breach of the prohibition of direct and indiscriminate attacks against civilians and civilian objects under IHL, and constitute an arbitrary deprivation of life, contrary to Article 6 ICCPR.
37. Turkey's failure to conduct an independent and impartial investigation into the use of lethal force against members of the YBS and civilians in Iraq, constitutes a violation of the victims' right to

effective remedy and of Turkey's procedural obligations under Article 6 ICCPR, read together with Article 2(3) ICCPR.

Obligation to Prevent Genocide

38. Turkey is under a continuing obligation to prevent the genocide of the Yazidis, an obligation which varies with its ability to effectively influence the situation of the Yazidis in Iraq and/or Syria. According to numerous bodies including UNITAD, the UN Commission of Inquiry on Syria, and human rights organisations, the genocide of the Yazidis is ongoing.¹⁰¹
39. Under the Genocide Convention, Turkey has a duty to prevent, prohibit and punish perpetrators¹⁰² of this ongoing genocide and must use all means reasonably available to them to prevent ongoing prohibited acts. In relation to the duty to prevent, targeting the ability of Yazidis to protect themselves militarily, targeting civilians, or targeting institutions such as hospitals directly contradicts the duties under the Genocide Convention.
40. Turkey's obligations under the Genocide Convention are separate to its obligation to respect, and ensure respect for, the principles of IHRL and IHL, and in particular to respect the right to life, and not to conduct targeted or indiscriminate attacks against civilians and civilian objects. Turkey owes obligations to the Yazidis and the world at large:
 - i. to immediately cease operations that involve the targeting of civilians, civilian objects and persons *hors de combat*,
 - ii. to immediately cease military operations that increase the risk of prohibited acts of genocide against the Yazidis,
 - iii. to take all measures reasonably available to prohibit, prevent and punish perpetrators of international crimes including its State agents, organs and officials and non-State actors affiliated with the Turkish State.

E. CONCLUSIONS AND RECOMMENDATIONS

1. In the light of the foregoing, there are strong grounds to conclude that Turkey, through continued military action targeting the Yazidis, is violating its obligations under international law.
2. The attacks by Turkey, although using military force, are governed by the law enforcement paradigm, and IHRL. Pre-emptive use of lethal force against persons is unlawful as a matter of IHRL, whether or not those persons are labelled "terrorists", and constitutes arbitrary deprivation of the right to life, contrary to Article 6 ICCPR.
3. Moreover, even if it is concluded that the attacks occurred within a situation of armed conflict between Turkey and the PKK or Turkey and Iraq, the attacks by Turkey in Sinjar have been conducted in direct violation of the prohibition of attacks against civilians and civilian objects, and/or members of the YBS who are *hors de combat* and/or not directly participating in hostilities with Turkey. There is no information to support any contention that the YBS has directed attacks against Turkey, or participated in hostilities against Turkey. There is no information to support Turkey's contention that the YBS is part of the PKK, or that the members of the YBS were directly participating in a non-international armed conflict between Turkey and the PKK, or in acts of terrorism, at the time of the attacks.
4. **Accountability Unit respectfully calls upon all relevant stakeholders, including States, international organisations, and regional organisations, to:**
 - i. Publicly condemn Turkey's actions as grave violations of IHRL (the right to life), and of Turkey's obligations to use all means reasonably available to prevent the ongoing genocide against the Yazidis;

- ii. Call upon Turkey to comply with its obligations under IHRL, and to immediately cease the unlawful targeting of, and indiscriminate attacks against, civilians and civilian objects, and persons *hors de combat*, in northern Iraq;
- iii. Call upon Turkey to immediately cease all counter-terrorism operations against the YBS that have resulted in the unlawful targeting of civilians and persons *hors de combat*, in violation of IHRL absent strong and cogent evidence indicating an immediate and present risk of armed attack against Turkey or its nationals (which to date has been wholly without basis), and that the use of lethal force is necessary and proportionate;
- iv. Call upon Turkey to take prompt and effective action in accordance with their obligations under the Genocide Convention to prevent and punish acts of genocide, to not be complicit in genocide in any way, and their general responsibility to act against crimes under international law, including by:
 - i. immediately ceasing all and any operations against Yazidi civilians or civilian infrastructure and ceasing all military operations against Yazidi defence forces absent strong and cogent evidence indicating that YBS activities present an immediate and present risk to life (which to date has been wholly without basis);
- v. Urge Turkey to cooperate to bring the serious breaches relating to genocide committed by Da'esh against the Yazidis to an end;
- vi. Urge Turkey to give all and any victims, survivors, and witnesses of possible violations of international law immediate access to: psycho-social support, independent legal representation and processes/procedures that will allow full and meaningful remedies and legal redress including compensation, restitution and reparations in accordance with international law;
- vii. Draw the attention of the UN High Commissioner for Human Rights to this serious situation that warrants immediate attention, and in particular Turkey's targeting of Kurdish and Yazidi civilians and/or persons *hors de combat* in violation of IHRL, and Turkey's obligation to prevent the ongoing genocide against the Yazidis;
- viii. Include the situation and the concerns raised herein in the Special Rapporteur's annual report to the Human Rights Council and the General Assembly.

64. Accountability Unit calls upon Turkey to:

- i. Comply with its obligations under international humanitarian law and international human rights law, and to immediately cease the targeting of civilians and civilian objects in northern Iraq (and Syria), absent any strong and cogent evidence to suggest that the YBS have participated in terrorist or other armed attacks against Turkey or pose an imminent threat to Turkey;
- ii. Take prompt and effective action in accordance with its obligations under the Genocide Convention to prevent and punish acts of genocide, to not be complicit in genocide in any way, and its general responsibility to act against crimes under international law, including by:
 - i. immediately ceasing all and any operations against Yazidi civilians or civilian infrastructure and ceasing all military operations against Yazidi defence forces absent strong and cogent evidence indicating an immediate and present risk of attack against the Turkish State or its nationals (which to date has been wholly without basis);
- ii. Cooperate to bring the serious breaches relating to genocide committed by Da'esh against the Yazidis to an end;
- iii. Give all and any victims, survivors, and witnesses of possible violations of international law immediate access to: psycho-social support, independent legal representation and processes/procedures that will allow full and meaningful remedies and legal redress including compensation, restitution and reparations in accordance with international law.

The Accountability Unit is an independent NGO and is not connected to any other organisation, political party or special interests. Our work is in accordance with our constitution, and we are governed by UK Charity Commission rules. Our work does not constitute political lobbying. Our work in relation to human rights seeks to bring into line State policies, practices and laws with the international law or domestic law obligations of the State concerned. This factsheet does not constitute legal advice and is for informational purposes only. A legal opinion may be commissioned. [END]

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Endnotes

- ¹ Turkey has conducted a number of formal military operations in northern Syria and northern Iraq. Since August 2016 those operations include: Operation Euphrates Shield, 24 August 2016 – 29 March 2017; Operation Olive Branch, 20 January 2018 – 9 August 2019; Operation Peace Spring, 9 October 2019 – 23 October 2019 (Turkey's occupation of Afrin district, northern Syria, is ongoing); Operation Spring Shield, 27 February 2020 – 6 March 2020; Operation Claw, 29 May 2019 – 14 June 2020; Operation Claw-Eagle and Operation Claw-Tiger, 15 June 2020 – 5 September 2020; Operation Claw-Eagle 2, 10 February 2021 – 14 February 2021; Operation Winter Eagle, launched on 2 February 2022.
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