

**SNHR**

الشبكة السورية لحقوق الإنسان  
SYRIAN NETWORK FOR HUMAN RIGHTS

## **Criminal Accountability in Syria:**

# **A Legal Analysis of the Litigation Procedures and the Indictment Decision against the Accused Atef Najib**

An Analytical Study on the Legal Structure of Criminalization, Modes of Responsibility, and Trial Guarantees in Syrian Judicial Proceedings

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The Syrian Network for Human Rights (SNHR), founded in June 2011, is a non-governmental, independent group that is considered a primary source for the OHCHR on all death toll-related analyses in Syria.

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## FIRST: EXECUTIVE SUMMARY

On 26 April 2026, the Fourth Criminal Court in Damascus began the trial proceedings of Brigadier General Atef Najib, the former head of the Political Security Branch in Daraa, on charges related to the violent suppression of civilian protests in early 2011. The indictment listed the names of eight other accused, all of whom are absent, including former President Bashar Al-Assad, his brother Maher Al-Assad, and senior security and military figures. In the second session held on 10 May 2026, the court confirmed the absence of the non-appearing accused, declared them fugitives from justice, and placed their assets under State administration, pursuant to Article 322 of the Code of Criminal Procedure.

The interrogation session of the present accused, Najib, began, and the indictment was read in full. Fifty plaintiffs were registered as civil parties, with the court confirming that the list of plaintiffs is not final and that other plaintiffs may join later. These are the first criminal proceedings undertaken by the Syrian transitional authorities against a prominent figure in the security apparatus of the former regime for acts which the court and the public prosecution described, in light of their nature and context, as constituting crimes against humanity, and the court also considered some of the acts attributed to the accused to be war crimes based on the Geneva Conventions and international humanitarian law.

These proceedings constitute the first practical test of the capacity of the Syrian judiciary in the post-Assad phase to deal with serious international crimes using the legal tools available to it, in particular the General Penal Code, the Anti-Torture Law No. 16 of 2022, the Transitional Constitutional Declaration issued on 13 March 2025, Syria's obligations under the International Covenant on Civil and Political Rights, and the conventions Syria has ratified. The test lies not only in the court's capacity to issue a conviction, but in the capacity of the proceedings to produce a judicial record that enjoys procedural integrity, a disciplined legal logic, and the capacity to withstand scrutiny under the standards that govern the prosecution of international crimes.

The core analytical problem this report addresses revolves around the gap between the gravity of the conduct attributed to the accused and the legal framework on which the Fourth Criminal Court relies.

In the absence of a national framework specialized in international crimes, the charges in the indictment were drafted by reference to national criminal law and a number of other pieces of legislation and decrees, with international law adopted as "a complementary and interpretive framework supportive of national legislation," as the court announced.

This choice has a direct effect on all aspects of the proceedings. It determines the nature of the attributed conduct, it restricts the available modes of individual criminal responsibility, it determines the applicable penalty regime, and it affects the legal precision of the resulting judicial record. Whether this choice reflects a conscious strategy on the part of the public prosecution and the court, or whether it reveals a structural deficiency in Syrian law, its legal effect calls for independent examination.

The report asks: to what extent do the proceedings of the Fourth Criminal Court meet the legal standards necessary to establish a credible national accountability for international crimes? It examines, within this framework, the legal structure of the proceedings and the hierarchy among their sources; the characterization of the charges and the implications of relying on national legislation rather than on the definitions of international crimes; the individual criminal responsibility of Atef Najib and the modes of responsibility available under Syrian law; the temporal threshold that determines the extent of the applicability of the war crimes framework to the early events in Daraa; and the due process implications of the in-absentia trial of Al-Assad and the other absent accused.

The analysis is based on a doctrinal legal study of Syrian law, in both its legislative and constitutional dimensions, and on its assessment against the standards of international human rights law and international humanitarian law, with limited reference to comparative transitional justice practices. The scope of the report is limited to the proceedings documented up to the end of the second session on 10 May 2026, and it does not independently address the potential use of the judicial record internationally before foreign courts or within international judicial cooperation frameworks.

The report concludes that the proceedings, as they currently stand, exhibit clear gaps across five main dimensions of the legal structure: the legislative framework, the characterization of the crimes, the doctrinal basis of individual responsibility, the temporal application of the war crimes framework, and the procedural guarantees governing the in-absentia trial. These gaps can be addressed within the proceedings themselves. However, if they remain unaddressed, they will undermine the capacity of these proceedings to claim to represent a coherent legal accountability for conduct that rises to the level of crimes against humanity.

Fadel Abdulghany, the Executive Director of the Syrian Network for Human Rights, says:



**Accountability is not measured by the number of judgments issued, but by the extent to which the judicial record can withstand legal scrutiny. The first true test of justice in post-Assad Syria lies in convicting the perpetrators, and also in building judicial proceedings that respect the very rule of law that has been violated for decades, that produce a record which preserves the rights of victims and safeguards their dignity, and that remains a credible legal reference for generations to come.**

## SECOND: BACKGROUND AND CONTEXTUAL FRAMEWORK

On 26 April 2026, the proceedings of the Fourth Criminal Court in Damascus began against Brigadier General Atef Najib, the former head of the Political Security Branch in Daraa Governorate, on charges relating to the violent suppression of civilian protests during February and March 2011. Najib is currently in detention in the Adra Prison in Damascus, having been arrested by the General Security forces in Latakia on 7 April 2026, following his return to Syrian territory from his refuge in Lebanon, where he had been residing in Hermel, in the Bekaa Valley. The session was attended by the public prosecutor, defense counsel, and a number of plaintiffs and their representatives.

The list of accused referred to in the indictment includes eight other accused, all of whom are absent: former President Bashar Hafez Al-Assad, his brother and former Commander of the Fourth Armored Division Maher Hafez Al-Assad, former Vice President Farouk Al-Sharaa, former Minister of Defense Ali Habib, former Minister of Interior Mohammad Ibrahim Al-Shaar, former head of the National Security Bureau Hisham Bakhtiar, former head of Air Force Intelligence Jamil Hassan, and former Director General of the Political Security Branch Mohammad Dib Zaitoun. The names of three of the accused appeared in news reports prior to the first session as Atef Najib, Bashar Al-Assad, and Maher Al-Assad. The remaining names were disclosed during the first session when the indictment was read out before the court.

The court rejected the defense's request to release the accused on bail, on the grounds of the gravity of the attributed offenses and the existence of well-founded fears of his flight from justice, and decided to continue his pre-trial detention.

In its second session, held on 10 May 2026, the court ruled that the absent accused be subjected to civic degradation and that their movable and immovable assets be placed under judicial sequestration, pursuant to Article 322 of the Code of Criminal Procedure. The session also witnessed the formal commencement of the interrogation of the accused Najib, with the indictment read out in full, listing at least ten charges, including murder, torture, abduction, deprivation of liberty, and incitement to commit international crimes, in accordance with Decree No. 148 of 1949 (the General Penal Code), Anti-Torture Law No. 16 of 2022, the Anti-Terrorism Law, and additional articles from a number of other instruments. Some of the acts attributed to him were also classified, according to the court's announcement and the prosecution's pleadings, within the framework of crimes against humanity and war crimes, drawing on the Geneva Conventions and international humanitarian law as complementary and interpretive frameworks, alongside national law.

Although news reports immediately preceding the second session referred to ten charges, official press releases issued after that session, as well as observers' reports on the same session, listed a more detailed count of twenty-four charges referenced from the General Penal Code, including: incitement to civil war (Article 216), failure to fulfill the duties of office (Article 376), interference of public officials in unauthorized matters (Article 363), forming an armed gang (Article 325), murder with premeditation (Article 535), unlawful arrest and deprivation of liberty (Articles 555-559), severe deprivation of physical liberty (Article 555), torture leading to permanent harm or death (Article 391), as well as charges related to forced displacement (Article 525), violation of civil rights (Article 319), and provocation of civil strife (Articles 298 and 307).

It is also reported that fifty plaintiffs were registered as civil parties before the start of the second session, with confirmation by the court that the list of plaintiffs would not be considered final and that other plaintiffs would be allowed to join the case during the following sessions. The judges initially decided to hold the second session in a public format, only to switch later to a closed format to enable the questioning of witnesses and the plaintiffs whose protection so requires.

These proceedings constitute the first criminal prosecution to be undertaken by the Syrian transitional authorities against a prominent figure in the security apparatus of the former regime, against the backdrop of acts which the court and the public prosecution described, in light of their nature and context, as forming part of a widespread or systematic attack against the civilian population.

The conduct attributed in this regard, according to the indictment as read out, includes a chain of acts that, taken together, constitute a pattern of repressive violence: the issuance of orders to use armed force against peaceful demonstrators; personal involvement in the decision of the security committee in Daraa that authorized the use of live ammunition; the targeting of demonstrators by snipers positioned on government buildings, including the Political Security building in Daraa; the prevention of medical evacuation of the wounded; the detention of ambulances and the obstruction of medical workers; the arrest of children on account of political graffiti and their subjection to torture during interrogation; the participation in the cover-up of the killing of demonstrators in the Omari Mosque; and the responsibility for orders that resulted in the killing of dozens of civilians and the wounding of hundreds. The indictment also confirms the description of these acts as constituting a widespread or systematic attack, with reference to the Geneva Conventions and the Rome Statute as complementary and interpretive frameworks, alongside the national legislative framework.

The conduct attributed to Najib in this report does not represent a final factual determination by the court regarding his criminal responsibility. Rather, it represents the prosecution's factual allegations as set out in the indictment and as referenced in the public reports of the public sessions. The legal sufficiency of these allegations and their evidentiary support are matters to be determined by the court at the conclusion of the proceedings.

These proceedings constitute the first true test of the capacity of the Syrian judiciary, in the post-Asad phase, to confront serious international crimes through the legal tools available to it, in particular the General Penal Code, the Anti-Torture Law No. 16 of 2022, the Transitional Constitutional Declaration issued on 13 March 2025, Syria's obligations under the International Covenant on Civil and Political Rights, and the conventions Syria has ratified. It is also worth noting in this context that Syria is among the countries that have not ratified the Rome Statute of the International Criminal Court (1998).

These proceedings raise three distinct sets of legal questions, each one independent in scope yet structurally interconnected. The first set concerns the nature of the conduct attributed and the suitability of the legal frameworks chosen for its characterization. The proceedings rely on a mixed framework that combines provisions of the General Penal Code, the Anti-Torture Law, the Anti-Terrorism Law, and the Transitional Constitutional Declaration, with international law adopted as a complementary and interpretive framework supportive of national legislation. The choice of this particular framework requires examination of its capacity to capture the gravity of the conduct attributed to Najib and the absent accused, and the extent of its compatibility with the standards of international criminal law applicable to crimes of this scale.

The second set relates to the modes of individual criminal responsibility available under the legal framework adopted by the court, and the extent of their applicability to the conduct attributed to Najib in light of his hierarchical position within the security apparatus. The position of the head of a branch within the Political Security apparatus, as has emerged in the course of the prosecution's pleadings, generates a particular kind of relationship between the accused and the acts attributed, and this calls for a precise definition of the doctrinal basis on which his criminal responsibility is founded.

The third set concerns the procedural guarantees that govern the in-absentia trial of Bashar Al-Assad and the other absent accused. The in-absentia trial, despite being permitted under Article 322 of the Syrian Code of Criminal Procedure, intersects with the standards of the International Covenant on Civil and Political Rights with respect to the right of the accused to be present at his trial, and to the conditions of valid in-absentia proceedings.

## THIRD: THE LEGAL STRUCTURE OF THE PROCEEDINGS

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The Syrian Penal Code does not contain definitions of crimes against humanity, war crimes, genocide, enforced disappearance, or command responsibility. The Anti-Torture Law No. 16 of 2022 defines torture in a manner that falls short of the standard set forth in Article 1 of the Convention against Torture, while no specialized transitional criminal legislation has yet been enacted. Accordingly, the court must derive the applicable law through interpretation. Under these circumstances, the entire judicial record hinges on the quality of this interpretation. Hence, the legal authority of the judgment depends, to a large extent, on the soundness of the interpretive choices that the court makes and on the rigor of the legal reasoning by which it justifies them.

The constitutional foundation for this interpretation is found in Article 12 of the Transitional Constitutional Declaration issued on 13 March 2025, which provides that Syria undertakes to comply with the international instruments it has ratified in the field of human rights and international humanitarian law. Syria is bound by the International Covenant on Civil and Political Rights since April 1969, by the Convention against Torture since August 2004, by the four Geneva Conventions since November 1953, and by Additional Protocol I since November 1983.

However, the question of whether Article 12 operates as a self-executing mechanism, allowing the court to apply the crime definitions specified in the conventions directly without implementing legislation, has not yet been resolved judicially. The relevant comparative practice is divided into two main approaches in this regard. Monist systems, such as the Netherlands, allow direct application of ratified conventions, while dualist systems require implementing legislation before international standards can be invoked judicially. The judgment in the Najib case may produce the first authoritative judicial interpretation of Article 12 in this context, hence it must address this issue directly rather than treat it as resolved.

Article 49 of the Constitutional Declaration excludes crimes against humanity, war crimes, and genocide attributed to the former regime from non-retroactivity protection, while maintaining this protection for other accused. This exception poses serious questions in light of Articles 15 and 26 of the International Covenant on Civil and Political Rights. Article 15 prohibits the application of penal laws retroactively, with an exception for acts which, at the time of their commission, were criminal according to the general principles of law recognized by the community of nations. Article 26 requires equality before the law and equal protection by the law without discrimination. The selective application of the principle of non-retroactivity through Article 49, in a manner that subjects accused affiliated with the former regime to an exception from which other accused are protected, raises the question of compatibility with the principle of equality.

Hence, the safest path is to base the treatment of non-retroactivity on customary international law, which already criminalized the relevant conduct before it occurred, and which applies to any accused regardless of political or institutional affiliation. The International Law Commission's 2019 Draft Articles on Prevention and Punishment of Crimes against Humanity, as well as the settled jurisprudence of the International Criminal Tribunal for the former Yugoslavia, since the Tadić case, confirm that the criminalization of crimes against humanity and war crimes is a settled principle of customary international law that applies regardless of national or political affiliation.

Therefore, Article 49 can serve as a complementary domestic mechanism, but it should not constitute the principal basis on its own for overcoming the non-retroactivity objection. The judgment that bases its analysis on customary international law as the principal source, while invoking Article 49 as a domestic mechanism that confirms what customary law has already established, will produce a more solid record from the perspective of compliance with the standards of the International Covenant on Civil and Political Rights, than a judgment that depends exclusively on the selective exception in Article 49.

Article 18 of the Constitutional Declaration provides that the crime of torture and the violation of personal freedoms shall not be subject to any statute of limitations, whether on the criminal action, the penalty, or related civil claims. This text removes the temporal restrictions that could limit prosecution for torture committed in the period prior to its issuance, and provides a clear domestic basis for the non-applicability of statutes of limitations on this category of crimes.

As for crimes against humanity and war crimes, the Constitutional Declaration does not contain explicit provisions on the non-applicability of statutes of limitations. The indictment, as it appears from the available reports, refers to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 1968, although Syria is not a party to this convention. This reference raises the question of whether the convention is being invoked as a treaty obligation binding on Syria, or as evidence of a principle of customary international law. The distinction is fundamental, since if it is invoked as a treaty obligation, the citation does not stand against a non-party State. As for an invocation based on its character as evidence of custom, it requires that the conclusion be independently supported, since the principle of non-applicability of statutes of limitations to the core international crimes has gained recognition as a customary principle, supported by the work of the International Law Commission and international practices that go beyond the limited scope of ratification of the 1968 convention.

In light of this structure, the most solid approach is to combine two independent grounds: Article 18 of the Constitutional Declaration, which removes the restrictions specifically with respect to torture; and the principle of non-applicability of statutes of limitations under customary international law, which applies to crimes against humanity and war crimes without the need to rely on the 1968 convention as a binding treaty source for Syria.

These three issues, the self-executing nature of Article 12, the selective application of the principle of non-retroactivity under Article 49, and the basis for the non-applicability of statutes of limitations, are linked together by a common structural feature: they all reflect the absence of a specialized transitional criminal legislation that defines crimes against humanity, war crimes, command responsibility, and other key concepts in the framework of national law. This absence forces the court into a complex interpretive role that goes beyond ordinary judicial functions, by establishing settled principles of customary international law into the national legal order through interpretation rather than legislation.

This structural deficiency cannot be addressed at the level of the proceedings themselves, since it requires legislative reform that is outside the scope of judicial action. However, the manner in which the court deals with this deficiency, by an explicit acknowledgment of the legal sources it relies on, and by clear reasoning on the interpretive choices it makes, will determine the credibility of the resulting record. The judgment that explicitly acknowledges the absence of national legislation, and that establishes its rulings on a clear basis in customary international law applied through Article 12, will produce a record that is more capable of withstanding legal scrutiny than a judgment that depends on ambiguous references to international principles without specifying its sources and the legal mechanism by which they are integrated.

## **FOURTH: CHARACTERIZATION OF THE CRIMES: BETWEEN TERRORISM OFFENSES AND INTERNATIONAL CRIMES**

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The session of 10 May 2026 produced an important shift in the legal characterization of the charges. The first session, held on 26 April, framed the charges within a broad political formula referring to “crimes against the Syrian people,” a phrase that does not rely on a specific definition in legislation or treaties. As for the second session, it produced a treaty-based characterization, since the public prosecution explicitly invoked the Convention against Torture, the International Covenant on Civil and Political Rights, the Rome Statute of the International Criminal Court, and the four Geneva Conventions. The principal question that this characterization raises is: do the legal and procedural conditions for the application of the international crimes framework to the conduct attributed to Najib exist, in light of the analysis set out in section three?

The choice between these two paths is not a procedurally neutral matter. Prosecution under the Penal Code alone requires proof that the accused committed specific criminal acts, however it does not require proof that those acts took place in the framework of a widespread or systematic attack directed against a civilian population. As for prosecution under the crimes against humanity framework, it requires proof of this contextual element specifically. The contextual element determines the threshold of gravity by which the acts are understood, and whether the judicial record grants the systematic violence practiced by the State against civilians the legal and normative weight that international criminal law grants it. Hence, the shift in the session of 10 May from the formula of “crimes against the Syrian people,” a phrase that does not rest on a specific definition in legislation or treaties, to a treaty-based characterization, is an important choice on the part of the prosecution, however it still needs a precise legal foundation.

The crimes against humanity framework, as codified in Article 7 of the Rome Statute and confirmed in the International Law Commission’s Draft Articles on Prevention and Punishment of Crimes against Humanity as expressing customary international law, requires that the prohibited acts, such as murder, torture, imprisonment, persecution, and others, be committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of that attack. The Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia in the Kunarac case held that the description “widespread” refers to the scale of the attack and the number of victims, while the description “systematic” refers to the organized character of the acts of violence and the absence of their randomness. These two elements are alternative, not cumulative. Furthermore, Pre-Trial Chamber II of the International Criminal Court, in the Kenya case, held that the attack must be carried out pursuant to or in furtherance of a State or organizational policy, and that the policy element need not be declared or formal, but can be inferred from the manner of commission of the acts.

The conduct attributed in the indictment, when assessed within the limits of what the public prosecution presented, describes a pattern that may satisfy these two dimensions. According to what was set out in the summary of the indictment decision and the prosecution’s pleading, the decision of the security committee to permit the use of live ammunition against the demonstrators, the reference to the targeting of demonstrators by snipers positioned on government buildings, including the Political Security building in Daraa, the prevention of the evacuation of the wounded and the detention of ambulances, and the arrest and torture of children on account of political graffiti on walls, are all elements that indicate, according to the narrative of the prosecution, conduct that is widespread in its effect and systematic in its organization. The institutional character of the conduct supports the inference of the existence of a State or organizational policy, since the conduct was attributed to a committee decision, and was carried out through a branch of the security apparatus under the command of Najib, and targeted civilians participating in peaceful protests. Based on what the public prosecution presented, it appears that the contextual conditions for crimes against humanity are capable of being established. However, this remains an assessment of the prosecution’s allegations, not a final judicial conclusion on the facts.

However, the legal reasoning in the indictment involves two points of weakness that call for correction before the judgment. The first consists in the reliance on *jus cogens* norms and Article 53 of the Vienna Convention on the Law of Treaties as the legal basis for classifying the conduct attributed as crimes against humanity. Article 53 of the Vienna Convention relates to the validity of treaties, and it provides that a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. Therefore, it regulates the relationship between treaties and peremptory norms, however it does not define the elements of the crime, nor does it specify the *mens rea*, nor does it establish a mode of individual criminal responsibility. Hence, transposing it from its original function to the field of attributing direct criminal responsibility to an individual represents an undisciplined expansion of its legal function.

It is true that the prohibition of crimes against humanity enjoys peremptory status in international law, however this character establishes the non-derogability of the norm, and does not on its own provide the degree of specification required under the principle of legality of crimes. The accused has a right to know, with a sufficient degree of precision and predictability, the elements of the offense attributed to him. Therefore, the most coherent legal path is to base the characterization of crimes against humanity on the definitions of customary international law, as codified in Article 7 of the Rome Statute and confirmed in draft Article 2 of the International Law Commission's Draft Articles, and then to apply them domestically through Article 12 of the Constitutional Declaration.

It may be objected to this path that the application of the definitions of the Rome Statute through Article 12, without implementing legislation, violates the principle of legality. However, the response to this objection rests on three interrelated considerations: the first is that the definitions of Article 7 reflect, in essence, the existing customary international law, as the commentary of the International Law Commission to draft Article 2 confirms; the second is that the underlying acts, such as murder, torture, and imprisonment, were prohibited under Syrian criminal law at the time of the conduct; the third is that the contextual element of crimes against humanity, namely the widespread or systematic attack, was settled in customary law before 2011, as the jurisprudence of the International Criminal Tribunal for the former Yugoslavia confirms since the *Tadić* case. Hence, the legal rule, in its essential elements, was capable of being known and foreseen. However, this response is not persuasive unless the court bases its judgment explicitly on customary international law, instead of relying on the selective exception in Article 49 as the sole reason for overcoming the non-retroactivity objection.

As for the second point of weakness, it relates to the reliance on the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. Syria is not a party to this convention. The indictment decision did not clarify whether it relies on it as a treaty obligation binding on Syria, or as evidence of a principle of customary international law. This distinction is fundamental. If it is invoked as a treaty, then this invocation does not stand against a non-party State. As for an invocation based on its character as evidence of custom, then this conclusion must be independently supported. The principle of the non-applicability of statutes of limitations to the core international crimes has received broad recognition as a customary principle, supported by the International Law Commission's Draft Articles and by international practices that go beyond the limited scope of ratification of the 1968 convention. Therefore, the safer path is to combine two independent bases: Article 18 of the Constitutional Declaration, which removes the restrictions with respect to torture specifically; and the principle of the non-applicability of statutes of limitations under customary international law, which applies to crimes against humanity and war crimes without the need to rely on the 1968 convention as a binding treaty source for Syria.

The analysis of the characterization of the crimes is not complete without addressing the effect of the selectivity of Article 49 on the framework of crimes against humanity. As explained in section three, Article 49 removes the protection of non-retroactivity with regard to crimes against humanity, war crimes, and genocide attributed to the “former regime,” while preserving it with regard to other accused, thus raising problems in light of Articles 15 and 26 of the International Covenant on Civil and Political Rights. The effect of this appears directly in the characterization of the crimes. If the court relies on Article 49 alone, and considers the selective exception in the Constitutional Declaration as a legally necessary condition for the application of international crime definitions to the conduct attributed, then the characterization itself will inherit the selectivity problem: the international crimes framework will become available against a specific category of accused, and unavailable to the same extent against other categories, in contradiction with the principle of equality before the law.

Therefore, the court must base the characterization of crimes against humanity on customary international law as the principal normative basis, on the consideration that the definitions in Article 7 of the Rome Statute reflect customary rules that were binding on all persons at the time of the acts, regardless of political or institutional affiliation. Article 49, in this case, can perform a complementary domestic function that confirms what customary law has already established, instead of bearing on its own the full legal weight of the characterization. This arrangement preserves the legal coherence of the characterization, and reduces the likelihood of its being challenged on the ground of equality under Article 26 of the International Covenant on Civil and Political Rights. As for the effect of this characterization on the modes of individual criminal responsibility available to the public prosecution, and the proof requirements associated with each mode, that is the subject of the next section.

## **FIFTH: MODES OF RESPONSIBILITY: THE CRIMINAL RESPONSIBILITY OF ATEF NAJIB**

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The Syrian Penal Code addresses criminal participation in Book Four on complicity, and distinguishes between the principal and the accomplice, and provides that responsibility arises on the basis of participation in the commission of the crime, or incitement to commit it, or the issuance of orders to commit it. Furthermore, it establishes the responsibility of the accomplice whether his connection to the principal was direct or indirect, and the accomplice whose assistance was necessary for the commission of the crime is punished as the principal. These provisions provide the domestic legal basis for attributing criminal responsibility to Najib for the acts committed by his subordinates in execution of his orders.

However, the Penal Code does not contain an explicit provision on command responsibility in the sense corresponding to Article 28 of the Rome Statute, which establishes the responsibility of the military commander for crimes committed by forces under his effective command and control as a result of his failure to exercise appropriate control, where he knew, or should have known, of the commission of the crimes, and did not take all necessary and reasonable measures to prevent or repress them or to submit their perpetrators to the competent authorities. The absence of this provision does not mean that command responsibility is necessarily excluded as a legal matter, however it does mean that the court must derive its basis from customary international law through Article 12 of the Constitutional Declaration, which raises, as section three explained, the self-execution issue that has not yet been resolved. The court's language in the session reflected this approach when it described Najib as "the absolute authority in Daraa Governorate" and held him under "direct command responsibility" for issuing orders of killing, arrest, and torture and for leading security and military operations within an organized hierarchical structure, without explaining independently the national legal basis on which command responsibility is built as a standalone legal form. Hence, any judgment that recognizes command responsibility without setting out its national legal basis and the mechanism of its integration through Article 12 will be more susceptible to challenge at the appeal stage.

Three analytically distinct modes of responsibility are available to the prosecution, each of which differs in its elements and proof requirements. The first mode consists of the perpetration through another (commission of the crime through another), that is, Najib's use of his subordinates as instruments for the execution of crimes by explicit orders. This mode rests on direct positive conduct, and does not require an inference based on tacit knowledge or passive omission. The indictment, as read in the session of 10 May, sets out specific conduct that supports this theory, including: Najib's issuance of direct orders to use armed force against peaceful demonstrators, his personal involvement in the security committee's decision that permitted the use of live ammunition, and his direct responsibility for the snipers positioned at the Political Security building in Daraa.

As for the second mode, it is participation in the commission of the crime through a joint criminal enterprise. The Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia, in the *Tadić* case, recognized three forms of joint criminal responsibility: the basic form, based on a shared *mens rea* (shared criminal intent); the systemic form, based on participation in an organized system of ill-treatment; and the extended form, based on responsibility for crimes that fell outside the common purpose but were a natural and foreseeable consequence of the enterprise. Each of these forms has independent *mens rea* requirements. The basic form requires proof of a shared intent to execute a specific criminal plan, while the extended form imposes responsibility for crimes that were not part of the original purpose, if they were a foreseeable consequence of the common enterprise. This last form carries the highest risks of challenge, since the foreseeability standard has not been applied consistently in international criminal jurisprudence.

As for the third mode, it is command responsibility. Its elements have been settled in customary international law and codified in Article 28 of the Rome Statute, and they are: the existence of a superior-subordinate relationship, the availability of actual or constructive knowledge that the crimes were being committed or were about to be committed, and the failure to take all necessary and reasonable measures to prevent the crimes or repress them or punish their perpetrators. The Bemba case before the International Criminal Court takes on particular importance in this context. In 2018, the Appeals Chamber overturned Bemba's conviction by a majority of three judges against two, and the majority concluded that the Trial Chamber had erred in assessing whether Bemba had taken all necessary and reasonable measures, particularly because it had not sufficiently assessed the measures that he had actually taken, including the referrals to the competent authorities and the initiation of investigations, in light of the practical circumstances in which a remote commander operates. The dissenting judges, Monageng and Hofmański, disagreed with the majority's standard of appellate review and its approach to assessing the sufficiency of the remedial measures.

The significance of this for the Syrian proceedings is that a conviction on the basis of command responsibility becomes more fragile when it rests fundamentally on constructive knowledge and a general failure to take measures, rather than on strong evidence as to actual knowledge, effective control, and the measures that could realistically have been taken. Furthermore, the standard of "all necessary and reasonable measures" remains among the most complex elements of command responsibility in international criminal jurisprudence, and it cannot be treated as a general formula that is sufficient on its own to establish responsibility.

With regard to Najib, the evidentiary record, as it was revealed in the session of 10 May, supports the hypothesis of perpetration through another (commission of the crime through another) and of the issuance of direct orders as the two strongest theories of responsibility. The indictment attributed to him specific orders, personal participation in a command decision, and direct operational responsibility for specific criminal acts. These modes rest on positive conduct that the public prosecution can establish through testimony and documentary evidence, without principal reliance on the inference based on omission that characterizes command responsibility.

As for al-Assad, the analysis is structurally different. His responsibility cannot rest on evidence of the same type, that is, specific orders issued in his personal presence at the local level, or direct participation in a specific operational decision in Daraa, or direct responsibility for a specific act at a specific site. In the absence of these specifications, the public prosecution must rely either on documentary evidence that establishes command directives issued from the presidential level or with his knowledge, or on an inference from the systemic character of the violations that took place within his command authority, to establish that the scale and consistency of the conduct were not possible without knowledge, authorization, or acceptance from the level of command. This direction has already appeared in the prosecution's submissions when it linked the orders to confront the demonstrators with fire and brutal repression to the chain of command that extended from the local security and military commands all the way to Bashar al-Assad as "the head of the defunct regime and commander of the army and armed forces." The first path requires documents authenticated by a clear chain of custody. As for the second path, it is a more complex inferential path, and the Bemba case has increased the necessity of dealing with it cautiously. Therefore, the court must distinguish in the judgment between the two paths of responsibility: Najib's responsibility and al-Assad's responsibility. Treating them as a single path or as interchangeable weakens both analyses.

The judgment must distinguish between each mode of responsibility with independent justification, and must not present multiple modes as if they were functionally equivalent or cumulative without specifying the elements and evidence specific to each one. A judgment that recognizes commission through another, or participation in a joint criminal enterprise, or command responsibility, as alternative routes to the same outcome without separate analysis of the *actus reus*, the *mens rea*, and the supporting evidence for each mode, produces an internally contradictory record that is susceptible to challenge. Furthermore, the proof requirements for each mode intersect with the temporal dimension of the case: the evidence that establishes Najib's direct orders and command authority must be linked to the phases of the conflict, in order to specify the legal framework that governs each act, whether crimes against humanity or war crimes. This temporal analysis is the subject of the next section.

## SIXTH: THE TEMPORAL THRESHOLD: THE PROBLEM OF CHARACTERIZING WAR CRIMES

War crimes, being crimes with a particular contextual element, require the existence of a nexus to an armed conflict. Under Article 8 of the Rome Statute, war crimes committed in non-international armed conflicts must take place “in the context of and be associated with an armed conflict not of an international character.” As for crimes against humanity, they are not subject to a similar requirement; their contextual element is the existence of a widespread or systematic attack directed against a civilian population, whether this occurred in peacetime, during an armed conflict, or in any other context. Since the charges brought against Najib rely on both frameworks, the assessment of the conduct attributed to him requires answering, first, a question that precedes the characterization: was there a non-international armed conflict in existence at the time of these acts?

If this condition is not satisfied, the war crimes framework cannot be applied to these acts, no matter how serious they are. Therefore, the court must specify the legal framework that governs each act, and must not apply the frameworks of crimes against humanity and war crimes to the same conduct without a clear temporal distinction.

The standard for a non-international armed conflict, as formulated by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia in the *Tadić* case, requires the existence of “protracted armed violence between governmental authorities and organized armed groups, or between such groups within a State.” The Trial Chamber in the *Boškoski and Tarčulovski* case subsequently broke down this definition into two complementary criteria: the intensity of the violence, and the organization of the parties. Intensity is measured by reference to the severity of the attacks, the geographic spread of the engagements, the increase in deployed government forces, the type of weapons used, the displacement of civilians, and the attention of the United Nations Security Council. As for organization, it is measured by reference to the existence of a command structure, the capacity to carry out coordinated operations, the capacity to recruit and train, and the existence of internal disciplinary mechanisms.

Looking at the timeline of events in Syria, the early Daraa protests and their suppression in February and March 2011 did not involve organized armed resistance on the part of the civilian population. State security agencies used lethal force against unarmed demonstrators, while organized armed groups, particularly those that subsequently came under the banner of the Free Syrian Army, began to emerge from mid-2011 onwards. The Independent International Commission of Inquiry on Syria concluded that a non-international armed conflict arose in the Syrian Arab Republic during February 2012, thereby triggering the applicability of Common Article 3 of the Geneva Conventions and customary international humanitarian law. The International Committee of the Red Cross likewise described the situation in Syria, in July 2012, as having reached the threshold of a non-international armed conflict.

The temporal gap between the beginning of the conduct attributed to Najib in February and March 2011, and the crossing of the non-international armed conflict threshold in early or mid-2012 according to credible international assessments, is of direct legal significance. As for the argument that Common Article 3 applies as soon as organized military or security force is used by the State against the population, it conflates the use of State force with the existence of an armed conflict in the legal sense. The updated commentary of the International Committee of the Red Cross on Common Article 3 sets a minimum threshold for application, consisting of the violence reaching a certain level of intensity and the existence of parties showing a minimum of organization. These are criteria that exclude situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature. Hence, the use of a State's military or security forces against civilian demonstrators, however lethal, does not by itself constitute an armed conflict in the absence of an organized armed party that meets the organization criterion in the *Tadić* case.

A direct consequence flows from this analysis with regard to the court's reasoning. As for the acts that took place before the threshold of a non-international armed conflict was reached, crimes against humanity are the correct and legally sufficient framework.

The contextual element of this framework is satisfied by the existence of a widespread or systematic attack directed against a civilian population, without the need to prove a nexus to an armed conflict. As for the application of the war crimes framework to conduct preceding the emergence of a non-international armed conflict, it would oblige the court either to specify an imprecise date for the crossing of the threshold, or to adopt an expansive reading of Common Article 3 that disregards the intensity and organization criteria. As for the acts that took place after the threshold was crossed, both frameworks may be available, however every war crime charge must specify its temporal and factual basis and its nexus to the armed conflict. The judgment must preserve this distinction in its structure, by applying the crimes against humanity framework to the early Daraa events, on which the session of 10 May focused, and by limiting the war crimes framework to the acts that the evidence establishes occurred after the *Tadić* criteria for a non-international armed conflict were satisfied.

Hence, if the court conflates the two phases, and considers all acts since February 2011 to fall within the war crimes framework without specifying the point in time at which the threshold of a non-international armed conflict was crossed, then it will fall into a legal error subject to challenge. A conviction on war crimes charges for acts that preceded the emergence of an armed conflict will be susceptible to appeal on the basis of the non-establishment of the contextual element for those acts specifically. A partial acquittal on war crimes charges may weaken the structure of the case without necessarily prejudicing the outcomes on crimes against humanity, however the damage to the internal coherence of the judgment, and the procedural cost of an appeal that could have been avoided, will be significant. Therefore, the safer path is to apply the crimes against humanity framework to the phase that preceded the emergence of a non-international armed conflict, and to limit the war crimes framework to the period in which the court establishes that the armed conflict threshold has been satisfied.

## SEVENTH: IN-ABSENTIA PROCEEDINGS AND FAIR TRIAL GUARANTEES

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The in-absentia criminal trial, in contrast to in-absentia judgment in civil proceedings, is a criminal procedure carried out in the absence of the accused. Article 322 of the Syrian Code of Criminal Procedure permits this type of procedure if the accused has been duly summoned, has not appeared, and the penalty for the offense attributed to him exceeds three years of imprisonment. Articles 328 and 329 provide for a special mechanism upon surrender or arrest, since the in-absentia judgment is annulled by operation of law upon the surrender of the convicted person or his arrest, and a full retrial is held in his presence.

This mechanism was applied in practice in the first session held on 26 April 2026, where the judge read out the names of the absent accused, decided to issue the orders setting time limits against them and to serve them duly under Article 322, and then reaffirmed their absence before moving to the preparatory procedures.

The legal consequence of this mechanism is that the in-absentia judgment is not considered a final determination of the criminal responsibility of the absent accused in the same sense carried by a final in-presence judgment. Its principal function consists of creating an official judicial record containing the established facts, the legal characterization, and the documented chain of responsibility, and this record remains in place until execution or retrial becomes possible. Hence, the in-absentia trial proceedings against al-Assad and the other absent accused should be evaluated in light of this function. The value of the record depends on its procedural integrity, an integrity that is governed, at the same time, by the rules of Syrian procedural law and by the standards of the International Covenant on Civil and Political Rights.

Article 14(3)(d) of the International Covenant on Civil and Political Rights guarantees the right of the accused to be tried in his presence. General Comment No. 32 of the Human Rights Committee establishes that in-absentia trials can be permissible if the accused has been notified of the proceedings in advance and sufficiently, has refused to exercise his right to be present, and that judgments issued in-absentia require special justification that takes into account the requirements of due process of law. Furthermore, the General Comment typically links the legitimacy of these proceedings to the right of the person convicted in-absentia to a retrial in normal circumstances upon his appearance before the court. It appeared in the facts of the opening session that the court relied on the summoning of the accused and their being called twice within the session, with reference to the declaration of their absence and the taking of the legal procedures against them, which is understood within the framework of judicial notification and public announcement, alongside the references made to notification at the last known place of residence.

This entails three fundamental conditions: prior and sufficient notification, voluntary absence, and the right to a full retrial upon surrender or arrest. The third condition is satisfied, in Syrian law, through the mechanism of annulment of the in-absentia judgment and retrial under Articles 328 and 329. As for the first two conditions, they impose an evidentiary burden on the public prosecution and the court. It appears that diplomatic notification through Russian channels is not practically available, in light of the continued presence of al-Assad in Russia and his protection there. The court confirmed at the session of 10 May that the notification orders were duly served at the last known place of residence of the accused, and that they did not comply with the summons. It appears that notification by publication or through indirect channels was among the means used.

It is not correct to say that notification by publication is always insufficient under Article 14(3)(d) of the International Covenant on Civil and Political Rights. In the case of a fugitive accused who deliberately evades notification, the Covenant standard requires the taking of all due steps to notify him, not proof of his actual receipt of the notification in every case. Publication, if combined with documented and good-faith efforts at direct notification, can satisfy this standard in circumstances of deliberate evasion. However, this conclusion depends on the existence of a clear record showing the attempts that were made, the means that were used, and the reasons for the failure of each attempt. As of 10 May, the public record confirms the issuance of the arrest warrant and the formal summons and the declaration of fugitive status, however it does not yet create a comprehensive notification record that sets out every notification attempt and the reasons for its failure. The issuance of an in-absentia judgment without this record would make it more susceptible to challenge under Article 14(3)(d).

There are two additional procedural gaps that require explicit treatment. The first relates to presidential immunity. Under the general principles of constitutional law, personal immunity is linked to the office of the head of State and lapses, in principle, when the occupant of the office ceases to exercise it. Al-Assad was removed from the presidency in December 2024, and then the Constitutional Declaration issued on 13 March 2025 replaced the 2012 Constitution, whose Article 105 provided that the President of the Republic is the Supreme Commander of the Army and the Armed Forces. Hence, the immunity linked to the office has ceased to exist, which is consistent with the path of the case as presented in the second session when the charges were brought against him as a fugitive accused and he is treated within the framework of criminal responsibility for acts attributed to a phase prior to the end of his term.

As for the second gap, it relates to the absence of counsel representing the procedural interests of the absent accused. The in-absentia proceedings against al-Assad are in practice uncontested, and the public record does not confirm that a lawyer has been specifically appointed to represent his procedural interests or the interests of the other absent accused. Proceedings in which the prosecution's evidence, legal characterization, and factual assertions are not subject to any adversarial challenge produce a record whose outcomes, although they have a formal effect under Syrian law, are less persuasive in any context where the procedural confrontation is considered an important condition for the credibility of the evidence. The appointment of a lawyer for the absent accused does not mean defending al-Assad politically or justifying his conduct, but rather subjecting the prosecution's case to a measure of legal scrutiny that strengthens the record instead of weakening it. The follow-up report issued by the Syrian Judicial Affairs Committee at the session of 26 April referred to the court arranging for the representation of the accused through the Bar Association, however the public record does not clarify whether this representation covers the absent accused or is limited to Najib.

The in-absentia trial proceedings against al-Assad are not, and cannot realistically be in the foreseeable future, a mechanism for the material execution of his sentence. Their principal value lies in the official judicial record that they produce: a documented determination of the factual and legal basis of criminal responsibility, issued by a competent court, that can remain in place after the conclusion of the current proceedings, and that can contribute to future accountability efforts, whether through retrial upon surrender or arrest, or through the use of its outcomes in other judicial contexts. This value depends on the integrity of the proceedings. A record weakened by the lack of notification details, or by the absence of demonstrable procedural representation for the absent accused, or by the failure to address the immunity question, or by the specific legal weaknesses identified in sections three through six, remains a record of diminished authority. This is so despite its general procedural consistency with what took place in the sessions of 26 April and 10 May 2026.

## EIGHTH: CONCLUSIONS AND RECOMMENDATIONS

### A- Conclusions

1. The Syrian Penal Code does not contain definitions for crimes against humanity, war crimes, genocide, enforced disappearance, or command responsibility. Furthermore, Law No. 16 of 2022 defines torture in a manner that falls short of the standard set forth in Article 1 of the Convention against Torture. No specialized transitional criminal legislation has yet been enacted. Therefore, the court must derive the applicable law through interpretation, and must base its judgment on clear legal reasoning, since the authority of the judgment depends, to a large extent, on the quality of this interpretation and its consistency.
2. Article 12 of the Constitutional Declaration provides that Syria undertakes to comply with the international instruments it has ratified in the field of human rights and international humanitarian law. However, the question of whether this article operates as a self-executing mechanism, allowing the court to apply the crime definitions specified in treaties directly without implementing legislation, has not yet been resolved judicially. The proceedings of the Najib case may produce the first authoritative judicial interpretation of this article in this context. Therefore, the judgment must address this issue explicitly, instead of treating it as a settled matter.
3. Article 49 of the Constitutional Declaration excludes crimes against humanity, war crimes, and genocide attributed to the “former regime” from non-retroactivity protection, while maintaining this protection with regard to other accused. This exception raises serious questions in light of Articles 15 and 26 of the International Covenant on Civil and Political Rights. The analysis concludes that the safer path is to base the treatment of non-retroactivity on customary international law, which already criminalized the relevant conduct before it occurred, and which applies to any accused regardless of political or institutional affiliation, with Article 49 considered a complementary domestic mechanism, not a sole or principal basis.
4. The reliance of the indictment on the rules of *jus cogens* and on Article 53 of the Vienna Convention on the Law of Treaties as a basis for the characterization of crimes against humanity conflates a rule that relates to the validity of treaties with the elements of individual criminal responsibility. Furthermore, the reliance on the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity does not clarify whether it is being treated as a treaty obligation or as evidence of customary law, even though Syria is not a party to that convention. These two points can be remedied by basing the characterization of crimes against humanity on the definitions of customary international law as codified in Article 7 of the Rome Statute and confirmed in the International Law Commission’s 2019 Draft Articles, and by basing the non-applicability of statutes of limitations on Article 18 of the Constitutional Declaration with regard to torture, and on the principle of the non-applicability of statutes of limitations under customary international law with regard to crimes against humanity and war crimes, without relying on the 1968 convention as a binding treaty source for Syria.

5. perpetration through another (commission of the crime through another) and the issuance of direct orders are considered the strongest modes of legal responsibility attributed to Najib, whenever supported by the evidence. The indictment refers to specific orders, personal participation in a command decision that authorized the use of live ammunition, and direct operational responsibility for specific criminal acts. These modes rest on positive conduct, and do not depend principally on inference based on constructive knowledge or on omission, both of which are characteristics of command responsibility whose evidentiary standard remains more complex after the 2018 Appeals Chamber reversal of the Bemba judgment at the International Criminal Court.
6. The judgment must distinguish analytically between the two paths of Najib's responsibility and al-Assad's responsibility. Najib's responsibility, according to the indictment, is based on evidence of specific conduct, direct orders, and a local operational position. As for al-Assad's responsibility, in the absence of evidence of direct orders issued at the local level, it must be established either through documented command directives issued from the presidential level or with his knowledge, or through disciplined legal inference from systemic patterns that occurred within the scope of his command authority. Treating these two paths as if they were interchangeable weakens both analyses.
7. The Tadić criteria relating to the intensity of the violence and the organization of the parties require that the court specify when the threshold of a non-international armed conflict was crossed. The early Daraa events, in February and March 2011, preceded that threshold according to the available international assessments. Crimes against humanity are the correct and legally sufficient framework for those events. The Independent International Commission of Inquiry on Syria identified February 2012 as the date of emergence of a non-international armed conflict, while the International Committee of the Red Cross described the situation in Syria as having reached this threshold in July 2012. Hence, the application of the war crimes framework to acts that preceded that threshold produces a legal error subject to challenge.
8. The in-absentia proceedings against al-Assad reveal separate procedural gaps. The public record does not yet contain a comprehensive notification record documenting every notification attempt and the reasons for its failure; the issue of presidential immunity has not been addressed with clear judicial reasoning; the public record does not confirm the appointment of a lawyer to represent the procedural interests of the absent accused; furthermore, the mechanism of annulling the in-absentia judgment and of retrial upon surrender or arrest, under Articles 328 and 329, means that the in-absentia judgment is not a final determination of criminal responsibility in the full sense of the final in-presence judgment.
9. The value of judicial accountability lies in the integrity of the proceedings and the precision of the legal principles on which the resulting judicial record is built. The contested in-presence trial of Najib can produce a record subject to adversarial scrutiny. As for the in-absentia proceedings against al-Assad and the other absent accused, they produce an official legal record whose value depends on the precision of the proceedings and the rigor of the reasoning. Every gap identified by this analysis, whether it relates to legislative deficiency, weaknesses in the indictment, overlap of modes of responsibility, temporal confusion in the characterization of war crimes, or procedural guarantees in the in-absentia trial, remains capable of being remedied within the proceedings themselves.

## B- Recommendations

### To the Fourth Criminal Court

1. Address the self-executing nature of Article 12 of the Constitutional Declaration directly in the judgment, with a statement of whether this article permits the court to apply the definitions of international crimes contained in treaties without implementing legislation, and provide the legal reasoning that supports this conclusion. (See Conclusions 1 and 2)
2. Base the analysis of non-retroactivity on the principle of customary international law that already criminalized crimes against humanity and war crimes before the occurrence of the attributed conduct, as confirmed by the 2019 International Law Commission Draft Articles and the settled jurisprudence of the International Criminal Tribunal for the former Yugoslavia. Article 49 should be treated as a complementary domestic mechanism, not as the sole or principal basis for overcoming the non-retroactivity objection. (See Conclusion 3)
3. Distinguish each mode of responsibility applied to Najib with independent justification, specifying the actus reus, the mens rea, and the supporting evidence for each mode. Priority should be given to the mode of perpetration through another (commission of the crime through another) and to the issuance of direct orders whenever the evidentiary record supports them, and multiple modes of responsibility must not be presented as if they were functionally equivalent or cumulative without separate analysis. (See Conclusions 5 and 6)
4. Maintain a clear analytical separation between Najib's responsibility and al-Assad's responsibility. The judgment must specify the mode of responsibility attributed to al-Assad, set out the evidence that supports it, and not treat the two paths of responsibility as if they were interchangeable. (See Conclusion 6)
5. Specify the point in time at which the threshold of a non-international armed conflict was crossed in accordance with the Tadić criteria relating to the intensity of the violence and the organization of the parties, with application of the crimes against humanity framework to the phase that preceded this threshold, and limitation of the war crimes framework to the acts that took place after its satisfaction has been established. (See Conclusion 7)
6. Address the issue of presidential immunity explicitly in the judgment, by a reasoned legal conclusion showing that personal immunity attached to the office of head of State terminated upon al-Assad's departure from the presidency in December 2024, or upon the entry into force of the Constitutional Declaration in March 2025. (See Conclusion 8)
7. Consider the appointment of a lawyer, through the Bar Association or any other appropriate mechanism, to represent the procedural interests of the absent accused in the in-absentia trial sessions, so as to allow the prosecution's evidence and its legal characterization to be subjected to a level of adversarial scrutiny that strengthens the credibility of the judicial record. The public record does not confirm whether the defense counsel appointed by the court at the 26 April session represents the absent accused or Najib alone; therefore this matter should be clarified in the record with explicit documentation of the procedural representation. (See Conclusion 8)

## To the Public Prosecution

1. Abandon the reliance on the rules of *jus cogens* and Article 53 of the Vienna Convention on the Law of Treaties as a direct basis for the characterization of crimes against humanity, and instead base this characterization on the definitions of customary international law as codified in Article 7 of the Rome Statute and confirmed in the 2019 Draft Articles of the International Law Commission, with their domestic application through Article 12 of the Constitutional Declaration. (See Conclusion 4)
2. Clarify that the lifting of statutes of limitations is based on Article 18 of the Constitutional Declaration with regard to torture, and on the principle of the non-applicability of statutes of limitations under customary international law with regard to crimes against humanity and war crimes, and not on the 1968 convention to which Syria is not a party. (See Conclusion 4)
3. Preserve the temporal distinction between the phase that preceded the emergence of a non-international armed conflict and the phase that followed it when presenting the evidence and the legal arguments. The war crimes framework should be applied only to conduct that the Public Prosecution can establish occurred after the satisfaction of the *Tadić* criteria relating to the intensity of the violence and the organization of the parties. (See Conclusion 7)
4. Base the non-retroactivity analysis in the prosecution memoranda on customary international law, as a law applicable to any accused regardless of political or institutional affiliation, instead of relying exclusively on the selective exception contained in Article 49. This would reduce potential weaknesses in light of Articles 15 and 26 of the International Covenant on Civil and Political Rights. (See Conclusion 3)
5. Document all attempts to notify the absent accused comprehensively in the record, including the means used, the dates of every attempt, the channels through which notification was sought, and the reasons for failure, so that the judgment can establish that all due steps were taken in the sense intended in General Comment No. 32 of the Human Rights Committee. (See Conclusion 8)

## To the Syrian Government

1. Enact specialized transitional criminal legislation that defines crimes against humanity, war crimes, genocide, enforced disappearance, and command responsibility in national law, in conformity with the Rome Statute and the International Law Commission's 2019 Draft Articles. This structural reform is the principal entry point for closing the legislative gap identified in the first conclusion. Its enactment may require legislative capacity and political will that are not fully available at the current stage, however the persistence of this gap is the common basis for most of the analytical weaknesses identified by this report. (See Conclusions 1 and 2)
2. Establish a clear legislative or executive basis for the jurisdiction of the Fourth Criminal Court over international crimes. The public record does not clarify whether the court's mandate was established by a law, a decree, or a judicial assignment. A court formally established to consider international crimes enjoys clearer institutional authority than a general criminal chamber that expands its jurisdiction through interpretive means. (See Conclusion 1)

3. Conduct an independent judicial audit to ensure that the judges assigned to consider international crimes cases have not been involved in prior judicial practices linked to the era of the former regime. The credibility of these proceedings depends, in part, on the independence of the judiciary from the authority under which the attributed violations occurred. (See Conclusion 9)

### **To Syrian Civil Society Organizations**

1. Monitor the proceedings systematically to verify compliance with the standards specified in this analysis, in particular the temporal distinction between the pre- and post-non-international armed conflict phases in the application of the legal frameworks; the separation of modes of responsibility with independent justification; the maintenance of evidence categories, including individual conduct, systemic pattern, and the impact of the violations on the victims; and the monitoring of the procedural guarantees in the in-absentia trials, including the notification record and the appointment of defense counsel. (See Conclusions 5, 7, 8, and 9)
2. Document any procedural irregularities as soon as they occur, so that they can be used in future appellate proceedings, or in the retrial upon surrender or arrest, or in any context in which the integrity of the judicial record is assessed. There should also be communication with the registered civil claimants to ensure the consistent exercise of their rights, including in closed sessions. (See Conclusions 8 and 9)

### **To the International, Impartial and Independent Mechanism**

Formalize cooperation with the Syrian Public Prosecution, so as to permit access to trial-ready case files, in particular in the in-absentia proceedings against al-Assad, where proof of command responsibility requires reliable materials prepared to a high standard. The mandate of the International, Impartial and Independent Mechanism, under General Assembly resolution 71/248 of 2016, includes the preparation of evidence for use before national courts. Formal cooperation would grant the Public Prosecution access to materials documented with a clear chain of custody, and would mitigate the admissibility challenges associated with materials collected during the military operations of late 2024. (See Conclusions 6 and 9)

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