

THE DECISION INVOLVES CONFIDENTIALITY

The confidentiality provision in Chapter 21, section 1 of the Public Access to Information and Secrecy Act (2009:400) shall continue to apply to information about health conditions regarding [REDACTED], [REDACTED] and [REDACTED] presented during the hearing behind closed doors.

The confidentiality provision in Chapter 15, section 1 of the Public Access to Information and Secrecy Act (2009:400) shall continue to apply to the data derived from information that has been disclosed on the condition that it may not be made public (file attachment 99) and presented at the hearing behind closed doors.

The confidentiality provision in Chapter 21, section 5 of the Freedom of Information and Secrecy Act (2009:400) shall continue to apply to the information presented at the hearing behind closed doors during the questioning of [REDACTED] and [REDACTED], in so far as this information is not apparent from the judgment of the District Court.



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1 **PARTIES AND JUDGMENT**

1.1

Parties

Defendant

[REDACTED]

Public defence counsel

Lawyer

[REDACTED]

Prosecution

Prosecutors [REDACTED] and [REDACTED]
Swedish Prosecution Authority
National Unit for combating International and Organised Crime
Box 57, 101 21 Stockholm

Injured parties

1. [REDACTED]

Counsel for the injured party
Junior lawyer [REDACTED]
2. [REDACTED]

Counsel for the injured party
Junior lawyer [REDACTED]
3. [REDACTED]

Counsel for the injured party
Junior lawyer [REDACTED]
4. [REDACTED]

Counsel for the injured party
Junior lawyer [REDACTED]

5. [REDACTED]

Counsel for the injured party
Junior lawyer [REDACTED]

6. [REDACTED]

Counsel for the injured party
Junior lawyer [REDACTED]

7. [REDACTED]

Counsel for the injured party
Junior lawyer [REDACTED]

8. [REDACTED]

Counsel for the injured party
Junior lawyer [REDACTED]

Judgment

Charges of which [REDACTED] is acquitted

Aiding and abetting crime under international law, serious crime, 1 January 2012–20 July 2012, Chapter 22, section 6, subsections 1 and 2 of the Criminal Code in its wording before 1 July 2014 and Chapter 23, section 4 of the Criminal Code

Damages

[REDACTED]'s claim for damages is rejected.

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Confidentiality

The confidentiality provision in Chapter 21, section 1 of the Public Access to Information and Secrecy Act (2009:400) shall continue to apply to information about health conditions regarding [REDACTED], [REDACTED] and [REDACTED] presented during the hearing behind closed doors.

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The confidentiality provision in Chapter 21, section 5 of the Freedom of Information and Secrecy Act (2009:400) shall continue to apply to the information presented at the hearing behind closed doors during the questioning of [REDACTED] and [REDACTED], in so far as this information is not apparent from the judgment of the District Court.

Compensation and reimbursement

[REDACTED] shall receive compensation from the state in the amount of SEK 1 333 903. The amount is broken down as follows:

- SEK 846 643 for work
- SEK 92 703 for lost time
- SEK 127 776 for expenses
- SEK 266 781 for VAT

[REDACTED] shall receive compensation from the state in the amount of SEK 532 179. The amount is broken down as follows:

- SEK 292 421 for work
- SEK 5 600 for lost time
- SEK 127 722 for expenses
- SEK 106 436 for VAT

The state shall bear the costs.

2 CLAIMS

2.1 Charge 1

The prosecution has requested that [REDACTED] be convicted of aiding and abetting crime under international law under Chapter 22, section 6 subsections 1 and 3 of the Criminal Code in its wording prior to 1 July 2014 and Chapter 23, section 4 of the Criminal Code.

The prosecutor has provided the following statement of the criminal act as charged.

Since 2 January 2012, there has been a non-international armed conflict in Syria between the Syrian Government on the one hand, and a large number of armed groups on the other.

The Syrian Army's warfare, as applied in the armed conflict in the area in and around the towns of Homs and Hama between 1 January 2012 and 20 July 2012, systematically included attacks carried out in violation of the principles of separation, precaution and proportionality. The warfare was therefore indiscriminate.

During this period, indiscriminate warfare was widely used against several towns or locations in the area in and around the cities of Hama and Homs, in particular in the Baba Amr neighbourhood of Homs in January and February 2012, in and around Al Rastan in January–May 2012, in and around Al-Houla in May 2012 and in and around Al-Qusayr in February–July 2012. The warfare involved widespread attacks by air and land forces, perpetrated by unknown persons within the Syrian Army. The method of combat did not distinguish between civilians and fighters, nor between civilian property and military targets. These attacks have caused damage to civilians and civilian property to an extent disproportionate to the concrete and immediate overall military benefits that could be expected to be achieved.

Because of this,

[REDACTED], [REDACTED], [REDACTED], [REDACTED],
and [REDACTED] as civilians in Homs, and [REDACTED]
and [REDACTED] as civilians in Al Rastan, along with many other

civilians in the area in and around Homs and Hama, have been affected by the indiscriminate warfare.

Indiscriminate warfare constitutes a crime under international law (war crime) as a serious violation of the rules of humanitarian law applicable to armed conflict, Article 3 of the Geneva Conventions I to IV and universally recognised principles of international humanitarian law.

The crime under international law is serious, because the warfare involved a large number of attacks carried out in a systematic and strategic manner, resulting in the deaths and injuries of many civilians, extensive loss of property and serious consequences for civilians.

██████████ served in the Syrian Army until ██████████ 2012. During the period ██████████, he held the position of Brigadier General and Head of the Armaments Department of the 11th Division of the 3rd Corps. In this position, he also played a role in the division command staff.

Through his position and function, he has been important for the functioning of the armaments within the 11th Division. He has contributed to the division's military command's ability to make strategic decisions and carry out planned military operations.

Thus, during the period in question, ██████████ has contributed, in word and deed, to the participation of the 11th Division, together with other military units, in the Syrian Army's warfare, which has systematically involved indiscriminate attacks on several towns or places in the area in and around the towns of Hama and Homs, in particular Al Rastan, Al-Houla and the Baba Amr neighbourhood.

More specifically, ██████████'s complicity consisted in the fact that he, through his position and function as Head of the Armaments Department of the 11th Division, had the overall responsibility for the division's armaments. In this position and function, he collaborated with the division command staff and the personnel responsible for armaments in the division's fighting battalions regarding the need for and availability of armament and other issues relating to armaments. When necessary, he was part of the division command staff and provided the division's military command with necessary information on the division's armaments, which, together with other information, formed the basis for the division command's strategic and operational decisions on the 11th Division's military operations. He received orders and

information from the division command and the senior command unit's armaments department, and relayed them to the operational units within the division, when they were relevant to armaments. He contributed to the implementation of these orders at operational level, and was responsible for the armaments department fulfilling its other tasks such as stockpile management, transport and repair of weapons and ammunition. He also had the overall responsibility for the registration of weapons and ammunition supplied to or passing through the division.

The crime was part of or otherwise connected with the armed conflict.

2.2 Damages

██████████ has requested that ██████████ pay damages of SEK 165 507.

The amount relates to physical and psychological damage, of which SEK 110 338 relates to physical damage and SEK 55 169 to psychological damage.

██████████ has requested that ██████████ pay damages of SEK 428 043.

The amount relates to damage to property.

██████████ has requested that ██████████ pay damages of SEK 35 466.

The amount relates to physical and psychological damage, of which SEK 23 644 relates to physical damage and SEK 11 822 to psychological damage.

██████████ has requested that ██████████ pay damages of SEK 100 000.

The amount relates to psychological distress.

3 **BACKGROUND**

In the spring of 2011, major popular uprisings began in several countries in the Middle East and north Africa. The main demand of the protest movements, which collectively came to be called ‘The Arab Spring’, was that the ruling regimes in the countries concerned should resign. The first protests in Syria took place in the areas around Damascus and Dar’a, but quickly spread to other parts of Syria. Peaceful demonstrations were held, to which the regime responded with an ever-increasing use of violence and eventually military means to quell them. In May 2011, the Syrian Army deployed soldiers and tanks in the areas of Dar’a, Baniyas, Homs, Al Rastan and Damascus.¹ In Syria, several armed groups participated in the uprising against President Bashar al-Assad, including the secular Free Syrian Army (FSA) and several Islamist resistance movements.²

As protests increased, the Syrian regime established a Crisis Management Committee (CCMC) which would coordinate military operations vis-à-vis the demonstrators.³ During the summer of 2011, the military presence increased in areas such as Homs, Al Rastan and Dar’a. In addition, roadblocks were set up just outside these areas to control movement in the area. The UN estimated that 3 500 civilians were killed between March 2011 and November 2011.⁴

In the period from March 2011 to July 2012, various international organisations have estimated that between 8 000 and 20 000 people were killed

¹ International, Impartial and Independent Mechanism (IIIM), *Brief on the commencement of the initial non-international armed conflict in Syria, 2020* (IIIM 2020), s. 1-4; Chatham House, *The Legal Classification of the Armed Conflicts in Syria, Yemen and Libya*, 2014 (Chatham House 2014), pp. 7 and 8.

² Chatham House 2014, pp. 9-10.

³ IIIM 2020, p. 4.

⁴ Chatham House 2014, p. 8.

and between 1.5 and 2 million people were displaced as a result of the fighting.⁵

██████████ was born in ██████████. After completing his A-levels, he started studying at the military academy and graduated in ██████ as a lieutenant. During his military career, he has served in the 3rd Division, including in the artillery regiment. From ██████ until ██████, he served as Brigadier General in the 11th Division. During this time, he was Head of the Armaments Department.

When he was transferred to serve in northern Syria in ██████ 2012, he chose to leave the army and fled to Türkiye shortly afterwards. In Türkiye, he participated in the creation of the ‘North Sun Battalions’ in the fight against the Syrian regime. He came to Sweden in ██████ and then applied for asylum.

In connection with the asylum investigation, the Swedish Migration Agency filed a police report of a suspected violation of international law and a police investigation was opened against ████████████████████. The Migration Agency made the assessment that ████████████████████ had been a senior officer in an army that was considered to have systematically committed human rights violations.

⁵ Ibid., p. 9.

4 CLAIMS

4.1 Criminal liability and damages

See above.

All the injured parties have assisted the prosecution.

4.2 Position

██████████ has denied any criminal offence.

██████████ has admitted that there was a non-international armed conflict in Syria, but he has not acknowledged that it was ongoing during the period at issue in the main proceedings from 1 January 2012.

██████████ has not acknowledged that the warfare of the Syrian Army during this period in the above-mentioned locations included attacks systematically carried out in violation of the Geneva Conventions or other principles of international law. However, if the prosecution has met its burden of proof in this respect, it is acknowledged that this is contrary to the principles of distinction, precaution and proportionality, and that the conduct of war was indiscriminate and constitutes a serious violation of international law.

██████████ has confirmed that he served in the Syrian Army until ██████████ 2012, and that he, during the period ██████████ to ██████████, held the position of Brigadier General and Head of the Armaments Department of the 11th Division of the 3rd Corps. He has denied that in this position he also had a function in the divisional management staff.

He has denied that he, by virtue of his role and position, was an important prerequisite for the functioning of the armament of the 11th Division and contributed to the division's military command's ability to make strategic decisions and carry out planned military operations.

He has denied that he, during the period in question, in word or deed, contributed to the 11th Division's participation, together with other military units, in the Syrian Army's warfare, which systematically involved indiscriminate attacks on several towns or sites in the area in and around the towns of Hama and Homs, in particular Al Quasayr, Al Rastan, Al-Houla, and in the Baba Amr neighbourhood.

He has denied that he had overall responsibility for the armaments of the 11th Division by virtue of his role and position as Head of the 11th Division's Armaments Department.

He has further denied that he has co-operated with the division's command staff and the personnel responsible for armaments in the division's fighting battalions regarding the need for and availability of armaments, or any other matters relating to armaments.

He has also denied that he was a member of the division's command staff and provided the military command of the division with the necessary information concerning the armaments of the division.

██████████ has testified that he received orders and certain information from the division command and the superior armaments board and, if necessary, passed this on to the next level of responsibility. However, he has denied that he was involved in the implementation of orders at operational level.

He testified that he was responsible for the Armaments Department's stockpile management, the registration of weapons and ammunition entering or leaving the division and, to some extent, the repair of weapons and ammunition. He has denied that he was responsible for the transport of arms and ammunition.

In any case, ██████████ has objected that he lacked intent in relation to the principal offence of indiscriminate waging of war by others and in relation to the act of complicity itself.

In any event, [REDACTED] has objected that the offence is exempt from liability, since he has acted within the framework of a military subordination relationship and had to follow orders.

[REDACTED] has disputed the claims for damages. He has argued that Syrian law should be applied to the individual claims. However, he has denied that there is any liability under Syrian law for the offence in question and has not accepted that the amounts claimed are in accordance with Syrian law. He has also not acknowledged any amount as reasonable. Furthermore, he denies liability for damages because he was employed by the Syrian state in the Syrian Army and thus cannot be held personally liable for any damage.

5 INVESTIGATION

5.1 The prosecutor

[REDACTED] has been heard. At the request of the prosecution, the injured parties [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] were interviewed.

At the request of the prosecutor, witness interviews were held with [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. During the main hearing, the District Court, pursuant to Chapter 35, section 14 of the Code of Judicial Procedure, read out [REDACTED]'s statements in police interviews and played back police interviews held with [REDACTED].

In addition, the prosecution referred to extensive documentary evidence. The evidence includes reports from international organisations such as various UN bodies, [REDACTED], Human Rights Watch and Chatham House. In addition, the prosecution has referred to the asylum investigation of [REDACTED], the analysis

memorandum from the National Operational Department (NOA) and certain other written evidence. Furthermore, the prosecutor has invoked and presented extracts from the media, films and film clips from the media and other sources as well as photographs.

5.2 The injured parties

The injured parties have invoked essentially the same evidence as the prosecution and have also invoked, inter alia, medical certificates, film clips and photos of injuries relating to [REDACTED] and [REDACTED], maps, video clips, valuation certificates of the home, excerpts from the Syrian Criminal Code and Civil Code, legal opinion on the content of Syrian law and expert witness testimony from [REDACTED].

5.3 [REDACTED]

[REDACTED] has relied on interviews with himself, his asylum investigation and a warrant for his arrest. He has also submitted legal opinions from Case No B 11304-14 from [REDACTED], [REDACTED] and [REDACTED].

6 LEGAL OBJECTIONS TO THE DRAFTING OF THE INDICTMENT

In connection with its closing statement in the case, the defence objected that the form of the indictment as such meant that it could not be used as grounds for conviction. In this respect, the defence has essentially objected that a prosecution concerning an unauthorised act of warfare – without indication of specific attacks – cannot objectively constitute an offence, either under Swedish or international law, that different acts committed by different perpetrators should not be regarded as a single offence and that an allegation of a large number of attacks as a method of combat must be linked directly to a person responsible for all parts of the method of combat. The defence argues

that [REDACTED]'s liability as an accomplice cannot therefore be assessed and that the charges should be dismissed on objective grounds.

In support of its argumentation, the defence has submitted legal opinions from another ongoing case before the Stockholm District Court (B 11304-14).

Although the case referred to above also concerns aiding and abetting serious crimes under international law in the form of an unauthorised method of combat, it can be concluded that the circumstances of that case differ in several respects from the present case. For example, that indictment relates to partly different claims of liability and covers a longer period of time and a wider geographical area than the indictment examined in this judgment. Nor does the second case concern the criminal liability of a military official, as the present case does. The legal opinions, written according to the specific circumstances of that case, are therefore of limited relevance and significance to the questions raised by the defence in the present case.

At the outset, it should be noted that the District Court, by its decision to issue a summons in the present case, has already found the indictment admissible for the purposes of the examination of the substance of the case by the District Court. It should also be noted that the defence did not object to the form of the indictment at any time during the preliminary proceedings or earlier at the main hearing. Nor has this been the case when the suspicion of crime was notified, as far as can be ascertained.

Among other things, the defence has raised the general question of whether an act of unlawful warfare can constitute an offence without indication of specific attacks. The District Court notes that the indictment in the present case does indeed concern the Syrian Army's 'warfare' as such. However, in the statement of the criminal act as charged, the prosecution has specified that this warfare consisted in the use of a prohibited method of combat in the form of systematic 'attacks carried out in violation of the principles of distinction, precaution and proportionality'. The prosecutor has also specified how the attacks were carried

out, namely by ‘unknown perpetrators within the Syrian Army carrying out extensive attacks with air and ground forces, where the method of combat did not distinguish between civilians and combatants or between civilian property and military targets.’ In the indictment, the different attacks have been specified in terms of time and place with the help of examples. The indictment also states how [REDACTED] allegedly contributed to the implementation of the method of combat and the indiscriminate attacks.

International law and practice of international humanitarian law make it clear that the crime of war crime in itself may consist of one or more underlying crimes. Such underlying crimes can consist, for example, of several direct attacks on civilians or civilian property that have been carried out independently of each other and by different perpetrators. The underlying crimes may also consist of the use of a method of warfare or combat, such as systematic military attacks, in violation of international humanitarian law.⁶

According to the District Court, it is also in the nature of things that a method of combat as such often consists of several different underlying acts or events. If the conditions are otherwise met for the application of international humanitarian law, an accused person may thus be convicted of a crime, such as war crime, even if there are several underlying crimes.

Similarly, according to the District Court, the question of whether the crime under international law has been committed should be assessed under Chapter 22 section 6 of the Criminal Code. This is also confirmed by previous case-law from Swedish courts. Among other things, the Svea Court of Appeal

⁶ See, for example, statements in the Yugoslavia Tribunal judgement in *Prosecutor v. Kupreškić et al.*, Trial judgement, 14 January 2000, IT-95-16, paras. 524 et seqq.

has found that a crime under international law may involve a number of acts, each of which could constitute a separate crime on its own.⁷

The District Court further understands the term ‘warfare’ in the present indictment as a collective term and description of a pattern or method of combat or strategy, applied through several different military attacks. The prosecutor has also confirmed during the main hearing that this is the intended interpretation.

On that basis, it can be noted that the prosecution’s statement of the criminal act as charged contains details of the time and place of alleged attacks by air and ground forces. According to the District Court, there is no obstacle to specifying in the statement of the criminal act as charged a longer time interval or to stating the location as a larger area or the whole country.

It should also be noted that the statement of the criminal act as charged contains elements corresponding to the penal provision for crimes under international law involving breaches of Common Article 3 of the Geneva Conventions I to IV and of generally recognised principles of international humanitarian law. In addition, the statement of the criminal act as charged is concrete in terms of both what the warfare included more specifically, and what the facilitation consisted of.

In summary, the District Court considers that the statement of the criminal act as charged meets the requirements of precision and concreteness that follow from the law, the Supreme Court’s case law and the European Convention. It will thus form the basis for the District Court’s examination of the indictment.

⁷ Svea Court of Appeal, judgment of 19 December 2023, case B 9704-22.

There is therefore no reason to dismiss the indictment on the grounds set out above.

It should also be noted that an interpretation other than that set out above would mean that serious offences of the kind in question, which are themselves prohibited by international law and which, by their nature, involve several underlying acts, could not in principle be prosecuted.

The District Court finds no reason to address the defence's objections beyond what is stated above.

7 RECORD OF THE HEARINGS

Summaries of the testimonies of the interviewees in the case can be found in section 14. In addition, the District Court sets out the relevant parts of the oral evidence in the grounds of its judgment. The information provided by Mohammed Hamo is presented under the next heading.

8 [REDACTED]'S TASKS

[REDACTED] has been heard on the charges and essentially stated the following. He was born in [REDACTED] and grew up in [REDACTED] in Syria. He started studying at the military academy in [REDACTED] and graduated in [REDACTED] with the rank of lieutenant. During his military career, he has served in the 3rd Division, including in the artillery regiment. From [REDACTED], he served as Brigadier General in the 11th Division. In June, he was transferred to the military command for northern Syria, but he deserted from the Syrian Army and fled the country in July 2012.

He joined the military because he wanted to protect the country. He noted, however, that in 2011–2012, the Syrian Army deviated from its objective. He had no possibility to desert from the army immediately, since this required extensive planning. He couldn't talk to anyone about leaving the army as he and his family risked imprisonment or death. He was transferred to a post in

northern Syria in [REDACTED]. He assumed the reason was that the army saw him as disloyal because he was a Sunni Muslim. It was not until July 2012 that he had the opportunity to desert and flee the country.

The 11th Division consisted of several different brigades, namely brigades 47, 87, 60 and 67, and also an artillery regiment No 135. Brigades 47 and 87 were stationed in Hama, brigade 60 was on the road to Palmyra, brigade 67 was stationed in Shamsin. The 135th artillery regiment was stationed in Shayrat and the divisional command was located in Shinshar. [REDACTED].

He was Brigadier General and Head of the Armaments Department. He was responsible for eight officers and two soldiers and had two drivers. He earned about SYP 40 000 a month and had an official car. There were thousands of Brigadier Generals in Syria and it was a common position due to long service.

The Armaments Department had the same role in peace as in war. His main task was to pass on information on consumption and requests for replenishment of weapons and ammunition from the division's units to the division commander. After the Head of Division had signed a decision, [REDACTED] forwarded it to the armaments board, which approved the decision and returned it to him. [REDACTED] then forwarded the signed order to the brigades who were able to collect the supplies. When the command granted such a request, he recorded the change in their records. He was not in a position to make his own decisions. His task was also to keep track of the number of weapons and ammunition in the division. He does not recall noticing any increase in the number of orders for ammunition in 2012 and the orders were mainly for lighter ammunition. He did not know what the weapons or ammunition were used for. Furthermore, the Head of Division had access to the same records as he did and could, if necessary, go directly to the brigade and ask for information. The head of division therefore did not have to go through [REDACTED] if he was not present.

The division had its own stock of ammunition, for which he was responsible, and which served as a reserve for the brigades. During his time, the reserve stock was never used. The brigades and battalions had their own stockpiles of weapons and ammunition. The division also had a workshop for which he was responsible. In spring 2012, he did not receive any request to repair weapons.

The division command consisted of the Head of Division, the Deputy Head of Division, the Chief of Staff and the Staff. He was in sporadic contact with the Head of Division, for instance when the Head of Division needed to sign a document or at general information meetings with all departments. He has not interacted with the division command to any great extent. These were only occasional meetings where all sorts of things could be discussed.

The heads of the other functional departments within the division were Alawites. A majority of the army and the top leadership were also Alawites. During the conflict, he was not allowed to know much about what was happening on the ground because the Alawites did not trust him. He was a Sunni Muslim and the senior leadership only shared information with those they trusted. The leadership kept a tight lid on secrecy because of the risk that parts of the army would otherwise desert. The information he received about the conflict came only from the media. As a Sunni Muslim, he was also heavily monitored. He does not know whether the 11th Division was involved in assisting the security services in cracking down on the demonstrations, as such information was classified and he was not working in the field. If the army mentioned anything about the conflict, they said that the insurgency was driven by terrorists and that it was a conspiracy. There is a big difference in information and transparency when it comes to civil war compared to when there is war between two states. If there had been a war against another country, the army would have received information to be prepared for battle. Now, information was only given to people trusted by the command. For example, if the Head of Division sent a brigade to a specific location, it was only that brigade commander who learned about it.

As regards the interviews held with him at the Swedish Migration Agency, he does not recognise everything that is written down in the interviews. The reason is probably that there were several different interpreters involved and no one read out the interviews so that he could approve them afterwards. He is also not aware that he is said to have talked to [REDACTED] and that he then would have claimed that he was surprised about the scope of the military operations and how much ammunition were needed in certain areas during the conflict.

9 GROUND OF THE JUDGMENT

9.1 Starting points for the District Court's examination

[REDACTED] has been charged with aiding and abetting serious crimes under international law under Chapter 22, section 6 of the Criminal Code.

The District Court will initially examine whether the objective conditions for convicting [REDACTED] of the offence charged are met. According to the District Court, this assessment must take place in several stages.

To begin with, the district court must examine the legal prerequisites for conviction of liability for crimes under international humanitarian law, specifically the offence of war crimes. In doing so, the District Court will consider, among other things, whether there was an armed conflict in Syria during the period in question.

If that is the case, the question of whether indiscriminate attacks as a method of combat constitute a war crime and whether this has been committed by the Syrian Army will be examined.

Based on the wording of the statement of the criminal act as charged, the District Court will, with some exception, examine the indictment with regard to the times and places that the prosecutor has specified in the indictment and primarily presented evidence about. However, the wording of the indictment

does not in itself exclude the possibility that other places than the ones specified can be included in the examination.

For [REDACTED] to be objectively liable as an accomplice to the alleged crimes committed, the District Court must then examine whether the prosecution has proved that the 11th Division – during the period concerned in the charge – has participated in the indiscriminate attacks of the Syrian Army against the places specified in the charge.

Only then will the District Court be able to determine whether [REDACTED], in word or deed, objectively contributed to the participation of the 11th Division in the indiscriminate attacks of the Syrian Army in such a way that he can be convicted of a criminal offence.

In the case of an objective crime, the subjective side should be examined.

9.2 The legal basis

9.2.1 International crimes

The provision in Chapter 22, section 6 of the Criminal Code, in its wording prior to 1 July 2014, regulates liability for international law offences. It has now been replaced by penalty orders for war crimes in the Act on the Punishment of Certain International Crimes (2014:406). The new Act does not apply retroactively, so the penal provision in Chapter 22, section 6 of the Criminal Code still applies to acts committed in 2012.

According to Chapter 22, section 6 of the Criminal Code, a person who is guilty of a serious breach of an agreement with a foreign power or a generally recognised principle relating to international humanitarian law in armed conflicts shall be sentenced to imprisonment for a maximum of 4 years for international crimes. If the crime is serious, the penalty is imprisonment for a maximum of 18 years or life. When assessing whether a crime is serious, particular account shall be taken, inter alia, of whether it has been committed

through a large number of separate acts, or whether many people have been killed or injured, or substantial loss of property has occurred as a result of the crime.

The Charter gives a number of examples of what are considered serious crimes under international humanitarian law, including attacking civilians or the incapacitated (para. 3), and launching an indiscriminate attack knowing that it will cause exceptionally heavy casualties or damage to civilians or civilian property (para. 4).

The legal text is based mainly on the Geneva Conventions of 1949 (GC I-IV) with the 1977 Additional Protocols (AP I-II) and on customary international law, which are automatically binding. International humanitarian law contains rules relating to non-international armed conflicts in, inter alia, Common Article 3 of GC I-IV and AP II, as well as in customary law providing for the protection of civilians. International case law is also of great importance in this area. Furthermore, the Rome Statute is considered to reflect codified customary law.

A prerequisite for the applicability of international humanitarian law, and thus also a prerequisite for the crime under international law alleged to constitute a war crime in the present case, is first of all the existence of an armed conflict at the time of the commission of the offence.

Armed conflicts are categorised as either international, where two or more states are involved in armed violence against each other, or non-international, also known as internal conflicts, where violence occurs within a state. In this case, the prosecution has argued that the offence was committed during a non-international armed conflict in Syria.

The Geneva Conventions contain certain basic guarantees in the case of an armed conflict of a non-international character.⁸ International jurisprudence has also developed the criteria to be met in order to establish the existence of such a conflict. It is clear from the so-called Tadic case at the Yugoslavia Tribunal (*Prosecutor v. Dusko Tadic*, Appeals judgement, IT-94-1) that the violence must reach a certain level of intensity and that the group or groups involved in the conflict must have achieved a certain degree of organisation.

The intensity of the violence will be assessed, inter alia, on the basis of duration, number of deaths and injuries, extent of material destruction, types of weapons used, geographical spread and impact on the civilian population. As regards the organisation requirement, at least one of the parties must be a non-state actor with a certain degree of organisation. In order to assess whether the non-state actor meets the organisational requirement, the existence of a hierarchical chain of command with a leader, the ability to plan and carry out organised attacks, control of territory, and the availability of weapons and other military equipment are among the factors to be taken into account. An overall assessment should always be made of whether an internal armed conflict exists or not. A state actor by definition always complies with the organisational requirement.⁹

However, the fact that international humanitarian law is applicable in a certain area and during a certain period does not automatically mean that it is applicable to every act committed in the area concerned and during the period concerned. For one or more acts to be assessed under international humanitarian law, the act must form part of or have a connection with the

⁸ In humanitarian law, those rules are contained, on the one hand, in Common Article 3 of GC I-IV and, on the other hand, in AP II to GC and in customary law.

⁹ See also IIIM, *Legal Memorandum on the tests for the existence and termination of a non-international Armed Conflict*, 2020, pp. 5-15.

armed conflict ('nexus' requirement). Such a link requires, inter alia, that the conflict has played a significant role in the offender's ability to carry out the act and his decision to do so.

9.2.2 Indiscriminate attacks

The prosecution alleged that the warfare of the Syrian Army constituted such a serious violation of the rules of humanitarian law, including of Article 3 of the Geneva Conventions and of generally recognised fundamental principles relating to international humanitarian law, namely the crime of war crimes.

Common Article 3 of GC I-IV provides basic protection for persons not taking part in hostilities as civilians against being killed and wounded, and against having their personal dignity violated or being subjected to humiliating treatment. Furthermore, it is clear from AP II that violence against life and health and the violation of the personal dignity of civilians are prohibited (Article 4). Similarly, there is a prohibition on targeting civilians and civil persons in attacks (Article 13).

Furthermore, it follows from Article 8 (2)(c)(i-ii) of the Rome Statute that it is a war crime to use violence against life and person and to subject someone to violation of their personal dignity. In addition, it follows from Article 8(2)(e)(i) that the intentional targeting of civilians is prohibited.

The principle of proportionality makes it clear that the initiator of an attack must be able to reliably assess the military benefits of the attack and the damage it may cause. The military benefits that may be taken into account shall be concrete and immediate. It is therefore not sufficient for the person deciding to initiate an attack to base an assessment of proportionality on the expectation that the attack will result in some form of military advantage. The foreseeable and expected benefit must in principle constitute an immediate and concrete

result of the attack and be relatively closely linked in time and space to it. The means and methods of combat shall minimise the risk of civilian casualties.¹⁰

The principle of distinction follows, inter alia, from Article 48 AP I and requires that warring parties must always distinguish between military objectives, on the one hand, and civilian persons and civilian property, on the other, and that strikes may only be directed towards military objectives. One consequence of the principle of distinction is the prohibition of warfare with indiscriminate effects, i.e. the use of means and methods of warfare which cannot be directed against a specific military objective and which therefore strike indiscriminately. The principle of differentiation must also be taken into account from the point of view of defence. This means, for example, that military installations and activities may not be built or carried out in densely populated areas or close to other protection objects.¹¹

The precautionary principle complements the two preceding principles by imposing on combatants an obligation to take all reasonable precautions to avoid injury to civilians and civilian objects, including by ensuring that attacks are directed only against military objectives. The means and methods of combat must therefore be chosen and used in such a way as to avoid or minimise the risk of civilian casualties (cf. AP I, Articles 57 and 58).

These principles, which ultimately aim to protect civilians, are also expressed in other ways in AP I. Article 51(4) prohibits indiscriminate attacks.

Indiscriminate attacks are defined as attacks which are not directed against a

¹⁰ See, inter alia, the Judgment of the Yugoslavia Tribunal in *Prosecutor v. Radovan Karadzic*, Appeals judgement, MICT-13-55-A, 20 arch 2019, p. 199 et seq., and Advisory Opinion of the International Court of Justice (ICJ) on the admissibility of the use of nuclear weapons, 8 July 1996, '*Legality of the Threat or Use of Nuclear Weapons*'.

¹¹ (See prop. 2013/14:146, p. 173).

specific military objective, as well as attacks using a method or means of warfare which cannot be directed against a specific military objective; or attacks using a method or means of warfare the effects of which cannot be limited and which are therefore capable of striking military objectives and civilian or civilian objects indiscriminately.

Decisions of the Yugoslavia Tribunal, among others, have emphasised that attacks, which are in themselves directed against military targets, are considered indiscriminate if the actual method of combat used carries a risk of causing extensive civilian damage.¹² In relation to fighting between government forces and rebels, the International Court of Justice (ICJ) has highlighted the obligation of the state to protect civil populations and to distinguish them from the other fighting party, especially where fighting is carried out in residential areas.¹³

In light of the long-standing customary nature of Common Article 3 of GC I-VI and AP II, the District Court considers that there is a prohibition under international humanitarian law against the use of combat methods in the form of attacks that indiscriminately affect civilians. The offence is also to be considered a serious offence within the meaning of Chapter 22, section 6 of the Criminal Code.

¹² See the Judgment of the Yugoslavia Tribunal in *Prosecutor v. Kupreškić et al.*, Trial judgement, IT-95-16, 14 January 2000, para. 524.

¹³ See ICJ judgment in *Armed activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, 19 December 2005, para. 208.

9.3 Was international humanitarian law applicable during the indictment period?

As such, [REDACTED] did not contest that there might have been an international armed conflict in Syria, but objected that the prosecution bears the burden of proving that there was an international armed conflict during the period of charges in question.

The question of whether there was a non-international armed conflict in Syria has been the subject of scrutiny in both Swedish and international courts. In its judgment of 5 August 2016 in case B 4770-16, the Svea Court of Appeal ruled that a non-international armed conflict was deemed to have existed in Syria at least from the end of May 2012. In its judgment of 31 May 2017 in Case B 225917, the same court found that such a situation existed in the country at least in May 2012. Furthermore, in its judgment of 2 May 2024 in Case B 122-23 (the judgment is under appeal), Blekinge District Court held that there was a non-international armed conflict in spring 2012 in Syria. A court in The Hague has also recently concluded that there was a non-international armed conflict in Syria from July 2011.¹⁴

The prosecution's investigation in the current case shows that there was fighting between the Syrian regime and, inter alia, the FSA and/or other armed groups, during the relevant prosecution period. International reporting shows that the peaceful protests in August 2011 turned into an armed opposition between the Syrian regime and the FSA. Clashes between the regime and the FSA took place, inter alia, in September and October 2011. In December 2011, the UN reported that thousands had been killed and tens of thousands had

¹⁴ Judgment of the Hague District Court of 22 January 2023 in case 71/122211-22.

sought refuge in neighbouring countries or been internally displaced in Syria. In February 2012, the UN condemned the attacks and stated that the Syrian regime committed systematic violence against the civilian population. In mid-March 2012, peace negotiations were initiated but clashes still continued. In May 2012, violence continued to spread to other parts of the country and the intensity of fighting increased significantly in some areas and the Syrian regime attacked cities with the help of artillery and the air force. The attacks took place mainly in Damascus, Aleppo, Homs and Hama where FSA troops were located. In June 2012, the United Nations ended the United Nations Supervision Mission in Syria (UNMISS) in Syria due to the increased violence in these areas.¹⁵

According to UN reports cited by the prosecution, a non-international armed conflict was considered to exist in Syria at least by the end of December 2011. The assessment was based on the fact that, at that time, the intensity of violence was deemed to have reached such force, taking into account how the Syrian regime regularly, and with particularly extensive military operations in December 2011, attacked the FSA with a large number of troops and heavily armed forces, causing major damage to civilians and civilian property.¹⁶ At the same time, the FSA was considered to meet the organisational requirement. The FSA then controlled certain territories, attacked various regime strongholds and had the ability to logistically support the residents and to withstand large-scale attacks by the Syrian regime.¹⁷ There is also some support in other reporting that, from at least November 2011, the FSA had a

¹⁵ IIIM 2020, p. 27 and Chatham House 2014, p. 9.

¹⁶ IIIM 2020, p. 29.

¹⁷ IIIM 2020, p. 33.

degree of organisation such that the requirement could be considered fulfilled.¹⁸

In the current case, the prosecution has also referred to video clips, photographs and testimonies from Syria during the period in question that show shelling and fighting between the Syrian Army and the FSA or other armed groups that took place, inter alia, in the spring of 2012.

Taking into account the above and the extensive reporting on how the situation in Syria has developed since the start of the conflict in 2011, the District Court is of the overall opinion that the evidence relied on by the prosecution proves that a non-international armed conflict has been ongoing in Syria since at least 1 January 2012. According to the District Court, the fact that individual witnesses in their interviews during the main hearing, as pointed out by the defence, stated that there were different rebel groups and that there was no communication between them, does not change this assessment (cf. interview with [REDACTED]).

As regards the link between the armed conflict at issue and the acts covered by the indictment, it should first of all be noted that an act whereby the army of a State has used a particular method of combat (in this case indiscriminate attacks that have affected civilians), in and of itself is very closely linked to the armed conflict.

Through his role and position, [REDACTED] has been part of the Syrian Army. If he were to be found guilty of the offence in question, there is therefore much to suggest that there was such a connection between the alleged act of aiding and abetting and the armed conflict that there would thus be

¹⁸ [REDACTED] report 9 July 2020, pp. 7-8.

objective grounds for conviction for a crime under international law.

However, a more detailed assessment of the link between the offences in question and the conflict should preferably be preceded by an examination of whether the objective conditions for liability exist.

9.4 Questions of evidence

Before the District Court examines the question of whether indiscriminate attacks can be considered to have been committed by the Syrian Army according to the statement of the criminal act, it is appropriate to explain the District Court's view of the evaluation of the evidence and the evidence in the case in general.

9.4.1 Burden of proof and requirements of proof

In criminal proceedings, the burden of proof lies with the prosecutor. Conviction requires that it is beyond reasonable doubt that the accused person is guilty of the acts which form the basis of the indictment. The proof requirement applies to all criminal offences (see NJA 1980, p. 721 et al. cases).

For an accused person to be convicted, there must be no reasonable doubt that he acted in all respects in the manner alleged by the prosecution. The 'beyond reasonable doubt' standard of proof means that the defendant should be acquitted if there is a reasonable alternative to the prosecution's case.

9.4.2 Robustness of the investigation

With regard to the so-called robustness of the Swedish law of evidence, it can be noted that the evidence may be considered robust only when the evidence available is so extensive that the assessment of evidence can hardly be disturbed by the possibilities of introducing further investigation. In a case of this nature high demands must be placed on the robustness of the evidence.

9.4.3 Valuation of evidence

The starting point is that there is a free evaluation of evidence (Chapter 35, section 1 of the Code of Judicial Procedure). Evidence evaluation can be done in different ways. In its examination, the court may first assess the value of the various pieces of evidence, in so far as they are relevant to the examination, presented separately by the prosecution and the injured parties who assisted the prosecution. The Court will then consider whether the weighted value of that evidence is sufficient to meet the evidential requirement, and whether it is therefore established that the crime was committed in the manner alleged in the statement of the criminal act as charged. If the prosecution's evidence is insufficient, the accused should be acquitted. If, on the other hand, the evidential requirement is deemed to be fulfilled, the accused's statements and other evidence invoked against the prosecution's statement of the criminal act should be examined. If the statement of the criminal act as charged is thereby rebutted or the accused person's account takes such force from the prosecution's evidence that the evidential requirement is not fulfilled, the action should be dismissed. At the same time, it is important to emphasise that the defendant has no burden of proof and is thus not obliged to account for circumstances that absolve him from liability (NJA 2015 p. 702).

9.4.4 Indirect evidence

Evidence is usually divided into direct (causal) and indirect (structural) evidence. Indirect evidence is also often called circumstantial evidence. 'Direct evidence' refers to evidence that is directly linked to what is alleged in the statement of the criminal act as charged. There is no requirement for the prosecutor to present direct evidence in order for a prosecution to be successful. Even in situations where the evidence is exclusively indirect, the overall value of the evidence may be so strong that it is established beyond reasonable doubt that the defendant is guilty of the offence alleged by the prosecution (cf. NJA 2023, p. 29, paragraphs 20 and 21).

9.5 General information concerning the evidence in the case

The prosecution's evidence for the statement of the criminal act has largely consisted of interviews with the injured parties and witnesses. In addition, a comprehensive body of material has been presented, consisting mainly of international reports published over the years and media coverage.

9.5.1 Written evidence

As regards the written evidence relied on in the case, it can be concluded that it is to a large extent 'indirect evidence' and that its value has to be assessed to a large extent on the basis of the way the information was collected.

The evidence includes, for example, reports from various international organisations involved in gathering evidence in Syria, such as the UN Independent International Commission of Inquiry on the Syrian Arab Republic (COI), the United Nations Evidence Collection Mechanism on crimes committed in connection with the conflict in Syria 'International, Impartial and Independent Mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes under International Law committed in the Syrian Arab Republic since March 2011' (IIIM) and the [REDACTED].

COI was set up in 2011 to investigate allegations of human rights violations in Syria since March 2011. COI reports show that they have had an inclusive approach in collecting materials and used a number of different sources from both sides of the conflict. An event is included in the reporting only if, according to COI, there is supporting evidence that there are reasonable grounds to believe that an event has occurred. The District Court also notes that the main purpose of the information contained in these reports is not to be used in court proceedings, but to report regularly on the situation in Syria to the UN Human Rights Council.

The District Court considers that, in light of the purpose of COI's work and the lower standard of proof used in its reporting, the reports cited can serve as supporting evidence to other direct evidence relied on in the case to show that a particular event occurred. However, such a report cannot, without the support of other evidence, alone serve as a basis for the conclusion that an event is to be considered to be proven.

As regards the IIIM's reporting, its mandate is to collect and analyse evidence of violations of international law committed in the context of the armed conflict in Syria since 2011 and to provide legal support to states conducting investigations and handling prosecutions of crimes committed in Syria from March 2011 onwards. In addition to collecting its own material, the mechanism also conducts targeted investigations. States, including Sweden, make contributions to the mechanism. The District Court will, if necessary, examine the probative value of this reporting in each individual case.

The prosecution also relied on reports from the [REDACTED]. These reports are largely based on information from various interviewers, but also on documents collected during the work of the organisation. A hearing held before the Swedish police with the organisation's head of investigation and operations, [REDACTED], has been recorded in the case. He has stated that [REDACTED]'s hearings, or 'interviews', are held in structured manner with staff specifically trained in interrogation techniques. Furthermore, he has reported that the documents collected mostly come from Syrian intelligence services and that the organisation is always working on the traceability of the documents collected. In support of the credibility of the organisation, he has also stated that it is [REDACTED] [REDACTED]. However, even if these circumstances suggest that the interviews and documents may be given a certain probative value, it cannot be disregarded that [REDACTED] [REDACTED] and therefore is not subject to the same regulatory framework as, for example, European judicial authorities. In other words, there are not at all the same procedural guarantees as in the case of a hearing before a

Swedish court, for example. In addition, the factors that are taken into account when assessing foreign interrogations in general (see below) must of course also be taken into account.

All in all, the District Court considers that the information from the [REDACTED] interviews can only be given very limited probative value. This does not mean that the evidence is completely devoid of value in support of other evidence in the case. However, it must be considered out of the question that the information alone can be used as the basis for a conviction.

With regard to [REDACTED]'s information from the Migration Board's asylum investigation, which the prosecution has invoked, the District Court notes the following. It should be noted at the outset that the interviews were held for a completely different purpose than a criminal investigation, and therefore lack the procedural safeguards that normally apply to police interviews, for example. [REDACTED] was also not assisted by a public defender during the interviews and, according to his own statement, did not approve the information in the interviews afterwards. Both the defence and the authorised legal interpreters who assisted the district court during the main hearing have also pointed out that the content of the interviews during the asylum procedure has been characterised by significant problems and errors in interpretation. In light of the above, the information provided during the interviews before the Migration Agency's case officer must, according to the District Court, be evaluated with extreme caution in the context of this case.

It should also be noted that the prosecutor relied on information which [REDACTED] allegedly provided in contact with the [REDACTED] during an informal conversation. However, the information could not be confirmed by [REDACTED] a posteriori and [REDACTED] stated that he did not remember the conversation.

As regards the media reporting referred to, in particular in the form of film clips and photographs, it should be noted that it gives a momentary picture of

what has happened in various areas on the ground. This evidence can then support other more direct evidence about an event, but cannot, as a general rule, alone prove that an event occurred at a certain time and place and who acted at that time.

9.5.2 Verbal evidence

In assessing the reliability of the testimony, the District Court must take into account the fact that the testimony relates to observations of events that took place 12 years ago. Moreover, the observations have in many cases been made under ongoing internal armed conflict and therefore emotionally difficult conditions. These circumstances mean that the evidence evaluation of the information provided must be conducted with caution.

Another circumstance to consider when evaluating the oral evidence is that nuances and peripheral details may be lost when interpreting from another language. Furthermore, several of the injured parties' and witnesses' statements are based on what they have heard from others or from the media about the events they were questioned about. Typically, a story heard second-hand has a much lower probative value than a story based on direct observation.

When assessing the reliability of the statements, it has therefore been important to investigate the conditions under which the statements were made, i.e. how the interviewees acquired knowledge of the things they described and what support they had for their memory.

In support of, and in opposition to, the oral evidence, the parties have to some extent produced notes of hearings and interviews held outside the main hearing. In part, these are written notes from police interviews held during the Swedish preliminary investigation. Such information must be evaluated with caution, among other things because such hearings are not subject to the same procedural safeguards as hearings before Swedish courts. In addition, some of

the police interviews were held several years ago, abroad. With regard, in particular, to hearings abroad, there are further factors that need to be taken into account in the assessment. In particular, the risk of purely linguistic problems, such as errors in translation and mere misunderstandings, must be taken into account. Furthermore, it must also be taken into account that neither prosecutors nor lawyers have been given the opportunity to ask questions to the interviewees, or, in any case, have not been able to significantly control the contents of the hearings.

Another aspect to be taken into account when assessing the evidence is that, due to the relatively long time that has elapsed since the time of the offence, it has been difficult for several of the persons interviewed to remember details such as dates or times of various events. In addition, some of the crucial data in the present case are based on secondary data.

9.6 Whether the Syrian Army has committed indiscriminate attacks in accordance with the indictment

The prosecutor has invoked extensive documentary evidence regarding the Syrian Army's warfare both before and during the indictment period.

The evidence shows that the peaceful demonstrations continued during 2011, while the army's countermeasures became increasingly more forceful.

According to reports, the army could open fire on crowds, killing protesters, either by sniper fire or by positioning armoured cars in densely populated areas.¹⁹ The reports also show that already in 2011 the regime attempted to stifle protests by using disproportionate force and that demonstrations and other gatherings were attacked by the military with heavy artillery. In

¹⁹ Chatham House 2014, pp. 8-9.

December 2011, Baba Amr was besieged and army tanks surrounded and attacked the area.²⁰

Reports also state that the military was given standing or direct orders to stifle the protests by all means available. Orders came from both military commanders and the security services, and in some cases there were orders to open fire on demonstrators and even at funerals.²¹

The general picture of the situation described above is also confirmed by the injured parties and witnesses heard in the case. Among other things, [REDACTED] has testified that, as a military in the 18th Division, he received information from the senior leadership that Israel and the Gulf countries were behind the insurgency. According to him, there was an order 'from the top' to fight the demonstrations so that the regime would not fall. [REDACTED] has also confirmed that the military was ordered to kill all those who went against Bashar Al Assad.

[REDACTED], [REDACTED], also confirmed the picture given above that peaceful demonstrators were targeted during the conflict.

According to UN reports, the same pattern and approach were used by the Syrian Army to crack down the protests in both 2011 and 2012; For example, there is information that the Syrian Army, together with the security services, attacked residential areas, villages and towns in Syria to stifle demonstrations or arrest wanted persons. Often, an attack began with the blocking of major roads around an area, including with the use of armoured cars. The military and security services then began to attack the encircled neighbourhood with heavy

²⁰ A/HRC 19/69, para. 43.

²¹ Human Rights Watch, *By All means necessary*, 2011, p. 33.

artillery or mortar fire.²² The attacks were reported to have taken place without prior warning to the civilian population and both women and children died during the attacks, including in the Homs area.²³ The general picture of the Syrian regime's attacks has also been confirmed by witnesses in the case, such as [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED], some of whom have testified about events that took place in 2012.

There are also reports that attacks by the regime followed the same pattern up to and during July 2012.²⁴ Army commanders reportedly ordered their soldiers to shoot unarmed protesters, to kill soldiers who refused to take orders and to attack civilian areas with indiscriminate shooting from armoured cars and machine guns.²⁵ In some cases, orders came directly from Bashar Al Assad, which is also confirmed by witnesses heard in the case, such as [REDACTED] [REDACTED].²⁶

The regime forces met strong opposition from the FSA in Al-Quasayr and the Homs area, among others. The resistance from the FSA and the demonstrations led to a forceful response.²⁷ For example, there are reports that Baba Amr was shelled by regime forces because the FSA or rebels were strong in that area, as confirmed during the main hearing by [REDACTED] and [REDACTED], among others. There are reports and testimonies that support the fact that the army and security forces had heavier weapons while resistance forces mainly

²² See, inter alia, A/HRC/20/CRP.1, para. 64, A/HRC/21/50, para. 52, A/HRC/19/69 para. 95.

²³ A/HRC/19/69, paras. 40 and 41.

²⁴ A/HRC/21/50, paras. 22 and 52.

²⁵ A/HRC/19/69, para. 97.

²⁶ See also Human Rights Watch, *By All means necessary*, 2011, p. 59.

²⁷ A/HRC/20/CRP, paras. 17 and 62.

had lighter weapons such as rifles and pistols, and that these could not match the regime's weapons (see, for example, the testimony of [REDACTED]).

The general picture that civilians were affected and killed during the attack of the military in Syria, as evidenced by reports from, inter alia, the UN, is also supported by the injured parties heard in the case, as the District Court explains in more detail below.

According to the District Court, the prosecution's evidence in the case gives a general picture that the warfare or method of combat used by the Syrian Army during the period of the indictment involved military attacks carried out in breach of international law and the principles of distinction, proportionality and precaution. There is also strong evidence that civilians and civilian property were hurt or damaged to a large extent.

However, according to the District Court, for the indictment to be considered proven, the prosecution must show that it has been established beyond reasonable doubt that the Syrian Army has committed the attacks specified in the statement of the criminal act as charged in the manner, time and place specified therein. As stated above, the reports relied on by the UN (COI) cannot, on their own, support the conclusion that an event must be regarded as proven. In order to fulfil the evidential requirement in criminal proceedings, alternative events must be considered totally excluded.

The District Court will therefore examine below each of the places covered by the indictment in order to assess whether the prosecution has sufficiently demonstrated that the alleged indiscriminate attacks were committed at the time and place specified.

9.6.1 Baba Amr in January and February 2012

The District Court first notes that there is strong support in the documentary evidence relied on in the case that Baba Amr was attacked by the Syrian Army at least in February 2012.

In particular, UN reports indicate that the Syrian Government shelled Baba Amr in February 2012 with mortars and rockets and that most of the deaths in Baba Amr during the operation that started in February 2012 were caused by extensive and indiscriminate shelling by government forces, mainly of civilian infrastructure and residential areas.²⁸ There are also extensive written reports that the regime attacked the media centre on 22 February 2012 and that [REDACTED] and [REDACTED] died and that several others were injured and killed, including children.²⁹

[REDACTED], [REDACTED] and [REDACTED] have unanimously shared their experiences in connection with the attack on the Baba Amr media centre in February 2012. They described how the only way to enter the area was through a tunnel and that Baba Amr had been completely besieged by the Syrian Army for several weeks and that the population could not leave the area. They were in the media centre at the time of the attack and were seriously injured. Their colleagues [REDACTED] and [REDACTED] were killed in the attack.

[REDACTED] and [REDACTED] have testified that patients were treated at the field hospital in February 2012 both before the attack on the media centre and during or after it as a result of the shelling. The patients had severe injuries and several were already dead, including women and children. They have also stated that the shelling of Baba Amr continued when they were in the hospital themselves and after they were moved to another building for safety reasons.

According to [REDACTED], the weapons used by the Syrian Army at the time were rockets, normally used to fire on large areas, and armoured vehicles. [REDACTED] [REDACTED], who had first-hand experience of serving in the [REDACTED],

²⁸ A/HRC/19/69, para. 46 and A/HRC/21/50, para. 91.

²⁹ A/HRC/20/CRP, para. 66 and A/HRC/21/50, Annex VI, para. 2.

including in the artillery, assessed that the weapons used in the shooting consisted mainly of various types of highly explosive artillery shells. He said that the attacks started early in the morning and lasted until the evening. [REDACTED], who also had experience in military service, has confirmed that all types of weapons such as rockets and artillery were used during the attacks against Baba Amr in February 2012. Since [REDACTED] and [REDACTED] have stated that they had particular knowledge of identifying weapons from their previous military service, confidence in their statements is strengthened in this regard.

[REDACTED] and [REDACTED] have also testified that the attack against the media centre was carried out with precision, unlike other indiscriminate attacks on Baba Amr.

[REDACTED], whose details are set out in section 15 [redacted], has spoken, inter alia, about [REDACTED] the Baba Amr field hospital in February 2012. He also reported that his brother died and that his house was destroyed during the violence.

[REDACTED] has testified that Baba Amr posed a threat to the regime not only because of the demonstrations that took place there and the presence of the FSA in the neighbourhood. Baba Amr was also an important target for the regime as the media were covering the area from its media centre. There were three attempts by the regime to take over Baba Amr. In all attempts, the security services joined the army with increasing resources and heavier weapons. He was in Baba Amr himself on two occasions, first in autumn 2011 and then during the fighting in January and February 2012. He stated that it was not possible to take seriously injured people out of and get medicine into Baba Amr, because the army had completely besieged the area and that there was a lot of damage to civilian property in Baba Amr.

Although [REDACTED] has testified about a major offensive against Baba Amr in which, among others, the 18th Division participated, the District Court

notes that he is unsure of when this took place. He has said that it was 2012, but in police interrogations he has stated, as the defence has pointed out, that this happened in 2013. The District Court is therefore unable to draw any firm conclusions from his testimony with regard to the time in question.

The District Court also notes that both [REDACTED] and [REDACTED] have testified about attacks or an offensive against Baba Amr, although they have not indicated when this took place.

The fact that the Syrian Army attacked Baba Amr in February 2012, causing extensive damage, is also supported by media reports cited by the prosecution.³⁰

Regarding the armaments available to the army, the District Court notes the following. The Syrian military's armoured and mechanised brigades in charge of the Homs area generally had access to armoured vehicles, armoured cars and soldiers.³¹ The use of heavier armament is also confirmed by persons heard in the case and in UN reports showing that in the spring of 2012 the army used machine guns, artillery and different types of armoured vehicles in attacks on different areas in Syria.³²

The evidence shows that the FSA was in fact active in Baba Amr from December 2011, as reported by, inter alia, the UN³³ and several persons heard in the case, such as [REDACTED], [REDACTED] and [REDACTED]. However, the investigation supports the fact that the shooting of Baba Amr, in

³⁰ See, for example, Paul Wood, *A journey into hell*, March 2012; [REDACTED]; Amnesty, report from February 2012: *Homs/Baba Amr*; Al Jazeera, *Violence intensifies in central Syria cities*, February 2012 and Aftonbladet, *Baba Amr är under attack!* (Baba Amr is under attack), February 2012.

³¹ Joseph Holliday, *Middle East Security Report 8 – The Assad Regime*, 2013, p. 43.

³² A/HRC/20/CRP, para. 13 and, for example, the testimony of [REDACTED].

³³ A/HRC/19/69, para. 43.

particular in February 2012, affected civilians and civilian property to a very large extent. There are also several testimonies that the shelling took place on a daily basis and without warning (e.g. the testimonies of [REDACTED] and [REDACTED]).

Based on the extensive evidence of damage to civilians and civilian property and descriptions of how the attacks were carried out in Baba Amr in February 2012, the District Court finds that it is beyond reasonable doubt that the attacks did not distinguish between civilians and combatants or between civilian property and military targets and that the attacks were disproportionate to the concrete and immediate overall military advantages that could be expected to be achieved. The Court also considers it out of the question, on the basis of the information on the armament used by the Syrian Army, that anyone other than the regime forces could have carried out the attacks in Baba Amr in February 2012.

There is also some oral evidence that attacks were carried out by the Syrian Army against or near Baba Amr in January 2012. For example, [REDACTED] has stated that he witnessed the 'battle' in Baba Amr in January 2012, among others. [REDACTED]'s statements also support the claim that attacks could have been carried out near Baba Amr in January 2012, when his brother was killed. There is no further evidence in the case to support indiscriminate attacks in January 2012 in Baba Amr. Therefore, having regard to the evidential requirement in criminal proceedings, the prosecution cannot be considered to have established with sufficient probative value that such attacks were carried out in the month in question.

In conclusion, the District Court finds that it has been established that only the attacks carried out against Baba Amr in February 2012 were indiscriminate. The indictment is therefore thus substantiated as regards Baba Amr.

9.6.2 Al Rastan January–May 2012

The injured party [REDACTED] has testified about the beginning of the demonstrations in Al Rastan in March 2011 and has also stated the following. The military set up checkpoints in the city in May 2011, and then there were fighting between armed persons and the military. The city was surrounded by the military. In January 2012, the military left and started shelling the city with artillery fire. The shelling came from a distance, was unannounced and indiscriminate. In February and March 2012, the city was bombed by aircraft. The purpose of the bombings was to kill as many as possible. Many were injured in the attacks, losing limbs, and people died daily. His house, which was in a civilian residential area, was damaged by one of the attacks in May 2012. There was a 40-centimetre hole in the roof from shellfire. The artillery attacks took place between January and June 2012, without distinction.

[REDACTED] testified that the unrest started in spring 2011 in Al Rastan because of the demonstrations. She has also shared her own experiences as described in section 15 [redacted].

Witness [REDACTED] has described how he was sent to Al Rastan as a tank driver in Brigade 47 of the 11th Division in November or December 2011. Al Rastan had already been under military siege for several months. They were informed that there were ‘terrorists’ causing unrest in Al Rastan and he was ordered to fire from the tank at the people leaving the area. When he saw a man, a woman and two to three children leaving the area, he simulated that his tank was faulty and could not be aimed with. [REDACTED] heard shelling on both sides around his tank and he saw that there was a lot of damage to property in Al Rastan on the side where the army was deployed. In addition to his brigade, there were also units from the 4th Division, the special forces and the security service on site. The city was surrounded so that those inside could not get out and so that the army could start attacking from the positions around the city.

██████████ testified that his friends reported that the army entered Al Rastan and set up road blocks, probably in autumn 2011.

General support for the fact that Al Rastan was attacked in the spring and the extensive destruction caused to the area can also be found in photos and films presented by the prosecution at the hearing.³⁴ The NOA's analytical memorandum also provides further support in the form of media reports that Al Rastan was shelled in spring 2012.³⁵

There is also information from ██████████, based on interviews with defectors from the Syrian Army, that the Syrian Army, as well as the 4th and 18th Divisions were present in and around Al Rastan in January and February 2012 and that Al Rastan was bombed daily. There is also evidence from these interviews that the army subsequently withdrew from Al Rastan.³⁶ With reference to what is stated above about the generally weak evidential value of this information, the District Court attaches only very limited importance to these reports.

In the light of what has emerged, in particular from the injured party interview with ██████████, which the District Court finds no reason to question, it is, in the District Court's view, established that his house was damaged in one of the attacks carried out against Al Rastan in May 2012. His description of the damage, combined with the information available on the armaments available to the Syrian Army, shows with sufficient strength that the attack was carried out by the Syrian Army. The injured parties' description of the destruction in the area is also supported by the film clips cited.

³⁴ Video clip from BBC, Paul Wood, 25 May 2012; video clip from YouTube, 15 May 2012, photo from Al Rastan published on 16 May 2012.

³⁵ NOA analysis report, p. 13.

³⁶ ██████████ report, 21 September 2018, pp. 12-13.

The testimonies of, inter alia, [REDACTED] and [REDACTED] also show that the regime met some resistance in Al Rastan and that FSA or other rebel groups were active in the area in late 2011 and 2012.³⁷ According to the District Court, however, it is clear from the other evidence described above that the shelling of Al Rastan, at least in May 2012, affected civilians and civilian property to a very large extent in a way that did not distinguish between civilians and combatants. Nor has there been any evidence that FSA was active in [REDACTED]'s residential buildings. In conclusion, the investigation provides some evidence that the Syrian Army attacked Al Rastan indiscriminately during parts of the period January to May 2012. However, it can be concluded that the investigation into the army's presence and behaviour in Al Rastan during the first part of the period is limited and vague. Therefore, the District Court cannot find the investigation sufficient to establish that it is clear that such attacks were carried out by the army during the period of January to April 2012.

On the other hand, as stated above, the District Court finds that it is established that the attacks carried out against Al Rastan in May 2012 did not distinguish between civilians and combatants or between civilian property and military targets and that the attacks were disproportionate in relation to the concrete and immediate overall military advantages that could be expected to be achieved.

9.6.3 Homs in early 2012

The District Court notes that the incident was not mentioned as an example of indiscriminate attacks in the statement of the criminal act as charged, but that it has been addressed by the prosecutor through the evidence in the case.

³⁷ See also e.g. BBC video clip, Paul Wood, 25 May 2012.

[REDACTED] has testified that her and her husband's apartment was destroyed in the [REDACTED] neighbourhood of Homs in early 2012, probably in March or April. She has stated the following about the incident. She saw the shelling from her in-laws' house and saw that shellfire hit the house. She believes the reason her house was shelled was that the FSA was thought to be there. The whole neighbourhood was razed to the ground. No one was killed in the shelling because everyone living in the house had moved out. The previous occupants of the house were all civilians. The FSA was in the area in order to hide and spread out. You knew they were in the area because they were masked and you could see them there. When the regime learnt of the FSA's presence in the area, it began to attack the area indiscriminately without warning the civilian population.

[REDACTED] has essentially told us the following. There were sniper shooters in the area of [REDACTED] in Homs and both children, the elderly or women were targeted. He also saw insurgents armed with rifles in the area. The shelling did not begin until the area had been cleared of civilians and only rebels remained. He saw that civilians were injured in the shootings, but he also saw that rebels were injured. His house was destroyed during the shooting and the houses nearby were razed to the ground. He saw that tanks and even rocket launchers were used in the shelling.

The prosecution and the injured parties also referred to a film that shows the destruction of their apartment following the attack.

[REDACTED] has testified that the military fired projectiles in [REDACTED] [REDACTED] during the winter, but he does not remember which year.

First of all, the District Court notes that there is extensive evidence of the Syrian regime's method of attacks carried out in Homs in general. There is also evidence that the army was present in the city of Homs before and during the prosecution period.

However, there is no direct evidence of the presence and actions of the army in the area, and in the neighbourhood of [REDACTED] in particular, in the manner required, according to the District Court, to prove that the attack was carried out by the army as alleged in the indictment. In this assessment, the District Court also takes into account that both injured parties have testified that there was a large FSA presence in the area and that the area had been emptied of civilians before the house was fired upon. In the light of the evidence referred to, it cannot therefore be regarded as established beyond reasonable doubt that the attack on the injured parties' residential building in 2012 did not distinguish between civilian property and military targets and that the attack was disproportionate to the concrete and immediate overall military advantages that could be expected to be achieved. The prosecution in this part is therefore not substantiated.

9.6.4 Al-Qusayr February–July 2012

According to reports from, among others, the United Nations, Al-Qusayr was exposed to attacks of the Syrian regime between February and May 2012.

According to reports, Al-Qusayr was severely affected by confrontations between Syrian troops and the FSA and/or rebels during the period. According to the report, witnesses from Al-Qusayr stated that the city was bombed indiscriminately, including through rockets and grenades, and that women and children were killed as a consequence. According to what the UN considers a credible source, the bombardment was random, with Syrian troops spreading mortar fire throughout the area. According to the report, Syrian troops attacked civilian residential areas, which, in addition to damage to houses and public infrastructure, also resulted in loss of human life and serious injuries. The

majority of those who suffered serious injuries from the bombings were civilians in their homes or on the streets.³⁸

██████████, who was heard in the case, stated that he was aware that Al-Qusayr was attacked, but that this took place several years after the Baba Amr attacks in 2012.

There is thus general written reporting that suggests that Al-Qusayr was attacked by the Syrian Army. As stated above, the District Court does not consider that the reports from, for example, COI, without support by other evidence, can form the basis for an event to be considered proven in an individual case. In light of the evidence referred to, it cannot therefore be considered beyond reasonable doubt that attacks against Al-Qusayr were carried out by the Syrian Army in the manner alleged by the prosecution. The prosecution in this part is therefore not substantiated.

9.6.5 Al-Houla, May 2012

According to UN reports, on 25 May 2012 a massacre of around 100 civilians, including a large proportion of children, took place in the Al-Houla region of Syria. According to the report, Al-Houla refers to a group of villages and cities, one of which is Taldou.³⁹

According to reports, on 25 May 2012, a demonstration was held near the city centre in the village of Taldou. Protesters were then reportedly fired upon with artillery and/or light weapons. Rebels, including FSA fighters in Taldou, attacked several checkpoints of the government forces and several people died

³⁸ See e.g. A/HRC/22/59 paras. 75–77, A/HRC/21/50, para. 91 and Annex VI paras. 5 and 7.

³⁹ A/HRC/20/CRP.1, paras. 23, 25 and 34 and A/HRC/21/50 para. 106.

as a result of fire from both sides. Shooting from artillery and tanks continued during the day. A special report on the Al-Houla incident states that the COI has verified that buildings were shelled by comparing satellite images, and much of the damage appears to have been caused by mortars, machine guns and artillery.⁴⁰

The prosecution also referred to video footage from Al-Houla.⁴¹

The District Court finds that there is no other evidence in the case concerning the attack in Al-Houla.

Based on the written reports of attacks in Al-Houla, there are strong indications that Al-Houla was attacked by the Syrian Army in May 2012. As previously stated, the District Court does not consider that the reports referred to from, for example, the COI, without the support of other evidence, can form the basis for an event in an individual case to be considered proven. Taken as a whole, the evidence relied on does not mean that it can be considered beyond reasonable doubt that attacks on Al-Houla were carried out by the Syrian Army in the manner alleged by the prosecution. The prosecution in this part is therefore not substantiated.

9.6.6 Summary

Although there have been indications of the presence of rebel forces and the FSA in the area of Baba Amr and in Al-Rastan, the District Court considers that, in view of the extensive damage to civilian property and the fact that civilians were injured and killed on a large scale in the abovementioned towns, the attacks carried out in the areas in question were contrary to the principles of

⁴⁰ A/HRC/20/CRP.1, para. 34 and A/HRC/21/50, paras. 52 and 53.

⁴¹ See guardian.co.uk on 25 May 2012

proportionality, distinction and precaution and were therefore indiscriminate. However, the evidence only makes it clear that the Syrian Army was involved in attacks such as those committed in Baba Amr in February 2012 and in Al Rastan in May 2012.

The Court therefore goes on to examine the question whether it can be considered that the 11th Division was involved in the specific attacks referred to.

9.7 Participation of the 11th Division in accordance with the indictment

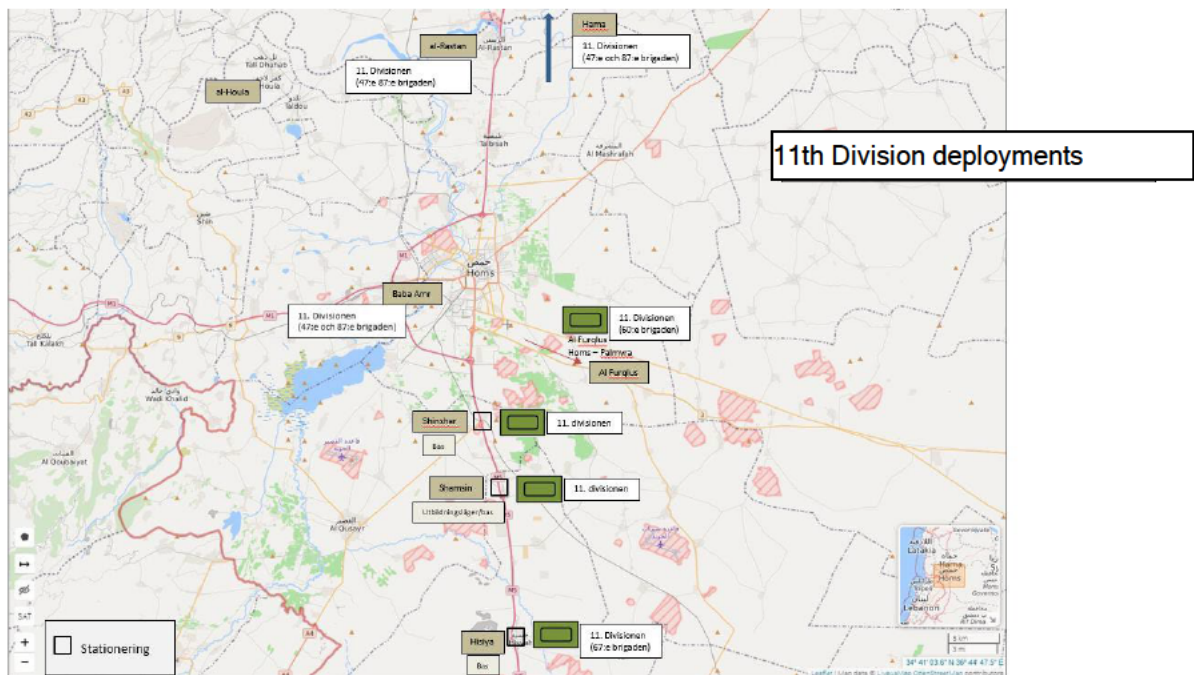
The prosecution relied on extensive evidence about the structure of the Syrian Army. In the light of the evidence and the information provided by [REDACTED], it must be held that the 11th Division was an armoured division consisting of four brigades, of which Nos 47, 60 and 67 were armoured brigades and No 87 was a mechanised brigade, and an artillery regiment of No 135. Under each brigade there were a number of battalions.

The evidence relied on by the prosecution shows that the 11th and 18th Division, at least in peacetime, had geographical responsibility for central Syria, including Homs and Hama.⁴² This has also been confirmed by several persons heard in the case, such as [REDACTED], [REDACTED] and [REDACTED], each of whom had experience of serving in the military and the latter two of the 11th Division in particular. Among other things, the evidence shows that brigades Nos 47 and 87 were located in the area around Hama, brigade No 60 in Al-Furqlus on the road to Palmyra. Brigade No 67 was

⁴² See e.g. Joseph Holliday, *Middle East Security Report 8 – The Assad Regime*, 2013, p. 35.

located near Hasyia and the artillery regiment near Shaira/Shoairat – south of Shinshar. [REDACTED] has also confirmed the geographical location of the 11th Division in the same way. In essence, the geographical location of the division is shown in the map below.

Image of the geographical location of the 11th Division.



The prosecution has presented evidence in the form of reports from [REDACTED] indicating that the 11th Division received intelligence information regarding some of the locations that the District Court now has to examine, such as Homs and Al-Rastan during the spring and up to the summer of 2012.⁴³

In addition, oral evidence has been referred to. Several witnesses have been heard about their knowledge of the presence of the 11th Division at different

⁴³ See [REDACTED] report of 19 February 2023, pp. 61–62 and letter from [REDACTED] on 30 September 2019.

locations at different times. The District Court will examine below the oral evidence referred to concerning the places now under examination.

9.7.1 Baba Amr in February 2012

[REDACTED], [REDACTED]
[REDACTED], has said that he was in the area in January. He left Baba Amr in February 2012 when he was injured. He believes that the 11th and 18th Divisions were in place on the second occasion to take over Baba Amr, but he is not sure. These two divisions were geographically responsible for the area in case of war with another country, and now the regime used them since they were there anyway. He has not personally seen the 11th and 18th Divisions, but has heard from other military personnel that the divisions were there.

[REDACTED], [REDACTED], has testified that he was in the Homs area when the revolution began in 2011. The 18th Division, which also cooperated with other divisions and the Security Service, was very active in the area. He remembers the 11th Division that was stationed in the same place [REDACTED]
[REDACTED]. He knows that a major offensive was launched against Baba Amr.

[REDACTED], [REDACTED],
said that the 18th Division was responsible for Baba Amr, among others, and that several other divisions, such as the 4th and 11th Divisions, were responsible for part of the same area. He has told the main hearing about a major attack on Baba Amr, led by the Minister of Defence, in which the 18th Division took part in 2012, although he cannot remember which month. He has also heard from other colleagues that the 4th and 11th Divisions and the Republican Guard were also involved in the attack and that Baba Amr was destroyed during the attack. As noted above, and as the defence has pointed out, [REDACTED] stated at the hearing during the pre-trial investigation that

the attack took place in 2013. The District Court cannot therefore draw any firm conclusions from his testimony regarding the timing of the current attack and the 11th Division's involvement in it.

██████████ ██████████ has heard about the attack against Baba Amr in the media. He also heard the shelling of the area. He believes that the 11th Division, which contained combat units, participated in the attacks because the division was located around Homs.

██████████ has testified that the 11th Division was located in Homs and that his uncle served there, but he was unable to specify what year this was.

The District Court finds that although there is indirect evidence that the 11th Division was geographically located in or around Baba Amr, the evidence does not directly support that the 11th Division was located and operating in Baba Amr during February 2012. Several of the witnesses heard have indicated that the division was present in the area, but in several cases this could not be stated with certainty. In addition, the information has been based on secondary data. It can also be noted that none of the persons interviewed have been able to confirm the presence of the 11th Division in Baba Amr in February 2012. There is also a lack of detailed evidence as to what the task of the 11th division was in the area and, for example, a lack of military orders or other evidence regarding the conduct of that division.

In conclusion, according to the District Court, there is insufficient evidence to establish beyond reasonable doubt that the 11th Division acted in the manner alleged in the statement of the criminal act as charged in Baba Amr in February 2012.

The indictment in this part is therefore not substantiated.

9.7.2 Al Rastan in May 2012

[REDACTED] has said that [REDACTED]
[REDACTED], he was ordered to Al Rastan in November or December 2011. There may also have been other brigades from the 11th Division present, but he does not know how many. He heard that part of the 4th Division was also there, as well as the special forces and some attack units from the security services. The task was to surround Al Rastan so that those who were inside the city would not be able to leave.

[REDACTED], [REDACTED], has stated that he understood that the 4th, 11th and 18th Divisions were in the vicinity of Al Rastan in May 2012, but he could not be sure because artillery fire was being fired from a long distance.

[REDACTED], [REDACTED], has testified that the 11th Division was mixed with his division already in March 2011. The 11th Division was in Al Rastan at that time. He has not been able to confirm exactly where they were, as different military units were mixed so that everyone was everywhere. He was not there himself.

[REDACTED], a [REDACTED], has reported that the army entered Al Rastan and set up roadblocks, probably in autumn 2011. He heard from others that the Republican Guard, divisions 11 and 15 and the special forces were in Al Rastan at the time.

The District Court notes that, admittedly, there is indirect evidence that the 11th Division has been located geographically in the Al Rastan area. However, the other evidence does not directly support the fact that the 11th Division was present and operating in Al Rastan in May 2012. While [REDACTED]'s information on the presence of the 11th Division in Al Rastan in 2011 may indicate to some extent that the 11th Division was present in 2012 as well, it is unlikely that the 11th Division was present in Al Rastan in 2011. The injured

parties and witnesses interviewed have not been able to confirm this. The documentary evidence relied upon and included in the [REDACTED] reports shows that there was some intelligence information concerning Al Rastan to the 11th Division from the security services in 2012. However, this information says nothing about what the 11th Division's task was and cannot in itself be regarded as providing sufficient support for the allegation of the 11th Division's activity in the area.

According to the District Court, there is insufficient evidence to establish beyond reasonable doubt that the 11th Division acted in the manner alleged in the statement of the criminal act as charged in Al Rastan in May 2012.

The indictment in this part is therefore not substantiated either.

9.7.3 Summary

According to the District Court, the prosecution has not sufficiently established that the 11th Division participated in the attacks on Baba Amr and Al Rastan during the period under review. Therefore, the evidence provided by the prosecutor cannot be considered sufficient to form the basis of a conviction in this part either.

9.8 The question of the aiding and abetting liability of

[REDACTED]

According to the District Court, the prosecutor has not proved that the 11th Division during the indictment period participated in the warfare and indiscriminate attacks of the Syrian Army against designated places in the indictment.

The indictment against [REDACTED] should therefore be dismissed on that ground alone.

On the basis of the order of assessment set out above, the District Court therefore does not need to examine the question whether [REDACTED] can be regarded as having contributed, in word or deed, to the indiscriminate attack by the 11th Division in such a way that he can be convicted of an offence.

The District Court nevertheless considers it appropriate to examine in full the objective aspect of the participation element and would like to state the following in this respect.

9.8.1 The legal basis

The defence has objected that the provisions of the Rome Statute on complicity should apply in the case.

As regards the relationship between the general part of Swedish criminal law and international humanitarian law, it can be concluded that the starting point is that the Swedish provisions on complicity should be applied.⁴⁴ When the Act on Penalties for Certain International Crimes was drafted, it was furthermore stated that the rules on perpetration and complicity in criminal offences in the Rome Statute are primarily intended to be applied by the International Criminal Court. As a starting point, this part of the Statute does not reflect existing customary law, which means there is no commitment to apply these criminal law principles nationally.⁴⁵ Another point is, according to the District Court, that international practice in this area can, to a certain extent, provide guidance

⁴⁴ The documents of the 1949 Geneva Diplomatic Conference show that no agreement could be reached on the issues of complicity, attempted offences, coercion, grounds for exemption from liability or compulsion to obey orders, which were left to the application of the law at national level.

⁴⁵ (See prop. 2013/14:146, pp. 212 and 213.)

for the assessment of who is to be considered as an accomplice or accessory to the act in the event of a crime under international humanitarian law.⁴⁶

Against this background, the District Court intends to examine [REDACTED]
[REDACTED]'s involvement under the Swedish rules on complicity.

It follows from Chapter 23, section 4 of the Criminal Code that not only the person who carried out an offence must be held liable, but also the person who promoted it by word and deed. The promotion is not required to have been a necessary precondition for the commission of the offence, but the act of complicity must have had an influence, either physical or psychological, on the creation or commission of the offence. An offence is promoted when someone has done something that facilitates or is at least likely to facilitate the commission of the offence. Therefore, liability for complicity may affect a person who has contributed only insignificantly to the commission of an offence.

In order to assess whether [REDACTED] could be convicted of complicity in the offences referred to in the indictment, the District Court first examines what can be considered to have been shown about the structure of the Syrian Army during the period of the indictment.

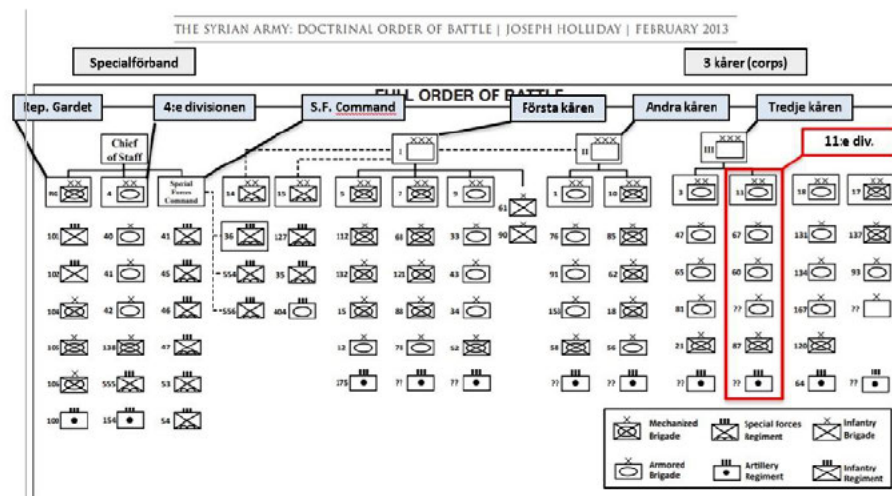
9.8.2 Structure of the Syrian Army during the prosecution period

The investigation revealed that the Syrian Army under the supreme command consisted of three corps and special units: the Republican Guard, the Special Forces and the Fourth Armoured Division. Under each corps, in turn, there were also a number of divisions. The third corps was responsible for internal

⁴⁶ See judgment of the Svea Court of Appeal of 19 December 2023, case B 9704-22.

defence and for strengthening the front in a potential war against Israel. The 11th Division was responsible for central Syria.⁴⁷

Picture of the overall structure of the Syrian Army



As stated above, the 11th Division was an armoured division consisting of four brigades, of which Nos 47, 60 and 67 were armoured brigades and No 87 was a mechanised brigade, and an artillery regiment (No 135). Under each brigade there were a number of battalions.

When the unrest began in 2011, the Syrian Army was, according to the cited reporting, organised and focused on defending itself against an Israeli invasion while countering attempts at coup d'état. As a result, large resources were allocated to the 4th Armoured Division, the Republican Guard and Special Forces. However, the army was primarily built to deal with a conflict with an

⁴⁷ Joseph Holliday, *Middle East Security Report 8- The Assad Regime*, 2013, p. 35.

external enemy, and was ill-prepared to fight against the internal resistance movement that existed from 2011.⁴⁸

The evidence also shows that during the current conflict, Mr Bashar al-Assad, who was the commander-in-chief of the army, combined elite loyalist units with specially selected conventional military units in order to avoid military defections. Units with a high proportion of Alawites were often considered more reliable and loyal. There is also information that Bashar al-Assad moved commanders who were Sunni Muslims.⁴⁹ [REDACTED], among others, has been able to confirm that the most loyal forces were selected and that these largely consisted of Alawites, such as the 4th Armoured Division.

Similarly, it appears that parts of different forces often were combined for a given operation and that the new unit then had a different chain of command and order than that of the conventional army. There is also information that only elite forces were used, which were considered loyal to Bashar al-Assad.⁵⁰ Furthermore, there is much to suggest that the three army corps in Syria did not operate according to the usual chain of command during the conflict.⁵¹

What is described above is also confirmed by the persons heard in the case. For example, [REDACTED] told us that all brigades were mixed and could thus be everywhere. [REDACTED] has also stated that superiors sometimes overlooked him as a Sunni Muslim and that an order was given directly to a subordinate unit where the commander was an Alawite. According to reports, the fact that Assad relied on loyal units would have made it possible to avoid

⁴⁸ Joseph Holiday, *The Syrian Army: Doctrinal order of battle*, 2013, p. 11.

⁴⁹ Joseph Holliday, *Middle East Security Report 8 – The Assad Regime*, 2013, pp. 12 and 13.

⁵⁰ Ibid. pp. 13 and 14.

⁵¹ See *ibid.*, p. 42.

the collective desertion of a whole unit, even if this considerably weakened the army strike force.⁵²

As regards specifically the siege of Homs, there are reports that this was carried out by parts of the 4th Division, the Special Forces and the Republican Guard and parts of conventional military units.⁵³

In the light of the above, according to the District Court, there is much evidence that there was a departure from the usual structure of the Syrian Army during the internal armed conflict. There are also indications that the original geographical responsibility, as reflected in the picture of the structure of the army above, had been dismantled during the conflict. Similarly, the evidence shows that the customary chain of command could be dispensed with, in order to create loyal units to avoid desertions.

9.8.3 [REDACTED]'s role and function

It is non-contentious in the case that [REDACTED] was a Brigadier General and Head of the Armaments Department of the 11th Division.

The question is whether [REDACTED], during the specified period of time, due to his role and function in word or deed could have contributed to the 11th Division's involvement in the Syrian Army's attack, as alleged by the prosecutor.

The prosecution has presented both oral and written evidence concerning the structure of a division and what the chain of command looked like in a division in general.

⁵² Ibid. p. 15.

⁵³ Ibid. pp. 14 and 35.

The written evidence shows, inter alia, that under each division there were a number of functional departments, one of which was an armaments department.⁵⁴ The divisional structure, as well as the existence of a similar structure and functions at all levels, from the level of senior command, to the divisional level, to the brigade level and to the battalion level, has also been confirmed by several witnesses in the case, such as [REDACTED] and [REDACTED], both of whom have first-hand experience from the Syrian Army.⁵⁵

There is also information that the functional departments had an advisory function for the division management in their respective specialist field, which has also been confirmed, for example, from the hearing with [REDACTED], [REDACTED], [REDACTED].⁵⁶ However, it can be noted that [REDACTED] has stated that he learned this during his military training.

The expert witnesses called by the prosecution, [REDACTED], [REDACTED], [REDACTED] and [REDACTED], have confirmed that the above structure is relatively normal within a military organisation. However, there are major differences between a Western army structure and the Syrian one, which was built according to the Russian top-down army structure. Furthermore, the expert witnesses agreed that an armaments department or equivalent is an important function in an army in general. They have also confirmed that, since the Syrian Army appears to be command-controlled, the scope for a head of department to make its own decisions may be limited.

Other evidence in the case also supports the view that decisions and orders were highly centralised to the highest command. An order would pass basically

⁵⁴ [REDACTED] reports, 9 July 2020, pp. 4-7 and 19 February 2023, p. 42.

⁵⁵ See also [REDACTED] report of 19 February 2023, p. 65.

⁵⁶ Cf. [REDACTED] report of 4 April 2023, p. 46.

unchanged through the chain of command to subordinate military units. Furthermore, it appears that subordinate officers were able to send information and requests for instructions or material upwards in the decision chain of command.⁵⁷ Several of the witnesses heard by the District Court have also confirmed that the Head of Department could sign an order or request, but that he could not change it or make his own decisions (for example, [REDACTED] [REDACTED]).

Initially, the District Court notes that there is no direct evidence in the case as to what, for example, an order to or from the armaments department could look like in the 11th Division during the period in question. Nor has any evidence been presented that directly links [REDACTED] to any behaviour such as a decision or order of the Syrian Army during the prosecution period.

It should also be noted that, although the expert witnesses heard in the case are or have been active in the Swedish military, they also stated that they do not have specific knowledge of the Syrian Army. The other witnesses heard did not have any personal experience in the armaments department of the 11th Division either, but described what they had learned during their military training or in other divisions.

The main evidence on the question of the role and function of [REDACTED] [REDACTED] during the prosecution period consists solely of indirect evidence. The direct information available about his service exclusively consists of information from [REDACTED] himself.

⁵⁷ [REDACTED] report of 19 February 2023, pp. 29-37 and 82-84 and [REDACTED] report of 9 July 2020, p. 6. See also [REDACTED], SYR.DO124.030.011 report on destroyed ammunition (exhibit 14).

██████████ testified at the main hearing that he was responsible for receiving the brigades' reports on their consumption or requests for replenishment of weapons and ammunition. His task was to submit the request to the Head of Division who made the decisions and in turn forwarded the request to the Armed Forces Board at the highest level. Once the Armaments Board had made its decision, ██████████ forwarded the signed order to the brigades, who were able to collect the supplies. He has had no opportunity to make his own decisions or to disclose information. The division had its own stock of ammunition, for which he was responsible, and which served as a reserve for the brigades. During his time, the reserve stock was never used. The brigades and battalions had their own stockpiles of weapons and ammunition. The division also had a workshop for which he was responsible.

In addition to forwarding requests from other units, his duties were mainly to keep track of the number of weapons and ammunition on hand in the division. When the higher command approved ammunition orders, he registered them.

He also said that the armaments department had the same role in times of peace as in times of war. In spring 2012, he did not receive any request or order to repair weapons. He also does not remember that he noticed any increase in the number of orders for ammunition during the period of the conflict. He was never told what the weapons or ammunition were being used for. The Head of Division had the same register as he had and could also contact the units directly, without going through him.

As a Sunni Muslim, he was heavily monitored and did not receive all the information. The leadership kept a tight lid on secrecy because of the risk that parts of the army would otherwise desert. The information he received regarding the conflict was provided to him only through the media. He does not know whether the 11th Division was involved in assisting the security services in suppressing the demonstrations, as such information was classified and he only had an office job. There is a big difference in information and

transparency when it comes to civil war compared to when there is war between two states. If there had been a war against another country, the army would have received information to be prepared for battle. Now, only trusted staff received information. He was relocated in June 2012. He assumed the reason was that the army saw him as disloyal because he was a Sunni Muslim.

The District Court notes that [REDACTED] in his interviews during the asylum investigation in 2017 and 2018 has given partly different answers than during the main hearing. However, as previously stated, the District Court assesses the information provided during the hearing before the Migration Board with extreme caution. Therefore, it is primarily what has emerged during the main hearing in the case that the District Court can examine.

As regards the role and function of [REDACTED] during the prosecution period, it can be noted that the prosecutor has not produced any evidence directly contradicting his own statements.

On the other hand, there is support in the evidence for [REDACTED]'s statement that, as a Sunni Muslim, he was excluded from information on the grounds of secrecy, as is also evident from the section above and from [REDACTED]'s testimony.

Information on how the Syrian Army was organised during the conflict, for example the mixing of parts of military units such as the 4th Division, the Special Forces and the Republican Guard and parts of conventional military units considered to be loyal, also suggests that [REDACTED]'s role during the conflict was different from what it would have been in a war between two states. [REDACTED] also stated that war against the civilian population differs completely from what they studied during the military training for war against an external enemy, since the war on their own population had an ethnic dimension.

As mentioned above, it may be noted that the usual chain of command may have been rendered inoperative by the combination of different parts of military units. There is also a lack of evidence in the case on how access to arming and ammunition was ensured in these joint operations.

In addition, [REDACTED] has denied significant parts of the statement of the criminal act as charged as regards his role and function, such as having had overall responsibility for the division's armament, having interacted with the divisional command staff and the fighting battalions, or having been part of the divisional command staff when necessary or having been involved in the operational implementation of orders. According to the District Court, the prosecution has not presented any evidence that contradicts [REDACTED]'s own statements in these respects.

9.8.4 Summary

It can be noted that the prosecution's evidence on the issue of [REDACTED]'s role and function during the period of the prosecution consists, in principle, exclusively of indirect evidence. However, according to the District Court, the evidence does not clarify to any great extent the role and function of [REDACTED] during the prosecution period. In summary, it can be concluded that reasonable alternative courses of events to those alleged in the indictment may be considered to have been possible. The evidence provided by the prosecutor is therefore not sufficient to form grounds for a conviction in this part either.

In addition, the only direct evidence available concerning [REDACTED]'s role and function during the prosecution period is the information he himself has provided. According to the District Court, these cannot be considered to have been rebutted by the prosecution.

In an overall assessment, the District Court considers that the prosecution has not proven that [REDACTED], through his position and function, has been an important prerequisite for the functioning of the armament within the 11th Division. Nor has it been established that he in word or deed was involved in the 11th Division's participation in the Syrian Army's attack, as alleged by the prosecutor. There are therefore no objective grounds for convicting [REDACTED] of complicity in the offences charged.

The indictment should therefore also be dismissed on this ground.

10 THE INDICTMENT AGAINST [REDACTED] [REDACTED] SHOULD BE DISMISSED

In the light of the foregoing, the public prosecutor has not established the objective elements of the statement of the criminal act as charged. For that reason alone, the indictment must be dismissed.

In the light of the District Court's conclusion, there is no reason to address the issue of intent.

11 DAMAGES

In view of the outcome on the issue of liability, the individual claims shall be dismissed.

12 COMPENSATION ISSUES

Lawyer [REDACTED] has requested compensation for 553 hours' work, 77.75 hours' time wasted and for expenses.

The preliminary investigation has been very extensive and has been ongoing for a long time. Lawyer [REDACTED] was appointed as public defender for the defendant on 7 December 2021. The case also concerns events in a place far from Sweden, and which occurred more than 10 years ago. In addition, the case raised questions of law requiring a special reading and of a complex nature,

and the hearing was held in a place other than the defendant's place of residence and the place of business of the defence. The prosecution has not had any objection to the cost claims.

On balance, the District Court considers that the cost claim in its entirety is reasonable and should be paid.

The counsel for the injured party, junior lawyer [REDACTED], claimed compensation of 191 hours for work, four hours' loss of time and expenses totalling SEK 137 861. [REDACTED] has represented eight injured parties in the case.

The prosecution has argued that the claim for reimbursement submitted by [REDACTED] for expenses for experts is somewhat high given that it is difficult to assess which costs relate to which work stages.

[REDACTED] was given the opportunity to comment on the prosecution's comments, but has not replied.

The District Court, which notes that the counsel for the injured party has represented a number of injured parties, several of whom live abroad, required additional work. Furthermore, it has been a comprehensive and legally complex case. The District Court therefore considers that requested compensation for work and time waste is reasonable and should be paid.

On the other hand, the District Court agrees with the prosecutor's assessment that the claim for expert witnesses is somewhat high and considers that reasonable compensation for expenses in this part should be set at SEK 65 000 (excluding VAT). That assessment also takes account of the fact that it is not possible to determine from the statement of costs which part of the amount relates to the work on the report and to the hearing of the witness [REDACTED].

Taking into account the outcome of the question of guilt, the costs of the defence and the counsel for the injured party should remain with the state.

13 MISCELLANEOUS

There are grounds to order confidentiality in accordance with the operative part of the judgment.

14 **ANNEX SUMMARIES OF PERSONS INTERVIEWED**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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15 **CONFIDENTIAL REASONS – SUMMARIES**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

STOCKHOLM DISTRICT COURT
DIVISION 4

JUDGMENT
20.6.2024

CONFIDENTIAL

Case number
B 5459-23

[REDACTED]

16 THE COURT

The District Court Judge [REDACTED], District Court Judge [REDACTED]
[REDACTED], and [REDACTED], [REDACTED], [REDACTED] and [REDACTED]
[REDACTED]

The Court agrees.

Digitally signed by the District Court Judge [REDACTED] and District Court
Judge [REDACTED]

17 INFORMATION ON APPEALS

How to appeal

The appeal must be received by Stockholm District Court by **11 July 2024**. The appeal must be in writing. Stockholm District Court will forward it to Svea Court of Appeal.

Appeal after the other party has appealed

If one party has appealed in due time, the other party also has the right to appeal even if the deadline has expired. This is known as a cross-appeal.

A party may lodge a cross-appeal within 1 additional week from the end of the period for appeal. A cross-appeal must therefore be lodged within 4 weeks of the date of the judgment.

A cross-appeal lapses if the first appeal is withdrawn or does not proceed for any other reason.

This is what to do

1. Indicate Stockholm District Court and the case number.
2. Explain why you think the judgment should be changed. State what change you want and why you think the Court of Appeal should hear your appeal (read more about leave to appeal below).
3. Specify the evidence to which you want to refer. Explain what you want to show with each piece of evidence. Submit any documentary evidence not already in the case file. If you want to have new interviews with someone who has already been interviewed or a new viewing (for example, a visit to a site), you should mention this and explain why. Also indicate whether you want the injured parties to attend a main hearing in person.
4. Provide name and personal ID number or corporate identification number. Provide current and complete information on where the Court can reach you: postal addresses, email addresses and telephone numbers. If you have a representative, please also provide the representative's contact details.
5. Sign the appeal yourself or have your representative do so.
6. Send or submit the appeal to Stockholm District Court. Be sure to send it in good time to allow for postage.

What happens next?

Stockholm District Court checks that the appeal has been lodged in due time. If it is filed too late, the Court rejects the appeal. This means that the judgment remains in force.

If the appeal is lodged in time, the Court forwards the appeal and all documents in the case to Svea Court of Appeal.

If you have previously received letters by simplified service, Svea Court of Appeal can also send letters in this way.

Leave to appeal to the Court of Appeal

When the appeal is lodged with Svea Court of Appeal, the Court first considers whether the case should be reviewed. If you do *not* obtain leave to appeal, the judgment under appeal remains in force. It is therefore important to include everything you want to say in your appeal.

When is leave to appeal required?

Criminal part

In the criminal part, leave to appeal is required in two different cases:

- The accused has only been sentenced to a fine.
- The accused has been acquitted of an offence carrying a maximum penalty of 6 months' imprisonment.

Damages part

Leave to appeal is required for the Court of Appeal to hear a claim for damages. Exceptions may apply when a judgment is appealed in the criminal part and there is a claim for damages linked to the offence. In that case, leave to appeal is not required if

- leave to appeal is not required for the criminal part, or if
- the Court of Appeal grants leave to appeal in the criminal part.

Decisions on other matters

In cases where leave to appeal is required in the criminal part (see above), leave to appeal is also required for decisions which may only be appealed in the context of the appeal against the judgment. Decisions subject to special appeal do not require leave to appeal.

When do I get leave to appeal?

The Court of Appeal grants leave to appeal in four different cases.

1. The Court of Appeal considers that there is reason to doubt that the District Court ruled correctly.
2. The Court of Appeal considers that it is not possible to assess whether the District Court ruled correctly without reopening the case.
3. The Court of Appeal needs to review the case in order to provide guidance to other courts in the application of the law.
4. The Court of Appeal considers that there are exceptional grounds for reopening the case for some other reason.

Want to know more?

More information is available at www.domstol.se. Contact Stockholm District Court or Svea Court of Appeal if you have any questions.