

**POLICY REPORT**

# The Captagon Trade's Legal Pathways to Accountability

An Outline of Potential International and Regional Mechanisms to Invoke Accountability for the Manufacture, Trafficking, and Sale of Captagon by the Syrian State





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*The content and views expressed in this policy report are those of the authors and should not be taken to reflect an official policy or position of the New Lines Institute for Strategy and Policy.*

(COVER) A defendant is brought into district court by judicial officers in Ellwangen, Germany, in March 2024. Germany’s Federal Criminal Police Office and the Ellwangen public prosecutor’s office uncovered a large captagon laboratory in Regensburg the previous summer. (Katharina Schröder / picture alliance via Getty Images)

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## Introduction

A substantial body of evidence implicates the Syrian regime directly in the trade of the illicit amphetamine-type drug captagon, which has caused serious organized crime, public health, and security devastation in the region.<sup>1</sup> The regime of Syrian President Bashar al-Assad has been widely and credibly implicated as the primary force behind the rapid upscaling of the illicit manufacturing, trafficking, and trade in captagon.<sup>2</sup> However, while evidence on captagon production and trafficking has accumulated, there remains little momentum on accountability pathways that can jump-start criminal mechanisms. Thus far, the policy response to the captagon trade has largely been ad hoc and piecemeal, focusing on particular aspects of the trade, such as precursor control or interdiction at border points, rather than broader supply-and-demand reduction. Accountability for implicated actors has been particularly absent in any governmental or multilateral response to the captagon trade.

To fill this gap, a cross-section of international mechanisms may contribute to advancing the Syrian state's accountability for its role in the manufacturing, trafficking, and trade in captagon. Robust forms of accountability rest upon rigorous fact-finding; preexisting standards against which impugned conduct is to be measured; appropriate mechanisms ensuring procedural fairness; and just and proportionate consequences for culprits where violations are found to have occurred.

## Executive Summary

To best address accountability as it relates to the Syrian regime's involvement in the captagon trade, governments can take up judicial, quasi-judicial, nonjudicial, and political mechanisms – particularly within the context of the United



(Joseph Eid / AFP via Getty Images)

Nations human rights architecture – to achieve greater accountability:

- Multiple countries can submit the captagon issue to the U.N. Human Rights Council Universal Periodic Review (UPR) process.
- The World Health Organization and U.N. Organization on Drugs and Crime can establish fact-finding missions into captagon's malign public health effects.
- The U.N. Human Rights Council can consider expanding the Independent International Commission of Inquiry on the Syrian Arab Republic (CoI) on the trafficking, production, and dissemination of captagon in regard to Syria.
- The Human Rights Council can establish a mandate focusing on human rights in the context of illicit narcotics.
- U.N. Charter- and treaty-based procedures linked to narcotics directly or linked to its impact can be explored.
- Governments can adopt a multilateral cooperation framework that will provide the necessary infrastructure to identify supply chains, gather intelligence on implicated actors, and support accountability efforts among law enforcement entities and policymakers.





## Potential Forms of Accountability for Captagon

Lesser forms of accountability may nevertheless significantly contribute to achieving desired outcomes. Broad-based strategies that involve several parallel accountability initiatives may have a significant cumulative effect, even though none of the individual initiatives are robust in design. Strategic accountability initiatives may also be tailored to the nature and aspirations of the offending party. For example, a consequence of accountability initiatives may be reputational damage, which may be of little concern to an organized crime group but greatly concerning to the Syrian state.

Accordingly, for the purposes of this report, the notion of accountability is multifaceted, without adopting a narrow definition. Indeed, accountability here is not meant as a binary concept but rather exists along a spectrum, and cultural determinants result in shifting conceptions of accountability. Establishing facts is a vital component of accountability. Often the fact-finding that underpins successful accountability strategies is undertaken by agents and organizations distinct from the mechanisms within which direct accountability is achieved. For example, while courts are general triers of fact, they do not, at least in common law systems, engage in fact-finding. A trier of fact benefits from evidence that is presented to establish facts, whereas fact finders compile the evidence that is to be presented.



Hayat Tahrir al-Sham (HTS) fighters display drugs seized at a checkpoint in Daret Ezza, Aleppo province, on April 10, 2022. (Omar Haj Kadour / AFP via Getty Images)

In the context of captagon, a successful accountability strategy cannot be achieved without better and more targeted fact-finding. Indeed, a primary goal of accountability is just and proportionate consequences for culprits, but without better understanding of the health consequences and addictive properties of captagon, this goal is unachievable. As such, organizations such as the World Health Organization can play a meaningful role in accountability efforts in relation to captagon if it assists in fact-finding. Governments can prioritize efforts to establish facts regarding the chemical composition of captagon; the social impact of captagon use, including health consequences and addictive properties; the attribution of production, trafficking, and trade of captagon to agents of the Syrian state; and the human rights implications of operations aimed at

suppressing captagon production, trade, and trafficking in the region.

The legal response to illicit drug production, trafficking, and trade falls traditionally in the domain of criminal law, which exists at two levels: international and domestic. International criminal law is a subregime of international law aimed at prosecuting those most responsible for crimes of concern to the international community, such as crimes against humanity, war crimes, and genocide.

While drug-related offenses fall within the purview of domestic criminal law, the perpetration of these offenses often has distinctly transnational components, as is the case with captagon. To facilitate the suppression and prosecution of such transnational criminal activity, states routinely render mutual assistance in investigating crimes and the arrest and



extradition of perpetrators. Such mutual efforts at transnational criminal law enforcement, often formalized in terms of agreements between states, is premised on the assumption that none of the states are involved in the relevant criminality. Where the state is indeed a primary functionary in the criminal network, the state cooperation that underpins accountability for transnational crime disappears.

There is then effectively a blind spot in the criminal law, as the conduct is not proscribed in terms of international criminal law and thus not prosecutable before courts such as the International Criminal Court (ICC), and the domestic mechanisms tasked with investigating and prosecuting breaches of domestic criminal law cannot properly function in relation to state-sanctioned criminal activity. This is not to say that efforts at criminal accountability should be abandoned, but emphasis can be placed on accountability mechanisms that can set the scene for criminal mechanisms. The richest space to achieve such accountability is within the human rights architecture of the U.N. system.

Three core considerations need to be addressed to determine the feasibility of a mechanism in a given context: the subject-matter jurisdiction of the mechanism (which legal standards the mechanism is competent to apply); the territorial and personal jurisdiction of the mechanism (over whom and where can the mechanism perform its functions); and

admissibility (whether conditions have been met for the matter to be eligible to be heard by the mechanism). Formal international accountability mechanisms can be usefully categorized as:

- **Judicial mechanisms:** The functioning of such mechanisms is underpinned by rigorous formal procedure, with a strong focus on procedural and administrative fairness. Judicial mechanisms usually have the power to render binding decisions but often have limited subject-matter jurisdiction, limited territorial and personal jurisdiction, and restrictive admissibility requirements. Courts of law are quintessential examples of judicial mechanisms.
- **Quasi-judicial mechanisms:** These mechanisms share many similarities with judicial mechanisms, but they have less rigid procedures; they are generally not well equipped to hear and receive evidence; not all members are legally trained; and their decisions are generally not binding. Treaty bodies established in terms of U.N. human rights treaties are examples of such mechanisms.
- **Nonjudicial mechanisms:** These mechanisms can take a range of forms. Commonly, they are more flexible in the means they employ in discharging their mandates; they don't have limited subject-matter jurisdiction but rather a thematically or regionally defined focus; and they do not have defined complaints procedures resulting in formal decisions being taken. Instead, they engage with states directly. The

Special Procedures of the U.N. Human Rights Council, including special rapporteurs, independent experts, and working groups, are nonjudicial mechanisms.

- **Political mechanisms:** Several mechanisms are designed to keep states accountable to other states for their actions, particularly as it relates to human rights. The UPR mechanism of the U.N. Human Rights Council is a cyclical process in terms of which each state internationally is subjected to a peer review within a four-year cycle.

Accountability can be achieved through formal and less-formal mechanisms and channels. For example, the news media can be a powerful agent, both as a catalyst for formal accountability and as an informal accountability mechanism. The present emphasis is on formal mechanisms at the international level. However, in the pursuit of international accountability, such mechanisms can often be operationalized as part of broader advocacy campaigns, in terms of which a successful outcome in each matter becomes secondary to the contribution made to the broader advocacy campaign, for example by fostering attention on the issue. In this manner, it is often useful to activate a formal accountability mechanism with no prospect of a successful outcome – a strategy intrinsic to many successful strategic litigation efforts. Such a broader advocacy approach may be viable to advance the accountability of the Syrian state for its role in the illicit captagon supply.



Broader advocacy campaigns may be significantly aided by using formal accountability mechanisms to address peripheral issues. For example, a campaign focused on the Syrian state's involvement in the captagon trade may be aided by triggering appropriate measures in response to the detrimental effect of the drug on children's health measures addressing the precursors to the manufacture of captagon, such as the supply chain of raw materials, may also contribute significantly to a campaign.



Two defendants speak with lawyers before the start of their trial in Ellwangen, Germany, on March 4, 2024. The case involves a large captagon laboratory. (Katharina Schröder / picture alliance via Getty Images)

## Accountability Through International Mechanisms

Several existing mechanisms, spanning the spectrum from judicial to political, could contribute to a strategy to hold the Syrian state to account for its involvement in the manufacture, trafficking, and trade of captagon. There also exist viable entry points for the creation of new mechanisms to contribute to such accountability.

### Judicial Mechanisms

The apex judicial mechanism in the international system is the International Court of Justice (ICJ). The contentious jurisdiction of the ICJ is aimed exclusively at interstate disputes and, accordingly, state-level accountability. Indeed, only states can be party to disputes before the ICJ. One unique feature of the ICJ is its broad subject-matter jurisdiction: It can apply as a matter of law any source of international law that is binding on the states in a given dispute. However, for the court to exercise jurisdiction in relation to a dispute,

either the states in question must agree to the ICJ's jurisdiction on an ad hoc basis or a treaty to which the states are a party must provide for the compulsory jurisdiction of the ICJ in relation to the given obligation. For example, the recent proceedings launched against Syria by Canada and the Netherlands are premised on the compulsory jurisdiction of the ICJ under Article 30(1) of the Convention Against Torture (1984):

“Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court

of Justice by request in conformity with the Statute of the Court.”

It is improbable that Syria would voluntarily submit to the ICJ in relation to a dispute regarding its involvement in the trade in captagon, although merely making the request may be strategically useful. However, Syria is party to myriad international treaties, so it is worth exploring whether any treaties relevant to accountability for involvement in the captagon trade provides for the compulsory jurisdiction of the ICJ.

The ICC serves to bring to account those most responsible for international crimes. The ICC's limited subject-matter jurisdiction is such that it can only prosecute perpetrators for war crimes, crimes against humanity, and genocide. While production and trafficking in illicit narcotics is not an international crime, issues peripheral to the captagon trade





may indeed amount to crimes against humanity or war crimes. Such potential issues include the use of lethal force in the context of captagon trafficking, as exemplified in violent clashes along the Syrian-Jordanian border.<sup>3</sup>

However, the situation in Syria is yet to be formally investigated by the Office of the Prosecutor of the ICC. Syria is not a state party to the Rome Statute of the ICC, which means that the ICC will only be competent to exercise jurisdiction in relation to Syria if the U.N. Security Council refers the matter to the ICC by way of a Chapter VII resolution. Such efforts have to date been thwarted by the veto power of Russia as a permanent member of the Security Council – a reality unlikely to change.<sup>4</sup>

### Quasi-Judicial Mechanisms

Within the auspices of the U.N., nine core human rights treaties have been adopted.<sup>5</sup> These treaties can be divided into two categories: those with limited and specific thematic focus, such as the Convention Against Torture,<sup>6</sup> adopted in 1984, and those with more general focus, such as the International Covenant on Civil and Political Rights, (ICCPR) adopted in 1966.<sup>7</sup> Each core treaty includes a treaty body, which is a quasi-judicial mechanism.<sup>8</sup> For a treaty body to exercise its mandate respecting of a given state, that state must be a party to the treaty. Moreover, the mandates of most treaty bodies have been expanded and augmented over time through the adoption of several optional protocols. While Syria has ratified all but one of the core U.N. human

rights treaties,<sup>9</sup> it has ratified few of the optional protocols to these conventions.<sup>10</sup>

The precise mandate, composition, and working methods of each treaty body differ slightly, but they share several features. Treaty bodies are composed of between 10 and 25 experts who serve in an independent capacity for renewable terms of four years. The experts are of recognized competence in human rights but come from diverse disciplinary backgrounds. Their mandate is primarily aimed at monitoring state compliance with obligations in relation to the relevant treaty through receiving and commenting on periodic state reports.

Civil society plays a vital function in compliance monitoring by treaty bodies. Civil society groups can submit written information to treaty bodies, which the body uses to determine the core issues to be considered and in its assessment of the state's compliance. Moreover, most treaty bodies engage directly with civil society organizations that submit written information. Compliance monitoring is a compulsory feature of all treaty bodies' mandates, from which states cannot opt out. Accordingly, engagement with the reporting process of treaty bodies offers a good avenue through which the issue of Syrian captagon trade can be brought to the attention of treaty bodies.

Treaty bodies also have what can be termed a soft enforcement mandate, and many have an inquiry procedure. These features may contribute to Syrian accountability

for involvement in the captagon trade. The enforcement mandate is primarily achieved through a jurisdiction to receive individual communications (also known as complaints) directly. This amounts to soft enforcement, as treaty bodies cannot render binding enforcement decisions.

However, states either have to opt into the individual communications procedure through ratification of an optional protocol or making a declaration, or they are afforded the opportunity to opt out. Syria has leveraged these procedures in such a manner that it is subject only to the individual communications procedure of the Committee on the Rights of Persons with Disabilities, and it is not subject to the inquiry procedures of any of the treaty bodies.

Individual communications are submitted to the Office of the High Commissioner for Human Rights (OHCHR) and then transmitted to the relevant treaty body. Procedurally, such communications are generally considered on paper, meaning oral submissions are not made, and evidence is not led. The outcome of the procedure is a written finding by the committee as to whether any rights violations in terms of the treaty have occurred. The finding is not binding on the state but is authoritative.

In addition to individual communications procedures, six of the nine treaty bodies include an inquiry procedure. However, as mentioned, Syria is not subject to any of the inquiry procedures. The advantage of this procedure is that it is activated by the treaty



This picture from July 2022 shows confiscated captagon pill stamps, presented at judicial police headquarters in Zahle, Lebanon. The illicit drug spawned an illegal \$10 billion industry that props up both al-Assad's regime and his enemies. (JOSEPH EID / AFP via Getty Images)

body on a *mero motu* basis (on its own accord). However, the threshold to trigger an inquiry procedure is higher than for individual communications – the treaty body must receive credible information suggesting that grave and systematic violations of human rights have occurred or are occurring. A further disadvantage is that inquiries are not generally made public.

While treaty bodies do not offer any readily apparent avenues for holding Syria to account, several neighboring states are indeed subject to individual communications and inquiry procedures. Given the transnational nature of the captagon trade in the Mediterranean-Gulf, there is value in further investigating the use of individual communications and/ or inquiry procedures in relation to

neighboring states. Where states in the region are taken to task in respect to their own failures in relation to the inflow of captagon from Syria, feasibly, this will affect their engagement with Syria.

For example, Turkey is subject to the individual communications procedure under the Human Rights Committee, which is the treaty body established in terms of the ICCPR. Turkey is also an increasingly significant transit hub for Syrian captagon.<sup>11</sup> Feasibly, rights that may be affected include the right to life under Article 6 of the ICCPR; freedom from torture and cruel, inhumane, or degrading treatment or punishment under Article 7 of the ICCPR; the right to liberty and security of person under Article 9 of the ICCPR; and the fair trial guarantees under Article 14 of the ICCPR.

Compulsory compliance-monitoring procedure offers a viable route through which the issue of Syrian involvement in the captagon trade, and its impact on human rights, can be brought to the attention of treaty bodies. Moreover, further investigation of the opportunities offered by the individual communications and inquiry procedures in relation to neighbor states is warranted.

### Nonjudicial Mechanisms

Special Procedures of the Human Rights Council exist within the U.N. Human Rights system parallel to the treaty bodies and offer a further avenue for accountability for Syria. Three forms of special procedures exist: special rapporteurs, independent experts, and working groups. Functionally, there is no distinction between special rapporteurs and independent experts – in both cases, the mandate holder is an individual appointed in an independent capacity for a once-renewable term of three years. Working groups, on the other hand, consist of five members, one each from the five U.N. regions. However, all special procedures have comparable working methods in discharging their mandates. All procedures either have a thematic (45 mandates) or country-specific (12 mandates) focus. Special procedures discharge their mandate through:

- Directly engaging with states with respect to reported violations and concerns in the form of either a letter of allegation (in response to a prima-facie violation) or an





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**“ When they [special procedures mandates] engage with a state in relation to a specific rights issue, they can do so drawing on the totality of human rights obligations the given state has incurred in relation to the issue at hand. ”**

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urgent appeal (in response to an impending potential violation);

- Undertaking country visits and, in the case of some mandates, issuing follow-up reports in the years after a country visit;
- Contributing to the development of international human rights law, including through annual thematic reports made to the Human Rights Council and General Assembly;
- Reporting on its work to the Human Rights Council and General Assembly; and
- Engaging in advocacy and awareness-raising and providing technical advice.

A key advantage of special procedures mandates is that they do not have a limited subject-matter jurisdiction. When they engage with a state in relation to a specific rights issue, they can do so drawing on the totality of human rights obligations the given state has incurred in relation to the issue at hand. As nonjudicial mechanisms, special procedures do not have clearly defined complaints procedures. Nevertheless, they are open to receiving information on a continuous basis regarding alleged violations. Indeed, across the spectrum of working methods, special procedures engage directly

with civil society. This more informal procedure has several advantages, particularly in relation to admissibility, including no requirement for prior exhaustion of domestic remedies and no formal *lis pendens* requirement (exclusion of a matter due to it being considered by another mechanism).

Presently, there are no special procedure mandates that relate directly to human rights and illicit narcotics. However, premised on the interdependence, indivisibility, and interrelatedness of human rights, several mandates may be useful in broadly defined campaigns aimed at advancing accountability for Syrian involvement in the captagon trade. These include the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of nonrecurrence; the Working Group on Business and Human Rights; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

Special procedures bring niche expertise that can contribute significantly to broader advocacy

campaigns. For example, the process of addressing profiteering from the captagon trade through precursor activities, such as corporations supplying raw materials, is challenging and highly specialized, yet the Working Group on Business and Human Rights brings substantial expertise in this regard.

Should a special procedures mandate become engaged with Syrian involvement in captagon trade, there is an added advantage in that each mandate reports on its work annually to the Human Rights Council and the secretary-general annually sends a separate report by each mandate to the General Assembly. This may significantly contribute to the mainstreaming of accountability for captagon trade within the U.N.

In addition to the special procedures framework, where acute circumstances necessitate a bespoke response, the Human Rights Council can on an ad hoc basis establish commissions of inquiry, which are charter-based bodies of sorts. In response to a rapidly deteriorating situation in Syria, the Human Rights Council established the Independent International Commission of Inquiry on the Syrian Arab Republic (CoI) on Aug. 22, 2011.<sup>12</sup>



Syrians demonstrate for freedom and democracy on March 16, 2023, in Brussels, Belgium. Protesters said that after Syrian President Bashar-al-Assad visited with Russian President Vladimir Putin in Moscow, the world turned a blind eye to crimes committed during Syria's civil war. (Thierry Monasse / Getty Images)

The Col has a broad mandate to investigate all alleged violations of international human rights law since March 2011 that occurred in Syria. This includes establishing the factual circumstances of such violations and identifying those

responsible for violations, including the commission of crimes against humanity, with a view of achieving accountability. The mandate of the Col has been augmented over time through the adoption of subsequent Human Rights

Council resolutions.<sup>13</sup> The working methods of the Col overlap with those special procedures, but the Col is significantly better resourced and maintains a higher profile. Accordingly, direct engagement with the Col is a strong, widely used entry point for accountability efforts regarding Syria.

Further investigation by the Human Rights Council of how best the Col can be engaged on the matter of captagon is called for. A possibility remains for the adoption by the Human Rights Council of a resolution tasking the Col specifically to investigate Syria's manufacture, trafficking, and sale of captagon. Shortly after the establishment of the Col, the Human Rights Council established the mandate of the Special Rapporteur on the Situation of Human Rights in the Syrian Arab Republic. However, the activation of this mandate is suspended until the conclusion of the mandate of the Col. While it is impossible to predict when this will be, the Col brings a higher profile to the U.N. work on Syria.

Feasibly, a mandate can be established focusing on human rights in the context of illicit narcotics. However, that requires careful consideration to determine the extent to which the current direction of travel toward more progressive understandings of human rights and drug policy can be achieved together with the aims of enhancing accountability for Syria's involvement in the captagon trade.



## Political Mechanisms Rooted in the International System

Within the political sphere, several avenues exist through which to advance accountability. These options range from formal mechanisms, such as the UPR process within the Human Rights Council, to less formal entry points, such as lobbying states to introduce resolutions to create, for example, a sanctions regime imposed upon named Syrian officials involved in the captagon trade. Political avenues cannot be covered exhaustively; as such, emphasis is placed on those options that can most readily be operationalized: engagement by political organs of the U.N., the UPR process, and the creation or expansion of sanctions regimes by individual states, the U.N., and the EU.

There are several avenues through the U.N.'s political organs where Syria's involvement in captagon trade can make the agenda. The feasibility of this is enhanced by the frequency with which these organs discuss the situation in Syria. The presidency of the Security Council, a position that rotates monthly in alphabetical order among its members, has significant powers for agenda-setting and accordingly has much potential for catalyzing engagement from among the U.N.'s political organs. While Security Council engagement with the situation in Syria has been hindered by Russian vetoes,<sup>14</sup> the General Assembly in April 2022 adopted a resolution to work around such roadblocks. Within 10 working days of a veto, the president of the General Assembly is now mandated

to call a formal meeting of all 193 assembly members to debate the circumstances under which the veto was cast.<sup>15</sup>

Further investigation is needed by governments into the value of elevating the issue of captagon to the political organs of the U.N. as a component of a broader accountability strategy. In particular, the competencies of the president of the Security Council and the requirements for direct engagement by the secretary-general can be prioritized.

The UPR is a political process in which each of the U.N. member states is peer reviewed for its performance with respect to its human rights obligations within each four-year cycle of the process. The review takes place based on the following documents:

- A national report prepared by the state concerned;
- A compilation prepared by the OHCHR of information from reports of treaty bodies, special procedures, and other relevant documents; and
- A summary of credible information provided by relevant stakeholders, also prepared by the OHCHR.

Each state is afforded a 3.5-hour review session, which takes the form of a discussion between the state under review and other U.N. member states. The review is conducted by the UPR Working Group, consisting of the 47 members of the Human Rights Council, and is facilitated by a "troika" of states that effectively are the rapporteurs of the given

state in the process. The troika is drawn from among the members of the Human Rights Council by way of secret ballot. Any member of the U.N. can participate in the interactive discussion.

The issue of captagon was not raised or considered during Syria's latest (third cycle) review on Jan. 24, 2022. Syria is tentatively scheduled for its evaluation in the fourth cycle of the UPR during the 54<sup>th</sup> Session of the Human Rights Council, from January to February 2027. The obvious entry point in the UPR process is through NGO submissions to the stakeholder summary. However, the OHCHR is likely to receive a large volume of submissions regarding Syria. To elevate the chances of an issue making it to the stakeholder summary, submissions can be made by multiple organizations. Moreover, should the Special Procedures and/or treaty bodies engage with the issue of Syrian involvement in captagon trade, it may also be reflected in the U.N. summary.

Sanctions regimes are one area where there has been significant development in addressing Syrian involvement in the captagon trade. On March 28, 2023, in a coordinated effort, the U.S. and U.K. imposed sanctions on several Syrian and Lebanese individuals and entities for their involvement in captagon production and trafficking.<sup>16</sup> Then on April 24, 2023, the Council of the European Union listed 25 individuals and eight entities in the framework of EU restrictive measures in view of the situation in Syria.<sup>17</sup> These listings focus by and large on Syrian





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“Effective partnerships for suppression of transnational criminal activity can include each state relevant to the supply chain in question, and the absence of Syria from any partnership network significantly problematizes effective partnership-based investigation, prosecution, and suppression of regional captagon trafficking and trade.”

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involvement in the production and trafficking of captagon.

These developments raise the question of why other relevant functionaries, such as the U.N. human rights architecture, remains unengaged with accountability for Syrian captagon production and trade. Indeed, further investigation into the antecedent history and engagements that lead to the adoption of sanctions is warranted, as this may shed light on how best to proceed in relation to other functionaries.

### Accountability Through Strengthening Regional Cooperation

The efforts of individual states operating in isolation in investigating, prosecuting, and suppressing transnational criminal activity are sure to fail. For this reason, states have actively sought to collaborate. Such collaboration can take the form of bilateral agreements such as the Cooperation Agreement for the Fight against the Illicit Traffic of Narcotics and Psychotropic Substances and Related Crimes (1997) between Ecuador and

Paraguay.<sup>18</sup> It can also take the form of more substantial multilateral cooperation. For example, the European Union Agency for Criminal Justice Cooperation (Eurojust) is a hub in the Hague that provides substantial infrastructure for national judicial authorities to cooperate in combating cross-border organized crime, including drug trafficking.<sup>19</sup>

#### *Eurojust*

*Eurojust is a hub that works with national authorities in combating serious and complex cross-border crimes including drug trafficking and money laundering. As a hub for national authorities, Eurojust provides infrastructure for direct operational support throughout the stages of cross-border criminal investigations, including a permanently on-call coordination service; direct links to cross-national counterparts; assistance with the preparation of judicial cooperation requests; assistance with the coordination of parallel investigations; joint investigation teams; and joint action days.*<sup>20</sup>

Effective partnerships for suppression of transnational

criminal activity can include each state relevant to the supply chain in question, and the absence of Syria from any partnership network significantly problematizes effective partnership-based investigation, prosecution, and suppression of regional captagon trafficking and trade. To ensure the involvement of all key players, it is important to accurately map the captagon supply chains starting from precursor routes, to manufacture in Syria, to end users in several states across the Mediterranean and Middle East. The challenges posed by narco-states are not new, and there is a history of cooperation in Latin America from which many lessons can be learned. Useful examples and resources include:

- The Joint Paraguayan-Chilean Cooperation Commission on the Prevention of Misuse and Suppression of Illicit Trafficking in Narcotic Drugs and Psychotropic Substances is a quintessential example of cooperation for suppression for transnational drug trafficking.<sup>21</sup>
- The Multilateral Evaluation Mechanism is a peer review process that measures the progress made by members of



the Organization of American States in addressing the illicit drug trade and related crimes. This is not a cooperation framework for suppression of transnational criminal activity, but it is a useful resource in tracking successes and failures of such cooperation efforts in the region.<sup>22</sup>

- The Europe Latin America Programme of Assistance against Transnational Organised Crime (EL PAcCTO) is an international technical assistance and cooperation program aimed combating transnational organized crime in Latin America by focusing on the full spectrum of the criminal chain across three components: police, justice, and penitentiary.<sup>23</sup>
- The Latin American Interior Security Committee, a recent initiative spearheaded by EL PAcCTO, is an agency aimed at facilitating political and technical dialogue between partners for security policies in Latin American states.<sup>24</sup>
- Constitutive Treaty of the Union of the South American Nations (2008): Article 3 of the agreement defines the objectives of the Union, which includes “coordination among specialised bodies of the Member States, taking into account international norms, in order to strengthen the fight against terrorism, corruption, the global drug problem ...”<sup>25</sup> This mandates coordination among such specialized bodies in relation to the global drug problem, though such coordination is yet to be operationalized.

- The Cooperation Program between Latin America, the Caribbean, and the European Union on Drug Policy focuses on the promotion and defense of human rights, gender fairness, public health, citizen security, and sustainable development in the context of drug policy.<sup>26</sup> This program provides a useful example for mitigating the adverse human rights consequences of regional cooperation in the investigation and prosecution of offenses related to the captagon trade.

The starting point for investigating the feasibility of a regional cooperation framework is to identify the potential partners by mapping the relevant supply chains, particularly countries that supply the precursor materials necessary for amphetamine-type stimulant production. Additionally, this framework can rigorously monitor the expanding list of destination countries for the captagon trade, particularly as traffickers adapt new routes amid law enforcement crackdowns.

The success of cooperation still rests heavily on gaining better insights, bolstering intelligence exchange, and robust fact-finding into the effects of captagon within the region. It is likely that regional investigation and prosecution will focus primarily on intermediaries in the supply chain outside of Syria. In that sense, this will not lead to direct and strong accountability of Syrian role players. However, the profitability of the trade for Syria will be affected, as may be the case in relation to Syria’s reputation in the region.

## Conclusion

The purpose of this report is to identify a cross-section of international mechanisms and regional cooperation opportunities that may contribute to accountability for the manufacture, trafficking, and sale of captagon by the Syrian state. It is intended to identify starting points for further investigation and research into the feasibility of the identified mechanisms. It is thus not intended to deal exhaustively with the operationalization of the identified mechanisms. No single mechanism offers a viable route through which to secure strong accountability by itself. As such, further consideration is needed to construct a coordinated accountability strategy through which various mechanisms are utilized to cumulatively advance accountability.

It is vital that, as the captagon trade expands from a regional illicit phenomenon to a trans-regional, globalized challenge to law enforcement, public health, rule of law, and human security, governments begin to contemplate policy pathways that can address the trade from the demand side to the supply side. Pursuing accountability within international organizations, such as the United Nations, for captagon manufacturers, traffickers, and dealers can be a key component of an emerging, coordinated counter-captagon strategy.

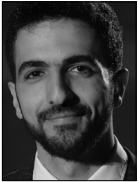
This report outlines these different pathways for governments to achieve better accountability for captagon agents, primarily in Syria. It identifies how countries



can utilize the infrastructure of the Human Rights Council, establishing a mandate to focus on the nexus between illicit narcotics and human rights abuses; utilize its Periodic Review process to adopt captagon as a key agenda item; and expand the Independent International Commission of Inquiry on the

Syrian Arab Republic. Additionally, U.N. member countries can improve fact-finding capabilities and investigations into how captagon is affecting public health. Finally, countries can further explore how to use procedure within the U.N. Charter and U.N. Treaty to further emphasize the

link between the illicit space and malign activity, such as human rights abuses. However, accountability can be achieved only if governments are committed to consistent intelligence exchange, dialogue, and coordination in countering the trade at large, either on a bilateral or a multilateral basis.



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Olabi has been interviewed by the BBC, CNN, The Guardian, The Financial Times, Al Jazeera, and Al-Arabiya. Olabi has been advising The Government of The Netherlands on their case against Syria for Torture at the International Court of Justice. He holds a master's degree in Public Policy from the University of Oxford.



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## Endnotes

- 1 See generally, Karam Shaar and Caroline Rose, *The Syrian Regime's Captagon End Game*, New Lines Institute for Strategy and Policy, May 2023. <https://newlinesinstitute.org/wp-content/uploads/2023/05/25-Dossier-Syrian-Regime-Captagon-NLISAP-1-1.pdf> (accessed Aug. 12, 2023).
- 2 See, for example, Report to Congress on A Written Strategy to Disrupt and Dismantle Narcotics Production and Trafficking and Affiliated Networks Linked to the Regime of Bashar al-Assad in Syria, Sec. 1238(c) of the National Defense Authorization Act for Fiscal Year 2023, P.L. 117-263, June 29, 2023. <https://www.state.gov/report-to-congress-on-a-written-strategy-to-disrupt-and-dismantle-narcotics-production-and-trafficking-and-affiliated-networks/> (accessed 12 August 2023).
- 3 Rose, Caroline, and Marks, Jesse. *Jordan is Far From Normalization with Syria*. New Lines Institute for Strategy and Policy. <https://newlinesinstitute.org/state-resilience-fragility/illicit-economies/jordan-is-far-from-normalization-with-syria/>.
- 4 U.N. News, "Russia, China block Security Council referral of Syria to International Criminal Court." United Nations. May 22, 2014. <https://news.un.org/en/story/2014/05/468962>
- 5 International Convention on the Elimination of All Forms of Racial Discrimination (1965); International Covenant on Civil and Political Rights (1966); International Covenant on Economic, Social and Cultural Rights (1966); Convention on the Elimination of All Forms of Discrimination against Women (1979); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); Convention on the Rights of the Child (1989); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); International Convention for the Protection of All Persons from Enforced Disappearance (2006); and Convention on the Rights of Persons with Disabilities (2006).
- 6 See <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading> (accessed April 9, 2023).
- 7 See <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (accessed April 9, 2023).
- 8 Two separate treaty bodies have been established in relation to the Convention against Torture (CAT), the Committee Against Torture was established in terms of the provisions of CAT and is a traditional treaty body. Responding to the need for greater technical assistance by states, the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, was subsequently created as new type of treaty body that is less adversarial.
- 9 The only core U.N. human rights treaty not ratified by Syria is the International Convention for the Protection of All Persons from Enforced Disappearance (2006).
- 10 The only exceptions being, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000); the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000); and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006).
- 11 Rose, Caroline, *Iraq and Turkey: Two Transit Countries to Watch in the Captagon Drug Trade*, New Lines Institute for Strategy and Policy (April 4, 2023) <https://newlinesinstitute.org/syria/iraq-and-turkey-two-transit-countries-to-watch-in-the-captagon-drug-trade/> (accessed Aug. 12, 2023).
- 12 Human Rights Council Resolution S-17/1 (22 August 2011).
- 13 See, for example, Human Rights Council Resolution S/19-1 (June 4, 2012); Human Rights Council Resolution S-25/1 (Oct. 25, 2016); Human Rights Council Resolution 37/1 (March 5 2018); and Human Rights Council Resolution 44/21 (July 17, 2020).
- 14 Russia has vetoed 17 Security Council resolutions on Syria to date. See: <https://usun.usmission.gov/remarks-at-a-un-general-assembly-meeting-following-a-veto-by-russia-on-a-un-security-council-resolution-on-syria/> (accessed Aug. 12, 2023).
- 15 General Assembly Resolution 76/262 (April 26, 2022).
- 16 See <https://home.treasury.gov/news/press-releases/jy1369> (accessed April 5, 2024).
- 17 See <https://www.consilium.europa.eu/en/press/press-releases/2023/04/24/syria-eu-sanctions-drug-trade-benefitting-the-regime/> (accessed April 5, 2024).
- 18 See [https://www.oas.org/ext/Portals/33/Files/TreatiesB/Parag\\_tratbil\\_ecu\\_esp\\_1.pdf](https://www.oas.org/ext/Portals/33/Files/TreatiesB/Parag_tratbil_ecu_esp_1.pdf) (accessed Aug. 12, 2023).
- 19 See <https://www.eurojust.europa.eu/crime-types-and-cases/crime-types/drug-trafficking> (accessed Aug. 12, 2023).
- 20 See <https://www.eurojust.europa.eu/about-us/what-we-do> (accessed Aug. 12, 2023).
- 21 See <https://www.chile.gob.cl/chile/blog/paraguay/asuncion/paraguay-y-chile-buscan-reforzar-cooperacion-internacional-sobre-el> (accessed Aug. 12, 2023).
- 22 See [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=S-006/17](https://www.oas.org/en/media_center/press_release.asp?sCodigo=S-006/17) (accessed Aug. 12, 2023).
- 23 See <https://elpaccto.eu/?lang=en> (accessed Aug. 12, 2023).
- 24 See <https://www.elpaccto.eu/en/news/lanzamiento-del-comite-latinoamericano-de-seguridad-interior/> (accessed Aug. 12, 2023).
- 25 See <https://www.gsdrc.org/docs/open/regional-organisations/unasur:%202008,%20establishing%20treaty.pdf> (accessed Aug. 12, 2023).
- 26 See <https://copolad.eu/en/what-is-copolad/> (accessed Aug. 12, 2023).

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