

Improving the prospects of
prosecuting ‘terrorists’ for core
international crimes committed
in the context of the conflict in
Syria and Iraq

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International Centre for
Counter-Terrorism

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ICCT Report
October 2023



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Abstract

The majority of European citizens - often referred to as 'foreign fighters' - that have returned to European soil have predominantly been prosecuted for terrorist offences. In recent years several European countries have been prosecuting alleged terrorists cumulatively for both terrorist offences and core international crimes. This paper explores which building blocks need to be in place to allow for such prosecutions. This paper argues that only if a suitable legal and institutional framework is in place can prosecution of core international crimes take place, thereby contributing to achieving accountability of the full range of crimes that have been committed by alleged terrorists in the context of the conflict in Syria and Iraq.

Keywords: ISIL/Da'esh, terrorist, Syria, Iraq, core international crimes

Introduction

ISIS and other terrorist groups have spread fear amongst civilian population and committed horrific crimes on a massive scale in the context of the conflict in Syria and Iraq. These crimes - in particular between 2013 and the territorial defeat of ISIS in 2019 - include carrying out terrorist attacks such as suicide bombings, murder, extrajudicial executions, torture, hostage-taking, conscripting children, sexual and gender-based violence, and persecution against Yazidis and other minority groups.¹

Many of these underlying criminal acts may constitute war crimes, crimes against humanity, or genocide, also collectively known as core international crimes. Article 6, 7, and 8 of the Rome Statute of the International Criminal Court (ICC) lists specific underlying criminal acts relevant to these offences, such as torture, enslavement, murder, sexual slavery, attacking civilians, and persecution.² Many of these are relevant in the context of the conflict in Syria and Iraq. When committed during armed conflict, some of these acts can constitute war crimes, and when conducted as part of a widespread or systematic attack directed against a civilian population, they can constitute crimes against humanity. Such acts may also constitute genocide if they are committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. In relation to the conflict in Syria and Iraq, the Independent International Commission of Inquiry on the Syrian Arab Republic (CoI) reported in 2016 that ISIS has committed genocide, multiple crimes against humanity, and war crimes against the Yazidi community.³ Yazidi women and girls were subjected to a range of sexual and gender-based violence including rape, and trafficked as slaves by ISIS.⁴

Bringing terrorists to justice within a rule of law framework is a vital aspect of an effective counter-terrorism strategy. According to United Nations Security Council Resolution (UNSCR) 1373(2001), States need to ensure that any person who participates in the financing, planning, preparation, or perpetration of terrorist acts or in supporting terrorist acts is brought to justice.⁵ States must similarly ensure that such terrorist acts are established as serious criminal offences under domestic law and that the punishment duly reflects the seriousness of such terrorist acts. Given the commission of core international crimes by ISIS and other terrorist organisations, one can argue that the obligation to bring alleged terrorists to justice for the full range of crimes they have committed is not only limited to terrorism offences, but must also extend to core international crimes. Holding terrorists accountable for the full range of crimes is not only a legal obligation, but can also lead to higher sentences and provide more justice to the victims.⁶ Furthermore,

1 UN Human Rights Council, "Report of the Independent International Commission of Inquiry on the Syrian Arab Republic", A/HRC/44/61, 3 September 2020 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/224/45/PDF/G2022445.pdf?OpenElement>.

2 UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, Articles 6-8, available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

3 UN Human Rights Council, "They came to destroy: ISIS Crimes Against the Yazidis", A/HRC/32/CRP.2, 15 June 2016, available at https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoISyria/A_HRC_32_CRP.2_en.pdf.

4 The nexus between sexual and gender-based violence (SGBV), human trafficking and migrant smuggling in the context of terrorist groups has been recognised in several UN Security Council Resolutions. UN Security Council Resolution 2331, S/Res/2331, 20 December 2016, available at <https://www.un.org/securitycouncil/s/res/2331-%282016%29>. Specifically addressing the linkages between these crimes: UN Security Council Resolution 2388, S/Res/2388, 21 November 2017, available at <https://www.un.org/securitycouncil/content/sres2388-2017>.

5 UN Security Council Resolution 1373, S/Res/1373, 28 September 2001, available at https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf.

6 Network for Investigation and Prosecution of Genocide, Crimes Against Humanity, and War Crimes, "Cumulative Prosecution of Foreign Terrorist Fighters for Core International Crimes and Terrorism-related Offences", Eurojust, May 2020, available at https://www.eurojust.europa.eu/sites/default/files/2020-05/2020-05_Report-on-cumulative-prosecution-of-FTFs_EN.pdf.

statutes of limitations are not applicable to core international crimes and as a result these crimes can be prosecuted decades later. The underlying reason for this is that core international crimes are considered so grave they may not go unpunished or lead to impunity. Finally, prosecuting for core international crimes has a symbolic function, giving recognition to the scale and harm done to victims and sending a clear message of condemnation.

The majority of European citizens - often referred to as ‘foreign fighters’ - that have returned to European soil have predominantly been prosecuted for terrorist offences, most notably membership of a terrorist organisation, but also for preparation of terrorist offences, incitement to terrorism, receiving or giving terrorist training, or financing of terrorism.⁷ In recent years several European countries have been prosecuting alleged terrorists cumulatively for both terrorist offences and core international crimes, thereby holding them accountable for the full range of crimes they have committed. These crimes have been committed by Syrian and Iraqi nationals, as well as Europeans who travelled to that conflict zone to join ISIS or other terrorist groups.

Whether a country prosecutes an alleged terrorist depends on whether they are ‘willing and able’ to do so. Considering the benefits of prosecuting both terrorism offences and core international crimes, this paper mainly focuses on the ‘able’ part. Specifically, it considers which building blocks need to be in place to allow the cumulative prosecution of terrorist suspects for terrorist offenses such as membership in a terrorist organisation and for core international crimes. The paper will do so by first looking at whether there is a legal obligation for States to prosecute alleged terrorists for serious crimes, in particular core international crimes, then by looking at establishing jurisdiction, criminalising offences, and the need for a structural organisation and expertise. This paper argues that only if a suitable legal and institutional framework is in place can prosecution of core international crimes take place, thereby contributing to achieving accountability of the full range of crimes that have been committed by alleged terrorists in the context of the conflict in Syria and Iraq. This analysis will also help policy makers and practitioners serve as a useful backgrounder to the topic and better understand why certain countries are not prosecuting alleged terrorists for core international crimes. The paper will rely on a unique set of relevant case law from European countries to guide its analysis, compiled in a dataset which is described in more detail in the first section of this paper, and attached in a condensed version as an appendix.

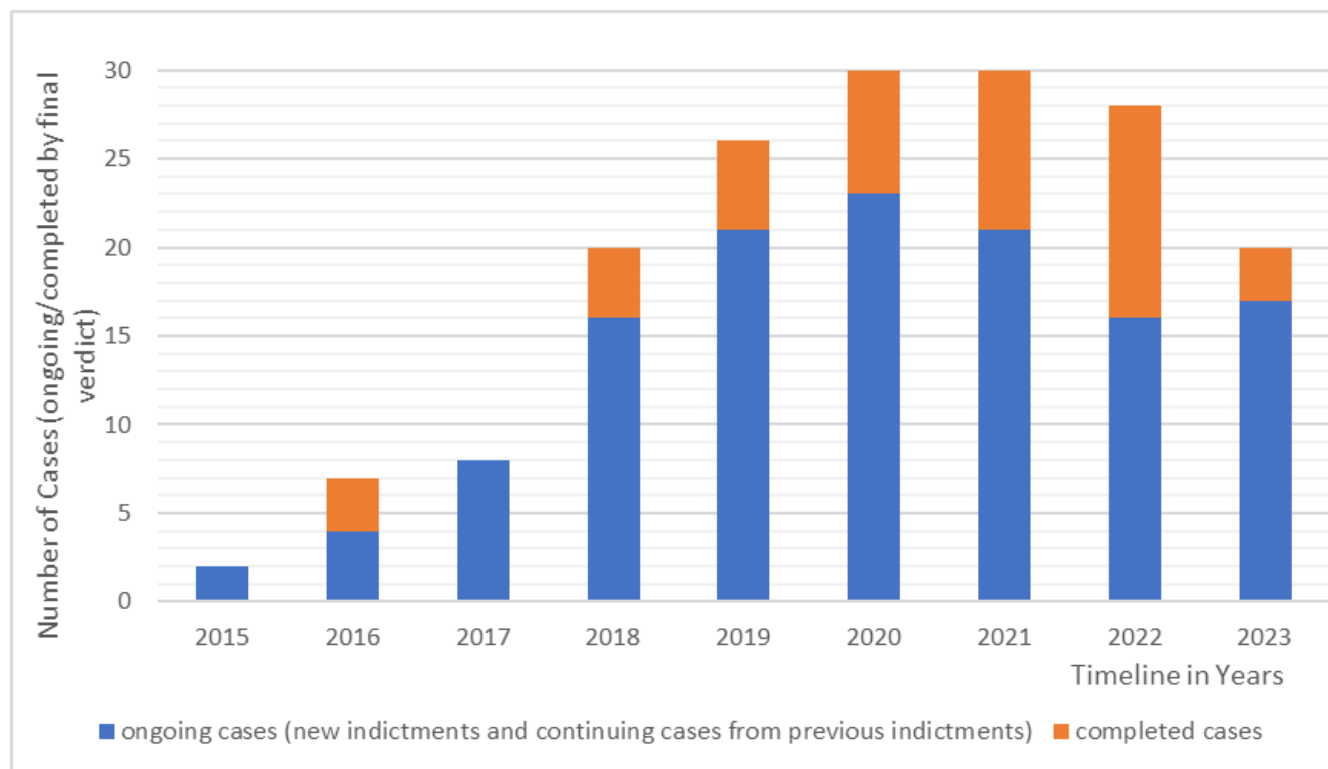
The Dataset

The following analysis is based on an extensive dataset compiled by the author of criminal cases focussing exclusively on prosecutions of alleged terrorists who have been charged with terrorist offences and core international crimes. When referring to *a case* in the context of this dataset and analysis, reference is made to one individual. The term *prosecution* is to be understood as the process of holding someone criminally accountable as such. This includes investigations, filing of indictments, trial phase, a conviction or acquittal, and in cases of a conviction, sentencing of an individual. Consequently, an individual ‘being prosecuted’ for certain conduct does not mean that the individual is eventually found guilty and convicted of this conduct, but that investigations were initiated. Proceedings in the case could be terminated for various reasons including the death of a suspect, a lack of evidence, or certain conduct which could not be proven beyond reasonable doubt during trial. Based on this definition of *prosecution*, the cases were divided into six categories, depending on the status of proceedings: under investigation, awaiting trial, case terminated, on trial, final (or partial) conviction, and final full acquittal. To be considered as

⁷ “European Union Terrorism Situation and Trend report 2023”, Europol, 14 June 2023, p. 13, available at <https://www.europol.europa.eu/publication-events/main-reports/european-union-terrorism-situation-and-trend-report-2023-te-sat>.

final, a case must be completed by a court decision after which all legal remedies have been used and there is no higher instance to hear the case, or the parties to the case have waived their right to use legal remedies and accepted the decision of a court as final. Only focusing on final trials may give a distorted view of the efforts that are being undertaken in a country to hold alleged terrorists accountable for both terrorist offences and core international crimes. For example, the below overview of trends over time would not be possible without also taking into account cases at investigation and pre-trial stage.

Table 1: Timeline of Cumulative Charges Prosecutions in European Countries (n=75, nnew=64, ncompl=43, as of 15 September 2023)



With this categorisation in mind, a list of cases in which alleged terrorist were prosecuted by domestic authorities for both terrorist offences and core international crimes was collected. This was done in the context of the conflicts in Syria and Iraq, given that these conflicts have not only attracted a large number of foreigners from across the globe but also Syrian and Iraqi nationals joining terrorist groups and other non-state armed groups.⁸ Therefore, the term *alleged terrorist* refers to any person who has joined a group such as ISIS, Jabhat al-Nusra, Hayat Tahrir al-Sham (HTS), or any other group that has been designated as a terrorist organisation by the EU, UN, or considered a terrorist group by a court in Europe. This means that prosecutions of members of armed opposition groups participating in the Syrian or Iraqi conflict that have not received this designation, such as the Free Syrian Army, and Syrian or Iraqi government forces, are excluded from the data set.⁹ In addition to nationals of the prosecuting State, the dataset also includes

⁸ The Rule of Law in Armed Conflict Project, “Non-international armed conflicts in Syria”, Geneva Academy, 29 September 2022, available at <https://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-syria#collapse3accord>.

⁹ In Sweden two members of the Free Syrian Army have been prosecuted for core international crimes, see: Case B 4770-16, *Mouhannad Droubi*, Judgement, Svea Court of Appeal, 5 August 2016; Case B 2259-17, *Haisam Omar Sakhanh*, Judgement, Svea Court of Appeal, 31 May 2017. Another three FSA members have been prosecuted for core international crimes in Germany, see: Case 3-3 StE 5/18, *Mohammad K.*, Judgement, OLG Stuttgart, 4 April 2019; Case 2 StE 6 OJs, *Kassim A.*, Judgement, OLG Koblenz, 13 February 2020; Case 3 StR 228/19, *Ibrahim Al F.*, Order, Federal Court of Justice, 19 August 2019. In addition, two former members of the Syrian General Intelligence Service

Syrian or Iraqi nationals who joined designated terrorist groups and are prosecuted abroad for crimes committed in the conflict zone. With more than 5,000 European citizens having joined terrorist groups in Syria and Iraq since 2013, and European countries hosting the largest diaspora of Syrian and Iraqi nationals next to the countries neighbouring the conflict zone including Turkey, the dataset is limited to cases that arose within European states.¹⁰ Reflecting the chronology of the Syrian and Iraqi conflicts, the dataset only includes cases which address crimes allegedly committed after July 2012.¹¹ New cases have been collected and developments in existing cases were updated in the dataset until 15 September 2023.

Against this background, an open-source, online search into relevant cases was conducted, applying native-level language skills in English, German, and Dutch, as well as assistance by leading multi-lingual online translation tools. As a first step, domestic authorities with the competence to initiate criminal proceedings in core international crimes and terrorism investigations in all European countries were identified. Press releases issued by these authorities were screened to identify and reflect recent developments in relevant cases. This list of cases was then checked against existing case-law databases, such as the International Crimes Database, or the Overview of National Jurisprudence on Core International Crimes, which is maintained by Eurojust's Genocide Network.¹² Each domestic court that has jurisdiction to try cases concerning core international crimes and terrorism charges was then identified, along with relevant jurisprudence databases. The number of relevant courts, including the number of available instances, varies per country with over forty respective courts identified by the author across Europe.¹³ These databases were searched using information from the existing list of cases to capture the most up-to-date judicial developments. Additionally, search terms based on charges from this list of cases were used to identify additional relevant cases within these databases. Finally, an online search using terms including names of defendants and courts as well as key terminology such as 'sentenced', 'charged', 'arrested', 'convicted', 'acquitted', 'guilty' in all of the above-mentioned languages were used to cross-check the existing list of cases and to identify additional cases through media reporting. Respective sources were only considered for the purpose of this research when corroborated by other open-source material.

The dataset does not claim to be exhaustive. However, due diligence was given to ensure that the dataset is as comprehensive as possible, allowing for meaningful analyses and contributions to discussions concerning the prosecution of alleged terrorists for core international crimes and terrorist offences. The analyses are based on a detailed assessment of the open-source

were convicted for crimes against humanity by the Higher Regional Court Koblenz in Germany, see: Case 1 StE 3/21, *Eyad A.*, Judgement, OLG Koblenz, 24 February 2021; and Case 1 StE 9/19, *Anwar R.*, Judgement, OLG Koblenz, 13 January 2022. However, there is some reluctance to prosecute members of the armed oppositions groups that have been assisting the coalition forces.

¹⁰ Richard Barrett, "Beyond the Caliphate: Foreign Fighters and the Threat of Returnees", The Soufan Center, October 2017, p. 10, available at <https://thesoufancenter.org/wp-content/uploads/2017/11/Beyond-the-Caliphate-Foreign-Fighters-and-the-Threat-of-Returnees-TSC-Report-October-2017-v3.pdf#page=10>; According to the UN, European countries host around one million refugees from Syria alone: "Syria Refugee Crisis – Globally, in Europe and in Cyprus", UNHCR Cyprus, 18 March 2021, available at <https://www.unhcr.org/cy/2021/03/18/syria-refugee-crisis-globally-in-europe-and-in-cyprus-meet-some-syrian-refugees-in-cyprus/>.

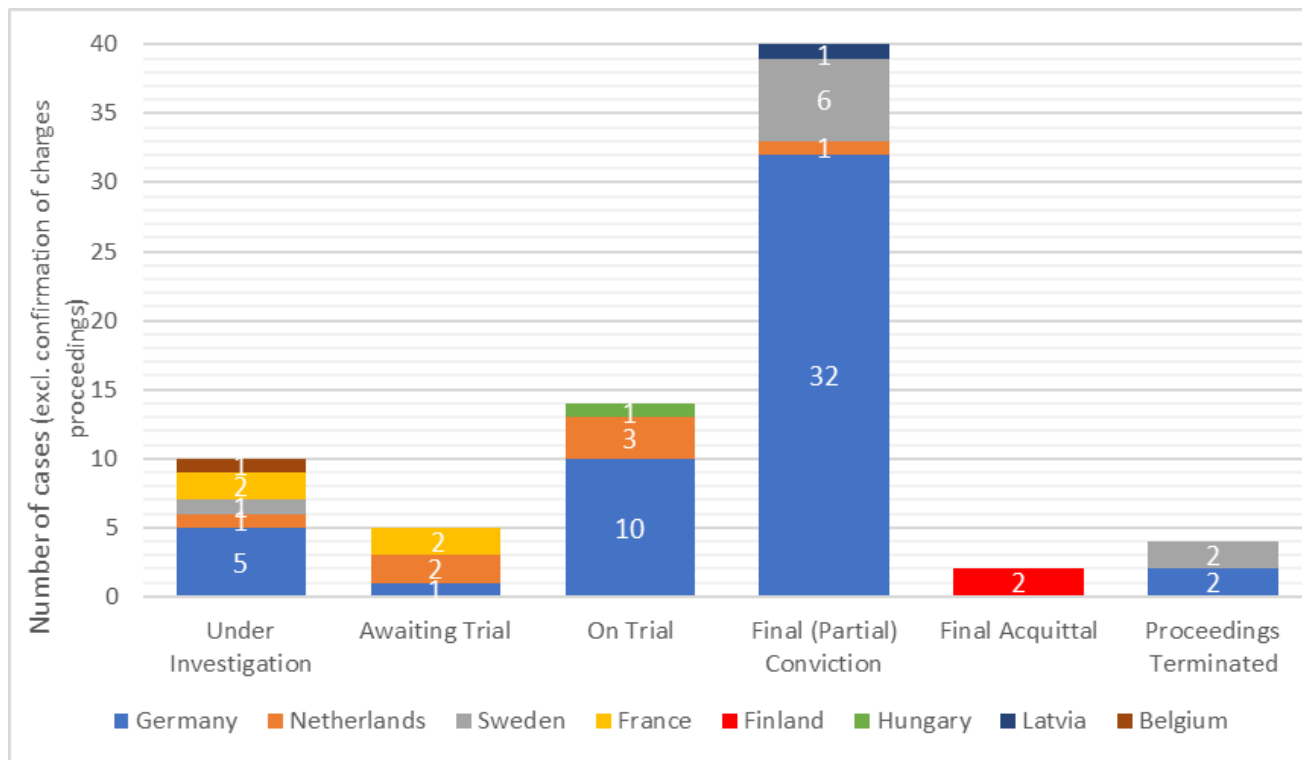
¹¹ International Committee of the Red Cross, "Syria: ICRC and Syrian Arab Red Crescent maintain aid effort amid increased fighting", Operational Update, 17 July 2017, available at <https://www.icrc.org/en/doc/resources/documents/update/2012/syria-update-2012-07-17.htm>.

¹² T.M.C. Asser Instituut, "International Crimes Database", available at <https://www.internationalcrimesdatabase.org/>; Network for Investigation and Prosecution of Genocide, Crimes Against Humanity, and War Crimes, "Overview of National Jurisprudence", Eurojust, available at <https://www.eurojust.europa.eu/publication/overview-national-jurisprudence>.

¹³ In the Netherlands, cases concerning core international crimes are centrally tried on first instance at the Rechtbank Den Haag and terrorism-related cases usually at the Rechtbank Rotterdam as explained below. Whereas in Germany, terrorism and/or core international crimes cases are tried on first instance at one of the 26 Higher Regional Courts.

information available on the collected cases which, unfortunately does not always include full written court decisions or other judicial documents.

Table 2: Dataset Detailing Case Status (n=75, as of 15 September 2023)



Bringing Alleged Terrorists to Justice for the Full Range of Crimes

War crimes, crimes against humanity, and genocide are considered the most serious crimes under international law, and a concern to the international community as a whole. According to the UN Commission on Human Rights, which was replaced by the UN Human Rights Commission, serious crimes of international law include ‘grave breaches of the Geneva Conventions, Additional Protocol I and other violations of international humanitarian law (IHL) that are crimes under international law, genocide, [and] crimes against humanity.’¹⁴ The jurisdiction of the ICC is limited to the most serious crimes of concern to the international community as a whole, these being war crimes, crimes against humanity, genocide, and the crime of aggression. The Preamble to the Rome Statute further emphasises that ‘such grave crimes threaten the peace, security, and well-being of the world’ and that ‘the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation.’

Due to the grave nature of core international crimes, there is a general obligation for states to prosecute these crimes.¹⁵ This obligation can be broken down into different elements: to establish

¹⁴ UN Commission on Human Rights, “Set of principles for the protection and promotion of human rights through action to combat impunity”, E/CN.4/2005/102/Add.1, 8 February 2005, available at https://ap.ohchr.org/documents/alldocs.aspx?doc_id=10818.

¹⁵ Whether there is an obligation to prosecute or extradite for core international crimes under customary international law remains questionable. The International Law Commission indicated it is not excluded that the principle has not yet crystallised into a rule of customary international law. See: International Law Commission, “The obligation to extradite or prosecute”, Yearbook of the International Law Commission II, no. 2 (2014): 103, para. 53, available at https://legal.un.org/ilc/publications/yearbooks/english/ilc_2014_v2_p2.pdf. There is not sufficient

jurisdiction, to criminalise core international crimes under domestic law,¹⁶ to penalise the offences in a manner that duly reflects the seriousness of the crimes,¹⁷ and to initiate investigations and submit the case to the prosecuting authorities.¹⁸ With respect to the obligation of states to prosecute these crimes in the context of this paper, ‘impunity’ refers to the inability and/or unwillingness of states to bring perpetrators of serious violations of international law to justice.

However, ending impunity is not only relevant in relation to core international crimes. States also have an obligation to hold those responsible for terrorist acts accountable under international law. In addition to counter-terrorism conventions that contain the obligation *aut dedere aut judicare* – also referred to as the obligation to extradite or prosecute¹⁹ – the UNSCR 1373(2001) on counter-terrorism specifically calls on all states to ‘deny safe haven’ to supporters, financiers, and other affiliates of terrorism. This is considered to constitute the obligation to extradite or prosecute, according to the UN Counter-Terrorism Committee.²⁰ Other UNSC Resolutions such as UNSC 2178(2014) and UNSC 2396(2017) also impose an obligation on States to bring those responsible for terrorist offences to justice. If all countries would adhere to the obligation of *aut dedere aut judicare*, this would de facto mean there should be no place to hide, no safe haven, for any terrorist. However, the fact that there is no definition of terrorism or of who is a terrorist, presents political and practical problems. The Kurdistan Workers’ Party (PKK) is designated as a terrorist group by the EU, Turkey, and a few other countries such as the United States (US) and Canada, but not the UN.²¹ The recent refusal of Sweden to extradite alleged members of the PKK, such as Turkish journalist Bulent Kenes, is what prompted Turkey to initially oppose Sweden’s accession to NATO and to claim that Sweden is harbouring terrorists.²² The obligation to extradite or prosecute can thus be seen as laying the groundwork for ‘an effective system of criminalisation and prosecution,’²³ and key to fighting impunity for both core international crimes, and terrorism offenses.

evidence of State practice and *opinio juris* to conclude that war crimes, crimes against humanity and genocide specifically or in general have matured enough to form a customary obligation. See Claire Mitchell, “Source of the *aut dedere aut judicare* obligation”, in *Aut Dedere, aut Judicare: The Extradite or Prosecute Clause in International Law*, (Graduate Institute Publications, 2011), available at <http://books.openedition.org/iheid/249>.

16 Geneva Conventions I–IV, articles 49, 50, 129 and 146, respectively; and Genocide Convention, article 5. See UNSC 1373(2001), article 2(e), UNSC 2178(2014), para 6, UNSC 2396(2017), para 1.

17 *Ibid.*

18 Geneva Conventions I–IV, articles 49, 50, 129 and 146; Genocide Convention, articles 4 and 7; Geneva Conventions I–IV, articles 49, 50, 129 and 146.

19 The 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; the 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; 2010 Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft; the 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation; the 1979 International Convention against the Taking of Hostages; the 1980 Convention on the Physical Protection of Nuclear Material; the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism; the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; the 1997 International Convention for the Suppression of Terrorist Bombings; the 1999 International Convention for the Suppression of the Financing of Terrorism.

20 UN Security Council, “Report by the Chair of the Counter-Terrorism Committee on the problems encountered in the implementation of Security Council resolution 1373 (2001)”, S/2004/70, 26 January 2004, p. 6, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/219/97/PDF/N0421997.pdf?OpenElement>.

21 See: “Foreign Policy - PKK”, Republic of Turkey Ministry of Foreign Affairs, available at <https://www.mfa.gov.tr/pkk.en.mfa>; Council Implementing Regulation (EU) 2022/147, OJ L 25/1, 4 February 2022, Annex, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2022:025:FULL>; US Department of State, “Designated Foreign Terrorist Organizations”, Bureau of Counterterrorism, available at <https://www.state.gov/foreign-terrorist-organizations/>; “Currently Listed Entities”, Public Safety Canada, available at <https://www.publicsafety.gc.ca/cnt/ntnl-scr/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-en.aspx#43>.

22 Sean Beeghly, “Sweden Supreme Court rules journalist may not be extradited to Turkey”, *Jurist*, 20 December 2022, available at <https://www.jurist.org/news/2022/12/sweden-supreme-court-rules-journalist-may-not-be-extradited-to-turkey/>.

23 International Law Commission, “Obligation”, para. 3.

In relation to war crimes, the Geneva Conventions obligate States to prosecute or extradite individuals suspected of grave breaches of international humanitarian law.²⁴ Additionally, under customary international law, states have the obligation to investigate and prosecute war crimes even if they were not committed domestically, by one of its nationals, or against one of its nationals but also when committed abroad, and by a foreigner against foreigners. Both obligations are applicable in both international and non-international armed conflicts.²⁵ The Genocide Convention on the other hand does not seem to provide for an obligation to prosecute or extradite, but only obliges states to establish jurisdiction when the crimes have been committed on their territory.²⁶ Furthermore, there appears to be no conventional basis for the obligation to prosecute or extradite concerning crimes against humanity or war crimes other than grave breaches and war crimes in non-international armed conflicts.²⁷ In 2022, the sixth committee of the UN adopted a resolution which brings the process of a Convention on Crimes against Humanity one step closer to adoption, although many hurdles still need to be overcome. If adopted, it could further close the impunity gap and impose an obligation for States to prosecute or extradite under the current Draft article 7.²⁸

If we zoom in to the first limb of the obligation to extradite or prosecute, states can only extradite to another country that has jurisdiction. Furthermore, deportations and extraordinary renditions – illegal transfer of a person abroad for the purposes of detention and interrogation - are not considered extraditions.²⁹ Several ‘foreign fighters’ have been detained in a third country, for example, United States (US) citizen Mirsad Kandic, who after several failed attempts to join the ranks of ISIS was detained in Bosnia and Herzegovina. After his arrest, Kandic was extradited to the US. In 2022, he was convicted of one count of conspiracy to provide material support to ISIS and five counts of providing material support to ISIS and sentenced to life imprisonment in July 2023.³⁰ Mirsad Kandic carried out many different activities for ISIS, he was engaged in smuggling weapons and money, actively recruiting ‘foreign fighters’, and providing training to them. If Mirsad Kandic were a European citizen and were to stand trial in a court in Europe that allows cumulative charging, he could be tried for a range of terrorist offences such as recruitment to terrorism,

24 Article 49 of the 1949 Geneva Convention I, Article 50 of the 1949 Geneva Convention II, Article 129 of the 1949 Geneva Convention III and Article 146 of the 1949 Geneva Convention IV

25 See: “Practice on Rule 157 and 158”, IHL Database. It should be noted that this only constitutes one part of the limb. While there is a customary basis to cooperate in the prosecution of war crimes, where possible, there is no obligation to extradition. See: IHL Database, “Rule 161”, IHL Database, available at <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule161>.

26 Article 6 of the Genocide Convention refers to the obligation to prosecute genocide when committed on their territory, but can establish universal jurisdiction. Amina Adanan, “Reflecting on the Genocide Convention at 70: How genocide became a crime subject to universal jurisdiction”, delivered after Nottingham International Law and Security Centre Interdisciplinary Conference, Nottingham, UK, 9 November, 2018, available at <https://www.ejiltalk.org/symposium-on-the-genocide-convention-reflecting-on-the-genocide-convention-at-70-how-genocide-became-a-crime-subject-to-universal-jurisdiction/>.

27 International Law Commission, “The obligation to extradite or prosecute (aut dedere aut judicare)”, Final Report, Yearbook of the International Law Commission 2:2, 2014, para. 14, available at https://legal.un.org/ilc/texts/instruments/english/reports/7_6_2014.pdf.

28 International Law Commission, “Draft Articles on Prevention and Punishment of Crime Against Humanity”, Report, Yearbook of the International Law Commission 2:2, 2019, available at https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_7_2019.pdf.

29 International Law Commission, “The obligation to extradite or prosecute (aut dedere aut judicare)”, Final Report, Yearbook of the International Law Commission 2:2, 2014, para. 22, available at https://legal.un.org/ilc/texts/instruments/english/reports/7_6_2014.pdf.

30 Department of Justice, “Federal Jury Convicts High-Level ISIS Member of Providing Support to a Foreign Terrorist Organisation, Including Two Counts Resulting in Death”, Office of Public Affairs Press Release, 25 May 2022, available at <https://www.justice.gov/opa/pr/federal-jury-convicts-high-level-isis-member-providing-material-support-foreign-terrorist>; Department of Justice, “High Level Member of ISIS Sentenced to Life in Prison for Material Support to a Foreign Terrorist Organization Resulting in Death”, U.S. Attorney’s Office Eastern District of New York Press Release, 14 July 2023, available at <https://www.justice.gov/usao-edny/pr/high-level-member-isis-sentenced-life-prison-material-support-foreign-terrorist>.

providing training for terrorist purposes and financing for terrorism in addition to membership of a terrorist organisation. More interesting is whether some of the underlying acts may constitute a core international crime. Kadic produced and disseminated the so-called documentary ‘Flames of War’ featuring executions carried out by ISIS and showing victims being made to dig their own grave before being executed at gunpoint. According to a US Department of Justice press release, Kadic tweeted ‘best thing ever seen on screen’.³¹ Considering that Kadic used more than 120 Twitter accounts, the dissemination and derogatory remark could constitute outrage upon personal dignity as a war crime. To qualify as a war crime, the act must be connected to the conflict, must concern persons who are protected under IHL, and Kadic should or could have been aware of their protected status, in this case as Iraqi government forces.

Some countries, such as the United Kingdom (UK) and the Netherlands, have revoked the citizenship of their foreign fighters, which poses significant challenges to the obligation to extradite or prosecute under several of the counter-terrorism conventions, such as the 1997 International Convention for the Suppression of Terrorist Bombings, or the 1999 International Convention for the Suppression of the Financing of Terrorism. When a country revokes the nationality of its citizens suspected of terrorism-related activities and deports him or her, it violates its obligation under relevant terrorism conventions. When a citizen is stripped of their nationality while in Syria or Iraq, their country clearly does not want the individual to return home (to stand trial), nor has this led to a prosecution in accordance with the right to a fair trial in Syria or Iraq where the citizen is located. Through the use of the deprivation of nationality, a State acts against the spirit and purpose of the obligation to extradite or prosecute under relevant terrorism conventions.

There are notable gaps in providing mutual legal assistance (MLA) – a formal cooperation between states in providing assistance and collection information for the purpose of criminal proceedings - and meeting extraditions for core international crimes. Only the Genocide Convention contains a political offence exception to extradition, which means that states should not treat genocide as a political crime such as terrorism, and therefore cannot use this as an excuse to refuse an extradition request.³² In order to combat impunity, it is crucial not only to strengthen a state’s ability to investigate and prosecute core international crimes, but also to improve extradition and MLA. In an initiative spearheaded by Slovenia, Argentina, Belgium, Mongolia, the Netherlands, and Senegal to address this cooperation gap, states have negotiated a Draft Convention on International Cooperation in the Investigation and Prosecution of Genocide, Crimes against Humanity, War Crimes, and other International Crimes after many rounds of consultations.³³ While the grounds for refusal were considerably broad and allowed states to refuse mutual legal assistance based on sovereignty, security, and *ordre public* (a set of fundamental values that form the essence of a society), in the final version of the Convention these grounds have been removed. On 26 May 2023, the Ljubljana-Hague Convention was adopted by 80 states, marking a significant milestone in achieving accountability for core international crimes.³⁴

31 Department of Justice, “High Level Member of ISIS Sentenced to Life in Prison for Material Support to a Foreign Terrorist Organization Resulting in Death”, U.S. Attorney’s Office Eastern District of New York Press Release, 14 July 2023, available at <https://www.justice.gov/usao-edny/pr/high-level-member-isis-sentenced-life-prison-material-support-foreign-terrorist>.

32 See article 7 Genocide Convention.

33 “Mutual Legal Assistance and Extradition Initiative”, Republic of Slovenia Ministry of Foreign and European Affairs, available at <https://www.gov.si/en/registries/projects/mla-initiative/>.

34 Republic of Slovenia, “The Ljubljana-Hague Convention adopted”, News Release, 26 May 2023, available at <https://www.gov.si/en/news/2023-05-26-the-ljubljana-hague-convention-adopted/>.

Establishing Jurisdiction

Establishing jurisdiction is a logical and necessary pre-condition to implement the obligation to extradite or prosecute in practice. Establishing jurisdiction can be on the basis of territoriality principle, active or passive nationality principle, or under universal jurisdiction. Without providing courts the authority or jurisdiction to hear a case, there can be no prosecutions.

Territorial Jurisdiction

The most common ground for establishing jurisdiction is territorial jurisdiction, meaning that courts have jurisdiction over crimes that have been committed within the territory of the state, also referred to as *locus delicti*. The majority of the crimes committed by ISIS and other terrorist groups in the context of the conflict in Syria and Iraq between 2013 and 2019 were committed in Syria and Iraq. Admittedly, European nationals who have joined ISIS or other terrorist groups could, in addition to crimes committed in the conflict, also perpetrate crimes before travelling in their home country, such as joining a terrorist group or receiving online training for terrorist purposes.

Both Syria and Iraq are the most ‘logical’ place as *locus delicti* where alleged terrorists would be held accountable. However, the prospects of the holding terrorists, including ‘foreign fighters’, accountable in Iraq are very slim, even more so in Syria.³⁵ The Counter-Terrorism Court in Syria is highly politicised and is even considered as a security branch of the Syrian regime, it is known for the lack of fair trials, confessions obtained through torture, and arbitrary detentions.³⁶ In Iraq, the courts are overburdened and while some progress has been made, prosecutions are still often confession-based, the death penalty is still being applied, and overly broad concepts of membership of terrorist groups are being used.³⁷ Whilst Iraq has adopted the Yazidi Survivors Law in 2021, the recent requirement for victims to file a criminal complaint to be eligible for reparation raises serious concerns and is a setback in a fair and meaningful implementation of the law.³⁸ In addition, Iraq has not adopted a law on core international crimes, although a joint working group has been established together with the UN Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIS (UNITAD) working towards criminalisation of core international crimes.³⁹ It is evident that currently neither Syria nor Iraq are able – even if they would be willing – to prosecute core international crimes.⁴⁰

Another option could be courts established by non-state actors located in Syria or Iraq, such as the Rojava courts established by the Autonomous Administration of North and East Syria

35 Committee on Legal Affairs and Human Rights, “Addressing the issue of Daesh foreign fighters and their families returning from Syria and other countries to the member States of the Council of Europe”, AS/Jur (2020) 03, 4 February 2020, available at <https://assembly.coe.int/LifeRay/JUR/Pdf/DocsAndDecs/2020/AS-JUR-2020-03-EN.pdf>.

36 “At Least 10,767 Persons Still Face Trial in Counter-Terrorism Court, nearly 91,000 Cases Heard by the Court – A Political/Security Court Which Aims at Eliminating Those Calling for Political Change for Democracy and Human Rights”, Syrian Network for Human Rights, 15 October 2020, available at <https://reliefweb.int/report/syrian-arab-republic/least-10767-persons-still-face-trial-counter-terrorism-court-nearly>.

37 “Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIS”, UN OHCHR, January 2020, available at https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_Report_HRAAdministrationJustice_Iraq_28January2020.pdf.

38 “Statement on the implementation of the Yazidi Survivors Law”, Amnesty International et al. Press Release, 14 April 2023, available at <https://reliefweb.int/report/iraq/statement-implementation-yazidi-survivors-law>.

39 <https://www.unitad.un.org/news/unitad-unique-partnership-iraq-and-continued-commitment-justice-victims-ISIS-crimes>.

40 Tanya Mehra, “Bringing (Foreign) Terrorist Fighters to Justice in a Post-ISIS Landscape – Part I: Prosecution by Iraqi and Syrian Courts”, ICCT Perspective, 22 December 2017, available at <https://www.icct.nl/publication/bringing-foreign-terrorist-fighters-justice-post-isis-landscape-part-i-prosecution>.

(AANES). While it is not uncommon for non-state actors in a non-international armed conflict to establish courts and administer justice, it raises several concerns. Although IHL does not explicitly prohibit non-state actors from creating their own courts, it does lay down certain minimum fair trial standards such as the right to a defence and the right to be presumed innocent. To illustrate this, a Court of Appeal in Sweden confirmed the findings of the District Court that the accused participated in the execution of seven Syrian soldiers who were held prisoners by a non-state armed group, called the Suleiman Fighting Company, an independent armed group separate from the Free Syrian Army. The defendant argued that he merely carried out a death sentence issued by a court and not an execution. The court concluded based on credible information from an expert witness that it is highly unlikely that at the time of the execution in May 2012, the Suleiman combat group actually established courts meeting the criteria of IHL, thereby concluding that any ‘death sentence’ handed down would be illegitimate and amount to an execution.

The situation with the AANES is quite different, three courts have been set, they have judges and have adopted ‘progressive’ laws but also face many fair trial issues. So far, the Rojava courts have only prosecuted Syrians members of ISIS but have claimed they also intend to prosecute some of the thousands of foreign ISIS suspects detained with the tacit consent of the suspects’ countries of origin. If the Rojava courts prosecute foreign members of ISIS, it is highly likely it will be for terrorist offences and not core international crimes.⁴¹ Considering that the AANES is not recognised by states, it means that their judgments are also not recognised. Whether the Rojava courts will start prosecuting foreign members of ISIS remains to be seen.⁴²

(Expanding) Active Nationality Principle

Courts can also establish jurisdiction on the basis of the active nationality principle, in which case the nationality of the perpetrator is the determining factor, or based on the passive nationality principle in which case the nationality of the victim allows the courts to assert jurisdiction.⁴³ Countries such as Germany and Sweden have accepted a large number of refugees from Syria and Iraq, among them could be victims and witnesses who have settled down in the host countries. When they include perpetrators, they could be prosecuted under an active personality principle in some countries. For example, Sweden,⁴⁴ Finland,⁴⁵ and the Netherlands⁴⁶ have extended the active nationality principle to also include legal residents. This would allow countries to hold perpetrators who reside in their country accountable and narrow the impunity gap. In Finland, victims who are permanent residents in the country at the time of the offence, or perpetrators present at the beginning of the court proceedings, are considered Finnish citizens for the purpose of asserting jurisdiction in criminal proceedings.⁴⁷ For example, two Iraqi twin brothers entered Finland as asylum seekers in 2015. The defendants were suspected of participating in the 2014 Camp Speicher massacre. They were prosecuted for involvement in the massacre and for killing captured recruits and soldiers. Proceedings were initiated after the dissemination of a video by ISIS depicting the murders, in which the brothers allegedly appeared. Though they

41 “Rojava to begin trials of foreign ISIS militants”, Rudaw News Article, 10 June 2023, available at <https://www.rudaw.net/english/middleeast/syria/10062023>.

42 Ibid.

43 Hein Wolswijk, “Locus Delicti and Criminal Jurisdiction”, *Netherlands International Law Review* 46: 3, December 1999, available at <https://www.cambridge.org/core/journals/netherlands-international-law-review/article/abs/locus-delicti-and-criminal-jurisdiction/82FBE6B6A424024FAC62F68BE8577B46>.

44 Chapter 2, sect. 2, Criminal Code of Sweden, available at https://legislationline.org/sites/default/files/documents/98/Sweden_CC.pdf.

45 Chapter 1, sect. 6, Criminal Code of Finland, available at https://legislationline.org/sites/default/files/documents/a4/Finland_CC_1889_am2015_en.pdf.

46 Art. 7(3) Criminal Code of the Netherlands, available at <https://wetten.overheid.nl/BWBR0001854/2023-01-01#BoekEerste>.

47 See sect. 5 and 7, Criminal Code of Finland.

were ultimately acquitted due to lack of evidence, this serves as an example of a policy which does not allow the technicalities of citizenship to be a barrier to prosecution.⁴⁸

Passive Nationality Principle

Perhaps one of the most famous terrorism cases based on passive nationality principle is the prosecution of the two remaining members of the so-called “ISIS-Beatles Cell” - Alexandra Kotey and El Shafee Elsheikh - in the US. After being captured early in 2018 by Kurdish-led Syrian Democratic Forces (SDF), both men were transferred to US custody. The British government had deprived Kotey and Elsheikh of their British nationality and allowed their transfer to the US to be prosecuted for their involvement in hostage taking of Americans and other foreigners.⁴⁹ Kotey pleaded guilty and Elsheikh stood trial, both were sentenced to life for four counts of hostage taking resulting in the deaths of the four Americans (James Foley, Kayla Mueller, Steven Sotloff, and Peter Kassig).⁵⁰ The District Court of Alexandria, Virginia, had jurisdiction in this case since the US can assert jurisdiction for hostage taking cases based on the US nationality of victims, meaning passive personality. In this specific case, the families of the victims were crucial in actively pursuing justice, including by writing an op-ed in *the Washington Post* and engaging with the Attorney General’s Office.⁵¹

In an attempt to further expand jurisdiction, in November 2022, the US amended the Justice for Victims of War Crimes Act which would permit prosecution of war crimes against a perpetrator who is in the US regardless of the nationality of the victim or perpetrator.⁵² Although this Act cannot be applied retrospectively, it can significantly expand the number of prosecutions in future, including in relation to ‘foreign fighters’ who have a foreign nationality that relocate to the US, or foreign nationals who have committed war crimes as a member of terrorist organisation abroad provided they are present in the US.

Universal Jurisdiction

Finally, courts can assert jurisdiction if there is no territorial or personal link with the crime or perpetrator and victims, but the crime is so heinous that it is considered a crime against the international community as whole. Universal jurisdiction is the mechanism through which a State can prosecute where neither territoriality, nor active, nor passive nationality principles apply, and is intrinsically linked to core international crimes. Universal jurisdiction is not a ground for jurisdiction for domestic crimes such as murder, arson, or theft. However, a distinction needs to be made as to whether states have an obligation or a right to assert universal jurisdiction

48 Case R 16/1304, *Ammar Jebbar-Salman*, Judgement, District Court of Pirkanmaa, 18 March 2016; Case R 17/1229, *Ahman Shhab Hamad and Daham Shhab Hamad*, Judgement, Court of Appeal of Turku, 28 February 2020.

49 Tanya Mehra, “The Long and Winding Road to Bringing the ISIS ‘Beatles’ to Justice”, ICCT Perspective, 27 August 2020, available at <https://www.icct.nl/publication/long-and-winding-road-bringing-isis-beatles-justice>.

50 In addition, Elsheikh was also convicted for 1 count of conspiring to commit hostage taking resulting in death; 1 count of conspiracy to murder United States citizens outside of the United States; 1 count of conspiring to provide material support to terrorists; 1 count of conspiring to provide material support to a designated foreign terror organisation see: United States Attorney’s Office Eastern District of Virginia, “ISIS ‘Beatle’ Sentenced to Life Imprisonment for Hostage-Taking Scheme that Resulted in the Deaths of American, British, and Japanese Citizens”, Press Release, 19 August 2022, available at <https://www.justice.gov/usao-edva/pr/isis-beatle-sentenced-life-imprisonment-hostage-taking-scheme-resulted-deaths-american#:~:text=%E2%80%9CToday%2C%20EI%20Shafee%20Elsheikh%20was,the%20FBI%20Washington%20Field%20Office>.

51 Diane Foley et al., “Our children were killed by Islamic State members. They must face trial.”, *The Washington Post*, 23 July 2020, available at <https://www.washingtonpost.com/opinions/2020/07/23/our-children-were-killed-by-islamic-state-members-they-must-face-trial/>.

52 Justice for Victims of War Crimes Act (2022), S. 4240, available at <https://www.justsecurity.org/wp-content/uploads/2022/12/War-Crimes-Act-2022.pdf>.

over core international crimes. States have an obligation to establish universal jurisdiction over offences which constitute grave breaches under the Geneva Conventions, while states have the right to establish universal jurisdiction over war crimes under customary international law.⁵³ Grave breaches are a narrower subset of war crimes and include wilful killing, torture, unlawful detention, or deportation.⁵⁴ States also have a right – though in light of a lack of treaty provisions, no obligation – to establish universal jurisdiction over crimes against humanity and genocide.

Nonetheless, many states around the globe have implemented universal jurisdiction for one or more core international crimes in their domestic legislation. In some countries, such as Sweden and Germany, the suspect does not need to be present in the country to initiate criminal proceedings under universal jurisdiction. However, prosecutors have discretion to not open investigations when the chance of apprehending the suspect is very small.⁵⁵ In the Netherlands, the presence of the accused is conditional to open investigations when the alleged core international crime was committed abroad, unless the perpetrator or victim is Dutch.⁵⁶

France, on the other hand, has a very complex set of requirements that need to be met to apply universal jurisdiction. In France, the suspect needs to be a ‘resident’ of France and some of the core international crimes also need to be criminalised in the country of commission. In 2021, the *Cour de Cassation*, the highest court in French judiciary, ruled that double criminality is required to prosecute crimes against humanity in two cases – one against Abdulhamid C., a member of the security forces of the Syrian regime for torture,⁵⁷ and one case against the French cement company Lafarge for aiding and abetting crimes against humanity committed by ISIS in Syria. Furthermore, the subsidiarity principle applies which means that French courts will primarily defer to international or respective national courts.⁵⁸ The ICC does not have jurisdiction over international crimes that have been committed in Syria and Iraq because the countries are not state parties to the Rome Statute, and a referral by the United Nations Security Council (UNSC) is likely to be blocked by Russia and China.⁵⁹ Since the ICC does not have jurisdiction over crimes committed in Syria and Iraq, France could defer a case to Iraqi courts if they were to assert jurisdiction. In fact, for a long time, France has favoured this approach in relation to terrorism offences, which has resulted in several French nationals being prosecuted in Iraq with 12 of them being sentenced to death.⁶⁰ As a result, crimes against humanity and war crimes must be criminalised both in France and in the country where the crimes have been committed. This

53 See: “Practice on Rule 157 and 158”, IHL Database.

54 Although the distinction may be becoming smaller, it is important to distinguish between war crimes and grave breaches from a procedural aspect. The obligations to criminalise, investigate, prosecute or extradite are still much stronger for grave breaches than for war crimes; Marko Divac Öberg, “The absorption of grave breaches into war crimes law” *International Review of the Red Cross* 91:873, March 2009, available at <https://www.icrc.org/en/doc/assets/files/other/irrc-873-divac-oberg.pdf>.

55 E.g. in Germany: Sect. 153f Code of Criminal Procedure of Germany, available at https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p1367.

56 See Art. 2 International Crimes Act of the Netherlands, available at <https://wetten.overheid.nl/BWBR0015252/2020-01-01>.

57 Roger Lu Phillips and Aweiss Al Dobouch, “France Is Not a Safe Haven for Human Rights Abusers – Despite High Court Opinion”, Just Security (blog), 9 December 2021, available at <https://www.justsecurity.org/79473/france-is-not-a-safe-haven-for-human-rights-abusers-despite-high-court-opinion/>; Tanya Mehra, “Bringing (Foreign) Terrorist Fighters to Justice in a Post-ISIS Landscape – Part I: Prosecution by Iraqi and Syrian Courts”, ICCT Perspective, 22 December 2017, available at <https://www.icct.nl/publication/bringing-foreign-terrorist-fighters-justice-post-isis-landscape-part-i-prosecution>.

58 Open Society Justice Initiative and TRIAL International, “Universal Jurisdiction Law and Practice in France”, Briefing Paper, February 2019, available at <https://www.justiceinitiative.org/publications/universal-jurisdiction-law-and-practice-france>.

59 Russia, China block Security Council referral of Syria to International Criminal Court, 22 May 2014, available at <https://news.un.org/en/story/2014/05/468962>.

60 Alissa J. Rubin, “French ISIS Supporters on Death Row in Iraq Ask for Mercy”, New York Times, 3 June 2019, available at <https://www.nytimes.com/2019/06/03/world/middleeast/iraq-islamic-state-syria-france.html>.

condition is not applicable to genocide and torture.

Syria – just like Iraq – has not ratified the Rome Statute of the ICC, but has ratified the Geneva Conventions, Torture Convention, and Genocide Convention, which means that prosecution of war crimes, genocide, and torture could technically be possible, but not for crimes against humanity. This leads to a very fragmented and limited scope of prosecuting alleged terrorists for some of the core international crimes.⁶¹ On 12 May the *Cour de Cassation* ruled in two cases that the double criminality requirement for crimes against humanity and war crimes should not be defined narrowly. This means that both crimes do not need to be criminalised in a similar manner in the country where they have been perpetrated and can even be defined as common crimes. In addition, the *Cour de Cassation* ruled that the condition of the habitual residence of the accused on French soil should be assessed by a broad(er) set of factors such as intention and duration of the stay in France.⁶² With this decision of the *Cour de Cassation*, some of the obstacles are removed thus paving the way for future prosecutions for all core international crimes that may have been committed in Syria and Iraq. While on paper universal jurisdiction is accepted, for example, in the United Kingdom⁶³ and France, it can be so narrow due to the different (cumulative) thresholds it needs to meet, that in practice it hardly leads to prosecutions and barely contributes to closing the impunity gap.

In addition to asserting jurisdiction based on active nationality principle, many countries, such as the Netherlands,⁶⁴ have extended the scope of universal jurisdiction to include terrorism offences – in addition to core international crimes. This allows Dutch courts to assert jurisdiction for terrorist acts committed abroad in accordance with domestic laws. In the Netherlands, domestic criminal law is also applicable to anyone who commits an offence outside the Netherlands insofar as this is required by a treaty or decision of an international organisation, such as the United Nations and regulated by a decree.⁶⁵ The Decree on International Obligations for Extraterritorial Jurisdiction gives effect to this obligation and lists a number of terrorism offences that require the Netherlands to establish universal jurisdiction.⁶⁶ In the case of Ahmad-al Y., the court had to determine whether it had jurisdiction over Ahmad-al Y. who at the time of the alleged crimes had Syrian nationality and was charged for war crimes and participation in a terrorist organisation between March 2015 and July 2017 in Syria.⁶⁷ The court concluded that several acts in the indictment, such as deliberately setting fire or causing an explosion where serious bodily injury or danger to life can be expected, and manslaughter or murder with terrorist intent, fall within the description of article 2 of the International Convention for the Suppression of Terrorist Bombings as listed in the Decree. This means that the Netherlands had jurisdiction to prosecute Ahmad-al Y. under universal jurisdiction. He was subsequently sentenced to six years imprisonment for membership of a terrorist organisation and the war crime of outrage upon personal dignity.

61 Roger Lu Phillips and Aweiss Al Dobouch, “France Is Not a Safe Haven for Human Rights Abusers – Despite High Court Opinion”, Just Security (blog), 9 December 2021, available at <https://www.justsecurity.org/79473/france-is-not-a-safe-haven-for-human-rights-abusers-despite-high-court-opinion/>; Tanya Mehra, “Bringing (Foreign) Terrorist Fighters to Justice in a Post-ISIS Landscape Part I: Prosecution by Iraqi and Syrian Courts”, ICCT Perspective, 22 December 2017, available at <https://www.icct.nl/publication/bringing-foreign-terrorist-fighters-justice-post-isis-landscape-part-i-prosecution>.

62 Ruling no 668 B+R, Judgement, Court of Cassation, 12 May 2023; Ruling no 669 B+R, Judgement, Court of Cassation, 12 May 2023.

63 Open Society Justice Initiative and TRIAL International, “Universal Jurisdiction Law and Practice in England and Wales”, Briefing Paper, May 2022, available at <https://www.justiceinitiative.org/uploads/33da3b6f-e6e6-4bef-8052-f87846113fe9/universal-jurisdiction-law-and-practice-england-and-wales-05232022.pdf>.

64 Sect. 2 Art.2, International Obligations Extraterritorial Jurisdiction Decree of the Netherlands (2014), available at <https://wetten.overheid.nl/BWBR0034775/2021-07-01>.

65 Art. 6(1) Criminal Code of the Netherlands.

66 International Obligations Extraterritorial Jurisdiction Decree of the Netherlands (2014), available at <https://wetten.overheid.nl/BWBR0034775/2021-07-01>.

67 Cases 09/748011-19 and 09/748004-21, Judgement, District Court of the Hague, 21 April 2021.

From the current case-law, it becomes apparent that foreign nationals who have committed terrorist offences in Syria and Iraq can be prosecuted for these terrorist offences, insofar as the courts have jurisdiction to prosecute terrorist offences when committed abroad by a foreign national. In the Netherlands, universal jurisdiction has been extended to terrorist offences. German courts also have jurisdiction over foreign nationals who participated in a foreign terrorist organisation, when the perpetrators are present in Germany, and as long as the Ministry of Justice has given authorisation to prosecute the foreign terrorist organisation.⁶⁸

Yet, universal jurisdiction remains very controversial and politicised. The fact that the application of universal jurisdiction has been debated for over a decade demonstrates how controversial it is. The African Union, during a joint meeting in 2009, expressed that universal jurisdiction can easily be misused for political purposes and is perceived as a tool of European countries targeting African countries. If we look at the universal jurisdiction cases in 2022, investigations concerning 169 suspects took place only in European countries, concerning crimes that have been committed in 28 countries worldwide, according to Trial International. At the same time, no universal jurisdiction investigations were underway in African or Asian countries, or countries in the MENA region.⁶⁹ More recently, 11 investigations have been opened by European states and Canada related to the war in Ukraine.⁷⁰ The scope and application of universal jurisdiction is also being debated and contested in various international fora such as the Global Counterterrorism Forum (GCTF) and the UN. For example, in the sixth UN Committee in 2018, the Kenyan representative stated that “universal jurisdiction must not be allowed to become a wildfire, uncontrolled in its spread and destructive of orderly legal processes.”⁷¹

Many States emphasised that universal jurisdiction should only be applied as a last resort and that primary responsibility to prosecute core international crimes rest with the States where the crimes have been committed, or with the State of nationality of the accused (as asserted by Jordan and Singapore). Other concerns that have often been raised is that universal jurisdiction should respect territorial integrity (China) and diplomatic immunities (Brazil, Iran, Cameroon).⁷²

Initiating investigations for core international crimes under universal jurisdiction does not always lead to prosecutions because some of the requirements are no longer met. This could be because senior State officials may enjoy immunities (Belgium), or proceedings are terminated because other countries have closer links to open investigations (Switzerland), or the accused person is no longer present in the territory (Netherlands), or Governmental approval is required (Sweden).

68 Sect. 129b(1) Criminal Code of Germany, available at https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html.

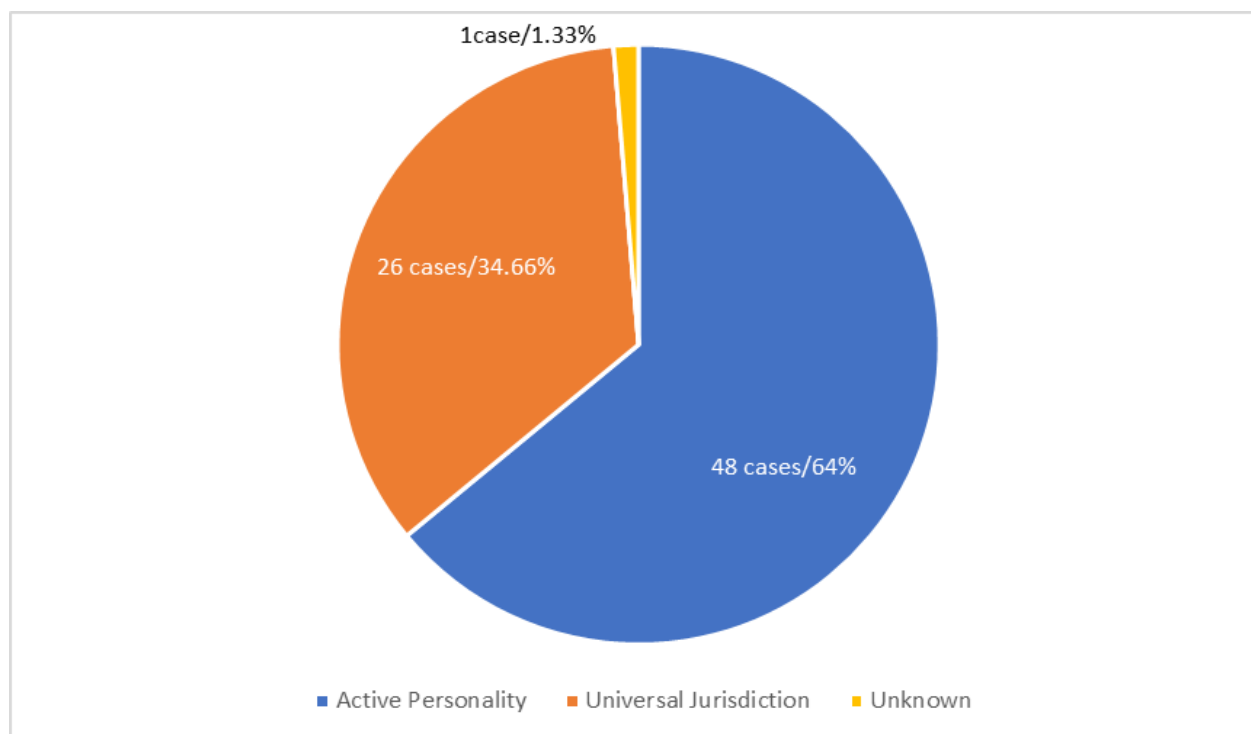
69 Trial International, “Universal Jurisdiction Annual Review 2023”, 17 April 2023, available at https://trialinternational.org/wp-content/uploads/2023/04/TRIAL_UJAR_2023_DIGITAL_21_04_Version2.pdf.

70 Ibid, p. 10.

71 “Without Clear Definition, Universal Jurisdiction Principle Risks Misuse, Abuse Sixth Committee Speakers Warn”, UN General Assembly Sixth Committee, GA/L/3571, 10 October 2018, available at <https://press.un.org/en/2018/gal3571.doc.htm>.

72 “Tackling Scope, Application of Universal Jurisdiction, Sixth Committee Speakers Debate Best Venue for Further Discussions on Principle’s Definition” UN General Assembly Sixth Committee, GA/L/3549, 11 October 2017, available at: <https://press.un.org/en/2017/gal3549.doc.htm>.

Table 3: Ground of Jurisdiction in European Cumulative Charges Proceedings (n=75, as of 15 September 2023)



According to the dataset, out of seventy-five cases in which suspects were or are currently being prosecuted (as of 15 September 2022) for both terrorism offences and core international crimes, forty-eight cases are based on active nationality principle as they are pursued against nationals or permanent residents of the prosecuting state. Twenty-six cases are based on universal jurisdiction, and none on the basis of passive personality principle. This does not mean that victims do not play a role in these cases, however. In several court cases, victims or their representatives have filed a criminal complaint and/or have testified in court. In the case of Jennifer W., for example, the mother of the deceased child, who had been identified and located by the NGO Yazda, provided crucial testimony. Jennifer W. was convicted of membership of a terrorist organisation and enslavement resulting in death as a crime against humanity based on active personality principle.⁷³

Criminalising Offences

In addition to establishing jurisdiction, States need to have criminalised war crimes, crimes against humanity, and genocide domestically in order to prosecute and hold alleged terrorists accountable for these crimes. All of the eight European countries that have so far prosecuted alleged terrorists for core international crimes have ratified and implemented the Rome Statute of the ICC.⁷⁴ Under the Rome Statute, the ICC has jurisdiction over four categories of international crimes, genocide, crimes against humanity, war crimes and, since 2018, the crime of aggression.

⁷³ The mother of the deceased child not only testified in court in the trial of Jennifer W., but also in the trial of W.'s husband, *Taha Al-J.*, who was tried separately by a different court. In the case of Taha Al J., the mother testified in court on five days. See: Case 5-3 StE 1/20-4-1/20, Taha Al-J., Judgment, OLG Frankfurt, 30. November 2021; Case 8 St 9/18, *Jennifer W.*, Judgment, OLG Munich, 25. October 2021.

⁷⁴ Finland, France, Germany, Hungary, Latvia, Netherlands, Sweden; see 'United Nations Treaty Collection', accessed 9 March 2023, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&clang=_en.

In several of the countries, domestic laws already criminalised some or all core international crimes prior to the Rome Statute, as a result, there are some minor differences between the definitions of core international crimes amongst the different countries.⁷⁵ Within the European Union, only Italy and Denmark have not yet implemented the Rome Statute and criminalised the core international crimes in their domestic legislation. Despite attempts to pass a more encompassing bill in Italy that would criminalise all three core international crimes and establish universal jurisdiction, a watered-down version has been submitted to Parliament only addressing war crimes and introducing the crime of aggression.⁷⁶ With the war in Ukraine, the government in Denmark is taking steps to criminalise core international crimes.⁷⁷ Also, in the US, a bill on crimes against humanity introduced by Senator Dick Durbin in 2009, is getting more traction during the Senate Judiciary Hearing Committee hearing on ‘From Nuremberg to Ukraine: Accountability for War Crimes and Crimes Against Humanity’ held on 28 September 2022.⁷⁸

While the maximum sentences for terrorist offences have been increased in several European countries, such as France⁷⁹ and the United Kingdom,⁸⁰ the maximum sentences available for core international crimes remain considerably higher in European countries. Depending on the circumstances of the case, the court could issue a high(er) sentence when a member of a terrorist group is convicted of a core international crime. In 2012, Abdul Jawad al-Khalaf established a terrorist fighting unit “Katiba Mohamed Ibn Abd Allah” which allegedly fought under the command of Jabhat al-Nusra. In 2013, the accused and his fighters participated in the conquest of Raqqa, stormed the governor’s palace, and captured at least 40 Assad supporters including policemen. The accused took part in the execution of at least two prisoners and was sentenced to life imprisonment, which is 15 years in Germany for the war crime against a person.⁸¹

Terrorism as a Distinct Core International Crime

As noted earlier, many of the underlying criminal acts committed by terrorist such as murder, rape, and enslavement could be prosecuted as core international crimes provided that the elements of the crime are met. If one element of terrorism is understood as the act to spread fear amongst the civilian population it can be prosecuted as a war crime and to some extent as a crime against humanity.

The prohibition of spreading terror among the civilian population can be found in international humanitarian law, more precisely, Article 51 of Additional Protocol I and Article 12(3) of Additional

75 This applies to Sweden, Netherlands, Germany and Sweden. In Latvia the pre-existing definitions of the core international crimes have not been amended to reflect the definitions of the Rome Statute. See: Ieva Kalnina et al., “Implementation of the Rome Statute of the International Criminal Court in Latvia”, SSRN Paper, 1 June 2007, available at <https://ssrn.com/abstract=928333>.

76 *Comunicato stampa del Consiglio dei Ministri n.25* [Press Release of the Council of Ministers n. 25], Italian Government, 16 March 2023, available at <https://www.governo.it/it/articolo/comunicato-stampa-del-consiglio-dei-ministri-n-25/22114>.

77 Ben Hamilton, “Minister eyes war crime shake-up in Denmark”, CPH Post, 21 March 2023, available at <https://cphpost.dk/2023-03-21/news/minister-eyes-war-crime-shake-up-in-denmark/>.

78 Eli M. Rosenbaum, “From Nuremberg to Ukraine: Accountability for War Crimes and Crimes Against Humanity”, Statement before the Committee on the Judiciary United States Senate, 28 September 2022, available at <https://www.judiciary.senate.gov/imo/media/doc/Testimony%20-%20Rosenbaum%20-%202022-09-281.pdf>.

79 Dr Sharon Weill, “Terror In Courts – French counter-terrorism: Administrative and Penal Avenues”, PSIA Science-Po Paris, May 2018, p. 20, available at https://www.sciencespo.fr/psia/sites/sciencespo.fr/psia/files/Terror%20in%20Courts_2.pdf.

80 UK Home Office, “Counter-Terrorism and Border Security Act 2019 – Sentencing Fact Sheet”, 6 June 2018, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/912087/2019-02-11_Criminal_Sentences_Fact_Sheet_RA.pdf.

81 He was also convicted for membership in a foreign terrorist organisation and violations of arms control laws. See: Case 5 - 2 StE 5/17, *Abdul Jawad al-Khalaf*, Judgment, OLG Stuttgart, 13 January 2020.

Protocol II of the Geneva Conventions. The prohibition is applicable during international and non-international armed conflicts and forms customary international law, meaning that any state regardless of whether it has ratified respective treaties is bound by these norms.⁸² In the *Galić* case, the Appeals Chamber at the International Criminal Tribunal for Former Yugoslavia (ICTY) indicated that the crime of spreading terror among the civilian population consists of three elements:

1. Acts of violence directed against the civilian population not taking direct part in hostilities causing death or serious injury to body or health within the civilian population.
2. The offender intentionally targeted the civilian population or individual civilians not taking direct part in hostilities the object of those acts of violence.
3. The acts were committed with the primary purpose of spreading terror among the civilian population.⁸³

As with any other war crimes, the nexus between the act and the armed conflict also needs to be established in order to distinguish between war crimes and ordinary crimes committed during, but unrelated to, an armed conflict. While acts of terror against civilians have been recognised as a (distinct) war crime, it has not been included as such in the Rome Statute. Since the Rome Statute served as a blueprint for many states criminalising core international crimes in domestic legislation, acts of terror as a (distinct) war crime might not be criminalised in their laws.⁸⁴ This does not mean that acts of terror cannot qualify as war crimes in these countries because certain acts of terror such as hostage taking, torture, or intentionally carrying out indiscriminate attacks against civilians, are acts that are prohibited as war crimes. However, the mental element also referred to as *mens rea* – in this case the intent to spread fear among civilian population which is characteristic of terrorist offences – is not included in these war crimes.

The act of spreading fear as a crime against humanity is not specifically mentioned in the Rome Statute or the Draft Convention on the Crimes against Humanity. In the *Blagojević and Jokić* case before the ICTY, the Trial Chamber concluded that terrorising a civilian population with discriminatory intent is an underlying act of persecution as a crime against humanity.⁸⁵ Many of the acts committed by terrorist groups such as torture, murder, or persecution could thus constitute a crime against humanity provided they are part of a systematic or widespread attack directed against a civilian population and conducted with the knowledge of the attack. However, under the Rome Statute – and therefore pursuant to many domestic laws – attacks against the civilian population must also be carried out as part of a state or organisational policy, which is more difficult to prove.⁸⁶

While war crimes and crimes against humanity share several common features, there are some distinguishing features. Most notably, war crimes can only be committed during an armed conflict, whereas crimes against humanity can be committed during and outside the context of an armed conflict. The fact that a crime against humanity must be committed as part of a widespread

82 IHL Database, “Rule 2”, available at <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule2>; on the status of customary law see: International Committee of the Red Cross, “Customary Law”, available at <https://www.icrc.org/en/war-and-law/treaties-customary-law/customary-law>.

83 Case IT-98-29-A, *Prosecutor v. Stanislav Galić*, Judgement, ICTY, 30 November 2006, para 100f.

84 Kelisiana Thynne, “Better a war criminal or a terrorist? A comparative study of war crimes and counterterrorism legislation”, *International Review of the Red Cross* 103, no. 916-917 (April 2021): 244, available at <https://international-review.icrc.org/sites/default/files/reviews-pdf/2022-02/better-a-war-criminal-or-a-terrorist-a-comparative-study-916.pdf>.

85 Case IT-02-6-T, *Prosecutor v. Blagojević and Jokić*, Judgment, International Tribunal for the Former Yugoslavia, 17 January 2005, paras 589f.

86 Harmen van der Wilt and Inez Braber, “The case for inclusion of terrorism in the jurisdiction of the International Criminal Court”, in *The International Criminal Court in Search of its Purpose and Identity*, ed. Triestino Marinello, (London: Routledge, 2014), available at <https://doi.org/10.4324/9781315780634>.

or systematic attack against a civilian population excludes the possibility to prosecute isolated incidents which could be prosecuted as a war crime.⁸⁷

Even though ISIS has institutionalised terror as their *modus operandi*, so far, no European citizens nor foreigners have been specifically prosecuted for the act of spreading fear amongst the civilian population as a war crime or crime against humanity, but instead for other underlying acts such as pillaging, enslavement, or murder. One of the reasons why domestic prosecutors are not pursuing terrorism as a core international crime is that the evidence is often missing, and it might be difficult to prove other elements of a core crime. Another more obvious reason is that prosecutors are more likely to rely on terrorist-related charges, notably membership of a terrorist group, but also financing of terrorism, and preparing for terrorist attacks.

Organisational Structure and Expertise

To successfully hold alleged terrorists accountable for core international crimes, a proper institutional framework is vital. As noted by Eurojust, this includes specialised war crimes units with dedicated staff, knowledgeable of both international criminal law and terrorism, as well as sufficient human, financial and material resources.⁸⁸ Countries like the Netherlands, Sweden, and Germany, have such units with knowledge of both international criminal law and terrorism. These three countries also have the highest total number of cases and highest number of convictions. When it comes to the linkages between terrorism and core international crimes, it is important that there is coordination between counter-terrorism and core international crime prosecutions. In the Netherlands, it is now common practice that for each person from Syria, the counter-terrorism prosecutors consult with the international crimes prosecutors to determine whether any linkages exist between terrorist offences and core international crimes and whether any additional charges could be laid.⁸⁹ In 2019, a special anti-terrorism prosecutor was established in France which not only has jurisdiction to deal with terrorism but also core international crimes. In Sweden, the investigation and prosecution of terrorism and core international crimes are led by different agencies. The investigations of core international crimes are led by the police and terrorism investigations are led by the security police.

Cumulatively charging for terrorism and core international crimes, can lead to multiple courts having jurisdiction to hear the case. Sometimes, it is not always clear which court has jurisdiction and/or presides over cases with linkages between terrorism and core international crimes. In Germany and Sweden, all courts have jurisdiction to deal with both terrorism and core international crimes, although in practice it appears most cases in Sweden are heard in the Stockholm District court which has relatively more experience.⁹⁰ In the Netherlands only the district court in The Hague can hear core international crimes cases and if additional charges for core international crimes are introduced, the case would move to the district court in The Hague.⁹¹ In France, different courts have jurisdiction over terrorism and core international crimes. The Court of Assizes with

⁸⁷ Mettraux, Guénaél, 24 War Crimes and Crimes against Humanity', *International Crimes and the Ad Hoc Tribunals*, (Oxford, 2006; online edn, Oxford Academic, 1 January 2010), available at <https://doi.org/10.1093/acprof:oso/9780199207541.003.0024>.

⁸⁸ "Key factors for successful investigations and prosecutions of core international crimes", Eurojust, 23 May 2022, available at <https://www.eurojust.europa.eu/publication/key-factors-successful-investigations-and-prosecutions-core-international-crimes>.

⁸⁹ Interview with Dutch official, June 2023.

⁹⁰ Section 120 Courts Constitution Act of Germany available at https://www.gesetze-im-internet.de/englisch_gvg/englisch_gvg.html; "Breaking down barriers: Access to justice in Europe for victims of international crimes", ECCHR Report, September 2020, pp. 94-95 available at https://www.ecchr.eu/fileadmin/Publikationen/Breaking_Down_Barriers_EN_web_FINAL_2020-11-08.pdf

⁹¹ See Art. 15 International Crimes Act of the Netherlands available at <https://wetten.overheid.nl/BWBR0015252/2020-01-01>.

three lay jurors as judges has jurisdiction over core international crimes, whereas terrorism cases are dealt with by 16th Chamber of the Paris judicial court or the specialised Court de Assize, with three professional judges. If a person is charged with terrorism and core international crimes, the special Court of Assizes would have precedence to hear the case. Currently, there is a plan to reform the adjudication of core international crimes, and also bring this under the jurisdiction special Court of Assizes with professional judges.⁹² Belgium has a similar situation where terrorism cases are tried before correctional courts and core international crimes before the Court of Assizes with 12 lay jurors as judges.

Conclusion

Our dataset shows that eight countries have prosecuted alleged terrorists for core international crimes, raising the question of whether other European countries are ‘willing and able’ to hold alleged terrorists accountable for the full range of crimes they have committed. In fact, these are two separate issues.

The first is whether the building blocks are in place that allow for the prosecution of core international crimes. All European countries have ratified the Rome Statute, with the final two, Italy and Denmark, planning to implement the Rome Statute in their domestic legislation. Some countries such as Austria, France, and Switzerland have a legal framework in place and have ongoing investigations or have been completed prosecutions for core international crimes that have been committed elsewhere or by perpetrators that are members of non-state actors such as the Free Syrian Army, or Iraqi or Syrian officials, all of which are not included in the database.

Establishing jurisdiction and criminalising core international crimes are essential pre-requisites to prosecute. Several Western countries are expanding the scope and/or their ability to prosecute core international crimes. This is because countries are more committed to closing the impunity gap and are actively triggering universal jurisdiction to prosecute alleged perpetrators for core international crimes, whilst France and the US are expanding the scope of universal jurisdiction. At the international level, efforts to hold perpetrators accountable for core international crimes are improving as well. The work on a proposed treaty on crimes against humanity is one step closer, the MLA initiative resulted in the adoption of Hague-Ljubjana Convention that will assist States in extradition and mutual legal assistance for core international crimes, thus facilitating the prosecution of core international crimes.⁹³

Some countries which have well-established war crimes unit such as Canada and the UK, but with limited practical experience in prosecuting core international crimes, are now stepping up their efforts due to the war in Ukraine. The UK is doubling its number of dedicated staff and will also extend its investigations into perpetrators beyond Ukraine, to terrorist groups in other conflicts.⁹⁴ In Belgium, a Syrian national who fled the conflict is now being investigated for alleged war crimes as a member of ISIS.⁹⁵ In June 2023, Belgium and the Netherlands joined a joint investigation team – initially established by Sweden and France - to assist in the prosecution of core international crimes by ‘foreign fighters’ against the Yezidi population in Syria and Iraq.⁹⁶

92 Interview with French official, June 2023.

93 80 countries support the Convention and it will enter into force 90 days after the second instrument of the deposit of the second instrument of ratification, acceptance, approval or accession; see Eli M. Rosenbaum, “From Nuremberg to Ukraine: Accountability for War Crimes and Crimes Against Humanity”, Statement before the Committee on the Judiciary United States Senate, 28 September 2022, available at <https://www.judiciary.senate.gov/imo/media/doc/Testimony%20-%20Rosenbaum%20-%202022-09-281.pdf>.

94 Interview with UK official, June 2023.

95 AFP, “Belgium probes refugee status of Syrian war crimes suspect”, Justiceinfo.net, 28 march 2023, available at <https://www.justiceinfo.net/en/114527-belgium-probes-refugee-status-of-syrian-war-crimes-supect.html>.

96 “Belgium and Netherlands sign up to joint investigation team targeting crimes against Yezidi victims in Syria

The trend of broader criminalisation expanded assertion of jurisdiction, the introduction of new international instruments, and improved domestic and collaborative resources demonstrates that the requisite building blocks are increasingly in place in many countries.

The second issue relates to political will. Since the start of the war in Ukraine, strengthening the efforts to prosecute core international crimes at both the international and domestic levels has been gaining momentum amongst many countries. This has also contributed to the amendment of the Justice for Victims of War Crimes Act in the US, allowing for the prosecution of war crimes against a perpetrator who is present in the US regardless of the nationality of the perpetrator or victim.⁹⁷ All of these efforts combined are creating a stronger and more robust legal framework that will enable and facilitate the prosecution of core international crimes in the future. This could potentially include alleged terrorists who commit such crimes in the context of Afghanistan or in the Sahel where several designated terrorist groups are committing crimes that may amount to war crimes, crimes against humanity, or genocide.

In recent years, several international and regional fora, such as UN CTED, The Council of Europe, and the GCTF have recognised the linkages between terrorist offences and core international crimes, in particular the relationship between counter-terrorism laws and international humanitarian law. In 2021 the GCTF adopted a non-binding document on the interlinkages between terrorism and core international crimes and in 2022 UN CTED launched a report mapping the intersection between terrorism and armed conflict.⁹⁸ More recently, in February 2023, The Council of Europe adopted a new Counter-Terrorism Strategy and identified several activities that will be undertaken in the coming years including drafting recommendations on ensuring accountability for terrorist offences and serious violations of IHL committed in the context of an armed conflict. These developments are a sign of political will that States are willing to consider the prosecution of alleged terrorists for not only terrorist offences but also for core international crimes.⁹⁹

The political will of States is vital for accountability, as is adopting effective prosecutorial strategies and having access to admissible, credible, and reliable evidence. This evidence is often located in conflict zones but can be crucial to successfully prove core international crimes. Forthcoming research will further rely on the same dataset and address some of these emerging prosecutorial strategies in holding members of ISIS and other terrorist groups accountable for both terrorist offences and core international crimes. Additionally, the second paper will provide unique insights into the core international crimes that both male and females have been convicted for and which sentences they received.

In countries that are already prosecuting alleged terrorists for terrorist offences and core international crimes, the number of prosecutions is increasing. In other countries the political

and Iraq”, Eurojust Press Release, 26 June 2023, available at <https://www.eurojust.europa.eu/news/belgium-and-netherlands-sign-joint-investigation-team-targeting-crimes-against-yezidi-victims>.

97 In essence the US now jurisdiction over war crimes even when not committed on their territory, nor by their nationals or against their nationals. The only prerequisite is that the perpetrator is on US soil. In several other countries, such as the Netherlands and Austria, the presence of the perpetrator is a prerequisite to exercise universal jurisdiction. In addition, the Bill also removes the statute of limitations for war crimes. See Section 2441, Chapter 118, Part I, Title 18, U.S. Code, available at <https://www.law.cornell.edu/uscode/text/18/2441>.

98 GCTF, “Memorandum on Criminal Justice Approaches to the Linkages between Terrorism and Core International Crimes, Sexual and Gender-based Violence Crimes, Human Trafficking, Migrant Smuggling, Slavery, and Crimes against Children”, September 2021, available at https://www.thegctf.org/Portals/1/Documents/Links/Meetings/2021/19CC11MM/CJROL%20Memorandum/CJ-ROL_Memo-ENG.pdf?ver=BqP5OK_Txt0tY8JFGamBzw%3d%3d; UN Counter-terrorism Committee Executive Directorate, “The interrelationship between counter-terrorism frameworks and international humanitarian law”, January 2022, available at https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/files/documents/2022/Jan/cted_ihl_ct_jan_2022.pdf.

99 Council of Europe Committee on Counter-Terrorism (CDCT), “Council of Europe Counter-Terrorism Strategy (2023-2027)”, 1456th meeting, 8 February 2023, para 3.1, available at https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680a9ad67#_Toc121816453.

will is gaining momentum and building blocks are being put in place to allow for the prosecution of core international crimes. This trend will contribute to holding alleged terrorists accountable for core international crimes committed in the context of the Syrian and Iraqi conflict and thus narrow the impunity gap.

Bibliography

- Adanan, Amina. “Reflecting on the Genocide Convention at 70: How genocide became a crime subject to universal jurisdiction”, *EJIL: Talk!*, 16 May 2019, <https://www.ejiltalk.org/symposium-on-the-genocide-convention-reflecting-on-the-genocide-convention-at-70-how-genocide-became-a-crime-subject-to-universal-jurisdiction/>.
- AFP, “Belgium probes refugee status of Syrian war crimes suspect”, *Justiceinfo.net*, 28 March 2023, <https://www.justiceinfo.net/en/114527-belgium-probes-refugee-status-of-syrian-war-crimes-supect.html>.
- Amnesty International et al., “Statement on the implementation of the Yazidi Survivors Law”, Press Release, 14 April 2023, available at <https://reliefweb.int/report/iraq/statement-implementation-yazidi-survivors-law>.
- Anonymous Dutch Official, interview with author, June 2023.
- Anonymous French Official, interview with author, June 2023.
- Anonymous U.K. Official, interview with author, June 2023.
- Barrett, Richard. “Beyond the Caliphate: Foreign Fighters and the Threat of Returnees”, *The Soufan Center*, October 2017, <https://thesoufancenter.org/wp-content/uploads/2017/11/Beyond-the-Caliphate-Foreign-Fighters-and-the-Threat-of-Returnees-TSC-Report-October-2017-v3.pdf#page=10>.
- Beeghly, Sean. “Sweden Supreme Court rules journalist may not be extradited to Turkey”, *Jurist*, 20 December 2022, <https://www.jurist.org/news/2022/12/sweden-supreme-court-rules-journalist-may-not-be-extradited-to-turkey/>.
- Case 1 StE 3/21, *Eyad A.*, Judgement, OLG Koblenz, 24 February 2021.
- Case 1 StE 9/19, *Anwar R.*, Judgement, OLG Koblenz, 13 January 2022.
- Case 2 StE 6 OJs, *Kassim A.*, Judgement, OLG Koblenz, 13 February 2020.
- Case 3 StR 228/19, *Ibrahim Al F.*, Order, Federal Court of Justice, 19 August 2019.
- Case 3 - 3 StE 5/18, *Mohammad K.*, Judgement, OLG Stuttgart, 4 April 2019.
- Case 5 - 2 StE 5/17, *Abdul Jawad al-Khalaf.*, Judgment, OLG Stuttgart, 13 January 2020.
- Case 5 - 3 StE 1/20-4-1/20, *Taha Al.-J.*, Judgment, OLG Frankfurt, 30. November 2021.
- Case 8 St 9/18, *Jennifer W.*, Judgment, OLG Munich, 25. October 2021.
- Case B 2259-17, *Haisam Omar Sakhanh*, Judgement, Svea Court of Appeal, 31 May 2017.
- Case B 4770-16, *Mouhannad Droubi*, Judgement, Svea Court of Appeal, 5 August 2016.
- Case IT-02-6-T, *Prosecutor v. Blagojević and Jokić*, Judgment, International Tribunal for the Former Yugoslavia, 17 January 2005.
- Case IT-98-29-A, *Prosecutor v. Stanislav Galić*, Judgement, ICTY, 30 November 2006.
- Case R 16/1304, *Ammar Jebbar-Salman*, Judgement, District Court of Pirkanmaa, 18 March 2016.
- Case R 17/1229, *Ahman Shhab Hamad and Daham Shhab Hamad*, Judgement, Court of Appeal of Turku, 28 February 2020.
- Cases 09/748011-19 and 09/748004-21, Judgement, District Court of the Hague, 21 April 2021.
- Code of Criminal Procedure of Germany, (1950), https://www.gesetze-im-internet.de/englisch_stpo/index.html.
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 23 September 1971, UNTS 14118.

- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 10 March 1988, UNTS 29004.
- Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, 1 July 2018, UNTS 55859.
- Convention on the Physical Protection of Nuclear Material, 8 February 1987, UNTS 24 631.
- Council Implementing Regulation (EU) 2022/147 of 3 February 2022 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Implementing Regulation (EU) 2021/1188 (2022), *Official Journal* L25, p. 1.
- Council of Europe Committee on Counter-Terrorism (CDCT), “Council of Europe Counter-Terrorism Strategy (2023-2027)”, 1456th meeting, 8 February 2023, https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a9ad67#_Toc121816453.
- Courts Constitution Act of Germany, (1950), https://www.gesetze-im-internet.de/englisch_gvg/index.html.
- Criminal Code of Finland, (1889/39), <https://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf>.
- Criminal Code of Germany, (1871), https://www.gesetze-im-internet.de/englisch_stgb/index.html.
- Criminal Code of the Netherlands, (1881), <https://wetten.overheid.nl/BWBR0001854/2023-10-01>.
- Criminal Code of Sweden, (1965), [https://www.government.se/government-policy/judicial-system/the-swedish-criminal-code/#:~:text=The%20Swedish%20Criminal%20Code%20\(brottsbalken,in%20specific%20acts%20and%20laws](https://www.government.se/government-policy/judicial-system/the-swedish-criminal-code/#:~:text=The%20Swedish%20Criminal%20Code%20(brottsbalken,in%20specific%20acts%20and%20laws).
- Decree on International Obligations Extraterritorial Jurisdiction Decree of the Netherlands (2014), <https://wetten.overheid.nl/BWBR0034775/2021-07-01>.
- Eurojust, “Belgium and Netherlands sign up to joint investigation team targeting crimes against Yezidi victims in Syria and Iraq”, Press Release, 26 June 2023, <https://www.eurojust.europa.eu/news/belgium-and-netherlands-sign-joint-investigation-team-targeting-crimes-against-yezidi-victims>.
- Eurojust, “Key factors for successful investigations and prosecutions of core international crimes”, 23 May 2022, <https://www.eurojust.europa.eu/publication/key-factors-successful-investigations-and-prosecutions-core-international-crimes>.
- Eurojust, Network for Investigation and Prosecution of Genocide, Crimes Against Humanity, and War Crimes, “Overview of National Jurisprudence”, 1 April 2020, <https://www.eurojust.europa.eu/publication/overview-national-jurisprudence>.
- Eurojust, Network for Investigation and Prosecution of Genocide, Crimes Against Humanity, and War Crimes, “Cumulative Prosecution of Foreign Terrorist Fighters for Core International Crimes and Terrorism-related Offences”, 19 May 2020, <https://www.eurojust.europa.eu/publication/cumulative-prosecution-foreign-terrorist-fighters-core-international-crimes-terrorism-related>.
- European Center for Constitutional and Human Rights. ; “Breaking down barriers: Access to justice in Europe for victims of international crimes”, ECCHR Report, September 2020, https://www.ecchr.eu/fileadmin/Publikationen/Breaking_Down_Barriers_EN_web_FINAL_2020-11-08.pdf.
- Europol, “European Union Terrorism Situation and Trend report 2023”, 14 June 2023, <https://www.europol.europa.eu/publication-events/main-reports/european-union-terrorism-situation-and-trend-report-2023-te-sat>.
- Foley, Diane et al., “Our children were killed by Islamic State members. They must face trial.”, *The Washington Post*, 23 July 2020, <https://www.washingtonpost.com/opinions/2020/07/23/our-children-were-killed-by-islamic-state-members-they-must-face-trial/>.

- Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 21 October 1950, UNTS 970.
- Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 21 October 1950, UNTS 971.
- Convention (III) relative to the Treatment of Prisoners of War. Geneva, 21 October 1950, UNTS 972.
- Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 21 October 1950, UNTS 973.
- Convention on the Prevention and Punishment of the Crime of Genocide, 12 January 1951, UNTS 1021.
- Global Counterterrorism Forum, “Memorandum on Criminal Justice Approaches to the Linkages between Terrorism and Core International Crimes, Sexual and Gender-based Violence Crimes, Human Trafficking, Migrant Smuggling, Slavery, and Crimes against Children”, September 2021, https://www.thegctf.org/Portals/1/Documents/Links/Meetings/2021/19CC11MM/CJROL%20Memorandum/CJ-ROL_Memo-ENG.pdf?ver=BqP5OK_Txt0tY8JFGamBzw%3d%3d.
- Hamilton, Ben. “Minister eyes war crime shake-up in Denmark”, *CPH Post*, 21 March 2023, <https://cphpost.dk/2023-03-21/news/minister-eyes-war-crime-shake-up-in-denmark/>.
- International Committee of the Red Cross, “Customary Law”, <https://www.icrc.org/en/war-and-law/treaties-customary-law/customary-law>.
- International Committee of the Red Cross, Customary IHL Database, “Rule 2”, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule2>.
- International Committee of the Red Cross, Customary IHL Database, “Practice on Rule 157”, <https://ihl-databases.icrc.org/en/customary-ihl/v2/rule157>.
- International Committee of the Red Cross, Customary IHL Database, “Practice on Rule 158”, <https://ihl-databases.icrc.org/en/customary-ihl/v2/rule158>.
- International Committee of the Red Cross, Customary IHL Database, “Rule 161”, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule161>.
- International Committee of the Red Cross, “Syria: ICRC and Syrian Arab Red Crescent maintain aid effort amid increased fighting”, 17 July 2017, <https://www.icrc.org/en/doc/resources/documents/update/2012/syria-update-2012-07-17.htm>.
- International Convention against the Taking of Hostages, 17 December 1979, UNTS Vol. 21931.
- International Convention for the Suppression of Acts of Nuclear Terrorism, 13 April 2005, UNTS 44004.
- International Convention for the Suppression of Terrorist Bombings, 15 December 1997, UNTS Vol. 37517.
- International Convention for the Suppression of the Financing of Terrorism, 9 December 1999, UNTS 38349.
- International Law Commission, “The obligation to extradite or prosecute (aut dedere aut judicare)”, Final Report, Yearbook of the International Law Commission 2:2, 2014, available at https://legal.un.org/ilc/texts/instruments/english/reports/7_6_2014.pdf.
- International Law Commission, “Draft Articles on Prevention and Punishment of Crime Against Humanity”, Report, Yearbook of the International Law Commission 2:2, 2019, https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_7_2019.pdf.
- Italian Government, Presidency of the Council of Ministers, “Comunicato stampa del Consiglio dei Ministri n. 25 [Press Release of the Council of Ministers n. 25]”, Press Release, 16 March 2023,

- <https://www.governo.it/it/articolo/comunicato-stampa-del-consiglio-dei-ministri-n-25/22114>.
- Justice for Victims of War Crimes Act (2022), S. 4240, <https://www.justsecurity.org/wp-content/uploads/2022/12/War-Crimes-Act-2022.pdf>.
- Kalnina, Ieva, and Martins Paporinskis, with Matthias Goldmann, Rain Liivoja, Cornelia Schneider, Ann Swampillai, and Isabelle E. Walther. “Implementation of the Rome Statute of the International Criminal Court in Latvia.” *SSRN* (1 June 2007).
- Mehra, Tanya. “Bringing (Foreign) Terrorist Fighters to Justice in a Post-ISIS Landscape – Part I: Prosecution by Iraqi and Syrian Courts”, *ICCT Perspective*, 22 December 2017, <https://www.icct.nl/publication/bringing-foreign-terrorist-fighters-justice-post-isis-landscape-part-i-prosecution>.
- Mehra, Tanya. “The Long and Winding Road to Bringing the ISIS ‘Beatles’ to Justice”, *ICCT Perspective*, 27 August 2020, <https://www.icct.nl/publication/long-and-winding-road-bringing-isis-beatles-justice>.
- Mettraux, Guénaél. “War Crimes in the Statutes of the *ad hoc* Tribunals”, in *International Crimes and the ad hoc Tribunals* (Oxford: Oxford University Press, 2006).
- Mitchell, Claire. “Source of the *aut dedere aut judicare* obligation”, in *Aut Dedere, aut Judicare: The Extradite or Prosecute Clause in International Law*, (Geneva: Graduate Institute Publications, 2011)
- Öberg, Marko Divac. “The absorption of grave breaches into war crimes law.” *International Review of the Red Cross* 91 no. 873, (2009): 163-183. <https://www.icrc.org/en/doc/assets/files/other/irrc-873-divac-oberg.pdf>.
- Omtzigt, Pieter. “Committee on Legal Affairs and Human Rights: Addressing the issue of Daesh foreign fighters and their families returning from Syria and other countries to the member States of the Council of Europe”, introductory memorandum delivered to the Parliamentary Assembly of the Council of Europe, Strasbourg, France, January 28, 2020, <https://assembly.coe.int/LifeRay/JUR/Pdf/DocsAndDecs/2020/AS-JUR-2020-03-EN.pdf>.
- Open Society Justice Initiative and TRIAL International, “Universal Jurisdiction Law and Practice in France”, Briefing Paper, February 2019, <https://www.justiceinitiative.org/publications/universal-jurisdiction-law-and-practice-france>.
- Open Society Justice Initiative and TRIAL International, “Universal Jurisdiction Law and Practice in England and Wales”, Briefing Paper, May 2022, <https://www.justiceinitiative.org/uploads/33da3b6f-e6e6-4bef-8052-f87846113fe9/universal-jurisdiction-law-and-practice-england-and-wales-05232022.pdf>.
- Phillips, Roger Lu and Aweiss Al Dobouch. “France Is Not a Safe Haven for Human Rights Abusers – Despite High Court Opinion”, *Just Security*, 9 December 2021, <https://www.justsecurity.org/79473/france-is-not-a-safe-haven-for-human-rights-abusers-despite-high-court-opinion/>.
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 6 August 1989, UNTS Vol. 1589, A-14118.
- Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft, 10 September 2010, ICAO Doc 9959.
- Public Safety Canada, “Kurdistan Workers Party”, Currently Listed Entities, <https://www.publicsafety.gc.ca/cnt/ntnl-scrnt/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-en.aspx#43>.
- Republic of Slovenia Ministry of Foreign and European Affairs, “Mutual Legal Assistance and Extradition Initiative”, <https://www.gov.si/en/registries/projects/mla-initiative/>.
- Republic of Slovenia, “The Ljubljana-Hague Convention adopted”, News Release, 26 May 2023, <https://www.gov.si/en/news/2023-05-26-the-ljubljana-hague-convention-adopted/>.

- Republic of Turkey Ministry of Foreign Affairs, “Foreign Policy – PKK”, <https://www.mfa.gov.tr/pkk.en.mfa>.
- Rosenbaum, Eli M., “From Nuremberg to Ukraine: Accountability for War Crimes and Crimes Against Humanity”, Statement before the Committee on the Judiciary United States Senate, 28 September 2022, <https://www.judiciary.senate.gov/imo/media/doc/Testimony%20-%20Rosenbaum%20-%202022-09-281.pdf>.
- Rubin, Alissa J. “French ISIS Supporters on Death Row in Iraq Ask for Mercy”, *New York Times*, 3 June 2019, <https://www.nytimes.com/2019/06/03/world/middleeast/iraq-islamic-state-syria-france.html>.
- Rudaw, “Rojava to begin trials of foreign ISIS militants”, 10 June 2023, <https://www.rudaw.net/english/middleeast/syria/10062023>.
- Ruling no 668 B+R, Judgement, Court of Cassation, 12 May 2023.
- Ruling no 669 B+R, Judgement, Court of Cassation, 12 May 2023.
- Syrian Network for Human Rights. “At Least 10,767 Persons Still Face Trial in Counter-Terrorism Court, nearly 91,000 Cases Heard by the Court – A Political/Security Court Which Aims at Eliminating Those Calling for Political Change for Democracy and Human Rights”, 15 October 2020, <https://reliefweb.int/report/syrian-arab-republic/least-10767-persons-still-face-trial-counter-terrorism-court-nearly>.
- T.M.C. Asser Instituut, “International Crimes Database”, Database, <https://www.internationalcrimesdatabase.org/>.
- The Rule of Law in Armed Conflict Project, Geneva Academy, “Non-international armed conflicts in Syria”, Conflicts Item, 29 September 2022, <https://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-syria#collapse3accord>.
- Thynne, Kelisiana. “Better a war criminal or a terrorist? A comparative study of war crimes and counterterrorism legislation”, *International Review of the Red Cross* 103, no. 916-917 (April 2021): 237-266.
- Trial International, “Universal Jurisdiction Annual Review 2023”, 17 April 2023, https://trialinternational.org/wp-content/uploads/2023/04/TRIAL_UJAR_2023_DIGITAL_21_04_Version2.pdf.
- U.K. Home Office, “Counter-Terrorism and Border Security Act 2019 – Sentencing Fact Sheet”, 6 June 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/912087/2019-02-11_Criminal_Sentences_Fact_Sheet_RA.pdf.
- UN Assistance Mission for Iraq. “Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIS”, UN OHCHR, January 2020, https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_Report_HRAAdministrationJustice_Iraq_28January2020.pdf.
- UN Commission on Human Rights, “Set of principles for the protection and promotion of human rights through action to combat impunity”, E/CN.4/2005/102/Add.1, 8 February 2005.
- UN Counter-Terrorism Committee Executive Directorate, “The interrelationship between counter-terrorism frameworks and international humanitarian law”, January 2022, https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/files/documents/2022/Jan/cted_ihl_ct_jan_2022.pdf.
- UN General Assembly, “Tackling Scope, Application of Universal Jurisdiction, Sixth Committee Speakers Debate Best Venue for Further Discussions on Principle’s Definition”, Press Release GA/L/3549, 11 October 2017, <https://press.un.org/en/2017/gal3549.doc.htm>.
- UN General Assembly, “Without Clear Definition, Universal Jurisdiction Principle Risks Misuse,

- Abuse, Sixth Committee Speakers Warn”, Press Release GA/L/3571, 10 October 2018, <https://press.un.org/en/2018/gal3571.doc.htm>.
- UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998.
- UN High Commissioner for Refugees Cyprus, “Syria Refugee Crisis – Globally, in Europe and in Cyprus”, News Item, 18 March 2021, <https://www.unhcr.org/cy/2021/03/18/syria-refugee-crisis-globally-in-europe-and-in-cyprus-meet-some-syrian-refugees-in-cyprus/>.
- UN Human Rights Council, “Report of the Independent International Commission of Inquiry on the Syrian Arab Republic”, A/HRC/44/61, 3 September 2020.
- UN Human Rights Council, “They came to destroy: ISIS Crimes Against the Yazidis”, A/HRC/32/CRP.2, 15 June 2016.
- UN Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL. “UN Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL”, Press Release, 7 June 2023, <https://reliefweb.int/report/iraq/unitad-unique-partnership-iraq-and-continued-commitment-justice-victims-isis-crimes-enar>.
- UN News, “Russia, China block Security Council referral of Syria to International Criminal Court”, 22 May 2014, <https://news.un.org/en/story/2014/05/468962>.
- UN Security Council Resolution 1373, S/Res/1373, 28 September 2001.
- UN Security Council Resolution 2178, S/Res/2178, 24 September 2014.
- UN Security Council Resolution 2331, S/Res/2331, 20 December 2016.
- UN Security Council Resolution 2388, S/Res/2388, 21 November 2017.
- UN Security Council Resolution 2396, S/Res/2396, 21 December 2017.
- UN Security Council, “Report by the Chair of the Counter-Terrorism Committee on the problems encountered in the implementation of Security Council resolution 1373 (2001)”, S/2004/70, 26 January 2004.
- U.S. Code, Title 18, Section 2441, Chapter 118, <https://www.law.cornell.edu/uscode/text/18/2441>.
- U.S. Department of State Bureau of Counterterrorism, “Foreign Terrorist Organizations”, <https://www.state.gov/foreign-terrorist-organizations/>.
- U.S. Attorney’s Office Eastern District of Virginia, “ISIS ‘Beagle’ Sentenced to Life Imprisonment for Hostage-Taking Scheme that Resulted in the Deaths of American, British, and Japanese Citizens”, Press Release, 19 August 2022, <https://www.justice.gov/usao-edva/pr/isis-beagle-sentenced-life-imprisonment-hostage-taking-scheme-resulted-deaths-american>.
- U.S. Department of Justice, “Federal Jury Convicts High-Level ISIS Member of Providing Support to a Foreign Terrorist Organisation, Including Two Counts Resulting in Death”, Press Release, 25 May 2022, <https://www.justice.gov/opa/pr/federal-jury-convicts-high-level-isis-member-providing-material-support-foreign-terrorist>.
- U.S. Attorney’s Office Eastern District of New York, “High Level Member of ISIS Sentenced to Life in Prison for Material Support to a Foreign Terrorist Organization Resulting in Death”, Press Release, 14 July 2023, <https://www.justice.gov/usao-edny/pr/high-level-member-isis-sentenced-life-prison-material-support-foreign-terrorist>.
- Van der Wilt, Harmen and Inez Braber. “The case for inclusion of terrorism in the jurisdiction of the International Criminal Court”, in *The International Criminal Court in Search of its Purpose and Identity*, ed. Triestino Mariniello, (London: Routledge, 2014): 17.
- Weill, Sharon. “Terror In Courts – French counter-terrorism: Administrative and Penal Avenues”, PSIA Science-Po Paris, May 2018, <https://www.sciencespo.fr/psia/sites/sciencespo.fr/psia/files/>

Terror%20in%20Courts_2.pdf.

Wolswijk, Hein D. "Locus Delicti and Criminal Jurisdiction", *Netherlands International Law Review* 46, no. 3 (1999): 361-382.

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