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

Tanya Mehra
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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,

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-
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. 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 background 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 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

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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)

<table>
<thead>
<tr>
<th>Year</th>
<th>Ongoing Cases</th>
<th>Completed Cases</th>
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<tbody>
<tr>
<td>2015</td>
<td></td>
<td>1</td>
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<tr>
<td>2016</td>
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<td>2</td>
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<tr>
<td>2017</td>
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<td>2022</td>
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<tr>
<td>2023</td>
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<td>9</td>
</tr>
</tbody>
</table>

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.\textsuperscript{8} Therefore, the term \textit{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.\textsuperscript{9} In addition to nationals of the prosecuting State, the dataset also includes

\textsuperscript{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.

\textsuperscript{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 rimes 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.\(^\text{10}\) Reflecting the chronology of the Syrian and Iraqi conflicts, the dataset only includes cases which address crimes allegedly committed after July 2012.\(^\text{11}\) 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.\(^\text{12}\) 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.\(^\text{13}\) 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 opposition groups that have been assisting the coalition forces.


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.’\textsuperscript{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.\textsuperscript{15} This obligation can be broken down into different elements: to establish


\textsuperscript{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, to penalise the offences in a manner that duly reflects the seriousness of the crimes, and to initiate investigations and submit the case to the prosecuting authorities. 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 prosecute – 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. 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. 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. The obligation to extradite or prosecute can thus be seen as laying the groundwork for ‘an effective system of criminalisation and prosecution,’ 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.
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. 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.

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. 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. 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.

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. 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. 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.

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.
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. Kandic 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, Kandic tweeted ‘best thing ever seen on screen’.31 Considering that Kandic 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 Kandic 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 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,
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
Establishing Jurisdiction

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. 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.

(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. 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, Finland, and the Netherlands 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. 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.
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.\textsuperscript{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.\textsuperscript{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).\textsuperscript{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.\textsuperscript{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.\textsuperscript{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

\textsuperscript{48} Case R 16/1304, Ammar Jебbar-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.
\textsuperscript{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#.\textsuperscript{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/.
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. Grave breaches are a narrower subset of war crimes and include wilful killing, torture, unlawful detention, or deportation. 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. 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.

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, 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. 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. 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. 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

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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 Ōberg, “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.
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 the 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.

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

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. More recently, 11 investigations have been opened by European states and Canada related to the war in Ukraine. 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.”

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).

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).

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70 Ibid, p. 10.
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.
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. 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. With the war in Ukraine, the government in Denmark is taking steps to criminalise core international crimes. 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.

While the maximum sentences for terrorist offences have been increased in several European countries, such as France and the United Kingdom, 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.

**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

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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. 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 civil 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.

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. 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. 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.

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

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83 Case IT-98-29-A, Prosecutor v. Stanislav Galić, Judgement, ICTY, 30 November 2006, para 100f.
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. 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. 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. 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. In France, different courts have jurisdiction over terrorism and core international crimes. The Court of Assizes with

89 Interview with Dutch official, June 2023.
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.\(^\text{92}\) 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.\(^\text{93}\)

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.\(^\text{94}\) In Belgium, a Syrian national who fled the conflict is now being investigated for alleged war crimes as a member of ISIS.\(^\text{95}\) 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.\(^\text{96}\)

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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/io/media/doc/Testimony%20-%20Rosenbaum%20-%202022-09-28.pdf . 
94 Interview with UK official, June 2023.
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. 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. 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.

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
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.
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