

# Syrian Torture Investigations in Germany and Beyond

Breathing New Life into Universal Jurisdiction in  
Europe?

Wolfgang Kaleck and Patrick Kroker\*

## Abstract

*The article discusses current developments in national prosecutions of international crimes committed in Syria and their potential to challenge international and national law for prosecuting these crimes. While most national authorities engaging in investigations and prosecutions of international crimes have so far employed a 'no-safe-haven approach', investigating and indicting suspects present on their territory, civil society organizations favour investigations against high-level perpetrators still in Syria, demanding state authorities follow a 'global-enforcer approach'. The article discusses the approach taken by German authorities where universal jurisdiction legislations allows a more strategic approach for the prosecution of international crimes and where the prosecutorial strategy of 'structural investigations' sets a promising example of how states can balance the two aforementioned prosecutorial concepts and thus contribute substantially to the fight against impunity for international crimes committed in Syria.*

- \* Wolfgang Kaleck founded the European Center for Constitutional and Human Rights (ECCHR) in 2007 and has served as General Secretary and Legal Director of the organization since then. Dr Patrick Kroker is a qualified lawyer and worked, among others, as an assistant to Civil Party Lawyers at the Extraordinary Chambers in the Courts of Cambodia. Since 2015, he is working at the International Crimes and Accountability programme at ECCHR as a Project Leader and Legal Advisor with a particular focus on international crimes in Syria, Iraq and Turkey as well as litigation concerning drone strikes. The ECCHR has filed and is working on a number of cases brought under the principle of universal jurisdiction in relation to Syria. Whereas some of them are explained in the article below, others can be found on the website of the organization: <https://www.ecchr.eu/en/our.work/international-crimes-and-accountability/syria.html>. The authors would like to thank their colleagues at ECCHR, Andreas Schüller and Alexandra Lily Kather, for their comments on this article. [kaleck@ecchr.eu; kroker@ecchr.eu]

# 1. Introduction: International Crimes Committed in Syria, their Documentation and the Lack of Accountability

Almost every imaginable international crime has been committed in Syria by one or several of the parties to the armed conflict. These include, among others, sexual violence, the recruitment of child soldiers, the use of human shields and illegal weapons such as barrel bombs or chemical weapons, indiscriminate military attacks on civilians and the siege of civilian areas with severe consequences for the besieged population. The crimes against the Yazidi population committed by the Islamic State in Iraq and the Levant (ISIS) — partly within Syria — including the widespread sexual enslavement of women and girls amount to genocide according to the findings of the Independent and International Commission of Inquiry on the Syrian Arab Republic (CoI Syria).<sup>1</sup>

One of the most commonly committed crimes in Syria was and still is torture, often alongside enforced disappearances in illegal detention facilities — a practice resorted to by almost all conflicting parties as a means not only to punish opponents but also to terrorize the part of the civilian population that is perceived as being sympathetic to them. Since the beginning of the uprising in 2011, in an extension and intensification of the existing decade-long practice of systematic torture of political opponents, the Syrian government has resorted to torture on a massive scale as a counter insurgency strategy.<sup>2</sup> According to a conservative estimate, 17,723 people are believed to have died in custody across Syria between March 2011 and December 2015.<sup>3</sup>

Next to being a revolution that turned into a civil war, the armed conflict in Syria has from the very beginning been a proxy war. Of the regional powers, Qatar and Turkey actively supported different groups of the fractured opposition to the Assad-controlled military, while Iran strongly intervened on the side of government forces. Russia began its direct military intervention in October 2015 on the side of the Syrian government while a US-led coalition of eight countries has conducted a partly secret air war campaign. Analysts have concluded that the coalition bombing of, among others, military targets

- 1 'They came to destroy': *ISIS Crimes Against the Yazidis*, UN Doc. A/HRC/32/CRP.2, 15 June 2016 (hereafter 'They came to destroy').
- 2 Human Rights Watch (HRW), *Torture Archipelago: Arbitrary Arrests, Torture and Enforced Disappearances in Syria's Underground Prisons in March 2011* (2012), available online at <https://www.hrw.org/report/2012/07/03/torture-archipelago/arbitrary-arrests-torture-and-enforced-disappearances-syrias> (visited 15 November 2017); *Out of Sight, Out of Mind: Deaths in Detention in the Syrian Arab Republic*, UN Doc. A/HRC/31/CRP.1, 3 February 2016 (hereafter 'Out of Sight, Out of Mind'); Amnesty International (AI), *It breaks the Human: Torture, Disease and Death in Syria's Prisons* (2016), available online at <https://www.amnesty.org/en/documents/mde24/4508/2016/en/> (15 November 2017).
- 3 M. Price, A. Gohdes and P. Ball, *Technical Memo for Amnesty International Report on Deaths in Detention*, Human Rights Data Analysis Group, 17 August 2016, available online at <https://hrdag.org/wp-content/uploads/2016/08/HRDAG-AI-memo-2.pdf> (visited 15 November 2017).

of the ISIS in Syria and Iraq<sup>4</sup> has led to the reported death of nearly 10,000 civilians.<sup>5</sup>

Concurrently, many Western corporations have profited from the ongoing violence in Syria and are under suspicion of having contributed to the commission of international crimes by one of the parties to the conflict during the course of their operations in Syria. This is true not only for arms suppliers and surveillance technology providers but also for manufacturers of building materials.<sup>6</sup>

The vast majority of international crimes, including torture, enforced disappearance and sexual violence, have been committed in a systematic way by the Syrian government, benefitting from a long-standing culture of impunity. While many members of non-state armed groups, be they foreign fighters or fighters from the region, involved in the commission of international crimes fled Syria and are being internationally investigated and prosecuted (albeit mainly under antiterrorism laws) by national prosecution authorities, the prospects of the Syrian government of benefiting further from a long-established culture of impunity are constantly rising with the government gaining military ground and thus also improving its standing in international peace negotiations. This article is, therefore, focused on accountability for international crimes committed by the Syrian government. This focus does not undermine the responsibility of all other parties to the conflict involved in the commission of international crimes in Syria. It is equally important for their acts to be investigated and prosecuted.

From the very beginning of the Syrian uprising, Syrian and international non-governmental organizations (NGOs), as well as international bodies, reported on the excessive violence, amounting to international crimes, employed by state authorities in Syria in response to the uprising. The first international body to confirm this assertion was the United Nations (UN) Human Rights Council in April 2011.<sup>7</sup> In September of the same year, a report of the UN High Commissioner for Human Rights found 'patterns of human rights violations that may amount to crimes against humanity' in Syria.<sup>8</sup> Since its establishment in August 2011, the Independent and International Commission of Inquiry on the Syrian Arab Republic (Col) has published more than 20 reports

4 Jordan, Canada, Australia, France, UK, the Netherlands, Belgium and Denmark; this coalition has on occasion been joined by aircraft from the United Arab Emirates, Saudi Arabia, Bahrain and Turkey.

5 See the constantly updated data collected by [airwars.org](https://airwars.org); regarding its methodology available online at <https://airwars.org/methodology-new-draft/> (visited 15 November 2017).

6 The cases of Lafarge, now Lafarge Holcim and Qosmos will be discussed *infra*, at 175. For the possible criminal responsibility of the Russian corporation Rosoboronexport for the provision of arms to the Syrian government, see C. Plomp, 'Aiding and Abetting: The Responsibility of Business Leaders under the Rome Statute of the International Criminal Court', 30 *Utrecht Journal of International and European Law* (2014) 4–29.

7 In its report HRC Res. S-16/1 of 29 April 2011, the Commission uttered its concerns about 'the death of hundreds of people' and the 'alleged deliberate killings, arrests and instances of torture of peaceful protesters by the Syrian authorities'.

8 *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Syrian Arab Republic*, UN Doc. A/HRC/18/53, 15 September 2011.

documenting human rights violations committed by various sides of the conflict, including the Syrian government, armed groups opposing the government as well as ISIS.<sup>9</sup> In its February 2012 report, the CoI noted that ‘widespread, systematic and gross human rights violations, amounting to crimes against humanity’ by governmental forces was occurring with the apparent knowledge and consent of the highest levels of the state.<sup>10</sup> A number of reports directly refer to individual criminal responsibility.<sup>11</sup> In fulfilment of its mandate, the CoI is compiling lists of potential suspects and has regularly presented them to the UN Security Council.<sup>12</sup>

There are two major shortcomings of the work of the CoI. First, it lacks access to the territory. It is, therefore, relying on findings of organizations and their investigators on the ground or having to conduct remote interviews with Syrians who have fled the country. It can be concluded that the CoI’s dependence on second-hand information increases the risk of manipulation of the received information.<sup>13</sup> A second shortcoming relates to the mandate of the CoI according to which it is not explicitly tasked with securing evidence to standards suitable for (international) criminal investigations. The extent to which the information collected by the CoI can be utilized for the purposes of international and national investigatory and prosecutorial efforts thus remains unclear.<sup>14</sup>

The task of responding to these two shortcomings is being undertaken on the one hand by Syrian NGOs dedicated to documenting past and ongoing human rights violations,<sup>15</sup> and on the other by an international NGO.<sup>16</sup> The

9 SC Res. 2209, 6 March 2015: exception to some extent concerning the alleged use of chemical weapons; SC Res. 2235, 7 August 2015: creating an Organization for the Prohibition of Chemical Weapons (OPCW) Joint Investigative Mechanism (JIM) to identify those responsible; SC Res. 2314, 31 October 2016, SC Res. 2319, 17 November 2016: extended JIM’s mandate until November 2017, HRC Res. S-17/1, 22 August 2011, UNHRC Res. S-17/1, 22 August 2011.

10 *Report of the independent international commission of inquiry on the Syrian Arab Republic*, UN Doc. A/HRC/19/69, 22 February 2012.

11 For example, in *Out of Sight, Out of Mind*, *supra* note 2, the CoI noted that there are ‘reasonable grounds to believe that high ranking officers [might be] ... individually criminally liable for the crimes committed in ... detention centres’, at 64.

12 See *supra* note 10, UN Doc. A/HRC/28/69, 5 February 2015.

13 For a discussion about the challenges in obtaining reliable and credible testimony, see M. Foster Lynch, ‘Collecting Data on Violence: Scientific Challenges and Ethnographic Solutions’, in T. Seybolt, J. Aronson and B. Fischhoff (eds), *Counting Civilian Casualties: An Introduction to Recording and Estimating Nonmilitary Deaths in Conflict* (Oxford University Press, 2013) 123–142 and N. Combs, *Fact-Finding Without Facts* (Cambridge University Press, 2010).

14 ‘United Nations Website’, *Syria: UN Chief Guterres Clarifies Tasks of Panel Laying Groundwork for Possible War Crimes Probe*, available online at <http://www.un.org/apps/news/story.asp?NewsID=56050> (visited 15 November 2017).

15 See, for example, the Violations Documentation Center (<http://vdc-sy.net/en/>), the Syrian Network for Human Rights (<http://sn4hr.org/>), and the Syrian Center for Statistics and Research (<http://www.csr-sy.org>).

16 Center for International Justice and Accountability (CIJA), *Written Testimony before The Commission on Security and Cooperation in Europe by Chris Engels Deputy Director for Investigations and Operations the Commission for International Justice and Accountability*, 22 September 2016, available online at <https://www.csce.gov/sites/helsinkicommission.house.gov/files/1.Chris%20Engels.Testimony.pdf> (visited 15 November 2017).

latter is mainly funded by Western governments, and was created in 2012 with the mandate of collecting and analysing evidence for crimes committed in Syria in accordance with the standards of international criminal law.<sup>17</sup>

Despite unprecedented levels of documentation of international crimes committed in Syria, there has so far been a complete lack of accountability for these crimes at the international level.<sup>18</sup> Although Syria signed the Rome Statute on 29 November 2000, it has never ratified it and is thus not a State Party barring one avenue of jurisdiction for the International Criminal Court (ICC). A referral by the UN Security Council, the other avenue for the ICC to be granted jurisdiction,<sup>19</sup> was vetoed by the permanent UN Security Council Members Russia and China in May 2014.<sup>20</sup> In addition to this, Russia has so far almost systematically vetoed all resolutions containing condemnation of human rights violations or calls for accountability for crimes committed by Syrian government forces or their allies.<sup>21</sup>

Amid growing frustration with the deadlocked UN Security Council and the unavailability of other realistic international accountability measures, such as an international criminal tribunal or a hybrid tribunal,<sup>22</sup> the UN General Assembly (GA) created in December 2016, on the initiative of some of its members, an International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Those Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (IIIM).<sup>23</sup>

The mission of the IIIM is to 'collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses and to prepare files in order to facilitate and expedite fair and independent criminal proceedings ... in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes ...'.<sup>24</sup> In its presumed role as 'a legal assistant that bridges the gap

17 See, for example, W. Kaleck and C. Terwindt, 'Non-Governmental Organisation Fact-Work: Not Only a Technical Problem', in M. Bergsmo (ed.), *Quality Control in Fact-Finding* (Torkel Opsahl academic EPublisher, 2013) 402–427.

18 I. Elliott, 'A Meaningful Step towards Accountability? A View from the Field on the United Nations International, Impartial and Independent Mechanism for Syria', 15 *Journal of International Criminal Justice (JICJ)* (2017) 239–256, at 240.

19 SC Res. 1970, 26 February 2011.

20 UN Doc. S/2014/348, 22 May 2014.

21 28 February 2017, on a draft resolution for accountability for chemical attacks in Syria: S/2017/712, S/PV.7893; 5 December 2016: UN Doc. S/2016/1026, S/PV.7825; 8 October 2016: UN Doc. S/2016/846, S/PV.7785; 22 May 2014: UN Doc. S/2014/348, S/PV.7481; 19 July 2012: UN Doc. S/2012/538, S/PV.6810; 4 February 2012: UN Doc. S/2012/77, S/PV.6711; 4 October 2011: UN Doc. S/2011/612, S/PV.6627.

22 C. Wenaweser and J. Cockayne, 'Justice for Syria? The International, Impartial and Independent Mechanism and the Emergence of the UN General Assembly in the Realm of International Criminal Justice', 15 *JICJ* (2017) 211–230, at 217 stating that 'it was presented against the background of the well-documented siege and assault of Aleppo'.

23 UN Doc. A/RES/71/248, 21 December 2016.

24 *International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Those Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011*, UN Doc. A/71/L.48, 19 December 2016, § 4.

between fact-finders and prosecutors'<sup>25</sup> the powers of the IIIM have been described as 'quasi-prosecutorial'.<sup>26</sup>

The establishment of the IIIM is remarkable for two reasons. First, the creation of such a mechanism presents a 'creative and innovative' approach to international criminal justice on the international level.<sup>27</sup> Secondly, with the vote for the IIIM, the majority of states in the GA constructed a path capable of overcoming the deadlock of the UN Security Council veto on matters of justice. By the same token, a potential precedent was set for similar situations in the future.<sup>28</sup>

Bearing in mind its mission to securing evidence, structuring it into case files and conducting further investigations into persons responsible for international crimes committed in Syria, the praise the IIIM currently receives, however, focuses on its future prospects of accountability rather than on any current effective impact.<sup>29</sup> Despite the fact that the IIIM, once functional, will probably contribute to national prosecutions brought under universal jurisdiction (UJ) principles, one has to consider the fact that prosecutorial and investigative authorities, particularly in European countries with an inquisitorial model, seek to and are often even obliged to conduct investigations themselves. How far this work can be outsourced to the IIIM, or at least facilitated by their preparation of case files, remains to be seen.

A functioning IIIM would have already embarked upon the preparatory investigation work usually undertaken by the ICC or a special tribunal, which in turn would have increased the possibility for accountability efforts to be achieved at the international level.<sup>30</sup> It is to be hoped that the creation of the IIIM has helped to gather political support for the idea from previously unconvinced states and sparked interest in taking another step towards a tribunal or Security Council referral to the ICC.<sup>31</sup> Additionally, the existence of an international quasi-prosecutorial mechanism established by the GA, whose mandate explicitly refers to accountability efforts through national courts by means of UJ, further legitimizes national investigations and prosecutions of international crimes under UJ in the sense that such efforts cannot as easily be dismissed as arbitrary or as violating state sovereignty.

## 2. UJ as an Accountability-option for Crimes in Syria

With no possibility of effective and fair trials in the country where the crimes were committed and impunity at an international level, UJ seems to be — at

25 Wenaweser and Cockayne, *supra* note 22, at 214.

26 *Ibid.*

27 Wenaweser and Cockayne, *supra* note 22, at 219.

28 A. Whiting, 'An Investigation Mechanism for Syria: The General Assembly Steps into the Breach', 15 *JICJ* (2017) 231–237, at 237.

29 Wenaweser and Cockayne, *supra* note 22, at 213: 'offers concrete hope for justice in Syria'. Whiting, *ibid.*, at 236: 'a bridge to a future moment when the conditions and political will exist to provide for accountability in Syria'.

30 Wenaweser and Cockayne, *ibid.*, at 219 and Whiting, *supra* note 28, at 237.

31 Draft Statute for a Syrian [Extraordinary] [Special] Tribunal to Prosecute Atrocity Crimes, 27 August 2013, available online at <http://www.publicinternationallawandpolicygroup.org/wp-content/uploads/2014/01/Chautauqua-Blueprint-2014.pdf> (visited 15 November 2017).

least at present — a last resort for accountability for international crimes in Syria. Against the backdrop of the development of UJ in the past 15 years, it is all the more important to outline its current application and its concrete potential with respect to accountability for crimes in Syria.

### A. The Current State of UJ

At the end of the 1990 s and the beginning of the 2000 s, there were vivid applications of UJ with investigations and trials being held in states such as Belgium and Spain. In this context, a significant series of investigations and trials was initiated concerning crimes committed in Argentina, Chile, Guatemala and Haiti, followed by Rwanda, Congo, Algeria and Afghanistan inter alia.

Concurrent with the establishment of the ICC, in order to complement the Rome Statute, newly adopted national codes, such as the Code of Crimes against International Law (*Völkerstrafgesetzbuch* or CCAIL) in Germany, began to enact the crimes laid out in the Rome Statute in domestic legislation. Yet the hope that important cases involving high political costs, such as those against Pinochet and Videla, would follow remained unfulfilled since, for example, no proceedings were initiated against Russian or American torturers for the crimes committed in Chechnya and Guantanamo.

Spain, as one of the few states allowing the application of UJ in Europe in the first half of the 2000 s, came under increasing political pressure.<sup>32</sup> Too many cases against powerful states, such as the USA and China, were conducted by the national investigative and prosecutorial authorities in Spain. As a result, the principle of UJ was heavily restricted in both Belgium in 2003 and in Spain in 2009 as well as in 2014. UJ from then on was applied only in a small number of cases with territorial or personality links to both countries.<sup>33</sup>

At a more technical level, professionalism and cooperation among European authorities improved with war crimes units from many European Union (EU) Member States actively investigating international crimes and coordinating their work within the EU Genocide Network.<sup>34</sup> Prosecutors,

32 See M. Langer, 'The Diplomacy of Universal Jurisdiction: The Political Branches and the Transnational Prosecution of International Crimes', 105 *American Journal of International Law* (2011) 1–35, at 1; M. Langer, 'Universal Jurisdiction is Not Disappearing: The Shift from Global Enforcer to No Safe Haven Universal Jurisdiction', 13 *JICJ* (2015) 245–256; W. Kaleck, *Double Standards: International Criminal Law and the West* (Torkel Opsahl Academic EPublisher, 2015), at 61–76; M. Verhaeghe, 'The Political Funeral Procession for the Belgium UJ Statute', in W. Kaleck, M. Ratner, T. Singelstein et al. (eds), *International Prosecution of Human Rights Crimes* (Springer, 2007) 139–148.

33 A. O'Sullivan, *Universal Jurisdiction in International Criminal Law: The Debate and the Battle for Hegemony* (Routledge, 2017), at 187–190.

34 For an analysis of the different war crimes units, see the following report by Human Rights Watch from 16 September 2014: *The Long Arm of Justice: Lessons from the Specialized War Crimes Units in France, Germany, and the Netherlands*, available online at <https://www.hrw.org/report/2014/09/16/long-arm-justice/lessons-specialized-war-crimes-units-france-germany-and> (visited 15 November 2017).

judges and sections of the public became increasingly familiar with UJ cases as an established legal avenue addressing the commission of international crimes abroad. Despite this, the understanding and application of UJ shifted from being a 'global-enforcer approach', according to which states may exercise UJ as a result of their role in preventing and punishing international crimes committed anywhere in the world, to a narrow 'no-safe-haven' conception according to which states preferred to exercise UJ in order for their territory not to be a refuge for suspects involved in the commission of international crimes.<sup>35</sup>

### B. UJ Cases in Europe Regarding Syria

The trend described above is also reflected in the context of ongoing investigations and prosecutions with respect to international crimes committed in Syria in various EU Member States.<sup>36</sup> The reasons for the regional concentration on Europe are twofold. First, the continent has traditionally been a stronghold for the application of the principle. According to a study by Amnesty International, while UJ is a widely established principle in theory with laws in 163 of 193 UN Member States allowing for the application of UJ over one or more international crimes,<sup>37</sup> Canada and Australia are the only non-European states in which the principle has been applied in a significant number of cases,<sup>38</sup> although some singular, yet important, investigations and trials have taken place in countries such as Argentina,<sup>39</sup> South Africa,<sup>40</sup> or Senegal.<sup>41</sup>

35 Langer, 'Universal Jurisdiction is Not Disappearing', *supra* note 32, at 247.

36 Elliott, *supra* note 18, at 247.

37 AI, *Universal Jurisdiction: A Preliminary Survey of Legislation around the world – 2012 Update* (2012), available online at <https://www.amnesty.org/en/documents/ior53/019/2012/en/> (visited 15 November 2017).

38 Langer, 'Diplomacy of Universal Jurisdiction', *supra* note 32, at 1.

39 Investigations proceeded in an Argentine case involving the commission of crimes against humanity in Spain's 1930s civil war. TRIAL International, *Make way for Justice # 3: Universal Jurisdiction Annual Review 2017* (2017), available online at <https://trialinternational.org/wp-content/uploads/2017/03/UJAR-MEP.A4.012.pdf> (visited 15 November 2017) (hereafter '*Make way for Justice # 3*'), at 6–7 and 'Argentinean Court Considers Spanish Civil War Inquiry', *The Guardian*, 14 April 2010, online available at <https://www.theguardian.com/world/2010/apr/14/spain-civil-war-argentina-inquiry> (visited 15 November 2017); Ricardo Miguel Cavallo served as an officer in the military junta *El Proceso* from 1976 to 1983 in Argentina. He was arrested, extradited and indicted under the principle of UJ by Spain and eventually stood trial in Argentina, see for example: W. Kaleck, 'From Pinochet to Rumsfeld: Universal Jurisdiction in Europe 1998–2008', 30 *Michigan Journal of International Law* (2009) 931–980, at 956.

40 G. Werle and P.C. Bornkamm, 'Torture in Zimbabwe under Scrutiny in South Africa: The Judgment of the North Gauteng High Court in *SALC v. National Director of Public Prosecutions*', 11 *JICJ* (2013) 659–675.

41 R. Brody, 'Victims bring a Dictator to Justice: The Case of Hissène Habré', April 2017, available online at <https://www.brot-fuer-die-welt.de/fileadmin/mediapool/2.Downloads/Fachinformationen/Analyse/Analysis70-The.Habre.Case.pdf> (visited 15 November 2017).

Secondly, European countries are in some ways closer to the Syrian war than many other non-European countries, particularly because of the presence in European territory of individuals who have fled the armed conflict. Thus, not only survivors, witnesses and those otherwise affected but also Syrian oppositionists, activists and lawyers as well as human rights NGOs are in close proximity to European law enforcement and prosecutorial authorities.

Several countries are investigating international crimes committed in Syria, including allegations of international crimes committed by ISIS against the Yazidi population. In seven national jurisdictions, cases of war crimes or crimes against humanity committed in Syria are ongoing or have been concluded.<sup>42</sup> In almost all cases, the investigations initiated by judicial authorities were triggered by the presence of a suspect in their territory.

As a result, a number of investigations and trials against low-level perpetrators in European jurisdictions for crimes committed in Syria are completed or underway.<sup>43</sup> Most of them ended with convictions, such as in Austria, where a 27-year old Syrian asylum seeker in Tyrol and former member of the oppositional Farouq Brigade was sentenced to life imprisonment in May 2017 for the multiple murders of several governmental soldiers near Homs between 2013 and 2014.<sup>44</sup>

In Sweden, 28-year old Mouhannad Droubi, previously recruited by the Free Syrian Army (FSA) in May 2012 and who had applied for asylum in Sweden in 2013, was sentenced to eight years' imprisonment for war crimes and torture-like assault.<sup>45</sup> Two further sentences were handed down in May and September of 2017. The former resulted in a life sentence for Haisam Omar Sakhneh, who was found guilty of a war crime for killing seven Syrian army soldiers during his membership of a non-state armed groups opposed to the Syrian government. The latter concluded in a prison sentence of eight months for Mohammad Abdullah, who was found guilty of a war crime because he violated the dignity of five dead or severely injured people by posing for a photograph with his foot on one of the victims' chest. The conclusion of this trial marks the first conviction of a soldier previously belonging to the Syrian army.

42 *Make way for Justice # 3*, *supra* note 39, at 70; Sweden, France, the USA, Germany, Austria, Spain and Switzerland. In Spain however, in order to circumvent jurisdictional restrictions for international crimes, the allegations of arbitrary detention, forced disappearance, torture and execution are being investigated as a potential crime of state terrorism, enshrined in Art. 573 of the Spanish Criminal Code. Sweden and Germany have the largest number of ongoing or concluded trials.

43 HRW, *These were the Crimes we are Fleeing: Justice for Syria in Swedish and German Courts (2017)* available online at <https://www.hrw.org/report/2017/10/03/these-are-crimes-we-are-fleeing/justice-syria-swedish-and-german-courts> (visited 15 November 2017), at 33–35.

44 K. Connolly and O. Bowcott, 'Austrian Court Jails Asylum Seeker for War Crimes in Syria', *The Guardian*, 11 May 2017, available online at <https://www.theguardian.com/world/2017/may/11/austria-jails-syrian-man-who-boasted-of-killings-in-homeland> (visited 15 November 2017).

45 'Swedish Court Sentences Syrian Rebel to Life for War Crimes', *Reuters*, 16 February 2017, available online at <http://www.reuters.com/article/mideast-crisis-syria-sweden-idUSL8N1G12S8> (visited 15 November 2017).

In Germany, three trials have been concluded at the time of the writing of this article.<sup>46</sup> In the first trial, Aria L., a German national, was sentenced to two years' imprisonment by the Higher Regional Court of Frankfurt for the war crime of treating a person who is to be protected under international humanitarian law (IHL) in a gravely humiliating or degrading manner in the context of a non-international armed conflict in Syria, punishable according to Section 8(1)(9) CCAIL. During his three-week long participation in the fighting in Binnish, Idlib, in February 2014, he had posed in pictures in front of two severed heads mounted on metal spears belonging to murdered members of Assad's forces.

In the second trial, German national Abdelkarim El B. was sentenced to eight and a half years' imprisonment by the Higher Regional Court of Frankfurt for membership in a terrorist organization and for having mutilated the body of an enemy soldier, thus having treated a person protected under IHL in a gravely humiliating or degrading manner (Section 8(1)(9) CCAIL). The accused was a registered member of ISIS and had participated in the fighting on the frontline close to Aleppo between September 2013 and February 2014.

The third trial concerns Suliman A.S. who was convicted for aiding a war crime and was sentenced to three and half years in prison by the Higher Regional Court in Stuttgart on 20 September 2017. Suliman A.S. was charged with committing a war crime against humanitarian operations (Section 10(1)(1) CCAIL) for directly attacking personnel involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the UN for his then alleged participation in the kidnapping of the UN worker Carl Campeau on 17 February 2013. He was further charged with being a member of the terrorist organization Jabhat al-Nusra but he was eventually acquitted of these charges. Campeau worked in Syria as a legal adviser to the UN Disengagement Observer Force, observing and keeping the ceasefire between Israel and Syria in the Golan Heights area.

Dissatisfied with the prosecution of mid- and low-level perpetrators accidentally present in Europe, civil society organizations have tried to use available legal means to work towards a more systematic approach to accountability for international crimes in Syria. NGOs engaged in strategic litigation have teamed up with Syrian lawyers, human rights groups, documentation organizations as well as survivors to make use of the respective UJ laws in different countries.<sup>47</sup>

In Spain, lawyers filed a criminal complaint against nine Syrian officials for the alleged enforced disappearance, torture and killing of Abdulmuemen Alhaj Hamdo in an illegal government prison in Damascus in 2013.<sup>48</sup> The

46 For more details on current investigations and proceedings in Germany, see *infra*, at 180 *et seq.*

47 See also Elliott, *supra* note 18, at 242; several criminal complaints submitted to support the structural investigations in Germany will be discussed *infra*.

48 'Guernica 37 – International Justice Chambers and its partner in Madrid G37 – Despacho Internacional, are filing a criminal complaint before the Spanish National Court against members of the Syrian security forces and intelligence for the commission of crimes of state

complaint was for the commission of the crime of (state) terrorism and only indirectly for crimes against humanity and war crimes. Following an appeal by Spain's state prosecutor against the opening of the case, the Spanish High Court ruled that the case had to be dismissed since the claimant, the sister of the deceased, had acquired Spanish nationality only after the crime had been committed.<sup>49</sup>

The involvement of external actors, such as transnational corporations, in international crimes committed in Syria has already been mentioned above. Such involvement has resulted in two ongoing investigations in France. In 2012, French NGOs filed a criminal complaint against the French company Qosmos alleging complicity in torture and war crimes by selling surveillance technology to the Syrian government.<sup>50</sup> In November 2016, French and German NGOs filed a joint criminal complaint for commercial activities in an area under ISIS control that allegedly amounted inter alia to financing of terrorism and complicity in war crimes as well as crimes against humanity by the (then) French company Lafarge. A judicial investigation into the case was opened in June 2017.<sup>51</sup>

In October 2016 another case regarding enforced disappearance and torture as crimes against humanity was filed by International Federation for Human Rights (FIDH) together with Obeida Dabbagh, brother and uncle of Mazzen Dabagh and Patrick Dabbagh. The father and son were taken by the Syrian air force intelligence to a detention facility on al-Mezzeh military airport in Damascus in November 2013.<sup>52</sup> Three judges have been tasked with investigating enforced disappearance and torture as crimes against humanity of the two victims who also held French nationality. As in Spain, victim nationality is a prerequisite for the assertion of jurisdiction.

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terrorism', Guernica 37, 1 February 2017, available online at <http://guernica37.org/wp-content/uploads/2017/02/170127-Press-Release-Syria-2.pdf> (visited 15 November 2017).

49 Re-Post of a *The New York Times* article, 'Spain Court Drops Complaint against Syrian Security Forces', 21 July 2017, available online at <http://guernica37.org/2017/07/new-york-times-spain-court-drops-complaint-against-syrian-security-forces/> (visited 15 November 2017).

50 For more information, see website of FIDH: <https://www.fidh.org/en/region/europe-central-asia/france/15116-france-opening-of-a-judicial-investigation-targeting-qosmos-for-complicity> (visited 15 November 2017).

51 For more information, see website of ECCHR: <https://www.ecchr.eu/en/business-and-human-rights/lafarge-syria.html> (visited 15 November 2017) and L'association Sherpa: <https://www.asso-sherpa.org/french-company-lafarge-sued-for-financing-isis-and-complicity-in-war-crimes-and-crimes-against-humanity-in-syria> (visited 15 November 2017).

52 *Make Way for Justice* # 3, *supra* note 39, at 26; see also: FIDH, 'The Case of Two Disappeared Franco-Syrians in a Bashar al-Assad Jail Referred to the French Justice', 24 October 2016, available online at <https://www.fidh.org/en/region/north-africa-middle-east/syria/the-case-of-two-disappeared-franco-syrians-in-a-bashar-el-assad-jail> (visited 15 November 2017) and FIDH 'Syria: French Judges Open Enquiry into Disappearance of Franco-Syrian Father and Son in Bashar al-Assad's Jails', 7 November 2016, available online at <https://www.fidh.org/en/impacts/syria-french-judges-open-enquiry-into-disappearance-of-franco-syrian> (visited 15 November 2017).

### 3. New Perspectives for ‘Global-enforcer Approaches’ to UJ? Structural Investigations in Germany

When prosecutors employ a strict ‘no-safe-haven approach’, cases like the ones filed by civil society organizations that are aimed at combating impunity in Syria in a strategic as opposed to coincidental manner, have limited chances of success. The result is that only (mostly low- or mid-level) perpetrators accidentally in Europe can be made to face prosecution in the near future for atrocities committed in Syria. For all those who wish for accountability mechanisms to address the amount and the gravity of the crimes that are in addition, part of a policy decided upon at the highest levels of government and military leadership, this is a disappointing perspective in light of the absence of other accountability options.

Yet, prosecutorial strategies employing a wider and more flexible approach do exist. In the following sections, the article turns to structural investigations as tools for combating impunity in Syria and their possible outcomes. Beginning with an introduction to the principles and practice of UJ in Germany, the prosecutorial strategy of structural investigations are described in general and in particular with regard to crimes in Syria before discussing its potential as a tool for combating impunity in Syria.

The discussion will focus almost exclusively to the situation in Germany, the country that has by far the greatest number of ongoing investigations and cases relating to international crimes committed in Syria. It also has, together with Norway, the least strict UJ requirements for such proceedings in Europe. It should be noted, however, that the strategy of structural investigations is also employed in France with the limitation that French law that prescribes jurisdiction over international crimes only if one or more of the victims is French or if a suspect has established his or her regular residence on French territory or, in the case of the crime of torture, if a suspect is located in French territory.<sup>53</sup>

#### A. UJ for International Crimes in Germany

The CCAIL (*Völkerstrafgesetzbuch*) came into force on 30 June 2002, section 1 of which provides the legal basis for the principle of UJ. The Office of the Federal

53 In September 2015, the French Minister of Foreign Affairs requested the Paris Prosecutor of the French unit for the prosecution of genocide, crimes against humanity, war crimes and torture to open a preliminary investigation for crimes against humanity, war crimes and torture. See ‘France investigates Syria’s Assad for crimes against humanity’, *Reuters*, 30 September 2015, available online at <http://www.reuters.com/article/us-france-syria-assad-idUSKCNORU11320150930> (visited 15 November 2017) and see also Arts 689, 689–681, 689–611 of the French *Code de Procédure Pénale*. The request is based on a set of over 50,000 photographs smuggled out of Syria by a former photographer of the military police of the Syrian government now known under the codename ‘Caesar’. The photographs display thousands of tortured corpses of persons who died in government-run detention facilities operated by the Syrian intelligence agencies.

Prosecutor (*Generalbundesanwaltschaft*) is vested with discretion not to investigate in cases 'without any link to Germany'.<sup>54</sup> The reason behind this regulation is to avoid overloading the national justice system with international investigations while at the same time enabling the prosecutor to participate in international prosecutorial investigative action and to prepare (national or international) prosecutions in order to impede impunity for international crimes that might otherwise go unpunished.<sup>55</sup>

In the first years of the existence of the CCAIL, the Office of the Federal Prosecutor objected to opening investigations based on controversial discretionary decisions in cases against former US-State secretary for defence Donald Rumsfeld and others regarding torture in Abu Ghraib, Guantanamo as well as other sites. The Federal Prosecutor asserted in the first case 2004/2005 that Germany, in analogy to Article 17 of the Rome Statute, had no jurisdiction in the matter because there were ongoing US court martial trials against soldiers and low-ranking officers in the Abu Ghraib torture cases. In a second case 2006/2007 he dismissed the case because there was no reasonable likelihood of a conviction in Germany.<sup>56</sup> Even more disputed was the failure to initiate proceedings against the former Uzbek interior minister Zokirjon Almatov, although he was present in Germany for medical treatment in autumn 2005.<sup>57</sup> Furthermore, Almatov had been listed on a European sanctions list as one of the main suspects in the Andijan Massacre in May 2005, in which over 1000 predominantly Muslim demonstrators were murdered, as well as in the operation of a massive torture apparatus under his authority in Uzbekistan.<sup>58</sup>

Critics have held that far fewer investigations than were possible were opened by the Office of the Federal Prosecutor because of a lack of resources in the first decade after 2002.<sup>59</sup> With the establishment of a specialized war

54 T. Beck and C. Ritscher, 'Do Criminal Complaints Make Sense in (German) International Criminal Law? A Prosecutor's Perspective', 13 *JICJ* (2015) 229–235, at 2–3: 'It is only in cases of offences committed abroad without any link to Germany whatsoever that the German Federal Prosecutor General (*Generalbundesanwalt*), responsible for the prosecution of international crimes, is enabled to exercise his/her discretion to dispense with prosecution under the strict requirements of section 153f German Code of Criminal Procedure.'

55 See BT Drs. 14/8524 (Draft of the German government for the introduction of the Code of Crimes Against International Law), at 37: 'to prevent impunity of perpetrators of international crimes through international solidarity in criminal prosecution' (translated by authors, the original texts reads '*die Straflosigkeit der Täter völkerrechtlicher Verbrechen durch international solidarisches Verhalten bei der Strafverfolgung zu verhindern*', available online at <http://dip21.bundestag.de/dip21/btd/14/085/1408524.pdf>, visited 15 November 2017).

56 Kaleck, *supra* note 39, at 927–980, 953, 953.

57 S. Zappalà, 'The German Federal Prosecutor's Decision not to Prosecute a Former Uzbek Minister: Missed Opportunity or Prosecutorial Wisdom?' 4 *JICJ* (2006) 602–622, at 602.

58 Sullivan, *supra* note 33, at 185–187 and Kaleck, *supra* note 39, at 952 as well as see e.g. the case of Uzbek Minister of Interior Almatov in 2005, information available at <https://www.ecchr.eu/en/our.work/international-crimes-and-accountability/uzbekistan.html> (visited 15 November 2017).

59 HRW, 'Universal Jurisdiction in Europe: The State of the Art' (2006), at 63, available online at <https://www.hrw.org/sites/default/files/reports/ij0606web.pdf> (visited 15 November 2017) and

crimes unit at the Federal Prosecutor's office in 2010 and resources increasing, two trials were eventually opened in 2010 concerning Rwanda as well as the Eastern Democratic Republic of Congo (DRC). In the first trial, a Hutu major was convicted and sentenced by the Higher Regional Court in Frankfurt for genocide (as codified in the Criminal Code before entry into force of the CCAIL) in Rwanda in April 1994.<sup>60</sup> In the second trial, two leading figures of a Hutu-militia named *Forces Démocratique de la Liberation de Ruanda* (FDLR) who resided in Germany were convicted for war crimes in September 2015. The appeal against the verdict is still pending at the time of writing.<sup>61</sup>

The war crimes unit at the Federal Prosecutor's office is currently staffed with seven prosecutors, which is an increase of two prosecutors in comparison to the founding year in 2010.<sup>62</sup> The prosecutors are assisted in their investigations by the Central Department for the Investigations of War Crimes and Crimes against Humanity (*Zentralstelle für die Bekämpfung von Kriegsverbrechen und weiteren Straftaten nach dem Völkerstrafgesetzbuch*) of the Federal Police. The Central Department is currently composed of 17 staff members, an increase by almost 100 percent in comparison to 2015, with another increase planned for 2018.<sup>63</sup>

## B. Structural Investigations in Germany

The German Federal Prosecutor can initiate investigations if there is an initial suspicion that a crime falling under the CCAIL has been committed. If a suspect or a victim of such a crime is of German nationality or if a suspect is present on German territory, he is obliged to investigate. In cases of pureUJ, the Federal Prosecutor has the above-mentioned discretion to open an investigation or to decline to do so.<sup>64</sup> If a defined suspect can be identified, investigations will be directed against this person. In other cases, the Prosecutor may

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N. Geißler und F. Selbmann, 'Fünf Jahre VStGB – Eine kritische Bilanz', *Humanitäres Völkerrecht - Informationsschriften* (2007) 160.

60 K. Ambos, 'The German *Rwabukombo* Case: The Federal Court's Interpretation of Co-perpetration and the Genocidal Intent to Destroy', 14 *JICJ* (2016) 1221–1234; P. Kroker, 'Universal Jurisdiction in Germany: The Case of Onesphore R. before the Higher Regional Court in Frankfurt', 54 *German Yearbook of International Law* (2011) 671–687.

61 P. Kroker, 'Weltrecht in Deutschland? Der Kongo-Kriegsverbrecherprozess: Erstes Verfahren nach dem Völkerstrafgesetzbuch', ECCHR, 2016, available online: <https://www.ecchr.eu/de/unsere-themen/voelkerstrafataten-und-rechtliche-verantwortung/kongo-kriegsverbrecherprozess.html> (15 November 2017).

62 BT Drs. 18/12487 (Reply of the German government to a request submitted by the Green party and parliamentarians regarding the criminal prosecution of international crimes committed in Syria in Germany), at 5, available online at <http://dip21.bundestag.de/dip21/btd/18/124/1812487.pdf> (visited 15 November 2017).

63 BT Drs. 18/12533 (Reply of the German government to a request submitted by the Green party and parliamentarians regarding the investigation of international crimes committed in Syria in Germany), at 5, available online at <http://dip21.bundestag.de/dip21/btd/18/125/1812533.pdf> (visited 15 November 2017).

64 See *supra* note 56.

open 'structural investigations'. This investigatory technique, employed since 2011 by the Federal Prosecutor for international crimes<sup>65</sup> is not explicitly foreseen in the German Code of Criminal Procedure,<sup>66</sup> nor is it explicitly excluded. It entails investigations with full investigatory powers that are not (yet) directed against specific persons but that exist for the purpose of investigating (and collecting evidence on) specific structures, within which international crimes have been allegedly committed.<sup>67</sup> These investigations thus take into consideration that international crimes are normally committed within (or by) a certain structure and in a specific context and that knowledge and evidence about both is helpful or even necessary in order to conduct investigations against individuals that are alleged to have committed these crimes. The investigators are meant to collect all relevant information that can be obtained in the country, particularly by witness-testimonies and open sources.

Evidence thus collected and secured on international crimes before a specific suspect has been identified can serve different purposes. First, it can enable the prosecutor to react swiftly when a suspect enters Germany in the future triggering the duty to investigate. This would put the prosecutor, for example, in a position to be better prepared, should a situation such as the above-mentioned visit of the Uzbek interior minister Zokirjon Almatov to Germany recur.<sup>68</sup> Secondly, such evidence can also facilitate substantially future proceedings in a third state or before an international court, if a specific case falls under the latter court's jurisdiction, because it can be shared by way of judicial cooperation.<sup>69</sup> This is why the prosecutorial strategy of structural investigations is sometimes referred to as anticipated legal assistance to other states or tribunals.<sup>70</sup> Thirdly, the knowledge and evidence gathered by

65 A. Schüller, 'The Role of National Investigations and Prosecutions in the System of International Criminal Justice – Developments in Germany', 4 *Sicherheit und Frieden* (2013) at 229.

66 The German Code of Criminal Procedure (CCP) is available online in English at <https://www.gesetze-im-internet.de/englisch.stpo/> (visited 15 November 2017).

67 See *supra* note 62, at 4, available online at <http://dip21.bundestag.de/dip21/btd/18/124/1812487.pdf> (visited 15 November 2017). Question 11: 'In the course of structural investigations against unknown suspects information and evidence regarding structures are being collected and preserved.' (translated by authors, original text reads: 'In den Strukturverfahren gegen unbekannte Täter werden Erkenntnisse und Beweise zu einer Struktur gesammelt und gesichert.')

68 See *supra* note 59.

69 See *supra* note 66 and A. Schüller and C. Meloni, 'Quality Control in the Preliminary Examination of Civil Society Submissions', in *Quality Control in Preliminary Examination: Reviewing Impact, Policies and Practices* (Torkel Opsahl Academic EPublisher, forthcoming).

70 C. Kreß, 'Reflections on the *Iudicare* Limb of the Grave Breaches Regime', 7 *JICJ* (2009) 789–809, at 789, 801 and regarding anticipated legal assistance, see W. Kaleck, 'Strafverfolgung nach dem Völkerstrafgesetzbuch: Ein kurzer Blick in die Zukunft – ein Kommentar zum Beitrag von Martin Böse', in J. Geneuss and E. Jeßberger (eds), *Zehn Jahre Völkerstrafgesetzbuch: Bilanz und Perspektiven eines 'deutschen Völkerstrafrechts'* (Nomos, 2013) 177–185 and P. Frank and H. Schneider-Glockzin, 'Terrorismus und Völkerstraftaten im bewaffneten Konflikt', 1 *Neue Zeitschrift für Strafrecht (NSTZ)* (2017) 5 and see Schüller and Meloni, *supra* note 69, at 6: 'This means that the Federal Public Prosecutor General secures evidence in order to be prepared to act upon requests by other States or international courts in the future. In order to be prepared and not to lose evidence over time, testimonies can be taken and stored.'

structural investigations can lead to the opening of an investigation against a specific person even if that person is not in Germany, if there is an ‘initial suspicion’ that he or she has committed an international crime.<sup>71</sup> If there is strong suspicion in this regard, the Federal Prosecutor can request the issuance of an arrest warrant against a suspect at the Federal Supreme Court.

### C. Structural Investigations regarding Syria

Currently six structural investigations are ongoing in Germany. Two of these relate to Syria. On 15 September 2011, the Federal Prosecutor began a structural investigation with respect to crimes committed by the Syrian government. The ‘Caesar photos’ are of paramount importance to these investigations.<sup>72</sup> The second structural investigation is concerned with crimes committed by non-state actors, such as ISIS and all other armed opposition groups and militia in Syria and Iraq and is ongoing since 1 August 2014. In particular, the investigation is focused on crimes perpetrated against the Yazidi community, particularly in Northern Iraq and Syria,<sup>73</sup> which, according to the finding of the CoI, amount to ‘the crime of genocide as well as multiple crimes against humanity and war crimes’.<sup>74</sup> These investigations gained momentum with the admittance of 1100 Yazidi women and children by a quota of the state government of Baden-Württemberg (and in the meantime also other German states) as refugees since 2014.

With the growing number of refugees, including a large number of survivors of international crimes, the number of leads requiring further investigations has increased significantly. In Germany as in other European countries, asylum seekers from Syria and Iraq are regularly asked if they have been affected by, witnessed or committed international crimes, such as torture, executions, or use of chemical weapons. Despite the clear obligation of the German authorities enshrined in Article 4 of EU-directive 2012/29/EU,<sup>75</sup> they are not informed about the reason for these questions nor about their rights and duties as potential witnesses, victims or suspects. If individuals have provided information in this regard which is sufficiently concrete and well founded, this is transmitted to the Federal Police. Asylum seekers are then potentially called to testify to the Federal Police. Within the huge number of potential witnesses within the Syrian exile community, those called to testify with priority can provide information about suspects present in Germany or countries that are part of the Europol-network. In this way, German authorities have so far received an estimated 2800 indications of international crimes committed in

71 Section 114 CCP (*supra* note 66).

72 Frank and Schneider-Glockzin, *supra* note 70, at 6.

73 *Ibid.*

74 *They came to destroy*, *supra* note 1.

75 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ (L) 315, 57-73, 14 November 2012.

Syria. In 300 of these cases, witnesses were able to name perpetrators. Up till May 2017 more than 200 witnesses have testified in the two structural investigations. The investigations against armed opposition groups have so far led to 22 person-specific investigations against 28 suspects for war crimes committed in Syria.<sup>76</sup>

Three concluded trials resulted from these investigations and were described above.<sup>77</sup> While four individuals have been arrested for suspicion of having committed a war crime while being a member of a terrorist organization, one trial is ongoing at the time of writing of this article, namely: In May 2017, what is to be expected to be the most extensive international crimes case in relation to Syria in a German court so far, was opened before the Higher Regional Court in Düsseldorf (case-file number 5 StS 3/16). The accused Ibrahim al F., a 41-year old Syrian national, is alleged to have commanded a militia comprising of at least 150 fighters. The militia, itself belonging to the group Ghoraba-as-Sham, part of the FSA, is said to have controlled a neighbourhood in northeastern Aleppo since 2012 by means of pillaging as well as unlawfully detaining and torturing opponents and enemy fighters upon the order of the accused, in some instances in his presence (Section 8(1)(3) CCAIL) and pillaging (Section 9(1) CCAIL). The trial was scheduled to last until September 2017 but has not been completed by the time of writing. Another opening of a trial for war crimes in Syria is to be expected in the coming months.<sup>78</sup>

Much less can be reported when it comes to the prosecution of crimes committed by the Syrian government. In this context, seven person specific investigations against 10 suspects have been conducted thus far with the first one ongoing since 2014. None of the suspects have been indicted so far.

#### *D. Prospects of More Strategic Investigations of Crimes in Syria*

So far, the only proceedings to have advanced to stages beyond initial investigations in Germany are those directed against low- or mid-level-suspects who were accidentally present on Germany territory, the authorities thus following a 'no-safe-haven approach'. Nevertheless, these cases and the growing collection of evidence will likely lead to broader and deeper knowledge and a stock of information on the various crimes committed in Syria since 2011. Furthermore, it is to be predicted that investigative mechanisms such as the IIIM will identify potential suspects in the exile Syrian communities all over

76 BT Drs. 18/12288 (Reply of the German government to a request submitted by the Green Party and parliamentarians regarding the criminal prosecution of international crimes committed in Syria in Germany), at 2–3, available online at <http://dip21.bundestag.de/dip21/btd/18/122/1812288.pdf> (visited 15 November 2017).

77 P. Kroker and A.L. Kather, 'Justice for Syria? Opportunities and Limitations of Universal Jurisdiction Trials in Germany', EJIL:Talk! Blog of the European Journal of International Law, 12 August 2016, available online at <https://www.ejiltalk.org/author/pkrokerandakather/> (visited 15 November 2017).

78 Frank and Schneider-Glockzin, *supra* note 70, at 3.

Europe, which may increasingly include individuals previously affiliated with the Syrian government and former members of its militias — and allow for their prosecution under the current ‘no-safe-haven approach’.

The following section will discuss, how the aforementioned prosecutorial technique of structural investigations allows the German Federal Prosecutor to move away from a pure ‘no-safe-haven approach’ towards a more nuanced approach including elements of ‘global-enforcer approach’. This might enable the Office to balance the worry of overburdening the national justice system with an unlimited number of UJ cases — one of the rationales behind a no-safe haven approach — with elements of a ‘global-enforcer approach’ that currently seems to be the only option for prosecutors of bringing those responsibility for crimes in Syria to face justice in the foreseeable future. After discussing the possibility of the German Federal Prosecutor to conduct investigations into high-level suspects independent of their current residence, it will be shown, how civil society organizations try to support investigative action in this sense. The discussion then turns to possible outcomes of a more strategic approach on a concrete legal and technical as well as on a more abstract and political level.

### 1. *Investigations against High-level Suspects?*

It has been discussed that the rationale for structural investigations as currently conducted in Germany is to collect and secure evidence for three different purposes, covering the range between strict ‘no-safe-haven approach’ to ‘global-enforcer approach’ to UJ: first, by way of being prepared to react quickly if suspects enter German jurisdiction, the prosecutor follows a classical ‘no-safe-haven approach’; secondly, to make the collected evidence and information available to other prosecutorial authorities and — if it is ever be created — to an international court or tribunal for Syria by way of legal assistance, as explicitly announced with regards to the situation in Syria.<sup>79</sup>

Such anticipated legal assistance tends more towards a ‘global-enforcer approach’ given the fact that knowledge about ongoing investigations is shared by European prosecutors in the EU Genocide Network under the roof of Eurojust. This network of those European prosecution offices specialized in the investigation and prosecution of genocide, crimes against humanity, and war crimes was established to ensure close cooperation between the national authorities in investigating and prosecuting international crimes to provide a forum for sharing of knowledge best practice. This means that information gathered by way of structural investigations can be exchanged with other prosecution authorities independent of particular cases in a specific jurisdiction, thus going beyond a pure ‘no-safe-haven approach’.

The third purpose may be described as follows. German law does not prevent the prosecutor from going even further and to investigate high-level suspects

79 *Ibid.*, at 5; Jeßberger and Geneuss (eds), *supra* note 70.

residing in Syria. Even if one were to demand that the German prosecutor only investigate cases that have any link to Germany, it is evident that the effects of the Syrian war and of the international crimes committed therein are felt well beyond its borders in European countries including Germany. These effects present a link to Germany that can be seen as sufficiently strong for the German prosecutor to employ a more strategic approach towards investigating suspects that bear the most responsibility for these crimes. In this vein, the Federal Prosecutor stated in a recently published article that his investigations regarding Syria are not only a necessary part of a peace-building process in the affected country but also within Europe itself because of the effects that these conflicts have on conflicts and international crimes in its vicinity.<sup>80</sup> In the same article, he further argues that in light of the uncertainty surrounding whether an international court will ever be able to exercise jurisdiction, national prosecutorial authorities need to seek every opportunity to bring suspects before courts.<sup>81</sup> This could be an indication that Germany assumes a proactive role to seek the extradition of high-level perpetrators where there is enough evidence to prosecute them. Another indication confirming this assumption is an international arrest warrant issued in late 2016 by the Federal Prosecutor against an ISIS leader for committing war crimes and genocide against religious Yazidi minority in August 2014.

## 2. Initiatives by Civil Society Organizations

Civil society organizations have actively tried to push the Federal Prosecutor to follow the last of the three approaches outlined above. In March 2017, a Berlin-based and two Syrian NGOs and lawyers together with nine Syrian torture survivors submitted a criminal complaint against high-level officials of the Syrian government to the Office of the Federal Prosecutor.<sup>82</sup> The complaint targets six officials known by name and further unknown officials of the Syrian military intelligence for torture, enforced disappearance and other crimes against humanity and war crimes committed. The claimants, as well as another seven survivors appearing as witnesses and as civil parties, were detained in three notorious detention centres under the control of the suspects and were either tortured themselves or were witnesses to torture.

80 *Ibid.*, at 1.

81 *Ibid.*, at 5, translated by authors, the original quote reads: *'Da ungewiss ist, ob ein internationales Strafgericht jemals hierzu berufen sein wird, werden die nationalen Strafverfolgungsbehörden wachsam sein und jede Möglichkeit, Verdächtige vor Gericht zu bringen, ausschöpfen müssen'*; see also: BT Drs. 14/ 8524 (Draft legislation of the German government regarding the introduction of the Code of Crimes against International Law), available online at <http://dip21.bundestag.de/dip21/btd/14/085/1408524.pdf> (visited 15 November 2017).

82 For more information see website of ECCHR: <https://www.ecchr.eu/en/international-crimes-and-accountability/syria/torture-under-assad.html>, the Syrian Center for Legal Researches and Studies (CLS): <http://www.sl-center.org>, the Syrian Center for Media and Freedom of Expression (SCM): <https://scm.bz/en/> (visited 15 November 2017).

The detention centres belong to branches 215, 227 and 235 of the Syrian military intelligence, where the majority of the deaths by torture documented by the above mentioned military photographer ‘Caesar’ have occurred. Along with the witness testimonies, the complaint contains documentary evidence of and analyses of command structures of the intelligence apparatus of the Syrian government and present leads to further evidence available in other European countries. With the complaint falling within the ambit of structural investigation regarding international crimes in Syria, no formal admissibility decision of the Federal Prosecutor or a court was required to start investigating the facts brought to the prosecutor’s attention.<sup>83</sup> In November 2017, the same organizations handed in two further complaints against high-level suspects responsible for torture and other crimes at five detention centres run by the Syrian Air Force Intelligence as well as the notorious military prison Saydnaya.<sup>84</sup> Additionally, a criminal complaint and a high-resolution set of the Caesar-photos containing metadata, which had until then not been in the possession of any international or national investigation or prosecution authority, was submitted by the ‘Caesar-Files Support Group’ to the Federal Prosecutor.

### 3. Possible Outcomes

Within a few weeks of the submission of the complaint in March 2017, the first 12 witnesses were called to testify. This indicates that these criminal complaints were taken seriously by the Federal Prosecutor. Despite the fact that — contrary to French and Italian practice — trials *in absentia* are not possible in Germany and that therefore, individual investigations into high-level suspects might not lead to formal accusations and trials in front of German courts, the possibility of investigations into the activities of such persons *in absentia* is not seriously questioned.<sup>85</sup> Ultimately this could lead to the Federal Prosecutor demanding arrest warrants against high-level suspects from Syria, which would be issued by the investigation judge at the Federal Supreme Court (*Bundesgerichtshof*) if the legal requirement is satisfied, namely of a strong suspicion that, according to the results of the investigations conducted so far, it is highly probable that the accused committed the crime.<sup>86</sup>

The execution of such an arrest warrant outside of Germany (with extradition following) depends on the legal assistance regulations that exist between the states involved. These consist of international (bilateral or multilateral)

83 For the latest update on the case, see <https://www.ecchr.eu/en/our.work/international-crimes-and-accountability/syria.html> (visited 15 November 2017).

84 AI, *Human Slaughterhouse: Mass hangings and extermination at Saydnaya prison, Syria* (2017) available online at <https://www.amnesty.org/en/documents/mde24/5415/2017/en/> (visited 15 November 2017).

85 Werle and Bornkamm, *supra* note 40, at 666–667.

86 See *supra* note 66: The legal requirements are laid down in section 112 German Code of Criminal Procedure and the procedure in sections 114, 125 and 162 of the German Code of Criminal Procedure.

treaties containing the contractual obligations that states have with each other in this regard. A very advanced system for this kind of judicial cooperation is in place among EU Member States: the European Arrest Warrant (EAW). The EAW is a 'a judicial decision issued by a [EU] Member State with a view to the arrest and surrender by another [EU] Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order'.<sup>87</sup> The noteworthy characteristic of the EAW is that it obliges other Member States to execute an arrest warrant issued by another Member State limited by legal principles and standards such as the double criminality requirement.<sup>88</sup> More often than not the execution of such arrest warrants manifests with remarkable differences concerning the implementation of these duties in different national legal systems.<sup>89</sup>

In the absence of such an advanced system of mutual judicial recognition and cooperation, a national arrest warrant could be published and communicated in the Schengen Information System (SIS), a governmental database maintained by the European Commission with 28 Member States plus four states which are not part of the EU,<sup>90</sup> if it concerns a suspect present in the Schengen area, or, if the suspect is believed to be present elsewhere, via Interpol. Within the Schengen system, states are obliged 'to extradite between themselves persons being prosecuted by the legal authorities of the requesting Contracting Party'.<sup>91</sup> The agreement, therefore, also contains rules that stipulate facilitated conditions for extradition among the Member States.<sup>92</sup>

Interpol does not issue or execute arrest warrants but collects and publishes requests for arrest by its 190 Member States. A Member State thus notified of the issuing of an arrest warrant by another member state against a person present on its territory, will handle this information according to its national law and its international obligations vis-à-vis the state that issued the arrest warrant. The extradition procedure would normally include a judicial decision on the legality of the extradition request and a political decision by the executive if the extradition is granted. In Germany, the former would be taken by the competent Higher Regional Court whereas the latter will be handled by the Federal Ministry of Justice in coordination with the Federal Foreign Office and

87 Art. 1(1) Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision, OJ (L) 190, 1-20, 18 July 2002.

88 L. Klimek, *European Arrest Warrant* (Springer International Publishing, 2015), at 67-90.

89 *Ibid.*, at 203-217.

90 EU Members States are: Ireland, Bulgaria, Cyprus, Romania, Croatia, France, Germany, Belgium, the Netherlands, the UK, Luxembourg, Spain, Portugal, Italy, Austria, Greece, Finland, Sweden, Denmark, Estonia, the Czech Republic, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, the for non-EU States being Iceland, Liechtenstein, Norway and Switzerland.

91 Art. 63, The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, OJ (L) 239, 19-62, 22 September 2000.

92 Arts 59-66, The Schengen acquis.

all other ministries whose political competences are affected by the extradition request.<sup>93</sup>

#### 4. *More than Pure Symbolism?*

With international arrest warrants being the most far-reaching effect, one might pose the question if the justice efforts discussed in this article serve more than pure symbolism. As Kai Ambos rightly points out, the purposes of punishment in ICL ‘must be elaborated.’<sup>94</sup> Undeniably the traditional purposes such as the preventive effect through deterrence and norm stabilization will still have their place.<sup>95</sup> Some observers, especially from media and politics, will evaluate the impact of ICL proceedings mainly based on the final result and consider those proceedings as incomplete and, therefore, a failure if the suspect is not sentenced and punished. But it is important to recognize the effects of the earlier stages of these proceedings in earlier stages as well as their interim results. The very existence of ICL as implemented in the Rome and national statutes may well have deterrent as well as norm stabilizing effects to which the opening of investigations, the collection of evidence on a large scale, and prosecution measures like seizing of documents or arrest warrants can then contribute.

Henceforth, the criticism that a certain measure has purely symbolic impact does not take into account the majority of the common theories of punishment. From the authors’ point of view it is, therefore, important to distinguish between different possible messages and evaluate them in order to later assess the impact of a certain procedure or procedural step.

In cases of arrest warrants, for example, there are a number of important messages that can be communicated if a court, like the highest criminal court in Germany or similar bodies in other European states issue arrest warrants. These decisions will be based on a thorough assessment of facts, combined with the legal arguments around the responsibility based on command responsibility or indirect perpetrators as commanders of repressive military and state institution (*Mittelbare Täterschaft kraft Organisationsherrschaft*).<sup>96</sup> Such

93 Section 74 of the German Act on International Cooperation in Criminal Matters (*Gesetz über die internationale Rechtshilfe in Strafsachen*). An English translation can be found at [https://www.gesetze-im-internet.de/englisch\\_ircg/index.html](https://www.gesetze-im-internet.de/englisch_ircg/index.html) (visited 15 November 2017).

94 K. Ambos, ‘Punishment without a Sovereign? The *Ius Puniendi* Issue of International Criminal Law: A First Contribution towards a Consistent Theory of International Criminal Law’, 33 *Oxford Journal of Legal Studies* (2013) 293–315.

95 G. Werle and E. Jeßberger, *Principles of International Criminal Law* (3rd edn., Oxford University Press, 2014), at 34–36.

96 T. Weigend, ‘Perpetration through an Organization: The Unexpected Career of a German Legal Concept’, 9 *JICJ* (2011) 91–111; J. Stewart, ‘The End of ‘Modes of Liability’ for International Crimes’, 25 *Leiden Journal of International Law* (2012) 165–219; N. Jain, ‘Individual Responsibility for Mass Atrocity: In Search of a Concept of Perpetration’, 61 *American Journal of Comparative Law* (2013) 831–871; K. Ambos, ‘The *Fujimori* Judgment: A President’s Responsibility for Crimes Against Humanity as Indirect Perpetrator by Virtue of an Organized Power Apparatus’, 9 *JICJ* (2011) 137–158.

decisions can on the one hand not only serve to (re-)establish the rule of law, in Syria and the region but also globally, and as a confirmation of the absolute prohibition of torture on the other. They will present an independent judicial decision, which, at least in civil law countries, takes into account inculpatory as well exculpatory evidence and can, therefore, serve as a factual as well as a legal stock for future investigations of high-level perpetrators at the national as well as the international level. They thus ultimately also serve the 'acknowledgement and truth seeking aspects of [international criminal] trials'.<sup>97</sup>

The cases of Chilean and Argentinean high-level perpetrators such as Pinochet, Videla and others have shown that international arrest warrants issued abroad can be precursors to prosecution elsewhere, especially in the countries where the crimes have been perpetrated. Moreover, in the case of Syria, arrest warrants could have the effect of setting the agenda in peace negotiations e.g. in which a demand can be made that no suspect of international crimes will become part of a new government. Once a new government is formed, it might even respond positively to demands for extraditing suspects. Further, investigations into high-level perpetrators can lead to targeted sanctions and freezing of their international assets and property. Last but not least, a message is conveyed to those perpetrators who are still in power in Syria that they may no longer be able to freely travel around the world.

This was also an unexpected outcome of the various proceedings against CIA agents and their superiors in the CIA extraordinary rendition programme after 9/11 and against US military torture in Guantanamo. European Court of Human Rights (ECtHR) judgments as well as arrest warrants, summons and trials *in absentia* in Germany, France and Italy led to a situation where hundreds of CIA agents and their superiors involved in the respective programme as well as high-level military commanders were warned against travelling to or via western Europe since their presence might invoke further proceedings and prosecutorial measures, such as interrogations and the issuance of arrest warrants against them.<sup>98</sup>

## 4. Conclusion

The history of international criminal law shows that the prospects of justice are dependent on politics. This is true even for the most ambitious project in international criminal law so far, the ICC, which without state cooperation and funding cannot proceed with its investigations. Particularly powerful states such as the USA, Russia and China manage to shield themselves and their allies from prosecutions. Similar observations can be made with respect to UJ cases. Critical voices such as Máximo Langer have pointed out that

<sup>97</sup> Werle and Jeßberger, *supra* note 95, at 36.

<sup>98</sup> Kaleck, *supra* note 39, and A. Schüller, 'Bringin CIA Torture to Justice', Open Democracy, 29 April 2015, available online at <https://www.opendemocracy.net/opensecurity/andreas-sch%C3%BCller/ending-impunity-bringing-cia-torture-to-justice> (visited 15 November 2017).

‘universal jurisdiction will not establish a minimum international rule of law in the sense of either holding a substantial share of the perpetrators of international crimes accountable, or being applied equally across defendants’. It follows that UJ will never substantially close the ‘impunity gap’ regarding international crimes given that high-cost, most mid-cost and many low-cost defendants are beyond the reach of the UJ enforcement regime and states have incentives to concentrate on defendants against whom there is broad agreement in the international community and whose own states of nationality are not willing to defend.<sup>99</sup>

In summary, this article argues for the examination of the possibilities the principle of UJ in a more nuanced manner. The repercussions of — particularly the first UJ cases in Europe regarding Latin America — were more significant than public and scholarly attention in north Atlantic states might suggest. The first wave of cases led to far-reaching results: Cases against Chilean and Argentinean perpetrators most notably in Spain, Germany, Italy and France including trials *in absentia*, international arrest warrants as well as extradition warrants against high-level perpetrators, such as Pinochet, Videla and dozens of others led to hundreds of prosecutions and judgments in Chile and Argentina.<sup>100</sup> Legal scholar Naomi Roht-Arriazas has described the interdependence of the trials in Europe and Latin America as the ‘Pinochet effect’,<sup>101</sup> which in the context of the ICC, may be seen as ‘positive complementarity’ in action.<sup>102</sup> The assumption is that a certain external pressure leads at a very minimum to increased efforts by states where the crimes have been committed to investigate and prosecute those crimes (in order to prevent an international tribunal or a court in a third country from intervening), or in the best case, such as in Argentina, to trials and judgments against perpetrators of crimes against humanity.

Both the trials and their effects on the societies of Chile and Argentina are underestimated. At the same time, neither the judgment against former ruling president Videla nor the case of the Operation Condor were accompanied by echoing repercussions in Europe or the US.<sup>103</sup>

99 Langer, ‘Diplomacy of International Law’, *supra* note 32, at 2, 31.

100 W. Kaleck, *Kampf gegen die Straßlosigkeit. Argentinien Militärs vor Gericht* (Wagenbach, 2010).

101 N. Roht-Arriaza, *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (University of Pennsylvania Press, 2006).

102 L. Nichols, ‘The Strategy of Positive Complementarity’, in *idem*, *The International Criminal Court and the End of Impunity in Kenya* (Springer Series in Transitional Justice, 2015) 29–46; WW. Burke-White, ‘Proactive Complementarity: The International Criminal Court and National Courts in the Rome System of International Justice’, 49 *Harvard International Law Journal* (2008) 53–108.

103 Available online at <http://www.ijrcenter.org/2016/06/07/argentine-court-convicts-former-dictator-for-conspiracy-in-operation-condor/>: ‘An Argentine court has convicted and sentenced former dictator Reynaldo Bignone and 14 other former Argentine military officers of crimes against humanity for their roles in Operation Condor, a transnational conspiracy behind the kidnapping, torture, killing and forced disappearance of hundreds of political dissidents during the 1970s and 1980s. Bignone was convicted of participating in an illicit association, kidnapping and the forced disappearance of over 100 people. The ruling is the first time a

In comparison, the first successful UJ case in Africa, the *Hissène Habré* trial concluded with the final verdict announced by the Extraordinary African Chambers in Dakar in May 2017. This achievement was a product of a politically fortunate set-up in Senegal, the persistent pressure of survivors as well as their supporters and an outcome of the previously initiated UJ proceeding in Belgium in combination with the ruling of the International Court of Justice (ICJ) in The Hague.<sup>104</sup>

UJ laws are accompanied by various requirements in different European countries such as the presence of the suspected person in the forum state, a link to the forum state or that the crimes have been committed against or by citizens or residents of the forum state. As has been discussed in Part 2.A. of this article, a slight turn away from the principle of UJ and a turn towards the principles of passive and active nationality as well as territoriality have become apparent over the last few years. Consequently, the attempts of national prosecutorial authorities as well as international NGOs resemble more an opportunistic 'no-safe-haven approach' in the sense that they depend massively of the presence of suspects on European territory than on strategic engagement.

Perhaps the best example of the strategic approach discussed above were the US investigations of Nazi crimes after World War II, which relied on the political study of Franz Neumann 'Behemoth' and especially in the Nuremberg follow-up trials, prosecuted the columns of the Nazi system, the business leaders, Reichswehr generals, doctors and lawyers.<sup>105</sup> Instead of employing this Nuremberg line of prosecution from the top to the lower levels, prosecutions are now usually focused on low-level suspects randomly noticed on European soil or European citizens involved in or affected by the commission of international crimes abroad. Even in those cases in which suspects are known to be travelling or do in fact travel to European states, investigative judges and prosecutors are often reluctant to open investigations or issue summons and arrest warrants. Such reluctance may be explained by a lack of time, diplomatic considerations or the sheer complexity of the cases.

The structural investigations regarding Syria are an exception to this trend. They demonstrate that a more nuanced approach to UJ offers an avenue to fill the gaps in (the incomplete and imperfect) system of international criminal law. Additionally, they allow for strategic investigations into atrocity crimes

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court in the region has publicly determined that dictators in Argentina, Bolivia, Chile, Brazil, Uruguay and Paraguay collaborated in the cross-border conspiracy to eliminate leftist dissidents, some of whom had previously evaded their reach by fleeing to neighbouring countries. Additionally, the case is a rare example of a domestic court's prosecution of a former head of state for transnational crimes, and is also noteworthy because the defendants were convicted on the basis of their participation in the international conspiracy rather than on individual criminal charges.'

104 Brody, *supra* note 41.

105 See e.g. K.C. Priemel, 'Mehr Exempel als Modell', in F. Jeßberger, W. Kaleck, T. Singelstein (eds), *Die Nürnberger Prozesse gegen deutsche Industrielle und die Ursprünge des Wirtschaftsvölkerstrafrechts* (Nomos, 2015) 25–64, at 42–45.

for which there are no other judicial forum. This prosecutorial technique further enables the authorities to investigate powerful actors at least in the beginning, without directly being exposed to political pressure since they are not focused on specific incidents or suspects, thus avoiding strong political reactions and interference by states whose elite might be under investigation.<sup>106</sup> Yet, structural investigations can ultimately yield tangible results in the form of arrest warrants issued against persons most responsible for heinous crimes if individual investigations against them are opened. They thus allow the German Federal Prosecutor to balance the rationale of ‘no-safe haven’ approach and to avoid what Langer calls the ‘high political cost’, namely an approach that takes into consideration the important role of national jurisdictions in the patchwork of international justice.<sup>107</sup>

The combination of trials against suspects arrested on European territory and the initiation of broader investigations against those who bear the most responsibility as discussed in this article show that the ‘no-safe haven’ and the ‘global-enforcer approach’ can complement each other and that this combination can serve as an interesting model for a modern and pragmatic approach to revitalizing UJ in Europe.

Survivors of massive crimes, family members, affected communities, local and global human rights organizations as well as lawyers, therefore, have a responsibility of communicating that the realistic and pragmatic use of UJ despite its restrictions has the potential to tackle the immeasurable horror of these crimes and to overcome the complete silence that often results soon after. In light of the sheer mass, complexity and systematicity of the crimes and abuses in Syria, justice and redress will most likely only be approximated in small steps and never fully achieved. But even these small steps alongside the results of ongoing investigations have to be communicated — to the legal community as well as to a broader public in order to establish the consensus amongst societies on the need to exercise UJ despite its eventual costs. Not only in the society affected by the crimes, but also in the societies in which the substitutional criminal justice for Syria is currently taking place, in order to seek support for these efforts, it is only by mobilizing public support that the interests of justice can prevail over short-term political and economic interests.

States should have UJ laws in place that allow for such flexibility and that enable international justice to function in situations where the main institutions vested with prosecutorial powers are blocked for political reasons. It follows that countries with restricted UJ laws must modify their laws in order to enable the judiciary to do such meaningful and immensely important work, thus assuming their responsibility as part of transnational efforts to address the most heinous crimes in Syria and elsewhere. One can only hope that the horrific crimes happening in Syria leave an impact on lawmakers and lead them to reconsider the no-safe-haven approach they currently pursue and to

<sup>106</sup> Schüller and Meloni, *supra* note 69.

<sup>107</sup> Langer, ‘Universal Jurisdiction is Not Disappearing’, *supra* note 32, at 253 ff.

reopen jurisdictions by modifying their laws in a way that specialized war crimes units can collect evidence, share it with other prosecution authorities and have the opportunity to request arrest warrants against suspects outside the country again. This is vital for the international justice project generally to be credible in the sense that it equally and effectively applies to all crimes that are of ‘concern to the international community as a whole.’<sup>108</sup>

108 O’Sullivan, *supra* note 33, at 208–209: “This move to what some call a “no-safe-haven” model obscures the structural forces (political and economic) that are in play in modern conflicts, including neoliberal policies and the hegemony of global north. This produces a tendency towards institutionalizing the “de facto impunity long enjoyed by the powerful” and reproducing “one-sided narratives of complex conflicts”.”