

NOTES

ACCOUNTABILITY IN A TIME OF WAR: UNIVERSAL JURISDICTION AND THE STRIVE FOR JUSTICE IN SYRIA

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ABSTRACT

In April 2020, the first criminal trial against Syrian state torture began in a German Higher Regional Court, marking a critical point for justice efforts related to the ongoing Syrian war. This trial is one of the many cases and investigations being brought forth under the international legal principle of universal jurisdiction. This Note broadly examines 100 universal jurisdiction cases, collected by three non-governmental organizations, related to crimes committed during the Syrian conflict. By surveying these cases and the charges brought forth, this Note aims to assess these cases' impact and role in accountability for Syria. This Note argues that the universal jurisdiction cases and the push for criminal accountability are helping to keep the prospect of justice "alive" in Syria. While universal jurisdiction is merely one small part of the transitional justice process and faces problems such as creating too much "false hope" among victims, the Syrian-led efforts and documentation can create pressure to continue justice efforts and ensure accountability in a post-conflict Syria. Other academic papers may have addressed universal jurisdiction in relation to Syria, but this Note's analysis focuses on integrating the voices of Syrian and Arab scholars, activists, and lawyers to ensure local experts are better represented in the legal and academic sphere.

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I. INTRODUCTION

In April 2020, the first criminal trial against torture by the Syrian state began in a German Higher Regional Court,¹ marking a critical point in justice efforts for crimes committed in the Syrian conflict. The charges are against two former Syrian General Intelligence Directorate officials: Anwar Raslan,² who faces charges including crimes against humanity for his alleged role in the torture of more than 4,000 detainees, and Eyad Al-Gharib, who faces charges for aiding and abetting crimes against humanity.³ This case is one of the many cases that lawyers and activists are pursuing under the international legal principle of universal jurisdiction to hold actors responsible for crimes committed in the Syrian conflict.

1. *First Criminal Trial Worldwide on Torture in Syria Before a German Court*, EUR. CTR. FOR CONST. & HUM. RTS., <https://www.ecchr.eu/en/case/first-criminal-trial-worldwide-on-torture-in-syria-before-a-german-court/> (last visited Nov. 8, 2020).

2. Anwar Raslan defected from the government in 2012 and joined the opposition. Thus, the Syrian community has debated if this trial “constitutes justice.” *The State of Justice: Syria 2020*, SYRIA JUST. & ACCOUNTABILITY CTR. 15 (Mar. 2020), https://syriaaccountability.org/wp-content/uploads/02.28_SJS-ENG_pdf_compressed-1.pdf. Additionally, regime supporters have reportedly been celebrating this trial since Raslan and Al-Gharib both defected and are thus considered traitors. See Fritz Streiff & Karam Shoumali, *Colonel, Defector, Defendant*, BRANCH251 13:00 (May 29, 2020), <https://podcasts.apple.com/us/podcast/colonel-defector-defendant/id1510202145?i=1000476163585>.

3. Mai El-Sadany, *Explainer: First Case Worldwide Involving Syrian State Torture*, TAHRIR INST. FOR MIDDLE E. POL’Y (Mar. 13, 2020), <https://timep.org/commentary/analysis/explainer-first-case-worldwide-involving-syrian-state-torture/>.

The ongoing war in Syria began in March 2011, following calls for political reform and for the Bashar Al-Assad regime to step down. President Bashar Al-Assad came into power in 2000,⁴ following the death of his father and former President, Hafez Al-Assad. There were hopes that Bashar Al-Assad would improve the human rights situation in Syria, and shift from his father's totalitarian style⁵ and infamous crackdowns on anyone who opposed him.⁶ But those hopes proved to be short-lived.⁷ The Syrian war has had massive humanitarian consequences, with several international organizations calling it one of the “greatest humanitarian crises of our time.”⁸ There are more than 380,000 documented deaths,⁹ more than 5.5 million refugees,¹⁰ and an estimated 6.2 million internally displaced individuals.¹¹ Journalists¹² and international organizations¹³ have critiqued the “international community’s”¹⁴ lack of response to the Syrian conflict—specifically

4. *A Wasted Decade: Human Rights in Syria during Bashar al-Assad's First Ten Years in Power*, HUM. RTS. WATCH, 1 (July 2010), <https://www.hrw.org/sites/default/files/reports/syria0710webwcover.pdf>.

5. *Id.* at 1.

6. *See id.* at 26.

7. *See id.* at 1–4.

8. *See, e.g., The Facts: What You Need to Know about the Syria Crisis*, MERCY CORPS (July 9, 2020), <https://europe.mercycorps.org/en-gb/blog/quick-facts-syria-crisis>; *Syria Emergency*, UNITED NATIONS HIGH COMM'R FOR REFUGEES, <https://www.unhcr.org/en-us/syria-emergency.html> (last visited Feb. 11, 2020); *Syria: The Biggest Humanitarian Crisis of Our Time*, AMNESTY INT'L, <https://www.amnesty.org.nz/take-action/syria-crisis> (last visited Feb. 11, 2020).

9. *Syria Death Toll Tops 380,000 in Almost Nine-Year War: Monitor*, FRANCE 24 (Jan. 4, 2020), <https://www.france24.com/en/20200104-syria-death-toll-tops-380-000-in-almost-nine-year-war-monitor>. Note that the exact number of casualties differs depending on the source. However, 380,000 is in the range of the most commonly reported death toll.

10. *Syria Regional Refugee Response*. UNITED NATIONS HIGH COMM'R FOR REFUGEES, <https://data2.unhcr.org/en/situations/syria> (last visited Feb. 11, 2020).

11. *Internally Displaced People*, UNITED NATIONS HIGH COMM'R FOR REFUGEES, <https://www.unhcr.org/sy/internally-displaced-people> (last visited April 8, 2020).

12. *See, e.g., Editorial, The International Community Has Failed Syrians*, THE NAT'L (Dec. 24, 2019), <https://www.thenational.ae/opinion/editorial/the-international-community-has-failed-syrians-1.955691>; Simon Tisdall, *The Epic Failure of Our Age: How the West Let Down Syria*, THE GUARDIAN (Feb. 1, 2018), <https://www.theguardian.com/world/2018/feb/10/epic-failure-of-our-age-how-west-failed-syria>.

13. *See, e.g., Syria: Seven Years of Catastrophic Failure by the International Community*, AMNESTY INT'L (Mar. 15, 2018), <https://www.amnesty.org/en/latest/news/2018/03/syria-seven-years-of-catastrophic-failure-by-the-international-community/>; *Syria*, GLOBAL CTR. FOR THE RESP. TO PROTECT, <https://www.globalr2p.org/countries/syria/> (last visited Mar. 5, 2020).

14. “International community” refers to the global response, specifically by U.N. agencies and states that may have greater political leverage, such as the U.S., Russia or United Kingdom, in alleviating the conflict.

towards the refugee crisis and continued regime-led bombardment on civilian sites, including hospitals and schools.¹⁵

Despite the absence of a strong response to stop or mitigate the conflict, there has been momentum in the effort to hold perpetrators accountable. Though the war has not ended and a reconciliation agreement has not been reached, civil society organizations (CSOs), states, non-governmental organizations (NGOs), and international organizations have pushed for criminal accountability, an important component of transitional justice.¹⁶ Syrian lawyers, activists, and organizations, including the Syrian Centre for Media and Freedom of Expression (SCM) and the Centre for Documentation of Violations (CDV), have brought forth evidence of crimes against humanity since the beginning of the conflict in March 2011.¹⁷ In fact, the Syrian conflict is probably the most documented conflict in history.¹⁸ Unable to file cases in Syria due to the ongoing conflict, lawyers, NGOs, and state prosecutors have utilized universal jurisdiction to prosecute individuals and entities that have committed or are suspected of committing egregious crimes.

Under the broadest definition of universal jurisdiction, individuals can file complaints for certain crimes—namely war crimes, crimes against humanity, and torture—in any national court, regardless of where the crime was committed and who committed the crime.¹⁹ Universal jurisdiction is a controversial principle in international law,²⁰

15. See, e.g., AMNESTY INT'L, *supra* note 13; *The Circle of Hell: Barrel Bombs in Aleppo, Syria*, AMNESTY INT'L UK (May 18, 2020), <https://www.amnesty.org.uk/circle-hell-barrel-bombs-aleppo-syria>; Nick Cumming-Bruce, *U.N. Panel Says Russia Bombed Syrian Civilian Targets, a War Crime*, N.Y. TIMES (Mar. 2, 2020), <https://www.nytimes.com/2020/03/02/world/middleeast/united-nations-syria-idlib-russia.html>; *Horror in Syria: UN Cites Deliberate Attacks on Civilians*, AL JAZEERA (Feb. 18, 2020), <https://www.aljazeera.com/news/2020/02/syria-cites-deliberate-attacks-civilians-200218111516852.html>.

16. Ghuna Bdiwi, *Attempting Justice within Conflict: How Has Syria Influenced the Contemporary Conceptions of Transitional Justice?*, TAHRIR INST. FOR MIDDLE E. POL'Y (Nov. 8, 2019), <https://timep.org/commentary/analysis/attempting-justice-within-conflict-how-has-syria-influenced-the-contemporary-conceptions-of-transitional-justice/>.

17. See Emmanuel Haddad, *Court of Last Resort*, LE MONDE DIPLOMATIQUE (George Miller trans., Oct. 2017), <https://mondediplo.com/2017/10/02Syria>.

18. See, e.g., Cristina Roca, *Long Read: How the Syrian War Changed How War Crimes Are Documented*, NEW HUMANITARIAN (June 1, 2017), <https://www.newsdeeply.com/syria/articles/2017/06/01/long-read-how-the-syrian-war-changed-how-war-crimes-are-documented>; Noha Aboueldahab, *Writing Atrocities: Syrian Civil Society and Transitional Justice*, BROOKINGS DOHA CTR. 11 (May 2018), https://www.brookings.edu/wp-content/uploads/2018/04/transitional-justice-english_web.pdf.

19. See El-Sadany, *supra* note 3.

20. Máximo Langer, *The Archipelago and the Wheel: The Universal Jurisdiction and the International Criminal Court Regimes*, in *THE FIRST GLOBAL PROSECUTOR: PROMISE AND CONSTRAINTS* 204, 218 (Martha Minow, C. Cora True-Frost & Alex Whiting eds., 2015).

but it has been employed for crimes committed in Syria as Syrian courts are not fit to handle such cases, and there is no international or hybrid criminal court presently available to investigate these crimes. The United Nations (U.N.) Human Rights Council created the Commission of Inquiry (CoI)²¹ and the U.N. General Assembly (UNGA) established the International, Impartial and Independent Mechanism (IIIM)²² to investigate the situation in Syria, gather information, and collect evidence. However, the CoI and IIIM are not courts and are not themselves directly engaged in criminal prosecution. Thus, universal jurisdiction presents a more immediate method to hold criminal actors accountable whilst preserving evidence for broader transitional justice efforts, such as truth commissions and historical records.

This Note will broadly examine 100 universal jurisdiction cases, collected by three NGOs,²³ related to crimes committed during the Syrian conflict. By surveying these cases and the charges brought forth, this Note aims to assess their impact and role in efforts to ensure accountability for Syria. This Note argues that the universal jurisdiction cases and the push for criminal accountability are helping to keep the prospect of justice “alive” in Syria. While universal jurisdiction is merely one small part of the transitional justice process and faces problems such as creating too much “false hope” among victims, the Syrian-led efforts and documentation can put pressure to continue justice efforts and ensure accountability in a post-conflict Syria. Section II will explore potential accountability mechanisms, aside from universal jurisdiction, that can be utilized for the Syrian conflict. Section III will assess universal jurisdiction as a legal principle. Section IV will examine universal jurisdiction cases related to the Syrian conflict. Lastly, Section V will assess their impact and their place within overall justice efforts in Syria.

II. OTHER ACCOUNTABILITY EFFORTS AND MECHANISMS

There are other mechanisms, aside from universal jurisdiction, that could hold actors accountable. Despite mounting evidence in Syria,²⁴

21. *Independent International Commission of Inquiry on the Syrian Arab Republic: Mandate*, UNITED NATIONS HUM. RTS. COUNCIL, <https://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/CoIMandate.aspx> (last visited Dec. 5, 2020, 10:09 AM).

22. *Mandate, INT'L, IMPARTIAL & INDEP. MECHANISM*, <https://iiim.un.org/mandate/> (last visited July 22, 2020, 4:33 PM).

23. The three NGOs are Trial International, the Center for Justice and Accountability, and the Syria Justice and Accountability Centre.

24. See Deborah Amos, *Mounting Syrian War Crime Cases Raise Hopes for Justice Against a Brutal Regime*, NPR (Sept. 24, 2019, 5:08 PM), <https://www.npr.org/2019/09/24/754863320/how-europe-has-become-the-epicenter-for-syrian-war-crimes-cases>.

international mechanisms have not been available for use or have not actively utilized such evidence in a criminal proceeding. This Section will address mechanisms and courts that could be used in the future or are currently engaged in accountability efforts.

A. *Syrian Domestic Courts*

In an ideal world, Syria's domestic courts would be able to investigate actors for crimes within its jurisdiction. The courts' proximity to the locations of where the crime occurred, the lack of a language barrier, and other, similar pragmatic benefits would streamline justice efforts. However, the Syrian judicial system's lack of due process and independence,²⁵ and the ongoing conflict makes domestic courts a null option for accountability at the moment. While the 1973 Syrian constitution provides for judicial independence in the justice system, the reality is that the system is corrupt and lacks any independence as it adheres to the President and the various security services in Syria.²⁶ Though the state may be keen to prosecute individuals affiliated with terrorism charges, the lack of due process and the state's notorious affiliation with torture²⁷ would not permit fair proceedings, and it is dubious that the judiciary system would prosecute any state officials loyal to the regime. In addition to the domestic courts' lack of independence, the continuing conflict and massive displacement prevents domestic courts from being a strong option for justice. There have been reports of returnees facing torture, or disappearing at the hands of government forces,²⁸ which limits the possibility of displaced individuals returning and trusting their state institutions for remedies anytime soon.

B. *International Criminal Court*

The International Criminal Court (ICC), the world's criminal court focused on the "most serious crimes of concern,"²⁹ is unable to

25. See *ILAC Rule of Law Assessment Report: Syria 2017*, INT'L LEGAL ASSISTANCE CONSORTIUM 22, 41 (Michael Elkman ed., 2017), <http://www.ilacnet.org/wp-content/uploads/2017/04/Syria2017.pdf>.

26. See *id.*

27. See *If the Dead Could Speak: Mass Deaths and Torture in Syria's Detention Facilities*, HUM. RTS. WATCH (Dec. 16, 2015), <https://www.hrw.org/report/2015/12/16/if-dead-could-speak/mass-deaths-and-torture-syrias-detention-facilities>.

28. *TIMEP Brief: The Return of Refugees*, TAHRIR INST. FOR MIDDLE E. POL'Y (Aug. 26, 2019), <https://timep.org/reports-briefings/timep-brief-return-of-refugees/>.

29. *Understanding the International Criminal Court*, INT'L CRIM. CT. 1, <https://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf> (last visited May 11, 2020).

investigate the situation in Syria. First, the ICC does not currently have jurisdiction, as Syria is not a party to the Rome Statute.³⁰ Second, while the U.N. Security Council (UNSC) has the power to refer a case to the ICC and there have been calls³¹ to do so, past efforts have failed, and will likely continue to fail due to current political dynamics. In 2014, the U.N. French Ambassador proposed a referral to the ICC to the UNSC, but Russia and China, allies of the Syrian government, vetoed the resolution.³² Russia called it a “publicity stunt” that would hinder political talks,³³ while China vetoed it on the basis of state sovereignty and called on Council members to allow the government and opposition members to negotiate a solution.³⁴

There may be a new avenue to refer Syria based on the ICC’s recent decision to investigate Myanmar’s treatment of the Rohingya.³⁵ The ICC issued a pretrial ruling that stated the Court could look into Myanmar’s crime of deportation into Bangladesh, as Bangladesh is a state party to the Rome Statute.³⁶ Applied to Syria, this may involve investigating the crime of deportation into Jordan, a state party to the Rome Statute³⁷ and home to more than 650,000 Syrian refugees as of April 2020.³⁸ However, the Jordanian government may be reluctant to support or request an investigation,³⁹ and with recent reports of Jordan deporting refugees back to Syria,⁴⁰ it is unclear if this is a viable option.

30. *The States Parties to the Rome Statute*, INT’L CRIM. CT., https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx (last visited Feb. 11, 2020).

31. Edith M. Lederer, *UN Chief Calls for Syria Referral to International Court*, ASSOCIATED PRESS (Jan. 26, 2018), <https://apnews.com/24e1d609e7944e37a17f1b7abb0af>.

32. Stephen J. Rapp, *Overcoming the Challenges to Achieving Justice for Syria*, 30 EMORY INT’L L. REV. 155, 158 (2015); *Russia and China Veto UN Move to Refer Syria to ICC*, BBC NEWS (May 22, 2014), <https://www.bbc.com/news/world-middle-east-27514256>.

33. BBC NEWS, *supra* note 32.

34. Press Release, Security Council, Referral of Syria to International Criminal Court Fails as Negative Votes Prevent Security Council from Adopting Draft Resolution, U.N. Press Release SC/11407 (May 22, 2014).

35. SYRIA JUST. & ACCOUNTABILITY CTR., *supra* note 2, at 16.

36. Maryam Saleh, *Syrian Refugees Use Precedent Set in Rohingya Case to Try to Bring Government Officials before the International Criminal Court*, THE INTERCEPT (Mar. 16, 2019), <https://theintercept.com/2019/03/16/syria-conflict-international-criminal-court/>.

37. INT’L CRIM. CT., *supra* note 30.

38. *Syrian Regional Refugee Response: Jordan*, UNITED NATIONS HIGH COMM’R FOR REFUGEES, <https://data2.unhcr.org/en/situations/syria/location/36> (last updated Aug. 4, 2020).

39. Saleh, *supra* note 36.

40. Bill Frelick, *“I Have No Idea Why They Sent Us Back” Jordanian Deportations and Expulsions of Syrian Refugees*, HUM. RTS. WATCH (Oct. 2, 2017), <https://www.hrw.org/report/2017/10/02/i>

Thus, at the moment, the ICC is unable to investigate the situation in Syria.

C. *Ad-hoc Tribunals*

An ad-hoc or hybrid tribunal dedicated to investigating the events in the Syrian conflict could be established in the future, but amidst the current political and security dynamics, it is not a presently available option. Former international tribunal prosecutors, judges, and academics pushed for a tribunal in 2013.⁴¹ But such a tribunal needs the Syrian state's consent or a UNSC resolution to be established.⁴² These are both nonviable options at the moment, as the Syrian government would not consent to a tribunal on its territory and Russia, a regime ally, would not approve of such a court.⁴³ A tribunal or court could be set up in a buffer zone or in a neighboring state, but Syria's neighboring states probably will not consent to host such a court, and there is no safe buffer zone in Syria.⁴⁴ Furthermore, there are high costs involved in running such a tribunal, not to mention high security risks for victims, suspects, and staff involved.⁴⁵

D. *Commission of Inquiry (CoI)*

The U.N. Human Rights Council (HRC) established the Independent International Commission of Inquiry (CoI) in October 2011 to investigate human rights violations in Syria, identify those responsible, and hold them accountable.⁴⁶ The CoI's mandate does not

have-no-idea-why-they-sent-us-back/jordanian-deportations-and-expulsions-syrian; see also TAHRIR INST. FOR MIDDLE E. POL'Y, *supra* note 28.

41. Nousha Kabawat & Fernando Travesi, *Justice for Syrian Victims Beyond Trials: The Need for New, Innovative Uses for Documentation of Human Rights Violations in Syria*, INT'L CTR. FOR TRANSITIONAL JUST. 3 (Feb. 2018), https://www.ictj.org/sites/default/files/ICTJ-Briefing-Syria_Documentation-2018.pdf. There has even been the suggestion to expand the Special Tribunal of Lebanon's mandate to go beyond the assassination of Prime Minister Rafik Hariri to other actions of Syrian officials. Mark Latimer, Shabnam Mojtahedi & Lee Anna Tucker, *A Step towards Justice: Current Accountability Options for Crimes under International Law Committed in Syria*, CEASEFIRE CTR. FOR CIVILIAN RTS. & SYRIA JUST. & ACCOUNTABILITY CTR. 5 (Apr. 2015), <https://syriaaccountability.org/wp-content/uploads/A-Step-towards-Justice1.pdf>. But, a sole focus on Syrian state officials would not be inclusive of other actors' crimes.

42. Latimer, Mojtahedi & Tucker, *supra* note 41, at 13.

43. *Id.*

44. *Id.*

45. *Id.* at 14.

46. *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice*, UNITED NATIONS HIGH COMM'R FOR REFUGEES 133 (2015), https://www.ohchr.org/Documents/Publications/CoI_Guidance_and_Practice.pdf.

explicitly focus on criminal investigations, so it is not clear the extent to which its information can be used for investigatory and prosecutorial efforts at the international and national level.⁴⁷ Swedish and German authorities reported that they reached out to the CoI, but due to the different mandate, the information may not be beneficial for criminal proceedings.⁴⁸ Rather, the CoI's mandate is focused on violations of human rights law, the creation of reports to address those violations,⁴⁹ and accountability beyond criminal prosecution, such as providing recommendations to the Syrian government.⁵⁰ The CoI does not have access to Syrian territory, and though they have made requests to the government to permit it to investigate inside Syria, all requests have been denied.⁵¹ Thus, the CoI relies on investigators and organizations on the ground, and conducts interviews with Syrians who fled Syria.⁵²

There have been criticisms of the CoI, as NGOs have called for it to have greater interaction with domestic authorities that are investigating grave crimes in Syria, and for greater cooperation with the IIIM to avoid duplicity in work.⁵³ Despite the CoI's shortcomings in bringing more immediate justice to victims, it nevertheless provides positive tools for accountability efforts. CoI has released more than twenty-five reports ranging in topics from children's rights to gender-based violence to detention conditions.⁵⁴ Advocacy groups have referred to these reports to address and bring further attention to the humanitarian crisis.⁵⁵ Additionally, the CoI's findings and recommendations could be used to implement domestic legal and policy changes in the political peace process and post-conflict reconciliation.

47. Wolfgang Kaleck & Patrick Kroker, *Syrian Torture Investigations in Germany and Beyond: Breathing New Life into Universal Jurisdiction in Europe?*, 16 J. INT'L CRIM. JUST. 165, 168 (2018).

48. "These Are the Crimes We Are Fleeing" Justice for Syria in Swedish and German Courts, HUM. RTS. WATCH 3-4 (Oct. 2017), https://www.hrw.org/sites/default/files/report_pdf/ijsyria1017_web.pdf.

49. Kabawat & Travesí, *supra* note 41, at 2.

50. UNITED NATIONS HIGH COMM'R FOR REFUGEES, *supra* note 46, at 95.

51. Rapp, *supra* note 32, at 159.

52. Kaleck & Kroker, *supra* note 47, at 168.

53. HUM. RTS. WATCH, *supra* note 48, at 8.

54. *Independent International Commission of Inquiry on the Syrian Arab Republic: Documentation*, UNITED NATIONS HUM. RTS. COUNCIL, <https://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/Documentation.aspx> (last visited Apr. 10, 2020).

55. See, e.g., *Statement at Item 4: Interactive Dialogue with the Commission of Inquiry on the Syrian Arab Republic UN Human Rights Council*, AMNESTY INT'L (Mar. 10, 2020), <https://www.amnesty.org/download/Documents/IOR4019362020ENGLISH.PDF>; *HRC39: Statement on the Report of the Commission of Inquiry on Syria*, WOMEN'S INT'L LEAGUE FOR PEACE & FREEDOM (Sept. 17, 2017), https://www.wilpf.org/wilpf_statements/statement-on-the-report-of-the-commission-of-inquiry-on-syria-3/.

E. *International, Impartial and Independent Mechanism (IIIM)*

The CoI marked a step towards accountability, but its lack of focus on criminal proceedings left a gap. The UNGA established the International, Impartial and Independent Mechanism (IIIM) in December 2016.⁵⁶ Similar to the CoI, the IIIM is not a court. Rather, the IIIM focuses on gathering evidence for accountability,⁵⁷ specifically, “. . . 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”⁵⁸ As its mandate broadly includes preparing files for “national courts,” the IIIM affirms the legitimacy of using universal jurisdiction in domestic courts.⁵⁹

When the IIIM was established, some Syrian organizations were reluctant to work with it and were confused about how it differed from the CoI.⁶⁰ It is unclear how effective engagement between the IIIM and Syrian civil society has been, but coordination between the two actors has improved.⁶¹ The IIIM engages with states,⁶² the CoI, and NGOs to better manage and achieve its mandate.⁶³ The IIIM is establishing a central repository of information and evidence,⁶⁴ and the IIIM’s work and collaboration with Syrian civil society organizations and lawyers can help ensure that Syrian voices are represented and leading the accountability process.

56. Haddad, *supra* note 17.

57. INT’L, IMPARTIAL & INDEP. MECHANISM, *supra* note 22.

58. *Id.* (emphasis added).

59. Kaleck & Kroker, *supra* note 47, at 170.

60. *Responding to Misconceptions Regarding the IIIM*, SYRIA JUST. & ACCOUNTABILITY CTR. (Aug. 2, 2017), <https://syriaaccountability.org/updates/2017/08/02/responding-to-misconceptions-regarding-the-iiim/>; Fernando Travesi, *Justice for Syria Must Go Beyond the Courtroom*, NEW HUMANITARIAN (Mar. 19, 2018), <https://deeply.thenewhumanitarian.org/peacebuilding/articles/2018/03/19/justice-for-syria-must-go-beyond-the-courtroom>.

61. *Statement Issued by Syrian CSOs in Support of the Work of the IIIM*, VIOLATIONS DOCUMENTATION CTR. IN SYRIA, <https://vdc-sy.net/statement-issued-syrian-organizations-working-fields-documentation-accountability-transitional-justice-support-work-iiim/> (last visited May 11, 2020).

62. Note that a Syrian government official stated that the IIIM was not based on any legal grounds and mocked its independence. Press Release, General Assembly, Without Clear Definition, Universal Jurisdiction Principle Risks Misuse, Abuse, Sixth Committee Speakers Warn, U.N. Press Release GA/L/3571 (Oct. 10, 2018), <https://www.un.org/press/en/2018/gal3571.doc.htm>.

63. *Engagement with Stakeholders*, INT’L, IMPARTIAL & INDEP. MECHANISM, <https://iiim.un.org/engagement-with-stakeholders/> (last visited May 11, 2020).

64. *Bulletin No.2 – April 2019*, INT’L, IMPARTIAL & INDEP. MECHANISM (Apr. 2019), <https://iiim.un.org/wp-content/uploads/2019/05/IIIM-Bulletin2-2019-4-En.pdf>.

III. UNIVERSAL JURISDICTION

Universal jurisdiction is a controversial issue within international law as it has both significant drawbacks and positive uses. There is no clearly established definition of universal jurisdiction, though it has “sufficient political legitimacy” over core international crimes.⁶⁵ In its broadest application, universal jurisdiction permits states to prosecute specific crimes—namely crimes against humanity, war crimes, genocide, and torture—even if the crime did not occur in the prosecuting state, the accused is a non-national, and the complainant is a non-national.⁶⁶ Universal jurisdiction does not have its own institution; rather, it utilizes resources from individual states.⁶⁷ There are two key rationales behind using universal jurisdiction: (1) states waive their sovereignty over these kinds of crimes when they commit them or permit their commission,⁶⁸ and (2) all states have an interest in prosecuting these cases as these specific egregious crimes affect humanity as a whole.⁶⁹ Furthermore, as universal jurisdiction was first introduced in the four Geneva Conventions of 1949, and as it is recognized in the 1984 Convention Against Torture,⁷⁰ states that ratified those treaties may have treaty obligations to extradite or prosecute perpetrators of such crimes.

Certain states, such as Germany, Norway, and Sweden—the only European countries to have “pure” universal jurisdiction—follow the broadest definition, thereby permitting a broad enforcement for specific crimes, even if there is no link to the victim or crime.⁷¹ There are more modified and limited forms of universal jurisdiction, where prosecuting states require some sort of connection to the crime. For instance, in France, courts have jurisdiction only if the victim is a French citizen, or if the suspected perpetrator is on French territory, resides in France,

65. Langer, *supra* note 20, at 218. Additionally, “. . . there is growing support for extending the universal jurisdiction theory to certain acts of terrorism” Curtis A. Bradley, *Universal Jurisdiction and U.S. Law*, 2001 U. CHI. LEGAL F. 323, 325 (2001).

66. Máximo Langer, *Universal Jurisdiction Is Not Disappearing: The Shift from ‘Global Enforcer’ to ‘No Safe Haven’ Universal Jurisdiction*, 13 J. INT’L CRIM. JUST. 245, 246 (2015); Rahim Hesenov, *Universal Jurisdiction for International Crimes - A Case Study*, 19 EUR. J. ON CRIM. POL’Y & RES. 275, 275 (2013).

67. Langer, *supra* note 20, at 206–07.

68. *Id.* at 206.

69. *Id.*

70. *Universal Jurisdiction over War Crimes*, INT’L COMM’N OF THE RED CROSS (Mar. 2014), <https://www.icrc.org/en/document/universal-jurisdiction-over-war-crimes-factsheet>.

71. HUM. RTS. WATCH, *supra* note 48, at 16.

or is a French national.⁷²

There are major criticisms of universal jurisdiction. First, opponents believe universal jurisdiction violates state sovereignty⁷³ as the respective states themselves should have control over crimes and acts within their jurisdiction. Second, it expends resources of domestic states for crimes that have no immediate connection to their jurisdiction. Third, opponents of universal jurisdiction contend it prevents equal application of the law as a case filed in France may have a different outcome than a case filed in Germany,⁷⁴ leading to inconsistent judicial outcomes.⁷⁵ Fourth, universal jurisdiction politicizes international criminal law by having certain states, mostly Western ones, take on cases.⁷⁶ In Syria's situation, European states (such as Germany, France, and Sweden) are investigating most cases.⁷⁷ Finally, universal jurisdiction cases may be too remote from victims and affected societies. This hinders the quality of evidence due to the lack of geographical proximity to the location of events, and shifts away from a victim-centered approach since many victims may not be able to participate in the proceedings.⁷⁸

Despite these criticisms, universal jurisdiction can serve as a powerful and positive tool. First, it can act as an accountability tool when a state's domestic courts fail or when there are political and security constraints, as there are in Syria, that prevent the ICC or an ad-hoc tribunal from investigating crimes. As no resources need to be expended for a court to be established, universal jurisdiction provides some sort of "immediate" justice and hope to victims. Second, while the prosecuting courts are not in states where the crime may have occurred, certain states have more limited definitions of universal jurisdiction and require some level of connection for a complainant to bring a case. Therefore,

72. *A Guide to National Prosecutions in France for Crimes Committed in Syria*, SYRIA JUST. & ACCOUNTABILITY CTR. 2, <https://syriaaccountability.org/wp-content/uploads/French-Jurisdiction-Guide-EN.pdf> (last visited May 11, 2020).

73. Hesenov, *supra* note 66, at 280; Press Release, General Assembly, Without Clear Definition, Universal Jurisdiction Principle Risks Misuse, Abuse, Sixth Committee Speakers Warn, U.N. Press Release GA/L/3571 (Oct. 10, 2018), <https://www.un.org/press/en/2018/gal3571.doc.htm>.

74. Langer, *supra* note 20, at 222; Hesenov, *supra* note 66, at 278.

75. This can and has happened in international tribunals as well (even among different appellate chambers of the ICC), but perhaps there is greater likelihood of harmonization among international courts as opposed to national courts.

76. Langer, *supra* note 20, at 223.

77. *See infra* Chart 2.

78. *See* Hilly Moorick-Even Khen, *Revisiting Universal Jurisdiction: The Application of the Complementarity Principle by National Courts and Implications for Ex-Post Justice in the Syrian Civil War*, 30 EMORY INT'L L. REV. 261, 271 (2015).

concerned states can enact legislation to control the flow of universal jurisdiction cases. Third, it can prevent states from being “safe havens” for perpetrators and prevent those guilty of international crimes from applying for asylum or refugee status in those specific countries.⁷⁹ Fourth, it can send a global message of accountability for egregious crimes—that wherever and by whomever certain grave atrocities are committed, there should be accountability, or at least the prospect of it. Fifth, while these cases are not being heard in the state where the crime occurred, it could be a tool that conflict-displaced communities use to obtain justice after fleeing their respective country.⁸⁰

IV. UNIVERSAL JURISDICTION CASES RELATED TO THE SYRIAN CONFLICT

Lawyers, organizations, and prosecutors have employed universal jurisdiction as a tool to presently hold accountable actors responsible for crimes committed in Syria.⁸¹ Using data from three non-governmental organizations—Trial International,⁸² the Center for Justice and Accountability,⁸³ and the Syria Justice and Accountability Centre⁸⁴—this Section will assess universal jurisdiction investigations and cases from the onset of the Syrian conflict (March 2011) at a broad level to determine the following: (1) who is being investigated or prosecuted, (2) where these investigations and cases are occurring, and (3) what type of crimes are being investigated. This Section includes all investigations and cases, even if they were closed or later dismissed, to gather a wider understanding of the type of cases being brought forward.

79. Hesenov, *supra* note 66, at 278.

80. HUM. RTS. WATCH, *supra* note 48, at 2.

81. Bdiwi, *supra* note 16.

82. I use Trial International’s 2015–2020 Universal Jurisdiction Annual Reports. See *Universal Jurisdiction Annual Review 2015*, TRIAL INT’L (2015), <https://trialinternational.org/wp-content/uploads/2016/06/Universal-jurisdiction-annual-review-2015-publication.pdf>; *Universal Jurisdiction Annual Review 2016*, TRIAL INT’L (2016), <https://trialinternational.org/wp-content/uploads/2016/06/Universal-jurisdiction-annual-review-2016-publication.pdf>; *Universal Jurisdiction Annual Review 2017*, TRIAL INT’L (2017), https://trialinternational.org/wp-content/uploads/2017/03/UJAR-MEP_A4_012.pdf; *Universal Jurisdiction Annual Review 2018*, TRIAL INT’L (2018), <https://trialinternational.org/wp-content/uploads/2018/03/UJAR-Make-way-for-Justice-2018.pdf>; *Universal Jurisdiction Annual Review 2019*, TRIAL INT’L (2019), https://trialinternational.org/wp-content/uploads/2019/03/Universal_Jurisdiction_Annual_Review2019.pdf; *Universal Jurisdiction Annual Review 2020*, TRIAL INT’L (2020), https://trialinternational.org/wp-content/uploads/2020/03/TRIAL-International_UJAR-2020_DIGITAL.pdf.

83. *Syrian Civil/Criminal Cases & Investigations of War Crimes (2011–Present)*, CTR. FOR JUST. & ACCOUNTABILITY, <https://cja.org/wp-content/uploads/2019/02/Syria-Cases-Updated-February-2019-12.pdf> (last updated Feb. 2019).

84. SYRIA JUST. & ACCOUNTABILITY CTR., *supra* note 2, annex I.

By broadly assessing these 100 investigations and cases,⁸⁵ this Section will examine where prosecuting states are placing their resources and if this is a beneficial approach to ensure justice in Syria. Defendants are grouped into seven main actors: (1) the Syrian state,⁸⁶ (2) corporations,⁸⁷ (3) Dae'sh (ISIS), Al-Qaeda, Al-Nusra, and affiliates,⁸⁸ (4) other armed groups,⁸⁹ (5) unknown groups, (6) the Free Syrian Army (FSA), and (7) Kurdish-led groups.⁹⁰ This Section focuses more closely on cases against Syrian government officials as the state has a special and different relationship with its citizens in comparison to non-state actors. Syria is a state party to both the International Covenant on Civil and Political Rights and the Convention Against Torture.⁹¹ Thus, it has international legal obligations to not subject anyone to “torture or to cruel, inhuman or degrading treatment or punishment”⁹² as well as an affirmative duty to take measures to “prevent acts of torture in any territory under its jurisdiction.”⁹³

85. As I focused on the cases documented by these three leading NGOs, my research may not encompass the complete or comprehensive cases that are connected to the Syrian conflict.

86. Note that in 2019, a U.S. District Court found the Syrian state liable for the death of U.S. citizen and war correspondent Marie Colvin under the terrorism exception of the Foreign Sovereign Immunities Act. See *What Does the Marie Colvin Case Mean for Syrians?* SYRIA JUST. & ACCOUNTABILITY CTR. (Feb. 8, 2019), <https://syriaaccountability.org/updates/2019/02/08/what-does-the-marie-colvin-case-mean-for-syrians/>. However, “[t]hat exception . . . does not involve the exercise of universal jurisdiction, because it requires that the claimant or victim have been a U.S. national at the time of the offending conduct, and because it applies only to a small class of nations determined by the executive branch to be state sponsors of terrorism.” Bradley, *supra* note 65, at 349 n.110. Thus, the Colvin case is not included in my data of cases against the Syrian state.

87. Corporations included Syrian, German, French, Italian, and Flemish companies. See SYRIA JUST. & ACCOUNTABILITY CTR., *supra* note 2, at 31–33; *Universal Jurisdiction Annual Review 2019*, *supra* note 83, at 32–33; *Universal Jurisdiction Annual Review 2020*, *supra* note 83, at 32–33; CTR. FOR JUST. & ACCOUNTABILITY, *supra* note 84, at 1, 2, 4.

88. Da'esh is the Arabic language acronym for ISIS. Da'esh, Al-Qaeda, and Al-Nusra are separate entities but Al-Nusra is linked to Al-Qaeda. Charles Lister, *Al-Qaeda versus ISIS Competing Jihadist Brands in the Middle East*, MIDDLE E. INST. 3 (Nov. 2017), https://www.mei.edu/sites/default/files/publications/PP3_Lister_CTQaeda_0.pdf. This categorization is based off of SJAC's categorization in the 2020 State of Justice Report. See SYRIA JUST. & ACCOUNTABILITY CTR., *supra* note 2, at 16.

89. These groups are Junud al-Sham and Liwa al-Muhajireen wal-Ansar. SYRIA JUST. & ACCOUNTABILITY CTR., *supra* note 2, at 32, 36.

90. These groups are the YPG (People's Protection Units) and PKK (Kurdistan Workers' Party). SYRIA JUST. & ACCOUNTABILITY CTR., *supra* note 2, at 31, 36.

91. *Ratification of 18 International Human Rights Treaties*, UNITED NATIONS HIGH COMM'R FOR REFUGEES, <https://indicators.ohchr.org/> (last visited Apr. 6, 2020).

92. International Covenant on Civil and Political Rights art. 7, Dec. 16, 1966, 999 U.N.T.S. 1976.

93. Convention Against Torture art. 2(1), June 26, 1987, 1465 U.N.T.S. 1987.

ACCOUNTABILITY IN A TIME OF WAR

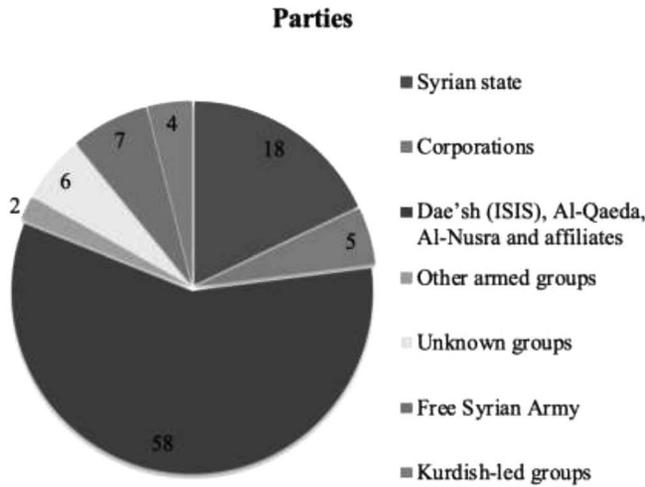


Chart 1: Parties⁹⁴

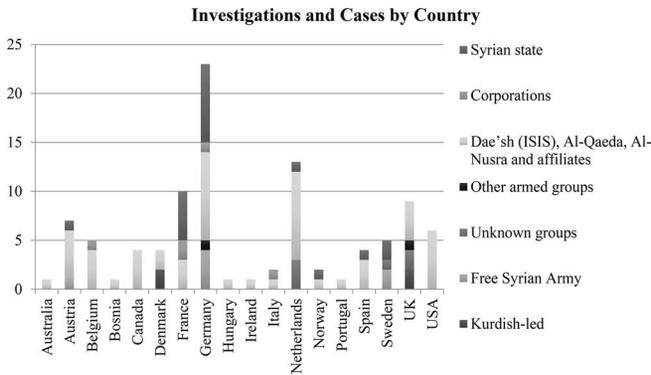


Chart 2: Investigations and Cases by Country⁹⁵

A. Overview of Universal Jurisdiction Cases

The next graphic illustrates the types of charges that have been brought. There are ten broad type of charges⁹⁶: (1) terrorism-

94. Data gathered from: SYRIA JUST. & ACCOUNTABILITY CTR., *supra* note 2, annex I; CTR. FOR JUST. & ACCOUNTABILITY, *supra* note 84; Trial International 2015–2020 Universal Jurisdiction Annual Reports, *supra* note 83.

95. Data gathered from: SYRIA JUST. & ACCOUNTABILITY CTR., *supra* note 2, annex I; CTR. FOR JUST. & ACCOUNTABILITY, *supra* note 84; Trial International 2015–2020 Universal Jurisdiction Annual Reports, *supra* note 83.

96. Each state has specific laws and definitions for each crime, and thus, one state may have a different definition of “terrorism” than another state. As my purpose is to broadly examine these cases, I did not assess each state’s definition of the specific charges. Rather, I focused on the overall charges.

related;⁹⁷ (2) CAH (crimes against humanity, which includes acts of torture, enforced disappearances, homicide, and rape),⁹⁸ war crimes or genocide; (3) complicity in/aiding and abetting CAH and/or war crimes; (4) violation of the 1949 Geneva Conventions; (5) other crimes;⁹⁹ (6) violation of trade and commercial regulations;¹⁰⁰ (7) exploitative labor conditions; (8) supporting engagement in armed

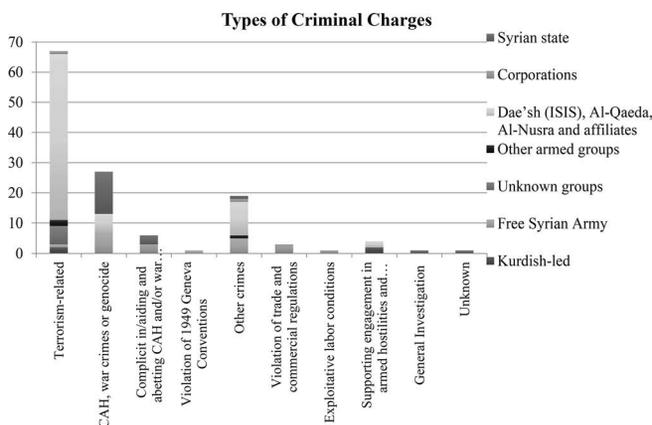


Chart 3: Types of Criminal Charges^{101,102}

97. “Terrorism-related” crimes include a wide range of acts, such as providing/attempting to provide material support to a terrorist organization, joining a/membership in a terrorist organization, supporting a terrorist organization, recruitment to a terrorist organization, financing/providing financial assistance to a terrorist organization, preparing terrorist crimes, committing crimes with terrorist intent, conspiring to provide material support to a designated foreign terrorist organization, preparation of terrorist acts, attempting to leave country to join a terrorist organization, and incitement to join terrorist groups (including dissemination of inciting materials). See SYRIA JUST. & ACCOUNTABILITY CTR., *supra* note 2, at annex I.

98. See Rome Statute of the International Criminal Court art. 7, *open for signature* July 17, 1998, 2187 U.N.T.S. 38544.

99. Other crimes include the following: violation of domestic act, assault, kidnapping, abduction with purpose of blackmail, attempted blackmail, murder/attempted murder/counseling commission of murder, rape, severe sexual harassment, unlawful imprisonment, use of force or threats against life or limb, and deliberate endangerment of people’s lives.

100. Specifically, these charges are violations of European Union (EU) export licensing requirements, E.U. embargoes or Foreign Trade Law.

101. Data gathered from: SYRIA JUST. & ACCOUNTABILITY CTR., *supra* note 2, annex I; CTR. FOR JUST. & ACCOUNTABILITY, *supra* note 83; Trial International 2015–2020 Universal Jurisdiction Annual Reports, *supra* note 82.

102. Note that as some individuals are investigated/charged for more than one crime, there are more than 100 crimes on the chart.

hostilities and violations of travel restrictions to Syria; (9) general investigation into crimes committed; and (10) unknown charges.

B. *Analysis of Cases*

The investigations and cases have targeted a wide array of actors, but out of the 100 investigations and cases examined, more than half are focused on Da'esh (ISIS), Al-Qaeda, and Al-Nusra. The majority of these cases are focused on “foreign fighters”—nationals of the respective prosecuting country who engaged or attempted to engage in “terrorism,” as defined by their respective state. These prosecuting countries have pursued actors that are more in line with their own justice efforts, namely national security.¹⁰³ There is a focus on terrorism charges since it is easier to prove a terrorism charge than it is to prove that an individual committed acts such as war crimes.¹⁰⁴ Additionally, fewer Syrian government officials reside in the states that are pursuing these universal jurisdiction cases,¹⁰⁵ thus there are fewer cases against the Syrian state and its officials. This focus on extremist groups, as opposed to a focus on those most responsible in the government, has led to some frustration within the Syrian community.¹⁰⁶

Furthermore, as illustrated in [Chart 2](#), Germany is home to the most investigations and cases primarily for two reasons. First, Germany has a broad definition of universal jurisdiction, thus permitting a wider range of cases to be filed. Second, Germany is home to more than 550,000 Syrian refugees,¹⁰⁷ and these refugees may have evidence or first-hand accounts of some of the crimes that occurred. While a criticism of universal jurisdiction is that the prosecuting court does not have strong access to evidence, the fact that Germany is home to a large Syrian refugee population probably makes it easier for authorities to interview victims¹⁰⁸ and makes German courts a sensible option for prosecuting these crimes.

However, there are some roadblocks when it comes to building these cases. First, there are some challenges in gathering evidence. Some

103. Aboueldahab, *supra* note 18, at 17.

104. HUM. RTS. WATCH, *supra* note 48, at 39.

105. See SYRIA JUST. & ACCOUNTABILITY CTR., *supra* note 2, at 14.

106. *Id.*

107. *Fact Sheet: Germany*, UNITED NATIONS HIGH COMM'R FOR REFUGEES, <https://reliefweb.int/sites/reliefweb.int/files/resources/68105.pdf> (last updated Feb. 15, 2019).

108. Haid Haid, *Towards Tangible Actions for Transitional Justice in Syria: Where to Go from Here?*, HEINRICH BÖLL STIFTUNG (Oct. 2017), https://lb.boell.org/sites/default/files/transitional_justice_paper_final.pdf.

suspects are not present in prosecuting states (including Jamil Hassan, the head of the Syrian Air Force Intelligence Directorate, who faces French- and German-issued arrest warrants)¹⁰⁹ and, therefore, it is harder to collect evidence for those specific cases. Swedish and German authorities have also reported trouble in gathering domestic evidence due to Syrians' lack of trust of police and officials, and fear of reprisal.¹¹⁰ Furthermore, high evidentiary standards in certain courts have had a negative impact on victims. The standard of criteria for evidence in a court of law has meant that many cases against such alleged perpetrators fall through, and victims continue to see the same person in the same camp or neighborhood.¹¹¹

In addition to challenges with gathering evidence, Syrian refugees in prosecuting countries may not be aware of universal jurisdiction or of how to navigate the legal system in their host country.¹¹² In a 2016-2017 research study, Human Rights Watch found that none of the refugees they interviewed knew of ongoing cases or knew of their right to participate in legal proceedings.¹¹³ Judgments and court documents are only available in Swedish or German, making them inaccessible for Arabic-speaking individuals.¹¹⁴

V. IMPACT OF UNIVERSAL JURISDICTION CASES

These cases and investigations, despite their shortcomings, have had a positive impact on Syria's transitional justice process. First, many of these cases and most of the documentation have been Syrian-led. Second, these cases provide some "immediate" justice to victims. Third, they preserve evidence of human rights abuses. Last, they push boundaries when it comes to traditional notions of transitional justice.¹¹⁵ Though there is a discrepancy between the number of cases focused on extremist and armed groups and the number focused on state officials, other mechanisms can fill this gap.

A. *Syrian-led Movement in Cases Against the State*

Syrian victims and nationals brought forth a majority of the cases filed against the state. While the courts are not located in Syria, Syrians

109. *Jamil Hassan*, TRIAL INT'L, https://trialinternational.org/latest-post/_trashed-5/ (last updated Mar. 29, 2019).

110. HUM. RTS. WATCH, *supra* note 48, at 46–47.

111. Aboueldahab, *supra* note 18, at 16.

112. HUM. RTS. WATCH, *supra* note 48, at 47–48.

113. *Id.* at 50–51.

114. *Id.* at 52.

115. *See* Bdiwi, *supra* note 16; Aboueldahab, *supra* note 18, at 27.

are using universal jurisdiction to collaborate with NGOs and bring forth their testimonies and first-hand accounts. Though some criticize the way in which evidence has been gathered because it does not meet “so-called international standards,” documentation has been a victim-led movement.¹¹⁶ Anwar Al-Bunni, the Syrian lawyer who has been at the forefront of many of these complaints, stated that these cases send a message to the perpetrator and “a message of hope to victims and the Syrian people; the path to justice has started. We are not dreaming of it anymore. We are making justice with our bare hands.”¹¹⁷ Therefore, universal jurisdiction has allowed Syrians to exercise some agency over the justice process despite the continuing turmoil.

B. More “Immediate” Satisfaction for Victims of the War

Universal jurisdiction is the only way to presently hold actors accountable and as a result, provides more “immediate” justice. Though these cases’ and investigations’ deterrence effect cannot be properly measured, individual victims are able to obtain some kind of relief.¹¹⁸ Fadel Abdul Ghany, founder of the Syrian Network for Human Rights, noted that these cases were “fundamental in an ongoing conflict situation.”¹¹⁹ These cases help draw attention to ongoing atrocities, which could potentially result in pressure to release detainees,¹²⁰ or shape the peace negotiations. Specifically, the ongoing trial in Germany against Anwar Raslan and Eyad al-Gharib has brought more international media attention to the torture and war crimes that have occurred, and could put further pressure to bring additional cases or make sure justice efforts are a stronger part of peace negotiations and post-conflict reconciliation.¹²¹ Furthermore, criminal accountability offers a harsher form of transitional justice that may be appealing to many victims. Some international NGOs used the example of transitional justice in South Africa and the reconciliation and forgiveness model in the past, which led to some Syrians having a negative perspective of transitional

116. Noha Aboueldahab, *Time, Transition, and Justice in Arab States*, ARAB CTR. WASH. D.C. (June 1, 2019), http://arabcenterdc.org/policy_analyses/time-transition-and-justice-in-arab-states/#_ednref19.

117. Haid, *supra* note 108, at 7.

118. See Steve Kostas & Eric Witte, *Building Roads to Justice in Syria*, OPEN SOC’Y JUST. INITIATIVE (Dec. 17, 2019), <https://www.justiceinitiative.org/voices/building-roads-to-justice-in-syria>.

119. Aboueldahab, *supra* note 18, at 24.

120. Kostas & Witte, *supra* note 118.

121. See Janet Anderson, *Justice Update – A Small Town in Germany*, ASYMMETRICAL HAIRCUTS 10:30 (May 1, 2020), asymmetricalhaircuts.com/episodes/justice-update-a-small-town-in-germany/.

justice, as they think it is merely about forgiveness.¹²² These cases affirm an important part of transitional justice: individuals should be held accountable for their actions, not simply forgiven.

In addition to providing more “immediate justice” to victims, cases against corporations could help ensure that international companies do not engage in contracts that benefit regime officials.¹²³ This is especially important as the Syrian regime is trying to normalize its relations and attract investors for reconstruction efforts.¹²⁴ These cases can send a direct message to corporations and business individuals to avoid any attempt to violate trade sanctions and pay closer attention to any type of investment in the country to evade complicity in human rights abuses.

However, there is an issue of setting high expectations amongst victims as to what these investigations and cases can accomplish. Bassam al-Ahmed, executive director and founder of Syrians for Truth and Justice, stated that there is a problem of false hope because some have exaggerated the impact of these cases, and not addressed their limitations.¹²⁵ As a result, some victims have become less willing to provide evidence.¹²⁶ Therefore, it is important to be clear with victims about what these cases can and cannot do, to better inform them, and create more trust between them and investigative bodies.

C. Preserves and Utilizes Evidence of Human Rights Abuses and Atrocity Crimes

By organizing and corroborating evidence, these cases are preserving and using evidence of crimes. They may not directly stop the continuing conflict, but as Mai El-Sadany, legal director of the Tahrir Institute for Middle East Policy, notes,

The process of participating in these cases, the process of documenting the evidence, the process of even speaking out loud about the violations that an individual or victim had to endure and who perpetrated those violations, that’s important from a documentation perspective; from a healing perspective for victims; for the memorialization and education perspective so

122. See Aboueldahab, *supra* note 18, at 15–16.

123. Kostas & Witte, *supra* note 118.

124. See *TIMEP Brief: Normalization of the Syrian Regime*, TAHIR INST. FOR MIDDLE E. POL’Y (May 13, 2019), <https://timep.org/reports-briefings/timep-brief-normalization-of-the-syrian-regime/>.

125. Haid, *supra* note 108, at 7.

126. Aboueldahab, *supra* note 18, at 17.

that decades from now, the history of the Syrian revolution and the Syrian war isn't rewritten.¹²⁷

Documenting the events is a “form of resistance,”¹²⁸ and while these cases will not completely compensate for the destruction, torture, and violence during the war, it ensures that these experiences are not erased from history.

D. *“Evolving the Traditional Transitional Justice Paradigm”*¹²⁹

These cases are cultivating a new way of approaching transitional justice. Syrian lawyer Ghuna Bdiwi argues that these cases and the push for accountability goes against the traditional notion that transitional justice occurs after a conflict.¹³⁰ Instead of waiting for a peace agreement, Syrians have been working since the beginning to document incidents of abuses and crimes. The conflict transformed the role of CSOs¹³¹ as Syrian CSOs have been actively engaged in documentation. This documentation is not merely restricted to criminal proceedings, but can support other parts of the transitional justice process.¹³²

E. *Cases Against the State*

Although these cases have had some impact so far, there is a gap in holding the Syrian state accountable as only eighteen of the 100 investigations and cases are focused on the state.¹³³ As a result of the focus on terrorism and extremist groups, some Syrian activists have expressed frustration for the lack of prosecution of Syrian government officials.¹³⁴ Wael Sawah, chief executive officer of the Syrian Center for Media and Freedom of Expression, stated that “The world has *been selective in applying justice against some of the individuals fighting with rebels or radical groups*. . . . Selective justice destroys peace and harms the concept of justice itself.”¹³⁵ Even though there has been “selective justice” and mostly

127. Saleh, *supra* note 36.

128. Aboueldahab, *supra* note 18, at 1.

129. Bdiwi, *supra* note 16.

130. *Id.*

131. Aboueldahab, *supra* note 18, at 27.

132. *Id.* at 4.

133. *See supra* Chart 1.

134. Aboueldahab, *supra* note 18, at 17 (“The requirement that such suspects be physically present in court significantly worsens the prospects for trials of Syrian government officials within the current climate of the Syrian conflict.”).

135. Haid, *supra* note 108, at 7 (emphasis added).

lower-level officials have been targeted in state-related cases, these cases against lower-level officials may pressure high-level officials.¹³⁶ Specifically, those who have an interest in traveling to Europe may feel pressured to push for a change in policies to evade any prosecution.

Diab Serrih, head of The Transitional Justice Coordination Group, noted the importance of the state's acknowledgement of the crimes, expressing that

The universal jurisdiction cases are great and we appreciate them, but they are not transitional justice There must be an official acknowledgement by the state of these violations. Whether it is the Assad government or the new government—the state must acknowledge responsibility and implement compensation. This apology is extremely important. Maybe even more important than court cases¹³⁷

Though the state has its own narrative of the war, and may view these cases as “propaganda” by mostly Western states to harm the regime, the documentation and corroboration of evidence may further put pressure on stakeholders and government officials to admit the incidents that occurred and may help in pressuring the government to eventually make some sort of apology. Finally, other mechanisms can fill in the gap to prosecute and investigate state officials.

F. *Interplay with ICC, a Potential Ad-hoc Tribunal, COI, and IIIM*

While universal jurisdiction is the only mechanism that is currently allowing criminal trials to be held, there are other mechanisms that could play a more cohesive and comprehensive role in the future. If the ICC ends up having jurisdiction over Syria, the Court will focus mostly on the highest-level officials, and probably let all the lower-level officials off the hook.¹³⁸ Many lower-level officials were the ones who directly orchestrated the specific crime against the victims and often have more interaction with the victims and their families. So, universal jurisdiction can play an important role here in holding lower-level officials accountable, while the ICC can hold higher-level state officials accountable, thus ensuring a wide range of accountability. In addition to the ICC, any potential ad-hoc tribunal that may be set up can fill in the gaps of

136. *Id.* at 7.

137. Aboueldahab, *supra* note 18, at 24–25.

138. Lattimer, Mojtahedi & Tucker, *supra* note 41, at 4.

holding state officials accountable and can “pick up” where universal jurisdiction leaves off. However, there would need to be a strong system in place to transfer documents, evidence, and resources to avoid having victims re-share experiences of trauma or to avoid double jeopardy for defendants.

The universal jurisdiction cases are working with the support of the U.N. mechanisms, the CoI, and the IIM. The CoI does not focus on criminal prosecution and focuses more on international human rights law, but it has called upon states to use universal jurisdiction to investigate those accused of egregious crimes.¹³⁹ The CoI’s reports and investigations could also be used to corroborate evidence in universal jurisdiction cases and further contribute to documentation. Like the CoI, the IIM encourages universal jurisdiction cases in national courts. But, the IIM has a more active role in supporting these cases as they have received requests for cooperation from national judges and prosecutors.¹⁴⁰ The IIM is home to a “central repository” of evidence, in which national prosecutors and NGOs share information and documentation with the mechanism.¹⁴¹

VI. CONCLUSION

Universal jurisdiction has led to some minor advances, but improvements can be made for a more efficient and victim-centered approach. First, funders, NGOs, and CSOs can work on enhancing local updates and coordinating outreach on these cases. Court developments and documents should be translated into Arabic so Syrians can understand events in their native tongue. Some NGOs have already done this in the ongoing trial of Anwar Raslan and Eyad Al-Gharib.¹⁴² In addition to ensuring court developments can be understood, CSOs and NGOs should ensure these materials reach Syrian audiences and should improve engagement with diaspora and displaced communities. This

139. Beth Van Schaack, *Domestic Courts Step Up: Justice for Syria One Case at a Time*, JUST SECURITY (Mar. 25, 2019), <https://www.justsecurity.org/63289/domestic-courts-step-up-justice-for-syria-one-case-at-a-time/>.

140. Stephanie Nebehay, *U.N. Investigators Hot on Trail of Syrian War Criminals*, REUTERS (Mar. 8, 2019), <https://www.reuters.com/article/us-mideast-crisis-syria-warcrimes/un-investigators-hot-on-trail-of-syrian-war-criminals-idUSKCN1QP1AF>.

141. *Bulletin No.1 – November 2018*, INT’L, IMPARTIAL & INDEP. MECHANISM 1–3 (Apr. 2019), <https://iiim.un.org/wp-content/uploads/2019/01/MESASA1.pdf>.

142. See *Archive: Trial Monitoring*, SYRIA JUST. & ACCOUNTABILITY CTR., <https://syriaaccountability.org/topic/trial-monitoring/updates/> (last visited May 29, 2020); *Trial Updates: First Trial Worldwide on Torture in Syria*, EUR. CTR. FOR CONST. & HUM. RTS., <https://www.echr.eu/en/case/trial-updates-first-trial-worldwide-on-torture-in-syria/> (last visited May 29, 2020).

can be done by establishing more forums within the diaspora and refugee communities to inform them of what is happening, or by improving coordination amongst NGOs to better share these materials online and with media channels. For example, the Syria Justice and Accountability Centre hosted an online discussion in Arabic about the ongoing Anwar Raslan and Eyad Al-Gharib trial, providing context to a wider audience about this trial's impact on justice for Syria.¹⁴³ Online discussions like these can be easily shared on social media platforms to the broader Syrian community. Second, it is important to make it clear to victims what these universal jurisdiction cases can, and cannot, do. It may be better to bring forth cases that are strategic and have high prospects of winning. Because the war has progressed for more than nine years, aiming for cases that have a high chance of winning may boost morale, help ensure victims' expectations are met, and avoid the problem of false hope especially amidst "an ever-growing sense of disillusionment among Syrians."¹⁴⁴ Third, there should be continued efforts to build and improve the IIIM's central repository of evidence, with the goal of engaging more Syrian CSOs. A Syrian organization expressed that the U.N. should aim to work more closely with Syrian civil society and see them as "partners in achieving justice," instead of merely resorting to them for information.¹⁴⁵

These universal jurisdiction cases are a small part of the transitional justice process. The lack of accountability and justice were catalysts in the 2011 uprisings,¹⁴⁶ and these cases are helping to continue the push for accountability.¹⁴⁷ Hosting these cases outside of Syria may be the only viable option for now,¹⁴⁸ but the bigger justice process must ensure that Syrians "feel that justice is in their hands."¹⁴⁹ In the future, a specific tribunal for Syria could be created to fill in gaps of these universal jurisdiction cases. Though some may view the ICC as a better fit, a

143. Syria Just. and Accountability Ctr., *Nqāsh 'br al-inṭmt: mādhā t'any Mhākmt Anwr R?* [Discussion on the Internet: What does Anwar R's Trial Mean?], FACEBOOK (May 8, 2020), <https://www.facebook.com/302595603518038/videos/687756162050746>.

144. *When "Public Interest Litigation" Isn't in the Public's Interest: Universal Jurisdiction and the Case against Assad*, SYRIA JUST. & ACCOUNTABILITY CTR. (Mar. 2, 2017), <https://syriaaccountability.org/updates/2017/03/02/when-public-interest-litigation-isnt-in-the-publics-interest-universal-jurisdiction-and-the-case-against-assad/>.

145. Aboueldahab, *supra* note 18, at 17.

146. Aboueldahab, *supra* note 116.

147. Aboueldahab, *supra* note 18, at 8.

148. Saleh, *supra* note 36.

149. Maya Abyad, *What Justice Can Foreign Courts Offer Syrians? (Part 2/2)*, SYRIA UNTOLD (Sept. 1, 2018), <https://syriauntold.com/2018/09/01/what-justice-can-foreign-courts-offer-syrians-part-2/>.

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hybrid court better ensures that Syrian judges and lawyers are part of the justice process,¹⁵⁰ which can further contribute to a Syrian-led transitional justice process. While this Note focused on criminal accountability, it is merely one part of the post-conflict process. As Radwan Ziadeh, senior fellow at the Arab Center in Washington, D.C. noted, the transitional justice and reconciliation process should also include other initiatives including institution-building, reformation of the security sector, and compensation to victims.¹⁵¹ Whatever next step is taken, the most important part is that Syrians be at the forefront of the justice process, lead in rebuilding their country, and ensure justice for all those who were killed, tortured, displaced, or disappeared.

150. Roca, *supra* note 18.

151. Radwan Ziadeh, *Time for Transitional Justice and National Reconciliation in Syria*, ARAB CTR. WASH. D.C. (Apr. 8, 2016), <http://arabcenterdc.org/wp-content/uploads/2016/04/RP-April-8-2016-RZ.pdf>.