

Europe's Fight Against Impunity for International Crimes

POLICY PAPER

EXECUTIVE SUMMARY

In the global quest for justice, the European Union (EU) has positioned itself as a crucial player in holding perpetrators of crimes against humanity, genocide and war crimes accountable. The principle of universal jurisdiction empowers national prosecutors to bring perpetrators of serious crimes to justice, **breaking through barriers** where other efforts have failed. Member states like Germany, Sweden, France, the Netherlands and others have harnessed this principle to achieve groundbreaking results. Yet, the system remains vulnerable. Strengthening legal frameworks and bolstering investigative and prosecutorial capacities are essential to ensuring that there is no safe haven for those who commit genocide, war crimes and crimes against humanity. This policy brief outlines how the EU, alongside Eurojust, Europol and other key players, can and should strengthen this architecture of universal jurisdiction within the EU.

UNIVERSAL JURISDICTION: A PATHWAY TO JUSTICE IN EUROPE AND BEYOND

When a Syrian torture survivor recognized a former Syrian secret service agent, who was responsible for torturing prisoners, on the streets of Berlin years after the Syrian revolution began, few could have anticipated the profound **turn of events that would follow**. Within a few years, that agent stood trial in a German court, and was then **convicted** of crimes against humanity and sentenced to life in prison for operating a torture prison in Damascus.

Known as **the al-Khatib trial**, it marks the first time that a court addressed Syrian state torture. It was a testament to the tireless efforts of victims and survivors, supported throughout the proceedings by NGOs, such as ECCHR, as well as European prosecutorial units in countries such as Germany, France, the Netherlands and Sweden. Although justice for Syria remains a daunting task, in part due to Russia's efforts to block the referral of the Syrian situation to the International Criminal Court (ICC), universal jurisdiction can deliver a powerful message: no one is above the law.

ECCHR uses the law to expose injustices and defend human rights. Whether taking on former US Defense Secretary Donald Rumsfeld for torture on behalf of Iraqi survivors, holding Syrian intelligence officers accountable for prison atrocities, challenging arms exports or seeking justice against textile giant KiK for a deadly factory fire in Pakistan, ECCHR stands at the forefront of the global fight for accountability.

Universal jurisdiction is one of the main avenues for justice for international crimes when it is not an option to seek justice in the home state of perpetrators or where the crimes are being committed. The principle enables a state to have jurisdiction over international crimes even when the crimes did not occur on that state's territory, and when neither the victim nor perpetrator is a national of that state.

European police, prosecutors, NGOs and courts have successfully taken advantage of universal jurisdiction in recent years as an avenue to investigate serious crimes, with significant results. This has paved the way for unprecedented accountability, reaching the highest levels of the Syrian regime. High-ranking officials such as Jamil Hassan, head of Syrian Air Force Intelligence, have faced arrest warrants. In a historic recent verdict by a Paris court, he was convicted to life in prison in absentia for war crimes and crimes against humanity, including torture, alongside two other senior Syrian officials. In another groundbreaking case, a German court delivered the first judgement worldwide on the genocide against Yazidis in Iraq and Syria, convicting several ISIS members to life sentences. In The Hague, a Syrian pro-government militia fighter was sentenced to 12 years in prison for war crimes and crimes against humanity. Most recently, German and Swedish authorities arrested several men linked to crimes against humanity in Syria, demonstrating the capability to pursue justice across borders. Universal jurisdiction has also been applied successfully to combat impunity for international crimes in other situations around the world, including in Rwanda, Afghanistan and Liberia.

UNIVERSAL JURISDICTION IN EUROPE AND THE WAR AGAINST UKRAINE

Russia's invasion of Ukraine has further enhanced the use of universal jurisdiction in Europe and elsewhere. Along with the US and UK, the EU established the Atrocity Crimes Advisory Group (ACA) in May 2022 to assist Ukraine's prosecutor general in investigating conflict-related crimes. The EU Advisory Mission for Civilian Security Sector Reform, initially created in 2014, shifted its focus to support Ukraine's justice efforts following the invasion. Additionally, Eurojust set up a Joint Investigation Team and a shared database for evidence to facilitate investigations and the exchange of information on war crimes between judicial authorities.

Eurojust, located in The Hague, serves as a hub for national judicial authorities to coordinate efforts against serious cross-border organized crime. The European Network for investigation and prosecution of genocide, crimes against humanity and war crimes (EU Genocide Network), established in 2002, promotes cooperation among national authorities in investigating and prosecuting genocide, crimes against humanity and war crimes. Joint Investigation Teams (JITs) are international collaborations of prosecutors, law enforcement agencies, and judges from multiple countries, typically formed for 12 to 24 months, to jointly investigate serious crimes. Multiple JITs have been formed that focus specifically on the investigation of international crimes, including on crimes targeting Yazidis.

European countries also launched structural investigations, reflecting a strong, coordinated European response to the crisis and to their commitment to accountability.

Structural investigations are probes initiated when there is evidence of a crime, but the perpetrators have not yet been definitively identified. The focus of these investigations is on uncovering the networks and structures linked to the crime, evidence that can then be shared with European and international prosecutors and courts.

THE CHALLENGES: INTERNATIONAL JUSTICE IN COURTS IN EUROPE

Achieving justice for international crimes in distant courts is marred by many difficulties, including collecting evidence, apprehending perpetrators and protecting victims and witnesses. With national laws allowing for investigating international crimes and a well-functioning system of judicial collaboration among EU member states, facilitated by the EU Genocide Network at Eurojust, the EU arguably became the most active region in the world when it comes to the prosecution of international crimes, thus manifesting its commitment to being an "Area of freedom, security and justice."

Still, justice for many crimes in Syria and for atrocities in places like Ukraine, Iraq, Yemen and Palestine/Israel remains elusive, with several barriers impeding progress:

- legal gaps in domestic universal jurisdiction laws of EU member states,
- insufficient witness protection and obstacles to justice for victims of serious crimes,
- limited resources of judicial authorities,
- insufficient cooperation between investigative units, and
- lack of political will, particularly in investigating powerful and allied actors.

**OVERCOMING THE CHALLENGES:
WHAT CAN THE EU DO?**

It is crucial for European institutions to address these challenges, uphold international norms, and ensure accountability equally in all situations where international crimes are being committed. There are many ways in which the EU can and should strengthen this universal jurisdiction architecture:

1 Ensure victims of serious crimes have access to justice.

Victims of international crimes must have meaningful access to justice, requiring psychosocial support, translation services and comprehensive witness protection. These enhance the ability of victims and survivors to fully engage with the justice system, ensuring that justice is both served and seen to be served. Victims of international crimes are still not included in the *EU Victims' Rights Directive* as a particularly vulnerable group. In the next reform cycle, it is crucial to also recognize victims of international crimes as rightsholders.

2 Push for comprehensive domestic criminalization as well as prosecution of international crimes. While most EU member states have legislation on international crimes, a number of states have not fully criminalized all acts as established by customary international law, the Rome Statute, international conventions and international courts' jurisprudence into their domestic laws. The EU should advocate for such a full implementation in all member states and encourage national authorities to open investigations and secure evidence into alleged crimes whenever possible, in order to close existing impunity gaps.

3 Push for strong universal jurisdiction frameworks.

Although many states have universal jurisdiction laws, they often include legal obstacles within their national legislation or jurisprudence, such as presence requirements for suspects, statutes of limitation, state and official immunities, and the recognition of amnesties and similar measures of impunity. The European Parliament can pass resolutions to call for the adoption of universal jurisdiction laws or the strengthening of legal frameworks by removing obstacles that hinder the investigation of serious crimes.

4 Support specialized units among police and prosecution offices.

Specialized teams with specific expertise on international crimes have proven key for the successful completion of investigations and trials. To champion the importance of universal jurisdiction, the European Parliament should encourage member states to strengthen or create such specialized units, provide them with the necessary training, and ensure cooperation among them.

5 Support funding for organizations and institutions that pursue justice for serious crimes. Through funding programs like the *Justice Programme*, the EU Commission can provide crucial financial support to member states and NGOs involved in universal jurisdiction cases, focusing on capacity-building and training initiatives. Additionally, the European Commission and Eurojust's Management Board, in collaboration with the Council of the EU and the European Parliament, should allocate a higher budget to Eurojust. This increase will enhance the coordination of complex cross-border investigations, thereby strengthening cooperation among national prosecutors.

6 Encourage EU member states to support and ratify key international treaties on international justice.

The EU should take a decisive step in supporting international treaty initiatives by ratifying and supporting them whenever possible, including the Ljubljana-The Hague Convention on Mutual Legal Assistance (*MLA Convention*) and the efforts to develop a Convention on Crimes Against Humanity (*CAH Convention*). These treaties are crucial for enhancing international cooperation and ensuring accountability for serious crimes. The *MLA Convention* streamlines cross-border legal assistance, which is vital for prosecuting transnational crimes. Meanwhile, the draft of the *CAH Convention* aims to fill critical gaps in international law, providing a comprehensive framework to address crimes against humanity. Supporting these treaties would solidify the EU's commitment to global justice and the rule of law.

7 Speak out against international crimes everywhere.

In its foreign policy, the EU should take a firm stand against perpetrators of international crimes and not engage in diplomatic relations with perpetrators of crimes against humanity, war crimes and genocide. The EU should also firmly oppose double standards and the one-sided implementation of international law exclusively against non-allies. Speaking out against atrocities, wherever they occur, is a matter of credibility and must be a top priority, as is actively securing accountability by supporting commissions of inquiry, enabling fact-finding missions, protecting human rights defenders, and backing efforts to document crimes and prosecute perpetrators. This should include supporting efforts to establish a permanent investigative mechanism for international crimes at OHCHR level.

8 Promote universal jurisdiction internationally.

The EEAS should use its diplomatic channels to promote the concept of universal jurisdiction, encouraging third countries to cooperate with EU member states in prosecuting international crimes.

ONE MECHANISM IN THE BROADER INTERNATIONAL JUSTICE TOOLBOX

Universal jurisdiction is a critical tool in the ecosystem of international justice alongside other mechanisms like the International Criminal Court and the increasing number of UN bodies with the mandate to collect evidence for potential future judicial use, such as the Investigative Mechanisms for Syria (IIM) or Myanmar (IIMM).

When effectively applied, it can spark a chain reaction, paving the way for meaningful accountability, and contribute to a society's efforts to come to terms with a violent past. For Europe, universal jurisdiction is a critical safeguard, ensuring that the continent does not become a refuge for perpetrators and in promoting peace and the international rule of law, both in its member states and worldwide.

ECCHR'S STRATEGY TOWARD MORE MEANINGFUL JUSTICE

ECCHR is an independent, non-profit organization founded in 2007 to enforce civil and human rights globally through legal action. ECCHR aims to end impunity for crimes like torture, war crimes, gender-based violence and corporate exploitation. The organization litigates cases, supports victims and survivors of serious crimes when they appear in court and collaborates with prosecutors, journalists, NGOs and lawyers in universal jurisdiction cases.

In collaboration with FIDH and REDRESS, ECCHR produced the report *Breaking down barriers: Access to justice in Europe for victims of international crimes*, funded by the EU's Justice Programme (2019–2020). The report highlights progress but notes ongoing barriers that hinder victims' rights and participation in legal proceedings. It offers a roadmap for improving access to information, protection and support for victims across the EU.

The *Global Initiative Against Impunity*, a four-year project that is co-funded by the EU, aims to enhance victim and civil society participation in accountability processes for serious human rights violations. This initiative focuses on a survivor-centered, trauma-informed and gender-transformative approach to justice and accountability.

In the context of the *Global Initiative Against Impunity*, ECCHR aims to strengthen cooperation with EU actors in the coming years to support the effective advancement of universal jurisdiction practices.

GET IN TOUCH

For further information on ECCHR's work and expertise on international crimes and accountability, contact:

Dr. Patrick Kroker

Senior Legal Advisor, International Crimes and Accountability Program

Florentina Pircher

Advocacy Coordinator, International Crimes and Accountability Program

pircher@ecchr.eu & info@ecchr.eu

EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS

DONATE

USING THE LAW TO WORK TOGETHER FOR GLOBAL JUSTICE. SUPPORT OUR WORK WITH A DONATION.

ECCHR.EU/DONATE

BANK ACCOUNT

OWNER: ECCHR

BANK: BERLINER VOLKSBANK

IBAN: DE77 100 90000 885360 7011

IMPRINT

TEXT:

PATRICK KROKER

WHITNEY NOSAKHARE

FLORENTINA PIRCHER

EDITING:

DAVE YOUSSEF

OCTOBER 2024

THIS PUBLICATION WAS CO-FUNDED BY THE EUROPEAN UNION. ITS CONTENTS ARE THE SOLE RESPONSIBILITY OF ECCHR AND DO NOT NECESSARILY REFLECT THE VIEWS OF THE EUROPEAN UNION.