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From:	General Secretariat of the Council
To:	Delegations
Subject:	Expert Report "20 Years on: Main Developments in the Fight Against Impunity for Core International Crimes in the EU" - Publication by the European Network for investigation and prosecution of genocide, crimes against humanity and war crimes ('Genocide Network')

Delegations will find attached the above mentioned report, which was published on Eurojust's website on 23 May 2022 at the occasion of the 7th EU Day Against Impunity.

EUROJUST

Network for investigation and prosecution of genocide, crimes against humanity and war crimes

20 YEARS ON:

MAIN DEVELOPMENTS IN THE FIGHT AGAINST IMPUNITY FOR CORE INTERNATIONAL CRIMES IN THE EU

AN ASSESSMENT OF THE STRATEGY OF THE GENOCIDE NETWORK TO COMBAT IMPUNITY FOR THE CRIME OF GENOCIDE, CRIMES AGAINST HUMANITY AND WAR CRIMES WITHIN THE EU AND ITS MEMBER STATES

THE HAGUE, MAY 2022

The Genocide Network

The European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes (the Genocide Network) was established by the Council of the European Union in 2002 to ensure close cooperation between national authorities in investigating and prosecuting the crime of genocide, crimes against humanity and war crimes. The Genocide Network facilitates exchange of information among practitioners, encourages cooperation between national authorities in Member States, and provides a forum for sharing knowledge and best practices. The Genocide Network is supported in its work by its Secretariat, based at the European Union Agency for Criminal Justice Cooperation (Eurojust) in The Hague, the Netherlands.

Eurojust helps prosecutors and judicial authorities solve some of Europe's most serious and complex crimes. Eurojust's work enables EU Member States to decide on common strategies and to build synergies that drive concrete operational results.

This report has been prepared by the Genocide Network Secretariat and is meant solely for information purposes.

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1. Executive summary

On 1 July 2022, the International Criminal Court will celebrate its 20th anniversary. Twenty years ago, the Rome Statute reaffirmed that it is the duty of every state to exercise its criminal jurisdiction over those responsible for core international crimes – the crime of genocide, crimes against humanity and war crimes. The European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes (the Genocide Network), hosted by the European Union Agency for Criminal Justice Cooperation (Eurojust), was created precisely to help Member States fulfil this duty, thus supporting the principle of complementarity.

In recent years, several conflicts and situations of massive human rights violations – including in Belarus, Iraq, Libya and Syria, to name a few – have attracted attention from the public and the international community, in part because of the violence of the conflicts, and in part owing to their geographical proximity to the EU and direct impact on refugee flows. As a result, victims, civil society and the public have actively scrutinised Member States' efforts to fight against impunity.

At the time of publication of this report, the EU and its Member States are facing a crisis unparalleled since the entry into force of the Rome Statute. The Russian invasion of Ukraine and alleged core international crimes committed in that context have sparked many simultaneous initiatives to promote accountability, including the opening of investigations in 11 Member States. The situation will undoubtedly test the EU and its Member States' readiness to tackle core international crimes committed on a large scale. The EU will also need to take a leading role in coordinating the actions of numerous stakeholders.

Thankfully, the EU accountability landscape is not the same as it was 20 years ago. As a result of tireless efforts led by national authorities and their partners – the Genocide Network, Eurojust, the European Union Agency for Law Enforcement Cooperation (Europol), international organisations and civil society actors – significant progress has been achieved and that must be recognised.

Specialised investigative and prosecution units established in some Member States have been increasingly successful in bringing cases to trial and securing convictions for core international crimes, in some instances cumulatively with interlinked crimes and offences, such as terrorism. National authorities have also developed their expertise and had recourse to new investigative and judicial cooperation tools, for instance by opening structural investigations into large-scale crimes and forming joint investigation teams. Moreover, cooperation with international courts and novel investigative mechanisms (the International Criminal Court; the United Nations International, Impartial and Independent Mechanism; and the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh / Islamic State in Iraq and the Levant) has been greatly reinforced, with a notable push forward resulting from the conflicts in Iraq and Syria. States have been able to react quickly to developing situations and gather evidence from various sources (e.g. battlefield information and open source information). In that regard, the cooperation with Eurojust, Europol and the Genocide Network has helped move these challenging investigations forward. More generally, there is greater awareness of core international crimes among practitioners and EU decision-makers, and the topic seems firmly set to remain on the political agenda for the foreseeable future.

Despite great strides forward, national authorities still find core international crimes particularly complex to investigate and prosecute. In some Member States, legislative gaps hinder

the full prosecution of crimes, the exercise of extraterritorial (universal) jurisdiction, or international judicial cooperation or mutual legal assistance. The establishment of national specialised units or nomination of dedicated staff remains limited. Even where specialised units exist, financial, technical and human resources are lacking to effectively address an ever-increasing and complex caseload. Some key activities, such as outreach to affected communities, cannot be prioritised. National authorities may also face challenges in fostering cooperation with numerous civil society actors. Limitations to the mandates of Eurojust and Europol also affect their cooperation with important stakeholders, including international organisations and civil society organisations. Finally, the protection of victims and witnesses remains an important concern for prosecution services.

Using observations collected by the Genocide Network Secretariat from Genocide Network member and observer states, this report engages in a stocktaking exercise. Looking back at recommendations listed in the 2014 strategy of the Genocide Network to combat impunity for the crime of genocide, crimes against humanity and war crimes within the EU and its Member States, the report highlights both achievements and shortcomings of the EU judicial response to core international crimes. The report demonstrates that, while capacity to investigate and prosecute these cases has significantly increased at institutional and national levels, capacities remain uneven among Member States and capacity building is needed.

Based on the report, the Genocide Network will launch an internal consultation and set up a working group tasked with formulating an updated set of recommendations. The objective is to define a new strategy in support of the EU's and Member States' renewed commitment to combating impunity for the crime of genocide, crimes against humanity and war crimes.

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2. Introduction

2.1. Background

On 1 July 2022, the International Criminal Court (ICC), the first permanent international criminal justice institution, will celebrate the 20th anniversary of the entry into force of the Rome Statute. Twenty years ago, its preamble stated that it is the duty of every state to exercise its criminal jurisdiction over those responsible for the unimaginable atrocities that constitute core international crimes – the crime of genocide, crimes against humanity and war crimes.

In echo to the principle of complementarity embedded in the Rome Statute, in June 2002 the Council of the European Union adopted Council Decision 2002/494/JHA ([1]) establishing a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes (Genocide Network). This decision pointed out that '[t]he successful outcome of effective investigation and prosecution of such crimes at national level depends to a high degree on close cooperation between the various authorities involved in combating them', and highlighted that '[c]lose cooperation will be enhanced if the Member States make provision for direct communication between centralised, specialised contact points'.

Since then, the Genocide Network, now hosted by the European Union Agency for Criminal Justice Cooperation (Eurojust), has played 'a crucial role in ensuring accountability within EU borders" ([2]) for core international crimes. The Genocide Network offers a model cooperation forum where the main accountability stakeholders– national prosecutors, investigators, mutual legal assistance officers of EU Member States and Observer States, the ICC, Eurojust, the European Union Agency for Law Enforcement Cooperation (Europol), United Nations (UN) investigative mechanisms and civil society – interact to support each other and share knowledge and best practices. Since 2011, the Genocide Network has been supported in its work by the Genocide Network Secretariat ([3]).

In October 2014, the Genocide Network adopted the strategy of the EU Genocide Network to combat impunity for the crime of genocide, crimes against humanity and war crimes within the European Union and its Member States (the Strategy). ([4]) The Strategy laid down a comprehensive set of recommendations that EU institutions and Member States should implement in order to support national authorities in combating impunity. In 2015, the Council of the EU endorsed the Strategy and renewed the EU's commitment to fighting impunity for core international crimes ([5]).

The accountability landscape has dramatically changed since the adoption of the Strategy. In particular, the caseload related to core international crimes has increased significantly across the EU. In 2021, 3 171 cases were ongoing across all Member States – with 1 547 new cases opened that year – which represents a 44 % increase in new cases since 2016 (Figure 1). These

([1]) Council of the EU, Council Decision 2002/494/JHA of 13 June 2002 setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes, OJ L 167, 26.6.2002, p. 1. In 2003, the Council adopted Council Decision 2003/335/JHA to complement this framework. See Council Decision 2003/335/JHA of 8 May 2003 on the investigation and prosecution of genocide, crimes against humanity and war crimes.

([2]) See European Parliament (Subcommittee on Human Rights), *State of play of existing instruments for combating impunity for international crimes*, 2020, p. 29.

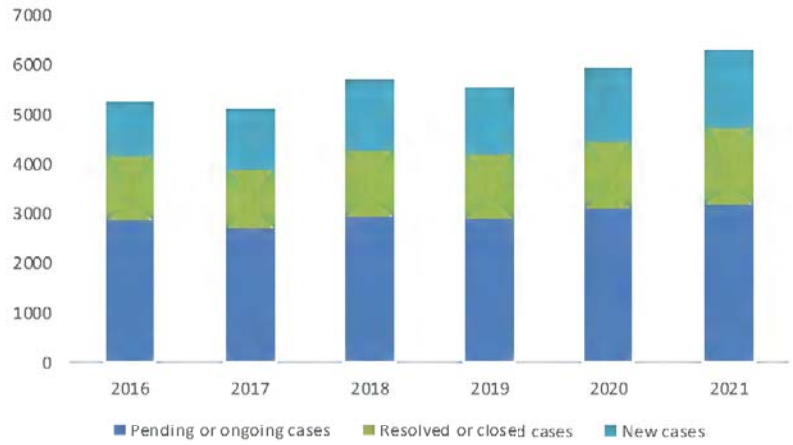
([3]) The Genocide Network Secretariat was established in July 2011 pursuant to Art. 25a of Council Decision 2009/426/JHA on the strengthening of Eurojust and amending Council Decision 2002/187/JHA setting up Eurojust with a view to reinforce the fight against serious crime. Decision 2009/426/JHA was implicitly repealed by Art. 48(2) of Regulation (EU) 2018/1727 of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138), which indicates that the Secretariat forms part of the staff of Eurojust and functions as a separate unit.

([4]) See Genocide Network Secretariat, *Conclusions of the 17th meeting of the European Network of Contact Points for investigation and prosecution of genocide, crimes against humanity and war crimes*, The Hague, 2014.

([5]) Council of the EU, *Council conclusions on strengthening the fight against impunity for the crime of genocide, crimes against humanity and war crimes within the EU and its Member States*, Document 15584/2/14, Luxembourg, 2014.

cases concern widely diverse geographical situations, encompassing, inter alia, Afghanistan, Belarus, the Central African Republic, China, Côte d'Ivoire, the Democratic Republic of the Congo, The Gambia, Iraq, Liberia, Libya, Rwanda, Sierra Leone, Sri Lanka, Syria, Uganda and Ukraine. As well as cases based on universal jurisdiction, Member States, in particular Croatia, Poland and Romania, continued to investigate core international crimes committed in their territories.

Figure 1. Core international crime cases in the EU, 2016–2021



This growing trend led to heightened public and media attention, with a particular focus on recent conflict situations (in Libya, Syria, Ukraine and northern Iraq). Since February 2022, the violent conflict in Ukraine and alleged war crimes and crimes against humanity committed in that context have sparked a whole new set of initiatives to promote accountability. As a result, victims, civil society and the public at large are actively scrutinising Member States' efforts to ensure accountability.

2.2. Scope and purpose

In this evolving and extremely current context, the Genocide Network Secretariat has undertaken an assessment of the implementation of the Strategy by EU institutions and Member States. **This report does not aim to provide a new set of recommendations; instead, it reflects on major achievements and remaining shortcomings.** Furthermore, the report does not pretend to present an exhaustive overview of all existing instruments for combating impunity within the EU; rather, it focuses on the recommendations initially listed in the Strategy ([6]).

As a follow-up to this stocktaking exercise, the Genocide Network Secretariat plans to launch a consultation within the network and set up a working group composed of contact points that will be tasked with formulating an **updated set of recommendations for the new Strategy**.

The findings in this report are based on multiple sources, including, predominantly, observations collected from Genocide Network contact points by the Secretariat through written questionnaires and discussions held during the plenary Genocide Network meetings ([7]), and institutional reports and open source information.

([6]) For an extensive and more global overview on that topic, please see European Parliament (Subcommittee on Human Rights), *State of play of existing instruments for combating impunity for international crimes*, 2022.

([7]) Multiple questionnaires were circulated in 2016, 2017, 2018, 2021 and 2022.

This report is solely meant for information purposes. With regard to references to any crimes or offences allegedly committed by an individual or group, the Genocide Network Secretariat reaffirms that any person charged by national or international authorities is presumed innocent until proven guilty. Therefore, the Secretariat and Eurojust do not provide opinions on these cases.

3. Remaining gaps in legislation for investigation, prosecution and mutual legal assistance

3.1. Incomplete implementation of Rome Statute crimes and universal jurisdiction

The ability of national authorities to successfully investigate and prosecute core international crimes depends on the comprehensive integration of international obligations into national law. This is particularly essential for defining crimes contained in the Rome Statute of the ICC.

Although 20 years have elapsed since the entry into force of the Rome Statute, as of May 2022, the national legislations of two Member States ([8]) do not provide definitions for some of the crimes or are not fully compatible with the Rome Statute. Nevertheless, some progress has been made since the adoption of the Strategy, with the definition of crimes against humanity included in the Austrian penal code in 2015.

Besides defining the crimes, adopting legislation that supports the exercise of universal or extraterritorial jurisdiction is another key element for the successful prosecution of core international crimes. At the time of writing, 24 Member States ([9]) can exercise universal or extraterritorial jurisdiction in relation to core international crimes committed abroad, including by third-country nationals ([10]). However in most countries the exercise of universal jurisdiction is limited by a number of conditions, including (i) the presence or residence of a suspect on the territory of the State; (ii) the double criminality principle; and (iii) prior government approval.

Despite those limitations, universal jurisdiction cases have significantly increased over the last few years and are currently ongoing in at least 11 Member States ([11]). With rapid developments taking place in relation to the conflict in Ukraine at the time of writing, this number is expected to grow substantially in the coming months and years.

However, legal obstacles created by certain national legislations pose a significant risk to the fight against impunity, even in States that have fully implemented the Rome Statute. Under French law, for example, in order to prosecute foreign perpetrators residing on French territory for crimes against humanity or war crimes, the condition of 'double criminality' must be fulfilled. This means that (i) the suspect must be a national of a State Party to the Rome Statute; (ii) the crime must have been committed on the territory of a State party; or (iii) the offences must be punishable under the law of the State where they were committed. In a decision issued on 24 November 2021, the French high court (*Cour de cassation*) found that this condition was not fulfilled in a Syrian case, since Syrian law does not provide for an offence comparable to crimes

([8]) Denmark and Italy have defined the crime of genocide, but not war crimes and crimes against humanity. Efforts are currently ongoing in Italy to fully integrate Rome Statute crimes.

([9]) Belgium, Bulgaria, Czechia, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Hungary, the Netherlands, Austria, Poland, Portugal, Slovenia, Slovakia, Finland and Sweden. Luxembourg, Malta and Romania cannot exercise universal jurisdiction in relation to core international crimes.

([10]) 2021 and 2022 questionnaires.

([11]) See TRIAL International, *Universal Jurisdiction Annual Review 2022*, Geneva, 2022, and recent announcements of multiple investigations in relation to Ukraine.

against humanity as defined under French law ([12]). Owing to a ripple effect, this decision may jeopardise a number of ongoing proceedings in France, and a legislative reform could be required for cases to move forward. On 9 February 2022, the French Ministry of Foreign Affairs and Ministry of Justice indicated this decision is likely to be re-examined, and stated that "the ministries stand ready to swiftly set out the changes, including legislative changes, that should be made to enable France to continue resolutely fulfilling its steadfast commitment against impunity for international crimes". ([13]) When integrating Rome Statute crimes into national legislation, States should be extremely prudent, as such issues may in effect lead to an impunity gap.

Member States are guided by their own case law on the matter of immunity. Of particular note is a recent decision issued by the German Federal Court of Justice on 28 January 2021, whereby the court reasserted that functional immunity under customary international law does not preclude criminal proceedings against organs of a foreign State for international crimes. In this case, a former lieutenant in the Afghan army fled to Germany in 2015 and was prosecuted for the war crimes of torture and outrage upon personal dignity for desecrating a body. The Federal Court of Justice found that in accordance with customary international law, lower-ranking State officials could not benefit from functional immunity before national courts for charges of war crimes, despite those crimes being committed while discharging duties for the State of Afghanistan.

3.2. Need for a global framework of mutual legal assistance in core international crime cases

Because of the nature of core international crimes and their cross-border effects, suspects, witnesses and evidence relating to these crimes are not limited to the national territory of one State nor to the territory of the EU. Worldwide cooperation between all states is therefore necessary to avoid the creation of safe havens for perpetrators of mass atrocities.

Existing international treaties addressing core international crimes, such as the Genocide Convention and the Geneva Conventions, contain limited provisions for mutual legal assistance and extradition, if any. During the 12th session of the Assembly of States Parties to the Rome Statute, many States Parties issued a joint statement acknowledging that the existing international procedural legal framework for mutual legal assistance (MLA) and extradition related to core international crimes was 'outdated and insufficient' ([14]). The group therefore proposed to set up a modern procedural multilateral treaty on MLA and extradition in order to improve practical cooperation between States investigating and prosecuting these crimes. This led to the MLA Initiative.

The MLA Initiative, led by a Core Group of six States ([15]) and supported by 70 more States, has coordinated several rounds of informal consultations and produced a draft Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity and War Crimes (Draft Convention) ([16]). Informal consultations continue, prior to formal negotiations that are expected to take place in Ljubljana, Slovenia, in 2023. The

([12]) See Cour de cassation, Pourvoi n° 21-81.344, 24 November 2021 (https://www.courdecassation.fr/decision/619de43eb458df69d4022a18).

([13]) See Communiqué conjoint du Ministère de l'Europe et des Affaires Étrangères et du Ministère de la Justice, 'Compétence des juridictions françaises en matière de crimes contre l'humanité', 9 February 2022 (http://www.presse.justice.gouv.fr/art_pix/CP%20-%20Double%20incrimination.pdf).

([14]) Joint statement by the Republic of Albania et al., 'International initiative for opening negotiations on a multilateral treaty for mutual legal assistance and extradition in domestic prosecution of atrocity crimes (crimes of genocide, crimes against humanity and war crimes)' at the 12th session of the Assembly of States Parties, 20–28 November 2013.

([15]) Argentina, Belgium, Mongolia, the Netherlands, Senegal and Slovenia.

([16]) The latest version of the Draft Convention, dated 21 April 2021, is available in English, French and Spanish on the Republic of Slovenia's website (https://www.gov.si/en/registries/projects/mla-initiative/).

Genocide Network Members and Observers, as well as the Secretariat, actively support and closely monitor the progress of the MLA Initiative ([17]).

It is of note that the current Draft Convention ([18]) restates the definition of core international crimes and compels States Parties to criminalise the crimes covered by the Draft Convention under their domestic laws ([19]). This step is critical in ensuring the efficiency of the overall system of cooperation.

4. Establishing, advancing and promoting specialised units

As underlined in the Strategy, specialised units are much better equipped to deal with the specific challenges posed by the investigation and prosecution of core international crimes. Specialised units gradually gain experience and retain knowledge within the same team, which ultimately facilitates the identification, investigation and prosecution of alleged perpetrators ([20]).

4.1. Gradual increase in specialisation within the European Union

As of May 2022, only six Member States had established fully independent specialised units within prosecution services and/or law enforcement services (Belgium, Germany, France, Croatia, the Netherlands and Sweden). This list has actually shortened since the Strategy was published: in Denmark, following an organizational change effective as of 1 January 2022, core international crimes cases are now handled by specialised staff members from the National Special Crime Unit and the State Prosecutor for Special Crime ([21]).

Similarly, while not all Member States have set up specialised units dealing exclusively with core international crimes, several of them (Czechia, Denmark, Estonia, Spain, Latvia, Hungary, Malta, Poland, Portugal and Finland) have identified specialised or dedicated staff from the prosecution and law enforcement services who are tasked with investigating and prosecuting these crimes, for which they receive appropriate training ([22]). In the remaining Member States, besides the nomination of a Genocide Network contact point, no particular specialisation has been implemented (Table 1).

Table 1. Specialised units within Genocide Network Member and Observer States

	Specialised unit (law enforcement services)	Specialised unit (prosecution services)	Specialised unit in other services (Ministry of Justice and/or MLA services)	Dedicated and/or specialised staff within general prosecution or law enforcement services
Member States				
Belgium	✓	✓	✓	
Bulgaria				Nomination of contact point
Czechia				✓

([17]) See Genocide Network Secretariat, *Conclusions of the 16th meeting of the European Network of Contact Points for investigation and prosecution of genocide, crimes against humanity and war crimes*, The Hague, 2014, para. 11; see also subsequent conclusions monitoring progress.
([18]) Version of 20 April 2021.
([19]) See Arts 2 and 4 of the draft convention.
([20]) See the Strategy, p. 33 and pp. 48–49.
([21]) 2022 questionnaire.
([22]) 2022 questionnaire.

Denmark			✓	✓
Germany	✓	✓	✓	
Estonia				✓
Ireland				Nomination of contact point
Greece				Nomination of contact point
Spain				✓
France	✓	✓		
Croatia		✓		✓
Italy				Nomination of contact point
Cyprus				Nomination of contact point
Latvia				Nomination of contact point
Lithuania				Nomination of contact point
Luxembourg				Nomination of contact point
Hungary				Nomination of contact point
Malta				Nomination of contact point
Netherlands	✓	✓		
Austria				✓
Poland				✓
Portugal				Nomination of contact point
Romania				Nomination of contact point
Slovenia				Nomination of contact point
Slovakia				Nomination of contact point
Finland				✓
Sweden	✓	✓	✓	
Observer states				
Bosnia and Herzegovina	✓	✓		
Canada	✓		✓	
Norway	✓	✓		
Switzerland	✓	✓		
United Kingdom	✓			✓
United States	✓	✓		

These results indicate that the degree of specialisation is uneven among EU Member States. Progress has been slow, with no new creation of specialised units. Nonetheless, there was an upwards trend in the identification and training of specialised staff within existing units; seven

additional Member States have engaged in such efforts since 2014 ([23]). The absence of specialised units in most Member States stems from multiple factors:

- an insufficient number of active cases
- difficulties in collecting evidence abroad
- lack of funding and necessary resources (including insufficient translation capacities)
- the optimisation or restructuring of the prosecutor's office's activities (managerial decisions)
- the prioritisation of other areas of crime
- an absence of jurisdiction over core international crimes under domestic legislation ([24]).

Member States without specialised units do not plan to set them up in the near future, despite the fact that some of the Member States are dealing with a number of core international crimes cases. Indeed, creating a specialised unit is generally considered unlikely to lead to more efficiency and may be unnecessary where the number of active cases is low.

However, the latest developments in the field in relation to the conflict in Ukraine proved different. As of May 2022, about a dozen Member States had opened investigations into alleged core international crimes committed in Ukraine since the Russian invasion on 24 February 2022. A joint investigation team was established on 25 March 2022 between Lithuania, Poland and Ukraine with Eurojust's support to coordinate efforts in gathering evidence and ensure its swift and secure exchange between partners ([25]). Owing to the massive scale of potential crimes, and the hundreds – if not thousands – of victims and witnesses, these investigations will pose unprecedented challenges to national authorities that, so far, have had limited experience of investigating core international crimes. Many national practitioners will need to navigate uncharted waters and quickly develop their expertise in this crime area. Moreover, the strong impetus for accountability observed within the EU is likely to lead to some accelerated developments in the coming months and years.

4.2. Remaining resource constraints

In Member States where specialised units have been successfully established, budgetary, staffing and financial constraints remain, with most of the units functioning with limited resources to handle growing numbers of cases. Moreover, some units also deal with other crime areas, which inherently hinders their efficiency and ability to fight against impunity ([26]). Nonetheless, there has been an increase in human resources allocated to specialised units in Germany, France, the Netherlands and Sweden.

In France, the newly created Crimes against Humanity, War crimes and Offences' unit within the National Anti-Terrorism Prosecutor's Office is exclusively equipped to prosecute crimes against humanity, war crimes and offences related to these crimes, and crimes of torture and enforced disappearance ([27]). As of May 2022, it was staffed with five prosecutors and three

([23]) Czechia, Estonia, Ireland, Spain, Hungary, Malta and Portugal; see the Strategy, p. 28. It is also of note that in Estonia and Lithuania, specialised units dedicated to the prosecution of Soviet and Nazi crimes existed until 2010–2011, but were dissolved on account of a lack of active cases.

([24]) 2016 questionnaire.

([25]) See Eurojust, 'Eurojust supports joint investigation team into alleged core international crimes in Ukraine', press release, 28 March 2022 (https://www.eurojust.europa.eu/news/eurojust-supports-joint-investigation-team-alleged-core-international-crimes-ukraine).

([26]) 2016 and 2022 questionnaires.

([27]) Created by the law of 23 March 2019, the National Anti-Terrorism Prosecutor's Office was established on 1 July 2019. Headed by the National Anti-Terrorism Prosecutor, it is placed within the Paris Judicial Court. It took over the responsibilities formerly vested in the

specialised assistants (Table 2). The number of staff has increased significantly compared with the former AC5 section of the Paris Prosecutor's Office, which comprised three prosecutors. However, the unit is subject to a continuous increase in the number of proceedings it handles, both in the context of preliminary investigations and judicial information. For instance, in January 2012, the AC5 was handling 20 cases under judicial information (relating to the genocide against Tutsi in Rwanda) and no preliminary investigations, and in February 2022, 75 preliminary investigations were under way and 80 judicial information cases were being dealt with in the unit ([28]). Therefore, the increase in staffing (about 166 %) is far from proportional to the increase in cases (about 675 %). In addition, the specialised unit is facing a growing number of tasks, including:

- responding to complaints and alerts from the asylum and immigration services;
- supervising technical investigations, such as interceptions, geolocations and special custody measures;
- referring cases to financial intelligence services or issuing requests for international criminal assistance;
- executing requests for international mutual assistance in criminal matters from other national judicial authorities and international courts;
- planning upcoming trials ([29]) (logistical and organisational processes), through a 'trial unit' composed of a specialised assistant and directed by the head of the division.

At law enforcement level, the Central Office for Combating Crimes against Humanity, Genocide and War Crimes ([30]) has been reinforced by the arrival of 14 new investigators, in addition to a division head and a deputy. Furthermore, additional staff may be recruited temporarily to help with specific investigations. Despite these reinforcements, there is insufficient staffing to deal with the large number of cases and their complexity, with 155 preliminary investigations and judicial information ongoing, spread over 30 geographical areas.

In Germany, the first specialised unit (S4), established in 2009, was joined by a second unit (S5) in October 2018, with seven to eight prosecutors assigned to each of the units. Both units are competent to investigate, prosecute and litigate all criminal cases involving core international crimes as well as cases of cumulative prosecution of core international crimes and terrorism. About 100 cases were ongoing in 2021.

One of the most significant evolutions can be observed in the Netherlands, where the government decided to dedicate part of the increased annual budget of the National Police to a structural increase in the personnel capacity of the International Crimes Team. Hence, the team was able to grow from 32 staff members in 2017 to 43 as of May 2022. Additional personnel, including senior investigators, analysts and both legal and digital experts, bring varied expertise

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AC5 section of the Paris Prosecutor's Office. Although the law provides that the National Anti-Terrorism Prosecutor's Office has concurrent jurisdiction with local prosecutors' offices, in practice, it has exclusive competence over core international crimes cases.

([28]) 2022 questionnaire.

([29]) After several years without any trials, the trial activity of the French specialised unit has significantly developed. Two trials per year are planned in the next few years. These trials are exceptional, especially in terms of length (never less than 4 weeks) and complexity in their preparation and organisation. This has an important impact on staffing.

([30]) The Central Office for Combating Crimes against Humanity, Genocide and War Crimes is an interministerial judicial police service composed of gendarmes, police officers and agents made available by the Ministry of the Armed Forces. The office's remit includes combating crimes against humanity and genocide, war crimes and offences, crimes of torture, and crimes of enforced disappearance. The office's jurisdiction applies when the perpetrator or victim of the crime committed abroad is of French nationality, or when the perpetrator is in France. The office conducts criminal police investigations, assists other investigative services, observes and analyses the development of these criminal phenomena, and searches for presumed perpetrators, co-perpetrators and accomplices of these offences who are likely to be on French territory. The office is also France's contact point for exchanges as part of international police cooperation.

to the team. The international crimes unit of the Prosecution Service also saw an increase in personnel and was able to add an additional prosecutor to the unit in 2020, and an additional legal officer in May 2022.

Finally, in Sweden the special permanent unit within the police added two analysts to its team of 15 investigators in 2016. Within the Swedish Prosecution Authority, the number of appointed prosecutors had grown from 5 to 12 prosecutors as of May 2022, but the prosecutors did not work full-time on core international crime investigations.

Despite these positive developments, which overall demonstrate stronger support at governmental level for the fight against impunity, underfunding and a lack of sufficient staffing in combination with the rapidly increasing caseload remain a major concern in most Member States. This lack of resources is hampering the timely conduct of trials in several Member States, for instance in Belgium and France.

Table 2. Resources allocated to specialised units within Genocide Network Member and Observer States

	Law enforcement services	Prosecution services and judiciary	Ministry of Justice and/or MLA services	Ongoing cases in 2021
Member States				
Belgium	7 investigators	6 staff (4 magistrates and 2 lawyers)	4 staff (3 lawyers and 1 administrative expert)	135
Germany	NA([31])	14 prosecutors	NA	99
France	16 staff (14 investigators, division head and deputy)	8 staff (5 prosecutors and 3 specialised assistants) In addition, 4 investigative judges and 3 specialised assistants (legal advisers) work in the specialised unit of the *Tribunal Judiciaire de Paris*	2 staff (1 specialised jurist and 1 agent)	155
Croatia	NA	21 staff (14 deputy state attorneys and 7 legal advisers)	NA	672
Netherlands	43 staff (investigators, analysts, legal advisers and digital experts)	8 staff (3 prosecutors, 2 legal officers, 1 legal adviser, 1 policy officer and 1 cultural anthropologist)	1 specialised legal and policy adviser	12
Sweden	17 staff (15 investigators and 2 analysts)	12 senior prosecutors	NA	137
Observer States				
Bosnia and Herzegovina	Approximately 18 staff (4 analysts and 13–14 investigators)	54 staff (27 prosecutors and 27 legal associates)	NA	374
Switzerland	NA (investigators, analysts)	6 staff (2 federal prosecutors, 2 assistant federal prosecutors, 2 legal	NA	14

([31]) Not applicable.

		officers, administrative assistants)		
United Kingdom	19 staff (1 detective inspector, 2 detective sergeants, 9 detective constables, 4 civilian investigators and 3 civilian staff)	NA (specialists prosecutors, senior specialist prosecutors, policy advisors, paralegal officers and administrative team members)	2 specialised lawyers	NA

4.3. Capacity-building and training support provided by the Genocide Network

Several Member States have set up training and continuous education programmes directed at law enforcement and judiciary staff to support specialisation in core international crime investigations and prosecutions ([32]).

Furthermore, in partnership with the European Judicial Training Network, the European Union Agency for Law Enforcement Training and other stakeholders, the Genocide Network Secretariat regularly facilitates specialised training sessions, webinars and workshops to build the capacities of national authorities in the field of core international crimes. For instance, since 2020 the secretariat has delivered a webinar on the cumulative prosecution of foreign terrorist fighters (FTFs) in cooperation with the European Union Agency for Law Enforcement Training. Every 2 years, the secretariat and the European Judicial Training Network offer a 3-day practical training course in Nuremberg, hosted by the International Nuremberg Principles Academy, targeting EU prosecutors and judges. This training aims to improve the participants with an understanding of substantive international criminal law and jurisprudence, and provide knowledge of practical issues involved in building a case on core international crimes and ensuing evidential challenges.

As another example, in 2021 the Genocide Network Secretariat partnered up with the International Committee of the Red Cross (Associate of the Genocide Network) to deliver a targeted workshop on complex legal issues (links between international humanitarian law and counterterrorism laws) for specialised network contact points. Previous specialised training include a full day of training organised in 2016 in partnership with the Prosecuting Conflict-related Sexual Violence Network and UN Team of Experts on Rule of Law and Sexual Violence in Conflict. The training identified obstacles to investigating and prosecuting conflict-related sexual violence, including misconceptions, stigma and security concerns; advised on the development of institutional strategies for overcoming them; and explored advantages and disadvantages of charging crimes that explicitly involve a sexual violence component (such as rape) or opting for a more general crime (such as torture or persecution).

Owing to the COVID-19 pandemic, a number of training and awareness-raising activities took place in an online format in 2020 and 2021, which made it easier to reach out to a greater number of practitioners from all Member States.

In addition, the Genocide Network Secretariat supported Member States' endeavours to gain an understanding of this crime area or work towards setting up specialised units. For

([32]) Belgium, Czechia, Germany, France, Netherlands, Portugal, Romania, Finland and Sweden, for instance; 2022 questionnaire.

example, the Secretariat co-organised workshops for practitioners in Lithuania in 2016 and in Austria in 2021. In 2019, the Secretariat assisted a Member State in applying to the EU Structural Reform Support Programme in order to build up national capacity.

4.4. Limited examples of national task forces and coordination bodies on impunity

While the creation of specialised units is an important step, it is equally important for law enforcement and prosecution services to closely collaborate with other national authorities, including MLA authorities, immigration authorities, intelligence services, ministerial authorities and other units dealing with serious crime, such as terrorism. To this end, establishing a national task force gathering relevant stakeholders or adopting a national strategy against impunity may bring significant added value ([33]).

Cross-organisation cooperation is quite effective in Genocide Network Member States. Immigration and customs authorities, intelligence agencies and ministerial authorities, specifically the ministries of justice, the interior and foreign affairs, are often included as active partners ([34]). While some Member States have established a special cooperation mechanism for that purpose (Belgium, Czechia, Germany, Netherlands and Portugal), in most cases the cooperation exists on a more informal level or effectively through usual cooperation and communication procedures ([35]).

Examples of advanced cooperation systems can be found in this regard in Belgium and the Netherlands. Belgium, for instance, established a national Task Force for International Criminal Justice that gathers 24 authorities (administrative, diplomatic, judicial, police, immigration, etc.). The task force is chaired by the specialised unit within the Ministry of Justice. Its roles relate to coordinating the different authorities to (i) implement complex requests for cooperation coming from the International Criminal Tribunals and Mechanisms; (ii) prepare and coordinate authorities for national trials relating to war crimes, crimes against humanity and crimes of genocide; and (iii) deal with judicial cases involving issues of international immunities. Its plenary meeting deals with new general projects and orientations in the field of international criminal justice ([36]).

In the Netherlands, the different organisations involved in the fight against impunity engage in a so-called chain approach. At the beginning of the chain, the Ministry of Foreign Affairs can try to deter perpetrators from coming to the Netherlands by communicating through the embassies. At a later stage, the 1F unit of the immigration service screens persons applying for asylum. At the end of the chain, the police and the prosecution service investigate and bring cases to court. The organisations involved (the Prosecution Service, National Police, Immigration Service, Ministry of Justice, Ministry of Foreign Affairs, and Repatriation and Departure Service) meet on a 6-weekly basis to coordinate their actions and to solve any potential challenges, with a senior-level meeting taking place every 1 to 2 years ([37]).

Moreover, even in countries that have not set up specialised units, efforts to adopt a streamlined and effective approach have been made. For instance, the Genocide Network contact point of Czechia joined a coordination body piloted by the Ministry of Justice and comprising

([33]) The Strategy, measures 1b and 3e (pp. 34 and 39).
([34]) 2016 and 2022 questionnaires.
([35]) 2016, 2018 and 2022 questionnaires.
([36]) 2022 questionnaire.
([37]) 2022 questionnaire.

police officers from the counterterrorism unit, Ministry of Interior and Department of Asylum and Migration Policy. Similar efforts have been undertaken in Slovenia ([38]).

Finally, among Observer States, Canada, the United Kingdom and the United States have established national coordination bodies ([39]):

- the Canada Crimes against Humanity and War Crimes Program, established in 1998 and comprising four programme partners (the Department of Justice; the Canada Border Services Agency; Immigration, Refugees and Citizenship Canada; and the Royal Canadian Mounted Police);
- the UK War Crimes Network, jointly chaired by the Head of the Metropolitan Police War Crimes Team and Head of the Counter-Terrorism Division of the Crown Prosecution Service, with meetings held biannually;
- The US Human Rights Violators and War Crimes Center, a government coordination body with representatives from 10 entities (the Department of Homeland Security Investigations; the Department of Justice, including the Federal Bureau of Investigation; and the Department of State) involved in the investigation, prosecution, denaturalisation, extradition and repatriation of human rights violators.

5. Growth of an effective cooperation system between the main stakeholders in the fight against impunity

National authorities investigating and prosecuting core international crime cases operate in a heavily fragmented context: there is no 'one-stop shop' for accessing evidence. Refugees, victims, witnesses, perpetrators and information are scattered across the world. In order to detect and investigate these crimes efficiently, and anticipate issues linked to the admissibility of evidence, national authorities must explore synergies and cooperate with other stakeholders, including immigration, law enforcement, prosecution, MLA, financial and intelligence authorities, as well as international investigative and judicial bodies and civil society.

This multifaceted cooperation should be accompanied by a multidisciplinary approach to take into account existing links between core international crimes and other types of criminality.

5.1. Central coordination role of the Genocide Network and the European Union Agency for Criminal Justice Cooperation

Since the adoption of the Strategy in 2014, the Genocide Network has largely strengthened its position as a central hub in the EU for the exchange of information, expertise and best practices, despite having limited resources ([40]). With approximately 150 contact points representing the 27 EU Member States, six observer states (Bosnia and Herzegovina, Canada, Norway, Switzerland, the United Kingdom and the United States), Eurojust, Europol, the ICC (Office of the Prosecutor), the European Commission, the Council of the EU, the Exclusion Network of the European Union Agency for Asylum (EUAA), four United Nations tribunals and

([38]) 2022 questionnaire.
([39]) 2022 questionnaire.
([40]) See European Parliament (Subcommittee on Human Rights), *State of play of existing instruments for combating impunity for international crimes*, 2022, p. 30; the study notes that 'The Genocide Network Secretariat comprises only three officials. In this regard, the EU should consider increasing the human resources dedicated to the fight against impunity, in particular to increase the capacity of the Genocide Network Secretariat ... The limitation on human resources negatively affects monitoring and reporting activities of the EU, especially hindering work on multi-functional periodical documents. Currently the capacity cannot meet the demands on some offices.'

investigative mechanisms, the Kosovo Specialist Chambers and Specialist Prosecutor's Office, the International Criminal Police Organization, the International Committee of the Red Cross and six international non-governmental organisations (NGOs) (Amnesty International, the Coalition for the International Criminal Court, the International Federation for Human Rights, Human Rights Watch, TRIAL International and Redress), the Genocide Network provides a truly unique platform for EU practitioners. The plenary Genocide Network meetings, taking place twice a year, gather up to 200 participants. They provide an invaluable opportunity for national practitioners to share their challenges with others and discuss innovative approaches to tackling core international crime cases.

The number of contact points has significantly increased, with most Member States appointing more than one contact point to represent different services (in most cases from prosecution services and law enforcement, but also from the Ministry of Justice). Contact points are generally nominated for several years, which has allowed the gradual build-up of expertise and personal contacts within the Genocide Network.

The Genocide Network operates in close synergy with Eurojust. Eurojust hosts the Genocide Network Secretariat, which forms part of Eurojust's workforce, functioning as a separate unit. Eurojust has Observer status within the network. Since the entry into force of Regulation (EU) 2018/1727 on 12 December 2019, Eurojust has competence over core international crimes and has become a critical partner in the fight against impunity, as initially recommended in the Strategy. In line with their respective mandates, Eurojust and the Genocide Network support national authorities in the investigation and prosecution of core international crimes, and facilitate cooperation with international bodies and NGOs.

Specifically, the Genocide Network Secretariat acts as a hub to centralise information and request for assistance from contact points; transmit information, best practices and resources on issues of interest; and provide updates on ongoing cases ([41]). The Secretariat is currently working on improving its information-sharing process by renovating the network's 'Restricted area' – a web page only accessible to network members. The objective is to better support contact points and allow them to easily access information regarding events, workshops and training organised by the Secretariat and its partners.

Eurojust provides operational support to such cases, particularly by facilitating coordination meetings and advising on the use of judicial cooperation tools. Eurojust also provides practical, legal and financial support to joint investigation teams (JITs), which often stem from the observations and groundwork of the Genocide Network. With the addition of core international crimes to Eurojust's portfolio, the number of cases supported by the agency has gradually increased. In 2021, Eurojust supported seven new cases, with nine ongoing cases from previous years, and one JIT. As of May 2022, Eurojust supported three JITs in relation to core international crimes.

5.2. Broader mandate and support of the European Union Agency for Law Enforcement Cooperation

In a complementary manner to the role played by Eurojust and the Genocide Network with regard to judicial authorities, the new Europol regulation ([42]), applicable since 1 May 2017, added the crime of genocide, crimes against humanity and war crimes to Europol's mandate. The

([41]) See European Parliament (Subcommittee on Human Rights), *State of play of existing instruments for combating impunity for international crimes*, 2022, pp. 35 and 60.

([42]) Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24.5.2016, p. 53. See Art. 3(1) and Annex I.

Genocide Network members foresaw this measure in the Strategy in 2014 and welcomed the implementation of Europol's new competencies at the 22nd Genocide Network meeting ([43]).

To tackle this new mandate, Europol set up the Analysis Project Core International Crimes (AP CIC), an operational analysis platform and database ([44]) that aims to collect, crosscheck and analyse various types of operational information and intelligence related to core international crimes in order to assist and support law enforcement authorities with their investigations, and to facilitate cooperation and coordination between relevant stakeholders (Member States, third parties and other organisations) ([45]).

Since its inception in November 2017, 24 countries (17 EU Member States, 7 third parties) and Eurojust have become members of the AP CIC. The AP CIC has also gained Observer status within the Genocide Network. Operational contributions to the project have increased since. In 2021, the AP CIC provided operational support to 36 investigations, 14 countries and the ICC, and organised 6 operational meetings allowing investigators and analysts of involved countries to directly share information and knowledge.

The AP CIC facilitates operational information exchange through its secure information exchange network application (SIENA) and establishes operational data collection projects such as the Yazidi Initiative to encourage countries to contribute and exchange relevant information related to a specific conflict or core international crimes event. It has also established a dedicated Europol Platform for Experts (AP CIC EPE) enabling law enforcement officials dealing with core international crimes to exchange expert knowledge, best practices and experiences.

The AP CIC also cooperates with international organisations and private parties such as NGOs in order to store and process data of relevance to Member States investigations. However, due to restrictions in the Europol Regulation concerning the storage and processing of data directly received from private parties, AP CIC usually receives this data via Member States that have established practical arrangements or memoranda of understanding with relevant NGOs for this purpose. However, the amended Europol Regulation that will come into force in June 2022 removes some of these obstacles to better facilitate the exchange and long-term storage of such data.

5.3. Important role of novel justice facilitators (IIIM, UNITAD, IIMM)

Since the adoption of the Strategy, the Genocide Network has gradually broadened its membership to newly created stakeholders of the fight against impunity. The network now plays a critical role in coordinating cooperation and assistance with the novel UN investigative mechanisms ([46]). All were granted Associate status with the network:

- the International, Impartial and Independent Mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes under international law committed in the Syrian Arab Republic since March 2011 (IIIM) ([47])

([43]) Genocide Network Secretariat, *Conclusions of the 22nd meeting of the European Network of Contact Points for investigation and prosecution of genocide, crimes against humanity and war crimes*, The Hague, 2017, para. 5.
([44]) See the Europol regulation, Art. 18(3).
([45]) See Europol's web pages on analysis projects (https://www.europol.europa.eu/crime-areas-trends/europol-analysis-projects) and genocide, crimes against humanity and war crimes (https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/genocide-crimes-against-humanity-and-war-crimes).
([46]) See European Parliament (Subcommittee on Human Rights), *State of play of existing instruments for combating impunity for international crimes*, 2022, p. 34.
([47]) Admitted as Associate on 25 May 2018. See Genocide Network Secretariat, *Conclusions of the 24th meeting of the European Network of Contact Points for investigation and prosecution of genocide, crimes against humanity and war crimes*, The Hague, 2018.

- the Investigative Team to Promote Accountability for Crimes Committed by Da'esh / Islamic State in Iraq and the Levant (UNITAD) ([48])
- the Independent Investigative Mechanism for Myanmar (IIMM) ([49]).

These mechanisms are not a court; they do not make arrests, or prosecute or issue indictments. Instead, they are mandated to collect, preserve and analyse evidence in support of competent national jurisdictions that will investigate and prosecute suspected perpetrators of core international crimes in identified situations (Iraq, Myanmar and Syria). By providing solid 'case building blocks' to national authorities, the mechanisms have quickly become invaluable and reliable tools in the fight against impunity.

Joining the Genocide Network also proved critical for the IIIM from its initial phase of operation, as the network provided an 'effective and valuable form of ongoing technical support for the IIIM in relation to engagement with other practitioners .... Having a representative attending the closed sessions of the Genocide Network, where Syria's situation is discussed, was critical and offered a chance to hear directly from the practitioners about their needs as well as present to them what the IIIM [could] offer' ([50]).

However, some Member States meet procedural obstacles that limit their interactions with these mechanisms. The laws of some countries do not permit prosecution services to address requests for assistance to international mechanisms. This requires solutions to be found and causes delays in cooperation. This situation is detrimental to accountability efforts. States should therefore consider developing cooperation frameworks with the UN mechanisms that allow sufficient flexibility.

5.4. Dynamic use of joint investigation teams in core international crime cases

JITs, next to other useful judicial cooperation tools such as the European arrest warrantand the European investigation order, are particularly promising tools in support of core international crimes cases. The first JIT of this kind was set up in 2018 in the Caesar case, between France and Germany. The JIT has received and continues to receive financial and operational support from Eurojust, enabling both countries to directly share evidence, knowledge and resources. This JIT has been extremely successful: it has led to the arrest of several suspects in the EU and to two convictions before the German Higher Regional Court in Koblenz in the first instance for crimes against humanity committed by the Syrian regime ([51]). Specifically, in a landmark judgment delivered on 13 January 2022 a high-ranking Syrian official, the former head of the investigations section in the Syrian General Intelligence Directorate's internal branch ('Branch 251'), was sentenced to life imprisonment for crimes against humanity, including for the death of 27 members of the opposition to the regime. The individuals were killed as a result of torture and inhumane conditions of imprisonment. Further, Sweden joined this JIT in January 2022.

While JITs have been rather underutilised in core international crimes cases in the past, the successful example of the Koblenz trial seems to have inspired other cases. Especially when

([48]) Admitted as Associate on 6 November 2020. See Genocide Network Secretariat, *Conclusions of the 28th meeting of the European Network of Contact Points for investigation and prosecution of genocide, crimes against humanity and war crimes*, The Hague, 2020.

([49]) Admitted as Associate on 10 November 2021. See Genocide Network Secretariat, *Conclusions of the 30th Meeting of the European Network of Contact Points for investigation and prosecution of genocide, crimes against humanity and war crimes*, The Hague, 2021.

([50]) European Parliament (Subcommittee on Human Rights), *State of play of existing instruments for combating impunity for international crimes*, 2022, p. 62.

([51]) See Eurojust, 'Increase in actions against impunity for war crimes by Syrian regime', press release, 21 May 2021 (https://www.eurojust.europa.eu/increase-actions-against-impunity-war-crimes-syrian-regime).

combined with a 'structural investigation' (e.g. as seen in Germany or Sweden), a JIT can be a particularly flexible and powerful tool to support core international crimes investigations.

In October 2021, France and Sweden signed a JIT agreement to support proceedings involving core international crimes committed by FTFs against the Yezidi population in Syria and Iraq. The JIT aims to avoid interviewing the same victims multiple times, thus mitigating the risks of retraumatisation and duplication. The JIT will also support enhanced cooperation with UNITAD and the IIIM. States that are not formally JIT partners may nonetheless benefit from its work and findings. For instance, national authorities with active cases can work closely with this JIT, providing access to relevant information and actively contributing (within the scope of the JIT's investigation) to the collection of information that may point to the involvement of their nationals as FTFs.

Finally, in March 2022 a JIT between Lithuania, Poland and Ukraine was set up with the legal and technical support of Eurojust in order to investigate alleged war crimes, crimes against humanity and other core international crimes committed in Ukraine in the ongoing conflict. The JIT also aims to facilitate and support the cooperation of JIT members with the ICC Office of the Prosecutor that joined the JIT as a participant on 25 April 2022 ([52]). This is an unprecedented development: it is not only the first time that a JIT has been set up at such speed, only a month after the start of the conflict, but also the first time that the ICC Office of the Prosecutor has joined such a cooperation framework with national authorities. These rapid developments may prefigure new strategies and innovative cooperation processes in future core international crime cases.

5.5. Notable progress in cooperation between judicial and immigration/asylum authorities

Immigration and asylum authorities, owing to their role as an EU entry point, can be considered 'first responders' in the fight against impunity. The critical importance of their role has been confirmed in the context of the very high numbers of refugees fleeing to the EU during the Syrian conflict, and since February 2022 because of the conflict in Ukraine. They are best placed to detect potential suspects of core international crimes and to collect initial, situation-relevant information. Similarly, they are very likely to encounter potential victims and witnesses. Therefore, the effectiveness and efficiency of the work led by law enforcement and prosecution services largely depend on the training of immigration and asylum services, and the procedures in place to collect and share information with judicial authorities ([53]).

In practice, in recent years EU bodies and national authorities have taken a number of measures in order to enable immigration and asylum authorities to support the fight against impunity.

At EU level, the EUAA's Exclusion Network was launched in February 2017 to facilitate and strengthen practical cooperation between the asylum administrations of EU+ countries on exclusion-related issues, including the withdrawal of international protection. The Exclusion Network gathers contact points from 28 EU+ countries whose activities focus on persons who are deemed to be undeserving of international protection because they have committed serious crimes that fall within the scope of Articles 12(2), 12(3) and 17 of the EU qualification directive (Directive 2011/95/EU), inspired by Article 1f of the 1951 Geneva Convention relating to the

([52]) See Eurojust, 'ICC participates in joint investigation team supported by Eurojust on alleged core international crimes in Ukraine', press release, 25 April 2022 (https://www.eurojust.europa.eu/news/icc-participates-joint-investigation-team-supported-eurojust-alleged-core-international-crimes).

([53]) The Strategy, p. 35.

status of refugees. This important achievement stems from the strategy recommendation to create a network structure of immigration authorities dealing with 1F cases that is similar to the Genocide Network ([54]). The Exclusion Network was admitted as an Associate of the Genocide Network in 2020 ([55]), and has attended the biannual Genocide Network meetings since then. The Genocide Network Secretariat also attends, as an observer, meetings organised by the Exclusion Network on issues of common interest, therefore facilitating communication with expert practitioners, the exchange of views and relevant best practices, and the exploration of potential synergies. This cooperation supports improved sharing of information between asylum authorities and judicial/police authorities within the member countries of both networks.

Meetings are held periodically to discuss strategic issues and specific topics such as the detection of potential perpetrators of core international crimes, evidence that can be used in the examination of exclusion cases, procedural aspects that pose challenges, the interpretation and application of relevant concepts, and cooperation with relevant actors. Specific practical tools and guides have also been drafted based on Member States' expertise and analyses to increase the knowledge and technical skills of asylum practitioners.

In addition, the EUAA offers training related to exclusion ([56]) and facilitates a dedicated network of asylum judges ([57]) comprising 35 contact points, including the Court of Justice of the EU and the European Court of Human Rights, that addresses the issue of exclusion through dedicated meetings, tailor made publications and capacity building activities. Finally, the EUAA's 'Country Guidance' documents provide guidance to asylum case officers regarding the assessment of the situation in particular countries (e.g. in Afghanistan, Iraq and Syria) with a specific section on exclusion from international protection ([58]). In particular, the Country Guidance documents advise on elements that should be considered by case officers in their assessment of the case in light of relevant exclusion grounds, and give examples of organisations or armed groups allegedly involved in core international crimes. These documents represent the joint assessment of Member States of the situation in main countries of origin, based on recent, objective and reliable country of origin information and are aimed at assisting decision-makers in the asylum procedure.

At national level, immigration/asylum case officers across the EU receive improved training in detecting potential perpetrators in the context of 1F cases. Furthermore, Sweden, for example, has established a specialised 1F unit within its immigration authority ([59]). The sharing of information has also improved in a number of Member States, with the systematic sharing of relevant information by immigration/asylum authorities with prosecution or law enforcement services in 1F cases ([60]), and of information provided by potential witnesses or victims of core international crimes, subject to the individuals' prior consent ([61]).

In France, for example, asylum law was reformed in July 2015. Since then, the French Office for the Protection of Refugees and Stateless Persons has had to report to judicial authorities individuals excluded from refugee status ([62]). The French Office for the Protection of Refugees and

([54]) The Strategy, p. 38.
([55]) See Genocide Network Secretariat, *Conclusions of the 28th meeting of the European Network of Contact Points for investigation and prosecution of genocide, crimes against humanity and war crimes*, The Hague, 2020.
([56]) See EUAA *Training Catalogue*, 2021 (https://euaa.europa.eu/training).
([57]) See the EUAA's website (https://euaa.europa.eu/asylum-knowledge/courts-and-tribunals).
([58]) Available on the EUAA's website (https://euaa.europa.eu/asylum-knowledge/country-guidance).
([59]) 2022 questionnaire.
([60]) Belgium, Bulgaria, Czechia, Germany, France, Malta, the Netherlands, Portugal, Slovenia and Sweden; 2022 questionnaire.
([61]) 2018 and 2022 questionnaires.
([62]) Code on the entry and residence of foreigners and the right to asylum, Art. L.121-10.

Stateless Persons has consequently fed the French specialised unit an increasing number of cases now under investigation ([63]).

Moreover, enhanced cooperation is ensured in a number of Member States, such as Belgium, the Netherlands, Slovenia and Sweden, either through regular meetings of the national task forces or coordination bodies, or more informally through regular exchanges of best practices and ad hoc cooperation.

The weeks following the invasion of Ukraine by Russia in February 2022 have clearly reminded the EU and Member State authorities of the critical importance of cooperation between law enforcement, judicial authorities and immigration/asylum authorities. Confronted with an unprecedented amount of persons seeking refuge at EU borders, most Member States have taken the initiative to provide immigration/asylum and police authorities with information forms, leaflets and questionnaires to be handed to Ukrainian refugees upon arrival in the EU to detect potential witnesses of war crimes. A similar approach was taken in Germany in relation to Syrian refugees, with the aim of subsequently transferring the information gathered to the judicial authorities for future use in criminal cases ([64]).

The immediate taking of this step in the case of Ukraine must be commended; however, this approach necessitates a strong cooperation framework at national level in order to ensure that information is collected, preserved and shared efficiently. Therefore, regular and effective sharing of information between immigration/asylum and investigating authorities should be further enhanced in all Member States concerned.

5.6. Development of a multidisciplinary approach and initial successes in holding corporate actors accountable

Adopting a multidisciplinary approach is key in investigating and prosecuting core international crimes ([65]). Terrorism, financial crimes, illegal trade in natural resources and violations of international sanctions are more often than not committed in the orbit of core international crimes. Investigating these crimes may therefore provide investigators with evidence or result in alternative proceedings if the collected evidence is insufficient to support a conviction for war crimes, crimes against humanity or genocide.

This issue has been regularly discussed by the Genocide Network, most recently during its 28th and 29th meetings ([66]). In May 2020, the Genocide Network Secretariat published an expert report on the cumulative prosecution of FTFs for core international crimes and terrorism-related offences. The report highlighted existing jurisprudence and developing national practices to demonstrate that it is possible to cumulatively prosecute and hold FTFs accountable for war crimes, crimes against humanity and the crime of genocide, in addition to terrorism-related offences ([67]). Eurojust and the Genocide Network have continued to advocate for and support cumulative prosecutions, playing a central coordinating and trend-setting role to enable the sharing of knowledge and best practices. This strategy has led to successful convictions of FTFs

([63]) 2022 questionnaire.
([64]) See Human Rights Watch, 'The long arm of justice: lessons from specialised war crimes units in France, Germany and the Netherlands', 16 September 2014, p. 10.
([65]) The Strategy, p. 38.
([66]) Genocide Network Secretariat, *Conclusions of the 28th meeting of the European Network of Contact Points for investigation and prosecution of genocide, crimes against humanity and war crimes*, The Hague, 2020; Genocide Network Secretariat, *Conclusions of the 29th meeting of the European Network of Contact Points for investigation and prosecution of genocide, crimes against humanity and war crimes*, The Hague, 2021.
([67]) See Genocide Network Secretariat and Eurojust, 'Cumulative prosecution of foreign terrorist fighters for core international crimes and terrorism-related offences', 19 May 2020 (https://www.eurojust.europa.eu/cumulative-prosecution-foreign-terrorist-fighters-core-international-crimes-terrorism-related).

on cumulative charges in several Member States ([68]), with sentences significantly higher than those usually handed down for terrorist offences only (e.g. to members of terrorist organisations) ([69]).

Furthermore, in another expert report published in December 2021, the Genocide Network Secretariat examined the relationship between violations restrictive measures (sanctions) and core international crimes. The expert report underlined that investigating and prosecuting such violations could prove critical in the overall fight against impunity, specifically where corporate and business actors are involved. Where complicity in core international crimes may be too complex to prove, the prosecution of sanctions violations may provide an alternative path towards accountability. Focusing on violations of sanctions as a criminal offence may also help establish the link needed in some countries for core international crimesproceedings to be initiated under the universal jurisdiction principle. The expert report also shed light on recent national case law, providing practical examples of potential synergies and recent cases in the Member States indicating that the violation of sanctions committed by corporate actors ([70]) may be prosecuted alongside charges for complicity in core international crimes ([71]).

The number of core international crimes cases involving corporate actors is on the rise, although still in an early phase. In a groundbreaking decision issued on 7 September 2021, the *Cour de cassation* found that Lafarge, a French parent company, financed Islamic State of Iraq and the Levant (ISIL) activities of several million dollars through local subsidiaries. The court also found that Lafarge had precise knowledge of the actions of ISIL, which were likely to constitute crimes against humanity. The court concluded that knowingly paying a sum of several million dollars to an organisation whose purpose is purely criminal is sufficient to characterise complicity. The case was remitted to an interlocutory court to move forward proceedings, with a potential indictment for complicity in crimes against humanity in addition to financing terrorist activities.

In Denmark, on 14 December 2021 Dan-Bunkering Ltd. A/S and its parent company Bunker Holding A/S, along with the CEO of the latter company, were convicted for violating EU sanctions against Syria, including the prohibition of the sale of jet fuel. Although war crimes or crimes against humanity were not a subject of these proceedings, the court found that A/S Dan-Bunkering Ltd. carried out numerous deals in jet fuel, which was ultimately delivered to tankers in the eastern Mediterranean when the Russian air force entered the civil war in Syria. The court found it proved that the fuel was delivered in Port Banias for use by the Russian military in Syria ([72]).

The topic of sanctions has gained unprecedented attention since the invasion of Ukraine, with the setting up of a 'Freeze and Seize' Task Force by the European Commission to ensure EU-level coordination to implement sanctions against listed Russian and Belarussian oligarchs ([73]).

([68]) In particular in Germany, the Netherlands and Sweden.

([69]) See the Genocide Network Secretariat's case law compendium, updated January 2022 (https://www.eurojust.europa.eu/judicial-cooperation/practitioner-networks/genocide-network).

([70]) See the Strategy, p. 37.

([71]) See Genocide Network Secretariat and Eurojust, *Prosecution of sanctions (restrictive measures) violations in national jurisdictions: A comparative analysis*, The Hague, 2021 (https://www.eurojust.europa.eu/publication/expert-report-prosecution-sanctions-restrictive-measures-violations-national-jurisdictions); Genocide Network Secretariat and Eurojust, *Addendum – Prosecution of sanctions (restrictive measures) violations in national jurisdictions: A comparative analysis*, The Hague, 2022 (https://www.eurojust.europa.eu/publication/expert-report-prosecution-sanctions-restrictive-measures-violations-national-jurisdictions).

([72]) See Genocide Network Secretariat and Eurojust, *Addendum – Prosecution of sanctions (restrictive measures) violations in national jurisdictions: A comparative analysis*, The Hague, 2022, (https://www.eurojust.europa.eu/publication/expert-report-prosecution-sanctions-restrictive-measures-violations-national-jurisdictions).

([73]) See European Commission, 'Enforcing sanctions against listen Russian and Belarussian oligarchs: Commission's "Freeze and Seize" Task Force steps up work with international partners', press release, 17 March 2022

The enforcement of sanctions, and the prosecution of sanctions violations, is of paramount importance in the fight against impunity. Member States should not underestimate the deterrent effects of such cases, and should ensure that legal persons can be held criminally liable and receive adequate sentences for related offences.

5.7. Enhanced cooperation with civil society actors

Civil society organisations (CSOs), in particular organisations specialising in political and diplomatic advocacy, open source investigations, and the documentation and litigation of core international crimes, are crucial partners for national authorities in the fight against impunity ([74]).

A majority of Genocide Network Member States closely liaise and cooperate with CSOs, in particular regarding outreach and victim protection. Some States have put in place cooperation platforms or community involvement panels with CSOs ([75]), in order to reach out more efficiently to diaspora communities and keep regular contact with victims' organisations. These initiatives also allow the sharing of information (e.g. statistical data shared by the national authorities and information on potential cases provided by NGOs).

In the Netherlands, for example, the International Crimes Team and the international crimes unit of the Prosecution Service have been making efforts, in close cooperation with NGOs and community ambassadors, to tighten their ties with victim communities (e.g. the Yezidi community and the Syrian community). Through organising panel meetings, holding round table discussions, and working on their visibility in such communities in other ways, the police and prosecution services aim to create levels of trust and understanding that allow them to work with these communities in the fight against impunity. In Romania, a National Network for Genocide Prevention and Multidisciplinary Investigation of Mass Graves was set up in 2018 by the Romanian Public Ministry, and involves the Romanian Ministry of Foreign Affairs as well as the CSO the Auschwitz Institute for the Prevention of Genocide and Mass Atrocities ([76]). Such initiatives should also be encouraged among other Member States.

The Genocide Network itself provides an important interface for national authorities and civil society representatives to establish contacts and share expertise. In its 20 years of existence, the network has become a recognisable point of entry and facilitator of contacts between national authorities and CSOs.

In addition to CSOs with full membership in the network as Associates, the Genocide Network Secretariat continuously seeks to build partnerships with other CSO actors ([77]) to facilitate the sharing of knowledge on issues of mutual interest. The Secretariat regularly invites CSOs to present their work and expertise during the open sessions of the Genocide Network meetings. Workshops or webinars may also be organised in cooperation with these actors. For example, in response to the crisis in Ukraine the Genocide Network held two ad hoc meetings on 11 March and 5 April 2022, in which Ukrainian CSOs working on documenting alleged core international crimes participated. These sessions provided an opportunity for CSOs to present

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(https://ec.europa.eu/commission/presscorner/detail/en/IP_22_1828). The task force is mainly composed of the Commission, national contact points, Eurojust and Europol.

([74]) Genocide Network Secretariat, *Conclusions of the 23rd meeting of the European Network of Contact Points for investigation and prosecution of genocide, crimes against humanity and war crimes*, The Hague, 2017; the Strategy, p. 40.

([75]) Germany, Croatia, the Netherlands, Romania and Sweden; 2022 questionnaire.

([76]) 2022 questionnaire.

([77]) Such as the European Center for Constitutional and Human Rights (ECCHR), the Commission for International Justice and Accountability, Civitas Maxima, the Open Society Justice Initiative, Syrian Archive, Clooney Foundation for Justice (the Docket) and Bellingcat.

their initiatives for facilitating accountability efforts and to discuss ways of cooperating with national authorities and the ICC.

In the past, the Genocide Network Secretariat has also delivered workshops for contact points in partnership with CSOs, including a practitioner workshop on 'Improving access to justice for victims of international crimes in Europe' organised with the International Federation for Human Rights, Redress, and the European Center for Constitutional and Human Rights in 2019. The workshop mainly highlighted key aspects of access to information and the active participation of victims in proceedings, and advised national authorities on how to support and protect victims against secondary victimisation.

5.8. Improved access to battlefield information as a new source of evidence

'Battlefield information' can be generally defined as material that originates from a conflict area, including material collected by military forces, but also NGOs, UN entities, the ICC and other organisations. The term 'battlefield evidence' may refer to both personal and non-personal data ([78]). Although this topic was not discussed in the Strategy, it has become a key issue for the EU and its Member States, specifically in the context of cumulative prosecutions of FTFs who support ISIL and other terrorist organisations in Syria and northern Iraq.

Information exchange between the military, law enforcement and judicial authorities has taken an impressive leap forward owing to the emergence of the FTF phenomenon. With the support of Eurojust, Europol and non-EU countries, facilitating access to battlefield information has proven essential in holding FTFs fully accountable for both terrorism offences and core international crimes, resulting in more justice for the victims, and longer sentences and prison terms for convicted perpetrators ([79]).

In 2018, Eurojust, in close cooperation with the Genocide Network, national authorities in Member States and the Liaison Prosecutors at Eurojust, developed a Memorandum on battlefield evidence that sets out the applicable legal framework and gives an overview of how battlefield information is obtained from military forces and other actors. While experience of using battlefield evidence at the time was limited, the updated Memorandum published in 2020 shows that in the past few years several countries have used such evidence in criminal proceedings against FTFs and other persons suspected of criminal offences during armed conflicts. The report also addresses challenges identified and ways to overcome them, as well as measures to strengthen information exchange ([80]).

As of May 2022, this positive trend continues to be observed by Member States. Several have concluded information exchange and cooperation arrangements with UNITAD, which allow them to access structural/contextual case briefs and individual case files prepared by the investigative team. UNITAD's ability to collect testimonial evidence from witnesses, combined with its capacity to identify corroborating internal ISIL documentation from digital battlefield evidence, has been particularly helpful in supporting investigations by national authorities ([81]).

([78]) See Eurojust, *Eurojust Memorandum on Battlefield Evidence*, The Hague, 2020 (https://www.eurojust.europa.eu/eurojust-memorandum-battlefield-evidence).

([79]) See Genocide Network Secretariat, *Cumulative prosecution of foreign terrorist fighters for core international crimes and terrorism-related offences*, The Hague, 2020 (https://www.eurojust.europa.eu/cumulative-prosecution-foreign-terrorist-fighters-core-international-crimes-terrorism-related).

([80]) See Eurojust, *Eurojust Memorandum on Battlefield Evidence*, The Hague, 2020 (https://www.eurojust.europa.eu/eurojust-memorandum-battlefield-evidence).

([81]) See United Nations, *Seventh report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant*, S/2021/974, 2021, para. 113.

Cooperation or sharing agreements are also in place between several Member States and the IIIM ([82]).

As a result, judicial authorities have become more familiar with the use of battlefield information in criminal proceedings and convictions have been secured against FTFs in about 10 Member States, including using evidence originating from conflict zones ([83]). Specifically, courts in Germany, Hungary, the Netherlands, Finland and Sweden have successfully prosecuted FTFs for war crimes ([84]). It is therefore crucial to ensure that battlefield information, including declassified information, can be delivered in a timely manner and in a way that secures its admissibility in court.

Nonetheless, some practical obstacles remain. Eurojust and Europol face some constraints with regard to the sharing of information with international organisations (such as the ICC, UNITAD and the IIIM). Prioritising the adoption of operational agreements on cooperation between Europol, Eurojust and UNITAD, the IIIM and the ICC would ease challenges in cooperation and information sharing.

6. Stronger awareness of core international crimes in the European Union and renewed commitment to combating impunity

6.1. Major achievements in raising awareness of core international crimes investigations and prosecutions

The Genocide Network Secretariat, in collaboration with Eurojust, dedicates part of its limited resources to actively raising awareness of core international crimes within the EU and Member State authorities, but also among the general public. These activities have been fruitful, with noteworthy achievements in the years following the adoption of the Strategy.

The Genocide Network Secretariat regularly issues expert papers related to the investigation and prosecution of core international crimes, as well legal or practical developments in the field. The expert papers, which are publicly available, seek to provide practical information and raise awareness on specific issues relevant to EU practitioners. Topics covered by such reports include the jurisprudence of the European Court of Human Rights on core international crimes ([85]), the prosecution of sexual and gender-based violence ([86]), prosecution for war crimes of outrage upon personal dignity based on open source evidence ([87]),

([82]) See United Nations, *Report of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011*, A/76/690, 2022, para. 30.

([83]) See Eurojust, *Eurojust Memorandum on Battlefield Evidence*, The Hague, 2020; see also the Genocide Network Secretariat's case law compendium, updated January 2022 (https://www.eurojust.europa.eu/judicial-cooperation/practitioner-networks/genocide-network).

([84]) See the Genocide Network Secretariat's case law compendium, updated January 2022 (https://www.eurojust.europa.eu/judicial-cooperation/practitioner-networks/genocide-network).

([85]) Genocide Network Secretariat, *Digest of the European Court of Human Rights jurisprudence on core international crimes*, The Hague, 2017 (https://www.eurojust.europa.eu/publication/digest-european-court-human-rights-jurisprudence-core-international-crimes).

([86]) Genocide Network Secretariat, *The prosecution at national level of sexual and gender-based violence (SGBV) committed by the Islamic State in Iraq and the Levant (ISIL)*, The Hague, 2017 (https://www.eurojust.europa.eu/prosecution-national-level-sexual-and-gender-based-violence-sgbv-committed-islamic-state-iraq-and-0).

([87]) Genocide Network Secretariat, *Prosecuting war crimes of outrage upon personal dignity based on evidence from open sources – Legal framework and recent developments in the Member States of the European Union*, The Hague, 2018 (https://www.eurojust.europa.eu/prosecuting-war-crimes-outrage-upon-personal-dignity-based-evidence-open-sources-legal-framework-0).

cumulative prosecutions of FTFs ([88]), and links between core international crimes and violations of sanctions ([89]).

In addition, the Secretariat allocates part of its budget to the translation of national jurisprudence into English. A case law compendium, providing case summaries and links to the translated case law, is accessible on the Genocide Network's website and is updated frequently ([90]). The case law compendium is a useful tool for national authorities and the public. It provides an overview of developing jurisprudence in the Member States, with the current selection focusing predominantly on crimes committed in Syria and Northern Iraq, use of open source as evidence and cumulative prosecution of FTFs.

The Genocide Network and Eurojust also bring visibility to convictions obtained for core international crimes in the EU Member States through official press releases and other media outreach ([91]).

One of the main achievements in this regard has been the creation of the EU Day against Impunity, as recommended in the Strategy. The EU Day against Impunity seeks to raise awareness of national investigations and the common efforts of EU Member States and the EU to enforce international criminal law, with a special focus on the roles and perspectives of victims and communities affected by criminal proceedings.

The first EU Day against Impunity took place on 23 May 2016, at the initiative of the Netherlands Presidency of the Council of the EU, together with the Genocide Network, the European Commission and Eurojust. Since then, 23 May has been commemorated under the auspices of each council presidency, with the sixth edition of the EU Day against Impunity taking place in 2021 ([92]) and the seventh edition in 2022. These editions were held online, through the release of video statements on Eurojust's YouTube channel, and prior editions were hosted in person by Eurojust. Examples of past topics include the increase in actions to hold perpetrators accountable for crimes in Syria ([93]) and the cumulative prosecution of FTFs ([94]). Annual statistics on newly opened, ongoing and closed core international crime cases in the EU are generally disclosed during the event.

The 2020 and 2021 editions of the EU Day against Impunity increased interest and reached beyond the usual networks of specialised practitioners, resulting in significant external outreach ([95]). This highly positive trend will be pursued in future editions, so that the strong message carried by this day is widely disseminated.

([88]) Genocide Network Secretariat, *Cumulative prosecution of foreign terrorist fighters for core international crimes and terrorism-related offences*, The Hague, 2020 (https://www.eurojust.europa.eu/cumulative-prosecution-foreign-terrorist-fighters-core-international-crimes-terrorism-related).

([89]) Genocide Network Secretariat, *Prosecution of sanctions (restrictive measures) violations in national jurisdictions: A comparative analysis*, The Hague, 2021 (https://www.eurojust.europa.eu/publication/expert-report-prosecution-sanctions-restrictive-measures-violations-national-jurisdictions).

([90]) The case law compendium is available on the Genocide Network's website (https://www.eurojust.europa.eu/overview-national-jurisprudence-july-2021).

([91]) For instance, see Eurojust, 'Increase in actions against impunity for war crimes by Syrian regime', press release, 21 May 2021 (https://www.eurojust.europa.eu/increase-actions-against-impunity-war-crimes-syrian-regime). This press release highlights the successful conviction by German courts of a member of the Syrian intelligence services for complicity in crimes against humanity, as a result of close inter-State cooperation through a JIT between France and Germany.

([92]) For more information about the EU Day against Impunity, see Eurojust's website (https://www.eurojust.europa.eu/judicial-cooperation/practitioner-networks/genocide-network/eu-day-against-impunity).

([93]) See Eurojust's website (https://www.eurojust.europa.eu/increase-actions-against-impunity-war-crimes-syrian-regime).

([94]) Reports on each edition of the EU Day against Impunity are available on Eurojust's website (https://www.eurojust.europa.eu/judicial-cooperation/practitioner-networks/genocide-network/eu-day-against-impunity).

([95]) The fifth EU Day against Impunity, promoted through social media channels and traditional media outlets, was mentioned in 146 media publications, with a combined estimated reach of around 400 million readers, along with 345 mentions of #EUDayAgainstImpunity. The press release on the sixth EU Day against Impunity received 560 online media mentions, and the main video created for the event had received about 700 views on 30 June 2021.

These public outreach efforts are complemented by regular, high-level interventions of the Genocide Network Secretariat before EU institutions and decision-makers, such as the European Parliament (in particular the Subcommittee on Human Rights), the Coordinating Committee in the area of police and judicial cooperation in criminal matters and the Working Party on Cooperation in Criminal Matters or other Council of the EU working parties to ensure that the topic of core international crimes receives adequate political attention and support.

6.2. Towards a renewed commitment on the part of the European Union to justice and accountability

Prior to the adoption of the Strategy, the EU demonstrated its commitment to fighting against impunity through Council Decision 2002/497/JHA setting up the Genocide Network and Council Decision 2003/335/JHA on the investigation and prosecution of core international crimes. Moreover, in the Stockholm programme and its action plan (2010–2014), the Council called on EU institutions to 'support and promote Union and Member States' activity against impunity', with a particular focus on promoting cooperation among Member States, non-EU countries, the ICC and ad hoc tribunals ([96]). In 2015, the Council adopted an action plan on human rights and democracy, listing '[e]nding impunity, strengthening accountability and promoting and supporting transitional justice' as one of its objectives ([97]).

However, until very recently the EU's commitment to fighting impunity has not figured prominently on the political agenda. This changed dramatically in the immediate aftermath of the Russian invasion of Ukraine. Confronted with a conflict in the direct vicinity of EU borders, on the European continent – an unprecedented situation and one that has not been encountered since the end of the former Yugoslavia and ensuing conflicts in the 1990s – EU decision-makers have again taken a strong and resolved stance against impunity for alleged war crimes and crimes against humanity committed in Ukraine.

On 4 April 2022, European Commission President Ursula von der Leyen stated that the 'harrowing images' of dead civilians in Bucha 'cannot and will not be left unanswered' and that 'the perpetrators of these heinous crimes must not go unpunished'. The President also announced that:

> *The EU has set up a Joint Investigation Team with Ukraine to collect evidence and investigate war crimes and crimes against humanity .... Eurojust and Europol are ready to assist.*
>
> *A global response is necessary. There are ongoing talks between Eurojust and the International Criminal Court to join forces and for the Court to be part of the Joint Investigation Team. Such a coordinated approach from the Ukrainian authorities, the EU, its Member States and agencies, and the International Criminal Court will allow for the evidence to be collected, analysed and processed in the most complete and effective way possible* ([98])

The president's support for the fight against impunity provides a strong political drive, and constitutes a critical factor in successful investigations and prosecutions of core international

([96]) Council of the EU, *The Stockholm programme – An open and secure Europe serving and protecting citizens*, OJ C 115, 4.5.2010, p. 1, para. 2.1.

([97]) Council of the EU, *Council conclusions on the action plan on human rights and democracy 2015–2019*, Document 10897/15, 2015. See Council of the EU, *EU Action Plan on Human Rights and Democracy*, Publications Office of the European Union, Luxembourg, 2015, Section III.

([98]) See European Commission, 'Statement from European Commission President Ursula von der Leyen following her phone call with President Zelenskyy on the Commission's reactions to the atrocities in Bucha', press release, 4 April 2022 (https://ec.europa.eu/commission/presscorner/detail/en/statement_22_2268).

crimes. In the coming months and years, this support is likely to be translated into a set of concrete measures and increased resources for national authorities conducting these cases.

In this regard, and as recommended in the Strategy ([99]), an EU action plan on the fight against impunity, supported by the European Commission and the Council of the EU, would be an important tool in encouraging and mapping out a coordinated approach at national and regional levels. This recommendation is already supported by several Member States ([100]), the European Parliament ([101]) and several CSOs ([102]).

7. Reinforcing the inclusion of victims and witnesses in core international crimes proceedings

The 2012 EU victims' rights directive ([103]) obliges Member States to ensure that victims of all crimes receive adequate information, support and protection in order to effectively participate in criminal proceedings. In May 2020, the European Commission delivered its assessment on the transposition of the victims' rights directive, concluding that most Member States have failed to adequately transpose its provisions ([104]). Shortly afterwards, the Commission presented the EU victims' rights strategy ([105]), meant to strengthen victims' rights.

In relation to victims and witnesses of core international crimes, issues such as safety concerns, the risk of retraumatisation and participation in proceedings all raise very specific challenges for national authorities ([106]). For that reason, several CSOs have paid close attention to victims of core international crimes and their ability to exercise their rights in the EU, leading to a key report published in September 2020 (the CSO Report) ([107]). In brief, the CSO Report concluded that, while substantial progress has been made in recent years, victims continue to face significant legal and practical barriers and may only effectively exercise their rights with the support of lawyers and/or specialised NGOs ([108]).

Among the main hurdles victims faced, the 2020 CSO Report identified (i) the risk of reprisal incurred by victims (and potential witnesses) still living in conflict-affected areas; (ii) insufficient resources of victim support services to meet the demand; (iii) strict eligibility rules for accessing legal aid; (iv) difficulty for victims in effectively participating in proceedings from

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([99]) The Strategy, p. 44.

([100]) Belgium, Cyprus, Germany, Finland, Croatia, Italy, the Netherlands, Portugal, Slovakia and Sweden; see the 2018 questionnaire.

([101]) See European Parliament resolution of 11 March 2021 on the Syrian conflict – 10 years after the uprising, 2021/2576(RSP), calling upon the European Commission to 'present an EU action plan on impunity, with a specific chapter on Syria' and stressing that 'this action plan should seek to better coordinate and harmonise Member States' resources and efforts to prosecute war criminals in the EU'.

([102]) See International Federation for Human Rights (FIDH), ECCHR and Redress, *Breaking down barriers: Access to justice in Europe for victims of international crimes*, 2020 (https://www.fidh.org/en/issues/international-justice/report-eu-must-eliminate-barriers-to-justice-for-victims-of-serious), p. 129. The report recommends that the 'EU develop an Action Plan or Strategy on Combatting Impunity for Serious International Crimes to ensure consistency and coherence of its internal and external policies in the fight against impunity for international crimes, to foster greater cooperation amongst Member States and to increase engagement by key EU institutions (including the Commission, Council and Parliament)'.

([103]) 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, 14.11.2012, p. 57.

([104]) European Commission, *Report from the Commission to the European Parliament and the Council on the implementation of 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*, COM(2020) 188 final, 11 May 2020.

([105]) European Commission, Commission communication – EU Strategy on Victims' Rights (2020–2025), COM(2020) 258 final, 24 June 2020.

([106]) The Strategy, p. 45.

([107]) FIDH, ECCHR and Redress, *Breaking Down Barriers: Access to justice in Europe for victims of international crimes*, 2020 (https://www.fidh.org/en/issues/international-justice/report-eu-must-eliminate-barriers-to-justice-for-victims-of-serious).

([108]) Ibid., p. 6.

afar, in a foreign language; (v) in some Member States, limited access to certain rights based on the residence or nationality of the victims ([109]).

In spite of these difficulties, in the past 2–3 years national authorities have taken a number of meaningful initiatives to support victims and witnesses in core international crimes proceedings.

7.1. New outreach efforts towards affected communities

As highlighted in the CSO Report, Member States, especially those equipped with specialised units, have become more proactive in their engagement with the media, civil society and diaspora communities. They have made efforts to participate in outreach activities on victims' rights despite the limited availability of resources.

Examples of best practices are the publication of press releases in several languages, the use of videos, the translation of judgments and the use of social media by some specialised units to inform communities of the outcome of proceedings ([110]). As a matter of general practice, the Netherlands issue press releases translated into multiple languages, which are distributed abroad through embassies and the local media. Final judgments concerning core international crimes are also translated into English and published online ([111]).

For instance, in February 2022 the Dutch prosecution service published a press release announcing the start of a hearing in an Afghan case. The press release was translated into Dari and English and shared through social media, including social media groups known to be widely used by Afghans worldwide. Because of this outreach, an Afghan news channel based in Iran was made aware of the case, travelled to The Hague and reported on the hearings for 5 consecutive days. Afterwards, victims known to the prosecution service and police were also informed by email on the course of the proceedings. When the court delivered its verdict on 14 April 2022, another press release was issued.

Nonetheless, this approach remains the exception rather than the norm, with authorities often citing a lack of resources and the prioritisation of their core mandate as an explanation ([112]). Such outreach initiatives have had highly positive effects among affected communities and should be encouraged in all Member States.

7.2. Supporting victims' participation in proceedings

According to the CSO Report, the right of victims to initiate proceedings is restricted by procedural impediments in some Member States ([113]). For instance, the right to initiate proceedings against an offender as a 'civil party' may be restricted in the case of core international crimes, by imposing the additional requirement of a strong link with the Member State where the complaint is filed (i.e. based on the fact that the crime was committed wholly or partly on the territory, or based on the nationality or residence of the perpetrator), or by preventing victims from appealing a decision not to prosecute ([114]).

Furthermore, victims located abroad may face difficulties in obtaining information about their rights, unless represented by a lawyer and/or supported by an NGO ([115]). Depending on the country, information on their rights is provided by law enforcement officials or a pre-trial judge

([109]) Ibid.
([110]) CSO Report, pp. 6–7, 76 (Germany), p. 90 (Netherlands), p. 103 (Sweden) and pp. 112–113.
([111]) CSO Report, p. 118.
([112]) CSO Report, p. 118.
([113]) CSO Report, p. 42.
([114]) CSO Report, p. 110.
([115]) CSO Report, pp. 43 and 76.

at the investigation stage, as well as by dedicated services within the prosecutor's office. However, victims may not be adequately informed of their right to participate in the proceedings unless they are formally called to testify or become complainants ([116]). There is also little information tailored to the specific needs of victims of core international crimes ([117]). It is therefore essential that victims are fully informed of their rights and benefit from State-remunerated legal counsel in order to effectively participate in proceedings ([118]).

In addition, access to translated case documents is uneven within the Member States. Interpretation of court hearings is rarely available; when it is provided, it is often limited to those hearings involving the active participation of a victim ([119]). During the Koblenz trial in Germany, many NGOs deplored the lack of simultaneous interpretation in Arabic for the members of the public in attendance; interpretation was limited to witnesses present in court. For victims and NGOs, this limited access to and understanding of the full proceedings demonstrated that the historic character of the trial for the Syrian community has not been properly taken into consideration by the national authorities, with the trial remaining inaccessible to most Syrians ([120]).

7.3. Pitfalls in the protection of victims and witnesses

The legal frameworks of most Member States offer a variety of protective measures to victims and witnesses (from providing them with anonymity during the proceedings and holding closed hearings, to placing them in a dedicated witness protection programme) ([121]). However, only a few of them allow victims to testify anonymously and through videoconference ([122]). Having this option is important especially for this category of victims, who may reside abroad and lack the resources to travel or may be reluctant to testify publicly or in person during the trial. It also mitigates the risk of secondary victimisation, as required by the victims' rights directive ([123]).

Yet according to the CSO Report, witness protection measures are rarely used, and are difficult to apply to victims located abroad ([124]). These difficulties have also been highlighted by Member States, in particular by Germany in the context of Syrian regime cases and the Koblenz trial. National authorities may struggle to balance the safety of witnesses and the publicity and public outreach surrounding trials.

8. Conclusion

Significant progress has been achieved throughout the EU since the adoption of the Strategy in 2014. At the time, the Genocide Network was the only actor in the EU working on the topic of investigating and prosecuting core international crimes. Today, three EU agencies support national accountability efforts under their respective mandates: Eurojust, Europol and the EUAA.

([116]) CSO Report, pp. 43 and 90.
([117]) CSO Report, p. 114.
([118]) CSO Report, p. 116.
([119]) CSO Report, p. 117.
([120]) See Syria Justice and Accountability Centre, *Between Hope and Despair: A way forward after the Koblenz trial*, Washington DC, 2022 (https://syriaaccountability.org/between-hope-and-despaira-way-forward-after-the-koblenz-trial/).
([121]) 2022 questionnaire. The protection of victims and witnesses is overseen by dedicated witness protection units in several Member States (e.g. Belgium). See also CSO Report, p. 124; the report notes that Member States are limited in their ability to provide protection outside the EU and are often forced to improvise or cooperate with local authorities, NGOs or international actors.
([122]) Notably Belgium, Germany, Austria, Finland and Sweden. See CSO Report, pp. 76 and 103. While Sweden allows testimonies to be given by video link, the identity of the witness must be disclosed to the accused.
([123]) See Arts 19–24 of the victims' rights directive. Secondary victimisation can be defined as negative consequences that may result from victims' participation in proceedings, including exposure to the perpetrators and judicial authorities. See CSO Report, p. 122.
([124]) CSO Report, pp. 43 and 76.

In parallel with this institutional shift, Member States have fostered their capacities to tackle this incredibly complex area of crime. Member States that were already at the forefront of the fight against impunity are even more active now and have managed to bolster their capacities and increase their caseloads despite limited resources.

In spite of remarkable breakthroughs, specialisation and capacity in this area of crime remains uneven among Member States. Their readiness to tackle core international crime cases will be tested by the new challenges and opportunities created by the current conflict in Ukraine. This unparalleled situation may lead to a rapid build-up in capacity in those Member States that, so far, have not dealt with such cases. Should that be the case, new avenues for accountability could be found for past conflicts, including Syria, but also for future core international crimes that may be committed in other situations. The Genocide Network, in cooperation with Eurojust, will continue to support Member States in any future endeavours to end impunity for the crime of genocide, crimes against humanity and war crimes.

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