

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

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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.