Realizing the Promise of Universal Jurisdiction: A Survivor-Centered Approach to Justice for the Yazidi Genocide

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More than a decade after the Islamic State of Iraq and Syria (ISIS) launched its genocidal campaign against the Yazidi community, the pursuit of justice for the atrocities committed against the ethnoreligious group remains an uphill battle. Amidst Iraq's failures to prosecute international crimes domestically and while other paths to international justice remain unsuccessful, the principle of universal jurisdiction (UJ) has, for the first time in Yazidi history, led to the conviction of perpetrators for atrocity crimes committed against them. Amidst the growing body of UJ case law concerning crimes against the Yazidis, an examination of past proceedings has revealed gaps in access for the Yazidi diaspora, barring them from meaningfully engaging with trials that are historic for their community.

While UJ holds the promise of serving as an extraterritorial solution for combating impunity for international crimes, this Article argues that, for court proceedings to achieve genuine universality, they must be accessible and visible to affected communities, even if members are not directly participating in the proceedings within the host country. Building on existing scholarship on the accessibility of UJ, this Article highlights gaps in how such proceedings engage victim communities, focusing specifically on the Yazidi community's ongoing pursuit of justice, for whom UJ represents the currently sole available legal mechanism. Through this case study, the Article seeks to broaden the discourse on accessibility and calls for a more survivor-centered approach in national prosecutions of international crimes by proposing three practical measures—translations, court recordings, and outreach initiatives—as essential tools to strengthen the legitimacy and reach of UJ proceedings.

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I. INTRODUCTION

Imagine if justice for the atrocities committed against *your* community were being pursued thousands of miles away. Despite being a member of the affected community, you have no access to the proceedings, nor will you receive the court documents that acknowledge the suffering inflicted on the survivors. Even those who are physically

present to observe the trial will not be provided with translations into a language they can understand. While the court's recognition of the genocide may be significant, it is evident that such proceedings fall short of delivering meaningful justice to those directly affected by the atrocities.

While domestic criminal proceedings have traditionally been viewed as delivering justice to survivors in individual cases,[1] the principle of universal jurisdiction (UJ) has provided an alternative mechanism for the broader victim communities to seek accountability for international crimes, especially when traditional avenues are not currently viable.[2] The promise of UJ is its extraterritorial solution for combating impunity for serious crimes, thus empowering states to bring criminal proceedings, irrespective of the location of the crime and the nationality of the perpetrator or the victim,[3] for egregious crimes such as genocide, crimes against humanity, and war crimes.[4] However, upon closer inspection, such proceedings are largely inaccessible to survivors not directly involved in the criminal justice process.

The Yazidis,[5] whom the world seemingly first came to know of with media coverage of the Genocide,[6] have largely relied on the principle of UJ in their quest for justice. Indeed, the pursuit of accountability for atrocities perpetrated against the ethnoreligious group has proven to be an uphill battle, with few—if any—available paths to justice.[7] The proceedings based on UJ in Europe have, for the first time in Yazidi

1. Susann Aboueldahab & Fin-Jasper Langmack, *Universal Jurisdiction Cases in Germany: A Closer Look at the Poster Child of International Criminal Justice*, 31 MINN. INT'L L. REV. 1, 21 (2022).

2. Howard Varney & Katarzyna Zduńczyk, *Advancing Global Accountability: The Role of Universal Jurisdiction in Prosecuting International Crime*, INT'L CTR. FOR TRANSITIONAL JUST. 1, 21 (2020), https://www.ictj.org/sites/default/files/ICTJ_Report_Universal_Jurisdiction.pdf.

3. Cedric Ryngaert, *The Concept of Jurisdiction in International Law*, *in* RESEARCH HANDBOOK ON JURISDICTION AND IMMUNITIES IN INTERNATIONAL LAW 57 (Alexander Orakhelashvili ed., 2015).

4. Julia Krebs et al., *Universal Jurisdiction and International Crimes: Constraints and Best Practices*, DIR.-GEN. FOR EXTERNAL POLICIES POL'Y DEP'T EUR. PARLIAMENT 1, 9 (2018), https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603878/EXPO_STU(2018)603878_EN.pdf.

5. Note that the term "Yazidis" may also be spelled as "Yezidis" or "Ezidis." The present Article will adhere to the spelling used by organizations such as the United Nations in their publications.

6. Kassidy Arena & Fatima Naqi, *A Decade After Genocide: Yazidi Community Finds Sanctuary in Lincoln After Fleeing Iraq*, NEB. PUB. MEDIA (Aug. 1, 2024, 6:00 AM), https://nebraskapublicmedia.org/en/news/news-articles/a-decade-after-genocide-yazidi-community-finds-sanctuary-in-lincoln-after-fleeing-iraq/.

7. Payam et al., *What Justice for the Yazidi Genocide?: Voices from Below*, 42 HUM. RTS. Q. 1, 3 (2020).

history,[8] led to the conviction of perpetrators for atrocity crimes committed against them.[9]

While these judgements have provided legal recognition of the atrocities committed against the Yazidi population,[10] a closer examination of the use of UJ in practice reveals how the proceedings are often inaccessible to the affected communities.[11] For example, during the first ever conviction for genocide against a member of the Yazidi community,[12] members of this ethnoreligious group who attended the proceedings were not provided with simultaneous translation. As a result, observers of this historic judgement were forced to rely on one another to interpret and communicate the courtroom developments in real-time.[13]

Building on existing scholarship on the accessibility of UJ,[14] this Article seeks to further highlight the accessibility gap evident in the growing body of extraterritorial jurisdiction cases. As the number of UJ cases in Europe continues to grow, with the most recent judgement delivered in July 2026 for atrocities committed against members of the Yazidi community,[15] this article examines the barriers to access of UJ

8. Yazidis have experienced over seventy instances of genocide and a long history of persecution. *See* Jennifer Venis, *Justice for the Yazidis*, INT'L BAR ASS'N (Sep. 27, 2022), https://www.ibanet.org/Justice-for-the-Yazidis.

9. Jennifer Venis, *War Crimes: Universal Jurisdiction Secures Convictions for Genocide Against Yazidi People*, INT'L BAR ASS'N (Aug. 3, 2022), https://www.ibanet.org/War-crimes-Universal-jurisdiction-secures-convictions-for-genocide-against-Yazidi-people.

10. Press Release, Office on Genocide Prevention and the Responsibility to Protect, *UN Special Adviser on the Prevention of Genocide Welcomes Genocide Verdict by German Court Against ISIS Member for the Enslavement and Abuse of Yazidi Woman in Syria and Iraq* (June 22, 2023), https://www.un.org/en/genocideprevention/documents/USG_Nderitu_Statement_ISIS_verdict_German_Court_22_June.pdf.

11. Margherita Capacci, *Syrian Trials Translated into Arabic: The Netherlands' Conclusive Test*, JUST. INFO (Feb. 13, 2024), https://www.justiceinfo.net/en/128392-syrian-trials-translated-into-arabic-netherlands-conclusive-test.html [hereinafter *Syrian Trials Translated into Arabic*].

12. On the trial of *Taha al-J*, *see* Alexandra Lily Kather & Johanna Groß, *Truly Historic: The World's First Conviction for Genocide Against the Yazidi*, VÖLKERRECHTSBLOG, (Dec. 17, 2021), https://voelkerrechtsblog.org/truly-historic/.

13. *See* Pia Marie Siebert, *Genocide Against the Yazidis—Accountability Before German Courts?* JUWISSBLOG (June 16, 2021), https://www.juwiss.de/64-2021/.

14. *See* Aboueldahab & Langmack, *supra* note 1, at 3; *see also* Lena Herzog, *The Yazidi Genocide Before the German Federal Court of Justice*, 66 GER. Y.B. INT'L 355, 368-369 (2023) (where the author notes that the impact of the conviction of the ISIS supporter for the Yazidi genocide may be limited due to the lack of adequate translations of the court proceedings, which may hinder access to the judgement for both perpetrators and victims of international atrocity crimes).

15. On the trial and conviction of Twana H.S. and Asia R.A., see *Inside the Twana H.S. and Asia R.A. Trial #01: Genocide Charges at Trial: The First Day in Munich*, SYRIA JUST. AND

proceedings identified in prior literature, particularly those relating to translation, court recordings, and outreach. By expanding on past scholarly work and focusing specifically on the Yazidi community's ongoing struggle for justice—where UJ remains the sole available legal mechanism—this Article wishes to broaden the conversation on accessibility and to encourage national judicial systems prosecuting international crimes to adopt a more survivor-centered approach to justice.

Part I provides the contextual background on the 2014 Yazidi Genocide, one of more than seventy instances of genocide recounted by Yazidi history.[16] The section also outlines the currently futile avenues for justice. Part II defines the principle of UJ to then briefly outline the cases brought based on this extraterritorial jurisdictional basis for atrocity crimes committed in the context of the Yazidi Genocide. Part III encourages the employment of three measures aimed at strengthening the promise of UJ. The initiatives—translations, court recordings, and outreach—are grounded in the idea that, for court proceedings to achieve genuine universality, they must be accessible and visible to affected communities, even if members of these communities are not physically present for the proceedings in the host country.

ACCOUNTABILITY CTR. (July 16, 2025), https://syriaaccountability.org/inside-the-twana-h-s-and-asia-r-a-trial-01-genocide-charges-at-trial-the-first-day-in-munich/ (The two defendants, Twana H.S. and Asia R.A., were accused of jointly committing genocide, crimes against humanity, war crimes, and domestic human trafficking charges, as well as of individually committing additional crimes against two Yazidi girls, following their arrest in Germany in April 2024). *See also UPDATE: Munich Court delivers Verdict against Asia R.A. and Twana H.S. for Genocide, Crimes Against Humanity, and War Crimes Against Two Yazidi Girls*, YAZDA (July 13, 2026), https://www.yazda.org/munich-trial-update ("The Court found the defendants guilty of committing, between 2015 and 2017 [i]n Mosul, Iraq, and Deir ez-Zor, Syria, genocide, crimes against humanity and war crimes against two Yazidi children. Twana H.S. was convicted of sexually abusing the children, while Asia R.A. was found guilty of aiding and abetting in the abuse.").

16. *See About the Genocide*, NADIA'S INITIATIVE, https://www.nadiasinitiative.org/the-genocide (last visited Apr. 24, 2025); *see also Mass Violence and Genocide by the Islamic State/Daesh in Iraq and Syria*, U. MINN., https://cla.umn.edu/chgs/holocaust-genocide-education/resource-guides/mass-violence-and-genocide-islamic-statedaesh (last visited Apr. 24, 2025) (while the violent persecution of the Yazidis, as recounted by the ethnoreligious group's oral history, predates the coinage of the term and subsequent legal definition, the systematic persecution, oppression, and massacres as recounted by the community have since been labeled as genocide, or "firmans"" or "fermans").

II. UNDERSTANDING THE YAZIDI GENOCIDE: "UNTIL JUSTICE IS ACHIEVED, EVERY DAY IS STILL GENOCIDE"[17]

A. The Yazidi Genocide: Crimes that "Shocked the Conscience of Humanity"[18]

In the early morning hours of August 3, 2014, militants of the terrorist organization Islamic State of Iraq and Syria (ISIS),[19] unleashed a coordinated attack across the Sinjar region of Northern Iraq.[20] With a failure to act on early warning signs that ISIS possessed the motivation and means to undertake a strategized campaign to ethnically cleanse the Yazidis from existence,[21] the once rural, quiet region became the site of one of the worst genocidal campaigns of the twenty-first century.[22] Within days of the massacre, a picture emerged of "ISIS committing almost unimaginable atrocities against the Yazidi community."[23]

As the United Nations Special Representative of the Secretary-General on Sexual Violence in Conflict noted, the "genocide spared no

17. ZOVIGHIAN PUB. OFF., *This Is Still Genocide- A Yazidi-Led Short Documentary in Partnership with Yazda*, at 7:34-7:39 (YouTube, Aug. 15, 2022), https://youtu.be/FN9y6Fd8ffk?feature=shared&t=454.

18. *ISIL Crimes Against Yazidis Constitute Genocide, UN Investigation Team Finds*, UN NEWS (May 10, 2021), https://news.un.org/en/story/2021/05/1091662.

19. Note that the U.S.-designated terrorist organization ISIS, also known as the Islamic State of Iraq and Syria, has been referred to by various names, including the Islamic State (IS), Daesh, and the Islamic State of Iraq and the Levant (ISIL). The Article will use the acronym ISIS throughout.

20. Laila Khoudeida, *The Yazidi Refugee Crisis*, YAZDA, https://www.ourcommons.ca/Content/Committee/421/CIMM/Brief/BR9342569/br-external/Yazda-e.pdf (last visited Mar. 25, 2025).

21. *See* Naomi Kikoler, *Bearing Witness Trip Report: The Islamic State's Targeting of Iraqi Minorities in Ninewa*, U.S. HOLOCAUST MEM'L MUSEUM 1, 6-15 (2015), https://www.ushmm.org/m/pdfs/Iraq-Bearing-Witness-Report-111215.pdf; *see also* Abid Shamdeen, *How the US Can Help the Struggling Yazidi Community in Iraq*, JUST SEC. (Dec. 8, 2022), https://www.justsecurity.org/84389/how-the-us-can-help-the-struggling-yazidi-community-in-iraq/ (the failure of the Iraqi government to investigate past attacks against minority communities and to address the early warning signs, such as the rise of hate speech and disinformation, as well as growing attacks against communities such as the Yazidis, created an environment of impunity. Simultaneously, as ISIS made its territorial advances in the Ninewa province, which was home to a diverse group of ethnic and religious minorities, Iraqi security forces and the Kurdish Peshmerga appeared to have done little to protect those communities, leaving their security compromised.).

22. Hannah McCarthy, *Is Europe Doing Enough to Prosecute ISIS Fighters for Yazidi Genocide?*, EURO NEWS (Aug. 10, 2021), https://www.euronews.com/my-europe/2021/08/10/is-europe-doing-enough-to-prosecute-isis-fighters-for-yazidi-genocide.

23. Rep. of the Hum. Rts. Council, *"They Came to Destroy": ISIS Crimes Against the Yazidis*, ¶ 2, U.N. Doc. A/HRC/32/CRP.2 (2016).

one in the Yazidi community regardless of age or gender."[24] With little resistance,[25] ISIS militants separated men and adolescent boys from women and young children as they began to seize the territory that had been the ancestral homeland of the ethnoreligious minority for centuries.[26] During the attack, it is estimated that 350,000 to 400,000 Yazidis fled to neighboring countries,[27] while approximately 50,000 Yazidis took shelter on Mount Sinjar,[28] in which the 4,800-foot-high mountain "served as a refuge for Yazidis fleeing possible genocide."[29] Despite being out of reach of ISIS militants, as recounted by a Yazidi woman, "so many children [died] on Mount Sinjar"[30] due to starvation and dehydration as ISIS militants encircled the mountain.[31] The rest, who were unable to flee, faced the onslaught of ISIS, the brutality of which cannot be overstated.

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24. Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, *Remarks for Yazda Seventh Annual Commemoration of the Yazidi Genocide on the Theme "Towards a Sustainable Future for Yazidis and Minorities in Iraq and KRI," 2-3 August 2021*, UN (Aug. 2, 2021), https://www.un.org/sexualviolenceinconflict/statement/remarks-for-yazda-seventh-annual-commemoration-of-the-yazidi-genocide-on-the-theme-towards-a-sustainable-future-for-yazidis-and-minorities-in-iraq-and-kri-2-3-august-202/.

25. Rep. of the Hum. Rts. Council, *supra* note 23, ¶ 24.

26. At the time of the attack, the Sinjar region in Iraq was "home to the world's largest population of Yazidis, with an estimated 400,000 living in the region." *See* Save the Children, A *Childhood of Fear: The Impact of Genocide on Yazidi Children in Sinjar* 1, 1 (2022), https://image.savethechildren.org/achildhood-of-fear.pdf-ch11044881.pdf/26fw6j2ga3ycx0137a88ato6564d80hl.pdf; *see also The Yazidis: An Ongoing Genocide*, EUR. PARLIAMENT 1, 1 (2016), https://www.europarl.europa.eu/cmsdata/209821/EPRS_ATA(2016)595842_EN.pdf ("The Yazidi community in Iraq was generally estimated to number between 300,000 and 700,000 before the onslaught by [ISIS].").

27. *Yazidi Displacement and Migration from Iraq: Trends, Drivers, and Vulnerabilities*, INT'L ORG. MIGRATION 1, 3 (2024), https://iraqdtm.iom.int/files/BorderMonitoring/20244304 3164 78_iom_iraq_protection_yazidipaper_digital.pdf ("The primary destination for most of these displaced was the Kurdistan Region of Iraq (KRI), specifically in Duhok Governorate, while others sought refuge in Türkiye to escape [ISIS] attacks."); *see also* Karel Černý, *Redefinition of Gender Roles as a Result of Armed Conflict and Forced Displacement: Sinjari Yazidis After the Genocide of 2014*, 80 WOMEN'S STUD. INT'L F. at 1, 1 (2020) ("Around 90% of Iraqi Yazidis thus wound up as refugees. It is estimated that between 280,000 and 345,000 Yazidis fled to the Kurdish province of Dohuk. Another 70,000 headed for Europe, most of them to Germany.").

28. Todd F. Buchwald & Adam Keith, *By Any Other Name: How, When, and Why the US Government Has Made Genocide Determinations*, U.S. HOLOCAUST MEM'L MUSEUM 63 (2019), https://www.ushmm.org/m/pdfs/Todd_Buchwald_Report_031819.pdf.

29. Jane Arraf, *Yazidis Remain in Fear on Iraq's Mount Sinjar After Attempted Genocide*, NPR (Mar. 29, 2018), https://www.npr.org/sections/parallels/2018/03/29/59761/yazidis-remain-in-fear-on-iraqs-mount-sinjar-after-attempted-genocide.

30. Kikoler, *supra* note 21, at 18.

31. *Id*. at 19; *see also* Rep. of the Hum. Rts. Council, *supra* note 23, ¶ 27 ("A humanitarian crisis quickly unfolded as ISIS trapped tens of thousands of Yazidi men, women, and children in temperatures rising above 50 degrees Celsius and prevented them from accessing to water, food

As a Yazidi religious authority simply stated, "When ISIS attacked Sinjar, they came to destroy."[32] The systematic genocidal campaign encompassed brutal acts of violence:

> ISIS fighters summarily executed men and older boys who refused to convert to Islam. [. . .] Most of those killed were executed by gunshots to the head; others had their throats cut. ISIS fighters carried out executions of male Yazidis in the streets of towns and villages, at makeshift checkpoints, on roadsides as well as on the lower sections of the roads ascending Mount Sinjar. [. . .] Yazidis, captured and forcibly transferred to Mosul and Tel Afar in the days following the attack, described being driven along roads, the sides of which were littered with corpses.[33]

Similarly, many older Yazidi women—"whom ISIS deemed too old for sexual slavery"[34]—were murdered *en masse*.[35] Younger boys were spared, but only to be "abducted, forced to convert to a radical version of Islam, given Islamic names, and indoctrinated as child soldiers."[36] More than 6,000 women and children were taken captive by ISIS,[37] many of whom were subjected to sexual violence with the aim of "destroying the community from within."[38]

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or medical care. On 7 August 2014, at the request of the Iraqi Government, US President Barack Obama announced American military action to help the Yazidis trapped on Mount Sinjar. 11 American, Iraqi, British, French, and Australian forces were involved in airdrops of water and other supplies to the besieged Yazidis. ISIS fighters shot at planes airdropping aid, and at helicopters attempting to evacuate the most vulnerable Yazidis.").

32. Francesca Braga, *ISIS and the Crimes Against the Yazidis People*, FED. LAW. 38, 39 (2019), https://www.fedbar.org/wp-content/uploads/2019/12/1-Feature.pdf.

33. Rep. of the Hum. Rts. Council, *supra* note 23, ¶¶ 32-35.

34. Jane Arraf, *'Nothing Left in the World Except These Bones': Yazidis Search for Mothers' Remains*, NPR (Dec. 2, 2020), https://www.npr.org/2020/12/02/940208630/nothing-left-in-the-world-except-these-bones-yazidis-search-for-mothers-remains.

35. *About the Genocide*, *supra* note 16.

36. Michelle Xiao Liu et al., *No Way Home: How an ISIS-Era Law Prevents Yazidi Women and Their Children Born of Conflict from Returning to Sinjar, Iraq*, JUST SEC. (Mar. 25, 2025), https://www.justsecurity.org/108909/no-way-home-how-an-isis-era-law-prevents-yazidi-women-and-their-children-born-of-conflict-from-returning-to-sinjar-iraq/.

37. *About the Genocide*, *supra* note 16.

38. *Id*. For a discussion on the gendered dimension of the 2014 Yazidi Genocide, *see* Michelle Xiao Liu, *The Enduring Genocide Against the Yazidis: How Iraq's Law on Religious Identity Violates the Human Rights of Yazidi Survivors of ISIS Captivity and Their Children Born of Sexual Violence*, 23 NW. J. HUM. RTS. 75, 84 (2025).

Following ISIS's territorial defeat in Iraq,[39] it is estimated that over 5,000 men and older women were killed,[40] many of whom were buried in 67 mass graves (counting those that have been discovered thus far).[41] Simultaneously, more than 400,000 Yazidis remain displaced, scattered across the region and unable to return to their homeland,[42] with nearly 200,000 living in displacement camps in Northern Iraq and Syria.[43] Additionally, over 2,500 Yazidis remain missing, "represent[ing] over a decade of suffering for [Yazidi] families, many of whom still do not know the fate of their loved one[s]."[44] Thus, the effects of the 2014 Yazidi Genocide reverberate to this day, exacerbated by the lack of avenues for bringing ISIS militants to justice.

Over a decade following the mass atrocities, eighteen governments and international bodies, including the United States of America,[45] have

39. Note that reports have emerged suggesting ISIS remains a potential threat despite its military and territorial defeat. *See* Busra Nisa Sarac, *Islamic State Remains a Potent Threat Five Years After Its Military Defeat*, THE CONVERSATION (Sep. 2, 2024, 12:13 PM), https://theconversation.com/islamic-state-remains-a-potent-threat-five-years-after-its-military-defeat-237599.

40. *About the Genocide*, *supra* note 16.

41. *Iraq: Exhume Mass Grave Sites to Ensure Justice*, HUM. RTS. WATCH (Aug. 13, 2024), https://www.hrw.org/news/2024/08/13/iraq-exhume-mass-grave-sites-ensure-justice.

42. *About the Genocide*, *supra* note 16.

43. *Id*. (while the precise number of internally displaced persons or refugees is difficult to quantify, it is estimated that nearly 200,000 Yazidis remain internally displaced in camps or informal settlements after fleeing ISIS's violent rampage. Several factors may be attributed to hindering Yazidis from returning to home, including the lack of "electricity, clean water, healthcare, education, and livelihood opportunities."). *See also* Liu et al., *supra* note 36.

44. *Remains of 32 Victims Arrive at Yazidi Genocide Memorial Ahead of Return to Families*, NADIA'S INITIATIVE (Feb. 21, 2025), https://www.nadiasinitiative.org/news/remains-of-32-victims-arrive-at-yazidi-genocide-memorial-ahead-of-return-to-families; *see also Yezidi Survivors of Islamic State Atrocities Abandoned to Indefinite Detention in North-east Syria*, AMNESTY INT'L (July 31, 2024, 05:36 PM), https://amnesty.ca/human-rights-news/yezidi-survivors-islamic-state-indefinite-detention-north-east-syria/ ("[the Yazidi] suffering continues today, as thousands remain missing."). Note that in 2023, six Yazidi women were rescued after more than eight years in ISIS captivity, giving hope to the families of other missing Yazidis that they, too, may be rescued one day. *See Rescue of Six Yazidi Women After 8 and a Half Years in Captivity*, NADIA'S INITIATIVE (June 3, 2023), https://www.nadiasinitiative.org/news/rescue-of-six-yazidi-women-after-8-and-a-half-years-in-captivity.

45. *See Remarks on Daesh and Genocide*, U.S. Dep't State (Mar. 17, 2016), https://2009-2017.state.gov/secretary/remarks/2016/03/254782.htm (the United States, on behalf of Secretary Kerry, ". . . assert that [. . .] Daesh is responsible for genocide against groups in areas under its control, including Yezidis, Christians, and Shia Muslims. Daesh is genocidal by self-proclamation, by ideology, and by actions—in what it says, what it believes, and what it does . . . . I hope that my statement today will assure the victims of Daesh's atrocities that the United States recognizes and confirms the despicable nature of the crimes that have been committed against them."). For

since recognized the Yazidi Genocide.[46] While such acknowledgements are a vital part of the healing process for the Yazidi community,[47] as Annalena Baerbock aptly noted, "[a]s a society, we have an obligation [. . .] to ensure that we do not just recognize this genocide but also bring about justice for the victims."[48] While the Yazidi community has continuously expressed a desire for justice, few mechanisms—whether judicial or not[49]—have been employed to hold ISIS militants accountable for crimes they have committed against the Yazidis. Notably, victims of mass atrocities have a right to justice;[50] however, this right has largely remained unsatisfied due to the unavailability of viable avenues for justice and accountability.

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an in-depth examination of genocide determinations by the U.S. government, *see* Buchwald & Keith, *supra* note 28, at 1.

46. *Nadia Murad's Statement on Recognition of Yazidi Genocide by German Government*, NADIA'S INITIATIVE (Jan. 19, 2023), https://www.nadiasinitiative.org/news/nadia-murads-statement-on-recognition-of-yazidi-genocide-by-german-government.

47. *Id*. ("[Recognition of Yazidi Genocide] is also a significant gesture to the Yazidi people and a necessary step for justice and accountability. It sends a message to survivors and the community that the world sees and recognizes the crimes committed against them, which is a vital part of the healing process for survivors and their families.").

48. *Speech by Foreign Minister Annalena Baerbock on the Occasion of the Recognition and Commemoration of the Genocide of The Yazidis*, FED. FOREIGN OFF., (Jan. 19, 2023), https://www.auswaertiges-amt.de/en/newsroom/news/recognition-genocide-yazidis/2574446.

49. How a community responds to a legacy of large-scale past abuses, commonly referred to as transitional justice, can take many forms, including: prosecution, delivering reparations, truth commissions, institutional reform, and national consultations. For further discussion, *see Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice*, at 2 (2010), https://www.securitycouncilreport.org/atf/cf%7B65BFCF9B-6D27-4E9C-8CD3CF6E4FF96FF9%7D/TJ_Guidance_Note_March _2010FINAL.pdf.

50. Sarah McIntosh, *Pursuing Justice for Mass Atrocities: A Handbook for Victim Groups*, U.S. HOLOCAUST MEM'L MUSEUM 1, 13 (2021), https://www.ushmm.org/m/pdfs/USHMM-Pursuing-Justice-for-Mass-Atrocities.pdf; *see also* G.A. Res. 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Dec. 16, 2005) ("victims should be treated with compassion and respect for their dignity, have their right to access to justice and redress mechanisms fully respected.").

B. The Unyielding Struggle for Justice: "My Community Doesn't Want Revenge; We Want Justice."[51]

Scholars have long recognized the importance of bringing justice to communities who survived mass atrocities.[52] Indeed, the value of addressing such crimes lies not only in providing survivors with an opportunity to be heard and in creating a historical record of harm suffered,[53] but also to condemn the crimes and signal to any future perpetrators that justice will be pursued.[54] Importantly, Dr. Aldo Zammit Borda notes that:

> [The] failure to address calls for justice for mass atrocities breeds a culture of impunity and an environment that is conducive to future violence. This, in turn, poses a real threat and the risk of undoing the good work that has already been done with respect to healing and restoration amongst the Yazidis. An unanswered call for justice in the face of mass atrocities is therefore like an open wound—there remains the ever-present danger of reinfection.[55]

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51. *Presentation Honors Survivors of the Yazidi Genocide*, COLUM. L. SCH. (May 17, 2023), https://www.law.columbia.edu/news/archive/presentation-honors-survivors-yazidi-genocide.

52. *See* Kyra Fox, *The Role of Justice in Preventing Mass Atrocities: Evolving Debates and New Directions*, U.S. HOLOCAUST MEM'L MUSEUM: SIMON-SKJODT CTR. FOR THE PREVENTION OF GENOCIDE at 1 (2019), https://www.ushmm.org/m/pdfs/ The_Role_of_ Justice_in_Preventing_Mass_Atrocities_-_Evolving_Debates_and_New_Directions.pdf ("Scholars and practitioners agree past atrocities are a strong predictor of future atrocities within a country."); *see also* Foreign & Commonwealth Off., *Speech: "To Deter Atrocities and Achieve Justice for Victims, Perpetrators of Genocide Must be Held Accountable for Their Actions."* (Apr. 16, 2014), https://www.gov.uk/government/speeches/to-deter-atrocities-and-achieve-justice-for-victims-perpetrators-of-genocide-must-be-held-accountable-for-their-actions ("To deter atrocities and achieve justice for victims, perpetrators of genocide must be held accountable for their actions.").

53. Neil J. Kritz, *Coming to Terms with Atrocities: A Review of Accountability Mechanisms for Mass Violations of Human Rights*, 59 L. & CONTEMP. PROBS. 127, 144 (1996).

54. *Id*. at 128 ("[Criminal accountability] can also establish a new dynamic in society, an understanding that aggressors and those who attempt to abuse the rights of others will henceforth be held accountable."); McIntosh, *supra* note 50, at 5 (observing that "Accountability mechanisms that aim to hold individuals and governments who are responsible for abuses accountable for their actions can acknowledge the seriousness of the harms that victims experienced and send a clear message that abuse and criminal behavior are not acceptable.")

55. Dr. Aldo Zammit Borda, *Why Iraq Should Enact Laws Criminalizing Genocide*, CITY ST. GEORGE'S U. LONDON (Dec. 12, 2022), https://www.citystgeorges.ac.uk/news-and-events/news/2022/12/why-iraq-should-enact-laws-criminalizing-genocide. A similar sentiment was echoed by Amal Clooney, counsel to Nadia Murad and other Yazidi victims of genocide:

> The historical record shows that the fuel for violence is impunity. And that we are destined to repeat crimes against humanity if we do not punish them. Justice makes

Addressing atrocities is thus crucial in preventing the fostering of a climate of impunity,[56] which is especially important for the Yazidi community. Indeed, prior to the Genocide, the community faced many other religiously-motivated attacks that were rarely investigated,[57] contributing to the heightened risk of atrocities against the ethnoreligious minority.[58] If a climate of impunity prevails, the historically marginalized and persecuted ethnoreligious minority may continue to face threats from ISIS, especially given the terrorist organization's recent effort to spread propaganda, incite violence,[59] and target vulnerable Yazidis, such as those currently living in displacement camps.[60]

A 2020 study which surveyed more than 1,000 internally displaced persons—primarily Yazidi survivors—revealed that 98.71 percent of respondents expressed a desire for justice for the crimes committed against their community.[61] Notably, justice is largely viewed as a

> peace possible: because trials allow for attribution of individual blame, instead of collective shame. Future perpetrators are put on notice that there are consequences for their crimes. And victims have a chance to heal.

Amal Clooney, Yazidis Deserve Justice for Genocide: How Biden's Team Can Lead the Way, Just Sec. (May 17, 2021), https://www.justsecurity.org/76185/yazidis-deserve-justice-for-genocide-how-bidens-team-can-lead-the-way/.

56. RIGHTS LWA, *Preventing Atrocities: Five Key Primers*, USAID 1, 7 (Sep. 2014), https://freedomhouse.org/sites/default/files/Preventing%20Atrocities%20Five%20Key%20Primers.pdf ("Unaddressed grievances that fester may escalate to become "drivers of atrocity" such as hate speech or particularly conspicuous cases of impunity."); *see also id.* 14 ("ensuring that human rights violations are documented and reported is an important element of an atrocity prevention strategy in that it helps combat a sense of impunity by perpetrators, can deliver justice and a renewed sense of social inclusion for victims, and serve as an early warning network of renewed instability.").

57. For example, *see Gunmen Kill 23 Members of Yazidi Minority in Iraq*, N.Y. TIMES (Apr. 22, 2007), https://www.nytimes.com/2007/04/22/world/africa/22iht-web-iraq22.5391913.html (an example of such religiously motivated attacks is the 2007 fatal attack against twenty-three Yazidis perpetrated by armed men who gunned down a bus, singled out members of the ethnoreligious minority, hijacking the bus, and later executed them.). *See also* Kikoler, *supra* note 21, at 8 (noting that "There was little response to these crimes from the Iraqi government. The perpetrators often were suspected to be Sunni extremists. Their crimes rarely were investigated and those we interviewed said that they felt the government had no interest in seeking justice for them. […] As a result, perpetrators continued to commit crimes with impunity.").

58. Kikoler, *supra* note 21, at 6.

59. PERSECUTION PREVENTION PROJECT, *Pathways to Protection: A Report Calling for Immediate Solutions to the Ongoing Destruction of the Yazidi Community of Sinjar*, 1, 7 (2024), https://macmillan.yale.edu/sites/default/files/2024-11/Pathways%20to%20Protection.pdf.

60. Liu et al., *supra* note 36.

61. Payam et al., *supra* note 7, at 15.

prerequisite to reconciliation[62]—a restorative process of survivors regaining a sense of safety and support in their recovery following the mass atrocities.[63] In light of the Yazidi community's feelings of betrayal by their Iraq neighbors, who were seen as complicit in the atrocities,[64] and the Kurdish Peshmerga's withdrawal as ISIS militants entered Sinjar,[65] criminal justice processes could serve to acknowledge the suffering of the Yazidi community and promote an understanding of the atrocities committed against them.

Albeit dated,[66] the 2020 study provides insights into the specific meaning of justice for a select number of members of the Yazidi community. The study found that respondents identified the fair trial of perpetrators as the second-most desired form of justice, just after international protection against further harm.[67] However, while "justice is multifaceted,"[68] consisting of various mechanisms, there has been limited progress in achieving judicial justice for the Yazidi community in the aftermath of the Genocide, in which "[the] attackers [can] be held accountable in court for the evil crimes they committed against [the Yazidis]."[69]

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62. ZOVIGHIAN PUB. OFF., *supra* note 17, at 5:18-5:24 (quoting Jameel Chomer, *Yazda's* former Country Director) ("[The international community] needs to understand that there will be no reconciliation without justice.").

63. Jesi Alexander, *The Path to Healing: Approaches to Reconciliation After Mass Atrocities*, 14 RIGHTING WRONGS 1, 2 (2024).

64. Inna Rudolf, *Navigating Conflicting Memories: Reconciliation Initiatives to Engage the Yezidi Population in Iraq Require an Urgent Overhaul*, XCEPT 1, 4 (2024), https://icsr.info/wp-content/uploads/2024/08/XCEPT-Briefing-note-Yezidi-reconciliation-in-Iraq.pdf.

65. Kikoler, *supra* note 21, at 13-14 (As a Yazidi survivor noted, following the withdrawal of the Kurdish Peshmerga—who were tasked with defending the vulnerable community—the Yazidis were left largely defenseless: "if only [the Peshmerga] told us they were leaving we would have fled earlier, and lives would have been saved."). *See also* Ewelina U. Ochab, *Can the Peshmerga Fighters Be Held Liable for Abandoning the Yazidis in Sinjar?* FORBES (July 31, 2017, 05:09 PM), https://www.forbes.com/sites/ewelinaochab/2017/07/31/can-the-peshmerga-fighters-be-held-liable-for-abandoning-the-yazidis-in-sinjar/ (noting that "[the Kurdish] Peshmerga was the only security force in the [Sinjar region in August 2014]. [The] Peshmerga allegedly removed some weapons from the Yazidis and promised to protect [them from the threats posed by ISIS]. By leaving Sinjar, [the] Peshmerga left the Yazidis vulnerable as without any protection.").

66. No similar study has been conducted since 2020. *See also Advocacy*, NADIA'S INITIATIVE, https://www.nadiasinitiative.org/advocacy (last visited Apr. 26, 2025) ("62% of Yazidis name fair trials for ISIS perpetrators as critical to justice.").

67. Payam et al., *supra* note 7, at 16.

68. Nadia Jahnecke, *The Fight for Justice for Yazidi Women: In Conversation with Nadia Murad*, CAMBRIDGE J. L., POL., & ART. (Mar. 18, 2024), https://www.cjlpa.org/post/the-fight-for-justice-for-yazidi-women-in-conversation-with-nadia-murad.

69. *Id*.

1. The Failure of Iraq's Domestic Legal System to Prosecute International Crimes

"It is ultimately Iraq's responsibility as the nationality state to deliver justice to its citizens."[70] Indeed, "[d]omestic legal systems are often best prepared to understand local customs, use the same language of those involved, and are more accessible for victims."[71] However, Iraq has largely failed to address the reconciliatory needs of Yazidi survivors, in spite of detailed findings and evidence of international crimes committed against the Yazidis in Iraq by the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD).[72]

As Iraq has failed to incorporate international crimes,[73] such as genocide, crimes against humanity, and war crimes, into its domestic law, ISIS militants have been largely prosecuted for terrorism-related offenses.[74] Such terrorist acts may include the "use of violence to spread

70. NADIA'S INITIATIVE, *Rebuilding After Atrocities: Accountability and Reconstruction in Sinjar and Beyond,* 40:52-41:00 (YouTube, Feb. 4, 2024), https://www.youtube.com/watch?v=f7r0bsns06E.

71. Aboueldahab & Langmack, *supra* note 1, at 3.

72. *See* Alannah Travers, *As UNITAD Is Now over: Charting the Path Towards Justice in Iraq*, 11 J. GLOB. FAULTLINES, 257, 257-258 (2024); *see also* Press Release, Security Council, Innovative Partnership Between Iraqi Authorities, Team Investigating Atrocity Crimes 'Is Working', Special Adviser Tells Sec. Council, U.N. Press Release SC/14379 (Dec. 10, 2020); *see also* Press Release, Ger. Fed. Foreign Off., Fed. Foreign Off. on the end of UNITAD's work in Iraq (Sep. 17, 2024), https://www.auswaertiges-amt.de/en/newsroom/news/2675878-2675878#:~:text=In%20cooperation%20with%20the%20Iraqi,in%20Iraq%20have%20been%20documented (Established under a 2017 UN Security Council resolution, UNITAD was tasked with documenting and investigating the mass atrocities committed by ISIS, including the crimes committed against the Yazidi community. The investigative mechanism also collaborated with the Iraqi government in gathering evidence and supported efforts to create a legal framework for the prosecution of international crimes by ISIS. With UNITAD's mandate and operations ceasing in 2024, the investigative body's repository of evidence of atrocity crimes committed in Iraq and elsewhere in relation to the 2014 Yazidi genocide, which could serve as the basis for criminal prosecutions according to UNITAD, is now stowed away in UN archives).

73. *See* Press Release, Alice Wairimu Nderitu, U.N. Special Adviser on the Prevention of Genocide, Outrage over the Crimes Committed Against the Yazidi Must not be Allowed to Diminish (Oct. 30, 2024), https://www.un.org/sites/un2.un.org/files/usg_nderitu_iraq_outrage_yazidi_30oct.pdf ("Iraq signed the Convention on the Prevention and Punishment of the Crime of Genocide in 1959, however there is need to fully domesticate international crimes in national legislation. Failure to do so leaves vulnerable groups without explicit guarantees of national legal protection. The justice and accountability gap created by the absence of comprehensive legislation to address allegations of commission of such crimes in Iraq is one of the reasons for the continued suffering of the Yazidi and other minority communities in the country—Christians, Shabak, Kaka'i and others—and presents a risk of genocide and related crimes recurring.").

74. Herzog, *supra* note 14, at 359.

fear," "any act with terrorist motives that threatens the national unity of the State," "damage to public property," and even "membership" in a terrorist organization.[75] In addition to being fraught with allegations of human rights violations,[76] "Iraq has executed hundreds of suspected [ISIS] fighters and convicted thousands more on grounds of guilty by association."[77] The use of capital punishment has notably prevented UNITAD from sharing the evidence collected from survivors, witnesses, and other actors as part of its preliminary case-file on the international crimes against Yazidis that could have supported the prosecution of ISIS militants in Iraq.[78] Additionally, such trials are problematic for the following reasons:

First, criminal trials can serve as a means of creating a historical record of the atrocities.[79] The International Criminal Tribunal for the former Yugoslavia (ICTY) recognized the importance of a court's function in its opinion in *Prosecutor v. Erdemovic*.[80] Even the Nuremberg Tribunals were used as a method of creating "an authentic record of Nazi

75. For example, between January 2018 and October 2019, "the [Iraqi] judiciary processed over 20,000 terrorism-related cases, with thousands pending as of January 2020." Rep. of the UNAMI, Human Rights in the Administration of Justice in Iraq, 4 (Jan. 2020), https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_Report_HRAdministrationJustice_Iraq_28January2020.pdf.

76. *Flawed Justice: Accountability for ISIS Crimes in Iraq*, HUM. RTS. WATCH (last visited Dec. 2017), https://www.hrw.org/report/2017/12/05/flawed-justice/accountability-isis-crimes-iraq.

77. Payam et al., *supra* note 7 at 4.

78. UNITAD will only transfer evidence if the conditions of imposing no death penalty and the adherence to international human rights standards of fair trials are met. *See* Travers, *supra* note 72, at 258. Notably, UNITAD has supported approximately twenty-three states with competent jurisdictions, including through the principles of UJ, that prosecuted or are currently prosecuting ISIS militants for their international crimes in Iraq, leading to fifteen convictions of ISIS members or affiliates so far. *See Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL*, UN, https://www.unitad.un.org/content/promoting-accountability-throughout-world (last visited Aug. 24, 2025) [https://web.archive.org/web/20250616053934/https://www.unitad.un.org/content/history].

79. Jane E. Stromseth, *Justice on the Ground: Can International Criminal Courts Strengthen Domestic Rule of Law in Post-Conflict Societies?*, 1 HAGUE J. ON THE RULE OF L. 87, 87 (2009).

80. *See Prosecutor v. Erdemović*, IT-96-22, Sentencing Judgment, ¶ 21 (Int'l Crim. Trib. for the Former Yugoslavia Mar. 5, 1998) ("The International Tribunal, in addition to its mandate to investigate, prosecute and punish serious violations of international humanitarian law, has a duty, through its judicial functions, to contribute to the settlement of the wider issues of accountability, reconciliation and establishing the truth behind the evils perpetrated in the former Yugoslavia. Discovering the truth is a cornerstone of the rule of law and a fundamental step on the way to reconciliation: for it is the truth that cleanses the ethnic and religious hatreds and begins the healing process.").

crimes and criminality … available for all mankind to study in future years."[81] If ISIS militants are prosecuted for terrorism-related charges, rather than for the atrocities they committed, such judgements may influence collective memory within Iraq, and "the genocide against the Yazidis will be gradually written out of the official histories of the conflict produced by the local Iraqi courts."[82]

Moreover, as Nadia Murad, a Yazidi survivor and Nobel Peace Prize laureate, observes, these trials fail to formally acknowledge the harm and trauma endured by survivors of the Yazidi genocide.[83] Indeed, survivors of the Yazidi Genocide have bravely shared their stories of enduring these mass atrocities, yet many feel that doing so has not led to justice for the crimes committed against them.[84] Their feelings of neglect—fueled by a lack of justice and dwindling international attention[85]—are compounded by reports from survivors of conflict-related sexual violence of feeling pressured to speak to journalists and risking re-traumatization in recounting their experiences.[86] Thus, in addition to the already insufficient participation of victims in Iraq's domestic proceedings,[87] the current trials fail to adequately recognize the suffering of victims and potentially contribute to the normalization of these criminal acts.[88]

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81. Harold Hongju Koh, Legal Adviser, U.S. Dept. of State, International Criminal Justice 5.0 (Nov. 8, 2012).

82. Aldo Zammit Borda, *Why Iraq Should Enact Laws Criminalizing Genocide*, BYU L. (Dec. 1, 2022), https://talkabout.iclrs.org/2022/12/01/why-iraq-should-enact-laws-criminalizing-genocide/.

83. Nadia Murad, *Yazidis Have Been Forgotten During Covid. They Need Justice, Jobs and a Return Home*, THE GUARDIAN (Feb. 24, 2021, 01:30 AM), https://www.theguardian.com/global-development/2021/feb/24/yazidis-iraq-justice-jobs-safe-return-home-nadia-murad.

84. *See* THE WEEK, *Exclusive Interview with a Yazidi—A Former ISIS Slave Speaks out*, at 08:38-08:45 (YouTube, Jan. 16, 2020), https://www.youtube.com/watch?v=6UGQkCIoUbQ ("We [the Yazidis] have shared our stories but even then, they have not done anything for us"); *see also* Johanna E. Foster & Sherizaan Minwalla, *Voices of Yazidi Women: Perceptions of Journalistic Practices in the Reporting on ISIS Sexual Violence*, 67 WOMEN'S STUD. INT'L F. 53, 56 (2018) (where Yazidi women stated "We have no benefit, no change in our situation" after speaking with journalists about the mass atrocities).

85. *See Nobel Laureate Nadia Murad Denounces Lack of Will to End Sexual Violence as a War Tactic*, UN NEWS (Sep. 28, 2020), https://news.un.org/en/story/2020/09/1074092.

86. Foster & Minwalla, *supra* note 84, at 56-57.

87. NADIA'S INITIATIVE, *supra* note 70, at 46:11-46:20.

88. *See* Press Release, SCOR, ISIL/Da'esh Committed Genocide of Yazidi, War Crimes against Unarmed Cadets, Mil. Pers. in Iraq, Investigative Team Head Tells Sec. Council, U.N. Press Release SC/14514 (May 10, 2021) (quoting Nadia Murad) ("Where impunity is accepted, violence is repeated. Accountability is essential.").

2. The Lack of Jurisdiction of the International Criminal Court

The avenue to prosecute ISIS's crimes before the International Criminal Court (ICC), the only permanent international criminal tribunal,[89] has likewise proven futile in securing justice for the Yazidis. While Yazidi advocates have called on the ICC "to investigate their persecution as a potential case of genocide,"[90] the former prosecutor of the ICC, Fatou Bensouda, expressed that the Court lacked the necessary jurisdictional basis for opening a preliminary examination into the "[c]rimes of unspeakable cruelty" committed by ISIS.[91] Additionally, Karim Khan, another former ICC prosecutor, never indicated any intention to prosecute the perpetrators of the crimes committed against the Yazidis.

Primarily, since the relevant crimes principally occurred in Syria and Iraq[92]—neither of which is a state party to the statute of the ICC (the Rome Statute)[93]—the ICC lacks the necessary territorial jurisdiction to address

89. *See* Rome Statute of the International Criminal Court, art. 1, July 17, 1998, 2187 U.N.T.S. 12 ("[the ICC] shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern") [hereinafter Rome Statute]; *see also* Koh, *supra* note 81 ("a permanent, standing institution capable of delivering justice.").

90. Toby Sterling, *Persecuted by Islamic State, Yazidis Turn to ICC for Justice*, REUTERS (Sep. 24, 2015 at 05:45 CT), https://www.reuters.com/article/world/persecuted-by-islamic-state-yazidis-turn-to-icc-for-justice-idUSKCN0RO14G/; *see also* Payam et al., *supra* note 7 at 28 ("83 percent indicated a preference for the ICC as a forum for prosecution of the crimes committed against them"); *see also UN Team Says Islamic State Committed Genocide Against Yazidis*, VOA NEWS (May 10, 2021), https://www.voanews.com/a/middle-east_un-team-says-islamic-state-committed-genocide-against-yazidis/6205676.html (citing Nadia Murad's appeal to the UN Security Council to refer the crimes committed against the Yazidi community to the ICC).

91. Press Release, ICC, Statement of the Prosecutor of the Int'l Crim. Ct., Fatou Benouda, on the Alleged Crimes Committed by ISIS (Apr. 8, 2015), https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-fatou-bensouda-alleged-crimes-committed-isis. On preliminary examinations of the ICC, *see* Sara Wharton & Rosemary Grey, *The Full Picture: Preliminary Examinations at the International Criminal Court*, 56 CAN. Y.B. INT'L L. 1 (2018).

92. Per the United States Commission on International Religious Freedom, atrocity crimes committed against the Yazidi community took place in both Iraq and Syria. While the crimes often began in Iraq, the crimes occuring in Syria include "ISIS likely [forcing] most of [the Yazidi] women and girls into slavery or marriage to fighters, many [of whom] are presumed hidden in ISIS family detention camps in Syria or in other ISIS enclaves." *See* SUSAN BISHAI, RELIGIOUS FREEDOM CHALLENGES IN IRAQ 10 YEARS AFTER ISIS'S GENOCIDE 4 (Sep. 2024), https://www.uscirf.gov/sites/default/files/2024-09/2024%20Iraq%20Genocide%20Issue%20Brief.pdf.

93. *See The States Parties to the Rome Statute*, INT'L CRIM. CT., https://asp.icc-cpi.int/states-parties (last visited Apr. 24, 2025). Note that, in 2005, Iraq's Interim Government declared that Iraq would accede to the Rome Statute; however, the decision was later withdrawn.

the commission of international crimes on their respective soils.[94] Notably, in March 2016, one year after Iraq's Council of Ministers declared that ISIS's crimes against the Yazidis amounted to genocide,[95] then-Prime Minister Haider al-Abadi gave no indication of an intention to join the ICC, "out of apparent concern that the court would also be able to examine grave abuses by government security forces."[96]

Similarly, a declaration under Article 12(3) of the Rome Statute,[97] which would recognize the jurisdiction of the ICC to prosecute crimes committed on the territory "of a State which is not a Party to [the] Statute,"[98] has yet to be invoked.[99] Notably, such a declaration would enable the ICC to assert jurisdiction over crimes in Iraq *retroactively*, allowing for the prosecution of crimes committed by ISIS throughout the 2014 Yazidi Genocide.[100]

Another avenue that remains unsused would be the United Nations Security Council (UNSC) referring the crimes committed during the Yazidi Genocide to the ICC, acting under Chapter VII of the UN Charter

See Iraq and the Rome Statute, PARLIAMENTARIANS FOR GLOBAL ACTION, https://www.pgaction.org/ilhr/rome-statute/iraq.html (last visited Apr. 28, 2025).

94. Nigel Walker & Philip Loft, *Atrocities Against the Yazidi Religious Community*, (H.C. Library, Debate Pack No. CDP-0027, 2022), https://researchbriefings.files.parliament.uk/documents/CDP-2022-0027/CDP-2022-0027.pdf

95. Skye Wheeler, *UN Panel Reports on ISIS Crimes*, HUM. RTS. WATCH (June 21, 2016, 8:53 AM), https://www.hrw.org/news/2016/06/21/un-panel-reports-isis-crimes-yezidis.

96. *Id*. On the other hand, the Syrian transitional government following the fall of the Bashar al-Assad regime had, according to ICC Prosecutor Karim Khan, "indicated an openness to justice and accountability for crimes that may have taken place [in Syria]." However, until Syria becomes a state party to the ICC, the Court lacks the necessary jurisdiction. *See ICC Prosecutor Holds Talks on Supporting Syria on War Crimes Prosecution*, REUTERS (Jan. 17, 2025, 9:36 AM), https://www.reuters.com/world/middle-east/icc-prosecutor-holds-talks-supporting-syria-war-crimes-prosecution-2025-01-17/.

97. For example, Ukraine and Palestine have both requested intervention by the ICC through an Article 12(3) declaration. *See Ukraine Becomes the 125th State Party to the ICC Rome Statute*, COALITION FOR THE INT'L CRIM. CT. (Jan. 22, 2025), https://www.coalitionfortheicc.org/ukraine-becomes-125th-ICC-state-party ("On 8 September 2015, the government of Ukraine lodged a second declaration under article 12(3) of the Statute accepting the ICC's jurisdiction in relation to alleged crimes committed on its territory from 20 February 2014 onwards, with no end date"); *see also* Malcolm N. Shaw, *The Article 12(3) Declaration of the Palestinian Authority, the International Criminal Court and International Law*, 9 J. INT'L CRIM. JUST. 301, 303 (2011) (the declaration made by the Palestinian government "expressly stated that the acceptance of jurisdiction was being made '[i]n conformity with Article 12, paragraph (3) of the Statute of the International Criminal Court'").

98. Rome Statute, *supra* note 89, at art. 12(3).

99. Wheeler, *supra* note 95.

100. Jennifer Trahan, *New Paths to Accountability for Crimes in Syria and Iraq (Including ICC Jurisdiction over Foreign Fighters)*, JUST SEC. (Nov. 12, 2014), https://www.justsecurity.org/17308/paths-accountability-crimes-syria-iraq-including-icc-jurisdiction-foreign-fighters/.

as per Article 13(b) of the Rome Statute.[101] While a referral by the UNSC to the ICC[102] would enable the Court to exercise jurisdiction over crimes committed in Iraq and Syria or by its nationals,[103] no such attempt has been made to address the atrocities committed against the Yazidis.[104]

Lastly, the ICC had previously indicated the ability to "exercise personal jurisdiction over alleged perpetrators who are nationals of a State Party,"[105] including potentially the "more than 13,000 foreign terrorist fighters from more than 80 [U.N.] Member States" that joined ISIS.[106] It has been noted that UNITAD "had a list of hundreds of ISIS members—their full names—who are not Iraqi, [including] their information, their involvement in the Yazidi Genocide."[107] However, throughout its history, the ICC has largely sought to prosecute those most responsible for international crimes.[108] Thus, "[f]oreign terrorist fighters tend not to have

101. Herzog, *supra* note 14, at 358 (Article 13(b) of the Rome Statute states that "[t]he [ICC] may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if: … (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations").

102. Pursuant to a determination that a situation poses a threat to international peace and security and warrants the adoption of non-forcible measures to maintain or restore the *status quo* of peace and security, coupled with an affirmative vote by its members. *See* Hemi Mistry, Referral by the United Nations Security Council: International Criminal Court (ICC), Max Planck Encyclopedias of International Law (January 2021), https://opil.ouplaw.com/display/10.1093/law-mpeipro/e3225.013.3225/law-mpeipro-e3225.

103. While the crimes committed against the Yazidi community occurred primarily in Iraq, ISIS militants abducted and forcibly transferred many Yazidis, primarily women and children, to Syria, where they were sold at slave auctions, sold directly to individual fighters, or held as collective property at ISIS military bases. Rep. of the Hum. Rts. Council, *supra* note 23, ¶ 55-58. Notably, attempts to refer the situation in Syria to the ICC through a draft resolution on May 22, 2014, failed after the governments of Russia and China exercised their veto, even though the resolution itself sought to address the "widespread violations of human rights and international humanitarian law" more generally within the country, rather than directly addressing the atrocities committed against the Yazidis. Rep. of the Hum. Rts. Council, *supra* note 23, ¶ 197.

104. Note that in 2016, the House of Commons urged the UK government to refer the situation of the Yazidis to the UNSC to confer the ICC with the necessary jurisdiction to bring justice to survivors. *See* HL Deb (20 Apr. 2016) (608).

105. *Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the Alleged Crimes Committed by ISIS*, ICC (Apr. 8, 2015), https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-fatou-bensouda-alleged-crimes-committed-isis.

106. Meetings Coverage, Security Council, Sec. Council Unanimously Adopts Res. Condemning Violent Extremism, Underscoring Need to Prevent Travel, Support for Foreign Terrorist Fighters, U.N. Meetings Coverage SC/11580 (Sep. 24, 2014).

107. NADIA'S INITIATIVE, *supra* note 70, at 46:55.

108. *See Q&A: The International Criminal Court and the United States*, HUM. RTS. WATCH (Sep. 2, 2020), https://www.hrw.org/news/2020/09/02/qa-international-criminal-court-and-

been in leadership positions of ISIS and would therefore fall outside of the scope of the ICC's prosecutorial policy."[109]

3. The Short-Lived Proposal for a Special Court to Prosecute ISIS Militants for International Crimes

The proposal for establishing a tribunal to prosecute ISIS militants has been circulating for some time, with survivors arguing that "transparent trials, using an international hybrid court mechanism remains the best way to ensure impunity does not prevail."[110] Indeed, faced with few available mechanisms for justice, coupled with fatigue from repeatedly sharing their traumatic experiences in hopes of holding perpetrators criminally accountable,[111] Yazidis have found the creation of a novel tribunal to be a compelling option.[112]

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united-states ("As a matter of policy, the ICC prosecutor gives priority to cases against individuals who it determines are most responsible for the crimes under the court's jurisdiction, regardless of their official position."). Indeed, "Regulation 34(1) of the Regulations of the Office and the Prosecution's Strategic Plan direct the Office to conduct its investigations towards ensuring that charges are brought against those persons who appear to be the most responsible for the identified crimes." Office of the Prosecutor, *Policy Paper on Case Selection and Prioritisation*, ICC, ¶ 42, (Sep. 15, 2016), https://www.icc-cpi.int/sites/default/files/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf; see *also* Maddelena Cogorno, *A Crime Without a Court: The Genocide of the Yazidi*, UNIV. OF ST. ANDREWS (Mar. 26, 2024), https://mecacs.wp.st-andrews.ac.uk/2024/maddalena-cogorno-a-crime-without-a-court-the-genocide-of-the-yazidi/ ("thus, the ICC could only deal with foreign fighters, who are low-level ISIL members, whereas its prosecution strategy has so far targeted only the 'big fish.'").

109. MARIEKE DE HOON, ACCOUNTABILITY FOR THE YAZIDI GENOCIDE: POSITION PAPER FOR DUTCH PARLIAMENT 16 (2022).

110. *Nadia Murad's Statement on the 10th Anniversary of the Yazidi Genocide*, NADIA'S INITIATIVE (Aug. 3, 2024), https://www.nadiasinitiative.org/news/nadia-murad-statement-on-10th-anniversary-of-yazidi-genocide. *See also* James Joseph & Lilian Trickey, *Unhealed Wounds: The Yazidi Genocide's Lasting Impact and the Need for International Response*, JURISTNEWS (July 24, 2024), https://www.jurist.org/commentary/2024/07/unhealed-wounds-the-yazidi-genocides-lasting-impact-and-the-need-for-international-response/. (highlighting that "Yazidi survivors and advocates have called for an international tribunal to be established, but their pleas have largely gone unanswered by the international community."). The UN Commission of Inquiry also recommended the creation of an ad hoc tribunal. *See* Rep. of the Hum. Rts. Council, *supra* note 23, ¶ 207(a).

111. *See* THE WEEK, *supra* note 84, ("We have shared our stories but even then, they have not done anything for us"); *see also* Pierre Sagnier, *Haunted by Genocide, Displaced Yazidis Demand Justice*, FAIR PLANET (June 15, 2022), https://www.fairplanet.org/story/haunted-by-genocide-displaced-yazidis-demand-justice/ ("It's very hard to bring survivors forward to testify because they have been interviewed so many times, telling their stories so many times to different organizations, journalists and the commission and there's no result . . . . That makes them tired, that makes them lose the hope and at some point can be re-traumatizing.").

112. *Nadia Murad's Statement on the 10th Anniversary of the Yazidi Genocide*, *supra* note 110.

Perhaps as a response to the overwhelming call from survivors, in 2021, the Kurdistan Regional Government (KRG) introduced a draft bill titled "Special Criminal Court Law on ISIS Crimes in the Kurdistan Region—Iraq" intended to prosecute ISIS militants for crimes of genocide, crimes against humanity, and war crimes in the Kurdistan Region of Iraq (KRI).[113] Indeed, international hybrid courts are designed to address specific atrocities and facilitate the prosecution of the crimes within a local context,[114] as seen by the Extraordinary Chambers in the Courts of Cambodia (ECCC) and the Special Court for Sierra Leone (SCSL).[115] Such a mechanism has the potential not only to "cultivat[e] local ownership" of the justice process—given its proximity to victims—but also to foster awareness of the unlawfulness of the violent acts within the territorial context where they first occurred.[116]

Despite the glimmer of hope for justice provided by the push for a special criminal court in the KRI, the Federal Supreme Court of Iraq rejected the proposal,[117] citing how the state's constitution strictly prohibits the establishment of a "special or extraordinary court" within its territory.[118] However, given that the draft bill was proposed by the KRG during Iraq's election year,[119] its timing raises suspicions about whether

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113. *KRG Advocates for Justice at the Hague and Calls for Accountability in ISIS Crimes Against Yazidis*, KURDISTAN REG'L GOV'T (Sep. 21, 2024), https://gov.krd/ocia-en/activities/news-and-press-releases/2024/september/krg-advocates-for-justice-at-the-hague-and-calls-for-accountability-in-isis-crimes-against-yazidis/.

114. McIntosh, *supra* note 50, at 38; *see also* Laura A. Dickinson, *The Promise of Hybrid Courts*, 97 AM. J. INT'L L. 295 (2003) ("Such courts are "hybrid" because both the institutional apparatus and the applicable law consist of a blend of the international and the domestic. Foreign judges sit alongside their domestic counterparts to try cases prosecuted and defended by teams of local lawyers working with those from other countries. The judges apply domestic law that has been reformed to accord with international standards.").

115. INTERNATIONAL CRIMINAL LAW SERVICES, INTERNATIONAL, HYBRID, AND NATIONAL COURTS TRYING INTERNATIONAL CRIMES, at 15-16 (ebook).

116. JANE STROMSETH, DAVID WIPPMAN & ROSA BROOKS, CAN MIGHT MAKE RIGHTS? BUILDING THE RULE OF LAW AFTER MILITARY INTERVENTIONS 249, 275 (2012); *see also* ELENA NAUGHTON, COMMITTING TO JUSTICE FOR SERIOUS HUMAN RIGHTS VIOLATIONS, at 79 (2018) ("Because many hybrid tribunals are located in the country where the crimes occurred, they can provide greater proximity to victims and increase the chances for national ownership of these processes.").

117. Khazan Jangiz, *Iraq Rejects Kurdish Attempts to Establish Court for ISIS Crimes*, GENOCIDE WATCH (June 27, 2021), https://www.genocidewatch.com/single-post/iraq-rejects-kurdish-attempts-to-establish-court-for-isis-crimes.

118. Article 95, Dustūr Jumh. ūrīyat al-'Irāq [The Constitution of the Republic of Iraq] of 2005.

119. *See* Shawn Yuan, *Iraq Announces Final Results of October Parliament Election*, AL JAZEERA (Nov. 30, 2021), https://www.aljazeera.com/news/2021/11/30/iraq-announces-final-results-of-the-october-legislative-election.

the proposal was politically motivated to gain favor with the Yazidi community in light of the broader domestic inaction in securing justice for victims of the genocide, by presenting an appearance of progress despite its likely unconstitutionality. Additionally, Yazda, a Yazidi non-profit organization, raised concerns that few, if any, Yazidi survivors were involved or consulted about the process, or, at the very least, were made aware that such a draft law existed.[120] Proposals for establishing an international tribunal to prosecute ISIS militants—outside of Iraq—have also been circulating.[121] However, little progress has been made in making the idea a reality.[122]

4. The Impasse of State Responsibility for Genocide Before the ICJ

In addition to calling for the individual criminal responsibility of ISIS militants for atrocity crimes committed against the Yazidis, the Yazidi Justice Committee (YJC) has called for the state responsibility of Iraq, Syria, and Turkey for failing to prevent the commission of the genocide against the Yazidis.[123] Notwithstanding the minimal references to a duty to prevent contained within the Convention on the Prevention and Punishment of Genocide,[124] the ICJ confirmed the obligation of prevention in 2007,[125] and later reiterated that state responsibility for

120. *Yazda and a Group of Survivors Discuss the Establishment of a Special Tribunal to Prosecute ISIL Suspects in Iraq*, YAZDA (June 9, 2021), https://www.yazda.org/yazda-and-a-group-of-survivors-discuss-establishing-a-tribunal-to-try-isil-suspects-in-iraq.

121. James Bays, *Netherlands FM Demands International Tribunal to Try ISIL Members*, AL JAZEERA (May 24, 2019), https://www.aljazeera.com/video/2019/5/24/netherlands-fm-demands-international-tribunal-to-try-isil-members.

122. It must be noted that international tribunals have been criticized, in part, for prosecuting only a limited number of defendants and examining crimes within a limited timeframe, which may lead to partial justice, while also being costly endeavors. *See* Stromseth, *supra* note 79, at 90.

123. YAZIDI JUSTICE COMMITTEE, STATE RESPONSIBILITY AND THE GENOCIDE OF THE YAZIDIS, at 1 (Aarif Abraham, Tatyana Eatwell, Aldo Zammit eds., 2022) (eBook).

124. Indeed, the word 'prevent' in reference to a possible duty upon state parties is only mentioned in Article I and Article VIII of the Convention on the Prevention and Punishment of the Crime of Genocide. *See* Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277, S. Exec. Doc. O, 81-1 (1949) [hereinafter Genocide Convention].

125. Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), 2007 I.C.J. 43, ¶ 43 (Feb. 26) ("The obligation to prevent the commission of the crime of genocide is imposed by the Genocide Convention on any State party which, in a given situation, has it in its power to contribute to restraining in any degree the commission of genocide. [T]he obligation to prevent genocide places a State under a duty to act which is not dependent on the certainty that the action to be taken will succeed in preventing the commission of acts of genocide, or even on the likelihood of that outcome.").

genocide extends beyond the act of perpetration itself.[126] To this end, the YJC presented evidence, which the committee believes indicates a failure by the three state parties to the Genocide Convention, including Türkiye to fulfill their obligations to prevent the genocide against the Yazidis.[127] Notably, the former Turkish ambassador to the United Kingdom, Ümit Yalçın, dismissed the allegations against Türkiye as unfounded.[128]

While the likelihood of securing reparations or damages for the Yazidi Genocide is unlikely,[129] Yazidi lawyer Natia Navrouzov emphasizes the fact that the significance of a case before the ICJ lies in holding states accountable for having facilitated or failed to act in response to the crimes committed against the Yazidis.[130] However, as with other avenues of accountability, the path is obstructed by an apparent lack of political will, as it "would require another country to take action" against one—or all—of the countries which the YJC believes have failed to comply with their duty to prevent and to bring proceedings against them before the ICJ.[131]

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126. Application of the Convention on the Prevention and Punishment of Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), 2024 I.C.J. 3, ¶ 33 (Jan. 26) (where the ICJ emphasized that state responsibility for genocide extends beyond mere perpetration of genocide, with "all the States parties to the Convention hav[ing] a common interest to ensure the prevention, suppression, and punishment of genocide").

127. To learn more about the allegations, *see* YAZIDI JUSTICE COMMITTEE, *supra* note 123, at 1-2.

128. The Turkish ambassador stated that:

> starting from the early years of the conflict in Syria [Turkey] played a key role in the protection of Syrian civilians and minorities, including Yazidis, in the region against the attacks and violations of terrorist groups. [. . .] Turkey not only opened its doors and became a safe haven for millions of Syrians and Yazidis but also provided protection for the people of the region through three counter terrorism operations in Syria. Today Yazidis live peacefully in areas that are under the control of the legitimate Syrian opposition in north-western Syria . . . . Moreover, last year many Yazidi families that took refuge in north-western Syria tried to return to their homes in Syria's north-east but [were] prevented from doing so by PKK/YPG [the initials of the Kurdish groups in Turkey and Syria].

Patrick Wintour, *Turkey Should Face International Court over Yazidi Genocide*, THE GUARDIAN (July 5, 2022), https://www.theguardian.com/law/2022/jul/05/turkey-should-face-international-court-over-yazidi-genocide-report-says-helena-kennedy.

129. *See* William A. Schabas, *Genocide and the International Court of Justice: Finally, a Duty to Prevent the Crime of Crimes*, GENOCIDE STUD. AND PREVENTION: AN INT'L J. 101, 115 (2007).

130. Jennifer Venis, *Report Calls for ICJ Case over State Failures to Prevent Yazidi Genocide*, INT'L BAR ASS'N. (Sep. 21, 2022), https://www.ibanet.org/War-crimes-Report-calls-for-ICJ-case-over-state-failures-to-prevent-Yazidi-genocide.

131. Patrick Wintour, *UK Lawyers Gather Evidence for Action Against Countries over Yazidi Genocide*, THE GUARDIAN (June 21, 2022, 1:00 AM), https://www.theguardian.com/law/

III. THE PRINCIPLE OF UNIVERSAL JURISDICTION: "SPARKS OF ACCOUNTABILITY,"[132] WITH LIMITATIONS

While international criminal justice is theoretically "multi-tiered, with multiple co-existing centres of gravity,"[133] in practice, the Yazidi community faces significant barriers to accessing justice for the international crimes committed against them. Consequently, the principle of UJ—often regarded as the "tool of last resort"—has been increasingly utilized to bridge the apparent accountability gap.[134]

A. Overview of the Principle of Universal Jurisdiction

Despite tracing its lineage to the prosecution of piracy and the slave trade in the seventeenth century,[135] the use of UJ has surged significantly over the past two decades in the context of especially egregious crimes of international law.[136] Indeed, UJ has been increasingly invoked to pursue accountability for atrocity crimes,[137] particularly in cases where traditional avenues of justice, as outlined earlier, are unavailable.[138] Broadly speaking, under the principle of UJ:

2022/jun/21/uk-lawyers-yazidi-justice-committee-genocide-iraq; Genocide Convention, art. IX ("Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.").

132. Venis, *supra* note 9.

133. *Id*.

134. *Id*. (Citing a Canada-based international lawyer, Amanda Ghahremani: "The reason for the surge of UJ statutes over the last 20 years is because countries were fulfilling their obligations under the Rome Statute [of the ICC] to end impunity for these crimes. So if there is no prosecution where the crime occurred, and if the [ICC] cannot prosecute either, then countries with UJ have a responsibility to do so."). *See also* Kristen Lavery, Legislation Factsheet: Prosecution of Mass Atrocity Crimes, 3 (July 2019) ("States are also increasingly passing laws that empower their courts to exercise universal jurisdiction, particularly when the states with connections to the mass atrocity crimes are unwilling or unable to hold perpetrators accountable.").

135. ABA SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE, *Universal Jurisdiction Its Successes, Failures and Opportunities to Hold Perpetrators of Human Rights*, at 5:30-5:49 (YouTube, Oct. 2, 2019), https://www.youtube.com/watch?v=CNsDRl86vhc.

136. Venis, *supra* note 9.

137. Hayley Evans, *A Survey of Recent Developments and Trends in Universal Jurisdiction*, LAWFARE MEDIA (Feb. 9, 2022, 1:36 PM), https://www.lawfaremedia.org/article/survey-recent-developments-and-trends-universal-jurisdiction.

138. Brianne McGonigle Leyh, *Using Strategic Litigation and Universal Jurisdiction to Advance Accountability for Serious International Crimes*, 16 INT'L J. TRANSNAT'L JUST. 363 (2022) ("Largely in response to the inherent limitations and shortcomings of traditional international criminal law infrastructures, including the budgetary constraints and jurisdiction of the [ICC].").

> a state may establish and exercise jurisdiction over certain grave crimes condemned by the global community as a whole, regardless of where those crimes were committed, or whether they have damaged that state's vital interests, and regardless of the nationality of the perpetrators or victims.[139]

Thus, the jurisdictional claim is based on the nature of the crime,[140] emphasizing that no safe haven should be afforded to *hostis humani generis*—the enemies of mankind—given the gravity of offenses,[141] such as genocide, crimes against humanity, war crimes, and torture.[142]

The growing corpus of UJ cases is intimately linked to states' incorporation of the principle into their domestic legislation.[143] The rationale for the growth in UJ cases has been, in part, attributed to states' adoption of so-called ICC implementing statutes to exercise jurisdiction

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139. DAVID LUBAN, JULIE R. O'SULLIVAN, DAVID P. STEWART & NEHA JAIN, INTERNATIONAL AND TRANSNATIONAL CRIMINAL LAW 171 (4th ed., 2023). It must, however, be noted that Judge ad hoc Van den Wyngaert noted that "[t]here is no generally accepted definition of universal jurisdiction in conventional or customary international law . . . . Much has been written in legal doctrine about universal jurisdiction. Many views exist as to its legal meaning and its legal status under international law." *See* Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.), 2002 I.C.J. 3, ¶ [PARA] (Feb. 4) (dissenting opinion by Van Den Wynaert, J.).

140. Máximo Langer, *The Archipelago and The Hub: Universal Jurisdiction and the International Criminal Court*, *in* THE FIRST GLOBAL PROSECUTOR: PROMISE AND CONSTRAINTS (Martha Minow & Alex Whiting eds., 2015); *see also* Karin M. Frodé, *Universal Jurisdiction as International Solidarity with Survivors of Atrocity Crimes: Lessons from Afghanistan's Diaspora*, 22 J. INT'L CRIM. JUST. 463, 464 (2024) ("[C]ertain crimes are an affront to humanity as a whole and should therefore be investigated and prosecuted by forum states regardless of the territory where the conduct took place and the nationalities of the actors involved"); *see also* Stephen Macedo, *Introduction, in* UNIVERSAL JURISDICTION: NATIONAL COURTS AND THE PROSECUTION OF SERIOUS CRIMES UNDER INTERNATIONAL LAW 4 (Stephen Macedo ed., 2004) ("Universal jurisdiction is the principle that certain crimes are so heinous, and so universally recognized and abhorred, that a state is entitled or even obliged to undertake legal proceedings without regard to where the crime was committed or the nationality of the perpetrators or the victims").

141. *Universal Jurisdiction*, CTR. FOR JUST. AND ACCOUNTABILITY, https://cja.org/what-we-do/litigation/legal-strategy/universal-jurisdiction/.

142. Frodé, *supra* note 140, at 465 ("The use of UJ tends to be reserved for the most serious of international crimes, including atrocity crimes (genocide, crimes against humanity, and war crimes) and, arguably, torture as a standalone crime."). *See also* MARY ROBINSON, UNIVERSAL JURISDICTION: NATIONAL COURTS AND THE PROSECUTION OF SERIOUS CRIMES UNDER INTERNATIONAL LAW 16 (Stephen Macedo ed., 2004) ("The principle of universal jurisdiction is based on the notion that certain crimes are so harmful to the international interests that states are entitled—and even obliged—to bring proceedings against the perpetrator, regardless of the location of the crime or the nationality of the perpetrator or the victim. Human rights abuses widely considered to be subject to universal jurisdiction include genocide, crimes against humanity, war crimes and torture.").

143. Yvonne M. Dutton, *Prosecuting Atrocities Committed in Ukraine: A New Era for Universal Jurisdiction?*, 55 CASE W. RES. J. INT'L L. 391, 400 (2023).

over international crimes.[144] The principle was adopted by countries such as Germany,[145] the Netherlands,[146] and Sweden,[147] where the trials based on UJ have taken place in the context of the 2014 Yazidi Genocide.

B. Universal Jurisdiction Cases on the 2014 Yazidi Genocide

The use of UJ serves to promote accountability where it might otherwise be absent.[148] The first conviction for the crime of genocide against the Yazidis on the basis of UJ occurred in Germany.[149] An Iraqi national, Taha al-J., was found guilty of enslaving and abusing a five-year-old girl, Reda, and her mother, Nora B., which later resulted in the girl's death "after Taha tied her with a cable outdoors to the bars of the window and left her in the scorching heat of up to 51 degrees Celsius as a punishment for wetting the bed."[150] Since then, Germany has led the way in prosecuting perpetrators for crimes committed during the 2014 Yazidi Genocide.[151] More recently, the German prosecutors have indicted

144. Heidi R. Gilchrist, *No Hiding from Justice: Universal Jurisdiction in Domestic Courts*, 55 TEX. INT'L L.J. 215, 218.

145. *See* HUM. RTS. WATCH, THE LEGAL FRAMEWORK FOR UNIVERSAL JURISDICTION IN GERMANY 1 (2014) ("The Code of Crimes against International Law (CCAIL), which came into force on June 30, 2002, gives German courts universal jurisdiction over genocide.").

146. *See* OPEN SOCIETY FOUNDATIONS, UNIVERSAL JURISDICTION LAW AND PRACTICE IN THE NETHERLANDS 4 (2019) ("In the Netherlands, the international provisions relating to international crimes and international humanitarian law have been domesticated in the Dutch 2003 International Crimes Act (Wet Internationale Misdrijven—ICA) of 19 June 2003.").

147. *See* OPEN SOCIETY FOUNDATION, UNIVERSAL JURISDICTION LAW AND PRACTICE IN SWEDEN 4 (2020) ("[T]he Swedish Act on Criminal Responsibility for Genocide, a new law codifying the Rome Statute was incorporated into Swedish law through the Swedish Act on Criminal Responsibility for Genocide, Crimes Against Humanity and War Crimes (Universal Crimes Act or UCA).").

148. UNITED NATIONS HUM. RTS. OFF. HIGH COMM'R (SEOUL), *What Is Universal Jurisdiction?* 2 (2022), https://seoul.ohchr.org/sites/default/files/2022-10/09_What%20is%20Universal%20Jurisdiction_formatting_FIN_ENG.pdf. *See also* Varney & Zduńczyk, *supra* note 2, at 1 ("Recourse to universal jurisdiction as a justice mechanism for victims of international crimes has become increasingly popular in recent years. This is especially so given the small appetite for criminal accountability in countries where violations take place and given the considerable shortfalls of the international justice system. Although universal jurisdiction faces serious challenges at the conceptual, legal, political, and practical levels, it often remains the only avenue for victims to pursue justice and address the "impunity gap.""").

149. *See* Venis, *supra* note 9.

150. *German Federal Court of Justice Confirms the First-Ever Conviction of an ISIS Member for Genocide*, DOUGHTY ST. CHAMBERS, (Jan. 23, 2026), https://www.doughtystreet.co.uk/news/german-federal-court-justice-confirms-first-ever-conviction-isis-member-genocide.

151. *See* Gurgen Petrossian, *Germany's Pursuit of International Criminal Justice Through Universal Jurisdiction*, 27(8) AM. SOC'Y INT'L L., at 1, 1 (Sep. 20, 2023), https://www.asil.org/insights/volume/27/issue/8.

and convicted two Iraqi nationals, Twana H. S.[152] and Asia R. A.,[153] for their respective roles in the genocidal campaign perpetrated by ISIS against the Yazidis.[154] The couple was accused of purchasing two Yazidi girls, aged five and twelve, and subjecting them to repeated acts of sexual violence.[155] The trial, which began in May 2025 and concluded in July 2026,[156] marks yet another case of German courts' investigation and prosecution of international offenses under Germany's domestic universal jurisdiction statute.

To make this possible, Germany, which is now home to the largest Yazidi diaspora,[157] has adopted extensive legislative measures allowing German prosecutors to exercise UJ under its domestic criminal code.[158] The significance of the judgements cannot be overstated, as "[t]he

152. INTERNATIONAL CENTRE FOR COUNTER TERRORISM, *Case: Twana H. S.* (2025), https://interlinkagesdatabase.icct.nl/case/twana-h-s.

153. INTERNATIONAL CENTRE FOR COUNTER TERRORISM, *Case: Asia R. A.* (2025), https://interlinkagesdatabase.icct.nl/case/asia-r-a.

154. *Indictment Filed Against Two Suspected Members of the Foreign Terrorist Organisation 'Islamic State (IS)' on Counts of Genocide, Crimes Against Humanity and War Crimes*, DER GENERALBUNDESANWALT BEIM BUNDESGERICHTSHOF (Dec. 30, 2024), https://www.generalbundesanwalt.de/SharedDocs/Pressemitteilungen/EN/2024/Pressemitteilung-vom-30-12-2024-2-engl.html.

155. *See Germany: Iraqi Couple Accused of Abusing Yazidi Girls*, DEUTSCHE WELLE (Dec. 30, 2024), https://www.dw.com/en/germany-iraqi-couple-accused-of-abusing-yazidi-girls/a-71186224; *see also Two Arrests on Suspicion of Genocide, Crimes Against Humanity and War Crimes as well as Membership in the Foreign Terrorist Organisation 'Islamic State' (IS)*, DER GENERALBUNDESANSWALT BEIM BUNDESGERICHTSHOF (Apr. 10, 2024), https://www.generalbundesanwalt.de/SharedDocs/Pressemitteilungen/EN/2024/Pressemitteilung-vom-10-04-2024-Engl.html ("Twana H. S. and Asia R. A. were married according to Islamic law and were members of [ISIS] in Iraq and Syria between October 2015 and December 2017. They held a then five-year-old Yazidi girl as a slave since no later than late 2015. Since October 2017, they enslaved a then twelve-year-old Yazidi girl as well. Twana H. S. repeatedly raped both children.").

156. *See Inside the Twana H.S. and Asia R.A. Trial #01: Genocide Charges at Trial: The First Day in Munich*, SYRIA JUST. AND ACCOUNTABILITY CTR. (July 16, 2025), https://syriaaccountability.org/inside-the-twana-h-s-and-asia-r-a-trial-01-genocide-charges-at-trial-the-first-day-in-munich/. *See also UPDATE: Munich Court delivers Verdict against Asia R.A. and Twana H.S. for Genocide, Crimes Against Humanity, and War Crimes Against Two Yazidi Girls*, *supra* note 15.

157. Sefik Tagay et al., *The 2014 Yazidi Genocide and Its Effect on Yazidi Diaspora*, 390 THE LANCET 1946, 1946 (2017).

158. *See* Permanent Mission of the Federal Republic of Germany to the United Nations, *Statement by the Federal Republic of Germany at the Sixth Committee on "The Scope and Application of the Principle of Universal Jurisdiction", October 2021* (2021), https://www.un.org/en/ga/sixth/76/pdfs/statements/universal_jurisdiction/15mtg_germany.pdf ("German prosecutors can exercise universal jurisdiction under the Code for Crimes against International Law (Völkerstrafgesetzbuch—VStGB). Investigations and prosecutions can be initiated into genocide (§ 6 VStGB), crimes against humanity (§ 7 VStGB) and war crimes (§§ 8-12 VStGB).").

genocide of the Yazidi has already been recognized by international bodies like the UN and the European Parliament as well as other national parliaments. But for a court of law to legally define the crimes ISIS committed against the Yazidi people as genocide is a 'first.'"[159] Following the German court's decision in *Taha al-J.,* other European countries have since followed charges of their own, including Sweden[160] and the Netherlands.[161] However, upon closer inspection of the proceedings, there is an apparent gap between the victimized community and the proceedings brought under UJ that seeks justice for the Yazidi Genocide.

IV. STRENGTHENING THE PRINCIPLE UNIVERSAL JURISDICTION FOR THE YAZIDI DIASPORA

Despite being hailed as a tool in the fight against impunity for international crimes,[162] states that have utilized the principle of UJ to bring justice to the Yazidis have largely made little effort to make the proceedings accessible to the broader victimized community.[163] With a reluctance to provide simultaneous translations, a historic lack of weblinks or court recordings to view the proceedings beyond the courtroom, and minimal outreach to ensure that communities are aware of the trials, the principle of UJ risks failing to provide either meaningful justice to victims or an effective deterrent for the international community as a whole. The proceedings must be brought closer to victimized communities: "[w]hen trials take place far from home and in a foreign

159. *German Court Hands Down First Genocide Conviction Against ISIS Member*, DOUGHTY ST. CHAMBERS (Nov. 30, 2021), https://www.doughtystreet.co.uk/news/german-court-hands-down-first-genocide-conviction-against-isis-member.

160. *See* Elin Hofverberg, *Sweden: Woman Convicted of International Crimes Against Yazidis in Syria and Iraq*, L. LIBR. CONG. (Mar. 17, 2025), https://www.loc.gov/item/global-legal-monitor/2025-03-17/sweden-woman-convicted-for-international-crimes-against-yazidis-in-syria-and-iraq/ [https://web.archive.org/web/20250322225458/https:/www.loc.gov/item/global-legal-monitor/2025-03-17/sweden-woman-convicted-for-international-crimes-against-yazidis-in-syria-and-iraq/] ("On February 11, 2025, the District Court in Stockholm announced that it had found Lina Ishaq guilty of genocide, crimes against humanity, and gross war crimes for her actions in Syria as a member of the jihadist Islamic State (IS) group.").

161. *See* Margherita Capacci, *"IS Saw the Yazidis as Objects, Not People"*, JUST. INFO (Oct. 22, 2024), https://www.justiceinfo.net/en/137381-is-saw-the-yazidis-as-objects-not-people.html [hereinafter *IS Saw the Yazidis as Objects, Not People*].

162. *See* Jan De Gols & Vaios Koutroulis, *A New Tool in the Fight Against Impunity for Core International Crimes*, LIEBER INST. W. POINT: ARTICLES OF WAR (Mar. 10, 2025), https://lieber.westpoint.edu/new-tool-fight-impunity-core-international-crimes/.

163. Máximo Langer & Mackenzie Eason, *The Quiet Expansion of Universal Jurisdiction*, 30 EUR. J. OF INT'L L. 779, 809 (2019).

legal system, it is imperative that resources are allocated to make [. . .] victim participation a reality."[164]

A. The Necessary Universality of the Principle of Universal Jurisdiction

As Stephen Macedo points out, UJ "holds the promise of a system of global accountability—justice without borders—administered by the competent courts of all nations on behalf of humankind."[165] However, for UJ to serve as an effective deterrent against crimes that harm the international community as a whole,[166] it is crucial to strengthen the connection between the forum state and the affected community. Such a sentiment was also articulated by a journalist who covered the Syrian trials in Germany: "These cases concern the international community as a whole and not just the people from the country where the crimes happened. How can courts claim that and yet make the trial completely inaccessible to people who do not speak German? It is such a contradiction."[167]

The need for accessibility and visibility is rooted in the fact that "the whole concept of access to justice is not just about getting justice itself but it is about making sure that victims and communities [are] able to witness justice being delivered."[168] Without adequate measures in place to mitigate the remoteness of the trials from the affected communities, the effects of the justice achieved may be diminished.[169] Past UJ cases make

164. Fritz Streiff & Hope Rikkelman, *Syrian Regime Crimes on Trial in the Netherlands*, JUST SEC. (Nov. 22, 2023), https://www.justsecurity.org/90225/syrian-regime-crimes-on-trial-in-the-netherlands/.

165. Macedo, *supra* note 140; *see also* R. A. Duff, *Authority and Responsibility in International Criminal Law*, *in* THE PHILOSOPHY OF INTERNATIONAL LAW 601 (Samantha Besson & John Tasioulas eds., 2010) ("Some kinds of wrong should concern us, are properly our business, in virtue of our shared humanity with their victims (and perpetrators): for such wrongs the perpetrators must answer not just to their local communities, but to humanity.").

166. Edward Hodgson, *Universal Jurisdiction and Strengthening Accountability for International Crimes in England and Wales*, CORKER BINNING (Dec. 14, 2023), https://corkerbinning.com/universal-jurisdiction-and-strengthening-accountability-for-international-crimes-in-england-and-wales/.

167. Capacci, *Syrian Trials Translated into Arabic*, *supra* note 11.

168. *Id*.

169. Aboueldahab & Langmack, *supra* note 1, at 21 ("Universal jurisdiction trials are far from an ideal tool when viewed from a transitional justice perspective. Their remoteness from the society concerned limits the effects they can have. This remoteness is not only geographical, but often also concerns cultural and language barriers. It is compounded by the fact that not the society concerned drives the process—although members can be heavily involved—but a foreign justice system.").

clear that several structural barriers impeded the achievement of more meaningful justice for the affected communities.

B. Measures to Strengthen the Principle of Universal Jurisdiction

1. Translations Would Bridge the Language Gap Between Host Countries and the Yazidi Diaspora

Past court proceedings based on the principle of UJ have demonstrated a reluctance to translate the trials to the language of affected communities. For example, during the trial of Taha al-J. in Germany, there was no simultaneous interpretation available for attendees who came to watch the trial in the public gallery,[170] leaving the members of the German Yazidi diaspora who were in attendance to rely on each other to interpret and communicate the court proceedings.[171]

Notably, the insufficient nexus between the justice process and the victimized community due to the language barrier is not unique to the Yazidis. A similar experience was reported when the German court sought to be the first to address the state-sponsored torture in Syria in 2021 but largely failed "to meet the needs of the Syrian population for information and justice."[172] With reference to a law stipulating that "[t]he language of the Court shall be German,"[173] the court struck down any requests for public translations.[174] Additionally, no electronic devices for private translations were allowed in the public gallery.[175] Thus, while individual victims who had the opportunity to participate directly in the proceedings received translations,[176] the broader victimized community experienced a significant informational gap.

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170. Thomas Becker et al., *Will Victims' Rights Be Lost in Translation? Bridging the Information Gap in Universal Jurisdiction Cases*, 38 UTRECHT J. INT. EUR. L. 39, 49 (2023).

171. Pia Marie Siebert, *Genocide Against the Yazidis—Accountability Before German Courts?*, JUNGE WISSENSCHAFT IM ÖFFENTLICHEN RECHT (June 16, 2021), https://www.juwiss.de/64-2021/.

172. Becker et al., *supra* note 170.

173. Gerichtsverfassungsgesetz (GVG) [Courts Constitution Act], (Sep. 9, 1975) BGBL I at 1077, § 184 (Ger.): "The language of the court shall be German." *See* Aboueldahab & Langmack, *supra* note 1, at 27.

174. Aboueldahab & Langmack, *supra* note 1, at 27-28.

175. *Id*. at 27.

176. Becker et al., *supra* note 170 ("Unless a victim is participating in the trials as a Nebenkl. . .ger, they do not have access to simultaneous German- Arabic interpretation; even then, interpretation is limited to the necessary exercise of a Nebenkläger's rights. Victims participating as witnesses also have access to interpretation insofar as that is necessary for their testimony in accordance with German law. Otherwise, simultaneous interpretation is not available to the public gallery. This makes it difficult for Arabic-speaking victims to follow the trials.").

Despite the trial drawing "strong attention from Syrian civil society and media," the court made little effort to ensure that the affected community could adequately follow the proceedings that were exclusively in German.[177] Indeed, even after the conclusion of the trial, German courts left most, if not all, documents related to the trials pertaining to the crimes in Syria untranslated, including court news releases and written verdicts.[178] To combat the inaccessibility of the proceedings for broader victim communities, civil society organizations have taken it upon themselves to provide translations for affected communities. For example, Nadia's Initiative and Yazda have published updates on convictions related to the mass atrocities committed against the Yazidi community in Iraq in both English and Arabic on their websites.[179]

Nonetheless, the apparent language barriers in UJ cases may limit the impact of the proceedings beyond the country where the trial is conducted. Indeed, without accurately translated information, "victims and affected communities risk the loss of a genuine connection to the trials."[180] As one Syrian journalist noted, "It struck me that every time I spoke to someone inside the country—and often Syrians outside the country—almost none of them knew there was a trial happening in [Germany]."[181]

Recognizing that some spectators may not be sufficiently proficient in the language of the host country where the UJ proceedings are taking place, the Hague District Court has introduced online simultaneous interpretation of proceedings.[182] Such an initiative marks a positive

177. Aboueldahab & Langmack, *supra* note 1, at 27.

178. Drake Lucas, *Germany Should Translate Trials on Syria into Arabic*, HUM. RTS. WATCH (Jan. 13, 2022), https://www.hrw.org/news/2022/01/13/germany-should-translate-trials-syria-arabic.

179. *Statement by Nadia Murad and Amal Clooney on First ISIS Conviction for Genocide*, NADIA'S INITIATIVE (Nov. 30, 2022), https://www.nadiasinitiative.org/news/nadia-murad-and-amal-clooney-joint-statement-of-genocide-conviction-of-isis-perpetrator; *see also Highest German Court Confirms Sentence in the First Trial Ever Against an ISIS Member for Crimes Against Yazidi Victims*, YAZDA (Apr. 5, 2024), https://www.yazda.org/highest-german-court-confirms-sentence-in-the-first-trial-ever-against-an-isis-member-for-crimes-against-yazidi-victims.

180. Becker et al., *supra* note 170.

181. Charlotte Bailey, *Syrian War Crimes on Trial in Germany: Will Justice Be Lost in Translation?*, THE NEW HUMANITARIAN (Oct. 21, 2021), https://www.thenewhumanitarian.org/2021/10/21/syrian-war-crimes-trial-germany-will-justice-be-lost-translation.

182. Capacci, *Syrian Trials Translated into Arabic*, *supra* note 11 ("Before the Hague District Court [in the case of Mustafa A. from 2024], journalists and members of the Syrian community followed the two hearing days and the judgement in person, with headsets and live

development toward efforts to make such trials more accessible. Notably, Germany has since followed suit, passing a law aimed at addressing the language barrier.[183] Still, as a lawyer who represents victims in UJ proceedings noted, the legislation is merely permissive, leaving the final decision as to whether the proceedings should be translated up to the judge.[184] It is thus imperative that judges recognize the value of facilitating access to translation in such proceedings, especially since Germany has been able to do so in the past.[185]

2. Access to Legal Proceedings Beyond the Courtroom Should Be Provided Through Web Links and Court Recordings

In addition to a lack of translations—a practice which appears to at least be moving in a positive direction—another obstacle in making UJ accessible to victim communities has been the lack of recordings or live links to allow those outside of the courtroom to view decisions that acknowledge their communities' suffering. Indeed, in Germany, despite being permissible under its laws, court recordings are not frequently used.[186] Instead, courts have erred on the side of caution in protecting the rights of defendants by not allowing recordings to take place, despite the often-historic significance of such decisions for people unable to attend the proceedings.[187]

Such a practice, however, should not be the norm. As seen in the Netherlands, there have been efforts to counteract the inaccessibility by

interpretation from Dutch to Arabic and vice versa"). *See also* Streiff & Rikkelman, *supra* note 164 ("observing that [in a 2023 case in the Netherlands involving a Syrian man accused of committing war crimes and crimes against humanity during the Syrian civil war, brought under the principle of UJ], the Dutch authorities have undertaken commendable efforts to provide simultaneous in-court translation from Dutch to Arabic and vice versa to those attending the trial in the public gallery. This seemingly simple, yet practical, solution offers increased access to justice for trial visitors who do not understand the local language and cannot be taken for granted.").

183. Hannah El-Hitami, *Trial and Error: Germany Reforms Its Law on International Crimes*, JUST. INFO (July 8, 2024), https://www.justiceinfo.net/en/134034-trial-and-error-germany-reforms-its-law-on-international-crimes.html.

184. *Id*.

185. Aboueldahab & Langmack, *supra* note 1, at 28.

186. *See* Alexander Dünkelsbühler, *Universal Jurisdiction Without Universal Outreach?*, VÖLKERRECHTSBLOG (July 8, 2024), https://voelkerrechtsblog.org/universal-jurisdiction-without-universal-outreach/ ("theoretically possible under §169(2) of the German Courts Constitution Act (GVG) 'for academic or historical purposes if the relevant proceedings are of paramount significance are of paramount significance for the contemporary history of the Federal Republic of Germany.'").

187. Aboueldahab & Langmack, *supra* note 1, at 29.

recognizing that a weakened nexus between the trial and victim communities may jeopardize the positive effects of the proceedings. For example, the Netherlands has previously provided interested onlookers with a web link for a live stream of the proceedings.[188] Notably, the Syrian community who were either living in exile or unable to attend the proceedings responded positively to the ability to be able to spectate remotely in real time.[189] Notably, given the Netherlands's initiative to provide online access to the trial of Hasna A.,[190] Yazda hosted public screenings at three universities across Iraq's Kurdistan region.[191] Such an initiative underscores the Hague Office of the Prosecutor's recognition that "justice is not just about the verdict itself but about access to the case."[192]

3. Outreach Should Bring Justice Closer to Affected Communities

The necessity of outreach efforts aimed at raising awareness and maintaining close communication with affected communities is crucial to assure survivors that accountability is pursued—even if thousands of miles away.[193] However, "[u]nless [civil society does] outreach, survivors often just don't know it's happening, or they have misinformation."[194] Within the international criminal justice system, outreach programs are not uncommon, as various justice mechanisms (whether international courts,[195] hybrid tribunals,[196] or truth commissions)[197] have sought to implement some form of outreach strategy within their mandate. For

188. Streiff & Rikkelman, *supra* note 164.

189. Capacci, *Syrian Trials Translated into Arabic*, *supra* note 11.

190. To learn more about the Hasna A. Trial, *see The Hasna A. Trial—The Beginning of a Landmark Case in the Netherlands for Crimes Committed by a Dutch National Against Yazidi Women*, YAZDA (Oct. 18, 2024), https://www.yazda.org/the-hasna-a-trial-the-beginning-of-a-landmark-case-in-the-netherlands-for-crimes-committed-by-a-dutch-national-against-yazidi-women.

191. *A Dutch Court Hands down Historic Verdict and Convicts an ISIL Member for Crimes Against Yazidis in Landmark Case in Netherlands*, YAZDA (Dec. 11, 2024), https://www.yazda.org/a-dutch-court-hands-down-historic-verdict-convicts-an-isil-member-for-crimes-against-yazidis-in-landmark-case-in-netherlands.

192. *IS Saw the Yazidis as Objects, Not People*, *supra* note 161.

193. Frodé, *supra* note 140, at 473.

194. Venis, *supra* note 9.

195. On outreach by the International Criminal Tribunal for Rwanda, *see* Adama Dieng, *Capacity-Building Efforts of the ICTR: A Different Kind of Legacy*, 9 NW. J. INT'L. HUM. RTS. 403, 407 (2011).

196. *See* Aaron Fichtelberg, *Outreach at the Hybrid Tribunals: The Cases of the Sierra Leone and Cambodia*, 6 J. GLOB. JUST. PUB. POL'Y 33, (2020).

197. *See* Stromseth et al., *supra* note 79, at 285-259.

example, in the first UJ case in Africa,[198] the proceedings against former Chadian president Hissène Habré before the Extraordinary African Chambers in Senegal were accompanied by commendable efforts to bring the case closer to victim communities in Chad. The proceedings were recorded, live-streamed, and broadcasted in Chad, with all sessions available online.[199] Additionally, the Chamber allocated a budget for an outreach program to be carried out by third parties,[200] with initiatives such as public debates, websites explaining the proceedings, and the organization of a public forum for Chadians.[201]

Thus, while live streams and translations of the proceedings made available to the Yazidi community could be one way of bridging the gap between them and the proceedings, additional measures could be taken to provide further information on the work of the various courts in seeking justice on behalf of the Yazidi community. For example, in 2019,[202] Yazda launched the Yazidi Survivors Network—a platform for survivors of the genocide, whether located in Iraq or elsewhere—to come together, express their needs in the healing process, and gain an understanding of the justice mechanisms currently in place.[203] Notably, the Netherlands has funded a similar initiative through its partnership with Yazda, aimed at increasing survivors' understanding of justice and accountability processes at both the national and international level.[204] Similarly, an event facilitated by Justice Rapid Response, Yazda, and the Clooney

198. *Hissene Habre Verdict: Landmark Decision Brings Justice for Tens of Thousands of Victims*, AMNESTY INT'L (May 30, 2016), https://www.amnesty.org/en/latest/press-release/2016/05/hissene-habre-verdict-landmark-decision-brings-justice-for-tens-of-thousands-of-victims/.

199. *Q&A: The Case of Hissène Habré Before the Extraordinary African Chambers in Senegal*, HUM. RTS. WATCH (May 3, 2016), https://www.hrw.org/news/2016/05/03/qa-case-hissene-habre-extraordinary-african-chambers-senegal.

200. Reed Brody, *Bringing a Dictator to Justice: The Case of Hissène Habré*, 13 J. INT'L CRIM. JUST. 209, 215 (2015).

201. REED BRODY, VICTIMS BRING A DICTATOR TO JUSTICE THE CASE OF HISSÈNE HABRÉ 18 (2d ed. 2017) https://www.brot-fuer-die-welt.de/fileadmin/mediapool/2_Downloads/Fachinformationen/Analyse/Analysis70-The_Habre_Case.pdf.

202. Natia Navrouzov & Lynn Zovighian, *10 Years into Genocide, Yazidi Survivors Continue to Demand Their Rights,* NEW HUMANITARIAN (Aug. 5, 2024), https://www.thenewhumanitarian.org/opinion/2024/08/05/10-years-genocide-yazidi-survivors-continue-demand-their-rights.

203. *Yazda Launches the Yazidi Survivors Network (YSN) to Advocate for the Rights of Survivors and Vulnerable Communities in Iraq and Syria*, YAZDA (Feb. 3, 2020), https://www.yazda.org/yazda-launches-the-yazidi-survivors-network-to-advocate-for-the-rights-of-survivors.

204. *See Yazda and the Kingdom of the Netherlands Partner to Assist Yazidi Survivors of Sexual and Gender-Based Violence in Dohuk Province, Kurdistan Region of Iraq (KRI)*, YAZDA (Jan. 23, 2020), https://www.yazda.org/yazda-the-kingdom-of-the-netherlands-partner-to-assist-yazidi-survivors-in-kurdistan-region-iraq.

Foundation for Justice brought together a limited number of survivors and representatives from the United Nations to discuss what steps must be taken to ensure justice for the Yazidi community.[205]

With these blueprints already available, states currently pursuing justice for the Yazidi community through UJ can not only provide funding for such efforts but can also host or participate in informational sessions aimed at bridging the inaccessibility gap that has plagued past UJ proceedings and dispelling the perception of some Yazidi survivors that the world has forgotten about them.[206] Another way to bridge the gap between the state where UJ proceedings take place and the affected community is by supporting other transitional justice mechanisms, such as memorialization.[207] For example, the State Government of Baden-Württemberg in Germany supported the creation of a life-sized sculpture inspired by the "first Yazidi survivor to secure justice against an ISIS perpetrator,"[208] unveiled in Stuttgart, Germany.[209] While such a memorialization effort is located outside of where the atrocities took place, it can provide a space for survivors to come together outside of their community in Iraq—especially as Germany is home to the largest Yazidi diaspora[210]—to reflect and heal together around a monument recognizing the genocidal acts committed against their members.[211]

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205. Justice Rapid Response, *Yazda and the Clooney Foundation for Justice are co-Hosting an Innovative and Interactive Event Inviting Guests to an Open Dialogue with Survivors of the Yazidi Genocide*, YAZDA (June 1, 2023), https://www.yazda.org/yazidi-genocide-engaging-with-yazidi-survivors-path-to-justice-en.

206. *See* Lyse Doucet, *Iraq Yazidis: The 'Forgotten' People of an Unforgettable Story*, BBC (Sep. 4, 2018), https://www.bbc.com/news/world-middle-east-45406232.

207. UN Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, ¶ 54, U.N. Doc. S/2004/616, (Aug. 23, 2004).

208. *"Mother and Justice"—Honoring the Resilience of Survivors Worldwide & Mobilizing for Justice and Accountability*, NADIA'S INITIATIVE, https://www.nadias initiative.org/mother-and-justice (last visited Apr. 20, 2025); *see also Nadia Murad Unveils Mother & Justice Memorial Alongside Fellow Survivors*, NADIA'S INITIATIVE (July 5, 2024), https://www.nadiasinitiative.org/news/unveiling-of-the-mother-and-justice-mobile-memorial (the sculpture was inspired by the plaintiff in the case of *Taha al-J.* before the Higher Regional Court of Frankfurt, who is a Yazidi woman who endured enslavement and abuse at the hands of the prosecuted and convicted ISIS militant, who also abused her five-year-old daughter which led to her death).

209. *Ambassador Nadia Murad Unveils Memorial in Germany*, POSTCODE LOTTERY GRP. (July 18, 2024), https://www.postcodelotterygroup.com/news/lottery-news/ambassador-nadia-murad-unveils-memorial-in-germany/.

210. *Germany Recognises Yazidi Massacre by ISIL as 'genocide'*, AL JAZEERA (Jan. 19, 2023), https://www.aljazeera.com/news/2023/1/19/germany-recognises-yazidi-massacre-as-genocide.

211. McIntosh, *supra* note 50, at 16.

V. CONCLUSION

With over a decade passing since the start of the Yazidi Genocide, many survivors continue to call for accountability for the mass atrocities committed against them and their community. However, the pursuit of justice has proven to be an uphill battle. With Iraq's failure to prosecute international crimes committed against its citizens, the limitations of the ICC in its ability to prosecute ISIS militants, and a lack of momentum for the establishment of a special court or the pursuit of state responsibility before the ICJ, the principle of UJ has become the only viable path to justice. Notably, some European states have already relied on this jurisdictional basis to prosecute ISIS militants for grave international crimes committed against the Yazidis.

Yet, upon closer examination, there are several gaps in the accessibility of such proceedings for the Yazidi community. The de facto exclusion of the Yazidi diaspora—due to a lack of translations, little to no access to live court proceedings outside the host country, and limited outreach—fails to center survivors at the heart of the proceedings, which are often very symbolic and historic for the community. As such, the Netherlands has taken steps toward more inclusive UJ proceedings through live interpretations, live streams, and supporting outreach, however minimal. Such good practices offer a foundation for more accessible justice and must continue to be employed and built upon to ensure that the principle of UJ reaches beyond the host country to affected communities, enabling survivors to gain some sense of ownership over the justice pursued in their name.