



# EXTRATERRITORIAL JURISDICTION

## What is Extraterritorial Jurisdiction?

A state generally has the right to prosecute a crime that occurred on its territory, meaning the act was committed inside the state. Extraterritorial jurisdiction refers to the power of a state to prosecute a crime that was not committed on its soil. Several states, particularly those in Europe, have accepted extraterritorial jurisdiction over serious international crimes, including war crimes, crimes against humanity, and genocide, under the principle that international law obligates the entire world to act to prevent impunity for such crimes.

## What are the types of extraterritorial jurisdiction?

There are three relevant principles of extraterritorial jurisdiction:

- **Active nationality principle** allows a state to prosecute its own nationals for crimes committed in Syria. Example: If a French national traveled to Syria, joined an armed group, and committed grave crimes, such as torture, France would have the right to prosecute them.
- **Passive nationality principle** allows a state to prosecute individuals who committed crimes against its nationals. For example, if a dual Syrian-Spanish national were the victim of a crime in Syria, Spain would have the right to prosecute the perpetrator under this principle.
- **Universality principle** requires no nexus between the prosecuting jurisdiction and

the individual in cases involving the most serious crimes of international concern.

Whether these principles can be utilized, and which one, depends on the policies of each particular country. Some countries have accepted jurisdiction under all three principles, some under only one or two, and others do not utilize any of them.

## How can extraterritorial jurisdiction apply to Syrian perpetrators?

In the case of Syria, many traditional avenues for accountability are not available. While ideally perpetrators are prosecuted in the national court system where a crime is committed, it is highly unlikely Syria would prosecute. Also, Syria is not a state party to the International Criminal Court, so the only way the Court could prosecute crimes committed in Syria is via a unanimous vote of the UN Security Council, which China and Russia have vetoed. Similarly, the UN Security Council has not shown an interest in creating an independent tribunal to prosecute crimes. Extraterritorial jurisdiction provides an alternative in cases in which there are no viable venues for prosecution. Hence, prosecution in foreign national courts is the most feasible and immediate path to criminal justice for Syrians.

Since the ICC does not have jurisdiction in Syria, there is no special tribunal, and Syria is unwilling to prosecute most cases, extraterritorial jurisdiction is the only clear path to justice for many Syrians.

## Why is universal jurisdiction so important?

While all three principles of extraterritorial jurisdiction can be applied to perpetrators of crimes in Syria, the majority of crimes do not involve the citizen of a country other than Syria. Universal jurisdiction is a principle that allows states or international organizations to claim criminal jurisdiction over an accused person regardless of where the alleged crime was committed and the accused's nationality or country of residence. This principle is based on the idea that the most serious crimes violate universal values held by all people, and hence should be eligible for prosecution by any court, anywhere, and at any time. In the case of Syria, universal jurisdiction gives nations the opportunity to prosecute a larger number of perpetrators than could be done under the active or passive personality principle.

While prosecution via national courts may be the best option for justice currently, there are serious drawbacks to this process. First, in most cases, countries will only pursue cases against perpetrators who are present in their country. In practice, this has meant that European countries are prosecuting perpetrators who fled to Europe as part of the refugee flow. While these prosecutions are important, they are often directed at relatively low-level perpetrators, while the perpetrators of the most serious crimes remain in Syria.

Alternatively, in cases where countries issue arrest warrants against perpetrators currently in Syria, such as when Germany issued a warrant for Jamil Hassan, the court will either need to wait until the accused turns themselves in voluntarily or is extradited, unlikely scenarios in Syria. Otherwise, the court can try the case in absentia, which means hold a trial without the accused present and wait to apprehend and carry out the punishment at a later date. If the accused remains in a position to continue committing abuses following the issuance of arrest warrants, this potentially could undermine the faith of Syrians in the possibilities of pursuing

justice. Ultimately, prosecution via national courts will never result in the type of comprehensive justice that can be achieved through a holistic transitional justice process. However, it is the most immediate option for pursuing criminal accountability.

## Which countries will prosecute Syrian perpetrators in national courts?

Every country has different rules about whether they will prosecute under extraterritorial jurisdiction. In the case of Syria, countries with large Syrian refugee populations have the greatest potential to prosecute these cases, as refugees can serve as defendants and witnesses. However, the largest hosts of refugees, such as Turkey, Jordan, and Lebanon, have not accepted the principle of universal jurisdiction. This leaves Europe as the primary focus of possible universal jurisdiction cases. A number of European countries are working actively to identify and prosecute those who committed crimes in Syria, and some have created dedicated prosecutor's offices to investigate war crimes. For example, both Sweden and Germany respect the principle of universal jurisdiction and have actively pursued criminal cases against Syrian perpetrators. Each country has specific rules about which cases they will undertake, and individuals looking to file a complaint should look into the specific legislation in that country.

## Has extraterritorial jurisdiction been successful in achieving justice for Syrians?

There have been multiple successful cases of perpetrators of crimes in Syria being held accountable in European courts, and prosecutors are actively working on pursuing more cases. For example, in the summer of 2012, Mouhannad Droubi and other FSA militants assaulted an unidentified man allegedly affiliated with the Syrian army. Droubi travelled to Sweden as a refugee in September 2013, where he received permanent residency and asylum status. In July 2014, Swedish police discovered a video of the assault and Droubi

was arrested in October 2014. On 26 February 2015, Droubi was convicted for “extremely gross assault and violation of international law” for violating the Common article 3 of the Geneva Conventions, and customary international humanitarian law. He was sentenced to five years in prison. Swedish prosecutors successfully argued that Droubi’s actions amounted to torture and a war crime.

## **How can documenters and human rights activists support prosecution through national courts?**

Through collecting and sharing high-quality documentation, documenters can directly support the work of national prosecutors. Organizations such as SJAC work directly with prosecutors’ offices to provide information to ongoing cases. SJAC also works with the IIIM, which is planning on building cases for national prosecution as well. Along with documentation, pursuit of justice through national courts will require victims and witnesses living outside of Syria to play an active role in filing cases and cooperating with prosecutors in ongoing cases. For this reason, educating Syrians abroad about their right to pursue justice through foreign courts and supporting them through the process will also be important to supporting justice efforts.