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Critical stasis and disruptive performances: ICJ and the Anwar R trial in Koblenz

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Abstract
This article explores the extraterritorial criminal court case against Anwar R, a high-ranking member of the Syrian regime on trial for crimes against humanity in Koblenz, Germany. Empirically anchored in ethnographic fieldwork conducted in Koblenz and with the Commission for International Justice and Accountability, the article illuminates the trial as a ‘disruptive performance’. The case against Anwar R punctuates two instances of negative stasis and unsettles two accounts of chronicity, namely, those of the Syrian conflict and of the field of international criminal justice. In order to illuminate the trial as a disruptive performance, the article empirically situates the Koblenz case both in relation to the Syrian war that it relates to, to the international criminal justice apparatus that it is a part of and to the underlying compilation of evidence that substantiates it. It thus clarifies both the symbolic potential and the constitutive process that has brought it into being.

Keywords
crisis, ethnography, international criminal justice, performance, stasis

Introduction
Trials can be spectacles. While most cases amount to the routine work of bureaucratic orders, the politicized few are often dramatic, boundary drawing events that punctuate and differentiate the humdrum of everyday socio-legal orders by showcasing transgression, voicing objection and executing reprimand. While the unspectacular multitude of
regular trials discreetly maintain societal life, the spectacular few instantiate or reinstate normative orders.

This article analyses a case of the latter through a performative lens. It looks at the *mise en scène* of an extraterritorial court case and elucidates the theatre of the trial with an eye to the orders it unsettles and the dynamics it affects. More specifically, the article investigates the field of international criminal justice (ICJ) and the ongoing trial of Anwar R, a former colonel in the intelligence service of the Syrian regime. At first glance, the trial could appear to be a mere show trial, politicized but inconsequential. Held in a domestic courtroom in Koblenz, Germany, it examines the conduct of a former regime operative turned refugee, during a 16-month period, at a regional branch of the Syrian security-intelligence service. Yet, the trial of Anwar R is an unusual one. It is both the result of a structural investigation by German authorities of the situation in Syria and of criminal complaints filed in Germany by Syrian victims and human rights activists for crimes committed in the course of an ongoing conflict in their home country. Brought before the court under the principle of universal jurisdiction, the case is emblematic of a novel attempt to secure justice provision in relation to the last decade of atrocities in Syria. Efforts to establish an international tribunal in relation to the Syrian situation, or secure a UN Security Council referral to the International Criminal Court (ICC), have been continuously blocked by regional and geopolitical disagreement. Moreover, as the al-Assad led Ba’ath regime edges ever closer to military victory, extraterritorial trials, such as the one in Koblenz, remain one of the only feasible avenues towards securing a measure of accountability. It is no surprise, then, that the case is the subject of intense international attention. Described as the first worldwide trial on state-sanctioned torture in Syrian detention centres, the proceedings in Koblenz have captured the public interest and spurred the hopes of the Syrian victims and survivors, who see the trial as a stepping stone on the long path to justice. Extra-territorial and transnational, it has become a spectacle, a public performance of culpability and accountability, that is seen to intersect the deadlock of an ongoing war that has spanned most of the last decade. Yet how are we to understand the significance of an extraterritorial trial, of a mid-level suspect, which offers no certain prospects of deterrence against the ongoing violence in the country or accountability for those most responsible for it?

In the context of the protracted conflict, we argue, the trial can be seen as an event that punctuates a situation of critical stasis. Within the present situation of ‘terror as usual’ in Syria (cf. Taussig, 1989), the case against Anwar R becomes a ‘disruptive performance’ on two different accounts. On the one hand, it has led to a refocusing of the international society’s attention on a perpetrating order that has otherwise been removed from the headlines and receded to the shadows of the global news flow (Perruci, 2009: 9). While it will most likely not lead to radical change or reveal the unknown, its mere enactment highlights a long-term practice of torture and mistreatment by regime forces. On the other hand, its performance counters a decline in the number and standing of international legal processes. After a surge in such activities, seen for example in the establishment of the ICC, the international criminal tribunals for Rwanda and the former Yugoslavia, the special court in Sierra Leone and Cambodia, the hybrid-courts in Cambodia and East Timor and the internationally assisted legal efforts in Iraq and Afghanistan (Drumbl, 2003: 263), the push towards international courts and adjudication
declined. The trial in Koblenz counters the waning of the practice and showcases a new avenue for ICJ. As with transitional justice, and ICJ in general, it communicates and enforces normative positions and boundaries. Yet contrary to the former, it may be seen as a disruptive rather than transitional phenomenon, as a spectacle of discontinuance.

In this manner, the case against Anwar R highlights both the systematic and seemingly endless atrocities of a brutal regime as well as the contemporary difficulties of ICJ in enforcing accountability for even the most well-documented and inexpiable harms. The case thus holds the prospect of countering two states of collapse. ‘Overflowing with the performative’ (Derrida, 2002: 255), it dramatically contrasts the ‘despectacularization’ of the atrocities and symbolically re-centres the institution of ICJ. In criminological terms, the case, thus, constitutes an interesting conjuncture. The fact that human rights violations committed in Syria are trialled via universal jurisdiction in a German national court makes it an interesting case within a global or supranational criminological focus (cf. Aas, 2010; Haveman and Smeulers, 2008). It exemplifies how international criminal justice has adapted to and challenges the way in which nation-centric geopolitical orders constrain justice and accountability. The case highlights, as such, the emergence of new modalities and geographies of penal power (Lohne, 2020: 145) that are responsive to the tension between national interests and international accountability. While the Anwar R trial falls within the ‘torture paradigm’ of human rights scholarship (cf. Campbell, 1999; Cohen, 1993), and may serve to document the murder, torture and mistreatment of the Syrian population by its government, it symbolically transcends the specific injustices that it addresses. Rather than focusing on egregious human rights violations, the procedural workings of the trial or the adjudication of such wrong doings (Born, 2011; Greco, 2007), this article seeks to fathom this transcendence by looking at its performative aspects and investigating the effects of its instantiation (cf. Cole, 2010; Leader, 2020; Taylor, 1997). Contextualized in relation to a double stalemate, that is, that of the endless endgame of the Syrian war and the increasing incapacity of ICJ of late, we analytically approach the court case in Koblenz in terms of its performativity and potential effects.

In empirical and methodological terms, the article builds on ongoing ethnographic fieldwork conducted with the Commission for International Justice and Accountability (CIJA) and within the court in Koblenz. While the former clarifies the systematic substantiation of the case, the latter highlights the trial as an event. CIJA is neither an official part of the prosecution nor defence. Yet, as a non-profit and non-governmental organization, engaged in collecting evidence of core international crimes perpetrated in Syria, it has provided assistance to German authorities in the form of original regime documents, which have informed the charges of crimes against humanity levelled against Anwar R. Doing fieldwork with the organization and partaking in its practice has enabled us to see the meticulous work that corroborates the case as performance and which allows it, despite its bureaucratically routinized nature, to be performed as event. The ethnographic fieldwork consists of observational studies, participant observation and interviews in both Koblenz and within CIJA. Within this, observational studies and participant observation have been used to gain insights into the methodological and regimented manner that evidence is collected and cases built. Furthermore, semi-structured interviews were conducted in order to grant us knowledge of the ideas and ideals that underlie this work within both the trial, the organization and the broader field of contemporary international
criminal justice. Finally, observational studies of the court are supplemented by trial hearing reports provided to us by CIJA. As the court does not release official trial transcripts, the reports provide a unique insight into the dynamics of the trial as well as important factual information about the case.

Two courtrooms

A trial resembles a play in that both begin and end with the doer, not with the victim. A show trial needs even more urgently than an ordinary trial a limited and well defined outline of what was done and how it was done. In the centre of a trial can only be the one who did—in this respect, he is like the hero in the play—and if he suffers, he must suffer for what he has done, not for what he has caused other people to suffer.

(Arendt, 1963: 8)

The first to enter is a member of the Prosecution. He greets the guards, cloaks his shoulders in a crimson robe and takes his seat. The court translators follow; a guten Morgen is exchanged. Next: all six victim representatives fill their cubicles—a bulwark of black gowns. In quick succession, a second prosecutor, four defence lawyers and five judges trickle in to form a square-like formation. From the top, clockwise: Judges, Defence, Representatives, Prosecution. The day’s witness is led to a table in the middle of the square. Finally, at 9.36 a.m. and without ceremony, a narrow door opens and the two defendants are escorted to their seats. The air is hushed, procedural. In the public gallery affixed in the back of the room and facing the judges’ dais, one is lulled by thick September heat.

Erheben Sie sich, ‘all rise’, the judge announces. With that, in Room 128 of the Higher Regional Court Koblenz, the 28th hearing in StE 9/19: The German Federal Public Prosecutor vs Anwar R and Eyad A² is opened. Anwar R, the high-profile defendant, is the main figure on trial. He is as Arendt states in the above quotation, ‘the one who did’. Yet, as the central defendant, he is equally a placeholder for the entirety of the regime’s brutality, just as an eventual conviction will make him a portal to further claims of accountability in relation to the al-Assad regime in the country. The trial addresses two figures of perpetration. While Anwar R is on trial, the al-Assad regime is the implicitly accused. Anwar R, a 57-year-old man from Homs, is, however, more than merely a scapegoat. A former colonel in the Syrian regime, he headed the investigation unit in a key facility of the General Intelligence Services in Damascus—Branch 251, and is charged with being a co-perpetrator in 4000 cases of torture, 58 murders and individual cases of sexual assault and rape. These alleged crimes took place between April 2011 and September 2012, and are classified as crimes against humanity.

The day’s hearing focuses on the testimony of Mazen Darwish, a leading Syrian lawyer, now based in Paris, who was himself imprisoned by the regime for his legal work in the country. In response to questioning, the witness proceeds to describe a murderous rule, whose brutality is orderly, bureaucratized and mandated by the very top of the political and military establishment to crush descent following the start of the 2011 uprisings against the Presidency of Bashar al-Assad. The witness is lawyerly, advances his argument slowly. His narrative moves between the specifics of his own detention, to the
history of the uprising and the broader nature of regime perpetration. Darwish’s detailed narrative and comprehensive analysis of the situation in the country generates palpable tension within the defence. Anwar R’s lawyer shifts in his seat and forcefully interjects: ‘I am not here to defend the regime; I am here to defend a person.’

The trial, however, is exactly that; a trialling of the regime in person. Anwar R is on trial for misdeeds he has ordered or approved, yet his actions place him as complicit in a level of perpetration that far exceeds his individual doing. The witness’ testimony culminates in this critical premise: namely, that the use of enforced disappearances, arbitrary killings, torture and rape predates the 2011 uprisings and has been an integral feature of the al-Assad family’s rule dating back to the Presidency of Hafez al-Assad only to be carried forth by his son, Bashar. Any ranking member of the regime’s intelligence forces may be assumed to be part of a regularized chain of command that has overseen widespread criminal conduct, in the form of international law violations, for over 60 years. By virtue of his former rank, Anwar R is complicit in the criminal conduct observed in Branch 251, yet his story ties into a protracted practice of torture and organized violence. The larger aim of the internationalized criminal trial thus surfaces to the forefront of the proceedings. While these processes have the primary objective to establish the individual criminal responsibility of the accused, the regime’s misdeeds are being showcased.

‘The curious feature about ICL [international criminal law] is that in it the emphasis shifts from punishment to trials’, Luban (2008: 8) states. Since no punishment can balance the atrocities committed, the trial becomes the primary dramatic force and ‘the punishment of the guilty seems almost an afterthought’ (Luban, 2008: 8). Put simply, ICL is not just concerned with who pulled the trigger, but with who gave them the orders to do so. Yet, the ritual nature of the trial is exactly what transforms Anwar R into an index of the regime and grants it its potential as a disruptive performance. Via the ritualized application of international criminal law, Anwar R is altered from a perpetrator to a personification of a perpetrating order. The trial ties him to the atrocities of the al-Assad rule as it makes him of the same order, making a potential guilty verdict not only a verdict of him, but a verdict of the regime itself. The performance of the trial as ritual—that is, both scripted, repetitive and transformative—integrates Anwar R into the regime (cf. Turner, 1969, 1972). Rituals work mereological magic. They make the part the whole.

Anwar R’s history

While the case for arguing for Anwar R’s complicity in the misdeeds committed by the regime seems strong, his recent connection to it is less clear-cut. The performative nature of the trial has in many ways propelled him to epitomize a violating order of which he was, in fact, a relatively inconsequential figure. Granted, he is the highest-ranking former member of the Syrian regime apprehended in Europe, yet, relative to Syria’s vast and deep security service apparatus, his position as head of investigations in Branch 251 of General Intelligence, is of mid-level standing. While he was, unquestionably, part of a murderous system, his career in the security services does not necessarily add up to him being the architect behind its planning.
‘He was the highest-ranking [former Syrian regime member] in Germany, but he is a fucking nobody’, as a central figure in building the case against him told us in an interview. Furthermore, Anwar R had, prior to his arrest, sought to detach himself from the regime that he had served as a henchman for—and which he is now being trialled as emblematic of. To understand the case made against him, and the spectacle it has become, we need to understand Anwar R’s involvement with the regime and his actions during the war.

Anwar R began his career in the Syrian security apparatus as part of the police force, before being recruited, in 1995, to join Branch 251 of the General Intelligence Directorate. During the next 13 years, Anwar R rose through the ranks, holding progressively higher positions in various sections of the Directorate. In 2008, he re-joined Branch 251 as head of investigations. Within three months of Anwar R’s promotion to the rank of colonel in early 2011, civil uprisings spread throughout Syria, inspired by popular protests already underway in Tunisia and Egypt. The regime’s response to the protests was swift and uncompromising. A presidential decree established the Central Crisis Management Cell (CCMC) to coordinate the actions of the state security services and the military. The orders produced by the CCMC, and signed by the President, were then filtered down through the chain of command to provincial and regional branches. In April, a CCMC resolution authorized the use of violence against the protest movement. Protesters were summarily detained and disappeared within a vast underground network of detention facilities. One such facility is located in the basement of Branch 251. Perched north of Baghdad Street, in the Al-Khatib neighbourhood of the city, Branch 251 is responsible for Damascus and its surroundings. There, detainees were questioned under extreme duress: beating with hoses, cables and sticks; electrocution; hanging from the wrists with one’s toes barely touching the ground; sexual violence; and threats of reprisals against family members. Cells were overcrowded with prisoners forced to sleep standing, unable to sit or lie down. Screams of tortured inmates reverberated through the prison daily and around the clock. Armed with the document bearing the CCMC resolution from 2012, federal prosecutors now seek to prove that what happened during that time in Branch 251 was part of a widespread and systematic attack against the civilian population; in other words, that it constituted crimes against humanity.

German prosecutors allege that these crimes occurred under Anwar R’s command as head of investigations. In his own written statement to the court, he confirms his rank and office during the prescribed period, but equivocally denies that he possessed the authority to order the use of violence. He maintains that he was stripped of all his responsibilities by June 2011, denies all charges against him and seeks to portray himself as a victim of the regime whose misdeeds he is charged with having committed. Anwar R insistently performs himself as persecuted within it. As a Sunni Muslim, he describes his loyalty to the Alawite-controlled regime as being increasingly questioned by his superiors, fuelling his desire to defect.

It would be another 20 months before he eventually crossed the border into Jordan with his family. According to Anwar R’s statement, and documents obtained, he was on active duty as late as October 2012. On 14 December 2012, Anwar defected and temporarily settled in Amman, Jordan with hopes of reaching Europe.
Perpetrator, opportunist and opposition member

Anwar R quickly transformed into a highly visible defector, as he aligned himself with the budding opposition in exile. However, being a person with inside knowledge of the regime, he was no ordinary refugee, and gave interviews to both Al-Jazeera and Der Spiegel. In January 2014, he travelled to Switzerland, joining the opposition delegation at the Geneva II peace conference brokered by the UN and the Arab League.

As his profile grew, so did the suspicion of some members of the exile community. Anwar R was seen to be engaged in a process of ‘situational adjustment’ (Becker, 1964: 44), a performance of his own by which he sought to shift alliances according to the development of the war. In his testimony to the court in Koblenz, the journalist from Der Spiegel, who interviewed Anwar R, described the perceptions of defectors during that time:

Those who left in 2011 were heroes. Those who left at the beginning of 2012, thought that the increasing violence was a problem. But those who left at the end of 2012 were quite late, they were seen as opportunistic.6

In other words, at the time that Anwar R decided to defect, the situation in the country stood in direct opposition to the current one. Rather than the regime being close to a military victory, people were envisaging a new political scenario without the al-Assad family at the helm. As opposition forces advanced towards Damascus, international condemnation and indications of readiness for military intervention swelled. At the time, the regime’s downfall was far from ruled out, if not a foregone conclusion.

With the help of a private contact, Anwar R contacted the German Foreign Office7 in order to further facilitate his refuge from Syria, and in late July 2014, he finally reached Berlin. Once settled in Germany, he initially assumed a low profile. Testimonies and documents brought before the court describe an ordinary, regularized existence, consistent with the experience of newly arrived asylum seekers: language courses; a ‘Leben in Deutschland’ test; applications to the Jobcentre.8 Yet, while he sought to lay low in his new place of residence, his past in Syria would come to haunt him. On 23 February 2015, Anwar R walked into a police station in Templehof, together with a translator, to issue a complaint. He claimed he was being followed by Syrian security service personnel.9 According to his statement, he had seen them outside a doctor’s office and on the S-Bahn: ‘I feel severely threatened, my life is in danger. All I want is personal protection as soon as possible because the events could develop quickly’,10 he wrote. The case officer filed the complaint and referred the case to the State Criminal Agency (Landeskriminalamt or LKA), which interviewed Anwar R but did not proceed with his complaint at the time. However, they did take note of his work in Syria, and two years later the LKA called him to gain a testimony of his work for the regime. In the interview, Anwar R described his role in both Branches 251 and 285; spoke to the practice of arbitrary detention and methods of interrogation inside Syrian detention centres. The LKA forwarded this information to section ST75 of the Federal Criminal Agency (Bundeskriminalamt or BKA)—the country’s war crimes unit.11
This referral set off a transnational criminal investigation of a scale before unseen in relation to Syria. Close to a hundred interviews were conducted with witnesses in Germany, France and Sweden; a Joint Investigative Force was set up by Eurojust to coordinate German and French investigative efforts; civil society was mobilized to identify victim-plaintiffs and provide evidentiary and investigative support. Anwar R entered the Templehof police station on that February day, fearing for his life due to his former position in Syria. There is no indication that he suspected being prosecuted by German authorities nor that his former rank and work in the Syrian regime would incriminate him. Yet, by filing a complaint, he set in motion regularized processes and procedures that eventually led to his arrest, on 12 February 2019, as well as the landmark trial to follow.

**Performance, stasis and states of chronicity**

Until 2011, I could identify with the Syrian legal and state system, but not after that.— Anwar R

In the years following his defection, Anwar R sought to position himself in opposition to the order he was formerly doing service for. One of the ironies of the court case is, as such, that it has indexically related him to the regime. While he has struggled to perform himself as persecuted, the trial as performance defined and positioned him as perpetrator. This is, of course, a common aspect of criminalization, and to some extent accounts for the fact that even if acquitted, an accusation commonly sticks to the defendant as a social stigma—a subject position unwillingly inhabited yet ontologized qua the performative event (cf. Butler, 1990; Deleuze, 1994 [1968]).

In the case of trials involving crimes against humanity, scholars have typically emphasized their didactic qualities: their ability to establish public records of atrocity, which serve as instruments of truth and memory. A trial such as the one in Koblenz, Koskenniemi (2002: 1) argues, ‘oscillates ambivalently between the wish to punish those individually responsible for large humanitarian disasters and the danger of becoming a show trial’. Indeed, despite the controversial and ambiguous nature of Anwar R’s position, and the trial’s ability to personify him as emblematic of the regime, the performative valence of the trial extends beyond the narrow parameters of the individual case to bring into focus the widespread and systematic nature of Syrian regime criminality. Yet, the significance of the Koblenz trial, and what distinguishes it from a mere show trial, we argue, lies in its capacity to serve as a disruptive performance: a legal event, that unsettles the underlying stasis of the two processes, which it intersects and converges, namely that of the Syrian war and the decline of the ICJ system. The trial as performance is obviously tied to Syria as a state of collective crises (cf. Turner, 1972). Yet the crises in question are not momentary, but rather long-lasting states of dysfunction and/or decline in which persistent deterioration has come to characterize the political, societal and/or social fabric (Vigh, 2006 [2003], 2008). The war has, in other words, become a background catastrophe; a calamity that has been politically present and part of the media flow for so long that its many ongoing atrocities almost fail to raise outrage (Dupuy, 2004, 2005). In this regard, the case against Anwar R does not
only raise awareness of actual regime misdeeds, but to the continued presence of a government with an almost unfathomable history of perpetration.

The trial of Anwar R commenced almost a decade after the outbreak of the Syrian war. Ever since the Russian military intervention in 2015 reshaped the calculus of the conflict, al-Assad’s grip on power has continued to tighten. Destructive and erosive, yet not decisive, the war has entered an indefinite stasis. It has become a state of affairs, a jarring background presence. Rather than a crisis to be overcome, Syria has turned into a condition of chronicity to be suffered, supported or ignored, depending on one’s position in relation to it. As the Commission of Inquiry on Syria, a human rights body with no adjudicative powers, reported as early as February 2012:

[The regime has] manifestly failed in its responsibility to protect the population; its forces have committed widespread, systematic and gross human rights violations, amounting to crimes against humanity, with the apparent knowledge and consent of the highest levels of the state.

(UN Commission of Inquiry on Syria, 2012)

However, the total impunity with which the regime’s security and military apparatus works is not new. Disregard for the well-being of the population can be seen to have been an indelible condition of Syrian politics for over 60 years. As the lead investigator in the Anwar R case would come to understand, torture in detention did not begin in 2011: ‘many witnesses mentioned methods of torture that had already been mentioned by an [Amnesty International] report in 1987’, it was said.14

The trial of Anwar R comes in this manner to disrupt the chronicity of systemic violence observed in Syria. As a performance, it manages to turn routine perpetration into a transgressive event and, hence, unsettles the state of negative stasis. It carries with it a potential for engagement precisely because, as a disruptive performance, it defaces the condition of persistent perpetration that defines the situation in Syria. In this manner, looking at this trial adds to our common understanding of performativity. Rather than instating an existing order, the trial instantiates the possibility of an alternative one.

The decline of ICJ

However, as mentioned in the introduction, the Anwar R case does not merely disrupt one negative state of stasis but two, as the Syrian crisis converges with a longer-term crisis of ICJ. The situation in Syria has unravelled before our eyes; it is arguably the most visible conflict ever fought. Images of bombed schools and medical facilities, gruesome killings, civilians targeted by fighter jets travelled quickly and far; each frame suggesting violations of the laws of war. By contrast, the large-scale practice of torture and killing in detention was by design invisibilized: conducted in the basements of security service branches; in cooling trucks carrying corpses in the dead of night; in the morgues of military hospitals operated out of sight. This was all about to change when in late 2013, an official forensic photographer of the Syrian Military Police—codename Caesar—defected, bringing with him over 55,000 images many of which were taken inside military hospitals in Damascus, where bodies of dead detainees would be brought from
security branches (Human Rights Watch, 2015). Caesar shared the photographs with international lawyers the following January, and a portion of them was eventually published by the _Guardian_. The images show emaciated bodies, eyes gauged out, broken limbs, rope burns, some bodies disfigured beyond recognition. Crucially, they show each individual inscribed with a prisoner’s number and the number of the branch from which their corpse arrived. In effect, the regime was generating potential corroborating evidence of extraordinary detail.

Caesar’s photographs surfaced the atrocities committed in detention facilities to public view and international calls for accountability grew stronger, only to be met by diplomatic and institutional impasse. As Syria is not party to the Rome Statute of the International Criminal Court (ICC), the situation required referral by the UN Security Council. In May 2014, and only months after the Caesar files became public, Russia and China vetoed such a referral blocking the path to criminal justice accountability (UN News, 2012). In response, the UN General Assembly voted to establish the International, Impartial and Independent Mechanism for Syria (IIIM) (A/RES/71/248) in December 2016 (UN General Assembly, 2016). The novel investigative body is charged with the gathering of evidence pertaining to the conflict for the purposes of criminal prosecutions but it does not hold prosecutorial powers nor direct investigative access inside Syria, making it exclusively reliant on civil society effort to gather evidence. Since then, and much like the conflict itself, the highest levels of international criminal justice have entered into an indefinitely stasis.

The Syrian war, with its blatant war crimes and insidious human rights violations, was a clear case for ICC involvement, yet the geopolitical interests involved and its protracted dynamics, exposed the limits of the ICJ system unlike any other conflict in the modern era. The system’s inability to respond to a crisis like the one observed in the country is coded in its institutional construction and teleological foundations. After a period of inactivity following the international military tribunals in Nuremberg and Tokyo, ICJ was resurrected with the establishment of the international criminal tribunals for the former Yugoslavia and Rwanda, in the early 1990s. The establishment of the permanent ICC followed in 2002. The institutions came to represent a return to criminal justice accountability after conflict as an internationally upheld norm and signalled a multilateral willingness to reject impunity. Concurrently, the late 1990s and early 2000s saw notable applications of universal jurisdiction (UJ)—a domestic legal framework, heavily reliant on transnational cooperation. The change modality allowed for the investigation and prosecution of suspects of any nationality in any country, regardless of where the crimes were perpetrated. Cases against Chilean and Argentinian perpetrators of international crimes, most prominently in Belgium and Spain, led to high-profile arrests and trials such as those of Pinochet and Videla along with other high-ranking individuals through domestic judicial mechanisms. Indeed, individuals investigated and tried in domestic courts overwhelmingly outnumber those at the international level (cf. Stahn, 2009). With the adoption of the Rome Statute, and based on its principle of complementarity, states adopted national codes to harmonize domestic legislation with the crimes laid out in the Rome Statue, such as the Code of Crimes against International Law in Germany (Kaleck and Kroker, 2018: 171). As a consequence, the position of domestic responses to serious crimes of international interest in the architecture of contemporary
ICJ was strengthened and expanded. Only if states are unable or unwilling to prosecute would the ICC come forth to serve as court of last resort (cf. Rikhof, 2014; Sikkink, 2011). Yet, these forward motions to strengthen domestic and international responses to serious crimes of international concerns failed to materialize in a greater number of high-level prosecutions. By late 2000, the principle of UJ was severely circumscribed in Belgium, Spain and France. Equally, the ICC Office of the Prosecutor had come under heavy criticism over its effectiveness—since its operationalization, it has convicted only five individuals of core international crimes. Similarly, the costly and prolonged investigations of established international ad hoc and hybrid tribunals resulted in markedly decreasing multilateral willingness to establish new judicial mechanisms.

In other words, by the time the opening salvos of the Syrian conflict were launched, ICJ itself was already suffering from a notable lack of effectiveness. A principal reason for this state of affairs, we argue, lies in the fact that the norms and institutions, that emerged from instrumentalizing the ICJ at both the domestic and international levels, were moulded to the conflicts they were designed to respond to. They were premised, first and foremost, on the end of conflict and political transition giving rise to a new multilateral consensus, in which the willingness to pursue accountability could emerge (cf. Van Schaak, 2021). This is exactly what the chronicity of the Syrian conflict fails to offer revealing, in turn, not just a country, but equally an institutional field in crisis.

**Substantiating a performance**

However, the trial in Koblenz is not performative as pure form. While it can be approached via a post-representational perspective on performance, as an event that instantiates ‘the matter that comes to matter’ (Barad, 2003), it builds on a meticulous effort of substantiation that ought not to be overlooked. The very possibility of it, and its potential to unsettle chronicity, rest on the underlying and invisibilized gathering of evidence that preceded it. Put another way, the trial’s immanent performativity (Fancy, 2014) does not *ex nihilo* bring into being the order it enacts, but builds, as we shall see, on an expansive collection of evidence.

With the conflict still ongoing in Syria, German investigators did not have access to the country. The Anwar R case is therefore built with the critical assistance of Syrian and international civil society actors, whose early work in securing evidence offers the evidence needed to stage the trial and effectuate a break in the stasis of ICJ. A study of one such actor—the Commission for International Justice and Accountability (CIJA)—illuminates the transformations in the field of international criminal justice that emerged in response to the Syrian conflict and eventually led to Anwar R’s prosecution. Early on in the conflict, CIJA’s director recognized the danger posed by the loss of evidence amid the quagmire of war as well as the necessity to collect and preserve it in a way that ensures its admissibility in court. Formally established in 2012, CIJA was founded exactly to disrupt the emerging impunity in Syria and ineffectiveness of ICJ institutions, which its founders, veterans of the field’s formative tribunals and courts, had observed first-hand. Since then, CIJA has been collecting, preserving and analysing prima facie evidence of core international crimes committed in Syria for the purposes of criminal justice accountability. In this manner, the organization set out to perform activities
associated with public bodies, specifically investigative arms of prosecutorial offices. Yet, unlike public bodies, such as the International Criminal Court—the Office of the Prosecutor (ICC-OTP) or, in Syria’s case, the IIIM, CIJA does not rely on state cooperation to secure the critical field investigative access to the country. As a consequence, and in contrast to advocacy efforts, its operations, offices, protocols and procedures are kept confidential; the organization itself retains only a minimum public profile, operates almost invisibly and without spectacle allowing almost no external access to its investigative processes or products (cf. Burgis-Kasthala, 2020b).

CIJA’s in-country investigative teams, composed of Syrian nationals, have extracted over a million original contemporaneously generated Syrian regime documents—official communiques, memos, orders and other potentially critical evidentiary materials—linking regime members to underlying criminal conduct (cf. Burgis-Kasthala, 2020a). At first, CIJA’s investigative and analytical focus was on the potential individual criminal responsibility of the very top of the Syrian regime—the President, ministers, heads of the security-intelligence directorates. In that, it reflected the then prevailing belief that Assad’s fall was imminent and an international jurisdiction would become available. CIJA produced 12 high-level legal briefs, with the most comprehensive and consequential being the 447-page, nation-wide Detention Brief, which reconstructs the perpetrating structures behind widespread and systematic violations observed in the regime’s secret detention facilities. By 2015, with the stasis in the conflict and the lack of a clear path towards high-level prosecutions, transnational efforts to identify and investigate former regime members in European territories intensified. With an established investigative presence in Syria, CIJA found itself well positioned to assist this effort and oriented itself towards the investigation of mid-level suspects. In effect, much like the field at large, CIJA was moving away from strategies predicated on the establishment of a future international justice effort for Syria and towards a more pragmatic approach steered transnationally and realized domestically (cf. Barbour, 2020). Since its founding, CIJA’s stated mandate has remained unchanged. Yet, its mission has undergone an evolution reflective of the trajectory of the Syrian conflict on the one hand, and the turn of criminal justice accountability towards the transnational on the other.

Not long after Anwar R was interviewed as a witness by Germany authorities in October 2017, an investigator with the war crimes unit sent CIJA a request seeking information on three subjects: Anwar R, Branch 251 and Branch 285. In almost all cases but for a very rare few, CIJA’s support to domestic authorities is a reactive process; only when analysts have independently identified sufficient evidentiary information that could potentially trigger an investigation in a given jurisdiction, would a proactive report be forwarded to relevant authorities. At the time of the request’s arrival, CIJA was already on Anwar R’s tail: CIJA investigators had confirmed his presence on German territory; analysts had identified documents bearing his signature as well as witness statements pertaining to the conditions of detention in both branches at the time of the alleged crimes; and the findings of the Detention Brief were used to place Anwar R and these branches within the regime’s chain of command. To the BKA’s surprise, the report they received in response to their request was, in fact, a suspect dossier. In his appearance before the court in Koblenz, the investigator in charge of the case testified that the receipt of the dossier was a decisive step forward in the investigation. More was
to come: ‘CIJA kept on sending updates on their own initiative, whenever they had new findings . . . My impression was that they had already investigated the person of Anwar [R], before we did.’ In keeping with CIJA’s longstanding practice of confidentiality, its role in the investigation only became public upon Anwar R’s formal arrest in February 2019; a representative of the organization provided expert testimony on its evidence to the court in November 2020. Together with the Caesar files, CIJA’s materials are some of the most frequently discussed and forensically examined pieces of evidence before the court in Koblenz. Their pertinence to the eventual verdict in the case is still to be determined. Yet, court hearings have surfaced the centrality of their role in the pre-trial investigation and, as such, in instantiating the performance of the trial itself.

To witness the Anwar R trial in person is to be surrounded by physical signifiers of the particularities of the trial and the transformations that constitute it. What the media has uniformly described as a landmark trial is held in an unremarkable building, far from the imposing seat of the ICC in the Hague. The proceedings of the first worldwide trial on state-sanctioned torture in Syria are held not in Arabic or English or French, but in German with simultaneous Arabic translation only available to participants and accredited observers. It is not televised; no official transcripts are released; the public gallery holds only 29 seats. Bashar al-Assad is not the one on trial and testimonies of the ongoing atrocities in Syria stand as reminders that the pain inside the country continues. Outside the courtroom, millions of Syrian refugees in Europe continue to live under the spectrum of political calculation: in 2019, Denmark became the first country to designate Damascus a ‘safe zone’ paving the way for deportations and denial of asylum status (Berger, 2019); every six months, German interior ministers evaluate the possibility for ‘safely’ returning Syrian refugees (Vohra, 2020).

Yet, stripped of theatrics as they may be, the proceedings in Koblenz build, one court hearing at a time, a searing counter-narrative and public record of continued criminality, while revealing the transformation of ICJ that holds the potential for accountability at long last. The trial’s significance lies not in its theatricality but in its ability to punctuate duelling states of chronicity, enabled by transformative actions, by design and necessity, devoid of spectacle and exercised below performance. In that, it evades the risk of becoming a show trial. Instead, it stands as a potential harbinger for the future of accountability for international crimes. A verdict is expected in one to two years from the time of writing. Yet, the Anwar R case has already proved to add to the momentum behind the pursuit of accountability under universal jurisdiction with leading practitioners describing it as the future of international criminal justice (The Economist, 2021), not only for Syria but for any other situation in which impunity for the most serious crimes reigns.

**Closure**

The Anwar R trial disrupts two instances of stasis and unsettles two accounts of chronicity. On the one hand, it symbolically punctuates the protracted conflict in Syria. On the other, it offers a break in the longstanding ineffectiveness of international criminal justice. As a ‘disruptive performance’, it is, like any ICJ trial, a normative display bringing the incessant atrocities back into focus as exceptional and condemnable. The performativity of the trial pries opens a space for engagement. It communicates that the war is not
forgotten, that the misdeeds committed are not acceptable, just as it clarifies the continued potential of instrumentalizing international criminal law and the field’s renewed capacity for action through universal jurisdiction via national courts.

Yet, the Anwar R trial is disruptive in a more contingent manner as well. As a symbolic birthing of a new means of engagement, the performative aspect of the trial may be seen to communicate normative boundaries and newfound possibilities that are specific to the Syrian case and the current state of ICJ. Scholarship on trials as performance has not traditionally concerned itself with the trial’s effective objective—to examine evidence and reach a verdict. Instead, it centres on the societal transformation enabled by the trial’s performativity. The trial is conceptualized as a ritual that draws transformative effect from its facility to be witnessed (Garfinkel, 1956; Turner, 1988). Trial proceedings and verdicts transform the status and identity of the defendant and thereby, when observed by a concerned community, instantiate social change. Therein, the theory would tell us, lies its performative potential. Yet, as we have demonstrated, the trial’s performativity is itself substantiated by novel and transnational forms of evidence gathering, which feed into regularized legal forms of activity devoid of spectacle. The Anwar R case builds on a range of evidence that directly testifies to the multitude of violations that have been carried out in Branch 251; violations that exist as scars and traumas on bodies and psyches, which ramify into families and populations and which wander into the coming generations. Equally, it reveals the perpetrating structures that enable them, thus retaining a capacity to offer a break in the chronic state of impunity to which the Syrian population has been subjected for decades.

While a focus on performativity may allow us to clarify the way that such trials constitute the orders and actors they enact (cf. Butler, 1990), the trial is perhaps too easily seen in purely post-representational terms. ‘What counts’, Allo (2010: 72) states, referring to so-called, ‘show trials’, ‘is not that a trial is labelled a ‘show trial’, it is, rather the end that the ‘show’ serves. Yet, in order to have any valence at all, a trial, such as the one in Koblenz, needs to be seen as more than a performance. Arendt’s critique of the trial of Adolf Eichmann, which introduced the article, stands as a standard-bearer of this analogy. For Arendt, every trial inhibits a degree of theatricality. Yet, if seen as ‘only’ performative, ‘only’ a show, it loses its credibility as a mechanism of justice delivery. The trial, in that situation is no ‘longer like a theatre, rather it is a theatre’ (Leader, 2020: 242)—a very different kind of ontologization than the post-representative theorists envision. A theoretical approach to international trials, which does not consider what lies below performance, is lesser for it. Trials may offer recognition where there is denial, instil memory where there is erasure, reaffirm moral commitment where there is moral abdication. If a trial of such scale is left to fail its effective objectives, it descends not merely into theatre but into tragedy.

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Notes

1. According to German data protection law, defendants are referred to by their first name and the first letter of their surname. Anwar R’s full name is publicly known but in light of ongoing trial proceedings, the article uses the abbreviation style prescribed by the law.

2. The second defendant in the case, Eyad A, is a low-ranking member of Syria’s intelligence services also charged with crimes against humanity. On 17 February 2021, the case against Eyad A was severed from Anwar R. The following week the defendant was found guilty of aiding and abetting torture and depravation of liberty as crimes against humanity and given a custodial sentence of four years and six months. In a worldwide first, the court found that his criminal conduct was part of a widespread and systematic attack against the civilian population orchestrated by the very top of the Syrian regime.

3. The Syrian intelligence services are composed of four Directorates: General Intelligence, Military Intelligence, Air Force Intelligence and Political Security.

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