



Permanent Mission
of the Federal Republic of Germany
to the United Nations
New York

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The Permanent Mission of Germany to the United Nations presents its compliments to the Office of Legal Affairs of the United Nations and has the honour with reference to General Assembly Resolution 64/117 of 16 December 2009, requesting the Secretary-General to invite Member States to submit information and observations on the scope and application of the principle of universal jurisdiction, to transmit the following report by the Government of the Federal Republic of Germany.

The Permanent Mission of Germany to the United Nations avails itself of this opportunity to renew to the Office of Legal Affairs of the United Nations the assurances of its highest consideration.

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Universal Jurisdiction in the Federal Republic of Germany

1. Summary

German courts exercise universal jurisdiction over the criminal offences laid out in sections 6 to 12 of the Code of Crimes Against International Law and other serious offences laid out in section 6 of the Criminal Code. Under the conditions laid out in section 153(c) and (f) of the Code of Criminal Procedure prosecutors have discretion not to initiate a prosecution.

2. Material Reach

Universal jurisdiction means the jurisdiction to try crimes committed abroad irrespective of the law of the locality where the offence took place and of the nationality of the perpetrator or the victim.

According to Section 1 of the German Code of Crimes against International Law of 26 June 2002 (*Völkerstrafgesetzbuch*) this act shall apply to criminal offences designated therein even when the offence was committed abroad and bears no relation to Germany. The competent German Court of Appeal may exercise jurisdiction over the following serious criminal offences defined in the Code:

- a) genocide (section 6);
- b) crimes against humanity (section 7);
- c) war crimes against persons (section 8);
- d) war crimes against private property and other rights (section 9);
- e) war crimes against humanitarian operations and emblems (section 10);
- f) war crimes concerning illegal methods of war (section 11);
- g) war crimes concerning illegal means of war (section 12);

Furthermore, according to section 6 of the general Criminal Code (*Strafgesetzbuch*) courts may exercise universal jurisdiction over various serious crimes, namely crimes involving nuclear energy, explosives or radiation, attacks against air or sea traffic, trafficking in human beings, unauthorised distribution of narcotics, dissemination of pornographic writings, counterfeiting, subsidy fraud, as well as other crimes committed abroad, if they must be prosecuted on the basis of a binding international agreement.

3. Procedural Issues

Sections 153(c) and 153(f) of the Code of Criminal Procedure (*Strafprozessordnung*) provide that public prosecutors have discretion with regard to the prosecution of crimes committed outside German territory.

a) General Rule on Crimes Committed Abroad

Section 153(c) para. 1 of the Code of Criminal Procedure provides that prosecutors may decide not to prosecute

- crimes which were committed outside the territorial scope of application of the Code of Criminal Procedure or which were committed by an accessory to a crime which itself was committed outside the territorial scope of application (no. 1);

- crimes which were committed by a foreigner on a foreign ship or airplane within German territory (no. 2);
- when in the cases of the crimes of 'Building of Criminal Associations' (section 129 Criminal Code) or of 'Building of terroristic Associations' (section 129a Criminal Code) the association does not, or does not mainly exist in Germany and the criminal act in question is of minor relevance or is limited to mere membership (no. 3).

Furthermore, according to sections 153(c) para. 2 and 3 of the Code of Criminal Procedure prosecutors may decide not to initiate a prosecution, if

- a sentence against the accused has already been executed abroad and a sentence in Germany would be of comparably minor relevance or if the accused has already been acquitted abroad by a final judgment in respect of the offence (ss 2);
- the crime was committed within the territorial scope of the Code of Criminal Procedure but through an act which took place outside of this scope, provided the execution of the criminal procedure could be seriously detrimental for the Federal Republic of Germany or is in conflict with overwhelming public interests (ss 3).

If, in the cases of sections 153(c) para. 1 no. 1, 2 and subsection 3, an indictment has already been submitted, prosecutors may suspend the court proceedings at any stage of a litigation, provided a continuation could be seriously detrimental to the Federal Republic of Germany or is in conflict with overwhelming public interests.

b) Crimes under the Code of Crimes Against International Law

Section 153(f) of the Code of Criminal Procedure applies to the prosecution of international crimes under the Code of Crimes Against International Law, provided the conditions of section 153(c) para. 1 no. 1 and 2 of the Code of Criminal Procedure are met.

Section 153(f) para. 1 of the Code of Criminal Procedure provides that prosecutors may decide not to initiate criminal proceedings, if the accused is not present in Germany and a future presence is not to be expected. If, in the cases referred to in section 153 (c) para. 1 no. 1, the accused is a German, however, this shall only apply if the offence is being pursued by an international court or by a state on whose territory the offence was committed or a citizen of which was injured by the offence.

Section 153(f) para. 2 of the Code of Criminal Procedure provides that prosecutors may in particular decide not to prosecute, if:

- a) no German is suspected of having committed the crime;
- b) the offence has not been committed against a German;
- c) the accused is not present in Germany or a presence is not to be expected; and
- d) the offence is pursued by an international court, by the state in which the offence was committed or by the state whose citizenship the suspect bears or a citizen of which was injured by the offence.

The same applies, if the accused is present in Germany, yet the conditions of b) and d) are met and the extradition to an international court or a state pursuing the case is permitted and intended.