



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

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Note Verbale

The Permanent Mission of Germany to the United Nations presents its compliments to the Office of Legal Affairs and, with reference to General Assembly resolution 71/149 of 13 December 2016, entitled "The scope and application of the principle of universal jurisdiction," has the honour to communicate the following:

The German Code of Crimes against International Law (CCAIL), which entered into force on 30 June 2002 (Federal Law Gazette I p. 2254), made the gravest crimes against international law a criminal offence under German law. These include genocide (section 6 of the CCAIL), crimes against humanity (section 7) and war crimes (sections 8 - 12) and, since 1 January 2017, the crime of aggression (section 13). The CCAIL only applies to criminal offences committed after this law entered into force. Criminal offences committed before 30 June 2002 are dealt with in accordance with prior legislation.

The Public Prosecutor General of the Federal Court of Justice is responsible for prosecuting criminal offences under the CCAIL. Special permission is not required to instigate an investigation or a similar procedure.

According to the first sentence of section 1 of the CCAIL, the principle of unlimited universal jurisdiction applies to genocide (section 6), crimes against humanity (section 7) and war crimes (sections 8 to 12); the application of the CCAIL to crimes of aggression (section 13), on the other hand, is only possible if the offence bears a concrete relation to Germany (second sentence of section 1).

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According to section 12 (1) of the German Criminal Code, crimes are unlawful acts punishable by a minimum sentence of one year's imprisonment. That means that these unlawful acts are always subject to German criminal law, regardless of where they were committed or the nationality of the perpetrator. However, this general applicability of German criminal law does not automatically legitimise the universal prosecution of an offence, especially when the suspect is not a German and the crime was not committed against a German national.

German legislators therefore provided for finely graduated limits on prosecution in a number of different circumstances in section 153 et seq. of the Code of Criminal Procedure. It is primarily the responsibility of the state in which a crime was committed and the home states of the perpetrator and victim as well as the competent international court to prosecute. This is justified by the special interest of the home states of the perpetrator and victim in the criminal prosecution, as well as by the, as a rule, greater proximity to the evidence of the above-mentioned states or courts.

There are no legal restrictions resulting from the absence of the accused from the territory of the Federal Republic of Germany; this applies in particular to cases in which a German national is suspected of having committed a crime or a crime has been committed against a German national.

There have already been several convictions in Germany on the basis of the CCAIL:

On 28 September 2015, the Higher Regional Court in Stuttgart convicted the 52-year-old Rwandan national Dr Ignace M. of leading a foreign terrorist organisation, the "Forces Démocratiques de Libération du Rwanda" (FDLR) and complicity in four war crimes as defined by the CCAIL. He was sentenced to 13 years' imprisonment. The 54-year-old Rwandan national Straton M. was convicted of leading a foreign terrorist organisation, the FDLR, and sentenced to eight years' imprisonment. These convictions are not yet final.

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On 12 July 2016, the Higher Regional Court in Frankfurt am Main convicted the 21-year-old Aria L. of a war crime against persons as defined by section 8 subsection (1) No. 9 of the CCAIL in connection with the civil war in Syria and sentenced him to two years' imprisonment.

The court found that the accused travelled to Syria in spring 2014. He stayed there for at least three weeks with an acquaintance, Vedat V., who had been engaged as a "religious fighter" in the civil war in Syria against the Syrian army since 2012. One day sometime between 8 March and 16 April 2014, Vedat V.'s group attacked a Syrian army checkpoint near the Syrian city of Idlib and captured an officer and an ordinary soldier. Both were murdered and decapitated. The fighters put the severed heads on metal poles with weights on the other end. The heads were then put on display to the public. The accused posed next to the severed heads and had himself photographed three times with the intent of ridiculing the deceased and denying them any dignity in death. The conviction is not yet final.

A similar case came before the Berlin Higher Regional Court. It was originally dealt with by the Federal Public Prosecutor General and was then passed on the General Prosecutor's Office in Berlin in autumn 2016. Following the liberation of the Iraqi city of Tikrit from the terrorist organisation "Islamic State" (IS) in spring 2015, a former officer of the Iraqi army, who applied for asylum in Germany, had posed for photographs in which he triumphantly held up the severed heads of two IS fighters. He saved the images on his tablet. On 1 March 2017, he was convicted of war crimes against persons and sentenced to one year and eight months' imprisonment commuted to a suspended sentence. The conviction is not yet final.

In a further case before the Higher Regional Court in Frankfurt am Main, the 30-year-old German national Abdelkarim El B. was convicted on 8 November 2016 of war crimes against persons, membership of the foreign terrorist organisation "Islamic State in Iraq and Greater Syria" (ISIG) and violation of the War Weapons Control Act. He was sentenced to eight years and six months' imprisonment. The court considered it proven that the accused travelled to Syria in September 2013 to join the ISIG there and

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took part on many occasions in the fighting against the Assad regime; to this end, several assault weapons were placed at his disposal. On 7 November, the unit of which the accused was a member pushed forward into a position abandoned by enemy fighters near the Syrian city of Aleppo where they found the corpse of a government soldier. They desecrated the deceased by cutting off his nose and both ears while insulting and cursing him, kicked his maimed face and finally shot him in the head. The accused took part in these acts and filmed the incident with his mobile telephone over several minutes. This conviction is not yet final either.

Moreover, the trial against the Syrian national Suliman Al-S. is currently taking place before the Higher Regional Court in Stuttgart. The 25-year-old is accused of taking part in the abduction of a Canadian UN worker as a member of the terrorist organisation "Jabhat al-Nusra" and thus violating section 10 (1) No. 1 of the CCAIL.

Furthermore, the trial against the 42-year-old Syrian national Ibrahim Al-F. is expected to begin before the Higher Regional Court in Düsseldorf in May 2017. Among other things, he is accused of war crimes against persons as defined in section 8 of the CCAIL. In particular, he is accused of arresting several persons arbitrarily over the course of a few months while leading a district militia in Aleppo, locking them up in makeshift prisons and torturing them in order to extract a ransom. At least one person is said to have died as a result of the torture.

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

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