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Statement by the Federal Republic of Germany at the Sixth Committee on “The scope and application of the principle of universal jurisdiction”, October 2021

Germany has found universal jurisdiction to be an effective and proportionate tool to pursue accountability for the worst international crimes. While we would prefer to have the most serious crimes under international law tried by international tribunals, in particular the International Criminal Court if the applicable complementarity criteria are met, we do our part in working towards accountability for these crimes. Currently, cases regarding torture in Syrian prisons by the Syrian regime as well as crimes by members of Da’esh are heard by German courts.

Since 2002, 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).

There are no **material conditions to the applicability of universal jurisdiction** for these crimes. The Code for Crimes against International Law also applies to crimes committed outside Germany, regardless of the nationality of the victim or perpetrator or any other connections to Germany (§ 1 VStGB). German law does not provide for criminal liability of companies or other legal persons. Also, the possible applicability of immunity may need to be considered in certain cases. In order to be tried before a German court, the defendant needs to be present in Germany. A trial *in absentia* is not foreseen in our legal system. However, prosecutor and police can commence preparatory investigations to preserve evidence and allow for a swift commencement of proper proceedings once the accused has entered Germany.

Specialised units have been created within our Federal Criminal Police (*BKA*) and the Federal Prosecutor General (*Generalbundesanwalt*) to investigate international crimes. The Federal Prosecutor General often initiates investigations into international crimes based on information received from the German migration authority (*BAMF*). The Federal Prosecutor General also runs a number of structural investigations (“*Strukturermittlungsverfahren*”) to investigate the background of largescale crimes. Structural investigations serve to gather and preserve evidence in preparation of future proceedings. Since 2011, the Federal Prosecutor General runs such a structural investigation concerning crimes against humanity and war crimes regarding acts committed by members of the Syrian regime. This may also include the alleged use of chemical weapons. These Structural investigations have led to **several trials**.

On February 24, 2021, the **Higher Court in Koblenz** sentenced a member of **Syrian Intelligence Services** to 4 years and 6 months for abetting Crimes against Humanity. The verdict against the alleged main perpetrator is expected in the coming months. He is charged with overseeing the torture of more than 4000 persons. A significant number of the victims is presumed not to have survived the torture and sexual assaults in a prison close to Damascus. In another case being heard by the **Higher Court of Frankfurt**, a Syrian doctor is accused of having committed crimes against humanity including torture and murder in Syrian prisons.

Further trials and convictions concern persons associated with **Da'esh, Jabhat al Nusra or other terrorist organisations** in Syria or Iraq who have **returned to Germany**. In addition to their classification as a terrorist organisation, these associations, having acted as organised non-state armed groups, qualify as parties to a non-international armed conflict in Iraq and Syria under International Humanitarian Law. It is possible to cumulatively prosecute and hold foreign terrorist fighters accountable for war crimes, crimes against humanity and the crime of genocide in addition to terrorism-related offences. In Germany, the competent authorities have implemented the concept of **Cumulative Prosecution** at a very early stage. This ensures the full criminal responsibility of perpetrators, may result in higher sentences, and delivers more justice for victims.

A German national is currently tried for her alleged involvement in war crimes while she was a member of Da'esh, causing the **death of a young Yazidi** girl. A foreign national has been extradited to Germany to face charges of **genocide** for crimes committed against the **Yazidi** community in Iraq.

The advantages of Cumulative Prosecution become particularly relevant for addressing acts of spouses of foreign terrorist fighters. It has often proved difficult to gather sufficient evidence to prosecute these women for membership in a terrorist organization. In these cases, German courts have found that the **occupation of a flat** from which victims of Da'esh had fled can constitute the **war crime** of appropriation of property (§ 9 VStGB). Also, it was found that a mother committed the **war crime of conscripting or enlisting children** for handing her own child to a Da'esh military training camp (§ 8 Abs. 1 Nr. 5 VStGB). In the last few years, several of these cases were tried in German courts and resulted in significant sentences.

German prosecutors are currently running over 100 investigations into international crimes. The message is clear: those who commit atrocities cannot feel safe. They will eventually be held accountable. There is **no safe haven for perpetrators of international crimes** against criminal prosecution in Germany.

I thank you.