



Note No. 98/2021

Verbal Note

The Permanent Mission of the Federal Republic of Germany to the United Nations presents its compliments to the Office of Legal Affairs of the United Nations and, with reference to the latter's Note Verbale (Reference: LA/COD/59/1) dated December 18, 2020, and paragraph 3 of General Assembly resolution 75/142 of December 15, 2020, has the honour to submit the following information and observations on the scope and application of universal jurisdiction:

Germany has found universal jurisdiction to be an effective and proportionate tool for pursuing accountability for the most serious crimes under international law. While it would be preferable for the Security Council to give the ICC more scope for trying the most serious crimes under international law, national jurisdictions can play an important part in achieving accountability. Cases regarding torture in Syrian prisons by the Syrian regime as well as crimes by members of Da'esh are currently being heard in German courts.

Since 2002, German prosecutors can exercise universal jurisdiction under the **Code for Crimes against International Law** (Völkerstrafgesetzbuch – VStGB, 'Code of Crimes against International Law', CCAIL). Investigations and prosecutions can be initiated with regard to genocide (section 6 of the VStGB), crimes against humanity (section 7 of the VStGB) and war crimes (sections 8-12 of the 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 (section 1 of the VStGB). German law does not provide for the criminal liability of companies or other legal persons. What is more, immunity under international law may need to be taken into account. In order to be tried before a German court, the defendant needs to be present in Germany. A trial *in absentia* is not envisaged in our legal system. However, prosecutors and police can commence preparatory investigations to preserve evidence and allow for a swift commencement of proper proceedings once the accused has entered Germany.

To the Office of Legal Affairs
of the United Nations

Specialised units have been created within the Federal Criminal Police Office (Bundeskriminalamt, BKA) and the Federal Public Prosecutor General (Generalbundesanwalt) to investigate international crimes. The Federal Public Prosecutor General runs a number of structural investigations (“Strukturermittlungsverfahren”) to investigate the background of large-scale crimes. Structural investigations serve to gather and preserve evidence in preparation for future proceedings. Since 2011, the Federal Public Prosecutor General has been running such a structural investigation concerning crimes against humanity and war crimes regarding acts committed by members of the Syrian regime. The Federal Public Prosecutor General is also running a structural investigation of this nature concerning crimes against humanity and war crimes regarding acts committed in Syria and Iraq by members of Da’esh and other terrorist groups. These Structural investigations have led to **several trials**.

A trial concerning crimes against humanity commenced on 23 April 2020 against two former members of the **Syrian intelligence** services. One of them 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.

A German national is currently being 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.

Further trials and convictions concern **persons associated with Da’esh** in Syria or Iraq who have **returned to Germany**. As many of the individuals concerned have German nationality, these may not be cases of universal jurisdiction; however, they have led to interesting developments regarding the application of international criminal law. 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 (section 9 of the VStGB). Furthermore, it was found that a mother committed the **war crime of conscripting or enlisting children** by handing her own child to a Da’esh military training camp (section 8 (1) 5 of the VStGB). German courts have also sentenced women who had fought with Da’esh in Syria for national crimes such as membership of a terrorist organization and violation of the duty of care towards their children as well as crimes under international law such as enslavement of a Yazidi woman (“cumulative prosecution”).

Moreover, in an important **ruling** of 28 January 2021, the **Federal Court of Justice** (Bundesgerichtshof, BGH) explicitly established for the first time that an official of another state (an officer in a national army) is not entitled to functional immunity (or *ratione materiae* immunity) with regard to acts carried out within the scope of their duties before national, especially German criminal prosecution agencies or courts. This ruling reflects the customary practice of Germany's Federal Public Prosecutor General for many years now.

Applying the Federal Court of Justice ruling on *ratione materiae* immunity, on 24 February 2021 the **Koblenz Higher Regional Court** convicted the Syrian national Eyad A., a member of the **Syrian General Intelligence Services**, for **complicity in crimes against humanity** and sentenced him to four years and six months in prison. This was the world's first court conviction in which an official of the Syrian regime was brought to justice for the regime's actions against the opposition from late April 2011 onwards. The judges ruled that these actions should be deemed crimes against humanity (section 7 of the VStGB) and stressed that – irrespective of any mistreatment – imprisonment alone in the Syrian intelligence service department 251 constituted torture in view of the atrocious conditions there.

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.

The Permanent Mission of the Federal Republic of Germany to the United Nations avails itself of this opportunity to renew to the Permanent Mission of the Republic of Vanuatu to the United Nations the assurances of its highest consideration.

New York, April 30, 2021

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of the United Nations