



April 28, 2022

General Assembly resolution 76/118 of 9 December 2021 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. German courts have spoken verdicts on cases regarding torture in prisons by the Syrian regime as well as crimes committed by members of da'esh. German prosecutors continue to bring new cases to courts.

Since 2002, German prosecutors can exercise universal jurisdiction under the **Code of Crimes against International Law, CCAIL** (*Völkerstrafgesetzbuch*). Investigations and prosecutions can be initiated with regard to genocide (section 6 of the CCAIL), crimes against humanity (section 7 of the CCAIL) and war crimes (sections 8-12 of the CCAIL).

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 CCAIL). 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 a ruling of 28 January 2021, the Federal Court of Justice (Bundesgerichtshof, BGH) explicitly established 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.

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.

Specialised units have been created within the Federal Criminal Police Office (Bundeskriminalamt, BKA) and the Federal Public Prosecutor General (Generalbundesanwalt) to investigate international crimes. In the context of such investigations, international cooperation is crucial, for example through Joint Investigation Teams or the Genocide Network of Eurojust, but also with UN-mandated evidence mechanisms. 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 alleged crimes against humanity and war crimes committed by members of the Syrian regime. The Federal Public Prosecutor General is also running a structural investigation of this nature concerning alleged crimes against humanity and war crimes committed in Syria and Iraq by members of da’esh and other terrorist groups. These structural investigations have led to **several trials**.

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. The judges stressed that – irrespective of any mistreatment – imprisonment alone in the Syrian intelligence service department 251 constituted torture in view of the atrocious conditions there. On January 13, 2022, Anwar R. was convicted to a lifelong sentence. He had served as colonel and head of the subdivision “Investigation” in the “Al-Khatib-branch” of the General Syrian Intelligence Service in Damascus. The Court found him guilty of crimes against humanity in the form of murder in 27 cases, torture in at least 4,000 cases, rape, sexual abuse and deprivation of liberty.

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.

A former member of **da’esh** was convicted by the Higher Court in Frankfurt on November 30, 2021 to a lifelong sentence for **genocide**, crimes against humanity and war crimes resulting in death. He and his wife, a German national, had abused a Yezidi woman and her daughter as slaves. To punish the 5-year old girl, the defendant chained the girl in a courtyard in extreme heat, causing her death. The defendant was extradited from Greece to Germany in 2019. In this case, the crime happened outside Germany, it

was perpetrated by an Iraqi citizen and the perpetrator had not lived in Germany when the investigation began.

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 a **war crime** of appropriation of property (section 9 of the CCAIL). Furthermore, it was found that a mother committed a **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 CCAIL). German courts have also sentenced women who had fought with da'esh in Syria for national crimes such as membership of a terrorist organisation and violation of the duty of care for their children as well as crimes under international law such as crime against humanity (section 7 of the CCAIL) for enslaving Yazidi women ("cumulative prosecution").

German prosecutors are currently running over 100 investigations into international crimes. The message is clear: those who commit atrocities – no matter where – cannot feel safe. They will eventually be held accountable.