



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

d . 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.

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

Further trials and convictions concern _____ 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 d 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

training camp (section 8 (1) 5 of the CCAIL). German courts have also sentenced

women who had fought with d _____ 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

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.