3.2 Between international solidarity and "no safe haven"

The German *Völkerstrafgesetzbuch* 20 years on

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1 Concept and aims of the VStGB

The VStGB is part of a larger set of laws, meant to implement the material law of the Rome Statute into German criminal law. For this purpose, the Federal Ministry of Justice established an expert working group in October 1999, which submitted a "Working Draft of a Law for the Introduction of a Code of Crimes Against International Law" in May 2001. As all political parties supported the project, it was passed unanimously in the German parliament in March of 2002 without substantial divergence from the Draft of the Special Working Group.[2]

According to the Official Explanatory Memorandum,[3] the VStGB intends to achieve four aims.

1 Firstly, the code aims at expressing the "specific wrong of crimes under international law". Essentially, the VStGB meant to tackle the lack of implementation of the Nuremberg law into domestic law: The German Criminal Code had previously contained no provisions on war crimes or crimes against humanity.[4] This lack of implementation was the result of the Federal Republic's long-lasting rejection of the "legacy of Nuremberg". It was only after the end of the Cold War that this scepticism was replaced by a quintessentially international criminal law-friendly attitude.[5] Only then was the inappropriateness of the so-called "ordinary crimes approach" fully recognised within the German legal and political discourse.
2 The second aim of the VStGB is to promote "legal clarity and practical application" by providing a unified code of international criminal law for the German judiciary. Smaller modifications to the law of the ICC Statute were supposed to be necessary in order for it to adhere to constitutional principles of German criminal law such as the principle of legal certainty and the principle of culpability. Other adaptations of the law of the Rome Statute seemed necessary to avoid contradictions and

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inconsistencies with systematic structures of German criminal law. Two of the most notable deviations of the VStGB from the ICC Statute may exemplify this approach.

The first regards the implementation of Article 28 of the ICC Statute. According to the expert group, the doctrine of command responsibility under Article 28 of the ICC Statute was an example of "rough justice" that unduly meshed different forms of a superior's omission without taking into account the varying degrees of his or her guilt.[6] Therefore, in the German implementation, Article 28 was split into three separate provisions.

Secondly, section 2 mandates the application of ordinary German criminal law when no special rules are created by the VStGB. Consequently, the German legislator refrained from implementing the general principles of the ICC Statute on the subjective element, mistake, self-defence or modes of participation, but rather relied on the existing rules and principles in German criminal law regarding these matters.[7]

These adaptations to basic structures of German criminal law have been a wise decision, as they helped to ensure the acceptance of the VStGB amongst the German judiciary. Even though the crimes of the VStGB were new and partly deviated from the law that German prosecutors, judges and criminal law scholars were familiar with, it was not "too far off". German lawyers could make sense of it. From a historical perspective, this is a key difference to the failed implementation of international criminal law within German criminal law in the aftermath of WWII. Back then, Control Council Law no 10 was met with widespread rejection, amongst other reasons due to it appearing as a foreign body of law. Contemporary statements in fact dismissed it as not "deutschrechtlich", a wording that, apart from carrying a decidedly nationalistic undertone, may also be read as meaning "alien to German legal thinking".[8]

3 The third aim of the VStGB is to ensure that Germany was "always in a position to prosecute crimes over which the ICC has jurisdiction". Germany was to fulfil all the requisites under the principle of complementarity in order to secure that no German citizen would ever end up before the ICC.[9]

4 The fourth aim is to contribute to the promotion and proliferation of international criminal law. The VStGB is carried by the idea that blending the substantive law of the ICC Statute with the principled and systematic approach of German criminal law doctrine would make for a better version of the Rome Statute, and could thus serve as a model code for the implementation process in other States.[10] An example is the law of war crimes for which systematic concerns set the impetus for a complete restructuring. War crimes in the VStGB are classified primarily with regard to the target of the attack, not with regard to the international or non-international nature of the armed conflict.[11]

To enable the prosecution of international crimes under the VStGB, some adaptations within the institutional structure of the German criminal justice system were necessary. The competent authority to investigate and prosecute crimes under the VStGB is the Federal Public Prosecutor (Generalbundesanwalt, GBA), not the Regional Public Prosecutor offices (cf § 142a(1) with § 120(1) no 8 Gerichtsverfassungsgesetz, GVG). In consequence, there is one central office to prosecute all cases within which crimes under the VStGB are investigated. Should the GBA decide to press charges in a certain case, those charges are brought before the Higher Regional Courts (Oberlandesgerichte, OLG) – more precisely, before the "Staatsschutzsenate", special panels that normally deal with crimes against State security, mostly terrorism cases (§ 120 I no 8 GVG). Additionally, a special investigation unit for investigating war crimes and other crimes under the VStGB was established within the German Federal Criminal Police.[12]

2 Which role for Germany in a multi-level system of prosecution of international crimes?

Neither the four official aims of the VStGB nor the institutional structures set in place for the prosecution of international crimes provide a clear answer to the actual core question that arises in the context of the practical application of the VStGB: Which role should the Federal Republic of Germany play in prosecuting crimes under international law?

Generally, the adjudication of international crimes by domestic criminal justice systems is evaluated along the lines of two different ideal types distinguished by Máximo Langer: the "global enforcer" approach and the "no safe haven" approach.[13]

The "global enforcer" label, however, does not frame its underlying rationale accurately. It should rather be called "the international solidarity" approach being built upon the idea that international criminal justice, in order to fulfil its function, needs to be administered on a multitude of levels simultaneously. This approach recognises that third States supporting the general idea of international criminal law have to play an active role in the enforcement of it and cannot defer to the ICC or other international(ised) criminal tribunals. It is simply not enough for third States to merely adjudicate cases with a link to their territory, nationals or residents. This understanding is to be distinguished from the claim that a single State could step in and globally ensure the enforcement of international criminal law on its own, as the "global enforcer" label suggests.

As regards Germany's role in a multi-level system of international criminal justice, the most important regulations may be found in section 1 of the VStGB as well as section 153(f) of the German Code of Criminal Procedure. Section 1, sentence 1 of the VStGB mandates the universality principle and applies to war crimes, crimes against humanity, and genocide.[14] Thus, in these cases, German courts have jurisdiction "even when the offence was committed

abroad and bears no relation to Germany". The German legislator hereby embraced the "international solidarity" approach. Indeed, the explanatory memorandum to the law explicitly states: "Since the primary aims is to prevent the impunity of perpetrators of crimes under international law through international solidarity in prosecution, the *duty* to investigate and prosecute is not limited to acts that have a point of connection to Germany."[15] In the same vein, the then Parliamentary State Secretary in the Federal Ministry of Justice, Eckhart Pick, stated in his speech on the occasion of the first reading of the draft law in the Bundestag: "The message of the Rome Statute, that the perpetrators and torturers of this world may no longer feel safe anywhere and at any time, will in future be given quasi legal status in Germany through the VStGB."[16]

Section 153f of the Code of Criminal Procedure, however, scales back this commitment, albeit it is unclear to what precise extent. At least in those cases without a domestic link to the alleged crime a certain level of discretion is opened to abstain from investigating and prosecuting these crimes. In sum, section 1 paves the way for an ambitious practice of prosecuting atrocity crimes worldwide by the German judiciary while the procedural rule section 153(f) allowed for boiling down this prosecutorial practice to a self-serving, "not in my backyard" approach.[17]

3 The VStGB in practice

Within the last 20 years of prosecutorial activity with regard to the VStGB, three stages can be distinguished.

3.1 Rocky starting years

Some have suggested that the latest stage could be headlined "towards complementary preparedness".[18] If so, the adequate label for the first five to ten years of the VStGB is "complete unpreparedness". After all, until 2009 both the GBA and the special investigation unit within the Federal Criminal Police lacked the personnel and resources to conduct any meaningful investigations.[19] During this time, the only visible activity of the GBA in the realm of international criminal law cases was to dismiss public complaints brought up by NGOs urging him to take on high-profile cases such as Donald Rumsfeld and other high-ranking military officials and civil advisers for the US torture and rendition programme installed after 9/11. During these years, representatives of the GBA gave the impression of being overwhelmed by the public scrutiny and activist critique of their work and maintained constantly a passive-aggressive mode of defending their inactivity.[20]

The most notable result was the ruling of the Higher Regional Court of Stuttgart, confirming that the Federal Public Prosecutor indeed enjoyed a large amount of discretion in deciding whether to investigate and prosecute international crimes with no direct link to Germany. The court also held that

the decision of the GBA to abstain from prosecution in line with section 153(f) of the Criminal Code of Procedure was not subject to judicial review.[21] Thus, in an act of self-empowerment against the legislative will – while nonetheless in accordance with the actual political will of the government and political authorities at that time – the judiciary freed itself from the VStGB's ambitious promise to prosecute international crimes in *all* potential cases worldwide. At the same time, criticism regarding the GBA's inactivity continued to increase.

3.2 Only low-cost cases, please

In the second phase, the GBA gained sufficient resources and got equipped with a proper War Crimes Unit and more personnel. Around the same time, the Prosecutor also became more willing and able to better explain his approach. Indeed, it was the head of the department of the GBA's office for the prosecution of crimes under international law who, at a conference on the occasion of the 10th anniversary of the VStGB, summarised the GBA's policy with the label "no safe haven Germany", later taken up by Máximo Langer, thereby largely neglecting the ambitious vision of section 1 of the VStGB.[22]

During the following years, this approach underwent a further development which may be summarised best under the maxim of "only low-cost cases, please". The GBA succeeded in ending all "uncomfortable" investigations in their early stages. These included cases directed against German military personnel for acts committed in the context of foreign missions, most notably the 2009 Kunduz airstrike in Afghanistan.[23] The same was true for cases surrounding the involvement of German security authorities in possible crimes under international law committed by NATO partners, namely the US, eg in the context of drone programmes of targeted killings.[24]

One the other hand, the Federal Public Prosecutor was willing to conduct so-called "structural investigations", that is, broad preliminary investigations not directed against specific suspects but designed to gather evidence related to potential crimes that could be used in future proceedings, be it by the German or any other international or domestic judiciary, even in criminal scenarios with no link to Germany, if only he was confident that no substantial political backlash would result from such investigations.[25]

Consequently, the prosecutorial practice in this second stage was characterised by a very small number of cases that eventually came to trial.[26] A case that exemplifies this phase fairly well and which coincidentally also led to the first conviction on the basis of the VStGB, concerned two leading functionaries, Ignace Murwanashyaka and Straton Musoni, of the Hutu rebel militia Forces Démocratiques de Libération du Rwanda (FDLR). Albeit being resident in Germany at the time of the commission of the crimes they were being charged with, both Murwanashyaka and Musoni had, according to the indictment, participated in massacres perpetrated in the provinces of North and South Kivu/Democratic Republic of Congo, through giving instructions via satellite telephone and by their propagandist activities for

the FDLR in Europe.[27] In 2015, the Higher Regional Court of Stuttgart convicted Murwanashyaka for assisting four incidents of war crimes and for membership as a ringleader in a foreign terrorist group and sentenced him to 13 years of imprisonment. Musoni was found guilty of membership as a ringleader in a foreign terrorist group while being acquitted of all charges of war crimes or crimes against humanity, and sentenced to eight years of imprisonment. However, in 2019, Murwanashyaka's conviction was overturned by the German Federal Court of Justice (Bundesgerichtshof, BGH), and the accused died in custody while awaiting the retrial that same year.

3.3 Syria, Afghanistan and the "Islamic State" (IS)

The third phase of prosecutorial activity started around 2015 and is characterised by a significant increase of cases in which crimes under the VStGB were investigated and prosecuted. This stage has to be understood in the context of the civil war in Syria, the activities of the terrorist group Islamic State in Iraq and Syria, the continuing armed conflict in Afghanistan, and, last but not least, the arrival of hundreds of thousands of refugees from these war-torn regions since 2011.

Three kinds of cases can be distinguished in this phase:

1 Men who had participated actively as part of armed groups in these conflicts, mostly as low-rank recruits of the IS or some other Islamist militias. These men were either German citizens, persons that had been resident in Germany before and returned to the country, or refugees who sought shelter in the Federal Republic.
2 Women who travelled from Germany to regions under the (temporary) control of the IS in order to marry IS fighters.
3 Higher-rank personnel involved in the larger-scale organisation and commission of crimes against humanity, including some functionaries of the Assad regime or IS commanders.

These three categories of cases do not carry the same weight in the practice of the German judiciary. Only cases from the first two categories have been brought to trial in larger numbers as of today. Here, the German judiciary has convicted individuals as war criminals even if they could be proven to have done no more than posed with the mutilated bodies of fallen enemy combatants.[28] Women who had voluntarily travelled to IS-held areas in order to marry IS fighters were considered to have participated in the commission of a war crime if the joint household was run in a house appropriated in violation of international law or if enslaved Yezidi women and girls were forced to perform labour services in that same household.[29] Thus, German courts have stretched the scope of the application of war crimes in these cases well beyond the personnel that had been convicted for international crimes before.

A further notable feature of the cases of the first two categories is that the charges brought against the accused oftentimes not only consist of international crimes but also include charges of membership of a foreign terrorist organisation and of illegally carrying military weapons. Thus, a convergence of international criminal law with anti-terrorism law can be observed.[30] This convergence is problematic for a number of reasons, particularly as it further reinforces the already existing selectivity of criminal prosecutions in the context of armed conflicts: in the vast majority of cases, the German judiciary goes after members of groups that are classified as terrorist by the international community. Those who commit crimes in the service of State armed forces or security agencies, on the other hand, are much less likely to become the focus of attention of the German criminal justice system.

It is to be mentioned, however, that the German Federal Court seized the opportunity provided by proceedings against a former officer of the Afghan army, who was charged with war crimes committed against members of the Taliban, to comment on the question of functional immunity of State officials before third State courts. At this occasion, the court did emphasise that an exception to the rule of functional immunity of State officials existed in the case of allegations of crimes under international law. At the same time, however, the Federal Court expressly affirmed such an exception only for lower-ranking functionaries.[31]

The third category of cases has only limited practical relevance so far. There is a small number of undisclosed arrest warrants against high-rank suspects of the Syrian Assad regime. The only disclosed arrest warrant is directed against Jamil Hassan, the head of Syria's Air Force Intelligence.[32] Additionally, three low- to mid-level suspects have been arrested in Germany and charged with having participated in Assad's torture programmes. Two of them have been convicted of assisting crimes against humanity by the Higher Regional Court in Koblenz, while the third is currently at trial before the Higher Regional Court in Frankfurt/Main.[33] The last case that falls into the third category is the one regarding Taha A-J, an Iraqi national and high-rank IS member who was convicted of genocide, crimes against humanity and war crimes against the Yezidi population.[34]

In contrast to the dozens of category I and II proceedings, only those very few cases of the aforementioned third category carry a symbolic significance that extends beyond Germany: for the first time, Assad's systematic crimes of torture against the Syrian civilian population and the genocidal campaign of the IS against the Yezidi population became the subject of criminal trials. This does not, however, change the fact that even these proceedings ultimately are politically low-cost as well.

4 The VStGB under the auspices of the Russian War of Aggression against the Ukraine

Russia's war against the Ukraine has recently changed the political backdrop against which the German judiciary prosecutes international crimes.

Throughout the Western world, calls for criminal investigations and the prosecution of Vladimir Putin and his inner circle have emerged. Impunity for the main political and military leaders responsible for this war of aggression and the crimes committed against the Ukrainian civilian population appears as an intolerable option even to those who have so far been sceptical or even hostile towards the International Criminal Court or the idea of national prosecution of crimes under international law by third States on the basis of the universality principle. The GBA has recognised the signs of the times and quickly opened a structural investigation in order to gather information and evidence on possible crimes under the VStGB in Ukraine while the political branch has agreed to provide more financial resources to the GBA so that two additional units can be established to undertake this investigation.[35] In this context, it is undisputed that, under international law, the political leadership surrounding and including Russian President Vladimir Putin and Foreign Minister Sergei Lavrov cannot become defendants in German criminal proceedings for reasons of immunity, as long as they hold office. Moreover, while the crime of aggression was incorporated into the VStGB in 2016 in order to implement the Kampala Amendments to the Rome Statute, the universality principle does not apply to this crime. Therefore, the German judiciary does not have the authority to prosecute the crime of aggression in this scenario. Once again, it is highlighted to what extent the actual practice of international criminal law is determined by questions of political and military power. It is only of little comfort that the terrible suffering currently caused to the Ukrainian population might provide a boost to the longstanding call for a less selective application of international criminal law and that it has to be enforced, above all, against those in positions of power.

5 Conclusion

German international criminal law has been searching for its role ever since the entry into force of the VStGB. Initially, there was the perhaps too idealistic promise that Germany would play an active role in the global fight against impunity for crimes under international law and would prosecute crimes of this kind everywhere. This promise, however, has never been fulfilled in practice. Instead, the German criminal justice system has chosen a course characterised above all by the avoidance of politically inconvenient proceedings. Surely, since 2015 the number of cases has increased considerably. The prosecutorial efforts of the Federal Public Prosecutor are also no longer exclusively limited to a "no safe haven approach", as there are ongoing structural investigations and occasional investigations and prosecutorial measures taken against individual suspects, even in lack of a link to Germany. Nonetheless, the prosecutorial practice is still far from the ambitious vision sketched out in section 1 of the VStGB. The most influential guiding principle of the Federal Public Prosecutor still appears to be to stick to low-cost cases which, naturally, add little to the larger project of international criminal law: ending the impunity

of large-scale atrocities. It remains to be seen whether this will change in light of the currently widespread call for the prosecution of those politically and militarily responsible for crimes committed in the war in Ukraine.

Notes

1 The author thanks Rachel Behring and Henrike Groß for their research and assistance in drafting this chapter.
2 More extensively on the law's origins: Gerhard Werle and Florian Jeßberger, 'International Criminal Justice is Coming Home: The New German Code of Crimes Against International Law' (2002) 13 Criminal Law Forum 199.
3 Bundestagsdrucksache (Parliamentary Document) 14/8524.
4 Bundestagsdrucksache (Parliamentary Document) 14/8524, p 12.
5 See for more details Ronen Steinke, *The Politics of International Criminal Justice: German Perspectives from Nuremberg to The Hague* (Hart Publishing 2012); Gerhard Werle and Florian Jeßberger, *Principles of International Criminal Law* (4th edn, OUP 2020) paras 485ff.
6 Bundestagsdrucksache (Parliamentary Document) 14/8524, pp 18–19. For a different evaluation of Art 28 of the ICC Statute: Boris Burghardt, 'Die Vorgesetztenverantwortlichkeit nach Völkerstrafrecht und deutschem Recht (§ 4 VStGB)' (2010) 5 Zeitschrift für Internationale Strafrechtsdogmatik 695ff.
7 Bundestagsdrucksache (Parliamentary Document) 14/8524, p 14.
8 For a detailed account, see Edith Raim, *Justiz zwischen Diktatur und Demokratie* (De Gruyter 2013) 579ff.
9 Bundestagsdrucksache (Parliamentary Document) 14/8524, p 12.
10 Bundestagsdrucksache (Parliamentary Document) 14/8524, p 12.
11 Bundestagsdrucksache (Parliamentary Document) 14/8524, pp 23–24.
12 See Klaus Zorn, 'Die Zentralstelle für die Bekämpfung von Kriegsverbrechen und weiteren Straftaten nach dem Völkerstrafgesetzbuch' (2017) 12 Zeitschrift für internationale Strafrechtsdogmatik 762.
13 Máximo Langer, 'Universal Jurisdiction is not Disappearing' (2015) 13 Journal of International Criminal Justice 246.
14 A different, much more restricted approach was chosen with regard to jurisdiction over the crime of aggression, see Florian Jeßberger, 'Implementing Kampala: The New Crime of Aggression under the German Code of Crimes against International Law', in Martin Böse and others (eds), *Justice Without Borders, Essays in Honour of Wolfgang Schomburg* (Brill 2018) 180.
15 Bundestagsdrucksache (Parliamentary Document) 14/8254, p 37 (emphasis by the author).
16 Bundestagsplenarprotokoll (Plenary Minute) 14/228, p 22685. See also Bundestagsplenarprotokoll (Plenary Minute) 14/228, p 22682 (Parliamentarian Röttgen), p 22683 (Parliamentarian Grießhaber).
17 Bundestagsdrucksache (Parliamentary Document) 14/8254, p 37; Thomas Beck and Christian Ritscher, 'Do Criminal Complaints Make Sense in (German) International Criminal Law?' (2015) 13 Journal of International Criminal Justice 230; see also Gerhard Werle, 'Völkerstrafrecht und deutsches Völkerstrafgesetzbuch' (2012) 67 JuristenZeitung 376.
18 Florian Jeßberger, 'Towards a "Complementary Preparedness" Approach to Universal Jurisdiction – Recent Trends and Best Practices in the European

Union', in European Parliament, *Universal Jurisdiction and International Crimes: Constraints and Best Practices* (2018) 53.

19 Boris Burghardt, 'Zwischen internationaler Solidarität und "not in my backyard"' (2018) 51 Kritische Justiz 24.

20 Claus Kreß, 'Nationale Umsetzung des Völkerstrafgesetzbuches' (2007) 13 Zeitschrift für Internationale Strafrechtsdogmatik 515, 523–525; see also Kai Ambos, '§ 1 Völkerstrafgesetzbuch', paras 29ff, in Wolfgang Joecks and Klaus Miebach, *Münchener Kommentar zum Strafgesetzbuch* (4th edn, CH Beck 2022).

21 OLG Stuttgart [2006] Neue Zeitschrift für Strafrecht 117. See on this decision Kai Ambos, 'International Core Crimes, Universal Jurisdiction and § 153f of the German Criminal Procedure Code: A Commentary on the Decisions of the Federal Prosecutor General and the Stuttgart Higher Regional Court in the Abu Ghraib/Rumsfeld Case' (2007) 18 Criminal Law Forum 43.

22 See Thomas Beck, 'Das Völkerstrafgesetzbuch in der praktischen Anwendung', in Florian Jeßberger and Julia Geneuss (eds), *Zehn Jahre Völkerstrafgesetzbuch, Bilanz und Perspektiven eines "deutschen Völkerstrafrechts"* (Nomos 2013) 161. Similar for the German Bundesregierung (Government), see for instance Bundestagsdrucksache (Parliamentary Document) 16/11479, p 4.

23 See Generalbundesanwalt, Decision of 16 April 2010 – 3 BJs 6/10-4. For a critical evaluation, see Constantin von der Groeben, 'Criminal Responsibility of German Soldiers in Afghanistan: The Case of Colonel Klein' (2010) 11 German Law Journal 469.

24 Generalbundesanwalt, Decision of 20 June 2013 – 3 BJs 7/12-4 [2013] Neue Zeitschrift für Strafrecht 644ff. For a critical evaluation, see K Ambos, 'Einstellungsverfügung GBA vom 20. 6. 2013 zum Drohneneinsatz in Mir Ali/Pakistan am 4. 10. 2010 u. Tötung des dt. Staatsangehörigen B.E. – Anmerkung zur "offenen Version" vom 23. 7. 2013' [2013] Neue Zeitschrift für Strafrecht 634.

25 For further information about these investigations see Julia Geneuss, *Völkerrechtsverbrechen und Verfolgungsermessen* (Nomos 2013) 294ff; Wolfgang Kaleck, 'Strafverfolgung nach dem Völkerstrafgesetzbuch: Ein kurzer Blick in die Zukunft – ein Kommentar zum Beitrag von Martin Böse', in Florian Jeßberger and Julia Geneuss (eds), *Zehn Jahre Völkerstrafgesetzbuch, Bilanz und Perspektiven eines "deutschen Völkerstrafrechts"* (Nomos 2013) 177 (179).

26 Thomas Beck, 'Das Völkerstrafgesetzbuch in der praktischen Anwendung', in Florian Jeßberger and Julia Geneuss (eds), ibid, 161; Rolf Hannich, 'Justice in the Name of All' (2007) 13 Zeitschrift für Internationale Strafrechtsdogmatik 507, 513–514.

27 See on this trial: ECCHR, Universal Jurisdiction in Germany?, available at: www.ecchr.eu/fileadmin/Juristische_Dokumente/Report_Executive_Summary_FDLR_EN.pdf (accessed 23 September 2022); Dominic Johnson, Bianca Schmolze and Simone Schlindwein, *Tatort Kongo – Prozess in Deutschland, Die Verbrechen der ruandischen Miliz FDLR und der Versuch einer juristischen Aufarbeitung* (Ch. Links Verlag 2016).

28 See OLG Frankfurt, Judgement of 8 November 2016 – 5 – 2 StE 10/16 – 9 – 2/1; BGH, Decision of 8 September 2016 – StB 27,16; OLG Frankfurt, Judgement of 12 July 2016 – 5 – 3 StE 2/16 – 4 – 1/16; BGH, Judgement of 27 July 2017 – 3 StR 57,17 – BGHSt 62, 272.

29 BGH, Decision of 4 April 2019 – AK 12,19; OLG Düsseldorf, Judgement of 4 December 2019 – 2 StE 2/19.

30 See for example Peter Frank and Holger Schneider-Glockzin, 'Terrorismus und Völkerstraftaten im bewaffneten Konflikt' [2017] Neue Zeitschrift für Strafrecht 6.
31 BGH, 3 StR 564/19. For a detailed account Gerhard Werle, 'Anmerkung' (2021) 76 Juristen Zeitung 732; Florian Jessberger and Aziz Epik, 'Anmerkung' (2022) Juristische Rundschau 10.
32 For further information concerning the arrest warrant see: European Center for Constitutional and Human Rights, 'Deutsche Justiz erlässt Haftbefehl gegen syrischen Geheimdienstchef Jamil Hassan', www.ecchr.eu/fall/deutsche-justiz-erlaesst-haftbefehl-gegen-syrischen-geheimdienstchef-jamil-hassan/#case_case (accessed 20 September 2022).
33 OLG Koblenz, Judgement of 24 February 2021 – 1 StE 3/21; OLG Koblenz, Judgement of 13 January 2022 – 1 StE 9/19; BGH, Decision of 20 April 2022, Az. 3 StR 367/21.
34 OLG Frankfurt am Main, Judgement of 30 November 2021 – 5–3 StE 1/20 – 4 – 1/20.
35 See, eg, Johannes Block, 'Committed in Ukraine, Prosecuted in Germany?', Völkerrechtsblog, 7 April 2022 <https://voelkerrechtsblog.org/de/committed-in-ukraine-prosecuted-in-germany/> (accessed 20 September 2022)

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