

EXPLORING THE INFLUENCE OF POLITICS ON UNIVERSAL JURISDICTION : A CASE STUDY ON GERMAN UNIVERSAL JURISDICTION CASES REGARDING SYRIA (1)

BY

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RÉSUMÉ

Depuis 2011, les Syriens font face à des violations généralisées des droits de l'Homme. Avec de nombreuses voies vers la justice bloquées, les tribunaux nationaux en dehors de la Syrie représentent actuellement la seule possibilité de poursuivre les auteurs de ces crimes. Sur base de sa compétence universelle, l'Allemagne joue un rôle remarquablement actif dans l'enquête et la poursuite des crimes en Syrie sur la base de la compétence universelle, même en l'absence de lien direct entre les crimes commis et l'État allemand. Cela peut s'expliquer par trois facteurs politiques. Premièrement, ce comportement est en accord avec la conception du rôle national (national role conception) de l'Allemagne, ou la façon dont l'Allemagne perçoit son rôle sur la scène internationale, en tant que « puissance normative » et peut-être même en tant que 'gendarme du monde'. Deuxièmement, l'approbation par la communauté internationale des poursuites est cruciale. Troisièmement, le fait que l'Allemagne accueille un nombre significatif de migrants syriens a un effet motivant et facilite les poursuites.

ABSTRACT

Since 2011, Syrians have been facing widespread human rights violations. With many roads to justice blocked, national courts outside Syria currently represent the only possibility to prosecute perpetrators. Using its universal jurisdiction, Germany has played a remarkably active role in investigating and prosecuting crimes in Syria, even in cases without a direct link between the crimes committed and the German State. This can be explained by three political factors. Firstly, this behaviour aligns with Germany's national role conception, or how Germany perceives its role on the international stage, as a 'normative power' and possibly even a "global enforcer". Secondly, the international community's approval of the prosecutions is crucial. Thirdly, the fact that Germany hosts a significant number of Syrian migrants has a motivating effect and facilitates prosecution.

(1) This article is based on research completed in August 2023.

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INTRODUCTION

In the realm of justice, the concept of universal jurisdiction (UJ) grants any State the power to prosecute the most serious crimes, regardless of where, by whom, and against whom they were committed. This principle authorizes every State in the world the potential to act as a guardian against impunity by taking up the responsibility to ensure that the gravest atrocities face justice. However, this authority is not without its share of scrutiny. Both proponents and opponents of UJ have voiced concerns about the fact that the initiation of these cases leaves considerable room for political influence. (2)

There are nonetheless situations where UJ becomes the only avenue to justice. For example, for over twelve years now, the Syrian population has been experiencing “the worst man-made disaster since the Second World War”. (3) During this conflict, a multitude of international crimes were committed by both the Syrian regime’s army (4) and rebel groups’ forces. (5) These include unlawful killings, arbitrary detention, torture, enforced disappearances, sexual enslavement, and the use of chemical weapons. (6) However, Syrian courts are leaving these crimes unpunished, the International Criminal Court (ICC) has no jurisdiction, and the United Nations Security

(2) See e.g. H. A. KISSINGER, “The Pitfalls of Universal Jurisdiction” (2001) 80(4) *Foreign Affairs*; H. KÖCHLER and M. YILANCI, “Universal Jurisdiction and International Power Politics: Ideal versus Real” (2006) 7(1) *Eskişehir Osmangazi Üniversitesi Sosyal Bilimler Dergisi*; UNGA Sixth Committee (79th session), “Universal Jurisdiction Principle Must Be Defined to Avoid Abuse, Endangerment of International Law, Sixth Committee Hears as Debate Begins” (15 October 2014) UN Doc GA/L/3481 <<https://press.un.org/en/2014/gal3481.doc.htm>> accessed 14 July 2023; Amnesty International, “Universal jurisdiction: The challenges for police and prosecuting authorities” (2007) 20 <<https://www.amnesty.org/fr/wp-content/uploads/2021/07/ior530072007en.pdf>> accessed 14 July 2023.

(3) UN, “Syria ‘worst man-made disaster since World War II’ – UN rights chief” (14 March 2017) <<https://news.un.org/en/story/2017/03/553252#:~:text=The%20conflict%20in%20Syria%20is,detention%20or%20information%20about%20where>> accessed 17 July 2023.

(4) A. KAMAL, “Impunity in Syria & Universal Jurisdiction in Europe: Is a Revival of the ‘Global Enforcer’ Approach in Order?” (2021) 2 *Queen Mary Law Journal* 97.

(5) R. ZIADEH, “Transition, Justice, and Accountability in Syria”, in R. ZIADEH (ed), *Accountability in Syria: Achieving Transitional Justice in a Postconflict Society*, Lexington Books, 2020, 2.

(6) UNHRC, “Report of the Independent International Commission of Inquiry on the Syrian Arab Republic” Forty-sixth session (11 March 2023), UN Doc A/HRC/46/55 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/059/73/PDF/G2105973.pdf?OpenElement>> accessed 24 July 2023; UNHRC, “‘No End in Sight’: Torture and ill-treatment in the Syrian Arab Republic 2020-2023” Fifty-third session (10 July 2023) UN Doc A/HRC/53/CRP.5. <<https://reliefweb.int/report/syrian-arab-republic/no-end-sight-torture-and-ill-treatment-syrian-arab-republic-2020-2023-independent-international-commission-inquiry-syrian-arab-republic-ahr53crp5-enar>> accessed 24 July 2023.

Council (UNSC) is unwilling to take action. (7) Therefore, UJ serves as a valuable last resort. (8)

Germany has come forward as the champion of justice in this context. (9) The country is remarkably and exceptionally (10) active in investigating and prosecuting atrocities that were committed in Syria and do not have any link with Germany. Understandably, the question is asked why a State would be willing to “sacrifice” its own resources for the global public good. (11) Is it overly optimistic to perceive this as an act of selfless altruism? Alternatively, does Germany have specific political motives underlying its actions?

By addressing the question “What political factors (12) might explain Germany’s proactive stance in investigating and prosecuting Syrian crimes on the basis of universal jurisdiction?” with an exploratory case study, this work aims to clarify the causal link between politics and the prevalence of UJ cases. The found results could contribute to the debate on whether the political influence in UJ cases is reconcilable with the rationale of UJ, which is for the prosecuting country to punish a crime as a ‘representative’ of the whole international community, without pursuing its own political interests. (13) Besides, understanding this causal link might help *inter alia* civil society organisations and NGOs in choosing the right forum to file a complaint.

The case of Germany and Syria, a holistic single case (14), was selected on the basis of the “extreme case” rationale. The Germany-Syria case is “extreme” because of the unusually high prevalence of UJ cases compared

(7) See *infra*.

(8) W. KALECK and P. KROKER, “Syrian Torture Investigations in Germany and Beyond” (2018) 16(1) *Journal of International Criminal Justice* 170-171.

(9) S. ABDOUELDAHAB and F.-J. LANGMACK, “Universal Jurisdiction Cases in Germany: A Closer Look at the Poster Child of International Criminal Justice” (2022) 31(2) *Minnesota Journal of International Law* 2.

(10) Prosecutions based on UJ are vanishingly rare. See E. KONTOROVICH, “The Parochial Uses of Universal Jurisdiction” (2019) 94(3) *Notre Dame Law Review* 1419.

(11) F. MÉGRET, “The ‘elephant in the room’ in debates about universal jurisdiction: diasporas, duties of hospitality, and the constitution of the political” (2015) 6(1) *Transnational Legal Theory* 99.

(12) This study will primarily focus on foreign policy and international relations, without extensively exploring internal German politics, including interactions between political parties. The rationale behind this approach is rooted in the aim of establishing a broad framework for future research, considering that UJ is a concept with a distinct international nature.

(13) *Ibid.*; H. MOODRICK-EVEN KHEN, “Revisiting Universal Jurisdiction: The Application of the Complementarity Principle by National Courts and Implications for Ex-Post Justice in the Syrian Civil War” (2015) 30(2) *Emory International Law Review* 265.

(14) This means that the focus is on one case in its context, without looking into different subunits of this case. See R. K. YIN, *Case Study Research and Applications: Design and Methods*, 6th edn, SAGE Publications, 2018, 51.

to other prosecuting States (15) as well as territorial States (16), *i.e.* the State where the crime occurred. (17)

The article is organized into two chapters. Chapter I gives a conceptual framework, comprising four sections. These sections address the concept of UJ, the interplay between UJ and politics, Germany's exercise of UJ in general and the use UJ in the case of Syria. Chapter II presents the exploration of influential political factors that could explain Germany's active involvement. These factors encompass national role conceptions, diplomatic considerations, and migration policy.

I. — CONCEPTUAL FRAMEWORK

A. — *Universal Jurisdiction: The Concept*

UJ, also called the universality principle, can be defined as prescriptive (18) “criminal jurisdiction based solely on the nature of the crime, without regard to where the crime was committed, the nationality of the alleged or convicted perpetrator, the nationality of the victim, or any other connection to the state exercising such jurisdiction.” (19) As such, the authority to punish is

(15) Germany's proactive application of UJ makes it a frequently cited example for other States. See e.g. Office of the High Commissioner for Human Rights (OHCHR), “German court's historic crimes against humanity finding in Syria case must spur momentum for international justice – Bachelet” (13 January 2022) <[https://www.ohchr.org/en/press-releases/2022/01/german-courts-historic-crimes-against-humanity-finding-syria-case-must-spur?LangID=E&NewsID=28021](https://www.ohchr.org/en/press-releases/2022/01/german-courts-historic-crimes-against-humanity-finding-syria-case-must-spur)> accessed 27 June 2023; Amnesty International, “Germany/Syria: life sentence for former intelligence officer is ‘historic victory’” (13 January 2022) <<https://www.amnesty.org.uk/press-releases/germanysyria-life-sentence-former-intelligence-officer-historic-victory>> accessed 1 July 2023; N. WILEY, “Impact Jurisdiction & Structural Investigations: The Key to the United States Prosecuting Human Rights Violators” (2023) 74 *Hastings Law Journal* 1255.

(16) Most UJ cases in Germany relate to crimes in Syria. See Bundesministerium der Justiz, “How to Punish War Crimes – Recent German Experiences in Bringing War Criminals to Justice” Rede von Dr. Marco Buschmann MdB, Bundesminister der Justiz, an der Harvard Kennedy School am 20. Oktober 2022 in Cambridge, Massachusetts” (20 October 2022) <https://www.bmj.de/SharedDocs/Reden/DE/2022/1020_Harvard.html?nn=6704226> accessed 27 May 2023.

(17) It must however be noted that Germany's involvement in UJ cases is not limited to Syria alone, and Germany is not the only State active in this field.

(18) Jurisdiction to prescribe in a criminal law context refers to the power of a State to establish laws and define certain behaviors as criminal offenses, while jurisdiction to enforce involves the authority to apply this criminal law by performing actions such as making arrests, detaining individuals, or initiating prosecutions. In criminal matters, this distinction is generally irrelevant. The application of a State's criminal law by its courts essentially represents the implementation or actualization of its prescription. See R. O'KEEFE, “Universal Jurisdiction: Clarifying the Basic Concept” (2004) 2(3) *Journal of International Criminal Justice* 745.

(19) Principle 1 Princeton Project on Universal Jurisdiction, “Princeton Principles on Universal Jurisdiction” (2001) <https://lapa.princeton.edu/hosteddocs/unive_jur.pdf> accessed 1 July 2023 (Princeton Principles); R. O'KEEFE, *International Criminal Law*, Oxford University Press, 2015, 17, §1.54; P. WEISS, “Universal Jurisdiction: Past, Present and Future” (2008) 102 *Proceedings of the Annual Meeting* (American Society of International Law) <<https://www.jstor.org/stable/25660324>> accessed 1 July 2023; R. MURRAY, J. ROBERTS and A. HUBER, “Practical Perspectives of Universal

derived from the crime itself (20), and not from a particular nexus between the offense and the prosecuting State (21). On the basis of UJ, every State in the world is free to prosecute such crime, without any particular state bearing responsibility. (22) The exercise of UJ can be legally based on treaties or customary international law. (23)

A specific form of UJ is “pure” or “absolute” UJ. This form of UJ entails that national legislation does not mandate that the accused must physically be present in the country to prosecute them. (24) International treaty law neither allows nor prohibits the exercise of such jurisdiction. (25) Also with regard to customary international law (26), the limited state practice lacks the required *opinio juris* to conclude absolute UJ would be either prohibited or allowed. (27) Therefore, this form of UJ remains controversial. (28)

UJ has a broad extraterritorial reach, but its application is limited to a narrow range of offenses. (29) The justification for the types of crimes sub-

Jurisdiction in the OSCE Region: Factors to Ensure Accountability of Perpetrators of Torture”, in P. CZECH, L. HESCHL, K. LUKAS, M. NOWAK and G. OBERLEITNER (eds), *European Yearbook in Human Rights 2022*, Intersentia, 2022, 593-594.

(20) G. WERLE, J. GENEUSS and F. JESSBERGER, *Principles of international criminal law*, 3rd edn, Oxford University Press, 2014, 59, §171.

(21) M. MORRIS, “Terrorism: The Politics of Prosecution” (2005) 5(2) *Chicago Journal of International Law* 410

(22) KONTOROVICH, “The Parochial Uses of Universal Jurisdiction” (2019) 94(3) *Notre Dame Law Review* 1427.

(23) M. LANGER, “The Diplomacy of Universal Jurisdiction: The Political Branches and the Transnational Prosecution of International Crimes” (2011) 105(1) *The American Journal of International Law* 1.

(24) N. BOISTER, *An Introduction to Transnational Criminal Law*, 2nd edn, Oxford University Press, 2018, 268.

(25) C. RYNGAERT, *Jurisdiction in International Law: United States and European Perspectives*, DPhil thesis, Katholieke Universiteit Leuven, 2007, 556 §851 <https://www.law.kuleuven.be/iir/nl/onderzoek/Onderzoek_medewerkers/Doctoraat_Cedric.pdf> accessed 27 June 2023; T. KLUWEN, “Universal Jurisdiction in Absentia Before Domestic Courts Prosecuting International Crimes: A Suitable Weapon to Fight Impunity?” (2017) 8 *Goettingen Journal of International Law* 18.

(26) Customary international law is built upon two elements. The first is the establishment of a common state practice, while the second, called *opinio juris*, involves recognizing this practice as a matter of legal obligation, prohibition, or permission. See J. WOUTERS, C. RYNGAERT, T. RUYS and G. DE BAERE, *International law: a European Perspective*, Hart Publishing, 2019, 135.

(27) R. RABINOVITCH, “Universal Jurisdiction In Absentia” (2005) 28(2) *Fordham International Law Journal* 511; T. KLUWEN, “Universal Jurisdiction in Absentia Before Domestic Courts Prosecuting International Crimes: A Suitable Weapon to Fight Impunity?” (2017) 8 *Goettingen Journal of International Law* 18.

(28) P. GAETA (ed), « The Repression of International Crimes in Domestic Jurisdictions », in A. CASSESE, L. BAIG, M. FAN, P. GAETA, C. GOSNELL and A. WHITING (eds), *Cassese’s International Criminal Law*, 3th edn, Oxford University Press, 2013, 278; C. RYNGAERT, *Jurisdiction in International Law: United States and European Perspectives*, DPhil thesis, Katholieke Universiteit Leuven, 2007, 556 §851 <https://www.law.kuleuven.be/iir/nl/onderzoek/Onderzoek_medewerkers/Doctoraat_Cedric.pdf> accessed 27 June 2023.

(29) A. ESER, “National Jurisdiction over Extraterritorial Crimes within the Framework of International Complementarity”, in L. CHAND VOHRAH and others (eds.), *Man’s Inhumanity to Man: Essays on International Law in Honour of Antonio Cassese*, vol. 5, Kluwer Law International, 2003, 283.

ject to UJ is tied to two underlying rationales. (30) Firstly, certain crimes are considered so heinous that they have an impact on the international community as a whole, and the perpetrators are regarded as enemies of all humankind. (31) Consequently, these crimes and the response to them are of concern to the entire international community, thus justifying the use of UJ. (32) Secondly, crimes committed in locations not under the jurisdiction of any particular state (*terra nullius*) may also be subject to UJ. (33) The first rationale explains why crimes such as genocide, war crimes, and crimes against humanity can be prosecuted on the basis of UJ. (34) The second rationale primarily applies to the crime of piracy. (35) While it would be difficult to argue that sea robbery is one of the most heinous crimes and land robbery is not, the justification lies in the fact that piracy, occurring on the high seas, poses challenges for prosecution based on traditional jurisdiction grounds. (36)

(30) I. BANTEKAS and S. NASH, *International Criminal Law*, 3rd edn, Routledge-Cavendish, 2007, 85-86; N. BOISTER, *An Introduction to Transnational Criminal Law*, 2nd edn, Oxford University Press, 2018, 268; R. O'KEEFE, *International Criminal Law*, Oxford University Press, 2015, 21, §1.59.

(31) D. HOVELL, "The Authority of Universal Jurisdiction" (2018) 29(2) *The European Journal of International Law* 448-449; F. LAFONTAINE, "National Jurisdictions", in W. A. SCHABAS (ed), *The Cambridge Companion to International Criminal Law*, Cambridge University Press, 2015, 155.

(32) J. SONG, "Pirates and Torturers: Universal Jurisdiction as Enforcement Gap-Filling" (2015) 23(4) *The Journal of Political Philosophy* 475; M. CHADWICK, "Modern Developments in Universal Jurisdiction: Addressing Impunity in Tibet and Beyond" (2009) 9(2) *International Criminal Law Review* 361; H. D. GOULD, *The legacy of punishment in international law*, Palgrave Macmillan, 2010, 83.

(33) C. RYNGAERT, *Jurisdiction in International Law: United States and European Perspectives*, DPhil thesis, Katholieke Universiteit Leuven, 2007, 550 §847 <https://www.law.kuleuven.be/iir/nl/onderzoek/Onderzoek_medewerkers/Doctoraat_Cedric.pdf> accessed 27 June 2023.

(34) M. LANGER, "Universal Jurisdiction as Janus-Faced: The Dual Nature of the German International Criminal Code" (2013) 11(4) *Journal of International Criminal Justice* 742-743; R. JOTHAM MUKAMA, "Universal Jurisdiction and the International Criminal Court in its Quest for International Criminal Justice" (2021) 5(1) *BiLD Law Journal* 56; A. HAYS BUTLER, "The Doctrine of Universal Jurisdiction: A Review of The Literature" (2000) 11(3) *Criminal Law Forum* 356. For a contrary view, see Anthony Sammons, "The 'Under-Theorization' of Universal Jurisdiction: Implications for Legitimacy on Trials of War Criminals by National Courts" (2003) 21(111) *Berkeley Journal of International Law* 126. Sammons argues that the *terra nullius*-rationale is the only possible justification for the exercise of UJ.

(35) M. CHADWICK, "Modern Developments in Universal Jurisdiction: Addressing Impunity in Tibet and Beyond" (2009) 9(2) *International Criminal Law Review* 362; S. W. BECKER, "Universal jurisdiction: Global report" (2008) 79 *International Review of Penal Law* 172; A. SAMMONS, "The 'Under-Theorization' of Universal Jurisdiction: Implications for Legitimacy on Trials of War Criminals by National Courts" (2003) 21(111) *Berkeley Journal of International Law* 126. For a contrary view, see Y. M. DUTTON, "Bringing Pirates to Justice: A Case for Including Piracy within the Jurisdiction of the International Criminal Court" (2010) 11(1) *Chicago Journal of International Law* 203-204. Dutton argues that the justification for UJ over piracy lies in the heinousness of the act, coupled with the fact that the crime is directed against ships and persons of many nationalities.

(36) J. SONG, "Pirates and Torturers: Universal Jurisdiction as Enforcement Gap-Filling" (2015) 23(4) *The Journal of Political Philosophy* 477; S. W. BECKER, "Universal jurisdiction: Global report" (2008) 79 *International Review of Penal Law* 172.

B. — *Universal Jurisdiction and Politics*

The relation between UJ cases and politics goes two ways. First, as the exercise of UJ is often not obligatory (37), politics can play an important role in the decision of states on whether or not to assert UJ over a certain crime. (38) This is the focus of the current research. Second, the exercise of UJ can have various political effects. (39) For example, as international crimes are often committed by state officials, it can impact the relations with the defendant's State of nationality. (40)

While politics are an important influential factor for the prevalence of UJ cases, various alternative elements could play a role. Important elements are for example that prosecutions are very costly, difficult, and require strong judicial systems. (41) Therefore, the possibility to start UJ cases is generally afforded to high-income countries. (42) It is however still relevant to research the specific reasons for Germany standing out among other high-income States in Europe and beyond. (43)

(37) Under customary international law, UJ is generally accepted to have a permissive nature. See A. HAYS BUTLER, "The Doctrine of Universal Jurisdiction: A Review of The Literature" (2000) 11(3) *Criminal Law Forum* 363.

However, some treaties, such as the 1949 Geneva Conventions, are considered to oblige the exercise of UJ. See R. O'KEEFE, "The Grave Breaches Regime and Universal Jurisdiction" (2009) 7 *Journal of International Criminal Justice* 3.

(38) See e.g. U. CAPDEPÓN, "The selectivity of universal jurisdiction: The history of transnational human rights prosecutions in Latin America and Spain", in J. QUATAERT and L. WILDENTHAL (eds), *The Routledge History of Human Rights*, Routledge, 2019, 507-522; R. BEN-ARI, "Universal Jurisdiction: Chronicle of a Death Foretold" (2020) 43(2) *Denver Journal of International Law & Policy* 171-174; J. PANÁKOVÁ, "Law and Politics of Universal Jurisdiction" (2011) 3(3) *Amsterdam Law Forum*.

(39) A. POLAKIEWICZ, "No Justice, No Security: International Criminal Law Enforcement's Rightful Place in the German National Security Strategy" (49*security*, 7 December 2022) <<https://fourninesecurity.de/en/2022/12/07/no-justice-no-security>> accessed 19 July 2023.

(40) M. LANGER, "The Diplomacy of Universal Jurisdiction: The Political Branches and the Transnational Prosecution of International Crimes" (2011) 105(1) *The American Journal of International Law* 2.

(41) "[T]he assembly recognizes that a scarcity of resources, time, and attention may impose practical limitations on the quest for perfect justice", see Introduction to the Princeton Principles, 27 <https://lapa.princeton.edu/hosteddocs/unive_jur.pdf> accessed 14 July 2023; E. KONTOROVICH, "The Parochial Uses of Universal Jurisdiction" (2019) 94(3) *Notre Dame Law Review* 1426.

(42) N. WILEY, "Impact Jurisdiction & Structural Investigations: The Key to the United States Prosecuting Human Rights Violators" (2023) 74 *Hastings Law Journal* 1255; M. LANGER, "The Diplomacy of Universal Jurisdiction: The Political Branches and the Transnational Prosecution of International Crimes" (2011) 105(1) *The American Journal of International Law* 11.

(43) N. WILEY, "Impact Jurisdiction & Structural Investigations: The Key to the United States Prosecuting Human Rights Violators" (2023) 74 *Hastings Law Journal* 1255.

C. — *Universal Jurisdiction in Germany**The Code of Crimes Against International Law*

If an international crime was committed, Germany can investigate or prosecute this crime under the Code of Crimes Against International Law (CCAIL) (44). (45) The CCAIL entered into force on 30 June 2002, one day before the Rome Statute of the International Criminal Court. (46) With the introduction of the CCAIL, Germany harmonized its domestic criminal law with the Rome Statute by transferring the substantive criminal law prescriptions thereof into German law. (47)

The Exploratory Memorandum of the CCAIL states that its “primary objective” is to fight impunity for international crimes “by solidarity in prosecution” and that “[t]he investigation and prosecution duty is not limited to crimes which have a German connection: even if there is no connection, the results of the investigations initiated in Germany could be valuable for proceedings before a foreign or international criminal court.” (48) The universality principle is enshrined in Section 1 of the CCAIL, which states that the CCAIL applies even “when the offence was committed abroad and bears no relation to Germany”. This way, the CCAIL allows for the exercise of UJ over genocide (49), war crimes (50), crimes against humanity (51) and crimes of aggression (52).

The German Code of Criminal Procedure (53) prescribes that “[u]nless otherwise provided by law, the public prosecution office is obliged to take action in relation to all prosecutable criminal offences, provided there are sufficient factual indications” (54), and thus includes the principle of mandatory

(44) In German: Völkerstrafgesetzbuch (VStGB); Code of Crimes against International Law of 26 June 2002, as last amended by Article 1 of the Act of 22 December 2016, available at <https://www.gesetze-im-internet.de/englisch_vstgb/englisch_vstgb.html> (CCAIL).

(45) Instead of the German Criminal Code, which is applicable when the suspect is present in Germany and the crime is also punishable in Syria, or when the victim is a German national, see Syria Justice and Accountability Centre, “A Guide to National Prosecutions in Germany for Crimes Committed in Syria” (29 August 2019) 2 <<https://syriaaccountability.org/content/files/2022/04/German-Jurisdiction-Guide-EN--1-.pdf>> accessed 27 June 2023.

(46) G. WERLE and F. JESSBERGER, “International Criminal Justice is Coming Home: The New German Code of Crimes Against International Law” (2002) 13(2) *Criminal Law Forum* 191-192.

(47) L. REYDAMS, *Universal Jurisdiction: International and Municipal Legal Perspectives*, Oxford University Press, 2003, 144.

(48) Explanatory memorandum to the CCAIL, quoted in K. GALLAGHER, “Universal Jurisdiction in Practice: Efforts to Hold Donald Rumsfeld and Other High-level United States Officials Accountable for Torture” (2009) 7 *Journal of International Criminal Justice* 1102.

(49) Section 6 CCAIL.

(50) Section 8-12 CCAIL.

(51) Section 7 CCAIL.

(52) Section 13 CCAIL.

(53) In German: Strafprozeßordnung (StPO).

(54) Section 152(2) German Code of Criminal Procedure.

prosecution. (55) However, after the introduction of the CCAIL, a principle regarding the non-prosecution of offences under the CCAIL was added. (56) Under Section 153f of the German Code of Criminal Procedure, the Federal Prosecutor now has the authority to refrain from investigating cases involving suspects who are not currently in Germany and are not expected to be present there, provided that neither the suspect nor the victim is having the German nationality. (57)

German legislation does not impose any specific criteria to exercise UJ, such as presence or residence in the territory, subsidiarity (58), official approval by the Ministry of Justice or double criminality. (59) This way, Germany is one of the few States that allows for the exercise of “absolute” or “pure” UJ. (60)

The Application of Universal Jurisdiction by Germany

Since the second half of the 1990s, under a coalition led by Christian Democrat Helmut Kohl, Germany has been showing its readiness to play an active role in the field of international criminal justice. (61) As an effect, already in 2001, it was stated that Germany was the most active in exercising UJ. (62) This was even before the introduction of the CCAIL, when German legislation regarding UJ was still very limiting. (63) According to the German Constitution, for a German court to have the authority to prosecute a crime,

(55) A. MALEK, “How a Syrian War Criminal Was Brought to Justice – in Germany: When refugees won historic convictions against the Syrian torture regime, they also opened a new front in the global fight for human rights” *The New York Times* (25 January 2022) <<https://www.nytimes.com/live/2022/01/13/world/syria-war-crimes-germany-verdict?cam->> accessed 5 July 2023.

(56) Section 153f German Code of Criminal Procedure.

(57) Since its introduction in 2002, Section 153f German Code of Criminal Procedure has been employed in four investigative proceedings (*Ermittlungsverfahren*). Furthermore, out of approximately 1.100 observation procedures (*Beobachtungsvorgänge*, a preliminary investigation before a formal investigative procedure) initiated during this period, §153f has been utilized in 201 instances. See Deutscher Bundestag, „Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Katja Keul, Margarete Bause, Kai Gehring, weiterer Abgeordneter der Fraktion BÜNDNIS 90/DIE GRÜNEN – Drucksache 19/11480 – Praxis und opferschutzrechtliche Aspekte in völkerstrafrechtlichen Verfahren“ (12 August 2019) 5 question 5 <<https://dserver.bundestag.de/btd/19/123/1912354.pdf>> accessed 15 July 2023.

(58) See *infra*.

(59) Eurojust, “At a Glance: Universal Jurisdiction in EU Member States” (2023) 3 <<https://www.eurojust.europa.eu/sites/default/files/assets/at-a-glance-universal-jurisdiction-in-eu-member-states.pdf>> accessed 24 June 2023.

(60) A. SKANDER GALAND, “What Counts as State Practice? The Koblenz Trial and Functional Immunity” (*Just Security*, 27 May 2020) <<https://www.justsecurity.org/70394/what-counts-as-state-practice-the-koblenz-trial-and-functional-immunity/W/>> accessed 28 June 2023.

(61) C. KRESS, “Germany and the Crime of Aggression”, in S. LINTON, G. SIMPSON and W. A. SCHABAS (eds), *For the Sake of Present and Future Generations: Essays on International Law, Crime and Justice in Honour of Roger S. Clark*, Koninklijke Brill NV, 2015, 37.

(62) M. T. KAMMINGA, “Lessons Learned from the Exercise of Universal Jurisdiction in Respect of Gross Human Rights Offenses” (2001) 23(4) *Human Rights Quarterly* 969.

(63) *Ibid*.

that crime and its corresponding punishment must be defined in a German statute. (64) However, at that time, only genocide and war crimes had been included as international crimes under German law. (65) Other international crimes, such as crimes against humanity, had to be prosecuted as regular offenses, for example manslaughter and murder. (66)

Moreover, some link between the defendant and Germany, such as long-term residency, was required to 'legitimize' the exercise of UJ over genocide and war crimes. (67) The German Federal Supreme Court at that time considered the exercise of UJ without such link as a violation of the principle of non-intervention. (68)

However, during the first seven years after its introduction, the CCAIL went completely unused. (69) From 2002 to 2011, the Office of the Federal Prosecutor received more than sixty complaints, all of which were subsequently dismissed. (70) In 2009, the War Crimes Unit of the German Federal Criminal Police (71) was established. (72) Since then, the volume of cases dealt with consistently increased over time. (73) This way, Germany is said to have known a real "learning curve" regarding UJ. (74) As already mentioned above, and as will be discussed in further detail below, today Germany still is the leading example in the field of UJ. (75)

(64) Article 103(2) Basic Law for the Federal Republic of Germany, as last amended by the Act of 28 June 2022, available at <https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html>.

(65) E. HANDL, "Introductory Note to the German Act to Introduce the Code of Crimes Against International Law" (2003) 42(4) *International Legal Materials* 995.

(66) *Ibid.*

(67) *Ibid.*; D. TURNS, "Aspects of National Implementation of the Rome Statute: The United Kingdom and Selected Other States", in D. MCGOLDRICK, P. ROWE and E. DONNELLY (eds), *The Permanent international criminal court: legal and policy issues*, Hart Publishing, 2004, 386.

(68) E. HANDL, "Introductory Note to the German Act to Introduce the Code of Crimes Against International Law" (2003) 42(4) *International Legal Materials* 995.

(69) N. WILEY, "Impact Jurisdiction & Structural Investigations: The Key to the United States Prosecuting Human Rights Violators" (2023) 74 *Hastings Law Journal* 1265.

(70) L. REYDAMS, "The application of universal jurisdiction in the fight against impunity" (Paper requested by the European Parliament's Subcommittee on Human Rights, 2016) 19 <<https://www.statewatch.org/media/documents/news/2016/apr/ep-study-universal-jurisdiction-fight-against-impunity-4-16.pdf>> accessed 20 July 2023.

(71) In full: Central Unit for the Fight against War Crimes and further Offences pursuant to the Code of Crimes against International Law.

(72) European Parliament Policy Department for External Relations, "Workshop: Universal jurisdiction and international crimes: Constraints and best practices" (September 2018) PE 603.878, 4 <[https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603878/EXPO_STU\(2018\)603878_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603878/EXPO_STU(2018)603878_EN.pdf)> accessed 15 July 2023.

(73) *Ibid.*

(74) *Ibid.*

(75) IJIM, "Spotlight: National Accountability Developments" (Bulletin N°7 2022) 2 <<https://ijim.un.org/wp-content/uploads/2022/03/IJIM-Syria-Bulletin-7-ENG-March-2022-1.pdf>> accessed 20 May 2023; Y. HAN, "Should German Courts Prosecute Syrian International Crimes? Revisiting the 'Dual Foundation' Thesis" (2022) 36(1) *Ethics & International Affairs* 37.

D. — *Universal Jurisdiction and Syria**Ways to Justice for Syria*

Tackling impunity is of paramount importance for the process of rebuilding Syrian society. (76) Indeed, trials can dispel notions of collective guilt, as individual responsibility for atrocities is clearly identified. (77) Besides, trials address the desire for private revenge by acknowledging rights violations and establishing a formal system of accountability. (78) Importantly, combatting impunity also helps preventing future violence. (79) This section will show that multiple ways to justice for Syria are currently blocked, underscoring the vital importance of UJ trials.

Firstly, as regards the ICC, Article 13 of the Rome Statute (80) stipulates that there are three ways to bring a case before the ICC: firstly, when a State Party refers the situation to the Prosecutor; secondly, when the Prosecutor initiates an investigation on their own; and thirdly, when the UNSC refers the situation to the Prosecutor. (81) For the first two options to be viable, it is necessary for the State where the act occurred (territorial State) (82) or the State of the accused's nationality (83) to have accepted the jurisdiction of the ICC. Since Syria has not done so, these paths are rendered inaccessible. (84) While the third option has been proposed, China and Russia (85) – two permanent members of the UNSC – have consistently been vetoing such references. (86) As a result, the ICC is unable to provide justice. (87)

(76) R. ZIADEH, "Transition, Justice, and Accountability in Syria", in R. ZIADEH (ed), *Accountability in Syria: Achieving Transitional Justice in a Postconflict Society*, Lexington Books, 2020, 6.

(77) B. VAN SCHAACK, *Imagining Justice for Syria*, Oxford University Press USA, 2020, 409-410.

(78) *Ibid.*, 410.

(79) *Ibid.*, 416.

(80) UNGA Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) ISBN No. 92-9227-227-6 (Rome Statute).

(81) Art. 13 (a), (c) and (b) Rome Statute, respectively.

(82) Art. 12 (2) (a) Rome Statute.

(83) Art. 12 (2) (b) Rome Statute.

(84) ICC, "States Parties to the Rome Statute", <<https://asp.icc-cpi.int/states-parties>> accessed 1 April 2023; ICC, "Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the alleged crimes committed by ISIS" (8 April 2015) <<https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-fatou-bensouda-alleged-crimes-committed-isis>> accessed 23 July 2023.

(85) Since the beginning of the war in 2011, Russia has vetoed seventeen UNSC resolutions on Syria. See United States Mission to the United Nations, "Remarks at a UN General Assembly Meeting Following a Veto by Russia on a UN Security Council Resolution on Syria" (19 July 2023) <<https://usun.usmission.gov/remarks-at-a-un-general-assembly-meeting-following-a-veto-by-russia-on-a-un-security-council-resolution-on-syria/>> accessed 30 July 2023.

(86) UNSC, "Security Council approves probe into war crimes, human rights abuses in Syria", (22 December 2014) SC/11407 <<https://www.un.org/press/en/2014/sc11407.doc.htm>> accessed 1 April 2023.

(87) J. DOUMIT, "Accountability in a Time of War: Universal Jurisdiction and the Strive for Justice in Syria" (2020) 52(1) *Georgetown Journal of International Law* 268-269; K. KASSAYE, "The Long Road towards Justice in Syria: Challenges and Perspectives on War Crimes" (2018) 7(1)

Secondly, in the past, the UNSC has established ad hoc tribunals, such as the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia in the 1990s. (88) Contrary to the ICC, *ad hoc* tribunals have the authority to initiate proceedings without any additional authorization from the territorial State or the UNSC. (89) However, the establishment of such tribunal would require the consent of Syria or a resolution of the UNSC. (90) Besides, there are a lot of practical considerations, such as the place where the tribunal would be established and the high costs involved. (91) Therefore, an ad hoc tribunal is not a presently available option. (92)

Thirdly, on 8 June 2023, the Netherlands and Canada filed a joined application instituting proceedings against Syria before the International Court of Justice (ICJ) concerning alleged violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (93) This decision was taken following unsuccessful efforts by the Netherlands and Canada to reach a negotiated settlement with Syria, and after Syria declined a proposal for arbitration. (94) While this represents a significant stride towards justice, the proceedings within the ICJ are confined to establishing

Journal of Civil and Legal Sciences 2. It should however be noted that creative ways to bring a case regarding Syria before the ICC are available. Those include asking the Court to investigate the crime of deportation into Jordan. As Jordan is a State Party to the Rome Statute, the ICC could have jurisdiction. See Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, ICC-01/19-33, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar (Pre-Trial Chamber III, 6 September 2018); H. VARNEY and K. ZDUN CZYK, "Gearing Up the Fight Against Impunity: Dedicated Investigative and Prosecutorial Capacities" (Research report International Center for Transitional Justice, 2022) 59 <https://www.ictj.org/sites/default/files/2022-03/ICTJ_Report_Specialized_Units_Web.pdf> accessed 29 July 2023.

(88) M. CHERIF BASSIOUNI, "Mixed Models of International Criminal Justice", in M. CHERIF BASSIOUNI (ed), *The Pursuit of International Criminal Justice: A world Study on Conflicts, Victimization, and Post-Conflict Justice*, vol. 1, Intersentia, 2010, 423.

(89) P. GAURI THAMPI, "Restoring Peace and Justice in Syria: A Proposal for an Ad-Hoc Tribunal" (2020) 2(1) *Vit Law Review* 42.

(90) J. DOUMIT, "Accountability in a Time of War: Universal Jurisdiction and the Strive for Justice in Syria" (2020) 52(1) *Georgetown Journal of International Law* 270. This UNSC Resolution has also faced veto from China and Russia. See S. ABDOUELDAHAB and F.-J. LANGMACK, "Universal Jurisdiction Cases in Germany: A Closer Look at the Poster Child of International Criminal Justice" (2022) 31(2) *Minnesota Journal of International Law* 3.

(91) J. DOUMIT, "Accountability in a Time of War: Universal Jurisdiction and the Strive for Justice in Syria" (2020) 52(1) *Georgetown Journal of International Law* 270.

(92) *Ibid.*; H. VARNEY and K. ZDUN CZYK, "Advancing Global Accountability: The Role of Universal Jurisdiction in Prosecuting International Crimes" (Research report International Center for Transitional Justice, 2020) 31 <https://www.ictj.org/sites/default/files/ICTJ_Report_Universal_Jurisdiction.pdf> accessed 24 July 2023.

(93) Government of the Netherlands, "The Netherlands and Canada to bring case against Syria before International Court of Justice" (12 June 2023) <<https://www.government.nl/latest/news/2023/06/12/the-netherlands-and-canada-to-bring-case-against-syria-before-international-court-of-justice>> accessed 14 July 2023.

(94) *Ibid.*

whether an international treaty violation has occurred. (95) Consequently, this action will not result in individual perpetrators facing trials for their international crimes, making the impact of this case likely to be mostly symbolic. (96)

Finally, while other efforts of the international community contribute to the creation of justice, they are not able to hold perpetrators of human rights violations accountable. For example, the United Nations has set up an Independent International Commission of Inquiry on the Syrian Arab Republic and an Impartial and Independent Mechanism (IIIM) for Syria, with the primary function of investigating alleged violations of international human rights law in Syria. (97) Besides, civil society organizations play an essential role in paving the way for justice, mainly by collecting evidence. (98) Some notable organizations in this regard are the Commission for International Justice and Accountability, and the Syrian Justice and Accountability Centre. (99)

E. — *German Universal Jurisdiction Cases regarding Syria*

The situation described above has as an effect that UJ is currently the preferred way to hold perpetrators of international crimes in Syria accountable. (100) As said, Germany has been taking the lead in creating justice (101)

(95) M. SWART, “Canada, The Netherlands take Syria to International Court of Justice” (*Aljazeera Media Network*, 15 March 2021) <<https://liberties.aljazeera.com/en/canada-the-netherlands-take-syria-to-international-court-of-justice/>> accessed 16 July 2023.

(96) *Ibid.*

(97) UNHRC, “Independent International Commission of Inquiry on the Syrian Arab Republic: Mandate” <<https://www.ohchr.org/en/hr-bodies/hrc/iici-syria/independent-international-commission>> accessed 31 July 2023.56; IIIM, “Who We Are: At a Glance”, <<https://iiim.un.org/who-we-are/at-a-glance/>> accessed 20 May 2023.

(98) H. VARNEY and K. ZDUŃCZYK, “Advancing Global Accountability: The Role of Universal Jurisdiction in Prosecuting International Crimes” (Research report International Center for Transitional Justice, 2020) 33 <https://www.ictj.org/sites/default/files/ICTJ_Report_Universal_Jurisdiction.pdf> accessed 24 July 2023.

(99) *Ibid.*

(100) IIIM, “Spotlight: National Accountability Developments” (Bulletin N°7 2022) 2 <<https://iiim.un.org/wp-content/uploads/2022/03/IIIM-Syria-Bulletin-7-ENG-March-2022-1.pdf>> accessed 20 May 2023; H. R. GILCHRIST, “No Hiding from Justice: Universal Jurisdiction in Domestic Courts” (2022) 57(2) *Texas International Law Journal* 219.

(101) Germany adopts the principle of “cumulative prosecution”, “by which an accused can be charged with a number of different crimes on the same underlying acts, with the charges being expressed cumulatively rather than alternatively”. Cumulative prosecution enables the prosecution of for example both terrorism offences and war crimes. By ensuring full criminal responsibility of the perpetrators, this approach delivers more appropriate justice for the victims. See Permanent Mission of the Federal Republic of Germany to the United Nations, “Statement of Germany in the UNGA sixth committee, ‘The scope and application of the principle of universal jurisdiction’, October 12th, 2022” (12 October 2022) <<https://new-york-un.diplo.de/un-en/-/2558190>> accessed 20 July 2023; K. AKSAMITOWSKA, “War Crimes Units: Legislative, Organisational and Technical Lessons” (2021) 17 <<https://www.asser.nl/media/795205/karolina-aksamitowska-war-crimes-units-legislative-organisational-and-technical-lessons-eng.pdf>> accessed 29 July 2023.

by investigating and prosecuting these human rights violations on the basis of UJ. (102) After discussing the structural investigations, this section will provide an overview of the German UJ cases regarding international crimes committed in Syria. (103)

Given the emphasis on UJ cases creating justice for atrocities in Syria, only cases where the accused has been proven guilty and ongoing cases will be considered. However, it is crucial to acknowledge that alongside these cases, numerous investigations took place that did not lead to convictions. Besides, it must be noted that sometimes, trials where German nationals are prosecuted for crimes they committed in Syria, are mentioned as UJ cases. (104) However, even though Germany might apply the CCAIL in these cases, they are based on the active personality principle (105) instead of the universality principle. (106) This article will stick to the definition of UJ as described above, and as generally agreed upon.

Structural Investigations

Germany was the first country to open “structural investigations” (*Strukturermittlungsverfahren*) related to Syria. (107) German authorities can open

(102) IIIM, “Spotlight: National Accountability Developments” (Bulletin N°7 2022) 2 <<https://iiim.un.org/wp-content/uploads/2022/03/IIIM-Syria-Bulletin-7-ENG-March-2022-1.pdf>> accessed 20 May 2023.

(103) This overview is compiled from information available online. Due to variations in the volume of accessible details for each case, not all cases are presented in equal detail. The cases are arranged chronologically based on the date of arrest. However, the date on which Kassim A. was arrested is not available online. Therefore, he is estimated to have been arrested a shortly after Abdul Jawad A.K., Abdulrahman A.A., Abdalfatah H.A. and Abdoufatah A., who received their sentence one month before Kassim A. In the case of Jamil Hassan, the date of issuance of his arrest warrant was used.

(104) See e.g. W. KALECK and P. KROKER, “Syrian Torture Investigations in Germany and Beyond” (2018) 16(1) *Journal of International Criminal Justice* 174 and the UJ database of TRIAL International, where such cases are included in the database but it is always specified that the jurisdiction was based on the active personality principle, see TRIAL International, “Universal Jurisdiction Database” <https://trialinternational.org/resources/universal-jurisdiction-database/?-keywords=&country=2338&topic=&resource_type=Trials+Watch&body=&orderBy=date&-submitted=1> accessed 2 July 2023.

(105) Jurisdiction based on active personality, enables States to exercise jurisdiction over crimes committed abroad by their nationals. So, unlike UJ cases, these cases require a certain link between the accused and the prosecuting country. See J. WOUTERS, C. RYNGAERT, T. RUYS and G. DE BAERE, *International law: a European Perspective*, Hart Publishing, 2019, 443.

(106) Some recent cases against Germans who committed international crimes in Syria are the cases against Jald A., Kim Teresa A., Leonora M., Monika K., Nadine K., Nils D., Romiena S., and Stefanie A. See TRIAL International, “Universal Jurisdiction Annual Review 2023” (17 April 2023) 63-70 <https://www.ecchr.eu/fileadmin/user_upload/01_TRIAL_UJAR_2023_DIGITAL_27_03.pdf> accessed 16 July 2023.

(107) Human Rights Watch, “Q&A: First Syria State Torture Trial in Germany Questions and Answers about the trial in Koblenz, Germany” (6 January 2022) <<https://www.hrw.org/news/2022/01/06/qa-first-syria-state-torture-trial-germany>> accessed 12 July 2023; N. GIBBONS, “Mass Migration, Universal Jurisdiction, and the Alien Tort Statute” (2022) 41(2) *Review of Litigation* 261.

such investigations where there is evidence that a crime has taken place, but potential perpetrators have not yet been identified. (108) Thus, structural investigations focus on structures and the context within which international crimes were perpetrated. (109)

The first structural investigation, which was opened in 2011, concerns regime-perpetrated war crimes and crimes against humanity in Syria. (110) The focus is in particular on the “Caesar photographs”. (111) The Caesar files consist of 26.948 photographs that were taken in Syria between May 2011 and August 2013, and show the bodies of more than 6.700 tortured and murdered individuals. (112) The photos were taken as part of the Syrian military police’s internal procedures, but got smuggled out of Syria (113) and now serve as valuable evidence. (114) In 2014, a second structural investigation was opened, covering crimes against the Yazidi minority in Syria and Iraq. (115)

Evidence collected through these structural investigations enable Germany to act swiftly when suspects enter Germany (116), can be shared by way

(108) ECCHR, “Term: Structural Investigations” <<https://www.ecchr.eu/en/glossary/structural-investigation/>> accessed 25 July 2023.

(109) N. GIBBONS, “Mass Migration, Universal Jurisdiction, and the Alien Tort Statute” (2022) 41(2) *Review of Litigation* 261; H. VARNEY, “Groundbreaking International Justice in Germany” (*International Center for Transitional Justice*, 28 May 2020) <<https://www.ictj.org/news/groundbreaking-international-justice-germany>> accessed 12 July 2023.

(110) B. YE, “How Germany is Leading the Way for Accountability for Crimes in Syria” (*International Justice Monitor*, 19 April 2019) <<https://www.ijmonitor.org/2019/04/how-germany-is-leading-the-way-for-accountability-for-crimes-in-syria/>> accessed 15 July 2023.

(111) Human Rights Watch, “Q&A: First Syria State Torture Trial in Germany Questions and Answers about the trial in Koblenz, Germany” (6 January 2022) <<https://www.hrw.org/news/2022/01/06/qa-first-syria-state-torture-trial-germany>> accessed 12 July 2023.

(112) ECCHR, “Photographs and data from the Caesar-File Group: Evidence of systematic torture in detention facilities of the Syrian intelligence services and military police” (2017) <https://www.ecchr.eu/fileadmin/Hintergrundberichte/Background_Syria_Torture_CaesarFiles_Germany-CriminalComplaint_ECCHR_August_2019.pdf> accessed 30 May 2023.

(113) The photographs were obtained by a Syrian photographer who fled the Syrian military police and sought asylum in Europe. See H. VARNEY and K. ZDUN CZYK, “Advancing Global Accountability: The Role of Universal Jurisdiction in Prosecuting International Crimes” (Research report International Center for Transitional Justice, 2020) 23 <https://www.ictj.org/sites/default/files/ICTJ_Report_Universal_Jurisdiction.pdf> accessed 24 July 2023.

(114) ECCHR, “Photographs and data from the Caesar-File Group: Evidence of systematic torture in detention facilities of the Syrian intelligence services and military police” (2017) <https://www.ecchr.eu/fileadmin/Hintergrundberichte/Background_Syria_Torture_CaesarFiles_Germany-CriminalComplaint_ECCHR_August_2019.pdf> accessed 30 May 2023. For further information on the achievements of the Caesar Files Group, see Caesar Files Group, “Results achieved” <<https://caesar-fsg.org/results-achieved/>> accessed 30 May 2023.

(115) B. YE, “How Germany is Leading the Way for Accountability for Crimes in Syria” (*International Justice Monitor*, 19 April 2019) <<https://www.ijmonitor.org/2019/04/how-germany-is-leading-the-way-for-accountability-for-crimes-in-syria/>> accessed 26 July 2023; W. KALECK and P. KROKER, “Syrian Torture Investigations in Germany and Beyond” (2018) 16(1) *Journal of International Criminal Justice* 180.

(116) A. KAMAL, “Impunity in Syria & Universal Jurisdiction in Europe: Is a Revival of the ‘Global Enforcer’ Approach in Order?” (2021) 2 *Queen Mary Law Journal* 115; P. KROKER and

of judicial cooperation to facilitate proceedings in other States or international courts, and can lead to the initiation of investigations against specific individuals, even if they are not in Germany. (117)

Ibrahim Al F.

Ibrahim Al F., a member of a group operating under the Free Syrian Army named Ghoraba as-Sham, was arrested in Germany on 5 April 2016. (118) On 25 September 2018, he was found guilty of committing torture, murder, and extortionist kidnapping against individuals protected under international humanitarian law, along with the commission of war crimes. (119) As a result, he received a life sentence in prison. (120)

Abdul Jawad A.K., Abdulrahman A.A., Abdalfatah H.A. and Abdoufatah A.

Abdul Jawad A.K., Abdulrahman A.A., Abdalfatah H.A. and Abdoufatah A. are former members of the combat unit belonging to Jabhat al-Nusra. (121) After entering Germany as refugees, A.K. was arrested in June 2016 and the three others in March 2017. (122) They were sentenced by the Higher Regional Court of Stuttgart in January 2020. (123)

A. L. KATHER, "Justice for Syria? Opportunities and Limitations of Universal Jurisdiction Trials in Germany" (*EJIL:Talk!*, 12 August 2016) <<https://www.ejiltalk.org/justice-for-syria-opportunities-and-limitations-of-universal-jurisdiction-trials-in-germany/>> accessed 22 July 2023.

(117) W. KALECK and P. KROKER, "Syrian Torture Investigations in Germany and Beyond" (2018) 16(1) *Journal of International Criminal Justice* 179-180; Permanent Mission of the Federal Republic of Germany to the United Nations New York, "Statement by the Federal Republic of Germany at the Sixth Committee on 'The scope and application of the principle of universal jurisdiction', October 2021" (2021) <https://www.un.org/en/ga/sixth/76/pdfs/statements/universal_jurisdiction/15mtg_germany.pdf> accessed 14 July 2023; M. STERIO, "Closing the Accountability Gap in Syria: Pathways to Prosecution" (Testimony before the United States Senate Committee on Foreign Relations, 18 May 2022) 6 <https://www.foreign.senate.gov/imo/media/doc/060822_%20Sterio_Testimony.pdf> accessed 4 July 2023.

(118) J. RIKHOF, "Extra-Territorial Jurisdiction Update – Jurisprudence" (2020) *Global Justice Journal*.

(119) TRIAL International, "Ibrahim Al F." (15 July 2020) <<https://trialinternational.org/latest-post/ibrahim-al-f/>> accessed 21 July 2023.

(120) *Ibid.*

(121) TRIAL International, "Abdul Jawad A.K., Abdulrahman A.A., Abdoufatah A. and Abdalfatah H.A." (25 March 2021) <<https://trialinternational.org/latest-post/abdalfatah-h-a/>> accessed 28 May 2023.

(122) *Ibid.*; "4 Men on Trial in Germany Accused of Killings in Syria" *Courthouse News Service* (25 September 2017) <<https://www.courthousenews.com/4-men-trial-german-accused-killings-syria/>> accessed 12 July 2023.

(123) TRIAL International, "Universal Jurisdiction Annual Review 2021: A year like no other? The impact of coronavirus on universal jurisdiction" (4 April 2021) 51 <https://trialinternational.org/wp-content/uploads/2021/04/UJAR-2021_UniversalJurisdictionAnnualReview-2.pdf> accessed 30 July 2023.

A.K. was sentenced to life in prison after being convicted of founding and leading a terrorist organization while exercising power over weapons of war, multiple counts of murder in conjunction with war crimes against persons (124) and deprivation of liberty resulting in death. (125)

A.A. and H.A. were acquitted of war crimes charges. (126) However, A.A., along with A., were sentenced to three years and five years and three months in prison respectively, for membership of a foreign terrorist organization and effective control over weapons of war. (127) H.A. received a sentence of eight years and six months for membership of a foreign terrorist organization, deprivation of liberty resulting in death in 19 separate cases, and deprivation of liberty in 21 separate cases. (128)

Kassim A.

Kassim A. was found guilty of committing war crimes against persons by the Higher Regional Court of Koblenz on 13 February 2020, as he was photographed posing with the severed head of a presumably opposing combatant. (129) For this (130), he was sentenced to one year and six months in prison. (131)

(124) The CCAIL distinguishes five types of war crimes: war crimes against persons (Section 8 CCAIL), war crimes against property and other rights (Section 9 CCAIL), war crimes against humanitarian operations and emblems (Section 10 CCAIL), war crimes consisting in the use of prohibited methods of warfare (Section 11 CCAIL), and war crimes consisting in employment of prohibited means of warfare (Section 12 CCAIL).

(125) OLG Stuttgart, Urteil vom 13.01.2020 - 5 - 2 StE 5/17, §§2-6 and §§17-19 <<https://openjur.de/u/2449642.html>>.

(126) IIM, “Spotlight: National Accountability Developments” (Bulletin N°7 2022) 4 <<https://iiim.un.org/wp-content/uploads/2022/03/IIIM-Syria-Bulletin-7-ENG-March-2022-1.pdf>> accessed 20 May 2023.

(127) OLG Stuttgart, Urteil vom 13.01.2020 - 5 - 2 StE 5/17, §§7-12 and 20-23 <<https://openjur.de/u/2449642.html>>.

(128) *Ibid.*, §§13-15 and §§24-25.

(129) „OLG Koblenz: Freiheitsstrafe für Posen mit abgetrenntem Kopf in Syrien“ *Beck-aktuell* (13 February 2020) <<https://rsw.beck.de/aktuell/daily/meldung/detail/olg-koblenz-verurteilt-34-jaehrigen-wegen-kriegsverbrechens-in-syrienkonflikt>> accessed 21 July 2023; H. VARNEY and K. ZDUŃCZYK, “Gearing Up the Fight Against Impunity: Dedicated Investigative and Prosecutorial Capacities” (Research report International Center for Transitional Justice, 2022) 61 <https://www.ictj.org/sites/default/files/2022-03/ICTJ_Report_Specialized_Units_Web.pdf> accessed 29 July 2023.

(130) Kassim A. was also convicted for several other crimes since his arrival in Germany, resulting in an aggregate prison sentence of three years and six months. See „OLG Koblenz: Freiheitsstrafe für Posen mit abgetrenntem Kopf in Syrien“ *Beck-aktuell* (13 February 2020) <<https://rsw.beck.de/aktuell/daily/meldung/detail/olg-koblenz-verurteilt-34-jaehrigen-wegen-kriegsverbrechens-in-syrienkonflikt>> accessed 21 July 2023.

(131) „OLG Koblenz: Freiheitsstrafe für Posen mit abgetrenntem Kopf in Syrien“ *Beck-aktuell* (13 February 2020) <<https://rsw.beck.de/aktuell/daily/meldung/detail/olg-koblenz-verurteilt-34-jaehrigen-wegen-kriegsverbrechens-in-syrienkonflikt>> accessed 21 July 2023.

German authorities were informed on these photographs by other Syrian migrants to whom Kassim had shown the pictures. (132)

Abdullah K., Mustafa K., Sultan K. and Ahmed K.

Abdullah K., Mustafa K., Sultan K. and Ahmed K. are four brothers who migrated to Germany and were arrested there on 12 June 2017, being “strongly suspected of being involved as members in the foreign terrorist organization Jabhat al-Nusra” (translated) and the commitment of war crimes, by forcing civilians to leave their city while plundering their possessions. (133)

Abdullah K. is reported to have taken his life in prison. (134) His brother Ahmed K. was acquitted of all charges. (135) With regard to Mustafa K. and Sultan K., the latest available information indicates that while they were cleared of war crime charges, terrorism charges have been upheld. (136)

Fares A.B.

Fares A.B. joined the terrorist organization ISIS in the summer of 2014. (137) In 2015, he came to Germany, where he was taken into pre-trial detention in April 2017, for other offences than international crimes. (138) While still in detention, he was officially arrested on suspicion of war crimes on 7 August 2017. (139) On 19 November 2020, the Higher Regional Court in Stuttgart found the 32-year-old Fares A. B. responsible for war crimes,

(132) *Ibid.*; “German court sentences Syrian man for war crimes” *Alarabiya News* (13 February 2020) <<https://english.alarabiya.net/News/world/2020/02/13/German-court-sentences-Syrian-man-for-war-crime>> accessed 19 July 2023.

(133) Der Generalbundesanwalt beim Bundesgerichtshof, “Vier mutmaßliche Mitglieder der ausländischen terroristischen Vereinigung ‘Jabhat al-Nusra’ festgenommen” (12 June 2017) <<https://www.generalbundesanwalt.de/SharedDocs/Pressemitteilungen/DE/2017/Pressemitteilung-vom-12-06-2017.html>> accessed 20 July 2023; Center for Justice & Accountability, “Syrian Civil/Criminal Cases & Investigations Of War Crimes (2011-Present)” (2019) <<https://cja.org/wp-content/uploads/2019/02/Syria-Cases-Updated-February-2019-12.pdf>> accessed 20 July 2023.

(134) “Al Nusra member committed suicide in prison” *ANF News* (31 August 2017) <<https://anfenglishmobile.com/news/al-nusra-member-committed-suicide-in-prison-21856>> accessed 14 July 2023.

(135) TRIAL International, “Mustafa K., Abdullah K., Sultan K., and Ahmed K.” (15 July 2020) <<https://trialinternational.org/latest-post/four-siblings-suspected-of-war-crimes/>> accessed 23 July 2023.

(136) *Ibid.*

(137) TRIAL International, “Fares A.B.” (25 March 2021) <<https://trialinternational.org/latest-post/fares-a-b/>> accessed 30 May 2023; “Syrian Man Charged in Germany With War Crimes, IS Membership” *VOA* (9 August 2017) <<https://www.voanews.com/a/syrian-man-charged-in-germany-islamic-state/3978344.html>> accessed 30 May 2023.

(138) S. TALMON and R. KENNY-MANNING, “Higher Regional Court in Stuttgart convicts an IS member of war crimes” (*German Practice in International Law*, 14 January 2021) <<https://gpil.jura.uni-bonn.de/2021/01/higher-regional-court-in-stuttgart-convicts-an-is-member-of-war-crimes/>> accessed 30 May 2023.

(139) *Ibid.*

attempted war crime against a person by killing in one instance, war crime against a person by torture in two instances, and membership in a terrorist organization. (140) He was sentenced to twelve years imprisonment. (141)

Jamil Hassan

In June 2018, Germany made history by becoming the first State or inter-state actor to issue an arrest warrant (142) against a senior member of the Assad government, Jamil Hassan. (143) Although France also issued an arrest warrant against Hassan, it did so based on the passive personality principle rather than the universality principle. (144) Hassan was the director of the Air Force Intelligence Directorate and is – on the basis of the Caesar files, their metadata and statements of Syrian torture survivors – accused of having commanded the perpetration of acts of torture that resulted in the death of hundreds of protestors illegally detained. (145)

On 29 March 2023, the French authorities indicted Jamil Hassan for his complicity in the Dabbagh case. (146) Mazen Dabbagh and his son Patrick Dabbagh were both Franco-Syrian nationals, who disappeared after being arrested in 2013 in their home in Damascus by Syrian Air Force Intelligence

(140) TRIAL International, “Fares A.B.” (25 March 2021) <<https://trialinternational.org/latest-post/fares-a-b/>> accessed 30 May 2023; S. TALMON and R. KENNY-MANNING, “Higher Regional Court in Stuttgart convicts an IS member of war crimes” (*German Practice in International Law*, 14 January 2021) <<https://gpil.jura.uni-bonn.de/2021/01/higher-regional-court-in-stuttgart-convicts-an-is-member-of-war-crimes/>> accessed 30 May 2023.

(141) S. TALMON and R. KENNY-MANNING, “Higher Regional Court in Stuttgart convicts an IS member of war crimes” (*German Practice in International Law*, 14 January 2021) <<https://gpil.jura.uni-bonn.de/2021/01/higher-regional-court-in-stuttgart-convicts-an-is-member-of-war-crimes/>> accessed 30 May 2023.

(142) While trials *in absentia* are not possible in Germany, investigations can be conducted into crimes allegedly committed by perpetrators who are not (yet) on the territory of Germany. See A. M. PELLICONI and F. SIRONI DE GREGORIO, “New universal jurisdiction case filed in Germany for crimes committed in Myanmar before and after the coup: On complementarity, effectiveness, and new hopes for old crimes” (*EJIL:Talk!*, 7 March 2023) <<https://www.ejiltalk.org/new-universal-jurisdiction-case-filed-in-germany-for-crimes-committed-in-myanmar-before-and-after-the-coup-on-complementarity-effectiveness-and-new-hopes-for-old-crimes/>> accessed 24 July 2023.

(143) A. L. KATHER, “Water finds its way? Universal jurisdiction as an avenue for justice in Syria” (*Articles of War*, 28 July 2021) <<https://lieber.westpoint.edu/water-finds-way-universal-jurisdiction-justice-syria/>> accessed 21 July 2023.

(144) TRIAL International, “Jamil Hassan” (30 March 2023) <<https://trialinternational.org/latest-post/jamil-hassan/>> accessed 21 July 2023.

(145) Caesar Files Group, “Caesar Photos Document Systematic Torture” (18 June 2020) <<https://caesar-fsg.org/caesar-photos-document-systematic-torture/>> accessed 30 May 2023.

(146) International Federation for Human Rights, “Syria/Dabbagh case - French justice orders the trial of Ali Mamlouk, Jamil Hassan and Abdel Salam Mahmoud” (4 April 2023) <<https://www.fidh.org/en/region/north-africa-middle-east/syria/syria-dabbagh-case-french-justice-orders-the-trial-of-ali-mamlouk>> accessed 28 July 2023.

agents and detained for interrogation at the Mezzeh detention centre. (147) Patrick Dabbagh died in 2014, his father in 2017. (148)

Anwar Raslan and Eyad al-Gharib

Anwar Raslan served as the head of the Investigations Division in the Internal Branch of Syria's General Intelligence Directorate, also known as the al-Khatib branch or Branch 251 (149), for a minimum of one year. (150) After entering Germany on a visa in 2014, he was arrested there in 2019. (151) On 13 January 2022, the Higher Regional Court in Koblenz found him guilty of being an accomplice to 27 counts of murder, 4.000 instances of torture and severe deprivation of liberty, and three cases of sexual violence, all classified as crimes against humanity. (152) The judges determined that Raslan, in his role as the head of the Investigations Division, bore responsibility for the interrogations and prison facilities. (153) As a result, he received a life sentence in prison. (154) The case of Raslan is currently pending appeal. (155)

Eyad al-Gharib, a former officer that manned checkpoints around Damascus and was an associate of Anwar Raslan (156), came to Germany

(147) TRIAL International, "Jamil Hassan" (30 March 2023) <<https://trialinternational.org/latest-post/jamil-hassan/>> accessed 21 July 2023; M. FITZPATRICK, "Three Syrian regime figures to face trial in France over 2013 arrests, killings" (RFI, 4 April 2023) <<https://www.rfi.fr/en/france/20230404-three-syrian-regime-figures-to-face-trial-in-france-over-2013-killings>> accessed 8 August 2023.

(148) M. FITZPATRICK, "Three Syrian regime figures to face trial in France over 2013 arrests, killings" (RFI, 4 April 2023) <<https://www.rfi.fr/en/france/20230404-three-syrian-regime-figures-to-face-trial-in-france-over-2013-killings>> accessed 8 August 2023.

(149) Branch 251 of the Syrian General Intelligence Service operates the al-Khatib prison, where detainees are alleged to undergo inhumane treatment, torture, sexual violence, and killings. See S. ABOUELDAHAB, "The End of the Al-Khatib Trial: A Historic Verdict and a Trial of Missed Opportunities" (*Völkerrechtsblog*, 7 February 2022) <<https://voelkerrechtsblog.org/the-end-of-the-al-khatib-trial/>> accessed 8 August 2023.

(150) Open Society Foundations, "Federal Prosecutor's Office v. Anwar R." <<https://www.justiceinitiative.org/litigation/federal-prosecutors-office-v-anwar-r>> accessed 21 July 2023.

(151) B. HUBBARD and K. BENNHOLD, "Syria War Crimes Verdict Former Syrian Colonel Guilty in War Crimes Trial in Germany" *The New York Times* (13 January 2022) <[https://www.nytimes.com/live/2022/01/13/world/syria-war-crimes-germany-verdict?cam="](https://www.nytimes.com/live/2022/01/13/world/syria-war-crimes-germany-verdict?cam=)> accessed 28 July 2023.

(152) Syria Justice and Accountability Centre, "Inside the Raslan Trial #58: The Raslan Verdict in Detail" (13 January 2022) <<https://syriaaccountability.org/inside-the-raslan-trial-the-raslan-verdict-in-detail/>> accessed 16 July 2023.

(153) *Ibid.*

(154) L. WESTENDARP, "German court convicts Syrian colonel of crimes against humanity" *Politico* (13 January 2023) <<https://www.politico.eu/article/anwar-raslan-syria-prison-convicted-crimes-against-humanity-germany/>> accessed 16 July 2023.

(155) TRIAL International, "Universal Jurisdiction Annual Review 2023" (17 April 2023) 56 <https://www.echr.eu/fileadmin/user_upload/01_TRIAL_UJAR_2023_DIGITAL_27_03.pdf> accessed 16 July 2023.

(156) OHCHR, "UN panel welcomes landmark guilty verdict in Germany's prosecution of former Syrian intelligence officer for crimes against humanity" (13 January 2023) <<https://www.ohchr.org/en/2022/01/un-panel-welcomes-landmark-guilty-verdict-germanys-prosecution-former-syrian-intelligence>> accessed 21 July 2023.

as an asylum seeker in 2018 (157) and was arrested and tried together with Raslan. (158) Al-Gharib was indicted for rounding up demonstrators and transporting them to Branch 251, being fully aware of the systematic torture and mistreatment detainees were subjected to. (159) He was convicted of accessory to crimes against humanity and received a sentence of four and a half years in prison. (160) This sentence has been confirmed by the Federal Court of Justice, making the decision final. (161)

The case of Anwar Raslan and Eyad al-Gharib marked the first trial worldwide against Syrian government officials for international crimes. (162)

Suliman Al-S.

In January 2016, Suliman Al-S, who had been living in Germany as a refugee, was the first to be arrested for war crimes committed in Syria. (163) In September 2017, he received a three-year and six-month prison sentence from the Stuttgart Court for his involvement in the kidnapping of a Canadian UN peacekeeper by an Islamist militant group, being considered an accessory to war crimes against humanitarian operations. (164)

This decision was appealed by German prosecutors, resulting in a longer sentence of four years and nine months. (165)

(157) Open Society Foundations, “Federal Prosecutor’s Office v. Anwar R.” <<https://www.justiceinitiative.org/litigation/federal-prosecutors-office-v-anwar-r>> accessed 21 July 2023.

(158) Center for Justice and Accountability, “Syrian civil/criminal cases & investigations of war crimes (2011-present)” (2019) <<https://cja.org/wp-content/uploads/2019/02/Syria-Cases-Updated-February-2019-12.pdf>> accessed 21 July 2023.

(159) TRIAL International, “Eyad al-Gharib” (3 April 2023) <<https://trialinternational.org/latest-post/eyad-al-gharib/>> accessed 22 July 2023.

(160) International Center for Transitional Justice, “Top German Court Rejects Syrian’s Appeal in Torture Case” (5 May 2022) <<https://www.ictj.org/latest-news/top-german-court-reject-s-syrian-s-appeal-torture-case>> accessed 21 July 2023.

(161) TRIAL International, “Universal Jurisdiction Annual Review 2023” (17 April 2023) 56 <https://www.echr.eu/fileadmin/user_upload/01_TRIAL_UJAR_2023_DIGITAL_27_03.pdf> accessed 16 July 2023.

(162) J. HILL, “German court finds Syrian colonel guilty of crimes against humanity” *BBC* (13 January 2022) <<https://www.bbc.com/news/world-europe-59949924>> accessed 16 July 2023; International Center for Transitional Justice, “Top German Court Rejects Syrian’s Appeal in Torture Case” (5 May 2022) <<https://www.ictj.org/latest-news/top-german-court-reject-s-syrian-s-appeal-torture-case>> accessed 21 July 2023.

(163) “German court lengthens Syrian kidnapper’s jail term” *The Local Germany* (23 January 2019) <<https://www.thelocal.de/20190123/german-court-lengthens-syrian-kidnappers-jail-term>> accessed 21 July 2023.

(164) *Ibid.*; “Germany: Syrian refugee jailed over UN observer’s abduction” *AP News* (20 September 2017) <<https://apnews.com/1e260bcd4995461299ee438a59bc8a72/Germany:-Syrian-refugee-jailed-over-UN-observer%27s-abduction>> accessed 21 July 2023.

(165) “German court lengthens Syrian kidnapper’s jail term” *The Local Germany* (23 January 2019) <<https://www.thelocal.de/20190123/german-court-lengthens-syrian-kidnappers-jail-term>> accessed 21 July 2023.

Khedr A.K. and Sami A.S.

Khedr A.K. and Sami A.S. were arrested in July 2020 in Germany. (166) In August 2021, they were found guilty of war crimes and terrorism-related charges by the Düsseldorf Higher Regional Court. (167) Khedr A.K. received a life sentence for his involvement in shielding the execution of a detained army officer and for being a member of a foreign terrorist organization. (168) He joined the Ghurabaa Muhassan group, which was part of Jabhat al-Nusra, the Syrian branch of Al Qaeda. (169) In July 2012, he participated in guarding a captured Syrian lieutenant colonel who was later executed. (170)

Sami A.S. was sentenced to nine years in prison for filming the crime, preparing the footage for al-Nusra propaganda purposes, and supporting a foreign terrorist organization. (171) The court considered him an assistant rather than an accomplice. (172)

As the Federal Court of Justice largely dismissed the defendants' appeals on 5 April 2022, both sentences are now final. (173)

Alaa M.

Alaa M., a former Syrian doctor, was arrested by the German police in June 2020 for his alleged involvement in crimes against humanity committed by the Syrian regime since 2011. (174) He is accused of torture, killings, and sexual abuse of civilians in military hospitals, including the notorious military hospital Mezzeh No. 601 in Damascus, where the Caesar photos were taken. (175)

(166) TRIAL International, "Khedr A.K. and Sami A.S." (28 March 2023) <<https://trialinternational.org/latest-post/khedr-a-k-and-sami-a-s/>> accessed 26 June 2023.

(167) *Ibid.*; "Germany court sentences two Syrians for war crimes and terrorism" *Jurist* (28 August 2021) <<https://www.jurist.org/news/2021/08/germany-court-sentences-two-syrians-for-war-crime-and-terrorism/>> accessed 26 June 2023.

(168) "Germany court sentences two Syrians for war crimes and terrorism" *Jurist* (28 August 2021) <<https://www.jurist.org/news/2021/08/germany-court-sentences-two-syrians-for-war-crime-and-terrorism/>> accessed 26 June 2023.

(169) TRIAL International, "Khedr A.K. and Sami A.S." (17 April 2023) <<https://trialinternational.org/latest-post/khedr-a-k-and-sami-a-s/>> accessed 26 June 2023.

(170) *Ibid.*

(171) *Ibid.*; "Germany court sentences two Syrians for war crimes and terrorism" *Jurist* (28 August 2021) <<https://www.jurist.org/news/2021/08/germany-court-sentences-two-syrians-for-war-crime-and-terrorism/>> accessed 26 June 2023.

(172) "Germany court sentences two Syrians for war crimes and terrorism" *Jurist* (28 August 2021) <<https://www.jurist.org/news/2021/08/germany-court-sentences-two-syrians-for-war-crime-and-terrorism/>> accessed 26 June 2023.

(173) TRIAL International, "Universal Jurisdiction Annual Review 2023" (17 April 2023) 59 <https://www.ecchr.eu/fileadmin/user_upload/01_TRIAL_UJAR_2023_DIGITAL_27_03.pdf> accessed 16 July 2023.

(174) *Ibid.*, 55.

(175) ECCHR, "Germany's Federal Public Prosecutor files charges against Syrian doctor Alaa M: Torture in Syrian military hospital" (28 June 2021) <<https://www.ecchr.eu/en/press-release/anklage-gegen-syrischen-arzt-alaa-m/>> accessed 19 July 2023.

The trial against Alaa M. began in January 2022 at the Higher Regional Court of Frankfurt and is currently in progress. (176) The case sheds light on the role of military hospitals within al-Assad's apparatus of injustice and the systematic violence against civilians. (177) The trial may also play a significant role in addressing crimes of sexual violence, as Alaa M is accused of injuring the genitalia of a boy and an adult man to deprive them of reproductive ability. (178)

Moafak D.

Moafak D., who was recognized as a refugee (179), was arrested in his apartment in Berlin on 4 August 2021. (180) In February 2023, he was convicted by the Higher Regional Court in Berlin for his involvement in the act of throwing a grenade into a gathering of Syrians who were awaiting food in Damascus back in 2014. (181) He received a life sentence for committing war crimes and two counts of attempted murder and bodily harm. (182)

Amin M.

Amin M., a former fighter associated with the Free Syrian Army, had been filmed disrespecting and mutilating a dead body. (183) He was arrested on 18 August 2021 and found guilty of war crimes on 5 October 2022 by the

(176) Global Centre for the Responsibility to Protect, "Joint Statement of Syrian Civil and International Organizations on the Initiation of Proceedings and the postponement of the public hearings on provisional measures on Acts of Torture in Syria before the International Court of Justice" (open letter, 21 July 2023) <<https://www.globalr2p.org/publications/joint-statement-of-syrian-civil-and-international-organizations/>> accessed 30 July 2023.

(177) ECCHR, "Germany's Federal Public Prosecutor files charges against Syrian doctor Alaa M: Torture in Syrian military hospital" (28 June 2021) <<https://www.ecchr.eu/en/press-release/anklage-gegen-syrischen-arzt-alaa-m/>> accessed 19 July 2023.

(178) *Ibid.*

(179) "German court convicts man over deadly 2014 attack in Syria" *AP News* (23 February 2023) <<https://apnews.com/article/germany-syria-government-damascus-fl72d889dd4989dcbbe1185ce4e9ba01>> accessed 26 June 2023.

(180) TRIAL International, "Moafak D." (30 March 2023) <<https://trialinternational.org/latest-post/mouafak-al-d/>> accessed 27 June 2023.

(181) "German court convicts man over deadly 2014 attack in Syria" *AP News* (23 February 2023) <<https://apnews.com/article/germany-syria-government-damascus-fl72d889dd4989dcbbe1185ce4e9ba01>> accessed 26 June 2023.

(182) "German court convicts man over Syrian war crime from 2014" *Deutsche Welle* (23 February 2023) <<https://www.dw.com/en/german-court-convicts-man-over-syrian-war-crime-from-2014/a-64802352>> accessed 26 June 2023; "German court convicts man over deadly 2014 attack in Syria" *AP News* (23 February 2023) <<https://apnews.com/article/germany-syria-government-damascus-fl72d889dd4989dcbbe1185ce4e9ba01>> accessed 26 June 2023.

(183) TRIAL International, "Universal Jurisdiction Annual Review 2023" (17 April 2023) 61 <https://www.ecchr.eu/fileadmin/user_upload/01_TRIAL_UJAR_2023_DIGITAL_27_03.pdf> accessed 16 July 2023.

Higher Regional Court of Frankfurt am Main. (184) Under juvenile law, he received a suspended sentence of one year and six months in prison. (185)

Raed E.

In 2015, Raed E. left Syria and travelled to Germany, where he was arrested in April 2022. (186) On 11 July 2023, the 32-year-old received an eleven-year prison sentence from the Berlin Regional Court after being convicted of war crimes, affiliation with a foreign terrorist organization, and various other offenses. (187) This ruling is currently still open to appeal. (188)

Ahmad H.

Ahmad H., who is suspected of being one of the most dangerous criminals from the National Defence Militia, was arrested in Germany on 2 August 2023. (189) He is strongly suspected of committing crimes against humanity and war crimes through torture and enslavement, and is currently held in pre-trial detention. (190)

II. — INFLUENTIAL POLITICAL FACTORS

This chapter will elaborate on the result of the exploratory research into the political factors that could explain Germany's active involvement. The following three elements came forward as influential political factors: (A) national role conceptions, (B) diplomatic considerations and (C) migration policy.

(184) *Ibid.*, 62.

(185) *Ibid.*

(186) "Germany arrests Syrian accused of torturing captives with IS" *AP News* (6 April 2022) <<https://apnews.com/article/islamic-state-group-berlin-germany-europe-war-crimes-4e098db-bfeac3ddb9667ffad3b52d639>> accessed 30 July 2023.

(187) "German court convicts Syrian IS member of war crimes for torturing captives" *AP News* (11 July 2023) <<https://apnews.com/article/germany-syria-war-crimes-islamic-state-verdict-be7791e2fb16d74d8181646c5c0e4f57>> accessed 21 July 2023.

(188) *Ibid.*

(189) Syria Justice and Accountability Centre, "Arrest of a suspected member of a Syrian Government militia on strong suspicion of war crimes and crimes against humanity" (3 August 2023) <<https://syriaaccountability.org/press-release-8-3-2023/>> accessed 4 August 2023; Der Generalbundesanwalt beim Bundesgerichtshof, "Festnahme eines mutmaßlichen Mitglieds einer syrischen regimzugehörigen Miliz wegen des dringenden Tatverdachts von Verbrechen gegen die Menschlichkeit und Kriegsverbrechen" (3 August 2023) <<https://www.generalbundesanwalt.de/SharedDocs/Pressemitteilungen/DE/aktuelle/Pressemitteilung-vom-03-08-2023.html>> accessed 4 August 2023.

(190) Der Generalbundesanwalt beim Bundesgerichtshof, "Festnahme eines mutmaßlichen Mitglieds einer syrischen regimzugehörigen Miliz wegen des dringenden Tatverdachts von Verbrechen gegen die Menschlichkeit und Kriegsverbrechen" (3 August 2023) <<https://www.generalbundesanwalt.de/SharedDocs/Pressemitteilungen/DE/aktuelle/Pressemitteilung-vom-03-08-2023.html>> accessed 4 August 2023.

A. — *National Role Conceptions*

Using a political-cultural approach, this chapter will explore identity as an explanatory element for Germany's foreign policy behaviour. (191) To study this, the concept of role will serve as a link between identity constructions and policy behaviour. (192)

First, role theory and national role conceptions will be explained. Second, in the 'indications' section, the results of the exploratory study of statements by German state officials as well as some notable experts, will be set out. The subtitles are the result of thematically coding the collected data. In a third part, a theory will be created about the explanatory potential of national role conceptions. Here, the found indications will be placed into a broader context and the theory will be further substantiated with statements and conduct of German officials that at first sight do not specifically relate to the UJ cases.

Identity and Role Conceptions

Role theory is considered a useful approach for employing identity as an explanatory factor for foreign policy behaviour. (193) According to the role theory, States, as 'actors', tailor their actions to align with specific roles they identify with. (194) 'Roles' encompass the expectations that others hold regarding the behaviour of the occupant of a particular role (external role expectations), as well as the expectations that the occupant holds about their own conduct in specific situations (internal role expectations). (195) These internal and external role expectations, along with material factors such as power capacities and geographic location, shape the values and beliefs to which foreign policy makers adhere and that are expected of them by the international community. (196) The beliefs held by foreign policy makers about their State's appropriate function and position in the international arena, are called national role conceptions. (197) In this section, national role

(191) L. AGGESTAM, "Role identity and the Europeanisation of foreign policy: A political-cultural approach", in B. TONRA and T. CHRISTIANSEN (eds), *Rethinking European Union Foreign Policy*, Manchester University Press, 2004, 82.

(192) *Ibid.*

(193) L. AGGESTAM, "Role identity and the Europeanisation of foreign policy: A political-cultural approach", in B. TONRA and T. CHRISTIANSEN (eds), *Rethinking European Union Foreign Policy*, Manchester University Press, 2004, 82.

(194) G. CHAFETZ, H. ABRAMSON and S. GRILLOT, "Role Theory and Foreign Policy: Belarusian and Ukrainian Compliance with the Nuclear Nonproliferation Regime" (1996) 17(4) *Political Psychology* 732.

(195) *Ibid.*, 732; H. TEWES, *Germany, Civilian Power and the New Europe: Enlarging NATO and the European Union*, Palgrave, 2002, 28.

(196) H. TEWES, *Germany, Civilian Power and the New Europe: Enlarging NATO and the European Union*, Palgrave 2002, 29.

(197) *Ibid.*, 19; U. KROTZ, "National Role Conceptions: France and Germany Compared" (2001) *Minda de Gunzburg Center for European Studies Harvard University Paper* 02.1, 3 <https://www.academia.edu/23859939/National_Role_Conceptions_and_Foreign_Policies_France_and_

conceptions will be explored as potential influential factors on Germany's behaviour.

National role conceptions are not created in a void. They are formed within a cultural context (198), and influenced by history, collective memory and socialization processes (199). The results are fairly robust and temporally stable conceptions about a State's identity. (200)

As regards Germany, Richard von Weizsäcker, one of Germany's former Presidents, also noted the necessity to understand the 'self-comprehension' or 'political self-understanding' of States. (201) In order to comprehend Germany's national role conceptions, statements and actions of policymakers, and particularly Heads of Government or State and Foreign Policy Ministers, will be studied. Holsti, an authority in the field of national role conceptions, mainly sourced national role conceptions from these statements. (202) In the broader literature it also seems accepted to infer national role conceptions from these sources. (203) Statements by other relevant experts are used as additional sources.

Germany_Compared> accessed 20 May 2023; a more elaborate and often used definition was provided by Holsti: "National role conceptions are 'policymakers' own definitions of the general kinds of decisions, commitments, rules and actions, suitable to their state, and of the functions, if any, their state should perform on a continuing basis in the international system or in subordinate regional systems". See K. J. HOLSTI, "National Role Conceptions in the Study of Foreign Policy" (1970) 14(3) *International Studies Quarterly* 245-246.

(198) L. AGGESTAM, "Role identity and the Europeanisation of foreign policy: A political-cultural approach", in B. TONRA and T. CHRISTIANSEN (eds), *Rethinking European Union Foreign Policy*, Manchester University Press, 2004, 85.

(199) U. KRITZ, "National Role Conceptions: France and Germany Compared" (2001) *Minda de Gunzburg Center for European Studies Harvard University Paper* 02.1, 3 <https://www.academia.edu/23859939/National_Role_Conceptions_and_Foreign_Policies_France_and_Germany_Compared> accessed 20 May 2023.

(200) *Ibid.*, 4.

(201) *Ibid.*, 5.

(202) K. J. HOLSTI, "National Role Conceptions in the Study of Foreign Policy" (1970) 14(3) *International Studies Quarterly* 236; K. BRUMMER and C. G. THIES, "The Contested Selection of National Role Conceptions" (2015) 11(3) *Foreign Policy Analysis* 275.

(203) See e.g. "Key foreign policy speeches frequently contain assertions referring to subjective we-feelings of a cultural group and its specific customs, institutions, territory, myths and rituals. These expressions of a collective national identity reveal how foreign policy-makers view past history, the present and the future political choices they face." in L. AGGESTAM, "Role identity and the Europeanisation of foreign policy: A political-cultural approach", in B. TONRA and T. CHRISTIANSEN (eds), *Rethinking European Union Foreign Policy*, Manchester University Press, 2004, 83; "[...] assumption that if a role conception at the national level exists, it should be reflected in the public statements of the leading policy-makers" in E. T. BAER, "Shift-of-axis in Turkish Foreign Policy: Turkish National Role Conceptions Before and During AKP Rule" (2015) 16(3) *Turkish Studies* 295; K. BRUMMER and C. G. THIES, "The Contested Selection of National Role Conceptions" (2015) 11(3) *Foreign Policy Analysis* 295; G. CHAFETZ, H. ABRAMSON and S. GRILLOT, "Role Theory and Foreign Policy: Belarussian and Ukrainian Compliance with the Nuclear Nonproliferation Regime" (1996) 17(4) *Political Psychology* 740.

Indications

The results of the exploration of statements and conduct of German state officials, can be categorized in two separate themes. First, Germany seems to profile itself as a global leader or example in this field. Second, the statements show a sense of global responsibility, especially in light of the country's own history.

Indication 1: Germany as a global leader or example

German policy makers explicitly stress the leading or example role Germany takes in the field of UJ. In 2020 Heiko Maas, then Minister of Foreign Affairs of Germany, for example stated: "Here in Germany, our courts and public prosecution offices are also *leading by example*." (emphasis added). (204) This was followed by a referral to the UJ cases regarding Syria, and the statement that "[t]hese proceedings reinforce the principle of universal jurisdiction and *encourage other states* to prosecute crimes against international law at the national level." (emphasis added). (205) He calls Germany "a pioneer in the use of universal jurisdiction". (206) In 2022, the Federal Justice Minister, Marco Buschmann, also referred to the "pioneering work" of Germany and said that he would welcome it if other constitutional States followed this example. (207)

On the one hand, the state officials do not seem to shy away from perceiving Germany as an example for the international community to follow and recalling the international responsibility of other States. (208) On the other hand, after mentioning Germany's commitment to prosecuting war criminals during a speech at the Harvard Kennedy School, Marco Buschmann seemed to try to nuance this example-role by stating: "That gives neither me nor us Germans the right to lecture anyone. Especially not here in the USA. For

(204) German Federal Foreign Office, "Speech by Foreign Minister Heiko Maas in the German Bundestag on the coalition motion 'War crimes and human rights violations must not go unpunished'" (28 October 2020) <<https://www.auswaertiges-amt.de/en/newsroom/news/-/2411152>> accessed 24 June 2023.

(205) *Ibid.*

(206) German Federal Foreign Office, "It is our moral duty" (30 June 2020) <<https://www.auswaertiges-amt.de/en/newsroom/news/maas-rnd-syria/2361080>> accessed 28 May 2023.

(207) "Verdict based on principle of universal jurisdiction: The historic ruling of a German court in a trial about state-sponsored torture in Syria is based on the principle of universal jurisdiction" (*Deutschland.de*, 14 January 2021) <<https://www.deutschland.de/en/topic/politics/universal-jurisdiction-in-germany-trial-on-state-sponsored-torture-in-syria>> accessed 30 May 2023.

(208) See for example the following statement of Marco Buschmann: "Appalling injustices [were committed in the] torture prisons of the Assad regime. [...] Answering this in the language of the law is the responsibility of the whole international community." in "Verdict based on principle of universal jurisdiction: The historic ruling of a German court in a trial about state-sponsored torture in Syria is based on the principle of universal jurisdiction" (*Deutschland.de*, 14 January 2021) <<https://www.deutschland.de/en/topic/politics/universal-jurisdiction-in-germany-trial-on-state-sponsored-torture-in-syria>> accessed 30 May 2023.

we Germans owe important lessons about democracy, human rights and the punishment of war crimes to the USA” (translated). (209)

Indication 2: Germany as globally responsible, especially in light of its own history

Another notable factor that is often cited, is Germany’s responsibility to act. Most often, this sense of responsibility is linked to its history. One of the standard formulas in official statements is that Germany, “due to its history”, has a “special (co)responsibility” for peace. (210)

A telling example is the following statement by Marco Buschmann: “It is our responsibility to stop or punish crimes; and it is – as we Germans have seen it ever since, against the background of our historical crimes under National Socialism – precisely our German responsibility.” (translated). (211) Therefore, he says that “War criminals should not feel safe anywhere in the world, *especially* not in Germany” (emphasis added, translated). (212) This is not a stand-alone statement. In a speech on “twenty years CCAIL”, he reiterated: “And especially for us Germans, in view of the history of our own country, it is clear: war criminals must not feel safe anywhere, least of all in Germany!” (translated). (213) During a plenary session of the UNGA, the German ambassador also stressed that, given “the lesson from [their] own tormented history”, the magnitude of crimes committed by the Syrian regime cannot go unaddressed. (214) Current Foreign Minister Annalena Baerbock confirms this idea: “My country, Germany, has waged inhuman wars of aggression and committed the most atrocious genocide, killing millions of people. Therefore, we have a special responsibility to do our part so

(209) Bundesministerium der Justiz, “‘How to Punish War Crimes – Recent German Experiences in Bringing War Criminals to Justice’ Rede von Dr. Marco Buschmann MdB, Bundesminister der Justiz, an der Harvard Kennedy School am 20. Oktober 2022 in Cambridge, Massachusetts” (20 October 2022) <https://www.bmj.de/SharedDocs/Reden/DE/2022/1020_Harvard.html?nn=6704226> accessed 27 May 2023.

(210) U. KRÖTZ, “National Role Conceptions: France and Germany Compared” (2001) *Minda de Gunzburg Center for European Studies Harvard University Paper* 02.1, 10 <https://www.academia.edu/23859939/National_Role_Conceptions_and_Foreign_Policies_France_and_Germany_Compared> accessed 20 May 2023.

(211) Bundesministerium der Justiz, “‘How to Punish War Crimes – Recent German Experiences in Bringing War Criminals to Justice’ Rede von Dr. Marco Buschmann MdB, Bundesminister der Justiz, an der Harvard Kennedy School am 20. Oktober 2022 in Cambridge, Massachusetts” (20 October 2022) <https://www.bmj.de/SharedDocs/Reden/DE/2022/1020_Harvard.html?nn=6704226> accessed 27 May 2023.

(212) *Ibid.*

(213) Bundesministerium der Justiz, “20 Jahre Völkerstrafgesetzbuch: Rede des Bundesministers der Justiz, Dr. Marco Buschmann MdB, zur Eröffnung der Veranstaltung ‘20 Jahre Völkerstrafgesetzbuch’ am 1. November im BMJ in Berlin” (1 November 2022) <https://www.bmj.de/SharedDocs/Reden/DE/2022/1101_Rede_VStGB.html> accessed 25 June 2023.

(214) UN, “Meetings Coverage: General Assembly, Plenary, Seventy-Sixth Session, 65th & 66th Meetings (AM & PM)” GA/12413 (1 April 2022) <<https://press.un.org/en/2022/ga12413.doc.htm>> accessed 16 July 2023.

that such crimes will never happen again – to help bring justice to the victims and ensure accountability for the perpetrators.” (215)

Also Peter Frank, Germany’s Federal Prosecutor General, seems to consider Germany responsible to act, when he says that “[Germany] owe[s] that to the victims and humanity”, referring to the German UJ trials regarding Syria. (216)

Stefanie Bock, the director of the International Research and Documentation Centre for War Crimes Trials at the University of Marburg in Germany, regards the UJ trials pertaining crimes in Syria as “historically the continuation of what [Germany] learned from the Nazi period and what [it] learned about the importance of the Nuremberg trials (217) and the Auschwitz trials for the way [they] dealt with [their] past and ultimately who [they] are today”. (218) Also Wolfgang Kaleck, one of the founders of the European Centre for Constitutional and Human Rights (ECCHR) (219) and the lawyer in several UJ cases, links the current German UJ trials to Nuremberg. He clarifies that the Nuremberg trials not only sought to prosecute the leaders of the Nazi regime, but also various individuals who played other roles in Nazi repression, such as doctors, business leaders, bureaucrats and propagandists. (220) According to Kaleck, “[t]hat [is] what made it possible to get a picture of the whole apparatus that led the Holocaust”. (221) He considers the trial of Anwar Raslan as “a first step in trying to get a picture of the crimes committed by Assad’s regime”. (222)

(215) German Federal Foreign Office, “Speech by Foreign Minister Annalena Baerbock at the commemoration of the 25th anniversary of the adoption of the Rome Statute of the International Criminal Court (long version)” (17 July 2023) <<https://www.auswaertiges-amt.de/en/newsroom/news/-/2609126>> accessed 30 July 2023.

(216) A. MALEK, “How a Syrian War Criminal Was Brought to Justice – in Germany: When refugees won historic convictions against the Syrian torture regime, they also opened a new front in the global fight for human rights” *The New York Times* (25 January 2022) <<https://www.nytimes.com/live/2022/01/13/world/syria-war-crimes-germany-verdict?cam->> accessed 9 July 2023.

(217) The Nuremberg Trials, conducted between 1945 and 1946 in Nuremberg, Germany, were a series of military trials held after the Second World War. The purpose was to prosecute key leaders of Nazi Germany for their involvement in war crimes, crimes against humanity, and other heinous acts committed during the war and the Holocaust. For more information, see V. G. HEBERT, *Hitler’s Generals on Trial: The Last War Crimes Tribunal at Nuremberg*, University Press of Kansas, 2010.

(218) K. BENNHOLD, “Syria War Crimes Verdict Former Syrian Colonel Guilty in War Crimes Trial in Germany” *The New York Times* (13 January 2022) <<https://www.nytimes.com/live/2022/01/13/world/syria-war-crimes-germany-verdict?cam->> accessed 28 July 2023.

(219) The ECCHR is an NGO that was founded in Berlin in 2007 and is dedicated to enforcing civil and human rights worldwide. For further information, see ECCHR, “Who we are” <<https://www.ecchr.eu/en/about-us/>> accessed 19 July 2020.

(220) B. HUBBARD and K. BENNHOLD, “Murder, Torture, Rape: A Landmark Conviction on State Violence in Syria” (13 January 2022) <<https://www.nytimes.com/2022/01/13/world/middleeast/verdict-syria-war-crimes.html>> accessed 20 July 2023.

(221) *Ibid.*

(222) *Ibid.*

National role conceptions: application to the case

When it comes to international criminal justice in general, Germany is often regarded as a role model. (223) Also German state officials often recall that Germany is a dedicated proponent of international criminal law. (224) As will be shown, the responsibility taken up by Germany today is strongly connected to the country's history and the self-conceptualization that is rooted in this history. Germany's history, and especially the lessons learned from it, is recognized as part of the German national identity (225) and remains a cornerstone of the German political discourse (226). The values and beliefs that were shaped by these historical experiences, are widely shared by the entire German society. (227)

The development of Germany's national role conceptions

After the Second World War, Germany needed to redefine its role in the international community. (228) At that point, the country's reputation and

(223) See e.g. S. TALMON, "Germany's comments on the ILC's first draft on crimes against humanity" (*German Practice in International Law*, 4 April 2019) <<https://gpil.jura.uni-bonn.de/2019/04/germanys-comments-on-the-ils-first-draft-on-crimes-against-humanity/>> accessed 1 July 2023; D. HOVELL, "The Authority of Universal Jurisdiction" (2018) 29(2) *The European Journal of International Law* 449; Fortify Rights, "Criminal Complaint Filed in Germany against Myanmar Generals for Atrocity Crimes" (24 January 2023) <<https://www.fortifyrights.org/mya-inv-2023-01-24/>> accessed 27 June 2023; M. STERIO, "Closing the Accountability Gap in Syria: Pathways to Prosecution" (Testimony before the United States Senate Committee on Foreign Relations, 18 May 2022) 7 <https://www.foreign.senate.gov/imo/media/doc/060822_%20Sterio_Testimony.pdf> accessed 4 July 2023.

(224) See e.g. "[Germany is] a staunch supporter of international criminal law" in S. TALMON, "Germany's comments on the ILC's first draft on crimes against humanity" (*German Practice in International Law*, 4 April 2019) <<https://gpil.jura.uni-bonn.de/2019/04/germanys-comments-on-the-ils-first-draft-on-crimes-against-humanity/>> accessed 26 June 2023; Federal Foreign Minister Annalena Baerbock stressing "Germany's longstanding commitment to the ICC, to upholding the rule of law internationally and to ending impunity for international crimes" in German Federal Foreign Office, "Statement of Federal Foreign Minister Annalena Baerbock" (2023) <<https://www.auswaertiges-amt.de/en/aussenpolitik/themen/icc-judicial-elections-hohoff-2023/-/2598642>> accessed 4 July 2023.

(225) German Federal Ministry of Defense, "White Paper 2016 on German Security Policy and the Future of the Bundeswehr" (13 July 2016) 22 <<https://www.bundeswehr.de/resource/blob/4800140/fe103a80d8576b2cd7a135a5a8a86dde/download-white-paper-2016-data.pdf>> accessed 25 June 2023; W. VON BEDROW, "Post—post-nationalism: Unified Germany after the East-West conflict" (1993) 48(3) *International Journal* 414 <<https://www.jstor.org/stable/25734015>> accessed 5 July 2023.

(226) J. SAM-SANG, "Bringing Normality Back in: Norms and Interests in Germany and Japan" (2019) *Isscu Research Papers* 19 <<https://chuo-u.repo.nii.ac.jp/records/11761>> accessed 4 July 2023.

(227) J. S. DUFFIELD, "Political Culture and State Behavior: Why Germany Confounds Neorealism" (1999) 53(4) *International Organization* 779.

(228) K. BRUMMER and C. G. THIES, "The Contested Selection of National Role Conceptions" (2015) 11(3) *Foreign Policy Analysis* 274; S. GREEN, D. HOUGH and A. MISKIMMON, *The Politics of the New Germany*, 2nd edn, Routledge, 2012, 196.

position in the international arena were at its lowest (229), and its actions were constantly regarded with a certain mistrust. (230) Germany was not in a position to take any foreign policy action that could endanger the prospects of a unification. (231) Therefore, it took on a faithful ally role, with the primary goal of winning back trust from the West and acquiring reliable partners, and with the ultimate aim of unifying the divided nation. (232) Today, German state officials continue to reference the trust and reputation that the country has regained in this manner. (233) The first action that made the decision for the faithful ally role clear, was Germany's accession to NATO in 1995. (234) From then on, the three master words of German foreign policy were: continuity, predictability and reliability. (235)

(229) S. GREEN, D. HOUGH and A. MISKIMMON, *The Politics of the New Germany*, 2nd edn, Routledge, 2012, 198.

(230) W. VON BREDOW, "Post-post-nationalism: Unified Germany after the East-West Conflict" (1993) 48(3) *International Journal* 415.

(231) K. BRUMMER and C. G. THIES, "The Contested Selection of National Role Conceptions" (2015) 11(3) *Foreign Policy Analysis* 275; this role can still be identified, for example where the federal chancellor Scholz states that the German National Security Strategy "will show [its] European and international friends and allies that [they] can rely on Germany", see German Federal Government, "Germany needs friends and allies in Europe and around the world" (22 June 2023) <<https://www.bundesregierung.de/breg-en/news/scholz-government-statement-2198084>> accessed 9 July 2023.

(232) S. GREEN, D. HOUGH and A. MISKIMMON, *The Politics of the New Germany*, 2nd edn, Routledge, 2012, 198; K. BRUMMER and C. G. THIES, "The Contested Selection of National Role Conceptions" (2015) 11(3) *Foreign Policy Analysis* 280-281.

(233) See e.g. "We continue to push for disarmament and arms control, and contribute to resolving international crises and upholding human rights, *thereby improving Germany's reputation* in foreign policy." (emphasis added, translated) in Die Bundesregierung, "Deutschlands Verantwortung für Frieden, Freiheit und Sicherheit in der Welt" (12 November 2019) <<https://www.bundesregierung.de/breg-de/themen/deutschlands-verantwortung-fuer-frieden-freiheit-und-sicherheit-in-der-welt-1682760#:~:text=Damit%20übernimmt%20Deutschland%20eine%20wichtige,Partnern%20und%20den%20VN%20ein>> accessed 10 July 2023; "Today's democratic and reunited Germany owes its role on the world stage to you, our international friends and partners. You placed your trust in us to become and to remain a peace-loving member of the international community." in German Federal Government, "Speech by Olaf Scholz, Chancellor of the Federal Republic of Germany and Member of the German Bundestag, at the 77th general debate of the United Nations General Assembly" (20 September 2022) <<https://www.bundesregierung.de/breg-en/search/speech-by-olaf-scholz-2128554>> accessed 10 July 2023.

(234) K. BRUMMER and C. G. THIES, "The Contested Selection of National Role Conceptions" (2015) 11(3) *Foreign Policy Analysis* 281.

(235) U. KROTZ, "National Role Conceptions: France and Germany Compared" (2001) *Minda de Gunzburg Center for European Studies Harvard University Paper* 02.1, 10 <https://www.academia.edu/23859939/National_Role_Conceptions_and_Foreign_Policies_France_and_Germany_Compared> accessed 20 May 2023.

Germany unequivocally chose anti-militarism (236) and multilateralism (237) as its foreign policy pillars. (238) First, this means that peace is considered an absolute value and the country avoids the use of military force. (239) Second, Berlin has a strong distaste for unilateralism (“Never alone”) (240), as it fears consequences such as diplomatic isolation, insecurity, and conflict. (241) As a result, German policymakers have consistently emphasized the significance of international institutions as a direct result of their commitment to multilateralism, highlighting the necessity for Germany to engage and firmly integrate itself within the frameworks of international cooperation. (242) This also entails that Germany, in line with its role as a faithful ally, attaches significant importance to fulfilling its international obligations and responsibilities, to avoid losing credibility in the eyes of its partners. (243)

Due to the end of the Cold War and German reunification in 1990, numerous external constraints (244) on Germany were lifted, its eastern borders were

(236) However, this principle of anti-militarism is considered to be relative and connected to Germany’s historical context. This was clearly demonstrated in the participation of Germany in NATO’s 1998 Allied Force Operation in Kosovo. Foreign Minister Joschka Fischer and Chancellor Schröder harnessed the historical memory of the Holocaust to garner public support for Germany’s involvement in the NATO military operation. They argued that the lessons of the past compelled Germany to take a morally justified and multilateral approach to halt ethnic cleansing, emphasizing the use of force as a last resort and with limited scope. Ludger Volmer, a Green foreign policy advisor, further asserted that a sovereign Germany had a responsibility to its democratic allies and the international community to participate in morally justified and multilaterally pursued military actions. Thus, as long as the military action is multilateral, “never again Holocaust” can prevail over “never again war”. See M. N. HAMPTON and D. C. PEIFER, “Reordering German Identity: Memory Sites and Foreign Policy” (2007) 30(2) *German Studies Review* 378; S. HARNISH, “Change and continuity in post-unification German foreign policy” (2010) 10(1) *German Politics* 51-53; B. BLAMENAU, “Breaking with convention? Zeitenwende and the traditional pillars of German foreign policy” (2022) 98(6) *International Affairs* 1910.

(237) Multilateral strategies aim for broad global objectives, rather than limited nationalistic objectives. See C. HOFHANSEL, *Multilateralism, German foreign policy and Central Europe*, Routledge, 2005, 4.

(238) J. S. DUFFIELD, “Political Culture and State Behavior: Why Germany Confounds Neorealism” (1999) 53(4) *International Organization* 780-781; B. CRAWFORD and K. B. OLSEN, “The Puzzle of Persistence and Power: Explaining Germany’s Normative Foreign Policy” (2017) 26(4) *German Politics* 591.

(239) J. S. DUFFIELD, “Political Culture and State Behavior: Why Germany Confounds Neorealism” (1999) 53(4) *International Organization* 780.

(240) T. BAGGER, “The World According to Germany: Reassessing 1989” (2019) 41(4) *The Washington Quarterly* 56.

(241) J. S. DUFFIELD, “Political Culture and State Behavior: Why Germany Confounds Neorealism” (1999) 53(4) *International Organization* 780.

(242) *Ibid.*, 782.

(243) *Ibid.*, 782.

(244) Such as the security threat posed by the Warsaw Pact, which led Germany to rely on Western allies for protection. See J. S. DUFFIELD, “Political Culture and State Behavior: Why Germany Confounds Neorealism” (1999) 53(4) *International Organization* 767.

extended, and its already significant power resources were bolstered. (245) This way, reunification presented opportunities for pursuing influence on the international stage. (246) The anticipation was that these changes would result in the 'normalization' of German foreign policy, causing the country to shift away from the principles of anti-militarism and multilateralism. (247) However, the contrary happened: the reunification of Germany was a critical driver for policy continuity. (248)

National role conception of a civilian or normative power

This continuity has classically been explained by the fact that while external factors influenced Germany's power, they did not lead to internal changes in its foreign policy. (249) Germany's foreign policy has consistently been influenced by its national role conception as a 'civilian power' (250), which entails adherence to principles such as anti-military and multilateralism. (251) Another essential aspect of a civilian power is its strong commitment to norms (252), and especially the promotion and realisation of human rights. (253) The human rights policy of a civilian power is said to have three features: the capacity and readiness to take action, the openness to relinquish

(245) J. S. DUFFIELD, "Political Culture and State Behavior: Why Germany Confounds Neorealism" (1999) 53(4) *International Organization* 767.

(246) *Ibid.*

(247) B. CRAWFORD and K. B. OLSEN, "The Puzzle of Persistence and Power: Explaining Germany's Normative Foreign Policy" (2017) 26(4) *German Politics* 592; A. DENISON, "German Foreign Policy and Transatlantic Relations since Unification", in D. WEBBER (ed), *New Europe, new Germany, old foreign policy?: German foreign policy since unification*, London: Cass, 2001, 155-156.

(248) S. HARNISH, "German Foreign Policy: Gulliver's Travails in the 21st Century", in R. K. BEASLEY, J. KAARBO, J. S. LANTIS and M. T. SNARR (eds), *Foreign Policy in Comparative Perspective Domestic and International Influences on State Behavior*, CQPress, 2012, 81; B. CRAWFORD and K. B. OLSEN, "The Puzzle of Persistence and Power: Explaining Germany's Normative Foreign Policy" (2017) 26(4) *German Politics* 594; for a nuanced view see P. A. MELLO, "German Foreign Policy", in J. JOLY and T. HAESBROUCK (eds), *Foreign Policy Change in European Union Countries Since 1991*, Palgrave Macmillan, 2021.

(249) B. CRAWFORD and K. B. OLSEN, "The Puzzle of Persistence and Power: Explaining Germany's Normative Foreign Policy" (2017) 26(4) *German Politics* 594; S. HARNISH and H. W. MAULL, "Conclusion: 'Learned its lesson well?' Germany as a Civilian Power ten years after unification", in S. HARNISH and H. W. MAULL (eds), *Germany as a Civilian Power? The foreign policy of the Berlin Republic*, Manchester University Press, 2001, 146; S. HARNISH, "Change and continuity in post-unification German foreign policy" (2010) 10(1) *German Politics* 38.

(250) S. HARNISH, "Change and continuity in post-unification German foreign policy" (2010) 10(1) *German Politics* 38; B. CRAWFORD and K. B. OLSEN, "The Puzzle of Persistence and Power: Explaining Germany's Normative Foreign Policy" (2017) 26(4) *German Politics* 591.

(251) H. TEWES, *Germany, Civilian Power and the New Europe: Enlarging NATO and the European Union*, Palgrave, 2002, 10.

(252) *Ibid.*

(253) F. PFEIL, "Civilian Power and human rights: the case of Germany", in S. HARNISH and H. W. MAULL (eds), *Germany as a Civilian Power? The foreign policy of the Berlin Republic*, Manchester University Press, 2001, 88.

autonomy, and the readiness to embrace short-term sacrifices in exchange for long-term institutional benefits. (254)

According to Beverly Crawford and Kim B. Olsen, Germany's national role conception is better represented by the notion of a "normative power". (255) They argue that while "civilian power" primarily emphasizes the role of civilian institutions that embody specific values, such as liberal democracy and laws, "normative power" centres on the moral commitment to these underlying values themselves. (256) These values include common responsibility, protection of human rights, peace, and the rule of law. (257) In essence, the 'normative power' concept focuses on the values directly rather than solely on the institutions constructed around them. (258) However, the conceptions of civilian power and normative power share the same foundation, and sometimes they are even used interchangeably. (259) Expanding on Crawford and Olsen's theory, Germany's behaviour in the context of UJ appears to be driven not solely by the presence of specific institutions but rather by its commitment to values and principles rooted in its historical background. This could potentially clarify the frequent references to Germany's past in the indications mentioned above and highlights the significance of the normative power role conception in shaping the country's conduct. In what follows, first, the "normative" element of this role conception will be addressed, focussing on norm-compliance and responsibility. Second, the "power" element will be discussed, addressing the active promotion of human rights and leadership.

The "normative" element of Germany's national role conception (260), which indicates commitment to values such as common responsibility and the protection of human rights (261), might clarify the sense of responsibility

(254) *Ibid.*; for a detailed overview of the ideal-type civilian power human rights policy, see F. PFEIL, "Civilian Power and human rights: the case of Germany", in S. HARNISCH and H. W. MAULL (eds), *Germany as a Civilian Power? The foreign policy of the Berlin Republic*, Manchester University Press, 2001, 99-101, table 5.1.

(255) B. CRAWFORD and K. B. OLSEN, "The Puzzle of Persistence and Power: Explaining Germany's Normative Foreign Policy" (2017) 26(4) *German Politics* 593.

(256) *Ibid.*; All Member States of the Council of Europe generally adhere to these values, but Germany, as a civilian or normative power, demonstrates an exceptional and noteworthy dedication to upholding them.

(257) B. CRAWFORD and K. B. OLSEN, "The Puzzle of Persistence and Power: Explaining Germany's Normative Foreign Policy" (2017) 26(4) *German Politics* 593.

(258) *Ibid.*

(259) See e.g. A. CUNHA, "Europe's Hegemon? The Nature of German Power During Europe's Crisis Decade" (*E-International Relations*, 23 August 2021) <<https://www.e-ir.info/2021/08/23/europes-hegemon-the-nature-of-german-power-during-europes-crisis-decade/>> accessed 5 August 2023.

(260) On Germany's civilian power role and human rights, see F. PFEIL, "Civilian Power and human rights: the case of Germany", in S. HARNISCH and H. W. MAULL (eds), *Germany as a Civilian Power? The foreign policy of the Berlin Republic*, Manchester University Press, 2001.

(261) B. CRAWFORD and K. B. OLSEN, "The Puzzle of Persistence and Power: Explaining Germany's Normative Foreign Policy" (2017) 26(4) *German Politics* 593.

German state officials express when discussing UJ. Since the Second World War, Germany took on a role of norm-compliance, which is also referred to as its legalistic culture. (262) As said, the country pays a lot of respect to legal stipulations and accords great legitimacy to legally codified procedures and regularized conduct, especially human rights. (263) As will be seen below, this later evolved to a role of an active human rights promoter.

A possible link with this normative element is the fact that Germany was one of the biggest proponents of the establishment of the ICC (264), and today still is one of its biggest supporters (265). The Rome Statute of the ICC – which was greatly influenced by many German proposals (266) – in its preamble states that it is “the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes” and that “the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation”. (267) In line with Germany’s normative foreign policy, it makes sense that the country takes up its prescribed responsibility to exercise UJ where possible. Indeed, the official website of the General Federal Prosecutor states in a text about investigations concerning Syria: “The Rome Statute reiterates that severe crimes [...] cannot go unpunished. The Office of the Federal Prosecutor meets this *international obligation* by

(262) T. BAGGER, “The World According to Germany: Reassessing 1989” (2019) 41(4) *The Washington Quarterly* 57; U. KROTZ, “National Role Conceptions: France and Germany Compared” (2001) *Minda de Gunzburg Center for European Studies Harvard University Paper* 02.1, 9 <https://www.academia.edu/23859939/National_Role_Conceptions_and_Foreign_Policies_France_and_Germany_Compared> accessed 20 May 2023; J. S. DUFFIELD, “Political Culture and State Behavior: Why Germany Confounds Neorealism” (1999) 53(4) *International Organization* 782.

(263) U. KROTZ, “National Role Conceptions: France and Germany Compared” (2001) *Minda de Gunzburg Center for European Studies Harvard University Paper* 02.1, 9 <https://www.academia.edu/23859939/National_Role_Conceptions_and_Foreign_Policies_France_and_Germany_Compared> accessed 20 May 2023

(264) G. WERLE and F. JESSBERGER, “International Criminal Justice is Coming Home: The New German Code of Crimes Against International Law” (2002) 13(2) *Criminal Law Forum* 197; H. BOEKLE, “German foreign human rights policy within the UN”, in V. RITTBERGER (ed), *German foreign policy since unification: Theories and case studies*, Manchester University Press, 2001, 287-288.

(265) Today, after Japan, Germany is the largest contributor to the ICC and also engages in voluntary contributions. See German Federal Foreign Office, “Völkerstrafrecht und der Internationale Strafgerichtshof” (12 January 2023) <<https://www.auswaertiges-amt.de/de/aussenpolitik/regelbasierte-internationale-ordnung/voelkerrecht-internationales-recht/voelkerstrafrecht>> accessed 1 June 2023; German Federal Foreign Office, “Strengthening International Law in Times of Crisis” - Speech by Federal Foreign Minister Annalena Baerbock in The Hague” (16 January 2023) <<https://www.auswaertiges-amt.de/en/newsroom/news/strengthening-international-law-in-times-of-crisis/2573492>> accessed 1 June 2023.

(266) G. WERLE and F. JESSBERGER, “International Criminal Justice is Coming Home: The New German Code of Crimes Against International Law” (2002) 13(2) *Criminal Law Forum* 196.

(267) N. STRAPATSAS, “Universal Jurisdiction and the International Criminal Court” (2002) 29(1) *Manitoba Law Journal* 16.

prosecuting crimes under the German International Criminal Code.” (emphasis added). (268)

A second obligation that Germany in this way fulfils is its commitment to the ‘responsibility to protect’, originating from an international conference on issues of national sovereignty and the possibility of intervention in 2000. (269) This principle, which comprises three pillars, was unanimously adopted by the UNGA in 2005. (270) The third pillar entails that in instances where a State clearly fails to protect its population against mass atrocities or is directly involved in committing such atrocities, the international community bears the responsibility to promptly and resolutely intervene in order to prevent and stop acts of genocide, war crimes, crimes against humanity, and ethnic cleansing. (271) This can be understood to include the obligation to hold perpetrators of international crimes accountable, if necessary on the basis of UJ. (272)

The element of ‘power’ could serve as a clarification for the leading role Germany takes on as an example for the international community. While Germany’s power has significantly grown since it took up its new role in the world after the Second World War, this did not lead to internal (normative) changes in German foreign policy. As said, it instead only boosted the German foreign policy discourse. Since then, the country can go beyond its norm-compliant behaviour and use this power to actively pursue its normative values and the principles of anti-militarism and multilateralism. (273) One could say that its power is ‘constrained’ by its normative values. (274) While the normative power cannot be used to make States forcefully adopt

(268) Der Generalbundesanwalt beim Bundesgerichtshof, “Unsere Aufgaben: Völkerstrafrecht” <https://www.generalbundesanwalt.de/DE/Unsere_Aufgaben/Voelkerstrafrecht/Voelkerstrafrecht-node.html;jsessionid=0E8D49B9314180DACEACC56FCADF2A51.intranet231> accessed 19 July 2023.

(269) D. FEIERSTEIN, “Human Rights? What a Good Idea! From Universal Jurisdiction to Crime Prevention” (2019) 13(3) *Genocide Studies and Prevention: An International Journal* 10.

(270) *Ibid.*

(271) *Ibid.*

(272) Global Centre for the Responsibility to Protect, “Summary of the 2023 UN General Assembly Plenary Meeting on the Responsibility to Protect” (14 July 2023) <<https://www.global2p.org/publications/summary-2023-r2p-debate/>> accessed 29 July 2023; L. ARBOUR, “The Responsibility to Protect as a Duty of Care in International Law and Practice” (2008) 34(3) *Review of International Studies* 457; International Justice Resource Center, “Universal Jurisdiction” <<https://ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction/#:~:text=Responsibility%20to%20Protect&text=The%20norm%20suggests%20that%20States,against%20humanity%2C%20and%20ethnic%20cleansing>> accessed 30 July 2023.

(273) B. CRAWFORD and K. B. OLSEN, “The Puzzle of Persistence and Power: Explaining Germany’s Normative Foreign Policy” (2017) 26(4) *German Politics* 592; Germany is said to have changed from being a consumer of stability and security, to taking on a producer role. See A. DENISON, “German Foreign Policy and Transatlantic Relations since Unification”, in D. WEBBER (ed), *New Europe, new Germany, old foreign policy?: German foreign policy since unification*, London: Cass, 2001, 155-156.

(274) B. CRAWFORD and K. B. OLSEN, “The Puzzle of Persistence and Power: Explaining Germany’s Normative Foreign Policy” (2017) 26(4) *German Politics* 598.

norms and practices, Germany can use it to provide incentives and effectively persuade States to embrace these norms and practices. (275) This theory perfectly aligns with the found indications: while Germany actively promotes the use of UJ and calls upon other States to follow its example, it does not go as far as to lecture other States and explicitly states that it does not intend to do so. (276)

Germany's normative power is further emphasized by the 2016 white paper on Security Policy and the Future of the Bundeswehr (2016 white paper), that highlights the country's responsibility to actively shape the global order and maintain the rules-based international system based on international law. (277) The paper even explicitly mentions "Maintaining the rules based international order on the basis of international law" as a security interest. (278) Besides, Germany regularly states that international criminal law specifically should be strengthened further. (279) Its recently published National Security Strategy also mentions the country's global commitment to human rights as a moral obligation, and states that it has an "international responsibility to protect" human rights, violations of which "are not domestic affairs of individual states". (280) These instances reaffirm Germany's active pursuit of normative values and its leading role in advocating for the promotion and protection of human rights and international law.

It should be noted that recent events in the context of the Russian-Ukrainian war have challenged Germany's normative or civilian power model. While

(275) Emanuel Adler and Beverly Crawford, "Normative Power: The European Practice of Region Building and the Case of the Euro-Mediterranean Partnership (EMP)" (2004) Institute of European Studies UC Berkeley Working Paper AY0404, 48 <<https://escholarship.org/uc/item/6xx6n5p4>> accessed 5 July 2023.

(276) See e.g. Bundesministerium der Justiz, "How to Punish War Crimes – Recent German Experiences in Bringing War Criminals to Justice" Rede von Dr. Marco Buschmann MdB, Bundesminister der Justiz, an der Harvard Kennedy School am 20. Oktober 2022 in Cambridge, Massachusetts" (20 October 2022) <https://www.bmj.de/SharedDocs/Reden/DE/2022/1020_Harvard.html?nn=6704226> accessed 27 May 2023; in a foreign policy context not directly related to UJ, Richard von Weizsäcker, a former German president and statesman, stated that it suits Germany to "evade any type of 'showing off'", see U. KROTZ, "National Role Conceptions: France and Germany Compared" (2001) *Minda de Gunzburg Center for European Studies Harvard University Paper* 02.1, 8 <https://www.academia.edu/23859939/National_Role_Conceptions_and_Foreign_Policies_France_and_Germany_Compared> accessed 20 May 2023.

(277) German Federal Ministry of Defense, "White Paper 2016 on German Security Policy and the Future of the Bundeswehr" (13 July 2016) 23 <<https://www.bundeswehr.de/resource/blob/4800140/fe103a80d8576b2cd7a135a5a8a86dde/download-white-paper-2016-data.pdf>> accessed 25 June 2023.

(278) *Ibid.*, 24-25.

(279) See e.g. *Ibid.*, and German Federal Government, "Robust. Resilient. Sustainable. Integrated Security for Germany: National Security Strategy" (June 2023) 52 <<https://www.nationalesicherheitsstrategie.de/National-Security-Strategy-EN.pdf>> accessed 9 July 2023.

(280) German Federal Government, "Robust. Resilient. Sustainable. Integrated Security for Germany: National Security Strategy" (June 2023) 51-52 <<https://www.nationalesicherheitsstrategie.de/National-Security-Strategy-EN.pdf>> accessed 9 July 2023.

traditionally Germany refused to provide weapons to conflict zones (281), it today is the second largest supplier of military support, including ammunition, Leopard battle tanks and anti-aircraft guns, to Ukraine. (282) Federal chancellor Scholz announced this 'shift' or *Zeitenwende* in a speech in February 2022, three days after Russia's attack on Ukraine. (283) He stated that although Germany "will always advocate for the peaceful resolution of conflicts", "[n]o other response to Putin's aggression was possible." (284)

Prior to this shift, Germany had been dedicated to its Ostpolitik approach towards Russia for several decades, concentrating on trade, energy cooperation, and establishing extensive economic, social, and political connections. (285) This policy was based on the assumption that such ties would bring Russia closer to Europe, ultimately fostering greater stability and security. (286) However, this assumption turned out to be somewhat naive. (287) Besides, a combination of external pressure and Germany's feeling of international responsibility have resulted in the gradually loosening of the country's culture of military restraint since the 1990s. (288) So while on the one hand it became clear that peaceful resolution would not solve the conflict between Russia and Ukraine, on the other hand Germany's assumed leadership role demanded concessions on its core foreign policy principle of anti-militarism.

Nonetheless, Berlin's *Zeitenwende* also stands for continuity. (289) Since the end of the Second World War, Germany has been relying on its core

(281) J. DEMPSEY, "Russia's War on Ukraine Is Changing Germany" (*Carnegie Europe*, 7 March 2023) <<https://carnegieeurope.eu/strategieurope/89213>> accessed 10 July 2023.

(282) "Duitsland belooft Oekraïne militaire steun tot eind 2027, ten bedrage van 17 miljard euro" *Knack* (14 July 2023) <<https://www.knack.be/nieuws/wereld/europa/duitsland-beloof-oekraïne-militaire-steun-tot-eind-2027-ten-bedrage-van-17-miljard-euro/>> accessed 9 July 2023.

(283) German Federal Government, "Policy statement by Olaf Scholz, Chancellor of the Federal Republic of Germany and Member of the German Bundestag, 27 February 2022 in Berlin" (27 February 2022) <<https://www.bundesregierung.de/breg-en/news/policy-statement-by-olaf-scholz-chancellor-of-the-federal-republic-of-germany-and-member-of-the-german-bundestag-27-february-2022-in-berlin-2008378>> accessed 9 July 2023.

(284) *Ibid.*

(285) J. DEMPSEY, "Russia's War on Ukraine Is Changing Germany" (*Carnegie Europe*, 7 March 2023) <<https://carnegieeurope.eu/strategieurope/89213>> accessed 10 July 2023.

(286) *Ibid.*

(287) *Ibid.*

(288) H. CAN and M. ÖNSOY, "Becoming an Army on Operations: Bundeswehr and the German Foreign Policy in the Post-Cold War Period" (2023) 7(1) *DergiPark* 128.

(289) B. BLAMENAU, "Breaking with convention? *Zeitenwende* and the traditional pillars of German foreign policy" (2022) 98(6) *International Affairs* 1913; After Germany's action in Kosovo (see footnote 236), it was already predicted that Germany would use force again in the future, but only with some source of international legitimacy and political risk-sharing, so that this partial "normalization" of Germany's foreign policy still aligns with its role as a civilian power. See A. DENISON, "German Foreign Policy and Transatlantic Relations since Unification", in D. WEBBER (ed), *New Europe, new Germany, old foreign policy?: German foreign policy since unification*, London: Cass, 2001, 164.

foreign policy traditions to gain back trust from the international community. (290) Today, its neighbours welcomed the huge increase in German defence spending, which would have set off alarm bells thirty years earlier. (291) This reaction proves that by pursuing its foreign policy traditions, Germany has now normalized its relations. (292) This way, the *Zeitenwende* not only affirmed successful traditions such as multilateralism and the pursuit of a rules-based international order, but also enabled the country to address and discard its more troublesome traditions, in this case the absolute commitment to anti-militarism. (293)

It can be concluded that while the *Zeitenwende* in a way changed the substance of the civilian power role, and the normative power role even so, Germany's leading role in the field of UJ has not changed since then, still corresponding with the country's interest in maintaining peace and strengthening the rules-based international order. (294) As the UJ cases concerning Syria remain consistent with the normative power role conception, this could still serve as a significant influential factor.

National role conception of a global enforcer

The foregoing could also be linked to Germany's national role conception in the field of UJ specifically. According to Maximilian Langer, when it comes to UJ, States can take two approaches (295): a 'no safe haven' or a 'global enforcer' approach. (296) States acting as a 'global enforcer', take on a role in preventing and punishing core international crimes occurring anywhere in the world, whereas States following the 'no safe haven' approach only prevent to serve as a refuge for perpetrators of these crimes. (297)

(290) B. BLAMENAU, "Breaking with convention? *Zeitenwende* and the traditional pillars of German foreign policy" (2022) 98(6) *International Affairs* 1912.

(291) *Ibid.*, 1913.

(292) *Ibid.*

(293) *Ibid.*

(294) Stiftung Wissenschaft und Politik, "German Foreign Policy in Transition: Volatile Conditions, New Momentum" (13 December 2021) <<https://www.swp-berlin.org/10.18449/2021RP10/>> accessed 17 July 2023.

(295) A combination of both approaches is also possible. See W. KALECK and P. KROKER, "Syrian Torture Investigations in Germany and Beyond" (2018) 16(1) *Journal of International Criminal Justice* 190.

(296) This distinction differs from the distinction between "pure" and "conditional" UJ. The latter focuses on the requirements for initiating UJ proceedings, while the concepts of "global enforcer" and "no safe haven" relate to the role of States in the UJ regime. Formal requirements like the defendant's presence or links with the prosecuting State may reflect a particular conception of UJ, but the substantive discussion revolves around the role of States in prosecuting international crimes committed outside their jurisdiction without a direct connection to the prosecuting States. See M. LANGER, "Universal Jurisdiction is Not Disappearing: The Shift from 'Global Enforcer' to 'No Safe Haven' Universal Jurisdiction" (2015) 13(2) *Journal of International Criminal Justice* 250.

(297) M. LANGER, "Universal Jurisdiction is Not Disappearing: The Shift from 'Global Enforcer' to 'No Safe Haven' Universal Jurisdiction" (2015) 13(2) *Journal of International Criminal Justice* 247-246.

While it has been stressed that “there is no safe haven for perpetrators of international crimes against criminal prosecution *in Germany*” (298)(emphasis added), Berlin has gone beyond the “no safe haven approach” and has instead seemed to take on a “global enforcer” role at times. (299) In the case of Jamil Hassan, the head of the Syrian Air Force Intelligence, Germany issued an international arrest warrant and even requested Lebanon to extradite him (300). (301) By really going after him, Germany signalled that there is no place for him to hide outside Syria. (302) The statement of Federal Justice Minister Christine Lambrecht that the German UJ trials send out “a clear message: war criminals must never feel safe *anywhere*” (303) (emphasis added), and the following statement of Marco Buschmann that that “[a]nyone who has committed crimes against humanity must not be allowed to find safe refuge *anywhere*” (304) (emphasis added, translated), could imply that state officials are confirming this role conception.

(298) UNGA Sixth Committee (77th session) “Statement by the Federal Republic of Germany” (12 October 2022) <https://www.un.org/en/ga/sixth/77/pdfs/statements/universal_jurisdiction/12mtg_germany.pdf> accessed 4 July 2023.

(299) A. MALEK, “How a Syrian War Criminal Was Brought to Justice – in Germany: When refugees won historic convictions against the Syrian torture regime, they also opened a new front in the global fight for human rights” *The New York Times* (25 January 2022) <<https://www.nytimes.com/live/2022/01/13/world/syria-war-crimes-germany-verdict?cam->> accessed 5 July 2023; A. SKANDER GALAND, “Accountability for International Crimes Committed in Syria” (*Individualization of War Project European University Institute Working Paper*, 2019) 5 <https://cadmus.eui.eu/bitstream/handle/1814/65384/IOW-Policy-Brief-Galand_160419.pdf?sequence=1&isAllowed=y> accessed 22 July 2023.

(300) At that moment, Jamil Hassan had traveled to Lebanon for medical treatment. See M. STERIO, “Closing the Accountability Gap in Syria: Pathways to Prosecution” (Testimony before the United States Senate Committee on Foreign Relations, 18 May 2022) 6 <https://www.foreign.senate.gov/imo/media/doc/060822_%20Sterio_Testimony.pdf> accessed 4 July 2023.

(301) ECCHR, “Arrest warrant against Jamil Hassan is a milestone and good news for all affected by Assad’s torture system: Other States Should Follow the Lead by the German Judiciary” (8 June 2018) <<https://www.ecchr.eu/en/press-release/arrest-warrant-against-jamil-hassan-is-a-milestone-and-good-news-for-all-affected-by-assads-torture-system/>> accessed 9 July 2023; C. KRESS, “Letter to the Editor – Germany’s Extradition Request for Gen. Jamil Hassan, with U.S. Support: The Vital Importance of Absence of State Officials’ Functional Immunity for Crimes under International Law” (*Just Security*, 13 March 2019) <<https://www.justsecurity.org/63227/letter-editor-germanys-extradition-request-gen-jamil-hassan-u-s-support/>> accessed 9 July 2023.

(302) P. WITTUM and S. TALMON, “‘We want to get this man’ – Germany requests Lebanon to extradite high-ranking Syrian official accused of crimes against humanity” (*German Practice in International Law*, 10 November 2020) <<https://gpil.jura.uni-bonn.de/2020/11/we-want-to-get-this-man-germany-requests-lebanon-to-extradite-high-ranking-syrian-official-accused-of-crimes-against-humanity/>> accessed 8 July 2023.

(303) “Germany: First trial of suspected Syrian security service members accused of torture begins” *Ruptly* (23 April 2020) <<https://www.ruptly.tv/en/videos/20200423-031-Germany--First-trial-of-suspected-Syrian-security-service-members-accused-of-torture-begins>> accessed 10 July 2023.

(304) “Verdict based on principle of universal jurisdiction: The historic ruling of a German court in a trial about state-sponsored torture in Syria is based on the principle of universal jurisdiction” (*Deutschland.de*, 14 January 2021) <<https://www.deutschland.de/en/topic/politics/universal-jurisdiction-in-germany-trial-on-state-sponsored-torture-in-syria>> accessed 30 May 2023.

Additionally, the fact that German legislation provides for pure UJ, enables the adoption of a broader prosecutorial strategy, such as the structural investigations. (305) As explained above, the gathering of evidence during structural investigations is not targeted at specific suspects, but at specific structures, within which international crimes have allegedly been committed. (306) This is also said to bring the German approach closer to a global enforcer approach. (307) Also the sharing of evidence found during a structural investigation with other prosecutors in Europe, goes beyond the no safe haven approach. (308)

Intermediate conclusion

This section illustrates that Germany's prominent position in implementing the universality principle aligns with its self-perception as a normative power, and possibly even a global enforcer. Nevertheless, based on this reasoning, one would expect Germany to have assumed this role following its reunification, considering that this was when the country acquired the capability to assume such a position. Contrary to this expectation, the CCAIL remained unused for seven years after its introduction.

While the author of this article expects that Germany's national role conceptions are a necessary explanatory factor for its current conduct, its years of inactivity in the past show that it is not a sufficient condition.

B. — *Diplomatic Considerations*

One of the major critiques on UJ is that it leaves too much scope for political influence. (309) Certainly, UJ cases can significantly impact international relations, potentially influencing States' decisions on launching investigations or prosecutions. (310)

(305) A. SKANDER GALAND, "Accountability for International Crimes Committed in Syria" (*Individualization of War Project European University Institute Working Paper*, 2019) 5 <https://cadmus.eui.eu/bitstream/handle/1814/65384/IOW-Policy-Brief-Galand_160419.pdf?sequence=1&isAllowed=y> accessed 22 July 2023.

(306) *Ibid.*

(307) *Ibid.*; W. KALECK and P. KROKER, "Syrian Torture Investigations in Germany and Beyond" (2018) 16(1) *Journal of International Criminal Justice* 182.

(308) W. KALECK and P. KROKER, "Syrian Torture Investigations in Germany and Beyond" (2018) 16(1) *Journal of International Criminal Justice* 182.

(309) See e.g. A. J. COLANGELO, "Universal Jurisdiction as an International 'False Conflict' of Laws" (2009) 30(3) *Michigan Journal of International Law* 904; H. VARNEY and K. ZDUŃCZYK, "Advancing Global Accountability: The Role of Universal Jurisdiction in Prosecuting International Crimes" (Research report International Center for Transitional Justice, 2020) 23 <https://www.ictj.org/sites/default/files/ICTJ_Report_Universal_Jurisdiction.pdf> accessed 24 July 2023; J. DOUMIT, "Accountability in a Time of War: Universal Jurisdiction and the Strive for Justice in Syria" (2020) 52(1) *Georgetown Journal of International Law* 274.

(310) M. LANGER, "The Diplomacy of Universal Jurisdiction: The Political Branches and the Transnational Prosecution of International Crimes" (2011) 105(1) *The American Journal of*

By exploring the impact of diplomatic considerations in the current case, this section aims to shed light on why Germany is focusing on cases related to Syria. It will first discuss the influence of this factor on UJ cases in general and then narrow its focus to Germany's specific involvement with Syria.

Diplomatic Considerations in Universal Jurisdiction Cases: General Theory

M. Cherif Bassiouni, an authority in the field of international criminal law, says that “[p]recisely because a state exercising UJ does so on behalf of the international community, it must place the overall interests of the international community above its own.” (311) This statement seems to start from the presumption that the exercise of UJ – as follows from its rationale (312) – is always in the best interest of the international community. However, past events show that sometimes, other States oppose the exercise of UJ. (313)

Indeed, not only does the State of nationality sometimes exert significant influence to safeguard its (former) officials (314), but the international community may also respond with sanctions and diplomatic protests if the selection of a UJ case wrongly interferes with international peace and security. (315) Hence, diplomatic considerations in UJ cases encompass two aspects: the international community's perspective and the relationship with the State of nationality.

Máximo Langer argues that States exercising UJ, always make a balance and will only prosecute if the political benefits of a UJ case outweigh the

International Law 6; M. LANGER, “Universal Jurisdiction as Janus-Faced: The Dual Nature of the German International Criminal Code” (2013) 11(4) *Journal of International Criminal Justice* 755.

(311) M. CHERIF BASSIOUNI, “Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice” (2001) 42(1) *Virginia Journal of International Law* 88-89.

(312) Namely that the crime has an impact on the international community as a whole, and the response is therefore a concern of this community.

(313) One prominent instance of such opposition occurred with the Belgian UJ law enacted in 1993. This law, being the broadest of its kind, allowed anyone to initiate criminal action in Belgium. However, when attempts were made to bring criminal charges against high-level state officials, including Ariel Sharon, the Prime Minister of Israel, and George H.W. Bush, former President of the United States, significant diplomatic repercussions followed. Despite holding the presidency of the European Union at that time, Belgium was excluded from the Israeli-Palestinian peace talks, and the United States even threatened to relocate the NATO headquarters out of Belgium if Belgian courts continued with the cases. Consequently, the Belgian law was significantly curtailed, such as by adding the requirement of a connection between Belgium and the accused or the victim. A similar situation also occurred in Spain. See Y. HAN, “Should German Courts Prosecute Syrian International Crimes? Revisiting the ‘Dual Foundation’ Thesis” (2022) 36(1) *Ethics & International Affairs* 40; M. HALBERSTAM, “Belgium’s Universal Jurisdiction Law: Vindication of International Justice or Pursuit of Politics” (2003) 25(1) *Cardozo Law Review* 247-266.

(314) M. LANGER, “The Diplomacy of Universal Jurisdiction: The Political Branches and the Transnational Prosecution of International Crimes” (2011) 105(1) *The American Journal of International Law* 7.

(315) M. LANGER, “Universal Jurisdiction as Janus-Faced: The Dual Nature of the German International Criminal Code” (2013) 11(4) *Journal of International Criminal Justice* 742-743.

international relations costs. (316) These costs depend on several factors, including whether the defendant's State of nationality is capable and willing to retaliate with diplomatic consequences against the prosecuting State for bringing charges against one of its nationals. (317) He also states that by focusing on low-cost defendants (318), for whom the international community has reached a broad agreement that they can be prosecuted and punished, the likelihood of opposition from the State of nationality diminishes. (319) Thus, not only does international agreement create an incentive for prosecution, but it also reduces the potential for facing hurdles in relations with the defendant's State of nationality. (320) Lastly, Langer stresses that in past cases where States still decided to prosecute higher-cost defendants, they faced diplomatic backlash and consequently restricted their UJ statutes. (321)

Diplomatic Considerations in Universal Jurisdiction Cases: Germany and Syria

In 2022, Marco Buschmann said: "We must apply the standards that we rightly consider universal, even to ourselves, even against powerful states, and even when it is inconvenient and brings disadvantages to us. Whoever shares human rights must affirm them completely." (translated). (322) While this statement might reflect Germany's ideal, there are multiple indications that Germany does take into account diplomatic considerations in pursuing UJ cases, in line with the general theories discussed above.

Firstly, quite counter to this statement, the 2016 white paper declares that "[Germany's] increased role in international security policy (323) will

(316) M. LANGER, "The Diplomacy of Universal Jurisdiction: The Political Branches and the Transnational Prosecution of International Crimes" (2011) 105(1) *The American Journal of International Law* 2.

(317) M. LANGER and M. EASON, "The Quiet Expansion of Universal Jurisdiction" (2019) 30(3) *The European Journal of International Law* 809.

(318) Langer defines low-cost defendants as defendants "who can impose little or no international relations, political, economic, or other costs on potential prosecuting states". See M. LANGER, "The Diplomacy of Universal Jurisdiction: The Political Branches and the Transnational Prosecution of International Crimes" (2011) 105(1) *The American Journal of International Law* 5.

(319) M. LANGER, "The Diplomacy of Universal Jurisdiction: The Political Branches and the Transnational Prosecution of International Crimes" (2011) 105(1) *The American Journal of International Law* 5.

(320) *Ibid.*, 9.

(321) *Ibid.*, 2.

(322) Bundesministerium der Justiz, "20 Jahre Völkerstrafgesetzbuch: Rede des Bundesministers der Justiz, Dr. Marco Buschmann MdB, zur Eröffnung der Veranstaltung '20 Jahre Völkerstrafgesetzbuch' am 1. November im BMJ in Berlin" (1 November 2022) <https://www.bmj.de/SharedDocs/Reden/DE/2022/1101_Rede_VStGB.html> accessed 25 June 2023.

(323) "[M]aintaining the rules-based international order on the basis of international law" is understood as part of this international security policy. See German Federal Ministry of Defense, "White Paper 2016 on German Security Policy and the Future of the Bundeswehr" (13 July 2016)

not [...] lead to automatic outcomes or obligations that run counter to our values and interests or overstretch our capabilities.” (324)

A second indication is linked to multilateralism, one of Germany’s fundamental foreign policy principles. In accordance with this principle, the 2016 white paper notes that “pursuing German interests (...) always means taking into account the interests of [its] allies and those of other friendly nations.” (325) This implies that disagreement by friendly States on the prosecution of a certain alleged perpetrator, would pose a hurdle for Germany to exercise UJ.

Thirdly, a document of the Bundestag regarding proposed changes to the CCAIL, states that the application of the universality principle over the crime of aggression does not seem appropriate, as “the crime of aggression criminalizes grave and highly dangerous acts of aggression against a State, and it is also a leadership offense (326)” (translated). (327) Therefore, it is stated that these situations “can be of particular foreign policy relevance”, and that “[t]his foreign policy component makes an international criminal court the appropriate judicial body for cases without a connection to Germany” (translated). (328) The first argument presented, regarding the seriousness of acts of aggression, can be linked to the fact that prosecuting the crime of aggression means prosecuting the decision to engage in war, “which is inherently a profoundly political decision” (329). (330) The second reason provided, regarding the crime of aggression being a leadership crime, suggests that Germany may be hesitant to prosecute high-ranking individuals due to the associated high costs. However, as already said and as will be further demonstrated below, this does not appear to be the situation in the case of Syria.

24-25 <<https://www.bundeswehr.de/resource/blob/4800140/fe103a80d8576b2cd7a135a5a8a86dde/download-white-paper-2016-data.pdf>> accessed 25 June 2023.

(324) German Federal Ministry of Defense, “White Paper 2016 on German Security Policy and the Future of the Bundeswehr” (13 July 2016) 22 <<https://www.bundeswehr.de/resource/blob/4800140/fe103a80d8576b2cd7a135a5a8a86dde/download-white-paper-2016-data.pdf>> accessed 25 June 2023.

(325) *Ibid.*, 25.

(326) Being a leadership crime, the crime of aggression can only be committed by leaders, who are persons “in a position effectively to exercise control over or to direct the political or military action of a state”, see Article 8*bis* (1) Rome Statute. This implies that the defendants will incur higher costs.

(327) German Bundestag, “Gesetzentwurf der Bundesregierung: Entwurf eines Gesetzes zur Änderung des Völkerstrafgesetzbuches” (1 June 2016) 12 <<https://dserver.bundestag.de/btd/18/086/1808621.pdf>> accessed 1 July 2023.

(328) *Ibid.*, 12-13.

(329) R. GOLDSTONE, “Prosecuting Aggression” *The New York Times* (26 May 2010) <<https://www.nytimes.com/2010/05/27/opinion/27iht-edpoint.html>> accessed 26 July 2023.

(330) M. P. SCHARF, “Universal Jurisdiction and the Crime of Aggression” (2012) 53(2) *Harvard International Law Journal* 381.

Fourthly, German UJ cases from the past also show that diplomatic consideration play an important role in deciding on prosecution. For example, Iraqi torture victims brought forward a complaint against Donald Rumsfeld in 2004. (331) Ultimately, under significant pressure from the U.S. government, this case was dismissed by the German prosecutor (332), despite clear authority under German law to prosecute (333). To justify this decision, the prosecutor referred to the principle of subsidiarity (334), which entails that once an investigation has commenced in a more suitable jurisdiction (335), Germany can refrain from prosecuting. (336) In a similar way, by relying on other justification grounds, the prosecutor dismissed a case against former Chinese President Jiang Zemin in 2003, complaints against Uzbekistan's Minister of Interior Zokirjon Almatov in 2005, a second case brought against Rumsfeld in 2006, and complaints against Head of the Uzbek Secret Service Rustan Inojatov in 2008. (337)

In the past, diplomatic considerations have led Germany to only initiate criminal cases in situations where the UNSC or the ICC had advocated for or initiated a criminal procedure. (338) This approach has been criticized for being an imperfect way to gauge the will of the international community, as the five permanent members of the UNSC can veto actions if they have geopolitical interests, and the ICC only has limited jurisdiction. (339) Therefore, it was argued that Germany should also investigate certain crimes in cases

(331) W. KALECK, "From Pinochet to Rumsfeld: Universal Jurisdiction in Europe 1998-2008" (2009) 30(3) *Michigan Journal of International Law* 952.

(332) *Ibid.*

(333) E. KONTOROVICH, "Inefficiency of Universal Jurisdiction" (2007) 1(1) *University of Illinois Law Review* 415.

(334) However, critics argue that this decision was politically motivated, serving as a way to protect the German government from transatlantic disruptions. See S. ABDOUELDHAHAB and F.-J. LANGMACK, "Universal Jurisdiction Cases in Germany: A Closer Look at the Poster Child of International Criminal Justice" (2022) 31(2) *Minnesota Journal of International Law* 5. Indeed, it is for example hard to claim that the principle of subsidiarity already applies in the initial investigative phase. See C. KRESS, "Universal Jurisdiction over International Crimes and the Institut de droit international" (2006) 4(3) *Journal of International Criminal Justice* 20.

(335) More suitable jurisdictions are considered to be the State where the crime was committed, the State of nationality of the perpetrator or victim, and the ICC or any other international criminal court. See Wissenschaftliche Dienste des Deutschen Bundestag, "Die Verfolgbarkeit von Auslandsstraftaten eines Deutschen, der sich in Deutschland aufhält", WD 2 - 3000 - 072/20, (6 August 2020) 10 <<https://www.bundestag.de/resource/blob/793170/d6bfb36683a2f3ee48253ff323a38a28/WD-2-072-20-pdf-data.pdf>> accessed 27 July 2023.

(336) W. KALECK, "From Pinochet to Rumsfeld: Universal Jurisdiction in Europe 1998-2008" (2009) 30(3) *Michigan Journal of International Law* 952. In Germany, the subsidiarity principle allows the prosecutor the discretion not to pursue a case, but it does not outright prohibit them from doing so. See Section 153f, §2, no 4 German Code of Criminal Procedure.

(337) W. KALECK, "From Pinochet to Rumsfeld: Universal Jurisdiction in Europe 1998-2008" (2009) 30(3) *Michigan Journal of International Law* 952-953.

(338) M. LANGER, "Universal Jurisdiction as Janus-Faced: The Dual Nature of the German International Criminal Code" (2013) 11(4) *Journal of International Criminal Justice* 757.

(339) M. LANGER, "Universal Jurisdiction as Janus-Faced: The Dual Nature of the German International Criminal Code" (2013) 11(4) *Journal of International Criminal Justice* 757.

where there are vetoes in the UNSC or where the ICC has not advocated for or opened an investigation or prosecution. (340) This is exactly what Germany seems to be doing in the case of Syria, where Russia and China have consistently blocked initiatives by the UNSC and the ICC has not explicitly advocated for or opened a criminal procedure (341).

Apart from the two mentioned vetoes, there exists a widespread consensus within the international community regarding the need to prosecute those responsible for human rights violations in Syria. (342) As no other way to justice seems open (343), Germany respects the principle of subsidiarity, further justifying its action and reinforcing the agreement by the international community. (344)

This consensus leads to several significant advantages for Germany. Firstly, it fosters and sustains Germany's positive relationships with the international community, which is essential due its commitment to multilateralism. (345) Secondly, it mitigates the risk of potential political repercussions from Syria (346), thereby facilitating the prosecution of (high-ranking) Syrian state officials. Thirdly, it strengthens Germany's capacity to assume a prominent role as a global enforcer. (347)

(340) *Ibid.*

(341) ICC, "Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the alleged crimes committed by ISIS" (8 April 2015) <<https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-fatou-bensouda-alleged-crimes-committed-isis>> accessed 1 August 2023. The Prosecutor of the ICC has only spoken out on alleged crimes committed by ISIS that were committed in Syria and Iraq. He then stressed that it is the primary responsibility of State Parties to domestically prosecute their nationals who allegedly committed these crimes. Consequently, the ICC's attention has been on State Party nationals connected to ISIS. In contrast, Germany has taken a broader approach, prosecuting individuals without German nationality and beyond ISIS-related cases.

(342) See e.g. UNGA Res 76/228 "Situation of human rights in the Syrian Arab Republic" (24 December 2021) UN Doc A/RES/76/228 <<https://www.un.org/pga/76/wp-content/uploads/sites/101/2022/02/Situation-of-human-rights-in-the-Syrian-Arab-Republic-A-RES-76-228.pdf>> accessed 26 July 2023.

(343) See *supra*.

(344) Council of the European Union, AU-EU Expert Report on the Principle of Universal Jurisdiction (16 April 2009), §14 and R9 <<https://data.consilium.europa.eu/doc/document/ST%208672%202009%20REV%201/EN/pdf>> accessed 20 July 2023 ("In prosecuting serious crimes of international concern, states should, as a matter of policy, accord priority to territoriality as a basis of jurisdiction"); C. RYNGAERT, "Subsidiarity and the Law of Jurisdiction" (2014) 5 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2523327> accessed 24 July 2023. For an overview of the state practice and opinion juris on this principle, see A. J. COLANGELO, "Universal Jurisdiction as an International 'False Conflict' of Laws" (2009) 30(3) *Michigan Journal of International Law* 900.

(345) H. KUNDNANI, "Germany as a Geo-economic Power" (2011) 34(3) *The Washington Quarterly* 32-33; German Federal Government, "Germany needs friends and allies in Europe and around the world" (22 June 2023) <<https://www.bundesregierung.de/breg-en/news/scholz-government-statement-2198084>> accessed 9 July 2023.

(346) M. LANGER, "The Diplomacy of Universal Jurisdiction: The Political Branches and the Transnational Prosecution of International Crimes" (2011) 105(1) *The American Journal of International Law* 5.

(347) A. KAMAL, "Impunity in Syria & Universal Jurisdiction in Europe: Is a Revival of the 'Global Enforcer' Approach in Order?" (2021) 2 *Queen Mary Law Journal* 118.

While the first benefit could explain Germany's active approach in general, the second benefit has the potential to clarify why the country does not shy away from exercising UJ over crimes committed by high-ranking state officials such as Eyad al-Gharib, a former member of the Syrian intelligence services (348); Anwar Raslan, former head of the Investigations Division at Branch 251 of the General Intelligence Directorate in Damascus (349); Alaa M., former military doctor and alleged employee of the Syrian Military Intelligence (350); and Jamil Hassan, former head of the Syrian Air Force Intelligence Service (351). With the case against Anwar Raslan and Eyad al-Gharib, Germany was the first to prosecute state-sponsored torture in Syria. (352) Even in general, it was the first time charges of crimes against humanity were brought against officials from a government that remains in power. (353) The third benefit could further clarify the global enforcer role that Germany takes up by investigating crimes committed by perpetrators outside its territory, for example in the Jamil Hassan case and during structural investigations. (354)

Intermediate Conclusion

The research conducted in this section suggests that diplomatic considerations indeed play an important role in clarifying why Germany investigates and prosecutes Syrian crimes specifically.

The pivotal determinant appears to be the international community's agreement with Germany's actions. Germany has changed its approach by considering factors beyond potential vetoes in the UNSC and the ICC's position and, instead, drawing inference from other credible sources of agreement. This existing consensus empowers Germany to prosecute (high-ranking) Syrian state officials and defendants who are not present within the territory,

(348) ECCHR, "Syria trial in Koblenz: German court convicts Eyad A of crimes against humanity" (24 February 2021) <<https://www.ecchr.eu/en/press-release/syria-trial-in-koblenz-german-court-convicts-eyad-a-of-crimes-against-humanity/>> accessed 25 July 2023.

(349) Syrian Justice and Accountability Center, "Inside the Raslan Trial #58: The Raslan Verdict in Detail" (18 February 2022) <<https://syriaaccountability.org/inside-the-raslan-trial-the-raslan-verdict-in-detail/>> accessed 23 July 2023.

(350) TRIAL International, "Alaa M." (31 March 2023) <<https://trialinternational.org/latest-post/alaa-m/>> accessed 23 July 2023.

(351) ECCHR, "German authorities issue arrest warrant against Jamil Hassan, head of the Syrian Air Force Intelligence" (2019) <https://www.ecchr.eu/fileadmin/Hintergrundberichte/Background_Syria_Torture_AirForceIntelligence_ECCHR_20190807.pdf> accessed 25 July 2023.

(352) K. BENNHOLD, "Syria War Crimes Verdict Former Syrian Colonel Guilty in War Crimes Trial in Germany" *The New York Times* (13 January 2022) <<https://www.nytimes.com/live/2022/01/13/world/syria-war-crimes-germany-verdict?cam->> accessed 28 July 2023.

(353) *Ibid.*

(354) A. MALEK, "How a Syrian War Criminal Was Brought to Justice – in Germany: When refugees won historic convictions against the Syrian torture regime, they also opened a new front in the global fight for human rights" *The New York Times* (25 January 2022) <<https://www.nytimes.com/live/2022/01/13/world/syria-war-crimes-germany-verdict?cam->> accessed 5 July 2023.

while fostering the country's positive relationship with the international community.

C. — *Migration Policy*

The war in Syria has given rise to the most significant refugee and displacement crisis in contemporary history. (355) With over half of the Syrian population forced to leave their homes due to the ongoing conflict, approximately 5.5 million individuals have become refugees or asylum seekers. (356)

After the Russian intervention in the Syrian civil war in September 2015, the then chancellor of Germany Angela Merkel made the decision to depart from Europe's fortress mentality (357) by opening the German borders. (358) In 2021, the United Nations Refugee Agency (UNHCR) reported that of the 1 million Syrian asylum seekers and refugees that are hosted in European countries, 59 percent are accommodated in Germany. (359) The significant intake of refugees by Germany is frequently highlighted as a facilitating factor in the initiation of UJ cases. (360)

This could be one of the explanations why Germany is specifically targeting human rights violations in Syria, and not for example the persecution

(355) UNHCR, "Syria Situation: Global Report 2022" <<https://reporting.unhcr.org/operational/situations/syria-situation>> accessed 22 July 2023; World Vision, "Syrian refugee crisis: Facts, FAQs, and how to help" <<https://www.worldvision.org/refugees-news-stories/syrian-refugee-crisis-facts#what-is>> accessed 23 July 2023.

(356) World Vision, "Syrian refugee crisis: Facts, FAQs, and how to help" <<https://www.worldvision.org/refugees-news-stories/syrian-refugee-crisis-facts#what-is>> accessed 23 July 2023.

(357) The term "fortress Europe" refers to a pervasive imagery of Europe being portrayed as a fortress with strong and restrictive migration policies. According to this description, national governments use the European Union policy level strategically to introduce migration policies that might be more difficult to implement at the national level alone. See L. BLOCK and S. BONJOUR "Fortress Europe or Europe of Rights? The Europeanisation of Family Migration Policies in France, Germany and the Netherlands" (2013) 15(2) *European Journal of Migration and Law* 208.

(358) S. RUPPERT-KARAKAS, "Human rights on demand: The contradictions of Germany's Syria policy" (*Al-Jumhuriya*, 8 July 2021) <<https://aljumhuriya.net/en/2021/07/08/human-rights-demand-contradictions-germanys-syria-policy/>> accessed 11 July 2023.

(359) UNHCR, "Syria Refugee Crisis – Globally, in Europe and in Cyprus Meet some of the Syrian refugees living in Cyprus" (18 March 2021) <<https://www.unhcr.org/cy/2021/03/18/syria-refugee-crisis-globally-in-europe-and-in-cyprus-meet-some-syrian-refugees-in-cyprus/>> accessed 5 July 2023; Syria Justice and Accountability Centre, "Refugees as Witnesses in Germany" (10 May 2023) <<https://syriaaccountability.org/refugees-as-witnesses-in-germany/>> accessed 5 July 2023.

(360) See e.g. N. WILEY, "Impact Jurisdiction & Structural Investigations: The Key to the United States Prosecuting Human Rights Violators" (2023) 74 *Hastings Law Journal* 1255; M. RANKIN, "The "Responsibility to Prosecute" Core International Crimes? The Case of German Universal Jurisdiction and the Syrian Government" (2019) 11(4) *Global Responsibility to Protect* 404; C. SCHAEER, "Prosecuting Syrian War-Crimes Suspects From Berlin: German officials are using the concept of universal jurisdiction to argue they can try anyone for war crimes committed anywhere, against any nation's people" *The Atlantic* (31 July 2019) <<https://www.theatlantic.com/international/archive/2019/07/can-germany-convict-syrian-war-criminals/595054/>> accessed 8 July 2023; J. J. SAVELSBERG and M. PHILIPS, "Epistemic Power of Universal Jurisdiction Spreading Knowledge about Mass Atrocity Crimes" (2022) 31(2) *Minnesota Journal of International Law* 95.

of Uighur people in China. (361) This section is especially interesting as it focusses on a link between the prosecuting State and the territorial State. It shows that migration could be a significant driving factor, and maybe even a necessary condition for Germany's stance.

This section will first focus on the general theories concerning the connection between migration and UJ cases. Due to limited research availability, the theories of three prominent scholars will be examined. Subsequently, the potential impact of Germany's migration policy on its UJ cases related to Syria will be investigated and compared to the aforementioned general theories.

Influence of Migration on Universal Jurisdiction: General Theory

The majority of individuals prosecuted under UJ in Europe have been migrants who have sought asylum or residency in the prosecuting country, with the exception of a few "legacy" Yugoslav and Rwandan cases. (362)

Eugene Kontorovich explains this by the fact that, although States are not obligated under international law to grant refugee status to these perpetrators (363), they often face challenges in extraditing them to the territorial State. (364) Indeed, the principle of non-refoulement prohibits States from returning or extraditing individuals to a State where they may face persecution or serious harm (365). (366) However, prosecution is necessary for several

(361) L. JOHNS, M. LANGER and M. E. PETERS, "Migrants and Justice Remittances: How the Movement of People Across Borders is Enabling the Spread of Universal Jurisdiction Cases" (*Opinio Juris*, 16 June 2022) <<http://opiniojuris.org/2022/06/16/migrants-and-justice-remittances-how-the-movement-of-people-across-borders-is-enabling-the-spread-of-universal-jurisdiction-cases/>> accessed 10 July 2023.

(362) E. KONTOROVICH, "The Parochial Uses of Universal Jurisdiction" (2019) 94(3) *Notre Dame Law Review* 1448. According to Langer and Eason, 65 percent of all defendants who have ever been tried based on UJ had previously applied for asylum in the prosecuting State. See M. LANGER and M. EASON, "The Quiet Expansion of Universal Jurisdiction" (2019) 30(3) *The European Journal of International Law* 797.

(363) Art. 1F(a) Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention). Indeed, refugee law primarily aims to protect victims, not perpetrators. See J. HANDMAKER, "Seeking Justice, Guaranteeing Protection and Ensuring Due Process: Addressing the Tensions Between Exclusion from Refugee Protection and the Principle of Universal Jurisdiction" (2003) 21(4) *Netherlands Quarterly for Human Rights* 679.

(364) E. KONTOROVICH, "The Parochial Uses of Universal Jurisdiction" (2019) 94(3) *Notre Dame Law Review* 1448.

(365) In general, the *non-refoulement* principle prohibits returning someone when there is a risk of irreparable harm upon return, including persecution, torture, ill-treatment or other serious human rights violations. However, most perpetrators of international crimes that have a valid claim of *non-refoulement*, do so because they fear persecution. Indeed, they often come from countries where the justice system does not adhere to European standards, and the nature of their crimes increases the likelihood of political retaliation. See OHCHR, "The principle of *non-refoulement* under international human rights law" (5 July 2018) <<https://www.ohchr.org/en/documents/tools-and-resources/technical-note-principle-non-refoulement-under-international-human>> accessed 15 July 2023 and E. KONTOROVICH, "The Parochial Uses of Universal Jurisdiction" (2019) 94(3) *Notre Dame Law Review* 1449.

(366) See Art. 33 Refugee Convention. For Member States of the European Council, such as Germany, the *non-refoulement* principle is also enshrined in Art. 3 of the Convention for the

reasons. It is in the State's own interest, for security and stability reasons, to prevent being a safe haven for perpetrators of atrocities, especially when the State is also hosting a significant number of victims and witnesses. (367) Additionally, prosecution can contribute to the integration of refugee communities into the society, promoting social stability. (368) Given the necessity of prosecution and the frequent prohibition of extradition, a trial based on UJ often becomes the sole viable choice for the hosting country. (369) Kontorovich argues that UJ has thus "become a substitute for extradition and other forms of rendition" to address the "legal gaps created by refugee and human rights norms". (370)

Máximo Langer and Mackenzie Eason also recognize the fact that an alleged perpetrator cannot be extradited as a way in which migration influences the number of UJ cases. (371) They add two other explanations to this theory. Firstly, migration from conflict zones brings numerous potential plaintiffs, witnesses, and defendants to jurisdictions with the necessary economic and legal resources to prosecute international crimes. (372) Secondly, state officials become aware of atrocities through information provided by alleged perpetrators during their immigration procedures and through fellow asylum seekers who alert authorities of the presence of these alleged perpetrators. (373)

Influence of Migration on Universal Jurisdiction: Germany and Syria

A first effect of Germany's migration policy is that the country receives a significant number of potential Syrian witnesses (374), as well as Syrian oppo-

Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 221. Regarding extradition of criminals, see: *Soering v. the United Kingdom*, no.14038/88, European Court of Human Rights (ECHR) 1989, §111; regarding expulsion of migrants, see: *Cruz Varas and Others v. Sweden*, no. 15576/89, ECHR 1989, §70. Besides, the *non-refoulement* principle is also part of customary international law. See J. HANDMAKER, "Seeking Justice, Guaranteeing Protection and Ensuring Due Process: Addressing the Tensions Between Exclusion from Refugee Protection and the Principle of Universal Jurisdiction" (2003) 21(4) *Netherlands Quarterly for Human Rights* 679.

(367) E. KONTOROVICH, "The Parochial Uses of Universal Jurisdiction" (2019) 94(3) *Notre Dame Law Review* 1448.

(368) European Parliament, Policy Department for External Relations, "Workshop: Universal jurisdiction and international crimes: Constraints and best practices" (September 2018) PE 603.878, 8 <[https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603878/EXPO_STU\(2018\)603878_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603878/EXPO_STU(2018)603878_EN.pdf)> accessed 15 July 2023.

(369) E. KONTOROVICH, "The Parochial Uses of Universal Jurisdiction" (2019) 94(3) *Notre Dame Law Review* 1450.

(370) *Ibid.*

(371) M. LANGER and M. EASON, "The Quiet Expansion of Universal Jurisdiction" (2019) 30(3) *The European Journal of International Law* 798-799.

(372) *Ibid.*, 796.

(373) *Ibid.*, 796-798.

(374) C. SWEENEY, "Justice Prevails over Realpolitik at Koblenz: International Law offers a Rare Glimmer of Hope after a Decade of Disappointments for Syrians" (*Opinio Juris*, 14 February

sitionists, activists and lawyers. (375) Thus, Syrians who are motivated to pursue justice (376), are united in a country with economic and legal resources necessary to start a trial on the basis of UJ. As argued by Langer and Eason, this is one way in which migration can lead to an increase of UJ cases. (377)

Secondly, official documents show that Germany indeed recognizes the importance of the information that Syrian migrants bring along, which further facilitates UJ cases. (378) This information is already gathered during the asylum application process (379), as German migration authorities also specifically seek to assess whether an asylum seeker has been a witness, or even perpetrator, of such crimes. (380) The investigation against Eyad al-Gharib, for example, was triggered by his own statements during an asylum interview. (381) In such situation, after the immigration case worker has sent the relevant information to a specialized division at the Federal Office for

2022) <<http://opiniojuris.org/2022/02/14/justice-prevails-over-realpolitik-at-koblenz-international-law-offers-a-rare-glimmer-of-hope-after-a-decade-of-disappointments-for-syrians/>> accessed 5 July 2023; Syria Justice and Accountability Centre, “Refugees as Witnesses in Germany” (10 May 2023) <<https://syriaaccountability.org/refugees-as-witnesses-in-germany/>> accessed 5 July 2023.

(375) W. KALECK and P. KROKER, “Syrian Torture Investigations in Germany and Beyond” (2018) 16(1) *Journal of International Criminal Justice* 173.

(376) On the reasons why the Syrian diaspora pursues UJ cases, see Espen Stokke and E. WIEBELHAUS-BRAHM, “Syrian diaspora mobilization for prospective transitional justice in the absence of transition” (2022) 21(4) *Journal of Human Rights* 500-516.

(377) M. LANGER and M. EASON, “The Quiet Expansion of Universal Jurisdiction” (2019) 30(3) *The European Journal of International Law* 796.

(378) See e.g. Deutscher Bundestag, “Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Tom Koenigs, Luise Amtsberg, Dr. Franziska Brantner, weiterer Abgeordneter und der Fraktion BÜNDNIS 90/DIE GRÜNEN – Drucksache 18/12286 – Ermittlung von in Syrien begangenen Völkerstraftaten in Deutschland” (30 May 2017) 4 <<https://dserver.bundestag.de/btd/18/125/1812533.pdf>> accessed 15 July 2023; Der Generalbundesanwalt beim Bundesgerichtshof, “Unsere Aufgaben: Völkerstrafrecht” <https://www.generalbundesanwalt.de/DE/Unsere_Aufgaben/Voelkerstrafrecht/Voelkerstrafrecht-node.html;jsessionid=0E8D49B-9314180DACEACC56FCADF2A51.intranet231> accessed 19 July 2023.

(379) It should be noted that these questions are typically not included in the asylum application interview as a standard practice but are specifically directed towards individuals of Syrian and Iraqi nationality. See Deutscher Bundestag, “Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Tom Koenigs, Luise Amtsberg, Dr. Franziska Brantner, weiterer Abgeordneter und der Fraktion BÜNDNIS 90/DIE GRÜNEN – Drucksache 18/12286 – Ermittlung von in Syrien begangenen Völkerstraftaten in Deutschland” (30 May 2017) 4, question 2 <<https://dserver.bundestag.de/btd/18/125/1812533.pdf>> accessed 15 July 2023.

(380) Syria Justice and Accountability Centre, “Refugees as Witnesses in Germany” (10 May 2023) <<https://syriaaccountability.org/refugees-as-witnesses-in-germany/>> accessed 5 July 2023. For more information on the specific questions asked, see Deutscher Bundestag, “Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Tom Koenigs, Luise Amtsberg, Dr. Franziska Brantner, weiterer Abgeordneter und der Fraktion BÜNDNIS 90/DIE GRÜNEN – Drucksache 18/12286 – Ermittlung von in Syrien begangenen Völkerstraftaten in Deutschland” (30 May 2017) 2, question 1 <<https://dserver.bundestag.de/btd/18/125/1812533.pdf>> accessed 15 July 2023.

(381) Human Rights Watch, “Q&A: First Syria State Torture Trial in Germany Questions and Answers about the trial in Koblenz, Germany” (6 January 2022) <<https://www.hrw.org/news/2022/01/06/qa-first-syria-state-torture-trial-germany>> accessed 12 July 2023; S. ABDOU-ELDAHAB and F.-J. LANGMACK, “Universal Jurisdiction Cases in Germany: A Closer Look at the Poster Child of International Criminal Justice” (2022) 31(2) *Minnesota Journal of International Law* 9.

Migration and Refugees, the federal police can be informed. (382) Following analysis, it may send specific follow-up requirements before sending it to the war crimes unit. (383)

Furthermore, apart from the asylum application process, instances of UJ cases have arisen due to the presence of both witnesses and perpetrators in Germany. (384) The case against Anwar Raslan for example, started after a Syrian migrant, who had been interrogated and jailed by him almost a decade earlier, recognized Raslan in a shop in Berlin. (385) Another example is the case against Kassim A., that became possible when Syrian refugees to whom he had revealed pictures depicting his crimes, informed the police. (386)

Thirdly, the interplay between civil society organizations and Syrian migrants has proven to be very important. Civil society organizations benefit from the documentation Syrian bring with them (387), and in their turn, these organizations play a substantial role as a bridge between the Syrians and the Federal Prosecutors. (388) For example, the ECCHR filed criminal complaints against Jamil Hassan on behalf of Syrians in Germany. (389) This

(382) Human Rights Watch, “Q&A: First Syria State Torture Trial in Germany Questions and Answers about the trial in Koblenz, Germany” (6 January 2022) <<https://www.hrw.org/news/2022/01/06/qa-first-syria-state-torture-trial-germany>> accessed 12 July 2023.

(383) *Ibid.*

(384) B. KNIGHT, “Refugees in Germany reporting dozens of war crimes” *Deutsche Welle* (4 November 2016) <<https://www.dw.com/en/refugees-in-germany-reporting-dozens-of-war-crimes/a-19179291>> accessed 19 July 2023.

(385) E. GRAHAM-HARRISON, “‘My goal is justice for all Syrians’: one man’s journey from jail to witness for the prosecution” *The Guardian* (12 December 2020) <<https://www.theguardian.com/world/2020/dec/12/my-goal-is-justice-for-all-syrians-one-mans-journey-from-jail-to-witness-for-the-prosecution>> accessed 2 August 2023.

(386) “German court sentences Syrian man for war crimes” *Alarabiya News* (13 February 2020) <<https://english.alarabiya.net/News/world/2020/02/13/German-court-sentences-Syrian-man-for-war-crime>> accessed 19 July 2023; “OLG Koblenz: Freiheitsstrafe für Posen mit abgetrenntem Kopf in Syrien” *Beck-aktuell* (13 February 2020) <<https://rsw.beck.de/aktuell/daily/meldung/detail/olg-koblenz-verurteilt-34-jaehrigen-wegen-kriegsverbrechens-in-syrienkonflikt>> accessed 21 July 2023.

(387) E. RINGKJØB STOKKE, *Diaspora Mobilization for Justice During Conflict: The Case of Syria*, DPhil thesis, University of Bergen, 2021, 60 <https://bora.uib.no/bora-xmlui/bitstream/handle/11250/2832911/drthesis_2021_stokke.pdf?sequence=2&isAllowed=y> accessed 14 July 2023.

(388) S. ABDOULDAHAB and F.-J. LANGMACK, “Universal Jurisdiction Cases in Germany: A Closer Look at the Poster Child of International Criminal Justice” (2022) 31(2) *Minnesota Journal of International Law* 10; A. MALEK, “How a Syrian War Criminal Was Brought to Justice – in Germany: When refugees won historic convictions against the Syrian torture regime, they also opened a new front in the global fight for human rights” *The New York Times* (25 January 2022) <<https://www.nytimes.com/live/2022/01/13/world/syria-war-crimes-germany-verdict?cam->> accessed 5 July 2023.

(389) J. NASR and R. KASOLOWSKY, “Germany issues international arrest warrant for top Assad officer” *Reuters* (8 June 2018) <<https://www.reuters.com/article/us-syria-crisis-germany-idUSKCN1J41VQ>> accessed 21 July 2023. For more information on the important role of the ECCHR in this context, see W. KALECK and A. SCHÜLER, “Universal Jurisdiction Gains New Momentum” (Forum for International Criminal and Humanitarian Law Policy Brief Series No. 96, 2019) 2 <<https://www.toaep.org/pbs-pdf/96-kaleck-schueler/>> accessed 2 August 2023.

way, Syrians get the opportunity to exercise some agency over the justice process. (390)

Fourthly, the German Federal Prosecutor has stressed that cases regarding Syria are not only crucial for the peace-building process within Syria, but also within Europe itself. (391) Indeed, refugees in a way “bring the crimes” to their host State, as the consequences of atrocities live on in their minds and bodies. (392) By prosecuting the perpetrators, Germany avoids the risk that social peace is disrupted. (393)

Fifthly, regarding the impossibility to extradite, it must be noted that in all but one of the fifteen UJ cases mentioned earlier, the defendants had migrated to Germany. In these cases, it would indeed have been impossible to return the alleged perpetrators to Syria, based on the non-refoulement principle. (394)

However, the case of Jamil Hassan stands out as a significant exception that challenges Kontorovich’s theory that “UJ in practice is a pragmatic, technical tool of state self-interest” (395) and “UJ has become a substitute for extradition or other forms of rendition” (396). The request for Hassan’s extradition from Lebanon indicates that UJ is not merely being used as a way to avoid providing a safe haven for a migrant who cannot be extradited to another jurisdiction for prosecution.

Why would Germany go as far as to prosecute high-level perpetrators outside its territory? It was already explained that this action aligns with Germany’s national role conception as a normative power, and in this specific context, as a global enforcer. Another possible explanation is that the involvement of migrants in pushing for UJ does not necessarily require both witnesses or victims and perpetrators to be present on German or European soil. The mere pressure exerted by Syrian witnesses and victims might be sufficient to prompt Germany to initiate an investigation and pursue prosecution.

(390) J. DOUMIT, “Accountability in a Time of War: Universal Jurisdiction and the Strive for Justice in Syria” (2020) 52(1) *Georgetown Journal of International Law* 281.

(391) W. KALECK and P. KROKER, “Syrian Torture Investigations in Germany and Beyond” (2018) 16(1) *Journal of International Criminal Justice* 174.

(392) F. MEGRET, “The ‘elephant in the room’ in debates about universal jurisdiction: diasporas, duties of hospitality, and the constitution of the political” (2015) 6(1) *Transnational Legal Theory* 100.

(393) *Ibid.*, 102.

(394) Syrian Network for Human Rights, “Violations Are Still Being Committed in All Parts of Syria, including Northern Syria, Refoulement of Refugees Poses a Serious Threat” (Joint Statement, 27 July 2023) <<https://reliefweb.int/report/turkiye/violations-are-still-being-committed-all-parts-syria-including-northern-syria-refoulement-refugees-poses-serious-threat>> accessed 8 August 2023.

(395) E. KONTOROVICH, “The Parochial Uses of Universal Jurisdiction” (2019) 94(3) *Notre Dame Law Review* 1419.

(396) *Ibid.*, 1450.

Syrian opposition leaders, activists, and human rights lawyers who migrated to Germany have shown a strong commitment to employing all available legal methods to hold the regime and any other individuals accountable for crimes committed in Syria. (397) This further emphasizes the normative imperative for Germany to initiate UJ prosecution against alleged perpetrators. (398) Research has already shown that domestic outrage over foreign human rights abuses can incentivize political branches to pursue prosecutions and trials. (399) Additionally, research on the prosecutorial discretion of German prosecutors has shown that in practice, they investigate all cases where victims or witnesses are present on German territory, even if Section 153f of the German Code of Criminal Procedure allows them to refrain from investigating. (400) This highlights the importance of the presence of victims and witnesses without requiring the presence of perpetrators on German soil.

As a final point, the migration factor could explain the initial non-application of UJ during the first years after the introduction of the CCAIL. The number of UJ cases drastically grew between 2009 and 2017 (401), with the migration flow from Syria to Germany being cited as an explanatory factor for this surge. (402)

The following table shows the number of indications forwarded by the Federal Office for Migration and Refugees to the War Crimes Unit per nationality of the person providing the information:

<i>Year</i>	<i>Syrian</i>	<i>Iraqi</i>	<i>Other</i>
2011	0	0	1
2012	2	0	15
2013	15	0	18
2014	231	12	31

(397) A. MALEK, “How a Syrian War Criminal Was Brought to Justice – in Germany: When refugees won historic convictions against the Syrian torture regime, they also opened a new front in the global fight for human rights” *The New York Times* (25 January 2022) <<https://www.nytimes.com/live/2022/01/13/world/syria-war-crimes-germany-verdict?cam->> accessed 5 July 2023.

(398) Y. HAN, “Should German Courts Prosecute Syrian International Crimes? Revisiting the ‘Dual Foundation’ Thesis” (2022) 36(1) *Ethics & International Affairs* 37.

(399) M. LANGER, “The Diplomacy of Universal Jurisdiction: The Political Branches and the Transnational Prosecution of International Crimes” (2011) 105(1) *The American Journal of International Law* 42.

(400) Open Society Foundations, “Universal Jurisdiction Law and Practice in Germany” (Briefing paper, 2019) 19 <<https://www.justiceinitiative.org/uploads/0b3c66af-68e0-4fd3-a8e0-d938a6e2b43b/universal-jurisdiction-law-and-practice-germany.pdf>> accessed 10 July 2023.

(401) European Parliament, Policy Department for External Relations, “Workshop: Universal jurisdiction and international crimes: Constraints and best practices” (September 2018) PE 603.878, 4 <[https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603878/EXPO_STU\(2018\)603878_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603878/EXPO_STU(2018)603878_EN.pdf)> accessed 15 July 2023.

(402) *Ibid.*

2015	1.560	2	462
2016	799	155	166
2017	153	58	59

Source: Deutscher Bundestag, 'Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Tom Koenigs, Luise Amtsberg, Dr. Franziska Brantner, weiterer Abgeordneter und der Fraktion BÜNDNIS 90/DIE GRÜNEN – Drucksache 18/12286 – Ermittlung von in Syrien begangenen Völkerstraftaten in Deutschland' (30 May 2017) 4 <<https://dserver.bundestag.de/btd/18/125/1812533.pdf>> accessed 15 July 2023.

It is notable that since 2014, Syrians have contributed the majority of the forwarded information. The table also shows a noticeable peak in 2015 and 2016, which aligns with the period when Germany experienced a substantial influx of Syrian refugees. (403) In this manner, migration flows could serve to clarify both Germany's present behaviour and its lack of action in the years following the implementation of the CCAIL.

Intermediate Conclusion

Regarding Länger and Eason's theory on the connection between migration and UJ, it appears valid that in the context of Germany and Syria, having victims, witnesses and perpetrators present in a country with the adequate resources for prosecution positively influences the number of UJ cases. However, the case of Jamil Hassan suggests that the presence of victims and witnesses alone may be sufficient when the perpetrator is absent.

Their theory concerning the impact of awareness-raising by alleged perpetrators during the asylum procedure, along with fellow asylum seekers, appears to be confirmed in this case as well.

However, the most significant observation is that Kontorovich's theory, which suggests that UJ serves merely as a solution for the impossibility to extradite, faces a challenge in the Jamil Hassan case. While Kontorovich's assertions might apply to various UJ cases, they require nuanced consideration.

Some scholars have suggested that the presence of victims on the territory of a certain State might justify the exercise of UJ by that State. (404) The current conclusion indicates that migration plays a key role in UJ cases, thereby substantiating the claims put forth by these scholars. In the context of the Germany-Syria case, Wolfgang Kaleck has for example stated: "The

(403) K. KASSAM and M. BECKER, "Syrians of today, Germans of tomorrow: the effect of initial placement on the political interest of Syrian refugees in Germany" (2023) 5 *Frontiers in Political Science* 2.

(404) See e.g. Y. HAN, "Should German Courts Prosecute Syrian International Crimes? Revisiting the 'Dual Foundation' Thesis" (2022) 36(1) *Ethics & International Affairs* 37; F. MEGRET, "The 'elephant in the room' in debates about universal jurisdiction: diasporas, duties of hospitality, and the constitution of the political" (2015) 6(1) *Transnational Legal Theory*.

main criticism of universal jurisdiction, which questions the legitimacy of a third country to judge acts to which it has no connection, does not apply here. When a country hosts more than 700.000 refugees, many of whom experienced violence and especially torture, there is a certain closeness that enables the prosecutor to launch proceedings.” (405) In line with this, Frédéric Mégret has proposed to introduce a new ‘model’ of UJ, understanding UJ as a defense of a very specific ‘humanity’ – namely the victim diaspora present in the prosecuting State – rather than the international community or humanity as a whole. (406)

III. — CONCLUSION

Both proponents and opponents of UJ have voiced concerns about the potential for political influence in deciding whether to initiate a case based on this principle. Nonetheless, the way in which politics influence these decisions, remains largely unexplored.

Therefore, the intention of this research was to contribute to finding an answer to the following question: “What influence do politics have on the prevalence of universal jurisdiction cases?”. To do this, a case study was conducted into German UJ cases regarding Syria, as these are particularly and exceptionally prevalent. The aim was to provide a hypothetical theory for future research to build upon.

An analysis of statements made by politicians and experts, along with relevant literature, was undertaken to uncover signs of influential political factors. These signs were organized into themes, resulting in the identification of three key factors: (A) national role conceptions, (B) diplomatic considerations and (C) migration policy. In summary, the research led to three primary hypotheses:

1. Germany’s national role conceptions as a normative power and possibly as a global enforcer, have a beneficial effect on the number of German UJ cases.
2. The fact that Germany hosts an unusually high number of Syrian refugees positively impacts the prevalence of German UJ cases related to Syria.
3. The worldwide condemnation of the situation in Syria by the international community enhances the number of German UJ cases concerning Syria.

(405) L. BJURSTRÖM, “For the First Time, Torture Committed by the Assad Regime Will Be Discussed in a Court” (*Justiceinfo.net*, 23 April 2020) <<https://www.justiceinfo.net/en/44167-first-torture-assad-regime-discussed-in-court.html>> accessed 3 August 2023.

(406) F. MÉGRET, “The ‘elephant in the room’ in debates about universal jurisdiction: diasporas, duties of hospitality, and the constitution of the political” (2015) 6(1) *Transnational Legal Theory* 114.

Firstly, national role conceptions could explain Germany's active stance in general. Simply put, national role exceptions are about the values and beliefs foreign policy makers adhere to in order to fulfil their own and other States' expectations about the "role" their country should take on the international stage. Two national role conceptions came forward as an explanation for Germany's strong sense of responsibility and leadership in the context of UJ. On the one hand, Germany is said to take on a "normative power" role. This entails that the country has a strong commitment to norms and international obligations and uses its power to pursue *inter alia* global human rights compliance. On the other hand, Germany also seems to be taking on a "global enforcer" role. This role is specifically linked to the use of UJ and implies the application of UJ in cases where the alleged perpetrator is not present within the territory. In doing so, the State not only prevents becoming a safe haven for perpetrators but takes a step further by actively upholding human rights on a global scale.

Germany gained the power to take on these roles in the years following its reunification. However, in the first seven years after its introduction in 2002, the CCAIL went completely unused. This seems to indicate that while Germany's national role conceptions could be an important explanatory factor, it is not a sufficient condition.

Secondly, diplomatic considerations have proven to play an important role. In the studied case, it seemed specifically essential that the international community condemns the situation in Syria and supports Germany's actions. This has three positive effects. First, it enables Germany to sustain and even foster its positive relationships with the international community. Second, it reduces the risk of potential political repercussions from Syria, which empowers Germany to prosecute (high-ranking) Syrian state officials. Third, it strengthens Germany's ability to assume the global enforcer role.

In contrast with the past, Germany seems to have abandoned its tradition of deducing agreement within the international community solely from action taken by the UNSC or the ICC. Instead, the vetoes of Russia and China in the UNSC and the fact that the ICC does not have jurisdiction, have not deterred Germany from initiating UJ cases.

Thirdly, Germany's migration policy has led to the presence of many Syrian refugees on its territory, which serves as both a motivating and facilitating factor. It motivates Germany to take action due to the significant number of victims within its borders, creating a moral imperative to prosecute. Furthermore, it facilitates UJ cases as victims can provide evidence, and often, perpetrators themselves have migrated to Germany. Contrary to the theory of Eugene Kontorovich, the case study has shown that UJ has not become a mere "substitute for extradition or other forms of rendition", as Germany does not only prosecute defendants who are present on its territory.

The hypotheses generated by the current study can serve as a valuable starting point for future research. One suggestion is to test these hypotheses in other cases, to enable generalization. In addition, it would be interesting to deepen this case study by process tracing the causal mechanisms at play.