

Dr. Stephanie Egerer-Uhrig
Federal Prosecutor at the Office of the Federal Prosecutor General of Germany

The Convention and National Prosecution of Crimes Against Humanity
26 September 2026

Thank you, Professor Chaira Giorgetti, for your kind introduction. Ambassadors, ladies and gentlemen, dear colleagues, I am deeply honoured to speak before you today. I am grateful for the invitation, and I would like to extend my sincere thanks to Professors Mettraux and Murphy for their insightful presentations, from which I have learned a great deal. I would like to take the opportunity to present a perspective of a national prosecutor on the Draft Articles. However, I must underline that my remarks do not represent any official position of the German government or the Office of the Federal Public Prosecutor General.

To begin, allow me to provide some preliminary context. Over the past years, Germany has successfully secured verdicts and conducted trials related to some of the gravest human rights committed in Syria and Iraq. The prosecution of crimes against humanity has been central to these efforts. For instance, the Higher Regional Court of Frankfurt ruled that Daesh's persecution of Yazidis constituted not only genocide, but also crimes against humanity and war crimes. Similarly, the Koblenz Higher Regional Court ruled that the Assad regime's crimes against its own population amounted to crimes against humanity. Moreover, numerous foreign terrorist fighters have been charged and convicted, cumulatively, for membership in a terrorist organisation and crimes against humanity.

The verdicts were grounded in the German Code of Crimes Against International Law (the 'Code'), which came into force one day prior to the Rome Statute of the International Criminal Court ('ICC'). The criminal provisions within this Code largely mirror those of the Rome Statute. Due to the nearly identical wording of the German provisions on core international crimes, namely genocide and crimes against humanity, the German authorities have been relying extensively on legal interpretations from the ICC and other international tribunals, as well as the resulting customary international law. This approach has proven useful in navigating the relatively new area of core international crimes in Germany, benefiting both our office and the courts handling these cases.

Under German law, provisions of the Code and other criminal statutes, such as those in the German Criminal Code, may be applied concurrently in the same case. By applying the principle of cumulative charges, the German authorities are able to present a comprehensive

account of the injustices suffered. Although Section 7 of the Code does not explicitly cover offences such as membership in a terrorist organisation or in some cases, especially the Yazidi cases, child abuse, these can still be addressed through other legal provisions. Additionally, mutual legal assistance in investigations into crimes against humanity is conducted under the same rules applicable to other criminal proceedings.

Mutual legal assistance plays a prominent role in nearly all cases dealt with by the German authorities. The applicability of the general legal framework for mutual legal assistance has greatly facilitated international cooperation, allowing all involved German authorities to rely on established, well-functioning channels of communication. This continuity also enables these authorities to coordinate directly with the same officials in partner countries who may be working on related cases.

The Code permits investigations to be carried out under the principle of universal jurisdiction, without restriction. At the same time, a provision in the German Code of Criminal Procedure gives the German authorities the discretion to refrain from initiating investigations in cases that lack any connection to Germany. It is important to emphasise that, apart from this provision, the German Code of Criminal Procedure contains no special rules that apply exclusively to investigations of core international crimes. Thus, the German authorities conduct these proceedings under the same procedural rules as those that govern instances of assault, fraud, or murder.

Therefore, any rule enshrined in the proposed convention that takes into consideration national provisions and allows for their applicability would be welcomed. The following two slides illustrate proceedings conducted against both state and non-state actors and provide an overview of the cases handled by the German authorities.

Proceedings have been conducted against members or affiliates of the Syrian regime as well as Daesh members responsible for crimes against Yazidis. In these cases, a broad range of provisions from Section 7 of the Code has been applied. The slide presents the full text of Section 7 of the Code, not for the audience to read in detail, but to demonstrate which provisions have already served as the legal basis for successful indictment and verdicts. To date, all cases that have been brought to the attention of the German authorities have relied on either the provisions of Section 7 of the Code or other applicable provisions of the German Criminal Code.

To present a brief overview: in Germany, the Federal Public Prosecutor General is the sole authority responsible for investigating core international crimes. The first investigation was launched in May 2009. Currently, the German authorities operate three special units dedicated to core international crimes, staffed by 14 public prosecutors. Which of the lessons learned from these national investigations could be relevant to the negotiations regarding a new convention?

More than 20 years of investigations have demonstrated that cases can be effectively prosecuted under the provisions of Section 7 of the Code. Since Section 7 of the Code closely mirrors the language of the Rome Statute, national authorities were able to draw on legal interpretations from the ICC and international tribunals, as well as resulting customary international law.

As mentioned earlier, no special provisions are necessary for investigations into crimes against humanity when it comes to evidence collection on mutual legal assistance. The involvement of a dedicated war crimes unit and specialised law enforcement personnel is essential. The same applies to trained interpreters, who play a crucial role in ensuring that victims can fully express themselves during questioning. It is important that witnesses who are also victims are interviewed in a manner that respects their cultural identity. For example, when speaking with Yazidi witnesses, one must be mindful that in the Yazidi language, Kur Kurmanji, there is no word for 'rape'. Thus, interpreters must exercise great care when discussing crimes and the specific details described by the witnesses. This is why national authorities conduct interviews with female Yazidi witnesses using exclusive female teams. In addition, effective mutual legal assistance and international cooperation are essential to successful proceedings.

Allow me to elaborate on the crucial value of international cooperation. It is indispensable for our investigations to establish contextual elements, namely, the evidence of a widespread and/or systematic attack on the civilian population. To this end, the German authorities have relied on expert witnesses across various fields, including scholars, political scientists, and journalists, as well as extensive information obtained through international cooperation. Thanks to this cooperation, it has been possible to avoid burdening Yazidi witnesses or victims with the need to prove these contextual elements, which significantly eases their participation in court and allows them to focus on recounting their experiences of torture.

Moreover, international collaboration is key to effectively investigating the involvement of individuals in crimes against humanity. I will address this point further shortly. Ultimately, cooperation with international partners is necessary at every stage of the process, from the initial investigation through the trial phase. It is important to underline that international cooperation goes beyond working with just one, two, or three partners. Instead, it involves a plethora of partners, including war crimes across Europe, Canada and Australia, among others, all of whom are also investigating crimes against humanity.

National authorities are collaborating closely with the ICC and other international tribunal UN evidence collecting mechanisms, formerly UNITAD,¹ currently, unfortunately, only with the International, Impartial and Independent Mechanism, as well as a great range of non-governmental organisations. To illustrate, these efforts have extended beyond collecting information about crime scenes, potential perpetrators, and victims. National authorities have also pursued new investigative avenues. For instance, the so-called Caesar files have been analysed, which are photographs documenting individuals who died in Syrian prisons. This analysis has enabled us to demonstrate that inmates were subjected to systematic torture.

Finally, I want to highlight a critical unresolved issue that significantly impacts both our investigations and trials: witness protection and support. During trials involving members of the former Assad regime, instances of considerable interference, threats, defamation, and false accusations have been encountered. Protecting witnesses' relatives abroad has often proven difficult or even impossible. Once witnesses arrive in Germany, national authorities have certain protective measures at their disposal. Nevertheless, some communities within Germany still pose considerable risks in these cases. For example, as noted on the slide, an 11-year-old nephew of a key witness was abducted in Syria one day before the witness was scheduled to testify in court. The authorities had to wait until the nephew of our witness was released by Syrian authorities before we could bring the witness back to court and complete the questioning. This was an extremely difficult and distressing experience for the witness. Naturally, witness protection is essential for victims, which is why it is commendable that the entire article of the Draft Articles is dedicated to this issue.

Similar issues were faced in the cases related to Daesh, where witnesses are often subject to threats via social media, press campaigns, defamation, and false accusations. This has become part of the everyday work of the German authorities.

¹ Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD).

To sum up, in this context, it is a welcome choice to adopt to the Draft Articles the definitions set forth in the Rome Statute. This alignment allows us to rely on established international jurisprudence and customary international law. Regarding crimes against humanity, no special provisions are necessary in German criminal procedure or mutual legal assistance laws. However, it is crucial to strengthen international cooperation, including extradition and mutual legal assistance. The Draft Articles' provisions on these matters align well with practical needs, as without effective mutual legal assistance, involving multiple partners, the proceedings would not have been possible.

A framework for the protection of witnesses is essential for the effective prosecution of perpetrators of core international crimes. There, the inclusion of a provision specially designed to ensure comprehensive witness protection and uphold witness rights is welcomed. Beyond safeguarding witnesses from abuse and intimidation, it would be valuable to consider including specific protective measures that strengthen victims' rights over the long term. As Professor Mettraux noted, the Draft Articles would provide clear statutes and mechanisms. In Germany, national authorities are fortunate to have both national legal frameworks and institutional mechanisms in place, along with the necessary political will to support them. Thank you for your attention.