When Perpetrators and Victims Meet Again

Examining Germany's Exercise of Universal Criminal Jurisdiction from a Hospitality Perspective

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Abstract

This article examines Germany's exercise of universal criminal jurisdiction (UCJ) from a hospitality perspective. It derives this perspective from recent theoretical writings, in particular Frédéric Mégret's work on the role of victim diasporas in UCJ proceedings. Mégret argues that states exercising UCJ respond to a duty of hospitality towards those who have suffered abroad but are now on the territory of a new state. While presenting a convincing theoretical case, this perspective requires verification in the practice of states that actually exercise UCJ. This article therefore considers to what extent the recent surge of UCJ cases in Germany is linked to the presence of a victim diaspora on its territory. In addition, it assesses whether German legal and public discourse also assumes a duty of hospitality towards those victim diasporas or whether it rests the exercise of UCJ on more traditional approaches.

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I. Introduction

In 2016, a friend and I visited a restaurant in Hamburg that is well known for its exquisite Levantine cuisine. My friend had fled Syria, settling in Hamburg about a year before, and he felt like this was one of the few places he could find an adequate quality of hummus and kibbeh. The restaurant employs many Syrians who had equally fled Syria at some point during the Civil War and found a new home in Hamburg and a new job at the restaurant. During our dinner my friend grew quiet and discontent, obviously bothered by something he had spotted in the restaurant. It later turned out that he saw one of the other customers wearing a cap that featured the logo of Islamic State of Iraq and Syria (ISIS) in Arabic letters. He had been reminded of the destruction of his homeland, the ashes of the street where his family's house had stood, dead friends and family as well as his arduous flight from home. Seeing this man enjoying dinner, in a public place in Germany, where my friend had now found refuge, left him disappointed, frustrated, and powerless.

This incidence has something to say about the encounter of victims with their former perpetrators in a third state that hosts both, the victim and the perpetrator. It resembles a story that Frederic Mégret recalls from the film 'Marathon Man' about the encounter of a Holocaust survivor and a Nazi in New York. In that article, Mégret draws a connection between that encounter and trials of universal criminal jurisdiction (UCJ), which he recognises 'as the place where the two diasporas (perpetrator and victim) meet, where their narratives compete, and where the host society is called upon to arbitrate a conflict that implicates its own becoming and evolving political constitution'.[1] Mégret builds on this quality of UCJ trials, by putting forward a new conception of UCJ, the 'hospitality' conception, which seeks to better understand the practice of universal jurisdiction from a descriptive as well as a normative perspective.

[1] Frédéric Mégret, 'The "elephant in the room" in debates about universal jurisdiction: diasporas, duties of hospitality, and the constitution of the political', Transnational Legal Theory 6 (2015), 89-116 (90).

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This article applies this new conception of UCJ to the exercise of UCJ in Germany, particularly with regards to the growing Syrian diaspora and their influence on UCJ proceedings. It proceeds from the premise that such a new conception might be well suited at describing Germany's exercise of UCJ and providing an apt normative framework for it. With regards to the concept of UCJ generally, the article provides a case-study that specifies whether Mégret's theoretical framework may in fact be accurate and significant within domestic contexts. To that end, I first elaborate on what is meant by the hospitality conception and how it relates to traditional conceptions of UCJ (II.), before examining Germany's state practice from a hospitality perspective (III.).

II. A Hospitality Conception of Universal Criminal Jurisdiction

Throughout recent decades, states invoked the concept of UCJ to prosecute core international crimes in their domestic courts, without having any territorial or national link to the crime in question.[2] Within this time, a plethora of conceptions evolved that attempted to specifically describe the concept of UCJ and normatively justify it. Yet, the concept remains under fire from all sides of the international arena.[3] Some even proclaim the death or extinction of universal criminal jurisdiction,[4] particularly with regards to the amendments of Belgium's and Spain's universal jurisdiction regulations. However, as Máximo Langer convincingly argues, the number of defendants tried in universal jurisdiction trials is currently on the rise again, even pointing towards the concept's expansion.[5] In fact, states such as Germany have only recently begun to adopt serious universal jurisdiction regulations and enact them in their judicial practice.[6]

It is in this *melange* that Frédéric Mégret puts forward his hospitality conception of universal criminal jurisdiction. In order to ascertain how it relates to the field of UCJ and can therefore unfold its potential, I will

2 Máximo Langer, 'The Diplomacy of Universal Jurisdiction: The Political Branches and the Transnational Prosecution of International Crimes', AJIL 105 (2011), 1-49 (1).

3 E.g. Henry Kissinger, 'The Pitfalls of Universal Jurisdiction', Foreign Aff. 80 (July/August 2001), 86-96.

4 Eric Hwang, 'China: The Growth of a New Superpower and the Extinction of Universal Jurisdiction', Wis. Int'l L. J. 32 (2014), 334-354.

5 Máximo Langer, 'Universal Jurisdiction is Not Disappearing: The Shift from "Global Enforcer" to "No Safe Haven" Universal Jurisdiction', JICJ 13 (2015), 245-256 (249).

6 See in detail below, III.1.

first take a look at traditional streams of thought dominating the UCJ field (1.). Following Mégret, I will subsequently elaborate on the descriptive and normative benefits a hospitality conception of UCJ may add to the field (2.).

1. Traditional Conceptions of Universal Criminal Jurisdiction

Mégret himself distinguishes between three dominant models of UCJ: The 'cosmopolitan' model, the 'interstate' model, and the 'global civil society' model.[7] He proposes these models 'as stylized accounts of the facticity and normativity of the practice' of UCJ.[8] The cosmopolitan model of UCJ typically refers to UCJ 'as a form of decentralised enforcement of universal values'.[9] Others therefore label this approach the 'global enforcer' conception of UCJ.[10] It describes international crimes as 'crimes in whose suppression all states have an interest as they violate the values that constitute the foundation of the world public order'.[11] Such grand and cosmopolitan language is particularly prevalent in human rights and civil society advocacy for the 'fight against impunity'.[12] Arguably, the cosmopolitan model also constitutes the predominant conception in academic discourse on UCJ.[13]

Yet, the cosmopolitan conception features several weaknesses, from a descriptive as well as a normative perspective.[14] Most fundamentally, the conception seems to fail in explaining the fact that UCJ is applied 'in some cases and not others' despite its universalist argument.[15] This fact suggests that there might be something else at stake than a universal cosmopolitan conception of justice, which significantly weakens the model as a normative theory.[16] Ultimately, so the criticism goes, relying on cosmopolitan ideals will often be a fig leave states employ for other interests. Furthermore, the

7 Mégret (n. 1), 92 ff.
8 Mégret (n. 1), 92.
9 Mégret (n. 1), 93.
10 Langer (n. 2).
11 Supreme Court of Appeal of South Africa, *National Commissioner of the South African Police Service v. Southern African Human Rights Litigation Centre*, 485/2012 [2013] ZASCA 168 (27 November 2013), paras 23-24.
12 Cf. e. g. Amnesty International, *Universal Jurisdiction: A Preliminary Survey of Legislation Around the World – 2012 Update* (London: Amnesty International Publications 2012), 1.
13 Mégret (n. 1), 93.
14 For an extensive normative critique cf. Yuna Han, 'Should German Courts Prosecute Syrian International Crimes? Revisiting the "Dual Foundation" Thesis', Ethics & International Affairs 36 (2022), 37-63 (46 ff.).
15 Mégret (n. 1), 94.
16 Cf. Gerry Simpson, *Law, War & Crime* (Cambridge: Polity Press 2007), 30.

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cosmopolitan model makes enemies with geopolitical realists, as it risks disrupting diplomatic relations.[17]

While Mégret formally distinguishes the cosmopolitan model from the global civil society model, the latter primarily appears as a mere variation of the former. It stresses the fact that, essentially, it is often non-governmental actors that nudge states 'to rise up to their cosmopolitan role'.[18] By explaining why some cases might get pushed through to domestic courts and others do not, the global civil society model may rebuke some of the criticism the cosmopolitan model encounters. However, as Mégret admits, the 'two models' remain intimately connected, as both 'speak the language of "Humanity"'.[19] As a result, the global civil society model by and large runs into the same issues as the cosmopolitan model, primarily with regards to its potential artificiality and therefore legitimacy.[20]

References to a 'global society' or 'the international community', which are so intimately connected with the cosmopolitan model of UCJ, neglect a particular rhetoric that frequently arises in the context of UCJ cases: Many states in recent times justified their exercise of UCJ by resorting to the notion of 'no safe haven'.[21] This notion proceeds from the premise that 'states may exercise universal jurisdiction to avoid becoming a refuge for participants in core international crimes'.[22] While it may superficially be considered related to the cosmopolitan model,[23] at its foundation, no safe haven seems to assume that 'the default rule is that war criminals should be tried in their country of origin rather than prosecuted under U[C]J'.[24] This follows from the restrictive nature of no safe haven: Prosecution should be limited to exceptional cases.

Mégret therefore attributes no safe haven to what he calls the interstate model of UCJ. The assumption here is that states mainly exercise UCJ when it conforms to their own interests, normatively limiting the use of UCJ to conditions 'in which it is seen as corresponding with sovereign interests'.[25]

17 Kissinger (n. 3).

18 Mégret (n. 1), 98.

19 Mégret (n. 1), 98.

20 Additionally, the global civil society model must respond to criticism accusing it of elitism, as the model may be said to rely on elite actors claiming to speak on behalf of the whole world.

21 On Germany cf. below, III.1.

22 Langer (n. 5), 249.

23 Langer (n. 5), 250 holds that no safe haven equally assumes 'that core international crimes are established in international law and affect the international community', which points in the same direction as the cosmopolitan model. I tend to disagree, following Mégret (n. 1), 96 who seems to perceive no safe haven as a manifestation of the interstate model.

24 Mégret (n. 1), 96.

25 Mégret (n. 1), 95.

This model certainly responds to the criticism voiced against the cosmopolitan model, but it fails to account for the significant number of UCJ cases that do not – at first glance – seem to correspond to sovereign interests. In fact, the interstate model in a way is 'not much of a theory at all', as it may easily be reframed as the interstate 'critique of universal jurisdiction'.[26] One may therefore consider no safe haven as the only application of the interstate model that speaks for UCJ rather than against it, acknowledging that states have a geopolitical interest not to serve as a territorial refuge for war criminals.

Even no safe haven is unable to rebuke the main criticisms voiced against the interstate model. For instance, it entirely disregards the very significant role that non-state actors play in advancing domestic UCJ statutes,[27] establishing domestic investigation units,[28] and litigation in domestic courts.[29] Furthermore, it does not account for those cases, in which no safe haven rhetoric was *not* invoked and no other state interest could be discerned. Normatively, the interstate model entirely devitalises the idealism underlying UCJ, which requires the exercise of UCJ in the name of some form of (cosmopolitan) justice, independent of particular state interests. This also goes for no safe haven, which is usually only invoked where it does not interfere with the invoking state's diplomatic relations.[30]

2. A Hospitality Conception of Universal Criminal Jurisdiction

It is within this field that Frédéric Mégret advocates a fresh conception of UCJ that takes seriously – in his words – the 'transnational societal factor' that is almost always at play in UCJ. Rather than being 'the result of some abstract invocation of humanity', the exercise of UCJ crucially depends on very concrete and real circumstances. According to Mégret, these circumstances are fundamentally shaped by the role of 'victim diasporas'.[31] From

26 Mégret (n. 1), 97.

27 See e. g. Amnesty International (n. 12).

28 See e. g. Human Rights Watch, 'The Long Arm of Justice: Lessons from Specialized War Crimes Units in France, Germany, and the Netherlands', 16 September 2014, available at <https://www.hrw.org/report/2014/09/16/long-arm-justice/lessons-specialized-war-crimes-units-france-germany-and>.

29 Langer (n. 2).

30 See the case history of the ECCHR, showing that complaints against US or UK actors have not been successful, ECCHR, 'International Crimes and Accountability', available at <https://www.ecchr.eu/voelkerstraftaten-kriegsverbrechen/>.

31 Mégret (n. 1), 99; see also Devika Hovell, 'The Authority of Universal Jurisdiction', EJIL 29 (2018), 427-456 (449): 'The insight is that the exercise of universal jurisdiction is primarily victim driven.'; Luc Reydams, *Universal Jurisdiction: International and Municipal Legal Perspectives* (Oxford: Oxford University Press 2004), 221.

this insight follows a comprehensive model of UCJ that can be labelled the 'hospitality conception' of UCJ. It proceeds from the premise that a state exercises UCJ to fulfil a duty of hospitality towards 'those who have suffered harm abroad but are now on the territory of a new state',[32] the forum state.

On the one hand, this postulates a descriptive account of UCJ: Mégret claims 'that there has not been a single use of U[C]J that was not framed in some way by the residence of victims in the forum state'.[33] In this sense, victim diasporas '"bring the crime" to the forum state, sensitise it to its existence and, often, demand some form of recognition'.[34] Rather than understanding core international crimes as far-away, ephemeral events, a diaspora-centred perspective sheds light on the continuous life of such crimes in victims' bodies, no matter their physical location. In other words, it appears that neither a cosmopolitan global society nor nation-states are the main actors of UCJ. Instead, victim diasporas may be the ones that 'speak' international criminal justice in domestic courts.

On the other hand, the hospitality conception also puts forward a normative theory for UCJ that may be better suited to justify its exercise by states than the traditional conceptions. It conceptualises UCJ 'as an encounter between the host society and its ambiguous "other" incarnated by the migrant'.[35] Since 'victim diasporas have legitimate expectations to be treated with decency, […] respect for their individuality, and the past that defines them', the host state's exercise of UCJ corresponds to a (moral) duty of hospitality.[36] In the case of UCJ, this general duty is reinforced by the practical possibility of the victims' encounter with the perpetrator on the host state's territory, which 'might be considered a form of revictimization, or at least a trivialization of "their" suffering'.[37]

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32 Mégret (n. 1), 89.

33 The Eichmann trial possibly provides the most prominent example for victim diasporas' influence on UCJ proceedings. Mégret gives a few further examples that seem to underscore his (descriptive) claim: 'Chilean and Argentine victims living in Spain and France; Rwandan victims living in Belgium, France and Canada; Zimbabwean victims living in South Africa; and Chinese/Tibetan victims living in Spain', Mégret (n. 1), 100; very specifically he references the case of Hiram Gahima (Rwandan) in Canada, 101.

34 Mégret (n. 1), 100.

35 Mégret (n. 1), 105.

36 Note that while such a duty of hospitality also has a cosmopolitan quality to it, cf. Immanuel Kant, *Practical Philosophy* (Cambridge: Cambridge University Press 1999), 330, it differs from or at the very least specifies the traditional cosmopolitan model of UCJ, as it puts 'a local face on an abstract idea, […] grounding cosmopolitan obligations in the immediacy and intimacy of an encounter', Kant (n. 36), 107; see also below with regards to the presence of victims at the al-Khatib trial, III.2.

37 Mégret (n. 1), 107.

Furthermore, the host state may have a political interest in the victims' decision to pursue the case in their host society instead of their home state, as 'their choice of the host state is fundamentally an act of integration within their host society and a vote of confidence in its judicial system'. This act is essentially 'an expression of a traditional aspiration to be integrated within the bounded community of a particular polis'.[38] Lastly, victims may have a human right to the exercise of UCJ and, according to Mégret, 'nothing in existing international human rights instruments suggests that the state where or by whose nationals the crime was committed should necessarily be the one providing justice'. The international right to an effective remedy[39] may be reframed as a 'transnational right to an effective remedy' that requires the victims' presence on the jurisdictional state's territory.[40]

These normative arguments seems to aptly fend off criticism voiced against the cosmopolitan and the interstate model. On the one hand, they preempt the accusation of artificiality brought forward against the cosmopolitan model, convincingly explaining why states may have an authentic interest in exercising UCJ. On the other hand, it retains some idealism from the cosmopolitan model, as the duty of hospitality is itself grounded in cosmopolitan ideals. Arguably, however, the hospitality conception's main strength lies in its descriptive capacity. The descriptive failures of both, the cosmopolitan and interstate conceptions, are largely undisputed and can partly explain why the concept's implementation encounters such challenges on a global level. The hospitality conception on the other hand presents a truly innovative way of understanding UCJ that capably accounts for the diverging degree of the concept's application globally.

One must read Mégret's framework in light of other modern approaches that critically reconsider more traditional accounts of UCJ, such as Devika Hovell's 'authority' conception.[41] Hovell focuses 'on the (contestable) claim to authority inherent in jurisdictional claims' and invites 'consideration of the purpose and beneficiaries of judicial authority',[42] rather than reducing jurisdiction to a mere 'legal source' issue in a purely positivist manner.[43]

38 Mégret (n. 1), 109. This fundamentally differs from the global society model, as the victim's choice is precisely *not* an act of global citizenship, but the expression of a wish to become part of a *specific* community.

39 E.g. as advanced by the Rome Statute's framework that, however, only applies when the territorial state is not willing to provide effective remedy.

40 Mégret (n. 1), 113.

41 See also David Luban, 'A Theory of Crimes against Humanity', Yale J. Int'l L. 29 (2004) 85-167 (91) speaking of jurisdiction as 'the study of the interests that create a legitimate stake in prescribing and enforcing the law'.

42 Hovell (n. 31).

43 Hovell (n. 31), 429 ff.

Mégret responds to this demand, focusing not so much on his conception's positivist embeddedness in domestic and international jurisdictions, but on the political dynamics underlying the exercise of UCJ, or what he calls the 'transnational societal factor'.[44] Thereby, the hospitality conception advances a normative argument that – in Hovell's terms – consists of a *claim* to authority, putting forward 'the legitimate aims' of an 'interested communit[y]'.[45]

Hovell's and Mégret's analyses also share important substantial traits, particularly regarding the role of victim communities as drivers of the exercise of UCJ. Hovell considers 'victim communities and victim-support organizations as key agents motivating universal jurisdiction trials, including preparing case files and galvanizing prosecutions', concluding that 'the exercise of universal jurisdiction is primarily victim driven'.[46] However, Mégret's argument deviates somewhat from Hovell's authority conception, as it specifically considers victim *diasporas* that live on the host state's territory. Rather than recognising the agency of victims generally, Mégret focuses on the role of those victims who fled to the host state and therefore carried the crime with them. Hence the normative argument, that victims' transnational 'transnational right to an effective remedy'[47] is complemented by its counterpart, the duty of hospitality for host states. This duty includes essentially political ideals of co-citizenship between victim diasporas and their host society. These political ideals of co-citizenship take seriously incidents that happen on the ground, in very real encounters between victims and perpetrators on a third state's territory, such as the one described in this article's introduction. This is what makes Mégret's conception so interesting for case studies of individual states such as Germany.

A recent study by Yuna Han expands on this notion, by applying the 'dual foundation thesis' to a normative assessment of Germany's exercise of UCJ.[48] The dual foundation thesis follows from the *Eichmann* case, in which the Jerusalem District Court grounded its jurisdiction in the cosmopolitan nature of the universal crime in question as well as in the special relationship between the State of Israel and Nazi crimes against Jews.[49] Han argues that this relationship was constituted by the trial of Eichmann itself, rather than

44 Mégret (n. 1), 99.

45 Hovell (n. 31), 437; similarly Reydams (n. 31), 221.

46 Hovell (n. 31), 449.

47 Mégret (n. 1), 113; or, in Hovell's words, their legitimate 'claim to authority', Hovell (n. 31), 437.

48 Han (n. 14), 50 ff.

49 District Court of Jerusalem, Criminal Case No. 40/61, para. 11.

relying on a preexisting relationship.[50] This certainly resonates with what Mégret says about the integrative function of UCJ trials under the hospitality conception. Yet, the dual foundation thesis expands its normative scope by including the cosmopolitan conception as a normative foundation for UCJ. This expansion of the hospitality conception's normative grounds could prove useful when considering the example of Germany.

III. Germany's State Practice from a Hospitality Perspective

Mégret's relatively novel conception of UCJ is convincing from a theoretical standpoint, in its descriptive and normative capacity. It remains to be seen, however, whether it can hold up in state practice, both regarding its descriptive worth as well as its normative claims. Is state practice really – as Mégret claims – driven by a duty of hospitality towards victim diasporas, do victim diasporas really 'speak' international criminal law? For space and complexity constraints one cannot answer this question universally. I therefore aim to specifically analyse Germany's exercise of UCJ in light of this question. Germany forms an appropriate example, as, since recently, it became the host state of the first trial against perpetrators associated with the Syrian Assad-regime, by exercising UCJ. Therefore, I will first provide a short summary of Germany's state practice with regards to UCJ (1.) and attempt to describe it from a hospitality perspective (2.), before making use of the German example to consider the conception's normative fundament (3.).

1. Germany's Exercise of Universal Criminal Jurisdiction

In order to prepare the subsequent assessment, my analysis of Germany's state practice concentrates on the general requirements for the exercise of UCJ in the German Code of International Criminal Law, *Völkerstrafgesetzbuch* (VStGB), and the German Code of Procedural Criminal Law, *Strafprozessordnung* (StPO), and their implementation in judicial practice. Germany adopted the VStGB in 2002 to incorporate the Rome Statute of the International Criminal Court into German law.[51] The VStGB lays out the funda-

50 In this regard Han (n. 14), 51, follows Itamar Mann's reading of the Eichmann trial, 'The Dual Foundation of Universal Jurisdiction: Towards a Jurisprudence for the "Court of Critique"', Transnational Legal Theory 1 (2010), 485-521 (515).

51 Open Society Justice Initiative and Trial International, 'Universal Jurisdiction Law and Practice in Germany Briefing Paper', March 2019, available at <https://www.justiceinitiative.org/publications/universal-jurisdiction-law-and-practice-germany>, 4.

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mental requirements for the exercise of UCJ in Germany, while the StPO contains more general procedural rules for criminal proceedings, including UCJ proceedings.[52]

With regards to the core international crimes, the VStGB 'does not stipulate any criteria restricting universal jurisdiction'.[53] According to § 1 s. 1 VStGB, jurisdiction can be exercised over core international crimes even if the act was committed abroad and has no connection with the domestic territory. This constitutes the classical situation of UCJ. However, this does not mean that German prosecutors will in fact investigate and prosecute every single international crime that was committed globally. While, in general, the *Legalitätsprinzip*[54] ('legality principle') requires prosecutors to investigate and prosecute all crimes committed, § 153 f StPO contains exceptions to this principle that heavily influence the implementation of § 1 VStGB in practice: Under certain conditions, prosecutors have the discretion to decide whether or not to investigate and prosecute international crimes.

These conditions are certainly fulfilled where the crime displays no nexus to Germany (territorially and regarding the nationality of the suspect or victim), the suspect is not present on the German territory and the offence is being prosecuted by an international court or another state under the territoriality or (active or passive) personality principle.[55] Then, discretion exists even regarding potential investigations. Yet, even if the victims are of German nationality or the offence is not prosecuted by another court, § 153 f (1) s. 1 StPO provides for discretion to pursue prosecution where the accused (not suspect) is not present on the German territory. This is because Article 103 (1) of the German Basic Law, the *Grundgesetz* (GG), prohibits any trial *in absentia*, even when exercising UCJ. Therefore, while there may be a general duty to investigate any international crime as soon as there is some kind of nexus or no other jurisdiction investigates,[56] prosecutors have discretion to press or not to press charges as long as the accused is not present on German territory.

How does this translate into prosecutorial practice? The competent body to lead investigations regarding VStGB-crimes is the Federal Prosecutor General, the *Generalbundesanwalt* (GBA). The GBA initially exercised its

52 See also Art. 103 (1) Grundgesetz, from which it follows that trials *in absentia* are constitutionally prohibited.

53 Briefing Paper (n. 51), 16; this neglects the crime of aggression, for which certain requirements exist, cf. § 1 s. 2 VStGB, as the crime of aggression does not, *a priori*, play a role within the hospitality conception and its foundation remains heavily disputed even within the cosmopolitan and interstate conceptions.

54 Regarding the application of the legality principle to the VStGB see the preparatory materials to the VStGB, Deutscher Bundestag, BT-Drs. 14/8524, 13.3.2002, 37.

55 Cf. § 153 f (2) s. 1 StPO.

56 Cf. BT-Drs. (n. 54), 38.

discretion by following an explicit 'no safe haven' policy;[57] it would only investigate where the suspect sought residence in Germany.[58] Hence, originally the GBA seemed set on making very limited use of its discretion to prosecute international crimes.[59] However, by 2019, Trial International's Universal Jurisdiction Annual Review[60] listed 'Germany with one of the highest activity entries'.[61] In fact, in 2011 the GBA began to conduct so-called structural investigations (*Strukturermittlungsverfahren*), preliminary measures that investigate structures and entire suspect groups, rather than individuals. These structural investigations are carried out independently of a nexus to Germany (in the sense of § 153 f StPO) and seem to present a shift in the GBA's policy regarding its prosecutorial discretion.[62]

Currently, Germany carries out as many as ten such structural investigations as well as more than eighty personalised investigations.[63] It is, however, worth noting that about half of these, four structural and about 40 personalised investigations, concern crimes committed in the context of the Syrian Civil War and by ISIS in Syria and Iraq.[64] Beyond these situations, the GBA carries out investigations concerning crimes committed in a large variety of countries: 'Ivory Coast, The Gambia, South Sudan, the Democratic Republic of the Congo (DRC), Iraq, Nigeria, Afghanistan, Mali, Sri Lanka, Cameroon, Somalia, Armenia, the Russian Federation (Chechnya), Pakistan, Ukraine, Central African Republic, and Sudan.'[65]

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57 Rainer Keller, 'Das Völkerstrafgesetzbuch in der praktischen Anwendung – eine kritische Bestandsaufnahme' in: Julia Geneuss and Florian Jeßberger (eds), *Zehn Jahre Völkerstrafgesetzbuch* (Baden-Baden: Nomos 2013), 141-160.

58 Boris Burghardt, 'Endlich! – Erster Haftbefehl gegen einen ranghohen Vertreter des syrischen Assad-Regimes', Völkerrechtsblog (11 June 2018).

59 This also conformed to the principle of subsidiarity envisioned during the drafting process of § 153 f StPO: As a general rule, priority should be given to the primary right and duty of international courts or prosecutors from the victims' or offenders' home states or the jurisdiction in which the crime was committed, cf. BT-Drs. (n. 54), 37; BGH, judgement of 26 January 2011, case no. 4 BGs 1/11.

60 Trial International, 'Evidentiary Challenges in Universal Jurisdiction Cases – Universal Jurisdiction Annual Review 2019', 1 March 2019, available at <https://trialinternational.org/latest-post/universal-jurisdiction-annual-review-2019-overcoming-evidentiary-challenges-though-collaboration/>.

61 Elisabeth Baier, 'A Puzzle Coming Together – The Henchmen of Assad's Torture Regime on Trial in Germany', Völkerrechtsblog (23 April 2020).

62 Burghardt (n. 58).

63 Christian Ritscher, 'Aktuelle Entwicklung in der Strafverfolgung des Generalbundesanwalts auf dem Gebiet des Völkerstrafrechts', ZIS 12 (2019), 599-601 (599).

64 Ritscher (n. 63), 600 f.

65 Trial International, 'Universal Jurisdiction Annual Review 2020 – Terrorism and International Crimes: Prosecuting Atrocities for What They Are', 30 March 2020, available at <https://trialinternational.org/latest-post/universal-jurisdiction-annual-review-2020-atrocities-must-be-prosecuted-soundly-and-rigorously/>, 48.

These investigations have translated into many smaller and larger proceedings. Until October 2019, six final verdicts for crimes on the basis of UCJ provisions in the VStGB have been delivered.[66] These do not include three important cases that target high-ranking perpetrators and hence form the most prominent cases in the context of UCJ in Germany: First, in 2015 the Oberlandesgericht (OLG) Stuttgart convicted two leaders of the Forces Démocratiques de Libération du Rwanda (FDLR) for war crimes.[67] However, the verdict against one of the defendants has been repealed by the German Federal Court, the *Bundesgerichtshof* (BGH), in 2018[68] and the defendant subsequently passed away.[69] Secondly, in 2018 the GBA released an arrest warrant against Jamil Hassan, the head of the Syrian Air Force Intelligence Directorate and close adviser to President Bashar al-Assad.[70] Thirdly, and most notably, in February 2021 the OLG Koblenz delivered a verdict in the al-Khatib trial against Eyad A., a former member of the Syrian General Intelligence Service.[71] The al-Khatib trial forms the first trial worldwide against former members of the Assad-Regime and is still ongoing against Anwar R., Eyad's former co-defendant.[72]

2. Describing Germany's State Practice from a Hospitality Perspective

Does Germany's exercise of UCJ conform to the hospitality conception from a descriptive perspective? Mégret rests his conception on the agency of victim diasporas in the host state, wherefore one must take a closer look at victim diasporas in Germany. Without prejudice to a potential definition of the term 'diaspora',[73] I here include people seeking or having been granted asylum for humanitarian reasons as well as German residents who have a family background marked by migration caused by international crimes.[74]

66 Ritscher (n. 63), 599, including more precise information about these proceedings.

67 OLG Stuttgart, judgement of 28 September 2015, case no. 3 StE 6/10.

68 BGH, judgement of 20 December 2018, case no. 3 StR 236/17.

69 Dominic Johnson, 'Präsident der FDLR-Rebellen ist tot', Tageszeitung (17 April 2019). The verdict against the other defendant, Straton Musoni, however, is final and is included in the seven verdicts mentioned before.

70 Burghardt (n. 58).

71 OLG Koblenz, judgement of 24 February 2021, case no. 1 StE 3/21; the verdict is, however, pending a decision on the defence appeal by the Federal Court of Germany (BGH).

72 On the trial generally see Baier (n. 61).

73 See further the description of the term provided by Marieke Volkert, 'Diasporagruppen in Deutschland: Leben im Spannungsfeld von Aufnahme- und Herkunftsland', Bundeszentrale für politische Bildung (28 November 2017).

74 Naturally, these categories often intertwine, allowing for a general look at the connection between international crimes, migration and refugee seekers.

While one encounters considerable difficulty in determining latter groups, the former groups can be approximated with a view to numbers: At the end of 2019, the five countries of origin with the largest group of refugee seekers in Germany were Syria (ca. 580,000), Afghanistan (216,000), Iraq (190,000), Iran (72,000), and Turkey (67,000).[75] To a large extent, these numbers root in migration movements in 2015 and 2016, explaining in particular the large number of Syrian nationals fleeing from the Syrian Civil War.[76] With regards to the other group, German residents with a migration history, an individual perspective is better suited to determine the agency of such groups.

In what way do these diasporas in Germany shape the exercise of UCJ? Christian Ritscher, head of one of two international criminal law units at the GBA, describes its practice as follows: 'Conflict situations, the *effects of which* are clearly felt in almost all European states and which require consistent punishment of international crimes in order not to create *safe havens* for international criminals, call for increased involvement of law enforcement authorities in the *international network*.'[77] In this short descriptive statements, all three conceptions of UCJ find resonance: Ritscher mentioning the effects of conflict situations in European states, including Germany, speaks for the relevance of the hospitality conception, as it stresses the migration effects of conflict situations. The wording 'safe haven' points towards the interstate conception of UCJ, as it corresponds to a very restrictive understanding of UCJ.[78] Lastly, the call for involvement as part of an international network indicates that Germany understands itself as a global enforcer under the cosmopolitan conception of UCJ.

Therefore, one cannot clearly define Germany's state practice as strictly conforming to one conception only. This does not come as a surprise, as the VStGB has been introduced not even twenty years ago and its implementation has been shaped by various individual and institutional actors.[79] However, more concrete trends than Ritscher's general statement can be discerned in the short history of Germany's exercise of UCJ. Initially, as already mentioned, Germany followed a restrictive no safe haven approach that was determined by the interstate conception of UCJ. Accordingly, the first trial concerning alleged crimes under the VStGB against the two FDLR-leaders

75 See Statistisches Bundesamt, 'Schutzsuchende nach Schutzstatus, Regionen und Herkunftsländern', 31 December 2020, available at <https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Bevoelkerung/Migration-Integration/Tabellen/schutzsuchende-staatsangehoerigkeit-schutzstatus.html>.

76 Volkert (n. 73).

77 Ritscher (n. 63), 601, translation by author (italicisation added).

78 See already before, II.2.

79 In that respect, one can certainly 'blame' the statute's discretionary character.

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can be attributed to the interstate conception.[80] In the century's second decade, however, without officially abandoning no safe haven, that approach seemed to have gradually changed to a much wider stance towards UCJ.[81] This is particularly evidenced by the implementation of structural investigations, which operate independently of individual suspects and their geographical location. Furthermore, the release of an arrest warrant against Jamil Hassan, who was never present on German territory, clearly constitutes a shift away from no safe haven.

One could therefore argue that Germany's current exercise of UCJ corresponds to the cosmopolitan conception. This could follow from the large variety of countries that today form the object of structural or personalised investigations. It appears nearly impossible to determine whether each of these investigations was influenced by victim diasporas because of the lack of transparency in how these investigations come to life. However, it should be noted that the GBA receives hundreds of new notifications from civil sources each year, indicating potential international crimes.[82] Certainly, some of these have been filed by civil society actors, including victim diasporas.[83] Nevertheless, the number of investigations into situations from all over the world point towards a general sense of cosmopolitanism at the GBA.

Yet, one should keep in mind that about half of these investigations concern situations in Syria and could potentially be linked to the Syrian diaspora in Germany. To reach more conclusive claims, it is worth taking a closer look at the cases that actually make it to trial or have elicited a verdict. Currently, German courts conduct trials concerned with situations in Iraq, Syria, and Sri Lanka.[84] German courts have delivered one verdict concerned with a situation in the DRC[85] and five verdicts concerned with situations in Syria,[86] without considering the early verdict concerning the Yugoslavian

80 'No safe haven' was applied, as the defendants had conducted their studies in Germany and also directed the FDLR's actions from Germany, hence committed potential crimes from Germany, cf. Patrick Krocker, 'Weltrecht in Deutschland? Der Kongo Kriegsverbrecherprozess: Erstes Verfahren nach dem Völkerstrafgesetzbuch', European Center for Constitutional and Human Rights (ECCHR) (2016), 52.

81 Burghardt (n. 58).

82 See the numbers provided by Ritscher (n. 63), 599 for 2018 and 2019.

83 With regards to Syrian diasporas, see just below.

84 Ritscher (n. 63), 600.

85 Cf. before at III.1.

86 BGH, judgement of 23 August 2018, case no. 3 StR 149/18; OLG Frankfurt a. M., judgement of 24 September 2018, case no. 5-3 StE 4/17-4-3/17, which, however, concerned a German national; OLG Stuttgart, judgement of 4 April 2019, case no. 3-3StE 5/18; OLG Düsseldorf, judgement of 24 September 2018, case no. 5-3 StE 7/16; OLG Koblenz, judgement of 24 February 2021, case no. 1 StE 3/21.

conflict.[87] Therefore, apart from two trials, all verdicts, and trials currently conducted, concern situations in Syria and Iraq. Accordingly, the large majority of UCJ investigations and trials listed in Trial International's Annual Reviews concern situations in Syria and Iraq.[88]

Furthermore, considerable evidence exists that at least the major cases against high-ranking perpetrators have been significantly influenced and shaped by Non-Governmental Organisations (NGOs) with direct links to victim diasporas. Namely, the al-Khatib trial as well as the arrest warrant against Jamil Hassan was pushed forward by the European Centre for Constitutional and Human Rights (ECCHR) in cooperation with almost one hundred Syrian torture survivors, relatives, activists, and lawyers.[89] While not all of these necessarily reside in Germany, many important witnesses as well as Syrian lawyers Mazen Darwish and Anwar al-Bunni, who support the proceedings, today reside in Germany, having fled the Assad regime's crimes.[90] With regards to crimes committed against the Yazidi population by ISIS in Syria and Iraq, the GBA responded to demands by the German-Iraqi NGO 'HÁWAR.help' by initiating legal action against (former) ISIS members.[91] These legal actions substantially rest on the GBA's cooperation with Kurdish authorities as well as a Yazidi NGO, 'Yazda',[92] which also formed a demand by HÁWAR.help and its founder Düzen Tekkal.[93] These examples

87 These verdicts were not delivered on the basis of the VStGB and occurred twenty years ago. They formed the initiation of UCJ trials in Germany and should therefore not dominate our understanding of today's exercise of UCJ.

88 See only Trial International, 'Universal Jurisdiction Annual Review 2021 – A Year Like No Other? The Impact of Coronavirus on Universal Jurisdiction', 12 April 2021, available at <https://trialinternational.org/latest-post/ujar-2021/>; Annual Review 2020 (n. 65); Annual Review 2019 (n. 60); Trial International, 'Make Way for Justice #4: Momentum Towards Accountability – Universal Jurisdiction Annual Review 2018', 2018, available at <https://www.ecchr.eu/en/publication/make-way-for-justice-4/>.

89 European Center for Constitutional and Human Rights (ECCHR), 'Dossier – Menschenrechtsverbrechen in Syrien: Folter unter Assad', available at <https://www.ecchr.eu/fileadmin/Sondernewsletter_Dossiers/Dossier_Syrien_2021Maerz.pdf>.

90 The ECCHR brought criminal charges against members of the Assad regime, which form the basis for the measures taken by the GBA, cf. European Center for Constitutional and Human Rights (ECCHR), 'Überlebende von Assads Folter-System fordern Gerechtigkeit – Strafanzeige in Deutschland: Portraits Anzeigenerstatter_innen', 23 June 2017, available at <https://www.ecchr.eu/fileadmin/Portraits/Syrien_Folter_Strafanzeige_ECCHR_Portraits_Anzeigenerstatter.pdf>.

91 Háwar.help, 'Háwar.help Forderungen zu IS-Verbrechen umgesetzt – Es gilt weiterhin: "No Safe Haven for Perpetrators of Sexual Violence"', 27 August 2020, available at <https://www.hawar.help/de/hawar-help-forderungen-zu-voelkerrechtsverbrechen-des-is-umgesetzt/>.

92 Cf. Ritscher (n. 63), 601.

93 Háwar.help (n. 91). The NGO's founder, Düzen Tekkal, is a German national with a Kurdish-Yazidi family background and strives for the prosecution of ISIS crimes against the Yazidi population.

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only form the well-known manifestations of what might be a deeper underlying influence of victim diasporas on current UCJ practice in Germany.

In fact, 'German immigration services hand out leaflets to arriving migrants, inviting them to testify'.[94] Human Rights Watch renders news reports claiming that a Yazidi woman informed the police after spotting a man who had abused her in an ISIS camp in Iraq at a market in the German town Baden.[95]

More signs for the de facto prevalence of the hospitality conception may be drawn from the procedural practice of UCJ trials themselves. Interestingly, in the first worldwide trial against former members of the Assad regime, the al-Khatib trial, the OLG Koblenz did not allow for the broadcast or even recording of the trial. Moreover, Arabic-language journalists were initially not allowed to access the live translations into Arabic that were restricted for access by trial participants.[96] Instead, 'the plaza in front of the courthouse as well as the adjacent park overlooked by the courtroom' has 'emerged as a platform for Syrian activists. In the early mornings, you might find a gallery of portraits of individuals having disappeared in the secret prisons of the Syrian intelligence agencies placed on the steps of the Court plaza and adorned with white roses'.[97] While the OLG Koblenz's lack of global outreach was widely criticised,[98] it does point to the prevalence of the hospitality conception vis-a-vis the cosmopolitan conception: The trial primarily serves the Syrian diaspora in Germany who can directly access the proceedings from the public gallery. Accordingly, the available seats were occupied by 'Syrian journalists, bloggers, filmmakers, podcasters, human rights lawyers, and activists', who 'consistently attended the trial'.[99]

One struggles to find a single cause for the current rise of UCJ proceedings in Germany. The cosmopolitan conception as well as the interstate concep-

94 Thomas Escritt, 'Middle East Refugees Help Europe Prosecute War Crimes', Reuters (27 May 2016).

95 Human Rights Watch, 'Fragen und Antworten: Straflosigkeit in Syrien und im Irak beginnt zu bröckeln – Asylsuchende und Weltrechtsverfahren in Europa', 20 October 2016, available at <https://www.hrw.org/de/news/2016/10/20/fragen-und-antworten-straflosigkeit-syrien-und-im-irak-beginnt-zu-broeckeln#Q11>.

96 This changed after an order by the German Constitutional Court, obliging the regional court to provide access to these translations at least to accredited Arabic-language journalists, BVerfG, decision of 18 August 2020, case no. 1 BvR 1918/20. However, it appears that little use has been made of this option by such journalists, cf. Alexander Dunkelsbühler, Alexander Suttor and Lea Borger, 'Universal Jurisdiction Without Universal Outreach?', Völkerrechtsblog, 13.1.2021.

97 Dunkelsbühler, Suttor and Borger (n. 96).

98 Dunkelsbühler, Suttor and Borger (n. 96).

99 Dunkelsbühler, Suttor and Borger (n. 96).

tion still influence the selection of cases brought to trial.[100] However, especially in recent years the co-incidence of significant growth of Syrian diasporas in Germany with a significant rise in UCJ cases concerned with situations in Syria is remarkable. This holds up particularly for the 'big' cases brought against high-ranking perpetrators that make Germany a forerunner in the prosecution of members of the Assad-regime. Furthermore, while initially the VStGB and StPO did not offer any form of victim participation, victims today have the opportunity to join in UCJ proceedings as joint plaintiffs.[101] Such participation seems to, at the very least, conform to the hospitality conception of UCJ. Accordingly, while theoretically the GBA has prosecutorial discretion to prosecute any crimes no matter whether a victim diaspora resides within Germany, it seems that prosecutors investigate precisely those cases 'where victims or witnesses are present in German territory'.[102]

3. The Hospitality Conception in Germany's Public Discourse

As Yuna Han points out, 'the pivotal role played by Syrian refugees within Germany […] only explain[s] how UJ proceedings came to be in present-day Germany, rather than [its] normative appropriateness'.[103] Yet, in contrast to evaluating the hospitality conception's descriptive accuracy regarding Germany's exercise of UCJ, one cannot assess its normative superiority simply by examining Germany's state practice. As explained before, Mégret puts forward three normative claims: The 'duty of hospitality' claim, the 'UCJ as integration' claim, and the 'human rights' claim. While one may theoretically attempt to verify the 'UCJ as integration' claim by examining the situation of victim diasporas in individual countries, integration is difficult to measure practically, particularly in short time spans. The Syrian diaspora, which is of interest here, has only resided in Germany for less than a decade, about the same timespan during which Germany has increased its UCJ practice with regards to situations in Syria. Moreover, the 'duty of hospitality' claim cannot be empirically proven, as it stipulates a moral-political duty that rests on abstract concepts of cosmopolitanism. Similarly, the 'human rights' claim rests on a certain con-

100 Considering especially that Germany's approach can hardly be considered all-encompassing. Politically and diplomatically dangerous terrain still remains untouched, with alleged crimes by the United States and United Kingdom in Afghanistan and Iraq lacking prosecution.

101 Krocker (n. 80), 96.

102 Briefing Paper (n. 51), 19.

103 Han (n. 14), 44.

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struction of *international* rules and principles that a single state's practice cannot exhaustively establish.[104]

Therefore, instead of attempting to verify Mégret's normative claims in their entirety, I here consider in what manner they have accompanied the rise of UCJ in German legal and public discourse. Specifically, did relevant actors consider German authorities bound by a duty of hospitality, or did the cosmopolitan or interstate conceptions prevail? The cosmopolitan conception still finds itself at the core of many public commentaries on UCJ proceedings in Germany, as illustrated by the widespread criticism of the lack of outreach activities by German authorities: The ECCHR holds that 'without a link back to the region concerned and without the involvement of the public beyond the Federal Republic of Germany, the goals associated with proceedings under the VStGB cannot be achieved'.[105] Furthermore, legal literature still largely proceeds from the premise that UCJ should be exercised entirely independent of a potential residence of victim diasporas in Germany.[106] The German legal world largely considers UCJ a vehicle for assuming the role of global enforcer.

To some extent, this is mirrored in broader non-legal discourse. The daily *Süddeutsche Zeitung* was amongst the newspapers that extensively covered the al-Khatib trial, publishing a comprehensive report about the trial's legal and factual background. It justified UCJ as a cosmopolitan construct that simply allows prosecution of the most heinous crimes by any state.[107] However, the report then goes on to explain the story of Anwar al-Bunni, a Syrian human rights lawyer who was 'menaced, beaten and almost killed' in a Syrian prison in 2006:[108] After having fled from Syria to Germany, al-Bunni recognised Anwar R. as the colonel of the Syrian Security Services who had in fact abducted him to that prison. The newspaper stresses that today al-Bunni spends his time lending support to the ECCHR in the al-Khatib trial and other proceedings concerning the situation in Syria, by searching for witnesses and evidence.[109] This report stands exemplary for the growing public

104 Certainly, however, one could consider German rhetoric regarding a potential human right to justice for victims an expression of opinio juris, if delivered by German authorities. However, the 'no safe haven' and 'global enforcer' conceptions still very much dominate official manifestations regarding universal jurisdiction, cf. below.

105 Krocker (n. 80), 103.

106 See merely Kai Ambos, 'Vorbemerkung zu § 3' in: Wolfgang Joecks and Klaus Miebach (eds), *Münchener Kommentar zum Strafgesetzbuch* (4th edn, Munich: C.H. Beck 2020), para. 46; on the other hand, Baier (n. 61) recognising the importance of victim diasporas.

107 Lena Kampf and Ronen Steinke, 'Der Prozess', Süddeutsche Zeitung (17 April 2020).

108 Kampf and Steinke (n. 107), translation by author.

109 The report also tells the story of Hussein Ghrer, who was also imprisoned in al-Khatib and today acts as a joint plaintiff in the al-Khatib trial.

recognition of the active role that specifically Syrian diasporas play in UCJ proceedings conducted in Germany.[110] It appears that, analogously to the integration of Syrian migrants after 2015/2016 and the rise of cases concerning situations in Syria, public discourse has discovered the tragedy of victims' encounter with their former perpetrators in refugee accommodations or even public spaces.[111]

On the other hand, the notion of 'global enforcer' still very much dominates German public discourse, which appears to refute the hospitality conception's relevance. Rarely do public figures speak of a *duty* towards victim diasporas when considering Germany's UCJ trials. Instead, they usually refer to ideals of cosmopolitan justice. While victim communities do play a role as supposed beneficiaries of UCJ proceedings, the victim *diaspora* does not surface as the primary holder of rights to whom the host state owes the exercise of UCJ.[112] Concerning the al-Khatib trial, most actors understand it as a necessary first step to hold the Assad regime accountable[113] and establish sexualised violence as an international crime against humanity.[114] Very few perspectives make explicit the role of victim diasporas as normatively relevant. Among these is the perspective of victims themselves, those who found a home in Germany and are actively involved in UCJ trials. For example, Wassim Mukdad, a witness in the al-Khatib trial, explicitly mentions the importance of the trial for Syrian

110 Christian Rath, 'Wider die Straflosigkeit', Legal Tribune Online (26 September 2019): 'Zum anderen kamen mit der Fluchtbewegung ab 2013 viele Opfer […] entsprechender Verbrechen nach Deutschland'; see also Joud Al-Hassan, 'Aus der Folterkammer in den Gerichtssaal – Joud Al-Hassan über den Koblenzer Prozess gegen syrische Geheimdienstmitarbeiter', Rosa Luxemburg Stiftung (23 June 2021).

111 In a similar vein, Beate Rudolph holds that the role as joint plaintiffs gives victims the opportunity to become active themselves and act, illustrating UCJ's emancipatory potential, Rath (n. 110); cf. also the online discussion organised by Heinrich-Böll-Stiftung, 'Strafverfolgung ohne Grenzen – Gerechtigkeit für Völkerrechtsverbrechen vor deutschen Gerichten', 12 November 2020, available at <https://voelkerrechtsblog.org/strafverfolgung-ohne-grenzen-gerechtigkeit-fuer-voelkerrechtsverbrechen-vor-deutschen-gerichten/>.

112 See Antonia Klein in an interview for *Völkerrechtspodcast* arguing that al-Khatib and similar trials should above all serve the Syrian community as a whole, whether located in Germany, Europe, or in Syria, available to listen at Philipp Eschenhagen, Sophie Schubert, Isabel Lischewski and Erik Tuchtfeld, '#11 Weltrechtsprinzip: Von Damaskus bis nach Koblenz', Völkerrechtsblog, (5 November 2021).

113 Claudia Roth who was at the time Vice President of the German Parliament considered the trial to be a sign that the international community would not tolerate crimes committed in Syria and would stand by the people of Syria, cf. Amelie Kaufmann, 'Der Al-Khatib-Prozess zeigt, was die Justiz noch lernen muss', Legal Tribune Online (14 November 2020).

114 See e. g. Lina Schmitz-Buhl, 'Missing Perspectives – Understanding the Accountability Gap for Enforced Disappearances in the Al-Khatib Trial and Beyond', Völkerrechtsblog (30 August 2021).

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communities in Germany along with Syrian communities in other European states and in Syria.[115]

While not representative of overall public discourse, this perspective should not be put off and does indicate the discursive relevance of the hospitality conception, however small it may still be in Germany.

IV. Conclusion

While the hospitality conception initially appeared irrelevant as a descriptive theory regarding the beginnings of Germany's exercise of UCJ, it has now evolved towards a powerful theoretical framework to understand the agency of victims in UCJ proceedings in Germany. This evolution primarily rests on the significant rise in UCJ cases concerned with situations in Syria, coinciding with the emergence of a large Syrian diaspora after 2015. The Syrian diaspora plays an important role in shaping UCJ proceedings in Germany. Whether or not this would establish sufficient state practice to inform a potential rule of customary international law, one cannot say with certainty. Yet, the picture shows a clear tendency for German authorities to effectively enact UCJ in cases where victim diasporas are present on German territory and push for prosecution, in one way or the other.

However, the hospitality conception has yet to reach German legal scholarship and larger public discourse to be considered a relevant normative framework for its exercise of UCJ. At this point, the hospitality conception cannot be understood to form the predominant normative understanding of UCJ in Germany. While in practice victim diasporas are often involved in UCJ proceedings to some extent or another, the authorities still only recognise them as helpful in the technical implementation of proceedings, not so much as the ultimate holder of rights who can demand the exercise of UCJ. Accordingly, German authorities do not consider themselves bound by a *duty* of hospitality towards victim diasporas.

The dual foundation thesis put forward by Yuna Han might be more sensitive to this normative prevalence of the cosmopolitan conception. While in practice Germany very much responds to victim diasporas,[116] it still considers its normative role to be a global enforcer under cosmopolitan ideals. This somewhat corresponds to the dual foundation thesis, which justifies UCJ by resorting to the cosmopolitan conception combined with

115 See the video of Heinrich-Böll-Stiftung (n. 111), at min. 26:43.

116 This result also conforms to Hovell's claim that victim communities are the main agents of UCJ, Hovell (n. 31), 449.

the normative promise of a (new) political bond between host state and victim diasporas. The dual foundation thesis does not reject the normative arguments put forward by the hospitality conception, rather it integrates them into a wider framework, literally grounding the exercise of UCJ on a dual foundation.

While the dual foundation thesis may partly explain Germany's current normative sentiments, this article's analysis illustrates the hospitality conception's overall descriptive advantages when it comes to Germany. In practice, it is not the cosmopolitan ideals, invoked publicly to justify intervention, but the agency of victim diasporas that appears to be the decisive factor for increased UCJ activity in Germany.

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