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No Safe Haven, Harmonized: Toward Streamlined U.S. Government Coordination in Atrocity Crimes Prosecutions

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NO SAFE HAVEN, HARMONIZED:  
TOWARD STREAMLINED U.S. GOVERNMENT  
COORDINATION IN ATROCITY CRIMES PROSECUTIONS

Nicolas Friedlich

ABSTRACT

Beginning in 1998, the United States Congress has slowly assembled a Title 18 statutory scheme to criminally prosecute perpetrators of atrocity crimes. These crimes range from the commission of genocide, war crimes, torture, female genital mutilation, and the employment of child soldiers. In the thirty-six years that have followed, the United States has only won two convictions under the scheme—with the second coming in April 2024. The United States has not advanced charges under various statutes, including for genocide, female genital mutilation, and the use of child soldiers. Nonetheless, between December 2023 and December 2024, Attorney General Merrick Garland announced new war crimes and torture charges against Russian and Syrian nationals, including the first war crimes charges in U.S. history.

Critics of the U.S. approach to atrocity crimes prosecutions are legion. Yet, this Article argues that their focus—largely on statutory lacunae and issues of interpretation—miss a larger point. The United States currently possesses the tools, expertise, and legal capacity to prosecute a far greater number of atrocity perpetrators. The problem lies not in the statutes themselves but in the administrative apparatus that the executive branch has erected to investigate potential atrocity criminals.

This Article will examine the current atrocity crimes architecture in the United States to identify a number of limitations. It will then deploy salient features of the French and German approaches to investigating atrocity crimes to identify areas of reform. Finally, the Article will conclude by offering three recommendations to improve

the U.S. atrocity crimes model. These recommendations will center on clarifying the interagency roles within the Human Rights Violators and War Crimes Center, strengthening information sharing with internal and external U.S. government stakeholders, and rolling back a complex system of agency prior approvals that hamstring efficient prosecutions and create bottlenecks.

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TABLE OF CONTENTS

INTRODUCTION ..... 161

I. THE UNITED STATES ATROCITY CRIMES PROSECUTION MODEL ..... 166

    A. The Centrality of Immigration to the U.S. Model’s Structure..... 167

    B. Information Sharing: The Importance of Interagency Dialogue ... 170

    C. Multilateral Evidence Sharing: The Lack of a Formalized Framework..... 172

    D. Prior Approvals Present Barriers to Efficient U.S. Prosecutions... 173

II. THE GERMAN ATROCITY PROSECUTIONS MODEL..... 175

    A. Structural Investigations..... 177

    B. The Centralization of the German Model..... 178

    C. Evidence Collection and Operational Information Sharing through Eurojust ..... 179

    D. Civil Society and Use of the Criminal Complaint..... 180

III. THE FRENCH ATROCITY CRIMES PROSECUTION MODEL ..... 181

    A. Centralization and Coordination within the Counterterrorism Office ..... 181

    B. Civil Society Participation via Official Party Status ..... 182

IV. RECOMMENDATIONS FOR THE U.S. ATROCITY CRIMES MODEL ..... 183

    A. Recommendation One: Congress should codify the Human Rights Center to centralize authority for atrocity crimes investigations, clarify interagency duties, and enshrine a path for NGO participation..... 183

    B. Recommendation Two: The Human Rights Center should formalize

multilateral evidence-sharing partnerships and pursue structural investigations to proactively target regions that may produce human rights offenders. ....	185
C. Recommendation Three: The DOJ should roll back prior approval barriers that preclude the timely progression of atrocity crime investigations.....	186
CONCLUSION.....	187

*“I would close with this. Our credibility on this issue depends on results.”*<sup>1</sup>

Senate Judiciary Committee Chair Dick Durbin (D-IL)  
Senate Judiciary Committee Hearing, September 28, 2022

*“When human lives are endangered, when human dignity is in jeopardy, national borders and sensitivities become irrelevant. Wherever men or women are persecuted because of their race, religion, or political views, that place must—at that moment—become the center of the universe.”*<sup>2</sup>  
Elie Wiesel  
Nobel Peace Prize Acceptance Speech, December 10, 1986

INTRODUCTION

Over the last thirty-six years, the United States has constructed a statutory scheme to prosecute perpetrators of atrocity crimes. Congress has enacted federal statutes to prosecute those who perpetrate, aid, abet, or conspire to engage in genocide,<sup>3</sup> war crimes,<sup>4</sup> female genital mutilation,<sup>5</sup> the recruitment or use of child soldiers,<sup>6</sup> and torture.<sup>7</sup> Yet, despite having statutory footing in place for decades, the United States has only won two convictions under the scheme: on torture charges against American citizens Roy Belfast, Jr. (Chuckie Taylor), the son of Liberian President Charles Taylor in 2008,<sup>8</sup> and Ross Roggio, a

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1. *From Nuremberg to Ukraine: Accountability for War Crimes and Crimes Against Humanity*: Hearing Before the S. Comm. On the Judiciary, 117th Cong. 22–23 (2022) (statement of Sen. Durbin, Chair, S. Comm. on the Judiciary).

2. Elie Wiesel, *Acceptance Speech*, THE NOBEL PRIZE (1986), <https://www.nobelprize.org/prizes/peace/1986/wiesel/acceptance-speech/>.

3. See 18 U.S.C. §§ 1091; 1093.

4. See 18 U.S.C. § 2441.

5. See 18 U.S.C. § 116.

6. See 18 U.S.C. § 2442.

7. See 18 U.S.C. §§ 2340–2340A.

8. See Press Release, U.S. Dep’t. of Just., Off. of Pub. Affs., “Roy Belfast Jr., A/K/A Chuckie Taylor, Sentenced on Torture Charges,” (Jan. 9, 2023), <https://www.justice.gov/opa/pr/roy-belfast-jr-aka-chuckie-taylor-sentenced-torture-charges>.

Pennsylvania resident who tortured an Estonian citizen in the north of Iraq in May 2023.<sup>9</sup> More frequently, the United States pursues deportation or removal proceedings when confronted with perpetrators of atrocity crimes.<sup>10</sup>

Following Russia's full-scale invasion of Ukraine in February 2022 and the unearthing of a slew of alleged Russian-perpetrated war crimes,<sup>11</sup> commentators began to call for renewed focus on U.S. domestic prosecutions for atrocity crimes. Many of these calls centered on amending Title 18 criminal statutes to confer broader jurisdictional reach to U.S. Department of Justice (DOJ) prosecutors. Civil society and Biden Administration officials called upon Congress to amend the War Crimes Act to provide for "present-in" jurisdiction.<sup>12</sup> Under this jurisdictional theory, those "present" in the United States can be prosecuted for war crimes without the crime carrying any other nexus to the United States.<sup>13</sup> Congressional attention came to a head in September 2022 when the Senate Judiciary Committee identified key jurisdictional holes.<sup>14</sup> Further, Senate Judiciary Chairman Dick Durbin called for the United States to begin showing "results"<sup>15</sup> under these atrocity statutes to bolster its global credibility.

Responding to these concerns, Congress passed the Justice for Victims of War Crimes Act (War Crimes Act) in January 2023.<sup>16</sup> The War Crimes Act amended 18 U.S.C. § 2441 to empower the DOJ to bring charges against *any* war crimes perpetrator found present in the United States. In addition, the DOJ stood up a War Crimes Accountability Team, led by DOJ veteran Eli Rosenbaum, to advance the DOJ's efforts to hold accountable those who have committed war

9. See Press Release, U.S. Dep't of Just., Off. of Pub. Affs., "Pennsylvania Man Sentenced to Prison for Torture and Illegally Exporting Weapons Parts and Related Services to Iraq," (Apr. 15, 2024), <https://www.justice.gov/opa/pr/pennsylvania-man-sentenced-prison-torture-and-illegally-exporting-weapons-parts-and-related>.

10. This Article will use "atrocity crimes" to refer to all five of the substantive human rights crimes codified in U.S.C. Title 18.

11. *From Nuremberg to Ukraine: Accountability for War Crimes and Crimes Against Humanity: Hearing Before the S. Comm. On the Judiciary*, 117th Cong. 22–23 (2022) (statement of Eli Rosenbaum, Counselor for War Crimes Accountability, U.S. Department of Justice).

12. Michel Paradis, *The Need for Urgency in Closing the War Crimes Act's Loopholes*, JUST SEC., (Apr. 14, 2022), <https://www.justsecurity.org/81094/the-need-for-urgency-in-closing-the-war-crimes-acts-loopholes/>.

13. *Id.*

14. See *id.*

15. *From Nuremberg to Ukraine: Accountability for War Crimes and Crimes Against Humanity: Hearing Before the S. Comm. On the Judiciary*, 117th Cong. 22–23 (2022) (statement of Sen. Durbin, Chair, S. Comm. on the Judiciary).

16. *The Justice for Victims of War Crimes Act*, 117 AM. J. INT'L L. 358, 358 (2023).

crimes in Ukraine.<sup>17</sup> In a breakthrough, Attorney General Merrick Garland announced on December 6, 2023, that the DOJ had charged four Russian nationals with war crimes, the first indictment under the War Crimes Act in U.S. history.<sup>18</sup>

DOJ has also begun to bring charges against officials complicit in the myriad human rights abuses of the recently deposed Bashar al-Assad regime in Syria. In December 2024, DOJ announced both torture<sup>19</sup> and war crimes<sup>20</sup> charges former officials of the Assad regime. DOJ's unsealing of war crimes charges against two former high-ranking Assad regime officials represented the second time in one year that DOJ had brought war crimes charges.<sup>21</sup> These charges are significant developments given that before 2023, DOJ had not brought war crimes charges since the War Crimes Act came into force in 1996.

While bringing the first war crimes charges in U.S. history and codifying present-in jurisdiction under the War Crimes Act are major steps forward, the U.S. government still lacks an effective organizational model to efficiently pursue these cases. Yet, most critics of the U.S. atrocity crimes model have focused on its statutory limits.<sup>22</sup> These arguments hone in on jurisdictional gaps and loopholes across the Title 18 criminal code that prevent atrocity prosecutions from moving forward.<sup>23</sup> Even before the Russian invasion, critics alleged that the

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17. See *Human Rights and Special Prosecutions Section (HRSP)*, U.S. DEP'T OF JUST., <https://www.justice.gov/criminal/criminal-hrsp> (Aug. 21, 2023); Press Release, Attorney General Merrick Garland, U.S. Dep't of Just., Off. of Pub. Affs. (Dec. 22, 2022), <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-statement-passage-justice-victims-war-crimes-act>.

18. See Press Release, U.S. Dep't. of Just., Office of Pub. Affs., Four Russia-Affiliated Military Personnel Charged with War Crimes in Connection with Russia's Invasion of Ukraine, (Dec. 6, 2023),

<https://www.justice.gov/opa/pr/four-russia-affiliated-military-personnel-charged-war-crimes-connection-russias-invasion>.

19. See Press Release, U.S. Dep't of Just., Office of Pub. Affs., Former Syrian Prison Official Charged with Torture, (Dec. 12, 2024), <https://www.justice.gov/opa/pr/former-syrian-prison-official-charged-torture>.

20. See Press Release, U.S. Dep't of Just., Office of Pub. Affs., Criminal Charges Unsealed Against Two Former High-Ranking Syrian Government Intelligence Officials for War Crimes against Americans and Other Civilians, (Dec. 9, 2024), <https://www.justice.gov/opa/pr/criminal-charges-unsealed-against-two-former-high-ranking-syrian-government-intelligence>.

21. See *id.*

22. See, e.g., Jeremy Gutner, *How to Get Away with Crimes Against Humanity: The Statutory Gap in U.S. Law*, JUST SEC. (Sept. 8, 2023), <https://www.justsecurity.org/88084/how-to-get-away-with-crimes-against-humanity-the-us-statutory-gap/>.

23. See, e.g., Beth Van Schaack, *Crimes Against Humanity: Repairing Title 18's Blind Spots*, in ARCS OF GLOBAL JUSTICE 341, 342 (Margaret M. de Guzman & Diane Marie Amann eds., 2018) (commenting on the Title 18 gaps that preclude more effective prosecutions, including the jurisdictional gap in the War Crimes Act, the lack of a crimes against humanity statute, and the lack of command responsibility as a distinct modality of liability); Douglass Cassel, *The ICC's New*

statutes lack sufficient jurisdictional reach.<sup>24</sup> For example, some atrocity statutes, like those criminalizing torture or the recruitment of child soldiers, only confer jurisdiction to federal prosecutors when U.S. nationals are the perpetrators of the crime, not the victim. Many critics believe this hampers the DOJ's ability to adequately enforce the atrocity statutes when U.S. victims are harmed.<sup>25</sup> Another set of critics argues for the enactment of a Title 18 crimes against humanity statute.<sup>26</sup> While Senator Durbin proposed a bipartisan crimes against humanity statute in 2009, the bill never passed the Senate.<sup>27</sup>

While statutory reform under the War Crimes Act represents a salutary first step, these critics miss a larger point. The United States currently possesses the necessary statutory authority and expertise to bring atrocity charges at a much more frequent rate. Certainly, new statutory fixes would further fortify human rights prosecutors' capacity to bring charges. However, critics have largely avoided analyzing the organizational barriers that prevent efficient prosecutions. Rather than focus on statutory language, this Article argues that the "whole-of-government" approach to atrocity crime enforcement, chaired by the Human Rights Violators and War Crimes Center (Human Rights

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*Legal Landscape: The Need to Expand U.S. Domestic Jurisdiction to Prosecute Genocide, War Crimes and Crimes Against Humanity*, 23 FORDHAM INT'L L. J. 378, 380 (1999), [https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1618&context=law\\_faculty\\_scholarship](https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1618&context=law_faculty_scholarship) (arguing that the United States trails behind other democracies due to gaps in its Title 18 criminal code); TRIAL INT'L, UNIV. JURIS.: LAW AND PRACTICE IN THE UNITED STATES (2022), <https://trialinternational.org/wp-content/uploads/2022/05/UJ-USA-1.pdf> (surveying the current constellation of atrocity crimes statutes and their jurisdictional deficiencies, such as with 18 U.S.C. 1091 and the high evidentiary showing required to win a conviction and the late 2007 adoption of present-in jurisdiction).

24. See, e.g., Elise Baker, *Closing the Impunity Gap for War Crimes*, JUST SEC. (Jan. 12, 2023), <https://www.justsecurity.org/84737/closing-the-impunity-gap-for-war-crimes/> (arguing that the United States should amend the jurisdictional ambit of its war crimes prosecutions under 18 U.S.C. § 2441, as well as focus on strengthening the political will to prosecute and mechanisms to share evidence with partner countries); David Scheffer, *Closing the Impunity Gap in U.S. Law*, 8 NW. J. INT'L HUM. RTS. 30, 31–32 (2009).

25. See *id.*

26. *Pursuing Accountability for Atrocities: Hearing Before the Tom Lantos Hum. Rts. Comm.*, 116th Cong. 4–6 (2019) (statement of Prof. Beth Van Schaack, Professor of Law, Stanford University), <https://www.uscirf.gov/sites/default/files/Beth%20Van%20Schaack-%20Lantos%20June%202019.pdf>.

27. Press Release, Sen. Durbin, Durbin, Leahy, and Feingold Introduce Legislation Making Crimes Against Humanity A Violation Of US Law, (June 24, 2009), <https://www.durbin.senate.gov/newsroom/press-releases/durbin-leahy-and-feingold-introduce-legislation-making-crimes-against-humanity-a-violation-of-us-law>; *From Nuremburg to Darfur: Accountability for Crimes Against Humanity: Hearing Before the Subcomm. on Hum. Rts. and the Law of the S. Comm. on the Judiciary*, 110th Cong. (2008), <https://www.govinfo.gov/content/pkg/CHRG-110shrg48219/html/CHRG-110shrg48219.htm>.

Center), requires substantial reform to realize its mission of transparent, efficient human rights investigations and prosecutions.<sup>28</sup>

This Article will first examine the major structural limitations of the U.S. atrocity crimes model. The U.S. model empowers Immigration and Customs Enforcement (ICE) to lead the Human Rights Center's whole-of-government approach to enforcing atrocity crimes statutes. ICE's historic—and publicly stated—focus on pursuing immigration and removal proceedings often comes at the expense of the DOJ's capacity to bring substantive atrocity charges. As a result, more than fifteen years after standing up the Human Rights Center, the U.S. model remains hampered by an immigration centered approach to prosecutions, inadequate information sharing across agencies, opaque evidence collection mechanisms, and several bureaucratic barriers.

After describing the U.S. model, this Article will highlight how France and Germany have modified their approach to atrocity crimes to bring charges more efficiently. Both France and Germany have taken important steps toward evidence sharing, structural investigations, and centralized organization that will prove instructive for future streamlining of the U.S. approach. Importantly, by empowering their human rights prosecutors to take the lead in commanding atrocity investigations, France and Germany have created systems that prioritize substantive criminal offenses over subsidiary immigration charges.

Finally, by reviewing the features of the French and German models, this Article will conclude by providing recommendations to address the current model's limits by examining the (I) organizational, (II) evidentiary, and (III) procedural barriers that have prevented the government from charging suspects.

First, the United States should codify the Human Rights Center to clarify institutional roles, enhance interagency evidence sharing, and enable greater input from criminal law experts to determine when substantive atrocity charges are appropriate. Second, the United States should formalize evidence sharing partnerships in regions where a significant number of atrocity perpetrators reside, enabling investigations to efficiently collect the evidence needed for probable cause determinations. Third, the United States should amend the DOJ Justice Manual to reduce the number of prior approvals by agency leadership

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28. See HUMAN RIGHTS VIOLATORS AND WAR CRIMES CENTER, FISCAL YEAR 2022 REPORT TO CONGRESS 3 (2022), <https://www.dhs.gov/sites/default/files/2022-12/ICE%20-%20Human%20Rights%20Violators%20and%20War%20Crimes%20Center.pdf>; Madison P. Bingle, Comment, *Holes in the United States' 'Never Again' Promise: An Analysis of the DOJ's Approach Toward Atrocity Accountability*, 73 ADMIN. L. REV. 869, 883 (2021).



and procedural barriers that hamstring prosecutions from proceeding more quickly. The number of prerequisite approvals significantly delays prosecutors' ability to bring charges and tilts the scale toward an immigration centered approach, which, comparatively, requires few, if any, prior approvals throughout the interagency.<sup>29</sup>

## I. THE UNITED STATES ATROCITY CRIMES PROSECUTION MODEL

The United States took its first steps toward accountability for atrocity crimes in 1979 when Attorney General Benjamin Civiletti ordered the creation of a special division within the DOJ, the Office of Special Investigations (Special Investigations).<sup>30</sup> The Attorney General empowered Special Investigations to pursue denaturalization and deportation for any Nazi or Nazi affiliate found within the United States.<sup>31</sup> Because the United States had not yet passed any substantive atrocity statutes, Special Investigations could only pursue civil immigration actions against Nazis found within the United States.<sup>32</sup> Between 1979 and 2009—for thirty years—Special Investigations was the only unit within the U.S. government tasked with investigating human rights violators, albeit for civil charges. Over that period, as humanitarian conflicts proliferated across the globe, concern grew that human rights violators were fleeing to the United States to find a safe haven where they would not be prosecuted for the substantive crimes that they had committed.<sup>33</sup>

To address the possibility that human rights violators who immigrate to the United States would not be held accountable, the United States took two key steps. First, in 2008, the United States charged a division of ICE with leading the Human Rights Center—an association of various federal offices empowered to “identify, locate, prosecute, and remove human rights abusers and war criminals from the United States” as part of a whole-of-government approach.<sup>34</sup> Second, Congress passed the Human Rights Enforcement Act of 2009.<sup>35</sup> The Act officially

29. *See id.* at 883, 878.

30. *See* Eli M. Rosenbaum, *An Introduction to the Work of the Office of Special Investigations*, 54 U.S. Att'ys' Bull. 1, 2 (Jan. 2006), U.S. Dep't of Just., Just. Manual § 9–73.000 (2018), <https://www.justice.gov/sites/default/files/usao/legacy/2006/02/14/usab5401.pdf>; Office of the Attorney General, Order No. 851–79 (Sept. 4, 1979).

31. *See id.*

32. *Id.*

33. Annie Hylton, *How the U.S. Became a Haven for War Criminals*, NEW REPUBLIC (Apr. 29, 2019), <https://newrepublic.com/article/153416/us-became-haven-war-criminals>.

34. *See* HUMAN RIGHTS VIOLATORS AND WAR CRIMES CENTER, *supra* note 28, at ii.

35. *See* Human Rights Enforcement Act of 2009, Pub. L. No. 111–122, 123 Stat. 3480 (2009), <https://www.govinfo.gov/app/details/PLAW-111publ122>.

established a permanent division of expert human rights and criminal prosecutors within the DOJ to investigate atrocity crimes: the Human Rights and Special Prosecutions Section.<sup>36</sup> As of 2017, these DOJ human rights prosecutors now sit as one of more than ten component units within the Human Rights Center interagency system.<sup>37</sup>

ICE's special divisions that administer the Human Rights Center command a massive global architecture, with a network of agents, investigators, and law enforcement officials. As the lead agency, ICE directs personnel distributed across 67 attachés offices across the globe.<sup>38</sup> The Human Rights Center also maintains four regional teams to devote specific attention to violators who may arrive from particular geographic regions of the world.<sup>39</sup>

The Human Rights Center has been operational for almost fifteen years. However, its approach has not shed the United States' immigration centered focus that defined the early period of U.S. human rights enforcement: charging Nazi war criminals with immigration fraud or otherwise deporting them. To date, ICE has deported almost one thousand alleged violators to their respective home countries.<sup>40</sup>

There are four key reasons for the U.S. model's sparse record of winning atrocity crimes convictions. First, the organizational structure of the U.S. model is centered on immigration and initiating removals of alleged violators wherever possible. This top-down focus on immigration involves prioritizing resources to expedite removals and deportations, at the expense of pursuing substantive criminal prosecutions. Second, the U.S. model does not allow for fluid interagency information sharing among the many component units of the Human Rights Center. Third, the Human Rights Center does not provide a multilateral evidence-sharing framework with other states. Fourth, a complex system of prior approvals from DOJ leadership hampers the flow of atrocity cases and creates bottlenecks at important junctures in the investigatory process.

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36. *Id.*

37. See HUMAN RIGHTS VIOLATORS AND WAR CRIMES CENTER, *supra* note 28, at 4.

38. See *Operation No Safe Haven, U.S. Immigration & Customs Enforcement* (2019), <https://www.ice.gov/features/no-safe-haven-2019>; *No Safe Haven, Human Rights Violators and War Crimes Center* (2021), [https://www.floridahealth.gov/programs-and-services/prevention/human-trafficking/\\_documents/Human\\_Rights\\_Interactive.pdf](https://www.floridahealth.gov/programs-and-services/prevention/human-trafficking/_documents/Human_Rights_Interactive.pdf).

39. Regional Support Teams (RSTs) investigate potential human right abusers that may arrive or have arrived in the United States from Latin America, Africa, Europe, Asia and the Middle East. See *No Safe Haven, Human Rights Violators and War Crimes Center*, *supra* note 38.

40. See HUMAN RIGHTS VIOLATORS AND WAR CRIMES CENTER, *supra* note 28.

### A. The Centrality of Immigration to the U.S. Model's Structure

Since 2008, ICE has commanded the Human Rights Center's large interagency system. In total, there are at least ten distinct units within the Human Rights Center's interagency system, representing the Departments of State, Treasury, Justice, Defense, and the Federal Bureau of Investigations (FBI).<sup>41</sup> While the system was designed to provide substantive accountability for victims of the gravest human rights violations, in practice, the vast majority of the Human Rights Center's cases proceed through immigration removal. In administrative removal proceedings, victims are deprived of the critical opportunity to see their perpetrators brought to account for the grave crimes that they have committed.<sup>42</sup> Yet, since 2003, ICE has successfully removed more than 990 potential human rights violators from the United States.<sup>43</sup> While the Human Rights Center states that it can "recommend prosecutions," it also seeks to initiate removal proceedings for potential human rights violators "whenever possible."<sup>44</sup>

Despite scholars' contention that DOJ human rights prosecutors exhibit a preference for bringing immigration related charges, the focus on removal and deportation is more a structural result of ICE's leadership of the Human Rights Center—of which DOJ is just one component. Put differently, the institutional design of how the United States investigates human rights violations creates a system that incentivizes and rewards pursuing immigration offenses.<sup>45</sup>

In its leadership of the Human Rights Center, ICE inaugurated a program termed "No Safe Haven," which focuses on ensuring that alleged violators find no safe harbor through permanently residing within the United States.<sup>46</sup> ICE has informally adopted what it terms the "Al Capone Theory" to its No Safe Haven Campaign.<sup>47</sup> Similar

41. *Id.* at 3–4.

42. See Jamie Rowen & Rebecca Hamlin, *The Politics of a New Legal Regime: Governing International Crime Through Domestic Immigration Law*, 40 LAW & POL'Y 243, 253 (2018) (identifying the inadequacy of administrative removal proceedings when remediating victims of atrocity crimes).

43. Press Release, U.S. IMMIGR. AND CUSTOMS ENFORCEMENT, ICE Arrests 39 Suspected Human Rights Violators Across the US During Operation No Safe Haven V, (Sept. 4, 2019), <https://www.ice.gov/news/releases/ice-arrests-39-suspected-human-rights-violators-across-us-during-operation-no-safe>.

44. See HUMAN RIGHTS VIOLATORS AND WAR CRIMES CENTER, *supra* note 28, at 3.

45. *Id.*

46. See Press Release, Immigr. and Customs Enforcement, ICE arrests 19 fugitives across US during "Operation No Safe Haven," (Sep. 23, 2014), <https://www.ice.gov/news/releases/ice-arrests-19-fugitives-across-us-during-operation-no-safe-haven>; "Operation No Safe Haven," IMMIGR. AND CUSTOMS ENFORCEMENT (2025), <https://www.ice.gov/features/no-safe-haven-2019>.

47. See Rowen & Hamlin, *supra* note 42, at 252; Brian Naylor, *War Criminals Next Door: Immigration Divisions Brings War Criminals to Justice*, NPR (March 26, 2015),

to how the FBI convicted Al Capone for tax fraud—rather than his substantive racketeering and bootlegging crimes<sup>48</sup>—ICE deploys civil case law from past Special Investigations Nazi removal proceedings to marshal fraudulent omissions or misrepresentations on immigration forms to expel atrocity offenders.<sup>49</sup> Rather than bring charges for the substantive atrocity crimes that they have committed, ICE charges violators with fraud—i.e., lying on their immigration applications. ICE’s testimony before Congress on behalf of the Human Rights Center similarly echoes a central focus on initiating removal proceedings for alleged violators. Both through live congressional testimony<sup>50</sup> and in annual reporting,<sup>51</sup> the reports center on the number of human rights violators arrested, deported, denied entry to the United States, or charged with immigration related crimes.<sup>52</sup>

ICE’s decision to pursue denaturalization and removal as opposed to charges for the substantive atrocity crime denies justice for victims of the most serious crimes.<sup>53</sup> Removal through immigration prevents victims of atrocity crimes with the opportunity to see their perpetrators brought to account at trial, with the ability to publicly testify to the

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<https://www.npr.org/sections/itsallpolitics/2015/03/16/393404632/war-criminals-next-door-immigration-division-brings-violators-to-justice>.

48. See Gabriel Mendlow, *Divine Justice and the Library of Babel: Or, Was Al Capone Really Punished for Tax Evasion?*, 16 OHIO ST. J. CRIM. L. 181, 191 (2018); *Al Capone*, FED. BUR. OF INVEST., <https://www.fbi.gov/history/famous-cases/al-capone>.

49. See Rowen & Hamlin, *supra* note 42; Naylor, *supra* note 47.

50. U.S. IMMIGR. AND CUSTOMS ENFORCEMENT, *Statement of John P. Woods, Deputy Assistant Director, National Security Investigations Division, Homeland Security Investigations, U.S. Immigration and Customs Enforcement, before the House Committee on Foreign Affairs, Tom Lantos Human Rights Commission: “No Safe Haven: Law Enforcement Operations Against Human Rights Violators in the U.S.”* (Oct. 12, 2011), <https://www.dhs.gov/news/2011/10/12/statement-record-ice-house-committee-foreign-affairs-hearing-titled-no-safe-haven>.

51. See HUMAN RIGHTS VIOLATORS AND WAR CRIMES CENTER, *supra* note 28.

52. *Id.*

53. See generally Nick Wiley, *Impact Jurisdiction & Structural Investigations: The Key to the United States Prosecuting Human Rights Violators*, 74 HASTINGS L.J. 1251, 1261 (2023) (arguing that criminal immigration charges fails to deter atrocity perpetrators given their comparatively light sentence and that victims are denied justice for the substantive crimes that perpetrators have committed); Katherine Morales, *Breaking the Silence: The Case for a Domestic Crimes Against Humanity Statute*, 31 GEO. IMM. L. J. 389, 390 (2017); Nicholas P. Weiss, *Somebody Else’s Problem: How the United States and Canada Violate International Law and Fail to Ensure the Prosecution of War Criminals*, 45 CASE W. RES. J. INT’L L. 579, 593–94 (2012), (explaining that the United States’ preference for immigration removal or extradition stems from various rationales, such as cost and time effectiveness, but it often denies justice for the substantive, underlying crime itself). In one instance, a scholar cited a case where the Third Circuit confirmed the conviction of a Liberian warlord immigration fraud and perjury, despite having committed “rape, sexual enslavement, slave labor, murder, mutilation, and ritual cannibalism.” *United States v. Jabateh*, 974 F.3d 281, 288 (3d Cir. 2020).

grave abuses that they suffered.<sup>54</sup> Importantly, there is also no guarantee that deportation or removal will *result* in the alleged violator being held accountable in their home country.<sup>55</sup> In fact, previous Assistant Attorney General (AAG) for the Criminal Division David Rybicki testified to Congress in 2019 that the DOJ cannot guarantee that home countries will bring criminal charges against individuals the United States decides to deport.<sup>56</sup> For example, U.S. immigration authorities deported a former Liberian warlord, George Boley, in 2012.<sup>57</sup> Boley was suspected of recruiting child soldiers during the First Liberian Civil War, yet immigration authorities deported him without the assurance that he would stand justice for the substantive atrocity crimes in his native country.<sup>58</sup> Indeed, rather than stand justice for the substantive crime of recruiting child soldiers, Boley was elected to the Liberian House of Representatives in 2017.<sup>59</sup> Whether ICE elects to pursue formal removal proceedings *or* criminal prosecutions on immigration or visa fraud, the critique remains the same: substantive justice has been avoided.

## B. Information Sharing: The Importance of Interagency Dialogue

Despite its emphasis within the counterterrorism context, interagency information sharing remains a central challenge for atrocity crimes prosecutions and within the Human Rights Center. The September 11<sup>th</sup> terrorist attacks revealed how siloing sensitive national security information across the interagency can contribute to catastrophic outcomes.<sup>60</sup> After calls for improved information sharing

54. See Weiss, *supra* note 53; Bingle, *supra* note 28; Rowen & Hamlin, *supra* note 42.

55. See Bingle, *supra* note 28; *Pursuing Accountability for Atrocities: Hearing Before the Tom Lantos Human Rights Commission*, 116th Cong. (2019) 9–10 (statement of Prof. Beth Van Schaack, Professor of Law, Stanford University), <https://www.uscirf.gov/sites/default/files/Beth%20Van%20Schaack-%20Lantos%20June%202019.pdf>.

56. See Bingle, *supra* note 28, at 876.

57. See Press Release, Immigr. and Customs Enforcement, Liberian Human Rights Violator Removed From US, (Mar. 29, 2012), <https://www.ice.gov/news/releases/liberian-human-rights-violator-removed-us>.

58. See Bingle, *supra* note 28, at 893; Rowen & Hamlin, *supra* note 42, at 255.

59. See Gerald Koinyeneh, *Representative George Boley Sues Fellow Lawmaker Dixon Sebo for Damages for Wrong*, FRONT PAGE AFRICA (May 28, 2021), <https://frontpageafricaonline.com/news/liberia-representative-george-boley-sues-fellow-lawmaker-dixon-sebo-for-damages-for-wrong/>.

60. In this instance, the 9/11 Commission determined that various information asymmetries across the U.S. intelligence community had contributed to failed coordination efforts in identifying the preparatory steps taken by the al-Qaeda terrorists. U.S. GOV'T ACCOUNTABILITY OFF., GAO-04-1033(T), 9/11 COMMISSION REPORT: REORGANIZATION, TRANSFORMATION, AND INFORMATION SHARING 416 (2004) [HTTPS://WWW.GAO.GOV/PRODUCTS/GAO-04-1033T](https://www.gao.gov/products/GAO-04-1033T), (noting instances where more fluid communication between intelligence agencies could have better identified preparatory steps that the 9/11 hijackers were taking in the lead up to the attacks).

from civil society and the recommendations from the 9/11 Commission Report,<sup>61</sup> the U.S. government endeavored to address and incorporate key reforms to ensure fluid, real-time information sharing when it came to targeting terrorist activity. In addition to statutory reforms within the USA PATRIOT ACT, the U.S. Department of Homeland Security (DHS) promulgated the National Strategy for Information Sharing in 2007, designed to effectuate many of the central challenges in counterterrorism information sharing within the intelligence community.<sup>62</sup> Since the George W. Bush Administration, a new focus on information sharing—a “need to share” imperative—has endured as a critical aspect of the post-9/11 counterterrorism landscape.<sup>63</sup>

The Human Rights Center was designed to provide a centralized hub across the interagency to enforce the United States’ atrocity crimes statutes and allow component units to share information.<sup>64</sup> Yet, as leaders of the Human Rights Center, ICE has never publicly articulated the *method* it uses to consult its interagency partners.<sup>65</sup> Moreover, ICE has not clarified how or when it chooses to notify the DOJ when it elects to deport an alleged offender.<sup>66</sup> For example, according to its FY 2022 Report, the Human Rights Center noted that it has flagged more than seventy-eight thousand human rights violators globally since 2003.<sup>67</sup> Yet, between 2017 and 2021, the Human Rights Center only opened 126 criminal investigations.<sup>68</sup> Based on these reports, DOJ human rights prosecutors are empowered to begin prosecutions only when ICE chooses to open an investigation and determine a substantive prosecution is preferable to deportation or removal through immigration authorities. Yet, it is unclear if ICE has retained responsibility for those 126 criminal investigations, how ICE determined to escalate a matter to investigation status, and what criteria ICE uses to refer matters to the DOJ.<sup>69</sup>

Despite ICE’s vast organizational resources, discussed *infra*, it has only occasionally allowed for subject matter expert attorneys from the

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61. *See id.*

62. U.S. DEP’T OF HOMELAND SEC., NATIONAL STRATEGY FOR INFORMATION SHARING (2007), [https://www.dhs.gov/sites/default/files/publications/10\\_0924\\_NSI\\_National-Strategy-Information-Sharing.pdf](https://www.dhs.gov/sites/default/files/publications/10_0924_NSI_National-Strategy-Information-Sharing.pdf).

63. *Id.*

64. *See* HUMAN RIGHTS VIOLATORS AND WAR CRIMES CENTER, *supra* note 28.

65. *See* Bingle, *supra* note 28, at 883.

66. *Id.*

67. *See* HUMAN RIGHTS VIOLATORS AND WAR CRIMES CENTER, *supra* note 28.

68. *Id.*

69. *Id.*

DOJ or State Department to be seconded to the Human Rights Center.<sup>70</sup> DOJ's Human Rights and Special Prosecutions section (HRSP) maintains a staff of more than one hundred veteran criminal trial attorneys, subject area specific historians, and legislative experts.<sup>71</sup> Many ICE immigration attorneys are not specialized in the areas of international criminal law or trained to recognize potential markers of an underlying human rights charge when presented with evidence.<sup>72</sup> Moreover, it is unclear if there is an ongoing mechanism for DOJ attorneys to provide their international criminal law expertise across the interagency structure on a regular basis.

### C. Multilateral Evidence Sharing: The Lack of a Formalized Framework

Another principal barrier that U.S. human rights prosecutors face is the efficient collection of evidence, especially in areas of armed conflict where coordination can prove challenging.<sup>73</sup> In atrocity crimes cases, the underlying facts, evidence, and testimony arise from events in foreign countries, with regimes that are potentially hostile to the United States enforcing its criminal laws against their citizens.<sup>74</sup> In a 2019 interview, former DOJ HRSP chief Teresa McHenry explained that evidence sharing frequently presents major logistical hurdles.<sup>75</sup> Importantly, the United States often must rely on Mutual Legal Assistance (MLA) treaties in order to gain access to critical evidence.<sup>76</sup> When access is denied, it can prove particularly challenging for human rights investigators to collect the information they need given the geographic distance to evidence, witnesses, and other materials critical to advancing the prosecution.<sup>77</sup>

The United States does not currently have any permanent multilateral arrangement for evidence sharing for prosecuting atrocity crimes.<sup>78</sup>

70. See Press Release, Immigr. and Customs Enforcement, *supra* note 57.

71. *Id.*; see *Human Rights and Special Prosecutions Section (HRSP)*, *supra* note 17.

72. *Id.*

73. See Joseph Rikhof, *Prosecutors on the Front Line: A Q&A with Teresa McHenry, Head of the Human Rights and Special Prosecutions Section of the U.S. Department of Justice*, QUEEN'S UNIV. (Feb. 13, 2019), <https://globaljustice.queenslaw.ca/news/prosecutors-on-the-front-line-a-qa-with-teresa-mchenry-head-of-the-human-rights-and-special-prosecutions-section-of-the-us-department-of-justice>.

74. *Id.*

75. *Id.*

76. *Id.*

77. See *id.* (explaining that without such cooperation with other countries, there are various logistical hurdles that investigators face in actually traveling in-country to meet with witnesses and collect the evidence they need).

78. See HUMAN RIGHTS VIOLATORS AND WAR CRIMES CENTER, *supra* note 28.



While the Human Rights Center states that it works across forty-eight countries,<sup>79</sup> and DOJ's human rights prosecutors have "developed productive relationships with many foreign counterparts,"<sup>80</sup> there is no permanent multilateral arrangement to ensure the fluid transfer of witness testimony or documentary evidence. Further, the United States has not yet signed the Ljubljana–The Hague Convention, an international treaty inaugurated in 2023 that enables state parties to engage in evidence sharing, joint investigations, and the extradition of atrocity crime suspects.<sup>81</sup> In a recent Human Rights Center Report to Congress, ICE Acting Director Tae Johnson announced new working relationships with the European Genocide Network and within the Five Eyes Alliance—a signals intelligence agreement between the United States, United Kingdom, Canada, Australia, and New Zealand.<sup>82</sup> It will be critical to monitor these new initiatives, given the necessity of collecting evidence in foreign locales to bring atrocity prosecutions.<sup>83</sup>

#### D. Prior Approvals Present Barriers to Efficient U.S. Prosecutions

The DOJ has erected a scheme of prior approvals that inhibit human rights prosecutors from efficiently charging atrocity crimes. Prior approvals are measures the DOJ has put in place to ensure that department leadership, often the AAG, can review and endorse an action that may be particularly sensitive to public policy. So, even in the rare instance that ICE determines that an atrocity matter is apt for the DOJ to consider substantive charges, the pre-indictment procedural process has only just begun.<sup>84</sup> The DOJ must refer to the AAG for the Criminal Division—and often, the Attorney General, as well—to determine when a matter is of *national significance*.<sup>85</sup> This requires close

79. See HUMAN RIGHTS VIOLATORS AND WAR CRIMES CENTER, *supra* note 28.

80. See Rikhof, *supra* note 73.

81. GOV'T OF THE NETHERLANDS, "Convention Signed to Combat International Crime More Effectively," (Feb. 14, 2024), <https://www.government.nl/latest/news/2024/02/14/convention-signed-to-combat-international-crime-more-effectively> (The Ljubljana - The Hague Convention will create a multilateral architecture for countries to support one another by sharing information and evidence to advance atrocity crimes prosecutions); *States Agree New Treaty to Fight Impunity for the Most Serious International Crimes*, REDRESS (2023), <https://redress.org/news/states-agree-new-treaty-to-fight-impunity-for-the-most-serious-international-crimes/>; Fishseha Tekle, *The Ljubljana-The Hague Convention: A step forward in Combating Impunity for Atrocity Crimes*, INT'L L. BLOG (2023), <https://internationallaw.blog/2023/09/18/the-ljubljana-the-hague-convention-a-step-forward-in-combating-impunity-for-atrocity-crimes/>.

82. See HUMAN RIGHTS VIOLATORS AND WAR CRIMES CENTER, *supra* note 28.

83. U.S. Dep't of Just., Just. Manual § 9–2.139 (2023).

84. The DOJ Justice Manual (Justice Manual), § 9–2.139 stipulates a number of notification, consultation, and approval processes in order for any major step of the investigation or prosecution to move forward. *Id.*

85. *Id.*



coordination with officials in the State Department and across the military branches.<sup>86</sup> The standard for national significance is a flexible one: the AAG can reject charges whenever it presents serious countervailing public policy considerations, including whether prosecution would be better served in the country where the events occurred.<sup>87</sup>

Even if the AAG determines that a matter is of national significance, the Justice Manual imposes several other approval requirements at every important stage of the litigation process, including to file a search warrant, material witness warrant, criminal complaint, superseding complaint, dismissal of a charge, or any trial-related document.<sup>88</sup> Moreover, the recent amendments to the War Crimes Act orders that the Attorney General must provide written approval that bringing a charge is in the public interest by consulting with the State and Defense Departments and deploying a complex balancing test.<sup>89</sup>

In many atrocity settings, acting quickly to collect evidence, witness testimony, and other resources is critical to preserving the materials needed to prove a case at trial. Given the threshold challenges in ICE even referring cases to DOJ human rights prosecutors, these prior approvals for atrocity crimes further delay and disincentivize ICE from referring substantive charges against alleged violators to the DOJ. They also enable actors from across the government to air their policy concerns as to whether bringing charges is appropriate. While a deliberative process is important to federal prosecutions, these prior approvals functionally create a complex system of bureaucratic barriers that delay charges from going forward.

This system of robust interagency consultation and prior approvals was on full display at the December 6, 2023, press conference to

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86. The Justice Manual highlights that these statutes concern “issues of national and international concern,” and as such, they require “careful coordination within the Department and senior officials in the foreign affairs and military communities.” *Id.*

87. The standard for national significance is capacious; it enables a finding whenever, *inter alia*, the AAG determines that the matter “presents important public policy considerations . . . [may] set precedent; may have . . . foreign policy implications . . . or is a sensitive case.” U.S. Dep’t of Just., Just. Manual § 9–142.000 (2023).

88. *Id.*

89. The statute holds that “no prosecution for war crimes shall proceed except on non-delegable ‘written certification of the Attorney General, the Deputy Attorney General, or an Assistant Attorney General . . . that a prosecution by the United States is in the public interest and necessary to secure substantial justice.’” Moreover, the AG or AAG should weigh “whether the alleged offender can be removed from the United States for purposes of prosecution in another jurisdiction and potential adverse consequences for nationals, servicemembers, or employees of the United States.” Elise Baker, *Closing the Impunity Gap for War Crimes*, JUST SEC. (Jan. 12, 2023), <https://www.justsecurity.org/84737/closing-the-impunity-gap-for-war-crimes/>.

announce the first war crimes charges brought in U.S. history.<sup>90</sup> There, Attorney General Garland, joined by FBI Director Christopher Wray, and DHS Secretary Alejandro Mayorkas, explained the rigorous inter-agency collaboration that informed the decision to bring the United States' first war crimes charges against four Russian nationals for their torture of a U.S. citizen in Ukraine.<sup>91</sup> Certainly, policy approvals and equity sharing are important to ensure the United States does not bring charges when there could be significant geopolitical blowback. Moreover, this was the United States' first war crimes charge, and there is reason to commemorate the event with media attention and to ensure that the decision is supported across the interagency. However, every substantive atrocity prosecution cannot proceed efficiently if every, even minor, decision throughout the investigation is subjected to such a rigid system of prior approvals and scrutiny.<sup>92</sup> To that end, the German model presents a strong counterexample of how more efficient, streamlined prosecutions might proceed.

## II. THE GERMAN ATROCITY PROSECUTIONS MODEL

Germany has become the high watermark for winning atrocity convictions in recent years under various jurisdictional theories.<sup>93</sup> There are four key features of the German approach that have enabled it to maintain a successful atrocity crimes record. First, Germany deploys a proactive, structural approach to investigating countries where atrocity crimes are rampant. Second, Germany's model is centralized, allowing the Federal Prosecutor General—with international criminal law expertise—to command the direction of investigations. Third, Germany participates in a formal multilateral evidence-sharing framework, Eurojust, which provides easy access to critical evidence. Fourth, Germany encourages Non-Governmental Organizations (NGOs) to formally file criminal complaints, evidence, and testimony on behalf of victims throughout the lifecycle of a litigation.

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90. See Press Release, U.S. Dep't. of Just., *supra* note 19.

91. *Id.*; See Scott R. Anderson & Natalie K. Orpett, *A Historic War Crimes Prosecution—With More to Come*, *LAWFARE* (Dec. 6, 2023), <https://www.lawfaremedia.org/article/a-historic-war-crimes-prosecution-with-more-to-come> (describing the novelty of the United States' filing the first war crimes charges in its history against four Russian nationals).

92. Anderson & Orpett, *supra* note 91.

93. Cristian González Cabrera & Patrick Kroker, *A Congo War Crimes Decision: What It Means for Universal Jurisdiction Litigation in Germany and Beyond*, *JUST SEC.* (Jan. 11, 2009), <https://www.justsecurity.org/62194/congo-war-crimes-decision-means-universal-jurisdiction-litigation-germany/>.

In 2002, Germany codified its international criminal code, the *Völkerstrafgesetzbuch* (VStGB) (“Code of Crimes against International Law”).<sup>94</sup> To realize its obligations under the Rome Statute, the Code of Crimes criminalizes genocide, crimes against humanity, and war crimes.<sup>95</sup> To enforce the Code, Germany provides its federal prosecutors with wide jurisdictional latitude, even to pursue charges that “bear no relation to Germany.”<sup>96</sup> Moreover, in contrast to the U.S. model, German federal prosecutors are less sensitive to concerns of ensuring that the state where the offender committed the crimes—the “territorial state”—should be provided every ability to prosecute the charge within its borders.<sup>97</sup> In this way, Germany can exercise jurisdiction without deferring to the territorial state’s capacity to prosecute for the same crime.<sup>98</sup>

Underscoring the heightened importance of atrocity crimes, Germany’s Constitution, or *Grundgesetz*, carves out special responsibility in art. 96 for the prosecution of both terrorism and international crimes at the federal level.<sup>99</sup> The exclusive unit charged with prosecuting these crimes is the Federal Prosecutor General or *Generalbundesanwalt*.<sup>100</sup> When the Prosecutor General determines that a potential atrocity crime should be investigated, she will delegate authority to a special police division: the *Zentralstelle für die Bekämpfung von Kriegsverbrechen* or ZBKV.<sup>101</sup> The ZBKV may only initiate investigations when the Prosecutor General deems it appropriate.<sup>102</sup> Moreover, the Prosecutor General can file indictments in State Security Panels, or *Staatsschutzensenate*, which are expertly equipped to adjudicate international atrocity crimes.<sup>103</sup>

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94. *Völkerstrafgesetzbuch* [International Criminal Code, VStGB] [Ger.] (2023), translation at <https://www.gesetze-im-internet.de/vstgb/BJNR225410002.html>.

95. *Id.*

96. *Id.*

97. See HUM. RTS. WATCH, THE LONG ARM OF JUSTICE: LESSONS FROM SPECIALIZED WAR CRIMES UNITS IN FRANCE, GERMANY, AND THE NETHERLANDS 51 (2014), <https://www.eurojust.europa.eu/sites/default/files/assets/2014-hrw-long-arm-of-justice-report.pdf>.

98. *Id.*

99. Christoph Safferling & Gorgen Petrossian, *Universal Jurisdiction and International Crimes in German Courts – Recent Steps Towards Exercising the Principle of Complementarity after the Entry into Force of the Rome Statute*, 11 EUR. CRIM. L. R. 242 (2021).

100. *Id.*

101. See TRIAL INT’L, UNIVERSAL JURIS. LAW AND PRACTICE IN GER. (2019), <https://trialinternational.org/wp-content/uploads/2020/05/Universal-Jurisdiction-Law-and-Practice-in-Germany.pdf>.

102. *Id.*

103. See Safferling & Petrossian, *supra* note 99.

Since 2014, Germany has successfully won convictions on the following range of international atrocity crimes: mutilation,<sup>104</sup> torture,<sup>105</sup> the enlisting of child soldiers,<sup>106</sup> sexual violence and slavery,<sup>107</sup> genocide,<sup>108</sup> crimes against humanity,<sup>109</sup> and war crimes.<sup>110</sup>

#### A. Structural Investigations

The German approach is also different in another key respect. In 2009, Germany began to deploy a proactive, structural approach to its criminal investigations.<sup>111</sup> This approach allows the Prosecutor General to direct German police to initiate generalized investigations in several countries with high levels of immigration to Germany. The Prosecutor General initiates these structural investigations not to charge specific persons, but to collect key information about the event, collect testimony, and, ultimately, identify future victims and witnesses living in Germany.<sup>112</sup> Many scholars attribute the success of Germany's atrocity crimes conviction rate over the last decade to the Prosecutor General's decision to adopt this structural approach.<sup>113</sup>

By gathering and culling evidence proactively in a region where there is large immigration to Germany, German prosecutors are able to bring charges more quickly when they determine that a previously identified individual has entered its territory. There are discernible echoes

104. See generally *OLG Frankfurt am Main*, Nov. 8, 2016, – 5–3 StE 4/16 – 4 – 3/16, openJur (Ger.) <https://openjur.de/u/2259256.html>; *OLG Stuttgart*, Jan. 11, 2018, 6–32 OJs 9/17, juris (Ger.) <https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=OLG%20Stuttgart&Datum=11.01.2018&Aktenzeichen=32%20OJs%209%2F17>, para. 38.

105. See generally *OLG Düsseldorf*, Sep. 24, 2018, 5 StS 3/16, openJur (Ger.) <https://openjur.de/u/2476224.html>.

106. See generally *OLG Düsseldorf*, Apr. 29, 2020, 7 StS 4/19, openJur (Ger.) <https://openjur.de/u/2248220.html>.

107. DOUGHTY STREET CHAMBERS, *German Federal Court of Justice Confirms The First-Ever Conviction of an ISIS Member for Genocide* (Jan. 26, 2023), <https://www.doughtystreet.co.uk/news/german-federal-court-justice-confirms-first-ever-conviction-isis-member-genocide#:~:text=In%20a%20decision%20published%20last,Yazidi%20victims%20in%20Fallujah%2C%20Iraq>.

108. Justine N. Stefanelli, *German Federal Court of Justice's First-Ever Genocide Conviction of ISIS Member*, AM. SOC'Y OF INT'L L. (Feb 1, 2023), <https://www.asil.org/ILIB/german-federal-court-justices-first-ever-genocide-conviction-isis-member>.

109. See generally *OLG Koblenz*, Feb. 24, 2021, 1 StE 3/21, Legal Tools <https://www.legal-tools.org/doc/x41x9j/>.

110. See generally *OLG Koblenz*, Feb. 24, 2021, 1 StE 3/21, Legal Tools <https://www.legal-tools.org/doc/x41x9j/>; BGH, Jun. 5, 2019, AK 28/19, openJur (Ger.) <https://openjur.de/u/2175602.html>; *OLG Koblenz*, Feb. 13, 2020, 2 StE 6 OJs 20/17, dejure <https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=OLG%20Koblenz&Datum=13.02.2020&Aktenzeichen=2%20StE%206%20OJs%2020/17>.

111. See Wiley, *supra* note 53; HUM. RTS. WATCH, *supra* note 97, at 61–3.

112. *Id.*

113. See Wiley, *supra* note 53; Safferling & Petrossian, *supra* note 99.

of this structural approach in the Ukrainian Prosecutor General's current approach to Russian war crimes: cataloging, documenting, and preserving records related to more than one hundred thousand alleged war crimes in advance of criminal proceedings that will likely take many years to fully adjudicate.<sup>114</sup> A significant benefit of a structural approach is that it enables investigators and officials to document and collect evidence in real time that may later be used in criminal proceedings—not years later when evidence may be impossible to collect.<sup>115</sup>

#### B. The Centralization of the German Model

The German model is notable for the centralized authority it confers to the German Prosecutor General. The Prosecutor General provides the relevant approval for German police to initiate an investigation—be it structural or specific to one alleged human rights offender. Moreover, the Prosecutor General has the authority to initiate which country or region will be the focus of a structural investigation.<sup>116</sup> For example, when Germany accepted more than one million refugees between 2014 and 2019,<sup>117</sup> many of those who also returned to Germany at that time were German nationals who had traveled to countries in the Middle East and North Africa (MENA) region to support aspects of various armed conflicts—notably, the civil wars in Syria and Libya.<sup>118</sup> To that end, the Prosecutor General initiated two structural investigations into potential atrocity crimes in Syria and Libya.<sup>119</sup> In this way, the German Prosecutor General wielded its centralized authority to channel government resources to investigations she deemed most critical to initiating prosecutions against alleged violators who would one day return to Germany.

In the United States, unlike Germany or France, DOJ human rights prosecutors are not the primary vehicle for *directing* investigations into alleged atrocity offenders. Within the Human Rights Center

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114. See CARNEGIE ENDOWMENT, *Ukraine's Quest for Justice: A Conversation with Prosecutor General Andriy Kostin* (Sept. 26, 2023), <https://carnegieendowment.org/2023/09/26/ukraine-s-quest-for-justice-conversation-with-prosecutor-general-andriy-kostin-event-8161>.

115. See HUM. RTS. WATCH, *supra* note 97, at 61–3.

116. *Id.*; Nicolas Kneba, *Prosecuting War Crimes Symposium—German Domestic Prosecutorial Experience*, LIEBER INST. AT WEST POINT, (Feb. 10, 2023), <https://lieber.westpoint.edu/german-domestic-prosecutorial-experience/>.

117. Sekou Keita and Helen Dempster, *Five Years Later, More than One Million Refugees are Thriving in Germany* (Dec. 04, 2020), <https://www.cgdev.org/blog/five-years-later-one-million-refugees-are-thriving-germany>.

118. See Safferling & Petrossian, *supra* note 99, at 249.

119. See HUM. RTS. WATCH, *supra* note 97, at 61–3.

architecture, that duty falls to ICE.<sup>120</sup> While it is true that these ICE units are authorized to work closely with DOJ human rights prosecutors, ICE's leadership's primary mission is to remove or deny entry to offenders. This mission is at odds with bringing atrocity charges where the evidentiary threshold for probable cause is met.<sup>121</sup>

### C. Evidence Collection and Operational Information Sharing through Eurojust

The German model presents a unique approach to multilateral evidence sharing when bringing atrocity crimes. Germany is among—if not the most—active participants within Eurojust's Genocide Network.<sup>122</sup> In 2002, the Council of the European Union established the European Network for the investigation of war crimes, crimes against humanity, and genocide (the Genocide Network).<sup>123</sup> The Council designated Eurojust, the EU Agency for Criminal Justice Cooperation, to oversee and manage the Genocide Network. The Genocide Network brings together EU national authorities when investigating core international crimes and provides a common platform for judicial cooperation, best practices, and evidence sharing.<sup>124</sup>

The Genocide Network also generated the most robust multilateral evidence collection mechanism for prosecuting core international crimes to date.<sup>125</sup> The Core International Crimes Evidence Database is a uniquely tailored archive that maintains and collates evidence related to all core international crimes in support of domestic judicial authorities.<sup>126</sup> According to the Genocide Network, this dataset can be used to “corroborate individual offenses and events or to unveil systematic actions and provide contextual information.”<sup>127</sup> To take one such example, a Franco-German team wielded the dataset to convict a high-ranking Syrian officials within the Assad regime for crimes against humanity in January 2022.<sup>128</sup>

120. Namely, through both HSI's Human Rights Violators and War Crimes Unit and ICE's Office of the Principal Legal Advisor.

121. *Id.*

122. Press Release, Eurojust, Germany Confirms Its Commitment to Eurojust (Sept. 21, 2023), <https://www.eurojust.europa.eu/news/germany-confirms-its-commitment-eurojust>.

123. See EUROJUST, *Genocide Network*, (2023), <https://www.eurojust.europa.eu/judicial-cooperation/practitioner-networks/genocide-network>.

124. See EUROJUST, *Core International Crimes*, (2023), <https://www.eurojust.europa.eu/crime-types-and-cases/crime-types/core-international-crimes>.

125. *Id.*

126. *Id.*

127. *Id.*

128. Press Release, Eurojust, Syrian Official Sentenced to Life for Crimes Against Humanity with Support of Joint Investigation Team Assisted by Eurojust (Jan. 13, 2022), <https://www.eurojust.europa>.

The Genocide Network has proven a leading-edge multilateral tool for prosecuting atrocity crimes. In 2022, the Genocide Network aided domestic authorities in thirty-five distinct core international crimes cases alone.<sup>129</sup> The Genocide Network has provided support to German authorities in numerous cases concerning genocide and crimes against humanity.<sup>130</sup> In addition, the Genocide Network has proven a rapidly tooled mechanism to deploy at the outbreak of armed conflict with potential atrocity cases. For example, only three weeks after Russia's full-scale invasion of Ukraine, Eurojust generated the formation of a Joint Investigation Team (JIT) between Ukraine, Poland, and Lithuania—followed by several other countries—to investigate core international crimes perpetrated by Russian soldiers in eastern Ukraine.<sup>131</sup>

#### D. Civil Society and Use of the Criminal Complaint

The German model also creates concrete pathways for civil society to provide key inputs into bringing atrocity charges. Due to the unique system of “criminal complaints” within the German civil law context, NGOs need not have individual standing (or party status) to submit a criminal complaint on behalf of another—the victim also need not be a client of the NGO.<sup>132</sup> To that end, various NGOs have begun to submit formal criminal complaints to the Prosecutor General.<sup>133</sup> For example, in October 2023, the Clooney Foundation for Justice filed three complaints with the Prosecutor General concerning Russian military commanders alleged to have committed war crimes in eastern Ukraine.<sup>134</sup> Similarly, in January 2023, another NGO, Fortify Rights, filed a criminal complaint on behalf of six individuals concerning senior Burmese military generals' complicity in war crimes, crimes against humanity, and genocide.<sup>135</sup>

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*eu/news/syrian-official-convicted-crimes-against-humanity-with-support-joint-investigation-team.*

129. See Press Release, Eurojust, *supra* note 122.

130. See EUROJUST, SUPPORTING THE JUDICIAL AUTHORITIES IN THE FIGHT AGAINST CORE INTERNATIONAL CRIMES (2020), [https://www.eurojust.europa.eu/sites/default/files/assets/2020\\_05\\_core\\_international\\_crimes\\_factsheet\\_en.pdf](https://www.eurojust.europa.eu/sites/default/files/assets/2020_05_core_international_crimes_factsheet_en.pdf).

131. See EUROJUST, *Joint Investigation Team Into Alleged Crimes Committed in Ukraine* (May 4, 2023), <https://www.eurojust.europa.eu/joint-investigation-team-alleged-crimes-committed-ukraine>.

132. See TRIAL INT'L, *supra* note 101.

133. *Id.*

134. CLOONEY FOUND. FOR JUST., *CFJ Files Cases in Germany Against Russian Commanders for Crimes Committed in Ukraine* (Oct. 26, 2023), <https://cfj.org/news/cfj-files-cases-in-germany-against-russian-commanders-for-crimes-committed-in-ukraine/>.

135. FORTIFY RIGHTS, *Criminal Complaint Filed in Germany Against Myanmar Generals for Atrocity Crimes* (Jan. 24, 2023), <https://www.fortifyrights.org/mya-inv-2023-01-24/>.



Once the Prosecutor General reviews the complaint and elects to launch an official investigation, NGOs play a critical role throughout the pre-trial process. While only victims themselves can formally submit evidence at trial, NGOs can proffer evidence throughout the course of the pre-trial investigation and direct officials to key witnesses and other documentary materials unique to specific countries.<sup>136</sup> In the U.S. context, there is no formal mechanism analogous to the private criminal complaint in Germany by which NGOs can direct the course of federal Title 18 investigations. While the DOJ's HRSP office does operate an active tip line,<sup>137</sup> and the Human Rights Center has consulted with NGOs on an ad hoc basis in the past, there does not appear to be a channel for NGOs to engage with the Human Rights Center architecture on a permanent basis.<sup>138</sup>

### III. THE FRENCH ATROCITY CRIMES PROSECUTION MODEL

The French model demonstrates two key innovations in its approach to atrocity crimes prosecutions. First, unlike the U.S. model, France has embraced a highly centralized approach, with a specific focus on atrocity crimes and counterterrorism, as opposed to deportation and removal. To this end, France has joined its counterterrorism and human rights prosecutors into one umbrella office, allowing for close collaboration and information sharing. Second, France has created a novel scheme to involve civil society as formal, *de jure* parties in atrocity crimes litigation.

#### A. Centralization and Coordination within the Counterterrorism Office

After codifying international atrocity crimes to honor its Rome Statute commitments in 2010, the French Parliament created a specific prosecutorial unit to investigate atrocity crimes, the Crimes Against Humanity Unit, or *Pôle crimes contre l'humanité*.<sup>139</sup> This Crimes Against Humanity Unit reports to the First Prosecutor of the Republic for Terrorism and is supported by a specialized police division for atrocity crimes.<sup>140</sup> French prosecutors have complete discretion as to whether

136. See HUM. RTS. WATCH, *supra* note 97, at 59.

137. U.S. DEP'T OF JUST., *Guide to Human Rights Statutes* (Jan. 2023), <https://www.justice.gov/media/1272906/dl?inline>.

138. See HUMAN RIGHTS VIOLATORS AND WAR CRIMES CENTER, *supra* note 28.

139. *Id.*

140. NATIONAL GENDARMERIE, *The Central Office for Combating Crimes Against Humanity and Hate Crimes (OCLCH)* (Oct. 3, 2022), <https://www.gendarmerie.interieur.gouv.fr/notre-institution/notre-organisation/l-office-central-de-lutte-contre-les-crimes-contre-l-humanite-et>



they should open a given investigation.<sup>141</sup> Yet, unlike the German or U.S. models, the French prosecutorial unit assigned to atrocity prosecutions is housed directly within the government's anti-terrorism authority.

Prosecutors within the Crimes Against Humanity Unit work in tandem with their counterterrorism counterparts, pooling expertise, resources, and best practices for pursuing both terrorism and atrocity-related charges.<sup>142</sup> Conversely, per the Justice Manual, the U.S. approach siloes DOJ human rights prosecutors from counterterrorism prosecutors in the DOJ's National Security Division (NSD). According to the Justice Manual, when DOJ's human rights prosecutors determine that a matter carries *any* nexus to NSD's counterterror work, it must promptly notify NSD, which then takes control of the matter.<sup>143</sup> Unlike the U.S. approach, the French model forces human rights prosecutors pursuing atrocity charges to work hand in glove with their counterterrorism colleagues, ensuring collaboration and information sharing throughout the matter's duration.<sup>144</sup>

## B. Civil Society Participation via Official Party Status

Another important feature of the French model is the role that NGOs and civil parties play throughout the lifecycle of an atrocity investigation and prosecution. The French model designates a specific role for both victims and NGOs to join criminal proceedings through official party status and lodging a complaint with the appropriate authority, the *Tribunal de Grande Instance de Paris*.<sup>145</sup> NGOs are empowered to bring complaints as formal civil parties when they can articulate a statutorily defined "special interest"<sup>146</sup> on behalf of a victim, irrespective of whether anyone within the NGO has suffered

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*les-crimes-de-haine-oclc*.

141. *Id.*

142. *Id.*; TRIAL INT'L, UNIVERSAL JURISDICTION LAW AND PRACTICE IN FRANCE (2019), <https://trialinternational.org/wp-content/uploads/2019/05/Universal-Jurisdiction-Law-and-Practice-in-France.pdf>.

143. U.S. Dep't of Just., Just. Manual § 9–2.139 (2023).

144. See generally Code de Procédure Pénale [C. pr. pén.] [Criminal Procedure Code], arts. 2–1 to 2–24 (Fr.); REDRESS, BREAKING DOWN BARRIERS: ACCESS TO JUSTICE IN EUROPE FOR VICTIMS OF INTERNATIONAL CRIMES

46, 46, 48 (2020), [https://www.fidh.org/IMG/pdf/breaking\\_down\\_barriers\\_en\\_web\\_final\\_2020-11-08.pdf](https://www.fidh.org/IMG/pdf/breaking_down_barriers_en_web_final_2020-11-08.pdf).

145. See REDRESS, *supra* note 144.

146. *Id.* at 50. These "special interests" include twenty-four statutorily defined grounds, including the full suite of atrocity crimes, discrimination based on race, ethnicity, or religion, and sexual violence. See generally Code de Procédure Pénale [C. pr. pén.] [Criminal Procedure Code], arts. 2–2, 2–3 (Fr.).

harm.<sup>147</sup> The French model goes beyond what the German structure provides in that it allows the NGO to become an official, *de jure* party to the proceeding.<sup>148</sup>

Granting NGOs *de jure* party status to the proceedings has already yielded benefits for the French model. On November 15, 2023, an investigative judge for the *Tribunal de Grande Instance de Paris* announced that a 2021 complaint filed by a Syrian NGO had led to the indictment and issuance of an arrest warrant for Syrian President Bashar al-Assad and two other key Syrian generals.<sup>149</sup> The warrants charge Assad and key military officials with war crimes and crimes against humanity for using chemical weapons against civilian populations in Syria.<sup>150</sup> In another example, after criminal complaints were filed by a French NGO, France brought charges against corporate executives of the Lafarge Corporation with complicity in crimes against humanity.<sup>151</sup>

#### IV. RECOMMENDATIONS FOR THE U.S. ATROCITY CRIMES MODEL

France and Germany have streamlined their approaches to atrocity crimes by deploying several unique features, including prosecutorial centralization, information sharing, and robust NGO participation. Drawing from each country's respective approach, the United States should implement the following three recommendations to harmonize its approach to human rights enforcement.

- A. Recommendation One: Congress should codify the Human Rights Center to centralize authority for atrocity crimes investigations, clarify interagency duties, and enshrine a path for NGO participation.

As it stands, the United States' capacity to bring atrocity prosecutions is limited by barriers to information sharing and interagency coordination. The Human Rights Center, through its ICE leadership, commands a massive structure that includes components from, *inter alia*, the DOJ, the State Department, the Department of Defense, and the FBI. No public-facing document, factsheet, or report has explained

147. See REDRESS, *supra* note 144.

148. *Id.*

149. See AGENCE FRANCE-PRESSE, *France Issues Arrest Warrant for Syria's Bashar al-Assad*, LE MONDE (Nov. 15, 2023), [https://www.lemonde.fr/en/international/article/2023/11/15/france-issues-arrest-warrant-for-syria-s-bashar-al-assad\\_6257146\\_4.html](https://www.lemonde.fr/en/international/article/2023/11/15/france-issues-arrest-warrant-for-syria-s-bashar-al-assad_6257146_4.html).

150. *Id.*

151. Sandra Cossart, *Multinational Lafarge Facing Unprecedented Charges for International Crimes: Insights Into the French Court Decisions*, OPINIO JURIS (Nov. 11, 2023), <https://opiniojuris.org/2022/11/15/multinational-lafarge-facing-unprecedented-charges-for-international-crimes-insights-into-the-french-court-decisions/>.

the method by which ICE leads these interagency efforts, collects evidence, or recommends that cases go forward for prosecution via DOJ.<sup>152</sup> Codifying the Human Rights Center would clarify how information is shared among the various units, as well as the legal standard by which investigations would be escalated for grand jury indictment. In September 2022, ICE Assistant Director Andre Watson called upon Congress to take up codification of the Human Rights Center to provide a clarifying structure to the current *ad hoc* system.<sup>153</sup>

Despite fifteen years in operation, the Human Rights Center has not publicly articulated a standard or set of criteria that governs when an investigation should be referred to the DOJ's HRSP. While DOJ HRSP attorneys have attempted to educate and sensitize other Human Rights Center personnel on the specifics of particular atrocity crimes through previous campaigns,<sup>154</sup> its criminal law expertise remains unique compared to the other Human Rights Center component units. If cases proceed to expedited deportation or removal before DOJ's human rights prosecutors can even be notified, the agency's expertise cannot be effectively deployed. Codifying standardized criteria to stipulate when referrals should be made will better utilize the DOJ's role and enable interagency collaboration and knowledge sharing.

Both France and Germany have statutorily ensured that the primary prosecutorial unit charged with proving substantive offenses directs their atrocity crimes efforts, not an immigration authority as in the United States. The French and German units have the latitude, without extensive prior approval requirements, to initiate and command the course of atrocity investigations. In the United States, human rights prosecutors must assume a subsidiary role to ICE's focus on initiating removal proceedings and denying entry to alleged atrocity violators. In order to both centralize and clarify human rights prosecutors' role within the interagency process, Congress should codify the Human Rights Center system into law, ensuring that the duties of each component unit are carefully delineated and explained.

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152. See HUMAN RIGHTS VIOLATORS AND WAR CRIMES CENTER, *supra* note 28; see Bingle, *supra* note 28.

153. U.S. Immig. and Customs Enforcement, *Statement of Andre R. Watson, Assistant Director for Homeland Security Investigations* (Sept. 28, 2022), <https://www.judiciary.senate.gov/imo/media/doc/Testimony%20-%20Watson%20-%202022-09-28.pdf>.

154. Press Release, U.S. Dep't of Just., Off. of Pub. Aff., Justice Department and Federal Partners Recognize Zero Tolerance Day for Female Genital Mutilation (Feb. 6, 2023), <https://www.justice.gov/opa/pr/justice-department-and-federal-partners-recognize-zero-tolerance-day-female-genital> (describing the effort to educate personnel on female genital mutilation issues across the Human Rights Center interagency).

Unlike France and Germany, the United States has not established a permanent pathway for NGOs to participate in the atrocity investigations process.<sup>155</sup> Codifying the Human Rights Center should guarantee a permanent seat within the architecture for NGO representation. Both France and Germany provide significant latitude to NGOs to guide the direction of their atrocity crimes investigations through witness preparation, evidence collection, and resource sharing. France even extends official, *de jure* party status to NGOs in criminal proceedings. Given ICE's recent statements calling for further integration of civil society partners, any congressional effort to codify the Human Rights Center should ensure a permanent seat at the table for NGOs. In particular, the regional teams that the Human Rights Center deploys to various geographic areas would prove a fruitful locus for NGO integration, where civil society can inform the U.S. approach to country-specific contexts. Without further statutory guidance, it will prove challenging for NGOs to make sense of an opaque interagency process within the Human Rights Center and to provide the key evidence that has proven so critical to successful prosecutions in Germany and France.

- B. Recommendation Two: The Human Rights Center should formalize multilateral evidence-sharing partnerships and pursue structural investigations to proactively target regions that may produce human rights offenders.

Rather than rely on bilateral, ad hoc relationships with partner countries, the United States should pursue formal integration into a multilateral evidence-sharing regime. Unlike France and Germany, the United States does not have any comparable multilateral arrangement when it comes to prosecuting atrocity crimes.<sup>156</sup> While the Human Rights Center explains that it works with specific attachés in forty-eight countries,<sup>157</sup> and DOJ's human rights prosecutors have "developed productive relationships with many foreign counterparts,"<sup>158</sup> there is no formal arrangement that approximates Eurojust's Genocide Network. Germany's full integration into Eurojust processes has enabled its prosecutors to work closely with European partners and to access evidence that has been essential to criminal convictions.

Yet, there are encouraging signs that the United States is beginning to seriously engage with multilateral partners. In a recent Human

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155. See Bingle, *supra* note 28, at 884.

156. See HUMAN RIGHTS VIOLATORS AND WAR CRIMES CENTER, *supra* note 28.

157. See *id.*

158. See Rikhof, *supra* note 73.

Rights Center Report to Congress, ICE Acting Director Tae Johnson articulated that DOJ's human rights prosecutors had formed initiatives with the Genocide Network and within the Five Eyes Alliance, a signals intelligence (SIGINT) agreement between the United States, United Kingdom, Canada, Australia, and New Zealand.<sup>159</sup> Moreover, the DOJ's recent partnership with the Ukraine Prosecutor General's office indicates another encouraging move to formalize future evidence sharing networks.<sup>160</sup> On September 22, 2023, Attorney General Garland announced that DOJ human rights prosecutors had contributed a second set of evidence to Eurojust's International Crimes Database.<sup>161</sup>

The United States should also consider adopting the German approach to structural investigations in countries where alleged violators are most likely to be found. As Germany has done in MENA countries with strong refugee flows, the United States should consider pursuing structural investigations in countries where immigration flows are strongest, such as the Northern Triangle of El Salvador, Guatemala, and Honduras.<sup>162</sup> In other contexts, the DOJ has already formalized joint-prosecutorial efforts with Northern Triangle countries. For example, DOJ's HRSP smuggling division currently operates Joint Task Force Alpha, a multilateral initiative that works in concert with law enforcement authorities from the Northern Triangle countries to prosecute prolific human smuggling operations.<sup>163</sup> Given the existing relationship in the human smuggling context, a partnership to conduct structural atrocity crimes investigations with Northern Triangle countries would prove fruitful.

C. Recommendation Three: The DOJ should roll back prior approval barriers that preclude the timely progression of atrocity crime investigations.

In order to ensure prosecutions can go forward more efficiently, the United States should amend the Justice Manual to reduce the number of high-ranking prior approvals required for any particular litigation. In

159. See HUMAN RIGHTS VIOLATORS AND WAR CRIMES CENTER, *supra* note 28.

160. Press Release, U.S. Dep't of Just., Off. of Pub. Aff., Readout of U.S. Attorney General Merrick B. Garland's Meeting with Ukrainian Prosecutor General Andriy Kostin (Sept. 22, 2023), <https://www.justice.gov/opa/pr/readout-us-attorney-general-merrick-b-garlands-meeting-ukrainian-prosecutor-general-andriy>.

161. *Id.*

162. See Wiley, *supra* note 53, at 1277.

163. Press Release, U.S. Dep't of Just., Off. of Pub. Aff., Eight Indicted in Joint Task Force Alpha Investigation and Arrested as Part of Takedown of Prolific Human Smuggling Network (Sept. 13, 2022), <https://www.justice.gov/opa/pr/eight-indicted-joint-task-force-alpha-investigation-and-arrested-part-takedown-prolific-human>.

conflict settings where atrocities occur, prosecutors must deploy investigative teams quickly to collect and preserve critical evidence to prove a case at trial. If every decision is delayed by a complex process of prior approvals, prosecutors will continue to be hamstrung in acting quickly to get the evidence they require.

As it stands, high-ranking Executive Branch officials must provide their express approval for each important step of the investigatory process. For example, in order to bring a war crimes charge, the Attorney General, the Secretary of State, and the Secretary of Defense all must be consulted. While these policy-level approvals serve an important purpose to ensure that geopolitically sensitive prosecutions only go forward with administration backing, the current system has forced DOJ human rights prosecutors to proceed at a slowed pace when it seeks to bring charges.<sup>164</sup> To efficiently provide justice to victims, especially American victims of human rights violations abroad, the decision to proceed with atrocity charges should not be delayed by an intensive approval process that can create bottlenecks at every important phase of the investigation and prosecution.

These prior approval and consultation requirements have likely precluded the United States from bringing particular atrocity crimes cases in the past. Commentators have proposed that the DOJ wielded such prior approvals to refuse to charge Sri Lankan Secretary of Defense and U.S. citizen Gotabaya Rajapaksa, who is widely viewed as having perpetrated war crimes, including the bombing of civilians.<sup>165</sup> While the DOJ should not ignore foreign policy equities, interagency consultation and prior approval reviews should not prevent the United States from providing substantive accountability to atrocity victims. To prevent the bureaucratic backlog from continuing to prevent timely prosecutions from moving forward, the DOJ should amend the Justice Manual and reduce the number of prior approvals required.

## CONCLUSION

On December 6, 2023, Attorney General Garland announced the first ever war crimes charges issued by the U.S. government. When questioned about future atrocity cases, the Attorney General responded, “You should expect more.”<sup>166</sup> Yet, fifteen years of past U.S. human

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164. *Id.*

165. See Baker, *supra* note 24.

166. CSPAN, *Justice Department Charges Four Russians with War Crimes Against American in Ukraine* (Dec. 6, 2023), <https://www.c-span.org/video/?532274-1/justice-department-charges-russians-war-crimes-american-ukraine>.

rights enforcement led by the Human Rights Center, with only two convictions, indicates that structural reform is necessary to realize the Attorney General's intent to bring more charges on a consistent basis. Both Germany and France are case studies in how empowering criminal prosecutors—not immigration authorities—to direct the course of atrocity crimes investigations, working hand in glove with civil society, can produce leading results. Moreover, both countries have centralized their respective approaches to atrocity crimes, ensuring that information sharing is in service of bringing substantive charges—not subsidiary fraud or immigration offenses.

This Article has proposed three key reforms that the United States should pursue to bolster the current atrocity crimes model—to ensure that our credibility on this issue aligns with our “results.”<sup>167</sup> First, the United States should codify the Human Rights Center to clearly enunciate interagency duties, bolster information sharing, and erect standardized criteria for when an investigation should be referred to DOJ's human rights prosecutors. Moreover, codifying the Center should entail a formal pathway for NGO participation throughout the investigatory and litigation process. Second, the United States should enter into a multilateral evidence-sharing framework to ensure ease of access to key witness evidence and testimony. Third, the DOJ should roll back its extensive system of prior approvals to bring atrocity charges, reducing the bottlenecks that currently delay every important stage in the litigation.

To ensure that the United States offers “No Safe Haven” for those who have committed the gravest crimes, it must do more than deport, remove, and denaturalize. Providing “No Safe Haven” to perpetrators must also mean prosecuting these crimes *as atrocities*. The United States currently possesses the statutes, the resources, and the expertise to pursue such charges. To heed Senator Durbin's clarion call—to align our global credibility with our actions—the United States should reform the organizational barriers that deny substantive justice to victims of the gravest crimes.

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167. *From Nuremberg to Ukraine: Accountability for War Crimes and Crimes Against Humanity*, 117th Cong. 22–23 (2022) (statement of Sen. Durbin, Chair, S. Comm. on the Judiciary).