



**Botschaft der Bundesrepublik  
Deutschland in Den Haag**  
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Embassy of the Federal Republic  
of Germany in The Hague

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**Verbal Note**

The Embassy of the Federal Republic of Germany presents its compliments to the Secretariat of the Assembly of States Parties and - with reference to the letter of the Secretariat ICC-ASP/6/S/20 of 25 July 2007 - has the honour to refer to Assembly resolution ICC-ASP/5/Res. 3 of 1 December 2006, in particular paragraph 6, sub-paragraph (h), of the plan of action wherein the Assembly called upon States Parties to provide to the Secretariat information relevant to promotion of the ratification and full implementation of the Rome Statute. In this context the Embassy wishes to communicate the following information:

**(i) Information on obstacles to ratification or full implementation facing States**

- The German Constitution contains a general prohibition of extradition of German nationals (article 16 para. 2 GG). To cooperate with the ICC, it was necessary to be capable of surrendering also German nationals to the Court. Therefore, to implement an exception of the general rule of article 16 para. 2 GG into the German Constitution, the provision had to be amended. (For the amendment see point (vii) below).
- Germany has not yet implemented article 70 para. 4 ICC Statute, i.e., it has not yet extended its criminal law provisions on false testimony (sect. 153 et seq. German Penal Code) to the ICC. This requires an amendment of the German Penal Code, which will be conducted according to the respective national provisions. A draft law is currently under parliamentary consideration.

**(ii) National or regional strategies or plans of action to promote ratification and/or full implementation**

- The German government is committed to the goals of the European Action Plan.
- Contribution to and promotion of a seminar organized by the International Criminal Law Network (ICLN) in Amman/Jordan (February 14th to 16th, 2005) with the title "The ICC and the Arab World"

Secretariat of the Assembly of States Parties  
to the Rome Statute of the International Criminal Court  
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- Contribution to and furtherance of a seminar organized by the Coalition for the International Criminal Court (CICC) with the title "Development of Strong Implementing Legislation UN-ICC"
- Promotion of a Training Course for the Asia/Pacific Region at the University of Nottingham
- Contribution to the "Intersessional Meeting of the Special Working Group on the Crime of Aggression", June 13th to 15th, 2005 organized by the Liechtenstein Institute on Self-Determination (Princeton University)
- Promotion of the Translation of the "Law on Cooperation with the International Criminal Court (ICC Act)" by the University of Göttingen/Germany
- Promotion of a seminar in Manila/Philippines, organized by the Philippine Coalition for the International Criminal Court (PCICC)
- Preparation and Organization of the Exhibition "From Nuremberg to The Hague – International and Mixed Criminal Courts" by the Goethe-Institut (German Cultural Institute) and Nuremberg Center for Human Rights
- Promotion of a seminar on the ICC in Chishinau/Moldova (March 3rd and 4th, 2006) organized by the International Criminal Law Society (Germany)
- Contribution to the "Intersessional Meeting of the Special Working Group on the Crime of Aggression", June 2006 Liechtenstein Institute on Self-Determination (Princeton University)
- Promotion of an international symposium on the International Criminal Court (ICC): "The International Criminal Court Reviewed – Significance, Accomplishments and Challenges" – November 4th, 2006 at Keio University Tokyo/Japan
- Promotion of the exhibition "From Nuremberg to The Hague – International and Mixed Criminal Courts" shown at the University of Sana'a/Republic of Yemen between January 27th and February 12th, 2007, as well as Panel Discussion at the Yemeni Parliament on February 11th, 2007: "The International Criminal Court and the Development of International Criminal Law" organized by the Friedrich-Ebert-Foundation in Sana'a/Republic Yemen
- Furtherance of the seminar "The ICC and the Arab World" in Abu Dhabi/UAE organized by the International Criminal Law Network (ICLN) in 2007
- Promotion of the seminar "Implementation of the Rome Statute for the International Criminal Court for the Middle East/North African Region" in Nottingham, April 15th to 19th, 2007, organized by the University of Nottingham
- Contribution to the "Intersessional Meeting of the Special Working Group on the Crime of Aggression" in Princeton, June 11th to 14th, 2007, organized by the Liechtenstein Institute on Self-Determination (Princeton University)

### **(iii) Technical and other assistance needs and delivery programmes**

None

### **(iv) Planned events and activities**

- Contribution to and support of a seminar of the Comision Andina de Juristas (CAJ) in La Paz, Bolivia with the title "International outlines in a new political constitution of Bolivia" in 2007.
- Contribution to and support of a symposium organized by the Institute for Security Studies (ISS) in Pretoria, South Africa with the title "Symposium to help build Support for, and Understanding of, the Role of International Law and the ICC in ending Impunity in Africa", planned for May 2008.
- Furtherance of the European Action Plan

### (v) Examples of implementing legislation for the Rome Statute

Since Germany opted for a full-fledged and autonomous implementation of the ICC Statute into domestic law, two comprehensive laws implementing the Statute substantively and procedurally have been adopted and various provisions of other laws have been changed:

- The substantive law for the implementation of the provisions defining crimes in the Rome Statute is the Code on International Criminal Law (Völkerstrafgesetzbuch, "VStGB"), of 26 June 2002 which mainly – apart from a few rules on the General Part – incorporates the crimes of the ICC Statute (article 5-8) into the domestic law. The VStGB entered into force the 1st July 2002, the same day as the ICC Statute. It has been translated into eight languages; Arabic, Chinese, English, French, Russian, Spanish, Greek and Portuguese.
- The procedural or cooperation law is the ICC Implementation Act (Gesetz zur Ausführung des Römischen Statuts des Internationalen Strafgerichtshofs, "IStGH-Ausführungsg") of 21 June 2002. This law consists of various articles which either create autonomous laws in it or reform other laws. The ICC Implementation Act contains 13 articles, the most important being article 1 which contains the actual ICC Cooperation Law, consisting of 73 sections. This cooperation law, together with the motives, was translated into English, Arabic, French, Russian and Spanish. The ICC Cooperation Law consists of seven parts and regulates the three common forms of assistance in criminal matters: the surrender of requested persons (sect. 2 et seq.), the execution of prison sentences and other sanctions issued by the ICC (sect. 40 et seq.) and other forms of assistance (sect. 47 et seq.). In addition, it deals with the transit of suspects (sect. 34 et seq.) and outgoing German requests to the ICC (sect. 64 et seq.). The ICC Cooperation Law transposes Germany's duties to cooperate strictly following the Statute. The structure of the Law equals the structure of the German Act on International Assistance in Criminal Matters (Gesetz über die internationale Recht-shilfe in Strafsachen, "IRG") that is applicable to horizontal mutual assistance, but contains autonomous terms which take into consideration the special character of cooperation with the ICC. The Federal Ministry of Justice rules on requests for the mutual assistance by the Court and on submission of requests to the Court for mutual assistance in agreement with the Federal Foreign Office and with other federal ministries whose departments are affected by the mutual assistance (sect. 68).
- Both laws (the Code on International Criminal Law and the ICC Cooperation Law) are autonomous laws that, in principle, can be understood and applied by themselves without references to other laws. This is especially true for the Cooperation Law which provides for a special cooperation regime with the ICC without making reference to the IRG.
- On 25 August 2004, the Agreement on the privileges and immunities of the ICC (Übereinkommen über die Vorrechte und Immunitäten des Internationalen Strafgerichtshofs) was implemented into German law through translation and publication in the German federal law gazette. Thus, the Court enjoys legal international personality with regard to Germany including the legal capacity necessary for the exercise of its functions, e.g. the capacity to contract, to acquire and to dispose of immovable and movable property and to participate in legal proceedings.

### (vi) Bilateral cooperation agreements between the Court and States Parties

By implementing the Cooperation law, the German legislator has created the prerequisites for a cooperation between Germany and the Court. Therefore, there are currently no further bilateral agreements necessitated. Should there occasionally appear a case where an agreement seems necessary, the German government will accord this with the Court on an *ad hoc*-basis, as has already been practised with other international Courts.

**(vii) Solutions to constitutional issues arising from ratification**

As already described above under point (i), the formerly absolute prohibition of extradition of German nationals had to be amended. Therefore, concerning the ICC, an exception of this prohibition was created, by inserting a new second sentence in article 16 para. 2 GG allowing for an extradition to a Member State of the European Union or to an International Tribunal provided that the principles of the rule of law are observed.

**(viii) national contact points for matters related to promotion of ratification and full implementation**

German Federal Foreign Ministry, International Criminal Court section (Referat 500), Directorate of Legal Affairs.

The Embassy avails itself of this opportunity to renew to the Secretariat of the Assembly of States Parties its highest consideration.

The Hague, 1<sup>st</sup> October 2007

