

Germany, Law on Cooperation with the ICTR

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: “Gesetz über die Zusammenarbeit mit dem Internationalen Strafgerichtshof für Rwanda”, in *BGBL* (Bundesgesetzblatt) 1998 I. p. 843; original in German, unofficial translation.]

1. Obligation to Cooperate

1. Pursuant to this Law, the Federal Republic of Germany shall fulfill its obligations to cooperate as stated in Resolution 955 (1994) adopted by the United Nations Security Council in accordance with Chapter VII of the United Nations Charter.
2. For the purposes of this Law, the term “Tribunal” shall refer to the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda between January 1, 1994 and December 31, 1994 and for the Prosecution of Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States during the same period, established by Resolution 955 (1994), and shall include its Chambers, its prosecuting authorities and the members of that Tribunal and the prosecuting authorities.

2. Status vis-à-vis criminal proceedings in the Federal Republic of Germany

1. At the Tribunal’s request, criminal proceedings involving offences which fall within its jurisdiction shall be transferred to the Tribunal at any stage. In the event that criminal proceedings which are so transferred have resulted in the imposition of a legally valid sentence, once the convicted party in question, pursuant to 3, paragraph 1, has been remanded to the custody of the Tribunal, the further enforcement of this sentence shall cease.
2. Should a request pursuant to paragraph 1, sentence 1 be submitted, no proceedings may be conducted against any person for an offence falling within the jurisdiction of the Tribunal for which they are

standing or have stood trial before that Tribunal.

3. Insofar as the conditions stipulated in paragraph 1, sentence 1 have been satisfied, the decision to transfer proceedings to the Tribunal shall be taken by the competent court. That court shall also submit to the Tribunal the available evidence and the records of the investigations and proceedings conducted up to that point, as well as any judicial decisions that have already been handed down. [...]
4. Subject to the proviso that the final decision shall be taken by the public prosecutor, where the proceedings in question are not yet pending before the court, paragraph 3, sentences 1 and 2 shall apply *mutatis mutandis*. [...]
5. In those cases specified in paragraph 3, sentence 1, the court shall not rule on the costs of the proceedings incurred prior to their transfer to the Tribunal until such time as the Tribunal has brought the transferred proceedings in question to a legal conclusion. In this connection, the court shall predicate its decision upon the Tribunal's ruling on the issues of guilt and punishment. Following consultation with the parties involved, a decision shall be effected by a court order. Sentences 1 to 3 shall apply *mutatis mutandis* in respect of those decisions which are to be taken in accordance with the law on compensation for criminal proceedings.

3. Transfer and conveyance of individuals

1. For the purpose of prosecuting an offence falling within the jurisdiction of the Tribunal, or for the purpose of enforcing a punishment imposed for such an offence, at the request of the Tribunal, any persons residing within the area where this law is in effect shall be placed in confinement and committed to the custody of either the Tribunal or the country which has assumed responsibility for enforcing a sentence imposed by the Tribunal.
2. [...] [T]he Law on International Mutual Assistance in Criminal Matters shall apply *mutatis mutandis* to such proceedings.
3. For the purpose of prosecuting an offence falling within the jurisdiction of the Tribunal, or for the purpose of enforcing a sentence imposed for such an offence, at the request of the Tribunal, persons shall be conveyed through the area where this Law is in effect and held in custody for the purpose of ensuring their conveyance. [...]

5. Mutual assistance by enforcement

1. Mutual assistance may be rendered by the enforcement of a legally valid sentence of imprisonment imposed by the Tribunal.
2. [...] [W]here the German enforcement authority deems the enforcement of a sentence to have been carried out, where a convicted prisoner escapes from custody prior to the conclusion of the enforcement of their sentence, where the enforcement of a sentence is no longer possible for other reasons, or in the event of the Tribunal's requesting a particular report, the competent authority, [...] shall advise and assist the Tribunal accordingly.
3. Where, in the opinion of the relevant competent authority, a pardon should be considered, the competent authority, pursuant to 74a of the Law on International Mutual Assistance in Criminal Matters, shall advise the Tribunal accordingly so that it may rule on the issue of granting a pardon to the convicted party in question.

6. Privileges and immunities

The judges, the director of the prosecuting authority and the President of the Tribunal shall be entitled to the privileges, immunities, exemptions and facilities which are accorded to diplomats under international law. Insofar as the efficient performance of the tasks of the Tribunal necessitates such an arrangement,

Article VI, Section 22 of the United Nations Convention on Privileges and Immunities of February 13, 1946 (Federal Law Gazette, 1980, II, p. 941) shall apply mutatis mutandis to other persons who, though not members of the Tribunal, are involved in proceedings conducted by that Tribunal.

7. Entry into force

This Law shall enter into force on the day following its promulgation.

Discussion

1. 1. To what extent does Security Council Resolution 955 [See UN, Statute of the ICTR] place a binding obligation on the international community to cooperate with the ICTR?
2.
 - a. Do States have to enact a law on cooperation with the International Tribunal?
 - b. Does this type of law clarify the jurisdictional scope of the ICTR?
 - c. Why is the normal legislation on mutual assistance in criminal matters not sufficient to implement Resolution 955 (1994)? Or could Resolution 955 be considered as self-executing? Which obligations under Resolution 955 go beyond normal extradition and mutual judicial assistance treaties?
3. Do you think that conflicting interest(s) may arise between the ICTR and Germany over the fate of an accused?
4. Does this legislation entitle Germany to arrest a suspect and transfer him to the competent authorities of the ICTR? Could Germany decide not to transfer a suspect and try him under its national legislation?
5. Will this type of legislation deter suspects who might otherwise decide to come to Germany to be immune from prosecution?