

Luxembourg, Law on Cooperation with the International Criminal Courts

N.B. As per the disclaimer ^[1], 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: *Luxembourg, Loi du 18 mai 1999 introduisant certaines mesures visant à faciliter la coopération avec le TPIY et le TPIR*, available in French on <http://www.cicr.org/ihl-nat> ^[2]; unofficial translation.]

Law of 18 May 1999 introducing certain measures intended to facilitate cooperation with: [...]

2. **the International Tribunal created by the United Nations Security Council in resolution 955 (8 November 1994) to prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in the**

territory of Rwanda and Rwandan citizens responsible for genocide and other such acts or violations committed in the territory of neighbouring States, between 1 January and 31 December 1994.

We, JEAN, by the grace of God, Grand Duke of Luxembourg, Duke of Nassau;

Our Council of State having been heard;

The Chamber of Deputies having granted its approval;

Given the Chamber of Deputies' decision of 21 April 1999 and that of the Council of State of 27 April 1999 that a second vote is unwarranted;

have ordered and do order:

Art. 1

In application [...] of United Nations Security Council resolution 955 (8 November 1994) establishing an international tribunal to prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such acts or violations committed in the territory of neighbouring States between 1 January and 31 December 1994, the Grand Duchy of Luxembourg shall take part in the repression of breaches and shall cooperate with [this tribunal] in accordance with the present law.

The following provisions shall apply to any person charged with crimes or other offences under Luxembourg law that constitute, under [...] Articles 2 to 4 of the Statute of the International Tribunal created by resolution 955, grave breaches of the Geneva Conventions of 12 August 1949 and of Additional Protocol II, signed in Geneva on 8 June

1977, violations of the laws and customs of war, genocide or crimes against humanity.

Section I: Jurisdiction and deferral from the Luxembourg courts

Subsection 1: Jurisdiction of the Luxembourg courts

Art. 2

Without prejudice to other specific legal provisions, those accused of the above-mentioned violations may be prosecuted and judged by Luxembourg courts if the accused or their accomplices are found in Luxembourg. These provisions also apply to any attempt to commit these violations wherever such an attempt is punishable.

The international tribunal shall be informed by the chief state prosecutor of any prosecution under way involving offenses that could come under its jurisdiction. A copy of that communication shall be simultaneously sent by the chief state prosecutor to the Minister of Justice.

No prosecution may take place before a national court for offences constituting grave violations of international humanitarian law in cases where the accused has already been judged by the international tribunal for the same offences.

Subsection 2: Deferral from the Luxembourg courts

Art. 3

The originals of requests from the international tribunal for deferral of cases from Luxembourg's investigative process or its courts shall be sent, accompanied by any documentary evidence, to the Minister of Justice, whose task shall be to ensure that they are properly constituted.

Art. 4

Depending on the circumstances, either the chief state prosecutor or the state prosecutor shall instruct the investigating magistrate, if an investigation is under way, or the court already dealing with the case on the basis of committal for trial or direct summons, to defer the case to the international tribunal.

The request for deferral shall be communicated to the other parties concerned. Any observations prompted by that communication must be made within eight days. The investigating magistrate or the court dealing with the case may also decide to take oral statements from the parties, who shall be summoned for this purpose by the registrar by means of a registered letter.

Art. 5

If the investigating magistrate or the court dealing with the case finds that the offences constituting the basis of the request for deferral are covered by Article 1 of the present law and that there is no apparent error, he/she shall defer the case and refer it to the international tribunal. No appeal may be made against any decision by the investigating magistrate or the court dealing with the case to defer it.

Art. 6

Once a case has been deferred, the case file shall be sent by the Minister of Justice to the international tribunal.

Art. 7

The deferral of a case from the national judicial system shall not affect the rights of any party claiming damages to apply the provisions of Article 3 of the code governing the investigation of criminal cases.

Where a case has been deferred from a court, that court – unless otherwise stipulated by the law and without prejudice to the ability of the international tribunal to order the restoration to their rightful owners of all property and resources acquired by illegal means – shall retain its ability, at the request of a victim who sued for damages before the criminal case was deferred, to rule on the civil action after the international tribunal has issued a judgement on the criminal proceedings.

Section II: Judicial cooperation

Subsection 1: International judicial assistance

Art. 8

The originals or certified copies of requests for judicial assistance from the international tribunal or its prosecutor must be addressed to the Minister of Justice, accompanied by any documentary evidence.

These documents shall be forwarded to the state prosecutor of the district court with territorial jurisdiction, who shall take all necessary steps.

In urgent cases these documents may be sent directly and by any means to the state prosecutor of the district court with territorial jurisdiction. They must be sent simultaneously in the forms specified in the preceding paragraphs.

Art. 9

Requests for assistance shall be dealt with, according to the circumstances, either by the state prosecutor of the district court with territorial jurisdiction or by the investigating magistrate of that court, and if appropriate in the presence of the prosecutor of the international tribunal.

Any provision of information requested by the international tribunal or its prosecutor and any warrant issued by those entities for enforcement on Luxembourg territory may be implemented only in compliance with national law and, in particular, in line with the powers assigned to the national authorities and in keeping with the code governing the investigation of criminal cases. The reports drawn up in the process of dealing with these requests shall be sent by the Minister of Justice to either the international tribunal or its prosecutor, depending on the circumstances.

In urgent cases, certified copies of these reports may be sent directly and by any means to the international tribunal.

Art. 10

Any conservatory measure to be taken regarding property situated on Luxembourg territory must receive prior approval from the Minister of Justice. The investigating magistrate of the district court with territorial jurisdiction shall order the search and seizure required for this purpose.

Subsection 2: Arrest and surrender

Art. 11

The originals of any requests by the international tribunal or its prosecutor for arrest and surrender must be sent, accompanied by any documentary evidence, to the Minister of

Justice who, after ensuring that they are properly constituted, shall forward them to the state prosecutor of the district court in the place of residence of the person sought or the place where he/she can be found.

The state prosecutor shall apply to the chambers of the district court to have the international tribunal's request for arrest declared enforceable.

In urgent cases these documents may be sent directly and by any means to the state prosecutor of the district court with territorial jurisdiction. They must be sent simultaneously in the forms specified in the preceding paragraphs.

Art. 12

Any person who is on Luxembourg territory and accused of one of the offences listed in Article 1 and whose arrest and surrender has been properly requested by the international tribunal shall be arrested without delay upon presentation of such a request duly declared enforceable by the chambers of the district court at the request of the state prosecutor or, in urgent cases in which that person has been indicted by the international tribunal, upon presentation of an arrest warrant issued by the state prosecutor or the investigating magistrate of the district court following application by the state prosecutor. The person sought shall be immediately informed of the accusation against him/her.

The person sought shall be brought before the investigating magistrate at the latest within 24 hours of his/her arrest. The latter shall note any information and explanation that the person consents to provide.

The person sought may at any time apply to the chambers of the district court for release. The latter shall act in accordance with the provisions of Article 116 ff. of the code

governing the investigation of criminal cases. However, the surrender of the person sought may not be delayed by such an application.

Art. 13

The chambers of the appeal court shall deal immediately with the matter. The person sought shall appear before the chambers at the latest 10 days after his/her arrest. The prosecuting authorities and the person sought, possibly accompanied by his/her counsel and, if need be, in the presence of an interpreter, shall have the opportunity to make a statement.

Art. 14

If the chambers finds that the offences constituting the grounds for requesting arrest and surrender come within the field of application of Article 1 and that the request contains no apparent error, they shall order that the person be surrendered.

The chambers shall also decide whether or not there are grounds for handing over to the international tribunal, in whole or in part, the papers and other objects seized. It shall order the return to the person sought of papers and other objects having no direct bearing on the offence of which he/she has been accused.

The chambers shall announce its decision in the form of an order issued at a public hearing within 10 days of the appearance before it of the person sought.

No appeal on points of law is possible in such cases.

Art. 15

The order issued by the chambers of the appeal court and, in certain cases, the place and date of surrender of the person sought and the length of detention awaiting surrender shall be communicated to the international tribunal by the Minister of Justice.

The person sought shall be surrendered within a month of the date on which the surrender order was issued. Failing this, the person's immediate release shall be ordered by the president of the chambers of the appeal court, unless the surrender has been delayed by circumstances beyond the authorities' control.

Release of the person sought shall preclude neither subsequent arrest nor a fresh decision to surrender him/her should the international tribunal present a new request to that end.

Art. 16

The provisions of the subsection are also applicable if the person sought is being prosecuted or has been convicted in Luxembourg on charges other than those serving as grounds for the international tribunal's request. However, in such cases the detainee is not entitled to release as provided for in Article 15.

The proceedings of the international tribunal shall have the effect, vis-à-vis the Luxembourg judicial and prison system as concerns the person sought, of suspending the time limit for bringing a prosecution and for enforcing a sentence.

Subsection 3: Enforcement of orders for return of property issued by the international tribunal

Art. 17

Decisions by the international tribunal to return property in application of Article 24(3) of

its Statute [ICTY, corresponding to the Art. 23(3) of the ICTR Statute] may be implemented in Luxembourg only after being declared enforceable before Luxembourg's civil courts in accordance with the ordinary procedure for enforcement set out in Article 546 of the Civil Procedure Code.

We command and order that the present law be promulgated in the Official Gazette for execution and compliance by all those concerned.

Minister of Justice, [...]

Luc Frieden

For the Grand Duke: His Lieutenant-Representative,

Henri heir to the throne of the Grand Duke

Discussion

1. To what extent does Security Council Resolution 955 oblige States to cooperate with the ICTR? [See UN, Statute of the ICTR ^[3]]
2.
 - a. Must States adopt legislation regarding cooperation with the ICTR?
 - b. Does this type of legislation serve to clarify the reach of the ICTR's jurisdiction?
 - c. Why is the standard legislation on mutual cooperation in criminal matters between States not sufficient to implement Resolution 955? Could that resolution be considered self-executing? Which of the obligations contained in Resolution 955 go beyond the provisions of classic treaties on extradition and judicial cooperation?
3. Does this law oblige Luxembourg to arrest suspects and hand them over to the ICTR? Can Luxembourg decide not to hand over suspects and, instead, to try them before its own courts?
4. Does this type of legislation dissuade suspects from going to Luxembourg for fear of

facing prosecution?

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