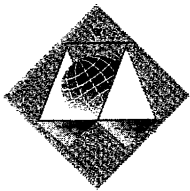




United Nations
Nations Unies



International
Criminal Tribunal
for the former Yugoslavia

Tribunal
Pénal International
pour l'ex-Yougoslavie

The Hague, 14 November 2002

Excellency,

I have the honour to refer to my letter of 26 July 2002 in which I requested the Government of the Federal Republic of Germany ("Germany") to enforce Mr. Dragoljub Kunarac's prison sentence, as imposed by the Appeals Chamber of International Criminal Tribunal for the former Yugoslavia ("International Tribunal") in its Judgement of 12 June 2002 ("Judgement"). I also refer to your reply of 14 November 2002, in which your Government agreed to enforce Mr. Kunarac's prison sentence.

In accordance with our understandings, Mr. Kunarac's prison sentence will be enforced by Germany on the following conditions:

1. Mr. Kunarac's prison sentence

The Appeals Chamber of the International Tribunal sentenced Mr. Kunarac to twenty-eight year's imprisonment. Subject to the conditions of the Judgement of the Appeals Chamber of the International Tribunal (Annex 1) and this Note, Mr. Kunarac's prison sentence will be enforced in Germany.

2. Enforcement

1. In enforcing Mr. Kunarac's sentence as pronounced by the Appeals Chamber of the International Tribunal, the competent national authorities of Germany shall be bound by the duration of the sentence.
2. The conditions of imprisonment shall be governed by the law of Germany, subject to the supervision of the International Tribunal, as provided for in Sections 5 to 7 and paragraphs 2 and 3 of Section 8 below.
3. If, pursuant to the applicable national law of Germany, Mr. Kunarac is eligible for early release, Germany shall notify the Registrar accordingly.
4. If the President of the International Tribunal, in consultation with the Judges of the International Tribunal, does not consider that the application of the early release is appropriate, the Registrar shall immediately notify the competent national authorities, who will provide for the immediate transfer of Mr. Kunarac to the International Tribunal.
5. The conditions of imprisonment shall be in accordance with relevant human rights standards.

His Excellency Dr. Edmund Duckwitz
Ambassador
Embassy of the Federal Republic of Germany
Groot Hertoginnelaan 18-20
2517 EG Den Haag

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law
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3. Transfer of Mr. Kunarac

The Registrar shall make appropriate arrangements for the transfer of Mr. Kunarac from the International Tribunal to the competent authorities of Germany. Prior to his transfer, Mr. Kunarac will be informed by the Registrar of the contents of this Note.

4. Non-bis-in-idem

Mr. Kunarac shall not be tried before a court of Germany for acts constituting serious violations of international humanitarian law under the Statute of the International Tribunal, for which he has already been tried by the International Tribunal.

5. Visits

1. The competent authorities of Germany shall allow visits to Mr. Kunarac by representatives of the International Tribunal, in accordance with Article 27 of the Statute of the International Tribunal. The competent authorities shall allow visits at any time and on a periodic basis, the frequency of visits to be decided by the International Tribunal. Reports on the conditions of detention and the treatment of Mr. Kunarac, based on the findings of the visits, will be prepared, as appropriate.

2. The competent authorities of Germany and the President of the International Tribunal shall consult each other on the findings of the reports referred to in paragraph 1. The President of the International Tribunal may thereafter request Germany to report to him or her any changes in the conditions of detention of Mr. Kunarac suggested in the reports.

6. Information

1. Germany shall immediately notify the Registrar:
 - a) two months prior to the completion of the sentence;
 - b) if Mr. Kunarac has escaped from custody before the sentence has been completed;
 - c) if Mr. Kunarac has deceased.
2. Notwithstanding the previous paragraph, the Registrar and the competent authorities of Germany shall consult each other on all matters relating to the enforcement of the sentence upon the request of either party.

7. Pardon and commutation of sentence

1. If, pursuant to the applicable national law of Germany, Mr. Kunarac is eligible for pardon or commutation of the sentence, Germany shall notify the Registrar accordingly.
2. The President of the International Tribunal shall determine, in consultation with the Judges of the International Tribunal, whether pardon or commutation of the

sentence is appropriate. The Registrar shall inform Germany of the President's determination. If the President determines that a pardon or commutation of the sentence is not appropriate, Germany shall act accordingly.

8. Termination of enforcement

1. The enforcement of the sentence shall cease:
 - a) when the sentence has been completed;
 - b) upon the demise of Mr. Kunarac;
 - c) upon the pardon of Mr. Kunarac;
 - d) following a decision of the International Tribunal as referred to in paragraph 2.
2. The International Tribunal may at any time decide to request the termination of the enforcement in Germany and transfer Mr. Kunarac to another State or to the International Tribunal.
3. The competent authorities of Germany shall terminate the enforcement of the sentence as soon as it is informed by the Registrar of any decision or measure as a result of which the sentence ceases to be enforceable.

9. Impossibility to enforce sentence

If, at any time after the decision has been taken to enforce the sentence, for any legal or practical reasons, further enforcement has become impossible, Germany shall promptly inform the Registrar. The Registrar shall make the appropriate arrangements for the transfer of Mr. Kunarac as soon as possible. The competent authorities of Germany shall allow for at least thirty days following the notification of the Registrar before taking other measures on the matter.

10. Costs

The International Tribunal shall bear the expenses related to the transfer of Mr. Kunarac to and from Germany, unless the parties agree otherwise. Germany shall pay all other expenses incurred by the enforcement of the sentence.

I would be grateful if you would confirm that the above is also the understanding of the Government of Germany.

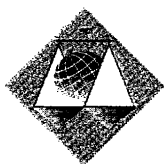
Please accept, Excellency, the assurances of my highest consideration.



Hans Holthuis
Registrar



United Nations
Nations Unies



International
Criminal Tribunal
for the former Yugoslavia

Tribunal
Pénal International
pour l'ex-Yougoslavie

14 November 2002

Excellency,

I am writing to you to set forth certain understandings of the International Criminal Tribunal for the former Yugoslavia (hereafter referred to as 'International Tribunal') relating to the Exchange of Notes of 14 November 2002 between the United Nations and the Government of the Federal Republic of Germany regarding the enforcement of Mr. Dragoljub Kunarac's prison sentence. As you will appreciate, the intention of this letter is to simply provide clarification of certain matters in the Exchange of Notes, is not intended for any other purpose and does not modify or change any of the terms or understandings contained in the Exchange of Notes.

Regarding the use of the term "enforcement" of Mr. Kunarac's sentence in the Exchange of Notes, particularly in section 2 thereof, this term is intended to have precisely the same meaning as it does in Article 27 of the Statute of the International Tribunal. We understand that this meaning may differ from the use of the term under German law. In the International Tribunal's view, as long as Mr. Kunarac is in the custody of German prison authorities in accordance with Article 27, the sentence is being enforced within the meaning of the Exchange of Notes. Moreover, the International Tribunal understands that Germany will apply its law in carrying out the sentence. Thus, in the International Tribunal's view Germany may take steps to hospitalize Mr. Kunarac, if necessary, or take other measures in relation to him under German law, provided that it retains custody of him in accordance with Article 27 of the Statute of the International Tribunal.

With regard to section 2(3) of the Exchange of Notes, the term "early release" is understood to include parole and any other measure that would result in the actual release of Mr. Kunarac from custody.

In the International Tribunal's view, Section 5 of the Exchange of Notes should be understood in the following way. The "representatives of the International Tribunal" will be persons under the authority of the International Tribunal; thus they are individuals and not organizations. For administrative convenience, the representatives of the International Tribunal will normally notify the German prison authorities before conducting a visit. However, such a courtesy notification is without prejudice to the International Tribunal's right to conduct unannounced visits. The International Tribunal expects that it will not exercise its right to conduct visits more than twice per year, unless special circumstances occur. The reports on the conditions of detention and the treatment of Mr. Kunarac shall be treated confidentially by the German authorities and the United Nations.

The provision contained in section 8(2) of the Exchange of Notes applies at all times while the Exchange of Notes is in force. Thus, in the event that the enforcement is terminated and Mr. Kunarac is transferred in accordance with section 8(2), Germany has no further responsibilities to enforce Mr. Kunarac's sentence under the Exchange of Notes.

His Excellency Dr. Edmund Duckwitz
Ambassador
Embassy of the Federal Republic of Germany
Groot Hertoginnelaan 18-20
2517 EG Den Haag

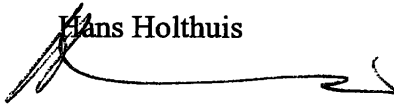
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The purpose of section 9 of the Exchange of Notes is to cover unforeseeable events. For example, there may be a change in German law that makes the sentence impossible to enforce, and this provision would thus apply. For a transfer to the International Tribunal in matters of early release (Section 2.3 of the Exchange of Notes) the applicable provision is Section 2.4, not Section 9. In the view of the International Tribunal, in the event that Germany's obligations under the Exchange of Notes are, or become, incompatible with German law, the provisions of section 9 shall apply, i.e., the German authorities transfer Mr. Kunarac in accordance with the provisions of section 9. It is understood that in such a case that, if exceptional circumstances exist, the Registrar would use his or her best efforts to act immediately.

I hope that the above is of assistance to you.

Please accept, Excellency, the assurances of my highest consideration.


Hans Holthuis
Registrar

THE AMBASSADOR
OF THE FEDERAL REPUBLIC OF GERMANY

Den Haag, 14 November 2002
Groot Hertoginnelaan 18-20, 2517 EG Den Haag
Tel. 070 / 342 06 27, Fax: 070 / 365 19 57

Dear Sir,

In reply to your letter of 26 July 2002 I have the honour to inform you that the Federal Republic of Germany is willing to take over the enforcement of Dragoljub Kunarac's prison sentence as imposed by the International Criminal Tribunal for the Former Yugoslavia and that the Federal Government has granted your request specified in the above letter.

Enforcement will be based on sections 1 to 10 of the Note of the International Criminal Tribunal for the Former Yugoslavia dated 14 November 2002 including the accompanying letter from the International Criminal Tribunal for the Former Yugoslavia dated 14 November 2002 concerning this Note.

I would suggest that the details of the transfer be arranged with the Ministry of Justice of North-Rhine/Westphalia. The contact person there is Mr. Peters of the prison division (phone: 0049 – 211 / 8792-212, fax: 0049 – 211 / 8792-456).

Please accept, Sir, the assurances of my high consideration.



Dr. Edmund Duckwitz

Mr. Hans Holthuis
Registrar
International Criminal Tribunal
for the Former Yugoslavia
The Hague

THE AMBASSADOR
OF THE FEDERAL REPUBLIC OF GERMANY

Den Haag, 14 November 2002
Groot Hertoginnelaan 18-20, 2517 EG Den Haag
Tel. 070 / 342 06 27, Fax: 070 / 365 19 57

Dear Sir,

I have the honour, in response to your Note dated 14 November 2002, and in reference to my letter to you dated 14 November 2002 to confirm to you that the prison sentence imposed on Dragoljub Kunarac by the International Criminal Tribunal for the Former Yugoslavia will be enforced in the Federal Republic of Germany pursuant to the arrangements described in your aforementioned Note.

Please accept, Sir, the assurances of my high consideration.



Dr. Edmund Duckwitz

Mr. Hans Holthuis
Registrar
International Criminal Tribunal
for the Former Yugoslavia
The Hague