



Embassy  
of the Federal Republic of Germany  
The Hague

Groot Hertoginnelaan 18 - 20, 2517 EG The Hague

**Franz Josef Kremp**

Ambassador of the Federal Republic of Germany

To the Registrar  
of the Mechanism  
for International Criminal Tribunals  
Mr. John Hocking  
Churchillplein 1  
2517 JW The Hague

The Hague, 26 June 2015

Dear Mr. Hocking,

I have the honour to confirm receipt of your Note of 10.06.2015 proposing on behalf of the Mechanism for International Criminal Tribunals ("Mechanism"), which, under Security Council resolution 1966 (2010) continues the jurisdiction, rights, obligations and essential functions of the International Criminal Tribunal for the Former Yugoslavia, the conclusion of an Agreement between the Mechanism and the Government of the Federal Republic of Germany in which the conditions for the Federal Republic of Germany assuming the enforcement of Mr. Ljubiša Beara's prison sentence are determined.

Your Note reads as follows:

"Excellency,

I have the honour to refer to my letter of 2 February 2015 in which I expressed my gratitude for the willingness of the Government of the Federal Republic of Germany ("Germany") to enforce Mr. Ljubiša Beara's prison sentence, as pronounced by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia ("ICTY") in its Judgement of 30 January 2015 ("Judgement").

I thus have the honour to propose that an Agreement between the Mechanism for International Criminal Tribunals ("Mechanism"), which, under Security Council resolution 1966 (2010) continues the jurisdiction, rights, obligations and essential functions of the ICTY, and Germany be concluded, concerning the conditions under which Mr. Ljubiša Beara's sentence of imprisonment shall be enforced, to read as follows:

## 1. Mr. Beara's sentence of imprisonment

The Appeals Chamber of the ICTY sentenced Mr. Beara to life imprisonment. Subject to the conditions of the Judgement and this Note, Mr. Ljubiša Beara's sentence of imprisonment shall be enforced in Germany.

## 2. Enforcement of sentence

1. In enforcing Mr. Beara's sentence as pronounced by the Appeals Chamber of the ICTY, 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 laws of Germany, subject to the supervision of the Mechanism.
3. If, at any time in the course of enforcement of sentence, pursuant to the applicable national law of Germany, in particular Section 57a of the German Criminal Code, Mr. Beara is eligible to have the enforcement of the remainder of his sentence suspended, Germany shall notify the Registrar of the Mechanism accordingly. If the President of the Mechanism, in consultation with any Judges of the sentencing Chamber who are Judges of the Mechanism, does not consider that suspending the enforcement of the remainder of the sentence and/or early release is appropriate, the Registrar shall immediately notify, via the German Embassy in The Hague, the competent national authorities, which, upon the request of the Mechanism, shall provide for the immediate transfer of Mr. Beara to the Mechanism or, if Germany expressly consents thereto, shall continue the enforcement in Germany.
4. If a review of eligibility for suspension of enforcement of the remainder of Mr. Beara's sentence pursuant to the applicable national law of Germany, in particular section 57a of the German Criminal Code, does not lead to the release of the convicted person, there shall be further reviews at the latest every two years *ex officio* or upon application by Mr. Beara, who is to be informed of his right to submit such an application, or at such earlier date as may be determined by the President of the Mechanism pursuant to Article 10 of the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence and Early Release of Persons convicted by the International Criminal Tribunal for Rwanda, the International Tribunal or the Mechanism.
5. Furthermore, the competent German authorities shall *ex officio* notify the Mechanism immediately if the health condition of the convicted person prevents a continuation of enforcement, and shall procure a decision from the

Mechanism regarding the termination of enforcement.

6. The conditions of imprisonment shall be in accordance with relevant human rights standards, which Germany is obliged under international law to respect.

### **3. Transfer of Mr. Beara**

The Registrar of the Mechanism shall make appropriate arrangements for the transfer of Mr. Beara from the Mechanism to the competent authorities of Germany. Prior to his transfer, Mr. Beara will be informed by the Registrar of the content of this Agreement.

### **4. Non-bis-in-idem**

Mr. Beara shall not be tried before a court in Germany for acts constituting serious violations of international humanitarian law under the Statutes of the ICTY or the Mechanism for which he has already been tried by the ICTY.

### **5. Visits**

1. The competent authorities of Germany shall allow visits to Mr. Beara by representatives of the Mechanism, in accordance with Article 25 of the Statute of the Mechanism. The competent authorities shall allow visits at any time and on a periodic basis, the frequency of such visits to be decided by the Mechanism. Confidential reports on the conditions of detention and the treatment of Mr. Beara, based on the findings of the visits, will be prepared as appropriate.
2. The competent authorities of Germany acknowledge the right of the International Committee of the Red Cross ("ICRC") to inspect the conditions of detention and treatment of the prisoner at any time and on a periodic basis, the frequency of such visits to be determined by the ICRC. The ICRC will submit a confidential report based on these findings of these inspections to the competent authorities of Germany and to the President of the Mechanism.
3. The competent authorities of Germany and the President of the Mechanism shall consult each other on the findings of the reports referred to in paragraphs 1 and 2. The President may thereafter request Germany to report to him or her any changes in the conditions of detention of Mr. Beara that may be recommended in the reports.

**6. Information**

1. Germany shall immediately notify the Registrar of the Mechanism:
  - a) two months prior to the completion of Mr. Beara's sentence;
  - b) if Mr. Beara has escaped from custody before the sentence has been completed; or
  - c) if Mr. Beara 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. Beara is eligible for pardon or commutation of the sentence, Germany shall notify the Registrar of the Mechanism accordingly.
2. The President of the Mechanism shall determine, in consultation with any Judges of the sentencing Chamber who are Judges of the Mechanism, whether pardon or commutation of the sentence is appropriate. The Registrar shall inform Germany of the determination of the President of the Mechanism. If the President determines that a pardon or commutation of the sentence is not appropriate, the Registrar shall immediately notify, via the German Embassy in The Hague, the competent national authorities who, upon the request of the Mechanism, shall provide for the immediate transfer of Mr. Beara to the Mechanism or, if Germany expressly consents thereto, shall continue the enforcement in Germany. Article 2, paragraph 4, shall apply *mutatis mutandis*.

**8. Termination of enforcement**

1. The enforcement of the sentence by Germany shall cease:
  - a) when the sentence has been completed;
  - b) upon the demise of Mr. Beara;
  - c) upon the early release, commutation or pardon of Mr. Beara, having been determined by the President of the Mechanism to be appropriate, or if Germany, in accordance with Article 2, paragraph 3, does not consent to continuing the enforcement;
  - d) following a decision of the Mechanism as referred to in paragraph 2 below.

2. The Mechanism may at any time decide to request the termination of the enforcement in Germany and transfer of Mr. Beara to another State or to the Mechanism.
3. The competent authorities of Germany shall terminate the enforcement of the sentence as soon as they are informed by the Registrar of the Mechanism of any decision or measure as a result of which the sentence ceases to be enforceable.

#### **9. Impossibility to enforce sentences**

If, at any time after the decision has been taken to enforce the sentence, for any legal or practical reasons, further enforcement should become impossible, Germany shall promptly inform the Registrar of the Mechanism. If required, the Registrar shall make appropriate arrangements for the transfer of Mr. Beara as soon as possible. Following the notification of the Registrar, the competent authorities of Germany shall not take any other measures on the matter without first contacting the Mechanism.

#### **10. Costs**

The Mechanism shall bear the expenses related to the transfer of Mr. Beara to and from Germany, unless the parties agree otherwise. Germany shall pay all other expenses incurred in the enforcement of the sentence.

#### **11. Languages**

This Agreement shall be concluded in the German and English languages, both texts being equally authentic.

#### **12. Duration of the Agreement**

1. This Agreement shall remain in force as long as the sentence referred to in Article 1 is being enforced by Germany.
2. Upon consultation, either party may terminate this Agreement, with two months prior notice. Notwithstanding the foregoing, this Agreement shall not be terminated before the enforcement by Germany of the sentence to which this Agreement applies has ceased and, if applicable, before the transfer of the convicted person as provided for in Article 9 has been effected, whichever is the later.

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

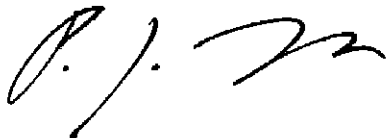
In such event, this Note and Your Excellency's Note in reply thereto expressing your Government's agreement shall constitute an Agreement between the Mechanism and Germany, which shall enter into force on the date of your Note in reply.

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

John Hocking  
Registrar  
Mechanism and ICTY"

I have the honour to inform you that my Government agrees to the proposals contained in your Note. Your Note and this Note in reply thereto shall thus constitute an Agreement between the Mechanism for International Criminal Tribunals and the Government of the Federal Republic of Germany, which shall enter into force on the date of this Note.

Please accept, Mr. Hocking, the assurances of my highest consideration.





The Hague, 10 June 2015

Excellency,

I have the honour to refer to my letter of 2 February 2015 in which I expressed my gratitude for the willingness of the Government of the Federal Republic of Germany ("Germany") to enforce Mr. Ljubiša Beara's prison sentence, as pronounced by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia ("ICTY") in its Judgement of 30 January 2015 ("Judgement").

I thus have the honour to propose that an Agreement between the Mechanism for International Criminal Tribunals ("Mechanism"), which, under Security Council resolution 1966 (2010) continues the jurisdiction, rights, obligations and essential functions of the ICTY, and Germany be concluded, concerning the conditions under which Mr. Ljubiša Beara's sentence of imprisonment shall be enforced, to read as follows:

**1. Mr. Beara's sentence of imprisonment**

The Appeals Chamber of the ICTY sentenced Mr. Beara to life imprisonment. Subject to the conditions of the Judgement and this Note, Mr. Ljubiša Beara's sentence of imprisonment shall be enforced in Germany.

**2. Enforcement of sentence**

1. In enforcing Mr. Beara's sentence as pronounced by the Appeals Chamber of the ICTY, 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 laws of Germany, subject to the supervision of the Mechanism.

His Excellency  
Mr. Franz Josef Kremp  
Ambassador of the Federal Republic of Germany  
to the Netherlands  
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3. If, at any time in the course of enforcement of sentence, pursuant to the applicable national law of Germany, in particular Section 57a of the German Criminal Code, Mr. Beara is eligible to have the enforcement of the remainder of his sentence suspended, Germany shall notify the Registrar of the Mechanism accordingly. If the President of the Mechanism, in consultation with any Judges of the sentencing Chamber who are Judges of the Mechanism, does not consider that suspending the enforcement of the remainder of the sentence and/or early release is appropriate, the Registrar shall immediately notify, via the German Embassy in The Hague, the competent national authorities, which, upon the request of the Mechanism, shall provide for the immediate transfer of Mr. Beara to the Mechanism or, if Germany expressly consents thereto, shall continue the enforcement in Germany.

4. If a review of eligibility for suspension of enforcement of the remainder of Mr. Beara's sentence pursuant to the applicable national law of Germany, in particular section 57a of the German Criminal Code, does not lead to the release of the convicted person, there shall be further reviews at the latest every two years *ex officio* or upon application by Mr. Beara, who is to be informed of his right to submit such an application, or at such earlier date as may be determined by the President of the Mechanism pursuant to Article 10 of the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence and Early Release of Persons convicted by the International Criminal Tribunal for Rwanda, the International Tribunal or the Mechanism.

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2. The competent authorities of Germany acknowledge the right of the International Committee of the Red Cross ("ICRC") to inspect the conditions of detention and treatment of the prisoner at any time and on a periodic basis, the frequency of such visits to be determined by the ICRC. The ICRC will submit a confidential report based on these findings of these inspections to the competent authorities of Germany and to the President of the Mechanism.
3. The competent authorities of Germany and the President of the Mechanism shall consult each other on the findings of the reports referred to in paragraphs 1 and 2. The President may thereafter request Germany to report to him or her any changes in the conditions of detention of Mr. Beara that may be recommended in the reports.

## **6. Information**

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John Hocking



Registrar

Mechanism and ICTY

