

THE NETHERLANDS

Provisions Relating to the Establishment of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (Amended Bill of 9 March 1994).

We Beatrix, by the grace of God, Queen of the Netherlands,

Princess of Orange-Nassau, etc., etc., etc.

Greetings to all who shall hear or see these presents! Be it known:

Whereas We have considered it necessary to take statutory measures in order to implement resolution 827 adopted by the United Nations Security Council on 25 May 1993, acting pursuant to Chapter VII of the Charter of the United Nations, and the Statute, adopted by the same resolution, of the International Tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 (Netherlands Treaty Series 1993, no. 168):

Thus We, having heard the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

Article 1

For the purposes of this Act, the following definitions shall apply:

Tribunal: the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by resolution 827 of the United Nations Security Council of 25 May 1993, including the Prosecutor at the Tribunal;

statute: the Statute of the Tribunal, incorporated in the annex to resolution 827 of the United Nations Security Council of 25 May 1993;

surrender: placing a person at the Tribunal's disposal by the Netherlands for the purposes of a criminal investigation against that person being conducted by the Tribunal;

transit: the transport under escort through Dutch territory of a person in order for him to be placed at the disposal of the Tribunal by a foreign State or be placed at the disposal of a foreign State by the Tribunal;

Our Minister: Our Minister of Justice.

Article 2

At the request of the Tribunal, persons may be surrendered to the Tribunal for prosecution and trial on account of criminal offences in respect of which the Tribunal has competence pursuant to the Statute.

Article 3

1. Persons whose arrest as suspects has been ordered by the Tribunal and who are found in the Netherlands may be provisionally arrested at the Tribunal's request.
2. All public prosecutors and assistant public prosecutors shall be empowered to order such provisional arrests.
3. The provisions of section 14, subsections 2 to 5, section 15, section 16, subsection 1 (a) and section 17 of the Extradition Act shall apply *mutatis mutandis*, with the proviso that the person arrested be brought before the Public Prosecutor in The Hague without delay.

Article 4

1. Sole competence to deal with requests for surrender by the Tribunal shall rest with the District Court in The Hague.
2. Sections 21 to 27 and section 28, subsection 1 of the Extradition Act shall apply *mutatis mutandis*.
3. If the District Court, which is to rule on whether the Tribunal's request may be granted, holds either that it cannot be established that the person brought before it is the person whose surrender has been requested or that surrender has been requested on account of offences in respect of which the Tribunal is clearly not competent under its Statute, its judgement shall declare the surrender inadmissible.
4. In cases other than those provided for by subsection 3, the District Court shall declare the surrender admissible in its judgement. The judgement shall be immediately enforceable.
5. Section 29, section 30, first sentence and subsection 2, section 32, section 33, subsections I and 2, sections 36 and 52 to 60 of the Extradition Act shall apply *mutatis mutandis*.

Article 5

Once the request for surrender has been granted, the person to be surrendered shall be placed at the disposal of the Tribunal without delay. Detention ordered pursuant to section 27 of the Extradition Act may be extended until that time.

Article 6

Persons in the Netherlands whom the Tribunal orders to be brought before it as witnesses or experts may be detained by order of the Public Prosecutor in The Hague and placed at the disposal of the Tribunal.

Article 7

1. The transit of persons being surrendered to the Tribunal as suspects by the authorities of a foreign power shall be conducted on the instructions of Our Minister by Dutch officers and under their guard.

2. The transit of persons being transferred to The Netherlands by the authorities of a foreign State as witnesses or experts in the execution of a subpoena issued by the Tribunal shall be conducted on the instructions of Our Minister by Dutch officers and under their guard.

3. Persons who have been detained by order of the Tribunal shall be transported outside the premises subject to the Tribunal's authority at the request of the Tribunal on the instructions of Our Minister by Dutch officers and under their guard.

4. The officers referred to in this section shall be empowered to take all appropriate measures for the security of the persons in question and to prevent their escape.

Article 8

Data from a police file as referred to in the Data Protection (Police Files) Act (Bulletin of Acts and Decrees 1990, no. 414), may be supplied, with or without a request to that end, to the Prosecutor at the Tribunal if necessary for the proper performance of his duties. The data shall be supplied via the National Criminal Intelligence Division in accordance with instructions given by Our Minister.

Article 9

1. Requests for any form whatsoever of legal assistance addressed to the police or any judicial body, named or otherwise, shall be complied with wherever possible.

2. Articles 552i, 552j, 552n, 552o to 552q of the Code of Criminal Procedure and section 51, subsections 1 and 4, of the Extradition Act shall apply *mutatis mutandis*.

3. Permission shall be given if requested for representatives of the Tribunal to be present when requests referred to in subsection 1 are implemented and for them to have the appropriate questions put to persons involved in the implementation.

4. The Dutch authorities responsible for implementing requests for legal assistance shall be responsible for the security of persons involved therein and to that end shall be empowered to attach conditions to the way in which requests for legal assistance are implemented.

Article 10

1. Without prejudice to the provisions of article 7, subsection 2, witnesses or experts, regardless of their nationality, who come to the Netherlands in response to a summons or subpoena issued by the Tribunal, shall not be prosecuted, arrested or subjected to any measures to restrict their liberty, on account of offences or convictions which preceded their arrival in the Netherlands.

2. The immunity referred to in subsection 1 shall lapse if the witness or expert, despite being able to leave the Netherlands for fifteen consecutive days following the date on which his presence is no longer required by the Tribunal, remains in the Netherlands or returns there after his departure.

Article 11

1. Custodial sentences imposed by a final judgement of the Tribunal may be enforced in the Netherlands at the Tribunal's request.

2. The convicted person may be provisionally arrested to that end at the Tribunal's request.

3. The public prosecutor or assistant public prosecutor in The Hague shall be competent to order such a provisional arrest.

4. Section 9, subsections 2 to 5, section 10, section 11, subsections 1 and 2 (a), and section 12 of the Enforcement of Criminal Judgements (Transfer) Act shall apply *mutatis mutandis*.

Article 12

1. Sole competence to deal with requests for enforcement by the Tribunal shall rest with the District Court in The Hague. Cases shall be dealt with by the full-bench division.
2. Section 18, subsection 1, sections 19 and 24 to 29 of the Enforcement of Criminal Judgements (Transfer) Act shall apply *mutatis mutandis*.
3. Unless the District Court holds that, having weighed all the interests involved, a decision to allow enforcement in the Netherlands cannot reasonably be taken, it shall declare enforcement admissible, quoting the relevant statutory provisions. Section 30, subsection 3, second sentence, and subsections 4 and 5, and section 31 of the Enforcement of Criminal Judgements (Transfer) Act shall apply *mutatis mutandis*. The judgement of the District Court shall be immediately enforceable.
4. The District Court may in no case impose a sentence longer than that imposed by the Tribunal.
5. Sections 33, 60 to 66 and 68 of the Enforcement of Criminal Judgements (Transfer) Act shall apply *mutatis mutandis*.

Article 13

1. The further enforcement of a custodial sentence imposed by the Tribunal which is being enforced in the Netherlands under articles 11 and 12 may be transferred to a foreign State. Sections 51 to 53, 56, 57 and 59 of the Enforcement of Criminal Judgements (Transfer) Act shall apply *mutatis mutandis*.
2. Before deciding on the transfer of enforcement pursuant to subsection 1, Our Minister shall seek the advice of the Tribunal. If the Tribunal advises against the transfer, Our Minister shall decide against it.

Article 14

Sections 2 to 7, 11 and 12 of the Pardons Act shall apply *mutatis mutandis* to petitions for reduction or commutation of sentences imposed by the Tribunal which are being enforced in the Netherlands under articles 11 and 12. Pardons shall be granted by the president of the Tribunal in accordance with article 28 of the Statute.

Article 15

The transit of persons who have been convicted by the Tribunal and in respect of whom a custodial sentence is to be enforced in a foreign State shall be conducted on the instructions of Our Minister by Dutch officers and under their guard. The said officers shall be empowered to take all appropriate measures for the security of the persons in question and to prevent their escape.

Article 16

Persons who, in accordance with the Tribunal's Statute, cannot claim immunity from the Tribunal's jurisdiction shall not be able, for the purposes of this Act, to claim such immunity from the jurisdiction of the Dutch courts and the enforceability of their decisions.

Article 17

Dutch law shall not apply to custodial sentences ordered by the Tribunal in premises used by the Tribunal in the Netherlands.

Article 18

This Act shall enter into force on the day following the date of publication of the Bulletin of Acts and Decrees in which it appears.

We order and command that this Act shall be placed in the Bulletin of Acts and Decrees and that all ministerial departments, authorities, bodies and officials whom it may concern shall diligently implement it.

Done: 21 April 1994 in The Hague

Beatrix

The Minister of Justice,

E. M. H. Hirsch Ballin

The Minister for Foreign Affairs,

P. H. Kooijmans