

No. 20793

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**UNITED STATES OF AMERICA  
and  
FEDERAL REPUBLIC OF GERMANY**

**Exchange of notes constituting an agreement relating to the taking of evidence. Bad Godesberg, 11 February 1955, and Bonn, 13 January and 8 October 1956**

**Exchange of notes constituting an agreement concerning the above-mentioned Agreement. Bonn, 17 October 1979 and 1 February 1980**

*Authentic texts: English and German.*

*Registered by the United States of America on 1 March 1982.*

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**ÉTATS-UNIS D'AMÉRIQUE  
et  
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

**Échange de notes constituant un accord relatif à l'obtention des preuves. Bad Godesberg, 11 février 1955, et Bonn, 13 janvier et 8 octobre 1956**

**Échange de notes constituant un accord se rapportant à l'Accord susmentionné. Bonn, 17 octobre 1979 et 1<sup>er</sup> février 1980**

*Textes authentiques : anglais et allemand.*

*Enregistrés par les États-Unis d'Amérique le 1<sup>er</sup> mars 1982.*

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT<sup>1</sup> BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY RELATING TO THE TAKING OF EVIDENCE

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I

*The Office of the United States High Commissioner for Germany  
to the German Federal Ministry of Foreign Affairs*

The Office of the United States High Commissioner for Germany presents its compliments to the Federal Ministry of Foreign Affairs and has the honor to bring the following matter to the attention of the appropriate Federal Government officials.

Prior to 1939 it is understood that German law prohibited in general the taking of testimony of German nationals by foreign consular officers stationed in Germany. Therefore, it was interpreted then under Article 22 of the 1923 Treaty of Friendship, Commerce, and Consular Rights<sup>2</sup> between the United States and Germany that American consular officers had the right to take depositions of American citizens, occupants of American vessels, and aliens having permanent residence in the United States, but that the taking of testimony of other categories of persons was forbidden by German law.

The Office of the United States High Commissioner for Germany would appreciate knowing whether German law now in effect in the Federal Republic still prohibits the taking of testimony of German nationals by foreign consular officers. This inquiry is made because there is nothing in the 1923 Treaty which prohibits the taking of such testimony. In the absence of a current German law prohibiting it or a specific request from the German authorities that such testimony not be taken, American consular officers in Germany will continue as they have since the war to take the voluntary depositions of all nationalities.

Inasmuch as this is a pressing matter, an urgent reply would be greatly appreciated.

The Office of the United States High Commissioner for Germany takes this occasion to assure the Federal Ministry of Foreign Affairs of its highest consideration.

Bad Godesberg-Mehlemer Aue, February 11, 1955

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<sup>1</sup> Came into force on 8 October 1956 by the exchange of the said notes.

<sup>2</sup> League of Nations, *Treaty Series*, vol. LII, p. 133.

## II

*The German Ministry of Foreign Affairs to the American Embassy*

[GERMAN TEXT — TEXTE ALLEMAND]

[TRANSLATION<sup>1</sup> — TRADUCTION<sup>2</sup>]

AUSWÄRTIGES AMT

THE MINISTRY OF FOREIGN AFFAIRS

511-04/80 12 586/55 III

501-511-04/80 12 586/55 III

*Verbalnote**Note Verbale*

Das Auswärtige Amt beehrt sich, unter Bezugnahme auf die Verbalnoten der Botschaft der Vereinigten Staaten von Amerika vom 11. Februar und 7. März 1955 sowie auf seine Verbalnote vom 31. März 1955 folgendes mitzuteilen:

With reference to the notes verbales of the Embassy of the United States of America of February 11 and March 7, 1955, and to its own note verbale of March 31, 1955, the Ministry of Foreign Affairs has the honor to state as follows:

Im Hinblick auf die von den Vereinigten Staaten gewährte Gegenseitigkeit werden in Zukunft Einwendungen gegen die Befragung deutscher oder anderer nichtamerikanischer Staatsangehöriger durch amerikanische Konsuln in der Bundesrepublik nicht erhoben werden.

In consideration of the reciprocity granted by the United States, no objections will in future be raised to the questioning of German or other non-American nationals by American consuls in the Federal Republic.

Es wird dabei davon ausgegangen,

In this connection, it is assumed that:

- 1.) daß auf die zu befragende Person keinerlei Zwang, weder zum Erscheinen, noch zur Aussage ausgeübt wird, insbesondere
  - a) die Bitte, Auskunft zu erteilen, nicht als „Ladung“ und die Befragung nicht als „Vernehmung“ bezeichnet wird,
  - b) für den Fall des Nichterscheinens oder der Verweigerung der Auskunft keinerlei Zwangsmaßnahmen angedroht werden,
  - c) auf die zur Auskunft bereite Person nicht in irgendeiner Form ein Zwang ausgeübt wird, Protokolle oder sonstige Vermerke über mündlich erteilte Auskünfte zu unterschreiben,

- 1) No compulsion of any kind will be used to force the person to be questioned either to appear or to make statements; specifically,
  - (a) The request to give information will not be called a “summons”, and the questioning will not be called an “interrogation”;
  - (b) There will be no threat of compulsory measures in the event of non-appearance or refusal to give information;
  - (c) A person willing to give information will in no way be compelled to sign records or other written statements of information given orally;

<sup>1</sup> Translation supplied by the Government of the United States.

<sup>2</sup> Traduction fournie par le Gouvernement des Etats-Unis.

- 2.) daß die Befragung in den Räumen der amerikanischen Konsulate stattfindet,  
 3.) daß die zu befragende Person die Möglichkeit hat, sich von einem Rechtsbeistand begleiten zu lassen.

Das Auswärtige Amt benutzt auch diesen Anlaß, die Botschaft der Vereinigten Staaten von Amerika erneut seiner ausgezeichneten Hochachtung zu versichern.

Bonn, den 13. Januar 1956

[L.S.]

An die Botschaft der  
 Vereinigten Staaten von Amerika  
 Bad Godesberg-Mehlem

- 2) The questioning will take place on the premises of an American consulate;  
 3) The person to be questioned will be afforded the opportunity to be accompanied by counsel.

The Ministry of Foreign Affairs avails itself of this opportunity to renew to the Embassy of the United States of America the assurance of its high consideration.

Bonn, January 13, 1956

[L.S.]

Embassy of the United States  
 of America  
 Bad Godesberg-Mehlem

### III

#### *The German Ministry of Foreign Affairs to the American Embassy*

[GERMAN TEXT — TEXTE ALLEMAND]

[TRANSLATION<sup>1</sup> — TRADUCTION<sup>2</sup>]

AUSWÄRTIGES AMT

THE MINISTRY OF FOREIGN AFFAIRS

501-511-04/80 I.-12580/56

501-511-04/80 I.-12580/56

#### *Verbalnote*

#### *Note Verbale*

Das Auswärtige Amt beehrt sich, unter Bezugnahme auf die dortige Verbalnote vom 23. Juli 1956-28 — und im Anschluß an seine Verbalnote vom 8. August 1956 — 501-511-04/80 — Vernehmungen/12021/56 — betreffend die Zuständigkeit der amerikanischen Konsuln zur Befragung deutscher Staatsangehöriger, folgendes mitzuteilen:

Unter Aufhebung der im vorletzten Absatz der Verbalnote des Auswärtigen Amts vom 15. Mai 1956 — 501-511-04/80-S-11195/56 — festgelegten Einschränkung erklärt die Bundesregierung — unter der Voraussetzung der Gegenseitig-

With reference to your note verbale of July 23, 1956-28 — and, further, to its own note verbale of August 8, 1956 — 501-511-04/80 — interrogations/12021/56 — regarding the authority of American consuls to question German nationals, the Ministry of Foreign Affairs has the honor to advise as follows:

Revoking the limitation contained in the next to the last paragraph of the note verbale of the Ministry of Foreign Affairs of May 15, 1956 — 501-511-04/80-S-11195/56 —, the Government of the Federal Republic also agrees, on the con-

<sup>1</sup> Translation supplied by the Government of the United States.

<sup>2</sup> Traduction fournie par le Gouvernement des Etats-Unis.

keit — ihr Einverständnis auch damit, daß die amerikanischen Ermittlungsbeamten nichtamerikanische Personen zum Zwecke der Befragung im — und der Verbalnote vom 13. Januar 1956 — 501-511-04/80 12586/55 III — in ihrer Wohnung und in ihren Geschäftsräumen aufsuchen, sofern die zu befragenden Personen eine Befragung in der eigenen Wohnung oder in den eigenen Geschäftsräumen ausdrücklich erbitten oder sich mit einer derartigen Art der Befragung ausdrücklich einverstanden erklären.

Das Auswärtige Amt benutzt auch diesen Anlaß, die Botschaft der Vereinigten Staaten von Amerika erneut seiner ausgezeichneten Hochachtung zu versichern.

Bonn, den 8. Oktober 1956

[L.S.]

An die Botschaft der  
Vereinigten Staaten von Amerika  
Bad Godesberg-Mehlem

dition of reciprocity, to visits by American investigating officers to non-Americans for the purpose of questioning within the meaning of the note verbale of January 13, 1956 — 501-511-04/80 12586/55 III — at the latter's homes and places of business, provided the persons to be questioned expressly request questioning to be conducted at their homes or places of business, or expressly consent to this form of questioning.

The Ministry of Foreign Affairs avails itself of this opportunity to renew to the Embassy of the United States of America the assurance of its high consideration.

Bonn, October 8, 1956

[L.S.]

Embassy of the United States  
of America  
Bad Godesberg-Mehlem

drücklich erbitten oder sich mit einer derartigen Art der Befragung ausdrücklich einverstanden erklären,

3. daß die zu befragende Person die Möglichkeit hat, sich von einem Rechtsbeistand begleiten zu lassen.

Das Auswärtige Amt nutzt diesen Anlaß, die Botschaft der Vereinigten Staaten von Amerika erneut seiner ausgezeichneten Hochachtung zu versichern.

Bonn, 17. Oktober 1979

An die Botschaft der Vereinigten Staaten  
von Amerika

[TRANSLATION — TRADUCTION]

*The German Ministry of Foreign Affairs to the American Embassy*

MINISTRY OF FOREIGN AFFAIRS

512-521.60 USA

*Note Verbale*

[*See note II*]

Bonn, 17 October 1979

Embassy of the United States of America

## II

*The American Embassy to the German Ministry of Foreign Affairs*

EMBASSY OF THE UNITED STATES OF AMERICA

BONN, GERMANY

No. 40

The Embassy of the United States of America presents its compliments to the Auswaertiges Amt of the Federal Republic of Germany and has the honor to refer to the Note Verbale of the Auswaertiges Amt (512-521.60 USA) dated October 17, 1979, which reads, in the English language translation, as follows:

With reference to its Note Verbale of November 15, 1978 (512-521.60 USA) concerning legal assistance in civil and commercial matters, the Foreign Office has the honor of informing the Embassy of the United States of America that the agreement between the Foreign Office and the Embassy of the United States of America on the questioning, by consular officers of the United States, of German or other non-American citizens in the Federal Republic of Germany, under the conditions stipulated there, which was concluded by the exchange of notes on

February 11, 1955, January 13, 1956, and October 8, 1956,<sup>1</sup> is still considered valid by the German side, as The Hague convention of March 18, 1970, on the taking of evidence abroad in civil or commercial matters,<sup>2</sup> became effective for the Federal Republic of Germany on June 26, 1979.

In the Foreign Office notes of January 13, 1956, and October 8, 1956 (501-511-04/80) the following prerequisites for the questioning of German or other non-American citizens were mentioned:

The United States of America grants reciprocity.

It is expected

- (1) That no compulsion is brought to bear on the person to be questioned to make him appear or provide information, more specifically,
  - (a) That the request to provide information is not called a "summons" and that the questioning is not called "interrogation";
  - (b) That no coercive measures are threatened in the event that a person does not appear or refuses to provide information;
  - (c) That no compulsion whatsoever is brought to bear on a person ready to provide information to make him sign protocols or other records of orally provided information;
- (2) That the questioning only takes place in the home, office or shop of persons to be questioned if said persons expressly ask to be questioned there or expressly state their agreement with this form of questioning;
- (3) That the person to be questioned has the possibility of having himself accompanied by a lawyer.

The Foreign Office avails itself of this opportunity once again to assure the Embassy of the United States of its high esteem.

The Embassy has the further honor to inform the Auswaertiges Amt that the United States Department of State shares the legal opinion of the Auswaertiges Amt as set out in its Note Verbale as it is translated in this Note.

The Embassy of the United States of America avails itself of this opportunity to renew to the Auswaertiges Amt the assurances of its highest consideration.

Embassy of the United States of America

Bonn, February 1, 1980

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<sup>1</sup> See p. 42 of this volume.

<sup>2</sup> United Nations, *Treaty Series*, vol. 847, p. 231.