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**THE IMPLICATIONS FOR COUNCIL OF**  
**EUROPE MEMBER STATES OF THE**  
**RATIFICATION OF THE**  
**ROME STATUTE OF THE**  
**INTERNATIONAL CRIMINAL COURT**

**LES IMPLICATIONS POUR LES ETATS**  
**MEMBRES DU CONSEIL DE L'EUROPE**  
**DE LA RATIFICATION DU STATUT DE**  
**ROME DE LA COUR PENALE**  
**INTERNATIONALE**

**Draft of an Act to Introduce the Code of**  
**Crimes against International Criminal Law**  
**(CCAICL – Introductory Act)**  
**22 June 2001**

**(Germany)**

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Stand: 22. Juni 2001

**Draft of an Act to Introduce the Code of Crimes against International Criminal Law  
(CCAICL – Introductory Act)**

The Federal Parliament has passed the following Act:

**Article 1  
Code of Crimes against International Law (CCAIL)**

**Part 1  
General provisions**

**Section 1  
Scope of application**

This Act shall apply to all criminal offences against international law, and also to crimes designated therein when the offence was committed abroad and bears no relation to Germany.

**Section 2  
Application of the general law**

The general criminal law shall apply to offences pursuant to this Act so far as this Act does not make special provision in sections 1 and 3 to 6.

**Section 3  
Necessary defence**

(1) Necessary defence within the meaning of this Act shall be the defence needed to avert from oneself or another the imminent unlawful use of force. In the event of commission of an offence pursuant to Sections 9 to 13 (war crimes) the perpetrator shall, moreover, also have acted unlawfully where the offence is necessary to ward off an imminent unlawful attack on property which is essential for the survival of the person concerned or on property which is essential for a military mission.

(2) Whoever in necessary defence commits an offence pursuant to this Act shall not have acted unlawfully. The offence shall not however be indicated in necessary defence if its probable consequences are out of proportion to the disadvantages made imminent by the attack.

(3) Participation in a military defence operation shall not in itself alone establish any justification based on necessary defence.

#### Section 4 Acting upon orders

Whoever commits an offence pursuant to Sections 9 to 13 in execution of a military order or of an order comparable in its actual binding effect shall have acted without guilt so far as the perpetrator does not know that the order is unlawful and so far as it is also not manifestly unlawful.

#### Section 5 Responsibility of military commanders and other superiors

(1) A military commander or civilian superior who omits to prevent his or her subordinate from committing an offence pursuant to this Act shall be punished as the perpetrator of the offence committed by that subordinate.

(2) Any person effectively giving orders or exercising command and control in an armed unit shall be deemed equivalent to a military commander. Any person effectively exercising command and control in a civil organisation or in an enterprise shall be deemed equivalent to a civilian superior.

#### Section 6 Non-applicability of statute of limitations

The prosecution of crimes pursuant to this Act and the execution of sentences imposed on their account shall not be subject to any statute of limitations.

### **Part 2** **Crimes against International Law**

#### **Chapter 1** **Genocide and crimes against humanity**

#### Section 7 Genocide

(1) Whoever with the intent of destroying as such, in whole or in part, a national, racial, religious or ethnic group

1. kills a member of the group,
2. causes serious bodily or mental harm to a member of the group, especially of the kind referred to in section 226 of the Penal Code,

3. inflicts on the group conditions of life calculated to bring about its physical destruction in whole or in part,
4. imposes measures intended to prevent births within the group,
5. forcibly transfers a child of the group to another group

shall be punished with imprisonment for life.

(2) In less serious cases referred to under subsection (1), numbers 2 to 5, the punishment shall be imprisonment for not less than five years.

## Section 8 Crimes against humanity

(1) Whoever, as part of a widespread or systematic attack directed against any civilian population,

1. kills a person,
2. inflicts, with the intent of destroying a population in whole or in part, conditions of life on that population or on parts thereof, being conditions calculated to bring about its physical destruction in whole or in part,
3. traffics in persons, in particular in women or children, or whoever in the exercise of an arrogated right of ownership over the person concerned enslaves that person in another way,
4. deports or forcibly transfers, by expulsion or other coercive acts, a person lawfully present in an area to another State or another area in contravention of a universally applicable general rule of international law,
5. tortures a person in his or her custody or otherwise under his or her control by causing that person substantial physical or mental harm or suffering where such harm or suffering does not arise only from sanctions that are compatible with the general rules of international law,
6. sexually coerces, rapes, forces into prostitution or deprives a person of his or her reproductive capacity, or confines a woman forcibly made pregnant with the intent of affecting the ethnic composition of any population,
7. causes a person's enforced disappearance, with the intention of removing him or her from the protection of the law for a prolonged period of time,
  - (a) by abducting that person with the authorisation or approval of a State or a political organisation, or by otherwise severely depriving such person of his or her physical liberty, followed by a failure immediately to give information, upon inquiry, on that person's fate and whereabouts, or

(b) by refusing, on behalf of a State or of a political organisation or in contravention of a legal duty, to give information immediately on the fate and whereabouts of the person deprived of his or her physical liberty under the circumstances referred to under letter (a) above,

8. causes another person severe physical or emotional harm, especially of the kind referred to in section 226 of the Penal Code,

9. severely deprives, in contravention of a universally applicable general rule of international law, a person of his or her physical liberty, or

10. persecutes an identifiable group or collectivity by depriving such group or collectivity of fundamental human rights, or by substantially restricting the same, on political racial, national, ethnic, cultural or religious, gender or other grounds that are universally recognised as impermissible under the general rules of international law

shall be punished, in the cases referred to under numbers 1 and 2, with imprisonment for life, and, in the cases referred to under numbers 3 to 7, with imprisonment for not less than three years.

(2) In less serious cases under subsection (1), number 2, the punishment shall be imprisonment for not less than five years, in less serious cases under subsection (1), numbers 3 to 7, imprisonment for not less than two years, and in less serious cases under subsection (1), numbers 8 and 9, imprisonment for not less than one year.

(3) Where the perpetrator causes the death of a person through an offence pursuant to section (1), numbers 3 to 10, the punishment shall be imprisonment for life or for not less than ten years in cases under subsection (1), numbers 3 to 7, and imprisonment for not less than five years in cases under subsection (1), numbers 8 to 10.

(4) In less serious cases under subsection (3) the punishment for an offence pursuant to subsection (1), numbers 3 to 7, shall be imprisonment for not less than five years, and for an offence pursuant to subsection (1), numbers 8 to 10, imprisonment for not less than three years.

(5) Whoever commits a crime pursuant to subsection (1) with the intention of maintaining an institutionalised regime of systematic oppression and domination by one racial group over any other shall be punished with imprisonment for not less than five years so far as the offence is not punishable more severely pursuant to subsection (1) or subsection (3). In less serious cases the punishment shall be imprisonment for not less than three years so far as the offence is not punishable more severely pursuant to subsection (2) or subsection (4).

## **Chapter 2**

### **War crimes**

#### Section 9

##### War crimes against persons

(1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character

1. kills a person protected under humanitarian international law,
2. takes hostage a person protected under humanitarian international law,
3. treats a person protected under humanitarian international law cruelly or inhumanly by causing him or her physical or emotional harm or suffering, especially by torturing or mutilating that person,
4. sexually coerces, rapes, forces into prostitution or deprives a person protected under humanitarian international law of his or her reproductive capacity, or confines such a person who has forcibly been made pregnant with the intent of affecting the ethnic composition of any population,
5. conscripts children under the age of fifteen years into the armed forces, or enlists them in the armed forces or in armed groups, or uses them to participate actively in hostilities,
6. deports or forcibly transfers, by expulsion or other coercive acts, a person protected under humanitarian international law and lawfully present in an area to another State or another area in contravention of a universally applicable general rule of international law, or
7. imposes on, or executes a substantial sentence in respect of a person protected under humanitarian international law, in particular the death penalty or a term of imprisonment, without that person having been sentenced in a fair and regular trial affording the legal guarantees required by international law,
8.
  - a) carries out experiments on a person protected under humanitarian international law, being a person who has not previously given his or her voluntary and express consent, or where the experiments concerned are neither medically necessary nor carried out in his or her interest,
  - b) takes organs or body tissue from such a person for transplantation purposes so far as it does not constitute removal of blood or skin for therapeutic purposes in conformity with generally recognised medical principles and the person concerned has previously given his or her voluntary and express consent, or

c) uses treatment methods that are not medically recognised on such person, without any medical necessity for such action and without the person concerned having previously given his or her voluntary and express consent,

and thereby causes the risk of death or of serious injury to health,

9. treats a person under humanitarian international law in a gravely humiliating or degrading manner

shall be punished, in the cases referred to under number 1, with imprisonment for life, in the cases referred to under number 2, with imprisonment for not less than five years, in the cases referred to under numbers 3 to 5, with imprisonment for not less than three years, in the cases referred to under numbers 6 to 8, with imprisonment for not less than two years, and, in the cases referred to under number 9, with imprisonment for not less than one year.

(2) Whoever in connection with an international armed conflict or with an armed conflict not of an international character, wounds a member of the adverse armed forces or a combatant of the adverse party after the latter has surrendered unconditionally or is otherwise placed hors de combat shall be punished with imprisonment for not less than three years.

(3) Whoever in connection with an international armed conflict

1. unlawfully holds a protected person prisoner or unjustifiably delays his or her return home,

2. transfers, as a member of an Occupying Power, parts of its own civilian population into the occupied territory,

3. unlawfully compels a protected person by force or threat of appreciable harm to serve in the forces of a hostile Power or

4. compels a national of the adverse party by force or threat of appreciable harm to take part in the operations of war directed against his or her own country

shall be punished with imprisonment for not less than two years.

(4) Where the perpetrator causes the death of the victim through an offence pursuant to subsection (1), numbers 2 to 6, the punishment shall, in the cases referred to under subsection (1), number 2, be imprisonment for life or imprisonment for not less than ten years, in the cases referred to under subsection (1), numbers 3 to 5, imprisonment for not less than five years, and, in the cases referred to under subsection (1), number 6, imprisonment for not less than three years. Where an act referred to under subsection (1), number 8, causes death or serious harm to health, the punishment shall be imprisonment for not less than three years.

(5) In less serious cases referred to under subsection (1), number 2, the punishment shall be imprisonment for not less than two years, in less serious cases referred to under subsection (1), numbers 3 and 4, the punishment shall be imprisonment for not less than one year, in less serious cases referred to under subsection (1), number 6, the punishment shall be imprisonment from six months to five years.

(6) Persons protected under humanitarian international law shall be

- a) in an international armed conflict: persons protected for the purposes of the four Geneva Conventions and of the Protocol Additional to the Geneva Conventions (Protocol I) (annexed to this Act), namely the wounded, the sick, the shipwrecked, prisoners of war and civilians;
- b) in an armed conflict not of an international character: the wounded, the sick, the shipwrecked as well as persons taking no active part in the hostilities who are in the power of the adverse party;
- c) in an international armed conflict and in an armed conflict not of an international character: members of armed forces who have laid down their arms and combatants of the adverse party who have laid down their arms or who have no other means of defence.

## Section 10

### War crimes against property and other rights

(1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character pillages or, unless this is imperatively demanded by the necessities of armed conflict, otherwise extensively destroys, appropriates or seizes property of the adverse party contrary to international law, such property being in the power of the perpetrator's party, shall be punished with imprisonment from one to ten years.

(2) Whoever in connection with an international armed conflict and contrary to international law declares the rights and actions of all, or of a substantial proportion of, the nationals of the hostile party abolished, suspended or inadmissible in a court of law shall be punished with imprisonment from one to ten years.

## Section 11

### War crimes against humanitarian operations and emblems

(1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character

- 1. directs an attack against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under humanitarian international law, or

2. directs an attack against personnel, buildings, medical units and transport, using the distinctive emblems of the Geneva Conventions (annexed to this Act) in conformity with humanitarian international law shall be punished with imprisonment for not less than three years. In less serious cases, particularly where the attack does not take place by military means, the punishment shall be imprisonment for not less than one year.

(2) Whoever in connection with an international armed conflict or with an armed conflict not of an international character makes improper use of the distinctive emblems of the Geneva Conventions (annexed to this Act), of the flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, thereby causing a person's death or serious personal injury (section 226 of the Penal Code) shall be punished with imprisonment for not less than five years.

## Section 12

### War crimes consisting in the use of prohibited methods of warfare

(1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character

1. directs an attack by military means against the civilian population as such or against individual civilians not taking direct part in hostilities,

2. directs an attack by military means against civilian objects, so long as such objects are protected as such by humanitarian international law, namely buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, or against towns, villages, dwellings or buildings which are undefended, or against demilitarised zones or works and installations containing dangerous forces,

3. carries out an attack by military means and definitely anticipates that the attack will cause death or injury to civilians or damage to civilian objects on a scale out of proportion to the concrete and direct overall military advantage anticipated,

4. uses a person who is protected under humanitarian international law as a shield to restrain a hostile party from undertaking operations of war against certain targets,

5. uses starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival or impedes relief supplies in contravention of humanitarian international law,

6. orders or threatens, as a commander, that no quarter will be given, or

7. treacherously kills or wounds a member of the hostile armed forces or a combatant of the adverse party

shall be punished with imprisonment for not less than three years. In less serious cases under number 2 the punishment shall be imprisonment for not less than one year.

(2) Where the perpetrator causes the death or serious injury (section 226 of the Penal Code) of a civilian or of a person protected under humanitarian international law through an offence pursuant to subsection (1), numbers 1 to 6, he shall be punished with imprisonment for not less than five years. Where the perpetrator intentionally causes death, the punishment shall be imprisonment for life or for not less than ten years.

(3) Whoever in connection with an international armed conflict carries out an attack by military means and definitely anticipates that the attack will cause widespread, long-term and severe damage to the natural environment on a scale out of proportion to the concrete and direct overall military advantage anticipated shall be punished with imprisonment for not less than three years.

### Section 13

#### War crimes consisting in employment of prohibited means of warfare

(1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character

1. employs poison or poisoned weapons,
2. employs biological or chemical weapons or
3. employs bullets which expand or flatten easily in the human body, in particular bullets with a hard envelope which does not entirely cover the core or is pierced with incisions

shall be punished with imprisonment for not less than three years.

(2) Where the perpetrator causes the death or serious injury (section 226 of the Penal Code) of a civilian or of a person protected under humanitarian international law through an offence pursuant to subsection (1), he shall be punished with imprisonment for not less than five years. Where the perpetrator intentionally causes death, the punishment shall be imprisonment for life or for not less than ten years.

## Chapter 3

### Other crimes

#### § 14

#### Violation of the duty of supervision

(1) A military commander who intentionally or negligently omits properly to supervise a subordinate under his or her command or under his or her effective control shall be punished for violation of the duty of supervision if the subordinate commits an offence pursuant to this Act, where the imminent commission of such an offence was discernible to the commander and he or she could have prevented it.

(2) A civilian superior who intentionally or negligently omits properly to supervise a subordinate under his or her authority or under his or her effective control shall be punished for violation of the duty of supervision if the subordinate commits an offence pursuant to this Act, where the imminent commission of such an offence was discernible to the superior without more and he or she could have prevented it.

(3) Section 5 subsection (2) shall apply mutatis mutandis.

(4) Intentional violation of the duty of supervision shall be punished with imprisonment for not more than five years, and negligent violation of the duty of supervision shall be punished with imprisonment for not more than three years.

#### Section 15 Omission to report a crime

(1) A military commander or a civilian superior who omits immediately to draw the attention of the agency responsible for the investigation or prosecution of any offence pursuant to this Act, committed by a subordinate, shall be punished with imprisonment for not more than three years.

(2) Section 5 subsection (2) shall apply mutatis mutandis.

**Annex to Section 9 subsection (6) letter a), Section 11 subsection (1), number 2, and subsection (2) of the Act**

For the purposes of this Act the term “Geneva Conventions” shall constitute a reference to the following:

- I. GENEVA CONVENTION of 12 August 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Federal Law Gazette 1954 II page 781, 783),
- II. GENEVA CONVENTION of 12 August 1949 for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Federal Law Gazette 1954 II page 781, 813),
- III. GENEVA CONVENTION of 12 August 1949 relative to the Treatment of Prisoners of War (Federal Law Gazette 1954 II page 781, 838) and
- IV. GENEVA CONVENTION of 12 August 1949 relative to the Protection of Civilian Persons in Time of War (Federal law Gazette 1954 II page 781, 917).

For the purposes of this Act Protocol I shall constitute a reference to the following:

Protocol Additional to the GENEVA CONVENTIONS of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977 (Federal Law Gazette 1990 II page 1550, 1551).

## Article 2

### Amendment to the Penal Code

Follow-up amendments to the Penal Code in the version published on 13 November 1998 (Federal Law Gazette I page 3322)

## Article 3

### Amendment to the Code of Criminal Procedure

#### **The Code of Criminal Procedure in the version promulgated on ... shall be amended as follows:**

1. Section 153c shall be amended as follows:
  - a) Subsection (1) shall be amended as follows:
    - aa) In number 2 the comma shall be replaced by a full stop.
    - bb) The following sentence shall be inserted after number 2: “Section 153f shall apply to offences punishable pursuant to the Code of Crimes against International Law.”
    - cc) The previous number 3 shall become subsection (2), and es werden nach der Absatzbezeichnung die Wörter „Die Staatsanwaltschaft kann von der Verfolgung einer Tat absehen,“ eingefügt.
  - b) The previous subsections (2) to (4) shall become subsections (3) to (5).
5. The following section 153f shall be inserted after section 153e:

#### **“Section 153f**

*(1) In the cases referred to under Section 153c subsection (1), numbers 1 and 2, the public prosecution office may dispense with prosecuting an offence punishable pursuant to sections 7 to 15 of the Code of Crimes against International Law, if the accused is not residing in Germany and such residence is not to be anticipated. If in the cases referred to under Section 153c subsection (1), number 1, the accused is a German, this shall however apply only where the offence is being prosecuted before an international court or by a state on whose territory the offence was committed or whose national was harmed by the offence.*

*(2) In the cases referred to under Section 153 subsection (1), numbers 1 and 2, the public prosecution office should dispense with prosecuting an offence punishable pursuant to sections 7 to 15 of the Code of Crimes against International Law, if*

- 1. there is no suspicion of a German having committed such offence,*
- 2. such offence was not committed against a German,*

3. *no suspect in respect of such offence is residing in Germany and such residence is not to be anticipated, and*

4. *the offence is being prosecuted before an international court or by a state on whose territory the offence was committed, whose national is suspected of its commission or whose national was harmed by the offence.*

*The same shall apply if a foreigner accused of an offence committed abroad is residing in Germany but the requirements pursuant to the first sentence, numbers 2 and 4, have been fulfilled and transfer to an international court or extradition to the prosecuting state is permissible and is intended.*

*(3) If in the cases referred to under subsection (1) or (2) public charges have already been preferred, the public prosecution office may withdraw the charges at any stage of the proceedings and terminate the proceedings.*

3. *In Section 100a number 2 the words “murder, manslaughter or genocide (sections 211, 212, 220a of the Penal Code)” shall be replaced by the words “murder, manslaughter (sections 211, 212 of the Penal Code) or genocide (section 7 of the Code of Crimes against International Law)”.*

4. *In Section 100c, subsection (1), number 3, the words “murder, manslaughter or genocide (sections 211, 212, 220a of the Penal Code)” shall be replaced by the words “murder, manslaughter (sections 211, 212 of the Penal Code) or genocide (section 7 of the Code of Crimes against International Law)”.*

5. *In Section 112 subsection (3) the words “section 7 of the Code of Crimes against International Law” shall be inserted after the words “of an offence pursuant to”, and the words “220a, subsection (1), number 1,” shall be deleted.*

### **Previous wording of Section 153c of the Code of Criminal Procedure**

#### **Section 153c. [Non-Prosecution of Offenses Committed Abroad]**

(1) The public prosecution office may dispense with prosecuting criminal offenses:

1. which have been committed outside the territorial scope of this statute, or which an inciter or accessory to an act committed outside the territorial scope of this statute has committed within the territorial scope thereof;
2. which a foreigner committed in Germany on a foreign ship or aircraft;
3. if a sentence for the offense was already executed against the accused abroad, and the sentence which is to be expected in Germany would be negligible after taking the foreign sentence into account or if the accused has already been acquitted by final judgment abroad in respect of the offense.

(2) The public prosecution office may dispense with prosecuting criminal offenses committed within, but through an act committed outside, the territorial scope of this statute, if the conduct of proceedings would pose the risk of serious detriment to the Federal Republic of Germany or if other predominant public interests present an obstacle to prosecution.

(3) If charges have already been preferred, the public prosecution office may in the cases of subsection (1), numbers 1 and 2, and of subsection (2) withdraw the charges at any stage of the proceedings and terminate the proceedings if the conduct of proceedings would pose the risk of serious detriment to the Federal Republic of Germany, or if other predominant public interests present an obstacle to prosecution.

(4) If criminal offenses of the nature designated under section 74a subsection (1), numbers 2 to 6, and under section 120 subsection (1), numbers 2 to 7, of the Courts Constitution Act are the subject of the proceedings, the Federal Prosecutor General shall have these powers.

#### **Articles 4 to 6: Follow-up amendments to other statutes**

#### **Article 7**

#### **Entry into force**

This Act shall enter into force on the day after its promulgation.