

Agreements effected by exchange of notes, T.I.A.S. No. 9938 (1980)

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T.I.A.S. No. 9938 (U.S. Treaty), 32 U.S.T. 4181 (U.S. Treaty), 1980 WL 309367 (U.S. Treaty)

UNITED STATES OF AMERICA

Federal Republic of Germany

Judicial Assistance: Taking of Evidence

**Agreements effected by exchange of notes**

Dated at Bad Godesberg and Bonn February 11, 1955 and January 13 and October 8, 1956;  
Entered into force October 8, 1956.

And exchange of notes

Dated at Bonn October 17, 1979 and February 1, 1980;  
Entered into force February 1, 1980.

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

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

\*1 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>1</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.

THE MINISTRY OF FOREIGN AFFAIRS

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

Note Verbale

With reference to the notes verbales of the Embassy of the United States of America of February 11 and March 7, 1955,<sup>2</sup> and to its own note verbale of March 31, 1955,<sup>2</sup> the Ministry of Foreign Affairs has the honor to state as follows:

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.

In this connection, it is assumed that:

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";

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- (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;
- 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 Bodesberg-Mehlem

THE MINISTRY OF FOREIGN AFFAIRS  
501-511-04/80 I.-12580/56

**Note Verbale**

\*2 With reference to your note verbale of July 23, 1956<sup>1</sup> - 28 - and, further, to its own note verbale of August 8, 1956<sup>2</sup> - 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 condition 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

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;

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(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

**Footnotes**

1 Signed Dec. 8, 1923. TS 725; 44 Stat. 2151; 8 Bevans 153.

2 Not printed.

3 Not printed.

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