

Agreement

on

the International Tracing Service

The Kingdom of Belgium,
the French Republic,
the Federal Republic of Germany,
the Hellenic Republic,
the State of Israel,
the Italian Republic,
the Grand Duchy of Luxembourg,
the Kingdom of the Netherlands,
the Republic of Poland,
the United Kingdom of Great Britain and Northern Ireland,
and
the United States of America,
hereinafter referred to as the Parties to the present Agreement;

Preamble

considering that the International Tracing Service was established for the purpose of tracing missing persons and collecting, classifying, preserving and rendering accessible to governments and interested individuals the documents relating to Germans and non-Germans who were interned in National Socialist concentration or labor camps or to non-Germans who were displaced as a result of the Second World War;

mindful of the Agreement Constituting an International Commission for the International Tracing Service, and of the Agreement on the Relations between the International Commission for the International Tracing Service and the International Committee of the Red Cross, both concluded at Bonn on June 6, 1955, as amended by the Protocol Renewing and Amending the Agreement Constituting an International Commission for the International Tracing Service concluded at Bonn on August 23, 1960, the Protocol Renewing and Amending the Agreement on the Relations between the International Commission for the International Tracing Service and the International Committee of the Red Cross concluded at Bonn and Geneva on September 30 and October 7, 1960, by the Arrangement Renewing and Amending the Agreement Constituting an International Commission for the International Tracing Service concluded at Bonn on October 15, 1973, by the Arrangement Renewing and Amending the Agreement on the Relations between the International Commission for the International Tracing Service and the International Committee of the Red Cross concluded at Geneva on December 22, 1972, by the Protocol on the amend-

ment of the Agreement Constituting an International Commission for the International Tracing Service concluded at Berlin on May 16, 2006, and by the Protocol Amending the Agreement on the Relations between the International Commission for the International Tracing Service and the International Committee of the Red Cross concluded at Luxembourg on May 16, 2006, as well as the Agreement on the Legal Status of the International Tracing Service in Arolsen, concluded at Bonn on July 15, 1993;

desiring to continue the preservation and tracing activities of the International Tracing Service in Bad Arolsen, while at the same time allowing for expansion of its activities to include the gradual development of the International Tracing Service into a centre for documentation, information and research, in order to ensure that the fates of those who fell victim to National Socialism and of the survivors continue to be studied and that the knowledge thereof be passed on to future generations;

desiring to ensure access, for research purposes, to archives and documents held by the International Tracing Service, both on site and through copies of the archives and documents received by Parties to the present Agreement or through other means such as remote access;

reaffirming that the present Agreement does not prejudice the ownership of the archives and documents reposing with the International Tracing Service in Bad Arolsen;

considering that the Parties to the present Agreement deem that the national law of each of them ensures adequate protection relating to personal data and expect that, in giving access to the copies, each Party to the present Agreement will take into consideration the sensitivity of certain information they may contain;

noting that, as a consequence of the expansion of the activities of the International Tracing Service, the International Committee of the Red Cross has expressed the wish to withdraw from the management and administration of the International Tracing Service;

recalling that the notification by the International Committee of the Red Cross to the Chairman of the International Commission for the International Tracing Service on April 14, 2011, renders such withdrawal and termination of the Agreement on the Relations between the International Commission for the International Tracing Service and the International Committee of the Red Cross, concluded at Bonn on June 6, 1955, as amended, effective December 31, 2012, in accordance with that Agreement's terms;

desirous to ensure the integrity and preservation of the original archives and documents and to continue the historical structure as a whole while maintaining an impartial and responsible administration and direction for the International Tracing Service, reflecting its international character;

recognizing the continuing contribution of the Federal Republic of Germany as the host country of the International Tracing Service;

have agreed as follows:

I. Objectives and tasks

Article 1

Role of the International Tracing Service

Constituting a unique source of information on matters related to acts of persecution by the National Socialist regime and to displacements of persons as a result of the atrocities of the Second World War in Europe, the International Tracing Service, which has its seat at Bad Arolsen, shall continue to act as an international centre for conservation, preservation, cataloguing and indexing of the archives and documents held at its premises, in order to facilitate tracing of victims, research, remembrance and commemoration, judicial support and other tasks within its competence.

Article 2

Conservation, preservation, cataloguing and indexing

The International Tracing Service shall ensure the conservation of the original archives and documents held at its premises, including by creating and maintaining appropriate conditions for conservation of the archives and documents, and by taking pertinent measures, as necessary, to halt and prevent decay or to restore the archives and documents. As custodian of original archives and documents the International Tracing Service shall ensure their integrity and the preservation and continuation of the historical structure

of the collection as a whole, unless the International Commission unanimously decides otherwise.

Article 3 Tracing

The International Tracing Service for humanitarian purposes shall provide from its archives and documents, all information which can be of assistance to and is of direct interest to a person or persons requesting such information. It will also be made available – for the same purposes – to the representatives on the International Commission, to Liaison Officers appointed by the Parties to the present Agreement, and, with the approval of the International Commission, to any governmental or non-governmental organization requesting information for the benefit of interested parties or their trustees, administrators or executors.

Article 4 Research

- a) Archives and documents held by the International Tracing Service shall be available for research, through access at the premises of the International Tracing Service and through access to copies of the archives and documents received by Parties to the present Agreement.
- b) The International Tracing Service may carry out research based on its archives and documents.

Article 5 Remembrance and commemoration

- a) With a view to remembrance and commemoration, the International Tracing Service may at its premises, *inter alia*, organize exhibitions, as well as educational initiatives based on its archives and documents.

- b) The International Tracing Service may facilitate remembrance and commemoration at other sites, on the territory of Parties to the present Agreement and, under the conditions to be determined by the International Commission, in States not a Party to the present Agreement.

Article 6

Judicial support

- a) Upon request by the competent judicial authorities, the International Tracing Service may support trials and other legal proceedings taking place under the jurisdiction of a Party to the present Agreement, on the basis of information which can reasonably be obtained from its archives and documents.
- b) All requests from the competent judicial authorities of States not a Party to the present Agreement shall be referred to the International Commission for decision.
- c) Testimony by any International Tracing Service officer or employee in a trial or other legal proceeding shall require a prior decision by the International Commission.
- d) For services rendered in civil proceedings the International Tracing Service may charge a fee.

Article 7

Other tasks

The International Tracing Service, by unanimous decision by the International Commission, may undertake activities beyond the scope of Articles 2 to 6 of the present Agreement, provided they relate to the information contained in the archives and documents held by the International Tracing Service.

II. Access to information, archives and documents

Article 8

Rules on access and use

Each Representative on the International Commission and any Liaison Officer appointed by any of the Parties to the present Agreement shall have free access to all archives and documents reposing with the International Tracing Service. These persons shall coordinate their activities with the Director.

Access to archives and documents for tracing and research at the premises of the International Tracing Service shall be ensured to the fullest extent possible, in accordance with the provisions below:

- a) Information for tracing purposes shall be provided upon request and without charge.
- b) Access to the archives and documents for research at the premises of the International Tracing Service shall be granted provided that all appropriate measures have been taken in order that the activities connected with this research do not significantly impair the fulfillment of the task of the International Tracing Service relating to its humanitarian mandate in accordance with Article 3 of the present Agreement.
- c) Use for research purposes of archives and documents held by the International Tracing Service shall be granted upon request. The terms and conditions of such use shall be determined by the International Commission in unanimously adopted directives governing use, including a schedule of fees. As a general principle, use shall be limited to archives and documents available in digitized form. Access to original archives and documents shall take due account of their conservation status. The inquirer shall agree in writing to comply with the regulations for access established by the International Commission.
- d) Notwithstanding paragraph c) above, archives and documents which were transferred or made available to the International Tracing Service, based on a written understanding at the time of deposit that the International Tracing Service would

enjoy exclusive right of use, may be used or further copied only if the donor of the archives and documents, or in appropriate cases its legal successor, so agrees in writing.

- e) The inquirer or user of the archives and documents shall bear individual responsibility under applicable national law for the divulgence of personal data.

Article 9

Copies of the archives and documents

- a) Each Party to the present Agreement shall receive upon request a single copy of the archives and documents of the International Tracing Service.
- b) Each Party to the present Agreement may make these archives and documents accessible for research on the premises of an appropriate archival repository or through remote access on its territory. Access shall be granted in accordance with the relevant national law and national archival regulations and practices.
- c) The International Commission shall decide on responding to requests for copies of archives and documents of the International Tracing Service, from States not a Party to the present Agreement and from non-State entities.

Article 10

Remote access to the holdings at the International Tracing Service

- a) Access by member States of the International Commission to archives and documents held by the International Tracing Service shall be granted upon request through secure and authenticated remote access provided that the requesting State bears the costs involved, including those entailed at the seat of the International Tracing Service. Such remote access shall be to all the archives and documents at the International Tracing Service at Bad Arolsen that are available to member States in digital copy.
- b) The International Commission shall take the decisions necessary for the implementation of remote access.

- c) The International Commission shall decide on requests for remote access to the archives and documents of the International Tracing Service at Bad Arolsen from States not a Party to the present Agreement and from non-State entities.

III. Protection of privacy

Article 11

Privacy

- a) Access to the archives and documents held by the International Tracing Services shall always be granted with due regard to the protection of the privacy of personal data, in accordance with the provisions below. The fulfillment of the humanitarian and research mandates is fully compatible with this Article.
- b) The International Tracing Service and the International Commission and the Liaison Officers shall take all reasonable steps to avoid divulging information about a person or persons which might prejudice the interests of the person or persons concerned or of their relatives.
- c) The use of personal data based on information taken from the original archives and documents provided by the International Tracing Service at Bad Arolsen, including their dissemination through publications, shall be governed by a set of rules laid down in directives unanimously adopted by the International Commission. Such directives shall give due regard to the interests of a person or persons concerned and their close relatives as well as to the furtherance of research on and knowledge about the period and events covered by the archives and documents held at the International Tracing Service.
- d) In providing access to copies of the archives and documents of the International Tracing Service, each Party to the present Agreement, taking into consideration the sensitivity of information these copies may contain, shall ensure through national law adequate protection of personal data derived from such information.

IV. Inviolability of archives and documents

Article 12 Inviolability

Without prejudice to ownership, the archives and documents held at the International Tracing Service shall be inviolable. The archives and documents shall not be subject to any form of requisition, arrest or seizure by courts or other authorities in the host country. In the territory of any other Party to the present Agreement the archives and documents will be inviolable to the extent permitted by national law.

V. Legal status

Article 13 International character and legal capacity

The International Tracing Service, an organization with international character, shall enjoy legal capacity and can, under the law of the Federal Republic of Germany, enter into the legal transactions necessary for the fulfillment of its tasks, particularly contracts of employment and rental and sales agreements, and may appear in court. For these purposes the International Tracing Service in Bad Arolsen shall be represented by its Director. Contracts of employment with the International Tracing Service shall be subject to the labor and social law applicable at the place of work.

VI. Governance

Article 14 The International Commission

- a) The International Commission, consisting of one representative appointed by each of the Parties to the present Agreement, shall act as the supreme governing body of the International Tracing Service.

- b) The International Commission shall be presided over by one of the representatives referred to in paragraph a) above. The first Chair of the International Commission shall be the Chair of the International Commission as established according to the Bonn Agreements at the date of the entry into force of the present Agreement.
- c) The International Commission may invite representatives, designated by other interested States or international organizations, to take part as observers in all discussions of matters of interest to those States or international organizations.
- d) The International Commission shall be convened initially by its Chair at Bad Arolsen not later than ninety days after the entry into force of the present Agreement. Thereafter, the International Commission shall meet at least once a year. Meetings of the International Commission may be held at the seat of the International Tracing Service or within the territory of the Parties to the present Agreement.
- e) The International Commission may decide to meet more frequently, provided that its Chair shall convene it within thirty days of a request by two of its members.
- f) The International Commission may take decisions only if two thirds of its members are present.
- g) The International Commission shall take its decisions by consensus or, when all efforts thereto have failed, by a simple majority of its members, present or represented, and voting, unless any other procedure is expressly provided for in the present Agreement or the International Commission decides otherwise.
- h) The Director of the International Tracing Service shall act as the Secretary to the International Commission.
- i) The International Commission shall establish its own Rules of Procedure by unanimous decision.

Article 15

Role of the International Commission

- a) The International Commission shall ensure the co-ordination between the Parties to the present Agreement in matters relating to the International Tracing Service and shall provide directives for the operations of the International Tracing Service, including for access to the archives and documents held at its premises.
- b) The directives referred to in paragraph a) above of this Article shall be transmitted for action to the Director of the International Tracing Service.

Article 16

Institutional Partner

- a) The Parties to the present Agreement hereby authorize the Chair of the International Commission to enter on their behalf into an agreement regarding an institution, hereinafter referred to as "the Institutional Partner", to be adopted unanimously. This agreement (hereinafter the "Partnership Agreement") shall contain the specific terms of the partnership between the International Tracing Service and the Institutional Partner.
- b) The task of the Institutional Partner is to work with the International Tracing Service, in order to ensure that it is able to fulfill its role under the present Agreement.
- c) The role of the Institutional Partner is to advise and work together with the International Commission and the Director of the International Tracing Service in the implementation of policy in fields such as human resource management; conservation and preservation; cataloguing and indexing; and budgeting and auditing.
- d) The International Commission may adopt proposed amendments to or an extension of the Partnership Agreement by unanimous decision. On the basis of this decision an amendment or extension could be entered into between the Parties to the Partnership Agreement.

- e) By unanimous decision, the International Commission may terminate the partnership in accordance with the terms of the Partnership Agreement, and may invite another institution to serve in this role after entering into a new agreement in accordance with paragraph a) above.

Article 17

Advisory and subsidiary relations

- a) The International Commission may establish advisory or subsidiary organs.
- b) The International Commission may enter into relationships with other institutions as it deems necessary.

Article 18

Observers

The International Committee of the Red Cross and the Institutional Partner shall be invited to appoint an observer to the International Commission.

Article 19

Non-governmental organizations

Non-governmental organizations having a well-defined interest in the operations of the International Tracing Service may submit suggestions to the International Commission and, under conditions to be determined by the International Commission, be invited to take part in the deliberations concerning these suggestions.

Article 20

Appointment of the Director

- a) Subject to the unanimous approval by the International Commission, the International Commission shall appoint the Director of the International Tracing

Service. The International Commission shall consult with the Institutional Partner referred to in Article 16 of the present Agreement before taking this decision.

- b) The nomination procedure for the Director of the International Tracing Service shall be defined in the Rules of Procedure of the International Commission.
- c) The Director of the International Tracing Service shall enjoy *mutatis mutandis* the same privileges and immunities as career consular officers according to Articles 40 to 47 and 52 of the 1963 Vienna Convention on Consular Relations in the Federal Republic of Germany, unless the Director is a national of or permanently resident in the Federal Republic of Germany. In the latter case, the Director shall enjoy immunity from jurisdiction and personal inviolability only in respect to official acts performed in the exercise of the Director's functions.
- d) The Director of the International Tracing Service shall be appointed for a period of five years. The Director may be reappointed once.

Article 21

Responsibility of the Director

- a) The Director of the International Tracing Service shall act under the directives of the International Commission, and shall be accountable to it. The Director shall inform the International Commission immediately should a situation arise which is not covered by the present Agreement nor by the Partnership Agreement and to which an existing decision taken or directive adopted by the International Commission in accordance with the present Agreement does not apply. The Director shall be responsible for the implementation of policy decisions taken by the International Commission, and for directing and administering the International Tracing Service.
- b) Under the guidance of the International Commission, the Director shall elaborate proposed priorities for the International Tracing Service and set out their financial implications for consideration by the International Commission. The Director shall draw up a draft annual work plan and budget estimate to be transmitted in a timely manner to and approved by the International Commission.

- c) The Director of the International Tracing Service shall, unless more frequently required, submit semi-annual reports on the activities of the International Tracing Service to the International Commission.
- d) The Director of the International Tracing Service shall submit to the International Commission an annual financial account of the preceding financial year.

VII. Role of State Parties

Article 22

Assistance to the International Tracing Service

- a) The Parties to the present Agreement shall give their assistance on request to the International Tracing Service in the fulfillment of its tracing function. They shall do this by examining, providing copies or transferring documents held in State, public or private archives in their territory which hold personal information on individuals directly concerned. Assistance shall be provided in accordance with the relevant national law and will not be granted where such assistance would be against the interests of the providing State Party or would prejudice the rights to ownership of such documents.
- b) The Director may at any time propose to the International Commission to approach the government of any State not party to the present Agreement or any non-State entity with an invitation to make accessible to the International Tracing Service the originals or copies of documents which are held by or on behalf of the said government or non-State entity and which are of great importance to the International Tracing Service in view of its tracing function.

Article 23

Liaison Offices

Any Party to the present Agreement and the International Committee of the Red Cross shall have the right to maintain, at its own expense, a permanent Liaison Office at the International Tracing Service.

Article 24

Support by the host country

- a) The International Tracing Service's regular budget relating to the objectives and tasks referred to in Article 1 of the present Agreement shall, on the basis of an annual budget estimate, to be approved by the International Commission, in accordance with Article 21 b) of the present Agreement, be transmitted to the Government of the Federal Republic of Germany and shall be financed by a contribution from the budget of the Federal Republic of Germany.
- b) The Federal Court of Audit of the Federal Republic of Germany may, in coordination with the Director of the International Tracing Service, audit the accounts of the International Tracing Service and examine the performance, regularity and compliance of its financial management.

VIII. Voluntary contributions

Article 25

Voluntary contributions

In addition to the funding referred to in Article 24 of the present Agreement, the International Tracing Service may invite and receive voluntary contributions from public as well as private sources to fulfill its objectives and tasks. The International Tracing Service will inform the International Commission about these contributions and their sources.

IX. Final clauses

Article 26

Accession

- a) The present Agreement shall remain open for accession by any State to which an invitation has been extended based on a unanimous decision by the International Commission.

- b) The instruments of accession shall be deposited with the Federal Republic of Germany.
- c) For States having deposited an instrument of accession, this Agreement shall enter into force on the thirtieth day after the deposit of the relevant instrument.

Article 27
Denunciation

- a) The present Agreement shall be in force for an indefinite period.
- b) Any State Party may denounce the present Agreement by written notification to the depositary. Denunciation shall take effect at the end of the next calendar year following such notification.

Article 28
Signature and provisional application

- a) The present Agreement shall be open for signature from December 9, 2011 in the Federal Foreign Office of the Federal Republic of Germany in Berlin by the Kingdom of Belgium, the French Republic, the Federal Republic of Germany, the Hellenic Republic, the State of Israel, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Poland, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.
- b) Provided all States referred to in paragraph a) above have signed the present Agreement, it shall be provisionally applied pending its entry into force, with effect from January 1, 2013, in accordance with any domestic laws where applicable.

Article 29
Entry into force

- a) The present Agreement shall enter into force on the later of: (1) January 1, 2013, or (2) the first day of the first month following the date on which the Kingdom of Belgium, the French Republic, the Federal Republic of Germany, the Hellenic Republic, the State of Israel, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Poland, the United Kingdom of Great Britain and Northern Ireland, and the United States of America have informed the depositary that their respective national requirements for the entry into force of the present Agreement have been fulfilled.

- b) As of the date on which the present Agreement enters into force, it supersedes the Agreement Constituting an International Commission for the International Tracing Service, concluded at Bonn on June 6, 1955, as amended by the Protocol Renewing and Amending the Agreement Constituting an International Commission for the International Tracing Service, concluded at Bonn on August 23, 1960, by the Arrangement Renewing and Amending the Agreement Constituting an International Commission for the International Tracing Service, concluded at Bonn on October 15, 1973, by the Protocol on the amendment of the Agreement Constituting an International Commission for the International Tracing Service, concluded at Berlin on May 16, 2006, as well as the Agreement on the Legal Status of the International Tracing Service in Arolsen, concluded at Bonn on July 15, 1993.

- c) Upon entry into force of the present Agreement, all decisions and directives of the International Commission taken under the previous agreements, mentioned in paragraph b) above, shall remain in force until such time as the International Commission decides otherwise.

Article 30
Depositary

The Federal Republic of Germany acting as depositary of the present Agreement shall inform all other Parties to the present Agreement about any signature, fulfillment of national requirements for the entry into force of the present Agreement, the entry into force of the present Agreement, accessions, denunciations and other notifications received

from the Parties to the present Agreement. It shall transmit a certified copy to all Parties to the present Agreement as well as to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations.

In witness whereof the Undersigned have signed the present Agreement.

Done at Berlin on December 9, 2011 in English, French and German, all three texts being equally authentic, in a single copy which shall be deposited in the archives of the Federal Republic of Germany.

For the Kingdom of Belgium

For the French Republic

For the Federal Republic of Germany

For the Hellenic Republic

For the State of Israel

Emmanuel Nahshon

For the Italian Republic

Keenan

For the Grand Duchy of Luxembourg

M Schamber

For the Kingdom of the Netherlands

[Signature]

For the Republic of Poland

Paul Paul

For the United Kingdom of Great Britain and Northern Ireland

R. A. [Signature]

For the United States of America

[Signature]