APPENDIX O

Law Concerning the Protection of Forces of the North Atlantic Treaty by Application of Criminal and Administrative Offense Law Provisions (NATO Forces Protection Law) of 27 March 2008 (previously titled Fourth Law Amending the German Criminal Law)

CONTENTS

SECTION 1.
APPLICATION OF CRIMINAL LAW PROVISIONS FOR THE PROTECTION OF THE STATES PARTY TO THE NORTH ATLANTIC TREATY

SECTION 2.
APPLICATION OF ADMINISTRATIVE FINE PROVISIONS FOR THE PROTECTION OF THE STATES PARTY TO THE NORTH ATLANTIC TREATY

SECTION 3.
APPLICATION OF PROVISIONS OF THE LAW ON THE CONSTITUTION OF COURTS (*GERICHTSVERFASSUNGSGESETZ*) IN CASE OF CRIMINAL ACTS AGAINST THE STATES PARTY TO THE NORTH ATLANTIC TREATY

SECTION 4.
APPLICATION OF PROVISIONS OF THE CODE OF CRIMINAL PROCEDURE IN CASE OF OFFENSES AGAINST THE STATES PARTY TO THE NORTH ATLANTIC TREATY

SECTION 1. APPLICATION OF CRIMINAL LAW PROVISIONS FOR THE PROTECTION OF THE STATES PARTY TO THE NORTH ATLANTIC TREATY

(1) For the protection of the non-German States party to the North Atlantic Treaty and their forces stationed in the Federal Republic of Germany, sections 93 through 97 and 98 through 100, in conjunction with sections 101 and 101a of the German Criminal Code (*Strafgesetzbuch)* shall apply, subject to the following proviso:

1. Military secrets of the parties to the Treaty shall be equal to State secrets as defined in section 93 of the German Criminal Code. Military secrets within the meaning of this provision are facts, objects, or knowledge concerning defense which are kept secret by an agency of a NATO member State located within the territorial scope of this law in consideration of the member State's security or the security of its forces stationed in the Federal Republic of Germany. Excepted are objects where it is the concern of the Federal Republic of Germany to determine if these objects or information pertaining to them are to be kept secret.

2. In the cases of section 94, paragraph (1), number 2, of the German Criminal Code, the intent to prejudice the Federal Republic of Germany is replaced by the intent to prejudice the NATO member State concerned or its forces stationed in the Federal Republic of Germany.

3. In the cases of sections 94 through 97 of the German Criminal Code, the danger of grave detriment to the external security of the Federal Republic of Germany is replaced by the danger of grave detriment to the security of the NATO member State concerned, or its forces stationed in the Federal Republic of Germany.

4. In the cases of section 99 of the German Criminal Code, secret service activity undertaken against the Federal Republic of Germany is replaced by secret service activity undertaken against the NATO member State concerned or its forces stationed in the Federal Republic of Germany.

5. In the cases of section 100 of the German Criminal Code, the Federal Republic of Germany is replaced by the NATO member State concerned.

6. In the cases of sections 94 through 97 of the German Criminal Code, criminal prosecution is permissible only if the highest military authority of the forces of the NATO member State concerned stationed in the Federal Republic of Germany or the head of its diplomatic mission declares that, at the time the offense was committed, safeguarding of the secret was necessary for the security of the member State or its forces stationed in the Federal Republic of Germany.

7. The authorization provided to the Federal Republic of Germany pursuant to section 97, paragraph (3), of the German Criminal Code is replaced by the request for punitive measures made by the highest military authority of the forces of the NATO member State concerned stationed in the Federal Republic of Germany, or the head if its diplomatic mission.

(2) For the protection of the forces of the non-German States party to the North Atlantic Treaty stationed in the Federal Republic of Germany which, at the time of the offense, stay within the area of the applicability of this law, the following provisions of the German Criminal Code shall be applied subject to the special provisions set forth in numbers 1 through 10 below:

1. Section 87, in conjunction with sections 92a and 92b, applies to acts by which the perpetrator knowingly engages in efforts directed against the security of the NATO member State concerned or the security of these forces.

2. Section 89, in conjunction with sections 92a and 92b, applies to acts committed by the perpetrator with the intent to undermine the dutiful readiness of soldiers, officials, or employees of these forces to serve the defense mission and by which he intentionally engages in efforts directed against the security of the NATO member State concerned or the security of these forces.

3. Section 90a, paragraph (1), number 2, and paragraph (2), in conjunction with sections 92a and 92b, apply to acts against the national symbols of these forces.

4. Sections 109d through 109g, in conjunction with sections 109i and 109k, apply to acts against these forces, their soldiers, military equipment, facilities, installations, or military activities with the proviso that the Federal Republic of Germany is replaced by the NATO member State concerned, the Federal Armed Forces (*Bundeswehr)* are replaced by these forces, and national defense is replaced by defense of the member States.

5. Section 113, section 114, paragraph (2), and sections 125 and 125a apply to offenses against soldiers or officials of these forces.

6. Section 120 applies to acts against the custody of prisoners of these forces, or individuals who are committed to an institution upon their order.

7. Sections 123 and 124 apply to acts of trespass in areas which are designated for public service or traffic of these forces.

8. Section 132 applies to the assumption of official authority of soldiers or officials of these forces.

9. Section 194, paragraph (3), applies to insults against an agency, a soldier, or an official of these forces.

9a. Section 305a applies to criminal acts of destruction of motor vehicles of these forces.

10. Section 333, paragraphs (1) and (3); section 334, paragraphs (1) and (3); section 335, paragraph (1), number 1, letter b, paragraph (2), numbers 1 and 3; and section 336 apply to granting an advantage and bribing soldiers and officials of these forces, or such employees of the forces who, by virtue of general or special instructions from a superior authority of the forces, have been formally obligated to perform their tasks responsibly.

(3) For the protection of the forces of the non-German States party to the North Atlantic Treaty stationed in the Federal Republic of Germany which, at the time of the act, stay within the area of applicability of this law, sections 16 and 19 of the Military Criminal Code (*Wehrstrafgesetz*), and in conjunction with these provisions, section 111 of the German Criminal Code shall also be applied to acts against these forces, subject to the following special provisions:

1. In sections 16 and 19 of the Military Criminal Code the Federal Republic of Germany is replaced by the NATO member State concerned, and the Federal Armed Forces and their soldiers are replaced by these forces and their soldiers;

2. A person who induces or tries to induce a soldier of these forces to commit an intentional unlawful act under section 16 or section 19 of the Military Criminal Code or renders assistance in the commission of such act, or who incites to such an act pursuant to section 111 of the German Criminal Code, is subject to punishment.

(4) Paragraphs (1) through (3) are applicable only to offenses committed within the area of applicability of this law.

SECTION 2. APPLICATION OF ADMINISTRATIVE FINE PROVISIONS FOR THE PROTECTION OF THE STATES PARTY TO THE NORTH ATLANTIC TREATY

In order to protect the forces of the non-German States party to the North Atlantic Treaty, which are stationed in the Federal Republic of Germany and stay within the area of applicability of this law at the time of the act, the following provisions of the Administrative Offenses Act (*Ordnungswidrigkeitengesetz)* shall be applied subject to the special provisions set forth in numbers 1 through 3:

1. Section 111 applies to acts against a responsible soldier or responsible official of these forces;

2. Section 113 applies to public gatherings directed against soldiers, officials, or employees of these forces who have been called upon by them for support;

3. Section 114 applies to the entering of military installations and facilities of a NATO member State as well as of areas which are off-limits to ensure a secure environment for these forces when performing their official duties.

SECTION 3. APPLICATION OF PROVISIONS OF THE LAW ON THE CONSTITUTION OF COURTS (*GERICHTSVERFASSUNGSGESETZ*) IN CASE OF CRIMINAL ACTS AGAINST THE STATES PARTY TO THE NORTH ATLANTIC TREATY

Regarding the application of the provisions of the Law on the Constitution of Courts on court jurisdiction and the taking over, transfer or referral of the investigation, proceedings and decision in criminal matters, the criminal acts described in section 1 are equal to corresponding violations of provisions in the German Criminal Code.

SECTION 4. APPLICATION OF PROVISIONS OF THE CODE OF CRIMINAL PROCEDURE IN CASE OF OFFENSES AGAINST THE STATES PARTY TO THE NORTH ATLANTIC TREATY

(1) If criminal proceedings involve offenses under section 1 of this law in conjunction with sections 94 through 100, 109f, or 109g of the German Criminal Code, section 153d of the Code of Criminal Procedure (*Strafprozessordnung*) shall apply accordingly, subject to the proviso that prosecution may be refrained from or the case be dropped—

1. In the event the offender, after the act and before its discovery has become known to him, has contributed to avert a threat to the security of the Federal Republic of Germany or of the NATO member State concerned, or if he has made such contribution by disclosing, after the act, his knowledge of treasonable activities in connection with the act, or

2. If conducting the proceedings would interfere with the security of the Federal Republic of Germany or of the NATO member State concerned to a greater extent than the jeopardy involved in the act itself.

(2) In the event criminal proceedings involve offenses pursuant to section 1 of this law in conjunction with sections 87, 89, 90a, 94 through 100, 109d, or 109f of the German Criminal Code, sections 153c and 153d of the Code of Criminal Procedure shall apply accordingly with the proviso that the potential severe disadvantage to the Federal Republic of Germany is replaced by the potential severe disadvantage to the NATO member State concerned or its forces stationed in the Federal Republic of Germany, and that overriding public interests are also those of the NATO member State concerned.

(3) Before filing of public charges is refrained from, the proceedings are discontinued or the complaint is withdrawn, the highest military authority of the forces of the NATO member State concerned stationed in the Federal Republic of Germany or the head of its diplomatic mission must be given an opportunity to provide comments.