

Compilation on implementing legislation 2010

Part I

At its 10th plenary meeting on 25 March 2010, the Assembly of States Parties adopted resolution ICC-ASP/8/Res.9 where the Assembly decided, inter alia, to request the Secretariat of the Assembly of States Parties (Secretariat) to reissue the questionnaire on the measures undertaken in respect of implementing legislation of the Rome Statute of the International Criminal Court (note verbale ICC-ASP/8/S/PA/19), to make available a compilation of comments submitted by States Parties and to encourage States Parties to provide information to the Secretariat in advance of the Review Conference to be held in Kampala, Uganda, from 31 May to 11 June 2010.

Accordingly, the Secretariat reissued the Plan of action questionnaire on 9 April 2010 (note verbale ICC-ASP/S/PA/07) and requested that States Parties conveyed the information referred to in the questionnaire through the diplomatic channel to the Secretariat, if feasible in digital versions.

States Parties which had already submitted information related to the questionnaire were encouraged to provide updated information on new developments regarding measures undertaken in the implementation process.

The Secretariat noted that information submitted would be made public, unless a specific indication was made of the parts of the submission which were to be considered confidential.

The Secretariat had as at 1 June May 2010 received 30 replies¹ to the Plan of Action reissued questionnaire from the following States Parties²:

Albania, Australia, Austria, Brazil, Canada, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France, Honduras, Ireland, Japan, Liechtenstein, Luxembourg, Mauritius, Mexico, Norway, Republic of Korea, Serbia, Slovenia, South Africa, Spain, Sweden, Trinidad and Tobago, United Kingdom, Zambia.

* * *

¹ The replies from the following States Parties are reflected in *Compilation on implementing legislation 2010 - Part II*: Australia, Honduras, Luxembourg, Mauritius, Republic of Korea, Slovenia, and Zambia.

² The Secretariat notes that the replies reflected in the compilation are replies conveyed specifically to the reissued questionnaire in note verbale ICC-ASP/S/PA/07. Replies conveyed to the Secretariat to the first issuance of the questionnaire in the 2009 note verbale ICC-ASP/8/S/PA/19 will be reflected separately.

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1. Albania

[Original: English]

Implementing legislation questionnaire for State Parties

1. Has your Government adopted any national legislation implementing the Rome Statute (“the Statute”).

The Republic of Albania signed the Rome Statute of the ICC on 18 of July 1998 and ratified it by law No. 8984, dated 23.12.2002 “On the ratification of the Rome Statute of the ICC”. Under the Constitution of the Republic of Albania (Articles 116 and 122) ratified international agreements become part of the domestic legal system, prevail on domestic laws and are directly enforceable unless their enforceability requires the enactment of a law. Precisely, Article 116 providing for the hierarchy of norms, ranks ratified international agreements immediately after the Constitution and Article 122 provides for their direct enforceability. According to Article 123 of the Constitution, the Republic of Albania based on international agreements, delegates powers on certain issues to international organizations. Therefore, it is not necessary under the Albanian system to enact specific implementation legislation as regards international agreements. Nevertheless, while evaluating the compliance of domestic law with ratified international agreements, Albania repeatedly reviews domestic legislation so that compliance is ensured.

In this framework, there is no specific law on the implementation of the Statute, since following ratification it has become part of the domestic legal system and is directly enforceable but legislative steps to ensure implementation resulting in amendments to different laws have been undertaken.

In order to fully comply with the Statute’s provisions, after signing but prior to ratification, Albania amended the Criminal Code by law No.8733, dated 24.1.2001, introducing changes to articles 73, 74 and 75 criminalizing respectively Genocide, Crimes against Humanity and War Crimes. In addition, the Criminal Procedure Code provisions on international judicial cooperation and a new law adopted lately, namely Law no.10193, dated 3.12.2009 “On jurisdictional relations with foreign authorities on criminal matters”, provide procedures for mutual legal assistance issues and judicial cooperation also with international courts in compliance with forms of cooperation provided by the Statute.

If yes

Part B

2. In implementing the Statute, did your Government draft special implementing legislation or did it incorporate the articles or substantive provisions of the Statute in the pre-existing law?

In implementing the Statute Albania, did not draft special implementing legislation but amended the Criminal Code as regards the criminal offences of Genocide, Crimes against Humanity and War Crimes, bringing them in line with the Statute’s provisions. Articles 73, 74 and 75, after the amendments introduced by law No.8733, dated 24.1.2001, provide as follows:

Article 73 *Genocide*

The execution of a premeditated plan aiming at the total or partial destruction of a national, ethnic, racial or religious group directed towards its members, and combined with

the following acts, such as: intentional murder a group's members, serious physical and psychological harm, placement in difficult living conditions which cause physical destruction, applying birth preventing measures, as well as the obligatory transfer of children from one group to another, is punishable by no less than ten years of imprisonment, or with life imprisonment.

Article 74

Crimes against humanity

Homicides, exterminations, turning into slaves, deportations and expulsions, and any kind of torture or other human violence committed in accordance with a pre-meditated concrete plan, against a group of civil population for political, ideological, racial, ethnic and religious motives, are punishable by non less than 15 years of imprisonment or by life imprisonment.

Article 75

War crimes

Acts committed by different persons in war time such as murder, ill-treatment or deportation for slave labor, as well as any other inhuman exploitation to the detriment of civil population or in occupied territory, murder or ill-treatment of war prisoners, murder of hostages, destruction of private or public property, destruction of towns, municipalities or villages, which are not dictated from military necessity, are punishable by no less than fifteen years of imprisonment, or life imprisonment.

According to the Criminal Procedure Code (namely Article 75/a), such crimes fall under the jurisdiction of the Serious Crimes Court. Law No.9110, dated 24.7.2003 "On the organization and functioning of the serious crimes courts" provides for the organization and functioning of such courts. According to Law No. 9877, dated 18.02.2008 "On the organization of the judiciary in the Republic of Albania", there is one First Sentence Serious Crimes' Court and on Serious Crimes' Appeal Court.

In 2008, the Criminal Code was re-amended introducing a new Article, (Article 74/a) providing as follows:

Article 74/a

Computer distribution of pro genocide or war crime materials

Public offering or intentional public distribution through computer systems of materials denying, minimizing to a great extent, approving or justifying acts constituting genocide or crimes against humanity, is punishable by three to six years of imprisonment.

3. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?

As explained above, the implementing legislation incorporates the substantive crimes by incorporating them in the legislation itself (Criminal Code) and not through reference to the Statute. However, according to Article 122 of the Constitution the Statute is directly enforceable.

4. Does the implementing legislation fully incorporate all modes of cooperation under Part 9 of the Statute?

In Albania there is no specific law providing for rules of cooperation with the ICC. But, in addition to the rules of the Statute, which according to the Constitution prevails on

domestic law and is directly enforceable, the issue of cooperation is covered by rules of Criminal Procedure Code and other legislation.

Lately in 2009, Albania adopted a new law, Law No. 10193, dated 3.12.2009 “On jurisdictional relations with foreign authorities in criminal matters”, providing for supplemental procedures while dealing with incoming and outgoing requests of inter-judicial cooperation. The latter provides (in Article 3) that its provisions do also cover cases of proceedings that fall under the jurisdiction of international criminal courts the jurisdiction of which has been accepted by the Republic of Albania. The present law, while stating that international agreements on cooperation prevail, while providing for diplomatic channels of communication, stating the Ministry of Justice as Central Authority and introducing rules on direct communication in cases of urgency, does also provide for various forms of cooperation including extradition, transmission of letters rogatory, transfer of the criminal proceedings, transfer of the sentenced persons, recognition and execution of foreign court decisions.

As regards international judicial cooperation, article 10 of the Criminal Procedure Code provides that relations with foreign authorities in criminal matters are regulated by international agreements accepted by the Albanian State, the generally accepted principles and rules of international law and the Criminal Procedures Code. Rules of cooperation are provided in Title X of the Criminal Procedure Code and on a recently adopted law, namely Law No. 10193, dated 3.12.2009 “On jurisdictional relations with foreign authorities in criminal matters”.

The Criminal Procedure Code regulates relations with foreign authorities in criminal matters in Title X providing for extradition, mutual legal assistance procedures and instruments, and recognition and execution of foreign court decisions. The provisions state the Ministry of Justice as Central Authority. As regards channels of communication, it is provided for the use diplomatic channels and in cases of urgency, for direct communication as well.

5. Does the implementing legislation designate a channel of communication with the Court?

As mentioned above, the Criminal Procedure Code states that the Central Authority in jurisdictional relations with foreign authorities is the Ministry of Justice. Law No.10193, dated 3.12.2009 “On jurisdictional relations with foreign authorities in criminal matters” while asserting this provision, does also provide for direct of communication, in cases of urgency. The latter provides that the Ministry of Justice and domestic judicial authorities admit and enforce requests of foreign judicial authorities in proceedings being under the jurisdiction of international courts, the jurisdiction of which has been accepted by the Republic of Albania, including ICC. Since rules of the present law do also cover cooperation with the ICC and since the Minister of Justice is the Central Authority in jurisdictional relations, the latter would be the designated channel of communication with the Court. Rules on direct cooperation apply accordingly.

2. Austria

[Original: English]

Implementing legislation questionnaire for states parties

1. Has your Government adopted any national legislation implementing the Rome Statute (“the Statute”)?

Yes.

**If not
Part A**

2. What legislative efforts, if any, has your Government taken to implement the provisions of the Statute into national law?

3. What obstacles, if any, has your Government faced in its efforts to implement the provisions of the Statute?

4. What form of assistance would benefit your Government’s efforts to implement the Statute?

**If yes
Part B**

5. In implementing the Statute, did your Government draft special implementing legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?

Austria has adopted special implementing legislation with a new Federal Law: “Bundesgesetz über die Zusammenarbeit mit dem Internationalen Strafgerichtshof” (Federal Law Gazette I No. 135/2002) that came into force 1 October 2002. By the adoption of this law, the provisions on cooperation with the Court contained in Part 9 of the Rome Statute as well as the provisions on enforcement of sentences imposed by the Court contained in Part 10 of the Rome Statute were implemented into national law.

6. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?

As for the substantive crimes, the commentaries to the government bill concerning the parliamentary approval of the Rome Statute state that according to Article 9 of the Federal Constitutional Law “the generally recognized rules of international law are regarded as integral parts of Federal law”.

Despite this transformation the program of the Austrian Government 2008 contains a paragraph aiming at adjusting the provisions set out in the Austrian Criminal Code with regard to war crimes and crimes against humanity in order to meet the requirements resulting from the principle of complementarity as enshrined in the Rome Statute. The crime of genocide is already incorporated in the Austrian Penal Code.

7. Does the implementing legislation fully incorporate all modes of cooperation under Part 9 of the Statute?

Yes.

8. Does the implementing legislation designate a channel of communication with the Court?

Yes, the Federal Ministry for European and International Affairs.

3. Brazil

[Original: English]

1. Has your Government adopted any national legislation implementing the Rome Statute?

A draft bill implementing the Rome Statute currently under consideration in Congress is expected to be adopted soon.

If not Part A

2. What legislative efforts, if any, has your Government taken to implement the provisions of the Statute into national law?

As previously stated, there is a draft bill of implementation of the Statute currently under consideration by the Brazilian National Congress. The draft incorporates into Brazilian penal legislation the definitions of genocide, crimes against humanity and war crimes as presented in the Rome Statute. The draft also establishes specific rules of procedure in order to allow for requests of cooperation made by the Court to be carried out without delay.

3. What obstacles, if any, has your Government faced in its efforts to implement the provisions of the Statute?

Brazil has not faced any particular obstacles in working to implement the Rome Statute. The draft bill is still in consideration due to the fact that it resulted from the discussion of different proposals put before Congress.

4. What form of assistance would benefit your Government's efforts to implement the Statute?

The Brazilian Government requires no assistance at this point to implement the Rome Statute.

4. Canada

[Original: English]

1. Has your Government adopted any national legislation implementing the Rome Statute (“the Statute”)?

CANADA: Yes.

IF YES

5. In implementing the Statute, did your Government draft special implementing legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?

CANADA: Canada drafted special implementing legislation, the Crimes Against Humanity and War Crimes Act (‘CAHWCA’), and amended other acts, including the Criminal Code, the Extradition Act and the Mutual Legal Assistance in Criminal Matters Act. The CAHWCA was enacted on June 24, 2000, which permitted Canada to ratify the Rome Statute on July 9, 2000. More information on Canada’s steps to implement the Rome Statute can be found at <http://www.international.gc.ca/court-cour/war-crimes-guerres.aspx?lang=eng>

6. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?

CANADA: Both. Articles 4 and 6 of the CAHWCA provide for the three crimes for which the ICC is competent at the time of filling this questionnaire (i.e. genocide, crimes against humanity and war crimes). The relevant provisions of the Rome Statute (referenced in the schedule to the Act) assist in clarifying what constitutes genocide, crimes against humanity and war crimes in Canadian law.

7. Does the implementing legislation fully incorporate all modes of cooperation under Part 9 of the Statute?

CANADA: The CAHWCA does not incorporate the modes of cooperation per se, but other statutes, including the Extradition Act and the Mutual Legal Assistance in Criminal Matters Act, which are the acts that provide for the implementation of treaties for extradition and mutual legal assistance in criminal matters, were amended in order for Canada to comply with our international obligations to cooperate with the International Criminal Court (ICC) under the Rome Statute and to fully incorporate all modes of cooperation under Part 9 of the Statute.

8. Does the implementing legislation designate a channel of communication with the Court?

CANADA: Under the Canadian law, the Minister of Justice is responsible for the administration of the Mutual Legal assistance in Criminal Matters Act and the Extradition Act. The Minister of Justice is authorized to act as the Central Authority for receiving and presenting requests for mutual legal assistance and extradition. The International Assistance Group of the Department of Justice Canada assists the Minister in the exercise of these functions, including with respect to ICC requests for cooperation.

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5. Colombia

[Original: Spanish]

Contestación del estado colombiano al cuestionario:

Legislación aplicación estatuto de roma

1. ¿Ha adoptado su Gobierno alguna legislación nacional para la aplicación del Estatuto de Roma (“el Estatuto”)?

Si.

En caso afirmativo

Parte B

5. Al aplicar el Estatuto, ¿tuvo que redactar su Gobierno una legislación de aplicación especial o por lo contrario incorporó los artículos o disposiciones sustantivas del Estatuto en la legislación preexistente?

En aras de lograr la adopción del Estatuto de Roma y evitar posibles contradicciones entre dicho instrumento y normas del ordenamiento jurídico interno, el Estado colombiano optó por utilizar la vía del Acto Legislativo para lograr solventar cualquier incompatibilidad que pudiese presentarse.³

A través del Acto Legislativo número 2 de 2001, se autorizó al Estado a reconocer la jurisdicción de la Corte Penal Internacional, adicionando el texto del Acto al Artículo 93 de la Constitución. El texto final de dicha norma quedó de la siguiente manera:

Artículo 93: “Los tratados y convenios internacionales ratificados por el Congreso, que reconocen los derechos humanos y que prohíben su limitación en los estados de excepción, prevalecen en el orden interno.

Los derechos y deberes consagrados en esta Carta, se interpretarán de conformidad con los tratados internacionales sobre derechos humanos ratificados por Colombia.

El Estado Colombiano puede reconocer la jurisdicción de la Corte Penal Internacional en los términos previstos en el Estatuto de Roma adoptado el 17 de julio de 1998 por la Conferencia de Plenipotenciarios de las Naciones Unidas y consecuentemente, ratificar este tratado de conformidad con el procedimiento establecido en esta Constitución.

La admisión de un tratamiento diferente en materias sustanciales por parte del Estatuto de Roma con respecto a las garantías contenidas en la Constitución tendrá efectos exclusivamente dentro del ámbito de la materia regulada en él”.

La razón fundamental por la cual se escogió este camino para lograr la adopción del Estatuto se debe principalmente a que ciertas disposiciones de dicho cuerpo normativo resultaban ajenas a la tradición jurídica nacional y a ciertos principios contenidos en la Constitución, tales como las normas que establecen la cadena perpetua como pena, la

³ De acuerdo a la legislación colombiana, un Acto Legislativo es una norma expedida por el Congreso de la República que tiene por objeto modificar, reformar, adicionar o derogar textos de carácter constitucional. Esta facultad está consagrada en la misma Constitución y en el Reglamento del Congreso (Ley 5 de 1992). En términos generales, el procedimiento para la aprobación de uno de estos Actos es más exigente que para expedir una Ley. Mientras que una Ley normal debe surtir 4 debates, los Actos Legislativos deben pasar 8.

imprescriptibilidad de la acción penal derivada de la comisión de conductas punibles consagradas en el Estatuto así como la inmutabilidad de las decisiones judiciales internas.

El efecto práctico que tuvo el Acto Legislativo número 2 fue que se permitió la ratificación del Estatuto de Roma, pero sin incorporarlo directamente como texto de la Constitución. Tal y como lo señaló la Corte Constitucional, la cual realiza un control constitucional sobre todas las normas internacionales que el Estado colombiano tenga la intención de ratificar o de adherirse, son cuatro las ramificaciones que se desprendieron de dicho Acto Legislativo:⁴

- Se le da una autorización al Estado colombiano de reconocer la jurisdicción de la Corte Penal Internacional en los términos previstos en el mismo Estatuto.
- Se le faculta al Estado para ratificar dicho instrumento.
- Se admite que se haga un tratamiento diferente en las materias que competen a la Corte Penal con respecto a los derechos y garantías contenidos en la Constitución.
- Este tratamiento diferencial solo se puede dar en el ámbito de lo regulado por el Estatuto de Roma.

Lo anterior significa que sólo se aplicarán las disposiciones del Estatuto cuando sea la Corte Penal Internacional quien esté adelantando labores de investigación y juzgamiento dentro de las materias que son de su competencia, pero mientras que el Estado colombiano esté ejerciendo su jurisdicción, las disposiciones del Estatuto que sean incompatibles con el ordenamiento jurídico interno colombiano no serán aplicables, ya que la jurisdicción penal que ejerce Colombia frente a cualquier delito, incluidos los contemplados en el Estatuto, debe tener como base y pilar las garantías mínimas que están consagradas en la Constitución Nacional.

Gracias a lo anterior, el Congreso de la República expidió la Ley 742 de 2002 aprobatoria del Estatuto, la cual fue objeto de examen constitucional por parte de la Corte, declarándola exequible y dando efectivamente vía libre para que el Gobierno Nacional procediese a ratificar dicho instrumento internacional.

6. ¿Incorpora la legislación de aplicación los crímenes sustantivos haciendo referencia al Estatuto o incluyendo los crímenes en la propia legislación?

Resulta importante señalar que los crímenes sustantivos contenidos en el Estatuto de Roma ya estaban contemplados en la legislación penal nacional a través de la Ley 599 del 24 de julio de 2000, actual Código Penal, es decir, antes de la entrada en vigor del Estatuto, y por ende, no hay una referencia explícita en dicho cuerpo normativo sobre el Estatuto como tal.

Dentro de los ejemplos que se pueden señalar de esta tipificación se encuentra el del delito de genocidio en el Capítulo primero del Título I del Código Penal, los crímenes de guerra contemplados en el Título II en su Capítulo Único denominado “*Delitos contra personas y bienes protegidos por el Derecho Internacional Humanitario*” y múltiples conductas punibles a lo largo del Código que el Estatuto considera crímenes de lesa humanidad tales como la desaparición forzada, el homicidio, el desplazamiento forzado, la detención arbitraria, el tráfico de personas, los delitos contra la libertad, integridad y formación sexuales, entre otros.

⁴ Sentencia C-578 de 2002

7. Incorpora la legislación de aplicación todas las modalidades de cooperación que figuran en la parte 9 del Estatuto?

En el 2004 se presentó en el Congreso de la República el Proyecto de Ley número 225 pero no logró avanzar en su trámite legislativo, siendo archivado. Lo mismo ocurrió con el Proyecto de Ley 040 de 2006, el cual fue archivado por no surtirse en el debido tiempo los respectivos debates para que fuese aprobado. El último de estos Proyectos de Ley fue presentado el año pasado bajo el número 080 titulado “*Por el cual se dictan normas sobre cooperación con la Corte Penal Internacional*” pero fue retirado por sus autores el 1 de septiembre del mismo año.

Ha sido una política consistente del Estado colombiano patrocinar y cooperar en el fortalecimiento de la Corte Penal Internacional como institución legítima para la investigación y penalización complementaria de quienes, sin distinción de ninguna clase, llegaren a incurrir en las más graves violaciones a los Derechos Humanos o cometieren infracciones a las normas del Derecho Internacional Humanitario. Se espera que a futuro Colombia cuente con un marco jurídico interno el cual permita una cooperación más fluida con la Corte.

Con todo, la Ley 906 de 2004, actual Código de Procedimiento Penal, consagra en su Libro V, Capítulo I, un principio general de cooperación internacional en materia penal, haciendo mención específica a la Corte Penal Internacional y el cual reza de la siguiente manera:

Artículo 484: Principio general: “Las autoridades investigativas y judiciales dispondrán lo pertinente para cumplir con los requerimientos de cooperación internacional que les sean solicitados de conformidad con la Constitución Política, los instrumentos internacionales y leyes que regulen la materia, en especial en desarrollo de la jurisdicción de la Corte Penal Internacional”.

8. ¿Designa la legislación de aplicación un conducto de comunicación con la Corte?

Cuando Colombia depositó su respectiva ratificación del Estatuto de Roma hizo claridad a través de la declaración número seis que el conducto oficial de comunicación con la Corte es el Ministerio de Relaciones Exteriores en todo lo referente a las solicitudes de cooperación o asistencia y se deberán tramitar por la vía diplomática.⁵

⁵ En consonancia con el artículo 87, 1 a.) y el párrafo 2 primer inciso del Estatuto.

6. Croatia

[Original: English]

Information of the Republic of Croatia - Implementing legislation questionnaire for States Parties -

1. Has your government adopted any national legislation implementing the Rome Statute?

Yes. The Government of Republic of Croatia adopted new national legislation implementing the Rome Statute.

The Croatian Parliament enacted the **Act on the Ratification of the Rome Statute of the International Criminal Court on 28 March 2001** (The Act on Ratification was published in The Official Gazette – International Agreements no. 5/2001)

In 2003 a special **Act on the Application of the Statute of the International Criminal Court and Prosecution of Criminal Offences against International War and Humanitarian Law** (The Official Gazette, no105/04) was enacted

As a key importance for the application of the Rome Statute, Republic of Croatia made amendments to the national Criminal Code

5. In implementing the Statute, did your Government draft special implementing legislation or did it incorporate the articles of substantive provisions of the Statute into pre-existing law?

Government of Republic of Croatia **drafted special implementing legislation but also made some amendments to the pre-existing law (for example to the national Criminal Code)**

6. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?

Entire Rome Statute is incorporated in the Act on the Ratification of the Rome Statute of the International Criminal Court

Act on the Application of the Statute of the International Criminal Court and Prosecution of Criminal Offences against International War and Humanitarian Law includes reference to the Statute and to the Criminal Code

7. Does the implementing legislation fully incorporate all modes of cooperation under Part 9 of the Statute?

Yes, the implementing legislation fully incorporate all modes of cooperation under Part 9 of the Statute

8. Does the implementing legislation designate a channel of communication with the Court?

Yes, the implementing legislation designate a channel of communication with the ICC

By the Act on the Ratification of the Rome Statute of the International Criminal Court the Ministry of Justice is designated as the central body competent for the implementation of the Rome Statute

The Act on the Application of the Statute of the International Criminal Court and Prosecution of Criminal Offences against International War and Humanitarian Law determines, *inter alia*, the competence for the co-operation of the Republic of Croatia with the International Criminal Court and the execution of decisions of the Court.

* * *

7. Costa Rica

[Original: Spanish]

Cuestionario para los Estados partes sobre legislación de aplicación

1. ¿Ha adoptado su Gobierno alguna legislación nacional para la aplicación del Estatuto de Roma?

El Estatuto de Roma fue suscrito por Costa Rica el 07 de octubre de 1998. La Asamblea Legislativa, de previo a su aprobación, sometió para consulta preceptiva de constitucionalidad, el proyecto de ley de dicho instrumento jurídico internacional a la Sala Constitucional. La Sala votó favorablemente según resolución de las 14:56 horas del 01 de noviembre de 2000. En esta resolución, además de los aspectos de la tramitación por parte de la Asamblea Legislativa, la Sala Constitucional analizó algunos aspectos de fondo del Estatuto de Roma y su aplicación a la luz del ordenamiento interno costarricense.

El Estatuto de Roma fue finalmente aprobado por la Asamblea Legislativa, mediante Ley número 8083 del 07 de febrero de 2001; el día 07 de junio de ese mismo año, se procedió con el respectivo depósito del instrumento de ratificación en poder del Secretario General de las Naciones Unidas.

Costa Rica ha realizado algunos progresos en el proceso de implementación del Estatuto de Roma de la Corte Penal Internacional. En ese sentido, el Poder Ejecutivo presentó a la Asamblea Legislativa, en el año 2002, el Proyecto de Ley “Represión Penal. Castigo de los Crímenes de Guerra y de Lesa Humanidad”. Mediante esta iniciativa, Costa Rica incorporó, dos tipos penales en los artículos 378 y 379 del Código Penal, referidos a los crímenes de guerra y de lesa humanidad (el delito de genocidio existe en el Código Penal desde su promulgación en 1970).

La Ley 8272 reformó además el artículo 7 del Código Penal de manera que se tipificó como delito internacional, la comisión de actos contrarios al Derecho Internacional Humanitario previstos en tratados internacionales suscritos por Costa Rica, por lo que se estableció la competencia de los tribunales costarricenses para penar estos delitos aún cuando hubieran sido cometidos fuera de sus fronteras, y con independencia de la nacionalidad del autor.

2. Al aplicar el Estatuto, ¿tuvo que redactar su Gobierno una legislación de aplicación especial o por el contrario incorporó los artículos o disposiciones sustantivas del Estatuto en la legislación preexistente?

Tal y como se explicó en la respuesta a la pregunta anterior, y con el propósito de implementar el Estatuto de Roma, Costa Rica incorporó en el Código Penal vigente los tipos penales de los artículos 378 y 379, así como la reforma al artículo 7 del Código Penal. No obstante, la legislación incorporada no es idéntica a la normativa prevista en el Estatuto de la Corte Penal Internacional, ya que remite a los tratados internacionales suscritos por Costa Rica en materia de derechos humanos y derecho internacional humanitario.

3. ¿Incorpora la legislación de aplicación los crímenes sustantivos haciendo referencia al Estatuto o incluyendo los crímenes en la propia legislación?

En los artículos 378 y 379 del actual Código Penal no se definen los crímenes de guerra y de lesa humanidad, sino que se hace remisión a los tratados e instrumentos internacionales sobre la materia de los que Costa Rica es parte; incluso el 379 menciona expresamente el Estatuto de Roma. Es decir, en la actualidad se utiliza el “tipo penal en blanco”, pues la descripción del hecho ilícito no se hace en la propia norma, sino que se

remite a otro texto. Sobre lo anterior, la Sala Constitucional ha dicho que: “En derecho penal se acepta como válida la técnica legislativa que permite la utilización de las leyes penales en blanco o necesitadas de complemento, sea aquellas en que el presupuesto no se consiga completo o específico en la propia ley, pues debe recurrirse a otra de igual o distinto rango para completarla” (Voto No. 2996 del 06 de octubre de 1992)

4. ¿Incorpora la legislación de aplicación todas las modalidades de cooperación que figuran en la parte 9 del Estatuto?

En la actualidad se encuentra pendiente de aprobación en la Comisión Especial de Derechos Humanos de la Asamblea Legislativa, el proyecto de ley 16272, la “Adición al Libro II del Código Penal, ley Número 4573, de un nuevo Título XVIII, Delitos contra Personas y Bienes Protegidos por el Derecho Internacional Humanitario”.

Sobre cooperación, el proyecto contempla que la jurisdicción nacional no se ejercerá cuando se trate de crímenes o delitos cuyo juzgamiento sea jurisdicción de la Corte Penal Internacional si se solicita la entrega por la Corte Penal Internacional, si se solicita la extradición por parte del Estado competente al amparo de Tratados o Convenciones internacionales vigentes para la República, y si se solicita la extradición por parte del Estado competente no existiendo Tratados o Convenciones vigentes con la República, en cuyo caso y sin perjuicio de los demás requerimientos legales, para conceder la extradición, el Estado requirente debió haber ratificado el Estatuto de Roma de la Corte Penal Internacional.

Se contempla además asistencia a la Corte por cuanto prescribe que *recibida de la Corte Penal Internacional o de cualquiera de sus órganos una solicitud de asistencia o cooperación, o una solicitud de entrega, la misma será remitida a la Corte Suprema de Justicia dentro de las cuarenta y ocho horas siguientes.*

Para la próxima Conferencia de Revisión, Costa Rica ha prometido trabajar en un protocolo de cooperación con la Corte que desarrolle e identifique las instituciones nacionales involucradas en el procedimiento previsto en el Capítulo IX del Estatuto de Roma.

5. ¿Designa la legislación de aplicación un conducto de comunicación con la Corte?

De conformidad con la Constitución Política de Costa Rica, el Poder Ejecutivo, compuesto por el Presidente de la República y el Ministerio de Relaciones Exteriores y Culto, es el encargado de: “Dirigir las relaciones internacionales de la República”.

El Poder Ejecutivo, mediante Decreto Ejecutivo No. 32077-RE del 21 de mayo de 2004, publicado en La Gaceta No. 216 del 4 de noviembre de 2004, creó la Comisión Costarricense de Derecho Internacional Humanitario (CCDIH) como: “un órgano público con la más amplia participación y representación interinstitucional y con funciones de asesoría del Poder Ejecutivo sobre medidas de incorporación, aplicación y difusión de las normas de Derecho Internacional Humanitario bajo la coordinación del Ministerio de Relaciones Exteriores y Culto” (Considerando III del Reglamento Interno de la Comisión Costarricense de Derecho Internacional Humanitario (CCDIH).

De conformidad con lo anterior, el Ministerio de Relaciones Exteriores y Culto (Dirección Jurídica y Dirección General de Política Exterior) y la Comisión Costarricense de Derechos Internacional Humanitario, son los entes designados para recibir comunicaciones de la Corte Penal Internacional.

8. Cyprus

[Original: English]

Has your Government adopted any national legislation implementing the Rome Statute (“the Statute”)?

The Rome Statute for the establishment of the International Criminal Court (Ratification) Law of 2002 (Law No. 8(III)/2002) incorporates the Rome Statute (“the Statute”) into national Law.

IF NOT Part A

What legislative efforts, if any, has your Government taken to implement the provisions of the Statute into national law? – N/A

What obstacles, if any, has your Government faced in its efforts to implement the provisions of the Statute? – N/A

What form of assistance would benefit your Government’s efforts to implement the Statute? – N/A

IF YES Part B

In implementing the Statute, did your Government draft special implementing legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?

The text of the Statute (the original English text as well as its translation into Greek) is incorporated in its totality in the Schedule to Law 8(III)/2002 for the purposes of its incorporation into national Law. The said Law can thus be described as “special implementing legislation”.

Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?

Law No. 8(III)/2002 incorporates the substantive crimes in the legislation itself.

Does the implementing legislation fully incorporate all modes of cooperation under Part 9 of the Statute?

No express reference is made to Part 9 of the Statute in Law 8(III)/2002). Part 9 is however, fully incorporated into national Law by virtue of the incorporation of the full text of the Statute into the Law (its Schedule) (see points 1 and 5 above).

Does the implementing legislation designate a channel of communication with the Court?

Law No. 8(III)/2002 does not designate a channel of communication with the Court. By virtue of section 3(b), however, the said law is to be applied in correlation with the International Cooperation in Criminal Matters Law of 2001 (Law No. 23(I)/2001), which

designates the Minister of Justice and Public Order as the competent authority for matters relating to international cooperation in criminal matters.

* * *

9. Czech Republic

[Original: English]

Information by the Czech Republic to the Secretariat of the Assembly of States Parties to the Rome Statute on the implementing legislation of the Rome Statute

In the first part, the Czech Republic would like make one general remark on the status of the Rome Statute in the Czech law, while the second part contains concrete answers to the ASP questionnaire. Both parts should be read together.

1. Legal force of the Rome statute in the Czech law

Under the Czech Constitution, the Rome Statute is an international treaty, through which the exercise of some sovereign powers of the Czech Republic was transferred, albeit conditionally, to an international institution (i.e., the ICC). As such, the self-executing provisions of the Rome Statute are directly binding and directly applicable (monistic approach). Following this legal approach, there was no legal need to pass any direct implementing legislation. Nevertheless, with regard to the non-self executing provisions, and because of the traditional, rather politic concept of “autonomy” of criminal law (dualistic approach), some changes were passed in the area of substantive law (crimes). From the procedural aspect (cooperation), the new Act on International Cooperation and Judicial Assistance is in process of consideration [including a draft of detailed provisions on all types of cooperation with the Court (and other international criminal tribunals and courts)]. The Czech authorities incorporated provisions of the Rome statute as follows:

a) Cooperation

The Czech authorities are currently able to cooperate with the ICC on the basis of the Code of Criminal Procedure (Act No. 141/1961 Coll., as amended). The Section 375(2) through (5) thereof provide for the application as appropriate of the Code’s Chapter XXV. on “International Cooperation and Judicial Assistance” (which regulates international judicial cooperation with foreign States, including among others surrender/extradition, transfer of the person through the Czech territory, and execution of judgments) in cases of cooperation with the international criminal courts and tribunals (both UN *ad hoc* tribunals and those established by a treaty binding the Czech Republic). On 1 January 2009, an amendment of Section 375 of the Code of Criminal Procedure has entered into force – this amendment deleted the provision barring surrender of Czech nationals to international criminal courts and tribunals.

b) Crimes

All the Crimes under the provisions of Articles 6, 7 and 8 of the Rome Statute are criminal offences under the Czech criminal law in force – the Czech Criminal Code (Act No. 40/2009 Coll., as amended). The relevant provisions of the Criminal Code can be found in the reports submitted to the Secretariat of the Assembly of States Parties on September 29, 2008 (Note No. 630/2008) and on August 18, 2009 (Note No. 478/2009).

The answers of the Czech Republic to the Secretariat’s questions are as follows:

2. Has your Government adopted any national legislation implementing the Rome Statute (“the Statute”)?

Yes, the Rome Statute was fully implemented into the Czech law when the new Czech Criminal Code – that is mentioned above – was adopted. In addition, the new Act on International Cooperation and Judicial Assistance is currently in process of drafting. The

above-mentioned amendment to Section 375 of the Code of Criminal Procedure has been enacted by Act No. 457/2008 Coll.

3. In implementing the Statute, did your Government draft special implementing legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?

The Czech Republic adapted the substance of articles or substantive provisions of the Statute into the general Criminal Code and Code of Criminal Procedure.

4. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?

The crimes within the jurisdiction of the Court are defined in the Czech law without an express reference to the Statute and their definitions in the Czech law are not simple copies of the wording of the relevant provisions of the Statute but have been adapted to suit the Czech legislative customs, traditions and practice. Some of these definitions are, as a matter of fact, even broader than those in the Statute (e. g. genocide, which has been extended to protect also groups defined by social class and other similar groups of people, reflecting the Czech Republic's historic experience with Communism).

5. Does the implementing legislation fully incorporate all modes of cooperation under Part 9 of the Statute?

Generally yes. Furthermore, the legislative draft of the new Act on International Cooperation and Judicial Assistance will most likely include more specific and detailed provisions covering different modes of the cooperation.

6. Does the implementing legislation designate a channel of communication with the Court?

Not directly, the concrete channel will depend on the concrete mode of cooperation and is specified in the declaration made by the Czech Republic under Article 87(1)(a) of the Statute when depositing the instrument of ratification.

10. Denmark

[Original: English]

Implementing legislation questionnaire for States Parties

1. Has your Government adopted any national legislation implementing the Rome Statute (“the Statute”)?

Yes; Denmark implemented the Statute by the passing of Act no. 342 of 16 May 2001 “Lov om den Internationale Straffedomstol” (Act on the International Criminal Court).

If not

Part A

Not applicable

If not

Part B

5. In implementing the Statute, did your Government draft special implementing legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?

According to section 1, subsection 1, of the above-mentioned Act no. 342 of 16 May 2001, the provisions of the Statute form part of Danish law. A Danish translation of the Statute itself is annexed to the Act.

Denmark chose to incorporate the Statute into Danish law as it contains a detailed regulation of the duty of the States Parties to cooperate with the Court. The implementing Act essentially consists of those supplementary rules that the Government deemed necessary to enable Danish authorities to cooperate fully with the Court in practice.

6. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?

The implementation of the Statute through Act no. 342 does not imply the incorporation of the Statute’s substantive crimes in Danish substantive criminal law. It should be noted, however, that the acts constituting all three categories of crimes contained in the Statute, are criminalised under Danish law.

7. Does the implementing legislation fully incorporate all modes of cooperation under part 9 of the Statute?

Yes; it follows from section 1, subsection 1, of the implementing Act no. 342, that Danish authorities are legally fit and able to comply with all cooperation obligations prescribed in part 9 of the Statute. For example, Denmark will be able to meet requests concerning legal aid, including investigation under the use of force and requests for extradition. Section 2 of the implementing Act contains detailed rules regarding the procedure of extradition to the Court.

8. Does the implementing legislation designate a channel of communication with the Court?

The implementing Act no. 342 does not designate a specific channel of communication with the Court; however, all communication may be directed to the

Government through the usual diplomatic channels, including the Danish Embassy in The Hague and the Ministry of Foreign Affairs of Denmark.

Additional questions

The following information is provided pursuant to paragraph 6, sub-paragraph (h), of the Plan of Action.

a) Information on obstacles to ratification or full implementation facing States

During the parliamentary negotiation of the Danish implementation bill (cf. L20 presented 4 October 2000 by the Foreign Minister) the compatibility between the ratification of the Statute and sections 13 and 20 of the Danish Constitutional Act of 5 June 1953 (Grundloven) was discussed. Reference is made to the answer provided below in paragraph vii) regarding solutions to constitutional issues.

b) National or regional strategies or plans of action to promote ratification and/or full implementation

Denmark is a member of the European Union and reference is therefore made to the EU's reply of 2 September 2009 to the request for information by the ASP. Denmark is an active member of the EU working group of ICC experts (COJUR Subarea ICC). Bilaterally, Denmark pursues a number of avenues with a view to providing financial, political and practical support to the Court.

c) Technical and other assistance needs and delivery programmes

No answer.

d) Planned events and activities

1. At the Eighth Session of the Assembly of States Parties, held in The Hague 18-26 November 2009, it was decided to promote a number of concrete proposals for amendment of the Statute in light of the upcoming Review Conference in Kampala, Uganda. This conference will furthermore include stocktaking to consider the holistic success and impact of the Rome Statute, with a particular focus on inter alia the principle of complementarity as a focal point in the battle against impunity. Following an invitation by the ASP, Denmark and South Africa have been given lead on the stocktaking segment on complementarity at the Review Conference in Kampala 31 May-11 June.

2. In connection with the pre-review conference, which was held in Uganda 25-29 January 2010, the Danish delegation availed itself of the opportunity to travel to northern Uganda together with delegations from Kenya, Sierra Leone and South Africa and the President of the ASP, Christian Wenaweser. During this visit, the delegation encountered a number of people, who were victims of violence related to cases currently pending before the International Criminal Court. The visit was funded by the Danish Embassy in Kampala, Uganda, with 50,000 Euros.

e) Examples of implementing legislation for the Rome Statute

Act no. 342 of 16 May 2001 (Act on the International Criminal Court) may be found on the website <https://www.retsinformation.dk/Forms/R0710.aspx?id=22925> in the authoritative Danish version. Unfortunately, the Act is not available in English.

f) Bilateral cooperation agreements between the Court and States Parties

Denmark and the Court are currently looking into the last details with a view to finalizing an agreement on enforcement of sentences.

g) Solutions to constitutional issues arising from ratification

No major constitutional issues arose at ratification. However, as is evident from the parliamentary process (cf. L20 presented 4 October 2000 by the Foreign Minister), which led to the passing of Act no. 342 of 16 May 2001 (Act on the International Criminal Court), two possible obstacles to ratification and full implementation of the Statute, both of a constitutional nature, were discussed.

First, the Government considered the ratification in relation to section 20 of the Danish Constitutional Act of 5 June 1953 (“Grundloven”). This provision provides that “(1) Powers vested in the authorities of the Realm under this Constitutional Act may, to such extent as shall be provided by statute, be delegated to international authorities set up by mutual agreement with other states for the promotion of international rules of law and cooperation. (2) For the enactment of a Bill dealing with the above, a majority of five-sixths of the members of the Folketing [parliament] shall be required. If this majority is not obtained, whereas the majority required for the passing of ordinary Bills is obtained, and if the Government maintains it, the Bill shall be submitted to the electorate for approval or rejection in accordance with the rules for referenda laid down in section 42.” The Government concluded, after thorough consideration, that Danish ratification of the Statute would not imply the transfer of constitutional powers within the meaning of section 20.

Second, the Government considered whether Danish ratification of the Statute would be in conflict with section 13 of the constitution, according to which the Danish monarch as Head of State enjoys full immunity against prosecution. However, taking note of the fact that the authority exercised by the Danish monarch in the Danish democracy is of a strictly formal nature, the Government considered it to be highly hypothetical, indeed, that any Danish monarch should ever commit a crime within the jurisdiction of the International Criminal Court. In this light, the Government concluded that section 13 of the constitution did not constitute an obstacle to ratification and full implementation of the Statute.

h) National contact points for matters related to the promotion of ratification and full implementation

Danish Ministry of Foreign Affairs
Department of International Law
Asiatisk plads 2
DK-1448 Copenhagen K
Phone + 45 3392 0000
Fax + 45 3254 0533
E-mail: jtf@um.dk

11. Estonia

[Original: English]

Subject: The questionnaire on the measures undertaken in respect of implementing legislation of the Rome Statute of the International Criminal Court

Estonia has adopted national legislation in order to implement the Rome Statute of the International Criminal Court. In respect of the questionnaire issued by the Secretariat of the Assembly of States Parties to the Rome Statute on this subject, Estonia is pleased to provide the following information:

1. In implementing the Statute, did your Government draft special implementing legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?

The Statute has become a part of Estonian legal order on 1 July 2002 during the reform of Estonian substantive and procedural penal law. The provisions intended to implement the Statute have been incorporated into the Penal Code (in force since 1 September 2002) and the Code of Criminal Procedure (in force since 1 July 2004).

2. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?

The substantive crimes are incorporated into the Estonian Penal Code without reference to the Statute, e.g. crimes against humanity – section 89, genocide – section 90, aggression – section 91.

3. Does the implementing legislation fully incorporate all modes of cooperation under Part 9 of the Statute?

The modes of cooperation have been provided for in the Code of Criminal Procedure, e.g. principle of cooperation – section 433, extradition – section 439, surrender of persons – section 491. However, if a rule of national law should be in contradictory to a provision of an international commitment, the latter prevails (section 433 (2) of the Code of Criminal Procedure).

A request for assistance received from a foreign state may be complied with pursuant to procedural provisions different from the provisions of the Code of Criminal Procedure unless this is not a contrary to the principles of Estonian law.

4. Does the implementing legislation designate a channel of communication with the Court?

According to section 435 (1) of the Code of Criminal Procedure, the Ministry of Justice is the central authority in the matters of international cooperation concerning penal law.

12. France

[Original: French]

1/- en adoptant la loi de coopération avec la Cour pénale Internationale n°2002-268 du 26 février 2002, la France s'est conformée avant même l'entrée en vigueur du Statut de Rome à l'obligation faite aux Etats parties au Statut de Rome d'adapter leur législation interne afin de « coopérer pleinement » avec la Cour. Cette loi reprend les modalités de coopération prévues par le chapitre IX du Statut.

La voie utilisée pour la transmission de toute communication entre la France et la Cour est la voie diplomatique (déclaration effectuée le 10 mai 2004). La loi du 26 février 2002 prévoit que les demandes d'entraide sont exécutées, selon les cas, par le Procureur de la République ou par le Juge d'instruction de Paris qui agissent sur l'ensemble du territoire national en présence, le cas échéant, du procureur près la Cour Pénale Internationale ou de son représentant, ou de toute autre personne mentionnée dans la demande de la Cour Pénale Internationale.

2/- Par ailleurs la procédure parlementaire qui aboutira à l'adoption d'une loi portant adaptation du droit pénal français à l'institution de la Cour est en cours. Le projet de loi adopté en première lecture au Sénat le 10 juin 2008 et qui sera examiné prochainement par l'Assemblée nationale, constituera le second volet de l'adaptation du droit français aux dispositions du Statut de Rome.

Sur le fond ce projet de loi prévoit d'adapter le droit interne français afin de permettre la poursuite par les juridictions nationales des auteurs de crimes entrant dans le champ de la compétence de la CPI en application du principe de complémentarité de juridiction prévu par le Statut de Rome.

Au-delà de la compétence des juridictions nationales, en toute hypothèse un éventuel suspect présent sur le sol français pourrait toujours être interpellé sur la base d'un mandat d'arrêt délivré par la cour et remis à celle-ci ou à tout autre Etat revendiquant sa compétence aux fins de la juger.

13. Ireland

[Original: English]

Implementing legislation questionnaire for States Parties

- 1. Has your government adopted any national legislation implementing the Rome Statute (“the Statute”)?**

Yes

If yes**Part B**

- 5. In implementing the Statute, did your government draft special implementing legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?**

Ratification of the Rome Statute of the International Criminal Court (“Rome Statute”) required an amendment of the Constitution. This amendment was effected by means of a referendum. The referendum was held in 2001, it was adopted by an overwhelming majority of Irish voters, and the amendment now forms Article 29.9 of the Irish Constitution, which provides that “The State may ratify the Rome Statute of the International Criminal Court done on the 17th day of July, 1998.”

The International Criminal Court Act 2006 (“2006 Act”) was enacted on 31 October 2006 in order to incorporate the Rome Statute into Irish law. The text of the Act is publicly and freely available in both the Irish and English languages and at the following website: <<http://www.oireachtas.ie/documents/bills28/acts/2006/a3006.pdf>>.

- 6. Did the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?**

The 2006 Act incorporates “ICC offences” through reference to the Statute. Section 6 of the Act provides interpretation for domestic jurisdiction in “ICC offences”:

“(1) In this part, unless the context otherwise requires—

[...]

“crime against humanity “ means any of the acts specified in Article 7 [of the Rome Statute];

“genocide” means any of the acts specified in Article 6 [of the Rome Statute];

“war crime” means any of the acts specified in Article 8.2 (except subparagraph (b)(xx)) [of the Rome Statute].

(2) In Articles 7 and 8 [of the Rome Statute] references to murder shall be constructed as references to the killing of a person in such circumstances as would, if committed in the State, constitute murder.”

The 2006 Act provides that, in interpreting the Act itself and the Rome Statute, the Irish Courts may where necessary take account of: (i) the rules of Procedure and Evidence; (ii) the Elements of Crimes; (iii) any relevant judgment or decision of the ICC; (iv) any other relevant judgment, and (v) may consider the *travaux préparatoires* relating to the Rome

Statute and the published views of commentators on its text and give them such weight as may appear appropriate in the circumstance. The Act further provides that judicial notice shall be taken of the Rome Statute, which is scheduled to the Act.

7. Does the implementing legislation fully incorporate all modes of cooperation under Part 9 of the Statute?

The 2006 Act lays down a legislative basis for cooperation with requests and orders from the ICC, in accordance with Part 9 of the Rome Statute.

The 2006 Act enables effect to be given to requests by the ICC for assistance in the investigation or prosecution of offences, including requests to arrest and surrender persons⁶ pursuant to a surrender order made by the High Court⁷. The Act further provides for assets to be frozen by a freezing order issued by the Minister for Justice pursuant to a request from the ICC,⁸ and the enforcement of orders issued by the Court.⁹

8. Does the implementing legislation designate a channel of communication with the Court?

The 2006 Act provides that requests from the ICC under Part 9 of the Rome Statute are to be dealt with by the Minister for Justice and Law Reform.

Part 3 of the 2006 Act deals with requests from the ICC for the arrest and surrender of persons. Section 17 provides:

‘(1) A request by the International Criminal Court for the arrest and surrender of a person shall be communicated to the Minister [for Justice and Law Reform] in accordance with Articles 87, 89 and 91.

[...]

(3) If the information furnished by the Court is in the Minister’s opinion insufficient, the Minister may request it to supply further information or documents.

(4) The Minister shall consult the Court under Article 97 in relation to any difficulties that may impede or prevent the execution of a request.’

Requests to freeze assets, to enforce orders and other requests from the ICC should also be communicated to the Minister for Justice and Law Reform in accordance with Part 4 and Part 5 of the 2006 Act.

Pursuant to Article 87 paragraphs 1 (a) and 2 of the Rome Statute concerning designation of channels and language of communication by States Parties to the Rome Statute of the International Criminal Court, Ireland’s channel of communication with the Court is the Embassy of Ireland in The Hague, and English is its preferred language of communication.

⁶ ICC Act 2006, Part 3.

⁷ ICC Act 2006, s 25.

⁸ ICC Act 2006, s 38.

⁹ ICC Act 2006, s 40.

14. Japan

[Original: English]

Japan's Response to the request by the Secretariat of the Assembly of States Parties in its document ICC-ASP/8/S/PA/19, dated 24 April 2009.

1. Japan's Ratification of the Rome Statute

Japan submitted its instrument of accession to the Rome Statute to the Secretary-General of the United Nations on 17 July 2007 and became a State Party to the Rome Statute on 1 October 2007.

Prior to its accession to the Rome Statute, Japan considered a number of issues which might become obstacles for the ratification of the Rome Statute. Those issues are: (a) the relationship between the crimes under the Rome Statute and Japanese domestic criminal laws; (b) the scope of application of Japanese domestic criminal laws (especially the issue of punishability of crimes committed abroad); (c) the principle of legality with respect to both substantive and procedural criminal laws (the impartiality of the Court, the clarity of the elements of crimes, the protection of human rights in the proceedings before the Court); (d) necessary measures to comply with the obligation to cooperate with the ICC; (e) financial matters raised by Japan's accession to the Rome Statute; and (f) translation of the Rome Statute into Japanese. Other relevant issues, such as superior responsibility, the statute of limitations, the punishability of (i) attempts of certain crimes, (ii) the commission of crimes committed abroad and (iii) incitement of the crime of genocide, and the immunity of members of the Diet (the Japanese Parliament), were also examined.

With respect to (a) the relationship between the crimes under the Rome Statute and Japanese domestic criminal laws, Japan examined the Rome Statute, the Elements of Crimes, the *travaux préparatoires* of those documents, the interpretations of those documents by other States Parties, etc., to determine: (i) whether existing domestic criminal laws cover the crimes under the Rome Statute; (ii) which domestic crimes correspond to the crimes under the Rome Statute; and (iii) whether the penalties under domestic law are compatible with the penalties under the Rome Statute.

After thorough examination of these issues, Japan reached the conclusion that no amendment was necessary to existing domestic criminal laws to implement the substantive criminal law of the Rome Statute, given that, setting aside exceptional cases, the crimes under the Rome Statute were covered by existing Japanese criminal laws, including the Act on the Punishment of Grave Breaches of International Humanitarian Law and the Act on the Treatment of Prisoners of War and Other Detainees in Armed Attack Situations, both of which were enacted in 2004. However, the existing domestic laws of Japan were found to lack the means to address offences against the administration of justice before the ICC and procedures for handling requests for cooperation from the ICC. Therefore, Japan enacted a law titled the Act on Cooperation with the International Criminal Court (the so-called "ICC Cooperation Act"), which provides the procedures to cooperate with the ICC, such as production of evidence, temporal transfer of a person in custody to the ICC, surrender of a person to the ICC and enforcement of fines and forfeiture. The Act also criminalises offences against the administration of justice before the ICC, such as destruction of evidence, false testimony and bribery. (For the contents of this Act, refer to the Annex to this document).

2. National and Regional Strategies to Promote the Ratification of the Rome Statute

The ICC needs to promote the universality of its membership. Although we have witnessed a steady increase in the number of States Parties, which amounts to 111 as of June

2010, this number is far from satisfactory. The ICC is the first and only permanent international criminal court, with the potential capacity to exercise its jurisdiction over the most serious crimes committed in any place in the world. Achieving the universality of the Rome Statute thus is of paramount importance in order for the Court to establish its full authority. Japan also regrets that currently only 15 countries from the Asian Group are States Parties, which leaves this region seriously under-represented. It is unfortunate that the ICC is often seen, or perhaps misperceived, as an institution dominated by certain regions. The geographical imbalance needs to be addressed in order for the Court to be received as a more universal institution. Japan, with full awareness of its role in the Asian region, has made strenuous efforts to increase the number of States Parties from Asia through its bilateral contacts as well as in regional fora such as the Asian-African Legal Consultative Organization (AALCO).

3. Events and Activities to Promote the Ratification of the Rome Statute

Japan has participated in national and regional seminars and workshops to promote the ratification of the Rome Statute in Canberra, Australia (August 2007); Da Nang, Viet Nam (April 2008); Manila, the Philippines (September 2008); and Vientiane, Laos (February 2010).

Japan also has hosted two regional seminars on the ICC. In March 2009, Japan, in co-sponsorship with the Asian-African Legal Consultative Organisation (AALCO), organised a seminar in New Delhi entitled “The International Criminal Court: Emerging Issues and Future Challenges”, in which over 90 attendants participated. (A summary of this seminar can be found at the Web site of the Ministry of Foreign Affairs of Japan at http://www.mofa.go.jp/policy/i_crime/icc/seminar0903.htm)

In March 2010, Japan, in co-sponsorship with the Government of Malaysia and the AACLO, organised a meeting in Putrajaya, Malaysia, entitled the “Round-Table Meeting of Legal Experts on the Forthcoming Review Conference of the International Criminal Court”, in which the representatives of 15 countries participated. (A summary of this meeting can be found at the Web site of the Ministry of Foreign Affairs of Japan at http://www.mofa.go.jp/policy/inter_law/law/round_table1004.html)

On the above occasions, Japan not only explained the significance of joining the Rome Statute from the point of view of establishing the rule of law in the international community, but also shared with the attendants its experience and technical expertise on the ratification of the Rome Statute.

4. National Contact Point

Articles 3 to 5 of the Act on Cooperation with the International Criminal Court stipulate that the Minister for Foreign Affairs is responsible for such matters as receiving requests for cooperation from the ICC and consulting with the ICC. The Ministry of Foreign Affairs thus is the national authority in Japan responsible for interacting with the Court, States and other actors on matters relating to the ICC, including matters related to promotion of ratification and full implementation of the Rome Statute.

The contact point in the Ministry of Foreign Affairs is the International Legal Affairs Division, at the following contact address:

Postal Address: 2-2-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-8919, Japan
Telephone: +81 (0)3 5501 8383
Fax: +81 (0)3 5501 8382

Alternatively, contact may be made by calling the Embassy of Japan in The Hague or the Permanent Mission of Japan to the United Nations in New York.

5. Response to the implementing legislation questionnaire for States Parties

a) Has your Government adopted any national legislation implementing the Rome Statute?

Yes, Japan has adopted the Act on Cooperation with the International Criminal Court in order to implement the obligations under the Rome Statute in the national sphere. The Act was approved by the Diet (the Japanese Parliament) on 27 April 2007, was promulgated on 11 May 2007 and entered into force on 1 October 2007, on the same date that the Rome Statute entered into force for Japan. (Further information on this Act can be found in Section 1 above and the Annex.)

b) In implementing the Statute, did your Government draft special implementing legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?

Japan drafted special implementing legislation, i.e., the Act on Cooperation with the International Criminal Court, by which it incorporated the offences against the administration of justice under article 70 of the Rome Statute into its domestic legal order. For the prosecution and punishment of the crimes under articles 6, 7 and 8 of the Rome Statute before a national court in Japan, pre-existing criminal laws apply. Examples of the relevant pre-existing criminal laws are the Penal Code, the Child Welfare Act, the Labour Standards Act, the National Public Service Act, the Act on the Punishment of Grave Breaches of International Humanitarian Law and the Act on the Treatment of Prisoners of War and Other Detainees in Armed Attack Situations.

c) Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?

Japan thoroughly examined the question of whether pre-existing criminal laws fully address the crimes under articles 6, 7 and 8 of the Rome Statute and reached the conclusion that, setting aside exceptional cases, those crimes are punishable under existing criminal laws. Japan therefore decided not to enact new legislation to criminalise those crimes. In case the crime in question cannot be punished under existing criminal laws, the suspect may be surrendered to the ICC under the provisions of the Act on Cooperation with the ICC.

d) Does the implementing legislation fully incorporate all modes of cooperation under Part 9 of the Statute?

The Act on Cooperation with the International Criminal Court provides the procedures for handling all types of requests for cooperation under Part 9 of the Rome Statute.

e) Does the implementing legislation designate a channel of communication with the Court?

The Act on Cooperation with the International Criminal Court designates the Minister for Foreign Affairs as a channel of communication with the ICC (Articles 3-5). Therefore, the Ministry of Foreign Affairs is responsible for communicating with the Court. (Refer to Section 4 above.)

Annex**Law on Cooperation with the International Criminal Court¹⁰****Contents**

Approved by the Diet on 27 April 2007

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Entered into Force on 1 October 2007

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¹⁰ unofficial translation

15. Liechtenstein

[Original: English]

ICC – Questionnaire

(Ref. ICC-ASP/8/S/PA/19, Annex IV, Implementing legislation questionnaire for States Parties)

1. **Has your Government adopted any national legislation implementing the Rome Statute (“the Statute)**

If yes

Part B

2. **In implementing the Statute, did your Government draft special implementing legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?**

The Liechtenstein Government drafted special legislation to implement the provisions of the Statute. The *Law on Cooperation with the ICC and other International Tribunals (ZIGG)* entered into force on 20 October 2004 (LGBl. 2004 Nr. 268) and provides the legal basis for comprehensive cooperation with the ICC.

3. **Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?**

The substantive crimes are criminalized in Liechtenstein through existing offences contained in the Liechtenstein Criminal Code. Section 321 explicitly criminalizes genocide. The other Rome Statute crimes fall under the scope of other existing offences contained in Sections 75 to 95 of the Criminal Code, dealing with crimes against life and limb. The incorporation of explicit references to war crimes and crimes against humanity is envisaged for future amendments.

4. **Does the implementing legislation fully incorporate all modes of cooperation under Part 9 of the Statute?**

The implementing legislation fully incorporates all modes of cooperation under Part 9 of the Statute.

5. **Does the implementing legislation designate a channel of communication with the Court?**

The Ministry of Foreign Affairs acts in close cooperation with the Ministry of Justice as channel of communication with the ICC. In urgent cases the governmental bodies communicate directly with the ICC or in police matters with INTERPOL.

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16. Mexico

[Original: English]

1. ¿Ha adoptado su Gobierno alguna legislación nacional para la aplicación del Estatuto de Roma?

Tras haber ratificado el Estatuto de Roma de la Corte Penal Internacional, el Gobierno de México ha mantenido entre sus prioridades la de impulsar las reformas necesarias para armonizar la legislación nacional con el Estatuto, particularmente en materia de cooperación y de la tipificación de las conductas en él previstas.

En relación con la cooperación con la Corte Penal Internacional, tras un largo proceso iniciado en 2006, el 15 de diciembre de 2009 el Senado de la República aprobó el proyecto de Ley Reglamentaria del párrafo octavo del artículo 21 de la Constitución Mexicana¹¹, conocida como el proyecto de *Ley de cooperación con la Corte Penal Internacional*.

Dicho proyecto de Ley tiene por objetivo facultar a las autoridades nacionales para cooperar plenamente con la Corte Penal Internacional.

El proyecto de Ley de Cooperación fue turnado a la Cámara de Diputados para su examen y actualmente se encuentra en consideración de ésta¹².

Por lo que respecta a la tipificación de las conductas previstas en el Estatuto de Roma, se decidió que éste sea uno de los temas prioritarios en el que centre su labor la recién creada Comisión Intersecretarial de Derecho Internacional Humanitario, y de esa forma quedó incluido en su programa de trabajo 2010

2. ¿Qué esfuerzos en materia de legislación, si los hubiera, se ha enfrentado su Gobierno en sus esfuerzos por aplicar las disposiciones del Estatuto?

Tal y como se señaló en el punto anterior, la Cámara de Diputados se encuentra considerando el proyecto de Ley de Cooperación, siendo uno de los compromisos del Gobierno Federal impulsar su adopción.

Cabe señalar que aún sin contar con legislación en la materia, ello no ha sido obstáculo para responder a las solicitudes de cooperación emanadas de la Corte por parte del Gobierno de México.

Por lo que ve a la tipificación de los crímenes competencia de la Corte y otras conductas delictivas previstas en el Estatuto de Roma, uno de los temas prioritarios en la agenda de la recién creada Comisión Intersecretarial de Derecho Internacional Humanitario (CIDIH-México)¹³ es precisamente la implementación de dicho instrumento internacional. Por ello, la citada Comisión se encuentra en un proceso de revisión de la legislación penal nacional para adecuarla a los estándares del derecho internacional.

3. ¿A qué obstáculos, si los hubiera, se ha enfrentado su Gobierno en sus esfuerzos por aplicar las disposiciones del Estatuto?

¹¹ El párrafo octavo del artículo 21 constitucional a la letra dice "El Ejecutivo Federal podrá, con la aprobación del Senado en cada caso, reconocer la jurisdicción de la Corte Penal Internacional".

¹² Turnada a la Comisión de Justicia de la Cámara de Diputados ([Gaceta Parlamentaria](http://gaceta.diputados.gob.mx/Gaceta/61/2010/feb/20100202-II.html#Min20100202-2), número 2940-II, 2 de febrero de 2010) <http://gaceta.diputados.gob.mx/Gaceta/61/2010/feb/20100202-II.html#Min20100202-2>

¹³ http://www.sre.gob.mx/acerca/marco_normativo/acuerdos/derinthum.pdf

Al momento no se han identificado obstáculos para la aplicación del Estatuto de Roma en el ámbito interno.

4. ¿Qué tipo de asistencia respaldaría los esfuerzos de su Gobierno para aplicar el Estatuto?

México no ha necesitado asistencia para cumplir con las obligaciones emanadas del Estatuto de Roma.

Sin embargo, México consciente de la importancia que representa para este ejercicio el intercambio de experiencias entre la comunidad internacional, sigue de cerca la labor que realiza la Organización de los Estados Americanos, particularmente el Comité Jurídico Interamericano, para la elaboración de legislación modelo en materia de cooperación de los Estados de la región con la Corte, así como en materia de implementación del Estatuto de Roma, de manera particular en lo referente a la tipificación de los crímenes que son competencia de la Corte Penal Internacional.

17. Norway

[Original: English]

The request was forwarded to the Royal Ministry of Foreign Affairs. The Norwegian response is as follows.

1. Has your Government adopted any national legislation implementing the Rome Statute (“the Statute”)?

Yes.

Norway ratified the Rome Statute on 16 February 2000. The implementing legislation with regard to cooperation and enforcement was enacted on 15 June 2001 (Act of 15 June 2001 No. 65). The definition of crimes and general principles of criminal law are set out in chapter 16, cf. chapter 1, of the Civil Penal Code of 2005 (Act of 20 May 2005 No. 28. Before the 2005 Civil Penal Code the 1902 Civil Penal Code applied).

2. In implementing the statute, did your Government draft special implementing legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?

Norway has drafted special implementing legislation.

As mentioned under question 1, the implementing act of 2001 regulates legislation with regard to cooperation and enforcement. This act contains minimal provisions that set out, in a general sense, the obligation to cooperate with the ICC, as well as provisions that authorise the Norwegian authorities to provide voluntary assistance to the Court. These statutory provisions are drafted in a succinct form, in accordance with established Norwegian practice, and they have to be interpreted in the light of the comprehensive *travaux préparatoires* detailing the scope of the obligations concerned.

The implementing act does not incorporate the ICC penal provisions into Norwegian law. This is not a requirement of the Statute. However, the definition of crimes and general principles of criminal law are set out in chapter 16, cf. chapter 1, of the Civil Penal Code of 2005. As mentioned, important directions are set out in the *travaux préparatoires*, which play a particularly important role in the interpretation of Norwegian statutory law.

3. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?

The crimes are incorporated in the legislation itself. Chapter 16 of the Civil Penal Code of 2005 contains penal provisions on genocide, crimes against humanity and war crimes. These provisions are mainly based on the corresponding provisions in the Rome Statute. However, some of the Norwegian provisions go beyond the provisions in the Statute.

4. Does the implementing legislation fully incorporate all modes of cooperation under part 9 of the Statute?

The implementing act of 2001 sets out a general obligation to cooperate. Section 1, states that, “Requests from the Court shall be complied with to the extent this follows from the Rome Statute”.

5. Does the implementing legislation designate a channel of communication with the Court?

According to section 1 of the implementing act of 2001, requests for surrender and other forms of assistance shall be addressed to the Ministry of Justice and the Police. In the event of a request from the Court for the surrender of a person who is a suspect, or has been charged or convicted, chapter 2 of the Extradition Act applies to the extent that its provisions are fully compatible with the Statute. In such cases, the request shall be sent through diplomatic channels, in accordance with section 13 of the Extradition Act.

18. Serbia

[Original: English]

Implementing legislation questionnaire for States Parties**1. Has your Government adopted any national legislation implementing the Rome Statute (“the Statute”)?**

Yes.

Part B**5. In implementing the Statute, did your Government draft special implementing legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?**

Both of it. In Criminal Code we incorporate separate chapter. On the other hand several months ago Government drafted lex specialis – Law on cooperation with ICC.

6. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?

Implementing legislation/Criminal Code incorporate the crimes against humanity and other values protected by international law. In that way we have implemented system of criminal acts that had been incorporated in Statute.

7. Does the implementing legislation fully incorporate all modes of cooperation under Part 9 of the Statute?

Yes it does.

8. Does the implementing legislation designate a channel of communication with the Court?

Yes it does. Channel of communication is: contact point, Ministry of Justice.

19. South Africa

[Original: English]

International Criminal Court Questionnaire/Annex - Implementing Legislation for States Parties (Reference ICC-ASP/S/PA/07)

Question 1

The Republic of South Africa has domesticated the Rome Statute of the International Criminal Court (Rome Statute) in terms of the Implementation of the Rome Statute of the International Criminal Court Act, Act No. 27 of 2002, which came into operation on 18 July 2002.

Part B

Question 5

South Africa was among the drivers for a strong and independent International Criminal Court. This positive position towards the idea of a permanent body of international criminal justice was also mirrored by how the issues were handled inside the country. To facilitate early ratification, an interdepartmental committee was established under the direction of the Department of Justice and Constitutional Development. South Africa ratified this international instrument on 10 November 2000, and the Minister of Justice introduced an International Criminal Court Bill by July 2001. In order to help smooth implementation, the Southern African Development Community (SADC), to which South Africa belongs, presented member states with a “Model Enabling Act” in 1999, which incorporated all International Criminal Court-related matters in one statute with the Rome Statute itself appended as a schedule.

Consequently the Rome Statute is annexed to the Implementation of the Rome Statute of the International Criminal Court Act, Act No. 27 of 2002.

Question 6

The core crimes now form part of South African law:

- Section 3(1)(c) of the Implementation of the Rome Statute of the International Criminal Court Act, Act No. 27 of 2002, specifies as one of the objects of the Act “*to provide for the crime of genocide, crimes against humanity and war crimes*”
- Section 4(1) Implementation of the Rome Statute of the International Criminal Court Act, Act No. 27 of 2002, makes it clear that “*Despite anything to the contrary in any other law of the Republic, any person that commits a crime, is guilty of an offence ...*”

Section 1 of the Implementation of the Rome Statute of the International Criminal Court Act, Act No. 27 of 2002, deals with the definitions, and *inter alia*:

“*crime*” means the crime of genocide, crimes against humanity and war crimes;

“*genocide*” means any conduct referred to in Part 1 of Schedule 1;

“*a crime against humanity*” means any conduct referred to in Part 2 of Schedule 1;

“*a war crime*” mean any conduct referred to in Part 3 of Schedule 1;”

The drafters of the Implementation of the Rome Statute of the International Criminal Court Act, Act No. 27 of 2002, incorporated the Rome Statute's definitions of the 3 core crimes directly into South African law through Schedule 1 appended to the Act:

- Part 1 of Schedule 1 follows the wording of Article 6 of the Rome Statute (Genocide)
- Part 2 of Schedule 1 follows the wording of Article 7 of the Rome Statute (Crimes against Humanity)
- Part 3 of Schedule 1 follows the wording of Article 8 of the Rome Statute (War Crimes)

However, nowhere in the Implementation of the Rome Statute of the International Criminal Court Act, Act No. 27 of 2002, is there a specific referral to Article 9 of the Rome Statute on the Elements of the Crimes. However, it is the opinion of South African authors¹⁴ that nothing prevents a South African court from having regard to the Elements of the Crime were it to be involved in the domestic prosecution of one of the core crimes.

Question 7

The Implementation of the Rome Statute of the International Criminal Court Act, Act No. 27 of 2002, sets in place a comprehensive cooperative scheme for South Africa vis-à-vis the ICC. The Preamble specifically mentions:

“To provide for a framework to ensure the effective implementation of the Rome Statute of the International Criminal Court in South Africa; to ensure that South Africa conforms with its obligations set out in the Statute; ...; to provide for the arrest of persons accused of having committed the said crimes and their surrender to the said Court in certain circumstance; to provide for the co-operation by South Africa with the said Court; ...”

Chapter 4 of the Implementation of the Rome Statute of the International Criminal Court Act, Act No. 27 of 2002, details cooperation with and assistance to the ICC in or outside South Africa, in particular:

- *Part 1: Cooperation with Court: Arrest of persons and their surrender to Court*
- *Part 2: Judicial Assistance to Court*

Section 14 mirrors Article 93(1) of the Rome Statute and specifies areas of cooperation and judicial assistance.—

“The relevant competent authorities in the Republic must, subject to the domestic law of the Republic and the Statute, cooperate with, and render assistance to, the Court in relation to investigations and prosecutions in the following areas:

- (a) The identification and whereabouts of persons or the location of items;*
- (b) the taking of evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the Court;*
- (c) the questioning of any person being investigated or prosecuted;*
- (d) the service of documents, including judicial documents;*

¹⁴ Brandon B. & Du Plessis M., *The Prosecution of International Crimes (A Practical Guide to Prosecuting ICC Crimes in Commonwealth States)*, 2005, Commonwealth Secretariat, p.197

- (e) *facilitating the voluntary appearance of persons as witnesses or experts before the Court;*
- (f) *the temporary transfer of persons in custody for purposes of identification or for obtaining testimony or other assistance;*
- (g) *the examination of places or sites, including the exhumation and examination of grave sites;*
- (h) *the execution of searches and seizures;*
- (i) *the provision of records and documents, including official records and documents;*
- (j) *the protection of victims and witnesses and the preservation of evidence;*
- (k) *the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties; and*
- (l) *any other type of assistance which is not prohibited by law, with the view to facilitating the investigation and prosecution of crimes within the jurisdiction of the Court.”*

The Regulations (Government Notice No. R1089, 16 August 2002) issued under the Implementation of the Rome Statute of the International Criminal Court Act, Act No. 27 of 2002, further prescribes cooperation with the ICC in relation to summonses, transfer of prisoners, restraint orders and confiscation orders.

South Africa also cooperates outside the mutual assistance context e.g.:

- The President can at the request of the ICC and by proclamation in the Government Gazette, declare any place in the Republic to be the seat of the ICC (Section 6)
- Privileges and immunities for the ICC officials are also catered for (Section 7)

Consequently, the Government of South Africa takes seriously its obligation to fully cooperate with the ICC in the form of extradition of suspects, legal assistance in investigations and obtaining evidence. Although provision is also made for the enforcement of sentences of the ICC, this is regulated by agreement between Member States and the ICC.

Question 8

Section 1 of the Implementation of the Rome Statute of the International Criminal Court Act, Act No. 27 of 2002, defines “*central authority*” as the “*Director-General: Justice and Constitutional Development*”.

Furthermore, Regulation 2 of the Regulations (Government Notice No. R1089, 16 August 2002) issued under the Implementation of the Rome Statute of the International Criminal Court Act, Act No. 27 of 2002, determines:

“A request sent to the Central Authority by the Court shall, unless the contrary is proved, be deemed to constitute the authorization of the Court to the Government of the Republic to act on behalf of the Court in any proceedings under the (ICC) Act”

Section 8(1) of the Implementation of the Rome Statute of the International Criminal Court Act, Act No. 27 of 2002, provides for the referral of a request for arrest and surrender to the Central Authority without specifying the mode/channel of referral. Taking past practice between South Africa and the Court into account, it is accepted that the diplomatic channel is

the channel of communication, thus between the Embassy of the Republic of South Africa to the Kingdom of the Netherlands and the Court.

20. Spain

[Original: Spanish]

Cuestionario para los estados partes sobre la legislación de aplicación

Respuestas del reino de España

1. ¿Ha adoptado su Gobierno alguna legislación nacional para la aplicación del Estatuto de Roma?

España ha adoptado la siguiente legislación nacional para la aplicación del Estatuto de Roma:

- a) Ley Orgánica 15/2003, de 25 de noviembre, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal.
- b) Ley Orgánica 18/2003, de 10 de noviembre, de Cooperación con la Corte Penal Internacional.

En la actualidad, las Cortes Generales españolas (Parlamento) están considerando un Proyecto de Ley Orgánica de reforma del Código Penal, que incorpora delitos que se corresponden con crímenes tipificados en el Estatuto de Roma, y que no habían sido incluidos en la reforma del Código Penal de 2003.

Parte B

5. Al aplicar el Estatuto, ¿tuvo que redactar su Gobierno una legislación de aplicación especial o por lo contrario incorporó los artículos o disposiciones sustantivas del Estatuto en la legislación preexistente?

España ha adoptado la Ley Orgánica 15/2003, de 25 de noviembre, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal. Entre las modificaciones del Código Penal introducidas por la LO 15/2003, la Exposición de Motivos de la misma señala la definición y regulación de los delitos que permiten coordinar la legislación interna española con las competencias de la Corte Penal Internacional.

España, por otra parte, ha adoptado la Ley Orgánica 18/2003, de 10 de diciembre, de Cooperación con la Corte Penal Internacional, que regula los aspectos orgánicos, procesales y procedimentales que permiten la aplicación concreta del Estatuto de Roma.

6. ¿Incorpora la legislación de aplicación los crímenes sustantivos haciendo referencia al Estatuto o incluyendo los crímenes en la propia legislación?

El Código Penal de 1995, en su Título XXIV (Delitos contra la comunidad internacional) incorpora entre sus tipos penales los crímenes de genocidio (artículo 607, Delitos de genocidio), los crímenes de lesa humanidad (artículo 607 bis, De los delitos de lesa humanidad) y los crímenes de guerra (artículos 608 a 614 bis, De los delitos contra las personas y bienes protegidos en caso de conflicto armado).

La inclusión en el Código penal de los delitos de genocidio antecede la adopción del Estatuto de Roma. El artículo 607 del Código Penal tipifica conductas equivalentes a las del artículo 6 del Estatuto de Roma, incluyendo además otros tipos penales de menor gravedad no contemplados en el Estatuto.

La tipificación actual de los delitos de lesa humanidad en el artículo 607 bis del Código Penal es resultado de la reforma operada por la LO 15/2003. Las conductas tipificadas en el artículo 607 bis incluyen las conductas tipificadas en el artículo 7 del Estatuto de Roma. Además, el artículo 607 bis, punto 1 incorpora el umbral de gravedad recogido en el artículo 7 del Estatuto, relativo a la comisión de los actos punibles “como parte de un ataque generalizado o sistemático” contra la población civil o una parte de ella.

En relación con los crímenes de guerra contenidos en el Estatuto de Roma, es preciso acudir a los artículos 608 a 614 bis, que regulan los delitos contra las personas y bienes protegidos en caso de conflicto armado. La reforma operada por la LO 15/2003 ha completado la legislación contenida en el Código Penal en materia de criminalidad de guerra, a la vista de las exigencias derivadas de la ratificación del Estatuto de Roma.

No hay referencias expresas al Estatuto en el articulado del Código penal, ni una inclusión literal en bloque de los crímenes de la competencia de la Corte en la legislación penal española. No obstante, desde un punto de vista sustantivo, la mayoría de los tipos penales recogidos en el Estatuto están contemplados en el Código Penal español.

Por otra parte, el artículo 131.4 del Código Penal dispone que “los delitos de lesa humanidad y de genocidio, y los delitos contra las personas y bienes protegidos en caso de conflicto armado, no prescribirán en ningún caso”.

7. ¿Incorpora la legislación de aplicación todas las modalidades de cooperación que figuran en la parte 9 del Estatuto?

El artículo 2 de la Ley de Cooperación con la Corte establece la obligación de España de cooperar con la Corte de conformidad con lo previsto en el Estatuto y, en especial, en el artículo 86 del mismo.

A continuación, la Ley de Cooperación con la Corte regula la detención (artículo 11), la libertad provisional (artículo 12), las diferentes modalidades de entrega de personas a la Corte (entrega simplificada, artículo 13; entrega, artículo 15; entrega temporal, artículo 18), la orden de comparecencia de un imputado ante la Corte (artículo 14), la cuestión de las solicitudes concurrentes (artículo 16), así como diversas posibles actuaciones posteriores a la entrega (artículo 19), tales como la eventual persecución por la Corte de una conducta anterior a la entrega o la puesta en libertad de la persona por parte de la Corte y su eventual traslado a otro Estado.

Por su parte, el artículo 20 de la Ley de Cooperación (De otras formas de cooperación con la Corte) dispone que “los órganos judiciales y el resto de autoridades españolas darán cumplimiento a las solicitudes de cooperación formuladas por la Corte previstas en el artículo 93 del Estatuto que no estén prohibidas en la legislación española y cuyo fin fuera también facilitar el proceso ante la Corte”, en consonancia con el propio artículo 93 del Estatuto.

8. ¿Designa la legislación de aplicación un conducto de comunicación con la Corte?

El artículo 6 de la Ley Orgánica 18/2003, de 10 de diciembre, de Cooperación con la Corte Penal Internacional regula los órganos de relación y consulta con la Corte.

Así el artículo 6.1 establece que “el Ministerio de Justicia es el único órgano de relación entre la Corte, por un lado, y los órganos judiciales y el Ministerio Fiscal, por otro, sin perjuicio de las competencias del Ministerio de Asuntos Exteriores”.

Por otro lado, el artículo 6.2 dispone que “el Ministerio de Justicia es también el órgano de consulta con la Corte en los casos previstos en el Estatuto, debiendo informar

previamente de cada consulta al Ministerio de Asuntos Exteriores. En el supuesto de que la consulta afecte a materias propias del ámbito competencial de los Ministerios del Interior o Defensa, recabará el informe de estos departamentos. Cuando la consulta concluya, a juicio del Ministerio de Asuntos Exteriores, aspectos de política exterior, será éste el competente, en coordinación con el Ministerio de Justicia y, en su caso, con otros ministerios concernidos”.

21. Sweden

[Original: English]

1. Has your Government adopted any national legislation implementing the Rome Statute (“the Statute”)?

Yes

5. In implementing the Statute, did your Government draft special implementing legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?

Sweden has adopted the Cooperation with the International Criminal Court Act (2002:329) which contains necessary legislation for cooperation with the Court in accordance with the obligations set forth in the Rome Statute.

The Act entered into force on 1 July 2002. Simultaneously, amendments were made to the Act (1994:569) on Sweden's Cooperation with the International Criminal Tribunals for Crimes Against International Humanitarian Law, the Immunities and Privileges Act (1976:661) and the Secrecy Act (1980:100). Additionally, the Cooperation with the International Criminal Court Ordinance (2003:69) has been adopted, entering into force on 1 April 2003. In 2010 necessary amendments were made in the Penal Code and in the Cooperation with the International Criminal Court Act (2002:329) in order to fully meet the obligations regarding offences against the administration of justice by the Court (article 70 of the Statute). The amendments entered into force on 1 January 2010. Also amendments were made in the Penal Code concerning the non-application of the ordinary statute of limitation for the crimes of genocide and crime against international law (which correspond to war crimes). The amendments are entering into force on 1 July 2010.

6. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?

Amendments to Swedish penal law in light of the Rome Statute and other developments in international law have been considered by a separate Commission, the Commission on International Criminal Law, which submitted its report in early November 2002 (SOU 2002:98). The Report contains proposals for a new Act on International Crimes, amendments to the Penal Code regarding the competence of Swedish courts and non-application of the ordinary statute of limitation to certain crimes. The report and the proposals have been remitted for comments and preparations towards a Government Bill is presently taking place.

7. Does the implementing legislation fully incorporate all modes of cooperation under Part 9 of the Statute?

Yes. The Cooperation with the International Criminal Court Act (2002:329) includes provisions on surrender of persons to the Court, including on provisional arrest, other forms of cooperation (compare Article 93 of the Rome Statute). Legal cooperation with respect to offences against the administration of justice (Article 70 of the Rome Statute) is also regulated. In addition, the Act provides for enforcement of fines, forfeiture and reparation orders, and authorizes the Swedish Government to accept enforcement of sentences of imprisonment

8. Does the implementing legislation designate a channel of communication with the Court?

Yes. With respect to requests for international legal cooperation (surrender, legal assistance, enforcement), the Cooperation with the International Criminal Court Act (2002:329) designates the Swedish Ministry of Justice as the channel for communications from and to the Court. For all other matters related to the ICC, the Swedish Ministry for Foreign Affairs is responsible for communications with the Court.

22. Trinidad and Tobago

[Original: English]

1. Has your Government adopted any national legislation implementing the Rome Statute?

The Government of Trinidad and Tobago has adopted national legislation in order to give effect to the Rome Statute.

In implementing the Statute, did your Government draft special implementing legislation or did it incorporate the articles or substantive provisions of the statute into pre-existing law?

In 2006, the Government of the Republic of Trinidad and Tobago enacted a specific piece of legislation referred to as the International Criminal Court Act, 2006 or (by its long title) an act to provide for the prevention and punishment of genocide, crimes against humanity and war crimes, to give effect to the Rome Statute of the International Criminal Court.

5. Does the implementing legislation fully incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?

The International Criminal Court Act (the Act) of the Republic of Trinidad and Tobago incorporates the crimes through reference to the statute and by incorporating the crimes in the legislation itself.

Section 9 of the Act criminalises genocide and conspiracy to commit genocide in the Republic of Trinidad and Tobago or elsewhere. It also defines genocide, by setting out the specific provisions of the Article 6 of the statute and sets out the penalties for genocide. With regard to crimes against humanity, Section 10 of the Act criminalises crimes against humanity in the Republic of Trinidad and Tobago and elsewhere. Section 10 also sets out the specific provisions of Article 7 of the Statute and sets out the penalties for crimes against humanity. Section 8 criminalises war crimes committed in Trinidad and Tobago and elsewhere. War crimes are described with reference to Article 8(2) (a)-(c) of the Statute. Section 11 also sets out the penalties of war crimes.

7. Does the implementing legislation fully incorporate all modes of cooperation under Part 9 of the Statute?

Section 6 of the International Criminal Court Act specifically states that Part 9 of the Statute which relates to international cooperation and judicial assistance shall have the force of law in Trinidad and Tobago.

With a view to facilitating the investigation and prosecution of crimes within the jurisdiction of the ICC, the Statute also sets out general provisions relating to requests for assistance and provide in detail for requests by the ICC for assistance that are made under Part 9 of the Statute, namely:

- a. the provisional arrest, arrest and surrender to the ICC of a person in relation to whom the ICC has issued an arrest warrant or given a judgment of conviction;
- b. the identification and whereabouts of persons or the location of items;
- c. the taking of evidence, including testimony under oath and the production of evidence, expert opinions, and reports necessary to the ICC;
- d. the questioning of any person being investigated or prosecuted;
- e. the service of documents, including judicial documents;

- f. facilitating the voluntary appearance of persons as witnesses or experts before the ICC;
- g. the temporary transfer of prisoners;
- h. the examination of places or sites, including the exhumation and examination of grave sites;
- i. the execution of searches and seizures;
- j. the provision of records and documents, including official records and documents;
- k. the protection of victims and witnesses and the preservation of evidence;
- l. the identification, tracing and freezing, or seizure of proceeds, property and assets, and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of *bona fide* third parties; and
- m. any other type of assistance that is not prohibited by the law of Trinidad and Tobago,

Provision is also made with respect to cooperation under Articles 19(8), 56, 64, 76 and 109.

8. Does the implementing legislation designate a channel of communication to the Court?

The Act prescribes that requests for assistance be made through authorised channels. Requests with regard to the arrest and surrender of a person are to be made directly to the Attorney General. In other cases, requests are to be made to a person authorised by the Attorney General to receive such requests. The authorised channel for these requests is the diplomatic channel to the Minister to whom responsibility for Foreign Affairs is assigned. In the case of urgent requests, the request may be made through any medium capable of delivering a written record or through the International Criminal Police Organisation or any other appropriate regional organisation, instead of through the authorised channel.

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23. United Kingdom

[Original: English]

Implementing legislation questionnaire for States Parties

1. Has your Government adopted any national legislation implementing the Rome Statute (“the Statute”)?

Yes. The International Criminal Court Act 2001 applies in England, Wales and Northern Ireland. The International Criminal Court (Scotland) Act 2001 applies in Scotland. And the International Criminal Court Act (Overseas Territories) Orders 2009 and 2010 apply in overseas territories.

If not

Part A

2. What legislative efforts, if any, has your Government taken to implement the provisions of the Statute into national law?

3. What obstacles, if any, has your Government faced in its efforts to implement the provisions of the Statute?

4. What form of assistance would benefit your Government’s efforts to implement the Statute?

If yes

Part B

5. In implementing the Statute, did your Government draft special implementing legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?

Special implementing legislation was drafted.

6. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?

The substantive crimes are incorporated into the legislation itself.

7. Does the implementing legislation fully incorporate all modes of cooperation under Part 9 of the Statute?

Yes

8. Does the implementing legislation designate a channel of communication with the Court?

Yes; it is the Secretary of State for Foreign & Commonwealth Affairs.
