



14 October 2011

Ministry for Foreign Affairs
Sweden

Secretariat of the Assembly
of States Parties
International Criminal Court
The Hague

**Information in accordance with the Plan of action of
the Assembly of States Parties for achieving
universality and full implementation of the Rome
Statute of the International Criminal Court**

With reference to the Plan of action of the Assembly of States Parties for achieving universality and full implementation of the Rome Statute of the International Criminal Court (hereinafter the Rome Statute), Assembly resolution ICC-ASP/5/Res.3 of 1 December 2006, in particular, paragraph 6, sub-paragraph (h), Sweden hereby submits the requested information to the Secretariat of the Assembly of States Parties.

**1 Sweden's efforts in support for achieving
universality of the Rome statute**

Sweden has since the onset been a strong supporter of the International Criminal Court and is deeply committed to the principles of the Rome Statute. The Court has a unique opportunity to ensure that the most serious crimes of concern to the international community as a whole are brought to justice and challenge the impunity that have so often been enjoyed in the past.

In order to achieve the objective of universality, as set out in the Plan of action, Sweden works both on a bilateral basis with other states, as well as takes active part in the efforts of the European Union.

1.1 Efforts through the European Union

The EU, on 21 March 2011, adopted a *Council Decision¹ on the International Criminal Court* with the objective of supporting the effective functioning of the Court and to advancing universal support

¹ This decision repealed the Common Position 2003/444/CFSP of 16 June 2003 on the International Criminal Court.

for the Court by promoting the widest possible participation in the Rome Statute. Furthermore, on 12 July 2011, the EU agreed on an *Action Plan to follow up on the Decision on the ICC*, aiming at coordinating EU activities, promoting the universality and integrity of the Rome Statute, and supporting the independence and effective functioning of the Court.

The realisation of these objectives requires the use of a variety of instruments such as political dialogue, demarches or other bilateral means, statements in the UN and other multilateral bodies and support for the dissemination of the ICC principles and rules.

The Council has also adopted several Decisions in the area of Freedom, Security and Justice, with a view to strengthening co-operation among Member States in the investigations and prosecutions of genocide, crimes against humanity and war crimes at the national level. Those instruments are necessary components of European and international efforts to bring perpetrators of serious international crimes to justice and have the potential to increase EU Member States ability to deal nationally with such complex cases.

The EU support to the ICC is also expressed within the framework of the United Nations. Since the Presentation of First Report of the ICC to the UNGA on 8 November 2005, the 27 EU Member States co-sponsor the annual resolution in support of the ICC. The EU played an active role in the adoption of UNSCR 1593 (2005) authorising the Security Council- for the first time - to refer a case (Darfur) to the ICC.

The EU played an active role in the review conference in Kampala in June 2010 and contributed to a thorough stock-taking exercise and successful negotiations on the crime of aggression.

Technical and financial assistance

1.2 Technical and other assistance needs and delivery programmes

It may also be important to assist countries, which have the necessary political will but may encounter difficulties with ratification, accession or implementation of the Statute. This could involve, inter alia, concrete expert assistance, financial support or access to relevant information.

The relevant framework for the provision of technical assistance to interested states is set out under the EU Action Plan. Diverse forms of assistance are envisaged, much of which is directed at the deployment of experts from and by Member States.

The EU also has elaborated a list of experts² to provide countries with technical assistance. The EU experts may be mandated to provide technical assistance on behalf of the EU, including the following tasks such as:

- Co-operating with requesting third states in any technical issue related to the participation in and implementation of the Rome Statute and its instruments, and with any form of co-operation with the ICC
- Participating in seminars, symposiums, conferences or any other national or international event, either of academic or of official character, as well as to relevant civil society events, as may be necessary for the widest dissemination of the values, principles and provisions of the Statute and related instruments, as well as for the implementation of the Council Decision on the ICC, and for the co-operation of the EU with the ICC

Planned events and activities

Sweden is a long term funder of the Coalition for ICC (CICC) which is an umbrella organisation for other NGO:s working with international criminal law. As a follow-up to resolutions at the Review Conference in Kampala, Sweden is ready to consider proposals for promoting national implementation legislation of the Rome Statute in countries which not yet have done so.

2 Information on ratification and implementation

Sweden ratified the Rome Statute on 28 June 2001 and the ratification had unanimous support in the Swedish Parliament. The ratification and implementation of the Statute were dealt with in separate processes. A time-consuming and rather complex element was the translation of the Statute into Swedish.

The Rome Statute has been implemented into Swedish law. For the purpose of implementation, the Act on Cooperation with the International Criminal Court (2002:329) has been supplemented by the ordinance (2003:69) containing provisions on the application of the act. The Act covers all forms of cooperation as set forth in Part 9 of the Rome Statute as well as enforcement of sentences, fines, forfeiture and reparation orders in accordance with Part 10 of the Statute. Necessary legislation with respect to the privileges and immunities of the Court in accordance with the Statute and the Agreement on the Privileges and Immunities of the International Criminal Court which Sweden ratified

² Please address the EU focal point for further information on this point.

on 13 January 2005, is provided in the Act on Immunity and Privileges in Certain Cases (1976:661).

In order to fully meet the obligations regarding offences against the administration of justice by the Court (article 70 of the Statute), necessary amendments have been made in the Penal Code and in the Act on Cooperation with the International Criminal Court. Also, amendments have been 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 corresponds to war crimes).

The Rome Statute does not per se require the implementation of the crimes of the Statute into national legislation. However, Sweden has a strong interest in having legislation permitting prosecution of serious international crimes to the same extent as is possible under the international system which Sweden has promoted. Obligations to criminalize international crimes follow from other international treaties, to which Sweden is a party, and from customary international law.

Following a Government resolution of 12 October 2000, a commission was appointed to review Swedish legislation on criminal responsibility for international crimes and jurisdiction over such crimes. In November 2002 the Commission submitted the report *International Crimes and Swedish Jurisdiction (SOU 2002:98, Internationella brott och svensk jurisdiktion)*, which entailed a proposal for amendments of the current penal law. The report has been remitted for comments by public authorities, universities, and non-governmental organisations, and preparations are presently taking place within the Ministry of Justice towards introducing a Government Bill during 2012.

2.2 Solutions to constitutional issues arising from ratification

Certain constitutional questions were raised in the Swedish ratification and implementation processes. The power of the Court set forth in article 57(3)(d) of the Rome Statute was considered, however limited and remote the case might be, as a transfer of public authority to the Court, which in turn triggered special requirements for the ratification decision by the Swedish Parliament.

Other constitutional issues that arose with respect to immunities afforded to parliament, ministers of the Government and members of the Supreme Court as well as of the Supreme Administrative Court. However, these immunities were considered unproblematic since they can be waived. A special question was the absolute immunity of the Monarch, but this was also not considered to be an obstacle to ratification due to the fact that the Monarch has no executive powers

under the Constitution, making the commission of a crime under the jurisdiction of the Court virtually impossible. It was noted that this argument should not be understood to prejudice any determination of the scope of the immunity in the future.

The prohibition against expulsion of Swedish citizens from the Realm, as set forth in the Constitution, may also affect extradition of nationals under certain circumstances. Apart from relying upon the principle of complementarity, it was also taken into account that difficulties that might arise with respect to this constitutional rule could be remedied by the subsequent enforcement in Sweden of any sentence imposed by the Court.

In relation to the decision to accept enforcement of sentences, the powers of the Government to exercise clemency, remit or reduce a penal sanction or other legal effect of a criminal act, were discussed but considered unproblematic.

In order to avoid any possible future conflict of norms, however, an amendment to the Swedish Constitution (*regeringsformen*) has been introduced, clarifying that the constitutional provisions on immunities and the prohibition against expulsion do not hinder Sweden from meeting its obligations under the Rome Statute. The Swedish Parliament adopted the amendment in a second reading in November 2010, and it entered into force 1 January 2011.

2.3 Examples of implementing legislation for the Rome Statute

In order to implement the Rome Statute, the Act on Cooperation with the International Criminal Court (2002:329) has been issued, supplemented by the ordinance (2003:69) containing provisions on the application of the act. The Act contains references to other pieces of legislation, including the Act on International Legal Assistance in Criminal Matters (2000:562), the Act on Extradition for Criminal Offences (1957:668) and the Act on International Cooperation in the Enforcement of Criminal Judgments (1972:260).

Provisions of other statutes or enactments concerning service and legal assistance to courts or authorities in another State also apply to requests from the International Criminal Court.

3 National contact points for matters related to promotion of ratification and full implementation

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