

**Plan of action of the Assembly of States Parties for achieving universality
and full implementation of the Rome Statute of the International Criminal
Court
(Japan's view and information)**

A. General view

1. Japan deposited the instrument of accession to the Rome Statute with UN on July 17, 2007, exactly 9 years after the adoption of the Statute at the Diplomatic Conference in Rome. Japan took the decision to become a member of the ICC with its belief that the Court would contribute to the promotion of “the rule of law” in the international community and that Japan itself would also contribute to the promotion of “the rule of law,” which is one of the pillars of the Japan’s foreign policy.

2. Since its accession to the Rome Statute, Japan has always been fully committed to the ICC, measuring up to the expectations of the international community; we have been providing not only the largest financial contribution to the Court, but also capable human resources including judges, and intellectual input to various discussions. The objective of Japan’s policy concerning the ICC is to foster an efficient, effective and systematically sustainable international criminal court that can function on the basis of the total confidence of the international community.

3. When Japan acceded to the Rome Statute in July, 2007, there were already 104 member States; that is to say, Japan took a long time to conclude the Statute. Major challenges for Japan’s accession were the relations between the “core crimes” provided in the Article 5 of the Statute, and Japanese domestic criminal laws; first, whether the existing domestic criminal laws cover the “core crimes”; second, which domestic crimes, if any, correspond to the “core crimes”; and third, whether the penalties under the domestic laws are in accordance with the penalties in the Rome Statute. Finally, Japan decided not to enact substantive criminal law to cover the “core crimes”, but to criminalize the

offences against the administration of the justice before the ICC and to set up the procedures to respond the requests for cooperation from the ICC; following the decision, we finally enacted Act on Cooperation with the International Criminal Court (hereafter referred to as ICC Cooperation Act).

4. In relation to the issue of the universality and implementation of the Rome Statute, Japan, since its accession to ICC, has been aware of its role in the Asian region and has made efforts in this regard through its bilateral contacts as well as in regional fora such as Asian-African Legal Consultative Organization (AALCO). In 2009 in India, Japan and the AALCO co-organized a seminar, and in 2010 in Malaysia, Japan organized a round table meeting with the AALCO and the host country. And Japan is always ready to continue to help those States wishing to become parties to the Rome Statute by sharing its experience of the accession and providing the examples of its domestic legislation to implement the obligations under the Statute.

5. However, since Japan's accession to the ICC in 2007, the number of Member States has increased only by 17 to 122. And it is regrettable to note that there are only 18 States Parties from Asia and Pacific group, making this region underrepresented and causing the ICC to be misperceived as a judicial body dominated by certain regions, and due to such a misperception a number of States remain hesitant about ratifying the Rome Statute.

6. Japan considers that it is about time that the States Parties should analyze what is the cause that certain States tend to remain hesitant or reluctant to conclude the Rome Statute and that we should look back on and, if necessary, review the universality promotion activities we have developed until now; whether or not the intensive activities have given an impression that States Parties come together to put a pressure on the non-member States of the ICC; whether or not some of the universality campaigns have been regarded self-righteous.

7. After all, we should recall that it is a matter of legislative policy of each

state whether it decides to ratify the Rome Statute or not; we should not be engaged in universality promotion campaigns which could be misunderstood as a sign of our intention to hasten or press the non-member States of the ICC to conclude the Statute.

8. Taking into account Japan's own experiences of having concluded the Rome Statute by enacting the ICC Cooperation Act and in light of the reactions of some States to which we have had a talk on the universality and implementation of the Rome Statute until now, we consider it more effective that the universality promotion activities should be conducted on the low-key basis making use of the bilateral consultations with professional people, but not with the people at political level. Also, in Japan's view, it should be borne in mind that the State Parties, when speaking to a non-member state of the ICC, had better confine themselves to acting as advisers or consultants, but not as promoters, just to respond to its concerns and doubts regarding the ratification and implementation of the Rome Statute; aggressive approach like joint demarche could sometime give an insensitive impression and have a result contrary to our expectation.

9. Regardless of the above mentioned points, however, nothing is more effective for the realization of the universality of the ICC than the records of performance given by the Court itself; the sound administration of the organizations, the expeditious and effective procedures, the impartial consideration for the rights of both accused and victims, rendering fair judgments, etc.; without having these achievements, we could never expect the establishment of the high evaluation and total confidence of the international community on the Court. And the Court, in any event, without evaluation and confidence of the international community, could never realize its universality and the full implementation of the Rome Statute.

B. Information relevant to promotion of the ratification and full implementation of the Rome Statute

10. Following is the information relevant to promotion of the ratification and full implementation of the Rome Statute, corresponding to the items listed in paragraph 6, sub-paragraph (h), of the Plan of action.

11. (i) Information on obstacles to ratification or full implementation facing States;

At this moment, Japan is not facing the obstacles to full implementation of the Rome Statute.

12. (ii) National or regional strategies or plans of action to promote ratification and/or full implementation;

Our basic thought is as explained in the above paragraphs from 7 to 9. We consider it more effective to have bilateral or multilateral consultations on the low-key basis with those States which are seriously working on the conclusion of the Rome Statute, in order to help them take necessary steps in the respective domestic procedure, including sharing Japan's experience on the ratification and full implementation of the Statute. This position, however, doesn't exclude the possibility of organizing an event like seminar or workshop open to the public so as to increase awareness and better understanding of the people of the non-member States concerning the objective and activities of the Court.

13. (iii) Technical and other assistance needs and delivery programmes;

At this moment, we don't have needs for assistance or other programmes.

14. (iv) Planned events and activities;

As stated before, Japan considers it more effective to give priority to the informal consultations and advices for the technical level of the governments which are studying seriously the ratification of the Rome Statute. Therefore, at this moment, we have not planned open events or activities.

15. (v) Examples of implementing legislation for the Rome Statute;

As explained in the paragraph, when Japan concluded the Rome Statute, the ICC Cooperation Act was enacted to criminalize the offences against the administration of the justice before the ICC and to set up the procedures to deal with the requests for cooperation from the ICC. The translation in English of the Act is available at the web-sight “Japanese Law Translation”, URL of which is as follows.

<http://www.japaneselawtranslation.go.jp/law/detail/?id=2269&vm=04&re=01&new=1>

16. (vi) Bilateral cooperation agreements between the Court and States Parties;

Japan has not concluded cooperation agreement with the Court.

17. (vii) Solutions to constitutional issues arising from ratification;

Japan has not faced constitutional issues to be resolved in relation to the ratification and implementation of the Rome Statute.

18. (viii) National contact points for matters related to promotion of ratification and full implementation;

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(End)

Annex III

Implementing legislation questionnaire for States Parties (Japan)

1. Has your Government adopted any national legislation implementing the Rome Statute (“the Statute”), or otherwise enacted legislation pertaining to the Rome Statute?

(Answer) When Japan concluded the Rome Statute, Act on Cooperation with International Criminal Court (hereafter referred to as ICC Cooperation Act) was enacted in order to criminalize the act against the administration of the justice before the ICC and to set up the procedures for requests for cooperation from the ICC. The Act can be regarded as legislation pertaining to the Rome Statute.

Nevertheless, for your information, Japan decided not to enact substantive criminal law to cover the so-called core crimes, provided in the Article 5 of the Rome Statute, because we concluded that the existing domestic criminal laws cover the core crimes.

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 a stand-alone legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?

(Answer) As explained in the answer to the question 1., Japan enacted the ICC Cooperation Act, which can be qualified as a stand-alone legislation.

6. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes into domestic law?

(Answer) As stated in the answer to the question 1., Japan did not enact new law to cover the substantive crimes, because we concluded that the existing domestic criminal laws cover the crimes.

7. Does the implementing legislation incorporate the following aspects of cooperation with the Court and if yes, how?

(Answer) The ICC Cooperation Act sets up the procedures for implementing all the obligations regarding the cooperation and judicial assistance for the ICC which are provided in the Rome Statute. Therefore, the Act covers all the items listed below, except the matters which are not provided as the obligation of the States Parties to the Rome Statute such as enforcement of sentences of imprisonment.

The translation in English of the Act is available at the web-sight “Japanese Law Translation,” URL of which is as follows.

<http://www.japaneselawtranslation.go.jp/law/detail/?id=2269&vm=04&re=01&new=1>

- (a) Arrest and surrender;
- (b) Interim release and release of persons (acquittal, non-confirmation of charges, etc);
- (c) Cooperation with OTP investigations;
- (d) Cooperation with the Court on the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes;
- (e) Enforcement of sentences;
- (f) Witness protection;
- (g) Other forms of cooperation (see in particular article 93 of the Rome Statute).

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

(Answer) The ICC Cooperation Act designates that the channel of communication with the Court is Minister for Foreign Affairs.

(End)