

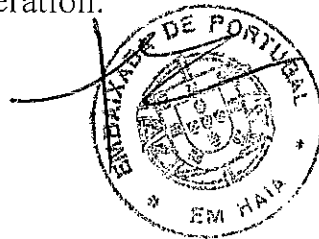


EMBAIXADA DE PORTUGAL
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The Embassy of Portugal presents its compliments to the Secretariat of the Assembly of States Parties - International Criminal Court - and, in reference to the Note ICC-ASP/8/S/PA/19, 24 of April 2009, has the honour to forward herewith the documentation from the Portuguese Authorities.

The Embassy of Portugal avails itself of this opportunity to renew to the Secretariat of the Assembly of States Parties - International Criminal Court - the assurances of its highest consideration.



The Hague, 25 August 2009

The Secretariat of the Assembly
of States Parties
International Criminal Court
Maanweg, 174
2516 AB The Hague



MINISTÉRIO DOS NEGÓCIOS ESTRANGEIROS

To
The Secretariat of the
Assembly of States Parties

In regard to paragraph 6, sub-paragraph (h), of the Plan of Action for Achieving universality and full implementation of the Rome Statute, whereby the Assembly called upon the States Parties to provide to the Secretariat information relevant to promotion of the ratification and full implementation of the Statute, the Portuguese Republic has the honour to inform as follows:

1. The Portuguese Republic signed the Rome Statute on the 17th July 1998, ratified it on the 18th January 2002 and made the deposit of its instrument of ratification on the 5th February 2002, with the declarations below:

"The Portuguese Republic declares the intention to exercise its jurisdictional powers over every person found in the Portuguese territory that is being prosecuted for the crimes set forth in article 5, paragraph 1 of the Rome Statute of the International Criminal Court, within the respect for the Portuguese criminal legislation. ..."

"With regard to article 87, paragraph 2 of the Rome Statute of the International Criminal Court, the Portuguese Republic declares that all requests for cooperation and any supporting documents that it receives from the Court must be drafted in Portuguese or accompanied by a translation into Portuguese. "



MINISTÉRIO DOS NEGÓCIOS ESTRANGEIROS

2. For the ratification of the Rome Statute the Portuguese Republic amended its Constitutional Law and its Criminal Law

2.1. In the Constitution,¹ amendments were made to Articles 7 and 33, in the following terms:

2.1.1. In Article 7, it was added a new paragraph (7), establishing that "with a view to achieving an international justice that promotes respect for the rights of both individual human persons and peoples, and subject to the provisions governing complementarity and the other terms laid down in the Rome Statute, Portugal may accept the jurisdiction of the International Criminal Court".

2.1.2. In Article 33, the amendments made it possible for the Portuguese Republic to accept "extradition for crimes that are punishable under the applicant state's law by a sentence or security measure which deprives or restricts freedom in perpetuity or for an undefined duration", as long as the "applicant state is a party to an international agreement in this domain to which Portugal is bound, and offers guarantees that such a sentence or security measure will not be applied or executed".

2.2. In the Criminal Law

2.2.1. As a general principle, the Portuguese criminal law applicable to all facts committed in the Portuguese territory.² The Portuguese criminal law is also applicable to facts committed outside the Portuguese territory³:

- i. When amounting to crimes such as "crimes against the national independence and integrity" or "crimes against the fulfilment of the State based on the rule of law";
- ii. By Portuguese citizens against other Portuguese citizens that reside in Portugal;

¹ The Portuguese Constitution in the English and French languages can be found in the website: www.parlamento.pt ;

² Article 4 of the Portuguese Criminal Code;

³ Article 5 of the Portuguese Criminal Code;



MINISTÉRIO DOS NEGÓCIOS ESTRANGEIROS

- iii. By Portuguese citizens or by foreigners against Portuguese citizens, if the offender is to be found in Portugal and if the facts are punishable in the territory where they took place unless if the punitive power is not carried out in that place, and the extradition cannot be performed or if it is decided not to surrender the offender as result of an European arrest warrant or of other international agreement binding Portugal;
- iv. By foreigners, irrespective of the nationality of the victim, if the offender is to be found in Portugal and the extradition cannot be performed or if it is decided not to surrender in result of an European arrest warrant or of other international agreement binding Portugal.

2.2.2. The Portuguese criminal law is also applicable to facts committed outside the Portuguese territory when it so results from an international convention⁴.

3. International Judicial Cooperation in Criminal Matters

3.1. Concerning the international judicial cooperation in criminal matters, the Portuguese Republic had, at the time of the ratification, domestic legislation on international cooperation in criminal matter, namely the Law 144/99⁵, of 31th August 1999, that its applicable to the cooperation between Portugal and any international judicial entities established within the framework of treaties or conventions that bind the Portuguese State, and covers the following forms of cooperation: extradition; transfer of proceedings in criminal matters; enforcement of criminal judgements; transfer of persons sentenced to any punishment, or measure, involving deprivation of liberty; supervision of conditionally sentenced or conditionally released persons and mutual legal assistance in criminal matters.

⁴ Article 5, paragraph 2 of the Portuguese Criminal Code;

⁵ The Law 144/99, in English and French languages can be found in the above websites:
<http://www.gddc.pt/legislacao-lingua-estrangeira/english.html>;
<http://www.gddc.pt/legislacao-lingua-estrangeira/francais.html>;



MINISTÉRIO DOS NEGÓCIOS ESTRANGEIROS

In according the article said law, the above forms of cooperation shall be carried out in accordance with the provisions of the international treaties, conventions and agreements that bind the Portuguese State and, where such provisions are non-existent or do not suffice the provisions of this law.

4. Specific Adaptation of the Criminal Legislation to the Statute of the International Criminal Court

4.1. By the Law no. 31/2004 of 22th July 2004, the Portuguese Republic made a specific adaptation of the criminal legislation to the Statute of the International Criminal Court specifying conduct constituting crimes against International Humanitarian Law, that constitutes the 17th amendment to the Criminal Code and enclose the Criminal Law Concerning Offences against International Humanitarian Law.⁶

5. Bilateral Cooperation Agreements

5.1. On the 10th December 2002, the Portuguese Republic signed the Agreement on the Privileges and Immunities of the International Criminal Court, adopted in New York, on the 9th September 2002, ratified it on the 10th September 2007 and made the deposit of its instrument of ratification on the 3rd October 2007, with the subsequent declaration:

"With regard to the Agreement on the Privileges and Immunities of the International Criminal Court, Portugal declares that the persons referred to in article 23 that are Portuguese nationals or have permanent residence in Portugal enjoy in Portuguese territory only the privileges and immunities referred to in this article."

5.2. Presently, the proposal of Relocation of Witnesses Agreement made by the Court to the Portuguese authorities remains under analysis.

⁶ The present Law in English language can be found in the following website:
<http://www.icrc.org/ihl-nat.nsf/a24d1cf3344e99934125673e00508142/6af0950f91cbc493c1256ef500419718!OpenDocument>



MINISTÉRIO DOS NEGÓCIOS ESTRANGEIROS

6. National or Regional Strategies or planes of action

6.1. During the Portuguese Presidency of the EU Council, the Portuguese Republic made “demarches” concerning the ratification of the Statute by the Community of Portuguese Speaking Countries (CPLP) that it still holds presently.

7. National contact points

7.1. The Portuguese Republic wishes to inform that the national contacts points for matters related to promotion of ratification and full implementation of the Statute are:

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MINISTÉRIO DOS NEGÓCIOS ESTRANGEIROS

Annex IV

Implementing legislation questionnaire for States Parties

1. Yes, it has adopted national legislation implementing the Rome Statute.

Part B

5. The Portuguese Republic, in implementing the Statute, drafted special implementing legislation and incorporated substantive provisions of the Statute into pre-existing law.

6. The substantive crimes were incorporated in the legislation itself.

7. Yes, it does fully incorporate all modes of cooperation under part 9 of the Statute.

8. Taking into account that Article 87 of the Statute the Portuguese Republic did not make any declaration or designation of any other appropriate channel for these purposes, because it assumed that in the absence of any declaration concerning this subject, the diplomatic channel should apply.