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[Text in Romanian]

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The Romanian Embassy to the Kingdom of the Netherlands presents its compliments to the Secretariat of the Assembly of States Parties and, with reference to note verbale ICC-ASP/9/SP/PA/21 of 9 August 2010, has the honour of presenting herewith the information requested under paragraph 6 (h) of the Plan of action.

The Romanian Embassy avails itself of this opportunity to renew to the Secretariat of the Assembly of States Parties the expression of its highest consideration.

The Hague, 19 October 2010

Seal, initials

INTERNATIONAL CRIMINAL COURT

SECRETARIAT OF THE ASSEMBLY OF STATES PARTIES

Background:

Romania ratified the *Rome Statute* by Law No. 111 of 28 March 2002. In accordance with the Constitution of Romania, treaties ratified by Parliament become part of internal law.

Romania ratified the *Agreement on Privileges and Immunities of the Court* by Law No. 204 of 2005.

Constitutional issues:

At the time the Rome Statute was ratified, two constitutional issues were debated:

-The immunity of the Head of State and of Members of Parliament: Romania interprets the constitutional text on immunity as endowing the Head of State and Members of Parliament with immunity in exercising their functions; however, perpetrating the acts set out in the Rome Statute is not part of those functions. There is thus no contradiction between the Romanian Constitution and the obligations that Romania has undertaken in ratifying the Rome Statute;

-Surrender of own nationals: at the time of ratification, Romania accepted the difference between “surrender” and “extradition” as provided for under article 102 of the Statute; Romania therefore considered that the constitutional prohibition on extradition of own nationals does not apply in the case of “surrender” to the International Criminal Court. Moreover, in 2003 the Romanian constitution was amended; article 19(2) of the Constitution now expressly allows for the extradition of own nationals on the basis of international conventions to which Romania is party.

Rome Statute implementing legislation:

The *New Criminal Code* of Romania, published in July 2009, under Title XII-“*Crimes of genocide, Crimes against Humanity and War Crimes*”, sets out the relevant provisions of the Rome Statute. The English translation of Title XII of the New Criminal Code is appended.

The New Criminal Code has not yet entered into force in view of the extent of its amendments to the Romanian criminal justice system. The Code is expected to enter into force during the second half of 2011.

Concerning procedural issues, *Law No. 302/2004 on International Judicial Cooperation in criminal matters* is applicable. Its article 4 provides:

Article 4- [TRANSLATION] “*Supremacy of international law*”

(1) *This Law is based on and applies the provisions on judicial cooperation in criminal matters contained in the international legal instruments to which Romania is party, as complemented by law in cases that are not covered therein.*

(2) Cooperation with an international criminal tribunal or with a public international organisation, in accordance with the relevant provisions of the special international instruments – such as the statutes of international criminal tribunals - shall be considered under a special legal procedure; this Law shall be applied as appropriate, and in a complementary manner where necessary.

At domestic level, the Ministry of Justice has initiated a process of inter-institutional consultations in order to prepare a draft Special Law on Cooperation with International Courts and Tribunals. Pending the entry into force of the Special Law, *Law No. 302/2004 on International Judicial Cooperation in Criminal Matters* provides a framework that is sufficient to respond to possible requests for cooperation on the part of the ICC.

The *Ministry of Justice* was designated in the Law on the Ratification of the Rome Statute as the competent Romanian authority to receive requests from the Court under article 87 of the Statute.

[TEXT IN ENGLISH]