

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

(1) 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.)

(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?

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.

(3) 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.

(4) 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.

(5) 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

[*unofficial translation*]

**Law on Cooperation with the International Criminal Court
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Approved by the Diet on 27 April 2007

Promulgated on 11 May 2007

Entered into Force on 1 October 2007

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