



AMBASCIATA D'ITALIA
L'AJA

The Embassy of Italy presents its compliments to the Secretariat of the Assembly of States Parties of the International Criminal Court and has the honor to refer to the letter dated 7 July 2014 (ICC-ASP/13/PA/45), which referred to the plan of action for achieving universality and full implementation of the Rome Statute, as contained in ICC-ASP/5/Res.3 and subsequent resolutions.

In this regard, Italy conveys herewith the filled in questionnaire prepared by the Court (Annex III) concerning implementing legislation and other information related to cooperation at large with the ICC, which is also being forwarded in its digital version to the Secretariat.

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

The Hague, 23 SEP 2014

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

Annex III

Implementing legislation questionnaire for States Parties

ITALY

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

1. Italian legislation implementing the Rome Statute includes the following instruments:

(i) Law No. 232 of 12 July 1999 (the “Ratification Bill”),¹ and

(ii) Law No. 237 of 20 December 2012 (“Cooperation Legislation”),²

(iii) Other substantive criminal law provisions.

2. Ratification Bill

Article 2 of the Ratification Bill provides that “full execution is given to the Statute [...] starting on the date of its entry into force, in conformity with Article 126 of the Statute”. This entails that, from a normative standpoint, the Statute was fully introduced into the Italian legal order as of 1 July 2002. Consequently, in the period 1999 to 2012, pending adoption of implementing legislation has not at any point in time hindered the full cooperation and judicial assistance by Italy to the ICC. In particular, Italy has actively answered to all requests for cooperation and assistance under the existing rogatory procedures (Code of Criminal Procedure, Articles 696 to 746). On several occasions, Italy has also provided to the ICC support that goes beyond the cooperation obligations under the Statute, and expands to political, diplomatic and material assistance.

3. Cooperation Legislation

This legislation contains *ad hoc* provisions implementing the Rome Statute’s cooperation obligations, including: applicable procedures; legal aid; arrest and surrender; enforcement of sentences, fines and forfeitures; Article 70 RS substantive criminal law provisions.

4. Substantive criminal law

Criminal law provisions related to Article 5 RS are implemented by means of offenses incorporated in the Criminal Code and in the Criminal Military Code, but also in pre-existing stand-alone legislation (*infra*, answer to Question 6).

IF NOT Part A

2. What legislative efforts, if any, has your Government taken to implement the provisions of the Statute into national law?

¹ *Ratifica ed esecuzione dello Statuto istitutivo della Corte Penale Internazionale, con Atto Finale ed Allegati, adottato dalla Conferenza diplomatica delle Nazioni Unite a Roma il 17 luglio 1998* [Ratification and execution of the Statute establishing the International Criminal Court, with Final Act and Annexes, adopted by the United Nations Diplomatic Conference in Rome on 17 July 1998]. Published in *Official Gazette* No. 167 (S.O.) of 19 July 1999.

² *Norme per l’adeguamento alle disposizioni dello Statuto istitutivo della Corte Penale Internazionale* [Implementing provisions to the Statute establishing the International Criminal Court]. Published in *Official Gazette* No. 6 of 8 January 2013. Entered into force on 23 January 2013.

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?*

Similarly to the legislation adopted for ensuring cooperation with ICTY and ICTR, stand-alone legislation was adopted for the ICC. However, this legislation (Article 10) also contains substantive criminal law provisions implementing Article 70.4(a) of the Rome Statute, by criminalizing offenses against the administration of justice at the ICC in the relevant provisions of the Italian Criminal Code ("c.p."). An informal parallel between such provisions in Italian criminal law and the correspondent ones of Article 70.1 RS is provided below:³

Article 322*bis* c.p. - Corruption, Embezzlement and related offenses [Art. 70.1(d) and (f) RS];

Article 343*bis* c.p. - Crimes committed against officials of the ICC and its functions (extension to the ICC of the crimes under articles 336, 337, 338, 339, 340, 342, and 343 c.p.) [Art. 70.1(d) and (e) RS];

Article 368 c.p. - Slander [Art. 70.1(b) RS];

Article 371*bis* c.p. - False deposition to the Prosecution [Art. 70.1(a) RS];

Article 372 c.p. - False testimony [Art. 70.1(a) RS];

Article 374 c.p. - Fraud in judicial proceedings (falsification and forgery) [Art. 70.1 (b) and (c) RS];

Article 374*bis* c.p. - False statements or certification [Art. 70.1(b) and (c) RS];

Article 377 c.p. - Obstruction of justice (corruption or intimidation of witnesses, experts, interpreters) [Art. 70.1(c) RS];

Article 378 c.p. - Abetment (assistance to shield from investigations) [Art. 70.1(c) RS];

Article 380 c.p. - Unfaithful counseling or expert deposition [Art. 70.1(b) RS].

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

Substantive crimes related to Article 70 of the Rome Statute are directly incorporated into domestic law (*supra*, Question 1, paragraph 3 and Question 5).

The core crimes of the Rome Statute (Article 5 RS) are covered through the following instruments:⁴

Article 6 RS - Law No. 962/1967 concerning the prevention and suppression of the crime of genocide;⁵

Article 7 RS - Criminal Code (relevant provisions);⁶

Article 8 RS - Criminal Military Code for Wartime, Articles 174-198, 209-214, and 230.⁷

³ **DISCLAIMER:** any application of such provisions is subject to interpretation by the competent Italian judicial Authorities.

⁴ Article 8*bis* RS implementation is not addressed here, since the crime of aggression's amendment to the Rome Statute has not been ratified at the present time.

⁵ Law 9 October 1967, No. 962 - *Prevenzione e repressione del delitto di genocidio* [Prevention and suppression of the crime of genocide], in *Official Gazette* No. 272 of 30 October 1967.

⁶ Royal Decree No. 1398 of 19 October 1930 - *Approvazione del testo definitivo del Codice Penale* [Final approval of the Criminal Code], in supplement to the *Official Gazette* No. 251 of 26 October 1930.

⁷ Royal Decree No. 303 of 20 February 1941 - *Codice Penale Militare di Guerra* [Criminal Military Code for Wartime].

7. Does the implementing legislation incorporate the following aspects of cooperation with the Court² and if yes, how?

Yes, all these aspects are all regulated by the cooperation legislation [*supra*, answer to Question 1(ii)], which also includes the statement of the obligation of Italy to cooperate with the ICC pursuant to the Rome Statute and consistently with the fundamental principles of the Italian legal system (Article 1).

(a) Arrest and surrender;

The Prosecutor General requests to the Court of Appeals in Rome an enforcement order to execute the arrest warrant issued by the ICC (Articles 11-12). A provisional arrest order for the purpose of surrender can also be issued (Article 14). The request for surrender is also decided by the Court of Appeals (Article 13).

(b) Interim release and release of persons (acquittal, non-confirmation of charges, etc);

In case interim release pursuant to Article 59(3)RS is granted, other measures can be imposed to prevent escape [Article 11(3)].

(c) Cooperation with OTP investigations;

Requests concerning investigations or taking of evidence are executed by order of the Court of Appeals in Rome, while the requesting Judges and Prosecutor are entitled to participate (Article 4).

A consultation procedure with the ICC is also provided to address issues arising out of cooperation requests, including for the purpose of the preservation of evidence (Article 22).

(d) Cooperation with the Court on the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes;

Idem.

(e) Enforcement of sentences;

ICC sentences can be executed in Italy upon recognition of the judgment (*exequatur*) by the Court of Appeals in Rome (Article 16). Penitentiary regime, control on the sentence enforcement, communication with the ICC, and venue of detention are also regulated (Articles 18-20).

(f) Witness protection;

See answer to Question 7(c).

(g) Other forms of cooperation (see in particular article 93 of the Rome Statute).

See answer to Question 7(c).

Enforcement of fines and forfeiture, as well as of reparation orders, are also regulated (Article 21).

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

Channel of communication for cooperation purposes is the Ministry of Justice (Article 2), who might consult, as appropriate, other relevant Ministries.

The Direction General for Criminal Justice (Second Office)⁸ processes the requests for cooperation, while a focal point for general issues concerning cooperation, judicial assistance and the implementation of the Rome Statute has also been established since 2012⁹ at the Direction General for Human Rights.¹⁰

⁸ Direzione della Giustizia Penale, Ufficio II.

⁹ This focal point was established on 27 June 2012 following-up to the 2010 Kampala Review Conference pledge to adopt "national policies on cooperation with the ICC and the establishment of a focal point thereon within the Ministry of Justice, by the end of 2011".

¹⁰ Direzione Generale del Contenzioso e dei Diritti Umani.