



AN ROINN GNÓTHAÍ EACHTRACHA

DEPARTMENT OF FOREIGN AFFAIRS

BAILE ÁTHA CLIATH 2

DUBLIN 2

The Department of Foreign Affairs presents its compliments to the Secretariat of the Assembly of States Parties to the International Criminal Court and has the honour to refer to Assembly resolution ICC-ASP/8/Res.9 adopted at its 10 plenary meeting on 25 March 2010, by which the Assembly decided, inter alia, to request the Secretariat of the Assembly of States Parties to reissue the questionnaire on the measures undertaken in respect of implementing legislation of the Rome Statute of the International Criminal Court (note verbale ICC-ASP/8//S/PA/19).

The Department of Foreign Affairs has the honour to forward herewith its replies to the questionnaire.

Department of Foreign Affairs, Dublin



7 May 2010

IRELAND

Implementing legislation questionnaire for States Parties

1. **Has your government adopted any national legislation implementing the Rome Statute (“the Statute”)?**

YES

IF YES

Part B

5. **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?**

Ratification of the Rome Statute of the International Criminal Court (“Rome Statute”) required an amendment of the Constitution. This amendment was effected by means of a referendum. The referendum was held in 2001, it was adopted by an overwhelming majority of Irish voters, and the amendment now forms Article 29.9 of the Irish Constitution, which provides that “The State may ratify the Rome Statute of the International Criminal Court done on the 17th day of July, 1998.”

The International Criminal Court Act 2006 (“2006 Act”) was enacted on 31 October 2006 in order to incorporate the Rome Statute into Irish law. The text of the Act is publicly and freely available in both the Irish and English languages and at the following website:

<<http://www.oireachtas.ie/documents/bills28/acts/2006/a3006.pdf>>.

6. **Did the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?**

The 2006 Act incorporates “ICC offences” through reference to the Statute. Section 6 of the Act provides interpretation for domestic jurisdiction in “ICC offences”:

“(1) In this part, unless the context otherwise requires—

[...]

“crime against humanity “ means any of the acts specified in Article 7 [of the Rome Statute];

“genocide” means any of the acts specified in Article 6 [of the Rome Statute];

“war crime” means any of the acts specified in Article 8.2 (except subparagraph (b)(xx)) [of the Rome Statute].

(2) In Articles 7 and 8 [of the Rome Statute] references to murder shall be constructed as references to the killing of a person in such circumstances as would, if committed in the State, constitute murder.”

The 2006 Act provides that, in interpreting the Act itself and the Rome Statute, the Irish Courts may where necessary take account of: (i) the rules of Procedure and Evidence; (ii) the Elements of Crimes; (iii) any relevant judgment or decision of the ICC; (iv) any other relevant judgment, and (v) may consider the *travaux préparatoires* relating to the Rome Statute and the published views of commentators on its text and give them such weight as may appear appropriate in the circumstance. The Act further provides that judicial notice shall be taken of the Rome Statute, which is scheduled to the Act.

7. Does the implementing legislation fully incorporate all modes of cooperation under Part 9 of the Statute?

The 2006 Act lays down a legislative basis for cooperation with requests and orders from the ICC, in accordance with Part 9 of the Rome Statute.

The 2006 Act enables effect to be given to requests by the ICC for assistance in the investigation or prosecution of offences, including requests to arrest and surrender persons¹ pursuant to a surrender order made by the High Court². The Act further provides for assets to be frozen by a freezing order issued by the Minister for Justice pursuant to a request from the ICC,³ and the enforcement of orders issued by the Court.⁴

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

The 2006 Act provides that requests from the ICC under Part 9 of the Rome Statute are to be dealt with by the Minister for Justice and Law Reform.

Part 3 of the 2006 Act deals with requests from the ICC for the arrest and surrender of persons. Section 17 provides:

‘(1) A request by the International Criminal Court for the arrest and surrender of a person shall be communicated to the Minister [for Justice and Law Reform] in accordance with Articles 87, 89 and 91.

[...]

(3) If the information furnished by the Court is in the Minister’s opinion insufficient, the Minister may request it to supply further information or documents.

(4) The Minister shall consult the Court under Article 97 in relation to any difficulties that may impede or prevent the execution of a request.’

¹ ICC Act 2006, Part 3.

² ICC Act 2006, s 25.

³ ICC Act 2006, s 38.

⁴ ICC Act 2006, s 40.

Requests to freeze assets, to enforce orders and other requests from the ICC should also be communicated to the Minister for Justice and Law Reform in accordance with Part 4 and Part 5 of the 2006 Act.

Pursuant to Article 87 paragraphs 1 (a) and 2 of the Rome Statute concerning designation of channels and language of communication by States Parties to the Rome Statute of the International Criminal Court, Ireland's channel of communication with the Court is the Embassy of Ireland in The Hague, and English is its preferred language of communication.