

Compilation on implementing legislation 2009

On 24 April 2009, the Secretariat conveyed to States note verbale ICC-ASP/8/S/PA/19, which included a questionnaire prepared by the Court regarding the measures undertaken in respect of implementing legislation.

States Parties were requested to complete and submit the questionnaire together with the information referred to in Assembly resolution ICC-ASP/5/Res.3 of 1 December 2006, by which the Assembly decided, inter alia, to adopt and implement the Plan of action for achieving universality and full implementation of the Rome Statute, in Assembly resolution ICC-ASP/6/Res.2 of 14 December 2007, and in paragraph 3 of resolution ICC-ASP/7/Res.3 of 21 November 2008, by which the Assembly, inter alia, endorsed the recommendations contained in the Report of the Bureau on the Plan of action (ICC-ASP/7/19) (see annex III).

The Secretariat had as at 9 April 2010 received 12 replies to the questionnaire that was issued in 2009 from the following States:

Barbados, Belgium, Bulgaria, Dominican Republic, Finland, Georgia, Netherlands, New Zealand, Paraguay, Poland, Portugal, and Slovakia.

* * *

Table of contents

1. Barbados.....	3
2. Belgium	4
3. Bulgaria.....	5
4. Dominican Republic.....	8
5. Finland.....	10
6. Georgia.....	12
7. Netherlands.....	15
8. New Zealand.....	16
9. Paraguay	17
10. Poland	18
11. Portugal.....	19
12. Slovakia.....	20

1. Barbados

[Original: English]

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

The Government is currently drafting the ICC legislation. The Chief Parliamentary Counsel is preparing a draft bill based on the Commonwealth Secretariat Model Bill.

If yes
Part A

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

3. What obstacles, if any, has your Government faced in its efforts to implement the provisions of the Statute?

The obstacles faced were:

- Lack of legislative priority as other legislation was most urgent
- This was a change of government after election in 2008. The new government is committed to implementing the ICC legislation

4. What form of assistance would benefit your Government’s efforts to implement the Statute?

Assistance in a form of a workshop for the Parliamentary Counsel drafting the ICC legislation. The contact for the drafting office is

sbelle@oag.gov.bb,
tel. 12464317700

Networking and general discussion with the Drafting Counsel could be useful.

If yes
Part A

N\A

* * *

2. Belgium

[Original: French]

1. La Belgique a adopté une législation nationale d'application du Statut de Rome. La mise en œuvre du statut s'est effectuée par le biais de :
 - la **loi du 5 août 2003 relative aux violations graves du droit international humanitaire** (voir Annexe I), publiée au Moniteur belge du 7 août 2003, qui attribue compétence aux juridictions belges pour juger les auteurs présumés de crime de génocide, crimes contre l'humanité et crimes de guerre ;
 - **loi du 29 mars 2004 concernant la coopération avec la Cour pénale internationale et les tribunaux pénaux internationaux** (voir Annexe II), publiée au Moniteur belge du 1^{er} avril 2004, qui fixe notamment les principes généraux régissant la coopération judiciaire entre la Belgique et la Cour.
2. La **mise en œuvre du Statut** par la Belgique revêt un **caractère mixte** :
 - Rédaction d'une loi d'application spéciale s'agissant des éléments de coopération entre la Belgique et la Cour pénale internationale ;
 - Intégration dans le Code pénal belge des incriminations de crimes visées par le Statut.
3. Les crimes relevant de la compétence de la Cour pénale internationale (crime de génocide, crimes contre l'humanité et crimes de guerre) ont été intégrés dans la législation belge par la **loi du 5 août 2003 relative aux violations graves du droit international humanitaire** (voir Annexe I), publiée au Moniteur belge du 7 août 2003, rendant les juridictions belges compétentes pour juger les auteurs présumés de ces crimes (compétence personnelle active, compétence personnelle passive et compétence universelle traditionnelle). **La définition des crimes s'inspire notamment du Statut de Rome de la Cour pénale internationale, en allant parfois au-delà du champ d'application des articles 6 à 8 du Statut, lorsque la Belgique y est tenue par une autre source conventionnelle ou coutumière de droit international humanitaire.**
4. Toutes les dispositions du chapitre IX du Statut sont couvertes par la loi du **29 mars 2004 concernant la coopération avec la Cour pénale internationale et les tribunaux pénaux internationaux**, notamment par ses articles 3 et 4.
5. L'article 5 de la **loi du 29 mars 2004 susmentionnée** désigne le **Ministre de la Justice comme autorité centrale** « pour recevoir les demandes émanant de la Cour et transmettre à la Cour les demandes provenant des autorités judiciaires belges. » En application de l'article 3 de l'arrêté royal du 17 septembre 2005 relatif à la création du service de droit international humanitaire, c'est ce dernier qui gère les dossiers relevant de la compétence de l'autorité centrale.

1 1 1 2

3. Bulgaria

[Original: English]

Bulgarian response to the implementing legislation questionnaire for States Parties on the ICC Plan of action

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

Yes, the Bulgarian Government adopted the relevant legislation measures by which the Rome Statute was implemented in the Bulgarian legislation.

The Republic of Bulgaria signed the Statute on 11 February 1999 and ratified it by law, adopted by the 39th National Assembly on 15 March 2002 (*promulgated in State Gazette, No. 31/26.03.2002*). Bulgaria deposited its instrument of ratification of the Rome Statute on 11 April 2002. With the ratification act Bulgaria took place among the first sixty states that contributed to the entering into force of the Rome Statute only four years after its adoption.

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?*

While implementing the Statute, the Bulgarian Government did not draft special implementing law because some substantive provisions have already existed in the national legislation - in particular in the Penal Code of the Republic of Bulgaria since its adoption in 1968. Such an example is Chapter XIV „Crimes against peace and humanity“ which includes substantial provisions defining crimes like genocide and apartheid, crimes against peace, crimes against the laws and customs of waging war (for details s. Annex 1). In view of the abovementioned we can summarize that when implementing the Rome Statute, the Bulgarian authorities have followed the second approach by incorporating the articles or substantive provisions of the Statute into pre-existing law.

Furthermore, as an international treaty the Rome Statute has been ratified according to a procedure established by the Constitution of the Republic of Bulgaria, has been promulgated, and has entered into force for the Republic of Bulgaria. Therefore and according to Article 5, para 4 of the Constitution it became part of the domestic law of the land and takes priority over any conflicting standards of domestic legislation.

In its Decision №7, dated 2 July 1992 under constitutional case № 6 /92 of the Constitutional Court, which has the nature of a subsidiary source of law, for the interpretation of Article 5, para. 2, 3 and 4 of the Bulgarian Constitution, the Constitutional Court of the Republic of Bulgaria decided that: „Any international instruments which have been ratified, promulgated and having come into force with respect to the Republic of Bulgaria, by which certain acts (actions or omissions) have been declared as criminal offences, but not being criminalized under the national law shall be considered part of the domestic legislation of the Republic of Bulgaria only as much as they clarify the sense and content of the existing in the Bulgarian Penal Code definitions of crimes or elements of crimes or if they create an obligation for a legislative amendment“.

?

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

?

?

?

The relevant Bulgarian criminal legislation does not refer to the Statute with regard to the substantive crimes regulated by it, because as mentioned above Chapter XIV of the Penal Code of the Republic of Bulgaria contains pre-existing provisions for substantive crimes nearly in the same terms as the Statute. Besides, when ratifying the Statute in 2002 the National Assembly adopted amendments and supplements in some of the relevant sections in the Penal Code (Section II „Crimes against the laws and customs of waging war”, Articles 451 and 415a; for details s. Annex 1).

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

Fully in line with the provisions of Article 88 of the Statute, the Bulgarian legislation provides for procedures for all of forms of cooperation specified under Part IX of the Statute.

In this respect in 2003 new amendments to the Penal Procedure Code were adopted provided for the successful judicial cooperation with the ICC in pursuance of the obligations that the Statute imposes on State Parties under Part IX of the Statute. These amendments were preserved in the consequently adopted in 2005 new Penal Procedure Code, in force from April 2006.

□

In 2005 the provisions for the extradition were taken out of the PPC and regulated in a special Law on extradition and the European arrest warrant (*promulgated State Gazette, No 46/3.06.2005, effective 4.07.2005, amended, SG No. 86/28.10.2005, effective 29.04.2006, amended and supplemented, SG No. 52/6.06.2008*) which provides for the surrender of persons for the purposes of criminal proceedings at a request of an international court.

In the same year a new amendment of the Constitution has been adopted by the National Assembly which *inter alia* stipulates that „No citizen of the Republic of Bulgaria may be surrendered to another State or to an international court for the purposes of criminal prosecution except where this is provided for in an international treaty which has been ratified, which has been promulgated, and which has entered into force for the Republic of Bulgaria” (Art. 25, para 4).

According to the national legislation the procedure with regard to requests for the arrest and surrender of persons to the ICC under Article 89 of the Statute is regulated in Chapter Three, Section I of Law on Extradition and European Arrest Warrant. In general these provisions are applicable in cases of extradition at the request of other States but Article 22 explicitly ensures that they shall also apply where arrest and surrender is requested by an international court.

Other forms of cooperation in relation to investigations or prosecutions as cited in Article 93 contain in the Penal Procedure Code, which sets forth rendering of legal assistance in criminal matters. The different types of cooperation are broadly formulated in order to allow wide range of procedural measures and actions.

Special protection measures can also be rendered to participants in criminal proceedings in particular witnesses and crime victims where their testimony, explanations or depositions

□

provide evidence of significant importance to criminal proceedings for crimes against peace and humanity. The protection is regulated in the Law of Protection of Persons Threatened in Connection with Criminal Proceedings (*promulgated, State Gazette No. 103/23.11.2004, effective 24.05.2005, last amended, SG No. 82/16.10.2009*) and consists of the following measures: 1. Personal physical protection; 2. Property protection; 3. Provisional placement in a safe location; 4. Change in the place of residence, workplace, or educational establishment or placement in another facility for the service of a sentence; 5. Full change of identity (for details s. Annex 2). 2

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

According to Art. 475, para 2 of the Bulgarian Penal Procedure Code „The request for international legal assistance shall be sent to the Ministry of Justice unless an international treaty to which Bulgaria is a party stipulates another procedure.”

Art. 476, para 1 of the abovementioned law stipulates that „The request for international legal assistance shall be executed under the procedure stipulated in the Bulgarian laws, or under a procedure stipulated in an international treaty to which the Republic of Bulgaria is a party. The request may also be executed under the procedure stipulated in the law of the other state or the statutes of the international court of justice, provided that this has been requested and does not contradict the Bulgarian laws. The other state or the international court of justice shall be informed about the time and place of execution of the request, if this is requested”.

In addition, it should be underlined that the Bulgarian Ministry of Justice will take the necessary measures to ensure that requests for mutual legal assistance from the International Criminal Court will be dealt with as a matter of urgency and will be given priority. 2

1 1 1 2

4. Dominican Republic

[Original: Spanish]

**Cuestionario sobre implementación de medidas legislativas
Corte Penal Internacional**

**Anexo IV
Cuestionario para los Estados Partes sobre las leyes
de aplicación del Estatuto de Roma**

1.- ¿Ha adoptado su Gobierno leyes de aplicación del Estatuto de Roma?

No.

En caso de que la respuesta sea negativa (Parte A)

2.- ¿Qué medidas ha tomado su Gobierno a nivel legislativo para la plena aplicación de las disposiciones del Estatuto en la legislación nacional?

Salvo disposición expresa de un convenio, resulta innecesaria la adopción de leyes adjetivas internas para dar vigencia a los mismos. En tal sentido, el artículo 3 de la Constitución Política de la Republica Dominicana dispone:

La República Dominicana reconoce y aplica las normas del Derecho Internacional general y americano en la medida en que sus poderes públicos las hayan adoptado, y se pronuncia en favor de la solidaridad económica de los países de América y apoyará toda iniciativa que propenda a la defensa de sus productos básicos y materias primas.

Asimismo, el artículo 1º del Código Procesal Penal, en vigencia desde el 2004, establece que:

Primacía de la Constitución y los tratados. Los tribunales, al aplicar la ley, garantizan la vigencia efectiva de la Constitución de la República y de los tratados internacionales y sus interpretaciones por los órganos jurisdiccionales creados por éstos, cuyas normas y principios son de aplicación directa e inmediata en los casos sometidos a su jurisdicción y prevalecen siempre sobre la ley. La inobservancia de una norma de garantía judicial establecida en favor del imputado no puede ser invocada en su perjuicio.

Conforme estas disposiciones legales, una vez se adopta un Convenio, éste forma parte del derecho positivo dominicano, con plena aplicación dentro del ordenamiento legal, y debe ser observado por los tribunales dominicanos.

En el Código Procesal Penal se ha previsto la sanción de algunos crímenes y delitos contenidos en tratados o convenciones. Además, el Poder Ejecutivo sometió al Congreso Nacional un proyecto de ley para la adopción de un nuevo Código Penal, que habrá de contemplar toda otra forma de crímenes y delitos,

2

incluyendo los que se especifican en Convenciones que han sido adoptadas por el Estado dominicano, en especial las de los Convenios de Ginebra de 1949 y sus Protocolos y el Estatuto de Roma sobre la Corte Penal Internacional, que no se encuentran en la actualidad incluidos en el Código Procesal Penal.

Por la importancia que reviste el mismo, el proyecto de nuevo Código Penal está siendo objeto de discusión y ponderación con la participación de amplios sectores de las sociedades civil y política, así como gremios de profesionales.

3.- ¿Qué obstáculos, de haberlos, ha encontrado su Gobierno en relación con sus esfuerzos para promover la plena aplicación de las disposiciones del Estatuto?

Ninguno.

4.- ¿Qué tipo de asistencia podría coadyuvar los esfuerzos de su Gobierno para la plena aplicación de las disposiciones del Estatuto?

Capacitación internacional para los funcionarios o autoridades encargadas de aplicación del Estatuto (fiscales, jueces y personal judicial administrativo).

1 1 1 2

2

5. Finland

[Original: English]

Implementing legislation questionnaire for States Parties (2009)

1. Has your Government adopted any national legislation implementing the Rome Statute ("the Statute")?

Yes, a parliamentary Act on the implementation of the provisions of a legislative nature of the Rome Statute of the International Criminal Court and on the application of the Statute (No. 1284/2000 of the Statute Book of Finland) as well as an Act on the amendment of the Criminal Code (No. 1285/2000 of the Statute Book of Finland) were passed in December 2000 when Finland ratified the Statute. Subsequently, the criminalizations in Chapter 11 of the Criminal Code were amended in April 2008 (No. 212/2008 of the Statute Book of Finland).

IF NOT Part A

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

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 special implementing legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?

Both methods were used in connection with the ratification of the Statute in 2000. The Act on the implementation of the provisions of a legislative nature of the Rome Statute of the International Criminal Court and on the application of the Statute stipulates that the provisions of the Statute, insofar as they are of a legislative nature, shall be in force as applicable law in accordance with the commitments of Finland. In addition, the Act contains a few specific provisions on the application of the Statute. For an unofficial English translation of Act No. 1284/2000 please refer to <http://www.finlex.fi/fi/laki/kaannokset/2000/en20001284.pdf>.

Also, an Act on the amendment of the Criminal Code was passed in 2000. For later amendments of the Criminal Code that relate to the Statute, please see response to question no. 6.

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

The substantive crimes have been incorporated in the Finnish Criminal Code. When the Statute was ratified by Finland in December 2000 no major amendments were introduced in the Finnish Criminal Code. It was acknowledged, however, that for the national courts to be fully able to exercise jurisdiction over crimes within the Court's jurisdiction it was necessary to amend the Criminal Code. The amendments with regard to the criminalizations of genocide, crimes against humanity and war crimes in Chapter 11 of the Criminal Code as well as the new provisions implementing Articles 28 and 33 of the Statute were adopted on 11 April 2008 and entered into force on 1 May 2008. An unofficial English translation of Chapter 11 of the Criminal Code is annexed to this response. For an unofficial English translation of the Criminal Code please refer to <http://www.finlex.fi/fi/laki/kaannokset/1889/en18890039.pdf>. A consolidated translation of the Criminal Code will be available at <http://www.finlex.fi> in the near future. ?

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

Yes. The Finnish Act on International Legal Assistance in Criminal Matters (No. 4/1994 of the Statute Book of Finland) forms the basis for cooperation between Finland and the International Criminal Court. However, Act No. 1284/2000 clarifies certain obligations of Finland based on Part 9 of the Statute. Also, for the purpose of full implementation of the provisions of the Statute, more extensive legal assistance is provided for in Act No. 1284/2000 than would have been possible otherwise under existing domestic law. 2

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

Yes. Section 2 of the Act on the implementation of the provisions of a legislative nature of the Rome Statute of the International Criminal Court and on the application of the Statute provides that the Ministry of Justice shall have the authority to receive requests for cooperation made by the International Criminal Court, concerning the investigation and prosecution of crimes within the jurisdiction of the Court, including requests for the arrest and surrender of persons and for the enforcement of orders of the Court, and shall execute the requests either itself or with the help of other competent authorities. Replies to the International Criminal Court shall be delivered through the Ministry of Justice even in cases where the Ministry of Justice has not itself executed the request, unless otherwise provided in the request for cooperation. Notwithstanding these provisions, the International Criminal Court may also contact competent Finnish authorities directly or through the diplomatic channels, or through the International Criminal Police Organization or any other appropriate regional organization. 2

1 1 1 2

6. Georgia

[Original: English]

Annex IV
Implementing legislation questionnaire for State Parties

1. Has your Government adopted any legislation implementing the Rome Statute ("the statute")?

Yes

Part B

5. In Implementing the statute, did your government draft implementing legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?

For achieving full implementation of the Rome Statute in Georgian national legislation the Parliament of Georgia adopted implementing legislation and also incorporated substantive provisions of the Statute in the pre-existing law. In August 14, 2003 the Parliament of Georgia adopted the "Law of Georgia on the Cooperation of Georgia with the International Criminal Court". The law established procedural framework of cooperation of Georgia with the ICC. Furthermore, relevant enactments had been made to the Criminal Procedure Code of Georgia.

As regards the substantive provisions of the Rome Statute, it is to be noted, that crimes envisaged under the Rome Statute had been incorporated in part 14 ("Crimes against mankind") of the Criminal Code of Georgia: crime of genocide (article 407), crimes against humanity (article 408), deliberate violation of the norms of the international humanitarian law during the armed conflict (article 411), violation of the norms of international humanitarian law during interstate or internal armed conflicts by creating danger for health or by severe physical injury (article 412) and violations of other norms of international humanitarian law (article 413). The articles: 407, 408 and 412 were reformulated by amendment #2937 to the Criminal Code of Georgia (28.04.2006) to bring national legislation in compliance with the Statute.

6. Does the implementing legislation incorporate the substantive crimes through references to the statute or by incorporating the crimes in the legislation itself?

The crime of genocide and the crimes against humanity had been incorporated in the Criminal Code of Georgia without the references to the Rome Statute. On the other hand, the definition of above-referred crimes is similar to the definitions stipulated by articles 7 and 8 of the Statute. Namely, the article 407 of the Criminal Code of Georgia Genocide is defined as:

"any of the following acts committed with the intent to destroy, in whole or in part national, ethnic, racial, religious or any other group, as such: killing the members of the group, causing grave injury to health, deliberately inflicting on the group grave conditions of life, imposing measures intended to prevent births within the group or forcibly transferring children of one ethnical group to another one".

In addition, according to article 408 of the Criminal Code of Georgia crime against humanity is defined as:

"any of the following acts committed as a part of a widespread or systematic attack directed against any civilian population or persons, as such: murder, extermination, grave injury to health, deportation, illegal deprivation of liberty, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, persecution against any identifiable group

- on political, racial, national, ethnic, cultural, religious or other grounds, apartheid or other inhuman acts, which cause serious physical or mental harm to a person".

With respect to the article 9 of the Statute ("War Crimes") relevant provisions of the Criminal Code of Georgia refer to the violations of international humanitarian law namely: article 411 ("Deliberate violation of the norms of the international humanitarian law during the armed conflict"), article 412 ("Violation of the norms of international humanitarian law during interstate or internal armed conflicts by creating danger for health or by severe physical injury") and article 413 ("Violations of other norms of international humanitarian law") of the Criminal Code.

Particular attention shall be paid to paragraph "d" of article 413 which declares punishable war crimes, envisaged by the international treaties of Georgia and which are not punishable under articles 411 and 412 of the Criminal Code of Georgia.

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

The Law of Georgia on the Cooperation of Georgia with the International Criminal Court (hereinafter the Law) fully implemented all modes of cooperation envisaged by Part 9 of the Rome Statute. Namely, Chapter IV of the Law ("Request of the International Criminal Law") among other issues refers to the form and content of the ICC request, immunity related issues, simultaneous requests submitted by the ICC and State Party, compensation of damage and etc. Chapter V of the Law establishes procedure for the transfer of accused person to the ICC.

Chapter VI "Other Forms of Cooperation" article 32 of the Law includes carrying out such procedural measures as: identification and interrogation of persons, obtaining of evidence, service of documents, conducting search and withdrawal, protection of witnesses, establishment of location of places and objects, conducting exhumation and etc.

In addition, paragraph "m" of article 32 of the Law the cooperation with the ICC envisages "any other kind of assistance which is not prohibited by the Georgian Legislation and which contributes to investigation and prosecution of crimes within the jurisdiction of International Criminal Court".

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

The Ministry of Justice of Georgia is the authorized state body for cooperation of Georgia with the International Criminal Court according to article 3 of the Law of Georgia on the Cooperation of Georgia with the International Criminal Court. For the fulfillment of this function, the Ministry of Justice of Georgia is authorized to:

- receive the request of the International Criminal Court for cooperation;
- decide on admissibility of cooperation with International Criminal Court, to work out the procedures of cooperation; in case of necessity, to decide on appeal against the jurisdiction of the International Criminal Court;
- decide on taking necessary measures for cooperation; at the same time, to determine which state body is directly authorized for the execution of the request;
- inform the International Criminal Court about the results of the execution of the request;
- consult the International Criminal Court about the issues brought in request in cases determined by the statute;

- f) in case of necessity to take measures for appointing the defender in treasury manner and/or for otherwise rendering legal assistance, in accordance with the manner established by Legislation;
- g) decide on transfer of a person to the International Criminal Court;
- h) transfer the request of International Criminal Court for conducting of criminal proceedings to corresponding authorized state body in accordance with the subparagraph "b" of the 4th Part of Article 70 of the Statute; ?
- i) decide upon the request of International Criminal Court for the enforcement of sentence in Georgia, concerning deprivation of liberty, also, decide about receiving of sentenced persons or/and enforcement of pecuniary penalty or reimbursement of other expenses, imposed by the International Criminal Court;
- j) determine the form of execution of request and the terms necessary for its fulfillment for the reason of undertaking urgent measures indicated in request;
- k) transfer on behalf of Georgia the evidences and information collected by the relative State Bodies to International Criminal Court, if the indicated fact makes it possible for the International Criminal Court to start the criminal prosecution;
- l) request the International Criminal Court to reimburse expenses for the execution of requests of mentioned Court in cases envisaged by the Statute;
- m) carry out other authorizations granted by the Statute and the Law. ?

1 1 1 1

7. Netherlands

[Original: English]

Promotion of the ratification and full implementation of the Rome Statute

The Netherlands

Annexe II - 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?

The Netherlands has special implementing legislation: the Internationaal Crimes Act ('Wet internationale misdrijven') and the International Criminal Court Implementation Act ('Uitvoeringswet van het Statuut van het Internationaal Strafhof met betrekking tot de samenwerking met en bijstand aan het ISH en de tenuitvoerlegging van zijn vonnissen').

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

The implementing legislation ('The International Crimes Act') incorporates the crimes in itself.

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

Yes, this is implemented through the 'International Criminal Court Implementation Act'.

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

The Implementation Act creates a centralized system, with the Minister of Justice as the central authority (Article 3). The Minister of Justice responds to a request himself or sends it to the Public Prosecutor in the Hague (centralised in a single prosecutors's office). The Public Prosecutor can, in implementing the request, request help from colleagues elsewhere. If, during the handling, an opinion of a judge is needed, this falls exclusively within the confines of the district court in The Hague (a single centralised court).

1 1 1 1 2

9. Paraguay

[Original: Spanish]

CUESTIONARIO PARA LOS ESTADOS PARTES SOBRE LAS LEYES DE APLICACIÓN DEL ESTATUTO DE ROMA

1. Ha adoptado su Gobierno leyes de aplicación del Estatuto de Roma (“el Estatuto”)?

No, hasta el día de la fecha no existe una Ley de aplicación del estudio del Estatuto de Roma.

EN CASO DE QUE LA RESPUESTA SEA NEGATIVA.

Parte A

2. Qué medidas ha tomado su Gobierno a nivel legislativo para la plena aplicación de las disposiciones del Estatuto en la legislación nacional?

Se ha formado una comisión interinstitucional para el estudio y formulación de un proyecto de Ley para la Implementación del Estatuto de Roma de la Corte Penal Internacional con representantes de la Corte Suprema de Justicia, del Ministerio de Relaciones Exteriores, del Ministerio Público y del Ministerio de Justicia y Trabajo. 2

3. Qué obstáculos, de haberlos, ha encontrado su Gobierno en relación con sus esfuerzos para promover la aplicación de las disposiciones del Estatuto?

Las dificultades encontradas durante la redacción del proyecto de Ley para la Implementación del Estatuto de Roma principalmente radicarón en la adecuación de la terminología penal internacional, especialmente en cuanto a los crímenes de guerra y a la terminología criminal militar. Igualmente, se podría mencionar el no contar con una mayor asistencia técnica en relación a la aplicación del Estatuto de Roma en otros países.

4. Qué tipo de asistencia podría coadyuvar los esfuerzos de su gobierno para la plena aplicación de las disposiciones del Estatuto?

Sería importante contar con una visión de expertos en Derecho Penal Internacional, a los efectos de tener mayor información y poder dar el debido enfoque al Proyecto de Ley para la Implementación del Estatuto. Asimismo, sería importante conocer el mecanismo de selección de los miembros de la Corte Penal, a los efectos de ir estableciendo el perfil del candidato a ocupar dicho cargo, o en su caso, apoyar la candidatura de un jurista extranjero de reconocida experiencia en la materia. 2

1 1 1 2

10. Poland

[Original: English]

Ad. 1

Yes. On November 23, 2004 entered into force a law concerning co-operation with the International Criminal Court.

Moreover, the draft law on the substantive criminal law has been prepared. Its aim is to complement the already existing regulations of the Criminal Code on crimes against humanity and war crimes.

Ad. 5

The regulations on co-operation with the ICC constitute a part of the Code of Criminal Procedure (Chapter 66e. *Co-operation with the International Criminal Court*), there is no specific law on co-operation with the ICC.

According to the Polish Constitution, international agreements after having been ratified by the Parliament are regarded as sources of universally binding law. They constitute a part of domestic legal order and may be applied directly. Furthermore, in the case of contradiction between the provisions of international agreement and provisions of domestic law, international law takes precedence over internal law. Hence, including international treaties within the framework of the sources of law in Poland, allows for direct application of the Rome Statute. Therefore, Chapter 66e of the Code of Criminal Procedure does not regulate the issues which are covered by the self-executory provisions of the Rome Statute and thus may be applied directly. The Chapter, in principle, deals with the issues in relation to which the Statute leaves States – Parties a certain degree of freedom as to the way of regulating them, or the regulations that enforce the Statute's provisions, e.g. the appointment of relevant authorities to execute the Court's requests for judicial assistance.

Ad. 6

The draft on substantive criminal law is aimed at incorporating crimes covered by the Statute into the Criminal Code. It is, however, limited to these crimes which has not been already covered by the Code (mainly crimes against humanity).

Ad. 7 - Yes, it does.

Ad. 8

No, it does not. However, it establishes national authorities to deal with the ICC requests for judicial assistance.

11. Portugal

[Original: English]

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.

1 1 1 1 1

2

12. Slovakia

[Original: Slovak]

fax: 00421 2 59 9 9 9 9
e-mail: stefan.majemik@justice.sk

Odpovede na dotazník o implementácii Rímskeho štatútu v zmluvných štátoch:

1. Áno, slovenské orgány prijali legislatívne opatrenia za účelom implementácie Rímskeho štatútu do národného práva.
5. Podstatné ustanovenia Rímskeho štatútu boli zapracované do predtým existujúcich zákonov.
6. Trestné činy boli implementované ustanoveniami, ktoré odkazujú na konkrétne články Rímskeho štatútu.
7. Do slovenského právneho poriadku neboli implementované všetky formy spolupráce, ktoré sú ustanovené v deviatej časti Rímskeho štatútu.
8. Implementovaná legislatíva neobsahuje úpravu foriem komunikácie s Medzinárodným trestným súdom.

1 1 1 1

2

2