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National Implementation of the Rome Statute of the International Criminal Court: In Search of an Appropriate Modality

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ABSTRACT

The implementation of the Rome Statute in the domestic sphere of each State party is crucial for achieving its ultimate purpose: to end impunity for perpetrators of heinous international crimes. The present paper aims to appraise various modalities for States to implement the Statute. It applies doctrinal legal research by analyzing the relevant provisions of the Rome Statute and evaluating the practice of selected States. The paper finds that the implementation modality primarily depends on whether the State is a monist or a dualist. Even in the same group of States, the details may vary depending on the constitutional law requirements. Several States enact the implementation legislation before adopting the Statute whereas other States do it only after joining the Statute. While many States adopt a single comprehensive legislation incorporating key obligations of the Statute, other States enact multiple legislation to implement the Statute. Yet some States follow the model law approach. After appraising the modalities, the paper concludes with recommendations for further improvement.

Keywords	*Rome Statute; national implementation; complementarity; criminalization of Rome Statute crimes; cooperation with the ICC*
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Manuscript History: *Received:* 2024-03-14 *Accepted:* 2024-10-05 *Corresponding Author:* Abdul Ghafur Hamid, ghafur@iium.edu.my	Legal Spirit is *Licensed under a Creative Commons Attribution-ShareAlike 4.0 International License* **Indexed:** **Layout Version:** V8.2024

PRELIMINARY

There are currently 124 States parties to the Rome Statute of the International Criminal Court (ICC), which entered into force on 1 July 2002.[1] It means that although there are opposing States, the overwhelming majority of States embrace the Rome Statute and the Court is fully operational.

It is the basic obligation of States parties to incorporate obligations under the Statute into their domestic law, which is commonly known as the implementation process. There are two main purposes of enacting national implementing legislation: (i) to materialize the

[1] "The State Parties to the Rome Statute," Website of the International Criminal Court, https://asp.icccpi.int/statesparties#:~:text=123%20countries%20are%20States%20Parties,Western%20European%20and%20other%20States.

principle of complementarity by enhancing States' capability to investigate and prosecute core international crimes and thus ensuring the primacy of national jurisdiction, and (2) to enable States to fully cooperate with the Court. Nevertheless, around 40 % of the 124 State parties have not yet adopted legislation for the implementation.[2] Even among those States that have adopted implementing legislation, less than 50% have criminalized ICC crimes in their domestic law.[3] The lack of effective implementing legislation for the Rome Statute has been a hard-core problem for the international criminal justice system.[4]

The stumbling blocks for enacting implementing legislation are inadequacy of resources, technical assistance, and legal expertise. To many States, the national implementation of the Rome Statute is a formidable challenge, given the diverse constitutional practices and national characteristics. The present paper is an attempt to appraise the implementing legislation of selected monist and dualist States intending to demonstrate which modality of implementing legislation is appropriate for what type of State.

Due to a lack of a prescribed modality for implementation in the Rome Statute, States are free to choose any modality they like. The State practice witnesses that there are at least three modalities for implementing purposes. They are (i) the single comprehensive enactment; (ii) the model law; and (iii) the multiple enactment.

The paper starts with the preliminary matters and the elucidation of the methodology. It then identifies the scope of implementing legislation including, among others, the principle of complementarity, incorporating the Rome Statute crimes into the national legal order, cooperation with the ICC, and judicial assistance such as arrest and surrender, witness protection, and the issues of extradition and immunity. After appraising the modalities of national implementing legislation considering the Rome Statute and the actual practice of States, the paper focuses on findings and conclusion.

METHOD

The present paper is primarily doctrinal legal research. As Terry Hutchinson rightly put it, "doctrinal research lies at the heart of any lawyer's task because it is the process used to identify, analyze, and synthesize the content of the law."[5] Critical analysis of primary sources is an important aspect of the doctrinal method. The paper, therefore, analyzes core obligations under the Rome Statute, the practice of selected State parties, particularly constitutional laws and national legislation of these countries, and model laws prepared by the South African Development Community,[6] Commonwealth Secretariat,[7] and

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2 Birkett, D.J. (2019) 'Twenty Years of the Rome Statute of the International Criminal Court: Appraising the State of National Implementing Legislation in Asia,' *Chinese Journal of International Law*, Vol 18 No. 2, 353–392, at 353.

3 'Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties,' International Bar Association (IBA), (October 2021), 187-195 https://www.ibanet.org/document?id=ICC-Report-Rome-Statute-October-2021.

4 See 'International Criminal Court: The failure of States to enact effective implementing legislation,' Amnesty International (September 2004), 42-48. https://www.amnesty.org/ar/wp-content/uploads/2021/09/ior400192004en.pdf.

5 Terry Hutchinson, (2017) 'Research Methods in Law,' in Dawkin Watkins (ed.) *Doctrinal Research*, 2nd. ed. Routledge, 32.

6 Maqungo S. (2000) 'The Establishment of the International Criminal Court: SADC's Participation in the Negotiations,' *African Security Review*, Vol. 9 No. 1, 51-53.

7 'International Criminal Court (ICC) Statute and implementation of the Geneva Conventions,' (2011), *Commonwealth Law Bulletin*, Vol 37 No. 4, 683-738.

the League of Arab States.[8] It does not, however, exclude secondary sources, such as scholarly articles, books, and other publications.

While the research is doctrinal, it also relies in part on comparative analysis. This is necessary as the internal application of international treaties witnesses the two approaches: the monist and the dualist. Civil law countries are primarily monist and their common law counterparts are generally dualist. The paper compares the practices of these two groups of States.

RESULT AND DISCUSSION

Identifying the contents of implementing legislation

The implementing legislation must encompass two essential components: (i) the idea of complementarity, and (ii) the State's cooperation with the Court.

(i) Materializing complementarity

After a heated negotiation process, the Statute finally endorsed the principle of complementarity that allows the States' primacy over ICC to prosecute Rome Statute crimes.[9] It is embodied in the Preamble: "The International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions."[10] The Court under Article 17 may exercise jurisdiction over the core crimes only if the State in question is "unwilling or unable genuinely to carry out the investigation or prosecution."[11]

A question that is frequently asked is what impact the principle of complementarity will have on national law. The principle will inspire States to keep their sovereignty intact by retaining their primacy over the ICC in dealing with heinous international crimes.[12] They would be reluctant to admit their judicial and legal inadequacies that would allow admissibility of a case to the ICC. They would aggressively pursue domestic prosecutions so that the ICC may not step in and take away their power to prosecute. To achieve complementarity, State parties need to adopt implementing laws encompassing, among others, the definition of crimes, the jurisdictional scope, the general principles of criminal law, and offences affecting the administration of justice. It is a must for States to fully incorporate the core crimes, namely, "genocide, crimes against humanity, war crimes, and aggression,"[13] into their national legal systems.

Most States follow one of the two modalities in incorporating the ICC crimes. They are: (i) the replication modality, that is, reproducing the definition of crimes of the Rome Statute verbatim, or (ii) the reference modality, that is, directly referring to the relevant article number of the Rome Statute. Both modalities are commendable as they carry two important advantages. First, these modalities do not require much resources and expert knowledge of

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8 Arab Justice Ministers Council, 'Decree Regarding the Arab Model Law Project on Crimes within the Jurisdiction of the ICC,' Decree No. 598-21d (29 November 2005), https://www.un.org/sexualviolenceinconflict/report/decree-regarding-the-arab-model-law-project-on-crimes-within-icc-jurisdiction/.

9 Sheng, A. (2007) 'Analyzing the International Criminal Court's Complementarity Principle through a Federal Court's Lens,' *ILSA Journal of International & Comparative Law*, Vol. 13, 413, 415. See also Burke-White, W.W. (2008) 'Proactive Complementarity: The International Criminal Court and National Courts in the Rome System of International Justice,' *Harvard Journal of International Law*, Vol. 59, 53, at 54.

10 Rome Statute, Preamble. Article 1 of the Statute also reaffirms the complementarity principle.

11 Rome Statute, Article 17.

12 See Kleffner, J.K. (2003) 'The Impact of Complementarity on National Implementation of Substantive International Criminal Law,' *Journal of International Criminal Justice*, Vol. 1, 86-113; Gurulé, J. (2001) 'The International Criminal Court: Complementarity with National Criminal Jurisdiction,' *Amicus Curiae*, 21-25.

13 Definitions of the first three crimes are enunciated in Articles 6, 7, and 8 of the Statute respectively. The definition of the crime of aggression was adopted at the Kampala Review Conference (amendment of Article 8) on 10 June 2010.

the subject matter. This is a major advantage for developing countries. Secondly, they may greatly reduce inaccuracy in the implementation.[14]

The Replication Modality

This modality is used by many States, including Australia, Belgium, Georgia, Kenya, Malta, Mauritius, South Africa, and Trinidad and Tobago. Some States reproduce Articles 6, 7, and 8 of the Rome Statute verbatim in their national legislation whereas others append these definitions of crimes in the schedules of the implementing legislation.[15]

International Criminal Court (Consequential Amendments) Act 2002 of Australia illustrates the first method of repeating definitions of ICC crimes verbatim in domestic law. This Act amends the Criminal Code Act 1995. The definition of crimes under the Rome Statute, together with the elements of crimes, are replicated verbatim in the amended Criminal Code Act 1995.

The second method of appending the definitions in the schedule can be found in the Implementation of the Rome Statute of the International Criminal Court Act 2002, adopted by South Africa.[16] In section 1, definitions of terms, it is stated that: "genocide means any conduct referred to in Part 1 of Schedule 1, a crime against humanity means any conduct referred to in Part 2 of Schedule 1, a war crime means any conduct referred to in Part 3 of Schedule 1."[17] In Schedule 1, "genocide, a crime against humanity, and a war crime" are defined, replicating definitions of these crimes in Articles 6, 7, and 8 respectively of the Rome Statute.[18]

The reference modality

The 'reference modality,' directly referring to the relevant article number of the Statute, is used by several other States parties. The International Criminal Court Act 2001 of the United Kingdom, for instance, incorporates the ICC crimes in the following manner:

> "Meaning of genocide, crime against humanity, and war crime
> (1) In this Part— 'genocide' means an act of genocide as defined in Article 6, 'crime against humanity' means a crime against humanity as defined in Article 7, and 'war crime' means a war crime as defined in Article 8.2.
> (2) In interpreting and applying the provisions of those Articles the court shall take into account— (a) any relevant Elements of Crimes …."[19]

It is to be noted that the elements of crimes are quoted in the implementing legislation. It demonstrates the commitment of the State to implement the Statute.[20]

Apart from the United Kingdom, the following States apply the reference modality: Austria, New Zealand, Ireland, Samoa, the Republic of Korea, and Uganda. The advantages of this modality are clarity and conciseness.[21]

Concerning jurisdiction, States should be assertive in that they should emphasize in their implementing legislation the primacy of their domestic courts over the ICC crimes. A good

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14 Bekou, O. and Shah, S. (2006) 'Realising the Potential of the International Criminal Court: The African Experience,' *Human Rights Law Review*, Vol. 6 No. 3, 499, at 509.

15 Implementing the Rome Statute of the International Criminal Court, Case Matrix Network (CMN), Centre for International Law Research and Policy, September 2017, 22. https://www.legal-tools.org/doc/e05157/pdf/.

16 Implementation of the Rome Statute of the International Criminal Court Act, Act 27 of 2002 (South Africa). See Plessis M. (2007) 'South Africa's Implementation of the ICC Statute: An African Example,' *Journal of International Criminal Justice*, Vol. 5 No. 2, 460.

17 Implementing the Rome Statute of the International Criminal Court Act 2002 (South Africa), section 1.

18 Ibid. Schedule 1.

19 International Criminal Court Act 2001 (the United Kingdom), section 50.

20 See Cryer, R. and Bekou, O. (2007) 'International Crimes and ICC Cooperation in England and Wales,' *Journal of International Criminal Justice*, Vol. 5 No. 2, 441; Cryer, R. (2002) 'Implementation of the International Criminal Court Statute in England and Wales,' *International and Comparative Law Quarterly*, Vol. 51 No. 3, 733.

21 Implementing the Rome Statute of the International Criminal Court, Case Matrix Network (CMN), 23.

example is the International Criminal Court Act 2002 of Australia, which provides that "…this Act does not affect the primacy of Australia's right to exercise its jurisdiction for crimes within the jurisdiction of the ICC."[22] It clearly shows the readiness and commitment of the Australian courts to investigate and prosecute any core international crime.[23]

In the implementing legislation, States as a general rule rely on jurisdictional principles that are well-established in international law, such as the territoriality principle, the nationality principle, and the passive personality principle.[24]

General principles of criminal law are enshrined in Part 3 of the Rome Statute.[25] Key factors that should attract the attention of States parties in adopting implementing legislation are "individual criminal responsibility,[26] the responsibility of commanders and other superiors,[27] the irrelevance of official capacity,[28] non-applicability of the statute of limitation,[29] and grounds for excluding responsibility (defences)."[30]

There are six punishable offences against the administration of justice under Article 70(1) of the Rome Statute, namely "giving false testimony, presenting false evidence, influencing a witness, impeding or intimidating an official of the Court, retaliating against an official of the Court, and soliciting or accepting a bribe as an official of the Court."[31] States parties normally domesticate these offences in their national implementing legislation.[32]

States that opt for implementing the Rome Statute may face constitutional issues, which can be a major obstacle in the implementation process.[33] Examples are the immunity granted to the head of State or government[34] and the non-extradition of nationals of a State.[35] To amend the constitution is the first option to resolve these issues. France can be taken as a good example. However, the French amendment is general, [36] and just inserted a new Article 53(2), stating that "France may recognize the jurisdiction of the ICC as provided in the Rome Statute."[37] Amending the constitution, however, is burdensome and complex. It may create political sensitivity. To avoid this, some States apply the interpretative approach, that is, to interpret the provision in the constitution to apply to national courts only and not to the ICC.[38] Another option is to follow the ruling in the *Pinochet case*.[39] It says that a rule of general customary international law has been established to lift the subject-matter immunity of a

22 International Criminal Court Act 2002 (Australia), 28 June 2002, section 3.

23 Bekou, O. (2011) 'In the hands of the State: Implementing legislation and complementarity,' in Stahn, C. and Mohamed M. El Zeidy (Eds.) *The International Criminal Court and Complementarity: From Theory to Practice*, Cambridge University Press, 830, at 843.

24 Implementing the Rome Statute of the International Criminal Court, Case Matrix Network (CMN), 51.

25 Rome Statute, Articles 22-33.

26 Ibid., Article 25.

27 Ibid., Article 28.

28 Ibid., Article 27.

29 Ibid., Article 29.

30 Ibid., Articles 31-33.

31 Ibid., Article 70(1).

32 See, for example, International Criminal Court Act 2006 (Republic of Ireland) 31 October 2006, section 11.

33 Report on Constitutional Issues raised by the Ratification of the Rome Statute of the International Criminal Court, CDL-INF (2001) 1, adopted by the Venice Commission, Strasbourg, 15 January 2001, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF(2001)001-e.

34 Ibid., 4-6

35 Ibid., 6-8.

36 Duffy H. (2001) 'National Constitutional Compatibility and the International Criminal Court,' *Duke Journal of Comparative & International Law*, Vol. 11 No. 5, 5-38, at 9.

37 See the new Article 53(2) of the French Constitution, inserted by the constitutional amendment of 8 July 1999.

38 Venice Commission Report (2001), 12.

39 *R v Bow Street Metropolitan Stipendiary, ex parte Pinochet Ugarte*, *The Pinochet* case [1999] 2 All ER 97.

head of State who commits an international crime. This is particularly possible in monist States where the general principles of International law prevail over national law.[40]

(ii) Cooperation of State parties with the ICC

The Rome Statute in its Part 9 has created a "detailed cooperation regime" between States parties and the Court. The Statute unequivocally imposes on States parties the general obligation to "cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court."[41] The cooperation regime needs the adoption of domestic laws as the Statute imposes on States "to ensure that there are procedures available under their national law for all of the forms of cooperation."[42]

Due to a lack of police force and territory of its own, the Court is entirely dependent on the full cooperation of State parties for arrest and surrender. Article 89 (1) of the Statute enunciates that "States Parties shall, in accordance with the provisions of this Part and the procedure under their national law, comply with requests for arrest and surrender."[43] State parties need to adopt procedural laws to comply with the obligation of arrest and surrender.

The national legislation must also have procedures for freezing assets, taking of evidence, and service of process, to conduct if requested by the ICC. The State party also must have national law to make it available for a prisoner to serve a sentence of imprisonment in the State if imposed by the court.

The Rome Statute entrusts the ICC with the "international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purpose." Again, the ICC "enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes." In pursuant thereof, the Agreement on the Privileges and Immunities of the International Criminal Court was adopted by the Assembly of States Parties on 10 September 2002.[44] The Agreement grants "privileges and immunities to the Court, its officials, personnel, counsel, witnesses, victims, experts, State representatives participating in ICC proceedings or the ASP, as well as other persons whose presence is required at the seat of the Court."[45] Many States have adopted domestic laws to implement the Agreement.

Modalities of implementing legislation in the practice of States

All State parties, regardless of their legal system, will need to modify their national law or adopt new legislation to meet the requirements of the Rome Statute system. The Rome Statute does not provide any specific modality of implementation. What is important is that the national legislation must effectively incorporate the key obligations under the Rome Statute.[46] This section will identify when implementing legislation should be adopted, discuss the impact of the monist-dualist dichotomy, and finally enunciate the three specific modalities for national implementation.

The time when the implementing legislation should be adopted

40 This can be illustrated by the case of Italy. Article 10 of the Italian constitution says "Italy's legal system shall conform with the generally recognised principles of international law," It means that the immunity provision in the Italian national law is now to be in accord with Article 27 of the Rome Statute. For the same effect, see Article 9 of the Austrian constitution.

41 Rome Statute, Article 86.

42 Ibid., Article 88.

43 Rome Statute, Article 89(1).

44 Agreement on the Privileges and Immunities of the International Criminal Court, 9 September 2002, entered into force on 22 July 2004. Currently there are 79 States parties to the Agreement.

45 Ibid., Articles 13-22.

46 Terracino, J.B. (2007) 'National Implementation of ICC Crimes: Impact on National Jurisdictions and the ICC,' *Journal of International Criminal Justice*, Vol. 5, 421-440.

The common practice of most States is that they ratify the Rome Statute first and only after that do they adopt implementing legislation. However, some dualist States require implementing legislation even before ratification or accession.[47] For example, the United Kingdom,[48] the Philippines,[49] Australia,[50] Canada,[51] and Finland[52] enacted the implementing legislation before ratifying the Rome Statute. This approach attracts two advantages: (i) the State could comply with any request for cooperation from the Court immediately upon ratification; and (ii) whenever ICC crimes are committed in its territory, the State may right away apply complementarity and initiate the jurisdiction of national courts.

The monist-dualist dichotomy and its impact on the modality of implementation

There are two main theories in respect of the relationship between international law and national law: the monist and the dualist. According to the monist theory, international law is directly applicable in the domestic sphere of States. It is automatically part of the law of the land without any implementing legislation. On the other hand, the dualist theory assumes that international law will not be part of the national legal system unless it is incorporated into national law through an enabling statute.[53]

It is axiomatic that whether a State is a monist, or a dualist affects how the Rome Statute is domestically implemented. However, State practice varies significantly even among the so-called dualist or monist States. In reality, we cannot simply generalize a State as "monist" or "dualist" because it may be "monist" in relation to treaty law while it may be "dualist" with respect to customary law.[54]

With regard to the domestic application of treaties, the two systems can be distinguished by means of the requirement of legislation. A State that applies monism in relation to treaties may not as a general rule be required to adopt any new legislation to give legal effect to the treaty in the national legal system. At least self-executing provisions of the treaty are applied directly in the national legal system without the necessity of any act or statute made by the legislature.[55]

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47 See Boas, G. (2004) 'An Overview of Implementation by Australia of the Statute of the International Criminal Court,' *Journal of International Criminal Justice*, Vol. 2, 179-190.

48 The UK adopted the International Criminal Court Act 2001 on 11 May 2001 and ratified the Rome Statute on 4 October 2001.

49 The Philippines adopted the Act on Crimes against International Humanitarian Law, Genocide, and Other Crimes against Humanity on 11 December 2009 and ratified the Rome Statute on 30 August 2011.

50 Australia adopted the International Criminal Court Act 2002 on 28 June 2002 and ratified the Rome Statute on 1 July 2002.

51 Canada adopted the Crimes Against Humanity and War Crimes Act on 29 June 2000 and ratified the Rome Statute on 7 July 2000.

52 Finland passed 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 (Act No 1284/2000)" on 28 December 2000 and ratified the Rome Statute the next day. Finland is in principle a dualist State in relation to international treaties. See Joutsamo, K. (1983) 'The Direct Effect of Treaty Provisions in Finnish Law,' *Nordic Journal of International Law*, Vol. 52 No. 3-4, pp. 34 - 44, at p. 35.

53 Abdul Ghafur Hamid @ Khin Maung Sein, (2023) *Public International Law: A Practical Approach*, 5th ed., Sweet & Maxwell) 54.

54 Ibid., 55-56.

55 Denza, E. (2014) 'The Relationship between International and National Law' in Evans, M. (Ed), *International Law*, 4th ed. Oxford University Press, pp. 412, 421. See also Bekou, O. and Shah, S. (2006) 'Realising the Potential of the International Criminal Court: The African Experience,' *Human Rights Law Review*, Vol. 6 No. 3, 499, at 503.

On the other hand, in a State that applies dualism in relation to treaties, treaties do not have a direct legal effect or automatically create law in the national legal system. After the adoption of a treaty, the legislature of the State must adopt an enabling act or statute to give legal effect to the treaty domestically.[56]

Nevertheless, due to the distinctive characteristic of the Rome Statute and the nature of the work the ICC carries, adopting the Statute without implementing legislation could not be sufficient even for a "monist" State. The provisions on cooperation under Part 9 of the Rome Statute are specifically not self-executing and cannot be directly applied. Issues relating to arrest and surrender, and immunity of officials need specific national legislation to regulate them.[57]

Apart from the impact of the monist/dualist dichotomy, the following sections will explore three specific modalities applied by States that have adopted implementing legislation.

(i) The single comprehensive enactment modality

The first modality requires single, comprehensive legislation encompassing whatever is necessary to implement. The advantage of this modality is clarity and ease of reference. A single, all-encompassing implementation legislation will be enormously useful for researchers and legal scholars to get all the necessary information in one focal point. Several States, mostly dualists, utilize this modality. The following are examples of these States and an analysis of their respective legislation.

Canada: The Crimes against Humanity and War Crimes Act, 2000

Canada adopted the "Crimes Against Humanity and War Crimes Act" on June 24, 2000,[58] as the first country in the world that embrace the idea of implementation. A few days after passing the implementing legislation, Canada ratified the Rome Statute on July 9, 2000. The Act criminalizes the core crimes as defined in the Rome Statute and customary and other rules of international law. In this way, Canada can fully rely on the principle of complementarity and claim the primacy of Canadian courts to prosecute ICC crimes.[59]

A specific part of the Act deals with "consequential amendments."[60] The amended Canadian laws enunciated in the Act included "the Criminal Code, the Extradition Act, and the Mutual Legal Assistance in Criminal Matters Act." The main purpose of amending the Extradition Act was to make sure that an accused person could not claim immunity to challenge his surrender to the Court. By amending the Mutual Legal Assistance in Criminal Matters Act, Canada can now help the ICC to investigate offences of genocide, crimes against humanity, and war crimes in much the same way that it currently assists foreign States with

56 Brownlie, I. (2008) *Principles of Public International Law*, Oxford University Press, 31-32.

57 "Implementation," Parliamentarians for Global Action (PGA), https://www.pgaction.org/ilhr/rome-statute/implementation.html. See also Bekou, O. and Shah, S. (2006) p. 499; Kleffner, J.K. (2003) 'The Impact of Complementarity on National Implementation of Substantive International Criminal Law,' *Journal of International Criminal Justice*, Vol. 1, 86-113; Schense, J. and Piragoff, D.K. (2003) 'Commonalities and Differences in the Implementation of the Rome Statute' in Neuner, M. (Ed.), *National Legislation Incorporating International Crimes: Approaches of Civil and Common Law Countries*, Berliner Wissenschafts-Verlag (BWV), 239.

58 The Crimes against Humanity and War Crimes Act, 2000 (Canada), adopted on June 24, 2000.

59 'Canada and the International Criminal Court,' The Government of Canada Website, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/icc-cpi/index.aspx?lang=eng.

60 The Crimes against Humanity and War Crimes Act, 2000 (Canada), "Consequential Amendments," Articles 33-75.

criminal investigations, in matters such as the identification of persons and gathering evidence in Canada.[61]

Canada's first-ever application of the Crimes Against Humanity and War Crimes Act is illustrated by the Munyaneza case.[62] In this case, Mr. Munyaneza was convicted under the three core ICC crimes on 22 May 2009 and was sentenced to life imprisonment on 29 October of the same year.[63]

The United Kingdom: The International Criminal Court Act 2001[64]

The International Criminal Court Act (ICCA) 2001 fully incorporates the Rome Statute into English law. The three objectives of the Act are:

(1) "to incorporate into domestic law the offences contained in the Rome Statute (genocide, war crimes, and crimes against humanity);
(2) to fulfill the United Kingdom's obligations under the Statute, particularly in relation to the arrest and surrender of persons wanted by the ICC and the provision of assistance concerning ICC investigations; and
(3) to create a legal framework so that persons convicted by the ICC can serve prison sentences in the United Kingdom."[65]

The Act, in Parts 2, 3, and 4 provides for the arrest and surrender of persons, and other forms of assistance such as taking evidence, service of process, freezing of forfeited property, and enforcement of judgments and orders.[66] Part 5 deals with offences. The ICCA uses the reference modality and defines the meaning of "genocide, crimes against humanity, and war crimes" by directly referring to the relevant article number of the Statute.[67] It incorporates, by reference, the "element of crimes" as adopted in Article 9 of the Statute.[68] It also criminalizes the ancillary offences of "aiding, abetting, inciting, attempting, conspiring, assisting or concealing the commission of any substantive offences."[69]

According to the ICCA, "commanders and other superiors" will be criminally responsible for failure to prevent the commission of, or take necessary action on the offences committed by, their subordinates.[70] The ICCA appends 10 schedules. Schedule 1 deals with immunities of judges and officials of the Court and Schedule 9 relates to offences against the administration of Justice as contained in Article 70 of the Statute.[71]

Ireland: The International Criminal Court Act 2006

61 'Canada and the International Criminal Court,' the Government of Canada Website.
62 *R. v. Munyaneza* [2009] QCCS 2201.
63 Lafontaine, F. (2010) 'Canada's Crimes against Humanity and War Crimes Act on Trial: An Analysis of the Munyaneza Case,' *Journal of International Criminal Justice*, Vol. 8, 269-288, at 269.
64 The International Criminal Court Act (the ICCA) (UK), 2001, adopted on 11 May 2001.
65 Foreign and Commonwealth Office: International Criminal Court Act: Explanatory Notes, para. 6. https://web.archive.org/web/20070927192736/http://www.fco.gov.uk/Files/kfile/ICCexplanatorynotes.pdf.
66 The ICCA (UK), Parts 2, 3, and 4.
67 Ibid., section 50(1). It directly refers to Article number 6, 7, and 8(2) of the Statute to define the three crimes.
68 Ibid., section 50 (2).
69 Ibid., section 55.
70 Ibid., section 65.
71 See Grady, K. (2014) 'International Crimes in the Courts of England and Wales' *Criminal Law Review*, Vol. 10, 693-722; Cryer, R. (2002), 'Implementation of the International Criminal Court Statute in England and Wales,' International and Comparative Law Quarterly, Vol. 51 No. 3, 733-743.

Ireland is one of the best examples of fully implementing the Rome Statute in a single enactment by adopting the International Criminal Court Act of 31 October 2006.[72] The Act gives legal effect to the Rome Statute, ratified by Ireland on 11 April 2002. Ireland, therefore, had ample time to prepare for comprehensive legislation and could take lessons from the weaknesses of earlier legislation adopted by other States.

Part 1 of the Act touches on preliminary matters. In Part 2, the Act focuses on ICC offences. The Act defines 'genocide,' 'crime against humanity,' and 'war crime' by applying the "reference method," by directly referring to Articles 6, 7, and 8 (2) (except subparagraph b(xx) of the Rome Statute.[73] The Act also repeals the Genocide Act 1973.[74] Penalty for ICC offences is: (i) imprisonment for life if the offence involves murder or is of extreme gravity, or (ii) imprisonment for a term not exceeding 30 years in any other case.[75] The Act criminalizes "offences against the administration of justice" by directly referring to Article 70(1) of the Rome Statute. Punishment for the offence is a fine or imprisonment not exceeding 5 years.[76] It provides for extra-territorial jurisdiction for offences under the Act.[77] By applying the reference method, the Act also refers to Article 68 of the Rome Statute for the protection of victims and witnesses.[78]

Part 3 of the Act deals with requests by the ICC for "arrest and surrender" and Part 4 relates to requests to "freeze assets and enforce orders of the Court." Part 5 touches on other requests by the ICC. Part 6 relates to the sitting of the ICC in Ireland, and affirms privileges and immunities of ICC Judges, Prosecutor, Registrar, and other members of the staff and other persons. The Act affirms that the Agreement on Privileges and Immunities of the ICC, as appended in Schedule 2, shall have legal effect in Ireland. It also touches on how to take evidence in proceedings. Finally, the Act provides that the "consequential amendments," as annexed in Schedule 3, shall have legal effect in Ireland.

The Act appends four Schedules. Schedule 1 annexes the entire Rome Statute verbatim. Agreement on Privileges and Immunities of the International Criminal Court is attached in Schedule 2. Schedule 3 deals with "consequential amendments." It announces amendments to the Defences Act 1954, the Extradition Act 1965, the Geneva Conventions Act 1962, the Diplomatic Relations and Immunities Act 1967, the Criminal Procedural Act 1967, and the Bail Act 1997. Schedule 4 attaches the Convention on the Prevention and Punishment of the Crime of Genocide, 1948.

Other dualist States such as New Zealand[79] and Uganda[80] also, follow the single comprehensive enactment modality.

The practice of Australia: an exceptional case

Australian practice is exceptional. Although it is a dualist State, it has deviated slightly from other common law countries. Instead of adopting a single comprehensive legislation, it has adopted two comprehensive legislation. The reality, however, is that the Australian practice is not very much different from the modality of adopting a single comprehensive enactment like Canada, the United Kingdom, or Ireland. The only difference is that Australia adopts two comprehensive enactments: one deals with the cooperation regime with the ICC and the other relates to the "consequential amendments," by amending the Criminal Code to

72 International Criminal Court Act 2006 (Kingdom of Ireland), 31 October 2006.
73 Ibid., s. 6
74 Ibid., s. 7
75 Ibid., s. 10.
76 Ibid., s. 11.
77 Ibid., s. 12.
78 Ibid., s. 14.
79 The Rome Statute is implemented in New Zealand through the International Crimes and International Criminal Court Act 2000, October 1, 2000.
80 The International Criminal Court (ICC) Act, May 25, 2010, gives legal effect to the Rome Statute in Uganda.

accommodate the ICC crimes. On the other hand, the other dualist States combine the two and merge them in a single enactment. Australia's two enactments are in effect equivalent to a single comprehensive enactment.

To ensure the primacy of Australia in prosecuting ICC crimes and enabling ratification of the Rome Statute, Australia adopted the two enabling laws: "(i) the International Criminal Court Act 2002;[81] and (ii) the International Criminal Court (Consequential Amendments) Act 2002."[82] Once the implementing legislation was ready, Australia ratified the Rome Statute on July 1, 2002.

The primary objective of the International Criminal Court Act 2002 (the ICC Act) is to facilitate compliance with obligations under the Rome Statute.[83] The areas covered by the Act are "the nature of cooperation, requests for arrest and surrender of persons to the ICC, documentary and evidentiary matters, search and seizure, protection of victims and witnesses and the preservation of evidence, confidential information and the protection of Australia's national security interests, enforcement of reparation orders and forfeiture of proceeds, enforcement of sentences in Australia, and requests that may be made by Australia to the ICC."[84]

The International Criminal Court (Consequential Amendments) Act 2002 was adopted "to amend the Criminal Code Act 1995 and certain other Acts in consequence of the enactment of the ICC Act 2002."[85] The Act consists of seven Schedules, amending seven existing domestic laws. The most substantive amendment, as enunciated in Schedule 1, is the Amendment of the Criminal Code Act 1995. The amendment adds a new Chapter 8, entitled "Offences against Humanity and Related Offences." The new chapter focuses on the "elements of the crimes of genocide, crimes against humanity, war crimes, and crimes against the administration of the ICC."[86]

(ii) The model law modality

This modality can be said as a sub-set of the above-mentioned single comprehensive enactment modality, the reason being that those that follow the model law modality also apply the single comprehensive enactment style.

There are international organizations that improvise a template for the States to use in drafting their national implementing legislation. For instance, the South African Development Community (SADC),[87] the Commonwealth Secretariat,[88] and the League of Arab States[89] have prepared model laws to assist the implementation of the Rome Statute.

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81 The International Criminal Court Act 2002 (Australia), adopted on 28 June 2022.

82 The International Criminal Court (Consequential Amendments) Act 2002 (Australia), adopted on 28 June 2002; Triggs, G. (2003) 'Implementation of the Rome Statute for the International Criminal Court: A Quiet Revolution in Australian Law,' 25(4) *Sydney Law Review*, Vol. 25 No. 4, 507-534, at 507.

83 The International Criminal Court Act 2002 (Australia), Long Title.

84 Boas, G. (2004) 'An Overview of Implementation by Australia of the Statute of the International Criminal Court,' *Journal of International Criminal Justice*, Vol. 2, 179–190, at 184-85.

85 The International Criminal Court (Consequential Amendments) Act 2002 (Australia), Long Title.

86 Boas, G. (2004) 'An Overview of Implementation by Australia of the Statute of the International Criminal Court,' at 186.

87 See Maqungo, S. (2000) 'The Establishment of the International Criminal Court: SADC's Participation in the Negotiations,' *African Security Review*, Vol. 9 No 1, 51-53

88 Commonwealth Secretariat, (2011) 'International Criminal Court (ICC) Statute and implementation of the Geneva Conventions,' *Commonwealth Law Bulletin*, Vol. 37 No. 4, 683-738.

89 'Decree Regarding the Arab Model Law Project on Crimes within ICC jurisdiction,' Decree No. 598-21d, adopted by the Arab Justice Ministers Council, 29 November 2005

The Commonwealth Secretariat, for example, first adopted a "Model Law to Implement the Rome Statute of the ICC" in September 2004.[90] However, following the outcome of the Kampala Review Conference of the Assembly of State parties in 2010, the Secretariat formed an expert group to revise and update the Model Law. The revised Model Law was approved by the Commonwealth Law Ministers in their meeting held on 11-14 July 2011 in Sydney, Australia.[91]

However, these model laws are useful as guidance only and States themselves must do necessary adjustments based on the peculiarity of their national legal system.

The practice of Samoa

The Commonwealth Model Law provides a template that member States may use in drafting their own implementing legislation. When considering developing the national enactment to implement the Rome Statute, Samoa opted to utilize the Commonwealth Model Law. In 2007, Samoa adopted a comprehensive International Criminal Court Act,[92] covering both aspects of crimes and cooperation.

The Samoan ICC Act is remarkable because it is very much in detail and appears to cover every aspect of implementing the Rome Statute. It is an Act "to enable Samoa to implement and give effect to its obligations under the Rome Statute."[93] In relation to the definition of crimes, it uses the reference modality, by directly referring to Articles 6, 7, and 8 of the Statute. However, in one aspect, it goes even beyond the provisions of the Rome Statute. Crimes punishable under the Act are defined not only by the Rome Statute but also by customary international law and other rules of international law.[94] With regard to the interpretation of the definition of crimes, the Act directly refers to Article 9 of the Statute.[95]

There are extensive provisions on the cooperation with the ICC, even by referring to the Rules of Procedure of the Court. However, the approval of the Minister is required for any request for cooperation. The Act also contains detailed provisions to deal with the eventuality of the ICC sitting in Samoa.[96] There is one consequential amendment to the domestic law. The Head of State Act 1965 is amended by substituting with a new section 5 that lifts the immunity of the head of State if charged with a Rome Statute crime.[97] The entire Rome Statute is appended in Schedule 1.[98]

The practice of South Africa

The South African Development Community (SADC), representing 12 member States, adopted a "Model Enabling Act" for the implementation of the Rome Statute on 9 July 1999.[99] South Africa ratified the Rome Statute on November 27, 2000. Following the SADC Model

https://www.un.org/sexualviolenceinconflict/report/decree-regarding-the-arab-model-law-project-on-crimes-within-icc-jurisdiction/.

90 'Model Law: To Implement the Rome Statute of the International Criminal Court (2004)' *Commonwealth Law Bulletin*, Vol 34 No. 4, December 2008, pp. 889-938 https://www.tandfonline.com/doi/abs/10.1080/03050710802521739?journalCode=rclb20.

91 Model Law to Implement the Rome Statute of the International Criminal Court (2011), 14 July 2011, Commonwealth Secretariat, https://asp.icc-cpi.int/sites/asp/files/asp_docs/library/asp/MODEL_LAW-Commonwealth-ICC-ENG.pdf. Akande, D. (2011) 'Commonwealth Revises its Model Law on the International Criminal Court,' *EJIL Talk!*, July 28, 2011, https://www.ejiltalk.org/commonwealth-revises-its-model-law-on-the-international-criminal-court/.

92 International Criminal Court Act 2007 (Samoa), 9 November 2007.

93 Ibid., Long Title.

94 Ibid., sections 5, 6, and 7.

95 Ibid., section 8.

96 National Implementing Legislation Database (NILD), Samoa, https://www.legal-tools.org/national- implementing-legislation-database.

97 International Criminal Court Act 2007 (Samoa), section 110.

98 Ibid., Schedule 1.

99 Olugbuo, B.C. (2004), 'Implementation of the Rome Statute in Africa: An Analysis of the South African Legislation,' *Eyes on the ICC*, Vol. 1 No. 1, 219-232, at 220.

Enabling Act, South Africa adopted the Implementation of the Rome Statute of the International Criminal Court Act of 2002.[100]

The cooperation provisions are in the main body of the Act whereas the definition of crimes, replicating verbatim the wording of the Rome Statute, are enunciated in schedules. The comprehensiveness and well-structured style of the Act is quite commendable. The Act has 5 Chapters, 40 sections. 2 Schedules and 1 Annexure. Interpretations and definitions stated in the Act[101] are in conformity with the South African Constitution[102] and the Rome Statute. The two main objectives of the Act are: (i) the principle of 'complementarity,' and (ii) the cooperation with the ICC.[103]

To achieve the objective of complementarity, the Act showcases the amendment of domestic laws[104] to make them in accord with the definition of crimes under the Rome Statute. Schedule 2 enunciates the two laws that are amended by the Act, namely, the "Criminal Procedure Act 1977," and the "Military Discipline Supplementary Measures Act 1999." The Act also deals with cooperation issues like arrest and surrender of persons[105] and prosecution of offences against the administration of justice as provided in the Statute.[106] The entire Rome Statute is appended verbatim in the Annexure.

(iii) The multiple enactment modality

The third modality is the adoption of two or more new enactments or amending a number of criminal laws, criminal procedures, and other related laws. The following States, primarily monist, use this modality.

The practice of Spain

Spain ratified the Rome Statute on 24 October 2000. In order to implement the Rome Statute, two organic laws were adopted in 2003. The first enactment, Organic Law 15/2003, made necessary amendments to the Spanish Penal Code, criminalizing genocide, crimes against humanity, and war crimes. It is to be noted that the definition of war crimes does not include crimes relating to sexual offences and child soldiers.[107]

The second enactment, Organic Law 18/2003, enunciates in detail the cooperation regime between Spain and the ICC.[108] The law entrusts the Ministry of Justice as the competent authority in dealing with the Court, supplemented by the Ministry of Foreign Affairs and the Ministry of Defence and Internal Affairs in matters relating to their areas.[109] In respect of the complementarity regime, the law provides the procedure of how to challenge the jurisdiction and admissibility of a case before the Court in furtherance of Article 17 of the Statute.[110] The law also includes provisions for arrest and surrender and enforcement of sentences.

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100 Implementation of the Rome Statute of the International Criminal Court Act, 2002, Act 27 of 2002, (South Africa), adopted on November 27, 2002.

101 Ibid., section 2.

102 Constitution of South Africa, 1996. Article 39.

103 Implementation of the Rome Statute of the International Criminal Court Act, 2002 (South Africa), section 3.

104 Ibid., section 38 and Schedule 2.

105 Ibid., Chapter 4.

106 Ibid., section 37.

107 Organic Law No. 15/2003 of November 25, 2003 on amendments to the Penal Code of Spain, https://www.wipo.int/wipolex/en/legislation/details/11793.

108 Organic Law No. 18/2003 of December 10, 2003 on cooperation with the International Criminal Court, https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Organic_Act_18_2003_of_10_December_on_Cooperation_with_the_Intenational_Criminal_Court_%28Ley_de_coop.PDF.

109 Ibid. Article 4.

110 Ibid. Article 9.

Spain is a monist State and under the Spanish constitution, the Rome Statute is directly applicable in the Spanish legal system.[111] Therefore, the Rome Statute is the primary source of law to be applied in the matter of cooperation with the Court. The Rules of Procedure and Evidence will also be legally effective in Spain once they are published in the Spanish official bulletin.[112] The two Organic Laws, therefore, deal only with residual issues.

The Practice of Germany

Germany has been a strong supporter of the Rome Statute and its implementation strategy is unique and systematic. Germany adopted four pieces of legislation for the entire process of implementation. The methodology used is famously known as the legislative concept of "Two Phases, Four Legal Building Blocks" to implement the Rome Statute.[113]

In the first phase, Germany enacted the Act of Ratification of the Rome Statute[114] and the Act Amending Article 16 of the Basic Law, [115] the first and the second legal building blocks. The Act of Ratification created the preconditions for ratification of the Statute. Article 16(2) of the Basic Law says: "No German may be extradited to a foreign country." The Act Amending the Basic Law has inserted the following sentence after the prohibition: "A regulation in derogation of this may be made by statute for extradition… provided there is observance of the principles of the rule of law." The amended Act, therefore, has created the constitutional basis for Germany to be able to surrender Germans to the ICC.[116] In this way, Germany was able to ratify the Rome Statute on December 10, 2002.

In the second phase, Germany enacted the "Act on Cooperation with the International Criminal Court" and the "Code of Crimes against International Law," the third and fourth legal building blocks. Germany, therefore, was able to complete its legislative strategy to implement the Rome Statute on June 30, 2002.

The practice of the Netherlands

The Netherlands is a monist State and implementation legislation was not necessary before ratification. It, therefore, could give priority to the ratification process and was able to leave ample time for the implementing legislation.[117] The Rome Statute Ratification Act was approved by the Houses on 5 July 2001[118] and the Netherlands ratified the Rome Statute on 18 July 2001.

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111 Constitution of Spain, 31 October 1978, Article 96(1) provides that "validly concluded international treaties, once officially published in Spain, shall be part of the internal legal system."

112 See Organic Law No. 18/2003 of December 10, 2003 (Spain), Additional Provision one: The ICC's Rules of Procedure and Evidence.

113 Kaul, H. (2005) 'Germany: Methods and Techniques Used to Deal with Constitutional Sovereignty and Criminal Law Issues,' in Lee. T.H.C. (Ed.) S*tates' Responses to Issues Arising from the ICC Statute*, Brill, 65-81, at 73.

114 Act of Ratification of the Rome Statute, entered into force on 8 December 2000, (Federal Law Gazette 2000 II, 1393).

115 Act Amending Article 16 of the Basic Law (Constitution) of November 29, 2000, entered into force on 2 December 2000 (Federal Law Gazette 2000 I, 1633).

116 Progress Report by Germany, 'The Implications for the Council of Europe Member States of Ratification of the Rome Statute,' 20 July 2001, *Consult ICC (2001)* p. 14, https://www.coe.int/t/dlapil/cahdi/Source/ICC/ConsultICC%282001%2914E%20Germany.pdf.

117 Verweij, H. and Groenleer, M. (2005) 'The Netherlands' Legislative Measures to Implement the ICC Statute,' in Lee, T.H.C. (Ed.) S*tates' Responses to Issues Arising from the ICC Statute*, Brill, 83-103, at 84.

118 Rome Statute Ratification Act, 5 July 2001, Official Gazettee, 2001, 242.

The Netherlands adopted several enactments for the implementation of the Rome Statute. The first law adopted by the Netherlands is the International Criminal Court Implementation Act 2002 (the Implementation Act).[119] The three aspects of cooperation envisaged by the Act are procedures for arrest and surrender,[120] other forms of cooperation as referred to in Article 93 of the Statute,[121] and enforcement of sentences imposed by the ICC.[122]

Secondly, an "Amendment Act" was passed, on the same date as the Implementation Act, to provide for specific technical amendments to the various Dutch laws that cannot be amended by the Implementation Act.[123] Examples of the laws amended are those related to amnesty and the extension of perjury to include perjury before the ICC. The two acts entered into force on 8 August 2002.[124]

It is noteworthy that the Netherlands is the host State of the ICC. This position creates a special role for the Netherlands in its relation to the Court. A distinction has to be made in this respect. The duties of the Netherlands as an 'ordinary' State Party are enshrined in Chapter 3 of the Implementation Act whereas its duties as the Host State are provided in Chapter 5 of the same.[125] The special duty of the host State is in relation to the enforcement of sentences of imprisonment. The Implementation Act refers to Article 103 (4) of the Rome Statute, which provides that "if no State is designated under paragraph 1, the sentence of imprisonment shall be served in a prison facility made available by the host State, in accordance with the conditions set out in the headquarters agreement."[126]

It is necessary to amend the criminal laws of the Netherlands to make sure that core crimes under the Statute are also crimes under Dutch law. For this purpose, the International Crimes Act (ICA 2003) was passed on 19 June 2003 as the third implementing legislation.[127] The ICA 2003 lists and criminalizes all international crimes that are within the jurisdiction of the Court.

CLOSING

National implementation of the Rome Statute is of paramount importance for the effective functioning of the international criminal justice system and the success of the ICC. The modality of implementation depends on the legal and constitutional system of each State. When it comes to the time for the adoption of implementing legislation, most States ratify the Statute before the implementing process. However, for some dualist States, it is

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119 International Criminal Court Implementation Act 2002 (Kingdom of the Netherlands), Kingdom Act of 20 June 2002, Bulletin of Acts, Orders and Decrees 2002, No 314. https://iccdb.hrlc.net/documents/implementations/pdf/Netherlands_ICC_Implementation_Act_2002.pdf . See Sluiter, G. (2004) 'Implementation of the ICC Statute in the Dutch Legal Order," 2:1 *Journal of International Criminal Justice*, Vol. 2 No. 1, 158–178, 160.

120 International Criminal Court Implementation Act 2002 (Kingdom of the Netherlands), Chapter 2, sections 11-44.

121 Ibid. Chapter 3, sections 45-54.

122 Ibid., Chapter 4, sections 55-84.

123 The Amendment Act 2002 (kingdom of the Netherlands), Act of 20 June 2002 to amend the Penal Code, the Code of Criminal Procedure and Some Other Acts, Bulletin of Acts, Orders and Decrees 2002, No 316.

124 Çinar, A., van Niekerk, S., et al, Implementation of the Rome Statute in the Netherlands, 27 June 2007, 1, https://ssrn.com/abstract=996521.

125 Ibid.

126 Rome Statute of the International Criminal Court, Article 103(4). See also, Obligations of the Host State: Kingdom of the Netherlands, The International Criminal Court Implementation Act 2002, Cooperation and Judicial Assistance Database (CJAD), https://cjad.nottingham.ac.uk/en/legislation/54/keyword/441/.

127 International Crimes Act (Act Containing Rules Concerning Serious Violations of International Humanitarian Law) (Kingdom of the Netherlands), Act 270 of 19 June 2003.

required to adopt the implementing legislation even before ratifying or acceding to the Statute. Its advantage is to enhance the primacy of national jurisdiction one step earlier.

The modality of implementing legislation largely depends on whether the State concerned follows the monist or the dualist trend concerning treaties. After analyzing the practice of selected States, it is found that the first modality that stands out is to adopt a single, comprehensive legislation covering all relevant provisions to be implemented. This modality is applied primarily by dualist countries, as illustrated by the practice of Canada, Ireland, New Zealand, Samoa, South Africa, Uganda, the United Kingdom, and arguably Australia. Clarity in law and convenience for reference purposes are the advantages of this modality. South Africa and Samoa also enact single comprehensive legislation by following the model law modality.

Many monist States apply multiple enactment modality by adopting two or more new enactments or amending a number of criminal laws and procedures. This can be illustrated by the practice of Germany, Spain, and the Netherlands. It is understandable as treaties are automatically incorporated into national law in monist States and they need to adopt legislation only on matters that are not self-executing.

The most crucial issue, however, is to encourage or persuade those State parties, which have not yet enacted implementing legislation, to initiate the implementation process. Some States may be reluctant due to their concern that the implementation process is a formidable task to embark on, given that the obligations of State parties under the Statute are many and varied. However, by perusing the modalities of implementation stated above, it would be much easier for those reluctant States to consider which modality would be the most appropriate one for them to follow, depending on the legal and constitutional system of the State concerned. There are also model laws, i.e., ready-made templates, which can be used by simply making a few adjustments.

It is ardently hoped that all the 124 States parties to the Rome Statute adopt the implementing legislation by using the modality suited to their legal system. The modalities may also help non-party States to understand more about the Statute and embark on pre-accession preparations to join the Statute. In this way, we can create a world free of heinous crimes and end impunity.[128]

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