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THE IMPLICATIONS FOR COUNCIL OF
EUROPE MEMBER STATES OF THE
RATIFICATION OF THE
ROME STATUTE OF THE
INTERNATIONAL CRIMINAL COURT

LES IMPLICATIONS POUR LES ETATS
MEMBRES DU CONSEIL DE L'EUROPE
DE LA RATIFICATION DU STATUT DE
ROME DE LA COUR PENALE
INTERNATIONALE

PROGRESS REPORT BY SWEDEN

General overview

Sweden signed the Rome Statute of the International Criminal Court in October 1998.

Within the Ministry of Justice, a legislative memorandum has been prepared (Romstadgan för Internationella brottmålsdomstolen, Ds 2001:3). The memorandum contains a presentation of the Rome Statute, a proposal that Sweden should ratify the Statute, and proposals for legislation necessary for the cooperation with the Court. It also entails an assessment of the relevant constitutional issues. The memorandum was submitted for comments to national courts, public authorities, universities and NGOs and other organisations. The comments were received in April 2001.

It was later decided to divide the issues of ratification and legislation in order to fast track the former question. Hence, a Government Bill proposing that Sweden should ratify the Rome Statute was decided on 11 April 2001 and submitted to the Swedish Parliament (Prop. 2000/01:122, Sveriges tillträde till Romstadgan för Internationella brottmålsdomstolen). Constitutional questions were thoroughly dealt with in the Bill. Following reports by the Parliamentary Standing Committee on Justice (bet. 2000/01:JuU30) and the Parliamentary Standing Committee on the Constitution (2000/01:KU13y), the Parliament approved ratification on 14 June 2001.

Sweden ratified the Statute on 28 June 2001 as the 36th State Party. In a declaration, Sweden has assigned the Ministry of Justice as the channel for requests from the Court and English or Swedish as the language to be used in the communications.

As a result of the debates in Parliament, the Government is considering to institute a review of certain constitutional matters.

A Government Bill on legislation necessary for the cooperation with the Court is being prepared. A draft Bill will be presented to the Legislative Council before the Bill can be decided and submitted to Parliament. This is expected to take place during the second half of 2001.

In a parallel process, the Government appointed a commission to review the Swedish penal law regarding crimes against humanity and other crimes against international law (the assignment is given in Dir. 2000:76, Straffansvar för brott mot mänskligheten och andra internationella brott mot folkrätten) in the light of the Rome Statute. The head of commission (Justice Dag Victor) shall submit a report before the end of October 2002. The report will be published (in: Statens Offentliga Utredningar, SOU).

Amendments to Swedish penal law concerning offences against the International Criminal Court (article 70 of the Statute) will be considered separately and a legislative memorandum is planned for the end of 2001.

The Nordic States have cooperated in the preparations for ratification and implementation of the Rome Statute. On 13 and 14 June 2001, an expert meeting on the International Criminal Court was held in Stockholm with participants from Denmark, Estonia, Finland, Latvia, Lithuania, Norway, Poland and Sweden. The objective was to discuss substantive legal matters relating to legal assistance and cooperation as well as to criminal law.

Cooperation between Sweden and the International Criminal Court

Legislation for the cooperation between Sweden and the International Criminal Court has not yet been adopted. A comprehensive proposal is contained in a legislative memorandum (Ds 2001:3), which has been favourably received when referred for comments. The proposal also contains amendments to the special Act on Swedish Cooperation With the International Tribunals for Crimes Against International Humanitarian Law (Act 1994:569).

According to the proposal, cooperation between Sweden and the International Criminal Court should be regulated in a separate Act. To a large extent, the draft law draw upon the existing legislation in respect of the Tribunals, but they also include certain provisions that are specific for the International Criminal Court. Issues of surrender and other forms of legal assistance are regulated, with a distinction made between the so-called core crimes (genocide, crimes against humanity and war crimes) and offences against the Court such as perjury (article 70 of the Statute).

Concerning deprivation of liberty and surrender to the Court of suspects and others, the draft legislation mirrors the existing legislation for the Tribunals. In addition, special provisions have been suggested for matters such as transit over Swedish territory (article 89:3), competing requests (articles 90 and 93:9), postponement of execution of a request (articles 89:4, 94:1 and 95), and notification in relation to interim release (article 59:3-4). The draft also suggests the application of existing simplified proceedings in certain cases (see article 92:3).

In respect of legal assistance, the draft legislation is built upon the new Swedish Act on International Legal Assistance in Criminal Cases (Act 2000:562). Modes of assistance that can be given to a requesting State can also be provided to the Court. This and other applicable rules cover the forms of assistance set forth in the Statute (article 93:1), but also entails additional measures, i.e. video conferences. In light of the Rome Statute, however, restrictions and limitations for providing legal assistance are generally not applicable in respect of the Court. There is, for example, no requirement of "double criminality".

The draft legislation also contains provisions on the relationship between Swedish proceedings and proceedings before the Court.

According to the draft proposal, sentences imposed by the Court may be enforced in Sweden. Legislation that allows such enforcement is also proposed. Additionally, the draft contains provision for enforcement of other decisions by the Court, including orders on reparation to victims.

Finally, the draft cooperation law also includes provisions on the assignment of defence counsel and counsel for an aggrieved person (a victim) in respect of proceedings in Sweden and rules on remuneration from Sweden for persons appearing before the Court. The latter should be seen as part of the cooperation requiring the facilitation of voluntary appearance at the Court (article 93:1 e).

Constitutional questions

One general question to consider was the compatibility of the obligations, according to the Statute, to cooperate fully with the Court and the Swedish Constitution (Regeringsformen). Sweden has a so-called dualist approach to international treaties. Hence, implementation of the treaty is required for making its provisions applicable by Swedish courts and public authorities. International obligations under a ratified treaty do not automatically prevail over the Constitution.

Another question was the requirements under the Swedish constitution for ratification, i.e. whether the Rome Statute could be ratified without constitutional amendments.

Constitutional issues relating to a ratification of the Statute were comprehensively discussed in the Government Bill (prop. 2000/01:122) and also in the parliamentary committees dealing with the Bill. Such issues were, in particular, constitutional provisions on immunities of the Head of State (King or Queen) and Members of Parliament, a prohibition of expulsion of Swedish citizens and the particular proceedings for prosecution and adjudication of crimes by certain officials, such as cabinet ministers. Additionally, enforcement of the Court's sentences required an assessment of the constitutional provisions on the Government's discretionary power to grant pardon and the right of Swedish courts to review of prison sentences.

In this context, the main questions were whether the obligations under the Statute were compatible with certain constitutional provisions and, in light of the constitutional rules on transfer of competences to an international body, whether ratification could take place without first amending the constitution. These issues were debated in the Parliament and a majority considered that the Statute could be ratified without constitutional amendments and the proposal to approve ratification was adopted. Nevertheless, a constitutional review is considered. Such a review will probably be limited to certain provisions regarding the transfer of competence to international bodies.

Penal Law

The current Swedish legislation encompasses the crime of genocide and war-crimes (crimes against international humanitarian law) but there is no specific provision on the crimes against humanity. Swedish law also contains statute of limitations applicable to all crimes.

As stated earlier a commission has been appointed during the autumn of 2000. The commission has been charged with the task of *inter alia* evaluating current Swedish penal legislation in the light of the Rome Statute, to suggest new legislation and to consider the current applicability of the provision on statute of limitation, with a view to abolish the provision for the crimes in the Rome Statute.