

## PREFACE

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This publication is not intended to be an academic analysis or comparative study of national implementing laws for the Rome Statute of the International Criminal Court. It is a synopsis of measures and methods used by 12 common law or civil law countries in managing their constitutional, sovereignty, judicial cooperation and criminal law problems resulting from their acceptance of the Court and its Statute. These practices are written mostly by authors who had been involved in the preparation of the Rome Statute and/or of their respective national implementing legislation. I am very grateful to them for informing us about their countries' endeavor in this regard and for their valuable contribution to this publication.

In accepting the ICC, states have indeed encountered many and different issues and problems ranging from constitutional and sovereignty to judicial cooperation and criminal law. Nevertheless, they have found ways to overcome successfully those difficulties. Ninety-five states are now parties to the Statute, only less than ten states have found it necessary to amend their constitutions. Most states were able to avoid tempering the constitution.

Because the Statute is about investigation and prosecution of international atrocity crimes, the Court cannot effectively perform its functions unless treaty obligations have been carried into effect in national law to provide the Court with the necessary assistance and cooperation. As will be seen, it is also necessary to criminalize the Statute crimes in domestic law to enable national courts to investigate and prosecute the ICC crimes. One of the main purposes of this volume is therefore to highlight some of the implementing measures that have been taken in these two areas.

As every national system is peculiar in its own way, each state must decide for itself the most appropriate measures to resolve their problems. This collection should not therefore be regarded as models or templates. The practice of these states might offer useful cues and stimulate practical thinking to allay fears and to resolve perceived difficulties for those states which are still searching for solutions.

Chapters 13 and 14 relate to situations in Japan and Mexico, which are yet to become parties to the Court. These chapters serve to illustrate principal issues that are likely to be raised in those countries in that matter. In fact, Mexico has already prepared a draft law which is pending before the legislature and is close to adoption. The last chapter contains a critique of

the Rome Statute written by a Chinese scholar who raises various questions and shows much apprehension of the Statute. Clearly, the views expressed therein are the author's alone and do not purport to reflect the current government position. But the chapter serves to illustrate how the ICC Statute could be misinterpreted and misunderstood, and the need to correct such views. No doubt, most of the issues raised therein have been rebutted indirectly by practices as shown in the first fourteen chapters of this collection. Persons and organizations that are interested in the universal membership of the Court should nevertheless be fully aware of such views and interpretation, and should make even greater effort to promote better understanding and appreciation of the Court and its Statute.

The Chinese Society of International Law organized a three-day Symposium in Beijing in October 2003 on comparative study of the international criminal law and the Rome Statute.\* Portions of the materials in this volume were presented at the Symposium; they have all been revised and expanded for the purpose of focusing on implementing issues and methods. New materials have also been added.

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\* For a summary of the conference, see Ling Yan, Beijing Symposium on Comparative Study of International Criminal Law and the Rome Statute, 3(1) *Chinese J. Int'l L.*, 305-18 (2004).