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COMMITTEE OF THE WHOLE  
Working Group on International Cooperation  
and Judicial Assistance

ROLLING TEXT OF ARTICLES 89, 90 BIS, 91 AND 91 BIS

Article 89

Provisional arrest

1. In case of urgency, the Court may request the provisional arrest of the person sought pending presentation of the request for [surrender] [transfer] [extradition] and supporting documents under article 88.
2. The request for provisional arrest shall be made by any medium capable of delivering a written record and shall contain:
  - (a) Information describing the person sought, sufficient to identify the person and information as to that person's probable location;
  - (b) A concise statement of the crimes for which the person's arrest is sought, the facts which are alleged to constitute those crimes, including, where possible, the date and location of the crime;
  - (c) A [duly certified] statement of the existence of a warrant of arrest or a judgement of conviction against the person sought; and
  - (d) A statement that a request for [surrender] [transfer] [extradition] of the person sought will follow.

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3. A person who is provisionally arrested may [, having due regard to article 59 (3) of this Statute,] be discharged from custody<sup>1</sup> if the requested State has not received the request for [surrender] [transfer] [extradition] and the supporting documents specified under article 88. However, the person may consent to [surrender] [transfer] [extradition] before the expiration of this period if the legislation of the requested State allows, in which case that State shall proceed to [surrender] [transfer] [extradite] the person to the Court as soon as possible.<sup>2</sup>

4. The fact that the person sought has been discharged from custody pursuant to paragraph 3 shall not prejudice the subsequent arrest and [surrender] [transfer] [extradition] of that person if the request for [surrender] [transfer] [extradition] and supporting documents are delivered at a later date.

Article 90 bis [90, paragraph 8]

Contents of request for other forms of assistance

1. A request for other forms of assistance referred to in article 90 shall be in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that a request shall be confirmed through the channel provided for in article 86, paragraph 1 (a).

2. The request shall, as applicable, contain or be supported by the following:

(a) A concise statement of the purpose of the request and the assistance sought, including the legal basis and grounds for the request;

(b) As much detailed information as possible about the location or identification of any person or place that must be found or identified in order for the assistance sought to be provided;

(c) A concise statement of the essential facts underlying the request;

(d) The reasons for and details of any procedure or requirement to be followed;

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<sup>1</sup>/ The question of specific time limit should be addressed in the Rules of Procedure and Evidence.

<sup>2</sup>/ It was suggested that the simplified surrender procedure should be the object of a separate paragraph, since it applies to both the provisional arrest stage and after a full surrender request has been submitted.

This paragraph could also be included in article 86.

(e) Any other information relevant in order for the assistance sought to be provided.

3. The provisions of this article shall, where applicable, also apply in respect of a request made to the Court.

Article 91

Execution of requests under article 90 and 90 bis

1. Subject to the provisions of the Statute, requests for assistance shall be executed in accordance with the [relevant procedure under the] law of the requested State.

2. In the case of an urgent request, the documents or evidence produced in response shall, at the request of the Court, be sent urgently.

3. Replies from the requested State, including any accompanying documents, shall be in accordance with the provisions of article 86, paragraph 2. The Court may also request the transmission of documents in their original language.

[4. (a) The Prosecutor or the Registrar may [, in accordance with the Rules of Procedure,] assist the authorities of the requested State with the execution of a request for assistance;

(b) The Prosecutor may, with the consent of the requested State, conduct investigations in the territory of the requested State [. In this regard the Prosecutor may enter into a specific arrangement with the requested State];

(c) Subparagraph (b) does not bar any requested State from allowing the Prosecutor to conduct an investigation in its territory upon notification.]

5. [In the execution of the request under this article, the requested State shall:]

(a) [Inform the] witnesses or experts that they may not be compelled to testify at the seat of the Court and that if they do not wish to travel to the seat of the Court, their evidence shall be taken in the country in which they reside or in such other place as they may agree upon with the Court [in accordance with national requirements [and in compliance with international law standards] <sup>3</sup>];

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<sup>3</sup>/ The exact formulation will depend on the formulation adopted for article 69.

(b) Guarantee the safety of witnesses and experts [, including employing means of taking evidence that shall protect the identity of the witness].

[(d) could be moved to article 54 ter as paragraph 3.]

6. Provisions allowing a person heard or examined by the Court under article 71 to invoke restrictions designed to prevent disclosure of confidential information connected with national defence or security also apply to the execution of requests for assistance under this article.

Article 91 bis

Costs

1. The costs associated with the [surrender] [transfer] [extradition] of a person shall be borne by the Court.

2. The ordinary costs for execution of requests in the territory of the requested State shall be borne by the requested State except for the following, which should be borne by the Court:

(a) Costs associated with the travel and security of witnesses and experts or the transfer of persons in custody;

(b) Costs of translation, interpretation and transcription;

(c) The travel and subsistence costs of the Prosecutor, members of his office or any other member of the Court;

(d) The costs of any expert opinion or report requested by the Court;  
and

(e) Following consultations, any extraordinary costs that may result from the execution of a request.

3. The provisions of paragraph 2 shall, as appropriate, apply to requests from States Parties to the Court. [The Court shall bear the ordinary costs of execution.]

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