



**UNITED
NATIONS**



**United Nations Diplomatic
Conference of Plenipotentiaries
on the Establishment of an
International Criminal Court**

Distr.
LIMITED

A/CONF.183/C.1/WGIC/L.11/Add.4
14 July 1998

Original: ENGLISH

Rome, Italy
15 June-17 July 1998

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

REPORT OF THE WORKING GROUP ON INTERNATIONAL COOPERATION
AND JUDICIAL ASSISTANCE

Addendum

I. INTRODUCTION

1. The Working Group held three additional meetings, on 14 and 15 July 1998, to consider remaining articles. The Working Group herewith transmits to the Committee of the Whole the following articles for its consideration: article 87, paragraphs 3 (a), 3 bis, 4, 8 and 9; article 90, paragraphs 2 (a) and (d), 3, 4, 5 and 9; and article 91, paragraph 4. The Working Group also notes the deletion of article 87, paragraph 3 (b), (c), (d) and (e); and article 90, paragraph 2 (b), (c), (e) and (f).
2. The Working Group thereby has concluded its work.

II. TEXT OF DRAFT ARTICLES

Part 9. International Cooperation and Judicial Assistance

Article 87

Surrender of persons to the Court

...

3. A State Party may deny a request for surrender only if:
 - (a) With respect to a crime under [article 5 (b) through (e)] [article 5 (e)], it has not accepted the jurisdiction of the Court;¹

¹This provision will be reconsidered in the light of the outcome of the discussions on jurisdiction.

- (b) Deleted²
- (c) Deleted
- (d) Deleted
- (e) Deleted

3 bis. Where the person sought for surrender brings a challenge before a national court on the basis of ne bis in idem, the requested State shall immediately consult with the Court to determine if there has been a relevant ruling on admissibility. If the case is admissible, the requested State shall proceed with the execution of the request. If an admissibility ruling is pending, the requested State may postpone the execution of the request for the surrender of the person until the Court makes a determination on admissibility.

[4. If a request for surrender is denied, the requested State Party shall promptly inform the Court of the reasons for such denial.]

...

8. If the person sought is being proceeded against or is serving a sentence in the requested State for an offence different from that for which surrender to the Court is sought, the requested State, after making its decision to grant the request, shall consult with the Court.

[9. Extradite or prosecute obligation³

(a) In the case of a crime to which article 5, paragraph (e), applies, the requested State [, if it is a party to the treaty in question but has not accepted the Court's jurisdiction with respect to that crime,] shall, where it decides not to surrender the accused to the Court, promptly take all necessary steps to extradite the accused to a State having requested extradition or [at the request of the Court] refer the case [through proceedings in accordance with national laws] to its competent authorities for the purpose of prosecution.

[(b) In any other case, the requested State Party shall [consider whether it can], in accordance with its legal procedures, take steps to arrest

²Some States reserved their position with respect to the deletion of this provision.

³The text of paragraph 9 (a) and (b) applies if there is a consent regime. If the Court has jurisdiction over core crimes and there is no consent regime, these provisions could be deleted.

and surrender the accused to the Court, or [whether it should take steps to extradite the accused to a State having requested extradition or [at the request of the Court] refer the case to its competent authorities for the purpose of prosecution.]

[(c) The surrender of an accused to the Court will constitute, as between States Parties which accept the jurisdiction of the Court with respect to the crime in question, compliance with a provision of any treaty requiring that a suspect be extradited or that the case be referred to the competent authorities of the requested State for the purpose of prosecution.]]

Article 90

Other forms of cooperation

...

2. A State Party may deny a request for assistance, in whole or in part, only if:

(a) With respect to a crime [under [article 5, paragraphs (b) through (e)] [article 5, paragraph (e)]], it has not accepted the jurisdiction of the Court: ⁴

(b) Deleted

(c) Deleted

(d) The request concerns the production of any documents or disclosure of evidence which relates to its national [security] [defence];⁵

(e) Deleted

(f) Deleted

[3. Before denying a request for assistance, the requested State shall consider whether the requested assistance can be provided subject to specified conditions, or whether the assistance can be provided at a later time or in an alternative manner, provided that if the Court or the Prosecutor accepts the assistance subject to conditions, it shall abide by them.]

[4. If a request for assistance is denied, the requested State Party shall promptly inform the Court or the Prosecutor of the reasons for such denial.]

⁴To be reconsidered in the light of the outcome of discussions on jurisdiction.

⁵To be reconsidered in the light of the outcome of discussions on article 71.

[5. If a requested State does not produce a document or disclose evidence under paragraph 2 (d) on the ground that it relates to its national defence, the Trial Chamber shall only make such inferences that relate to the guilt or innocence of the accused.]

...

9. (a) (i) In the event that a State Party receives competing requests other than for surrender or extradition from the Court and from another State pursuant to an international obligation, the State Party shall endeavour, in consultation with the Court and the other State, to meet both requests, if necessary by postponing or attaching conditions to one or the other request.

(ii) Failing that, competing requests shall be resolved in accordance with the principles established in article 87 bis.

(b) Where, however, the request from the Court concerns information, property or persons which are subject to the control of a third State or an international organization by virtue of an international agreement, the requested States shall so inform the Court and the Court shall direct its request to the third State or international organization.

Article 91

Execution of requests under articles 90 and 90 bis

...

4. Without prejudice to other articles in this Part, where it is necessary for the successful execution of a request which can be executed without any compulsory measures, including specifically the interview of or taking evidence from a person on a voluntary basis, including doing so without the presence of the authorities of the requested State Party if it is essential for the request to be executed, and the examination without modification of a public site or other public place, the Prosecutor may execute such request directly on the territory of a State as follows:

(a) When the State Party requested is a State on the territory of which the crime which is alleged to have been committed, and there has been a determination of admissibility pursuant to articles [16 or 17], the Prosecutor may directly execute such request following all possible consultations with the requested State Party;

(b) In other cases, the Prosecutor may execute such request following consultations with the requested State Party and subject to any reasonable conditions or concerns raised by that State Party. Where the requested State Party identifies problems with the execution of a request pursuant to this subparagraph it shall, without delay, consult with the Court to resolve the matter.⁶

⁶A few delegations expressed reservations about this provision.