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of an International Criminal Court**

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COMMITTEE OF THE WHOLE
Working Group on Enforcement

DRAFT REPORT OF THE WORKING GROUP ON ENFORCEMENT

I. INTRODUCTION

1. At its 2nd meeting, on 16 June 1998, the Committee of the Whole decided to refer to the Working Group on Enforcement, under the chairmanship of Mary Ellen Warlow (United States of America), the following articles of Part 10:

PART 10. ENFORCEMENT

- Article 93. General obligations regarding recognition [and enforcement] of judgements
- Article 94. Role of States in enforcement [and supervision] of sentences of imprisonment
- Article 95. Enforcement of the sentence
- Article 96. Supervision and administration of sentence
- Article 97. Transfer of the person upon completion of sentence
- [Article 98]. Limitation of prosecution/punishment for other offences
- [Article 99]. Enforcement of fines and forfeiture measures
- Article 100. Pardon, parole and commutation of sentences [early release]
- [Article 101]. Escape

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ROM.98-1750

2. The Working Group held four meetings to consider the articles contained in Part 10, Enforcement, from 30 June to 3 July 1998. The Working Group herewith transmits to the Committee of the Whole the following articles of Part 10 for its consideration: ...

3. The remaining articles will be transmitted at a later stage.

II. TEXT OF DRAFT ARTICLES

PART 10. ENFORCEMENT

Article 93

General obligation regarding recognition
[and enforcement] of judgements

pending

Article 94

Role of States in enforcement of
sentences of imprisonment

1. (a) A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept sentenced persons. The State so designated shall promptly inform the Court whether it accepts the request.

(b) At the time of declaring its willingness to accept sentenced persons, a State may attach conditions to its acceptance as agreed by the Court and in accordance with this Part.

(c) The administering State of enforcement shall notify the Court of any circumstances, including the exercise of any conditions agreed under subparagraph (b) above, which could materially affect the terms or extent of the imprisonment. The Court shall be given at least 45 days' notice of any such circumstances.

(d) Where the Court cannot agree to the change of circumstances, it shall notify the State and proceed in accordance with article 94bis, paragraph 1.

2. In exercising its discretion to make a designation under paragraph 1, the Court shall take into account any of the following:

(a) The principle that States Parties should share the responsibility for enforcing sentences of imprisonment in accordance with principles of equitable distribution to be elaborated in the Rules of Procedure and Evidence; ¹

(b) The application of widely accepted international conventional standards governing the treatment of prisoners;

(c) The views of the sentenced person;

(d) The nationality of the sentenced person;

(e) Such other factors regarding the circumstances of the crime or the person sentenced, or the effective enforcement of the sentence.

3. 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 conformity with and under the conditions as set out in the Host State Agreement as referred to in article 3, paragraph 2. In such a case, the costs involved in enforcement of a sentence of imprisonment shall be borne by the Court.

Article 94 bis

Change in designation of State of enforcement

1. In every case the Court may at any time decide to transfer the sentenced person to the prison of another State.

2. The sentenced person may at any time apply to the Court to be transferred from the State of enforcement.

Article 95

Enforcement of the sentence

1. Subject to conditions it may have specified in paragraph 1 (b) of article 94, the sentence of imprisonment shall be binding on the States Parties, which may in no case modify it.

2. The Court alone shall have the right to decide any application for review of the judgement or sentence. The State of enforcement shall not impede the sentenced person from making any such application.

¹Some delegations expressed the view that there needs to be an additional article on this issue. Some delegations expressed the view that this should be the only reference.

Article 96

Supervision and administration of sentence

1. The enforcement of a sentence of imprisonment shall be subject to the supervision of the Court and shall be consistent with widely accepted international conventional standards governing treatment of prisoners.
2. The conditions of detention shall be governed by the law of the State of enforcement and consistent with widely accepted international conventional standards governing treatment of prisoners, and shall in any case be not more or less favourable than those available to prisoners convicted of similar offences in the State of enforcement.²
3. Communications between persons sentenced and the Court shall be unimpeded and confidential.

Article 97

Transfer of the person upon completion of sentence

1. Where the State of enforcement does not authorize the person to remain in its territory following completion of sentence, the person shall be transferred to another State. The person may indicate the State to which he wishes to be transferred. However, if that State does not agree to accept the person, he or she may be transferred to the State of his or her nationality or another State that agrees to accept the person.
2. The costs involved in transferring the person to another State pursuant to paragraph 1 shall be borne by the Court, if no State bears those costs.
3. [Subject to the provisions of article 98,] The State of enforcement may also, in accordance with its national law, extradite or otherwise surrender the person to the State which has requested the extradition or surrender of the person for purposes of trial or enforcement of a sentence.

²Paragraph 2 was accepted by some delegations only on the basis that there will be article 94 bis.

[Article 98 ³

Limitation of prosecution or punishment for other offences

1. A sentenced person in the custody of the State of enforcement shall not be subjected to prosecution or punishment or to extradition to a third State for any conduct committed prior to delivery to the State of enforcement, unless such prosecution, punishment or extradition has been approved by the Court at the request of the State of enforcement.
2. The Court shall rule on the matter after having heard the person.
3. Paragraph 1 of this article shall cease to apply if the sentenced person remains more than 30 days in the territory of the State of enforcement after having served the full sentence imposed by the Court or returns to the territory of that State after having left it.]

Article 99

Enforcement of fines and forfeiture measures

1. States Parties shall give effect to fines or forfeitures ordered by the Court under Part 7, without prejudice to the rights of bona fide third parties in accordance with [the procedure of the national law] [their national law].⁴
2. Judgements of reparation shall be enforced by States Parties in accordance with article 73.⁵
3. Pending

³Some delegations who had wanted article 98 deleted indicated a willingness to accept article 98 if necessary to achieve consensus. However, they stressed that their position to delete article 92 (also dealing with the rule of speciality) remained unchanged. Some other delegations felt that article 98 must be included, but also felt that article 92 should be deleted.

⁴Some delegations, in the spirit of compromise and in an effort to achieve consensus, were willing to accept "give effect to" rather than "enforce", but only if the final clause of the paragraph read "in accordance with the procedure of their national law".

Some delegations also wanted to emphasize that their willingness to accept a reference to national procedural law in this Part does not prejudice their position with respect to the inclusion of such a reference in Part 9.

⁵The final text of this paragraph will have to be reconsidered in the light of the final text of article 73.