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**Preparatory Commission for the International  
Criminal Court**  
**Working Group on Rules of Procedure and Evidence concerning  
Parts 9 and 10 of the Statute**  
New York  
16-26 February 1999  
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29 November-17 December 1999

**Proposal submitted by France concerning part 9 of the Rome  
Statute of the International Criminal Court on international  
cooperation and judicial assistance**

**Part 9 of the Statute**

*Part 9 of the Statute contains many references to the Rules of Procedure and Evidence and deals with complex legal issues for which the practical, routine functioning of the Court needs to be organized. Australia, in document PCNICC/1999/DP.1, deals with several of these issues. The French proposals are mainly based on the rules proposed by Australia. France also suggests a few additions.*

*The rules are presented in the order of the articles of the Statute, numbered according to the method adopted thus far by the Preparatory Commission.*

*They are based on:*

- Rules 127 to 134 contained in the document submitted by Australia (PCNICC/1999/DP.1)*
- The rules contained in the general outline proposed by France (PCNICC/1999/DP.2).*

## Article 87

### **Rule 9.1. Organs of the Court responsible for the transmission and receipt of communications relating to international cooperation and judicial assistance**

*(This rule, placed before rule 127 proposed by Australia, specifies the organs responsible for the actual transmission and receipt of all communications relating to cooperation.)<sup>1</sup>*

(a) The Registrar shall transmit the requests for cooperation made by the Chambers of the Court and shall receive the responses from requested States. The Office of the Prosecutor shall transmit the requests for cooperation made by the Prosecutor and shall receive the responses from requested States.

(b) The Registrar shall be the recipient of any communication from States concerning the designation or subsequent change in the designation of those national channels charged with receiving requests for cooperation made by the Court, as well as of any communications from States concerning the choice of or change in the language in which requests for cooperation should be made. The Registrar shall transmit any such communications to the Office of the Prosecutor and to the Presidency.

### **Rule 9.2. Channels of communication with States Parties**

*(This rule is based on rule 127 proposed by Australia.)*

*Sub-rule (a) suggested by Australia: after the first sentence, the following sentence would be added, to replace the rest of the paragraph:*

“Upon request by the Court, a State Party shall provide all relevant information concerning the national authority charged with receiving requests for cooperation”.

*This wording avoids making a reference to the date of deposit of the instrument of ratification (rule 107 suggested by Australia); indeed, the Court will not exist until the first 60 instruments of ratification have been deposited.*

*Sub-rule (b) suggested by Australia: France suggests that it should be deleted, as it seems to contradict the Statute. If a State has not made a designation of authority, then it has chosen the diplomatic channel. This sub-rule relates to the provisions for changing the channel of communication.*

*Sub-rule (c) suggested by Australia: it could be supplemented by a second sentence as follows:*

“Such a change shall take effect only in respect of requests for cooperation made by the Court three months after the date on which the Court has received notification of the change.”

*France also suggests the addition of two paragraphs to rule 127 proposed by Australia:*

“(d) When a request for cooperation does not contain all necessary documents, the requested State shall so notify the Court, which shall then complement its request.

“(e) If the Court deems it necessary, it may request a State Party to acknowledge receipt of a request for cooperation.”

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<sup>1</sup> This issue could also be dealt with in part 4.

*These provisions make it possible to correct speedily any purely material errors of the Court relating either to the content or to the addressee of a request.*

**Rule 9.3. Channels of communication with States not party to the Statute**

*(This rule draws on rule 128 proposed by Australia, but is drafted to correspond strictly with the wording of article 87, paragraph 5.)*

When a State not party to the Statute has agreed to cooperate with the Court in accordance with the provisions of article 87, paragraph 5, and has not designated thereupon a channel of communication with the Court, the Registrar shall request it in writing to make such a designation and to provide the relevant information concerning the national authority charged with receiving requests for cooperation.

The provisions of rule 9.2 shall apply *mutatis mutandis* to requests for cooperation transmitted to States not party to the Statute.

**Rule 9.4. Channels of communication with intergovernmental organizations**

*(This rule draws on rule 129 proposed by Australia, but is drafted to correspond more strictly with the wording of article 87, paragraph 6.)*

When an intergovernmental organization is called upon to cooperate with the Court in accordance with the provisions of article 87, paragraph 6, and the organization has not designated thereupon a channel of communication with the Court, the Registrar shall request it in writing to make such a designation and to provide the relevant information concerning the authority charged with receiving requests for cooperation.

The provisions of rule 9.2 shall apply *mutatis mutandis* to requests for cooperation transmitted to an intergovernmental organization.

**Rule 9.5. Change of language designated under article 87, paragraph 2**

*(This rule draws on rule 130 proposed by Australia.)*

In order to resolve the problem of a State Party which has omitted to make a choice, and for the sake of clarity, this rule should begin with the following paragraph:

“When the requested State Party has not chosen a language for communication with the Court, the Registrar shall ask the requested State to make such a choice in accordance with article 87, paragraph 2. If that State does not proceed to do so, the requests for cooperation shall either be in or be accompanied by a translation into one of the working languages of the Court.”

*After that, the Australian text would remain unchanged, and the following sentence would be added, reading:*

“Such a change shall take effect only in respect of requests for cooperation made by the Court 90 days after the date on which the Court has received notification of the change.”

**Rule 9.6. Language of requests directed to States not party to the Statute**

*(This rule draws on rule 131 proposed by Australia, but is closer to the wording of article 87.)*

When a State not party to the Statute has agreed to cooperate with the Court in accordance with the provisions of article 87, paragraph 5, and has not made a choice of language, the Registrar shall request it in writing to make such a choice.

If that State does not proceed to do so, the requests for cooperation shall either be in or be accompanied by a translation into one of the working languages of the Court.

A change in the choice of language shall take effect only in respect of requests for cooperation made by the Court 90 days after the date on which the Court has received notification of the change.

**Rule 9.7. Procedure applicable to article 87, paragraphs 5 and 7**

(a) At the request of the Prosecutor, of the Defence or of the victims or their legal representatives acting pursuant to article 75 or article 57, paragraph 3 (e), in accordance with rules (x) to (xx), or on its own motion, the Chamber of the Court dealing with the case or the Chamber which has ruled on the case may examine an issue related to article 87, paragraphs 5 or 7.

(b) As soon as an issue is brought before the Chamber in accordance with the provisions of sub-rule (a), the Chamber shall inform the State concerned and call for any observation that State may wish to make.

The Chamber shall inform the State concerned and, if applicable, those parties which brought the matter to its attention, of the effect given, if any, to the matter raised in accordance with sub-rule (a).

**Article 89**

**Rule 9.8. Challenge to admissibility of a case before a national court (article 89, paragraph 2)**

When a situation described in article 89, paragraph 2, arises, and without prejudice to the provisions of article 19 and of rules (n) to (nn) on procedures applicable to challenges to the jurisdiction of the Court or to the admissibility of a case, the Chamber of the Court dealing with the case shall, if the admissibility ruling is still pending, take all appropriate steps to ensure that the person concerned is able to present to the Court the grounds on which he or she challenges the admissibility of the case on the basis of article 20.

**Rule 9.9. Request for transit (article 89, paragraph 3 (e))**

(a) In situations described in article 89, paragraph 3 (e), the Court may transmit the request for transit to the State concerned by any medium capable of delivering a written record.

(b) When the time limit provided for in article 89, paragraph 3 (e), has expired and the person concerned has been released, such a release shall be without prejudice to a subsequent arrest of the person concerned in accordance with the provisions of article 92 or article 89.

**Article 90**

**Rule 9.10. Competing requests in the context of a challenge to the admissibility of a case**

(a) In the context of a challenge to the admissibility of a case, a Chamber of the Court, when determining the matter of admissibility of a case based on the fact that there are both a request by the Court for the surrender of a person and a competing request for extradition, as described in article 90, paragraph 1, may ask the requested State how it has decided to proceed upon the competing request for extradition.

Such a request for information from the Court is without prejudice to the consideration of other issues of admissibility described in article 17.

(b) In situations described in article 90, paragraph 8, the decision of the requested State shall be transmitted to the Prosecutor, who shall act, if necessary, in accordance with article 19, paragraph 10.

## **Article 92**

### **Rule 9.11. Time limit in relation to provisional arrest**

*France supports the Australian proposal for rule 132, and suggests that the time limit should be 40 days.*

### **Rule 9.12. Transmission of documents supporting the request**

When a person has consented to surrender in accordance with the provisions of article 92, paragraph 3, and the requested State proceeds to surrender the person to the Court, the Court may then ask the requested State whether it is still necessary, after the surrender, that the State should be provided with the documents described in article 91.

### **Rule 9.13. Arrangement for surrender**

*France supports the Australian proposal for rule 133.*

## **Article 93**

### **Rule 9.14. Assurance provided by the Court under article 93, paragraph 2**

The Chamber of the Court dealing with the case may provide the assurance described in article 93, paragraph 2, at the request of the witness or the expert concerned, or at the request of any party to the proceedings.

Without prejudice to protective measures, if any, granted by the Court to the witness or expert, the Chamber shall notify those participating in the proceedings of this request and ask them whether they have any observations to make in writing. The Chamber shall also inform them of any effect it may give to the request.

### **Rule 9.15. Transfer of a person in custody**

*(This rule draws on rule 134 proposed by Australia relating to the application of article 93, paragraph 7.)*

*The Australian proposal is generally acceptable. France would however suggest an addition, and an amendment. A new sentence, worded as follows, would be added to sub-rule (a) suggested by Australia:*

“Before proceeding with the transfer, the Registrar shall be satisfied that the person concerned has given his or her consent to the competent authority of the requested State.”

*France also suggests deleting sub-rule (c) of the Australian proposal, which seems to contradict the Statute. Indeed, there is no provision in article 93, paragraph 7, enabling the person concerned to lodge an appeal with the Court; he or she can no doubt do so before the national courts of the State concerned, but this is not relevant in the Rules of Procedure and Evidence of the Court.*

#### **Rule 9.16. Cooperation requested of the Court**

(a) In accordance with article 93, paragraph 10, a State may transmit to the Court a request for cooperation, either in or accompanied by a translation into one of the two working languages of the Court.

(b) Requests described in sub-rule (a) shall be sent to the Registrar, who shall transmit them as necessary either to the Prosecutor or to the Chamber concerned.

(c) When the Court decides to grant the request for cooperation from a State, the request shall be executed, insofar as possible, following the procedure outlined therein by the requesting State and in the presence of the persons specified in the request.

### **Article 98**

#### **Rule 9.17**

(a) When a requested State notifies the Court that a request for surrender or assistance raises a problem of execution in respect of article 98, the Court shall invite its written or oral observations as well as those of the third State concerned, and shall determine whether and how the request for surrender or assistance should be acted upon, in accordance with article 98.

(b) Pending a response by the Court, the requested State may postpone execution of the request for cooperation.

### **Article 101**

#### **Rule 9.18. Pleas based on a violation of article 101, paragraph 1**

A person surrendered to the Court may submit a plea based on a violation of article 101, paragraph 1, at the latest during the hearing on the confirmation of the charges, in accordance with the provisions of rule 5.19 (b) (ii) and (c).

However, if the person is surrendered to the Court after a hearing on the confirmation of the charges held in his or her absence, pursuant to article 61, paragraph 2, and to rules 5.21 to 5.23, the person charged may submit a plea relating to the application of article 101, paragraph 1, before the Trial Chamber, in accordance with the provisions of rule 6.12.

#### **Rule 9.19. Extension of the surrender**

When the Court has requested a waiver of the requirements of article 101, paragraph 1, and the requested State wishes to obtain the views of the person surrendered to the

Court, a judge of the Chamber dealing with the case shall seek the views of the person, in the presence of his or her counsel.

The views expressed shall be transmitted to the requested State as soon as possible.

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