CHAPTER 453

INTERNATIONAL CRIMINAL COURT ACT

To provide for assistance to the International Criminal Court.

13th December, 2003

ACT XXIV of 2002.

PART 1

PRELIMINARY

Short title.

1. The short title of this Act is the International Criminal Court Act.

Interpretation.

2. (1) In this Act, unless the context otherwise requires -

"ICC crime" means a crime (other than the crime of aggression) over which the ICC has jurisdiction in accordance with the ICC Treaty the relevant provisions of which are reproduced in Schedule I to this Act;

"the ICC Treaty" means the Statute of the International Criminal Court, done at Rome on 17th July, 1998;

"the ICC" means the International Criminal Court established by the ICC Treaty;

"genocide" means an act of genocide as defined in article 54B of the Criminal Code; Cap. 9.

"crime against humanity" means a crime against humanity as defined in article 54C of the Criminal Code; Cap. 9.

"war crime" means a war crime as defined in article 54D of the Criminal Code; Cap. 9.

"Minister" means the Minister responsible for Justice.

(2) In interpreting and applying the provisions of this Act the court shall take into account the original text of the ICC Treaty and of any treaty and convention referred to in the ICC Treaty.

PART 2

ASSISTANCE TO THE ICC

Provision of assistance.

3. (1) The powers conferred by this Part on the Minister are exercisable for the purpose of providing assistance to the ICC in relation to investigations or prosecutions where -

(*a*) an investigation has been initiated by the ICC, and

(*b*) the investigation and any proceedings arising out of it have not been concluded.

(2) Where facsimile transmission is used -

(*a*) for the making of a request by the ICC or the transmission of any supporting documents, or

(*b*) for the transmission of any document in consequence of such a request,

this Part applies as if the documents so sent were the originals of the documents so transmitted. Any such document shall be receivable and admissible in evidence accordingly.

(3) Nothing in this Part shall be read and construed as preventing the provision of assistance to the ICC otherwise than under this Part.

Power to make regulations.

4. The Minister may make regulations providing for the meeting of requests for assistance by the ICC and in particular and without prejudice to the generality of that power may make regulations prescribing the conditions and procedures for the execution of any such request for all or any of the following purposes -

(*a*) the questioning of persons being investigated or prosecuted by the ICC;

(*b*) the taking or production of evidence;

(*c*) the service of any document or act of the proceedings before the ICC;

(*d*) the temporary transfer to the ICC of a prisoner for purposes of identification or for obtaining testimony or other assistance;

(*e*) the entry into and search of any premises and the seizure of any item;

(*f*) the taking of fingerprints or non-intimate samples;

(*g*) the exhumation of any body;

(*h*) the provision of records and documents;

(*i*) the investigation of proceeds of any ICC crime;

(*j*) the freezing or seizure of proceeds for eventual forfeiture;

(*k*) the verification of any evidence or other material.

National security interests.

5. (1) Nothing in any of the provisions of this Part, requires or authorises the production of documents, or the disclosure of information, which would be prejudicial to the security of Malta.

(2) For the purposes of any such provision a certificate signed by or on behalf of the Prime Minister to the effect that it would be prejudicial to the security of Malta for specified documents to be produced, or for specified information to be disclosed, is conclusive evidence of that fact.

Transmission of material to the ICC.

6. (1) Any evidence or other material obtained under this Part by a person other than the Attorney General, together with any requisite verification, shall be sent to the Attorney General who shall make arrangements for the transmission of the evidence or

other material to the ICC.

(2) Where any evidence or other material is to be transmitted to the ICC, there shall be transmitted -

(*a*) where the material consists of a document, the original or a copy, and

(*b*) where the material consists of any other article, the article itself or a photograph or other description of it,

as may be necessary to comply with the request of the ICC.

PART 3

OFFENCES IN RELATION TO THE ICC

Offences in relation to the ICC.

7. (1) It shall be an offence for any person to intentionally commit any of the acts mentioned in Article 70.1 of the ICC Treaty (offences against the administration of justice in relation to the ICC), hereinafter in this Part referred to as "the relevant article".

(2) In interpreting and applying the provisions of the relevant article the court shall take into account any relevant judgment or decision of the ICC and may also take into account any other relevant international jurisprudence.

(3) Without prejudice to the provisions of article 5 of the Criminal Code, a criminal action may also be prosecuted in Malta against any citizen of Malta or permanent resident in Malta who shall have become guilty of an offence mentioned in subarticle (1) although the offence may have been committed outside Malta. Cap. 9.

(4) Proceedings for an offence under this article shall not be instituted except by or with the consent of the Attorney General.

(5) The relevant provisions of the relevant article are set out in the Second Schedule.

(6) A person who is found guilty of an offence under subarticle (1) shall be liable to punishment as follows -

(*a*) where the offence consists of the act mentioned in paragraph (*a*) of the relevant article, to the punishment laid down in articles 104, 105, 107 of the Criminal Code for the corresponding circumstances of the case; Cap. 9.

(*b*) where the offence consists of the act mentioned in paragraph (*b*) of the relevant article, to the punishment laid down in article 103 of the Criminal Code;

(*c*) where the offence consists of any of the acts mentioned in paragraph (*c*) of the relevant article, to the punishment laid down in articles 102, 110, or 111 of the Criminal Code for the corresponding circumstances of the case;

(*d*) where the offence consists of any of the acts mentioned in paragraph (*d*) of the relevant article -

(i) to the punishment of imprisonment from two to five years if the official of the Court properly

performs his or her duties; or

(ii) to the said punishment increased by two or three degrees where the official of the Court fails to perform, or improperly performs, his or her duties; or

(iii) to any punishment higher than imprisonment for a term of five years to which a person accused of an ICC crime may have been sentenced where the official of the Court fails to perform, or improperly performs, his or her duties in or in connection with the trial of that person;

(*e*) where the offence consists of the act mentioned in paragraph (*e*) of the relevant article, to the punishment laid down in article 95(1) of the Criminal Code as the circumstances of the case may be;

Cap. 9.

(*f*) where the offence consists of any of the acts mentioned in paragraph (*f*) of the relevant article, the offender may be dealt with as for the corresponding offence under articles 115 and 121(4)(*d*) of the Criminal Code and shall be liable to punishment accordingly.

Mental element.

8. (1) References in this Part to a person committing any of the acts mentioned in the relevant article, shall be construed in accordance with this article.

(2) Unless otherwise provided by article 7 or by the relevant article, a person is regarded as committing an act referred to in subarticle (1) only if the material elements are committed with intent and knowledge.

(3) For this purpose -

(*a*) a person has intent -

(i) in relation to conduct, where he means to engage in the conduct, and

(ii) in relation to a consequence, where he means to cause the consequence or is aware that it will occur in the ordinary course of events, and

(*b*) "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events.

(4) In interpreting and applying the provisions of this article (which corresponds to article 30 of the ICC Treaty) the court shall take into account any relevant judgment or decision of the ICC and may also take into account any other relevant international jurisprudence.

PART 4

ENFORCEMENT OF SENTENCES AND ORDERS

Detention in Malta in pursuance of ICC sentence.

9. (1) This article applies where -

(*a*) Malta is designated by the ICC as the state in which a person, hereinafter in this Part referred to as "the prisoner", is to serve a sentence of imprisonment imposed by the ICC, and

(*b*) the Minister informs the ICC that the designation is accepted.

(2) The Minister shall issue a warrant authorising -

(*a*) the bringing of the prisoner to Malta,

(*b*) the detention of the prisoner in Malta in accordance with the sentence of the ICC, and

(*c*) the taking of the prisoner to a prison, within the meaning of the Prisons Act, in Malta. Cap. 260.

The provisions of the warrant may be varied by the Minister, and shall be so varied to give effect to any variation of the ICC's sentence.

(2) Subject to the provisions of subarticle (3), a prisoner subject to a warrant authorising his detention in a prison in Malta shall be treated for all intents and purposes as if he were subject to a sentence of imprisonment imposed in exercise of criminal jurisdiction by a court in Malta.

(3) The provisions of any regulations made under the Prisons Act shall apply to a prisoner under this Part subject to such modifications, adjustments or adaptations as the Minister may by regulations under this subarticle prescribe after consultation with the Minister responsible for prisons.

Temporary return or transfer of custody to another state.

10. (1) This article applies where the Minister receives a request from the ICC -

(*a*) for the temporary return of the prisoner to the custody of the ICC for the purposes of any proceedings, or

(*b*) for the transfer of the prisoner to the custody of another state in pursuance of a change in designation of state of enforcement.

(2) The Minister shall -

(*a*) issue a warrant authorising the prisoner's temporary return or transfer in accordance with the request,

(*b*) make the necessary arrangements with the ICC or, as the case may be, the other state, and

(*c*) give such directions as to the custody, surrender and, where appropriate, return of the prisoner as appear to him appropriate to give effect to the arrangements.

(2) Where the prisoner is temporarily returned to the custody of

the ICC, the warrant authorising his detention in Malta shall continue to have effect so as to apply to him again on his return.

Custody of prisoner in transit, etc.

11. (1) The prisoner shall be deemed to be in the legal custody of the Minister at any time when, being -

(*a*) in Malta, or

(*b*) on board a Maltese vessel or aircraft,

he is being taken to or from any place or is being kept in custody.

(2) The Minister may, from time to time, designate a person as a person who is for the time being authorised to take the prisoner to or from any place or to keep the prisoner in custody.

(3) A person so authorised has all the powers, authority, protection and privileges of a police officer.

(4) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by the police and taken to any place to which he may be taken under the warrant issued under any provision of this Part.

Power to make regulations.

12. The Minister may make regulations to provide for the enforcement in Malta of -

(*a*) fines or forfeitures ordered by the ICC, and

(*b*) orders by the ICC against convicted persons specifying reparations to, or in respect of victims,

and in particular and without prejudice to the generality of that power may make regulations which -

(i) authorise the Minister to appoint a person to act on behalf of the ICC for the purposes of enforcing the order and to give that person such directions as appear necessary to the Minister;

(ii) require the registration in the Public Registry of any order to which this article applies and providing for the effects of such registration;

(iii) apply all or any of the provisions relating to the enforcement in Malta of orders of a court of a country or territory outside Malta;

(iv) provide that the reasonable costs for and incidental to the registration and enforcement of an order are recoverable as if they were sums recoverable under the order;

(v) provide for the recovery of fines as a civil debt or for the conversion into imprisonment or detention of any such fines in default of payment:

Provided that different provision may be made for different kinds of order.

Amendment of the Criminal Code. Cap. 9.

13. *Omitted under the Statute Law Revision Act, 1980.*

Amendment of the Extradition Act. Cap. 276.

14. *Omitted under the Statute Law Revision Act, 1980.*

Amendment of the Prisons Act. Cap. 260.

15. *Omitted under the Statute Law Revision Act, 1980.*

Articles of ICC Statute in Schedule.

16. The relevant provisions of Articles 9, 13, 70 and 92 of the ICC Treaty referred to in this Act are reproduced in the Second Schedule and any reference to any such article in this Act or in any other law shall be construed as a reference to the same article as reproduced in the said Schedule.

Ratification of ICC Treaty.

17. Notwithstanding the provisions of any other law, the Government is hereby authorised to ratify the ICC Treaty.

FIRST SCHEDULE

(Article 2)

Crimes within the Jurisdiction of the International Criminal Court

Article 6

Genocide

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such -

(*a*) Killing members of the group;

(*b*) Causing serious bodily or mental harm to members of the group;

(*c*) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(*d*) Imposing measures intended to prevent births within the group;

(*e*) Forcibly transferring children of the group to another group.

Article 7

Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack -

(*a*) Murder;

(*b*) Extermination;

(*c*) Enslavement;

(*d*) Deportation or forcible transfer of population;

(*e*) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(*f*) Torture;

(*g*) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(*h*) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(*i*) Enforced disappearance of persons;

(*j*) The crime of apartheid;

(*k*) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1 -

(*a*) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in

furtherance of a State or organizational policy to commit such attack;

(*b*) "Extermination" includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(*c*) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(*d*) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(*e*) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(*f*) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(*g*) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(*h*) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(*i*) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

1. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

Article 8

War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means -

(*a*) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under

the provisions of the relevant Geneva Convention -

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

(*b*) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts -

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic

monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

(xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

(xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(xvi) Pillaging a town or place, even when taken by assault;

(xvii) Employing poison or poisoned weapons;

(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

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(xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, paragraph 2 (*f*), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(*c*) In the case of an armed conflict not of an international character, serious

violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause -

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(*d*) Paragraph 2(*c*) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(*e*) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (*f*), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.

(*f*) Paragraph 2 (*e*) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

SECOND SCHEDULE

(Article 16)

Articles of the ICC Treaty referred to in the Act

Article 9

Elements of Crimes

1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

2. Amendments to the Elements of Crimes may be proposed by -

(*a*) Any State Party;

(*b*) The judges acting by an absolute majority;

(*c*) The Prosecutor.

Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

3. The Elements of Crimes and amendments thereto shall be consistent with this Statute.

Article 13

Exercise of jurisdiction

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if -

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(*b*) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations;

Article 70

Offences against the administration of justice

1. The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally -

(*a*) Giving false testimony when under an obligation pursuant to Article 69, paragraph 1, to tell the truth;

(*b*) Presenting evidence that the party knows is false or forged;

(*c*) Corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence;

(*d*) Impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties;

(*e*) Retaliating against an official of the Court on account of duties performed by that or another official;

(*f*) Soliciting or accepting a bribe as an official of the Court in connection with his or her official duties.

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4. (*a*) Each State Party shall extend its criminal laws penalizing offences against the integrity of its own investigative or judicial process to offences against the administration of justice referred to in this article, committed on its territory, or by one of its nationals;

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NOTE -

Article 69.1, referred to in Article 70.1(a), provides as follows -

"1 Before testifying, each witness shall, in accordance with the Rules of Procedure and Evidence, give an undertaking as to the truthfulness of the evidence to be given by that witness.".

Article 92

Provisional arrest

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3. A person who is provisionally arrested may be released from custody if the requested State has not received the request for surrender and the documents supporting the request as specified in Article 91 within the time limits specified in

the Rules of Procedure and Evidence. However, the person may consent to surrender before the expiration of this period if permitted by the law of the requested State. In such a case, the requested State shall proceed to surrender the person to the Court as soon as possible.