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**Level:** Introductory

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Article 103 is the key provision on the role of States in the enforcement of sentences. Two preliminary questions arise with regard to this provision.

The first one refers to the legal status of the ICC's sentences. In this regard, it is important to note that the factual part containing the ICC factual findings and identifying the sentenced person is authoritative, binding each State Party when the final decision has been taken by the ICC. Nevertheless, the penitentiary part of the sentence is only authoritative at the moment of the acceptance by the State of the obligation to enforce it.

The second preliminary issue refers to the principles of the enforcement of sentences and the exact modalities of penitentiary enforcement. Following the system at the International Criminal Tribunal for the former Yugoslavia, the ICC Statute only addresses the first ones. As a result, the exact modalities of penitentiary enforcement are not addressed in the ICC Statute.

In light of this situation, the ICTY concludes additional bilateral enforcement agreements with willing parties based on the guidelines offered by the Model Agreement developed by the United Nations, establishing the main framework in which the enforcement of sentences could be carried. It is likely that the ICC will follow the same system, based on a number of bilateral agreements.

This will have the advantage of providing more flexibility to the willing States parties and thus enhancing their willingness to accept enforcement on a case by case basis. However, this approach could also lead to territorial dissimilarities in relation to standard minimum rules on detention, early release, conditional release, suspension of enforcement, or parole to give just some examples.

Turning now to the specific regulations provided for in article 103, paragraph (1)(a) provides that “a sentence of imprisonment shall be served in a State designated by the ICC from a list of States which have indicated their willingness to accept sentenced persons”.

Concerning the conditions of acceptance, paragraph (1)(b) allows State Parties, at the time of declaring their willingness to accept sentenced persons, to attach conditions to their acceptance

which must be agreed by the ICC to be applicable. As it stands now, the States Party could formulate any condition of a penitentiary administrative nature, including those connected with the capacity of a given prison facility where the ICC sentenced person is to be placed.

Paragraph 1 finalizes by stating that “A State designated in a particular case shall promptly inform the ICC whether it accepts the Court’s designation”. It is only after acceptance that the designated party shall notify the ICC whether it is going to exercise any of the above-mentioned conditions.

Paragraph 2 provides for the principle of mutual information. According to it, the enforcement state and the ICC are obliged to provide each other with mutual information on any circumstances, including the exercise of any conditions agreed under paragraph 1, which could materially affect the terms or extent of the imprisonment. The ICC must be given at least 45 days’ notice of any such known or foreseeable circumstances, and during this period, the enforcement state, shall take no action that might prejudice its obligations under article 110. As a result of such notification, consultations may be held to find an agreement acceptable for both the ICC and the enforcement state. If such agreement cannot be reached, the ICC shall notify the enforcement state, and shall proceed in accordance with article 104, paragraph 1.

Paragraph (3) sets out the factors that the ICC must take into consideration in exercising its discretion to designate the enforcement state. These factors are the following: first, the principle that States Parties should share the responsibility for enforcing sentences of imprisonment, in accordance with the principle of equitable distribution as provided for in Rule 201 of the Rules of Procedure and Evidence; second, the application of widely-accepted international treaty standards governing the treatment of prisoners; third, the views of the sentenced person; fourth, the nationality of the sentenced person; and, finally, any other factors regarding the circumstances of the crime or the person sentenced, or the effective enforcement of the sentence, as may be appropriate in designating the enforcement state.

Finally, paragraph four makes clear that, if the ICC Registrar fails to find a willing Party along the lines set out in paragraph [1], the host State has to act as residual custodian on behalf of the ICC. In such a case, the costs arising out of the enforcement of a sentence of imprisonment shall be borne by the ICC.

And with this we conclude the presentation of article 103.

Thank you very much.