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COMMITTEE OF THE WHOLE
Working Group on Procedural Matters

REPORT OF THE WORKING GROUP ON PROCEDURAL MATTERS

Addendum

I. INTRODUCTION

1. The Working Group held ... additional meetings to consider the remaining articles, from ... to ... June 1998. The Working Group herewith transmits to the Committee of the Whole the following articles of Part 5 for its consideration: article 54, paragraph 4; article 54~~ter~~, paragraph 3 (d); article 58, paragraph 6; and article 61, paragraph 6~~bis~~. The Working Group also transmits the following articles of Part 6: article 62, paragraph 1; article 65; and article 69, paragraphs 2 to 4, 4~~bis~~, 5, 6 and 8.
2. The remaining articles will be transmitted at a later stage.

II. TEXT OF DRAFT ARTICLES

Part 5. Investigation and Prosecution

Article 54

Initiation of an investigation

4. The Prosecutor may at any time reconsider a decision whether to initiate an investigation or prosecution based on new facts or information.

Article 54 ter

Rights of suspects and other persons
during an investigation

3.

(d) Shall not be subjected to arbitrary arrest or detention, and shall not be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established in the Statute and the Rules of Procedure and Evidence.

Article 58 ¹

Issuance by the Pre-Trial Chamber of an
arrest warrant or a summons to appear

6. As an alternative to seeking a warrant of arrest, the Prosecutor may submit an application requesting that the Pre-Trial Chamber issue a summons for the person to appear. If the Pre-Trial Chamber finds that there are reasonable grounds to believe that the person committed the crime alleged, and that a summons is sufficient to ensure the person's appearance,² it shall issue the summons, with or without conditions restricting liberty (other than detention) if provided for by national law, for the person to appear on a specified date. The summons shall identify the person summoned and the crimes which the person is alleged to have committed, and shall contain a concise statement of the facts which are alleged to constitute the crime. The summons shall be served on the person.

Article 61

Confirmation of the charges before trial

6 bis. The refusal of the Pre-Trial Chamber to confirm a proposed charge shall not preclude the Prosecutor from subsequently asking again for its confirmation, if it is supported by additional evidence.³

Proposed new paragraph 9: pending.

^{1/} The Working Group draws the attention of the Drafting Committee to a problem with the Arabic version of this provision.

^{2/} Some delegations stated that the provision should not be considered to give the Pre-Trial Chamber the power to issue an arrest warrant instead of a summons as applied for by the Prosecutor when it finds a summons insufficient to ensure the presence of the person.

^{3/} Nothing precluding the Pre-Trial Chamber from exercising any of its functions and powers in conjunction with that request, including to secure the presence of the accused person.

Part 6. The Trial ⁴

Article 62

Place of trial

1. Unless otherwise decided, the place of the trial will be the seat of the Court.
2. deleted
3. deleted
4. deleted
5. deleted

Article 65

Proceedings on an admission of guilt

1. Where the accused makes an admission of guilt under article 64, paragraph 1 (d), the Trial Chamber shall determine whether:
 - (a) The accused understands the nature and consequences of the admission of guilt and whether the admission is voluntarily made after sufficient consultation with defence counsel; and
 - (b) The admission of guilt is supported by the facts of the case that are contained in:
 - (i) The charges and in any supplementary materials presented by the Prosecutor, and which the accused admits; and
 - (ii) Any other evidence, including the testimony of witnesses, presented by the Prosecutor or the accused.
2. Where the Trial Chamber is satisfied that the matters referred to in paragraph 1 are established, the Trial Chamber shall consider the admission of guilt, together with any additional evidence presented and admitted, as an admission of all the essential facts that are required to prove the crime to which the admission of guilt relates, and may convict the accused of that crime.
3. Where the Trial Chamber is not satisfied that the matters referred to in paragraph 1 are established, the Trial Chamber shall order that the trial be continued under the ordinary trial procedures provided by this Statute, and shall consider the admission of guilt not to have been made and may remit the case to another Trial Chamber.

^{4/} The Working Group decided that the word "indictment" should be replaced by the word "charges" throughout Part 6.

4. Where the Trial Chamber is of the opinion that a more complete presentation of the facts of the case is otherwise required in the interests of justice, in particular the interests of the victims, the Trial Chamber may request that the Prosecutor present additional evidence, including the testimony of witnesses, or may order that the trial be continued under the ordinary trial procedures provided by this Statute and, in the latter situation, shall consider the admission of guilt not to have been made and may remit the case to another Trial Chamber.
5. Any discussions between the Prosecutor and the defence regarding modification of the charges, acceptance of the admission of guilt by the accused or the penalty to be imposed shall not be binding on the Court.

Article 69

Evidence

1. pending
2. The testimony of a witness at trial shall be given in person, except to the extent provided by the measures set forth in article 68 or in the Rules of Procedure and Evidence. The Court may also permit the giving of viva voce (oral) or recorded testimony of a witness by means of video or audio technology, as well as the introduction of documents or written transcripts, subject to this Statute and in accordance with the Rules of Procedure and Evidence.⁵ These measures shall not be prejudicial to or inconsistent with the rights of the accused.
3. The parties may call evidence relevant to the case, in accordance with article 64, paragraphs 3 and 6. However, the Court has the authority to call all evidence that it considers necessary for the determination of the truth.
4. The Court may rule on the relevance or admissibility of any evidence in accordance with the Statute and the Rules of Procedure and Evidence.

^{5/} The Working Group noted that the requirements for the admissibility of recorded testimony should be addressed in the Rules of Procedure and Evidence.

4 bis. The Court shall address and observe privileges on confidentiality as set forth in the Rules of Procedure and Evidence.⁶

5. The Court shall not require proof of facts of common knowledge but may take judicial notice of them.

6. Evidence obtained by means of a violation of this Statute or internationally recognized human rights and which either casts substantial doubt on its reliability or the admission of which is antithetical to and would seriously damage the integrity of the proceedings, shall not be admissible.

7. pending

8. When deciding on the relevance or admissibility of evidence collected by a State, the Court shall not rule on the application of the State's national law.

^{6/} These may include privileges relative to doctor-patient, lawyer-client and priest-penitent relationships and other similar privileges.