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COMMITTEE OF THE WHOLE
Working Group on Procedural Matters

PROPOSAL SUBMITTED BY CROATIA

Article 71

Sensitive national security information

Option 2

New paragraph 1

Add a new paragraph 1, as follows:

"1. States cannot claim national defence or security interests for withholding documents or evidentiary materials unless the legitimacy of their concerns has been established by a Pre-Trial Chamber or Trial Chamber."

Paragraphs 1 to 6 thus are renumbered as paragraphs 2 to 7.

This new paragraph 1 can also be added in other options of article 71.

The present proposal corresponds to the Appeals Chamber decision of the International Tribunal for the Former Yugoslavia concerning subpoena duces tecum in the Blaskif case and relevant norms of the Statute and the Rules of Procedure and Evidence of the ICTY.

The Security Council has established this standard for the efficient functioning of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda. There is no reason to apply different practices to the International Criminal Court.

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