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**Preparatory Commission for the International
Criminal Court**

New York
26 July–13 August 1999

**Proposal by France concerning the Rules of Procedure
and Evidence**

Part 3, section 3, subsection 3

Addendum

Section 3. Pre-trial phase (*continued*)

Subsection 3. Closure of the pre-trial phase (*continued*)

62. Confirmation proceedings in the absence of the person charged

**Rule 62.1. Measures taken to ensure the presence of the person concerned at the
hearing on confirmation of charges**

(a) If the person concerned has never appeared before the Pre-Trial Chamber, or if, having appeared under the conditions set forth in rule 5.9,¹ the person has fled or cannot be found, the Pre-Trial Chamber may hold consultations with the Prosecutor, at the request of the latter or on its own initiative, in order to determine whether there is cause to hold a hearing on confirmation of charges under the conditions set forth in article 61, paragraph 2. When the person concerned has a counsel, the consultations shall be held in the presence of the counsel.

(b) The Pre-Trial Chamber shall ensure that a warrant of arrest of the person concerned has been issued and, if the warrant of arrest has not been executed, in a reasonable period of time after the issuance of the warrant, that all reasonable measures have been taken to locate and arrest the person.

¹ See document PCNICC/1999/WGRPE/RT.3.

Rule 62.2. Waiver by the person concerned of his or her right to be present at the hearing on confirmation

If the person concerned is available to the Court, but wishes to waive his or her right to be present at the hearing on confirmation of charges, he or she shall submit a written request to the Pre-Trial Chamber, which may hold consultations with the Prosecutor and the person, assisted or represented by his or her counsel.

Rule 62.3. Decision on the holding of a hearing on the confirmation of charges in the absence of the person concerned

(a) After holding consultations under rules 62.1 and 62.2, and taking into account, among other things, the seriousness of the crimes committed and the interests of the victims, the Pre-Trial Chamber shall decide whether there is cause to hold a hearing on confirmation of charges in the absence of the person concerned, and, in that case, whether the person may be represented by counsel. The Pre-Trial Chamber may, before taking the decision, invite observations from the victims or their legal representatives, in accordance with rules (x) to (xx).²

The decision of the Pre-Trial Chamber shall be notified to the Prosecutor and, where appropriate, to the counsel of the person concerned, and to the victims or their legal representatives, if they have been allowed to participate in the proceedings under rules (x) to (xx).

(b) If the Pre-Trial Chamber decides not to hold a hearing on confirmation of charges in the absence of the person concerned, and the person is not available to the Court, the confirmation of the charges may not take place until the person is available to the Court. The Pre-Trial Chamber may review its decision at any time, at the request of the Prosecutor or on its own initiative.

If the Pre-Trial Chamber decides not to hold a hearing on confirmation of charges in the absence of the person concerned, and the person is available to the Court, it shall order the person to appear.

Rule 62.4. Preparation of the hearing on confirmation of charges in the absence of the person concerned, and holding of the hearing

(a) If the Pre-Trial Chamber decides to hold a hearing on confirmation of charges in the absence of the person concerned, the provisions of rule 5.9³ shall apply, *mutatis mutandis*, to the preparation of the hearing.

If the counsel of the person concerned has been allowed to participate in the proceedings, he or she shall exercise all the rights recognized to the person and shall respect the obligations incumbent upon the person under rule 5.9.

(b) The provisions of rule 5.10 shall apply, *mutatis mutandis*, to the holding of the hearing on confirmation of charges in the absence of the person concerned.

If the counsel of the person concerned has been allowed to participate in the proceedings, he or she shall exercise all the rights recognized to the person and shall respect the obligations incumbent upon the person under rule 5.10.

² This subparagraph replaces paragraphs (a) and (b) of rule 62.3 in document PCNICC/1999/DP.8/Add.2.

³ See document PCNICC/1999/WGRPE/RT.3.

