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**Preparatory Commission for the International
Criminal Court**
Working Group on the Rules of Procedure and Evidence
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Proposal by France concerning the Rules of Procedure and Evidence

Recapitulation of the general outline proposed by France¹

Part 3. Procedure

Section 3. Pre-trial phase

Subsection 2. Conduct of investigation and proceedings

- 57. Collection of evidence.
- 58. Disclosure.
- 59. Orders and warrants issued by the Pre-Trial Chamber (application of the Chamber's powers under article 57 of the Statute).

Proposals

57. Collection of evidence

Rule 57.1 (...)

Rule 57.2 (...)

Rule 57.3 (...)

See document PCNICC/1999/DP.7/Add.2.

¹ See document PCNICC/1999/DP.2.

Rule 57.4. Evidence that cannot be reproduced.²

1. In the situation provided for in article 56, paragraph 1(a), the Prosecutor shall advise the Pre-Trial Chamber in a written request.

2. Immediately upon being advised by the Prosecutor, the Pre-Trial Chamber shall designate one of its judges to take the necessary measures referred to in article 56, paragraph 2.

The judge so designated shall without delay hold consultations with the Prosecutor and, subject to the provisions of article 56, paragraph 1(c), with the person who has been arrested or who has appeared before the Court pursuant to a summons and his counsel in order to determine the measures that he will take and the modalities of their implementation.

2. In the situation referred to in article 56, paragraph 3, the Pre-Trial Chamber shall meet in plenary session.

The Pre-Trial Chamber shall without delay hold consultations with the Prosecutor. If, following these consultations, the Pre-Trial Chamber decides to take measures at its own initiative, it shall designate one of its judges who shall take the action provided for in paragraph 1.

Where the Prosecutor considers that the measures taken could jeopardize the proper conduct of the investigation, he may request that the Pre-Trial Chamber defer the measures. The Pre-Trial Chamber shall respond to this request as promptly as possible, in plenary session, and shall communicate its decision to the Prosecutor and to the person who has been arrested or who has appeared before the Court pursuant to a summons, as well as to his counsel.

Rule 57.5. Collection of evidence in the territory of a State Party³

1. Where the Prosecutor considers that a State Party is in the situation contemplated in article 57, paragraph 3(d), he may submit a written request to the Pre-Trial Chamber for authorization to himself to take certain measures in the territory of the State in question.

2. The Pre-Trial Chamber shall pursuant to article 87, paragraph 1(a), notify the competent authority of a State Party of the Prosecutor's request. It shall request this authority to submit in writing its views on this request within such period of time as it may determine.

The Pre-Trial Chamber may also, at its own initiative, or at the request of the Prosecutor or of the State party in question decide to hold a hearing.

3. The Pre-Trial Chamber shall issue its decision in an order and shall state the reasons for the order, based on the criteria set out in article 57, paragraph 3(d).

4. The order referred to in paragraph 3 shall specify the nature and, where possible, the modalities of enforcement of the measures which the Prosecutor shall be authorized to take in the territory of the State Party concerned. The order shall also establish the duration of these measures.

5. This order may be reviewed, at the request of the Prosecutor or of the State Party concerned.

² This rule concerns article 56 of the Statute.

³ This rule concerns article 57, paragraph 3 (d) of the Statute.

Rule 57.6. Collection of evidence at the request of the defence⁴

1. In compliance with article 57, paragraph 3(b), the Pre-Trial Chamber shall accede to the request of a person who has been arrested or has appeared pursuant to a summons under article 58, unless it determines and states the grounds for such determination that the request was made merely to delay the proceedings or that it will clearly be of no help in the defence of the person accused.

2. Before taking its decision, the Pre-Trial Chamber may seek the views of the Prosecutor.

58. Disclosure

This rule was already dealt with during the session of February 1999: see document PCNICC/1999/L.3/Rev.1, rules 5.11 to 5.21.

59. Orders and warrants issued by the Pre-Trial Chamber

Questions related to the orders and warrants issued by the Pre-Trial Chamber appear to be covered by other rules (see, in particular, the above proposals concerning rules 57.4 to 57.6).

⁴ This rule concerns article 57, paragraph 3 (b) of the Statute.