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Preparatory Commission for the International Criminal Court

Working Group on Rules of Procedure and Evidence

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Proposal submitted by the Netherlands and Poland concerning the Rules of Procedure and Evidence

Article 70

Rule 6.26

1. The Court shall have the primary power to exercise jurisdiction in cases envisioned under article 70 in the case of a positive jurisdictional conflict with the host State. The Court shall give sympathetic consideration to a request from the host State for a waiver of its primary power to exercise jurisdiction in cases where the host State considers such a waiver to be of particular importance.
2. In other cases, in making a decision whether or not to exercise jurisdiction, the Court may consider, in particular:
 - (a) Availability and effectiveness of prosecution in a State Party;
 - (b) Seriousness of an offence;
 - (c) Possible joinder of charges under article 60 with charges under articles 5 to 8;
 - (d) The need to expedite the proceedings;
 - (e) Link with the ongoing investigation or trial before the Court; and
 - (f) Evidentiary considerations.
3. If the Court decides not to exercise its jurisdiction, it may request a State Party to exercise its jurisdiction pursuant to article 70, paragraph 4.