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**Preparatory Commission for the  
International Criminal Court**  
**Working Group on Rules of Procedure and Evidence**  
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16–26 February 1999  
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**Revised discussion paper proposed by the Coordinator**

**Rules of Procedure and Evidence related to Part 6 of  
the Statute**

**Addendum**

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**Rule 6.9**  
**Self-incrimination by a witness**

(a) A witness<sup>1</sup> may object to making any statement that might tend to incriminate him or her. However, the Chamber may direct the witness to answer the question or questions, after assuring the witness that the evidence provided in response to the questions:

- (i) Will be kept confidential and will not be disclosed to the public or any State; and
- (ii) Will not be used either directly or indirectly against that person in any subsequent prosecution by the Court, except under articles 70 and 71.

(b) Before giving such an assurance, the Chamber shall seek the views of the Prosecutor, *ex parte*, to determine if the assurance should be given to this particular witness.

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<sup>1</sup> The issue of the application of the protection to the incrimination of family members still has to be discussed.

(c) In determining whether to direct the witness to answer, the Chamber shall consider:

- (i) The importance of the anticipated evidence;
- (ii) Whether the witness would be providing unique evidence;
- (iii) The nature of the possible incrimination, if known; and
- (iv) The sufficiency of the protections for the witness, in the particular circumstances.

(d) If the Chamber determines it would not be appropriate to provide an assurance to this witness, it shall not direct the witness to answer the question. If the Chamber determines not to direct the witness to answer, it may still continue the questioning of the witness on other matters.

(e) In order to give effect to the assurance, the Chamber shall:

- (i) Order that the evidence of the witness be given in camera;
- (ii) Order that the identity of the witness and the content of the evidence given shall not be disclosed, in any manner, and provide that the breach of any such order will be subject to sanction under article 71;
- (iii) Specifically advise the Prosecutor, the accused, the defence counsel and any Court staff present of the consequences of a breach of the order under subparagraph (ii);
- (iv) Order the sealing of any record of the proceedings; and
- (v) Use protective measures with respect to any decision of the Court to ensure that the identity of the witness and the content of the evidence given are not disclosed.

(f) Where the Prosecutor is aware that the testimony of any witness may raise issues with respect to self-incrimination, he or she shall request an in camera hearing and advise the Chamber of this, in advance of the testimony of the witness. The Chamber may impose the measures outlined in subparagraph (e) for all or a part of the testimony of that witness.

(g) The accused, defence counsel or the witness may advise the Prosecutor or the Chamber that the testimony of a witness will raise issues of self-incrimination before the witness testifies and the Chamber may take the measures outlined in subparagraph (f).<sup>2</sup>

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<sup>2</sup> A rule should be included under Part 9 indicating that when the Court seeks assistance from a State to facilitate the voluntary appearance of a witness, the Court should specify in the request that the witness be advised of this rule on self-incrimination.