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**Preparatory Commission for the International
Criminal Court**

**Working Group on Rules of Procedure and Evidence
concerning Part 5 of the Statute**

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**Proposal submitted by Japan concerning the rules of
procedure and evidence relating to Part 5 of the Statute,
on investigation and prosecution**

Rules 5.28 to 5.34. Disclosure

Add a general rule on disclosure, as follows:

- “1. Within a reasonable time before the confirmation hearing and the trial, the Prosecutor and the defence shall disclose to the opponent party the evidence they intend to submit at each proceeding.
- “2. The Prosecutor and the defence shall disclose to the opponent party any additional evidence they intend to submit during the confirmation hearing or the trial in a timely manner so that the party can have enough time to examine it.
- “3. It shall be up to the Prosecutor and the defence to decide the scope of the evidence they intend to submit at the confirmation hearing or at the trial.”

Explanatory note

Each of the current draft rules on disclosure (rules 5.18 (b), 5.28-5.34, 6.20) is related to a specific issue. However, it is necessary to elaborate a general rule concerning the scope of the evidence that the parties to the proceedings shall disclose at different stages of the proceedings, as well as the question relating to the disclosure by the defence.

(N.B. See footnote 77.)¹ It may be appropriate to discuss the necessity of specific rules in the light of the general rule.

The basic idea of this new general rule concerning disclosure is as follows:

– **Wording in accordance with article 61, paragraph 3 (b)**

It is necessary to clarify that the scope of the evidence subject to disclosure at the stage of the confirmation of the charges is limited to the evidence that is to be submitted at that stage, and that the evidence that is to be submitted only at the trial stage is outside the scope.

– **General principles on the scope of evidence that shall be subject to disclosure by the Prosecutor and the defence at different stages**

- (1) The subject (the Prosecutor and the defence) should be the same;
- (2) The evidence should be limited to that which is to be submitted at different stages by the Prosecutor and the defence;
- (3) It is up to the Prosecutor and the defence to decide the concrete scope of the evidence that they submit at different stages.

These kinds of general principles on the scope of disclosure should be established first, and then the necessity of having a specific provision may be discussed separately.

¹ PCNICC/1999/L.5/Rev.1/Add.1.