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Proposal by France on Rules of Procedure and Evidence

Part 3, section 3, subsection 1

Part 3. Trial proceedings

Section 3. Pre-trial phase

Subsection 1. Commencement of investigation and proceedings

54. Notification of the decisions of the Prosecutor

Rule 54.1. Evaluation by the Prosecutor of information provided to him

When the Prosecutor wishes to initiate an investigation *proprio motu*, he shall analyse the seriousness of the information received in accordance with article 15 and with rules x to x of the present Rules of Procedure.

When the Prosecutor has before him a situation referred to him by a State Party or by the Security Council, he may, in order to evaluate the information provided to him before initiating an investigation, seek additional information from those referring the case or from other States or intergovernmental or non-governmental organizations.

In any event, the Prosecutor may, before initiating an investigation or referring a case to the Pre-Trial Chamber under article 15, request the Pre-Trial Chamber for a ruling regarding a question of admissibility or jurisdiction in accordance with the provisions of article 19, paragraph 3, and with rules x to x of the present Rules of Procedure.

99-03703 (E)



Rule 54.2. Notification of the decision not to initiate an investigation

(a) When the Prosecutor decides not to refer a situation to the Pre-Trial Chamber under article 15, he shall so inform in writing those who provided him with information in accordance with that article.

When the Prosecutor decides not to initiate an investigation under article 53, he shall so inform in writing the State referring the situation to him under article 14, or the Security Council in respect of a situation covered by article 13, paragraph (b).

(b) In the event of more than one referral, the Prosecutor must inform in writing all those who referred situations to him or provided him with information.

(c) The decision of the Prosecutor must be notified as soon as possible and must contain an explanation of the factual and legal considerations on which it is based in view of the absence of a reasonable basis to proceed as defined in article 53, paragraph 1.

(d) When the Prosecutor has before him a situation referred to him under articles 13 to 15 and his decision not to proceed with the investigation is based solely on article 53, paragraph 1 (c), he must also so inform the Pre-Trial Chamber in writing as soon as possible. (On this last paragraph, see also rule 56 of the Australian proposal (PCNICC/1999/DP.1).)

(e) The victims or their legal representatives shall be informed under the terms set forth in rules x to xx.

Rule 54.3. Notification of the decision of the Prosecutor not to prosecute

(See also the Australian proposal, rule 60.)

When the Prosecutor decides not to prosecute, he shall so inform in writing the Pre-Trial Chamber, together with the State which referred the situation to him under article 14 or the Security Council in respect of a situation covered by article 13, paragraph (b).

In the event of more than one referral, the Prosecutor shall inform in writing all those who referred situations to him.

The decision of the Prosecutor must be notified as soon as possible and must contain an explanation of the factual and legal considerations on which it is based in view of the provisions of article 53, paragraph 2.

If any victims or their legal representatives have provided the Prosecutor with information at any stage of the proceedings, the decision not to prosecute shall be notified to them under the terms set forth in articles x to xx.

55. Procedure to be followed in the event of an application for review of a decision not to proceed with an investigation or not to prosecute

(See also the Australian proposal, rules 57 and 61.)

Rule 55.1

(a) In the three months following the notification provided for in rules 54.1 and 54.2, the State making the referral under article 14, or the Security Council in respect of a situation covered by article 13 (b), or both, may make a well-founded application for a review by the Pre-Trial Chamber of the decision of the Prosecutor not to initiate an investigation or not to prosecute.

(b) In this initial application, the State or the Security Council may request the Pre-Trial Chamber to order the Prosecutor to provide them with the evidence in his possession.

Before taking a decision, the Pre-Trial Chamber shall consult the Prosecutor to determine which documents or information may be provided without risk to third parties or to current or future investigations or prosecutions. It shall take the necessary measures, on the one hand, to keep the information confidential, under articles 54, 72 and 93, and on the other hand, under article 68, to protect the safety of witnesses and victims and members of their families.

Following the transmittal of any such documents or information, the State having applied to the Pre-Trial Chamber or the Security Council shall have an additional period of one month in which to submit additional observations.

(c) In all cases, the Prosecutor shall transmit to the Pre-Trial Chamber, at the latter's request, all information and documents in his or her possession. The Pre-Trial Chamber shall take the measures necessary to protect this information, pursuant to paragraph (b) above.

(d) The initial request, along with any additional observations submitted by the State having applied to the Pre-Trial Chamber or by the Security Council, shall be transmitted to the Prosecutor, who shall have an opportunity to respond in writing within a time-frame established by the Pre-Trial Chamber. The observations of the Prosecutor shall be transmitted to the State having applied to the Pre-Trial Chamber or to the Security Council, which may respond thereto.

(e) The victims or their legal representatives shall be informed, in accordance with the conditions laid down in rules x to xx, of any request submitted by a State Party or by the Security Council under article 53, paragraph 3 (a).

They may, in accordance with article 19, paragraph 3, submit any observations on the jurisdiction of the Court or the admissibility of the case, if the request to the Pre-Trial Chamber concerns these issues.

They may also take part in the proceedings subject to the conditions laid down in rules x to x of these Rules.

Rule 55.2

(a) The Pre-Trial Chamber may issue a ruling following this exchange of written observations.

However, it may decide, whenever it deems useful, to hold a hearing and to invite all parties to the proceedings to participate.

(b) The ruling of the Pre-Trial Chamber, concurred in by a majority of the judges comprising the Chamber,¹ shall in all cases state the reasons in fact and law on which it is based. It shall be communicated to all parties to the proceedings.

Should the Pre-Trial Chamber request the Prosecutor to review, in whole or in part, his or her decision not to open an investigation or not to proceed, the latter shall comply as soon as possible. He or she may, to this end, request additional information or decide to pursue his or her investigation.

Once the Prosecutor has taken a final decision, he or she shall so inform the Pre-Trial Chamber and the parties to the proceedings. This decision shall state the considerations in fact and law on which it is based.

(c) If the ruling of the Pre-Trial Chamber concerns the jurisdiction of the Court or the admissibility of the case, the parties to the proceedings before the Pre-Trial Chamber may appeal this ruling in accordance with article 82, paragraph 1 (a).

56. Supervision by the Pre-Trial Chamber of decisions of the Prosecutor taken in the interests of justice

(See also the Australian proposal, rules 58 and 62.)

Rule 56.1

(a) In cases in which the decision of the Prosecutor is based exclusively on the considerations referred to in article 53, paragraph 1 (c) or 2 (c), the Pre-Trial Chamber may, at its own initiative, review this decision in the three months following the notification provided for in rules 54.1 and 54.2.

Before issuing a ruling, the Pre-Trial Chamber shall inform the Prosecutor of its intention to review his or her decision and shall establish a time-frame during which he or she may submit any observations.

In cases in which a request has been submitted to the Pre-Trial Chamber by a State or by the Security Council, the latter shall also be so informed and may submit observations in accordance with rule 55.1.

(b) The victims or their legal representatives shall also be informed of this proceeding and may take part in it subject to the conditions laid down in rules x to x of these Rules.

Rule 56.2

(a) The Pre-Trial Chamber may issue a ruling following this exchange of written observations.

However, it may decide, whenever it deems useful, to hold a hearing and to invite all parties to the proceedings to participate.

(b) The ruling of the Pre-Trial Chamber, concurred in by a majority of the judges comprising the Chamber, shall in all cases state the reasons in fact and law on which it is based. It shall be communicated to all parties to the proceedings.

Notwithstanding the provisions of rule 55.2 (b), should the Pre-Trial Chamber overrule the decision of the Prosecutor not to open an investigation, or, in the case referred to in article 15, not to submit to the Pre-Trial Chamber a request for authorization of an investigation, or not to proceed, the Prosecutor shall comply with the ruling of the Pre-Trial Chamber as soon as possible.

Notes

¹ Rulings of the Pre-Trial Chamber shall be made in plenary session and not by a single judge exercising its functions under article 57, paragraph 2 (b)