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**Preparatory Commission for the International Criminal Court**

New York

16–26 February 1999

26 July–13 August 1999

29 November–17 December 1999

**Proposal submitted by France concerning the Rules of  
Procedure and Evidence**

**Part 3, section 1, subsection 2**

**Section 1. Provisions common to different stages of the  
proceedings**

**Subsection 2. Evidence**

**37. General provisions**

**Rule 37.1. Principle of freedom of evidence**

All evidence submitted by the parties shall, in principle, be admissible before the chambers of the Court, which shall freely assess its probative value, in accordance with article 69, paragraph 4.<sup>1</sup>

**Rule 37.2. Non-application of national law**

(See also rule 96, paragraph (a), of the Australian proposal.)

The chambers of the Court shall not be bound by national legislation governing evidence.

**Rule 37.3. Inadmissibility of certain evidence**

Evidence may be declared inadmissible by a chamber of the Court of its own motion or at the request of one of the parties by means of a written application citing the grounds set out in article 69, paragraph 7. This application shall be communicated to the other parties concerned.

99-04597 (E)



The issue of inadmissibility must be raised as soon as possible after the evidence is submitted to a chamber of the Court.

*Evidence ruled inadmissible shall be withdrawn from the case file.*

**Rule 37.4. Reasons for rulings concerning admissibility**

(See also rule 96, paragraph (c), of the Australian proposal.)

The chambers of the Court must set forth the reasons that led them to rule on the admissibility of evidence.

**38. Testimony (*to come*)**

*Notes*

<sup>1</sup> One of the consequences of the principle of freedom of evidence is that the agreements reached between the Prosecutor and the defence with regard to evidence are not binding on the Court. Moreover, there is no need to provide specific rules for the substantiation of certain facts. Specifically, with regard to evidence in cases of sexual assault, the principle of freedom of evidence makes it possible to respond to all of the questions raised in rule 101 of the Australian proposal (PCNICC 1999/DP.1). There is thus no need to invoke the notion of "corroboration of testimony", since the principle of freedom of evidence allows the judges to attribute to each piece of evidence submitted by the parties the probative value they deem fair and relevant.

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