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20 August 1996

ORIGINAL: ENGLISH

PREPARATORY COMMITTEE ON THE ESTABLISHMENT
OF AN INTERNATIONAL CRIMINAL COURT
12-30 August 1996

PROPOSAL SUBMITTED BY ARGENTINA AND CANADA FOR
ARTICLES 38, 38 bis, 41 AND 43

Article 38

Amend paragraph 1 (d) to read:

- (d) allow the accused to enter a plea of not guilty or to make an admission of guilt before the Trial Chamber.

Add a new article 38 bis:

Article 38 bis

Abbreviated proceedings on an admission of guilt

1. Where the accused makes an admission of guilt under article 38, paragraph 1 (d), the Trial Chamber shall determine whether:

- (a) the accused appreciates the nature and consequences of the admission of guilt and whether the admission is voluntarily made; and

- (b) the admission of guilt is firmly supported by the facts of the case that are contained in:

- (i) the indictment and in any supplementary materials presented by the Prosecutor, and which the accused admits; and

- (ii) any other evidence, including the testimony of witnesses, presented by the Prosecutor or the accused.



2. Where the Trial Chamber is satisfied that the matters referred to in paragraph 1 are established, the Trial Chamber shall consider the admission of guilt as an admission of all the essential facts that are required to prove the crime to which the admission of guilt relates, and may convict the accused of that crime.

3. Where the Trial Chamber is not satisfied that the matters referred to in paragraph 1 are established, the Trial Chamber shall order that the trial be continued under the ordinary trial procedures provided by this Statute, and shall consider the admission of guilt not to have been made.

4. Where the Trial Chamber is of the opinion that a more complete presentation of the facts of the case is otherwise required in the interests of justice, the Trial Chamber may request that the Prosecutor present additional evidence, including the testimony of witnesses, or may order that the trial be continued under the ordinary trial procedures provided by this Statute and, in the latter situation, shall consider the admission of guilt not to have been made.

Article 41

Paragraph 1: in the opening sentence, delete the phrase "subject to article 43".

Paragraph 2 should be amended to read:

"Inculpatory and exculpatory evidence that becomes available to the Procuracy ..."

Article 43

Add the following phrase, "subject to article 41", as follows:

"The Court shall take necessary measures available to it to protect, subject to article 41, the accused, victims and witnesses and may to that end conduct closed proceedings or allow the presentation of evidence by electronic or other special means."
