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Article 76 concerns sentencing. I will start with some general remarks. Article 76 was adopted without difficulty at the Rome Conference. In international criminal proceedings, it is possible to identify two major choices of presenting evidence and making submissions relating to sentencing. The first option is to have submissions and evidence on sentencing considered at one or more distinct hearings to be held after the pronouncement of a verdict of guilt. That would be a bifurcated trial. The other option is hearing all of the evidence and submissions together without issuing a separate decision on guilt. That would be a single trial.

Distinct sentencing hearings are familiar in common law systems in order to protect the jury. Even in the absence of juries in international criminal proceedings, it could be argued from a human rights perspective in favour of separation of the hearings into two stages as to safeguard the judges' impartiality.

The *ad hoc* tribunals initially adopted a policy of distinct sentencing hearings (that is Rule 100 of the original ICTY Rules of Procedure and Evidence). This approach was later abandoned because the judges of the *ad hoc* tribunals thought separate sentencing hearings were unnecessary in the absence of jury trials. That is ICTY Rules of Procedure and Evidence Rule 85(A)(vi) and an equivalent rule in the Rules of Procedure and Evidence of the ICTR. There were complaints about this procedure. The defence argued in *Brđanin* that the accused was forced to “give up his right against self-incrimination in order to present evidence relevant to his sentencing”. The Trial Chamber dismissed this objection with reference to the Appeals Chamber in *Vasiljević*, where the latter stated that “an accused can express sincere regret without admitting his participation in a crime”. At the ICC, article 76 creates a strong presumption in favour of separate sentencing hearings.

The first paragraph of article 76 provides the following:

“In the event of a conviction, the Trial Chamber shall consider the appropriate sentence to be imposed and shall take into account the evidence presented and submissions made during the trial that are relevant to the sentence”.

The circumstances to be considered includes mitigating and aggravating circumstances relating to the crime and circumstances such as the role of the defendant and treatment of victims.

Paragraph (2) of article 76 provides the following:

Except where article 65 applies and before the completion of the trial, the Trial Chamber may on its own motion and shall, at the request of the Prosecutor or the accused, hold a further hearing to hear any additional evidence or submissions relevant to the sentence, in accordance with the Rules of Procedure and Evidence.

This means the following. Paragraph (2) presents that holding a distinct sentencing hearing is an option; however, considering that such a hearing is mandatory at the request of the Prosecutor or accused, it appears likely that there will be a separate sentencing in all cases. Rule 143 provides that this hearing can be postponed by the Trial Chamber, in exceptional circumstances. In the *Lubanga* trial, the Trial Chamber decided, at the request of the defence, that there would be a separate sentencing hearing if the accused is convicted. This provision does not operate when article 65 applies (that is, in cases of a guilty plea).

Paragraph (3) of article 76 apprise the following: “Where paragraph (2) applies, any representations under article 75 shall be heard during the further hearing referred to in paragraph (2) and, if necessary, during any additional hearing”. This means the following. In cases with distinct sentencing hearings, such hearings shall also include the presentation of evidence and submissions relating to reparations.

Paragraph (4) of article 76 provides the following: “The sentence shall be pronounced in public and, wherever possible, in the presence of the accused”. This means the following. Whereas the accused is to be present during trial, paragraph (4) suggests a less strict approach by the use of the words “wherever possible”.