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**Preparatory Commission for the
International Criminal Court**

Working Group on Rules of Procedure and Evidence
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Discussion paper proposed by the coordinator

Part 5 of the Rome Statute

INVESTIGATION AND PROSECUTION

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

[N.B. The following two rules replace rules 55.1 and 55.2 in document
PCNICC/1999/DP.6 and rules 57 and 61 in document PCNICC/1999/DP.1.]

Rule 5.5

(a) A request under article 53, paragraph 3, for a review of a decision by the
Prosecutor not to initiate an investigation or not to prosecute shall be made in writing within
90 days following the notification given under rule X or XX.

The request shall be supported with reasons.

(b) The Pre-Trial Chamber may request the Prosecutor to transmit the information
or documents in his or her possession, or summaries thereof, that the Chamber considers
necessary for the conduct of the review.

The Pre-Trial Chamber shall take such measures as are necessary to protect this
information under articles 54, 72 and 93 and to protect the safety of witnesses and victims
and members of their families under article 68, paragraph 5.

99-04832 (E)



(c) When a State or the Security Council makes a request referred to in paragraph (a) above, the Pre-Trial Chamber may seek further observations from them.

(d) The victims or their legal representatives shall also be informed of this review and may take part in it subject to the conditions laid down in rules X to XX.*

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.**

Footnote*

This provision will be considered at the July/August session of the Preparatory Commission as part of the comprehensive discussion of the participation by victims in proceedings before the Court.

Footnote**

This rule will need to be considered as part of a general discussion of the rules which may be required to underpin article 19.

Rule 5.6*

(a) A decision of the Pre-Trial Chamber, concurred in by a majority of the judges comprising the Chamber, shall contain reasons, as well as a full explanation of those reasons. It shall be communicated to all those who were involved in the review.

Where the Pre-Trial Chamber requests the Prosecutor to review, in whole or in part, his or her decision not to initiate an investigation or not to prosecute, the Prosecutor shall reconsider that decision as soon as possible.

(b) Once the Prosecutor has taken a final decision, he or she shall notify the Pre-Trial Chamber in writing. This notification shall contain the Prosecutor's conclusion, the reasons for the conclusion as well as a full explanation of those reasons. It shall be communicated to all those who were involved in the review.

Footnote*

While undertaking a review under article 53, the Pre-Trial Chamber may have to address issues relating to article 19. In turn, this may raise issues about the right to appeal a decision under article 19.

Review by the Pre-Trial Chamber of decisions of the Prosecutor under article 53 (1) (c) or (2) (c)

[N.B. The following two rules replace rules 56.1 and 56.2 in document PCNICC/1999/DP.6 and rules 58 and 62 in document PCNICC/1999/DP.1.]

Rule 5.7

(a) The Pre-Trial Chamber may on its own initiative review a decision of the Prosecutor taken solely under article 53, paragraph 1 (c) or 2 (c), following the notification given under rule X or XX.

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 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 informed and may submit observations in accordance with rule X.

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

Footnote to (b):

This provision will be considered at the July/August session of the Preparatory Commission as part of a comprehensive discussion of the participation by victims in proceedings before the Court.

Rule 5.8

(a) A decision of the Pre-Trial Chamber, concurred in by a majority of the judges comprising the Chamber, shall contain reasons, as well as a full explanation of those reasons. It shall be communicated to all those who were involved in the review.

When the Pre-Trial Chamber does not confirm the decision of the Prosecutor, he or she shall proceed with the investigation or prosecution.