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**Preparatory Committee on the Establishment
of an International Criminal Court**

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Working Group on Procedural Matters

Paper put forward by the Delegations of ARGENTINA, AUSTRALIA, AUSTRIA, CANADA, FRANCE, GERMANY, JAPAN, KOREA, MALAWI, the NETHERLANDS, SOUTH AFRICA, SWEDEN, the UNITED KINGDOM, and the UNITED STATES, proposing a framework for the fundamental stages of the criminal process of the Court.

This paper is intended only to describe principles which might govern the framework for the fundamental stages of the criminal process and is not meant to be a substitute text for the Zutphen text. Rather, if delegations agree, in the context of this framework further work could be done to simplify the Zutphen text, and in particular Articles 51 through 54. This paper assumes that safeguards for the accused would be fully respected in all the stages of the proceedings described below.

Stage A: Pre-trial Chamber order for the arrest of the person

If upon investigation the Prosecutor concludes that there are reasonable grounds to believe that a person has committed a crime within the jurisdiction of the court, and that the arrest of that person is necessary in view of the factors described in Article 52.1(b), the Prosecutor shall make an application to the Pre-Trial Chamber seeking a warrant for the arrest of the person with respect to those crimes. The application shall specify:

the name of the person or persons, and any other useful identifying information;

the specific crimes within the jurisdiction of the Court which the person is alleged to have committed;

a concise statement of the facts which are alleged to constitute those crimes;

a summary of the evidence and any other information which the Prosecutor believes form reasonable grounds to believe that the person committed those crimes; and

the reasons why the Prosecutor believes the arrest of the person is necessary.

The Pre-Trial Chamber shall examine the application and the evidence or other information submitted by the Prosecutor and, if satisfied that there are reasonable grounds to believe that the person named committed the crime alleged and that the specific criteria for arrest are met, shall issue a warrant for the arrest of the person. The warrant of arrest shall identify the person to be arrested and the crimes for which the person's arrest is sought, and shall contain a concise statement of the facts which are alleged to constitute those crimes.

Stage B: The arrest of the person by national authority and the person's surrender to the ICC, as provided in Part 9

The person would be arrested by national authorities, based on the warrant of arrest issued by the Pre-Trial Chamber in Stage A. The person would be surrendered to the ICC according to applicable national procedures. There would be no need to elaborate the charges any further at this stage.

Stage C: Hearing before the Pre-Trial Chamber to confirm the charges

Within a reasonable period after the person's surrender or voluntary appearance before the ICC, a hearing shall be held to confirm the charges on which the Prosecutor seeks trial. (In the event the prosecutor had not sought the arrest of the person and he voluntarily appears before the ICC, then the procedures under Stages A and B, which are premised on the need to arrest the person, would not apply.)

A reasonable period prior to the hearing, the person shall be provided with the proposed charges and informed of the evidence on which he or she intends to rely at the hearing.

At the hearing, the Prosecutor must present the charges on which he seeks trial and has the burden of establishing to the court that there is a prima facie case¹ which respect to each of those charges. The evidence, however, could be presented in summary form; full presentation of witnesses and evidence as at trial is not contemplated.

At the hearing, the accused person has the right to test the evidence and to submit that the Prosecutor has not established a prima facie case.

At the conclusion of the hearing the Pre-Trial Chamber will decide whether there is a prima facie case in respect of any or all charges. If there is a prima facie case as to any of the charges, the Pre-Trial Chamber will confirm them, commit the case for trial and bind the person over for trial.

If the person had not previously been subject of a warrant of arrest, an arrest warrant may be issued upon confirmation of the charges at the conclusion of the hearing.

Stage D: The trial

¹ We would look to various formulas already in the Zutphen text for clearer expression of the "prima facie case" concept.