

16 August 1996

UNITED NATIONS  
Department of Public Information  
Press Release  
L/2798

---

TRIAL IN ABSENTIA AMONG ISSUES DISCUSSED BY PREPARATORY  
COMMITTEE ESTABLISHMENT OF CRIMINAL COURT

---

The wilful and deliberate refusal of accused persons to appear before a proposed international criminal court would be sufficient grounds for initiating a trial in absentia, many delegations told the Preparatory Committee on the Establishment of an International Criminal Court yesterday afternoon.

Several delegations spoke of the need to balance the internationally recognized right to self-defence with the exceptionally serious, international nature of crimes to be prosecuted by the proposed court. Also this afternoon, the Committee discussed the functions and powers of the trial chamber.

The representative of Egypt said that while the right to self-defence was fundamental, the international court would be rendering judgement on powerful persons in a unique position to obstruct justice. In the majority of cases, the accused would likely be absent. Argentina called for terms under which in absentia trials might be carried out to be clearly spelt out.

Canada, Austria, South Africa and several others said that while in absentia trials should be allowed for the purpose of gathering testimony and evidence, definitive pronouncements of guilt or innocence should only be made upon the apprehension of the accused. Germany noted that several war criminals in this century had escaped justice due to the loss of evidence.

Japan said trials might proceed when the accused deliberately refused to appear, provided that rigorous criteria were employed to ensure that the refusal was both wilful and deliberate. The court might be flexible in cases where the accused persons had escaped from lawful custody or broken bail, New Zealand asserted. The right of appeal was emphasized by Thailand.

---

Absentee trials might undermine the credibility of the proposed court, several delegates said. The need for the court to follow the "highest international standards" in legal matters was raised by Trinidad and Tobago. Finland suggested that the court not be used for "show trials".

The representatives of China, Austria and South Africa voiced opposition to elements of the court's draft statute by which in absentia trials could be justified by the ill health of the accused persons, or by their disruption of trial proceedings. Chile said ill health should be used only to postpone proceedings. When the accused created disruptions, "means should be found to restore order", the United States asserted.

Australia said the provisions of the statute dealing with contempt might result in the accused being removed from the trial chamber, with defendants retaining a right to monitor the trial through counsel. Italy noted that the court faced two equally serious risks: that of being reduced to issuing only declamatory judgements, and that of defendants being able to halt proceedings by refusing to appear.

Also this afternoon, the Committee discussed issues relating to the advisability of allowing the accused to enter a plea of guilty or not guilty at the commencement of the trial. The representative of Ireland opened the debate by saying that the entering of a plea of guilty or not guilty was "one of the most important concepts" of the common law system. He reviewed the procedural consequences of entering the plea and the advantages of such a system.

The representative of Australia suggested that it would be better to "bridge the gap" between different legal systems instead of debating which system was better. Entering a plea of guilty or not guilty was "relevant only in the case of a trial by jury", the Netherlands said, adding that the proposed statute should provide a rule for an admission of guilt in open court, as well as a guarantee that no judgement would be based solely on the confession of the accused.

The representative of Canada said that the real issue at hand was the following question: If the accused was willing to admit to the essential facts in the indictment, what would be the practical effects of such an admission or plea? Even after such an admission, the final decision belonged to the court, he added. The court should pay particular attention on whether the accused made full and voluntary admission, and whether the admission was firmly supported by the facts in the case. When those conditions were met, it could lead to an abbreviated proceeding; otherwise, the court could order a full trial.

Norway urged the Committee to undertake imaginative efforts to find common denominators in the world's different legal systems.

The Preparatory Committee meets again at 10:30 a.m. today to continue discussing the draft statute of the proposed court.

\* \* \* \* \*