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COMMITTEE OF THE WHOLE
Working Group on Procedural Matters

PROPOSAL FOR ARTICLE 63

Trial in presence of the accused

1. The accused shall be present during the trial.

N.B. The accused person's right to legal assistance during the trial is dealt with in articles 64 and 67.

2. If the accused, being present before the Court, is continuing to disrupt the trial, the Trial Chamber may remove the accused and shall provide for him or her to observe and assist counsel from outside the courtroom, through the use of communications technology if required. Such measures shall be taken only in exceptional circumstances, after other reasonable alternatives have proved inadequate, and only for such duration as is strictly required.

Preservation of evidence

No provision would be contained in this Article. Instead, a provision along the following lines could be inserted into article 57:

4. Evidence preserved for trial pursuant to this article, or the record thereof, shall be admitted at trial in accordance with article 69, and given such weight as determined by the Trial Chamber.

GE.98-71181 (E)
ROM.98-1722

[3.

Option 1¹

(a) Notwithstanding paragraph 1, the Trial Chamber may, in exceptional circumstances, order that the trial proceed in the absence of the accused, if the accused, having been present at the commencement of the trial, thereafter flees [, after being previously advised that the trial could continue if he or she did so].

(b) The Trial Chamber shall, if it makes an order under subparagraph (a), ensure that the rights of the accused under this Statute are respected, and in particular, that the accused is legally represented, if necessary by a lawyer appointed by the Court.

(c) Where the Trial Chamber has conducted proceedings in accordance with this paragraph, its judgement under article 72 may be appealed in accordance with the provisions of Part 8.

Option 2²

N.B. The proposals contained in documents A/CONF.183/C.1/WGPM/L.15 and L.17 are abbreviated versions of this option. In substance, the proposal in document L.15 deviates from option 2 only in respect of subparagraphs (a) - exceptional circumstances - and (c).

(a) Notwithstanding paragraph 1, in exceptional circumstances, the Trial Chamber may, in the interests of justice, proprio motu or at the request of one of the parties, order that the trial proceed in the absence of the accused, if the latter, having been duly informed of the opening of the trial:

- (i) Requests to be excused from appearing for reasons of serious ill-health;
- (ii) Does not appear on the day of the hearing; or
- (iii) Under detention has, when summoned for the date of the trial, refused to appear without good reason, and made it particularly difficult to bring him to the Court.

In the event that the accused is convicted following a trial held in his absence, the Trial Chamber may issue a warrant for the arrest and transfer of

¹Option 1 is derived from the original text of article 63, option 2.

²Option 2 is in essence the original text of article 63, option 3.

the accused for the purposes of executing the judgement. The decision taken under the provisions of this paragraph shall be communicated to the accused and may be appealed.

(b) The Trial Chamber shall, if it makes an order under subparagraph (a), ensure that the rights of the accused under this Statute are respected, and in particular:

- (i) That all reasonable steps have been taken to inform the accused of the charge; and
- (ii) That the accused is legally represented, if necessary by a lawyer appointed by the Court.

(c) When the accused has not been duly informed of the opening of the trial and when all reasonable steps have been taken to inform the accused of the charges, the Trial Chamber may also, in very exceptional circumstances, proprio motu or at the request of one of the parties, order that the trial proceed in the absence of the accused when required in the interests of justice or the interests of the victims.

The accused may not then be represented by a lawyer of the accused's choosing, but the judge presiding over the Trial Chamber may appoint a lawyer on his own motion.

(d) When the accused, having been judged in accordance with the above provisions, is taken prisoner or is arrested, the decisions taken in his absence by the Trial Chamber shall be null and void in all their provisions. The evidence submitted during the trial held in the absence of the accused may not be used, during the second trial, to establish the charges levelled against the accused, except where it is impossible for the depositions to be made a second time or where the evidence cannot again be produced.

Nevertheless, the accused may agree to the decision if the sentence pronounced in his absence is less than or equal to 10 years of imprisonment.]
