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PREPARATORY COMMITTEE ON THE
ESTABLISHMENT OF AN INTERNATIONAL
CRIMINAL COURT
Working Group on General Principles of
Criminal Law and Penalties
11-21 February 1997

CHAIRMAN'S TEXT

Article K¹

Mistake of fact or of law^{2, 3}

Alternative text A

Unavoidable mistake of fact or of law shall be a defence provided that the mistake is not inconsistent with the nature of the alleged crime. Avoidable mistake of fact or of law may be considered in mitigation of punishment.

Alternative text B

1. A mistake of fact shall be a defence only if it negates the mental element required by the crime [charged provided that said mistake is not inconsistent with the nature of the crime or its elements] [, and provided that the circumstances he reasonably believed to be true would have been lawful].

¹ The letter designation of this article corresponds to that found in part 3 bis (General principles of criminal law) of volume II of the report of the Preparatory Committee (Official Records of the General Assembly, Fifty-first Session, No. 22 (A/51/22), vol. II).

² There were widely divergent views on this matter.

³ Some delegations were of the view that mistake of fact was not necessary because it was covered by mens rea.

2. Mistake of law may not be cited as a ground for exemption from criminal responsibility [, except where specifically provided for in this Statute].⁴

⁴ Some delegations felt that paragraph 2 of alternative text B still left some ambiguity, and an alternative approach could read as follows:

"Mistake of law as to whether a particular type of conduct is a crime under this Statute, or whether a crime is within the jurisdiction of the Court, is not a defence. However, a [reasonable] mistake of law may be a defence if it negates the mental element required by such crime."