



Lexsitus Lecturer: Dr. Christopher Mahony (Research Fellow, CILRAP)

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Hello, my name is Chris Mahoney. I am a Research Fellow at the I am a Research Fellow at the Centre for International Law Centre for International Law Research and Policy, and I'm going to briefly take you through article 25 of the Rome Statute. Article 25 speaks to the elements of individual criminal responsibility and article 25(1) says that the Court shall have jurisdiction over natural persons.

Article 25(2) then tells us that a person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with the Statute.

Then Article 25(3) begins to take us into the modes of liability, what we call Individual Criminal Liability it says: "in accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

- a. Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
- b. Orders solicits or induces the commission of such a crime which in fact occurs or is [even] attempted;
- c. For the purpose of facilitating the commission of such a crime [an individual] aids, abets or otherwise assists in its commission or its attempted commission including providing the means for its commission;
- d. In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either: be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or [where it is] made in the knowledge of the intention of the group to commit a crime".

Now, what do we necessarily mean by knowledge? What we mean by knowledge is informed by article 30. Article [30] tells us that unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court, only if the material elements are committed with intent and knowledge. So, for the purposes of this article a person has intent where in relation to conduct that person means to engage in the conduct, so this is the actus reus element. In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of

events. Then article [30(3)], for the purposes of this article, knowledge means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. Know and knowingly are therefore construed in this in this way and are to be interpreted in this way throughout the Rome Statute.

So, how has this been interpreted? There has been some discrepancy in the jurisprudence as to the level of knowledge, firstly for aiding and abetting.

Of course, we have the well-known case before the International Criminal Tribunal for the former Yugoslavia. This was the Perišić' Appeal Judgment which demanded specific direction as a mens rea element of the intent. It argued that to aid and abet requires that the material support provided to another person that committed a crime had to have been intended specifically for the specific crime that was committed. However, this interpretation, set outside the preceding jurisprudence. It was rejected recently in the Charles Taylor Appeal Judgment before the Special Court for Sierra Leone. It was also rejected in the Šainović Appeal Judgment before the International Criminal Tribunal for the former Yugoslavia, as well as in the Popović Appeal Judgments, and the Stanišić and Simatović Appeal Judgments, both also before the International Criminal Tribunal for the former Yugoslavia.

Before the International Criminal Court, the first aiding and abetting conviction was entered under, of course, 25(3)(c) and that was in the trial of Jean-Pierre Bemba. In that judgment, the Court provided its interpretation of the mental standard for aiding and abetting and especially the purpose requirement.

So, we have these two significant modes of liability. One, which is article 25(3)(c) for the purpose of facilitating the commission of a crime: aids, abets or otherwise assists in its commission, or its attempted commission including providing the means for its commission. But then of course we have the issue of knowledge and whether an individual intends, whether the aiding or abetting is for the purpose of committing a crime. Of course, we then go to article 30 to determine what that means and what knowledge means and here we have the standard of the ordinary course of events in the Lubanga Appeal Judgment. The ordinary course of events were interpreted to mean virtual certainty of course. This jurisprudence may hold or be overturned, but this idea that if an individual provides material support to a group, and they have knowledge that perhaps the group has committed conduct consistently in the past that constitutes criminality under the Rome Statute, then those actors may well be liable for aiding and abetting.

Of course, in article 25(3)(d) and anywhere in any other way, an individual contributes to the commission or attempted commission of such a crime by a group of persons acting with common purpose, this same purpose specific to the criminal conduct is not necessary. What is necessary there is to show that a common purpose existed between the person making in any other way a contribution to a group that then committed crimes under the Rome Statute.