

A/AC.249/1997/WG.2/CRP.2/Add.2  
19 February 1997

ORIGINAL: ENGLISH

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 B b., c. and d.<sup>1</sup>

Individual criminal responsibility

[Subject to the provisions of articles C, G and H,] a person is criminally responsible and liable for punishment for a crime defined [in article 20] [in this Statute] if that person:

(a) commits such a crime, whether as an individual, jointly with another, or through another person regardless of whether that person is criminally responsible;

(b) orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;

[(c) fails to prevent or repress the commission of such a crime in the circumstances set out in article \_\_ [referring to command/superior responsibility];]

---

<sup>1</sup> 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, Supplement No. 22 (A/51/22), vol. II). In addition to replacing paragraphs b., c. and d., of article B, the present article also replaces articles I and J.



(d) [with [intent] [knowledge] to facilitate the commission of such a crime,] aids, abets or otherwise assists in the commission [or attempted commission] of that crime, including providing the means for its commission;<sup>2</sup>

(e) either:

(i) [intentionally] [participates in planning] [plans] to commit such a crime which in fact occurs or is attempted; or

[(ii) agrees with another person or persons that such a crime be committed and an overt act in furtherance of the agreement is committed by any of these persons that manifests their intent [and such a crime in fact occurs or is attempted];<sup>3</sup>]<sup>4</sup>

(f) [directly and publicly] incites the commission of [such a crime] [genocide] [which in fact occurs], [with the intent that such crime be committed];

(g)<sup>5</sup> [with the intent to commit such a crime,] attempts to commit that crime by taking action that commences its execution by means of a substantial step, but that crime does not occur because of circumstances independent of the person's intentions.<sup>6</sup>

-----

---

<sup>2</sup> It was pointed out that the commentary to the ILC draft Code of Crimes (A/51/10, p. 24, para. (12)) implicitly also includes aiding, abetting or assisting ex post facto. This presumption was questioned in the context of the ICC. If aiding, etc., ex post facto were deemed necessary to be criminalized, an explicit provision would be needed.

<sup>3</sup> In addition to the two types of conduct described in para. (e), there is a third type of criminal association that may be considered. One formulation of this third category would be to refer to the conduct of a person who "participates in an organization which aims at the realization of such a crime by engaging in an activity that furthers or promotes that realization".

<sup>4</sup> The inclusion of this subparagraph gave rise to divergent views.

<sup>5</sup> Questions pertaining to voluntary abandonment or repentance should be further discussed in connection with defences or penalties.

<sup>6</sup> A view was expressed that it would be preferable that issues connected with attempt be taken up in a separate article rather than in the framework of individual responsibility. In that view, the article on individual responsibility should only refer to the way in which the person takes part in the commission of a crime, regardless of whether it deals with a completed crime or an attempted crime.