



Article 25 ICC Statute

Individual criminal responsibility

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.
2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.
3. 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 attempted;
 - (c) For the purpose of facilitating the commission of such a crime, 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 crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) 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
 - (ii) Be made in the knowledge of the intention of the group to commit the crime;
 - (e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;
 - (f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.
4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

Artikel 25 IStGH-Statut

Individuelle strafrechtliche Verantwortlichkeit

- (1) Der Gerichtshof hat aufgrund dieses Statuts Gerichtsbarkeit über natürliche Personen.
- (2) Wer ein der Gerichtsbarkeit des Gerichtshofs unterliegendes Verbrechen begeht, ist dafür in Übereinstimmung mit diesem Statut individuell verantwortlich und strafbar.
- (3) In Übereinstimmung mit diesem Statut ist für ein der Gerichtsbarkeit des Gerichtshofs unterliegendes Verbrechen strafrechtlich verantwortlich und strafbar, wer
 - a) ein solches Verbrechen selbst, gemeinschaftlich mit einem anderen oder durch einen anderen begeht, gleichviel ob der andere strafrechtlich verantwortlich ist;
 - b) die Begehung eines solchen Verbrechens, das tatsächlich vollendet oder versucht wird, anordnet, dazu auffordert oder dazu anstiftet;
 - c) zur Erleichterung eines solchen Verbrechens Beihilfe oder sonstige Unterstützung bei seiner Begehung oder versuchten Begehung leistet, einschließlich der Bereitstellung der Mittel für die Begehung;
 - d) auf sonstige Weise zur Begehung oder versuchten Begehung eines solchen Verbrechens durch eine mit einem gemeinsamen Ziel handelnde Gruppe von Personen beiträgt. Ein derartiger Beitrag muss vorsätzlich sein und entweder
 - i) mit dem Ziel geleistet werden, die kriminelle Tätigkeit oder die strafbare Absicht der Gruppe zu fördern, soweit sich diese auf die Begehung eines der Gerichtsbarkeit des Gerichtshofs unterliegenden Verbrechens beziehen, oder
 - ii) in Kenntnis des Vorsatzes der Gruppe, das Verbrechen zu begehen, geleistet werden;
 - e) in Bezug auf das Verbrechen des Völkermords andere unmittelbar und öffentlich zur Begehung von Völkermord aufstachelt;
 - f) versucht, ein solches Verbrechen zu begehen, indem er eine Handlung vornimmt, die einen wesentlichen Schritt zum Beginn seiner Ausführung darstellt, wobei es jedoch aufgrund von Umständen, die vom Willen des Täters unabhängig sind, nicht zur Tatausführung kommt. Wer jedoch die weitere Ausführung des Verbrechens aufgibt oder dessen Vollendung auf andere Weise verhindert, ist aufgrund dieses Statuts für den Versuch des Verbrechens nicht strafbar, wenn er das strafbare Ziel vollständig und freiwillig aufgegeben hat.
- (4) Die Bestimmungen dieses Statuts betreffend die individuelle strafrechtliche Verantwortlichkeit berühren nicht die Verantwortung der Staaten nach dem Völkerrecht.

German Criminal Code

Strafgesetzbuch

Section 25 Perpetration

- (1) Whoever commits the crime himself or through another shall be punished as a perpetrator.
- (2) If more than one person commit the crime jointly, each shall be punished as a perpetrator (co-perpetrator).

§ 25 Täterschaft

- (1) Als Täter wird bestraft, wer die Straftat selbst oder durch einen anderen begeht.
- (2) Begehen mehrere die Straftat gemeinschaftlich, so wird jeder als Täter bestraft (Mittäter).

Section 26 Incitement

Whoever intentionally induces another to intentionally commit an unlawful act, shall, as an inciter, be punished the same as a perpetrator.

§ 26 Anstiftung

Als Anstifter wird gleich einem Täter bestraft, wer vorsätzlich einen anderen zu dessen vorsätzlich begangener rechtswidriger Tat bestimmt hat.

Section 27 Accessoryship

- (1) Whoever intentionally renders aid to another in that person's intentional commission of an unlawful act shall be punished as an accessory.
- (2) The punishment for the accessory corresponds to the punishment threatened for the perpetrator. It shall be mitigated pursuant to Section 49 subsection (1).

§ 27 Beihilfe

- (1) Als Gehilfe wird bestraft, wer vorsätzlich einem anderen zu dessen vorsätzlich begangener rechtswidriger Tat Hilfe geleistet hat.
- (2) Die Strafe für den Gehilfen richtet sich nach der Strafdrohung für den Täter. 2Sie ist nach § 49 Abs. 1 zu mildern.

Individual criminal responsibility (Art. 25 ICC Statute)

Committing crimes under international law typically entails cooperation of a large number of persons. However, the collective nature of crimes under international law does not absolve us of the need to determine individual responsibility. This approach has been reflected in customary law and all international criminal law instruments since 1945 (cf. Article 25 Sections 1 and 2 ICC Statute). The ICC Statute has set out the requirements for individual criminal responsibility more systematically and also more detailed than any of the preceding statutes. It does not leave it to the definitions of the crimes to establish how they can be committed, as it partly happened in the IMT Statute. And it also goes beyond the ICTY and ICTR Statutes, which simply enumerate forms of individual criminal responsibility by referring to a person “who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime”.

• Provisions of the ICC Statute

While Art. 25 (3) clearly distinguishes three types of individual criminal responsibility, there are no explicit gradations made in the degree of criminal liability. No explicit reference is made to the modes of participation in sentencing; however, as stated in Art. 78 (1) of the Statute and ICC Rule of Procedure and Evidence 145 (I) (c), the Court can take into account “the degree of participation of the convicted person.”



- **Commission, Art. 25 (3) (a) ICC Statute**

- Commission as an individual

One who fulfills the requirements of a crime against international law in his or her own person “commits as a crime as an individual” in terms of Article 25 (3) (a), first alternative, and is clearly liable under international criminal law

- Joint Commission (Co-Perpetratorship)

If several people act together in committing a crime under international law, each one is individually responsible. According to Article 25 ICC Statute joint commission entails both an **objective element** (“committing”), which is a **contribution** to the physical commission of the crime and a **subjective element** (“jointly”), which could be named a common plan, or purpose, or design. It flows from this consensual work sharing co-operation that every co-perpetrator is responsible for the contributions of the other perpetrators, which means that every co-perpetrator is responsible for the whole crime.

- The contribution of the crime need not be part of the execution of the material elements of the crime. It can consist of any kind of contribution at any stage of the crime, even in a preparatory stage.
- As regards the subjective element, one needs to establish the quality and intensity of the mutual agreement or design to commit the crime. This subjective is also crucial for the distinction between joint commission and other forms of participation which is largely in the subjective sphere.
- Each perpetrator must have special intent if so required for the crime in question.

- Commission through another person

Article 25 (3) (a), third alternative of the ICC Statute establishes criminal responsibility of a perpetrator who uses another person as a tool to commit a crime under international law, regardless of whether the direct perpetrator is liable himself.

- Commission by omission?

The commission of a crime under international law is, in the words of the Yugoslavia Tribunal, not only “the physical perpetration of a crime by the offender himself”, but also “the culpable omission of an act”. In this regard, the ICC Statute is open to interpretation.

- **Ordering and instigating, Art. 25 (3) (b) ICC Statute**

- Ordering

Anyone who orders the commission of a crime against international law is criminally liable. This provision of Article 25 (3) (b), first alternative, of the ICC Statute embodies customary international law. An order assumes the existence of a – typically military – relationship of subordination between the one giving and the one receiving the order.



➤ **Instigation: Soliciting / inducing**

According to ICTY jurisprudence, one who “prompts” another, by action or omission, to commit a crime against international law is an instigator. As a rule, this results from psychological pressure; however, physical inducements are also conceivable. Even a primary perpetrator who has already decided to act may be induced to act. A chain of inducements is possible. The instigator is not liable for the excesses of a person who acts at his instigation.

Subjectively, instigation requires that the perpetrator wished to “provoke or induce” the commission of the crime or that he or she was aware of the “substantial likelihood” that the commission of the crime would result from his or her conduct.

• **Assistance**

Assistance is the weakest form of complicity which covers any act that contributes to the commission or the attempted commission of a crime under international law.

➤ **Assisting the primary perpetrator, Art. 25 (3) (c)**

It suffices for the assistance to facilitate the crime or otherwise has a substantial effect on it. It is not necessary for the assistance to be causally connected to the crime.

The assistance need not be given at the location or at the time the main crime is committed. However, it appears to be in conflict with the principle of individual guilt if an accused is held responsible for aiding and abetting a crime after the crime’s completion.

From a subjective point of view, it is required that the person giving the assistance was aware that his own acts assisted in the commission of that crime by the principal. Additionally, Article 25 (3) (c) requires that the assistance be afforded “for the purpose of facilitating the commission” of the crime.

➤ **Assisting the commission by a group Art. 25 (3) (d)**

As an objective requirement, responsibility is connected to the commission or attempted commission of a crime under international law by a group. A group is any association of at least three persons who act in furtherance of a “common purpose.” Any contribution to the group crime not covered by another form of participation establishes the criminal responsibility of the accessory.

Unlike Art. 3 (c), Art. 3 (d) does not require that the perpetrator act for the purpose of facilitating the commission of a specific crime under international law. The aim of furthering the criminal activity of the group and knowledge of its purpose would suffice.

• **Inchoate crimes (attempt; incitement to genocide)**

Unlike in international customary law, planning and preparing a crime under international law is not covered by the ICC Statute. The zone of criminality only begins once the perpetrator incites to commit genocide, Art. 25 (3) (e), or has taken a significant step toward carrying out the crime, Art. 25 (3) (f). Participating in an attempt is criminal, as is an ineffective attempt.



Recommended reading: Gerhard Werle: *Principles of International Criminal Law*, 2005, marg. no. 338-346, 353-366; 485-487, 491-508;
Special topic (optional reading): Joint Criminal Enterprise (Gerhard Werle: *Principles of International Criminal Law*, marg. no. 349-352)