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A. Appendices

A.1. Modes of Liability Under the Charter of the IMT at Nuremberg

Article 6.

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

(a) CRIMES AGAINST PEACE: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

(b) WAR CRIMES: namely, violations of the laws or customs of war. [. . .]

(c) CRIMES AGAINST HUMANITY [. . .]

Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

Article 8.

The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

All translations of the following legislation are the author’s own. The greatest care was taken to ensure the choice of English words represent the meanings given to terminology within each of the respective jurisdictions, however any mistakes made are the responsibility of the author.
A. Appendices

A.2. Modes of Liability Under the Model Penal Code of the US (not applied in most states of the US)

Section 2.06. Liability for Conduct of Another; Complicity.

(1) A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable, or both.

(2) A person is legally accountable for the conduct of another person when:
   (a) acting with the kind of culpability that is sufficient for the commission of the offense, he causes an innocent or irresponsible person to engage in such conduct; or
   (b) he is made accountable for the conduct of such other person by the Code or by the law defining the offense; or
   (c) he is an accomplice of such other person in the commission of the offense.

(3) A person is an accomplice of another person in the commission of an offense if:
   (a) with the purpose of promoting or facilitating the commission of the offense, he
      (i) solicits such other person to commit it; or
      (ii) aids or agrees or attempts to aid such other person in planning or committing it; or
      (iii) having a legal duty to prevent the commission of the offense, fails to make proper effort so to do; or
   (b) his conduct is expressly declared by law to establish his complicity.

(4) When causing a particular result is an element of an offense, an accomplice in the conduct causing such result is an accomplice in the commission of that offense, if he acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense.

(5) A person who is legally incapable of committing a particular offense himself may be guilty thereof if it is committed by the conduct of another person for which he is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his incapacity.
A.2. Modes of Liability Under the Model Penal Code of the US (not applied in most states of the US)

(6) Unless otherwise provided by the Code or by the law defining the offense, a person is not an accomplice in an offense committed by another person if:

(a) he is a victim of that offense; or

(b) the offense is so defined that his conduct is inevitably incident to its commission; or

(c) he terminates his complicity prior to the commission of the offense and
   (i) wholly deprives it of effectiveness in the commission of the offense; or
   (ii) gives timely warning to the law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.

(7) An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction or has been acquitted.
PARTIES TO OFFENCES

Article 21.
(1) Everyone is a party to an offence who
   (a) actually commits it;
   (b) does or omits to do anything for the purpose of aiding any person to commit it; or
   (c) abets any person in committing it.
(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.

Article 22.
(1) Where a person counsels another person to be a party to an offence and that other person is afterwards a party to that offence, the person who counselled is a party to that offence, notwithstanding that the offence was committed in a way different from that which was counselled.
(2) Everyone who counsels another person to be a party to an offence is a party to every offence that the other commits in consequence of the counselling that the person who counselled knew or ought to have known was likely to be committed in consequence of the counselling.
(3) For the purposes of this Act, ‘counsel’ includes procure, solicit or incite.

ATTEMPTS — CONSPIRACIES — ACCESSORIES

Article 463. Except where otherwise expressly provided by law, the following provisions apply in respect of persons who attempt to commit or are accessories after the fact to the commission of offences:
(a) every one who attempts to commit or is an accessory after the fact to the commission of an indictable offence for which, on conviction, an accused is liable to be sentenced
to imprisonment for life is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years;

(b) every one who attempts to commit or is an accessory after the fact to the commission of an indictable offence for which, on conviction, an accused is liable to imprisonment for fourteen years or less is guilty of an indictable offence and liable to imprisonment for a term that is one-half of the longest term to which a person who is guilty of that offence is liable; . . .

Article 464. Except where otherwise expressly provided by law, the following provisions apply in respect of persons who counsel other persons to commit offences, namely

(a) every one who counsels another person to commit an indictable offence is, if the offence is not committed, guilty of an indictable offence and liable to the same punishment to which a person who attempts to commit that offence is liable . . .

PARTICIPANTS AUX INFRACTIONS

Article 21.

(1) Participant à une infraction:

a) quiconque la commet réellement;

b) quiconque accomplit ou omet d'accomplir quelque chose en vue d'aider quelqu'un à la commettre;

c) quiconque encourage quelqu'un à la commettre.

(2) Quand deux ou plusieurs personnes forment ensemble le projet de poursuivre une fin illégale et de s'y entraider et que l'une d'entre elles commet une infraction en réalisant cette fin commune, chacune d'elles qui savait ou devait savoir que la réalisation de l'intention commune aurait pour conséquence probable la perpétuation de l'infraction, participe à cette infraction.

Article 22.

(1) Lorsqu'une personne conseille à une autre personne de participer à une infraction et que cette dernière y participe subséquemment, la personne qui a conseillé participe à cette infraction, même si l'infraction a été commise d'une manière différente de celle qui avait été conseillée.

(2) Quiconque conseille à une autre personne de participer à une infraction participe à chaque infraction que l'autre commet en conséquence du conseil et qui, d'après ce que
savait ou aurait du savoir celui qui a conseillé, était susceptible d’être commise en conséquence du conseil.

(3) Pour l’application de la présente loi, «conseiller» s’entend d’amener et d’inciter, et «conseil» s’entend de l’encouragement visant à amener ou à inciter.

**TENTATIVES — COMPLOTS — COMPLICES**

Article 463. Sauf disposition expressément contraire de la loi, les dispositions suivantes s’appliquent à l’égard des personnes qui tentent de commettre des infractions ou sont complices, après le fait, de la perpétration d’infractions:

a) quiconque tente de commettre un acte criminel pour lequel, sur déclaration de culpabilité, un accusé est passible de l’emprisonnement à perpétuité, ou est complice, après le fait, de la perpétration d’un tel acte criminel, est coupable d’un acte criminel passible d’un emprisonnement maximal de quatorze ans;

b) quiconque tente de commettre un acte criminel pour lequel, sur déclaration de culpabilité, un accusé est passible d’un emprisonnement de quatorze ans ou moins, ou est complice, après le fait, de la perpétration d’un tel acte criminel, est coupable d’un acte criminel et passible d’un emprisonnement égal à la moitié de la durée de l’emprisonnement maximal encouru par une personne coupable de cet acte . . .

Article 464. Sauf disposition expressément contraire de la loi, les dispositions suivantes s’appliquent à l’égard des personnes qui conseillent à d’autres personnes de commettre des infractions:

a) quiconque conseille à une autre personne de commettre un acte criminel est, si l’infraction n’est pas commise, coupable d’un acte criminel et passible de la même peine que celui qui tente de commettre cette infraction . . .

A.3.1. Diagram Of Hierarchical Relationship Between The Old Common Law Modes Of Liability (No Longer Applied)
A. Appendices

A.4. Modes Of Liability Under The German *Strafgezeitsbuch*

SECTION TWO
Third Title
Principal (Authorship) And Participation

§25 Principals
(1) Any person who commits the offence himself or through another shall be liable as a principal.
(2) If more than one person commits the crime jointly, each shall be liable as a principal (joint principals).

§26 Abetting (or Inducing)
(1) Any person who intentionally induces another to intentionally commit an unlawful act shall be liable to be sentenced as if he were a principal.

§27 Aiding
(1) Any person who intentionally assists another in the intentional commission of an unlawful act shall be convicted and sentenced as an aider.
(2) The sentence for the aider shall be based on the penalty for a principal. It shall be mitigated pursuant to §49(1).

§29 Separate criminal liability of the accomplice
Each accomplice shall be liable according to the measure of his own guilt and irrespective of the guilt of the others.

§49 Special statutory mitigating circumstances
(1) When a sentencing mitigation is required or permitted according to this provision, the following mitigation shall apply:
   1. In place of life imprisonment, the mitigated sentence shall not be less than three years.
   2. In the case of a limited term of imprisonment, a sentence of at most three quarters of the maximum sentence applicable for the crime may be given. For a monetary fine, the same applies with respect to the maximum daily rate.
ZWEITER ABSCHNITT
Dritter Titel
Täterschaft und Teilnahme

§25 Täter
(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 (Mit-
täter).

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

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

§29 Selbständige Strafbarkeit des Beteiligten
Jeder Beteiligte wird ohne Rücksicht auf die Schuld des anderen nach seiner Schuld
bestraft.

§49 Besondere gesetzliche Milderungsgründe
(1) Ist eine Milderung nach dieser Vorschrift vorgeschrieben oder zugelassen, so gilt für
die Milderung folgendes:
   1. An die Stelle von lebenslanger Freiheitsstrafe tritt Freiheitsstrafe nicht unter drei
      Jahren.
   2. Bei zeitiger Freiheitsstrafe darf höchstens auf drei Viertel des angedrohten Höchst-
      maßes erkannt werden. Bei Geldstrafe gilt dasselbe für die Höchstzahl der Tagessätze.
A. Appendices

A.4.1. Diagram Of Hierarchical Relationship Between German Modes Of Liability
A.5. Modes of Liability Under the Argentine Codigo Penal

TITLE VII
CRIMINAL PARTICIPATION

ARTICLE 45 - Those who take part in the execution of the crime or provide assistance or cooperation to the author or authors, without which it would not have been possible to commit the crime, will receive the sentence established for the crime. Those who directly bring about that another person commit the crime will also receive the same punishment.

ARTICLE 46 - Those who co-operate in any other way in the execution of the crime, and those who provide subsequent assistance in fulfilment of promises made prior to the crime, are punished with one third to one half of the sentence corresponding the crime. If the sentence is reclusion for life, then reclusion for fifteen to twenty years will apply, and if the sentence is life imprisonment, a sentence of ten to fifteen years imprisonment will apply.

TITULO VII
PARTICIPACION CRIMINAL

ARTICULO 45 - Los que tomasen parte en la ejecución del hecho o prestasen al autor o autores un auxilio o cooperación sin los cuales no habría podido cometerse, tendrán la pena establecida para el delito. En la misma pena incurrirán los que hubiesen determinado directamente a otro a cometerlo.

ARTICULO 46 - Los que cooperen de cualquier otro modo a la ejecución del hecho y los que presten una ayuda posterior cumpliendo promesas anteriores al mismo, serán reprimidos con la pena correspondiente al delito, disminuida de un tercio a la mitad. Si la pena fuere de reclusión perpetua, se aplicará reclusión de quince a veinte años y si fuere de prisión perpetua, se aplicará prisión de diez a quince años.
A. Appendices

A.5.1. Diagram of Hierarchical Relationship Between the Argentine Modes of Liability
A.6. Modes of Liability Under the Rome Statute

Article 25

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 a 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 . . .