

Actus Reus of Aiding and Abetting in International Crimes (Original Research)

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Extended Abstract

Actus reus of a crime is one of the elements that has a special place in the organization of a crime. International crimes have different forms of material elements according to the complexity and multiplicity of the ways of committing them. This diversity in the material element will also make the methods of aiding different. In the procedure of international courts, based on different legal theories, they have issued rulings that state the basis of guarantee and separation between the people involved in the commission of the crime regarding the aiding and abetting of international crimes. Certain rulings, based on the theory of criminality, have put two objective and subjective theories as the basis of their reasoning behind the findings. Another group of opinions and judgments in line with part "d" paragraph 3 of Article 25 of the Rome Statute have put forward the theory of joint criminal actions and made it the basis of the guarantee and separation of the principal from the aider and abettor. The basis of the mentioned theory should be sought in the theory of absolute metaphorical criminality and the theory of equality in the rights of common law countries. Recently, the International Criminal Court has used the criterion of crime control, acknowledging the existence of a distinction between the main perpetrator and the aider and abettor. According to this criterion, the principal perpetrator is not limited to the person who has physically committed the crime, but also includes those who, despite not being present at the scene of

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the crime, have control and leadership over the commission of the crime, because they are the ones who ultimately decide to commit the crime. Considering the above theoretical foundations, Therefore, the question that is constantly raised is that how the material element of aiding and abetting in international crimes organized With the descriptive and analytical method in the form of studying and following the judgments and judicial procedures of international criminal courts and the opinions of jurists and searching in the original sources of international criminal law, it seems that, firstly, the behavior of the aider and abettor in international criminal law can be both an act and an omission. Negligence in committing the act fulfills the behavior required to commit the crime and makes it possible to fulfill the material element of aiding and abetting by omission. In addition, it is not necessary for the act to be tangible, but it can include omission, which often has a decisive effect on the commission of the crime, provided that the omission of the said act is necessary along with the mental element, as a result of the possibility of the omission of the act simply by presence or spiritual encouragement. To provide help, as an aider or abettor is realized when it is accompanied by will and knowledge; Secondly, The material element of the aider and abettor must be realized; Thirdly, the time of realization of the material element of the aiding and abetting in international criminal law includes before, after and during the crime; Fourthly, the condition of effect or effect is essential that there is no fixed procedure in the selection of each of the last mentioned conditions among international criminal courts. Referring to the second and third clauses of Article 25 of Clause 3 of the Statute of the International Criminal Court, it has not commented on the quantity of assistance and assistance and its amount, that is, how much of this act must be done in order for the title of aider and abettor to be included in this guilty person. . While, the military courts of Nuremberg in 1948, in the trial of Otto Ollendorff, according to Law No. 10 of the Council, stated: the assistance provided must have a substantial effect on the crime of the principal offender. Opinions of the ICTR, ICTY and the Special Court of Sierra Leone and Cambodia emphasize the latter statement. Further, the International Criminal Court and the Special Tribunal of Lebanon consider only the influence on the occurrence of the crime as the criterion of the aider and abettor. Therefore, international criminal courts, such as ICTR and ICTY, believe that the role of the aider and abettor in the commission of a crime must have a quantitative and qualitative threshold, and they have openly spoken about the "direct and fundamental" effect in committing a crime. The International Law Commission has deemed it necessary that the aider and abettor are directly and fundamentally involved in the commission of the crime. In addition, in the commentary on the draft of the 1996 plan, it is mentioned that the aider and abettor must provide the kind of assistance that directly and fundamentally assists in the commission of the crime.

Therefore, between the ICTY and ICTR, the Nuremberg and Tokyo Military Courts, and the Sierra Leone and Cambodia Courts, the common point in the material element is the existence of the basic influence of the aider and abettor on the occurrence of the crime, and on the other hand, the International Criminal Court and the Special Tribunal of Lebanon on the lack of the need for substantial influence as a condition for the occurrence of the aiding and abetting.

Keywords

Actus Reus, Court, Tribunal, Statute, Crimes, Aider and Abettor, International Criminal Law.

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