

# Individual Criminal Liability at ICC: A Case Study

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**Abstract:** *This article is about the Individual Criminal Liability of the Individual at ICC. Here in this article my main focus is to highlight the crimes committed by an individual at an international level and the affixing the liability on such wrongdoer so that they or she must not be let free. This could be achieved with the help of International Criminal Court which is in the process of development and has provided the teeth to the provisions of the Rome statute by punishing the accused of war crimes, crimes against humanity and genocide. The provisions of Rome statute has tried to protect the rights of both the accused as well as the victims and has even due regard to the safety and protection of the witnesses. Here in the Article, my focus would be on Article 25 of the statute which talks about the jurisdiction of ICC on every such person who commits the crime within the jurisdiction of the court and thus providing punishment and penalty for the same and it would include not only the offender who committed the offence directly but also the one who aided or abetted such crime. Further, I would be discussing the trial of Thomas Lubanga case and as to how he was prosecuted.*

**Keywords:** ICC, International Criminal Court, Article 25, Rome Statute, Thomas Lubanga, War Crimes, Genocide, Crimes against humanity

## 1. Introduction

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The greatest responsibility to prosecute as well as fixing the criminal liability or responsibility on an individual is an international case is on the International Criminal Court (ICC), where the ICC works on the guidelines of the Rome Statute which is an international legal document that strives to provide the mechanism for the trials, investigations and punishments to the individuals involved in dangerous crimes like the crimes against humanity, genocide, war crimes etc. Before the coming into force of the ICC's Rome Statute that is before July 1, 2002, there was no such concrete mechanism which could confer the liability on the wrongdoer. [1] However there were certain temporary arrangements like International Criminal Tribunal For Yugoslavia (ICTY) and International Criminal Tribunal For Rwanda (ICTR) but still they were lacking the teeth to create a fear of liability or the consequence of the wrongdoing until the ICC came and took up this job seriously and had successfully established itself since then. [2]

There are no doubt certain requirements which are yet to be fulfilled by the ICC and it requires further more developments in order to streamline its procedural set up but still its journey so far has surfaced itself as a permanent, concrete and a serious body which is capable enough to start the case while following all the required objectives of International Criminal Law along with Human Rights standards and further to investigate the case properly along with the cooperation of the states and the witnesses wherein the rights of the accused as well as those of the victims are also kept intact and further to conclude its trial, followed by appeals and finally adopting various redressal mechanisms. [3]

The concept of the individual criminal responsibility provides that when an individual or group of individuals commits a crime which is of international nature and which affects not only the local or domestic laws [4] but also the international laws then such an individual must be fixed with a liability for his wrongdoing as the crime committed by him or her has affected the society or people at large like, the war crimes, genocide, ethnic cleaning, crimes against humanity etc. [5]

### Article 25 of the Rome Statute

According to the 25th Article of ICC statute, the ICC would have the jurisdiction over natural persons and if anyone commits a crime within the court's jurisdiction then he or she would be entitled to undergo liability as provided in the statute. Further, it is provided that the court would have jurisdiction over every person who falls within the jurisdiction of the Rome Statute and such a person would be punished accordingly. It is also provided that to attract the liability it is not necessary that the individual has committed the crime directly and thus it would be sufficient if in case he or she has abetted the act or has aided the act or has supplied anything essential for the commission of the offence. [6] Such a person would be liable equally as if the offence had been committed by him directly. Thus it covers within its ambit any individual, group of individuals, any organisation etc who work with a ulterior motive or intention to do an act in an offensive manner and against

humanity, such a person would be pulled and made liable under the ICC Statute. [7] In order to establish the Joint Liability under Article 25 (c) of the ICC Statute, there must exist the concurrence of Actus Reus and Mens Rea that is the act by the group of people together to work towards a common plan, along with the need to have a common existence of mental element at the time of doing of the act in order to attract the joint liability.

Thus the liability under International Criminal Law is not limited only for committing war crime, genocide or crime against humanity but also for any attempt, assistance, facilitation or aiding and abetment of the crime as well. So the individual who even plans or instigates the commission of crime, could also be made liable.

### **The Criminal Liability Imposed on Thomas Lubanga Dyilo by ICC.**

Thomas Lubanga [8] was the first person ever who was convicted by the International Criminal Court (ICC). He was from the Democratic Republic of Congo and was accused of the war crimes for which he was convicted. He founded and took a lead in the Union of Congolese Patriots (UPC) and was found to be a key player and mastermind in the Ituri conflict. Under his leadership the rebels committed various acts of inhuman nature and did various human rights violations including murder, ethnic massacres, rape, torture, forcibly conscripting child soldiers and mutilation. Further he was also charged for crime against humanity, rape, murder, etc. Later on he was convicted with an imprisonment of 14 years. [9]

Going into the details of the case, The Trial Chamber concluded that the accused as well as the co - accused agreed, participated and acted with a common intention to build an army with a motive to establish and maintain political as well as military control over Ituri. It further confirmed that there was a participation by the young children who were used as soldiers and also the bodyguards of the accused. Thus a warrant of arrest was issued against Lubanga and charges were confirmed against him. While the proceedings were going on there was a stay for a time being and later the proceedings were again resumed, the appeal chambers upheld the decision to stay the proceedings but it reversed the decision to release the accused and the case was thus remanded back to the trial chambers. The Trial chambers ordered to stay the proceedings considering the fair trial issues of the accused, due to non implementation of Chamber's orders by prosecution. Later in the trial various witnesses were testified and even experts were called and even the victims were allowed to participate in the trial and finally on 14th March 2012, the Trial Chamber concluded the guilt of Lubanga for the war crimes and also for using children in such hostilities and thus was awarded a sentence for 14 years. [10]

The convictions in the cases shows that the ICC has developed so far since its inception in 2002 and since then its growing body which is making its success in dealing with heinous war crimes etc. The support and cooperation that the ICC is getting from various states has made ICC a strong body to rely on and even in cases where the state does not take an action to prosecute against the war criminals, the

ICC is self sufficient to take an initiative, carry on the investigations and conduct a fair and transparent trial with a conclusion which is binding on the states. [11]

### **References**

- [1] See Model Penal Code (American Law Institute, 1985), § 2.06 (1): "committed by his own conduct", available at (last visited 30 June 2008); good Introduction by M. D. Dubber, *Criminal Law: Model Penal Code 1 et seq.* (NY:Foundation Press, 2002), Spanish Penal Code (Código Penal, Ley Orgánica 10/1995, de 23 Nov. 1995), article 28: "por sí solo"; German Penal Code (trans. by J. Darby, *THE AMERICAN SERIES OF FOREIGN PENAL CODES* (Vol. 28, 1987), , last visited 1 July 2008), § 25 (1): "selbst ... begehrt" ("acting himself").
- [2] U.N. Doc. A/CONF.183/C.1/L.3 (1998), article 23 paras. 5 and 6. See also E. Wise, *General Principles of Criminal Law*, in: L. Sadat Wexler (ed.), *MODEL DRAFT STATUTE FOR THE INTERNATIONAL CRIMINAL COURT BASED ON THE PREPARATORY COMMITTEE'S TEXT TO THE DIPLOMATIC CONFERENCE 42* (1998); A. Sereni, *Individual criminal responsibility*, in: F. Lattanzi (ed.), *THE INTERNATIONAL CRIMINAL COURT: COMMENTS ON THE DRAFT STATUTE 145-6* (1998); supra note 3, W.A. Schabas, *Principles*.
- [3] 9 C. f. "Discussion paper proposed by the Coordinator", in: Report of the Preparatory Commission, 24 July 2002 (Addendum. Part II. Proposals for a provision on the crime of aggression, UN-Doc. PCNICC/2002/2/Add.2) and (last visited 30 June 2008); for a critical assessment see also R. S. Clark, *Rethinking aggression as a crime and formulating Its elements: The Final Work-Product of the Preparatory Commission for the International Criminal Court*, 15 *LEIDEN J. INT'L L.* 859 (2002).
- [4] Micaela Frulli, in Antonio Cassese et al. (Eds.), *The Rome Statute of the International Criminal Court: A Commentary*, Oxford University Press, Oxford, 2002, p. 533.
- [5] Kai Ambos, in Otto Triffterer (Ed.), *Commentary on the Rome Statute of the International Criminal Court - Observers' Notes, Article by Article, Second Edition*, C.H. Beck/Hart/Nomos, München/Oxford/Baden-Baden, 2008, p. 765.
- [6] See – for a first attempt to develop a theory of attribution in international criminal law – K. Marxen, *Beteiligung an schwerem systematischem Unrecht. Bemerkungen zu einer völkerstrafrechtlichen Straftatlehre*, in: K. Lüderssen (ed.), *AUFGEKLÄRTE KRIMINALPOLITIK ODER KAMPF GEGEN DAS BÖSE? BAND III: MAKRO DELINQUENZ 226 et seq.* (1998). On the peculiarities on attribution in international criminal law see also supra note 2, K. Ambos, *DER ALLGEMEINE TEIL*, 539 et seq. and passim.; id., *Remarks on the General Part of International Criminal Law*, 4 *J. INT'L CRIM. JUST.* 663 (2006); supra note 328, id., § 7, margin No. 10.
- [7] Prosecutor v. Tadic, para. 191. In a similar vein most recently Prosecutor v. Krajišnik, Case No. IT-00-39-T, Judgment, Trial Chamber, 27 Sep. 2006, para. 876:

"JCE is well suited to cases such as the present one, in which numerous persons are all said to be concerned with the commission of a large number of crimes". C. f. A. Zahar/G. Sluiter, INTERNATIONAL CRIMINAL LAW. A CRITICAL INTRODUCTION 255-257 (2008). 30 Supra note 24, Pro

- [8] Prosecutor v. Lubanga, Case No. ICC-01/04-01/06-803, Decision on the confirmation of charges, PTC I, 29 Jan. 2007, paras. 326 et seq.
- [9] The Prosecutor v. Thomas Lubanga Dyilo, ICC 601/04601/06.
- [10] Situation in the Democratic Republic of the Congo, in the case of the Prosecutor v Thomas Lubanga Dyilo, ICC-01/04-01/06.
- [11] See Prosecutor v. Perreira, Case No. 34/2003, Judgment, Special Panel for Serious Crimes, 27 Apr. 2005, 19-20, (last visited 30 June 2008). Concurring also *ibid.*, Separate Opinion of Judge Phillip Rapoza, pp. 4-5, paras. 17-18, 25. See also Prosecutor v. de Deus, Case No. 2a/2004, Judgment, Special Panel for Serious Crimes, 12 Apr. 2005, p. 13, see: (last visited 30 June 2008); Prosecutor v. Cardoso, (known as Lolotoe Case), Case No. 04c/2001, Judgment, Special Panel, 5 Apr. 2003, pp. 18 et seq., (last visited 30 June 2008)