

REVISITING ACTUS REUS: A SURVEY OF AIDING AND ABETTING CONVICTIONS IN INTERNATIONAL CRIMINAL LAW

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ABSTRACT

The scope of aiding and abetting in international criminal tribunals has been subject to significant dispute. While the parameters for mens rea have received a great deal of attention, the actus reus debate is considerably less developed. This paper surveys aiding and abetting cases from international criminal jurisprudence to define the parameters of acceptable actus rei for aiding and abetting convictions. Some central questions that go into this scope-defining exercise are: how close to the crime does one have to be; can those who contributed to the plan or the broader logistics be liable under an aiding and abetting theory; and what acts (or omissions) have sufficed to meet the actus reus threshold for aiding and abetting convictions? This case survey articulates a line of what acts meet the actus reus of aiding and abetting liability across various international criminal tribunals.

This survey divides the actus reus of aiding and abetting into two overarching umbrellas of 'material support' and 'influence,' with further conceptual subcategories beneath each umbrella. Material support is divided into identifying members of a target group; providing weapons or other integral logistics; providing or authorizing personnel (including assailants) to a crime scene; transporting victims to a crime scene; denying the target group protection; and establishing and supervising roadblocks. Influence is divided into tacit encouragement (serving as an approving spectator at the crime scene); standing guard; giving a speech; issuing a hateful media campaign; explicit moral encouragement; issuing orders; attending meetings; omissions; and, importantly, endorsing unlawful decisions.

This study surveys fifty-four cases in which individuals were convicted of aiding and abetting and the conviction upheld, and twenty-three instances in which an aiding and abetting conviction was either considered and rejected or overturned on appeal. Through the use of originally-created visuals, it analyzes, compares, and contrasts each case within the framework described above to elicit the overall themes and concludes by drawing a line for the actus reus of aiding and abetting in international criminal law.

I. INTRODUCTION

The advent of international criminal accountability arose as a response to the atrocities perpetrated by the Nazis during World War II.¹ Gas chambers, forced labor camps, extreme humiliation, torture, and dehumanization led the global community to pierce the veil of sovereignty.² The global community started to consider that sometimes states cannot be left to control all the activities within their own borders; sometimes intervention is required into the otherwise sovereign affairs of another state to prevent gross abuses of human rights by a state against its own

¹ See Evolution of International Criminal Justice, INT'L CRIM. COURT PROJECT.

² See generally *id.*

people.³ Thus, at the Nuremberg trials in the 1940s, international criminal law was born, and individual criminal responsibility for international crimes became a tool in the accountability toolbox.⁴

In the United States legal system, parameters are expanded or limited through jurisprudence. The U.S. has tested the boundaries of its laws for over 200 years and even new laws are frequently litigated.⁵ However, cases regarding international criminal accountability are relatively uncommon given the difficulty in prosecuting such crimes, the lack of buy-in to the international criminal law regime, and the time and resources required to litigate just one of these cases.⁶ Thus, defining the parameters of acceptable interpretations of provisions within statutes for these criminal tribunals is an ongoing enterprise.

One area in international criminal law, modes of liability, has received significant attention.⁷ Put simply, modes of liability offer ways to differentiate conduct and assign liability to perpetrators that is proportional to the actual harm they caused.⁸ The three overarching frameworks for criminal liability are co-perpetration (also known as Joint Criminal Enterprise), superior or command responsibility (failure to prevent or punish a crime committed by a subordinate), and individual criminal responsibility.⁹ Generally, both direct and indirect individual criminal responsibility incorporate planning, instigating, ordering, committing, and aiding and abetting as modes of liability.¹⁰ Although not articulated so clearly at the outset, the Nuremberg trials established similar modes of liability, and the ad-hoc tribunals drafted their statutes to include a framework for liability that encompassed different forms of criminal responsibility.¹¹ The below table identifies the *actus reus* standards of six international criminal tribunals.

³ See generally *id.*

⁴ See *id.*

⁵ See, e.g., State and Federal Reproductive Rights and Abortion Litigation Tracker, KAISER FAMILY FOUND. (Feb. 17, 2023).

⁶ See The International Criminal Court and the United States, HUM. RTS. WATCH.

⁷ See generally MODES OF LIABILITY IN INT'L CRIM. LAW (Jérôme de Hemptinne et al., 2019) [hereinafter MODES OF LIABILITY].

⁸ See *id.*

⁹ See *id.*

¹⁰ *Id.*

¹¹ *Id.*

Table 1: Actus Reus Standards of International Criminal Tribunals¹²

Court	Location in Statute	Actus Reus Standard
International Criminal Court (ICC)	Article 25(3)(c), Rome Statute	A person who “[p]urposefully aids and abets, or otherwise assists in the commission of a crime under the jurisdiction of the ICC, or attempted commission, including providing means for its commission.” ¹³
International Criminal Tribunal for the former Yugoslavia (ICTY)	Article 7(1)	“A person who planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute shall be individually responsible for the crime. Article 7(1) is concerned with persons directly responsible for planning, instigating, ordering, committing, or aiding and abetting in the planning, preparation, or execution of a crime. Thus, both the individual who himself carries out the unlawful conduct and his superior who is involved in the conduct not by physical participation, but for example by ordering or instigating it, are covered by Article 7(1).” ¹⁴

¹² The Special Tribunal for Lebanon was excluded because it draws from Lebanese criminal law and does not explicitly mention aiding and abetting liability, though the relevant mode of liability can be found in Article 3(1) of the Statute for the Special Tribunal for Lebanon. *See* S.C. Res. 1757, Statute of the Special Tribunal for Lebanon, art. 3(1), U.N. Doc. S/RES/1757, at 12 (May 30, 2007). Further, formulations of modes of liability from the Nuremberg trials (which help explain the origins and evolution of the ‘modes of liability’ concept and deserve particularly significant further attention) and the International Military Tribunal for the Far East likewise do not mention aiding and abetting liability, and thus were excluded.

¹³ Rome Statute of the International Criminal Court art. 25(3)(c), *adopted* July 17, 1998, 2187 U.N.T.S. 3 [hereinafter Rome Statute].

¹⁴ S.C. Res. 827, Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, art. 7(1–4), U.N. Doc. S/RES/827 (May 25, 1993), *reprinted in* 32 I.L.M. 1203 (1993) [hereinafter ICTY Statute].

Court	Location in Statute	Actus Reus Standard
International Criminal Tribunal for Rwanda (ICTR)	Article 6(1)	“A person who planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation, or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime.” ¹⁵
Kosovo Specialist Chambers (KSC)	Article 16, Law on the Specialist Chambers	“A person who planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation or execution of such a crime shall be individually responsible for the crime.” ¹⁶
Special Court for Sierra Leone (SCSL)	Article 6	“A person who planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation, or execution of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime.” ¹⁷
Extraordinary Chambers in the Courts of Cambodia (ECCC)	Article 29, Law on the Establishment of the Extraordinary Chambers	“Any Suspect who planned, instigated, ordered, aided and abetted, or committed the crimes referred to in article 3 new, 4, 5, 6, 7 and 8 of this law shall be individually responsible for the crime.” ¹⁸

While the constitutive statutes for these tribunals outline which modes of individual liability shall be criminalized, they do not define the modes of liability; rather, the definitions come from interpretation through jurisprudence. This study focuses on the jurisprudence that further defines the parameters of the actus reus for

¹⁵ S.C. Res. 955, Statute of the International Tribunal for Rwanda, art. 6(1), U.N. Doc. S/RES/955 (Nov. 8, 1994), *reprinted in* 33 I.L.M. 1598 (1994) [hereinafter ICTR Statute].

¹⁶ Law on the Specialist Chambers and Specialist Prosecutor’s Office, Law No. 05/L-053, art. 16 (Kos.).

¹⁷ Agreement between the United Nations and the Government of Sierra Leone, Statute of the Special Court for Sierra Leone, U.N.-Sierra Leone, art. 6, Jan. 16, 2002, 2178 U.N.T.S. 137, at 147 [hereinafter SCSL Statute].

¹⁸ Law on the Establishment of the Extraordinary Chambers art. 29, *as amended* Oct. 27, 2004, NS/RKM/1004/006 (Cambodia).

aiding and abetting liability—an area that, while equally important as the parameters of the mens rea for aiding and abetting, has received considerably less attention.¹⁹

The actus reus of aiding and abetting can be defined most simply as acts or omissions that assist, encourage, or lend moral support to a crime, and that have a substantial effect on or substantially contribute to the commission of the crime.²⁰ It is conduct that has a substantial effect on the commission of acts for which the accused is held individually liable.²¹ Defining the parameters of the actus reus with precision is a difficult task, as actus reus is to be assessed on a “case-by-case basis in light of the evidence as a whole.”²² Nevertheless, it is a valuable endeavor. Aiding and abetting as a mode of individual criminal responsibility is much stronger than superior liability, for example, and it is arguably easier to prove than other modes of individual criminal liability.²³ It is useful for prosecutors as a potentially more attainable mode of individual liability, and for judges who must decide whether an alleged act meets the aiding and abetting threshold.²⁴ And, with an increase in atrocity crime cases around the world—both in international tribunals and national jurisdictions, which often include indictments on the basis of individual responsibility, including aiding and abetting—defining these parameters is a particularly relevant exercise today. In 2021, a former Syrian government official

¹⁹ Defining the mens rea for aiding and abetting has received significant attention, vacillating between knowledge and purpose but ultimately landing on knowledge. See ROBERT CRYER ET AL., AN INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE 4 (2019) (“The main question has been whether it requires that the accomplice had the purpose or desire to facilitate the underlying offense. The SCSL ruled that the mens rea for aiding and abetting requires only knowledge and not purpose, namely that the accused knew his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator.”). It seems the ICC is the only tribunal that still holds a purpose standard for the mens rea of aiding and abetting. Further, the Rome Statute Article 10 suggests that nothing in the Court’s decision making should be taken as to change CIL.

²⁰ See Prosecutor v. Delalić, Case No. IT-96-21-A, Appeal Judgment, ¶¶ 732, 735 (Int’l Crim. Trib. for the Former Yugoslavia Feb. 20, 2001) [hereinafter *Čelebići*, Appeal Judgment].

²¹ *Id.*

²² Prosecutor v. Taylor, Case No. SCSL-03-01-T-1283, Trial Judgment, ¶ 475 (Sep. 26, 2013) (“As the Appeals Chamber, as well as the ICTY and ICTR Appeals Chambers, have consistently emphasised, whether an accused’s acts and conduct had a substantial effect on the commission of the crime ‘is to be assessed on a case-by-case basis in light of the evidence as a whole.’”).

²³ See *Čelebići*, Appeal Judgment, *supra* note 20.

²⁴ When I say ‘threshold,’ I refer to the threshold for an act to suffice as the actus reus for aiding and abetting; this is not the same threshold discussed in the literature (often with regard to the ICC) regarding whether the principal must meet a minimum threshold. See, e.g., Manuel J. Ventura, *Aiding and Abetting and the International Criminal Court’s Bemba et al. Case: The ICC Trial and Appeals Chamber Consider Article 25(3)(c) of the Rome Statute*, 20 INT’L CRIM. L. REV. 1139 (2020).

was convicted and sentenced in a German court for aiding and abetting crimes against humanity for his role in transporting protesters to a Syrian torture site.²⁵ That same year, a German court convicted a twenty-nine-year-old Islamic State member of aiding and abetting war crimes against persons in two cases.²⁶ Finally, in December 2021, a Rwandan taxi driver was convicted and sentenced for aiding and abetting genocide by a French court for transporting militiamen to various massacre sites during the Rwandan genocide.²⁷

Early convictions for aiding and abetting also occurred in national jurisdictions. In 2017 (upheld on appeal in 2019), a German court found a defendant guilty of aiding and abetting a war crime against humanitarian operations (as found in the German Code of Crimes against International Law) for kidnapping a United Nations (UN) employee in Syria.²⁸ Additionally, in late 2018, a defendant was convicted in a Dutch court of aiding and abetting war crimes for managing the largest timber operation in Liberia and facilitating the importation of weapons (contravening United Nations Security Council embargos) that were supplied to militias and used to carry out massacres during the second Liberian civil war.²⁹ The defendant's aiding and abetting conviction was based on his knowing provision of trucks, drivers, and facilities for the transportation and storage of weapons, as well as armed personnel.³⁰ The conviction was upheld by the Dutch Supreme Court.³¹

Although increasing globally, not all aiding and abetting convictions have been successful. In fact, many unsuccessful convictions have hinged on the *actus reus* of aiding and abetting. For example, in June 2020, a German court overturned a conviction for aiding and abetting a killing and war crimes by serving as an armed security guard in Syria during public executions of men, women, and children by ISIS members.³² The court upheld the appellant's conviction for membership in a terrorist organization (ISIS) but found that there was no sufficient evidence for the aiding and abetting charges.³³ Also in Germany, an appellate court overturned a conviction for aiding and abetting war crimes when the judgment did not establish

²⁵ See Oberlandesgericht [OLG] [Higher Regional Court] Koblenz, Feb. 24, 2021, 1 StE 3/21, *aff'd*, Bundesgerichtshof [BGH] [Federal Court of Justice], Apr. 20, 2022, 3 StR 367/21 (Ger.).

²⁶ See OLG Frankfurt, Nov. 30, 2021, 5-3 StE 1/20-4-1/20 (Ger.).

²⁷ See Cour d'assises [Court for Serious Crimes] Paris, 5e sect., Dec. 16, 2021, 19/0057 (Fr.).

²⁸ See OLG Stuttgart, Sept. 20, 2017, 3 StE 5/16-4 (Ger.) (trial of Suilman Al-S, found guilty of committing a war crime against humanitarian operations under Section 10(1)(1) of the German Code of Crimes against International Law (CCAIL) for "directly attacking personnel involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, abduction for the purpose of blackmail, unlawful imprisonment, attempted blackmail and use of force or threats against life or limb.").

²⁹ See Hof 's-Hertogenbosch 21 april 2017, NJFS 2017, 153 m.nt. CMJ Ryngaert (Neth.).

³⁰ See *id.*

³¹ See HR 18 december 2018, NJ 2020, 350 m.nt. E. van Sliedregt (Neth.).

³² OLG Düsseldorf, June 3, 2020, III-6 StS 2/19 (Ger.).

³³ *Id.*

beyond a reasonable doubt that the appellant encouraged or facilitated the attacks.³⁴ These European examples point out problems in meeting evidentiary standards for aiding and abetting that will be further elucidated by the present survey.

The United States offers one recent example of the difficulty in defining the actus reus of aiding and abetting. In 2021, the U.S. Supreme Court held in *Nestlé USA, Inc. v. Doe* (hereinafter *Nestlé*) that general corporate activity does not suffice as aiding and abetting.³⁵ In its eight-to-one decision in this civil case, the Court said:

To plead facts sufficient to support a domestic application of the ATS [Alien Tort Statute], plaintiffs must allege more domestic conduct than general corporate activity Nearly all the conduct that they say aided and abetted forced labor—providing training, fertilizer, tools, and cash to overseas farms—occurred in Ivory Coast. The Ninth Circuit nonetheless let this suit proceed because respondents pleaded as a general matter that “every major operational decision by both companies is made in or approved in the U.S.” App. 314. But allegations of general corporate activity—like decision-making—cannot alone establish domestic application of the ATS Because making ‘operational decisions’³⁶ is an activity common to most corporations, generic allegations of this sort do not draw a sufficient connection between the cause of action respondents seek—aiding and abetting forced labor overseas—and domestic conduct.³⁷

³⁴ BGH, Dec. 20, 2018, 3 StR 236/17, *rev’g* OLG Stuttgart, Sept. 28, 2015, 5-3 StE 6/10 (Ger.).

³⁵ *Nestlé USA, Inc. v. Doe*, 141 S. Ct. 1931, 1937 (2021).

³⁶ Interestingly, this has a similar ring to it as the *Čelebići* Appeal Judgement which held that it “would not accept that the circumstance alone of holding a position as a guard somewhere within a camp in which civilians are unlawfully detained suffices to render that guard responsible for the crime of unlawful confinement of civilians.” *Čelebići*, Appeal Judgment, *supra* note 20, ¶ 364. The Defense in *Jokić* tried to make a similar argument by extrapolating the following principle from *Čelebići*, “where a person holds a position within an organized structure to which certain lawful duties attach, the mere performance by that person of their routine duties will not of itself constitute aiding and abetting crimes that may be committed within that organized structure.” Prosecutor v. Blagojević & Jokić, Case No. IT-02-60-A, Appeal Judgment, ¶ 190 (Int’l Crim. Trib. of the Former Yugoslavia May 9, 2007) [hereinafter *Blagojević & Jokić*, Appeal Judgment]. Ultimately, in *Čelebići*, the Appeals Chamber upheld that the camp guard’s unlawful confinement of prisoners was too insignificant to constitute aiding and abetting. The idea that merely carrying out one’s role in an operational system is insufficient for the actus reus of aiding and abetting seems to have remained persuasive, though this survey hopes to demonstrate that even the “mere performance of routine duties” can suffice the actus reus for aiding and abetting. *Id.*

³⁷ *Nestlé USA, Inc. v. Doe*, 141 S. Ct. 1931, 1937 (2021) (Thomas, J., plurality op.).

This means that the alleged conduct of providing financial support, farming supplies, training, and exclusive contracts does not merit regulation or reprimand under U.S. law. The Court deemed these acts to be mere “general corporate activity” and suggested that for ATS litigation to be successful in such a case, the plaintiffs would need to demonstrate more.³⁸ Although national courts may rely on their own standards and jurisprudence for modes of liability, these cases demonstrate that courts do consider the jurisprudence of international tribunals for aiding and abetting and, when unable to discern clear standards, rule in ways that may be contrary to what is acceptable in international law.

This problem is also present in international criminal tribunals. Most recently the ICC held in *Prosecutor v. Gbagbo and Blé Goudé* (hereinafter *Gbagbo*) that lists of general contributions not linked to specific crimes do not meet the actus reus of aiding and abetting, writing that “[a]part from stating that these contributions ‘had the effect of strengthening the capability of the pro-Gbagbo Forces to commit the crimes charged,’ no explanation [was] offered by the Prosecutor as to how these generic contributions can be linked to the specific crimes.”³⁹ Defining the parameters of when ‘general corporate activity’ (as in *Nestlé*) or ‘general contributions’ (as in *Gbagbo*) meet the actus reus of aiding and abetting would be a helpful exercise for decisions going forward; it would also provide answers about the sufficiency of the nexus or link to the crime. For example, in September 2021 two former Serbian State Service Officials appealed to overturn their convictions of aiding and abetting crimes committed by a State Security Service special fighting unit in the Bosanski Šamac area to the UN Residual Mechanism for International Criminal Tribunals.⁴⁰ In sum, they argued that (1) their organizing of trainings for State Security Unit members and local Serb forces did not amount to practical assistance that had a substantial effect on the perpetration of the persecution, murder, and forcible displacement carried out by Unit members and local Serb forces;⁴¹ (2) the trial chamber failed to identify a connection between the alleged assistance and the crimes committed, which included a massacre in the town of Crkvina;⁴² and (3) arranging for the training of persons sent to Bosanski Šamac to fight, by allowing them to use facilities and trainers, did not equate to support for military actions in the context of the conflict and commission of crimes by these forces.⁴³ Each of these contentions is related to the actus reus of aiding and abetting.

³⁸ *Id.* at 1936-37.

³⁹ *Prosecutor v. Gbagbo*, ICC-02/11-01/15-1263-AnxB, Reasons of Judge Geoffrey Henderson, ¶ 2019 (Jan. 15, 2019) (footnote omitted) [hereinafter *Gbagbo*, Majority Opinion].

⁴⁰ See *Prosecutor v. Stanišić & Simatović*, Case No. MICT-15-96-A A13-A1, Stanišić Defence Notice of Appeal (Sept. 6, 2021) [hereinafter Stanišić Notice of Appeal]; *Prosecutor v. Stanišić & Simatović*, Case No. MICT-15-96-A A25-A15, Simatović Defence Notice of Appeal (Sept. 6, 2021) [hereinafter Simatović Notice of Appeal].

⁴¹ Stanišić Notice of Appeal, *supra* note 40, ¶¶ 16, 18(a); *id.* ¶¶ 40, 33-36.

⁴² *Id.* ¶¶ 18(b), 22; *id.* ¶ 38.

⁴³ *Id.* ¶ 18(c); *id.*, ¶¶ 31-32.

This paper further defines the parameters and confines of the actus reus of aiding and abetting in international criminal law, as gleaned from interpretations across international criminal law jurisprudence. Part II explores high-level principles of aiding and abetting in existing jurisprudence and contrasts them with definitions of the other modes of liability within individual criminal responsibility. Part III analyzes the actus reus of aiding and abetting, explaining the methods and framework used in the survey. It compares similar acts that sufficed to constitute the actus reus of aiding and abetting across different tribunals and contrasts them with similar acts that did not suffice to be aiding and abetting, or, conversely, did suffice but amounted to an even graver form of liability than aiding and abetting. Part IV concludes with a summary of the parameters for the actus reus of aiding and abetting drawn from this survey and provides further clarity for prosecutors, judges, defense attorneys, and scholars in the international criminal law field about charges, indictments, judgments, defenses, and articles that can help move the field forward in a productive way.

II. MODES OF LIABILITY UNDER INDIVIDUAL CRIMINAL RESPONSIBILITY

Various modes of individual liability exist to capture the way the accused participated in a crime.⁴⁴ These modes of individual liability aim to be sufficiently diverse to prevent both over- and under-charging defendants.⁴⁵ The form and degree of participation in a crime is one of the elements that “can either ‘augment’ or ‘lessen’ the gravity of a crime.”⁴⁶ For example, current jurisprudence indicates that convictions for superior responsibility carry lower sentences than those for individual responsibility.⁴⁷ Individual responsibility can be most simply parsed into direct participation—the planning, instigating, commission, and ordering of a crime—and indirect participation⁴⁸ such as aiding and abetting.⁴⁹ Each of the direct modes has similarities to aiding and abetting; however, because jurisprudence tends to read-in a false mutual exclusivity amongst modes of individual criminal responsibility, this study focuses on differentiating between aiding and abetting and direct modes of liability. For example, while a perpetrator cannot be held liable for the same acts under both individual criminal responsibility and superior responsibility, they can be held liable for multiple modes of individual criminal

⁴⁴ Barbora Hola et al., *Consistency of International Sentencing: ICTY and ICTR Case Study*, 9 EUR. J. CRIMINOLOGY 539, 544 (2012).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ This is not to be confused with indirect liability, which is found in a different section of each statute. *See, e.g.*, Rome Statute, *supra* note 13, art. 28; ICTY Statute, *supra* note 14, art. 7(a); ICTR Statute, *supra* note 15, art. 6(3); SCSL Statute, *supra* note 17, art. 6(3).

⁴⁹ Hola et al., *supra* note 44, at 544.

responsibility for the same acts.⁵⁰ In cases where multiple modes of individual criminal responsibility are present but a defendant was convicted of only one mode, judges may have chosen the more specific offense if the conduct was the same.⁵¹ However, when multiple modes of liability are present for different conduct (for example, ordering through explicit orders and aiding and abetting through the provision of weapons), courts seem to refrain from convicting the perpetrator under both modes of liability.⁵² The subsequent survey identifies instances where that is the case. In order to do so, a more thorough understanding of the differences among the various modes is required. Although “[i]nternational courts and tribunals do not mention the mode of liability within the disposition of their judgments in more than 95% of the cases surveyed,”⁵³ there is a sufficient set of cases in international criminal law jurisprudence that further define the parameters of these modes of liability within themselves and compared against one another.

A. Aiding and Abetting

Aiding and abetting is “an accessorial mode of liability where the accused is alleged to have facilitated the commission . . . of crimes by others.”⁵⁴ Although one concept, aiding can be parsed from abetting, and for a successful conviction, one need not meet both; in other words, an accused can be liable for *just* aiding or *just* abetting (though judgments are seldom written that way).⁵⁵ For example, aiding can correlate to providing any type of practical assistance or material support, whereas abetting can be seen as encouragement or moral support.⁵⁶ There is a lot of case law demonstrating that an accused can be convicted of either aiding or abetting.⁵⁷ The actus reus of aiding and abetting captures this severability by providing that acts or omissions that assist, encourage, or lend moral support to crimes that have had a substantial effect on or substantially contributed to the commission of the crime⁵⁸ should suffice to meet the definition. Jurisprudence provides some high-level principles that further define what is needed and not needed for the actus reus of an aiding and abetting conviction.

⁵⁰ See, e.g., Prosecutor v. Đorđević, Case No. IT-05-87/1-A, Appeal Judgment, ¶¶ 831-32 (Int'l Crim. Trib. of the Former Yugoslavia Feb. 23, 2011).

⁵¹ *Id.*

⁵² See *id.*

⁵³ James G. Stewart, *How Coherent Is Coherentism? Misgivings about Treating Superior Responsibility as a Form of Complicity*, 35 TEMP. INT'L & COMPAR. L.J. 133, 138 (2021).

⁵⁴ Manuel J. Ventura, *Aiding and Abetting*, in MODES OF LIABILITY, *supra* note 7 at 173–74.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Prosecutor v. Brima, Case No. SCSL-2004-16-A, Appeal Judgment, ¶ 75 (Feb. 22, 2008) [hereinafter *Brima*, Appeal Judgment].

First, the act or omission must have a substantial effect on the perpetration of the crime.⁵⁹ The tables below list some of the sufficient and insufficient formulations of principles in judgments from tribunal jurisprudence.

Table 2: Formulations Sufficient for the Actus Reus of Aiding and Abetting

Case and Court	Formulation
Prosecutor v. Furundžija (<i>Furundžija</i>) (ICTY). ⁶⁰	The act made a “significant difference to the commission of the criminal act by the principal.” ⁶¹
Prosecutor v. Orić (<i>Orić</i>) (ICTY). ⁶²	The act was substantial and efficient enough to make performance of the crime possible, or at least easier. ⁶³
Prosecutor v. Taylor (<i>Taylor</i>) (SCSL). ⁶⁴	The rendered assistance, encouragement, or moral support supported and sustained the organized commission of crimes; made civilians more vulnerable and less able to defend themselves; provided a pretext for the attacks and sustained the functioning of the organized commission of crimes; supported and enhanced the capacity of the principals to commit crimes; supported and sustained the system of arrests and detention; contributed to and made possible the victims’ deportation; and permitted the continued existence and further development of the inhumane situation. ⁶⁵

⁵⁹ Prosecutor v. Karadžić, Case No. IT-95-5/18-A, Appeal Judgment, ¶¶ 574-76 (Int’l Crim. Trib. of the Former Yugoslavia Feb. 23, 2011).

⁶⁰ Prosecutor v. Furundžija, Case No. IT-95-17/1-T, Trial Judgment (Int’l Crim. Trib. for the Former Yugoslavia Dec. 10, 1998) [hereinafter *Furundžija*, Trial Judgment].

⁶¹ See *id.*, ¶ 233.

⁶² Prosecutor v. Orić, Case No. IT-03-68-A, Appeal Judgment (Int’l Crim. Trib. For the Former Yugoslavia July 3, 2008) [hereinafter *Orić*, Appeal Judgment].

⁶³ See *id.*, ¶

⁶⁴ Prosecutor v. Taylor, Case No. SCSL-03-01-A, Appeal Judgment (Sept. 26, 2013) [hereinafter *Taylor*, Appeal Judgment].

⁶⁵ See *id.*, ¶¶ 362-85.

Table 2.1: Phrases Indicating Insufficiency for the Actus Reus of Aiding and Abetting

Case and Court	Insufficient Phrase
Furundžija (ICTY). ⁶⁶	“[M]arginal participation.” ⁶⁷
Prosecutor v. Blagojević & Jokić (<i>Blagojević & Jokić</i>) (ICTY). ⁶⁸	“[W]here a person holds a position within an organized structure to which certain lawful duties attach, the mere performance by that person of their routine duties will not of itself constitute aiding and abetting crimes that may be committed within that organized structure.” ⁶⁹

Much of the lack of clarity in defining aiding and abetting stems from the fact that a finding of aiding and abetting is ultimately a case-by-case “fact-based inquiry in light of all the evidence as a whole.”⁷⁰ However, general principles can still be derived from case law. First, aiding and abetting is not an inchoate offense; unlike attempt and conspiracy, a perpetrator cannot be charged with aiding and abetting without the actual offense being carried out.⁷¹ In other words, one cannot be held responsible for aiding and abetting a murder that did not happen. Second, it is unnecessary to show that each act individually constituted substantial assistance.⁷² Other principles, including object, timing, distance, and nexus, contribute to creating a substantial effect.⁷³

Aiding and abetting may involve contributing to the planning, preparation, or execution of a completed crime.⁷⁴ Thus, its object can vary, and the assistance can pertain either to the principal or to the act in a tangible or intangible manner. With regards to distance and timing, an actor can be liable for aiding and abetting despite being absent during the commission of the crime, and may participate before, during, or after the crime has been perpetrated.⁷⁵ That after-the-fact assistance can constitute aiding and abetting may seem counterintuitive. However,

⁶⁶ *Furundžija*, Trial Judgment, *supra* note 60.

⁶⁷ *See id.*, ¶ 231.

⁶⁸ Prosecutor v. Blagojević & Jokić, Case No. IT-02-60-A, Appeal Judgment (Int’l Crim. Trib. of the Former Yugoslavia May 9, 2007) [hereinafter *Blagojević & Jokić*, Appeal Judgment].

⁶⁹ *Id.*, ¶ 190.

⁷⁰ *See Ventura*, *supra* note 54, at 191.

⁷¹ Prosecutor v. Nyiramasuhuko, Case No. ICTR-98-42-A, Appeal Judgment, ¶ 3345 (Dec. 14, 2015) [hereinafter *Nyiramasuhuko*, Appeal Judgment].

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *See Brima*, Appeal Judgment, *supra* note 58, ¶ 75.

⁷⁵ Prosecutor v. Ntagerura, Case No. ICTR-99-46-A, Appeal Judgment (July 7, 2006).

an offer made “before, during, or after the commission of a crime, or assistance to be provided after the fact, may encourage or morally support the perpetrator and thereby have a substantial effect on the commission of the crime.”⁷⁶ For example, a perpetrator who maintains a “culture of impunity via covering up, excusing, or failure to punish crimes, can reach a point where the principal perpetrators will become acutely aware that they will suffer no consequences as a result of their criminal actions, thereby encouraging or morally supporting their behavior.”⁷⁷ In sum, the assistance rendered can vary in form and targeted object, and be distant in both time and space. However, these factors are relevant only insofar as there is a sufficient nexus to the crime: there must be a sufficient link to show that the conduct had a substantial effect on the commission of the crime.⁷⁸ This does *not* mean that there must be a cause-and-effect relationship between the conduct and the commission of the crime.⁷⁹ Nor must the conduct be indispensable or a necessary requisite for the crime (e.g. a ‘but for’ formulation).⁸⁰ Lastly, a finding that the accused “provided more limited assistance to the commission of the crime than others does not preclude the accused’s assistance from having made a substantial contribution to the crime.”⁸¹

Two other forms of less tangible conduct constitute aiding and abetting: omission and tacit encouragement. An omission must have a decisive effect on the commission of the crime:⁸² it “must be directed to assist, encourage, or lend moral support to the perpetration of a crime and have a substantial effect on the perpetration of the crime.”⁸³ For an omission to constitute aiding and abetting, the accused must have had both a legal duty and the ability to act in the circumstances.⁸⁴ When the crime would have been substantially less likely to occur had the accused acted pursuant to the legal duty, the actus reus is satisfied.⁸⁵ However, when the accused is in a position of authority and was at or near the scene of the crime but did not intervene, criminal liability is based not on a legal duty to act, but on the encouragement or tacit approval afforded to the principal perpetrators.⁸⁶

⁷⁶ Ventura, *supra* note 54, at 194 n.94.

⁷⁷ *Id.* at 250.

⁷⁸ *Nahimana v. Prosecutor*, Case No. ICTR-99-52-A, Appeal Judgment, ¶ 672 (Nov. 28, 2007) [hereinafter *Nahimana*, Appeal Judgment].

⁷⁹ *Prosecutor v. Sesay*, Case No. SCSL-04-15-A, Appeal Judgment, ¶¶ 534–45 (Oct. 26, 2009) [hereinafter *Sesay*, Appeal Judgment].

⁸⁰ Ventura, *supra* note 54, at 193.

⁸¹ *Id.* For an analysis of acts that have a nexus sufficient for the actus reus of aiding and abetting, see discussion *infra* Part III.

⁸² See generally *Furundžija*, Trial Judgment, *supra* note 60, ¶¶ 190–249.

⁸³ *Orić*, Appeal Judgment, *supra* note 62, ¶ 43.

⁸⁴ *Id.*

⁸⁵ *Prosecutor v. Popović*, Case No. IT-05-88-A, Appeal Judgment, ¶ 1741 (Int’l Crim. Trib. for the Former Yugoslavia Jan. 30, 2015) [hereinafter *Popović*, Appeal Judgment].

⁸⁶ *Prosecutor v. Brđanin*, Case No. IT-99-36-A, Appeal Judgment, ¶ 273 (Int’l Crim. Trib. for the Former Yugoslavia Apr. 3, 2007) [hereinafter *Brđanin*, Appeal Judgment].

Tacit approval occurs when the accused holds a position of authority and is physically present during the commission of the crime. It allows the inference that non-interference by the accused amounts to encouragement.⁸⁷ Tacit approval does not require that the accused be a “superior authority” or have “effective control” over the principal perpetrator. Rather, it often involves an accused who “holds a position of authority and is physically present at the scene of the crime, such that his nonintervention provides tacit encouragement to the principal perpetrator.”⁸⁸ For example, tacit approval may come from “an approving spectator who is held in such respect by the other perpetrators that his presence encourages them in their conduct.”⁸⁹ The below table summarizes some of the principles surrounding the actus reus for aiding and abetting as derived from case law.

Table 3: Principles of Actus Reus of Aiding and Abetting Liability

Required for Actus Reus	Not Required for Actus Reus
<p>The conduct must have a substantial effect on the perpetration of the crime.</p> <p>The crime must actually be carried out.</p> <p>In the case of an omission, the accused must have a legal duty and the ability to act in the circumstances.</p>	<p>There need not be a cause-and-effect relationship between the conduct and the crime.</p> <p>The conduct does not have to be a necessary precondition to the crime (but-for relationship).</p> <p>The accused need not have independent initiative, power, or discretion over the principal perpetrator of the act.</p> <p>The accused need not hold a position of authority over the perpetrator.</p> <p>The accused need not provide assistance at the time the crime is committed.</p> <p>The accused need not have a plan or shared agreement with the perpetrator.</p>

⁸⁷ Prosecutor v. Kalimanzira, Case No. ICTR-05-88-A, Appeal Judgment, ¶ 74 (Oct. 20, 2010) [hereinafter *Kalimanzira*, Appeal Judgment]; see also Prosecutor v. Ndahimana, Case No. ICTR-01-68-A, Appeal Judgment, ¶ 147 (Dec. 16, 2013).

⁸⁸ *Sesay*, Appeal Judgment, *supra* note 79, ¶ 541.

⁸⁹ Prosecutor v. Kayishema, Case No. ICTR-95-1-T, Trial Judgment, ¶¶ 200–01 (May 21, 1999); see also Prosecutor v. Semanza, Case No. ICTR-97-20-T, Trial Judgment, ¶¶ 365–66 (May 15, 2003).

Required for Actus Reus	Not Required for Actus Reus
	<p>The perpetrator need not have knowledge of the accused or of the accused's assistance (except when the assistance is in the form of tacit approval or moral encouragement)</p> <p>Principal or commissioner identified.</p> <p>The accused need not have knowledge of the precise crime intended or committed by the perpetrator.</p> <p>Each individual act need not constitute substantial assistance, only the conduct as a whole.</p>

Although this survey does not focus on the mens rea of aiding and abetting, it is worth a summary of some of generalized principles. The mens rea of aiding and abetting liability requires that (1) the accused must act (or fail to act) with the knowledge that doing so assists, encourages, or lends moral support to the perpetration of a crime, but need not act (or fail to act) for the purpose of assisting in the commission of the crime; (2) the accused must know the principal's state of mind: to establish knowledge, it is sufficient for the accused to be aware that a crime is likely to be committed, and that one of those crimes is in fact committed; and (3) the accused need not share the intent of the principal perpetrator.⁹⁰

Aiding and abetting is often considered the least grave offense in comparison to other modes of liability.⁹¹ For example, planning and ordering are distinguished from aiding and abetting because “[t]hey are far graver and conceptually distinct from the latter.”⁹²

⁹⁰ See Ventura, *supra* note 54, at 196.

⁹¹ *Id.*

⁹² Shahram Dana, *Reimagining Punishment for Atrocity Crimes: An Innovative Sentencing Framework for International Criminal Law*, 5 CAMBRIDGE L. REV. 49, 73 (2020).

Table 4: Actus reus principles for modes of individual criminal responsibility⁹³

	Must precede crime	Must be cause-and-effect ⁹⁴	Can be committed by omission	Substantial effect on crime	Must have Superior or Subordinate relationship	Must show effective control	Inchoate offense
Aiding and Abetting	X	X	✓	✓	X	X	X
Ordering	✓	✓	X	✓	✓	X	X
Instigating	✓	✓	✓	✓	X	X	X
Planning	✓	✓	✓	✓	X	X	X
Commission	N/A	N/A	✓	N/A	X	X	✓
Superior Responsibility	X	Not Clear ⁹⁵	✓	✓	✓	✓	X

Thus, while each individual criminal responsibility mode requires that the conduct of the accused have a substantial effect on the crime to meet the actus reus threshold for aiding and abetting, it does not need to precede the perpetration of the

⁹³ This table provides an overview of principles derived from case law and scholarly articles. There are likely additional variables that could be added to the table, and others that could be refined.

⁹⁴ Cause-and-effect refers to a causal link that is more than the type of facilitation, or indirect support, sufficient for aiding and abetting. It is closely linked with, but more direct than a substantial contribution to the effect on the crime. The SCSL described the ‘causal link’ requirement in terms of differentiating aiding and abetting from instigating, but it can apply to other modes of liability: “The instigator prompts the commission of the offense, whereas the aider and abettor’s contribution hinges on the principal’s determination to execute the offense.” The additional element of indirectness that the contribution hinges on is absent in modes that require causal links.

⁹⁵ See Miles Jackson, *Command Responsibility*, in *MODES OF LIABILITY*, *supra* note 7, at 409, 427 (discussing lack of clarity regarding the causal link between conduct and crime).

crime itself,⁹⁶ have a cause-and-effect relationship with the committed crime,⁹⁷ or be the result of a superior-subordinate relationship.⁹⁸

1. Planning

Planning liability is invoked when an individual designs, alone or with others, the criminal conduct resulting in one or more crimes being perpetrated if the crime follows such design and the planning substantially contributed to the perpetration.⁹⁹ The planning must have had a substantial effect on the perpetration of the crime and the accused must intervene *before* the crime is committed.¹⁰⁰ In one case, the judges held that the evidence has to prove beyond a reasonable doubt that the accused “designed the criminal conduct which took place . . . or that his involvement in the planning process substantially contributed to the criminal conduct which occurred.”¹⁰¹ Oftentimes for an actus reus to reach the threshold for a conviction under this mode, information about the nature of the participation or involvement in the planning is required to determine whether it substantially contributed to the criminal conduct.¹⁰²

2. Instigating¹⁰³

The actus reus definition of instigating “implies prompting another person to commit an offence” through an act or omission.¹⁰⁴ Instigating must precede the crime because it is not an inchoate offense like aiding and abetting.¹⁰⁵ It is sufficient to demonstrate that instigation was a factor that substantially contributed to the conduct of another committing the crime.¹⁰⁶ While it is not necessary to prove that the crime would not have been perpetrated without the involvement of the accused,

⁹⁶ See *Nahimana*, Appeal Judgment, *supra* note 78.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ See Jérôme de Hemptinne, *Planning*, in *MODES OF LIABILITY*, *supra* note 7, at 355, 358.

¹⁰⁰ See *Nahimana*, Appeal Judgment, *supra* note 78, ¶ 479.

¹⁰¹ Prosecutor v. Fofana, Case No. SCSL-04-14-A, Appeal Judgment, ¶ 97 (May 28, 2008) [hereinafter *Fofana*, Appeal Judgment].

¹⁰² *Id.* (finding that more information about the nature of the participation or involvement in the planning meeting was needed to determine whether it substantially contributed to the criminal conduct).

¹⁰³ Not to be confused with direct and public incitement to genocide, which is its own inchoate offense. The ICC refers to instigating as ‘soliciting’ or ‘inducing’.

¹⁰⁴ See *Nahimana*, Appeal Judgment, *supra* note 78, ¶ 480.

¹⁰⁵ *Id.*

¹⁰⁶ Prosecutor v. Karera, Case No. ICTR-01-74-A, Appeal Judgment, ¶ 321 (Feb. 2, 2009) [hereinafter *Karera*, Appeal Judgment].

a cause-and-effect relationship is necessary for instigating.¹⁰⁷ This cause-and-effect relationship is slightly different from having a substantial effect, however. Although finding that an accused's conduct had a substantial effect will normally satisfy the "substantial effect" requirement for the purposes of both aiding and abetting and instigating, instigating requires more than merely facilitating the commission of a crime, which may otherwise suffice for aiding and abetting.¹⁰⁸ For example, if a principal perpetrator was convinced to do something prior to the instigating, an accused cannot be convicted of instigating the principal to do it (at best, the accused may be liable for aiding and abetting). The SCSL Appeals Chamber found that instigating requires a causal link¹⁰⁹ that aiding and abetting does not, holding that "the instigator prompts the commission of the offense, whereas the aider and abettor's contribution hinges on the principal's determination to execute the offense."¹¹⁰

3. Ordering

The act of ordering "implies a superior-subordinate relationship . . . [whereby] the person in a position of authority uses it to convince [or coerce] another to commit an offense."¹¹¹ The relationship of authority and subordination may be de jure or de facto, and the order may be given through expressed or implied conduct; however, orders must precede the crime.¹¹² The order must have a substantial contribution to the crime, but need not be given by a superior directly to the person who commits the crime.¹¹³ Ordering is not an inchoate crime.¹¹⁴

Ordering is distinguishable from command responsibility.¹¹⁵ Command responsibility is a form of indirect liability that can be based on an omission.¹¹⁶ It requires the accused to have the ability to prevent and/or punish criminal conduct, and to exercise effective control over the subordinates who perpetrated the crime.¹¹⁷ In contrast, ordering requires a positive act.¹¹⁸

¹⁰⁷ See *Fofana*, Appeal Judgment, *supra* note 101.

¹⁰⁸ *Id.*

¹⁰⁹ See Antonio Coco, *Instigation*, in *MODES OF LIABILITY*, *supra* note 7, at 257, 269.

¹¹⁰ See *Fofana*, Appeal Judgment, *supra* note 101.

¹¹¹ Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Trial Judgment, ¶ 483 (Sept. 2, 1998) [hereinafter *Akayesu*, Trial Judgment].

¹¹² *Id.*

¹¹³ See Prosecutor v. Semanza, Case No. ICTR-97-20-A, Appeal Judgment, ¶ 361 (May 20, 2005) [hereinafter *Semanza*, Appeal Judgment]., ¶ 361.

¹¹⁴ See *id.*

¹¹⁵ See Prosecutor v. Milošević, Case No. IT-98-29/1-A, Appeal Judgment, ¶¶ 267, 290 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 12, 2009) [hereinafter *Milošević*, Appeal Judgment].

¹¹⁶ See *id.*

¹¹⁷ See Jackson, *supra* note 95, at 413.

¹¹⁸ See *Milošević*, Appeal Judgment, *supra* note 115.

Ordering is similar to soliciting (urging the perpetrator to commit the criminal act) and inducing (exerting influence by strong reasoning, persuasion, or conduct implying the prompting of the commission of the offense) in that all must have a direct effect on the commission of the offense (i.e. a principal perpetrator cannot have decided to commit the offense regardless of any orders, solicitation or inducement).¹¹⁹ However, ordering—unlike soliciting and inducing—requires a superior-subordinate relationship between the accused and the principal perpetrator or a position of authority vis-a-vis the physical perpetrator.¹²⁰ In other words, ordering entails prompting another person to commit a crime.¹²¹

4. Commission¹²²

In this study, commission is most relevant when a charge is elevated from aiding and abetting to the commission. The principal perpetrator physically fulfills all material elements of the crime: control over and knowledge of the commission of the crime. Acts other than physical perpetration can constitute direct participation, such as the physical perpetration of a crime or culpable omission of an act mandated by a rule of criminal law.¹²³ The formulation often presented in case law is whether the accused's conduct was as much an integral part of the crime (genocide, war crime, etc.) as the crimes which it enabled.¹²⁴ For example, commission can be evaluated with the question: *Was the accused's conduct as much an integral part of the genocide as were the killings which it enabled?* In one case that found the accused liable for commission, the accused personally participated in the attacks, led the assailants, issued instructions, and oversaw aspects of the crime.¹²⁵ In another, the accused participated in discussions with authorities, accepted their decision to destroy a church, and subsequently ordered the church's destruction with Tutsis inside, even instructing a bulldozer driver on how to do so.¹²⁶ The court elevated his acts to the commission of genocide, finding them to be "as much an integral part of the genocide as the killings."¹²⁷

¹¹⁹ Prosecutor v. Bemba, ICC-01/05-01/13-749, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute, ¶ 34, ¶ 81 (Nov. 11, 2014) [hereinafter *Bemba*, Article 61 Decision].

¹²⁰ *Id.*

¹²¹ *Id.* ¶ 73; see also Prosecutor v. Ongwen, ICC-02/04- 01/15-422-Red, Decision on the Confirmation of Charges Against Dominic Ongwen, ¶ 42 (Mar. 23, 2016).

¹²² At the ICC, commission is separate from individual criminal responsibility but in the other statutes, it is not.

¹²³ See *Nahimana*, Appeal Judgment, *supra* note 78.

¹²⁴ See Tom Gal, *Direct Commission, in* MODES OF LIABILITY, *supra* note 7, at 17, 26.

¹²⁵ Prosecutor v. Munyakazi, Case No. ICTR-97-36A-T, Trial Judgment & Sentence, (July 5, 2010) [hereinafter *Munyakazi*, Trial Judgment].

¹²⁶ Prosecutor v. Seromba, Case No. ICTR-2001-66-A, Appeal Judgment, ¶ 161 (12 March 2008) [hereinafter *Seromba*, Appeal Judgment].

¹²⁷ *Id.*

In sum, courts often convict an accused of commission, as opposed to aiding and abetting, when 1) the accused's acts were integral part of the crime; 2) the accused was physically present at the crime; and 3) the accused participated in, supervised, directed, or otherwise fully exercised influence over the perpetrators; and/or supervised or directed the crime.

III. SURVEY AND ANALYSIS OF THE ACTUS REUS OF AIDING AND ABETTING IN INTERNATIONAL CRIMINAL LAW

A. Method

This study assessed fifty-four individuals convicted of aiding and abetting—whose convictions were upheld if appealed—and twenty-three individuals for whom an aiding and abetting conviction was either considered and rejected, or overturned on appeal. The study does not include the numerous cases from Nuremberg¹²⁸ that shed light on relevant principles, or jurisprudence distinguishing aiding and abetting from another mode of liability (an effort by judges to define parameters for themselves in the early days of international criminal law). Though not exhaustive, this study attempts to capture as many cases as possible. From these cases developed two overarching themes, with subcategories beneath each under which typical examples of aiding and abetting actus reus fall. Each subcategory contains analysis of cases that met the aiding and abetting actus reus standard, and those that did not, in an attempt to delineate between successful and unsuccessful cases.

When it comes to interpreting the jurisprudence of the actus reus of aiding and abetting to determine which acts constitute it, two overarching themes of conceptualization emerge. These themes break well along the cleavage of practical assistance and moral encouragement, two terms often found in the definitions for aiding and abetting across jurisprudence. Along the break line of practical assistance is material support, and along the cleavage of moral encouragement is influence.

Material support includes any type of support that has a substantial effect on, or serves as a substantial contribution to, the commission of the crime by practically assisting the principal actor. Oftentimes, material support is a tangible provision of assistance to perpetrators or a denial of protection to victims. The types of support that have recurred throughout the jurisprudence that fall under this umbrella are: 1) identifying members of a target group; 2) providing weapons or other integral logistics; 3) providing or authorizing personnel, including assailants, to a crime scene; 4) transporting victims to a crime scene; 5) denying protection to the target group; and 6) establishing or supervising roadblocks.

¹²⁸ While future publications may include a more in-depth analysis of the numerous Nuremberg cases, these cases were excluded from the present study due to space and time constraints.

Influence refers to any kind of encouragement or moral support that has a substantial effect on the commission of the crime. This kind of support is often intangible, such as omissions, speech that offers reassurance or validation to individual perpetrators, speech that incites the masses, unlawful decision-making or endorsement of unlawful decisions, tacit permission through presence, or orders. The subcategories that fall below this umbrella category are: 1) serving as an approving spectator at the crime scene (tacit encouragement); 2) standing guard; 3) giving a speech to the masses; 4) issuing a hateful media campaign; 5) explicit moral encouragement; 6) issuing orders; 7) attending meetings; 8) omissions; and importantly, 9) endorsing unlawful decisions. These categories, which developed out of the present survey, aim to further conceptualize the parameters of conduct that meet the actus reus threshold for aiding and abetting.

Table 5: Framework for the actus reus of aiding and abetting

Material Support	Influence
Identifying members of the target group.	Serving as an approving spectator at the crime scene (tacit encouragement).
Providing weapons or other integral logistics.	Standing guard.
Providing or authorizing personnel, including assailants, to the crime scene.	Giving a speech to the masses.
Transporting victims to a crime scene.	Issuing a hateful media campaign.
Denying protection to a target group.	Explicit moral encouragement.
Establishing or supervising roadblocks.	Issuing orders.
	Attending meetings.
	Omission.
	Endorsing unlawful decisions.

The following analysis identifies cases that fall within each bucket to meet the threshold for the actus reus of aiding and abetting for a successful conviction. Each subsection contains an explanation of the subcategory, as well as a table for better visualization of the cases and their sufficient conduct. Not every subcategory has cases that feature an unsuccessful attempt at an aiding and abetting conviction; those that do contain an additional table contrasting them. The analysis reveals a pattern in the dismissals on appeal for aiding and abetting: generally, a conviction

for aiding and abetting is overturned because of (a) a weak link between the conduct and the effect on the crime; (b) a different mode of liability better fitting the conduct; and/or (c) an evidentiary issue (often that either the evidence for the conviction was circumstantial, making aiding and abetting the only reasonable inference from the facts, or there was not enough evidence for either the accused or for the principal act). Lastly, cases are included in multiple tables where an individual's varied conduct fits into different subcategories of the actus reus for aiding and abetting. These cases, as well as those with singular conduct that fits into multiple subcategories, are designated in tables or footnotes as cases that blur the line, as it is unclear whether the conduct would suffice to meet the actus reus threshold alone, or whether it only sufficed in conjunction with conduct from other subcategories.¹²⁹

B. Challenges and Shortcomings:

Although the survey captured some principles from the cases studied, difficulties arose in discerning which acts supported a conviction, or which acts lined up with which conviction. Further, in cases on appeal, it was challenging to determine which acts were thrown out with the vacating or overturning of a conviction, and which remained relevant to the convictions that were upheld. Appellate decisions often uphold the charges in the indictment or the conviction of the trial chamber without specifically reiterating which acts led to the conviction—which necessitates a search for additional documents or information. Logistically, judgments are extremely long; without a central database that information can be hard to find, lost behind broken links, and so on.

Most importantly, like everything that involves human actors, it was difficult to place conduct into clear-cut subcategories. Individual actors committed various acts that fell under different umbrellas across multiple categories, as well as single instances of conduct that in and of themselves could fall within various subcategories. For example, the conduct of giving a speech to incite the masses to commit genocide falls within the subcategories of speech-giving and endorsing unlawful decisions. A more refined conceptual system could avoid such overlap.¹³⁰ Another difficulty was capturing whether the weight given to the individual's role had a substantial effect on the crime. Sometimes the weight given to the role was explicit: a prime minister's silent presence at a speech inciting the masses surely provides tacit encouragement,¹³¹ for example, as does a condoning of violence by a highest priest, who the perpetrators viewed as part of the 'holy trinity' and without his blessing would not carry out the crimes.¹³² In other instances, it was difficult to

¹²⁹ As previously discussed, this survey is non-exhaustive.

¹³⁰ Such refinements could be the subject of a future work.

¹³¹ *Prosecutor v. Kambanda*, Case No. ICTR-97-23-S, Trial Judgment & Sentence (Sept. 4, 1998) [hereinafter *Kambanda*, Trial Judgment].

¹³² See *Fofana*, Appeal Judgment, *supra* note 101.

determine whether a perpetrator's role had any influence on the aiding and abetting conviction, or whether the equation is as simple as 'anyone who identifies a member of a target group to authorities in the furtherance of atrocity crimes will meet the actus reus threshold for aiding and abetting.'; for example when the prefect of a district would give an order or provide weapons, or otherwise engage in some conduct. Thus, an individual's role is a factor for consideration.

These shortcomings aside, some overlap is impossible to avoid, such as an actor's conviction for aiding and abetting containing multiple subcategories of actus reus for an individual who engaged in varied conduct: for example, an individual who provided weapons *and* gave a speech. This kind of unavoidable overlap, as well as the case-by-case nature of these decisions, makes it difficult to fully separate certain acts as necessary or sufficient for a certain conviction. Was it the speech or the provisions of weapons that enabled the conviction? Sometimes tribunals clearly separate these acts and define exactly what a conviction is based upon; at other times this is more difficult to discern. As another example, would a person convicted of aiding and abetting murder as a crime against humanity for the conduct of transporting a victim to the crime scene and standing guard while they were tortured have been convicted for *just* standing guard at the crime scene, or *just* transporting the victim there? This lack of clarity poses challenges to any type of line-drawing exercise that attempts to determine the sufficiency of certain acts or conditions for a criminal conviction, but a comparative analysis of the cases with successful and unsuccessful aiding and abetting charges can nonetheless provide some clarity in further defining the actus reus of aiding and abetting in international criminal law.

C. Material Support¹³³

1. Identifying Members of the Target Group

Several cases, including Nuremberg cases, have held that 'identifying members of the target group' meets the actus reus for aiding and abetting.¹³⁴ This conduct has a substantial effect on the commission of a crime because it quite literally identifies the targeted individuals and helps facilitate the crime perpetrated against them through their identification.

¹³³ Much of the analysis of individual cases throughout this section lies within the footnotes. This is because tables are structured by subcategory instead of by case, and out of a desire for visual ease.

¹³⁴ As previously explained, certain acts overlap with other subcategories due to the imprecision of the framework. For example, the post-Holocaust cases in Table 6 that found liability based on creating and submitting lists could have also or instead been placed in the subcategory of providing integral logistics. There is no science to why one case might fall into one subcategory bucket while sharing qualities with another; rather, these are choices required by such an exercise.

Table 6: Acts that met the actus reus threshold for aiding and abetting by identifying members of a target group

Case & Court	Conduct	Role & Conviction	Additional Subcategories ¹³⁵
Prosecutor v. Karera (<i>Karera</i>) (ICTR). ¹³⁶	Karera took ¹³⁷ Gakuru, a Tutsi, to a roadblock, told the Interahamwe (a militia group in Rwanda) that Gakuru was an ‘Inyenzi’, and instructed them to arrest him. ¹³⁸	Karera, a Prefect of the Kigali-Rural province, was convicted of aiding and abetting murder. ¹³⁹	Ordering

¹³⁵ This column indicates that the relevant conduct falls within, or shares qualities with, at least one other subcategory.

¹³⁶ *Karera*, Appeal Judgment, *supra* note 106.

¹³⁷ Taking an individual to a roadblock could also easily fit in the subcategory of transporting victims to a crime scene: an example of overlap in subcategories.

¹³⁸ See *Karera*, Appeal Judgment, *supra* note 106, ¶ 298. ‘Inyenzi’ was a dehumanizing euphemistic label used by Hutu perpetrators to refer to Tutsis. Dehumanizing labels for individuals and groups such as this term are referenced in order to demonstrate all aspects of the crime.

¹³⁹ See *id.*, ¶ 323. Karera’s position of authority, in addition to the orders he issued, might have brought this case to the sufficiency threshold for actus reus as opposed to someone not in that role. In the trial chamber, Karera also was convicted of transporting weapons to a commune office, which were given to counsellors and subsequently reached the Interahamwe at the roadblocks where they were used to kill Tutsis. His conviction on that count was overturned because of a lack of notice in the indictment, not for any material problem with the conduct meeting the actus reus threshold. *Id.*, ¶¶ 259, 297.

Case & Court	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Rukundo (<i>Rukundo</i>) (ICTR). ¹⁴⁰	Rukundo “identified Tutsi refugees to soldiers and the Interahamwe[,] who subsequently removed and killed them.”	Rukundo, a Roman Catholic priest, was convicted of aiding and abetting genocide and crimes against humanity.	Explicit moral encouragement ¹⁴¹
United States v. Ohlendorf (<i>Einsatzgruppen</i>), w.r.t. ¹⁴² Klingelhoef (WWII). ¹⁴³	Klingelhoef located and turned over lists of Communists. ¹⁴⁴	Klingelhoef, a Sturmabführer (major) in the SS, was convicted of accessory to war crimes and crimes against humanity.	Providing integral logistics

¹⁴⁰ Prosecutor v. Rukundo, Case No. ICTR-2001-70-A, Appeal Judgment, ¶¶ 54, 176 (Oct. 20, 2010) [hereinafter *Rukundo*, Appeal Judgment].

¹⁴¹ The judgment also suggests that Rukundo’s aiding and abetting conviction included consulting with the assailants prior to the crimes being carried out and subsequently boasting of the killings. *See id.*

¹⁴² ‘W.r.t.’ signifies “with respect to.” In cases with multiple defendants, this notation indicates which defendant’s acts are analyzed.

¹⁴³ United States v. Ohlendorf, 4 Trial of War Criminals Before the Nuremberg Military Tribunals (T.W.C.) (U.S. Mil. Trib. 1947) [hereinafter *Einsatzgruppen*, Judgment].

¹⁴⁴ *See id.* at 568–70 (“Even if [his functions had been limited to that of an interpreter] it would not exonerate him from guilt because in locating, evaluating and turning over lists of Communist party functionaries to the executive department of his organization he was aware that the people listed would be executed when found. In this function, therefore, he served as an accessory to the crime.”).

Case & Court	Conduct	Role & Conviction	Additional Subcategories
France v. Becker (<i>Becker</i>), w.r.t Pitz (WWII). ¹⁴⁵	Pitz created and submitted lists of individuals to arresting authorities and reported French youths who rejected his attempts to recruit them to the German army, leading to their arrest, internment, and forcible drafting and deportation to Germany.	Pitz, a Nazi party administrator, was convicted of aiding and assisting the arrest and deportation of French citizens. ¹⁴⁶	Providing integral logistics

¹⁴⁵ France v. Becker, Case No. 40, 7 L.R.T.W.C. 67, 71, Trial Judgment (Mil. Trb. Lyon 1947), https://tile.loc.gov/storage-services/service/l1/l1mlp/Law-Reports_Vol-7/Law-Reports_Vol-7.pdf.

¹⁴⁶ See *id.* At the time of the Nuremberg trials the mode of liability of “aiding and abetting” did not yet exist; however, aiding and assisting (as well as a few other forms of liability) are similar enough.

Case & Court	Conduct	Role & Conviction	Additional Subcategories
Nahimana v. Prosecutor (<i>Nahimana</i>), w.r.t. Ngeze (ICTR). ¹⁴⁷	Ngeze identified Tutsi civilians who were subsequently taken to be killed.	Ngeze, a Rwandan journalist and founder of the Kangura newspaper, was convicted of aiding and abetting genocide and extermination in the Gisenyi Prefecture.	
Prosecutor v. Guek Eav alias Duch (<i>Duch</i>) (ECCC). ¹⁴⁸	Duch extracted confessions from detainees and discussed strategies and targets for arrest with his commander that resulted in targets being executed. ¹⁴⁹	Duch, a chairman of the S-21 interrogation center, was convicted of crimes against humanity. ¹⁵⁰	Endorsing unlawful decisions

¹⁴⁷ *Nahimana*, Appeal Judgment, *supra* note 78, ¶ 672.

¹⁴⁸ Prosecutor v. Guek Eav alias Duch, Case No. 001/18-07-2007/ECCC/TC, Trial Judgment (July 26, 2010) [hereinafter *Duch*, Trial Judgment].

¹⁴⁹ See *id.*, ¶¶ 169-80 (describing Duch's responsibilities as chairman).

¹⁵⁰ See *id.*, ¶¶ 11, 562. It is unclear under which mode of liability Duch was convicted, though it seems possible it was commission: "the Accused . . . served as Deputy and then Chairman of S-21, a security centre tasked with interrogating and executing perceived opponents of the CPK [Communist Party of Kampuchea]." *Id.*, ¶ 111. Duch's responsibilities included teaching interrogation methods to subordinates and reporting detainees' confessions. *Id.*, ¶ 126. As Chairman, Duch had full authority over all S21 staff; it is in this capacity that he is alleged to have planned, instigated, ordered, committed, or aided and abetted crimes against humanity and war crimes." *Id.*, ¶¶ 111, 132.

2. Providing Weapons or Other Integral Logistics

A very prominent subsection of convictions for aiding and abetting atrocity crimes consists of the provision of weapons, ammunition, vehicles, or other integral logistics. This subcategory, by far the largest, also includes conduct such as discarding bodies or offering financial support. Although the subcategory is more broadly defined than others—and thereby has room to encompass more cases and conduct—it also is indicative of a unique form of contribution that has no more of a proper home than aiding and abetting. Many of the subcategories in this survey can fit into other modes of criminal responsibility; for example, speeches can be instigating, orders can be ordering, meetings can be planning, hateful media campaigns can be direct and public incitement to genocide (its own inchoate offense), and omission can be command responsibility. Providing weapons or other integral logistics is harder to fit into other categories, however, and best fits in the aiding and abetting camp.

Table 7: Acts that met the actus reus threshold for aiding and abetting by providing weapons or other integral logistics

Case	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Brima (<i>Brima</i>), w.r.t. Kamara (SCSL). ¹⁵¹	Kamara provided machetes to troops who committed crimes during “Operation Cut Hand.”	Kamara, a high-ranking member of the Armed Forces Revolutionary Council (AFRC), was convicted of aiding and abetting a system of sexual slavery and forced labor.	Tacit encouragement ¹⁵² Endorsing unlawful decisions ¹⁵³

¹⁵¹ See *Brima*, Appeal Judgment, *supra* note 58, ¶¶ 425, 1941.

¹⁵² Kamara was present as well. *Id.*

¹⁵³ See *id.*, ¶ 247 (finding Kamara “supported and sustained the organized commission of the acts and thereby provided practical assistance.”).

Case	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Renzaho (<i>Renzaho</i>) (ICTR). ¹⁵⁴	Renzaho distributed weapons that were deemed to have been used by those who received them to kill Tutsis; issued directives or instructions to erect roadblocks; sanctioned conduct at the roadblocks; and supervised a selection process at a refugee site where forty Tutsis were abducted and killed. ¹⁵⁵	Renzaho, a Prefect of Kigali-Ville and Colonel in the Rwandan Armed Forces, was convicted of aiding and abetting murder.	Issuing Orders Explicit Moral Encouragement Endorsing Unlawful Decisions Approving Spectator at Scene of Crime Establishing/Supervising roadblocks

¹⁵⁴ Prosecutor v. Renzaho, Case No. ICTR-97-31-A, Appeal Judgment, ¶¶ 2, 93 (Apr. 1, 2011) [hereinafter *Renzaho*, Appeal Judgment].

¹⁵⁵ See *id.*, ¶¶ 336-37 (finding that, with respect to the distribution of weapons, the link between the defendant's provision of weapons and how they were used was only supported with "scant evidence." Nevertheless, the Chamber found that the defendant encouraged the physical actors to commit the charged crimes by his acts and conduct, and thereby deemed his conduct to be aiding and abetting. Further, and importantly, the Chamber likely upheld this conviction because they found that the only reasonable conclusion was that Renzaho's instructions to erect roadblocks and to distribute weapons encouraged the people manning the roadblocks to kill Tutsis and therefore substantially contributed to the killings at them).

Case	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Bagaragaza (Bagaragaza) (ICTR). ¹⁵⁶	Bagaragaza provided heavy weapons, which had been concealing in factories, to the Army chief of staff; authorized personnel to participate in attacks; provided vehicles and fuel which were used to transport members of the Interahamwe to crime scenes; and provided a substantial amount of money for the purpose of buying alcohol to motivate the Interahamwe to continue with the killings.	Bagaragaza, the Director General of the office controlling the Rwandan tea industry, was convicted of aiding and abetting genocide.	Authorizing or providing personnel Explicit moral encouragement

¹⁵⁶ Prosecutor v. Bagaragaza, Case No. ICTR-05-86-S, Sentencing Judgment, ¶¶ 1, 18, 25 (Nov. 11, 2009).

Case	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Ntakirutimana (<i>Ntakirutimana</i>), w.r.t. Gérard (ICTR). ¹⁵⁷	Gérard procured <i>gendarmes</i> (officers) and ammunition for an attack.	Gérard, a medical doctor practicing at the Mugonero Adventist Hospital, was convicted of aiding and abetting genocide.	Providing personnel
Blagojević & Jokić, w.r.t. Jokić (ICTY). ¹⁵⁸	Jokić coordinated the deployment and monitoring of the Zvornik Brigade's engineering resources and equipment to mass execution sites.	Jokić, an officer in the Republika Srpska army, was convicted of aiding and abetting murder.	Endorsing unlawful decisions

¹⁵⁷ Prosecutor v. Ntakirutimana, Case Nos. ICTR-96-10-A & ICTR-96-17-A, Appeal Judgment 188, ¶¶ 3, 47 (Dec. 13, 2004) [hereinafter *Ntakirutimana*, Appeal Judgment].

¹⁵⁸ *Blagojević & Jokić*, Appeal Judgment, *supra* note 19, ¶¶ 4, 143.

Case	Conduct	Role & Conviction	Additional Subcategories
Blagojević & Jokić, w.r.t. Blagojević (ICTY). ¹⁵⁹	Blagojević blocked humanitarian convoys to a “safe area” in Srebrenica and made Bratunac Brigade resources, including vehicles, fuel, and personnel, available to assist in a forcible transfer operation. ¹⁶⁰	Blagojević, an officer in the Republika Srpska army, was convicted of aiding and abetting murder and aiding and abetting persecution through murder, cruel and inhumane treatment, terrorism, and forcible transfer. ¹⁶¹	Denying protection to the target group Endorsing unlawful decisions

¹⁵⁹ *Id.*, ¶¶ 32, 110.

¹⁶⁰ *Id.*; *see also id.*, ¶ 111 (the chamber makes a noteworthy distinction that it “did not impose criminal liability on Blagojevic based on an overarching duty to civilians, but rather, based on making his brigade’s resources available to render practical assistance to the operation”).

¹⁶¹ *Blagojević & Jokić*, Appeal Judgment, *supra* note 36, ¶ 3.

Case	Conduct	Role & Conviction	Additional Subcategories
United Kingdom v. Rohde (<i>Rohde</i>), w.r.t Berg (WWII). ¹⁶²	Berg worked the oven in a concentration camp crematorium.	Berg, a prisoner in a concentration camp, was convicted of being “concerned in the killing of” four women. ¹⁶³	
United States v. Pohl (<i>Pohl</i>) (WWII). ¹⁶⁴	Pohl conserved and accounted for loot in the afterphases of Operation Reinhardt.	Pohl, Chief of the SS Economic Administrative Main Office, was convicted of being an accomplice to Operation Reinhardt. ¹⁶⁵	

¹⁶² United Kingdom v. Rohde, No. 31 5 L.R.T.W.C. 55, Trial Judgment (Brit. Mil. Ct. Wuppertal 1948), https://tile.loc.gov/storage-services/service/l1/l1mlp/Law-Reports_Vol-5/Law-Reports_Vol-5.pdf.

¹⁶³ *Id.* at 54; *see also Taylor*, Appeal Judgment, *supra* note 22, ¶ 31. Although *Rohde* was a case of capital murder, it is relevant to considerations of aiding and abetting and other forms of complicity because it was necessarily deemed to be an accomplice case. This is evidenced by the difference in procedural standards with regard to the unnecessariness of corroborating accomplices to serve as witnesses, as opposed to cases with other modes of liability for which more than one witness was needed.

¹⁶⁴ United States v. Pohl, 5 T.W.C. 958, 988, Trial Judgment (U.S. Mil. Trib. II 1947).

¹⁶⁵ *Id.* at 964-67, 1065. The Court held that “[h]aving knowledge of the illegal purposes of the action and of the crimes which accompanied it, his active participation even in the afterphases of the action make him particeps criminis in the whole affair.” *Id.* at 989. While there was no aiding and abetting liability *per se* in *Pohl*, these close principles further define the lines meant to be drawn here.

Case	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Ndindabahizi (<i>Ndindabahizi</i>) (ICTR). ¹⁶⁶	Ndindabahizi transported assailants, distributed weapons, and encouraged killings of Tutsis; told people at a roadblock to implement an envisaged plan; and gave orders to kill Tutsis at Gitwa Hill.	Ndindabahizi, the Minister of Finance in the Interim Government of Rwanda, was convicted of aiding and abetting extermination and genocide at Gitwa Hill.	Giving orders Explicit moral encouragement Providing personnel (assailants)

¹⁶⁶ Prosecutor v. Ndindabahizi, ICTR-01-71-A, Appeal Judgment, ¶¶ 2, 4-5, 137 (Jan. 16, 2007) [hereinafter *Ndindabahizi*, Appeal Judgment].

Case	Conduct	Role & Conviction	Additional Subcategories
United Kingdom v. Tesch (<i>Zyklon B</i>), w.r.t. Tesch (WWII). ¹⁶⁷	Tesch, who was in a position to influence or prevent the transfer of Zyklon B gas to Auschwitz, supplied the gas.	Tesch, the owner of a company that produced and distributed Zyklon B, was convicted of complicity in war crimes. ¹⁶⁸	
Prosecutor v. Ngirabatware (<i>Ngirabatware</i>) (ICTR). ¹⁶⁹	Ngirabatware distributed weapons and issued statements at two roadblocks in the Nyamyumba Commune. ¹⁷⁰	Ngirabatware, the Minister of Planning of Rwanda, was convicted of aiding and abetting genocide.	Supervising roadblocks

¹⁶⁷ United Kingdom v. Tesch, 1 L.R.T.W.C. 93, Trial Judgment 93, 101-02 (Brit. Mil. Ct. Hamburg 1946), https://tile.loc.gov/storage-services/service/ll/llmlp/Law-Reports_Vol-1/Law-Reports_Vol-1.pdf.

¹⁶⁸ *Id.* The court necessarily made the determination that without the supply of gas the exterminations would not have occurred in that manner, and therefore that the actions of the accused directly assisted in the commission of the illegal act of mass extermination. This kind of assistance that has a substantial effect on the crime is what the current definition of aiding and abetting consists of. Even in cases such as *Zyklon B*, where the act in complicity was significantly removed from the ultimate illegal result, it is clear that the actions of the accused had a substantial and direct effect on the commission of the illegal act, and that the accused generally had knowledge of the likely effect of their actions.

¹⁶⁹ Prosecutor v. Ngirabatware, Case No. ICTR-99-54-T, Trial Judgment, ¶¶ 1111, 1345 (Dec. 20, 2012).

¹⁷⁰ *Id.*, ¶¶ 875, 1305, 1320, 1322. These statements to incite the killings most likely fell under direct and public incitement to genocide as opposed to aiding and abetting.

Case	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Nzuwonemeye (<i>Nzuwonemeye</i>) (ICTR). ¹⁷¹	Nzuwonemeye ordered the deployment of soldiers to the Prime Minister's residence, sent them supplies, issued operational instructions, and remained in contact with them.	Nzuwonemeye, Commander of the Reconnaissance Battalion in the Rwandan Army, was convicted of aiding and abetting. ¹⁷²	Giving orders Authorizing personnel to go to the crime scene

¹⁷¹ Prosecutor v. Nzuwonemeye, Case No. ICTR-00-56-T, Trial Judgment, ¶¶ 1625–26 (May 17, 2011) [hereinafter *Nzuwonemeye*, Trial Judgment].

¹⁷² *Id.*, ¶¶ 2013, 2107. Nzuwonemeye's exact conviction is unclear. It seems he may have been acquitted and the aiding and abetting decision vacated. See Ephrem Rugiririza, *Judges Urge France to Take Acquitted Rwandan*, JUST. INFO (May 10, 2019), <https://www.justiceinfo.net/en/41386-judges-urge-france-to-take-acquitted-rwandan.html>.

Case	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Stanišić & Simatović (<i>Stanišić & Simatović</i>) (ICTY). ¹⁷³	Stanišić and Simatović organized trainings for State Security Unit members and local Serb forces sent to Bosanski Šamac to fight, allowed fighters to use their facilities and trainers, and participated in a massacre in the town of Crkvina.	Stanišić (the head of Serbia’s State Security Service) and Simatović (a senior intelligence operative with the service) were convicted of “aiding and abetting the crimes of persecution, murder, deportation, and forcible transfer committed by Serb forces following the takeover of Bosanski Šamac” in April 1992.	

¹⁷³ Prosecutor v. Stanišić & Simatović, Case No. IT-03-69-T, Appeal Judgment, ¶¶ 2, 21, 151, 547, 612 (Int’l Crim. Trib. for the Former Yugoslavia Dec. 15, 2015) [hereinafter *Stanišić & Simatović*, ICTY Appeal Judgment].

Case	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Kristić (<i>Kristić</i>) (ICTY). ¹⁷⁴	Kristić provided integral logistics and arms and allowed Drina Corps buses to be used to transport prisoners to execution sites.	Kristić, a chief of staff and commander of the Drina Corps of the Bosnian Serb Army (VRS), was convicted of aiding and abetting genocide.	Endorsing unlawful decisions
Prosecutor v. Katanga (<i>Katanga</i>) (ICC). ¹⁷⁵	Katanga armed rebel fighters for an attack on the village of Bogoro and procured weapons, including guns and machetes, that were used to kill more than 200 of the villagers.	Katanga, a Congolese militia leader, was convicted of aiding and abetting murder and pillage by reinforcing the strike capability of the militia (but was acquitted of direct involvement).	

¹⁷⁴ Prosecutor v. Kristić, Case No. IT-98-33-T, Appeal Judgment, ¶¶ 3, 142-43, 238 (Int'l Crim. Trib. for the Former Yugoslavia Aug. 2, 2001).

¹⁷⁵ Prosecutor v. Katanga, ICC-01/04-01/07 OA 13, Judgment on the appeal of Mr. Germain Katanga against the decision of Trial Chamber II of 21 November 2012 entitled "Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons," ¶ 27 (Mar. 27, 2013); *see also* Prosecutor v. Katanga, ICC-01/04-01/07, Judgment pursuant to article 74 of the Statute, 658-59 (Mar. 7, 2014) [hereinafter *Katanga*, Trial Judgment].

Table 7.1: Acts that did not meet the *actus reus* threshold for aiding and abetting by providing weapons or other integral logistics

Case	Conduct	Role & Conviction	Why Insufficient for Aiding and Abetting
Prosecutor v. Kupreškić (<i>Kupreškić</i>) (ICTY). ¹⁷⁶	Kupreškić unloaded weapons and was present in the town of Ahmići before an attack.	Kupreškić, a member of the police, was not convicted of aiding and abetting crimes against humanity.	Weak link: The court could not connect the weapons provided to those used in the attack. The weapons were unloaded six months before the attack, and there were testimonial inconsistencies, which made the connection tenuous. The most the court could prove was Kupreškić's mere presence outside the hotel during the attack.
Prosecutor v. Karemera (<i>Karemera</i>) (ICTR). ¹⁷⁷	Karemera distributed weapons, issued letters of instructions, and was present at a hotel where weapons were distributed (tacit encouragement).	Karemera, the Minister of Institutional Relations of Rwanda, was acquitted of aiding and abetting genocide and murder.	Evidentiary problem: the trial chamber based its conviction on circumstantial evidence, but did not rule out other explanations; their conclusion was not the only reasonable inference that could have been drawn from the evidence.

¹⁷⁶ Prosecutor v. Kupreškić, Case No. IT-95-16-A, Appeal Judgment, ¶¶ 12, 241, 256, 277, 283, 304 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 28, 2001) [hereinafter *Kupreškić*, Appeal Judgment].

¹⁷⁷ Prosecutor v. Karemera, Case No. ICTR-98-44-AR, Appeal Judgment, ¶¶ 346, 386, 447, 651, 740 (June 16, 2006) [hereinafter *Karemera*, Appeal Judgment]; Prosecutor v. Karemera, Case No. ICTR-98-44-T, Trial Judgment, ¶ 2 (Feb. 2, 2012).

Case	Conduct	Role & Conviction	Why Insufficient for Aiding and Abetting
Prosecutor v. Fofana (<i>Fofana</i>), w.r.t. Fofana (SCSL). ¹⁷⁸	Fofana supplied logistics and provided commanders with arms, ammunition, and vehicles. ¹⁷⁹	Fofana, the Director of War of the Civil Defense Forces (CDF), was not convicted of aiding and abetting for the provision of logistics and weapons because the court decided that his conduct did not substantially contribute to the crime. ¹⁸⁰	Alternate mode of liability: Fofana was instead convicted of command responsibility for his acts. Command responsibility and individual criminal responsibility are incompatible for the same acts.

3. Providing or Authorizing Personnel (including assailants)

Providing or authorizing personnel is often considered as meeting the threshold for the actus reus of aiding and abetting. Personnel includes individuals sent to help run a labor camp, or build a roadblock, etc. More typically, assailants are authorized from above to be sent to the ground or are literally transported or led on the ground by the accused.

¹⁷⁸ *Fofana*, Appeal Judgment, *supra* note 101, ¶ 97.

¹⁷⁹ *Id.*, ¶ 97.

¹⁸⁰ *Id.*, ¶¶ 16, 98. It seems that since command responsibility and individual criminal responsibility cannot both exist for the same conduct, the chamber decided that a more clear-cut way to discern liability was through the effective control Fofana exercised over the situation and perpetrators as Director of War. It is still slightly unclear why this is, especially because the court found that there was an absence of substantial effect.

Table 8: Acts that met the actus reus threshold for aiding and abetting by providing or authorizing personnel to the crime scene

Case	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Lukić (<i>Lukić</i>), w.r.t. Sredoje Lukić (ICTY). ¹⁸¹	Lukić carried arms and transferred individual personnel to a crime scene.	Lukić, an alleged member of the White Eagles military group, was convicted of aiding and abetting persecution and murder.	Providing arms
Nzuwonemeye (ICTR). ¹⁸²	Nzuwonemeye ordered the deployment of soldiers to the prime minister's battalion.	Nzuwonemeye, the Commander of the Reconnaissance Battalion in the Rwandan Army, was convicted of aiding and abetting.	Ordering

¹⁸¹ Prosecutor v. Lukić, IT-98-32/1-A, Appeal Judgment, ¶¶ 410, 448, 667 (Int'l Crim. Trib. for the Former Yugoslavia Dec. 4, 2012) [hereinafter *Lukić*, Appeal Judgment]; Prosecutor v. Lukić, IT-98-32/1-T, Trial Judgment, ¶ 77 (Int'l Crim. Trib. for the Former Yugoslavia July 20, 2009) [hereinafter; *Lukić*, Trial Judgment].

¹⁸² *Nzuwonemeye*, Trial Judgment, *supra* note 171, ¶¶ 1625-26, 2013, 2107.

Case	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Gacumbitsi (<i>Gacumbitsi</i>) (ICTR). ¹⁸³	Gacumbitsi expelled Tutsi tenants who were subsequently killed, drove the attackers in a convoy with his vehicle leading, failed to prevent the transportation of attackers in communal vehicles, and was present during an attack on the Tutsi in the Rusumo Commune.	Gacumbitsi, mayor of the Rusumo Commune, was convicted of aiding and abetting murder, massacres which encouraged genocide, and extermination in the Rusumo Commune.	Denying target group protection Omission ¹⁸⁴ Tacit encouragement

¹⁸³ Prosecutor v. Gacumbitsi, Case No. ICTR-2001-64-A, Appeal Judgment, ¶¶ 2, 21, 112, 131, 206 (July 7, 2006) [hereinafter *Gacumbitsi*, Appeal Judgment].

¹⁸⁴ The conduct which suggests Gacumbitsi was in a position to prevent certain acts suggests a type of aiding and abetting by omission, or perhaps even command responsibility. *Gacumbitsi* is a good example to push back against the false exclusion that is common in aiding and abetting cases.

Case	Conduct	Role & Conviction	Additional Subcategories
Ndindabahizi (ICTR). ¹⁸⁵	Ndindabahizi transported assailants, distributed weapons, and encouraged killings of Tutsis; armed people with grenades and threw a grenade himself to instigate an attack; told people at roadblock to implement an envisaged plan; and gave orders to kill Tutsis at Gitwa Hill.	Ndindabahizi, the Minister of Finance in the Interim Government of Rwanda, was convicted of aiding and abetting extermination and aiding genocide at Gitwa Hill.	Ordering Explicit moral encouragement Providing arms

¹⁸⁵ Ndindabahizi, Appeal Judgment, *supra* note 166, ¶¶ 2, 4-5, 137.

Case	Conduct	Role & Conviction	Additional Subcategories
Stanišić & Simatović (ICTY). ¹⁸⁶	Stanišić and Simatović arranged for the training of persons sent to Bosanski Šamac to fight by allowing fighters to use their facilities and trainers.	Stanišić (the head of Serbia's State Security Service) and Simatović (a senior intelligence operative with the service) were convicted of "aiding and abetting the crimes of persecution, murder, deportation, and forcible transfer committed by Serb forces following the takeover of Bosanski Šamac" in April 1992.	
Prosecutor v. Ntawukulilyayo (Ntawukulilyayo) (ICTR). ¹⁸⁷	Ntawukulilyayo instructed refugees to go to Kabuye Hill where they were subsequently attacked, and transported soldiers to the crime scene.	Ntawukulilyayo, a former sub-prefect in Rwanda's southern prefecture of Butare, was convicted of aiding and abetting genocide.	Transporting victims to a crime scene Denying target group protection

¹⁸⁶ *Stanišić & Simatović*, ICTY Appeal Judgment, *supra* note 173, ¶¶ 2, 15, 21, 50, 60, 151, 547, 612.

¹⁸⁷ Prosecutor v. Ntawukulilyayo, Case No. ICTR-05-82-A, Appeal Judgment, ¶¶ 2, 243 (Dec. 14, 2011) [hereinafter *Ntawukulilyayo*, Appeal Judgment].

Case	Conduct	Role & Conviction	Additional Subcategories
Ntakirutimana, w.r.t. Gérard (ICTR). ¹⁸⁸	Gérard transported armed attackers to crime scenes.	Gérard, a medical doctor practicing at the Mugonero Adventist Hospital, was convicted of aiding and abetting genocide.	
Ntakirutimana, w.r.t. Elizaphan (ICTR). ¹⁸⁹	Elizaphan transported armed attackers to crime scenes.	Elizaphan, a pastor, was convicted of aiding and abetting extermination.	

4. Transporting Victims to Crime Scene

Another typical form of aiding and abetting liability is transporting the victim to the crime scene. This often refers to physically transporting the victim (as opposed to ordering or authorizing transportation). This subcategory also implicitly includes deception or falsely invoking a reason for the target group to travel to the scene of the crime.

¹⁸⁸ *Ntakirutimana*, Appeal Judgment, *supra* note 157 at 188, ¶¶ 3, 491.

¹⁸⁹ *Id.* at 187, ¶¶ 2, 532.

Table 9: Acts that met the actus reus threshold for aiding and abetting by transporting victims to the crime scene

Case	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Limaj (<i>Limaj</i>), w.r.t. Bala (ICTY). ¹⁹⁰	Bala blindfolded a prisoner (“L12”), brought him to a barn where he was beaten, and was present during the incident.	Bala, a guard at the KLA Lapušnik-Llapushnik prison camp, was convicted of aiding and abetting torture, cruel treatment, and murder.	Approving spectator Tacit encouragement
Prosecutor v. Kalimanzira (<i>Kalimanzira</i>) (ICTR). ¹⁹¹	Kalimanzira falsely encouraged Tutsis to take refuge at Kabuye hill, brought armed reinforcements, and tacitly approved of a sub-Prefect’s call for Tutsis to go to Kabuye Hill, where they were massacred.	Kalimanzira, the Minister of the Interior in the Interim Government of Rwanda, was convicted of aiding and abetting genocide in relation to the massacre.	Provision of weapons and other integral logistics Providing Personnel Tacit Encouragement ¹⁹²

¹⁹⁰ Prosecutor v. Limaj, Case No. IT-03-66-T, Trial Judgment, ¶¶ 649, 658, 721. (Int’l Crim. Trib. for the Former Yugoslavia Nov. 30, 2005).

¹⁹¹ *Kalimanzira*, Appeal Judgment, *supra* note 87 at 89, ¶¶ 2, 59, 219-20.

¹⁹² *Id.*, ¶ 220 (discussing tacit approval and the important distinction between aiding and abetting and commission: “. . . the Appeals Chamber is not convinced that Kalimanzira’s tacit approval of Sub-Prefect Ntawukulilyayo’s call for Tutsis to go to Kabuye hill, and his leading assailants to Kabuye hill, are sufficient to require that the legal qualification of his overall conduct be elevated to ‘committing’” genocide).

Case	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Tadić (<i>Tadić</i>) (ICTY). ¹⁹³	Tadić pushed men on bus, ordered people out of their houses and beat them, threatened people and made statements, and acted as a bodyguard for interpreter.	Tadić, a member of Serbian paramilitary forces, was convicted of aiding and abetting crimes of sexual violence. ¹⁹⁴	
Ntawukulilyayo (ICTR). ¹⁹⁵	Ntawukulilyayo instructed refugees to go to Kabuye hill where they were subsequently attacked, and transported soldiers to the crime scene.	Ntawukulilyayo, a former sub-prefect in Rwanda's southern prefecture of Butare, was convicted of aiding and abetting genocide.	Providing personnel

¹⁹³ Prosecutor v. Tadić, Case No. IT-94-1-A, Appeal Judgment, ¶ 178 (Int'l Crim. Trib. for the Former Yugoslavia July 15, 1999) [hereinafter *Tadić*, Appeal Judgment].

¹⁹⁴ Prosecutor v. Tadić, Case No. IT-94-1-T, Trial Judgment, ¶¶ 187, 194-96, 692 (Int'l Crim. Trib. for the Former Yugoslavia May 7, 1997) [hereinafter *Tadić*, Trial Judgment].

¹⁹⁵ *Ntawukulilyayo*, Appeal Judgment, *supra* note 188, ¶¶ 2, 243.

Case	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Nikolić (<i>Nikolić</i>) (ICTY). ¹⁹⁶	Nikolić “removed and otherwise facilitated the removal of female detainees from the hangar, which he knew was for purposes of rapes, and other sexually abusive conduct. . . . by camp guards, special forces, local soldiers and other men.” ¹⁹⁷	Nikolić, a Bosnian Serb army commander and commander of the Sušica detention camp, pled guilty to aiding and abetting rape. ¹⁹⁸	

¹⁹⁶ Prosecutor v. Nikolić, Case No. IT-94-2-A, Judgment on Sentencing Appeal (Int’l Crim. Trib. for the Former Yugoslavia Feb. 4, 2005) [hereinafter *Nikolić*, Sentencing Appeal].

¹⁹⁷ Prosecutor v. Nikolić, Case No. IT-94-2-S, Sentencing Judgment, ¶ 87 (Int’l Crim. Trib. for the Former Yugoslavia Dec. 18, 2003) [hereinafter *Nikolić*, Sentencing Judgment].

¹⁹⁸ *Nikolić*, Sentencing Appeal, *supra* note 287, ¶¶ 2-4; *Id.*, ¶ 119.

Case	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Semanza (<i>Semanza</i>) (ICTR). ¹⁹⁹	Semanza was often present at Musha Church and Mwulire Hill, where massacres took place; once cut a Rusanganwa on the forehead at Musha Church, who later died from the injuries; incited people to rape Tutsi women in Gikoro; and gave a speech that culminated in the rape of one woman and the death of another.	Semanza, the mayor of the Bicumbi commune, was convicted of aiding and abetting genocide and extermination. ²⁰⁰	Speech Tacit encouragement

5. Denying Protection to Target Group Member(s)

Another way perpetrators have provided material support is by denying certain protections to members of the target group. Protections include housing, refuge, a safe haven, arms with which to defend themselves, humanitarian aid, and job security. In the cases that follow, the accused removed these protections for the target group, leaving them further exposed and vulnerable to harm and persecution.

¹⁹⁹ Prosecutor v. Semanza, Case No. ICTR-97-20-T, Trial Judgment, ¶¶ 431–33 (May 15, 2003).

²⁰⁰ *Id.* at 165, 15. Although Semanza rarely took part in the attacks, he still aided those who committed the massacre.

Table 10: Acts that met the actus reus threshold for aiding and abetting by denying a member or members of a target group protection

Case	Conduct	Role & Conviction	Additional Subcategories
Gacumbitsi (ICTR). ²⁰¹	Gacumbitsi expelled tenants who were subsequently killed and knowingly exposed them to being targeted by Hutu attackers.	Gacumbitsi, mayor of the Rusomo Commune, was convicted of aiding and abetting murder.	Providing personnel Omission Tacit encouragement
Prosecutor v. Seromba (<i>Seromba</i>) (ICTR). ²⁰²	Seromba turned away victims seeking refuge and fired Tutsi employees.	Seromba, a priest, was convicted of aiding and abetting genocide. ²⁰³	

²⁰¹ *Gacumbitsi*, Appeal Judgment, *supra* note 183, ¶¶ 2, 112, 124, 206.

²⁰² *Seromba*, Appeal Judgment, *supra* note 126, ¶¶ 4, 240.

²⁰³ *Id.*, ¶¶ 2, 226; *see also Seromba* in Table 17.1 (discussing how the Court engaged in a line-drawing exercise between aiding and abetting and commission).

Case	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Brđanin (<i>Brđanin</i>) (ICTY). ²⁰⁴	Brđanin issued governmental orders; supported and enabled attacks by Bosnian Serb forces in the implementation of a strategic plan; and disarmed the target group because he was responsible for the ARK crisis staff decisions to disarm Bosnian Muslims and Bosnian Croats throughout the ARK, which created an imbalance of arms and weapons favoring the Bosnian Serbs in the Bosnian Krajina. ²⁰⁵	Brđanin, the President of Autonomous Region of Krajina (ARK) Crisis Staff, was convicted of aiding and abetting crimes committed in the context of armed attacks.	Attending meetings to make a plan Issuing orders Endorsing unlawful decisions
Blagojević & Jokić, w.r.t. Blagojević (ICTY). ²⁰⁶	Blagojević blocked humanitarian convoys to a “safe area” in Srebrenica.	Blagojević, an officer in the Republika Srpska army, was convicted of aiding and abetting murder and aiding and abetting persecution through murder, cruel and inhumane treatment, terrorism, and forcible transfer.	Providing weapons or other integral logistics Endorsing unlawful decisions

²⁰⁴ *Brđanin*, Appeal Judgment, *supra* note 86, ¶¶ 2, 29.

²⁰⁵ *See, e.g., id.*, ¶ 152.

²⁰⁶ *Blagojević, & Jokić*, Appeal Judgment, *supra* note 36, ¶¶ 3, 32, 346.

6. Establishing or Supervising Roadblocks

Lastly, a common act for establishing this mode of liability is establishing or supervising roadblocks. Establishing or supervising roadblocks could arguably fall under another mode—for example, one could issue orders to create a roadblock, or tacitly encourage activities at a roadblock where massacres are taking place. And the uniqueness of the roadblock to the Rwandan genocide may explain why it is so common, in which case it should not merit its own subcategory. Nonetheless, establishing or supervising roadblocks is a distinct category because of its uniqueness as a temporary killing site.

Table 11: Acts that met the actus reus threshold for aiding and abetting by establishing or supervising roadblocks

Case	Conduct	Role & Conviction	Additional Subcategories
Nahimana, w.r.t. Ngeze (ICTR). ²⁰⁷	Ngeze “set up, manned and supervised roadblocks in Gisenyi . . . that identified targeted Tutsi civilians who were subsequently taken to and killed at the Commune Rouge.”	Ngeze, a Rwandan journalist and founder of the Kangura newspaper, was convicted of aiding and abetting genocide and extermination in the Gisenyi Prefecture.	
Renzaho (ICTR). ²⁰⁸	Renzaho ordered the establishment of roadblocks, and sanctioned conduct and provided continued material support at them.	Renzaho, a Prefect of Kigali-Ville and Colonel in the Rwandan Armed Forces, was convicted of aiding and abetting murder.	Ordering Explicit and tacit moral encouragement Providing arms and other integral logistics

²⁰⁷ *Nahimana*, Appeal Judgment, *supra* note 78, ¶ 412.

²⁰⁸ *Renzaho*, Appeal Judgment, *supra* note 154, ¶¶ 2, 93, 336.

Case	Conduct	Role & Conviction	Additional Subcategories
Ngirabatware (ICTR). ²⁰⁹	Ngirabatware issued statements at two roadblocks in Nyamyumba Commune that he supervised; and distributed arms.	Ngirabatware, the Minister of Planning of Rwanda, was convicted of aiding and abetting genocide.	Orders Explicit moral encouragement Provisions of arms and other integral logistics

D. Influence

1. Tacit Encouragement

Tacit encouragement often takes the shape of an approving, yet silent, spectator at the scene of a crime. When finding tacit encouragement, courts often hold that the individual's responsibility was based not on the accused's duty to act but the encouragement and support afforded to principal by omissions. This form of aiding and abetting is different from omission liability in that it does not necessarily require the actor to have a legal duty to act, nor be in a superior-subordinate relationship (though it is often the case for tacit encouragement to have a substantial effect on the crime), rather, it is the effect of a confluence of the actor's influence and silence that may offer permission.

²⁰⁹ Prosecutor v. Ngirabatware, Case No. MICT-12-29-A, Appeal Judgment, ¶¶ 2, 3, 278 (Dec. 18, 2014); *Ngirabatware*, Trial Judgment, *supra* note 169, ¶¶ 875, 1111, 1305, 1320, 1345.

Table 12: Acts that met the actus reus threshold for aiding and abetting through tacit encouragement or being an approving spectator at scene of the crime

Case	Conduct	Role & Conviction	Additional Subcategories
Brima, w.r.t. Kamara (SCSL). ²¹⁰	Kamara was present during the commission of crimes, which gave moral support to the principal perpetrators because of his authority.	Kamara, a high-ranking member of the Armed Forces Revolutionary Council (AFRC), was convicted of aiding and abetting a system of sexual slavery and forced labor.	
Prosecutor v. Aleksovski (<i>Aleksovski</i>) (ICTY). ²¹¹	Aleksovski was present during and did not object to the mistreatment of prisoners, notwithstanding its systematic nature and his authority over the perpetrators. ²¹²	Aleksovski, a Bosnian Croat prison commander, was convicted of aiding and abetting mistreatment of prisoners by HVO soldiers.	
In re K. (<i>Synagogue Case</i>) (WWII). ²¹³	The defendant, who held the status of an Alter Kämpfer and was a long-time militant of the Nazi party, was present at the scene of the crime and had knowledge of the criminal enterprise.	The defendant was a Nazi party militant.	

²¹⁰ *Brima*, Appeal Judgment, *supra* note 58 at 30, 38–39, ¶¶ 245, 425, 1941.

²¹¹ Prosecutor v. Aleksovski, Case No. IT-95-14/1-A, Appeal Judgment, ¶¶ 172, 174, 189. (Int'l Crim. Trib. for the Former Yugoslavia Mar. 23, 2000).

²¹² *Id.*, ¶¶ 175, 177. Aleksovski was necessarily aware that his tacit approval would be construed as a sign of support and encouragement, and thus substantially contributed to the mistreatment.

²¹³ *In re K.*, 1 Entscheidungen in Strafsachen, Judgment (Brit. Mil. Ct. 1948).

Case	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Kayishema & Ruzindana (<i>Kayishema & Ruzidana</i>) (ICTR). ²¹⁴	Kayishema and Ruzindana were passively present during massacres and held a position of authority, but failed to oppose a killing and offered tacit encouragement.	Kayishema and Ruzindana, Rwandan Hutu militiamen, were convicted of aiding and abetting massacres based on tacit encouragement. ²¹⁵	
Prosecutor v. Vasiljević (<i>Vasiljević</i>) (ICTY). ²¹⁶	Vasiljević was present and armed with automatic weapons during a forcible transfer of victims to the location where they were shot. ²¹⁷	Vasiljević, a former member of the White Eagles (a Serbian paramilitary group), was convicted of aiding and abetting murder.	Transporting victims to crime scene

²¹⁴ Prosecutor v. Kayishema & Ruzindana, Case No. ICTR-95-1-A, Appeal Judgment, ¶ 201 (June 1, 2001) [hereinafter *Kayishema & Ruzindana*, Appeal Judgment]; Prosecutor v. Kayishema & Ruzindana, Case No. ICTR-95-1-T, Trial Judgment, ¶ 404 (June 1, 2001) [hereinafter *Kayishema & Ruzindana*, Trial Judgment].

²¹⁵ *Kayishema & Ruzindana*, Trial Judgment, *supra* note 334 at 13-14; *Kayishema & Ruzindana*, Appeal Judgment, *supra* note 333 ¶¶ 190, 200. The individual responsibility was based not on Kayishema and Ruzindana's duty to act, but on the encouragement and support they afforded to the principals by their omissions.

²¹⁶ Prosecutor v. Vasiljević, Case No. IT-98-32-A, Appeal Judgment, ¶¶ 26, 135 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 25, 2004).

²¹⁷ *Id.*, ¶¶ 130, 134. The presence of weapons may have an effect on a conviction, as occurs within U.S. criminal procedure. For example, the presence of weapons on police officers at a crime scene can add to, but is not dispositive of, a greater likelihood that an accused could objectively feel seized, thereby making the presence of arms a relevant factor in an analysis for Fourth Amendment violations.

Case	Conduct	Role & Conviction	Additional Subcategories
Gacumbitsi (ICTR). ²¹⁸	Gacumbitsi was present throughout an attack in the Tutsi Rusomo Commune.	Gacumbitsi, mayor of the Rusomo Commune, was convicted of aiding and abetting extermination in the Rusumo Commune.	Omission Denying target group protection
Prosecutor v. Muhimana (<i>Muhimana</i>) (ICTR). ²¹⁹	Muhimana gave permission to “take away” a victim who was subsequently raped, and held the status of an influential, well-known figure in the community.	Muhimana, a Rwandan civic leader (Conseiller of the Gishyita sector of Kibuye prefecture), was convicted of aiding and abetting genocide, rape, and murder as crimes against humanity.	Ordering Explicit moral encouragement
Prosecutor v. Akayesu (<i>Akayesu</i>) (ICTR). ²²⁰	Akayesu was present during a rape and offered words of authority. ²²¹	Akayesu, the mayor of a commune, was convicted of aiding and abetting rape.	

²¹⁸ *Gacumbitsi*, Appeal Judgment, *supra* note 183, ¶¶ 2, 21, 206.

²¹⁹ Prosecutor v. Muhimana, Case No. ICTR-95-1B-A, Appeal Judgment, ¶¶ 2, 12, 185, 190 (May 21, 2007) [hereinafter *Muhimana*, Appeal Judgment].

²²⁰ *Akayesu*, Appeal Judgment, *supra* note 111, ¶¶ 3, 414, 418.

²²¹ *Id.*, ¶¶ 414, 418. Akayesu’s tacit approval of the violence through his presence, and his explicit encouragement through words of authority, sent a signal of official tolerance.

Case	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Sesay (<i>Sesay</i>), w.r.t. Gbao (SCSL). ²²²	Gbao was present at a crime scene. ²²³	Gbao, a Revolutonararu United Front (RUF) member, was convicted of aiding and abetting assault.	Giving orders ²²⁴

²²² *Sesay*, Appeal Judgment, *supra* note 79, ¶¶ 13, 1319.

²²³ *Id.*, ¶ 541, 545, 1175. The court stated that “[t]he physical presence at the crime scene of the Accused, combined with his or her position of authority, allowed the inference that non-interference by the accused actually amounted to tacit approval and encouragement” that could amount to aiding and abetting. It is submitted that this applies to Gbao, whose position and authority, notably in Kailahun, could not be disputed. Gbao did not interfere in the massive “recruitment of civilians including persons under the age of 15 being sent to training and then used for military purposes.” This can only be seen as a tacit approval and encouragement of the crime. In his role as ideology instructor and later as IDU and OSC Commander, Gbao clearly tolerated a system in which the RUF secured recruits by the forceful capture of civilians. As such, the only reasonable inference is that his conduct amounted to that of an aider and abettor.

²²⁴ *Id.*, ¶ 593. Gbao stormed the Reception Center in Makeni on April 17, 2000 with a group of twenty-five to thirty armed rebels and told peacekeepers that if they did not dismantle all the tents, he would burn them with the peacekeepers inside. On May 1, 2000, at the Makump DDR camp, a witness (Jaganathan) asked Gbao to explain his problems and Gbao responded: “[g]ive me back my five men and their weapons, otherwise I will not move an inch from here.” Jaganathan attempted further discussion but did not make any progress in resolving the problem.

Table 12.1: Acts that did not meet the actus reus threshold for aiding and abetting by tacit encouragement or silent presence at the scene of a crime

Case	Conduct	Role & Conviction	Why Insufficient for Aiding and Abetting
Prosecutor v. Kamuhanda (<i>Kamuhanda</i>) (ICTR). ²²⁵	Kamuhanda was present during an attack, said nothing as people on the ground were killed, held a position of authority over the attackers, led the attackers into the compound, and initiated the attack.	Kamuhanda, a Rwandan politician, was convicted of ordering genocide and extermination.	Alternate mode of liability: the conduct was likely insufficient for an aiding and abetting conviction due to Kamuhanda's direct conduct of leading the attackers and holding a position of authority over them; these acts better fit ordering than aiding and abetting.

²²⁵ Prosecutor v. Kamuhanda, Case No. ICTR-99-54A-A, Appeal Judgment, ¶¶ 2-3, 16, 77 (Sept. 19, 2005) [hereinafter *Kamuhanda*, Appeal Judgment].

Case	Conduct	Role & Conviction	Why Insufficient for Aiding and Abetting
Nahimana, w.r.t. Barayagwiza (ICTR). ²²⁶	Barayagwiza held a position of authority, incited the general public and militia groups to exterminating all Tutsis by allowing subordinates to broadcast his messages, and did not take reasonable steps to prevent or punish the perpetrators. ²²⁷	Barayagwiza, a member of the RTLM radio station with authority and control over it, was convicted of instigating genocide, instigating persecution, planning the Ginseyi attack, and ordering crimes against humanity.	Alternate mode of liability: Barayagwiza's conduct is most likely better captured by instigating than by aiding and abetting because of the causal link tying the radio messages and the violence together.

²²⁶ *Nahimana*, Appeal Judgment, *supra* note 78, ¶ 3.

²²⁷ *See id.*, ¶¶ 630, 837. The notion of not taking reasonable steps is may also fit in the subcategory of omission. Likewise, the conduct of media broadcasting may also fall under the subcategory of issuing a hateful media campaign.

Case	Conduct	Role & Conviction	Why Insufficient for Aiding and Abetting
Kalimanzira (ICTR). ²²⁸	Kalimanzira was present during a speech.	Kalimanzira, the Minister of the Interior in the Interim Government of Rwanda, was acquitted of aiding and abetting genocide in relation to the speech.	Weak link: the court found it “impossible to determine with any reasonable certainty whether any killings in fact occurred following [the speech at which Kalimanzira was present] and, if so, the degree to which they were related to the ceremony.” ²²⁹
Karemera (ICTR). ²³⁰	Karemera was present at a hotel where weapons were distributed.	Karemera, the Minister of Institutional Relations of Rwanda, was acquitted of aiding and abetting genocide and murder.	Evidentiary problem: the trial chamber based its conviction on circumstantial evidence, but did not rule out other explanations; their conclusion was not the only reasonable inference that could have been drawn from the evidence. ²³¹

²²⁸ *Kalimanzira*, Appeal Judgment, *supra* note 87 at 89, ¶¶ 2, 75, 80.

²²⁹ *Id.*, ¶ 77. The trial court held that Kalimanzira’s presence during Ndayamabaje’s speech, which instigated the killing of Tutsis, offered tacit approval and substantially contributed to subsequent killings amounting to the aiding and abetting of genocide. The Appeals Chamber later reversed the conviction based on this event because of the weak link.

²³⁰ *Karemera*, Appeal Judgment, *supra* note 177, ¶¶ 346, 447; *Karemera*, Trial Judgment, *supra* note 177, ¶ 2.

²³¹ *Karemera*, Appeal Judgment, *supra* note 177, ¶¶ 386, 651, 740.

Case	Conduct	Role & Conviction	Why Insufficient for Aiding and Abetting
Prosecutor v. Nyiramasuhuko (<i>Nyiramasuhuko</i>) (ICTR). ²³²	Nyiramasuhuko was silently present during an inflammatory speech given by the Prime Minister.	Nyiramasuhuko, the Minister for Family Welfare and the Advancement of Women, was not convicted of genocide based on her presence at the speech.	Weak Link: Although Nyiramasuhuko tacitly approved of the policies delineated in the speech, the court held that this tacit approval did not substantially contribute to the genocide.

2. Standing Guard

Standing guard is another subcategory beneath the influence umbrella. The difference between standing guard and tacit encouragement is that a person standing guard is contributing to the crime through provision of a service; for example, safety: either protecting those within the building he is guarding or protecting the alleged safety of the community by looking out for target group threats. This is different from an accused who tacitly encourages through omission or silence, which is significant because their position of authority is such that their tacit encouragement may have a substantial effect on the commission of the crime.

²³² *Nyiramasuhuko*, Appeal Judgment, *supra* note 71, ¶¶ 2, 11, 593, 647-48, 653.

Table 13: Acts that met the actus reus threshold for aiding and abetting by standing guard

Case	Conduct	Role & Conviction	Additional Subcategories
Lukić (ICTY). ²³³	Lukić was present and armed at a crime scene.	Lukić, the leader of a group of armed men, was convicted of aiding and abetting murder.	
Tadić (ICTY). ²³⁴	Tadić pushed men on a bus, ordered people out of their houses and beat them, threatened people and made statements, and acted as a bodyguard for interpreter.	Tadić, a member of Serbian paramilitary forces, was convicted of aiding and abetting crimes of sexual violence.	

3. Giving a Speech to Incite the Masses

Speeches given at ceremonies or public events are often intended to incite the masses. This is distinct from direct and public incitement to genocide, which is its own inchoate crime. Instigation is another mode that is often blurred or conflated with aiding and abetting by giving a speech.

²³³ *Lukić*, Appeal Judgment, *supra* note 181, ¶¶ 410, 448, 667; *Lukić*, Trial Judgment, *supra* note 181, ¶ 77; *see also supra* note 217 (discussing the potential significance of being armed).

²³⁴ *Tadić*, Appeal Judgment, *supra* note 193, ¶¶ 187, 194-96.

Table 14: Acts that met the actus reus threshold for aiding and abetting by speech-giving

Case	Conduct	Role & Conviction	Additional Subcategories
Fofana, w.r.t. Kondewa (SCSL). ²³⁵	Kondewa gave a speech at Tongo in which he blessed the criminal acts as High Priest (fighters would not go to war without a blessing, because they believed that Kondewa transferred his mystical powers to them and made them immune to bullets).	Kondewa, a High Priest, was convicted of aiding and abetting crimes and cruel treatment in Tongo Fields.	
Fofana, w.r.t. Fofana (SCSL). ²³⁶	Fofana gave a speech at a passing out parade in December 1987 during which he encouraged and supported instructions to kill captured enemy combatants and collaborators, inflict physical suffering and injury, and destroy their houses.	Fofana, the Director of War of the Civil Defense Forces (CDF) and a leading general in the Kamajors militia, was convicted of aiding and abetting murder and cruel treatment in Tongo Fields.	

²³⁵ Prosecutor v. Fofana, Case No. SCSL-04-14-T, Trial Judgment, ¶¶ 721-22, 735 (Aug. 2, 2007) [hereinafter *Fofana*, Trial Judgment]; *Fofana*, Appeal Judgment, *supra* note 101 at 187.

²³⁶ *Id.*

Case	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Kambanda (Kambanda) (ICTR). ²³⁷	Kambanda gave a speech calling upon population to kill Tutsis, participated in meetings, and issued directives.	Kambanda, the Prime Minister of Rwanda, was convicted of committing genocide (not of aiding and abetting).	

Table 14.1: Acts that did not meet the actus reus threshold for aiding and abetting by speech-giving

Case	Conduct	Role & Conviction	Why Insufficient for Aiding and Abetting
Kamuhanda (ICTR). ²³⁸	Kamuhanda gave a speech during a meeting.	Kamuhanda, a Rwandan politician and the Minister of Higher Education, Scientific Research and Culture, was convicted of ordering genocide and extermination.	Alternate mode of liability: Kamuhanda was convicted of ordering instead of aiding and abetting because the distribution of weapons was not “sufficiently compelling to maintain the conviction for aiding and abetting.” Weak link: There was insufficient evidence to demonstrate Kamuhanda aided and abetted extermination and genocide because the link between the participants in the meeting where he gave his speech and the attackers was not strong enough to find that he led the attack in a literal sense.

²³⁷ *Kambanda*, Trial Judgment, *supra* note 131 at 27-28, ¶¶ 39, 44-45.

²³⁸ *Kamuhanda*, Appeal Judgment, *supra* note 225, ¶¶ 2-3, 62, 72, 77.

Case	Conduct	Role & Conviction	Why Insufficient for Aiding and Abetting
Nyiramasuhuko, w.r.t. Sindikubwabo (ICTR). ²³⁹	Sindikubwabo made inflammatory speeches and called upon the population to kill Tutsis in the presence of many officials, including Nyiramasuhuko and Kanyabashi.	Sindikubwabo, the president of Rwanda, was convicted of direct and public incitement to genocide.	Alternate mode of liability

4. Hateful Media Campaign

It is no surprise that hateful media campaigns can prompt a population to adopt dehumanizing rhetoric and other mechanisms of moral disengagement to make atrocity crimes more prevalent across a community. Recently, however, hateful media campaigns have been assigned to present and direct incitement to genocide, rather than aiding and abetting liability.

²³⁹ Nyiramasuhuko, Appeal Judgment, *supra* note 71.

Table 15: Acts that met the actus reus threshold for aiding and abetting by issuing a hateful media campaign

Case	Conduct	Role & Conviction	Additional Subcategories
United States v. von Weizsäcker (Ministries Case) (WWII). ²⁴⁰	Dietrich as chief of the press department fostered and directed a persistent campaign to arouse the hatred of the German people against Jews.	Dietrich was convicted under different modes of liability.	
France v. Göring (IMT Judgment), w.r.t. Streicher (WWII). ²⁴¹	Streicher was held responsible for crimes against humanity in that in his speeches and articles week after week, month after month, he infected the German mind with the virus of anti-Semitism and incited the German people to active persecution.	Streicher was convicted under different modes of liability.	

²⁴⁰ United States v. von Weizsäcker, 14 T.W.C. 308, 416 (U.S. Mil. Trib. 1949).

²⁴¹ Fr. v. Göring, 22 I.M.T. 411, 120 (1946) [hereinafter IMT (Int'l Mil. Trib.) Judgment].

Table 15.1: Acts that did not meet the actus reus threshold for aiding and abetting based on issuing or furthering a hateful media campaign

Case	Conduct	Role & Conviction	Why Insufficient for Aiding and Abetting
Nahimana, w.r.t. Ngeze (ICTR). ²⁴²	Ngeze founded the propaganda newspaper Kangura, named Tutsis on airwaves and drove around with a megaphone mobilizing the Hutu population to come to CDR meetings and spreading the message that the Tutsi ethnic minority ('Inyenzi') would be exterminated.	Ngeze, a Rwandan journalist and founder of the Kangura newspaper, was convicted of direct and public incitement to genocide.	Alternate mode of liability: Ngeze was convicted of direct and public incitement to genocide. Weak link: Ngeze was not convicted of aiding and abetting because the court could not prove a link between deaths and his broadcasts.

5. Explicit Moral Encouragement

Explicit moral encouragement, including words of reassurance, can be given during the commission of an act; it can also be given prior to the commission of an act over the phone, in a meeting, through an action like leading a convoy, or through orders. Explicit moral encouragement is more direct than support derived from the tacit encouragement that comes from silent presence. There may be some overlap between this form of moral encouragement and ordering; for example, Muhimana's statement to his subordinate of "take her away" could be both an order and a source of moral support or encouragement in that the superior condoned the actions.²⁴³ However, the difficulty in drawing such a distinct line should

²⁴² *Nahimana*, Appeal Judgment, *supra* note 78.

²⁴³ See *infra* Table 16.

be recognized.

Table 16: Acts that met the actus reus threshold for aiding and abetting by explicit moral encouragement

Case	Conduct	Role & Conviction	Additional Subcategories
Rukundo (ICTR). ²⁴⁴	Rukundo “identified Tutsi refugees to soldiers and the Interahamwe[,] who subsequently removed and killed them,” consulted with the assailants right before they committed the crime, and subsequently boasted of the killings.	Rukundo, a Roman Catholic priest, was convicted of aiding and abetting genocide and crimes against humanity.	Identifying members of a target group
Muhimana (ICTR). ²⁴⁵	Muhimana gave permission to “take away” a victim who was subsequently raped, and held the status of an influential, well-known figure in the community.	Muhimana, a Rwandan civic leader (Conseiller of the Gishyita sector of Kibuye prefecture), was convicted of aiding and abetting genocide, rape, and murder as crimes against humanity.	

²⁴⁴ *Rukundo*, Appeal Judgment, *supra* note 140, ¶¶ 52, 54, 176.

²⁴⁵ *Muhimana*, Appeal Judgment, *supra* note 219, ¶¶ 2, 12, 185, 190.

Case	Conduct	Role & Conviction	Additional Subcategories
Akayesu (ICTR). ²⁴⁶	Akayesu was present during a rape and offered words of authority. ²⁴⁷	Akayesu, the mayor of a commune, was convicted of aiding and abetting rape.	
Renzaho (ICTR). ²⁴⁸	Renzaho distributed weapons that were deemed to have been used by those who received them to kill Tutsis; issued directives or instructions to erect roadblocks; sanctioned conduct at the roadblocks; supervised a selection process at a refugee site where forty Tutsis were abducted and killed; ordered the establishment of roadblocks; and sanctioned conduct and provided continued material support at them.	Renzaho, a Prefect of Kigali-Ville and Colonel in the Rwandan Armed Forces, was convicted of aiding and abetting murder.	

²⁴⁶ *Akayesu*, Appeal Judgment, *supra* note 111, ¶¶ 3, 418, 483.

²⁴⁷ *Id.*, ¶¶ 414, 418. Akayesu's tacit approval of the violence through his presence, and his explicit encouragement through words of authority, sent a signal of official tolerance.

²⁴⁸ *Renzaho*, Appeal Judgment, *supra* note 154 ¶¶ 2, 79, 93, 336-37.

Table 16.1: Acts that did not meet the actus reus threshold for aiding and abetting through explicit moral encouragement

Case	Conduct	Role & Conviction	Why Insufficient for Aiding and Abetting
Prosecutor v. Munyakazi (Munyakazi) (ICTR). ²⁴⁹	Munyakazi led assailants; issued instructions; oversaw key aspects of the crimes, such as the destruction of a door at Shangi parish and removal of refugees from the parish; and personally participated in the crimes.	Munyakazi, a businessman and farmer in Bugarama commune, was convicted of committing genocide and extermination.	Alternative mode of liability: Munyakazi was convicted of commission. The additional active element of participating in the crimes likely made his conduct cross the threshold from aiding and abetting to commission: “His liability was not based on his prominence or influence alone, but rather on his active involvement in the crimes.”

²⁴⁹ Prosecutor v. Munyakazi, Case No. ICTR-97-36A-A, Appeal Judgment, ¶ 136 (Sept. 28, 2011); *Munyakazi*, Trial Judgment, *supra* note 125, ¶¶ 1, 339, 433.

6. Issuing Orders

Issuing orders is any type of order given by a superior to a subordinate.

Table 17: Acts that met the actus reus threshold for aiding and abetting by issuing orders

Case	Conduct	Role & Conviction	Additional subcategories
Renzaho (ICTR). ²⁵⁰	Renzaho ordered the establishment of roadblocks, and sanctioned conduct and provided continued material support at them.	Renzaho, a Prefect of Kigali-Ville and Colonel in the Rwandan Armed Forces, was convicted of aiding and abetting murder.	Explicit and tacit moral Encouragement Establishing or sanctioning roadblocks Providing of arms and other integral logistics
Nzuwonemeye (ICTR). ²⁵¹	Nzuwonemeye ordered the deployment of soldiers to the Prime Minister's residence, sent them supplies, issued operational instructions, and remained in contact with them.	Nzuwonemeye, Commander of the Reconnaissance Battalion in the Rwandan Army, was convicted of aiding and abetting. ²⁵²	

²⁵⁰ *Renzaho*, Appeal Judgment, *supra* note 154, ¶¶ 2, 84, 93, 336.

²⁵¹ *Nzuwonemeye*, Trial Judgment, *supra* note 171, ¶¶ 246, 1625–26, 1729.

²⁵² *Id.*, ¶¶ 2013, 2107. Nzuwonemeye's exact conviction is unclear. It seems he may have been acquitted and the aiding and abetting decision vacated. See Ephrem Rugiririza, *Judges Urge France to Take Acquitted Rwandan*, JUST. INFO (May 10, 2019), <https://www.justiceinfo.net/en/41386-judges-urge-france-to-take-acquitted-rwandan.html>.

Case	Conduct	Role & Conviction	Additional subcategories
Karera (ICTR). ²⁵³	Karera took an individual to a roadblock, said they were a Tutsi, and ordered that they be arrested. ²⁵⁴	Karera, a Prefect of the Kigali-Rural province, was convicted of aiding and abetting murder.	Provision of weapons ²⁵⁵ Transporting victims to a crime scene

Table 17.1: Acts that did not meet the actus reus threshold for aiding and abetting by issuing orders

Case	Conduct	Role & Conviction	Why Insufficient for Aiding and Abetting
Seromba (ICTR). ²⁵⁶	Seromba had discussions with authorities and accepted their decision to destroy a church, and instructed and ordered a bulldozer driver to destroy the church.	Seromba, a priest, was convicted of aiding and abetting genocide.	Alternate mode of liability: Seromba was convicted of commission: “His acts were as much an integral part of the genocide as the killings.”

²⁵³ *Karera*, Appeal Judgment, *supra* note 106, ¶ 298.

²⁵⁴ *Id.*, ¶¶ 298, 323. ‘Inyenzi’ was a dehumanizing euphemistic label used by Hutu perpetrators to refer to Tutsis. Dehumanizing labels for individuals and groups such as this term are referenced in order to demonstrate all aspects of the crime.

²⁵⁵ The trial chamber convicted Karera for transporting weapons to the commune’s office (the crime scene). However, the prosecution failed to include the allegation of weapons distribution in its amended indictment, so the Appeals Chamber reversed the aiding and abetting conviction. This is helpful to know because the fact that appeals chambers are reversing such distinct parts of charges can tell us what conduct would likely stand on its own, given more proper supporting information. Additionally, it demonstrates what kind of conduct *can* stand on its own. See *id.* ¶ 259.

²⁵⁶ *Seromba*, Appeal Judgment, *supra* note 126, ¶¶ 2-3, 226, 161.

7. Attending Meetings

There is little jurisprudence on attending meetings or planning crimes; however, cases that involve endorsing unlawful activity can serve as an all-encompassing model that includes attending and planning meetings. Although there are some shared qualities between attending and planning, there are cases that do not overlap. More attention might be paid to the *Taylor* decision, which states that the aiding and abetting provision in the SCSL statute (which is presumably similar to statutes of the other ad hoc tribunals) was understood by parties to the agreement to appropriately apply to those most responsible for the large-scale and organized commission of crimes against civilian populations in Sierra Leone.²⁵⁷ At least four other cases, *Jokić*, *Brđanin*, *Kristić*, and *Blajojević*, have applied aiding and abetting liability to large-scale crimes committed by organized groups of individuals.²⁵⁸ They include acts for those who have planned and attended meetings as well. At the time of publication, however, this study identified only two cases involving planning.

Table 18: Acts that met the actus reus threshold for aiding and abetting by attending meetings

Case	Conduct	Role & Conviction	Additional subcategories
Rukundo (ICTR). ²⁵⁹	Rukundo consulted with assailants and identified Tutsi refugees who were presented to the Interahamwe and killed.	Rukundo, a Roman Catholic priest, was convicted of aiding and abetting genocide and crimes against humanity.	Identifying members of a target group

²⁵⁷ See *Taylor*, Appeal Judgment, *supra* note 22.

²⁵⁸ *Id.*

²⁵⁹ *Rukundo*, Appeal Judgment, *supra* note 140, ¶¶ 14, 54, 91, 176.

Table 18.1: Acts that did not meet the actus reus threshold for aiding and abetting by attending meetings

Case	Conduct	Role & Conviction	Why Insufficient for Aiding and Abetting
Fofana, w.r.t. Fofana (SCSL). ²⁶⁰	Fofana was present at a commander's meeting.	Fofana, the Director of War of the Civil Defense Forces (CDF), was not convicted on this charge.	Weak link: without information about the nature of Fofana's presence in the meeting the Chamber held that it could not deem that this substantially contributed to the subsequent acts beyond a reasonable doubt.

8. Omission

For omission liability under aiding and abetting, the accused must have a legal duty, and the ability, to act under the circumstances.²⁶¹ Aiding and abetting by omission differs from command responsibility in that command responsibility requires effective control.²⁶²

²⁶⁰ *Fofana*, Appeal Judgment, *supra* note 101, ¶¶ 16, 46.

²⁶¹ *See Orić*, Appeal Judgment, *supra* note 62, ¶ 43.

²⁶² *See Čelebići*, Appeal Judgment, *supra* note 20.

Table 19: Acts that met the actus reus threshold for aiding and abetting by omission

Case	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Simić (Simić) (ICTY). ²⁶³	Simić unlawfully arrested and detained of non-Serbs and confined them under inhumane conditions; forcibly displaced non-Serb civilians; administered a forced labor program; denied medical care to a detainee; and was present during forced labor.	Simić, the president of the Serb Crisis Staff, was convicted of aiding and abetting persecution: “As president of the crisis staff he was responsible for the health, safety, and welfare of all citizens in the area administered by the crisis staff, and he had an obligation to provide for appropriate detention facilities. His deliberate denial of adequate medical care to the detainees in these detention facilities lent substantial assistance to the confinement under inhumane conditions prevailing therein.”	

²⁶³ Prosecutor v. Simić, Case No. IT-95-9-A, Appeal Judgment, ¶ 132 (Int’l Crim. Trib. for the Former Yugoslavia Nov. 28, 2006) [hereinafter *Simić*, Appeal Judgment].

Case	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Sainović (Sainović) w.r.t. Lazarević (ICTY). ²⁶⁴	Sainović received information and did not do anything with it despite having a legal duty to do so.	Sainović, a commander of the Priština Corps of the VJ, was convicted of aiding and abetting deportation and other inhumane acts.	
Prosecutor v. Popović (Popović), w.r.t. Pandurević (ICTY). ²⁶⁵	Pandurević killed Bosnian Muslim prisoners. NB: Although the defense wanted the Appeals Chamber to find liability under command responsibility, 6(3), the court said that since they already entered 6(1), they would not change it.	Pandurević, a former commanding officer of the Zvornik Brigade, was convicted of aiding and abetting persecution through murder as a crime against humanity in relation to the Milići Prisoner, and aiding and abetting murder by omission.	

²⁶⁴ Prosecutor v. Šainović, Case No. IT-05-87-A, Appeal Judgment, ¶¶ 4, 10, 990 (Int'l Crim. Trib. for the Former Yugoslavia Jan. 23, 2014) [hereinafter *Šainović*, Appeal Judgment].

²⁶⁵ *Popović*, Appeal Judgment, *supra* note 85, ¶ 7.

Case	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Mrksić (Mrksić) (ICTY). ²⁶⁶	Mrksić aided and abetted the murder, torture, and cruel treatment of civilians and prisoners of war at Ovčara. Further attention is deserved for the exact acts.	Mrksić, a commander of the Guards Brigade, was convicted of aiding and abetting by omission for torture and inhumane treatment.	
Gacumbitsi (ICTR). ²⁶⁷	Gacumbitsi expelled tenants who were subsequently killed and knowingly exposed them to being targeted by Hutu attackers, and was present throughout an attack in the Tutsi Rusomo Commune.	Gacumbitsi, mayor of the Rusomo Commune, was convicted of aiding and abetting murder.	
Einsatzgruppen, w.r.t. Klingelhoef (WWII). ²⁶⁸	Klingelhoef located and turned over lists of Communists.	Klingelhoef, a Sturmbannführer (major) in the SS, was convicted of accessory to war crimes and crimes against humanity.	

²⁶⁶ Prosecutor v. Mrksić, Case No. IT-95-13/1, Appeal Judgment, ¶¶ 2, 4 (Int'l Crim. Trib. for the Former Yugoslavia May 5, 2009).

²⁶⁷ Gacumbitsi, Appeal Judgment, *supra* note 183, ¶¶ 2, 78.

²⁶⁸ Einsatzgruppen, Judgment, *supra* note 143, at 412.

Table 19.1: Acts that did not meet the actus reus threshold for aiding and abetting by omission

Case and Court	Alleged Conduct	Role & Disposition	Why Insufficient for Aiding and Abetting
Sainović (ICTY). ²⁶⁹	Sainović failed to investigate and punish crimes.	Sainović, the Deputy Prime Minister of Yugoslavia, was not convicted.	There was not enough to show that, had Sainović taken adequate measures to prevent or punish, the crime would have been substantially less likely.
Prosecutor v. Delalić (Čelebići Case), Trial Judgment (ICTY). ²⁷⁰		Delalić, who ran the Čelebići prison, was not convicted.	Delalić did not have enough command and control over the prison camp and the guards who worked there to entail criminal responsibility for their actions.
Prosecutor v. Strugar (Strugar) (ICTY). ²⁷¹		Strugar, a Montenegrin General in the Yugoslav People's Army, was not convicted.	Strugar could not be convicted of aiding and abetting as an ex-post facto crime unless “the air of impunity was known and motivating beforehand.”

²⁶⁹ *Šainović*, Appeal Judgment, *supra* note 264, ¶¶ 2, 993, 1615.

²⁷⁰ *Čelebići*, Appeal Judgment, *supra* note 20, ¶ 298.

²⁷¹ *Prosecutor v. Strugar*, Case No. IT-01-42-A, Appeal Judgment, ¶¶ 2, 18 (Int'l Crim. Trib. for the Former Yugoslavia July 17, 2008).

Case and Court	Alleged Conduct	Role & Disposition	Why Insufficient for Aiding and Abetting
Orić (ICTY). ²⁷²	Orić failed to prevent reckless destruction by his subordinates and wanton destruction by other fighters and civilians, and failed to prevent civilians from being present during such attacks.	Orić, the commander of the Bosnian Joint Armed Forces, was acquitted on appeal.	Orić did not have the ability to exercise effective control over his subordinates to prevent harm, which is required for omission liability.
Prosecutor v. Chea & Samphân (Chea & Samphân), w.r.t. Nuon and Khieu (ECCC). ²⁷³	Nuon and Khieu permitted poor conditions at crime scenes including lack of water, food, medical care, and the imposition of hard labor conditions.	Nuon, the deputy secretary of the communist party, and Khieu, the head of state of democratic Kampuchea, were convicted of aiding and abetting murder as a crime against humanity, but the conviction was overturned on appeal.	It is unclear why the conviction was overturned, but it deserves further attention and most likely hinged on the fact that Nuon and Khieu did not have the ability to prevent the crimes.

²⁷² Orić, Appeal Judgment, *supra* note 62, ¶¶ 4, 21, 31.

²⁷³ Prosecutor v. Chea & Samphân, Case No. 002/19-09-2007-ECCC/SC, Appeal Judgment, ¶¶ 152, 382, 456, 1100 (Nov. 23, 2016) [hereinafter *Chea & Samphân*, Appeal Judgment].

Case and Court	Alleged Conduct	Role & Disposition	Why Insufficient for Aiding and Abetting
Nahimana, w.r.t. Barayagwiza (ICTR). ²⁷⁴	Barayagwiza did not take reasonable steps to stop subordinates from broadcasting messages over the radio inciting the public and militia to exterminate Tutsis.	Barayagwiza, the Policy Director in the Ministry of Foreign Affairs of Rwanda, was convicted of instigating genocide, instigating persecution, planning the Ginseyi attack, and ordering crimes against humanity.	Alternate mode of liability: Barayagwiza was convicted of instigating genocide and persecution.

9. Endorsing Unlawful Decisions

Endorsing unlawful decisions is perhaps the biggest catch-all of the delineated subcategories, because all of the subcategories arguably involve endorsing unlawful decisions. However, this subcategory is meant to express a higher level of action—closer to planning or making high-level decisions—than can be considered aiding and abetting. Understandably, many cases fall within this subcategory and there is great variation to it.

²⁷⁴ *Nahimana*, Appeal Judgment, *supra* note 78, ¶¶ 3, 356, 584.

Table 20: Acts that met the actus reus threshold for aiding and abetting by endorsing unlawful decisions

Case Shorthand	Conduct	Role & Conviction	Additional Subcategories
Ministries Case (WWII). ²⁷⁵	Dietrich directed and supervised the execution of an agreement between a bank and Himmler for the receipt, classification, deposit, conversion, and disposal of stolen properties taken by SS from victims.	Dietrich was the managing director and vice president of Reich Bank.	
IMT Judgment, w.r.t. Frick (WWII). ²⁷⁶	Frick drafted, signed, and administered many laws, designed to eliminate Jews from German life and economy, that formed the basis of the Nuremberg decrees; and actively enforced them.	Frick was the Reich Minister of the Interior.	
IMT Judgment, w.r.t. Speer (WWII). ²⁷⁷	Speer told Sauckel an estimate of the total number of workers needed; supplied instructions for allocating it to the various industries to Sauckel; and was informed at planning meeting that his demands for labor were so large as to necessitate violent recruitment methods.	Speer was Hitler's architect.	

²⁷⁵ United States v. von Weizsäcker, *supra* note 241, at 608.

²⁷⁶ I.M.T. Judgment, *supra* note 241, at 499.

²⁷⁷ *Id.* at 521–22.

Case Shorthand	Conduct	Role & Conviction	Additional Subcategories
Justices case, w.r.t. Klemm (WWII). ²⁷⁸	Klemm took part in drafting the law to make treason retroactive and applied it to annexed territories; directed witness Mitzschke to obtain reports; and was knowingly involved in the suppression of the punishment of the people who participated in the murder of Allied airmen.	Klemm was the state secretary in the Ministry of Justice.	Giving orders
Simić (ICTY). ²⁷⁹	Simić worked together with police, paramilitaries, and the JNA to maintain the system of arrests and detention of non-Serb civilians, which had an important influence on the unlawful arrests and detention; and had an obligation to provide appropriate detention facilities.	Simić was President of the Serb Crisis Staff.	Omission

²⁷⁸ International Military Tribunal, *Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10, Nuernberg, October 1946-April 1949*, at 1055, 1099 (1951).

²⁷⁹ *Simić*, Appeal Judgment, *supra* note 264, ¶¶ 3, 114, 122.

Case Shorthand	Conduct	Role & Conviction	Additional Subcategories
Prosecutor v. Krnojelac (Krnojelac) (ICTY). ²⁸⁰	Krnojelac voluntarily accepted the position of warden when he could have refused or resigned from position; knew that his acts and omissions were contributing to the maintenance of the unlawful system of imprisonment by the principal offender; was present at the scene; allowed an individual to be detained knowing it was unlawful; and failed (omission) to take the measures required by the offenses which he was aware were being committed against the detainees under his authority, thereby encouraging the principal offender. ²⁸¹	Krnojelac, a prison warden (the most senior supervisory role at KP dom), was convicted of aiding and abetting persecution.	Omission
Blagojević & Jokić, w.r.t. Jokić (ICTY). ²⁸²	Jokić coordinated the deployment and monitoring of the Zvornik Brigade's engineering resources and equipment to mass execution sites.	Jokić, an officer in the Republika Srpska army, was convicted of aiding and abetting murder.	Providing weapons or other integral logistics

²⁸⁰ Prosecutor v. Krnojelac, Case No. IT-97-25-A, Appeal Judgment (Int'l Crim. Trib. for the Former Yugoslavia Sept. 17, 2003).

²⁸¹ *Id.*, ¶¶ 38–44.

²⁸² *Blagojević & Jokić*, Appeal Judgment, *supra* note 36.

Case Shorthand	Conduct	Role & Conviction	Additional Subcategories
Blagojević & Jokić, w.r.t. Blagojević (ICTY). ²⁸³	Blagojević blocked humanitarian convoys to a “safe area” in Srebrenica.	Blagojević, an officer in the Republika Srpska army, was convicted of aiding and abetting murder and aiding and abetting persecution through murder, cruel and inhumane treatment, terrorism, and forcible transfer.	Providing weapons or other integral logistics Denying protection to a target group
Brima (SCSL). ²⁸⁴	Kamara provided machetes to troops who committed crimes during “Operation Cut Hand” and was present during the commission of crimes, which gave moral support to the principal perpetrators because of his authority.	Kamara, a high-ranking member of the Armed Forces Revolutionary Council (AFRC), was convicted of aiding and abetting a system of sexual slavery and forced labor.	Tacit encouragement Providing weapons or other integral logistics

²⁸³ *Id.*²⁸⁴ *Brima*, Appeal Judgment, *supra* note 58, ¶ 75.

Case Shorthand	Conduct	Role & Conviction	Additional Subcategories
Duch (ECCC). ²⁸⁵	Duch extracted confessions from detainees and discussed strategies and targets for arrest with his commander that resulted in targets being executed.	Duch, a chairman of the S-21 interrogation center, was convicted of crimes against humanity.	Identifying members of a target group
Prosecutor v. Kvočka (Kvočka) (ICTY). ²⁸⁶		Kvočka, a duty officer at the Omarska detention camp, was convicted of aiding and abetting inhumane acts as CAH.	

²⁸⁵ *Duch*, Trial Judgment, *supra* note 148.

²⁸⁶ Prosecutor v. Kvočka, Case No. IT-98-30/1-A, Appeal Judgment (Int'l Crim. Trib. for the Former Yugoslavia Feb. 28, 2005).

Case Shorthand	Conduct	Role & Conviction	Additional Subcategories
Stanišić & Simatović (ICTY). ²⁸⁷	Stanišić and Simatović organized trainings for State Security Unit members and local Serb forces sent to Bosanski Šamac to fight, allowed fighters to use their facilities and trainers, and participated in a massacre in the town of Crkvina.	Stanišić (the head of Serbia’s State Security Service) and Simatović (a senior intelligence operative with the service) were convicted of “aiding and abetting the crimes of persecution, murder, deportation, and forcible transfer committed by Serb forces following the takeover of Bosanski Šamac” in April 1992.	Providing weapons or other integral logistics
Nzuwonemeye (ICTR). ²⁸⁸	Nzuwonemeye ordered the deployment of soldiers to the Prime Minister’s residence, sent them supplies, issued operational instructions, and remained in contact with them.	Nzuwonemeye, Commander of the Reconnaissance Battalion in the Rwandan Army, was convicted of aiding and abetting.	Ordering

²⁸⁷ Šainović, Appeal Judgment, *supra* note 264.

²⁸⁸ Nzuwonemeye, Trial Judgment, *supra* note 171.

Case Shorthand	Conduct	Role & Conviction	Additional Subcategories
Brđanin (ICTY). ²⁸⁹	Brđanin issued governmental orders; supported and enabled attacks by Bosnian Serb forces in the implementation of a strategic plan; and disarmed the target group because he was responsible for the ARK crisis staff decisions to disarm Bosnian Muslims and Bosnian Croats throughout the ARK, which created an imbalance of arms and weapons favoring the Bosnian Serbs in the Bosnian Krajina.	Brđanin, the President of Autonomous Region of Krajina (ARK) Crisis Staff, was convicted of aiding and abetting crimes committed in the context of armed attacks.	Attending meetings to make a plan Issuing orders Denying protection to target group members
Taylor (SCSL). ²⁹⁰	Taylor provided the RUF with training, weapons, and related material, logistical support, staging ground for attacks, and a safe haven for retreat; and led rebel forces in neighboring Liberia, a country that experienced its own civil war between 1989 and 2003.	Taylor, the President of Liberia, was convicted of aiding and abetting murder, persecution, and genocide. ²⁹¹	

²⁸⁹ *Brđanin*, Appeal Judgment, *supra* note 86.

²⁹⁰ *Taylor*, Appeal Judgment, *supra* note 22.

²⁹¹ *Id.* ¶ 358 (holding that “Taylor’s assistance supported, sustained, and enhanced the RUF/AFRC’s capacity to undertake its operational strategy.”).

Table 20.1: Acts that did not meet the actus reus threshold for aiding and abetting by endorsing unlawful decisions

Case	Alleged Conduct	Role & Disposition	Why Insufficient for Aiding and Abetting
Gbagbo (ICC). ²⁹²	Prosecution offered a list of general contributions not linked to any specific crimes	Gbagbo was the President of Ivory Coast.	Weak link: the Chamber found that “apart from stating that these contributions had the effect of strengthening the capability of the pro-Gbagbo forces to commit the crimes charged, no explanation is offered as to how these generic contributions can be linked to the specific crimes.”
Chea & Samphân, w.r.t. Nuon & Khieu (ECCC). ²⁹³	Nuon and Khieu permitted poor conditions at crime scenes including lack of water, food, medical care, and the imposition of hard labor conditions.	Nuon, the deputy secretary of the communist party, and Khieu, the head of state of democratic Kampuchea, were convicted of aiding and abetting murder as a crime against humanity, but the conviction was overturned on appeal.	

²⁹² *Gbagbo*, Majority Opinion, *supra* note 39, ¶ 2019.

²⁹³ *Chea & Samphân*, Appeal Judgment, *supra* note 274.

Case	Alleged Conduct	Role & Disposition	Why Insufficient for Aiding and Abetting
Orić (ICTY). ²⁹⁴	Orić failed to prevent reckless destruction by his subordinates and wanton destruction by other fighters and civilians, and failed to prevent civilians from being present during such attacks.	Orić, the commander of the Bosnian Joint Armed Forces, was acquitted on appeal.	

IV. SUMMARY & CONCLUSION

While an in-depth analysis of each case in this study would certainly offer a richer understanding of all the facts presented in the cases, that is left for a future stage of this project. The cases analyzed above highlight certain themes that, though non-exhaustive, further clarify thematic conceptualizations. First, appeals are often granted in three generalized ways: (1) by overturning an aiding and abetting conviction due to a weak link (insufficient nexus between the assistance provided and the crime committed); (2) by vacating an aiding and abetting conviction, but adopting a different mode of liability for the acts (often based on unnecessary mutual exclusivity);²⁹⁵ and (3) because of an evidentiary problem—for example, with circumstantial evidence, the conviction must be the only reasonable inference

²⁹⁴ Orić, Appeals Judgment, *supra* note 62.

²⁹⁵ *Gacumbitsi* tells us that multiple individual criminal responsibility modes can exist at once for the same conduct. Gacumbitsi was convicted of ordering and instigating for some of the same conduct as he was for aiding and abetting. See *Gacumbitsi*, Appeal Judgment, *supra* note 183.

a fact finder could derive from the evidence.²⁹⁶ Perhaps a weak link can be remedied by avoiding the evidentiary problem laid out in the third prong.²⁹⁷

Second, a lot of patterned, repetitive activity falls within the two umbrella categories of this study, material support and influence. Provision of weapons and other integral logistics and endorsing unlawful activity were the two most common subcategories in which conduct met the actus reus of aiding and abetting.

Third, the study identified some of the central principles that define what conduct is needed (or not needed) for the actus reus of aiding and abetting.²⁹⁸ For example, the accused's conduct must have had a substantial effect on the perpetration of the crime, but other common elements—including a but-for relationship between the conduct and the crime; a plan; authority over the principal perpetrator; or provision of assistance at the time of the crime—are not necessary. Of all the individual modes of criminal liability, aiding and abetting seems to be an easier mode through which to secure a conviction.²⁹⁹

Nevertheless, this study would benefit from greater refinement of principles, further analysis, greater distinction between and within cases, and more attention to detail. Logistically, it would benefit from teamwork because of the complexity and room for error in parsing through each appellate case and all its accompanying documents (indictments, lower court judgments, sentencing documents, fast-fact sheets, etc.). Additionally, refinement of survey method or presentation of information would reduce complicated overlap in the subcategory method.

A deeper analysis would also address the questions that remain unanswered—such as how to reconcile or differentiate cases that appear similar but are actually different, and vice versa, or how to more narrowly define what planning looks like in an aiding and abetting liability mode. There are already databases³⁰⁰ and articles³⁰¹ that discuss aiding and abetting in international criminal law;

²⁹⁶ See, e.g., *Čelebići*, Appeal Judgment, *supra* note 20, ¶ 458 (“If there is another conclusion which is also reasonably open from that evidence, and which is consistent with the innocence of the accused, he must be acquitted.”).

²⁹⁷ See, e.g., *Renzaho*, Appeal Judgment, *supra* note 154 (The link between the defendant's provision of weapons and how the weapons were used was only supported with ‘scant evidence.’ Nevertheless, the Chamber found that the defendant encouraged the perpetrators to commit the charged crimes by his acts and conduct, and thereby deemed his conduct to be aiding and abetting. Further, and importantly, the Chamber likely upheld this conviction because they found that the only reasonable conclusion was that Renzaho's instructions to erect roadblocks and to distribute weapons encouraged the people manning the roadblocks to kill Tutsis, and therefore substantially contributed to the killings at them).

²⁹⁸ See *supra* Table 3.

²⁹⁹ See *supra* Table 4.

³⁰⁰ See Oona A. Hathaway, et al., *Aiding and Abetting in International Criminal Law*, YALE L. SCH. LILLIAN GOLDMAN L. LIBR. DIGITAL COLLECTIONS, <https://documents.law.yale.edu/aiding-and-abetting-cases> (last visited Mar. 24, 2023).

³⁰¹ See, e.g., Oona A. Hathaway et al., *Aiding and Abetting in International Criminal Law*, 104 CORNELL L. REV. 1593 (2019); Ventura, *supra* note 54.

however, future studies should focus on distilling what acts suffice for the actus reus prong of aiding and abetting. For all the reasons mentioned in the challenges section of this piece, this is not easy, but with more experience, time, teamwork, and seasoned practitioners or professors, it is an achievable goal. Scholars, litigators, and judges would benefit from such a comprehensive study: a sort of restatement of the law in the international criminal law context. This line-drawing exercise is hopefully illuminating and the start of further delineation of the sufficiency of certain acts and conditions for the actus reus of aiding and abetting liability in international criminal law.