

Section 10: Criminal Attempt

Article 27: Attempt

1. It is a criminal offense to attempt to commit a criminal offense by taking action that commences its execution by means of a substantial step, but where the offense does not occur because of circumstances independent of the intentions of the person.
2. A person who abandons his or her effort to commit a criminal offense or who otherwise prevents the completion of the offense is not criminally responsible under the MCC for the attempt to commit that offense, if that person completely and voluntarily gave up his or her criminal purpose.

Commentary

Paragraph 1: Commonly, attempt is treated as an inchoate or incomplete offense. This position has been adopted in the MCC. Attempt, as an incomplete offense, is distinct from the modes of liability contained in Section 11 on participation, where a participant in a criminal offense is treated as having committed—or, in other words, completed—an offense. Consequently, attempted criminal offenses are subject to modified penalty ranges under Article 48, given the fact that the criminal offense was not actually completed. Reference should be made to Article 48 and its accompanying commentary. To be found liable for an attempted criminal offense, the perpetrator must have the intention to commit the criminal offense (mental element), coupled with an act that progresses sufficiently toward completion of the offense—a “substantial step.” In the case of attempt, the frustrated efforts of the perpetrator resulted in the noncommission of the offense. But for this, he or she would have committed the criminal offense. It is not enough to think about committing a criminal offense or to prepare for it. In some jurisdictions, where it is legally or physically impossible for a person to attempt a particular criminal offense, this legal or physical impossibility is deemed a defense to attempt.

The wording of Article 27 is taken from Article 25(3)(f) of the Statute of the International Criminal Court. A state wishing to implement its obligations under the statute should ensure that attempt is contained in its domestic legislation.

Paragraph 2: In some systems, the abandonment of attempt does not result in the exclusion of criminal responsibility for an attempted criminal offense. This is a matter of policy. In the MCC, the approach of the drafters was to exclude criminal responsibility for the abandonment of attempt where the person “completely and voluntarily gives up his or her criminal purpose.” It also excludes criminal responsibility where a person prevents the completion of the offense, if that person “completely and voluntarily gives up his or her criminal purpose.”