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Nuremberg principles

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For the denaturalization of German Jews, see [Nuremberg Laws](#). For the set of research ethics principles for human experimentation, see [Nuremberg Code](#).

The **Nuremberg principles** were a set of guidelines for determining what constitutes a [war crime](#). The document was created by the [International Law Commission](#) of the [United Nations](#) to [codify](#) the legal principles underlying the [Nuremberg Trials](#) of [Nazi](#) party members following [World War II](#).

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[\[edit\]](#) The principles

[\[edit\]](#) Principle I

Principle I states, "Any person who commits an act which constitutes a [crime under international law](#) is responsible therefor and liable to punishment."

[\[edit\]](#) Principle II

Principle II states, "The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law."

[\[edit\]](#) Principle III

Principle III states, "The fact that a person who committed an act which constitutes a crime under international law acted as [Head of State](#) or responsible government official does not relieve him from responsibility under international law."

[\[edit\]](#) Principle IV

Principle IV states: "The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him".

This principle could be paraphrased as follows: "It is not an acceptable excuse to say 'I was just following my superior's orders'".

Previous to the time of the [Nuremberg Trials](#), this excuse was known in common parlance as "[Superior Orders](#)". After the prominent, high profile event of the Nuremberg Trials, that excuse is now referred to by many as "[Nuremberg Defense](#)". In recent times, a third term, "[lawful orders](#)" has become common parlance for some people. All three terms are in use today, and they all have slightly different nuances of meaning, depending on the context in which they are used.

Nuremberg Principle IV is legally supported by the [jurisprudence](#) found in [certain articles in the Universal Declaration of Human Rights which deal indirectly with conscientious objection](#). It is also supported by [the principles found in paragraph 171 of the Handbook on Procedures and Criteria for Determining Refugee Status](#) which was issued by the Office of the [United Nations High Commissioner for Refugees](#) (UNHCR). Those principles deal with the conditions under which [conscientious objectors](#) can apply for refugee status in another country if they face persecution in their own country for refusing to participate in an illegal war.

See also: [Superior Orders](#)

[\[edit\]](#) Principle V

Principle V states, "Any person charged with a crime under international law has the right to a fair trial on the facts and law."

[\[edit\]](#) Principle VI

Principle VI states,

"The crimes hereinafter set out are punishable as crimes under international law:

(a) [Crimes against peace](#):

(i) Planning, preparation, initiation or waging of a [war of aggression](#) or a war in violation of international treaties, agreements or assurances;

(ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

(b) [War crimes](#):

Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation of [slave labor](#) or for any other purpose of the civilian population of or in occupied territory; murder or ill-treatment of [prisoners of war](#) or persons on the Seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

(c) [Crimes against humanity](#):

Murder, extermination, enslavement, deportation and other inhumane acts done against any civilian population, or persecutions on political, racial, or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime."

[\[edit\]](#) Principle VII

Principle VII states, "Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law."

[[edit](#)] The Principles' power or lack of power

See also: [Sources of international law](#) and [International legal theory](#)

In the period just prior to the June 26, 1945 signing of the [Charter of the United Nations](#), the [governments](#) participating in its drafting were opposed to conferring on the [United Nations legislative power](#) to enact binding [rules](#) of [international law](#). As a corollary, they also rejected proposals to confer on the [General Assembly](#) the power to impose certain general conventions on states by some form of majority vote. There was, however, strong support for conferring on the General Assembly the more limited powers of study and recommendation, which led to the adoption of Article 13 in [Chapter IV of the Charter](#).^[1] It obliges the [United Nations General Assembly](#) to initiate studies and to make recommendations that encourage the progressive development of international law and its [codification](#). The Nuremberg Principles were developed by UN organs under that limited mandate.^[2]

Unlike treaty law, [customary international law](#) is not written. To prove that a certain rule is customary one has to show that it is reflected in state practice and that there exists a conviction in the [international community](#) that such practice is required as a matter of law. (For example, the [Nuremberg Trials](#) were a "practice" of the "international law" of the Nuremberg Principles; and that "practice" was supported by the international community.) In this context, "practice" relates to official state practice and therefore includes formal statements by states. A contrary practice by some states is possible. If this contrary practice is condemned by other states then the rule is confirmed.^[3] (See also: [Sources of international law](#))

In 1950, under [UN General Assembly](#) Resolution 177 (II), paragraph (a), the [International Law Commission](#) was directed to "formulate the principles of international law recognized in the Charter of the [Nuremberg Tribunal](#) and in the judgment of the Tribunal." In the course of the consideration of this subject, the question arose as to whether or not the Commission should ascertain to what extent the principles contained in the Charter and judgment constituted principles of international law. The conclusion was that since the Nuremberg Principles had been affirmed by the General Assembly, the task entrusted to the Commission was not to express any appreciation of these principles as principles of international law but merely to formulate them. The text above was adopted by the Commission at its second session. The Report of the Commission also contains commentaries on the principles (see Yearbook of the International Law Commission, 1950, Vol. II, pp. 374–378).^[4]

[[edit](#)] Examples of the principles supported and not supported

For examples relating to Principle VI, see [List of war crimes](#).

For examples relating to Principle IV (from before, during, and after the Nuremberg Trials), see [Superior Orders](#).

[[edit](#)] The 1998 Rome Statute of the International Criminal Court

Concerning Nuremberg Principle IV, and its reference to an individual's responsibility, it could be argued that a version of the [Superior Orders](#) defense can be found as a defense to international crimes in the [Rome Statute](#) of the [International Criminal Court](#). (The Rome Statute was agreed upon in 1998 as the foundational document of the International Criminal Court, established to try those individuals accused of serious international crimes.) Article 33, titled "Superior Orders and prescription of law,"^[5] states:

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:

- (a) The person was under a legal obligation to obey orders of the Government or the superior in question;

- (b) The person did not know that the order was unlawful; and
- (c) The order was not manifestly unlawful.

2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

There are two interpretations of this Article:

- This formulation, especially (1)(a), whilst effectively prohibiting the use of the Nuremberg Defense in relation to charges of genocide and crimes against humanity, does however, appear to allow the Nuremberg Defense to be used as a protection against charges of war crimes, provided the relevant criteria are met.
- Nevertheless, this interpretation of ICC Article 33 is open to debate: For example Article 33 (1)(c) protects the defendant only if "the order was not manifestly unlawful." The "order" could be considered "unlawful" if we consider [Nuremberg Principle IV](#) to be the applicable "law" in this case. If so, then the defendant is not protected. Discussion as to whether or not Nuremberg Principle IV is the applicable law in this case is found in [a discussion of the Nuremberg Principles' power or lack of power](#).

See also: [States Parties to the Rome Statute of the International Criminal Court](#)

[edit] Canada

Main article: [Jeremy Hinzman](#)

Nuremberg Principle IV, and its reference to an individual's responsibility, was also at issue in [Canada](#) in the case of *Hinzman v. Canada*. [Jeremy Hinzman](#) was a [U.S. Army deserter](#) who claimed [refugee](#) status in Canada as a [conscientious objector](#), one of [many Iraq War resisters](#). Hinzman's lawyer, [Jeffry House](#), had previously raised the issue of the [legality of the Iraq War](#) as having a bearing on their case. The [Federal Court](#) ruling was released on March 31, 2006, and denied the refugee status claim.^{[6][7]} In the decision, Justice [Anne L. Mactavish](#) addressed the issue of personal responsibility:

“An individual must be involved at the policy-making level to be culpable for a crime against peace ... the ordinary foot soldier is not expected to make his or her own personal assessment as to the legality of a conflict. Similarly, such an individual cannot be held criminally responsible for fighting in support of an illegal war, assuming that his or her personal war-time conduct is otherwise proper.”^{[8][9][10]}

On Nov 15, 2007, a Coram of the [Supreme Court of Canada](#) consisting of Justices [Michel Bastarache](#), [Rosalie Abella](#), and [Louise Charron](#) refused an application to have the Court hear the case on appeal, without giving reasons.^{[11][12]}

[edit] See also

- [Command responsibility](#)
- [Crimes against humanity](#)
- [Crime against peace](#)
- [Geneva Conventions](#)
- [International Criminal Court](#)
- [International legal theory](#)
- [Laws of war](#)
- [London Charter of the International Military Tribunal](#)
- [Nuremberg Defense \(Principle IV\)](#)
- [Nuremberg Code](#)
- [Nuremberg Trials](#)
- [Rule of Law in Armed Conflicts Project](#)
- [Rule of law](#)
- [Rule According to Higher Law](#)

- [Sources of international law](#)
- [Superior Orders: Pre-Nuremberg history of Principle IV](#)
- [War crimes](#)

[\[edit\]](#) References

- [Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal, 1950](#), on the website of the [International Committee of the Red Cross \(ICRC\)](#)
- [Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal, 1950](#), on the website of the [United Nations \(UN\)](#)

[\[edit\]](#) Further reading

- [Introductory note by Antonio Cassese](#) for General Assembly resolution 95(I) of 11 December 1946 (Affirmation of the Principles of International Law recognized by the Charter of the Nürnberg Tribunal) on the website of the [UN Audiovisual Library of International Law](#)
- [Nuremberg Trial Proceedings Vol. 1 Charter of the International Military Tribunal](#) contained in the [Avalon Project](#) archive at [Yale Law School](#)
- [Judgment : The Law Relating to War Crimes and Crimes Against Humanity](#) contained in the [Avalon Project](#) archive at [Yale Law School](#)

[\[edit\]](#) Footnotes

1. [^] ["Charter of the United Nations, Chapter IV: The General Assembly"](#). United Nations. June 26, 1945. Retrieved December 23, 2010.
2. [^] [Drafting and implementation of Article 13, paragraph 1, of the Charter of the United Nations](#)
3. [^] [International Committee of the Red Cross \(ICRC\) Customary international humanitarian law](#)
4. [^] [International Committee of the Red Cross \(ICRC\) References Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal, 1950: Introduction](#)
5. [^] [Rome Statute of the International Criminal Court \(10 November 1998 and 12 July 1999\). "Rome Statute of the International Criminal Court; Part 3: General Principles of Criminal Law; Article 33: Superior orders and prescription of law"](#). Rome Statute of the International Criminal Court. Retrieved 21 March 2010.
6. [^] Mernagh, M. (2006-05-18). ["AWOL GIs Dealt Legal Blow"](#). Toronto's Now Magazine. Retrieved 2008-06-02.
7. [^] ["Hinzman v. Canada \(Minister of Citizenship and Immigration\) \(F.C.\), 2006 FC 420"](#). Office of the Commissioner for Federal Judicial Affairs. pp. (see *Held*, Para. (1)). Retrieved 2008-06-16.
8. [^] Mernagh, M. (2006-05-18). ["AWOL GIs Dealt Legal Blow"](#). Toronto's Now Magazine. Retrieved 2008-06-02.
9. [^] [Hinzman v. Canada](#) Federal Court decision. Paras (157) and (158). Accessed 2008-06-18
10. [^] Roman Goergen (Feb 23, 2011). ["Sanctuary Denied"](#). [In These Times](#). Retrieved 6 March 2011.
11. [^] CBC News (2007-11-15). ["Top court refuses to hear cases of U.S. deserters"](#). CBC News. Retrieved 2008-06-02.
12. [^] ["Supreme Court of Canada – Decisions – Bulletin of November 16, 2007, \(See Sections 32111 and 32112\)"](#).

[\[edit\]](#) External links

- [István Deák, Retribution against Heads of State and Prime Ministers](#)

