

# **Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal**

1950

Text adopted by the International Law Commission at its second session, in 1950 and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the principles, appears in *Yearbook of the International Law Commission, 1950*, vol. II, para. 97.

## *Principle I*

**Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment.**

Commentary: This principle is based on the first paragraph of article 6 of the Charter of the Nürnberg Tribunal which established the competence of the Tribunal to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the crimes defined in subparagraphs (a), (b) and (c) of article 6. The text of the Charter declared punishable only persons "acting in the interests of the European Axis countries" but, as a matter of course, Principle I is now formulated in general terms.

The general rule underlying Principle I is that international law may impose duties on individuals directly without any interposition of internal law. The findings of the Tribunal were very definite on the question whether rules of international law may apply to individuals. "That international law imposes duties and liabilities upon individuals as well as upon States", said the judgment of the Tribunal, "has long been recognized". It added: "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provision of international law be enforced."

## *Principle II*

**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.**

Commentary: This principle is a corollary to Principle I. Once it is admitted that individuals are responsible for crimes under international law, it is obvious that they are not relieved from their international responsibility by the fact that their acts are not held to be crimes under the law of any particular country. [...]

The principle that a person who has committed an international crime is responsible therefor and liable to punishment under international law, independently of the provisions of internal law, implies what is commonly called the "supremacy" of international law over national law. The Tribunal considered that international law can bind individuals even if national law

does not direct them to observe the rules of international law, as shown by the following statement of the judgment: "... the very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual State".

### *Principle III*

**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.**

Commentary: This principle is based on article 7 of the Charter of the Nürnberg Tribunal. According to the Charter and the judgment, the fact that an individual acted as Head of State or responsible government official did not relieve him from international responsibility. "The principle of international law which, under certain circumstances, protects the representatives of a State", said the Tribunal, "cannot be applied to acts which are condemned as criminal by international law. The authors of these acts cannot shelter themselves behind their official position in order to be freed from punishment...." The same idea was also expressed in the following passage of the findings: "He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the State if the State in authorizing action moves outside its competence under international law."

The last phrase of article 7 of the Charter, "or mitigating punishment", has not been retained in the formulation of Principle III. The Commission considers that the question of mitigating punishment is a matter for the competent Court to decide.

### *Principle IV*

**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.**

Commentary: This text is based on the principle contained in article 8 of the Charter of the Nürnberg Tribunal as interpreted in the judgment. The idea expressed in Principle IV is that superior orders are not a defence provided a moral choice was possible to the accused. In conformity with this conception, the Tribunal rejected the argument of the defence that there could not be any responsibility since most of the defendants acted under the orders of Hitler. The Tribunal declared: "The provisions of this article [article 8] are in conformity with the law of all nations. That a soldier was ordered to kill or torture in violation of the international law of war has never been recognized as a defence to such acts of brutality, though, as the Charter here provides, the order may be urged in mitigation of the punishment. The true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether moral choice was in fact possible."

The last phrase of article 8 of the Charter "but may be considered in mitigation of punishment, if the Tribunal determines that justice so requires", has not been retained for the reason stated under Principle III [...] above.

*Principle V*

**Any person charged with a crime under international law has the right to a fair trial on the facts and law.**

*Principle VI*

**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 to slave-labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war, of 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 inhuman 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.

*Principle VII*

**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.**

---