

2006

RESPONSIBILITIES UNDER THE NUREMBERG PRINCIPLES

SPECIFIC PRINCIPLES AND OPINIONS

1. Certain Principles of Nuremberg.

In 1945, at the initiative of the United States, the General Assembly of the United Nations affirmed unanimously "the principles of international law recognized by the Charter of the Nuremberg Tribunal." In 1950, the International Law Commission formulated the Principles of Nuremberg, which offer the most complete set of guidelines presently available on the relationship between personal responsibility and war crimes.

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.

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 for him.

Principle VIb: 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 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.

Principle VII: Complicity in the commission of a crime against humanity as set forth in Principle VI is a crime under international law.

2. Excerpts from the Supreme Court Opinion in the Matter of Yamashita.

General Tomoyuki Yamashita was the commanding general of the Fourteenth Army Group of the Imperial Japanese Army in the Philippine Islands at the end of World War II. Following his surrender to American forces, a U.S. military commission tried him for violating the law of war by failing to control the operations of his troops, "permitting them to commit" atrocities against civilians and prisoners of war. There was no evidence that Yamashita had ordered the atrocities, or had even known about them. Nonetheless, he was convicted and sentenced to death. The Supreme Court of the United States affirmed the judgment on February 4, 1946, in a decision that included the following language:

The question then is whether the law of war imposes on an army commander a duty to take such appropriate measures as are within his power to control the troops under his command for the prevention of the specified acts which are violations of the law of war and which are likely to attend the occupation of hostile territory by an uncontrolled soldiery, and whether he may be charged with personal responsibility for his failure to take such measures when violations result. That this was the precise issue to be tried was made clear by the statements of the prosecution at the opening of the trial.

It is evident that the conduct of military operations by troops whose excesses are unrestrained by the orders or efforts of their commander would almost certainly result in violations which it is the purpose of the law of war to prevent. Its purpose to protect civilian populations and prisoners of war from brutality would largely be defeated if the commander of an invading army could with impunity neglect to take reasonable measures for their protection. Hence the law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates.

3. Majority Judgment of the Tokyo War Crimes Tribunal.

The Majority Judgment of the Tokyo War Crimes Tribunal, handed down in November 1948 affirmed the principle that political leaders who authorize illegal battlefield practices and policies, or who have knowledge of these practices and policies, are responsible for the commission of war crimes. The following is an excerpt from the Majority Judgment:

A member of a Cabinet which collectively, as one of the principal organs of the Government, is responsible for the care of prisoners is not absolved from responsibility if, having knowledge of the commission of the crimes in the sense already discussed, and omitting or failing to secure the taking of measures to prevent the commission of such crimes in the future, he elects to continue as a member of the Cabinet. This is the position even though the Department of which he has the charge is not directly concerned with the care of prisoners. A Cabinet member may resign. If he has knowledge of ill-treatment of prisoners, is powerless to prevent future ill-treatment of prisoners, but elects to remain in the Cabinet thereby continuing to participate in its collective responsibility for protection of prisoners he willingly assumes responsibility for any ill-treatment in the future.

Army or Navy commanders can, by order, secure proper treatment and prevent ill-treatment of prisoners. So can Ministers of War and of the Navy. If crimes are committed against prisoners under their control, of the likely occurrence of which they had, or should have had knowledge in advance, they are responsible for those crimes. If, for example, it be shown that within the units under his command conventional war crimes have been committed of which he knew or should have known, a commander who takes no adequate steps to prevent the occurrence of such crimes in the future will be responsible for such future crimes.

II. SELECTED OPINIONS

"If certain acts in violation of treaties are crimes, they are crimes whether the United States does them or whether Germany does them, and we are not prepared to lay down a rule of criminal conduct against others which we would be unwilling to have invoked against us." --Justice Robert Jackson, Chief United States Prosecutor at Nuremberg.

An appeal to the German people by Franklin D. Roosevelt during World War II: "Hitler is committing these crimes against humanity in the name of the German people. I ask every German and every man everywhere under Nazi domination to show the world that he does not share these insane criminal desires....I ask him also to keep watch, and to record the evidence that will one day be used to convict the guilty."

Reference: Doctors of Infamy: The Story of the Nazi Medical Crimes. Copyright 1949 by Henry Schuman, Inc., New York.

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