



Superior Orders Defense: Absolute vs. Conditional Liability

- Kaveri Nanduri (II B.A.LL.B.)

The defense of superior orders is one of the most highly debated in International Criminal Law. This is because the subordinate is faced with compulsory obedience to his superior's order because of the strict hierarchy and psychological pressure under military practices. However, the subordinate faces a very difficult dilemma when an unlawful order is received by him, making him criminally liable for the actions he commits. This question of whether individuals could escape liability for war crimes by simply claiming that they were following orders was presented before the Nuremberg Trials. Article 8 of the London Charter relating to the Nuremberg Tribunal rejected this defense and then established the principle of absolute liability. However, over time this approach was diluted under the Rome Statute of the International Criminal Court. This article seeks to examine how the defense of Superior Orders has evolved over the time - from the approach of absolute Liability which was used in the Nuremberg trials, where subordinates were held fully responsible for committing crimes even if they were following orders,

to the Conditional Liability approach under the Rome Statute, which only allows this defense in certain situations.

During the Nuremberg Trials, this defense was raised by various Nazi officials, both as a basis for reducing the punishment and as a complete defense. Their contention was that they were merely following the orders of the Fuhrer who was at the top of the strict hierarchical system. However, considering the seriousness of the crimes committed during the Nazi regime, absolving the subordinates of their liability would mean that only Hitler would be responsible for the atrocities committed. Thus, dismissing this stance, Article 8 of the London Charter which was specifically created for the Nuremberg Tribunal states that- The action of the subordinate which is a result of the order by his government or superior, shall not free him of his responsibility but will be considered in the seriousness of the punishment. The basis for this stance on absolute liability is that Hitler could not commit the aggressive war all by himself, it is with the cooperation of all the soldiers, military leaders as well as business organisations that such serious breaches of

News at a Glance

The UN Human Rights Council has launched a fact-finding mission to investigate human rights violations in North and South Kivu, following atrocities linked to the ongoing conflict in the region. The council has urged Rwanda to end military support for M23 and called for humanitarian funding to assist displaced populations. For more information, see [here](#).

Israel has officially announced its withdrawal from the United Nations Human Rights Council (UNHRC) due to what it describes as ongoing bias against the country. Foreign Minister Gideon Saar criticized the UNHRC for focusing disproportionately on Israel and protecting human rights abusers. This is aligning Israel's stance with that of the United States which withdrew earlier this week. For more information, see [here](#).



international law could happen. Though the Nuremberg Tribunal considers whether a moral choice was in fact available, it states that the subordinate is bound to obey only the lawful orders of his superior. This approach laid down in Nuremberg was then used in the ad-hoc tribunal in Yugoslavia and Rwanda to hold the perpetrators of war crimes accountable for their actions.

With the establishment of the International Criminal Court (ICC), the defense of superior orders was considered once again, but in a narrower sense through the Conditional Liability approach. This approach can be seen as middle ground to the absolute liability approach which was introduced under very special circumstances of the Nazi Regime. It considers that on the battlefield, it is not the soldiers who make the judgement call but the high ranking superior, with soldiers not knowing many times if the order was even illegal. Under Article 33 of the Rome Statute, this defense can be fully considered only if the subordinate did not know that the order was illegal and that the order was not evidently illegal. However, it becomes important to note that commitment of any crimes of

genocide and crimes against humanity is not covered under this provision since these are seen unlawful per se. This provision has thus been criticised for creating a distinction in the seriousness of crimes and only covering war crimes and the crime of aggression under it.

In conclusion, the defense of superior orders has evolved from the Absolute Liability approach which was used in Nuremberg Trials to the conditional liability approach under the Rome Statute. The Nuremberg Trials were created to cover the most serious breaches of International Law, while the ICC on the other hand takes a more general approach. The ICC's recognition of this defense does not necessarily move away from the already established principles but considers the practical problems of military obedience. Thus, while deciding the individual criminal responsibility for serious crimes, the merits of each case should be seen while deciding the final outcome.

News at a Glance

Victims in Kenya have urged the International Criminal Court to investigate alleged abductions and human rights violations, including police brutality and extrajudicial killings. Local rights groups and victims argue that these acts amount to crimes against humanity. For more information, see here.

UN human rights experts condemned the death of Jamshid Sharmahd, a 69-year-old journalist and activist detained by Iran in 2020. After years of arbitrary detention, his death in custody was deemed a violation of his right to a fair trial, with experts urging Iran to halt judicial executions. For more information, see here.

The 2024 Corruption Perception Index (CPI) from Transparency International shows global corruption rates remain high, with an average score of 43 out of 100. The report stresses that corruption worsens the climate crisis by diverting funds meant for climate action and undermining climate policies. For more information, see here.



The Responsibility to Protect in a Fractured World

- Harshita Tandon (II B.A.LL.B.)

The genocides in Rwanda (1994) and Srebrenica (1995) led to a collective shift in how the international community viewed global governance. The result of these new deliberations to secure minority human lives was the adoption of the Responsibility to Protect (R2P) principle at the 2005 UN World Summit. This principle redefined sovereignty as a responsibility rather than an absolute right and, obliged states to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.

The R2P framework is enshrined in the 2005 World Summit Outcome Document and establishes three pillars of responsibilities, i.e.; The responsibility each state bears to protect its population from mass atrocities; The global community's responsibility to support states in fulfilling this duty through capacity-building and preventive measures, and; If a state "manifestly fails" to protect its population, the international community is obligated to intervene via peaceful means or, as a last resort, coercive measures authorized by the UN

Security Council (UNSC) under Chapter VII of the UN Charter. Legally, R2P draws from erga omnes obligations—duties owed to the international community as a whole—such as those under the 1948 Genocide Convention, which mandates states to prevent and punish genocide. The International Court of Justice (ICJ), held in 2007 that all states have a duty to act against genocide, even beyond their borders. The R2P's third pillar keeps collective military action as the last resort, however, its implementation hinges on the UNSC's political dynamics. The veto powers among permanent members (P5), often paralyze adequate responses, as seen in Syria. The legal criteria for intervention include the principles of Last Resort, Proportionality and Reasonable Prospects. However, these criteria are non-binding, leaving room for politicized interpretations.

It is interesting to note that R2P applies only to four crimes, excluding other human rights violations (e.g., systemic repression or climate-induced displacement). This restricts its utility in complex crises. States like Russia even contest R2P as a Western tool to justify regime change, reflecting

News at a Glance

The European Commission stated it has not received formal notification from the US regarding potential tariffs on EU steel and aluminium exports but firmly rejected any justification for such measures. It warned of economic harm to transatlantic trade and assured it would take necessary steps to protect European interests. For more information, see [here](#).

Israel's High Court of Justice upheld Justice Isaac Amit's appointment as Supreme Court president, dismissing a petition by right-wing groups claiming violations of judicial independence. The decision highlights ongoing tensions between the judiciary and the government amid calls for controversial reforms. For more information, see [here](#).



enduring tensions between sovereignty norms and humanitarian imperatives. Subsequently, the absence of a formal mechanism to enforce state obligations allows persistent inaction. For example, despite early warnings, the UNSC failed to prevent atrocities in Myanmar. This event highlights the broader issue of the UNSC's failure to act decisively in the face of clear and systematic human rights violations. This inaction has allowed the escalation of the crisis. Hence, one of the biggest limitations of the international system in addressing such violations is an interference of geopolitical interests when matters require immediate action.

Thus, it is imperative to bring about structural changes in the working of the principle and the ideals it entails. The introduction of enhanced Early Warning Systems appears to be an attractive solution. The primary workings of this system include narrowing down signs of human rights violations, bringing them to light on the international forum and building capacity to prevent possible atrocities. The UN's Framework of Analysis for Atrocity Crimes provides tools for risk

assessment, but greater institutional coordination is needed to analyze and prepare for areas that are prone to destabilisation. Additionally, the merit of proposals to restrict veto use must be reconsidered in mass atrocity cases to mitigate political gridlocks that prevent adequate actions. Further, the success of Regional Partnerships should be reemphasised. The African Union's precedent of authorizing intervention in the 2013 Central African Republic mission offers a model for localized responses. By combining local expertise with international support, the AU was able to stabilize the situation, protect civilians, and lay the groundwork for long-term peace. All in all, a reformed and responsive R2P framework, supported by stronger early warning mechanisms, discussions on the misuse of veto power, and effective regional partnerships, is essential to ensure that the promise of "never again" is more than just rhetoric in an increasingly fractured world.

News at a Glance

Amnesty International has raised alarm over El Salvador's recent amendment to Article 248, warning it could undermine human rights protections and limit public participation in government decisions. The new law allows faster constitutional changes, potentially consolidating power and eroding democratic norms. For more information, see [here](#).

Human Rights Watch (HRW) has urged countries to urgently repatriate their nationals from Syrian detention camps, where thousands are living in life-threatening conditions. The organization criticized the US government's suspension of aid to NGOs in these camps and called for accountability and reintegration efforts. For more information, see [here](#).



Individual Programmes for Holocaust Survivors for Breach of International Humanitarian Law

- Ritu Karwa (III B.A.LL.B.)

The Holocaust was one of the darkest chapters in human history, leading to varied transformations like the recognition of genocide as a legal term led to the adoption of the Genocide Convention and changes in International Humanitarian Law. The same period also saw the adoption of the Universal Declaration of Human Rights (UDHR), laying the foundation for modern human rights law and setting a precedent for recognizing individuals as subjects of international law.

The formalization of genocide as a legal term and the establishment of individual legal remedies were largely driven by Holocaust survivors seeking justice and compensation for their suffering. These survivors directed their claims toward the Federal Republic of Germany, the successor state to the Third Reich. The challenge was to push Germany to assume responsibility and establish mechanisms for personal compensation. At the time, international law, primarily based

on the 1907 Hague Convention, focused on state-to-state reparations, treating individuals as represented by their respective governments. Jewish organizations played a pivotal role in pressuring the German government along with The State of Israel also submitting a formal claim to the Allied forces, to reinforce the international political weight behind the survivor's demands. Realizing the need for these claims, post-war Germany wanted to create a new legal approach with accountability and responsibility toward Holocaust survivors. In 1947, the U.S. Office of Military Government initiated the first legal mechanisms for Holocaust survivors to file claims for restitution.

In a major speech, German Chancellor Konrad Adenauer addressed the Bundestag, taking full responsibility for Germany's part in the "unthinkable crimes" committed against the Jewish people. This statement provided the foundation for negotiations, ultimately leading to the Luxembourg Agreement on 10 December 1952. This was an agreement among the Federal Republic of Germany, the State of Israel, and the Jewish Claims

News at a Glance

UN experts have criticized a US executive order imposing sanctions on ICC staff, stating it undermines justice for war crimes victims and weakens global accountability. The ICC and 79 countries have reaffirmed their commitment to holding perpetrators of atrocities accountable. For more information, see [here](#).

The Australian government has passed a new law banning hate symbols and enforcing minimum sentences for certain terror offenses to address rising antisemitism and extremism. The law mandates severe penalties for hate crimes and terrorism, but concerns have been raised about potential impacts on free speech. For more information, see [here](#).



Conference, aimed at establishing the legal basis for individual claims. The Luxembourg Agreement called the the German federal government to create a holistic legal framework to compensate the Holocaust survivors. The Federal Compensation Law was enacted, permitting victims to make claims for compensation against personal injuries and loss of property, such as real estate, financial assets, and even looted art. However, it was beset with enormous problems. German administrative authorities imposed strict procedural requirements leading to many survivors struggling to provide the necessary documentation, having lost their records during Nazi persecution. As a result, numerous claims were denied on technical grounds, leaving many survivors without the compensation they deserved.

These presented some challenges for the German government that led it to introduce BEG Schluß, aimed at simplifying compensation by instituting a fund-based structure which will enable recipients of compensation, especially survivors, to receive compensation payments without experiencing an excessive degree of bureaucratic obstruction. Since

1990, when Germany reunified, further agreements have also enhanced compensation programs. The tearing down of the Iron Curtain meant more reparations were extended to the Holocaust survivors from Eastern Europe. One of the most important initiatives was the establishment of the Remembrance, Past, and Future (EVZ) Foundation, which offered compensation to forced laborers. The Ghetto Pension Law (ZRBG) was also introduced in 2002, which further expanded the scope of compensation, allowing survivors who had worked in ghettos under Nazi rule to receive pensions. The legal framework regarding Holocaust reparations has been changing over the decades and covers nearly all categories of Nazi victims.

Reflecting on seventy years of individual compensation claims, the BEG law initially led to years of litigation, with many claims rejected due to the lack of supporting legal definitions that matched the survivors' lived experiences. While those who succeeded in their claims received relatively high compensation, many others faced bureaucratic hurdles that prevented them from obtaining justice.

News at a Glance

Over 160 human rights organizations, trade unions, and civil society groups have called on the EU to impose a comprehensive ban on trade and business with Israeli settlements in the Occupied Palestinian Territories. This follows the 2024 ruling by the International Court of Justice, which deemed Israel's presence in the region unlawful. For more information, see [here](#).

The International Court of Justice (ICJ) allowed the Organisation of Islamic Cooperation (OIC) to participate in advisory proceedings about Israel's obligations in the Occupied Palestinian Territory. The OIC, which supports Palestinian rights, will submit a written statement by February 28. For more information, see [here](#).



The introduction of a fund-based structure under BEG Schluß facilitated a more efficient compensation process, covering thousands of claims in a shorter time frame. However, this approach had limitations—it restricted access to judicial review and limited survivors' ability to appeal government decisions. Legal claims brought by Holocaust survivors played a crucial role in shaping the German government's approach to responsibility and reparations. Over the years, political and legal pressure—sometimes from within Germany, other times through class-action lawsuits in the United States—forced the government to expand its compensation mechanisms. Other countries with pro-Nazi regimes during World War II, such as Romania and Hungary, have also adopted similar legal frameworks for individual compensation. Such measures serve as a form of restorative justice, facilitating dialogue between victims and perpetrators while acknowledging historical injustices. While no amount of compensation can curtail the evils of the Holocaust, the legal machinery to take individual claims has been very instrumental in recognizing these injustices and

steps to redress them. Through continued dialogue and legal developments, the compensation process has provided financial relief to survivors while furthering the debate on human rights, historical accountability, and the role of international law in addressing past atrocities.

St. Louis: How a Refugee Crisis Exposed Global Indifference

- Vibha Kulkarni (I B.A.LLB)

St. Louis, a German ocean liner carrying 937 Jewish refugees to Cuba in 1939, took a tragic turn when they were denied entry upon reaching. The refugees already escaping the Nazi persecution were left in a state of limbo when the United States, as well as Canada, denied them asylum, eventually forcing the passengers to return to Europe, where many fell victim to the Holocaust. During the Holocaust period, international law lacked the presence of a cohesive legal framework to address mass displacement and statelessness. Even the global communities had allowed the atrocities to unfold with little resistance from their side. The international laws during that time were shaped by prejudiced notions against refugees. The US

Upcoming Activities

Call for Papers: International Conference on 'Migrants and Displaced Persons: Protection of Human Rights and Challenges by Christ Academy Institute of Law, Bengaluru

Differences are found in the legal provisions and policies relating to citizenship, immigration etc. Owing to that, abstracts are invited from academicians, practitioners, researchers, scholars and students on issues related to specified themes. The date for the submission of the abstracts is April 2, 2025. For more information, see [here](#).

Call for Papers: Legal Aspects of Interactions between International Organizations and the Private Sector

The PRIVIGO project ("International Organizations between Mission and Market"), sponsored by the European Research Council and located at the Erik Castrén Institute, is organizing a workshop in Helsinki on 23 May 2025. For more information, see [here](#).



Immigration Act of 1924 and Canada's "None is too Many," policy specifically excluded Jewish refugees. Without any cohesive or binding frameworks, xenophobia was patronised in the name of domestic concerns. Nations use security concerns, economic arguments, and nationalist rhetoric to justify their restrictive policies against immigrants.

At that time, international laws regarding refugee protection were still in their infancy. As they only applied to particular groups, the League of Nations' 1933 Refugee Convention and the 1922 Nansen Passport System were insufficient to stop the Holocaust of 254 passengers of St. Louis or quell the building antisemitism. The international communities were unwilling to act decisively and prioritised national interests over humanitarian concerns. The Cuban and US authorities' rejection was influenced by antisemitic sentiments, domestic political pressure, fears of economic burden, and nationalist factions. Canada, however, followed a particular immigration policy that was exclusionary towards Jewish refugees. This demonstrated that anti-Jewish prejudice was pervasive throughout the Americas

and Europe and was not limited to Nazi Germany. The states that had refused asylum to refugees faced no consequences. This presented the failure of international law in holding the accountable states that had the ability to change the trajectory of many lives but denied so. The events of the Holocaust and tragedies like St. Louis led to the need for international frameworks like Statelessness Conventions (1954 and 1961), which aim at protecting the rights and status of the stateless individuals by guaranteeing them education, employment and access to courts. The establishment of the Universal Declaration of Human Rights (UDHR) and the United Nations High Commissioner for Refugees (UNHCR) helps refugees to seek asylum. The UDHR recognises nationality as a fundamental human right, while the UNHCR advocates, protects, and works to end statelessness globally. A more proactive response to St. Louis could have made it an example of international compassion and accelerated the establishment of international human rights norms.

The event highlights the complex interplay between political decision-making and humanitarian responsibilities. When

Upcoming Activities

Call for Papers: Seminar on the 'Convergence of Law and Economics: Businesses, Industries & Beyond' at NUSRL, Ranchi

The seminar seeks to provide a platform for intellectual engagement, where academicians, legal experts, economists, industry leaders, policymakers, and students come together to discuss and analyze key issues at this intersection. The Abstracts can be submitted by Feb 16; for more information see [here](#).

Call for Papers: International Conference on 'Sustainability and Global Challenges' by FIMT, Delhi

The intersection of sustainability and global challenges has become a focal point in modern commerce and management. Addressing environmental, social, and economic concerns is essential for businesses to thrive while contributing positively to global well-being. The abstracts can be submitted by 20th February, 2025. For more information, see [here](#),



humanitarian concerns are subordinated to political gains, it undermines the values of compassion and justice for those affected by tragedy. The refugees aboard the St Louis were not merely diplomatic concerns; they were individuals seeking safety and dignity. Yet their suffering was overlooked in favour of political considerations. As the world faces ongoing refugee crisis, this event is a reminder on how humanitarian concerns should remain central, rather than being overshadowed by political considerations.

Upcoming Activities

Call for Papers: International Virtual Conference on Air and Space Law by Christ University

The 1st School of Law International Virtual Conference on Air and Space Law 2025, organized by the Air and Space Law Committee of the School of Law, CHRIST (Deemed to be University), Bengaluru, aims to serve as a premier platform for legal scholars, practitioners, students, and industry experts to discuss and deliberate on critical issues in aviation and outer space law. The Expression of Interest can be submitted by Feb 15, 2025. For more information, see [here](#)

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