

Contents

1	Introduction	1
1.1	The Subject of the Study	1
1.2	Background of the Study	6
1.3	Terminology	9
1.3.1	The Defense of Superior Orders	9
1.3.2	Defense	9
1.3.3	Views on the Superior Orders Defense	11
1.3.4	International Criminal Law	13
1.4	Structure of the Study	14
2	Before the Adoption of the Nuremberg Charter	15
2.1	National Laws of the Drafting Countries of the Nuremberg Charter	15
2.1.1	The Defense of Superior Orders in the United Kingdom	15
2.1.2	Superior Orders Defense in the United States	23
2.1.3	Superior Orders Defense in France	30
2.1.4	Superior Orders Defense in the Soviet Union	34
2.1.5	Conclusion	36
2.2	Situation of International Law	38
2.2.1	Proposals of Treaties and Superior Orders Defense	39
2.2.2	The Versailles Treaty and the Reipzig Trials	42
2.2.3	Conclusion	47
3	Formation of the ‘Nuremberg Principle’	49
3.1	Preparatory Work of the Nuremberg Charter	49
3.1.1	The United Nations War Crimes Commission	50
3.1.2	Preparatory Work of the Nuremberg Charter	52
3.2	The Nuremberg Trial	58
3.2.1	The Argument of the Prosecution	59
3.2.2	The Argument of the Defendants	62

3.2.3	The Judgment	66
3.2.4	Conclusion	71
3.3	The Subsequent Proceedings	71
3.3.1	The Argument of the Prosecution	73
3.3.2	The Argument of the Defense Counsels	75
3.3.3	The Judgment	79
3.3.4	Conclusion	87
3.4	The Tokyo Trial	89
3.4.1	The Argument of the Defense Counsels and the Prosecution	91
3.4.2	The Judgment	94
3.4.3	Conclusion	95
3.5	The 'Nuremberg Principle' and the Theory of Superior Orders Defense	95
3.5.1	Theoretical Ambiguity of the 'Nuremberg Principle'	95
3.5.2	Theories of Superior Orders Defense	96
3.5.3	The Meaning of the 'Nuremberg Principle'	101
4	After the Trials Under the Nuremberg Charter	103
4.1	International Rule-Making	103
4.1.1	Preparatory Work of Treaties and Superior Orders Defense	104
4.1.2	Codification Process at the ILC	109
4.1.3	Statutes of the International Criminal Tribunals	117
4.1.4	Conclusion	125
4.2	Judicial Precedents	127
4.2.1	National Cases	128
4.2.2	The <i>Erdemović</i> Judgment of ICTY Appeals Chamber	133
4.3	Academic Arguments	141
5	Change of the Structure of International Legal Order and 'Hesitation'	147
5.1	The 'Nuremberg Principle' and the Present	147
5.2	The 'Nuremberg Principle' – Denial of Automatic Immunity – and International Legal Order	149
5.3	Remaining Problems	150
Select Bibliography		157
Monographs (Including Microfilm)		157
Articles		162
Index		173

The Execution of Illegal Orders and International
Criminal Responsibility

Sato, H.

2011, VIII, 175 p., Hardcover

ISBN: 978-3-642-16752-2