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Establishment of an International
Criminal Court**

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COMMITTEE OF THE WHOLE
Working Group on General Principles
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Working paper on article 32

Superior orders and prescription of law

Option A

The fact that a war crime has been committed pursuant to an order of a superior authority, whether military or civil, does not deprive the conduct in question of its character as a war crime, nor does it relieve the person of criminal responsibility, unless the person did not know that the superior order was unlawful and the order was not manifestly unlawful.

Option B

1. The fact that a person's conduct was pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve the person of criminal responsibility unless the order did not appear to be manifestly unlawful.

[2. In respect of the commission of the crime of genocide or a crime against humanity, a person shall not be exempted from criminal responsibility on the sole ground that the person acted pursuant to an order of a Government or a superior, or pursuant to national legislation.] ¹

¹This issue has yet to be fully discussed in informals, and therefore the text remains bracketed.