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Special international Criminal courts : Legal Achievements or Selective justice

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Summary
The temporary international criminal tribunals represented an essential step in the path of international criminal justice, as they came in response to serious crimes that shook the conscience of humanity, as the international military tribunals at Nuremburg and Tokyo established the principle of individual criminal responsibility and the absence of impunity after World War II and laid the foundation for the principle of trying individuals for international crimes, regardless of their position. In the 1990s, the international criminal tribunals for Yugoslavia and Rwanda reinforced this trend by prosecuting crimes of genocide and crimes against humanity. These courts contributed to Developing international criminal law, strengthening the principle of non-impunity, and establishing a culture of accountability at the international level .
Keywords : International Criminal Tribunals ; Individual Criminal Responsibility ; Genocide ; Crimes Against Humanity ; International Criminal Justice

Introduction

The international crimes committed during World War II were not ordinary crimes, but rather constituted a shock to the human conscience that prompted the international community to search for effective mechanisms to hold their perpetrators accountable. Hence the urgent need to establish international judicial mechanisms in order to prosecute their perpetrators, and in this context, temporary international criminal tribunals emerged as an exceptional solution to achieve justice.

International criminal justice passed through successive stages of development, beginning with the first attempts to establish international criminal justice after World War II, especially through the Nuremburg and Tokyo trials, through the establishment of unprecedented legal principles that constituted a historical turning point in establishing the principle of individual criminal responsibility for crimes regardless of the official capacity of their perpetrators.

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With the development of armed conflicts at the end of the twentieth century, the international community revived international criminal justice by establishing temporary criminal courts, most notably the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, which were established in light of international transformations. These two courts represented an advanced stage in developing the rules of international law, enhancing the protection of human rights, and contributed to strengthening the idea of international justice as a necessity for maintaining international peace and security.

Did the special criminal courts constitute an effective mechanism for achieving international criminal justice, or did they establish a model of selective justice subject to international political considerations?

Based on this, the article aims to study the experience of special international criminal courts, and to explain their contributions and limitations, based on the analytical approach through studying the legal texts, the principles established by these courts, and the descriptive approach to present the circumstances of their establishment and jurisdiction, and using the comparative approach to highlight the similarities and differences between them, in order to evaluate their role in achieving international justice.

To answer the problem, we divided the research into two main sections. In the first section, we addressed the study of the temporary international criminal tribunals after World War II, represented by the international military tribunals of Nuremburg and Tokyo, where we focused on the circumstances of their establishment, their jurisdiction, and the legal impact they had in establishing the principle of individual criminal responsibility.

As for the second section, we devoted it to studying the international criminal tribunals in the 1990s, which was represented by the International Criminal Tribunals for the former Yugoslavia and Rwanda, where we discussed their role in prosecuting the perpetrators of genocide and crimes against humanity, and analyzing the extent of their contribution to the development of international criminal law and strengthening the principle of non-impunity at the international level.

The first topic: the early beginnings of international criminal justice

The Nuremburg and Tokyo International Criminal Tribunals are considered a prominent turning point in the history of international criminal justice, as they came in the wake of World War II to hold those responsible for serious crimes committed during it accountable. The Nuremburg Tribunal set a legal precedent by approving the principle of individual criminal responsibility and criminalizing crimes against

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humanity, war crimes, and crimes against peace, which contributed to establishing the rules of international law. It also confirmed that official status does not exempt from responsibility (the first requirement). As for the Tokyo trials, they targeted military leaders. And Japanese politicians after Japan's surrender, in turn, enshrined the same legal principles at the level of the Far East (the second demand)

The first demand is the Nuremburg Tribunal as a starting point for international criminal justice

The Nuremburg Tribunal was established in 1945 after the end of World War II, with the agreement of the allied countries to try the leaders of Nazi Germany for crimes committed during the war with the aim of achieving justice and trying those accused of war crimes, crimes against humanity, and crimes against peace (First Section). This court represented a pivotal step in the development of international criminal law by establishing the principle of individual international criminal responsibility and criminalizing crimes against humanity (Second Section).

The first section: The legal framework and historical context for the establishment of the court

As a result of the tragedies that humanity witnessed and following the end of World War II An investigation committee was formed to collect investigations, consisting of 17 countries, and this committee approved A draft agreement to establish a court specialized in trying the accused, in accordance with the law Allied oversight, which culminated in their efforts, as the establishment of an international military court was approved. To try "Hitler" and his aides, despite conflicting opinions regarding the formulation of a statute This is due to the difference in the legal authority of the four countries, which are: the Union The Soviet Union, America, France, and Britain, but representatives of the Allied countries were able to conclude a The 'London Agreement' to prosecute criminals of World War II on August 8, 1945 or what is known At the Nuremburg Court [i].

The first article of that agreement decided to establish an international military court to try war criminals whose crimes do not have a specific geographical location, whether in their personal capacity or as members of terrorist organizations or in both capacities. As for other criminals, their trial was entrusted to national courts and other courts established under Law No. 10 of the Oversight Council[ii].

The second article stipulates that the formation of the International Military Tribunal, its jurisdiction and its powers are stipulated in the regulations attached to the agreement, and that these regulations are considered an integral part of it. These

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regulations were actually drawn up and attached to the agreement of August 8, 1945, consisting of 30 articles divided into seven sections, and it was decided that its permanent headquarters will be in Berlin, with its first trials taking place in the city of Nuremburg[iii].
Article VI, the last paragraph, of the London Regulations also stipulates that: "The managers, organisers, attendees, and partners are being followed up." Those who contributed to the preparation and implementation of any crime. Specified in the list, the official status of the accused does not affect their criminal responsibility, as Article Seven of the list stipulates that the official status of the accused, whether as heads of state or senior officials, is not considered an excuse or a reason to reduce the sentence, and stipulates Article Six, the last paragraph of the London Regulations, stipulates that: "The managers, organisers, attendees, and partners are being followed up." Those who contributed to the preparation and implementation of any crime. specified in the regulations, and Article 15 also specifies the tasks of The public prosecutor before the court, which consists of searching for Evidence, collecting it, presenting it, and preparing the indictment report. Interrogating the accused and hearing witnesses "[iv]
Pursuant to the text of Article Two of the regulations, the court was composed of a judge The American Biddle, the Englishman Lawrence, and the French jurist (De Fabre) and the Russian (Nikchno), and the Englishman (Lawrence) took over The Presidency of the Court, accordingly, the Nuremberg Court was composed of members representing The victorious countries in World War II were not neutral or Countries defeated in war.

When the issue of determining the nature of the court was put on the discussion table; The prevailing opinion was that
Be of a military nature, to ensure the speedy resolution of cases. presented before it, in addition to the fact that this type of court is not Usually restricted in terms of spatial jurisdiction to the regions in which This is a crime, and this was explicitly expressed by the British Minister of Justice. At that time, it was recognized in international law that the laws of War allows a combatant commander to be punished by a court military, anyone proven to have committed a hostile act in violation of the laws of War and its customs wherever this act is committed[v]
The first session of this court took place on November 20, 1945, and it continued The sessions continued until October 1, 1946, and the Allies held sessions Military trials at the Palace of Justice at Nuremberg, perhaps The most important reasons for holding sessions in the aforementioned palace are: Due to the total devastation caused by the role of the German courts Intense Allied bombing during World War II.

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The trials generally dealt with war criminals who They committed atrocities against humanity in Europe, and among anyone Atrocities committed Establishment of concentration camps for civilians Europeans and put civilians in those detention centers that It was characterized by the worst living conditions, as the Nazis did not mobilize them safely. detainees and not providing the minimum means of comfort in that Detainees.[vi]

The court issued its first rulings in October 1946. The rulings punished twelve defendants with death by hanging, three with life imprisonment, two with twenty years in prison, one with fifteen years in prison, and another with ten years in prison. Three of the defendants were acquitted, but only twenty-one defendants appeared before the International Criminal Court in Nuremburg. As for the remaining three, the first committed suicide in prison and the second managed to escape. The convicts were placed in the Banda prison in the city of Nuremberg. Berlin [vii].

The second section : the legal contributions of the Nuremburg Tribunal in establishing the principle of individual responsibility

It can be said that the Nuremburg Tribunal succeeded to some extent in laying the first building block for the establishment of a true international criminal law, and the features of this law became clear through the results of the trials, where crimes were codified and the superiority of the international legal rule over its domestic counterpart was emphasized [viii]،The international responsibility of an individual was also recognized for the first time, and his official status is not considered a reason for reducing the sentence, even if the criminal behavior was committed by senior officials. Its system also did not take into account the official status of the accused, as it does not affect their criminal responsibility. Therefore, it does not matter whether the accused is a head of state, a senior leader, or a senior official, as this is not considered an excusing excuse or even a reason for mitigation for him[ix].

Since 1945, it has been accepted that an individual's official status as head of state or as a senior official does not constitute an obstacle to international criminal prosecution, especially with regard to war crimes or crimes against humanity. This rule has been mentioned and repeatedly mentioned not only in the statute of the military tribunals in Nuremburg and Tokyo, but also in the statute of the international criminal tribunals for Yugoslavia and Rwanda, as is the case with the current International Criminal Court, meaning that these texts do not distinguish between a head of state who is in office and one who is no longer so[x].

This means that the Nuremburg Tribunal was the actual beginning of the application of many legal principles, the existence of which was not recognized by the International Law Commission at the time, and it opened the way for expanding a new concept of international

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law. It was sufficient for it to renew new and new types of crimes at the international level, in addition to regulating the rulings issued against them [xi]، The idea of international criminal justice was applied seriously for the first time in modern history to the criminals of World War II, and each of them received his punishment without immunity. It contributed to rebuking crimes against humanity, but it did not acquire a permanent character, but it contributed to mobilizing international efforts to establish a permanent international judicial structure[xii].

Since that time, states have not stopped reaffirming and reaffirming that war crimes and crimes against humanity cannot remain unpunished. However, these crimes are almost all the work of the state, and any of the texts that stipulate the punishment of such crimes do not grant immunity to heads of state. It follows that punishment for these crimes must be implemented without taking into account any immunity. The same applies to the nature of the court, whether national or international[xiii].

It also completely abolished the defense or protection behind the president's orders to evade responsibility. These trials, in addition to the rulings it issued against the Germans and Japanese, affected the international legal system that followed them. Given the importance of the principles brought by the Nuremburg Military Tribunal, three weeks after issuing its ruling on October 1, 1946, the General Assembly held the second part of its first session in New York, and the opening session, held on October 23, 1946, witnessed the approval. The importance of the Charter of the Nuremburg Tribunal as a guide to the path that can be followed in pursuit of agreement in order to better protect humanity from wars in the future [xiv]، It also drafted its International Law Committee, especially the international responsibility of individuals, the definition of international crimes, and the supremacy of international law over national law. It also established international rules in international law for the trial of natural persons, and not only for the trial of states before international law[xv].

As for the Rome Statute, the crimes under the jurisdiction of the International Criminal Court are taken from the text of Article VI of the Nuremburg Statute of Military Justice, except for the crime of aggression, which is a new crime.

Also, the international criminal responsibility of commanders and superiors stipulated in Articles 27 and 28 of the Statute of the International Criminal Court has been stipulated in the text of Article 07 of the Nuremburg Military Judiciary Regulations. On the other hand, one of the basic principles in trials is those represented by the rights of the accused and the defense mentioned in Articles 59 and 61 / Paragraph 06 as well as Articles 63 and 67 of the International Criminal Court Statutes, which is matched in this by the text of Article 16 of the Nuremburg Military Judiciary Statutes[xvi].

However, the Military Court was subjected to many criticisms, the most important of which was that the majority of attempts conducted at that time within the Nuremburg Tribunal did not apply the principle of priority with national courts in accordance with the provisions of the above-mentioned articles. The main reason for this lay in the collapse of the judicial system, the government and all German agencies

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at that time. In any case, this court, which had a political nature that transcended legitimacy, was created by the victors of the war, representing the role of judge and jury. In such circumstances, there was no place for national courts in international justice[xvii] .

The second demand is for the Tokyo court to emulate the experience of the Nuremburg court

The Tokyo International Military Criminal Court is one of the temporary international criminal courts that was established after World War II to hold senior Japanese officials accountable for crimes against peace, war, and humanity (Section One). This court represented a unique experience in applying international law on the ground (Section Two).

Section One: The legal and regulatory basis of the Tokyo Court

Japan committed crimes in the Far East no less heinous than those committed by its allies in the Western Axis countries, as civilians were the target of military attacks, and Allied prisoners of war were brutally killed. The bombing of Japan without a prior declaration of war, and the participation of the United States of America in World War II, played a major role in the later Tokyo trials[xviii] ،On 07/16/1945, the Potsdam Declaration was issued by the United States of America, the United Kingdom, the Republic of China, Britain, and the Soviet Union, which joined them later. This declaration included a pledge to subject Japanese war criminals who committed their crimes against Allied prisoners to strict justice[xix] ،This is because Japan committed crimes no less horrific than the crimes committed by Germany and its allies during World War II, which was the killing of civilians and Allied prisoners[xx].

On January 19, 1946, the Commander-in-Chief of the Allied Forces in the Far East, American General Mark Arthur, issued a decision to establish an international military tribunal in Tokyo to try major war criminals in the Far East. On the same day, the general approved the procedural organization list for that court, which was later amended based on his order[xxi].

The Tokyo II Court is an international military court established to punish war criminals. World War II committed in the Far East by Japan [xxii]، It was composed of eleven judges representing eleven countries, ten of which fought Japan and only one country was neutral, India. The judges of this court were chosen by the Supreme Commander of the Allied Powers, but within the limits of the list of names submitted to him by the aforementioned countries.[xxiii].

The Supreme Commander also appointed a Public Prosecutor who was entrusted with the prosecution and prosecution of war criminals whom the Court has jurisdiction to try. Each country that was at war with Japan may appoint a member to the Public Prosecutor. The Supreme

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Commander appointed the representative of the United States of America, Joseph Keman, as Public Prosecutor to the Court, and he is assisted in this by ten agents representing the member states of the Court[xxiv].

The first thing to note about the formation of this court is that it was not the result of an international treaty, as in the military court at Nuremburg. Part of the jurisprudence of the reason for this is due to political considerations, the most important of which is that the Soviet Union entered the war against Japan, which was defeated a few weeks after this entry, which raised the concern of the United States of America about the ambitions of the Soviet Union in the Far East.

The trials lasted from April 19, 1946 until November 12, 1948, and at the end of it a ruling was issued convicting twenty-six defendants, including military personnel and civilians. The Tokyo trials did not include a condemnation of any organization, similar to what happened in Nuremburg[xxv]،

Thus, this court can be defined as a temporary judicial institution that was formed by agreement between the victorious allied countries during World War II, in order to punish the perpetrators of crimes that pose a danger to the human race in the Far East region and to achieve justice for the victors. It was called the “Tokyo Court” because it was held in the city of Tokyo in Japan[xxvi].

The second section is the legal evaluation of the Tokyo court experience and the problem of victorious justice

By reviewing the jurisdiction of both the Tokyo Court Regulations and the Nuremburg Court Regulations and the conduct of the trial, the principles upon which they were based, and the charges brought against the accused, we find no fundamental difference between the two statutes, neither in terms of jurisdiction nor in terms of the conduct of the trial, nor in terms of principles, nor in terms of the charges brought against the accused[xxvii] ،It assigned criminal responsibility to the leaders, instigators, planners, and those who participated in

In developing or implementing a plan or conspiracy to commit these crimes, but they may be considered a circumstance that mitigates punishment, if the court deems that this is consistent with the requirements of justice[xxviii]

It is noted that the Tokyo Court was specialized in trying natural persons who commit these crimes in their personal capacity only and not as members of organizations, as there was no text in its regulations similar to Article 9 of the Nuremburg Court Regulations, which allows the court to attach criminal status to bodies or organizations[xxix]

Despite the similarity between the two courts, the Tokyo court did not carry the same value with regard to the conduct of the trials. The charges were limited to crimes

against peace and war crimes, and there were no crimes against humanity, as a result of the political tension that prevailed between the allies during these trials. The control and influence of the American side on the administration of the trials was also evident. In addition, there are those who say that the judges of the Nuremburg court were more efficient and independent than the judges of the court in Tokyo, with the exception of its three Dutch judges. (Rolling), the Indian (Pol), and the Frenchman Bernardhg) who strongly opposed the court's rulings, while it seemed as if the other judges were acting for political motives[xxx].

Among the points recorded in the Tokyo court: American General MacArthur enjoyed broad powers in the field of pardons, releasing convicts, or reducing their sentences, as well as his great influence on the court's decisions through his issuance of the death sentence against Japanese General Tomiyuki Yamachitan, as well as exempting Japanese Emperor Hiroto from trials[xxxi]، In addition, those who were sentenced to imprisonment were released before the end of the prescribed sentence. Indeed, there were those who later and a few years later held important political positions in their country. Among these was Shigemitsu Mamoru, who was sentenced by the Tokyo court to seven years in prison. He was released on conditions on November 21, 1950, and in November 1951 he was granted the right to pardon. He became Minister of Foreign Affairs in December 1954 and played an important role in obtaining the right to A final amnesty for all Japanese prisoners, which was actually done in 1957[xxxii].

It is worth noting that the trials that took place in Nuremburg and Tokyo, despite the legal shortcomings and political interference that occurred in them, and the imposition of the victor's principle and conditions of submission on the countries that lost the war, constitute a bright spot and a starting point for international criminal justice to undertake the prosecution of the perpetrators of such crimes that the national judiciary is unable to prosecute, and to be a deterrent to those who tempt themselves to use their authority to violate human rights and commit crimes against humanity[xxxiii].

The second section covers the International Criminal Tribunals for the former Yugoslavia and Rwanda as a developed model for temporary courts

Following the tragic events experienced by the Yugoslav and Rwandan people, and in an attempt by the United Nations Security Council to address international crimes, it issued several resolutions based on Chapter Seven of the United Nations Charter, considering that the actions committed in these areas constitute blatant violations of international humanitarian law. In order to end the problem and punish those responsible for it, it established the International Criminal Court for the former Yugoslavia in 1993, which constituted an important step in reviving international

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criminal justice and Establishing the principle of non-impunity (the first demand), then the International Criminal Tribunal for Rwanda in order to prosecute those responsible for genocide and crimes against humanity committed during 1994, which had a major role in developing judicial jurisprudence (the second demand).

The first demand is the International Criminal Court for the former Yugoslavia and the development of the rules of international law

Section One: The legal basis for establishing the Court for the Former Yugoslavia

The court was established by resolution 827 of May 25, 1993 by the unanimous Security Council, and its mission was to try persons responsible for committing serious violations and violations of international humanitarian law on the territory of the former Republic of Yugoslavia since 1991.

As for the crimes within the court's jurisdiction, they are crimes arising from the Geneva Conventions of 1949, violations of the rules and customs of war, crimes of genocide, and crimes against humanity.

The authority of the court is limited to trying natural persons, because the state is not considered criminally responsible in its capacity, as international criminal responsibility for these crimes still exists today. The court contains 14 judges, and after the amendment it became 27 judges. It consists of primary bodies and an appeals body that includes seven judges. It should be noted that this court added a new dimension to the process of narrowing war crimes, including grave violations of the four Geneva Conventions, which constitute individual responsibility that requires Punishment[xxxiv].

The description of this court as circumstantial or with a specific purpose means that it was established, similar to what the Nuremburg and Tokyo courts were, for a specific case, and that its mandate could end at any moment if consideration of this case ends, or if the Security Council wants to put an end to it, as indicated by Security Council Resolution No. 827.

The establishment of the first international court is also considered from two aspects: the first is the first international criminal court during the era of the United Nations, and its establishment took place through the comprehensive executive body, the Security Council, and the second: it is the first and actual application of the principle of international criminal prosecution against individuals before an international criminal court that has its own clear criminal judicial system[xxxv].

In discussing the extent of the legitimacy and independence of the International Criminal Tribunal for the Former Yugoslavia, some writers argued that the Security

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Council's issuance of the decision to establish the International Tribunal as a related body competent to maintain and restore security to normal, was considered a new shift in the work of the Security Council and outside the scope of the mandate entrusted to it under Chapter Seven of the Charter, as the International Court of Justice was established in accordance with the United Nations Charter of 1945, and the Statute of the Court of Justice forms an integral part. The Charter requires ratification by member states in accordance with the principles of international treaty law. As for the establishment of the International Criminal Tribunal for the Former Yugoslavia, it only required the approval of nine members of the Security Council, including the five permanent members[xxxvi].

Based on the tasks and powers granted to it as the main body, the latter sought to exploit all the provisions of the Charter in a way that would benefit the role assigned to it, and even more so to achieve the reason for the existence of the United Nations itself, by which we mean achieving, maintaining and restoring international peace and security. Thus, the Security Council relied in its jurisdiction to establish this court on justifications whose basis we find in Chapter Seven of the Charter[xxxvii].

If it is determined that there is a threat to the peace, a breach of it, or the occurrence of aggression, the Security Council has broad and unrestricted authority (within the framework of the Charter) under Article 39 to choose actions and evaluate appropriate measures.

When taking measures of repression, he may choose between two types of measures according to the requirements of the situation:

1- Measures whose implementation does not require the use of armed force (Article 41).

2- Measures of a purely military nature, taken by the Council if it becomes clear to it that non-military measures are not sufficient for the purpose or it is proven that they have not fulfilled it. These measures are taken by air, sea or land forces, and within the limits necessary to maintain international peace and security, or to restore it to normal. These actions may include demonstrations, blockades, and other operations by means of the air, sea or land forces of members of the United Nations (Article 42). Accordingly, Article 42 is not valid. It will be a basis for establishing the two courts because it is related to procedures accompanied by armed force.

We remain with Article 41, which grants that **"the Security Council may decide what measures must be taken that do not require the use of armed forces to implement its decisions, and it may request the members of the United Nations to implement these measures, and among them may be a partial or complete**

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cessation of economic relations, rail, sea, air, postal, telegraphic, wireless and other means of communication and the severing of diplomatic relations."

Article 41 permits the Security Council to take whatever measures it deems appropriate that do not require the use of armed force to implement decisions. It is noted that the aforementioned measures are not included exclusively, as evidenced by the fact that the text was used, "and it may be among them." This formula of subordination indicates to us that these measures are some of the punitive measures that can be taken without the need to use armed force, so the Security Council may add to them whatever sanctions it deems necessary to maintain international peace and security or to restore them to normal[xxxviii].

This is what he actually did when he established the International Criminal Tribunals for Yugoslavia and Rwanda when he linked the establishment of these tribunals to Chapter Seven of the Charter, which is considered the only justification for his intervention. In addition, Article 29 grants the Security Council the establishment of subsidiary bodies that it deems necessary to perform its functions [xxxix].

Therefore, many international law writers have reached an important conclusion, which is: The goal of establishing the International Criminal Tribunal for the former Yugoslavia was to change the political system in Yugoslavia more than to try those responsible for violations of international humanitarian law. In other words, humanitarian legal considerations prevail in the work of this court[xl].

The formation of the court is considered the first event of its kind after the formation of the Nuremburg court, and there are some who doubted the credibility of this court, especially since its effects and effectiveness cannot be instantaneous and direct, but the court quickly proved the reality of its existence and its seriousness in working.[xli]

The second section: The Court's contribution to consolidating the rules of international humanitarian law and international criminal justice

It is worth noting that the trials of the Yugoslav Tribunal differed from the Nuremburg trials, meaning that the Yugoslav Tribunal tried only natural persons, while Nuremburg tried natural persons and legal persons such as states, companies and organizations. It also differed from the Nuremburg and Tokyo Tribunals in directing indictment. The Criminal Tribunal of Yugoslavia accuses anyone who committed or participated in violating international humanitarian law, while the two military tribunals limit the indictment to war criminals only, and this is what Approved by the second paragraph of Article Seven of the Statute of the International Criminal Tribunal for Yugoslavia.

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In addition, the head of state is not exempt from bearing criminal responsibility in the event that one of the persons subject to his authority and orders commits the illegal act if he knows and is aware that his subordinates are committing the crime, and he does not take the necessary precautions and appropriate measures to prevent its occurrence or punish the perpetrator. As for the subordinate who carried out his superior's order to carry out the crime, it cannot be a reason to reduce the punishment if the international court deems that doing so would be more just[xlii].

The indictment issued by Attorney General Louise Arbor against Slobodan Milozovic for crimes against humanity in Kosovo was one of the most important decisions issued by the Yugoslav Tribunal and is considered a historical precedent because it targeted a head of state who was still in his job. This was on May 22, 1999. It covered crimes against humanity to which the Albanians of Kosovo were exposed from January 1, 1999 until the issuance of this decision. A second indictment was issued by Attorney General Carla Del Pont, on September 27, 2001, covered other crimes against humanity committed in the territory of Croatia from August 1, 1991 to June 1992, and on November 22, a third indictment was issued against Milošević relating to crimes against humanity committed in Bosnia and Herzegovina from March 1, 1992 to December 31, 1995.

Milosevic appeared for the first time on July 3, 2001, but the follow-up proceedings against him were suspended on March 14, 2006 due to his death on March 11, 2006[xliii].

Milosevic's compliance before the court makes him the first head of state to be tried before an international criminal court in this century, and this represents a victory for international justice[xliv]،
And to establish a judicial precedent in international criminal justice, and an important principle in holding heads of state and senior officials accountable for the war crimes, genocide, and crimes against humanity they commit, and this cannot be invoked because of the immunities and privileges they enjoy that keep them immune from conviction and trial[xlv].

The second demand is for the International Criminal Court for Rwanda and the strengthening of the principle of non-impunity

The establishment of the International Criminal Tribunal for Rwanda was a pivotal response in the history of international criminal justice. It was the result of a humanitarian tragedy that shook the conscience of the entire world. The court was not merely a mechanism for punishing grave crimes, but rather an embodiment of an international will to reject impunity. The first section established the principle of non-impunity and the determination of the responsibility of individuals. It played a major role in developing the

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concepts of international criminal law, especially with regard to genocide and crimes against humanity. The second section

The first section: The establishment of the court

The International Criminal Tribunal for Rwanda was established after a tribal conflict that lasted for decades, even before the establishment of the Republic of Rwanda between the Hutu and Tutsi tribes, as the Hutu tribe did not allow the rest of the other tribes, led by the Tutsis, to assume the reins of power in Rwanda, or participate in the government system, and thus the struggle for power in Rwanda turned into an internal conflict between the Tutsi tribe and the government forces led by the Hutu tribe, after which it extended to neighboring countries, and this conflict was known as the commission of Many crimes occurred, and to confront this situation, the Rwandan government called on the United Nations to intervene to stop these massacres, and accordingly the Security Council issued a set of resolutions[xlvi].

The International Criminal Tribunal for Rwanda was established under the auspices of the United Nations to prosecute persons responsible for genocide and other similar violations committed in the territories of neighboring countries, between 1 January 1994 and 31 December 1994[xlvii] ،

On February 22, 1995, the Security Council adopted Resolution 877 regarding the selection of the court, with the latter being located in Arusha, the capital of Tanzania. The reason for this is due to the close distance between the court and the place where grave violations of international humanitarian law were committed, and to Tanzania being considered the country that hosted, from 1992 to 1994, the negotiations between the parties to the Rwandan conflict that culminated in the conclusion of the Osha Peace Agreement of August 4, 1993. Other ،Kama Laity was appointed president of that court[xlviii].

The traditional method of establishing the court, which is to conclude a treaty or agreement, has been excluded, because that would take a long time for the court to then begin its procedures, and thus the procedures, especially those related to the investigation, would become ineffective, and perhaps even useless. Therefore, the decision to establish it by the Security Council took this reason into consideration, and because the experience of the former Yugoslavia also paved the way to benefit from re-taking that decision. In fact, all of these procedures are not neutral because delegating the establishment of the court to the Security Council does not mean expression. This does not mean that the reasons for maintaining peace prevail over the reasons for law and criminal justice. This does not mean that the requirements of justice have been completely excluded. On the contrary, they have been stated strongly in the Basic Law.

However, if and when a conflict occurs, the considerations of maintaining international peace and security will prevail over the considerations of criminal justice, which means that political considerations will always prevail and be strengthened[xlix].

It should be noted that the International Criminal Tribunal for the Former Yugoslavia was a temporary or transitional headquarters or body until the physical establishment of the International Criminal Tribunal for Rwanda, so that the temporary management of human resources and the preservation of official documents was supervised by the Registry of the International Criminal Tribunal for the former Yugoslavia[l] ‹Its Statute also indicated in Article 15 that the Prosecutor of the Court is the same as the Attorney General of the Tribunal for the Former Yugoslavia, and such a text was stated in the second paragraph of Article 12 of the Statute when organizing the Appeals Chamber, where it indicated that the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia is its Appeals Chamber, and the Secretary-General of the United Nations justified this approach by saying that institutional ties guarantee unity of legal outlook and unity of economic sources[li].

The court looks into crimes of genocide, crimes against humanity, violations of Common Article 3 of the Geneva Conventions, and violations of Additional Protocol II. Thus, the International Criminal Tribunal for Rwanda in 1994 has jurisdiction over crimes that were subject to jurisdiction over the International Criminal Tribunal for the former Yugoslavia in 1993.

By reviewing the text of Articles Two and Three of the Statute of the International Criminal Tribunal for Rwanda of 1994, which stipulate crimes and serious violations of international humanitarian law that fall within the jurisdiction of this court, it becomes clear that they are a repetition of the text of Articles Four and Five of the Statute of the International Criminal Tribunal for the former Yugoslavia of 1993. However, what distinguishes the Rwanda Tribunal is that it is competent to consider certain acts of war crimes only, which is what was stipulated in Common Article 3 of the Geneva Conventions dated 08/12/1949 regarding the protection of victims during wartime, as well as the Additional Protocol attached to this agreement dated 06/08/1977, which is stipulated in Article 4 of the Statute of the Court[lii].

Article 8 of the Statute of the Court for Rwanda included an emphasis on the principle of shared jurisdiction of this court with the national criminal courts to hold accountable the acts mentioned in this statute, and the persons accused of committing them, within the framework of the spatial and temporal jurisdiction of this court.

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This article also shows that it gives the court a degree of precedence and supremacy over national criminal jurisdiction, as this court has the right, in any case the case may be, to formally request the national judiciary to abandon consideration of the case before it for its own sake, That is, it should stop examining that case and then refer it to the International Court in accordance with the procedures stipulated in its work charters, because the national judiciary of these countries was either unable to bring these defendants to trial, or it was unwilling because the men in power are the ones accused of committing these crimes, which prevents them from being prosecuted and brought to justice in order to deter them and others, and to compensate for the harm that was caused to the victims as a result of committing these serious violations of the rules of international humanitarian law and human rights [liii]، The rulings issued by these courts also enjoy absolute validity before national courts in order to eliminate the shortcomings that domestic courts may face in prosecuting those with leadership and immunities (politicians, military) who have committed grave violations of human rights and international humanitarian law.

The second section is the impact of the Rwandan experience on the development of international criminal justice

The Rwanda Court considered that the official status of the accused, whether as a head of state or government, or a senior official, does not exempt him from criminal responsibility, nor is it a reason for reducing the sentence[liv] ، The president or commander is not only responsible for the act he himself commits, but he is also responsible for the criminal acts committed by others if he plans to commit those acts or orders them to be committed[lv].

In this context, Mr. Leite Kama, President of the Criminal Tribunal for Rwanda, stressed in an article commenting on the paramount importance of the two international criminal tribunals for the former Yugoslavia and Rwanda, which were established by the United Nations, saying: "The principle of direct personal criminal responsibility has become recognized today in international law, and accordingly, international courts can prosecute any individual on charges of violating international law, even if he commits these violations within the territory of his country."

It can be said that this principle has contributed to the prosecution of more than fifty political and military leaders who violated the principles of international humanitarian law, before the courts of Yugoslavia and Rwanda[lvi].

The International Criminal Tribunal for Rwanda has also influenced international law and criminal justice with several jurisprudence, especially the crime of genocide.

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It is worth noting that the crime of genocide in the temporary international criminal courts is derived from the 1948 Genocide Treaty. It was stipulated in the system of the former Yugoslavia court in Article 4, paragraph 02, while in the system of Rwanda, it was stipulated in Article 2 0, paragraph 2 0.

Perhaps the most important points that the Rwandan Tribunal came up with are:

The concept of group in the Akayesu case, where the first instance chamber of the Rwanda Court gave a definition of the national, ethnic, racial and religious group. The national group represents a group of people who share a legal relationship based on common citizenship, accompanied by an exchange of rights and duties. The ethnic group is a group whose members share a single language or culture. As for the ethnic group, it is that which is based on inherited physical signs, and is often identified by a geographical region, and independently of linguistic factors. Cultural, national or religious, and finally a religious group is one that is made up of members who share the same religion, belief or religious practices. It should be noted that most of the developments in genocide crimes began in the AKAYSU case and were followed by other developments in the MUSEMA case.

. There is another issue, which is the issue of criminal intent in the crime of genocide, and here the Court of Rwanda in the two MUSEMA cases. And RUTAGANDA confirmed in its ruling that, in fact, it is more appropriate to determine intent according to each case separately, and this is by extracting the material elements of proof related to the parties[lvii] ‘The trial of former Prime Minister John Kambada by the court also set a precedent that developed the concept of crimes against humanity and prominently codified international humanitarian law. Thus, we see that the establishment of the Rwanda Tribunal is an effective and significant contribution to the development of international humanitarian law and its application to non-international armed conflicts that have caused great international pressure to confront cases of genocide that require a prompt international judiciary with institutions specialized in performing its tasks in reducing human rights violations[lviii].

Finally, it should be said that the two Special Criminal Tribunals for the former Yugoslavia and Rwanda enacted laws and prosecuted the most heinous criminals, including generals and members of governments, and contributed to establishing lasting peace in regions torn by conflict[lix] .

Their experience also made some countries ready to accept the presence of an international judicial body authorized to intervene in criminal matters, especially matters that have an international impact because of their seriousness[lx].

Conclusion

The temporary international criminal tribunals constituted a pivotal stage in the development of international criminal justice, as they contributed to the establishment of many international legal principles, such as enshrining the principle of international responsibility for the individual, and strengthening the idea of non-impunity. The Nuremburg and Tokyo tribunals laid the theoretical and practical foundation for international criminal justice, despite their exceptional nature and criticisms, while the tribunals of the former Yugoslavia and Rwanda represented a qualitative development in international jurisprudence, whether in terms of expanding the scope of international crimes or enhancing Protection of victims in armed conflicts.

However, despite their role, these courts remained surrounded by legal and political restrictions that affected their effectiveness, especially in terms of selectivity in establishment, limited jurisdiction, and delayed justice, which raises serious questions about the extent of their ability to achieve comprehensive and sustainable international criminal justice.

Therefore, it can be said that the temporary international criminal courts, even if they did not fully achieve the desired justice, did pave the way for the establishment of a more developed international judicial system or contributed to establishing the principle of criminal accountability, which makes them an essential, albeit incomplete, step in the process of establishing international criminal justice.

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