INVESTIGATING CRIMINAL JUSTICE IN INTERNATIONAL CRIMINAL COURTS WITH A CASE STUDY OF THE TOKYO COURT AND CUSTOMARY INTERNATIONAL LAW

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Abstract
The Second World War is undoubtedly one of the darkest moments of the 20th century. This war, both in terms of the number of countries involved and in terms of the dead, wounded, displaced and the type of weapons used, as well as the extensive effects it left on all aspects of human social, political and cultural life, is a place for reflection in the contemporary history of the world. One of the innovative effects of this war in international law can be seen in the formation of international courts against the perpetrators of crimes during the war. The establishment of the Nuremberg and Tokyo tribunals, for the first time, invalidated the immunity of governments and rulers for committing some serious crimes during the war, which marked the beginning of a path that, despite the fifty-year hiatus of the Cold War, would bear fruit in two decades. Recently, the creation of temporary international courts such as the former Yugoslavia and Rwanda and finally the creation of the International Criminal Court brought its appearance to the fore.
Keywords: *Tokyo court, international criminal law, responsibility of heads of state, international law, customary international law.*

INTRODUCTION

Regardless of the flaws in the process of the Nuremberg Trials, and apart from the fact that only a small number of war criminals and perpetrators of violations of common values of humanity were tried in this court, from the legal point of view, the Nuremberg Trials are a turning point in the history of criminal law between is considered international; Because this court was able to change many international rules, including the immunity of heads of state, the principle of intra-border criminal law, the justification of the execution of superior orders, the lack of criminal responsibility in international law, in favor of the implementation of international justice. In such a way that the principles of the Nuremberg trials are not only in the court that was formed at the same time, that is, the Tokyo court to try international criminals in the Far East, but also in other international criminal courts, including the courts of the former Yugoslavia and Rwanda, and even the International Criminal Court. International criminal law was used. In other words, what we see today under the title of international criminal law is the continuation and development of the principles of the Nuremberg trials. After the nationalists close to military circles gained power in Japan in 1931, the colonial development policies of this country began. In September 1931, Japan invaded Manchuria and started encroaching on parts of China and officially declared war on China in 1937. After that, in addition to China, it expanded its operations to other countries such as Burma, Indonesia, Philippines, Malaysia, Hong Kong, Singapore, etc. In a short period of time, Japan dominated the Pacific Ocean and the East Indian Ocean. On December 7, 1941, during a daring operation, this country attacked the US port of Pearl Harbor in the Pacific Ocean and destroyed an important part of the American fleet. The official entry of America into World War II on December 7, 1941 was accompanied by the declaration of war on Japan. On August 6 and 9, 1945, the Japanese cities of Hiroshima and Nagasaki were targeted by American atomic bombs, and at the same time, Soviet forces entered Manchuria and the Japanese

were forced to surrender. After the surrender of Japan and the end of World War II, the 11 Allied countries decided to try a number of high-ranking Japanese officials for crimes committed in Southeast Asia between 1928 and 1945, which the court called a military tribunal. International became famous for Far East or Tokyo court.

In this part of the upcoming research, we will deal with the establishment of the International Criminal Court of the Far East, known as the Tokyo Court.

On November 30, 1941, the Prime Minister of Japan severely criticized America and England in a statement and said that these two governments have been enslaving and exploiting the people of Asia for a long time. The islands of the Indian and Pacific oceans have been owned without right, and there is no other way except their withdrawal from Asia and the islands by resorting to coercive forces, and Asia needs to cleanse itself bloody from the domination and influence of the Europeans and the Washington government. A few hours after the declaration of mutual war between America and Japan, England sided with America and Churchill stated that: ((In the war with Japan, England will side with America)). Three days later, on December 11, the American government declared war on Germany and Italy and entered the war completely on both fronts (Europe and North Africa - Far East) and in 1945, as Roosevelt predicted. He was able to emerge from the ruins of the war as a superpower, and the implementation of the Marshall Plan and other financial and economic programs turned his dollar into an international currency, which has been under severe pressure since 2008. It leaves behind a sensitivity. After declaring war, Roosevelt asked the American people in a radio message to prepare themselves to endure a long war and possibly many casualties, which will be accompanied by many difficulties and rations and public mobilization. After the surprise attack of Japan, Roosevelt gave a speech to the US Congress at Pearl Harbor and requested a formal declaration of war on Japan. This speech is known as "(the disgraceful speech)" which is mentioned below.

Yesterday's attack on the Hawaiian Islands has caused heavy losses to the US Navy and other military forces. Countless Americans have died. In addition, it has been reported that US ships between San Francisco and Honolulu have been attacked. Also, yesterday the Japanese government attacked Malaya. Last night, Japanese forces attacked Guam. Last night, Japanese forces attacked the Philippine Islands. Last night, Japanese forces attacked the Wake Islands. Today, the Japanese attacked Midway Island. So The Japanese have launched a massive surprise attack in the Pacific region. The events of yesterday are their language. The people of the United States have already made up their minds and know the meaning of life and security of our country very well. I, as Commander-in-Chief The ground and air forces have taken the necessary measures to defend themselves. Especially the attack that happened to us will always be remembered. It does not matter how long it will take to overcome this deliberate attack. The American people in their honesty towards a decisive victory will be taken. I believe, when I have defended this point, that we will not only defend ourselves to the utmost, but that such frauds will never endanger us again. I expressed the wishes of the Congress and the people. Hostilities have begun. We cannot turn a blind eye to the fact that our people, our land and our assets are in grave danger. Relying on our armed forces and the tenacity of our people, we will achieve a certain victory. So God's hand is with us. I request the Congress to declare a state of war between the United States and the Empire of Japan due to the unprovoked and cowardly attack by Japan on Sunday, December 7th. The Tokyo Tribunal for the Far East was the result of the Tokyo Charter and the declaration of the American General Douglas MacArthur, who was the supreme commander of the Allies in the Far East, and was issued on January 19, 1946. This Charter was prepared based on the London Charter and followed the procedure of the Nuremberg Trials, in addition, it was similar to the Nuremberg Trials regarding the main war criminals, but unlike the Nuremberg Trials, in which the prosecuting attorney from the four allied countries jointly issued the indictment. In the Tokyo court, indictments were issued through a lawyer selected by General MacArthur, but on behalf of eleven countries that signed the terms of Japan's surrender (Australia, Canada, China, France, England, India, Holland, New Zealand, Philippines, Soviet Union and America)) was done. Judges were also appointed by General MacArthur from among the candidates proposed by the aforementioned eleven governments. In addition, in implementing its charter, the court followed the reasoning of the Nuremberg Tribunal, which was announced in January 1946 and designed in the charter.

Independence of the Tokyo court in exercising jurisdiction

The crimes that were foreseen in the Nuremberg and Tokyo charters are somewhat different from the international crimes that currently exist. For example, in the Nuremberg Charter, genocide was not recognized as an independent crime, and there was a difference between war crimes and crimes against humanity. In this way, war crimes were committed in the occupied territories, while crimes against humanity were committed in Germany and annexed territories as part of the Third Reich. Although the Nuremberg Tribunal claimed that it used the provisions of customary international law in explaining and interpreting it's Charter, at that time, although it was possible that there were provisions of customary international law related to war crimes, but, of course, in There were no such regulations related to crimes against humanity or crimes against peace. The court also said that judges can also refer to domestic criminal laws to interpret and explain court regulations. For example, the judges of the above courts examined the issue of coercion in committing a crime by referring to their national laws, because the provisions of international law did not provide a solution in this field.

Also, the courts that implemented Law No. 10 of the German Control Council interpreted it by considering generally recognized criminal law. For example, the American prosecutor of the court referred to the laws of the United States in the Dakho Forced Camp case regarding participation and cooperation in the commission of a crime.

Eleven judges of the court were selected from among the names that were proposed by the signatory governments of Japan's capitulation condition, as well as the countries of India and the Philippines. In applying and interpreting its statute in January 1946, which was actually prepared from the statute of the Nuremberg Tribunal, the Tokyo Court considered following the same reasoning as the Nuremberg Tribunal. This court held its first session on May 3, 1946.

The accusations of Japan's war criminals were divided into three categories, which included: crimes against peace, which were related to the former prime minister of Japan and twenty-four other criminals, and the prosecution of other accused of war crimes and crimes against humanity. Handed over to the military courts of other countries.

The aforementioned court, like the New York court, referred to the Brian Kellogg Treaty and concluded that according to this treaty resorting to war as a tool of national policy is illegitimate and causes the criminal responsibility of those who prepared and prosecuted it. Finally, the Tokyo court issued its verdict on November 4, 1948.

As mentioned, the statute of the Tokyo court, like the statute of the Nuremberg court, accepted the same classification of three types of crimes against peace and the rules of war and crimes against humanity, and the prosecutor's office did not consider conspiracy as the fourth type of crimes. The defendants in Tokyo were all real persons, but it should be noted that the memory of (criminal organizations) still had a place in the mind. Because the court could try the war criminals. Whether as a natural person or as a member of an organization.

Belonging to another organization was not an independent aspect of the crime and had become a criminal enterprise, and for this reason, the court verdict could not separate the conspiracy from the main crime. The trial lasted from April 2 to November 12. None of the 25 defendants were acquitted. 7 people were sentenced to death. 16 to life imprisonment and two to temporary imprisonment. Those sentenced to death were hanged on December 23, 1948.

The basis for the formation of this court goes back to the Cairo Declaration, dated December 1, 1943. In this announcement, the United States, Great Britain and China announced their determination to prosecute Japan for its aggression. This goal was announced again in the Potsdam Declaration dated July 26, 1945.

On January 19, 1946, General Douglas MacArthur, Supreme Allied Commander, issued the Tokyo Charter as an executive order. Thus, unlike the Nuremberg Charter, which was jointly issued by the Allies, the Tokyo Charter was solely the achievement of the Americans, and the American allies were consulted only after the issuance of the Charter. The Attorney General of the Court was also an American. The role of Americans in this court was so prominent that the Dutch judge of this court called it "(American show)."

As mentioned, the Tokyo Charter was almost a complete copy of the Statute of the International

Criminal Court of Nuremberg, with the exception that no criminal organizations were mentioned in the crime against humanity section. Another interesting point about this court was that the emperor of Japan was not tried. The reason given for not prosecuting the Emperor of Japan was his lack of active support for the war and also the important role he had played in ending the war. But in fact, MacArthur recognized that if the emperor of Japan is tried, the military government will come to work in Japan, guerrilla war will be started in Japan and the balance of power will be lost.

The trials of the Tokyo court lasted almost two and a half years, and the reason for this Slowness was the constant need to translate conversations, the need to understand the politics in Japan, and the procedural problems that arose from the differences inherent in the continental European, Anglo-Saxon, and Japanese legal systems. .

The defendants were not allowed to wear their old uniforms and were forced to wear American forced labor uniforms. In addition, all the defendants were not tried in this court. Out of a total of 250 Japanese officials who were at the disposal of the Allies, only 28 people were tried and these people were chosen very carefully and based on the criteria that they were convicted of crimes against peace, crimes against humanity and war crimes and represented various branches of the Japanese government.

The judges were also chosen by MacArthur from among the candidates proposed by the eleven mentioned countries. On April 29, 1946, an indictment was issued against 28 Japanese, containing 55 counts and organized into three parts:

First part (paragraphs 1 to 36): Crimes against peace

The second part (paragraphs 37 to 52): crimes related to committing intentional murder

The third part ((Paragraphs 53 to 55)): Other treaty war crimes and crimes against humanity.

Among the defendants, there were four prime ministers, four ministers of foreign affairs, five ministers of war, and a number of other ordinary people. But, due to political reasons, no indictment was issued against the first person of Japan, the emperor, Hirohito. The court started working in Tokyo on May 3, 1946 and issued its verdict on November 4, 1948. During this period, the testimony of 419 witnesses was heard and 779 written testimonies were examined. The defendants were sentenced as follows:

7people were sentenced to death, 16 people were sentenced to life imprisonment, one person was sentenced to 20 years imprisonment and another to 7 years imprisonment, while three people were acquitted.

In the comparison between the Nuremberg and Tokyo proceedings and judgments, the procedure of the Nuremberg court is usually considered fairer than the Tokyo court. Because the Tokyo court was completely under the influence of General MacArthur and his political considerations. However, both courts have been subjected to similar criticisms due to the retroactive nature of crimes against peace and crimes against humanity, and both have rejected this objection based on similar arguments. Both courts have accepted and emphasized personal criminal responsibility and rejected exemptions and defenses such as obeying the orders of superiors. It seems necessary to mention here that due to the fact that Germany was jointly occupied by the Allies, they formed a control council to manage its affairs. As mentioned earlier in this regard, according to the tenth law of this council approved on December 20, 1945 (which, contrary to the London and Tokyo charters, was not considered an international document, but based on the legislative power of the Allies in occupied Germany, following unconditional surrender and The condition of this country was imposed and was applicable only in Germany), military tribunals by each of the Allied countries to try war criminals (in addition to the Nuremberg and Tokyo trials)) was formed. The countries of America, England, France, Soviet Union, Australia, Canada, Netherlands, Norway, Denmark, China, as well as Poland took action and issued heavy sentences against many defendants.

In addition to the 10th Law of the Allied Control Council, which was applicable in Germany, after the Second World War, various countries took action in their countries to prosecute and try war criminals, based on domestic laws. In Germany, between 1947 and 1990, 60,000 cases of this type were reported. Among the important cases prosecuted outside Germany, the Eichmann and Demjanjuk cases in Israel and Barbie in France can be mentioned. The last mentioned person was a German officer and head of

the Gestapo in the Lyon region of France during the occupation of this country by Germany during World War II. He was tried in the early eighties.

In connection with the Eichmann case, it should be acknowledged that he was the SS commander in the service of the SD organization, the head of the agency responsible for the Jewish issue. With this important position, he had an important and effective contribution in the systematic deportation and massacre of Jewish people, of which he himself admitted that five million of them were killed by his direct order. This figure cannot be verified, but it is certain that the number was more than this. Because he was a fugitive during Germany's defeat, the national courts working in Germany were fully competent to deal with his charges. He took refuge in Argentina and lived there under a fake name. Israeli secret agents found out his identity and handed him over to the Israeli government for trial. Israel's trial was based on ethics, but his jurisdiction was not very clear from the legal point of view, and it created a problem in terms of legal jurisdiction and judicial jurisdiction.

In connection with the jurisdiction, it should be said that on the assumption that Israel's legislative jurisdiction is fixed, considering the specific circumstances of the detention of the accused, Israel's jurisdiction could be discussed and investigated. The illegality of Eichmann's kidnapping from the point of view of general international law raises an issue that cannot be discussed in this topic. Since then, they have not examined this issue from a legal point of view. Israel relates its defense to the practical side of the case.

This means that he claims that the kidnappers did this on their own initiative and the government was not responsible for this. A problem arises from the point of view of Israel's internal law, and that is whether Israeli judges could accept a prosecution whose first step was associated with breaking the law? There are countries that try the rejected accused when the extradition rules have been implemented as they should be.

Shouldn't it be concluded that the trial of the accused is permissible when he is brought before the court according to the law? The answer is negative. Because these countries ((the United States of America, whose judicial practice is fully documented by Israeli judges)) have no work except in the case of the extradition of the criminal, with the legal validity of the means with which the accused was brought to their presence.

The reason is that the judge must consider and pay attention to the regularity of the proceedings. In the case of extradition, the procedural procedure starts from the moment the request for extradition is made, and other than this case, the jurisdiction of the court starts from the time the case comes to the court. What happened before, especially what happened abroad, has nothing to do with the court. The Court of the Interior of Israel has answered that "it has been proven in customary international law that kidnapping a person does not affect the court's jurisdiction in terms of his trial, and from the moment this person comes within the court's jurisdiction, he has the right to be tried by the court") This reference to the rule of customary international law is a strange and interesting fallacy to confirm the finding of the accused in the jurisdiction of the domestic court.

This doubt about the application of domestic or international law can be seen throughout the case, and this is an important issue brought up by this case because the court accepted it. Regarding the implementation of Israel's national law in this regard, it should be said that in 1936, when Palestine was under the British protectorate, the criminal law was approved, the major part of which, like most of the laws of the protectorate countries, was adopted as Israel's law when declaring Israel's independence in 1948. It remained and this part remained until 1965, and in that year, a new criminal law replaced it. The crimes foreseen in this law could also include Eichmann's criminal acts. That is, the international crimes of the perpetrators of these crimes, if there is no other law, are subject to the definition of general crimes.

The general criminal law should be combined with a special law approved in 1950, which was about the trial of Nazis and their collaborators. This special law had established rules that went beyond the general criminal law, because on the one hand, it was applicable to the specific crimes referred to in this law, such as crimes against the Jewish people, war crimes, crimes against humanity, and affiliation with an enemy organization. On the other hand, about public law crimes, which were explicitly mentioned in it. The most important ruling of these extreme regulations, whose purpose is to provide

severe punishment, is the ruling that determines the field of implementation of these exceptional rights. But in the case of specific crimes, only the nature of these crimes is to be considered and other aspects are not taken into account. In the case of crimes that are adapted from public law, in order for this law to be applicable to them, it is only enough that these crimes took place in the enemy's territory and during the establishment of the Nazi regime.

As mentioned, the domestic law of Israel provides a sufficient basis for the prosecution, and the charge was not covered by any law except the 1950 law and the 1936 criminal law of Israel. The defendant's defense was criticizing the law; one was from the field of its implementation, the other from the point of retrogression (looking into the past) and the third criticism of Eichmann was from the severity of the law. In relation to the field of law enforcement, the inclusion of Israel's legislative jurisdiction over crimes committed outside its territory by people other than its nationals and towards people other than its citizens is an extreme inclusion.

The emergence of Israel as an independent state was after the Nazi regime. In the era when the aforementioned crimes were committed, the Israeli government had no nationals. It is not without precedent that the jurisdiction of the legislator is based only on the specific nature of the crimes, and that is the real jurisdiction, but this jurisdiction is only in the case of a special interest that the government has in pursuing crimes that threaten its vital interests (such as sabotage against security country)) is not justified. Jurisdiction must have reliance and this point of reliance cannot be found because when the crimes were committed, they could not have harmed the non-existent state of Israel in any way.

But in connection with retrogression or being an observer of the past, it should be said that it was not possible to prosecute the accused; Because the 1950 law had either criminalized some of the behaviors, or had allowed behaviors to be subject to Israeli law, which were not subject to the conditions of committing public law crimes, but this law had been approved after those criminal behaviors.

In connection with the severity or violence of the law, which was the third criticism of Eichmann, it should be said that this law did not recognize the actions of the superiors, the actions of the government. However, domestic criminal law usually recognizes Muscat punishment.

In connection with the verdict, it should be said that Eichmann, who was sentenced to death in the first stage, in the court of Beit al-Maqdis province and as a result of an appeal in the Supreme Court, was hanged. This conviction was sufficiently justified in terms of the provisions of Israeli law, which the Israeli judge should only implement, and not pay attention to the objections that are made to him; because a judge is a judge according to the law, not according to the legality of his law. However, the first answer of the Israeli judges is: ((The court must follow the law approved by the legislature)) and this reason was enough to reject the defense lawyer's objection.

But if this reason was enough, the question arises, why do they bring reasons from international law to reject the objection? Invoking the customary nature of international law and the behavior and history of Nuremberg, to answer the formality of the law or to justify the non-acceptance of the government's action or the command of superiors, as the reason for the punishment, as well as invoking the unity of the Jewish people and the Jewish state and the general aspect of being punishable Eichmann's existence was an answer to the problem of the extreme expansion of the jurisdiction of Israel's law.

This last reference is very weak. The London Agreement had given jurisdiction to an international court and at the same time specified the normal jurisdiction of domestic laws, and the treaty related to genocide, which was a document of the court, basically had nothing to do with international jurisdiction. If this is the purpose of justifying the Israeli law, why is it not permissible to refer to the ruling of Lotus, which says: "(Each government is free to choose the principle of jurisdiction of its criminal law as it deems better and more effective)). This silence is meaningful. By referring to the rule derived from the Lotus ruling, Israeli judges justified the arbitrary nature of their law, but their purpose was to prove this competence with substantive evidence.

By measuring the defense attorney's attack on Israel's law, these judges have answered this attack in favor of their law, but this argument was for a trial other than Eichman's trial. Eichmann's trial relied

enough on the texts of Israeli domestic law that were documented in the indictment, and reference to international law was an additional reason. This argument should be considered a political argument or an argument based on legal opinions. Is it not natural to get inspiration from the solutions that have been the source of imitating these rights for new legal interpretation?

Paul Touvier's trial was in the early seventies. He was one of the local authorities of France and had collaborated with the German occupiers during World War II in the torture of his countrymen. It should be mentioned here that the new French criminal law approved on July 22, 1992, has assigned a special place to crimes against humanity and divided them into two categories, one is genocide or mass killing and the other is crimes against humanity. In other words, genocide is considered one of the crimes against humanity.

In 1989, Canada tried the first defendant under the 1987 Act, which introduced crimes against humanity into Canadian criminal law. This lawsuit was against a person named Finta, who was the commander of the Hungarian Gendarmerie and was accused of participating in the Nazi extermination policy by helping to transport 6,178 Jews to Auschwitz and other camps in June 1944. Although this lawsuit led to the defendant's acquittal, the court confirmed the existence of crimes against humanity in international law before 1945, which would remove the retroactive objection of the provisions of the London and Tokyo Charters.

The only lawsuit filed against the Allies from World War II was brought by some Japanese citizens against the United States for the use of atomic bombs in Hiroshima and Nagasaki, which resulted in the deaths and injuries of more than 225,000 innocent civilians. However, as mentioned before, the Japanese court rejected this lawsuit the aforementioned remained without conviction. Likewise, during the Second World War, many war crimes were attributed to the Italian occupation by the former Yugoslavia and Greece, including the killing of civilians and mistreatment of prisoners. Libya has made similar claims against Italy during the occupation. The Moscow Declaration of 1943 allowed these countries to pursue criminals, and Italy's capitulation document obliged this country to extradite its war criminals. But in practice, Italy did not respond to the requests for the extradition of the accused, and America and England agreed with Italy's position.

The subject and personal jurisdiction of the Tokyo court is as follows:

A) Subject Jurisdiction: According to Article 5 of the Tokyo Charter, the jurisdiction of the court includes the following crimes, and the perpetrators are personally responsible for their actions, and these crimes include: crimes against peace, conventional war crimes, and crimes against humanity.

b) Personal Jurisdiction: The Tokyo court is responsible for punishing and convicting people who are personally or members of an organization accused of committing crimes against humanity and were involved in some way.

As stated, the result of the trials of the International Military Court in Tokyo (Far East) on April 29, 1946, an indictment was issued against 28 Japanese, which contained 55 crimes and was organized in three parts. In this way, it should be said that the suspects of Japanese war crimes were classified as grade (A), (B) and (C) suspects. The Tokyo court prosecuted only the suspects ((A)), i.e. those accused of crimes against peace. Among the 28 defendants of this court, there were four prime ministers, one of whom was Hideki Tojo, four ministers of foreign affairs, five ministers of war, and a number of others. Of course, due to political reasons, an indictment was not issued against the emperor (Hirohito).

Criminal liability of natural and legal persons in the Tokyo court

On April 29, 1946, an indictment was issued against 28 Japanese defendants, which was set up in 55 items and in three parts. The first part (paragraphs 1 to 36): crimes against peace, the second part (paragraphs 37 to 52): intentional murder, the third part (paragraphs 53 to 55): other treaty war crimes and crimes against humanity. Suspects of Japanese war crimes were classified as (A) or (B) or (C) suspects. The Tokyo court prosecuted and tried only the suspects ((a)), i.e. those accused of crimes against peace. Among the 28 defendants of this court, there were four prime ministers (one of whom was Hideki Tojo), four ministers of foreign affairs, five ministers of war and a number of other people. Due to political reasons, no indictment was issued against the Emperor Hirohito. In the Tokyo court,

the testimony of 419 witnesses was heard and 779 written testimonies were examined. Among the 28 defendants, 7 were sentenced to death, 16 to life imprisonment, one to 20 years and one to 7 years. Also, two of the defendants died during the trial and another defendant was declared mentally unfit for trial. None of the defendants were acquitted in the Tokyo court.

Pui, the last emperor of China who was captured by the Soviet Union after the occupation of Manchuria by the Red Army, was brought to court and testified against the Imperial Japanese Army.

The legal basis of the court was based on the charter of the International Military Court of the Far East. The jurisdiction of this court was derived from the Tokyo Charter, which was attached to the (General MacArthur) Declaration and was prepared based on the London Charter. The reason for the formation of this court was the countless crimes that the Japanese forces committed during more than a decade of occupation and imposing war on the countries of Southeast Asia, especially China, including the Nanjing Massacre in which 300 people were killed. One thousand people were killed and 20 thousand women were raped, as well as the prevalence of drug use among Chinese people and the use of Chinese nationals for biological experiments and the forced deportation of thousands of Chinese nationals to forced labor camps in Japan.

More than 100 defense lawyers, three quarters of whom were Japanese and one quarter were Americans in addition to their assistants, represented the defendants in the court. ((Crime against humanity)) is one of the crimes that did not have a specific title and history in international law before the establishment of the Nuremberg and Tokyo courts.

According to Article 5 of the Statute of the Tokyo Military Court, these crimes are: (Destruction, enslavement, deportation or any other inhuman act committed against civilians, before or during war, or torturing and tormenting people for political, racial and Religion) ((Crimes against Peace)), according to Article 5 of the Statute of the Tokyo Military Court, are: ((Managing or starting and preparing or continuing a war of aggression or a war that is contrary to treaties and agreements or international agreements or participation in A collective plan or conspiracy to carry out one of the aforementioned acts.

((war crimes)) due to paragraph b of article 5 of the Tokyo Statute include: ((violation of the laws and customs of war, murder and deportation of civilians from the occupied areas and mistreatment of them for the purpose of forced labor or for any other purpose, murder of prisoners) War and misbehaving with them, execution of hostages, looting of public or private property and destruction without cause of cities or villages or any kind of destruction and destruction that is not based on the necessity of war)) In this way, it should be said that the suspects of Japanese war crimes were classified as suspects ((A)), ((B)) or ((C)). The Tokyo court prosecuted only the suspects ((A)), i.e. those accused of crimes against peace. Of course, according to the court's compromise, there was no prosecution or indictment against the person Emperor Hirohito, as mentioned, was not extradited and the Japanese royal family was generally recognized as immune from prosecution.

As mentioned in the previous lines, the Tokyo proceedings lasted for more than two and a half years. In the court, the words of 419 witnesses were heard and 4336 documents were displayed, which included the affidavits of 799 people. And finally, on November 4, 1948, he issued his vote. The court took six months to come to a decision and publish its 1,781-page draft decision. The court decision was based on the majority of the judges. Disagreement between judges from different countries caused five of the 11 judges of the court to publish their separate verdict outside the court on the day the verdict was read.

According to the court verdict, some criminals were sentenced to death and some were sentenced to life imprisonment or long-term imprisonment. According to the statute of the Tokyo court ((Article 16)), the judge has the right to impose the death penalty or any punishment he deems just. Among the 28 defendants, seven were sentenced to death, 16 to life imprisonment, one to 20 years and one to seven years. Also, two Japanese defendants died during the trial and one defendant was declared mentally unfit for trial. This was despite the fact that none of the defendants were acquitted in the Tokyo court.

In the courts that were held in parallel with the Tokyo court in other countries, according to the Japanese tabulation, 5,700 people were found guilty of crimes of unconventional warfare and war

against humanity, of which 984 were sentenced to death and 475 were sentenced to life imprisonment. And 2944 people were sentenced to limited and short-term imprisonment. The number of those sentenced to death by the courts established in the countries were: Holland with 236 people, Australia with 153 people, China with 149 people, America with 140 people, France with 26 people and the Philippines with 17 people. In addition to this number, the Soviet Union and Communist China had also established courts for Japanese war criminals. During the trial process, there were criticisms from the defendants, their lawyers and some jurists, some of which will be mentioned below.

Criminal liability of heads of state in the Tokyo court

The International Military Tribunal for the Far East (Tokyo) was established following the surrender of Japan in World War II and based on the London Treaty of August 8, 1945. This court held its first session on May 3, 1946. The accusations of Japanese war criminals were divided into three categories: crimes against peace, war crimes and crimes against humanity. The Tokyo court examined only the first category of charges, i.e. crimes against peace, which were related to the former prime minister of Japan and twenty-four other criminals, and left the prosecution of other accused of war crimes and crimes against humanity to the military courts of other countries. Did the said court, like the Nuremberg court, referred to the Brian Kellogg Treaty and concluded that according to this treaty resorting to war as a tool of national policy is illegitimate and causes the criminal responsibility of those who prepared and prosecuted it. The Tokyo court issued its verdict on November 4, 1948.

The interesting point and common point between the Nuremberg and Tokyo courts and the court dealing with the accusations of Wilhelm II was that they were formed after the end of the war by the victors to try the accused and were imposed on the survivors of the war. These courts were established based on the belief that war is not an international necessity and that the principles of justice and justice are applicable to governments and their leaders. The most important jurisdiction of these courts, which was specified in the Nuremberg and Tokyo statutes, was the trial and punishment of people who were accused of committing crimes in war and emphasized the responsibility of individuals in international law. The Nuremberg and Tokyo International Courts also showed that politicians and country leaders will not be exempt from punishment if they violate international peace and security and commit international crimes.

-Immunity of heads of state and military courts after World Wars I and II:

As mentioned in detail in the previous pages, the Tokyo court, like the Nuremberg court, referred to the Brian Kellogg Treaty and concluded that according to this treaty resorting to war as a tool of national policy is illegitimate and causes criminal liability for those who prepared it and have followed One of the criticisms of the Tokyo court was that it did not consider the legality of the crime. Because until then, the concepts of crime against humanity and criminal responsibility for committing crimes against peace had not been recognized in international law, but what is important in the meantime is the subsequent support of international principles recognized by the Charter. Nuremberg Court and the judgment issued by it, which was unanimously adopted in the form of Resolution (1) of December 95, 1946 of the United Nations General Assembly. Shortly after, the aforementioned principles were approved by the International Law Commission and accepted by the United Nations General Assembly on December 12, 1950. These principles are as follows:

Principle 1) The fact that, from the point of view of domestic law, an act that is considered a crime according to international law does not have a criminal description, it will not absolve the perpetrator of such crimes from the responsibility he has according to international law.

Chapter Three, the fact that a person has committed international crimes as a head of government or a temporary official will not be a reason for his lack of responsibility or a reduction in his punishment.

The fourth principle) the fact that a person has committed crimes while carrying out the orders of his government or a superior authority, does not absolve him of his responsibility according to international law.

Principle 5) A person who is accused of committing a crime according to international law has the right to a fair trial, both in terms of the facts ((method of verification)) and in terms of ((method of application and interpretation) of the law.

Principle 6) the following crimes are punishable as international crimes:

A) Crimes against peace
b) War crimes
c) Crimes against humanity.
Principle 7) Cooperation and participation in committing crimes against peace, war crimes, or crimes against humanity are considered international crimes.
The question that is raised about the Nuremberg and Tokyo courts is whether these two courts were really international courts. In response to this question, there are two hypotheses:
1 -These courts were national courts or at most courts that were formed by allied countries, and what they lacked to be international was the agreement of the governments of Japan and Germany, which had obligations placed on them.
2 -These courts were international courts; because these courts were established by a treaty that the conquering governments signed with two sides, so to speak. On its own behalf and as a proxy on behalf of the defeated countries or the victorious countries should be recognized as an international government that establishes an international institution in the name of the international community that it represents.
There are reasons to prove this last theory. Including the fact that the United Nations, as the embodiment of the international community, approved the Nuremberg principles as the principles of international law.
The point to consider and the common point between the Nuremberg and Tokyo courts and of course the court dealing with the accusations of Wilhelm II was that they were formed after the end of the war by the victors to try the accused and imposed on the survivors of the war. As mentioned, this the courts were founded on the belief that war is not a necessity of international life and that the principles of justice and justice are applicable to governments and their leaders. The most important jurisdiction of these courts, which were specified in the Nuremberg and Tokyo Statutes, was the trial and punishment of people who were accused of committing crimes in war and emphasized the responsibility of individuals in international law.
The Nuremberg and Tokyo International Courts also showed that politicians and country leaders will not be released from punishment if they violate international peace and security and commit international crimes.
Suspicion of the criminalization of the defendants' actions during the war in the Tokyo court
Some of the criticisms raised included legal objections raised by the defense lawyers of the defendants during the proceedings. They argued that the court can never be freed from the fundamental doubt about the legitimacy, fairness and impartiality of the court. This was more apparent because the United States had provided financial resources and staff for the court, and also represented the country as the chief prosecutor. It was also argued that the Nuremberg and Tokyo Charters were approved after international crimes were committed, and this is contrary to the non-retroactivity of punishments.
In response to the above criticism, the argument of the allies was that the scope of illegal acts and also the crimes of these defendants are so wide that it cannot be accepted that even they themselves were unaware of the possible consequences of their actions. The drafters of the Nuremberg and Tokyo charters believed that international law, like the reflective legal system, is one of the moral judgments of the world community. Therefore, sometimes, the international judge can make a decision before the legislator (that is the states) about the enforcement guarantee of a legal rule.
Another answer that has been given to the above criticisms was that there is an old and well-established custom in international law that the head of state or government whose country is occupied and the crime took place in his territory, after the victory over the enemy, they has tried Also, there is another definite custom for establishing military and civilian courts to deal with crimes and crimes committed by their own nationals or the enemy in relation to the laws of war, by each of the governments at war, both during and after the war. It is because this matter was also confirmed and emphasized by the Tokyo court.
Lawyers also challenged that individual criminal responsibility for crimes against peace and, more specifically, the concepts of (conspiracy) and (war of aggression) and (crimes against humanity) were

defined at the time of the formation of the Tokyo Tribunal. They were not yet accepted as concepts in international law. In addition, the lawyers insisted that there is no basis for the responsibility of individuals for the actions of governments in international law. They objected to another concept called negative criminality, which means the failure of responsible people to prevent criminal actions and war crimes by subordinates or to punish criminals. Some of the defendants and critics also believed that the orders issued regarding the committed crimes were legal according to the internal laws of the country of the defendants.

It was for these reasons that Judge Radhabinod Pal, the Indian judge of the Tokyo court, acquitted all the defendants on the grounds that there was no individual criminal responsibility under international law.

In response to this criticism, the Tokyo court cited the 1928 treaty concluded between 63 countries to reject the objection of the defense lawyers who stated that a war of aggression is not an international crime under international law, and in completing its argument He referred to other documents such as the 1923 mutual assistance agreement plan, the 1924 Geneva protocol, the September 24, 1924 statement of the General Assembly of the League of Nations and some other documents. Also, the Nuremberg Tribunal referred to the Hague Conventions regarding war crimes. And according to the accepted theory of the supremacy of international law over domestic law, it should be said that domestic law is enforceable as long as it does not conflict with international law, and in case of conflict between these two laws, it must be acted upon according to international law.

Waiver of other violations of international law at the Tokyo court

On the other hand, some lawyers argued that the allied powers also violated international law during the war, including the atomic bombing of Japan by the United States of America, which should have been tried in court. Radhabinod Pal, the Indian judge of the court, argued that the exclusion of Western colonialists and the use of the atomic bomb by the United States from the list of crimes, the presence of judges from conquering nations, did not cause the court to fail to provide anything other than an opportunity for revenge on the conquerors.

Another objection raised was that the composition of this court was unfair and in fact, the losers of the war were tried by the winners; therefore, this court did not have the feature of being neutral. In fact, critics believed that the aforementioned courts should have been expanded and, for example, according to this court, Japan did not have the right to accuse the United States in the Tokyo court of using atomic bombs in Hiroshima and Nagasaki, or that the Japanese government did not He was able to accuse the Soviet Union of violating the neutrality agreement of April 13, 1941 in the aforementioned court. Of course, a solid legal answer was not provided in this connection; It was only mentioned that although the London Charter was first drawn up and signed by four dominant governments, 19 other governments joined this court after that and it has become universal and international; But there was no proper justification for the fact that the court was composed of appointed judges of four dominant countries. Of course, it should be noted that the presence of 19 countries gave the Tokyo court more international prestige than the Nuremberg court.

Similarities between the Tokyo court and the Nuremberg court

The Tokyo court compared to the Nuremberg court that was established had similarities that are mentioned below:

1-Tokyo Court in implementing his charter, he followed the reasoning of the Nuremberg Court which was announced in January 1946 and designed in the Nuremberg Charter.

2 -Both courts have accepted personal criminal responsibility and rejected defenses such as the immunity of government officials.

3- Both Tokyo and Nuremberg courts recognized crimes against peace, war crimes and crimes against humanity. Following the model used in the Nuremberg trials, the Allies defined three types of crimes. Charges of type (a) means crimes against peace, against high-ranking leaders who were involved in planning and directing the war. The new accusations ((b)) and ((c)) that were attributed to Japanese nationals of any degree included, ((conventional war crimes)) and ((crimes against humanity))

The differences between the Tokyo court and the Nuremberg court

Although the Tokyo court is a continuation of the Nuremberg court and the main purpose of both courts was to deal with the crimes committed in World War II; but there are differences between these two courts that are worth mentioning. According to the names of these two courts, it is clear that one was established to try Nazi leaders and the other to try and punish the Japanese. **According to the studies conducted in this regard, the two military courts of Nuremberg and Tokyo had differences which are mentioned below:**

1 -The defendants of the Nuremberg trial were mostly of German descent, and in fact the main criminals were formed on the European front, but Japanese criminals were tried in the Tokyo court.

2 -In the Tokyo court, in contrast to the Nuremberg trial (in which the prosecution lawyers from the four allied countries jointly issued the indictments), the indictments were issued through a prosecution team chosen by General MacArthur. But it was done on behalf of 11 countries (that is, Australia, Canada, China, France, England, India, Netherlands, New Zealand, Philippines, Soviet Union, and the United States of America).

3 -The jurisdiction of the Nuremberg Tribunal was limited to three areas: 1) crimes against peace; 2) war crimes; 3) Crimes against humanity, while the Tokyo court left the trial of the suspects of ((conventional war)) and ((crimes against humanity)) to the military courts of other countries. The trial of other Japanese war defendants was also held in 10 regions of China and the countries of the Netherlands, Great Britain, Australia, the United States of America, France, the Philippines, and the Soviet Union.

4 -The Tokyo court was more international compared to the Nuremberg court, whose judges were appointed from four allied countries and major world powers (United States of America, England, France, and the Soviet Union). Because its judges consisted of judges from 11 countries, including India, China and the Philippines. On the other hand, some have argued that the Tokyo trial had an American base, because unlike the Nuremberg trial, there was only one prosecution team led by the American (Joseph Keenan). Although the members of the court, representatives of 11 different countries, were unanimous.

5 -The length of the Nuremberg court proceedings was about one year, but the Tokyo court proceedings lasted about two years.

6 -The Nuremberg court had 24 defendants, but the Tokyo court had 28 defendants, and 3 defendants were acquitted in the Nuremberg court, but no defendant was acquitted in the Tokyo court.

7 -In the comparison between the proceedings and judgments of the Nuremberg and Tokyo courts, they usually consider the procedure of the Nuremberg court to be much fairer than the Tokyo court; Of course, both courts have accepted personal criminal responsibility and rejected exemptions and defenses, and also recognized the crime against humanity.

8 -The first objection brought to the Tokyo court was that in this court, like the Nuremberg court, the defendants are tried and punished according to regulations that did not exist at the time of the crime. It has always been criticized that crimes against humanity and individual criminal responsibility for crimes against peace were not accepted concepts in international law at the time of the establishment of the Nuremberg and Tokyo tribunals, and it was also argued that the Nuremberg and Tokyo Charters after committing crimes have been approved internationally and this is contrary to the principle of legality of crime and punishment.

Conclusion:

After the establishment of the Nuremberg and Tokyo courts after the end of the Second World War, due to the dominance of the bipolar atmosphere on international relations, despite the fact that we witnessed the occurrence of crimes and crimes against peace and humanity in all corners of the world, but a court between The International Criminal Court was not formed to punish the perpetrators and perpetrators, but this changed with the collapse of the Eastern Bloc and temporary international criminal courts such as the International Criminal Court of the former Yugoslavia and Rwanda were formed to try war criminals in these two countries.

The comprehensive and global wave that was formed in the support of human rights and humanitarianism in the modern environment of international law, showed the need to form a permanent international criminal court to deal with such crimes. The statute of this court was approved by representatives of 120 governments in Rome in July 1998, and on July 1, 2002, it became an independent and global entity with its approval by 60 countries.

Undoubtedly, the establishment of the International Criminal Court was the legacy of the Tokyo and Nuremberg trials in the trial of World War II criminals. Of course, the International Criminal Court has similarities and differences with the Nuremberg and Tokyo courts, which will be mentioned below.

Existing similarities:

1- The jurisdiction of the issues handled by the Tokyo Court and the International Criminal Court is similar. This means that crimes such as crimes against humanity, crimes against peace and war crimes are dealt with in both courts.

2- In both courts, the principle of individual responsibility has been accepted and they have ended the immunity of governments in committing crimes.

Available differences:

These two courts have different formation bases. The Tokyo Court was formed based on the order of General MacArthur, Supreme Commander of the Allied Forces, but the International Criminal Court was formed based on an international treaty that was ratified by more than 100 countries.

The range of issues dealt with in the International Criminal Court is more than that of the Tokyo Court. According to Articles 6, 7, and 8 of the Rome Statute, the International Criminal Court can investigate and issue judgments regarding the crimes of mass murder, crimes against humanity, and war crimes.

Crimes such as rape, terrorism and drugs have been agreed upon by the General Assembly of the Court.

Another difference between these two courts is that the International Criminal Court has permanent jurisdiction. And this is while the Tokyo court was temporary and was formed to try high-ranking Japanese officials and officers who committed crimes before and during World War II, and its mission ended in 1948. Did The Tokyo court was established after the crime and surrender of the Japanese government. This is despite the fact that the International Criminal Court was established before the crime took place, and the criticisms that were leveled at the Tokyo Court regarding the principle of the legality of the crime at the time of the crime, are not directed at this court.

Unlike the Tokyo court, the International Criminal Court is not a war victors' court, but mainly tries those who even had the upper hand in armed conflicts.

The jurisdiction of the International Criminal Court is supplementary, which means that the main responsibility in prosecuting and dealing with the crime is with the national court, and if these courts are unwilling or unable to fulfill their duties, the Court will enter he does. At the same time, in the Tokyo court, Fatih Rasa organized a court to deal with the crimes.

According to Article 16 of the Tokyo International Military Court Charter, there was also the death penalty. And based on this, a number of defendants were sentenced to death; but there is no death penalty in the International Criminal Court.

Another difference between these two courts is that the International Criminal Court does not have a military force to enforce its judgments, and this is the responsibility of the countries that have ratified the statute of the court or, in some cases, the United Nations Security Council, to guarantee implementation. And this is while in the Tokyo court, the victors of the war took over the execution of the judgments issued by the court.

((War crime)) due to clause (b) of Article 5 of the Tokyo Statute are:

Violating the laws and customs of war, killing and deporting civilians from occupied areas and mistreating them for the purpose of forced labor or for any other purpose, killing prisoners of war and mistreating them, executing hostages, looting public property or Privatization and destruction without cause of cities or villages or any type of destruction and destruction that is not based on the necessity of war.

In this way, it should be acknowledged that the Japanese war crime suspects were classified as (A), (B) or (C) suspects. The Tokyo court also prosecuted only the suspects ((a)), i.e. those accused of

crimes against peace.

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