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The Protection of Human Rights in Temporary International Criminal Justice

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Abstract

This study examines the protection of human rights within the framework of temporary international criminal justice, focusing on the experience of ad hoc tribunals established in response to serious violations of international humanitarian law. It highlights the legal foundations, jurisdictional scope, and procedural guarantees of these courts, particularly the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda. By analyzing their contributions to criminal accountability, the research underscores how these tribunals advanced the principles of justice, deterrence, and the enforcement of international human rights norms. Despite criticism regarding selectivity, political influence, and dependence on state cooperation, the tribunals played a decisive role in consolidating the notion of individual criminal responsibility for grave crimes such as genocide, crimes against humanity, and war crimes,and for more detail we will rely on the analytical and descriptive method by presenting the development of international criminal justice and its impact on promoting and protecting human rights.

Keywords: human rights, temporary international criminal justice, ad hoc tribunals, accountability, international humanitarian law.

الملخص

تدرس هذه الدراسة حماية حقوق الإنسان في إطار العدالة الجنائية الدولية المؤقتة، مع التركيز على تجربة المحاكم الخاصة المنشأة استجابةً للانتهاكات الخطيرة للقانون الدولي الإنساني. وتبرز الدراسة الأسس القانونية ونطاق الولاية والضمانات الإجرائية لهذه المحاكم، لا سيما المحكمة الجنائية الدولية ليوغوسلافيا السابقة والمحكمة الجنائية الدولية لرواندا. ومن خلال تحليل مساهماتها في المحاسبة الجنائية، تؤكد الدراسة كيف ساهمت هذه المحاكم في تعزيز مبادئ العدالة والردع وتطبيق معايير حقوق الإنسان الدولية. ورغم الانتقادات المتعلقة بالاختيارية والتأثير السياسي والاعتماد على تعاون الدول، لعبت هذه المحاكم دوراً حاسماً في ترسيخ مفهوم المسؤولية الجنائية الفردية عن الجرائم الخطيرة مثل الإبادة الجماعية وجرائم ضد الإنسانية وجرائم الحرب.

الكلمات المفتاحية: حقوق الإنسان، العدالة الجنائية الدولية المؤقتة، المحاكم الخاصة، المساءلة، القانون الدولي الإنساني

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INTRODUCTION:

The discussion on respecting human rights and the necessity of their international protection began after the historical events experienced by the international community, which endured grave events, international and civil wars, that affected many legal principles and undermined the rights established by ancient civilizations. Their origins trace back to Greek civilization, then Roman civilization, in addition to what was established by the divine religions, affirming the need to respect and protect human rights, such as Judaism, Christianity, and lastly Islam. Added to this is the role played by major thinkers and philosophers. The emergence of some documents and declarations in England, the United States of America, and France also contributed to enshrining a set of rights, such as the Magna Carta in 1215, the Bill of Rights in 1688 in England, the Petition of Rights in 1628 in England, the American Declaration of Independence in 1776, and the French Declaration of the Rights of Man and Citizen in 1791.[1] Attention to human rights continued to increase, becoming an internal concern of states, in addition to the emergence of the League of Nations in 1919 and the International Labour Organization in 1919, which dealt with certain aspects of human rights. However, all these documents and declarations failed to curb human rights violations, and people remained vulnerable to them, suffering the scourge of wars and the most atrocious crimes against humanity in the two World Wars.

With the establishment of the United Nations in 1945, interest in protecting human rights increased, and their protection became one of its priorities. Councils were created to promote and respect human rights, and the Universal Declaration of Human Rights was adopted in 1948, along with two International Covenants: the first on civil and political rights, and the second on social, economic, and cultural rights. In addition, international conventions were adopted to consolidate the protection of human rights during armed conflicts, namely the four Geneva Conventions of 1949. However, this was only relatively effective in protecting human beings.

This led to the necessity of considering the creation of international judicial bodies to punish perpetrators of crimes against humanity, war crimes, genocide, and crimes of aggression, through an independent international criminal justice system as a judicial mechanism to ensure respect for those rights. Before addressing temporary international criminal justice and its role in limiting human rights violations, it is first necessary to clarify the concept of human rights. They are defined as a branch of public international law consisting of a set of written or unwritten legal rules aimed at protecting human rights and well-being in times of peace, with the human being at their core. Their purpose is to ensure human protection, prosperity, and welfare[2]. International human rights law aims to protect individuals in peacetime from abuses by the state to which they belong[3], whereas international humanitarian law is a law that aims to address humanitarian issues arising directly from armed conflict, whether of an international or non-international character[4].

So, what are these bodies or mechanisms established to ensure the international protection of human rights? And to what extent have they succeeded in protecting individuals from human rights violations domestically and internationally? To answer this problematic, we will rely

on the analytical and descriptive method by presenting the development of international criminal justice, focusing our study on temporary international criminal justice, both military and civil, as an essential stage of international justice in protecting human rights, as follows:

1 – Temporary International Criminal Justice (Military)

Before the establishment of a permanent international judicial body specialized in the protection of human rights, special and temporary international criminal courts emerged, contributing to the punishment of human rights violators in specific periods, such as the Nuremberg and Tokyo Tribunals, and the Rwanda and Yugoslavia Tribunals.

1.1 – The Tokyo and Nuremberg Tribunals

After the outbreak of World War I in 1914, and as a result of the crimes committed during that period, along with the development of international thought aimed at eliminating international criminal acts, the features of criminalization, prosecution, and accountability for international crimes began to take shape. Following the signing of the Treaty of Versailles on June 28, 1919, the responsibility of the Emperor and senior German leaders was established under Article 230 due to their proven involvement in committing war crimes, breaches of peace, and crimes against humanity against the citizens of allied states.[5]

This treaty consisted of 440 articles that addressed war crimes and prohibited Austria from merging with Germany without the consent of the League of Nations. It laid the foundation for the idea of international criminal responsibility by establishing the first temporary international criminal court to try Wilhelm II before a special court[6], but it failed. Later, the Nuremberg and Tokyo Tribunals were established, both being military courts.

1.1.1 – The Nuremberg Tribunal

After the outbreak of World War II in 1939, which involved violations of humanitarian, ethical, and legal principles, awareness arose of the need to punish major war criminals and hold them accountable for the crimes they committed, which undermined the highest human rights enshrined in previous documents and declarations. Following the Moscow Declaration of 1943, which outlined the principles that should be followed by states in prosecuting German war criminals, and announced the necessity of prosecuting them, the San Francisco Conference was held, where the U.S. government presented a project to establish an international criminal court to France, England, and the Soviet Union.[7]

Subsequently, the London Conference was held on June 26, 1945, which resulted in the London Agreement between the United States, the Soviet Union, and the United Kingdom on August 8, 1945. Its first article established the International Military Tribunal to prosecute Nazi leaders and high-ranking officers, known as the Nuremberg Tribunal, which adopted the following principles:[8]

- Jurisdiction to prosecute war crimes, such as killing and mistreating civilians, forcing them into compulsory labor inside or outside the occupied territory, killing or mistreating prisoners of war, killing hostages, looting public or private property, unjustified destruction not warranted by military necessity[9], crimes against peace, and crimes against humanity.[10]

- Personal jurisdiction limited to prosecuting German war criminals regardless of the place of the crime.
- Temporal jurisdiction limited to crimes committed during World War II, from 1939 to 1945.

Although the tribunal was primarily political in its aims, it represented the first cornerstone in establishing the rules of international criminal responsibility, contributing significantly to creating a legal system to protect and defend human rights, culminating in the establishment of the permanent International Criminal Court.

However, the court was composed of judges from the victorious states, which contradicted the principle of judicial neutrality. It followed Anglo-Saxon trial procedures, violating the principle of legality by criminalizing acts retroactively, which contradicts the principle of non-retroactivity of criminal laws[11]. Moreover, German defendants and lawyers faced difficulties in understanding those rules. The tribunal also ignored crimes committed by the Allies, such as the bombing and destruction of German cities and the nuclear bombings by the United States in Hiroshima and Nagasaki, whose effects remain to this day.[12]

Although the tribunal punished World War II criminals and enshrined individual criminal responsibility and many principles later adopted by subsequent courts, it violated several human rights essential to a fair trial, such as neutrality, defense, appeal, etc., and neglected fundamental principles for the protection of human rights set forth in earlier declarations and charters.

1.1.2 – The International Military Tribunal for the Far East – Tokyo

After Japan signed the Instrument of Surrender on September 2, 1945, U.S. General Douglas MacArthur announced the creation of the International Military Tribunal for the Far East, due to the crimes committed by Japan in the region, which targeted civilians and brutally killed Allied prisoners of war.[13]

After the tribunal's statute was adopted, which did not differ in substance from Nuremberg, it had the same jurisdiction and procedures. According to Article 5 of its Statute, the court's jurisdiction extended to:

- **Crimes against peace:** Planning, preparation, initiation, or waging of a war of aggression, whether declared or undeclared, in violation of international law, treaties, agreements, or guarantees, or participation in a common plan or conspiracy to commit any of the foregoing acts.
- **War crimes:** Crimes against the laws and customs of war, such as planning or waging an aggressive war in violation of treaties, agreements, or guarantees, or participation in a common plan or conspiracy for such acts.
- **Crimes against humanity:** Murder, extermination, enslavement, deportation, or other inhumane acts committed against any civilian population before or during the war, or persecution on political or racial grounds in connection with crimes within the tribunal's jurisdiction, whether or not such acts violated the domestic law of the country where they were committed.[14]

Despite this, the tribunal faced heavy criticism for being politically motivated and dominated by American influence, unlike Nuremberg, which was relatively more independent.[15]

Although some Tokyo Tribunal judges strongly opposed its deviation from legal justice principles, and despite its lack of significant interest from international criminal law scholars due to its similarity to Nuremberg and its political motives, it nonetheless laid the foundation for the idea of international criminal responsibility of individuals, regardless of their political positions.

2 – Temporary International Criminal Justice (Civil)

After the Nuremberg and Tokyo military trials set a precedent for establishing the principle of international criminal responsibility, the international community sought to consolidate international criminal law rules and grant them legitimacy, avoiding the mistakes of the earlier tribunals, by adopting international conventions and treaties obligating all subjects of international law to respect them.

In light of the heinous crimes and atrocities committed in the former Yugoslavia and Rwanda, the UN Security Council issued resolutions establishing the International Criminal Tribunal for the former Yugoslavia (1993) and the International Criminal Tribunal for Rwanda (1994). Given the serious human rights violations in both countries, we will now discuss both tribunals by presenting their jurisdiction and the main principles that emerged from them, aimed primarily at defending and consolidating human rights.

2.1 – The Tribunal for the Former Yugoslavia

As a result of ethnic cleansing committed against Bosnian Muslims in 199— (cut in your text), the Security Council, after expressing its concern about human rights violations and breaches[16] of international humanitarian law in Yugoslavia, adopted Resolution 780 establishing a special Commission of Experts to investigate and collect evidence of such widespread violations in the territory of the former Yugoslavia. This included reports of mass deportations and ongoing ethnic cleansing practices. In Resolution 771, the Security Council reaffirmed its request that states, and international organizations, if necessary, collect and provide all available information relating to violations of the four Geneva Conventions, in addition to assisting the Commission of Experts. It also urgently established an impartial commission of experts to study and analyze the information provided and supply the Secretary-General with all findings and evidence of such violations in Yugoslav territory.[17]

After verifying the matter, the Security Council issued its Resolution No. 808 establishing an international tribunal to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1999.[18]

The seat of this tribunal is The Hague in the Netherlands, and the tribunal is composed of three organs: the Chambers, the Office of the Prosecutor, and the Registry. It consists of 11 judges elected by the United Nations General Assembly from a list prepared by the Security Council, and these judges elect the President of the Tribunal.[19]

As for the temporal jurisdiction of the tribunal, it considers crimes committed from 1/1/1991 until an indefinite date to be determined later by the Secretary-General of the United Nations after the restoration of peace, while its territorial jurisdiction covers the territory of the former

Yugoslavia.[20]

Its subject-matter jurisdiction is set out in Articles 2 to 5 of its Statute, concerning serious violations of the 1949 Geneva Conventions, violations of the laws and customs of war according to the 1907 Hague Convention IV on the Laws and Customs of War on Land, in addition to the crime of genocide and crimes against humanity[21]. Although it faced criticism for being the result of Security Council resolutions and for relying mainly on the cooperation of states to fulfill its mission[22]—which could affect its impartiality—it nevertheless sought to curb the commission of international crimes and human rights violations and to establish criminal responsibility even for senior state officials. It also sent a strong message on the necessity of respecting international treaties related to human rights, the laws and customs of war, and the four Geneva Conventions of 1949.

Through its subject-matter jurisdiction, this tribunal attempted to pursue and punish perpetrators of those crimes that violated the rights protected under human rights declarations and international conventions, foremost among them the right to life enshrined in Article 3 of the Universal Declaration of Human Rights, as well as derivative rights such as the rights to liberty, dignity, and personal security without discrimination, among other fundamental rights.

2-2- The International Criminal Tribunal for Rwanda (ICTR):

This tribunal was established following the massacres committed in Rwanda after an armed opposition group seized power in 1986. After the conflict dragged on for years and thousands of Tutsi were killed by the Hutu, the Rwandan government addressed an urgent appeal to the United Nations in July 1994, requesting intervention to stop the massacres[23]. The Security Council, acting under Chapter VII of the UN Charter, decided as follows:[24]

- The establishment of an international tribunal to prosecute persons responsible for acts of genocide and other serious violations of international humanitarian law committed in the territory of Rwanda, as well as Rwandan citizens responsible for committing such acts in neighboring states during the period between January 1, 1994, and January 31, 1994. To that end, the Statute of the International Criminal Tribunal for Rwanda was adopted.

This tribunal exercises its territorial and personal jurisdiction over persons responsible for genocide and other violations of international humanitarian law committed in Rwanda and over Rwandan citizens responsible for committing these violations in neighboring states. As for temporal jurisdiction, the tribunal considers violations committed between January 1, 1994, and December 31, 1994.

Its subject-matter jurisdiction includes the following crimes:

- Genocide.
- Crimes against humanity.
- Violations of Common Article 3 of the Geneva Conventions and violations of Additional Protocol II, including acts of violence against the life, health, or physical or mental integrity of persons, especially killing or cruel treatment such as torture,

mutilation, or any other form of corporal punishment; collective punishments; hostage-taking; acts of terrorism; and outrages upon personal dignity, etc.

Among the principles affirmed by this tribunal is the prohibition of trying a person twice for the same offense, whether before this tribunal or national courts, given the concurrent jurisdiction over persons responsible for these violations. However, the Rwanda Tribunal has primacy over national courts and may formally request national courts to defer to its jurisdiction under its Statute.[25]

The tribunal is composed of three organs:[26]

- The Chambers, consisting of two Trial Chambers and one Appeals Chamber.
- The Office of the Prosecutor.
- The Registry.

This tribunal also guaranteed rights to the accused during trial, including that all his statements be heard fairly and publicly, and that the accused is presumed innocent until proven guilty. The accused is entitled, on a basis of full equality, to the following minimum guarantees:

To be informed promptly, in detail, and in a language he understands of the nature and cause of the charges against him; to have adequate time and facilities to prepare his defense and communicate with counsel of his choosing; to be tried without undue delay; to be tried in his presence and to defend himself in person or through legal assistance if he cannot afford it, among other guarantees of a fair trial as provided for in Article 20 of the Statute of this tribunal.

CONCLUSION:

Through our presentation of the ad hoc criminal tribunals, both military and civilian, and their various stages, it can be said that their judgments contributed, to varying degrees, to preventing human rights violations, particularly during armed conflicts. These tribunals are regarded as the serious starting point for establishing the principle of individual criminal responsibility of senior state officials. Their principles therefore enshrined the protection of individual rights: the criminalization of genocide is nothing but recognition of the right to life proclaimed in Article 3 of the Universal Declaration of Human Rights. Similarly, the prohibition of torture and cruel, inhuman treatment constitutes one form of outlawing and criminalizing inhumane crimes as affirmed in Article 5 of the Declaration. In addition, the prohibition of all forms of slavery is established in Article 8 of the International Covenant on Civil and Political Rights. As for the principle of *ne bis in idem* (no person shall be tried twice for the same crime), it is an extension of the guarantees of a fair trial, recognized by criminal jurisprudence and enshrined in paragraph 7 of Article 14 of the Covenant.

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