The Evolution of Individual Criminal Responsibility: A Legal Perspective on its Development in International Law

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لقد مر مفهوم المسؤولية الجنائية الدولية بتحول كبير عبر التاريخ. يستكشف هذا البحث تطور هذا المفهوم، ويتتبع تطوره من المفاهيم البدائية للمساءلة في الحرب إلى إنشاء محاكم دولية لمحاكمة الجرائم الدولية الأساسية، اذ كان تطور المسؤولية الجنائية الدولية عملية معقدة ومتعددة الأوجه، شكلتها عوامل تاريخية وسياسية وقانونية مختلفة، وتبحث الورقة الجهود المبكرة لتحميل الأفراد المسؤولية عن انتهاكات الجسيمة للقانون الدولي، وتسلط الضوء على التحديات المرتبطة بإنفاذ هذه المساءلة. ثم يحلل اللحظة الفاصلة لمحكمتي نورمبرغ وطوكيو، اللتين أرستا مبدأ المسؤولية الجنائية الفردية عن جرائم الحرب والجرائم ضد الإنسانية. ويستكشف البحث كذلك تقنين هذه الجرائم في المعاهدات الدولية وما تلاها من إنشاء محاكم جنائية دولية دائمة مثل المحكمة الجنائية الدولية. وأخيرا، تناقش الورقة الاتجاهات المعاصرة في مجال العدالة الجنائية الدولية، بما في ذلك توسيع نطاق الجرائم الدولية والسعي المستمر للمساءلة عن الفظائع المرتكبة في مناطق مختلفة حول العالم، ويسهم هذا البحث في تعميق فهم التطور الجاري للقانون الجنائي الدولي وجهوده الرامية إلى ضمان المساءلة عن الانتهاكات الجسيمة للقانون الدولي.

الكلمات المفتاحية: المسؤولية الجنائية الدولية، المسؤولية الجنائية الدولية الفردية، الانتهاكات الجسيمة، الجرائم الدولية، القانون الدولي، المحاكم العسكرية الدولية، المحكمة الجنائية الدولية.

The concept of international criminal responsibility has undergone significant transformation throughout history. Its development has been a complex and multifaceted process, shaped by various historical, political, and legal factors, This research explores the development of this concept, tracing its development from rudimentary notions of accountability in warfare to establishing international tribunals for prosecuting core international crimes. The paper examines early efforts to hold individuals liable for grave violations of international law, highlighting the challenges associated with enforcing such accountability. It then analyses the watershed moment of the Nuremberg and Tokyo Tribunals, which established the principle of individual criminal responsibility for war crimes and crimes against humanity. The research further explores the codification of these crimes in international treaties and the subsequent creation of permanent international criminal courts like the International Criminal Court (ICC). Finally, the paper discusses contemporary trends in international criminal justice, including expanding the scope of international crimes and the ongoing pursuit of accountability for atrocities committed in various regions worldwide, This research contributes to a deeper understanding of the ongoing development of international criminal law and its efforts to ensure accountability for grave violations of international law.

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Introduction:

1. subject of study:

The wars that took place, the accompanying abuses, and the commission of heinous crimes that affected fundamental human rights and threatened international peace and security have shown the urgent need to define the rules of international criminal responsibility for these violations.

International criminal responsibility was formed through the different eras of history, where it began to take shape gradually in various ways. International criminal responsibility oscillated in the first eras, either in the actions carried out by the victorious party in the war against the defeated party or in the repeated demands of international law scholars for the need to punish the aggressors and oppressors of kings, presidents, and princes who wage unjust wars.

The First World War established international criminal responsibility against perpetrators of international crimes and grave violations. At the same time, the Second World War began consolidating and applying the rules of this responsibility.

The development of international criminal responsibility has been an intricate and diverse progression, influenced by the shifting dynamics of global politics, the rise of new threats to international peace and security, and the increasing acknowledgement of the necessity to hold individuals responsible for the gravest offences under international law. This research paper thoroughly examines the historical progression of international criminal responsibility, starting from its initial establishment after World War I and continuing to its present state.

In light of global developments, it was illogical that heinous crimes and grave violations that shocked humanity's conscience should pass without a fair trial and deterrent punishment since the general principles of law establish that there can be no punishment without responsibility. International jurisprudence has finally recognised international criminal responsibility as a basis for prosecuting perpetrators of grave violations and international crimes that threaten the entire international community.

2. Significance of study:

International criminal responsibility is a cornerstone of the contemporary international legal order. It embodies the principle that individuals, not just states, can be held accountable for egregious violations of international law. This research delves into this crucial concept's historical development and ongoing development, tracing its journey from nascent customary norms to a robust framework with permanent institutions for prosecution.

3. study problem:

The primary challenge in addressing international criminal responsibility lies in determining the appropriate subject of such responsibility under international law: is it the individual, the state, or both? This question has been the focus of significant

debate within international jurisprudence, which has evolved through various stages in its understanding of criminal responsibility.

Key questions arise in this context, including:

1. What are the criteria for assigning international criminal responsibility to individuals instead of states?
2. How has international jurisprudence developed over time in defining the scope and nature of criminal responsibility?
3. What are the grave violations and international crimes typically considered under international criminal responsibility?

4. study objective:

This research seeks to provide a comprehensive analysis of the progressive development of international criminal law, focusing on its evolving mechanisms and frameworks to ensure accountability for grave violations of international legal norms. Through this study, a deeper understanding will be achieved regarding the principles and practices that underpin the enforcement of justice in addressing severe breaches of international law.

5. study Methodology:

The research will employ historical analysis and comparative methodologies. It will analyze legal texts such as international treaties and relevant case law to gain insights into the legal framework surrounding criminal responsibility in both contexts. And compare it with Iraqi legislation when we need to compare.

6. Structure of study:

To clarify the development of international criminal responsibility, this article will first discuss the historical development of international criminal responsibility according to successive stages and then address the jurisprudential trends about the subject of international criminal responsibility.

1. Historical developments of international criminal responsibility:

The establishment and consolidation of criminal responsibility in international law have undergone significant development and historical roles at certain stages, which this study will deal with in the following categories:

1.1 Pre-World War I:

The establishment of the first international criminal court dates back to 1474 in Breisach, Germany, where a tribunal comprising 27 judges from the Holy Roman Empire convened to address the accountability of Peter von Hagenbach. He was convicted for violating the "laws of God and man," having permitted his soldiers to commit egregious acts, including the rape and murder of innocent civilians and the looting of their property. This historical event marked a pivotal moment in the evolution of international criminal justice, setting a foundational precedent for holding individuals accountable for grave violations of fundamental legal and moral principles. Since then, similar precedents have emerged, contributing to the gradual development of modern international criminal law principles. (1)

However, the principle of international criminal responsibility became as stable as it is today only after the First World War and The concept of establishing an

international criminal tribunal to prosecute individuals responsible for grave violations of international law gained prominence only after World War I, particularly following the signing of the Treaty of Versailles in 1919. This marked a significant turning point in the evolution of international criminal law, as it introduced the idea of a dedicated mechanism to hold perpetrators accountable for their actions.

Notably, the notion of punishing war criminals and developing a structured approach to address violations of international law initially emerged through the efforts of individuals, scholars, and international organizations, rather than as a formal initiative by states. These pioneers laid the groundwork for modern international criminal justice, advocating for mechanisms rooted in principles of accountability rather than vengeance or the victors' justice.

Prominent jurists of the time, including Hugo Grotius, made significant contributions to shaping this discourse. Grotius introduced a theory of criminal responsibility that emphasized the legitimacy of imposing penalties on individuals, including heads of state, for war crimes. He argued that such punishments should not rely solely on an international body—which was yet to exist—but should instead be grounded in universal principles of positive law applicable to international relations. Grotius also stressed the importance of respecting the lives of non-combatants, such as women, children, farmers, and clerics, underscoring the need to protect the innocent from the ravages of war.

Furthermore, the call for an international judicial authority gained traction among legal scholars, many of whom advocated for its establishment under the auspices of the victorious powers in World War I. They envisioned a tribunal that would prosecute the defeated states and their leaders, not merely as a punitive measure, but as a means of formalizing the principles of international criminal responsibility, particularly individual responsibility. These early proposals played a pivotal role in laying the foundation for the modern global justice framework, transitioning from ad hoc retribution to a system rooted in universal accountability and respect for human dignity[2].

In 1864, during the American Civil War, US President Abraham Lincoln issued a law to the United States Army known as the (Lieber law), which was prepared by the professor and jurist (Francis Lieber); where the text included in Articles (44) and (47) of its punishment for acts of violence and brutality committed against persons in the enemy country. It also imposed severe punishment on any soldier who committed violations against the citizens of the hostile country, thereby establishing the principle of international criminal responsibility[3]. Although this law is considered an internal law, it has contributed to the emergence and development of international custom in general, as the Libre Law is an essential foundation at the global level, as it casts a shadow on all relevant international treaties and conventions. [4]

Also (Gustave Moynier) in 1872 called to establish a court to undertake criminal accountability for perpetrators of serious violations in wars and their punishment, where he submitted a proposal for a draft international convention on the establishment of an international judicial body to prevent and deter any violation of the Geneva Convention of 1864, in which he referred to the issues of the composition

of the court, its jurisdiction and powers, the definition of violations, the determination of penalties and their imposition on the perpetrators of crimes and the determination of appropriate compensation for victims, to be drafted in a particular additional protocol annexed to the Geneva Convention in 1864, and the proposal took into account that The State to which the convicted person belongs shall execute the verdicts of the International Military Court. It is the first proposal to establish a permanent international judicial body to try and punish the perpetrators of crimes and serious violations in war[5]. Despite the apparent effort of this project, it did not find an echo among world leaders at the time to embody it.

By integrating the theoretical and moral underpinnings introduced by thinkers like Grotius with the practical demands for post-war justice, these efforts crystallized the principles that continue to inform the development of international criminal law today.

It seems that despite international jurisprudential and legal efforts to develop more apparent lines for the concept of international criminal responsibility and its application, the expected success was not found with the outbreak of the First World War in 1914 and the consequent destruction of States, casualties and severe violations of the rules of war that had a broad impact on the procedural and substantive development of the codification of the rules of international criminal responsibility later.

It is clear from the preceding that international responsibility at this stage was limited to the civil aspect related to the repair of damage or material or in-kind compensation[6], the entrenchment of the principle of judicial immunity for state agents, and the difficulty of separating the relationship between the responsibility of the state and the responsibility of its agents or individuals, prevented the application of international criminal responsibility at that stage, and this is evident in the Hague Conventions of 1899 and 1907 on respect for the laws and customs of war on land, which did not provide for any international criminal responsibility or penalties imposed when Violation of the rules of these agreements on violators. However, they are competent to regulate the controls governing the means of warfare and the laws and customs of war.

1.2 Post-World War I:

As a result of the gravity of the violations of the rules and laws of war during the First World War in a manner that violates human dignity and undermines the interests of the human race, there is an urgent need to move the idea of international criminal responsibility and crystallize it.

At the end of World War I, work began on the legal and structural establishment of an international tribunal to try those responsible for crimes against international law and instigators of war. The victorious Allied countries in the war held a preliminary conference for peace in Paris in 1919. At this conference, several topics were raised, the most important of which was the issue of the trial of the German Caesar (Guillaume II) and the rest of the German war criminals, as well as Turkish officials accused of violating humanitarian laws.[7]

The Commission on the Responsibilities of Warfarers and the Enforcement of Penalties for Violations of the Laws and Customs of War in 1919, established by the 1919 Paris Preliminary Peace Conference, investigated the responsibility of those who violated the laws of war and recommended in its report that those responsible for war crimes be prosecuted, thus making the concept of crimes against humanity a legal reality(8).

It concluded that responsibility for waging war was moral since there was no international law prohibiting and punishing it and considered that an international sanction should be established for such acts in the future. The Commission also believed that those responsible for war crimes should be extradited to States for prosecution by domestic penal laws.(9)

Based on the decisions of the Paris Conference, the Treaty of Versailles was held in 1919 in France, where the idea of international criminal responsibility first appeared, as stipulated in Articles (227), (228), (229), and (230) of Part VII of the Treaty of Versailles the individual international criminal responsibility of the Emperor of Germany (Kaiser Wilhelm II) for the crime against international morals and the sanctity of treaties.(10) She pointed to the formation of a special court to try him and other German war criminals accused of violating humanitarian laws and the need for Germany to recognize the right of the Allies to prosecute anyone found guilty of violations of the laws and customs of war(11). In doing so, it recognized individual international criminal responsibility.

Indeed, Germany passed a law in the same year, establishing the Imperial Court in Leipzig to try war crimes committed by Germans both inside and outside Germany(12). However, the proposed tribunal could not apply criminal responsibility as the treaty obligation to prosecute and punish perpetrators was not implemented. Germany failed to do so, and the Allied powers were not interested in accountability(13).

However, on the substantive side, the Treaty of Versailles achieved a significant leap in the establishment of international criminal responsibility by introducing the idea of partial international responsibility of individuals for their wrongful acts, whether these individuals are private persons or heads of State, that is, it did not adopt the principle of immunity, a development at a time when this matter was not recognized because the international community does not accept that idea at this historical stage. It also stipulated (war crimes) for the first time in the history of international criminal law.

As for the Treaty of Sèvres in 1920, concluded between Turkey and the Allied countries, its provisions were similar to the terms of the Treaty of Versailles, as stipulated in Articles (226), (227), (228), (229) and (230) in Part VII of this treaty the provisions of individual international criminal responsibility with almost the exact wording in the Treaty of Versailles(14). Nevertheless, the Treaty of Sèvres did not receive official approval, so its terms were never put into effect. However, in 1923, it was substituted by the Treaty of Lausanne, which contained no provisions for prosecutions but had a secret annex to the Treaty of Lausanne, granting amnesty to Turkish officials. (15) It is noted that the trials that followed the First World War did not achieve the desired purpose; they did not seem serious about achieving the

desired international justice, and some of them did not take place in the first place, as in the trial of the Kaiser of Germany (Guillaume II).[16]

These treaties were followed by other international efforts, such as international conventions and committees, which contributed to establishing the rules of international criminal responsibility against states and individuals and in drafting penal texts. All those treaties and conventions formed the basis for the provisions of criminal responsibility in international criminal law for violations of international law. The first international effort, the most important of which was the establishment of the League of Nations in 1920 in the aftermath of the First World War and the response to its remnants and its enormous consequences at the international humanitarian level. The Covenant of the League of Nations included provisions criminalizing the resort to war and imposing responsibility on those who resort to it before resorting to peaceful means. The Covenant has set several sanctions against States that violate their obligations, such as expulsion from the League, economic boycott, and international sanctions[17]. The Covenant recognizes international responsibility toward States but lacks express provisions establishing international criminal responsibility.

The draft treaty of mutual aid was also submitted in 1923 by a committee of the League of Nations, prepared by Lord Robert Cecil, and stipulates that war of aggression is an international crime that entails international criminal responsibility and is not approved by states. It is the first international treaty after the Versailles Convention (1919) to recognize aggression as an international crime[18]. Then, the Paris Charter was issued in 1928 and signed between the Allied Powers, Germany, and several other countries; where this agreement considered war an international crime and an outlaw act for the first time, which meant criminalizing aggressive war and prohibiting resorting to it.[19]

The 1937 Geneva Convention was also concluded to establish an international criminal court to punish the perpetrators of terrorist crimes, the reason for which was the assassination of the King of Yugoslavia and the Minister for Foreign Affairs of France by an extremist Croatian association. However, this Convention has never entered into force[20].

This stage was also characterized by international jurisprudential activity on the call for the recognition and application of international criminal responsibility on states or individuals, where the jurist (Saldana) put forward the idea of international criminal responsibility, suggested that the jurisdiction of the Permanent International Court of Justice must extend to criminal matters, by establishing an international criminal court specialized in trying the perpetrators of international crimes, whether from states or individuals[21]. In his research and writings, the jurist (Henri Dendieu de Fabre) presented the principle of international criminal responsibility and contributed to its development, as he called for the punishment of perpetrators of international crimes through the establishment of an international criminal justice of its own and later became one of the judges of the Nuremberg Military Tribunal[22]. The jurist (Politis) also issued a book entitled (New Directions of International Law), where he explained the need to establish an international criminal justice system and

organize a criminal chamber specialized in war crimes under the Permanent Court of International Justice[23]. In 1927, the jurist (Levit) presented a draft codification of international criminal law, which includes substantive and procedural provisions, and called for establishing an independent international criminal court and the need to develop the international criminal responsibility of states and individuals. [24]

The International Law Society held [25]an international conference in Argentina in 1922, at which establishing an international criminal justice system to deal with offences committed by states or individuals was recognized as long as those offences were directed against another state or its nationals. The Assembly also considered, at another conference, the international criminal justice system to prosecute the perpetrators of grave violations as a circuit emanating from the Permanent Court of International Justice in The Hague. [26]

The Inter-Parliamentary Union held[27] its World Conference in Geneva, Switzerland, in 1924, where the jurist (Vesbian Bella) presented a report on a proposal to establish the penal law competent to identify international crimes and indicated their penalties and that criminal responsibility does not lie only with the State, but also on the individuals who represent it. A second conference was held in 1925, in which the jurist (Bella) presented a report on the aggressive war and the punishment imposed on it, proposed applying the principle of criminal legality in this crime, and stressed the need to establish the international criminal judiciary.[28]

The International Society of Penal Law held[29] its first conference in 1926, discussing the need to activate international criminal responsibility by establishing an international criminal judiciary. The idea was recognized in principle at the conference, provided that this was through the Permanent Court of International Justice in The Hague. The conference formed a committee to prepare the draft headed by the jurist (Vesbian Bella), and it was submitted to the second conference held in 1928. It was referred to the League of Nations and countries' governments to study it and submit proposals.[30]

In general, this phase witnessed a radical change and a significant development in practice following the signing of the Versailles Convention in 1919, which caused a change in the penal concepts that prevailed in traditional international criminal law by adopting the principle of international criminal responsibility for states and individuals alike.

1.3 Post-World War II:

This phase witnessed critical historical events in the development of international criminal responsibility, which led to radical changes in the international legal system in general and international humanitarian law and international criminal law in particular.

Among its most critical initial signs is the establishment of the Nuremberg Military Tribunals and Tokyo Military Tribunals, and the conclusion of international conventions such as the Convention on the Prevention and Punishment of the Crime of Genocide in 1948, and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity in 1968, where individual international criminal responsibility was established after World War II. In addition,

the statutes of international military criminal tribunals also explicitly recognize the idea of individual criminal responsibility for international crimes.

1- International Military Tribunal in Nuremberg IMT:

As a result of the crimes and violations committed by Nazism during World War II, this tribunal was established by the London Convention in 1945 by Article I of the Convention, whose mission is to try war criminals whose crimes do not have a specific geographical limitation(31).

The Statute of this Court consists of (30) articles; Its headquarters are in Berlin under Article (22) of its Statute. However, all its trials took place in Nuremberg; as for its substantive jurisdiction, it is defined by Article (6) of the Statute as crimes against peace, war crimes, and crimes against humanity. According to this article, organizers, instigators, accomplices, shareholders, and conspirators are prosecuted for committing these crimes(32).

This court is competent to try natural persons (individuals) and legal persons according to Article (9). It tried with the necessary guarantees to perform a fair trial for them and issued its verdicts against (24) defendants and (7) organizations convicted of terrorism. Where 12 convicts were sentenced to death by hanging, 3 to life imprisonment, two others to twenty years in prison, another defendant to fifteen years, and another defendant to ten years, and the court acquitted three defendants of the charges against them(33).

This court and the accountability of individuals responsible for international crimes is a development in international criminal justice and international criminal law. However, it has been subjected to many criticisms, including that it is predominantly political and military, and this is clear from its name under the London Convention of 1945. It is also considered one of the types of courts formed by the victorious party to hold the defeated accountable; that is, the judiciary and justice of the victor of the defeated undermines its independence and impartiality. The problem of the legality of crimes and penalties was also raised, as the Statute of the Court was legislated, and the Court was formed under the London Convention later than the time of the commission of the crimes. This is contrary to the rule of no crime or punishment except by text, and its consequence is that criminal law is not retroactive to the past. Still, it is answered that, as explained earlier in Chapter I, the nature of the principle of legality in international criminal law differs from that of domestic criminal law in that it is customary, that is, the criminalization of violations that occurred before the formation of the court already exists in the form of customary international rules.(34)

2- International Military Tribunal for the Far East IMTFE:

This tribunal was established to try war criminals in the Far East after Japan signed the surrender paper in 1945 and was established in 1946 by the commander of the Allied forces in Japan.

Referring to the statute of this tribunal does not differ from the Nuremberg Tribunal in terms of trial procedures and the principles on which it was founded. Article (1) stipulated the establishment of this tribunal to try war criminals in the Far East, and the court was composed of 11 judges from 11 countries. Article (5) of the statute specified that defendants are tried for crimes against peace, against customs of war,

and humanity, as they are the same crimes that came in the regulations of the Nuremberg Tribunal, which is competent to try Natural persons who commit these crimes in their capacity and do not commit them as members of terrorist organizations or bodies, which is contrary to what was stated by the Nuremberg Tribunal, where no provision in the Tokyo Regulations allow the accountability of legal persons, and the Tokyo Court Regulations considered the official capacity as a mitigating factor for punishment, and this is unlike the Nuremberg Tribunal as well, where it does not affect the punishment there(35).

This period also witnessed the conclusion of essential conventions at the international level, such as **the Convention on the Prevention and Punishment of the Crime of Genocide of 1948,** which went beyond the limits of civil responsibility of the State by obliging it to compensate for its injurious acts, to establish penalties against those responsible for acts constituting the crime of genocide as a crime that threatens international peace and security(36).

The four Geneva Conventions of 1949 and the Protocols to it of 1977 **were also concluded**, as the four Geneva Conventions and their two Protocols to codify the rules and provisions of criminal responsibility for grave and serious violations of the rules and provisions of international humanitarian law, thus making criminal responsibility based on international conventions that have won the acceptance of the international community and are no longer based on international custom only(37).

1.4 The modern phase (the phase of temporary and permanent international criminal tribunals):

After the Second World War and after the failure of the League of Nations to achieve its objectives, the international community saw the necessity of establishing an international organization similar to the League of Nations but more influential and organized. The United Nations was established in 1945, and its Charter included the establishment of the Security Council, which is the executive organ responsible for the maintenance of international peace and security and has broad powers under Chapter VII of the Charter of the United Nations, including taking appropriate measures to maintain international peace and security, as well as the formation of international criminal tribunals. When needed and when there is a serious violation of international humanitarian law and human rights(38).

During this period, many international crimes occurred, and many grave violations of the rules of international humanitarian law and international human rights law occurred. The United Nations, through the Security Council, addressed some of these crimes by establishing two international tribunals: the International Interim Criminal Tribunal for the Former Yugoslavia in 1993 and the International Criminal Court in Rwanda in 1994. The establishment of the International Criminal Court was approved by the United Nations Diplomatic Conference held in Rome in 1998.

1. International Criminal Tribunal for the Former Yugoslavia ICTY:

In response to the atrocities committed in Yugoslavia, this tribunal was established by UN Security Council Resolution No. 808 on 22/5/1993 to try those accused of serious violations of international humanitarian law and human rights committed in

the territory of the former Yugoslavia since 1991 and its statute consisting of (34) articles was ratified by Security Council Resolution No. 827 on 25/5/1993.(39)

Concerning the Statute of the International Criminal Tribunal for the Former Yugoslavia of 1993, the first article recognizes, establishes, and affirms criminal responsibility against persons who commit international crimes and serious violations of international humanitarian law, whether private individuals, heads of state or government. Article VI stipulates that the Court's jurisdiction to try natural persons only, and Article 7 of the Statute stipulates that individual criminal responsibility shall fall personally on anyone who plans a crime or incites Regardless of the official position of the accused, whether head of state or government or government or a government official, they may be ordered or perpetrated, or otherwise assist and encourage the planning, preparation or execution thereof, regardless of the official position of the accused, whether head of state or government or government official. The commission of an offense by a subordinate shall not relieve his superior of criminal liability if he/she has: (1) effective control over his subordinate; (2) he knows, or has reason to know, that the subordinate was about to commit such acts or has committed them; and (3) he fails to take the necessary and reasonable measures to prevent the commission of the offense or punish the subordinate who commits the offense after he has committed it.(40)

From the outset, the Statute emerged as an essential document that effectively achieved the first comprehensive codification of international criminal law. As a result, the drafters of the Statute of the International Criminal Tribunal for Rwanda and the Rome Statute of the International Criminal Court and the constituent documents of a growing group of so-called mixed tribunals, such as the International Criminal Court for Sierra Leone, were guided by the statute.(41)

2. International Criminal Tribunal for Rwanda ICTR:

The massacres that took place in Rwanda prompted the Security Council, based on the provisions of Chapter VII of the Charter of the United Nations, to adopt Resolution No. 955 of 1994 on 8/11/1994. On the establishment of the Special Tribunal for Rwanda. The Statute of the International Criminal Tribunal for Rwanda consists of 32 articles.

Regarding the Statute of the Tribunal, Article I of the Tribunal stipulates that the Tribunal shall have jurisdiction to try persons accused of committing serious acts against international humanitarian law in the territory of Rwanda, as well as Rwandan citizens who committed such acts on the territory of neighboring States between 1/1/1994 and 31/12/1994. The Statute of the International Criminal Tribunal for Rwanda also provides for the prosecution of any natural person who has planned to commit crimes in violation of the four Geneva Conventions, or He instigated or assisted in their commission or ordered them, as he is subject to personal accountability for those crimes, without the official capacity he carries any effect in denying criminal responsibility or reducing the sentence, and stipulated that the superior's responsibility for the actions of his subordinates and holding him accountable for all their consequences just because of their knowledge, however, it was not permissible for the subordinate to defend that the crime was issued by him

by order of the president until he was exempted from responsibility[42]. Thus, the Tribunals for Yugoslavia and Rwanda established the principle of direct individual criminal responsibility in international law. International criminal tribunals prosecute any individual for violations of international law, even if such acts occur within the territory of the country to which he belongs, and states must cooperate fully with the court[43].

3- International Criminal Court ICC:

The history of establishing the International Criminal Court stretches back more than a century, and the road to establishing this court was long. The first efforts to establish a permanent international criminal court can be traced back to the early nineteenth century, as it began explicitly in 1872 with the invitation of Gustave Moynier, who proposed the establishment of a permanent court in response to Franco-Prussian war crimes. Then came the next call for establishing this court by the drafters of the Treaty of Versailles of 1919, which recommended the establishment of an ad hoc international tribunal. To try the war criminals Kaiser and the Germans in the First World War. [44] Various international efforts to establish the Court continued over the following decades, culminating in success in 1994 when the International Law Commission submitted its final draft of the Statute of the International Criminal Court to the United Nations General Assembly and recommended the convening of a conference of plenipotentiaries to negotiate a treaty and enact the Statute. To consider the main substantive issues of the draft statute, the General Assembly established the Ad Hoc Committee on the Establishment of the International Criminal Court, which met twice in 1995.[45]

The United Nations General Assembly decided to convene the United Nations Conference of Plenipotentiaries on the Establishment of the International Criminal Court at its fifty-second session to finalise and adopt a convention on establishing the International Criminal Court. The Rome Conference was held from 15 June to 17 July 1998 in Rome, Italy, where 120 countries voted to approve the Statute of the International Criminal Court. On April 11, 2002, several states simultaneously deposited the sixtieth ratification necessary for the entry into force of the Rome Statute. The treaty entered into force on 1 July 2002.[46]

This Court is the central pillar and the most important fruit of international efforts to lay fundamental foundations for international criminal justice. The Statute of the International Criminal Court is the most important international instrument under which the establishment and development of the principle of international criminal responsibility were integrated.

Concerning the 1998 Statute of the International Criminal Court, Article 25 of the Rome Statute dealt with individual criminal responsibility, stating that the Court has jurisdiction over natural persons and that such persons who commit any crime within its jurisdiction shall be subject to punishment. As it is clear from the text above, the Court is competent for natural persons; that is, the person who committed the crime is responsible in his capacity for it and is liable to bear punishment, and therefore the Rome Statute does not take international criminal responsibility of the State as well as international organizations, knowing that this does not prevent the realization of

international civil responsibility over them. This law establishes the irrelevance of the person committing the criminal act to invoke individual criminal responsibility or mitigate the penalty without regard to the fact that the perpetrator is a head of State, head of Government, or a member of parliament or without regard to the immunity enjoyed by him, whether international or national. This regulation affirms the responsibility of commanders and superiors, whether civilian or military, for the actions of their subordinates who commit the crimes stipulated in this regulation.(47)

2. Jurisprudential trends in international criminal responsibility:

The question of who is accused of international criminal responsibility in contemporary international jurisprudence has been fiercely debated, and jurists have divided into three jurisprudential trends. This study will discuss it as follows:

2.1 International criminal responsibility against the State alone:

Part of jurisprudence, such as the jurist (von List)(48), believes that the state alone is responsible for international crimes; it is the only person who commits this crime and is the only entity to which the benefits resulting from the commission of a grave violation devolve, and it is the main object of international criminal law, and this depends on the fact that the individual is not a subject of international law. Therefore, he is not addressed by its provisions and is not criminally responsible for the crimes committed(49). It is inconceivable that a natural person would simultaneously be subject to two legal systems, namely domestic and international law(50).

This view is based on specific arguments, namely that the State is the international person to whom criminal responsibility can be applied since international law addresses States and the State has a set of international obligations. International criminal responsibility must be established against it if it violates those obligations.(51) Such crimes could only be conceivable to be committed by States alone, and international criminal responsibility must be confined to them.

Some also argued that the state has an independent will distinct from the will of the individuals belonging to it, as individuals are only tools to express the will of the state, and their actions and actions are attributed to the state, and the state bears their responsibility.(52) Others argued that sovereignty does not conflict with international criminal responsibility, as recognizing the state's sovereignty does not conflict with criminal responsibility if the state violates the rules of international law. Therefore, the illegal acts committed by the state that harm the public interest and public order of the international community are considered international crimes that must be punished, as sovereignty today is not absolute but has become restricted and conditional by the state's waiver of a part of its sovereignty to build a balanced and secure international community. International criminal justice is commonly applied.(53)

Many international jurists have criticized this view sharply and argue that international criminal responsibility cannot be applied to groups or states. Some argued that the state cannot be held accountable because it is a legal person, as the legal person does not have criminal intent, which constitutes the moral element of the international crime or grave violation.(54) Others deny the criminal responsibility

of the state because it contradicts the principle of the personality of punishment[55], as it contradicts the principle of state sovereignty[56]; the subject is under consideration as the establishment of international criminal responsibility against a state does not prevent the possibility of imposing sanctions on it through the use of all means of Duress brought by international law, and as included in the Charter of the United Nations of sanctions in Chapter VII, which varies in the forms of international sanctions from political to economic and military[57].

Despite the arguments of the proponents of this view, many believe that this doctrine repeats the traditional concept of international law. This trend, especially after developments at the international level, has become entirely unacceptable, as it is no longer a new idea in the jurisprudence of international law[58].

2.2 Dual criminal responsibility of both the state and the individual:

Proponents of this trend, most famously the jurist (Faspian Bella), believe that international criminal responsibility is borne by the state and individuals acting in its name. Thus, he agrees with the first doctrine on holding the State internationally criminally responsible, with the addition of individuals to this responsibility[59].

This jurisprudential trend is based on arguments, the most important of which is that international criminal law cannot ignore the responsibility of natural persons due to criminal acts committed in the name of the state. If exceptional, punitive sanctions must be applied to states, international punishment must also extend to those who led the nation and committed those acts.[60] They also argue that the State, possessing international personality, must bear partial international responsibility. At the same time, international criminal law cannot overlook the responsibility of individuals who commit international crimes on behalf of the State.[61] Others also believed that international criminal responsibility must be regulated against the state and individuals, as the state is accountable for its acts in collective crimes such as aggression. In contrast, individuals achieve their criminal responsibility for acts committed violating the laws and customs of war and crimes against humanity.[62]

This trend was criticized, as some jurists believed that the penalties imposed on the state are not, in fact, criminal penalties, and they believe that the general principles of criminal law do not allow the imposition of punishment on two persons (the individual and the state) for one crime without having a criminal contribution bond between them and that the legal person needs a natural person to express it. Therefore, holding the natural person (the individual) accountable is necessary because he is the subject of criminal accountability. Note that it is impossible to imagine the criminal perception of the state in isolation from the criminal intent of its members[63], as the state is an idea or imagination, and the real criminal is the individual who must be the subject of this responsibility and bear the imposition of punishment.[64]

2.3 Individual international criminal responsibility:

The proponents of this jurisprudential trend believe that the individual (natural personality) is the one who commits the grave violation or international crime and, therefore, is the one who bears international criminal responsibility and imposes punishment on him, as is the case in the internal criminal laws, where they see that

criminal responsibility falls on the persons who committed these responsible acts. Therefore, the State cannot be held accountable for these crimes because it is a legal person who does not have the criminal intent that is an essential element in the crime and thus dissolves the individual. The place of the legal person in international criminal responsibility(65).

They based this on the fact that the state is no longer the only axis around which the provisions of international law revolve. Still, the role of the individual has emerged in that the growing role within the scope of public international law cannot be ignored, and international law now recognizes human rights and freedoms. Therefore, many conventions have been concluded to ensure respect for the rights and freedoms of the natural individual.(66) In return, the individual must respect the rights of others and refrain from committing crimes against humanity or be subject to international punishment(67). This is based on the Charter of the United Nations and the Nuremberg and Tokyo statutes. Hence, the individual becomes responsible for the international crime he commits as an interlocutor in the provisions of this law.(68) Therefore, contemporary international jurisprudence rejects the state's accountability because this violates the principles of personality and individualization on which criminal punishment is based according to the contemporary idea.

As the offender is subject to criminal responsibility, it is only conceivable that he is an individual (natural person), whether this act is committed in his name or the name of his state and for its benefit. Still, the state cannot imagine this because it is a legal personality and cannot meet the conditions for moral attribution. Still, it can be held civilly accountable, and this is understood from the text of Article 25(4), which included: "No provision in this statute relating to individual criminal responsibility affects the responsibility of States under international law".

Finally, introducing individual international criminal responsibility for grave violations of international law is consistent with the rules of criminal justice, the most important of which is the rule of personal punishment, so that persons or individuals found responsible are punished but not innocent(69).

The third trend is the most correct among the three jurisprudential trends, as it is the view followed by international judicial precedents and supported by the statutes of international criminal courts, the most important of which is the Rome Statute. The state cannot be considered criminally responsible like natural individuals, as it does not have the will of natural individuals, as the legal person carries out his work and tasks through natural persons from rulers, leaders, and officials. They are individuals who have criminal intent, and it is known that criminal responsibility requires perception and discrimination, and this is not available or even impossible for the State. The introduction of the criminal responsibility of individuals is also essential because it ensures that no natural person goes unpunished for grave violations of the supreme interests protected by international law and the threat they pose to international peace and security.

Conclusion:

The study carefully examines how international criminal responsibility has evolved, shifting from a focus on states to emphasizing individual accountability. This

significant change reflects new principles in international law, marked by key events such as the Treaty of Versailles (1919) and the historic Nuremberg and Tokyo Tribunals. These milestones established the idea of individual criminal responsibility for war crimes and crimes against humanity, moving away from collective state responsibility and highlighting the need for legal measures to address serious violations .

The creation of the International Criminal Court (ICC) in 2002 further solidified this shift, providing a permanent venue to prosecute severe crimes like genocide, crimes against humanity, and war crimes. The ICC represents the international community's commitment to universal accountability and justice.

However, the study points out ongoing challenges that hinder the effectiveness and reach of international criminal justice. Some key issues include the reluctance of certain states to ratify the Rome Statute, the complexities involved in enforcing judicial decisions, the protection of witnesses, and the need for state cooperation. These challenges reveal a tension between state sovereignty and the international effort to combat impunity, highlighting the need for innovative legal and institutional solutions.

Additionally, the study advocates expanding the ICC's jurisdiction and improving the international legal framework to address emerging concerns such as cybercrimes and environmental offences. Through these recommendations, the research envisions a stronger system of international criminal law that not only addresses past atrocities but also anticipates future challenges, ultimately promoting global justice and peace.

Footnotes:

(1) G. Schwarzenberger, International Law as Applies By International Courts and Tribunals, 1968, p.462. See also M. Bassiouni, Chronology of Efforts to Establish an International Criminal Court, International Review of Penal Law, Vol. 86, n. 3-4, 2015, p.1182.

(2) Hamid Al-Saadi, Introduction to the Study of International Criminal Law, Al-Maaref Press, Baghdad, 1971, p. 67.

(3) Article 44 of the aforementioned law stipulates punishment for "all acts of violence and brutality committed against persons in the country subject to invasion, all destruction of property, every theft, looting, dismissal from work, and every wounding, rape, maiming, or killing of this population," and article 47 stipulates "severe punishment for all crimes punishable by criminal laws, such as arson of property, assassination, and mutilation if committed by a US soldier on the territory of an enemy state, and shall be considered as committed inside the homeland." See Saeed Salem Juwaili, Implementation of International Humanitarian Law, Dar Al-Nahda Al-Arabiya, Cairo, 2003, pp. 72-73.

The Lieber Act was preceded by orders and laws by some leaders that included the idea of criminal responsibility, as the King of England (Richard II) in 1368 issued orders to the army command on the management of military and combat operations. It included the prohibition of acts of violence against women, burning houses, destroying churches and imposing penalties on those who commit such violations, as Ferdinand King of Hungary in 1526 issued laws that included similar provisions, Emperor Maximilian II of Bohemia in 1570, and King Gustav II of Sweden Adolgi in 1621. See ibid, p.71

(4) Ali Zaalan Nehme, Haidar Kazem Abd Ali, and Mahmoud Khalil Jaafar, International Humanitarian Law, 4th Edition, Dar Al-Masala, Baghdad, 2019, pp. 20-21.

(5) Gustave Moynier, Draft International Convention on the Establishment of an International Judicial Body to Prevent and Deter Any Violation of the Geneva Convention of 1864, Geneva, 1872, published in the International Review of the Red Cross, Year XI, No. 60, June 1998, pp. 348-350.

(6) Article III of the Hague Convention IV respecting the Laws and Customs of War on Land of 1907, established the principle of compensatory international liability (civil liability), and provided that the belligerent party to whom such breaches are attributed shall be obliged to compensate if the need arises, and shall be liable for acts committed by persons belonging to its armed forces as its agents in carrying out such acts.

(7) M. Cherif Bassiouni, From Versailles to Rwanda in Seventy-Five Years: The Need to Establish a Permanent International Criminal Court, DePaul University, Harvard Human Rights Journal, Vol. 10, 1997, pp.14-15.

(8) Report of the Commission on the Responsibilities of the Authors of the War and on Enforcement of Penalties for Violations of the Laws and Customs of War, Conference of Paris, Carnegie Endowment for International Peace, Division of International Law, Pamphlet No. 32, 1919, reprinted in Am. Journal of International Law, vol. 14, 1920, p.95. see also M. Cherif Bassiouni, Crimes Against Humanity: The Case for a Specialized Convention, Washington University Global Studies Law Review, Vol. 9, n.4, 2010, pp.575-576.

(9) Ziad Itani, The International Criminal Court and the Development of International Criminal Law, First Edition, Al-Halabi Legal Publications, Beirut, 2009, p. 59.

(10) Article 227 of the 1919 Treaty of Versailles states: "The Allies and Allied Powers shall summon Guillaume II, the former Emperor of Germany, formally for committing a great crime against universal principles and morals and the sanctity of treaties, and a special court will be formed to try the accused and guarantee him the necessary guarantees for his right to defense."

(11) Mohamed Cherif Bassiouni, The International Criminal Court - Its Origin and Statute with a Study of the History of International Investigation Commissions and Previous International Criminal Trials, Third Edition, Judges Club, Cairo, 2002, p. 11.

(12) Ziad Itani, op. cit., p. 86.

(13) M. Cherif Bassiouni, From Versailles to Rwanda in Seventy-Five Years: The Need to Establish a Permanent International Criminal Court, DePaul University, Harvard Human Rights Journal, Vol. 10, 1997, pp. 18-21.

(14) Article 230 stipulates that "the Ottoman government undertakes to hand over to the authorities of the allied countries persons it requests, for committing massacres in the territories that were part of the territory of the Ottoman Empire on August 1, 1919, and the allied countries reserve the right to form a court to try them, and the Ottoman Empire is obliged to recognize this court."

(15) M. Cherif Bassiouni, The Time Has Come for an International Criminal Court, Indiana International & Comparative Law Review, Vol. 1, No. 1, 1991, pp.3-4..

(16) Ali Abdul Qadir Al-Qahwaji, op. cit., p. 178.

(17) See Articles 12, 13, and 14 of the League of Nations Covenant of 1919.

(18) Ziad Itani, op. cit., p. 62.

(19) Ibid. pp.64-65.

(20) Convention for the Creation of an International Criminal Court, opened for signature at Geneva, 16 Nov.1937, League of Nations official Journal, series of publications 1937.V.II., League of Nations Doc. C.547 (I). M.384(I).1937. v., 1938. See also M. Bassiouni, Chronology of Efforts to Establish an International Criminal Court, op. Cit, p.1191.

(21) Ali Abdul Qadir Al-Qahwaji, op. cit., p. 184.

(22) Mark Lewis, The Birth of the New Justice: The Internationalization of Crime and Punishment, 1919-1950, Oxford University Press, 2014, pp. 181–198.

(23) Ali Abdul Qadir Al-Qahwaji, op. cit., p. 186.

(24) Ibid.

(25) It was founded in Brussels in 1873 as (Association for the Reform and Codification of the Law of the Peoples), see Muhammad Muhyiddin Awadh, op. cit., p. 14.

(26) V. A. Röling, B., The Law of War and the National Jurisdiction since 1945, in Collected Courses of the Hague Academy of International Law, vol. 100, 1960, p.355.

(27) The organization was founded in 1889 under the Inter-Parliamentary Conference. Its founders were statesmen Frédéric Bassey of France and William Randall Kramer of

the United Kingdom, an international organization of national parliaments. Its primary objective is to promote democratic governance, accountability and cooperation among its members; other initiatives include promoting gender equality among legislatures, enabling youth participation in politics and sustainable development. See the following link: https://en.wikipedia.org/wiki/Inter-Parliamentary_Union (accessed 20/2/2024).

(28) Ziad Itani, The International Criminal Court and the Development of International Criminal Law, First Edition, Al-Halabi Legal Publications, Beirut, Lebanon, 2009, p. 55.

(29) This association was founded in 1924 and is an extension of the International Federation of Penal Law, which was founded in Paris in 1889 by three lawyers: the Dutch professor Van Hamel, the German professor Liszt and the Belgian professor Prins See Samir Ali, Principles of Criminology, Punishment and Penal Policy: Causes of Crime and Criminal Control, First Edition, Al-Halabi Legal Publications, Beirut, Lebanon, 2019, p. 215.

(30) Hossam Abdel Khaleq Al-Sheikha, Responsibility and Punishment for War Crimes with an Applied Study on War Crimes in Bosnia and Herzegovina, Dar Al-gamaa Al-gadida, Alexandria, 2004, p. 96.

(31) See the Agreement for the prosecution and punishment of the major war criminals of the European Axis of 1945 (London Agreement).

(32) See the Statute of the Nuremberg International Military Tribunal of 1945.

(33) Yale Law School, Lillian Goldman Law Library, the Avalon project, Judgement: Sentences, the International Military Tribunal, on this link: https://avalon.law.yale.edu/imt/judsent.asp. (accessed on 22/2/2024).

(34) Zana Rafig Saeed, ground excluding for International Criminal Responsibility, First Edition, Modern Book Foundation, Lebanon, 2016, p. 31.

(35) See the Statute of the 1946 Tokyo International Military Tribunal.

(36) See the Convention on the Prevention and Punishment of the Crime of Genocide of 1948.

(37) See the Four Geneva Conventions of 1949 and the Additional Protocols to the Four Geneva Conventions of 1977.

(38) See Charter of the United Nations of 1945.

(39)See the above two resolutions at the links: https://digitallibrary.un.org/record/243008?ln=en; https://digitallibrary.un.org/record/166567?ln=en&v=pdf. (accessed on 1/2/2024).

(40) See the Statute of the International Criminal Tribunal for the Former Yugoslavia of 1993.

(41) F. Pocar, Statute of the International Criminal Tribunal for the Former Yugoslavia, United Nations Audiovisual Library of International Law, United Nations, 2010, p. 3.

(42) See Statute of the International Criminal Tribunal for Rwanda 1994.

(43) Louise Arbour, Progress and Challenges in International Criminal Justice, Fordham International Law Journal, Vol. 21, No.2, December 1997, p. 536.

(44) See the History of the ICC on this link: https://web.archive.org/web/20070307195635/http://www.iccnow.org/?mod=icchistory. (accessed on 22/2/2024). See also CICC, A timeline of the establishment and work of the International Criminal Court, Hague, 2006, pp. 1-5.

(45) CICC, op. cit., pp.1-5

(46) Ibid.

(47) See Statute of the International Criminal Court 1998.

(48) Mohammed Mohyeldin Awadh, Studies in International Criminal Law, Dar Al-Fikr Al-Arabi, Egypt, 1972, p. 379.

(49) Abdul Wahid Muhammad Al-Far, International Crimes and Punishment Power, Dar Al-Nahda Al-Arabiya,1994, p. 29.

(50) Ismail Abdel Rahman Mohamed, Criminal Protection of Civilians in Time of Armed Conflict, Dar Al-Nahda Al-Arabiya, Cairo, 2000, p. 186. citing Zana Rafiq Saeed, op. cit., p. 17.

(51) Sami Mohamed Abdel Aal, Criminal Sanctions in Public International Law, Dar Al-gamaa Al-gadida, Alexandria, 2015, p. 284.

(52) Alaa Zaki, Criminal Responsibility in Torture Crimes in the Light of Criminal Protection of Human Rights, New University Press, Alexandria, 2013, p. 303.

(53) Wael Ahmed Allam, The Center of the Individual in the Legal System of International Responsibility, Dar Al-Nahda Al-Arabiya, Cairo, 2001, p. 89.

(54) Alaa Zaki, op. cit., p. 304.

(55) Tarek Ezzat Rakha, Human Rights Law, Between Theory and Practice in Positivist Thought and Islamic Law, Dar Al-Nahda Al-Arabiya, Cairo, 2004. p. 3 quoting the thesis ...

(56) Sami Mohamed Abdel Aal, op. cit., p. 285.

(57) Al-Sayed Abu Eita, International Sanctions between Theory and Practice, University Culture Foundation, 2001, p. 397.

(58) Mohamed Abdel Moneim Abdel Ghani, International Crimes - A Study in International Criminal Law, Dar Al-gamaa Al-gadida, Alexandria, 2010, p. 487.

(59) Saeed Salem Joyli, op. cit., p. 63.

(60) Abdul Wahid Muhammad Al-Far, International Crimes, op. cit., p. 31.

(61) Ibid, p.31.

(62) Ali Jamil Harb, The Theory of Contemporary International Punishment: The International Sanctions System against States and Individuals, International Criminal Encyclopedia, Part One, First Edition, Al-Halabi Legal Publications, Beirut, Lebanon, 2013, p. 194.

(63) Clyde Eagleton, The Responsibility of State in international law, New York University Press, Annals of the American Academy of Political and Social Science, vol. 141, n. 1, 1928, pp.14, 291. Citing Zana Rafiq Saeed ,op. cit., p.18.

(64) Sami Mohamed Abdel Aal, op. cit., p. 288.

(65) Abdul Wahid Muhammad Al-Qar, op. cit., p. 33.

(66) Ahmed Abu Al-Wafa, intermediate in Public International Law, Fifth Edition, Dar Al-Nahda Al-Arabiya ,Cairo, 2010, p. 56.

(67) Nina Jorgensen, State Responsibility and the Genocide convention 1948 The reality of international law, Clarendon Press, Oxford, 1999, p273.

(68) Muhammad Muhyiddin Awadh, op. cit., p. 384.

(69) Hamid Al-Saadi, op. cit., p. 78.