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The historical développement of international crimininal responsibility of individual in international criminal law

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Abstract:
The criminal responsibility of the individual in international criminal law was defined by discussions after the end of the first world war by the committee to determine the responsibilities of war beginners; as well as judicial applications before the german supreme court in Leipzig, as well as through the major jurisprudence issued by the Nuremberg and Tokyo courts,which were established later after spending was legalized later.
Keywords: Responsibility for war crimes , international trials , Nuremberg trials.

INTRODUCTION

The criminal responsibility of the individual in international criminal law was defined by discussions after the end of the First World War by a committee defining the responsibilities of war starters; as well as judicial applications before the german Supreme Court in Leipzig. New judicial bodies are being created, which have affected the physical lives of millions of people.

What is the role of the judicial bodies that were established in developing new concepts and developing them or relying on them to form precedents that can later be relied upon?

We will endeavor to answer this according to the following elements.

Chapter 1: The role of the committee to determine the responsibilities of war starters

After the end of World War I, the allies met at the preliminary peace conference in paris in january 1919, and at the allied negotiation conference on the surrender of germany and the peace treaty. A 15-member committee was also established, called the committee for defining the responsibilities of war beginners and for the execution of sanctions. its goal was to achieve and declare responsibility beginners of war and all those who violated its laws and customs in order to put them on trial[1].

The committee recommended:

"All persons from among the enemy states, regardless of their leadership position and without distinction between their ranks, including heads of state who have been proven to have committed violations of the rules and customs of war or the laws of humanity, they bear responsibility and can be pursued penally."

In the opinion of L. Sunga, this recommendation ended the idea of heads of state hiding behind immunity; It also ended the idea of lower-ranking leaders disappearing behind the push to obey higher orders[2].

And when the commission finished its work in 1920, it presented a list of 895 war criminals, including military and politicians[3].

The committee also recommended the establishment of an international court to try these criminals; This list included only the names of the people at the top of the ladder of leadership, including the caesar.

After the signing of the versailles agreement on June 28, 1919, which included Articles 227 to 230, the general path of the Allies became clear, a questionnaire about their orientation, and Article 227 stipulated that:

"The allies and the allied powers officially summon gilliom ii, the former emperor of germany, for committing a great crime of the principles of universal morality and the sanctity of treaties.And the allies and the allied powers will make a solemn request to the government of the netherlands, requesting the extradition of the former emperor to them, for possible trial."

The second paragraph of article 228 stipulates the following:

"the german government will hand over to the allied powers all persons accused of violating the laws and customs of war who have been identified by name, rank, department, or business conferred upon them by the german authorities..."[4]

The provisions of articles 227 and 228 were drawn up based on a special agreement between the leaders of the allied countries, and the agreement showed a relentless pursuit by the allied countries towards holding the persons responsible for war crimes in their personal capacity, including the kaiser germany; according to some, this step was a prelude towards non-

recognition or the abolition of the "act of state doctrine", as it was a prelude towards the idea of following government leaders and holding them responsible for war crimes[5].

According to l.green, the report prepared by the commission did not include any suggestion that gilliome ii had personally administered or issued orders to one of the individuals that - i.e. the administration or the command - was in violation of the rules and customs of war.

The united states and japan objected to the idea of prosecuting the head of state; also, the Versailles convention in the end did not talk about:"crimes against international law" but about: "a major crime against the principles of universal morality and the sanctity of treaties."

Nor was the trial required to be in accordance with the law; the committee stated in its report that:

" ..The public arraignment under article 227 framed against the german ex- emperor has not a juridical character as regards its substance, but only in its form.the ex- emperor is arraigned as a matter of hight international policy, as the minimum of what is demanded for a supreme offence.The allied and associated powers have decided that judicial form, a judicial procedure and a regular constituted tribunal should be set up in order to assure the accused full rights and liberties in regard to his defence and in orders that the jugement should be of the utmost solemn character.[6]"

France, Britain and Russia also tried to do the same with the political leaders in the ottoman empire about the armenian genocide, but they also failed, despite the inclusion of the same proposals contained in the versailles agreement on follow-up and

responsibility in the sèvres agreement, but Turkey refused to sign the agreement[7].

according to professor Bassiouni, the content of articles 227 to 230 of the versailles convention is directed towards establishing the personal responsibility of the supreme leader[8]; according to him, the failure of the tsar's trial was due to the void created between the investigation and trial stage[9]. Nor were the allies prepared to set a precedent by prosecuting a head of state for a new international crime; from there, the allies asked germany to try a limited number of war criminals before the german supreme court in Leipzig[10].

Chapter 2: The Leipzig trials

On february 13, 1920 the allies decided to give Germany a list of: 896 names for their trial; however,Germany refused this and in the end a compromis consensus was reached according to which Germany will try 45 accused before the reich supreme court in leipzig and apply to them international law before national law.[11]

The only case according to w.parks in which the pacifist theory was discussed was related to the trial of major Benno Crusius; who was found guilty by the court of ordering the killing of wounded french prisoners and was sentenced to two years in prison[12].

in this case, general Stenger and major Crusius were prosecuted for shooting prisoners of war; executing them in prisons; as for the general, it is because he issued the orders to do so: the general argued that his orders were to take the necessary precaution against the french prisoners from obtaining arms again and returning them against the germans, and denied that he had

issued an order to kill any prisoner soldier, which led to a verdict of innocence against him.

As for major Crusius, his situation was different and complicated because on the one hand he had orders and that he personally participated in the killing of the prisoners. with the crime of murder and negligent homicide[13].

According to D. Mundis, the other case in which the court dealt with the pacifist principle was the shooting of the survivors of the Llandvery Castle.

The facts of the case date back to 1921 when L. Ludwig and Jobn Boldt killed part of the captain of the british hospital ship that was sunk by a german submarine, of which out of a total capacity of 258, only 24 of them survived, after they received orders from the captain of the ship to do so.

And this case raised legal problems represented in the fact that the british ship was outside the borders of the war battles because it was sunk on the irish borders, in addition to the fact that the captain of the German ship Hulmut Ptrik had issued an order to kill all the survivors of the sinking who were on board the lifeboats; due to the loss of the commander, he was not prosecuted, and the trial of officers Lindwig and Boldt ensued.

The court ruled that shooting the enemy, who was devoid of weapons, as well as individuals while fleeing from death, is against the law on the one hand, and on the other hand, the two officers were under the authority of the commander and had no special intention to kill, and therefore they were convicted of a lesser crime and with a lesser penalty (four years).

Hendin believes that this ruling has a special value for the period between the wars, because the court recognized that "the

captain of the ship issued an order that appeared to be in violation of international law, and therefore the commander alone is specifically responsible for it."[14]

This stage was also characterized by the conclusion of an international treaty that includes reference to the responsibility of commanders, and it is related to the geneva convention of 1929 for the improvement of the condition of the sick and wounded during armed conflicts, which dealt with the duties of commanders of the armies of the warring military forces in article 26 thereof[15]; which later became (that is, the article) the subject of international jurisprudence and will be referred to when addressing the jurisprudence that it adopted.

Chapter 3: Trials by war committees

The development of the theory was not limited to trials of an international character, but was also carried out by national military commissions and courts; the first took place before the american military commission in manila (section one) and the second by a canadian military court (section two).

The work of the military commissions began in time before the international trials, and therefore they are starting.

Section 1: The case of general Tomoyuki Yamashita.

General Yamashita held his position as commander of the imperial japanese forces in the Philippines and as military governor-general of the Philippines on october 9, 1944, until his surrender on september 3, 1945.

The general was prosecuted before a us military commission based in the Philippines headed by general Douglas Mac Atrture on the grounds that he had violated the law of war. The commission stated the following:

"General Tomoyuki Yamashita, commander of the imperial japanese forces, in Manila and elsewhere in the Philippine islands, as commander of the japanese armies in the war withThe United States Of America and its allies, has unlawfully refrained from discharging his obligations as commander by monitoring the conduct of the military operations of his forces as permitted them to commit the most heinous crimes and other grave crimes against individuals of The United States Of America, its allies, and its dependents, especially the filipinos, and thus the general has violated the law of war..."

The committee mentioned that the general had violated the law of war because Japan had joined a number of treaties that constituted rules and norms for land war. Japan was one of the organizers of the fourth Hague convention of 1907, as well as the 1929 convention relating to the improvement and development of the condition of the wounded and sick in battle[16].

According to L.Green, the charges against the general are not that he personally committed violations of the rules and customs of war, but that he, as commander in chief of the military, failed to escape the obligations imposed by the law of war to ensure the implementation of these obligations by his forces[17].

Three types of violations against the civilian population were enumerated:

1- Starvation, killing and extermination without any trial of civilians, detainees and prisoners of war.

2-Extensive torture, rape and killing of a large number of residents in the philippines, including children, women and religious men, using explosives and burying them alive.

3-Extensive destruction and removal without any military necessity of dwellings, economic and business places; hospitals; schools and public places[18].

More than 8000 civilians were killed and more than 500 rapes were committed in Manila alone; during the general's rule, more than 32,000 civilians were killed, including hundreds of american soldiers[19].

This national trial witnessed the establishment of the nuremberg special tribunal and the ratification of its charter[20].This is because the general's accusation took place only two days before the signing of the London charter on october 8, 1945; therefore, many of the trials that took place in europe referred to this case as a reference case, and the case of general Yamashita is considered the most important case - according to many american jurists - because the accusations against the general were related to his leadership responsibility in particular[21].

the general stated before the commission that he had not given any orders such as those given to him (kill all the philippines); he also denied that he had any knowledge of the commission of these crimes or that he had seen such crimes and that he too had not received any orders from the leadership in Japan to kill civilians.

He was also newly appointed to his post, which did not allow him to know his officers well; and that the american army, in its attack, cut off all means of communication between the army units, and finally, the army was divided into decentralized units whose commanders have the discretion to take whatever decisions they deem appropriate[22].

Through hearing witnesses - about 286 - and looking at documents - 432 documents - the committee concluded that the general's defense was rejected based on five evidence (1) by the number of crimes committed (2) by the number of victims (3) The extent of the violations (4) the similarity in the implementation methodology (5) an increase in the number of violations committed by the authority of a single officer.

The committee, where none of its judges received legal education, stated the following:

"The follow-up committee has provided evidence proving that the crimes were extensive and extensive in terms of time and space, which confirms that they were allowed to be committed intentionally and intentionally and managed by the accused or that he ordered them secretly..."

The committee also stated more clearly that:

"The crimes were committed comprehensively from the north to the south of the islands of the Philippines, and they were committed repeatedly during the leadership of general Yamashita, as they were grave, apparent and repeated in terms of their breadth and inhumanity that the accused should have known about."

The issue of knowledge raised by the committee indicates that the follow-up was not able to prove the current element of knowledge of the accused[23], so it indicated that the accused must know or should have known of the commission of these crimes, which is called the Must Have Known criterion.Simply peaceful.

Among the committee’s unanimous conclusions in this case is that the military commander has positive obligations to monitor the individuals under his authority to ensure their compatibility

and compliance with the requirements of the law of war[24].Thus, it becomes clear that the commander’s responsibility here was based on his failure to perform this positive obligation "breach of duty"Also,on the other hand, the committee did not accept the claim of lack of knowledge or ignorance of the facts "claim of ignorance";The defendant’s defense stated that the general did not commit any personal error and the follow-up must prove the element of error in order to assess his penal responsibility;But the follow-up stated that the crimes were comprehensive and extensive so that the accused should have known about them. Therefore, as the committee said to him, the accused "failed to carry out his duty to monitor his forces[25]".

And this ruling was appealed to the US Supreme Court in what became known as the Re-Yamachita case. It is known that the Supreme Court does not discuss the facts to say the innocence or the conviction of the appellant, but it only considers if the committee that conducted the trial has the ability, authority and jurisdiction to try the accused first[26].

The Supreme Court confirmed the committee’s ruling on January 7, 1945, and after discussing the issue of jurisdiction, it stated that:

"...The issue is: if the law of war imposes on the military commander an obligation to take the appropriate means available to him to monitor the forces placed under his authority and command in order to prevent and protect against violations of the law of war... and if any charges can be attributed to him for his personal responsibility in the event of his refusal refrain from performing this obligation if it is established that the law of war has been violated."

After the court returned to listing the international agreements in force - at the time - including articles 1 and 43 annexed to the fourth convention of the hague treaty of 1907, article 19 of the tenth convention and 26 of the Geneva convention of 1929, the court stated that:

"...the content of these articles imposes on the appellant a positive obligation to take all measures".[27]

In his possession for the protection of prisoners of war and for the protection of civilians.

Apparently, the supreme court's unanimous decision did not elicit the same reaction as the unilateral opinion of justices Murphy and Rutledge.

The unilateral opinion emphasized the incompatibility of the supreme court's ruling on Yamashita's command responsibility with the principle of personal responsibility[28]; he stated that:

"The accused has not been prosecuted as having personally contributed to or ordered the commission of these crimes; nor is there evidence that he had knowledge of them; he is simply prosecuted for having unlawfully failed to discharge his obligation as commander to monitor operations. military action by his subordinates that allowed them to commit crimes...".

He also mentioned the unilateral opinion that general Yamashita might be right when he declared that he was not aware of his forces committing these crimes, because when the American forces entered the Philippines, they sought in every way to strike communications, which he succeeded in doing, striking the leaders and bases, and then it is followed up that he did not.watching his soldiers[29].

As for the mens rea criterion approved by the committee, it is proven that it was not entirely clear[30]; It is proven that he relied on the criterion of criminal liability without error, according to professor Bassiouni[31];I believe that the proposition made by the defendant's defense before the committee is to a large extent true, that:

"The accused is not prosecuted as having done anything to anyone or because he has refrained from doing anything; but expressly because he is only a commander of the Imperial Japanese Forces and for that reason alone he has become guilty of every crime committed by every soldier under his command."

As a summary of this case, it appears that the case of general Yamashita,according to most of the jurists, is one of the most important issues that dealt with the theory of the peaceful president, and that it is the most controversial[32]; Or, more interestingly, Disapproval[33].

Its importance appears in that it contributed to the development of the theory and recognized the existence of a positive obligation in the leader's right to take all appropriate means in order to impose respect for the law of war on his subordinates[34].

And that the committee had applied the idea of penal responsibility without error[35] when it relied on the science component on the criterion must know and that this responsibility is based on the leadership-submissive relationship and that the president, on the other hand, is under a duty or obligation to science." Duty to know[36].

This is despite the fact that this criterion will be retracted later, because the criterion adopted, according to what was

described as"High Point For Command Responsibility",is the highest criterion approved for establishing the responsibility of the peaceful president[37]. Where limited.

Section 2: The Kurt Mayer case.

This case is also considered one of the most important cases that dealt with the responsibility of the commander in the post-world war II era, and this was done by a canadian war crimes court; The trial took place in the same time period as the Yamashita case[38].

Brigade Fuhrer Kurt Meyer has been followed up on the canadian war crimes regulation and this is based on article 10 of it, the fourth and fifth paragraphs,which bear responsibility for the commander when one of his forces or a group of them commits a war crime and that this evidence is attributed as prima facie to the commander[39].

K Meyer was prosecuted as having committed war crimes at his instigation, as well as the killing of Canadian prisoners of war in violation of the rules and customs of war, and that he also issued an order to kill these prisoners or by his forces, and the follow-up panel provided evidence that Meyer had issued an order that must of shooting prisoners and that the killing was so close to his center that he should have known about it[40].

Meyer was charged, first with inciting and supporting his forces by refusing to give the coalition forces any mercy in violation of the rules and customs of war,and second as being responsible for the killing of prisoners of war when his forces killed 23 canadian prisoners of war near the villages of Authie and Buron the third is that he issued a direct order to kill 07

canadian prisoners of war while he was at the headquarters in the Abbaye Ardenne[41].

Twenty-nine witnesses were called; The trial committee stated that:

"...It is a matter of common opinion that not only the people who killed prisoners can be prosecuted as war criminals; but also every military commander who has been motivated to commit these behaviors...and that the general question is: When is the commander responsible for war crimes? committed by his men and by forces subject to his authority, and thus he is pursued and punished as a war criminal? And this answer is not easy, as the follow-up body should prove this responsibility...

A military commander cannot be pursued as a war criminal in all cases in which soldiers under his authority commit; But it is necessary to prove some facts... including: the rank of the accused, the rights and duties of the commander by which he occupied this position, the degree of training obtained by his soldiers, his age and experiences, and in general everything that may prove that the commander commanded or encouraged, whether verbally or otherwise. implicitly to the killing of prisoners, or administratively failing to perform his duties as military commander to prevent or take an affirmative action to prevent the killing of prisoners.

...and that it is not necessary for the court to find or directly prove the existence of an order on the part of the commander to kill the prisoners, but it may infer from clear indications that the commander has made the prisoners pass to the state of death..."[42]

"...Just as the court, through the experiences it knows about military materials,and its endeavors to know the customs during

the battle, as well as in the light of the laws, can determine the responsibility of the accused in any case..."[43]

Professor Green considers that the cases of Yamashina and Meyer are the two most important cases in which the responsibility of the commander was referred to, and that the phrases cited by the court in the search for the responsibility of the commander are similar to what was included in the British and American legalization of the rules of land war, in similar terms and language, and the same situation applies to the canadian organization"Canadian Régulation.[44]"

Chapter 4: The Nuremberg and Tokyo trials

The international tribunals of Nuremberg and Tokyo are considered the most important means of developing international criminal law, especially in relation to the law of individual criminal responsibility.

The judiciary issued by them is considered to have fundamental implications for the development of this law. Its precedents are still used until the present time because the trials touched the most important leaders and led to a review of traditional concepts of the law international law on absolute immunity,sovereignty, and invoking the responsibility of the state instead of the person acting in charge, and others; How did the charters of these courts contribute to that, and what is their jurisprudence on it?

Section 1: Discuss the charter of the Nuremberg and Tokyo tribunals.

Slidrgt mentioned that the charter of the international tribunal for the Nuremburg did not include articles on the responsibility of leaders, nor did the judgments issued by it

include references to this responsibility, because the court was dealing with the theory of participation when it finds the accused guilty and not to the idea of the responsibility of leaders; he justifies his idea with professor lippmann's opinion that the Nuremberg tribunal treated the commander's responsibility "implicitly"; because any kind of criminal contribution may arrange the penal responsibility of the commander when any crime is committed under his authority[45]; emphasizing the same idea, professor L. Green mentions that he contradicts the idea of obeying the higher orders that the charter touches on in article 8 of it; the charter did not include any explicit reference to the responsibility of the peaceful president. despite this, article 7 stipulates that the official capacity of the accused, whether as a head of state or as a high official in it, cannot be considered an excuse preventing follow-up or a mitigating circumstance.

Article 8 also stipulates that the act of the accused acting upon the order of his government or a pacifist president does not absolve him of responsibility; but it may be considered as a circumstance mitigating the penalty if the court considers that the requirements of justice require it.

Langston believes that the fact that the text of the charter does not include any explicit reference to the responsibility of the leaders does not mean that the international tribunal for the nuremburg special tribunal will not pursue the leaders and hold them criminally accountable; and the various applications of the court's judiciary have proven just the opposite, and all the prosecutions were against the people who occupy the highest positions in the state and the nazi party.

In general, the charter of the court was drafted at the london conference, without the participation of any german or neutral lawyer, and with reference to the aforementioned articles - (6 and 7 of the charter) - it included a formulation of the leader's direct responsibility, and this is for the leader who contributes to the formation or execution of a joint plan or conspiracy to commit a crime carried out by his subordinates (article 6 (b) of the charter).

And despite this, although the american proposal included making the commander's responsibility indirectly (the responsibility to abstain) and this in both of the charters, whether for the Nuremberg court or the Tokyo court, this never happened when the text was issued.

It should be noted that the charter of the nuremberg special court has specified personal jurisdiction in it to prosecute major criminals of the european axis countries only, unlike the charter of the Tokyo special court, in which the personal jurisdiction exceeds to any major war criminal and not only japanese criminals,but the evidence is that the follow-up affected only the criminals major japanese including eighteen war criminals; the same applies to the crimes, as the crimes that were subject to follow-up are those that had an international extension or the concept of violation was not related to one country because the law of the oversight council organized the issue that the courts of the allied countries undertake the trial of the rest of the other criminals who committed crimes on their territory.

Section 2: Major jurisprudence in the Nuremberg and Tokyo trials.

The military tribunals of Nuremberg and Tokyo issued a prolific judiciary that tended to confirm the legal nature of the

trials in order to avoid any criticism regarding the fact that the trials were aimed at "revenge" but rather to achieve "justice and law"; Priority has been given to “major criminals” who are those people whose crimes do not have a single international border, that is, people whose crimes "exceed the borders of a single state".This criterion can only affect the most senior officials and leaders in the leadership ladder.

For this reason, the trials affected the most high-ranking political and military officials at the level of the Nazi Party and the state;The trial of General Wilhelm Von Leeb and those with him is one of the trials that affected thirteen German leaders[46] in what is known as the "High Command Case".

All the accused, including von Lieb, were prosecuted for crimes against peace,war crimes,crimes against humanity, and conspiracy to commit the aforementioned crimes. Among the most important issues facing the court was the question of responsibility or standards of personal and individual responsibility for each defendant. The court stated the following:

"In order for any person to be criminally liable, there must be a breach of a moral obligation established under international law, i.e. a personal act of free will based on knowledge that it is criminal conduct under international law.[47]"

And the court refused to rely on holding the accused to criminal responsibility without error Strict Liability. Rather, it relied on the criterion of negligent omission, saying:

"...The criminal behaviors committed by these forces cannot hold them accountable based on a hierarchical element or relationship[48]... and that saying about any person that he is a criminal is not done with regard to his relationship in the

leadership ladder, as there must be a personal mistake or an act that can That it directs and leads to the act directly, or that the violation was committed by one of the subordinates and constituted by the commander a criminal omission."

The ruling considered that the commander must know the behavior of his personnel[49], although the court acquitted the main accused von Lieb of the crimes committed by his forces because he did not have the authority to monitor them because they killed a large number of Russian prisoners and that these crimes were not under his direct authority[50].

On the other hand, the court acquitted the accused"von Lieb"of leadership responsibility because, according to it, he had earlier disputed the legality of the order called: "the commissar Decree ; He also instructed the subjects under his authority not [51]" to follow the content of the order and to abide by the requirements of international law and the law of war, and that any violation of that - the law of war - subjected its owner to disciplinary sanctions[52].

For this reason, the Nuremberg court acquitted him of this accusation, because the military commander Von Lieb had proven that he had rid himself of the obligation imposed on him by law towards those subject to his authority and the duty of supervision and the need to adhere to the requirements of humanitarian law to prevent the commission of crimes, but he failed in the other accusation against him for not doing the same The positive attitude towards what is known as "the Barbarossa Juridiction".He did not give instructions not to implement this command[53]; It is known from the study of the commander’s responsibility that the obligation to control imposed on him under

international law necessitates the necessity of preventing those subject to non-compliance with the provisions of international humanitarian law by committing war crimes.This is what makes it illegal and therefore not enforceable.

The theory also knew similar applications in what was known as the hostage case, which is related to a group of high-ranking officials in the German military system who were followed up as perpetrators and contributors to the commission of murders and conversion of thousands of people. In the state, there is a sponsor to hold him criminally liable; But it tended that to hold the accused responsible, the causal relationship must be proven, the act the accused did or the omission of the act of a criminal nature. In addition, it must be proven that the act was committed illegally and based on the will and knowledge of the perpetrator[54].

And the court confirmed in this case that the element of knowledge is a cornerstone of the crime and what is meant by it: that the commander can be held criminally responsible by abstaining when "the commander must know that the person under his authority has committed the crime".

And this happened towards the accused, not when the court applied to him the "Shold Have Known"criterion, and this is based on reports that reached the accused stating that crimes had occurred and that the accused should have known about the crimes committed in his barracks in view of the gravity of the crimes and that he had the means to know and refrained from surround himself with it[55].

Thus, the court in this case has adopted the same standard that the committee came up with in the Yamashita case, but this time in a more clear and detailed manner[56].

The court acknowledged the responsibility of "Wilhelm List" in view of the murder of a group of hostages within the borders of the occupied territory in which he was appointed, and that the commanding position he occupies requires him to monitor his subordinate people. The court declared the following:

"The accused said he had no knowledge of a mass killing of the population because he was absent from his position, as well as when the reports were received.

The commander-in-chief of colonial areas is obligated to maintain public order and security, to punish the commission of crimes, and to protect life and property within the center.

If he refrains from obtaining information as required by the leadership position, then this abstention constitutes a flagrant violation of this duty, which carries criminal responsibility....[57]"

The court considered that the accused had received reports of unjustified killings of thousands of people at the hands of unknown perpetrators, yet he did not do anything; And that the accused, List maréchal von, did not ask the officials to conduct a follow-up to the case and investigate the legality of this murder; For this reason, the accused’s failure to put an end to these illegal crimes, as well as his failure to take the necessary measures to ensure non-repetition of committing them, and this constitutes a grave breach of his leadership duty and entails his penal responsibility; And the Nuremberg Special Court considered that one of the duties of the leader, in addition to protecting public

order and security, and protecting people and property, is the prevention and punishment of crimes[58].

According to Sliedregt, the court in this case applied the "should know" criterion, but on the basis that there were reports received by "not" of the commission of the crimes and not on the basis that the crimes were of a broad and comprehensive nature[59].

And the International Military Tribunal for the Far East “Tokyo” applied the same rules to former Foreign Minister Hirota because he did not take the necessary measures at his office to put an end to the crimes that are being committed, despite the information he received that hundreds of people are being killed in an unlawful manner. legal and illegal; The same applies to the mass rape of women in what is known as “the Rape of Nanking” and the crimes of assault, and this is what makes his refusal amount to a criminal negligence, and that he consciously refrained from taking the possible measures at his disposal to prevent the occurrence of these crimes[60].

Given the nature of the position occupied by the accused, given that he is a "civilian" or a politician and not a military one, this precedent has taken a deep dimension of analysis. Especially given that Judge Röling issued a unilateral opinion expressing his somewhat different view of the court's jurisprudence, which was recalled again in the judiciary of the Special Court for Rwanda in several cases, including - in Akayosu and Alfred Somoza - by saying:

"Generally speaking, a Tribunal should be very careful in holding civil government officials responsible for the behavior of the army in the field. Moreover, the Tribunal is here to apply the general principles of law as they exist with relation to the

responsibility for missions'. Considerations of both law and policy, of both justice and expediency, indicate that this responsibility should only be recognized in a very restricted sense"[61].

Perhaps this unilateral opinion influenced the Special Tribunal for Rwanda to the extent that it considered the issue of criminalizing the responsibility of civilian leaders "contentious[62]"; Because the historical origins of the theory in general have shown that the theory is from the establishment of military law or military tradition, and this is what made judge rowling ask the court to be careful about the theory's transgression to civilian leaders; And I think that this very concept is what will lead the United States to submit a proposal to the drafting committee of the draft statute for the international criminal court regarding the establishment of a distinction criterion in the moral element between civilian leaders and military leaders, which is the same ratified text that is currently in force.

Conclusion.

The development of the individual’s international responsibility in international law has taken several attempts since the end of the first world war and the establishment of war committees to assess the legal status of individual centers. The principle in development is the establishment of the special international tribunals for Nuremberg and Tokyo, where the special criminal responsibility of the individual and not the state has been recognized,and that the state cannot replace its nationals to protect them from committing acts described as war crimes;

The theory of senior officials leaders has also received a great deal of research.

Footnotes:

[1]-Mahmoud Sherif Bassiouni, international humanitarian law, dar alnahda, 2007, pp. 183-187.
[2]-Lyal S.Sunga, individual responsibility in international law for serious human rights violations, martinus nijhoff publishers, 1992, p.22.
[3]-This idea is very essential in the study, especially in view of its weight in the historical development of the leader's theory. L. Sunga expressed it as follows: " if soveringn immunity were an admissible grounds for exempting officials of high rank, offenders of lesser rank could mere persuaively argur the defence of superior orders, if the real decision makers were immune from legal responsibility altogether, then officials of lesser rank should be excused also".See: lyal s.sunga,op.cit, pp.22.
[4] Bassiouni, op.cit, p.186,193.
[5]-Matthew Lippman : « The Other Nuremberg: American Prosecutions of Nazi War Criminals in Occupied Germany » , Ind. Int'l & Comp. L. Rev. 1 (1992-1993), vol : 3 , Pp. 1- 100, at : 3-4.
[6]- Leslie C.Green, fifteenth waldemar a.solf lecture in international law : superior orders :and command responsibility, military law review ,vol :175, march 2003, pp.309-384 , at :348-349.
[7]- Ibid.
[8]- Bassiouni, crime against… ,op.cit, p .426
[9]- Bassiouni, op.cit, p.192.
[10]- Ibid.
[11]-Daryl A Mundis , « crimes of the commanders :superior responsibility under article 7(3) of the icty statute » ,in international criminal law development in the case law of the icty, boas and schabas eds, martinus nijhoff publishers ,pp.239-275, at :242.
[12]- W.Parks ,op.cit ,Pp.13.
[13]-Stuart E Hendin , command responsibility and superior orders in the twentieth century :a century of evolition, murdoch university electronic jornal of law ,at Para..32.
[14]-Ibid, Para.29.
[15]-D.Burnett Weston, command responsibility and a case study of the criminal responsibility of israeli military commanders for the pogrom at chatila and sabra,military law review, vol:107,1987,pp.71-189,at:84.

[16]-W.Parks,op.cit, pp.22-23; L.C.Green, superior orders and command,op.cit,p.194.
[17]- L C.Green, «war crimes… », op.cit, p.04.
[18]- CH.Garaway : « command responsibility : victor's justice or just desserts ?", international conflict and security law, 2005,pp.68-83,at :72; major Michael L.Smidt ,"Yamachita, medina, and beyond :command responsibility in contemporary military operation",military law review,2000,vol :164,pp:155-234,at:178.
[19]-Rockwood,op.cit,p .127-128.
[20]- For the general's trial was not an international affair; Because it was done by an American military commission that was based in Manila and its five judges were all American soldiers, and it was appealed to the US Supreme Court and the execution of the death sentence against the general from their side also on February 23, 1946.
[21]-Rockwood, op.cit, p.127.
[22]-Andrew D Mitchell, failure to halt prevent or punish :the doctrine of command responsibility for war crimes, sydny law review, 2000,vol:22,pp.381-410,at :389.
The army was divided into three groups: the first, led by Yamashina, called "Shobu"; the second, led by Yokoyama, which was called "Shimbu", and the third, led by Tsukada, which was called "Kembu".
[23]- Ibid.
[24]- W.Parks, op.cit,p .35
[25]- Major Bruce D.Landrum , the yamachita war crime trial :command responsibility then and now, military law review, vol :149,1995,pp.293-301,at 296.
[26]- Ibid.
The us supreme court has monitored three points: 1- the commission's jurisdiction over the accused. 2- the commission's jurisdiction over crimes and violations. 3- monitoring the availability of the defendant's rights, fair trial and procedures. W.parks,op.cit,p .61-62.
[27]- W.parks,op.cit,p.33-35.
[28] - Sliedregt, op.cit ,p.122.
[29] - Lundrum ,op.cit,p .297.
[30] - L.Smidt,,op.cit,p .181.
[31] -Bassiouni, op.cit,p .432.
For your information, the famous article edited by parks on the issue: consider that the committee did not rely on the liability criterion without error.

We do not fail here to mention the simple difference that exists in the two systems, common law and civil law regarding criminal liability without error; what is meant by this responsibility is strict liability in the common lo:«total liability for an offence wich has committed whether you are at fault or not».York dictionary of law , york press and librairie du liban publishers, second edition,2000,p.231.
In other words, the responsibility here is based on the presence or absence of the error; the error is assumed and the denial of the error must be proven.
In the civil law system, this responsibility is called according to the crimes délits matériels, including: « L'agent ets présumé fautif s'il a accompli le geste interdit». Jean Pradel ,droit pénal général ,edition cujas ,16 éme edition ,2006/2007 , p.489
[32]- L.Smidt, op.cit ,p.180; Bassiouni, op.cit,p.426; W.Parks ,op.cit ,p.22.
Jenny S. Martinez argues that the reason she raised the controversy was primarily related to the standard of science approved by the committee.
[33]- Sliedregt, op.cit ,p.123.
[34]- M.J Delavigne, op.cit,p .59.
[35]- Bassiouni, op.cit, p. 432.
[36]- Ibid.
[37]- Lundrum, op.cit,p.298.
[38]- Bassiouni, op.cit,p .431.
The trial officially began on december 10, 1945, and took place before a panel of five judges of military rank. Witney Lacken Bawer ,Chris Madsen ,Justifying Atrocity:Lieutenant-Colonel Murice Andrew And The Defence Of Brigadefuhrer Kurt Meyer, in canadian military history since the 17th century, edited by yyes tremblay, 2001,pp.553-564,at:558.
Meyer was the officer commanding the SS12 tank sub-unit and was appointed to his post on June 14, 1944; The committee pronounced a death sentence against him (by firing squad). On appeal, a life sentence was issued, and it was expressly released in 1954. Luis-Philippe.F.Rouillard, Canada's prevention and repression of war crimes ",miskol journal of international law,vol:02,2005,pp.43-58,at:44-45.
[39]- LC.Green ,superior orders and command responsibility,op.cit,p.196.
[40]- Ibid.
[41]- Case n22, the abbye ardeene case trial if ss brigadefuhrer kurt meyer.the totality of the judgment <www.hlss.uwe.ac.uk>
It is possible to refer to the rest of the charges in the judgment.The three charges mentioned in the text were proven against Meyer, while he was acquitted of the fourth and fifth charges.
[42]- L.Green ,the fifteenth…,op.cit,p.355;L.Green,superior…op.cit,p.196-198.

[43]- L.Green ,the Fifteenth…,op.cit,p.352.
[44]- Ibid.
[45]-E.Van Sliedrgt ,the criminal responsibility of individual for violation of international humanitarian law ,T.M.C asser press the hague,2003,p.124.
[46]- W.Parks,op.cit,p.62.
The case also touched :" Hugo Sperrle – General Of The Army –Geord Karl Friedrich – Wilhelm Von Kuech- General- Johanns Blaskowitz- General-Hermann Hoth- General-Hans Reinhardt –General-Hzns Von Salmuth-General –Karl Hollidt- General –Karl Hollidt-General-Otto Schniewind-Admiral-karl Von Roques –General Of Infantry- Hermann Reinecke –General Of Infantry – Walter Warlimont –General Of Artyllery- Otto Woehler –General Of Infantry –Rudolf Lehmann-General ,Judge Advocate".
[47]-Ibid.
[48]- In the thesis: hierarchical relationship or hierarchical authority is synonymous with the term: subordination.
[49]- N.Laviolette ,op .cit,p.102-103.
[50]- Sliedregt ,op.cit,p .126.
[51]-This order was issued along with another order called, in which instructions are directed to the military commanders who are present in the areas of operations not to abide by the contents of international law, especially the law of war, and that priority is not given to international law, but rather to internal law; Prisoners and civilians are not treated and they are not given any humane treatment.
[52]- O'Brien(JAMES C.)**,**« The International tribunal for violation of international humanitarian law in the former Yugoslavia » , American journal of International law , 1993, vol : 87, pp.639-659, at : 652.
[53]-Regarding the commands, the commissar Decree and the Barbarossa Juridiction, refer to:
Parks (William), op.cit, p. 45-46.
[54]- N.Laviolette,op.cit,p.102.
[55]-Ibid.
[56]-Ibid.
[57]- Sliedregt ,op .cit,p.125
[58]- Le procureur c/ TIHOMIR BLAŠKIĆ, arrêt , op.cit , para :82.
[59]-Ibid,p.126.
[60]-The Prosecutor v. ALFRED MUSEMA ,case no. ictr-96-13-a, judgement and sentence, trial chamber i , 27 january 2000, para :133 .
[61]-The unilateral opinion of Judge Röling extracted from the decision of the International Tribunal for Rwanda in the case of: The prosecutor versus

JEAN-PAUL AKAYESU , case no. ictr-96-4-t, judgment , chambre i, decision of: 2 september 1998 , para : 490.

[62]- The prosecutor versus Jean-Paul Akayesu , case No. ICTR-96-4-T,op.cit , para : 491.