

The role of the international judiciary in preventing crimes of ethnic cleansing

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Abstract

Humanity has witnessed and continues to witness many international crimes committed by human beings, whether in peacetime or in time of war. The crime of ethnic cleansing comes on top of these crimes in terms of seriousness, serious consequences, and negative effects that this heinous crime leads to, and therefore these crimes are not limited to eradicating human lives only, but also cause deep wounds and excruciating pain to the families of the victims of the crime, and the crime was not The subject of interest and denunciation of international law, especially the criminal part of it, but of all monotheistic religions, and it must be noted that international law did not include a crime in the name of ethnic cleansing, but only limits it to war crimes. However, the concept of ethnic cleansing prevailed on a large scale thanks to the international human rights mobilization that It was fueled by the massacres of Bosnia and Herzegovina and the forced deportations, so the ethnic cleansing was mentioned in a report of the Security Council that dealt with the Yugoslav crisis in 1992.

Thus, ethnic cleansing has become a reality, expressed by the tragic international events, in a number of societies and is not limited to a specific geographical region, as these crimes reflect the desire of a racial or tribal minority to monopolize the supreme political power in the country, and consider the policy of racial discrimination, enslavement, extermination, and others, These violations may also be due to the outbreak of internal conflicts on ethnic, religious, tribal, or political grounds between citizens of one country and another, and this is what happened in many countries of the world. Therefore, these crimes are becoming more dangerous as they raise the concern of the international community as a whole, which led to their addressing. This will ensure effective punishment and prosecution of perpetrators through measures taken at the national level as well as through the strengthening of international cooperation.

Since the crime of ethnic cleansing is one of the most important crimes, and carries with it the framework of criminal behavior, and to find out about this crime and the role of the judiciary in limiting it, I divided the research into three demands, the first dealt with the concept of the crime of ethnic cleansing, and the second was the role of World War II courts in reducing The crimes of ethnic cleansing, and the third, the role of the temporary international courts in limiting the violations of ethnic cleansing

Keywords: ethnic cleansing; international judiciary; crimes

Introduction

Defining the crime of ethnic cleansing

Ethnic cleansing is an old term and a practice that has been applied in various forms in many conflicts, and sometimes by committing crimes of sexual violence, persecution, or practicing terrorism and parochial massacres against members of the group to be eliminated, as happened in Bosnia, and as happened in Palestine as well (Nassar, 2009, p. 122).

Ethnic cleansing is an act that aims to establish an ethnically homogeneous region, by transferring members of a particular group using camps where torture, sexual violence and mass killing are practiced. Through these camps, forced expulsions, destruction of private property and culture, looting and theft, and preventing humanitarian aid from reaching Victims (Said, 2009, p. 32).

Another definition is that ethnic cleansing can be understood as the expulsion of unwanted population from a territory for reasons of ethnic or religious discrimination, political, strategic or ideological considerations, or due to the availability of all of these elements (Ayoub, 2008, p. 26)..

In its 1999 report on the study of ethnic cleansing, the US Department of State mentioned it as "the systematic removal of members of an ethnic group from a society or communities with the aim of changing the ethnic structure of a region. What is happening in the Republic of Bosnia and Herzegovina is one of the living examples of the meaning of ethnic cleansing, where substitution of a particular ethnic group in a particular area in place of another ethnic group that was living in that area. (Salama, 2006)

Based on this, it can be said that all of the above-mentioned definitions contain elements leading to a common opinion about ethnic cleansing, which is that ethnic cleansing aims to create ethnic homogeneity in a multi-ethnic territory by expelling unwanted ethnic groups using multiple methods - administrative, military, intimidating, informational - so that they become refugees, and make their return impossible, under the pretext that the territory should be limited to a specific main race

The second requirement

The role of World War II courts in reducing ethnic cleansing

The Second World War is the real starting point in establishing the idea of criminal responsibility and establishing an international criminal justice (Al Shukri, 2005, p. 20).

After the end of World War II, the London Conference was held on 06/26/1945, which resulted in the conclusion of the London Charter on 8/8/1945, between the United States, Britain, France and the Soviet Union, which decided to establish a supreme international military court (Nuremberg trials)., to prosecute war criminals whose crimes do not have a specific geographical location (Makhzoumi, 2008, p. 136).

Article 1 of the London Charter states: "An international military court shall be established after consultation with the German Supervisory Board to try war criminals whose crimes have no specific geographical limitation, whether they are accused personally or as members of organizations or bodies, or with these qualities".

During the Nuremberg trials, Article 49 of the Fourth Geneva Convention had not yet been drawn up, but on the other hand there were the Hague Regulations, the laws of humanity

and the dictates of public conscience referred to in the preamble to the Hague Regulations. In response to Nazi Germany's practices of ethnic cleansing, the Allies sought to prosecute and punish the people who are proven responsible for these operations, after the defeat of the Axis Powers, the London Charter of 8 August 1945 established the International Military Court for Nuremberg and defined its mandate and the crimes that fall within its jurisdiction and included three categories of crimes:

The first category is crimes against peace (and includes any measure, preparation, instigation, management or pursuit of a war of aggression or a war in violation of international treaties, agreements, charters or guarantees and assurances provided by states, as well as contributing to a general plan or conspiracy with the intent of committing the aforementioned acts.

The second category is crimes against humanity (which is every act of willful killing, extermination, enslavement, deportation and persecution committed against the civilian population for political, racial or religious reasons before or during the war in connection with a crime within the jurisdiction of the Court or related to it.

The third category is war crimes (every violation or violation of the laws and customs of war, including for example: willful killing, ill-treatment, deportation of the civilian population. etc), and the deportation of civilians falls within the last two categories, which can be classified as "war crimes." And "crimes against humanity" according to the nationality of the deportees. If the deportees are non-citizens, we are in connection with a war crime, while if the deportees are citizens, we are in the process of "crime against humanity", and the court has jurisdiction to punish natural persons. (Al Shukri, p. 26)

As a result of the Potsdam Declaration, the Commander-in-Chief of the Allied Powers in the Far East issued a proclamation on January 19, 1946, establishing the Tokyo Court to try war criminals in the Far East, particularly the Japanese, and the statute of this Court was defined by a charter attached to this Proclamation (Al Shukrip. P 26) .

Because of the similarities between these two courts, we have decided to deal with examples from trials. It is known that German forces committed a lot of ethnic cleansing and were convicted by the Nuremberg Court in many of its rulings, including the case known as Case No. 9, the defendants for criminal conduct arising from their functions as members of this German term Meaning "special task forces" These are four special units formed in May 1941 before the German attack on Russia at the direction of Hitler, the claim claims that the primary purpose of the establishment was to accompany the German army in occupied Eastern Europe and the extermination of Jews, Gypsies and other elements of the civilian population For reasons of "racist" or "politically undesirable", the number of victims of this program reached about one million people. The trials lasted eight months and convicted the German accused of committing the crimes of expulsion and forcing the civilian population to leave the occupied territories of Poland and other territories occupied by Germany the Nazis issued fourteen death sentences, and five life sentences (Ayoub, p. 30.).

Although the World War II trials are described as the justice of the victor, the Nuremberg Court was the first step towards a successful fight in tracking the perpetrators of international crimes and established the idea of prosecuting war criminals before an international judicial body without any regard for their official status or capacity .

The third requirement

The role of temporary international courts in limiting violations of ethnic cleansing

In the period extending from the Nuremberg and Tokyo trials until the last decade of the twentieth century, international criminal courts were not established to try those accused of international crimes, despite the occurrence of numerous armed conflicts in which the rules of international law were violated, in 1982, and the crimes of genocide - for example, the Israeli invasion Lebanon in 1978 and the crimes against humanity and war crimes committed by the Israeli forces against the Palestinian people, but these violations did not find a gesture from the international community, especially the major powers, to suppress them (Saeed, p.41). But the beginning of the nineties of the twentieth century witnessed the establishment of two international criminal courts based on a Security Council resolution to suppress international crimes committed in both the former Yugoslavia and Rwanda. Based on a Security Council resolution on February 22, 1993 AD, to try those accused of international crimes during armed conflicts, after its republics sought independence from Yugoslavia, as the declaration of Bosnia and Herzegovina's independence was a permission to start a campaign of ethnic cleansing practiced by the Serbs against the Bosnians, and in order to They carried out murder, rape, torture, deportation and other serious violations of the rules of international humanitarian law (Makhzoumi, p. 153).

In fact, Article VI of the Genocide Convention made the establishment of such courts optional, but it did not clarify how to establish and organize this court. However, it is praiseworthy for this article to provide for the possibility of trial before an international court other than the national judiciary in whose territory the crimes of genocide occurred, because the establishment of a court International - at that time - is not impossible, but it is possible to achieve, as some have said, there were precedents for the establishment of the Nuremberg Courts in 1945 and Tokyo in 1946, to try the crimes of the Second World War. Humanity in establishing a permanent international criminal court. It also looks at the fall of criminal rulers and forms for them international criminal courts similar to the Nuremberg and Tokyo courts that tried German and Japanese war criminals (Muhammad, pg. 304).

The establishment of a court with the mandate to prosecute the perpetrators of international crimes remained a dream that did not materialize for nearly half a century. An international criminal court has not been established since the Nuremberg and Tokyo courts, until the extermination treaty was criticized as being nothing more than a theoretical agreement that was not applied on the ground. The perpetrators of genocide crimes under its provisions, and no court was established in this regard for nearly half a century, until the Yugoslavia Court was established in 1993, and then the Rwandan Court in 1994. Hope was renewed and the international community sought to call for the establishment of a permanent international criminal court, and responded to the desire of the majority of countries, and an International Criminal Court was established in July 10, 1998 under the Rome Statute, which granted it the jurisdiction to try the most serious international crimes, including the crime of genocide, and its jurisdiction is complementary to national criminal jurisdictions, and this is an essential guarantee to prevent impunity for the perpetrators of these crimes. The Convention has the elements of effectiveness and obligation, as will be explained elsewhere (al-Far, pg. 305).

Articles (2-5) of the Statute of the International Criminal Court for the former Yugoslavia refer to the court's substantive jurisdiction to try persons responsible for: war crimes, which are the grave violations of the Geneva Conventions of 1949 and their Additional Protocols, violations of the laws and customs of war, crimes of genocide, which are Acts

committed with intent to destroy or exterminate a national, racial, ethnic or religious group in whole or in part, as well as crimes against humanity, which are acts that are directed against the civilian population and take place in the context of an armed conflict, whether of an international or internal nature (Makhzoumi, pp. 165 and 167.).

As for the attempt by the International Criminal Court for the former Yugoslavia to implement the rules prohibiting ethnic cleansing, Article (2) Paragraph (g) criminalized deportation and forcible transfer as a grave breach of the Geneva Conventions of 1949, and the Special Criminal Court for the former Yugoslavia referred to in its first decision on the Dragan case Nikolić that under Dragan's control and orders, a large number of detainees were illegally transferred from Suzica camp to Batkovic camp in the summer of 1992. Dragan organized the deportation by summoning the detainees by their names, telling them that they would exchange places with the Serb detainees. The detainees transferred to Batkovic camp were forced to travel by bus with their heads covered with their hands behind their heads and forced to sing the Serbian national anthem(), the Trial Chamber sentenced him to 23 years imprisonment on February 18, 2003, but after the appeal, the Appeal Chamber reduced the sentence to 20 years on February 4, 2005, and also accused the Serbian President SLOBODAN MILOSEVIC of carrying out operations Ethnic cleansing, in which the Kosovo prosecutor, according to his 1999 indictment, described the forces of the Federal Republic of Yugoslavia (Serbia and Montenegro) It was working towards, with the encouragement or support of MILOSEVIC, a campaign of terror and violence directed against Kosovar Albanian civilians. carried out by the above-mentioned forces, that about 800,000 Kosovar Albanian civilians were expelled from the province, by forcibly deporting them, and what followed this process of looting and destruction of their homes and bombing of villages, and the survivors were transferred to the borders of neighboring countries, and the Public Prosecution said that the responsibility It is the responsibility of MILOSEVIC, de jure being President of the Federal Republic of Yugoslavia (Serbia and Montenegro), Commander-in-Chief of the Yugoslav Army, and Chairman of the Supreme Defense Council, as well as in accordance with the de facto authority. Thus, MILOSEVIC was charged with individual criminal responsibility under Article (7/1) of the Statute to the International Criminal Court for the former Yugoslavia, as well as under Article (7/3), which does not excuse the president from the actions of his subordinates if he knew or had reason to know and did not take the appropriate measures to punish them, and thus he was accused of murder. It is a violation of the laws and customs of war, in addition to four counts of crimes against humanity: deportation, murder and persecution on political, racial or religious grounds.

On August 2, 2001, the court sentenced General RADISLAV KRSTIC to 46 years in prison, after finding him guilty of genocide, persecution, murder, inhuman treatment, terrorism against civilians, ethnic cleansing of civilians and destruction of property of Bosnian Muslim civilians. The Court had accused KRSTIC of forcibly transporting 25,000 Bosnian Muslims, on 12 and 13 July 1995, by bus outside Srebrenica to territory under the control of the Bosnian Army in the area called KLADNJ. He was arrested on April 3, 2000, sentenced to 20 years in prison on March 17, 2009, and was accused of committing crimes in 35 Bosnian municipalities from July 1, 1991 to December 30, 1992, including violating the rules and customs of war, crimes against humanity: persecution, murder Intentional deportation and forcible transfer, states that the Trial Chamber of the Court sentenced MOMILO to 27 years in prison, and also found that he had participated in a joint criminal act aimed at reconstructing the territory of the Republic of Bosnia under the control of ethnic Bosnian Serbs. A, by reducing the proportion of Bosnian Muslims and Bosnian Croats through the commission of various crimes (Aita, , 2011, p. 452), and one of its most important achievements was the arrest of the former President

of the former Yugoslavia (Slobodan Milosevic) on June 28, 2001 AD, and his trial later, and this event was the beginning of a new era in the development of International criminal justice, the surrender of an accused who was until very recently a head of state, his indictment and then his trial, all represent a great victory for the international community in the fight against impunity and a decisive step towards a world where the rule of law prevails. Mr. (Momylokrad Itink), who were formerly two great political figures, are important developments in the court's relations with the authorities of the former Yugoslavia, and in the context of the foregoing, it appears that the criminal courts of the former Yugoslavia and Rwanda take precedence over national courts and their legal systems, including the trial and punishment of the perpetrators of the most serious crimes However, its rulings were mostly unsatisfactory, as the statute of the Yugoslav Court does not include the death penalty, as well as the participation of the two courts in the Appeals Chamber and One to cover the expenses, in addition to choosing one prosecutor for both courts, which detracts from their effectiveness for which they were found, in addition to the fact that they are temporary courts linked to the Security Council and the extent to which it maintains international peace and security and has the right to stop their work whenever he deems it necessary, even if the establishment of the two criminal courts In the former Yugoslavia and Rwanda, it is just a step - albeit in fact very important - towards the establishment of an international criminal court that is concerned with prosecuting and prosecuting the perpetrators of international crimes(Abboud, , p. 89).

Conclusion

Countries, regardless of their power, seek to appear as a state that defends human rights and contributes to its promotion. Perhaps the most important of these rights is now that no one is expelled from his homeland by any means or for any purpose, as ethnic cleansing is defined as a lack of harmony with a group of individuals in a region. Certain for reasons related to discrimination based on ethnic, religious, political, etc., where this group is eliminated by using multiple means such as violence, murder, torture, sexual assault and deportation, and sometimes it reaches the use of military and media means, and there are many motives for committing these Crime, including (race, race, religion, economy, culture), and through my study of this topic, I reached many results, the most important of which are:

First: The ethnic cleansing operations represent a threat to international peace and security, through the use of armed force, intimidation, forced deportation, obliteration of cultural privacy, or harm to the sanctities of the target group and forcing them to abandon the essence of their privacy, and thus represent a direct violation of human rights.

Second: The international judiciary has criminalized the crime of ethnic cleansing, especially after the Second World War, through the Charter of the United Nations of 1945, which included a prohibition on all members of the United Nations in their international relations from the threat or use of force against the territorial integrity or political independence of any country or on any grounds. It does not agree and as intended by the United Nations, it has also established many international courts to try the perpetrators of international crimes, including the crime of genocide.

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