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CONCEPTUAL ASPECTS OF THE RESEARCH

Novelty and signigficance of the topic. With the development of human rights and humanitarian law culture, the international community began to create legal mechanisms and institutions aimed at ending impunity and holding accountable those responsible for the horrors of armed conflict, paving the way for a new concept - post-conflict justice. It is based on the slow development of international humanitarian law and early efforts to prosecute war criminals. However, the current experience of post-conflict justice has evolved in response to the development of human rights, the democratisation process, and the end of the Cold War.

The history of the last two centuries allows us to note, with regret, macabre realities linked to the consequences of armed conflicts. Thus, the danger of the emergence of armed conflicts at the present stage is not at all illusory. Even in a century in which states seem to be attached to the values promoted by international organisations such as the United Nations or the Council of Europe, war is part of everyday life. Ossetia, Syria, Karabakh, Ukraine. Since 24 February 2022, Europe has been facing a crisis that has shaken the world legal order: the Russian-Ukrainian war that is keeping the whole world in suspense, culminating in the exclusion of the Russian Federation from the Council of Europe on 16 March 2022. For the first time in 50 years, humanity has felt the breath of a real nuclear danger. No one could predict the outcome of this confrontation. What is certain is that we are witnessing a new configuration of power in the world. Obviously, this will call for post-conflict justice. Victims will demand justice and redress. The sphere of the protection of fundamental rights and freedoms in all circumstances is increasingly moving closer to international humanitarian law. Issues related to the establishment of restorative mechanisms will certainly appear on the regional or international agenda. It is not excluded that the UN or the CoE will draw inspiration from empirical models of post-conflict justice, learning the lessons of the past, selecting the strong elements and adapting it predominantly to the everyday dimension of human rights.

Analyzing the history of post-conflict justice, three stages of its evolution can be distinguished. Eeven though, their prerequisites, causes and effects were not the same. However, it must recognize that the same goal has dictated at every stage the building of institutions to achieve this justice - the the repression of the most heinous international crimes. Therefore, the stages condense around a new controversial creation of universal repression.

I. The first stage, which we will conventionally call ***the Nuremberg stage***, manifested itself in the establishment of the International Military Tribunals at Nuremberg and Tokyo. These tribunals have firmly established that there are certain crimes that give rise to international interest in their prosecution, and that the commission of such acts entails individual responsibility. It is worth noting that these concepts of individual international

responsibility for specific crimes against peace and crimes against humanity were defined at Nuremberg.

II. The second period in the evolution of transitional justice, which we will call ***the UN Security Council tribunals phase***, began with the creation in 1993 and 1994 of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) in response to widespread violations of international humanitarian law in the Balkans and Africa. Unlike the military tribunals of 1945, both tribunals were established under Article 39 of the UN Charter by resolutions of the UN Security Council and are binding on all UN member states. Despite the contribution these two courts have made to international criminal law, their work has been strongly criticised.

III. The third stage in the development of post-conflict international justice, which we call the ***stage of universal repressive jurisdiction***, began with discussions on the need for the creation of an International Criminal Court, empowered to prosecute the most serious crimes against the international community with the general principles of criminal law and respect for the rights of defendants and victims.

Despite the creation of a permanent international criminal jurisdiction and a hope to avoid the need for an additional *ad-hoc* institution, it turned out that this was prematurely exposed. This has prompted the international community to promote ***alternative judicial processes*** to deal with war crimes and crimes against humanity at the national level. Thus, in a short period of time, several tribunals have been established to prosecute international crimes committed by people involved in some of the most brutal conflicts ever fought by mankind, the so-called hybrid tribunals. Hybrid courts are the latest development in international criminal justice, the hybrid model being a combination of national and international elements.

It is undeniable that local courts and governance structures in most post-conflict situations are weak and face too many financial and logistical constraints to effectively handle the complex processes of prosecution and punishment of war criminals. Moreover, the proximity of the conflict-affected area, the inability of many local courts to try war crimes is often due to damage caused by bombing, arson, looting or negligence.

The shortcomings in this respect do not imply that international courts are the only alternative. Purely international institutions often fail to promote local capacity building or the application and development of substantive rules criminalising mass atrocities in countries in transition countries. In post-conflict situations, it is important to develop local awareness in the justice sector. An international tribunal located far from the affected country and run by foreigners cannot effectively train local judges in the necessary skills.

In this sense, hybrid courts can be seen as one of the most effective forms of justice in a post-conflict context. In turn, hybrid courts are not intended to redefine “justice”, but rather

to promote the idea that local people's perceptions of justice mechanisms are important. Thus, popular support and understanding of the institution figure prominently in the process of establishing hybrid courts, demonstrating that the hybrid mechanism is the most successful for resolving the judicial crisis that has arisen because of conflict. The application of domestic law and the involvement of national judges alongside international judges are perfectly compatible with state sovereignty and reinforce the cultural and political expectations of both perpetrators and victims.

Goal of the thesis. Taking into account the relevance and importance of the subject matter of the present scientific endeavour, its ***main goal*** is a multi-aspectual research on the institution of internationalised (hybrid) national criminal tribunals, with the establishment of their novel aspects from the perspective of identifying the best solutions for establishing a reliable justice for all actors and entities in areas affected by internal or international conflicts, a justice capable of repressing the most serious crimes committed in these territories and restoring social equity.

To achieve the proposed goal, the following ***objectives of the research*** have been identified, the achievement of which also conditions the solution of the scientific problem:

- defining the concept of a hybrid criminal court;
- establishing the principles of activity and the limits of jurisdiction of the hybrid court;
- determining their organisational patterns and structure;
- identification of mechanisms to trigger international jurisdiction;
- elucidation of the procedure for the adoption of judicial acts by hybrid courts and their enforcement mechanisms;
- demonstrating the unique elements of each existing criminal court;
- identifying the failures and strengths of these jurisdictions.

Scientific novelty of the results obtained. The novelty and scientific originality of the present thesis lies in the formulation of an autochthonous doctrinal study on the originality of internationalised national criminal jurisdiction, specifying the distinctive aspects, identifying the place and role of internationalised courts in the network of existing courts in the world today, especially in regions devastated or affected by internal or international conflicts. It should be noted that the current scholarly approach, even if it focuses on the dynamics of hybrid tribunals, is nevertheless a work that falls entirely within the area of concern, regulation and research of public international law, taking into account the conjuncture and source of the creation, as well as the mode of operation of these jurisdictions. The results obtained can be used innovatively for the establishment of a hybrid court for human rights litigation in territories with disputed jurisdiction: dominated by foreign occupation, not effectively

controlled by states or separatist territories. The scientific novelty of the present approach could lead to the establishment of a hybrid court to create day-to-day legal security for the population living in secessionist territories, which is often at the mercy of unconstitutional authorities that ignore minimum standards of protection of fundamental human rights and freedoms. Such courts would be the reliable solution for such territories as the self-proclaimed dniester republic, Karabakh Mountain, South Ossetia, Crimea. Such a projection is not excluded for other territories under various foreign occupations in the future.

Thus, ***scientific novelty of the results obtained*** involves a dual legal nature, which primarily consists in arguing the viability and effectiveness of internationalised national criminal tribunals in view of the desirability of using this type to restore justice in territories ravaged by specific internal or international conflicts and to punish those guilty of committing the most serious international crimes. On the other hand, the demonstration of their effectiveness justifies the hypothesis of using this format for the establishment of a human rights jurisdiction to prevent and redress human rights violations, in peacetime, in territories affected by armed conflict where contested sovereignty persists.

Theoretical value and practical value of the work. The study carried out has a profound scientific character, in particular referring to the particularities of internationalised national criminal courts. The proposed thesis is an in-depth scientific approach to the nature and legal essence of internationalised jurisdictions, considering their variety and the particularities that each court created demonstrates. The work, in a clear and logical manner, outlines the defining, common and novel elements of internationalised criminal tribunals, working with consolidated texts of international instruments and elucidating the jurisprudence derived from those fora.

The study is of value to scholars designing solutions to prevent and suppress international crimes committed in conflict-affected territories, as well as to the political will to implement them.

Implementation of the scientific results. The research results, conclusions and recommendations finalized during the study were used in the texts of scientific articles in specialized journals, as well as discussed and evaluated at national and international conferences.

Synthesis of the research methodology. The structure of the thesis is conditioned by the research aims and objectives and includes list of abbreviations, annotation in three languages, introduction, four basic chapters, general conclusions and recommendations, bibliographical list.

Chapter I entitled *"Doctrinal and normative reflections on the organisation and functioning of international repression jurisdictions"* highlights the results of scientific

research on the typology of criminal jurisdictions carried out by the theorists and practitioners in the field by analysing the English, French, Russian and Romanian literature, including local literature.

Also in this chapter, the relevant provisions of the international instruments establishing and related to the activity of internationalised national courts (establishment agreements, international conventions, statutes) and of the national legislation applicable to the work of internationalised national courts are structured and explained. This chapter concludes with conclusions, including on issues and directions for research.

Chapter II entitled *"Building internationalised criminal courts"* reveals the research carried out on the definition of the concept of a hybrid criminal court, the establishment of the principles of activity and the limits of jurisdiction of criminal courts, the identification of their institutional structure and organisational particularities, ending with a series of conclusions on the segments subject to scientific analysis.

Chapter III entitled *"Dictio juris of internationalised criminal courts"* presents a detailed analysis of the procedures for triggering hybrid jurisdiction and conducting pending proceedings, as well as the mechanisms for adopting and enforcing jurisdictional acts from a comparative law perspective. Naturally, this section concludes with a series of conclusions by the author on the issues researched.

Chapter IV entitled *"Unique Aspects of Internationalised Criminal Tribunals"* contains the comparative scientific research developed on the distinctive features of each individual hybrid criminal tribunal, cataloguing the characteristics, successes and failures of the Special Court for Sierra Leone, the Khmer Rouge Tribunal, the Special Tribunal for Lebanon and no doubt, those of the Iraqi High Criminal Tribunal in Baghdad. Finally, the chapter draws conclusions from the thematic investigation.

The general conclusions and recommendations develop final general rationales based on the research as a whole and present some conceptual and practical milestones in the complex and multilateral approach to internationalised national criminal tribunals in the system of public international law and international criminal law in general, but also as a separate institution within the law of international litigation.

Publications on the thesis topic. Results are published in 8 journal articles and presented at 6 national and international conferences.

CONTENTS OF THE THESIS

The thesis entitled **"Internationalised National Criminal Tribunals"** has a classical structure consisting of an introduction, four chapters, general conclusions and recommendations, bibliography.

The **Introduction** provides an overview of the work, proposes an argument regarding the topicality of the topic and the object of research, identifies the main object and purpose of the PhD thesis, the objectives of the research, its scientific novelty, the methodological and theoretical-scientific support, the theoretical and practical importance of the work.

Chapter I entitled ***"Doctrinal and normative reflections on the organisation and functioning of international repression jurisdictions"*** is divided into three paragraphs and highlights the results of scientific research on the typology of criminal jurisdictions carried out by theorists and practitioners in the field.

Paragraph 1.1. "Analysis of the results of scientific research on the typology of international jurisdictions in criminal matters" highlights the scholarly approaches of national and foreign scholars who research the subject of the organization and functioning of international repression jurisdictions.

In the foreign literature, some works are identified that focus directly on the work of internationalised national courts. A trend is discernible whereby an imposing emphasis is placed on the issue of international criminal jurisdictions and their success story in international law.

In this context, one can note the work of Vladimir Tochilovsky *"The law and jurisprudence of the international criminal tribunals and courts"* [30], Klaus Bachmann and Aleksandar Fatic *"The UN International Criminal Tribunals: Transition without Justice?"* [19, 290 p.], Yves Beigbeder *"International Criminal Tribunals Justice and Politics"* [20, 351 p.]. These papers focus on reviewing the statutes, achievements and limitations of international criminal courts starting with the Nuremberg and Tokyo Tribunals, followed by the temporary international courts of the 1990s and hybrid tribunals, and the creation of the permanent International Criminal Court.

Particular attention has been paid to works that provide an analysis of international tribunals from a human rights perspective such as *"International Criminal Tribunals and Human Rights Law Adherence and Contextualisation*" written by Krit Zeegers [31, 434 p.], Human Rights Watch *"Genocide, War Crimesc and Crimes Against Humanity: A Digest of the Case Law of the International Criminal Tribunal for Ruanda"* [22, 482 p.].

Paragraph 1.2. "Research on international instruments establishing and related to the work of internationalised national tribunals" provides a foray into the codification process of international instruments establishing and related to the work of internationalised tribunals.

The internationalised national tribunals, which are the subject of the research in question, organise their judicial activity in accordance with the international instruments based on which they were established, and others related to them. As a result, those instruments and their impact on hybrid courts have been analysed.

Given the primary objective and the specificity of the research, special attention was paid to the creation of the Special Court for Sierra Leone.

By *Resolutioin of 14 August 2000* [12], the Security Council expressed its deep concern about the serious crimes committed on the territory of Sierra Leone against UN residents and staff and the prevailing situation of impunity. By this resolution, the Security Council called on the Secretary-General to negotiate an agreement with the Government of Sierra Leone to establish an independent Special Court to prosecute those who bear the greatest responsibility for serious violations of domestic law and international humanitarian law. The *Agreement* under discussion was signed on 16 January 2002. Following the signing, the Special Court for Sierra Leone was established to prosecute individuals for crimes committed within Sierra Leone since 30 November 1996.

The jurisdictional framework is governed by the *Statute of the Special Court for Sierra Leone*, which is annexed to and forms an integral part of that Agreement. The Statute lists the crimes falling under the jurisdiction of the SCSL: murder; extermination; slavery; deportation; arrest; torture; rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence; persecution on political, racial, ethnic, or religious grounds; other inhumane acts.

At the same time, an important moment that was naturally highlighted concerned the extension of the Court's jurisdiction over persons who committed or ordered the commission of atrocities on the territory of Sierra Leone, the provisions of the *Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949* are also applicable [2] and of the *Additional Protocol II of 8 June 1977* [11].

Like the Special Court for Sierra Leone, the Khmer Rouge Tribunal (KRT), set up with the help of the UN. Thus, the *General Assembly Resolution of 22 May 2003* [13] welcomed the efforts of the Secretary-General and the Government of Cambodia to conclude the negotiation of the draft agreement on the condemnation of crimes committed during the Khmer regime, which is annexed to the resolution. The purpose of the agreement is to regulate cooperation between the United Nations and the Royal Government of Cambodia in the

process of holding accountable the leaders of the Khmer Rouge Regime and those most responsible for crimes and serious violations of Cambodian criminal law, international humanitarian law and international conventions recognized by Cambodia, which were committed during the period from 17 April 1975 to 6 January 1979. The Agreement provides, *inter alia*, for the legal basis, principles, and modalities of such cooperation.

The statute provides that the KRT has the power to prosecute all persons suspected of having committed crimes of genocide as defined in the *1948 Convention on the Prevention and Punishment of the Crime of Genocide* [1]. Thus, based on the provisions of the Convention, the following acts will be punished:

- attempts to commit genocide;
- conspiracy to commit genocide;
- participation in acts of genocide.

The Cambodian Tribunal has the power to prosecute all those who have committed or ordered to be committed grave breaches of *the Geneva Convention of 12 August 1949*, such as the following acts against persons or property protected under the provisions of these Conventions: intentional murder; torture or inhuman treatment; intentionally causing severe suffering or serious harm to physical integrity or health; destruction and infliction of grievous damage to property, not justified by military necessity and committed illegally and unreasonably; compelling a prisoner of war or a civilian to serve in the forces of an enemy power; willfully depriving a civilian or prisoner of war of the right to a fair trial; illegal expulsion or illegal transfer or deprivation of liberty of a civilian; taking civilians hostage..

The Tribunal has the power to try all those responsible in the highest degree for the destruction of cultural property during armed conflict, in accordance with the *1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* [3]. The TKR also has jurisdiction over crimes against internationally protected persons under the *1961 Vienna Convention on Diplomatic Relations* [4].

As for the Special Tribunal for Lebanon (STL), unlike the first two hybrid tribunals, it was established by *Security Council Resolution of 30 May 2007* [14]. This resolution established the Tribunal through direct application of *Chapter VII of the UN Charter*.

The STL differs considerably from other hybrid courts:

- is the only international court whose subject-matter jurisdiction extends only to offences defined by reference to national law;
- is the first international tribunal with jurisdiction over terrorist offences (under domestic law);
- it has not been given jurisdiction to prosecute the most serious violations of domestic criminal law, such as war crimes, genocide, and crimes against humanity.

Unlike other internationalised hybrid tribunals, which rely on both domestic and international law, the Special Tribunal for Lebanon applies only the Lebanese Penal Code as its source of substantive law.

In turn, the Iraqi High Criminal Tribunal (IHCT) was not created with UN involvement, it can only be considered hybrid due to the international provisions that it uses to prosecute persons suspected of genocide, crimes against humanity and war crimes. Thus, Article 13 gives the IHCT jurisdiction over serious violations of the Geneva Convention of 12 August 1949; serious violations of the laws and customs applicable in international armed conflict, within the limits established by international law; serious violations of the laws and customs of warfare applicable in non-international armed conflicts, within the limits established by international law.

Paragraph 1.3. "National law applicable to internationalised national jurisdictions" focuses on national law applicable to internationalised national jurisdictions.

Following the analysis of the legal framework applicable to hybrid courts, it was necessarily emphasised that recourse to the rules of national law, which is one of the main features of iterationalised jurisdiction.

Hybrid courts make use of national legislation in relation to offences against minors, sexual offences, and crimes against public safety and social coexistence.

This chapter concludes with conclusions, including issues and research directions.

Chapter II, entitled ***"Building internationalised criminal courts"*** is structured in four paragraphs and is devoted to defining the concept of a hybrid criminal court, establishing the principles of activity and the limits of jurisdiction of criminal courts, identifying their institutional structure and organisational peculiarities.

In ***paragraph 2.1. "The concept of the hybrid criminal court"*** a comprehensive survey of the hybrid criminal court is carried out.

The end of the Second World War was marked by the emergence of new international rules that established the international legal responsibility of individuals for committing the most serious encroachments on the peace and security of mankind. Prior the establishment of the international tribunals in Nuremberg and Tokyo, those responsible for of war crimes and crimes of aggression were tried by national courts, usually of the victorious state, under the military justice system. The Nuremberg trials confirmed that individuals bear responsibility, including to the highest degree, both under national law and international norms and customs. [16]

The last decade of the the 20th century, after the end of the Cold War, was marked by events that amounted to serious attacks on fundamental human rights and the basic rules of humanity. The acts of genocide committed in Bosnia and Rwanda have prompted the UN to

establish new jurisdictions with limited territorial jurisidiction to prosecute those responsible for the atrocities accountable. This led to the creation of the International Criminal Tribunal for the former Yugoslavia (ICTY) [24] in 1993 and, a year later, the International Criminal Tribunal for Rwanda (ICTR) [25].

Despite the considerable achievements of those jurisdictions, they were not designed to provide the most optimal definitive model for the implementation of international criminal justice. In 2002, the need for *ad hoc* criminal jurisdictions was diminished by the creation of the International Criminal Court (ICC), the permanent institution set up to punish the perpetrators of the most serious international crimes. But before the creation of the ICC, the UN Security Council and the international community became aware of the various shortcomings of *ad hoc* tribunals that prevented the use of that jurisdictional model in the future, and the United Nations began to look for alternatives. This led to the birth of a new form of international criminal jurisdiction - the hybrid court. [28, p. 1015]

These courts are positioned as “hybrid” or “internationalised” because their institutional apparatus and applicable law consist of a mixture of international and domestic law, resulting in a mixed form of justice. They engage the consolidated efforts of both the international community and the state in which the alleged crimes were committed.

Given the recent nature of the hybrid courts phenomenon, their definition is in the process of being affirmed. However, despite some ambiguities, certain basic features can be deduced, namely: a combination of elements of domestic and international law (rules of positive law, principles and rules of international criminal law); the recruitment of international and national officials (judges, members of the prosecutor's office, support staff); functioning on the basis of a statute agreed and approved by the host government and international structures (UN); the conduct of inquiry and trial proceedings in in the prescribed manner; establishment in states affected by conflicts resulting in the commission of war crimes and crimes against humanity. Thus, it is certain that hybrid courts form a separate jurisdiction, different from national courts and international courts (*ad hoc* or permanent).

Hybrid courts can be an effective solution where the local community is ready to pursue justice but needs international assistance to effectively prosecute and punish crimes. These tribunals are *sui generis* bodies, comprising judges, prosecutors, and additional domestic and international staff, and are governed by legal norms and procedural rules of the positive law of the host state and relevant norms and principles of international law. [23, p. 230]

The recent spread of internationalised tribunals is since states that have suffered from impunity do not have real possibilities on their own to punish the crimes committed, and the establishment of *ad hoc* international jurisdictions modelled on the ICTY and ICTR is not a good alternative on grounds of expense and jurisdictional capacity. The hybrid jurisdiction

model has developed in special circumstances, in states affected by armed conflict, where there are no domestic courts capable of dealing with the pressing need to punish crimes committed during the conflict, and the establishment of an international tribunal is not reasonable.

Paragraph 2.2. "Principles of activity and limits of jurisdiction of hybrid courts" looks at the scope of activity and the limits of jurisdiction of criminal courts.

The internationalised national jurisdiction is a particular legal category within the existing jurisdictions in the world at the present stage, characterised by several distinctive aspects regarding its triggering, organisation, functioning, limits of jurisdiction, decision-making activity, etc. The need for the establishment of an internationalised national criminal jurisdiction was due to the specific political, social, and humanitarian configuration caused by the commission of multiple crimes, which are serious violations of the domestic criminal law of the states for which the jurisdiction was established, international humanitarian law and custom, the law of war (*jus ad bellum*) and relevant international conventions.[15]

Internationalised national courts or tribunals are in fact a combination of the legal-institutional essence of a national jurisdiction with the international one. Sometimes they are even called "hybrid courts" because of the interconnection of two distinct, independent, and even opposing elements.

Internationalised tribunals combine in their jurisdictional activity not only legal elements of domestic and international origin, but they also incorporate elements of personnel, magistrates, prosecutors coming from domestic and foreign environments connected to the realities of dispensing justice in the state affected by crimes and offences. Each internationalised national court is unique in its creation, composition and applied legislation, being established on the territory of the State where the alleged crimes were committed, it reflects the tendency of internal and external decision-makers to territorially prosecute the commission of crimes and thus punish the guilty perpetrators, focusing in particular on the idea of justice being served by the persons or their representatives who have suffered directly from the atrocities committed.

Like any other international or national criminal court, hybrid tribunals base their activities on certain ***general principles***, such as: legality of incrimination, individual criminal responsibility, non-applicability of the statute of limitations to crimes against humanity and war crimes, legal irrelevance of the excuse of performing an act of state, non-withdrawal of criminal liability based on an order from a superior, etc.

In the field of investigating the principles of activity and the limits of jurisdiction of internationalised national criminal tribunals, we conclude that each of these tribunals was created in special circumstances, with the need to operate effectively in different circumstances. Therefore, there is no uniform "hybrid" court model. These tribunals are in fact

attempts by the international community to respond to harmful acts in local conflicts with fewer resources. However, the crimes committed in internal conflicts have often been large-scale and have consequently become a concern of the peoples of the world on a large scale, not only for the victims and citizens of the affected state.

Paragraph 2.3. "Organisation and institutional structure of hybrid tribunals" provides a comprehensive analysis of the organisational process and institutional structure of internationalised criminal tribunals.

One of the most interesting novelties in international criminal law in the late 1990s-early 2000s concerns the emergence of a "third generation" of criminal authorities (the Nuremberg and Tokyo tribunals being the first, the criminal tribunals for the former Yugoslavia and Rwanda, the International Criminal Court being the second generation), which are called, for lack of a better term, "internationalised national" or "hybrid" tribunals. They were designed as a legal mix of national and international elements, forming part of specialised mechanisms designed to end impunity in a particular state. [26, p. 93]

Like all international judicial bodies, including *ad-hoc* or permanent courts, internationalised criminal tribunals are composed of qualified and independent judges who operate under pre-established rules of procedure and adopt binding decisions. They are subject to the same principles that govern the work of international justice (due process, impartiality, and independence). Like other criminal tribunals, the purpose of hybrid courts is to punish serious violations of international criminal law, international humanitarian law and international human rights law committed by individuals, including those bearing the highest degree of responsibility, and thus to deter future violations and help restore the rule of law. [17]

Thus, like all other criminal bodies incorporating international elements, to properly fulfil their noble mission, hybrid tribunals are to base its work on the principles of international cooperation and judicial assistance from States and international organisations, although in the case of internationalised criminal courts, the aspect of cooperation is more difficult due to the special legal status of these jurisdictions.

However, despite certain important similarities with other criminal courts, internationalised criminal tribunals form a distinct jurisdictional category that distinguishes them from all other related entities. In some cases, these courts are part of the judicial system of a particular country (host country), while in others they have been grafted onto the local judiciary. There are also situations where internationalised courts are an entirely different institution, ranking above the domestic court system. But in all cases, the nature of hybrid courts is mixed, incorporating both national and international features.

The structure and composition of internationalised tribunals are logical and directly reflect the powers of these courts to investigate and prosecute crimes committed in the territories of States affected by internal conflicts or crimes committed during the rule of certain non-democratic regimes. Representing a new typology of criminal courts, the so-called "third generation of courts", they have not yet succeeded in demonstrating any exceptional organisational and compositional aspects. On the other hand, the structural aspects of criminal courts, whether domestic or international, operating on *ad-hoc* or permanent basis, show certain stable and binding characteristics, each court comprising magistrates, prosecutors, administrative staff and judicial support staff, these divisions marking the jurisdictional activity of any criminal court.

The last paragraph 2.4., presents a conclusion of the process of building hybrid criminal courts.

Chapter 3 "Dictio juris of internationalised criminal courts" is divided into three paragraphs and presents a detailed analysis of the procedures for triggering hybrid jurisdiction and conducting pending proceedings, as well as the mechanisms for adopting and enforcing jurisdictional acts from a comparative law perspective.

Paragraph 3.1. "Initiation of jurisdiction and conduct of pending proceedings", of this chapter, aims at analysing in detail the procedure for the declaration of jurisdiction and the conduct of pending proceedings.

Initiating investigations and prosecutions are among the most important goals of international hybrid tribunals. These decisions, usually yaken by prosecutors at first instance and reviewed by judges, play an enormous role in determining the legitimacy and ultimate success of the entire international criminal law law. The crimes referred to the hybrid courts far outnumber the resources available to them, a situation that cannot be radically changed soon. In the following, an analyses of each hybrid classical court in terms of the triggering of jurisdiction and the conduct of proceedings was fulfilled.

In this regard, a thorough research of the constitutive acts and rules of procedure of the Special Court for Sierra Leone, the Khmer Rouge Tribunal, the Special Tribunal for Lebanon, the Iraqi High Criminal Tribunal in terms of their jurisdictional competence and the conduct of pending proceedings has been carried out.

Paragraph 3.2. "Adoption and enforcement of judicial acts: comparative case law" comes with a detailed exposition of the relevant jurisprudence on the adoption and enforcement of jurisdictional acts.

The stages of the initiation of jurisdiction, commencement and conduct of pending proceedings are naturally followed by those of the adoption of the relevant jurisdictional acts and, subsequently, their enforcement. As a result, a comparative analysis of the procedures

concerning the adoption and enforcement of judgments adopted by the courts under scientific research was carried out with, e.g., Charles Taylor Case, Case 001 Kaing Guek Eav [5], Case 002 Nuon Chea, Khieu Samphan, Ieng Sary, Ieng Thirith. [6], Case 003 Meas Muth [7], Case 004 Ao An, Yim Tith [8], Case Ayyash and others (STL-11-01) [9], Case Hamadeh, Hawi and El-Murr (STL-11-02) [10], Case Dujail (Trial of Saddam Hussein), etc.

Paragraph 3.3. comes to a summary conclusion regarding the *Dictio juris* segment of the activity of internationalised courts.

Chapter 4, entitled **"Unique Aspects of Internationalised Criminal Tribunals"** is composed of 5 paragraphs and contains the comparative scientific research developed in the field of the distinctive features of each hybrid criminal court, cataloguing the characteristics, successes and failures of the Special Court for Sierra Leone, the Khmer Rouge Tribunal, the Special Tribunal for Lebanon, and no doubt, those of the Iraqi High Criminal Court in Baghdad. Finally, the chapter draws particular conclusions from the thematic investigation.

Paragraph 4.1. "Specific elements of the Special Court for Sierra Leone" provides an analysis of the specific elements of the Special Court for Sierra Leone. Thus, the Court has jurisdiction *ratione materiae* over offences under national law such as the abuse of girls and arson, both of which are very typical of the conflict in Sierra Leone, in addition to violations of international criminal law. [21, p. 457-515]

Paragraph 4.2. "Distinctive features of the Khmer Rouge Tribunal" discusses the distinctive features of the Khmer Rouge Tribunal. The Khmer Rouge Tribunal is a product of compromise, a fact clearly demonstrated by the history of tense and protracted negotiations that led to its establishment. From the outset, there have been criticisms of the legality of the establishment of the Tribunal, its limited jurisdiction and insufficient references to international law.[18] Further concerns have been raised more recently after evidence emerged of political interference, bias and corruption among judges and Tribunal employees.[27]

Paragraph 4.3. "Unique aspects of the Special Tribunal for Lebanon" provides an insight into the distinctive aspects of the Special Tribunal for Lebanon.

The status of the Special Tribunal for Lebanon differs significantly from that of other hybrid tribunals, being the first hybrid tribunal established exclusively based on the UN Security Council Resolution. However, the Statute of the Tribunal for Lebanon is arguably the most "national" of the statutes, in that it contains multiple references to domestic law.[29] Unlike other hybrid tribunals, the Special Tribunal for Lebanon is not mandated to try violations of international humanitarian law and international criminal law. The Special Tribunal for Lebanon has a limited mandate to try those held responsible for the 14 February 2005 terrorist attack which resulted in the death of former Lebanese Prime Minister Rafiq Hariri and the death or injury of others. Article 1 of the Statute states that the elements used to

establish a link with the Hariri case are: criminal intent or motive, purpose of the attacks, nature of the targeted victims, pattern of attacks (*modus operandi*), perpetrators. A unique feature of the STL is that it only examines domestic crimes.

Paragraph 4.4. "The Iraqi High Criminal Court - unsuccessful attempt to establish an internationalised jurisdiction" presents an analysis of the characteristic features of the Iraqi High Criminal Court.

Following the analysis of the specific aspects of the Iraqi Tribunal, the manner of its establishment, as well as the direct involvement of the occupying forces in the process, were brought to the fore. Because of the direct involvement of the Coalition Provisional Authority in the establishment of the Tribunal, the Iraqi High Criminal Court has often been seen as a Trojan horse and an instrument of revenge for the opponents of Saddam Hussein's regime.

Paragraph 4.5. comes to a summary conclusion regarding the unique features of hybrid criminal tribunlas.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

In the context of the above, ***the main goal*** of the present scientific approach is to conduct a multi-aspectual research on the institution of internationalised (hybrid) national criminal tribunals, with the establishment of their unique aspects from the perspective of identifying the most optimal solutions for establishing a reliable justice for all actors and entities in areas affected by internal or international conflicts, a justice capable of repressing the most serious crimes committed in these territories and restoring social equity. The research carried out has enabled us to draw the following ***general conclusions***:

1. International criminal law doctrine has no common concept for designating this type of jurisdiction. This research allowed us to conclude that two approaches are applied: ***internationalised national criminal courts*** and ***hybrid courts***. Both concepts refer to a specific form of universal repressive jurisdiction, being the "hybrid" compromise between the system of national criminal law and international criminal law, hence their name. Therefore, the two terms, ***internationalised national criminal tribunals,*** and ***hybrid criminal tribunals***, are and will be used synonymously in international criminal law, because they both equally reflect the same concept and equally respond to the dual legal nature of these jurisdictions.

2. Hybrid criminal tribunals are a natural product of evolving social relations and the international community's views on the dispensation of justice in conflict-affected areas, considering the achievements and failures of *ad hoc* international jurisdictions. The multi-aspectual study of hybrid tribunals allows us to conclude that this form of jurisdiction placed at the domestic and international levels constitutes a new configuration of justice in the world

and responds to the socio-political needs to respond to human rights violations in different regions because of internal or internationalised conflicts, as well as to put an end to impunity especially for officials of different ranks in those areas.

3. The typology of hybrid courts is varied, with the concept of hybrid criminal court encompassing a category of internationalised courts, the defining elements of which may differ. However, the legal purpose of the various types of hybrid tribunals is clear. They are an excellent alternative to *ad hoc* criminal jurisdictions and to the International Criminal Court because they allow the investigation and prosecution of a variety of war crimes and crimes against humanity committed within the territorial limits of a state, which do not require judicial capacity to organise and conduct an investigation in accordance with the relevant international standards, internationalised justice being carried out within relatively short time limits and at reasonable expense. At the same time, the justice that has been achieved is in the view of the immediate victims of the crimes committed and, in general, of the population of the state that has suffered from the conflict. Hybrid courts are a sincere and commendable effort to improve the judicial experiences of post-conflict societies and to remedy many of the shortcomings of international and national courts in this area. Some of the potential benefits of hybrid tribunals include the ability to foster wider public acceptance, build local capacity and disseminate international human rights litigation standards.

4. The organisation and structure of internationalised national courts, while representing some specific aspects, can be placed within certain pre-established patterns common to all hybrid courts. The organisation and structure of internationalised national courts, while representing some specific aspects, can be placed within certain pre-established patterns common to all hybrid courts. The composition of internationalised tribunals is logical and directly reflects the powers of these courts to investigate and prosecute crimes committed in the territories of states affected by internal conflicts or crimes committed during the rule of certain non-democratic regimes. Representing a new typology of criminal courts, the so-called "third generation of courts", they have not yet managed to demonstrate any exceptional organisational aspects. On the other hand, the structural aspects of criminal courts, whether domestic or international, *ad hoc*, or permanent, reveal certain stable and binding characteristics, each court comprising magistrates, prosecutors, administrative staff and judicial support staff, these divisions marking the jurisdictional activity of any criminal court.

5. The cases decided and pending before internationalised courts demonstrate their relative efficiency. However, on the one hand, there have been successes in terms of punishing those guilty of committing various offences in the States concerned, including at the highest level, in compliance with the relevant international fair trial standards. While on the other hand there are shortcomings in terms of compliance with reasonable time limits for bringing the

guilty to justice, interference by national politicians in the internationalised justice process, and the risks that the persecution of certain individuals is due to reasons other than legal ones, with certain political interests of external forces at stake.

6. The statute and work of the Special Tribunal for Lebanon have produced many novelty aspects in terms of subject-matter jurisdiction based exclusively on domestic law, the crystallisation of an international definition of terrorism in international law, the creation for the first time in the history of hybrid courts of an autonomous defence office characterised by guarantees and privileges similar to international judges, the active participation of victims, the questionable trial in absentia of persons who cannot be physically identified as they are protected by radical Islamist groups (Hezbollah). Notwithstanding the criticisms of how to establish this jurisdiction directly through the Security Council resolution, the disputed necessity of creating a hybrid tribunal for the investigation and trial of essentially a single act (terrorist attack on the Lebanese Prime Minister), and the uncontroversial factual and legal views on attempts to influence the Syrian government through the internationalized procedure, this model can nevertheless serve as a blueprint for the architecture of an improved hybrid jurisdiction. The work of the jurisdictions surveyed certainly provides lessons learned for the creation of a hybrid court when the context calls for it, the design taking into account all existing advantages and excluding undesirable and objectionable shortcomings.

Thus, the ***important scientific problem addressed*** consists in arguing the viability and effectiveness of internationalised national criminal tribunals in view of the appropriateness of using this type to restore justice in territories ravaged by specific internal or international conflicts and to punish those guilty of committing the most serious crimes and human rights violations.

Accordingly, the conclusions drawn suggest certain ***recommendations and proposals*** that we dare to put forward in the context of promoting hybrid criminal jurisdiction, namely:

1. There are valid arguments that internationalised national justice should be given priority over classical international justice when a State affected by internal or international conflicts faces shortcomings in bringing individuals to international criminal responsibility for committing international crimes. Since the hybrid criminal court is a specific category of jurisdiction, it is advisable to operate with this construction even when a State is faced with the commission of serious offences against international criminal law in a territory over which it has no effective control and prosecution of the perpetrators under national or international justice is either impossible or unreasonable. We believe that in this case the hybrid court is the most optimal solution also for post-conflict justice.

2. Even if the practice of hybrid tribunals was designed for the repression of international crimes, it would be a reliable and effective model for examining cases of

violations of fundamental human rights and freedoms in territories with contested jurisdiction, not so much from the perspective of settling territorial disputes, but for reasons of redress, prevention, and cessation of violations in territories where there is no system of fair, constitutional and independent justice. Such courts would be the optimal solution for the legal examination of any cases of human rights violations on the territory of the self-proclaimed transnistrian republics until the final settlement of the transnistrian conflict. The jurisdiction could comprise a panel of 7 judges, 3 of whom would be appointed by the constitutional authorities of the Republic of Moldova, according to different formulas, 2 appointed by the UN and 2 appointed by the OSCE. It would be advisable that at least 2 judges are former judges of an international jurisdiction (International Criminal Court, European Court of Human Rights, etc.). The European Convention on Human Rights could serve as the applicable substantive law, and the law of the Republic of Moldova as the applicable law.

The impact of establishing such a zone would be crucial for the establishment of a human rights "buffer zone" on the left bank of the Nistru river. For the proper functioning of such a jurisdiction, especially one endowed with confidence over the act of justice, under the guarantee of international judges, it is advisable that the source of its creation should nevertheless be of external, preferably UN, origin.

3. To substantiate the previous recommendation, it is proposed to outline a new institution in international criminal law, part of public international law, as **the hybrid criminal jurisdiction**, with the concept, principles of activity, limits of jurisdiction, mechanisms for triggering jurisdiction, conduct of pending proceedings, procedure for adopting jurisdictional acts and their enforcement.

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ADNOTARE

Sîrcu Artur
„Tribunalele penale naţionale internaţionalizate”
Teză de doctor în drept
Specialitatea: 552.08 – Drept internațional și european public. Chișinău, 2022

Structura tezei: introducere, 4 capitole, concluzii generale și recomandări, bibliografia din 154 surse, text de bază 143 pagini. Rezultatele sunt reflectate în 8 publicații printre care articole științifice și comunicate la conferințe științifice.

Cuvinte cheie: curți penale naționale internaționalizate, tribunal hibrid, jurisdicție, Tribunalul Special pentru Sierra Leone, Tribunalul Special pentru Liban, Tribunalul Khmerilor Roșii, Înaltul Tribunal Penal Irakian.

Domeniul de studiu. Lucrarea ține de materia dreptului internațional public, dreptului internațional penal și dreptului contenciosului internațional, în mod special axându-se pe analiza jurisdicției penale naționale internaționalizate.

Scopul și obiectivele lucrării. Scopul principal constă în cercetarea multiaspectuală a instituției tribunalelor penale naționale internaționalizate (hibride), cu stabilirea aspectelor inedite ale acestora din perspectiva identificării celor mai optime soluții pentru stabilirea unei justiții fiabile susceptibilă să reprime cele mai grave crime comise în zonele afectate de conflicte. Obiectivele lucrării au fost orientate spre definirea conceptului de tribunal penal hibrid; stabilirea principiilor de activitate și limitelor de competență ale tribunalului hibrid; determinarea tiparelor de organizare și structură ale acestora; identificarea mecanismelor de declanșare și a procedurilor pendinte; elucidarea procedurii de adoptare a actelor jurisdicționale pronunțate de curțile hibride și mecanismelor de executare ale lor; demonstrarea elementelor inedite ale fiecărui tribunal penal existent; identificarea eșecurilor și punctelor forte ale curților internaționalizate.

Noutatea și originalitatea științifică. Noutatea și originalitatea științifică a prezentei teze constă în formularea unui studiu doctrinar autohton asupra originaității jurisdicției penale naționale internaționalizate, cu specificarea aspectelor distinctive, identificarea locului și rolului tribunalelor internaționalizate în rețeaua instanțelor de judecată existente în lumea actuală, în special în regiunile devastate sau afectate de conflicte interne sau cu caracter internațional.

Problema științifică importantă soluționată constă în argumentarea viabilității și eficienții tribunalelor penale naționale internaționalizate în perspectiva oportunității recurgerii la acest tip pentru restabilirea justiției pe teritorii măcinate de conflicte interne sau internaționale specifice și pedepsirea vinovaților de comiterea celor mai grave crime și încălcări ale drepturilor omului.

Semnificația teoretică a cercetării. Studiul efectuat are un profund caracter științific, în mod special referindu-se la particularitățile tribunalelor penale naționale internaționalizate. Teza propune spre susținere un demers științific aprofundat asupra naturii și esenței juridice a jurisdicțiilor internaționalizate ținând cont de varietatea acestora și caracterele pe care le demonstrează fiecare tribunal creat. Lucrarea, de o manieră clară și logică conturează elementele inedite ale tribunalelor penale internaționalizate, operând cu texte consolidate ale instrumentelor internaționale și elucidând jurisprudența degajată de respectivele foruri.

Valoarea aplicativă a lucrării. Studiul denotă valență aplicativă pentru doctrinarii care proiectează soluții de prevenire și reprimare a crimelor internaționale comise pe teritorii afectate de conflicte, precum și pentru factorul politic care are voința necesară să le implementeze. Cert, teza este recomandată celor interesați în propagarea standardelor justiției imparțiale și oneste, precum și promovarea valorilor demnității umane și stoparea impunității la scară mondială.

Implementarea rezultatelor științifice. Rezultatele cercetării, concluziile și recomandările definitivate pe parcursul efectuării studiului au fost expuse în articolele

științifice în reviste de specialitate, precum și discutate și evaluate în cadrul conferințelor de profil naționale și internaționale.

ANNOTATION

Sîrcu Artur
"National internationalized criminal tribunals"
Ph.D. thesis
Specialty: 552.08 – International and European Public Law. Chisinau, 2022

Structure of the thesis: introduction, 4 chapters, general conclusions and recommendations, bibliography which includes 154 sources, basic text of 143 pages. The results of the research are exposed in 8 scientific articles and reports to scientific conferences.

Key words: national internationalized criminal courts, hybrid tribunal, jurisdiction, Special Tribunal for Sierra Leone, Special Tribunal for Lebanon, Khmer Rouge Tribunal, High Criminal Iraqi Tribunal. Area of the research. This work is based on the study of international public law, international criminal law and law of international litigation, with a special emphasis on the analysis of the institution of hybrid criminal courts.

Goal and objectives of the thesis. The main purpose is the broad research of the institution of hybrid criminal courts, with establishment of common and inedited aspects from the perspective of identifying the best solutions for establishing a reliable justice system that can repress the worst crimes committed in conflict-affected areas. The objectives of the research are directed to the definition of the concept of hybrid court, determination of principles of activity and limits of their competence; establishment of patterns of organization and structure; identification of mechanisms to trigger internationalized jurisdiction; analysis of pending proceedings; clarification of procedure of adoption and execution of judgements ruled by hybrid courts; proof of inedited elements of every existing tribunal; identification of errors and successes of the tribunals. Scientific novelty and originality.

The scientific novelty and originality of the thesis resides in the formulation of a doctrinal research of national level on the problem of national internationalized criminal jurisdiction. It was specified the nature and legal essence of it, determined distinctive aspects, identified the place and the role of hybrid courts in the network of legal jurisdictions existing actually, especially with reference to regions ravaged or affected by armed national or internationalized conflicts. Important scientific problem that has been solved it consists in arguing the viability and efficiency of internationalized national criminal tribunals with a view to using this type in order to restore justice in territories ravaged by specific internal or international conflicts and to punish those guilty of the most serious crimes and human rights violations.

Theoretical meaning of the research. The research has a profound theoretical character, referring to the peculiarities of national internationalized courts. The thesis is a deep scientific demarche on the nature and legal essence of hybrid courts taken being aware of their variety and characters of each established court. The work, in a clear and logical manner emphasizes defining elements, common and inedited, operating with consolidated texts of international instruments and elucidating case-law developed by respective for a.

Practical value of the work. The study denotes applicative value for scholars who design solutions for the prevention and repression of international crimes committed in conflict-affected territories, as well as for the political factor that has the necessary will to implement them. The work is undoubtedly utile for those interested in promotion of standards of impartial and honest justice, as well as promotion of human values and stop of impunity at a world scale.

Implementation of the scientific outcomes. The results, conclusions and recommendations formulated through this research were exposed in the texts of scientific articles published in specialised magazines, and were put forward for discussions during national and international conferences.

АННОТАЦИЯ

Сырку Артур
«Национальные интернационализированные уголовные трибуналы»
Диссертация на соискание учёной степени доктора права.
Специальность: 552.08 – Международное и Европейское публичное право.
Кишинёв, 2022.

Структура диссертации: введение, 4 главы, общие выводы и рекомендации, библиография, включающая 154 источников, основной текст изложен на 143 страницах. Результаты исследования освещены в 8 научных статьях и методико-дидактических работах.

Ключевые слова: национальные интернационализированные уголовные суда, гибридный трибунал, юрисдикция, Специальный Трибунал по Сьерра Леоне, Специальный Трибунал по Ливану, Трибунал Красных Кхмеров, Высший Уголовный Трибунал по Ираку.

Область исследования. Данная работа основывается на комплексном изучении области международного публичного права, международного уголовного права и права международного судопроизводства. В частности, она относится к многостороннему анализу института гибридных судов.

Цель и задачи исследования. Целью исследования является многостороннее изучение принципа института гибридных судов в контексте международного публичного права, в общем, и международного уголовного права, и права международного судопроизводства, в частности, с установлением общих и различных аспектов исходя из точки зрения определения лучших решений для установления надежного правосудия, которое может пресекать самые тяжкие преступления, совершенные в районах, затронутых конфликтом. Основными задачами работы являются определение концепции гибридного трибунала, установление их принципов деятельности и границ компетентности, выявление организационного и структурного типажа, установление механизмов запуска международной гибридной юрисдикции, анализ процедур, освящение процедуры принятия судебных решений и их исполнения, доказательство неизвестных особенностей каждого гибридного трибунала, выявление недостатков и сильных сторон интернационализированных судов.

Новизна и научная оригинальность состоит в доказательстве жизнеспособности и эффективности интернационализированных национальных уголовных трибуналов с учетом возможности использования этого типа для восстановления справедливости на территориях, разоренных конкретными внутренними или международными конфликтами, и для наказания виновных в наиболее серьезных преступлениях и нарушениях прав человека.. Важная научная проблема, которой было найдено решение, состоит в выявлении сущности и юридической природы гибридных уголовных судов в контексте их типологического разнообразия, с освящением особенных элементов, присущих каждому трибуналу.

Теоретическое значение. Исследование имеет глубокий научный характер, в частности, ссылаясь на особенности национальных интернационализированных уголовных трибуналов. Работа, предложенная к защите, является глубоким научным демаршем о сущности и юридической природе интернационализированных юрисдикций в контексте их разнообразия и особенных характеристик каждого трибунала. Диссертация в ясной и логичной манере освящает основные элементы, общие и различные, присущие гибридным судам, используя консолидированные тексты международных инструментов и выявляя судебную практику данных форумов.

Практическая значимость исследования. Исследование имеет практическую ценность для специалистов в данной области, разрабатывающих решения по предотвращению и пресечению международных преступлений, совершаемых на

территориях, затронутых конфликтом, а также для политического фактора, у которого есть необходимая воля для их реализации. Конечно, диссертация рекомендуется тем, кто заинтересован в распространении стандартов беспристрастного и честного правосудия, а 30 также в продвижении ценностей человеческого достоинства и прекращении безнаказанности во всем мире.

Внедрение научных результатов. Результаты, общие выводы и рекомендации исследования опубликованы в статьях различных профильных журналов, обсуждены и оценены на национальных и международных конференциях.

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