

Boundaries of cooperation between the International Criminal Court and Hybrid criminal courts

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Abstract

International crimes in their various forms pose a serious threat to the peace and security of the international community, and this is why the latter had to move in order to find mechanisms to fight them and put an end to their perpetrators, through the establishment of international criminal judicial bodies, headed by the International Criminal Court, Where the most important pillars of international criminal justice were established by laying the foundation of an independent, competent international criminal system to prosecute war criminals and put them behind bars, and with the spread of armed conflicts in many regions, especially those outside the temporal and spatial jurisdiction of the International Criminal Court, the search began for alternatives to suppressing crimes committed in those regions, and the establishment of International criminal courts.

Keywords: Courts, state, criminal, international, cooperation, crimes, international, judiciary, people, law.

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1. INTRODUCTION

International cooperation with the various international criminal courts and their systems is one of the most important pillars upon which the international criminal justice system is based. Accordingly, the participants, during the Rome Conference founding the International Criminal Court, attached great importance to the issue of international cooperation, as they devoted an entire chapter, chapter 9, to it in the statute of the court. Regardless of how many forms of international cooperation with the International Criminal Courts and its mechanisms exist, the latter cannot be implemented on the ground due to political and legal obstacles. Therefore, it was necessary for international bodies, the United Nations and all the actors of international law in the field to intensify efforts to search for solutions and alternatives to embody international cooperation with international criminal courts in a more efficient and dynamic manner, especially with regards to those crimes that fall outside the temporal and regional jurisdiction of the aforementioned courts. The idea of establishing a new generation of criminal courts with the contribution of the United Nations body, that is hybrid criminal courts, is a unique experience ~~of its kind~~ in the field of fighting international crimes that fall outside the jurisdiction of the International Criminal Court^{1*}. What is meant by internationalized criminal courts, also known as mixed or hybrid courts, are those courts that are made up of local and international judges having jurisdiction within the country where severe breaches of human rights and foreign humanitarian law occurred. The United Nations played a key role in its establishment, which earned it an international character despite the discrepancy that distinguished them from each other.

The idea of international cooperation between hybrid criminal courts and the International Criminal Court is of great importance in light of the wide spread of non-international armed conflicts, especially those that fall on territories outside the jurisdiction of the International Criminal Court and which could be considered by some internationalized criminal courts.

¹□ Internationalized criminal courts, or mixed or hybrid courts, mean those courts composed of local and international judges who have judicial authority within the country in which serious violations of human rights and international humanitarian law occurred, and the United Nations played a primary role in their establishment, which earned them international status despite the discrepancy that distinguished them. **See for that**: Mahdaoui Abdel Qader, Youssef Ali Hashem, The Contribution of International Criminal Courts to the Development of the Rules of International Humanitarian Law (The Sierra Leone Criminal Court as a Model), African Journal of Legal and Political Studies, Ahmed Draria University, Adrar-Algérie, Volume: 02, Issue: 02, December 2002, p. 74.

Thus, the aim of studying international cooperation between hybrid criminal courts and international criminal courts is to determine the limits of this cooperation and the extent of its contribution to achieving the efficiency and effectiveness of both types of courts, and this is in light of the spread of international crimes that have continued to increase due to the political conditions the world is witnessing today.

We also sought to draw the attention of researchers and international jurists to the fact that the issue of cooperation between hybrid criminal courts and international criminal courts is a good alternative from a practical point of view in the face of obstacles such as the lack of jurisdiction.

Based on what was previously mentioned, the following questions are posed: What are the limits of cooperation between International Criminal Courts and Hybrid criminal courts, and does this cooperation contribute to achieving the effectiveness of these courts?

To address these questions, we divided the research paper into two main sections, the first will address the legal basis for cooperation between Hybrid Criminal Courts and the International Criminal Court, in by investigating the the legal nature of both types of courts.

In The second element will address the nature of international cooperation between Hybrid Criminal Courts and the International Criminal Court by studying cooperation between them in judicial matters as well as cooperation in non-judicial (administrative and financial) issues.

In dealing with this topic, we relied on the descriptive approach by collecting the most important documents from international texts and national legislation, then analyzing and commenting on them using the analytical method.

2. The Legal Basis For Cooperation Between Hybrid Criminal Courts And The International Criminal Court

The idea of establishing international criminal judicial bodies is not a product of the recent past. Rather, it has its roots in ancient history. However, it emerged clearly in Article 227 of the 1919 Versailles Convention, where the latter decided to establish an international military court with the aim of

prosecuting those responsible for the crimes of the First World War¹. These trials did not take place in the way they were intended to, but they gave a strong impetus to jurists and international jurists to continue research and consultation in order to embody that idea which came to fruition with the advent of 1998 by establishing the first permanent international criminal judicial body.

In parallel to that, another type of criminal court of a special nature was established as a result of bilateral agreements between the United Nations and some countries, called hybrid criminal courts, where these two types of courts had mutual relations of cooperation in several areas, the most important of which was the fight against international crimes. Before addressing the knowledge of the nature of cooperation between Hybrid Criminal Courts and the International Criminal Courts, we must study the legal basis for this cooperation by defining the legal nature of Hybrid Criminal Courts and the International Criminal Court in the first section, and then study how international cooperation is embedded in the statutes of these courts in the second section.

2.1 The legal nature of the International Criminal Court and Hybrid criminal courts

The International Criminal Court was established through an agreement between a group of countries under the special auspices of the United Nations, while international Criminal Courts were established through a bilateral agreement between the United Nations and countries with an interest in addressing international crimes on their territory.

Accordingly, this section will address the legal nature of the International Criminal Court and hybrid criminal courts as well as the nature of the relationship between these courts and the United Nations, while the second section will address the legal nature of the Hybrid Criminal Courts.

2.1.1 The Legal Nature Of The International Criminal Court

The developments that have taken place on the international scene since 1999 have highlighted the need for the early establishment of an independent and effective International Criminal Court to investigate crimes against humanity and

¹ Aqabi Amal, Trial Procedures before the International Criminal Court, a graduation note to obtain a master's degree, Public Law Division, specializing in international law and international relations, Faculty of Law, Badji Mokhtar Annaba University, p. 07.

war crimes, and to prosecute those accused of committing them¹, as temporary criminal justice is no longer feasible in light of the growing crimes against humanity, war crimes, and the crimes of aggression.²

The establishment of the International Criminal Court has left several questions about its legal nature and what relationship it has with the United Nations unanswered, which is greatly credited for its establishment, as well as the relations it has with the rest of international law. Is the International Criminal Court an independent judicial body that investigates war crimes and crimes against humanity, and the crimes of aggression and genocide specified in article 05 of its statute, or is it an international body affiliated with the United Nations that established it to address those crimes and prevent their perpetrators from going unpunished?

A. The International Criminal Court As A Judicial Institution:

Referring to the text of Article 1/1 of the Rome Statute, the International Criminal Court is a permanent body that has the authority to exercise its jurisdiction over people in relation to the most serious crimes of international concern, as referred to in this Statute. The Court should be complementary to the national criminal jurisdictions. The jurisdiction and *modus operandi* of the court shall be governed by the provisions of this statute.³

By reading the text of the article, it becomes clear that the court is a judicial body tasked with looking into the most serious crimes against the international community. The article specified for us the type of this jurisdiction, which is a complementary jurisdiction to the national judiciary, which means that the priority in considering these crimes is for the national judiciary, as emphasized in

¹ Bari'a Al-Qudsi, *The International Criminal Court, its nature and jurisdiction, and the position of the United States of America and Israel towards it*. Damascus University Journal of Economic and Legal Sciences, Volume 30, Second Issue, 2004, p. 116.

² Jabbari Lahssan Zein El-Din, *The Legal Basis of the Relationship between the International Criminal Court and the United Nations Based on the Negotiating Agreement Signed in 2004*, Mediterranean Dialogue Magazine, No. 13-14, December 2016, p. 307.

³ Article 01 reads as follows: " An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute" Rome Statute of the International Criminal Court, was originally circulated as document A/CONF.183/9 of 17 July 1998. P 02

paragraph 10 of the preamble to the Statute of the Court, which says that the International Criminal Court established under this Statute will be complementary to the national criminal jurisdiction¹, except in the cases provided for in Article 17 1/a, which stipulates that the Court will have priority based on the state's unwillingness to undertake investigation, prosecution, or its inability to do so².

Also, looking at the structural organization of the International Criminal Court, we find that Article 34 of the Statute of the Court identifies four organs of the Court, which are almost the same organs contained in courts and judicial systems all over the world, although the names are different.³

B. The International Criminal Court As An International Organization Established By An International Treaty:

All definitions of international organizations agree that there must be three elements for the establishment of international organizations, which are: international character, the character of self-will, and the character of continuity. In this part, we will try to project these elements on the International Criminal Court to prove that the International Criminal Court is not just a judicial body. Rather, it is an international organization that enjoys an international legal personality like all international organizations.

B.1. The International Character Element :

It is a necessary component for the establishment of an international organization, and it means that international organizations are established through the agreement of fully sovereign international entities that have membership in the organization and choose their representative in it. This treaty has several names, including the charter, the covenant, the statute, etc. The treaty establishing the international organization defines the goals of the organization, its competence, and organs. It is also concluded by an international conference that includes representatives of the governments of the participating countries. It

¹ See paragraph 10 of the preamble to the International Criminal Court Statute, *op. cit.*, P 01.

² Article 17 reads as follows: " Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:

(a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State

is unwilling or unable genuinely to carry out the investigation or prosecution.." Statute of the International Criminal Court, *Op.cit.* P 10.

³ Article 34 reads as follows: " The Court shall be composed of the following organs: (a) The Presidency; (b) An Appeals Division, a Trial Division and a Pre-Trial Division; (c) The Office of the Prosecutor; (d) The Registry" Statute of the International Criminal Court, *Op.cit.* P 17.

expresses the voluntary consent of its constituent states, and this consent, or collective will, is necessary for its establishment and for the organization to gain international status, regardless of the number of its member states.¹

This comprehensive examination of international character applies to the International Criminal Court, which was founded by the desire of the countries who participated in the 1998 Rome summit.

In terms of the legal character of the Court's Statute, it is an international treaty. That is because, according to the Vienna Convention on the Law of International Treaties (1969-1989), the agreement is an international treaty, regardless of its name, because nomenclature plays no role in this respect. An agreement, treaty, protocol, declaration, charter, covenant, instrument, legislation, interim settlement, exchange of memos, letters, or an approved verbatim record are all names for it.

Based on the above, the International Criminal Court is a permanent international institution established by treaty for the purpose of investigating and prosecuting people who commit the most serious crimes to which international law attaches great importance (namely, genocide, crimes against humanity, war crimes, and crimes of aggression). It is based on a treaty that is binding to its member states.

B.2 The Element Of Self-Will:

The element of self-will means that the organization has a self-will that is independent and distinct from the will of its member states, this will results from the participation of member states in the organization to form a new will independent of their will. The Statute of the International Criminal Court affirmed that the latter enjoys self-will as an element of the international organization. It expressly states in its preamble that the states that signed this statute have resolved to establish an independent international criminal court. We also find that the element of will appears clearly in the relationship agreement with the United Nations of 2004, which indicated in its content that the United Nations body recognizes the International Criminal Court as an independent judicial institution².

¹ Iman Obaid Karim, Saddam Al-Fatlawi, The Legal Nature of the International Criminal Court, an article published on the following link: <https://lib.imamhussain.org/arabic/law/9959> Date of view: 12/25/2021.

² Bari'a Al-Qudsi, Op.cit, P 125.

B.3. The Element Of Permanence:

In addition to the elements of international character and self-will, the elements of permanence and continuity is required for the establishment of the international organization, which is that the organization be on a permanent and continuous basis in order to achieve the common and continuous interests of its member states. The element of permanence also ensures the independent self-will of the organization in the face of its member states. The organization casually loses its will and independence with regard to every decision or action it issues in confronting the member states, which is incompatible with the element of self-will and its establishment as an international organization¹.

By extrapolating the provisions of the statute of the International Criminal Court, we find that it affirms that the court will enjoy permanent jurisdiction in more than one place, as the preamble referred to the establishment of a permanent criminal court, and the first article also stipulated that a court would be established and that it would be a permanent body, as stipulated in the relationship agreement with the United Nations The United Nations of 2004 confirms the Commission's recognition of the Court as a permanent and independent judicial institution. International jurisprudence has also emphasized the permanent state of the Court, and this is what we see in the definitions of jurists of the International Criminal Court, such as Professor Sherif Bassiouni's recognition when he says : "... that it is a permanent international entity." and the definition of Professor Ahmed Abu Al-Khair Attia when he said: "It is a permanent judicial system."²

Based on the above, it becomes clear to us that the International Criminal Court is an international organization to which all the elements of the three international organizations apply to. Therefore, it is a person of international law addressed by its rules to grant it rights and impose obligations on it. This is achieved by the recognition of its statute of international legal personality in Article 04, paragraph 01. The recognition of the international legal personality of the International Criminal Court was also confirmed in the 2002 Privilege and Immunity Agreement in Article 2 under the title of the Court's Legal Status and Legal Personality³.

¹ Ibidem, P 125.

² See paragraph 09 of the Preamble to the Statute of the International Criminal Court, p. 01.

³ Article 02 of the Agreement on the Privileges and Immunities of the International Criminal Court state the following: " The Court shall have international legal personality and shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment

C. The Nature Of The Relationship Between The International Criminal Court And The United Nations:

During the discussions on the Court's Statute, there was some disagreement about the nature of the relationship between the UN and the International Criminal Court. He believes that the Court, like the International Court of Justice, should be affiliated with the United Nations and one of its main organs. Concerning the second trend, he argued that the Court should be an independent judicial body with international personality, owing to the fact that the first opinion is difficult to verify, as making the International Criminal Court an organ of the United Nations requires amending the United Nations Charter. The opinion of the International Law Commission and the Preparatory Committee formed by the United Nations Assembly regarding the study of the draft statute and the preparation of the final report on this statute was divided into two directions. One school of thought holds that the court should be affiliated with the United Nations, and that one of its main organs should be similar to the International Court of Justice. The second school of thought, on the other hand, rejected the need for the court to be an independent judicial body with international personality, owing to the fact that the first opinion is difficult to verify because making the International Criminal Court a United Nations organ necessitates an amendment. The commission's charter and, as a result, the difficulty of amending procedures in terms of voting by permanent members, which is impossible to achieve due to the United States' rejection of the idea of establishing an international criminal court ¹.

The relationship between the International Criminal Court and the United Nations is critical, as evidenced by the strict formula presented in Chapter One under the title Establishing the Court, which indicates not only the attachment of the relationship with the United Nations to the structure of the Court, but also the principles of cooperation that achieve international peace. To define the Court's international status by supporting and activating the Prosecutor's and other bodies' decisions, as the United Nations can ensure the Court's decisions are subordinated in cases where members of the UN refuse to cooperate with the Court².

of its purposes. It shall, in particular, have the capacity to contract, to acquire and to dispose of immovable and movable property and to participate in legal proceedings." In particular, it should have the capacity to contract, to possess and dispose of real estate and movables, and to litigate. Documents of the International Criminal Court, ICC-ASP/1/3, 2002, p. 3.

¹ Jabbari Lhassan Zain al-Din, Op.cit, p. 314.

² Jabbari Lhassan Zain al-Din, Op.cit, p. 314.

The agreement between the International Criminal Court and the United Nations governs their relationship as well. The foundation of this relationship is mutual representation, which is a method of coordinating roles and positions between two parties in pursuit of common goals. The cooperation agreement also imposes an obligation on the United Nations, represented by its Secretary-General, as the custodian of any Other agreement related to the Court's exercise of jurisdiction, to transmit any information related to the Statute or related to the Court's work, such as new ratifications of the Statute deposited with it, as well as proposing agenda items to the United Nations and arranging for cooperation with UN staff due to their experience in international work

2.1.2 The Legal Nature Of Hybrid Criminal Courts:

The establishment of Hybrid criminal Courts came either with the intervention of the United Nations to suppress grave violations of the rules of international humanitarian law and the implementation of the principle of preventing impunity for international crimes, or in response to the request of the government of the country concerned, in the hope of achieving the demand for transitional justice, given the inability of the judiciary in those countries to fully ensure the achievement of justice for grave violations of the rules of international humanitarian law, and to obtain financial and logistical support and judicial expertise that is lacking in its national judiciary regarding the punishment of international crimes.¹

The International Hybrid Criminal Courts are mainly responsible for the application of international criminal law for crimes punishable by international law, which is the main reason for the establishment of these courts, and some provisions of domestic law with respect to acts punishable by national law, which are not considered crimes in the eyes of international law, and therefore the internationalized nature of these courts It is inferred from the applicable law, the composition of judges, and from the law that established them, which is international law, that these specialized criminal chambers were the first model for what were later called Hybrid Criminal Courts or International Criminal Courts².

Internationalized or Hybrid Criminal Courts are also considered a unique model in the field of international criminal justice, which raised many problems

¹ Mahdawi Abdel Qader, Yussat Ali Hashem, Op.cit, p. 73.

² Ould Youssef Mouloud, Fighting Impunity in the Third Generation of International Criminal Courts: Internationalized or Hybrid Courts, Journal of Political and Law Books, No. 19, June 2018, pp. 752-753.

in determining their legal nature, as some considered that international courts are a special type of national court whose material jurisdiction extends to international crimes committed in the territory of that state, while others classified them within the international courts due to the availability of the foreign element in the court's set-up and its reliance on the rules of international law, while a third party believes that it does not fall under any national or international legal system. On the contrary, it falls under an international system that is reflected in the formation of the courts and in the nature of the rules to which they are subject to, despite the discrepancy in the way it formed, is possible to distinguish two basic types of these courts, the first of which are the courts established under an international treaty between the United Nations and the government of the country on whose territory international crimes were committed, as is the case for the Special Court for Sierra Leone and the Cambodian Extraordinary Chambers, and the second type was established within the framework of international assistance to some regions, as is the case for ~~This is the case~~ for the Hybrid Chambers in Kosovo, the War Crimes Chambers in Bosnia and Herzegovina, or the Serious Crimes Chambers in Timor-Eastern. Although the first type has an international legal basis and operates as a legal institution outside the local jurisdiction, the second type forms part of the local system with a modification in the composition of staff or applicable law¹.

It should also be noted that the establishment of these courts was aimed at achieving several goals, the most important of which are achieving international criminal justice and punishing grave violations of international humanitarian law, contributing to peace or national reconciliation in those regions, and confirming national sovereignty which is evident in the long period of negotiations it took with the United Nations in most cases, the governments of the violations concerned, the rejection of extra-state trial procedures; and the priority of the international element over the national element in the court's composition².

2.2 International Cooperation In The Statutes Of International Criminal Courts And Hybrid Criminal Courts:

International cooperation in fighting international crimes is the basis for the establishment of the international criminal judicial system, as it was stipulated by

¹ Mahdawi Abdel Qader, Yussat Ali Hashem, Op.cit, p p 75-76.

² Sherif Atlam, Mohamed Maher Abdel Wahed, Encyclopedia of International Humanitarian Law Conventions, Official Texts of Conventions and Ratifying Countries, Issued by the International Committee of the Red Cross, Cairo, 2002, p. 312.

many international covenants, similar to the statutes of the International Criminal Courts, whether special or permanent, where we find the text of Articles 88 and 89 of the first protocol of 1977, in addition to the four Geneva Conventions of 1949. The High Contracting Parties stress the need for mutual cooperation in criminal affairs through the High Contracting Parties providing each other with the highest degree of assistance in connection with criminal procedures taken in response to grave breaches of the provisions of the Conventions or this Protocol. The High Contracting Parties also vow to act jointly or separately, in cases of grave breaches of the Conventions and this Annex "Protocol", in cooperation with the United Nations and in accordance with the Charter of the United Nations¹.

It also called for international cooperation in Article 31 of Protocol II of the Hague Convention for the Protection of Cultural Property of 1954, where it stated: "In cases of serious violations of this Protocol, the Parties vow to work-collectively through the Committee, or individually-in cooperation with UNESCO and the United Nations², and in conformity with the Charter of the United Nations." The 2nd preambular paragraph of the Convention on the Prevention and Punishment of the Crime of Genocide called for international cooperation when stated : " Recognizing that at all periods of history genocide has inflicted great losses on humanity, and Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required...³"

In this part, we will try to discuss the foundations of international cooperation in the statute of the International Criminal Court and the foundations of international cooperation in the statutes of Hybrid Criminal Courts.

2.2.1 The Basis Of International Cooperation In The Statute Of The International Criminal Court:

The International Criminal Court's international cooperation stems from its Statute, as well as cooperation agreements concluded and/or by the Court with other international bodies and agents of international law. Article 86 of the Statute of the International Criminal Court states: "States Parties shall cooperate, in accordance with The provisions of this Statute shall fully cooperate with the Court in the investigations and prosecutions it conducts, within the Court's

¹ Mahdawi Abdel Qader, Yussat Ali Hashem, Op.cit, p p 75-76.

² Sherif Atlam, Muhammad Maher Abdel Wahed, Op.cit, P 449.

³ Convention on the Prevention and Punishment of the Crime of Genocide, Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III), of 9 December 1948 Entry into force: 12 January 1951, in accordance with article XIII

jurisdiction, into crimes.”¹.

As stipulated in Article 03 of the Agreement on the Relationship between the Court and the United Nations for the year 2004, the obligation to cooperate closely between the Court and the United Nations Organization, where appropriate, and to consult on matters of mutual interest, in compliance with the provisions of this agreement and in accordance with all the provisions and provisions of the Basic Regulations².

Under Article 15, paragraph 01 of Chapter III, under the heading Cooperation and Legal Assistance, the same cooperation agreement confirmed the United Nations’ vow to cooperate with the Court and to provide the Court with such information or documents as the Court may request under Article 87, paragraph 6 of the Statute³. Where the latter stipulates that the Court may request any intergovernmental organization to provide information or documents, and the Court may also request other forms of cooperation and assistance to be agreed upon with the organization and consistent with its competence or mandate⁴, Paragraph 02 of the same article states that the Court may be provided with other forms of cooperation and assistance in accordance with the provisions of the Charter and the Statute of the United Nations or its relevant programmes, funds, and offices after its approval⁵.

2.2.2 The Basis Of International Cooperation In Criminal Courts Statutes:

Among the reasons that led to the establishment of ⁶hybrid criminal court is to help prevent impunity for perpetrators of international crimes by prosecuting and implementing sanctions against them, and thus ~~they can~~ strengthening the rule of law, especially when impunity is one of the main causes of conflict. In addition, the weakness of the judicial system in The countries where those courts are established, and the lack of judicial experience of their staff, especially in the field of investigations and prosecutions for international crimes, forced the state

¹ Article 86 reads as follows: " States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court." Statute of the International Criminal Court, Op.cit. P 42.

² Article 3 of Negotiated Draft Relationship Agreement between the International Criminal Court and the United Nations, ICC-01/04-01/06-1267-Anx1 07-04-2008 1/13, 7 June 2004, p 02.

³ Ibidem, p 06. (Article 15/1)

⁴ See Article 87/06 of Statute of the International Criminal Court, Op.cit. P 58.

⁵ Article 15/2 of Negotiated Draft Relationship Agreement between the International Criminal Court and the United Nations, Op.cit, p 07.

to extend a hand to request assistance from international bodies in order to confront these criminals and punish them for those acts.

Accordingly, the basis for cooperation with hybrid criminal court derives from the agreements establishing them as a link between the competent state and the United Nations. In this section, we will discuss the foundations of international cooperation in agreements to establish some international criminal courts, specifically the extraordinary chambers within the framework of Cambodian courts and the specialized criminal chambers of East Timor.

A. Extraordinary Chambers Under the Cambodian Courts:

The Extraordinary Chambers were established within the framework of the Cambodian courts as a result of the agreement between the United Nations and Cambodia to prosecute senior leaders of the "Khmer Rouge^{1*}" who were responsible for genocide, crimes against humanity, war crimes, and other crimes under domestic law, committed during the period from April 1975 to January 1979. Under the agreement, the Cambodian courts would take responsibility for the investigation procedures, and accordingly, the Cambodian National Assembly passed a law to establish the court on these terms. Negotiations between the two parties in New York resulted in an agreement on March 17, 2003. The Royal Government of Cambodia agreed to four main demands of the United Nations. Thus, the Cambodian law was amended to simplify the appeal procedure in order to incorporate the rights provided for the accused in Articles 14 and 15 of the International Covenant on Civil and Political Rights, and to stress that the Vienna Convention on the Law of Treaties prevents invoking national law to evade obligations under international treaties with regard to amnesty. The agreement states that the Royal Government of Cambodia vows to honor these obligations².

B. Specialized Criminal Chambers of East Timor:

Following East Timor's independence and the withdrawal of Indonesian military forces, the Security Council established, by Recommendation No. 1272

¹□ The plaintiff, King Gvek Eov, appeared before the International Court of Cambodia, supported by the United Nations, to be the first leader in the Khmer Rouge movement for his actions in the so-called death fields. He was held illegally for 5 years before the establishment of the State Court of Cambodia, after which the sentence was reviewed by the Cambodian High Court of Courts and convicted of life imprisonment.

The ruling was followed by Judge "Nelson", referring to the role of the accused as head of the "Toyo Sliling" camp, known as (S-21), which came with his own confession and with the testimony of witnesses and civil parties in the Kingdom. **See for that** : Ould Youssef Mouloud, Op.cit, P 753.

² Ibidem, Op.cit, P 753.

of 25 October 1999, an interim administration for East Timor entrusted with the task of rebuilding, reconstructing East Timor, restructuring, and establishing the judicial system¹, the United Nations Transitional Administration in East Timor, established pursuant to By resolution 1272 (1999), acting, among other things, to administer the judicial system, the United Nations Transitional Administration in East Timor².

A Security Council resolution established specialized judicial bodies. It established the "Specialized Criminal Chambers for East Timor" in March 2000. These chambers have sole jurisdiction to prosecute serious crimes such as genocide, crimes against humanity, war crimes, and torture. These chambers apply both Timorese and international criminal law to these crimes.³

It was stated in the Security Council resolution on international cooperation that the Council encourages Member States, agencies, and international organizations to provide the transitional administration of East Timor with personnel, equipment, and other resources as requested by the Secretary-General, including those required for institution-building, and stresses the need for close coordination of cooperation efforts to the extent possible. In its resolution, the Council also calls for the necessity of stopping violence and criminal acts and bringing all those responsible for these violations to justice⁴.

C. Special Court for Sierra Leone:

Faced with the miserable conditions that Sierra Leone has reached as a result of armed conflicts, its government submitted, in June 2000 to the United Nations, a request for the assistance of the United Nations in establishing a special court to prosecute the leading members of the Revolutionary United Front. As a result, the Security Council issued Resolution No. 1315 on August 14, 2000, establishing a special court to prosecute violators of international humanitarian law in Sierra Leone. The Security Council requested the Secretary-General to negotiate with the Government of Sierra Leone in order to reach an agreement on the establishment of the court, consistent with the previous

¹ Ibidem, P 752.

² Subsidiary organs of the Security Council, https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/en/sc/repertoire/2000-2003/00-03_5.pdf , p 199 (date of view 17/ 01/2022)

³ Ould Youssef Mouloud, Op.cit, P 753

⁴ Resolution No. 1272 (1999), of October 25 1999, establishing a Transitional Authority in the Territory of East Timor, Security Council Documents, Session No. 4057, document symbol S/RES/1272/1999.

resolution (which stipulated that crimes against humanity and war crimes should be included and other serious violations of international humanitarian law within the substantive jurisdiction of the court, as well as crimes committed in Sierra Leone that fall under the national law of the country should be included in this jurisdiction)¹.

The establishment of the court took three years for the United Nations and Sierra Leone to sign an agreement under which the legal framework of the court was established on January 16, 2002. sent to the President of the Security Council by the Secretary-General of the United Nations. The court was set in Freetown, the capital of Sierra Leone, without being affiliated with the national courts. The trials began in July 2004².

The second paragraph of Article 15 of the Statute of the Special Court of Sierra Leone states that the prosecutor may, while exercising the power to interrogate suspects, victims, and witnesses, collect evidence and conduct on-site investigations. The Prosecutor shall assist, as appropriate, the relevant Sierra Leonean authorities. The Court may also conclude cooperation agreements with the International Criminal Tribunal for Rwanda or the International Criminal Tribunal for the Former Yugoslavia to enforce sentences. The Special Court may also conclude similar agreements with other states to implement sentences as stipulated in Article 22/1. From the statute³.

3. The Nature Of Cooperation Between The International Criminal Court And Criminal Courts:

The International Criminal Court has played an important role in the working process of hybrid criminal courts, despite the special legal nature of the latter, but there has been a link between these two types in the framework of substantive and procedural cooperation.

In the same context, the former Secretary-General of the United Nations, Ban Ki-moon, stated during a session of the General Assembly on 4/10/2013 that the international criminal justice system began two decades ago, that is, 50 years after the trials of the Second World War, stressing that impunity for war crimes, crimes against humanity, genocide, and other international crimes is no longer acceptable

¹ Roquia Awashri, Ikhlas bin Obaid, The Future of Internationalized Courts in Devoting International Criminal Justice, Article published on the link: <https://www.asjp.cerist.dz/en/article/87701>, p. 08 (date of view: 17/01/2022)

² Roquia Awashri, Ikhlas bin Obaid, Op.cit., P P 8-9

³ See Article 15/2 and Article 22/1 of STATUTE OF THE SPECIAL COURT FOR SIERRA LEONE, at <http://www.rscsl.org/Documents/scsl-statute.pdf> date of vew (22/01/2022).

and is no longer permitted, noting that the system of international criminal courts and hybrid criminal courts has given a voice to victims and witnesses, adding that supporting these courts means respecting them and not questioning their independence, impartiality, and impartiality¹.

The Secretary-General of the United Nations added: "The establishment of the International Criminal Court, the Special Court for Sierra Leone, the Extraordinary Chambers of the Cambodian Courts, and the Special Court for Lebanon has resulted in a system of accountability based on the work of the International Criminal Court and the courts of Rwanda and the former Yugoslavia over nearly two decades, and the two courts have referred cases to national authorities, which has resulted in strong and independent domestic criminal justice systems."²

Accordingly, we will discuss in this element the nature of cooperation between the International Criminal Court and Hybrid Criminal Courts by addressing cooperation in substantive issues first, then cooperation in procedural issues.

3.1 Judicial Cooperation Between The International Criminal Court And Hybrid Criminal Courts:

The International Criminal Court has provided many facilities to Hybrid Criminal Courts, especially in judicial matters represented in the trials of war criminals and violators of the rules of international humanitarian law.

3.1.1 Facilitate Trial Procedures:

One of the most prominent forms of cooperation between the International Criminal Court and Hybrid Criminal Courts in matters of trials and execution of sentences is the facilities provided to the Special Court for Sierra Leone. On June 20, 2006, the Special Court for Sierra Leone transferred Mr. Charles Taylor to the detention center of the International Criminal Court in The Hague for the purpose of using the facilities of the Criminal Court during his trial, this is in accordance with the Memorandum of Understanding concluded by the International Criminal

¹ SPECIAL COURT FOR SIERRA LEONE OUTREACH AND PUBLIC AFFAIRS OFFICE, PRESS CLIPPINGS, Thursday, 11 April 2013, p p 5-6.

² SPECIAL COURT FOR SIERRA LEONE OUTREACH AND PUBLIC AFFAIRS OFFICE, Op.cit, P 7.

Court and the Special Court for Sierra Leone on April 13, 2006¹.

The trial will be conducted by the Trial Chamber of the Special Court for Sierra Leone, sitting in The Hague. The ICC will not conduct the trial of Mr. Taylor under the terms of the Memorandum of Understanding, but rather the ICC will provide courtroom services and facilities, detention services, and related assistance. All costs will be paid in advance by the Special Court for Sierra Leone, through a trust fund established by the ICC Registrar so that this measure will not affect the work of the ICC. As the President of the Special Court on March 29 sent Judge A. Raja n. Fernando, letter to ICC President Judge Philip Kirsch, requesting the use of ICC facilities to conduct the trial and this consultation within the Special Court and with external parties, due to concerns about stability in the region in the event of Mr. Taylor's trial in Freetown. As noted by Judge Fernando in his letter, the International Criminal Court requested the views of States Parties on this issue. The Assembly of States Parties subsequently informed the International Criminal Court of its acceptance of the application of the Special Court for Sierra Leone. Subsequently, the Memorandum of Understanding was signed by Judge Kirsch on behalf of the ICC and Mr. Lovemore Munlo, Registrar of the Special Court².

The International Criminal Court also cooperates with Hybrid Criminal Courts by supporting the latter with highly qualified judges in the field of international criminal justice. Many of these have been appointed, including but not limited to :

A. On December 14, 2016, **Dr. Ekaterina Trendavilova** was appointed as the first head of the specialized departments. After the Independent Selection Committee made its recommendation, the appointing body, Mrs. Alexandra Baba and Polo, Head of the EULEX Mission in Kosovo, formally appointed the President, Mrs. Trendavilova (1953), a distinguished judge, lawyer, and academic from Bulgaria with extensive experience in international criminal law, criminal law and criminal procedure law, and human rights law. She served as a judge at the International Criminal Court (ICC) from 2006 to 2015. Prior to her appointment to the International Criminal Court, she was Professor of Criminal

¹ The Special Court for Sierra Leone to use ICC Facilities for Trial of Charles Taylor, Press Release, At : <https://www.icc-cpi.int/Pages/item.aspx?name=the%20special%20court%20for%20sierra%20leone%20to%20use%20icc%20facilities%20for%20trial%20of%20charles%20taylor> date of view (23/01/2022).

Idem, date of view (23/01/2022).

² The Special Court for Sierra Leone to use ICC Facilities for Trial of Charles Taylor, Op.cit, date of view (23/01/2022).

Justice at Sofia University, Deputy Prosecutor at the Sofia District Court and provided expert opinion on criminal law and human rights standards to the Bulgarian Parliament and Supreme Court. In addition, a number of Bulgarian ministries¹.

B. Judge Kristen van den Wingert, who served as a judge at the International Criminal Court (ICC) from 2009 to 2018, On September 17, 2021, Judge Van den Wingert was appointed to serve as one of the Special Advisers to the Prosecutor of the International Criminal Court. She previously served as a judge at the International Criminal Tribunal for the former Yugoslavia between 2003 and 2009 and as a special judge at the International Court of Justice between 2000 and 2002. Prior to that, between 1991 and 1998, she was Vice-President of the Commission for the Reform of Criminal Procedure in Belgium (Committee Franchimont). She has also worked as an expert for the European Union on several criminal law projects. Between 1985 and 2005².

3.1.2 Cooperation By Supporting National Reconciliation Programmes:

The cooperation of the International Criminal Court with Hybrid Criminal Courts was not limited to judicial matters (trials...) but also to playing a role in the reconciliation programme between adversaries that was put forward by the United Nations in April 2013. Over the past two decades, many international criminal courts have been established, either under the auspices of the United Nations or in cooperation with the International bodies, to judge war crimes and crimes against humanity committed in countries as diverse as the former Yugoslavia, Rwanda, Sierra Leone, and Cambodia. These include the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the Special Court for Sierra Leone. The Extraordinary Chambers of the Courts of Cambodia, the Special Court for Lebanon, and the International Criminal Court (ICC)³.

However, in highlighting the topic of reconciliation, those present at the General Assembly emphasised that the latter would be achieved when all parties of the conflict were willing to tell the truth to each other. Honoring all victims is at the heart of this endeavour. This is why it is so important to ensure that

¹ See the official website of the specialized departments in Kosovo at the link : <https://www.scp-ks.org/en/dr-ekaterina-trendafilova-appointed-president-specialist-chambers>, date of view (25/01/2022).

² Idem, date of view (25/01/2022).

³ SPECIAL COURT FOR SIERRA LEONE OUTREACH AND PUBLIC AFFAIRS OFFICE, PRESS CLIPPINGS, Op-cit, PP 6-7.

atrocities are not denied or peculiarly celebrated as national victories. Reconciliation, at its core, is about the future, making sure that yesterday's tragedies are not allowed to limit the ability of the people to communicate with one another and to work together for a better and more inclusive tomorrow¹.

3.2 Cooperation Between The International Criminal Court And Hybrid Criminal Courts In Non-Judicial Matters:

The special tribunals were designed to avoid some of the shortcomings faced by the previous international tribunals, namely the UN International Criminal Tribunals for the Former Yugoslavia and Rwanda (the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda). It was imagined that their establishment (the Special Courts) would be a cost-effective and financially efficient model for the External Management Committee and the donor countries that fund these courts through voluntary contributions².

Accordingly, we will discuss in this part the cooperation between the International Criminal Court and hybrid criminal courts in financial matters, and then cooperation in administrative matters.

3.2.1 Financial Cooperation Between The International Criminal Court And Hybrid Criminal Courts:

The Agreement for the Establishment of the Caretaker Court of Sierra Leone RSCSL ratified by the Parliament of the State on 15/12/2011 provides that it shall have its headquarters in Freetown, but it will perform its functions in a temporary seat in the Netherlands with a branch office in Freetown to protect and support witnesses and victims. RSCSL is funded, like SCSL, through voluntary contributions from the international community, but the agreement allows it to search for alternative means of financing. It has an oversight committee to help obtain adequate funds and provide advice and political guidance on the non-judicial aspects of the court³.

whereas Article 04 of the Agreement Establishing the Caretaker Court

¹ SPECIAL COURT FOR SIERRA LEONE OUTREACH AND PUBLIC AFFAIRS OFFICE, PRESS CLIPPINGS, Op-cit, P 7.

² Antonio Cassese, REPORT ON THE SPECIAL COURT FOR SIERRA LEONE, December 2006, <http://www.rscsl.org/Documents/Cassese%20Report.pdf#search=%22The%20International%20Criminal%20Court%22> , p 1. Date of view 24/01/2022.

³ See the official website of the Special Court for Sierra Leone: <http://www.rscsl.org/> date of view (25/01/2022).

stipulates that the Court shall have a Supervisory Committee to assist in obtaining adequate funding and to provide advice and political guidance on all non-judicial aspects of its work. The Oversight Committee will include all parties and significant contributors to the Court¹.

Article 1 of the Memorandum of Understanding signed between the International Criminal Court and the Special Court for Sierra Leone states that the International Criminal Court is committed to providing the necessary facilities and support to the Special Court and its related activities, without prejudice to the work of the International Criminal Court and the Special Court and their financial and legal independence as stipulated in Article 02 of the Memorandum of Understanding. Article 03 stipulates that the Special Court promises to pay all funds related to covering the costs and fees for providing services and facilities in the accounts of the International Criminal Court in advance. From the memorandum of understanding.²

3.2.2 Administrative Cooperation Between The International Criminal Court And Hybrid Criminal Courts:

Hybrid Criminal Courts have the legal capacity to allow them to conclude contracts and agreements within the limits of their jurisdiction.

The conclusion of contracts for the acquisition of property and movables is one of the benefits of international courts' legal capacity. Article 05 of the agreement governing the conduct of business in Sierra Leone states that the latter must have legal capacity to acquire and dispose of property, both movable and immovable, as well as administrative responsibility for preserving manuscripts to facilitate access to them. According to Article 06 of the same agreement, the Court will have a temporary seat in the Kingdom of the Netherlands in addition to its main seat in Freetown³.

On the other hand, the International Criminal Court and the Special Court shall consult on the provision of services and other facilities relating to the

¹ The Residual Special Court for Sierra Leone Agreement (Ratification), PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTING DEPARTMENT, SIERRA LEONE, GAZETTE NO. 6 OF 9TH, FEBRUARY 2012, P 3. (<http://www.rscsl.org/Documents/RSCSL-Act.pdf>).

² International Criminal Court, Memorandum of Understanding regarding Administrative Arrangements Between the International Criminal Court and The Special court of Sierra-Leone, date of entry into : 13/04/2006, Official Journal Publication, 2006, p 2. (Document code : ICC-PRES/03-01-06)

³ The Residual Special Court for Sierra Leone Agreement (Ratification), Op-cit, p 5.

courtroom with the prior written consent of the Kingdom of the Netherlands. Those of the Special Court and this is according to the text of paragraph 01 of Article 05 of the Memorandum of Understanding under the title: "Courtroom services and facilities." This is in addition to the courtroom, including court reports, audio and video recording services, the ability to link video via satellite, the preservation of evidence, and the use of safes throughout. The duration of the trial and the International Criminal Court must, according to Article 08/1/2/3, provide administrative and logistical services to the Special Court, including¹:

(A) access to ICC IT facilities, subject to compliance with ICC IT protocols, policies, and documents, and various rules, in particular regarding the use of external applications and software installation;

(B) access to the external communication facilities of the International Criminal Court on the basis that the Special Court is procuring compatible equipment for this purpose,

(C) stockpiling parts of Special Court equipment or property based on available space, without prejudice to the International Criminal Court's non-liability for the risk and damage to it, or its destruction or loss... However, all reasonable care must be taken by the International Criminal Court in storing this equipment and property².

The Special Court shall remain responsible for the implementation of all functions and duties related to the conduct of the trial, and the International Criminal Court shall not bear any responsibility for the performance of these tasks and duties as stipulated in Article 05, paragraph 02. regarding details of services, facilities and support, such as time of use and equipment, and put in place arrangements for the provision of such services and facilities³.

In the context of the provision of detention centers, the International Criminal Court must provide detention services and facilities to the Special Court for use in the detention of persons arrested by the Special Court who will be brought to trial, as defined by the relevant regulations and agreements concluded by the International Criminal Court that define the operational framework of the

¹ International Criminal Court, Memorandum of Understanding regarding Administrative Arrangements Between the International Criminal Court and The Special court of Sierra-Leone, Op-cit, P 4.

² International Criminal Court, Memorandum of Understanding regarding Administrative Arrangements Between the International Criminal Court and The Special court of Sierra-Leone, Op-cit, p 4 (Article 8/3)

³ Idem, P 3.

detention centre of the Court apply. The International Criminal Court, including but not limited to the ICC Regulations and the ICC Registry, makes necessary adjustments to the detention of the Special Court¹.

4- Conclusion

International cooperation between the International Criminal Court and Hybrid Criminal Courts has given a strong impetus to the dedication of international criminal justice, despite the obstacles it faces, especially the political ones:

1- Hybrid Criminal Courts are judicial bodies that enjoy independence and a capacity that enables them to conclude contracts and agreements with persons of international law, allowing them to exercise their powers in suppressing international crimes and preventing their perpetrators from impunity.

2-The International Criminal Court can assist hybrid criminal courts in various fields, whether judicial or administrative, without prejudice to their original jurisdiction in combating international crimes.

3- Hybrid Criminal courts are one of the mechanisms for fighting international crimes, used by the United Nations and the International Criminal Court in combating international crimes and preventing perpetrators from impunity, especially in cases outside the jurisdiction of the International Criminal Court.

Based on the findings, we decided to propose a number of suggestions as follows:

1- Hybrid Criminal Courts are effective judicial bodies in deterring international crimes. Therefore, the international community should work to support this type of court and encourage its establishment in order to expand the universal jurisdiction of international criminal justice across various countries of the world.

2-Expanding the scope of cooperation between the International Criminal Court and Hybrid Criminal Courts, by working to support these courts and providing them with various necessary means in order to carry out their work of

¹ International Criminal Court, Memorandum of Understanding regarding Administrative Arrangements Between the International Criminal Court and The Special court of Sierra-Leone, Op-cit, P 3 (Article 6/1).

combating international crimes and preventing the perpetrators of these crimes from impunity.

3-The United Nations body in its various organs should urge countries to provide adequate support to the International Criminal Court and Hybrid criminal courts, especially in terms of assistance in arrest, detention, and extradition of accused persons, and to provide the financial and administrative capabilities necessary for this purpose by concluding cooperation agreements between these courts and the concerned countries.

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