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MASTER'S THESIS

"POLITICAL, JURISDICTIONAL, AND LEGAL CHALLENGES FOR THE ESTABLISHMENT OF INTERNATIONAL CRIMINAL TRIBUNALS"

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Annotation

Nowadays, military tribunals have become a common phenomenon because they form the most effective response of the international community to war crimes. However, their appearance resulted from a long discourse after the Second World War in the context of applying measures of international legal support for bringing war criminals to justice. Nevertheless, a responsibility that existed at that time was objective from the point of view of international criminal law.

Since most war crimes are criminal acts under the laws of almost all states without exception, it is logical that the onset of responsibility is an unavoidable objective fact. However, the principal value of such a national process cannot be compared to an international one since only in the conditions of a military tribunal as a form of criminal prosecution, recognized by most countries of the world, is the most crucial goal of punishment for war crimes - public prevention - achieved.

The purpose of the study: is to research and analyze the practice of the International Criminal Tribunals to define war propaganda as an international crime and study the challenges of international criminal tribunals.

The object of the study is the norms of international law, which regulate the establishment and activity of international criminal courts and tribunals, particularly the International Criminal Court.

The subject of the study is the jurisdiction of the International Criminal Court, its content, implementation practice, and problems of cooperation between different countries and the International Criminal Court.

Research methods: dialectical, comparative, historical-legal, comparative-legal, systemic, special-legal, logical-legal.

In 2002, the International Criminal Court (ICC) became a permanent body of international criminal justice. The Rome Statute of the International Criminal Court, adopted on July 17, 1998, by the Diplomatic Conference of Plenipotentiaries under the auspices of the United Nations, has jurisdiction over persons responsible for the most severe crimes of concern to the international community.

Keywords: International Criminal Court, Law, Human Rights, Politics and International Relations, International Relations and International Organisations, ad-hoc

CONTENT

Introduction

In the fight against impunity for terrible crimes committed by aggressors, the active activity of the international community to create tribunals - special courts to investigate the most serious crimes that have befallen humanity - played a key role. However, over time it became clear that creating separate ad hoc courts to resolve cases related to only one conflict is irrational regarding resources and time spent. Therefore, established a single international court to investigate the most egregious crimes.

Amnesty International and many other human rights organizations actively advocated establishing a permanent international criminal court. Amnesty International is a non-governmental organization that, through campaigns, leads the global human rights movement to ensure the protection of all human rights enshrined in the Universal Declaration of Human Rights and other international standards.

In particular, this organization is active in conducting campaigns aimed at:

- release of prisoners of conscience;

- ensuring a fair and speedy trial for

- political prisoners;

- abolition of the death penalty, torture and other cruel acts

- treatment of prisoners;

- stopping political murders and "disappearances";

- resistance to human rights violations by opposition groups.

As a result, in 1998, in Rome (Italy), 120 states signed the Rome Statute (further- RS), which was the starting point for the establishment of the International Criminal Court (further - ICC).

The ISS is an independent body that operates independently of the United Nations. The Court locate in The Hague (Kingdom of the Netherlands), and contributions from member states and voluntary contributions from international organizations, governments, individuals and corporations cover all expenses. The Court's composition consists of 18 judges elected for one year by the decision of the assembly of the Court's member states.

It is worth noting that the Rome Statute was not the first international treaty to establish a judicial body to prosecute persons guilty of the most severe crimes. Its predecessor was the Convention on the Establishment of an International Criminal Court of 1937 (which did not enter into

strength).

In addition, there were other proposals for creating a permanent body to prosecute those guilty of the most severe crimes. Although none of these initiatives was implemented, they made the basis for establishing the ICC, the first permanent international Court criminal case.

Thus, it is worth noting that the International Criminal Court embodies the ideas of the world community regarding the fight against and punishment for the most terrible crimes.

The research aims are ICC principles, content RS, problems and prospects of the ratification, and the consideration of the positive and negative consequences after its approval. Since Ukraine has been in armed conflict with the Russian Federation since 2014, there is no doubt that the issue of ratification of the RS is essential. Another important aspect is the review and analysis of lawsuits sent by Ukraine to the ICC and their effectiveness.

Based on the topicality of the topic, its primary goal is to reveal theoretical and practical issues related to expediency

ratification of the RS.

The tasks are:

- investigate the problem of Ukraine's ratification of the RS;

- consider the legal nature of the Rome Statute of the ICC;

- to investigate the algorithm of signing and ratification of the RS of the ISS by countries;

- determine the advantages and disadvantages of Ukraine's ratification of the RS.

The object of the study is the issue and perspective of the ratification of the Rome Statute of the International Criminal Court by Ukraine.

The subject of the study is the norms of the Rome Statute of the International Criminal Court.

Research methods. The following techniques I use during the work

- logical analysis:

- comparative analysis;

PART I Establishment of International Criminal Tribunals

1.1. Chapter I Political and historical preconditions for the establishment of international criminal prosecution

Most of the 20th century was in forming international criminal law, which happened gradually, step by step. However, it existed only as ad hoc. Under the absence of a permanent criminal court and the imperfection of the law, ad hoc tribunals could not form influence frequent military conflicts. Society encountered international crimes only when these crimes had already been committed. International criminal justice began to operate only under certain conditions but did not exist as an independent force. Similar conditions, as a rule, were military actions that caused severe violations of existing international law and caused significant danger to society.

In modern science, several different approaches to the time of the formation of criminal justice in international law have emerged. For example, Christopher Keith Hall, a legal adviser to the International Secretariat of Amnesty International in London, notes that during the 20th century, special tribunals conducted almost all trials for violations of the laws of war. Specially created by one of the parties (usually the victorious country) to issue the necessary decisions in similar situations, and not by ordinary courts or a specialized international criminal court. (Schabas, W. 2006). Most parties would be recognized this authority.

Humanity did not have a single attempt to create an international criminal court to punish the perpetrators of terrible bloody wars until the First World War. The proof may be that Napoleon I, accused of launching wars of aggression at the beginning of the nineteenth century, was never convicted by an international criminal court but suffered the punishment of an international political act of the victorious countries. The treaty between the victorious countries: Russia, Prussia, Great Britain, and Austria, recognized and declared Napoleon as a criminal, and he was sent to the island of St. Elena to serve a sentence. Also, we can agree with S. Bassiouni, who notes that the usual procedure for deterring offences during military operations was an internal state problem, not an international one. (Schabas, W. 2006). Therefore, we can observe how numerous violations committed during the war went unpunished. Because of the weighty fact, anyone not recognized that entire countries, as subjects, should bear responsibility for war crimes or other violations of international law, just as individuals, in some cases, bear responsibility under international criminal law. The only thing that could keep the country from violating the established rules of war was the will of these states.

The enormous scale of the First World War and the vast number of victims among civilians demanded an adequate response from the international community. That is why the authors of the Versailles Peace Treaty included a particular section, "Sanctions", which directly provided responsibility for war crimes.

Despite imperfections, the norms of international criminal law regulate the formation of such a court, and despite the lack of a corresponding legal framework that regulates its formation and activity, the procedure for conducting a trial by an international criminal court is not yet established. The Treaty of Versailles should be considered the first precedent in international

criminal justice. The country's criminal jurisdiction extends to its entire territory. Not only all citizens of the country fall under the jurisdiction, but citizens of other countries who have committed crimes on the territory of this country. The legal relationship between the country and its citizens determines the presence in them of a distinct set of interrelated rights and responsibilities. That is why when a citizen commits certain illegal acts or serious crimes that the country considers illegal, it automatically gives it the prerogative to start an investigation and prosecution. The legal basis for such prosecution is criminal legislation, which directly determines which illegal acts are crimes and what punishment is for such acts. In simple language, the country only conducts its territory's criminal law security function.

If the effect of the criminal law in space could extend beyond the borders of one country, it would practically mean that another country's sovereignty is violated. Therefore, in conclusion, the need to regulate this issue by institutions that will not depend on the domestic laws of one state and be able to administer justice even to specific subjects of international crimes - that is, to bring to justice any person guilty of international crimes.

For the first time in history, the Versailles Peace Treaty provided the possibility to remove any person from the jurisdiction of a particular state, which contained a special provision indicating such a possibility while ignoring the will of such a person. It is a well-known fact that the state's sovereignty means that it performs any functions on its territory, including legal ones, exclusively by its forces. No other state can interfere in the internal affairs of another state. Suppose this principle of international law is violated. In that case, it will mean encroachment on the sovereignty of a state that guarantees its citizens' rights and freedoms and protects them from illegal acts.

The first stage for establishing criminal jurisdiction in public law was the introduction of the principle of inevitability of punishment for violation of international norms. For the first time, the principle was declared when officials of the country's highest echelon are responsible for bloody military actions and other violations of the norms of public law and must bear the punishment for their illegal actions. Then, based on the abovementioned principles, the question arose about creating an international court that could administer justice to persons guilty of serious international crimes.

In 1919, a historic event occurred at a Paris conference - a decision was approved to create an international arbitration court called the "Permanent Chamber of International Justice".(Larry May,2017)

The concept of this Chamber provided that it would include one representative from each participating country. It expected that the Chamber would prepare a judicial procedure to consider cases of heinous crimes against international law and order.

As a result, by the beginning of the Second World War, humanity had specific rules for conducting military operations. However, there was no procedure for bringing to justice persons guilty of serious international crimes, despite numerous steps taken by the international community: specific articles were included in international treaties and special agreements.

Thus, the International Criminal Court was created after the Second World War because, despite the numerous attempts of the international society, until that time, humanity did not

succeed in creating such a judicial institution that could solve the problem of bringing people to justice for international crimes.

1.2. Chapter II Establishment of the International Criminal Tribunal for the former Yugoslavia

Just after, the world was shocked by the events connected with the tragic breakup of Yugoslavia, the cooperative society of the victorious countries. In the words of Paul Tavernier, they "ceased to close their eyes" to all the crimes committed and permitted the establishment of the International Tribunal to punish those responsible for serious crimes against international humanitarian law that they committed on the territories of Yugoslavia.

The Tribunal was created based on resolutions 827 and 808 issued by the United Nations Security Council, dated February 22 to May 25, 1993. (Schabas, W. 2006)

In almost half a century, it was the first time that the strict disregard of international humanitarian law, which operates within the framework of some armed conflicts, became not only the object of curiosity of the international community but also the object of court proceedings.

The head of the International Criminal Tribunal, Antonio Cassese, was responsible for the former Yugoslavia. Moreover, he noted: "its creation (about the tribunal) is the only correct response to the mass murders, "purges" and atrocities that took place in the former Yugoslav Federation. Their number and scale were not known to the general European community since the end of the war". (Schabas, W. 2006)

It is necessary to focus on proposals for creating an international criminal court, intending to carry out justice due to the war crimes of the United States of America committed in Vietnam. Alternatively, to deliver to this Court Saddam Hussein, who is the culprit of Iraq's aggression against Iran. However, these proposals were severely criticized, as it was believed that these courts would be a cover for large countries or a reason to postpone creating a permanent International Criminal Court for a long time.

It is worth noting that before the creation of the International Tribunal. There were Resolutions of the Security Council of the United Nations, which actively condemned all the atrocities committed in the territories of Yugoslavia and contributed to the creation of commissions to investigate the facts of these atrocities and the numerous murders of innocent people.

The foundation of the international Tribunal on issues of law was based on Security Council Resolutions 771 and 780. In them, actions encroaching on global security and peace were represented as violations of international humanitarian law. Taking advantage of this, the UN Security Council used the seventh chapter of the United Nations Charter and an international tribunal was created based on powers. They followed the regulations specified in the section and were related to the immediate implementation of measures to restore security and peace.

The charter document of the International Tribunal for the Yugoslav Federation differed significantly from the previous founding documents of tribunals identical to the international one. However, it included all the main principles of the international criminal Court,

determined according to the international Tribunal of Nuremberg and established by the Resolution of the United Nations in 1946.

The charter document had about 34 articles. They provided for the competence of the Tribunal and the predominant types of offences. At the same time, paragraph "i" of Art. 5 of the statute of the Tribunal emphasized the unlimited range of acts committed by criminals, the so-called "other inhuman acts. It gave the court freedom in its actions in the qualification and investigation of behaviour on the element of inhumanity. (Kaul, H.,and Kress, C.,1999) Furthermore, the statute determined territorial and temporal jurisdiction, the composition of the Tribunal, any rights of the accused, the procedure for sentencing and the individualization of responsibility.

The Statute of the Yugoslavian Tribunal did not provide for the consideration of cases in absentia, as the Nuremberg Tribunal did. In the Charter, namely in the 9th article, it was established that the International Tribunal has the right to parallel jurisdiction over the courts of certain countries. However, his jurisdiction took priority over others. Any trial stage could be formally suspended, and the Tribunal would ask the national judicial authorities to refer the case to the Tribunal.

Cases when the international Tribunal came into force include:

1. Violent crimes according to the Geneva Conventions of 1949;

2. Contempt and violation of the laws and customs of warfare;

3. Genocide;

4. Numerous crimes against humanity

The document of the Statute of the International Tribunal was not the only one of its kind. Therefore, naturally, the Tribunal, like other participants in the process, had to be guided by some statutes and legislation.

Thus, based on Article 15 of the Statute, which determined normative features, the Rules of Procedure and Evidence by the Tribunal were adopted. At the same time, the Rules of custody or code of professional conduct of the defender to the Tribunal were approved.

These secondary documents showed the degree and way to improve the justice process for international crimes and establish a specific structure of the organization of international criminal justice. It should also be noted that the role played by the judges of the Tribunal in creating these additional documents was significant. For example, Paul Tavernier wrote: "These rules (about collateral documents) that they developed can be perceived as the International Code of Criminal Procedure". (A Caesius,1999)

The specially organized Tribunal for the Yugoslav Federation was utterly devoid of bias of judges and prosecutors and minimized all bias in the judicial proceedings.

The fact is cited, Article 11 of the Statute defines the unique bodies of which the Tribunal consisted.

Namely: the Judicial Chamber, which included the Judicial and Appellate Board, the Secretariat, the Prosecutor, and other bodies. At the same time, at the request of the UN

Security Council, Gen. The Assembly elected judges, while the Security Council appointed the Prosecutor on the recommendation of the Secretary General of the United Nations. The Secretary also had the right to appoint the staff of the Secretariat (Article 17 of the Statute). (CASSESE, A. ET AL. 2002)

The upper and lower limits of punishment were determined according to the criminal laws of the former Yugoslav Federation. In addition to the punishment, the confiscation of property-acquired crimes and their return to rightful owners was stipulated. (Article 24)

The Statute of the Tribunal did not provide for the death penalty as a type of sentence.

The incarceration process had to take place outside the territory of the Yugoslav Federation in countries that expressed a desire to keep those convicted according to the sentences. In the post-war period, the active fight against international crimes was not considered a matter of individual states or organizations but only a common way of countering the whole world, which is what this means. The jurisdiction of the International Tribunal, which was established in 1993, also extended to acts committed before its establishment. The Tribunal worked indefinitely. (Articles 8, 9 of the Statute). During the work of the Tribunal, it issued 20 publicly confirmed conclusions. They also conducted about ten cases that were violated by Article 61 of the Rules and Evidence Procedure. Slobodan Milosevic, a former politician of the Yugoslav Federation, was responding to the Tribunal at that time. Earlier, the Tribunal considered Karadzic's case. He is yet another Yugoslav national charged with genocide against ethnic Albanians. The productivity of the international criminal Court is demonstrated and confirmed precisely by these facts.

Like all other criminal justice bodies, the international Tribunal responsible for Yugoslavia has presented an ad-hoc court. The Tribunal extended its influence only to the territory of the SFRY. So it is stated in the statute's Preamble and Article 8 on territorial jurisdictions. It was created in order to fairly punish criminals who committed crimes of an international scale localized in certain territories.

After achieving the purpose and providing that all tasks assigned to it, Tribunal fulfilled, the Tribunal will cease to exist in the niche of an international court body. It was proposed to increase the Tribunal's zone of influence for crimes committed outside certain jurisdictions of specific countries or by citizens of these countries. However, such a proposal was successfully rejected.

1.3. Chapter III Establishment of the International Criminal Tribunal for Rwanda

After the formation of the Tribunal for Yugoslavia, the same body as the International Court was created. It was a consequence of the military conflict in the territories of Rwanda.

In the spring of 1994, the number of people killed in Rwanda (Africa) exceeded half a million. The official defence of the accused at the Tribunal, which Chris Mine Peter represented, called all these murders a severe genocide in world history. (KIRBY, C.,2006)

If analyzing all the events of that time, we conclude: this genocide was carefully planned because the mass media were engaged in the propaganda of racism every day. Along the way, whole lists of potential victims of genocide were compiled. Therefore, any human ethnicity in Rwanda, Africa, could become both a guarantee for survival and a death sentence for any citizen.

For the crimes in Rwanda, Africa, dating from the first half of 1994, it was set as a goal that the joint international society of countries would ensure all norms regarding the observance of international human rights and seek to punish all those guilty of violating these rights.

The head of the Security Council of the United Nations officially stated in 1994, according to which violations of international rubber were condemned. Rights in Rwanda, Africa. He also made public questions regarding immediate investigations.

A special Commission of Experts was created to investigate these violations. Then in November 1994, the Rwandan Government invited the creation of a tribunal in the Security Council to prosecute people responsible for crimes against international law within the territory of Rwanda.

It is worth noting the fact that despite the desire of the Rwandan authorities to create this international body of the Court voting by resolution 955, which provided for the creation of this Tribunal, a member of the Government of African Rwanda voted "against" as a reflection of this position for several reasons.

Rwanda rightly observed that the actions of 1994 were not spontaneous but carefully planned. (Schabas, W,2006)

The second reason was that the structure of the Tribunal did not correspond to the tasks assigned to the Tribunal. The fact that the Appeals Chamber and the Rwandan and the Yugoslav Federation tribunals shared the Prosecutor hurt the productivity of those tribunals.

The third principled position was that the Rwandan authorities protested the absence of the death penalty in the sentencing forms, as the country's laws provided this punishment. At the same time, African Rwanda was against the fact that convicted persons would serve their sentences in other third countries and not in the territories of Rwanda. Although the country voted against forming such a tribunal, Rwanda did not deny its potential cooperation with the judicial body.

In general, the statutes of Yugoslavia and Rwanda were almost identical, with a difference in literally a few provisions. Some historians consider this statute a deviation from the International Criminal Tribunal for the Yugoslav Federation. In particular, all these penal authorities had standard services and commonly responsible persons working in these tribunals.

According to articles 1-4 of the charter document, the Tribunal can hear African Rwanda cases involving genocide, crimes against humanity, and unavoidable war crimes.(KLEFFNER, J., OUP, Oxford, 2008) The third article, which was responsible for crimes against humanity, could be based on the accepted classification of these crimes; namely, they did not include the conditions of connection between crimes and armed conflicts. At the same time, it included an essential qualification feature related to the large-scale and systematic nature of violations.

According to the fourth article, the area of influence of the Tribunal is limited and based on the third article. It is common to the conventions adopted in Geneva and to the Second Additional Protocol. The fourth article proves the principle aimed at individual criminal responsibility due to violations of these conventions. The members of the Security Council of

the United Nations believed that these statements provided other arguments for rejecting all doubts related to the discussion of the competence of the Yugoslav Tribunal.

As for territories, the Rwanda tribunal was not limited to just one country. It also extended to the lands of neighbouring states if it concerned severe crimes against international humanitarian law committed by Rwandans (Article 7 of the Charter). Application of the principles of personal jurisdiction.

Also, the peculiarity was that the Rwandan Tribunal contained three Chambers. By making some amendments to the statute, it was decided to form the third Chamber of the Court. The United Nations Security Council adopted it through Resolution 1165 (April 30, 1998). The purpose of such creation is to increase the pace of cases, as many accused have waited for justice for a very long time. As a result, sentences on convicts were executed in Rwanda or other countries that agreed to their readiness.

At the same time, there were some problems in the work of the Rwandan Tribunal, namely: not very effective cooperation between the country's authorities and the Tribunal, as some people suspected of genocide held leading positions in the country at the time. Actions regarding detention and sentencing people under suspicion also became a problem. At the same time, the International Tribunal issued much more severe and strict decisions, although it considered most essential cases. The Rwandan Tribunal did not work similarly to the Nuremberg or the Tokyo tribunal. This region's atmosphere of instability and tension continues to prevail, affecting the tribunals' work. Rwanda's lack of a chief prosecutor has been widely criticized because, as scientists believed, it slowed down the action of the court body. However, we should have considered the contribution of the Tribunal. The statute of the Rwandan Tribunal, all the rules, procedures, evidence, and all the practice of their work, were a big step toward the development of international law.

Ultimately, it is necessary to separate the opinion of the person interested in these bodies. The head of the Rwandan Tribunal, Laiti Kama, emphasized the contribution of these courts to international criminal justice. First of all, the decisions made by the tribunals contributed to the growth of the judicial practice about crimes around the world, especially if we talk about genocide. The second aspect was that the formation of these court bodies established the already-voiced principle of individual criminal responsibility, respectively. It enabled the judiciary to prosecute individuals for crimes under international law in the future. It worked even when such violations were localized in a particular country. The formation of thematic tribunals was also a good impetus for creating an international court permanently. Since: "The court, which will have in its jurisdiction the whole range of possibilities together with the mechanism of taking matters into its own hands, will be able to gain influence on the relations between the countries." (Schabas, W. 2006)

However, the newly created Rwandan and Yugoslav tribunals are only considered partially universal bodies of justice. They are extending their influence in time and space to persons who have committed crimes according to the norms of international law.

The activity of these tribunals depends on territories and specific individuals.

The conclusion is that all these facts show the need for universal international justice because such a principle of criminal justice, in comparison with the principles of the Nuremberg

Tribunal, defined by international law, should have become the primary determinant for its whole existence.

This involved:

a) the universality of the jurisdiction of international criminal justice in time, space, and a range of subjects (natural persons) for committing international crimes;

b) the need for a permanent judicial body - the international criminal Court.

Features specific to the principles of the international zone of criminal influence were identified as the universality of the entire field of criminal justice, personalization of punishments, various crimes against the world society, and special procedures of court proceedings.

Only such signs as a whole will be able to turn international justice into a tool that will become a path to peace and security in the world.

1.4. Chapter IV Establishment of the Special Court for Sierra Leone

The Sierra Leone Tribunal began its work in June 2001. The Tribunal has a composition similar to that of the previous two Tribunals. The Tribunal is financed with the support of the United States. In 2005, the Special Court received approximately US$54.9 million in voluntary contributions from 33 States within a four-year budget of US$104 million. (JONES, J., ET AL,2004)

Located on the West African coast, Sierra Leone is a former British colony ruled by a succession of corrupt autocrats until a rebellion broke out in 1991. To the extent that the rebels were animated by any progressive reform agenda, this quickly disappeared as the conflict degenerated into a campaign of brutality and atrocity whose principal victims were the rural peasants. Only in 1999 did the rebel groups advance on the capital, Freetown, destroying much of the city and prompting the fragile Government to sue for peace. The Lome Peace Agreement, reached on July 7, 1999, provided a power-sharing government in which the rebel Revolutionary United Front would be given cabinet positions. In addition, combatants on all sides were granted an amnesty. The parties to the Agreement were the Government of Sierra Leone and the Revolutionary United Front. However, it received the benediction of the 'moral guarantors,' including Togo, the Commonwealth, the Economic Community of West African States (ECOWAS), the Organization of African Unity (OAU, now known as the African Union), and the United Nations. (CRYER, R.,2001)

There was a renewed outbreak of fighting in Sierra Leone for a few weeks in May 2000, well before the Truth and Reconciliation Commission had been established but after its enabling legislation had been adopted.

The Government quickly mastered the situation, arresting many Revolutionary United Front supporters and, in effect, shifting in its favour the fragile balance in the power-sharing negotiated at Lome'. Then the Government of Sierra Leone 'reassessed' its position concerning the amnesty. Sierra Leone's President Kabbah wrote to the Security Council requesting that it establish an international tribunal to prosecute members of the Revolutionary United Front. The President explained that the purpose of such a court is to try

and bring to credible justice those members of the Revolutionary United Front (RUF) and their accomplices responsible for committing crimes against the people of Sierra Leone and for the taking of United Nations peacekeepers as hostages.

In April 2002, three months after the Government of Sierra Leone and the UN signed the Special Court Agreement, UN Secretary-General Kofi Annan appointed the Registrar and the Chief Prosecutor. They arrived in Freetown in late July and early August 2002, respectively.

They began operations under challenging conditions. A planning mission in January 2002 had determined that no ready-made and convenient offices for the Court existed and that a new facility would have to be built. Moreover, unlike the International Criminal Tribunal for Rwanda (ICTR), the Court lacked a formal relationship with the UN. For various reasons, cooperation from the UN Assistance Mission in Sierra Leone (UNAMSIL) proved minimal, politically, and financially complex. However, support from UNAMSIL military personnel was easier to obtain. Assistance from the Government of Sierra Leone was also forthcoming. The Special Court built its site—staff offices, courtrooms, and prison facilities—on an 11.5-acre plot of land donated by the Government in central Freetown. However, until January 2003, the Registry had to work in provisional offices owned by the Bank of Sierra Leone, while the Office of the Prosecutor, located in a private residence a few kilometres away, was not transferred to the permanent site until August 2003. (FRULLI M.,2000)

The Special Court for Sierra Leone is one of the first such experiments that was founded with the signing of the Agreement between the United Nations and the Government of Sierra Leone on January 16, 2002. It called to prosecute persons guilty of serious crimes against the population of this West African state and UN personnel. The Statute of the Special Court for Sierra Leone, consisting of 25 articles, was added to the Agreement. Some authors prefer to call this Court an ad hoc UN tribunal. There is no doubt that this view deserves attention, but this Court is primarily mixed.

The mixed character of this Court is manifested in several directions. First of all, his competence includes the prosecution in the Court of persons who bear the tremendous responsibility of severe violations of both international humanitarian law and the legislation of Sierra Leone, committed on the territory of the state since November 30, 1996

The second circumstance is related to the order of appointment and composition of officials of this Court. For example, the Trial and Appeals Chambers include judges appointed by the Government of Sierra Leone and judges appointed by the UN Secretary-General. Moreover, the number of the latter prevails. On the UN Secretary General's initiative, the Prosecutor and the Secretary of the Court are appointed.

The Secretary-General has remarked that 'the Special Court, as foreseen, is established by an Agreement between the United Nations and the Government of Sierra Leone and is, thus, a treaty-based sui generis court of combined jurisdiction and composition.

The lawful status of the SCSL is defined by its constituent

the instrument, the SCSL Agreement. Article 1 of the SCSL Agreement clearly states, 'There is hereby established a Special Court for Sierra Leone…'. Moreover, the preamble to the SCSL Statute provides, 'Having been established by an Agreement between the United

Nations and the Government of Sierra Leone…'.(Jones, J., 2004) The Security Council has referred to the SCSL as having been established by the SCSL Agreement.2

The Appeals Chamber has established this status on several occasions.

The SCSL is thus a treaty-based institution. In this sense, the SCSL has more familiar with the ICC than the ICTY and the ICTR. It has a separate legal personality under international law and is an international – and not a national - institution.

The nature and legal basis of the SCSL have been grown several times in prior actions before the Appeals Chambers. Resolution 1315 and the involvement of the Security Council in the creation of the SCSL indicate that the SCSL was rather established by the Security Council acting pursuant to Chapter VII of the Charter. By this view, the very involvement of the Council with the location of the SCSL, in the mix with its earlier role in relation to Sierra Leone and its relation to the situation in Sierra Leone as continues to constitute a threat to international peace and security, renders the establishment of the

SCSL is an exercise of the powers of the Security Council acting under Chapter VII of the Charter. However, this argument needs to be revised. The Security Council did not establish the SCSL, nor do the orders of the SCSL bind third states. Before working under Chapter VII of the Charter, the Security Council must make a determination as to whether the situation in question means a threat to the restoration or care of international peace and security. It had earlier decided that the situation in Sierra Leone constituted a threat to international peace and safety, and this determination was reiterated in Resolution 1315. The jurisdictional point for the operation of Chapter VII of the Charter was pleased. Thus, it was open to the Security Council to use its powers under article 41 of the Charter to find an international tribunal as a measure to restore international peace and security.

Alternatively, the Security Council could have relied upon its general power for international peace and security under article 24 of the Charter. Nevertheless, the Security Council did not act under Chapter VII; it merely requested the SecretaryGeneral to negotiate an agreement with Sierra Leone for the establishment of a tribunal. Resolution 1315 can be contrasted with Resolutions 955 and 827, which have the words' Acting under Chapter VII of the Charter of the United Nations.

While the inclusion of the term 'acting under Chapter VII' is a case of custom or practice only, the absence of these words in Resolution 1315 creates a strong belief that the Security Council needed to rely upon its powers under Chapter VII of the Charter. Moreover, the Security Council did not establish the SCSL by Resolution 1315. There has yet to be a decision of the Security Council with which Sierra Leone - or other states - could be required to cooperate.10 At most, Resolution 1315 is a non-binding recommendation from the Security Council acting under article 39 of the Charter. Having been established by a treaty and not by one of the principal organs of the United Nations, the SCSL cannot be and has not been deemed a subordinate organ of the United Nations. The idea that the SCSL is a 'Chapter VII' body relies on an overly broad understanding of Resolution 1315 and the Council's powers for international peace and security. This approach is incompatible with the practice of the Council, which generally requires required language and reference to the Council acting under Chapter VII to engage the Council's powers.

Moreover, it isn't very certain that states would be willing to accept that any action of the Council that may have a link to international peace and security is an exercise of the Council's powers under Chapter VII of the Charter and hence potentially pressing on member states. While the practice of the Council may extend additionally to allow such an extensive understanding, it certainly does not do so yet.

The Appeals Chamber has too denied recommendations that the request from the Security Council expressed an illegal board of powers by the United Nations. It supposed that the query of whether the Security Council has the power to delegate its powers to the Secretary-General was not an issue. Resolution 1315 was clearly a request from the Security Council to the Secretary-General, which he was assigned to act pursuant to articles 97 and 98 of the Charter. The United Nations is generally acknowledged to have treaty-making powers so as to allow it to enter into contracts with states and other international organizations, this power being suggested as required for the execution of its functions and as a feature of its lawful personality. Fulfilling the request did not require a board of power from the Security Council. Besides, the problem of whether the Secretary-General had the power to conclude the SCSL Agreement of his own volition was also considered irrelevant, as he was requested to do so by the Security Council. Nor did the United Nations act ultra vires in entering into the SCSL Agreement, as the Security Council is not required to keep control of an institution that is not a subordinate organ, and the presence and activities of the SCSL do not control the Security Council in the performance of its functions under Chapter VII of the Charter. Several defendants have challenged the lawfulness of the Tribunal's establishment based on an alleged violation of the Constitution of Sierra Leone. Section 120 of the Constitution vests the judicial power of Sierra Leone in the judiciary, established under Chapter VII of the Constitution. Any bill changing the structure of the judicial system may not become law until after it has been passed by Parliament and approved at a referendum. It has been said that the SCSL Agreement altered the judicial system of Sierra Leone through the creation of a parallel jurisdiction not contemplated by the Constitution and ousting of the supervisory jurisdiction of the Supreme Court. These changes required proof at a referendum, which did not occur.

Instead, the Ratification Act was promulgated pursuant to the general power of the President to enter into treaties, subject to Ratification by Parliament. The Appeals Chamber rejected this argument, labelling these submissions as 'erroneous, if not fallacious'.It offered four reasons for its conclusion. First, the Ratification Act states that the SCSL is not to form part of the judiciary of Sierra Leone. Second, the SCSL has a separate judicial capacity, including the power to enter into treaties, a power which national courts do not have. Third, as a treaty-based organ, the SCSL does not use within an existing legal system. Finally, the SCSL is clearly established above the national court system. The Appeals Chamber completed that 'The establishment of the Special Court under Article 1 of the Special Court Agreement fulfils the relevant constitutional requirements, and the proper procedures were certainly followed.' The Appeals Chambers's findings on this issue are worrying for several reasons. The first, third and fourth reasons are effectively the same, and the second reason needs to resolve the issue of whether constitutional provisions have been complied with. It is also still being determined whether it is appropriate for the SCSL to review submissions with trained constitutional requirements, especially where the state parties have not raised any objection and absolutely believe that they are bound by the SCSL Agreement. Although the Appeals Chamber of the ICTY thought that it had the jurisdiction to assess the legality of its

establishment in the Tadic case, the legal basis of the ICTY is other than that of the SCSL and is based on the authority of the Security Council acting under Chapter VII of the Charter. Where a tribunal is established by a treaty, the power of review should not be open to ensuring that state parties have complied with domestic constitutional or other provisions. If this view was extended to the Rome Statute, it would need the ICC to consider challenges to its authority based on a possible breach of constitutional law by any one of its member states.

Defendants have even proposed that the SCSL is not an international institution but a court within the judicial system of Sierra Leone. This would need proceedings in the SCSL to yield with the Constitution, including allowing a defendant to complete habeas corpus applications to the Supreme Court. The argument that the SCSL is a national judicial institution rests on two grounds. First, the hybrid nature of the SCSL, which it is offered, indicates the Tribunal from the ICC, the ICTY and the ICTR. Second, it is claimed that although the SCSL Agreement specified the SCSL, the Ratification Act imported the SCSL into the judicial structure of Sierra Leone, causing the SCSL to be a national court.30 This argument may be fast dispelled. Section 11(2) of the Ratification Act states that 'the Special Court shall not form part of the Judiciary of Sierra Leone', and section 13 supplies that 'offences arraigned before the Special Court are not prosecuted in the name of the Republic of Sierra Leone'. The memorandum of objects and reasons connected to the Ratification Act stresses that the Ratification Act is 'to make provision for the ratification and implementation of the Agreement' and to provide 'the details needed to effectuate the exercise of jurisdiction by the Court'. (Jones, J., 2004) The Ratification Act functions as implementing legislation only; it does not show a domestic criminal tribunal with international service, nor can it convert an otherwise international institution into a domestic court. The SCSL has consistently and correctly denied this argument. In Prosecutor v Brima, the Appeals Chamber held that, as the SCSL Agreement was formed pursuant to international instruments, it could not come into force without an instrument of Ratification. However, this instrument of Ratification did not convert the SCSL into a domestic court. 31 In conclusion, the SCSL is a treaty-based institution. It is an international tribunal and works outside the household legal system of Sierra Leone.

PART II

The legitimacy and legality of the International Criminal Tribunals

2.1 Chapter I Creation by resolution of the United Nations Security Council

A meaningful way to ensure the stability of international legal relations is to form an institute in the system of international law. The emergence of such an institute is primarily due to the need to create an effective mechanism for protecting the international legal order, which is increasingly suffering due to international conflicts. It invariably leads to violations of critical international legal principles and the commission of international crimes, aggravating international terrorism. As a result, it causes the need to establish clear limits of international criminal responsibility of states and individuals.

The recent changes in the field of international legal order objectively require an adequate response of international law to prevent violations of people's inalienable rights and to develop a timely and consistent response to the commission of international crimes.

Despite all the attempts of the international community to prevent armed conflicts, and mass violations of the absolute rights of people and society, the commission of international crimes has become widespread; in the 20th century alone caused millions of innocent deaths and caused the extermination of entire peoples and nations. That is why one of the most critical issues of international legal relations today is the problem of prompt and productive response and prevention of the most brutal crimes on a global scale.

All these and other issues related to the protection of international humanitarian law gave rise to the need to create the International Criminal Court, which is obliged to become an instrument of international criminal justice. The tasks and functions of this Court are defined by the Rome Statute of 1998. This document defines the procedure for prosecuting persons who have committed international crimes, contains a list of similar crimes, and establishes the grounds of international criminal responsibility and the rules of cooperation of states in international criminal justice.

The International Criminal Court (ICC) was created in 1998 and operational in 2002. The ICC was established during a time of significant movement in the field of international criminal law: the Yugoslavia and Rwanda tribunals were established in 1993 and 1994, respectively, through Security Council resolutions, and the creation of a permanent international criminal court was viewed as complementary to the existing ad hoc accountability mechanisms.

The establishment of other ad hoc tribunals, such as the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, and the Special Tribunal for Lebanon, followed the creation of the ICC.

After the conflicts in Rwanda and the former Yugoslavia, and in the absence of a permanent international criminal court, the international community chose to establish two ad hoc International Criminal Tribunals to prosecute individuals responsible for war crimes, crimes against humanity, and acts of genocide in these two specific situations. Accordingly, the International Criminal Tribunal for the Former Yugoslavia (ICTY) was established in 1993, and the International Criminal Tribunal for Rwanda (ICTR) 1994 investigated and punished the perpetrators of the egregious crimes committed during those conflicts.

The UN Security Council set up both Tribunals through resolutions adopted under Chapter VII of the UN Charter. (Schabas, W,2006)

Such resolutions are binding on all States. The Tribunals were established in this manner to impose their jurisdiction directly on all States. The other method would have been to adopt a treaty creating such a body, which would have required States' consent and then ratification.

Since then, on July 17, 1998, States adopted the Statute of the International Criminal Court (ICC), called the Rome Statute, which entered into force on July 1, 2002. The ICC is responsible for bringing to justice persons accused of genocide, war crimes, and crimes against humanity. The ICC's jurisdiction is subject to certain preconditions, and it operates only when the concerned State or States are unwilling or unable to carry out the necessary investigations and prosecutions. The UN Security Council, however, can impose the ICC's jurisdiction on a given State by adopting a resolution under Chapter VII of the UN Charter.

The ICTY was established by Security Council Resolutions 808 of February 22 1993, and 827 of May 25, 1993.(GRAEFRATH, B., 1990) It is based in The Hague, Netherlands. The ICTR was established by Security Council Resolution 955 of November 8, 1994, and is based in Arusha, Tanzania. The Statutes of the Tribunals are annexed to these resolutions.

Since there is no international code of criminal procedure, the Tribunals established their own Rules of Procedure and Evidence—adopted on February 11, 1994, for the ICTY, and June 29, 1995, for the ICTR. The ICTR adopted rules very similar to those of the ICTY. The Rules were largely inspired by the standard law system, which governs most Anglo-Saxon States, as opposed to civil law. The standard law system is often labelled as having an accusatorial (or adversarial) approach, while the civil law system is considered inquisitorial.

Two of the three tribunals being studied, the ICTY and the ICTR, were established by the Security Council decision taken under Chapter VII of the Charter of the United Nations. The third, the SCSL, was established due to a Security Council initiative. However, its existence results from a negotiated treaty between the United Nations and the Government of Sierra Leone.

The creation of the ICTY by the Security Council in May 1993 represented an important innovation. Resolution 808, adopted by the Security Council on February 22, 1993, charged the Secretary-General with preparing proposals concerning the establishment of the Tribunal. First, however, the Council needed to pronounce how this was to be done.

Before the challenges could proceed, the Tribunal had to examine the legality of its establishment. A few years earlier, the International Court of Justice had shown great reticence when asked to sit in judicial review of a Security Council decision. Several members of the Court thought it improper for the Court to review acts of the Council, given that the Charter of the United Nations had set no hierarchy among its principal organs. Moreover, the Nuremberg Charter had expressly prohibited defendants from contesting the legitimacy of the Court itself.

The ICTY Appeals Chamber may have ducked the entire issue of the legality of the Tribunal's creation by reasoning in this way, as some commentators urged. Nevertheless, the Appeals Chamber found that it had jurisdiction to entertain the challenge, noting that this was not a judicial review in any general sense but rather a validation of the legality of its

establishment. This power, known as the principle of "Kompetenz-Kompetenz" in German or "la competence de la competence" in French, is part of. (DANILENKO, G.M., 2000) Indeed a significant part of the incidental or inherent jurisdiction of any judicial or arbitral tribunal consists of its "jurisdiction to determine its jurisdiction'," the Appeals Chamber said. It is a necessary component in exercising the judicial function, which is often done. However, it only needs to be expressly provided for in the constitutive documents of those tribunals. Acknowledging a high degree of deference for Security Council determinations as to the existence of a threat to the peace – a precondition for action under Chapter VII – the Appeals Chamber rejected the motion. This preliminary conclusion by the Appeals Chamber cannot, however, be taken as authority for the existence of any broader jurisdiction within the Tribunal to review Security Council decisions. Inspired by the ICTY Appeals Chamber, the SCSL Appeals Chamber has also declared that it is empowered to pronounce the validity and legality of its creation.

Within the Charter of the United Nations, articles 29 and 42 are central to the Security Council's authority. According to article 29, the Council may 'establish such subsidiary organs as it deems necessary for the performance of its functions.' The General Assembly has previously created a court as a subsidiary body, and the International Court of Justice endorsed it. As the Appeals Chamber recalled, the Security Council's powers and authority are conditioned by the terms of the Charter. As a body, the Council does not have unlimited powers, and any justification for its actions must be rooted in provisions of the Charter. The basis for establishing the tribunals is Chapter VII of the Charter, which is predicated upon a determination by the Council of 'the existence of a threat to peace, breach of peace, or act of aggression'.(CRYER, R., FRIMAN, H., ROBINSON, D. AND WILMSHURST, E.,2007) The ICTY Appeals Chamber noted that this posed no real difficulty because it was evident that the conflict in the former Yugoslavia fit clearly within these terms. Even were the conflict solely internal in nature, the past practice of the Security Council confirmed that this would still fall inside the scope of Chapter VII of the Charter.

The Security Council had made this relatively straightforward with an implicit reference to Chapter VII in Resolution 827, which established the ICTY. However, the Resolution did not point to the specific provision of Chapter VII on which the Council relied. Resolution 827 said that 'in the particular circumstances of the former Yugoslavia,' the establishment of the International Tribunal 'would contribute to the restoration and maintenance of peace.' The Appeals Chamber noted that article 41, which speaks broadly of measures not involving the use of force, did the trick.

An ICTR Trial Chamber in Kanyabashi reached the same conclusions on these issues. The Trial Chamber noted the 'wide margin of discretion' of the Security Council in deciding when and where there exists a threat to international peace and security. 'By their very nature, however, such discretionary assessments are not justiciable since they involve the consideration of several social, political, and circumstantial factors which cannot be weighed and balanced objectively by this Trial Chamber,' it said.

There was a distinction between Rwanda and the former Yugoslavia because the former was unquestionably an internal armed conflict. It was argued that international peace and security issues engaging the Security Council did not arise in such situations.

Despite recognition of the authority of the Security Council to establish international tribunals, the judgments have nevertheless drawn attention to the importance of consent by the States concerned. In Tadic, for example, the ICTY Appeals Chamber noted that the Republic of Bosnia and Herzegovina had not only not contested the jurisdiction of the Tribunal but had approved of it and offered its cooperation.

Similarly, the ICTR Trial Chamber in Kanyabashi remarked upon the fact that 'the establishment of the ICTR was called for by the Government of Rwanda itself, which maintained that an international criminal tribunal could assist in prosecuting those responsible for acts of genocide and crimes against humanity and in this way promote the restoration of peace and reconciliation in Rwanda'. (KAUL, H., AND KRESS, C.,1999)

Thus, according to the ICTR, the Security Council's establishment of the Tribunal by a resolution under Chapter VII' with the participation of the Government of Rwanda' did not violate the sovereignty of Rwanda.' The issue has returned from time to time, but the jurisprudence is unwavering. Further confirmation of this authority within the Security Council can now be found in the Rome Statute of the International Criminal Court.

It does not purport to authorize the creation of a new tribunal. However, it recognizes the Security Council's power to refer cases to the Court and block prosecutions under certain circumstances, all according to its powers under Chapter VII. The Council's authority was never questioned during the drafting of the Rome Statute, in which most States participated, something that confirms the interpretation by which criminal prosecution belongs within the scope of Chapter VII. It seems beyond doubt that the Security Council is empowered to establish an international criminal tribunal. The obstacles to creating future tribunals by the Security Council (and, indeed, referral of cases to the International Criminal Court) are political, not judicial.

2.2 Chapter II Creation of a treaty-based count

The treaty-based creation of the Special Court for Sierra Leone is said to have had a dramatic effect on its powers. Because the ICTY and ICTR are established by Security Council resolution according to Chapter VII of the Charter of the United Nations, these two tribunals have been held to have the authority to issue binding orders directed against States. Moreover, the primacy of the two tribunals for national courts means that they can order the deferral of pending proceedings in national courts of any State to permit the international Tribunal to proceed with a case. The treaty-based Special Court for Sierra Leone does not have the power to issue binding orders on States, and its primacy over national jurisdictions applies only to the courts of Sierra Leone. Even its powers within Sierra Leone must be exercised according to the Special Court Act. Without that legislation, the Court would be impotent. For this reason, defence lawyers at the Special Court have devoted so attention to issues of the national legislation and the Constitution of Sierra Leone.

The Special Court for Sierra Leone was established not by Security Council resolution, which by the late 1990s had become politically unlikely, but by an Agreement between the United Nations and the Government of Sierra Leone. (KAZEMI, N.,2003) The operative document is, in effect, an international treaty between a State and an intergovernmental organization. Treaties between international organizations and States are a public international law instrument governed by the Vienna Convention on the Law of Treaties Between States and

International Organisations or Between International Organisations. In his report on the draft Statute of the SCSL, the Secretary-General explained that it is a treaty-based sui generis court of mixed jurisdiction and composition'.

He described it as a treaty-based organ not anchored in any existing system'. According to the Appeals Chamber of the SCSL, 'the Special Court is established by treaty and has the characteristics associated with classical international organizations (including legal personality; the capacity to enter into agreements with other international persons governed by international law; privileges and immunities; and an autonomous will distinct from that of its members).'(KNOOPS, G.,2008) Theoretically, the ICTY and the ICTR were also created in this way. However, this fact does not bolster the argument that the Security Council was acting outside its powers in creating the two institutions.

There are other examples of establishing international criminal tribunals by treaty, beginning with Nuremberg in 1945. On August 8, 1945, the four victorious 'great' powers, France, the Soviet Union, the United Kingdom, and the United States, agreed by treaty to establish a tribunal for the prosecution of the major Nazi war criminals. Several other States subsequently ratified the treaty.

The international community was outraged by the crimes of Nazi Germany during the Second World War, in which the Allied Powers submitted statements (declarations) that they expressed their desire to conduct the necessary investigation. Thus, these countries wanted not only war criminals but also people who gave orders to carry out crimes committed within the borders of the "Berlin-Rome Axis" states against the residents of enemy states to be punished.

Therefore, amid similar declarations, it would be appropriate to separate the Statement of the USSR authorities, "Prosecution of Hitler's supporters and their allies for violations in European states," dated October 14, 1942. It was noted: "The authorities of the Soviet Union call for an international tribunal to try and punish war criminals by the laws of criminal law." It should be noted that the Moscow Declaration, which entered into force in 1943, also had highly fateful significance. The leaders of the governments of such countries as the USSR, the USA, and Great Britain signed it. It talks about the responsibility of Hitler's forces for the brutal acts committed. This declaration had to do with the German military responsible for numerous murders of people and other heinous crimes or violations against the peaceful and innocent inhabitants of the countries.

It follows that the Moscow Declaration, dated 1943, announced the measure by which fascist violators were to be held accountable before the Court. Nazi criminals were sent to the territory of those countries; these people committed atrocious acts and had to be convicted by the laws of those countries. Therefore, proving the guilt of the prominent war criminals, whose criminal acts are not limited to a particular geographical place, should occur internationally.

The first trial of the International Military Tribunal was held on November 20, 1945, in the city of Nuremberg, while in October 1946, the decision of the Tribunal was pronounced, connected with the conviction of nineteen of the most critical war criminals. (KELSEN, H.,1947)

However, the Nuremberg trial was by no means just one method of determining the punishment for criminals of the Second World War. On the contrary, it was the first time in history that such a process went to Court and still punished those guilty of international conflicts.

Therefore, the Statement of the Statute of the Nuremberg Tribunal symbolizes compromise in forming international criminal justice.

This process marked the spectrum of actions dangerous to society, which are also synonymous with interstate crimes - such are illegal actions for breach of peace and war crimes against society. In addition, the decision of the International Military Tribunal noted and pointed to the crimes of interstate affairs according to such documents as the Treaty of Versailles, the Hague Conventions, and the Brian-Kellogg Pact).

The analysis of this verdict of the international Tribunal also makes it possible to see the legal argumentation regarding individual criminal responsibility for criminal acts in different countries. For example, it is written there: "international law includes the duty not only of countries, but also of certain citizens... and people, not abstract categories commit violations of international law, and only by punishing these people who have committed terrible acts, compliance is guaranteed norms of common law...". (DANNER, A.M., 2007) In conclusion, this is confirmed by the previously described Treaty of Versailles.

The inviolability of high-ranking officials protects the citizens of certain states. At the same time, it should not apply to acts considered criminal according to international legal norms. People who have gone against the law do not have the right to use their position to avoid a well-deserved sentence.

When analyzing an individual criminal sentence, the decision of the International Military Tribunal uses the ICC Statute. According to the decision, the purpose of this document "refers to the fact that certain people have international obligations that are greater than the national obligations of subjugation determined by a specific country."

As seen from this provision, no specific position of the defendant is the reason for avoiding punishment for committing interstate crimes.

The number of proceedings and sessions of court cases was also recorded in the Statute by regulation. In the form of punishments for the accused, such severe forms of punishment as the death penalty or other forms were proposed. The Tribunal's decision is final, did not need to be discussed, and had to be by order of the Control Council in Germany, which is an independent body with the appropriate powers to change the decision and can consider the accused's request for clemency. If we talk about the convicts who were sentenced to death, then appealing all requests for a reduction of the sentence, the sentence itself was carried out on the night of October 16, 1946.

The foremost development step in the implementation of the international Court was the fact that shows how the Nuremberg tribunal referred only to the agreements mentioned above between states when making accusations. These agreements are the legal basis of the law of those times, namely the Hague Convention of 1907 and the Geneva Convention of 1929 "On the Treatment of Prisoners of War." (KELSEN, H.,1947)

There is some difference between tribunals. The differences between the two types of tribunals based on the nature of their creation may be more theoretical than real. In the case of the two tribunals established by the Security Council, given that they have no legal means of enforcement, they rely upon Security Council action to execute their orders. On several occasions, the tribunals have appealed to the Security Council to take action. To date, the Council has never responded to any specific request from the tribunals. However, it has periodically issued resolutions of a general nature calling upon States to comply with orders from the tribunals. On several occasions, States, and their national courts, have complied with orders from the tribunals in exercising their primacy or their so-called Chapter VII powers. However, where a State defies the tribunals, they are powerless, absent subsequent Security Council action.

As for the Special Court, the counterweight to its alleged lack of Chapter VII power is the prestige that comes from its association with the United Nations, the fact that it was established under a Security Council resolution. The active participation of major international and regional powers, including the United States, the United Kingdom, and Nigeria, in its management committee. Like the two ad hoc tribunals, nothing is preventing the Special Court from appealing to the Security Council to assist it, nor does anything stand in the way of the Council complying with such a request, aside from the omnipresent political considerations.

In the litigation surrounding the establishment of the ICTY and ICTR, the defence counsel challenged the authority of the Security Council to establish the Tribunal, noting the absence of any express authorization in the Charter of the United Nations. The same, of course, might be said for the authority of the United Nations to create an international judicial institution by treaty.

The Security Council to initiate, as it did by Resolution 1315, the establishment of the Special Court by Agreement with Sierra Leone. Resolution 1315 noted that Sierra Leone's situation threatened international peace and security. However, it stopped short of using the United Nations jargon that indicates the Council was acting under Chapter VII.

For the SCSL Appeals Chamber, this was not a significant inconvenience, given that 'where the Security Council decides to establish a court to maintain or restore international peace and security it may or may not. At the same time, contemporaneously, call upon members of the United Nations to lend their cooperation to such a court as a matter obligation'. (JONES, J., ET AL,2004)

Here, the SCSL is saying that it is indeed an emanation of the Security Council. Created in response to a request addressed to the Security Council and as a result of a process in which the Security Council was actively engaged, it must be gainsaid that the Security Council is significant participation. The Security Council can, by Resolution, intervene to influence the work of the SCSL, just as it has intervened to steer the work of the ICTY and ICTR. The Appeals Chamber also noted that the Agreement between the United Nations and Sierra Leone constitutes 'an agreement between all members of the United Nations and Sierra Leone,' making it 'an expression of the will of the international community.'

States are obliged to cooperate with the two tribunals stages of the process of investigation and prosecution of a person (Article 29, the Statute of the ICTY, Article 28, the Statute of the

ICTY). Such obligations include complying "without undue delay" with requests for assistance in gathering evidence; receiving statements of witnesses, suspects, and experts; identifying and locating persons; and delivering documents. States must also comply with court requests, such as subpoenas, arrest warrants, and surrender orders.

To facilitate the transfer of an accused by a state, tribunals have established an agreement between the Tribunal and the state concerned that circumvents the legal hurdles that often result from extradition procedures.

These obligations include the obligation to contribute to the budget, allocate personnel, and especially implement specific judicial and legislative measures in domestic law to implement the provisions of the Statutes of the Tribunals and the resolutions that created them.

Therefore, the goodwill of states is a crucial element in ensuring the smooth operation of tribunals. It is essential because tribunals, unlike national courts, have no enforcement mechanism to back them up and no specific provisions to punish a state that does not cooperate with tribunals or amend its domestic law to include obligations arising from the Articles of Association.

The Stabilization Force deployed by NATO in the former Yugoslavia (SFOR), for example, does not have the mandate of a police force responsible for tracking down war criminals. Instead, its mandate states that the military can arrest individuals accused of war crimes if they encounter them in the context of their operations. However, the few SWAT operations that have been launched with the sole purpose of arresting the accused seem to indicate that the interpretation of this mandate remains fluid.

The International Residual Mechanism for Criminal Tribunals was established by United Nations Security Council Resolution 1966 (2010) to finish the work begun by the two International Criminal Tribunals. It is subdivided into two branches; the ICTR branch began functioning on July 1, 2012, and the ICTY branch on July 1, 2013. The Resolution establishing the Mechanism calls upon the two Tribunals to finish their work by December 31, 2014, and to prepare their closure and transition of cases to the Mechanisms. In March 2012, the UN Security Council appointed Judge Hassan Boubacar Jallow, the current prosecutor of the ICTR, as the prosecutor of the International Residual Mechanism for Criminal Tribunals.

In this Resolution (1966), the UN Security Council decided that:

the Mechanism "shall continue the jurisdiction, rights, and obligations and essential functions of the ICTY and the ICTR" (Art. 4);(A Caesius,1999)

the Rules of Procedure and Evidence of the Mechanism and any amendments shall take effect upon adoption by the judges of the Mechanism (Art. 6);

States shall cooperate fully with the Mechanism and take any measures necessary under their domestic law to implement the provisions of the present Resolution and the Statute of the Mechanism (Art. 9). The Mechanism shall operate for an initial period of four years from the first commencement date. Review the progress of the Mechanism's work, including completing its functions, before the end of this initial period. Every two years after that, and further decided that the Mechanism shall continue to operate for subsequent periods of two years following each such review unless the Security Council decides otherwise (Art. 17).

PART III Jurisdiction of the International Criminal Tribunals

3.1 Chapter I Territorial, personal and temporal jurisdiction

States typically exercise criminal law jurisdiction over crimes committed on their sovereign territory. Territorial jurisdiction also lies at the heart of the operations of the three ad hoc tribunals. Each bears the name of an existing or former sovereign State, and this broadly defines the locus of crimes they are authorized to investigate and prosecute.

The spatial jurisdiction of the International Tribunal for the former Yugoslavia is limited to the territory of the former Socialist Federal Republic of Yugoslavia, including its land territory, airspace, and territorial waters (Article 8 of the Statute).

The temporal jurisdiction of the Hague Tribunal is particular. Suppose the Nuremberg and Tokyo tribunals were retrospective in nature, and the jurisdiction of the Rwanda Tribunal is limited to a short and clearly defined period. In that case, the jurisdiction of the International Tribunal for the former Yugoslavia extends to the past (since 1991) and the indefinite future. Despite the settlement of the conflict, which became the immediate reason for the establishment of the Tribunal, its powers were extended to new situations. Thus, the powers of the Tribunal went far beyond the situation that became the basis for its establishment. By Resolution 1160 of March 31, 1998, the Security Council authorized the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia to begin gathering information "relating to acts of violence in Kosovo." The resolution states that the Federal Republic of Yugoslavia authorities are "obliged to cooperate with the Tribunal." (Schabas, W. 2006)

Resolution 1199 of September 23, 1998, also calls on the authorities of the FRY and the leaders of the Kosovo Albanian community to cooperate fully with the Prosecutor of the Tribunal in the investigation of possible violations within its jurisdiction.

Resolution 1207 of November 13, 1998, reaffirming all its previous decisions in this regard, again called on the FRY to take the necessary measures to implement the provisions of resolution 827, which, as we know, did not apply to the situation in Kosovo. The International Tribunal for the former Yugoslavia has become a permanent criminal court on the territory of Europe.

The Tribunal for Rwanda has jurisdiction that is not limited to the territory of Rwanda but extends to the territory of neighbouring states regarding serious violations of international humanitarian law committed by citizens of Rwanda: "the territorial jurisdiction of the International Tribunal for Rwanda extends to the territory of Rwanda, including its land territory and airspace, as well as to the territory of neighbouring states regarding serious violations of international humanitarian law committed by citizens of Rwanda" (Article 7 of the Statute of the Rwandan Tribunal). According to the same Article, the situation in which the Rwandan Tribunal received the authority to carry out international criminal prosecution has a clear time frame - it is limited to the period from January 1 to December 31, 1994.

To confirm the Nuremberg principles, the Statute of the International Tribunal for the former Yugoslavia and the Statute of the Rwanda Tribunal proclaim individual international criminal responsibility. According to Article 6 ("Personal Jurisdiction") of the Statute of the Yugoslav Tribunal, the jurisdiction of the Tribunal extends to natural persons. A similar provision is contained in Article 5 of

The statutes do not distinguish the categories of "major war criminals" and do not limit the concept of the subject of an international crime to the official position of the guilty person. Article 7 (1) of the Statute of the International Tribunal for the former Yugoslavia provides that a person who is the perpetrator or accomplice of a crime is "individually responsible for the crime." (Kirby C.,2006)

This provision is based on the general principle of criminal law, according to which an individual is responsible for his actions and omissions. The Statute establishes two types of personal responsibility. First, an individual can be held criminally responsible for direct participation in the commission of a crime (individual criminal responsibility) and criminal inaction when the crimes are committed by his subordinates (superior criminal responsibility).

It is important to emphasize that, unlike the personal jurisdiction of the Nuremberg and Tokyo tribunals, the jurisdiction of modern criminal tribunals is not limited either by the high official position of the accused persons or by their citizenship. The jurisdiction of the tribunals falls on the participants of each conflicting party, which makes it possible to reject the claim that the justice delivered by the tribunals is "justice of the victors." (KLINKNER, M.,2008)

International judicial institutions for criminal cases have always had an extraordinary character and were created due to the commission of crimes requiring a detailed response. The international criminal tribunals for the former Yugoslavia and Rwanda have partially departed from this tradition, initiating criminal cases against minor perpetrators. Their jurisdiction is not limited to the category of "major criminals."

It is now recognized that the main task of the ad hoc tribunals is to bring to justice "the most senior leaders suspected of the greatest responsibility" for crimes within the jurisdiction of

the tribunals. The statement of the UN Secretary-General in his Report to the Fifty-sixth session of the General Assembly testifies to the importance of bringing high-ranking officials to criminal responsibility.

Tribunal termination strategies directly relate to the personal and temporal jurisdiction of tribunals. On the one hand, the circle of persons brought to justice by the tribunals is limited; on the other hand, measures are being taken to shorten the term of consideration of cases. The establishment of limitation periods may counter the interests of justice; therefore, it is currently impossible to establish a clear limit on the temporal jurisdiction of the tribunals by establishing a specific date for the end of their activity. It is also necessary to ensure that the transfer of cases to national courts does not occur to the detriment of international standards of justice.

According to the head of the International Criminal Tribunal for the former Yugoslavia, T. Meron, the trials will have to be held in 2023. Most likely, they will continue until the end of the same year. The Tribunal is one of the manifestations of the Security Council's commitment to international justice, the rule of law, and the fight against impunity, as well as peace and reconciliation. The mission of the Tribunal will not be accomplished while the main accused are hiding from justice.

In the International Criminal Court, as in any national one, such a term as "jurisdiction" is provided; since no distribution of cases between existing judicial authorities can do without this concept, I consider it necessary to reveal the concept of the jurisdiction of the ICC and consider its limits.

The jurisdiction of the International Criminal Court is derived from the jurisdiction of the national judicial system. However, it can act independently in exceptional cases of incapacity of the national judicial systems. The International Criminal Court functions as a legal institution in those cases when the legal structures at the national level do not provide the necessary measures to combat the crimes under their jurisdiction that encroach on the peace and security of mankind or when the national legal system does not perform the functions assigned to it due to the presence of a conflict within the state, in the event absence of a judicial system body at the state level and others. Also, the International Criminal Court has limitations on fulfilling its rights and obligations in time; it can be called "temporary jurisdiction." Temporal jurisdiction is expressed as follows:

- The ICC has the right to consider crimes committed after the entry into force of the Statute, namely from July 1, 2002 (Articles 11, 12 of the Rome Statute).

- The norms of the Rome Statute do not provide for a limitation in the form of a statute of limitations (Article 29 of the Statute), which is analogous to the norms of the Convention on the Non-Application of the Statute of Limitations to War Crimes or Crimes against Humanity, which the UN General Assembly adopted in 1968. (GAETA, P.,1998)

In addition, the powers of the ICC are limited in space; namely, the Court examines only those crimes in which the suspect is a citizen of a participating state or those citizens who committed crimes on the territory of participating states.

An additional exclusive jurisdiction is that of the ICC about crimes of international outrage.

The list of crimes falling under such jurisdiction is specified in Art. 5 of the Rome Statute:

1. crimes of Genocide;

2. crimes against humanity;

3. war crimes;

3.2 Chapter II Subject-matter jurisdiction generally.

3.2.1 Sub-Chapter I Genocide

International or national courts may prosecute Genocide. The preference of international law for the latter can be seen in the decision of the drafters of the Convention to establish an obligation to repress Genocide without simultaneously creating an international jurisdiction. However, such a possibility was contemplated and expected at some time in the future. It is also evident in the principle of 'complementarity', which defines the operations of the International Criminal Court, established in 2002 following the entry into force of the Rome Statute. According to this principle, genocide offenders should be tried before domestic or national courts. Only when these fail should the international jurisdiction become operational.

From a policy standpoint, however, one or the other system may not always be preferable for genocide prosecution. For example, where a domestic judicial system operates effectively, it may be quite capable of dealing appropriately with the crimes of the past. However, sometimes, a domestic judicial system will be operational yet require, for its credibility, that some international trials be held to deal with significant cases. Rwanda chose this approach when, in 1994, it requested that the Security Council establish an international criminal court. Accordingly, the Security Council resolution creating the International Criminal Tribunal for Rwanda stressed 'the need for international co-operation to strengthen the courts and judicial system of Rwanda, having regard in particular to the necessity for those courts to deal with large numbers of suspects'. (CLARK, R.,1981)

Such a crime as Genocide is specified in Art. 5 of the Statute, guided by the provisions of Article 2 of the Convention on the Prevention of the Crime of Genocide and its Punishment of 1948.

Genocide should be understood as purposeful actions aimed at the complete or partial destruction of a group of people (on various grounds: religion, nation.). The existence of a specific plan and purpose is the difference between Genocide and other crimes against humanity.

Genocide can be expressed in the following acts:

1) extermination (murder) of members of a particular group based on belonging;

2) causing physical and spiritual harm to persons belonging to a particular group;

3) extermination of group members by influencing their living conditions;

4) destruction of the group by influencing the demography within the group;

5) forced relocation of children of group members to another group. (DANILENKO, G.M.,2000)

It is also necessary to distinguish such type of Genocide as cultural Genocide, which is purposeful action aimed at creating obstacles to the existence and development of a group of features that unite its participants (religion, creed, language, ethnic traditions.). This type of Genocide does not fall under the ICC's jurisdiction by the Rome Statute's norms; the exception may be if cultural Genocide is accompanied by an act expressing Genocide. The application of the provisions of the Statute to ecocide (targeted actions against the ecological system of a specific territory) is similar.

Paragraph 3 of Article 25 of the Rome Statute stipulates responsibility for the commission of the crime of Genocide for those who take part in propaganda, coercion, motivation, implementation of the plan of Genocide, and in other ways, support the commission of this crime. Genocide as a crime does not necessarily have to be completed since even the allegation of the intent and purpose of Genocide is sufficient to classify the act as a crime.

In Genocide, both the organizer of this crime and the immediate perpetrator and all those who participate in and support the commission of such a crime is subject to prosecution.

3.2.2 Sub-Chapter II Crimes against humanity

The characteristics of crimes against humanity are contained in the Statute of the Nuremberg Tribunal, the Statutes of the International Criminal Tribunals for Yugoslavia and Rwanda, the Rome Statute of the International Criminal Court, and other international legal documents.

In favour of war crimes, crimes against humanity can only be committed against civilians.

Article 7 of the Rome Statute of the International Criminal Court deals with crimes against humanity. This document offers the most extensive list of actions that can become a crime.

Article 7 of the Rome Statute of the International Criminal Court states that crimes against humanity are any of the following acts: murder, extermination, enslavement, deportation, or torture when they occur as part of a widespread or systematic attack against any civilian, if any the attack is deliberate. (Schabas, W. 2006)

Crimes against humanity are crimes designed to destroy the very nature of man. These crimes are considered the most heinous crimes because they represent deliberate mass killings, either the fact of the creation of people themselves (crimes against humanity) or the fact of belonging to an ethnic or national group (Genocide).

Universal jurisdiction extends to crimes against humanity. It means that the state is obliged to prosecute or extradite the criminal, that no person sued for the commission of such a crime has the right to claim exemption from extradition for political reasons, the state is obliged to assist one of the provided evidence on demand in such a crime.

Crimes against humanity are at the core of the subject-matter jurisdiction of

the three tribunals. 1 According to the 2005 Darfur Commission, crimes against humanity 'are particularly odious offences constituting a serious attack on human dignity or a grave humiliation or degradation of one or more human beings (for instance, murder, extermination, enslavement, deportation or forcible transfer of population, torture, rape and other forms of sexual violence, persecution, enforced disappearance of persons).' (JURDI, N.,2007)

2 Not only are crimes against humanity the common denominator of the three statutes, but they are also central to virtually all indictments.

Genocide is often described as an aggravated form of crime against humanity. While such statements may be an oversimplification, the two categories of crime that are cognates can be seen from the indictment policy of the Prosecutors and the judgments themselves. There have been no convictions for Genocide where a conviction for crimes against humanity could not also have been sustained.

Similarly, it is scarce for any tribunals to convict a person for war crimes that are not accompanied by charges of crimes against humanity.

The actual 'umbrella rule' of the tribunals is the prohibition of crimes against humanity. This broad concept captures most forms of atrocity committed against innocent civilians, including war crimes in the classic sense.

If the statutes of the three tribunals only contemplated crimes against humanity within their subject-matter jurisdiction, this would change little in their operations except to reduce the length of trials and the legal debates about arcane subjects. Crimes against humanity also have much in common with international human rights law, and the language in the relevant provisions reflects this.

There are three criteria by which crimes against humanity fall under the jurisdiction of the ICC:

1. actions are studied "as a component of the use of widespread and methodical attacks";

2. the actions are aimed at the civilian population; even in the presence of the military population, the status of the civilian population does not change;

3. the actions that were taken by the policy of the state or organization. Random acts do not fall under the jurisdiction of the Court.

A particular type of crime is crimes against humanity, which are enshrined in Article 7 of the Rome Statute:

- murder;

- extermination - the deliberate creation of living conditions aimed at the destruction of part of the population;

- enslavement - deeds based on the right of ownership about an individual;

- deportation or forced displacement of the population – forced, illegal displacement of persons from the territory where they were by the current legislation;

- imprisonment and cruel deprivation of physical freedom;

- torture/abuse means the illegal, intentional infliction of severe mental or physical pain/suffering on a person who is deprived of liberty in custody;

- rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence;

- persecution of a group based on unifying features such as politics, race of group members, nationality, ethnicity, culture, gender features, religion, and others, or other actions recognized as inadmissible under the norms of international law - involves the intentional deprivation of the fundamental rights of the community based on membership contrary to international law

- enforced disappearance of people means the arrest, detention, or abduction of people for an extended period;

- the crime of apartheid - means inhuman acts carried out in the context of an institutionalized regime of systematic oppression and domination of one racial group over another racial group or groups and carried out to preserve such a regime;

- others against humanity of a similar nature. (JORGENSEN, N.,2001)

The most challenging component to prove in relation to crimes against humanity is that the attack against the civilian population must have been overall or systematic. It is now commonly assumed that relates to an armed conflict is not an element of a crime against humanity, and that customary international law does not require a discriminating motive other than for the offence of persecution. The offence of crimes against humanity is included in the material jurisdiction of all the tribunals studied, with the exception of the LST. Article 2 of the SCSL Statute incorporated crimes against humanity. All charges issued by the SCSL included counts of crimes against humanity. The Appeals Chamber has held that the general aspects of crimes against humanity had been specified in relation to the activities of the CDF in Sierra Leone. Besides, the Trial Chamber in the AFRC trial found that a widespread or organized attack by AFRC/RUF forces was directed against the civilian population of Sierra Leone at all times pertinent to the indictment. It also found evidence that preconceived plans or policies for the execution of the attack existed both in the period where the AFRC/RUF were the government and in the postintervention period.

The Special Law includes crimes against humanity in the material jurisdiction of the ECCC. All individuals subject to the analysis will most likely be charged with crimes against humanity. On the proof that was unrestricted to the Group of Experts, it appears that the most difficult part of the crime to establish would be the systematic nature of the attacks, as it has been argued that many horrors 'lacked direction and amounted effectively to random brutality'.Assuming that state action was required as of 1975, the Group of Experts also noted that 'many of the acts appeared part of an intentional, widely known governmental policy' and the State must have been involved as 'only the Government … had the control of the country needed to engage in these acts'.(Report of the Group of Experts, note 54, para 70)

The statements of the Commission of Inquiry and the Special Rapporteurs emphasized that the violence executed in East Timor during 1999 was on a large scale, one that was widespread or systematic or both. Given the problems with establishing Genocide and war crimes, most acts in East Timor were prosecuted as crimes against humanity or as crimes under household law. Section 5 of Regulation 2000/15 largely adopts the definition of crimes against humanity found in the Rome Statute, including the need to establish the policy element of the crime. The first trial, including charges of crimes against humanity, commenced in July 2001. Notably, the SPSC found that it was 'satisfied beyond reasonable doubt that there was an extensive attack by pro-autonomy groups supported by Indonesian

authorities targeting the civilian population in the area, namely those linked with political movements for self-determination in East Timor'.In reaching this finding, the SPSC relied upon the conclusions of the Commission of Inquiry, which had been admitted without challenge, and witness testimony. Subsequent decisions before the SPSC have confirmed the existence of a widespread and systematic attack. Nevertheless, as all of the members of the Indonesian military and its authority indicted by the SPSC remained at large, it was not possible to examine the connection between the East Timorese militia and the TNI and the role of the TNI in the violence. Article 172 of the Criminal Code of Bosnia and Herzegovina largely duplicates the definition of crimes against humanity found in the Rome Statute. The WCC has relied upon the jurisprudence of the ICTY to verify the presence of a widespread and systematic attack on the civilian population in Bosnia. There was initial confusion as to the requirement for a nexus to an armed conflict, which is not required by Article, although it is a requirement under Article 7 of the ICTY Statute. Early decisions of the WCC referred to the existence of an armed conflict and the fact that the attack occurred within this context. This disorder may have been created by the reliance of different panels on the jurisprudence of the ICTY. The following decisions have essentially acknowledged this disorder.

While the IJPP has been granted jurisdiction in respect of crimes against humanity, no charges have been issued that have charges of crimes against humanity. A public justification for the deletion of charges of crimes against humanity has not been provided. It may be that the reluctance to use the crimes against humanity requirement stems from the problems the ICTY has faced in proving the existence of the general aspects of the crime. To date, it has not found the existence of a widespread and systematic attack against civilian people, at least in relation to the crimes alleged to have been committed by the KLA. The LST Statute is the first constituent instrument of an internationalized or international criminal tribunal not to include jurisdiction in respect of crimes against humanity. The Security Council did assume that crimes against humanity were within the substantive jurisdiction of the LST, and early drafts of the LST Statute included crimes against humanity in Article 3. The determination to remove this provision reflected a lack of support amongst Security Council members, concerned that it would be too difficult for the prosecution to demonstrate the general elements required to establish the assassination of Hariri as a crime against humanity. The failure to include crimes against humanity has also been attributed to specific requests from Russia and China. However, it is certainly arguable that the assassination and connected attacks could include a crime against humanity. (Jurdi, N.,2007)

3.2.3 Sub-Chapter III War crimes

The next group of crimes is war crimes; they are divided into two groups:

- Group of crimes defined in the Geneva Convention of 1949;

- Group of crimes defined in the Hague Convention.

The powers of the Court are to adopt sanctions for the groups mentioned above of crimes, as well as for a group of additional crimes and violations. Such a group of crimes and offences that fall under the jurisdiction of the Court include:

1) Providing testimony that does not correspond to reality during the obligation to give truthful testimony;

2) Illegal pressure on an official to force or persuade him to violate his official duties;

3) presentation of knowingly false, forged evidence;

4) illegal influence on witnesses and creation of obstacles to the formation of the evidence base;

5) bribery and abuse of official position. (Cumes, G.,2003)

The primary measure of punishment for the above crimes is acceptable.

The major determinant in the inclusion of war crimes in the material jurisdiction of a tribunal is the presence of an armed conflict, as all war crimes must have been engaged in connection with an armed conflict. The nature of that armed conflict, whether international or non-international, will handle the type of war crime that is included in the Statute. The conflict in Sierra Leone was typically considered to be a non-international armed conflict, despite the suggested involvement of foreign elements. (Akinrinade, B.,2001) Consequently, the SCSL Statute retains jurisdiction only in respect of grave violations of Common Article 3 and Additional Protocol II to the Geneva Conventions, which regulate internal armed conflicts. Sierra Leone was a party to these instruments at the appropriate time. The SCSL Statute also confers jurisdiction in respect of three specific crimes as serious violations of international humanitarian law: intentionally directing attacks against the civilian people as such or against civilians not taking direct part in hostilities; consciously leading aggression against protected personnel, installations, material, units or vehicles involved in humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations; and conscripting or enlisting children under the age of 15 into armed forces or groups or using them to participate actively in hostilities. The final requirement addresses the issue of the recruitment and use of child soldiers, which was across the board in Sierra Leone. Charges under this Article have been included in all indictments issued by the SCSL. Regardless, there were concerns that this provision did not represent customary international law. The Appeals Chamber had confirmed that the ban against the recruitment of child soldiers had customary international law status before November 30 1996, the date the SCSL's temporal jurisdiction started. Moreover, the Appeals Chamber held that child recruitment was criminalized under customary international law before it was set out as a criminal provision in treaty law, and definitely by November 1996. Thus there was no issue regarding the retroactive application of article 4(c).

The IHT has jurisdiction in respect of crimes perpetrated in connection with both international armed conflicts and non-international armed conflicts. There are three international armed conflicts within the temporal jurisdiction to which the serious breach conditions of the Geneva Conventions would apply: the Iran-Iraq war, the invasion of Kuwait and the first Gulf War, and the 2003 invasion of Iraq. Nevertheless, there have been no trials in relation to these armed conflicts, although it appears that the IHT may be examining possible war crimes executed during the aggression and occupation of Kuwait. There have been charges and beliefs in relation to non-international armed conflicts. In the Anfal judgment, the Trial Chamber decided that there was a non-international armed conflict between the Government of Iraq and Pishmarga forces during the suitable time and that the campaign in Anfal was connected with that armed conflict and was executed against the civilian habitats. The accused were sentenced to various crimes under article 13(4) of the

IHT, described as other heavy violations of the laws and customs of war applicable in a non-international armed conflict.

Deciding whether the entry requirement of an armed conflict has been fulfilled and the nature of the armed conflict was especially challenging in East Timor. As Kress notes, 'this threshold issue cannot be satisfactorily explored without touching upon the question of the international legal status of Indonesia's presence in East Timor since December 7 1975'. East Timor became an occupied territory when it was 'placed under the authority of the hostile army'. (East Timor,1995) The International Court of Justice has found that, following the departure of the Portuguese authorities from East Timor, 'Indonesia has occupied the Territory, and the Parties acknowledge that the Territory has remained under the effective control of that state'.From December 1975, East Timor was under Indonesian occupation, as provided for in common article 2 to the Geneva Conventions and customary international law. The Geneva Conventions, in particular, the grave breach conditions set out in the fourth Geneva Convention, applied. The Indonesian occupation subsisted until the withdrawal of Indonesian forces from East Timor sometime after September 20 1999, as did the application of the conventions. The situation included one of international armed conflict. Evidence suggests that the prevalence of violence during the relevant period was carried out by pro-integration militia. The actions of such groups could be attributed to Indonesia and would be connected with the occupation and thus may have formed the basis of war crimes charges. There have also been indications that a non-international armed conflict existed in East Timor between the pro-independence militia and pro-integration militia, acting with or under the control of the Indonesian military. Such a finding would have been controversial, as it would mean that the Indonesian occupation was lawful and that East Timor had become part of Indonesian territory. Alternatively, it would require a conclusion that the pro-integration forces were not attributable to Indonesia, that the militia was organized and that the instances of violence between the two groups were of good passion so as to include a non-international armed conflict. The available evidence indicates that it is unlikely that these elements would be pleased.

If they were, the provisions of Common Article 3 would have involved violations which give rise to criminal accountability.

The Commission of Inquiry statement did not direct to the inclusion of war crimes in the material jurisdiction of the suggested Tribunal. Consequently, the SPSC has yet to be required to decide whether an armed conflict existed and the nature of that conflict, as no charges were issued, including charges of war crimes.

This result has been criticized, as it needs to be more clear of the elements needed to prove crimes against humanity, with the panel incorrectly indicating that a connection to an armed conflict was required. Moreover, the decision as to the presence of an armed conflict was reached with reference to the relevant jurisprudence of the ICTY. The conclusion also does not consider the effect of Indonesia's illegal occupation of East Timor nor the implications of the peace agreement between the Indonesian military and FALINTIL on April 21 1999.

The ICTY has maintained that there lived an international armed conflict in Bosnia from 1992 to 1995 and that a situation of armed conflict existed from 1992 to the signing of the Dayton Agreement in 1995.132 The ICTY generally does not identify the nature of the armed conflict, due to its finding that violations of Common Article 3 gave rise to individual criminal liability in both international and non-international armed conflicts. The Criminal Code of Bosnia and Herzegovina criminalize war crimes against civilians (Article 173), war crimes against the wounded and sick (Article 174) and war crimes against prisoners of war (Article 175). These provisions are based on those found in the SFRY Criminal Code and partially enforce Bosnia's obligations arising from the Geneva Conventions and the first and second Additional Protocols.

The WCC has published a number of indictments and rendered several convictions for war crimes in special violations of Articles 173 and 175.

It is commonly assumed that the period in Kosovo from March 24 to June 10 1999 (the NATO bombing campaign) formed an international armed conflict. The ICTY has held that a non-international armed conflict existed in Kosovo between the Kosovo Liberation Army (KLA) and the armed detachments of the FRY (Prosecutor v Limaj, Judgment, Trial Chamber, November 30 2005, para. 171) persisted until at least the beginning of the bombing campaign. This is reflected in the charging practice of the ICTY, where all indictments regarding Kosovo have charged acts as war crimes pursuant to Article 3 of the ICTY statute rather than under Article 2, the grave breaches provision. As with the genocide cases discussed above, many of the earlier cases in Kosovo to consider war crimes charges contemplated apparent soaking in relation to alleged acts by Serbs, resulting in several beliefs being toppled by the Supreme Court. The Court rejected the proposition that the NATO intervention had changed the character of the conflict from a non-international armed conflict to an international armed conflict, seeing that there was no evidence that NATO had general control of the KLA 'even applying the laxest "overall control" test'.

Part IV

Legal challenges according to the current situation in Ukraine

In 2000, on January 20, Ukraine signed the Treaty of Rome. It contains all the requirements for starting the ISS. Therefore, it will happen if the ICC ratifies the agreement. Nevertheless, it is necessary to determine the standard features of the Charter and Ukrainian laws, namely the Constitution of Ukraine. Ratification of the Treaty of Rome will only occur if changes are made to the Constitution of Ukraine.

Ukraine is discussing the content of the Statute with the International Criminal Court. The provisions of the Charter must fully comply with the legislation of Ukraine. The upper branches of government are involved in the discussion. As the Guarantor of legal legislation, the President of Ukraine sent a petition to the Constitutional Court and emphasized that the Charter's content must coincide with the provisions of the Constitution of Ukraine.

After the discussion, the Constitutional Court of Ukraine pronounced its decision: Article 1 of the Statute and part of the tenth preamble of the Constitution do not have general provisions, namely in the provision that "the International Criminal Court supplements national justice bodies." (Cassses, A., 2002) Therefore, the Rome Statute does not correspond to the Constitution of Ukraine.

The Constitutional Court of Ukraine notes that only the national Court administers justice (Article 124). In Ukraine, there is a whole judicial system of total jurisdiction. The classification of this system is as follows: first of all, the Supreme Court of Ukraine, then higher specialized judicial institutions, and finally, appellate and local courts. It is not allowed to transfer the tasks and powers of the courts regarding their resolution to a second person or institution responsible for their implementation. In addition to general judicial institutions, the Constitutional Court has the right to exercise justice.

The National Constitutional Court noted: The Statute of the International Criminal Court contains specific information. They are specified in the Constitution's preamble and articles 1.4 (clause 2) and 17 (clause 1) of the Statute.34 It is these norms of the ICC that complement the national criminal courts. The International Criminal Court differs from any other international justice body in this case. Take the European Court of Human Rights as an example. Appeal to this body is determined by Article 55 of the Constitution of Ukraine. The International Court of Justice has the right to assist national authorities in protecting their citizens. In turn, the International Criminal Court supplements the laws of the judicial bodies of Ukraine.

Now let us analyze some points. At the same time, we will not diminish the importance of the Constitutional Court of Ukraine.

Article 7 of the Statute of the ICC states that the latter does not supplement all provisions of the judicial jurisdiction of Ukraine. The ICC only branches out to those crimes that are too serious and are a threat to all people on the planet, such as genocide, aggression, war crimes, and those that threaten people's lives.

The listed crimes acquire international significance, so they should be considered only in the international arena. The Constitutional Court of Ukraine and other national courts do not have the right to consider international crimes in Court. There is an opinion that the International Criminal Court's court decisions do not supplement Ukraine's jurisdiction; namely, they are used in parallel. The International Criminal Court, as a body, in no way complements the system of judicial bodies of Ukraine.

National judicial authorities have the right to administer justice at the international level, but they will not be vested with the legal rights of the ICC.

In this case, the national courts will not encroach on the rights of the International Criminal Court when making a court decision.

Likewise, the ICC does not encroach on the competence of a national court. In addition, the proceedings will be carried out by the International Criminal Court, not on the territory of our country, which is contrary to the Constitution of Ukraine. The International Space Station has such an international subjectivity that it activates its appointment on the territory of Ukraine and outside its borders.

Thus, Article 1 of the Statute of the ICC corresponds to the provisions of the Constitution of Ukraine specified Article 124.

During the meeting of the Constitutional Court of Ukraine, the issue of ratification was resolved. It was here that the representative of the Ministry of Foreign Affairs of Ukraine was invited. He emphasized that the statements of the ICC Statute do not contradict the provisions of the Constitution of Ukraine, and the Treaty of Rome can be ratified.

Having examined that the norms of the Charter coincide with the laws of our state's Constitution, it is possible to emphasize some statements due to which the dispute in the Constitutional Court continued.

The Constitution states that the President of Ukraine, judges, and deputies have inviolability. Moreover, it should be guaranteed by the Constitution of Ukraine. According to this provision, the Constitutional Court of Ukraine declared: Article 27 of the Statute of the International Criminal Court contradicts the Constitution of Ukraine.

In this case, it is absurd. The Statute applies its laws equally to all state citizens, without paying attention to their position, while not cancelling their superiority and inviolability. In other words, the position of the President of Ukraine, members of the government, and other representatives of the authorities do not exempt such persons from criminal liability by the Statute of the International Criminal Court. Also, such a position does not cancel the verdict or reduce the punishment. The International Criminal Court has no obstacles in exercising its jurisdiction over a specific person. No norms and advantages, which are given to persons in certain official positions, do not prevent the Court from condemning even citizens of the state.

As stated in the rules of the Constitutional Court, responsibility for the crimes referred to in the Treaty of Rome establishes clear obligations for Ukraine by other international legal documents that entered into force for Ukraine even before the Constitution of Ukraine was adopted. (KOIVU, V.,2001)

Such norms include the Convention on the Prevention of Genocide and its Punishment, which was approved on December 9, 1948. The Convention on the Prevention of Apartheid and its Punishment entered into force in 1957 on November 30. And other international treaties.

About the Constitutional Court, the latter approved: all norms of the Statute of the International Criminal Court, in which the prohibition of genocide, aggression, crimes against humanity, or war crimes can be traced, today appear as average norms of international law.

The provisions of the Constitution of Ukraine indicate the inviolability of the highest branch of government, i.e., the President of Ukraine, judges, and deputies. Furthermore, the norms of the ICC Statute do not impose taboos and do not annul the laws of the Constitution. The Statute justifies its reasoning by the fact that the inviolability of the President of Ukraine, people's deputies, or judges applies only to the jurisdiction of Ukraine and does not stand in the way of the exercise of the jurisdiction of the International Criminal Court. As stated in the Constitution of our country, the inviolability of the highest branch of government will in no case guarantee the release of such persons from punishment for international offences.

It is this moment that is the objective statement of the Statute of the ISS. It should be noted that the Constitution of Ukraine, in particular Article 92, Clause 22, indicates the responsibility of persons for committing criminal acts. This law cannot be interpreted as inconsistent with Article 5 of the Statute of the International Criminal Court.

Article 9 of the Constitution states that those international norms, which were agreed upon at the meeting of the Verkhovna Rada, are part of the national laws of Ukraine. The agreement mentioned above is being worked out and appears as a law, which is equal in legal terms to other laws. Hence, the accession of Ukraine to the Statute does not contradict the norms of the Constitution of Ukraine. Changes that took place with such a merger refer only to the Criminal or Criminal Procedure Codes of Ukraine.

The sentenced persons shall serve their sentence in the country chosen by the Court, by Article 103, paragraph 1, subparagraph "a ." Such a state is determined among others that have submitted a notification to the ISS about the presence of such a person on the territory of this state.

Articles 103 and 124 of the Statute of the ICC emphasize: Other statements may be allowed when the ICC has agreed to serve the punishment of criminals in its state. Therefore, Ukraine can accept its citizens to serve a sentence if it is different from the order approved in the Constitution of Ukraine. In this case, Ukraine should submit a request to the International Criminal Court, which indicates its readiness to take Ukrainian citizens.

Note that the International Criminal Court chooses the country where the criminal will serve his sentence. The Court also takes into account the wishes of the convicted person and the citizenship of the person. The International Criminal Court draws attention to well-known international stereotypes of the attitude towards the convicted.

Taking into account the obligations of Ukraine at the international level, the norms of the Charter do not contradict the Constitution of Ukraine.

Many controversies revolve around the problem that shows the prohibition of extradition of persons from our country. This problem appears alongside the discussion about the possibility of the ICC supplementing the judicial bodies of Ukraine.

Article 25, Part 2 of the Constitution of Ukraine states: A citizen of Ukraine may not be extradited to a second country under any circumstances. The ICC submits a request for the arrest and transfer of the criminal to the currently located country. It is stated in Article 89 of the Charter, namely Clause 1. The member countries of the Treaty must necessarily comply with such a request.

The ruling of the Constitutional Court states that the ban on the extradition of a guilty person from our country to a second country is related only to national jurisdiction. Therefore, such prohibition does not apply to international jurisdiction.

The Constitutional Court approved the decision regarding the compliance of Articles 89 and 107 of the Statute of the ICC with the Constitution of Ukraine. However, it emphasized that the International Criminal Court cannot be put on the same page as any other foreign court. The ICC has an international basis and is not created from national law. Therefore, the provisions of the Constitution, which prohibit the extradition of Ukrainian citizens, cannot exist separately from the international legal obligations of Ukraine.

The Constitutional Court of Ukraine recognized the international jurisdiction of the ICC, which differs from the national one in its content. The Court concluded that international jurisdiction could supplement national jurisdiction. In that part of the ICC Statute, it complements the bodies of the receiving justice system of Ukraine. Based on this, the Constitutional Court recognized the Treaty of Rome as inconsistent with the Constitution of Ukraine.

Therefore, ratifying the Treaty by Ukraine and further cooperation with the ICC will be possible when appropriate amendments are made to the Basic Law. Unfortunately, as of today, there are no changes or additions to the Constitution of Ukraine. Therefore, the ratification of the ICC Statute is postponed indefinitely.

The problem of international justice intensified after the Second World War - it was a time when the victorious countries were able to implement the idea of criminal justice, which would go beyond the legal field of one state and have an international character. For example, the Tribunals in Tokyo and Nuremberg had the appearance of the courts of the winners over the losers - this opinion was held by many scientists, such as Al-Zaharna Salim Muhammed Saadi, Jeffrey Robertson, Ihor Ivanovich Lukashuk, Oksana Vasylina Senatorova, and Kateryna Anatolyivna Vajna. Thus, postulates about a fair and independent international court remained ideas and theories until 1998.

The situation changed only on July 17, 1998, during the Rome conference of the official spokespeople of the U.N. member states. On this day, the Rome Statute for the creation of the International Criminal Court was adopted, which began to operate on July 1, 2002, following the ratification of the ICC Statute by sixty-six countries on April 11, 2002.

The International Court of Justice acquired the status of the first interstate judicial body which acts permanently in criminal law.

Nearly 160 countries participated in the Rome mentioned above conference, and 124 countries have already ratified the R.S. of the ISS, including all the states that are part of the European Union. This fact points to the great need of the civilized world, and the E.U. in particular, for a single and robust criminal justice institution to effectively combat grave and

socially dangerous crimes. Ukraine was an active participant during the drafting of the Rome Statute, which Ukraine signed on January 20, 2000. However, until now, this Statute has not remained unratified by our state, despite the urgent need, especially if we consider the events of recent years in the east of Ukraine. Surprisingly, as many as 30 states (not including Ukraine) still need to ratify the ISS RS, although they had previously signed it. In addition to our state, the countries of the former Soviet Union, Armenia, Kyrgyzstan, the Russian Federation, and Uzbekistan did not ratify the R.S. As for Ukraine. It should be noted that in November 2006, the Agreement on Privileges and Immunities of the International Criminal Court of September 9, 2002, entered into force. However, the Statute of the ICC has yet to be ratified.

Since the ratification problem of the Rome Statute remains unresolved to this day, it is necessary to establish the root causes of such a long-term delay in ratification (already 20 years) and formulate a solution to eliminating existing obstacles.

The preamble of the first article of the Rome Statute indicates that the ICC is a supplement to national institutions of criminal justice (such as judicial institutions).

It follows that the function of the ICC is based on the principle of complementarity mentioned in Article 17 of the Criminal Code. That means the International Criminal Court fulfils its duties only in cases where a country is unable or unwilling to carry out a full-fledged investigation on its.

The main argument regarding the lack of possible ratification by Ukraine of the Russian Federation immediately after its signing was the Opinion of the Constitutional Court of Ukraine dated July 11, 2001, No. 3-v/2001. It stated that paragraph 10 of the preamble and Article 1 of the Rome Statute do not correspond to the central part of the Constitution of Ukraine Statute of the ISS. The provisions above define the International Criminal Court as a "supplement to national criminal justice institutions." Thus, the Constitutional Court of Ukraine made the following conclusion - such a so-called addition to the existing judicial system is not provided for by the Constitution of Ukraine, namely Chapter 8, "Justice".So first of all, it is necessary to make changes to the Constitution (namely, part 2 of Article 9 of the Criminal Code), which the addition of the judicial system by the International Criminal Court was foreseen, and only after that, it will be possible to ratify the R.S. of the ICC.

It follows that there is only one reason that stands in the way of the ratification of the R.S. of the ISS - this reason is the complementary nature of the activity of the ISS.

The introduction of amendments to the Constitution of Ukraine regarding the determination of jurisdiction of the ICC, in practice, the implementation provisions at the legislative level have been temporarily postponed, unescorted by specifying reasons.

As a rule, such reasons are indicated in explanatory notes, or official conclusions of the central committee of the Verkhovna Rada of Ukraine regarding the relevant draft of the law are provided. In addition, the E.U. countries usually do not have a term of three years as "unusual in international relations ." Therefore, the process of delaying the ratification of the

Rome Statute in Ukraine can be explained through the analysis of publications and statements of various scientists, analysts, and officials of Ukraine and the E.U.

The E.U. has repeatedly drawn attention to the need to adjust Ukraine's substantive and procedural law regarding the provisions of the R.S. The Criminal Code of Ukraine needs corrections in defining the concept of crimes regulated by the Criminal Code and their exact list. The plan of measures for the implementation of the National Strategy for the Protection of Human Rights for 2020 states that one of the primary measures concerns compliance with the norms of international law regarding the protection of the lives of the civilian population in the temporarily occupied territory. To that end, it is planned to analyze the quality of implementation of international humanitarian law and criminal legislation in Ukraine to identify gaps and inconsistencies. For example, the formation of war crimes. In addition, it is planned to develop, taking into account the results of the analysis of the draft law regarding the introduction of amendments to the Criminal Code of Ukraine and, if necessary, the application of normative legal acts to the Verkhovna Rada of the country for settlement with the norms of humanitarian law. Such foundations were created, including for the establishment of war crimes.

In July 2016, the parliament considered a draft law on making several changes to the Criminal Code of Ukraine to harmonize it with the provisions of the Rome Statute of the International Criminal Court. Experts from the Center for Civil Liberties developed this project. As a result, changes and additions are developed to such concepts as:

• Concept of slavery;

• Crimes against humanity;

• Committing war crimes against society;

• War crimes against justice;

• Directed war crimes that have a property nature;

• Crimes of a military nature committed to counter the execution of humanitarian operations and the use of symbols;

• War crimes expressed in the implementation of prohibited methods of conducting military operations.

In addition, clarifications of the concept of genocide crimes were introduced. Article 437 regarding the crime of aggression has been completely changed. This bill provides for amendments and corrections in the Criminal Procedural Code of Ukraine, the Law "On the Application of Amnesty in Ukraine," and the Criminal Executive Code in the Law "On Probation ." Measures have been implemented regarding the practical aspects of using the changes developed for the Criminal Code of Ukraine.

It should be noted that the specified concept and component of the crime of aggression in the considered draft law fully correspond to the content of the Kampala amendments, which were approved on June 11, 2010. The introduced changes settled the issue of the jurisdiction of the ICC regarding the crime of aggression. The innovations establish that it is possible to introduce one's jurisdiction only to the manifested crime of aggression discovered within one year after ratification or acceptance by thirty participating states.

Palestine became the thirtieth state to ratify the Kampala Amendments on June 26, 2016. December 14, the Assembly of States of the Rome Statute adopted a Resolution regarding the activation of the jurisdiction of the International Criminal Court regarding the commission of the crime of aggression. The date of activation is July 17, 2018. Therefore, Ukraine should ratify the R.S. already with the Kampala amendments. Along with this, it is essential to adopt changes to the Criminal Code of Ukraine through the conclusion of Article 437 regarding the crime of aggression in the new wording proposed by the draft Law "On Amendments to the Criminal Code of Ukraine to Ensure Its Harmonization with the Provisions of the International Criminal Court." (Kobrick, E.S.,1987)

Despite the effect of significant changes regarding the regulation of Ukrainian criminal law according to the Rome Statute, the adjustment process is carried out too slowly.

As Ukraine has not yet ratified the R.S., it has already twice submitted an appeal to the ICC requesting jurisdiction in February 2014 and 2015 by the third part of Article 12. In the first case, issues related to the commission of crimes against humanity by senior officials during protests from November 21, 2013, to February 22, 2014, were considered. In the second case, issues related to the commission of crimes against the Ukrainian people and war crimes by officials of the Russian Federation and leaders were considered. Terrorist organizations "DNR" and "LNR" as well as regarding the implementation of aggressive actions aimed at the territory of the annexed Autonomous Republic of Crimea.

Currently, a preliminary investigation was conducted by the submitted statements regarding the committed crimes against humanity to establish the grounds before the investigation. Furthermore, by Article 53 of the Criminal Code, the Prosecutor is obliged to consider the issue of jurisdiction and the interests of justice. The report of the conducted investigation states that the Prosecutor's office held meetings with the conflicting parties regarding the location of the ICC office. And during the mission to Ukraine in April 2017. In addition, official meetings were held with the General Prosecutor's Office to assess the availability of information that weights the analysis carried out by the Prosecutor's Office. Furthermore, meetings were held with public organizations to confirm the validity of the information provided, and a cooperation plan and progress in the investigations were established. Today, the Prosecutor's Office is working on establishing incriminated crimes and specific incidents per the elements of crimes established by the Criminal Code.

Thus, the principal legal grounds for the delay in Ukraine's ratification of the R.S. have been established. At the same time, most scientists and politicians in the country are sure that the main reason for the delay in ratification is political. Therefore, the specified political reasons have no basis. The international community repeatedly pointed out this fact, including ICC prosecutor Fatu Bensouda in the 2016 Report on the investigation of the "Situation in Ukraine" case.

As a result, according to the remarks of Ana Gome, a member of the European Parliament, political will is decisive. For Ukraine, ratifying and fully implementing the R.S. is considered essential to European development. Furthermore, ratification is considered a way to fulfil the provisions of the Association Agreement (Articles 8, 24) and comply with international human rights obligations. Member of the European Parliament Barbara Lochbühler rightly noted that Ukraine makes a significant contribution to the E.U., as with its help, it achieves the goal set before the E.U., namely: ensuring stability and security, as well as independence,

sovereignty, territorial integrity and inviolability of borders. Ukraine also provides a single space of freedom, security, and justice for the E.U.

Every day, more and more new steps are being taken to restore justice to Ukraine and bring to justice all those responsible for this criminal war.

Ukraine is already cooperating with many countries and international organizations so that every Russian murderer receives the deserved punishment. Ukraine has also established cooperation with the International Criminal Court and will increase it. However, unfortunately, the available international legal instruments are not enough for justice.

Even in the International Criminal Court, it is still impossible to hold Russia's highest political and military leaders accountable for the crime of aggression against Ukraine - for the primary crime. The crime caused all other crimes of this war - not only after February 24 but also from 2014. That is when it all started.

A special tribunal is needed to be responsible for aggression, in addition to the International Criminal Court. Moreover, now they are doing everything to create such a tribunal.

Address the first lady of Ukraine to the parliament and the people of Great Britain dedicated to this task.

After visiting the United Kingdom on behalf of all Ukrainian men and women who suffered from Russian aggression, she called on Great Britain to become a leader in global efforts to create a special tribunal for the crime of Russian aggression against Ukraine and to restore justice.

The British have this experience, which is part of their shared historical memory. In the winter of 1942, when no one could predict when the Second World War would end, it was in London that representatives of the Allies signed the St. James Declaration. The document started the path to the Nuremberg Tribunal, that is, to justice after that war.

There is already strong cooperation with the Netherlands, which is helping to establish a prosecutor's office to gather evidence of war crimes. In addition, there is cooperation with France, which helps us in fieldwork to document Russian evil.

It is necessary to unite the world majority in support of the draft resolution of the U.N. General Assembly regarding the special tribunal. Develop the necessary legal architecture for the tribunal to function. We must fully implement this peace formula clause and ensure justice after this war, just as after the Second World War. Moreover, Great Britain will show its leadership precisely in this struggle for justice.

A meeting of justice ministers of the G7 countries was held in Berlin - extremely useful. Ukraine was represented there by the Prosecutor General and the Minister of Justice of our country. This meeting was devoted to bringing the

occupiers and the aggressor state to justice for everything they had done. According to the meeting results, an apparent willingness to work together to eventually restore the force of international law, restore the full effect of the UN Charter, and bring Russia to just responsibility.

Conclusion

Summing up, it should be noted that the International Criminal Court exists as an organized structure of bodies, each of which has its components, functions, powers, rights and obligations enshrined at the legislative level. Thanks to the cooperation and well-structured structures of the ICC departments, the courts are the guarantors of international justice at the judiciary level.

The study of the formation of the ICC raised the question that not all members of the international community are convinced of the proper functioning of such an international criminal justice body. Otherwise, they express the opinion that the international community cannot guarantee the protection of human rights

through coercion using international institutions, and the creation of such institutions is premature.

The main reasons why courts fail to deliver justice are:

1. Because the jurisdiction of the ICC is limited to a relatively narrow list of crimes, the ICC has relatively little authority.

-Crimes against humanity;

-War crimes;

-A crime of aggression;

- Genocide.

2. Enforcement of judgments will only be possible if they, in one way or another, concern the most powerful countries, such as the United States and China.

The study of the prerequisites for creating such an institution as the International Criminal Court suggests that the Treaty of Versailles would be the first step in ensuring the inevitability of criminal responsibility for international crimes not only of states but also of individuals and states. Although the Convention did not create an international judicial body, it is fundamental to establishing international criminal justice.

The International Military Tribunal in Nuremberg became a powerful catalyst for the development of international criminal justice as an integral system of modern international law, became the basis for subsequent tribunals, and was also included in the 1998 ICC RS.

Therefore, establishing the International Criminal Court can be considered a natural and inevitable process for the international community.

It should be noted that the principle of individual criminal responsibility, proclaimed by the International Tribunal at Nuremberg, played a vital role in developing international criminal law. This principle is enshrined, for example, in a U.N. document entitled "Reaffirmation of the principles of international law recognized by the Nuremberg Statute" in the resolution of the General Assembly of December 11, 1946. As a result, it was established that international crimes were committed by individuals, not abstract entities. Thus, ensuring the implementation of human rights and punishment for violations became possible.

It is worth noting that the ICC does not recognize immunity or other specific principles regarding individual status, prohibits the prosecution of such persons in criminal proceedings, and Statute of limitations for international crimes. The fact is that it does not provide for the application of a crime. However, these principles must be respected given the high risk and severe consequences of such actions.

Comparing the International Criminal Court to military courts gives many assurances to those convicted by the International Criminal Court. At the same

time, in most cases, the International Military and not the entire volume of such guarantees. For example, a convict can appeal and reconsider the case due to newly discovered circumstances. This right may also be exercised after the death of the convicted person. These situations reflect the humanization of the international community. Its desires to follow the principles of the rule of law.

Notable is the fact that RS ISS needs to learn of forex tradition. Nevertheless, it gives reason to conclude that the ICC does not violate national sovereignty, does not seek to interfere with domestic judicial processes, and is only an addition to the judicial systems of the participating countries.

Created primarily to prevent international crime, the ICC is stronger enough to motivate and objectively punish those convicted after conviction. Moreover, the International Court of Justice has enough judiciary to carry out its mandate. Therefore, today the ICC is the best and most influential institution for implementing international criminal justice. Regarding my master's thesis, Ukraine's cooperation with the International Criminal Court, please note that the ICC is not a subject of today's national justice system. Unfortunately, the Constitutional Court of Ukraine recognized that the CC SIB violates the Basic Law of Ukraine.

For this reason, the ratification of the Statute by Ukraine and subsequent cooperation with this institution will be possible only after the necessary changes are made to the Constitution of Ukraine. Unfortunately, despite domestic politicians' numerous promises, it is impossible to ratify the R.S. since the necessary changes have yet to be made to the CSU. After a detailed analysis of the reasons for Ukraine's delay in ratifying the ISS by the Russian Federation, I concluded that the country's political will plays a leading role in this issue. Unfortunately, I must say that in Ukraine, there is no clear and consistent policy regarding implementing the necessary international norms of criminal law. As you can see, the Ukrainian authorities only want the speedy and effective ratification of the R.S. In particular, it is necessary to amend the Criminal and Criminal Procedure Codes of Ukraine, the Law of Ukraine "On the use of amnesty in Ukraine", the Law of Ukraine on criminal administration and the Law of Ukraine "On probation". Unfortunately, today we do not see decisive actions in this direction.

Summary

An analysis of all the positive and negative aspects of the ad hoc tribunals shows that their institution cannot be considered an adequate solution to the problem of stopping international crimes. The creation of legal means at the international level to punish persons guilty of committing acts related to the violation of international humanitarian law in some countries for not taking

similar measures against others cannot but cause a feeling of a selective approach to the humanitarian and legal consequences of various armed conflicts. This approach can be eliminated only with the help of the functioning of a permanent criminal court. On the basis of U.N. Security Council Resolution 1966 (2010) of December 22, 2010, the activities of the International Criminal Tribunals for Rwanda and the former Yugoslavia ceased on July 1, 2012, and July 1, 2013, respectively, and their successor is the International Residual Mechanism for Criminal Tribunals. All international treaties concluded by the U.N. regarding the specified international tribunals remain valid with respect to this mechanism.

Current practice shows that some crimes – in particular genocide, crimes against humanity and absolute war crimes – are of concern not just to the primary victims and their society but also to all states and the wider global community. There is a trend towards demanding responsibility for these crimes, yet, defects in the general mechanisms of accountability have been exposed. The traditional mechanism for enforcement of criminal law – the courts of the territorial state – fails to supply responsibility in a number of circumstances. These include cases where the territorial state has effectively collapsed as the result of armed conflict, and there is no capacity in the judicial system to try people accused of engaging in serious crimes. Comparable problems exist where the judicial system lacks autonomy from the government or major political factions or is (or is perceived to be) partial to particular groups within society. The conflict may be continued, offering domestic tribunals with serious security threats and functional limits. There may be no political will to conduct trials, as the offending authorities may remain in power or retain their influence at the national level. Responsibility may be traded for other aims, such as securing a peace accord or improving relations with a neighbouring state that was formerly a party to the conflict. Domestic law may be underdeveloped and may not incorporate international crimes and theories of criminal responsibility, or its application may be delayed by domestic provisions such as impunity, amnesty or statutes of limitation.

This thesis has determined several of the key points about the design of hybrid and internationalized tribunals, in particular, their lawful basis and jurisdictional parts. While there are deviations between the tribunals, it is still likely to identify some common regulations and appearing practices. In light of the potential future role of such tribunals in the system of international criminal justice, this practice warrants continued study by states and the wider international community so as to provide that tribunals are appointed with the powers and framework required by a particular context. Such a study will not address other deficiencies in the practice of such tribunals, in particular, the defeat to provide sufficient resources and the selectivity inherent in the creation and design of such tribunals. Nevertheless, it should render these tribunals more effective mechanisms in the trend to finishing immunity for international crimes.

LITERATURE AND REFRERENCES LIST

- *International Criminal Tribunals* (2017) *Cambridge Core*. Available at: https://www.cambridge.org/core/books/international-criminal-tribunals/649FAEC8D68D8B763D74BC52A2A7728A (Accessed: 2022).
- State, U. (2009) *UPDATED STATUTE OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, ICC Legal Tool*

Database. Available at: https://www.legal-tools.org/doc/b4f63b/ (Accessed: 2022).

- BERESFORD, S., & MULLER, A.S., 'The Special Court for Sierra Leone: an initial comment' (2001) 14 Leiden Journal of International Law
- BOLTON, J., 'The Risk and the Weaknesses of the International Criminal Court from America's Perspective' (2001) 41 Virginia Journal of International Law
- BURKE-WHITE, W., 'Reaffirming Impunity: Applying Liberal International Law Theory to an Analysis of Amnesty Legislation' (2001) 42 Harvard International Law Journal 467 – 'A Community of Courts: Toward a System of International Criminal Law Enforcement (2002) 24 Michigan Journal of International Law 1
    - 'Complementarity in Practice: The International Criminal Court as Part of a System of Multi-level Global Governance in the Democratic Republic of Congo (2005) 18 Leiden Journal of International Law
    - 'The Domestic Influence of International Criminal Tribunals: The International Criminal Tribunal for the Former Yugoslavia and the Creation of the State Court of Bosnia & Herzegovina' (2008) 46 Columbia Journal of Transnational Law
    - 'Proactive Complementarity: The International Criminal Court and National Courts in the Rome System of Justice (2008) 49 Harvard International Law Journal
- CASSESE, A. ET AL (eds), The Rome Statute of the International Criminal Court: a Commentary, vol. 1 (OUP, New York, 2002)
- CERONE, J., 'The Special Court for Sierra Leone: Establishing a New Approach to International Criminal Justice (2002) 8 ILSA Journal of International & Comparative Law 379
- A Caesius.(1999). The Statute of the International Criminal Court: some preliminary reflections, European Journal of International Law, Volume 10, Issue 1, Pages 144–171, https://doi.org/10.1093/ejil/10.1.144
- Schabas, W. (2006). The U.N. International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone. Cambridge: Cambridge University Press.
- Schabas, W. (2006). Creation of the tribunals. In *The U.N. International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone* (pp. 3-46).
- Schabas, W. (2006). The legitimacy and legality of the tribunals. In The U.N. International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone (pp. 47-73).
- Schabas, W. (2006). Territorial, personal and temporal jurisdiction. In *The U.N. International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone* (pp. 123-150). Cambridge: Cambridge University Press. doi:10.1017/CBO9780511617478.005
- Schabas, W. (2006). Crimes against humanity. In *The U.N. International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone* (pp.

185-225). Cambridge: Cambridge University Press. doi:10.1017/CBO9780511617478.008

- The Constitution of Ukraine: Adopted at the fifth session of the Verkhovna Rada of Ukraine on June 28. 1996 - K.: Press of Ukraine, 1997. - 80 p.
- A Caesius, The Statute of the International Criminal Court: some preliminary reflections, European Journal of International Law, Volume 10, Issue 1, 1999, Pages 144–171, https://doi.org/10.1093/ejil/10.1.144
- CIAMPI, A., 'The Obligation to Cooperate' in CASSESE, A. ET AL (eds), The Rome Statute of the International Criminal Court: a Commentary, vol. 1 (OUP, New York, 2002)
- CLANTON, S., 'International Territorial Administration and the emerging obligation to prosecute' (2006) 41 Texas International Law Journal
- CLARK, R., 'Does the Genocide Convention Go Far Enough? Some Thoughts on the Nature of Criminal Genocide in the Context of Indonesia's Invasion of East Timor' (1981) 8 Ohio Northern University Law Review
- CRYER, R., 'A Special Court for Sierra Leone?' (2001) 50 International & Comparative Law Quarterly
    - Prosecuting International Crimes: Selectivity and the International Criminal Law Regime (CUP, Cambridge, 2005)
    - 'The Security Council and International Humanitarian Law' in BREAU, S. AND JACHEC-NEALE, A., (eds) Testing the Boundaries of International Humanitarian Law (BIICL, London, 2006)
    - 'Sudan, Resolution 1593 and International Criminal Justice (2006) 19 Leiden Journal of International Law
    - 'The Security Council, Article 16 and Darfur' (2008) Oxford Transitional Justice Research Working Paper Series
- CRYER, R., FIRMAN, H., ROBINSON, D. AND WILMSHURST, E., An Introduction to International Criminal Law and Procedure (CUP, Cambridge, 2007)
- COMES, G., 'Murder as a Crime Against Humanity in International Law: Choice of Law and Prosecution of Murder in East Timor' (2003) 11 European Journal of Crime, Criminal Law and Criminal Justice
- DANILENKO, G.M., 'The Statute of the International Criminal Court and Third States' (2000) 21 Michigan Journal of International Law
- DANNER, A.M., 'When Courts Make Law: How the International Criminal Tribunals Recast the Laws of War (2006) 59 Vanderbilt Law Review
- EVENSON, E., 'Truth and Justice in Sierra Leone: Coordination Between Commission and Court' (2004) 104 Columbia Law Review
- FASSBENDER, B., 'Reflections on the International Legality of the Special Tribunal for Lebanon' (2007) 5 Journal of International Criminal Justice
- FRULLI, M., 'The Special Court for Sierra Leone: Some Preliminary Comments' (2000) 11 European Journal of International Law
- 'The Question of Charles Taylor's Immunity: Still in Search of a Balanced Application of Personal Immunities' (2004) 2 Journal of International Criminal Justice

- GAETA, P., 'Is NATO Authorized or Obliged to Arrest Persons Indicted by the International Criminal Tribunal for the Former Yugoslavia?' (1998) 9 European Journal of International Law – 'Official Capacity and Immunities'
- CASSESE, A. ET AL (eds), The Rome Statute of the International Criminal Court: a Commentary, vol. 1 (OUP, New York, 2002)
- GRAEFRATH, B., 'Universal criminal jurisdiction and an international criminal court' (1990) 1 European Journal of International Law
- HALL, L. & KAZEMI, N., 'Recent Development: Prospects for Justice and Reconciliation in Sierra Leone (2003) 44 Harvard International Law Journal
- HANNUM, H., 'International Law and Cambodian Genocide: The Sounds of Silence (1989) 11 Human Rights Quarterly
- HAPPOLD, M., 'International Humanitarian Law, War Criminality and Child Recruitment: The Special Court for Sierra Leone's Decision in Prosecutor v Samuel Hinga Norman' (2005) 18 Leiden Journal of International Law 283
- Child Soldiers in International Law (Manchester University Press, Manchester, 2005)
- 'Darfur, the Security Council, and the International Criminal Court (2006) 55 International and Comparative Law Quarterly
- HARPER, E., 'Delivering Justice in the wake of mass violence: new approaches to transitional justice (2005) 10 Journal of Conflict and Security Law 149
- JONES, J., ET AL 'The Special Court for Sierra Leone: A Defence Perspective' (2004) 2 Journal of International Criminal Justice
- JORGENSEN, N., 'The definition of genocide: Joining the dots in the light of recent practice' (2001) 1 International Criminal Law Review
- JUDAH, T., Kosovo: War and Revenge (Yale University Press, 2000)
- JURDI, N., 'The Subject-Matter Jurisdiction of the Special Tribunal for Lebanon' (2007) 5 Journal of International Criminal Justice
- KAMHI, A., 'Private Funding for Public Justice: The Feasibility of Donations to the Cambodian Tribunal' (2007) 48 Harvard International Law Journal
- KAMMINGA, M.T., 'Lessons learned from the exercise of universal jurisdiction in respect of gross human rights abuses,' (2001) 23 Human Rights Quarterly
- KATZENSTEIN, S., 'Hybrid Tribunals: Searching for Justice in East Timor' (2003) 16 Harvard Human Rights Journal
- KAUL, H., AND KRESS, C., 'Jurisdiction and Cooperation in the Statute of the International Criminal Court: Principles and Compromises' (1999) 2 Yearbook of International Humanitarian Law
- KAZEMI, N., 'Prospects for Justice and Reconciliation in Sierra Leone (2003) Harvard International Law Journal 287
- KELSEN, H., 'Will the Judgement in the Nuremberg Trial Constitute a Precedent in International Law' (1947) 1 International Law Quarterly
- KIERNAN, B., 'Historical and Political Background to the Conflict in Cambodia, 1945-2002' in AMBOS, K. AND OTHMAN, M. (eds) New

Approaches in International Criminal Justice: Kosovo, East Timor, Sierra Leone and Cambodia (Max Planck Institute, Freiburg, 2003)
- KING, H.T., 'Universal Jurisdiction: Myths, Realities, Prospects, War Crimes and Crimes against Humanity: The Nuremberg Precedent' (2001) 35 New England Law Review
- KINGSTON, J., 'Regaining Dignity: Justice and Reconciliation in East Timor' (2006) 13 Brown Journal of World Affairs
- KIRBY, C., 'Rwanda's Gacaca Courts: A Preliminary Critique' (2006) 50 Journal of African Law 94
- KYRGYZ, F., 'Security Council Governance of Postconflict Societies: A Plea for Good Faith and Informed Decision Making (2001) 95 American Journal of International Law 579
- KIRSCH, P. AND HOLMES, J., 'The Birth of the International Criminal Court: The 1998 Rome Conference' (1998) 36 Canadian Yearbook of International Law 3
- KISSINGER, H., 'The Pitfalls of Universal Jurisdiction,' (2001) 80 Foreign Affairs 86
- KLEFFNER, J., Complementarity in the Rome Statute and National Criminal Jurisdictions (OUP, Oxford, 2008) KLINGBERG, V., '(Former) Heads of State before International(ized) Criminal Courts: the case of Charles Taylor before the Special Court for Sierra Leone (2003) 46 German Yearbook of International Law
- KLINKNER, M., 'Forensic Science for Cambodian Justice' (2008) 1 International Journal of Transitional Justice 1
- KLOSTERMANN, T., 'The Feasibility and Propriety of a Truth Commission in Cambodia: Too Little? Too Late? (1998) 15 Arizona Journal of International and Comparative Law
- KNOOP, G., 'International and Internationalized Criminal courts: the new face of international peace and security (2004) 4 International Criminal Law Review
- KUBRICK, E.S., 'The ex post facto prohibition and the exercise of universal jurisdiction over international crimes' (1987) 87 Columbia Law Review
- KOIVU, V., 'Head-of-State Immunity v. Individual Criminal Responsibility under International Law' (2001) XII Finnish Yearbook of International Law