What role can temporary Hybrid Criminal Courts play in the presence of a permanent international criminal court?

أي دورللمحاكم المختلطة المؤقتة في ظل وجود محكمة جنائية دولية دائمة؟

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Abstract:

International criminal courts have witnessed significant development from the first half of the 20th century to the present day. The military tribunals in Nuremberg and Tokyo, established in 1945 and 1946, respectively, in the aftermath of World War II to prosecute war criminals from the Axis powers and the Far East, represented the first generation of this jurisprudence. The second generation of international criminal courts emerged with the establishment of the ad hoc tribunals for Yugoslavia in 1993 and Rwanda in 1994, both created by decisions of the United Nations Security Council. Subsequently, two closely related generations of hybrid criminal courts and the permanent International Criminal Court (ICC) established by international treaty in 1998 appeared. What distinguishes these two generations of courts is that neither of them replaced the other but rather worked side by side. This prompts us to examine the role that temporary hybrid criminal courts can play alongside a permanent international criminal court.

Keywords: Hybrid Criminal Courts, International Criminal Court, International Crimes, Non-International Armed Conflicts.

ملخص:

شهدت المحاكم الجنائية الدولية تطوراً ملحوظاً منذ النصف الأول من القرن العشرين إلى يومنا هذا، حيث شكَّلت المحكمتين العسكريتين في كل من نورمبورغ وطوكيو سنتي 1945 و1946، اللتان أنشئتا في أعقاب الحرب العالمية الثانية لمعاقبة مجرمي الحرب من دول المحور والشرق الأقصى الجيل الأول منه، ليأتي الجيل الثاني من هذه المحاكم مُمثلاً في المحكمتين الخاصتين في كل من يوغسلافيا سنة 1993 ورواندا سنة 1994 المنشأتين بقرارات من مجلس الأمن، ثم ظهر بعد ذلك جيلين متقاربين من المحاكم الجنائية هما المحاكم الجنائية المختلطة موضوع هذه الورقة البحثية، والمحكمة الجنائية الدولية الدائمة المنشأة بموجب اتفاق دولي سنة 1998، وما ميز هذين الجيلين من المحاكم أنهما لم يخلف أحدهما الآخر، بل ظلا يعملان جنباً إلى جنب، وهو ما يدعونا للبحث عن الدور الذي يُمكن أن تؤديه المحاكم الجنائية المختلطة ذات الطابع المؤقت مع وجود محكمة جنائية دولية دائمة.

الكلمات المفتاحية: المحاكم الجنائية المختلطة؛ المحكمة الجنائية الدولية؛ الجرائم الدولية؛ النزاعات المسلحة غير الدولية.

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Introduction:

The international community, through the United Nations organization, has entered into numerous charters and agreements that call for the respect of fundamental human rights. This commitment extends to both peacetime, as seen in the Universal Declaration of Human Rights in 1948 and the International Covenants of 1966, as well as during international and non-international armed conflicts, as evidenced by the 1948 Convention for Preventing and Punishing Genocide, along with the 1949 Geneva Conventions and their 1977 Additional Protocols.

However, despite these agreements, parties in both international and non-international conflicts have continued to commit repeated violations of human rights charters and grave breaches of international humanitarian law agreements. As a result, the international community has sought mechanisms to enforce international criminal courts to hold those responsible for these violations accountable. In the context of addressing these violations and pursuing their perpetrators, international criminal courts have witnessed significant developments from the late first half of the 20th century to the present day. This evolution included the establishment of several criminal courts to address the consequences of catastrophic events world wide, the first generation involved the creation of military tribunals by the Allied powers to prosecute individuals responsible for international crimes on the defeated side during World War II. This included the Nuremberg Tribunal established in 1945 to prosecute war criminals from the Axis powers and the Tokyo Tribunal in 1946 to prosecute war criminals in the Far East. However, these tribunals were criticized for embodying victor's justice over the vanquished.

Then came the second generation, represented by the hybrid criminal courts established by the United Nations Security Council to address crimes against humanity committed during internal armed conflicts in Yugoslavia and Rwanda. These are the International Criminal Court for the former Yugoslavia in 1993 (ICTY) and the International Criminal Court for Rwanda in 1994 (ICTR). However, their establishment by the Security Council gave the impression of political considerations prevailing over legal considerations, and it raised significant controversy regarding their legitimacy due to the absence of any explicit provision in the United Nations Charter granting the Security Council the authority to create international criminal courts.

Subsequently, two closely related generations of international criminal courts emerged: hybrid tribunals, which are established periodically to address specific cases, and the ICC established under the Rome Statute in 1998, which entered into force on July 1, 2002. What distinguishes these two generations of courts is that neither has supplanted the other; they have continued to work side by side. Hence, this paper aims to address the question: **Are hybrid courts considered an alternative to International Criminal Court, or a complementary mechanism to reinforce international criminal justice?**

By answering this question, we aim to present an analytical and evaluative study on four hybrid courts, which are: Special Panels for Serious Crimes in East Timor (SPSC) in 2000, Sierra Leone in 2002 (SCSL), Extraordinary Chambers in the Courts of Cambodia (ECCC) in 2003, and Special Tribunal for Lebanon (STL) in 2007. This assessment aims to understand their significance in tackling international crimes in the presence of ICC with overlapping jurisdiction. The paper will address two main aspects: the first will examine the rationale behind the creation of hybrid courts, while the second will shed light on the most significant challenges and obstacles they have faced.

Section I: Justifications for the establishment of Hybrid Criminal Courts

In the aftermath of unprecedented non-international armed conflicts that erupted in various regions of the world in the late 1990s, the United Nations turned to adopt a new model of international criminal courts to address serious violations of human rights and international humanitarian law in those areas. This model took the form of hybrid or Internationalized criminal courts, following the shortcomings of ad hoc international criminal courts established by United Nations Security Council resolutions under Chapter VII of the United Nations Charter.

The United Nations either facilitated or encouraged the creation of these innovative judicial institutions to administer international criminal justice, existing alongside the permanent

international criminal court. These institutions were not intended to replace or compete with the permanent court but rather to complement it. The sensitivity of the post-conflict situation (First Subtopic) and the constraints imposed by the International Criminal Court's Statute (Second Subtopic) provided sufficient justifications for the establishment of these types of courts.

A) Sensitivity of the Situation Post Internal Armed Conflicts:

The fragility of the situation in countries experiencing internal armed conflicts, or those emerging from such conflicts, characterized by chaos, security breakdown, and the weakening or collapse of judicial institutions safeguarding the rule of law, necessitates the substitution of transitional justice for national or ordinary international justice. This is for the purpose of bringing justice closer to victims and witnesses (Firstly), strengthening or rebuilding national justice systems after armed conflicts (Secondly), and addressing symbolic trials to eliminate the phenomenon of impunity (Thirdly).

1 - Bringing Justice Closer to Victims and Witnesses

With the exception of STL, initially established by agreement between the Lebanese government and the United Nations in 2007 but stalled due to a parliamentary deadlock, which prompted the United Nations Security Council to impose its establishment through Resolution 1757 dated May 30, 2007, with its seat ultimately located in the Netherlands for security reasons, the norm has been that hybrid criminal courts are established on the territory where the serious violations of human rights and international humanitarian law occurred. This is exemplified in the case of SCSL and ECCC. These courts have adopted an approach of bringing justice closer to the location of the crimes and the victims, a distinguishing feature that sets hybrid courts apart from previous international courts, especially ICTY and ICTR, and even ICC[(1)] .

Considering the importance of the trial location in conflict and post-conflict societies, the annual report of the Secretary-General of the United Nations to the Security Council noted that even though the presence of the Yugoslavia and Rwanda Courts outside the countries where the crimes occurred provided them with more suitable operational facilities and ensured their security and independence, their presence in the affected countries still had several significant benefits. These benefits included facilitating their interaction with the local population, bringing them closer to evidence and witnesses, and making it easier for victims and their families to witness the prosecution of their tormentors[(2)]. This is a matter that was addressed in the experience of hybrid criminal courts.

In light of the above, it becomes clear that the establishment of hybrid international criminal courts, whenever feasible, in the places where serious international crimes have occurred serves three highly important objectives. Firstly, the proximity of the trial to the crime scene facilitates the collection and preservation of criminal evidence, preventing manipulation. Secondly, it spares witnesses the burden of traveling to distant locations to testify. Thirdly, and most importantly, it addresses the psychological aspect for the victims, providing them and their families with the opportunity to see justice served against their tormentors, which fosters trust and reassurance in their hearts. All these objectives are particularly relevant in societies emerging from armed conflicts.

2 - Enhancing or Rebuilding National Justice systems after Armed Conflicts

Often, countries emerging from conflicts suffer from weak or absent rule of law mechanisms, inadequate law enforcement, and an inability to dispense justice. For example, in the internal armed conflict in Sierra Leone, the widespread chaos led to a complete collapse of the country's judicial system, including the judiciary, public prosecution, police departments, and other executive bodies, with most former state officials fleeing the country. In light of this, the Secretary-General of the United Nations recommended the establishment of a court committed to international standards for prosecuting human rights violators and violations of international humanitarian law, with this court being independent of Sierra Leone's domestic judiciary and composed of both national and international judges[(3)].

It is undeniable that national justice systems should be the primary recourse for holding criminals accountable. However, when local authorities are unprepared or unable to prosecute major criminals locally, the role of the international community becomes crucial. The experience of hybrid international criminal courts has strongly demonstrated the validity of this approach. These courts have effectively shown the possibility of administering justice and conducting fair trials at the international level after the collapse of national judicial systems. More importantly, they reflect the international community's gradual shift from tolerance for impunity to the establishment of the rule of international law(4).

While the direct responsibility for protecting human rights and humanitarian security in countries affected by internal armed conflicts, which have weakened or failed local judicial systems, lies with the international community, national legal reforms must be locally owned and guided. No external initiative for legal sovereignty, justice reconstruction, or transitional justice can succeed or be sustainable. Therefore, the United Nations and the international community's role should not be a replacement for national courts but a contribution to building an effective national legal system. For this reason, the United Nations has focused on assisting these countries in enhancing their national legal systems in accordance with international standards(5).

From the above, it can be deduced that the collapse of national judicial systems or their inability to prosecute major criminals is one of the primary reasons that led the United Nations to adopt the approach of hybrid criminal courts. The intention behind these mixed interventions was not to completely eliminate the role of national judicial bodies but rather to contribute to efforts aimed at rebuilding national legal capacities. For instance, international assistance played a fundamental role in the extensive efforts to operate criminal courts in East Timor, either through the direct application of international law or by ensuring that international standards of fairness are met(6).

3 - Combating Show Trials to Eliminate Impunity

Experiences have shown that if the trial of major criminals is left to national criminal courts, they often conduct superficial trials that result in amnesty or issue judgments that do not align with the gravity of their crimes. Therefore, the approach of hybrid criminal courts was adopted by incorporating the international element to overcome biases or lack of independence within the legal system. It is presumed that international judges and prosecutors are less susceptible to security threats or political pressures(7).

Hybrid criminal courts are typically characterized by their neutrality and independence due to their fundamental systems incorporating safeguards and judicial standards. These include transparency and rigor in appointing their judges and prosecutors, as well as the composition of these courts with both national and international judges. Their fundamental systems ensure the rights of the accused and guarantee a fair trial, in addition to providing rights to civil parties to present their opinions and observations(8).

Furthermore, hybrid courts are established to overcome legal obstacles such as amnesty or sovereign immunity. The presence of international judges alongside local judges in these courts serves as international oversight to ensure effective prosecution of serious crimes, particularly preventing impunity. This, in turn, strengthens the rule of law, especially when impunity is a root cause of conflict. Restoring respect for the rule of law and asserting that war crimes, crimes against humanity, and genocide should not go unpunished are pivotal for sustainable peace and democratic transition(9).

In general, the establishment of hybrid courts was aimed at achieving several goals, the most important of which are: achieving international criminal justice and punishing serious violations of international humanitarian law, and contributing to achieving peace or national reconciliation in areas of armed conflict(10), whose judicial bodies are usually unable to impose the rule of law, as Katzenstein states: “The hybrid model endeavors to combine the strengths of temporary courts with the benefits of local prosecutions”(11).

However, ending impunity is not exclusive to hybrid criminal courts but is a shared goal with previous international criminal courts, including ICC, which was established for this purpose. It

should not be hastily assumed that this shared goal between hybrid courts and the ICC implies a jurisdictional overlap. Rather, hybrid criminal courts are considered complementary mechanisms to the ICC, handling cases that the latter cannot address due to jurisdictional limitations.

B) Overcoming Limitations in the Statute of the International Criminal Court:

If the aforementioned justifications for establishing hybrid criminal courts find their explanation in the fragile situations dominated by chaos, insecurity, and the weakness or collapse of judicial institutions during internal armed conflicts or their aftermath, there are other justifications imposed by the nature of the statute of ICC. This statute comes with a set of limitations that hinder its ability to address all serious violations of human rights and the rules of international humanitarian law occurring during internal armed conflicts and to prosecute their perpetrators fully. Therefore, the concept of hybrid criminal courts was embraced to fill the remaining gaps in dealing with the most serious international and national crimes and to definitively close the door to impunity.

Of course, we do not mean by this the relative limitation of international treaties, which provide that their effects apply only to the states that are parties to them or those that have accepted them voluntarily. This limitation, as emphasized by Article (12) of the Rome Statute of the International Criminal Court, can be bypassed by referring the case to ICC under Article (13/b). Here, it is not a requirement that the state where the crimes were committed or its citizens be parties to this statute or have accepted the jurisdiction of the court. What we mean by limitations are those related to the jurisdiction of this court, which can only be bypassed by resorting to the mechanism of hybrid criminal courts. These limitations manifest themselves as follows:

1 - Subject-Matter Jurisdiction

At the United Nations Diplomatic Conference, the attendees agreed, after difficult and arduous negotiations, on the minimum crimes that should fall under the jurisdiction of the International Criminal Court. These crimes are considered the most serious in the eyes of the international community and have been limited to four crimes: genocide, crimes against humanity, war crimes, and the crime of aggression(12). However, it was observed that there are crimes that are no less serious than those within the jurisdiction of this court. These crimes have caused great suffering to individuals and communities during internal armed conflicts, such as torture, sexual crimes, religious persecution, and ethnic cleansing. The effects of these crimes cannot be erased, and post-conflict societies cannot be rebuilt without bringing their perpetrators to justice based on internationally recognized principles of justice and fairness.

Since the ICC is incapable of addressing this type of crime due to its subject-matter jurisdiction, and since national courts in these societies lack the will or ability to prosecute the perpetrators of these crimes, there is a pressing need to establish hybrid criminal courts to overcome these obstacles. This need has already been recognized in the documents establishing these courts, where a significant number of crimes not specified in the Rome Statute have been included, in line with the specificities of each case.

Regarding the SPSC in East Timor, we find that Section X of Regulation No. 2000/11 provides for the establishment of a judicial body with jurisdiction over serious crimes, namely genocide, war crimes, crimes against humanity, murder, sexual crimes, and torture. Regulation 2000/15 reaffirms this jurisdiction and further defines it by specifying that the Court's jurisdiction over genocide is in accordance with its definition in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948. As for crimes against humanity, this regulation requires that the acts constituting them must be part of a widespread or systematic attack with a policy element. It seems that the purpose of this requirement was to establish the responsibility of the Indonesian government, which intervened to support the militias responsible for the violence in 1999 and opposed secession(13).

The Regulation No. 2000/15 delineated the war crimes falling under the jurisdiction of the Special Panel for Serious Crimes in East Timor, covering four categories of war crimes. These categories encompass :serious violations of the Four Geneva Conventions, serious violations of customary laws and applicable rules in international armed conflict, violations of common article 3

of the Geneva Conventions, violations of laws and customs applicable in non-international armed conflicts [(14)]. The expansion of the court's jurisdiction to encompass a wide range of war crimes is attributed to the unique nature of the conflict in East Timor, which involved both international and non-international elements. The invasion of East Timor by Indonesian forces in 1975 was considered an international conflict due to its violation of the United Nations Charter and customary international law. However, the conflict that arose after the 1999 referendum for independence from Indonesia was deemed a non-international conflict, as it occurred between pro-independence and pro-Indonesian militia groups[(15)].

The SCSL has jurisdiction over two types of crimes: international crimes, including serious violations of international humanitarian law, crimes against humanity, violations of Common Article 3 of the four Geneva Conventions, and violations of its Second Additional Protocol of 1977, as well as other serious violations of international humanitarian law such as deliberate attacks on civilians, entreprises, peacekeeping missions, and the recruitment of children under 15 years of age for participation in hostilities [(16)] . In addition to these crimes, the Sierra Leonean law specifies certain crimes related to mistreatment of girls under the Child Cruelty Act of 1926 and crimes related to willful damage to property under the Malicious Damage Act of 1861[(17)].

Similarly, with regard to the ECCC, which were established pursuant to an agreement between the United Nations and the government of Cambodia on March 18, 2003[(18)], their subject-matter jurisdiction includes two types of crimes as well. According to Article (3), these crimes are murder, torture, and religious persecution as violations of Cambodian criminal law from 1956, and international crimes such as genocide under the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, crimes against humanity, serious violations of the Geneva Conventions, and the crime of destroying cultural and heritage property during armed conflict under the 1954 Hague Convention. These chambers also consider crimes against persons protected under international law according to the 1961 Vienna Convention on Diplomatic Relations[(19)].

2 - The Personal Jurisdiction Restriction

The Rome Statute of the International Criminal Court limits its personal jurisdiction to natural persons who are over the age of 18 at the time of the commission of the crimes attributed to them, regardless of their nationality, thus excluding legal persons from its jurisdiction. The Statute also states that neither official capacity nor the immunities enjoyed by certain persons under national or international law may prevent the Court from exercising its jurisdiction over them. Therefore, this Statute applies to all persons equally without any discrimination based on official capacity[(20)].

A look at the provisions of the statutes of the hybrid criminal courts related to individual criminal responsibility reveals that they are in line with the Rome Statute of ICC with regard to the restriction of their jurisdiction to natural persons and the non-recognition of the official capacity of leaders and senior civilian and military officials or the immunities that they enjoy as a result. However, the hybrid criminal courts violated the Rome Statute of ICC with regard to the provisions on individual criminal responsibility in two issues, which may have been among the justifications for establishing this type of court.

For the first issue, the Statute of SCSL did not restrict its personal jurisdiction to the prosecution of those responsible for serious violations of international humanitarian law, including the leaders who committed these crimes and who threatened the establishment and implementation of peace processes in Sierra Leone. On the contrary, it extended it to include two categories of criminals that no other international criminal court, either temporary or permanent, had ever extended its jurisdiction to, namely: members of peacekeeping forces and related individuals present in Sierra Leone who commit violations or offenses, whether under international law or Sierra Leonean law, when the states that sent them are not willing or able to prosecute them. In this case, the jurisdiction to prosecute them belongs to the Special Court for Sierra Leone if the Security Council grants it that power at the request of a State[(21)].

The second category pertains to children who were recruited by armed groups during the civil war that erupted in Sierra Leone in the late 1990s. The Basic Statute of the Special Court for Sierra

Leone grants the authority to prosecute children aged between 15 and 18 years when they commit crimes falling within its jurisdiction. It also mandates that they be treated in a manner that preserves their dignity, taking into consideration their young age, with the aim of encouraging their rehabilitation and reintegration into society to assume constructive roles. Their trials must adhere to international human rights standards, particularly the rights of the child(22).

As for the second issue Cambodian legislation specifies in Articles (1) and (2) of the amended 2004 Law, which supplements the 2001 Law establishing the Cambodian Extraordinary Chambers, the individuals subject to prosecution. These individuals include the leaders and senior officials of the Democratic Kampuchea regime. Thus, Cambodian legislation narrows the personal scope of jurisdiction of these extraordinary chambers by limiting judicial prosecution to Cambodian citizens for the grave crimes and serious violations they committed. Consequently, it exempts individuals from major powers and neighboring countries who were present on Cambodian territory from criminal responsibility. This also applies to Chinese military, security, and political experts who worked with the Khmer Rouge regime for a period of four years during their rule(23).

3 - Temporal Jurisdiction

The Rome Statute adheres to the general principle applied in all criminal legal systems worldwide, which dictates that criminal law should not have a retroactive effect. Accordingly, the provisions of the Basic Statute have an immediate or direct effect and apply only to events occurring after the effective date of the Statute. Events that occurred prior to this date are not subject to its provisions(24), This principle is affirmed by Article (1/11) of the Basic Statute, stating: "The Court has no jurisdiction over crimes committed before the entry into force of this Statute." Article (1/24) of the same Statute also states: "A person shall not be criminally responsible under this Statute for conduct prior to the entry into force of this Statute".

However, the principle of non-retroactivity inherent in ordinary criminal justice systems seems to pose a challenge to transitional justice systems, often referred to as transitional justice, which are specifically designed to hold individuals accountable for crimes committed before or during their operation. The primary aim of these systems is to restore the rule of law and stability in societies torn apart by wars and internal conflicts. This goal can only be achieved by eradicating the effects of all serious crimes committed in the past through the prosecution of their perpetrators to ensure a safe transition to a stable future based on solid foundations. Therefore, by resorting to hybrid courts, retroactive effect can be applied to these crimes. As it is well-known, international crimes do not become time-barred(25).

This is indeed reflected in the documents created for all hybrid criminal courts worldwide. For instance, Regulatory Decree No. 2000/15, issued on 06/06/2000, which defined the jurisdiction of SPSC in East Timor, expanded the jurisdiction of these chambers retroactively to 1975. The decree distinguished between two types of crimes in terms of retroactive effect. In the case of the most serious international crimes such as war crimes, crimes against humanity, and genocide, the retroactive effect extended to a date before 25/10/1999 ultimately covering all crimes that occurred in East Timor since the entry of Indonesian forces into the territory. Regarding ordinary crimes specified in domestic law, such as murder, torture, and sexual crimes, the decree limited retroactivity to the period from 01/01/1999 to 25/10/1999(26).

As for the agreement concluded between the United Nations and the Government of Sierra Leone on 16/01/2002, establishing the SCSL in accordance with Security Council Resolution No. 1315 dated 14/08/2000, Article (01/1) of its Statute stipulated that the temporal jurisdiction of the Court extends retroactively to 30/11/1996. This date corresponds to the signing of the "Abidjan Agreement" for peace, which the United Nations Secretary-General considered the most suitable among other proposed dates for the commencement of the Statute's effect. It contributed to framing the Sierra Leone conflict accurately, ensured the inclusion of the most egregious crimes within the Court's jurisdiction, and covered crimes committed by all parties and armed groups. It was also agreed that the Court's jurisdiction remains open-ended as the conflict was still ongoing at the time of the agreement(27).

Nevertheless, this date has faced strong criticism from civil society, especially victims and a group of Sierra Leonean legal experts, as it would prevent the prosecution of those responsible for crimes committed before this date. However, the international community justified this decision by stating that Sierra Leonean national courts could handle such cases(28).

The ECCC also have retroactive temporal jurisdiction, but it is defined differently. It covers the period from 17/04/1975 to 06/01/1979. This period corresponds to the rule of the Khmer Rouge in Cambodia during which they committed acts of genocide and crimes against humanity(29).

4 - Complementary Jurisdiction

Out of a commitment to respecting the sovereignty of states on one hand and the determination not to tolerate the perpetrators of the most serious international crimes on the other, the diplomats gathered at the Rome Conference for the establishment of an International Criminal Court meticulously addressed the issue of the relationship between this Court and national criminal courts. They agreed to give priority and precedence to the latter in prosecuting perpetrators of these crimes. As for the International Criminal Court, its role is subsidiary and complementary to national jurisdiction, as emphasized in the tenth paragraph of the preamble to the Statute of ICC and reiterated in its Article 1, which states that the Court shall be complementary to national criminal jurisdictions.

Articles (17/1) and (20/3) of the Statute of the International Criminal Court delineate the situations in which the Court may exercise its complementary jurisdiction. These include instances where the Court finds that the state conducting the investigation or prosecution in the case lacks the willingness or ability to do so, or where it is established that the state that conducted the investigation or prosecution decided not to prosecute the person concerned due to a lack of willingness or ability to prosecute, or where the state tried the person concerned but the trial proceedings were for the purpose of shielding them from criminal responsibility or violated the recognized principles of independence and impartiality(30).

Given the unique circumstances in conflict and post-conflict societies, which require trials conducted in accordance with internationally recognized standards of justice and fairness, the relationship between hybrid criminal courts and national courts has been approached entirely differently from that between ICC and national courts. Documents establishing these hybrid courts affirm that in cases where there is concurrent jurisdiction between them and national courts, the hybrid courts shall take precedence.

For example, the regulatory decree defining the jurisdiction of SPSC in East Timor stipulates that these chambers have priority in jurisdiction over other national courts. This allows them the authority to request the transfer of any case pending before another court in East Timor that falls within their jurisdiction at any stage of the proceedings(31).

Similarly, in the Statute of SCSL, it was noted that the Special Court and the national courts in Sierra Leone share concurrent jurisdiction. However, the Special Court takes precedence in jurisdiction over national courts and is granted the authority to request the transfer of any case falling within its jurisdiction from the national courts at any stage of proceedings(32).

The same principle was reaffirmed by the Statute of STL when it indicated that the Special Tribunal and the Lebanese national courts share concurrent jurisdiction. However, the Special Tribunal takes precedence in exercising jurisdiction over national courts for crimes falling within its purview, even if the latter have initiated proceedings, especially in the case of the attack on Prime Minister Rafik Hariri, for which the Statute stipulates that national courts must cede jurisdiction to the Special Tribunal within two months of its Prosecutor assuming duties(33).

It should be noted that the priority of hybrid criminal courts in exercising jurisdiction is limited to the national courts in the countries where these hybrid courts are established, without affecting the national courts of other states. This is because the establishment of hybrid courts was based on bilateral agreements that do not impose any obligation to cooperate with these courts on other states. This is in contrast to ICTY and ICTR, which were established by United Nations Security Council resolutions that compel all states to cooperate with them(34).

Section II: Challenges Faced by Hybrid Criminal Courts

Hybrid criminal courts were created to apply international standards of fair trial to perpetrators of serious international crimes, while respecting the rights of the accused, victims, and witnesses, by transferring the international criminal judicial experience to judges and prosecutors in national judicial systems of countries emerging from recent conflicts. Although these courts have experienced different levels of success in accomplishing their intended objectives and making contributions, albeit relatively, to establishing international criminal courts and reducing impunity for perpetrators of serious international crimes, this model of courts, like other special criminal tribunals, has faced a range of difficulties and obstacles that hindered them from achieving their objectives. These challenges can be categorized into two main branches: national difficulties (First Subtopic) and international difficulties (Second Subtopic).

A) National Difficulties:

Hybrid criminal courts have encountered several national measures that restricted their activities and hindered their work. These measures relate to national amnesties and reconciliation efforts (firstly) and judicial immunity typically granted to heads and senior leaders within national legal systems (secondly).

1 - National Amnesties and Reconciliation Measures

Granting amnesty in areas emerging from civil wars, authoritarian rule, or armed conflicts is one of the measures used to incentivize combatants to surrender and cease hostilities, leading to comprehensive national reconciliation(35). Given that hybrid courts were established against the backdrop of internal armed conflicts to promote transitional justice, the issue of comprehensive or individual amnesties provided for by national laws or international agreements for some individuals has posed an obstacle to some of these courts in dealing with such individuals. This particularly applies to ECCC and SCSL.

Regarding Cambodia, the issue of amnesty was discussed during negotiations in 1994. The Cambodian government proposed granting amnesty to all former combatants who had previously opposed the Cambodian democracy and were willing to align with the government within a period of 6 months. The aim was to contain the crisis and move towards a final cessation of armed conflicts that had targeted thousands of civilians(36). When the ECCC were established, the issue of amnesty was raised in the case of one of the Khmer Rouge leaders, Leng Sary, who had been previously sentenced to death in absentia with the confiscation of all his assets. However, he later benefited from royal amnesty after surrendering on September 14, 1996. This case was a subject of dispute between the United Nations and the Cambodian government. In the end, it was agreed to grant the Extraordinary Chambers discretionary authority to proceed with the trial of Leng Sary, and based on this, the court decided to retry him on charges of crimes against humanity and grave violations of the 1949 Geneva Conventions since the previous judgment issued in 1979 did not encompass all the acts for which he was later prosecuted by the Extraordinary Chambers(37).

The same objective was pursued by the Sierra Leonean government when it decided to grant a blanket amnesty to all combatants upon reaching the Lomé Peace Agreement on July 7, 1999, which included provisions for full amnesty and non-prosecution for all warring factions involved in the Sierra Leonean conflict in exchange for an immediate cessation of all hostilities. During the negotiations for the establishment of SCSL, discussions arose between the representatives of the Sierra Leonean government and the United Nations regarding the impact of this agreement on the jurisdiction of the court in relation to amnesty. The United Nations argued that the Lomé Agreement should not be relied upon as it lacked legitimacy under international law (38). However, the statute of the Special Court distinguished between international crimes and crimes under domestic law. It stipulated that amnesty granted to any person subject to the jurisdiction of the Special Court regarding crimes considered international in nature, as referred to in Articles 2 to 4 of this statute, would not preclude their prosecution(39). Crimes under Sierra Leonean domestic law, as outlined in Article 5 of the same statute, were excluded from this provision.

However, this narrow interpretation of the Lomé Agreement by the Special Court, which confined the application of amnesty to crimes under domestic law only, faced strong criticism from the defense teams of some of the accused individuals before the SCSL. They argued that the Sierra Leonean government had violated its contractual obligations, particularly Article (11) of the Lomé Agreement, which stipulated the granting of amnesty. They contended that this agreement preceded the one with the United Nations, and therefore, the court lacked jurisdiction concerning crimes committed by members of the Revolutionary United Front or other parties to the conflict before July 1999. Nevertheless, the Appeals Chamber of the Special Court, through its decision issued on March 13, 2004, rejected these challenges for lack of foundation. It considered that the Lomé Agreement was not an international treaty, and although it bound the Sierra Leonean government, it did not prevent the prosecution of individuals for crimes considered international as defined in Articles (2) to (4) of the Special Court's statute(40).

In addition to the above, the SCSL encountered another obstacle that hindered its effectiveness. This related to the parallel work of the Truth and Reconciliation Commission, established by the Sierra Leonean Parliament on February 10, 2000, in accordance with Article (25) of the Lomé Peace Agreement between the Sierra Leonean government and the Revolutionary United Front. This commission operated concurrently with the mandate of the Special Court, leading to a dispersion of efforts and a blurring of boundaries between political and judicial considerations in resolving the Sierra Leonean conflict. The goal of establishing the Truth and Reconciliation Commission was to achieve an extralegal settlement by utilizing amnesty and forgiveness for perpetrators in exchange for their participation in restoring the human dignity of victims and promoting national reconciliation. This approach was fundamentally at odds with the Special Court's mandate, especially concerning amnesty, as the court excluded amnesty, particularly for international crimes. Therefore, the objectives of the two institutions could not be reconciled due to their differing mandates(41).

2 - Judicial Immunity for Heads of State and Senior Leaders

International criminal courts, whether temporary or permanent, were specifically established to end the impunity of heads of state and senior military leaders for the heinous international crimes they commit. Therefore, their foundational documents expressly state that official capacity and associated immunities cannot be invoked as a justification for exemption from criminal responsibility or for the reduction of punishment, including Article (27) of the International Criminal Court's statute.

Despite the firmly established principle of not relying on official capacity as a barrier to accountability before the aforementioned international criminal tribunals, its application by the SCSL sparked numerous debates and encountered several difficulties. This issue came to the forefront when the court indicted former Liberian President Charles Taylor, raising questions about whether it should be considered an international criminal judicial body and, consequently, whether it could apply international law in this context. Taylor's defense argued that his indictment by the Special Court was illegal because the court was a national institution rather than an international one. They contended that Taylor still enjoyed immunity under international law due to his status as the sitting President of Liberia .However, the Appeals Chamber of the Special Court rejected this argument and declared that the Special Court for Sierra Leone was, in fact, an international court established based on the rules of international law(42).

On the other hand, some international organizations called on the state of Ghana to execute the international arrest warrant issued against the Liberian President who was present on its territory and surrender him to the Special Court or directly prosecute him before its own courts. They relied on two considerations for this request. The first is that Ghana is one of the states that ratified the Rome Statute, which, in Article (27), stipulates that official capacity shall not exempt a person from criminal responsibility, even if they are a head of state. The second consideration is related to Ghana's obligation to cooperate with the Special Court, as outlined in Article (86) of the Rome Statute(43).

However, it is essential to clarify that these arguments did not amount to legal obligations. This is because the Statute of SCSL did not include provisions obligating non-cooperating states. Nevertheless, Ghana's accession to the Rome Statute created a moral commitment to respect the fundamental principles of transitional justice and the systems of international courts that draw inspiration from the Rome Statute.

In conclusion, the Appeals Chamber of SCSL affirmed the international character of this tribunal. It clarified that the court did not derive its jurisdiction solely from its internal agreements but also from the decision of the United Nations Security Council, issued under Chapter VII of the UN Charter. Furthermore, it emphasized the UN's contribution to the establishment of the Special Court for Sierra Leone, which made it an international criminal tribunal. Consequently, Charles Taylor, the former President of Liberia, was indeed prosecuted by the Special Court for Sierra Leone on these grounds(44).

B) International Difficulties:

In addition to amnesty measures, national reconciliation, and judicial immunities for heads of state and senior leaders as domestic obstacles, there are international difficulties faced by mixed criminal courts. These international difficulties can be categorized into two main aspects: inadequate international cooperation in terms of funding (firstly) and a lack of cooperation in terms of judicial assistance (secondly).

1 - Inadequate International Cooperation in Funding

Although the financial aspect is one of the most critical factors for the success of judicial institutions, as it ensures their authority and independence (45), hybrid criminal courts have suffered significantly from a lack of resources due to inadequate international cooperation in funding. This can be attributed to their funding model, which relies on voluntary donations from states and the United Nations system. This is in contrast to ICC, which has a mandatory and permanent funding system primarily based on contributions from its member states and funds provided by the United Nations for cases referred by the UN Security Council(46).

Most hybrid criminal courts have faced financial resource shortages, regardless of their funding models. For instance, the SPSC in East Timor, established under a UN Security Council Chapter VII resolution, were directly funded from the regular budget of the United Nations Mission in East Timor, without a dedicated budget(47). However, this funding model did not achieve the desired results and was insufficient.

Criticism of this funding approach was raised by the Expert Committee in its 2005 report on the trials in East Timor. The report highlighted resource shortages and the inadequacy of funding for the Serious Crimes Unit and the Special Panels for Serious Crimes. During the period from 2003 to 2005, the allocated funds for the work of these units did not exceed $14.5 million, equivalent to approximately 5% of the total estimated budget for the United Nations Mission in East Timor. This amount was meager compared to the funds allocated to other hybrid criminal courts worldwide or the International Criminal Courts for the former Yugoslavia and Rwanda, which amounted to approximately $82 million for a two-year period(48). This financial shortfall had a detrimental impact on the functioning of these units.

Similarly, the situation applies to the ECCC, which relied on a mixed funding approach based on voluntary donations from donor countries and the government of Cambodia. However, due to the insufficiency of funds, they faced difficulties in financing their operations. This prompted the United Nations Secretary-General on May 25, 2010, to appeal to donor countries urgently. He stated that there was an estimated financial shortfall of $21 million for the year 2010, with $14.6 million being the expenses of the United Nations and $6.5 million being the expenses of the Cambodian government. He emphasized that without these donations, the Extraordinary Chambers would not be able to continue their work(49).

The STL adopted a similar funding approach as the ECCC. The Lebanese government bore 49% of the Court's expenses, while the remaining expenses were covered by contributions from United Nations member states. In cases where these contributions were insufficient for the Court's

operations, the Secretary-General, along with the Security Council, would explore alternative means of financing the Court[50] . This funding method was heavily criticized for being highly unfavorable, as it did not ensure the Court's independence. Instead, it exposed the Court to the financial support's requirements, negatively affecting the trial program's speed and efficiency[51].

Regarding the SCSL, it initially relied entirely on a non-binding method of voluntary contributions from the international community. This led to a severe financial crisis due to insufficient donations during its third year of operation. In response, the UN Secretary-General urgently requested the adoption of a contributions-based approach while maintaining the Special Court's independence. As a result, the General Assembly allocated $16.7 million as a grant to enable the Special Court to complete its mandate by December 31, 2007[52].

2 - The weakness of international cooperation within the framework of judicial assistance.

International judicial assistance refers to any judicial procedure carried out by one state to facilitate the trial process in another state concerning a crime falling under the jurisdiction of the latter[53]. Therefore, international criminal courts require cooperation from states, especially concerning matters such as the arrest and surrender of accused individuals and the collection of evidence for investigations and trials. As a result, the foundational statutes of both temporary and permanent international criminal courts have established binding rules for states to cooperate during investigations and prosecutions. These rules are based on the understanding that these courts are either established by the Security Council under Chapter VII of the UN Charter or by a collective international treaty.

However, for some of these hybrid criminal courts, established under bilateral international agreements, the absence of binding treaty provisions requiring non-party states to provide assistance, coupled with the lack of effective support from the Security Council, resulted in limited and conditional cooperation. This cooperation remained subject to the goodwill and intentions of non-party states, or required the conclusion of specific agreements to regulate the needed assistance. This issue significantly affected the effectiveness of hybrid criminal courts.

In the case of SCSL, although its rules of evidence and procedures granted the Court the authority to request assistance from states through the conclusion of international agreements or other appropriate means, it faced challenges in obtaining international cooperation. Ghana, for instance, refused to execute arrest warrants, and Nigeria granted asylum to Charles Taylor. Despite the Court's request to the United Nations for the invocation of Chapter VII to make its decisions mandatory, Security Council Resolution 1610 of June 30, 2005, did not directly oblige Nigeria to cooperate with the Special Court, instead urging all states to cooperate fully with it[54].

The ECCC also encountered difficulties in receiving cooperation and assistance from states. Although its internal regulations allowed for the possibility of making requests to non-party states for cooperation through the conclusion of international agreements or other appropriate means, the Chambers struggled with limited international cooperation. The internal regulations also provided for recourse to the United Nations Secretary-General or the Royal Government of Cambodia for assistance in cases where cooperation from relevant states was not forthcoming, without explicitly mentioning the option of resorting to the Security Council[55].

The problem of limited international cooperation extended not only to mixed criminal courts established under bilateral agreements but also to those created with international assistance, such as the SPSC in East Timor. These units faced difficulties in securing cooperation from the Indonesian government, despite an agreement between Indonesia and the United Nations Transitional Administration in East Timor regarding mutual legal assistance in the investigative phase. These difficulties encompassed the execution of arrest warrants, search and seizure operations, as well as facilitating the transfer of individuals. This situation was noted in the report of the Independent Expert Group, which reviewed the trial of serious violations of human rights committed in East Timor in 1999, and submitted its report to the Secretary-General of the United Nations in 2005[56].

Conclusion:

Hybrid criminal courts reflect a stage in the development of international criminal courts, known as the third generation of international criminal courts. The international community, through the United Nations, resorted to them to prosecute the most serious international crimes in some countries that have witnessed armed conflicts and disputes. At the end of this research paper, we present the most important results and recommendations as follows:

1 – Results

- Hybrid criminal courts are not an alternative to the permanent international criminal justice system represented by the ICC but complement it, working alongside it to establish international criminal courts and reduce opportunities for impunity, particularly in cases where the ICC does not have jurisdiction.
- The objective behind the establishment of hybrid criminal courts, in addition to overcoming the limitations present in the basic framework of ICC is to bring justice closer to victims and witnesses, facilitate access to criminal evidence, and, more importantly, to enhance or rebuild national justice systems in countries that have experienced armed conflicts and whose own systems have collapsed or become incapable or unwilling to administer criminal justice.
- The law applied in hybrid criminal courts is not limited to international law but rather combines international and national law, both substantively and procedurally.
- Hybrid criminal courts do not exclusively prosecute the four most serious international crimes but have subject-matter jurisdiction that blends national and international crimes. Their material scope includes serious violations of the 1949 Geneva Conventions and their 1977 Additional Protocols, as well as violations of the common Article (3) of the Geneva Conventions, violations of the laws and customs of war applicable in non-international armed conflicts.
- The personal jurisdiction of some mixed criminal courts has expanded to include two categories of offenders, which had not been previously within the jurisdiction of any of the international criminal courts, whether temporary or permanent: peacekeepers and related personnel when their home states are unwilling or unable to prosecute them, and children between 15 and 18 years old when they commit crimes falling within the jurisdiction of the court. These children must be treated in a manner that considers their age, and efforts should be made to rehabilitate and reintegrate them into society.
- The principle of non-retroactivity in ordinary criminal justice appears to pose a barrier to transitional justice systems, which are specifically designed to prosecute crimes committed before or during their establishment, with the aim of restoring the rule of law and stability in societies torn by wars and internal conflicts. Therefore, the basic statutes of hybrid criminal courts have included provisions for the prosecution of crimes committed prior to their establishment.
- The specificity of post-conflict societies required that when there is concurrent jurisdiction between hybrid criminal courts and national courts, the former should take priority. This is in contrast to the relationship between the ICC and national courts, where priority is given to the latter.
- The success of hybrid criminal courts in reducing impunity for serious crimes has been relative and varied from one court to another. Obstacles encountered included amnesty measures, national reconciliation efforts, and immunity granted to heads of state and senior leaders, as well as weak international cooperation, especially regarding funding and judicial assistance.
- It is expected that hybrid criminal courts will become the more prevalent model in the coming years because they reflect the fusion of national and international wills to achieve international criminal justice according to international standards. Simultaneously, they undermine the authority of the UN Security Council to impose justice decisions through political resolutions under Chapter VII of the UN Charter.

2 - Recommendations

- Restrict the use of hybrid criminal courts to situations of armed conflict where serious crimes are committed, which cannot be effectively addressed through amnesty measures or national reconciliation efforts.

- Priority should be given to judges from neighboring countries when appointing international judges to hybrid criminal tribunals, provided that those countries are not involved in the conflict. This achieves linguistic proximity between the court's judges and ensures that they belong to the same legal traditions, which enhances the court's social legitimacy.
- Ensure that the basic statutes of future hybrid criminal courts include more effective provisions regarding international cooperation.
- Involve regional organizations in the establishment of hybrid criminal courts, as they are closer to and better understand the backgrounds of internal armed conflicts, thus increasing the trust of neighboring states in these courts.

Citations:

(1) Triki Sharifa, Hybrid International Criminal Courts, Master's Thesis in Law, Faculty of Law, University of Algeria Ben Yousef Ben Khedda, 2009/2010, p. 23.
(2) Refer to the document number S/2004/616 dated 23/08/2004, containing the annual report of the Secretary-General to the Security Council titled "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies," p. 15.
(3) Khaled Akab Hassoun, Internationalized Criminal Courts within the Scope of International Law, Tikrit University Journal of Law and Political Sciences, College of Law, Tikrit University, Iraq, Volume 03, Year 03, Issue 11, pp. 37, 38.
(4) Refer to: Document Number: S/2004/616, previous reference, p. 19.
(5) The same reference, pp. 09, 16 .
(6) Refer to Document No: HR/PUB/08/2, issued by the Office of the United Nations High Commissioner for Human Rights, titled " Rule-Of-Law tools for post-conflict states - Maximizing the Legacy of Hybrid Courts," United Nations, New York and Geneva, 2008, p. 4.
(7) The same reference, the same page.
(8) Djamel Abdel Nasser Manae, the role of the Security Council in protecting human rights as an aspect of maintaining international peace and security, available at: http://legalarabforum.com/ar/node/%20227. Quoted from the work of Omar Mokrani and Houda Lousif, Internationalized Criminal Courts as Mechanisms for Punishing International Crimes: Sierra Leone and Cambodia as Models," Master's Thesis in International Law and International Relations, Faculty of Law and Political Science, University of Djijel, Algeria, 2015/2016, p. 13.
(9) Refer to Document No. HR/PUB/08/2, previous reference, p. 04 .
(10) Atik Ali, Ben bouabdalla Mounia, Boundaries of cooperation between the International Criminal Court and Hybrid criminal courts, Journal of law and humanities Sciences, University of Djelfa, Algeria, Volume 15, Issue 03, October 2022, p. 33.
(11) Eileen Skinnider, Experriences And Lessons From "Hybrid" Tribunals: SIERRA LEONE, EAST TIMOR And CAMBODIA, A paper prepared for the Symposium on the International Criminal Court, February 3 – 4, 2007; Beijing, China, p. 18
(12) Refer to: Article (05) of the Rome Statute of the International Criminal Court, which was signed at the Rome Diplomatic Conference on July 17, 1998, and entered into force on July 1, 2002.
(13) Amer Abdel Fattah Al-Djoumard, Abdallah Ali Abou, International Criminal Courts, Rafidain Journal of Law, College of Law, University of Mosul, Iraq, Volume 08, Year 11, Issue 29, 2006, pp. 206-207.
(14) Khaled Akab Hassoun, previous reference, p. 50.
(15) Amer Abdel Fattah Al-Djoumard, Abdullah Ali Abou, previous reference, p. 207 .
(16) Refer to: Articles (01),(02),(03), and (04) of the Statute of the Special Court for Sierra Leone. Document Number: S/2002/246, dated: 08/03/2002, issued by the Security Council, containing the Statute of the Special Court for Sierra Leone, p.p 27-29.
(17) Refer to: Article (05) of the Statute of the Special Court for Sierra Leone, pervious reference, p. 29.
(18) Khaled Akab Hassoun, previous reference, p. 42.

(19) Amer Abdel Fattah Al-Djoumard, Abdullah Ali Abou, previous reference, p.p 200 ,201.
(20) Refer to: Articles (25), (26), and (27) of the Rome Statute of the International Criminal Court .
(21) Refer to: Articles (01), (02), (03), and (04) of the Basic Statute of the Special Court for Sierra Leone, previous reference, p. 27.
(22) Refer to: Article 07(1) of the Statute of the Special Court for Sierra Leone, previous reference, pp. 30, 31.
(23) Safouan Maksoud Khalil, Criminal Justice in Cambodia and Delayed Transition, Bahrain Law Journal, University of Bahrain, Volume 10, Issue 01, June 2013, p. 157.
(24) Ali Youcef Al-Shoukri, International Criminal Justice in a Changing World, 2nd ed., Dar Al-Thaqafah for Publishing and Distribution, Amman, Jordan, 2011, p. 190.
(25) Amer Abdel Fattah Al-Djoumard, Abdullah Ali Abou, previous reference, p.184.
(26) Khaled Akab Hassoun, previous reference, p. 51.
(27) Refer to: Document No: S/2000/915, dated: 04/10/2000, issued by the Security Council, Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, paragraphs 25, 26, and 27, pp. 07, 08.
(28) Triki Sharifa, previous reference, p. 104.
(29) The same reference, the same page.
(30) Refer to: Articles (17/1) and (20/3) of the Statute of the International Criminal Court, previous reference.
(31) Refer to: Article (01/4) of Regulatory Decree No. 2000/15, dated: 06/06/2000. Referenced in footnote No. 03 in: Wafa Dridi, The Role of International Criminal Justice in Implementing the Rules of International Humanitarian Law, Ph.D. Dissertation in Law, Faculty of Law and Political Science, University of Batna, Algeria, 2015/2016, p. 163.
(32) Refer to: Article 08 of the Statute of the Special Court for Sierra Leone, previous reference, p. 31.
(33) Refer to: Article 04 of Document No: 2007 S/RES/1757, dated: 30/05/2007, issued by the Security Council, containing the Statute of the Special Tribunal for Lebanon, p. 16.
(34) Wafa Dridi, previous reference, p. 121.
(35) Triki Sharifa, previous reference, p. 210.
(36) The same reference, the same page.
(37) Walhi Al-Moukhtar, The Experience of International Criminal Courts between the Requirements of National Justice and International Criminal Justice, Journal of Humanities, University of Constantine1, Algeria, Volume 32, Issue 04, December 2021, pp. 523.
(38) Triki Sharifa, previous reference, p. 211 .
(39) Refer to: Article (10) of the Statute of the Special Court for Sierra Leone, previous reference, p. 32.
(40) Walhi Al-Moukhtar, The Experience of International Criminal Courts between the Requirements of National Justice and International Criminal Justice, previous reference, p. 522.
(41) Ahmed Mabkhouta, Sayed Ali Sharmat, "International Criminal Courts as Mechanisms for Resolving Non-International Armed Conflicts - Sierra Leone as a Model," Comparative Legal Studies Journal, Hassiba Ben Bouali University, Chlef, Algeria, Volume 06, Issue 02, December 2020, p. 1679.
(42) Triki Sharifa, previous reference, p.p 217, 218 .
(43) Walhi Al-Moukhtar, The Experience of International Criminal Courts between the Requirements of National Justice and International Criminal Justice, previous reference, p. 523.
(44) Triki Sharifa, previous reference, p.p 217, 218.
(45) Ahmed Mabkhouta, Sayed Ali Sharmata, previous reference, p.1678.
(46) Refer to: Article (15/A,b) of the Rome Statute of the International Criminal Court, previous reference.
(47) Triki Sharifa, previous reference, p. 207.

(48) Report To The Secretary-General Of The Commission Of Experts To Review The Prosecution Of Serious Violations Of Human Rights In Timor Leste "Then East Timor" In 1999, 26 May 2005, Annexe II, Paragraph 93-104, p 28-30.
(49) Triki Sharifa, previous reference, p. 204.
(50) Refer to: Article (05/1,2) of the Annex I to Security Council Resolution No. 1757, dated 30/05/2007, Document No. S/RES/1757, p. 07.
(51) Hatati Mohammed, "The Special Court for Lebanon in Light of International Criminal Law," Doctoral Thesis in International Law and International Relations, Faculty of Law, University of Algiers 1, Algeria, 2019/2020, p. 343.
(52) Walhi Al-Moukhtar, The Experience of International Criminal Courts between the Requirements of National Justice and International Criminal Justice, previous reference, p. 522.
(53) Salem Mohammed Souleiman Al-Oujli, "Decisions of International Criminal Responsibility in Substantive Legislation," Doctoral Dissertation in Law, Faculty of Law, Ain Shams University, Egypt, 1997, p. 425.
(54) Walhi Al-Moukhtar, The Experience of International Criminal Courts between the Requirements of National Justice and International Criminal Justice, " Doctoral Thesis in Public Law, Faculty of Law, University of Algiers 1, 2015/2016, p. 239.
(55) Triki Sharifa, previous reference, p. 231.
(56) Walhi Al-Moukhtar, "International Criminal Justice and Serious Violations of International Humanitarian Law", previous reference, p. 241.

1- Bibliography:

A- Books:

- Ali Youcef Al-Shoukri, International Criminal Justice in a Changing World, 2nd ed., Dar Al-Thaqafah for Publishing and Distribution, Jordan, 2011.

B – Theses:

- Triki Cherifa, Hybrid International Criminal Courts, Master's Thesis in Law, Faculty of Law, University of Algeria Ben Yousef Ben Khedda, 2009/2010.
- Omar Mokrani and Houda Lousif, Internationalized Criminal Courts as Mechanisms for Punishing International Crimes: Sierra Leone and Cambodia as Models," Master's Thesis in International Law and International Relations, Faculty of Law and Political Science, University of Djijel, 2015/2016.
- Wafa Dridi, The Role of International Criminal Justice in Implementing the Rules of International Humanitarian Law, Ph.D. Dissertation in Law, Faculty of Law and Political Science, University of Batna, 2015/2016.
- Hatati Mohammed, "The Special Court for Lebanon in Light of International Criminal Law," Doctoral Thesis in International Law and International Relations, Faculty of Law, University of Algiers 1, Algeria, 2019/2020.
- Salem Mohammed Souleiman Al-Oujli, "Decisions of International Criminal Responsibility in Substantive Legislation," Doctoral Dissertation in Law, Faculty of Law, Ain Shams University, Egypt, 1997.
- Walhi Al-Moukhtar, The Experience of International Criminal Courts between the Requirements of National Justice and International Criminal Justice, " Doctoral Thesis in Public Law, Faculty of Law, University of Algiers 1, 2015/2016.

C - Newspaper articles:

- Khaled Akab Hassoun, Internationalized Criminal Courts within the Scope of International Law, Tikrit University Journal of Law and Political Sciences, Iraq, Volume 03, Issue 11, Year 03.
- Amer Abdel Fattah Al-Djoumard, Abdallah Ali Abou, International Criminal Courts, Rafidain Journal of Law, Iraq, Volume 08, Issue 29, Year 11, 2006.
- Safouan Maksoud Khalil, Criminal Justice in Cambodia and Delayed Transition, Journal of Law, Bahrain, Volume 10, Issue 01, June 2013.

- Walhi Al-Moukhtar, The Experience of International Criminal Courts between the Requirements of National Justice and International Criminal Justice, Journal of Humanities, Algeria, Volume 32, Issue 04, December 2021.
- Ahmed Mabkhouta, Sayed Ali Sharmat, International Criminal Courts as Mechanism for Resolving Non-International Armed Conflicts - Sierra Leone as a Model, Comparative Legal Studies Journal, Hassiba Ben Bouali University, Chlef, Algeria, Volume 06, Issue 02, December 2020.
- Atik Ali, Ben bouabdalla Mounia, Boundaries of cooperation between the International Criminal Court and Hybrid criminal courts, Journal of law and humanities Sciences, Djelfa University, Algeria.
- Eileen Skinnider, Experriences And Lessons From "Hybrid" Tribunals: SIERRA LEONE, EAST TIMOR And CAMBODIA, A paper prepared for the Symposium on the International Criminal Court, February 3 – 4, 2007; Beijing, China.

D - International Doucuments:

- Document No: S/2004/616 dated 23/08/2004, containing the annual report of the Secretary-General to the Security Council titled "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies".
- Document No: HR/PUB/08/2, issued by the Office of the United Nations High Commissioner for Human Rights, titled "Rule-Of-Law tools for post-conflict states - Maximizing the Legacy of Hybrid Courts", United Nations, New York and Geneva, 2008.
- Rome Statute of the International Criminal Court, which was signed at the Rome Diplomatic Conference on July 17, 1998, and entered into force on July 1, 2002.
- Statute of the Special Court for Sierra Leone. Document Number: S/2002/246, dated: 08/03/2002, issued by the Security Council, containing the Statute of the Special Court for Sierra Leone.
- Document No: S/2000/915, dated: 04/10/2000, issued by the Security Council, Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone.
- Regulatory Regulation No. 2000/15, dated: 06/06/2000.
- Document No: 2007 S/RES/1757, dated: 30/05/2007, issued by the Security Council, containing the Statute of the Special Tribunal for Lebanon.
- Report To The Secretary-General Of The Commission Of Experts To Review The Prosecution Of Serious Violations Of Human Rights In Timor Leste "Then East Timor" In 1999, 26 May 2005.
- Security Council Resolution No. 1757, dated 30/05/2007, Document No. S/RES/1757.