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STRONG REASONS FOR AN INTERNATIONAL TRIBUNAL FOR THE INTERNET

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STRONG REASONS FOR AN INTERNATIONAL TRIBUNAL FOR THE INTERNET

The world has witnessed a significant increase in activities of the Internet. This unbridled trend has resulted in the emergence of a number and increasing complexity of private and public disputes, both at the domestic level, and the international dimension.

However, the transnational aspects of the Internet and Electronic Commerce also present international challenges, requiring new forms of global governance to deal with these global issues.

The global nature of the Internet and its global reach, provided by a worldwide architecture, presents a series of jurisdictional complexities to any country wishing to exercise its sovereign power ordinarily. Still, this new system has transformed our lives and our society in shaping judicial aspirations.

This working paper has as its principal objective show the proposal to establish an International Tribunal (Court) for International Law on the Internet¹.

For this, the work is divided into two parts. In Part One, raises some of the reasons and innovative aspects introduced by the Internet and the consequent challenges in law enforcement.

More directly in Part Two, introduces an overview on the proposal of an International Tribunal for the Internet, to be established due to the challenges that national jurisdictions are facing to enforce its judicial decisions.

STRONG REASONS TO IMPLEMENT AN INTERNATIONAL TRIBUNAL FOR THE INTERNET

Initially, in a diverse set of legal systems, from the United States of America to the United Kingdom, from India to China, from Norway to France, from Greece to Israel, from Denmark to Brazil, from Portugal to Germany, the problems arising from new technologies, especially those promoted by the

¹ This working paper is based on our PHD Thesis defended at Coimbra University in 2012 (Portugal, European Union), and It was published first on Cyberlaw Review. See FREIRE E ALMEIDA, Daniel. *An International Tribunal for the Internet*. São Paulo: Almedina, 2016, available at: <http://www.barnesandnoble.com/w/an-international-tribunal-for-the-internet-daniel-freire-e-almeida/1123118107?ean=9788584930142> or http://www.almedina.com.br/catalog/advanced_search_result.php?keywords=Daniel+Freire&x=14&y=3 . See Cyberlaw Review available at: http://www.cijic.org/wp-content/uploads/2016/06/Cyberlaw-by-CIJIC_vf.pdf

different uses of the Internet are seen increasingly as a challenge, complementary and innovative, to traditional national legal systems.

On the same line, users of these new computer systems, leveraged by the Internet, have already required a new type of behavior in the provision of legal services.

Within this new context of digital relationships, and in addition, countries around the world seek closer ties with its citizens, to improve their communication systems and services offerings, as well as trying to follow the changes in society, increasingly digitized ².

² Vide BOEHME-NEßLER, Volker. *CyberLaw. Lehrbuch zum Internet-recht*. München: Verlag C.H. Beck, 2001, p. 333 et seq. In fact, governments around the world are increasingly looking to strengthening their communication links and provision of services to citizens, such as: In Germany - <http://www.deutschland.de> ; in Italy- <http://www.italia.gov.it> ; in the United Kingdom- <http://www.direct.gov.uk> , Cfr. HOUSE OF COMMONS COMMITTEE OF PUBLIC ACCOUNTS. *Government on the Internet: Progress in delivering information and services online*. London: The Stationery Office Limited, Sixteenth Report of Session 2007–08, 2008, p. 01/33. Vide DUTTON, Willian, HELSPER, Ellen, GERBER, Monica. *The Internet in Britain 2009*. Oxford: Oxford Internet Institute, 2009, p. 01/72. Vide, also, NORTON, Pedram. *Directgov: The Right Direction for E-government or a Missed Opportunity?* Journal of Information, Law & Technology, 2008, p. 01/16, Vide GREAT BRITAIN. *Government on the internet: progress in delivering information and services online*. London: The Stationery Office, 2007, See OXFORD INTERNET INSTITUTE at: <http://www.oii.ox.ac.uk/> ; in the United States- <http://www.firstgov.gov> ; in France- <http://www.service-public.fr> ; Austria- <http://www.help.gv.at> ; Spain- <http://www.administracion.es/> ; Brazil- <http://www.brasil.gov.br> ; Portugal- <http://www.portaldocidadao.pt/PORTAL/pt> ; about Greece Vide IGLEZAKIS, Ioannis. *The development of E-Governance and the issue of digital inclusion in Greece with particular regard to the constitutional right of e-participation*. Journal of Information, Law & Technology, 2008, p. 02/24. For an international overview, Vide GRIFFIN, David, TREVORROW, Philippa, HALPIN, Edward. *Developments in e-government: a critical analysis*. Washington, DC: IOS Press, 2007, Vide PAVLICHEV, Alexei, GARSON, David. *Digital government: principles and best practices*. Hershey: Idea Group Publishing, 2004, Vide REMØE, Svend, ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT. *Governance of Innovation Systems*. Paris: OECD, 2005. Vide ORGANISATION FOR ECONOMIC

In fact, as well, there are disputes arising from new activities on the Internet, which due to the arguments of speed, immediacy, **internationality**, and lodging in the information abroad, among others, cannot wait for the slow and traditional resolution of their disputes, through the national courts³.

Indeed, the Internet has created a "tangled web" of legal and scientific complexity that has exceeded the capacity of judicial systems to manage these cases only with traditional and national solutions.

We conclude that to the extent that the new media advance, it seems clear that the current structures and supervision models are not properly prepared to face a world where challenges transcend national boundaries, and in such a constant and numerous way.

In fact, many of the processes that affect individuals, countries and businesses in the Internet world are beyond the jurisdictions of national Judicial Power exercise mechanisms.

COOPERATION AND DEVELOPMENT. *Resolving E-commerce Disputes Online: Asking the Right Questions about ADR*. Paris: OECD publishing, nº 63, 2002, p. 01/07. Vide ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT. *Shaping Policies for the Future of the Internet Economy*. Paris: OECD publishing, nº 148, 2008, p. 09 et seq.

³ In this regard, in substance, of deserved prominence is the opinion of WALD (2001), *in verbis*: "Now, we continue to live with legal techniques of the past, without noticing that often become obsolete and that the new economic and technological context must match a new Law, which is not a strait-jacket to prevent the development, but rather, a catalyst for new social aspirations." Vide CALLIESS, Graf-Peter. *Online Dispute Resolution: Consumer Redress in a Global Market Place*. German Law Journal, Volume 07, nº 08, 2006, p. 659. Vide HÖRNLE, Julia. *Cross-border Internet Dispute Resolution*. Cambridge: Cambridge University Press, 2009, p. 26 et seq. Vide POLANSKI, Paul Przemyslaw. *The Internationalization of Internet Law*. In: KLABBERS, Jan, SELLERS, Mortimer. *The Internationalization of Law and Legal Education*. Helsinki & Baltimore: Springer, IUS GENTIUM COMPARATIVE PERSPECTIVES ON LAW AND JUSTICE, 2008, p. 191/210; Cfr. WALD, Arnaldo. *Prefácio*. In: CHALHUB, Melhim Namem. *Trust*. Rio de Janeiro: Renovar, 2001, Preface.

We can find several cases around the world showing the global context of the Internet challenging the national context of the courts or tribunals, like Uber's cases, EU-USA data transfer, Google, Facebook, WhatsApp, Apple, Twitter, Microsoft, Alibaba, Netflix, Amazon, cases of Cyber espionage of China, the United States of America, Brazil, European Union, Russia, WikiLeaks, Snowden, among many others..⁴

Also explicitly is the importance that even Judicial Powers being aware of the practical limits of execution of judgments or subjecting decisions against people abroad (that is, to exercise its jurisdiction), they are reluctant to openly admit the limits of their power over the Internet.

However, the reality prevails and many Internet judgments of the Internet remain unforced.

In other words, there is nothing more international than the Internet, and the national States, originally territorial, are being challenged in the exercise of their sovereign power in this virtual space.

In this context, the needs grow to require new forms of global governance to deal with these global issues. Also, with the increase of Internet

⁴ A complete list of cases, with details, can to be found in our PHD Thesis defended at Coimbra University in 2012 (Portugal, European Union). See FREIRE E ALMEIDA, Daniel. *An International Tribunal for the Internet*. São Paulo: Almedina, 2016, available at: <http://www.barnesandnoble.com/w/an-international-tribunal-for-the-internet-daniel-freire-e-almeida/1123118107?ean=9788584930142> or http://www.almedina.com.br/catalog/advanced_search_result.php?keywords=Daniel+Freire&x=14&y=3 .

users, and to the extent that international problems brought to light also grow, the answers should also be international.

In this course, it's important to emphasize that the traditional Law faces growing challenges. Beginning with the clear internationality of the Internet. In the same line of reasoning, there is no physical barriers to online mobility, and the forms of control, therefore, have not been prepared in order to focus on the new virtual activities. In fact, one of the challenges faced by the judge is to achieve effectively the subordination of a certain foreign defendant in a lawsuit initiated in his country, like we observed by the recent case of WhatsApp in Brazil⁵.

On the other hand, we find that in some cases the applicants did not even have access to a meritorious decision, by the simple fact that the Tribunals deviated from the jurisdiction. Equally, we can admit that to the extent that more people are subject to different spatial domains, it leads to a conflict or sometimes convenience between the sovereign powers.

Still, we look into as to what legislation could subject the behavior of a citizen or company linked to multiple sovereignties, in time of any trial. In addition, the situations caused by the Internet and the solutions offered by the Treaties and Regulations were not prepared taking into consideration this new context.

⁵ See REUTERS, "Brazil judge orders WhatsApp blocked, affecting 100 million users". Available at <http://www.reuters.com/article/us-facebook-brazil-whatsapp-idUSKCN0XT1KB>, 05.03.2016.

Moreover, fundamentally, we must emphasize that the freedom that both attracts people to the Internet at the same time, and paradoxically, to be properly maintained need some sort of order, either by new regulatory means, whether by new judicial means.

The new spaces created by the Internet, or cyberspace, have increased this debate considerably⁶.

In this sense, we consider the need for a new plan, due to the current lack of ability to respond to all electronic issues facing forward to the national Judicial Powers⁷.

For all titles, it arises therefore the need for a new paradigm⁸. Everything therefore in the direction of an international judicialization, more efficient and suitable for the world of the Internet:

AN INTERNATIONAL TRIBUNAL FOR THE INTERNET⁹.

⁶ Also, we realized that international cooperation mechanisms such as letters rogatory, *in exemplis*, are too slow for the days of the Internet, and urgently need to be improved if they are to meet the legitimate aspirations of their jurisdictional. *Vide* KLEINWÄCHTER, Wolfgang, DORIA, Avri. *Internet Governance Forum (IGF). The First Two Years*. Paris: UNESCO, 2010, p. 324. *Vide* DIZARD, Wilson. *Digital diplomacy: U.S. foreign policy in the information age*. Washington: Praeger, 2001, p. 99 et seq.

⁷ A complete list of arguments and reasons can to be found in our PHD Thesis defended at Coimbra University in 2012 (Portugal, European Union). See FREIRE E ALMEIDA, Daniel. *An International Tribunal for the Internet*. São Paulo: Almedina, 2016, available at: <http://www.barnesandnoble.com/w/an-international-tribunal-for-the-internet-daniel-freire-e-almeida/1123118107?ean=9788584930142> or http://www.almedina.com.br/catalog/advanced_search_result.php?keywords=Daniel+Freire&x=14&y=3.

⁸ *Cfr.* VON BOGDANDY, Armin, DELLAVALLE, Sergio. *Universalism and Particularism as Paradigms of International Law*. New York: International Law and Justice Working Paper 2008/3, p. 57 et seq. *Cfr.* RABINOVICH-EINY, Orna. *Beyond Efficiency: The Transformation of Courts Through Technology*. UCLA Journal of Law & Technology, Volume 12, nº 01, 2008, p. 03.

Under the new materials that Law, as well as International Law has absorbed, it is highlighted the need of an effective international justice, arising from the supplementary assimilation of issues that were of absolute (*or not*) dominance of the States¹⁰.

In this perspective, CASELLA, ACCIOLY and NASCIMENTO E SILVA (2008), believe that the understanding and the scope of International Law only consolidate to the extent that it has the impossibility awareness and operational inadequacy of national systems to confront current needs¹¹.

The new dimension brought by the Internet, entitled cyberspace, did not ask the consent of the States to constitute a global scale. The International Law, then, if it does not wish to position itself as inefficient or ineffective, must incorporate the real problems, and star in its actions aimed at establishment of justice, also on a global scale¹².

⁹ See our book: FREIRE E ALMEIDA, Daniel. *An International Tribunal for the Internet*. São Paulo: Almedina, 2016, available at: <http://www.barnesandnoble.com/w/an-international-tribunal-for-the-internet-daniel-freire-e-almeida/1123118107?ean=9788584930142> or http://www.almedina.com.br/catalog/advanced_search_result.php?keywords=Daniel+Freire&x=14&y=3.

¹⁰ In general, *Vide* RÖBEN, Volker. *The Enforcement Authority of International Institutions*. In: GOLDMANN, Matthias VON BOGDANDY, Armin, WOLFRUM, Rüdiger, VON BERNSTORFF, Jochen, DANN, Philipp. *The Exercise of Public Authority by International Institutions: Advancing International Institutional Law*. Heidelberg: Springer, 2010, p. 819/840. *Vide* VON BOGDANDY, Armin, DELLAVALLE, Sergio. *Universalism and Particularism as Paradigms of International Law*. New York: International Law and Justice Working Paper 2008/3, p. 57 et seq. *Vide* LEITE DE CAMPOS, Diogo. *Preface*. In: GOMES, Fabio Luiz. *Direito Internacional. Perspectivas Contemporâneas*. São Paulo: Saraiva, 2010, p. 5/8.

¹¹ *Cfr.* CASELLA, Paulo Borba, ACCIOLY, Hildebrando, NASCIMENTO E SILVA, G. E. do. *Manual de Direito Internacional Público*. São Paulo: Saraiva, 2008, p. 99.

¹² *Vide* UERPMANN-WITZACK, Robert. *Internetvölkerrecht*. Archiv des Völkerrechts, Volume 47, Number 3, September 2009, p. 261/283.

In the segment of the Internet, it should be put into perspective its future evolution. In fact, today's importance of International Law is revealed by the many areas that came to absorb, such as the International Economic Law, International Communication Law, International Law of Outer Space, the International Environmental Law, International Human Rights Law, the International Criminal Law and International Sports Law, among others¹³.

In all dimensions to what it was called, International Law sought to give their contribution. Whether on land, at sea, in the air or in space, new international legality thresholds were tacked¹⁴.

¹³ Cfr. MACHADO, Jónatas E. M. *Direito Internacional. Do Paradigma Clássico ao Pós-11 de Setembro*. Coimbra: Coimbra Ed., 2006. p. 96. About the International Economic Law, Vide SALACUSE, Jeswald. *The Emerging Global Regime for Investment*. Harvard International Law Journal, Volume 51, Number 2, Summer 2010, p. 427/473. Vide MELLO, Celso D. de Albuquerque. *Curso de Direito Internacional Público*. Rio de Janeiro: Renovar, 2º Volume, 2004, p. 1683 et seq. Vide ROBERTS, Paul. *Comparative Criminal Justice Goes Global*. Oxford Journal of Legal Studies, Volume 28, Number 02, 2008, p. 369/391. Vide CLAPHAM, Andrew. *The Role of the Individual in International Law*. The European Journal of International Law, Volume 21, Number 01, 2010, p. 25/30. Vide, also, LIMA PINHEIRO, Luís. *Direito Internacional Privado*. Coimbra: Almedina, Volume 1, 2008, and LIMA PINHEIRO, Luís. *O Direito aplicável aos Contratos Celebrados através da Internet*. In: PINHEIRO, Luís de Lima. *Estudos de Direito Internacional Privado*. Coimbra: Almedina, Volume II, 2009.

¹⁴ Regarding the international legal treatment of the various dimensions of the territory in its terrestrial, maritime, aeronautical fields, as well as in the legal treatment of outer space, Vide CASELLA, Paulo Borba. *Direito Internacional dos Espaços*. São Paulo: Atlas, 2009. Vide SIMMA, Bruno. *Universality of International Law from the Perspective of a Practitioner*. The European Journal of International Law, Volume 20, Number 02, 2009, p. 265/297. Vide OWADA, Hisashi. *The Rule of Law in a Globalizing World – An Asian Perspective*. Washington University Global Studies Law Review, Volume 7, Number 02, 2008, p. 193/194. Vide SALACUSE, Jeswald. *The Emerging Global Regime for Investment*. Harvard International Law Journal, Volume 51, Number 2, Summer 2010, p. 427/473. Vide UERPMANN-WITZACK, Robert. *Principles of International Internet Law*. German Law Journal, Volume 11, nº 11, 2010, p. 1245/1263. Vide BÚRCA, Gráinne de. *The European Tribunal of Justice and the International Legal Order After*

But to do so, it cannot and it should not be based on previous paradigms on which were based several theories "inter / nationalist", largely negating the possibility of a, complementary or shared Law, in a Global scale¹⁵.

Many of them supported by facts and acts situated in anterior temporal moment in which there was not even the airplane as a means of international transport, and to increase international relations¹⁶. The importance of such a claim is covered on the premise that international relations have become more commonplace to the extent that new international means of transport emerged, *in casu* the airplane.

But now, transportation is also virtual, digital, instantaneous, and global with the Internet.

Kadi. Harvard International Law Journal, Volume 51, Number 1, Winter 2010, p. 01/49. Vide MACHADO, Jónatas E. M. *Direito Internacional. Do Paradigma Clássico ao Pós-11 de Setembro*. Coimbra: Coimbra Ed., 2006. p. 96/97. Vide FREIRE E ALMEIDA, Daniel. *Bioterrorism Act – A Nova Política Externa dos EUA e a Eleição Presidencial sob a Perspectiva Diplomática do Brasil*. In: SAVINO, Luis María (Org.). *Las Elecciones de los Estados Unidos y El Impacto Global*. Buenos Aires: Fundación Centro de Estudios Americanos, 2004, p. 157/173. Also, see FREIRE E ALMEIDA, Daniel. *The Taxation of Electronic Commerce in the United States of America and in the European Union*. São Paulo: Almedina, 2016.

¹⁵ *Cfr.* In a favorable position to the universalism, VON BOGDANDY, Armin, DELLAVALLE, Sergio. *Universalism and Particularism as Paradigms of International Law*. New York: International Law and Justice Working Paper 2008/3, p. 57 et seq. On the conduct for a Universal International Law, Vide LORCA, Arnulf Becker. *Universal International Law: Nineteenth-Century Histories of Imposition and Appropriation*. Harvard International Law Journal, Volume 51, Number 2, Summer 2010, p. 475/552.

¹⁶ Vide VON BOGDANDY, Armin, DELLAVALLE, Sergio. *Universalism Renewed: Habermas' Theory of International Order in Light of Competing Paradigms*. German Law Journal, Volume 10, nº 01, 2009, p. 05/30.

In other words, the needs, conditions, prospects, and dimensions established are also international, global.

The benefits of global judicialization of international disputes on the Internet, with proper organization, would allow for greater efficiency in the search for justice and legal security. In this sphere, international Law arises with promising fundamental perspective¹⁷.

The Internet constitutes a topic that concerns all peoples, and it is used across the globe, the different computer systems are interconnected, the various languages find their universal terminology¹⁸.

¹⁷ Vide CASSESE, Sabino. *Regulation, Adjudication and Dispute Resolution Beyond the State*. Heidelberg: Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, Fall, 2008, p. 25 et seq. Vide KASTO, Jalil. *New International Order and International Law After the Millennium*. London: International Law Series nº 07, 2002, p. 12 et seq. Vide WESTON, Burns, FALK, Richard, CHARLESWORTH, Hilary, STRAUSS, Andrew. *International Law and World Order*. St. Paul: Thomson/West, 2006. Vide VON BOGDANDY, Armin, DELLAVALLE, Sergio. *Universalism and Particularism as Paradigms of International Law*. New York: International Law and Justice Working Paper 2008/3, p. 57 et seq. Vide SIMMA, Bruno. *Universality of International Law from the Perspective of a Practitioner*. The European Journal of International Law, Volume 20, Number 02, 2009, p. 265/297. Vide OWADA, Hisashi. *The Rule of Law in a Globalizing World – An Asian Perspective*. Washington University Global Studies Law Review, Volume 7, Number 02, 2008, p. 187/205. Vide LORCA, Arnulf Becker. *Universal International Law: Nineteenth-Century Histories of Imposition and Appropriation*. Harvard International Law Journal, Volume 51, Number 2, Summer 2010, p. 475/552. Vide UERPMANN-WITZACK, Robert. *Internetvölkerrecht*. Archiv des Völkerrechts, Volume 47, Number 3, September 2009, p. 261/283.

¹⁸ Vide HUNTINGTON, Samuel P. *The Clash of Civilizations and the Remaking of World Order*. New York: Simon & Schuster, 2003, p. 59/64. Vide CASTELLS, Manuel. *A Era da Informação: Economia, Sociedade e Cultura. (O Poder da Identidade- Volume II)*. Lisboa: Fundação Calouste Gulbenkian, 2003, p. 63. Vide SCHOR, Miguel. *Mapping Comparative Judicial Review*. Washington University Global Studies Law Review, Volume 7, Number 02, 2008, p. 281.

On the other hand, the arguments seeking to overturn the additional possibility of a World Law, Global or a *Universelles Völkerrecht* in no time mention the phenomenon of the Internet.

The paradigms have changed, we need to understand them, formulate new international routes, and address them.

Because of this goal, and in order to resolve the issues raised, we are to propose the unprecedented **International Tribunal for the Internet**, presenting it in its essential aspects¹⁹.

AN OVERVIEW OF AN INTERNATIONAL TRIBUNAL FOR THE INTERNET

Initially, we can state that, purposely, we seek rather take utility of assessing the experiences and best practices implemented previously in international legal areas. On the other hand, it is explicit the importance of the efforts of developing analysis related to Internet governance.

Preliminarily, this initial focus lead us to a coherent integration to the desired starting point the International Tribunal for the Internet.

¹⁹ A complete list of arguments and reasons can to be found in our PHD Thesis defended at Coimbra University in 2012 (Portugal, European Union). See FREIRE E ALMEIDA, Daniel. *An International Tribunal for the Internet*. São Paulo: Almedina, 2016, available at: <http://www.barnesandnoble.com/w/an-international-tribunal-for-the-internet-daniel-freire-e-almeida/1123118107?ean=9788584930142> or http://www.almedina.com.br/catalog/advanced_search_result.php?keywords=Daniel+Freire&x=14&y=3.

In the original point, we dedicate, then, our investigations and reflections concerning the International Legal System to be adopted by the Tribunal, with the outlined solution, with the possible models focused on its Starting Point, as well as the establishment of its headquarters.

In continuation, we cover the national scope of the Tribunal for the Internet, with its main purposes. In this order, and in order to resolve the issues raised, we try to discuss the fundamental concerning admissibility criteria and the stipulations relating to the Applicable Law.

Starting from the essence of the investigated points²⁰, we consider, in this part of our study, the need for a prospective deepening on organizational composition of the Tribunal, with its basic tasks.

In this context, regarding the Rules of Procedure to be implemented as of now, it is focusing on the desire and the need for such a Tribunal to gather assumptions passing through Procedural innovations (*Scanning of Procedural Parts, Celerity of Formalities, online audiences*), Technological Innovations (*appropriate technological means for Law operators to carry out the changes raised*), and Organizational Innovations (*Personal and Functional*). Everything, therefore, to be addressed, along with the Procedural Phases idealized, and aligned with the proposed innovations.

²⁰ See our book: FREIRE E ALMEIDA, Daniel. *An International Tribunal for the Internet*. São Paulo: Almedina, 2016, available at: <http://www.barnesandnoble.com/w/an-international-tribunal-for-the-internet-daniel-freire-e-almeida/1123118107?ean=9788584930142> or http://www.almedina.com.br/catalog/advanced_search_result.php?keywords=Daniel+Freire&x=14&y=3.

By position, it is not intended, here, to define in detail thorough all the ins and outs of a future founder treaty, but the essential aspects involving the issues discussed during this working paper²¹.

It is appropriate to alert at this point that, even if they have different views on the following topics, and of course there will be, the suggestions that follow are the result of further reflection, deep reading (over 2,500 authors), constant monitoring of digital practice, fundamental jurisprudential analysis, search for the best technique available, alignment to the evolutionary future of Digital Society, and above all, a spirit of wellness for global collective (*us*)²².

Changes, obviously, will be the result of suggestions and subsequent negotiations around the most sensitive points to countries, individuals, and participating companies.

²¹ A complete list of arguments, reasons and details can to be found in our PHD Thesis defended at Coimbra University (Portugal, European Union). See FREIRE E ALMEIDA, Daniel. *An International Tribunal for the Internet*. São Paulo: Almedina, 2016, available at: <http://www.barnesandnoble.com/w/an-international-tribunal-for-the-internet-daniel-freire-e-almeida/1123118107?ean=9788584930142> **or** http://www.almedina.com.br/catalog/advanced_search_result.php?keywords=Daniel+Freire&x=14&y=3 .

²² *Vide*, about this perspective, LEITE DE CAMPOS, Diogo. *O Direito em NÓS*. New York: Lawinter Review, Volume I, Issue 1, March 2010, p. 05/30.

It is under this perspective, then, we present our conclusions about the contours of the **International Tribunal for the Internet**, listed below, topically²³.

- First, the Tribunal would possess the specific purpose of judging international disputes relating to the Internet and International Electronic Commerce.
- Accordingly, in becoming an international organization focused on the prosecution of international conflicts of the Internet and Electronic Commerce, possess legal personality of International Law, provided also the international legal capacity necessary for the performance of all its functions, and the full attainment of its objectives.

Two important points result of this condition, namely, the Tribunal could negotiate and conclude treaties, and still would be independent of States, companies and other International Organizations. These points are extremely important in international judicial activity.

- The Tribunal's headquarters will be in location that fulfills the conditions necessary for the implementation of the agency under review, and the Tribunal would own regional headquarters in the territory of any State Party. In these places, besides the exercise of its

²³ This working paper is based on our PHD Thesis defended at Coimbra University (Portugal, European Union). See FREIRE E ALMEIDA, Daniel. *An International Tribunal for the Internet*. São Paulo: Almedina, 2016, available at: <http://www.barnesandnoble.com/w/an-international-tribunal-for-the-internet-daniel-freire-e-almeida/1123118107?ean=9788584930142> or http://www.almedina.com.br/catalog/advanced_search_result.php?keywords=Daniel+Freire&x=14&y=3.

powers and purposes, people and businesses have the opportunity to access the Tribunal.

- The Tribunal should have universal jurisdiction, encompassing natural persons, companies, States and International Organizations, with the key objective to judge international disputes relating to the Internet and Electronic Commerce.
- However, international cases from the Internet and Electronic Commerce would be jurisdiction of the Tribunal, where not properly appreciated, tried or executed previously by national or international courts, in judicial exercise.
- But, if the country, the company or person you want to drive directly an international demand in the International Tribunal for the Internet, this would be possible without the prior need to establish the proceedings in another national authority, judicial or extrajudicial.
- In a complementary purpose, the Tribunal may be called upon to run earlier international decisions that have become difficult to implement by countries with meritorious discussion, with *res judicata*.
- Similarly, cases that require the cooperation of other countries or the Internet companies may be mediated by the Tribunal, by communication, request an investigation and interconnection between the parties involved.
- Finally, in this area, the Tribunal would be able to advise on relevant and international issues involving Internet Law.

- The Member State, or Compliant with the founder Treaty, shall accept the universal jurisdiction of the International Tribunal for the Internet, including its jurisdictional, individuals and companies.
- In cases where the applicant or defendant, company or person, under the jurisdiction of a non-member of the Treaty, the Tribunal shall conduct proceedings for possible acceptance of the country in question, in the specific case, and for all other subsequent cases involving the non-member country.
- Another possibility of cases before the Tribunal admission would be one resulting from the acceptance of forum clause, or international agreement, established in terms of service of the Internet Web sites that sets out the jurisdiction of the International Tribunal for the Internet.
- Likewise, the Tribunal judge demands set forth by international Treaty establishing the Tribunal's jurisdiction by interested countries and international organizations.
- In order to avoid national legal delays, the Tribunal's jurisdiction could be thrown by the person who does not receive appropriate legal treatment of a Member State for a period of twelve (12) months from the filing date of the lawsuit, in case option of the plaintiff by the adjudicative nationally.
- In consequence of the difficulty of national trial in cases of great international repercussion, the Tribunal may exercise jurisdiction.

- However, it must be that the Tribunal only enjoy in investigative or adjudicative headquarters, cases occurring after the entry into force of its founder Treaty.
- But, the issues of judgment of the Tribunal does not decay or prescribe.
- Likewise, there would be no exclusion of jurisdiction in relation to the age of the person concerned or defendant²⁴.
- On the other hand, stands out, that the Tribunal would use as sources from the founder International Treaty of the International Tribunal for the Internet, to the International Treaties related to the Internet, Electronic Commerce and Information Society.
- Also, the Tribunal would use the Law chosen by the parties resulting from the application of an international agreement or terms of service of Web sites on the Internet, consistent with the Treaty of the International Tribunal to the Internet.
- In the same vein, in a subsidiary and complementary way, the Tribunal would resort to international treaties in general, the International Customary Law, Principles of International Law, Principles of the Internet Law, the International Tribunal for the

²⁴ A complete list of arguments, reasons and details can to be found in our PHD Thesis defended at Coimbra University (Portugal, European Union). See FREIRE E ALMEIDA, Daniel. *An International Tribunal for the Internet*. São Paulo: Almedina, 2016, available at: <http://www.barnesandnoble.com/w/an-international-tribunal-for-the-internet-daniel-freire-e-almeida/1123118107?ean=9788584930142> or http://www.almedina.com.br/catalog/advanced_search_result.php?keywords=Daniel+Freire&x=14&y=3.

Internet, and the Doctrine of publicists and International academics of Internet Law, where applicable.

- In the absence or inapplicability of all previous international sources, the domestic law of the jurisdictions involved, related to the Information Society, Internet, and Electronic Commerce, with primacy by the national law of the process of victim in question, and where the legislation is compatible with the purposes of the Treaty of the International Tribunal for the Internet, and the sources of international law.
- For there to be an effective international judicial activity, the Tribunal shall be composed of a General Assembly, by a General Secretariat, by a Chamber of Prosecutors, by International Lawyers, by Diplomats in the service of the Tribunal, and by a Chamber of Judges.

Each of these bodies would be essential for the full implementation of the tasks related to the Tribunal.

- At the General Assembly all States and International Organizations members have right to speak and vote. Moreover, this would be the appropriate forum for bringing, discussion and implementation of treaties defining International Law on the Internet and Electronic Commerce.
- Have the Director General to manage the Registry of the Tribunal, would be the holder of the international relations of the Tribunal and shall establish relations with the countries, International Organizations and companies, as well as enter into treaties on behalf

and in the interest of the Tribunal. In addition, the General Secretariat takes care of the management, permanently, of the entire internal structure of the International Tribunal for the Internet, and the operation, communication and negotiation of future interests.

- In addition to the required neutrality in the tasks of the Secretariat, the servers would be appointed by the Director General, through global selection process, ensuring the highest standards of efficiency, competence, impartiality, neutrality and integrity, and may be appointed to perform functions on any of the organs of the International Tribunal for the Internet.
- With the same arguments explained above, would be the appointment of Judges, Prosecutors, Diplomats and International Lawyers of the Tribunal.
- The Judge's Chamber, responsible for adjudicative task, would be divided into sub-chambers of Instruction, Specialized and General Chambers, and of Specialized and General Chambers of Resource.
- In turn, Prosecutors must instruct the international investigations, submit and track complaints based on information about the Tribunal's jurisdiction practices. To this end, can gather additional information from States, corporations, individuals and other organizations as well as seeking receive written, scanned or oral testimony at the Tribunal headquarters or regional headquarters located in the participating countries, with criteria guided by prudence, neutrality and maximum efficiency.

- The International Lawyers represent the authors or defendants in Tribunal lawsuits, where they do not have financial means to hire a lawyer.
- With regard to the Diplomats of the Tribunal, these would be directed and appointed by the Director General, and shall represent the Tribunal's purposes, organize integration of conferences, meetings focused on multilateral negotiations to promote the Applicable Law to the Tribunal, actively participate in regular and extraordinary meetings, survey the international diplomatic positions the Tribunal should adopt and participate in the presentation of goals, proposals, strategies, and negotiations of interest of the International Tribunal for the Internet.
- Another key point to the Tribunal, would be its Procedures, guided by judicial innovations, with adoption of all means and proper technological conditions for the Tribunal to exercise its operators working expeditious and effective internationally.
- The procedural steps would be initiated by the International Investigation, going to the Presentation of Action and consequent International Contestation. In being necessary, additional evidence could be presented, seeking the cooperation of Internet companies, countries and International Organizations. Judgment and Decision would end the initial adjudication phase, and is possible to appeal

once. Anyhow, using or not the appeal, the execution stage would end the action in Tribunal²⁵.

- In order to make up to universally, the constitutive Treaty would be open for signature by all States and International Organizations on the planet.
- With associative effect, the Treaty would be open to Internet companies and International Internet Commerce companies, seeking a regime of cooperation.
- To the Judicial work, the English language would be the authentic language, ensuring the translation into Chinese, the Spanish, the Arabic, the Portuguese, the Japanese, the Russian, the German, the French, and the Malaysian language.
- In respect to decisions on amendments or revisions of the founder Treaty of the Tribunal, or supervening texts that this should be part as attachments, shall be taken by a majority of two thirds of the States and International Organizations members present and voting.
- All the locations of the Tribunal are expected to benefit by guaranteed privileges and immunities to the embassies of any sovereignty, and headquarters of International Organizations, and the servers, Judges, Prosecutors, Diplomats and International Lawyers. Similarly should be the treatment of technological devices, including the Tribunal's

²⁵ This working paper is based on our PHD Thesis defended at Coimbra University (Portugal, European Union). See FREIRE E ALMEIDA, Daniel. *An International Tribunal for the Internet*. São Paulo: Almedina, 2016, available at: <http://www.barnesandnoble.com/w/an-international-tribunal-for-the-internet-daniel-freire-e-almeida/1123118107?ean=9788584930142> or http://www.almedina.com.br/catalog/advanced_search_result.php?keywords=Daniel+Freire&x=14&y=3.

communication networks and its agencies, which should receive similar treatment to those above, with absolute inviolability and immunity from jurisdiction.

- Note that the founder Treaty of the International Tribunal for the Internet would not allow reservations to your text, and the Annexes Treaties.
- For all the financial maintenance of the Tribunal, should help participating States through quotas. The Tribunal may, on occasion, to use the personal services, furniture and real estate, placed at their disposal, free of charge, by States Parties, other Organizations and companies with a view to collaboration with any of the organs of the Tribunal.
- Finally, the founder Treaty of the International Tribunal for the Internet would take effect after the date of deposit of the twentieth instrument of ratification or accession with the Director General of the International Tribunal for the Internet.

CONCLUSION

For all that was idealized and proposed, which ultimately we must conclude that the multiple uses of the Internet have presented many challenges, judicial and legislative, that deserve the scientific and academic dedication.

The real incorporation of these challenges, which we seek to bring summarily along this working paper, presents the need for answers and solutions able to cope with the observed complexity of the Internet World.

That is what we humbly sought when outlining the contours of an innovative **International Tribunal for the Internet**²⁶.

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²⁶ A complete list of arguments, reasons and details can to be found in our PHD Thesis defended at Coimbra University (Portugal, European Union). See FREIRE E ALMEIDA, Daniel. *An International Tribunal for the Internet*. São Paulo: Almedina, 2016, available at: <http://www.barnesandnoble.com/w/an-international-tribunal-for-the-internet-daniel-freire-e-almeida/1123118107?ean=9788584930142> **or** http://www.almedina.com.br/catalog/advanced_search_result.php?keywords=Daniel+Freire&x=14&y=3 .

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