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OVERVIEW

The Journal of International Criminal Law (*JICL)* is a scientific, online, peer-reviewed journal, first edited in 2020 by Prof. Dr. Heybatollah Najandimanesh, mainly focusing on international criminal law issues.

Since 2023 JICL has been co-managed by Prof. Dr. Anna Oriolo as General Editor and published semiannually in collaboration with the International and European Criminal Law Observatory (IECLO) staff.

JICL Boards are powered by academics, scholars and higher education experts from a variety of colleges, universities, and institutions from all over the world, active in the fields of criminal law and criminal justice at the international, regional, and national level.

The aims of the JICL, *inter alia*, are as follow:

- to promote international peace and justice through scientific research and pubblication;
- to foster study of international criminal law in a spirit of partnership and cooperation with the researchers from different countries;
- to encourage multi-perspectives of international criminal law; and
- to support young researchers to study and disseminate international criminal law.

Due to the serious interdependence among political sciences, philosophy, criminal law, criminology, ethics and human rights, the scopes of JICL are focused on international criminal law, but not limited to it. In particular, the Journal welcomes high-quality submissions of manuscripts, essays, editorial comments, current developments, and book reviews by scholars and practitioners from around the world addressing both traditional and emerging themes, topics such as

- the substantive and procedural aspects of international criminal law;
- the jurisprudence of international criminal courts/tribunals;
- mutual effects of public international law, international relations, and international criminal law;
- relevant case-law from national criminal jurisdictions;
- criminal law and international human rights;
- European Union or EU criminal law (which includes financial violations and transnational crimes);
- domestic policy that affects international criminal law and international criminal justice;
- new technologies and international criminal justice;
- different country-specific approaches toward international criminal law and international criminal justice;
- historical accounts that address the international, regional, and national levels; and

- holistic research that makes use of political science, sociology, criminology, philosophy of law, ethics, and other disciplines that can inform the knowledge basis for scholarly dialogue.

The dynamic evolution of international criminal law, as an area that intersects various branches and levels of law and other disciplines, requires careful examination and interpretation. The need to scrutinize the origins, nature, and purpose of international criminal law is also evident in the light of its interdisciplinary characteristics. International criminal law norms and practices are shaped by various factors that further challenge any claims about the law's distinctiveness. The crime vocabulary too may reflect interdisciplinary synergies that draw on domains that often have been separated from law, according to legal doctrine. Talk about "ecocide" is just one example of such a trend that necessitates a rigorous analysis of law *per se* as well as open-minded assessment informed by other sources, *e.g.*, political science, philosophy, and ethics. Yet other emerging developments concern international criminal justice, especially through innovative contributions to enforcement strategies and restorative justice.

The tensions that arise from a description of preferences and priorities made it appropriate to create, improve and disseminate the JICL as a platform for research and dialogue across different cultures, in particular, as a consequence of the United Nations push for universal imperatives, *e.g.*, the fight against impunity for crimes of global concern (core international crimes, transboundary crimes, and transnational organized crimes).

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Journal of International Criminal Law [Vol. 4 – Issue 2]

The Crime of Genocide: National and International Theories and Practices. The Judgment of Hierarchical Responsible in Genocidal Processes. Dialogues and Comparative Experiences: From International Criminal Court to Argentina ESMA Trial

by Carlos Federico Gaitan Hairabedian[*]

ABSTRACT: Genocides and crimes against humanity may involve the highest political leaders and high-ranking military officials. These leaders can be far from the actual site of the crimes, and not engaging personally in any of the material elements of the crime charged. The present work will address theoretical and jurisprudential discussions regarding diverse forms of intervention in punishable acts, to analyze how to attribute individual criminal responsibility of the superior for the acts of their subordinates. Whether they are military commanders or not. I will compare the development of hierarchical responsibility or the responsibility of the Commander-in-Chief within international law, based on the Nuremburg judicial proceedings to the present with the International Criminal Court and the "ESMA Trial" about individual criminal responsibility in the Argentina Navy base between 1976 and 1983. In order to achieve this objective, I will analyze the distinct forms of how responsibility is assigned, referenced in art. 25.3 (a) and art. 28 of the Roman Statute and the adaptation with the rules and regulations of decisions of the International Criminal Court.

KEYWORDS: Argentina; Crimes Against Humanity; ESMA; Genocide; International Criminal Court; Human Rights; Justice; Memory; Truth.

I. Introduction

It is commonplace in genocide studies to say that the 20th century was the century in which more people died due to wars and crimes committed by the state. From the massacres against the *Hereros* and the Armenian Genocide through the Holocaust; from two world wars to the crimes committed in Rwanda, Yugoslavia, Bangladesh, Sudan, the Middle East and the rise of international terrorism, preventive attacks and conservative nationalism. There is no doubt that the 20th century has been a century of state homicides.

After the Second World War, the process of justice and punishment of Holocaust reached a peak of prominence in the Nuremberg Military Tribunal trials. Similarly, but with less visibility, it happened in Tokyo, Japan. Decades later, international justice was delivered by the *ad hoc* tribunals International Criminal Tribunal for the Former Yugoslavia (ICTY) and the

International Criminal Tribunal for Rwanda (ICTR). Towards the end of the 20th century, hybrid courts emerged such as the Special Court for Sierra Leone, the Court of Bosnia Herzegovina, the Special Court of Sierra Leone, the Extraordinary Chamber in the Court of Cambodia, etc.

International human rights law, public international law and humanitarian law emerged as international instances of justice against crimes against humanity or genocide. At the end of

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the 1990s, the International Criminal Court (ICC) was created as a synthesis, of all the previous experiences with competence *ratione materiae* in international crimes (genocide, war crimes and crimes against humanity among others). This fact undoubtedly marked a clear advance in the international fight against impunity, despite the enormous difficulties of implementing the Rome Statute (RS) and certain criticisms in the definitions of some criminal types.

Meanwhile, at the beginning of the 21st century in South America, Argentina, a powerful process of impunity was stopped by the struggle of the human rights movement – which was accompanied by broad sectors of society. The search for truth, memory and justice collapsed the wall of silence, impunity, oblivion, and forgiveness established by decades of impunity. Starting in 2004 Argentinian state began to give official responses to their historical demands regarding gross violations of human rights committed during the military dictatorship (1976-1983). Thanks to the declassification of secret intelligence documents and military files and the support to witnesses and victims' trials began all over the country against perpetrators in tune with the highest standards of international human rights law.

The trial of individuals responsible for international crimes presents enormous technical difficulties. The classic positivist legal systems of the late 18th and 19th centuries did not foresee massive crimes committed by individuals in high positions of power such as genocide, war crimes and crimes against humanity. It was only with the creation of international tribunals in Nuremberg and Tokyo, and later with the ad hoc tribunals, that specific procedures and mechanisms for judging these large - scale crimes began to take hold. With the sanction of the RS and the ICC decisive progress was made, marking a turning point in the international fight against impunity, with legal and political social derivations that reach the present.

This are complex processes that need the academia to improve and achieve their full development through the study and analysis of their jurisprudence and doctrine. Precisely from there arises the need to address issues such as the responsibility of military leaders and hierarchical superiors in a comparative perspective. This method helps us to study, understand, disseminate, and contribute to the progressive development of International Human Rights Law and International Criminal Law in the fight against impunity and the strengthening of international justice based on international cooperation and dialogue.

Especially in these days, it is necessary to redouble intellectual efforts generating debates, presenting proposals, and strengthening the commitment of the academic and legal community specialized in the matter to provide new and better technical tools to guarantee memory, peace, truth and justice and the government of International Human Rights Law.

II. Individual Responsibility in International Law

Until Second World War international public law had the states as the central subject of concern. After the Holocaust, the center of the scene was occupied by the international protection of the individuals. It was in the 20th century, with the development on international law that human person become a subject of international law, overcoming to that all-powerful conception of the Hegelian state.[1] We can find the roots of international protection of the individual in the Kantian conception of person as an end in 17th and 18th century. The prevailing legal positivism in modern states systematized this conception within their respective legal systems during the 19th and early 20th centuries, reinforcing the centrality of the individual as a

[1] Antonio Augusto Cançado Trindade, *The Human Person as a Subject of International Law: Advances in its International Legal Capacity in the First Decade of the 21st Century*, 46(1) IIDH MAGAZINE 270 (2007), at 274-279.

subject of law. This legal evolution reached its peak with the Universal Declaration of Human Rights in 1948[2] when the primitive barbarism of the human being in the Nazi concentration camps was exposed to the world.

The central question is: how can such heinous crimes be committed against human beings? It is then that the direct responsibility of the individual bursts onto the international legal scene. Individual responsibility was established, and the duties imposed by international law were defined. The consolidation of the international criminal personality of individuals, as active subjects, as well as passive subjects of international law, strengthens responsibility (accountability) in international law for abuses perpetrated against human beings. On the other side, individuals are also bearers of duties under international law, reflecting the consolidation of their international legal personality. The statute of the Nuremberg International Military Tribunal (Charter of the International Military Tribunal) agreed upon in the London Agreement by the victorious powers of World War II was the birth certificate of International Criminal Law. The confirmation of the law applied at Nuremberg took place at the International Criminal Tribunal for the Far East in Tokyo between 1946 and 1948. Then, in the post-war period, the international criminal law applied by these military tribunals was validated, in turn, by Law no. 10 on the "Punishment of Persons who are guilty of having committed war crimes, crimes against peace or crimes against humanity of December 20, 1945", known as Law no. 10 Allied Control Council with jurisdiction over 4 occupation zones. On 13 February 1946, the UN General Assembly adopted Resolution 3 (I), in which it became aware of the definition of war crimes, crimes against peace and crimes against humanity as contained in the Statute of the Military Tribunal of Nuremberg on 8 August 1945. Later, that same year, Resolution no. 95 (I) of 11712/1946, confirmed the principles of international law recognized by the Statute of the Nuremberg Tribunal and its judgment. Later, the system for prosecuting individuals responsible for crimes was reinforced by the sanctions of the ICTR and ICTY Statute. Currently by the RS and the creation of the ICC. Since then, International Criminal Law (ICL) achieved a significant advance in the commitment pursued by the international community to fight against impunity, thus reaffirming, once again, the condition of the individual not only as a holder of rights but also as a subject of individual criminal responsibility.

Genocide, crimes against humanity, war crimes, forced disappearances, ethnic cleansing, massacres, torture - known as core crimes - among others, are international crimes, regardless of how they may be considered in domestic law of the states. One of the great advances of the ICL was to consider *stricto sensu* individuals subjected to criminal sanctions and not the States to which they belonged. It is the people who bear criminal responsibility individually, regardless of whether they are State agents. This new conception of individual criminal responsibility for international crimes was the great advance that international law had in recent years.

We can cite three different levels of evolution in international courts of the notion of individual criminal imputation for international crimes. The first level of individual criminal responsibility implemented in the Nuremberg and Tokyo Tribunals. The second level took place with the ad hoc creation of the ICTY and the ICTR. Finally, the third stage that began with the creation of the ICC. In this type of crime, where criminal organizations, generally but not necessarily state-owned are involved, the responsibility of the superior is usually complex, and the doctrine was not always able to respond to the questions and difficulties raised.[2] The

[2] Daniel Turack, *The Criminal Responsibility of Individuals for Violations of International Humanitarian Law by Elies Van Sliedregt*, 33(2) CAPITAL UNIVERSITY LAW REVIEW 525 (2004), at 526.

doctrine of criminal responsibility of the superior and its legal conceptualization in the Rome Statute was a response to the limitations presented by the concepts of authorship and participation to capture the responsibility of the superior.

III. Evolution of the Criminal Responsibility of the Hierarchical Superior

The position of the hierarchical superior has shifted throughout the jurisprudence in international courts. The Nuremberg jurisprudence has limited the criminal responsibility of superiors for the acts of subordinates to generals and commanding officers, excluding military personnel without such command from liability. The Tokyo Court limited liability to cabinet members. The ICTY has demanded a "position of authority" or a "hierarchical power". Its antecedents go back, as a general principle, to international humanitarian law. In the Regulation Annex to the Convention IV of The Hague of 1907, it was already mentioned that the superior should exercise a responsible command in relation to his subordinates.[3]

The qualitative jump in this matter was given by the ICTY Statute and its jurisprudence. The Statute established the individual criminal responsibility in arts. 7.1, and 7.3, which established the responsibility of the superior for acts committed by his subordinate as "responsibility by command". This doctrine also established that the person who planned, instigated or perpetrated the of crimes did not necessarily have to be the perpetrator of the *actus reus* of any of those crimes, but rather had to have

> […] the criminal intention, which is directly or indirectly, the intention that this act be committed […] In order for the perpetrator of the actus reus to act, there must be a previous plan or an order […] and there must be evidence that demonstrates the connection between the instigation and the *actus reus* of the crime. [4]

Thus, one or several people could be the ones who designed the criminal plan, with a division of roles both in its preparatory phase and in its execution.

Until then there were coincidences both in the doctrine and in the jurisprudence that the superior should be the one who had a certain "level of leadership" and command. But it was with the sanction of the RS and the creation of the ICC where certain ambiguities were overcome and a clear and simple formula was established that referred to the "superior and subordinate" that was not limited only to responsibility at the leadership level. The RS also expanded the power of the subject who was responsible for his hierarchical position at the command level (power of command or "command"), giving the norm a more solid structure with a more precise wording.

It is important to clarify that the attribution of criminal responsibility in the international criminal law must be distinguished from the same in national criminal law. While in the latter case a specific criminal result caused by the individual act of a person is normally punished, international criminal law creates responsibility for acts committed in a context of collective violence, or in a systematic or generalized manner, as is often the case with war crimes, genocide and crimes against humanity. As they are complex facts that are very difficult to investigate, the individual's own contribution to the harmful result is not always evident because it usually operates within the framework of organized power structures, which range from

[3] KAI AMBOS, THE GENERAL PART OF INTERNATIONAL CRIMINAL LAW. BASIS FOR A DOGMATIC ELABORATION (2002), at 299.

[4] ICTY, The Prosecutor v. Tihomir Blaškic, IT 95-14T, Judgment, Trial Chamber (Mar. 3, 2000), para. 278.

armed organizations - state or not - and which carry out diverse actions in very complex fields of action, often indeterminate.

One of the most relevant aspects of the ICC jurisprudence on the individual responsibility of an accused for an act that he did not commit as a direct perpetrator occurs in the decision confirming charges in the case *Katanga and Ngudjolo Chui* case no. ICC-01/04-01/07 of September 30, 2008 and in the confirmation of charges decision in the case *Lubanga* case no. ICC-01/04-01/06 of January 29, 2007. Two fundamental aspects stand out here: 1) the ratification of the provisions of the decision confirming charges in the *Lubanga* case regarding the adoption through art. 25(3)(a) of the theory of mastery of the fact as distinctive criterion between authorship and participation and; 2) the use for the first time in the history of the Court of mediate co-authorship, as a result of the joint application of co-authorship based on functional co-domain of the fact and mediate authorship by domain of organized power structures.

Neither Germain Katanga nor Mathieu Ngudjolo Chui was considered to have materially committed any of the crimes that took place during the attack on Bogoro region, but rather their role was to ensure the execution of the attack by discussing the details with the commanders in charge of leading troops on the ground, providing weapons. They lead the deployment of his forces and give the orders to attack the population. The defendants made their contributions through the armed groups that they managed both *de jure* and *de facto,* thus complying with the requirement of a hierarchical structure with fungibility of its members, as required by mediate authorship through structures of power. The success of the attack depended on the joint and coordinated action of these two-armed groups of different ethnic groups. Being Lendus and Ngitis, the combatants only responded to orders from the chiefs who were of their ethnic group. Since it was not possible to identify to which armed group the direct perpetrators of the attacks belonged, because the subordinates of one would not carry out the orders of another, nor could it be established that Katanga and Ngudjolo Chui had participated directly in the attack, SCP I decided apply the concept of indirect co-authorship based on the functional domain and indirect authorship through the structure of power.

For this reason, due to the great development of the theme in the international arena, I believe it is important to describe and comment on how individual responsibility was analyzed in the trials against those responsible for crimes committed during the Argentine dictatorship (1976-1983).

Although the cases analyzed so far took place on the African continent after the entry into force of the RS, we must remember that in Latin America during the 1960s, 1970s and 1980s there was also a history of similar criminal acts that they could have been included, without any difficulty, in any of the crimes established by the ICC. We said that the spirit of this research work was to generate a contribution that would reinforce communication, cooperation and the comparison of experiences in the judgment of this type of facts with the aim of using the best possible tools in pursuit of the universal fight against impunity. To that end, I believe it is essential to analyze the local Argentine experience on the responsibility of the superior in the prosecution of state crimes. In the case of this article, I will work on two cases: the *Juicio a las Juntas* or case 13/84 and the ESMA Trial.[5]

IV. The Judicial Treatment of the Responsibility of the Superior in the Crimes of the Argentine Military Dictatorship (1976-1983). "ESMA Trial" and *Juicio a las Juntas*

[5] Also known as "ESMA Megacausa" "ESMA III" or "ESMA Unificada" no.1282, TOF 5.

As in many Latin American countries, the institutional political history of the Argentine Republic was crossed by the horrors of a military dictatorship between 1976 and 1983. We call this process "*state terrorism*" because as the opposite of the rule of law. A systematic extermination plan based on secrecy and terror was structured from the state. The tragic result was around 30,000 murdered disappeared detainees, of all ages and social status, most of them thrown alive into the sea after unspeakable processes of physical and mental torture or shot and clandestinely buried.

With the mobilization of broad sectors of the Argentine people accompanying the historical claims of the human rights movement, the process of transition from dictatorship to democracy reached one of its fundamental milestones and the first treatment of the horrors of the recent past through the *Juicio a las Juntas* in the mid-1980s.

In this process we found the bases of the application of the doctrine established a few decades later in arts. 23 and 28 of the RS. It was proved, based on numerous testimonies and expert evidence substantiated in oral and public hearings, the organization of clandestine operations executed by illegal structures directed by the commanders in chief of the Argentinean military for the persecution and disappearance of people. The existence of a criminal plan devised from the highest levels of the Argentine state to commit crimes such as homicides, illegal deprivation of liberty, torture and theft of babies, among other massive violations of human rights, was proven. The judges of the *Juicio a las Juntas* were inspired and influenced by a criterion for attributing criminal responsibility the theory of mediate authorship by an organized power structure, based on the judgement of Nazi criminal in Nuremberg Trials. On this factual basis, the judges concluded that

> […] the instrument used by the man behind is the system itself that he manages discretionally, a system that is made up of expendable men based on the proposed purpose. The domain is not then over a concrete will, but over an 'indeterminate will', whatever the executor, the event will still occur.[6]

But in the *Juicio a las Juntas* only the Commanders-in-Chief and a few high rank generals were convicted. It was proved the existence of a systematic plan of extermination at the national level, using military bases and police stations and centers of detention and torture. Kidnappings were planned there, detainees were tortured[7] and disappeared through "death flights" the Argentinean final solution. Among this torture centers, in the middle of Buenos Aires city there was one emblematic: the Navy Higher Mechanics School (ESMA). When an attempt was made to advance to the responsibility of middle and lower commands in the *Juicio a las Juntas*, quartering's and attempted coups occurred. During that time military still maintained a significant share of power that managed to considerably condition the democratic order. Due to the strong pressure exerted by the armed forces against this trials, impunity laws were enacted,[8] which together with presidential pardons, prevented the punitive claim and the continuation of investigations of these crimes. As a reaction of resistance to the prevailing impunity, the human rights movement found the so-called "Truth Trials" as the only existing hybrid judicial channel to obtain truth and respond to the claims of victims and relatives of

[6] Federal Criminal and Correctional, Trial of the Military Juntas, 13-1984, Appeals Chamber of the Federal Capital, Judgment (Dec.9, 1985).
[7] Sex crimes, appropriations of minors, robberies were also committed.
[8] Due Obedience Law no. 23,521 and Full Stop Law 23,492 were enacted on 23 December 1986 and 6 April 1987, respectively.

crimes of the dictatorship and search for the disappeared. Based on the Right to Truth, these processes allowed to recover evidence and to claim the search of disappeared bodies. [9]

After decades, in the beginning of the 21st Century the impunity process was reversed. After 2005, Argentina started a new era which can be called "The memory, truth and justice process",[10] characterized by the annulment of impunity laws and nullity of military pardons, backed by international human rights law which sparked the re-opening of new trials against, medium and low rank military officers.[11] According to the Egyptian jurist of Armenian origin Sèvane Garibian

> Argentina has the particularity of having experienced – since the dawn immediately after the military dictatorship – practically all of the legal tools known in the treatment of massive violations of Human Rights: self-amnesty followed by investigation commission (1983), criminal trial (1985) followed by new amnesties (1986-87), presidential pardon (1990), repeal of amnesties for being considered unconstitutional by the Supreme Court of Justice and reopening of criminal proceedings (2005).[12]

Many of these sentences qualified the acts constituting crimes against humanity, although for another minority group of judges they were qualified as "genocide".[13] These trials are an open space for witnesses, victims, survivors, families, and the community in general to testify in public a legal proceeding endorsed by the National Constitution and International Human Rights Law. The testimonies heard in these trials are not only procedural acts but also true instances of reparation and an exercise of collective memory. But on a strictly procedural level, testimonial statements are fundamental evidence to hold the perpetrators accountable.

How are individuals prosecuted in this trials? Which is the most efficient mechanism to apply different models of criminal imputation? How are applied? Here is when International Criminal Law receipted by the Argentine legal system provides tools based on the principle of cooperation and comparative analysis helping to improve criminal imputation to high, middle and low rank responsible and ensure the best way to prosecute them.

In the ESMA Trial, that took place between 2012 and 2017 more than 54 individuals were prosecuted, most of them medium and low rank officers who served at the ESMA. Among them there was a group of criminals - some resounding as Astiz, Acosta, Donda, Pernías, Cavallo - who had been benefited by the impunity laws in the eighties and later with the reopening of in

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[9] A fundamental role in this process was played by Professor Juan Méndez of the American University Washington College of Law. Thanks to the Trials for the Right to the Truth, the son of survivors of the Armenian genocide Gregorio Hairabedian initiated a Trial for the Right to the Truth of the Armenian Genocide in 2001 and an Argentine federal judge ruled in his favor in April 2011, judicially recognizing the Genocide Armenian, www.verdadyjusticia.org.ar.

[10] According to official calculations of the Attorney General of the Nation, from the reopening of the trials until 2021, a total of 631 trials were registered, in which 1,044 individuals were founded guilty and 162 innocents. Many of these sentences qualified the acts constituting crimes against humanity, although for another minority group they were qualified as "genocide", see *Son 1044 las personas condenadas en 264 sentencias en causas por crímenes de lesa humanidad*, FISCALES (Sept. 24, 2021), https://www.fiscales.gob.ar/lesa-humanidad/son-1044-las-personas-condenadas-en-264-sentencias-en-causas-por-crimenes-de-lesa-humanidad/.

[11] The pardons were rendered null, and void and the Due Obedience and Full Stop laws were declared unconstitutional. The Supreme Court of Justice of the Nation issued the rulings *Arancibia Clavel* (Ruling 327: 3312) of 24 August 2004 on application of the principle of imprescriptibly of crimes against humanity, *Simón* (Ruling 328: 2056) on the unconstitutionality of the laws of due obedience and full stop of 14 June 2005 and *Mazzeo* (Ruling 330:3248) on the unconstitutionality of the pardons of 13 July 2007, among others.

[12] Sèvane Garibian, *The Legal Consecration of Forgotten Witnesses: The Argentine Judge Against the Armenian Genocide*, 92 LECTURES AND ESSAYS FACULTY OF LAW UNIVERSITY OF BUENOS AIRES 279 (2015), at 279-297.

[13] *Son 1044 las personas condenadas*, *supra* note 10.

this trial, prosecuted again. One of the most relevant characteristics of the ESMA Trial was that it was possible to demonstrate the structural functioning of the repression of the Argentine Navy during the dictatorship. The most innovative part of this process was having realized the implementation of the final stage of the extermination plan through the death flights. Throughout five years of oral debate, hundreds of witnesses, forensic experts, survivors and relatives testified. And one of the difficulties raised during the trial was related to which theory of attribution of responsibility should be applied, taking into account the multiplicity of behaviors and the different degrees of participation of the accused depending on the number of attributed acts and the organic position they occupied – whether within their official or clandestine face- within the structure of the force. The different positions in this regard and the differences between the parties revived discussions on the international jurisprudence that we have seen so far, adding in this trial a new tension on the application of the doctrine of the Joint Criminal Enterprise (JCE) and the theory of mastery of the fact through the organized structures of power. Many defendants rejected the transfer of *ad hoc* international criteria to local jurisprudence. But the Court convicted most of the accused applying as a criterion of attribution of responsibility the theory of mastery of the fact through devices of organized power, analyzed by Roxin for the immediate authors, and the subsequent theory of successive functional co-authorship for the direct participants. In this way, the validity of this doctrine was ratified in local Argentine jurisprudence which necessarily leads to reflect on the effectiveness of continuing to use this institute and to concentrate efforts on a correct attribution of responsibility based on the application of the functional domain of the act and mediate authorship through organized power structures as used by the ICC in the *Katanga* and *Lubanga* cases.

The long road of the fight for memory, truth and justice paid off. Based on the evidence collected over so many years in the ESMA Trial, the existence of a structural plan for the annihilation of the Argentine Navy, based in the ESMA, was proven, in which the highest command to the last non-commissioned officer participated. Based on this doctrine, not only were the direct perpetrators punished, but those who directed the extermination plan from their naval desks were held criminally responsible. In this sense, it was correct that the analysis of the participation of the defendants in the ESMA Trial was formulated in terms of a functional co-authorship verified within the structure of an organized apparatus of power, whose scope of action has been separated from the right, and where the members of the same had a defined and positive willingness to carry out the illicit act planned together.

It is necessary to frame these debates in the context of the local experience of prosecuting international crimes, the analysis of which serves to improve the technical tools both at the national and international levels. The trial experiences at these two levels provide an ideal framework for a broad debate and an exchange of experiences that lead to the strengthening of the global principles of the fight against impunity and the defense of international human rights law. This is precisely where the international cooperation between jurisdictions that Prof. Cancado Trindade referred to as "judicial dialogue and coordination" serves as a connecting point and conceptual framework.

The globalization of justice and the globalization of the persecution of barbarism could be the axis of the criminal policy of the ICC. Powerful and rich experiences such as the ESMA Trial in Argentina, arise debates and productions around criminal doctrine institutes. The implementation of human rights in the internal sphere of the states, as well as the effectiveness of certain evidentiary standards, the role of the victims in the process and the role of judges and defenders could function as a beacon and guide for current and future processes where crimes of this magnitude are judged, especially the International Criminal Court.

V. Conclusion

Since 1948, the original mission of the Universal Declaration of Human Rights was the universalization of constitutive rights of human dignity. Hannah Arendt said that human rights were not simply a fact, but a constructed fact, a human invention, which was in a constant process of construction and deconstruction. They were the law of the weakest against the law of the strongest. A counterpower against absolutism and authoritarian barbarism. In the field of international criminal law, from Nuremberg to the ICC, this process had advances and setbacks. Without a doubt, the creation of the ICC and the trials of criminals of the dictatorship in local Argentine oral courts honors the implementation of international human rights law in the domestic sphere, leading to a great advance in the history of international law.

In times like ours, where the homogeneous and pure global conception of the German jurist Carl Schmitt seems to prevail with the rise of nationalism and fascism in many countries, it is key to reinforce the commitment of the states, civil society and international organizations for the protection of human rights in the international fight against impunity and in the implementation of international human rights law. We should be inspired by those advances achieved by the emancipatory struggles for human dignity, which in 1948 provided effective responses to the atrocities committed by Nazism. These same struggles of the Argentine human rights organizations so that the state would render accounts to society for the crimes committed by the military dictatorship between 1976-1983 and that there be truth and justice in memory.

The fight for the effective fulfillment of human rights, truth, memory and justice against impunity is not a straight path defined a priori. Underlying processes in continuous development that open and consolidate spaces of struggle for human dignity and universal justice.

Latin America, a continent that has a lot to say about the suffering of its people from atrocities and the horror of state crimes. Perhaps those who live in other latitudes can look towards the American continent and see how a history of death, terror and authoritarianism in the peoples of Latin America has led in many cases to processes of transition from dictatorships to democracies that managed to address their past and present on the basis of peace, law and unrestricted respect for human rights. A clear example of this process can be seen in Argentina, where took place he permanent mobilization and sustained claim of the human rights movement with the support of the national state and international organizations.

In Greek mythology, King Sisyphus was punished by the gods to climb a mountain by pushing a giant rock and lower it again, like this for all eternity, as a constant process in eternal movement. The eternal struggle towards the mountain tops is like the struggle for human rights, enough to fill the human heart. It may seem absurd because the struggle for human rights has no end and it cannot have an end. The fight for universal justice and the defense of human rights in the 20th century has been similar to that of Sisyphus. A constant and eternal struggle, full of efforts and frustrations. Sometimes absurd. Although the true absurdity is the gross violations of human rights, which supposes, as in the case of genocide, to eliminate from the face of the earth a social group determined, it always failed because perpetrators cannot erase the memory of people. The claims and struggles in defense of human rights leaves marks and create memory. The international protection of human rights and the defense of the human rights of life and human dignity, the search for justice and the end of impunity, will never be absurd, although it often seems like an impossible mission.

Sisyphus's rock leaves its traces every time it descends from the mountain.