

OPINION TRIBUNALS AND THE PERMANENT PEOPLE'S TRIBUNAL

Luís Moita

lmoita@autonoma.pt

Director/Professor, Department of International Relations, Autonomous University of Lisbon (UAL) Portugal. Director, Observatory of Foreign Relations (OBSERVARE) Coordinator, Master in Peace and War studies, Scientific Council member, UAL. Professor, Institute of Higher Military Studies, and lecturer, National Defense Institute Vice-Rector, UAL (1992-2009) and Coordinator, Socrates Institute for Continued Training Integrated researcher, "Cities and Regions: paradiplomacy in Portugal".

Abstract

There is dialectic between public opinion and the enforcement of justice by the competent authorities. History contains numerous examples where international opinion movements demonstrate against judicial decisions, since, either by act or by omission, established jurisdictions sometimes pronounce questionable verdicts or leave unpunished crimes that were committed. These demonstrations take a variety of forms, ranging from the international commission of inquiry to the truth and reconciliation commissions. Among such exercises of citizenship from civil society, the so-called "opinion tribunals" stand out, whose first major initiative was due to Lord Bertrand Russell in the 1960s. Following this tradition, the Permanent Peoples' Tribunal has been very active between 1979 and 2014, organizing deliberative assemblies and pronouncing decisions in a "quasi-judicial" framework. Its critics point a finger at the resemblance of justice used for ideological purposes, but the legitimacy of these initiatives, backed by current international law, is defensible for their capacity to shake consciences and for being a legal innovation at the service of the right of peoples.

Keywords:

International law; public opinion; opinion tribunals; peoples' rights; legal constructivism

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Although not always widely known, the existence of “opinion tribunals” has been a reality for the past decades. As a rule, they act in the international arena. Even when dealing with internal issues of a particular country, they address global issues and the echoes of their deliberations extend beyond national borders. The purpose of this paper is to critically reflect on the nature and role of opinion tribunals, particularly the Permanent People’s Tribunal, created in Bologna in 1979. This reflection is part of a research project about international jurisdiction conducted by OBSERVARE, the international relations research unit of Universidade Autónoma de Lisboa¹.

The term “opinion tribunal” encompasses two concepts: the idea of “tribunal” is immediately associated with the enforcement of justice based on a legal norm; the concept of “opinion” refers to the somehow diffuse idea of public opinion, in which collective feelings, widely shared trends of ideas and beliefs insistently emphasized in public manifest themselves. There is a peculiar dialectic between law and public opinion – in our case, between national and international law and international public opinion. Due to their imperative nature and also to their gaps, laws enforced by the courts impact their influence on public opinion, projecting their values on them, disseminating rules of conduct and promoting consensus around commonly accepted principles, sometimes leaving issues unresolved; conversely, the sensitivity of public opinion displays interfere in the formulation of laws, require their enforcement or refute their failure. As a French sociologist of international relations defined wisely:

Public opinion and international law should not be confused and gain nothing if they were to be confused. It is the inevitable and necessary tension between them that may lead to a bit more fairness in the world. If lawyers were to be freed of the pressure of public opinion, they would risk becoming strictly technicians of the established order. If opinion was to be left to itself, it would risk wandering endlessly in search of its projects: only law can help it

¹ When preparing this text I received valuable indications and suggestions from Gianni Tognoni (Secretary General of the PPT) and Piero Basso, former comrades in mobilizing causes, as well as from Simona Fraudatario (of the Lelio Basso International Foundation). My colleagues Mario Losano, of the University of Eastern Piedmont, and Miguel Santos Neves, of Universidade Autónoma de Lisboa, enriched the original text with important comments and suggestions and other colleagues, jurists Patrícia Galvão Teles, Constança Urbano de Sousa, Mateus Kowalski and Pedro Trovão do Rosário, helped overcoming my limitations in this field. Brígida Brito offered meticulous support in all methodological aspects. To all I give special thanks.



realize its ideal by providing it with the staff and the institutions of a new world. Accordingly, it is in the interest of the community of human beings that the dialogue between international law and public opinion never ceases. (Merle, 1985: 97).

Having accepted this viewpoint, prior clarification is still required: one should not perceive “opinion tribunal” as a trial carried out by public opinion. The concept of public opinion is too volatile to support the consistency of a founded, dispassionate and weighted judgement. Justice cannot be at the mercy of the emotions of current opinion or of the vicissitudes of published views. Legal procedures, in their rigour and technical complexity, in their connection to the current legislation, in their respect for the guarantees of accused persons, are not comparable to floating perceptions and preferences, however widespread they may be. Still, that does not prevent, quite the opposite, consensus around certain principles from being gathered, so as to anticipate norms that have not yet been legislated which may later be legally enforced, or to protest against the insufficient implementation of international laws, or to fill legal loopholes or institutional omissions responsible for the impunity of criminals.

Opinion movements and court rulings

The history of the twentieth century is dotted with examples of opinion movements that acted as critical conscience regarding controversial acts in the enforcement of justice. Sometimes, their impact was limited to restricted circles of informed elites. In other cases, they had a long echo in public opinion. It is worth remembering some emblematic cases that were symbolic moments in the dialectic between law enforcement and international public opinion.

At the end of the nineteenth century, the famous Dreyfus Affair shook public French and international opinion, with the particularity of disclosing perverse anti-Semitism reactions and triggering vehement protests that later led to justice being made. Alfred Dreyfus, an officer of Jewish origin, held posts of responsibility in the French army and in 1895 was accused of spying in favour of Germany, when the resentments of the Franco-Prussian war were still felt. After having been dispossessed of his post and deported to a distant island, Dreyfus always claimed his innocence and his case raised a wave of indignation that led to his credibility being restored.

A few decades later, the United States were shaken by a tremendous miscarriage of justice that led to the death sentence of Nicola Sacco and Bartolomeo Vanzetti. These two Italian immigrants, anarchists, carriers of illegal weapons, were suspected of murder and robbery, arrested in 1920 and convicted in court for murder, despite the absence of evidence and the massive appeal against their conviction: solidarity committees were created, large demonstrations were held in several countries and eminent international figures claimed for their release. All was in vain and Sacco and Vanzetti were electrocuted seven years later. It was not until 1973 that the truth was officially restored and the memory of the two anarchists posthumously rehabilitated.

Meanwhile, the rise of National Socialism in Germany had a dramatic episode that marked both Hitler’s escalating seizure of power and the anti-Communism hatred of his regime: the fire at the Reichstag – the palace of the Berlin Parliament – in February



1933. The Nazi investigation identified a suspect, a young left wing Dutch who ended up sentenced to death, and the blame was attributed to the Communists, leading to the arrest of many thousands of people who resisted Nazism. However, in September of the same year, the " Legal Commission of Enquiry into the Burning of the Reichstag" was set up in London and organized a counter-case that concluded that the Nazi leaders were likely to be guilty².

Between 1936 and 1938, the Moscow Trials triggered major international repercussions. On the orders of Stalin, a massive purge was carried out that physically killed most of the Soviet elite. Following forged complaints or "confessions" of convenience, the courts pronounced ruthless sentences against the ruling class, especially against Trotsky and his followers. The European Left reacted with ambiguity to the events, despite the severe criticism of people like the surrealist poet André Breton and the Marxist Victor Serge; an international investigation commission was created in the United States, chaired by the prestigious philosopher of morals John Dewey, who concluded that Trotsky was innocent, despite the fact that the majority of the members of the commission distanced from his ideas³.

Another trial, also in the United States, that caused intense international outcry was the one involving the Rosenberg couple after the end of World War II. They were accused of spying on the nuclear program in favour of the USSR, which would have allowed the Soviet Union to accelerate the production of the atomic bomb. Tried in 1951 and executed in 1953, Julius and Ethel Rosenberg were Jewish and communism sympathizers and even today there is controversy about their guilt, especially that of his wife Ethel. Numerous prominent world figures, such as Einstein, Pius XII, Sartre, and Brecht protested against the sentence, denouncing primary anti-communism and the latent anti-Semitism, asking for clemency for a couple that was convicted without conclusive evidence.

In their symbolic strength, all the above mentioned cases illustrate the tension between the enforcement of legal norms and international public opinion, as well as between formal bodies that have judicial authority and informal bodies that contest them. Like a kind of dialogue or confrontation between powers and counter-powers, a dialectical opposition and complementarity between legal judgments and currents of opinion emerges. The enforcement of justice, fallible as it is, vulnerable to all sorts of abuses, is not limited to the jurisdiction of the courts and extends itself to the social capacity of protest, which does not mean that the latter has any guarantee of being right or any prerogative of "moral superiority." By act or omission, whether due to deficit of interpretation or due to a legal void, the law, and especially international law, does not always respond to the demands of complex human situations. Hence this apparent historical necessity of creating correction, rehabilitation and contesting moments as an antidote to the potential perversion of justice caused by its own agents.

Perhaps it is this very same need to do justice outside the conventional structures that leads to the creation of special bodies when regular courts do not seem to be the most appropriate places to judge collective or individual behaviour, as is the case of truth and reconciliation commissions. There are known initiatives in this area, such post-apartheid South Africa or Latin American societies after the military dictatorships.

² For a detailed analysis of this case see Klinghoffer, A.J. and Klinghoffer, J.A. 2002: 11-50.

³ For more detailed information, see also Klinghoffer, A.J. and Klinghoffer, J.A. 2002: 51-101.



Seeking to avoid the settling accounts that are likely to reopen wounds of the past, but also taking as inadmissible the impunity of those responsible for the crimes committed, such commissions have had the role of preserving the memory of the facts and of determining the responsibility of political actors, with the aim of obtaining recognition, disclosure, forgiveness and reconciliation, and not so much punishment. In these cases, the wisdom of the transition phase with a view to consolidating democracy prevails, more than the mechanical enforcement of criminal laws.

There was a similar process in Rwanda as a therapy against the memory of the tragic genocide of the Tutsis perpetrated by Hutu militias between April and June 1994, which killed over 800,000 Rwandans and forced nearly two million people to flee. A special international tribunal was set up to indict those responsible for the crimes, but a large number of prisoners, over 100,000, remained in the country, for which reason the official courts were unable to prosecute all cases. The local government encouraged resorting to the traditional conflict resolution institution - called Gacaca - as a way to mobilize the population for the fulfilment of justice, with emphasis on the role of the elders and the function of social integration, according to the best African traditions.

The aforementioned examples attest the variety of ways that have been used to find solutions to challenge or complement the role of established judicial systems, either through opinion movements, or international commissions of inquiry, truth and reconciliation commissions, or via customary practices, in the aforesaid tension between law and public opinion. Ultimately, this action can even be conducted by individuals, as shown in the special case of the blog of the great American jurist Richard Falk, one of the most influential names in the field of international law⁴. It is a blog he created on the day he turned 80 and is an impressive repository of his independent and critical thinking on legal and political issues, with a title that is, in itself, a programme: Global Justice in the 21st Century.

International jurisdictions and opinion tribunals

For centuries, international law has been regulated by treaties agreed between two or more states, which, despite the legal nature of the established relationship, were only morally obliged to abide by their provisions, without the strict existence of an international jurisdiction with instruments to ensure compliance therewith, and, if necessary, by enforcement action. However, back in 1899, a Permanent Court of Arbitration was created following an international Hague Conference, and although there was already a Permanent Court of International Justice established under the Covenant of the League of Nations, it was only in 1946 that the International Court of Justice, based in The Hague, started functioning as part of the multilateral framework of United Nations. Its role was clearly defined: to resolve conflicts between states. The European Court of Human Rights, based in Strasbourg, created in 1959 by the Council of Europe, had a different purpose. Much later, in 2002, after its statutes were adopted in Rome, the International Criminal Court was created, coincidentally also based in the capital of the Netherlands, different from the ICJ due to its capacity to judge individuals accused of committing aggression, genocide, war crimes, and crimes against humanity.

⁴ See <http://richardfalk.wordpress.com/>, accessed on 29/12/2014.



Meanwhile, at the initiative of the United Nations Security Council, three other tribunals were created to trial one-off concrete situations: the International Criminal Tribunal for the former Yugoslavia, established in May 1993, the International Criminal Tribunal for Rwanda, set up in November 1994, and the Special Court for Sierra Leone, created in 2000⁵, intended to judge the crimes of genocide, war crimes and crimes against humanity in these countries. Somehow, they are actual replicas of the special tribunals set up immediately after the 1939-45 war to try crimes perpetrated by the Germans and the Japanese, the Nuremberg Tribunal and the Tokyo War Crimes Tribunal, respectively. The latter, of course, had very particular characteristics, as they were military courts organized by the victors of the war; they created jurisprudence as the decisions were based on norms that had not been previously legislated, thus calling into question the principle of non-retroactivity of criminal law; however, they had the merit of judging the individual responsibilities of political leaders - no longer sheltered behind the regime under which they were fulfilling orders - and of condemning crimes not previously explained, such as crime against peace, war crime, the crime of genocide and crime against humanity.

Thus, we have two kinds of international courts: the emergency courts, with ad hoc functions and powers limited to specific situations (Nuremberg, Tokyo, former Yugoslavia, Rwanda, Sierra Leone ...) and the regular or permanent courts - two in The Hague, the ICJ and the ICC, and the European Court of Human Rights - which are stable elements of the international legal architecture.

Opinion tribunals appeared in a totally different situation. One can doubt the relevance of this designation, as we will see later. In any case, numerous initiatives of citizens without any official mandate have taken the form of judicial processes to enunciate pronouncements on issues when fundamental human rights are at stake. Thus, they are a kind of informal international jurisdiction arising from the civil society and not from established powers, devoid of coercive force but aspiring to sensitize international opinion and public authorities thanks to the moral value of their sentences, which are in fact based on current international law.

The most representative of these opinion tribunals is perhaps the Permanent Peoples' Tribunal (PPT), which has been active since 1979 and is the central object of this study. Its creation, however, lies in a context that should be recalled.

The PPT originated in a previous truly "founding" experience, the international tribunal against war crimes committed in Vietnam, known simply as the Russell Tribunal⁶, which was the source of inspiration for all subsequent similar actions. The initiative was taken by Lord Bertrand Russell, philosopher, mathematician and Nobel Prize winner for Literature in 1950, who also stood out as an activist for the cause of peace and disarmament. He was joined by an extremely prestigious group of persons, including another big name in twentieth-century thought, Jean-Paul Sartre, at first reluctantly, then convinced by Simone de Beauvoir, accepting to chair the court sessions in London in 1966. The work was resumed in Stockholm (1967) and finally in Roskilde, Denmark,

⁵ On this truly special case, since it was a hybrid national and International tribunal, see Paula, Thais and Mont'Alverne, Tarin "A evolução do direito internacional penal e o Tribunal Especial para Serra Leoa: análise da natureza jurídica e considerações sobre sua jurisprudência", *Nomos: Revista do Programa de Pós-Graduação em Direito da UFC*, Available at <http://mdf.secrel.com.br/dmdocuments/THAISeTARIN.pdf>, accessed on 30/1/2015.

⁶ Very detailed analysis in Klinghoffer, A.J. and Klinghoffer, J.A. 2002: 103-162.



in the same year. It was due to be held in Paris, but General De Gaulle, then president of France, did not consent, although he opposed the US policy towards Vietnam. In a letter to Sartre he explained that his decision in no way restricted freedom of expression, but argued that "I shall not teach you that any justice, in principle and in its implementation, belongs exclusively to the State"⁷This is an issue of primary importance that shall be further addressed. In his response, Sartre defined the foundation of the PPT's legitimacy:

Why have we appointed ourselves? It was precisely because no one else did. Only governments or the peoples could have done it. As for governments, they want to retain the possibility to commit crimes without running the risk of being judged; therefore, they would create an international body empowered to do so. With regard to the peoples, except in case of revolution, they do not assign courts, for which reason they could not appoint us⁸.

Somehow, this first Russell Tribunal recovered the previous one constituted by the Nuremberg Tribunal (Jouve, 1981: 670-671; Merle, 1985: 56-59), dealing with a typology of crimes that included crimes against peace, war crimes, crimes against humanity and the crime of genocide⁹, with the key difference that it was a tribunal that was aware that it did not have the capacity for physical coercion or to enact effective sanctions.

After Bertrand Russell died, a second Russell Tribunal with identical structure was summoned by Italian Senator Lelio Basso, who had integrated the jury of the first one and distinguished himself due to his intervention. Three sessions were held in Rome and Brussels between 1973 and 1976, dedicated to denouncing and condemning the crimes conducted by various Latin American military dictatorships, namely Brazil and Chile but also Bolivia, Uruguay, Argentina and other Central American countries, with significant impact on the public opinion of this sub-continent¹⁰. The name of Lelio Basso reappeared later, definitely connected to the Permanent Peoples' Tribunal: it is possible that the contact he maintained with the atrocities of Latin American dictatorships gave him intuition: there are governments that are at war against their own people, and these must be given voice, in addition to the states that are supposed to represent them.

⁷ General De Gaulle's letter, dated 19 April 1967, is available online at <http://bernat.blog.lemonde.fr/2008/06/10/le-tribunal-russell-et-le-proces-du-11-septembre/>. Accessed on 29/12/2014.

⁸ *Ibid.* There is a lot of information about the Russell Tribunal, including the complete list of members, technical contributions and individual testimonies available at <http://911review.org/Wiki/BertrandRussellTribunal.shtml>, accessed on 29/12/2014. The English version of Sartre's inaugural speech can be read in <http://thecry.com/existentialism/sartre/crimes.html>, accessed on the same date.

⁹ The term "genocide" is a neologism first used by the Polish Jewish lawyer Raphael Lemkin to describe the systematic Nazi persecution of Jews: information at <http://www.ushmm.org/wlc/en/article.php?ModuleId=10007043>, accessed on 29/12/2014.

¹⁰ The most detailed study on the Russell Tribunal II is available online in a PDF in *academia.edu* by Julien Louvrier: http://www.academia.edu/166082/Le_Tribunal_Russell_II_pour_l_Amerique_latine_1973-1976_Mobiliser_les_intellectuels_pour_sensibiliser_l_opinion_publicque_internationale, accessed on 29/12/2014.



There are also brief allusions to a Russell Tribunal III which met in Frankfurt in 1978 on a seemingly local theme - professional bans in West Germany - and a Russell Court IV based in Rotterdam in 1980 to denounce the "ethnocide" of the Amerindian peoples (Jouve, 1981: 671).

In this context of the Russell Tribunal sessions, a remarkable initiative of similar contours took place in Portugal in 1977-78: the Humberto Delgado Civic Court (a general who opposed the Salazar regime, murdered by the PIDE – Salazar's political police), created to trial the dictatorship crimes in Portugal. It was a brief but intense experience motivated by the lack of prosecution of those responsible for the dictatorial regime, in particular the political police. It brought together prestigious democratic individuals¹¹ and made a final decision entitled "Judging the PIDE, condemning fascism".

Shortly after, in 1982, the Russell Tribunal on Congo met in Rotterdam to judge the crimes committed during the dictatorship of Mobutu Sese Seko¹², President of Zaire. Seemingly, the name "Russell Tribunal" was taken as a "brand" used in different circumstances.

Meanwhile, the IPT – Indian Independent People's Tribunal – also called Indian People's Tribunal on Environment and Human Rights¹³, was created in 1993, in the tradition of the grassroots movements crossing the Indian society, focusing on human rights issues and particularly on environmental justice.

In 2000, an Opinion Tribunal was held in Tokyo (*minshū hōtei* in Japanese, meaning people's court) on the "comfort women"¹⁴ used in military brothels: an initiative of the Violence against Women in War Network, the aim was to judge responsibilities relating to kidnapping and mass deportation of women for sexual favours made to Japanese soldiers in the territories occupied by the Japanese expansionism in the years 1930-40. This issue was well-known but had always been silenced, despite having affected women from Korea, Taiwan, Indonesia, East Timor, China, and Vietnam.

There are also references to the meeting held in Berlin in 2001 of the Court of Human Rights in Psychiatry¹⁵, also referred to as the Russell Tribunal, which had the particularity of having concluded its work with a double verdict: a majority one that considered the existence of serious abuse of human rights in psychiatric practice, and a minority one that just alerted for possible deviations in the practice.

From the years 1998-2000 to the present, the Latin American Water Tribunal, also linked to the so-called Central American Water Tribunal, has been very active conducting activities on contamination and water resources issues in a number of

¹¹ See the analysis available at <http://www.esquerda.net/artigo/tribunal-c%C3%ADvico-humberto-delgado-uma-experi%C3%Aancia-breve-1977-1978/28229>, accessed on 28/12/2014. The full sentence can be found at <http://ephemerajpp.com/2014/01/11/tribunal-civico-humberto-delgado/>, accessed on 29/12/2014.

¹² Check the brief description at http://fr.wikipedia.org/wiki/Tribunal_Russell_sur_le_Congo, accessed on 29/12/2014.

¹³ The website is <http://www.iptindia.org>, accessed on 29/12/2014.

¹⁴ See Rumiko Nishino, «Le tribunal d'opinion de Tôkyô pour les « femmes de réconfort » », *Droit et cultures* [online], 58 | 2009-2, made available on 1/10/2009, accessed on 29 /12/2014. URL: <http://droitcultures.revues.org/2079>.

¹⁵ See Ian Parker, "Russell Tribunal on Human Rights in Psychiatry & "Geist Gegen Genes", *PINS (Psychology in society)*, 2001, 27, 120-122 30 June-2 July 2001, Berlin, available at http://www.pins.org.za/pins27/pins27_article12_Parker.pdf, accessed on 29/12/2014. See also <http://www.freedom-of-thought.de/rt/accusation.htm>, accessed on the same day.



countries in the region. There were sessions in Rotterdam in 1983 about the contamination of the river basin of the Rhine, as well as those held in 1992 in Amsterdam on ecological crimes in several continents, and also to the National Water Tribunal in Florianopolis, Brazil, in 1993, on the mining contamination and pesticide products¹⁶. Defending the democratization of environmental justice, these Latin American documents use the term "ethical court" (noted for its nature) and the category of "ecocide" (to characterize environmental crimes).

The Western military intervention in Iraq was one of the events that gave rise to several initiatives such as opinion tribunals. A World Tribunal on Iraq¹⁷ was created in 2003 in Brussels, also called the Brussels Tribunal or BRussells Tribunal (playing with the phonetic proximity of Brussels to Russell), confirming that the Russell Tribunal remains the key reference. It held sessions in Brussels and in Istanbul in 2004 and 2005 and examined the Project for a New American Century, of the American neo-conservatives and the resulting aggression against Iraq. A session took place in Lisbon in 2005, with the collaboration of several Portuguese lawyers¹⁸. Later the World Tribunal on Iraq became a permanent forum, evolving into an international network of "academics, intellectuals and activists."

Since 2007 a commission has been active in Malaysia to investigate war crimes. It is called Kuala Lumpur War Crimes Commission (KLWCT), also known as Kuala Lumpur War Crimes Tribunal and is an alternative to the International Criminal Court, deemed to be ineffective¹⁹. It is chaired by the former prime minister of Malaysia, Mahathir Mohamad and in 2011 it condemned the intervention in Iraq, personally blaming President Bush and Prime Minister Blair for it. In 2013, it accused the Israeli state for the genocide of the Palestinian people.

Again in Brussels, the opinion tribunal on the detention of foreign children in closed centres was held in 2008²⁰. At the initiative of the NGOs Coordinator for Children's Rights, the verdict symbolically condemned the Belgian State for infringing the relevant international conventions.

Despite the distance in time with respect to the events, in 2009 the opinion tribunal met in Paris on the use of "Herbicide Orange"²¹ (or "Agent Orange"), the name of a powerful chemical defoliant, comprising a mixture of two strong herbicides used by the US in the Vietnam War, whose impacts are still being felt. As a chemical weapon of devastating effects, this defoliant is prohibited by international conventions. The tribunal condemned not only the US government, but also the companies producing the product, such as Monsanto Corporation and Dow Chemical.

¹⁶ See <http://traqua.com>, accessed on 29/12/2014, as well as <http://www2.inecc.gob.mx/publicaciones/libros/363/cap18.html>, accessed on the same day.

¹⁷ See its website <http://www.brusseltribunal.org>, accessed on 30/12/2014.

¹⁸ Documentation available at http://tribunaliraque.info/pagina/ap_tmi/o_que_e.html, accessed on 30/12/2014.

¹⁹ See the respective website in <http://criminalisewar.org>, accessed on 30/12/2014.

²⁰ Reference in <http://www.lacode.be/tribunal-d-opinion-sur-la.html>, accessed on 29/12/2014.

²¹ About the tribunal see <http://www.mondialisation.ca/agent-orange-le-tribunal-international-d-opinion-de-paris-condamne-les-facts-unis-et-les-firmes-tasuniennes/13667?print=1>, accessed on 29/12/2014. Additional information at <http://www.history.com/topics/vietnam-war/agent-orange>, accessed on the same day.



One of the most representative opinion tribunals is perhaps the Russell Tribunal on Palestine²², which held sessions from 2010 to 2013 in Barcelona, London, Cape Town, and New York and, more recently, an extraordinary session (September 2014) in Brussels on violations of international law by Israel in Gaza. As a rule, however, the aim is not so much to condemn Israel (Israel's violations of international law are all too familiar), but rather to show the responsibilities of the entities that objectively support Israel in its violations of international law. It described the situation in Israel as similar to the South African *apartheid* regime and introduced the category of "sociocide" to characterize the attack on Palestinian identity.

In addition, an "informal" tribunal was held in Venice in September 2014 on the situation in the Ukraine²³. Not entirely explicit and even dubious in nature, it also claimed to follow the Bertrand Russell tradition. It ended up condemning US President Obama and the Ukrainian President Poroshenko, NATO and the European Commission, charging them with war crimes committed in the East of the country.

Besides these initiatives, several appeals to the formation of opinion tribunals according to the Russell model on a range of issues have been reported. For example, in Paris, in 2010, there was an appeal for a world opinion tribunal on climate and biodiversity²⁴, based on the lack of success of major international conferences on the subject. The following year, a petition whose signatories called for an opinion tribunal to judge nuclear crimes²⁵ was started, prioritizing, in this case, nuclear disasters affecting civilians, as in the Chernobyl and Fukushima tragedies.

Tokyo, Kuala Lumpur, Brussels, Rome, Paris, Florianopolis, Rotterdam, Amsterdam, Lisbon, Venice, Cape Town, New York, London, Stockholm, Roskilde, Frankfurt, Berlin, Istanbul, New Delhi, San Jose in Costa Rica, The Hague - cities in three continents expressing the cultural and geographical dispersion of events that the organizers designate in many ways as courts, opinion tribunals, citizens' tribunals, international courts, ethical courts, conscience tribunals²⁶.... However, in addition to their geographic spread and variety of designations, they have some common features: they are civil society initiatives; they are participatory processes involving intellectuals and activists; they are technically grounded on current norms of the community of nations; they seek to compensate for shortcomings of international law or its implementation; they denounce and condemn the most serious crimes against human beings and against peoples; generally they have a clear anti-imperialist and anti-colonialist ideological standpoint; they are carriers of causes of emancipatory intent; they use analogies with legal procedures to make their conclusions; they aim to raise public awareness and through it call the attention of powers that be.

²² Plenty of information available at <http://www.russelltribunalonpalestine.com/en/>, accessed on 29/12/2014.

²³ News in <http://rt.com/news/187584-russell-tribunal-obama-ukraine/> accessed on 29/12/2014.

²⁴ News available at http://www.lemonde.fr/idees/article/2010/10/27/pour-un-tribunal-mondial-d-opinion-pour-le-climat-et-la-biodiversite_1431693_3232.html, accessed on 30/12/2014.

²⁵ As can be seen in <http://www.rene-balme.org/24h00/spip.php?article1358>, accessed on 30/12/2014.

²⁶ The designated "peoples' tribunals are very different from these, promoting summary sentences and sometimes summary executions, leading to a true perversion of justice, such as those conducted by the Red Brigades in Italy in the sentencing of Aldo Moro, or that have been promoted even by governments in periods of instability, as happened in Angola (see <http://www.casacomum.org/cc/visualizador?pasta=04308.001.017>, accessed on 27/1/2015).



The Permanent People's Tribunal (1979-2014)

In the above context, the Permanent Peoples' Tribunal (PPT) has special importance. Its main aspects include: Lelio Basso, senator of the Italian independent left, of unusual political stance, had been part of the Russell Tribunal I and was the soul of Russell Tribunal II. He died in 1978, leaving incomplete a project involving three institutions: the Lelio Basso Foundation, the International League for the Rights and Liberation of Peoples and the Permanent Peoples' Tribunal. The Foundation is based in Rome and still exists today; the League, established in 1976, was an extended social movement of meritorious action but in the last years of the twentieth century its members dispersed to various causes; as for the Tribunal – already after Basso's death – it was only formed in 1979 in the city of Bologna. Its first president was François Rigaux, an eminent Belgian jurist and a professor at the Catholic University of Leuven²⁷. The general secretary was Gianni Tognoni, a physician in Milan professionally connected to health policies.

This set of institutions used a kind of "magna carta" as a reference: the Universal Declaration of People's Rights²⁸, proclaimed by Lelio Basso in Algiers on 4 July 1976, a symbolic day marking the 200 years of the independence of the United States. The Algiers Declaration, a document anchored in values that were emerging at the time, was characterized by some fundamental traits: it considered people as collective subjects of rights, in line with the UN's own approaches, thereby complementing the current vision about human rights; it addressed a new kind of recently recognized rights, so-called "third generation" rights (in addition to the civic-political, economic and social rights), such as the right of peoples to existence, cultural identity, political and economic self-determination, the right to scientific progress as the common heritage of humanity, the right to environmental protection and access to common resources of the planet, and the rights of minorities. Moreover, the spirit of the Declaration was fully in line with the claim for a "new international political and economic order," which was then so insistently present in the political discourse of the leaders of the Third World and European left, and assumed by multilateral institutions.

After describing briefly the circumstantial framework and ideological milieu that led to the creation of the Permanent Peoples' Tribunal - PPT -, its characteristics are described below.

First of all, it is a **permanent** tribunal. The majority of other similar experiences were initiatives of opinion tribunals aimed at specific issues and particular cases, geographically defined and circumscribed in nature. Instead, the PPT has existed for 35 years (1979-2014) and deals with a large number of situations, since it is open to the variety of processes that come its way. Hence the relevance of being considered "permanent", as it operates in the long run and is constantly ready to cater for those suffering from violations of fundamental rights.

Secondly, it is an **international** tribunal, for many reasons: a) its composition (the jury members come from 29 different countries); b) the topics it covers include many

²⁷ François Rigaux died in December 2013; he had already been succeeded as Chairman of the PPT by Salvatore Senese and later by Franco Ippolito, Italian jurists.

²⁸ Full text available at http://www.internazionaleleliobasso.it/?page_id=214, accessed on 30/12/2014.



sensitive issues of world politics and the cases it addresses- even when they are local - have an impact across borders; c) its constant references to international law and human rights and peoples, bearers of universal values; d) it has the ambition to influence international public opinion, global decision centres and the initiatives of the community of nations.

Third, it is a tribunal of the **peoples** (regardless of the known ambiguity of the term "peoples"). Lelio Basso refused the possible designation of "citizens' tribunal" for its alleged "bourgeois" connotations, preferring "peoples' tribunal" (Klinghoffer, AJ and Klinghoffer, JA 2002: 164). The subject of rights that the PPT privileges is the collective subject, a particular people, a particular human community, a particular society as a whole. It is true that human rights are at the forefront of its agenda but, according to its status, "the Tribunal has no jurisdiction to rule on particular cases of single individuals, except where there is a relationship with the violation of the right of peoples"²⁹. This is in line with the Algiers Declaration (Universal Declaration of Peoples' Rights) and the designation of the International League for the Rights and Liberation of Peoples. In a context where states are conventionally considered to be the only subjects of international law, the PPT breaks away from this view and affirms the prerogative of the people being themselves subjects of international law, so that they can act as interlocutors of international jurisdictions.

Fourth, the PPT has a similar function to that of a **tribunal**. It is guided by the "Nuremberg principles"³⁰, its statute and practice set out a series of procedures inspired in court cases: when a "complaint" is received, it can be filed (in case of inconsistency) or accepted for the inquiry to be open; the situations are examined in-depth in a widely participatory process aiming to identify violations of international law, listing witnesses, hearing experts, and preparing reports; public sessions are chaired by a jury; the defendants are invited to attend and present their version of the facts (which rarely happens); the jury meets in closed sessions and prepares a final judgment for which there is no appeal; the judgment is made public and sent "to the United Nations, relevant international bodies, governments, and the media." The entire basis for the decision is grounded strictly on existing international law and the formalism of the public sessions reproduces the model of a court hearing. This analogy with the judicial process will be discussed later.

In fifth place, the **jury's composition** is also statutorily regulated, requiring the presence of seven members for a valid sentence. The current members³¹ co-opted by the central structure are altogether 71 from 29 different countries and are called on a case by case basis for the PPT sessions. Over its 35 years of activity, numerous other people formed this body of judges, many of them world-renowned. Most of the members are lawyers, academics, scientists, writers, established artists, leaders and former leaders, members with experience of international organizations, some Nobel laureates, and prominent figures of social movements.

Finally, in sixth place, comes the **financing** of the PPT activities. The everyday functions of the secretariat have the logistical and operational support of the Lelio

²⁹ Article 1 of the PPT Statutes, available at http://www.internazionaleleliobasso.it/?page_id=213, accessed on 2/1/2015.

³⁰ *Ibid.* The following points always refer to the Statute.

³¹ The current list can be read in http://www.internazionaleleliobasso.it/?page_id=215, accessed on 3/1/2015.



Basso International Foundation, while the costs of conducting public sessions are supported by public and private sponsors contacted for this purpose by the Tribunal's secretariat and the entities interested in presenting the process.

The sentences of the PPT

With over forty sessions in very different cities in various continents, the cases proposed to the Tribunal were examined and the ensuing rulings are an important collection of factual, legal and political documentation³². Given that it is impossible to analyse the contents of each of the sentences pronounced by the PPT, a systematization of the topics is proposed here³³.

The first area has to do with **minor aspects of unresolved decolonization processes**, as in the cases of Western Sahara, a former Spanish colony annexed by Morocco, Eritrea, a former Italian colony annexed by Ethiopia, and East Timor, a former Portuguese colony annexed by Indonesia, in sessions that took place in Brussels (1979), Milan (1980) and Lisbon (1981), respectively. They were typical situations which concerned the principle of self-determination, in accordance with the rules of the international community, and processes were introduced by liberation movements recognized as such: the Polisario Front, the Popular Front for the Liberation of Eritrea and FRETILIN. The situation in Puerto Rico was also addressed (Barcelona, 1989).

Another series of sentences were linked to **violations of minority rights**, a theme already referenced in the Algiers Declaration and the PPT statutes. The regime in the Philippines and the violation of the rights of the Bangsa-Moro people was tried (Antwerp, 1980); Another sentence condemned the historical genocide of the Armenians (Paris, 1984); the rights of indigenous communities in the Brazilian Amazon were addressed in a session (Paris, 1990); the violations of the Tibetan people's rights were equally judged (Strasbourg, 1992); the rights of the Sri Lankan Tamil people, later silenced by military action, were the subject of two sessions (Dublin, 2010, and Bremen, 2013).

The PPT also took on cases concerning **regimes oppressing their own people**, whether in the context of military dictatorships, or as part of systematic denial of the rule of law. This was the case of the session that condemned the military junta in Argentina (Geneva, 1980); shortly after the repressive El Salvador regime was judged (Mexico City, 1981); the following year the regime of Zaire's President Mobutu was sentenced (Rotterdam, 1982); this was followed shortly after by the trial of authorities in Guatemala (Madrid, 1983); the Philippine regime, which had already been tried in the session concerning the Bangsa-Moro people, was sentenced again (The Hague, 2007).

Some of the Tribunals' sessions focused particularly on **human rights violations** in different societies, starting with Latin America (Bogota, 1991), specifically against "impunity for crimes against humanity"; restrictions on the right to asylum in Europe were also judged (Berlin, 1994); the special case of violation of the rights of children

³² The sentences for the years 1979-1998 are compiled into a book in their Italian version in Tognoni, Gianni (org) (1998). To see the rest check <http://www.internazionaleleleliobasso.it/?cat=15>, accessed on 3/1/2015.

³³ Klinghoffer, A.J. and Klinghoffer, J.A. 2002: 165-181 proposed a systematization that is different from the one shown here.



and minors in the world was addressed in a process that unfolded in three cities (Trento, Macerata, Naples, 1995); the same theme on the rights of children and adolescents in the Brazilian society was judged (São Paulo, 1999); a session (Paris, 2004) was devoted to human rights violations in Algeria in the 1992-2004 period.

On several occasions the PPT spoke out about **situations of armed conflict** where the fundamental rights of people were violated. First, the Soviet intervention in Afghanistan was described as "aggression" that went against the rules of the international community and the USSR was thus condemned as a country-aggressor (discussed in two sessions: Stockholm, 1981 and Paris, 1982); Likewise, crimes against humanity committed in the conflicts in the former Yugoslavia were treated in two sessions (Bern, 1995 and Barcelona, in the same year); earlier, there had been a statement condemning the US military aggression against the Sandinista regime in Nicaragua (Brussels, 1984); a special historical case can be included in this area: the conquest of America and the denial of the rights of the Amerindian peoples, analysed five hundred years after the arrival of Columbus to that continent (Padua and Venice, 1992); Finally, predicting the imminent aggression ("preventive war") against Iraq in 2003, the PPT organized a session on "international law and the new wars" (Rome, 2012).

A separate chapter in the PPT's sentences concerns **environmental crimes** of extreme gravity representing large-scale violations of human rights to life, health and sustainable environment. This was the case of the chemical industry accident of the Union Carbide company in Bhopal, India in 1984, resulting from a gas leak that killed thousands of people and had health consequences on hundreds of thousands (sessions on industrial risks and human rights in Bhopal, 1992 and in London, 1994); the same applied to the Chernobyl nuclear accident in 1986, tried ten years later (Vienna, 1996).

More recently, the **economic policies** of multilateral organizations and the activities of **multinational corporations** that affect the rights of the people have figured prominently in the PPT's agenda, thus addressing the root causes of structural violence affecting our societies. The macro-economic policies of the International Monetary Fund and the World Bank were the subject of two important sessions (Berlin, 1988 and Madrid, 1994), with a harsh judgment of their practices; clothing manufacturing companies were condemned for disrespect for workers' rights, including for subcontracting companies in the poorest countries (Brussels, 1998); the oil company Elf-Aquitaine was judged for criminal activities in Africa (Paris, 1999); in general, the role of multinationals was discussed in a PPT session (Warwick, 2000); the specific case of human rights violations by multinationals in Colombia was judged over a long period of time (2006-2008); in turn, the practices of the European Union and multinationals in the whole of Latin America were scrutinized and condemned (Madrid, 2010) for violation of often forgotten rights, such as the right to land, the right to food sovereignty, the right to public health, the right to the environment and so on; multinational companies operating in the agro-chemical sector had their own specific judgment (Bangalore, 2011); Finally, a series of hearings in several Mexican cities culminated in a final session in Mexico City in 2014, on "free trade, violence, impunity and peoples' rights in Mexico".



Now that the characterization of the Permanent Peoples' Tribunal and the systematization of its contents³⁴ have been done, the essential issues raised by previous observations will be analysed and the questions regarding the legitimacy and functions of the PPT and their relationship with international law will be addressed.

What is the legitimacy of the PPT?

Earlier we quoted de Gaulle's phrase: "any justice in principle and in its implementation, belongs exclusively to the state". The classical theory is very clear in this respect, in that it considers the enforcement of justice as a sovereign function, in the framework of rule of law being based on the famous division of powers, where precisely the legislative and the judicial powers are cornerstones of the sovereign state, with any non-public authority being excluded from its remit. In this respect, the initiative of the opinion tribunal is summarily deprived of legitimacy, further aggravated, according to the critics, by the fact that it stages a simulation of justice without any mandate to do so, at the service of a political struggle that swings according to ideological motivations. The aforementioned sociologist Marcel Merle uses the same harsh criticism, denouncing the "mockery of justice for propaganda purposes" (Merle, 1985: 85). The composition of the tribunal is "somewhat elitist, rather than democratic, composed of self-appointed committees (...) selected more for their ideological preferences than for their legal righteousness" (Klinghoffer, AJ and Klinghoffer, JA 2002: 7). By politicizing the supposed enforcement of the law, the opinion tribunal undermines the very idea of justice, because it renounces the principle of impartiality as a precondition for the correctness of the judgement. In this sense, the "sentence" is inevitably damaged by the absence of exemption and the process is nothing more than the assembling of parts leading to the desired conclusion. The "accused" is previously "condemned" and the audience of the "tribunal" is a mere theatrical procedure for propaganda purposes.

These harsh critical questions should be taken seriously for, due to their vehemence, they question the practice of opinion tribunals. If taken literally and to their ultimate consequences, they would end up disallowing these initiatives, removing credibility and even respectability from them.

In contrast, it is possible to reflect about opinion tribunals and in particular the PPT taking into account their real configuration and reconsidering the sources of their legitimacy. In this sense, it can be argued that their nature is "quasi-judicial" and that their legitimacy is founded on imperatives of conscience, referring to existing international law and involving the broad participation of witnesses to establish the facts where flagrant violations of human rights and the rights of peoples occur.

First of all, the "quasi-judicial" nature should be examined. This expression is used here by analogy with another term that recently entered the vocabulary of international relations studies: "paradiplomacy". Traditionally, diplomatic action is also considered to be a sovereign function and, as such, the exclusive competence of states. However, at

³⁴ The PPT obviously was interested in other cases and causes which, in one way or another, came its way, but never made it to a session. The problem of the Kurds, widely considered to be a stateless nation, was considered but it was blocked due to circumstances that led to breaks in contact. Similarly, the issue of the Palestinian people's rights was repeatedly raised, despite the difficulties caused by divisions between Palestinian nationalists and, dramatically, by the murder of three of its high-level interlocutors.



present, an increasing number of entities other than central powers conduct external relations initiatives that are close to the concept of diplomacy, as in the case of interests and cooperation projection actions undertaken by cities, regions, companies, foundations, NGOs, and various other associations ... All these activities have been described by some authors as "paradiplomacy"³⁵

Similarly, the "quasi-judicial" nature can be attributed to events outside the sphere of public powers but which have a formality similar to that of official courts and follow procedures based on both national and international legal proceedings. As was abundantly stressed at the outset, numerous initiatives have used this "quasi-judicial" paradigm, ranging from international commissions of inquiry to opinion tribunals.

In the case of the PPT, the procedures were described above, justifying the analogy now invoked. The indictment, the sentence, the opening of the inquiry, the right to a full defence, the testimony of witnesses and expert reports, the reference to the laws in force, bear resemblance to court proceedings, giving symbolic and moral strength to verdicts. As it turned out, all this is happening on the understanding that the term 'tribunal' is merely analogical, almost metaphorical, especially as we know that the decision is devoid of coercive power. In a word, it lies in the sphere of the "quasi-judicial".

The term "quasi-judicial" has the advantage of pointing implicitly to some ambivalence in the concept of justice. On the one hand, justice is the enforcement of the rule of law and in this sense one says that the courts do justice. But justice is also an ethical and social value, an ambition of fairness in the relationships between humans, and, in that sense, justice is something programmatic into the future. Opinion tribunals stand somehow on the border of these two concepts: on the one hand they are close to the legal procedure and codified law, on the other they try to echo the aspiration of justice that positively permeates societies.

This being its specific nature, the question of its legitimacy is left open. On this, one can say that the legitimacy of the PPT is based on the fundamental democratic right to freedom of opinion and expression of thought and is based first and foremost on the shaking of consciences. Given the countless violations of people's rights, the impunity of those responsible, the omission of both national and international judicial bodies, it is natural that the conscience of those reacting with nonconformity to these situations wants to be heard, like a cry. It is as if the authority of ethics comes to the aid of non-compliance with legal authority with the aim of replicating its action, as if it stood at "post-conventional level" (to use the expression used by Lawrence Kohlberg³⁶), in the sense that respect for standard is superiorly assumed and overcome by the apprehension of values. For some reason we found expressions such as "ethical tribunal" or "conscience tribunal" along the way: they illustrate the ambivalence where the legal and the axiological cross, on the side of "reasons of state" or the convenience of international jurisdictions.

Such legitimacy, however, is enhanced by a component of PPT sessions: the initiative of civil society and, even more, the broad participation of numerous grassroots

³⁵ See, for instance, Miguel Santos Neves "Paradiplomacy, knowledge regions and the consolidation of 'soft power'" in JANUS.NET, *e-journal of International Relations*, Vol. 1, no 1 (Fall 2010), pp. 12-32.

³⁶ See Kohlberg, Lawrence (1981) *Essays on Moral Development, I: The Philosophy of Moral Development: Moral Stages and the Idea of Justice*. San Francisco: Harper & Row.



institutions that collaborate in establishing the facts, the testimony of experienced situations in denouncing violations of rights. These facts act as an antidote against any arbitrariness temptation and at the same time ensure the rooting in social reality, where the cry of the victims is heard louder.

If we take one example among many others, the PPT's ruling on the social and environmental crimes in the Brazilian Amazon lists no less than 26 local organizations that formed the basis of the prosecution and supported the argument of the whole process³⁷ of the session organized in Paris on 16 October 1990. This is how the legitimacy of a citizenship exercise is built, deriving from collective perceptions, based on shared feelings and, above all, on verifiable facts, while giving voice to the voiceless. Its connection to social movements enables giving the PPT a counterpower quality that affirms itself, under democratic principles, against the established powers. This also helps legitimize its practices, because the existence of countervailing powers is healthy in any society, and their action should not be regarded as abusive, since they act as balancing factors as a precaution against the pathology of "official truth" or single thought.

The PPT also benefits from another kind of legitimacy that is achieved a posteriori. The fact that, as a rule, the majority of its deliberations is subject to recognition by the international community at a later stage can mean a kind of ratification that is legitimizing. This is illustrated by the cases the Tribunal has chosen to take on, such as the Western Sahara, Eritrea and East Timor ones, making us conclude that the alleged rights came to be widely acknowledged. This retrospective look sheds new light on the set of sentences by giving them both legal and political relevance, timeliness and consistency.

Finally, the legitimacy of the PPT is further evidenced by the impartiality of its decisions. It condemned both the US aggression against the Sandinista regime in Nicaragua and the invasion of Afghanistan by USSR troops. It condemned both the social and environmental crimes in Bhopal, India and the ones in Chernobyl, in the Soviet Ukraine. Against suspected ideological partisanship, the reference to the rights of people became a guarantee of impartiality and, therefore, of credibility.

The PPT and international law

In the context of the aforementioned "quasi-judicial" perspective, the deliberations of the Permanent Peoples' Tribunal relate permanently, and logically as, to acquired legal norms. Thus, it resorts to the multiple codification of the rules that safeguard human rights and the rights of peoples, and regulates the roles of international political and economic agents and the relationships of the members of the world community. A

³⁷ These are: Centro dos Trabalhadores da Amazônia, Associação Brasileira de Reforma Agrária, Associação dos Geógrafos Brasileiros, Instituto de Apoio Jurídico Popular, Instituto Vianei, Conselho Indigenista Missionário, Comissão Pró-Índio, Campanha Nacional para a Defesa e o Desenvolvimento da Amazônia, OIKOS, Salve a Amazônia, Fase (Nacional), Amigos da Terra (Rio Grande do Sul), IBASE (Instituto Brasileiro de Análises Económicas e Sociais), Movimento Nacional de Defesa dos Direitos Humanos, Sociedade Parense para a Defesa dos Direitos Humanos, UNI (União das Nações Indígenas), CPT (Comissão Pastoral da Terra), Campanha Nacional pela Reforma Agrária, Campanha Nacional dos Seringueiros, CEDI (Centro Ecuménico de Documentação e Informação), IAMA (Instituto de Antropologia e Meio Ambiente), MAGUTA (Centro de Documentação e Pesquisa do Alto Solimões), NDI (Núcleo de Direitos Indígenas), CTI (Centro de Trabalho Indigenista), INESC (Instituto de Estudos Sócio-económicos) and CUT (Central Única dos Trabalhadores). In Tognoni (org) (1998) p.358.



legislative and contractual collection of texts resulting from sedimentation and ripening over the centuries that the PPT uses as a basic reference is available.

The example that follows is particularly illuminating: the resolution on the social and environmental rights in the Brazilian Amazon³⁸, examined in October 1990. The sentence passed at the time listed the legal documents that informed it, starting with Brazil's own Constitution and making reference to more than 40 norms of national law, to which a further 24 documents of international law were added: declarations, conventions, agreements, resolutions, and relevant international treaties. This is a rule present in all of the PPT's verdicts, namely the rigour of the reasoning based on positive law, emanating from both the national legislatures and the international community or contracted through treaties between states as well as the jurisprudence of other bodies.

However, the PPT does not just reproduce the processes established by judicial bodies. Conversely, it has, with regard to them, the function to replace and complement them. An example of this was the decision made on crimes in the former Yugoslavia at a meeting in Bern in 1995, which explicitly stated:

Asserting itself as heir to the International Tribunal on American war crimes in Vietnam and to the Russell Tribunal II on Latin America, the Permanent Peoples' Tribunal takes upon itself a supplementary role, due to the deficiency and inadequacy of existing international tribunals, and the impossibility for peoples, individuals and NGOs to access such courts, which are exclusively entitled to judge conflicts between states or act upon a strictly regulated mandate³⁹.

This need is particularly felt in the area of political and economic activities, which are outside the scope of international jurisdictions, despite its human and social relevance. For all the above reasons, it can be affirmed that the PPT seeks to fill a void and play a subsidiary role: "opinion tribunals played a relevant role since the end of World War II in the dispute to illuminate the historical and geographical gaps in the persistent selectivity of international criminal law" (Feirstein, 2013: 118).

Another feature concerns the understanding of the judging function. More than punish, which would be out of the question due to the absence of coercive force, the PPT favours not the criminal role but awareness about the violation of rights and – by recognizing the role of people – the capacity of liberating energies. The legal field thus seems to be brought back to its original vocation:

The original role given to law is thus recovered. Far from being an instrument of control, it acts as an instrument of liberation from all forms of domination, exclusion, and denial. The 'judges' also leave

³⁸ Available at http://www.internazionaleleliobasso.it/wp-content/uploads/1990/10/Amazzonia-brasiliana_TPP_it.pdf, accessed on 13/1/2015.

³⁹ See http://www.internazionaleleliobasso.it/wp-content/uploads/1995/02/ExYugoslavia_I_TPP_it.pdf, accessed on 13/1/2015.



behind the traditional role of judiciaries, surpassing the criminal and punitive dimension of law, so as to become overseers whose role is to guide the interpretation of the facts for the reconstruction of the truth that legitimates complaints and resistances (Fraudatario and Tognoni, 2013: 5) ⁴⁰.

The initiatives of the PPT thus have the role of pointedly warning against the crushing of collective rights, aiming at bridging gaps and anticipating regulations that may be imposed. The exercise of citizenship is consequently a contribution to the advance of positive law itself, in the manner of a "reservoir of ideas" (Merle, 1985: 58), becoming a pressure group for the improvement of international law in its normativity and applications. Therefore, we find a dynamic vision of law whose norms are always receptive to innovation, not only to deal with the amazing vicissitudes of our history, but also to improve its humanization mechanisms.

Interestingly, in this regard the texts on the PPT by the main authorities on the topic are instructive: François Rigaux, who was its president for many years, and Gianni Tognoni, who has always been its secretary general. More than any other, they theorized about the PPT and clarified their views on it. They have different views about the same reality that complement the identity of the PPT. Rigaux is essentially a jurist and so his views refer to the imperative nature of the law:

The permanent peoples' tribunal is not a people's court, but an opinion tribunal. Its unique strength lies in rationality itself: gathering the facts, hearing witnesses, requesting clarification from the rapporteurs, and then verifying whether the facts that it declares to be proven are contrary to any legal norm. (...) The objective foundation of the activities of the Permanent Peoples' Tribunal can be inferred from the dynamism inherent in the rule of law. (Rigaux, 2012: 168-169).

Here the emphasis is placed on the rationality of the legal procedure and legal basis of its deliberations. The source of authority of the PPT's pronouncements lies basically in its conformity to the international legal order. Gianni Tognoni's views, in turn, are not distant from Rigaux's, but he emphasizes a versatility and creativity that foster a different intellectual approach. His words fully illustrate his different stance. For him, the PPT is a "research exercise" involving "choosing intelligence over power, having the responsibility to seek the roots of things and of their future potential, more than manage the balance of the present". He sees it as "a borderless exercise in listening and observing, out of respect for people with needs and those seeking a sense of liberation", pursuing a "shared research logic" (Tognoni 1998: 1). In another text

⁴⁰ See also the following: "Far from affirming itself as a producer of convictions, the real purpose and mission of the PPT is to give victims the recognition and the legitimacy of their truth – which never corresponds to the official one – so that it becomes an instrument of struggle and claim before the official bodies. On the other hand, the legitimacy of the Tribunal and of its sentences, truths and memory depends on the subsequent recognition of those same truths reconstructed by the victims, which turns the PPT into an instrument of anticipation of truths, minimizing any argument about their impotence". In Fraudatario and Tognoni (2011) p.3.



written with Simona Fraudatario, they state that the documentation produced by the PPT is like a "working agenda" and that its practice is primarily a "permanent tool for exploring and experimenting" (Fraudatario and Tognoni, 2013: 2). When describing the backbone of the project underpinning the tribunal, they write that the PPT:

Experiments practices and languages for the structural restitution of the role of active protagonists to the victims of violations, which were caused by invisibility, non-recognition, and impunity by the existing international law (...). Its deepest mission is the continued pursuit of observation instruments and to interpret reality with a comparative and critical stance directed at the capacity of the right to prevent, protect and guarantee the existence of people, victims, and offended persons (Fraudatario and Tognoni, 2013 : 2 and 4).

Research, observation, and experimentation: these words express a "laboratory" view of the relationship between the PPT and law. The vitality of the communities, the unpredictability of history, the complexity of collective processes, and the deepening of awareness of the values in question, require legal innovation. This "experimentalist" conception of international law seems especially interesting: the codification of rules of conduct is not a static and finished process, but rather an open process that seeks new solutions, in reference to the social dynamics and the growing ethical requirements perceived by people. One can describe it as a constructivist perspective of law, understood as something *in fieri*, under construction. The legal normativity is thus a tool for progress and humanization. Opinion tribunals and in particular the Permanent Peoples' Tribunal, coming from the private sector, citizenship, civil society, linked to social movements from the base, have shared responsibility for contributing to avoid the impunity of crimes committed and for fostering the enforcement of law, not as an oppressive norm, rather as a liberating matrix.

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