
CYBERLAW
by CIJIC

CYBERLAW by CIJIC

EDIÇÃO N.º VI – SETEMBRO/OUTUBRO DE 2018

REVISTA CIENTÍFICA SOBRE CYBERLAW DO CENTRO DE INVESTIGAÇÃO JURÍDICA DO CIBERESPAÇO – CIJIC – DA FACULDADE DE DIREITO DA UNIVERSIDADE DE LISBOA

EDITOR: NUNO TEIXEIRA CASTRO

SUPORTE EDITORIAL: EUGÉNIO ALVES DA SILVA

PRESIDENTE DO CIJIC: EDUARDO VERA-CRUZ PINTO

CIJIC: CENTRO DE INVESTIGAÇÃO JURÍDICA DO CIBERESPAÇO

ISSN 2183-729

CYBERLAW by CIJIC

NOTAS DO EDITOR:

No prólogo de mais esta nova edição da revista do Centro de Investigação Jurídica do Ciberespaço da Faculdade de Direito da Universidade de Lisboa, antecipo-me a aduzir dois actos, em breve, solenes, que não deverão passar em claro nas agendas de cada um.

O primeiro desses actos terá lugar no próximo 17 de Outubro na Universidade de Aveiro. Trata-se da Sétima edição da Iniciativa Portuguesa do Fórum da Governação da Internet.

Um sublinhado desde logo para o local do evento. É importante que a academia se sinta interligada com Portugal, no seu todo. Sair de Lisboa, do conforto centralizador da capital, é um pequeno mas mui nobre sinal de que há muito e bom trabalho a ser desenvolvido diariamente na plenitude dos mais de 98 mil quilómetros quadrados que compõem o nosso pequeno país.

No que à edição deste ano do Fórum da Governação da Internet diz respeito, trata-se de um evento organizado pela FCT (Fundação para a Ciência e a Tecnologia I.P), em parceria com a ANACOM (Autoridade Nacional de Comunicações), APDSI (Associação para a Promoção e Desenvolvimento da Sociedade da Informação), API (Associação Portuguesa de Imprensa), Associação DNS.PT, Ciência Viva (Agência Nacional para a Cultura Científica e Tecnológica), CNCS (Centro Nacional de Cibersegurança), IAPMEI (Agência para a Competitividade e Inovação), ISOC-PT

(Capítulo Português da ISOC), Polo TICE.PT, Secretaria Geral da Presidência do Conselho de Ministros, e Sociedade Civil.

Serão objecto de discussão, temas como «Governação e políticas públicas da Internet nos contextos nacional e global»; «Inteligência Artificial e *Big data*»; «Segurança no Ciberespaço: O dilema entre a privacidade do indivíduo e a segurança do Estado»; «Governação, confiança, privacidade e desafios na era do IoT»; «*Fake news, fake views* -Sociedade da (Des)Informação».

As sessões e respectivos painéis apresentam temas e oradores de reconhecida qualidade, e, seguramente, será um 17 de Outubro de 2018 muito e bem preenchido em Aveiro[1].

O outro evento, como seria natural, até pelo investimento feito pelo país na realização deste por mais dez anos em Portugal, é a *Lisboa web summit* 2018.

O programa e agenda[2] da feira, que se realizará no Altice Arena entre 5 e 8 de Novembro, já foram dados a conhecer. O destaque recai na presença de oradores como o Secretário-Geral das Nações Unidas, Sr. António Guterres; o inventor do *www*, Sir Tim Berners-Lee; o CEO do eBay, Mr. Devin Wenig; a Comissária Europeia para a Concorrência, Mrs. Margrethe Vestager; entre outros.

Os temas são vastos. A agenda *idem*. Uma semana desta feira para explorar avidamente.

Em suma, sendo eventos contrastantes na apresentação, na forma e até na finalidade, seria pouco cordial não aproveitar a proximidade destes para esta nota de agenda.

Arrolado o introito, focando-nos apenas no essencial desta nova edição, seguramente que a entrada em vigor, em pleno, do RGPD - *REGULAMENTO (UE) 2016/679 DO PARLAMENTO EUROPEU E DO CONSELHO de 27 de abril de 2016, relativo à proteção das pessoas singulares no que diz respeito ao tratamento de dados pessoais e à livre circulação desses dados e que revoga a Diretiva 95/46/CE*; bem como da Lei Geral de Protecção de Dados (LGPD) no Brasil, aprovada no plenário do

1 Informações sobre o programa do evento podem ser consultadas em: https://www.governacaointernet.pt/pdf/forum_programa_2018.pdf.
O evento é de entrada livre mas requer uma inscrição prévia. Mais informações em: https://www.governacaointernet.pt/2018.html
2 Mais informações em: https://websummit.com/schedule

Senado Federal pelo PLC 53/2018, a 10 de Julho; impuseram que o tema da protecção de dados pessoais fizesse, novamente, parte do cardápio da revista.

No plano nacional, a Proposta de Lei 120/XIII, que assegura a execução, na ordem jurídica nacional, do Regulamento (UE) 2016/679, relativo à proteção das pessoas singulares no que diz respeito ao tratamento de dados pessoais e à livre circulação desses dados, continua em suave desenvolvimento[3], mais de dois anos após a publicação do Regulamento europeu, o RGPD.

Não obstante, procurando contrariar o *adagio* da Proposta de Lei 120/XIII, procuramos coligir doutrina e opinião que demonstrem um pouco do *vivace* de pessoas e organizações na adaptação às novas realidades supranacionais. Neste sentido, encontraremos *ways not to read* o RGPD; as principais dificuldades e dúvidas partilhadas por organizações e por pessoas singulares na adaptação à nova realidade jurídica europeia. *Curiosamente*, do outro lado do Atlântico, trazemos, ainda, o impacto da LGPD brasileira nos negócios e nas pessoas, neste novel quadro normativo de agregação temática. É, pela actualidade do tema, tempo, ainda, de reintegrar o conceito de desindexação, *in casu*, da desindexação de conteúdos ofensivos na net, recuperando críticas jurídicas ao relevante caso *Google Spain*.

Saltando da circunspecção dos dados pessoais e da privacidade para outro tema, serão apresentadas reflexões quanto à apreensão de correio eletrónico e registos de comunicação de natureza semelhante. O tema é fervilhante. Na actualidade, a vivência em sociedade cresce *digitalodependente*, convocando discussões doutrinárias profundas. Ainda não será desta que se pacificará, entre os intérpretes e aplicadores do direito, a distinção juridicamente relevante entre correio e correio eletrónico. Mas, as reflexões que aqui se publicam, valem a leitura e o crepitar de questões.

Colocada em perspectiva esta espécie de matrimónio, de conveniência, que o direito e a tecnologia assumiram, a problemática dos drones, inteligência artificial e robótica, também têm aqui palco no plano jurídico.

Direito e Tecnologia são meios essenciais ao desenvolvimento do homem, com implicações, dilacerantes, nas mais variadas formas em como revelamos o ser social que somos. A ética, juridicamente relevante, aliada à segurança - subjacente ao

3 Pode ser consultada a actividade relativa à Proposta de lei em: http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=42368

conceito *Safe-by-design* (SbD) - estimulam dissecções imediatas desde o plano de concepção, no patamar R&D do desenvolvimento das mais diversas ferramentas, utensílios, *gadgets*, cada vez mais apetrechadas de inteligência artificial e robótica, que vão procurando satisfazer necessidades diversas do *mercado*, isto é, nossas.

Aproveitando a epígrafe, projecto uma questão, que gostava de ver discutida numa próxima edição da revista: será profícuo que ao invés da pirexia em torno da segurança - a qualquer custo - dos dispositivos, tentando antecipar toda a indeterminabilidade da vida humana – com todos os custos inerentes a esta tarefa de adivinhação – o foco poderia vir a incidir sobre a *responsabilidade pela segurança*? Assumindo-se a impossibilidade de segurança absoluta de toda e qualquer ferramenta, será que alvitraremos, no futuro, um modelo de responsabilidades partilhadas como solução?

A insolência típica das muitas questões não poderia terminar sem o regresso a uma ideia em processo de maturação: como conciliar diversas ordens, práticas e tradições jurídicas; actores, partes e contrapartes processuais; pessoas singulares, organizações e Estados, perante tal amálgama de situações quotidianas neste *pot-pourri* que a Internet é e do qual dependemos? Estaremos no vértice da necessidade de um Tribunal Internacional para a Internet? Mais umas penadas sobre a arquitetura de um desejável edifício de harmonização e resolução de pleitos jurídicos a nível mundial.

Resta-me, por fim, agradecer a todos pelo esforço e pelo trabalho, endereçando, em nome do Centro de Investigação Jurídica do Ciberespaço – CIJIC – da Faculdade de Direito da Universidade de Lisboa, um sentido reconhecimento a cada um dos autores: Muito Obrigado.

Cyberlaw by CIJIC, ***Direito: a pensar tecnologicamente*.**

Boas leituras.

Lisboa, FDUL, 05 de Outubro de 2018

Nuno Teixeira Castro

CYBERLAW

by CIJIC

DOUTRINA

THE ORGANIZATIONAL STRUCTURE OF AN INTERNATIONAL TRIBUNAL FOR THE INTERNET

DANIEL FREIRE E ALMEIDA *

* Ph.D. Professor of International Law, Internet Law and International Relations at Catholic University of Santos – PhD and Master´s Program. Postdoctoral researcher at Georgetown University (Washington-DC).
Contacto: da616@georgetown.edu , danielfreire@unisantos.br

RESUMO

Este artigo tem como principal objetivo apresentar a estrutura organizacional formulada pelo autor para criar um Tribunal Internacional para a Internet.

O texto de trabalho é dividido seis secções, que proporcionam o conhecimento de relevantes e inovadores argumentos da organização interna do Tribunal Internacional para a Internet, incluindo sua Assembleia Geral, a Secretaria-Geral, a Câmara dos Juízes, a Câmara de Procuradores, a Associação Internacional de Advogados e os Diplomatas do Tribunal. Tudo, pois, a ser estabelecido devido aos desafios que as jurisdições nacionais e regionais enfrentam para aplicar suas decisões judiciais e legislações no ambiente internacional da Internet.

Palavras-chave: Direito Internacional – Tribunal da Internet – Ambiente Digital - Direito na Internet – Tribunais Internacionais – Governança Global.

ABSTRACT

This article has as its main objective to present the organizational structure formulated by the author to create an International Tribunal for the Internet. The working paper is divided into six sections that provide the relevant knowledge and innovative arguments of the internal organization of the International Tribunal for the Internet, including on the General Assembly, the General Secretariat, the Judge's Chamber, the Chamber of Prosecutors, the International Association of Lawyers, and the Diplomats of the Tribunal. All therefore to be established due to the challenges that the jurisdictions of the national and regional spaces confront to apply their judicial decisions and laws in the international environment of the Internet.

Keywords: International Law – Internet Tribunal – Digital Environment - Internet Law – International Courts – International Tribunals – Global Governance.

1. GENERAL INTRODUCTION

Getting back to this distinguished Cyberlaw review, and facing innovative challenges in the Internet world, we come across the need of one International Internet Tribunal and global legislation on the Internet.

In fact, recently, the European Union have adopted the new REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of natural persons with regard to the processing of personal data and on the free movement of such data[1], in effect since May 25th, 2018 (General Data Protection Regulation-GDPR).

There is no doubt about the necessity and importance of this *new* European regulation[2]. But, what about the rest of the World? Is the Internet "online" just only inside the European Union? Since when the Internet should be divided by territories? And, what about the Internet companies and stakeholders, worldwide dispersed? Only a few questions arising after this European legal concretion.

Furthermore, we know that the European Court of Justice (ECJ) ruled that search engines, like Google, Bing or Baidu, need to remove the link between search results and a website if it contains material that the individual deems should be "*forgotten*"[3].

In this sense, according to the decision, the Article 4(1)(a) of Directive 95/46 (now repealed by the GDPR) is to be interpreted as "*meaning that processing of personal data is carried out in the context of the activities of an establishment of the controller on the territory of a Member State, within the meaning of that provision, when the operator of a search engine sets up in a Member State a branch or subsidiary which is intended to promote and sell*

1 REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of natural persons with regard to the processing of personal data and on the free movement of such data. Available at https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=PT .

2 Vide DIXON, Helen. *Regulate to Liberate. Can Europe Save the Internet?* New York: Foreign Affairs. September 19, 2018. Accessed September 19, 2018. Available at https://www.foreignaffairs.com/articles/europe/2018-08-13/regulate-liberate .

3 See Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González, Available at http://curia.europa.eu/juris/document/document.jsf?text=&docid=153853&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=380763 .

advertising space offered by that engine and which orientates its activity towards the inhabitants of that Member State."[4].

In other words, Google, in case, is considered a controller of personal data, and the national data protection law (from Spain) is applicable, even if indexing happens in the United States of America or somewhere else.

In turn, the new GDPR is following and enforcing that the "Territorial scope" of the Regulation (2016/679) applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the European Union, regardless of whether the processing takes place in the European Union or not. Likewise, the Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union, or the monitoring of their behavior as far as their behavior takes place within the Union. Besides, the new GDPR applies to the processing of personal data by a controller not established in the Union, but in a place where Member State law applies by virtue of public international law.

This new context has resulted in the emergence of a growing complexity of new laws and decisions, both at the domestic and/or international dimension levels, that can easily start an international conflict of decisions and laws, like the one provided by the European Court of Justice in this recent case.

Like I wrote before in my previous book[5], the fact that the European Union is trying to "speak" the same language in regulatory terms and decisions is, indeed, an excellent start. At last, it should be emphasized that the European Union, aware of the need for cooperation and international dialogue - because of the transnational aspects of the Internet and international e-commerce - stipulated as key priority issues the regulation and legalization of the Internet.

---

4 *Cfr*. Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González, Available at http://curia.europa.eu/juris/document/document.jsf?text=&docid=153853&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=380763 .

5 See FREIRE E ALMEIDA, Daniel. An International Tribunal for the Internet. São Paulo: Almedina, 2016, available at: https://www.almedina.net/ebook_info.php?ebooks_id=97885849301426 or https://www.amazon.co.uk/International-Tribunal-Internet-Daniel-Almeida-ebook/dp/B018HHLO70/ref=sr_1_2/262-5128826-5206617?s=books&ie=UTF8&qid=1537272381&sr=1-2&refinements=p_27%3ADaniel+Freire+e+Almeida .

However, the Internet is Global, international, worldwide. We will need to give a step forward. In fact, we need to do it now.

The international aspects of the Internet requires new forms of global governance to deal with these global issues. The global nature of the Internet and its global reach, provided by a worldwide architecture, presents a series of jurisdictional complexities to any country wishing to exercise its sovereign power ordinarily.

With the EU doing this, legislating on the world of the internet, without recognized global legitimacy but with manifest repercussions all over the world,, we will face conflicts of jurisdiction and laws (in fact that is what happening now!)[6].

More, within EU, take Germany, for example. According to the Interior Minister Horst Seehofer, Germany is considering a legal framework for cyberwar, enacting laws that would let it respond actively to foreign cyber-attacks, regardless of latitude, be it China, Iran, Russia, others... The Internet world demands a solution like an International Tribunal for the Internet, with international treaties.

The present working paper has as its principal goal to show the proposal to establish an International Tribunal for the Internet[7]. More specifically, we will address the organizational composition of the Tribunal, with some its basic tasks[8].

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

To the users, companies, States and other internet stakeholders, the benefits of one global judicialization of international disputes on the Internet, with proper organization, would allow for greater efficiency in the search for justice and legal security. On the other

6 See, for example, the case of China: SEGAL, Adam. *When China Rules the Web*. New York: Foreign Affairs. September 19, 2018. Accessed September 19, 2018. Available at https://www.foreignaffairs.com/articles/china/2018-08-13/when-china-rules-web .

7 This working paper is based on our PHD Thesis defended at Coimbra University in 2012 (Portugal, European Union). See FREIRE E ALMEIDA, Daniel. An International Tribunal for the Internet. São Paulo: Almedina, 2016, available at: https://www.almedina.net/ebook_info.php?ebooks_id=97885849301426 or https://www.amazon.co.uk/International-Tribunal-Internet-Daniel-Almeida-ebook/dp/B018HHLO70/ref=sr_1_2/262-5128826-5206617?s=books&ie=UTF8&qid=1537272381&sr=1-2&refinements=p_27%3ADaniel+Freire+e+Almeida .

8 For a complete version of our proposal, please see our book: FREIRE E ALMEIDA, Daniel. An International Tribunal for the Internet. São Paulo: Almedina, 2016, available at: https://www.almedina.net/ebook_info.php?ebooks_id=97885849301426 or https://www.amazon.co.uk/International-Tribunal-Internet-Daniel-Almeida-ebook/dp/B018HHLO70/ref=sr_1_2/262-5128826-5206617?s=books&ie=UTF8&qid=1537272381&sr=1-2&refinements=p_27%3ADaniel+Freire+e+Almeida .

hand, the arguments seeking to overturn the additional possibility of a world Law, Global or a *Universelles Völkerrecht* at no time mention the growing and dependent phenomenon of the Internet.

The paradigms have changed, we need to understand them, formulate new international routes, and address them. Because of this goal, and in order to resolve the issues raised, we are to propose the unprecedented International Tribunal for the Internet, presenting it in its essential organizational aspects.

Essentially, it is emphasized that its scope should be global, encompassing natural persons, companies, States and International Organizations, and to deal with **international** cases of the Internet. That is, the jurisdiction of the International Tribunal for the Internet should then be of a complementary range to the national jurisdictions. In fact, there would be no reason to move the adjudicative task at international level if the resolution materializes in the area of national scope of the disputed legal question.

The current paper is divided into six parts, raising some relevant topics to internal Organization of the International Tribunal for the Internet, namely: the General Assembly, the General Secretariat, the Judge's Chamber, the Chamber of Prosecutors, the International Bar Association, and diplomats of the Tribunal, to be established in order to overcome the challenges that national and international jurisdictions face in enforcing their respective judicial decisions and laws.

II. INTERNAL ORGANIZATION AND STRUCTURE OF THE INTERNATIONAL TRIBUNAL FOR THE INTERNET

It is appropriate to address, at this point, some relevant topics to internal organization of the International Tribunal for the Internet, including on the General Assembly, the General Secretariat, the Judge's Chamber, the Chamber of Prosecutors, the International Association of Lawyers, and diplomats of the Tribunal.

This approach will allow us to visualize the structure necessary to carry out the specific functions of prosecution of international cases involving the Internet and International Electronic Commerce, and duly justified by the challenges presented in the present Internet World[9].

1. General Assembly

It is initially necessary to the Tribunal to be provided with a legislative competence center set up by a **General Assembly**. Likewise, it is critical to the future goals of the international adjudicative body, to have their own place of reserved seat to the representatives of the Member States and Internet stakeholders.

Thus, regular and special meetings may be scheduled depending on the circumstances and needs, which certainly exist for these occasions. Within the assembly, all Member States should have a voice and vote, and to be represented by diplomats, Internet stakeholders, Global companies and technical-professionals (Law, Internet, E-Commerce, Computers).

At this point, be noted that the performance of this negotiator and representative role, by States, should be carried out by highly qualified personnel in international affairs and the Internet. This is because, it is desired that the future material that also serve as an international source for the Tribunal's trials is the result of various debates in this Assembly.

9 This working paper is based on our PHD Thesis defended at Coimbra University in 2012 (Portugal, European Union). See FREIRE E ALMEIDA, Daniel. An International Tribunal for the Internet. São Paulo: Almedina, 2016, available at: https://www.almedina.net/ebook_info.php?ebooks_id=97885849301426 or https://www.amazon.co.uk/International-Tribunal-Internet-Daniel-Almeida-ebook/dp/B018HHLO70/ref=sr_1_2/262-5128826-5206617?s=books&ie=UTF8&qid=1537272381&sr=1-2&refinements=p_27%3ADaniel+Freire+e+Almeida .

In this context, as a way to avoid merely delaying postures or goals hinder the continuity of actions, decisions about amendments or revisions of the founder Treaty, or supervening texts that should be part of this should be taken by a majority of two-thirds Member States present and voting, along the lines of the Vienna Convention (1969), article 9, paragraph 2[10].

One important final touch, subsequent Treaties that further define questions of international Law on the Internet and Electronic Commerce, should be part of the Tribunal Founder Treaty[11].

The aim with such means is the following: start a codification of international Law on the Internet and Electronic Commerce, and that the future Member States, when carrying out accession to the Tribunal, may, at the same time, consent with the sources to be used in trials.

In that context, it is worth mentioning here the hypothesis of negative international ratification, that is, it would be adopted a faster mechanism for subsequent Treaties originated in the General Assembly of the Tribunal, be considered as adopted by the Member States, without the need of internal procedures of each country[12].

Consequently, certainty as to the rules of international Law established by those Treaties, facilitate understanding by all stakeholders, as well as the resolution of cases before the Tribunal. In addition, the development of these rules can be reported by member countries.

Therefore, the General Assembly should be put on that body where all States and International Organizations members have voice and vote at the same level.

10 Article 9, paragraph 2. reads as follows: "2. The adoption of the text of a treaty at an international conference is effected by two-thirds majority of States present and voting, unless these states by the same majority, decide to apply a different rule. " *Cfr*. VIENNA CONVENTION ON THE LAW OF TREATIES, Vienna, 1969. On the matter of merely delaying postures or goals hinder the continuity of actions, *Vide* CASSESE, Sabino. *Regulation, Adjudication and Dispute Resolution Beyond the State.* Heidelberg: Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, Fall, 2008, p. 09.

11 To check out our complete Treaty proposal ("THE FOUNDER TREATY OF AN INTERNATIONAL TRIBUNAL FOR INTERNET"), please see our book: See FREIRE E ALMEIDA, Daniel. An International Tribunal for the Internet. São Paulo: Almedina, 2016, available at: https://www.almedina.net/ebook_info.php?ebooks_id=97885849301426 or https://www.amazon.co.uk/International-Tribunal-Internet-Daniel-Almeida-ebook/dp/B018HHLO70/ref=sr_1_2/262-5128826-5206617?s=books&ie=UTF8&qid=1537272381&sr=1-2&refinements=p_27%3ADaniel+Freire+e+Almeida .

12 This assumption would not only be set if the country expressly declared its untying to the dictates of the Treaty.

Everything, thus, compatible with the egalitarian principles among countries in the Public International Law. But, the configuration of the General Assembly will guarantee the presence and voice to the Internet stakeholders, to the Global companies and experts.

Additionally, in general terms, the General Assembly of the Tribunal would examine and promote the guidelines regarding the administration of the Tribunal, determine the budget and its guidelines, and seek to improve the Tribunal's efficiency through its decisions.

2. General Secretariat – Servers

Continuing, the Tribunal must host a General Secretariat. Referred body, managed by the General Manager, must focus on management, on a permanent basis, of all the Organization's internal structure and functioning, communication and negotiation of future interests.

It should consist of neutral servers in any way representing the desires or the policy of their own countries of origin or nationality. This quality, neutrality, should be very well represented, also, and above all, by the figure of Director General of the International Tribunal for the Internet.

The latter, head of international relations of the Tribunal, must seek to establish relations with the countries, International Organizations, Internet stakeholders and companies, as well as enter into treaties and cooperative systems on behalf of the Tribunal.

Continuing, in our view, the servers must be appointed by the Secretary, through global selection process in order to meet the qualified staff necessary to technical services and of support of the Tribunal, on the advice of Judges, Prosecutors, the International Bar Association, the diplomats and the Director General.

Yet, regarding the recruitment of staff, the Director General should seek to ensure the highest rules of efficiency, competence, impartiality, neutrality and integrity, taking into account the objectives of the body.

In no event could be any indication on the part of judges, prosecutors, diplomats or lawyers in world selection processes.

The only direct election would be the own Director General, open ballot, by a majority, considering the recommendations of the countries in the Assembly of the Member States.

The Director General should be elected for a period of five years, to perform duties on an exclusive basis, with no right to reelection. Due to the nature of the position, after the mandate would receive a reform to the same rules it had during the period of his term, ceasing in the moment that assumes any other gainful activity.

In addition, even with regard to the category of servers, the Tribunal should hire expert consultants. This is to assist the different organs of the Tribunal in its international and digital activities.

Therefore, the said category, in their specialized areas, would transit between the various organs, according to the need of the Tribunal.

They should, therefore, be of different areas of knowledge, with primacy for professionals in the Internet field, Informatics, software, applications, Information Systems, and Electronic Commerce.

3. Judge's Chamber

As a result, then, of their own goals already posted before the Tribunal, we found that the novel organization must have its adjudicative sector**.**

In primacy, the Judge´s Chamber gather Judges. These, in essence, should be guided by determinations that do not emphasize any State or private interest in their judgments, decisions and advisory opinions.

The Judges would be properly divided into sub-chambers of Instruction, Specialized Chambers (divisions in international legal areas of the internet, and a general division), and Boards of Appeal. In addition, any Judge of the Tribunal could, for distributive draw, draw up international advisory opinions.

Thus, initially, the sub-chambers of Instruction would examine, preliminarily, that the proposed action would fit between the Admissibility conditions. It should, for example, come across clearly unfounded actions. On the other hand, others may be irrelevant. Still, some may only want to establish conflicts in order to disturb

international personalities, companies or States, without having concerned any legal relationship with the person concerned.

Continuing, the Judge's Chamber would be divided into specialized chambers, that would dedicate their efforts to the trial of disputes involving the International Law on the Internet, with the knowledge of various fields of Law, including the Criminal Law, the Tax Law, the Electronic Commerce, the Civil Law, the Business Law, and others to raise the formation of a specialized Chamber. Those matters that do not concern a specialized division would be allocated to a Judge's Chamber General. In this regard, we can anticipate that the division into specialized Chambers does not withdraw, but objectives, an interdisciplinary adjudicative analysis.

In fact, the multiplicity of ways in which the phenomenon of Internet manifests and incorporates justified, largely, an interdisciplinary international adjudicative approach[13]. Under these angles, the purpose of the Tribunal is to go further and seek to overcome the natural demarcation of areas of Law. In other words, integrate, and then separate the areas of Law in its international dimension on the Internet.

In addition to the practical interest, the division into specialized Chambers is to ensure qualitatively that trials be supported by qualified judges in areas justifying deep meritorious knowledge. However, where the international and the Internet present to serve as an integration reference.

In summary about the own intricacies and details of the above disciplines must be guided by an international and Internet perspective in the evaluation of their cases[14].

Next, it is necessary for the body will house a Chamber of Resources, guaranteed up a double and ultimate degree to the demands of the Tribunal.

The judges dedicated to this section would be exclusive and should not participate in trials in Specialized Chambers. *The exception would give only the advisory tasks, where the resource judges could also contribute.*

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

Again, the Appeals Division would be divided into specialized segments, meeting the same criteria reserved for Specialized Chambers. Note that for each demand, upon appeal, where three participating judges.

Finally, the Tribunal should set aside additional task to each of the judges, including those of the Appeals Chamber, in order to participate in sweepstakes relating to consultations to the International Tribunal for the Internet.

Great international repercussion of questions requiring the interpretation of Applicable Law in the International Tribunal for the Internet could be submitted to the Advisory assessment of the Tribunal.

The Tribunal would fulfill its task in this area. Logically, an important collation, the Judge's Chamber shall have a large number and qualified judges. In the opposite direction, at this Tribunal the number should also mean quality. First, quantity determination must be guided by sufficiency to avoid up accumulations of cases, slow, and dissatisfaction of international (and National!) jurisdictional. Also, it cannot be the privilege of a few judges.

The aim, in fact, is hiring (by Global selection process) an unprecedented number of judges to the international scope of the Tribunal[15]. In other words, at least 2 per nationality, of the member countries[16]. In this case, it would be at a later stage, therefore, represented the main legal systems of the world, and would have, likewise, equitable geographical representation.

These criteria are not equivalent to saying that the judges would be appointed by the countries. Not even participate in the trials as representatives of their countries. Therefore, they cannot be political or ideologically, directly nominated by their countries of origin.

Even with regard to nationality criteria, the national of any member country can apply to be a Judge, ensuring at least 2 places per country, which should be increased by the need of the Tribunal, and in proportion to the number of direct connections to

15 The International Criminal Court meets in its "Judicial Divisions" 18 judges, while the International Court of Justice is composed of 15 judges and a "Register". However, we should be aware that the International Criminal Court held only 26 cases to date, while the International Court of Justice held only a little bit more of 150 cases. *Cfr*. *International Court of Justice*, Available at: https://www.icj-cij.org/en/list-of-all-cases . *Cfr*. *International Criminal Court*, Available at: https://www.icc-cpi.int/Pages/cases.aspx , Accesses in 09.18.2018.
16 Only member countries could have nationals in the internal composition of the Tribunal as a means of pressure to accession.

the Internet that the country has. That is, the country that has the most Internet users now has more judge positions in the Tribunal.

The intention here is that digital inclusion efforts of each country result in proportional guarantee vacancies for the Tribunal's office. In this line, for hiring a judge, they should, on its own initiative, apply to the Tribunal, through global selection process, with criteria that seek to represent what is desired from a Judge of the International Tribunal for the Internet.

It should be noted, fundamentally, that this procedure contradicts, on purpose, the criteria adopted for filling positions in other international legal bodies. This is because the Tribunal for the Internet is not intended to be a political instrument, used to embellish the partisanship of personalities, comrades, an intentional ideology or house of favor of certain counterparts.

After all, it should be noted that the merit criteria, based on legal knowledge, should guide the conduct of completing the Tribunal's office. Note, that it is not the case here to exacerbate the role of the lawyer in the case of judges Chamber. The desire is that the diplomatic or political criteria remain assigned to the negotiations in the General Assembly of the Tribunal, suitable location for the governments of each country and stakeholders to indicate their representatives and negotiators.

Still on the judges, as of now, some criteria can be tacked, and for now, then, as we talk about the quality of judges. They must have solid academic training; recognized legal competence; have specific knowledge of the operation of the qualities and details of International Law, the Internet and Electronic Commerce; they should devote themselves on an exclusive basis; gather specific knowledge of the complementary legal area, to which will dedicate in Tribunal: Criminal Law, Tax Law, the Electronic Commerce, the Civil Law, the Business Law; they should be guided by the independence in all functions; and shall have an excellent knowledge of one of the languages of the Tribunal[17].

17 To find out our complete Treaty proposal ("THE FOUNDER TREATY OF AN INTERNATIONAL TRIBUNAL FOR INTERNET"), please see our book: See FREIRE E ALMEIDA, Daniel. An International Tribunal for the Internet. São Paulo: Almedina, 2016, available at: https://www.almedina.net/ebook_info.php?ebooks_id=97885849301426 or https://www.amazon.co.uk/International-Tribunal-Internet-Daniel-Almeida-ebook/dp/B018HHLO70/ref=sr_1_2/262-5128826-5206617?s=books&ie=UTF8&qid=1537272381&sr=1-2&refinements=p_27%3ADaniel+Freire+e+Almeida .

Due to the above criteria, the Secretary General must then be a remarkable Commission to prepare, conduct and decide to take the global selection process, ensuring that the fairs meet the parameters linked to the objectives and the material in the Statute, including its Applicable Law, and is made new selection every year, in order not to occur cases of vacancy, due to vacation or retirement of judges.

The position should be exercised until the date of retirement of the Magistrate, never before eight years of exclusive exercise in Tribunal[18], and with a minimum of age.

Judges should receive annual salaries, and tax-exempt, under the Vienna Convention on Diplomatic Relations (1961) and in alignment, with what was established in the Convention on the Privileges and Immunities of the United Nations in 1946, and in the Convention on the Privileges and Immunities of the Specialized Agencies (1947)[19].

4. Chamber of Prosecutors

Prosecutors must instruct the international investigations, submit and track complaints based on information about the Tribunal's jurisdiction practices. That way, you can link the Prosecutor to offices to investigate and report practices that would fall in the jurisdiction of the International Tribunal for the Internet.

First, an important point: he must conduct investigations, either on his own initiative or at the instigation of interested parties (persons, companies or States), along the lines arranged on Admissibility and Conditions Criteria[20]. Consequently,

18 The minimum number of years should be a candidate compromise in order to avoid those who would use the position before the Tribunal only as a way to spend a certain time in a new country or relevant position.

19 These conventions have been used as a model whenever a new International Organization prepares and negotiates its founder Treaties and the Headquarters Agreements concluded accordingly. *Vide* UNITED NATIONS. Convention on the Privileges and Immunities of the United Nations, 1946. *Vide* UNITED NATIONS. Convention on the Privileges and Immunities of the Specialized Agencies, 1947. Vide *Vienna Convention on Diplomatic Relations*, 1969. *Vide* REINISCH, August. *The Immunity of International Organizations and the Jurisdiction of Their Administrative Tribunals*. New York: International Law and Justice Working Paper 2007/11, p. 2 et seq.

20 Please see our complete Treaty proposal ("THE FOUNDER TREATY OF AN INTERNATIONAL TRIBUNAL FOR INTERNET"), in our book: See FREIRE E ALMEIDA, Daniel. An International Tribunal for the Internet. São Paulo: Almedina, 2016, available at: https://www.almedina.net/ebook_info.php?ebooks_id=97885849301426 or https://www.amazon.co.uk/International-Tribunal-Internet-Daniel-Almeida-ebook/dp/B018HHLO70/ref=sr_1_2/262-5128826-5206617?s=books&ie=UTF8&qid=1537272381&sr=1-2&refinements=p_27%3ADaniel+Freire+e+Almeida .

they should report activities that may be subject to trial by the Tribunal, within those criteria, and that have not been made by interested parties.

For this, they could collect additional information from States, companies, people and other International Organizations as well as seek to receive written, digital or oral testimony at the Tribunal headquarters or regional headquarters located in the participating countries.

On the other hand, when the events are triggered by persons, companies and/or States, as subjects of certain actions, Prosecutors should only participate in a complementary way in assisting the judges' decisions. All activities should be guided by prudence and neutrality. However, in the shortest possible time. For more than once, we refer to extremely quickly and relocation of the content on the Internet qualities. All the Tribunal's activities should take this into consideration.

Prosecutors should seek, therefore, innovative actions and modern research methods. The request for information offices should be scanned and sent by digital means, in order of the modern Rules of Procedure.

An important collation, Prosecutors should be engaged in the same manner and criteria that we referred to the Judges. In fact, the only distinction will be a function of the position desired by the candidate, each of whom must apply for one career during a worldwide selection process: either Judge or Prosecutor, International Lawyer, or server, or Diplomat of the Tribunal.

5. International Bar Association

Another organization, as member of the Tribunal's structure, should be an International Bar Association.

The claimants should, in cases where they have no financial means to hire a lawyer in their country of origin, have free legal representation.

The criteria to be used to verify the situation will be interested to family income, which should not exceed €1,000 or $1000, in principle. The service should be as broad as possible. Therefore, the lawyers must reside in the country of the plaintiff, given the need for criteria to be reviewed by the Tribunal, through the Director General, and also on the recommendation of the Member States. The difference here, compared to

other positions, is that the lawyer must be entered on the national advocacy organ with a valid license to practice the law.

The costs of their activities, as well as their salaries shall be paid by the Tribunal. However, its work registration will be held in the country of the Tribunal. Here again, it would be proposed by the immunities provided by the Vienna Convention on Diplomatic Relations of 1961, including its headquarters and office work, the Convention on the Privileges and Immunities of the United Nations (1946), and the Convention on the Privileges and Immunities of Specialized Institutions (1947)[21]. The reason for this will be to ensure the independence and necessary security for their activities in relation to the country of residence.

The lawyer at the Tribunal should also work on an exclusive basis. He should follow audiences *online* to be made to the Tribunal, from the country of location of the branch of the International Tribunal for the Internet. In addition, he shall issue opinions on matters involving the country's Law on which it is situated, and defend the legal interests of the Tribunal with the assistance of the International Organization diplomats.

At the point above, namely of opinions, the intention, too, is to lend input to the Judges in their advisory role.

6. Diplomats of the Tribunal

The Tribunal should form a body of negotiating diplomats to the external interests of the Tribunal. This group, headed by the Director General, represent the purposes of the Tribunal, organizing inclusive conferences, meetings focused on multilateral negotiations, actively participate in regular and special meetings to promote the Law Applicable to the Tribunal and which international diplomatic positions the Tribunal should adopt. In other words, which are their goals, proposals, strategies, and

21 These conventions have been used as a model whenever a new International Organization prepares and negotiates its founder Treaties and the Headquarters Agreements concluded accordingly. *Vide* UNITED NATIONS. Convention on the Privileges and Immunities of the United Nations, 1946. *Vide* UNITED NATIONS. Convention on the Privileges and Immunities of the Specialized Agencies, 1947. Vide *Vienna Convention on Diplomatic Relations*, 1969. *Vide* REINISCH, August. *The Immunity of International Organizations and the Jurisdiction of Their Administrative Tribunals*. New York: International Law and Justice Working Paper 2007/11, p. 2 et seq.

subsequent negotiations (headquarters, regional offices, diplomatic representation, guarantees, and immunities).

This body shall act in accordance with the guidance of the Director General, through representation, information gathering, negotiation and promotion of interests of the International Tribunal.

Timely, again mention here that all servers, attorneys, diplomats, international lawyers should be hired in the same manner and criteria that we referred to the Judges.

The only difference is due to the position wanted by the candidate, each of whom, as noted, apply for one job during a worldwide selection process: either Judge or Prosecutor, International Lawyer, or server, or Diplomat of the Tribunal[22].

22 The positions in question receive such salaries, cost of cover, benefits and possible reform established by a Meeting of States Parties. These salaries and allowances cannot be reduced.

III. CONCLUSIONS

For all as proposed above, both with regard to Internet potentialities, and about new problems and conflicts introduced by it, it is justified that the direction for an International Tribunal for the Internet should be suitable for the new world of Internet.

In other words, if we repeat everything that had been done regarding some national court procedures, *and possibly international*, to design a new Tribunal, may fall in the same slow errors, excess delaying resources, few cases, inefficiency of decisions, among other challenges already historically investigated by scholars around the world.

Indeed, the resolution of international Internet disputes, requires a new paradigm of international justice. Therefore, the best results, for the Internet World, are very important[23].**That what we want by addressing an International Tribunal for the Internet[24]**.

Essentially, what is desired, in addition to the identification and analysis of relevant problems which presents itself, is to idealize an effective solution. In fact, the view of the problems arising in the prosecution of international Internet issues and Electronic Commerce, opened, thereby, exciting ways to call for a solution.

The idealization of an International Tribunal for the Internet is a solution that, for us, is the best technique for legal and international conflict resolution of international Law on the Internet. Moreover, fundamentally, we must emphasize that the freedom that both attracts people to the Internet at the same time, and paradoxically, to be properly maintained need some sort, either by new regulatory means, whether by new judicial means.

Nevertheless, the establishment of an International Tribunal for the Internet, which we propose in this working-paper, can be improved in the course of future times, by those

23 *Vide* WHITING, Alex. *In International Criminal Prosecutions, Justice Delayed Can Be Justice Delivered.* Harvard International Law Journal, Volume 50, Number 2, Summer 2009, p. 323/364.

24 A complete list of arguments, reasons and details can to be found in our PHD Thesis defended at Coimbra University (Portugal, European Union). See FREIRE E ALMEIDA, Daniel. An International Tribunal for the Internet. São Paulo: Almedina, 2016, available at: https://www.almedina.net/ebook_info.php?ebooks_id=97885849301426 or https://www.amazon.co.uk/International-Tribunal-Internet-Daniel-Almeida-ebook/dp/B018HHLO70/ref=sr_1_2/262-5128826-5206617?s=books&ie=UTF8&qid=1537272381&sr=1-2&refinements=p_27%3ADaniel+Freire+e+Almeida .

.

wishing to also devote to the acquisition of true international Internet issues, and reflect on the best alternatives.

But everything should be done without neglecting the practice cases, the international reality of the Internet and E-Commerce, and without, fundamentally, despising academic and professional studies that are presented worldwide. Furthermore, although several statements or idealizations may find diverging forces and information on other precedents, we can say after borderless readings, and long critical meditations, that the present moment of international relations provided by the Internet offers scenarios and justifications to more modern and humbly bold positions. As a matter of fact, as evidenced by the digital world, the Internet has been a virtual space of convergence and concentration, unprecedented, of the most varied forms of information, communication, commerce, services, entertainment and crime.

We shall not respond to this new world with old regulatory and national judicial tools. In fact, the Internet meets certain characteristics and natural conditions that challenge old judicial experiences and regulatory requirements of resolution of legal disputes, locally and internationally. Indeed, digital networks operated by the companies are global, and the social structure in which they are based, digital networks, is by definition global. As we can see, the new patterns of choice for communication and social interaction online replaced territorially limited ways of human relationships.

Important here to be noted are the consequences of these changes and implications, huge for the future of our societies, increasingly digital. These digital communication tools pose a different set of legal problems, ranging from child pornography, passing through cybercrimes, conflicts between e-commerce companies and States or persons, cyberespionage, system intrusions, cybersecurity, the use of cryptocurrencies and blockchain for financial crime, money laundering and tax evasion, cyberattacks, among many and many others. Such cases are proliferating in Tribunals worldwide, involving a growing number of people, with an international dimension. In fact, in all areas where the Internet "manifests itself" we find significant legal repercussions reaching the Tribunals more constantly.

Disputes arising from new Internet activities put traditional judicial powers under uncomfortable situations, much because of the speed of arguments, instantaneity, internationality, exterritoriality, and hosting of the Internet data abroad (which can be used as an evidence in courts around the world).

The legal techniques of the past have not been able to respond to all new challenges. Likewise, are the legislative challenges, given the difficulty in achieving to subject the behavior of a citizen linked to multiple sovereignties, when in any trials.

Multiple activities conducted through the Internet are inherently transnational, presenting complexities on the implementation of national or regionally specific regulations. Technological advances have, through the numerous activities offered by the Internet, significant interactions with endless interferences on distant individuals physically, but more and more virtually connected.

It is in this line of reasoning then, that by taking legislative initiatives of a country that can slide wherein the Internet area, we can check a state interest in enforcing such rules for the acts and persons located in its national space, like the GDPR. But we find, on the other hand, that many (millions) other acts and people would be outside of the effective context of these laws, even relating with people and domestic companies through the Internet.

In other words, we can conclude that the limits on the scope of the regulations, in the affairs of the Internet, are faced by any country, similarly, no matter the content of the Law that arises. More specifically, we can address that some basic qualities of the Internet have offered resistance to the application of national legislation in the activities developed by the World Wide Web, as the globalization of the Internet, International electronic communications and data, and the multinational Electronic Commerce, exercised by the global digital companies.

Therefore, growing needs require new forms of global governance to deal with all these digital issues, but also global ones. Indeed, people and companies look for "*global greater certainty and justice*" in international affairs involving the Internet.

That is why we present the International Tribunal for the Internet, originally since 2008[25].

25 A complete list of arguments, reasons, the history, and details can to be found in our PHD Thesis defended at Coimbra University in 2012 (Portugal, European Union). See FREIRE E ALMEIDA, Daniel. An International Tribunal for the Internet. São Paulo: Almedina, 2016, available at: https://www.almedina.net/ebook_info.php?ebooks_id=97885849301426 or https://www.amazon.co.uk/International-Tribunal-Internet-Daniel-Almeida-ebook/dp/B018HHLO70/ref=sr_1_2/262-5128826-5206617?s=books&ie=UTF8&qid=1537272381&sr=1-2&refinements=p_27%3ADaniel+Freire+e+Almeida .

IV. BIBLIOGRAPHY

CASSESE, Sabino. *Regulation, Adjudication and Dispute Resolution Beyond the State*. Heidelberg: Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, Fall, 2008, p. 09.

DIXON, Helen. *Regulate to Liberate. Can Europe Save the Internet?*. New York: Foreign Affairs. September 19, 2018. Accessed September 19, 2018. Available at https://www.foreignaffairs.com/articles/europe/2018-08-13/regulate-liberate .

EINISCH, August. *The Immunity of International Organizations and the Jurisdiction of Their Administrative Tribunals*. New York: International Law and Justice Working Paper 2007/11, p. 2 et seq.

FREIRE E ALMEIDA, Daniel. *An International Tribunal for the Internet*. São Paulo: Almedina, 2016, available at: https://www.almedina.net/ebook_info.php?ebooks_id=97885849301426 or https://www.amazon.co.uk/International-Tribunal-Internet-Daniel-Almeida-ebook/dp/B018HHLO70/ref=sr_1_2/262-5128826-5206617?s=books&ie=UTF8&qid=1537272381&sr=1-2&refinements=p_27%3ADaniel+Freire+e+Almeida .

GOOGLE SPAIN SL AND GOOGLE INC. V AGENCIA ESPAÑOLA DE PROTECCIÓN DE DATOS (AEPD) AND MARIO COSTEJA GONZÁLEZ, Available at http://curia.europa.eu/juris/document/document.jsf?text=&docid=153853&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=380763 .

REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL *on the protection of natural persons with regard to the processing of personal data and on the free movement of such data*. Available at https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=PT .

SEGAL, Adam. *When China Rules the Web*. New York: Foreign Affairs. September 19, 2018. Accessed September 19, 2018. Available at https://www.foreignaffairs.com/articles/china/2018-08-13/when-china-rules-web .

THE FOUNDER TREATY OF AN INTERNATIONAL TRIBUNAL FOR INTERNET, in FREIRE E ALMEIDA, Daniel. *An International Tribunal for the Internet*. São Paulo: Almedina, 2016, available at: https://www.almedina.net/ebook_info.php?ebooks_id=97885849301426 or https://www.amazon.co.uk/International-Tribunal-Internet-Daniel-Almeida-

ebook/dp/B018HHLO70/ref=sr_1_2/262-5128826-5206617?s=books&ie=UTF8&qid=1537272381&sr=1-2&refinements=p_27%3ADaniel+Freire+e+Almeida .

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

UERPMANN-WITTZACK, Robert. *Principles of International Internet Law*. German Law Journal, Volume 11, nº 11, 2010.

UNITED NATIONS. *Convention on the Privileges and Immunities of the United Nations*, 1946.

UNITED NATIONS. *Convention on the Privileges and Immunities of the Specialized Agencies*, 1947.

VIENNA CONVENTION ON THE LAW OF TREATIES, Vienna, 1969.

WHITING, Alex. *In International Criminal Prosecutions, Justice Delayed Can Be Justice Delivered*. Harvard International Law Journal, Volume 50, Number 2, Summer 2009, p. 323/364.