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Sumário

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Abstract

The aim of this paper is to present the criminal offences related to the organized crime as a result of a process of internationalization of Criminal Law in which different legal systems interfere. The selected methodology of the present paper is based on instruments which correspond with a qualitative methodological strategy. As reporting units are identified: local legislation (criminal legislation of the States under consideration, namely permanent member states of MERCOSUR) international legislation and legal doctrine. With regard to the investigative technique, it is used the traditional documentary analysis: contest analysis. The criminal offences characteristic of this new model of Criminal Law sets up a new discipline, namely "Transnational Criminal Law". As a consequence of this, the development of a regional dogmatic of criminal law becomes necessary to provide legal certainty, but also to act as retaining wall facing to ideas, categories and intuitions of other systems of criminal imputation which become dysfunctional when they are applied in our system. The establishment of a regional of criminal law around the Transnational Criminal Law becomes thus a new regional strategy faced with the Americanization of criminal policy.

Keywords: Internationalization; Criminal Law; Legal Theory.

Resumo

O objetivo deste artigo é apresentar as infrações penais relacionadas ao crime organizado como resultado de um processo de internacionalização do Direito Penal em que diferentes sistemas legais interferem. A metodologia selecionada do presente trabalho baseia-se em instrumentos que correspondem a uma estratégia metodológica qualitativa. Como unidades de informação são identificadas: legislação local (legislação penal dos Estados em consideração, nomeadamente Estados membros permanentes do MERCOSUL) legislação internacional e doutrina legal. No que se refere à técnica investigativa, utiliza-se a análise documental tradicional: análise de concurso. As infrações criminais características deste novo modelo de Direito Penal estabelecem uma nova disciplina, chamada "Direito Penal Transnacional".

* Artigo convidado

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Como consequência disso, o desenvolvimento de uma dogmática regional do direito penal torna-se necessário para proporcionar segurança jurídica, mas também para atuar como muro de retenção diante de ideias, categorias e intuições de outros sistemas de imputação criminal que se tornam disfuncionais quando aplicados nosso sistema. A criação de um direito penal regional em torno do Direito Penal Transnacional torna-se, assim, uma nova estratégia regional diante da americanização da política criminal.

Palavras-chave: Internacionalização; direito penal; teoria jurídica

1. The internationalization of criminal law

The classic Criminal Law is a product of closed and unitary domestic legal systems. Criminal Law of the economic globalization and the supranational integration is, instead, an increasingly unified Law, but, at the same time, less guarantee-based, in which the rules of imputation (attribution of liability) are relaxed and in which the (substantive and procedural) criminal safeguards are relativized.[1] The distinctive features of this new model of Criminal Law are the following:

(*i*) The internationalization of Criminal Law is performed through the instruments of the International Law[2]. In the first instance, it was developed by the Customary International Law; through principles which were, subsequently, codified by the Rome Estate which creates the International Criminal Court (ICC). However, bi and multilateral treaties are the instruments which perform this process of internationalization. These conventions affect many criminal offences such as terrorism, illicit drug and arms trafficking, human trafficking, prostitution and child pornography, organized crime, money laundering, etc.

The process of internationalization of Criminal Law we refer to is developed, essentially, through the "Transnational Criminal Law" (TCL), concept we develop further down, from the incorporation in the domestic legislations of the criminal offences emerged from international conventions (treaty crimes).

(*ii*) The new Criminal Law emerged from the process of internationalization is a Law oriented to give practical answers. The style of legal arguments is rather pragmatic and, mainly, oriented to legal factual arguments.[3] The pragmatism which characterizes this new model of Criminal Law is displayed by the fact that the actors – mainly the states – do not discuss about the foundation of a new Criminal Law based on the redefinition of its principles, but, in the light of a specific problem, for example, the drug trafficking or the organized crime; the answer is (always) punitive reflected in an international convention.

In this process of codification of the "treaty crimes" have retreated the dogmatic, categorical or systematic discussions.[4] The exigence to give an answer to the crime of the globalization is conceived, in general, in

1 Silva Sánchez, Jesús María. *La expansión del derecho penal:* aspectos de la política criminal en sociedades postindustriales. 2. ed. Madrid: Civitas, 2001. p. 81.

2 Following Triffterer, the International Criminal Law in a formal sense is the set of all the rules of criminal international nature, that connect a certain conduct– international crimes – with certain consequences typically reserved to the Criminal Law and which, as such, are directly enforceable. Triffterer, Otto. *Dogmatische Untersuchungen zur Entwicklung des materiellen Völkerstrafrechts seit Nürnberg.* Freiburg i. Br.: Albert, 1966. p. 34. According to Ambos, the International Criminal Law is a combination of the principles of the Criminal Law and the ones of the International Law. From the first it takes the idea of individual liability and the idea of blameworthiness for a certain conduct. From the second it takes, whereas, the criminal offences, subjecting the conduct into question to an autonomous punishment of the International Law (principle of direct liability of the individual according to the International Law). Ambos, Kai. *Internationales Strafrecht:* Strafanwendungsrecht – Völlkerstrafrecht – Europäisches Strafrecht – Rechthilfe. 4. ed. München: C. H. Beck, 2014. p. 100-101.

3 Perron, Walter. Europäische und transnationale Strafrechtspflege als Herausforderung für eine moderne Strafrechtdogmatik. In: Tiedemman, Klaus et al. (Ed.). *Die Verfassung moderner Strafrechtspflege.* Erinnerung an Joachim Vogel. Baden-Baden: Nomos, 2016. p. 316.

4 Ambos, Kai. Zur Zukunft der deutschen Strafrechtswissenschaft: Offenheit und diskursive Methodik statt selbstbewusster Provinzialität. In: Tiedemman, Klaus; et al (Ed.) *Die Verfassung moderner Strafrechtspflege.* Erinnerung an Joachim Vogel. Baden-Baden: Nomos, 2016. p. 324.

punitive terms. From international agreements is intended to harmonize the domestic criminal legislations to avoid that certain conducts remain unpunished in certain territories ("criminal havens").

We can define the "treaty crimes" as a set of rules, based on none fundamental conception, but they pursue, unilaterally and with an eye on opportunity criteria, a single purpose: the protection of certain interest which ensure the international security. Indeed, the only desire of the international legislator is the achievement of certain aims related to the internal security (the fight against terrorism and the organized crime), the suppression of certain undesirable crimes (child pornography) or the protection of financial interests (in order to avoid money laundering). These rules are not systematically organized, nor based on a unitary criminal theory. The classification of the criminal rules and the selection of a criminal theory in which they can be based on have been left to member states.

(*iii*) The national legislator and the national judges are not more, for some time, sovereigns of the enactment and application of the criminal legislation, but they are extensively forced by the international obligations.[5] According to Vogel, form of appearance of the "interlegality". The inter and supranational legal systems influence in the national legal systems and cause their resistance. The fact that the crime acts, due to the globalization, in an increasingly transnational way, as in the case of the international terrorism, the organized crime or the drugs or human trafficking, drives to the internationalization.[6-7]

(*iv*) In view of the need to give a punitive answer to the transnational crime, it is not possible that the German-based Criminal Law System disregards the Common Law System. In the recent years a permanent loss of the international significance of the German science of Criminal Law is perceived in all levels. Even though it preserves, anyway, influence in numerous States of the "Civil Law System".[8] However, the basic concepts of the German dogmatic of Criminal Law (*deutsche Strafrechtsdogmatik*) such as legal interest (*Rechtgut*), "*Unrecht*" or "*Schuld*" are not considered as part of the international or European criminal heritage.[9] How much has invested the German dogmatic (Legal Theory) of Criminal Law in the attempt to bridge the criminal divide between "*Unrecht*" and "*Schuld*"? Concepts which are still unknown in others legal systems, they even have no English translation.[10] The "encounter of legal cultures" is unclear,[11] the reception of

5 Perron, Walter. Europäische und transnationale Strafrechtspflege als Herausforderung für eine moderne Strafrechtdogmatik. In: Tiedemman, Klaus; et al (Ed.) *Die Verfassung moderner Strafrechtspflege.* Erinnerung an Joachim Vogel. Baden-Baden: Nomos, 2016. p. 319.

6 "We live in a time of [...] networks of legal orders forcing us to constant transitions and trespassings [...] that is, [...] interlegality". SANTOS, Boaventura de Sousa. *Toward a new common sense:* law, globalization and emancipation. London: Routledge, 1995. p. 473.

7 Vogel, Joachim. La internacionalización del Derecho penal y del Proceso penal. *Revista Penal*, v. 22, 2008. p. 161. Vogel, Joachim. Europäische Kriminalpolitik: europäische Strafrechtsdogmatik. *Goltdammer's Archiv für Strafrecht*, 2002. p. 520.

8 Ambos, Kai. Zur Zukunft der deutschen Strafrechtswissenschaft: Offenheit und diskursive Methodik statt selbstbewusster Provinzialität. In: Tiedemman, Klaus; et al (Eds.) *Die Verfassung moderner Strafrechtspflege.* Erinnerung an Joachim Vogel. Baden-Baden: Nomos, 2016. p. 322.

9 Vogel, Joachim. Strafrecht und Strafwissenschaft im internationales und europäisches Rechtsraum. *Juristen Zeitung*, 2012. p. 25. In the field of the general theory or the general part of (International) Criminal Law is largely ignored the deductively-based concept of crime created by the German theory. The only convincing result of the German theory is the "*Tatherrschaftslehre*" (theory of control over the act as main criterion) developed by Claus Roxin. This theory has been recepted not only in other legal systems, but also by international criminal courts. Ambos, Kai. Zur Zukunft der deutschen Strafrechtswissenschaft: Offenheit und diskursive Methodik statt selbstbewusster Provinzialität. In: Tiedemman, Klaus; et al (Ed.) *Die Verfassung moderner Strafrechtspflege.* Erinnerung an Joachim Vogel. Baden-Baden: Nomos, 2016. p. 323. Rightly, Satzger estates that the complexity of a theory in no way represents a deficit of a scientific discipline, but it is a sign of a large developed dogmatic; as it is currently the case of the German Criminal Law, which cannot be comprehended without a high level of abstraction and complexity, it is immediately evident that cannot be understood concepts and previsions at the first attempt. Stazger, Helmut. Die Rolle einer modernen deutschen Strafrechtswissenschaft im europäischen und internationalen Kontext. In: Tiedemman, Klaus; et al (Ed.) *Die Verfassung moderner Strafrechtspflege.* Erinnerung an Joachim Vogel. Baden-Baden: Nomos, 2016. p. 280.

10 These concepts can be translated in Portuguese as "*ilicitude*" (*Unrecht*) and "*culpabilidade*" (*Schuld*).

11 According to Cassese the "National legal orders do not contain a uniform regulation of criminal law. On the contrary, they are split into many different systems, from among which two principal ones emerge: that prevailing in common law countries (the UK, the USA, Australia, Canada, many African and Asian countries), and that obtaining in civil law countries, chiefly based on a legal system of Romano- Germanic origin (they include states of continental Europe, such as France, Germany, Italy, Belgium, the countries of Northern Europe such as Norway, Sweden, Denmark, as well as Latin American countries, many Arab countries, as

concepts, categories and institutions from other legal traditions is often ignored by the legislator; it is the dogmatic of Criminal law, which, in a kind of defending trench, exposes the spread of this phenomenon. Faced with this situation, one of the few conclusions which can be made is that the attempt to universalize the German dogmatic of Criminal Law is a chimera. [12] At the beginning of the new century Roxin announced that "the science of Criminal Law will have to strengthen the criminal grounds for a supranational Criminal Law, that is, in a foreseeable time, the European and the International Criminal Law".[13] However, the German science of Criminal Law had no influence, with a few exceptions,[14] in the development of the criminal international legislation.[15]

2. The internationalization of the fight against the organized crime

Despite the general consensus about the fact that the organized crime represents a worldwide problem, there is no consensus about what the organized crime really is. The current discussion how should be defined this concept, focused on the individuals and the structures or, on the contrary, if it should be defined based on the criminal activities and how they are organized, keep the social scientist and the jurists in a vicious circle.[16] Within the disciplines which study this phenomenon (criminology, sociology, economy, international relationship, etc.) there are vague concepts of this subject,[17] and the consensus reached in the

well as Asian states including, for instance, China). The heterogeneous and composite origin of many international rules of both substantive and procedural criminal law, *a real patchwork of normative standards,* complicates matters…". Cassese, Antonio. *International criminal law.* 2. ed. Oxford: Oxford University Press, 2007. p. 7.

12 See: Welzel, Hans. *Vom Bleibenden und vom Vergänglichen in der Strafrechtswissenschaft.* Marburg a. d. Lahn: Elwert, 1964. p. 16-17. Kaufmann, Armin. Das Übernationale und Überpositive in der Strafrechtswissenschaft. In: Jescheck, Hans-Heinrich, et al (Ed.). *Gedächtnisschrift für Zong Uk Tjong.* Tokio: Seibundo, 1985. p. 100-111.

13 Roxin, Claus. Die Strafrechtswissenschaft von den Angaben der Zukunft. In: Esser, Albin et al (Ed.). *Die deutsche Strafrechtswissenschaft vor der Jahrtausendwende.* Rückbesinnung und Ausblick. München: C.H. Beck, 2000. p. 369.

14 Thus, the Kampala Review Conference of the Rome Statute of the International Criminal Court (Uganda, 2010) in which Germany played a decisive role in the definition of the crime of aggression.

15 If the current German penal legislation can be contemplated as international and European, especially as exemplary can be called into question. The German Penal Code in its present form dates from the reforms of the 1960' and 1970 and cannot be a model to follow. In the international and European arenas of criminal policy, Germany is not a predominant actor; in other words, the decisions are taken by other States. Joachim. Strafrecht und Strafwissenschaft im internationales und europäisches Rechtsraum. *Juristen Zeitung*, 2012. p. 25-26. Likewise, Silva Sánchez manifests himself sceptical about the current role of the German Dogmatic of Criminal Law. "I have to confess it is my fear that for the Dogmatic, 'any past time was better'. In effect, the great German scholars are retired or are in the process of doing so, and a large portion of their successors – in any case, some of the most brilliant and influential – seem much more open to worship the golden calf of Brussels (or maybe of Washington) to follow their predecessors. *O tempora, o mores*!". Silva Sánchez, Jesús María. Prólogo 2012. El sistema moderno del derecho penal: cuestiones fundamentales. In: Schünemann, Bernd (Comp.). *El sistema moderno del derecho penal:* cuestiones fundamentales. Estudios en honor del Claus Roxin en su 50º aniversario. 2. ed. Buenos Aires: B de F, 2012. p. 15-16.

16 Maljevic, Almir. *Participation in a Criminal Organization and "Conspiracy":* different legal model against criminal collectives. Berlin: Duncker & Humblot, 2011. p. 2-3.

17 The research in the matter of "organized crime" "does not have the notion of a coherent object of study as its starting point. On the contrary, the very purpose of the study of organised crime is to determine whether or not such coherent phenomenon indeed exists". VON LAMPE, Klaus. *The study of organised crime:* an assessment of the state of affairs. In: Organised crime: norms, markets, regulation and research. Oslo: Unipub, 2009. p. 166. A definition of "organised crime" is, therefore, a possible outcome rather than a precondition for the study of this subject. KELLY, R. J. Criminal underworlds: looking down on society of bellow. In: *Organized crime:* crosscultural studies. Totowa (NJ): Rowman & Littlefield, 1986. p. 10. Lampe points out three problems at the time of conceptualizing the organized crime, namely: "First of all, there is the problem of delineation organized crime as an object of study. Organized crime is neither a clearly discernible empirical phenomenon, nor do we find an agreement on what its 'essence' or 'nature' might be. Rather, a broad range of people, structures and events are in varying degrees and combinations subsumed under this umbrella concept. Due to this elusiveness, the phrase 'organized crime' was allowed to take on an existence of it owns quite independent from the social reality it supposedly relates to. Social scientists, then, not only face the challenge of nailing a 'conceptual pudding' to the wall. They also have to deal with the duality of organized crime as a facet of social reality and as a social construct. [...] The second difficulty has to do with the lack of concise terminology. For example, basic concepts such as those of 'criminal organization' and 'criminal networks' are sometimes used interchangeably and at other times are treated as analytically distinct categories […] As a result there is a great deal of confusion and misunderstanding […] The third problem arises where commonly held

legal sphere, by means of an international convention, has not achieved, even today, that the different States still use different concepts of it.[18]

The criminal system of the United States is a domestic Law, which spreads globally, influencing in the international instruments, particularly from its dominant position in the conventions, producing, in this way, modifications in the other domestic legal systems. Thus, new concepts such as "corporate liability", criminal offences related to organized crime, human trafficking, money laundering or drug trafficking were originally conceptualized by the American Criminal Law.[19]

In reference to the organized crime, one must not lose sight of the dominant role of the criminal policy of the USA in the fight against drug trafficking since the 1960' in the international legislation.[20] There was an "Americanisation" of the answer of the international community to the problem of drug trafficking, founded from the framework established in the UN Conventions against drug trafficking. [21] These conventions were established as the result of an intense and continued pressure of USA to lead the crime policy on this matter. The *UN Vienna Convention of 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* is in line with the objectives of the American diplomacy as is indicated in the recommendations "*Foreign Assistance*" of the *Reagan Organized Crime Commission*.[22],[23] At the same time, as the crime policy showed signs of ineffectiveness to combat this scourge, it was established in the international agenda the need to fight against a wider phenomenon, namely the "organized crime". In the last decade of twenty century the con-

views on the reality of organized crime are contradicted by empirical research. Often enough what is considered by the media, politicians and law enforcement officials as an established fact, under closer scrutiny turns out to be a misconception. For example, the existence of complex criminal organizations in illegal markets may be falsely assumed where in fact numerous independent actors cooperate within networks structures". VON Lampe, Klaus. Organised crime: research in perspective. In: *Upperworld and underworld in cross-border crime*. Nijmegen: World Legal Publishers, 2002. p. 189-198. p. 191.

18 In the case of Germany, with the law lo combat drug trafficking and other ways of participation in the organized crime (OrgKG) of 1992 special investigative measures were introduced in the criminal procedural legislation (StPO) and with them was established, on constitutional grounds, the criminal prosecution of the organized crime. The substantive Criminal Law, on the contrary, has changed very little; until today there is no criminal offence of participation in a criminal organization (*Organisierte Kriminalität-Straftatbestand*). Henceforth, the organized crime should be considered under the traditional criminal offences of gangs and criminal association (*kriminelle Vereinigung*). Sinn, Arndt. *Organisierte Kriminalität 3.0*. Heidelberg: Springer, 2016. p. 4. In the case of England and Wales, according to Obakata, "the UK legislation does not provide for a legal definition of organized crime. Instead, the law enforcement agencies have adopted a working definition of organized criminals or groups as 'those involved, normally working with others, in continuing serious criminal activities for substantial profit, whether based in the UK or elsewhere'. The government argues that this definition captures the essence of organized crime. Indeed, this working definition is somewhat broader than the ones given by the Organised Crime Convention". Obokata, Tom. *Transnational organised crime in international law*. Oxford: Hart Publishing, 2010. p. 157. In the case of US legislation, we can mention the RICO Act (*Racketeer Influenced and Corrupt Organizations*). This federal act was designed to combat the organized crime – especially mafia-type – which provides criminal penalties for the activities performed by a criminal organization. It was approved in 1970 during the Nixon administration and, therefore, it is an earlier concept than the one adopted by UNTOC.

19 VOGEL, Joachim. Europäische Kriminalpolitik – europäische Strafrechtsdogmatik. In: *Goltdammer's Archiv für Strafrecht*. 2002. p. 521.

20 Nadelmann, Ethan. *Cops across borders:* the internationalization of U.S. criminal law enforcement. Pennsylvania: State University Press, 1993. p. 466.

21 UN has established three conventions in drug trafficking, namely: a) *Single Convention on Narcotic Drugs* (1970); b) *Convention on Psychotropic Substances* (1971) and c) *UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (Vienna 1988).

22 Woodiwiss, Mike. Transnational organised crime: the global reach of an american concept. In: Edwards, A.; Gill, P. (Ed.). *Transnational organised crime:* perspectives on global security. London: Routledge, 2003. p. 19.

23 It is noteworthy that even though UN Convention of 1988 understands the illicit traffic in narcotic drugs and psychotropic substances as a form of transnational organized crime, it does not conceptualize the "organized crime". Only in its article 3 establishes that "Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally: … (c) Subject to its constitutional principles and the basic concepts of its legal system: (iv) Participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article." And the point 5.5 adds "The Parties shall ensure that their courts and other competent authorities having jurisdiction can take into account factual circumstances which make the commission of the offences established in accordance with paragraph l of this article particularly serious, such as: (a) The involvement in the offence of an organized criminal group to which the offender belongs; (b) The involvement of the offender in other international organized criminal activities…".

cept "transnational organized crime" emerged as a new concept in the academy and in the popular discourse. This theoretical category arose in a specific historical juncture where converged relevant factors, among which the most important is the end of the cold word and its replacement for a new world order, which led to a new security discourse preaching "the war against the organized crime". In the last years of the twenty century different actors (politicians of different countries, international organizations, academicians, etc.) have outlined the concept "organized criminal group" which had its corollary at the *UN Convention against Transnational Organized Crime* (UNTOC) (Palermo, Italy 2000).

3. THE PHENOMENON OF ORGANIZED CRIME IN OUR REGION: THE NEED OF A REGIONAL CRIMINAL LAW?

At the regional level, the governments are forced to give an effective solution to one of the biggest scourges that undermines the security of the States. It is not about the criminal offences, which are competence of the International Criminal Court, but the transnational organized crime; being its consequences significant. The criminal organization related to drug trafficking, to human trafficking, to arms trafficking, to money laundering, and other offences of transnational nature, constitute the core problem of the criminal policies in the states of the region. These organizations have reached a regional dimension and they have escaped from the control of the domestic institutions. Following Silva Sánchez,

> […] the economic phenomena of globalization and economic integration lead to the new criminal methods of classic offences, as well as the emergence of a new kind of offences. Thus, the integration generates […] a new conception about the crime, focuses on elements traditionally strange to the idea of criminality as a marginal phenomenon; in particular, the elements of organization, transnationality and economic power[24]

In the face of this phenomenon, difficulties may be experienced by the States to establish an effective criminal policy. The fact that the criminal organizations perform beyond national bounds – the scope in which the state can deploy its *potesta puniendi* –, coupled with the limited resources that the States have to develop these criminal policies, and the connivances that these organizations find with actors that operate in the several levels of the prevention and the punishment of the crime (border control, police forces, judicial system, penitentiary system, etc.) leads the criminal policy to symbolic functions.

From several sectors such as the academy, the national (e.g. Argentinian Congress) and regional government sector (e.g. Unasur, Parlasur), ONGs, *inter alia*, it has been suggested the need for the creation of the Regional Criminal Court against the Transnational Organized Crime (RCCTOC). The current preliminary drafts differ about the regional scope that this court should have (MERCOSUR, South America, Latin America and Caribbean?), as well as about the (possible) criminal offences subject of prosecution and punishment by the court (especially in criminal offences of limited or moderate severity such as cybercrime). However, all of them agree that the court should be a permanent, independent tribunal based on the principle of complementarity – just like the ICC –, aimed at the prosecution and punishment of transnational organized offences. Several factors speak in favour of the setting up of a RCCTOC; as merely exemplification, we mention the following:

(*i*) The background of the ICC. All the states under consideration has signed the Rome Statute and, consequently, have recognized the jurisdiction of the ICC for certain criminal offences. It is of course true that here we cannot apply the argument "*a fortiori*" and, in fact, the state should have no interest in leave in hand of another jurisdiction the prosecution and punishment of common crimes. Nevertheless, the states under consideration have recognized the complementary jurisdiction of the ICC and this, on its own, constitute a strong argument at the time to create a court with similar characteristics.

24 Silva Sánchez, Jesús-María. *La expansión del derecho penal:* aspectos de la política criminal en sociedades postindustriales. 2. ed. Madrid: Civitas, 2001. p. 85-86.

(*ii*) The background of United Nation Convention against Transnational Organised Crime and the Protocols Thereto (UNTOC). The same as the Rome Statute, this convention has been signed by the States under consideration. UTNTOC establish a general definition of "organized criminal group" (Art. 2 (a)), at the same time, it provides actions, which must be adopted by the States parties, aimed to prevent, suppress and punish the offences defined by the convention and the protocols thereto. Although it has not the aim to establish an international jurisdiction, however, this convention provides multiple measures in the field of judicial cooperation in criminal matters, which provide a basis for a possible RCCTOC.

(*iii*) MERCOSUR and the cooperation agreements in criminal matters. Within the regional bloc "MERCOSUR" there are agreements among the States parties and with associate States, which aim is the international cooperation in criminal matters. By way of example: 1) Agreement on Legal Mutual Assistance in Criminal matters among the States Parties of MERCOSUR, Republic of Bolivia and Republic of Chile (Buenos Aires, 18th February 2002), 2) Agreement against the Smuggling of Migrants among the States Parties of MERCOSUR (Belo Horizonte, 16th December 2004); 3) Agreement against the Smuggling of Migrants among the States Parties of MERCOSUR, Republic of Bolivia and Republic of Chile. The relevance of these agreements resides in the fact that the subject of them is the legal cooperation among the States, as the same time as they get engaged to suppress and punish the offences that are characteristic of the transnational organized crime.

(*iv*) The existence of similar criminal law systems. This background is of the utmost importance, given that the states under consideration have in criminal matters (as much in substantive criminal law as in criminal procedure law) very similar systems, this fact facilitates the setting-up of a regional jurisdiction. All the States under consideration belong to "Civil Law system" and in criminal matters they make use of the German theory of crime (*Verbrechenslehre*).[25] There is a common thread among the theories proposed by Zaffaroni in Argentina, Tabares in Brazil, Fernández in Uruguay, etc[26]. At the same time, in Criminal Procedure Law there is a trend toward the consolidation of the adversarial system. The resemblance of the systems constitutes a great advantage of our region over others, for example, the European Union, where coexists several systems and, as a preliminary step to agreements in criminal matters, a minimum of common principles should be found among the different legal systems, generating resistance of the states to the agreements because, in several cases, that involves the relaxation of certain basic principles of their respective systems.[27]

(*v*) The existence of the criminal offence of "participation in a criminal association". The States under consideration have a similar statutory offence related to the participation in a criminal association. This is a common offence among the states that belong to the "civil law system". On the contrary, the model of "conspiracy" is followed by the States of "common law system". Even though they have similar aims, the objective and subjective elements of the offences are different and the consequences of their application also differ. The fact that the only model used in the region is the "participation in a criminal association" facilitates the task of legal harmonization as consequence of the treaty that creates the RCCTOC. [28]

25 JESCHECK, Hans-Heinrich; Wiegend, Thomas. *Lehrbuch des Strafrechts. Allgemeiner Teil*, 5. Auflage, Berlin: Duncker & Humblot, 1996. p. 194-196. Bacigalupo, Enrique. *Derecho penal:* parte general. 2. ed. Buenos Aires: Hammurabi, 1999. p. 197. Murmann, Uwe. *Grundkurs Strafrecht:* Allgemeiner Teil, Tötungsdelikte, Körperverletzungsdelikte. 2. Auflage, München: C.H. Beck., 2013. p. 50.

26 See, Zaffaroni, Raúl, et al. *Derecho penal:* parte general. 2. ed. Buenos Aires: Ediar, 2003. Tavares, Juarez Estebam Xavier. *Teoría del injusto penal*. Buenos Aires: B de F, 2010. Fernández, Gonzalo. *Bien jurídico y sistema del delito*. Buenos Aires: B de F, 2004.

27 About the constitution of a Federal Criminal Law in the European bloc, which gives answers to problems such as the transnational crimes the science of criminal law based on the German Law tradition has necessarily live together with the system of the Common Law. SILVA SÁNCHEZ, Jesús-María. *La expansión del derecho penal:* aspectos de la política criminal en sociedades postindustriales. 2. ed. Madrid: Civitas, 2001. p. 85. About the harmonization of Criminal Law in the European Union, see: Vogel, Joachim. Strafrecht und Strafwissenschaft im internationales und europäisches Rechtsraum. *Juristen Zeitung*, 2012. p. 25-31. See also: SCHÜNEMANN, Bernd. *Die Europäisierung der Strafrechtspflege als Demontage des demokratischen Rechtsstaats*. Berlin: Berliner Wissenschafts-Verlag, 2014.

28 All the states under consideration have similar criminal offences, all of them punish the conduct of take part of an association intended to commit criminal offences. Namely article No. 210 of the Argentinian Criminal Law, article No. 288 of the Brazilian Criminal Law, article No. 150 of Uruguayan Criminal Law and article No. 239 of Paraguayan Criminal Law.

4. Regional criminal law: international criminal law or transnational criminal law?

Frequently, the concepts "international crime" and "transnational crime" are used interchangeably to describe a conduct or activities which have international dimensions. Under the International Law there is, however, a difference between them. This difference lies in the nature of the crime. The international crimes are considered as concerning to the international community as a whole, or *delictia juris gentum*. They are those conducts which threaten the international order or the international community. This kind of crime is directly prohibited by the International Law, namely the International Criminal Law (ICL), which establish an individual criminal responsibility. The number of offences that belong to this category is limited and they are established in the Statue of Rome (genocide, crimes against humanity, war crimes and the crime of aggression). The prohibition of these criminal offences is firmly established in Customary International Law constituting *ius cogens*. [29] This kind of criminal offences can only be perpetrated within the jurisdiction of one State, unlike the notion of "transnational crime".[30] The international dimension lies in its consequences, these crimes affect international values.

The transnational crime, however, is not generally regarded as a crime which affect the international community. It can affect legal interests of more than one state, but not all the states that shape the international community.[31]The criminal offences under the category "transnational crimes" relate to an emerging branch of the International Law known as "Transnational Criminal Law" (TCL). According to Boister, this discipline does not establish individual responsibility in the International Law nor prohibits conducts directly. Furthermore, the prohibition of the organized crime is not generally considered as part of Customary International Law. Even though the organized crime has existed for a long time in history and the states have criminalized different forms of conducts in their domestic legislations,[32]transnational organized crimes such as money laundering, drug or human trafficking, etc. not necessarily involve a massive victimization which affects the fundamental value of humanity as such. In short, these offences can be defined as "*mala prohibita*".[33] A lot of questions can be posed about this new discipline, namely: which is the aim of TCL? Which relationship has it with other disciplines such as ICL or International Human Rights Law (IHRL)? And the most important for us: can an international jurisdiction be founded in TCL? Bellow, we shall try to give satisfactory answers.

The main purpose of TCL is to indirect promote the prevention of this crimes in the national level. For example, UNTOC obliges the signatory states to criminalize several conducts related with the organized crime. This is not the only international instrument that establishes this kind of obligations. There are other pre-existing repressive conventions which obliges the States to prohibit certain crimes such as drug trafficking,[34] cultural property,[35] nuclear materials,[36] endangered species,[37] offences related to child pornography,[38] cybercrime[39], counter fighting,[40] etc.[41] The UNTOC, however, has not a specific subject of

29 BROWNLIE, Ian. *Principles of public international law*. 6. ed. Oxford: Oxford University Press, 2003. p. 6.

30 ObokAta, Tom. *Transnational organised crime in international law*. Oxford: Hart Publishing, 2010. p. 30.

31 Cassese, Antonio. *International criminal law*. 2. ed. Oxford: Oxford University Press, 2007. p. 12.

32 BOISTER, Neil. Transnational international law?. *European Journal of International Law*, v. 14, p. 953-976, 2003. p. 963.

33 Obokata, Tom. *Transnational organised crime in international law*. Oxford: Hart Publishing, 2010. p. 31.

34 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna 1988).

35 Convention on the Means of Prohibiting and Preventing the Illicit Transport, Export and Transfer of Ownership of Cultural Property (UNESCO, Paris 1970).

36 Convention on the Physical Protection of Nuclear Materials (International Atomic Energy Agency 1979). European Convention on the Protection of Environment through Criminal Law 1998.

37 The Convention on International Trade in Endangered Species of Wild Flora and Fauna (Washington 1975).

38 Optional Protocol to the Convention on the Rights of Child on the sale of children, child prostitution and child pornography, UN General Assembly, 2001.

39 Convention on Civil Crime – Council of Europe.

40 International Convention for the Suppression of Counterfeiting Currency (Geneva, 1929).

41 Obokata, Tom. *Transnational organised crime in international law*. Oxford: Hart Publishing, 2010. p. 40.

protection, its benefit lies in the fact that can be used to prosecute and punish several criminal activities inasmuch as they are serious offences perpetrated by a transnational organized criminal group.[42]

The TCL has an essential role obligating the States to prohibit and punish the organized crime. This obligation is reinforced by other branches of International Law. The ICL is a good example. This area becomes relevant when the crime is considered an "international crime". Some authors, like Obokata, argue that, under certain circumstances, human trafficking can be considered as a crime against humanity.[43] In addition, as some aspect of the organized crime have been regarded as affecting the interest of the international community or the international peace, there is a probability that in the future some of these crimes will be elevated to the status of "*delictia juris gentum*".[44]

Another branch of the International Law that impose an obligation to prohibit the organized crime is the International Human Rights Law (IHRL); this discipline is important while each organized crime is committed involves a violation of human rights. Criminal offences like child prostitution and child pornography, sexual and labour exploitation are some examples of offences that involve implications for human rights. Whereas the ICL imposes obligations on individuals not to commit (international) crimes, the IHRL does not strictly create legal obligations upon non-state actors like organized criminal groups. Nonetheless, IHRL can be applied, given that it has been recognized that the states may be responsible for the acts of non-states actors under certain circumstances.[45] In conclusion, the TCL can be effectively by the IHRL.

It could be possible that the rules that prevent and suppress the organized crime is ICL, since the states has prohibited this practice in one way or another through the course of history, and some international instruments has existed for a long time. Nevertheless, there is no convincing evidence of the state practice nor of the *opinion juris* in the prohibition of the organized crime *per se*, principally because the states have a different understanding about what "organized crime" is.[46] If the prohibition of the organized crime can be regarded as Customary International Law would will depend on the scope on which the states are able to share a mutual understanding in the future and, in this matter, the UNTOC can play a key role. Furthermore,

42 Obokata, Tom. *Transnational organised crime in international law.* Oxford: Hart Publishing, 2010. p. 40.

43 OBOKATA, Tom. Trafficking of human beings as a crime against humanity: some implications for the International Legal System. *International and Comparative Law Quarterly*, v. 54, 2005. p. 445.

44 Obokata, Tom. *Transnational organised crime in international law.* Oxford: Hart Publishing, 2010. p. 45.

45 For example, the obligation to investigate, prosecute and punish act of individuals which implies violation to human rights has been explicitly recognized in the Optional Protocols to the Convention on the Rights of Child (Arts. 1, 3, 4). In addition, the United Nation Convention on the Law of the Sea (1982), even though it is not an instrument that has the aim to promote the international criminal justice or the human rights, it obligates the states to suppress trafficking of slaves and drugs in high seas. Obokata, Tom. *Transnational organised crime in international law.* Oxford: Hart Publishing, 2010. p. 46.

46 According to Lampe, "it is important to understand why it is so difficult to come to this subject [the phenomena associated with organized crime] and why there is still such a great deal of confusion. Contrary to what one might expect, this has not so much to do with the sinister and clandestine ways of gangsters and mafiosi. Instead it has to do with a general problem of how people perceive and make sense of the world they live in. First of all, people cannot possibly grasp reality in all its complexity. Their perception is inevitably selective, which means they focus on certain aspects while neglecting others, secondly, what they see they tend to frame and rearrange into categories that are in line with their pre-existing views attitudes, and values. Thirdly, people make sense of the world not as individuals but as social beings. They come to shared understandings of how to view and interpret reality in a process that has been called the *social construction of reality* […] It is important to realize that the social construction of reality is a dynamic process, influenced by numerous factors, with many possible outcomes. This also applies to the notion of organized crime […] [The] organized crime is not something that exists clearly discernible out in the real world, such as the Egyptian pyramids. This does not mean that what the concept of organized crime refers to is a figment of someone's imagination without any link to reality. The diverse phenomena which are variously labeled organized crime - some exaggerations, misinterpretations, and mystification notwithstanding. However, in order to speak of organized crime, certain aspect of the social universe first have to be separated out from a dense web of individuals, actions, and structures and brought into a unifying context on the conceptual level. Organized crime, in this sense, is a construct, an attempt to make sense of a complex social reality. Strictly speaking, organized crime as something that is clear-cut and self-evident only exists on paper, in the combination of the two words *organized* and *crime*. At the same time, the meaning of these two words is loose, flexible, and contradictory. For example, some associate organized crime essentially with the organization of criminal *activities*, while for others the term organized crime refers primarily to the organization of *criminals*". von Lampe, Klaus. *Organized crime:* analyzing illegal activities, criminal structures, and extra-legal governance. Los Angeles: Sage, 2016. p. 11-12.

the Princeton principles of universal jurisdiction estates "that universal jurisdiction is criminal jurisdiction based solely on the nature of the crime".[47] In this line of reasoning, it is accepted that the universal jurisdiction is not appropriate for the organized crime, because this practice is not seen as a crime concerning to the international community.

Consequently, the Criminal Law of organized crimes is a manifestation of TCL. The fact that the organized crime is not a subject of ICL does not an obstacle to establish an international jurisdiction on this matter for several reasons. Firstly, TCL and ICL are not isolated discipline, as we state above, in some cases it is difficult to draw a clean line between them. Secondly, both disciplines share the same principles, the difference lies on the subject of the protection. And finally, the TCL is based on the idea of the legal cooperation between the states and the setting up of a regional jurisdiction is the ultimate expression of this cooperation.

5. The need of a Legal Theory of Transnational Criminal Law

The criminal rules of the TCL cannot continue being dissimilar and disconnected from each other. They must be integrated in a system to be each other in harmony and relating to the general principles of law and the common constitutional traditions of the States. For that purpose, these provisions cannot remain pursuing interests on a unilateral basis, but need to account the function of Criminal Law, namely, the protection of the fundamental freedoms by means of a system which allows the consistence intra-systematic of its criminal rules, guarantees the predictability of its consequences, provides legal certainty, excludes the arbitrariness and the improvisation in the application of the law and, finally, reinforces the confidence in the validity of the international legal order, that is, the confidence in the system. That is the assignment of dogmatic of Criminal Law. This assignment cannot be supplied by the jurisprudence because this legal activity is limited only to the interpretation of the rule in particular, and only in reference to the particular case what it is a preparatory phase – and only a part – of the dogmatic task.

The problem lies in the fact that the judiciary has assumed a driving role and, even, a leadership role indicating the development pathways of the international criminal legislation. The internationalization of the sources of law and the rupture of the linkages of the nation states has facilitated this process. From here arise, among other things, the necessary called into question of any dogmatic oriented culture, like the one of the exclusive scholar caste of jurists of the Civil Law.[48]

The great challenge is laying the foundation of a (regional) dogmatic of Criminal Law, which accomplishes with assigned duties and serves, at the same time, as "*ligne Maginot*" against other legal traditions which are not compatible with our system of criminal imputation.

6. The problem of the international criminal legislation: its legitimacy deficit

The problem relating to the internationalization of Criminal law is the fact that the rules are thought by other legal system, particularly from Common Law, and these rules become dysfunctional when they are applied according to the rules that govern our system of criminal imputation based on the theory of crime (*Verbrechenslehre*).

47 Principle 1.1. Under Principle 2, serious crimes include piracy, slavery, war crimes, crimes against peace, crimes against humanity, genocide and torture. Reprinted in MACEDO, Stephen (Ed.). *Universal jurisdiction:* national courts and the prosecution of serious crimes under international law. Philadelphia: Philadelphia University Press, 2004. p. 24-25.

48 Domini, Massimo. El problema del método penal: de Arturo Rocco al europeísmo judicial. In: Domini, Massimo. *Poder Judicial y ética pública:* la crisis del legislador y de la ciencia penal en Europa. Buenos Aires: B de F, 2015. p. 40.

Thus, the criminal offences drafted in the international conventions describe several conducts of authorship generating problems in our system of imputation in which we differentiate between the perpetrators and the accessories (complicity) from the criteria of "accessory".[49] As well as the criminalization of activities which, according with our criminal system, consist in preparatory activities and, therefore, remain unpunished.

Furthermore, some criminal offences, characteristic of Common Law, appear in international conventions. This is the case of the criminal offence of conspiracy.[50] This criminal offence is defined today as an agreement to commit a crime, and sometimes, more broadly, as an agreement to engage in any unlawful act. It is often said that the gist of the crime consists in the agreement. A narrower definition of the crime requires an overt act in execution of the agreement.[51] The application of this criminal offence in our criminal system is not possible without the violation of basic principles given that its considerable scope of criminalization. The main problem of this criminal offence lies in the excessive overtaking of the punishment, including stages that should be out of the reach of the punitive punishment affecting the privacy of individuals.[52] Furthermore, the application of the conspiracy, such as it functions in the system of Common Law, can involve a violation of the principle of *ne bis in idem*, especially if it is considered as an individual criminal offence which does not merge with the criminal offence perpetrated in pursuance of the conspiracy. In the face of this entire question, the application of the criminal offence of conspiracy in our system cannot be practiced without violating fundamental principles.

The criminal rules which shape the TCL have a "legitimacy deficit". This deficit does not lie in the formal aspect, since the criminal offences have been introduced by the respective domestic legislative bodies in compliance with international obligations, but the problem lies on its material legitimacy. A criminal rule, although it has been introduced according to all democratic formalities, which collides with essential legal principles, it is as unlawful as a criminal rule introduced arbitrarily.

The criminal rules must be subject to common constitutional principles of the member states, as well as the general principles of ICL, such as the principle of legality, the principle *ne bis in idem*, the principle of equality, the principle of legal certainty, the principle of protection of the fundamental human rights, the principle of protection of human dignity, among others.

The function of the dogmatic of Criminal Law is to provide legitimacy to these rules, by the means of an interpretation consistent with the fundamental principles of the system. The problem lies in how to move this task forward within the different states which conform Latin-American Criminal Law. In the view

49 According to Fletcher "The central question in any system of complicity is distinguishing between co-perpetrators and accessories. The former are punished as full perpetrators, regardless of the liability of anyone else; in many systems, the latter are punished less severely and their liability is derivative of a wrongful act by a perpetrator. The subjective and objective, as well as the "hegemony" theories all seek a rational point of demarcation between acting as a co-perpetrator and acting as an accessory. However, this is not the case of American Law in certain criminal offences given that "It is well established in American law that membership in a conspiracy serves as a criterion for liability as a co-perpetrator of substantive crimes committed by other conspirators. Under the stringent *Pinkerton* rule, even an incarcerated conspirator may be held accountable for crimes committed by conspirators still at large. The effect of this doctrine is to eliminate the distinction between accessories and perpetrators in consensual criminal ventures. Rendering aid to an existing conspiracy may make one a party to the group, but never as an accessory, only as a full member of the conspiracy. The logic is that contribution betokens an agreement; an agreement implies a conspiracy; and a conspiracy entails liability as a perpetrator. If Anglo-American law were ever to admit of a more refined classification of actors as accessories and perpetrators, the system would have to abandon the doctrine of conspiratorial complicity, which effectively prevents treating a member of a conspiracy as an accessory rather than a perpetrator. The official position of German law is that mere membership in a conspiracy is insufficient to classify a conspirator as a co-perpetrator in the crimes of other conspirators […] only those participants are co-perpetrators who 'jointly' execute the criminal act. Merely agreeing that one member of the group should commit the crime is not enough to constitute 'joint' execution". Fletcher, George. *Rethinking criminal law*. New York: Oxford University Press, 2000. p. 660-661.

50 Art. 3 1. b iv *UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (Vienna 1988); Art. 5 (a) (i) UNTOC.

51 Fletcher, George. *Rethinking criminal law*. New York: Oxford University Press, 2000. p. 218-219.

52 Zaffaroni argues that the criminal offence into question is constitutionally questionable because it involves an enlargement of the scope of the prohibition that cannot be avoided without violating constitutional principles. Zaffaroni, Raúl, et al. *Derecho penal:* parte general. 2. ed. Buenos Aires: Ediar, 2003. p. 809-810.

of the lack of a regional block with criminal competences – contrary to what is currently the case of the European Union– the development of a regional Legal Theory of Criminal Law becomes extremely hard, if not impossible. An answer to this problem has been thought from the project of creation of a Regional Criminal Court against the Transnational Organized Crime.

7. The setting up of a regional court against transnational organized crimes: basis for a regional dogmatic

The setting up of a RCCTOC constitutes a significant step to the conformation of a regional dogmatic (Legal Theory) of Criminal Law which fulfils the two functions mentioned above, i.e. it provides legal certainty and, at the same time, it acts as "*ligne Maginot*" against the advance of concepts and ideas developed in other system of imputation which cannot be applied in our system without violating some fundamental principles. This court would not only define the rules of the prosecution and sanction of certain criminal offences which conform the TCL, but it would define these criminal offences and establish the corresponding penalties. Next, the member States should harmonize their criminal legislation to that end.

The process of harmonization is an essential step for the aim of the constitution of a regional dogmatic of Criminal Law. We can conceptualize "harmonization of criminal law" as "the process of modifying different criminal legislations in order to improve their consistency and eliminate frictions among them".[53] Only if the different states share similar descriptions of each criminal offence, it is possible to develop an interpretation applicable to all of them.

The importance of the development of a regional Legal Theory of Transnational Criminal Law does not lie in the procedural rules, but in the establishment of the criminal offences subject of the convention and in the principles and rules of the General part of the Criminal Law. From these rules, it is possible to develop the interpretation; it is the task of the dogmatic to interpret the different criminal offences according to the rules of the General Part, providing them its content and removing the possible contradictions.

Around a set of criminal offences characteristic of the organized crime (drug trafficking, trafficking in persons, smuggling of migrants, illicit manufacturing of and trafficking in firearms, etc.) becomes essential to the development of a Regional Legal Theory of Criminal Law. It will be the task of this discipline the elaboration of categories and the integration of the different criminal concepts, providing legal certainty that otherwise would not exist. Hence, the dogmatic of criminal law wakes possible, therefore, pointing out the limits and defining concepts, an assertive and calculable application of the Criminal law, it makes possible to subtract it to the irrationality, to the arbitrariness and to the improvisation. When less developed is the dogmatic, more unpredictable will be the solution of the tribunals, the conviction or the acquittal will more depend on the chance and on uncontrollable factors.[54] Many of these criminal offences suffer from their loose content, contrary to the principle of specificity proper to Criminal Law. The role of the dogmatic thus becomes crucial for the building of a less rudimentary corpus of legal rules which conforms TCL.

8. Final considerations

The preferential attention to Europe, by the means of its legal system, cannot be interpreted as anti-Americanism, but only in reference to the cultural pluralism which exists in the world. We admire the Ame-

53 Calderoni, Francesco. *Organized crime legislation in the European Union:* harmonization and approximation of criminal law, national legislations and the EU framework decision on the fight against organized crime. Heidelberg: Springer, 2010. p. 3.

54 Gimbernat Ordeig, Enrique. *Estudios de derecho penal.* 3. ed. Madrid: Tecnos, 1990. p. 158.

rican democracy, but a great democracy can also make mistakes. Moreover, not everything that benefits the USA means also an edge over other democracies. In other words, there is a diversity of national interests and more conceptions of common goods. There are profound different points of view, for example, about ecology, about the criminal prosecution of the crimes against humanity, about the forms of supranational integration. Not only it is useful, but also indispensable that the South American jurists compare the legal solutions and the legislative development which have had – for example – the Rio Declarations and the Kyoto Protocol on environment, the Statute of Rome which created the International Criminal Court and, finally, the trades which regulate the equally evolution of the European States to forms of increasing regional integration. The European Union and the single European States have frequently followed different paths to those proposed by the United States. And South America has experienced one of this contrasts between Mercosur (created by the common national interests of South American States) and ALCA (legitimated as a form of unification exogenous to Latin America, born under pressure not disinterested of the USA).[55]

The set of criminal offences which conform TCL, was designed for other systems of imputation, in particular Criminal Law of the USA and their application in our system of imputation (German-based Criminal Law System) many inconveniences.

Besides, the criminal activities which are intended to prevent and repress by means of these criminal offences exceed the power of action of the state. The criminal organizations have, indeed, become global, while the states may only offer a (punitive) answer limited to a national sphere. The need to embrace this phenomenon in its full dimension has generated, from different sectors, drafts of the creation of a RCC-TOC. All of them agree that the court should be based on the principle of complementary and its statute should not only establish the procedural rules, but also, at the same time, should define the different criminal offences subject to the jurisdiction of this court and the set the principles and rules which regulate the criminal imputation.

The setting up of a court with the characteristic above mentioned would constitute a fundamental step to the configuration of a regional dogmatic of Criminal Law. The dogmatic would not only provide legal certainty to TCL but also it would act as retaining wall facing to ideas, categories and intuitions of other system of criminal imputation which become dysfunctional when they are applied in our system.

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55 Losano, Mario G. Europa y América Latina: el 'viejo occidente' el 'otro occidente'. In: Losano, Mario G., Muñoz Conde, Francisco (Coord.). *El derecho ante la globalización y el terrorismo:* "Cedant arma togae". Actas del Coloquio Internacional Humboldt, Montevideo abril 2003. Valencia: Tirant lo Blanch, 2004. p. 29.

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