European Research Studies Journal
Volume XXI, Special Issue 1, 2018

pp. 570-580

International Justice as a Way to Settle Conflicts in the World Arena: The Idea and the Implementation

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Abstract:
The purpose of this article is to identify the processes regarding the emergence of international justice and the start of international courts functioning.

Dialectical, phenomenological and historical methods of analysis is the methodological basis of the article to allow to identify the international justice essence and the specifics of this phenomenon implementation in the initial stages of its development.

In the course of this analysis the authors came to the conclusion that the international justice concept formation occurred in the turn of the XIXth and XXth centuries while the international justice formation took place in the first half of the XXth century.

Keywords: *International court of justice, international justice, judicial activities, international disputes.*

JEL Classification Codes: *K00, K33.*

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1. Introduction

Nowadays it is difficult to exaggerate the importance of international justice, as it provides a number of the integration processes associated with the human rights protection and the peaceful resolution of the international disputes. The peaceful resolution of the international disputes and conflicts in the frame of the international courts is very significant in the modern world.

At the same time, international justice issues, despite the existence of numerous international law sources, remain debatable in many aspects. It is due to the diversity of international legal relations and legal procedures determining the order of settling of various international disputes and cases. There is no consensus concerning a significant number of procedural aspects whose decision is based on judges' discretion as well as on common customs (Dorskaya, 2012).

The international justice is said to have originated in Ancient Greece due to the necessity to resolve disputes among numerous Greek city-states. From the XIIIth to the XIXth centuries there were a number of cases, when the arbitration courts settled the international disputes on heritable property and throne succession. At the same time international trade developed actively both in the Baltic sea and the Mediterranean sea. To unify the commercial practices the supranational bodies (although not permanent) were established to decide the international disputes. The main international justice development stages are the following:

1) from the Antiquity up to the 70-es of the XIXth century – in fact, this is the international justice prehistory stage;
2) from the 70-is of the XIXth century up to the First World War and the 1919 Paris Peace Conference this is the stage of theoretical formulation of the idea of international justice and the first attempts to implement it;
3) from the 20-es of the XXth century up to the end of the Second World War this is the stage of work of the first universal international courts in the League of Nations;
4) from 1945 up to the present this is the modern stage of international justice development.

This article is devoted to the second and the third stages. The study is very topical because it allows to understand and evaluate the origination processes of the international justice.

The study resulted in the hypothesis, according to which the emergence and the development of international justice was due to the highly developed international relations, thenecessity to settle international conflicts peacefully, the presence of a sufficiently developed of international law theory and the support from both the global public opinion and the leadership of world leading powers. The authors' objective is to consider this hypothesis and to identify the significance of the international justice development stages for their future development.

2. Literature review

In Russia the issue of origin and the international justice development is still little studied. L.A. Kamarovsky (1881) was the first to study it in his fundamental work. V.M. Khvostov (1963) and A.S. Protopopov (2006) were also interested in this subject. O.V. Butkevich (2012), G.B. Vlasova (2008), A.Kh. Kardanov (2015), A.A. Kofanov (2009), A.I. Popkov (2008), S.V. Prylutsky (2013), A.S. Smbatyan (2013), O. Tereshchenko (2014) contributed much to the study of this issue.

It is important to mention that there are no major works to study the international courts as a complex, to analyse the international courts activities in in a whole, to consider the entire historical path of the international justice development. The given article looks into the way the international justice processes are established which is new to the modern Russian international law study.

3. Methodology of research

This research is based on the dialectical, phenomenological and historical methods. The dialectical method provides the study objectivity, historicism, accounting for the unity of qualitative and quantitative determinants, determinism and observance of the principle of negation of negation. The phenomenological method involves the study of both particular phenomena and common entities, observation of the types of manifestation and interpretation of the meanings of phenomena. Finally, the historical method allows us to consider the social system in its development, revealing its essential features.

4. Results

4.1 The international justice idea origin

One of the most complicated questions in the history of international law is the origin of the idea of international justice. There is a view that, initially, this idea arose in the Ancient Greece, which was divided into more than 150 dwarf states – policyholders, which constantly were warring with each other, and periodically united in alliances (Athen, Peloponnesian, Achaean, etc.). In the period from the XIIIth to the XIXth centuries there were several attempts to settle inter-state disputes about succession to the throne and landholding rights in arbitration courts. But actually the humanity started to develop the international justice only at the end of the XIXth century, in fact in 1872, according to the results of the 1870-1871 Franco-Prussian war. The President of the International Committee of the Red Cross G. Moynier (1870) first substantiated in details the idea of an international judicial body at the doctrinal level, stating it in the project of Convention on the Establishment of an International Judicial Body for the Prosecution of Persons Guilty of Violations of the Geneva Convention on the Improvement of the Condition of Sick and Wounded in the Warring Armies of 22.08.1864.

L.A. Kamarovsky (1881) was a prominent Russian lawyer contributed much to the development of the International justice concept, and in his fundamental work "On the International Court of Justice" said: "In general, the question of international court is a matter of time. Not only theoretical reasons, but practical ones will compel the state to follow the path to implement it as well".

He argued that it is necessary to establish a unified international justice body followed by the establishment of the special international courts to develop international justice.

The main issue for L.A. Kamarovsky in establishment of the international court was what law should be applied. And thus, the international court establishment problem was supplemented by the international law development issue. The scientist developed a very significant project to develop the international court of justice. It was based on the idea of international law as the main regulator of the international relations and the role of judicial institutions both internationally and in the interaction of the states in the interational arena.

The international court of justice was to initiate and become the institution of the future international organization. The Europe and American states will join it without losing its sovereignty to form a legally organized world. To do this, this court is to be based on the following principles: the court independence, collegiality of justice, oral hearings and competitiveness, the possibility to revise the decisions and the presence of the specialized departments.

The main issue was how to form an international judicial body**.** First, it was necessary to select the candidate - judges at the state level. It was assumed that the legal communities of the individual countries would make the lists, approved by the Ministry of Justice, and then to select two candidates as judges from these lists. Second, the judges must be irremovable and only the judicial authority is entitled to remove them from their position. A judge is not be engaged in any other activity, except administration of justice and has no right to receive rewards and marks of distinction from anyone. L.A. Kamarovsky (1881) paid special attention to the judges' personal qualities and their education, believing they are to be specially trained.

The international court of justice must become a permanent institution unlike the existing forms of arbitration court and arbitration proceedings. Although the recourse to the court could be optional, the court decision had to be compulsory (if recourse to a court took place). The procedure of appeal against court decisions was available.

The court jurisdiction was supposed to cover Europe and America, and then to spread to other states that would replace the former colonies. L.A. Kamarovsky (1881) allowed the establishment of regional courts as well. The competence of the

international court of justice included: a) to settle disputes among the states; b) to systematize the international law.

According to the scientist the court politicization is the danger for the international court of justice. To avoid this, the States' organization is to control the court's activities provided its independence, impartiality of judges and the credibility of the parties. Eventually it is possible to say that within the mentioned period the international court of justice started to be understood as an international institution to settle inter-state conflicts to prevent armed clashes. The doctrinal ideas of the international court of justice were developed in the course of the First (1899) and to the bigger extend the Second (1907) Hague Conferences. These Conferences established on Russia's initiative, aimed at developing the mechanism for the peaceful resolution of the international conflicts and the establishing a permanent international arbitration.

Convention for the Pacific Settlement of International Disputes was adopted at the First Hague Conference (1899) to establisht the Permanent Court of Arbitration. The members discussed only a list of people able to be the arbitrators, certain rules of judicial proceedings and institutional framework for it. The Second Hague Conference (1907) adopted the Convention the Establishment of an International Prize Court. Its objectives were to resolve conflicting claims relating to captured ships during wartime. However, the adoption of such a onvention in first years of the XXth century was doomed to fail because under those conditions no state wanted to take part in such events. The establishment of a permanent international judicial institution with the similar fate was another important initiative of the Second Hague Conference. An ad hoc international court was supposed to be established, which would meet in a defined composition and settle the cases submitted to its consideration during the whole session. In the course of the international court project discussion the participants were unable to agree on a number of issues. Eventually, the Convention on the Court of Arbitration establishment was not adopted.

Despite the modest results of the two Hague Conferences, it should be noted that they initiated the process to the establish of a universal organization of states, international courts and the new international law branch – the law of armed conflict without which the Nuremberg and Tokyo trials would have been impossible.

4.2 The Central American court of justice – the first experience to establish international courts

The first real international court took place in Central America, not in Europe no matter how strange it is, it was the Central American Court of Justice (CACJ). It was set up by five Central American Republics at the conference convened in Washington on the 14th of November, 1907, suggested by Mexico and the United States. On the 20th of December, 1907, the Convention about Central American

Court of Justice (CCJ) was signed. The Convention was suposed to work for ten years from the date of its last ratification and could be prolong other 10-year terms. From the 15th of February to the 12th of March Nicaragua, Costa Rica, Salvador, Honduras and Guatemala ratified the Convention. According to the Convention, CCJ has ordinary and extraordinary competencies. Ordinary competence included:

1) resolving disputes among the agreed states;
2) resolving disputes between any Convention state-participant and its citizens;
3) determining the position where the disputing parties must be during the whole trial;
4) the cases concerning the internal constitutional law of the state-members in case when the domestic constitutional conflict could not be settled by the agreement state-member.

This Central American Court of Justice (CCJ) ordinary competence was considered basic and compulsory.

According to the extraordinary competence the Central American Court of Justice (CCJ) had the right to act as the arbitration body in disputes between a state party and the citizens of the Convention non-memeber states , and also between the Convention state member and the Convention non-member state. The CCJ approved its rules of procedure independently, adopted the budget and managed its current economic activities. Judges were appointed by the legislatures of states members. Judicial presence consisted of five judges. All five judges were to be present to get the quorum. The judges had diplomatic privileges and immunities to guarantee their independence. Besides the judges could refuse to hear the case, and the parties had the right to challenge the judges. However, there was one important point which undermined the the judges' independence. The state could recall their appointed judge, and the judges always identified themselves with the nominating states.

In terms of organization the CCJ was to act as a permanent international body with the sessional order of meetings. The CCJ Chairman was elected annually on the first session, and every judge, appointed by the corresponding state, had to be in this position once in five years. In the CCJ proceedings written and oral speeches had to combined and the adversarialism principle was respected. The CCJ characteristic feature was that its meetings according to the general rule had to be closed and the open hearings were perceived as the exception from this rule. The decision was to be taken by majority vote (three of five or four of five), but all judges had to sign it. The the decisions had to be based on the international laws or national legislation.

Thus, CCJ was planned as an authoritative international body with extensive powers, but it was not very active. For ten years of its existence, CCJ heard ten cases, five of them were complaints by the individuals. All of them were rejected. In 1910 and 1912, CCJ made a proposal to mediate in the internal armed conflicts in Nicaragua,

but it was turned down. After its ten-year work CACJ ceased its existence in April 1918.

It is difficult to say whether this experience was successful or not (it was the first real international court). **T**he lack of real independence of judges was a reason for several failures of CCJ. The of the state members' leadership believed that they (the judges) first of all are their representatives (consequently there is no independence in decision-making). It is necessary to add that CCJ settled the political conflicts not so much as a court but as a political mediator. Moreover, the USA (in fact, the owner of the region at that time) began to percept CCJ as a hindrance to implement its foreign policy. Nevertheless, the CCJ activity had a positive impact in the of international judicial institutions development in Latin America.

4.3 The Permanent Court of International Justice

At the end of the First World War in November 1918, the Paris Peace Conference and the signing of the Treaty of Versailles resulted in the establishment of the first universal international organization of states, called the "League of Nations" and the first permanent international court - the Permanent Court of International Justice (PCIJ). The PCIJ competence was wide enough. Its primary goal was to resolve inter-state disputes.

The Court was accessible to all League state members and states were listed in the Annex to the Pact of the League of Nations. The access terms for the other states were determined by the Council of the League of Nations. According to the general rule, an appeal to the Court was voluntary. States had the opportunity to recognize the compulsory jurisdiction of the Chamber. Later on the voluntary and compulsory jurisdiction system was used by the International Court of United Nations.

On the one hand, the Court decisions on the essence of the dispute were compulsory for the parties, but, on the other, it did not possess the coercive force to implement its decisions. Regarding the internal organization of PCIJ we should say that its As to the internal organization of the The Permanent Court of International Justice it adopted its rules in 1922, then revised them in 1926 and amended in 1927 and 1931.

Its new and the latest version in the Court history was adopted on the 11th of March, 1936, a few years before the League of Nations and its Court stopped their existence. The election of the Chairman, the Vice-Chairman and the Secretary of the Court was carried out by PCIJ itself. The number of judges working in the Court changed. At first they were 11 judges, but with the new states joining the League of Nations, their number became 15. Originally they were elected by the Council and then by the Assembly of the League of Nations for a nine- year term. Also the judges could be re-elected. There were a number of general criteria the panel of judges had to correspond:

- its members had to be fully independent, had a stable moral qualities and high qualification necessary to take the highest judicial positions in their home countries;
- judges had to be representatives of the main (as Arnold Toynbee wrote "special", 1991) world civilizations and its main legal systems.

The following key concepts guaranteed the judges' independence:

1) the judges were irremovable and only the unanimous decision of the rest members of the Court could deprive each of them of powers;
2) to carry out their functions the judges were granted diplomatic immunity and privileges;
3) the judges did not have the right to engaged in the political, administrative or any other professional activity;
4) the judges could not act as representatives, advisers or lawyers of one or another party in the Court;
5) annual remuneration of a judge was not subjected of reduction during the his whole term.

PCIJ carried out its activity in the following organizational forms: meetings in full session, meetings deaking with the cases on "transit and messaging", "labor cases" and "simplified procedure". English and French were the official languages. The parties to the dispute choose the language. There were written and oral stages in legal proceedings. The written stage meant the exchange the formalized documents (memorandum, responses, etc.) between the parties as well as between parties with the Court mediation. The end of the the written stage of the legal proceedings was the appointment of the hearings.

The oral stage was presented by the parties' arguments given by their representatives, as well as reports of experts and witnesses. When all speeches finished the meeting was declared closed, but in case of necessity an additional meeting convened. The publicity of all meetings was the general rule but the Court could take a decision to hold closed meetings. The decisions on the considered cases were taken by the Court judges in accordance with the procedure established by the rules and behind the closed doors. The decision announced publicly, it was final and was not a subject to appeal except for a request for its interpretation or its revision on again opened circumstances.

Assessing the PCIJ activities it is necessary to say that it was conceived as the only means to solve conflicts. It should be understood that besides the availability of a judicial body there should be the disputing parties' desire to appear before the court. And the Court considered only those cases presented to it by the states. It is worth paying attention to the ratio of the decisions on the specific cases with the number of advisory opinions, that means that PCIJ took an active part on the League of Nations work and the latter used the Court as a legal structure. It is necessary to add that it is

impossible to evaluate the court activities only according to the total number of cases.

Actually the total number of cases submitted to be considered by the court was small. However, the decisions and opinions developed by its judges, at present are discussed and presented in connection with the settlement of the most important issues of the international legal regulation**.** The Wimbledon case (on issues of international responsibility), the Lotus case (on the implementation by States of the criminal jurisdiction in respect of foreigners), the Eastern Karelia case (in the jurisdiction of international judicial institutions), the case concerning certain German interests in Upper Silesia (on the national minorities' protection) and others are often given as examples.

The PCIJ work to institutionalize the international criminal justice was particular importance. This process was initiated by Great Britain with the establishment of the special Committee to investigate the cases of law or customs violation during the war in 1918 and made a proposal to estalish the international Tribunal to judge the former of the German Emperor - Wilhelm II and his associates.

Soon a joint meeting of the foreign Ministers of the USA, the UK, Japan, Italy and France, organized by the Commission, took place. It recognized that the management of the States of the quadruple Alliance (Germany, Austro-Hungary, Turkey, Bulgaria) deserved the criminal responsibility. It was for the first time when two categories of criminal acts committed by politicians and the military were singled out: the first was the unleashing of a war and the second was war crimes.

The Commission came to the conclusion that it was legitimate to establish the special international Tribunal for war criminals - Wilhelm II and others. But it was not accomplished. not be realize. the Netherlands refused to extradite Wilhelm II and Germany did not only refuse to extradite them, but refused to consider the lists containing the names of 900 war criminals as well. PCIJ existed for 18 years; from January, 1922 (first session) to February, 1940 when it actually stopped to operate (legally the Court existed till the 31st of January, 1946 when the judges declared to the General Secretary of the League of Nations about their resignations).

During that time period 29 international disputes and issued 20 advisory opinions were considered. The widespread idea of the compulsory jurisdiction of PCIJ was the main achievement of that Court. By 1993 it had been recognized by 65 states.

The anti-Hitler coalition victory in the Second World War, the United Nations establishment contributed to the international justice idea development**.** The International Court of Justice of United Nations was established. The Nuremberg and Tokyo trials of war criminals became the important events, that detached the old international justice from the new one.

5. Discussion

Thus, due to this study the hypothesis has received further development and confirmation. All said above allows us to make a number of fundamental conclusions.

1. The doctrinal approach to the international justice issues was implemented at the turn of the XIXth–XXth centuries by Kamarovsky (1881) and in the decisions of the first (1898) and the second (1907) Hague Conferences.
2. The first experience to implement the international justice idea was the CCJ establishment in 1907, and regional international courts which operated for ten years.
3. The first universal political organization of the states – the League of Nations was founded after the First World War and the Paris Peace Conference in 1919 together with the establishment of the first international judicial body – Permanent Chamber of International Justice. At the same time the first permanent international Tribunal, the PCIJ was established. It had been existing for eighteen years and its main achievement was the spread of the compulsory jurisdiction idea of the main international judicial agency.

6. Conclusion

The questions of international justice's history, as the history of international law, continue to be characterized by a high degree of discussion. This is due to the insufficient development of scientific ideas in this legal science branch. The sufficient number of monographs and textbooks containing the international law history has not been published in Russia yet. It all results in the difficulties the national law system faces while dealing with international justice issues.

International justice has a long history, it originated from the Ancient Greece. Amphictyonies acted as international courts there. These courts could have a serious impact on interstate relations and for the first time in the Europe history the enforcement tools for judgments and penalties for their violation were developed.

The Ancient Rome lawyers introduced the notions "peoples' rights" and theoretically substantiated the possibility to consider international public and private disputes on a particular legal basis. The Middle Ages introduced a number of terms concerning the relations of suzerainty-vassalage into the legal science that started to be regulated at the international level with the intermediary participation. Gradually the international justice broke out from the Church jurisdiction that conditioned the necessity to develop new principles to implement the judicial activity at the international level.

However, the process to establish the international court of justice really started only at the turn of the XIXth and the XXth centuries. The Hague Conferences, the first

international courts activity at the regional level and the PCIJ establishment under the League of Nations became its main milestones. The very topic of the conducted research put forward certain restrictions. The authors' attention was focused on the second and the third stages of the international justice development. Therefore, further research on this issue should focus on the study of the modern international courts formation and development.

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