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# SYSTEM OF THE INTERNATIONAL CRIMINAL JUSTICE: FEATURES OF THE INTERNATIONAL CRIMINAL COURTS AND TRIBUNALS, THEIR CLASSIFICATION

The article is devoted to the analysis and defining of system's components of the international criminal justice, which came through a lot of challenges and changes in its development. The works of scholars, who investigated this theme and brought in their own amendments into the classification of the international justice are analyzed. The development and formation of the international criminal justice is defined and its features are analyzed. The names of the international institutions are given as well as the sphere of their work and the "group of the institutional model: to which they belong to". The definitions and features of the international court and international tribunal are indicated. The definition of the term international criminal justice is formed. The features of the international legal institutions are being discovered and their aspects (aims), which became the guaranty of international legal institutions' activity. The author defines the classification of the international legal institutions, which are parts of the system of international criminal justice.
**Key words:** International criminal justice, international criminal public justice, international court, international tribunal.

The international criminal law is a new stake in the system of international law, which is based on generally recognizable principles and norms of international law. Formation of the international criminal law is tied with creation of the International martial court in order to make accountable the main military criminals of the European axis countries (further- Nuremberg tribunal), which served for the development of the international criminal justice.

The International criminal justice (further – ICJ) is a system of international legal institutions, founded by the international community with the UN, based on the main international agreements, which are directed on holding responsible those who are guilty of perpetration international crimes, protection of the international community from this sort of repeated commission and prevention of the international crimes which create the threat for peace and safety of the humanity.

I. P. Blischenko and I. V. Fisenko consider international justice as a system of bodies for international justice, and justice – is an activity[1]. The international criminal public justice (further – ICPJ) – is an international mechanism and procedure, both created by the worldwide community of countries for investigation of criminal injurious acts and crimes of physical and legal entity, which have international character. Having analyzed the formation of the international justice we pay attention to classical international law. Then the procedure of making accountable belonged to a state – irrespective of character and degree of crime, a state had authority, as well as possibility of transfer to the court and punishment of the physical entity[2]. Post-war period become a peculiar stage in development of modern international justice. The international community tried to establish such an international criminal system, which would work in the system of law enforcement of criminal law due to complex political and practical obstacles which resulted into acts of aggression from subjects of international law. "International criminal public justice" and "ICJ" are reciprocal definitions; the following features of ICJ are the proofs of it:

1. Done only by the institutions of international justice – courts. Court is given jurisdiction to manage justice in cases with international crimes or empower special court for legal proceeding on international level in international criminal cases.

[1] Блищенко, И.П., Фисенко, И.В. (1998). *Международный уголовный суд. Предисловие проф. В.П. Лозбякова*. Москва: Закон и право, ЮНИТИ, 132.

[2] Марусин, И.С. (2004). *Международные уголовные судебные учреждения: судоустройство и судопроизводство.* Санкт-Петербург, 5.

2. Responds to specific aims, which the international community establishes for it. In such case we refer to the international acts in which these main tasks are stated. These are: Resolutions of the General Assembly of the UN which initiated Ad hoc International Tribunals, and which had as a goal to stop such crimes, which carry the threat for international peace and safety; guaranty legal persecution of those who are responsible for serious irregularities of international humanitarian law[1]; use effective measures for making accountable those, who are responsible for it; to help the process of the international reconciliation, renewal and support of peace[2]; the agreement between the UN and Sierra-Leone's government about the creation of the Special Court for Sierra Leone, which main mission was creation of independent special court for criminal prosecution of those, who are seriously responsible for committing of serious infringements of the international humanitarian law and crimes according to the Sierra-Leone's legislation[3]; and Rome Statute of the International criminal court, the constant body, which is authorized to do jurisdiction over those, responsible for the most serious crimes, that cause preoccupation of the international community, in preamble of which the following aims are stated – the most serious crimes don't have to be left unpunished; remind each state about the duty of realization its criminal jurisdiction over those, who are held accountable for committing international crimes; create solid guaranties of respect towards accomplishing an international public justice and secure its maintenance[4].

3. Made with the help of trial and deciding by the international courts of criminal cases about committing crimes of the international character, through defining the fact of committing the international crimes, which are the subject of investigation in the criminal case; defining the judicial consequences, which occur from execution of norms of international law according to stated facts, hence convicting the person, who is guilty in committing crimes o the international character.

4. Realized according to procedural order, which is defined by the international law and operates in definite forms, distinguished by the sources of international law. This feature of ICJ has as a goal organization of opened, unprejudiced, equal, impartial and fair consideration of a case by all the international court institutions[5].

The international law scholars – I.P. Blischenko and I.V. Fisenko – claim that ICJ appeared with the advent of international crime, which consists of international and institutional elements[6].

Defining the system of ICJ we need to pay attention to determination of the terms of international court and international tribunal. Court is a body, which accomplishes justice in a form of trial and decision of criminal, civil, administrative and other categories of cases through established procedural order[7]. In its evolution, the realization of this term absorbed at each stage of its development principles due to which justice operates. Henceforth, L.O. Kamarovski states that the international court is an intergovernmental body which is appointed for the prevention of transformation of confrontation into war[8]. The history of the international courts starts from the creation of Permanent Court of International Justice in 1920 by the League of Nation initiative and which had to be the "worldwide court" and under its jurisdiction all the law collisions between the states had to fall under[9]. Since the beginning of the World War II the successful activity of the Permanent Court were stopped, however its work was continued ad hoc by the post-war tribunals.

The International tribunal is an emergency court, which created for solution of special issues. This body made a great contribution in the development of the International criminal law. And we now, starting

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[1] Резолюція 827 (ухвалена Радою Безпеки на її 3217-му засіданні, 25 травня 1993 року). *Офіційний сайт Верховної Ради України.* <http://zakon4.rada.gov.ua/laws/show/995_d66>.

[2] Резолюція 955 (ухвалена Радою Безпеки на її 3453-му засіданні, 8 листопада 1994 року). *Офіційний сайт Верховної Ради України*. <http://zakon4.rada.gov.ua/laws/show/995_d67>.

[3] Concluded between the United Nations and the Government of Sierra Leone (adopted 16 January 2002). <http://www.rscsl.org/Documents/RSCSL%20Agreement%20and%20Statute.pdf>.

[4] Римський статут міжнародного кримінального суду (Міжнародний документ від 17.07.1998). *Офіційний сайт Верховної Ради України*. <http://zakon4.rada.gov.ua/laws/show/995_588>.

[5] Волеводз, А.Г. (2009). *Современная система международной уголовной юстиции: понятие, правовые основы, структура и признаки.* Москва: Институт права и публичной политики, 303-323.

[6] Блищенко, И.П., Фисенко, И.В. (1998). *Международный уголовный суд. Предисловие проф. В.П. Лозбякова*. Москва: Закон и право, ЮНИТИ, 132-133.

[7] Юридический словарь. *Суд. Толкование.* <http://dic.academic.ru/dic.nsf/lower/18563>.

[8] Колосов, Ю.М., Кривчикова, Э.С. *Международное право.* <http://vse-uchebniki.com/mejdunarodnoe-pravo-besplatno/157-mejdunarodnyie-sudyi-30996.html>.

[9] Скрипник, О.М. (2011). *Історія міжнародних організацій.* Умань: ПП Жовтий О.О., 73.

from 1945, since the moment of creation of the Nuremberg tribunal, the international community "started a new page" in the system of international criminal justice. The post-war tribunals ad hoc were given the same status as the international courts, which were directed at renewal of justice through development of the procedural norms of the international law. During 50 years newly-created tribunals were filling the gaps in their activity and acquiring experience, having recreated all the achievements in the Rome Statute of the International Criminal Court.

Henceforth, the system of ICJ, in opinion of A. Volevodza consists of:

1. International courts of general jurisdiction for deciding of international collisions.
2. Specialized international courts for deciding of international collisions, which are tied with separate straights of the international corroboration or regulated by separate branch of the international law.
3. Specialized international tribunals of limited jurisdiction for deciding of collisions between international organizations and their workers.
4. International criminal courts (tribunals).
5. International non-governmental organizations – arbitration, court of arbitration and other courts, which do trial of collisions in the sphere of regulation of the international private law and separate branches of international law[1].

However, in the process of scientific investigation, professor A.Volevodz points out more wider systematic of international criminal justice. The author investigates the international criminal justice as a plurality of institutional models, **first group** of which is – *Ad hoc International criminal tribunals*, which function as substitute bodies of United Nations Security Council. An example of these bodies may be the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (further - ICTY) and the International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994 (further - ICTR). The **second group** consists of – *mixed (hybrid) tribunals (courts)*, which are divided into: special courts, created according to the major treaties of the UN countries (e.g. Special Court for Sierra Leone and Special Tribunal for Lebanon – these international judicial bodies were founded at a base of countries treaty with the UN) and courts, which are formed by the temporal administration of the UN at the territories, where the peacemaking operations are conducted (these group refers to the courts , which are founded by the peacemaking missions, which have administrative mandate of the UN – mixed courts at the territory of Kosovo, Boards of exclusive jurisdiction to the serious crimes on the East Timor. The **third group** is leaded by the *national courts, which falls within the jurisdiction of legal investigation of international crime with the participation of international courts and other participants of criminal proceeding.* This group is formed due to the duty of the countries, which are the members of the international treaties directed on crime and criminality establishing international crimes, take measures to the implementation into the national legislation the international law norms. However, this kind of courts (so called "internationalized courts") are neither international, nor mixed because they are created and formed in the order stated by the national legislation, materially-procedural and procedural base of which is national criminal and criminally-procedural law. The **fourth group**, as A. Volevodz considers, is the most perfect from all the institutional models, which act now, namely –*International criminal court*[2].

Professor V. Butkevich distinguishes two groups in the system of the international judiciary: the **first one** consists of bodies and institutions of quasi-judicial character, which control the realization international law norms and other international bodies that regulate the international collisions. This group classifies by the *term and effectiveness of the action*: presently active; used to be active for a long time, but stopped their work; which failed after its creation and stopped to exist; which are located at forming station; which are proposed to form; and by the *authority and the object of investigation disputes:* international administrative tribunals; inspective tribunals (arbiters); bodies for solving human-right issues; bodies of international law duties maintenance; constant arbitrational tribunals and commissions of reconciliation; bodies of international claims and compensations (multisided and two-sided). The **second one** consists of

[1] Волеводз, А.Г., Волеводз, В.А. (2009). *Современная система междунраодной уголовной юстиции. Хрестоматия.* Москва: «Юрлитинформ», 5-6.

[2] Волеводз, А.Г. (2009). *Современная система международной уголовной юстиции: понятие, правовые основы, структура и признаки.* Москва: Институт права и публичной политики, 303-323.

international courts of universal and regional character. The constituents of this group are the international courts of general jurisdiction (International Court of Justice, Central American Court of Justice, Permanent Court of International Justice (1919-1945). The International Islamic Court (the proposition to form has been offered); legal proceeding in branch of international criminal admiralty law (International tribunal of admiralty law); the international criminal law courts and courts of international humanitarian law (International Criminal Court, ICTY, ICTR, Special Court for Sierra Leone, Nuremberg tribunal, International Military Tribunal for the Far East); in the environmental sphere – at this stage the necessity of creation the international environmental court is being discussed; institutions which solve collisions in trade, commerce and investment (The organ on attainment of agreements in decision controversy in the WTO); international courts on human rights(European Court of Human Rights, African Court on Human and Peoples' Rights, Inter-American Court of Human Rights); regional economic integration treaties and legal bodies and institutions, which are divided into – European, African, Near East, Latin America[1].

Henceforth, we consider starting analysis of the system of international legal proceeding according to some aspects. First of all, the aims (tasks), on the base of which the international criminal bodies act. Thereby the fact that international criminal law is directed at peace providing and safety of humanity, but not all the subjects of international law fully obey the stated norms, the top aim is bringing into account and punishing of those, who are guilty for committing the crimes, which are related to a responsible judicial institution. Another task is so-called universal character of the international law norms, which are directed at protection of the international corroboration in total and each its member and everyone from those, who by their activity or inaction threat the safety of humanity. From this task comes the following – the warning of the international crimes and sustention of peace and safety.

In order to define the "internationality" of the judicial institution we have to look at features. The German scholar K.Tomushat distinguished **5 criteria**: *the first* one was in permanence of the international judicial body. He claims that the existence of the judicial body should not depend upon the peculiarity of a given case, so he expelled from the amount of the international courts not just an arbitrage ad hoc, but at the same time institutions which just are the stable frames and lists of the experts and arbiters for inclusion into arbitrage or in conciliation commission. *The second one* – creation of the international judicial institution at the base of the international treaty or decision of the international organization. *The third* principle consists of a court's duty during the consideration of a case to base on the international law. However, this principle has exceptions, as the international courts and tribunals in its practices applied to the national legislation's norms. *The fourth* criteria is an availability of the procedural rights of the international judicial body by which it is ruled and which can't be changed by the sides of the argument. Professor A.Volevodz considers that carrying of the international trial, legal investigation and deciding of a criminal case must be done by list of people (which is international), who posses some rights and duties: court, prosecutor (accuser), the accused (suspect) and the defender[2]. *The fifth* criterion is in a compulsion of a decision passed by the international judicial institution. The additional feature R.Tomushat considered the authority of the international courts to make consultative inquests that carry recommendable character. In the New York University's project at codification of the international courts and arbitrages, one more principle is separating out – only independent judges must be members of the international judicial body.

Professor V. Butkevich points out wider criteria of the international court, considering the creation of international judicial institution at the base of international treaty, which may be divided into multisided universal, multisided regional, local or particular. The next stage is an availability of statute, which may be in a form of self-reliant international treaty, addition to the international treaty or regulation. As it was already stated, the independence is an inalienable feature of the international court – as in legal proceeding, taking neutral decisions and in financial independence. At the same time, V. Butkevich pays attention towards the principle of equality of sides as for law implementation and in the court session. Accordingly, to the functioning of these bodies, the international judicial institutions may be divided into the courts, which act on a permanent base, during sessions and via ad hoc system. Another criterion of a decent international court is a court jurisdiction, which spreads only on those cases and subjects, which stated in the statutory judicial body documents. In such a way, the international criminal justice is enjoying through the international courts, which support the principle of sides' equality, according to procedural rights, stated

[1] Буткевич, В.Г. (2012). *Правове забезпечення ефективного виконання рішень і застосування практики Європейського суду з прав людини*. Одеса: Фенікс, 30-35.

[2] Волеводз, А.Г. (2009). *Современная система международной уголовной юстиции: понятие, правовые основы, структура и признаки.* Москва: Институт права и публичной политики, 303-323.

by the court and with the regulatory compliance of the international law[1].

According to highly-pointed features of the international judicial institution, we consider defining the ICJ system. The ICJ bodies are divided into temporal (for deciding a specific case) and constant courts. The **first group** consists of: *the international tribunals ad hoc* (ICTY and ICTR); *mixed (hybrid) courts,* which are created on a base of treaties with the UN (Special Court for Sierra Leone, Special Tribunal for Lebanon) and courts, which are formed by the temporal administrations of the UN (Mixed courts on territory of Kosovo, Collegiums of exceptional jurisdiction on East Timor). **The second group** of the ICJ bodies is held by: *the International Criminal Court* and *"Internationalized courts"* (National courts by the participation of international judges), such as Department for War Crimes of the Court of Bosnia and Herzegovina and Extraordinary Chambers in the Courts of Cambodia.

Each stage of the international law development brought its amendments into the developments of the international criminal law. "The founder" of the international criminal law Antonio Kasseze in his works followed one rule – hominum causa jus constitutum est (lat. "any law is established for people"). In his views, the international criminal justice must be basing on an individual criminal responsibility[2]. The said above proves that every part of the ICJ supplements another, guaranteeing the observance and realization of norms of international law in practice and filing the gaps in its development. For guaranteeing the safety of humanity and peace, securing the international community directs its authority at the doing of fair and non-biased international justice.

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