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THE HISTORY OF THE ESTABLISHMENT OF ORGANS FOR FACT-FINDING IN THE RESOLUTION OF INTERNATIONAL DISPUTES

The paper traces the historical background of the formation and development of the institution of international fact-finding. As a result of the progressive development of international law, the institution of international investigation emerged at the turn of the 19th and 20th centuries, first receiving its international legal consolidation in the Hague Convention on the peaceful settlement of international disputes of 1899. The history of establishing fact-finding bodies by states, which acted as parties to disputes based on factual issues, both at the universal and regional levels, is examined. The practice of resorting to investigation procedures within international intergovernmental organizations such as the League of Nations, the UN, ILO, ICAO, the World Bank, the EU, and others is considered.

In the modern period of international law, the fact-finding procedure has gained quite extensive use and is implemented in a more primitive form, especially within the activities of the United Nations. The UN establishes international commissions (composed mainly of individuals who are not citizens of the parties to the dispute or participants in the situation) authorized, as often happens, not only to establish facts (conduct investigations) but also endowed with broad competence to provide conclusions on legal issues and recommendations for dispute resolution or situation. The UN also uses the international investigation procedure in conjunction with other international mechanisms for dispute resolution.

Referring to international bodies for fact-finding, as one of the means of peaceful settlement of international disputes, was first provided for by the Hague Conventions on the peaceful settlement of international disputes of 1899 and 1907. Therefore, the existence of various nature international investigating commissions - from "pure" fact-finding in the Tigre case to investigations regarding the Red Cross and the Letellier and Moffitt case, which were close to arbitration.

Keywords: *fact-finding, investigation, international investigating commissions, international investigative procedure, international disputes, peaceful settlement of international disputes, international crimes*

INTRODUCTION

Throughout history, the primary method of resolving international disputes has been war, and the possession of a large army ready for battle has always been the most convincing argument. However, over time, there began to emerge and form an understanding of the necessity of turning to peaceful means to resolve conflicts.

The idea of peaceful dispute resolution developed in international law during its "classical" period, when the use of weapons was not prohibited. For a long time, international law did not impose on states the obligation to resolve any disputes exclusively by peaceful means, which was considered too burdensome for their sovereignty. Although military conflicts remain present in the modern world, the trend toward peaceful resolution of international disputes is developing and gaining increasing popularity. A significant impetus for development, as well as international legal enforcement, was given to this process at the turn of the 19th and 20th centuries in connection with the holding of the Hague Peace Conferences in 1899 and 1907 [1].

The practice of conducting independent investigations by international bodies into the circumstances leading to disputes between states was absent at that time. At the end of the 19th century, the eminent international law scholar F.F. Martens first argued for the necessity of such a means of dispute resolution. He saw the task of the investigatory commission in conducting an investigation into the factual circumstances of the disputed situation and providing corresponding conclusions to the states. In doing so, the report containing such conclusions does not bind the parties, but they may rely on them in further peaceful settlement procedures.

Analysis of recent research and publications

The theoretical basis of the study includes the works of prominent 20th-century scholars, as well as leading domestic researchers of the modern period, such as V.G. Butkevych [1], O.V. Butkevych [2], O.M. Vilegzhanyin. Se-

parate issues related to the institution of international fact-finding are addressed in the works of international law experts such as A.Kh. Abashidze, L.M. Anisimov, I.P. Blishchenko Among foreign scholars, various aspects of the fact-finding procedure are highlighted in their works by M. Bassiouni, M. Bergsmo, K. Bruderlein, T. Bürgenthal, L. van den Herik, K. Garwood, Ch. Garroway, R. Grace, D. Jacobs.

The **PURPOSE** of the paper is an international legal and historical analysis of the procedure for the establishment of bodies for the settlement of international disputes.

RESEARCH METHODS

This paper is based on the legislative base of Ukraine, norms of international law, works of domestic scientists, as well as materials of national periodicals, statistical collections. The research uses the methods of analysis, synthesis, comparison and generalization.

RESULTS

One of the prerequisites for the development of the investigation procedure and its formation as an independent means of peaceful resolution of international disputes was the explosion in 1898 in the harbor of Havana of the American warship "Maine". The United States believed that the responsibility for this event lay with the government of Spain. Spain denied this and established an investtigative commission, which concluded that the explosion was due to an internal cause. Based on the results of its own investigation, the American side concluded that the ship was destroyed by an underwater mine. In many ways, the divergent conclusions of the commissions were based on different interpretations of evidence, which prompted delegates to the 1899 Hague Conference to pay serious attention to the issue of fact-finding in international disputes. The focus of the conference was on the proposal of the Russian delegation to replace national investigation commissions, which proved to be completely ineffective in the described situation, with international commissions for impartial investigation of facts and circumstances of international disputes.

In the first Hague Peace Conference, 26 states participated. As a result of the conference, 3 conventions and 3 declarations were adopted. Among others, the Convention on the Pacific Settlement of International Disputes was adopted, which provided for the possibility of establishing international investigative commissions as one of the means of peaceful dispute resolution. In the adopted Convention, six articles (Articles 9-14) were devoted to international investigative commissions. These articles addressed the tasks of such commissions, their composition and procedures, the obligations of states involved in the dispute towards the commission, as well as the content and nature of the commission's report. Soon, the value of such regulatory framework was demonstrated.

The first instance of resorting to the investigation procedure was the establishment of the Gulfs investigative commission following an incident that occurred in 1904 in the Dogger Bank during the war between Russia and Japan. There were suspicions of a possible attack by Russian ships. As the Russian fleet under the command of Vice-Admiral Rozhestvensky sailed through waters controlled by Great Britain, British fishing trawlers were operating in the Dogger Bank.

However, Russian sailors mistook these trawlers for Japanese military ships and opened fire on them and their own ships. As a result, one trawler was sunk and five were damaged, six fishermen were wounded, one was killed, and one of the Russian fleet cruisers was damaged, with two crew members injured.

This incident attracted significant attention from the international community. As the trawlers themselves were from the port of Hull, the event became known as the "Hull Incident" in history. As a result, British-Russian relations significantly deteriorated, with Britain demanding accountability from Rozhestvensky. The states were on the brink of diplomatic relations rupture. However, the situation was resolved through the creation, at Russia's proposal, of an international investigative commission, which became the first instance in history of using the fact-finding procedure [4].

During the establishment of the Commission, the parties were guided by the provisions of the Convention for the Pacific Settlement of International Disputes of 1899. The Commission's mandate was to establish the factual circumstances of the incident and provide conclusions regarding the responsibility of the individuals whose actions led to it. The Commission included representatives from Russia and Great Britain, as well as representatives from France (at Russia's invitation) and the United States (at Britain's invitation). By the decision of its members, a representative of Austria became the Commission's chairperson. As a result of the Commission's activities, the following findings were established:

1. Russian sailors were the only ones who claimed to have seen Japanese military ships.
2. British trawlers behaved peacefully, and there were no grounds for opening fire.
3. The duration of the shelling exceeded the necessary limit.
4. Admiral Rozhestvensky bears responsibility for the shelling of British trawlers [4; 5].

Subsequently, based on the Commission's findings, the parties settled the dispute through negotiations. Great Britain withdrew its demand to bring Rozhestvensky to trial and received compensation from Russia in the amount of £65,000.

The international investigative commission on the Dogger Bank incident vividly illustrates the value of the international investigation procedure as a tool for peaceful dispute resolution. Investigation of the incident by two separate national commissions could have led to a worsening of the situation, as their findings would likely have been contradictory, as in the case of the Maine ship. Although such an outcome would not necessarily have led to war, the parties' decision to create an international investigative commission effectively eliminated the risk of the dispute, which involved particularly sensitive issues, escalating out of control. On the other hand, the investigation also deviated from the provisions of the Hague Convention. The Commission's duty to determine responsibility placed on it, in addition to its investigative function, also an arbitral function. The Commission members undoubtedly wisely sought to downplay this aspect of their activities, and in their decision, which was somewhat ambiguous, demonstrated that legal and factual aspects do not always need to be clearly

distinguished in the interests of dispute resolution [4; 28].

As a result, a new Convention on the Pacific Settlement of International Disputes was adopted. The international legal regulation of the activities of investigative commissions was reflected in 28 articles dedicated to the subject of investigation, the formation of commissions, and their competencies.

The Convention defined the following procedure for forming the personnel of the commissions. Two members of the commission were appointed by each of the parties, as provided for in the 1899 Convention. However, now only one of them could be a citizen of the respective disputing party. The person who would be the chairperson of the commission is chosen by such members.

If agreement on this matter is not reached, the disputing parties turn to a third state, and its representative is appointed as the chairperson. If the parties fail to agree on the selection of such a third state, then each of them must choose one state, and they have two months to appoint the chairperson. In case of failure, they each select two individuals from the Permanent Court of Arbitration, one of whom will become the chairperson of the commission through drawing lots [4; 8].

The 1907 Convention expanded the list of issues subject to regulation by the investigation agreement. These issues relate to the location where the commission holds its meetings, the language to be used, the deadlines within which the parties must provide their views on the factual circumstances, and other aspects of the commission's activities that the parties wish to define. Additionally, the parties were given the right to appoint assessors, specifying their powers in the agreement. It was also provided that special agents could act on behalf of the parties in investigative commissions, acting as intermediaries between the commission and the parties [4; 8].

Additionally, the Convention contained provisions governing the activities of international investigative commissions in cases where the parties did not stipulate otherwise in the agreement. Their purpose was to streamline the process of establishing and operating such commissions, as well as to develop a unified model of investigative procedure. Among the specified provisions were norms regarding the location of the commission, the procedure for replacing members, the functions of the secretariat, and so on. According to Article 18, investigative commissions were granted the right to regulate the details of the proceedings and to perform any formal acts for gathering evidence that were not specified in the agreement. Such regulatory framework for the aspects of the commissions' activities provided them with the ability to quickly make decisions on certain matters, if necessary, without the need for coordination with the parties [4; 8].

It is worth noting that many provisions of the 1907 Convention regulated the process of collecting evidence and evaluating its credibility. Due to the shortcomings of the Gul Investigation Commission, the authors of the Convention aimed to codify these issues to prevent disputes regarding the procedure that could arise between the parties in case of resorting to the investigation institution. Thus, competitive nature of the investigative procedure and the right of commissions to conduct on-site inspections for evidence collection and site inspection were enshrined. While the obligation of the parties to facilitate the commission's activities by providing any means and methods for establishing facts was established earlier in the 1899 Convention, a novelty introduced by the 1907.

Convention was the additional duty to ensure the appearance of witnesses and experts residing on the territory of the respective party. Since witness testimony is the basis for forming the evidentiary basis, the questioning procedure and the credibility of the obtained testimonies are crucial for the successful operation of the investigative commission. Therefore, the witness interrogation procedure was also detailed in the new Convention.

Another innovation of the mentioned regulatory act was the confidentiality of the investigative commission's meetings, which were to be held behind closed doors. The decisions of the commission were to be taken by majority vote, and if any member refused to vote, such fact had to be recorded in the minutes. The report of the commission, as before, had to be signed by all members and was not obligatory for the disputing parties. The novelty was that in case a commission member refused to sign it, the report did not lose its validity [4; 8].

The first instance of resorting to the investigative procedure under the 1907 Convention was an investigation related to a series of incidents near the coast of Tunisia during the Italo-Turkish War of 1911-1912. Italy alleged that French vessels were transporting Turkish contraband. On January 25, 1912, the French mail steamer "Tavignano" was arrested, and two other vessels were fired upon. Italy claimed that this occurred in open sea, while France believed the incident took place in Tunisian territorial waters. Consequently, it was decided to refer the matter to an international investigative commission in accordance with the 1907 Convention, consisting of French, Italian, and British naval officers [28].

The main task of the Commission was to determine where exactly the incidents that were the subject of the dispute took place. Seeking to resolve serious contradictions in evidence, the Commission, in addition to questioning witnesses and studying relevant documents, also visited the scene of the events. However, in its unanimous report, the Commission concluded that it could only identify the areas where the incidents occurred. Although the Commission could not definitively determine whether the arrest took place in Tunisian waters, it concluded that incidents involving firing definitely occurred. According to the agreement under which the Commission was established, the next step was supposed to be the referral of the legal aspects of the dispute to arbitration. However, this did not happen, and the dispute was resolved out of court, as the Italian government agreed to pay 5000 francs in compensation[28].

D. Merrills expresses the opinion that "if the Commission on the Gul Incident demonstrated the value of the investigation procedure in resolving an explosive situation, then the Taviniano case showed how, under different circumstances, it can be used to create a basis for further arbitration" [28].

The Commission on the "Taviniano", like its predecessor, was ideally formed so that the results of its work could be used to resolve the situation by an authorized tribunal. Thanks to the provisions of the 1907 Convention regarding the need to regulate procedural matters, the Commission was able to complete its investigation in less than a month. And although the Commission was forced to leave

the main disputed issue unresolved, the governments of France and Italy were sufficiently satisfied with its work to include provisions in their arbitration agreement regarding the mandatory use of its report. According to D. Merrills, the fact that the dispute was not referred to an arbitration body indicates that while establishing facts can be considered as a preliminary stage for arbitration, in practice, as envisaged by the authors of the 1907 Convention, clarifying the factual circumstances of the disputed situation, or even just some of them, may be sufficient to settle the dispute through negotiations [28].

The next situation in which the investigation procedure was applied was the case concerning the ship "Tiger". On May 7, 1917, during World War I, a German submarine pursued and sank the Norwegian ship "Tiger" near the northern coast of Spain. As in the case of the "Taviniano" incident, the justification provided was that the ship was carrying contraband, and the decisive issue was the location of the ship. Spain claimed that the incident occurred in its territorial waters, while Germany argued that it took place in international waters. After lengthy diplomatic negotiations, Spain and Germany agreed to establish a commission to investigate in accordance with the 1907 Convention.

The Commission on the "Tiger", like its predecessor, consisted of naval officers representing the interests of the disputing parties, under the chairmanship of a representtative of a neutral state – Denmark. Despite the conflicting testimonies regarding the navigation of the ship, the Commission concluded that the incident occurred in Spanish waters [28].

Much like previous cases, the investigation of the Tiger incident has several interesting aspects. It was the first instance where the parties to an international investigation agreed in advance to accept the commission's report as binding. This departure from the provisions of the Hague Conventions demonstrated the determination of the respective states to use the fact-finding procedure for dispute resolution and, similar to the inclusion of legal issues within the scope of the Gul Investigation Commission, showed how, under certain circumstances, the investigation procedure can be flexible enough to substitute for arbitration. To some extent, the mandatory nature of the Commission's decision mirrored its resemblance to arbitration. At the same time, the evidentiary process conducted by the Commission underscored the unique nature of the investigation procedure. Evidence regarding the location of the submarine and the sunken ship at that time was extremely challenging to interpret.

Partly, this is explained by the difficulty of precisely determining the location of a vessel at sea after the event has occurred. Partly, it is due to the passage of time between the incident and the investigation, which led to the destruction of many crucial pieces of evidence. It could be expected that arbitration in this situation would raise a serious argument in favor of the burden of proof. The fact that an international investigative commission is not an arbitral tribunal allowed it to evaluate the evidence and ultimately settle the dispute without addressing this complex legal issue [28].

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In 1911, the United States concluded treaties with France and Great Britain, stipulating that all differences or disputes between the parties must be submitted either to arbitration or to the Joint High Commission of Investigation. These treaties, known as the Taft (or Knox) arbitration treaties, provided that the organization and procedure of the commissions as a whole should be governed by the relevant provisions of the Hague Convention of 1907. However, they contained several departures from the latter: they did not limit the types of disputes that could be investigated; they empowered the commissions, in addition to establishing facts, to make recommendations; and they went so far as to stipulate that the commission's decision on whether the dispute should be referred to an arbitral body was binding on the parties [28]. On February 7, 1923, the United States entered into a Convention with the governments of Guatemala, El Salvador, Honduras, Nicaragua, and Costa Rica regarding the establishment of international investigative commissions. According to Article 5 of this Convention, the commissions were authorized to investigate all facts, incidents, and circumstances related to matters that could be subject to investigation and were empowered to make recommendations regarding the terms of settlement, which the commission deemed appropriate, fair, and expedient [23].

The expanded authority of international investigative commissions to provide recommendations aimed at resolving international disputes laid the groundwork for the development of a new means of international dispute resolution known as conciliation, which effectively represents the next stage in the evolution of international investigative commissions.

During the period between the two World Wars, the practice of referring not only factual but also legal aspects of disputes to commissions became even more widespread. The provisions of the agreement concluded in 1925 between France and Switzerland regarding the functions of permanent conciliation commissions served as a model for

subsequent agreements in this field [28].

On September 26, 1928, a multilateral international treaty was concluded – the General Act for the Pacific Settlement of International Disputes, which was registered with the Secretariat of the League of Nations. It provided for recourse to conciliation, judicial settlement, or arbitration. Investigative procedure was not defined as an independent means of dispute resolution; it was a component of the conciliation procedure. In many respects, the provisions of the General Act regarding the organization and activities of conciliation commissions repeated the provisions of the Hague Conventions of 1899 and 1907 regarding investigative procedure [6]. The Act provided for disputes to be submitted for consideration by a permanent or special commission, which was to consist of 5 members, among whom only one could be a citizen of one of the parties. It established an adversarial nature of proceedings, allowed commissions, under certain conditions, to independently determine their rules of procedure, and so on [3].

According to Article 15 of the Act, the task of the conciliation commission is to clarify disputed issues, gather all necessary materials for this purpose through investigation or other means, and attempt to bring the parties to an agreement. The activity of the conciliation commission related to conducting investigations was based on the provisions of Chapter III of the Hague Convention of 1907, dedicated to regulating the activities of inquiry commissions. Thus, international investigative procedure became an integral part of conciliation [3].

The European Convention on the Peaceful Settlement of Disputes of April 29, 1957, provides for the conduct of inquiries as part of the conciliation procedure [26].

As an independent procedure, the establishment of facts was provided for in a number of international legal instruments adopted during this period. Mention should be made of the functioning of the International Humanitarian Fact-Finding Commission, established pursuant to Article 90 of the Additional Protocol I of June 8, 1977, to the Geneva Conventions of 1949, which is a permanent body. The main purpose of the Commission's activities is to investigate allegations of serious violations of international humanitarian law [2]. However, to this day, there have been no precedents of recourse to the services of the Commission. As a separate procedure during arbitration proceedings, the establishment of facts is provided for in Annex VIII to the United Nations Convention on the Law of the Sea of 1982 [7]. Another example is the Convention on the Law of Non-Navigational Uses of International Watercourses of May 21, 1997. Article 33 of the Convention, which establishes mechanisms for the settlement of disputes between participating states, provides for the creation of fact-finding commissions. These commissions are empowered to make recommendations, among other things [10].

It should be noted separately that the fact-finding procedure has been invoked in connection with the military conflict in Donbas. In 2014, a passenger plane carrying out flight MH17 from the Netherlands to Malaysia was shot down, resulting in the loss of all passengers and crew members. The UN Security Council adopted Resolution 2166 (2014) on July 21, 2014, urging for a full and impartial investigation into the circumstances of the crash based on the principles of international civil aviation [17].

Among several investigations, two notable ones are the technical investigation conducted by the Dutch Safety Board (DSB) and the criminal investigation by the Joint Investigation Team (JIT) aimed at holding accountable those responsible [5].

A special agreement was concluded between the DSB and the National Bureau of Air Accidents and Incidents Investigation of Civil Aircraft of Ukraine, according to which the latter provided authorization to conduct the relevant investigation [5].

The members of the investigation team included representatives from the Netherlands, Ukraine, Malaysia, the United States, the United Kingdom, the Russian Federation, and Australia [5; 25]. Additionally, experts from Belgium, Canada, Germany, Indonesia, Israel, Italy, New Zealand, the Philippines, and Vietnam were included in its composition [5; 25].

The investigation team aimed to establish the circumstances leading to the crash and inform the concerned parties about them. Additionally, they sought to recommend measures aimed at minimizing the risks of similar disasters occurring in the future [5; 25].

The report presented on October 13, 2015, contains a detailed analysis of the flight's execution and the conduct of Ukraine, Malaysia Airlines, and other operators during the flight over the conflict zone in Donbas. Additionally, the report examines various aspects of civilian aviation flights over regions affected by armed conflicts [5; 25].

The investigation concluded that the crash occurred due to the aircraft being struck by a missile fired from a Buk surface-to-air missile system. It emphasized the lack of adequate risk assessment of the conflict in Donbas for civilian air flights, leading to the flight being considered safe. The current system of civilian aviation protection was criticized for its inability to provide the necessary level of risk assessment for civilian aircraft flying over areas of military conflict [5; 25].

As a result, a series of recommendations were developed aimed at ensuring the safety of civil aviation flights over areas of armed conflict. These recommendations focused on the necessity of exchanging information among relevant international and national legal entities and conducting risk assessments for such flights [25].

The task of the technical investigation conducted by the DSB could not have been to establish the responsibility of individuals involved in the crash because judicial or administrative procedures should be separate from it [5; 9]. For this purpose, the Joint Investigation Team (JIT) conducted its activities, which carried out the criminal investigation [5; 25].

The mechanism of operation of the JIT is provided for by the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 1959 (adopted on November 8, 2001) in Article 20, as well as by the Convention on Mutual Legal Assistance in Criminal Matters between the Member States of the European Union of 2000 (signed on June 13, 2000) in Article 13 [24].

The activity of the JIT regarding the crash of the flight over Donbas aimed to establish the truth about the factual circumstances of the event, determine specific individuals responsible for the crash, and gather evidence for the criminal prosecution of those individuals [5; 30]. The group consisted of representatives from Ukraine, the Netherlands,

Malaysia, Belgium, and Australia. The JIT confirmed the conclusion that the aircraft was hit by a missile launched from a Buk missile system, which, according to the investigation team, was in the possession of the armed forces of the Russian Federation. It was alleged that the Buk system was transported to Ukrainian territory from Russia and then returned to Russia with a missing missile [5; 31].

The Dutch Public Prosecution Service identified four individuals who were deemed potentially responsible for the crash [31]. On July 17, 2014, the Netherlands and Ukraine entered into an agreement on international legal cooperation regarding crimes related to flight MH17, under which the competence to conduct criminal proceedings was vested in the national courts of the Netherlands. Currently, the investigation by the JIT continues as there are suspicions of involvement in the disaster by a larger number of individuals [5; 31].

The institution of international investigation, as one of the means of peaceful dispute resolution, has developed not only through recourse by states involved in a dispute. The practice of using international investigative commissions, both independently and in combination with other peaceful means of resolving international disputes, has evolved within the framework of international intergovernmental organizations. The League of Nations had a significant influence on the development and shaping of the principle of peaceful resolution of international disputes. Among its objectives was facilitating the settlement of conflicts between states [6]. In accordance with the Covenant of the League of Nations, the organization could propose possible methods of settlement to parties engaged in a state of war. Although states were not obligated to refrain from the use of force in their relations with each other, the League of Nations sought to limit the resort to armed forces as a means of resolving disputes. For instance, member states of the League of Nations, according to Article 12 of the Covenant, were required to refer any dispute that might lead to rupture to the consideration of the League Council or to arbitration or judicial settlement [6].

Establishment of facts was implicitly highlighted by the Covenant of the League of Nations as an important element of the peaceful settlement process. According to Article 15 of the Covenant, parties were obligated to present to the Council their view of the facts regarding the dispute between them and the documents relevant to it. Additionally, Article 17 of the Covenant empowered the Council of the League of Nations to conduct investigations into the circumstances of the dispute [6]. The provisions that established mechanisms for peaceful resolution of international disputes were also contained in the Protocol on the Pacific Settlement of International Disputes of 1924 and the General Treaty for Renunciation of War as an Instrument of National Policy of 1928 [6].

During its operation, the League of Nations resorted to the creation of international investigative commissions on seven occasions, including disputes over the Åland Islands in 1921 and the Mosul Conflict in 1925. These investigative commissions did not include representatives of the parties involved. They thoroughly examined the circumstances of each dispute and, in some cases, facilitated reconciliation between the parties [30].

After the Second World War, international bodies conducting international investigations began to revert to their initial role of establishing facts. During this period, the procedure of international investigation was introduced into international law as an independent means of dispute resolution. The use of international investigative procedures was not widespread in intergovernmental practice. In this context, only the case of resorting to the investigation procedure in the case of the "Red Crusader" in 1961 can be mentioned. International treaties concluded in the modern period of international law envisaged the use of fact-finding procedures both in their pure form and as part of reconciliation processes. The United Nations General Assembly, through Resolution 268A (III) "Reaffirmation of the General Act of 26 September 1928" of April 28, 1949, made minor amendments to the General Act of 1928. The importance of the conciliation procedure was confirmed, and the investigation procedure remained its integral part [13].

At the present stage of development of international law, the practice of resorting to the procedure of international investigation has received the broadest application within the framework of the United Nations (UN). It can be said that today, the UN, compared to other subjects of international law, most actively utilizes international investigative commissions in its activities.

According to Article 1 of the UN Charter, one of the purposes of the Organization is to maintain international peace and security. To achieve this goal, the UN resorts to various measures, including the fact-finding procedure. Article 33 of the UN Charter imposes an obligation on parties involved in any dispute that could endanger the maintenance of international peace and security to first seek its resolution through negotiation, investigation, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their choice. Furthermore, Article 34 of the Charter empowers the UN Security Council to investigate any dispute or situation which might lead to international friction or give rise to a dispute, to determine whether the continuation of the dispute or situation might endanger the maintenance of international peace and security. Thus, international fact-finding bodies are regarded by the Organization as one of the means of peaceful settlement of international disputes [18].

A significant impetus in the development of the fact-finding procedure was provided by a series of United Nations General Assembly resolutions entitled "Question of the Methods of Fact-finding". On December 16, 1963, the UN General Assembly adopted Resolution 1967 (XVIII) "Question of the Methods of Fact-finding", in which it emphasized the importance of measures aimed at impartially establishing facts within the framework of international organizations and based on bilateral and multilateral agreements to promote the peaceful settlement of international disputes and their prevention. The resolution also underscored the need to study the practice of using fact-finding methods in international relations and raised the question of the possibility and desirability of creating a special international body for fact-finding or assigning such a function to an existing organization [14].

These issues were further developed in the United Nations General Assembly Resolution 2329 (XXII) "Question of the Methods of Fact-finding" of 1967. In this resolution, the General Assembly once again emphasized the usefulness of impartial fact-finding as a means of settling disputes and urged UN member states to more effectively utilize existing

methods of fact-finding. Additionally, member states were encouraged to entrust fact-finding tasks to competent international organizations and bodies established by agreement among the parties concerned, in accordance with the principles of international law, the UN Charter, and other relevant agreements, when choosing means of peaceful dispute settlement. Furthermore, the Secretary-General was proposed to compile a list of experts in legal and other fields, whose services could be used by disputing states by mutual agreement, and member states were suggested to appoint no more than five of their nationals to be included in such a list [14].

In addition to this, the Manila Declaration on the Peaceful Settlement of International Disputes of 1982 and the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security, and on the Role of the United Nations Organization in This Field of 1988 contain calls to the General Assembly, the Security Council, and the Secretary-General to utilize in their activities the procedures of investigation and their potential for establishing facts [5; 12].

The procedure for investigation within the framework of the UN received more detailed regulation through the adoption of General Assembly resolution 46/59 on December 9, 1991. The UN Declarations on Fact-Finding in the field of maintaining international peace and security regulated the creation and functioning of international investigative commissions directed by authorized bodies of the Organization. The preamble emphasizes the particular significance of the activities of fact-finding bodies in the context of the UN's efforts in peacefully resolving disputes and situations, the further existence of which could jeopardize the maintenance of international peace and security. Specifically, it underscores the necessity for the Organization to obtain complete and detailed information about such disputes or situations. Therefore, it can be argued that the investigation procedure is considered by the UN as an important mechanism contributing to the maintenance of international peace and security [16].

Throughout its history, the UN has often resorted to fact-finding procedures. UN fact-finding bodies have different structures and mandates, including investigation, mediation, or compensation provision. International investigative commissions are frequently used to address situations involving gross violations of international humanitarian law and human rights law, both prolonged and arising from sudden events, as well as to hold those responsible for such violations accountable and combat impunity. Such international investigative bodies have been established by the Security Council, the General Assembly, the UN Human Rights Council and its predecessor, the Commission on Human Rights, the Secretary-General, and the High Commissioner for Human Rights.

The Security Council, together with the Secretary-General, has dispatched 27 investigative commissions to various regions and countries worldwide, including Angola, Burundi, Rwanda, Somalia, Sudan, Indonesia, Pakistan, Yugoslavia, Iraq, Kuwait, Lebanon, Syria, Gaza Strip, etc. The UN Human Rights Council actively utilizes international investigative commissions by dispatching relevant missions to Yemen, Myanmar, North Korea, Sri Lanka, Gaza Strip, and other regions worldwide. The procedure of international investigation has also been applied within the activities of other international organizations. The Constitution of the International Labour Organization (ILO) provides for the possibility of establishing investigative commissions to investigate complaints regarding violations of labor conventions by a member state of the ILO. After a comprehensive analysis of the complaint, the Investigation Commission prepares a report containing its findings based on all factual data and recommendations regarding measures to be taken and the deadlines for their implementtation. Investigative commissions are typically established when a member state is accused of committing persistent and serious violations and has repeatedly failed to remedy them [29].

As of today, 13 investigative commissions have been established (Greece 1971, Chile 1975, Poland 1984, Nicaragua 1991, Belarus 2004, Zimbabwe 2010, and others), with the most recent one established by the Administrative Council in March 2018 following a complaint filed under Article 26 against the government of the Republic of Venezuela. In cases where a state refuses to comply with the recommendations of the Investigative Commission, the Governing Body may take measures in accordance with Article 33 of the ILO Constitution, which was first applied in 2000 when the Governing Body appealed to the International Labour Conference to take action to stop Myanmar's use of forced labor. The complaint was filed against Myanmar in 1996 in connection with violations of the Forced Labour Convention of 1930 (No. 29). As a result, the Investigative Commission found "widespread and systematic use" of forced labor in the country [21].

In 1993, the World Bank established a quasi-judicial procedure by creating the Inspection Panel to receive and review requests from communities, organizations, or groups who believe that a Bank-funded project may adversely affect them and assert that the project may be inconsistent with the Bank's operational policies and practices. The Panel's task is to initially recommend to the Executive Directors whether the issue should be investigated and then, if necessary, to conduct an inspection. The Panel's findings are not binding but are based on an objective investigation, accompanied by visits and consultations, and carry significant weight. Since the inspection has a quasi-judicial aspect, the Panel's reports go beyond strict investigation but clearly include a substantial element of fact-finding. The World Bank's Inspection Panel has already begun to develop useful practice, and the Inter-American Development Bank and the Asian Development Bank currently have similar mechanisms [28].

Regional organizations also occasionally establish international fact-finding bodies. A notable example is the International Fact-Finding Mission created by the European Union Council to investigate the causes and evolution of the conflict in Georgia in 2008 [11].

CONCLUSIONS

Based on all of the above, the following conclusions can be reached: The recourse to international fact-finding bodies as a means of peaceful resolution of international disputes was first envisaged by the Hague Conventions on the Pacific Settlement of International Disputes in 1899 and 1907. The procedure of international fact-finding was provided for by the Hague Conventions as a means of peaceful resolution of a narrow range of international disputes.

However, the practice of its use indicates that "honor" and "substantial interests" were undoubtedly involved in disputes where the fact-finding procedure was employed. International fact-finding commissions, by establishing not only facts but also rights and individual responsibility, in many aspects of their activities resembled arbitration, the composition and procedure of which were similar to judicial bodies rather than purely fact-finding commissions as originally intended. International disputes differ in nature, circumstances, and subject matter, so states adapted the technique of international fact-finding for each individual case based on their interests and specific circumstances. Therefore, the existence of diverse international fact-finding commissions – from "pure" fact-finding in the Tigre case to investigations regarding the Red Cross and the Letellier-Moffitt case, which were closer to arbitration – became possible. Subsequent international treaties providing for fact-finding procedures typically were based on the provisions of the Hague Conventions, although they deviated from them in some respects.

Despite the fact that such treaties did not find wide application in practice, they contributed to the development of peaceful dispute settlement as such.

They are characterized by recognition that:

1. Permanent international fact-finding commissions have significant advantages over ad hoc bodies.

2. There should be no restrictions on the types of disputes that may be subject to investigation.

Practice also evolved towards empowering international fact-finding commissions to make recommendations on possible settlement methods, ultimately leading to the formation of such a peaceful means of settling international disputes as conciliation. Between the First and Second World Wars, a tendency emerged to combine fact-finding with the conciliation procedure. International legal acts of that time typically provided for fact-finding only as part of conciliation. Such practice was much more common than the use of fact-finding procedures in their pure form.

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ІСТОРІЯ СТВОРЕННЯ ОРГАНІВ З ВСТАНОВЛЕННЯ ФАКТІВ У РОЗВ'ЯЗАННІ МІЖНАРОДНИХ СПОРІВ

У статті прослідковано історичні передумови формування та розвитку інституту міжнародного встановлення фактів. Будучи результатом прогресивного розвитку міжнародного права, інститут міжнародного обслідування склався на рубежі XIX ст. та XX ст., вперше отримавши своє міжнародно-правове закріплення в Гаазькій Конвенції про мирне вирішення міжнародних суперечок 1899 р. Досліджено історію створення органів з встановлення фактів державами, що були сторонами спору, який ґрунтувався на питаннях факту, як на універсальному, так і на регіональному рівнях. Розглянуто практику звернення до процедури обслідування в рамках міжнародних міжурядових організацій, таких як Ліга Націй, ООН, МОП, ІКАО, Всесвітній банк, ЄС тощо.

В сучасний період міжнародного права процедура встановлення фактів набула досить широкого застосування і реалізується у більш первісному вигляді, особливо в рамках діяльності ООН. ООН створює міжнародні комісії (до складу яких зазвичай входять особи, що не є громадянами сторін спору або учасників ситуації) уповноважені, як це часто буває, не тільки на встановлення факту (проведення розслідування), а й наділяються широкою компетенцією стосовно надання висновків з питань права та рекомендацій з вирішення спору або ситуації. ООН також застосовує процедуру міжнародного обслідування у поєднанні з іншими міжнародними механізмами врегулювання суперечок.

Звернення до міжнародних органів з встановлення фактів як до одного із засобів мирного вирішення міжнародних спорів вперше передбачено Гаазькими конвенціями про мирне вирішення міжнародних спорів 1899 і 1907 рр. Тому стало можливим наявність різноманітних за природою міжнародних слідчих комісій – від «чистого» встановлення фактів у справі Тигру до розслідувань стосовно Червоного Хрестоносця і справи Летельє та Моффіта, що були наближені до арбітражних.

Ключові слова: *встановлення фактів, обслідування, міжнародні слідчі комісії, міжнародна слідча процедура, міжнародні суперечки, мирне вирішення міжнародних спорів, міжнародні злочини*