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ОБЗОР ПРЕДМЕТНОГО ПОЛЯ | SCOPING REVIEW

Evolution of approaches to international courts' effectiveness assessment

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Abstract

International courts' effectiveness is quite a contested concept that requires strictly defined and clearly described criteria. Numerous legal scholars have tried to describe this phenomenon. L. R. Helfer is recognised as the initial scholar to emphasise the classical legal criteria of international courts' effectiveness. Subsequently, Y. Shany has proposed modern criteria that blend social and legal approaches. More recently, G. Navarro and certain other academics have applied the classical criteria developed by L. R. Helfer to current realities. For example, C. Calabria applied "classical legal criteria" for modern legal institutes. G. Navarro has specifically examined the activity of one particular international court, employing both classical and new criteria, including the so-called "efficiency chain". However, there are certain gaps in these studies. As indicated above, legal scholars have mostly focused on development of new criteria rather than on analysis of existing ones. This results in a lack of comparative and critical analysis of all the effectiveness criteria tested throughout time. Moreover, there is scarce research on feasibility of applying social or other non-legal approaches. Hence, this paper is dedicated to the analysis of certain gaps mentioned above. It examines the historical trajectory of the development in application of different effectiveness criteria for international courts. The main aim of this paper is to structurise the doctrinal approaches to assessment of the international courts' effectiveness developed over time and to practically compare the described methods.

Key words: international courts, international courts' effectiveness, legal approach, socio-legal approach

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Эволюция подходов к оценке эффективности международных судов

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Аннотация

Эффективность представляет собой весьма спорное и комплексное понятие, раскрытие которого требует строгих и четко описанных критериев. Ученые-юристы неоднократно пытались дать определение этому понятию, выработав соответствующие критерии. Так, первопроходцем в этой области принято считать Л. Р. Хелфера — правоведа, выделившего классические правовые критерии оценки эффективности международных судов. Более современная точка зрения, основанная на сочетании социального и правового подходов, впоследствии была представлена в работах Ю. Шейни. В недавних исследованиях, в частности за авторством Г. Наварро и др., классические критерии, разработанные Хелфером, применяются в контекстах, заданных современными правовыми реалиями. Например, К. Калабриа использовала «классические правовые критерии» для оценки современных правовых институтов. Г. Наварро, в свою очередь, проанализировала деятельность конкретного международного суда с учетом не только классических, но и современных критериев, включая так называемую «цепочку повышения эффективности». Однако в этих исследованиях есть определенные пробелы. Как упоминалось выше, ученые-юристы в основном уделяли внимание разработке новых критериев, а не анализу и критическому осмыслению уже существующих. Следовательно, отсутствует подробный сравнительный и критический анализ критериев эффективности. Более того, лишь малое число правовых исследований затрагивает анализ возможности применения социальных или других неправовых подходов к оценке эффективности. Данная статья посвящена анализу некоторых пробелов, упомянутых выше. В ней рассматривается историческая траектория развития различных критериев эффективности международных судов. Основная цель статьи состоит в структурировании выработанных с течением времени доктринальных подходов к оценке эффективности международных судов и в практическом сравнении описанных методов.

Ключевые слова: международные суды, эффективность международных судов, правовой подход, социально-правовой подход

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Introduction

The international courts dealing with the promotion of human rights and international peace and security are increasingly resolving more cases these days. For example, the advisory jurisdiction of the International Court of Justice (hereinafter — ICJ) has grown in popularity, as evidenced by an increasing number of cases subject to advisory jurisdiction[1] in 2025 compared to 2020 statistics.[2] 2020 saw an increase in the number of situations undergoing investigation in the International Criminal Court.[3] Moreover, in 2024, the International Criminal Court began to investigate cases beyond African territories, attracting the attention of legal scholars.[4] In 2025, the number of public outstanding arrest warrants issued by International Criminal Courts doubled in comparison with the number of warrants issued in 2023.[5] Parallel significant growth was evident at the European Court of Human Rights. Hence, in 2024, the number of judgements reached 1,102 in total.[6] Applications resolved by the judgments of the European Court of Human Rights increased by 56 percent in 2025, with the total number reaching 10,829.[7] Overall, in the last five years, there has been a significant increase in the number of cases referred and resolved by aforementioned international courts. Consequently, this upward trend prompted legal scholars to assess the effectiveness of international courts to suggest new legal and management tools for their further development.

Effectiveness is viewed as a complex phenomenon. Accordingly, for its assessment effectiveness criteria should be clearly defined. This paper highlights that possible approaches to effectiveness criteria applied to the international courts generally fall into three main categories: legal, non-legal and hybrid approaches. Legal approach foresees a direct link to the rule of law and justice. In other words, scholars, in defining this approach, established criteria that focused on such categories as legality of the courts' decisions, administration of justice, compliance with decisions. A non-legal approach to the effectiveness criteria can be regarded as more abstract. It examines

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1 International Court of Justice. Report of the International Court of Justice, 1 August 2024–31 July 2025. https://www.icj-cij.org/sites/default/files/2025-10/2024-2025-en.pdf (pp. 44–51).

2 International Court of Justice. Report of the International Court of Justice, 1 August 2022–31 July 2023. https://www.icj-cij.org/sites/default/files/2023-10/2022-2023-en_0.pdf (p. 5).

3 International Criminal Court. Report of the International Criminal Court, 24 August 2021, A/76/293. https://www.icc-cpi.int/sites/default/files/itemsDocuments/A_76_293_E.pdf (pp. 8–12).

4 International Criminal Court. Office of the Prosecutor Annual Report 2023. https://www.icc-cpi.int/sites/default/files/2023-12/2023-otp-annual-report.pdf (pp. 26–29).

5 International Criminal Court. Office of the Prosecutor Annual Report 2025. https://www.icc-cpi.int/sites/default/files/2025-12/2025-annual-report.pdf (p. 16).

6 European Court of Human Rights. Annual report of 2024. https://www.echr.coe.int/annual-reports#:~:text=2022-,2022,-2021 (p. 36).

7 European Court of Human Rights. Annual report of 2024. https://www.echr.coe.int/documents/d/echr/annual-report-2024-eng (p. 34).

categories like the ability of the courts to achieve their goals, ability to accumulate new resources and to attract more clients (claimants). It is remarkable that such criteria developed within the framework of a non-legal approach can be applied to other institutions (international organisations, commercial companies, banks, etc.) due to their universality. Non-legal criteria can be also called by the name of a particular science which builds the basis for such an approach. For example, Y. Shany has clearly stated in his papers that he applied a sociological approach to the effectiveness assessment. A hybrid approach is employed when both the legal and non-legal effectiveness criteria are combined.

This topic has consistently been a subject of legal research. To illustrate, L. R. Helfer began to study international courts' effectiveness in the 1990s (Helfer & Slaughter, 1997, pp. 273–392) and revised his conclusions several times (Helfer, 2014, pp. 464–482). In his studies, particular attention was paid to the effectiveness criteria determined from the perspective of law. Hence, the most frequently used effectiveness criteria taken into account were the high qualification of the international judges, the presence of strong formal authority governing the court's operation, compliance with judgments and others (Helfer & Slaughter, 1997, pp. 273–392). Another approach was developed by Y. Shany. It can be regarded as a complex approach which foresees a combination of legal and sociological approaches (Shany, 2010a, pp. 10–14). He used a rational system approach assessing courts' ability to achieve their goals (Shany, 2010a, pp. 10–14). Among other criteria, compliance with courts' decisions (Shany, 2010b, p. 4) and judicial independence (Shany, 2010b, pp. 1–22) were considered. G. Navarro's recent study employed in part the framework developed by L. R. Helfer. She applied this approach to the Inter-American Court of Human Rights (hereinafter — IACtHR), which was not analysed by Helfer, and criticised it due to a lack of correlation between compliance and effectiveness (Navarro, 2024, pp. 138–152). A new approach to the effectiveness of assent was suggested by C. Calabria. She broadened the list of effectiveness criteria in accordance with new tendencies and modern values. Hence, some criteria mentioned above were replaced with strengthening, application, implementation and adequacy (Calabria, 2018, pp. 53–62). So, the effectiveness of the international courts has been analysed from different perspectives.

Nevertheless, there is an essential lack in the comparative or critical studies assessing the effectiveness criteria developed by scholars mentioned above. Firstly, the historical evolution of scholars' attitudes to the development of effectiveness criteria remains unanalysed. For example, L. R. Helfer suggested certain clear effectiveness criteria in 1997 (Helfer & Slaughter, 1997,

pp. 273–392). More modern studies by scholars did not properly analyse such criteria and did not compare these criteria with the originally suggested ones. For example, A. Watts (Watts, 2001, pp. 21–39) explored the effectiveness of the ICJ and criticised its functioning without analysis of former legal research. Secondly, modern legal scholars, especially Crockett (Crockett, 2011, pp. 1–5), do not directly name the applied effectiveness criteria but, in fact, duplicate some criteria offered by Helfer. A third issue is the absence of comparative analysis across all established legal, non-legal, or hybrid approaches within contemporary research. Hence, Shany was the first one who directly proposed applying sociological criteria to measure the effectiveness of international courts (Shany, 2010a, pp. 1–49). However, neither Navarro (Navarro, 2024, pp. 138–152), nor Calabria (Calabria, 2018, pp. 1–267) who applied a complex approach to the international courts' effectiveness assessment used analysis of Shany's or other legal scholars' papers to criticise or make a comparison with newly developed criteria.

This paper follows a particular structure, outlined as three parts. The first part explores classical and modern legal studies of international courts' effectiveness criteria. The second part addresses effectiveness criteria based on modern legal approaches, and the third part describes the socio-legal approach.

Accordingly, the paper aims to describe the differences arising over time in legal approaches related to the assessment of international courts and detail new modern methodologies that combine multiple study approaches.

1. Evolution of classical legal approaches of international courts' effectiveness assessment

The history of international courts' effectiveness research began quite recently. L. R. Helfer and A.-M. Slaughter published their first study on the topic in 1997 (Helfer & Slaughter, 1997, pp. 273–392). This detailed monograph contains an analysis of the activity of two international courts and a quasi-judicial body: the European Court of Justice (hereinafter — ECJ), the European Court of Human Rights (hereinafter — ECtHR) and the United Nations Human Rights Committee. Their research created an essential basis for studies by the later legal scholars.

The authors formulated a checklist to make an assessment of international courts. Firstly, the composition of the tribunal shall be taken into account. They suppose that the backgrounds of the jurists serving in the international courts are vital, because appointed judges can gain authority if only they are known and already respected by domestic courts' judges (Helfer & Slaughter, 1997, pp. 300–301). Secondly, the caseload or functional capacity of the courts shall be assessed (Helfer & Slaughter, 1997, p. 301). So, international courts can be

regarded as successful if they attract a large number of claimants (Helfer & Slaughter, 1997, p. 301). It can directly correlate with the scope of the caseload of the court. However, this criterion can be affected by the financial and other contributions of the countries devoted to this international court (Helfer & Slaughter, 1997, p. 301). Nevertheless, authors regard this criterion for situations in which an international court has just appeared (Helfer & Slaughter, 1997, p. 303). Thirdly, R. Helfer and Slaughter analyse independent fact-finding (Helfer & Slaughter, 1997, p. 303). Courts' decisions must be based on credible factual information, which can come from independently assessed facts or public consensus (Helfer & Slaughter, 1997, p. 303). Consequently, courts' judgments should remain free from any political statements (Helfer & Slaughter, 1997, p. 304).

Further, the formal authority of the international court shall be present (Helfer & Slaughter, 1997, p. 304). The source of law governing all the activities of the court shall contain provisions under which the decisions made by the court are binding (Helfer & Slaughter, 1997, p. 304). For example, authors regard the Treaty of Rome and the European Convention on Protection of Human Rights and Fundamental Freedoms (hereinafter — ECHR) as successful examples of such sources setting forth the binding nature of their rulings and the authority of such bodies as legal tribunals (Helfer & Slaughter, 1997, pp. 304–305). Hence, to achieve recognition as a strong formal authority, courts' decisions under this treaty shall be regarded as binding. Moreover, states are expected to incorporate such decisions into domestic law since it gives more grounds for further compliance with rulings (Helfer & Slaughter, 1997, p. 328).

Nonetheless, there are some factors which are beyond the states' or judges' control. These factors can affect the effectiveness of the courts directly, but they are difficult to counteract (Helfer & Slaughter, 1997, p. 328). The nature of the violation can be regarded as such a factor (Helfer & Slaughter, 1997, p. 329). K. J. Alter and L. R. Helfer found that there is a paradox in the human rights violation sphere: human rights regimes and created tribunals turned out to be more effective in the states which need the least (Helfer & Slaughter, 1997, p. 329). In other words, in these states there are minor human rights violations. Another factor is related to the presence of national institutions which adhere to the rule of law and react to citizen's interests (Helfer & Slaughter, 1997, p. 329). Authors presume that courts which are subject to analysis operate on the basis of a liberal democratic community and rule of law due to the legal and political conditions in the European states (Helfer & Slaughter, 1997, p. 329). Another essential factor relates to the cultural and political homogeneity of states which are subject to the international court (Helfer & Slaughter, 1997, p. 335). As for the ECJ and the ECtHR, there is relative homogeneity of the states participating

in the relationships with these courts (Helfer & Slaughter, 1997, p. 335). If different states with different cultural and legal backgrounds are trying to cooperate with the same international court, its effectiveness can suffer due to the presence of essential distinctions (Helfer & Slaughter, 1997, p. 336).

In sum, the research by Karen J. Alter and Laurence R. Helfer can be regarded as quite complex. The effectiveness of international courts depends on different factors which are within and beyond the control of international courts. Authors have created the check-list that is quite complete, though not fully exhaustive. Moreover, by effectiveness assessment, not only check-list provisions but also political, social and cultural factors affecting the states' and courts' behavior shall be taken into account. Authors also regard the ECJ and the ECtHR as examples of quite effective international courts, since these international courts meet the requirements of the check-list.

The initial research by K. J. Alter and L. R. Helfer described above incorporates not only legal effectiveness criteria but also certain non-legal criteria, such as courts' ability to attract new claimants. This specific criterion can clearly be seen as non-legal due to its applicability across various fields, but other criteria described above can be applied to the courts only. Therefore, within the framework of this paper, a single non-legal criterion is regarded as insufficient to determine the approach as "non-legal" or complex.

In 2001 Sir A. Watts published a critical study regarding the effectiveness of procedures for international dispute settlement (Watts, 2001, pp. 21–39). He has selected the ICJ as the subject of his analysis (Watts, 2001, p. 22). Firstly, he pays attention to the role of the counsel in their relation with the international court (Watts, 2001, p. 24), including possible biases in their reasoning, as counsel usually represents the interests of particular states and operates in absence of a universal ethical framefork (Watts, 2001, p. 27). Secondly, the author supposes that the role of registries is underrated, meanwhile they can seriously affect the effectiveness of the ICJ. For example, lack of financing can lead to the insufficiency of translators and other staff (Watts, 2001, pp. 30–32). Thirdly, judicial delays play an essential role in the effectiveness (Watts, 2001, p. 32). Sir Watts supposes that the presence of any judicial delays makes the process ineffective (Watts, 2001, p. 32). For example, certain processes can take ten years, due to the circumstances caused by the states-parties to the process itself (Watts, 2001, pp. 32–33). However, factors such as geographical location of documents can play a significant role in this issue (Watts, 2001, pp. 33–35).

In sum, the approach and criteria used by Sir Watts can be regarded as targeted. He focuses on the internal processes of the ICJ to determine its effectiveness. The role of counsel in the process seems underestimated

and subject to further improvement since it reflects the presence of a democratic and open process. Another criterion is based on the role of the court's staff. The author considers staff and their successful performance to be an essential element of effectiveness, since lack of competent staff leads to errors in decisions that can automatically be regarded as ineffective. The last criterion is based on the avoided delays. The author supposes that delay is the main sign of the court's ineffectiveness, since failure to comply with its own inner deadlines cannot be regarded as a normal working process. Hence, this approach is fully legal since its applicability to any other entities is impossible. Moreover, this approach can be regarded as the most targeted one within the framework of this paper, as it involves the development of a criterion applicable only to the ICJ.

To sum up, Helfer and his colleagues made a significant contribution to the development of the sphere of international courts' effectiveness. They succeeded in the accumulation of factors which directly affect the international courts' effectiveness and these studies can be used by entitled authorities to improve this effectiveness. Basically, the authors divide factors into two groups: factors within the control of international courts and factors beyond their control. Factors within courts' control are the following: the presence of formal authority of the court, enforcement mechanism, functional capacity of the court (i.e. ability to attract claimants), independence of politically influenced fact-finding, the scope of binding nature of court's decisions, the ability of member states to implement court's decisions into domestic legislation and contribution made into international law development in form of academic innovations or spreading court's influence on the other smaller or less effective international courts. Factors beyond the court's control, in turn, can be regarded as political, cultural, social and other differences arising between the member states, which led to the deceleration of international integration. Watts, in turn, developed his own effectiveness criteria without any application to the check-list developed by Helfer. He was especially interested in the effectiveness assessment of the ICJ and suggested a specific effectiveness criterion for this court. Meanwhile, Helfer tried to determine quite universal effectiveness criteria which could be applied to any international court.

2. Modern legal approaches to determination of international courts' effectiveness criteria

As mentioned above, the approaches to the effectiveness criteria have constantly evolved over time. Nevertheless, it is reasonable to draw up a framework of the historical analysis of the legal effectiveness criteria development. Firstly, in the 2010s certain new key legal studies on this topic

were published. For example, L. R. Helfer reviewed his attitude to the effectiveness assessment and suggested certain new legal criteria for international courts' effectiveness. So, the author assumed that a sufficient amount of time had passed to allow for a partial review of his conclusions, taking into account significant legal and political changes. Secondly, such an approach can be regarded as a modern one due to its temporal closeness to the date of this paper's publication and the fact that it contains a series of features which is typical especially for this approach. Namely, such an approach combines direct references to the classical legal criteria developed by L. R. Helfer and other legal scholars described above with revision of these criteria. In other words, some modern legal approaches emphasise the fundamentality of classical legal effectiveness criteria, while also introducing new effectiveness criteria which have not figured in the scientific field yet.

It is remarkable that modern legal approaches directly or indirectly use the criteria developed by L. R. Helfer. In 2011, S. Crockett published an article regarding the effectiveness of international criminal courts (Crockett, 2011, pp. 1–5). International criminal courts were the subject of analysis. She pays attention to the tendency of the states to adhere to decisions made by international courts. The author examined the effectiveness of two International Criminal Tribunals (hereinafter — ICTs), created by the United Nations for the former Yugoslavia (ICTY) and Rwanda (ICTR) (Crockett, 2011, p. 1).

It is believed that the ICTY and the ICTR laid foundations for international criminal justice. According to Crockett, the ICTY can be regarded as an effective tribunal due to the fact that its decision in the *Tadić* case was enforced and the defendant failed to prove that ICTY lacks the necessary jurisdiction (Crockett, 2011, pp. 2–3). This case is remarkable and demonstrates effectiveness since Duško Tadić was the first man found guilty of sexual violence within the framework of international crime. Hence, the broadening of the scope of the crimes falling within the ICTY jurisdiction and criminalisation of sexual violence at the international level took place. The ICTR can also be regarded as quite effective, since in the process called *"Trial Against Hate Media"* in August 2003, it expanded the frameworks for accusations related to the genocide (Crockett, 2011, p. 3).

However, *ad hoc* courts, including ICTs, are usually criticised. Firstly, inconsistency in their decisions takes place (Crockett, 2011, p. 3). Secondly, their decisions often base on morality and ethics rather than on norms of law (Crockett, 2011, p. 3). Thirdly, such tribunals are usually expensive (Crockett, 2011, p. 3). Fourthly, punishing the national leaders who enjoy popular support may be regarded as an attempt to discredit national sovereignty (Crockett, 2011, p. 3). Hence, it is unlikely that such a decision will be enforced. As for the ICTY,

some experts insist on the fact that the tribunal failed to achieve its goals related to reconciling the people of the region, as the Serb and Croat public reacted negatively (Crockett, 2011, p. 3).

In sum, there are no clear criteria for effectiveness set by S. Crockett. However, her reflections on topic led to the conclusion that an ICT can be regarded as effective if: it has authority to resolve a case, its decisions are recognised by domestic institutions, it makes contribution in the norm-generating process (in analysed example, the ICTR succussed in the expansion of the interpretation of term "genocide" and the ICTY criminalised sexual violence).

In 2014, L. R. Helfer published another article focused on the effectiveness of international courts within the frameworks of case-specific effectiveness, *erga omnes* effectiveness, embeddedness effectiveness and effectiveness in developing international law (Helfer, 2014, pp. 466–482). Case-specific effectiveness can be regarded as the oldest one (Helfer, 2014, p. 464). The author emphasised that early studies primarily considered whether the states-parties to the process changed their behavior following an international court's decision (Helfer, 2014, p. 466). In other words, this criterion is directly related to the ability of international courts to compel compliance with their decisions. However, a great number of international courts do not possess an enforcement mechanism and, because of it, they are obliged to seek support from its members (Helfer, 2014, p. 467). Nevertheless, later studies focused on differences between compliance and effectiveness (Helfer, 2014, p. 467). So, a high level of compliance can occur without legal processes. To determine the effectiveness under this criterion, all causal effects shall be measured to give a proper answer which aspects affected the states' behavior directly (Helfer, 2014, pp. 467–468). Hence, this criterion is a complex one, since it provides for compliance with international court's decisions. It can be granted only if strong connections between the state enforcing court's decisions and the enforcement mechanism proposed by the international court exists.

Erga omnes effectiveness can be regarded as quite a unique criterion for international courts' effectiveness determination. It is common for international courts that their decisions are final and binding for the parties to the process. *Erga omnes partes* effect of these decisions, in turn, makes them binding for all the parties to the contract (Helfer, 2014, p. 471). In other words, all the decisions of international courts become binding for all the member states and precedents appear. The inter-partes rule shall be regarded as less effective, since it leads to the repetitive processes in which only parties to the dispute change (Helfer, 2014, p. 471). Nowadays, more and more international courts are seeking soft ways to set forth *erga omnes partes* principle. So, it is asserted that it has the intention to spread its jurisdiction over all the members to the ECHR (Helfer,

2014, p. 471). The WTO Appellate Body stated that all the legal interpretations adopted in the WTO reports become a part of the WTO dispute resolution system. Nevertheless, some developed countries speak out against the *erga omnes partes* effect. The USA claimed that this effect of WTO decisions directly contradicts the principle of bilateral dispute settlement (Helfer, 2014, p. 471). However, such power of international courts' decisions can be regarded as quite controversial. So, Helfer suggested that the decisions of international courts could have a binding nature which would be similar to the fundamental and binding nature of precedent in Anglo-Saxon systems of law. Nevertheless, to make such decisions final and binding at the international level, there should be strong integration between domestic and international legal systems to grant due enforcement of these decisions. Moreover, domestic courts and legislators will be deprived of the opportunity to officially comment, review or modify decisions of international courts. As mentioned above, some states may consider the final and binding nature of these decisions as a significant draught to a state's sovereignty. Therefore, it is less likely that this criterion will be met than any other criterion developed by Helfer.

The embeddedness effectiveness aspect deals with the states' ability to prevent violations of international law norms within their territory (Helfer, 2014, p. 474). It also addresses the integration of international standards into domestic legislation (Helfer, 2014, p. 474). In other words, violations falling within the scope of international court's jurisdiction shall be effectively prevented at the preparation stage. So, such violations must be effectively investigated at a domestic and international level to demonstrate that it would be impossible to avoid punishment for committing such a violation. Moreover, complex preventive measures shall be developed on both levels to make the number of committed violations decrease. It is remarkable that this criterion directly contradicts with another criterion suggested by Helfer. In his earlier study, he stressed out that an international court could be considered as an effective one if it attracted a sufficient number of claimants. In this case, the number of claimants will decrease, as international courts have made a significant contribution in the prevention of this type of violation. So, such a criterion can be regarded as a more significant one developed by Helfer.

When assessing effectiveness, the international courts' jurisdiction and access rules should be considered (Helfer, 2014, p. 474). For example, L. R. Helfer supposes that access rules providing for domestic remedies exhaustion are obliged to assess whether domestic courts offer the parties to the dispute real opportunities to resolve it (Helfer, 2014, p. 475). The other problem in this sphere relates to the creation of direct links between the international and national courts (Helfer, 2014, pp. 474–475). The author

regards the ECJ as a successful court in accordance with this criterion, since the preliminary reference procedure enables national courts judges to seek instructions and other clarifications on certain EU law matters. National European courts have thus become main compliance partners of the ECJ. So, these factors led to the entrenching of supranational legal standards set by the ECJ in European domestic legislation (Helfer, 2014, pp. 474–476). Moreover, the ECJ can be regarded as partially meeting the criterion of *erga omnes partes* effectiveness, since national European courts were seen as the main compliance partners interested not only in the enforcement of the ECJ decisions but also in implementation of these decisions in domestic legislation.

Effectiveness in developing international law differs from the approaches described above since it allows the analysis of the effectiveness of norm-generating functions of international courts (Helfer, 2014, pp. 476–477). The main aims of international courts are the application and interpretation of this treaty which establishes these courts. Therefore, the scope of their activity and jurisdiction are quite limited (Helfer, 2014, p. 477). For example, ECtHR effectiveness can be measured on the basis of the interpretation and application of the ECHR by the judges (Helfer, 2014, p. 477). Moreover, international courts are capable of driving doctrinal innovations (Helfer, 2014, p. 478). So, ECtHR is constantly trying to spread human rights protection standards by taking into account local particularities (Helfer, 2014, p. 477). WTO scholars usually appeal to the dictionaries for words' ordinary meaning determination and this attitude can be regarded as original one (Helfer, 2014, p. 477). Hence, in the case of the association of courts' activity with innovations, the attractiveness of such courts can increase. It is remarkable that Helfer uses a personalised approach highlighting the criteria that are met by concrete international courts.

Finally, L. R. Helfer observes different attitudes to effectiveness determination. Three functional approaches are identified and foresee the following criteria: providing for compliance with international courts' decisions, spreading the binding nature of decisions beyond the parties to the dispute, implementation of norms developed by international courts into domestic legislation and preventing the occurrence of similar violations. The last criterion shall be regarded as a norm-generating one and based on the contribution made by the courts to the development of international law. Finally, he highlights that all described approaches mainly overlap (Helfer, 2014, pp. 480–481). Therefore, it is possible to make the conclusion that all these criteria should be taken into account by effectiveness assessment, since a single use of one or two approaches is not sufficient for exhaustive analysis. The study prepared by Helfer is the only one observed within the framework of

this paper that contains analysis and critique of effectiveness criteria proposed in previous studies.

In 2017, K. J. Alter and L. R. Helfer published a critical analysis of the effectiveness of the new international court — Andean Tribunal of Justice (Alter & Helfer, 2017, pp. 3–303). This research covered such issues as legal and institutional frameworks for court's rulings (Alter & Helfer, 2017, pp. 51–88), comparison of operation mechanisms of the ECJ (Alter & Helfer, 2017, pp. 90–108) and analysis of the court's effectiveness (Alter & Helfer, 2017, pp. 111–142, pp. 261–280). The authors, drawing upon the legal effectiveness criteria from their earlier research, concluded that this court is highly effective. This assessment stems from the substantial annual volume of rulings and the high level of adherence to them (Alter & Helfer, 2017, pp. 261–280). Nevertheless, they pointed out that such an effectiveness cannot be regarded as an absolute one for certain reasons. For example, in the period between 2007 and 2014, a lot of rulings were made based on political grounds (Alter & Helfer, 2017, pp. 163–369). Moreover, almost all rulings were based on one source of jurisdiction and made in the same field (Alter & Helfer, 2017, pp. 111–142). Nonetheless, the court possesses its own development trajectory.

It was later noted by K. J. Alter and L. R. Helfer that they did not take into account new realities of international courts related to the international courts' effectiveness. This circumstance prompted them to publish a new monograph in 2017 (Alter & Helfer, 2017, pp. 545–549). Firstly, fragmentation of international law is taking place, and it affects the working processes of international courts directly. So, too many international courts make decisions which can be regarded as sectoral due to the fact that many international courts are able to hear particular cases related to specific spheres (Alter & Helfer, 2017, p. 549). In other words, the competence of international courts to hear certain cases is quite limited since all the essential scopes are divided between the international courts and there is no wide scope of matters which can be referred to the concrete international court in comparison with national courts (Alter & Helfer, 2020, p. 549). Secondly, the impact of the international courts' decisions on international affairs remains uncertain (Alter & Helfer, 2017, p. 549). The impact on international relations between the subjects of international law, in turn, can be regarded as a criterion of the effectiveness of international courts (Alter & Helfer, 2017, p. 549). In sum, K. J. Alter and L. R. Helfer criticise defectiveness from this perspective in matters which are outside of human rights defense since from their point of view, other international institutions and their effectiveness need improvement (Alter & Helfer, 2017, p. 549).

In sum, Helfer remains the only one of the scholars whose studies were analysed within the framework of the paper who revised and criticised

effectiveness criteria developed by him and other legal scholars. There is an interesting developing line of Helfer's approach to international courts' effectiveness. Firstly, he prepared a check-list with effectiveness criteria and applied it to certain international courts. Secondly, he developed some new effectiveness criteria. Thirdly, a combination of all the criteria developed was applied to the international court that had not been subject of research yet. Fourthly, particular research was revised to take into account some actual changes in tendencies of international law development.

In 2024 G. Navarro published an article with an analysis of international courts' evolution. This article contains a broader assessment of international courts' effectiveness based on compliance with courts' rulings and the impact of the courts' activity (Navarro, 2024, pp. 138–152). Her study is mainly based on the ruling made by the IACtHR and focuses on the effectiveness of this particular court (Navarro, 2024, p. 138). She defines the IACtHR as quite an effective international court, since it uses an approach developed by *Ius Commune Constitutionale en América Latina* which is based on the promotion of democracy and human rights defense with resistance to social and political changes (Navarro, 2024, p. 147). As terms used for the description of the effectiveness concept, author uses compliance and implementing international standards by domestic courts, transconstitutionalism, which provides for relationships between different legal orders and "efficiency chain" (Navarro, 2024, pp. 148–152).

However, the "efficiency chain" concept was detailed in the monograph published in 2018 by another author, C. Rodrigues de Araújo Calabria (Calabria, 2018, pp. 1–267). The efficiency chain was created as a reaction to the existing literature on international courts' effectiveness criteria, which fails to observe socio-legal aspects of effectiveness (Calabria, 2018, p. 49). The efficiency chain, as noted by Calabria, is a multi-layered working concept which is partially based on the "chain of normative concretization" proposed by M. Neves (Calabria, 2018, p. 50). While Neves used his concept for analysis of factors affecting courts' effectiveness on different litigation stages, Calabria applies to different "effectiveness stages" (Calabria, 2018, p. 51). In other words, the next level of courts' effectiveness cannot be reached without compliance with criteria set at the lower levels.

In accordance with the study, this concept foresees observance, application, strengthening, implementation, and adequacy (Calabria, 2018, p. 51). Therefore, adequacy should be considered as the highest level of effectiveness. Observance, in turn, can be regarded as a preliminary concept, the first layer in the chain. Observance is a separate element that is directly related to the adherence to the international court's jurisprudence (Calabria, 2018,

pp. 53–54). Such adherence must be an anticipated action that does not contradict existing courts' jurisprudence and must be taken by the subject of law of due legal capacity without any prescription set in other decisions of national or international courts (Calabria, 2018, pp. 53–54).

Application is the second part of the chain (Calabria, 2018, p. 55). It provides for the application of the norms developed by international courts by the responsible organs of the state possessing due legal capacity in legal documents or public policies which exist in the form of any legal sources (Calabria, 2018, p. 56). The author highlights that the term "application" itself shall be applied to all official agents responsible for executing or applying law (Calabria, 2018, p. 56). Hence, there is a clear difference between observation and application. Observation can exist in the form of direct compliance, specific action taken by an empowered state organ, meanwhile application can foresee direct reference to a particular rule of law developed by a specific international court.

Another essential part is called strengthening and this term should be used instead of the term "enforcement" (Calabria, 2018, p. 57). It refers to the capacity of the international court to strengthen different institutional and social structures within the states which are subject to the jurisdiction of this court (Calabria, 2018, p. 57). In other words, strengthening directly correlates with the execution of the decisions made by international courts and with legal acts created with the support of international courts' practice, which are created to strengthen structures mentioned above (Calabria, 2018, p. 57). Sanctions and other coercive methods employed by the states (including foreign states), are notably less effective strengthening mechanisms, since national courts can apply more soft methods which can expand applied redress mechanisms (Calabria, 2018, p. 57). Strong social and cross-institutional structures are needed to improve the relationships between institutions and states to maintain the state interest in further cooperation at the international level.

Implementation is the third part of the chain (Calabria, 2018, p. 69). The author prefers to use this term instead of the term "compliance" (Calabria, 2018, pp. 69–70). Implementation can be regarded as the execution of official acts by state organs that clearly intend to comply with orders arising from the international courts' decisions (Calabria, 2018, p. 60). Therefore, execution of non-domestic judgments is generally considered to be a legally and financially costly process since it often provides for concrete legal mechanisms set out in the national legislation. Such a process normally foresees more steps than ordinary application of the rule of law created by court. It requires practical assistance from the state in the form of both legal and non-legal measures to guarantee the enforcement of international court decisions. Moreover, strong

cross institutional and social structures are needed to make such implementation possible.

The final part of the chain is adequacy. It ensures conformity between the practices of all state structures and the norms of international courts (Calabria, 2018, p. 62). This concept foresees a decrease in injuries, which serves as grounds for the decisions of international courts, using domestic mechanisms to reduce similar injuries (Calabria, 2018, p. 62). Adequacy can also be regarded as the final result which is fairly expected from the member states of the international court (Calabria, 2018, p. 64). This criterion can be regarded as a unique one suggested by modern legal scholars for effectiveness assessment. Nevertheless, adequacy itself can be considered as somewhat idealistic for certain reasons. Firstly, it requires a high level of conformity of state legal practice and international courts' practice. Secondly, a complex set of measures is required to reduce the number of violations committed and to grant the enforcement of international court's decision. Due to differences in the legal systems of different states, the varying levels of development of these systems, and different political and legal views on this matter, such a level of conformity can barely be reached.

Finally, in her monograph, Calabria uses a cumulative chain of criteria to assess the effectiveness of international courts. There is no direct conclusion stating that the absence of any part of the chain leads to the ineffectiveness of the international court's activity, but such a conclusion can be inferred from the fact that the adequacy criterion application would be impossible without any of the other parts of the chain. This attitude is quite new and illustrative.

To sum up, the effectiveness criteria suggested by the authors focusing on single publications in this sphere can be regarded as a combination of the attitude suggested by L. R. Helfer and new, personally developed criteria. Moreover, this topic remains quite current, since in 2024, as there is an ongoing interest in analysing international courts' effectiveness, since the position of the courts which have already been analysed is dynamically changing over time. Nevertheless, criteria developed by L. R. Helfer and his colleagues are popular due to their universality. Moreover, Helfer remained the only one legal scholar who revised and criticised effectiveness criteria developed by him and other scholars. In the most recent study he stressed out certain mistakes made in previous study and suggested more correct results of effectiveness analysis. Modern scholars use the check-list analysed in the first section of this paper (Helfer & Slaughter, 1997, pp. 300–336) and, as the most often used effectiveness criteria, can be defined as the presence of formal authority, legitimacy and contribution to international law development. However, the new attitude suggested by C. Calabria is innovative. She proposes to replace

classical terms by new ones. For example, the term “strengthening” shall replace the term “enforcement” and the term “implementation” shall replace the term “compliance”. In addition, the final part of the efficiency chain is “adequacy”, which promotes fairness and balance of interests.

3. Socio-legal approach of international courts’ effectiveness assessment

In his 2010 publication Y. Shany explored the effectiveness of international courts and its assessment (Shany, 2010a, pp. 1–49), employing social science methodology (Shany, 2010a, p. 9). In this paper he clarifies that such effectiveness can be assessed, but there are a lot of affecting factors. Furthermore, this paper describes all the aspects of the author’s approach which will be used in all parts of the cycle. Notably, all the papers on this topic by Shany adopt both a legal and a sociological approach, and each paper foresees its own effectiveness criterion.

The main approach used in his papers is called “the rational system approach”. The author presumes that, in accordance with this approach, international court should struggle for its goals and the ability to achieve the goals set can be equal to the term “effectiveness” (Shany, 2010a, p. 10). There are two types of goals: official and operative (Shany, 2010a, pp. 11–12). Official goals are usually legally fixed in the documents that govern the international court’s activity (Shany, 2010a, pp. 11–12). It is typical for these goals that they are vague and quite open-ended (Shany, 2010a, pp. 11–12). As for operative goals, they reflect specific policies of the court and set forth direct measures which can be used to achieve them (Shany, 2010a, pp. 11–12). However, the list of goal types is not exhaustive. Goals can be divided into external (set by external stakeholders) and internal (set by the court’s employees) (Shany, 2010a, p. 12), ultimate ends (goals which represent an independent intention) or intermediate goals (which can be regarded as a step on the way to reaching the ultimate ends goals) (Shany, 2010a, pp. 12–13), explicit (which are unvague and are set unambiguously in the official documents) and implicit goals (which can become clear by using deduction approach by analysing the court’s documents) (Shany, 2010a, p. 13).

The author identifies the ambiguity of the objectives given to international courts as the primary obstacle to measuring their effectiveness (Shany, 2010a, p. 14). Goal ambiguity occurs in case of political difficulties related to the determination of clear and precise goals. There are certain levels of this ambiguity: lack of clear mission comprehension, ambiguity of operation goals described above, lack of clear evaluative goals, lack of clear priority goals (Shany, 2010a, p. 14). Shany points out that, under all or certain mentioned

circumstances, it can be difficult or even impossible to assess the court's effectiveness (Shany, 2010a, p. 14).

Moreover, there are certain other conceptual problems related to the determination of international courts' effectiveness. Firstly, unexpected results can occur. An international court as an organisation can achieve all the goals set, but serious additional costs arise (Shany, 2010a, p. 16). So, the comprehensive approach used to assess the effectiveness relates to taking into account all the unforeseen costs and benefits (Shany, 2010a, p. 16). Secondly, a distinction shall be made between the goals and motivations of the court (Shany, 2010a, p. 16). These terms can sometimes overlap partially (Shany, 2010a, p. 17). It occurs when court members are trying to achieve other goals than the court itself (Shany, 2010a, p. 17). Thirdly, appropriate time units shall be taken to make an assessment of effectiveness (Shany, 2010a, p. 17). Different international organisations i.e. international courts have different life circles. For example, assessment of the first years of court existence should not be taken into account in case its life circle lasts for decades (Shany, 2010a, pp. 17–18). Excessive focus on particular periods of courts' lives can also overshadow the "bigger picture" (Shany, 2010a, pp. 17–18).

The scholar points out that there are certain approaches which can be used regarding the determination of effectiveness beyond the rational system approach: the open system approach and the system recourse approach (Shany, 2010a, p. 19). The first approach relates to the social impact made by the international courts, which can be measured in net benefits or costs invested in such an environment (Shany, 2010a, p. 19). However, the author characterises this approach as quite sensible, since it can directly depend on the list of organisational goals, which can be unwieldy and affect effectiveness (Shany, 2010a, p. 19). The second approach deals with the ability of the court to attract and accumulate all the resources needed for further court's development (Shany, 2010a, p. 19). Nevertheless, the author supposes that this approach is unsuitable for legal study, since normative assumption about the importance of goals achievement plays an essential role (Shany, 2010, p. 19). Because this approach lacks normativity, the other methods described earlier become more attractive (Shany, 2010a, p. 19). Finally, the system recourse approach can be successfully used in combination with other approaches (Shany, 2010a, p. 22).

For further analysis, the author uses operational categories for effectiveness measurement: structure or input, process, and outcome (Shany, 2010a, p. 22). In accordance with a rational system approach, the court can be considered effective if its resources enable it to achieve its goals (structure), its organisational process also provides goals achievement (process), and final results meet the requirements set (Shany, 2010a, p. 22). According to this

approach, an international court can be regarded as effective if it meets its official goals and operative goals. From a political point of view, this criterion is one of the most effective for assessment (Shany, 2010a, p. 22). But in sum, under this approach the analysis of judicial outcomes shall be made (Shany, 2010a, p. 32). Some results can be easily assessed. For example, the number of judicial decisions made in a certain period of time. Other factors like "development of coherent jurisprudence" are more complex (Shany, 2010a, pp. 32–34). Normative impact on the social environment, contribution to general international law and compliance with international law norms can hardly be assessed (Shany, 2010a, pp. 32–34). From this point of view, precise measurement of results is impossible.

The operational category of "structure" can be useful for the assessment of the international court's capacity to achieve its goals (Shany, 2010a, p. 36). As structure attributes can be regarded as legal powers, including the binding nature of the court's decisions and applicable law, personnel capacity including number of judges and other staff, budget and other sources including tangible and intangible property of the court, structural independence including judicial and institutional independence, usage potential influenced by the relevance of the area of dispute resolved by the court (Shany, 2010a, p. 37). Another essential structural factor relates to the ability to transform the court's structure and procedures in accordance with permanently changing needs (Shany, 2010a, pp. 37–38). The ease and openness to further changes plays a significant role in the court's effectiveness. The last operational category, outcome, deals with the question of whether the court's outputs correspond with the goals set (Shany, 2010a, p. 38).

Another operational category is process. From this point of view, the pace of the judicial processes can be analysed, since it can be used for prediction of the further number of disputes which are subject to the court's resolution (Shany, 2010a, p. 38). Moreover, certain additional factors shall be taken into account: access to justice, participation of all interested members in the process, arising costs, consistency in the application of particular norms by the court, monitoring of the compliance with the court's decisions, transparency of the process (Shany, 2010a, pp. 38–40).

To sum up, Y. Shany bases his studies on a combination of sociological and legal instruments. His paper "*Assessing the Effectiveness of International Courts: Can the Unquantifiable Be Quantified?*" can be regarded as an essential basis for further research in this field since it establishes a clear structure of the effectiveness analysis. In essence, three main approaches can be used: the approach assessing the ability to struggle with the goals set, the approach assessing the social impact on other institutions, and the approach assessing

the ability to attract new resources for further development. Yet, the author most often uses the first method, because the assessment value it provides is distinctly clearer and less vague than others both in qualitative and quantitative aspects. For deeper and more structured analysis in the case of a rational system approach application, the following operational categories can be used: input, process and outcome. Input related to the goals set by and before the court, structure deals with the court's inner processes, outcome shall be regarded as correspondence between the court's results and goals set.

Later in 2010, Shany published another study which is called "*Compliance with Decisions of International Courts as Indicative of their Effectiveness: a Goal-based Analysis*" (Shany, 2010b). In this paper he determines compliance with decisions made by international courts as the main criterion of their effectiveness. Hence, he applies a rational system approach as the main one (Shany, 2010b, p. 8). Unlike previous papers, several cases resolved by ECtHR and the ICJ are subject to analysis, so real-life examples can illustrate all the elements of the author's approach (Shany, 2010b, p. 4).

The most relevant criterion for determining effectiveness is compliance with the decisions of international courts, as this directly reflects the perspective of the international rule of law. Compliance with international courts' decisions shall be regarded as a causal relationship between the courts' decisions and states' behavior, leading to the convergence between them (Shany, 2010b, p. 4). Moreover, compliance with court decisions can be determined as a ground for legitimacy (Shany, 2010b, p. 4).

Shany hypothesised that there is a correlation between the objections regarding the court's decision made by the losing party, the burdensomeness of the remedies and "compliance pull" of the states (Shany, 2010b, p. 5). This vision is supported by legal realism literature using a game theory approach, international legitimacy literature and empirical works proving that "high-cost" decisions can be more rarely complied with than "low-cost" decisions (Shany, 2010b, p. 6). This means that these types of decisions can be made more often due to the fact that they do not affect essential governmental interests and budgets (Shany, 2010b, p. 6).

The author bases his analysis of enforcement's effectiveness on the fact that whether the international court achieves its goals directly related to the remedies and compliance. He takes into account the following factors: promoting compliance with international law as primary norm compliance, international dispute resolution and dispute prevention, cooperative regime promotion, legitimising of international norms and institutions (Shany, 2010b, p. 7). These factors overlap, so a concrete juridical decision can help to achieve more than one goal and a combination of norm compliance and legitimisation can take

place (Shany, 2010b, pp. 7–8). The last factors influencing the effective compliance may arise from unintended costs or benefits (Shany, 2010b, p. 8).

The ECtHR is regarded by the author as an international court with quite effective compliance. Compliance takes mainly the form of compensation and satisfaction (Shany, 2010b, p. 9). As grounds for such effectiveness can be considered a great number of repetitive cases (Shany, 2010b, pp. 13–14).

As for the ICJ, the focus of the analysis is compliance with specific decisions — the *Bosnian Genocide* and *Avena* cases. In the *Bosnian Genocide* case, it was hard to determine whether Serbia complied with the decision, given that the suspects remained at large (Shany, 2010b, p. 16). The *Avena* case, in turn, had more clear results. The ICJ ruled that the USA violated the Vienna Consular Relations Convention and ordered a review of the sentences to Mexican nationals (Shany, 2010b, p. 16). The US President published a memorandum, and instructed all the states' courts to comply with decisions and certain sentences were revised and some courts refused from the death penalty (Shany, 2010b, p. 16). Nevertheless, such a decision was criticised by the authorities, since they saw an attempt to interfere in internal affairs of the state and finally, the Supreme Court declined the President's memorandum (Shany, 2010b, pp. 16–17).

In his article of 2012 Shany examined judicial independence as an indicator of international courts' effectiveness (Shany, 2012, p. 251). The author highlights that due to the vagueness of the term "effectiveness", the results of the analysis should be taken into account with certain apprehension and, due to the difference in the goals set by international courts, the courts' need for judicial independence can vary seriously (Shany, 2012, p. 254).

Judicial independence shall be defined as a notion set forth in legal norms and practices (Shany, 2012, p. 254). The process of selecting judges and the potential for political intervention in court operations are considered factors that enhance judicial independence (Shany, 2012, p. 255). Judicial independence as a process feature can be described as the ability to exercise the court's powers without any interference of other actors in the judicial process. Such interference can take place in case states make an attempt to influence the final ruling or appoint concrete judges (Shany, 2012, p. 256).

Shany bases his analysis on the approach mentioned in his previous articles and determines primary norm compliance, dispute resolution, regime support and regime legitimisation as key features of the rational system approach (Shany, 2012, p. 258). It is worth highlighting that judicial independence can positively correlate with the current international regime support, since within the framework of this regime operates an international court itself. Judicial independence is also necessary for stable normative and institutional

environments which deal with long-term goals set by the members of such regimes (Shany, 2012, pp. 260–261).

Nevertheless, some decisions made by independent judges without taking into account states' interests can lead to the decrease of states' interest in complying with such decisions (Shany, 2012, p. 262). If judges' behavior can be characterised as "insensitive to the needs" of parties to the dispute, the attractivity of such an international court may decrease (Shany, 2012, p. 262). Hence, the legitimacy of the international court may be called into question due to a lack of authority and support from a state (Shany, 2012, p. 262). In other words, the chronic gap between the members' interests, legal expectations and courts' decisions can lead to the ineffectiveness of the court as a whole.

In sum, judicial independence can be connected with effectiveness in a very complicated way. Judicial independence may mirror the democratic basis of the international court's activity. Independence of judges grants that the court is free from political interference, and it attracts more claimants seeking an unbiased decision. As it follows from all the conclusions above, attractiveness of the court and number of claimants is used for its determination as an effective one. However, a balance of interests should take place to make the court attractive and effective. So, it shall be free from political intervention, but it shall correspond with the actual values of the member states. It leads to the conclusion that such independence as the main effectiveness criterion remains current for legal regimes promoting democratic values.

In 2015, Y. Shany published another paper related to the legitimacy and effectiveness of international courts (Shany, 2015, pp. 1–21). He describes following factors of the effectiveness assessment: whether international courts successfully achieve the goals set by their members, whether their activity has a greater influence on other subjects of international law which exist in the same social environment, whether international courts gain significant volume of resources necessary for their further functioning (Shany, 2015, pp. 8–9).

In the first part of his monograph Shany describes effectiveness and legitimacy in very close terms. Moreover, a rational systematic approach related to the improvement of effectiveness of international courts can lead to direct conflation of these two terms (Shany, 2015, p. 11). So, one of the essential goals of any international court consists of enhancing the legitimacy of the decisions and any other norms created by the court (Shany, 2015, p. 11). The main reason for filing a claim to a particular international court can be regarded as a very high level of its legitimacy (Shany, 2015, p. 12). Moreover, legitimate decisions made by the international courts can directly affect the environment in a positive way. Meanwhile, illegitimate decisions can have

a negative impact or no impact at all (Shany, 2015, p. 14). Therefore, decisions changing the environment positively can be regarded as effective.

Nonetheless, there are certain distinctions between them. Subsequently, conflicts between these two concepts can arise (Shany, 2015, p. 16). In certain cases legitimacy protection leads to decisions which shall be directly regarded as ineffective (Shany, 2015, p. 16). "Ineffective" means that such decisions cannot help the court reach the goals set, but there are no clear negative consequences, like termination of the existence of the court or significant reduction of the court's resources (Shany, 2015, p. 16). As examples of cases which were legally and academically correctly resolved by the international courts but led to the ineffectiveness of the courts, Shany names the following: *Hirst v. United Kingdom*,[8] ICJ Advisory Opinion on independence of Kosovo,[9] *Cambell v. Zimbabwe*.[10] In the first case the United Kingdom failed to comply with the decision, in the second case there was no impact on the international environment and in the third case it led to a short-time collapse of the court's activity due to the members' refusal to support the court (Shany, 2015, p. 17). As an opposite example, the author points at the activity of the Court of Justice of the European Union, which made a greater contribution to the European integration process but its legitimacy suffered (Shany, 2015, p. 18). The International Centre for Settlement of Investment Disputes lost the support of the members since it was accused of preventing member states from adopting economic reforms in response to emergencies (Shany, 2015, p. 18).

To sum up, Y. Shany published numerous papers on the matter of international courts' effectiveness. He used a hybrid format of research providing for a combination of legal and sociological approaches. His research explores two main areas: some works concentrate on legal effectiveness criteria (like independence of judges), while others foresee a hybrid approach including legal and sociological effectiveness criteria. In his papers Shany refers to the rational system approach that is based on the ability to achieve the court's goals and approaches based on the volume of social impact of the court and the ability to accumulate new resources for further activity. The rational system approach is the most popular and includes analysis of the goals set, process of achieving goals and difference between the outcome and the preliminary goals set. In more recent papers Shany regards different criteria for effectiveness in accordance with a rational system approach scheme. Compliance with decisions of international courts can be defined as one of the essential criteria of

[8] ECtHR. *Hirst v. United Kingdom*. Judgment of 6 Oct. 2005, Grand Chamber.

[9] Accordance with international law of the unilateral declaration of independence in respect of Kosovo, 2010, ICJ 403.

[10] SADC Tribunal. *Campbell v. Zimbabwe*. Case 2/2007, Judgment of 28 Nov. 2008.

effectiveness. For compliance analysis such factors as preliminary norm compliance, successful dispute resolution, legal regime promotion, i.e. extension of the current legal regime to the new subjects of law, regime legitimisation are taken into account. However, compliance cannot serve as a single and sufficient criterion. Judicial independence is considered as another interesting criterion of effectiveness since it allows to determine the level of development of democratic principles, building a ground for international courts' operation. However, this criterion should be applied by taking into account the court's goals and other effectiveness criteria, since independence is connected with effectiveness in a very complicated way.

Conclusion

To sum it all up, the effectiveness criteria suggested by Laurence R. Helfer is regarded as classical. This approach to judicial effectiveness is quite contemporary, since such criteria as the ability of the court to attract a sufficient number of claimants, presence of strong formal authority, composition of the tribunal and qualifications of judges are still widely considered in contemporary research. While most of the effectiveness criteria proposed by Helfer are considered legal, he also identified some specific and irrelevant criteria and attitudes. For example, case-specific effectiveness, *erga omnes partes* effectiveness and courts' impact on the prevention of similar violations are nowadays rarely used in legal studies. Moreover, such criteria can be regarded as quite idealistic and barely achievable by international courts, since such achievements regard a very high level of integration between national and international courts. In addition, a strong enforcement mechanism for international courts' decisions shall be developed to make meeting of any criterion mentioned above possible.

It is remarkable that Helfer has been working on the analysis of international courts' effectiveness for years. His method is considered well-structured and progresses logically. Firstly, Helfer introduced a list of concrete effectiveness criteria and illustrated it using real examples of international courts' operation. Secondly, this list was expanded and new unique legal criteria were added. Thirdly, Helfer chose the new international court as a subject of effectiveness analysis. Finally, the result of the court's effectiveness mentioned above was revised.

Modern legal scholars usually employ a combination of classical effectiveness criteria and new criteria developed by themselves. Consequently, Crockett directly incorporated certain criteria devised by Helfer within the paper, without explicitly stating the effectiveness criteria used. The attitude suggested by Calabria can be regarded as quite innovative. She combines classical

effectiveness criteria developed by Helfer with new criteria developed by herself. Calabria suggested a fundamentally new approach to the assessment of international courts' effectiveness. She claimed that the efficiency chain shall be taken into account and foresees that every next effectiveness criterion is more difficult to achieve in comparison with the previous one. Moreover, achievement of every next criterion is impossible if all the previous criteria are not met.

The socio-legal approach to the international courts' effectiveness is represented in the studies by Yuval Shany. He used a hybrid format of research with a well-structured combination of instruments. Some of Shany's studies are dedicated to legal effectiveness criteria (like independence of judges or enforcement of courts' decisions) only, but the main focus remains on a sociological approach. He appealed to the rational system approach and stressed the international courts' ability to achieve their goals, the courts' impact on social processes and the ability to accumulate new resources for further activity. In more recent works, Shany determined other criteria for effectiveness based on a rational system approach scheme. It is remarkable that Shany's studies dedicated to the legal criteria of international courts' effectiveness contain analysis and critique of the qualifications of judges, their independence and decision enforcement as relevant effectiveness criteria. Shany highlights that only legal criteria used for effectiveness analysis cannot be regarded as sufficient since it ignores essential aspects of international courts' operation. Therefore, he broadened the scope of criteria applicable within the framework of effectiveness analysis.

Finally, it is important to note that the history of determination of any criteria applicable to the international courts' effectiveness assessment began with legal studies. Helfer, Watts and their colleagues operated with legal categories only. Some legal criteria of effectiveness developed by Helfer, such as the high qualification of judges, their independence, the presence of strong legal authority for court's operation and the binding nature of decisions are often used by modern legal scholars within the framework of international courts' effectiveness analysis. Modern research on this subject generally shows two key trends. The first one foresees the application of classical legal criteria developed by Helfer to the international courts which have not been subject to analysis yet. The second provides for application of a combination of criteria developed by Helfer and newly developed criteria. New effectiveness criteria is non-legal in its essence, meanwhile application of legal criteria is only criticised due to its narrowness. So, complexity and variability can be regarded as main features of approaches used in the analysis of international courts' effectiveness.

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