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THE CONCEPT AND THE LEGAL NATURE OF STATE RESPONSIBILITY FOR INTERNATIONALLY WRONGFUL ACTS

EL CONCEPTO Y LA NATURALEZA JURÍDICA DE LA RESPONSABILIDAD ESTATAL POR HECHOS INTERNACIONALMENTE ILÍCITOS

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Abstract. The end of the Cold War and the bipolar world order caused a lot of controversial questions about the nature of relations between states in the formation of a new international law and order. One of the fundamental tasks facing the international community is the need to increase respect for the rule of law in international as well as domestic life. Solving global problems requires increasing the level of controllability of the international system. Awareness of this task is gradually reflected in political thinking. Its relevance is emphasized in the acts of both international organizations and states. However, based on the realities of the political situation, we have to admit that the practical solution to the problem of increasing the level of control is slower than is required at the present stage. The concept and legal nature of the state's responsibility for internationally wrongful acts.

Keywords. State, international law, responsibility, international organizations.

1. INTRODUCTION

An important tool for solving this problem is international law. Obviously, without international law, the world system would not be able to function normally. The growing role of international law at both interstate and national levels is becoming increasingly noticeable. However, this does not mean that international law fully meets the requirements of modernity. The paradox of the development of international law is a substantial gap between lawmaking and law enforcement. Meanwhile, raising the level of international law is a necessary condition for its effectiveness. Based on the history of the development of international law, one can say that the observance of international norms was ensured mainly by political means. And only from the 2nd half of the 20th century the foundations were laid for the set of norms necessary for any legal system, such as the rules on liability.

Another challenge facing the international community is to resolve the problem of interstate conflicts and wars. In this question, there is not and may not be a consensus regarding the prospects for the disappearance of wars and conflicts from the life of the world community. Wars are the result of political decisions to achieve political goals with the help of armed force. The significance of international legal responsibility is determined by the fact that it is a necessary legal means of ensuring compliance with the norms of international law, a means of restoring disturbed international relations.

Many international lawyers have dedicated their works both to international law in general and to its individual branches dealing with the problems of international legal responsibility. Currently, the problem of international responsibility is most acute in the light of the current political situation in the world. The concept of international legal responsibility refers to those issues that have not yet been sufficiently developed in international law. Meanwhile, the solution of other cardinal problems of responsibility under international law - the grounds, goals and functions, form and volume, etc. - depends on the correct disclosure of the content of this concept. did not raise as much controversy as the responsibility of states, and no other field is so unclear and intimidated from the point of view of theory.

The term "responsibility" has acquired legal significance relatively recently - it was borrowed from English philosophers of the XVIII century. Later it became widespread in politics, law, and everyday life, including the moral, political, legal and other aspects of the interaction of man and the state. “Responsibility” is a concept that is initially ambiguous. The development of states, rights, improvement of social relations, real legal practice are constantly making adjustments to the concept and content of responsibility, methods of its implementation, give rise to its new types.

2. PROBLEM STATEMENT

One can cite a number of examples of the use of the term “responsibility” to denote certain duties or duties, which can be found not only in the sources of national law, but also in a number of international ones. In Art. 24 of the UN Charter states that the members of the UN "assign to the Security Council the primary responsibility for the maintenance of international peace and security...” and in art. 73 states that "Members of the United Nations ... bear or accept responsibility for the management of territories whose peoples have not yet achieved full self-government ...".

Social responsibility is divided into two types: negative (retrospective), responsibility for unlawful actions already committed in the past and positive (active) for future actions. Positive responsibility is characterized by socially useful (legitimate) behavior of subjects of social relations, manifested in the fulfillment of their duties prescribed by social norms. Such behavior is a socially necessary mode of action of subjects. "Therefore, the essence of positive responsibility is the duty of all actors to act in such a way that not only specific regulations (prohibitions, binding or authorization), but also more general goals established by social norms, are implemented as much as possible adequately." Characteristic features of positive responsibility is the constant monitoring by each subject of his social relations of his behavior, taking into account the prescriptions of social norms and the requirements of relevant life situations. Such self-control presupposes mutual relations of subjects aimed at the implementation of the prescriptions of social norms, including the norms of law, which are, first of all, judgments about the proper and possible behavior of people.

That is why this responsibility is a permanent and necessary element in the mechanism of regulating social relations and is designed to ensure its actions in the present and future. And as a result, each subject of social relations is a carrier of positive responsibility, which ensures the optimal functioning of a social one in accordance with the objective conditions of its existence. Hence it is clear that positive responsibility plays an important role in the mechanism of regulating social relations.

Negative responsibility is caused by the antisocial behavior of a separate subject of social relations, manifested in violation of the prescriptions of social norms. This responsibility for the past behavior of the subject, which is manifested in his refusal to perform the duties established by social norms, leads to a violation of the relations of this subject with other subjects of social relations and, consequently, to the disruption of the functioning of the mechanism regulating them. That is why negative responsibility inevitably gives rise to new (secondary) legal relations, within the framework of which it is incumbent upon the offender to compensate for the negative consequences of his behavior and incur certain deprivations. Its peculiarity lies in the fact that it is included in the mechanism of regulating social relations in connection with the facts of violation of the established rules of behavior or, if we bear in mind its preventive role, with the possibility of such violation.

Thus, both types of social responsibility are called upon to perform a single function — to ensure the stable development of relations within a given social system. It follows that both moral and legal responsibility can be positive or negative, regardless of whether it is a domestic or international sphere.

In the course of a scientific study of legal liability, it turned out that the concept of legal liability is quite ambiguous. It is possible to divide all the diversity of views on this issue into two main groups: understanding of legal responsibility in a narrow and broad sense.

3. DISCUSSION

M.D. Shargorodsky, L.C. Yavich, O.S. Ioffe investigated legal liability in the narrow sense and linked it to illegal behavior, which should lead to government coercion and punishment. This position defines the retrospective aspect of legal liability.

B.C. Markov, N.I. Matuzov, P.E. Nedbaylo consider legal liability more broadly. Legal responsibility is presented not only as a consequence of a negative phenomenon, as a reaction of the state to the perfect tort, but as a positive phenomenon that presumes the subject's conscious attitude to his actions, i.e. This is the basis of the behavior of subjects, excluding violation of legal regulations.

However, in any branch of knowledge, the study of the problem of responsibility would be significantly advanced if sufficient attention was paid to the study of both types of responsibility. As for legal science, a comprehensive analysis of the essence of legal responsibility is due to the constant increase in the role of legal regulation of social relations. It is well known that the rule of law plays an essential role in the regulation of social relations. Legal norms constitute the normative basis of the system for regulating these relations, which ensures their orderliness, strict warranty, stability and stability. A special feature of legal norms is that they prescribe the proper behavior of the subjects of legal relations, suggesting at the same time the legal consequences of failure to comply with these regulations.

Legal responsibility in its positive aspect arises from the moment of the emergence of the legal norm, and negative responsibility - from the moment of violation of its regulations. From the point of view of assessing the role of positive and negative responsibility in ensuring the functioning of the mechanism of legal regulation, they are interrelated legal phenomena. In specific cases, however, they cannot manifest simultaneously. Refusing to comply with the prescriptions of a legal norm, its addressee ceases to be the subject of positive responsibility in the framework of the primary relations regulated by this norm, and becomes the subject of negative responsibility in the framework of new secondary legal relations. The essence of negative responsibility is the right of the competent authorities of the state to demand restoration of the violated law and order and apply measures of state influence to the offender, as well as the obligation of the offender to subordinate his behavior to these requirements. Thus, legal responsibility in its negative aspect acts as a means of legal control over the compliance of the behavior of individual subjects of the prescription of the norms of domestic law and ensures the restoration of the violated law and order and its protection.

However, not all scientists strive to combine these two aspects and on their basis formulate a single definition of legal responsibility. The opinion that legal liability is the legal reaction of the state to an

offense, a measure of state coercion is the most common. According to this judgment, responsibility is the condemnation of the offense and in the determination for the offender of certain negative personal or property deprivation.

So, O.S. Loffe and M.D. Shargorodsky by legal responsibility is a measure of state coercion based on legal and public condemnation of the offender's behavior, expressed in the establishment of certain negative consequences for him in the form of a restriction of personal or property order.

Understanding of legal responsibility as a duty to undergo the adverse consequences of a wrongful and guilty act includes all signs of this legal phenomenon that were absolutized before (legal liability as the actual implementation of legal sanctions; punishment, punishment, additional burden imposed for non-fulfillment of legal obligation or abuse law, as the fulfillment of legal obligations under the influence of state coercion, etc.)

Positive and negative legal responsibility is also characteristic of international relations. An objective prerequisite for the responsibility of states is their need to manage their relationships, which is achieved through a system of legal norms fixing rules, without which international communication would be impossible. A subjective prerequisite for the responsibility of a state is its free will as a sovereign territorial organization of human society. The mutual relations of states as equally sovereign subjects require equal respect from each other's sovereignty.

Responsibility of states is closely connected with their future-oriented practical activities, and is always expressed in legitimate behavior aimed at strengthening the international legal order.

Responsibility for violation of the provisions of the law is always associated with negative consequences both for the States affected by the violation and for the State that committed the violation. It is caused by unlawful behavior of the state, which took place in the past and creates a threat to the international community, and has a negative character. From the above we can conclude that the negative responsibility of the state is an essential element of the mechanism for regulating international relations. However, the main role in the functioning of this mechanism is played by a positive responsibility.

In the sphere of international relations, both types of responsibility are relatively separate, but at the same time interrelated phenomena. Their isolation is manifested in the fact that a state that fulfills international obligations inherent in positive responsibility cannot be assigned negative responsibility. And, on the contrary, the state that violates these obligations ceases to be the subject of positive responsibility and new obligations are imposed on it, which are characteristic of negative responsibility. The interrelation of positive and negative responsibility is predetermined by the fact that the fulfillment by states of obligations characterizing both types of responsibility ensures the functioning of the mechanism of international legal regulation serving to strengthen the international legal order. The interdependence of positive and negative responsibility confirms the content of some diplomatic notes of the states in which, along with claims for damages, punishment of the perpetrators, etc. The offender state is also required to strictly comply with international obligations and take all necessary measures to prevent future violations.

Responsibility of states as subjects of international legal relations has a number of essential features in comparison with the responsibility of subjects of domestic relations. States have sovereignty, and over them there is no centralized system of bodies that would stand above the governments of states and dictate their will to them.

Speaking about the subjects of domestic relations, it seems appropriate to consider the issue of the responsibility of individuals in international law. In the international legal doctrine there is an opinion that the founder of the concepts of the international responsibility of individuals is G. Grotius.

The main focus of this work was to determine the conditions under which we can talk about the responsibility of the head of state and society. "If any warrior or someone else, even in a just war, sets fire to enemy buildings, devastates the fields and such actions will cause damage not by virtue of an order and when it is not caused by any need and there is no necessary reason for it, then the appropriate person obliged to pay damages." However, G. Grotius believed that it should be civil, not criminal liability.

In international law, the issue of the status of individuals has long been debated whether they can be considered as subjects of international law, i.e. does the individual as such come into contact with the international legal order? As follows from the theory of international law, the subject must have the rights and duties established by international law, and there must also be an international

mechanism of direct enforcement in court of these rights and obligations. At present, it is difficult to talk about the observance of these conditions in relation to individuals, as states remain the inevitable mediators between their citizens and the international community.

The Nuremberg and Tokyo trials undoubtedly constituted a serious departure from classical international law. For the first time, individuals were convicted and punished by an international judicial body on international legal norms. The international legal status of individuals is more complex due to the subjective rights that they are granted according to its norms. It is necessary to distinguish two situations. In the first, an individual enters into a relationship with a foreign state. In this case, the principle of customary law takes place, in accordance with it, in the sphere of regulating the treatment of foreigners, individuals possess a minimum of international legal rights. This minimum set of rights that belongs to citizens abroad does not change anything in the international legal status of individuals, and as a result, an individual cannot file a claim against a foreign state and can only enjoy international legal protection from his own state. , acting on his behalf through diplomatic actions. In the second situation, an individual asserts his rights in the face of a "national" state. In this case, it is necessary to talk about the norms of the national legal system.

From the point of view of the generally recognized norms of modern international law, one can speak of a significant element of fiction in the status of individuals as subjects of international law. However, this does not mean that due to the lack of international legal personality of individuals, they cannot be held responsible for committing international crimes. Thus, the Nuremberg Tribunal recognized individuals as responsible for committing international crimes, while not stating that an individual is a subject of international law.

It should be noted that the onset of the international legal responsibility of individuals does not necessarily imply its connection with the international legal responsibility of the state. As some authors note, the international criminal liability of individuals acts as a form and consequence of the responsibility of the state itself. If individuals commit crimes of an international character, they are the ones who are brought to justice.

Interesting in this aspect is the question of the responsibility of the head of state. It is advisable to identify a number of aspects for the most complete characterization of the institution of responsibility of the head of state, both under international and domestic legislation.

The most important difference between the domestic and international legal responsibility of the head of state is that if the current head of state is protected by constitutional immunity from criminal prosecution within the country, the head of state does not have immunity from international criminal jurisdiction.

Thus, Article 7 of the Charter of the International Nuremberg Military Tribunal for the trial and punishment of the main war criminals of the European countries of the axis states: "The position of defendants, their position as head of state or responsible officials of various government departments should not be considered as grounds for exemption ".

The principle of non-use of immunity was further reflected in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 (Article IV), the Statutes of the Tribunals for the former Yugoslavia (Part 2, Article 7) and Rwanda (Part 2, Article 6). It was the prosecutor of the International Criminal Tribunal for Yugoslavia, in May 1999, against the President of the Yugoslav Republic of Yugoslavia, Slobodan Milosevic, who was charged with "crimes against humanity and violation of the laws and customs of war" - the first time in history that the incumbent head of state was brought to justice by an international court of law.

The idea of not recognizing diplomatic immunity as a defense against international criminal justice was finalized in the Rome Statute of the International Criminal Court.

The recognition of the jurisdiction of the head of state to the organs of international justice as a general principle of international law does not at all mean that the whole international community is ready to agree to this.

In fact, the question of recognizing the International Criminal Court and ratifying its Statute has split all states of the world into two groups.

Those who signed and ratified the Statute fully recognized the lack of immunity from international criminal jurisdiction. Those who refused to sign the Statute (USA, Israel, PRC, Yemen, Qatar, etc.), thereby actually expressed their disagreement with the indicated principle of international law, the question of the immunities of their own citizens became primarily a stumbling block for them. There

are also a fairly large number of undecided countries, many of which have signed the Statute, but are not in a hurry to ratify it (Russia also applies to them). The result of this process was the presence of contradictions between the provisions of the Statute and the norms of the constitutions of a number of states on the immunity of the head of state, which, in turn, caused serious problems when ratifying the Rome Statute. The fact is that the principle of the inviolability of the head of state is enshrined in the constitutions of most countries of the world. If we are talking about republics, then the immunity of the head and the state from criminal prosecution can be limited only by a special constitutional procedure, as a rule, rather complicated. No other exemptions from the principle of criminal immunity of the head of state were previously provided. Therefore, strictly speaking, the ratification of the Rome Statute requires the introduction of appropriate amendments to the constitution.

4. PROMOTING RESPONSIBLE, PEACEFUL AND SAFE USE OF OUTER SPACE

Limited resources of outer space are used by an increasing number of States, international intergovernmental organizations and non-governmental entities. As more actors engage in space activities, whose actions might affect others, including users of space services on Earth, it is of utmost importance to ensure that all actors comply with requirements of international space law.

International cooperation on the peaceful uses of outer space helps to bring the benefits of space technology applications to a wide circle of stake-holders, both governmental and non-governmental, and to intensify and diversify national space programmes. Policy and regulatory frameworks at the national, regional and global levels are of paramount importance to provide the necessary basis for space activities of States, particularly developing countries, to meet sustainable development goals .

Each year, the United Nations General Assembly, in its resolutions on international cooperation in the peaceful uses of outer space(the latest resolution 72/77 was adopted in 2017) , reaffirms the importance of international cooperation in developing the rule of international law, including relevant norms of international space law and their important role in international cooperation for the exploration and use of outer space for peaceful purposes and of the widest possible adherence to international treaties that promote the peaceful uses of outer space in order to meet emerging new challenges, especially for developing countries. The General Assembly also recognizes that all States, in particular those with major space capabilities, should contribute actively to the prevention of an arms race in outer space with a view to promoting and strengthening international cooperation in the exploration and use of outer space for peaceful purposes.

The General Assembly, in its resolutions on international cooperation in the peaceful uses of outer space, further requests the Committee on the Peaceful Uses of Outer Space to continue to consider, as a matter of priority, ways and means of maintaining outer space for peaceful purposes, and agrees that the Committee should continue to consider the broader perspective of space security and associated matters that would be instrumental in ensuring the safe and responsible conduct of space activities, including ways to promote international, including regional and interregional cooperation to that end. The Assembly encourages the Office for Outer Space Affairs to conduct capacity-building and outreach activities associated with space security and transparency and confidence-building measures in outer space activities, as appropriate, and within the context of the long-term sustainability of outer space activities.

The General Assembly resolutions on transparency and confidence-building measures in outer space activities (starting from its resolution 68/50) encourage relevant entities and organizations of the United Nations system to coordinate, as appropriate, on matters related to the recommendations contained in the report of the Group of Governmental Experts on Transparency and Confidence-Building Measures in Outer Space Activities (UN Document A/68/189 of 2013). This call is taken into account in meeting the objectives of the Conference.

5. CONCLUSION

If inside the country the head of state is legally responsible for a more or less wide range of criminal acts (in some countries, also for constitutional delicts), then he can be held accountable to international justice bodies if international crimes are committed, the list of which is strictly defined in the statutes of the international tribunals. As a rule, these include only war crimes, crimes against peace and humanity, as well as other most serious violations of international humanitarian law.

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