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INTERNATIONAL RESPONSIBILITY OF STATES FOR THE CONDUCT OF PRIVATE ACTORS

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This paper deals with the problem of international liability for the conduct of private actors, which violates the rights and interests of states and individuals. It is shown that the application of the principle of *due diligence* allows to realize the objectives of the interests of the international community in maintaining stability and peace in the international arena and encourage States to take actions that will prevent and avert violations of internationally recognized values not only by public institutions but also by individuals and entities.

Keywords: international responsibility, attribution, private actors, *due diligence* standard.

Formulation of the Problem. International responsibility is one of the guarantees of order of international legal relations, which acquired a new quality in recent decades. Decision of the task of raising the effectiveness of international law largely laid on the international responsibility which plays a fundamental role in the modern system of international law, demonstrating the level of development, unity and organization. Instability of modern world poses new challenges to existing state and legal institutions. World development is characterized by a multiplicity of conflicting and ambiguous trends that significantly alter the defining characteristics of international relations and clearly represent the beginning of a new world order.

The idea that now international research cannot be limited only by the analysis of intergovernmental cooperation is gaining more and more supporters. The substantial change and transformation of public international law at the beginning of the XXI century particularly concerning the system of actors is being described not only by the researchers of international law and international relations, but also by experts in the state, political and social sciences.

Theories which is based on the principles of liberal paradigm, significantly developed the concept of international actor outside a state-approach «breaking the solid cocoon of national state» [1, p. 730], which lays the foundation for the establishment of international issues of subjectivity. R. Keohane and J. Nye saw international relations in terms of «reducing the sovereignty» of states when near the interstate relations, carried out by means of classical diplomacy and military force, the importance of international «non-relationship» increases where other actors who are fully governed by entirely different considerations interact.

Undoubtedly, we should agree with M. Lebedev that political world has become more complex in many ways last few decades. One of these options is participants of international relations. In the second half of the twentieth century (and particularly intensively at its end) on the world stage, so-called non-traditional participants (actors) of international relations began to act more active along with states – TNCs, NGOs, various movements, media, domestic regions, intergovernmental organizations etc. [2]. At the beginning of XXI century non-state actors not only stepped up its activity on the inter-

national arena, but also greatly complicated mechanisms and forms of activity, expanded the scope of its involvement. Analysis and consideration of such entities is required for understanding contemporary international relations, forecasting and compliance.

It should be noted that some authors seek to restrict the category of non-traditional actors list (transnational corporations (TNCs), international non-governmental organizations and others offer a wider list of them. It seems that the second approach is more appropriate because it allows using flexibility to changes in the international arena.

J. Rosenau highlights two key «worlds» in international relations: «countries» which the researcher believes that they are dominant and «actors outside the sovereignty» which includes non-sovereign international actors – international organizations, transnational corporations, national movements, ethnic groups, territorial communities, bureaucratic structures, individuals [3, p. 24].

In one of his works P. Tsygankov notes that the number and diversity of non-state actors is not endless in world politics. They are present in almost all aspects of life: economic, industrial, social, information and communication, legal, humanitarian, human rights, social and natural, providing a significant and growing impact on their evolution and political processes of the modern world as a whole [4, p. 7]. D. Feldman believes that non-governmental actors represent a variety of ethnic and religious communities, professional, ideological and political, educational and other organizations, individuals and associations «by interest», the contents of which cannot be political, but their implementation has installed reliable international political significance [5, p. 36].

The politics of dominating the state as a central international actor begins to treat questioned with the emergence and spread of such actors in regional and global levels. Some researchers (e.g. M. Nicholson) for describing this phenomenon use the term «paradox of participation», according to which the increasing level of openness of the international system for the participation of new actors makes a mess in international relations and contributes to their chaotic, which makes it difficult to achieve effective solutions.

So, as of today we can fix the emergence of a wide range of international actors who «undermine» a state-system of international relations [6, p. 90].

A. Reinisch indicates a clear departure from purely state-based approach at present, according to which only state behavior can lead to liability in international law [7, p. 38].

Display of negative «by-effect» of enlargement participants in international relations is a threat to international order emanating from non-state actors who operate regardless of the state and whose actions lead to a breach of the fundamental values of the international community in various areas (international law, human rights, international security, international humanitarian law, environmental protection, international maritime law and many others). Weak entities were strong in the sense that can cause significant damage to internationally recognized values. The world of the twenty-first century faced with the fact that non-state actors are able to throw a significant challenge to the state.

That is why more acutely raises the question of the extent to which States can and should take responsibility for the actions of individuals, bringing problems of attribution of wrongful conduct state to the next level.

Status of research problem. A lot of attention in the issue of international State responsibility for the actions of individuals was paid to foreign legal science, but those problems are not explored in the doctrine of Ukrainian science of international law. M. Buromenskiy, V. Boutkevitch, A. Seibert-Fohr, I. Lukashuk, B. Conforti, A. Klephem, A. Reinisch, D. Malcolm, N. Santarelli, I. Ziemel etc may be named among domestic and foreign scientists who raised the topic in his writings.

The aim of the article is to study the question of international liability for the behavior of individuals, which violates the rights and interests of other states and individuals.

Describing the «expansion of subject area of global security» V. Kulagin uses the term «privatization» of its space. Scientist writes that large-scale invasion of new non-state actors to the security space affected the overall paradigm for further development of global cooperation on security [8, pp.38-39]. Professor N. Zelinska exploring the phenomenon of «Somali piracy» reasonably argues that «in conditions of «privatization» criminality swiftly goes beyond state control and has a devastating impact on the world's order. It is the cause and consequence of many global destabilizing phenomena» [9, pp. 125-139].

At first glance it can be considered that the existing rules sufficiently protect the internationally recognized rights and interests of states and individuals from violations committed by non-state (private) actors. However, this is not enough to ensure full and comprehensive protection of these values in accordance with international law, as the above provisions of Articles on Responsibility of States certainly do not cover cases when a private person whose conduct is contrary to the international obligations of the State acts in complete isolation from the state context and there is no communication with native state functions.

Undoubtedly, individuals who are not vested in any way the qualities of state body, are capable to violate by their actions the rights of another state which are guaranteed on international level. The

literature provides different examples of acts of this kind. P. Kuris calls among them offending the honor and dignity of a foreign state, the image of the flag, organizing armed troops to support insurgencies or subversion, attacks against representatives of foreign states [10, p. 196].

According to the V. Vasilenko «the most typical cases of unauthorized actions of individuals and entities, due to which the responsibility of the state may occur, traditionally were attack on the honor and dignity of a foreign state, the image of the flag, the attacks on foreign diplomatic missions and attacks on diplomats. Such cases may also include acts of piracy, counterfeit currency, spread of drugs and others. Propaganda of war, genocide, racial discrimination, terrorist activities etc are in modern conditions the most dangerous actions of individuals and legal entities in respect of which, if state doesn't stop them, international legal responsibility arises» [11, p. 130].

It is explained in the commentary to Articles of 2001 that the state could be responsible for the consequences of the behavior of private actors, if it has not taken the necessary measures to prevent negative consequences. For example, a receiving State is not responsible, as such, for the acts of private individuals in seizing an embassy, but it will be responsible if it fails to take all necessary steps to protect the embassy from seizure, or to regain control over it.

It follows that the state can be blamed for acts of its own bodies, which are expressed in their rejection to take appropriate measures to stop unauthorized illegal actions of individuals and legal entities.

As A. Seibert-Fohr noted on the one hand the state cannot be held accountable for the actions of individuals in the absence of any recent communication with public authorities or carriers of public functions. On the other hand if the state, however, is obliged to take certain protective measures and if they do not fulfill relevant obligations, they carry the same offense which entails their international legal responsibility, even when the action which causes damage is committed by individuals [12, p. 42]. Recognition principle of proper diligence, which includes, among other things, and takes into account what measures the government is able to realize and how these measures are suitable to prevent danger, let find differentiated responses. This approach makes possible a legal assessment of the legal relationship between the interest of the international community to provide protection on the one hand, and the necessary measure of public accountability on the other [12, p. 60].

R. Cook expressed a similar view: «in principle, the state is not responsible for the actions of individuals or institutions ... States are, however, responsible for their failure to meet its international commitments, even when major violations are carried out by private individuals» [13, p. 125].

The next was stated in a separate opinion of Judge Pinto De Albuquerque in the case of Sargsyan v. Azerbaijan (16 June 2015), which was heard by the International Court of the UN: «During the first decade of the twenty-first century, the following rule of customary international law crystallised: States have the legal obligation to

prevent and stop the commission, preparation and incitement thereto, of genocide, war crimes, ethnic cleansing and crimes against humanity. When a State commits these crimes, condones the commission of these crimes or is manifestly unable to oppose their commission in the national territory or the territories under its effective control, the international community has a legal obligation to react with all adequate and necessary means, including the use of military means, in order to protect the targeted populations. The reaction temporary must be, effective and proportionate» [14, p. 137].

Some authors write about direct state responsibility for the actions of individuals and legal entities (e.g. M.R. Garcia-Mora). According to V. Vasilenko similar wording falsely reflects the real state of things because the state is not usually responsible for the actions of individuals, but is responsible for the behavior of their bodies that failed to prevent such acts or punish their perpetrators, and that's why «it is better to talk about the responsibility of the State, arising *in connection* with the activities of natural and legal persons» [11, p. 130]. According to fair statements of P. Kuris, the ground of liability of the state for the illegal actions of individuals is the omission of relevant state institutions, contrary to the obligation of the state to prevent unlawful conduct of individuals that harms foreign State and obligation to punish the perpetrators of such illegal actions [10, p. 196]. L. Huseynov also stands on the position that direct attribution of the behavior of individuals to the state that do not actually carried out on its behalf, is also wrong [15, p. 114].

It should be noted that it is possible to find in the literature a point of view according to which «in the way of exception a state responsibility for the actions of individuals exists if they put damage to another State representative» (Haylborn). A. Verdross use provisions of Art.3 of Hague Regulations on the Laws and Customs of War on Land as an example of true public responsibility for

guilty actions of private individuals. According to this provisions the state is responsible during the war for all actions of members of its armed forces, so not only for public actions committed by them, but also for actions which clearly are not a subject of their jurisdiction, and even for such actions which from the outside cannot be state actions (such as robbery or rape). However, this rule does not apply in peacetime, so that the application by analogy exclusive law is inadmissible [16, p. 378].

P. Kuris hold back the position that «the state can sometimes be responsible for the actions and individuals by virtue of special contractual obligations. For example, the Soviet Union in the agreements with Poland, Hungary, East Germany and Czechoslovakia on the legal status of Soviet troops temporarily located on the territory of these states undertook to be responsible for the acts and omissions of the families of Soviet soldiers. In this case we are dealing with so-called indirect (such as to replace) responsibility of the state» [10, pp. 205-205].

Conclusions. Thus, the state can be recognized internationally responsible in connection with the actions of individuals or entities, which are no way connected with the state apparatus, which is resulted in violation of international legal obligations of the state as against other states and concerning the private interests of individuals. Thus the concept of attribution to the state an unlawful behavior of the aforementioned categories of private actors is possible only in very limited circumstances, such as when it is expressly provided specific norm of international law. In all other cases attribution (as defined operation that specifies some behavior as the state activity) of the behavior of private actors in the absence of any meaningful communication for the purposes of liability of such entities to the state mechanism is unreasonable and contrary to the basic postulates of the law of international responsibility. In such situations behavior of public authorities for breach of the standard of *due diligence* is attributes to the state.

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МІЖНАРОДНА ВІДПОВІДАЛЬНІСТЬ ДЕРЖАВИ ЗА ПОВЕДІНКУ ПРИВАТНИХ АКТОРІВ

Анотація

Стаття присвячена розгляду проблеми міжнародної відповідальності держави за поведінку приватних акторів, що порушує права та інтереси держав та приватних осіб. Доводиться, що застосування принципу due diligence дозволяє реалізовувати цілі забезпечення інтересів міжнародного співтовариства у підтриманні стабільності та спокою на міжнародній арені та спонукати держави до вчинення дій, що дозволять попередити та відвернути порушення визнаних міжнародних цінностей не лише державними інституціями, а й приватними особами та утвореннями.

Ключові слова: міжнародна відповідальність, атрибуція, приватні особи, стандарт due diligence.

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МЕЖДУНАРОДНАЯ ОТВЕТСТВЕННОСТЬ ГОСУДАРСТВА ЗА ПОВЕДЕНИЕ ЧАСТНЫХ АКТОРОВ

Аннотация

Статья посвящена рассмотрению проблемы международной ответственности за поведение частных акторов, нарушающих права и интересы государств и частных лиц. Доказывается, что применение принципа due diligence позволяет реализовывать цели обеспечения интересов международного сообщества в поддержании стабильности и спокойствия на международной арене и побудит государства к совершению действий, позволяющих предупредить и предотвратить нарушение признанных международных ценностей не только государственными институтами, но и частными лицами и образованиями.

Ключевые слова: международная ответственность, атрибуция, частные лица, стандарт due diligence.