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International legal responsibility of State

This article studies the institute of international legal responsibility of the state. The article gives the definition of the term «international responsibility» according to some legal scientists, also to legal grounds occurrence of this type of liability. In work considered subjects of law of international responsibility and legal consequences of a breach of international law.

Key words: international legal responsibility, the subjects of the law of international responsibility, the obligation to state the legal basis and legal implications.

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International legal responsibility is one of the basic and ancient institute of international law.

Responsibility is necessary legal mean of enforcement of norms of international law and recovery of violated rights and relations. It acts as a special instrument to regulate international relations and as guarantor of the functioning of international law.

In the legal literature provides several concepts of international legal responsibility.

– International legal (international) responsibility is the legal consequences which arise for the subject of international law, violated the existing norms of international law and its international obligations. At the same time it is one of the legal means of ensuring compliance with these regulations and reimbursement inflicted harm or damage. State may not invoke the provisions of its internal law as justification for failure to perform its contractual obligations. Almost all the legal systems of the world recognize the international legal responsibility of subjects of international law, violating the norms of international law and its obligations under international treaties [1].

– International legal responsibility is a set of legal relations arising in the modern international law in respect of an offense committed by a State or other subject of international law, or in connection with the damage caused by one State to another as a result of lawful activity [2].

– International legal responsibility is the subject of a legal obligation to eliminate the consequences of the wrongdoing of the harm caused to another subject of international law as a result of the offense [3].

One of the guiding principles in contemporary international law is the principle of sovereign equality. Following this principle, the State involve in the mutual relations and multilateral international relations and possessing sovereignty as a political and legal property of expressing the rule of each of them in the country and its independence in foreign affairs. At the same time, this principle does not indicate a lack of interaction and interdependence of states, since no state can exist and develop in isolation from the world community. This principle allows the state to carry out any actions, which do not contradict the established principles and norms of international law. If the state does not fulfill or breach of its obligations arising from international law, naturally raises the question of its responsibility to the individual states and the international community as a whole.

Legal consequences of a breach of treaty and customary international law may affect the State of the offender, the injured State or group of States or the entire international community as a whole, as well as international intergovernmental and non-governmental organizations and even the interests of individual businesses and individuals. These effects, as well as the form and amount of liability can be different depending on the gravity of the offense, the size of the inflicted harm or damage to, the nature and severity of the offense and, in particular, may include:

a) responsibility for the aggression, genocide, apartheid, racial discrimination, denial of independence to colonial countries and peoples, violation of the laws or customs of war, etc.;

b) the obligation of the wrongdoing State to compensate the inflicted harm or damage to other states, their legal entities and individuals, peoples, struggling for self-determination and the establishment of their own state, international intergovernmental and non-governmental organizations;

c) the application in accordance with international law to the wrongdoing State coercive economic measures in response to the offense up to the establishment of an economic blockade of art. 41 of the Charter of the United Nations (for example, against Yugoslavia and Iraq in the early 90 years XX century.) And the

use of the state-offender armed forces under art. 42 of the Charter of the United Nations (for example, against North Korea in 1950–1953 and for aggression against South Korea and Iraq in 1991 for aggression against Kuwait).

According to the Austrian legal scientist A.Ferdross, «negation of the principle of state responsibility for internationally wrongful acts would lead to destruction of international law, as a denial of responsibility for the commission of a wrongful act would disappear as the obligation of States to respect the rules of international law»[4].

Responsibility in International Law is an international assessment of the subject of the offense and its perpetrator, and is characterized by the use of certain measures to the offender. The content of international legal responsibility lies in the conviction of the offender and the offender's obligation to incur the adverse effects of the offense.

Institute of the international legal responsibility of States has long been known. However, in the past, the science of international law and State practice said that State responsibility was limited only to the obligation to compensate the damage caused to the person and property of foreign citizens, then at the beginning of the XX century there were rules for damages to the state (for example, the Hague Convention on the Settlement of International Disputes World 1907). However, until the early 30th XX century international law does not contain the concept of «aggression», was not aware «of responsibility for the war», is not linked to the legal consequences of its causes, and international practice had no examples of the personal responsibility of individuals for the war of aggression. And only in the beginning of 40th XX century it was made the first practical step in the implementation of responsibility for the war: for aggression against Finland, the Soviet Union was expelled from the League of Nations and the International Labour Organization. However, in the Soviet Union in the legal literature of the period indicated that the League of Nations into a tool of the imperialist states, so the USSR came get out this organization.

The victory of the anti-Hitler coalition and against the Japanese in World War II and the formation of the United Nations, the collapse of the colonial system and the emergence of new independent states had led to qualitative changes in the institute of international legal responsibility of States. In the first place in importance it was nominated responsible for the aggression, genocide, racial discrimination, apartheid, denial of Independence to Colonial Countries and Peoples. More strict liability was the advance for violating the laws and customs of war. Gone are the «right to war» and the «right of the victor», changed the nature of coercive measures applied to the wrongdoing State, has greatly increased the role of the UN and its Security Council in particular, created new subjects of international legal responsibility — international intergovernmental organizations.

Scientific and technological progress, the expansion of international integration processes in the field of economy and trade, the expansion of global economic relations, the need for the efforts of all humanity in addressing the protection of the human environment and the fight against international terrorism, as well as the ongoing armed conflicts in various parts of the world — all of it is pretty stepped up as the UN and its agencies, including the International Law Commission of the United Nations, which in 1956 began work on the codification of the principles and rules on the responsibility of States for internationally wrongful acts.

After the World War II issues of the international legal responsibility of States are envisaged in the UN Charter, in the conventions prohibiting genocide, apartheid, racial discrimination, many conventions aimed at protecting the human environment (sea, air and space, flora and fauna, the Antarctic and etc.) and in regulations of the use of high-risk sources (for example, for damage caused by space objects, aircraft on the Earth's surface ships with nuclear power plants, etc..), as well as the Geneva Conventions on the Protection of Victims of War of 1949 and the Additional Protocols I and II of 1977.

The criminal responsibility of individuals for crimes against peace, humanity and war crimes and other international crimes from the inapplicability of the statute of limitations for such crimes received international recognition and legal consolidation. Liability arises if the acts of individuals associated with criminal activity (or inactivity) of state and government. This responsibility is reflected in the charters of the international military tribunals in 1945 and 1946, in the statutes of the international tribunals for Yugoslavia and Rwanda in 1993 and 1994, in the Rome Statute of the International Criminal Court in 1998, the international conventions relating to criminal offenses of an international character, which participate (or show obvious inaction) of officials of state bodies. All this suggests that at the end of the XX century actively took the stage of formation and consolidation of the principle of the contractual liability of the State for the activity (inactivity) of its public authorities, as well as its legal and physical persons.

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However, it is impossible to consider the international responsibility as a variety of duties. More correctly, it appears that the responsibility for a number of attributes is very similar to the responsibility, and the latter, in turn, with the obligation, but the international responsibility can not determine only through duty. The duty as a sanction, precede responsibilities. It is for breach of duty can come responsibility.

For a long time there is a work on the codification of international legal responsibility. At the moment it is not yet completed. Therefore, so far there is no universal international convention on the international legal responsibility. Since 1956, the Institute of codification of international legal responsibility is held on behalf of the General Assembly of the United Nations International Law Commission. The Commission considered and provisionally adopted a number of articles that address issues regarding international responsibility.

At this stage, the Commission has restricted its task only responsibility of the State, without touching the responsibility of other subjects of public international law. It also agreed to consider only responsible for internationally wrongful acts. At the moment it adopted such an important document as the draft articles on State responsibility (Draft Articles on State Responsibility).

The Convention on International Liability for Damage Caused by Space Objects establishes liability for damage caused by a space object on the surface of the Earth, to aircraft in flight and a space object of another subject of international law.

Also declares the international responsibility for the violation of several international treaties, among which are the International Convention on the Suppression and Punishment of the Crime of Apartheid for him and Genocide Convention.

The UN General Assembly in 1974 gave the concept of «aggression» and install that the war of aggression is a crime against international peace and aggression entails international responsibility.

In the literature there is the view that the notion of responsibility covers all the negative consequences of the offense, including the use of coercion. Meanwhile, coercion, whether these are countermeasures or sanctions, is an independent institute, which is associated with responsibility but has different characteristics. It is significant that there is support of the Commission's proposal to include articles on countermeasures as a chapter in the part entitled «The implementation of State responsibility». However, due to the close connection rules on liability with the institution of countermeasures, there is reason to merge them into a single branch of international law.

In the past, international legal responsibility was very close to private law, which, of course, does not preclude its public-law nature because of the specific subjects. Traditional responsibilities were bilateral and cause damage. Articles on Responsibility adopted on behalf of the General Assembly of the United Nations International Law Commission, based on the concept of strict liability, under which liability is incurred as a result of the fact of violation of rules, regardless of guilt or causing damage to concrete. The concept reflects the general interest of the maintenance of international order and marks an important step in the progressive development of international law.

In theory, under the grounds provided for international responsibility is understand the international legal norms are objective and subjective characteristics. There are legal, factual and procedural grounds of the international legal responsibility. Legal bases are the international legal obligations of the subjects of international law, according to which an act to be declared an international offense. In other words, by the international offense violated not the international legal norms but the obligations of actors to comply with international rules of conduct. Therefore, the list of sources of legal basis of liability is wider than the range of sources of international law. The legal basis of liability are the contract, custom, decisions of international courts and tribunals, resolutions of international organizations, as well as unilateral international legal obligations of States, establishing legally binding rules of conduct for the State (in the form of declarations, statements, notes, speeches of officials, etc.). The actual basis of liability is an international offense, that is, the act of the subject of international law, reflected in the actions (inaction) of its organs or officials, in violation of international legal obligations. Procedural grounds of liability are the procedure of cases of violations and to prosecute. In some cases, this procedure is recorded in detail in the international instruments, in others it is left to the choice of applying liability measures.

The objectives of the law of international responsibility: a) deter potential offenders (preventive function); b) encourage the offender to perform their duties properly (the function of law enforcement); c) to provide the victim compensation for material and moral damages (compensation function); d) affect the future behavior of the subjects in the interest of good faith to fulfill its obligations (prevention and maintenance of law and order).

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Nowadays, in international law reflected the concept of collective counteraction of particularly serious international offenses affecting the common interests of the indigenous: «Every State, by virtue of its membership in the international community has a legal interest in the protection of certain basic rights and the fulfillment of certain essential obligations».

The subjects of the law of international responsibility are the subjects of international law. International organizations, as a subject of international law, are responsible for the0ir own acts, i.e. for the acts of its organs and officials. In 1999, the International Court of Justice determined that the United Nations is responsible for the conduct of its organs or agents. These provisions are confirmed in the commentary to the articles on the responsibility of: international, i.e. intergovernmental organizations in accordance with international law «has a separate legal personality and shall be responsible for their own acts committed by this organization through its agencies or officials».

Individuals are not subject of international legal responsibility, even if they commit an internationally wrongful act as officers of the state, «persons of organs». For this they bear criminal responsibility, including criminal responsibility directly on the basis of international law.

It follows that the international legal responsibility is the subject of a legal obligation to eliminate the consequences of wrongdoing harm caused to another subject of international law. International legal responsibility has considerable specificity. It is neither private law nor the criminal law. It is a special kind of public liability, contribute to achieving one of the main objectives of the international community — to ensure the rule of law, and the triumph of his rule in international relations. Without the diligent performance of the states recognized principles and norms, commitments it can not be achieved world order. Achieving the rule of law depends on the willingness of States to ratify the main international agreements and undertake corresponding obligations. Finally, it is necessary effective monitoring of implementation by States of obligations. In the process of approval of the rule of law on the world stage the important role belongs to the International Court of Justice, the principal judicial organ of the United Nations. Promoting the rule of law and the approval of the resolution of legal disputes, the Court contributes to the progressive development of international law and its institutions, principles and norms.

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А.Борсукбаева

Мемлекеттің халықаралық-құқықтық жауапкершілігі

Мақала мемлекеттің халықарaралық-құқықтық жауапкершілік институтын зерттеуге арналған. «Халықаралық жауапкершілік» термині, кейбір ғалымдардың ойынша, құқықтық негіздер туындайтын міндеттемеге жақын. Сондай-ақ халықаралық жауапкершілік құқық субъектілері мен халықаралық құқықтығы нормалардың заңды бұзудың салдары болып саналады.

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Международно-правовая ответственность государства

Данная работа посвящена изучению института международно-правовой ответственности государства. В статье даны определения термину «международно-правовая ответственность» по мнениям некоторых ученых, а также юридическим основаниям наступления данного вида ответственности. Также рассмотрены субъекты права международной ответственности и юридические последствия нарушения норм международного права.

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