THEORETICAL AND LEGAL GROUNDS OF LIABILITY IN INTERNATIONAL LAW

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Annotation. The article describes the peculiarities of the state's international legal responsibility for violating international obligations in accordance with the requirements and norms of international law. Along with this, the legal nature of offenses was analyzed and it was noted that the main shortcomings are that special attention is paid to the application of countermeasures to states from the position of international organizations and institutions regarding the subsidiary responsibility of member states. The concept of legal responsibility of states for internationally illegal acts was developed in antiquity, more precisely – in the 4th century BC. In modern international law, the application of the institution of international legal responsibility dates back to 1920, when the Charter of the League of Nations indicated the possibility of imposing sanctions against countries that violated their international legal obligations. But the issue of international legal responsibility was fully developed after the Second World War, when humanity realized the extent of the damage caused by the fascist states and theirs. In 1945, the issue of combating internationally illegal acts was reflected in the UN Charter (Chapter VII «Actions in relation to threats to peace, breaches of peace and acts of aggression»). Attempts to codify norms of international legal responsibility of states were made by legal scholars, non-governmental and intergovernmental organizations. However, none of them led to the emergence of a universal international convention at this time. The modern concept of international legal responsibility evolved from the responsibility of states for damages caused to foreign persons. Therefore, initially the codifiers paid the main attention to material liability for damage caused to the person and property of foreign citizens and foreign capital. Since the second half of the 20th century, the responsibility of states for aggression, war crimes, apartheid policy, and genocide began to be recognized. The nature of the applied measures of responsibility and the forms of its implementation are changing. Then there are changes in the circle of subjects – the responsibility of international organizations and individuals appears. With the expansion of technical and scientific capabilities, the absolute responsibility of states for damage caused as a result of legitimate activities appears. In 1956, the UN General Assembly referred to the International Law Commission the issue of codification of norms of international legal responsibility of states.

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Formulation of the problem. Responsibility in international law plays an important role in ensuring the stable functioning of the international system. The International Law Commission of the United Nations (hereinafter – the UN) defined the content of international responsibility in the context of: «those consequences that this or that internationally wrongful act may have in accordance with the norms of international law in various cases, for example, the consequences of an act in terms of compensation damage and corresponding sanctions». In the modern science of international law, the definition of «international legal responsibility» is defined as specific negative legal consequences arising from a subject of international law as a result of his violation of an international legal obligation.

The purpose of the article is to analyze the institution of state responsibility in international law, and the object of research is the institution of international legal responsibility of states for committing illegal acts.

The state of scientific development of the problem. The author researched and analyzed well-known scientific works of international scientists, namely: I.P. Blyshchenko, B.C. Vereshetin, Yu.M. Zhdanov, R.A. Kalamkryan, A.Ya. Kapustin, I.I. Karpets, Yu.M. Kolosov, V.M. Kudryavtsev, etc.

Presenting main material. International legal responsibility of states is one of the fundamental and oldest institutions of international law. One of the guiding principles in modern international law is the principle of sovereign equality. Adhering to this principle, states take part in mutual relations and multilateral international communication, possessing sovereignty as a political and legal property and international immunity, which express the supremacy of each of them within the country and independence in external relations. At the same time, the mentioned principle is not a sign of the lack of interaction and interdependence of states, since no state can exist and develop in isolation from the entire world community. This principle enables the state to carry out any actions that do not contradict the established principles and norms of international law. If the state does not fulfill or violates its obligations arising from the norms of international law, the question of its responsibility before individual states or the world community as a whole naturally arises. The principle of sovereign equality makes it possible to distinguish states into the main group of subjects of international law, and therefore of international responsibility. When studying the theory of international law, the subjects of international legal responsibility are the subjects of international law. The current articles adopted by the UN General Assembly are mainly devoted to the responsibility of states to other states. However, it should be noted that the general part of the articles also applies to the responsibility of states before other subjects of international law.

In addition to states, states that advocate self-determination and international (intergovernmental) organizations are also considered subjects of the law of international legal responsibility [1, p. 98]. In 2002, the UN International Law Commission, in accordance with the resolution of the UN General Assembly, started working on the topic «Responsibility of international organizations». The issue of legal personality of natural

persons is debatable in the theory of international law. The majority of authors (for example, D.B. Levin, V.A. Vasylenko, V. Davyd and others) justify the position according to which natural persons, like legal entities, are not subjects of international legal responsibility. The question of the legal personality of transnational corporations is similar to the problem of the international legal personality of an individual. The definition of «international legal responsibility» covers legal relations arising under international law in connection with an internationally wrongful act. Therefore, the content of international legal responsibility consists of negative consequences that occur for the state as a result of its violation of the norms of international law. These legal relations can be both bilateral and multilateral (in case of an increase in the number of subjects due to the participation of other subjects, except the injured state) [2, p. 47]. They arise both in connection with the initial obligations of the subject's responsibility, and in connection with the use of coercive measures by the injured party (with the aim of forcing the offending state to fulfill the initial obligations).

The legal relations of international legal responsibility can be outlined in detail and structured as follows: the basis of international legal responsibility of a state is its violation of an international obligation, that is, the commission of an international offense. In order to draw a conclusion about the presence of an international offense, it is necessary to establish whether there was an action or inaction by state officials or bodies that, according to the current norms of international law, can be blamed on the state, and such behavior violated the international obligation of this state. Since the state can perform certain actions or not act with the help of its organs and officials, it can be blamed for the internationally illegal behavior of only such individuals who have the status of a state organ or its official. The action or inaction of these persons, which violates the norm of international law, is considered in international practice as the behavior of the state itself. A state will bear international responsibility for the actions of its legislative body if it has adopted a law or other normative act that contradicts the international obligations of that state. For example, the European Court of Human Rights in the Decision in the case «Kononenko v. Ukraine» dated December 7, 2006 recognized a violation of paragraph 1 of Art. 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms of 1950 and Art. 1 of the First Protocol to this Convention on the grounds that in accordance with the Law of Ukraine «On the Introduction of a Moratorium on the Compulsory Sale of Property» dated December 26, 2001, a moratorium was introduced on the compulsory sale of property of state-owned enterprises, in the statutory funds of which the state's share is more than 25% , as a result of which the decision of the national court rendered in favor of the applicant was not implemented for more than 7 years and 11 months [3]. The basis for the emergence of liability will be the official publication of such an act of parliament (which in most cases is also the moment from which the normative act enters into force). Failure by the parliament of a state to adopt a legislative act necessary for the fulfillment of its international obligation can trigger the responsibility of that state only if it caused moral or material damage. However, there are situations when the state can bear responsibility for inaction as such (without the occurrence of negative consequences), in particular, if the subject of an international agreement was precisely the adoption of relevant legislative acts.

On the basis of the above, it can be noted that the concept of international legal responsibility is characterized by the following features: it occurs after the commission of

an international offense, is implemented on the basis of the norms of international law, is associated with certain negative consequences for the offender, is aimed at strengthening the international legal order. Norms defining the responsibility of states in international law form a special international legal institution. The content of this institute changed in accordance with changes in the development of international law. Norms constituting the institution of international legal responsibility are mostly of a conventional nature, which gives increased significance to their codification. The UN International Law Commission has done extensive preliminary work on this issue. Eight reports of its special rapporteur – the Italian professor R. Ago – made by him in 1969–1980, were laid by the UN International Law Commission as the basis of Part 1 «The Origin of International Responsibility» of the Draft Articles on the Responsibility of States for Internationally Illegal Acts. Since 1981, the UN International Law Commission has been working on parts 2 and 3 of the draft articles on the responsibility of states for internationally wrongful acts, which have the names «Content, forms and scope of international responsibility» and «Exercise of international responsibility and settlement of disputes». Another important direction in the activities of the UN International Law Commission is the preparation of the draft Code of Crimes against the Peace and Security of Mankind, which was carried out in 1947–1954 and was renewed in 1982. If the offending state does not fulfill its obligations under such legal relations, it, accordingly, commits a new offense, therefore new legal relations arise in which the injured state already has the right to apply coercive measures to the offending state in order to fulfill its subjective obligations. The grounds for responsibility are divided into legal (normative) and factual. Legal grounds are a set of legally binding international legal acts, on the basis of which a certain behavior (action or inaction) qualifies as an international offense. The legal basis of responsibility can be contained in any sources of international law and other acts that fix the rules of conduct binding on the state. They are legitimate, legally valid contracts, customs, judicial decisions of international courts and arbitrations (however, advisory opinions are not included in the list); binding acts of international bodies and organizations (for example, the UN Security Council), conferences and meetings; individual unilateral acts of states of an international legal nature, through which they assume international obligations and which are recognized by other states (for example, establishing a certain width of territorial waters). The factual basis of international legal responsibility is that for which responsibility arises. That is, it is a certain legal fact, namely an international offense [4].

The resolution of the question of whether the action of the state is a violation of international obligations and a factual basis for responsibility depends on the presence of signs of an offense. The main characteristics of an international offense are illegal conduct, harm (damage) caused by illegal conduct, and a causal connection between the action and harmful consequences. More controversial in the science of international law is the inclusion of the subject's guilt in the list of objective signs of an international offense. Given the complexity of the interpretation of the very concept of «guilt», the establishment of guilt in international law, the controversial practice of proving it, the UN International Law Commission did not include it in the Draft Articles on the Responsibility of States for Internationally Illegal Acts as a necessary sign of an offense. Illegal behavior is manifested in the violation of international obligations of the state in the form of action or inaction. Illegality in international law means a discrepancy between the legal norm and the behavior of the state. Manifestations of illegal behavior are as follows: – non-compliance

by state bodies with its international obligations, which manifests itself in violation of the rights of other states and international organizations; – non-compliance by state bodies with its international obligations, which is manifested in the violation of the rights of individuals and legal entities; – non-compliance by state bodies with its international obligations in connection with spontaneous actions of legal entities and individuals; – non-compliance by state bodies with its international obligations arising in connection with illegal activities on its territory by bodies of other states and international organizations. Any illegal behavior damages the legitimate interests of subjects of international law, which are protected by international law, negatively affects the international legal order. Damage can be both material (property) and immaterial (moral). Most often, damage is caused in a mixed form. The nature and amount of damages affect the determination of the scope, type and form of international legal responsibility. A causal connection (real, objective, necessary, not accidental) between the unlawful conduct and the harm caused is a necessary element of the offense. The presence of the necessary features makes it possible not only to qualify a certain behavior as a crime, but also to separate the latter from similar acts that do not have all the necessary features, such as unfriendly acts and crimes of an international nature. An unfriendly act is the behavior of a state that causes harm to other states, but does not violate the norms of international law, as a result of which there is no offense [5, p. 36]. An unfriendly act affects the interests of the state, which are not protected by international law. Such actions (acts) include, for example, the restriction of the rights of individuals and legal entities on the territory of the state, the increase of customs duties (taxes) on goods imported from a certain state, the nationalization of foreign property, etc. In the event of an unfriendly act, the state independently decides how to respond to such actions, however, if this does not contradict the obligations under the treaties. Since international law does not prohibit unfriendly acts, the main role in regulating the problems that arise is played by moral and political means. Crimes of an international nature (criminal acts of natural persons) affect the interests of two, several or many states, that is, they are of international danger, therefore they are grounds for criminal, not international legal punishment. The legal basis for responsibility for such acts is international agreements on combating specific types of crimes and domestic norms of criminal law adopted in accordance with them. The fight against such offenses is provided for by the norms of international law, but the responsibility of individuals in such cases is not international law. The main feature of these offenses is that they are committed outside the boundaries of state policy by individuals who are not state officials acting on its behalf, but on the contrary, act, as a rule, to violate the legislation and law and order of their own state. In our opinion, it is appropriate to distinguish the following types of international responsibility: a) political responsibility arising in the event of a violation of any international obligation by a subject of international law. This type of liability arises from the very fact of violation of a norm that protects the interests of another state, as well as in the event that there is no property damage or other visible negative consequences; b) material liability arising in two cases: when the offense caused material damage and when the damage occurred without violation of the law, but its compensation is provided for by a special international agreement. In the first case, material liability arises as a result of a direct causal connection between a violation of the law and material damage. Thus, political and material responsibility can arise simultaneously as a result of the same offense. Any

international wrongful act that is not an international crime is an international offense. During the commission of torts, the regime of bilateral responsibility applies, which consists in the fact that only the directly injured state has the right to apply to the court.

Conclusions. Summarizing the above, the scientific opinion is defended that the modern system of international legal coercive measures (sanctions and countermeasures) is a complex of various elements implemented by states both individually and within the framework of relevant international organizations and institutions. The existing system plays a unique role in the mechanism of international legal regulation, and in social terms it performs the function of comprehensive protection of the security of the international community and aims at the possibility of flexible selection of adequate and effective means of response to any internationally illegal act. The modern powerful system of international legal coercive measures is, without a doubt, the main means of realizing international legal responsibility.

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