TYPES AND FORMS OF INTERNATIONAL LEGAL RESPONSIBILITY OF THE INTERNATIONAL (INTERGOVERNMENTAL) ORGANIZATIONS

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TYPES AND FORMS OF INTERNATIONAL LEGAL RESPONSIBILITY OF THE INTERNATIONAL (INTERGOVERNMENTAL) ORGANIZATIONS

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Abstract

A comprehensive analysis of the types and forms of international legal responsibility of international (intergovernmental) organizations is carried out in the article. The main types of liability of the international (intergovernmental) organizations and their separation into certain forms are revealed. The forms of international legal responsibility of international (intergovernmental) organizations under existing international sources are characterized.

Keywords:

international legal responsibility, forms and kinds of international legal responsibility, restitution, compensation, restoration, satisfaction, assurances and guarantees of non-repetition.

JEL Classification  K30, K33

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STATEMENT OF THE PROBLEM

The problem of international legal responsibility of intergovernmental organizations is one of the main issues requiring a scientific development and legal regulation that is generated by expanding the range of possibilities of subjects of international law. The events that took place in the international arena in the last decade has shown that some organizations are given more extensive powers and in some cases are used as a tool to implement the strategic subjective objectives of particular Member States. At the same time, the increasingly growing role of international organizations as subjects of international law requires the research of the types and forms of responsibility.

Some aspects of responsibility for internationally wrongful acts were revealed in the works of local and foreign experts on international law such as: D. Antsylotti, I. Brownlie, M.V. Buromenskiy, V.G. Boutkevytch, V.A. Vasilenko, A.F. Vysotsky, L. Huseynov, M. Kolosov, P. Kuris, D.B. Levin, V.A. Mazov, A. Casses, L.F. Oppenheim, A. Ferdross. The results of their research and conclusions concern the liability issues as a whole, not taking into account the specific responsibility of international organizations. In the western doctrine of international law the subject of responsibility of international organizations is investigated more extensively. Some aspects of this theme are covered in the works of E. Butkevys (Poland), M. Hirsch (Israel).

BASIC MATERIAL

UN International Law Commission (UN CIL) during the creation of the Draft of articles concerning State responsibility distinguished three forms of the compensation for damage: restitution, compensation, satisfaction. These forms of the compensation for damage are the methods of implementation the obligation of compensation. These forms are reflected in art. 33 of the Draft of articles on responsibility of international organizations.

Restitution is a restoration of the original state of things that is the situation that existed before the commission of an internationally wrongful act [14, p. 322].

An example of restitution of the international organization is a fact of meeting the requirements of Liberia and Panama, which they have
presented to the International Maritime Organization in accordance with the advisory opinion of the International Court of Justice in the case of the International Maritime Organization in 1960. Liberia and Panama demanded the restoration of their right to be the members of the Maritime Committee Safety navigation. This requirement was satisfied. [9]

UN CIL divides the entire set of actions relating to the implementation of restitution into two types: material and legal. As an example of material restoration of violated rights of States UN CIL names such forms in which restitution can be realized: the return of the territory; release of the illegally arrested persons; unlawfully arrested property release.

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It is clear that not all the forms of restitution which are applicable to the states can be applied to international organizations. However, when the international organization is a plaintiff and in the case when it is the defendant such form of restitution as a return of property is applicable. In case when the organization is a plaintiff and the state is a defendant such form of restitution as the release of illegally detained persons can take place. [1, p. 81-86].

To the concept of "legal restitution" refer revocation, cancellation or modification of legislative provisions adopted in breach of international law, revocation or revision of the administrative measures adopted unlawfully against a person or property of a foreigner.

In case of organizations' responsibility, the ways of restitution of the organization may be the following: cancel or change within the organization of the legal acts which in any way violate the rights of the Member States or third parties. The most common is a legal restitution as compensation by the organization in the case of legal relationships between the European Community and the EU Member-States.

The compensation is a form of financial redress. Talking about the use of this form of compensation for legal relations involving an international organization, we can say that the organization is able to both pay and claim compensation. But here some peculiarities should be noted: firstly, peculiarities concerning the payment of a monetary compensation by the organization (if the organization is the respondent) and, secondly, peculiarities concern the vindication by the organization of cash payments (when the organization is the plaintiff).

In the first case, the main issue is the problem of the possibility of financial compensation by the organization itself.

First of all, for some reasons in this situation the organization may not be able to pay the material damage itself (it can make and makes
restitution and satisfaction, but does not carry compensation). And then the question arises, if the Member States should in such situations (even if they were not liable) provide compensation to the offended party.

Secondly, it is necessary to realize if the payments made from the funds of the organization are the payments made by Member States in case of compensation for material damage caused by the act of an international organization.

Of course, financial funds of the organization form mainly by the expense of the Member-States. However, the funds transferred by the Member State to the budget of the organization, are no longer the means of that particular state and become assets of the international organization. In this case the international organization itself remains a subject who is responsible for all the other consequences of the offense.

Thus, the peculiarities related to the formation of the organization's budget should not influence its independent duty to compensate the damage to the offended party. This conclusion is based on three principles: international organizations have independent legal personality; responsibility of the Member State, above all, should be based on the criteria of attribution of conduct, but not on a membership criteria; obligation of Member States to provide compensation can only be based on the rules which are mandatory for the states - the rules on state's responsibility or the provisions of the Statute of the organization [1, p. 82].

In the second case, when the damage is caused to the international organization itself, the main issue concerns the content of damage which organization may request.

The fact that an international organization may claim the compensation of damages caused to itself (its headquarters, property) is not in doubt and is generally recognized. However, here arises the question of the applicability to the organization of this concept of damages regarding the claim for compensation of material damages caused to individuals.

This issue was discussed in detail by the UN International Court of Justice in its Advisory Opinion in the case of compensation for damage incurred in the service of the United Nations, on 11 April 1949. Two questions were raised in front of the Court:

1) Can the UN as an international organization present action against the de-jure or de-facto responsible state in order to obtain compensation for damage caused to: a) the UN itself; b) the victim agent or his successors;
2) in case of a positive answer to the question 1 (b) how the claim of the UN will relate to a law of the State of nationality of the agent to request a compensation of the damage caused to him (the agent) [8, p. 178]?

To the question 1 (a), the Court unanimously gave a positive response. In answering this question the Court defined the concept of damage caused to the international organization (UN). Such damage includes the damage caused to the interests of the organization, its administration, its property and interests which it seeks to protect. This loss should include a refund of any payments that organization shall pay its agent or its successors. Regarding the questions 1 (b) and 2, between the members of the Court serious disagreements had arisen. As a result to that advisory opinion five special thoughts were added. This is due primarily to the different nature of institutions of diplomatic and functional protection. Unlike the state, which has the unconditional ability to claim the compensation of damage caused to its citizens, the international organization has limited ability to seek compensation for damage caused to its agent [8, p. 179].

Intangible forms of responsibility include restoration, satisfaction and guarantees of non-repetition and assurance.

Restoration as a form of responsibility is not mentioned in the Draft of articles. However, according to the draft of Art. 35, restitution is a restoration of the situation that existed prior to the offense. Typically, restitution usually referred to material forms of international legal responsibility [13, p. 293]. And even in the text of art. 35 it is emphasized that it should not be "materially impossible". However, restoring the situation that existed before the offense is not always associated with the material burden of the offender. Restoration of the status quo ante can be made (except restitution in nature) also in the form of restitutio in pristinum, which is the restoration of the intangible rights of the affected subjects of international law. This form of liability is called "restoration" and it refers to an intangible liability [11, p. 214; 12, pp. 751-752]. With regard to international organizations-offenders restoration can be expressed, for example, by the withdrawal of the illegally occupied territory, repeal of a legal act that spawned offense.

Satisfaction in the Draft of the articles on responsibility of international organizations is seen as a form of reparation, which may be expressed in recognizing of violations, expression of regret, a formal apology or expressed in another appropriate form. There is no clear definition of this form of responsibility of the Draft of articles. In that document only specific
ways of compensation of damages are defined. We think satisfaction can be defined as compensation to the victim subject / subjects of the intangible damage.

The draft art. 37 emphasizes that the international organization is responsible for an internationally wrongful act and is obliged to provide satisfaction for the damage caused by this act, in the way it can not be recovered by restitution or compensation. Thus according to the content of the Draft of articles, there is a hierarchy of forms of compensation, which is similar to the hierarchy, enshrined in Articles on responsibility of states for internationally wrongful acts - must first try to compensate the damage in the form of restitution (try to restore the situation that existed prior to the offense), then, if that is not enough or is not possible, it is necessary to resort to compensation and only if these two ways of smoothing the fault are exhausted, you can refer to a satisfaction.

Commenting on that provision in the course of work on the Draft of articles on state's responsibility, UN International Law Commission pointed at the "exceptional nature of satisfaction" that may be required only when the losses are not refunded fully by restitution and compensation. This is due to the fact that, according to the Commission, usually any damage caused by international offense could be compensated financially, i.e. through compensation. However, compensation covers only damages "calculated in financial terms." As to satisfaction, it will occur in cases where the damage is not exposed to financial evaluation, when the victim suffered a public insult or when the violated rights cannot be restored financially [4, p. 249].

It is possible to assume that the prosecution of the offender in the form of satisfaction should not be restricted by the exceptional circumstances of causing them an intangible damage. This form of responsibility can be fully applied simultaneously with the restitution and / or compensation, because the emergence of an intangible damage has nothing to do with the existence of material damage. Any offense will automatically cause harm to honor, dignity and reputation of the victim. And even when at the same time a computable material damage was caused, the intangible damage must be also compensated. According to the Draft of articles, satisfaction is expressed in the recognition of violation, expression of regret, a formal apology or another appropriate form. In our view, it will not be extremely burdensome for international organization to apologize for the damage along with compensation.
In practice there are not many examples of satisfaction provided by international organizations, comparing with the number of cases of satisfaction by the states-offenders, but, nevertheless, there are some of them. Typically, they are expressed in the form of an apology or expression of regret. In the fifth report prepared by the Special Rapporteur of the Commission George Haya [2], as an example the UN Secretary General's statement regarding the fall of Srebrenica was specified. The report stated that "... in the history it is hard to find a more difficult and painful experience, than that acquired by the UN in Bosnia. With a sense of profound grief and sorrow we have analyzed our actions and decisions in response to the capture of Srebrenica "[3].

There are also cases of the responsibility for the actions of an international organization by a third party (but only on a voluntary basis, while as a general rule, only a person who is guilty in an can be pulled to justice). Thus, President Barack Obama in February 2012 sent a letter of apology to the Afghan President Hamid Karzai for the official burning of the Koran by soldiers of NATO. The letter was handed to Karzai by the American ambassador in Afghanistan. Barack Obama regretted the incident and apologized to Afghan President and the Afghan people. The US leader also assured Karzai that the soldiers committed this act unintentionally, and promised to investigate and punish those who were responsible. Previously, the Commander of the International Security Assistance Force in Afghanistan, General John Allen apologized for the behavior of the US military [16]. Thus, in this case the responsibility is a form of satisfaction in several ways at once: criminality, bringing forgiveness, and promise to investigate and punish the guilty individuals.

The prosecution of international organization-offender in the form of satisfaction, of course, must take place if this form of liability is adequate in the circumstances of the case. At the same time, a list of ways of the responsibility in this form is doubtful as it is referred to in Art. 37: recognition of a violation, expression of regret, a formal apology or other similar form.

Recognition of the offense, even if it is not explicitly expressed, even in the absence of an official statement by the representative of the international organization, will automatically take place in providing a restitution or compensation to the offender, while the compensation of the damage in these forms indicates the recognition of guilt to the crime.

Official apologies of the international organization, is probably the most common way of the responsibility in the form of satisfaction. It must
be explicit, not implied, and come from the officials of the organization-offender.

As for satisfaction in the form of the expression of regret, we consider that it is wrong to refer this method to the forms of responsibility, while expression of regret about the damage caused to the victim may also come from individuals who have no relation to the situation, but are frankly sympathetic to the victim. States and international organizations often regret certain actions and events that are spontaneous in nature (floods, tsunamis, earthquakes), but that does not mean they confess guilt in the incident. That assignment expression of regret to the forms of responsibility, in our view, could cause misinterpretation of the actions of third parties.

Satisfaction "in other appropriate forms" can be expressed in various activities of the international organization, depending on who is the victim. If this is a state, it may be, for example, a solemn flag honors; administrative punishment of the persons concerned; adoption of internal regulations to ensure compliance with international obligations; investigation of the circumstances of the incident. In some cases, special missions may be sent to a victim state.

The assurances and guarantees of non-repetition. In a third form of intangible responsibility of international organizations, along with a restoration and satisfaction, we believe it is necessary to consider the assurances of non-repetition.

UN International Law Commission included the termination and non-repetition of an internationally wrongful act in Part three of the Articles on responsibility of international organizations, entitled "Content of the international responsibility of an international organization" and brought them to the general principles of this Part. Art. 30 contain a provision, which is fully identical to the provisions laid down in Art. 30 of the Articles on responsibility of States for internationally wrongful acts: the international organization is responsible for an internationally wrongful act; and it must: stop the act if it lasts; provide appropriate assurances and guarantees of non-repetition, if the circumstances warrant.

We believe that the termination and the provision of assurances and guarantees of non-repetition are completely independent, though interrelated, obligations arising in connection with the commission of unlawful acts. We can not deny the fact that the obligation to stop and not repeat the wrongful act is fundamental, indisputable, and refer to the general principles of responsibility. However, the article also states that the offender must provide adequate assurances and guarantees of non-repetition, and this
is a completely different kind of commitment. It is not so certain. This is an additional burden for the international organization, which confidently can be referred to the intangible forms of responsibility, especially considering the formulation "if circumstances so require." In fact, this will depend on the degree of confidence of the victim concerning the offender. If the restoration of the situation that existed prior to the offense is not enough for the victim, he may require the international organization-offender to provide some assurance and guarantee that this will not happen again.

Assurances of non-repetition can carry oral or written form of a statement in which the international organization confirms its intention to do everything possible that this situation would not repeat in the future [10, p. 1-15].

As to the guarantees of non-repetition, the situation is completely different. Here one application may not be enough. An adequate guarantee for the victim may be, for example, the adoption of the preventive measures necessary to prevent a repetition of the offense by the international organization. That may include: appropriate guidance to the officials, the abolition of internal decisions or act of the international organization. Either way, the injured subject chooses a concrete form of the guarantees.

CONCLUSIONS

In general, as it was already noted, there are not many examples of prosecution of international organizations in international practice. This is not due to lack of complaints about the activities of international organizations, but rather to the fact that there is no permanent international body (or organization) authorized to consider disputes involving international organizations, especially the cases involving international organizations. International Court of Justice, for example, is not authorized. According to the § 1 Art. 34 of the Charter of the court, only states may be the parties in cases in the Court [17].

The prosecution of the international organization is not possible even in the European Court of Human Rights, while this judicial body considers disputes only if the alleged violation by the High Contracting Parties (which include only state) of human rights protected by the Convention for the Protection of Human Rights and Fundamental Freedoms occurred [5].

Consequently, subject-victims of illegal actions (or inaction) of the international organization can only rely on themselves to protect their rights.
in the manner of self-help or voluntary meet the requirements of the offender for damages. It is not currently possible to force the international organization to fulfill its obligations arising from legal liability. It is possible that this fact supports the states in the idea of creation of international organizations and joins them, especially taking into account that the state is not liable for the actions of the international organization of which it is a member. So it's a quite convenient way of shifting the responsibility in unpopular decisions.

REFERENCES


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