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Legal Entities Entitled to Invoke International Responsibility

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Abstract

The paper is devoted to the consideration of one of the most pressing problems of invocation to international legal responsibility: the definition of the circle of subjects entitled to make claims against a violator of the norms of international law. Taking into account the existing mandatory and recommendatory norms of international law, as well as the existing practice of international judicial bodies, the paper emphasizes the need for a clear definition of the legal category "victim", since it is that which has the right to call an offender to justice. When determining a victim, three situations may exist: when the obligation is violated in relation to one state, when the obligation is violated with respect to a group of states and when the interests of the international community as a whole are violated. At the same time, in classical bilateral relations, only the directly injured state has the right to call to account, regardless of the seriousness of such relations, which does not prevent the third states from expressing their concern about the situation. However, in the event of a breach of obligations towards the international community as a whole, even if there is a directly affected subject of international law, the entire international community, on which behalf the United Nations has the right to claim, has the right to appeal.

Keywords: International responsibility, Internationally wrongful act, Invocation of responsibility, Claim, International community, Third state.

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1. INTRODUCTION

Modern international relations are characterized by a high degree of involvement in the processes of settling intrastate and international conflicts between a large number of states that are not directly participants in these conflicts. Such involvement is associated with a special interest in the outcome of these conflicts, since the results of the settlement of disputes between states (positive, as well as negative) can influence the political situation in the respective region with the most unpredictable legal consequences in the long term. However, it is necessary to clearly understand which subjects of international law have the right to call to account other subjects of international law, taking into account the inviolability of the principle of international law on inadmissibility of interference in the internal affairs of states, and also taking into account the inevitable negative consequences of politicization of the process on resolving an international conflict with the involvement of a large number states that are not parties to the dispute.

The answer to this question lies in the content of the legal relationship of responsibility. This attitude arises from the violation of international obligations by a subject of international law. This indicates the secondary nature of this legal relationship, that is, it arises from a different international legal relationship. Consequently, only the same subjects of international law that participated in the primary legal relationship can act on the side of the injured entity and the harm-doer. The procedure of calling for international legal responsibility itself is a formal process of claim against a state or states [1]. The status of the injured party can appear only in the event that the rights of this subject are violated by the actions or inaction of another entity. From this, it follows that only the injured subject of international law can call for accountability of the offender.

In this connection, the correct understanding of the legal category "victim" becomes very important.

2. METHODS

The study of this issue is impossible without due attention not only to the binding norms of international law of a compulsory nature (in particular, contained in the 1969 Vienna Convention on the Law of Treaties, the 1982 UN Convention on the Law of the Sea), but also on recommendatory documents which are often considered by theorists as ordinary norms of international law.

The legal category "victim" is most meaningfully disclosed in documents developed by the UN International Law Commission and ready to signature at the moment by the states, namely, the Articles on Responsibility of States for Internationally Wrongful Acts and the Articles on the Responsibility of International Organizations for Internationally Wrongful Acts.

Special attention should be paid to the decisions of the international judicial bodies, which consolidate the call to account.

3. RESULTS AND DISCUSSION

States are classified as "injured" in the articles on the responsibility of States for internationally wrongful acts only in the following cases: if a breached obligation is an obligation to that State separately; if a breached obligation is an obligation of a group of states including that state, or the international community as a whole. At the same time, in order the second case would be in force, it is necessary that the breach of this obligation either specifically affected this state or be of such a nature that it radically changes the situation of all other states in respect of which there is an obligation with respect to the further fulfillment of this obligation [2].

Thus, there are three possible situations: when the obligation is violated in relation to one state, when the obligation is violated with respect to a group of states and when the interests of the international community as a whole are violated.

The first case in international practice is less common than others, including violations of obligations from bilateral treaties, from international judicial decisions and commitments taken by one state against another unilaterally. It is the injured state that will be entitled to call for the responsibility of the wrongdoing state.

Some difficulties in this situation, as the Special Rapporteur of the International Law Commission of the United Nations, J. Crawford, noted are caused by violations of treaties that are most closely associated with the "classical" set of bilateral obligations, but are to protect the collective interest at a deeper level. For example, they are the obligations enshrined in the Vienna Convention on Diplomatic Relations of 1961. They are two-sided in nature, and "ordinary" violations of this Convention in relation to one state are unlikely to be considered as raising issues for other states that are its parties. However, at a certain level of seriousness for a violation of the Convention, questions may arise about the establishment of diplomatic relations that would cause legitimate concerns of third countries [3].

I believe that in such classic bilateral relations, the right to call to account will still have only the directly injured state, regardless of the degree of their seriousness, which does not prevent the third states from expressing their concern about the situation.

In the second case, when obligations are violated with respect to a group of states, it is mainly a matter of non-fulfillment of obligations arising from multilateral treaties. Here two situations are possible in turn:

1. When one state is directly injured, and the remaining states from this group are interested. To identify the victim directly, additional conditions are imposed. It must be "particularly affected" by a breach of a multilateral obligation. Comments on the Articles on Responsibility are explained in the example of the UN Convention on the Law of the Sea. Despite the fact that the obligation not to pollute the open sea is multilateral, only one or several states can directly suffer from pollution. And although all the parties to the Convention have a common legal interest in observing the obligations enshrined therein, only those directly affected by pollution will be considered as victims. Neither the Articles on responsibility, nor the Vienna Convention on International Treaties has established clear criteria for assessing the amount of damage necessary to recognize a State or States as victims. This question is decided individually each time depending on the circumstances of the case. If an injured subject is no single, but there are two or more of them, each injured subject has the right to call the offender to account in proportion to the damage caused by it.

2. When all states in this group are victims; here, as a rule, we are talking about international obligations of a special nature, violation of which affects the rights of all parties to the international agreement. Article 42 on Responsibility of States repeats the provision enshrined in the 1969 Vienna Conventions on International Treaties which stated that these obligations are of such a nature that "a significant violation of its provisions by one party radically changes the position of each other party with regard to the further fulfillment of its obligations arising from the contract". For example, in case of violation of the provisions of the Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1974 by at least one party, all other parties to this treaty will be considered as victims, since such a violation can entail detrimental consequences for human health, marine living resources, the quality of sea water, and impede fishing and the use of the sea. Therefore, all parties to the Convention have an individual interest in compliance with the provisions of this treaty. Consequently, each of them will have the right of claim in relation to the offender. In some cases, breach of obligation by one party makes the further effect of a contract meaningless. However, not any violation of an obligation

automatically leads to its termination for all others. This violation must be of such a nature that it radically changes the situation for all other states in respect to which there is an obligation concerning the further fulfillment of this obligation. That is, the breach of the contract must be so serious that it is simply impossible for the participants to continue to execute it. Special Rapporteur of the International Law Commission of the United Nations J. Crawford calls this kind of obligation "integral", and understands them as an indication of obligations that are in effect on the basis of the principle "all or nothing". In other words, J. Crawford stresses, the violation of such an obligation jeopardizes the contractual structure as a whole. Fortunately, this does not apply to human rights treaties; if anything, since one state cannot violate human rights because of the violation of another state.

International human rights agreements can be considered as an example of non-fulfillment of obligations with regard to a group of states. They are not aimed at upholding any of own interests of the participating states, but at protecting the common interest: the fundamental human rights and freedoms that are recognized as the greatest value of humanity. In this regard, as L.G. Huseynov emphasizes, in violation of the rights of an individual, all participating states "acquire" the status of injured states with all the legal consequences that ensue from this. At the same time, these states are not obliged to prove the occurrence of a damage caused to them. In this situation, the very fact of committing an offense will be enough. L.G. Huseynov says that such a right of a state to call for the responsibility of the offender represents a significant discrepancy with the traditional principles of international law according to which a state can take international action against another state only when the first state is directly a victim of a violation of international law or when it renders diplomatic protection to one of its citizens, the right of which is violated by another state. Within the framework of international human rights treaties, a state can call for accountability not only for violations committed against its citizens, but also for persons who are not its citizens or stateless persons. Likewise, states can complain to international human rights bodies about the incompatibility of national law and administrative practice of another state with the relevant international human rights treaty without stating violations of the rights of any particular person [4].

3. When obligations towards the international community as a whole are not fulfilled, that is, the obligations erga omnes are violated. These include aggression, slavery, colonialism, racial discrimination, genocide, ecocide, biocide, mercenarism, terrorism. That is, the basis for calling for responsibility in this case is the common or general interests of the international community as expressed through obligations *erga omnes partes* or *erga omnes* [5].

Here, the international community as a whole is the victim. Such situations should be considered separately and not in the context of the injured state or group. This fact was highlighted by the Association of International Law in its comments to the articles on responsibility, which stated that the definition of "injured state" in a situation where the interests of the entire world community were affected and the obligations of erga omnes were violated was insufficiently satisfactory. It seems that all states are victims. The confusion in the definition of injured state directly influences the choice of individual ways of reimbursing damage by states (and also countermeasures) [6].

Individual states also proposed replacing the phrase "the international community as a whole" with the expression "the international community of states as a whole" [7].

J. Crawford, Special Rapporteur of the International Law Commission, noted that the expression "the international community as a whole" was widely recognized and does not at all mean the emergence of a new subject of law, but underlines the multifacetedness of such a community that includes not only states but also international organizations [8].

Recognition of all states as victims in case of breach of obligations erga omnes is a very important guarantee of the stability of the international legal order. As I. Scobbie points out, all states have a legal interest in ensuring compliance with peremptory norms, whether or not they or their nationals are materially injured by any given breach [9]. A. Bird also substantiates this situation by the weakness and ineffectiveness of inter-state procedures, what confirms that it is important that other forms of enforcement are possible when peremptory norms and obligations to the international community as a whole are breached [10]. This is due to the fact that in some cases, the directly affected state may not be. For example, if human rights are violated within a country, in particular, when citizens of the offending state are victimized by genocide or apartheid. If the entire international community as a whole is not recognized as a victim, there would be no one to call the offender to account. Consequently, such international crimes would remain unpunished.

4. SUMMARY

In connection with the fact that the "international community as a whole" does not exist as an independent subject of international law and it is only a legal fiction, representing the whole aggregate of states, the following question arises: Who on behalf of the international community as a whole has the right to call for the international legal responsibility of an offending state?

The only true answer to this question is the recognition of this right for the United Nations in the person of the UN Security Council, which, according to the UN Charter, is responsible for maintaining peace and security. Individual states do not have the right to act separately, independently determine the presence of the constituent elements of an international offence, determine the forms and scope of international legal responsibility and make corresponding demands. However, this does not deprive them of the right to initiate a discussion on the current situation in the UN.

Also it is necessary to understand to what kinds and forms of international legal responsibility the above-mentioned subjects have the right to call. Directly affected states, of course, have all the range of ways to influence the offender and have the right to call him to account in any kinds and forms in order to ensure full compensation for the damage suffered by them and to receive full satisfaction.

Considering that a state can violate the rights and legitimate interests of not only other states but also individuals (individuals and legal entities) and international organizations by their actions or inaction, they also need to be considered as entities entitled to call to account.

An individual, being the subject in whose interests the set of peremptory norms of international law, both conventional and contractual [11, 12], is accepted, has many rights, while having a limited number of ways to protect them. One of such ways of protection is the appeal for diplomatic protection, in which the victim is not a state itself, but a private person. Consequently, the beneficiary of the legal relationship of responsibility will also be a private person, in defense of whose interests the state has acted. However, the subject calling for accountability will be the state.

5. CONCLUSION

Thus, a state can be a subject calling for accountability not only in the event of causing harm directly to itself. The delineation of injured and interested states is important in practice, as it delineates the range of rights given to states in the process of calling the offender to account. The provisions on diplomatic protection give additional rights to the state, and additional guarantees to private individuals of this state. At the same time, if an offender commits an international crime, subjects entitled to call to account become obliged to do so.

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