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The Responsibility of States in Contemporary International Law

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Abstract: This article examines one of the most pressing and complex issues in modern international law, which requires its scientific development - the issue of state responsibility. A very difficult issue that arises when considering liability for environmental damage is the issue of state fault, one of the most controversial in the doctrine of general international law, especially in international law on state liability for environmental damage.

Keywords: responsibility of states; loss, international law; environment; responsibility; perceived guilt

1. Introduction

The issue of international liability when it comes to environmental pollution is one of the most difficult in international law and has no clear-cut solution in the doctrine or practice of interstate communication.

There is a change in the natural environment, a decrease in natural resources, and restoration processes are extremely expensive.

The destruction of the livelihoods that underlie human existence due to environmental degradation is no less a threat than a military one, as a result of which environmental costs are difficult to estimate. In many cases, the damage caused to nature is irreversible. Thus, the problem of the environment is characterized by a planetary scale.

Even the high efficiency of nature conservation at national level does not mean a complete solution to the problem of ensuring environmental protection and the rational use of natural resources on the planet. The World Ocean, Antarctica, Space and other natural resources, which are heavily exploited and exposed to the influence of the world community, remain outside the limits of national jurisdiction. In addition, in the process of economic and other activities on their territory, states have a detrimental effect on the environment of neighboring states and international territories.

The survival of humanity depends on its solution. Success can only be achieved as a result of active cooperation between countries.

The cause of damage to the environment can be expressed by the implementation of any act that causes damage to health, human living conditions and any object of the natural environment.

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Thus, there has been damage to the natural environment, such as pollution, radiation, noise, explosions, vibrations, other energy, floods, fires, earthquakes, sand debris, other environmental calamities or other damage to human health and living conditions, natural resources and ecosystems as a result of any direct or indirect human impact on the natural environment.

For the emergence of international legal liability, the harmful consequences of the activities must go beyond the jurisdiction of the State carrying out such activities. That is, the damage should be cross-border in nature. Environmental damage is cross-border when the act, as a result of which it occurs, is committed in the territory of a State and the damage is caused in the territory outside the jurisdiction or control of that State (Bowman & Boyle, 2002).

The concept of liability emerged and developed in domestic law with the commission of the crime. The concept of liability for damages caused by legal activity that is associated with increased danger is relatively new but is recognized in most legal systems around the world. However, different legal systems use different concepts as a basis for this concept, such as "perceived guilt", "risk, "dangerous activity" and so on. But it is clear that liability for damages caused by legal activities is a general principle, its understanding and wording are similar, despite the difference in the specific application of this principle in different states.

2. Analysis of the Sources of International Law

An analysis of the sources of international law gives reason to believe that in modern international law a new principle is formed - the principle of protection of the human environment and also in international space law, the principle of protection of space and environment has emerged since the establishment of international space law.

The essential content of the international legal principle for the protection of the human environment and space is that the activities carried out by a State under its jurisdiction or control in the use and exploration of outer space should not prejudice the environment of other States and their interests in areas outside actions of the national court (Дубровник, 2018).

In our time, the degree of use and exploration of outer space by humanity is far from reaching this to strictly limit the limits of the responsibility of states for its actions on the pollution of outer space and specific space bodies. To date, the international community has focused only on the interaction of space exploration and environmental protection, i.e. humanity uses various positive conditions to protect the terrestrial environment that space practice offers to limit or prevent negative consequences on the terrestrial environment in the process of space exploration. In short, the protection of human space eliminates the real and potential threat from the space exploration process.

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Of course, the issue of state responsibility is one of the most urgent and complex in modern international law and requires its scientific development. The Stockholm Declaration explicitly states that "States shall cooperate in further developing international law on liability and compensation for victims of pollution and other environmental damage caused by the activities of those States under their jurisdiction or control over areas outside their jurisdiction... The adoption of preventive measures by states does not

yet serve as a guarantee against damage outside their borders. Such damage can occur both as a result of the imperfection of human knowledge about the relationships that exist in nature and its individual elements, as well as due to the impossibility of the states to coordinate sufficiently effective preventive measures due to the action of political factors. In the doctrine of international law, it is generally recognized that the liability of a State arises as a result of a violation of a rule of international law or, more specifically, of the obligations established by that rule, the international legal liability of a State arises in the event of a breach of obligations. Under international law (Sandrine, 2018) a State's international legal liability arises in the event of a breach of its obligations under international law. (Sandrine, 2018) a State's international legal liability arises in the event of a breach of its obligations under international law (Sandrine, 2018).

The issue of the responsibility of states to cause transnational damage to space and the terrestrial environment in the process of space activities, being part of a more general problem of international legal responsibility, has its own peculiarities. A particular difficulty is the insufficient development of the system of international environmental standards. In the international legal literature, there is no consensus on whether damage is an independent element of an international crime. However, there is no doubt that causing damage as a result of the impact on the natural environment of another state is one of the most important conditions for the emergence of the responsibility of the offending state. More, such damages will almost always have a material expression and will have an economic character. Ordinary, unfavorable "and be" serious "or" substantial (OECD, 2012).

It is known that the nature and extent of the damages depend on the types, forms and scope of liability of the State which committed an error. Therefore, the main type of liability for damage to the environment is liability, usually expressed, liability to correct the damage caused, ie to restore the situation that existed before the infringement or, if this is not possible, to compensate for the damage suffered by the injured state in the doctrine of general international law, especially in international space law.

The important principles of liability for environmental damage caused by legal activities in international law are the principles of the Stockholm Declaration of 1972 and the Rio Declaration of 1992. In these documents, states should cooperate in the further development of international law in relation to liability and compensation issues for the harmful consequences of environmental damage caused by activities under their jurisdiction or control in relation to areas outside their jurisdiction (International Court of Justice, 2010).

In 1969, an international convention on civil liability for damage caused by oil pollution was adopted. This convention addresses 4 important issues:

- Removing legal obstacles for coastal states to obtain adequate compensation;
- Harmonization of a liability regime, which has so far been based on some general provisions of tort law;
- Ensuring that the source of pollution pays adequate compensation for the damage caused;
- Allocation of costs in the light of the 1957 Convention on the Limitation of Liability of Ship-owners.

3. Results and Discussions

Because of the analysis of the relevant international legal norms, the following main features of the liability regime for environmental damage caused by legal activities can be highlighted:

The operator is obliged to carry out a permanent insurance of its activities or to offer other guarantees to cover the maximum compensation in case of damages;

The State of origin is obliged to respect the principle of non-discrimination;

Matters which are not directly governed by international legal treaties should be governed by national law and should not contravene the rules of international law;

Judgments of a court of a State must have equal force in the territory under the jurisdiction of another State.

However, in order to prevent or compensate for the damage caused, it is necessary to find out who is responsible for causing such damage. The responsibility lies with the person who controlled the activity, as a result of which the damage was caused.

In accordance with international space law, legal persons and natural persons are recognized as liable for damage caused by environmental pollution. However, these people may sometimes be unable to provide adequate financial compensation for the damage caused by pollution.

To this end, international agreements on civil liability for damage caused by pollution should include rules obliging the State to guarantee compensation for damage caused by pollution caused by legal or natural persons of nationality or belonging to that State, up to the limits established by the agreement. States should have the right, introduced in an international treaty, to take protective measures in areas beyond the limits of their national jurisdiction to prevent pollution of their territory, provided that such measures do not exceed the reasonable limits required to achieve this goal.

According to the rules of international law and international space law, states are obliged to adopt national legislation on the prevention of environmental pollution, taking into account existing treaties, as well as the decisions and recommendations of the competent international organizations in this field. In this regard, it would be very useful to develop a unified framework for such legislation.

In general international and space law, it is necessary to intensify the process of development and adoption by states of universal technical norms and rules which establish optimal criteria for the reliability of the design of technical means, as a result of accidents from which environmental pollution may arise, Equally important is the development and adoption by states of optimal rules and standards to ensure the elimination of harmful agents in the environment and space in safe quantities, in other words, so that such disposal does not have the nature of the pollution (International Law for Environmental Damage, 1997).

Of great importance for the successful solution of the problem of space and environmental pollution prevention is the control by the states over the correct implementation of the norms and regulations that forbid the pollution of space and the environment, as well as the control over the level of its pollution. Such control by states is becoming particularly important in areas that go beyond national jurisdiction. The need for such control has led to the development of special international agreements and the adoption of appropriate decisions by a number of international organizations.

The next important issue is the issue of the legal force of the judgment. The 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Dangerous

and Harmful Substances by Sea provides an exception to the rule on the impossibility of reviewing a judgment which has entered into force. Thus, 'any judgment shall be recognized in any Member State unless the decision was taken as a result of fraud or the defendant was not notified within a reasonable time and was not given the opportunity to defend his case in court.

Thus, the main precondition for the international legal liability of a state is the ability to choose a certain behavior option in objectively determined situations and to be responsible for the choice.

Today, the concept of responsibility is used in 2 ways. The term "liability" means liability for breach of international legal obligations, i.e. liability for illegal acts. This liability arises in the event of a violation of the rule of law. The term "liability" means liability.

The division of responsibilities into primary and secondary indicates a significant difference in terms of "responsibility" and "responsibility". If the damage was caused as a result of the consequences which the State should have prevented, such a State may be released from liability for unlawful actions (liability) if it proves that it has taken all possible measures to prevent the consequences. However, in this case, the state is not exempt from liability and will be obliged to compensate the damage caused (International Court of Justice, 2010).

The real basis of the responsibility of the states for the damages caused by legal actions is: a) the event; b) damage, and c) a causal relationship between them.

The event is associated with the legal behavior of the state, causing damage to another state.

The damages caused by the event can only be material. The event, which underlies the liability for the damages caused by the legal activity, causes material damages to the injured state. However, it does not violate the intangible interests of the state, which are protected by law. By virtue of this, the significance of liability for such damage consists in compensating for material damage and is not a consequence of a violation of the international legal order. It is compensatory in nature.

Special forms of liability for damages resulting from legal actions may be monetary compensation, services, technical assistance and the provision of different types of material values, etc.

Unlike liability for a crime, liability for damages caused by a legal activity fulfills a stimulus function, the nature and purpose of which significantly differentiate it from the preventive function performed by liability for a crime.

In our view, international legal protection of the environment in the process of space exploration should include a set of rules governing relations between states in the process of using the natural environment (space, atmospheric and terrestrial environment), as well as a set of rules that regulates relations between states on environmental management in the process of space exploration.

Activities that lead to harmful damage can be completely banned. This category includes some types of nuclear tests in the atmosphere, space and underwater. The reason for banning such activities is the extent of the harmful consequences arising from its implementation.

Activities harmful to another state may be carried out:

In the territorial jurisdiction or control of the state carrying out this activity or outside them;

On a common site, and the damage could be caused to another state, either on a common site or in the territorial jurisdiction or control of the affected state.

Environmental damage caused by activities that are not normally associated with risks, possibly as a result of unexpected events. Deterioration of the environment is also possible as a result of the normal course of business.

Given the current magnitude and intensity of anthropogenic impact on the environment, the concept of liability for a crime cannot always serve as an appropriate legal means of securing environmental interests. In this case, the damage to the environment remains. Consequently, a more flexible concept of liability for environmental damage is needed.

Recently, attention, both nationally and internationally, has focused on the concept of liability for damages caused by legitimate activities. In the literature, such a responsibility is called no-fault, strict, absolute, objective, compensatory liability. These concepts have their own characteristics, however, in fact, they are close to each other. The emphasis on this type of responsibility is due to the fact that (Дубровник, 2018):

Manufacturing processes have become more technically complex. It is therefore becoming increasingly difficult to demonstrate that the damage resulting from such activities is the result of negligence. Thus, it becomes necessary to relieve the applicant of the burden of proving the guilt of the defendant;

The damage caused by some types of activities can be significant and the consequences can be very serious;

When it is known that responsibility for environmental damage will have to be assumed, it can be assumed that additional precautions will be taken.

Thus, the concept of risk is of great importance for the concept of liability for damage caused by legal activity. This concept was formulated by the Organization for Economic Cooperation and Development.

The risk is the introduction by a person into the environment of substances or energy that lead to such destructive consequences that, by their nature, pose a threat to human health, harm living resources and ecosystems and create barriers or obstacles to recreational use and other legal uses of the environment.

The UN Commission on International Law stressed that the prevention of transboundary environmental damage should be carried out in accordance with the following conditions;

In most states, before starting to carry out risk-related activities, the operator is obliged to obtain the appropriate permission from the state authorities to carry out such activities;

Before obtaining an authorization, the state determines the degree and nature of the risk associated with the activity, including the impact on people, property, the environment, both inside and outside the state.

The status of the risk-related activity must provide the necessary technical and other information to States that may suffer cross-border damage as a result of the activity;

States of origin and countries which may suffer cross-border damage should hold joint consultations in order to take the necessary measures to prevent or minimize damage and to work together in this direction; In any case, the origin of the risk-related activity is obliged to take all necessary measures to prevent and minimize cross-border damage. Violation of this obligation by the state entails liability for illegal actions.

Activities that involve the risk of causing damage to the environment must have a physical quality, and its consequences must flow from that quality.

The International Commission of International Law has concluded that any type of human activity is associated with one or another degree of risk. It is impossible to quantify this risk. Therefore, it does not

make sense to create an exhaustive list of dangerous substances, the use of which is associated with one degree or another of risk. This conclusion can be drawn for two main reasons. First, there are 60,000 chemicals in the world, and it is impossible to know all the consequences of their use. Second, some substances, such as water, are not dangerous, but in some cases they can be dangerous.

4. Conclusions

Therefore, the list should be indicative, appear as an annex and complete the general definition of hazardous activities, which should be as detailed as possible.

Risk is the main component of dangerous activities. It refers to the probability that the harmful consequences will occur as a result of the related activity. The danger of a certain type of activity is determined by the degree of risk of damage and its amount.

Risk activities can be divided into 2 groups:

- Risk-related activities, i.e. activities that lead to an increased risk of causing cross-border damage;
- Activities with harmful consequences, i.e. activities that cause cross-border damage as a result of its normal implementation.

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