

INTERNATIONAL LEGAL ASPECTS OF ECONOMIC RESPONSIBILITIES OF STATES

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Abstract. *The subject* of the article is international legal aspects of economic responsibility of states. The aim of the article is to find an answer to the problematic issues of economic responsibility of states and its international legal aspects. Different concepts of economic responsibility are analyzed due to the lack of a unified approach to it both in economics and in related branches of law. It is noted that the institution of economic responsibility is designed to stabilize the relations of socio-economic development, the interests of participants in social exchange and to achieve the goals of sustainable development. From the international legal point of view of understanding economic responsibility, the state bears two types of responsibility – material (economic) and non-material (political). And international legal responsibility of the state is considered as an institution of the law of international responsibility. It is from this point of view the economic responsibility of the state is considered by international lawyers and specialists in the field of international relations. *The methodology* of the article is based on the fact that there are three basic mechanisms of liability – derivative of property rights, contracts, and torts. Contract law deals with breaches of duty, tort law deals with accidental or intentional injury to persons or property, and property law deals with misappropriation or interference with property rights. It is concluded that the state is the same economic entity in terms of economics as all equal economic entities. However, the applicability of the means of economic responsibility in the international legal aspect is complicated by the immunity of the state with regard to its property. Therefore, there are signs of liability not for all property, but only for that which has certain signs of applicability – use for commercial purposes, connection with the subject matter of the claim. In the aspect of economic responsibility, there is a distinction between immunity from jurisdiction and immunity from enforcement. The problem of differentiation of commercial and state property is outlined, attention is focused on the existence of certain categories of state property, the public nature of which is not in doubt and which are not considered possible for economic (property) responsibility for the conduct of diplomatic and consular activities of their missions, consulates, special missions, etc., whose immunity is enshrined in the Vienna Convention on Diplomatic Relations of 1961; military property, as well as property used for military purposes; property that is part of the cultural heritage of a foreign state or part of its archives, as well as property that is part of an exhibition of items of scientific, cultural or historical significance. It is also concluded that economic responsibility in international law is not always associated with the negative consequences of unlawful behavior, because it can also be applied as a result of lawful behavior, leading to the infliction of harm to other subjects. Thus, the economic responsibility of the state is on the verge of regulation of public and private law. This is its peculiarity and complexity of its application to the state.

Key words: economic responsibility, functions of responsibility, expropriation of property, state immunity, coercive measures, commercial property, public property.

JEL Classification: M14, P14

1. Introduction

In science there is no unified approach to the understanding of economic responsibility. As a rule, in the classical understanding economic responsibility refers to economic entities, whose choice of behavior with respect to the rational use of resources determines

the economic result as a set of key economic indicators, the so-called "independence". In this sense, the institute of economic responsibility is designed to stabilize the relations of socio-economic development, the interests of participants of social exchange and to achieve the goals of sustainable development. To this extent,

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economic responsibility can arise only in the process of implementation of property relations and is carried out through forms of socio-economic control and awareness of the responsibility of economic subjects.

Since economic responsibility is possible only with the realization of property rights, under socialism economic responsibility of subjects was never considered as an independent institution, but was considered only as an integral element of social responsibility, aligning the interests of economic subjects in the interests of society. In a market economy, economic responsibility is a form of social responsibility. The very public interest is to achieve economic stability; the state is not interested in the loss or decline of the taxpayer, employer, part of the state economy, etc. This was not always the case, though, because there was not always the conviction that the goal of economic activity was not just to make a profit. However, the relevant social framework – such as trade unions, social control, contributed to the development of the model of socially responsible business. Today, business entities, including states, among the basic principles of their activities are justice, utilitarianism, and respect for human rights, which is expressed in the obligation to take into account the interests of social groups (in the case of the domestic dimension) and the interests of other members of the international community (in the case of the international dimension).

The paper considers that the effective owner is a socially responsible organization that is economically responsible not only to its own formation, but also to other market participants. The formation of the foundations of the "new economy" and the acceleration of globalization at the beginning of the XXI century require a revision of the thesis of the responsible owner only within state borders, since the state in this sense is also an economic actor and also bears economic responsibility. Therefore, from another point of view, economic responsibility can mean providing economic benefits both for the region of origin of a particular good or service and for the region for which it is intended.

Another understanding of the economic responsibility of the state is based on the international legal point of view, according to which the state bears two types of responsibility – material (economic) and non-material (political). And international legal responsibility of the state is regarded as an institution of the law of international responsibility. It is from this point of view that the economic responsibility of the state is considered by international lawyers and specialists in the field of international relations.

Formation and development of international responsibility of states, understanding of the essence, grounds and consequences of which significantly

changed during the history of social development in parallel with the general humanization of international relations in the second half of the XIX century and in the first half of the XX century the topic of international responsibility of states began to be considered as one of the most important in the international context, directly connected with the formation of international law.

A prerequisite for effective implementation of the functions of international law is a developed and perfect system of international responsibility of subjects of international law, primarily states. But this extremely important area of international legal relations is characterized by the most contradictory achievements in the development of doctrine and practice.

State responsibility is central to international law because its underlying idea guarantees the effectiveness of international law. Nevertheless, the field of international responsibility requires detailed research in order to solve many theoretical discussions and practical problems related, in particular, to the determination of the grounds for holding states responsible, to the application and clarification of the circumstances precluding the offence, the use of forms of compensation, and especially to the peculiarities of the implementation of responsibility that causes harm. The lack of conceptual coverage and legal regulation of state responsibility under international law makes it necessary to address the issue of international state responsibility in order to develop agreed positions on controversial aspects and present a coherent concept of international legal responsibility.

2. Literature analysis

The constant development of the rules and principles of international responsibility calls for an in-depth analysis of the doctrinal developments concerning international responsibility and an understanding of the changes that have taken place to date in this area of international law. Foreign international legal doctrine devotes considerable attention to issues of international state responsibility, in particular by such specialists as A. Abbas, R. Ago, S. F. Amerasing, D. Antsilotti, E. Arechaga, R. R. Batrshin, B. Sh. Bellalova, F. O. Vertlib, S. Verhoeven, R. Wolfrum, K. O. Deikalo, D. Jinx, M. Evans, A. Seibert-Four, A. Cassese, M. W. Keshner, J. S. Kozheurov, B. Conforti, J. Crazhen, J. Crawford, D. B. Levin, I. I. Lukashuk, D. McGoldrick, F. Maxim, T. Nissel, A. Nollkamper, S. Olleson, A. Pellet, O. A. Proshina, R. Rothberg, T. Ruiz, M. Sassoli, M. Spinedi, D. M. Hager and others.

Problems of international legal responsibility of the state are reflected in the works of Ukrainian scientists: V. F. Antipenko, S. S. Andreichenko, M. O. Baimuratov,

Y. Y. Blazhevich, V. G. Butkevich, K. A. Vazhna, V. A. Vasilenko, V. N. Denisov, N. V. Dryomina-Volok, O. V. Zadorozhny, N. A. Zelinskaya, O. V. Malovatsky, L. D. Timchenko, G. O. Hristova and others.

It should be noted that most civil disputes involve liability. A defendant is liable if the law requires him or her to compensate the plaintiff for the harm caused. In jurisprudence, there are at least three purposes of liability law: to compensate victims, to deter wrongdoers, and to reduce risk. Economic theories, by contrast, tend to understand the law of liability as seeking the effectiveness of incentives and accepting risk.

3. Research methodology

There are three main mechanisms of liability – those arising from property rights, contracts, and torts. Contract law deals with breaches of duty, tort law deals with accidental or intentional damage to persons or property, and property law deals with misappropriation or interference with property rights.

From these mechanisms of application of international responsibility we can formulate its goals: deterrence of a potential offender (preventive function); promotion of the proper performance by the offender of his duties (law enforcement function); compensation to the injured party for the material and moral damage caused (compensatory function); impact on the future behavior of actors in the interest of the good faith performance of their duties (prevention and maintenance of law and order). State responsibility for internationally wrongful acts has the corrective function of international legal regulation, since it contributes to the restoration, strengthening and protection of the international legal order (Blazhevych, 2006).

There is no doubt that state responsibility is a fundamental principle of international law, stemming from the nature of the international legal system and the doctrines of state sovereignty and the equality of states (Shaw, 2003).

It should be noted that there are various points of view in the legal literature on the definition of legal relations arising as a result of internationally wrongful acts. There are three main positions on this issue. According to the first, the legal results of an internationally wrongful act are described on the basis that such results constitute a binding bilateral relationship arising between the offending state and the injured state, in which the obligation of the first state to provide reparation corresponds to the subjective right of the other state to claim reparation.

The other view is that the rule of law is coercive, and considers the authorization given to the injured State to impose coercive sanctions against the responsible State to be the primary legal consequence directly

derived from the wrongful act. According to the third, most accepted approach, the consequences of internationally wrongful acts cannot be limited to reparation or "sanctions" (Draft articles on the responsibility of states for internationally wrongful acts with comments on them, 2001).

The UN Commission on International Law has defined state responsibility as "all kinds of new legal relationships that may arise under international law as a result of the internationally wrongful act of a state, whether such relationships are limited to legal relationships between the perpetrator state that committed the wrongful act and the directly affected state, or they also extend to other subjects of international law, and whether they focus on the obligation of the guilty state to restore the rights of the affected State and to compensate it for the damage (losses) caused, or also cover the right of the affected state itself or of other subjects of international law to apply to the guilty state any sanction permitted under international law" (Yearbook of the International Law Commission, 1973).

The understanding of responsibility in international law has evolved with the emergence of international law as a whole, since responsibility is no longer confined to states and recognizes the legal personality of other subjects of international law; it has lost its conceptual unity as a result of the cessation of the recognition of harm as a condition of responsibility for violation.

The law must be upheld regardless of the consequences of the violation, and any violation entails liability, with the content of such liability and its specific consequences varying according to whether the damage was caused by such actions and according to the nature of the violation (Pellet, 2010).

In this regard, let us focus on the international legal aspects of the implementation of economic (material) responsibility of states. The issue of economic responsibility is closely related to the principle of state sovereignty and at the international level touches upon the problem of jurisdictional immunities of states, which agreed in 2004 to the UN Convention on Jurisdiction of States and their Property. Therefore, decisions on state liability, which are increasingly being made in civil cases where the defendant is a foreign state, to compensate for damage caused by the activities of the state and its officials in another state, face the problem of execution of these decisions, since most often the property of the state is under immunity from interference by persons and authorities in the territory of the receiving state. Thus, such issues are subject to ambiguous interpretation by courts, executive authorities of different states and require theoretical research and generalization.

4. Presentation of the main material

Thus, consider whether a foreign state's immunity includes immunity from coercive measures. In international agreements on state immunity and in the judicial and legislative practice of various countries, a limitation of a foreign state's jurisdictional immunity does not imply the automatic application of coercive measures (detention, arrest, recovery) against its property, since immunity from coercive measures and jurisdictional immunity are considered separate elements of the principle of immunity of a foreign state. Due to the immunity of the defendant state from coercive measures, individuals cannot protect their legal rights and interests, because the foreign state may refuse to enforce the court's decision.

Cases when it is possible to apply coercive measures to the property of a foreign state after a court decision are listed in Article 19 of the UN Convention on Jurisdictional Immunities of States and their Property of 2004, they are listed in the decision of the UN International Court of Justice in the case "On Jurisdictional Immunities of the State" on the application of Germany against Italy (with the participation of Greece). Immunity from execution was considered by the International Law Commission during the preparation of the draft articles to be the "last frontier" (Draft Articles on Jurisdictional Immunities of States and Their Property, with commentaries, 1991), since the question of its existence does not arise until the question of recognition of judicial immunity is considered and in the absence of such a decision against it.

In recognizing a foreign state's immunity from execution, states proceed either from the theory of absolute immunity or from the theory of limited immunity, assuming execution on state property used for commercial purposes. Moreover, while in some states it may be sufficient to declare that the property is not used for commercial purposes, in other states courts are increasingly requiring the foreign state to substantiate such a declaration, with verification of its authenticity already being considered a violation of state sovereignty (Kröll, 2015). The problems associated with the application of the jurisdictional immunity of a state are complicated by the fact that often interim measures and then enforcement actions in a foreign state affect primarily the "diplomatic real estate" of another state (it is the diplomatic real estate that is affected, for example, by the enforcement measures applied in France and Belgium in the case of former Yukos shareholders against the Russian Federation). In this regard, it should be noted that state property subject to such exceptions should be limited to that which is used for public nonprofit purposes.

The execution of a judgment in its territory against a foreign state is a form of jurisdiction, and the State is obliged to respect the jurisdictional immunity of the foreign respondent State, regardless of whether it was respected by the court that rendered the judgment. This was the conclusion reached by the International Court of Justice in the case "Jurisdictional Immunities of the State" on the application of Germany v. Italy (with the participation of Greece) (Jurisdictional Immunities of the State).

A foreign state's waiver of judicial immunity does not automatically entail a waiver of immunity from execution. This is justified by the fact that the property of the affected State located in the territory of another state may be necessary for State non-commercial purposes and therefore cannot be confiscated. This principle is now part of customary international law, despite differing views as to its content and the possibility of its limitation (Kröll). It is contained in Article 20 of the 2004 UN Convention: when consent to take coercive measures is required, consent to the exercise of jurisdiction by the court is not implied. The International Court of Justice has also stated that State immunity from coercive measures exists independently of judicial immunity and often applies in cases where the State is found not to have judicial immunity (Jurisdictional Immunities of the State).

However, the judicial and legislative practice of most States in applying coercive measures against foreign property is more restrained than in exercising jurisdiction at the trial stage. This is due to the fact that coercive measures against a foreign state constitute a more serious infringement of its sovereignty than the exercise of judicial jurisdiction, and may affect the essential interests of the foreign state, which may lead to various misunderstandings and deterioration of relations between states (Sinclair, 1980; Bouchez, 1979).

For this reason, many courts in various countries have recognized a foreign state's immunity from coercive measures, even though, under the principle of limited immunity, they have waived immunity from jurisdiction and initiated legal proceedings against the foreign state. For example, Belgian jurisprudence, which was one of the first to apply the principle of limited immunity by exercising jurisdiction over acts of *jure gestionis* of a foreign State, until 1951 recognized absolute immunity of foreign property from coercive measures (Verhoeven, 1979). The same can be said about the case law of the United States, Germany, Austria and France (For a detailed analysis of court cases).

At the same time, a tendency to limit a foreign state's immunity from coercive measures against its property is emerging and gradually intensifying in State practice, which is a natural and logical extension of the limitation of a foreign state's jurisdictional

immunity. Today, the limitations on a state's immunity from coercive measures are reflected in the case law of many states, in the legislation of several countries and in international agreements on the immunity of the state. However, in all the above cases, immunity from jurisdiction and immunity from coercive measures are considered as separate components of the general principle of immunity of a foreign state (The exception is the case law of Switzerland...).

Immunity of the property of a foreign State from enforcement action is a generally recognized principle. However, as in the case of jurisdictional immunity, in the course of many years of practice certain exceptions to this rule have been made, making it possible to apply coercive measures to the property of the foreign State in the event of its refusal to enforce a judicial decision. Without these exceptions, all efforts to ensure equal conditions for all participants in civil relations would be in vain.

First of all, measures to enforce the judgment can be applied in the case of voluntary consent of a foreign state to the implementation of coercive measures expressed in an international agreement, in a written treaty or in a statement on a particular case (Art. 23 of the European Convention on State Immunity, 1972). It should be noted that the mere consent of a foreign state to the exercise of jurisdiction does not mean its consent to the application of coercive measures to its property by court order (Art. 12 (3) of the English State Immunity Act). In other words, in order to apply measures to enforce or secure a court decision, the court must obtain the separate consent of the foreign state. This view was also expressed by Special Rapporteur S. Sucharitkul, who in his report to the International Law Commission stated: "A waiver of jurisdictional immunity does not mean consent to the enforcement of a claim. The court of the territorial state may decide to exercise jurisdiction over a foreign state on various grounds, such as the commercial nature of the claim, the consent of the foreign state, voluntary submission or waiver of immunity. However, the court will have to reconsider and examine its jurisdiction to enforce its decision..." (Crawford, 1981).

The last sentence of S. Sucharitkul's opinion quoted above brings the second reason for applying coercive measures to the property of a foreign state. Despite all the assertions that jurisdictional immunity and immunity from coercive measures are two separate elements of the principle of immunity of a foreign state, they share a common basis. Therefore, having named the basic criterion for limiting a foreign state's jurisdictional immunity, it is easy to assume that it is the basis for limiting a foreign state's property immunity from coercive measures. It is the criterion of commercial use of property.

To limit immunity from coercive measures, almost all of the above-mentioned international agreements and national laws, as well as judicial practice, use the criterion of the use of property for commercial purposes. The only exception is the European Convention on State Immunity of 1972, which prohibits coercive measures against foreign property without its consent (Article 23). However, the Convention obliges contracting states to recognize and enforce judgments rendered against them. If this condition is not met, the plaintiff is given the opportunity to appeal to the judicial authorities of the state against which the judgment was rendered. In addition, the Additional Protocol provides for the possibility of filing an action before a special European Court of State Immunity (Explanatory Report on the European Convention on State Immunity and the Additional Protocol).

Thus, the system established by the 1972 European Convention is based on the obligation of member states to voluntarily obey judgments rendered against them, and provides for a rather complicated procedure in case a state refuses to execute a judgment. Apparently, this is due to the restrained position of many countries in those years on the application of measures of enforcement of a judgment against a foreign state.

Application of coercive measures against property of foreign state, in particular state ships and cargoes on them, in case of their use for commercial purposes, is provided by Brussels Convention of 1926 on unification of some rules concerning immunity of state ships (Articles 1 and 2), Geneva Convention of 1958 on the High Seas (Articles 8 and 9), Geneva Convention of 1958 on Territorial Sea and Adjacent Areas (Articles 18-22), UN Convention on the Law of the Sea (Articles 28 (3), 32, 95, 96).

Limitations on immunity of foreign property from coercive measures based on the use of property for commercial purposes are provided for in the 2004 UN Convention on Jurisdictional Immunities of States and Their Property (Article 18) and in the foreign immunity laws of some states (American Foreign Immunity Act 1976).

At first glance, the simple formulation of the criterion for applying coercive measures to property in practice faces a rather difficult problem of its implementation, since in certain situations it is very difficult to distinguish objectively and accurately between commercial and non-commercial property. For example, what about a government bank account intended for government functions that was also used for commercial purposes? Can coercive measures be applied to government property, one part of which was used for commercial purposes and the other part for government purposes (so-called mixed funds or accounts)? Equally important is the question of

whether enforcement measures should apply to any foreign commercial property located in the territory of the court, or should enforcement of the judgment be limited to property directly related to the subject matter of the suit?

Despite the possible difficulties in some situations in distinguishing between commercial and state property, there are several categories of state property whose public nature is not in doubt by virtue of peremptory or customary norms of international law. These include:

(a) diplomatic and consular premises and other property of a State used for the diplomatic and consular activities of their missions, consulates, special missions, etc., whose immunity is set forth in the Vienna Convention on Diplomatic Relations of 1961 (Article 22(3)), the Vienna Convention on Consular Relations of 1963 (Article 31(4)), the Convention on Special Missions of 1969 (Article 25(3)). Immunity of this category of property, including bank accounts, is also provided for in Article 21(1)(a) of the 2004 Convention. The absence of a separate reference to the immunity of bank accounts of diplomatic and consular missions in the aforementioned conventions has led to contradictory court decisions;

(b) property of a military nature, as well as property used for military purposes. This includes the immunity of naval warships as well as government ships used for public purposes and other military property. Articles providing for immunity of the above property from coercive measures are contained in the 2004 UN Convention (Article 21(1)(b)) and in many national laws on immunity of a foreign state (Canadian Foreign State Immunity Act 1982);

(c) Unlike other state immunity instruments, the 2004 UN Convention distinguishes two additional categories of property to which coercive measures may not be applied: property "forming part of the cultural property of a foreign state or part of its archives" shall not be offered for sale (Article 21(1)(d)), and property "forming part of an exhibition of objects of scientific, cultural or historical importance" shall not be offered for sale (Article 21(1)(e)).

In all applicable national laws and in almost all international agreements on state immunity, as well as in the case law of many countries, coercive measures may be applied to foreign property intended for commercial use. However, there is a certain category of property for which there is no uniform approach, both in the jurisprudence of states and in the national laws on state immunity. The differences mainly concern the possibility of applying coercive measures to the bank accounts of diplomatic missions of a foreign state and the accounts of the central bank of a foreign state. In addition, States and jurists have expressed opposing views on the legality of the application by the courts of coercive measures against any commercial

property of a foreign state located in the territory of the forum state, regardless of the subject matter of the claim.

Therefore, the question arises when implementing the economic responsibility of the state by enforcing a judgment rendered against one state on the territory of another state, about the categories of property that can be foreclosed. In this connection, we consider it appropriate to take into account the provisions of the UN Convention on Jurisdictional Immunities of States and their Property of 2004 as provisions of customary international law. Of particular importance from the point of view of protecting the interests of a foreign state are those categories of state property that are considered to be used or intended to be used exclusively for non-commercial purposes, and therefore cannot be compulsorily disposed of.

First, it concerns the bank accounts of diplomatic missions. In the judicial practice of a number of countries in different years there have been attempts to seize the bank accounts of foreign diplomatic missions. The main reason for such attempts was the absence of an express provision in the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963 on immunity of bank accounts of diplomatic and consular missions. Recall that Article 22(3) of the 1961 Convention provides for inviolability of diplomatic missions, immunity of missionary property and means of transport, correspondence and archives, stating that they "shall enjoy immunity from search, requisition, seizure and execution".

In 1977, the German Constitutional Court, discussing the possibility of seizing the Philippine Embassy's bank account, ruled that international law prohibited any coercive measures against the embassy's bank account (Case X v. Rep. of Philippines, 1977). According to the Court, although Article 22(3) of the Vienna Convention of 1961 does not specifically mention the immunity of the bank account of a diplomatic mission, coercive measures are also inadmissible in relation to the bank account of a diplomatic mission, since its use is necessary for the unimpeded exercise of the diplomatic functions of the mission.

A similar decision was made in 1983 by the Court of First Instance in England in the case of *Alcom v. Colombia*. The court based its decision on the fact that the embassy's bank account was used for non-commercial purposes, namely to ensure its operation, even if part of it was used in commercial transactions to purchase goods and services for the embassy (Fox, 1985).

That decision was reviewed by the Court of Appeals, which based its decision to take enforcement action on the Colombian Embassy bank account on the fact that some of the money in the account was

used in commercial transactions, and therefore, within that portion of the money, according to the court, enforcement action could have been taken (Fox, 1985). The court held that the use of the money was essentially a commercial transaction. For the court in this case, the nature of the embassy's use of the bank account was prioritized.

A similar decision was made by a U.S. court in 1980, according to which enforcement measures could be imposed on the accounts of foreign states (including diplomatic missions), some of which were used for commercial purposes, because otherwise the state would have the opportunity to use some money for commercial purposes, at the right time referring to the partial use of the bank account for government purposes (Case of Birch Shipping C. v. Embassy of UR of Tanzania, 1980).

Although the courts have largely refused to enforce the bank accounts of diplomatic missions (X c. Rep. of Philippines, 1977), however, due to gaps in the Vienna Convention of 1961, the bank accounts of diplomatic missions have not always remained intact.

Therefore, the inclusion in the UN Convention on jurisdictional immunities of a provision providing for immunity of bank accounts of diplomatic and consular missions is justified, as it eliminates double interpretation of Article 22 (3) of the Vienna Convention on Diplomatic Relations and ensures unhindered implementation of diplomatic or consular missions in the host country.

Second, the ownership of central banks. As is well known, foreign accounts of central banks are used not only for government purposes, often states use them in commercial operations. The central bank is a public institution, and it would seem that coercive measures against central bank property should be applied depending on the purposes for which it is used. However, under the UK Immunity Act, for example, foreign central bank property enjoys complete immunity from coercion (Article 14 (4) of the English Act). The 1976 U.S. law also provides for immunity from the property of a foreign central bank "held in an account in the name of that bank" (Section 1611(b)). According to the commentary to the Law, the application of coercive measures to the property of the central bank of a foreign state is possible in the case of the use of funds to finance commercial contracts of other state bodies, institutions and enterprises (See: commentary on Article 1611(b)). Canadian law limits the immunity of central bank accounts from enforcement action if the accounts are used for commercial purposes.

The International Law Commission, following the path of the English Act of 1978, has chosen the option of full immunity for central bank accounts, regardless of the purpose of their use, which, in our view, is not entirely justified. In particular, Article 21 (1)

(c) of the 2004 UN Convention prohibits coercive measures against the property of a central bank or other foreign financial institution. The Australian Law Reform Commission's view that British and American lawmakers, in prohibiting enforcement action against central bank property, were motivated primarily by economic interests, since London and New York are major global financial centers, is quite persuasive. And since Australia has no such interest, the Commission found no reason to grant a foreign central bank greater immunity than the foreign state itself. According to it, the property of central banks and other financial institutions of foreign states should be treated in the same way as the property of the foreign state itself for the purpose of coercive measures (See: The Law Reform Commission, Report N 24).

In other words, the use of coercive measures depends on the purposes for which the property of the central bank was used or intended to be used.

As far as case law is concerned, it should be noted that courts in various countries have taken enforcement action against the property of central banks when in their opinion the property was not being used for public purposes. For example, in the United Kingdom, before the Foreign Immunity Act came into force, the Court of Appeal ruled on two enforcement proceedings against the Central Bank of Nigeria, stating that the specific amounts were not used for government purposes, but to finance commercial transactions (Judgment of the Court of Appeal in *Trendtex Trading Corp. v. Central Bank of Nigeria*, 1977). Similar decisions were made in Germany (Case of the Central Bank of Nigeria, 1975), France (Case of *Englander v. Statni Banka Ceskoslovenska*, 1969), Switzerland (Case of the *Banque Centrale de la Rep. of Turkey v. Weston Comp. of Finance and Invest. SA*) and the United States (*The Weston Co. case de Finance et d'Investissement, SA v. La Rep. De l'Ecuador*, 1993).

This paper considers that Article 21(1)(c) of the 2004 UN Convention, by completely prohibiting the enforcement of central bank property, gives the latter unwarranted privileges, since it means extending immunity from enforcement measures also to money held in central bank accounts and used by the state in commercial transactions. However, given the specific functions of central banks, which are of particular importance to sovereign states, a balanced approach is necessary.

In the case of mixed use of foreign central bank accounts (i.e., using one part of the funds for commercial and the other for government purposes), it is probably necessary to limit immunity from enforcement to funds used for commercial purposes, because otherwise the foreign state, its agencies, institutions, and the central bank itself can always avoid enforcement action by partially using a

particular account for government purposes, thereby "saving" the rest of the funds used for commercial purposes from being enforced.

Third, the relationship between the commercial property of the foreign state and the subject matter of the action. Legislative and judicial practice lacks a uniform approach as to whether enforcement measures may be applied to any commercial property of a foreign state located in the territory of the court, or whether the enforcement of a judgment should be limited to the commercial property related to the subject matter of the suit.

The immigration laws of Great Britain, South Africa, Pakistan, Singapore, Canada, and Australia do not make enforcement action contingent on the connection between the subject matter of the action and the commercial property of the foreign state. Instead, they provide for enforcement action against any commercial property of a foreign state located in the territory of a state court and directly used or intended for commercial use¹. This means that the foreign state is responsible for all of its commercial property located in the territory of the forum state.

In contrast, under the U.S. Immunity Act (Section 1610(a)(2)) and the 2004 UN Convention (Section 19(1)(c)), commercial property can only be enforced if there is a nexus between the commercial property and the subject matter of the claim. In particular, Article 19(1)(c) of the 2004 UN Convention authorizes the use of coercive measures against property located in the forum state and "directly used or intended for use by a foreign state for commercial (non-state) purposes and having a connection with the subject matter of the action or with the institution or institution against which the proceedings are directed".

Although the United States Immunity Act of 1976, like the 2004 UN Convention, allows coercive measures to be applied only to commercial property of a foreign state related to the subject matter of the claim, after an amendment to the 1996 Act, Article 1610 (a) provides for the application of coercive measures in respect of any commercial property of a foreign state to enforce a judgment on a claim for damages resulting from acts related to "torture, extrajudicial killings, hostage-taking, air terrorism, as well as providing material assistance ... to such actions (AJIL, 1997)".

The amendment only partially affects U.S. law arising in litigation where the subject matter of the suit is not related to specific property of a foreign state. For

example, how does one find a connection between the subject matter of a claim and the commercial property of a foreign state in a suit brought by an individual for physical or property damage caused by a collision with the vehicle of a foreign diplomatic agent?

If the foreign state refuses to comply with the court's award of damages, enforcement of the judgment under the 2004 UN Convention and, in part, under U.S. law will be difficult because they require that the foreign state's commercial property be connected to the claim. The damages award will simply remain on paper, because it is impossible to establish a connection between the subject matter of the suit and the commercial property in this case because the latter is not involved in the particular situation.

In similar cases in countries where national law or jurisprudence does not require a mandatory connection between the subject matter of the action and the commercial property of the foreign state, enforcement of the judgment is quite possible because enforcement action will be taken against any commercial property of the foreign state located in the forum state.

Due to the fact that the requirement of a mandatory connection between the subject matter of the claim and the commercial property of a foreign state located in the state of the court prevents the enforcement of judicial decisions on claims for damages, as well as the view that the state represented by various government agencies, institutions, organizations, etc, which applies in a foreign territory certain acts of a commercial nature or causes injury to persons or entities must be liable for all of its commercial property located in the territory of the court, the paper believes that Article 19(c) of the 2004 UN Convention needs to be revised to eliminate the requirement that the commercial property must be connected to the subject matter of the action².

5. Conclusions

When considering the economic responsibility of the state, it should be remembered that from the perspective of private international law, the state is the same economic entity as all equal economic entities. However, the applicability of the means of economic responsibility in the international legal aspect is complicated by the immunity of the State in respect of its property. Therefore, there are peculiarities of liability not for all property, but only for that which

¹ Article 13 (4) of the English Law; Article 14 of the South African Law; Article 14 of the Pakistani Law; Article 15 of the Singapore Act; Article 11 of the Canadian Law; Art. 32 of the Australian Law.

² This view is shared, in particular, by Morris V. The International Law Commission's Draft Convention on the Jurisdictional Immunities of States and Their Property // The Denver Journal of International Law and Policy. V. 17. 1988–89; Trooboff PD Foreign State Immunity. Course report. VV 1986. P. 370–372; Coad W. D. The Canadian State Immunity Act // Law and Policy in International Law. V. 14: one thousand one hundred and ninety-seven. 1983. P. 1209; Schreuer CH State Immunity: Some Recent Developments. Cambridge, 1988. P. 128–132; The Law Reform Commission. Report N 24. Foreign State Immunity. Canberra, 1984. P. 76.

has certain signs of applicability – use for commercial purposes, connection with the subject matter of the claim. It is also important to remember the difference between jurisdictional and executive immunity. Given the difficulties associated with the separation of commercial and state property, there remain several categories of state property, the public nature of which is not in doubt and to which economic (property) liability cannot be applied – diplomatic and consular premises and other state property that is used for diplomatic and consular activities of their missions, consulates, special missions, etc., whose immunity is enshrined in the Vienna Convention on Diplomatic Relations of 1961; military property,

as well as property used for military purposes; property that is part of the cultural heritage of a foreign state or part of its archives, and property that is part of an exhibition of items of scientific, cultural or historical significance.

In addition, economic responsibility in international law is not always associated with the negative consequences of unlawful behavior, because it can also be applied as a result of lawful behavior, causing harm to other subjects. Thus, the economic responsibility of the state is on the verge of regulation of public and private law. This is its peculiarity and complexity of its application to the state.

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- An exception is the case law of Switzerland, whose courts did not distinguish between the two types of immunity, but considered that immunity from enforcement measures did not differ in nature from jurisdictional immunity. See Opinion of the Swiss Government on this issue, as described in the Special Rapporteur's second report on "Jurisdictional immunities of States and their property". Report (second) of the Special Rapporteur of the ILC at its 40th session // *Doc. A / CN.4 / 422*. P. 37. One of the Federal Court's judgments states: immunity from enforcement measures, unless coercive measures relate to property intended to carry out sovereign actions." *Arab Rep. of Egypt v. Cinetelevision International*, 1979 (ILR 65, 1984. P. 425–430).
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