DOI: https://doi.org/10.30525/2256-0742/2024-10-3-78-88

TOPICAL ISSUES OF DOCTRINE AND COURT PRACTICE ON THE INTERNATIONAL RESPONSIBILITY OF THE STATE FOR THE ACTIVITIES OF FOREIGN NON-STATE ARMED GROUPS

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Abstract. The article examines the topical issues of doctrine and international judicial practice regarding the determination of the State's responsibility for international wrongful acts, in particular, those related to the activities of foreign non-State armed groups. The authors analyse the international legal framework of State responsibility for international wrongful acts, as well as individual criminal liability of individuals. The paper substantiates a set of economic and legal instruments for the implementation of international responsibility (reparations, satisfaction, restitution, economic sanctions) as a mechanism for ensuring compliance with international law by States. The study identifies the legal positions of the International Court of Justice, the International Criminal Court, the International Criminal Tribunal for the former Yugoslavia, the European Court of Human Rights and other international judicial institutions on the application of the concepts of "effective control" and "overall control" in judicial practice, as well as problematic issues of law enforcement.

Keywords: international law, international court, state, control, foreign entities, jurisdiction, international crime, economic and legal liability, restitution, economic sanctions, reparations, satisfaction.

JEL Classification: K33, F51

1. Introduction

In the absence of full comprehensive international legal regulation of the responsibility of States and international intergovernmental organisations for internationally wrongful acts, insufficient clarity of conventional regulation of these issues, especially in the context of violations of universal norms of international law that have the character of jus cogens, the doctrine and practice of international judicial bodies, in particular in determining the criteria for the responsibility of States and/or international intergovernmental organisations for the acts of non-State actors under their control, are of particular importance. This is of paramount importance, primarily in determining the criteria for the responsibility of States and international intergovernmental organisations for internationally wrongful acts, as well as in resolving the problems of qualifying international crimes that may be committed in international and non-international armed conflicts related to the activities of both national or acting under the mandate of the relevant international intergovernmental organisation, and non-State armed groups, including foreign ones. In these circumstances, there may be a certain connection between an international wrongful act of a State or an international intergovernmental organisation and an international crime of an individual, especially in the case of an international crime committed by an official of a State or an international intergovernmental organisation. At the same time, it is important to distinguish between two regimes of responsibility – the international legal responsibility of a State or international legal responsibility of an international intergovernmental

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organisation and the international criminal responsibility of an individual for acts of concern to the entire international community.

This issue is extremely relevant for Ukraine, which, in the context of the armed aggression of the Russian Federation, has suffered large-scale and irreparable violations in such fundamental areas as the maintenance of peace and international security, ensuring territorial integrity and inviolability of borders, protection of human and civil rights, and is actively using international judicial mechanisms to protect its national interests. In particular, on 31 January 2024, the International Court of Justice ruled on the merits of the case of Ukraine v. the Russian Federation regarding the application of the International Convention for the Suppression of the Financing of Terrorism and the International Convention on the Elimination of All Forms of Racial Discrimination. The Court ruled that Russia had violated both international treaties.

State of the research. The doctrine of international law has devoted numerous scholarly works to the issues of qualification of the responsibility of a State and an international intergovernmental organisation for international wrongful acts, including those related to wars and other armed conflicts. This issue is the subject of constant attention of the UN and its International Law Commission, other international intergovernmental organisations and States, and is reflected in the scientific research of J. Crawford, J.-F. Quéguiner, R. Kolb, T. Meron, J. G. Stewart, G. Zyberi, A. Cullen, S. Vite´ and other scientists. In the national international legal science, this issue is represented by the research of S. S. Andreichenko, V. P. Bazov, V. A. Vasylenko, M. M. Hnatovskyi and others. Given the lack of clarity of conventional wording in the issues of qualifying the responsibility of a State and an international intergovernmental organisation for the acts of non-State actors, the practice of international judicial institutions is of particular importance. However, the practice of these judicial institutions in the application of international criminal law and international humanitarian law is enriched with new legal positions, and many problems of qualification of certain situations in connection with wars and other armed conflicts still remain without clear legal regulation. Among the issues that require consideration are those pertaining to the qualification of responsibility on the part of a State or an international intergovernmental organisation for international illegal acts perpetrated by non-State entities, and the qualification of international crimes that may be committed by national and foreign non-State actors.

Purpose and objectives of the study. The purpose of the article is to identify the specific features of qualification of the responsibility of a State or an international intergovernmental organisation for international wrongful acts, in particular, those related to the activities of national and foreign non-State actors in armed conflicts, in the doctrine and practice of international judicial institutions. With this goal in mind, the study has the following objectives: a) to determine the international legal framework of responsibility of a State or an international intergovernmental organisation for an international offence, and the normative basis for qualifying international crimes related primarily to armed conflicts; b) to study the concepts used by international justice bodies to qualify the international legal responsibility of a State or an international intergovernmental organisation, as well as the international individual criminal responsibility of an individual; c) to find out the specifics of qualification of international crimes that may be committed by national and foreign non-State actors, primarily in the context of war and other armed conflicts.

A number of methods form the *methodological basis* for the study of international legal regulation of the responsibility of a State or an international intergovernmental organisation for international wrongful acts, including those related to the activities of non-State entities, and the qualification of international crimes related to the activities of national and foreign non-State actors in armed conflicts, as well as for the study of the doctrine and practice of international judicial institutions in this area of legal relations: historical and legal, comparative legal, systemic, formal legal and dialectical.

2. Presentation of the Main Provisions

The principle of good faith and binding nature of international treaties and obligations (*pacta sunt servanda*) is enshrined in Article 2(2) of the UN Charter (The Charter of the United Nations and the Statute of the International Court of Justice of 26.06.1945) and was, in particular, enshrined as a *jus cogens* norm in the Vienna Convention on the Law of Treaties of May 23, 1969 (The Vienna Convention on the Law of Treaties of May 23, 1969). In view of this, there is a generally recognised principle in international law that States are responsible for wrongful acts. International legal responsibility is a legal relationship that has arisen as a result of an international wrongful act, consisting of an obligation to restore the previous state or compensation, which may be accompanied by coercive actions. Depending on the seriousness of the wrongful act, its consequences differ, for example, for acts of aggression, genocide and violation of norms (*erga omnes*), the State is responsible to the entire international community. Responsibility in international law should be understood as a legal relationship arising from the commission of an international wrongful act, the

content of which is to restore the state that existed before the international offence.

In the doctrine, legal relations of State responsibility for international wrongful acts are divided into primary and secondary, where primary relations are those related to the State's compliance with international law, and secondary relations are those arising after the State commits a wrongful act and cover legal relations of responsibility of such a State. The liability of a subject of international law, such as a State, as well as other subjects of international law, arises from the breach of an international obligation, regardless of the origin of the obligation. International obligations may be established by a customary rule of international law, a provision of a valid international treaty, a decision of relevant international organisations or international bodies, such as a resolution of the UN Security Council, or general principles of law. Subjects of international law can also assume international obligations by virtue of a relevant unilateral act, which is confirmed by the practice of the International Court of Justice (1974).

Article 1 of the 2001 Articles on the Responsibility of States for Internationally Wrongful Acts, which were adopted as an annex to UN General Assembly resolution 56/83, states: "Every internationally wrongful act committed by a subject of international law entails the international responsibility of that State" (UN. General Assembly). Thus, the UN International Law Commission formulated the general, customary and treaty principle of international legal responsibility. At the same time, an internationally wrongful act of a State may be one or more acts in different forms. Article 2 of the Articles on the Responsibility of States for Internationally Wrongful Acts defines the elements of an internationally wrongful act of a State, i.e., the conditions necessary to establish the existence of an internationally wrongful act of a State. It is noted that an internationally wrongful act of a State occurs when any behaviour constituting an act or omission a) is attributable to the State under international law; and b) constitutes a breach of an international legal obligation of that State. Thus, a State's unlawful conduct may constitute both an active act and an inaction of the State concerned.

The necessary conditions for establishing the existence of an international offence determine the grounds for the international responsibility of a State. A distinction is made between regulatory (legal) and factual (legal and factual) grounds. Normative legal grounds are understood as legally binding international legal acts, in accordance with the requirements of which certain conduct of a State is qualified as an international offence. Important in this case is the provision of Article 3 of the Articles on the Responsibility of States for Internationally Wrongful Acts, which states that "the characterisation of a State act as internationally wrongful is determined by international law. Such qualification shall not be affected by the qualification of the act as lawful under domestic law" (UN General Assembly). The UN International Law Commission has pointed out that a State act must be qualified as internationally wrongful if it violates an international obligation, even if this act does not contradict the internal law of the State, and even if, according to this internal law, the State must act in this way. The actual basis for the international responsibility of the State is an international violation, an act of the State, which is expressed in the action or inaction of its bodies or officials that violate international legal obligations.

The issue of attribution to a State of a breach of an international obligation is reflected in Chapter II of the Articles on State Responsibility. In particular, the conduct of any organ of the State is considered as an act of the State concerned, regardless of whether such organ exercises legislative, executive, judicial or any other functions, and regardless of whether it is a central or local governmental body. The State must also be held responsible for the acts of persons or entities exercising elements of State power, or the acts of persons or groups of persons who, in the commission of an internationally wrongful act, acted under the direction or control of the State, or the acts of persons or groups of persons who actually exercised elements of State power in the absence of official State authorities or in the situation where such authorities are unable to exercise their functions. The State should also be held responsible for any acts not attributable to the State by the relevant legal norms, but which the State has recognised as its own acts (UN. General Assembly). Thus, in accordance with the provisions of Article 2 of the Articles on State Responsibility for Internationally Wrongful Acts, the necessary elements for establishing the existence of an internationally wrongful act of a State include attribution to the State of conduct inconsistent with its international legal obligations. At the same time, the documents of the UN International Law Commission in English and French use the term "attribution", which allows the use of the term "attribution" in national law-making and law enforcement practice, which most fully reflects the essence and characteristic properties of such a legal phenomenon as recognition of the conduct of certain State and non-State actors as a relevant State act, including for the purpose of deciding on the issue of prosecution in case of an internationally wrongful act.

It should be noted that the State is responsible for the actions of any of its organs, regardless of their status in the State system, as long as they act in their official capacity. The responsibility of a country also includes the actions of individuals or groups of people acting under the control of that country.

The State must make full reparation for the damage caused by the wrongful act. The responsible State is obliged to make full reparation for the damage caused by an internationally wrongful act. Damage caused by an internationally wrongful act may be compensated in the form of satisfaction; restitution; reparation (compensation).

The international legal doctrine and practice of States have formed a terminological definition of some forms of international economic and legal instruments (restitution, reparation, satisfaction, reprisals, etc.). This terminology has not lost its significance in modern conditions. When analysing the economic and legal instruments applied for an international offence committed by a State, it becomes clear that such offences include less serious and more serious economic rights, with different accompanying circumstances. This ultimately determines which instruments are legitimate in each case under international law against the State that committed the relevant offence.

Satisfaction is the provision of gratification to the injured State through public apologies, punishment of guilty officials, etc., usually involving compensation for damage that cannot be assessed financially, intangible damage (e.g., insult to the national flag, violation of diplomatic immunity) or damage to national dignity. For example, damage to the national flag is often caused by a breach of obligations, regardless of its material consequences.

In order to avoid abuses that violate the principle of sovereign equality, it is determined that compensation should be proportionate to the damage and not take the form of humiliation of the responsible State.

Thus, when Germany was divided between the victorious forces, all German power belonged to the Control Council. The limitation of sovereignty was not only the loss of German territory, but also the elimination of all institutions that exercised supreme power. The armed forces were forcibly disbanded, and the State apparatus was purged. The entire political system of Germany was dismantled (Deutsche Teilung - Deutsche Einheit).

Reparations are monetary or other material compensation for damage, including lost profits. The responsible State is obliged to compensate for the damage caused by the unlawful act, but cannot compensate by restoring the original state. Compensation is a supplement to the violated situation and its purpose is to compensate for the damage in full.

Financial damage includes damage caused to the country itself, its citizens and companies. The State has the right to claim compensation for damage to the health of its officials and citizens. Not only material losses, but also non-pecuniary damage, such as loss of relatives and friends, pain and suffering, and humiliation, are compensated. In principle, restoration of the original state is a priority.

Thus, Germany had to compensate for the damage it caused during the Second World War. The repayment claim of 22,200 billion USD was reduced to 220 billion USD (Deutsche Teilung – Deutsche Einheit).

The following types of compensation, in addition to cash, were also applied:
– Dismantling of industrial enterprises;
– certain equipment and products of companies that continued to operate were sent to the affected countries;
– the use of German military labour;
– transferring part of Germany's territory to the affected countries;
– compensation claims (payment of funds to citizens who suffered especially during the Second World War, for example, in concentration camps).

Restitution means restoration to the extent possible of the financial situation that existed before the offence was committed.

Restitution can take the following forms:
– Restoration of destroyed property;
– regaining property or territory.

There is the concept of "legal restitution"; such restitution requires a change in the legal position in the legal system of the responsible State or in the legal relationship with the injured State, such as the repeal or amendment of a particular law or court decision.

The forms of implementation of economic and legal liability depend on the type of liability. Historically, the issue of economic sanctions in international economic law has been considered without distinguishing between the categories of international and State crimes. As a rule, when the situation in world politics escalates and relations between countries come to a standstill, the leadership of States may resort to the use of the most powerful tool of influence on the international position of a country – economic sanctions. A State subject to sanctions usually faces restrictions on imports and exports of goods and investments. Almost always, these restrictions result in stagnant economic growth and a decline in the development of the national economy. Based on the principle of interconnectedness of national markets and international division of labour, sanctions are a kind of external "shock" and in certain cases can unbalance the economic development of countries subject to restrictive measures, forcing their governments to make political concessions. In addition, sanctions are a tool for demonstrating "soft power" and enable the initiating countries to achieve their goals without the use of armed force.

Today, the Russian Federation, which is recognised by the international community as an aggressor country, is subject to a broad system of economic and legal

sanctions in connection with the war in Ukraine in order to:
– Weaken the Russian economy and national currency;
– change the country's position on the war and its own international policy (Die EU-Sanktionen gegen Russland im Detail).

The current economic situation in the country largely depends on the macroeconomic climate. It should be noted that the consequences of the economic and legal sanctions imposed against the Russian Federation today extend to many types of activity. Today, the Russian Federation is experiencing a shortage of food products, such as cheeses, sausages, fruits, medicines, fish and seafood, spare parts and components, and household chemicals. Even if certain types of goods are available, they are expensive. Today, the share of imported products exceeds 80% of the Russian pharmaceutical market. Another problem that Russia has already faced is the change in relations in the gas industry, which also has a significant impact on its economic situation, as economic prosperity and foreign investment inflows into the country are directly dependent on gas consumption and its supply to the market. The impact of the sanctions has not escaped the monetary policy of the Russian Federation, especially the depreciation of its national currency. The reasons for the decline were undoubtedly, first of all, the decline in oil prices, and secondly, the same sanctions, embargoes and various economic bans. The sanctions had a particularly serious impact on the banking system and foreign accounts of the aggressor country. Prohibitory measures were introduced against Russian banks, and assets of Russian private investors and State-owned companies were frozen. Thus, it should be noted that after the imposition of economic sanctions, Russia's foreign trade turnover experienced a significant drop. This happened because both exports and imports declined significantly, which was caused by the imposition of sanctions by both Western countries and Russia's retaliatory measures (Die EU-Sanktionen gegen Russland im Detail).

The United States and more than 30 allies and partners around the world have imposed the most effective, coordinated and wide-ranging economic restrictions in history. Experts predict that Russia's GDP will shrink by 15 per cent this year, reversing the economic gains of the past fifteen years. Inflation has already exceeded 15 per cent and is expected to accelerate even further. More than 600 private sector companies have already left the Russian market. Supply chains in Russia are seriously disrupted. The Russian Federation is likely to lose its status as a major economy and continue its long slide into economic, financial and technological isolation. In particular, U.S. exports to Russia of items subject to the new export controls have declined by 99 percent in value terms, and the force of these restrictions will increase over time as Russia reduces all stockpiles of spare parts for certain aircraft, tanks, and other resources essential to the war machine (FACT SHEET).

The moderate effect, which reflects the multifactorial cumulative impact of external and internal "shocks" on the national economy, can be demonstrated by the example of Iran. The direct negative effects of economic sanctions against Iran include, in particular, a significant reduction in the country's oil revenues: according to Bloomberg, from mid-2012 to 2023, Iran faced annual revenue losses of 48 billion USD (or approximately 10% of the Iranian economy). In 2012, Iran's total oil revenues amounted to 69 billion USD (i.e., by 27% lower than in previous years). Taking into account the decline in oil production and investments into the energy sector, Iran's expenses are currently estimated at about 100 million USD/day or 5 billion USD/month (Sadeghi-Boroujerdi, 2023).

Despite the significant differences in sanctions regimes, almost all of them are an attempt to achieve political goals in the face of a weakening national economy and declining social welfare in the countries subject to sanctions. The development of the sanctions toolkit was an experimental process: initially, purely financial sanctions mostly failed to achieve the desired effect, so the countries subject to restrictive measures in some cases switched from the so-called "soft" influence to the use of "hard" military force. At present, the mechanisms of economic sanctions in the global economy have been tested and have formed a widespread and powerful tool for influencing the financial sector of the national economy of emerging and developing countries.

The above example demonstrates that the importance of international economic and legal responsibility of States is significant due to the fact that it acts as a mechanism for States to comply with international law. It is the proper implementation of the institution of international economic and legal responsibility that will contribute to this.

International legal responsibility of a State arises if the wrongful act can be attributed to the State. The scope of State responsibility is determined within the criteria set out in Article 8 of the Articles on the Responsibility of States for Internationally Wrongful Acts (UN. General Assembly). A State may be attributed the conduct of its State organs, including its legislative, executive and judicial organs, according to the rules contained in the Articles on State Responsibility. However, these Articles do not clearly define the rules for attributing to the State the conduct of private actors and non-State actors,

including foreign non-State actors. International legal doctrine and case law confirm that a State must take the necessary measures to prevent violations of the State's international obligations not only by its bodies and officials, but also by its citizens, foreigners and other persons within the jurisdiction of the State. At the same time, the State cannot be an absolute guarantor of the lawful behaviour of these categories of persons. In this case, the question arises as to the degree of due diligence, which depends on whether the State has sufficient realistic opportunities to fulfil its international legal obligations in each particular case and, as a result, whether or not to bring the State to international legal responsibility. The State's liability in connection with the conduct of private individuals arises if the State has not taken measures to prevent such unlawful acts, or to punish the relevant persons guilty of committing such acts, including international crimes, and to take other necessary measures.

It should be noted that resolving, in particular, the issue of holding the State responsible for the activities of foreign non-State actors is of great theoretical and practical importance, especially given the intensification of wars and other armed conflicts in the world and the gradual erasure of differences in legal regulation between international and non-international armed conflicts, the presence of proxy wars and "hybrid wars" in the current global geopolitical and security relations. In this regard, the issues of internationalisation of armed conflicts, military and paramilitary activities of a certain State on the territory of another State, as well as State control over foreigners and non-State armed groups, which have become the subject of special attention of international judicial institutions, attract special attention.

For the first time, the International Court of Justice considered the issue of State responsibility for the activities of foreign non-State actors in 1986 in the case of military and paramilitary activities in and against Nicaragua (Military and Paramilitary Activities in and against Nicaragua). When considering the responsibility of the United States of America for violations of international humanitarian law committed by anti-government armed groups (the Contras) in Nicaragua, the International Court of Justice found that these groups were organised, trained and financed by the United States. The Court, relying on the universally recognised principle of international law that the actions of private individuals cannot be attributed to a State unless those individuals or groups are acting under its direction, authority and control, concluded that the United States was legally responsible in this case. The Court noted that the United States exercised effective control over the military and paramilitary operations during which the alleged violations were committed (Military and Paramilitary Activities in and against Nicaragua).

However, the International Criminal Tribunal for the former Yugoslavia (Appeals Chamber) in the case of Duško Tadić, when deciding on individual criminal liability for international crimes, did not agree with the concept of "effective control". In its decision in this case, the Appeals Chamber of the ICTY noted that the concept of "effective control" contradicts the logic of the law of international responsibility and the practice of States and judicial institutions (Prosecutor v. Tadic, ICTY, para. 116). For the purposes of individual criminal liability for international crimes and the qualification of armed conflict, the ICTY Appeals Chamber applied the concept of "overall control", which does not require evidence of direct leadership by the State of actions that violate international humanitarian law. At the same time, the Appeals Chamber of the ICTY has identified three situations in which certain non-State actors should be considered as acting on behalf of the State. Firstly, when it comes to the actions of an individual or non-military organised group, it should be considered that they acted as a de facto organ of a State, "it must be ascertained whether the State in question gave the individual or group in question precise instructions to perform a particular act, or whether it must be established that the unlawful act was publicly supported or approved ex post facto by the State concerned". Secondly, when it comes to State control over armed forces, volunteers or paramilitaries, "control should be general in nature (and not limited to the provision of financial assistance, military equipment or training)", but it should not "go so far as to include the issuance of specific orders by the State or the direction of each individual operation" (Prosecutor v. Tadic, ICTY, para. 137). Thirdly, the Appeals Chamber of the ICTY cites the example of "individuals becoming members of State organs through their actual behaviour within the structure of the State" (Prosecutor v. Tadic, ICTY, para. 141-143). It should be noted that this legal position of the ICTY was not a unanimous decision. Thus, in his dissenting opinion, ECtHR Judge M. Shahabuddeen expresses doubt about the need to challenge the correctness of the decision of the International Court of Justice in the case of Nicaragua v. the United States, considering it quite legitimate (Prosecutor v. Tadic, ICTY, para. 17). The general unconvincing and difficulty of practical application of this decision of the ICTY Appeals Chamber in the future is also noted in the legal literature. In particular, J. Stewart argues that the application of the criteria of "overall control" to international humanitarian law undermines the possibility of consistent and principled application of humanitarian norms in the context of internationalised warfare (Stewart, 2003). The authors believe that this primarily concerns solving the problems of combating violations of international humanitarian

law and bringing international criminals to justice. L. Moir notes that the provisions of the judgment of the Appeals Chamber of the ICTY regarding the issues of "overall control" are "unnecessary (and indeed dubious) considerations" (Moir, 2004).

When analysing the issue of establishing State responsibility for the actions of non-State actors, primarily proxy forces in a proxy war or "hybrid war", it should be noted that determining the extent to which a foreign State exercises control over anti-government forces is one of the important issues in the practice of international judicial institutions. Therefore, it is no coincidence that the International Court of Justice was forced to return to the issue of attributing responsibility to the State for the acts of non-State actors. In particular, in the 2007 judgment in the case of Bosnia and Herzegovina v. Serbia and Montenegro on the application of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, the International Court of Justice, having analysed the concept of "overall control" of the Appeals Chamber of the ICTY, rejected it for the following reasons: a) first, in the Court's view, the criterion of "overall control" is unconvincing in determining the responsibility of the State for the actions of armed forces and paramilitary groups that are not part of its official organs, in view of the following two aspects. The first is that logic does not require the application of the same criteria to resolve two issues whose nature is very different, and therefore the degree of State participation in an armed conflict may differ from that for which it is responsible; the second aspect is that the concept of "overall control" excessively expands the scope of State responsibility, as it goes beyond the criteria set out in Article 8 of the Articles on the Responsibility of States for Internationally Wrongful Acts (Application of the Convention on the Prevention and Punishment of the Crime of Genocide, para. 405-406).

This legal position of the International Court of Justice has been criticised by some international lawyers, in particular by the former President of the ICTY A. Cassese, one of the authors of the concept of "overall control" (Cassese, 2007). In addition, the concept of "overall control" has been further developed in the practice of the International Criminal Court. Thus, in the case of Thomas Lubanga, one of the leaders of the rebel group of the Democratic Republic of the Congo, found guilty of war crimes, the Pre-Trial Chamber of this Court made a legal conclusion that "the overall control of a State over an armed group implies that such a State plays a role in the organisation, coordination and planning of military operations carried out by the armed group, in addition to financing and providing material support, training of its members, as well as operational support provided to it" (Prosecutor v. Thomas Lubanga Dyilo, International Criminal Court). On 31 January 2024, the International Court of Justice ruled on the merits of the case of Ukraine v. the Russian Federation regarding the application of the International Convention for the Suppression of the Financing of Terrorism of 1999 and the International Convention on the Elimination of All Forms of Racial Discrimination of 1965. The Court ruled that Russia had violated both international treaties. The International Court of Justice has ruled that the Russian Federation violated certain parts of the UN Convention for the Suppression of the Financing of Terrorism by failing to investigate financial support for separatists in eastern Ukraine in 2014. In particular, the Court's judgement states: "111. In light of the foregoing, the Court concludes that the Russian Federation has violated its obligations under Article 9, paragraph 1, of the ICSFT" (International Court of Justice). The statement of the Ministry of Foreign Affairs of Ukraine on the decision of the International Court of Justice in the case against the Russian Federation of February 1, 2024 emphasises that "this is the first time in history that the International Court of Justice has issued a final judgement on Russia's violations of international law" (Statement of the Ministry of Foreign Affairs of Ukraine on the decision of the International Court of Justice in the case against the Russian Federation of February 1, 2024). Also, on February 2, 2024, the International Court of Justice ruled on the case of genocide charges under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

The case law of the European Court of Human Rights is relevant in applying the concept of "effective control" not only to individual claims, but also to inter-State cases. According to Article 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, "The High Contracting Parties shall ensure to everyone within their jurisdiction the rights and freedoms set forth in Section I of the present Convention" (The Convention for the Protection of Human Rights and Fundamental Freedoms of 1950). For the first time, the legal conclusion that the jurisdiction of Article 1 of the Convention is not equivalent to the territory of the Contracting Parties was proclaimed in the decision of the European Commission of Human Rights in the inter-State case of Cyprus v. Turkey of 26 May 1975, where it was stated that "agents of States Parties to the Convention" located in the territory of another State Party "by their actions are capable of bringing any other persons or property located in the territory of another State Party" within the jurisdiction of the respondent State within the meaning of Article 1 of the Convention to the extent that "they exercise control over such persons or property" Cyprus v. Turkey (I)

and (II), Applications Nos. 6780/74 and 6950/75). Subsequently, the extraterritorial application of the European Convention on Human Rights was carried out by the European Court of Human Rights in a number of its judgments, in particular in Ilaşcu and Others v. Moldova and Russia, Georgia v. Russia (2), Ukraine v. Russia (concerning Crimea) and other cases. Thus, ten inter-State lawsuits filed by Ukraine against the Russian Federation since 2014 are currently being considered in four proceedings: a) Ukraine v. Russia (concerning Crimea), (Nos. 20958 and 38334/18) concerning Russia's human rights violations in Crimea since February 2014 (the so-called "Crimean case"); b) Ukraine and the Netherlands v. Russia (Nos. 8019/16, 438000/14, 28525/20, 11055/22), concerning Russia's human rights violations in the occupied areas of Donetsk and Luhansk oblasts since 2014 and crimes committed during the full-scale invasion (Ukraine v. Russia (X), joined by the ECtHR in this proceeding in February 2023); c) Ukraine v. Russia (VIII) (No. 55855/18), which concerns the seizure of three Ukrainian naval vessels with their crews in the Kerch Strait in November 2018; d) Ukraine v. Russia (IX) (10691|21) in connection with the practice of targeted assassination operations against Russia's opponents both on its territory and in other countries, including members of the Council of Europe.

Control issues have been reflected in two interim decisions, which is important: Ukraine v. Russia (concerning Crimea), No. 20958 and No. 38334/18, which were delivered on January 14, 2021, and Ukraine and the Netherlands v. Russia, Nos. 8019/16, 43800/14, 28525/20, which were delivered on January 25, 2023, which confirmed by an international judicial body the fact of the Russian Federation's seizure and control of the temporarily occupied territories of the Autonomous Republic of Crimea and the city of Sevastopol since February 27, 2014 and Donetsk and Luhansk oblasts since May 11, 2014, which continues to this day (ECtHR. Ukraine and the Netherlands v. Russia (applications Nos. 8019/16, 43804/14 and 28525/20)). The ECtHR was the first to issue such judgments compared to other international courts, and Ukraine has already claimed the seizure of its territory by the Russian Federation as an established legal fact at the international level. The full-scale invasion of the Russian Federation, which has been ongoing since February 24, 2022, is another stage of aggression against Ukraine. Therefore, the procedural decision of the ECtHR to join the application "Ukraine v. Russia (X)", No. 11055/22, to the case "Ukraine and the Netherlands v. Russia", Nos. 8019/16, 43800/14, 28525/20, where the admissibility decision has already been made, is extremely crucial.

Thus, at the stage of admissibility, the ECtHR issued an interim decision for Ukraine and the Netherlands, which refutes the position of the Russian Federation on the separatists in Donbas being independent of it. Through a detailed analysis of a huge body of evidence, the European Court of Human Rights proves that since 2014, the Russian Federation has been in control of the "Donetsk People's Republic" and "Luhansk People's Republic", as well as of the territory allegedly controlled by these entities, but in fact, as the Court found, by the Russian Federation. From the point of view of general international law, taking into account the facts established by the ECtHR, it is confirmed that the armed aggression of the Russian Federation in eastern Ukraine began in April 2014. This judgment refutes Russia's arguments that it "is not responsible for the actions of the separatists" in eastern Ukraine and that these separatists "were independent of it". The establishment by the ECtHR of specific territorial and temporal limits of control by the Russian Federation gives grounds for other international and national courts that will consider relevant court cases related to these events to take the said judgment as a starting point. It is believed that this may also apply to the inter-State dispute between Ukraine and the Russian Federation in the International Court of Justice.

In the said interim judgment, the European Court of Human Rights made a legal conclusion that the Court can establish State responsibility for human rights violations during war and other armed conflicts, which is also important in connection with the consideration of the important for Ukraine inter-State application "Ukraine v. Russian Federation (X)" under application No. 11055/22, filed by the Government of Ukraine on June 23, 2022, which concerns the events related to Russia's large-scale invasion of Ukraine, during which, as Ukraine claims, Russia committed a large number of violations of the Convention for the Protection of Human Rights and Fundamental Freedoms, including violations of the Convention: the right to life (Article 2), the prohibition of torture (Article 3), the right to liberty and security (Article 5), the right to respect for private and family life (Article 8), the right to freedom of opinion and expression (Articles 9 and 10), freedom of assembly and association (Article 11), the right to protection of property (Article 1 of Protocol No. 1 to the Convention), the prohibition of discrimination (Article 14), and others. Within the framework of these proceedings, Ukraine filed two applications for interim measures under Rule 39 of the ECHR Rules. The first one was filed in the first days of the full-scale invasion, and on March 1, 2022, the ECtHR issued instructions to the Russian Federation to refrain from attacks on civilians and civilian objects, and later expanded

them and ordered the State to provide civilians with access to safe evacuation routes, medical care, food and safe regions in general. The second application, filed on August 22, 2022, concerned Ukrainian defenders of Azovstal in Mariupol who had been taken prisoner, and sought to ensure their right to life and prohibition of torture, guaranteed by Articles 2 and 3 of the European Convention, and for whom, according to the information received, a "trial" was planned. Having urgently considered the said application, the ECtHR stated that in the inter-State case of Ukraine v. the Russian Federation (X) the guidelines provided by it in the case of Oliinichenko v. Russia and Ukraine are applied. In this case, the ECtHR provided the Russian Federation with instructions to immediately ensure the rights enshrined in the European Convention, including the right to medical care, in any applications on behalf of Ukrainian prisoners of war, in which sufficient evidence is provided of a serious and imminent risk of irreparable harm to their physical integrity (Article 3 of the Convention) and/or right to life (Article 2 of the Convention). In addition, the ECtHR urgently informed the Committee of Ministers of the Council of Europe of this decision.

The inter-State cases of Ukraine v. Russia are a particular priority for the European Court of Human Rights, as evidenced by the active consideration of the merits of Ukraine v. Russia (concerning Crimea) and Ukraine and the Netherlands v. Russia (combined) – oral hearings are scheduled for 2023 in the first case and comments on the merits of Russia's human rights violations are being prepared in the second case. Even despite the expulsion of the Russian Federation from the Council of Europe in March 2022 and the termination of its participation in the Convention for the Protection of Human Rights and Fundamental Freedoms on September 16, 2022, the ECtHR continues to consider cases against Russia, which sends a powerful signal to the aggressor that legal punishment and responsibility for human rights violations are inevitable. Although there is currently some uncertainty about Russia's compliance with potential judgments in inter-State cases, the Council of Europe continues to monitor the implementation of judgments in which the ECtHR has found violations by Russia, applying new approaches and solutions. In addition, the establishment of the International Compensation Mechanism is important.

This legal position of the European Court of Human Rights is important and innovative. It is important not only for Ukraine but also for the international community as a whole. Earlier, in its decision in the case of Georgia v. Russia (II) [GC] No. 38363/08 of January 21, 2021, the ECtHR took a different position – the period of active hostilities was effectively excluded from consideration. In the judgment in this case, the European Court distinguished between military operations conducted during the active phase of hostilities and other events that need to be considered in the context of the current international armed conflict, including those that occurred during the "occupation" after the cessation of the active phase of hostilities, as well as the detention and treatment of civilians and prisoners of war, the freedom of movement of displaced persons, the right to education and the obligation to investigate (ECtHR. Georgia v. Russia). This is also important in terms of forming the legal and institutional framework for the activities of international criminal justice bodies (Bazov, 2023), consideration and resolution of cases of individual criminal liability of persons for committing international crimes in Ukraine, in particular the crime of aggression, the crime of genocide, war crimes and crimes against humanity.

3. Conclusions

Summing up the results of the study of the international law theory and practice of international judicial institutions regarding attribution of responsibility to the State for the activities of foreign non-State actors, it should be noted that this issue is relevant and important for ensuring peace and international legal order. There may be a connection between an international wrongful act of a State or an international intergovernmental organisation and an international crime of an individual, especially in the case of an international crime committed by an official of a State or an international intergovernmental organisation. At the same time, it is important to distinguish between two regimes of responsibility – international legal responsibility of a State or international legal responsibility of an international intergovernmental organisation and international criminal responsibility of an individual for acts of concern to the entire international community.

The concepts of "effective control" and "overall control" used in the practice of international judicial institutions demonstrate the difficulty of determining the criteria for attributing responsibility to the State for the activities of foreign non-State actors. The lack of consistency and unity in the legal positions of international justice bodies on this issue highlights the lack of effective conventional regulation of State responsibility. This, in turn, creates preconditions for further research in the field of international relations.

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Received on: 25th of June, 2024
Accepted on: 26th of August, 2024
Published on: 20th of September, 2024