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## ENFORCEMENT OF OBLIGATIONS ERGA OMNES IN INTERNATIONAL LAW: TO THE ISSUE OF MEASURES

The article is dedicated to obligations erga omnes enforcement in international law that nowadays draws more and more attention of representatives of international law science in the world while it is not studied enough in Ukraine yet. The topic is relevant due to the necessity of protection of common interests and values of humankind, in particular those that can be objects of obligations erga omnes. At the present stage it has become obvious that the effective protection of such values and interests can be guaranteed only with common efforts of all states and the international community as a whole. The concept of obligations erga omnes gives us exactly this kind of possibility since states owe those obligations to the international community in any given case and a breach of those obligations enables all states to take action.

Another important question is the admissibility of different measures to enforce obligations erga omnes proposed by scholars recently. Some of them, for example, forcible countermeasures, are highly debatable. In addition the appearance of a large number of enforcement measures in the scholars' publications requires their systematization. So, in the article the author studies the enforcement measures considering different scientific approaches to the issue, identifies and systematizes different measures of enforcement, analyzes the possibility of using non-forcible and forcible countermeasures in the process.

**Keywords:** obligations erga omnes, enforcement, measures of enforcement, non-forcible countermeasures, forcible countermeasures, Security Council of the UN.

**Problem statement.** The international system has undergone significant changes, and these changes have been accelerating lately. One of the factors behind these processes is, in particular, the recognition of the common interests and values of humankind that need effective protection and defense. It is also becoming increasingly apparent that all countries in the world must be involved in such processes.

These changes in the system of international relations also pose new challenges to international law, which should ensure their proper regulation. As a consequence, new international legal concepts and mechanisms are emerging and are continuing to evolve to meet these requirements. One of them is the obligations erga omnes concept, which defines certain international obligations as those that states owe in any given case to the international community, because they relate to their common interests and values, and a breach of those obligations enables all states to take action. The issue of the invocation of responsibility in case of the violation of obligations erga omnes raises the question of the enforceability of community interests [1, p. 10].

The relevance of this concept in the context of protection of the most important common interests of humanity leads to the search for practical measures of restoring violated rights and obligations, among which some researchers point out even humanitarian intervention and the use of force on the whole. While not denying the validity of such ideas in general, however, we believe that developing them against the background of a lack of regulatory certainty about the concept of «obligations erga omnes» can lead to ambiguous results and misuse of them to justify the unauthorized use of force in international relations.

Therefore, the concept of obligations erga omnes in general, and the issues of their enforcement in particular, require further theoretical studies and normative definition that makes this scientific work relevant.

**Analysis of the latest researches and publications.** Many works have recently been devoted to the research into the theory and practice of fulfillment and enforcement of obligations erga omnes. It seems that in Ukraine there is still little attention to be paid to the study of these issues. One of the most comprehensive studies is the PhD thesis of O. O. Kopteva «Erga Omnes Obligations in the System of International Legal Obligations» (2013). Other scholarly publications are dedicated to the specific issues of creation, fulfillment and enforcement of this type of obligations.

As for foreign researchers, they pay much more attention to obligations erga omnes. Among them are: C. Annacker, A. Cassese, G. Gaia, E. Posner, M. Ragazzi, B. Simma, etc. C. Tams, E. de Wet, and K. Zemanek have been involved more deeply in the research on the enforcement of these obligations. Particularly noteworthy is the scientific work of P. Picone, «Obligations Erga Omnes and Use of Force» (2017), which is a comprehensive and all-round study of this type of obligations, summarizing the results of fruitful years of scholarly work of the scientist. Some chapters of the work are dedicated to the issues and problems of obligations erga omnes enforcement at the present stage.

**Purpose statement.** Given the above-mentioned reasoning, the purpose of the article is to explore current approaches to enforcement of obligations erga omnes, to identify and systematize the measures of enforcement, to study the possibility of using non-forcible and forcible countermeasures in this process.

**Main part of the research paper.** As noted, the literature now offers a large number of different measures to enforce obligations erga omnes, which would prevent their breach and guarantee responsibility in the event of such a breach. It seems possible to classify the appropriate measures according to the criterion of the subject, which implements them, into those carried out individually by a single state, group of states or the international community as a whole. Another approach to the classification of the enforcement mechanisms can lay in their division into judicial and extrajudicial ones.

Most of the measures offered to enforce obligations erga omnes now relate specifically to the enforcement issues and responsibility of transgressor after the breach has already been committed. However, some of the measures in question may be preventive in nature, as they may create a system for monitoring compliance with such obligations. Such measures can be implemented mainly by a group of states or all states of the world together, so they will be considered in conjunction with other group measures of enforcement of obligations erga omnes.

In addition, it should be noted that the division of enforcement measures into groups and those to be carried out by the international community as a whole is conditional due to the fact that the specificity of obligations erga omnes enables any member of the international community to require fulfillment of these obligations from the obliged subject. Therefore, the individualization of certain groups of states that are capable of doing it raises questions. However, given that there are proposals to attribute to obligations erga omnes also obligations erga omnes partes (between all parties)<sup>1</sup>, that is, those concerning States Parties to a particular multilateral agreement, it is logical to provide such a group of states with a specific set of enforcement measures of this kind. However, there are measures that, by virtue of their extraordinary nature, can only be used by the international community as a whole. We are talking, for example, about the use of force.

Without claiming the definitive nature of the conclusions and the presentation of the material, the classification offered is more of an overview. The following material is intended to summarize and systematize, to a certain extent, the scientific approaches available to guaranty fulfillment and enforce obligations erga omnes in modern international law.

Enforcement of obligations erga omnes by individual states

There are a few mentioned possibilities for individual States to enforce obligations erga omnes. As they say in Art. 2 of Resolution of the 5th Commission of the Institute of

<sup>1</sup> To see, for example, Par. 1 of Art. 1 of Resolution of the 5th Commission of the Institute of International Law «Obligations and Rights Erga Omnes in International Law», 2005

International Law «Obligations and Rights Erga Omnes in International Law» of 2005: when a state commits a breach of an obligation erga omnes, all the States to which the obligation is owed are entitled, even if they are not specially affected by the breach, to claim from the responsible state in particular: a) cessation of the internationally wrongful act; b) performance of the obligation of reparation in the interest of the state, entity or individual which is specially affected by the breach. Restitution should be effected unless materially impossible. But this article doesn't clarify the issue about the measures that any state can undertake to enforce the obligations erga omnes in case a state-transgressor refuses to fulfill the obligation voluntarily.

In the context of individual enforcement the question of countermeasures arises. Countermeasures in order to react to serious violation of an obligation erga omnes has been greatly debated [2, p. 9]. Chapter 2 of Part 3 of Draft Articles on Responsibility of States for Internationally Wrongful Acts regulates the conditions of countermeasures application by an individual state. The problem is that Art. 49, 52 mention only an injured State as a subject who may only take countermeasures against a state which is responsible for an internationally wrongful act in order to induce that state to comply with its obligations, including obligations erga omnes.

At the same time Art. 54 of the same chapter of the draft states that «this chapter does not prejudice the right of any state, entitled under Art. 48, Par. 1 (the obligation breached is owed to a group of states and is established for the protection of a collective interest of the group; or the obligation breached is owed to the international community as a whole) to invoke the responsibility of another state, to take lawful measures against that state to ensure cessation of the breach and reparation in the interest of the injured state or of the beneficiaries of the obligation breached». The latest provisions give to researchers a ground to talk about the possibility for a state that wasn't directly injured also to undertake individual countermeasures, e.g. economic sanctions.

Some of them think that the practice of countermeasures unilaterally taken in the collective interest is well-established with regard to non-forcible countermeasures. According to the state practice analyzed by several authors, states adopt such countermeasures when a serious breach of an obligation erga omnes occurs and consider their response to be legal. As a recent example, one could consider the international sanctions unilaterally levied against the Russian Federation after its annexation of the Crimea [2, p. 10].

It should be noted that each of these instances of use of unarmed (economic) force was carried out without the authorization of the Security Council, but was accompanied by an indication of the purpose of the action – e.g. to force the guilty state to respect human rights (one of obligations erga omnes) [3, p. 28].

We need to take into account that states can – and not must – take countermeasures pursuant to an erga omnes character of some obligations. In Longobardo's opinion, for example, the erga omnes enforcement character of the duty to prevent genocide clearly allows states to adopt non-forcible countermeasures in order to prevent or effectively repress at an early stage a genocide occurring in another state's territory, in accordance with the doctrine of responsibility to protect [2, p.13]. This doctrine is also widely known inter alia as a legal basis for humanitarian interventions, but still remains greatly debatable.

It seems that it becomes more common also as a basis for the obligations erga omnes enforcement. And it makes it possible for some scientists to state that «the use of force within the concept of «responsibility to protect» is another exception to the principle of non-intervention. This statement is underlined by the fact that it is generally accepted the implementation of the «responsibility to protect» concept, namely of «duty to respond» (one component of the concept), by instruments of both military and non-military nature. Obviously, in practice, the use of forcible measures has become more widespread ...; however it is the group of non-forcible activities that is of interest» [3, p. 28].

Thus, there is now a widespread belief in international law that there is a possibility to use non-military, mostly economic, countermeasures to enforce obligations erga omnes

unilaterally by a state if the collective interests of the international community are injured. There are much more objections to the possibility of using forcible countermeasures. Although some researchers point to the existence of such an opportunity, citing in particular the right to unilateral humanitarian intervention in the context of so-called «forcible self-help», based on the customary norm that existed in classical international law and allegedly preserved after the adoption of the UN Charter [4, p. 10–11].

Among them, one of the scientists who has been studying obligations *erga omnes* for almost 40 years, professor Picone, thinks that the problem of enforcement of obligations *erga omnes* can be solved «if we take into account that... a possible attribution to the United Nations to rights to enforce the obligations *erga omnes* cannot exist without acknowledging the fact that in the event of paralysis of the organization states assume their *uti universi* authority regarding the management of necessary reactions, also by use of force (if this is clearly permitted by general international law): it is obviously inadmissible that obligations *erga omnes* could potentially remain unfulfilled only through the lack of activity of the United Nations» [5, p. 152]. As a last resort against a serious breach of obligations *erga omnes*, states can adopt forcible countermeasures. However, the possibility of taking forcible countermeasures against a serious breach of an obligation *erga omnes* has to meet some requirements that should safeguard against abuses: the impossibility for the Security Council to act due to veto issues [5, p. 306]; the humanitarian purpose of intervention should prevail, if not overarching, over other military-political goals and interests of intervention; the force employed should be necessary and proportionate; the intervention should be determined by the «beneficial outcome», i.e. such measures should be discontinued when the goal is achieved or they will prove ineffective [5, p. 345].

While, professor Picone seems to favour legitimizing the use of military countermeasures to enforce obligations *erga omnes* unilaterally; at the same time he argues in his research for the exclusive role of the Security Council as a key body that would not only be responsible for enforcement of the obligations that were breached, but would be generally responsible for the functioning and regulatory development of this group of obligations. The relevant provisions will be discussed below, since, in our opinion, they belong to the international community's measures of obligations *erga omnes* enforcement.

Anyway we should also note that many researchers state that use of forcible countermeasures in the case of serious breaches of obligations *erga omnes*, even for the prevention of genocide, is still uncertain and it is highly doubtful whether force can be used beyond the limits of the UN Charter [2, p. 13]. For example, according to Art. 5 of Resolution of the 5th Commission of the Institute of International Law «Obligations and Rights *Erga Omnes* in International Law» of 2005: «Should a widely acknowledged grave breach of an *erga omnes* obligation occur, all the states to which the obligation is owed: a) shall endeavor to bring the breach to an end through lawful means in accordance with the Charter of the United Nations; b) shall not recognize as lawful a situation created by the breach; c) are entitled to take non-forcible countermeasures under conditions analogous to those applying to a State specially affected by the breach». So, the Institute of International Law in their resolution on obligations and rights *erga omnes* arrived at the conclusion that all the state can bring «lawful means» in accordance with the Charter of the United Nations and take just non-forcible countermeasures.

As noted by some authors, and professor Zemanek as well, another possibility for the enforcement of obligations *erga omnes* for a state can lay in its right to exercise the universal jurisdiction so long as it is permitted by a general *opinio juris* in respect of grave violations of human rights, which derive from a convention that does not contain an explicit provision about the criminalization of its violations, would not permit prosecution abroad when the incriminated acts were committed or ordered by Heads of State or other officials with a claim to immunity *ratione materiae* [6, p. 49]. At the same time for other representatives of international law science the prospects for its widespread practical implementation are doubtful. First, the application of universal jurisdiction mixes two legal orders: national

and international, and violates the jurisdictional principles that flow from the sovereignty of states. Secondly, it poses a threat to the abuse and use of such a jurisdiction for political purposes, which can undermine international law and neglect human rights [7, p. 18].

Finally in the context of enforcement of obligations *erga omnes* an individual State can bring a claim to the courts. Within this category of measures one further needs to distinguish between enforcement by a judicial body with general substantive jurisdiction, namely the International Court of Justice (hereinafter – ICJ) and enforcement by functional judicial bodies with limited substantive jurisdiction, for example, the International Tribunal for the Law of the Sea [1, p. 10].

Talking about the enforcement through the ICJ, it's worth mentioning that despite the proliferation of judicial bodies in current international law, the ICJ has certain features that set it apart in terms of universality... However, the ICJ has been reluctant to see itself as an institution responsible for the progressive enforcement of community interests [1, p. 12].

It remains to be seen whether the ICJ would also allow standing in situations where States base their claims exclusively on the fact that a customary international law of a community oriented nature has been violated. Such a claim would then be based on the *erga omnes* proper character of the international obligation at stake. A claim of this nature would, however, only have a chance of succeeding between States which have both accepted the compulsory jurisdiction of the ICJ in terms of article 36(2) of the ICJ Statute [1, p. 16]. Even the *jus cogens* status of a particular *erga omnes* obligation does not (yet) in and of itself provide jurisdiction before the ICJ, nor does it have any other «automatic» effect. [1, p. 17].

The possibility to appeal to the ICJ is also mentioned in Art. 3 of Resolution of the 5th Commission of the Institute of International Law «Obligations and Rights *Erga Omnes* in International Law» of 2005, but with the same necessary condition of such an appeal – the existence of a jurisdictional link between a state alleged to have committed a breach of an obligation *erga omnes* and a state to which the obligation is owed.

The same set of conditions has value for judicial enforcement through other courts of functional (specialized) character though they have a limited subject-matter jurisdiction that means they can consider disputes based on obligations *erga omnes partes* that were already mentioned. For example, Art. 187 of the United Nations Convention on the Law of the Sea determines that the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea shall have jurisdiction in disputes with respect to activities in the seabed area between states parties concerning the interpretation or application of the relevant part of the convention and annexes thereto.

Anyway, we agree that the *erga omnes* character of a particular obligation cannot impose jurisdiction on states against their will. So, states' consent remains a corner stone for international judicial dispute settlement [1, p. 20].

Enforcement of obligations *erga omnes* by a group of states or the international community as a whole.

Talking about enforcement of obligations *erga omnes* by a group of states one should distinguish between the measures to prevent breaches of such obligations and the measures to stop breaches of obligations in question. Reporting systems, inspection, verification and investigation systems, complaints procedures, activities of supervisory organs belong to the first group of measures.

Lets overview in brief the measures of prevention mentioned above. Reporting systems are now fairly common in all international regimes which establish *erga omnes* obligations. But according to professor Zemanek's opinion, the method does not seem particularly helpful in respect of those states where an occasional disregard of international obligations is most likely to happen [6, p. 13].

Inspection, verification and investigation systems are a specialty of weapons conventions and extremely rare in other context. Sometimes they appear in the sphere of human rights protection. One is the European Convention against Torture which, by setting up the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or



Punishment, established almost the only effective organ for monitoring compliance outside the arms control and disarmament area [6, p. 14].

Regarding complaints procedures, the term can be understood in two senses: either as the right to initiate an institutional process of verification or investigation, as mentioned above, e.g. in the case of the Montreal Protocol, or as the right to initiate a process in which the alleged violation is adjudicated and the accused state bound to abide by the decision [6, p. 15]. Instances of a right to complain do not exist outside the field of human rights protection. However, only the jurisdictions of the Inter-American Court of Human Rights and of the European Court of Human Rights fulfill the conditions just mentioned.

Professor Zemanek points out that all conventions which establish *erga omnes* obligations would also establish supervisory organs and give them adequate powers to exercise supervision. Reporting systems alone, valuable as they may be under certain circumstances, will not suffice. Some element of verification should be added to reduce the temptation to fudge the reports [6, p. 16].

So, unfortunately there are only some examples of preventive measures of *erga omnes* obligations enforcement. Mostly they can be established and use by a multilateral treaty for the category of so called obligations *erga omnes partes*. Their usage in the context of *erga omnes* obligations belonging to general international law raises questions and makes obvious the necessity of creation of a common organization that could manage this kind of questions.

Next group of enforcement measures can be used by a group of states or even by the international community as a whole in the case of a breach of an *erga omnes* obligation. We should note that the discussion on the possibility of usage of unilateral non-forcible and forcible countermeasures mentioned above is relevant also for the possibility of a group countermeasures usage especially when we are talking about forcible ones. What's more it seems that the decision of use of force for *erga omnes* obligation enforcement should be taken exactly by the international community as a whole.

In this context it's appropriate to add some reflections on the possibility of application of humanitarian interventions that is very close related to the concept of «responsibility to protect». Some defenders of humanitarian intervention refer also to the inefficiency of the United Nations: since the Security Council made no or only insufficient use of its powers under the Charter to protect human rights, the rights of states under traditional customary international law, including the right to intervene for humanitarian purposes, were restored [6, p. 38]. The foregoing study of humanitarian intervention confirmed the view that the law of the Charter has not changed, in spite of numerous transgressions. In other words: the use of force for humanitarian purposes, without authorization by the Security Council, remains highly controversial [6, p. 50]. Even if some researchers highlight that in the case of mass atrocities (such as genocide, war crimes, crimes against humanity and ethnic cleansing), if the Security Council does not authorize the use of the force to protect civilians, other universal or regional organizations (and, finally, even singular states) could attack the perpetrators and end the atrocities [2, p. 8].

At the same time the others note that practice of unilateral armed measures prohibited by international law jeopardizes the stability of regulation of interstate relations. Given that, in the context of globalization, the effective functioning of the collective security system is a direct guarantor of national security, it is essential to have a separate jurisdiction between collective and individual powers to apply force in international relations [4, p. 11].

We have neither intention nor possibility to deepen here with humanitarian intervention and «responsibility to protect» studies, but in connection with the latest statement it's worth returning to the role the Security Council is deemed to play in the context of enforcement of obligations *erga omnes*. Unfortunately the attempts of reform it have no success. What's more, in the opinion of some scientists, it is a complete misreading of the actual situation to suppose that an increase in the membership of the Security Council and the nomination of additional permanent members would make the Council more operational or bring about a change in its attitude towards enforcing the protection of human rights or of other *erga omnes* obligations, for instance in the field of environmental protection [6, p. 45].

So, it seems that not only the configuration but the very nature of the Council should be change. With this view, we should return to professor Picone's studies. According to Picone, despite the lack of formal changes to the UN Charter, the Security Council has been undergoing some changes for a long time, including, in particular: a) the broader and more discretionary interpretation of the concept of a threat to peace under Art. 39; b) in the practice of sanctioning aimed at concealing the unlimited powers granted for the exercise of purely unilateral intervention by States; c) assuming new powers not provided for by the Charter through the exercise of functions of a jurisdictional nature [5, p. 302]. Professor Picone attributes these changes to the impact of obligations *erga omnes* on the UN system. In his view, this influence is so strong that the work of the Security Council has become the basis for the formation of general rules of international law of an instant nature [5, p. 302]. The refore, it suggests assuming some law-making functions.

These changes in the work of the Security Council and certain influence that the General Assembly has also had on the formation of the concept of collective and shared values, allow professor Picone to argue for a transformation of the nature of the UN, and its transformation into a material organ of the international community. This body could meet the requirements of states acting in the collective interest and guarantee a higher level of evaluation and realization of interventions effectuated by such states in the spirit of general international law to protect some *erga omnes* obligations [5, p. 303]. This, in turn, would help to resolve many issues, beginning with the lack of consensus on the hierarchy of basic values of the international community (non-intervention and protection of human rights are a well known instance of such a conflict [6, p. 44]) to the legitimacy of humanitarian interventions and the normative regulation of «responsibility to protect» practice, etc.

**Conclusions and suggestions.** So, now we can say that the concept of *erga omnes* obligations continues to evolve, as evidenced by the formation of a number of measures of their enforcement. Their application, however, raises a number of practical and theoretical questions.

The measures suggested by different scientists can be conditionally divided into those that can be used individually by a state and those that can be applied by a separate group of states and even by the international community as a whole. In addition, it's possible to divide these measures into judicial and extrajudicial ones, preventive and those applicable to obligations breaches.

The group of remedies that states can use individually includes countermeasures, exercise of universal jurisdiction, and appeals to international courts (the International Court of Justice and specialized courts). The use of countermeasures is quite controversial. When it comes to serious breaches of *erga omnes* obligations, especially those enshrined in the norms of *jus cogens* character, the use of non-forcible (mainly economic) countermeasures is almost unanimously accepted. However, the possibility of using forcible countermeasures raises serious objections, albeit supported by a number of international law scholars. It seems that if such a measure of enforcement of *erga omnes* obligations is possible, it is more likely in the context of their application by the international community as a whole.

The exercise of universal jurisdiction can help to bring to justice in the case of international crimes commitment. However, it is not currently mandatory, and is therefore only limited to conventional obligations *erga omnes*.

The most common practice in enforcement of such obligations is to apply to the International Court of Justice, whose decisions generally are of great importance for the formation of obligations *erga omnes* concept in international law. At the same time, as for the terminology the content of its decisions is quite contradictory, and the necessary condition for the settlement of disputes is the existence of a jurisdictional link between the court and the parties to the dispute, even when it comes to violation of *erga omnes* obligations, which proceed from the peremptory norms of international law. If this condition is met, disputes in question could also potentially be dealt with by specialized international courts.

As for the group measures of *erga omnes* obligation enforcement, they include a number of preventive mechanisms for breach of such obligations, including: reporting systems,

inspection, verification and investigation systems, and complaints procedures. However, for the time being, implementation of these mechanisms are only possible through the signing of international treaties, that is, for enforcement of erga omnes partes obligations only, leaving aside obligations based on general international law.

Finally, the measures of erga omnes obligation enforcement, which, in our view, can only be applied by the international community as a whole, include humanitarian intervention or intervention in the context of the «responsibility to protect» concept. The possibility of such interventions is, in itself, very debatable. However, if one assumes it, it is exactly in defense of erga omnes obligations that relate to the common values and interests of mankind.

Many issues regarding the enforcement of such obligations in general and the use of force with this scope in particular, could be resolved in the presence of an international organization that could, to some extent, systematize heterogeneous practice in this area, stimulate the development of the erga omnes obligations concept and be responsible for their enforcement. According to the number of studies, such functions could be fulfilled by the UN, especially since the changes that the Security Council has undergone in recent decades make it necessary for them to carry out these functions.

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## ВИКОНАННЯ ЗОБОВ'ЯЗАНЬ *ERGA OMNES* В МІЖНАРОДНОМУ ПРАВІ: ДО ПИТАННЯ ПРО СПОСОБИ

### Резюме

Статтю присвячено забезпеченню виконання зобов'язань *erga omnes* в міжнародному праві. Наразі це питання привертає все більше уваги представників науки міжнародного права в світі, чого, на жаль, поки що не можна сказати про Україну. Актуальність теми дослідження є значною у зв'язку з необхідністю захисту спільних інтересів і цінностей людства, зокрема тих, які можуть виступати предметом зобов'язань *erga omnes*. На сучасному етапі стало очевидним, що ефективний захист таких цінностей і інтересів може бути гарантований тільки спільними зусиллями всіх держав або краще всього світового співтовариства у цілому. Концепція зобов'язань *erga omnes* надає нам саме таку можливість, оскільки держави в будь-якому випадку зобов'язані виконувати ці зобов'язання перед міжнародною спільнотою, а їх порушення дозволяє всім державам вживати заходів для захисту.

Іншим важливим питанням є припустимість різних способів забезпечення виконання зобов'язань *erga omnes*, що пропонуються вченими останнім часом. Деякі з них, наприклад, військові контрзаходи, є досить спірними. Крім того, поява великої кількості способів забезпечення в публікаціях вчених вимагає їх систематизації. У зв'язку з цим в статті вивчено наукові підходи до проблеми забезпечення виконання зобов'язань *erga omnes*, виявлено та систематизовано різні способи забезпечення, проаналізовано можливість застосування в цьому процесі невійськових і військових контрзаходів.

Способи, що пропонуються різними вченими, можуть бути умовно поділені на ті, які можуть застосовуватися державою самостійно, та ті, які можуть застосовуватися окремою групою держав і навіть міжнародною спільнотою в цілому. Крім того, можна розділити ці способи на судові та позасудові, превентивні і ті, які застосовуються в разі порушення зобов'язань.

Група способів забезпечення, які держави можуть використовувати індивідуально, включає контрзаходи, застосування універсальної юрисдикції та звернення до міжнародних судів (Міжнародний Суд ООН і спеціалізовані суди). Що стосується групових заходів щодо забезпечення виконання зобов'язань *erga omnes*, вони включають ряд запобіжних механізмів порушення таких зобов'язань, включаючи: системи повідомлення, інспекцій, перевірок та розслідування та процедури подання та розгляду скарг.

Використання контрзаходів в процесі забезпечення зобов'язань є досить спірним. Коли мова йде про серйозні порушення зобов'язань *erga omnes*, особливо тих, які закріплені в нормах *jus cogens*, застосування невійськових (головним чином економічних) контрзаходів припускається практично одностайно. Однак застосування військових контрзаходів викликає серйозні заперечення і, якщо і припускати можливість цього, може бути реалізовано тільки за рішенням міжнародного співтовариства в цілому.

Багато питань, що стосуються забезпечення виконання відповідних зобов'язань та, зокрема, питання застосування сили з цією метою, могли б бути вирішені в разі існування міжнародної організації, яка б була здатна певною мірою систематизувати неоднорідну практику в галузі, стимулювати розвиток концепції зобов'язань *erga omnes* і нести відповідальність за їх виконання. Схоже, що такі функції могла б виконувати ООН, особливо з урахуванням того, що зміни в роботі Ради Безпеки, що мали місце протягом останніх десятиліть, обумовлюють необхідність саме для неї виконувати ці функції.

**Ключові слова:** зобов'язання *erga omnes*, забезпечення виконання зобов'язань, способи забезпечення, невійськові контрзаходи, військові контрзаходи, Рада Безпеки ООН.

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## ИСПОЛНЕНИЕ ОБЯЗАТЕЛЬСТВ *ERGA OMNES* В МЕЖДУНАРОДНОМ ПРАВЕ: К ВОПРОСУ О СПОСОБАХ

### Резюме

Статья посвящена обеспечению исполнений обязательств *erga omnes* в международном праве. В настоящее время этот вопрос привлекает все больше внимания представителей науки международного права в мире, чего, к сожалению, пока еще нельзя сказать об Украине. Актуальность темы исследования велика в связи с необходимостью защиты общих интересов и ценностей человечества, в частности тех, которые могут выступать предметом обязательств *erga omnes*. На современном этапе стало очевидным, что эффективная защита таких ценностей и интересов может быть гарантирована только совместными усилиями всех государств или лучше всего мирового сообщества в целом. Концепция обязательств *erga omnes* предоставляет нам именно такую возможность, поскольку государства в любом случае обязаны выполнять эти обязательства перед международным сообществом, а их нарушение позволяет всем государствам предпринимать действия для защиты.

**Ключевые слова:** обязательства *erga omnes*, обеспечение исполнения обязательств, способы обеспечения, невоенные контрмеры, военные контрмеры, Совет Безопасности ООН.