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STATE RESPONSIBILITY FOR ENVIRONMENTAL HARM IN ARMED CONFLICTS: TO THE ISSUE OF ATTRIBUTION

As of November 2023, damage caused to the environment in Ukraine by the armed conflict since 2022 has increased to almost 60 billion dollars, among which air pollution amounts to almost 30 billion, land resources degradation estimates at around 28 billion and more than 2 billion is the calculation of harm to water resources [1]. The war has affected more than 20 % of conservation areas of Ukraine [2]. Obviously, the above harm should be compensated by the aggressor state after the end of the conflict. At the same time, being a relatively new task for the purposes of international legal regulation compensation for environmental harm caused in relation to armed conflicts poses many theoretical and practical questions. One of them is the issue of responsibility attribution, which becomes more complicated in the situations of armed conflicts where harm to the environment is produced by a complex set of involved actors, among which are states, their armed forces, other military and paramilitary groups and non-state actors, such as rebel groups, transnational corporations, individuals, etc. This aspect is important because, as is well-known, state responsibility will not emerge, if actors' behavior cannot be attributed to a state.

In this regard, general international legal provisions on state responsibility should be considered. For this purpose, it is important to mention Art. 31 (1) of the ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts of 2001, which establishes that

"the responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act". It means that all types of harm caused to a state in connection with an armed conflict, environmental harm included, should be repaired. Even though the above articles have no binding force, according to the view of many experts they reflect customary international law. The above general rule can be detailed by the provisions of the UNGA Resolution "On Protection of the Environment in Relation to Armed Conflicts" of 7 December 2022 in which annex the principles of it can be found. So, with regard to Principle 9 (1), "an internationally wrongful act of a State, in relation to an armed conflict, that causes damage to the environment entails the international responsibility of that State, which is under an obligation to make full reparation for such damage, including damage to the environment in and of itself". In practice, the cases of environmental harm compensation can be found in several post-conflict settlement procedures. E.g., in the work of the UN Compensation Commission established by the UN Security Council to process claims related to the Iraq-Kuwait Gulf War of 1990–1991 and the recent ICJ Judgement in "*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Reparations"* of 9 February 2022.

In order to answer the question about which subjects' conduct can be attributed to a state and, consequently, bring it to responsibility, the recourse to the above Articles on Responsibility of States is needed. In this connection the provisions of Art. 4 -8 should be considered. Their content can be summed up as follows: the subjects whose conduct is under question with a view to attributing it to a state should be qualified as official organs of that state (de-jure organs) or its de-facto organs in the situations where their conduct is directed or controlled by it.

With the regard to environmental harm, the conduct of the military and its members is obviously to be attributed to a state. At the same time, it is not so clear concerning the acts of rebel groups and other military or paramilitary organizations that are not under a direct state control. As the ICJ Judgements in *Armed Activities* of 2005 and 2022 show, considering the issue of attribution the court distinguished between the occupied territory and other territories of the Congo in armed conflict. For the former it recognized the responsibility of Uganda for the conduct of its de-jure and de-facto organs. Moreover, the court found

out that being the occupying power Uganda violated its duty of due vigilance in controlling the activities of rebel groups acting on their own account on the occupied territory in order to prevent human rights and international humanitarian law violations in this territory (par. 179 of the 2005 Judgment). It gave reasons to the court to establish Uganda's responsibility for acts of looting, plundering and exploitation of the Congolese natural resources committed by the members of the Uganda army, including in the occupied territory, and for failure to comply with its obligations as an occupying power in respect of all similar acts committed there by other armed groups out of its effective control (par. 250 of the 2005 Judgment). At the same time, the court established no responsibility of Uganda for the conduct of rebel groups outside the territory under occupation, because in the view of court the necessary threshold of an effective control in their regard wasn't reached.

The above allows to draw some conclusions regarding the attribution of state responsibility for environmental harm in armed conflicts. First and foremost, a state can be held responsible for acts of its official organs and organs (groups, individuals) that are under its control and direction. For this purpose, the threshold of an effective control should be reached. At the same time, the conduct of other groups, corporations and individuals cannot be attributed to a state, which raises the question about their criminal responsibility under international or national law.

References

1. *ЕкоЗагроза*. Офіційний ресурс Міністерства захисту довкілля та природних ресурсів України. URL: https://ecozagroza.gov.ua.
2. *Урядовий портал*. Новини від 06.11.23. URL: https://www.kmu.gov.ua/news/mindovkillia-viinoiu-urazheno-ponad-20-pryrodookhoronnykh-terytorii-ukrainy