Секция «Английский язык и право (на английском языке)»

Violation of erga omnes partes obligations as a ground for invocation of state responsibility

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The concept of *erga omnes partes* mostly arises with invocation of state responsibility by a State other than an injured State. The main purpose of this paper is to give answers to the following questions: whether the violation of *erga omnes partes* obligations can be the ground for the invocation of state responsibility and what treaties should be breached in order to have such a legal standing.

Since the development of the law of state responsibility had started there were different opinions with respect to who can invoke the state responsibility in general. For instance, Grotius acknowledged the possibility to demand the punishment even if there were no direct injuries but due to the violation of "the law of nature or of nations" [2]. However, Vattel was of the opposite mind that only special affected State can claim violation of obligation by another state [10]. As a result of evolution of different opinions and theories rules in question were reflected in Articles on Responsibility of States for Internationally Wrongful Acts ("ARSIWA"). Namely, Article 48.1(a) and Article 48.1(b) deal with the invocation by the State other than an injured State [3] and refer to *erga omnes* and *erga omnes partes* obligations [5].

James Crawford as the Special Rapporteur on state responsibility in the International Law Commission ("ILC") studied and developed the *erga omnes partes* concept. He referred it to obligations the violation of which will affect all parties of treaty where such obligations are contained. To perform these obligations "all States parties are recognized as having a common interest, over and above any individual interest that may exist in a given case" [7]. Herewith, common or collective interests can be expressed as a "common heritage of mankind" (for instance, "the mineral resources of the sea-bed and subsoil beyond national jurisdiction") [6].

The first and the only application of the *erga omnes partes* concept appeared in the judgment of the International Court of Justice ("ICJ") in the case concerning *Questions Relating to the Obligation to Prosecute or Extradite* (Belgium v. Senegal). Firstly, the ICJ declared the availability of Belgium's legal standing based on Senegal's breach of obligations owed to certain group of States. Secondly, it was recognized that Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") contained the obligations *erga omnes partes* [9].

Thus, the violation of *erga omnes partes* obligations can be the ground for the legal standing before the court. However, it should be noted that the State other than an injured State cannot claim reparation for its own benefits even if there is the violation of *erga omnes partes* obligations [1]. Such States are entitled only to request cessation and insurance of non-repetition

of wrongful conduct and the reparation "...in the interest of the injured State or of the beneficiaries of the obligation breached" [4].

Case-law practice does not contain the definite determination or acknowledgement of treaties which provide *erga omnes partes* obligations. However, some prominent scholars such as Tams and Crawford, have discussed this issue. Summarizing it should be concluded that in order to form obligations in question treaties must create obligations for a certain group of states aiming the achievement of collective interest. Among such treaties are those which regulate the field of environment, disarmament, humanitarian law, law of the seas and trade law [7, 8]. For instance, the 1949 Geneva Conventions and the 1977 Protocols thereto, the International Covenant on Civil and Political Rights, the International Covenant on Economic Social and Cultural Rights, the African Charter on Human and Peoples' Rights, the European Convention on Human Rights, the Biodiversity Convention or the Ozone Protocol, CAT, WTO agreements are such treaties [8, 11].

The most authors also agree that human rights treaties have provisions which are *erga omnes* with regard to the international community as a whole, and *erga omnes partes* towards the group of States (which are parties to these treaties).

To conclude despite the *erga omnes partes* concept is recognized in the public international law there is no the multiform case-law practice with regard to it.

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