УДК 341.1/.8
DOI https://doi.org/10.32837/yuv.v0i2.2344

D. Deineko,
Ph.D. Student in International Law,
Institute of International Relations,
Taras Shevchenko National University of Kyiv;
Specialist for Consular and Administrative issues
of the Embassy of Ukraine in the Kingdom of Thailand

RESPONSIBILITY OF STATES FOR BREACH OF ERGA OMNES OBLIGATIONS BY OMISSION. ACCOUNTABILITY OF BELARUS FOR GENOCIDE OF UKRAINIANS

Introduction and relevance of the research. Acknowledging that the military aggression of the Russian Federation against Ukraine that has started in early 2014 and reached in peak in spring 2022 has already taken lives of tens of thousands of civilian Ukrainians [1], injured nearly three times more, and forced 5,2 million Ukrainians to flee Ukraine seek safety in other states [2] the author decided to carry out a thorough legal analysis on international responsibility of states turning a blind eye to Ukraine's suffering or even contributing to it. Russian troops violate international humanitarian and human rights law during their invasion of Ukraine, including: deliberate and indiscriminate attacks on civilians; their use as hostages and human shields; executions and rapes; forced conscription and kidnapping, attacks on medical personnel and facilities; use of banned weapons [3]. Since February 24, 2022 Ukrainian law enforcement authorities have initiated investigations into over 16,000 war crimes and aggression offenses [4]. Bearing in mind that some states attributed to crimes conducted by Russia's Armed Forces and provided a springboard for the attack on Ukraine the author decided to study the concept, features and consequences of an alleged internationally wrongful act of the Republic of Belarus and other states. At the request of 42 nations, the International Criminal Court launched its own full-fledged genocide investigation [5]. The European Union, the United States, and the United Kingdom have formed the Atrocity Crimes Advisory Group, which will assist the Ukrainian Prosecutor General's Office in the investigation of Russian crimes in Ukraine. However, according to the author, considerable attention to qualification of the actions of Belarus and possibly other states in international legal academic publications is not given. This makes the article up-to-date.

Purpose. Firstly, in order to provide international legal qualification to the actions of states that through omission, and possibly active actions, such as Belarus, first contributed to the preparation for invasion and later to the aggression of the Russian Federation against the civilian population of Ukraine, the author analyzes Articles on the responsibility of states for international wrongful acts, UN ICJ cases, customary practice and the application of the Genocide Convention. Secondly, the author looks for ways to declare an act unlawful without the consent of the state that committed the internationally illegal act and provides options for bringing it to international legal responsibility. Thirdly, the author examines countermeasures

against Belarus for aiding and abetting Russia's war, without the actual use of Belarusian soldiers.

Methods. Analytical legal research – evaluation of facts and data relevant to the topic and comparison of similar circumstances in existing court judgments, application of specific legal norms and doctrine to the facts of violation of *erga omnes* obligations. Applied legal research – practical solutions to issues of the research, expanding the understanding of the causes of international legal responsibility and proposals for the advancement of the legal system.

Main body. International Law Commission's (ILC) Draft articles responsibility of states for internationally wrongful acts is a common denominator and framework that largely structures the way scientific society discusses the liability of states in various areas. Articles are considered to be the main achievement in the field of state responsibility of the last two decades. Despite an instrument was adopted by the ILC at its fifty-third session in 2001 and is of high importance the UN GA only suggested governments without prejudice to attract their attention to the question of their future adoption or other appropriate action. The movement towards a common framework of shared values addressing state responsibility on the fifty-sixth session of the UN General Assembly finally led to the adoption of UN General Assembly Resolution 56/83 Responsibility of States for internationally wrongful acts (ARSIWA) [6]. Bearing in mind that ARSIWA was adopted in UN GA Resolution and was never put up as a treaty many scholars have firm views on whether that is a good way forward or not at all.

Firstly, it should be noted that while drafting the articles on responsibility of states for internationally wrongful acts International Law Commission had a goal to produce secondary law that could encompass general principles of states accountability. Neither ILC aspired to define the nature of international liability nor was a focus put on obligations to prevent harmful acts or omissions. This conclusion is both supported by the ARSIWA commentary by J. Crawford [7] and Gerhard Hafner [8].

Secondly, in the meaning of ARSIWA, an internally wrongful act consists of an act or omission or both. Whether a breach of international law has occurred depends on the preconditions for the breach on the one hand and the framework conditions for such conduct on the other. As it is stipulated by Article 2 ARSIWA internationally wrongful act should consist of 2 elements: 1) conduct is attributable to a state under international law and 2) an omission/ act constitutes a breach of international obligations [6].

Thirdly, liabilities and procedures to be followed when addressing state responsibility have deep roots and the nature of customary international law. It is known that state responsibility is based upon an infringement, which is related both to a violation of a specific agreement and to other breaches of obligations. The consequence here is not simply to adjudicate a state but make that state pay reparations to an aggrieved party. For example, in *the Spanish Zone of Morocco, it was stressed by Judge Huber*: "All rights of an international character involve international responsibility. If the obligation in question is not met, there is a responsibility to make reparation" [9]. The concept idea was supported in *Coenca Bros v. Germany* and later in *Chorzow Factory*.

Fourthly, conduct is attributable to consist not only of an action but more important an omission. It is difficult to separate "omissions" from the surrounding context associated with determining responsibility, therefore let's consider some secondary sources of law. For example, in the *Corfu Channel* case, the ICJ held that Albania knew or should have known about

the existence of mines in its territorial waters and failed to warn third countries of the existence of mines, which was a sufficient basis for Albania to assume responsibility for the omission [10]. Accordingly, a third state (the Republic of Belarus) is responsible for allowing belligerent Russia's Army and Air Forces to be located in its jurisdiction and carry out military operations against Ukraine since 24 February 2022.

The genocide against Ukrainians based on their nationality (*to keep up with Article 2 of the Genocide Convention* [11]) is a grave violation of international law attributable both to Russia, Belarus, and others supporting the war or omitting any actions to prevent a mass massacre by Russia's Armed Forces. In *Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* the ICJ upheld that: "... each State has to prevent and to punish the crime of genocide not territorially limited by the Genocide Convention" and "... irrespective of the nature of the conflict forming the background to such acts, the obligations of prevention and punishment which are incumbent upon the States parties to the Convention remain identical" [12].

Since each state has a comprehensive executive system, which organ should be accountable? Bearing in mind Article 4 of ARSIWA, the principle of the unity of the State entails that the acts or omissions of all its organs should be regarded as acts or omissions of the State for international responsibility. There is no category of organs specially designated for the commission of internationally wrongful acts, and virtually any State organ may be the author of such an act [13]. In the case of the *United States diplomatic and consular staff in Tehran*, the court concluded that the responsibility of the Islamic Republic of Iran stemmed from the "inaction" of its authorities, in which case "inadequate steps" were clearly required.

The peremptory norm of general international law (*jus cogens*) creates obligations to the entire international community of which all States have legal interests. Any State has the right to invoke the responsibility of another State for violations of peremptory norms of general international law following the rules on State responsibility for internationally wrongful acts. States should work together to legally end a State's gross violation of its obligations under peremptory norms of general international law. No State shall recognize as lawful a situation resulting from a serious breach by a State of its obligations under a peremptory norm of general international law nor shall it provide assistance or assist in the maintenance of such a situation.

The ARSIWA seems to be significant because it was a far-reaching goal of ILC from the 1960th to 2001, which established a streamline for lawyers to develop the concept of state responsibility on regional and international levels. Terms and concepts of ARSIWA became universally accepted. According to J. Crawford, the ILC has encoded the way we think about state responsibility. One may disagree on how the articles are to be construed, but without ILC's concepts and terms in the ARSIWA, there is no way to discuss international state responsibility. ILC has convinced sovereign states of using state responsibility that is by no means obvious. The text sets out responsibility as an omnibus notion; it is the automatic consequence of every breach of international law. This omnibus notion as encoded by the ILC is likely to be bland because the ILC excised from the text or references all the dogma concepts we use to talk about responsibility in a domestic legal framework [14]. There is nothing in the text about the duties, rights, or obligations of states. Surely, the ILC's function is to codify secondary rules of responsibility not the primary rules, the concrete obligations. The ILC focused on

the secondary rules such as attribution, excuses, reparation, and response to a violation.

On the other side, ILC laid down a clear prescription as to what states can invoke as a defense in international law as secondary rules, *i.a.* consent, self-defense, counter-measures, but not other things not mentioned in Chapter V of ARSIWA. It is an interesting balance between the absence of core primary duties and obligations and the very real presence of concrete rules on defenses, attribution, and remedies. It is clear that ARSIWA was the result of international commitment and common vision. The Ukrainian academic and member of the ILC I. I. Lukashyk emphasized: "the principle of international responsibility underlies international law: any internationally wrongful act of a subject of international law causes his international responsibility" [15]. Kindly note that no political strategy or governmental acts may breach an *erga omnes* rule agreed by the international community, especially by a state perpetrator.

ILC has effectively adopted the responsibility of a 20th-century vision. Firstly, it is often said that ILC's vision of responsibility looks at objective responsibility. There is no need to prove fault or damage, at least not at the general level. This has been a key in adopting a rule in an international law that works with multilateral and collective interest obligations where the damage does not matter in a way it is important in the context of a bilateral claim. Secondly, Articles 16 and 17 of the ILC's text are the first serious attempts to come to terms that we don't always have one claimant and one respondent, but we may have bystander responsibility. We may have a duty not to be neutral. We may have complicity and responsibility resulting from that. Those are the ideas that weren't captured before the ILC put it on the map.

Unfortunately, even though ARSIWA became a universal language that coined terms of state responsibility it lacks the force of bindingness. It is interesting how international law evolves through agenda-setting through developing a language that other picks up on. Should the international community make the instrument binding? Yes, since the only primary source of international law may make states reconcile their national political orders with obligations in environmental, maritime, and military law and the responsibility of the whole state for breach of these obligations. At the same time, ARSIWA is a powerful authority that is often cited as customary international law in the field of state responsibility. The report of the UN Secretary-General dated 2007 has supported the previous hypothesis identifying 154 cases referring to ARSIWA and justices continue to refer to the ARSIWA considering the country's accountability [16].

In 2022 the ARSIWA are likely outdated as they do not reflect the growth of the field of human rights, they don't reflect the Internet and the prominence of non-state actors in certain areas *e.g.* cyber warfare. In the past terrorist groups would need to access tanks or infantry vehicles to be able to launch a war. Today occupants are heavily reliant on computers, and access to technology to be effective in a cyber war context.

It's fair to say that articles on state responsibility depart from the premise of a limited state. They explicitly say that state responsibility both for an omission and act is hard to prove, it's the exception, not the rule. Still, the biggest gap is accountability – bringing claims before international tribunals if the bar of state responsibility is not met. Thus what is the way out? One prominent response has been to create new rules in certain sectors of law and the economy. This idea is reasonable as ARSIWA are secondary rules and they are meant to operate in the background. In circumstances where states believe that dif-

ferent rules have to apply they enforce them through treaties. For example, article 139 of the United Nations Convention on the Law of the Sea makes states responsible for acts of subcontractors.

Another strategy to fill the gaps was to develop obligations based on the duty to prevent or relatedly the due diligence principle. If the treaty or the instrument underlying the action contained a duty to prevent or hold the state responsible for omission then progressive interpretations could be applied. For example, Genocide Convention requires states to have a duty to prevent. A clear example here is unpopular in the media case "Mothers of Srebrenica". Among other issues, the problem of who has the power to prevent certain acts and whether the UN may be accountable was discussed. The Supreme Court of the Netherlands concluded that the UN enjoys absolute immunity, based on the International Court of Justice's (ICJ) decision in Nicaragua v. the United States of America, in which the ICJ interpreted Article 103 of the UN Charter to mean that the Charter obligations of UN Member States prevail over conflicting obligations from another international treaty, whether earlier or later in time than the Charter [17]. The distinction between State immunity and UN immunity, it held, is insufficient to warrant treating the right of access to a court differently in the two instances.

Worth highlighting that the due diligence principle requires certain states and non-state actors to demonstrate the duty of effort although not necessarily a result in terms of taking measures to prevent certain activities which may be harmful.

According to article 55 of the ARSIWA principle *lex specialis derogat legi generali* is prioritized. Although the ARSIWA is a set of general rules regulating states' accountability, nations are guided rather by treaties containing clear obligations; states keep testing how far they may deviate from the general core. The correct way of understanding the importance of general rules is to consider established *lex generali* as the basic framework where there is no separate act to regulate the case particularly or wholly. The existing practice of deviation from general rules likely produces large fractures ineffectiveness of international law.

Reacting to significant violations of international law, such as genocide and war crimes, the focus has changed from state accountability to international criminal responsibility, which is a different concept of liability. Despite the rapid development of digital technologies and consequently cyber warfare, the ongoing full-scale war of Russia against peaceful Ukraine and other states and finally trust between aggressor states and civilized nation, the international community often remain "present and voting in favor of unbinding acts" when all conditions are available for the codification of responsibility. Indeed, Rome was not built in one day; progressive development of international law should be guided by international demand.

The International Court of Justice has found that the obligation to prevent and punish genocide entails respect for the right to self-determination and related obligations as defined by international humanitarian law and constitutes such an obligation. Likewise, peremptory norms have been part of the international legal system since the 1969 Vienna Convention on the Law of Treaties. The question that arises is whether violations of these rules, especially "serious" violations of particularly important ones, justify a different regime of responsibility than other violations of international law. This was confirmed by the 1976 version of the draft articles on State responsibility adopted by the International Law Commission on the proposal of Special Rapporteur Roberto Ago.

Its Article 19 (2) provided that "the breach of an obligation so essential for the protection of fundamental interests of the international community should be considered to constitute an international crime".

The idea that breaches of these obligations would constitute "state crimes" had long been vigorously debated at the ILC and in the literature, and was subsequently pragmatically abandoned by the Special Rapporteur in favor of "serious breaches of obligations as peremptory norms". The balance between an omission and assisting a state is not explicit. However, an international wrongful act is defined as both act and omission and a researcher should focus more on the features of internationally wrongful act than the interpretation of an omission.

According to Article 24 of the UN Charter the UN General Assembly and Security Council bear the responsibility to maintain international peace and security in the world. Consequently, some journalists voice issues regarding the responsibility of the UN over the lack of efforts to prevent Russia from further invasion of Ukraine. Although the principle not to use force and refrain from the use of force is a statutory UN principle there is no liability for countries (Belarus, Democratic People's Republic of Korea, Eritrea, Russian Federation, and Syria) for voting against the GA Resolution Aggression against Ukraine (A/ES-11/L.1). States are entitled to vote independently and have no responsibility for their opinion, even if such actions conflict with fundamental principles in international law laid down in Articles 1 and 2 of the UN Charter. The UNGA Resolution is of huge political importance as it represented the will of all UN members concerning Russia's agreement, although it is not obligatory for enforcement in contrast to the UN Security Council Resolutions. Of course the results of the UNGA voting may not be considered evidence of some internationally wrongful act or omission.

On the contrary, the action of Belarus should be considered as aggression. It satisfies the criteria set out in Article 3 (f) it the UN General Assembly Resolution 3314: "allowing its territory, which it has placed at disposal of another state to be used by that other State for perpetrating an act of aggression against a third state" [18]. Bilateral Russia-Belarus military training "Union's Determination" started on February 10th, 2022 on the territory of Belarus. Under the pretext of military drilling, the Russian military entered the territory of Belarus and launched a war against Ukraine from the territory of Belarus on February 24, 2022. These actions fall under the conditions to qualify as aggression. As of 20 June 2022, there is no evidence of the Armed Forces of Belarus' direct involvement in Russia's war against Ukraine; nonetheless to say the least Russia's military vehicles use the service of Belarus agents and state-owned property as accommodation.

While determining whether a state attributed to an internationally wrongful act by an act or omission and deepening into the doctrine of international law one should keep the primary focus on the features of an international wrongful delict as an integrated concept set out by ARSIWA. ARSIWA does not specify clearly where the red line between an act and omission is. I believe that an act and omission in most cases occur rather together than separately as wrongful conduct of a state. Russia's full-scale military invasion of Ukraine and murder of civilians is an ACT. At the same time, somehow Russia's armed forces crossed Russia's border control. Trespassing to the Ukrainian-Russian state border became possible due to the OMISSION of state bodies of the Russian Federation, in particular, the Border Service of the Federal Security Service of the Russian Federation. Hence,

act and omission are interconnected, as often one is impossible without the other.

The substantive jurisdiction of the International Criminal Court includes core international crimes – the most serious crimes against international law, *i.e.* acts or omissions of individuals that violate mandatory rules of general international law and provides grounds for bringing these individuals to individual criminal liability directly based on international law [19]. The International Criminal Court does not recognize the immunities of heads of state and senior officials. Article 27 of the Rome Statute directly indicates the inadmissibility of references to official positions, assuming that the Statute applies to all persons equally.

Despite the possibility of establishing the formal compliance of the actions of the Russian Federation with the definition of aggression, there are currently no decisions of the UN Security Council on this issue, which makes it impossible to implement Russia's international responsibility. The provisions of paragraph 4 of Article 2 of the UN Charter, violated by the Russian Federation are *jus cogens erga omnes*, this entitles the entire international community to seek international accountability for Russia's wrongful acts.

Most publications by scholars and international experts in the field of international law indicate that *erga omnes* commitments include those types of obligations contained in *jus cogens*, although their details still need to be studied and specified in a multilateral legal instrument.

Obiter dictum, according to Article 4 of the UN Charter peace-loving is a condition for membership in the United Nations organization [20]. Together with other facts proving the absence of legal grounds for membership of Russia in the UN organs the mentioned above condition should be taken into account. Practically, it means unblocking the work of the UN Security Council by recognizing membership of Russia unlawful and consequently dissatisfaction with the requirements for future UN membership.

Conclusion. Direct use of Belarus' military forces can be considered an act of aggression and an unlawful use of force (similar to how it is with Russia). It is not essential for Belarus to directly participate in hostilities in order to violate international law. Belarus appears to be accountable for its role in Russia's illegal use of force under the principles of state responsibility. A state's help or support in another state's unlawful conduct constitutes a derived but independent unlawful act of the aiding state, according to Article 16 of the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts.

Another opinion is that Belarus rather qualifies as an aggressor-state under the UNGA Resolution 3314. According to its Article 3(f), a State's action of permitting its territory, which it has made available to another state, to be used by that other State for committing an act of aggression against a third State, likewise constitutes an act of aggression. Consequently, either by omission or aggression the actions of Belarus are considered internationally wrongful acts with no grounds for justification.

The International Court of Justice may hear a case only if the States concerned have recognized the jurisdiction of the Court. Even though Article 36 of the ICJ Statute envisaged the right of a court to consider matters provided for in the UN Charter or other pacts, lack of recognition of universal jurisdiction of the UN ICJ put too many spikes in the wheels of growth and progress of international justice. As Russia and Belarus submitted a conditional declaration under Article 36 (3) of the ICJ statute the court may not

consider a case based on a violation of the UN Charter. Therefore Ukraine is seeking justice only based on: *1) the Convention on the Prevention and Punishment of the Crime of Genocide; 2) the International Convention on the Elimination of All Forms of Racial Discrimination; 3) the International Convention for the Suppression of the Financing of Terrorism*.

On February 26th, 2022, Ukraine filed a request for the indication of provisional measures with the ICJ, noting that the Russian Federation's allegation of an invasion of Ukraine to prevent genocide has no basis. On February 26th, 2022 in a dispute over the Genocide Prevention Convention Ukraine denied that any genocide ever occurred. The author highlights the date and wording of the claim to draw your attention to another claim Ukraine should submit for ICJ consideration, in particular responsibility of Russia and Belarus for genocide in Ukraine, evidence of which was disclosed during and after the de-occupation of the Kyiv region, Chernihiv region, Kharkiv region and other regions of Ukraine. As of early March 2022, the massiveness of the civilian killings by Russians was unknown. Thus a new claim, not about the unlawfulness of invasion, but on killing people based on nationality, causing physical and mental harm to Ukrainians, forcible transfer of children to Russia should be raised by Ukraine in the ICJ.

Everyone agrees that aggression and genocide are not the ordinary international violations; these acts are *erga omnes* crimes. Due to the fact violation of the obligation not to use force or promote it is contrary not only to the interests of individual states, but also to the entire world legal order, states have every right to take countermeasures against Belarus. It can be Ukraine, EU states and even regionally distant ASEAN. Sanctions within international organizations, especially against Belarus, whose human rights activities are condemned by most organizations, are unlikely to be effective. Sanctions from organizations associated with civil society in Belarus are far more effective. Finally, here are some practical examples of countermeasures that are highly successful: freezing public accounts abroad; use of state property (corporations) to compensate Ukraine for damages; sanctions against the military-industrial complex; blocking the supply and purchase of foreign weapons.

The international responsibility of states for grave internationally wrongful acts or omissions is inevitable. Unlike most of today's scientific articles, this scientific work is devoted to the responsibility of the allies of the aggressor country Russia for the murder of tens of thousands of Ukrainians without explanation. Firstly, in order to provide international legal qualification to the actions of states that through omission, and possibly active actions, such as Belarus, first contributed to the preparation for invasion and further aggression of the Russian Federation against the civilian population of Ukraine, the author analyzes Articles on the responsibility of states for international wrongful acts, decision rendered by UN ICJ, customary practice and the application of the Genocide Convention. Secondly, the author looks for ways to declare an act illegal without the consent of the state that committed the internationally illegal act and provides options for bringing it to international legal responsibility. Thirdly, the author examines countermeasures against Belarus for aiding and abetting Russia's war, without the actual use of Belarusian soldiers. The writing of this scientific article was preceded by an in-depth study of international sources in order to determine the effective methods of bringing Belarus and other allies of Russia to justice.

Belarus appears to be accountable for its role in Russia's illegal use of force under the principles of state responsibility. A state's help or support in another state's unlawful conduct constitutes a derived but independent unlawful act of the aiding state, according to Article 16 of the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts. Another opinion is that Belarus rather qualifies as an aggressor-state under the UNGA Resolution 3314. Due to the fact that violation of the obligation not to use force or promote it is contrary not only to the interests of individual states, but also to the entire world legal order erga omnes. States have every right to take countermeasures against Belarus without distinction to a continent or region where state is located. Taking into account new evidence disclosed during and after the de-occupation of the Kyiv region, Chernihiv region, Kharkiv region, and other regions of Ukraine, a new claim about genocide of Ukrainians should be brought to the attention of ICJ stressing not only the unlawfulness of Russian invasion but unambiguous evidence of Russian genocide of Ukrainians, including the use of Belarus assistance that ended up with deliberate murdering of civil Ukrainians.

Key words: Genocide of Ukrainians, ARSIWA, State responsibility, Aggression, Countermeasures, Internationally wrongful act, Omission.

Дейнеко Д. Відповідальність держав за порушення зобов'язань erga omnes шляхом бездіяльності. Відповідальність Білорусі за геноцид українців

Протиправна діяльність держав за важкі міжнародно-протиправді дії чи бездіяльність є неминучою. На відміну від більшості сьогоденних наукових статтей цей науковий доробок присвячений відповідальності держав-союзниць країни-агресора – Росії за вбивство десятків тисяч українців без пояснення причини. По-перше, автор аналізує статті про відповідальність держав за міжнародно-протиправні діяння, рішення Міжнародного суду ООН, звичаєву практику та застосування Конвенції про геноцид з метою надання міжнародно-правової кваліфікації діям держав, які бездіяльністю, а можливо й активними діями, як-от Білорусь, спочатку сприяли підготовці вторгнення а потім агресії Російської Федерації проти мирного населення України. По-друге, автор шукає способи визнання діяння незаконним без згоди держави, яка вчинила міжнародно-протиправну дію для притягнення її до міжнародно-правової відповідальності. По-третє, автор розглядає контрзаходи проти Білорусі за сприяння російській війні, без фактичного використання білоруських солдатів. Написанню цієї наукової статті передувало глибоке дослідження міжнародних джерел з метою з'ясування дієвих методів притягнення Білорусі та інших союзників Росії до відповідальності. З'ясовано, що Білорусь несе відповідальність за свою роль у незаконному застосуванні Росією сили проти України, що суперечить основним принципам міжнародного права. Згідно зі статтею 16 статей Комісії міжнародного права про відповідальність держав за міжнародно-протиправні діяння (Резолюція ГА ООН 56/83), допомога або підтримка держави протиправною поведінкою іншої держави є похідним, але протиправним актом держави, яка таку допомогу надає. Інша думка полягає в тому, що юридичний статус Білорусі скоріше кваліфікується як держава-агресор за Резолюцією 3314 Генеральної Асамблеї ООН. У зв'язку з тим,

що порушення зобов'язання не застосовувати силу і не сприяти цьому суперечить не лише інтересам окремих держав, а й усьому світовому правовому порядку erga omnes, держави мають повне право вживати проти Білорусі контрзаходи незалежності від географічного розташування держави. Беручи до уваги нові докази, оприлюднені під час та після де окупації Київської області, Чернігівської області, Харківської області та інших регіонів України, слід порушити нове питання перед Міжнародним Судом ООН щодо геноциду, яке підкреслить не лише незаконність російського вторгнення, а й надзвичайно важливі докази геноциду українського народу Росією, у тому числі використання допомоги Білорусі, що призвела до свідомого вбивства цивільних українців.

Ключові слова: геноцид українців, статті про відповідальність, відповідальність держави, агресія, контрзаходи, міжнародно-протиправні дії, бездіяльність.

References

1. Ukraine: Civilian casualties as of 31 May 2022. United Nations Human rights Office of the High Commissioner. Ukraine. 01.06.2022 URL: https://ukraine.un.org/en/184439-ukraine-civilian-casualties-31-may-2022

2. Individual refugees from Ukraine recorded across Europe. United Nations Human rights Office of the High Commissioner. Operational data portal updated 21.06.2022. URL: https://data.unhcr.org/en/situations/ukraine

3. Russia`s war crimes. Highlight of war crimes committed by Russia in Ukraine according to the Office of the Prosecutor General of Ukraine URL: https://war.ukraine.ua/russia-war-crimes

4. «The National Police has launched more than 16,000 investigations into Russia`s crimes». Cabinet of Ministers of Ukraine. URL: https://www.kmu.gov.ua/news/nacpoliciya-rozpochala-ponad-16-tisyach-provadzhen-za-faktami-zlochiniv-rosiyan

5. ICC investigation ICC-01/22. International Criminal Court. URL: https://www.icc-cpi.int/ukraine

6. United Nations General Assembly Resolution 56/83 Responsibility of States for internationally wrongful acts. 2001 URL: https://undocs.org/A/RES/56/83

7. James Crawford (1999) Second report on State responsibility, by Mr. James Crawford, Special Rapporteur. DOCUMENT A/CN.4/498 and Add.1–4. URL: https://legal.un.org/ilc/documentation/english/a_cn4_498.pdf

8. Hafner, G. (2002). The draft articles on the responsibility of states for internationally wrongful acts, Austrian Review of International and European Law Online, 5(1), 189–270. doi: https://doi.org/10.1163/157365100X00066

9. Judge Huber. Case: the Spanish Zone of Morocco (Spain v United Kingdom) (1923) 2 RIAA 615, 641. URL: https://lawexplores.com/the-conditions-for-international-responsibility/

10. The Corfu Channel case (Merits) Judgment as of 9th April, 1949, page 22–23. URL: https://www.icj-cij.org/public/files/case-related/1/001-19480325-JUD-01-00-EN.pdf

11. Convention on the Prevention and Punishment of the Crime of Genocide 1948. URL: https://cutt.ly/OKYLB6S

12. Case concerning application of the Convention on the prevention and punishment of the crime of genocide (Bosnia and Herzegovina v. Yugoslavia) (preliminary objections) Judgment of 11 July 1996 (paras. 27–33) URL: https://www.un.org/law/icjsum/9625.htm

13. Draft articles on. Responsibility of States for Internationally Wrongful Acts, with commentaries. 2001. Text adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10), Page 40 URL: https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

14. Conference: State responsibility: Where are we and where to next? British Institute of International and Comparative Law (BIICL), 2022 URL: https://www.youtube.com/watch?v=fnlGSi_zSbY

15. Лукашук И. И. Концепция права международной ответственности. Государство и право. 2003. № 4. С. 79–87.

16. Report of the Secretary-General of the UN. A62/62. Responsibility of States for internationally wrongful acts. 2007. URL: https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/62/62&Lang=E

17. Mothers of Srebrenica et al v. State of The Netherlands and the United Nations, case number 10/04437, 2012, page 9. URL: http://www.asser.nl/upload/documents/20120905T111510-Supreme%20Court%20Decision%20English%2013%20April%202012.pdf

18. General Assembly resolution 3314 (XXIX), adopted on 14 December 1974, Article 3(f). URL: https://legal.un.org/avl/ha/da/da.html

19. The Rome Statute of the International Criminal Court. Entered into force on 1 July 2002. Article 5, 27. URL: https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf

20. United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Article 4. URL: https://www.refworld.org/docid/3ae6b3930.html