

INTERNATIONAL RESPONSIBILITY OF A STATE FOR DISTORTION OF HISTORICAL FACTS: THEORETICAL ASPECTS OF THE PROBLEM

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ABSTRACT

The problem of distortion of historical facts by individuals and officials of the states is extremely relevant at the present time. One of the main reasons for the "free" interpretation of the facts that took place in the history of different countries and of the history of mankind as a whole seems to be the absence of rules setting forth international responsibility of States for such acts. In order to develop an approach to the solution of this problem from the point of view of international law there were considered and analyzed provisions of international legal instruments, as well as the norms of the Russian law, establishing criminal and administrative responsibility for the distortion and denial of the facts of the World War II. The analysis proves the necessity of international recognition of wrongfulness of the act aimed at distorting the facts of history, followed by fixing the international legal responsibility of States for relevant internationally-wrongful acts.

Keywords: *international responsibility; responsibility of a state; internationally wrongful act; invocation of responsibility; distortion of historical facts; falsification of history.*

INTRODUCTION

Currently, one of the most serious problems the international community came across, the problem that is both a cause and a consequence of political tension, is the aggressive policy aimed at the distortion of historical facts, misrepresentation of facts that took place in the past.

It is worth mentioning that this problem is not the new one. Mankind came across this problem not once, even in the modern history. The attempts of "free" interpretation of reasons, certain events and results of the World War II, took place even right after the completion of that terrible war. For example, A. V. Bykov underlines that after the World War II there were published wartime memoirs, articles, analytical reviews, containing distortion of historical facts [1]. They were published in foreign countries, first of all in the Federal Republic of Germany, England and the USA. The same techniques and methods (selective analysis of official records, partial coverage of events) use modern "exposers". It concerns not only the facts of the World War II but also other historical events. In particular, an opinion that Turkey is "practising a denialist policy" in respect of the act of genocide of Armenians, that took place in 1915-1916, was offered in scientific literature [2].

There has been fairly mentioned that nowadays the main method of cognition is mostly the mass media, where the prevailing Internet provides the youth with retelling of the mostly mythologized histories, which are sometimes falsified [3]. Electronic present sense impressions present a unique opportunity for interested parties to fabricate admissible evidence in anticipation of litigation [4].

2.METHODS

2.1. Responsibility of a State for the Conduct of State Organ or Official

The analysis of the positive international law shows that human right for free search, access and distribution of information, established in Art. 19 of the Universal Declaration of Human Rights (1948), corresponds just to the obligation of a State to give the citizens a possibility to exercise this right. The successive establishment of this state obligation can be observed in such international acts of obligatory and recommendatory character as the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998); Report of The Commission On Science and Technology for Development (1995); The UNESCO Universal Declaration On Cultural Diversity (2001). However this human right must correspond to another one no less important obligation of a State – the obligation to be liable for the official information, especially concerning historical events, because the freedom of speech may lead to the abuse of this right.

It is necessary to take into account that in accordance with the international law the conduct of any State organ is considered as an act of that State, whether the organ exercises legislative, executive, judicial or any other functions, regardless of the position it holds in the organization of the state, and regardless of its character as an organ of the central government or of a territorial unit of the state. A state has the rights and duties as a whole, as a single unit. Consequently it is liable for its acts in the same capacity. International judicial bodies in such cases use also the term 'effective control' and the broader term 'overall control', that have been used, in particular, by the International Court of Justice in the proceedings on Genocide in Bosnia [5]. However, as well as other legal entities international legal entities can operate only through their organs [6]. That is to say that responsibility of a State and its officials is indivisible. It means *inter alia* impossibility of existence of reverse situation – invocation of responsibility of an official for an offence committed by the state. On this matter in Congo v. Belgium case the International Court of Justice has held quite a contradictory decision which was already subjected to criticism in scientific literature [7, 8, 9].

Therefore, speaking about distortion of historical facts, it is necessary to admit that any statement of a State official is considered to be an act of that State, whatever position that person holds in the organization of the state, and whatever its character as an organ of the central government or of a territorial unit of the state.

2.2. Responsibility of a State for the Conduct of an Individual.

As a rule, a conduct of an individual (private person) or entity which is not an organ of a state is not considered as an act of a State in accordance with international law, unless the person or entity is empowered by the law of that State to exercise elements of the governmental authority. This rule is also formulated in the Article 4 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts, worked out and adopted by the International Law Commission and then annexed by the UN General Assembly to the resolution 56/83 of 12 December 2001 commending the Articles to the attention of Governments without prejudice to the question of their future adoption or other appropriate action. Thus the suggestion to adopt the Articles as annex to the Resolution was proposed by the International Law Commission as it gave a possibility of further reflection on the text and might help to avoid possible divisive and inconclusive debates in the Sixth Committee [10].

Thus conduct of a private person or entity, is not considered as an act of a State, and they enjoy freedom of speech. However, this freedom is not absolute as we can see in precedent-setting decisions of the European Court of Human Rights and the European Commission of Human Rights. As P. Lobba pointed out, national prohibitions imposed on denials of the Holocaust have produced a 30-years practice of the

given international bodies. In spite of the declared principles on free speech, the Strasbourg organs have progressively developed an exceptional regime in this regard based on the 'abuse clause' envisaged under Article 17. As a result the abuse clause was extended to encompass a growing class of utterances, including the denial of historical facts other than the Nazi genocide [11]. It means that insofar as historical facts is concerned, when it is a matter of the people's history or history of the mankind as a whole, even private persons have some certain limits of freedom of speech, some restrictions can be established even with respect to individuals. And for public authorities the given restrictions are even more essential as their Statements are not private, they proceed as a matter of fact on behalf of the State.

In the given context it is important to understand that falsification of history differs from simple subjective opinion in respect of one or another event by the fact that falsification is always deliberate. It means that falsification is not nearly an accidental distortion of facts, this distortion intentional. The second distinctive feature is the existence of a specific aim of falsification – political, economic, social or other. Achievement of this objective is seen to the falsifier in formation of the certain attitude to different events.

It seems that one of the reasons of such acts is the absence of international rules establishing responsibility of States for similar acts or at least fixing their wrongfulness .

3.RESULTS.

3.1.Theoretical Aspects of the Grounds of International Responsibility of a State.

Invocation of international responsibility of a State is possible if only there are both legal (de-jure) and factual (de-facto) grounds of international responsibility. Only in that case we can be sure that there exist all elements of the internationally wrongful act in the State's actions .

The legal ground is the legislative confirmation of wrongfulness, illegality of an act. This ground solely, undoubtedly, is not enough for invocation of State responsibility as international norms in the sphere of responsibility contain just a hypothetical possibility of bringing a State to responsibility. To make legal relationship in the sphere of international responsibility arise the act of the State breaking rules of international law is also necessary. That would constitute the factual (de-facto) ground which is considered as that legal fact. In international law doctrine these grounds are also quite often interpreted through the answers to questions «on the basis of what» and «for what» international responsibility is invoked [12].

Though concerning the grounds of international responsibility there is no unity of opinions in the scientific researches. Speaking about the grounds of responsibility K. L. Sazonova emphasizes that there are different terms used as synonyms in scientific works and research papers on international law. This is not beneficial to a theoretical regulation of branch [13]. R. L. Hachaturov in particular points out the normative and legal-factual grounds of international responsibility, specifying that the normative ground supposes an abstract possibility for bringing to responsibility for an offence, but it is not enough for the appearance of specific legal relationship on responsibility, existence of the legal facts creating legal relationship on responsibility is also necessary [14]. Even the mentioned Draft articles on Responsibility of States for Internationally Wrongful Acts do not clarify the terminological problem and even set some confusion on the question of regulation of the grounds of international responsibility. Thus, Article 2 establishes a rule according to which there is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State. As a matter of fact, the given Article actually establishes the grounds of international responsibility of a State, however the Article is entitled «Elements of an internationally wrongful act of a State». It is worth of noting that in interrelation with the

Article 1 of the given document (which lays down a rule in accordance to which every internationally wrongful act of a State entails the international responsibility of that State) the rule established in the Article 2 seems to be filled with greater sense and theoretical similarity to the grounds of international responsibility .

It means that the first of the grounds set forth in the Article 2 (conduct attributable to the State under international law) with reference to the questions of responsibility of a State for distortion of historical facts can be expressed, for example, in the Statements, official applications of public officials of a State expressing denial or bringing into a question well known historical facts. More than that, actions or inactivity directed on destruction of monuments of history or expressing disrespect for them, nonacceptance of measures on their protection from crime offences on the part of private persons can be also qualified as the factual ground of international responsibility. As one can see, there is no problem with the factual grounds for invoking State responsibility for distortion of historical facts. However it is not enough. As discussed, there is a necessity in simultaneous existence of both factual and legal grounds. The latter is understood as a contradiction of the specified actual actions (or inactivity) to the norms of international law or as it is set forth in Article 2 of the Draft articles on Responsibility of States for Internationally Wrongful Acts, a breach of an international obligation of the State. And a breach of an international obligation of the State takes place when an act of a State mismatches the given obligation irrespective of its origin or character. Such characterization is not affected by the characterization of the same act as lawful by internal law.

3.2. Problems of Revealing of Grounds of International Responsibility for Distortion of Historical Facts.

The abovementioned means that the first of the grounds set forth in the Article 2 (conduct attributable to the State under international law) in the context of responsibility for distortion of historical facts may consist of utterances, official acknowledgements denying or calling into questions well known historical fact. As a factual ground of responsibility may also be considered acts directed to destruction of monuments and statues or expression of disrespect towards them or failure to take measures aimed at vandalism protection. It is worth noting that nowadays we come across plenty factual grounds of international responsibility for distortion of historical facts. But it is not enough as the presence of legal ground is also necessary. As a legal ground of international responsibility should be considered inconsistency of the State's actions to its obligations in accordance with international law .

Therefore, even in case of adoption of the Articles on responsibility of a State for internationally wrongful acts in a form of Convention, in case of making its provisions binding to the States, this document will not be of great importance for the purpose of invocation of international responsibility for distortion of historical facts as it does not include a list of internationally wrongful acts that may be attributed to States. The system of international law is organized with a complicated way – obligations of States the breach of which may be considered as internationally wrongful acts are set forth in various bilateral or multilateral international treaties, agreements and conventions. This situation, I suppose, is quite explainable considering variety of types of international relationships. Undoubtedly there are international treaties fixing at the same time wrongfulness of an act and the responsibility for that act (for example the United Nations Convention on the Law of the Sea 1982, Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies 1967, which establish responsibility of a State for separate types of offences not concretizing thus types and forms of responsibility). However the majority of international treaties usually fix just wrongfulness of an act without establishing specific forms in which the State-offender may be brought to justice and even without establishing the responsibility as a whole. And in all these international treaties there are no rules establishing wrongfulness of distortion of historical facts, les setting forth human right for respectful attitude to the facts of the people's history, of the progressive development history, the so-called «right to the truth» which as fairly is emphasized by P. Tacar and M. Gauin encompasses all aspects of the truth

and all the pages of history [15]. It seems the essentiality of such international rules has really taken shape .

4.DISCUSSION

4.1.The UN General Assembly Resolution 60/7 “Holocaust Remembrance” in the International Rulemaking Process in the Sphere of Responsibility of a State for Distortion of Historical Facts.

A huge step on the way to establishment of international wrongfulness of acts aimed at distortion of historical facts was made in 2005, when the UN General Assembly adopted resolution 60/7 “Holocaust remembrance”, which contained an appeal to remember the crimes of the past and to ensure they will never be repeated in the future. With this purpose Article 3 of the Resolution established rejection of any denial of the Holocaust as a historical event, either in full or part. This provision that was formulated quite concrete (rejection of any denial of the Holocaust), nonetheless called some questions. In particular, who is the addressee of this provision (who should follow this rule), what exactly should be understood as “rejection”, does it mean rejection of denial exclusively or rejection of disapproval as well?

In 2007, the UN General Assembly adopted another resolution 61/255 devoted directly to this issue by means of which the before established provision was more concretized. The resolution which consists just of two Articles firstly establishes the condemn without any reservation any denial of the Holocaust, and secondly urges all Member States unreservedly to reject any denial of the Holocaust as a historical event, either in full or in part, or any activities to this end .

The wordings used in this document seem to be more concrete and reflect the attitude of the Member States to any act aimed at distortion of the Holocaust as a historical event more clearly – such acts will not be merely rejected but will also be condemned by the whole international community. The provisions of this Resolution are addressed not only to specific persons or entities, but also directly to States that are called upon to reject such acts.

The UN General Assembly resolutions, even adopted on extremely important issues, are not binding, they do not contain mandatory provisions, but their importance from the point of view of the progressive development of international law is unquestionable. And in this context the abovementioned resolutions have made an enormous contribution to the progressive development of international law, to the formation of international rules setting forth the unlawfulness of distortion not only of the Holocaust facts, but also of the other well-known historical facts .

4.2.Approach to the Problem of Responsibility for Distortion of Historical Facts in the Russian Federation.

It is worth noting that in the Russian Federation the problem of responsibility for distortion and denial of historical facts is paid due attention. In 2009 there was established the Commission on counteraction to attempts of falsification of history causing damage to the interests of Russia. That Commission was established by the Russian Federation Presidential Decree, which faced criticism on different grounds (the aim of the document, doubtful demand for it, structure of the Commission, the Decree’s title). On February, 14th, 2012, less than in three years that document became invalid because of the acceptance of another Russian Federation Presidential Decree №183 which has at the same time abrogated the Commission. But the problem of counteraction to attempts of falsification of historical facts and events (undertaken with an intention of causing damage to the interests of Russia) was never forgotten. In the Article 8 of the same Decree which has abrogated the Commission, the specified activity was established as one of the key activity directions of the Committee specially created at that time within the carried out in Russia Year of the Russian history.

In this regard the Federal law No. 128 of May 5, 2014 “On Introducing Amendments to Certain Legislative Acts of the Russian Federation” is of great importance in the process of establishing responsibility for falsification and distortion of historical facts. That law has actually made the extremely important amendments concerning establishing illegality of acts directed on deliberate distortion of the historical facts into the Criminal code of the Russian Federation and into the Code of Administrative Offences of the Russian Federation. Thus there has appeared Article 354.1 “Rehabilitation of Nazism” in the Criminal code of the Russian Federation. In accordance with this Article’s provisions, on its entry into force the following acts are considered to be criminal: denial of the facts established by a verdict of the International Military Tribunal for the Trial of War Criminals of the European countries of axis, approval of crimes established by the specified verdict, and propagation of the obviously false information on activity of the USSR within the World War II, as well as public propagation expressing obvious disrespect for a society by spreading false information about days of military glory and memorials of Russia connected with protection of Motherland, as well as desecration of symbols of military glory of Russia committed publicly. As for the Code of Administrative Offences of the Russian Federation, it was supplemented by the Article 13.15 establishing the administrative responsibility in the form of penalty up to 1 million rubles for public propagation expressing obvious disrespect for a society by spreading false information about days of military glory and memorials of Russia connected with protection of Motherland, as well as desecration of symbols of military glory of Russia committed particularly but not exclusively by means of mass media and (or) telecommunication networks (including “Internet”)

Such steps at an internal level are extremely necessary as they are directed on protection of historical memory of the people, as well as on impeding attempts of deliberate distortion of historical facts. Undoubtedly the mechanism of these legal provisions realization should be very precise to avoid infringement of a freedom of speech. I believe that detailed determination in the dispositions of the legal norms of the elements of the given offence is the certain guarantee that the above-noted norms will not be interpreted unreasonably loose.

5. CONCLUSION

Thus at the present time there is no international mechanism of invocation responsibility of a State for distortion of historical facts but the progressive development of international law in that sphere is obvious. Coverage of this problem is carried out in the scientific works of historians, but it is extremely important to study it fully, from different perspectives, including international law to develop the approach to the further regulation of international responsibility for such acts. It will be useful to take into account the experience of those countries that have included the appropriate norms in there legislation. In particular, it might be helpful to consider appropriating legal framework containing in the Russian legislation. Undoubtedly the internal rules construction especially of those that establish responsibility in the sphere of public law differs greatly from the way of rule-making process and construction of international rules because on the international level there are no imperative instructions and orders, legal entities in international law have to reach an agreement while laying down international rule. Nevertheless, the approach used in the framing of dispositions of the abovementioned legal rules of the Russian legislation could be used in the international rule-making process while establishing wrongfulness of acts directed on distortion, denial and falsification of historical facts.

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