Specific Aspects of Restoration as a Form of Invocation of International Responsibility of a State

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Abstract
Restoration is one of the most complex forms of intangible international legal responsibility. The problem lies in the absence of a generally accepted notion of restoration as an independent form of responsibility, and its primary consideration is only as a form of restitution. Even the term “restoration” is rarely used in international legal documents. Without denying the existence of the common goal of restitution and restoration – restoring the situation that existed before the violation of the law, based on the analysis of international legal acts, as well as the practice of judicial and quasi-judicial bodies, it is concluded that the restoration has a specific character. It is expressed in the need to adopt domestic legal acts to restore the violated rights of the injured subjects of international law, which indicates the independence of this form of responsibility. Responsibility in the form of restoration can be invoked not only by the injured states but also by individuals by applying to international quasi-judicial bodies, such as the UN Committees on Human Rights, against tortures, to eliminate discrimination against women. In turn, the European Court of Human Rights does not have the competence of calling states to such kind of responsibility.

Keywords
International Legal Responsibility, Internationally Wrongful Act, Restoration, Restitution, Reparation

Introduction
The commission of an international wrongful act, regardless of its gravity and nature, entails serious legal consequences, in particular, the emergence of a secondary legal relationship of responsibility between the infringer of the law and the injured or other subject. The content of this legal relationship is expressed in the right of the victim to demand the cessation and non-repetition of the wrongful act, as well as the provision of amends. This right corresponds to the duty of the person who caused the damage to compensate for the damage caused. Fundamentally important in this legal relationship is that the injured party has the choice of a method of reparation of the damage. And the most preferred form of responsibility in terms of compliance with the goals and functions of calling for international legal responsibility is restitution.

In the theory of international law, restitution is considered to be the material form of responsibility [1]. However, the Articles on State Responsibility for Internationally Wrongful Acts developed by the United Nations International Law Commission states that “the state responsible for the internationally wrongful act is obliged to carry out restitution, that is, to restore the situation that existed before the wrongful act ...” (Article 35), and such restoration can exist in two forms: restitutio in integrum and restitutio in pristinum. There is no doubt about the substantive nature of the first form (which in the international doctrine is called restitution in kind), since in this case we are talking about the return of illegally seized individually determined property, for example, archives, historical and artistic values, etc. The second form of restitution is expressed in the restoration of the incorporeal rights of injured subjects of international law. This form of responsibility, despite what is considered within the framework of restitution, refers to intangible forms of responsibility and is called “restoration”, which can be expressed in the release of unlawfully apprehended persons, the withdrawal of troops from an illegally occupied territory, the restoration of previously existing borders with the neighboring state and so on. However, given the lack of consonance in opinions about the nature of restoration, the difference of views on the independent nature of this form of international legal responsibility, its study is of considerable interest.

Methods
The study of forms of international legal responsibility is impossible without due attention not only to the existing norms of international law of a binding nature but also the documents of a recommendatory nature, which are often regarded by the theorists as usual norms of international law.

These include, first and foremost, the documents developed by the UN International Law Commission and recommended by the UN General Assembly, as well as the Articles of Responsibility of States for Internationally Wrongful Acts and Articles of Responsibility of International Organizations for Internationally Wrongful that are open for signature by states. Of no small importance is the study of other international legal acts of a recommendatory nature, in particular, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, approved by Resolution 40/34 of the UN General Assembly.

Special attention should be paid to the decisions of international judicial bodies, which confirmed the invocation of states to responsibility in the form of restoration. An example of such decision is the case of the diplomatic and consular staff of the United States of America in Teheran (the USA against Iran). In its judgement on this case,
between the two countries which caused serious damage to the environment. Nicaragua claimed that Costa Rica was carrying out large-scale construction work in most of the border area. In 2011, the State of Nicaragua appealed to the UN International Court of Justice to file a lawsuit against Costa Rica to bring the state to other forms of responsibility. For example, on December 22, International practice knows many cases of holding the perpetrator of an offence accountable in the form of restitution. But, as Ana Filipa Vrdoljak interprets the consequences of wrongfull act more loosely, pointing to the fact that restitution, compensation, rehabilitation, and satisfaction must be considered and utilized to achieve full reparation for the injury or loss flowing from the wrongful act [11].

Summary
However, it is the consideration of restitution and restoration as the forms of responsibility under international law that will allow to achieve the goal of responsibility under international law in corpore. Invocation of responsibility in the form of restitution in no way prevents the invocation of responsibility in other forms, if restitution alone will not be enough to respond in damages. Thérèse O’Donnell believes, compensation is often considered forward-looking and utilitarian, restitution backward-looking and rights-based [10]. Ana Filipa Vrdoljak interprets the consequences of wrongfull act more loosely, pointing to the fact that restitution, compensation, rehabilitation, and satisfaction must all be considered and utilized to achieve full reparation for the injury or loss flowing from the wrongfull act [11]. International practice knows many cases of holding the perpetrator of an offence accountable in the form of restoration concurrently with bringing the state to other forms of responsibility. For example, on December 22, 2011, the State of Nicaragua appealed to the UN International Court of Justice to file a lawsuit against Costa Rica regarding “violations of Nicaraguan sovereignty and significant damage to the environment in its territory”. Nicaragua claimed that Costa Rica was carrying out large-scale construction work in most of the border area between the two countries which caused serious damage to the environment.
In a statement, Nicaragua claimed, in particular, that “one-sided actions of Costa Rica ... threaten to destroy the San Juan de Nicaragua and its fragile ecosystem, including adjacent biosphere reserves and internationally protected wetlands, the preservation of which depends on clean waters of the river and its continuous flow” [12].

In this regard, Nicaragua asked the Court to decide and declare that Costa Rica violated a number of obligations enshrined in bilateral and multilateral agreements. In addition, Nicaragua asked the Court to decide and declare that Costa Rica should:

a) restore the situation in the same condition;

b) compensate for all damages incurred, including expenses incurred to deepen the San Juan River;

c) not conduct any further work in the area without proper transboundary environmental assessment and that the results of such expertise should be submitted to Nicaragua for analysis and response in time”.

Thus, in this case, the injured party (Nicaragua) demanded that the transgressing state (Costa Rica) be held accountable in several forms at once:

1. in the form of satisfaction, demanding to recognize the fact of the offence itself;
2. in the form of restoration, demanding to restore the situation that existed before the offence;
3. in the form of compensation, demanding to compensate for the damages;

Restoration as a form of intangible liability of the wrongdoing state can be used not only by the injured state but also by an international organization, for example, in the event of unlawful detention or arrest by official authorities of the host state or transit of the personnel of the United Nations.

An individual also privately, by filing a complaint with a competent international body, has the right to demand from the transgressing state to restore the situation that existed before the offense, for example, in the case of unlawful arrest and detention, in the case of unlawful deprivation of nationality, unlawful eviction from the host country and so on.

It should be noted, however, that when an individual complaint is filed with the European Court of Human Rights, an individual cannot count on the court to hold the transgressing state accountable in the form of restoration, since this is not its responsibility. This judicial authority does not have the right to revoke a decision made by a state authority or a national court, does not give instructions to the legislator, and has no right to give orders to take measures that have legal consequences. The court deals with only specific complaints in order to establish whether violations of the requirements of the Convention have actually been committed, and sentence “fair satisfaction of the claim” in the form of financial compensation for material and moral damage, as well as reimbursement of the applicant of all costs and expenses if his claims are met.

At the same time, as emphasized by B.L. Zimenko, decisions and rulings of the European Court of Human Rights are the result of law enforcement, and not law-making activity, and therefore these judicial acts cannot contain any legal norms [13].

But the UN Committee on Human Rights, against torture, on the elimination of all forms of racial discrimination, on the elimination of discrimination against women has the right to establish the responsibility of the delinquent state in the form of restoration.

Thus, in re of K. Ackla against Togo, the UN Human Rights Committee acknowledged the presence in the actions of the state of signs of violation of the provisions of the International Covenant on Civil and Political Rights of 1966. K. Ackla argued that he was discharged for inaptitude from law enforcement agencies, the accusation was fabricated. His demand for the establishment of a disciplinary commission to consider the case was not satisfied by the state. K. Ackla was arrested. After his release, he was forbidden to return to his hometown. Based on the results of the consideration of the case, the Committee decided to oblige Togo to provide the claimant with fair compensation in the form of a restoration of freedom of movement and residence, as well as to pay him compensation [14].

In a case of D. Pinto against Trinidad and Tobago, the UN Committee on Civil Rights met satisfaction of the applicant party, the Committee obliged the state to provide restoration in the form of releasing the claimant, being under sentence of death, from prison [15].

Analogous decisions have been made by the UN Human Rights Committee in a number of cases related to non-compliance by states with the provisions of the International Covenant on Civil and Political Rights [16].

In addition to violations during the trial, the UN Human Rights Committee has tried a number of cases concerning the restoration of the applicants’ parental rights. For example, in the case of N.T. against Canada in 2007, it was decided to restore the right to see her daughter [17], a similar decision was also taken in the case of J.A. Martinez against Paraguay [18].

**Conclusion**

The analysis of the norms of international law, as well as the practice of judicial and quasi-judicial bodies, suggest that restoration is an independent type of intangible responsibility under international law. The use of different terminology in relation to this legal category only emphasizes the specifics and characteristics of restoration as the most preferred form of non-material state responsibility, since, first of all, it is necessary to consider the possibility of restoring the old state of things.
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References