

**THEORETICAL-CONCEPTUAL UNDERSTANDING  
OF CATEGORIES “GUILT”, “ATTRIBUTION”  
AND “IMPUTATION” FOR THE PURPOSES  
OF INTERNATIONAL RESPONSIBILITY OF THE STATE**

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**INTRODUCTION**

The effectiveness of international law as of a socially necessary instrument for international relations regulating depends crucially on the States' strict adherence to their international obligations. The implementation and application of the rules of law have long been of particular importance, which is confirmed by the postulates *executio est finis et fructus legis* (An execution is the end and the fruit of the law) and *applicatio est vita regalae* (The application is the life of a rule). Conscientious implementation of international obligations is a criterion for the legitimacy of the activities of States in international and domestic spheres and it is a necessary condition for stability and efficiency of international law and order. However, the problem of the effectiveness of the rules of international law, which has been acutely and widely discussed throughout history and considered to be the most vulnerable side of international law, remains one of its central problems today.

The task of enhancing of the effectiveness of international law is largely entrusted with international responsibility, which plays a fundamental role in the current system of international law while demonstrating the level of its unity and stability.

The issue of State responsibility has received much attention in international legal literature. Some aspects of responsibility of States for their internationally wrongful acts have been considered in the works of such Ukrainian international lawyers as Y.Y. Blazhevych, M.V. Buromenskyi, V.H. Butkevych, A.I. Dmytriiev, N.A. Zelinska, I.I. Lukashuk, V.V. Mytsyk, L.D. Tymchenko, Y.S. Shemshuchenko and other.

A significant contribution to the development of responsibility problems was made by the works of Soviet scientists: V.A. Vasylenko, Y.M. Kolosov, P.M. Kuris, D.B. Levin, S.B. Petrovskyi, S.B. Raskalei, H.I. Tunkin and others. Foreign authors who devoted their issues to international legal responsibility are Roberto Ago, Dionisio Anzilotti, Ian Brownlie, Antonio Cassese, James Crawford, Lassa Oppenheim, Alain Pellet, Alfred Verdross, Malcolm Nathan Shaw and other.

At the same time, many important aspects of international responsibility issues have not yet become the subject of special study in contemporary Ukrainian science of international law and have been partially disclosed by foreign scholars. Thus, the further study of one of the most contentious issues in the area of international responsibility, the issue of State guilt, is relevant.

### **1. Category “guilt” of State in international law: the essential characteristic**

The notion that “guilt” is relevant in international law is shared by most of international lawyers. At the same time, the problem of guilt is perhaps the most complex in the whole theory of international responsibility law. The fact that the issue of State guilt has proven to be one of the most controversial areas of international responsibility has been repeatedly emphasized in the writings of many researchers. For example, D. Anzilotti wrote: “Generally, disputes regarding the theory of guilt and certain aspects of its application in international law have long existed and remain exist. While some authors support the theory of guilt providing it with an interpretation that differs significantly from the one given in internal law (Hatschek), others deny this theory without hesitation (Diena). Some authors also allow the notion of guilt only to identify certain categories of misconduct, in particular, the so-called “neglect torts” in general (Strupp) or some of them specifically (Schoen). Finally, some authors acknowledge that the notion of guilt is necessary to determine certain consequences, such as an obligation to compensate for harm, whereas this notion is unnecessary in simple satisfaction (Triepel), or believe that it is necessary in satisfaction, but not in compensation for damage suffered by patrimonial property (Iess)”<sup>1</sup>.

Some scientists have raised doubts about the possibility of using the concept of guilt to characterize the actions of the state. In one of his writings, V.M. Yelynychev concluded that an analysis of the state’s behavior through the concept of guilt is not only optional but also largely redundant and harmful, as it raises a minor issue in the first place and allows the delinquent state to challenge the lawfulness of its liability (which it bears from the moment of committing the delict) by reference to the lack or unintentional intent or negligence on the part of its authorities<sup>2</sup>. From the perspective of other authors, “the guilt is a complex concept that can hardly be applied to the state at all, but proving the guilt of the state for its responsibility for

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<sup>1</sup> Анцилотти Д. Курс международного права : введение – общая часть ; пер. с итал. ; под ред. : Д. Б. Левин (Предисл.) ; пер. : А. Л. Сакетти, Э. М. Фабриков. М. : Инстр. лит., 1961. Т. 1. С. 415.

<sup>2</sup> Ельничев В. Н. Вина в международном праве. *Советское государство и право*. 1972. № 3. С. 127.

internationally wrongful acts is optional, but this does not mean the absence of such guilt as the State's guilt presumes"<sup>3</sup>.

Note that in the process of codification, the idea of developing a general rule of guilt was repeatedly criticized by authoritative authors for being too large. The topic was considered to be too heterogeneous to regulate individual norms.

The International Law Commission, in view of the differences and debates, including the difficulty of proving guilt, did not include the guilt in the wrongful act as a necessary element. Another reason for not including the topic of guilt in the draft articles of the ILC was the inconsistency of jurisprudence in the area of state responsibility. The jurisprudence on this issue has always been different, and international courts and arbitrations have largely been unwilling, or at least incapable, of resolving this issue in principle.

Thus, the International Law Commission avoided a clear solution to the question of the place of guilt in the system of rules on international responsibility of States. The Commission decided not to stop on the position, which was produced by the long-standing academic debate, and began to consider the problem of guilt in a pragmatic way, according to which the guilt is a circumstance, the absence of which must be proved by the defendant State in order to exclude the wrongfulness of its conduct<sup>4</sup>.

Despite the contradictions about the concept of "guilt", in the theory and practice of international law, this concept is used quite often, since it is inherently related to such fundamental categories as international offenses and international responsibility. In particular, the notion of guilt of the State, with reference to its two forms (intent and negligence), is featured in important diplomatic documents. For example, when considering in the Third Committee of the Third Commission of the UN Conference in San Francisco the provisions of Chapter VII of the Charter of the United Nations on threats to the peace, breaches of the peace, or acts of aggression the proposal from the report about "the costs of coercive action against the *guilty State* fell upon that State" was adopted. This proposal was unanimously approved at the plenary session of the conference<sup>5</sup>.

Provisions on guilt are found in many international courts, arbitrations, and conciliation commissions<sup>6</sup>. Links to guilt can also be found in a number

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<sup>3</sup> Міжнародне право : [підручник] / Ліпкан В. А., Антипенко В. Ф., Акулов С. О. та ін. / заг. ред. В. А. Ліпкана. К. : КНТ, 2009. С. 249.

<sup>4</sup> Gattini A. Smoking / No Smoking : Some Remarks on the Current Place of Fault in the ILC Draft Articles on State Responsibility// *European Journal of International Law*. 1999. Vol. 10. P. 397.

<sup>5</sup> Левин Д. Б. Ответственность государств в современном международном праве. М. : Междунар. отношения, 1966. С. 56.

<sup>6</sup> Ref., for instance, cases: Alabama claims of the United States of America against Great Britain (1871) // Reports of International Arbitral Awards. Vol. XXIX. P. 125–134 ; United States v. Great Britain (Home Missionary Society Case) (1920) // Reports of International Arbitral

of international treaties, in particular Art. 54 of Convention respecting the Laws and Customs of War on Land (1907)<sup>7</sup>, Art. 2 of Convention on the Prevention and Punishment of the Crime of Genocide (1948)<sup>8</sup>, Convention for the Unification of Certain Rules Relating to International Carriage by Air (1929)<sup>9</sup> and other.

It follows from the above mentioned that the guilt category in both its forms is uniquely applicable to the States. The presence of specific attributes of the State's guilt in international law in comparison with the guilt of certain individuals in internal law cannot be a reason for neglecting the concept of guilt relative to the State.

The notion of guilt as well as its application in international law has its own specific features that distinguishes it from the guilt in internal (criminal or civil) law. Let's try to distinguish several of such characteristics.

1) The guilt as a separate institution of international law has its own peculiarities connected with the peculiarities of international law itself and international relations to which it is directed.

2) The State's guilt is not a psychic attitude to behavior, which is committing.

3) The guilt is a manifestation of state will.

4) The State's guilt is not equated with the guilt of its separate bodies: legislative, executive, judicial, both central and local.

5) The degree of guilt can be essential for the onset of international responsibility of the State.

6) The State's guilt is not proved in all cases but only when it is explicitly provided by the primary norms (genocide, aggression).

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Awards. Vol. VI. P. 42–44 ; Award between the United States and the United Kingdom relating to the rights of jurisdiction of United States in the Bering's sea and the preservation of fur seals (1893) // Reports of International Arbitral Awards. Vol. XXVIII. P. 263–276 ; Casablanca Arbitration (France v. Germany) (1909) // The American Journal of International Law. Jul., 1909. Vol. 3. № 3. P. 755–760; Award in the Matter of the Cadenhead Case (1914) // The American Journal of International Law. Jul., 1914. Vol. 8. № 3. P. 663–665 ; B. E. Chattin (United States) v. United Mexican (1927) // Reports of International Arbitral Awards. Vol. IV. P. 282–312; In the matter of the death of James Pugh (Great Britain, Panama) (1933) // Reports of International Arbitral Awards. Vol. III. P. 1439–1453; Loizidou v. Turkey. ECHR Judgment of 18 December 1996 // EHRR. Vol. 23. P. 513 та ил.

<sup>7</sup>Convention (IV) respecting the Laws and Customs of War on Land and its annex : Regulations concerning the Laws and Customs of War on Land (1907) URL: [http://avalon.law.yale.edu/20th\\_century/hague04.asp](http://avalon.law.yale.edu/20th_century/hague04.asp).

<sup>8</sup>Convention on the Prevention and Punishment of the Crime of Genocide (1948) URL: <http://www.hrweb.org/legal/genocide.html>.

<sup>9</sup>Convention for the Unification of Certain Rules Relating to International Carriage by Air (1929) URL: <http://www.jus.uio.no/lm/air.carriage.warsaw.convention.1929/doc.html>.

## 2. The relation between the concepts of imputation and attribution

For the onset of an international responsibility of the State, in addition to committing wrongful acts, another important condition must be fulfilled, namely: the subject of the obligation must be legally charged with wrongful conduct (“imputation”). Article 2 of the Articles on Responsibility of States for Internationally Wrongful Acts specifies that the necessary element for determining the existence of an internationally wrongful act is the State’s behavior, which does not comply with its international obligations. As stated in the award of the international arbitration tribunal, established under the Convention on the Settlement of Investment Disputes, in the case of *Gustav F. W. Hamester GmbH & Co KG v. Republic of Ghana* (2010), “Article 2 is not an independent basis for attribution, but merely provides for the elements of determining the internationally wrongful act of a State, which must be attributed to the State and violate the State’s international obligation”<sup>10</sup>.

C. Eustathiades emphasizes that in international delict a distinction is made between an objective element, an action or omission that is a known behavior, and a subjective element arising from the perpetration of the conduct of the subject of the law<sup>11</sup>.

Familiarization with the work of the Commission, as well as with international legal literature, leads to the conclusion that the essence of the guilt, its theoretical justification due to various reasons became an obstacle for international lawyers, which caused the most controversial opinions. As a result, the problem of imputation has been largely confused<sup>12</sup>.

What does the “imputation” condition of a particular State’s conduct as a requirement to qualify it as an internationally wrongful act? In scientific works on international responsibility, court decisions and in the practices of States the term “imputation” is used to indicate that a particular act is a State activity.

M. Marinoni rightly concluded, “States, as well as legal entities, cannot but resort to the actions of individuals whose activities must be legally related to the States themselves... In reality, there is no legal entity “state”, but only the actions and wills of the persons, which by democracy are assigned to the subject of law of

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<sup>10</sup> Gustav F. W. Hamester GmbH & Co KG v. Republic of Ghana. ICSID. Case № ARB/07/24. Award. 18 June 2010. Para. 173 URL: <http://www.italaw.com/documents/Hamesterv.GhanaAward.pdf>.

<sup>11</sup> Eustathiades C. Th. Les sujets du droit international et la responsabilité internationale : Nouvelles tendances / C. Th. Eustathiades / Recueil des Cours de l’Académie de droit international. T. 84. 1953-III. Leyden, Sijthoff, 1955. P. 422.

<sup>12</sup> Ельничев В. Н. Проблема вменения в международном праве. *Правоведение*. 1970. № 5. С. 83.

the other than the natural person who is their executor”<sup>13</sup>. As K. Strupp emphasized, “the state requires individuals... whose will and behavior in the physical natural world are the actions of individuals, but in the legal world they are the actions of the community as a whole, that is, of the state”<sup>14</sup>.

From G. Kreijen’s perspective, without government agencies and agents imputation, which is actually “attribution”, becomes impossible. Without reference to the author of the act, there can be no liability for internationally wrongful acts. Without responsibility, international law loses its meaning as a mechanism that ensures international stability and order<sup>15</sup>.

Experts in international law have repeatedly emphasized that the term “imputation” in international law does not have the same meaning as, for example, in internal criminal law, where it may mean the mental properties of a person.

The concept of “imputation”, which is used in international law, has significant differences from the similar concept used in internal legal systems. The provision set out by Special Rapporteur R. Ago in his third report on International Responsibility of States was of fundamental importance: “International law scientists have long sought to emphasize that those who use these terms in the area of international responsibility of States do not seek to attach a meaning corresponding to the meaning given, for example, in internal criminal law, where the term “imputability” is sometimes understood as a moral state, the possibility of perception and manifestation of desire on the part of the subject as the basis of responsibility and where “imputation” can be understood as a charge brought against a person by the judiciary”<sup>16</sup>.

The Commission was extremely keen to avoid the ambiguity that different perceptions of these concepts may cause in certain systems of internal criminal law. For this very reason, at the end of the discussion of the second report on the responsibility of States at the twenty-second session, the Commission at the suggestion of some of its members, in particular of M.O. Ushakov, concluded on the advisability of not using the terms

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<sup>13</sup> Marinoni M. La responsabilita degli Stati per gli atti dei loro rappresentanti secondo il diritto internazionale / M. Marinoni. Rome, Arthenaeum, 1913. P. 33. Цит по : Second report on State responsibility by Roberto Ago, Special Rapporteur. The origin international responsibility A/CN.4/233 // Extract from the Yearbook of the International Law Commission. 1970. Vol. II. P. 189.

<sup>14</sup> Strupp K. Das volkerrechtliche Delikt. *Handbuch des Volkerrechts*. Stuttgart, Verlag von K. Kohlhammer, 1920. Bd. III, 1st abt. P. 35–36.

<sup>15</sup> Kreijen G. State failure, sovereignty and effectiveness : legal lessons from the decolonization of Sub-Saharan Africa. Leiden; Boston : M. Nijhoff, 2004. P. 273.

<sup>16</sup> Third Report on State responsibility, by Mr. Roberto Ago, Special Rapporteur, the internationally wrongful act of the State, source of international responsibility. A/CN.4/246 and Add.1–3 // Yearbook of the International Law Commission. 1971. Vol. II, Part One. P. 214.

“imputation”, “imputability” and the use of the term “attribution” to statement of fact of attribution of action or inaction to the state. As Professor N.A. Zelinska points out, “it is very telling that the terms “guilt” and “imputation” were not used in the proposed draft articles in respect of the State’s responsibility”<sup>17</sup>.

The fact that the term “imputation” has a different meaning than the general sense of the term, which connects wrongful action or omission of its performer, D. Anzilotti wrote in his first work, which dealt with the international responsibility<sup>18</sup>. The author stressed that the meaning of the term “imputation” in international law does not correspond in any way to the content that is embedded in it in internal law, when imputation means the mental state of the agent as a basis of responsibility. When it comes to imputation on the State, it simply means that the international legal order treats actions or omissions as actions of a particular State... Then, since the state as a legal entity is physically incapable of acting, it is obvious that all that can be imputed on the State is the action or omission of individuals or groups of individuals<sup>19</sup>.

At the 25<sup>th</sup> session of the ILC in 1975, it was stated that the term “attribution” in international law is in essence analogous to the term “imputation” used in internal law. However, there is no unambiguous opinion as to what is the term to indicate the relationship between the act and the entity in international law. The International Law Commission, like some authors, opposes the transfer of the term “imputation” from national law. Primarily, this is again due to the fact that in national law the term is used in a different meaning and is related to the concept of guilt. The ILC also believes that the term “imputation” has some criminal law connotation, so it would be more appropriate to use the term “attribution”<sup>20</sup>.

The commentary on Articles of 2001 explains: “... the term “attribution” is used to refer to an operation of attribution of a particular action or omission to a State. International practice and judgments also use the term “imputation”

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<sup>17</sup> Зелинская Н. А. Международные преступления и международная преступность : [монография]. Одесса : Юридическая литература, 2006. С. 89.

<sup>18</sup> Second report on State responsibility by Roberto Ago, Special Rapporteur. The origin international responsibility A/CN.4/233 // Extract from the Yearbook of the International Law Commission. 1970. Vol. II. P. 189.

<sup>19</sup> Second report on State responsibility by Roberto Ago, Special Rapporteur. The origin international responsibility A/CN.4/233 // Extract from the Yearbook of the International Law Commission. 1970. Vol. II. P. 189.

<sup>20</sup> Report of the International Law Commission on the work of its twenty-fifth session, 7 May – 13 July 1973. UN Doc. A/9010/Rev.1 Official Records of the General Assembly. Twenty-eighth session. Supplement № 10 // Extract from the Yearbook of the International Law Commission. 1973. Vol. II. P. 165.

as, for instance, *Diplomatic and Consular Staff* (1980), *Military and Paramilitary Activities* (1986). However, the term “attribution” makes possible to avoid any suggestion that procedural actions, which attribute behavior to a State, are fiction or that the conduct in question is in fact the behavior of another entity<sup>21</sup>.

According to V.D. Vadaplas, “the Commission’s rejection of the term “imputation” and its replacement with the term “attribution” “is decisive, allowing thus to avoid the previously known semantic confusion when the imputation for the action of the State was without any reason associated with the accusation of the judiciary in the internal state law<sup>22</sup>”.

According to V.A. Vasylenko, assignment (attribution or imputation) is not only closely linked to the guilt of the States, but is a system of procedural actions for its establishment. Respectively, the clarification of peculiarities of attribution or imputation process reveals the specific nature of the guilt of delinquent State and determines the procedure for its establishment. And the main thing here is not in the terminology, but in the nature of the legal relations caused by the internationally wrongful act<sup>23</sup>.

An indication that imputation is regarded as attributing the actions of individuals to the State is also contained in the jurisprudence of states. For example, in the advisory opinion of the Permanent Court of International Justice in the case of German settlers in Poland in 1923, it was stated that the “action of the State” should include action or omission of whichever person or group of persons: “States can act only with or through their agents or representatives”. Imputation is the means by which liability for wrongful acts is applied to the State<sup>24</sup>. In the conclusion mentioned above, the court ruled that the Polish Government under the Minority Treaty had an obligation to take measures “to ensure full protection of life and freedom for all Polish citizens regardless of their birth, nationality, language, race or religion.”

The Court found that the eviction of German settlers from Poland would violate the State’s obligations under the Minority Treaty, especially the property rights of the German minority in Poland.

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<sup>21</sup> Commentaries to the draft articles on Responsibility of States for internationally wrongful acts adopted by the International Law Commission at its fifty-third session (2001). Report of the Commission to the General Assembly on the work of its fifty-third session // Yearbook of the International Law Commission. 2001. Vol. II, Part Two. P. 36.

<sup>22</sup> Вадаплас В. Д. Развитие института международно-правовой ответственности // Международное право в современном мире: сб. ст. / отв. ред. Ю. М. Колосов. М.: Международные отношения, 1991. С. 41–51.

<sup>23</sup> Василенко В. А. Ответственность государства за международные правонарушения. Киев: Вища школа, 1976. С. 156.

<sup>24</sup> Settlers in Poland. Advisory Opinion of 10 September 1923 // PCIJ – Series B. № 6. URL: [http://www.icj-cij.org/pcij/serie\\_B/B\\_06/Colons\\_allemands\\_en\\_Pologne\\_Avis\\_consultatif.pdf](http://www.icj-cij.org/pcij/serie_B/B_06/Colons_allemands_en_Pologne_Avis_consultatif.pdf).



In the case of Dickson Car Wheel Company (U.S.A.) v. United Mexican States (1931) the General Claims Commission (Mexico and United States) noted in its award: “Under international law, apart from any convention, in order that a State may incur responsibility it is necessary that an unlawful international act be imputed to it, that is, that there exist a violation of a duty imposed by an international juridical standard”<sup>25</sup>.

When examining the nature and meaning of the category “imputation” on the State, one should also present the positions of jurists who do not consider it necessary to impute the unlawful actions or omissions of individuals or legal entities before it is found responsible for violating the principles and rules of international law.

I. Brownlie comes from the assertion that “generally broad formulas of State responsibility are of little use and they are simply misleading when internal law analogies arise. Thus, it is often said that responsibility arises only when the contested action or omission can be imputed on the State. Imputation is a superfluous notion since the main question in a particular situation is whether there is a breach of duty. The content of the imputation varies depending on the specific duty, the nature of the offense, etc. Imputation generates fiction in cases, where there is no guilt, and suggests a substitute (derivative) responsibility, when the latter is not applicable...”<sup>26</sup> Moreover, in one of his later works I. Brownlie stated, “The concept of imputation is a source of unnecessary difficulty and should be avoided”<sup>27</sup>.

In our opinion, the statements made by opponents of imputation theory are not sufficiently convincing. We cannot agree that imputation is a “needless” or “superfluous” concept. Imputation is one of the prerequisites for the existence of international responsibility, since in order to put the mechanism of international responsibility into effect, it is necessary to determine whether the action or omission was committed by a State. Imputation is an integral and inevitable component in the mechanism of recognition of a State’s responsibility for breach of international obligations.

Thus, attribution provisions are prominent in international law. The main reason is that States can act only through individuals and legal entities and without the application of proper attribution mechanism States will not be a subject to international liability for specific misconduct.

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<sup>25</sup> Dickson Car Wheel Company (U.S.A.) v. United Mexican States (1931) // Reports of International Arbitral Awards. Vol. IV. P. 669–691.

<sup>26</sup> Международное право. В 2-х книгах : перевод с английского. Кн. 2 / Броунли Я. ; под ред. : Тункин Г. И. ; пер. : Андрианов С. Н. М. : Прогресс, 1977. С. 83.

<sup>27</sup> Brownlie I. The Rule of Law in International Affairs : International Law at the Fiftieth Anniversary of the United Nations. Hague : Martinus Nijhoff Publishers, 1998. P. 83.

At the same time, it is necessary to ascertain the existence of politically legal problems in the application of attribution rules, which provokes heated discussions in the theory and practice of international law. The reasons for such disputes, as seen, can include: the absence of general mandatory rules, which define the conditions for attribution; the dependence of the application of one or the other rule on the particular circumstances of the case; the contestation of applicable rules and different interpretations in case law and legal doctrine.

### **3. The concept “attribution” through the prism of state-oriented and individually-oriented approaches**

For the purpose of deep analysis and evaluation of such a legal phenomenon as “attribution” in international law, in our opinion, two main approaches can be applied: *state-oriented* and *individually-oriented*.

These approaches are determined by such two fundamental criteria as the *status* of the subject of the act that contradicts the international legal obligations of the State and the *relationship* of the subject of the act that contravenes the international legal obligations of the State with the latter.

The criterion of the status of the subject of unlawful conduct is based on the recognition of the legal significance of the actions of state or non-state actors in establishing the State’s international legal responsibility in situations which are determined by international law. In this context it is necessary to distinguish between categories of state and non-state actors whose unlawful conduct is attributed to the State in order to hold them accountable internationally.

For the purposes of attribution state actors should be understood as persons and entities which regardless of their functions and position in the system of the state are part of the state apparatus, exercise state power, in accordance with internal law, state legal practice and the provisions of the law of international relations have the “governmental” status, act in an official capacity, including the *ultra vires* conduct and violating the rules governing their activities and whose conduct is contrary to the international obligations of the State.

Non-state actors for attribution purposes should be understood as:

1) persons and entities that do not have the governmental status but in certain circumstances perform certain elements of state power, have a functional or factual connection with the State, and whose conduct is contrary to the international obligations of the State;

2) non-governmental individuals and entities acting in the absence of significant for the purposes of attribution functional or actual communication

with public officials, and whose conduct is contrary to the international obligations of the State (private actors).

The criterion of connection of the subject of the act, which contradicts the international legal obligations of the State with the State itself, is based on the recognition of the legal significance of the functional or actual influence of the state on the subject, the behavior of which is attributed to the State in establishing its international legal responsibility in situations determined by the international law.

According to a *state-oriented* approach, unlawful conduct can be attributed to the State when it comes from one of its bodies or officials, that is, from one of the elements by which the State functions. In this case, the place of the body or official in the mechanism of the State does not matter: according to Art. 4 the Articles of 2001, the conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it 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. In this case, the relationship between the State and the subject of the specific conduct is functional.

In addition, under the influence of international practice, special rules for attribution to the State of unlawful conduct committed by a person or entity, which is not state in a narrow sense (*stricto sensu*) but which have a functional or factual connection with the State, have been developed. Such rules are reflected in Art. 5–11 of Articles on Responsibility of States for Internationally Wrongful Acts of 2001.

These provisions, however, do not take into account the situation of the conduct of persons in the situation of absence of significant in terms of international responsibility connection with the state functions holders. In today's context, it is possible to trace the emergence of a large number of private actors in the international arena, who "undermine" the state-oriented model of international relations, which testifies to the change and transformation of international public law at the beginning of the XXI century, in particular regarding the system of actors, and allows us to single out an individual-oriented approach in addressing the issue of attribution to the State of the conduct of individuals and the imputation of international responsibility on the State. The isolation of this approach is conditioned by the importance of the conduct of individuals in determining the international responsibility of the State.

An *individual-oriented* approach in the context of the issue of attribution of conduct to the State in order of international responsibility should be considered in two ways:

1) unlawful conduct of private actors may be attributed to the State for the purpose of determining its international legal responsibility in situations where such actors are not functionally or actually linked to the State in cases expressly provided by the international law;

2) Due to the unlawful conduct of private actors, which are functionally or actually unrelated to the State apparatus, the conduct of State bodies for failing to comply with the *due diligence* standard is attributed to the State.

Based on a *state-oriented* and *individual-oriented* approach attribution rules can be classified into five main groups:

1) attribution of the conduct of bodies and persons having the status of an authority of a state or its official and acting in such a capacity, including the *ultra vires* conduct or committed with excess of authority; cases of attribution to the State of the conduct of bodies placed at the disposal of a State by another State;

2) attribution of the conduct of non-state bodies, which nevertheless are authorized to execute the elements of state power and attribution to the State of the conduct of non-state persons and entities that execute the elements of state power in situations of absence or failure of official power;

3) attribution to the State of conduct directed, controlled or supervised by the State; attribution to the State of the unlawful conduct of insurgent or other movements that are successful; an attribution of conduct that is recognized and accepted by the State as its own *ex post facto*;

4) attribution to the State of unlawful conduct of individuals and entities in situations where there is no functional or actual connection of such actors with the State;

5) attribution to the State in connection with the unlawful conduct of private actors in the conduct of public authorities for failure to comply with the *due diligence* standard.

Based on the above, we can conclude that “attribution” should be understood as the recognition of the act or omission of state or non-state actors by the State’s action in order to determine its international responsibility for the violation of its international legal obligations.

It should be noted that the purpose of attribution is to indicate for liability purposes that it is related to the actions of the State. Attribution of conduct to the State by itself says nothing about the lawfulness or wrongfulness of such conduct and attribution rules should not be formulated in such a way that they have the opposite meaning<sup>28</sup>.

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<sup>28</sup> Commentaries to the draft articles on Responsibility of States for internationally wrongful acts adopted by the International Law Commission at its fifty-third session (2001). Report of the Commission to the General Assembly on the work of its fifty-third session // Yearbook of the International Law Commission. 2001. Vol. II, Part Two. P. 39.

## CONCLUSIONS

The question of guilt in international law gives rise to different judgments and has no clear answer. Two main directions should be clearly distinguished, reflecting the attitude of the doctrine to the problem of guilt: the position on the recognition of the value of guilt (advocated by Soviet and most post-Soviet international lawyers, as well as some Western scientists); the position of leveling any value of guilt for the onset of responsibility (a significant number of leading scientists in international law).

The following main approaches to the essence of State guilt in international law can be distinguished: the theory of fault responsibility, the theory of objective responsibility, the approach to guilt understanding through violation of *due diligence*, an eclectic approach to the question of guilt. These theories should be the subject of some thorough research.

The attribution provision occupies a prominent place in international law, which is explained by the need to determine whether a particular act of a state or non-state actor is committed by a State for further bringing it to international responsibility. At the same time, it is necessary to ascertain the existence of political and legal problems in the application of norms on attribution, which causes heated debate in the theory and practice of international law. Among the reasons for such disputes are the following: the absence of general mandatory rules, which define the conditions for attribution; the dependence of the application of one or the other rule on the particular circumstances of the case; the contestation of applicable rules and different interpretations in case law and legal doctrine.

International legal relations, constantly becoming more complicated, determine in today's conditions the growing need for a clear formulation and specification of the rules governing the recognition of State conduct as contrary to the international legal obligations of the State and the adoption of a universal convention on the responsibility of states for internationally wrongful acts. Intense activity in the international arena of non-state actors, including private actors, which violates internationally recognized values and destabilizes the international system, indicates a departure from the traditional state-centered world and requires an adequate response from the international community to new challenges. A deep and comprehensive study of the peculiarities of attribution to the State of unlawful actions by state and non-state actors, including private entities, is absolutely necessary for improvement of the mechanism of international responsibility and increase of the effectiveness of international law.

## SUMMARY

The question of guilt in international law gives rise to different judgments and has no clear answer. Two main directions should be clearly distinguished, reflecting the attitude of the doctrine to the problem of guilt: the position on the recognition of the value of guilt (advocated by Soviet and most post-Soviet international lawyers, as well as some Western scientists); the position of leveling any value of guilt for the onset of responsibility (a significant number of leading scientists in international law). The following main approaches to the essence of State guilt in international law can be distinguished: the theory of fault responsibility, the theory of objective responsibility, the approach to guilt understanding through violation of *due diligence*, an eclectic approach to the question of guilt. It is determined that “attribution” should be understood as the recognition of the act or omission of state or non-state actors by the State’s action in order to determine its international responsibility for the violation of its international legal obligations.

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