

**S. S. Andreychenko**

PhD in Law, Associate Professor

National University "Odessa Law Academy",

International Law and International Relations Department

Fontanskaya road, 23, Odesa, 65009, Ukraine

**ATTRIBUTION TO A STATE OF WRONGFUL CONDUCT OF  
INSURRECTIONAL MOVEMENTS IN THE CASE  
OF A NEW STATE CREATION**

In the article the main question is the attribution to a state of wrongful conduct of an insurrectional movement in the cases of a new state creation. The theory of continuity which exists between a new state organization and an organization of rebel movement as the basis for the attribution of conduct to a state has been considered. The concepts of "rebel" and "others" movements within the context of the application of Para. 1 of Art. 10 of the Draft Articles on State Responsibility for Internationally Wrongful Acts of 2001 were analyzed.

**Keywords:** international state responsibility, attribution of conduct, rebel and others movements.

**Problem statement.** The regulation on the attribution of conduct to a state on purpose for establishing of its international legal responsibility is central to international law. As J. Griebel noted the reason is that states are legal entities and can act only through individuals. Without the concept of attribution to a state it won't be able to act, nor can't they be liable for illegal actions as a result of such acts [1, p. 602].

As a general rule at the international level the state is attributed the conduct of its official authority, no matter what branch of government they represent and from place in the state apparatus.

Under the influence of international practice special rules for attribution to the State of wrongful conduct were developed in those situations, when the connection between the state and the executant can be questioned. The most important and indisputable of these rules are reflected in Art. 5-11 of the Draft Articles on State Responsibility for Internationally Wrongful Acts in 2001.

Article 10 of the Draft Articles on State Responsibility for Internationally Wrongful Acts (hereinafter – draft) devoted a special occasion of attribution to a State of conduct of non-state actors, namely the conduct of an insurrectional or

other movement which subsequently becomes a new government of the state or who manages to create a new state. For example, in international practice there are situations when certain groups favor the creation of a new government or state. Those groups can organize a revolution that reaches or does not reach success. Examples include activities in Nicaragua (1984), the Guardians of the Islamic Revolution in Iran (1979), the African National Congress during the apartheid regime in South Africa (1960-1994), the National Patriotic Front of Liberia (NPFL) (1989-2003), etc. [2, p. 262].

In such cases the main question arises: "Should the state be internationally responsible for the wrongful conduct of an insurrectional or other movement"?

Considering events that are taking place on the international scene at this moment and directly affect interests of our country, on the question of blame (attribution) is violating international law and must be solved as soon as possible according to all international laws without any violence.

**Analysis of recent research and publications.** Problems of the international state responsibility has been considering in writings of significant amount of foreign scientists, such as D. Anzilotti, I. Brownlie, V. A. Vasilenko, V.S. Vereshchetin, G. Crawford, Y.M. Kolosov, I.M. Kouris, D.B. Levin, V.A. Mazov, L. Oppenheim, G.I. Tunkin and others.

In domestic science of international law certain aspects of the state responsibility for international illegal acts has been researched by V.F. Antipenko, Y.Y. Blazeitch, M.V. Buromensky, V.G. Butkevych, A.I. Dmitriev, N.A. Zelynskaya, I. I. Lukashuk, V.V. Mytsyk, E.L. Streltsov, L.D. Timchenko, Y. Shemshuchenko and others. However, in important scientific labors the question about state responsibility for wrongful conduct of rebel and other actions remains unclosed.

The ability of state responsibility for illegal actions that rebel movement has done is analyzed on the whole in the context of state responsibility problem for the actions of private persons made during internal unrest. Movement is "temporary" phenomenon; time when it exists is matching with continuing the fight against the

state. If the insurrection is suppressed, the existence and organizational structure of movement ends. If the movement wins there are two cases: the insurgency can take over control of the organizational structure of the existing state or a new state may be created [3, p. 328].

**Paper purpose.** The purpose of writing is to study the question of attribution to the state the conduct of the insurgency in the case of a new government.

**Paper main body.** First of all, it should be noted that the universal international legal rule is that state mustn't be attribute the insurgency conduct that fighting against the existing authorities [4, p. 136].

International arbitration has always followed the principle of awarding state behavior rebel movements. For example, the provision was interpreted by the mixed commission for claims between the US and the UK in the case of *John H. Hanna vs. United States* (1873): "State responsibility arises from the actions of armed rebels committed against the state because the state cannot exercise control over them or to prevent such acts" [5, p. 143].

In the case of *Italy vs. Venezuela (the Sambiaggio Case)* (1903) which concerned claim of Italy to compensate the damage caused to its citizens during a failed coup in Venezuela the Italian-Venezuelan mixed claims commission rejected the Italian claim on the grounds that: a) revolutionaries are not agents of government and indirect responsibility is not expected; b) their actions were committed with the aim of overthrowing the government, and no one is responsible for the actions of enemy that is trying to destroy it; c) revolutionaries were not under state control and the government cannot be responsible for damages caused by those who are not under its influence [6, c. 499].

The International Law Commission explains in the commentary to the draft that initially behavior of rebel movements is only the behavior of individuals. It can be compared to the behavior of individuals or groups involved in the riots or mass demonstrations, and it also cannot be assigned to the state. Afterward when on practice an organized movement appears, less it behavior may be assigned to

the state, which will not be able to exercise a real control over its activities. The rebel action that didn't achieve the success cannot be assigned to the state except in causes provided by any other section of chapter II, for example in special circumstances provided in Art. 9 [7, p. 50].

In contrast in cases where the movement achieves its aims and either becomes a new state government, or creating a new state on the part of the pre-existing State or in the territory under its control, it would be unnatural if the new regime or new State could avoid responsibility for their former behavior.

Article 10 provides behavior of a rebel movement that won for awarding state [7, c. 50].

Paragraph 1 of Art. 10 of the draft is concerning the situation when the insurgency as a new government replaces the former state government and the ruling organization insurgency is ruling organization of that State. The phrase "which becomes the new government" is used to describe this effect.

In this case, the attribution to a state of rebel movement behavior during the struggle is possible by the *continuity* that exists between the new organization of States and the insurgency. The state does not cease its existence as a subject of international law. It remains the same state, despite the changes, reorganization and transformation of its institutions. Moreover, it is the only subject of international law which may be responsible. The situation requires that acts committed during the struggle for power by the apparatus of insurgency could be assigned to state existing alongside the government acts [7, p. 50].

As S. Amerasinh pointed out, insurgent actions (or other directional opposition) of movement is considered as if it acted as the legitimate government of a state during his illegal acts [8, p. 54]. D. Mataz notes that the obligations which should be taken during its armed struggle for power, integrates not only the rules of international humanitarian law, but the general rules of international law including human rights [9, p. 621-634].

Professor S. Tomushat observes: "When any formation is competing to be the legitimate government of a state, for the international community it is seen as

an entity, which has initially assigned a certain very specific duties and responsibilities ... The international community has established common standards concerning the rights and obligations that each entity which seeks to provide legal nature of its activities in order to act as a suitable subject of international relations, must be complied"[10, c. 573-591].

At the same time, the International Law Commission said that the rule enshrined in para.1 shall not be interpreted too broadly in events of government national conciliation that was formed after reaching agreement between the existing authorities and the leaders of insurgency. The state should not be responsible for the behavior of opposition movement that resorts to violence only because of the fact that the opposition elements are included in a newly formed government in favor of general peace. Thus, the criterion of application paragraph 1 is the existence of a real and substantial continuity between the former rebel movement and the new government which it was able to create [7, p. 51]. For example, in Sierra Leone, despite the fact that some members of the Revolutionary United Front (RUF) were included in the structure of government across the ceasefire (1998), Sierra Leone wasn't responsible for gross violations of human rights and humanitarian law committed by RUF [2, p. 264].

According to J. Kreizhen "national reconciliation – is the magic formula in cases of state incapacity and often perceived as the only way out of helplessness internal conflict. An attempt that has been made in Somalia, Sierra Leone, Liberia and the Democratic Republic of Congo mainly was with questionable results. A great indignation throughout the Democratic Republic of Congo was caused by the situation where, for example, several military commanders who allegedly involved in committing atrocities against civilians, have been proposed (and according to be accepted) as deputy chairmen in the new government of the country at the end of 2002" [11, p. 281]. Despite the possibility of prosecution these military commanders as either military commanders or individuals for violations of international humanitarian or criminal law, it is unlikely that their crimes will be

assigned to the Democratic Republic of Congo in future, and whatever of that these people stay in power [11, p. 281].

Thus, Para. 1 of Art. 10 provides the attribution to a state of a rebel movement activity and consequently the international responsibility for its wrongful acts in case of a new government creation by the representatives of the rebel movement, but not in case when only some of them are involved in the event.

Within considering problem the words "*rebel movements*" (para.1 of Art. 10) and "*rebel movements and others*"(Para. 2. of Art. 10) are staying ambiguous in application.

Lukashuk rightly focuses on the existence a contradiction of Para. 1 and Para. 2: "Attracts attention that the first paragraph of article provides a possibility of a new government creation only by rebel movement. Meanwhile, the new government can be created by other movements. A contradiction appears with Para. 2 according to which a new state can be created by rebel, but by other movement too. The question is: Why other movement can create a state, but cannot create a government?"[4, p. 139].

The UN International Law Commission of follows commented these provisions: "Comparing with paragraph 1 the rules of attribution the conduct laid down in Paragraph 2, expands and includes "rebel or other" movements. These conceptions reflect on great variety of movements which can create new state" [7, p. 51].

According to I. Lukashuk, the clarification contained in the commentary to the article can hardly be considered conclusively, cause of practice. "Scientist says that more often "other movements" create a new government rather than a new state" [4, p. 139]. During the discussion about article the International Law Commission drew attention to this point, but the situation didn't change [4, p. 139].

For resolving this question it is necessary to define the meaning of the concepts of "rebel" and "other" movement.

The International Law Commission noted that a comprehensive definition of types the groups is covered by the term “rebel” that used in Article 10, is complicated by large variety of forms that can be the rebel movements in practice. It’s depend on what is talking about, relatively limited internal unrest, the real situation of civil war, anti-colonial struggle, the activities of a national liberation front, revolutionary or counter-revolutionary movement, etc. Rebel movements can be based in the state against which is the action, or in a third state [7, p. 51].

With all this diversity it may be accepted a threshold (“threshold intensity”) using of the law of armed conflict provided in Additional Protocol II in 1977. Paragraph 1 of Art. 1 refers to anti-government “armed forces or other organized armed groups which under responsible command control part of its territory, which enables them to carry out sustained and concerted military operations and implement this Protocol”. Then the behavior of such groups is opposed to the violations of internal order situation and to the emergence of internal tensions, such as disorder, individual and sporadic acts of violence and other acts with a similar nature, cause they are not armed conflict” (Para. 2 of Art. 1). This definition of “anti-government forces” in the context of the Protocols reflects the basic idea of “insurgency” [7, p. 51].

However, with the explanation provided by the Commission it is not clearly perceived what is meant by the term “other movement.

Thus, as S.H. Hluhenkyy notes the accurate definition of private armed groups – “anti-government armed forces”, “organized armed groups”, “rebels”, “armed opposition”, “nations that are fighting against colonial domination, alien occupation and racist mercenaries”, whose struggle is directed against the current government and government forces controlled by this government – under the only name it is quite challenging. Notwithstanding taking into consideration the existence of Art. 10 of the draft, the term “rebel movements and other” is more suitable for the determination of non-armed forces under a general name [12, p. 40].

It should be noted that in this case the author uses the term “rebel movements and other” as a whole, not just to Para.2 of Art. 10.

Thus, we believe that Para. 1 should undoubtedly be applied in the case when the new government is “another movement”.

Another contentious issue that arises in the context of attribution to a state of illegal behavior of rebel movements is the problem of “lawfulness” of such movements.

The International Law Commission on this matter noted that for the purposes of Art. 10 should not hold any differences between the different categories of movements on the criterion of any international “legitimacy” or any illegality on the transformation of government, despite the potential importance of such distinctions in other contexts. From the viewpoint of law on governing state responsibility, it seems unnecessary and undesirable to dismiss the new government or a new state from responsibility for the behavior of its staff, citing on their legality or illegality. Instead of this attention should be escalated to this particular behavior, as well as its legality or illegality under applicable international law [7, p. 51].

Damberi P. notes that the legitimacy of struggle for the independence of a national liberation movement does not lead to any impunity for internationally wrongful acts committed during the struggle [13, p. 619]. In his advisory opinion on Namibia the International Court of Justice said that “the physical control over the territory but the sovereignty or the legitimacy of title is the basis of responsibility for acts affecting other states” [14, p. 107].

**Conclusions.** Summarizing it should be noted next. The behavior of rebel or other movements may be assigned to the state only in exceptional circumstances, in events of achieving success by the struggle movement. In such situations when rebel movements don’t grab state power, the rules of state responsibility aren’t applied to them. Under such circumstances laying responsibility on the state for the wrongful acts of rebels to which it had no relation, indeed it would be unfair.



In international law one of the principles awarding state internationally wrongful conduct is the principle of awarding state behavior and other rebel movements in case of a new government.

In our opinion in Para.1 of Art. 10 we would have to specify that “the behavior of rebel or other movement which becomes a new government of a state is considered an act of that state under international law”, because practice shows that the actions of other movements, not only rebel, lead to the creation of a new state government.

In case of gaining the victory by an organized movement radical changes have place in the state, against which was directed the battling, so that raises the question of continuity and change of identity. The continuity is the basis for awarding state acts that were committed by rebel or other movements in the struggle.

The application of Para. 1 of Art. 10, which provides the attribution to a state of behavior of a rebel movement in the case of a new government creation, guarantees respect for the basic principle of international law responsibility – international responsibility comes for any internationally wrongful acts. Thus, in international law there is a standard that sets to each entity, which tries to create a new state government, the duty to observe international obligations and ensures the inevitability of international responsibility for their illegal behavior, which in turn, promotes international order stability and effectiveness of international law.

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