

URGENT NEED FOR ADDITIONAL CODIFICATION OF FORMS OF MATERIAL AND NON-MATERIAL (POLITICAL) RESPONSIBILITY OF STATES

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Annotation. The article is devoted to the study of the need for additional codification of the forms of material and non-material (political) responsibility of states. The codification of international legal responsibility is a systematic process of setting out the norms of international law regarding the responsibility of subjects for violating international obligations, which is carried out through the creation of codified acts - conventions or resolutions. The main goal of the codification of international legal responsibility is to ensure clear and understandable regulation of the procedure for international legal responsibility and to promote the development of international law. The purpose of the article is to study five main doctrinal documents on the issue of codification of the forms of material and non-material (political) responsibility in international public law for the purpose of the commonality of the names of the forms of international legal responsibility - UN General Assembly Resolution No. 56/689 entitled "Responsibility of States for Internationally Wrongful Acts" of December 12, 2001; Decisions of the International Court of Justice, which establish the responsibility of states for violations of international law and, accordingly, the application of various forms of material and non-material (political) responsibility); the Rome Statute of the International Criminal Court, which defines the composition of international crimes (genocide, crimes against humanity, war crimes, the crime of aggression) and establishes responsibility for their commission in the form of material and non-material (political) responsibility; the Statutes of the International Military Tribunals in Nuremberg and Tokyo (Far East), which established responsibility for crimes against peace, war crimes and crimes against humanity committed during the Second World War and the application of various forms of material and non-material (political) responsibility for these crimes.

Methods of analysis, synthesis, comparative law, and a systemic approach are used for a comprehensive study of five doctrinal documents on the issue of codification of forms of material and non-material (political) liability in public international law and practical aspects of introducing these forms to a country that violates public international law.

The study shows:

1. The absence of use of retortion as a form of international legal responsibility in all 5 studied documents;
2. The use of substitution as a form of international legal responsibility in only one document;
3. The average use (in 2-4 documents) of restitution, satisfaction, restoration, reprisals and sanctions as forms of international legal responsibility.
4. The use of reparation as a form of international legal responsibility in all analyzed documents;

As a general conclusion, we can say that there is an urgent need for additional codification of the forms of material and non-material (political) responsibility of states and is a necessary step to ensure the effectiveness and justice of international law in the modern world. It will allow to eliminate gaps, systematize existing norms, take into account new challenges and ensure a clearer and fairer application of international law.

Key words: Public international law, codification of forms of material and non-material (political) responsibility of states, restitution, substitution, reparation, sanction, restoration, reprisal, retort, satisfaction.

1. Introduction.

As noted by Voitsekhivskyi A.V., codification is the systematization of existing international legal norms and the development of new norms in accordance with the subject of regulation in order to create internally agreed legal acts [1].

The codification of international legal responsibility is a systematic process of setting out the norms of international law regarding the responsibility of subjects for violating international obligations, which is carried out through the creation of codified acts - conventions or resolutions. The main goal of the codification of international legal responsibility is to ensure clear and understandable regulation of the procedure for international legal responsibility and to promote the development of international law.

From the above, it becomes clear that codification is a law-making process. It is customary to distinguish between official codification, which is carried out by states, their organizations, and unofficial codification, which is carried out without the participation of states by international non-governmental organizations, private individuals [2].

2. Analysis of scientific publications.

Certain aspects of the codification of forms of material and non-material (political) responsibility of states were considered in their works by such well-known domestic and foreign scientists as: Mysak O.I.; Koverznev M.S., Koverzneva G.P.; Skrylnyk O.O.; Antonovych M.M.; Gura G.M.; Baymuratov M.O.; Pronyuk N.V.; Kaminsky I.I.; Voytsikhovsky A.V.; Horvatova O.O.; Telipko V.E.; Ovcharenko A.S. and others. However, given the growing instability in the international political arena, the need for additional codification of forms of material and non-material (political) responsibility of states is an extremely relevant and timely task today.

3. The aim of the work.

The aim of the work is to study five main doctrinal documents on the issue of codification of forms of material and non-material (political) responsibility in international public law for the purpose of the commonality of the names of forms of international legal responsibility - UN General Assembly Resolution No. 56/689 entitled "Responsibility of States for Internationally Wrongful Acts" of December 12, 2001; Decisions of the International Court of Justice, which establish the responsibility of states for violations of international law and, accordingly, the application of various forms of material and non-material (political) responsibility); The Rome Statute of the International Criminal Court, which defines the composition of international crimes (genocide, crimes against humanity, war crimes, the crime of aggression) and establishes responsibility for their commission in the form of material and non-material (political) responsibility; The Statutes of the International Military Tribunals in Nuremberg and Tokyo (Far East), which established responsibility for crimes against peace, war crimes and crimes against humanity committed during World War II and the application of various forms of material and non-material (political) responsibility for these crimes.

Methods of analysis, synthesis, comparative law and a systemic approach are used for a comprehensive study of five doctrinal documents on the issue of codification of forms of material and non-material (political) responsibility in public international law and practical aspects of introducing these forms to countries that are violators of public international law.

4. Review and discussion.

The leading place in the codification system of international legal responsibility is occupied by the codification of forms of material and non-material responsibility in international public law. The codification of forms of material and non-material responsibility in international public law is a continuous process, the main goal of which is to systematize and formalize the norms of international

public law relating to the international legal responsibility of states and other subjects of international public law for violations of international obligations and norms of this law.

Material responsibility provides for monetary and other material compensation for violations of international public law, which occurs through restitution, reparation and substitution.

Non-material (political) responsibility includes measures aimed at restoring the violated right through the application of satisfaction, restoration, reprisals, retorts and sanctions.

The main functions of codification of forms of material and non-material responsibility in public international law:

1. Increasing confidence:

Codification provides clear boundaries for understanding and applying the norms of international legal liability in public international law.

2. Increasing fairness:

Codification ensures the fair application of international legal liability for violations of the norms of public international law.

3. Increasing efficiency:

Codification contributes to increasing the efficiency of the application of measures aimed at restoring the violated right.

4. Ensuring stability:

Codification ensures the stability of international relations and the strengthening of public international law.

The main international bodies involved in codification are:

1. The UN International Law Commission [3] - prepares draft codification acts and promotes the development of public international law;
2. The UN General Assembly [4] - considers and adopts resolutions concerning codification and the progressive development of public international law;
3. International organizations and experts - conduct research, develop draft codification acts and advise states on issues of international legal responsibility.

The main international body dealing with the codification of international legal responsibility is the UN International Law Commission [3].

The UN International Law Commission (ILC) is the main body dealing with the progressive development of international law and its codification, it was established by the UN General Assembly to promote the codification and progressive development of international law.

The tasks of the ILC include the preparation of draft conventions on issues not yet regulated by international law, as well as the revision of existing norms.

The ILC's work on draft articles on State responsibility, which was completed in 2001, was an important step in the codification of this area of international law.

It is important to note that the ILC does not adopt laws, but prepares drafts that can then be adopted by UN Member States in the form of treaties or other international acts.

In addition to the ILC, other bodies and organizations also play an important role in this area:

1. The UN General Assembly [4];

- has the right to organize research and make recommendations on the progressive development of international law and its codification, which includes issues of international legal responsibility.

2. The International Court of Justice [5];

- can also consider cases related to international legal responsibility and issue decisions that may be of importance for the development of this area.

3. The International Criminal Court (ICC) [6];

- deals with the prosecution of persons responsible for the most serious international crimes, such as genocide, crimes against humanity and war crimes.

4. States also play an important role in the formation and development of international legal norms, including in the area of responsibility.

It is worth noting that the issue of international legal responsibility is complex and multifaceted, and its consideration requires the participation of various international bodies and states.

The main doctrinal documents on the issue of codification of forms of material and non-material (political) responsibility in public international law are:

1. UN General Assembly Resolution No. 56/689 entitled “Responsibility of States for Internationally Wrongful Acts” of December 12, 2001;

2. Decisions of the International Court of Justice, which establish the responsibility of states for violations of international law and, accordingly, the application of various forms of material and non-material (political) responsibility);

3. The Rome Statute of the International Criminal Court, which defines the composition of international crimes (genocide, crimes against humanity, war crimes, the crime of aggression) and establishes responsibility for their commission in the form of material and non-material (political) responsibility.

4. The Statutes of the International Military Tribunals in Nuremberg and Tokyo (Far East), which established responsibility for crimes against peace, war crimes and crimes against humanity committed during World War II and the application of various forms of material and non-material (political) responsibility for these crimes.

Below is a brief but quite interesting study of five main doctrinal documents on the issue of codification of forms of material and non-material (political) responsibility in public international law for the purpose of the commonality of names of forms of international legal responsibility:

1. UN General Assembly Resolution No. 56/689 entitled “Responsibility of States for Internationally Wrongful Acts” of December 12, 2001 [7].

Table 1.

Number of uses of forms of material and non-material (political) responsibility in UN Resolution No. 56/689 entitled “Responsibility of States for Internationally Wrongful Acts” of December 12, 2001.

Forms of responsibility	Number of uses of the specified form of responsibility
Forms of material responsibility	
Restitution	7
Substitution	0
Reparation	11
Forms of non-material (political) responsibility	
Satisfaction	5
Restoration	0
Reprisal	1
Retorsion	0
Sanction	0

As we see, the lack of using of the 4 forms of international legal responsibility in UN General Assembly Resolution No. 56/689 entitled “Responsibility of States for Internationally Wrongful Acts” of December 12, 2001.

2. Decisions of the International Court of Justice of the United Nations may establish the responsibility of states for violations of international law [8].

Table 2.

Number of decisions of the International Court of Justice of the United Nations using the names of forms of material and non-material (political) responsibility based on press releases.

Forms of responsibility	Number of uses of the specified form of responsibility
Forms of material responsibility	
Restitution	16
Substitution	4
Reparation	184
Forms of non-material (political) responsibility	
Satisfaction	25
Restoration	7
Reprisal	0
Retorsion	0
Sanction	15

As we see, there is not using of the two forms of international legal responsibility in the decisions of the International Court of Justice, which establish the responsibility of states for violations of international law.

3. Rome Statute of the International Criminal Court [9].

Table 3.

Number of uses of forms of material and non-material (political) responsibility in the Rome Statute of the International Criminal Court.

Forms of responsibility	Number of uses of the specified form of responsibility
Forms of material responsibility	
Restitution	2
Substitution	0
Reparation	11
Forms of non-material (political) responsibility	
Satisfaction	0
Restoration	0
Reprisal	0
Retorsion	0
Sanction	4

As we see, there is not using of the 5 forms of international legal responsibility in the Rome Statute of the International Criminal Court, which defines the composition of international crimes (genocide, crimes against humanity, war crimes, crime of aggression) and establishes responsibility for their commission in the form of material and non-material (political) responsibility.

4. The Statute and Judgments of the Nuremberg Tribunal – History and Analysis of the Memorandum submitted by the Secretary-General [10].

Table 4.

Number of uses of forms of material and non-material (political) responsibility in the Statute and Judgments of the Nuremberg Tribunal.

Forms of responsibility	Number of uses of the specified form of responsibility
Forms of material responsibility	
Restitution	0
Substitution	0
Reparation	1
Forms of non-material (political) responsibility	
Satisfaction	0
Restoration	0
Reprisal	0
Retorsion	0
Sanction	1

As we see, the lack of application of the 6 forms of international legal responsibility in the Charter and the decisions of the Nuremberg Tribunal, which established responsibility for crimes against peace, war crimes and crimes against humanity committed during World War II and the application of various forms of material and non-material (political) responsibility for these crimes.

5. International Military Tribunal for the Far East (Tokyo), Judgment of 4 November 1948 [11].

Table 5.

Number of uses of forms of material and non-material (political) responsibility in the International Military Tribunal for the Far East (Tokyo).

Forms of responsibility	Number of uses of the specified form of responsibility
Forms of material responsibility	
Restitution	0
Substitution	0
Reparation	1
Forms of non-material (political) responsibility	
Satisfaction	7
Restoration	10
Reprisal	1
Retorsion	0
Sanction	0

The lack of application of the 4 forms of international legal responsibility in the International Military Tribunal for the Far East (Tokyo), which established responsibility for crimes against peace, war crimes and crimes against humanity committed during World War II and the application of various forms of material and non-material (political) responsibility for these crimes.

5. Conclusions.

Thus, the codification of international legal responsibility is a systematic process of setting out the norms of international law regarding the responsibility of subjects for violating international obligations, which is carried out through the creation of codified acts - conventions or resolutions. The main goal of the codification of international legal responsibility is to ensure clear and understandable regulation of the procedure for international legal responsibility and to promote the development of international law. According to the study of five main doctrinal documents on the issue of codification of forms of material and non-material (political) responsibility in international public law for the purpose of the commonality of the names of forms of international legal responsibility, the following conclusions can be drawn:

1. Lack of use of retorsion as a form of international legal responsibility in all 5 studied documents;
2. Use of substitution as a form of international legal responsibility in only one document;
3. Average use (in 2-4 documents) of restitution, satisfaction, restoration, reprisals and sanctions as forms of international legal responsibility.
4. Use of reparation as a form of international legal responsibility in all analyzed documents;

As a general conclusion, it can be said that there is an urgent need for additional codification of the forms of material and non-material (political) responsibility of states and is a necessary step to ensure the effectiveness and fairness of international law in the modern world. It will eliminate gaps, systematize existing norms, take into account new challenges and ensure a clearer and fairer application of international law.

References:

1. Voitsekhivskiy A.V. International Law. Textbook. Kharkiv 2020. P.20. [in Ukrainian].
2. Telipko V.E., Ovcharenko A.S. Public International Law. Textbook. Kyiv. Center for Educational Literature. 2010. P.287. [in Ukrainian].
3. United Nations. International Law Commission. URL: <https://legal.un.org/ilc/> (дата звернення: 01.06.2025). [in English].
4. United Nations. UN General Assembly (UNGA). URL: <https://www.un.org/en/ga/> (дата звернення: 01.06.2025). [in English].
5. International Court of Justice. URL: <https://www.icj-cij.org/home> (дата звернення: 01.06.2025). [in English].
6. International Criminal Court. URL: <https://www.icc-cpi.int/> (дата звернення: 01.06.2025).
7. United Nations. Responsibility of States for Internationally Wrongful Acts 2001. URL: https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf (дата звернення: 01.06.2025). [in English].
8. Internal Court of Justice. URL: https://www.icj-cij.org/advanced-search?search_api_fulltext=&search_api_fulltext_1=&search_api_fulltext_2=&case_selection=1&field_document_group_type=All&field_doc_incidental_proceedings=All&field_date_of_the_document%5Bmin%5D=&field_date_of_the_document%5Bmax%5D=&items_per_page=10&sort_order=DESC (дата звернення: 01.06.2025). [in English].
9. Rome Statute of the International Criminal Court. URL: <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf> (дата звернення: 01.06.2025). [in English].
10. United Nation. Document:-A/CN.4/5 The Charter and Judgment of the Nürnberg Tribunal – History and Analysis: Memorandum submitted by the Secretary-General. URL: https://legal.un.org/ilc/documentation/english/a_cn4_5.pdf (дата звернення: 01.06.2025). [in English].
11. Global Institute for the Prevention of Aggression. International Military Tribunal for the Far East Judgment of 4 November 1948. URL: https://crimeofaggression.info/documents/6/1948_Tokyo_Judgment.pdf (дата звернення: 01.06.2025). [in English].

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