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THE CONCEPT OF DUE DILIGENCE AND NOTIFICATION ON THE EPIDEMIC: A LEGAL STUDY IN INTERNATIONAL RESPONSIBILITY: COVID 19 AS A MODEL

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ABSTRACT. The Article focused on the two topics of due diligence and notification on the epidemic in light of the rules of international responsibility because the controversy and legal debate is still raging in determining the legal framework for both concepts, as two hypotheses conflict in this framework: The same rule of care, in contrast to the claim of an injured country as a result of not taking the assumed care. In this context, it is necessary to indicate the limits of due diligence and one of its most critical preventive forms, which is the notification before the occurrence of the damage, and whether it is strict normative or circumstantial related to before, during, and after the event of the damage. With the spread of deadly epidemics in the international community and the damage that resulted from their spread, it has become necessary for international jurisprudence to take a serious stand to fill the legal gaps related to dealing with the spread of deadly epidemics. Therefore, among the crucial matters about the principle of due diligence that the state must do, as well as notification to deal with issues that may threaten international peace and security, including epidemics, we will work on clarifying the concepts of due diligence and notification in light of the current legal rules and their effectiveness in curbing the evasion of international responsibility.

JEL Classification:
K12, K13, K20

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Introduction

Due diligence and notification of harmful activities are well-established concepts in the field of law in its various branches, as international rules require the code or customary of states to exercise due diligence and diligence to work not to harm other countries or violate their international obligations, as well as in the matter of notification. Because global responsibility exists and does not harm illegal conduct internationally, the degrees of commitment and the determination and reparation of the gravity of the damage depend on the timely achievement of the degree of compliance with the principles of due diligence and notification. The study refers to several contemporary legal issues, especially with the increasing prevalence of the CORONA pandemic and its impact on

various aspects of life, which requires addressing the subject in line with prevailing legal thesis, particularly in determining the course of international responsibility for confirming due diligence and notification, which will contribute to the promotion of scientific and practical research in terms of international disputes arising from damages on the one hand, and the hypothesis of the performance of due diligence and preventive specialties. The study is exposed to one of the most critical topics in the legal arena by examining jurisprudence and legal jurisprudence concerning the duties of States to exercise due diligence in exercising their sovereign rights, which may result in damages to the rights of other states and lead to the violation of the obligations of the injured States, as well as the duty to notify of the damages expected due to the practice. The problem can be described as follows: any conduct arising from States is supposed to be subject to the principle of compliance in exchange for international obligations, only through due diligence in normal circumstances and accordance with convincing and logical events, and if this hypothesis is consistent in international practice, states have not raised global responsibility and the claim that a State is not complying with the principle of due diligence? Why do there be no fixed criteria for determining the concept of due diligence? Is there any effect of notification within the scope of international responsibility in exchange for due diligence? To elaborate on the research subject, the answer to the questions raised required the analytical approach in the analysis of the relevant legal texts and the descriptive approach to describing the legal concepts known within the scope of the rules of international responsibility. The research plan includes dividing the study into two researchers, first showing the concepts of due diligence and notification, the statement of legal adaptation of each, and the statement of state obligations, and the second research is devoted to examining the international responsibility arising from the outbreak of the Corona pandemic within the framework of the concepts mentioned above.

First topic: due diligence and epidemiological notification

States are working on exercising their political rights within their territories and within the territory by land, sea, and air, and the forms of exploitation of these rights vary, it may result in damage within the territory of the state or even outside its territory, and here is the concept of due diligence by the state to work not to harm neighboring countries at the very least, The issue of notification of the expected damages resulting from the exploitation of their sovereign rights by States is also a matter of Through this research, we will work on clarifying the concept of due diligence in the first requirement. In contrast, the second requirement will be devoted to demonstrating the concept of risks about the harmful consequences of the spread of epidemics.

The Due Diligence

The concept of due diligence is linked to the late nineteenth century, following the discussion of neutrality, and then extended to many areas of commercial law, international environmental and diplomatic law, and the treatment of foreigners (1). In the context of the research, the issue of due diligence in controlling the spread of THE CORONAVIRUS and the possibility of reducing it by the State of origin has raised considerable controversy, particularly if the State of origin does care to reduce its spread, To inform the concept of due diligence, we will divide the requirement into two branches, showing the conventional definition of due diligence in the first branches. In contrast, we will be subject to research on legal adaptation and jurisprudence in the second section.

Section 1: Conventional definition

The concept of due diligence is one of the most central concepts in international law. Many arbitration decisions have referred to it on the subject of global responsibility. However, the specific standard of due diligence has remained somewhat unclear. Still, it is generally not agreed upon, possibly due to the circumstances surrounding each case, which reflects on the emergence of multiple concepts and if the contents are the same for those who were able to analyze the facts Constructed and interpreted for due diligence.

The origin of the term due diligence is Roman law, under which a person was responsible for any accidental harm to others, indicating that person's wisdom (2).

If we follow the legal concepts, we will find what is known as due diligence by saying: the care that the usual person must do before entering into a separate agreement with the other party or is a certain standard of care through which the normal person is assessed, to be wary of the expected harm that results from their use of his property towards others (3).

Collins defines due diligence as "a reasonably expected or legally required degree of care, particularly from persons providing professional advice, and to conduct an assessment with caution and necessary care" (4).

It is defined in the dictionary of law as: "Care exercised by a reasonable person to avoid harm to other persons or their property" (5).

Although the definition mentioned above referred to a general legal understanding that might apply to natural persons rather than to moral persons, including States, that was not enough to show the elements of due diligence at the level of state compliance with their obligations to the Customary Convention, which would lead to the search for other definitions that would achieve the objective of the study.

It is also described as a concept generally accepted in international law. States must act to ensure that activities do not harm the environment of other States under their jurisdiction (6).

It also defines it: "The excellent conduct expected of a particular State Government, which aims to protect the interests of other States effectively, does not require that the state's care be consistent with its negligence, even if it fails to meet the standard of conduct expected, and has made an excellent effort to minimize the damage (7).

As a standard of conduct, due diligence is defined as a standard of conduct required by the State " (8).

In the light of case law, the International Court of Justice, in its opinion during the Corfu Channel case, has outlined the concept of due diligence by saying: "Each State is obliged not to knowingly allow it to the territories that will be used for acts contrary to the rights of other States "(9).

Through the Court's view above, it has established a general commitment to ensuring good neighborly relations.

Although it is argued that due diligence derives from negligence in English law, the idea of due diligence does not stem from a particular system or tradition. In 1872 the concept of due diligence was introduced in the Alabama case concerning the failure of the United Kingdom to fulfill the duty of neutrality during the American Civil War (10).

Due diligence was mentioned during the Alabama arbitration adjudication, as the Court referred to two rules relating to the subject of life and state responsibility for damages caused by individuals when acting within the jurisdiction of the State (11).

In the case concerning U.S. diplomatic and consular officials in Tehran, the International Court of Justice interpreted in its May 24, 1980 ruling that it was "what the

responsible state must do under normal circumstances and address the situation by using the scientific means available for fulfilling its international obligations." (12). The interpretation, therefore, indicates an acceptable level of governance, care, and determination expected of the State to do during certain circumstances to meet its international obligations.

It should be noted that the Iraqi Penal Code has included the concept of due diligence in article 369 of it, and the warning issued contributes to the proof of error by the Department of Health in the future (13).

Section 2: Legal adaptation of due diligence in the light of the rules of general international law and diligence

With epidemics and pandemics, customary international norms require a legal framework that obliges States to prevent the transmission of harm to other States through legal action, health measures, and efforts to achieve the goals and protect the international community. Due diligence is the expression commonly used to establish a standard of conduct, by which the State can measure efforts to address risks, threats, or harms, i.e., it is a standard of good governance and assess the extent to which the State responds and has done what was reasonably expected of it when responding to particular harm or risk (14).

The due diligence standard can be found in several rules of international law, including customary rules that bind States in their mutual relationship, including human rights, the environment, and cyberspace, as well as global public health standards (15).

International rules usually impose obligations on States, including conduct, preventing, halting, or repairing national or transnational damages. Due diligence is generally flexible and depends on the ability of States to take the necessary and appropriate measures in the right place and at the right time (16).

Advanced speech gives due diligence a measure of importance, particularly in the light of international conflicts of interest and with the discretion of States to choose what they deem appropriate, depending on the circumstances that have given rise to the source of damage under general and possible international obligations (17).

In the context of the global health crisis of the Corona pandemic, it is assumed that there is a balance between the rights and freedoms that States seek to protect and economic interests and the obligations imposed on them when taking specific actions. Lack of capacity and infrastructure must not be an excuse to hesitate to confront the epidemic (18).

Due diligence is a commitment to conduct rather than an obligation of consequence, which means that States must do their utmost to do their duty. If they fail to do so, they are responsible for the look. They do not ask for the results achieved to urge the State of origin to demonstrate as much effort as possible to prevent or minimize the expected damage (19).

To examine the legal adaptation of due diligence, we will discuss the analysis of international due diligence obligations under the principles of general international law as follows:

First: the principle of no harm and no harm

This principle exists in customary guardian law and is a rule requiring States to take the necessary and acceptable measures to prevent severe cross-border damage. Therefore such standards would mean that none of the legal consequences arising from that damage would be borne if the injured State did not perform its duty (20).

It is true that the principle of non-harm, taking its wide range in the environmental sphere, can be applied in international law in such a way that it can include the consequences of the spread of epidemics such as the Corona pandemic, the obligation here requires States to act without looking at the person responsible for the damage or whether the activity is legitimate or not. Thus, the principle of non-harm includes human accidents caused by private entities and those caused by natural disasters (21).

According to international law, due diligence is achieved on the State through a low probability of causing disaster or the possibility of cross-border damage-causing severe damage (22).

There is no doubt that the spread of THE CORONA virus has caused significant damage beyond the national boundaries of the State of origin. However, as in other due diligence obligations, the principle of non-harm does not force States to stop the spread of the epidemic once and for all but to try to stop the spread and reduce its risk to society.

It should be noted that the International Court of Justice confirmed the customary nature of this principle in the Corfu Canal case in 1949 when it referred to the State's duty to prevent the use of its territorial waters in acts contrary to the rights of other States (23).

In the area of justice, the principle of non-harm has been addressed in several cases, including the Alabama case, the Trail smelter, nuclear weapons, and the work of the International Law Commission in the 2001 draft articles on the prevention of cross-border damage (24).

Second: International Disaster Law

The 2016 draft articles of the International Law Commission included advanced customary rules for assessing the international legal framework on disasters at the international level (25).

Through the review, it is clear that States must act to prevent and treat cross-border damage and not harm the populations of other States or those crossing their territories or areas under their jurisdiction (26).

There are also rules of common international law that establish obligations under customary law, including those governing diplomatic and international bilateral relations. Therefore these obligations require the sending State to compensate the receiving State as a restriction on compliance with international commitments (27).

If the damage has been done to a group of States, not one, the confrontation is collective, and the harmful State is obliged to compensate for the damage (28).

Third: International Human Rights Law

Under international law written and customary, States must protect the human rights of individuals under their jurisdiction or from any harm caused by the use of their political rights by States, as indicated by the preamble to the International Covenant on Civil and Political Rights of 1966 (29).

As part of the research and with the spread of the CORONA pandemic, the duty of due diligence can apply to the world's health emergency crisis, and as is well known, most human rights have been affected by the spread of the Corona pandemic, but the right to life and the right to health care the most affected and we will address this in a focused and competent manner.

1- The right to life

In its 2018 public comment (36) on article 6 of the International Covenant on Civil and Political Rights, the UN Commission on Human Rights referred to the right to life and the principle of due diligence that States parties have to respect the right to life and have a responsibility to refrain from any conduct leading to arbitrary deprivation of life. States parties must also ensure the right to life and due diligence to protect the lives of individuals from deprivation caused by persons or entities whose conduct is not attributed to the State. The obligation of States parties to respect and guarantee the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life (30).

The issue of the arbitrary use of lethal force is one of the most common terms associated with the violation of the right to life, so the duty to adopt the necessary measures to protect the right to life of members of society under the jurisdiction of the State of justice and to ensure that it is not violated. The violation may be a reality through situations in which patients are at risk and deprived of emergency services that protect the right to life and provide treatment without discrimination (31).

2- The right to health

The right to health care requires caretakers of patients at risk of COV to take measures to keep pace with emergency conditions in society that directly threaten the lives of individuals, as indicated in the article (12/3) of the International Covenant on Civil and Political Rights 1966 (32).

Article (12/2c,d) of the International Covenant on Economic, Social and Cultural Rights 1966 also noted the need to include the gradual realization of the right to health in such a way as to ensure the prevention, treatment, and control of epidemics, and the creation of conditions for the provision of medical services and patient care (33).

The criteria for the right to health can indeed be applied at two levels, both of which move international responsibility against a State that has not taken precautions under the principle of due diligence, namely, the affirmation of the right to health of the individuals living there, or even for the regressive effects that may affect individuals outside the territory of the State that has not performed the duty of due diligence.

Here, the breach must be clear and convincing evidence to free you from responsibility for breaching an international obligation, which can be confirmed in *le Mailloux v. France* before the European Court of Human Rights, as the Court stated: "The Court noted that although the right to health is not in itself a guaranteed right under the European Convention on Human Rights and its protocols, States have a positive obligation to take appropriate steps. However, in the current case, the Court considered that it did not have to determine whether the State had failed to meet these positive obligations. The request was unacceptable. among all the inhabitants of France. Still, she did not explain how he was personally affected. Instead, she reiterated that she did not accept a claim without conclusive evidence, in the sense that applicants could not file a complaint about a provision of domestic law, local practice, or general procedure simply because it was contrary to the European Convention, and for the individual to claim to be a victim of a violation of the Convention, within the meaning of Article 34 (individual applications), the individual concerned must be able to To prove that he was "directly affected" by the measure complained of, i.e., he must provide reasonable and convincing

evidence of the possibility of a violation affecting them personally. But in the current case" (34).

Third: International humanitarian law

The importance of applying international humanitarian law during the spread of deadly epidemics lies in two dilemmas, the first during armed conflicts. The parties to the conflict must then take due diligence to prevent the spread of the epidemic and observe the rules of international humanitarian law (35).

It should be noted that there is no due diligence standard as mentioned earlier that could apply to the State's obligation to particular conduct, as it varies according to due diligence standards (36).

The second axis is within the duty of the occupying authorities to maintain public health by making every effort and by using the means available to place preventive health measures within the territory they control to combat the spread of deadly epidemics in the territory controlled by the occupying Power (37).

The occupying power must provide medical care and collect patients (38). For all you mean.

Family health care?

Common Article 3 of the Geneva Conventions?

The concept of notification

Many are the actions of States in the various fields of science. Still, these actions may result in damages to other states, whether by the will of harmful conditions or beyond their control, and one of the means agreed by the international community to strengthen cooperation among members of the international community is to notify any expected harm in the future, whether by the projecting States expected to be harmed, to assess the anticipated risks and notify the international community at the earliest opportunity. Possible, to prevent or minimize the consequences of such damage, and to inform the concept of notification, we will address the conventional definition of it in the first section and then show the legal adaptation of the notification in the light of international rules and jurisprudence and the judiciary as follows:

Section 1: Conventional definition

The notification defines that: "This legal conduct in which an international person of his will informs another international person of a particular incident, thereby aiming to mitigate certain legal implications, whether this situation represents a material incident such as the seizure of a particular territory, or a legal fact as an international agreement, whether this situation is legitimate or illegal" (39).

The notification also defines that "an act by which a particular act formally defines the other party, status, fact or document, which may have legal implications," and part of the jurisprudence considers that notification means "the procedure by which a State notifies another State of a particular incident, which may have legal implications" (40).

The Permanent International Court of Justice has defined the notification as (official declaration of one State to another or another, specific facts are made public to prepare for a legal reaction) (41).

It is also known that: (an act by which the State brings to the knowledge of other persons of international law a particular fact or position with specific legal implications, since without notification the States or persons concerned may pay their ignorance of it, they must draw its consequences under international law (42).

Section 2: Legal adaptation of notification in the light of the rules of general international law and jurisprudence

The State may issue the notification in writing or orally, where there are cases expressly imposed by the text. Here the notification is mandatory, for example, in the article (34) of the Berlin Convention of 1885, which required States to notify their counterparts in occupation or protection of a particular territory (43).

In the same vein, article (38) of the Third Hague Convention of 1907 stated that neutral States must be notified of the state of war between their parties (44).

Article (11) of the London 1909 statement mentioned the notification when it touched on the maritime blockade (45).

Article 1/3 of the Charter of the United Nations also addressed the issue of notifying States of the United Nations to withdraw (46).

The United Nations Convention on State Activity in Outer Space Exploration and Use of 1967 also emphasized the commitment of the States parties to the Treaty to inform other States parties to the Treaty, or the Secretary of the United Nations, of any phenomenon they detect in outer space (47).

In the absence of a convention or customary text, the notification is optional, for example, in the severing of diplomatic relations or the emergence of a new State and others (48).

It should be noted that the International Court of Justice, having addressed the subject of notification in its judgment in the Corfu Channel case, described the duty of information as based on the initial considerations of humanity and that the obligations of the Albanian Government were to notify British warships of the existence of sea mines and the danger they could pose in the public interest (49).

The Court's view was that the Albanian Government had not fulfilled its international obligations to notify ships crossing the Strait (50).

This principle is recognized in the use of international waterways and is adopted in international conventions, provisions by international arbitration bodies, the practices of international organizations, and state conferences (51).

In an example related to the subject of the study, the WHO Health Regulation, adopted in 2005 and introduced on 15 June 2007, is one of the essential binding instruments for States to regulate state obligations to the international community to curb the spread of rapidly contagious diseases and epidemics (52).

It is true that the purpose of this regulation is (prevention, protection, control, and response to the spread of diseases at the international level in ways commensurate with and limited to public health risks), and prepares the Information Centre and control of deadly infectious diseases, in addition to the obligations imposed by international rules to notify the outbreak and spread of epidemics to other States (53). In the course of our research, we can ask the following question:

How committed is the source State to the relevant notification of the spread of the CORONA pandemic?

To answer, states comply under the International Law on Health Regulations and Regulations issued by who in 2005 by sharing information, following up on health developments, and working to notify WHO first and foremost by consulting with WHO under articles 6 and 7 of 2005 WHO Health Regulations. Furthermore, article VI obliged States to assess health events on their territory by working with the guidelines and for each State to notify WHO and make efforts to determine emergency health events (54).

The second paragraph of the same article above indicated that the State notifying the organization should communicate with who and provide it with accurate information and report on the difficulty of responding quickly to emerging health challenges (55).

Article VII of the Regulation sought to expand States' obligations by exchanging information referred to by Article VI to include any health conditions experienced by the State, which is evidence of an emergency or unexpected health event on the territory of that State, whatever its source and may pose a threat to global health in general (56).

Through the above, the failure of the source state to notify the epidemic is a violation of the obligations imposed by the provisions mentioned above, and Article VII obliged the exporting country of the virus to refrain from noticing its spread regardless of whether it caused its spread or not.

Second: International responsibility arising from the CORONA pandemic outbreak

The views of jurists of international law combine the definition of unlawful conduct as (an act that violates the provisions of international law, which violates the rules of general international law, convention or customary law, or the principles of public law) (57).

The jurist (AJO) defines him as (conduct attributed to the State under the law, which consists of an act or omission, contrary to one of its obligations) (58).

The jurist De Boi internationally defines the illegal act as Merely violating the rules of law and thus creating a case for examining psychological factors or examining the intentions of the active State, which facilitates the errand of the injured and reduces the burden of establishing evidence, it is enough to prove the difference between the actual conduct of the State and the content of the legal obligation imposed on it (59).

Article 1 of the Draft State Responsibility states that: "Any illegal international act by the State entails its international responsibility" (60).

The term "wrongful act" is indeed a term that, although commonly used in The Arab Studies, is inaccurate, since when reviewing the definition in the article (1) of the Draft Articles of Responsibility 2001, it is clear that Pena's mistake was made in translating the purpose of the document in Arabic. The term ACTS has been translated into Arabic as acts, which means reducing the movement of international responsibility solely to illegal acts without neglect. In contrast, at the heart of Legal rules relating to liability generally show the opposite (61). The term ACTS refers to acts, namely either act, omission, or omission, which is closer to the legal framework known both at the level of national legislation and at the level of international conventions, which involves responsibility for any act or omission by a natural or moral person legally qualified for legal accountability, and with evidence that reveals The draft convention itself, in article 2, states: "The state commits an internationally illegal act if the act of action or omission.....) (62). From this text, the contradiction in which the document was signed in Arabic appears, once referring to (acts) and in others, to actions involving action or negligence (omission).

It also demonstrates the trend mentioned above, as comments from the Commission on the articles of the draft indicate that the term "Acts" refers to unlawful or

wrong actions, as the international illegality also refers to negligence (omission) that cannot be included in the term "act" (63).

From the above, we believe that internationally unlawful conduct violates international rules, whether customary or general principles. To be informed of the subject of responsibility, we will divide the subject of responsibility into two demands that show, first, the neglect of the State of origin and its implications while addressing the issue of negligence of the state injured in the second requirement.

The Neglect of the source state

Article 1 of the Draft State Responsibility is the fundamental principle of assigning responsibility to the State that issues unlawful conduct, which stipulates that ((any illegal international act by the State entails its global responsibility) (64).

Article II of the draft also identified the necessary elements to do the act of what comes out of the State illegally (65).

The text of the article above emphasized that the basic rules on international responsibility in its various forms may set specific criteria for demonstrating whether or not the State defaults and such standards ((due diligence)."

Illegal action is an essential key pillar in assigning responsibility to the Source State through illegal actions contrary to its international obligations in the light of collective and non-collective international conventions, not to mention its obligations to customary rules (66).

In its ruling in the famous Corfu Strait case, the International Court of Justice clarified its verdict based on error theory. It acknowledged Albania's responsibility for the presence of mines in its waters, and through the Court's ruling, it dealt with the matter on two crucial aspects:

First side:

About the Albanian Government's knowledge of the mines in the Corfu Strait, the Court used this aspect to prove the evidence in the case, as by doing so, the Court was assured of the Albanian Government's knowledge of the mines, as it was able to know, and therefore recognized Albania's responsibility for the dangerous activity in its territory, regardless of who committed that activity, which is part of the absolute responsibility of the State for actions under its territorial jurisdiction and under its control.

Second side:

This aspect relates to the extent to which Albania is responsible for the explosions and the material damage caused, as well as the human losses assigned by the Court to Albania based on the theory of error, as the Court indicated that Albania, knowing the existence of the mines, had not taken precautionary and due diligence to warn ships approaching the area of the "game," as a result of serious negligence in not preventing the disaster (67).

As part of our research, 2005 WHO Health Regulations provide for the State's obligation to report outbreaks of diseases that cripple or restrict international travel and trade based on clear and confirmed evidence (68).

States parties must establish a minimum level of basic control, responding and providing assistance to WHO, giving them access to and using NGOs to gather

information and thus giving them the power to declare an international health emergency (69).

Based on the above case law and international regulations, the neglect of the source State in preventing the spread of COV and its failure to do due diligence to reduce the spread of this deadly virus is sufficient reason to assign international responsibility to the Source State. Furthermore, it causes the inability to fulfill its international obligations to the international community.

According to the State above Responsibility Project, the source state has violated its obligations in the light of the draft state responsibility by not taking the necessary measures to prevent the spread of the epidemic.

The Neglect of affected countries

Article (42) of the Draft State Responsibility states that: (The state has the right to invoke as a state the responsibility of another state if the obligation that has been breached is a duty:

A- Towards a single country.

b. Or towards a group of States, including that state, or the international community as a whole, and the breach of obligation was:

1. Particularly affects that State.

2. Or of a nature that radically changes the position of all other States to which the obligation is a duty to continue to fulfill the obligation.

Through the above text, article (42) narrowly defined the term injured state and differentiated between harm to a particular State individually and a small group of States, and the legal interests of a large group of States within the limits of mutual collective obligations that State.

The injured State must therefore take specific measures of a formal nature to preserve and protect its rights in the light of international obligations, such as applying against another State before an international court or judicial body. The request must be based on verified harm or violation of an international obligation.

The situation may be up to the State taking countermeasures based on a specific international treaty right (70).

A distinction must also be made between the injured State and states that have the right to invoke liability under article (48) of the Draft Responsibility of States based on the existence of the common interest of establishing responsibility (71).

From a closer look at the text of the article (42), there is a significant similarity between it and the text of the article (60) of the Vienna Convention of 1996. Still, the distinct difference is that the latter gave the State party to the treaty the right to unilaterally terminate or suspend the treaty in a material breach (72). In contrast, article (42) of the Draft State Responsibility relates to any violation of an international obligation, whatever the nature of that obligation.

Through the preceding, the injured State must do what article (42) dictates, namely, to claim its right to redress the damage caused by an act of a State or group of States, which was contrary to everyday international obligations.

Under the concept of the offense, the negligence of the state injured in claiming its rights results in the right to claim compensation from the State or States that caused the damage, based on what is known in international litigation as the principle (no harm than usual), (ab issues non fit injuria) (73).

Here, a State affected by harmful actions emanating from a State or a group of States has several options, including recourse to international justice or taking specific temporary or permanent measures as dictated by the state of harm, but in the case of neglect of the affected State, there are two areas:

First: negligence in taking the necessary measures

The State is affected when the violated right arises from a bilateral treaty in several cases. First, the party and the other affected party have the right to terminate or withdraw from the treaty.

If the violated right arises from a ruling or decision to settle disputes from an international tribunal or judicial body in favor of another State in the conflict from which the affected State may benefit, or the right may arise under a founding instrument, such as an international organization from which the State has the right to help. The violated right may arise from a multilateral treaty or a rule of customary international law. The request may be fixed for the affected State. However, if that is claiming the State neglects its right, it is not entitled to claim compensation for damages caused by another State or State (74).

Second: negligence of the affected State in claiming reparation and compensation

The Draft Articles of International Responsibility 2001 require that the affected State claim compensation commensurate with the amount of damage caused by the State's harmful conduct. If the State neglects its right to claim the prize, it is therefore responsible for not claiming (75).

The Conduct that is not prohibited by law

Harm is a necessary condition for the attribution of international responsibility, which results from an unlawful act. Therefore the burden will be based on error. Still, with the scientific development that prevailed in societies of all its names, harmful actions are no longer limited to the place of use by the State. The damage resulting from the use of States cross-border to include neighboring and non-neighboring states is the transboundary damage. With the emergence of this type of behavior, a new kind of responsibility arose to have it Based on the theory of risks. The burden became based mainly on legitimate conduct, but this conduct results in harm, and we will address in this requires specific actions that are not prohibited by law as follows:

Section 1: Force Majeure

Article (23) of the Draft State Responsibility states that: (1- It is illegal to act by the State, which is not in conformity with that State's international obligation if it is due to force majeure, i.e., the occurrence of an irresistible force or an unexpected event, which is beyond the will of that State, making the performance of that obligation in these circumstances materially impossible).

By analyzing the text above, because of its lack of illegality, three conditions must be met:

1. An unexpected act should occur with a force that cannot be resisted.

2. The act and force should be beyond the control of the State concerned with the event.

To make it materially impossible to perform a commitment in these circumstances 76.

It should be noted that the phrase "irresistible," which relates to the description of force, emphasizes that there must be a constraint that the State has been unable to avoid or resist using the means available and for the event to be unexpected, should not be foreseen before it occurs, or to facilitate its vision before it occurs, as well as (the force that cannot be resisted) or ((unexpected event)) should be associated with a link of causality with physical impossibility, As indicated by the phrase "due to force majeure..." making it physically impossible and subject to paragraph (2), the state's conduct is illegal as these elements are met as long as the state of force majeure continues (77).

Force Majeure may also be due to a natural or physical event, for example, the diversion of a particular state's aircraft to the territory of another state due to extreme weather conditions, earthquakes, or floods, or maybe due to human intervention that has resulted in the loss of control of part of the territory as a result of a rebellion, or military operations by a third state that destroys a particular region. All these circumstances should not be resisted and their effects avoided (78).

Force Majeure does not include circumstances in which the performance of the obligation is rugged for the State because of, for example, a political or economic crisis, nor does it include cases arising from the negligence or negligence of the State concerned (79).

We can ask the following question: Can the spread of the CORONA pandemic be considered a case of force majeure?

When looking at relevant case law, they are no longer (plague bacillus), H1 N1 virus in 2007, and dengue fever is a force majeure health event, as judges consider these diseases to be known and not life-threatening (80).

It should be noted that in the presence of force majeure, it is impossible to establish the relationship between the existence and spread of the pandemic. At the same time, the obligation cannot be performed (81).

Although laws differ in adopting the subject of force majeure, there is no unified or precise definition (82), other than based on the basic principles of Roman law, 83which are based on the fact that they make it impossible to implement the obligation, a characteristic of force majeure and an unexpected and unstoppable event.

Section 2: Distress

Another case in which the illegality of state actions that do not conform to its international obligations can be unlawful is that of distress, as referred to in article (24) of the Articles of the Draft State Responsibility 2001 (84).

Through the text of the article above, it deals with the actions of individuals representing the State or those under their care, as their activities are illegal in a situation where the state agency is in circumstances where he has to act contrary to the obligations of the State in the hope of saving a life.

It should be noted that the situation of distress is different from that of compelling circumstances, as a person's actions in a state of pain are voluntary and in line with the state of danger, which has led many researchers to define it as a case of (relative impossibility) in compliance with international law (85), as well as not a preference between legitimate interests and compliance with international law because of their association with the lives of others (86).

As a practical experience, the situation of severity is that aircraft or ships belonging to one country enter the territory of another country due to extreme weather conditions or mechanical or navigational failures; in 1946, American warplanes entered Yugoslav airspace without permission. Yugoslav defenses were attacked, and in return, the United States Government protested the justification for entering the aircraft to avoid danger; Yugoslavia rejected this justification. It promised it a violation of its airspace (87).

In the same regard, it can be argued that a state of distress can be invoked in many treaties and that it is considered a circumstance that justifies the conduct contrary to international obligation, for example, the 1958 Regional Sea and Climate Zone Convention and the 1982 Convention on the Law of the Sea (88).

Reviewing article (24) of the Draft State Responsibility makes it clear that it limits the exemption from illegality to situations where human life is in imminent danger. That distress situations do not include emergencies described as more necessary than difficult situations. Furthermore, article (24) does not exempt the State or its representative from complying with other obligations (international or national), for example, provided that the relevant authorities are informed of access, or that information concerning the conduct contrary to the obligation is provided (89).

Through the above, we find that the state of force majeure and the state of distress are cases with which the illegality of the state's actions or one of its agents is contrary to international obligations. Still, the difference between them is that the conduct in the case of force majeure is beyond the will of the State while acting in a state of distress is under the choice of the State agent, but it works to preserve life in exchange for a breach of life. International commitment.

As part of our research on the CORONA pandemic, we believe that the HIV-exporting state can invoke force majeure or extreme self-defense and deny the illegality of the actions that led to the spread of the virus once it has been established that the spread of the virus was caused by force majeure out of control, or because of the extreme situation that led the State or one of its agents to act contrary to international obligation.

In general, resorting to rules of international responsibility against the pandemic State requires not only proof that it has not taken the necessary measures to prevent proliferation under due diligence or notification criteria promptly but also requires proof that the subject matter of the violation has been characterized by relative weight (Gravity), i.e., if the courts accept the worst of the violations, as The international judiciary does not move merely to ask for it, but there must be a consensus between jurisdiction and jurisdiction over the subject of violation, in other words, when conditions are met, the most important of which is the seriousness and seriousness of the damage, as well as the failure to perform due diligence and notification at the appropriate time and means (90).

Conclusions

Having outlined through research the concepts of due diligence, notification, and the duties of States towards both concepts and addressed the international responsibility of the states causing the damage in the event of a breach of international obligations, the following are our findings and proposals that could constitute an addition to the subject of due diligence and notification. Due diligence is a vague term in international responsibility because of its association with the issue of responsibility for cross-border damage. Moreover, there is no agreed definition of due diligence and notification concepts, and their definition is a matter of jurisprudence.

In the search for due diligence by the COV-exporting country to limit its spread, which directives stressed the need to observe health regulations, exercise due diligence to reduce HIV outbreaks, and notify the international community of any potential harm to the international community. There must be an international agreement on the spread of deadly epidemics to preserve the safety of the international community and the environment in general. Due diligence is involved in several branches of international law, including international humanitarian law, international human rights law, and disaster law, and therefore is an important and complex topic that needs to be regulated through international conventions, or at the very least the legislator's setting of criteria on the concept and elements of due diligence. As the phenomenon of deadly epidemics increases, the international community must effectively help prevent, diagnose and respond early to the spread of epidemics. Therefore, the concept of the relative weight of the movement of global responsibility must be reviewed. In turn, we mean the gravity of unlawful conduct, whether by negligence by the State of origin, by setting precise criteria, such as those agreed in international criminal courts, in particular, that the damage has reached the highest thresholds of responsibility, i.e., when it is widespread, long-term and highly influential at the international and humanitarian levels.

(1) Hanqin Hue, *Transboundary Damage in International Law*, Cambridge University Press, 2003, Cambridge, the United Kingdom, p162.

(2) Jona than Bonnit cha and Robert Mccorquodale, *The concept of ((Due Diligence)) in the UN Guiding Principles on Business and Human Rights*, *The European Journal of International Law*, 28 No.3, 2017, p.901.

(3) Hoskisson Robrt E ; Hitt, Michael A, Ireland, *strategic Management competitiveness and Globalization: concepts and cases N 1*, Duane, 2004, p. 251.

(4) Jona than Bonnit cha and Robert Mccorquodale, *op.cit*, p.900.

(5) *Ibid*, p.901.

(6) Maria flemme, *Due Diligence in International Law*, master thesis, faculty of law, university of land, 2004, p.4.

(7) *Ibid*, p.15.

(8) *Ibid*, p.901.

(9) ICJ, *Corfu Channel case (United Kingdom of Great Britain and Northern Ireland V. Albania*, 1949.

(10) Maria laziness, *on.cit*, p.4.

(11) *Ibid*, p.28.

(12) *Ibid*, p.6.

(13) Article (369) From the Penal Code. The Iraqi for 1969 amended as: (A person who causes a serious illness harmful to the lives of individuals shall be punished by imprisonment for no more than one year or a fine of not more than 100 dinars.

(14) Antonio Coco, Prevent Respond, Cooperate: States Due Diligence Duties Vis- a- Vis the covid-19 Pandemic. Available on: Electronic Copy available at <https://ssrn.com> .Visit date 12/11/2021

(15) Ibid, p.2.

(16) I L A Study (n2)2, 8, Draft Articles on prevention (n5), L54-155, ar4t 3(12)-(13).

(17) I L S Study (n2)7, 9, Draft on prevention (n5) 154, art 3 (11).

(18) Draft Articles on Prevention (n5) 156, Article 3(17), Alabama Arbitration United states Vs. Great Britain (1872).

(19) Antonio Coco, op.cit,p.3.

(20) Alabama Case No. (10) 172 Arbitration is also being considered in The Trail Smelter (United States v. Canada in 1963).

(21) Antonico coco, on.cit,p.3.

(22) Report of the Commission on the work of the fifty-third session no.A/56/589) .

(23) Set of rulings, decisions and opinions issued by the International Court of Justice, 19491991, United Nations, New York,1992, p. 11.

(24) Trail Smelter Arbitration (United States v Canada) (1938 and 1941) 3 RIAA 1905, 1963.

(25) Antonico coco, on.cit,p3.

(26) ¶Comment text Article II of the draft articles on the prevention of cross-border damage with comment In the Yearn of the International Law Commission 2001, p. 195-196, document no.A/CN.4/SER. A/2001)

(27) Draft responsibility of states paragraph (10) of comment on article (42) of the draft, p. 154.

(28) Draft state responsibility to comment on article (42) paragraph No. (11) p. 154.

(29) ¶Consideration of the preamble to the International Covenant on The RightThe civil and political 1966.

³⁰ Human Rights Committee General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life CCPR/C/GC/36, 30 October 2018, para.7

(31) Antonico coco, opcit,p.5.

(32) ¶Article 12/3 of the International Covenant on Civil and Political Rights of 1966 states: ((The above rights may not be restricted by any restrictions other than those provided for by law, and are necessary to protect the^lof national, public order, public health, public morals or the rights and freedoms of others, and are in line with the rights of^lrecognized in this era))

(33) Article (12/2c, d) of the International Covenant on Economic, Social and Cultural Rights 1966 states: Include ^lfor measures that^lwits in this covenant taken to ensure full practice That's why. Right, those measures for: (c) prevention of^lEpidemic, endemic, professional and^lDiseases of^lOther treatment and control, (d) creating conditions that will provide medical services and medical care to the community in case of illness.

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(36) Ibid, p.52.

(37) ¶Consideration of article (56) of the Fourth Geneva Convention of 1949.

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(39) Khaleda Sinoun Merhi, Unilateral State Behaviors, PhD Thesis Presented to the Faculty of Law, University of Montreal, July 2004, p169

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(41) Khaleda Annon Merhi Al-Taie, former source, p. 69.

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(43) Consider Article 34 of the Berlin Convention Organization of European Colonialism and African Trade Held on February 26, 1885.

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⁽⁷⁵⁾ Draft responsibility of states to comment on article (42), p. 152-154.

⁽⁷⁶⁾ The same source, Comment (2), p. 98.

⁽⁷⁷⁾ Article (23) of the Draft State Responsibility 2001.

⁽⁷⁸⁾ Comment on paragraph (2) of article (23) of the Draft State Responsibility p. 98.

⁽⁷⁹⁾ International Law Commission, Yearn of International Law 1978, Volume II Part I, p. 6, Document No. . (A/CN.4/ 315)

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⁽⁸⁴⁾ Article (24) of the Draft State Responsibility (2001) considers:

1- His class denies illegality for the act of the State, which is not in accordance with an international obligation of that State if the person who has already done so, in a severe state, does not have another reasonable means of saving his or her life or the lives of other persons entrusted to him to care for him.

Paragraph (1) does not apply in the following two cases:

A. In the case of distress attributable individually or in conjunction with other factors to the conduct of the State invoking it, b- In the event that the act in question is likely to result in a fatal or greater risk).

⁽⁸⁵⁾ O. J. Lissitzyn, "The treatment of aerial intruders in recent practice and international law", AJIL, vol. 47, No. 4 (October 1953), p. 588.

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⁽⁸⁶⁾ Draft responsibility of states comment No. (1) on article (24) p. 101.

⁽⁸⁷⁾ There are other similar cases that have occurred on land, sea and land. Joe's all aimed at saving the spirits of doom.

Consider that study al used it to Un General Manna/Document A/CN.4/315 .

⁽⁸⁸⁾ Consider article (14/3) of Sea Agreement Qalymi and the adjacent area of 1958, Article (18/2) of the United Law of the Sea 1982.

⁽⁸⁹⁾ Draft State Responsibility comment (6,7,8) on article (24) p. 102.

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