Таким образом, географическое указание тяжело назвать средством индивидуализации, в то время как именно наименование места происхождения товара является таковым в силу наличия у него свойств, присущих всем средствам индивидуализации. Следовательно, для разрешения коллизии понятий, связанных с индивидуализацией товаров, обладающих уникальными свойствами географического объекта, на территории которого он произведен, требуется пересмотр законодательства Республики Беларусь о географических указаниях в части уточнения понятийного аппарата, что будет способствовать более полной регламентации рассматриваемого вопроса.

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Attribution of conduct of private entities to states: fragmentation of international law

Логвинович Е. А., студ. III к. БГУ,
науч. рук. Дейкало Е. А., канд. юр. наук, доц., Макаревич И. И., ст. преп.

The fragmentation of international law reflects the rapid expansion of international legal activity into various new fields and the diversification of its objects and techniques. Fragmentation is accompanied by the emergence of specialized and relatively autonomous rules and legal institutions [1]. What once appeared to be governed by “general international law” has become the field of operation for such specialist systems as “trade law”, “human rights law”, “environmental law”, “European law” and others.

Regarding the rules on attribution of conduct of private entities to states, we can observe that the International Court of Justice (ICJ), as well as specialized international tribunals, has elaborated on various tests with regard to attribution of conduct, applying the same customary rules, reflected in Articles on States’ Responsibility. The question is whether this phenomenon can be qualified as fragmentation and, if yes, what legal challenges it poses.

In the *Nicaragua* case (1986) ICJ found that the United States had not been held responsible for the acts of the Nicaraguan contras merely on account of

organizing, financing, training and equipping them. Such involvement failed to meet the test of "effective control", which requires "direction or enforcement of perpetration of wrongful acts" [2].

In the *Tadic* case (1999), the International Criminal Tribunal of the former Yugoslavia (ICTY) turned to *Nicaragua* case and found "effective control" test a too high threshold for attribution of conduct on military groups – however, suitable for non-military ones [3]. Tribunal stated that hierarchy and chain of command makes it easier for states to control military groups and, thus, merely overall control over alleged activity is necessary for attribution. Tribunal applied "overall control" test as reflection of customary rule on attribution and created a competing approach to those of ICJ.

In *Bosnian Genocide* case (2007) ICJ extensively criticized – on jurisdictional and substantive matters – "overall control" test of ICTY and found "effective control" test exclusively applicable [4].

Other thresholds for attribution were also developed in human rights law and investment arbitration.

In *Loizidou v. Turkey* (*1996*) the European Court of Human Rights applied an "effective overall control test". This test does not refer at all to control over the individuals or groups but to control over the territory in which those individuals are and where the wrongful acts have been committed [5].

The International Centre for Settlement of Investment Disputes elaborated on the issue of attribution within the context of nationality of legal entities. The Tribunal makes extensive references to findings of ICJ on "effective control" test. Along with this, in *Jan de Nul v. Egypt* (2008) the Tribunal finds that "effective control" test demands for both – general control over the entity and specific control over the particular act [6]. However, this view is inconsistent with the practice of ICJ, which has never found general control a necessary element for attribution.

Hence, the rules of attribution are differently interpreted in the light of self-contained regimes and, following the logic of ILC, it is clearly an example of fragmentation. ILC distinguishes between three types of normative conflict: (a) conflicts between general and special law; (b) conflicts between two types of special law; (c) conflicts between general law and a particular, unorthodox interpretation of it [7].

Fragmentation of the rules of attribution creates two types of legal problem. First, legal rules lose their predictability. Second, legal subjects appear in an unequal position to each other because different thresholds are applied towards their conduct.

The situation could be assessed in two ways – as a negative effect of erosion of general international law or as a logical outcome of increased international legal activity. We are inclined towards the second opinion. Current state of international law – which is highly diversified – does not leave the possibility to decide the

problem through artificial unification and promotion of general international law. Solution is seen in further progressive development of international law. Since tribunals have already consistently decided to follow their own approaches to attribution, this sphere will remain fragmented and inconsistencies would be overcome separately within each particular regime.

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Grounds for refusal of recognition and enforcement of foreign arbitral awards

Мухаммедов К. М., магистрант БГУ,
науч. рук. Макаревич И. И., ст. преп.

The grounds for refusal to recognize foreign arbitral awards are provided for in Article V of The New York Convention and are divided into two groups: the foundation of a private character (Article V, Paragraph 1 of The New York Convention) and the foundation of a public character (Article V, Paragraph 2 of the New York Convention).

In the first case, the refusal should be granted if the recognition of the decision would violate the rights of the individual debtor and in the second case if the public interest of the state would suffer. In particular, the recognition and execution of decisions of foreign courts is characterized by such a basis as the attribution of