

коронавирусом COVID-19» – [Электронный ресурс]. – Режим доступа: https://pravo.by/upload/docs/op/C22000171_1585256400.pdf. – Дата доступа: 27.10.2020.

2. Указ Президента Республики Беларусь от 24.04.2020 №143 «О поддержке экономики» – [Электронный ресурс]. – Режим доступа: https://pravo.by/upload/docs/op/P32000143_1587762000.pdf. – Дата доступа: 27.10.2020.

3. Постановление Совета Министров Республики Беларусь от 08.04.2020 №208 «О введении ограничительного мероприятия» – [Электронный ресурс]. – Режим доступа: https://pravo.by/upload/docs/op/C22000208_1586379600.pdf. – Дата доступа: 27.10.2020.

The problem of defining the diplomatic protection in international law

*Карловская Е. Е., магистрант БГУ,
науч. рук. доц. Дейкало Е. А., канд. юрид. наук,
доцент, ст. преп. Макаревич И. И.*

With the development of the world community there also occurred significant changes in the field of international law. Notably, after the end of World War II there were formed the principles that are still the foundation of the international law. Besides, a new legal order has been created which is based on respect for human rights, peaceful coexistence of states and settlement of disputes exclusively by peaceful means. As the subject of international law has significantly expanded, thus introducing new concepts and creating new norms. One of the issues that has not lost its relevance until now is the issue related to diplomatic protection, or rather the definition of diplomatic protection in international law.

Article 1 of The Draft Articles on Diplomatic Protection 2006 states that for the purposes of the present draft articles, diplomatic protection consist of the invocation by a state, through diplomatic action or other means of peaceful settlement, of the responsibility of another state for an injury caused by an internationally wrongful act of that state to a natural or legal person that is a national of the former state with a view to the implementation of such responsibility [1].

That is, this article defines diplomatic protection, pointing out the signs, the presence of which is necessary in order for the state, whose individual or legal entity has suffered, to be able to call the violating state to account. These signs include: the existence of an internationally wrongful act, the injury to an individual or legal entity, and the existence of a legal link between the victim and the state.

S. Joseph wrote that “diplomatic protection can be defined as a procedure for implementing the responsibility of the state for violations of international law as

a result of causing legal harm to the person or property of a citizen of any state” [Quoted from 2].

According to another legal scientist, expert in the theory of international law, namely, M. S. Volkova, diplomatic protection means “a mechanism for the peaceful settlement of an internationally wrongful act that is committed by a state against a foreign natural or legal person as a result of violation of international standards of treatment that caused damage to these persons or the occurrence of consequences that the state has the right to consider as a violation of its own interests for the purpose of vocations to responsibility” [2].

C. de Visscher defines diplomatic protection as “the procedure by which states defend the right of their citizens to apply for with international law” [Quoted from 3].

V. C. Huck, in the Encyclopedia of Public International Law, offers a definition that reflects the development of law in connection with functional protection of agents involved with international organizations: “Diplomatic protection is <...> protection provided by a subject of international law to persons, natural or legal, from violation of international law by another subject of international law” [Цит. по 3].

A. H. Abashidze believes that “this is the protection that the state, through the bodies of external relations, has the right to provide to its citizen who is abroad, in case of violation or attempts to violate his rights” [4, c. 61].

Following all of the above mentioned, as we see it, the most complete definition of diplomatic protection was given by I. I. Lukashuk. In this author’s judgment, diplomatic protection is understood as a diplomatic protection procedure by which a state protects the right of its citizens in case of their violation by an international wrongful act of another state, in which they could not achieve the restoration of their rights by exhausting local remedies [5, c. 109].

We believe that this very definition most accurately describes diplomatic protection, since it includes all the necessary elements of the latter: a specific subject composition, namely the claimant state, a citizen of the claimant state whose rights were directly violated, as well as the respondent state, the existence of an international legal act to hold the offending state accountable, the existence of a legal link between the state of nationality and the individual whose rights have been violated and the need to exhaust local remedies.

Литература

1. Draft articles on Diplomatic Protection 2006 / [Electronic resource] / International Law Commission. – Mode of access: https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_8_2006.pdf. – Date of access: 11.11.2020.

2. Волкова, М. С. К вопросу об определении понятия «дипломатическая защита» [Электронный ресурс] / М. С. Волкова // Вестн. Моск. ун-та. – 2009. – №3. – Режим доступа: <https://cyberleninka.ru/article/n/k-voprosu-ob-opredelenii-ponyatiya-diplomaticheskaya-zaschita>. – Дата доступа: 11.11.2020.

3. Содилов Ш.Д. Институт дипломатической защиты в международном праве [Электронный ресурс] / Ш. Д. Содилов // Вестник Московского университета МВД России. – 2010. – №1. – Режим доступа: <https://cyberleninka.ru/article/n/institut-diplomaticheskoy-zaschity-v-mezhdunarodnom-prave>. – Дата доступа: 15.02.2020.

4. Абашидзе, А. Х., Аль-Факи Гамиль Хизам Яхья. Дипломатическая и консульская защита: история и современность / А. Х. Абашидзе, Аль-Факи Гамиль Хизам Яхья // Вестник РУДН. Серия «Юридические науки». – 2001. – №2. – С. 57–58.

5. Лукашук, И. И. Международное право. Общая часть: учеб. для студентов юрид. фак. и вузов / И. И. Лукашук; Рос. акад. наук, Ин-т государства и права, Академ. правовой ун-т. – Изд. 3-е, перераб. и доп. — М. : Волтерс Клувер, 2005. – 432 с.

Природа прав, защищаемых посредством дипломатической защиты: права государства или права человека?

*Карловская Е. Е., магистрант БГУ,
науч. рук. Дейкало Е. А., канд. юрид. наук, доцент*

На современном этапе одним из вопросов, который стоит перед правовой наукой, является вопрос природы прав, защищаемых посредством дипломатической защиты. Мнение авторов по данному вопросу разделилось: некоторые утверждают, что осуществляя дипломатическую защиту, государство в первую очередь защищает свои нарушенные права, другие же говорят о том, что посредством дипломатической защиты государство защищает нарушенные права своего гражданина.

К примеру, И. А. Ведель говорит о том, что «гражданин, которому причинен вред за границей, не может самостоятельно прибегнуть к средствам дипломатической защиты. Для того чтобы в отношении этого гражданина была применена дипломатическая защита со стороны государства его гражданства, необходимо применение юридической фикции, согласно которой вред, причиненный гражданину, есть вред причиненный государству» [1].

В свою очередь, Дж. Дугард утверждает, что представление о том, что вред человеку является ущербом самого государства, не всегда поддержива-