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THE EVOLUTION OF THE PHENOMENON OF RESTITUTION IN LEGAL DOCTRINE AND INTERNATIONAL LEGAL PRACTICE

Summary. This scholarly article examines the development of the concept of restitution through the lens of its evolution, with a focus on legal doctrine and international legal practice. The study examines the historical stages of the development of the concept of *restitutio in integrum* in Roman law, the characteristics of its subsequent development in international legal thought, and its transformation into one of the key mechanisms for restoring violated rights within the system of international legal responsibility of subjects of international law. The study analyzed doctrinal approaches to defining the conceptual framework in relation to other forms such as reparation, compensation, satisfaction, and substitution. The study focuses on the evolutionary stages of the concept's development under the influence of the practice of international judicial institutions, in particular the decisions of the Permanent Court of International Justice and the European Court of Human Rights. Attention is given to the processes of codification of international legal responsibility within the framework of the United Nations International Law Commission. The study identifies the specific features of applying restitution to the return of unlawfully seized property, cultural property, and living heritage, and analyzes contemporary challenges in distinguishing between various forms of international legal redress. The study's findings indicate that the concept of restitution has evolved through a complex yet flexible developmental path, from an institution of Roman private law to a universal mechanism for restoring a violated legal status in contemporary international law. It is argued that, under contemporary conditions, restitution remains a priority form with a dynamic nature of development, which, by its very nature, is capable of acting preventively.

Key words: *restitutio in integrum*, restitution, preventive restitution, international legal responsibility, internationally wrongful act, compensation for damages, cultural property, living heritage, doctrine of international law, international legal practice, international law, contemporary international law, international human rights standards.

Purpose statement. The current period of dynamic change in the international legal order which directly affects the restoration of violated rights and the remediation of the consequences of internationally wrongful acts is of particular significance. The ongoing presence of armed conflicts, human rights violations, unlawful seizure of property, destruction of wildlife, occupation or annexation of territories, and other challenges to international

security underscore the need to seek effective legal mechanisms for restoration and the assurance of justice. Therefore, restitution occupies a distinctive position as one of the fundamental legal remedies aimed at restoring the situation that existed immediately prior to the commission of the unlawful acts.

Contemporary legal doctrine has solid grounds for holding that the phenomenon of restitution has undergone a sufficiently long evolutionary

development [25, pp. 1098–1099] and possesses a distinctive legal nature. The origins of this phenomenon can be traced back to Roman law, where the concept of *restitutio in integrum* was regarded as an exceptional means of restoring violated rights and eliminating the unjust consequences of legal facts. Over time, this legal construct underwent significant transformations, gradually becoming integrated into national legal systems and into international law itself. At the same time, legal relationships evolved logically, new forms of liability were established, and judicial mechanisms developed all of which contributed and continue to contribute to a rethinking of the substance and functional purpose of restitution.

Emphasizing the relevance of this study, it is worth highlighting the fact that restitution is also undergoing certain changes in the context of contemporary international legal practice. As of now, restitution is viewed not only as a form of material compensation or the return of property, but as a broad-based mechanism for restoring the status quo [15, p. 75]. This phenomenon encompasses various mechanisms for restoring the legal status of individuals, territories, and states. This aspect is reflected in the practice of the International Court of Justice of the United Nations (hereinafter "UN"), the European Court of Human Rights (hereinafter "ECHR"), and other international judicial bodies.

It is particularly important to emphasize that, despite the significant number of scholarly works both Western and Ukrainian devoted to the issue of international legal responsibility, the evolution of the phenomenon of restitution continues to be a subject of scholarly debate. Legal doctrine offers various approaches to understanding the legal nature of this phenomenon, its relationship to other forms, the criteria for its application, and its place within the system of international legal remedies. Given the above-mentioned aspects, examining the evolution of the phenomenon of restitution in legal doctrine and international legal practice is timely and of scientific significance. An examination of the historical background,

doctrinal approaches, and contemporary practice of restitution allows us not only to trace the patterns of restitution's development but also to identify prospects for its further transformation within the context of the current international legal order.

State of the Research on the Topic. The use of scholarly works by researchers whose work is relevant to the topic of this study played an important role in exploring the issue. Among these, the following should be noted: O. Barabash, G.A. Bialy, P. Gorinov, M. Hrynyshyn, I.M. Dolyanovska, V.I. Karasov, Ya. Zhukorska, M.M. Kamyshansky, V.V. Lykhvar, K.S. Lisova, I.V. Novosad, and O.S. Gonchar.

The purpose of this scholarly article is to conduct a comprehensive study of the development of the phenomenon of restitution in legal doctrine and international legal practice, and to identify the evolutionary preconditions for the formation and development of the concept of *restitutio in integrum* from its earliest origins to its contemporary understanding as a form of restoration of violated rights.

Presentation of the Main Material. It appears that clarifying the legal nature of restitution is impossible without referring to its origins, which are rooted in Roman law. Therefore, the prevailing view among scholars is that the concept of *restitutio in integrum* was developed within the Roman legal tradition [14, p. 115]. This fact confirms the existence of the first legal mechanisms for restoring violated rights and returning a person to the position that existed prior to the occurrence of unlawful actions. Despite its centuries-long evolutionary path, the institution of restitution has not lost its relevance in the modern legal landscape. This phenomenon continues to be an important element of civil law regulation while also retaining significance for the development of international legal mechanisms for the restoration of violated rights. It appears that this approach allows not only for an understanding of the contemporary legal nature of restitution but also for tracing the patterns of development of mechanisms for restoring violated rights in national and international law [16, p. 38].

It is worth noting that there is a certain dilemma in legal doctrine regarding the definition of the concept of "restitution," which gives rise to several approaches to understanding the substance and legal nature of this phenomenon. Etymologically, the term derives from the Latin word *restitutio*, which means "restoration" or "return" [12, p. 290]. As we established earlier, the concept of *restitutio in integrum* has its origins in Roman law, where this phenomenon was viewed as an obligation to restore the situation that existed prior to the commission of an unlawful act. Therefore, in international law, restitution traditionally serves to restore a violated right by returning property, territories, or other material assets that, for example, were unlawfully seized, occupied, or transferred as a result of an unlawful act. Contemporary and, to a certain extent, transitional realities provide examples such as the return of property unlawfully transferred by one entity from the territory of another for example, during an armed conflict, the nature of which may be international or non-international. At this stage, restitution can serve as one of the characteristic mechanisms for restoring the violated rights and eliminating the consequences of internationally wrongful conduct [18, p. 50].

By examining the evolutionary development of this phenomenon, it becomes entirely possible to emphasize that restitution applies not only to property located on the territory of a particular entity, such as a state involved in an armed conflict,

but also to objects that, as a result of unlawful actions, have come into the possession of or are under the control of even third parties. And it is at this stage that we would like to note that the return of cultural property occupies a special place within the institution of restitution. In legal doctrine, the restitution of cultural property is regarded as a special type of restitution involving the return of objects of historical, cultural, artistic, scientific, or religious heritage that were unlawfully removed and transferred. Therefore, the return of cultural property is one of the priority areas for the development of international legal regulation of restitution relations [19, p. 318]. A distinct focus on this category of property can already be traced back to international treaties concluded after World War I. In particular, a number of treaties under the Versailles system contained special provisions aimed at regulating the return of cultural property and other objects of exceptional historical and cultural significance. This step represents a stage in the formation of the international legal foundations for restitution and the further development of mechanisms for the protection of cultural heritage in the context of armed conflicts [4, p. 100].

When examining this doctrine, scholars traditionally distinguish between the material and non-material liability of states for the commission of internationally wrongful acts [8, p. 37]. Material liability, in particular, is aimed at eliminating the consequences of the harm caused and restoring the legal status quo that was violated. Its main forms generally include restitution, substitution, and reparation, each of which has its own specific characteristics depending on the nature of the harm caused and the possibilities for its compensation. It appears that restitution occupies a central place among these forms; it consists of restoring the situation that existed prior to the commission of the internationally wrongful act and, in turn, requires the elimination or minimization of the harm caused [7, p. 58]. And it is precisely here that it is important to note the main purpose of restitution, which is to restore the previous legal and factual state. Substitution is considered one of the forms of restitution. Its application is necessary in cases where the return of specific property to its original state is impossible for example, due to destruction, loss, or significant damage. An examination of international practice reveals that circumstances often arise in which neither one form of liability nor another is capable of ensuring the restoration of the violated state. In such cases, the legal instrument of reparation is applied as an independent form of material liability under international law. The essence of this phenomenon lies in compensating for the harm caused through the provision of monetary payments, goods, services, or other forms of material compensation. Reparation is intended to compensate for the negative consequences of an international wrongful act and for lost property, with the aim of ensuring the principle of just compensation in legal relations [11, p. 131].

When examining the development of the institution of restitution and other forms of liability, it is necessary to take into account the inseparable link with the evolution of the very concept of states' liability under international law. The establishment of relevant mechanisms was largely influenced by the principle of state sovereignty, which for a long time defined the nature of international relations and the limits of states' legal obligations. At the same time, the evolution of the international legal order led to the gradual establishment of universally binding norms and principles of international law, in particular the norms of *jus cogens*, which are today regarded as the fundamental basis of the modern international

legal system. The evolutionary origins of the concept of reparations in international law are traditionally associated with Hugo Grotius. In his 1625 work *De jure belli ac pacis*, the philosopher established the existence of a legal connection between the breach of international or treaty obligations and the emergence of a duty to remedy the consequences of such a breach; this aspect is typically examined through the lens of the means of waging war and the moment of the establishment of peace [17, pp. 123–124]. It is worth noting that the existing terminology, in particular the concept of “restitution,” had not yet been established during that period. In light of the above, it is possible to emphasize that the theoretical approaches developed by the thinker became an important foundation for the further development of international legal responsibility [5, p. 28].

This stage of the study allows us to note that the development of the responsibility of the principal subjects of international law was accompanied by a shift in approaches to redressing harm caused by internationally wrongful acts. One such example is contribution, which was predominantly tort-based in nature and was widely applied in interstate relations until the beginning of the last century. The specific nature of this phenomenon lay in the victorious state's imposition, by coercion, of an obligation on the defeated state to make monetary or property payments regardless of the actual extent of the damage caused [10, p. 815]. This practice remained for a long time one of the consequences of armed conflicts; therefore, one can find the view in legal doctrine that contribution, as an independent form of international liability, effectively ceased to exist after 1919. In contrast, in modern international law, compensation for damage caused by an internationally wrongful act is primarily linked to the institution of restitution. We have now reached the next stage in this evolution, where we can see that international legal doctrine distinguishes between restitution in kind that is, *restitutio in integrum* and restoration *restitutio in pristinum*. Restitution in kind entails restoring, to the greatest extent possible, the material situation that existed prior to the commission of the internationally wrongful act, through the return of property, territories, or other objects unlawfully taken or seized as a result of the wrongful act. It is this type of restitution that most fully reflects the fundamental principle of international legal responsibility, according to which the violated right must be restored to the extent that this is factually and legally possible [6, p. 164].

The next stage in the development of the doctrine of state responsibility is the practice of international judicial decisions, in particular those of the Permanent Court of International Justice in the *Factory at Chorzów* case [20]. In academic circles, this case is considered one of the fundamental precedents in this field. It was in this decision that one of the defining principles of modern international law was formulated, according to which a breach of an international obligation gives rise to an obligation on the part of the breaching state to remedy the consequences of such a breach by fully compensating for the damage caused. The judgment in the *Factory at Chorzów* case [20] significantly influenced the further development of the concept of reparations in international law. The Court effectively held that compensation must cover the full extent of the negative consequences of the wrongful act, including not only direct material damages but also other losses causally linked to the unlawful act. This approach marked a significant step in the development of state liability and largely shaped the subsequent evolution of the institutions of restitution, compensation, and other forms [1, p. 361].

The current reality demonstrates the significant development of the institution of international legal responsibility and its legal consolidation within the system of modern international law. This aspect concerns such interrelated concepts as reparation, restitution, compensation, and satisfaction, the legal distinctions between which are not always clear-cut in either doctrine or practice. Decisions by international judicial bodies shape the contemporary understanding of the phenomenon we are examining; in particular, this also pertains to the ECHR. At this stage, it is worth noting the case of *Brumărescu v. Romania*, in which the court states that “If the nature of the violation allows for the restoration of the previous state (*restitutio in integrum*), then the respondent State is obligated to do so” [27]. In other words, we also see here a certain influence and development of the standard of human rights protection, because in this context, the High Contracting Parties are obligated to uphold the rights guaranteed by the Convention, and the concept of restitution serves as a significant aid in this regard.

It is worth noting that the concept of reparation in international law can be used in both a broad and a narrow sense. Focusing on the concept of restitution, the nature of this aspect is aimed at restoring the situation that existed prior to the commission of the unlawful act; compensation consists of reimbursement for damages in monetary or other material form, while satisfaction involves the application of non-material measures aimed at restoring the violated justice and the international standing of the aggrieved party. Therefore, the existence of a multifaceted approach to interpreting these categories often gives rise to both doctrinal dilemmas and practical difficulties in resolving disputes of both an international and non-international nature. As a result, differences may arise in international practice regarding the scope of the offending state's obligations, the choice of an appropriate form of reparation, and the criteria for assessing the harm caused. Therefore, the practical distinction between forms of international legal responsibility and their application remains one of the key areas of development in contemporary international legal doctrine [3, p. 500].

The development of the international legal responsibility of subjects of international law has been a gradual process and is directly linked to the overall evolution of international law. To a certain extent, mechanisms of responsibility serve as a factor in strengthening the international legal order. In classical international law, the responsibility of states was largely viewed through the lens of compensation for harm caused to foreign citizens or property [2, p. 689]. It is noteworthy that during this period, the principle gradually took shape according to which a breach of an international obligation gives rise to the legal responsibility of the breaching state. This approach was reflected in international practice and became an important element in the formation of the general concept of international legal responsibility. In fact, the next stage in the development of the institution of international legal responsibility occurred in the 20th century, when the codification of international law gained momentum and the role of another category of subjects of international law namely, international organizations grew. The activities of the United Nations International Law Commission were of paramount importance in this process. This body undertook the systematization and doctrinal analysis of the norms governing the responsibility of states for internationally wrongful acts. Consequently, we now see the formation of a modern conceptual model of international legal responsibility, within the framework of which its main structural

elements have been defined. These include the existence of an internationally wrongful act and the occurrence of international legal consequences, which entail the obligation to remedy the consequences of the violation and ensure adequate compensation for the harm caused. Consequently, these components have become the foundation of the modern understanding of the mechanisms of restitution, compensation, and other forms of reparation in international law [13, p. 11].

Contemporary reality demonstrates that restitution is most commonly applied in the context of the return of cultural property that has been unlawfully removed or displaced as a result of armed conflicts or other internationally wrongful acts. The very issue of restoring states' control over cultural heritage objects has become one of the key areas of development for restitution mechanisms in international law. As a rule, the subject of restitution in such cases is cultural property of special historical, religious, or other significant importance. It is necessary to cite examples here, such as museum exhibits, archival documents, works of art, religious artifacts, and other cultural heritage objects that constitute an important part of a state's national identity and historical memory. The international community's heightened focus on the return of cultural property stems not only from its material value but also from its exceptional importance for preserving the cultural identity of peoples. Therefore, it should be added here that restitution can serve not only a compensatory function but also a cultural-restorative one, contributing to the restoration of historical justice and the protection of the world's cultural heritage [9, p. 147].

The next step in the research is aimed at broadening our understanding of the phenomenon of restitution, with a focus on reflections regarding the conservation of fauna. Studies of *Raphus cucullatus* (the dodo) and the Kanaani cat provide grounds for rethinking traditional approaches to understanding restitution and for developing a conceptual approach to the preventive restitution of living heritage. A distinctive feature of the study is the fact that the Kanaani is an extremely rare Israel cat breed [26]. There is also a contrast between these two examples namely, the dodo serves as a symbol of the irreversible loss of biological diversity and a reminder of humanity's inability to preserve a unique element of the natural heritage of the present in a timely manner, whereas the case of the Kanaani demonstrates the possibility of applying preventive mechanisms aimed at preserving objects threatened with extinction.

Therefore, it is necessary here to focus on the evolution of the very concept of restitution, which, during the era of classical international law, was primarily associated with the return of tangible objects resulting from internationally wrongful acts, examples of which were mentioned earlier. However, contemporary developments in international legal doctrine and interdisciplinary research indicate a gradual expansion of the substantive scope of this category and its adaptation to the new challenges of a globalized world. Unlike classical forms of restitution, and in the case of wildlife conservation, the focus is not on the return of a value that has already been lost, but on creating conditions specifically for conservation and continued existence. In such circumstances, restitution acquires the capacity to act preventively and is carried out through various measures aimed at documenting the origin of the object, securing international recognition, providing legal protection, and facilitating institutional restoration. This conceptual proposal allows us to view restitution not only as a mechanism for

remediating the consequences of a violation that has already occurred, but also as a tool for preventing the irreversible loss of objects that represent distinctive cultural, religious, historical, or natural value. Therefore, in our view, the idea of preventive restitution of fauna or living heritage broadens traditional conceptions of the meaning and functions of restitution already present in contemporary international law, shifting the emphasis from an exclusively restorative function to the preservation and protection of unique objects until the moment of their potential loss [23, p. 169].

In light of the above, the development of contemporary international law demonstrates a gradual shift in approaches to the management and protection of heritage. Whereas such functions were traditionally the exclusive responsibility of states, non-state or transnational actors are now playing an increasingly significant role. International organizations, research institutions, professional associations, charitable foundations, and other institutions are becoming increasingly involved in the processes of preserving cultural and biological heritage and developing international standards for the protection of both human and living heritage.

The findings of this scholarly article lead us to conclude that restitution is more than a legal doctrine; this phenomenon directly embodies the very purpose reflected in this legal concept. That is, when it comes to a normative legal act, the primary mission regarding restitution lies not only in identifying injustice but, on the contrary, in ensuring that the current legal framework is capable of acting preventively [24]. This component illustrates the evolution of international legal regulation to its current state, within which the preservation of unique heritage sites is ensured through the cooperation of state, intergovernmental, and non-state actors at the global level [22, pp. 124–125]. In this regard, non-governmental actors such as the WCF can play a significant role; therefore, while on the one hand this remains a matter of debate regarding “soft power,” the current legal reality is transforming this approach, as this category of actors promotes and protects sites within their sphere of activity [21].

Conclusions. It should be noted that this study leads to the conclusion that the phenomenon of restitution has undergone and continues to undergo a long and complex evolutionary process, transforming from a legal construct of Roman private law into one of the key mechanisms of international legal liability. It has been established that the concept of *restitutio in integrum*, which originated in Roman law, laid the foundation for the restoration of a violated legal status and had a decisive influence on the further development of both national legal systems and international law. The study revealed that the formation of the modern understanding of restitution occurred in parallel with the emergence of the institution of states' international legal responsibility. From classical notions of the obligation to remedy the consequences of a legal violation, the doctrine of international law has gradually evolved into a comprehensive system of redress, within which restitution has taken a leading role alongside compensation and satisfaction. As a result of the study of doctrinal approaches, it has been established that, despite the widespread use of the term “restitution” in international law, controversial issues still arise. Particular attention is paid to the study of the practice of applying restitution with regard to the return of unlawfully seized property and cultural property. It has been established that the sphere of cultural heritage protection has become one of the most important areas of development for restitution mechanisms in international law. The return of cultural property is

now viewed not only as a form of material compensation but also as an instrument for restoring historical justice, protecting national identity, and preserving humanity's cultural heritage. Furthermore, as part of this study, the author has formulated a proposal to refine the contemporary understanding of restitution so that it can serve not only a restorative function but also a preventive one, basing this on the Latin expression *ius est ars boni et aequi*.

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Гребенюк Д., Саліта М. Еволюція феномену реституції у правовій доктрині та міжнародній правовій практиці

Анотація. У науковій статті з'ясовано розвиток явища реституція крізь призму еволюції за фокусом на правову доктрину та міжнародно-правову практику. Досліджувалися історичні етапи розвитку концепції *restitutio in integrum* у римському праві, особливості подальшого розвитку в міжнародно-правовій думці та трансформацію в один із ключових механізмів відновлення порушених прав у системі міжнародно-правової відповідальності суб'єктів міжнародного права. Проаналізовано доктринальні підходи до визначення понятійного апарату у співвідношенні з іншими формами таким як репарація, компенсація, сатисфакція та субституція. Дослідницьку увагу приділено еволюційним етапам розвитку концепції під

впливом практики міжнародних судових інституцій, зокрема рішення Постійної палати міжнародного правосуддя та Європейського суду з прав людини. Акцентується увага процесам кодифікації міжнародно-правової відповідальності в межах діяльності Комісії міжнародного права ООН. Визначено особливості застосування реституції щодо повернення незаконно вилученого майна, культурних цінностей та живої спадщини, а також проаналізовано сучасні проблеми розмежування різних форм міжнародно-правового відшкодування. За результатами дослідження встановлено, що явище реституція формується крізь складний але у той же час гнучкий шлях розвитку від інституту римського приватного права до універсального механізму відновлення порушеного правового стану у сучасному міжнародному праві. Обґрунтовано, що в сучасних

умовах реституція залишається пріоритетною формою з динамічним характером розвитку, яка за своєю природою здатна превентивно діяти.

Ключові слова: *restitutio in integrum*, реституція, превентивна реституція, міжнародно-правова відповідальність, міжнародно-протиправне діяння, відшкодування шкоди, культурні цінності, жива спадщина, міжнародно-правова доктрина, міжнародно-правова практика, міжнародне право, сучасне міжнародне право, міжнародні стандарти захисту прав людини.

Використання штучного інтелекту. Під час підготовки статті інструменти штучного інтелекту використовувалися виключно для мовного редагування, перевірки граматики, перекладу або інших допоміжних завдань, без використання згенерованих ними об'єктів як результатів академічної діяльності



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