The Concept and Nature of "Due Diligence" in International Law

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Extended Abstract

Currently, "due diligence" and its obligations have a special significance and undeniable role in international law as influential and controversial issues. Recent research by scholars and experts in various fields of international law on "due diligence" and its obligations indicates that its remarkable capacity can lead to paradigm shift in international law, filling the existing gaps in it and changing it into a real legal system with maximum and utmost efficiency. Significant areas in which due diligence plays strategic role are as follows: International economic law and international investment law, human rights, humanitarian law, environmental law and international responsibility, which has been independently published by same author in some of these fields.

The present research's main question is to examine the concept and origin of due diligence and its obligations in international law, and in this regard, the concept of this principle has been found through the analysis of the theory of scholars and during the procedure (case-law) of international courts and tribunals as follows: Due diligence is a deliberately flexible standard that obliges the subject of international law (states and intergovernmental organizations) to take utmost care or act with utmost care and diligence in fulfilling their contractual and customary obligations.

This maximum commitment for each country or intergovernmental organization will be different and subject to change depending on the situation and conditions, the ability of the country or intergovernmental organization, the importance of interests that are at risk of damage and other effective components. In terms of its nature, the mentioned rule is not only the primary rules of conduct and not the secondary rules of responsibility, but exactly like good faith, it is a quality with which primary obligations must be fulfilled. In terms of origin, the formation of due diligence can go back to the 19th century, although, for a long time after that, this concept -according to some thinkers - remained on the sidelines and did not gain its real status. (In fact the point in

concern with origin of due diligence is, it's a standard stem from human reason or human wisdom and it's not just Eurocentric. Many old legal systems have a rule similar to due diligence, then its root go back neither to Europe nor to the 19th century. The root of due diligence is as old as the history and humanity. For example in Islamic legal system there is a similar rule (with the same concept, function and condition) or maybe the real origin of due diligence is called *Ehtiyat fiqhi* (or jurisprudential/juristic caution). Its go back approximately to 1400 years ago or even more, not just 19th century! And also Māori's *Tikanga* (Māori ways/tradition) is other similar of due diligence. Then it's not belonging to some special culture or legal system.)

After that, and in the first step, due diligence acted as an adjustment for the government's rule. Since the sovereignty of a state requires the exclusive jurisdiction of the state over its territory, due diligence emphasizes certain actions that states are expected to commit to in order to protect the interests of other states. On the other hand, due diligence will have a supporting role in connection with governance. Considering that sovereignty over a land implies absolute responsibility for all harmful actions that take place in that area, due diligence removes part of the responsibility of such behavior from the government.

The origin of due diligence in international law can be traced in two obvious fields:

- The duty of neutral country during the war; and
- Protection of foreigners and their properties.

The pioneer of these events is Alabama claims, which first held governments responsible for the actions of individuals and entities under their territory, and on the other hand identified the scope of due diligence obligations to be more than a country's obligation to its citizens. . Investment claims of United States citizens versus. Mexico are another important source that has helped to clarify the scope of due diligence obligations. According to the first report of the International Law Association, objective criteria for due diligence can be obtained from this series of arbitrations. The criteria are as follows:

- The degree of influence and effectiveness of the government's control over certain areas of its territory;
- The degree of predictability of the actual event;
- The importance of interests that must be supported and protected.

Considering the Trail Smelter case, the government's ability to prevent or minimize the risk of violating international rules can be added to these three titles.

Ultimately and briefly, it can be claimed: Due diligence obligations play strategic roles in international law. Finally we can say there is no field in international law in which due diligence has no role to play

Keywords: Due diligence, International Law, Primary rules of Conduct, Secondary rules of Responsibility.

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