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ЛЕКЦИИ ЛЕТНЕЙ ШКОЛЫ ПО МЕЖДУНАРОДНОМУ ПУБЛИЧНОМУ ПРАВУ

Обязательства по международному праву

Ида Караччоло

COURSES OF THE SUMMER SCHOOL ON PUBLIC INTERNATIONAL LAW

Obligations under International Law

Ida Caracciolo

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Настоящее издание содержит материалы лекций Иды Караччоло по теме «Обязательства по международному праву», прочитанных в рамках Летней Школы по международному публичному праву 2024 года.

The present publication contains the text of lectures by Ida Caracciolo on the topic “Obligations under International Law”, delivered within the frames of the Summer School on Public International Law 2024.

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Летняя Школа по международному публичному праву 2024 года
Summer School on Public International Law of 2024

Дорогие друзья!

Центр международных и сравнительно-правовых исследований продолжает публикацию лекций, прочитанных в рамках Летней Школы по международному публичному праву.

Летняя Школа — проект Центра, призванный дать возможность тем, кто изучает международное право, занимается или планирует заниматься им, получить дополнительные знания о предмете и стимулировать самостоятельную работу слушателей. Занятия в Летней Школе состоят из лекций и семинаров общего курса и объединённых рамочной темой специальных курсов, которые проводятся ведущими экспертами по международному праву, а также индивидуальной и коллективной работы слушателей.

В 2024 году Летняя Школа состоялась в пятый раз и прошла в гибридном формате. В Москве курсы читали Альфредо Кросато Нойманн, Шуэша Ляо, Эйрик Бьорге и Бенуа Майер. Ряд лекций были проведены с подключением экспертов онлайн в библиотеке Центра. Онлайн-занятия провели Ида Караччоло, Нилюфер Орал, Кэти-Энн Браун и сэр Майкл Вуд. Были прочитаны лекции на такие темы, как право международных договоров, изменение климата и международное право, обязательства по международному праву, различные аспекты морского права и, конечно, лекции в рамках общего курса по международному публичному праву. Эти и другие материалы Летней Школы прошлых лет доступны на сайте iclrc.ru.

Центр международных и сравнительно-правовых исследований выражает благодарность членам Консультативного совета Летней Школы: Р. А. Колодкину, С. М. Пунжину, Л. А. Скотникову, Б. Р. Тузмухамедову, С. В. Усоскину — и всем, кто внёс вклад в реализацию этой идеи.

Dear friends,

The International and Comparative Law Research Center continues publication of lectures delivered at the Summer School on Public International Law.

The Summer School is a project of the ICLRC aimed at providing those learning, working, or aspiring to work in the sphere of international law with an opportunity to obtain advanced knowledge of the subject and encouraging participants to engage in independent research. The Summer School's curriculum is comprised of a general course on public international law, lectures on special topics, and seminars delivered by leading international law experts, as well as of independent and collective studying.

In 2024, the Summer School was held for the fifth time, in a hybrid format. The offline courses in Moscow were delivered by Alfredo Crosato Neumann, Xuexia Liao, Eirik Bjorge, and Benoit Mayer. A number of lectures were held at the Center's Library with remote experts, namely Ida Caracciolo, Nilufer Oral, Kathy-Ann Brown, and Sir Michael Wood. Among the topics of the lectures were the law of treaties; climate change and international law; obligations under international law; lectures on the law of the sea; and of course, the general course on public international law. These and the past years materials of the Summer School are available on the website iclrc.ru.

The International and Comparative Law Research Center wishes to express its appreciation to the members of the Advisory Board — Roman Kolodkin, Sergey Punzhin, Leonid Skotnikov, Bakhtiyar Tuzmukhamedov, and Sergey Usoskin — as well as others who helped implement the project.

Ида Караччоло

Ида Караччоло — судья Международного трибунала по морскому праву с 2020 года. До назначения на эту должность в течение многих лет совмещала академическую и практическую деятельность в области международного права. С 1994 по 2020 год она работала консультантом и экспертом по правовым вопросам в юридической службе Министерства иностранных дел Италии, участвовала в качестве члена итальянской делегации в различных органах и комитетах Организации Объединённых Наций, Совета Европы и Европейского союза, а также в различных многосторонних и двусторонних переговорах. Состоит в коллегии адвокатов Рима. Была судьёй *ad hoc* Европейского суда по правам человека в 2016–2021 годах. Является альтернативным арбитром Суда ОБСЕ по примирению и арбитражу, членом итальянской национальной группы Постоянной палаты третейского суда и членом Административного трибунала Международной итало-ибероамериканской организации (IILA). Профессор международного права в Университете Кампании «Луиджи Ванвителли». Является членом редакционных коллегий и научных комитетов журналов и серий по международному праву и праву Европейского союза, а также редактором двух научных серий по международному праву.

Ida Caracciolo

Ida Caracciolo has been a judge at the International Tribunal for the Law of the Sea since 2020. Before being appointed to this position, she combined academic and practical activities in the field of international law for many years. From 1994 to 2020, she worked as a consultant and legal expert in the Legal Service of the Italian Ministry of Foreign Affairs, participating as a member of the Italian delegation in various bodies and committees of the United Nations, the Council of Europe and the European Union and in various multilateral and bilateral negotiations. She is a barrister of the Rome Bar. She was an *ad hoc* judge of the European Court of Human Rights in 2016–2021. She is an alternate arbitrator of the OSCE Court of Arbitration and Conciliation, a member of the Italian national group of the Permanent Court of Arbitration, and a member of the Administrative Tribunal of the International Italian-Ibero-American Organization (IILA). Ida Caracciolo is a full professor of international law at the University of Campania "Luigi Vanvitelli". She is a member of several scientific associations and committees of journals and series on international law and European Union law, and the editor of two scientific series on international law.

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PREFACE

This publication is a compilation of two lectures and a seminar I delivered in 2024 at the Summer School on Public International Law of the International and Comparative Law Research Center. The publication does not claim to be a scientific or dogmatic study but serves an illustrative purpose by putting into writing the content of those lectures and the seminar.

The lectures and the seminar are aimed to introduce participants to a "general theory of obligations" — an approach not so common in international legal studies — which typically deal with international obligations in relation to treaties and state responsibility rather than as a subject *per se*.

For this reason, this publication does not address the breach of obligations or the consequences of such breaches, nor does it address the effects of the breach of conventional obligations on the treaties that established them.

The footnotes provide an overview of doctrinal comments on those core and widely debated topics — including obligations *erga omnes*, obligations *erga omnes partes*, obligations of result, and obligations of conduct — which have been afforded in the lectures and the seminar.

LECTURES 1 AND 2:

International Obligations: Overview, Legal Sources, and Subjects Involved

1. A Theory of International Obligations

According to a scholar, "International relations are a manifold of obligations"[1] while another commented that "[m]uch of what States do in the international system, they do as a response to their perceived obligations, commitments, or responsibilities."[2] In contrast to this, an international law of obligations has never been developed, as has been the case in many domestic legal systems, especially those of civil law. In other words, international law seems to eschew the abstract category of obligation, dwelling instead on obligations under a practical perspective, namely with reference to treaty law and especially international responsibility. According to the first perspective, the notion of obligation can be understood only in relation to that of a valid norm while according to the second, such a notion can be understood only in relation to the consequences stemming from the non-compliance with the obligation.

In this regard, it is worth noting that the UN International Law Commission in the 2001 Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries, in explaining the term 'obligation', emphasizes that the

[1] Paskins B., *Obligations and the Perception of Understanding of International Relations*, in Donelan M. (ed.), *The reason of States: A Study in international political theory*, London, 1978, p. 167.
[2] Clinton D., *International Obligations: To Whom Are They Owed?*, in *The Review of Politics*, 1993, 2, p. 291-310, at p. 291.

> "[…] reference is made to the breach of an international obligation rather than a rule or a norm of international law. What matters for these purposes is not simply the existence of a rule but its application in the specific case to the responsible State. The term 'obligation' is commonly used in international judicial decisions and practice and in the literature to cover all the possibilities."[3]

From the perspective mentioned by the Commission, norms and obligations are indistinguishable. At this point, the study of the nature of norms, along with the modalities and consequences of their violation, becomes all-absorbing.

In such a context, obligations cannot be regarded as an internationally legal archetype and this justifies the absence of an organic and systematic discipline of international obligations. This same context evidently makes it difficult to develop a theory of international obligations, the very usefulness of which remains a subject of doctrinal debate.[4]

Although international obligations have never been the subject of organic discipline and analysis, the issues of the formation and fulfillment of international obligations are main elements of the law of treaties and international responsibility. In such domains, these issues have been conceptualized by international jurisprudence, particularly by the International Court of Justice and the International Tribunal for the Law of the Sea as well as by the

[3] Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, 2001, *Yearbook of the International Law Commission, 2001*, Vol. II, Part Two, p. 36.
[4] Mik C., *Theory of Obligations in International Law*, Abingdon, New York, Routledge, 2024.

International Law Commission in its works on the law of treaties[5] and the responsibility of States,[6] and by scholars.[7]

Drawing on the conclusions of international jurisprudence, the work of the International Law Commission, and scholars' studies, central points in the study of international obligations are the sources of international obligations, the subjects involved therein, their scope and contents, and the means of fulfilling them.

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[5] Draft Articles on the Law of Treaties with Commentaries, 1966, *Yearbook of the International Law Commission, 1966*, Vol. II.

[6] *Yearbook of the International Law Commission, 2001*, cit.

[7] *Ex multis*, Annacker C., *The legal régime of* erga omnes *obligations in international law*, in *Austrian Journal of Public and International Law*, 1994, 2, p. 131-166; Dominicé C., *The International Responsibility of States for Breaches of Multilateral Obligations*, in *European Journal of International Law*, 1999, p. 353-363; Dupuy P-M., *Reviewing the Difficulties of Codification: On Ago's Classification of Obligations of Means and Obligations of Result in Relation to State Responsibility*, in *Ibidem*, 1999, p. 371-385; Ibbetson D., *A Historical Introduction to the Law of Obligations*, Oxford, OUP, 2001; Sicilianos L.A., *The Classification of Obligations and the Multilateral Dimension of the Relations of International Responsibility*, in *European Journal of International Law*, 2002, p. 1127-1145; Fitzmaurice M., Elias O., *Contemporary Issues in the Law of Treaties*, Utrecht, Eleven International, 2005; Gaja G., *Les obligations et les droits* erga omnes *en droit international: Obligations and rights* erga omnes *in international law*, in *Annuaire de l'Institut de Droit International*, 2005, 1, p. 117-212; Crawford J., *Multilateral Rights and Obligations in International Law*, in *The Hague Academy Collected Courses*, 2006, Vol. 319, p. 325-482; Villiger M.E., *Commentary on the 1969 Vienna Convention on the Law of Treaties*, Leiden, Boston, Nijhoff, 2008; Economides C.P., *Content of the Obligation: Obligations of Means and Obligations of Result*, in Crawford J., Pellet A., Olleson S. (eds.), *The Law of International Responsibility*, Oxford, OUP, 2010; Nishimura Y., *Source of the Obligation*, in *Ibidem*, p. 365-372; Samuel G., *Law of Obligations*, Cheltenham, Edward Elgar Publishing, 2010; Gautier P., *On the Classification of Obligations in International Law*, in Hestermeyer H.P. (ed), *Coexistence, Cooperation and Solidarity: Liber Amicorum Rüdiger Wolfrum*, Leiden, Boston, Nijhoff, 2012, Vol. I; Karavias M., *Corporate Obligations under International Law*, Oxford, OUP, 2013; Shelton D., Gould A., *Positive and Negative Obligations*, in *The Oxford Handbook of International Human Rights Law*, Oxford, OUP, 2013; Schulze R., Zoll F. (eds.), *The Law of Obligations in Europe: A New Wave of Codifications*, Munich, Selier European Law Publishers, 2013; Gaja G., *The Protection of General Interests in the International Community*, in *The Hague Academy Collected Courses*, 2014, Vol. 364, p. 9-185; Id., *Claims concerning obligations* erga omnes *in the jurisprudence of the International Court of Justice*, in *Global Justice, Human Rights and the Modernization of International Law*, 2018, p. 39-46; D'Argent P., *Les obligations internationales*, in *The Hague Academy Collected Courses*, 2021, Vol. 417.

2. Legal Sources of International Obligations

International obligations are established by international rules. However, not every international rule necessarily creates an international obligation.

As the International Law Commission states in the Draft Articles on Responsibility of States for Internationally Wrongful Acts

> "[i]nternational obligations may be established by a customary rule of international law, by a treaty or by a general principle applicable within the international legal order. States may assume international obligations by a unilateral act. An international obligation may arise from provisions stipulated in a treaty (a decision of an organ of an international organization competent in the matter, a judgment given between two States by ICJ or another tribunal, etc.)."[8]

Given the fact that international customs are applicable to all States and to those international organizations whose mandate is concerned by a specific customary rule, the obligations established by a customary rule bear on all States and concerned international organization. On the contrary, only States parties must comply with obligations contained in international treaties.

As outlined in Article 53 of the 1969 Vienna Convention on the Law of Treaties, certain general norms of international law are recognized and accepted by the international community as peremptory norms (*jus cogens*). These norms, from which no derogation is permitted, can only be modified by other norms of the same character. Reflecting and safeguarding the fundamental values of the international community, *jus cogens* norms hold a superior hierarchical status over other customary and conventional rules of international law and are universally applicable.

[8] *Yearbook of the International Law Commission, 2001*, cit., p. 55.

Peremptory norms of international law (*jus cogens*) can serve as sources of international obligations. The nature of these obligations, however, remains a subject of considerable debate. Central to this discussion is the relationship between *jus cogens* and obligations *erga omnes*, namely those obligations owed to the international community as a whole, which are to be complied with by all States and in relation to which "[…] all States can be held to have a legal interest in their protection."[9]

The International Court of Justice has never expressly affirmed the existence of a relationship between *jus cogens* and *erga omnes* obligations even though it seems to presume such a relationship when it applies the legal consequences of the violation of peremptory rules to the violation of obligations *erga omnes*. In particular, the Court holds that

> "[s]ince respect for the right to self-determination is an obligation *erga omnes*, all States have a legal interest in protecting that right (see *East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995*, p. 102, para. 29; see also *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v. Spain), Second Phase, Judgment, I.C.J. Reports 1970*, p. 32, para. 33). The Court considers that, while it is for the General Assembly to pronounce on the modalities required to ensure the completion of the decolonization of Mauritius, all Member States must co-operate with the United Nations to put those modalities into effect."[10]

For its part, the International Law Commission, in the Draft Articles on the International Responsibility of States, points out that

[9] *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), Judgement 5 February 1970, I.C.J. Reports 1970,* p. 3, para. 33.
[10] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, para. 180.

> "[w]hether or not peremptory norms of general international law and obligations to the international community as a whole are aspects of a single basic idea, there is at the very least substantial overlap between them. [...] But there is at least a difference in emphasis. While peremptory norms of general international law focus on the scope and priority to be given to a certain number of fundamental obligations, the focus of obligations to the international community as a whole is essentially on the legal interest of all States in compliance — i.e. in terms of the present articles, in being entitled to invoke the responsibility of any State in breach."[11]

Subsequently, in its Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*Jus Cogens*)[12] the International Law Commission recognizes the relationship between peremptory norms and *erga omnes* obligations with some *distinguo* and takes the view that peremptory norms of general international law give rise to obligations owed to the international community as a whole (Principle 17). According to the Commission,

> "[a]lthough all peremptory norms of general international law (*jus cogens*) give rise to obligations *erga omnes,* it is widely considered that not all obligations *erga omnes* arise from peremptory norms of general international law (*jus cogens*). For example, certain rules relating to common spaces, in particular, common heritage regimes, may produce *erga omnes* obligations independent of whether they have peremptory status. The International Tribunal for the Law of the Sea determined that the obligations of States parties relating to preservation of the environment of the high seas and the deep seabed under the 1982 United Nations Convention on the Law of the Sea had an *erga omnes* character."[13]

[11] *Yearbook of the International Law Commission, 2001*, cit., p. 111-112.
[12] *Yearbook of the International Law Commission, 2022*, Vol. II, Part Two.
[13] *Ibidem*, p. 65-66.

Although unilateral acts of States are not sources of binding norms, nonetheless through them States can assume obligations towards another State or other States. In 2006, the International Law Commission clarified this principle in its Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations. According to the Commission,

> "[a] unilateral declaration entails obligations for the formulating State only if it is stated in clear and specific terms. In the case of doubt as to the scope of the obligations resulting from such a declaration, such obligations must be interpreted in a restrictive manner. In interpreting the content of such obligations, weight shall be given first and foremost to the text of the declaration, together with the context and the circumstances in which it was formulated."[14]

International organizations empowered by their constituent treaties can adopt binding unilateral acts, thereby imposing obligations on their member States, subject to the conditions and limits established in those treaties.[15] This is typically the case of the European Union with its regulations, directives and decisions.

Lastly, international obligations can also be instituted by international courts and tribunals. Orders for provisional measures often entail obligations directed at one or both parties involved in a dispute. For instance, the International Court of Justice imposed several obligations on Israel in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (*South Africa v. Israel*), following a request

[14] *Yearbook of the International Law Commission, 2006*, Vol. II, Part Two, principle 7.
[15] *Ex multis*, Tomuschat Ch., *Obligations Arising for States Without or Against Their Will*, *The Hague Academy Collected Courses*, 1993, Vol. 241, p. 195-374, at 326. The European Union through regulations and decisions can also impose direct obligations on individual and private domestic entities and entities.

for the modification of its earlier order dated March 28, 2024.[16] Typically, international obligations on States may also be imposed by the judgements on prompt release of vessels and crews by the International Tribunal for the Law of the Sea.[17]

International norms are commonly divided into primary and secondary norms. This distinction is at the basis of international responsibility and the approach of the International Law Commission, starting from Ago's considerations.[18] In particular, in the 1980 Report, the Commission clarifies that

> "the purpose of the present draft articles is not to define the rules imposing on States, in one sector or another of inter-State relations, obligations whose breach can be a source of responsibility and which, in a certain sense, may be described as 'primary'. In preparing the present draft the Commission is undertaking solely to define those rules which, in contradistinction to the primary rules, may be described as 'secondary', inasmuch as they are aimed at determining the legal consequences of failure to fulfil obligations established by the 'primary' rules. Only these 'secondary' rules fall within the actual sphere of responsibility for internationally wrongful acts."[19]

Thus, secondary rules can also establish obligations for the State, specifically, the responsible State. This is the case of the obligation to cease the wrongful act, if it is continuing; the obligation to offer appropriate assurances and guarantees of non-repetition (Art. 30 of the Draft Articles on State Responsibility), if circumstances so require, or the obligation to make reparation (Art. 31 of the Draft

[16] Para. 57.
[17] E.g. *"Camouco" (Panama v. France), Prompt Release, Judgment 7 February 2000, ITLOS Reports 2000*, p. 10, at p. 35.
[18] *Yearbook of the International Law Commission, 1970*, Vol. II, p. 306, para. 66 (*c*).
[19] *Yearbook of the International Law Commission, 1980*, Vol. II, Part Two, p. 27, para. 23.

Articles on State Responsibility).[20] These may be called secondary obligations taking into consideration their legal source which is distinct from that of primary obligations stemming from primary rules. Some identical obligations, such as the obligation to compensate, can find their source in primary or secondary norms, as noted by the International Law Commission. According to the Commission,

> "[t]here may be cases where States incur obligations to compensate for the injurious consequences of conduct which is not prohibited, and may even be expressly permitted, by international law (e.g. compensation for property duly taken for a public purpose). There may also be cases where a State is obliged to restore the *status quo ante* after some lawful activity has been completed. These requirements of compensation or restoration would involve primary obligations; it would be the failure to pay compensation, or to restore the *status quo* which would engage the international responsibility of the State concerned."[21]

3. States and International Organizations as Subjects of International Obligations

An international obligation is a commitment established by international law whereby one party, a State or an international organization, is bound to act in a specified manner for the benefit of another party (or more parties), a State or an international organization holding, in turn, the interest to demand the fulfillment of that obligation.

In the light of this definition of the international obligation, the first element deserving analysis is the identification of the parties involved in such an obligation.

[20] *Yearbook of the International Law Commission, 2001*, cit., p. 88-94.
[21] *Ibidem*, p. 31-32.

The fact that international obligations are established by international rules implies that the subjects of international obligations are States and international organizations, within the confines of their conferred mandates, rather than individuals or domestic legal entities, which are not subjects of international law. Nevertheless, contemporary international law — particularly in areas such as human rights protection and environmental protection — includes rules that define and regulate conduct required of individuals or legal entities. Such conduct, however, becomes compulsory for individuals and legal entities only when States enact domestic laws necessary to implement the provisions of international law. These are obligations imposed by international law on States to adopt the necessary legislation, measures and mechanisms of control to obtain that individuals and legal entities comply with the prescriptions established by international law.

In the case of the European Union, whose legal order recognizes as subjects not only the Member States but also their nationals, the EU Court of Justice has held that it is entirely conceivable that the rules of the EU Treaties can be a direct source of obligations for private individuals vis-à-vis other private individuals.[22]

Taking into consideration the number of States involved, obligations can be bilateral or collective (also called multilateral). The latter category includes obligations *erga omnes partes* and obligations *erga omnes*.

4. Bilateral Obligations

Bilateral obligations are owed by one State to another. Crawford writes in his Third Report on the Responsibility of States that "[a] bilateral international obligation is one to which there are only

[22] 8 April 1976, 43/75 *Defrenne*, paras. 38-39 and 3 June 2021, C-624/19, *K e.a.*, paras. 20 ff.

two parties (obligee and obligor)."[23] This type of obligation is often, though not inherently, characterized by reciprocity.[24] For example, the obligation in a bilateral treaty to provide national treatment or most-favored-nation treatment is typically reciprocal. Another example is the customary international law obligation of a coastal State to respect the right of innocent passage for foreign vessels through its territorial sea.

However, a bilateral obligation can exist without a corresponding counterpart, as seen in agreements for the restitution of stolen cultural artifacts under a bilateral treaty.

It is also possible that a State owes the same obligation to many other States when it simultaneously owes duties to multiple obligors. Fitzmaurice qualified multilateral treaties "providing for a mutual interchange of benefits between the parties, with rights and obligations for each involving specific treatment at the hands of and towards each of the others individually" as 'reciprocating' treaties.[25] On the other hand, Simma found out that such treaties

[23] Doc. A/CN.4/507 and Add. 1–4*, Third Report on State Responsibility by Mr. James Crawford, Special Rapporteur, para. 99. See also Second Report on State Responsibility by Mr. Roberto Ago, *Yearbook of the International Law Commission*, *1970*, Vol. II, Part One, p. 206, para. 46.

[24] See D'Argent P., *Les obligations internationales*, cit., p. 44. According to this scholar, "Dans ce modèle juridique proche du droit privé, toute obligation correspond à un droit subjectif, et réciproquement. Le droit subjectif se confond avec l'intérêt personnel au respect de l'obligation qui en permet l'existence puisque l'obligation existe seulement pour satisfaire des besoins propres à son bénéficiaire. L'intérêt au respect du droit se limite à l'intérêt au respect des principes de l'ordre juridique qui rendent l'obligation opposable au débiteur par le créancier."

[25] Third Report on the Law of Treaties by Gerald Fitzmaurice, *Yearbook of the International Law Commission*, *1958*, Vol. II, Art. 18 "Legality of the object (conflict with previous treaties-normal cases)", para. 2. See Pauwelyn J., *A Typology of Multilateral Treaty Obligations: Are WTO Obligations Bilateral or Collective in Nature?*, in *European Journal of International Law*, 2003, 5, p. 907-951.

are bundles of bilateral rights and duties.[26] This type of obligations is, for instance, exemplified in the parallel obligations set forth in the 1961 Vienna Convention on Diplomatic Relations. They are parallel as they are reiterated in the numerous individual bilateral relationships stemming from the Convention.[27]

5. Collective Obligations

On the contrary, collective obligations involve multiple States and often serve collective interests. Therefore, they are not owed to a State individually or to several States individually but to a group of States or to the international community as a whole. Their collective nature stems from the fact that these obligations are aimed at protecting common values. For this reason, the debtor is called to fullfill the obligation not towards another specific State but to a group of States or all States in the international community. These obligations arise in areas that concern the fundamental interests of humanity or global stability.

The nature of collective obligations is to be inferred by interpreting the rules that establish them and in light of the common values that these obligations are intended to protect.

The category of collective obligations includes obligations *erga omnes* and obligations *erga omnes partes*.

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[26] Simma B., *Bilateralism and Community Interest in the Law of State Responsibility*, in Dinstein Y., Tabory M. (eds), *International Law at a Time of Perplexity: Essays in Honor of Shabtai Rosenne*, Dordrecht, Boston, London, Nijhoff, 1989, p. 821-844, at p. 821-822; Papa M.I., *Litigating Collective Obligations before the International Court of Justice. Progress, Challenges and Prospects*, in *The Law and Practice of International Courts and Tribunals*, 2024, p. 36-72.

[27] Third Report on State Responsibility, cit., para. 100. See also Doc. A/CN.4/517 and Add.1, Fourth Report on State Responsibility by Mr. James Crawford, Special Rapporteur, para. 40.

6. Obligations *Erga Omnes* / *Erga Omnes Partes*

The obligations *erga omnes* were recognized by the International Court of Justice (ICJ) in the *Barcelona Traction* case. In paragraphs 33 and 34 of the judgement the Court holds that

> "In particular, an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-a vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*. 34. Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of human person, including protection from slavery and racial discrimination."[28]

Therefore, in that very famous *obiter dictum*, the Court draws the fundamental distinction between two categories of international obligations: those towards another State and those towards the international community as a whole, which, by their specific nature, are relevant for all States. However, this specification does not appear particularly enlightening, since every State has an interest in international law being respected. What instead clarifies the Court's thinking is the further specification that every State has an interest in the protection of these obligations *erga omnes*.

The Court refers to collective obligations in other decisions. In the *East Timor* case, the Court confirms that "the right of peoples to self-determination ... has an *erga omnes* character."[29] In the *Application of the Convention on the Prevention and Punishment*

[28] *Barcelona Traction, Light and Power Company, Limited*, cit.
[29] *East Timor (Portugal v. Australia), Judgment 30 June 1995, I.C.J. Reports 1995,* p. 90, para. 29.

of the Crime of Genocide (Preliminary Objections) case, the Court briefly mentions and reiterates that "the rights and obligations" under the 1948 Genocide Convention "are rights and obligations *erga omnes*."[30]

In the *Questions relating to the Obligation to Prosecute or Extradite* case, according to the Court,

> "[t]he States parties to the Convention [*against Torture*] have a common interest to ensure, in view of their shared values, that acts of torture are prevented and that, if they occur, their authors do not enjoy impunity. The obligations of a State party to conduct a preliminary inquiry into the facts and to submit the case to its competent authorities for prosecution are triggered by the presence of the alleged offender in its territory, regardless of the nationality of the offender or the victims, or of the place where the alleged offences occurred. All the other States parties have a common interest in compliance with these obligations by the State in whose territory the alleged offender is present. That common interest implies that the obligations in question are owed by any State party to all the other States parties to the Convention. All the States parties 'have a legal interest' in the protection of the rights involved (*Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), Second Phase, Judgment, I.C.J. Reports 1970*, p. 32, para. 33). These obligations may be defined as 'obligations *erga omnes partes*' in the sense that each State party has an interest in compliance with them in any given case."[31]

The judgment is significant as the Court demonstrates a shared interest in upholding obligations *erga omnes partes*. Notably, the

[30] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections, Judgment 11 July 1996, I.C.J. Reports 1996,* p. 595, para. 31.
[31] *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment 20 July 2012, I.C.J. Reports 2012*, p. 422, para. 68.

Court acknowledges the right of other contracting parties to the Convention to invoke the responsibility of another State. On this point, the Court holds that

> "[t]he common interest in compliance with the relevant obligations under the Convention against Torture implies the entitlement of each State party to the Convention to make a claim concerning the cessation of an alleged breach by another State party. If a special interest were required for that purpose, in many cases no State would be in the position to make such a claim. It follows that any State party to the Convention may invoke the responsibility of another State party with a view to ascertaining the alleged failure to comply with its obligations *erga omnes partes*, such as those under Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention, and to bring that failure to an end."[32]

In the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in Nyanmar* case, in examining the request for the indication of provisional measures, the Court reiterates that

> "[i]n view of their shared values, all the States parties to the Genocide Convention have a common interest to ensure that acts of genocide are prevented and that, if they occur, their authors do not enjoy impunity. That common interest implies that the obligations in question are owed by any State party to all the other States parties to the Convention."[33]

Finally, in the Advisory Opinion of 19 July 2024 on the *Legal Consequences Arising from the Policies and Practices of Israel in the*

[32] *Ibidem*, para. 69.
[33] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgement 22 July 2022, I.C.J. Reports 2022*, p. 477, para. 41.

Occupied Palestinian Territory, Including East Jerusalem, the Court deals with obligations *erga omnes* by stating that

> "[a] great many of the rules of that Convention are so fundamental to the respect of the human person, and elementary considerations of humanity, that they are 'to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law' (see *ibid.*, p. 199, para. 157; citing *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 257, para. 79). These rules incorporate obligations which are essentially of an *erga omnes* character (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 199, para. 157)."[34]

In the same Opinion the Court confirmed that

> "[…] the right of all peoples to self-determination is 'one of the essential principles of contemporary international law' (*East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995*, p. 102, para. 29). Indeed, it has recognized that the obligation to respect the right to self-determination is owed *erga omnes* and that all States have a legal interest in protecting that right (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 199, para. 155; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 139, para. 180)."[35]

In conclusion, the Court acknowledges the existence of *erga omnes* obligations — those obligations in which all States share a common interest in their compliance. These obligations are undertaken by a State, either through an agreement or on the basis

[34] Para. 96.
[35] Para. 232.

of customary international norms, towards all other States or the international community as a whole. This shared interest grants the States to whom the obligation is due the right to invoke the responsibility of the State that has allegedly violated it. *Erga omnes* obligations are intrinsically linked to *erga omnes* rights. The Court explicitly affirms the *erga omnes* nature of obligations enshrined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and, in the context of customary law, the obligation to respect the right of peoples to self-determination.

In the Advisory Opinion of 1 February 2011, the International Tribunal for the Law of the Sea recognizes that the law of the sea has expanded the category of *erga omnes* obligations by including therein the obligations relating to preservation of the environment of the high seas and in the Area. In particular,

> "[e]ach State Party may also be entitled to claim compensation in light of the *erga omnes* character of the obligations relating to preservation of the environment of the high seas and in the Area. In support of this view, reference may be made to article 48 of the ILC Articles on State Responsibility […]."[36]

Another important pillar on collective obligations is constituted by the Draft Articles on Responsibility of States for Internationally Wrongful Acts which has incorporated some of the non-procedural aspects of the *erga omnes* concept in the regime on the invocation of responsibility and countermeasures.[37]

Notwithstanding the objective of the Draft Articles, the International Law Commission devotes some reflections on the definition of collective obligations. In commenting Draft Article 48

[36] *Responsibilities and Obligations of States Sponsoring Persons and Entities with respect to Activities in the Area, ITLOS Reports 2011,* p. 10, para. 180.
[37] D'Argent P., *Les obligations internationales*, cit., p. 106.

on the invocation of responsibility by a State other than an injured State, the Commission notes that the provision does not distinguish between different sources of international law and that obligations protecting a collective interest of a group may derive from multilateral treaties or customary international law. Such obligations have sometimes been referred to as "obligations *erga omnes partes*."[38]

According to the Commission,

> "[o]bligations coming within the scope of paragraph 1 (a) [*of Article 48*] have to be 'collective obligations', i.e. they must apply between a group of States and have been established in some collective interest. They might concern, for example, the environment or security of a region (e.g. a regional nuclear-free-zone treaty or a regional system for the protection of human rights). They are not limited to arrangements established only in the interest of the member States but would extend to agreements established by a group of States in some wider common interest. But in any event the arrangement must transcend the sphere of bilateral relations of the States parties. As to the requirement that the obligation in question protect a collective interest, it is not the function of the articles to provide an enumeration of such interests. If they fall within paragraph 1 (a), their principal purpose will be to foster a common interest, over and above any interests of the States concerned individually. This would include situations in which States, attempting to set general standards of protection for a group or people, have assumed obligations protecting non-State entities."[39]

On this basis, the Commission emphasizes the concept of obligations *erga omnes* in addressing the identification of injured States when a customary or conventional norm imposing obligations

[38] *Yearbook of the International Law Commission, 2001*, cit., p. 126.
[39] *Ibidem*.

on a group of States or the international community as a whole is violated (Art. 42 (b)). The injured States are entitled to invoke the responsibility of another State (Art. 42, *incipit*).

Generally, the violation of such norms does not injure a specific State unless the violation either affects it in a specific manner or fundamentally alters the ability of all other States to fulfill the obligation. This is particularly relevant in the context of integral obligations, where a breach jeopardizes the obligation's fulfillment for all parties.[40] In other terms, for a State to be considered injured in such cases, mere breach is insufficient; the breach must threaten the collective fulfillment of the obligation. This category of obligations includes those contained in disarmament treaties in which the fulfillment of obligations by one contracting State directly affects the ability of others to meet their commitments, as these obligations are inherently integral in nature.[41]

The expansion of the category of injured States in cases involving collective obligations is justified by the recognition that all States party to a treaty, or the international community as a whole, may have a general interest in ensuring compliance with international law and maintaining the continuity of long-established international institutions and arrangements.[42]

The Draft Articles on Responsibility (Article 48) recognizes also that, in certain circumstances, States other than the injured one may invoke international responsibility. This applies, first, when there is a breach of an obligation owed to a group of States, provided the non-injured State invoking liability belongs to that group and the obligation is established to protect a collective

[40] Urs P., *The Elusiveness of 'Interdependent Obligations' and the Invocation of Responsibility for their Breach*, in *British Yearbook of International Law*, 2024, p. 1-48.
[41] *Ibidem*, p. 323.
[42] *Ibidem*, p. 118.

interest of the group. The critical factor here is not the source of the obligation — whether customary or conventional — but whether it is intended to safeguard a general interest shared by the entire group, transcending the bilateral relationships between its members.[43]

According to the Commission,

> "Article 48 is based on the idea that in case of breaches of specific obligations protecting the collective interests of a group of States or the interests of the international community as a whole, responsibility may be invoked by States which are not themselves injured in the sense of Article 42."

Such States therefore act not in their individual capacity by reason of having suffered injury, but in their capacity as members of groups of States to which the obligation is owed, or indeed as a member of the international community as a whole.[44]

States that are entitled to raise questions of responsibility, even if not directly injured by the violation, may invoke the cessation of the internationally wrongful act, and assurances as well as the performance of the obligation of reparation in the interest of the injured State or of the beneficiaries of the obligation breached (Art. 48, 2 (a) (b)).

Scholars have extensively analyzed obligations *erga omnes* from various perspectives, often reaching different conclusions. Doctrinal reflections have focused, among other things, on whether it is conceivable that certain international obligations are not necessarily characterized by a bilateral structure, as they

[43] *Yearbook of the International Law Commission, 2001*, cit., p. 345.
[44] *Ibidem*, p. 126. Crawford J., *Responsibility for Breaches of Communitarian Norms: An Appraisal of Article 48 of the ILC Articles on Responsibility of States for Internationally Wrongful Acts*, in Fastenrath U. et al. (eds.), *From Bilateralism to Community Interest: Essays in Honour of Bruno Simma*, Oxford, OUP, 2011, p. 224-240.

safeguard common interests shared by a group of States or even the entire international community. For example, Ago argues that "almost all obligations of customary international law are obligations *erga omnes* in the sense that they are owed to each and all States."[45]

Other significant debates revolve around distinguishing obligations *erga omnes* from obligations *erga omnes partes* and understanding the connection between *erga omnes* obligations and *jus cogens*. While most scholars agree that obligations *erga omnes* differ from those *erga omnes partes*, the Institut de Droit International, in its 2005 Krakow resolution, uses the term *erga omnes* to refer to both customary obligations and those derived from multilateral treaties, following the approach of the International Court of Justice.[46]

On the link between *erga omnes* obligations and *jus cogens*, the prevailing view is that while the two are not identical, there is considerable overlap between them.[47] Finally, scholarly discussions also address procedural issues related to these obligations,

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[45] Ago R., *Obligations* Erga Omnes *and the International Community*, in Weiler J.H.H., Cassese A., Spinedi M. (eds.), *International Crimes of State: A Critical Analysis of the ILC's Draft Article 19 on State Responsibility*, Berlin, W. de Gruyter, 1989, p. 237-239. On this issue, see Nolte G., *From Dionisio Anzilotti to Roberto Ago: The Classical International Law of State Responsibility and the Traditional Primacy of a Bilateral Conception of Interstate Relations*, in *European Journal of International Law*, 2002, p. 1083-1098; Kammerhofer J., *Obligations* erga omnes, in *Max Planck Encyclopedia of Public International Law*, online, February 2024.

[46] "Article 1. For the purposes of the present articles, an obligation *erga omnes* is:
(a) an obligation under general international law that a State owes in any given case to the international community, in view of its common values and its concern for compliance, so that a breach of that obligation enables all States to take action; or
(b) an obligation under a multilateral treaty that a State party to the treaty owes in any given case to all the other States parties to the same treaty, in view of their common values and concern for compliance, so that a breach of that obligation enables all these States to take action."

[47] Kammerhofer J., op. cit.

particularly which States have the legal standing to invoke, react to, or bring proceedings before international tribunals or courts in response to violations of these obligations.[48]

[48] *Ibidem*. See *inter alia* Papa M.I., *Protezione diplomatica, diritti umani e obblighi* "erga omnes", in *Rivista di diritto internazionale*, 2008, 3, p. 669-737; Picone P., *Le reazioni collettive ad un illecito* erga omnes *in assenza di uno Stato individualmente leso*, in *Rivista di diritto internazionale*, 2013, 1, p. 5-47; Cimiotta E., *The relevance of* erga omnes *obligations in prosecuting international crimes*, in *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 2016, 3, p. 687-713; Rezai Shaghaji D., *L'émergence des obligations* erga omnes *de protection des droits humains découlant des normes impératives et l'habilitation des États membres de la communauté internationale d'agir*, in *Revue de droit international et de droit comparé*, 2016, 4, p. 477-500; Longobardo M., *The contribution of international humanitarian law to the development of the law of international responsibility regarding obligations* erga omnes *and* erga omnes partes, in *Journal of Conflict and Security Law*, 2018, 3, p. 383-404; Tanaka Y., *Reflections on* locus standi *in response to a breach of obligations* erga omnes partes*: a comparative analysis of the "Whaling in the Antarctic" and "South China Sea" cases*, in *The Law and Practice of International Courts and Tribunals*, 2018, 3, p. 527-554; Ravindra P., *The role of ICJ procedure in the emergence and evolution of* erga omnes *obligations*, in *The Global Community*, 2019, p. 211-241; Wyler É., *Quelques réflexions sur la typologie des obligations en droit international, avec référence particulière au droit des traités et au droit de la responsabilité*, in *Annuaire français de droit international*, 65, 2019, p. 25-49.

SEMINAR:

Content and Scope of International Obligations

International obligations vary in their content and scope. In other words, they require States to undertake different conducts or performances to fulfill them. This variation in content becomes particularly significant when assessing the non-compliance of such obligations.

1. Positive and Negative Obligations

Some obligations require States to act, such as performing a specific act or providing something. Therefore, they are called positive obligations. Conversely, a negative obligation demands abstention, meaning refraining from a particular act, thereby imposing a prohibition.[49]

For instance, the obligation of the receiving State to protect diplomatic premises is typically a positive obligation[50] as the obligation to cooperate. Conversely, the inviolability of diplomatic premises[51] and the principle of non-intervention in matters within the national jurisdiction of States[52] are negative obligations.[53]

The distinction has gained notable relevance and has been the subject of significant jurisprudential developments in the field of international human rights protection. For instance, the International Court of Justice, with reference to the crime of genocide

[49] See *inter alia* Shelton D., Gould A., *Positive and Negative Obligations*, cit.
[50] 1961 Vienna Convention on diplomatic relations, art. 22(2).
[51] *Ibidem*, art. 22(1).
[52] Established by an ancient customary rule of international law.
[53] D'Argent P., *Les obligations internationales*, cit., p. 122-149.

emphasizes the differences between the violation of the obligation to prevent genocide under Article I of the 1948 Convention and the "complicity in genocide" under Article III (e). According to the Court,

> "[c]omplicity always requires that some positive action has been taken to furnish aid or assistance to the perpetrators of the genocide, while a violation of the obligation to prevent results from mere failure to adopt and implement suitable measures to prevent genocide from being committed. In other words, while complicity results from commission, violation of the obligation to prevent results from omission; this is merely the reflection of the notion that the ban on genocide and the other acts listed in Article III, including complicity, places States under a negative obligation, the obligation not to commit the prohibited acts, while the duty to prevent places States under positive obligations, to do their best to ensure that such acts do not occur."[54]

The Human Rights Committee refers to positive and negative obligations for the better protection of human rights in its General Comment No. 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*. In particular, the Committee emphasizes with respect to the obligation of States to respect and ensure the protection of human rights that this obligation

> "is both negative and positive in nature. States Parties must refrain from violation of the rights recognized by the Covenant, and any restrictions on any of those rights must be permissible under the relevant provisions of the Covenant. […]. Article 2 requires that States Parties adopt legislative, judicial, administrative, educative and other appropriate measures in order to fulfil their legal obligations. […] The Covenant cannot

[54] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment 26 February 2007, I.C.J. Reports 2007*, p. 43, para. 432.

> be viewed as a substitute for domestic criminal or civil law. However, the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. [...] The Covenant itself envisages in some articles certain areas where there are positive obligations on States Parties to address the activities of private persons or entities. For example, the privacy-related guarantees of article 17 must be protected by law. It is also implicit in article 7 that States Parties have to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power. [...]."[55]

For its part the United Nations Office on Drugs and Crime clarifies that

> "[p]ositive obligations require national authorities to act; that is, to take necessary measures to safeguard a right or, more precisely, to adopt reasonable and suitable measures to protect the rights of the individual. Such measures may be judicial (for example, where the State is expected to enforce sanctions against public officials who abuse their power in the treatment of smuggled migrants). They may also be of a more practical nature. One example would be measures taken in places of detention to prevent smuggled migrants from committing suicide or harming themselves or others. In summary, positive obligations are, broadly speaking, obligations 'to do something' to ensure respect and protection of human rights.

[55] General Comment No. 31[80]. The Nature of the General Obligation Imposed on States Parties to the Covenant. Adopted on 29 March 2004 (2187 meeting). CCPR/C/21/Rev.1/Add. 13, 26 May 2004, paras. 6-8.

> Negative obligations refer to a duty not to act; that is, to refrain from action that would hinder human rights. For instance, by not returning smuggled migrants to countries where they face risks of persecution, the State will be abiding by the corresponding negative obligation. Importantly, the fulfilment of a negative obligation might very well require positive action. This may include adoption of laws, regulations and standard operating procedures that prohibit push back policies of migrant smuggling vessels found close to the State's maritime border."[56]

Finally, positive obligations have been utilized by the European Court of Human Rights to expand States' obligations vis-à-vis human rights. Most of the provisions of the European Convention on Human Rights contain negative obligations, i.e. obligations on States to avoid acting in a manner that unjustifiably interferes with the rights under the Convention. Positive obligations, i.e. obligations to take legislative, administrative and judicial measures to protect these rights, have therefore been derived by the Court by means of interpretation.[57] With respect to certain rights, e.g. the right to life and the prohibition of torture and inhuman and degrading treatment or punishment, the Court inferred from the respective Articles 2 and 3 the positive obligation with procedural content to investigate promptly and

[56] UNODC, *Positive and negative obligations of the State*, https://www.unodc.org/e4j/zh/tip-and-som/module-2/key-issues/positive-and-negative-obligations-of-the-state.html#:~:text=In%20summary%2C%20positive%20obligations%20are,that%20would%20hinder%20human%20rights.

[57] These positive obligations have been inferred e.g. for the protection of the right to life, the right of association, the freedom of expression. See *inter alia* the *Case of Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania, GC, Judgment 17 July 2014*; and the *Case of Safi and Others v. Greece, Judgment 7 July 2022*. On this issue, Klatt M., *Positive Obligations under the European Convention on Human Rights*, in *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 2011, p. 691-718; Stoyanova V., *Positive Obligations under the European Convention on Human Rights Law Within and Beyond Boundaries*, Oxford, OUP, 2023.

impartially their violations committed by both state authorities and private actors.[58]

2. Substantive and Procedural Obligations

Then there are substantive and procedural obligations. Essentially, substantive obligations focus on the content or outcome of an action, rather than the process used to achieve it. On the contrary, procedural obligations are centered on how an action or decision should be taken and the steps and characteristics of the process to be followed to that end. Typically, procedural obligations contain duties to notify, to consult, to initiate a particular procedure, or to negotiate.

The category of procedural obligations has developed specifically in two branches of international law: the protection of human rights and the protection of the environment. As mentioned earlier, the obligation to investigate inferred by the European Court of Human Rights in the protection of certain rights set forth in the European Convention on Human Rights is a typical example of a procedural obligation.

The Convention on Early Notification of a Nuclear Accident, adopted in 1986 following the Chernobyl nuclear plant accident, establishes a notification system for nuclear accidents from which a release of radioactive material occurs or is likely to occur and which has resulted or may result in an international transboundary release that could be of radiological safety significance for another State. It requires States to report the accident's time, location, nature, and

[58] *Case of McCann and Others v. the United Kingdom, GC, Judgment 27 September 1995*; *Case of Assenov and Others v. Bulgaria*, Judgement 28 October 1998; *Case of El-Masri v. the Former Yugoslav Republic of Macedonia*, *GC, Judgment 13 December 2012*; *Case of Labita v. Italy, Judgment 6 April 2000*. See Chevalier-Watts J., *Effective Investigations under Article 2 of the European Convention on Human Rights: Securing the Right to Life or an Onerous Burden on a State?*, in *European Journal of International Law*, 2010, 3, p. 701-721.

other data essential for assessing the situation. Notification is to be made to affected States directly or through the International Atomic Energy Agency (IAEA), and to the IAEA itself. Reporting is mandatory for any nuclear accident involving facilities and activities listed in Article 1. Pursuant to Article 3, States may notify other nuclear accidents as well.

Moreover, most multilateral environmental agreements contain various procedural obligations. One example is Article 14 of the 1992 Convention on Biological Diversity, which imposes several procedural obligations on States, including the obligation to

> "[…] (a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures; […] (c) Promote, on the basis of reciprocity, notification, exchange of information and consultation on activities under their jurisdiction or control which are likely to significantly affect adversely the biological diversity of other States or areas beyond the limits of national jurisdiction, by encouraging the conclusion of bilateral, regional or multilateral arrangements, as appropriate; […] (d) In the case of imminent or grave danger or damage, originating under its jurisdiction or control, to biological diversity within the area under jurisdiction of other States or in areas beyond the limits of national jurisdiction, notify immediately the potentially affected States of such danger or damage, as well as initiate action to prevent or minimize such danger or damage; […]."[59]

[59] See *inter alia* Okowa P.N., *Procedural Obligations in International Environmental Agreements*, in *British Yearbook of International Law*, 1996, 1, p. 275-336, Brunée J., *International Environmental Law and Community Interests: Procedural Aspects*, in Benvenisti E., Nolte G. (eds.), *Community Interests Across International Law*, 2018, Oxford, OUP, p. 151-175.

International jurisprudence has also addressed procedural obligations in environmental matters. The International Court of Justice's findings in *Pulp Mills on the River Uruguay* case are particularly significant.[60] The Court deduces from the customary principle of prevention, envisaged as a substantive obligation of conduct, the procedural obligation to carry out a prior environmental impact assessment when the planned activity involves a risk of significant transboundary damage. On this point the Court referred to

> "a practice, which in recent years has gained so much acceptance among States that it may now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource."[61]

On the same vein, the International Tribunal for the Law of the Sea, in the Advisory Opinion of 21 May 2024, observes that the obligations of monitoring and environmental assessment set out in articles 204, 205, and 206 of the UNCLOS

> "are procedural in nature. As held by the arbitral tribunal in the *Chagos Marine Protected Area Arbitration*, procedural obligations, such as the requirement to conduct an environmental impact assessment, 'may, indeed, be of equal or even greater importance than the substantive standards existing in international law' (*Arbitration regarding the Chagos Marine Protected Area between Mauritius and the United Kingdom of Great Britain and Northern Ireland*, *Award of 18 March 2015, RIAA, Vol. XXXI*, p. 359, at

[60] *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment 20 April 2010, I.C.J. Reports 2010*, p. 14. See Boule A., *Pulp Mills Case: A Commentary*, https://www.biicl.org/files/5167_pulp_mills_case.pdf; Zhu X., He J., *International Court of Justice's Impact on International Environmental Law: Focusing on the Pulp Mills Case*, in *Yearbook of International Environmental Law*, 2012, 1, p. 106-130.
[61] Para. 204.

p. 500, para. 322). Compliance with these procedural obligations is a relevant factor in meeting the general obligations under articles 194 and 192 of the Convention."[62]

The International Court of Justice also holds that customary international law establishes an obligation to notify and consult with regard to any planned activity that carries a risk of significant harm to another State.[63]

3. Obligations of Conduct and Obligations of Result

The categories of obligations of conduct and obligations of result lie at the core of any analysis of the content and scope of international obligations. While much has been written on the subject by international courts and tribunals, the International Law Commission, and legal scholars, the topic remains far from exhausted, and further reflections will continue to emerge in the future.

These categories in international law originate from the theory of obligations in domestic civil law. Specifically, the terms *obligations of means* and *obligations of result* can be traced back to the French jurist René-Nicolas-André Demogue, who introduced the concepts of *obligation de moyen* and *obligation de résultat* in his work *Traité des obligations en général*.

In civil law tradition, the distinction relates to the nature of the obligation, particularly regarding the content of the performance required. In obligations of means, the debtor is required to perform a specific activity with due diligence but is not responsible for

[62] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, cit., para. 345.
[63] See also *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia), Judgment 1 December 2022, I.C.J. Reports 2022*, p. 614, para. 119; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Judgment 16 December 2015*, *I.C.J. Reports 2015*, p. 665, para. 114.

guaranteeing a particular outcome. Conversely, in obligations of result, the debtor is bound not only to perform an activity but also to achieve a specific result. In the latter case, the obligation is considered fulfilled only when the expected result is obtained. In contrast, for an obligation of means, the debtor is discharged once he/she has exercised the level of diligence required for the performance.

Following Ago's conclusions, the International Law Commission introduced the two categories of obligations of conduct and result in articles 20 and 21 of the Draft Articles on the Responsibility of States adopted at first reading in 1996.[64] However, the Commission's perspective was different from that of the civil law tradition. In fact, obligations of conduct are qualified as those obligations that require the State to adopt a particular course of conduct and whose breach amounts to not having engaged in that particular conduct. Obligations of result are instead those obligations requiring the State "to achieve a particular result *in concreto*, but leaving it free to choose at the outset the means of achieving that result."[65] The breach of obligation, therefore, arises from the failure to achieve the intended result.

The Commission acknowledged this distinction, recognizing its importance in addressing certain issues related to determining the timing and duration of a breach of an international obligation. It also acknowledged that this distinction is not always clear-cut and that, in cases of interpretative differences, it will be up to the

[64] Draft Articles on State Responsibility, Complete Text, *Official Records of the General Assembly. Fifty-first Session, Supplement No. 10* (A/51/10 and Corr. l, p. 125-151).
[65] *Yearbook of the International Law Commission, 1977*, Vol. II, Part One, para. 46, Article 21(1), "Breach of an international obligation requiring the State to achieve a particular result."

international court to resolve them.[66] According to the Commission, the obligations of result

> "are frequently encountered in international law where the action required of the State has to be taken at the level of direct relations between States. Obligation 'of result', on the other hand, [...], predominate where the State is required to bring about a certain situation within its system of internal law. In such cases, international law naturally respects the freedom of the State and confines itself to informing the State of the result to be achieved, leaving it free to choose the means to be used for that purpose. Nevertheless, in this case too, it sometimes happens that international law enters, as it were, into the sphere of the State, to require the adoption of the particular course of conduct by some branch of the State machinery."[67]

Thus, as Dupuy observes, Ago's understanding of the distinction is "almost the opposite of that of the classical approach."[68] Anyway, due to criticism of this distinction, the Draft Articles adopted by the Commission in 2001 omitted any trace of the distinction proposed by Ago.

The obligations of conduct are slightly outlined in the Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities with Commentaries adopted by the International Law Commission in 2001. In commenting on the obligation to prevent

[66] UN Secretariat, *Draft Articles on State Responsibility with Commentaries Thereto Adopted by the International Law Commission on First Reading*, January 1997, 97-02583, https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_1996.pdf, p. 134, para. 4.
[67] *Ibidem*, p. 134, para. 6.
[68] Dupuy P-M., *Reviewing the Difficulties of Codification*, cit., 1999, 2, p. 371-385. See also Wolfrum R., *Obligation of Result Versus Obligation of Conduct: Some Thoughts About the Implementation of International Obligations*, in Arsanjani M.H. et al. (eds.), *Looking to the Future: Essays on International Law in Honor of W. Michael Reisman*, Leiden, Boston, Nijhoff, 2010, p. 363-383; Economides C., *Content of the Obligation: Obligations of Means and Obligations of Result*, cit.

transboundary harm, the Commission qualifies it as an obligation of diligence and in fact

> "[i]t is the conduct of the State of origin that will determine whether the State has complied with its obligation under the present articles. The duty of due diligence involved, however, is not intended to guarantee that significant harm be totally prevented, if it is not possible to do so. In that eventuality, the State of origin is required, as noted above, to exert its best possible efforts to minimize the risk. In this sense, it does not guarantee that the harm would not occur."[69]

It is the international jurisprudence which has delved in the distinction and over the years has analyzed the two categories of obligations in an attempt to clarify their nature and function.

In the *Nuclear Tests* case, the International Court of Justice refers to "obligation as to conduct, concerning the effective cessation of nuclear tests", without further elaborating.[70] On the contrary, in the *LaGrand* case the Court, while analyzing the provisional measures it had ordered to the United States, holds that

> "[a]s to the first measure, the Court notes that it did not create an obligation of result, but that the United States was asked to 'take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings'."[71]

It is unclear whether the Court interpreted the obligation of conduct as requiring the adoption of all necessary measures or as an obligation that allows state discretion in choosing the means of implementation.

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[69] *Yearbook of the International Law Commission, 2001*, cit., p. 154.
[70] *Nuclear Tests (Australia v. France), Judgment 20 December 1974, I.C.J. Reports 1974,* p. 253, para. 56.
[71] *LaGrand (Germany v. United States of America), Judgment 27 June 2001, I.C.J. Reports 2001,* p. 466, para. 111.

The Court takes a more definite position on the meaning of obligations of result in the Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*. In particular, the Court in analyzing the obligation to negotiate in good faith nuclear disarmament set up in Article VI of the Treaty on the Non-proliferation of Nuclear Weapons considers that

> "[t]he legal import of that obligation goes beyond that of a mere obligation of conduct; the obligation involved here is an obligation to achieve a precise result — nuclear disarmament in all its aspects — by adopting a particular course of conduct, namely, the pursuit of negotiations on the matter in good faith."[72]

This line of interpretation is confirmed in the judgment of 26 February 2007 in the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* case in which the Court clearly defines what is to be understood by an obligation of conduct with respect to the obligation to prevent genocide and introduces the concept of due diligence. According to the Court,

> "[i]t is clear that the obligation in question is one of conduct and not one of result, in the sense that a State cannot be under an obligation to succeed, whatever the circumstances, in preventing the commission of genocide: the obligation of States parties is rather to employ all means reasonably available to them, so as to prevent genocide so far as possible. A State does not incur responsibility simply because the desired result is not achieved; responsibility is however incurred if the State manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide. In this area the notion

[72] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion 8 July 1997, I.C.J. Reports 1996,* p. 226, para. 99.

> of 'due diligence', which calls for an assessment *in concreto*, is of critical importance."[73]

Finally, the Court has applied the distinction between obligations of conduct and obligations of result to environmental obligations upon States since its 20 April 2010 judgement in the *Pulp Mills on the River Uruguay* case.

Regarding the nature of the obligation provided for in Article 36 of the bilateral treaty between Argentina and Uruguay establishing the Statute of the Uruguay River, the Court rules that

> "[a]n obligation to adopt regulatory or administrative measures either individually or jointly and to enforce them is an obligation of conduct. Both Parties are therefore called upon, under Article 36, to exercise due diligence in acting through the Commission for the necessary measures to preserve the ecological balance of the river."[74]

Therefore, according to the ICJ, an obligation of conduct is an obligation to engage in certain specified conduct tending towards the result, whereas an obligation of result is an obligation to achieve the result itself.

The Court also links obligations of conduct with obligations of due diligence, i.e. those obligations that entail

> "[...] not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators, to safeguard the rights of the other party. The responsibility of a party to the 1975 Statute

[73] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007*, p. 43, para. 430.
[74] *Pulp Mills on the River Uruguay (Argentina v. Uruguay),* cit., p. 14, para. 187.

would therefore be engaged if it was shown that it had failed to act diligently and thus take all appropriate measures to enforce its relevant regulations on a public or private operator under its jurisdiction."[75]

Following the path set by the International Court of Justice, the International Tribunal for the Law of the Sea has further elucidated the concept of obligation of conduct in three advisory opinions in which the Tribunal has also clarified the link between such an obligation and the concept of due diligence.

According to the Seabed Disputes Chamber in the Advisory Opinion on the *Responsibilities and obligations of States sponsoring persons and entities with respect to the Area*,

"[t]he sponsoring State's obligation 'to ensure' is not an obligation to achieve, in each and every case, the result that the sponsored contractor complies with the aforementioned obligations. Rather, it is an obligation to deploy adequate means, to exercise best possible efforts, to do the utmost, to obtain this result. To utilize the terminology current in international law, this obligation may be characterized as an obligation 'of conduct' and not 'of result', and as an obligation of 'due diligence'."[76]

The Seabed Disputes Chamber underlines that

"[…] obligations 'of due diligence' and obligations 'of conduct' are connected. This emerges clearly from the Judgment of the ICJ in the *Pulp Mills on the River Uruguay*: 'An obligation to adopt regulatory or administrative measures … and to enforce them is an obligation of conduct. Both parties are

[75] *Ibidem*, para. 197. See also the "ILA Study Group on Due Diligence in International Law Second Report", July 2016.
[76] *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion 1 February 2011, ITLOS Reports 2011,* p. 10, para. 110.

therefore called upon, under article 36 [of the Statute of the River Uruguay], to exercise due diligence in acting through the [Uruguay River] Commission for the necessary measures to preserve the ecological balance of the river' (paragraph 187 of the Judgment)."[77]

The Chamber is aware that

"[…] the content of 'due diligence' obligations may not easily be described in precise terms. Among the factors that make such a description difficult is the fact that 'due diligence' is a variable concept. It may change over time as measures considered sufficiently diligent at a certain moment may become not diligent enough in light, for instance, of new scientific or technological knowledge. It may also change in relation to the risks involved in the activity. […] The standard of due diligence has to be more severe for the riskier activities."[78]

Finally, the obligation to apply a precautionary approach is also to be considered an integral part of the 'due diligence' obligation.[79]

These conclusions are reflected in the Advisory Opinion on *Request for an Advisory Opinion submitted by the Sub-regional Fisheries Commission (SRFC)*. In this Advisory Opinion, the Tribunal focuses on the obligation to ensure upon the flag State. According to the Tribunal,

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[77] *Ibidem*, para. 111.

[78] *Ibidem*, para. 117. For scholars' comments see *ex multis* Zhang H., *The Sponsoring State's 'Obligation to Ensure' in the Development of the International Seabed Area*, in *The International Journal of Marine and Coastal Law*, 2013, p. 681-699; Geddis E., *The Due Diligence Obligation of a Sponsoring State: A Framework for Implementation*, in Nordquist M.H., Moore J.N., Long R. (eds.), *International Marine Economy*, Leiden, Boston, Nijhoff, 2017, p. 246; Caracciolo I., *Due diligence et droit de la mer*, in Cassella S. (éd.), *Le standard de due diligente et la responsabilité internationale,* Paris, Pedone, 2018, p. 163-185; Ollino A., *Due Diligence Obligations in International Law*, Cambridge, CUP, 2022.

[79] *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion*, cit., p. 75.

> "it is not considered reasonable to make a State liable for each and every violation committed by persons under its jurisdiction, it is equally not considered satisfactory to rely on mere application of the principle that the conduct of private persons or entities is not attributable to the State under international law (see ILC Articles on State Responsibility, Commentary to article 8, paragraph 1)."[80]

For this reason, in the case of illegal, unreported and unregulated fishing

> "the liability of the flag State does not arise from a failure of vessels flying its flag to comply with the laws and regulations of the SRFC Member States concerning IUU fishing activities in their exclusive economic zones, as the violation of such laws and regulations by vessels is not *per se* attributable to the flag State. The liability of the flag State arises from its failure to comply with its 'due diligence' obligations concerning IUU fishing activities conducted by vessels flying its flag in the exclusive economic zones of the SRFC Member States."[81]

In other terms

> "[…] the flag State is not liable if it has taken all necessary and appropriate measures to meet its 'due diligence' obligations to ensure that vessels flying its flag do not conduct IUU fishing activities in the exclusive economic zones of the SRFC Member States."[82]

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[80] *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion 2 April 2015, ITLOS Reports 2015*, p. 4, para. 112. For comments see Oral N., *The Contribution of ITLOS to the Development of International Law for Protection of the Marine Environment and Conservation of Living Resources, Case-Law and the Development of International Law*, in Galvão Teles P., Almeida Ribeiro M. (eds.), *Contributions by International Courts and Tribunals*, Leiden, Boston, Brill, Nijhoff, 2021, p. 180-196.

[81] *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission*, cit., para. 146.

[82] *Ibidem*, para. 148.

However, some ambiguity remains in the Tribunal's conclusions. While it is evident that the obligation to ensure is an obligation of conduct — and therefore a due diligence obligation — it is less clear whether due diligence constitutes the essence of all obligations of conduct.

In its more recent Advisory Opinion of 21 May 2024, the Tribunal reaffirms its previous case law on obligations of conduct and further develops the concept of due diligence. Notably, the Tribunal identifies several conduct-related obligations embedded in Part XII of UNCLOS, including the obligation set forth in Article 194(1), which requires contracting parties

> "to act with 'due diligence' in taking necessary measures to prevent, reduce and control marine pollution. […] The obligation of due diligence requires a State to put in place a national system, including legislation, administrative procedures and an enforcement mechanism necessary to regulate the activities in question, and to exercise adequate vigilance to make such a system function efficiently, with a view to achieving the intended objective."[83]

The Tribunal not only upholds its previous jurisprudence but also expands upon it by clarifying that certain obligations, such as those under article 194(1), and some other obligations under Part XII of the Convention, may be formulated

> "in such a way as to prescribe not only the required conduct of States but also the intended objective or result of such conduct. Whether this obligation is that of conduct or of result depends on whether States are required to achieve the intended objective or result […] This, in turn, depends essentially upon

[83] *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, cit., paras. 233-234.

> the text of the relevant provision and the overall circumstances envisaged by it."[84]

The Tribunal also addresses the issue of due diligence. According to the Tribunal,

> "[i]t is difficult to describe due diligence in general terms, as the standard of due diligence varies depending on the particular circumstances to which an obligation of due diligence applies. There are several factors to be considered in this regard. They include scientific and technological information, relevant international rules and standards, the risk of harm and the urgency involved. The standard of due diligence may change over time, given that those factors constantly evolve."[85]

The addition of scientific information and urgency to the other elements already identified in previous case law as factors in assessing the due diligence standard is noteworthy. Also noteworthy are the Tribunal's clarifications on risk, to be appreciated "in terms of both the probability or foreseeability of the occurrence of harm and its severity or magnitude."[86]

Finally, the Tribunal emphasizes the link between the due diligence and the precautionary approach. Such link is so important that States could not meet the standard of diligence if they did not consider the risks associated with activities within their jurisdiction or control. This even if scientific data on the point of risks are insufficient.[87]

To conclude, the contribution of international case law to clarifying the concepts of obligations of conduct and due diligence has been pivotal. The scope and purpose of obligations of conduct

[84] *Ibidem*, para. 238.
[85] *Ibidem*, para. 239.
[86] *Ibidem*.
[87] *Ibidem*, para. 242.

have been explicitly defined, while due diligence has been recognized for its inherent flexibility, as it is shaped by the circumstances of each specific case. This flexibility enables it to account for the numerous variables present in relations between States.

4. Obligation of Conduct in the Protection of Human Rights

The issue of obligations of conduct and the standard of due diligence also arises in international law with regard to the protection of human rights. In particular, obligations of conduct are incumbent on the State to prevent, protect and remedy human rights violations by private actors within the territory or areas under the jurisdiction of the State. This was first affirmed by the Inter-American Court of Human Rights in *Velasquez Rodriguez v. Honduras*.[88] With reference to Article 1(1) of the Inter-American Convention on Human Rights, the Court considers that two obligations stem from it. In particular, the second obligation of the States Parties is

> "to 'ensure' the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction. This obligation implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate, and punish any violation of the rights recognized by the Convention and moreover if possible,

[88] "Article 1. Obligation to Respect Rights
1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.

167. The obligation to ensure the free and full exercise of human rights is not fulfilled by the existence of a legal system designed to make it possible to comply with this obligation — it also requires the government to conduct itself so as to effectively ensure the free and full exercise of human rights."[89]

In the same vein, the European Court of Human Rights explains that

"[…] where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person […], it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk."[90]

The State is therefore responsible for adopting the necessary regulations and establishing a state apparatus to ensure the protection of human rights. However, the State enjoys discretion in fulfilling this task.[91]

[89] *Case of Velásquez-Rodríguez v. Honduras, Judgment of July 29, 1988 (Merits),* Series C No. 4, para. 172.
[90] *Case of Osman v. the United Kingdom*, *Judgment 28 October 1998*.
[91] See *inter alia* Monnheimer M., *Due diligence obligations in international human rights law*, Cambridge, CUP, 2021; Malaihollo M., Lane L., *Mapping out due diligence in regional human rights law: Comparing case law of the European Court of Human Rights and the Inter-American Court of Human Rights*, in *Leiden Journal of International Law*, 2024, 2, p. 462-483.

5. Integral or Interdependent Obligations

Some obligations have particular characteristics with regard to their scope. Among these are integral or interdependent obligations.

The term *integral or interdependent obligations* is used with respect to the obligations referred to in Article 42(b)(ii) of the Draft Articles on State Responsibility, which, as mentioned above, entitles "an injured State" to invoke responsibility for the breach of an obligation owed to a group of States or "the international community as a whole" if the breach is "of such a character as radically to change the position of all the other States to which the obligation is owed with respect to the further performance of the obligation." The term is also applied to those obligations outlined in article 60(2)(c) of the 1969 Vienna Convention on the Law of Treaties which allows any party to a treaty to invoke a breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that "a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty."[92]

This is a category of obligations for which state practice is scarce and which has been little studied by doctrine.[93] Their boundaries are vague also due to terminological uncertainties in the work of the International Law Commission, first on the law of treaties and then on state responsibility. The relationship between these obligations and the *erga omnes / erga omnes partes* obligations is also uncertain.

Examples of interdependent obligations are indicated in the work of the Commission, namely obligation of disarmament and

[92] Crawford J., Olleson S., *The Exception of Non-performance: Links Between the Law of Treaties and the Law of State Responsibility*, in *Australian Yearbook of International Law*, 2000, online version.
[93] Tams C.J., *Individual States as Guardians of Community Interests*, in Fastenrath et al. (eds.), op. cit., p. 379-405, at p. 385.

non-proliferation. Special Rapporteur Fitzmaurice considers that

> "the obligation of each party to disarm, or not to exceed a certain level of armaments, or not to manufacture or possess certain types of weapons, is necessarily dependent on a corresponding performance of the same thing by all the other parties, since it is of the essence of such a treaty that the undertaking of each party is given in return for a similar undertaking by the others."[94]

It seems therefore that interdependent obligations are those obligations that inherently rely on the mutual fulfillment by all parties involved. These obligations are structured in such a way that their effectiveness depends on mutual compliance among States.

6. Alternative and Conjunctive Obligations

Concerning again the scope of some obligations, it is possible for certain rules to impose either conjunctive or alternative obligations on States. This doctrinal distinction is closely tied to the concept of a "complex wrongful act" as proposed by Ago.[95]

In the case of conjunctive obligations, the obligations are cumulative, meaning that failure to fulfill even one of them results in non-compliance by the obligated State. Each component of the obligation must be independently satisfied, as partial compliance is insufficient. For example, Article 9 of the UN Covenant on Civil and Political Rights imposes cumulative obligations on States Parties to ensure the right of every individual to liberty and security of

[94] Second Report on the Law of Treaties by Gerald Fitzmaurice, UN doc. A/CN.4/107, *Yearbook of the International Law Commission, 1957*, Vol. II, p. 54.
[95] D'Argent P., *Les obligations internationales*, cit., p. 154. See also Distefano G., *Continuous, Composite and Complex Wrongful Acts and the Law of State Responsibility*, in *Annuaire de français de droit international,* 2006 p. 1-54.

person. Each of these obligations must be met to fully comply with the conventional provision.

By contrast, alternative obligations grant the obligated State a choice between multiple options for fulfilling its duty. As long as one of the specified options is performed, the State is considered compliant. For instance, when a State commits a wrongful act, it may be obligated to either restore the situation to its previous condition (restitution) or provide compensation.

CONCLUSION

As in any legal system, obligations are fundamental components of the international legal order. In the context of international law, States and international organizations are required to fulfill their obligations to safeguard the interests of other subjects or, as is increasingly common in contemporary international law, the shared interests of a group of States or the international community as a whole. Failure to comply with these obligations results in international responsibility. If the obligation arises from a treaty, non-compliance may also lead to the termination of that treaty.

International obligations thus serve as the foundation for global legal order, establishing a framework for cooperation and the protection of both individual and collective interests.

This highlights the importance of clarifying the elements and scope of international obligations notwithstanding the absence of a comprehensive theory on the subject. As a result, case law and legal doctrine have identified various categories of international obligations. Some of these have been explored in the lectures and the seminar. The identifications of the various types of obligations and their respective characteristics play a crucial role in legal interpretation, facilitating the comparison between abstract legal principles and concrete cases.

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На английском языке

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