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# *The International Responsibility of States for Breach of Multilateral Obligations*

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## **Abstract**

*This article deals with the three main questions related to the violation of multilateral obligations in international law: definition of those obligations, the elements constituting a violation, and the effects of the latter. Observing that many obligations in international law, both in treaties and in customary international law, bind several states, or all states, in their mutual relations, thus creating parallel bilateral obligations, the author is of the opinion that they do not all correspond to the specific definition of 'multilateral obligations', but only those the violation of which is of concern for the international community. The violation of those multilateral obligations leads to state responsibility according to the normal, ordinary elements of responsibility: attribution to the state and violation of an obligation. There is no additional criterion. The quantitative element is merely relevant with respect to the reaction of other states. The breach of a multilateral obligation gives to the injured state the normal rights of the 'victim', whereas the other states are not 'victims' but are entitled to take measures aiming at the cessation of a conduct in breach of that obligation, without prejudice of conventional systems.*

An examination of the conditions and effects of breach by a state of *multilateral obligations* calls first and foremost for a definition of the term 'multilateral obligation', including identification of its specific features and nature. There follows the question of what does a breach of multilateral obligations consist of, what are its constituent elements. Consideration should also be given to the consequences in terms of international responsibility that may be incurred thereby, since the conception one may have of such responsibility is, in this author's opinion, quite closely linked to an analysis of the previous question. This is the order in which some ideas on this subject will be presented in this short paper.

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## 1 Outline of a Definition

The term ‘multilateral obligation’ has not yet been firmly defined. The idea or notion it expresses is not new, though it appeared only fairly recently. A multilateral obligation is a legal duty whose bearer — a state — is answerable before the entire international community.<sup>1</sup> In other words, breach of this obligation, which is frequently a duty of abstention, is something that concerns the international legal community as a whole, principally all states. It is an absolute obligation. In language more common hitherto, reference is made to obligations *erga omnes*,<sup>2</sup> as well as the existence of *jus cogens*<sup>3</sup> and the controversial notion of *international crimes of states*.<sup>4</sup> I shall return to this later in this paper.

Since the specific feature of multilateral obligations is that they are endowed with particular importance due to the general interest they protect, they differ from other obligations which may be called ordinary and which might conceivably be called ‘multilateral’ to the extent that they bind more than two states. I have primarily in mind those obligations accepted by the parties to a multilateral treaty, but customary law should also be taken into account.

## 2 Multilateral Obligations and Multilateral Treaties

There is no need to regard as multilateral, in the sense that is intended here, every obligation laid down by a multilateral treaty. One must be wary of confusing the source — here the treaty — and the various obligations it stipulates. These most often constitute for each state party, even though they bind all states in the same terms, more of a bundle of bilateral obligations, something legal scholars have not failed to stress.<sup>5</sup> Thus, among the innumerable possible illustrations, one may note that a multilateral extradition treaty, for instance, sets up a conventional bond between each of the parties and each of the other parties, so that breach of a particular provision by one state — generally the state applied to — affects only one other state, most often the state making the application that has not secured the extradition the treaty entitles it to.

There is, to be sure, a conventional community, each of whose members is interested in the application made of the treaty; this may open a possibility of

<sup>1</sup> Special note should be taken in this connection of the courses by three German authors held at the Hague Academy of International Law: C. Tomuschat, ‘Obligations Arising for States without or against Their Will’, 241 *RdC* (1993-IV) 195; J. A. Frowein, ‘Reactions by Not Directly Affected States to Breaches of Public International Law’, 248 *RdC* (1994-IV) 345; B. Simma, ‘From Bilateralism to Community Interest in International Law’, 250 *RdC* (1994-IV) 217.

<sup>2</sup> First highlighted by the International Court of Justice in the *Barcelona Traction* case, ICJ Reports (1970) 3.

<sup>3</sup> Laid down by the 1969 Vienna Convention on the Law of Treaties, Articles 53 and 64.

<sup>4</sup> The famous Article 19 of the Draft Articles on State Responsibility drafted by the International Law Commission (UN Doc. A/51/332) has already produced floods of ink, cf. esp. J. Weiler, A. Cassese and M. Spinedi, *International Crimes of States* (1989). The debate resumes with the new Special Rapporteur, Professor James Crawford, First Report on State Responsibility, UN Doc. A/CN.4/490/Add.1, where all useful references will be found.

<sup>5</sup> Cf. esp. Frowein, *supra* note 1, at 395.

intervention in legal proceedings on questions of interpretation,<sup>6</sup> but breach of a multilateral agreement confers rights or capacities in principle only on the injured state, whose subjective rights have been affected. It is therefore neither useful nor judicious to have recourse to the term multilateral obligations to refer to all the obligations liable to result from multilateral conventions.

To be sure, as a brief review will suffice to show, it is always permissible for states concluding a multilateral agreement to provide for a mechanism whereby breach of the agreement by one of the parties may give all the others — irrespective of there not being any infringement of their rights — the power to respond, if only by opening proceedings within specific bodies. There is action ‘in the interest of the law’, here treaty law. The example of the United Nations Charter springs to mind — particularly the ban on the use of force (Article 2(4)) taken together with Chapter VII of the Charter.<sup>7</sup>

Treaty systems for human rights protection are also among the most typical examples, especially since the obligations taken on by states ultimately concern individuals under their jurisdiction much more than the states parties themselves.<sup>8</sup> Nonetheless, each of them is given the possibility, varying according to the treaty instrument considered, to open proceedings by complaining that one of the parties has not respected a right guaranteed by the treaty.<sup>9</sup> This shows the existence of a general interest of the community of states parties with respect to treaty texts.

It will have been noted that the two examples just mentioned — ban on the use of force and protection of fundamental rights of human beings — are precisely those that are most clearly identified as belonging to the binding norms (*jus cogens*, obligations *erga omnes*) anchored in general international law; this point will be discussed below since these binding norms involve multilateral obligations not confined to the treaty framework where they appear.

However, it is also possible to identify treaty systems where the duties set up by the basic treaty, though without being taken up and sanctioned by customary law, seem important enough to contracting states to merit the inclusion of mechanisms which enable a state that has not performed its duties to be called to account.

One might mention an area which is similar to that of human rights in terms of the obligations to be met; namely, international labour law. We know that the many conventions concluded under the auspices of the International Labour Organisation (ILO) have the states as parties, but the duties they take on *vis-à-vis* each other are to

<sup>6</sup> See Article 63 of the Statute of the International Court of Justice; cf. S. Torres Bernàrdez, ‘L’intervention dans la procédure de la Cour internationale de Justice’, 256 *RdC* (1995) 303.

<sup>7</sup> From this perspective, see esp. Frowein, *supra* note 1, at 366 *et seq.* We know that the Security Council, in the name of a sort of international public order, also treats domestic situations as ‘threats to peace’ pursuant to Charter Article 39; cf. Dominicé, ‘Le Conseil de Sécurité et l’accès aux pouvoirs qu’il reçoit du Chapitre VII de la Charte des Nations Unies’, *Revue suisse de droit international et de droit européen* (1995) 417.

<sup>8</sup> See the interesting analysis by Simma, *supra* note 1, at 364.

<sup>9</sup> See esp. old Article 24 (current Article 33) of the European Convention on Human Rights and Fundamental Freedoms.

be incorporated in their domestic law and the rules laid down by each Convention must be applied. The parties chiefly concerned are thus the workers; and this is why, under the ILO, monitoring procedures are provided for which enable a state party to a convention, even if in no way injured, to bring a complaint against another state party which in its view does not respect the said convention.<sup>10</sup> We know that elsewhere monitoring procedures may also be employed by other interested parties.<sup>11</sup> It is still the case that in a specific conventional and institutional context one can observe the presence of powers to act ‘in the interest of the law’.

Taking a very different example, one might ask whether the noted *Wimbledon* case may not be of interest from the viewpoint under discussion here. Whereas the claimant states before the Permanent International Court of Justice included some whose rights had been infringed, that was certainly not the case for all; and here too they may be regarded as having acted in the interest of the law, i.e. the system set up by Article 380 of the Treaty of Versailles.<sup>12</sup>

It may be noted in conclusion that some multilateral treaties set up more than a bundle of bilateral relations in the sense that, in the framework of the treaty community, special mechanisms allow a response to breaches even if the state acting has not, properly speaking, been injured.

Must we then, in connection with the duties set up by these conventions, speak of multilateral obligations? Apart from obligations appearing in a treaty that correspond to a customary rule regarded as binding, it must certainly be said that this sort of description would hardly be useful. One may speak of treaty systems setting up multilateral guarantees, or of multilateral monitoring mechanisms, but it would be wrong to label these as obligations solely because they are included in certain types of multilateral treaties, without regard to their content. All the same, a treaty obligation applies only among the parties to it.

But it is precisely the intrinsic content of each obligation that may justify recognizing it as incorporating a value important to the international community as a whole, thereby justifying the term multilateral obligation.

We are, then, in the area of general international law.

### 3 Multilateral Obligations and Customary Law

It is undoubtedly typical of any legal order that it contains rules obliging each member in the same terms *vis-à-vis* all the other members of the collectivity. In the context of civil responsibility in domestic law, for instance, the prohibition on causing harm to the physical integrity of others is certainly one of these general obligations. It may be

<sup>10</sup> See esp. Article 26 of the ILO Constitution.

<sup>11</sup> Cf. Valticos, ‘L’évolution des systèmes de contrôle de l’Organisation internationale du travail’, *RGDIP* (1987) 847.

<sup>12</sup> *SS Wimbledon* Case, PICJ Series A, No 1. The *SS Wimbledon* was a British ship chartered by a French company. Article 386 of the Versailles Treaty opened access to the Court for ‘any interested power’. On that basis Japan and Italy joined the claimants.

accepted that in international law, for example, the ban on interfering with freedom of shipping is also one of these general rules imposed on all states *vis-à-vis* all others.

In short, it is possible, in my view, to present similar observations regarding customary international law to those suggested by the analysis of multilateral agreements. However general a rule may be, it ends up creating a bundle of bilateral relations. Breaching it will have effects only in relations between the culprit of the breach and the injured state.

The general obligations as such are thus not 'multilateral' in the sense used here, the sense in which, in my opinion, this term should be understood. Only a special category will fit this concept. This specific category of customary obligations includes rules that are each distinguished by their content, and are held to incorporate a special value to the point that a breach is considered to involve the international community as a whole. The obligations concerned have generally received enough attention to make it unnecessary to dwell on them at length: namely, the ban on aggression, genocide and serious pollution of the natural environment as well as the protection of fundamental rights of human beings.<sup>13</sup>

The important thing to note here is that these rules, which are distinguished by their content, in other words the specific interest they protect, are, taken together, the object of the crystallization of custom in two dimensions.<sup>14</sup> On the one hand, they gain customary bindingness in accordance with the usual criteria for the formation of custom. On the other, that very process of formation leads to their being seen as having binding, absolute value that confers on them a multilateral nature, meaning that their breach concerns the international community as a whole.

For the very reason that values particularly deserving of protection are involved, it seems obvious that the ethical, moral element plays a special role.<sup>15</sup> It plays an important part in the very process of crystallization of custom, where the subjective element is clearly favoured over actual practice, as well as in the affirmation of the absolute nature of the norm, which has specifically to do with its embodying an essential social value.

In conclusion, returning to our initial definition after this excursion through various aspects of multilaterality, it may be said that a multilateral obligation is an absolute obligation in customary international law which is binding on all states in their mutual relations, and that a breach of such an obligation concerns all other states.

<sup>13</sup> It will be recalled that the International Law Commission has endeavoured to draw up a sort of non-exhaustive catalogue of these fundamental norms, but under the questionable label of international crimes of states; this is in Article 19 of the present Draft Articles.

<sup>14</sup> Cf. A. Gómez Robledo, 'Le *ius cogens* international : sa genèse, sa nature, ses fonctions', 172 *RdC* (1981-III) 105; this author, however, talks of 'double consent', a term I prefer to avoid.

<sup>15</sup> Cf. Dominicé, 'Le grand retour du droit naturel en droit des gens', *Mélanges en l'honneur de Jacques-Michel Grossen* (1992) 399.

## 4 Related Notions

It is time to dwell briefly on some ideas, briefly mentioned above, that are more familiar in the language of scholars and in practice, namely obligations *erga omnes*, *jus cogens* and ‘international crimes of states’. These are, in my view, very closely connected with multilateral obligations as defined here.

First, though, it might be useful to take a quick detour so as to recall the main features of some generally accepted concepts in domestic law, for this should enable clarification of some possible ambiguities. Without doubt, the internationalist must be extremely cautious when drawing comparisons with domestic law. The error lies in seeing analogies all too often where they do not exist, or only very remotely. However, to the extent that bringing out similarities between international and domestic law also allows the differences to be stressed, the specific features of international law may be better discerned.

Domestic legal systems also offer examples of general rules, valid for all, that establish a bundle of bilateral relations in relationships between individuals. Breach of these bilateral relations produces an effect only between the culprit of the wrongful act and the injured party. However, the importance allotted to various social values means that certain acts committed in bilateral relationships between individuals concern society as a whole. These acts are at the root of an organized collective response. Here the function of criminal law will have been recognized, and we shall immediately note that the same act — say, blows and injuries — is covered by two distinct norms, with different criteria and modes of application.

Disregarding individual criminal liability, also known in international law, and considering only the state’s liability, the analogy between international law and domestic law is, as we see, very limited. The only similarity is that certain acts committed in relations between members of the community concern the community as a whole, having regard to the ethical values infringed. There the parallel stops. International law has not developed a second set of norms, the breach of which must satisfy specific constitutive elements (like the notion of culpability in criminal law).<sup>16</sup> The notion of criminal responsibility of the state is foreign to it. A wrongful act brings only one norm into question, the multilateral obligation.

Since it was established by the International Court of Justice in the *Barcelona Traction* case, the notion of obligation *erga omnes* has held sway.<sup>17</sup> In our view, it would be idle to seek or to define distinctions between various categories of binding norms. The term ‘obligation *erga omnes*’, like multilateral obligation, describes a binding norm in its relational perspective, meaning that the breaching state is answerable to the community as a whole, not just to the injured state.<sup>18</sup> It may thus be accepted that the

<sup>16</sup> See esp. the lucid and convincing analysis by Professor J. Crawford in his critique of Article 19 of the International Law Commission’s Draft Articles, First Report, *supra* note 4.

<sup>17</sup> *Supra* note 2.

<sup>18</sup> I personally prefer the term ‘multilateral obligation’, among other reasons because the International Court of Justice made curious use of the expression ‘*erga omnes*’ in the *Nuclear Tests* case (*New Zealand v. France*), ICJ Reports (1974) 269.

term *jus cogens* applies to the same binding norms.<sup>19</sup> They are looked at here from the viewpoint of the relationship established between the state and the norm itself: the state may not do anything, be it a legal act or an action, that breaches a norm of *jus cogens*.

There remains the question of international crimes of states, and the definition proposed by the International Law Commission in Article 19 of the Draft Articles on State Responsibility, at least as the draft currently stands. Some very brief observations will be presented here.

First, as already stressed, the illustrative list in Article 19 corresponds, *ratione materiae*, to the principles, generally prohibitions, enunciated as obligations *erga omnes* and under *jus cogens*. These values are of particular importance.

Second, it may be noted that the International Law Commission undoubtedly showed great wisdom, following the conclusion of the Vienna Convention on the Law of Treaties and the *Barcelona Traction* judgment, in stressing that there exist in the international legal order particularly important norms whose breach affects the community as a whole.

As a third observation, however, it was undoubtedly wrong to seek to distinguish two categories of breach, and especially to have recourse to a vocabulary reminiscent of criminal law. It was my belief in the past that the term 'international crimes of States' could be an acceptable linguistic convenience, while emphasizing that there could clearly be no question of 'criminalizing' the international liability of states but only of arousing a collective response to an intolerable situation. My opinion has changed on this point, since the term 'crime' with its penal connotations is liable to create confusion.<sup>20</sup> Moreover, as I shall consider more closely below, there is only one type of breach. It is only that in certain cases the capacity to respond is, within precise limits, also granted to other states than the one whose rights have been infringed.

## 5 The Constituent Elements of Breach of Multilateral Obligations

It is only after endeavouring to focus closely on the concept and the specific features of multilateral obligations that one may seek to tackle the question of their breach.

According to the International Law Commission's Draft Articles, an internationally wrongful act of a state comprises two elements (Article 3). These are, as we know, the objective element consisting in an action or omission contrary to an international obligation, and the subjective element having to do with attributing the breach to a state.

One essential and repeatedly emphasized feature of this definition is that it includes neither *fault* (*culpa, dolus*), nor *damage*, even understood in the broadest sense, among the constituent elements of an internationally wrongful act, and consequently of a

<sup>19</sup> Cf. Simma, *supra* note 1, at 300, for whom '*jus cogens* and obligations *erga omnes* are but two sides of one and the same coin'.

<sup>20</sup> See Crawford, First Report, *supra* note 4.

state's international responsibility. This position did not reach unanimity, but is in my view justified, as the present Special Rapporteur of the International Law Commission, Professor James Crawford, rightly stresses in his new reading of the Draft Articles.<sup>21</sup>

Finding that a state's conduct is contrary to an international obligation and is attributable to the state is accordingly sufficient to draw the conclusion as to its international responsibility. The question arising here is thus whether these criteria are to be maintained in relation to multilateral obligations. The answer is, in my view, undoubtedly yes.

What in fact distinguishes the multilateral obligation, as we have seen, is only the fact that it protects an important social value. It does not in structure nor in legal nature present any distinctive features implying that breach has to involve distinct or specific constitutive elements.

In this connection, the brief comparison drawn above between international law and domestic law, recalling the great difference existing between them, is illustrative. We were reminded that in domestic law the same act that infringes another's rights and a socially protected value is apprehended by two distinct norms, for which the criteria of application are not the same. In international law, by contrast, there is only one single norm. The criteria of breach remain the same, even when the rule in question has been subject to the crystallization of custom 'to the second degree',<sup>22</sup> since it is always intrinsically the same rule.

## 6 The Quantitative Element of Breach

Since the constitutive elements of breach are the same whatever may otherwise be the importance of the norm to the international community as a whole, it is thus necessary to ask whether every breach is of such a nature as to engender 'collective' effects as long as it infringes a multilateral obligation. Without at this point pre-empting what these responses by the community might be, it is my view that the answer must be that the capacity to employ them must be subordinated to the presence of a certain quantitative gravity. One might speak of serious breaches if the term could be divested of any penal connotation oriented to subjective elements, but it is not certain that ambiguities and confusions can be avoided, so that it is probably preferable to keep the term 'substantial breach', which brings out the quantitative element well.

I believe that this has an important role, since a single breach of a multilateral obligation, however serious in moral terms, does not seem to justify response on the scale of the collectivity. It will, for instance, be noted that the ban on aggression, indisputably a multilateral obligation, is a special case, quantitatively determined, of a broader obligation, the ban on the use of force against another state. An operation like

<sup>21</sup> *Ibid.*

<sup>22</sup> This is the 'double crystallization' mentioned earlier, Section 3.

the one engaged in by the British Royal Navy in the Corfu Channel in 1946<sup>23</sup> may be analysed as running counter to a multilateral obligation but to an insufficient extent to open the way to states other than the injured one taking measures.

Similar considerations are in order regarding the important area of fundamental rights of the person. A few isolated cases of torture undoubtedly breach a multilateral obligation, but the breach is not substantial enough to give rise to the possibility for third states to respond.

It will, moreover, be noted that Article 19 of the International Law Commission's Draft requires, in its definition of an international crime concerning the breach of obligations to protect human beings, that there be a 'serious, large-scale violation'. In contrast, the *Institut de droit international*, in its Santiago de Compostella Resolution,<sup>24</sup> takes a much more satisfactory account of this quantitative aspect, in a graded fashion. There are not two categories of breach as in the ILC's Article 19, but only one type, and it is its degree of gravity that determines the extent of response by third states.<sup>25</sup>

In short, a multilateral obligation is breached under the same circumstances as any international obligation whatsoever. The response of third states is determined by the extent of the breach. It should certainly not come about for a single breach of slight extent. In general terms, where justified, the proportionality principle should apply to it.

## 7 Observations on the Legal Effects of Breach

On a delicate matter where minds are divided, one cannot here do more than suggest a few points of reference. This seems necessary since there is a correlation between the view one has of multilateral obligations and the general profile of the effects likely to result from their breach.

The first observation states the obvious, namely that breach of a multilateral obligation gives the injured state the usual rights and powers of international responsibility,<sup>26</sup> taking account of any treaty rules that may apply.

In this context it is worth stressing that the notion of the injured state must remain

<sup>23</sup> *Corfu Channel case (United Kingdom v. Albania)*, ICJ Reports (1949) 3.

<sup>24</sup> Resolution of 13 September 1989 'La protection des droits de l'homme et le principe de non-intervention dans les affaires intérieures des Etats', *Annuaire de l'Institut de droit international*, 63 (1990) 438; cf. Dominicé, 'La contrainte entre Etats à l'appui des droits de l'homme', *Estudios en homenaje al Professor Don Manuel Diez de Velasco* (1993) 261.

<sup>25</sup> See Article 2, last subparagraph, of the Resolution, stating that the gravity of breaches complained of is to be taken into account, and Article 4, stipulating in particular that the response must be proportionate to the seriousness of the breach.

<sup>26</sup> In the International Law Commission's Draft Articles, Ch. II (Articles 41–46) of Part 2 gives the injured party's rights an expression that in general terms would seem to be in conformity with *lex lata*, on condition, however, that the definition of the injured state (Article 40) be modified (see *infra* note 27). Chapter III, on countermeasures, could also be regarded as an interesting codification of existing law, if there was not too close a link set up with the procedures for settling differences. Part 3, *de lege ferenda*, was not settled.

limited to what it has been to date.<sup>27</sup> The fact that all states are concerned by breach of multilateral obligations, and that they may have a legal interest in those obligations being respected, in no way implies that they should be treated as injured,<sup>28</sup> if their own rights are not otherwise affected, since that would create obvious confusion. In its present form the International Law Commission's draft does not seem very wise on this point.

In order to determine what kind of capacity to act should be allotted to non-injured states or third states, what they may embark on 'in the name of the law', it is best to start by considering a prior question regarding treaty law or, more exactly, the effect that monitoring and penalty systems set up by international treaties must be seen as having.

Let us first recall that such systems are likely to be incorporated in any multilateral treaty whatever, whether or not it involves multilateral obligations. It is in each specific case, then, that one has to determine whether the procedures or modes of action offered by the treaty are open to all states parties, even if not injured by a specific measure, as is the case in the system of the ILO conventions. It should also be determined whether the mechanisms provided for by the treaty rule out any other measure.<sup>29</sup>

However, it is one specific aspect that attracts our attention here: where a treaty involves multilateral obligations — which are here the treaty expression of customary rules — and also provides for an institutional mechanism, does the latter's existence imply that no unilateral measure is admissible any longer?

In connection with the ban on use of force, it will be noted, for instance, that unilateral measures of a military nature are permissible under Article 51 of the United Nations Charter (legitimate collective defence), but what of the other measures? Can states take unilateral measures? Likewise, in connection with substantial human rights infringements, can states act unilaterally, despite the existence of remedies set up by the treaties?

In my view, the answer to the general question is certainly an affirmative one, in the sense that third states' freedom of action continues to exist. Given that we are in the area of general international law of a fundamental nature, which multilateral obligations are, and assuming that it authorizes unilateral responses, it is hard to see how it could be conceivable for a treaty system to limit their scope.

Thus, I believe that systematic breaches of human rights by one state give every

<sup>27</sup> Article 40(3) proposed treating all states as injured states where an international crime is involved. For multilateral obligations, plainly one cannot grant all states the specific rights of the injured state.

<sup>28</sup> Suffice it to say that in the event of breach of a multilateral obligation all states may take measures in conformity with international law with the aim of putting a stop to the breach. One may claim that this is a customary rule.

<sup>29</sup> One of the many questions raised by a treaty system is whether it is 'self-sufficient'; cf. Simma, 'Self-contained Regimes', *Netherlands Yearbook of International Law*, 16 (1985) 111. More broadly, if international law prescribes specific consequences in response to certain acts, the question arises whether these specific consequences rule out any other measure; cf. Dominicé, 'Les rapports entre le droit diplomatique et le système des contre-mesures entre Etats', in *Studi in onore di Enrico Serra* (1991) 795.

other state the power to respond by means of measures not involving the use of armed force,<sup>30</sup> even where the states in question are bound by an agreement which provides for a judicial-type procedure, on the model of the European Convention on Human Rights. Any other solution would have the effect of creating different categories of states in relation to the breach of multilateral obligation, according to whether they are bound by a treaty system or not.

Having stated the principle, this brief article is not the place to give a detailed analysis of the measures likely to be taken by third states. They are the ones generally accepted by way of 'horizontal' countermeasures, supplemented by corollary measures such as non-recognition of situations or legal acts.

The most important question would seem to me to be the object of these measures. In short, it seems clear that their objective must be to bring a stop to conduct constituting a persistent breach of a multilateral obligation. It is more doubtful that other objectives can be contemplated.

The persistence of a situation of breach of a multilateral obligation, such as systematic breaches of human rights, serious sources of pollution, and so forth, is intolerable. Stopping such a situation is a legitimate objective for measures of constraint.

Once the breach is over, when it has been brief for instance, the question presents itself in different terms. An *a posteriori* response might look like a sort of penalty. At most it might be accepted that if the injured state or individual victims do not obtain the reparations they are entitled to, forcible measures may be taken by third states. They would then be aimed at stopping the ongoing failure to meet the obligation to make reparations.

## 8 Conclusions

Following this rather rapid examination of a number of delicate questions, the main proposals suggested by the issue of breach of multilateral obligations may be stated as follows:

- a) Multilateral obligation must be taken as meaning an absolute obligation sanctioned as such by international customary law, binding on all states *vis-à-vis* all others, breach of which concerns the international community as a whole.
- b) Breach of a multilateral obligation results from the same constituent elements as any breach of an international obligation. There are not several categories of breach distinguished by differences in nature among various obligations.
- c) Where breach of a multilateral obligation is substantial, any state is entitled to take measures of constraint in conformity with international law aimed at causing a persistent breach to cease.

These measures must be proportionate to the extent of the breach.

- d) The existence of monitoring procedures set up by international agreements does not constitute a bar to the application of the aforementioned principles.

<sup>30</sup> See the Resolution of the *Institut de droit international*, *supra* note 24.