ON THE CLASSIFICATION OF OBLIGATIONS IN INTERNATIONAL LAW

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A. Introduction

It is a pleasure and an honour to contribute to a liber amicorum dedicated to Rüdiger Wolfrum; it is also a challenge, given the apparently unlimited variety of activities that have attracted his interest as academic, negotiator or judge on topics that range from the South Pole to the Arctic, from human rights to the environment and from the deep seabed to the Sudan.

This paper will take as its starting point a recently published article by Wolfrum concerning the distinction between obligations of conduct and obligations of result in international law.¹ That distinction was examined by Roberto Ago in his International Law Commission (ILC) reports on State responsibility and, since then, has attracted the attention of a number of international scholars.² In his article, Wolfrum not only revisits the classification, but also enriches it by referring to new categories of obligations. In so doing, he expands on an idea expressed by Jean Combacau, who, thirty years ago,³ noted that there was a lack of—and therefore a need for—a theory of obligations in international law. Certainly, certain aspects of such a theory have already been developed. The sources of obligations (treaties, customary law, unilateral acts and principles of law) and the conditions for their creation are

relatively well known\(^4\) but, apart from the notions of obligations *erga omnes* and *ius cogens* (peremptory norms), the existing studies on international obligations are very general in nature.

It therefore seems useful to turn again to the classification of obligations in international law. To this end, I will examine the notions of obligations of result and obligations of conduct (B), obligations concerning the treatment of persons and obligations granting direct rights to States (C), and self-executing obligations (D).

**B. Obligations of Result and Obligations of Conduct**

**I. Roberto Ago's Classification**

If the distinction between obligations of conduct and obligations of result has become “popular” in international law, this is largely due to Ago, who developed these notions and attached thereto important consequences as regards the responsibility of States. This distinction, as developed by Ago, is not reflected in the final set of articles on State responsibility adopted by the ILC in 2006, but that does not mean that it may simply be ignored. It forms a comprehensive and refined system, a fact which may explain the interest that it continues to generate.

In Ago’s theory, the distinction between obligations of result and obligations of conduct is closely linked to the way that international law interacts with municipal law and, more precisely, to the degree of intrusion of international law into the sphere of domestic law. According to Ago, in most cases, international law “stops short at the outer boundaries of the State machinery”\(^5\) and does not prescribe to the State the precise ways in which it needs to comply with its international obligations. However in some cases which, for Ago, “are relatively rare—international law, in a sense, invades the sphere of the State by requiring one or other specified component of the State machinery to adopt a particular course of conduct”\(^6\) in the form of an action or an

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\(^4\) This does not mean that there are no remaining grey areas in the creation of international obligations, particularly when obligations are deduced from the practice of States or from their silence, as in the case of modifications of treaties based on the subsequent practice of States parties, or that of obligations based on acquiescence or implied consent.


\(^6\) Id.