



UNIVERSITÀ
DI SIENA 1240

FUNDAMENTALS OF INTERNATIONAL LAW

Master's Degree Course in International Sciences (LM-52)

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Topic Five

The Violation of International Law and its Consequences (II)

Consequences of an Internationally Wrongful Act

- Invocation of responsibility
- Cessation and/or reparation (Part Two ARS): obligations arising automatically
- Countermeasures (Part Three ARS): ultimate remedy

Cessation and Reparation

- Cessation (and guarantees of non repetition) as independent obligations (art. 30)
- *“Reparation must wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed”* (PCIJ, Chorzow Factory case, 1928)
- Re-establishment of the legal situation prior to the occurrence of the IWA (art. 31)



Forms of Reparation

- Restitution (in kind) (art. 35)
- Compensation (due under CIL when the breach of IL comes with a violent conduct towards state goods, means and organs) (art. 36)
- Satisfaction (moral damage) (art. 37)

Countermeasures

- Unlawful acts becoming lawful because of their objective and scope (art. 49)
- No resort to the use of force and compliance with *ius cogens* (art. 50)
- Proportionality (art. 51)
- Retaliation (unfriendly but lawful act)

Self-Defence

- *“Nothing in the present Charter shall impair the **inherent right** of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security”* (UN Charter, Article 51.1)
- Main exception to the prohibition of the use of armed force
- Some limitations: proportionality, necessity, immediacy
- Individual and collective self-defence
- No preventive self-defence



The Prohibition of the Use of Force: Other Possible Exceptions

- *“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”* (UN Charter, Article 2.4)
- *Ius cogens* rule
- Humanitarian intervention
- Responsibility to protect



The UN Collective Security System

- Actions taken by the UNSC under Chapter VII of the UN Charter (art. 39 ff. UN Charter)
- Provisional measures (art. 40)
- Measures not involving the use of force (art. 41)
- Measures involving the use of force (art. 42)
 - Peace-keeping and peace-enforcement operations
 - Authorization to the use of force



Consequences in the Case of Particular Breaches

- Additional consequences for *ius cogens* violations (art. 41 ARS)
 - Cooperation to terminate the violation
 - Prohibition of recognizing as lawful the situation
 - Prohibition of aiding or assisting the wrongdoer in maintaining the unlawful situation
- Extension of the invocation of responsibility for *erga omnes* violations (ICJ, *Barcelona Traction* case, 1970) (art. 48)
 - Obligations *erga omnes partes*: all parties to a treaty
 - Obligations *erga omnes*: all states
- Lawful countermeasures on behalf of the injured state

33. When a State admits into its territory foreign investments or foreign nationals, whether natural or juristic persons, it is bound to extend to them the protection of the law and assumes obligations concerning the treatment to be afforded them. These obligations, however, are neither absolute nor unqualified. 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-à-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 the human person, including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law (*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951, p. 23*); others are conferred by international instruments of a universal or quasi-universal character.

ICJ, *Barcelona Traction case*, 5.2.1970

International Responsibility Toward and of Individuals

- Human rights law (right to demand compensation)
 - Dual responsibility of a state: toward another state and toward an individual
- International criminal law
 - Regime of responsibility adding to that of the state

