BREACHING AN INTERNATIONAL OBLIGATION-THE OBJECTIVE ELEMENT OF THE INTERNATIONAL RESPONSIBILITY OF THE STATE FOR INTERNATIONALLY WRONGFUL ACTS

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Abstract

The responsibility of states for internationally wrongful acts can be triggered in case two essential elements are cumulatively met, namely: the subjective element, the chargeability of the wrongful act and the objective element, the violation of the obligation assumed internationally. The violation of an international obligation is the objective element of the international responsibility of the state for internationally wrongful acts. The subject of international law is the holder of various rights and the subject of various obligations. Such rights or obligations arise from concrete legal cases, that is they have been determined by the agreement of will of the subjects of international law. The subject of law acts or does not act for the purposes of exerting the subjective act, its faculty or power lead to a violation of international obligations.

The obligation has been created and imposed to the subject of international law based on a legal document, be it an international treaty, a decision of a arbitral or jurisdictional court, a decision of an international organization, etc. The violation of this obligation, by omission or action, constitutes the element of responsibility. There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character. An act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs.

Keywords*: international responsibility, state, internationally wrongful acts, breach of an international obligations, the objective element.*

1. Introductory aspects

The responsibility of the state for internationally wrongful acts can be triggered if two essential elements are cumulatively met, that is: the subjective element, the chargeability of the wrongful act, and the objective element, the breaching of the obligation assumed internationally.[1] The delimitation between the conduct required by the international norm law and the wrongful conduct by the respective state constitute the essence of the wrongful act and the existing situation can be expressed in various ways. For instance, International Court of Justice (I.C.J.) uses phrases such as "incompatible with the state's obligations"[2], "contrary fact" or a fact "improper" to an existent rule and "the failure to meet and obligation assumed conventionally". It is recognized the breaching of an obligation, even in case where the act of the state is only partly contrary to an obligation assumed internationally. In some cases, the conduct required by the international law norm is clearly established, in other cases it is shaped by indicating a minimum standard according to which the state is free to act. The conduct may consist in an action or failure, as it may be constituted in a combined way of an action and failure. The wrongful character of the act is invoked independently of the existence of the guilt, negligence; the doctrine, practice and case law being in favour of instating the objective responsibility.[3] In each case, the comparison between the conduct

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[1] R.Miga-Beşteliu, *Drept internaţional public-Curs universitar (Public International Law – University Course)*,vol.II, (Editura C.H.Beck, 2008), p.30, art.2

[2] Please refer to the *United States Diplomatic and Consular Staff in Teheran case, (*I.C.J. Reports 1980), p.3, p.29.

[3] M. Shaw, *International Law,* 4th Edition, (Cambridge, University Press, 1999), p. 29.

adopted by the state and the required conduct can determine whether a breach of an international obligation has occurred. In order for an wrongful act to exist, there needs to exist a conduct contrary to the international law norms in force, irrespective of the source and nature of the international obligation breached. As a result, the obligation needs to exist, therefore to be present, irrespective of its source and content. Breaching an obligation also leads to the creation of a new rapport of international law, being considered a new source of obligation for the state guilty of committing the wrongful act.

Although the aspects presented have been subject to the works of the UNO International Law Commission (ILC), the identification of the characteristic features of the international obligations is necessary so that this way we would be able to appreciate whether we have the second element of the wrongful act.[4] The absence of the international obligation triggers the inexistence of the wrongful act and state's responsibility under international law.

On another hand, the study of each category of obligations is not important in codifying the responsibility of the states, but we deem it important from the point of view of the responsibility of the states and international case law. It would be very easy to assert that it is not relevant the delimitation of the obligations according to content, but it is very difficult to identify in each particular case whether an international obligation has been breached and if yes, what the obligation is and what the breaching consists in.[5]

In conclusion, we consider that it is welcome the attention paid to the objective element of responsibility, as this way the rules applied internationally can be better understood.

2. Origin of the obligation

Establishing the origin of the international obligation is determined by the existence of various sources of international law and by the possibility of triggering specific consequences according to the source of the obligation. Thus, there can be identified obligations assumed based on customary law, obligations the arise from treaties, obligations determined by the application of a general principle of international law, obligations imposed under decisions adopted by a relevant body of an international organization, obligations arisen from the I.C.J. decisions or arbitral decisions assumed based on a unilateral act of the state.[6]

The practice of the states and the decisions of international courts confirm the existence of the principle stating that the responsibility of the states is triggered by breaching an international obligation irrespective of the origin of such obligation.

This principle is applied in the *Armstrong Cork Company* Case by the Conciliation Commission of the United States and Italy, set up based on art. 83 of the Peace Treaty dated 10 February 1947. The Commission says that the responsibility of the state triggers the obligation to repair the prejudices caused, if such are the result of a failure to meet international obligations. In this regard, the Commission refers to any obligation instated by the public international law rules.[7]

Such a decision also results from the works of the Committee preparing the Hague Conference of 1930 which requested that the states' governments should decide on the relevance or irrelevance of the origin of the breached obligations. All the states' governments agreed with the

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[4] Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001,*Yearbook of the International Law Commission, 2001*, vol. II, Part Two.

[5] James Crawford, *The international Law Commission's Articles on States Responsibility, Introduction, text and Commentaries,* (Cambridge University Press 2002), p.124-141. **Felicia Maxim,** *Dreptul răspunderii statelor pentru fapte internațional ilicite (Responsibility of the States for Intrnationally Wrongful Acts)*, Editura Renaissance, 2011, p.128-161.

[6] Yearbook of the International Law Commission, 1976, vol. II, Part One, p. 6; **I. Anghel,V. Anghel**, *Răspunderea în dreptul internațional (Responsibility in International Law)*, (Editura Lumina Lex, Bucureşti, 1998), p.46.

[7] United Nations, Reports of International Arbitral Awards, vol. XIV, 1953,p.163.

principle already instated in international practice, according to which it was of no importance the origin of the obligations assumed, the responsibility of the states being triggered in all cases in which a wrongful act was committed, the arguments formulated were, however, different.

In the decision ruled by the I.C.J. in the *Barcelona Traction, Light and Power, Limited* Case, it is said that the Belgian government could be entitled to formulate a request if it proved that one of the violated rights and facts reported by it had been determined by breaching an obligation arisen from the treaty or from breaching a general rule of law.[8]

The analysis of each source of international law as a source of obligations can lead to disclosing certain particularities. Thus, in case of customary law it is easy to say that it can constitute a source of obligations, but it is more difficult to prove. Being defined as "a relatively long, repeated and uniform general practice considered by the state as expressing a rule of conduct with mandatory legal force in the rapports between them"[9], it needs to prove the subjective element and the objective element. There are cases where states have not accepted a certain customary law, in cases of this type responsibility cannot be established as the obligation pertaining to it does not exist. The inexistence of the obligation is proven by considering various acts and opinions by means of which the state has manifested its objections.

In case of treaties, specialized literature claims the existence of special cases.[10] There can be identified cases where a state can breach a norm regarding the conclusion of the treaties, in order to determine another state to conclude a treaty, which constitutes a case of responsibility for the wrongful act; if it breaches a norm established under the treaty, it is a responsibility according to the respective treaty. In treaties law, the Vienna Convention states that the provisions of the Convention do not prejudice any of the issues that might be raised in relation to a treaty from the point of view of international responsibility of a state.[11] Nevertheless, the Convention states that a material breach of a treaty by a party state authorizes the other party to a bilateral treaty to invoke the breaching as a reason for terminating the validity of the treaty or for suspending the application of the treaty in full or in part.[12]The articles regarding the treaties declared terminated, out dated or whose application has been suspended, the Convention assumes the related authority.

Referring to the relationship between the treaties law and the law of the international responsibility of the states, the Court mentions that these two branches of international law have obviously distinct scopes. According to the treaties law, there needs to be established whether a convention is in force or whether it has been suspended or denounced. However, according to the law of the responsibility of the states, there needs to be appreciated to what extent the suspension or denouncing of a convention, which would be incompatible with the treaties law, engage the responsibility of the state that has taken such action.[13]

As a result, we support the assertion, formulated in specialized literature, which underscores the interference between the two categories of norms, appreciating that the law of the responsibility of the states contributes to the consolidation of the treaties law.[14]

The use of the concept of "principle" makes use invoke the distinction between the fundamental principles of international law and the general principles of law. The fundamental principles constitute the core of international law, they determine the contents of the other principles, norms and institutions of the entire system of international law. The fundamental principles are

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[8] I.C.J.Reports, 1970,p.3-p.46.

[9] **D**.Popescu,Drept internațional public(*Public International Law)*,Editura Universității Titu Maiorescu, 2005, p.32.

[10] I.Diaconu, *Tratat de drept internațional public (Treatise of Public International Law)*, vol. III, (Editura Lumina Lex, Bucureşti, 2005), p.357.

[11] art. 73 of the Vienna Convention regarding the treaties law of 1969.

[12] art. 60 of the Vienna Convention regarding the treaties law of 1969.

[13] C.I.J. Recueil, 1997, para.47.

[14] I.Diaconu,op.cit., vol.III, 2005,p.358.

instated based on customary law and multilateral treaties that are universal, their normative contents giving them a mandatory legal character.[15] As a result, disregarding the provisions of the conventions and customary law having the value of *jus cogens,* which instate the fundamental principles of international law, triggers the responsibility of the states.

The general principles of law refer to the complex of general rules that form the basis of operation of each system of law, national and international. The recognition of the general principles of law as source of international law generally covers certain gaps of this type of law. Such principles, however, do not have a mere complementary role as against the treaty and customary law, but are independent legal norms, not being included in the category of ancillary means, and being placed on the same standing as the treaty and customary law. Invoking the rich doctrine and practice of the states that attest the value of the general principles of law, but especially the fact that the text of 38 of the C.I.J. Bylaws has not been abrogated, the authors of international law consider that the states are obligated to observe them.[16] Thus, disregarding the general principle of law equals a breach of international obligations.

Part of the ancillary means, art. 38 of the I.C.J. By laws refers to the court decisions and doctrine of the best qualified experts of various states. The doctrine of the best qualified experts cannot be brought into discussion, as it consists in the contribution of various specialists and works of international scientific forums of utmost importance to the codification and progressive development of international law, but without mandatory legal value. However, court decisions have mandatory legal force only for the litigating parties and only for the case settled. As a result, disregarding the contents of a decision may trigger the responsibility of the state that has disregarded the contents of the ruling pronounced. The category of the international courts whose decisions are taken into consideration also includes international arbitration tribunals.[17] The decisions of international courts being appreciated for their high scientific level can be invoked in similar cases.

Although not regulated by art. 38 of the I.C.J. Bylaws, still the unilateral acts are recognized as part of the category of sources of rights and obligations in international law. In order to determine the responsibility of the states for breaching the obligations instated by unilateral acts, it is necessary to invoke the distinction between the unilateral acts of international organizations and the unilateral acts of states. Within the acts of the international organizations we distinguish between: the acts that form the internal law of the organization, which, even if mandatory are not relevant to the issue of sources and the acts referring to reaching the objectives of the organization, which may be subdivided into acts with mandatory legal force and acts having the character of recommendation.[18]

Part of the category of acts with mandatory legal force, we can mention the resolutions that regard peacekeeping and international security and especially the ones adopted based on chapter VII of the UNO Charter. In this respect, art. 25 of the UNO Charter states that: "The members of the United Nations agree to accept and execute the decisions of the Security Council in accordance with this Charter." The resolutions with mandatory legal force adopted by the Security Council regard the reaching of precise objectives or establishing international standards in special fields.[19] Thus, if a state adopts a behaviour contrary to the conduct established under the resolution, it is triggered the responsibility of the state and as a result the sanctioning of the respective state.[20]

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[15] D.Popescu, op.cit., 2005, p.39.

[16] R.Miga-Beşteliu, *Drept internaţional public, Curs universitar (Public International Law, University Course)* ,vol.I, (Editura All Beck, Bucureşti, 2005), p.75.

[17] These can be set up by two or more states to settle certain disputes. The essential difference between arbitral courts and the C.I.J. is the ad-hoc al arbitration as different from the permanent character of the Court.

[18] D.Popescu, op. cit., 2005,p.37; Gerhard von Glahn, James Larry Taulbee, Law among Nations, 8th Edition, (New York, San Francisco, Boston, 2007), p.75-76.

[19] D.Popescu, *Sancţiunile în dreptul internaţional (Sanctions in International Law),* în „ Dreptul românesc şi integrarea europeană*",* vol.IV,2006, p.176-177.

[20] D.Popescu, *Natura bivalentă a actelor Consiliului de Securitate al O.N.U.(The Bivalent Nature of the acts of the UNO Security Council)*, în „ Dreptul românesc şi integrarea europeană", vol. I, 2003, p.91-93.

In principle, the resolutions of the UNO General Assembly have the value of *soft law,* that is they are recommendations, the states being free to choose whether to observe the provisions of the resolutions. A distinct category is represented by the resolutions adopted under the form of declarations that refer to fields of special importance to international law, such as: human rights, outer space, decolonization, principles of international law, etc. The declarations of the UNO General Assembly can acquire a conventional character, when, subsequently to adoption, they are formally accepted by the states (under the form of treaties or conventions).

At first sight, the unilateral acts of the states cannot be considered sources of international law, as they represent a unilateral manifestation of will, not being the result of the joint agreement of the states. Still, certain unilateral acts of the states are susceptible to have effects, that is to engage the state which has issued them or even to create rights and obligations.[21]

3. Existence of the obligation

In order to be able to talk about the international responsibility of the states, we need to refer to a conduct contrary to the conduct established under an obligation in effect as at the time of occurrence of the wrongful act. The problem that leads to unclear aspects is establishing the time when the obligation arises and the time when the obligation ceases to have effects. The controversy has been determined by the succession of the rules of international law and of the obligations assumed under the rules instated. If the obligations did not suffer changes in time, then this aspect could not be invoked and it would be very easy to prove that the state has engaged a conduct contrary to an obligation in effect, which has led to triggering its responsibility. Actually, this issue is far more complex, as international law is not a static system, the norms are issued when this is deemed necessary and they cease to exist when they become obsolete.[22]

The existence of the international obligation triggers three general cases which should be considered. *The first case* regards the situation where the obligation requiring a certain conduct has ceased to exist before the state has adopted a contrary conduct. It is obvious that we do not deal with a conduct contrary to international law, this not being a wrongful act. However, there needs to be clearly delimited the time when the obligation has ceased to exist. *The second case* regards the adoption by the state of a conduct contrary to the conduct prescribed by an existing obligation in force. Although the resolution could be considered to be a simple one, in the sense that it is obvious that the existence of the obligation determines the state to adopt a proper behaviour, still, in the practice and case law of international law, there have been controversies regarding the delimitation of the time of occurrence of the event from the time of settling the dispute.

Thus, if the obligation exists between the time of occurrence of the wrongful act and the time of settling the dispute, the decisions is easy to make. Disputes occur when the obligation assumed ceases to exist in the time span between the time of occurrence of the wrongful act and the time of settling the dispute. The analysis of the decisions pronounced internationally has confirmed the application of the principle that establishes the responsibility of the state, if the state has adopted a conduct contrary to the conduct required under the obligation assumed as at the time when the wrongful act has taken place. Moreover, it has been confirmed that it is of no importance the fact that the existence of the obligation assumed has ceased as at the time of settling the case. *In respect of the third case,* identified in the practise of the states and specialized literature, which might refer to a case where the state might adopt a conduct which at the time of occurrence was not contrary to the norms of international law, subsequently, however, a rule might come up setting a conduct that against the conduct of the state makes the latter wrongful. Is it possible to determine the responsibility of the state for a conduct contrary to a conduct imposed under a new rule, which did

[21] **R.**Miga-Beşteliu, op.cit.,2005,p.79.

[22] Yearbook of the International Commission, 1976, vol. II, Part One, p.14; Gerhard von Glahn, James Larry Taulbee, op.cit., 2007, p.67-68.

not exist at the time of the action of the state? In domestic law, a person cannot be criminally liable for an act that was not prohibited at the time when it was committed. The principle has been instated by the constitutional provisions of various states or of criminal codes, as well as of various international documents or conventions, such as for instance: The Universal Declaration of Human Rights of 1948[23], European Convention of Human Rights of 1950[24] etc. In the field of the civil responsibility of the states, this principle is often not states expressly, but it is no doubt that in this field also it represents a general rule. Being a general principle of law, accepted by all the law systems, it can be said that it is a valid principle also to the international society, which can be applied in the field of the international responsibility of the states.[25] As a result, we can conclude that the responsibility of the states for adopting a conduct contrary to the one prescribed by the obligation assumed is triggered if the obligations exist at the time of occurrence of the wrongful act.

In international case law, the aspects presented above are generally resolved implicitly, rather than explicitly. The best known thesis is the one formulated in 1928 by arbiter Max Huber in the *Island of Palmas* Case*,* the aspect that needed to be clarified regarded the problem whether it could be established the exertion of Spain's sovereignty over an island, as this state had discovered the island in XVI century. The arbiter decided that: "Both parties agree that an act should be appreciated in light of the law contemporary with it and not with the rules in force as at the time of occurrence of the dispute or the rules existing as at the time of resolving the case. "Therefore, we need to admit that the rule stated represents a general principle that can be applied also in other cases.

An example may be the decision ruled in the J. Bates Case as arbiter in the Joint Commission regarding Great Britain and the United States set up based on the Convention of 8 February 1853. The case brought forth to the Commission regards the conduct of the British authorities in respect of the American vessels engaged at the time in the slaves trading. The United States requested compensations from Great Britain, as the British authorities had freed a number of slaves aboard the American vessels which belonged to American nationals. The specificity of the case was, however, determined by the fact that the incidents occurred at different times, the arbiter having to establish for each incident whether slavery was allowed. The incidents occurred in the period when slaves trading was allowed, including in the British dominions, triggered the responsibility of the British authorities. As different from these, the incidents occurred in the period when slavery had been forbidden by the "civilized nations", including by the United States, could not be considered wrongful. In conclusion, the arbiter ruled that there was a breach of an international obligation if the conduct of the state bodies was contrary to an obligation in force as at the time when the conduct took place.[26]

The European Commission of Human Rights has often had the opportunity to apply the rule mentioned above. The most mediatized application is the one regarding decision 1151/61. A Belgian citizen invoking the provisions of art. 5 paragraph 5 of the European Convention of Human Rights claimed damages from the German Government for the prejudices caused to him by the detention and death of his brother in a concentration camp in 1945. The Commission overruled the request saying that although art.5 paragraph 5 of the Convention stated that any person who was the victim of an arrest or detention under conditions contrary to the provisions of this article was entitled to reparations, the case invoked did not fall under the scope of this provision, as it took place in a period of time when the Convention was not in effect.[27]

[23] UNO General Assembly Resolution, 217 A (III),Art.11, paragraph 2.
[24] Art.7-(1) European Convention of Human Rights.
[25] Yearbook of the International Law Commission, 1976, vol.II, Part One, p.19.
[26] Yearbook of the International Law Commission, vol. II,Part Two, 2001,p.134.
[27] Report of the International Law Commission, vol.II, Part One, 1976,p.17; European Court of Human Rights, Grand Chamber, Blecic v. Croatia, 2006, para.48

The practise of the states and the authors of international law have recognized the application of the principle according to which an act of the state is considered to be wrongful, if the breached norm was in force as at the time of occurrence of the act.

The instated principle is not only necessary, but is also sufficient to trigger the responsibility of the state. Once the responsibility has been triggered as a result of breaching the obligation, it cannot be affected by the subsequent cessation of the obligation as a result of the cessation of the treaty that has been breached or of another change to international law. Thus, the Court in the *Northern Cameroons* Case mentioned that if during the existence of the custodianship the custodian was responsible for the acts of violating the Custodianship Agreement as a result of which damage was effected to another member of the United Nations or to other citizens, the claim for damages cannot be eliminated by the cessation of the custodianship[28]. Similarly, in the *Rainbow Warrior Case,* it was stated that although the conventional obligations had expired with the passage of time, France's responsibility for breaching its obligations has effects as the breaching had occurred when the obligation was in force.[29]

From the above, it results that, according to international practice, doctrine and case law of international courts an act of a state cannot constitute a breach of its international obligation, unless the respective state was bound by the respective obligation at the time of the breaching.[30]

4.Contents of the obligation assumed

The specific contents of the obligation assumed or the particular type of conduct required to the state will not have effects on responsibility.

In the *Gabcikovo-Nagymaros Project Case,* C.I.J., referring to the provisions of the draft articles adopted by ILC in 1976 in supporting the solution ruled, underscored that it is a well-known fact that when the state commits a wrongful act, international responsibility is established irrespective of the nature of the obligation breached by it.[31]

In a similar context, it has been argued that the obligation regarding certain aspects can be considered as breached when a wrongful act is committed corresponding to the contents of the obligation. The rule formed the basis of the objection formulated in the *Oil Plaforms Case* in front of CIJ. It has been said that a treaty of friendship, trade and sailing cannot, in principle, be breached by a conduct that has involved the use of armed force. The Court has very prudently formulated an answer pointing out that the 1955 Treaty required to each party various obligations regarding various aspects. Any action from any of the parties that was incompatible with those obligations was considered wrongful, irrespective of the means by which it was taken. A breach of the rights of one of the parties according to the treaty, by means that involve the use of force, was considered as wrongful as a breach by means of an administrative decision or by any other means. The matters referring to the use of force were not, as a result, excluded *per se* from the scope of the Treaty, thus the breaching of an international obligations was an international wrongful act, irrespective of the subject and contents of the obligations breached and irrespective of the type of the noncompliant conduct.[32]

The breaching of an international obligation can sometimes be determined by the contents of the provisions of the domestic law, which may happen in case where the provisions of the domestic law conflict with the international obligations assumed. Thus, all the states are obligated to observe the international obligations assumed, in this respect the legislative bodies will take all the necessary

[28] Northern Cameroons, Preliminary Objections, I.C.J.Reports, 1963, p.15-35.
[29] Yearbook of the International Law Commission, vol.II, Part Two, 2001, p.136.
[30] Also see in this respect art. 13 of the Draft articles of ILC
[31] Also see in this respect art. 12 of the Draft articles of ILC.
[32] Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objections, I.C.J.Reports, 1956, p.811-812, para.21.

measures to put domestic legislation in agreement with international legislation, and the judicial bodies will apply the law adopted by the legislative bodies. In case where disregarding the international obligations is determined by the conflict between the domestic legislation and the international provisions, guilty are considered those domestic bodies that are in charge of adapting the domestic legislation to the internationally accepted norms of law. However, as pointed out above, the state is responsible for the internally wrongful acts of the state bodies.

The contents of the obligations assumed determines the necessity of making various distinctions between obligations according to the importance of the interest pursued. Thus, it can be identified the category of crimes and delicts, the category of the obligations of result and the obligations of means, as well as the category of the obligations that establish the adoption of a behaviour in an imperative manner or forbid a certain behaviour. The distinctions made have led to contradictory discussions on the cases where it is triggered the international responsibility of the states for wrongful acts or on whether such a distinction is necessary as part of the responsibility of the states for wrongful acts. The controversies have been brought to an end by reaching a unanimous agreement between practitioners, theoreticians and states, an agreement that points out to the principle according to which any breach of an international obligation triggers the responsibility of the state, irrespective of the object of the obligations assumed.

4.1 The triad: wrongful act, crimes and delicts

In classic international law the wrongful acts of the states which breached an international obligation were considered "international delicts", as it was not recognized the distinction between crimes and delicts as in domestic law. Together with the manifestation of the tendencies to outlaw war, war has started to be considered by doctrine an international crime. A valuable contribution in this respect was made by Romanian lawyer V.V.Pella, who supported the necessity of instating international responsibility for the war of aggression, qualified as being the most serious international crime.[33] The necessity of the distinguishing, within the general category of wrongful acts, a separate category that regards violations of norms of top importance to international society became obvious after the end of World War II. The terrible consequences of World War II consisting in the disappearance of a big number of people, destruction of property, massacres executed on human beings led to the necessity of adopting at international level a category of norms to ensure the observance of human rights and human being.

As a result, from the point of view of the responsibility of the states, in its initial works, ILC made a net distinction between international crime and international delict. According to art. 19 of the draft articles of 1996 a wrongful act consisting in a violation by a state of an international obligation so essential to the protection of fundamental interests of international community, that its breaching is recognized as a crime by this community overall, is an international crime.[34]

Para. 4 of art. 19 of the draft shaped the concept of international delict stating that any internationally wrongful act that is not a crime according to the above provisions is an international delict. The provisions mainly aimed at delimiting the category of international crimes from the residual category of international delicts.[35]

However, the delimiting was no longer kept in the final form of the Draft articles (2001), considering that no criminal consequences can be developed for states in case of violation of the fundamental norms. The distinction made between crimes and delicts is important as it underlines the

[33] **G**.Geamănu, *Drept internațional public (Public International Law)*, vol.I, (Editura Didactică şi Pedagogică, București, 1981), p.337.

[34] I.Diaconu, op. cit., vol. III, 2005, p.347.

[35] S. Villalpando, *L'emergence de la communaute internationale dans la responsabilite des Etats, (*Presses Universitaires de France, 2005), p.164.

protection of the values essential to international society, but also it was not well placed in the draft articles, as it presented a criminal approach rather than an international one.

In the reports presented, J.Crawford tried to reach a consensus between the members of the Commission replacing the notion of crime with the concept of "serious violation by a state of an obligation to the international community overall, essential to the protection of its fundamental interests"[36]. ILC has regulated the serious violations of the obligations established based on the imperative norms of general international law in Chapter III of Part II of the Draft regarding the contents of the responsibility of the states.

4.1.1. Serious violations of the *jus cogens* norms

The identification of the serious violation of an international obligation is done by using two criteria: the first criterion regards the violation of an obligation established according to an imperative norm of general international law, and the second criterion regards the effects considered under the aspect of their extent and nature.

In order to determine the contents of the obligations violated we need to consider the concept of imperative norms of the international law.[37] Based on the Convention regarding the treaties law of 1969, a norm of general international law is a norm accepted and recognized by the international community of states overall, as a norm from which no derogation is allowed and which cannot be amended unless by a norm of the general international law having the same character (art.53). Still, the Convention presents the concept of *jus cogens*, but does not identify, *exempli gratia*, categories of norms that do not fall under the scope of the concept.

Within the works of ILC, it cannot be reached a consensus with regard to listing various categories of this type of norms, and most authors of international law have referred to criteria related to the importance of the values protected by norms. Thus, it has been noticed that one of the prohibitions regards aggression, the norms that forbid such actions being considered imperative norms. In the comments made by ILC on the treaties law, as well as in the debates that took place in the Vienna Conference, the governments of the states agreed that not resorting to force or to the threat of force was an imperative norm. The states also agreed with other examples supported by the Commission in respect of the norms that forbid slavery and slaves trading, genocide, racial discrimination and apartheid. These aspects have been subject to international regulations, the states ratifying the conventions and treaties with no exception. In respect of slavery and slaves trading, it can be said that they are no longer important, as such cases are rather isolated occurrences. However, the importance given to human rights and the fact that slavery and slaves trading would be a denial of the human rights have determined international community to establish norms which forbid such acts having the value of *jus cogens*. Supporting the position of imperative norms of the norms that forbid genocide has also been identified by the international case law. The position of imperative norm was also applied in case of the provisions regarding the banning of torture in art. 1 of the December 1984 Convention against torture and other cruel, inhuman and degrading treatment and the punishment of such acts.

Eventually, we mention the international existence of the imperative norms that regard the right to self-determination. C.I.J. stated in the *East Timor* Case that the principle of self-determination was one of the most important principles of the contemporary international law, which led to an imperative obligation which ensured the exertion and observance of the principle as a fundamental principle of international fundamental law.[38]

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[36] Third report on state responsibility by Mr. J.Crawford, 2000, p.3.

[37] **S. Villalpando**, op.cit., p.164.

[38] East Timor (Portugal v.Australia), I.C.J.Reports, 1995, p.90, p.120, para.29; In this respect, please refer to the Declaration on the principles of international law regarding the friendship and cooperation between states, according to the UNO Charter, Resolution of the UNO General Assembly no.2625(XXV), 1970.

The obligations imposed by the imperative norms aim at defending the most important values and interests for international community, which regard the existence of the states and their citizens, protecting the basic human values.

The concept of imperative norms of the general international law has been recognized by the practice of the states, international case law, as well as the courts and tribunals of the states. The position of C.I.J. was expressed, for instance in the *Barcelona Traction* case as follows: "An essential difference needs to be established between the obligations of the states to the international community overall and those that arise as against another state part of diplomatic protection. Given their very nature, the first regard only the states. Given the importance of the rights involved all the states can be considered as having a common legal interest in protecting them, and the correlative obligations are *erga omnes* obligations"[39]The Court was interested to present a position contrary to the one presented by the victim state against the background of the diplomatic protection, underscoring the position adopted by all the states with regard to the violation of an obligation recognized by the international community overall. Although the case presented dealt with no such case, the Court clearly underscored that the responsibility of the states would be triggered in case of a violation of various obligations that are characteristic to the whole international community, and given the importance of the protected law, all the states have a legal interest in protecting those rights.[40]

The shaping of the position of the states, but also the international case law regarding the category of imperative norms, as well as the theories prepared in the literature of international law have led to the identification of the respective fields, thus they will be grouped in: norms that regarding the banning of the use of force and the threat of force; norms the regard the principle *pacta sunt servanda*; other fundamental principles of international law stated in the UNO Charter; the elementary rights to life and human dignity, the norms that refer to rights generally recognized to all members of the international community, such as the freedom of seas and outer space.

The qualification of the violations of international obligations as serious has been introduced by the provisions of art.40 of the ILC Draft, considering that the violation of such an obligation is serious if it shows an obvious or systematic disregard of the respective obligation on the behalf of the relevant state.

We believe that the provision mentioned above is not correctly formulated, even if in the comments made, ILC points out that the word "serious" regards the representation of the intensity of the violation of the obligation and not that a violation of such obligation is not serious. In order to be serious, two alternative criteria are established in order to appreciate seriousness: the violation of the obligation should be obvious or systematic.[41] In order to be systematic, it needs to take place in a deliberate and organized manner and in order to be obvious the intensity of the violation is taken into account, established according to the values protected by the violated norms and by the effects resulted.[42]

Specialized literature[43] says that art. 40 of the Draft sets two distinct regimes of responsibility:

- "ordinary" international responsibility, that which is established based on meeting the conditions stated by art.2 of the Draft,[44] whose general consequences consist in the obligations to halt the wrongful behaviour, to meet, under the conditions required, the obligation initially violated and to repair the prejudice effected by the wrongful conduct;

[39] I.C.J.Reports 1970, p.3-33.

[40] Yearbook of the International Law Commission,vol.II, Part Two, 2001,p.278.

[41] R.Miga –Beşteliu, *Dreptul răspunderii internaţionale a statelor.Codificarea şi dezvoltarea progresivă în viziunea Comisiei de Drept Internaţional a O.N.U.*, în Revista Română de Drept Internaţional, nr.2, 2006,p.10.

[42] Yearbook of the International Law Commission, 2001, p.285.

[43] S. Villalpando, op.cit., p.254.

[44] These conditions regard the violation of an international obligation and, respectively, the attribution of the wrongful behaviour to the state.

➢ aggravated international responsibility, involving two conditions (nature of the violated obligation and the intensity of the violation), which need to be met in order to trigger various specific consequences.[45] In the literature of international law, it has been asserted that among the factors that have contributed to determining the degree of seriousness there are: the intention to breach the norm, the extent and number of the violation and the seriousness of the consequences.[46]

4.1.2.Consequences specific to serious violation of the jus cogens norms

First of all it is very clear that a serious violation of the obligations assumed determines the legal consequences stipulated for breaching an obligation of "common law"[47], thus the guilty state has the obligation of ceasing the wrongful act, the obligation of giving assurance and guarantees that the act will not be repeated, as well as the obligation of repairing the prejudice caused. The occurrence of the obligations listed will not be affected by the seriousness of violating the obligation, however supplementary consequences might appear in case of serious violations, consequences determined by the special circumstances of such violations.

As noted, the first condition regards the obligation of the state to cease the wrongful act, but it is obvious the possibility of cases where the guilty state should not comply. In this respect, the states need to cooperate to put an end to the violation occurred. The interventions shall be made firstly by means of the international organizations, these being the main forms of international cooperation. Generally, the focus is on the intervention of the United Nations which is a well organised framework, whose members of most states of the world. Cooperation, however, cannot be reduced only to a framework organized by the scope of the United Nations, it can also be achieved by a reduced number of states or may take the shape of non-institutionalized cooperation. The obligation to cooperate in order to repress wrongful acts exists for the victim states, but also for the states that have not suffered and which need unite their efforts to counteract the effects of the violations occurred. Cooperation has been manifested internationally pre-emptively, but also for the purpose of doing away with the effects, however in this case cooperation has been rather low and without a significant efficiency.

No state should encourage the commissioning of serious violations of the imperative norms of general internal law, but on the contrary should make efforts to remedy the situation, without giving aid, assistance or supporting the situation created. A state that helps guilty states, supports them or gives them assistance shall be considered guilty and shall be responsible. In a related development, collective manifestation of non-recognition is an efficient way of repressing the serious violation occurred internationally, but also a form of implicit cooperation, aiming at isolating the guilted state and forcing it to remedy the situation the has been condemned.

Although it was normal that specific consequences of a serious violation of the obligations should include the consequences of a violation of a common obligation, it was also necessary to add new ones. As a result, it is established that the states should cooperate in order to end, by licit means, any serious violation; no state should recognize a licit a situation created by a serious violation and support the maintaining of this situation; there are not excluded the legal consequences stated for breaching an obligation or the supplementary consequences, which may appear on the basis of international law further to a serious violation.[48]

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[45] R. Miga-Beşteliu, op.cit., 2006, p.9.

[46] See in this respect also art. 1 of the Convention for banning the use for military purposes or for any other hostile purposes techniques of changing the environment (1976), which states that each party state assumes the obligation of not engaging in using for military purposes or for any other hostile purposes techniques of changing the environment having wide scope, long lasting or serious effects, as means that effect destruction, damage or prejudices to another party state.

[47] R Miga Beşteliu**,** op.cit., 2006,p.11.

[48] art.41 of the Draft artciles of ILC regarding the responsibility of the states for internationally wrongful acts.

Authors of international law claim that the Draft does not require overwhelming obligations to the guilty state, but that are certain measures to be taken by all in order to achieve an "isolation" of the guilty state and paralysation of the consequences of its conduct.[49]

4.2.Obligations of means and obligations of result

Based on the claims in the specialized literature, it can be asserted that the delimitation between the two categories is based on the fact that in case of the obligation of means the purpose of the obligation needs to be achieved by means, behaviours, precisely determined actions, whereas in case of the obligations of result it is of no interest how this result is to be obtained.[50] The category of obligations of means, there can be introduced the states' obligation of adopting certain laws or legislative measures, such as the ones in the field of human rights; the obligation of submarines to sail on surface in the territorial sea of another state or the obligation of police forces not to enter the premises of the diplomatic missions without the acceptance of the head of the diplomatic mission.[51] An obligation of means is breached when the state adopts a behaviour that is not conformant in accordance with the conduct determined specifically under the respective obligation.

The distinction becomes important when the existence of a violation is established, but it is not relevant from the point of view of the responsibility of the states for wrongful acts. In the *Colozza* case, the European Court of Human Rights was requested to rule in a case where the trial had been conducted in the absence of a person, the latter not being informed of the trial; the person had been convicted to a 6-year term in prison and could not subsequently challenge the sentence. The person claimed that they did not have the possibility to defend themselves as per art.6 of the European Convention of Human Rights.[52] The Court pointed out the following: "The contracting states enjoy a great liberty of appreciation in choosing the means to ensure the surety that their legal systems comply with the requirements of art.6 para. 1 in this field. The task of the Court is not to indicate to the states what these means are, but to establish whether the result required under the Convention have been obtained. To this end, the resources offered by the domestic legislation need to prove efficient, and the accused, who was in a similar situation to the one in which Mr. Colozza found himself, needs not to be obligated to prove that they had not tried to elapse from justice or that his absence was due to a case of force majeure.[53]

As a result, the Court rules that art. 6 requires an obligation of result. In order to settle the cases invoked in such circumstances it is not sufficient to analyse what measures have been adopted in order to realize an effective application of art. 6. The distinction between the obligations of result and the obligations or means is not conclusive to prove a breach of art.6.

It is important for the determination of the responsibility of the states for wrongful acts to determine the conduct that needs to be adopted, that is the indication of the result pursued or the adoption of concrete actions presented by the international legal provision. Thus, if the state fails to obtain the result pursued, it is guilty of committing a wrongful act, and in case of the obligations of means it is guilt as it has not adopted the behaviour described in the norms of international law. Irrespective of the case, the state will be responsible for the wrongful acts committed, of essence being the wrongful character, that is why in the field of responsibility the distinction is not important, the specialized literature saying that it is more a distinction of interest to civil law.[54]

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[49] D.Popescu, op.cit., 2006, p.183; R.Miga-Beşteliu, op.cit., 2006,p.11-12.

[50] G.Geamănu, op.cit., 1981 , p.338.

[51] D.Popescu, A.Năstase, *Drept internațional public (Public International Law)*, Ediție revăzută și adăugită, (Casa de editură și presă „Șansa" S.R.L., 1997), p.343.

[52] Article 6 of the European Convention of Human Rights.

[53] Decizii ale Curții Europene a Drepturilor Omului, Culegere Selectivă (Decisions of the Euroepean Court of HUman Rights, Selection fo choice), Editura Polirom, 2000, p.148

[54] **I**. R.Urs,S. Angheni, *Drept civil (Civil Law),* ediția a-III-a, (Editura Oscar Print,București, 2000), p.179.

4.3. Actions or omissions

The conduct attributed to the state may consist in an action or omission. The cases where the international responsibility of the states is triggered by an omission are at least as numerous as the ones where the international responsibility of the states is triggered by an action, in principle, there being no difference between the two. Furthermore, as also specified in the ILC, there cannot be isolated an omission from other relevant circumstances to determined responsibility[55]. Specialized literature claims that the violation may take place as a result of a positive action -*delicta commissiva*- (when the obligation was of not doing) or of an omission, of refraining - *delicta omissiva*-(when the obligation was of giving or doing).[56]

In conclusion, the international responsibility of the states may be triggered by committing a wrongful act that may consist in an action or omission originated by both causes. For instance, the international dispute regarding the Corfu Strait, between Great Britain and Albania, settled by the I.C.J. in 1949 gives a classical example of establishing the responsibility of the states both for action and for omission. As at October 22, British ships passing through the Albanian territorial waters hit a mine field placed in the strait, incurring of deaths and material damage[57]. I.C.J. held Albania responsible for not having notified the existence of the mine field placed in its territorial waters, as well as the fact that it allowed its territory to be used contrary to the right of other states, according to the theory that the sovereign of that territory knew all the actions or inactions taking place on its territory. I.C.J. also held responsible Great Britain for undertaking demining operations in the Albanian territorial waters without any consent.[58] In the case of the diplomatic staff in Teheran, triggering responsibility took place due to the Iranian authorities' omission to take all the measures necessary to protect the US diplomatic and consular staff.[59]

4.4.Hypothesis of the complex delict

4.4.1 Continuous wrongful act

According to the established principles, a breach of a specific obligation of international law takes place when the respective obligation was in force for the state at the time when it adopted the conduct contrary to the behaviour required by the obligation. The mentioned rule is very clear for instantaneous conducts, but difficulties are encountered when the conduct is extended for a certain period of time. In this case, three situations can be identified*: the first situation* regards an obligation that was not in effect at the time when the state adopted a certain conduct, and as a result, the state acted legally, however, subsequently, the obligation came into effect and the acts of the state have become wrongful*; the second situation* regards the case where the conduct of the state was contrary to the norms of international law in the beginning, however, subsequently the obligation became no longer effective and the conduct has become licit; *the third situation* regards the possibility where the state acted wrongfully in a continuous manner, the obligation being permanently into effect.

The application of the principle is not difficult on condition that the acts committed be continuous and the time span during which the acts took place should coincide with the period in which the obligation was in force. If at the time when it acted, the acts of the state were perfectly legal and the obligation of the state came into effect subsequently, the state will be responsible only for the violations occurred as of the time when the obligation came into effect. On the other hand, when the conduct of the state was wrongful at the time when it started to act, but subsequently it became licit as the obligation ceased to have effects, the state will be responsible for the wrongful act committed correspondingly to the time when the obligation was in effect.

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[55] Yearbook of the International Law Commission,vol.II,Part Two,2001,p.70.

[56] I. Anghel, V.Anghel , op.cit., p.43; M.Eliescu, *Răspunderea civilă delictuală (Delictual Civil Responsibility)*, (Editura Academiei, Bucureşti, 1972),p.141-142.

[57] Corfu Channel,Merits,I.C.J.Reports, 1949, p.4, 22-23.

[58] I.Chung-Legal Problems involved in Corfu Channel incident, 1959, p.2.

[59] Yearbook of the International Law Commission, vol.II,Part Two,2001, p.70.

The notion of continuous act is common to all the great system of law, being also recognized in international law. International courts have encountered many cases where the continuous wrongful act has been invoked. For instance, in the *Diplomatic and Consular Staff* Case, the Court took into account the fact that Iran had successively and continuously breached its obligations to the United States of America as stated in the Vienna Conventions of 1961 and 1963.[60] The consequence of the continuous wrongful act depend on the circumstances in which it has occurred and during the violation effected. For instance, in the *Rainbow Warrior* Case[61] the arbitration invoked the France's omission of withholding two of its agents on Hao Island for a period of three years, a request formulated in the agreement between France and New Zeeland. The arbitral tribunal made a distinction between continuous acts and instantaneous acts pointing out that by making this classification in this case it was obvious that the continuous violation consisted in the omission to go back to the Hao Island, the two agents having committed a continuous act. The classification mentioned is not a pure theoretical one, but on the contrary it has effects in practice, determining serious violations, playing an important role also in determining the prejudice effected.[62]

ILC noting the implications of the continuous wrongful acts has deemed it necessary to include a special provision in the Draft articles which have provided for the three cases regarding the length in time of the act.[63]

Thus, the Draft establishes, to a certain extent, that the distinction between the violation that is instantaneous and the continuous wrongful act by underscoring the importance of the identification of the starting moment and the moment when it ended, mentioning that the subsequent effects are not considered an extension of the wrongful act committed.

We consider that the introduction in the category of continuous wrongful acts of the obligations of vigilance, of the obligations that are required in order to prevent the occurrence of wrongful acts, as being important and conclusive in the field. The violation of an obligation of vigilance can be considered a continuous act, if the state fails to adopt any measure during the period in which the event continues to occur and to constitute an act contrary to the conduct required by the obligations assumed. For instance, the obligation to prevent across border air pollution in the *Trail Smelter* Case was violated by acts of continuous pollution.[64] Indeed, in such cases, the violation can be progressively aggravated by the length of time during which the acts continue to have effects. We mention that the violation of the obligation to prevent can be effected by an instantaneous wrongful act, whereas if the conduct remains contrary to the norms assumed during a period of time, it changes into a continuous wrongful act.

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[60] United States Diplomatic and Consular Staff in Teheran, I.C.J.Reports 1980,p3-37.

[61] Marc Perrin de Brichambaut, Jean-Francois Dobelle avec la collaboration de Marie-Reine d'Haussy, *Lecons de droit international public*, (Presses de Sciences Po et Dalloz, 2002),p.208. In 1985 two French agents sank a ship belonging to Greenpeace called Rainbow Warrior, while in the territrial waters of New Zeeland. The dispute was brought in front of the UNO Secretary General and his decision was accepted by the two states taking the shape of an agreement. This treaty established that the two French agents are to be transferred under French military escort to Hao Island for a three-year period. Before the three-year period had elapsed, the two agents left the island without requesting the approval of New Zeeland. The Court ruled that France violated its obligations assumed.

[62] Rainbow Warrior,UNRIAA, vol. XX,1990,p.217-264.

[63] Article 14 -Extension in time of the breach of an international obligation -1. The breach of an international obligation by an act of a State not having a continuing character occurs at the moment when the act is performed, even if its effects continue; 2. The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.; 3. The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.

[64] A similar situation occurred in the case of Romania vs. Hungary and to a certain extent Serbia, with regard to the incident in Baia Mare, in the year 2000, when River Tisa and other rivers were polluted with cyanides and when the polluted waters reached Danube, the situation mentioned occurred.

4.4.2 Complex wrongful act

As different from the acts analysed above, the wrongful acts to which we will refer are neither instantaneous nor continuous. Doctrine says that the complex wrongful act consists in a series of separate acts that regard different situations, which creating a unitary whole can constitute a violation of an international obligation or the complex wrongful act may consist in a succession of acts that regard the same situation, a circumstance that determines eventually a violation of an international obligation.[65]

In the first case, the complex wrongful act consisting in a series of acts that regard different situations, which overall form together a violation, there can be considered the case where each act is a violation of the obligations assumed, or each of them is a violation, other than the one constituted by the whole of them.

We consider that the notion of complex act is limited to violations of the obligations that regard a sum of conducts and not acts considered individually.[66] Examples may be the obligations regarding genocide, apartheid or the crimes against humanity, systematic acts of racial discrimination etc. Some of the most serious wrongful acts are defined in international law by presenting their complex character. The importance of the obligations mentioned in international law also determines the necessity of instating responsibility of the states for such acts.

The crime of genocide may be an illustration of a complex wrongful act. It is regulated as crime distinctly by the Convention of 1948 regarding the prevention and punishment of the crime of genocide, in the By-laws of International Criminal Court, as well as in the by-laws of the ad-hoc tribunals. All the legal instruments present the content of the crime of genocide by listing the acts that can be committed. Thus, based on the Convention in 1948, genocide is defined as being any of the acts committed with the intention of extermination, in whole or in part, a national, ethnic, racial or religious group, consisting in: the physical extermination of the members of the group; serious harming the physical or mental integrity of the members of the group; intentionally subjecting the group to living conditions that would lead to its physical destruction, partial or total; measures that aim at preventing births within the group, forced transfer of children from one group to another.[67]

Of essence is the identification of the period when this complex delict took place. It is asserted that the occurrence takes place at the time of the latest action or inaction, which cumulated with other actions or inactions, is sufficient to determine a wrongful act, not being necessary to be the past in a series. Determining the time when it is identified the violation of the international obligation is made by reference to the primary rules of international law. The number of actions or omissions that need to constitute wrongful acts is also determined by the phrasing and purposes contained in the primary rules. The legal provisions do not clearly establish the number of actions or inactions that need to be part of a series in order to constitute a complex wrongful act, requiring only a sufficient number, which sometimes might determine uncertainty on the moment of committing a complex wrongful act.[68]

It is recognized the existence of complex acts that are constituted from a series of actions or inactions regarded as a whole, which determines a wrongful act, but it is not excluded the possibility that each act should be wrongful by reference to another international obligation.

In the ILC. Such cases are regulated as follows: 1. The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act; 2. In such a case, the breach extends over the entire period starting with the first of

[65] Yearbook of the International Law Commission, vol.II, Part One, 1976,p.21.

[66] As established by C.D.I. in the comment made in 2001,p.149.

[67] art.2 of the Convention regarding the prevention and repression of the crime of genocide,9 December 1948; **I.Diaconu**, op.cit., vol. III, 2005, p.375.

[68] Yearbook of the International Law Commission, (Part Two, 2001), p.149.

the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation. [69]

Conclusions

The analysis of the objective element of the internationally wrongful act has involved approaching the specific issues related to it, namely: the origin of the obligation violated, the existence of the obligation violated, as well as the analysis of the content of the obligation assumed. Establishing the obligation violated is determined by the existence of a number of sources of international law and by the possibility of occurrence of specific consequences according to the source of the obligation. As a result, there can be identified obligations assumed based on customary laws, obligations arising from treaties, obligations determined by the application of a general principle of international law, obligations imposed by decisions adopted by a relevant body of an international organization, obligations arisen from the decision of I.C.J. or arbitral decisions and obligations assumed under a unilateral act.

Part of the existence of the obligation violated, the problem on which the research has focused was that of the time when the obligation arises and the time when the obligation ceased to have legal effects, the controversies being determined by the succession of the rules of international law. The conclusion reached, according to international practice, doctrine and case law, in case where the state was bound by the respective obligation at the time of the occurrence of the violation.

The content of the obligations assumed has led to making a series of distinctions between obligations according to the importance of the obligations pursued. Thus, it has been analysed the triad wrongful act, crimes and delicts; the category of the obligations of result and obligations of means; as well as the category of the obligations that establish the adoption of a behaviour in an imperative manner or that forbid a certain behaviour.

In respect of the triad wrongful act, crimes and delicts, the attention has been focused on the concept of "serious violation of the *jus cogens* norms" and on their consequences, a concept that has replaced the notion of international crime presented in the ILC Draft of 1996.

The hypothesis of complex delict has brought into discussion the concepts of continuous wrong act and complex wrongful act. With regard to the continuous wrongful act it has been underscored the importance of identifying the moment when the act ceased to be, mentioning that the subsequent effects are not considered an extension of the wrongful act effected. In a different development, the research of the complex wrongful act has been conducted by reference to violations of the obligations that regard a sum of conducts and not facts considered individually.

The identification of the feature characteristics of the international obligations is necessary in order to prove the existence of the objective element of the wrongful act, this aspect having a major importance to international case law.

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