DOI: 10.7251/GFP2414060G

UDC: 343.232:347.441.142.2(100)

Originalni naučni rad

Datum prijema rada:
17. maj 2024.

Datum prihvatanja rada:
25. ju4 2024.

International Legal Obligations of the States and Problem of Their Implementation

Abstract: The article explores the various possible sources of international obligations of the States and the grounds for the binding effect of international rules upon the States. It is demonstrated that the States, although being sovereign actors at the international plane, are not only becoming subject to the international rules when they express their consent, but they are bound by the rules to which their acquiescence is assumed. The latter type of rules are mostly developed within international customary law. The international legal obligations can have varying scope of the addressees and some of them override any other commitment, such as ius cogens, or may affect the whole of international community, such as erga omnes obligations. The practical relevance of the international obligations for ensuring a functioning international regime can be assessed from the perspective of compliance of the States with their commitments. It goes without saying that the international society is not an ideal place when it comes to the adherence to the rules, but the States usually adhere to the majority of their obligations. Unlike a limited number of special cases, the international institutions, both judicial and political, are not always offering the direct enforcement venues for ensuing the full compliance with the international obligations and preventing any unlawful conduct. Nonetheless, international law is widely perceived as a viable tool for regulating international relations and transactions at the international plane.

Key words: Public International Law, Obligations, Treaties, Customary law, International ogranisations, Adjudication.

Prof. dr Duško Glodić
College of Legal Studies, Pan-European University Apeiron, Banja Luka, dusko.z.glodic@apeiron-edu.eu

1. INTRODUCTORY REMARKS

Any legal system is built around its normative sources which usually contain general rules, define rights and eventually impose obligations upon their subjects. This is also typical for international law that has a specific set of its sources, made in a more or less structured manner, and that generates the legal obligations that are incumbent on the international law subjects.

While the contemporary national legal systems regularly define procedures and actors that are empowered to enact and sanction its sources and thus define the general obligations imposed on the natural and legal persons, international law does

not systematically elaborate its comprehensive law creating procedures and institutions. These formalities are practically dispersed throughout different instances of international legal order, its subjects and international institutions. Thus, the obligations under international law do not necessarily follow the same logic, typology and formalities as the obligations defined by national/internal legal systems. In other words, international law is much more decentralised, obviously lacking an across-the-board type catalogue of its formal sources and rules as well as the single 'legislating' power. Such a state of affairs also affects the types and grounds for the obligations that arise under international law.

While considering those specific traits of international law, this article, at the first place, will intend to explore the position of the States, as sovereign subjects of international law and the legal obligations that define the frames for their behaviour at the international plane. Secondly, the legal forms from which the international obligations of States stem will be also analysed. Thirdly, the article will discuss different types of the international legal obligations in relation to their scope and range of application, while also assessing the grounds for the binding effects of international law. Finally, the article will consider the judicial and other institutional venues for the implementation and enforcement of the international obligations.

2. STATES AND INTERNATIONAL LEGAL OBLIGATIONS: BETWEEN A CREATIVE FREEDOM AND COMPELLING EFFECTS

Any consideration of international obligation and status of the subjects of international law proceeds from the assumption that the subjects enjoy freedom of action at the international plane, as long as these actions were not forbidden by the effective international law rules.[1] In this sense, the general perception would be that the international legal order offers a space of creative freedom for the international law subjects, *i.e.* for the States and international organisations. Although the shape of international community has significantly changed if compared to the early XX century, and the new political reality at the international plane demonstrated that the States are not anymore the sole international law-making subjects,[2] the independent and sovereign States are considered as primary factors in the contemporary international relations and they stand as the international law basic entities. They act as sovereign bodies at the international plane and are the most prominent creators and implementers of international law rules, but can also be responsible for wrongdoings at the international plane. The State's institutions are involved in adopting and establishing international rules, either explicitly or through acquiescence to certain practices developed and applied at the international plane.[3] As such, the States are creators of treaties and international customs, on the one hand, and are subjects to the international rules and obligations, on the other hand.[4] In doing so, the States manifest their legally relevant will as the holders of sovereignty, yet within the frames and in compliance with international law.

---

1 Shaw, M. (2003). *International Law*, Cambridge: Cambridge University Press, 190.

2 Klabbers, J. (2020). "The Cheshire Cat That Is International Law," *European Journal of International Law*, Vol. 31/1, 270.

3 Kelzen, H., (2010). O*pšta teorija prava i države,* Beograd: Pravni fakultet Univerziteta u Beogradu, 460-461.

4 Rosenne, S. (2004). *The Perplexities of Modern International Law*, Leiden/Boston: Martinus Nijhoff Publishers, 237-238.

Such a nature of the States, leads to understanding that has been supported by some authors whereby "*the question of obligation seems to many an important one, and distinguishable from the analogous question of the duty of obedience in domestic law, for this reason: under the doctrine of state sovereignty, of the nation-state is sovereign and independent, how can it possibly be subject to a higher authority, to a superior legal system.*"[5] International law is supportive of the independence of States and their external sovereignty, albeit it defines a number of obligations upon them.[6] The capacity and will of the States to create international law through treaties and customs expresses their subjugation to this legal system.[7]

Nonetheless, in addition to their freedom of action and capacity to create international rules, the States are also being subjugated to a wide range of international obligations that complement their international legal status. Pellet underlines the importance of obligations for the functioning of international law, but he also concludes that law is not exclusively based on the obligations: "*there is no doubt that binding obligations are part of law, but law also includes permissions, recommendations, incentives, orientations, ... any discussion of the parameters of law and of its definitions is inevitably premised on one taking a position as to what the basis, or 'foundations', of law is or are.*"[8] Rosenne exemplifies the independence of the States by underlining their capacity and freedom to conduct international and foreign affairs freely and to undertake international obligations through interacting with other international law subjects – States and international organisations, including the creation of new international subjects in the form of intergovernmental organisations.[9] Therefore, international law, as such, is multifaceted phenomenon that includes a number of different layers of legal reality that are constituted in accordance with its norms.

Acting at the international plane, as presented above, requires an interplay between the creative freedom of States, on the one hand, and they behaviour in accordance with the obligations that they have to follow, on the other hand. Regardless of this perspective, any valid and positive international norm that imposes certain international obligations upon its addressees, inherently provides for its validation by explaining reasons that justify its mandatory nature. The norms, as such, are tacitly providing explanation why certain expected manner of conduct is needed.[10] The normative nature of international legal system obliges the international law subjects to pay attention to the valid international rules and the inherent compulsory effects that these shall produce. The formal sources of international law, which can define certain international legal obligations, play a key role in assessing the legal position of any international actor within the international community.

---

5 Teson, F.R. (1990). "International Obligation and the Theory of Hypothetical Consent," *Yale Journal of International Law*, Vol. 15, 84.

6 Shaw, M. (2003), 43.

7 See: Teson, F.R. (1990), 90.

8 Pellet, A. (1992). "The Normative Dilemma: Will and Consent in International Law-Making," *Australian Yearbook of International Law*, Vol. 12/1, 26.

9 Rosenne, S. (2004), 241.

10 See: Dajović, G. (2021). „Normativnost međunarodnog prava," *Pravni zapisi*, Vol. XII/2, 492-493.

3. CONNECTING THE FORMAL SOURCES OF INTERNATIONAL LAW WITH LEGAL OBLIGATIONS

The international legal obligations have to be shaped through certain actions that are, when undertaken in a given form, recognised as capable of producing legal effects. These actions result in the forms which are supposed to semantically provide their performers with the sense and understanding of legal imperatives. They result in constitution of legal relations that are inherent to the creation of international obligations. In this context, the formal sources are expected to define what are the States and other concerned actors obliged to do under international law.

Therefore, when discussing the issue of legal obligations, one of the inevitable questions is that of formal sources. The sources not only provide for the content of legal rules, but also for the methods of their creation, as well as the grounds of their validity.[11] More specifically, in the context of international law, the sources are considered as "*any legal process creating general norms intending to govern international relations*."[12] One should also note that law does not merely consist of a form, but it also comprises certain content.[13] The sources of law are useful for detecting the obligations as any rule contained therein may provide for someone's benefits, on the one hand, and for the other's costs, on the other hand.[14]

In the general legal theory, at least as explained by Kelsen, a legal obligation, unlike other types of obligations such as moral ones, is based on a legal norm. Accomplishing the legal obligation means behaving in a way which is not contrary to the legal norm and which would not entail application of sanctions. Contrary, any behaviour which would be a violation of the legal obligation would represent a delict that may lead to the imposition of sanctions.[15] However, when it comes to international law, Kelsen underlines the uncertainty of duty to impose and execute the sanctions for the failure to comply with the obligation under international law.[16] In this context, one ought to note the distinction between so called 'primary norms', which dictate a desirable way of behaviour, and 'secondary norms', which define the procedures, competences and institutional frameworks for the functioning of the legal order in question.[17] The lack of systematic and general solutions containing the secondary rules that would consistently follow the primary rules is a key feature of international law. This state of development of international legal order enables us to assess this legal system against the possibility to enforce its legal rules.[18]

Despite the fact that the international legal system necessarily follows certain forms and processes for its creation, interpretation and implementation, some authors warn against blind follow up on the formalities of the processes, because such an approach can outshine the substance of the rules and the obligations stemming therefrom. This is due

---

11 Kelzen, H., (2010), 218.

12 Pellet, A. (1992), 30.

13 *Ibid.*, 24.

14 Klabbers, J. (2020), 273-274.

15 Kelzen, H., (2010), 137-138.

16 *Ibid.*, 139.

17 Krešić, M. (2014). „Kelsenovi, Lauterpachtovi i Rossovi teorijskopravni modeli međunarodnog prava," *Zbornik PFZ,* Vol. 64/1, 135.

18 Stein, E. (1987). "Collective Enforcement of International Obligations," *Heidelberg Journal of International Law*, Vol. 47, 56.

to the fact that the formalities lead to abstract qualifications and categorisations which are not directly and necessarily relying on the concrete context in which some legal obligations were construed. A real analysis could not only rely on the formalities, but should also take into account a wider perspective around the life of a legal rule and obligation enshrined in it.[19]

While examining the international obligations, the scholars give the primary consideration to treaties, on the one hand, and to customary law, on the other hand.[20] The international obligations could also be defined in some other formal documents, such as resolutions and decisions of international organisations and the source of obligation can equally be the international wrongdoing or delict.

The treaties, regardless of their specific designation, as formal sources of international law, are at the centre when it comes to defining international obligations. They are not only used to create obligations, but also to prove their existence as they are written and acknowledged sources of law.[21] The States, usually, enter into the treaties upon decisions and approvals by their relevant authorities in accordance with their internal legal procedures. They may also propose a modified legal regime to be applied to this State, notably through the use of technique of reserves.[22] In this context, the States should not undermine the effects of international law by their domestic laws and implementing acts.[23]

While considering the written sources of international law, one should not neglect other types of written instruments, so called informal agreements, that are widely used in the international practice, but which are not formal treaties. These instruments create

---

[19] Wyler, E. (2019). «Quelques réflexions sur la typologie des obligations en droit international, avec référence particulière au droit des traités et ay droit de la responsabilité», *Annuaire français de droit international*, Vol. 65/2019, 31-32.

[20] Klabbers argues that the notion of the treaties and customs still remains insufficiently dissected in the theory of international law. See: Klabbers, J. (2020), 277.

[21] Rosenne, S. (2004), 28. When it comes to interpreting the treaties, the States, i.e. the governmental representatives tend to follow the pattern of behaviour of an attorney at law. As pointe out by Teson: "*In advancing their competing claims, governments will seek to interpret treaty language, state practice, and judicial precedents in a way that puts their claims in the best possible light, just as advocates would do in a national legal system. This is different from asserting that governments will simply manipulate legal materials to advance their interest.*" Teson, F.R. (1990), 86. As for the validity of the treaties, the International Court of Justice has established that: "*Nor does the Court need to dwell upon the question of the relationship between the law of treaties and the law of State responsibility, to which the Parties devoted lengthy arguments, as those two branches of international law obviously have a scope that is distinct. A determination of whether a convention is or is not in force, and whether it has or has not been properly suspended or denounced, is to be made pursuant to the law of treaties. On the other hand, an evaluation of the extent to which the suspension or denunciation of a convention, seen as incompatible with the law of treaties, involves the responsibility of the State which proceeded to it, is to be made under the law of state responsibility.*" (*Gabčikovo-Nagymaros Project (Hungary vs. Slovakia), Judgment, ICJ Reports 1997,* para. 47).

[22] Klabbers, J. (2020), 275; Dajović, G. (2021), 499; Hathaway, O.A. (2005). "Between Power and Principle: An Integrated Theory of International Law," *University of Chicago Law Review*, Vol. 72, 473.

[23] Jennings, R., Watts, A. (1992). *Oppenheim's International Law*, Volume I, Harlow: Longman, 94.

certain sort of commitments between the parties thereto, which could not be considered as the legally binding obligations. These instruments that bear certain political weight can be grounds for invoking political liability of their signatories and the violation thereof can lead to the loss of reputation at the international plane.[24] Contrary to such views, Rosenne expresses his understanding that "*anything written in the course of the pursuit of national policy, whether on the bilateral level or on the multilateral level, may have legal consequences. What those consequences are or could be depends on all the circumstances.*"[25] Therefore, any commitment, either political or legal, which is expressed at the international plane, may have some repercussions to the government that acquiesced to this.

In addition to the written sources[26], the international obligations can also stem from the customary law.[27] It is widely argued that the treaties and international agreements which are written expression of concurring will of their parties are compulsory only for those subjects that singed up to them. In contrast to the treaties, the customary law and the rules existing within the customs, are creating obligations for all those entities that are subject to their application. Thus, the effect of the treaties is, in principle, restricted to the contracting parties, whilst the customs, as sources of international obligations, are obligatory for all the States that fall within the scope of their application. The range of addressees of the latter is wider than the list of those upon whom the treaty is binding.[28] Unlike treaties, the customs are usually binding without prior expression of consent/will of its addresses and in certain cases they can be binding even despite the manifested contrary will.[29]

Besides the treaties and customs, responsibility for international unlawful doings can also give rise to international obligations.[30] The States, when contravening their in-

---

[24] Glodić, D. (2021). „Use of Legally Non-Binding Instruments in Contemporary Practice of International Relations," *Godišnjak Fakulteta pravnih nauka*, Vol. 11, 98-97.

[25] Rosenne, S. (2004), 342.

[26] One should be mindful of the need to carefully use the wording 'written.' Rosenne underlines that "*a written instrument treated by those who made it as a treaty (such as by its being registered with the Secretariat of the United Nations) may in fact not be intended to impose executory obligations on its parties. On the other side of the coin, a formal statement made in a political context or a non-binding resolution of an international organization may be accepted by a State as a basis for its future action. That may be a treaty, but is likely to be found to constitute a commitment that those who made it are bound to act accordingly.*" Rosenne, S. (2004), 338.

[27] Though for the modern lawyers that mostly deal with the topics of national law, the issue of customary law is largely outdated, this is highly important in the international law context. Rosenne nicely explains that "*today in the general theory and in the thesaurus of public international law, customary law is positive law as much as conventional law. It comprises the rules of law derived from the consistent conduct of States acting in the belief that the law requires them to act in that way.*" Rosenne, S. (2004), 34.

[28] Rosenne, S. (2004), 30-31.

[29] See: Pellet, A. (1992), 33-34.

[30] Although there is a general view that any damage caused by one party leads to its responsibility towards the injured party, and subsequently to the correlation between the obligation of the wrongdoer towards the one that was injured. In the context of international responsibility, it is noted that "*the 'exact' correlation between the breach of an international obligation of a state and the injury to the subjective right of another state – is not as absolute as one would like to believe. There are in cat several cases where the beneficiaries of an international obligation*

ternational obligations, can be held responsible for their acts through the available international mechanisms.[31] In this context, one should, at the first place, determine if there are international legal rules defining that certain type of behaviour could be perceived as wrongdoing, and, at the second place, examining if any international countermeasure or sanction could be imposed in the given situation.[32] In the case of default and disrespect to the international obligations, the states concerned usually fall within the bilateral relations emerging between the injured party and the one that committed an unlawful act or disregarded its international obligation. Such approach leads to the conclusion that there will always be a need to establish certain level of reciprocity in order to upheld the legal qualifications of any concrete situation that may give rise to the international obligation.[33]

Finally, the international obligations can be defined by some other international documents adopted within the international organisations or other international bodies. One of the most striking examples is the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations of 24 October 1970.[34] The activities, documents and other undertakings by international organisations are usually demonstrative of the generally accepted practice of States and, as such, they are constitutive of the customary law.[35] They are either proving the existence of a custom or establishing usage that may eventually result in generating the legal view of its obligatory effect.[36]

4. CLARIFYING GROUNDS FOR BINDING EFFECT OF THE INTERNATIONAL RULES

After briefly analysing the sources that create international legal obligations, we would briefly expose two major teachings on the binding character of the international rules – the natural law concept and positivist concept or consent theory. When the concept of natural law is considered, one has in mind the fundamental rights of the States, as the subjects of the international community, whilst the positivist concept follows the main principle according to which the States consented, expressly or implicitly, to international rules, thus undertaking international obligations.[37] In addition to the theories that affirm the binding nature of international law, there are also some teachings that question their binding character. Regardless of such writings and the arguments that they raise with a view of undermining the binding features of international rules, the practice of the States,

are not states, but individuals, peoples or other entities. The norms related to human rights or the right of peoples to self-determination are striking examples." Sicilianos, L-A. (2002). "The Classification of Obligations and the Multilateral Dimension of the Relations of International Responsibility," *European Journal of International Law*, Vol. 13/5, 1132.

31 Kelzen, H., (2010), 293.

32 *Ibid.*, 436.

33 Sicilianos, L-A. (2002). "The Classification of Obligations and the Multilateral Dimension of the Relations of International Responsibility," *European Journal of International Law*, Vol. 13/5, 1133.

34 Resolutions adopted by the General Assembly during its 25th session, 15 September-17 December 1970. - A/8028. – 1971, 121-124.

35 Jennings, R., Watts, A. (1992), 30-31.

36 Shaw, M. (2003), 110.

37 For more details see: Teson, F.R. (1990), 86-100.

international organisations and international tribunals and other institutions, demonstrates that the States and international bodies consider international law as a binding system of rules to which they and their organs are subject.[38]

Without regard to the particularities of different teachings that try to define the basis for the authority of international law, the necessity for the functioning of the international society, demands the authoritative and binding set of rules which determine what is considered as the right conduct of the international relations actors. This practical necessity is the best explained by Oppenheim when he asserts that:

> "*The common consent that is meant is not consent to particular rules but to the express or tacit consent of states to the body of rules comprising international law as a whole at any particular time. Membership of the international community carries with the duty to submit to the existing body of such rules, and the right to contribute to their modification or development in accordance with the prevailing rules for such processes. Thus new states which come into existence and are admitted into the international community thereupon become subject to the body of rules for international conduct in force at the time of their admittance. No single state can say on its admittance into the community of nations that it desires to be subjected to such and such rules of international law, and not to others. The admittance includes the duty to submit to all the rules in force, with the sole exception of those which are binding upon such states only as are parties to a treaty creating the rules concerned.*"[39]

In a similar manner, Fitzmaurice underlines that "*The real foundation of the authority of international law resides similarly in the fact that the state making up the international society recognise it as binding upon them, and, moreover, as a system ipso facto binds them as members of that society, irrespective of their individual wills.*"[40] Therefore, there does not seem to be room for discussing if international law is binding or not. The true conundrum is actually the question of ensuring its effective implementation which will be addressed below.

Another important topic is an attempt for classifying international obligations, and some authors propose establishing a few categories: ordinary obligations, obligations *erga omnes partes*, obligations resulting from peremptory norms, *i.e. ius cogens*, and obligations *erga omnes*.[41] For the sake of terminological clearing, one should be aware of the distinction between the obligations *erga omnes partes*, on the one hand, and the obligations *erga omnes*, on the other hand. The first set of obligations includes those that stem from a multilateral treaty establishing a certain legal regime applicable to the defined number of the contracting parties. The most notable examples of such regimes are different regional conventions concluded among a limited number of State parties. The other group of obligations stem from the duties towards the international community as a whole. In other words, it is an obligation to all the States that may be concerned by a concrete behaviour at the international plane.[42] In addition to the purely juridical arguments that may be drawn

---

[38] See: Jennings, R., Watts, A. (1992), 11-13.

[39] Jennings, R., Watts, A. (1992), 14-15.

[40] Fitzmaurice, G. (1956), 8.

[41] Sicilianos, L-A. (2002), 1137; Dailler, P., Forteau, M., Pellet, A. (2009). *Droit international public*, Paris: LGDJ, 271-272.

[42] Sicilianos, L-A. (2002), 1136. Sicilianos, none the less, provides further explanations to the possible overlap between these two categories: "*It may, however, be that there is an overlap between*

in favour of this type of obligations, a more realistic reading should be also considered. Namely, it seems that the respect of such obligations by the States, which are not parties to the treaties and sources of *erga omnes* obligations, depends to the high extent on capacity and readiness of the States that formed and established these obligations to ensure their application.[43]

A specific category of obligations are the category of peremptory rules existing within *ius cogens*.[44] Such rules cannot be derogated or disregarded by the States. They have an overarching compelling effect and override all other commitments, both legal and political. Practical effects of this category of rules are contained in the law of treaties' rule envisaging that any treaty conflicting with the rule contained within *ius cogens* shall be considered as void.[45] These peremptory rules are considered as accepted and recognised by the entire international community and whose derogation is only permitted by a new rule of international law possessing the same effect.[46] Now, when the law of treaties defines the effects and position of this category of rules, it remains unresolved as to what would be their effect upon the relations that are not subject to any international treaty. It is, however, assumed that it would not be possible to derogate a peremptory rule by acquiescence or consent that would create a contrary norm.[47]

---

these two categories of obligations to the extent that the regional instrument takes up an obligation under general international law owed to the international community as a whole. In such an eventuality – frequent particularly in the area of human rights – the states parties to the regional instrument can assert the legal consequences that result from it, as well as (where appropriate) the consequences in general international law. The other states in the international community for their part will invole the responsibility of the defaulting state and the consequences provided by general international law." Ibid., 1136. See also: Shaw, M. (2003), 116.

43 Dailler, P., Forteau, M., Pellet, A. (2009), 273.

44 The International Law Commission explains the meaning of *ius cogens* in the following terms: "*The Commission pointed out that the law of the Charter concerning the prohibition of the use of force in itself constitutes a conspicuous example of a rule in international law having the character of jus cogens. Moreover, if some Governments in their comments have expressed doubts as to the advisability of this article unless it is accompanied by provision for independent adjudication, only one questioned the existence of rules of jus cogens in the international law of to-day. Accordingly, the Commission concluded that in codifying the law of treaties it must start from the basis that to-day there are certain rules from which States are not competent to derogate at all by a treaty arrangement, and which may be changed only by another rule of the same character. … Moreover, the majority of the general rules of international law do not have that character, and States may contract out of them by treaty. It would therefore be going much too far to state that a treaty is void if its provisions conflict with a rule of general international law. Nor would it be correct to say that a provision in a treaty possesses the character of jus cogens merely because the parties have stipulated that no derogation from that provision is to be permitted, so that another treaty which conflicted with that provision would be void. Such a stipulation may be inserted in any treaty with respect to any subject-matter for any reasons which may seem good to the parties.*" Report of the Commission to the General Assembly, Doc. A/6309/Rev.1, Part II – Report of the ILC on the work of its 18th session, Yearbook of the International Law Commission, 1966, Vol. II, 247-248.

45 Rosenne, S. (2004), 359; Dajović, G. (2021), 515-516.

46 Jennings, R., Watts, A. (1992), 7. Article 53 of the Vienna Convention on the Law of Treaties, *United Nations Treaties Series*, Vol. 1155, I-18232;

47 Jennings, R., Watts, A. (1992), 8.

Furthermore and given the importance of this category of obligations, some authors see their emergence as the process of constitutionalising international law in a way that the States are not anymore omnipotent and sole authority when it comes to creating the international rules and defining international obligations. Certain powers are also vested in the international organisations.[48] However, despite their importance, there is no a wide agreement on the potential catalogue of rules falling within the category of *ius cogens* norms. Some authors try, albeit not definitely, to draw a list of the possible issues that are regulated by the peremptory norms by relying on the work of the International Law Commission:

> "*Although the Commission refrained from giving in its draft Articles on the Law of Treaties any examples of rule of ius cognes, it did record that in this context mention had additionally been made of the prohibition of criminal acts under international law, and of acts such as trade in slaves, piracy or genocide, in the suppression of which every State is called upon to cooperate: the observance of human rights, the equality of States and the principle of self-determination.*"[49]

While classifying the international obligations, some authors also distinguish them as per the scope of their addressees, thus identifying universal international law, which is applicable and binding on all the subjects of international law, general international law obligating significant number of the States, and particular international law with a rather limited number of States upon which it is mandatory.[50] In the fact, the scope of application of an international obligation would be determined by the source establishing such an obligation.

5. INTERNATIONAL OBLIGATIONS AND *PROBLÉMATIQUE* OF THEIR IMPLEMENTATION – PROCESSES AND INSTITUTIONS

The effective execution of international obligations is related to effectiveness of the international legal order. One of the primary concerns of international law is ensuring the effective and efficient application of its rules.[51] Although the international practice widely accepts the idea that international law is a binding set of rules and that international legal obligations have to be honoured by their addressees, the dynamics of international life require certainty in terms of respecting the international rules by the States. Currently, the necessity for doing so is also underlined by the process of globalisation which has widely influenced the perception of importance of respecting and abiding by the international obligations.[52] This is particularly true for the States that must not act in contravention of their undertaken obligations and these obligations should not be undermined by the domestic laws.[53] In this respect, national legislative freedom of the State is restricted in the light of applicable international obligations.

In the practice, the international obligations are most often observed by the States. However, in case of a government breaching some of its international obligations, that government would not usually explain such a violation of international law by its '*national*

[48] Klabbers, J. (2020), 271.
[49] Jennings, R., Watts, A. (1992), 8.
[50] *Ibid.*, 4.
[51] Kelzen, H., (2010), 207-208.
[52] Hathaway, O.A. (2005), 476.
[53] Jennings, R., Watts, A. (1992), 94.

interests', but it would rather argue that its behaviour, position or attitude was aligned with the international obligation or rule in question, or at least they will provide an interpretation of rules favouring their positions.[54] Thus, national representatives, while trying to defend the behaviour of their government, which may be contrary to the applicable international obligations, will usually provide the interpretation which goes in their favour before the relevant political, diplomatic and judicial fora. In this vein, the governments would make efforts not to ostensibly manifest their determination to violate the international legal obligations, but would rather offer an interpretation of their attitude, which may not be upheld by the relevant fora, that is meant to exonerate their acts committed in violation of their obligations under international law.

In the context of an ever-growing scope of international law[55], the effects of legal system are highly determined by the processes related to its creation, law making procedures and available enforcement remedies. Assessing these aspects requires "*taking into account the whole social reality*".[56] This reality, if considered at the international plane, includes all varieties of international actors, international institutions and relevant international tribunals. Effective implementation of international law is particularly challenging as the international legal order, unlike domestic legal systems, lacks a centralised legislating power, generally and abstractly recognised mandatory jurisdiction of international courts, as well as established compulsory enforcement mechanisms.[57] Institutionalising legal systems through defining the bodies responsible for ensuring compliance with the norms of that legal system are essential for enabling its effects.[58] However, except for a limited number of specific instances, a single, direct and always mandatory adjudicatory venue does not exist in international law. Instead, a plethora of different actors, however, can be accorded some competences for ensuring the compliance with some international rules.

The international institutions, as they are usually involved in creation, interpretation and application of international rules, sometimes provide for a specific form for assessing the validity and interpreting international norms and eventually enforcing their implementation. Interpretation of international legal rules is considered as an essential element in precisely determining their binding effect because the rules can be so formulated as to leave room for loose interpretation which may result in uncertain outcome as applying the concrete rules is concerned.[59] In reality, the States are interested to extract some benefits

---

54 Teson, F.R. (1990), 86; Pellet, A. (1992), 31.

55 See: Shaw, M. (2003), 43-45.

56 Pellet, A. (1992), 25.

57 Shaw, M. (2003), 50. Although this comparison between international and domestic law happens often, as the jurists tend to assess the legal matters through the prism of municipal legal orders, some authors, however, express different views which depart from this domestic-law-comparison approach. In this vein, Hathaway underlines that "*International law is neither just like domestic law, nor is it inconsequential. Instead, it differs from domestic law in ways that affect – but do not eliminate – its ability to influence state behavior. Two central differences stand out: First, international treaty law is voluntary – states are not bound by it unless they accede to it. Second, international law lacks a single sovereign with the power to enforce the law*." Hathaway, O.A. (2005), 487.

58 Dajović, G. (2021), 490.

59 This is particularly explained by Pellet who underlines that: "*Any rule is soft in some respect since 'All rules of international law are open to interpretation.' The question is: to what extent is a rule open to interpretation? A lot of treaties – and, formally, treaties are hard law par excel-*

from the international transactions, but are also warried of preserving their reputation at the international plane. When acting at the international plane, there is serious concern by the relevant State apparatus to avoid any potential retaliation by other actors within the international community.[60] Fear from the potential retaliation by other is consequently one of the major tools ensuring execution of the international obligations.

With the exception of a limited number of specialised tribunals that can directly and without special agreement adjudicated in disputes between a given circle of States, the International Court of Justice and other international tribunals are allowed to settle disputes and decide on merits of any case related to the potential breach of the international obligations, only if there is the consent of the parties to the dispute in question. Yet, there can be also a question on how to ensure that the final decisions of the international courts be honoured by the parties concerned and if there would be willingness within the international community to use other means to enforce these decisions with a view of rendering the international obligations effective.[61] Apparently, some procedural tools and enforcement mechanisms which are taken for granted in the sphere of national law, are less evident when it comes to ensuring the respect for the international obligations.

Besides the international adjudication as a possible tool for ensuring the respect of international obligations, there are also some political bodies that have been created by the States. At the apex of international institutions, one may find the Security Council of the United Nations. Although there are serious critics to its efficiency and effective reaction for ensuring the compliance with the international obligations, this institution has formally significant powers the use of which still depend on the concrete political circumstances.[62] The most direct way of enforcing international law through the means of the Security Council is the imposition of sanctions or undertaking collective measures to ensure and restore peace, when it is notably acting under Chapter VII of the UN Charter.[63] Eventual inability of the Security Council to agree and act conclusively in some concrete situations that arouse at the international plane, provoked the reinforcement of regional organisations and structures, on the one hand, and to strengthening the mandate of the United Nations General Assembly through the adoption of 1950 Resolution 'Uniting for Peace' and inauguration of emergency sessions.[64] In the absence of a structured institutional and centralised system for enforcing the international obligations, the international community's components, as it is considered by some authors, may also try to use the self-help. This tool is based on the possibility left to the damaged party to revendicate and

lence – are substantially soft in that not only are they open to interpretation, but they are also drafted in order not to impose strict obligations on the parties. States 'bind' themselves to 'make all possible efforts,' 'to act in a certain manner', 'to examine with sympathy.'" Pellet, A. (1992), 27-28.

60 See: Hathaway, O.A. (2005), 494-502.

61 Fitzmaurice, G. (1956), 6-7. Article 94.2. of the UN Charter reads: "*If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.*"

62 Stein, E. (1987), 57-58.

63 Fitzmaurice, G. (1956), 5.

64 Stein, E. (1987), 59-61.

effectively protect its lawful interests.[65]

Regardless of the above-mentioned characteristics of the international institutional set up for enforcing the international obligations, this is not undermining the prevailing reliance on international law as an accepted and, largely obeyed, system of binding rules. Namely, whenever the States make efforts to provide acceptable grounds for disobeying an international obligation, *i.e.* setting aside their duty stemming from an international rule, they will not argue that international law is without biding effect. In such circumstances, the States and other international law subjects, would usually challenge the interpretation of the rule in question according to which they should be obliged to certain behaviour or position. In other words "*there is no real dispute about the proposition that nations must honour international law; rather, disputes are about what international law requires*."[66] Thus, the parties to the disputes may be seen as challenging the meaning of the international rule by arguing in favour of different interpretations of the same text.

The national governments seem to be aware of the features of international law when it comes to enforcing the international obligations, but this does not undermine the role that international law plays at the international plane. Yet, there is no a more perfect and elaborate mechanism for regulating international relations than by the tools of international law, conclusion of the treaties, establishment of international organisations and development of accepted practices in the form of customary rules. Although suffering from some intrinsic flaws, the international law procedures are still perceived as the most reliable set of rules for ensuring certain stability in international transactions and interactions among the States and other international actors.

6. CONCLUDING REMARKS

This article discussed the issue of international legal obligations of the States and the grounds of their biding nature, as well as the problem of their implementation in the international legal order. It is found that, although the theoretical approaches to identifying the grounds for the binding effect of the international obligations vary, the practical side of the international life, follows the principles that the States are bound by the treaties to which they consented and their acquiescence to the established international practices in the form of customs is assumed. Thus, from the practical aspect of international relations, international law is a set of binding rules and norms and the national governments, international organisations and other relevant actors normally do not challenge the binging character of international rules as such.

In the context of a decentralised international community and despite an ever-increasing number of international instances, the international institutions – both political and judicial – are not always the most suitable venues for ensuring full adherence and respect to all the international obligations. Namely, the lack of a mandatory and centralised adjudicatory system does not provide for undisputable legal mechanisms for resolving any failure to implement international legal rules. Thus, a lot remains at the disposal of national governments and some political international bodies, such as the UN Security Council, to ensure that international law be accorded the intended effect and the obligations stemming therefrom be honoured.

---

[65] Fitzmaurice, G. (1956), 3.

[66] Teson, F.R. (1990), 87.

The rudimentary nature of international legal system, particularly in terms of enforcing the international obligations, does not deprives it of its primary function – regulating inter-State relations and international relations in general, as well as behaviours of international actors within the international community. There is consciousness of the States that the international obligations are legally binding upon them and that the stability of international system requires adherence to these obligations. The States keep entering into international legal commitments and abide to the international customs, on the one hand, and they also legitimately expect that these will be honoured by the other parties, on the other hand. Therefore, international law, as a set of sources for international legal obligations, remains a desirable and viable tool for setting international relations and any inter-State transactions.

REFERENCE

Dailler, P., Forteau, M., Pellet, A. (2009). *Droit international public*, Paris: LGDJ;

Dajović, G. (2021). „Normativnost međunarodnog prava," *Pravni zapisi*, Vol. XII/2, 488-522;

Fitzmaurice, G. (1956). "The Foundations of the Authority of International Law and the Problem of Enforcement," *Modern Law Review*, Vol. 19/1, 1-18.

Glodić, D. (2021). „Use of Legally Non-Binding Instruments in Contemporary Practice of International Relations," *Godišnjak Fakulteta pravnih nauka*, Vol. 11, 91-104;

Hathaway, O.A. (2005). "Between Power and Principle: An Integrated Theory of International Law," *University of Chicago Law Review*, Vol. 72, 469-536;

Jennings, R., Watts, A. (1992). *Oppenheim's International Law*, Volume I, Harlow: Longman;

Kelzen, H., (2010). Opšta teorija prava i države, Beograd: Pravni fakultet Univerziteta u Beogradu;

Klabbers, J. (2020). "The Cheshire Cat That Is International Law," *European Journal of International Law*, Vol. 31/1, 269-283;

Krešić, M. (2014). „Kelsenovi, Lauterpachtovi i Rossovi teorijskopravni modeli međunarodnog prava," *Zbornik PFZ,* Vol. 64/1, 133-158;

Pellet, A. (1992). "The Normative Dilemma: Will and Consent in International Law-Making," *Australian Yearbook of International Law*, Vol. 12/1, 22-53.

Rosenne, S. (2004). *The Perplexities of Modern International Law*, Leiden/Boston: Martinus Nijhoff Publishers;

Shaw, M. (2003). *International Law*, Cambridge: Cambridge University Press;

Sicilianos, L-A. (2002). "The Classification of Obligations and the Multilateral Dimension of the Relations of International Responsibility," *European Journal of International Law*, Vol. 13/5, 1127-1145.

Stein, E. (1987). "Collective Enforcement of International Obligations," *Heidelberg Journal of International Law*, Vol. 47, 56-66.

Teson, F.R. (1990). "International Obligation and the Theory of Hypothetical Consent," *Yale Journal of International Law*, Vol. 15, 84-120.

Wyler, E. (2019). «Quelques réflexions sur la typologie des obligations en droit international, avec référence particulière au droit des traités et au droit de la responsabilité», *Annuaire français de droit international*, Vol. 65/2019, 25-49;

United Nations Charter, available at: https://www.un.org/en/about-us/un-charter/full-text , accessed on 03/03/2023.

Resolutions adopted by the General Assembly during its 25th session, 15 September-17 December 1970. - A/8028. – 1971, 121-124;

Report of the Commission to the General Assembly, Doc. A/6309/Rev.1, Part II – Report of the ILC on the work of its 18th session, Yearbook of the International Law Commission, 1966, Vol. II;

Vienna Convention of the Law of Treaties of 23 May 1969, *United Nations Treaties Series*, Vol. 1155, I-18232;

Gabčikovo-Nagymaros Project (Hungary vs. Slovakia), Judgment, ICJ Reports 1997.

Međunarodnopravne obaveze država i problem njihovog provodjenja

Glodić, dr Duško

Rezime: Članak istražuje izvore međunarodnih obaveza država i osnove za obavezujuće dejstvo međunarodnih pravila na države. Pokazalo se da države, iako su suvereni akteri na međunarodnom planu, ne samo da postaju podložne međunarodnim pravilima kada izraze svoj pristanak, već su i obavezane pravilima na koja se pretpostavlja njihova saglasnost. Potonja vrsta pravila se uglavnom razvija u okviru međunarodnog običajnog prava. Međunarodne pravne obaveze mogu imati različit opseg adresata i neke od njih nadjačavaju bilo koju drugu obavezu, kao što je ius cogens, ili mogu uticati na čitavu međunarodnu zajednicu, kao što su obaveze erga omnes. Praktična relevantnost međunarodnih obaveza za osiguranje funkcionisanja međunarodnog režima može se ocijeniti iz perspektive pridržavanja obaveza država. Podrazumijeva se da međunarodna zajednica nije idealno mjesto kada je u pitanju poštovanje pravila, ali se države obično pridržavaju većine svojih obaveza. Za razliku od ograničenog broja posebnih slučajeva, međunarodne institucije, kako sudske tako i političke, ne nude uvijek direktna sredstva za izvršenje i osiguranje punog poštovanja međunarodnih obaveza i sprečavanje protivpravnog ponašanja. Bez obzira na sve, međunarodno pravo se generalno percipira kao valjano sredstvo za regulisanje međunarodnih odnosa i transakcija na međunarodnom planu.

Ključne riječi: međunarodno javno pravo, tumačenje međunarodnog prava, međunarodni ugovori, običajno pravo, međunarodne organizacije.