

CINQUIEME COMMISSION
Les obligations et les droits *erga omnes* en droit international

FIFTH COMMISSION
Obligations and rights erga omnes in international law

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RESOLUTION

OBLIGATIONS *ERGA OMNES* IN INTERNATIONAL LAW

The *Institute of International Law*,

Considering that under international law, certain obligations bind all subjects of international law for the purposes of maintaining the fundamental values of the international community;

Considering that a wide consensus exists to the effect that the prohibition of acts of aggression, the prohibition of genocide, obligations concerning the protection of basic human rights, obligations relating to self-determination and obligations relating to the environment of common spaces are examples of obligations reflecting those fundamental values;

Desiring to take a first step in clarifying certain aspects of inter-State relations created by these obligations, especially the consequences of their breach and the related remedies, while acknowledging that some of these obligations also exist towards subjects of international law other than States;

Adopts the following Resolution:

Article 1

For the purposes of the present articles, an obligation *erga omnes* is:

- (a) an obligation under general international law that a State owes in any given case to the international community, in view of its common values and its concern for compliance, so that a breach of that obligation enables all States to take action; or
- (b) an obligation under a multilateral treaty that a State party to the treaty owes in any given case to all the other States parties to the same treaty, in view of their common values and concern for compliance, so that a breach of that obligation enables all these States to take action.

Article 2

When a State commits a breach of an obligation *erga omnes*, all the States to which the obligation is owed are entitled, even if they are not specially affected by the breach, to claim from the responsible State in particular:

- (a) cessation of the internationally wrongful act ;
- (b) performance of the obligation of reparation in the interest of the State, entity or individual which is specially affected by the breach. Restitution should be effected unless materially impossible.

Article 3

In the event of there being a jurisdictional link between a State alleged to have committed a breach of an obligation *erga omnes* and a State to which the obligation is owed, the latter State has standing to bring a claim to the International Court of Justice or other international judicial institution in relation to a dispute concerning compliance with that obligation.

Article 4

The International Court of Justice or other international judicial institution should give a State to which an obligation *erga omnes* is owed the possibility to participate in proceedings pending before the Court or that institution and relating to that obligation. Specific rules should govern this participation.

Article 5

Should a widely acknowledged grave breach of an *erga omnes* obligation occur, all the States to which the obligation is owed:

- (a) shall endeavour to bring the breach to an end through lawful means in accordance with the Charter of the United Nations;
- (b) shall not recognize as lawful a situation created by the breach;
- (c) are entitled to take non-forcible counter-measures under conditions analogous to those applying to a State specially affected by the breach.

Article 6

The preceding articles are without prejudice:

- (a) to the rights and remedies pertaining to a State which is specially affected by the breach of an obligation *erga omnes*;
- (b) to the application of special rules to the breach of certain obligations *erga omnes*;
- (c) to the rights that a State party to a multilateral treaty has, under the law of treaties, as a consequence of a breach concerning the same treaty.

Adopted on August 27, 2005.