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Shared obligations in international law

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CONCLUSIONS TO PART I

The first part of this study has focused on the conceptualization of shared obligations in international law. It has developed a concept of shared obligations as an analytical tool through which to assess international obligations binding upon multiple states and/or IOs in the context of cooperative action and the pursuance of common goals. The findings of Part I can be briefly summarized as follows.

Chapter 2 has examined the move beyond a bilateral view of legal relations in the international law of obligations. It has found that the international law of obligations recognizes that certain types of international obligations are owed *to* multiple states and/or IOs simultaneously, but it has not addressed the possibility and potential consequences of international obligations that are owed *by* multiple states and/or IOs. Concepts such as integral obligations, interdependent obligations, multilateral obligations and *erga omnes (partes)* obligations indicate that the international law of obligations has approached the move beyond a bilateral view of legal relations solely from the perspective of the right-holders in legal relations. The concept of shared obligations approaches legal relations from the perspective of the duty-bearers.

Chapter 3 has conceptualized shared obligations in international law, which is an overarching concept that covers two types of shared obligations. On the basis of this chapter it is possible to categorize an international obligation in a particular situation as either shared or not shared. The main characteristic that distinguishes obligations that are shared from obligations that are not shared is the existence of a relationship between the bearers of shared obligations that consists of more than just the fact that they are all parties to the same multilateral treaty or bound by the same rule of customary international law. It is this relationship that gives rise to questions of (non-)performance: when is a shared obligation fulfilled or breached by which duty-bearer?

The chapter has elaborated on this relationship between the bearers of a shared obligation by discussing the three elements that are present whenever the present study speaks of a shared obligation. First, a shared obligation has two or more duty-bearers since a state or IO cannot share an international obligation on its own. Second, the duty-bearers in question are bound to a similar international obligation

or, in other words, an obligation with similar normative content. Third, the similar international obligations of multiple states and/or IOs pertain to the same concrete case or, in other words, the same constellation of facts. This is the case when multiple states and/or IOs agree to an obligation to work towards or achieve a common goal or when multiple states and/or IOs are factually linked to a common situation, which includes situations in which multiple states exercise some form of authority or control over the same territory and/or individual(s) which results in all of them being bound to a similar international obligation with regard to that territory and/or individual(s).

Chapter 4 has introduced and examined two types of shared obligations: divisible and indivisible shared obligations, and in doing so has drawn from the categories of multilateral and *erga omnes (partes)* obligations discussed in chapter 2. On the basis of chapter 4, a shared obligation can be categorized as either divisible or indivisible. The distinction between these two types of shared obligations is the key to a better understanding of the (non-)performance of shared obligations.

An indivisible shared obligation binds multiple states and/or IOs to achieve a common result. Its structure of performance is indivisible, which means that it can only be fulfilled or breached by all duty-bearers simultaneously when that common performance has (or has not) been achieved. Only shared obligations that are indivisible give rise to a multilateral legal relation where the obligation is held by multiple duty-bearers. Hence, indivisible shared obligations are the mirror image of the concepts of multilateral and *erga omnes (partes)* obligations.

A divisible shared obligation binds each duty-bearer to its own share only. Its structure of performance is divisible, which denotes that it is possible for one duty-bearer to be released from the obligation by doing its share while another duty-bearer at the same time breaches the obligation by failing to do its share. A divisible shared obligation gives rise to multiple bilateral legal relations, and in each of these legal relations the obligation is held by one duty-bearer.

Moreover, chapter 4 has shown that qualifying a shared obligation as either divisible or indivisible can be facilitated by several categorizations of obligations that are commonly employed in international law. An indivisible shared obligation always constitutes a positive obligation of result, whereas a divisible shared obligation can consist of an obligation of conduct, a negative obligation of result or a positive obligation of result.

The present study's conceptualization of shared obligations, and the distinction between divisible and indivisible shared obligations in particular, contributes to a

better understanding of the (non-)performance of international obligations, since it helps to clarify when a shared obligation is fulfilled or breached by which duty-bearer(s). At this point it should be emphasized that while the topic of (non-)performance of shared obligations is relevant separate from the topic of international responsibility (since it encompasses the *fulfillment* of international obligations), it is at the same time inherently linked to international responsibility (since it also encompasses the *breach* of international obligations).

The second part of this study focuses on the implications of breaches of shared obligations for the international responsibility of states and international organizations, hereby relying on the conceptualization of shared obligations set out in Part I. Chapter 5 addresses the implications of breaches of shared obligations for the determination of shared responsibility, whereas chapter 6 explores the implications of breaches of shared obligations for the content of shared responsibility. The distinction between divisible and indivisible shared obligations is one of the common threads running through these two chapters, since the application of the principles enshrined in the ILC's articles to breaches of shared obligations results in a different outcome depending on whether the shared obligation breached is divisible or indivisible.