LEGAL STUDY ON *JUS COGENS* NORMS

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Abstract

Jus Cogens means the compelling law and as such, a *jus cogens* holds the highest hierarchical position among all other norms and principles. As a consequence of that standing, *jus cogens* could be a exceptionally capable and contested concept in international law. According to the Vienna Convention on the law of Treaties, a peremptory norm of general international law is a norm accepted and recognized by the whole international community of states. It also reflects the constitutional norms of the international community as a whole. These norms can be found in the Charter of the United Nations and also many multilateral treaties, especially those concerned with human rights, contain peremptory norm and which are non-derogable. State Practice and decisions of International Court of Justice confirmed the prohibition of genocide, slavery, torture, racial discrimination and the right to life as having the character of *jus cogens*. From the identification of *jus cogens* norms, there may be an impact of peremptory norms on state and official immunities and the immunity of international organizations.

Keywords*: jus cogens*, peremptory norm, compelling law, non-derogable, *erga omnes*

Introduction

Jus Cogens means 'compelling law'. The norms of *jus cogens* are universal and obligatory. They do not depend on the consent of States. *Jus Cogens* are found in the Vienna Convention on the Law of Treaties (VCLT), 1969. The concept of *jus cogens* appeared at the end of the 19th century when a few international law writers claimed the conceivable invalidity of international agreement opposite to certain basic standards of international law in spite of the fact that it was not possible to identify those norms. *Jus Cogens* or peremptory norms are defined as rules from which no derogation is permitted and which can be amended only by a new general norm of international law of the same value.

Furthermore, the authoritative character of numerous broadly acknowledged accepted *jus cogens* rules is clearly within the interests of most, in the event that not all, States, as those States see and show those interests to be. Most States consider rules just like the prohibitions on aggression and genocide, which ensure the establishment of the advanced nation-State. These prohibitions are very important as to allow of no exceptions. *Jus Cogens* is considered that the standards secure the basic values of the universal community.

Aims and Objectives

The purpose of this paper is to outline the emergence of *jus cogens* in the Vienna Convention on the Law of Treaties. For the purpose of this paper, *just cogens* is relevant to both treaty law and customary international law, which is the most significant aspect of this conceptual development. It is to understand the significance of obligations *erga omnes* in order to safeguard the interests of the whole community, and then to observe the relationship between *jus cogens* and *erga omnes.* It aims to examine the extent of the concept of *jus cogens* in an effort to identify its defining criteria.

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Methodology

This study will conduct as a qualitative research by reviewing, examining and collecting relevant information and literatures relating to *jus cogens*. The relevant international instruments will also be reviewed, including the Vienna Convention on the Law of Treaties, draft article, and reports of the International Law Commission.

Findings

Jus cogens restrict unilateral acts like treaties due to the recognition of the importance and necessity of the concept of *jus cogens* in protecting the fundamental interests of the international community. The VCLT does not provide a list of *jus cogens* norms. The International Law Commission gave examples of listing and made references to the norms in commentaries and discussions. Therefore, there is confusion about the sources, the content, and the scope of the application of *jus cogens*. The violation of *jus cogens* norm may result in the responsibility of a state for an internationally wrongful act; however, there have been no efforts by the international community to reserve the effects of alleged violations of *jus cogens* or to ensure that offending states compensated their victims.

Concept of *Jus Cogens*

Jus cogens, or peremptory norms of international law, are an extraordinary kind of international law in that they are generally pertinent standards that take priority over all other sources of international law, such as treaties or custom, in any case of state consent. Early seventeenth to nineteenth century international law writers argued that there are certain essential principles of international law (*jus scriptum*) that bind all states, regardless of consent, *jus scriptum*. These rules did not permit any exceptions as they derived from a higher law, natural law. Any treaties and customs that violated this law were prohibited. The concept of a limitation on State Sovereignty and certain non-derogable obligations continued after the First World War. The principle of non-derogable rights in the context of law of treaties was mentioned in the League of Nations Covenant of 1919.[1]

The concept of *jus cogens* is formally entered into international law in Articles 53 and 64 of the Vienna Convention on the Law of Treaties (1969), which establish the illegality of treaties conflicting with a peremptory norm of general international law. Article 53 of the 1969 Vienna Convention on the Law of Treaties provides that a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purpose of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.[2]

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[1] Aniel Cardo de Beer, Peremptory Norms of General International Law (*Jus Cogens*) and the Prohibition of Terrorism, Leiden; Boston, 2019, p.62.

[2] Article 53 of the Vienna Convention on the Law of Treaties, 1969.

As to the provisions of Article 64 of the VCLT, any treaty that is in conflict with a newly established peremptory rule of general international law will be nullified and void.[1]

An existing treaty which is inconsistent with an emergent *jus cogens* rule shall terminate on the date on which the rule arises. Article 53 and Article 64 aim to prevent this outcome by declaring that a treaty which is incompatible with a rule of *jus cogen*s shall terminate or become void.

Where a treaty is void under Article 53, Article 71 provides that the parties are to eliminate as far as possible the consequences of any act performed in reliance on any provision which conflicts with *jus cogens* and bring their mutual relations into conformity with the peremptory norm. Where a treaty terminates under Article 64, the parties are released from any obligation further to perform the treaty, but this does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination, provided that the rights, obligations or situations may be maintained thereafter in conformity with the new peremptory norm.[2]

Draft Article 26 of the Articles on State Responsibility for Internationally Wrongful Acts provides that nothing in this chapter precludes the wrongfulness of any act of a State which is not in conformity with an obligation arising under a peremptory norm of general international law.[3] According to this article, in the case of a conflict between fundamental obligations, one of which concerns a peremptory norm, the obligation of the peremptory norm has priority.

The subject of "peremptory norms of general international law (*jus cogens*)" was initially brought up in the annex 2 to the Commission's report on its sixty-sixth Session, 2014, and was later added to the long-term work programme of work. The Commission decided to include the subject in its work agenda at its 67th session in 2015, and Mr. Dire Tladi was chosen to serve as the subject's Special Rapporteur.

The concept of *jus cogens* is again set forth in the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986. Although *Jus cogens* fundamentally lacks a substantive definition, it imposes the restrictions on the ability of States to enter into treaties. By definition, all States are a part of the international community as a whole, and the obligations at issue are collective commitments that safeguard the interests of the international community as a whole.

Jus Cogens and Positive Sources of International Law

Custom and treaties were the foremost cited sources of *jus cogens* norms aimed the Vienna Conference. General principles of law, whereas not unequivocally specified were similarly not invalidated as a source of jus cogens norms, but by Trinidad and Tobago.[4] There's, in any case, a few vulnerability as to the source of *jus cogens* rules. There are genuine issues related with statements that *jus cogens* rules can be the result of one or any of the by and large acknowledged essential sources of international law (treaties, customary international law, general principles of law), or may be natural law.[5]

[1] Article 64 of the Vienna Convention on the Law of Treaties, 1969.
[2] Article 71 of the Vienna Convention on the Law of Treaties, 1969.
[3] Article 26 of the Draft articles on Responsibility of States for Internationally Wrongful Acts, 2001.
[4] ILC, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001, p.16.
[5] Micheal Buyer, Custom, Power and the Power of Rules, Cambridge University Press, 2004, p.187.

The foremost self-evident sign of general international law is customary international law. Without a doubt numerous see customary international law as the foremost common premise for the arrangement of *jus cogens* norms. Gérard Cahin, for illustration, observes that customary international law is "an ordinary and common, if not exclusive, implies of formation of *jus cogens* norms." The strong relationship between the rules of customary international law and norms of *jus cogens* is reflected within the articulations by States in the General Assembly over a long time. The idea that norms of *jus cogens* are constituted by rules of customary international law is similarly borne out in case law of both domestic and international courts. *In Questions Relating to the Obligation to Prosecute or Extradite*[1], the International Court of Justice recognized that the torture is prohibited according to the customary international law. Therefore, it has become a peremptory norm (*jus cogens*)."

As for how the idea of *jus cogens* came to be, there are actually two main schools of thought: either it came straight from international law, or it was derived from one of the preexisting sources of international law. Though some contend and concede that *jus cogens* acknowledges a completely new body of law capable of establishing widely applicable regulations.[2]

The VCLT's Article 53 was challenged by several States, but only because it was ambiguous and lacked a separate dispute resolution process. Only France and Turkey were able to consistently refute the existence of jus cogens in the end.[3] There are many who contend that the current sources have been altered to permit majority rulemaking within the framework of higher law. The idea that the concept of *jus cogens* arises as a new source of general international law, however, is not supported by the history of negotiations leading up to the Vienna Convention. Instead, it was evidently common to see *jus cogens* as the result of the sources that were already in existence."[4]

International law sources can serve as the foundation for *Jus Cogens*. Peremptory norms prevent some norms from being derogated from or created by a small group of law-making subjects, therefore, restricting the ability of international subjects, in particular States, to make laws.

Jus Cogens and Customary International Law

Only in the event of a clearly established *opinio juris*—a state's belief that a practice is binding because it sprang from customary rule—are customs binding. Nonetheless, any customary concept that is consistently opposed makes an exception to the rules' binding nature. Other methods exist for superseding customary laws, including the creation of special customary international law norms and the signing of treaties. The *jus cogens* laws, on the other hand, are too basic for states to avoid accountability for, and as such, they are binding regardless of the parties' permission or the state's own particular decision to be bound.[5]

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[1] *Belgium v. Senegal*, Judgment, Report of ICJ, 2012.
[2] Dire Tladi, Special Rapporteur, Second report on *Jus Cogens*, 2017, p.79.
[3] Sten Verhoeven, Norms Of *Jus Cogens* In International Law: A Positivist and Constitutionalist Approach, 2011, p.64.
[4] Kamrul Hossain, the Concept of *Jus Cogens* and the Obligation Under the U.N. Charter, Santa Clara Journal of International Law, Volume 3, 2005, p.79.
[5] Kamrul Hossain, the Concept of *Jus Cogens* and the Obligation Under the U.N. Charter, Santa Clara Journal of International Law, Volume 3, 2005, p.78.

However, Michael Byers prefers to demonstrate that the "process of customary international law," which is a component of the international constitutional order, is where jus cogens rules originate. He contends that the non-detractable nature of *jus cogens* laws can be attributed to *opinio juris*, or anything akin to it, because states do not seem to think that they can consistently object to or contract out of *jus cogens* rules. States cannot imagine an exception to these rules because they are so fundamental to the international society of states and how that society defines itself. However, there is no mention of any aspect of practice in Article 53 of the Vienna Convention. At that point, it was difficult to imagine *jus cogens* as a reinforced kind of custom. David Kennedy referred to the super-customary rule as *jus cogens*.[1]

The preeminent source of *jus cogens* norms can be identified, so justifying the peremptory nature of those rules in a manner that aligns with the traditional bipartite understanding of customary international law. States cannot 'opt out' of the idea of *jus cogens*, just as they cannot 'opt out' of particular *jus cogens standards*. Because customary international law is typically thought to be predicated on State permission, it may therefore appear to be a troublesome source for *jus cogens* rules. Additionally, the establishment of unique customary international law norms and persistent objection are rejected by *jus cogens* standards.

Jus Cogens and Treaties

Multilateral treaties are especially appropriate sources for *jus cogens* because they are often adopted by a wide majority of States and contain special language governing the substantive content of the norm. In determining whether a particular provision in a treaty also reflects a *jus cogens* norm, treaties have historically posed evidentiary difficulties because treaties were regarded “more as contracts of private law than as genuine normative instruments.”[2]

Treaties can, at most, only play a minor role in the creation of *jus cogens* rules, according to Professor Michale Byers of the Duke University Law School, for two reasons. First, a treaty cannot restrict the powers of its parties to amend its provisions or release a party from its responsibilities; this can only happen by a subsequent treaty that all parties have agreed to. Second, none of the treaties that have codified the generally accepted *jus cogens* rules have been unanimously ratified, despite the fact that these principles are globally applicable. A general norm of international law cannot be established by any treaty, not even the UN Charter. Only between the parties to a treaty, obligations can be created.[3]

Treaty law may comprise general international law, according to Grigory Tunkin. Furthermore, it seems that several delegations at the Vienna Conference held the belief that *jus cogens* standards might originate from treaties. Poland's declaration, which said the following, may have been the clearest acknowledging treaty law as a component of general international law:

"The form or source of such rules was not of essential importance in determining their peremptory character." Some were traditional, while some were conventional. Certain aspects

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[1] *Ibid.*.

[2] Fransciso Forrest Martin, Stephen J. Schnably, Richard J. Wilson, Jonathan S. Simon, Mark V, Tushnet, International Human Right & Humanitarian Law, Cambridge University Press, 2016, p.33.

[3] Kamrul Hossain, the Concept of *Jus Cogens* and the Obligation Under the U.N. Charter, Santa Clara Journal of International Law, Volume 3, p.77-78.

originated as customs and then became part of global accords. Conversely, several were only later incorporated into customary law after initially appearing in conventions."[1]

Regarding the function of treaties in the context of *jus cogens*, some have claimed that while they do not create *jus cogens*, they do serve as proof of their existence or a declaration of peremptory rules.[2]

Because multilateral treaties are frequently ratified by a large majority of States and include specific language governing the norm's substantive content, they are particularly suitable sources for *jus cogens*. Particularly, multilateral human rights treaties incorporate non-derogable, peremptory norms.

Jus Cogens and General Principles of Law

When it comes to the modern application of broad principles for jus cogens, the ILC sets the standard. "General principles of law may serve as bases for peremptory norms of general international law (*jus cogens*)," according to Conclusion 5(2). "It is appropriate to refer to the possibility of general principles of law forming the basis of peremptory norms of general international law (*jus cogens*)," the Commentary to Conclusion 5 goes on to clarify. The statement goes on to say that general legal principles are a component of general international law since they apply to all members of the international community equally and broadly."[3]

Furthermore, Verdross referenced "the general principle prohibiting states from concluding treaties *contra bonos mores*" in his discussion of treaties that were against *jus cogens*. Every juridical order that governs the morally and rationally coexisting members of a community has this ban, which is shared by the legal systems of all civilized nations."[4]

Some commentators have persuasively argued that *jus cogens* norms can also arise from general principles of law. This is supported by the language of Article 53 of the Vienna Convention on the Law of Treaties, which refers to peremptory norms of "general international law," a term which, in turn includes general principles of law.[5]

Constitutional recognition of *jus cogens* rules of international law would be a more dependable means of safeguarding them inside the domestic legal system. The 1999 revision of the Swiss Federal Constitution accomplished this. A recent addition makes it clear that a People's Initiative (referendum) seeking a constitutional amendment cannot go against the *jus cogens* standards. The Swiss government is required to nullify any initiative that violates *jus cogens*. Such clear acknowledgment can act as a "emergency break" to ensure that fundamental international responsibilities are always respected.[6]

Domestic laws typically provide that contracts that go against the *ordre public* or public policy are void. Because they contain the ideas that nations deem to be fundamental to the

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[1] Dire Tladi, Special Rapporteur, Second Report on *Jus Cogens*, 2017, p.27.
[2] Sten Verhoeven, Norms Oof *Jus Cogens* in International Law: A Positivist and Constitutionalist Approach, 2011, p.67.
[3] Anthony J. Colangelo, Procedural *Jus Cogens*, Columbia Journal of Transnational Law, 2022, p.412.
[4] *Ibid*, p.413.
[5] Brian D. Lepord, Customary International Law: A New Theory with Practical Applications, Cambridge University Press, 2010, p.243.
[6] Erika de Wet, *Jus Cogens* and Obligations *Erga Omnes*, Oxford Handbook on Human Rights, p.19.

organization of a given legal system, most significant, and hierarchically superior, constitutions are a particularly potent source of *jus cogens*.

Identification of *Jus Cogens*

The requirements outlined in Article 53 for a norm to qualify as a jus cogens standard are widely acknowledged.[1] Article 53, of particular significance, states that the identification of jus cogens principles requires the assent of the international community of States. Nevertheless, this article does not specify which entity has the authority to determine whether a norm of international law is jus cogens, nor does it offer procedures for establishing such consent.[2]

Article 53 does not include a (non-exhaustive) list of *jus cogens* rules because there is no "accepted criterion by which to identify a general rule of international law as having the character of *jus cogens*" and since this word is always changing. In spite of this, some Law of Treaties publications tried to define a *jus cogens* norm. The UN Charter's principles regarding the unlawful use of force, international laws that prohibit international crimes, and international laws that forbid the slave trade, piracy, or genocide are a few specific examples. Regretfully, the authors of Article 53 refrained from enumerating these standards for concern that doing so would restrict the applicability and breadth of the idea of *jus cogens*.[3]

Examples suggested of treaties conflicting with such rules included: (a) a treaty contemplating an unlawful use of force contrary to the principles of the Charter; (b) a treaty contemplating the performance of any other act criminal under international law; and (c) a treaty contemplating or conniving at the commission of acts, such as trade in slaves, piracy or genocide, in the suppression of which every State is called upon to co-operate.[4]

In its Commentary to the Draft Articles on State Responsibility in 2001, the ILC gave as examples of *jus cogens* the prohibition of aggression, slavery and slave trade, genocide, racial discrimination and apartheid, torture, basic rules of international humanitarian law applicable in armed conflict, and the right to self-determination.

The United Nations Charter contains the *Jus Cogens* norms. The foundation of international law is the Charter. The international legal system's guiding ideas have been embraced by the members. All of the rules in Chapter I of the Charter are regarded as related to *jus cogens*. The Charter empowers the Security Council to make a formal determination concerning violations of principles of the Charter.

Since the end of the Second World War, a catalogue of instruments enshrining basic human rights has been codified by States as public international law. Many multilateral treaties, especially those concerned with human rights, contain peremptory norm and which are non-derogable. State practice and decisions of International Court confirmed these rules as having the character of *jus cognes.* They are prohibition of genocide, slavery, torture, racial discrimination and the right to life. Any act or omission which leads to violation of human rights with *jus*

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[1] Aniel Caro de Beer, Peremptory Norms of General International Law (*Jus Cogens*) and the Prohibition of Terrorism, Leiden; Boston, 2019, p.69.

[2] Diana Contreras-Garduno and Ignacio Alvarez-Rio, A Barren Effort? The Jurisprudence of the Inter-American Court of Human Rights on *Jus Cogens*, p.116.

[3] *Ibid*.

[4] Report of the International Law Commission on the work of its Fifteenth Session, 1961, p.199.

cogens status necessarily represents a breach of international obligation and leads to state responsibility.

In the case of *Armed Activities on the Territory of the Congo*,[1] the ICJ described genocide as 'assuredly' being a peremptory norm of general international law, without engaging in any analysis of state practice.

Neither the International Law Commission nor the Vienna Conference on the Law of Treaties developed an accepted list of peremptory norms, although both made reference in commentaries and discussion to the norms against genocide, slave trading, and use of force other than in self-defense.

Functions of *Jus Cogens*

The goal of a general international law peremptory rule is to limit other members of the international community of States' capacity to take bilateral action. If other members of the international community of States as a whole establish a peremptory norm of general international law that limits the freedom of action of members of the international community of States as a whole to act bilaterally, there are two problems with incoherence that result. First, by limiting their own freedom of action, those members of the worldwide community of states are also limiting the freedom of other members of the international community of states in general. Second, this would contradict the notion of sovereign equality because it would suggest that those participants in the international.[2]

The asserted functions of *jus cogens* are particularly important because the very definition of the term is often stated in relation to the primary function it serves, that is, on its being as a norm from which no states can derogate by mutual agreement. A second function is sometimes asserted: that *jus cogens* imposes a duty on all states to respect such norms and as a consequence any unilateral act in violation of a *jus cogens* norm would be null and void. In determining the legitimacy of Security Council resolutions and incompatible domestic laws, as well as the effects of peremptory norms on state and official immunities and the immunity of international organizations, national and international tribunals have started to address some of the potential ramifications arising from the identification of *jus cogens* norms.[3]

Three recognized and sound legal functions have been argued to be primarily displayed by *jus cogens*: (i) a contractual *jus cogens*, which has the effect of nullifying treaties (Article 53 VCLT); (ii) a judicial *jus cogens*, wherein internal or international tribunals use peremptory norms as a standard of control over acts of the Security Council; and (iii) a sanctioning *jus cogens*, which outlines particular consequences of State responsibility.

Exceptions of *Jus Cogens*

One definition of "derogation" is "an exception to or relaxation of a rule of law." It is implied that the verb "to derogate from" means "to detract from" or "deviate from (a set of rules or agreed form of behavior)". "A person or thing that is excluded from a general statement or does not follow a rule" is defined as a "exception." The verb "specify as excluded from a

[1] Democratic Republic of the Congo v. Rwanda, Report of ICJ, 2006.
[2] Jan Anne Vos, The Function of Public International Law, T.M.C, Asser Press, 2013, p.264.
[3] Dinah Shelton, *Jus Cogens*: Quo Vadis? Netherland Yearbook of International Law, Volume 46, Asser Press, 2016, p.34.

category or group" is employed with the preposition "except," which implies "not including; other than." When it takes the form of a conjunction, it is "used before a statement that forms an exception to one just made." Taking into consideration all of these interpretations, it does seem that there is some overlap in the potential meanings of the terms exception and derogation.[1]

Exceptions can be distinguished from derogations by their level of generality," notes Helmersen. The level of generality of an exception is equal to that of the rules it amends. A "derogation" amongst all parties should actually be regarded as an exception, as the application of a derogation will only extend to certain parties who are bound by the relevant rule.[2]

Human rights conventions include fundamental safeguards, such the right to life and the prohibition on torture, arbitrary detention, slavery, and forced labor, that state parties may not, under any circumstances, temporarily, partially, or even in times of public emergency, suspend. There is a prevalent contention that the *jus cogens* character of many human rights commitments in international treaties is intimately linked to their non-derogability. State parties are not permitted to enter into contracts that exclude them from these duties *inter se* if an international legal standard is paramount.[3] These rules are crucial because they forbid exceptions

One specific example of a potential overlap between the concepts of derogation and exception is the absolute ban on the use of force in international relations, which allows for the exception of at least self-defense and possibly others (like humanitarian intervention and the protection of nationals). Self-defense, use of force in accordance with a Security Council authorization, and consent are examples of exceptions that would not count as derogations because they do not include the commission of aggression.

Jus Cogens and Obligations *Erga Omnes*

The concept of obligations *erga omnes* means obligations owed 'towards all' States. Like *jus cogens*, *erga omnes* lays down a procedural consequence flowing from the importance of certain substantive norms to the international public order. If an obligation is *erga omnes*, then it is owed to the whole community of States, such that any state has standing under international law to enforce compliance with it.[4]

The prominence of the values at stake determines both obligatory standards and erga omnes. The protection of significant international values serves as the basis for designating rules as having preemptive status. Similar to this, responsibilities *erga omnes* are determined by the significance of the rights they defend, which is why they provide each and every State a legal interest. Contrary to what some academics have claimed, obligations *erga omnes* are not defined by their non-reciprocal or non-bilateralisable characteristics. If that were the case, all absolute obligations—such as those requiring States to adopt a particular parallel conduct within their

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[1] De Hoogh, André, The Compelling Law of *Jus Cogens* and Exceptions to Peremptory Norms, Oxford University Press,2020, p.130.

[2] *Ibid*, p.130.

[3] Thomas Kleinlein, *Jus Cogens* as the 'Highest Law'? Peremptory Norms and Legal Hierarchies, Netherlands Yearbook of International Law 46 (2015), pp. 173–210.

[4] Gideon Boas, Public International Law: Contemporary Principles and Perspectives, Edward Elgar Publishing, 2012, p.101.

jurisdiction—and all interdependent obligations—that is, obligations that must be fulfilled by all parties in order to achieve the desired outcome—would be considered obligations *erga omnes*.[1]

State responsibility pertains to the idea of *erga omnes* duties. Due to the general rule of State responsibility not finding its way into a codifying convention, responsibilities *erga omnes*, aside from *jus cogens*, are not established in international treaty law. Finding widely accepted standards to identify *erga omnes* norms is challenging. Typically, state practices are examined in relation to situations when states that were not directly impacted by an international wrong adopted corrective action without being held accountable for their own wrongdoing.[2] The two specific obligations resulting from a serious breach of *jus cogens* norms are outlined in Articles 41 (1) and (2) of the Draft Articles on State Responsibility for Internationally Wrongful Acts. The positive obligation is to cooperate in order to bring an end to the situation, and the negative obligation is to neither recognize nor assist in maintaining the situation that was created by the breach.

Any State, excluding an injured State, may invoke the responsibility of another State in line with paragraph 2 of the Draft Articles on State Responsibility for Internationally Wrongful Acts, provided that: (a) the obligation violated is owed to a group of States, including that State, and is established for the protection of a collective interest of the group; or (b) the obligation is owed to the international community as a whole.

In *Barcelona Traction Light and Power Company, Limited*,[3] where the Court drew "an essential distinction" between obligations owed to particular States and those owed "towards the international community as a whole". With regard to the latter, the Court went on to state that "in view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*".

In the judgment of ICJ on *Questions relating to the Obligation to Prosecute or Extradite*[4], the International Court of Justice determined that the Torture Convention's alternative obligation to prosecute or extradite was an obligation *erga omnes* partes, which grants all parties to the convention the right to demand respect with such a rule by another party without having to prove a particular interest.

By definition, all States are a part of the international community as a whole, and the obligations at issue are collective commitments that safeguard the interests of the international community as a whole. As the proscription of acts of aggression safeguards each State's survival and the security of its citizens, such responsibilities may, of course, also protect the specific interests of States.

Conclusion

All states must accept and follow *jus cogens* norms regardless of objection. However, the positive regulations of international law still respect the principle of equal sovereignty which recognizes that no state can be bound by an international norm in absence of its consent. Because of the universal nature of *jus cogens* norms, they possess the "highest status in international law"

[1] Sten Verhoeven, Norms of *Jus Cogens* on International Law: A Positivist and Constitutionalist Approach, p.230.
[2] Stefanie Schmahl, An Example of *Jus Cogens*: The Status of Prisoners of War, The Fundamental Rules Of the International Legal Order: *Jus Cogens* and Obligations *Erga Omnes*, Leiden/ Boston 2006, p.35.
[3] Belgium v. Spain, Judgment of ICJ, 1970.
[4] Belgium v. Senegal, ICJ Reports (2012)422.

and can be modified only by other *jus cogens* norms. The International Law Commission and the Vienna Conference on the Law of Treaties did not provide an accepted list of peremptory norms. Moreover, obligations *erga omnes* are not embodied in a provision of the VCLT, but they would bind as part of general international law even in the absence of a contractual obligation. Obligations *erga omnes* give legal effect to the importance of the interests of the international community protected by *jus cogens* norms. Therefore, States should not recognize as lawful a situation created by a serious breach nor render aid or assistance in maintaining that situation.

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