THE APPLICABILITY OF THE ERGA OMNES PARTES DOCTRINE IN THE ADJUDICATION OF INTERNATIONAL HUMAN RIGHTS DISPUTES

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DEDICATION

To my beloved mother, Mrs. Arinietwe Jesca, the most beautiful thing that ever happened to me and Mr. Wallen Ankwasa, my benefactor and mentor.

ACKNOWLEDGEMENTS

I express my gratitude to my family for their unwavering moral and financial support throughout the years, especially during the completion of this degree. I could never repay you enough.

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And finally, I want to say thank you to me. I could never quite put into words how proud I am, of myself for taking risks and succeeding in every endeavor well, save from love.

STUDENTS DECLARATION

I, Rugambwa Arinda Isaac, the author, certify that this research dissertation is entirely original with no submissions, either in part or in full, to any university or other higher education institution worldwide as a prerequisite for the award of this degree.

…… …….

RUGAMBWA ARINDA ISAAC. DATE.

SUPERVISORS' DECLARATION

I, Mrs. Bako Jane Patricia, hereby declare that this research dissertation is the work of Rugambwa Arinda Isaac accomplished under my supervision.

…… ……

MRS. BAKO JANE PATRICIA. DATE.

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LIST OF ABBREVIATIONS

DRC	Democratic Republic of Congo
EU	European Union
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic Social Cultural Rights
ICJ	International Court of Justice
ICTY	International Court for former Yugoslavia
NATO	North Atlantic Treaty Organization
PCIJ	Permanent Court of International Justice
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
USSR	United Soviet States of Russia
VCLT	Vienna Convention on the Law of Treaties
UDHR	Universal Declaration of Human Rights.

ABSTRACT.

The Erga Omnes Partes Doctrine, a fundamental principle of international law, imposes obligations upon states towards the international community as a whole. This research delves into its applicability within the context of adjudicating international human rights disputes. By examining pertinent case law, treaties, and scholarly literature, this research elucidates the evolving role of the doctrine in shaping the adjudication of international human rights violations. It explores the tension between state sovereignty and international obligations, analyzing how the doctrine operates in practice to hold states accountable for violations of human rights norms. Furthermore, this research assesses the effectiveness of international mechanisms, such as international courts and tribunals, in invoking and enforcing the Erga Omnes Partes Doctrine. Through a comprehensive analysis, this research seeks to contribute to a deeper understanding of the doctrine's significance in promoting global human rights protection and fostering accountability among states in the international arena.

CHAPTER ONE

1.1 Introduction.

Erga Omnes partes doctrine is not an entirely new international law principle since its first reception in 1966 in the *South West African Cases (second phase)*. It refers to the legal capacity of states to lodge a dispute before the court even when they have not suffered a direct injury.[1]

This doctrine did not take shape at least until 1969 with the enactment of the Vienna Convention on the Law of treaties *(Art 60(3)*, the 2001 Articles on states for internationally wrongful Acts *(Articles 42 and 48 (1) (b)* and subsequent case law with the latest being the 2024 Gaza conflict on Provisional measures, lodged by South Africa against Israel for various crimes including genocide.[2]

The doctrine has had little lime light in the arena of human rights on an international scale majorly because of its modulus of inception. It is right to say that the doctrine has been majorly applied to genocide cases or crimes against humanity citing the Rome statute, the Geneva conventions and The Hague conventions.[3]

This Research will extrapolate the direct application of this doctrine to multilateral human rights conventions, treaties and Free Trade Area Agreements.[4] The basic rationale is that such conventions and agreements are multilateral in nature and thus confer a legal interest onto the international community. Chris Tamms during the 53rd session as a special rapporteur on the ILC draft Articles intimated that a breach of an obligation erga omnes is equivalent to a material breach of a treaty enshrined in *Art*.

[1] McGarry, B. (2023). Obligations Erga Omnes (Partes) and the Participation of Third States in Inter-State Litigation. The Law & Practice of International Courts and Tribunals, 22(2), Page 273-300.

[2] Alexander, Atul, (January 26, 2024) The Curious Case of South Africa v. Israel – Preliminary Reflections.

[3] Shapira, Amos, and Amos Shapia. "Comment: The Erga Omnes Applicability of Human Rights." *Archiv Des Völkerrechts*, vol. 30, no. 1, 1992, pp. 22–27.

[4] Chios Carmody, WTO Obligations as Collective, 17 EUR. J. INT'L L. 419 (2006); Joost Pauwelyn, A Typology of Multilateral Treaty Obligations: Are WTO Obligations Bilateral or Collective in Nature? 14 EUR. J. INT'L L. page 907.

60(3) of the Vienna convention on the law of treaties.[5] This research will shed more light on this position in regards to such a material fundamental breach, how and why this interpretation should be adopted by the court in adjudicating international human rights cases.

It is important to note that the erga omnes doctrine only applies to the admissibility question, that is to say, the states' capacity to bring a case before the court when it has not suffered any injury. It is underscored by *Art. 42* of the Articles on states for internationally wrongful Acts (ARSIWA) in regard to remedies non-injured states can seek to enforce obligations owed to an international community.[6]

Equally important to note is that, the obligation erga omnes partes are non-bilateral in nature. This forms the basic foundation of this research that seeks to justify universal legal interests in regard to human rights cases. Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination.[7]

The concept of obligations erga omnes was reaffirmed in subsequent judgments, and is now generally regarded as creating, in and of itself, a category of international obligations.[8] The International Court of Justice (ICJ) found that certain obligations are

[5] Marco Longobardo, (2018)The Contribution of International Humanitarian Law to the Development of the Law of International Responsibility Regarding Obligations Erga Omnes and Erga Omnes Partes, 23 J. CONFLICT & SEC. L. 383, page 397.

[6] Both obligations erga omnes and erga omnes partes relate strictly to legal standing. See Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, (separate opinion by Higgins, J.)

[7] Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain), Second Phase, Judgment, 1970 I.C.J. 3.

[8] Legal Consequences of Separation of Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 2019 I.C.J. 95, 180 (Feb. 25); see also Legal Consequences of Construction of a Wall in Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, 157 (July 9) ("In the Court's view, these rules [of humanitarian law applicable in armed conflict] incorporate obligations which are essentially of an erga omnes character.")

so important that all states must be considered to have an interest in the compliance of others, and correctly identified the obligation to refrain from acts of aggression as one of these obligations.[9]

It is questionable though, whether human rights obligations can be construed in the same manner. In fact, the obligation to refrain from acts of aggression is so important that its breach arguably threatens the security of every other state, collectively and individually. Thus, the significance of an obligation to every other state collectively and individually would itself justify standing on the part of any state to ensure compliance with the relevant obligation.

As for the human rights-related examples noted by the ICJ, including obligations to outlaw acts of genocide and to protect people from slavery and racial discrimination, it is rather difficult to imagine why a breach would necessarily have affected all other states sufficiently as to justify a legal interest in ensuring compliance; after all, the express rights holders of human rights obligations are individuals and not third-party states.[10]

The proposition that suggests that states have a legal interest in ensuring compliance with human rights obligations thus requires us to adopt a particular perspective. It requires us to set aside the traditional conception of states as self-interested sovereign actors,[11] and to imagine them as entities having a collective duty to safeguard the

[9] See Barcelona Traction, supra note 7.

[10] Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 1996 I.C.J. 595, 626, 4 (July 11) [hereinafter Bosnian Genocide] (declaration of Oda, J.)

[11] Dino Kritsiotis, Imagining the International Community, 13 EUR. J. INT'L L. 961, 967 (2002) (explaining the process through which States have reached the stage "of determining whether [the international community] knows of values other than the sovereign identities of its individual members [states]"); Samantha Besson, Community Interests in International Law: Whose Interests Are They and How Should We Best Identify Them, in Community Interests Across International Law 36, 37 (Eval Benvenisti & George Nolte eds., 2018).

welfare of humanity as a whole.[12] The idea of states mutually pledging to protect human rights is not a mere assertion but is supported by states' practice in concluding human rights treaties.[13]

The adoption of human rights treaties, and the design that was incorporated into the drafting of these treaties, in turn, evidently influenced the development of the law of treaties, as is reflected in the 1969 Vienna Convention on the Law of Treaties ("VCLT") (adopted a few months before the Barcelona Traction judgment), which incorporate specific provisions that govern treaties of a "humanitarian character."[14]

As Professor Mariko Kawano observes, because the concepts of erga omnes and pre-emptory norms were not well established during the earlier stages of the development of international law, the role of treaties in protecting fundamental international human rights became very important.[15]

The real bone of contention regarding the significance of the ICJ's dictum in Barcelona Traction is not the (essentially objective) observation that there may be some international obligations significant enough to justify universal standing, but rather, the view on a state's role with respect to human rights.

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[12] Christian J. Tams, (1978–79); Enforcing Obligations Erga Omnes In International Law 15 (2005); Krystyna Marek, Criminalizing State Responsibility, 14 Revue Belge De Droit Int'l 460, 481–82 Stephen Mccaffrey, Lex Lata Or The Continuum Of State Responsibility, In International Crimes Of State: A Critical Analysis Of The ILC's Draft Article 19 Of State Responsibility 242, 244 (Joseph Weiler, Antonio Cassese & Marina Spinedi Eds., 1989); Peter D. Coffman, Obligations Erga Omnes And The Absent Third State, 39 Ger. Y.B. Of Int'l L. 285, 296–97 (1996); Evan J. Criddle, Standing For Human Rights Abroad, 100 Cornell L. Rev. 269, 329 (2015).

[13] Prior to 1970, these conventions included, e.g., the 1926 Slavery Convention; the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; the 1951 Refugee Convention; the 1952 Convention on Political Rights of Women; the 1954 Convention on the Status of Stateless Persons; and the 1961 Convention on the Reduction of Statelessness. TAMS, ibid 12, at 4.

[14] Vienna Convention on the Law of Treaties art. 60(5), May 23, 1969, 1155 U.N.T.S. 331

[15] Mariko Kawano, (2012) Standing of a State in the Contentious Proceedings of the ICJ, 55 JAPANESE Y.B. INT'L L. 208, 215–16.

This development in international law in general, and human rights law in particular, was later characterized as a part of states' broader duty to safeguard "community interests"[16] or "community values"[17] one that recognizes the "limits of the principles of reciprocity"[18] that so deeply influenced (and constrained) the way international legal relationships are constructed.

[16]In 1994, Judge Simma observed that "[a] rising awareness of the common interests of the international community, a community that comprises not only States, but in the last instance all human beings, has begun to change the nature of international law profoundly." Bruno Simma, From Bilateralism to Community Interest in International Law, 250 RECUEIL DES COURS 217, 234 (1994) ("International law has undoubtedly entered a stage at which it does not exhaust itself in correlative rights and obligations running between states, but also incorporates common interests of the international community as a whole, including not only states but all human beings. In so doing, it begins to display more and more features which do not fit into the… bilateralist structure of the traditional law."); see also Bruno Simma, Universality of International Law from the Perspective of a Practitioner, 20 EUR. J. INT'L L. 265, 297 (2009); see also Santiago Villalpando, The Legal Dimension of the International Community: How Community Interests are Protected in International Law, 21 EUR. J. INT'L L. 387 (2010). The potential applications of obligations erga omnes in international environmental law in protecting community interests were raised by Judge Weeramantry in Gabcˇı´kovo-Nagymaros Project (Hung. v. Slvk.), Judgment, 1997 I.C.J. Rep. 7 (Sep. 25) (separate opinion by Weeramantry, J.).

[17] Judicial endorsement of "community values" was seen in *Austria v. Italy*, App. No. 788/60, 1961 Y.B. Eur. Conv. on H.R. 4, 19–20 (Eur. Comm'n on H.R.) 18, where the European Commission on Human Rights remarked that "the purpose of the high Contracting Parties in concluding the [European] Convention was not to concede to each other reciprocal rights and obligations in pursuance of their individual national interests but to . . . establish a common public order of the free democracies of Europe with the object of safeguarding their common heritage of political traditions, ideals, freedom and the rule of law"; Study Group of the Int'l Law Comm'n, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, 393, U.N. Doc. A/CN.4/L.682 (2006); Sandesh Sivakumaran, Impact on the Structure of International Obligations, in The Impact Of Human Rights Law On General International Law 133, 146 (Menno Kamminga & Martin Scheinin eds., 2009) (describing notions such as jus cogens as representing a minimum threshold for community values in international law)

[18] Yoshifumi Tanaka, (2011) Protection of Community Interests in International Law: The Case of the Law of the Sea, 15 Max Planck Y.B. U.N. L. Online 15.

The Research argues that it is only through this lens that obligations pertaining to human rights must be understood to satisfy the ICJ's observation that obligation erga omnes are so important that all states must be held to have an interest in their fulfilment.

1.2 Background.

The concept of human rights is an old age sanctity of mankind without which the definition of modern democracies would cease to have meaning. The observation, enforcement and protection of human rights forms the very bedrock of peaceful co-existence of the international community.[19]

Obligation erga omnes are not anything new in the arena of human rights but have recently become a matter of great discussion as a result of the decisions of the ICJ in the *Gaza conflict,*[20] and *Belgium v. Senegal*.[21] The former concerned provisional measures for a cease fire by the state of South Africa against Israel whereas the latter concerned the prosecution of former Chadian President Habre.

The realisation of such a community calls for stringent laws and policies to shape its modulus operandi. It will be argued that the current status quo necessitates a clear extension of the application of the erga omnes doctrine to human rights treaties, conventions and free trade area agreements. The biggest question posed before the ICJ is whether states which violate human rights owe a duty to observe these treaties to the international community or between themselves.

This question has been answered partially by the court. In the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia*

[19] Yoshifumi Tanaka, (2011) Protection of Community Interests in International Law: The Case of the Law of the Sea, 15 Max Planck Y.B. U.N. L.15.

[20] Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel) 29 December 2023.

[21] Questions relating to the Obligation to Prosecute or Extradite, Belgium v Senegal, Judgment, ICJ GL No 144, ICGJ 437 (ICJ 2012), 20th July 2012.

v. Myanmar) (Provisional Measures) in relation to the Genocide Convention.[22] The court found that, The Gambia had prima facie standing to submit a dispute against Myanmar on the basis of the alleged violations of obligations under the Genocide Convention.

> *The majority declared that: In view of their shared values, all the States parties to the Genocide Convention have a common interest to ensure that acts of genocide are prevented and that, if they occur, their authors do not enjoy impunity. That common interest implies that the obligations in question are owed by any State party to all the other States parties to the Convention.*[23]

The conditions from which standing may be derived to invoke responsibility before an international court were further examined by the International Law Commission) (ILC in a series of reports that later became the Articles on the Responsibility of States for Internationally Wrongful Acts ("ARSIWA") in *Articles 40, 42 and 48.*[24]

It's not disputed that the ARSIWA does not expressly use the words "legal standing," it is observed in the Commentary that a right to invoke responsibility includes the right to institute proceedings before an international court.[25]

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[22]Application of Convention on Prevention and Punishment of Crime of Genocide (*Gam. v. Myan.*), Provisional Measures, 42 (Jan. 23, 2020) [hereinafter *The Gambia v. Myanmar*].

[23] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Application Instituting Proceedings, 11 November 2019.

[24] Responsibility of States for Internationally Wrongful Acts, in Report of the International Law Commission on the Work of Its Fifty-third Session, [2001) 2 Y.B. Int'l L. Comm'n 1, U.N. Doc. A/CN.4/ SER.A/2001/Add.1 (Part 2), 43 [hereinafter ARSIWA].

[25] Commentary to Article 42, (2), in Int'l Law Comm'n, Rep. on the Work of its Fifty-Third Session ("Invocation should be understood as taking measures of a relatively formal character, for example, the raising or presentation of a claim against another State or the commencement of proceedings before an international court or tribunal."), cited in James Crawford, The International Law Commission's Articles On State Responsibility: Introduction, Text And Commentaries 57–61 (2002); Annie Bird, Third State Responsibility For Human Rights Violations, 21 Eur. J. Int'l L. 883, 891 (2010) ("[T]he distinction between legal interests to invoke responsibility and standing to institute ICJ proceedings has not usually been drawn in practice; the latter was considered to be a consequence of the former."). Note also that by utilizing the distinction between an "injured state" and situations involving a party "other than an

1.3 Problem Statement.

States have flagrantly disregarded core tenets of international human rights law in the past without facing consequences from the ICJ. The crucial question at hand is whether the International Court of Justice (ICJ), the primary tribunal of the UN, offers international human rights victim states enough legal protection under these kinds of situations. Regretfully, the quick and unambiguous response is no.

The severity of the infraction usually determines how serious the repercussions will be. The *Barcelona Traction Light and Company* case in 1962, the need to prosecute President Habré of Chad in 2012, the situation in Myanmar in 2011, the Russian invasion of Ukraine in 2022 and most recently, The Gaza Conflict are just a few examples of the conflicts that have gravely violated the most fundamental principles of international human rights law and left a trail of death, destruction, and tension between nations. Insufficient legal accountability for the offenders in the ICJ allows these disputes to continue wreaking havoc on both direct and indirect victims.

The ICJ's limited application of the erga omnes doctrine to international human rights violations instituted by third-party non-injured nations hinders state accountability for internationally wrongful acts. The ICJ cannot hear an issue, regardless of its merits, unless states declare the court to have jurisdiction over it, according to the ICJ Statute. State governments may, in effect, avoid facing legal consequences for their transgressions, as they have in the past, by contesting the jurisdiction of the Court. This leads to states doubting the value of the UN's "primary judicial organ." Hence, this research challenges the International Court of Justice's limited application of the erga omnes doctrine as a barrier to global justice.

injured state," Articles 42 and 48 intended to provide exhaustively for situations that might give rise to a right to invoke the responsibility of another.

1.4 Objectives of the study.

Research Objectives.

This research will be guided by the following objectives as categorized hereunder;

Overall Objective.

To inquire into the utility of the application of the erga omnes doctrine to international human rights violations.

Specific Objectives.

This research will be specifically guided by the following objectives;

a) To examine the background of the doctrine of erga omnes partes in Public International law.

b) To describe the doctrine erga omnes as a mechanism in international human rights dispute resolution.

c) To inquire into the propriety of the application of erga omnes doctrine by the ICJ.

d) To explore mechanisms for reform of the jurisdictional framework of the ICJ.

1.5 Research questions.

This research study will be guided by the following research questions in an attempt to achieve the overall and specific objectives;

i) What is the background of the doctrine erga omnes in international law?
ii) What is the nature and operation ability of this doctrine?
iii) Has the doctrine of erga omnes served the best interests of international human rights justice?
iv) How can this limited application by the ICJ, if any, be addressed?

1.6 Justification of this research.

This research will question the utility of the application of the erga omnes doctrine to international human rights violations by the ICJ. It will interrogate pertinent questions

about the absoluteness of state sovereignty in judicial proceedings and delimits its applicability in the ICJ.

Article 36(2) ICJ statute in conjunction with *Articles 42* and *48* of the ARSIWA that fleshes out the absoluteness of state sovereignty in the jurisdiction of the ICJ has not received critical analysis on its compliance with the doctrine of erga omnes. This study will examine this relationship.

It will also examine the proposition that the application of erga omnes doctrine to genocide cases only by the ICJ is not absolutely tenable. There has been little attempt to challenge the sanctity of state sovereignty in the context of the ICJ's jurisdiction.

This study adds legal remedies to the framework for resolving international human rights disputes. It is intended to enhance the current political-economic remedies imposed on states that are purportedly in breach of international human rights law. The reforms' originality will also encourage more study into the viability of this strategy for achieving a dualistic goal, extending the protection of weaker states under international law and promoting adherence to it.

1.7 Scope of this research.

The thematic focus of this research will be restricted to the ICJs' application of the erga omnes doctrine to international human rights law and a critical examination of state sovereignty from a doctrinal perspective. With this research, the researcher hopes to establish a connection between the power dynamics that shaped the ICJ's and the Permanent Court of International Justice (PCIJ's) respective jurisdictional frameworks in regards to non-injured third party states, as well as the various institutions themselves.

The theoretical and conceptual frameworks, together with the recommendations, will be influenced by this. The research has no boundaries regarding time or location. The global timeline it takes into consideration is historical, modern, and futuristic. The ICJ and its jurisdictional framework, however, will be the main subject of the study.

1.8 Literature Review.

The majority of erga omnes criticisms have adopted a broad stance, casting doubt on the benefit of the doctrine's broad applicability to the genocide convention in international relations rather than the International Court of Justice's (ICJ) application of the same to cases involving international human rights disputes.

Significant research on the applicability of the ICJ Statute has, nevertheless, concentrated on *Article 42* of the ARSIWA rather than the universal legal interest criterion under *Articles 48(1) (b)* of the ARSIWA and *60(3)* of the VCLT.[26]

For instance, McGarry, B. (2023) correctly points out that the doctrine of erga omnes can be directly applied to international law cases involving genocide; however, he addresses this from the perspective of the difficulty of fostering unanimity in the resolution of global issues concerning human rights unless they form part of the humanitarian character crimes embedded in *Art.60 (3)* of the VCLT, 1969.[27]

He proposes that rather than aiming for unanimous state assent, states should respond to international crises rationally. It sounds a lot like the case made by Shapira, Amos in his paper The Erga Omnes Applicability of Human Rights,[28] in which he appears to imply that infringement of human rights must come under the purview of VCLT, 1969 *Art. 60(3)*.[29]

The McGarry proposition is generally conceded. Nonetheless, McGarry fails to acknowledge the significance of legal realism in the World Court Statutes' construction, particularly with regard to the issue of universal standing. His 2023 article, like many others, looks at standing generally under *Art. 42* of the ARSIWA rather than addressing

[26] International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two.

[27] Third Report on the Law of Treaties by Fitzmaurice, 1958, Volume II, Paragraph 77, page 41. UN General Assembly, Draft Declaration on Rights and Duties of States, 6 December 1949.

[28] Shapira, Amos, and Amos Shapia. (1992), "Comment: The Erga Omnes Applicability of Human Rights." *Archiv Des Völkerrechts*, vol. 30, no. 1, page. 22–27.

[29]Sir Humphrey Waldock, (1963) Second Report on the Law of Treaties volume II, page 23.

the legal realists' interpretation of *Article 48(1) (b)* of the ARSIWA regarding the universal legal standing proposition.[30]

While it is undisputed that many natural law school of thought proponents in international law concentrate on the nature of concepts and rules, legal realists are more interested in what courts and other legal actors really do.

They base their definition of law less on the written wording of the UN Charter and the ICJ Statute (*lex lata*) but more on the legal actions of the ICJ.[31] This research will focus on using a legal realism approach to examine universal standing because McGarry's writings do not address this specific connection between his ideas and the usefulness of the ICJ's universal standing in regard to the adjudication of international human rights disputes.[32]

The arguments put out by Amos Shapira and McGarry are not all that dissimilar. They both argue that restricting the application of the principle of sovereign equality to circumstances of genocide is the only way to achieve an equal status in terms of obligation erga omnes. Although this represents a considerable ideological shift from the McGarry stance, which sparks the argument over absolute or relative pure application,[33] this research will investigate whether such a stringent approach is feasible in the ICJs' adjudication of international human rights disputes in terms of Art.48 (1) (b) of the ARSIWA.

In his 2005 discourse on "obligation erga omnes," Christian J. Tamms expands on Pok Yin's position.[34] He makes a distinction between actio popularis and erga omnes forms.

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[30] Commentary on Articles 42 and 48 of the Articles on State Responsibility, Yearbook of the International Law Commission, 2001, vol. II, Part Two II, paragraph 23.

[31] International Law for Humankind: Towards a New Jus Gentium by C Trindade, 2nd edition, 2013, Volume 8, page 275.

[32] M Byers (1997); Conceptualizing the Relationship between Jus Cogens and Erga Omnes Rules, page 66.

[33] Questions Relating to Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgment, 2012 I.C.J. 422, 68 (July 20).

[34] Christian J. Tams, (2006) Enforcing Obligations Erga Omnes in International Law; Volume 44 of Cambridge Studies in International and Comparative Law.

He goes into detail about them in international law and how the presence of a predominance in the framework has a significant impact on its appropriate application.

However, Christian and Pok Yin's work don't really concentrate on the existence of the ICJ's universal standing issue in regards to international human rights disputes. This research will delve deeper into the reality of universal standing in the resolution of international human rights conflicts, even though it regards the arguments put forth by the scholars as crucial to comprehending the whole issue.

In his separate ruling in the 1962 South West African case (second phase), Judge Jessup of the PCIJ approaches the topic of states' universal standing fairly more.[35] He makes a number of correlations between actio-popularis and obligation erga omnes. He argues from the outset that the goal of the World Court's founding was to encourage the international community to pursue peace through the rule of law rather than force.[36]

The reasoning behind the rigorous application of the concept is not examined in the separate ruling. Judge Jessup only mentions that the theory was novel and had never been used until the incident in South West Africa. In contrast to the courts' 1962 stance, Judges Spender and Fitzmaurice now agreed that the 1966 merits judgement should be overturned.

Judge Fitzmaurice merely addresses this void in a general sense. He doesn't go into great detail on how the minorities' treaty, which was at the time under dispute, came to have universal legal status. The purpose of Chapter Three of this study is to explicitly address this gap and explain why the ICJ accepted the PCIJ stringent application almost entirely. This is the crux of this research.

Since the 1970 Barcelona Traction Judgement, which established the locus standi of all States with regard to violations of responsibilities pertaining to genocide and

[35] Ethiopia v South Africa; Liberia v South Africa, (Second Phase) [1966] ICJ Rep 6.

[36] Third Report on the Law of Treaties by Fitzmaurice, 1958, Volume II, Paragraph 77, page 41. UN General Assembly, Draft Declaration on Rights and Duties of States, 6 December 1949.

aggression, slavery and racial discrimination, and the fundamental rights of human beings, the ICJ has notably built a lineage of case law.[37]

It's important to note, that the lacuna created by the court in its strict application of this doctrine has created an international vacuum in regards to the adjudication of international human rights disputes which this research will expose.[38]

In Bosnia and *Herzegovina v. Serbia and Montenegro*,[39] the Court reiterated that "the rights and obligations enshrined by the [Genocide] Convention are rights and obligations erga omnes," demonstrating the Court's predisposition to make such pronouncements in obiter dictum.

The International Law Commission's (ILC) 2001 Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) reflect the conventional need of a direct injury for *locus standi* in inter-State proceedings.[40]

A variety of PCIJ and ICJ jurisprudence will be utilized in this study. The research will give the ICJ and PCIJ's judicial decisions a lot of weight in projecting the legal status of international law and its tenets,[41] even though the ICJ's rulings are solely binding on the parties to the dispute under *Article 59* of the ICJ Statute. Its application extends beyond analyzing the legal position in disputed and advisory cases; it also serves to

[37] Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (New Application), Judgment, I.C.J. Reports 1970, p. 3, para. 33.

[38] Belgium v Senegal, Judgment, ICJ GL No 144, ICGJ 437 (ICJ 2012), 20th July 2012.

[39] Application of the Convention on the Prevention and Punishment of the Crimes of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections, Judgment, I.C.J. Reports 1996, p. 595, para. 31. Of course, locus standi is relatively clear in cases of neighboring States engaged in military conflict, due to the presence of direct and unique injury.

[40] Responsibility of States for Internationally Wrongful Acts, *Yearbook of the International Law Commission*, Vol. II (2) (2001).

[41] Italy v France, United Kingdom of Great Britain and Northern Ireland and United States of America - Monetary Gold Removed from Rome in 1943 - Judgment of 15 June 1954 - Preliminary question - Judgments [1954] ICJ 2; ICJ Reports 1954, p 19; [1954] ICJ Rep 19 (15 June 1954).

forecast the Court's stance in cases under its jurisdiction, had respondent states not refused consent.

1.9 Methodology.

Research design.

The desktop review design will be undertaken in this research. This design will center on current and historical developments in critical legal studies concerning the ICJ's jurisdictional framework in regard to the adjudication of international human rights disputes. This research design makes it possible to analyze international law's current and historical inclinations at the same time, as demonstrated by published works, books, and decided cases.[42]

Methods of data consideration.

A desk review approach will be used to gather data for this research. It will examine the primary and secondary data taken from the black letter law, the International Court of Justice's rulings, and academic writings by well-known publicists who have made arguments regarding the four study questions.

Ethical Consideration.

This research will take into account the research ethics and legal writing principles of objectivity, respect for confidentiality, and reference to all research resources. The Student Best Practice Guidelines and other pertinent ethical rules of conduct will also be adhered to.[43]

1.10 Chapter Synopsis.

This research will be structured into five Chapters.

[42] H I. Majamba (2009); Fundamental of Legal Research: A Law Student's Companion' Draft for Students at Law School.

[43] D Ramenyi (2011); Field Methods for Academic Research: Interviews, Focus Groups Questionnaires' 2nd Ed. S.L.: Academic Publishing International Ltd.

Chapter one will give the introduction to the research and lay down the background and justification of the research.

Chapter two will discuss the background to the concept erga omnes. It analyses its legal framework and discusses the ICJs position in different cases.

Chapter three will describe the universal legal standing requirement in the adjudication of international human rights disputes. It will elaborate the erga omnes-requirement and how it is a necessary requirement in specific human rights treaties.

Chapter four will highlight, the conclusions and recommendations of the research.

CHAPTER TWO: OBLIGATION ERGA OMNES

2.1 Introduction

There was much uncertainty for many years regarding a state's ability to file a lawsuit against another for alleged human rights abuses before the International Court of Justice (ICJ). Except in cases where a nation might claim protection,[44] because it was directly impacted by the infringement such as when it happened within its borders but was being carried out by another state against its citizens abroad.[45]

A state's legal interest in seeing human rights norms guaranteed, remained unclear, as contrasted to its moral interest.[46] The International Court of Justice (ICJ) acknowledged

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[44] See, e.g., Mavrommatis Palestine Concessions (Greece v. U.K.), Judgment, 1924 P.C.I.J. (ser. A) No. 2, at 12 (Aug. 30); Panevezys-Saldutiskis Railway (Est. v. Lith.), Judgment, 1939 P.C.I.J. (ser. A/B) No. 76, at 16 (Feb. 28); Nottebohm (Liech. v. Guat.), Second Phase, Judgment, 1955 I. C.J. 4, at 24 (Apr. 6).

[45] See, e.g., Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. 43 (Feb. 26); see also Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Merits Judgment, 1986 I.C.J. 14 (June 27) (concerning the sponsoring of paramilitary activities by a foreign State within domestic territory; other examples including extraterritorial abductions within domestic territory)

[46] South West Africa (Eth. v. S. Afr.; Liber. v. S. Afr.), Second Phase, Judgment, 1966 I.C.J. 6, 41–59 (July 18) [hereinafter 1966 South West Africa case] ("Humanitarian considerations may constitute the inspirational basis for rules of law, just as, for instance, the preambular parts of the United Nations Charter constitute the moral and political basis for the specific legal provisions thereafter set out. Such considerations do not, however, in themselves amount to rules of law. All States are interested—have an interest—in such matters. But the existence of an "interest" does not of itself entail that this interest is specifically juridical in character. . . . In order to generate legal rights and obligations, it must be given juridical expression and be clothed in legal form."). See also Judge ad hoc Skubiszewski in his dissenting opinion in the East Timor case, where he pointed out that there is always "a myriad of interests" (social, economic, political, and moral) that States have, as individual members of the international community, in compliance with certain rules of international law. However, in order for such an interest to be legally enforceable, it must be one that is legally protected. East Timor (Port. v. Austl.), Judgment, 1995 I.C.J. 90, 224, 103–104 (June 30) [hereinafter East Timor] (dissenting opinion by Skubiszewki, J.); see South West Africa (Eth. v. S. Afr.; Liber. v. S. Afr.), Preliminary Objections, 1962 I.C.J. 455 (Dec. 21) [hereinafter 1962 South West Africa case (Preliminary Objections)] (dissenting opinion of Winiarski, J.) (Remarking that, in order to find the applicant States to have obtained the capacity to raise a claim

in the South West Africa (Second Phase) case that "an *actio popularis*, or right resident in any member of a community to take legal action in vindication of a public interest was not known to international law as of then,[47] which strengthened the belief that no state may bring a case to the ICJ on behalf of foreign individuals or groups.

As a result, it was unclear whether to reverse the ICJ's ruling in South West Africa and,[48] if not, how these two seemingly diametrically opposed positions could be reconciled when it declared in its Barcelona Traction ruling that certain human rights obligations are obligations erga omnes insofar as "all States can be held to have a legal interest in their protection."[49]

The ICJ's disjunction in its remarks led to a lengthy discussion over what is required to gain legal standing.[50] Some scholars, question the idea that a violation of an international duty might result in universal standing for all nations because,

against the respondent State before the ICJ, there must exist "a subjective right, a real and existing individual interest which is legally protected.")

[47] 1966 South West Africa case, supra note 33.

[48] See, e.g., Egon Schwelb, (1992); The Actio Popularis and International Law, 2 ISR. Y.B. HUM. RTS. 46.

[49] Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain), Second Phase, Judgment, 1970 I.C.J. 3, 33, 35 (Feb. 5) [hereinafter Barcelona Traction].

[50] Id.; see also Christian J. Tams, Enforcing Obligations Erga Omnes In International Law 15 (2005); Krystyna Marek, Criminalizing State Responsibility, 14 Revue Belge De Droit Int'l 460, 481–82 (1978–79); Stephen McCaffrey, Lex Lata or the Continuum of State Responsibility, in International Crimes Of State: A Critical Analysis Of The Ilc's Draft Article 19 Of State Responsibility 242, 244 (Joseph Weiler, Antonio Cassese & Marina Spinedi eds., 1989); Peter D. Coffman, Obligations Erga Omnes and the Absent Third State, 39 GER. Y.B. OF INT'L L. 285, 296–97 (1996); Evan J. Criddle, (2015); Standing for Human Rights Abroad, 100 CORNELL L. REV. 269, 329.

historically, accountability under international law has been based on the ideas of "tort" or "delict,"[51] and has therefore only been "acknowledged in relation to another state."[52]

The recognition of responsibilities erga omnes also suggests that nations may be held responsible to every member of the international community in light of judicial recognition of the significance and relevance of the corresponding obligations for every other state.[53] As a result, the horizontal framework of international law in which nations serve as the exclusive legislators is undermined. Additionally, it poses a threat to establish a decentralized system of law enforcement, which could, it is feared, encourage the partisan or abusive application of international law.

Much of the skepticism about obligations erga omnes parts is also rooted in the overall rejection of the concept of obligations erga omnes. Similar to the concept of obligations erga omnes, obligations erga omnes partes aim to grant legal standing to states that are not directly harmed, as long as those governments are also signatories to the same treaty.[54]

The idea disproves the widely held notion that multilateral treaties are made up of a series of bilateral, reciprocal rights and obligations by doing this.[55]

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[51] Clyde Eagleton, (1950); International Organization and the Law of Responsibility, 76 Recueil Des Cours 319, 423 ("Responsibility [under traditional international law] was acknowledged only in relation to another state; it was based on 'tort' or 'delict' . . . The two states concerned fought it out as between themselves, and no one else had the right to interfere.")

[52] Id. Therefore, it was thought that a breach of an erga omnes obligation only gave rise to a right to self-help remedies, such as to insist on fulfilment of the obligation or call for the breach to be discontinued and, when such remedies failed, to impose countermeasures/retorsions falling short of the use of force (such as imposing unilateral sanctions) with a view to pressuring the violating States into compliance.

[53] See Barcelona Traction, supra note 7 ("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.").

[54] See, e.g., Questions Relating to Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgment, 2012 I.C.J. 422, 68 (July 20) [hereinafter Belgium v. Senegal].

[55] See, e.g., Christian Dominice, The International Responsibility of States for Breach of Multilateral Obligations, 10 EUR. J. INT'L L. 353, 354 (1999).

Thus, it has been maintained that the idea of erga omnes partes distorts treaty interpretation and, consequently, state consent. Like obligations erga omnes, the idea of obligations erga omnes partes likewise poses a risk of spawning a dispersed method of enforcement in which each state party to a convention may claim liability for a violation.[56]

The Gambia made a request for provisional measures against Myanmar in November 2019, claiming that the country had violated the Genocide Convention by committing genocide against the Rohingya community.[57] The Arakan Rohingya Salvation Army (ARSA) and Myanmar's military engaged in armed combat as a result of decades-long tensions between the predominantly Muslim Rohingya and the majority Bamar Buddhist populace.[58] After August 2017, there were more frequent and violent battles between government forces and militants, which resulted in numerous deaths and injuries, including children. Sexual assault and rape "were perpetrated on a mass scale."

The International Court of Justice (ICJ) determined that The Gambia had prima facie standing against Myanmar in its ruling for the indication of temporary measures. This was true even though The Gambia is located over 7,000 miles away from Myanmar and does not appear to have a physical relationship to the dispute.[59] The International Court of Justice declared that as a result of their shared values, all States parties to the Genocide Convention have a common interest to ensure the prevention of acts of genocide. Since the Gambia is a party to the Genocide Convention, it has a legal interest

[56] Belgium v. Senegal, supra note 13 (dissenting opinion of Xue, J. 12); id. (Dissenting opinion of Sur, J. 38).

[57] An ethno-religious minority with an estimated population of 1–1.5 million, the Rohingya are a heavily deprived stateless nation residing in the Rakhine State of Myanmar. Over the decades, the government of Myanmar has sought systematically to deprive the group of their civil and political rights. See A. K. M. Ahsan Ullah, (2016); Rohingya Crisis in Myanmar: Seeking Justice for the “Stateless,” 32 J. CONTEMP. CRIM. JUST. 285.

[58] See Hum. Rts. Council, Rep. of the Indep. Int’l Fact-Finding Mission on Myan. (Sept. 12, 2018); 31–35, U.N. Doc. A/HRC/39/64.

[59] See Application of Convention on Prevention and Punishment of Crime of Genocide (Gam. v. Myan.), Provisional Measures, 2 (Jan. 23, 2020) [hereinafter The Gambia v. Myanmar].

in adhering to its duties. These obligations are known as obligations erga omnes partes, or obligations owed by any State party to all the other State parties.

The purpose of this research is to assess the legal standing of erga omnes partes obligations and the ramifications that this has for the law. This research will show, among other things, that the idea that a state may have legal standing to demand the enforcement of international legal obligations, even if it has not suffered a direct injury, was not a novel or enigmatic notion; rather, it had existed long before the South West Africa cases.

The International Law Commission's (ILC) attempts to codify the law on legal standing are examined in chapter four, along with the ways in which the ILC's body of work impacted regional and international tribunal rulings. The ICJ's response to the idea in case law is covered in chapter three, along with how its perspective on the matter may change how the idea should be interpreted.

2.2 The south West African Cases. The genesis of the disputation

Understanding the conditions under which a state may obtain standing before an international court is often accomplished by looking first at the South West Africa instances.[60] Following Germany's defeat in World War I, Namibia (then known as German South West Africa) was put under the jurisdiction of South Africa.[61]

Following World War II, Namibia was to be annexed by South Africa, according to a request made to the General Assembly. South Africa continued to invade Namibia notwithstanding the General Assembly's rejection of the request. Ethiopia and Liberia launched legal action against South Africa in 1960, requesting a ruling from the international court that South Africa had violated its obligations as a mandatory power, Namibia remained a mandate, and Namibia ought to be placed under UN supervision as a result of South Africa's misdeeds.

[60] 1962 South West Africa case (Preliminary Objections), supra note 3; 1966 South West Africa case, supra note 3.

[61] For an excellent background to the case, see Richard A. Falk, (1967) The South West Africa Cases: An Appraisal, 21 INT'L ORG. 1, 2–5.

The question in the 1962 South Africa case (Preliminary Objections) before the International Court of Justice (ICJ) concerned Ethiopia's and Liberia's standing in relation to South Africa's purported violations of the conditions of the Mandate, a contract signed between South Africa and the Allied Powers.[62] The majority determined that Ethiopia and Liberia had standing in the issue by a slim vote of eight to seven. However, there was a lot of opposition to the aforementioned decision. In their joint dissenting opinion, Judges Spender and Fitzmaurice noted that Article 7 of the Mandate could not be viewed in a vacuum; rather, it had to be read in conjunction with other sections of the international agreement.

Many scholars have criticized the 1966 South West Africa ruling. First off, despite the fact that the case was in the merits stage, it was believed that the question of standing should have been resolved in 1962. However, due to the ICJ's methodology, the case was not finally decided.[63] In the 1966 judgement, the majority argued that a state's standing to bring a case to court was different from its standing to seek relief, which was the issue in the 1966 judgement.[64]

As sir Hersh Lauterpacht intimated in his non-legal capacity,

“States enter into multilateral treaties to protect common interests of an economic, political, or humanitarian nature through the imposition of obligations whose uniformity and general observance are essential to the agreement, in addition to securing for themselves tangible mutual benefits in the form of balancing give and take. States often have a vital interest in upholding specific rules and principles due to the

[62] 1962 South West Africa case (Preliminary Objections), supra note 5.

[63] See 1962 South West Africa case (Preliminary Objections), supra note 3, at 328; see also Falk, supra note 33, at 6.

[64] 1966 South West Africa case, supra note 3, 15; Farid Ahmadov, (2018) The Right of Actio Popularis before International Courts and Tribunals 90.

interdependence of international relations, but some of them are unlikely to be negatively impacted by a change or violation of these principles in a single instance."[65]

The International Court of Justice did not rule on whether a treaty might allow non-injured state parties to have the right to file a claim. In contrast, the International Court of Justice's comment that *Article 7* of the Mandate lacked sufficient clarity to infer universal standing in the event of a breach appears to suggest that such standing may actually be specifically provided for.

2.3 Shaping the *erga omnes* doctrine: Barcelona Traction, Light & Co

The International Court of Justice (ICJ) seemed to have gone back on its previous position about legal standing four years after the contentious 1966 ruling in South West Africa. The question on the table in Barcelona Traction was whether Belgium might file a claim against Spain at the International Court of Justice (ICJ) on behalf of Belgian shareholders of a Canadian corporation whose operations had been declared bankrupt by a Spanish court.[66] The ICJ observed in its now-famous dicta;

"States owe duties to the global community that are attributed to all States. Given the gravity of the rights at stake, all States can be considered as having a legal interest in defending them; these are duties erga omnes."

The concept of obligations erga omnes was maintained by later rulings,[67] and it is now generally accepted that this created a new category of international responsibilities.

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[65] Hersch Lauterpacht, The *Chinn* Case, 16 BRITISH Y.B. INT'L L. 164–66 (1935) (by reference to interests of an economic and political nature, Lauterpacht was likely alluding to the treaties providing for the creation of objective regimes); see, e.g., Convention Concerning the Memel Territory art. 17, signed at Paris, May 8, 1924, U.N. Doc. A/AC.25/Com.Jer/W.13. The clause was discussed in Interpretation of Statute of Memel Territory (U.K., Fr., It. & Japan v. Lith.), Preliminary Objection, 1932 P.C.I.J. (ser. A/B) No. 47, at 251 (June 24).

[66] For a commentary on the case, see Richard B. Lillich, (1971) Two Perspectives on the Barcelona Traction Case, 65 AM. J. INT'L L. 522.

[67] See, e.g., Legal Consequences of Separation of Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 2019 I.C.J. 95, 180 (Feb. 25); see also Legal Consequences of Construction of a Wall in Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, 157 (July 9) ("In the Court's view, these rules

In its ruling, the International Court of Justice (ICJ) properly defined the commitment to refrain from acts of aggression as one of those duties that are so vital that all governments must be deemed to have an interest in the compliance of others.[68] However, it's debatable if the same rules apply to the interpretation of human rights obligations.

Regarding the human rights disputes that the International Court of Justice (ICJ) has noted, such as the duties to prevent acts of genocide and to shield individuals from slavery and racial discrimination, it is difficult to see how a violation would have affected every other state to the extent necessary to warrant a legal interest in ensuring compliance; after all, individuals, not states acting as third parties, are the express proprietors of human rights obligations.[69]

We must therefore adopt a specific viewpoint in order to accept the idea that states have a legal interest in guaranteeing adherence to their commitments under human rights law. It necessitates that we abandon the conventional understanding of nations as self-serving sovereign actors,[70] and instead see them rather as states with a shared responsibility to protect the wellbeing of all people.

Human rights duties must be interpreted from this perspective in order to meet the International Court of Justice's (ICJ) remark that these rights are so vital that every state must be considered to have an interest in seeing them fulfilled. The conduct of

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[of humanitarian law applicable in armed conflict] incorporate obligations which are essentially of an erga omnes character.")

[68] See Barcelona Traction, supra note 35, 33–34.

[69] See, e.g., Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 1996 I.C.J. 595, 626, 4 (July 11) [hereinafter Bosnian Genocide] (declaration of Oda, J.)

[70] See Dino Kritsiotis, (2002); Imagining the International Community, 13 EUR. J. INT'L L. 961, 967 (explaining the process through which States have reached the stage "of determining whether [the international community] knows of values other than the sovereign identities of its individual members [states]"); Samantha Besson, (2018); Community Interests in International Law: Whose Interests Are They and How Should We Best Identify Them, in COMMUNITY INTERESTS ACROSS INTERNATIONAL LAW 36, 37 (Eval Benvenisti & George Nolte eds.

states in signing human rights treaties supports the premise that governments should mutually pledge to preserve human rights; it is not merely a claim.[71]

The 1970 Vienna Convention on the Law of Treaties ("VCLT"), which was adopted a few months before the Barcelona Traction judgement, contains specific provisions governing treaties of a "humanitarian character,"[72] reflecting the adoption of human rights treaties and the design incorporated into their drafting. These developments clearly influenced the development of the law of treaties.

In terms of the importance of the ICJ's ruling in Barcelona Traction, the real point of contention is not the (mostly objective) observation that certain international obligations might be important enough to warrant universal standing, but rather the perspective on the role that a state has in relation to human rights.

The aforementioned advancements in international law, specifically in the area of human rights law, were subsequently explained as a component of states' wider

[71] Prior to 1970, these conventions included, e.g., the 1926 Slavery Convention; the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; the 1951 Refugee Convention; the 1952 Convention on Political Rights of Women; the 1954 Convention on the Status of Stateless Persons; and the 1961 Convention on the Reduction of Statelessness. TAMS, supra note 13, at 6.

[72] Vienna Convention on the Law of Treaties art. 60(5), May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VCLT].

obligation to protect "community values"[73] or "community interests."[74] This obligation acknowledges the boundaries of the reciprocity principles,[75] which have a significant impact on the formation of international legal relationships.

[73] Judicial endorsement of "community values" could be seen in Austria v. Italy, App. No. 788/60, 1961 Y.B. Eur. Conv. on H.R. 4, 19–20 (Eur. Comm'n on H.R.) 18, where the European Commission on Human Rights remarked that "the purpose of the high Contracting Parties in concluding the [European] Convention was not to concede to each other reciprocal rights and obligations in pursuance of their individual national interests but to . . . establish a common public order of the free democracies of Europe with the object of safeguarding their common heritage of political traditions, ideals, freedom and the rule of law"; Study Group of the Int'l Law Comm'n, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, 393, U.N. Doc. A/CN.4/L.682 (2006); Sandesh Sivakumaran, Impact on the Structure of International Obligations, in THE IMPACT OF HUMAN RIGHTS LAW ON GENERAL INTERNATIONAL LAW 133, 146 (Menno Kamminga & Martin Scheinin eds., 2009) (describing notions such as jus cogens as representing a minimum threshold for community values in international law).

[74] For instance, writing in 1994, Judge Simma observed that "[a] rising awareness of the common interests of the international community, a community that comprises not only States, but in the last instance all human beings, has begun to change the nature of international law profoundly." Bruno Simma, From Bilateralism to Community Interest in International Law, 250 RECUEIL DES COURS 217, 234 (1994) ("International law has undoubtedly entered a stage at which it does not exhaust itself in correlative rights and obligations running between states, but also incorporates common interests of the international community as a whole, including not only states but all human beings. In so doing, it begins to display more and more features which do not fit into the . . . bilateralist structure of the traditional law."); see also Bruno Simma, Universality of International Law from the Perspective of a Practitioner, 20 EUR. J. INT'L L. 265, 297 (2009); see also Santiago Villalpando, The Legal Dimension of the International Community: How Community Interests are protected in International Law, 21 EUR. J. INT'L L. 387 (2010). The potential applications of obligations erga omnes in international environmental law in protecting community interests were raised by Judge Weeramantry in Gabc˘ı´kovo-Nagymaros Project (Hung. v. Slvk.), Judgment, 1997 I.C.J. Rep. 7 (Sep. 25) (separate opinion by Weeramantry, J.).

[75] Yoshifumi Tanaka, Protection of Community Interests in International Law: The Case of the Law of the Sea, 15 MAX PLANCK Y.B. U.N. L. ONLINE 15 (2011).

2.4 Legal Standing in the ARSIWA

The ILC conducted a series of investigations that further analyzed the conditions under which one may get standing to assert responsibility before an international court.[76] As noted in the Commentary, the right to commence proceedings before an international court is part of the right to invoke responsibility, even if the phrase "legal standing" is not used specifically in the Articles.[77] *Art. 48* contains the pertinent provisions.

The objective of *Art. 48(1) (a)* is to handle circumstances in which obligations are established to safeguard the interests of an arsenal of states collectively.[78] It depicts the relationship that is frequently included in multilateral agreements pertaining to environmental protection or human rights.[79] Such obligations were established with the intention of "transcending the 'sphere of the bilateral relations of the States parties, thus creating obligations that are genuinely multilateral.[80]

As a result, each state party has a stake in other states' compliance. *Art. 48(1) (b)* was formulated to tackle erga omnes obligations that fall beyond the purview of treaty

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[76] Responsibility of States for Internationally Wrongful Acts, in Report of the International Law Commission on the Work of Its Fifty-third Session, [2001) 2 Y.B. Int'l L. Comm'n 1, U.N. Doc. A/CN.4/ SER.A/2001/Add.1 (Part 2), 43 [hereinafter ARSIWA].

[77] See Commentary To Article 42, (2), In Int'l Law Comm'n, Rep. On The Work Of Its Fifty-Third Session ("Invocation Should Be Understood As Taking Measures Of A Relatively Formal Character, For Example, The Raising Or Presentation Of A Claim Against Another State Or The Commencement Of Proceedings Before An International Court Or Tribunal."), Cited In JAMES CRAWFORD, THE INTERNATIONAL LAW COMMISSION'S ARTICLES ON STATE RESPONSIBILITY: INTRODUCTION, TEXT AND COMMENTARIES 57–61 (2002); Annie Bird, Third State Responsibility For Human Rights Violations, 21 EUR. J. INT'L L. 883, 891 (2010) ("[T] He Distinction Between Legal Interests To Invoke Responsibility And Standing To Institute ICJ Proceedings Has Not Usually Been Drawn In Practice; The Latter Was Considered To Be A Consequence Of The Former."). Note Also That By Utilizing The Distinction Between An "Injured State" And Situations Involving A Party "Other Than An Injured State," Art. 42 And 48 Intended To Provide Exhaustively For Situations That Might Give Rise To A Right To Invoke The Responsibility Of Another.

[78] *Id.*

[79] See Commentary to Art. 48, in Int'l Law Comm'n, Rep. on the Work of its Fifty-Third Session, cited in CRAWFORD, supra note 81.

[80] James Crawford, (2012); Brownlie's Principle Of Public International Law 21 8th ed.

law.[81] These obligations are similar to the kind of obligations mentioned in the Barcelona Traction dicta, which states that "all States can be held to have a legal interest in its protection." Moreover, *Art. 48(1) (b)* can be interpreted in conjunction with *Arts. 40 and 41* of the ARSIWA,[82] which address circumstances in which there are flagrant violations of the peremptory or jus cogens rules of general international law.[83]

The rationale underlying the syntax of *Art. 48* is that a state should be able to claim responsibility without first having to ascertain the kind (material or moral) or extent of damages or injuries.[84] Instead, standing is determined only by whether the claimant state is owed an obligation that is in violation. This strategy, which was adopted by Professor James Crawford, the fifth and final Special Rapporteur on the matter, after being inspired by second Special Rapporteur Roberto Ago, was designed to guarantee that "every internationally wrongful act of a State entails the international responsibility of that State."[85] This Article, in effect, creates legal standing according to the common interests *(Art. 48)*.[86]

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[81] Schwelb, supra note 46.

[82] ARSIWA, supra note 22, arts. 40 and 41.

[83] *Id.* art. 41(1).

[84] Id.

[85] Alain Pellet, The ILC's Articles on State Responsibility for Internationally Wrongful Acts and Related Texts, in THE LAW OF INTERNATIONAL RESPONSIBILITY 75, 77 (James Crawford, Alain Pellet, Simon Olleson & Kate Parlett eds., 2010). As Articles 1 and 2 of the ARSIWA provided, "[e]very internationally wrongful act of a State entails the international responsibility of that State" and "[t]here is an internationally wrongful act of a State when conduct consisting of an action or omission . . . constitutes a breach of an international obligation of the State." This position can in turn be traced to the Chorzów Factory case, where it was determined that every breach of international law "involves an obligation to make reparation." See Factory at Chorzów (Claim for Indemnity) (Jurisdiction) (Ger. v. Pol.), Judgment, 1927 P.C.I.J. (ser. A) No. 9, at 21 (July 26).

[86] Annemarieke Vermeer-Ku¨nzli, (2014); Invocation of Responsibility, in Principles Of Shared Responsibility In International Law: An Appraisal Of The State Of The Art 251, 257 (Andre´ Nollkaemper & Ilias Plakokefalos eds.

For non-injured states, the legal interest under *Article 48* is restricted to ensuring the enforcement of the breached commitments.[87] Once more, this stance is in line with the Barcelona Traction dictum,[88] and aligns with the perspective of a number of PCIJ rulings that grant treaty parties legal standing solely for their interest in guaranteeing adherence to treaty obligations, rather than because they have actually suffered a material injury.

In *Prosecutor v. Anto Furundzija*,[89] the International Criminal Tribunal for the former Yugoslavia (ICTY) clarified that a violation of an obligation erga omnes results in a claim for compliance accruing to all members, who can then demand that the obligation be fulfilled or, in any event, request that the breach be discontinued. The European Commission on Human Rights has noted similar things.[90]

That is to say, in a situation where a state has been harmed, the state that has not been harmed cannot relinquish its liability to the non-harmed state.[91] Every State, save an injured State, is permitted to claim the obligation of another State in line with paragraph 2, as stated unequivocally in *Art. 48(1)*.[92]

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[87] S.S. Wimbledon, supra note 50; see, e.g., Interpretation of Statute of Memel Territory (Preliminary Objection) (U.K., Fr., It. & Japan v. Lith.), Judgment, 1932 P.C.I.J. (ser. A/B) No. 47 (June 24); Interpretation of Statute of Memel Territory (U.K., Fr., It. & Japan v. Lith.), Judgment, 1932 P.C.I.J. (ser. A/B) No. 49 (Aug. 11).

[88] Barcelona Traction, supra note 35, 33–34 (i.e., that these concern rights and obligations in whose protection States have a "legal interest")

[89] Prosecutor v. Furundžija, Case No. IT-95-17/1-T, Judgment, 151 (Int'l Crim. Trib. for the Former Yugoslavia Dec. 10, 1998)

[90] See *Ireland v. United Kingdom*, 23 Eur. Ct. H.R. (ser. B) 239 (1976).

[91] For instance, in the case S.S. Wimbledon, the French Company (France) suffered a pecuniary loss as a result of Germany's refusal of passage and therefore sought reparations. That did not preclude Japan's standing to seek a declaration of illegality. See S.S. Wimbledon, supra note 50. Judge Weermantry opined that when considering erga omnes obligations, one must look beyond inter partes rules, procedures, and remedy, because fairness as between parties may not be sufficient to do justice to rights and obligations of an erga omnes character. Gabčıkovo-Nagymaros Project (Hung. /Slovk.), Judgment, 1997 I.C.J. Rep. 7 (Sep. 25) (separate opinion by Weeramantry, J.)

[92] ARSIWA, supra note 22, art. 48(1).

Enforcing human rights and humanitarian conventions would be greatly aided by this, especially when it comes to situations involving refugees and/or stateless populations travelling between states.[93] Furthermore, if the unlawful act has been stopped by the time the matter comes before an international court, a claim is unlikely to be acceptable because non-injured governments are only allowed to demand that the wrongful act stop. This lessens the impact of standing claims made based on shared legal interests, which helps allay worries that admitting the existence of duties erga omnes and/or erga omnes partes will encourage politically motivated states to file frivolous lawsuits.[94]

In its 1997 judgment, The International Criminal Tribunal for the former Yugoslavia (ICTY) in *Prosecutor v. Blaskic*,[95] while expressly referring to the ILC's efforts described above and the ICJ's dictum in Barcelona Traction, remarked that *Art. 29* of the Statute of the ICTY amounts to an obligation erga omnes partes. The International Criminal Tribunal for Rwanda ("ICTR") further affirmed the Blasˇkic´ decision-making approach to obligations erga omnes partes in a number of rulings.[96] During his tenure as a judge

[93] For example, if a stateless population from State A fled to State B as a result of gross systematic oppression toward them in State A, the right of third States to demand State A's compliance with international human rights obligations should not be subject to State B's institution of proceedings against State A, even though State B could be said to be specifically affected, nor should it be extinguished by State B's waiver of its right to reparations. See discussions on The Gambia v. Myanmar below. Similar concerns may arise in cases of human trafficking.

[94] See Edith Brown Weiss, (2002); Invoking State Responsibility in the Twenty-First Century, 96 AM. J. INT'L L. 798, 805.

[95] Prosecutor v. Blasˇkic´, Case No. IT-95-14/14-T, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 29, 1997).

[96] See Prosecutor v. Nahimana, Case No. ICTR-99-52-T, Decision on the Motion to Stay the Proceedings in the Trial of Ferdinand Nahimana, 9 (June 5, 2003), Prosecutor v. Nzabonimana, Case No. ICTR-98-44D-T, Decision on Defence Motion to Reconsider Prior Trial Chamber Decisions on France's Cooperation with the Tribunal, 29 (Mar. 4, 2010).

at the Inter-American Court of Human Rights, Judge Cancíado Trindade fervently supported the concept of erga omnes partes.[97]

The ARSIWA's proposed regulations, however, do not finally resolve the issue of a treaty's status. This is due to the fact that states are typically able to adopt specially crafted treaty provisions that establish rules *lex specialis*, regardless of whether these provisions strengthen or loosen the standards for legal standing.[98] Treaty interpretation, in short, determines whether parties intended universal standing for all contracting parties before an international court in the case of a breach and if an obligation under a treaty might legitimately be described as an obligation erga omnes partes.[99]

The principle of obligation erga omnes partes essentially asserts that when a State Party violates a provision of a treaty, it affects all other State Parties' legal interests or positions. Additionally, to the extent that such a treaty foresees international judicial

[97] See Las Palmeras v. Colombia, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 67, 9–12 (Feb. 4, 2000) (separate opinion by Trindade, J.); Communities of the Jiguamiandó and the Curbaradó Regarding Colombia, Provisional Measures, Order of the Court, "Having Seen," 4–6 (Inter-Am. Ct. H.R. Mar. 6, 2003) (concurring opinion by Trindade, J; Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, 66, 77, 79, 82–83 (Sept. 17, 2003) (concurring opinion by Trindade, J.); Pueblo Indı´gena de Kankuamo Regarding Colombia, Provisional Measures, Order of the Court, "Having Seen," 2–3 (Inter-Am. Ct. H.R. July 5, 2004) (concurring opinion by Trindade, J.).

[98] TAMS, supra note 12, at 70.

[99] In addition to potentially providing for special rules in relation to standing, a treaty may also provide for particular avenues/mechanisms for collective enforcement or restrict dispute settlement to the procedures established by the treaty, thereby restricting the jurisdiction of the ICJ. For instance, art. 33 of the ECHR (as amended by Protocols Nos. 11 and 14) provides for a rather relaxed threshold for legal standing (i.e. concerning "any alleged breach of the provisions") for all State parties while restricting collective enforcement to the mechanisms created by the Convention, i.e. the European Court of Human Rights. See ECHR, supra note 57. The relevant provisions of the Constitution of the ILO provide that disputes as between States must be resolved through the internal mechanisms of the ILO before they may be referred to the ICJ. See Constitution of the ILO arts. 26–29, 31, Oct. 9, 1946, 62 Stat. 3485. The difference between admissibility and jurisdiction is addressed below. See infra notes 149–152.

settlement of disputes in the framework of that treaty, the violation can have a procedural remedy."[100]

Therefore, it is still necessary to answer the challenging question of whether all human rights treaties have obligations erga omnes partes, considering that the majority of them, if not all of them, include provisions for responsibilities that are "non synallagmatic"[101] or cannot be implemented bilaterally. Human rights treaties, for example, have been described as a "series of unilateral engagements solemnly contracted before the world as represented by the other Contracting Parties," since they are not concluded on the basis of reciprocity.[102]

2.5 The ICJ's Acceptance of Erga Omnes Partes Obligations

The International Court of Justice (ICJ) first explicitly affirmed the idea of obligations erga omnes partes in the *Belgium v. Senegal* judgement.[103] In this case, Hissan Habre´,

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[100] Jure Vidmar, (2014); Protecting the Community Interest in a State Centric Legal System: The UN Charter and Certain Norms of 'Special Standing', in THE COMMON INTEREST IN INTERNATIONAL LAW 109, 113 (Wolfgang Benedek, Koen De Feyter, Matthias C. Kettemann & Christina Voigt Ed.

[101] See Comm. on the Elimination of Racial Discrimination, Inter-State Communication Submitted by the State of Palestine Against Israel, 3.33, U.N. Doc. CERD/C/100/5 (Dec. 12, 2019). The Committee notes that the jurisprudence of the European and Inter-American systems of protection of human rights, as well as the General Comment of the Human Rights Committee, shows that the objective or non-synallagmatic nature of the substantive obligations contained in the European and American Convention of Human Rights has as a result, that any State party may trigger the collective enforcement machinery created by the respective treaty, independently from the existence of correlative obligations between the concerned parties.

[102] Jean S. Pictet,(1952); Commentary on First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, in The Geneva Conventions.

[103] Belgium v. Senegal, supra note 13; cf. Martin Dawidowicz, Third-Party Countermeasures In International Law 42–43 (2017) (observing that the admissibility of Australia in Whaling in Antarctic (Austl. v. Japan: N.Z. intervening), Judgment, 2014 I.C.J. 226 (Mar. 31), was implicitly based on the idea of obligations erga omnes partes). Note that various ICJ judges made observations effectively recognizing that obligations pertaining to human rights treaties may be owed to all States parties. Judge Simma observed in relation to the Geneva Convention that "regardless of whether the maltreated individuals were Ugandans or not, Uganda had the right—indeed the duty—to raise the violations of international humanitarian law [before the International Court of Justice]." See Armed Activities on Territory of the

the former president of Chad, was being prosecuted by victims of Chadian nationality in Belgian courts for grave human rights violations.[104] Habre´ sought safety in Senegal following the fall of the government.[105] Senegalese law did not grant the authority to exercise universal jurisdiction, which is why subsequent attempts to prosecute Habré in Senegalese courts were unsuccessful.

In the absence of a particular interest, the question of whether Belgium's UNCAT membership was sufficient to support its legal standing before the ICJ was at stake.[106] The majority of the judges reached an affirmative decision, citing the need for state parties to the UNCAT to adhere to specific fundamental requirements as part of the Convention's goal and intent. It is, therefore, in the common interest of all state parties to see to it that these shared interests are upheld.

The conceptual relationship between a treaty's object and purpose and its underlying common interests leads to additional implications. Since obligations erga omnes partes are those that are essential to the treaty's object and purpose, it is likely that these obligations also cannot be subject to reservations, in accordance with *Art. 19(c)* of the VCLT.[107]

Given the objective and purpose of every multilateral treaty, the real-world implementation of obligations erga omnes partes may go beyond human rights treaties

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Congo (New Application: 2002) (Dem. Rep. Congo v. Rwanda), Judgment, 2005 I.C.J. 168, 347, 34 (Dec. 19) (separate opinion by Simma, J.). Judge Oda in Bosnian Genocide observed in relation to the obligation to prevent and punish acts of genocide under Article 1 of the Genocide Convention that "these legal obligations are borne in a general manner erga omnes by the Contracting Parties in their relations with all the other Contracting Parties to the Convention—or, even, with the international community as a whole—but are not obligations in relation to any specific and particular signatory Contracting Party," although he further commented that States are entitled to resolve disputes through other organs of the U.N. but not by invoking the responsibility of States before the ICJ. See Bosnian Genocide, supra note 68.

[104] Belgium v. Senegal, supra note 52, 19

[105] *Ibid.*

[106] *Ibid.*

[107] VCLT, supra note 14, art. 19(c)

and non-reciprocal treaties entirely. They might even apply to agreements pertaining to free trade areas, for instance.[108]

As can be seen from the preceding analysis, a breach of obligations erga omnes partes and the "material breach" that is described in *Art. 60* of the VCLT are conceptually identical.[109] A major violation of a treaty "consists in: (a) a repudiation of the treaty not sanctioned by the present Convention; or (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty," according to *Art. 60(3)* of the VCLT.[110] The basic idea of obligations erga omnes partes enhances the VCLT addressing the consequences for material breach,[111] by giving third states the legal recourse to lodge a claim for the cessation of the claimed breach and granting third-party standing in the case of such a breach.[112]

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[108] See, e.g., Chios Carmody, WTO Obligations as Collective, 17 EUR. J. INT'L L. 419 (2006); Joost Pauwelyn, A Typology of Multilateral Treaty Obligations: Are WTO Obligations Bilateral or Collective in Nature? 14 EUR. J. INT'L L. 907 (2003).

[109] Marco Longobardo, The Contribution of International Humanitarian Law to the Development of the Law of International Responsibility Regarding Obligations Erga Omnes and Erga Omnes Partes, 23 J. CONFLICT & SEC. L. 383, 397 (2018).

[110] VCLT, supra note 14, art. 60(3).

[111] VCLT, supra note 14, art. 60(2), provides that: "A material breach of a multilateral treaty by one of the parties entitles: (a) The other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either: (i) in the relations between themselves and the defaulting State, or (ii) as between all the parties; (b) A party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State; (c) Any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty." Article 60(5) provides that: "Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties."

[112] Where judicial settlement is not expressly provided, a breach of an obligation erga omnes partes may provide the legal basis for countermeasures as envisaged by the ARSIWA. See ARSIWA, supra note 22, art. 54.

This chapter has described the evolution of erga omnes partes obligations. It has described the radical shift in the understanding of international obligations (largely brought about by state-to-state agreements to defend human rights) that led to the ICJ's observation in Barcelona Traction that duties to the international community may exist, and it has established an exhortation against placing too much reserve in the 1966 ruling in South West Africa that denied third-party standing.

CHAPTER THREE: HUMAN RIGHTS TREATIES IN CONTENTION

3.1 Introduction

Chapter three will describe the universal legal standing requirement in the adjudication of international human rights disputes. It will elaborate the erga omnes-requirement and how it is a necessary requirement in specific human rights treaties.

In the realm of international law, the adjudication of human rights disputes carries profound significance, as it addresses violations that transcend national borders and affect humanity as a whole. Central to this adjudication process is the concept of universal legal standing, which ensures that relevant parties possess the right to initiate or participate in proceedings concerning human rights violations. A cornerstone of this principle is the erga omnes requirement, which underscores the universality and indivisibility of human rights obligations. This research explores the significance of universal legal standing in international human rights disputes, with a particular focus on the erga omnes requirement and its necessity in specific human rights treaties.

3.1.1 Universal Legal Standing

Universal legal standing refers to the entitlement of individuals, states, or other entities to bring forth claims or participate in legal proceedings concerning human rights violations, irrespective of their nationality or relationship to the parties involved.[113] This principle recognizes that human rights are universal in nature and require collective responsibility for their protection and enforcement.[114] By granting standing to a wide array of actors, including individuals, states, international organizations, and non-governmental organizations (NGOs), universal legal standing ensures that human

[113] Jure Vidmar, (2014); Protecting the Community Interest in a State Centric Legal System: The UN Charter and Certain Norms of 'Special Standing', in The Common Interest In International Law 109, 113 (Wolfgang Benedek, Koen De Feyter, Matthias C. Kettemann & Christina Voigt.

[114] Edith Brown Weiss, Invoking State Responsibility in the Twenty-First Century, 96 AM. J. INT'L L. 798, 805 (2002).

rights violations are not shielded from scrutiny or accountability based on jurisdictional boundaries.[115]

3.1.2 The Erga Omnes Requirement

At the heart of universal legal standing in international human rights law lies the erga omnes requirement. Derived from Latin, erga omnes translates to "towards all" or "for all."[116] This principle emphasizes that certain obligations, particularly those pertaining to fundamental human rights, are owed by states to the international community as a whole, rather than solely to other states or specific individuals.[117] As articulated in the International Court of Justice's (ICJ) landmark judgment in the Barcelona Traction case (1970), obligations erga omnes are obligations "the performance of which is owed to the international community as a whole."[118]

3.1.3 Necessity in Human Rights Treaties

The erga omnes requirement plays a crucial role in various international human rights treaties by affirming the universal nature of certain rights and the collective responsibility to uphold them.[119] For instance, in the context of the Genocide Convention (1948),[120] the obligation to prevent and punish genocide is considered an erga omnes obligation,[121] as it safeguards the rights of all individuals against the gravest

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[115] Annemarieke Vermeer-Ku¨nzli, Invocation of Responsibility, in Principles Of Shared Responsibility In International Law: An Appraisal Of The State Of The Art 251, 257 (Andre´ Nollkaemper & Ilias Plakokefalos eds., 2014).

[116] Fastenrath, Rudolf Geiger, Daniel-Erasmus Khan, Andreas Paulus, Sabine von Schorlemer & Christoph Vedder eds., 2011).

[117] Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria), Provisional Measures, 1996 I.C.J. 13 (Mar. 15).

[118] Abaclat and Others v. Arg. Republic, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, Dissenting Opinion of Georges Abi-Saab,18, 126 (Aug. 4, 2011)

[119] Allott P (1988) State responsibility and the unmaking of international law, Harvard ILJ, pp 3–26.

[120] Boed R (2000) State of necessity as a justification for internationally wrongful conduct. Yale Hum Rights Dev Law J 3:1–43.

[121] Cohan JA (2007) Torture and the necessity doctrine, Valparaiso Univ. LR 41, pp 1587–1632.

of human rights violations.[122] Similarly, principles such as the prohibition of torture and slavery, enshrined in conventions such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and the Universal Declaration of Human Rights (1948), respectively, are upheld as erga omnes obligations binding on all states.[123]

Moreover, the erga omnes requirement serves to reinforce the principle of jus cogens, which denotes peremptory norms of international law that are universally recognized and from which no derogation is permitted.[124] These norms, which include prohibitions against genocide, slavery, and torture, reflect fundamental values shared by the international community and form the cornerstone of the global human rights regime.[125]

3.2 The 1951 Refugee Convention

The fundamental tenet of the 1951 Convention is non-refoulement, which states that a person seeking refuge should not be sent back to a nation where they pose a grave risk to their safety or freedom.[126] The convention specifies the fundamental minimum requirements for how refugees must be treated, including their access to employment, shelter, and education while they are in transit so they can live honorable and independent lives.[127]

Additionally, it outlines the responsibilities of refugees to their host nations and lists some groups of individuals such as war criminals who are ineligible for refugee status. It

[122] Crawford JR, Olleson S (2003); The nature and forms of state responsibility. In: Evans MD (Ed) International Law. Oxford University Press, Oxford, pp 445–472.

[123] Heller KJ (2006) The rhetoric of necessity (or, Sanford Levinson's Pinteresque Conversation). Georgia LR 40:779–806

[124] Lowe V (1999) Precluding wrongfulness or responsibility: a plea for excuses. EJIL 10:405–411.

[125] Okowa P (1999) Defences in the jurisprudence of International Tribunals. In: Goodwin-Gill G, Talmon SAG (Eds) The reality of international law. Essays in honor of Ian Brownlie. Oxford University Press, Oxford, pp 389–411.

[126] United Nations General Assembly resolution 429(V) of 14 December 1950.

[127] Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, Advisory Opinion, United Nations High Commissioner for Refugees, (Jan. 26, 2007).

also describes the States' legal responsibilities as parties to one or both of these agreements. The 1951 Convention's geographical and temporal bounds were eliminated by the 1967 Protocol, the sole modification made to the Convention since it came into effect on April 22, 1954.[128] The 1951 Convention was initially restricted to individuals escaping European wars that took place prior to January 1, 1951. These restrictions were lifted by the 1967 Protocol, granting the Convention universal applicability.[129]

The principle of non-refoulement is a crucial type of protection for refugees within the scope of humanitarian and customary international law.[130] The principle of non-refoulement forbids states from expelling or transferring individuals from their jurisdiction or effective control if there are good reasons to believe that their return could result in irreversible harm, such as torture, ill-treatment, persecution, or other grave violations of human rights.[131]

The International Court of Justice established the standard for determining whether an obligation is an obligation erga omnes partes in the case of Belgium v. Senegal.[132] The Court must decide whether a State's ability to file a claim in court alleging that a treaty commitment has been violated is based only on its status as a state party to the Convention. Finding out whether an obligation is an obligation erga omnes partes

[128] Ben Saul, (Dec. 15, 2021) *"Recognition" and the Taliban's International Legal Status*, Int'l Ctr. for Counter-Terrorism.

[129] The Organization of African Unity (now African Union) Convention governing the Specific Aspects of Refugee Problems in Africa 1969, adopted in Addis Adaba, 10 September 1969; the European Union Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, Official Journal L 304 , 30/09/2004 P. 0012 – 0023. The Cartagena Declaration on Refugees, adopted at a colloquium held at Cartagena, Colombia, 19-22 November 1984, while non-binding, also sets out regional standards for refugees in Central America, Mexico and Panama.

[130] Convention Relating to the Status of Refugees 1951 Art 38, Apr. 22, 1954, 189 U.N.T.S 150.

[131] Convention Relating to the Status of Refugees 1951 Art 33, Apr. 22, 1954, 189 U.N.T.S 150.

[132] Questions Relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgement, 2012 I.C.J 422.

necessitates determining three things: first, the treaty's object and purpose; second, the state parties' shared interest in adhering to the obligations outlined in the treaty; and third, whether the specific obligation in question was included to fulfil the treaty's identified purpose. This test will be used to evaluate the Refugee Convention's non-refoulement requirement.

First and foremost, the Refugee Convention's goal is to grant refugees the most fundamental liberties and rights. When determining a treaty's object and purpose, the Vienna Convention on the Law of Treaties permits consideration of the treaty's preamble.[133] Examining the Refugee Convention's preamble, it states that every state party to the agreement is required to make an effort to ensure that refugees can exercise their fundamental rights.[134] Therefore, the goal of the Convention is to ensure that refugees can exercise their fundamental rights and liberties to the greatest extent feasible through international collaboration.

The purpose of this treaty's adoption was to provide the refugees with these rights in a fair and humane manner.[135] Furthermore, reference can be made to the convention's preliminary materials by the Vienna Convention.[136] The Convention's Travaux Préparatoires demonstrated that it was understood that putting refugees on an equal footing with residents of the countries of asylum is the cornerstone of the Convention. The objective of the Convention encompasses the desire of the state parties to be obligated by the non-discrimination principle for refugee care.[137] Delivering a refugee back to a country where his freedom or life would be in danger due to his race or religion would be the same as handing him over to his attackers. Therefore, it follows that the fundamental human rights and liberties of refugees are the aim and purpose of the Refugee Convention.

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[133] Vienna Convention on the Law of the Treaties art. 31, May 23, 1969, 1155 U.N.T.S 331.

[134] Economic and Social Council Res. 1950/319 (Aug. 16, 1950).

[135] U.N. ESCOR, 11th Sess., 158th mtg., U.N. Doc. E/AC.7/SR.158 (Aug. 15, 1950).

[136] Vienna Convention on the Law of the Treaties, *supra* note 6.

[137] Paul Weis, The Refugee Convention, 1951, The Travaux Pr*é*paratoires Analysed with a Commentary by the Late Dr. Paul Weis (1995).

The second step is to ascertain whether state parties have a shared interest in adhering to the treaty's requirements. The International Court of Justice ruled in Belgium v. Senegal that, despite the alleged torturer's or victim's lack of connection to any state party, all parties to the Convention Against Torture have a "common interest" in upholding the duty to prosecute those accused of torturing.[138] It is possible to say that these states have a "legal interest" in fulfilling their erga omnes partes duties. All parties to the convention are owed the aforementioned obligations.

It is possible to say that these states have a "legal interest" in fulfilling their erga omnes partes duties. All parties to the convention are owed the aforementioned obligations. Using the same logic, states have a shared interest in preserving fundamental human rights, which includes preserving the liberties and rights of refugees. This rationale also applies to the Refugee Convention. Because of the nature of human rights treaties, states are obligated to all state parties, even if they have no connection to the state that is in violation of the treaty.[139]

State parties are now required by law to request and demand compliance from other state parties.[140] Human rights treaties are not made on the basis of reciprocity; rather, they are a set of solemn, unilateral agreements made in front of the world through the other Contracting Parties.[141] This suggests that every human rights treaty is fundamentally erga omnes.[142]

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[138] Questions Relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), *supra* note 36.

[139] H.R.C. General Comment No. 31, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004), 2; Dinah Shelton, The Oxford Handbook of International Human Rights Law 510 (2013); Walter Kälin and Jörg Künzli, The Legal Nature of Human Rights Obligations, in The Law of International Human Rights Protection (2d. ed., 2019) 86.

[140] *See Id.*

[141] Jean S. Pictet, (Dec. 15, 2021); The Geneva Conventions of 12 August 1949: Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva: Int'l Comm. Of the Red Cross ed., 1958), comments on common Article 1.

[142] Erika de Wet, (2008); The International Constitutional Order 55 Cambridge University Press Ed.

Furthermore, the provisions of the Convention Against Torture and the Convention for the Prevention and Punishment of the Crime of Genocide have previously been compared by the International Court of Justice because both conventions' contracting states have a single, common interest that is, the accomplishment of the high purposes that serve as the convention's primary motivation rather than any individual interests.[143] Similarly, the safeguarding of refugees' fundamental human rights is a component of the Refugee Convention's common interest. Each state party to the agreement owes all other state parties obligations, as this shared interest ensures that anyone who violates the goal of the refugee agreement does not enjoy impunity.[144]

The purpose of establishing responsibilities to safeguard the collective interest of a group of states is to go beyond the realm of the State parties' bilateral relations, resulting in multilateral obligations.[145] Because all states parties to the Refugee Convention have a common interest in adhering to the pertinent duties of the Convention, any state party could contend that another state is responsible for stopping an alleged breach by that other state party.[146] The relevant obligations can be said to be of an erga omnes partes character, as no special interest is needed for this purpose.

Third, the goal of the Refugee Convention can only be achieved by incorporating the non-refoulement duty. Obligation erga omnes partes are those that are so essential to the subject matter and intent of the agreement that they cannot be modified or waived.[147] The core idea of non-refoulement serves as the foundation for the Refugee

[143] Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Judgment, 1951 I.C.J. Rep 15, 23 (May 28)

[144] *See* Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), *supra* note 36.

[145] Linos-Alexander Sicilianos, (2008); *The Classification of Obligations and the Multilateral Dimension of the Relations of International Responsibility*, 13 Eur. J. Int' L. 1127, 1135.

[146] *See* Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), *supra* note 36.

[147] Vienna Convention on the Law of Treaties art. 19(c), May 23, 1969, 1155 U.N.T.S 331; Pok Yin Stephenson Chow, *On Obligation Erga Omnes Partes*. 52 Georgetown J. Int'l L. 469 (2020).

Convention.[148] *Art. 33* establishes this crucial duty. Furthermore, no deviations or reservations from *Art. 33* are allowed under *Art. 42*. Because of how important it is, the UNHCR has said that the principle of non-refoulement is a norm of customary international law.[149] This norm is founded on nations' awareness of the normative nature of the principle and their consistent conduct.[150]

3.3 The 1926 Slavery treaty

Slavery has been the norm throughout the lengthy history of humanity. In contrast, the global struggle to outlaw slavery, the slave trade, and finally lessen the use of forced labour has only lasted a short while.[151] While the practice of one person enslaving another has existed for eternity and was a feature of most civilizations across history, the New World was transformed by European exploration expeditions,[152] which led to an industrialization of servitude.[153] This shift resulted in the forced removal of an estimated 12.5 million Africans from their continent between 1501 and 1866 so that they may be exploited for commodities in the Americas, as well as the enslavement of an undetermined number of indigenous people in the Western Hemisphere.[154]

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[148] Weis, *supra* note 147.

[149] Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukr. v. Russ.), Provisional Measures, 2017 I.C.J. Rep. 104, 63 (Apr. 19).

[150] *Commentary on The Refugee Convention 1951 Articles 2-11, 13-37*, United Nations High Comm'r for Refugees (1997).

[151] Gregory E. O'Malley and Alex Borucki, (May/Aug 2017) "Patterns in the intercolonial slave trade across the Americas before the nineteenth century," Tempo, 23: 315-338.

[152] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, New York, 15 November 2000, United Nations, Treaty Nations, vol. 2237, p. 319.

[153] ALDEN, Dauril, (1987); Late Colonial Brazil, 1750-1808. In: BETHELL, Leslie (Ed.). Colonial Brazil. New York: Cambridge University Press, page. 284-343.

[154] BANKS, Kenneth J. (2005); Official Duplicity: The Illicit Slave Trade of Martinique, 1713-1763. In: COCLANIS, Peter A. (Ed.). The Atlantic Economy during the Seventeenth and Eighteenth Centuries. Columbia: University of South Carolina Press, p. 229-251.

Even though certain scholars, like Jean Bodin (1530–1596) and Montesquieu (1689–1755), questioned the moral and philosophical foundations of slavery, there was still widespread agreement in Europe that slavery was lawful *(jus gentium)* even though it went against natural law.[155] That agreement, based on Roman law, would, however, be put to the test throughout time, and most notably by the slave uprising that resulted in the 1804 revolution that turned the French colony of Saint-Domingue into the independent Republic of Haiti.[156] Consequently, the European Powers expressed their desire to consider the universal abolition of the trade of slaves in 1815 at the Congress of Vienna in an effort to bring to an end a scourge which has for a long time desolated Africa, degraded Europe, and afflicted humanity.[157]

During the majority of the 1800s, the global abolitionist campaign took place on the high seas,[158] whereby a sequence of bilateral agreements facilitated by the United Kingdom permitted a right to search in an effort to curb the trafficking of Africans into slavery.[159] By century's end, this network of treaties effectively put an end to the Atlantic slave trade and cleared the diplomatic path for the achievement of a multilateral accord. The slave trade was effectively abolished in 1905 thanks to the

[155] ELLIOTT, J. H. (2006); Empires of the Atlantic World: Britain and Spain in America, 1492-1830. New Haven: Yale University Press.

[156] GEGGUS, David. "The French Slave Trade: An Overview" William and Mary Quarterly, vol. 58, n. 1, p. 119-138, 2001.

[157] GRAHAM, Richard. Another Middle Passage: The Internal Slave Trade in Brazil. In: JOHNSON, Walter (Ed.). The Chattel Principle: Internal Slave Trades in the Americas. New Haven: Yale University Press, 2004.

[158] JORDAAN, Han. (2003); The Curaçao Slave Market: From Asiento Trade to Free Trade, 1700-1730. In: POSTMA, Johannes; ENTHOVEN, Vitor, (Eds.). Riches from Atlantic Commerce: Dutch Transatlantic Trade and Shipping, 1585-1817. Leiden: Brill, p. 259-285.

[159] BOOGAART, Ernst van den; EMMER, Pieter C. (1596-1650) "The Dutch Participation in the Atlantic Slave Trade," in: GEMERY, Henry A.; HOGENDORN, Jan S. (Eds.). The Uncommon Market: Essays in the Economic History of the Atlantic Slave Trade. New York: Academic Press, 1979, p. 353-375.

Muscat Dhows case,[160] as well as the *General Act of the Brussels Conference of 1890*,[161] which established a maritime zone off the East Coast of Africa with a restricted "right to visit."

In order to achieve this goal, the 1926 Slavery Convention was birthed,[162] to recognize the need to reach more detailed arrangements and set out to complete and extend the work accomplished under the Brussels Act.[163] Its two main goals were to secure the abolition of slavery and the slave trade and its complete suppression. The Convention covers forced labour,[164] slavery, and the slave trade, indicating that its purview is broader than its name would imply.[165]

Art. 9 of this convention can be interpreted to confer universal jurisdiction,[166] on all parties to the convention by barring any form of reservations to it.[167] The Supplementary Convention of 1956, made efforts to establish how to apply the term of slavery to modern cases of people being held in servitude without a legal title.[168] In

[160] Muscat Dhows Case, France v Great Britain, Award, (1961) XI RIAA 83, ICGJ 406 (PCA 1905), 8th August 1905.

[161] General Act of the Brussels Conference relating to the African Slave Trade, signed on 2 July 1890 (173 C.T.S. 293); revised by the Convention of St. Germain of 10 September 1919 (8 L.N.T.S. 26). See slavery.

[162] European Court of Human Rights, Case of Rantsev v. Cyprus and Russia, no. 25965/04, Judgement of 7 January 2010.

[163] General Act of the Brussels Conference relating to the African Slave Trade, signed on 2 July 1890 (173 C.T.S. 293); revised by the Convention of St. Germain of 10 September 1919.

[164] Convention (No. 105) concerning the abolition of forced labour, Geneva, 25 June 1957, International Labour Organization, United Nations, Treaty Series, vol. 320, p. 291.

[165] BANKS, Kenneth J. (2005); Official Duplicity: The Illicit Slave Trade of Martinique, 1713-1763. In: COCLANIS, Peter A. (Ed.). The Atlantic Economy during the Seventeenth and Eighteenth Centuries. Columbia: University of South Carolina Press, p. 229-251.

[166] European Court of Human Rights, Case of Siliadin v. France, no. 73316/01, Judgement of 26 July 2005.

[167] Slavery Convention, signed at Geneva on 25 September 1926 and amended by the Protocol opened for signature or acceptance at the Headquarters of the United Nations, New York, 7 December 1953, United Nations, Treaty Series, vol. 212, p. 17.

[168] BASKES, Jeremy. Staying Afloat: Risk and Uncertainty in Spanish Atlantic World Trade, 1760-1820. Stanford: Stanford University Press, 201 Bottom of Form3.

establishing power of control according to the *2012 Bellagio-Harvard Guidelines* on the Legal Parameters of Slavery,[169] "the powers attaching to the right of ownership must be understood to mean control exercised over a person who is restricted in or significantly deprived of his or her individual liberty,[170] with the intention of exploitation through the use, management, profit, or transfer of a person to another, slavery exists wherever possession becomes equal to control.

This convention aimed to legitimize and promote the outlawing of slavery and the slave trade.[171] It defined slavery as a person's state or condition in which any or all of the rights associated with ownership are exercised over them.[172] Any action involving the apprehension, purchase, or removal of an individual with the intention of reducing them to slavery was deemed to constitute the slave trade.[173] In order to further the abolition of slavery and the slave trade, the convention set specific guidelines and articles. In the global fight to stop these abuses, it was a big step. Under UN auspices, the convention was expanded in 1956 with the adoption of the Supplementary Convention on the Abolition of Slavery.[174] This unwavering dedication to human rights continues to influence global initiatives aimed at ending forced labour and slavery.

If the Refugee Convention's erga omnes partes commitment of non-refoulement can be demonstrated, then any country party to the convention is entitled to sue a country

[169] Inter-American Court of Human Rights, Case of the Workers of Hacienda Brasil Verde v. Brazil, Series C No. 318, Judgement of 20 October 2016.

[170] Community Court of the Economic Community of West African States, Case of Hadijatou Mani Koraou v. the Republic of Niger, no. ECW/CCJ/JUD/06/08, Judgement of 27 October 2008.

[171] Report of the First Session of the Ad Hoc Committee on Slavery to the Economic and Social Council (E/1660, 27 March 1950).

[172] Report submitted by the Secretary-General pursuant to resolution 388 (XIII) of the Economic and Social Council of 10 September 1951, "Slavery, the Slave Trade, and Other Forms of Servitude" (E/2357, 27 January 1953).

[173] J. Allain, (2008); The Slavery Conventions: The Travaux Préparatoires of the 1926 League of Nations Convention and the 1956 United Nations Convention, Leiden, Martinus Nijhoff.

[174] J. Allain, (2013) Slavery in International Law: Of Human Exploitation and Trafficking, Leiden, Martinus Nijhoff.

that violates this obligation before the International Court of Justice. State parties to the treaty are so required by it to accept any refugees who are requesting asylum. As a result of this establishment, non-refoulement requirements are now more enforceable, improving the chances of protecting the rights of persecuted refugees in the turbulent global socio-partisan environment.

3.3 The 1954 convention on the status of stateless persons

Statelessness can occur in many different situations. This phenomenon manifests itself in migratory contexts, wherein certain expatriates lose their nationality without obtaining the nationality of their place of habitual residence.[175] Still, the majority of stateless people have never left their "own country" and have never crossed international borders.[176] Their situation is what it is, that is, in the nation where they have lived for a considerable amount of time often their birth nation.[177] Statelessness for these people frequently stems from issues with the formulation and application of nationality rules.[178]

A person's right to nationality is established by *Art. 15* of the 1948 (UDHR), which also forbids the denial of nationality without cause. The exercise of the entire spectrum of human rights is contingent upon the right to one's nationality.[179] The goal of the 1961 Convention is to guarantee each person's right to a nationality by preventing and reducing statelessness. To this end, the Convention provides Contracting States with guidelines for the acquisition, renunciation, loss, and deprivation of nationality.

[175] Convention on Certain Questions relating to the Conflict of Nationality Laws, The Hague, 12 April 1930, League of Nations, Treaty Series, vol. 179, p. 89.

[176] Protocol relating to a Certain Case of Statelessness, The Hague, 12 April 1930, League of Nations, Treaty Series, vol. 179, p. 115.

[177] Special Protocol Concerning Statelessness, The Hague, 12 April 1930, United Nations, Treaty Series, vol. 2252, p. 435.

[178] Geneva Convention relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, United Nations, Treaty Series, vol. 75, p. 287.

[179] General Assembly resolution 8 (I) of 12 February 1946 (Question of Refugees).

Loss or hardship cannot lead to statelessness, according to *Arts. 5-8* of the 1961 Convention.[180] But the word "stateless" is not defined in the Convention. The definition of a "stateless person" under customary international law is instead established in *Art. 1(1)* of the 1954 Convention relating to the Status of Stateless Persons,[181] which states that an individual is one "who is not considered as a national by any State under the operation of its law.[182] The 1961 Convention, which states that an individual cannot lose or be deprived of their nationality if doing so would make them stateless, states must consider whether the affected person is in possession of another nationality at the time of the loss or deprivation, not if they could later acquire one.[183]

If the authorities of a specific State refuse to recognize an individual as a national, then a Contracting State is required to acknowledge that the individual is not a national of that State.[184] A Contracting State cannot evade its responsibilities by interpreting another State's nationality rules differently than the other State has done.[185] This forms the basic ground for the operationalization of the erga omnes partes doctrine in fulfillment of the collective purpose of both conventions.[186]

In conclusion, universal legal standing, anchored in the erga omnes requirement, is indispensable in the adjudication of international human rights disputes. By recognizing

[180] Convention relating to the Status of Refugees, Geneva, 28 July 1951, United Nations, Treaty Series , vol. 189, p. 137.

[181] General Assembly resolution 429 (V) of 14 December 1950 (Draft Convention relating to the Status of Refugees).

[182] Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), Geneva, 8 June 1977, United Nations, Treaty Series, vol. 1125, p. 3.

[183] Convention on the Reduction of Statelessness, New York, 30 August 1961, United Nations, Treaty Series , vol. 989, p. 175.

[184] Economic and Social Council resolution 18 (III) of 3 October 1946 (Refugees and displaced persons).

[185] Report of the Drafting Committee on an International Bill of Human Rights on its First Session (E/CN.4/21, 1 July 1947).

[186] Report of the Ad Hoc Committee on Statelessness and Related Problems, 16 January to 16 February 1950 (E/1618 (E/AC.32/5)).

the universality and indivisibility of human rights obligations, this principle ensures that all relevant actors have the right to seek accountability for violations, thereby advancing the cause of justice and upholding the dignity and rights of individuals worldwide. In a world marked by increasing interconnectedness and interdependence, the promotion and protection of human rights require a collective commitment that transcends borders and national interests. Through the application of universal legal standing and the recognition of erga omnes obligations, the international community can strive towards a more just and humane world order.

CHAPTER FOUR. CONCLUSIONS AND RECOMMENDATIONS

4.1 Introduction

The International Court of Justice (ICJ) is the pinnacle of the global effort to achieve peace through the application of law. Its duties include adjudicating interstate conflicts and resolving legal issues pertaining to the worldwide community of states. Notwithstanding all of these obstacles.

In the quest of international justice, the ICJ and other international dispute resolution bodies have wrestled with applying the erga omnes theory to legitimate human rights conflicts. State consent requirements have been upheld in all spheres of international relations, including judicial and arbitrational processes, by proponents of the legal conceptions of state autonomy and equality. The principles of equality and fairness in law have been hijacked by the ICJ's consent requirement, on the other hand, at least when it comes to issues that the world community of nations finds most pressing. In addition to offering ideas for improving the ICJ's jurisdictional system, this chapter draws conclusions that are especially pertinent to determining the research questions.

4.2 Conclusions

The research study examined the applicability of the erga omnes doctrine in the ICJ's adjudication of international human rights conflicts. It came to several conclusions, which are outlined below.

An Ad Hoc Committee of Experts on Slavery was established by the United Nations Economic and Social Council (ECOSOC) in 1949 to review the Slavery Convention. Not enough justification exists for eliminating or changing the definition found in *Art. 1* of the Slavery Convention 1926, according to their conclusion. The Committee did, however, draw attention to the fact that other, equally abhorrent kinds of servitude ought to be outlawed and that the definition of slavery in the Slavery Convention did not encompass the whole spectrum of comparable practices. As a result, the Committee suggested that a follow-up convention be created to address behaviors comparable to slavery.

As a result, on December 7, 1953, the Protocol Amending the Slavery Convention was completed at UN headquarters in New York, changing the Slavery Convention. On the

same day, the Protocol became enforceable for Canada. The amendment guaranteed that the United Nations would carry out the responsibilities and roles established by the 1926 Slavery Convention under the League of Nations.

Implementing on the 1926 Slavery Convention and the 1930 ILO Forced Labor Convention, the 1956 United Nations convention is called the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices. The term "chattel slavery" was abolished and replaced in *Art. 1* with a definition that forbade debt bondage, serfdom, servile marriage, and child enslavement.

Many more international agreements that reaffirmed the outlawing of slavery surfaced in the years after the Supplementary Convention on the Abolition of Slavery. The right to work was acknowledged in *Art. 6.1* Of the International Covenant on Economic, Social, and Cultural Rights. This right encompasses everyone's ability to earn a living through employment that they voluntarily choose or accept. *Art. 8* of the International Covenant on Civil and Political Rights guaranteed freedom from forced labor, slavery, and servitude. "Enslavement" is defined as a crime against humanity falling under the jurisdiction of the International Criminal Court by *Art. 7(2) (c)* of the Rome Statute of the Court.

More recently, trafficking in persons was made illegal "for the purpose of exploitation" by the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also known as the "Trafficking Protocol"), which was created as an addendum to the UN Convention Against Transnational Organized Crime and included, at the very least, the exploitation of other people's prostitution or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs. The definition of slavery as established by the Convention of 1926 and the Supplementary Convention of 1956 has not changed, despite calls for a new definition that takes into account modern circumstances.

The criteria under which protection for refugees is offered, withheld, or terminated are set forth in *Art. 1* of the Convention. Important components of the definition of a refugee include being outside of one's place of origin, nationality, or habitual residence

as demonstrated by one's refusal to return, as well as a well-founded fear of persecution based on the previously mentioned grounds. But without a doubt, the most crucial criteria in determining a person's status as a refugee is having a legitimate fear of persecution. In essence, the remaining components of the definition being outside one's nation of origin, citizenship, or place of habitual residence along with the refusal to return are matters of truth. These serve as proof that the applicants are afraid of being persecuted in their nation of origin, citizenship, or place of permanent residence.

In contrast, the legal norm of a well-founded fear of persecution is dependent on the presence of factual facts in order to be applied. The word 'well-founded' implied a concern based on plausible grounds for persecution, according to *Grahl-Madsen*. According to him, the meaning of this term is that a person's claim to refugee status should be evaluated using a more objective standard rather than their mental state.

Similar claims have been made by other authors. It has been noted that the term "well founded" denotes the presence of adequate evidence to support the determination that the petitioner for refugee status would likely risk persecution if they were to return to their country of origin. According to some sources, in order for an application to be considered well-founded, the applicant must either provide a convincing explanation for their fear of persecution or provide evidence of an objective risk in order to demonstrate their fear. These opinions are in line with some rulings rendered by superior courts in renowned common law nations.

The definition of "well-founded fear" of persecution within the parameters of the Convention Relating to the Status of Refugees has been expanded by a consensus of judicial opinion. The United States Supreme Court established the reasonable likelihood of persecution test as the foundation for interpreting the meaning of well-founded fear of persecution in the case of *I.N.S. v. Cardoza Fonseca*. Judge Stevens said in an illustrative judgment that it is sufficient to demonstrate that persecution is a plausible possibility rather than that the circumstances will almost certainly lead to prosecution as long as an objective situation is demonstrated by the facts.

In the English case of *R v. Secretary of State for the Home Department, ex parte Sivakuniaran*, the House of Lords adopted similar strategy. Six members of the Tamil ethnic group who were citizens of Sri Lanka submitted asylum requests in this instance. The Secretary of State declined to approve the applications, stating that the applicants had nothing to fear from returning to Sri Lanka based on the information at his disposal.

According to the ruling of the House of Lords, in order for an applicant for refugee status to be granted status under *Art. 1 (A) (2)* of the Convention, they must demonstrate a reasonable likelihood of facing persecution if they are returned to their home country. The Court held that the Secretary of State could consider facts and circumstances that were known to him or established to his satisfaction, but may not have been known to the applicant, in order to determine whether the applicant's fear was objectively justified, when determining whether the applicants had made out their claim that their fear of persecution was well-founded.

These instances generally highlight the kinds of issues that arise from progressively narrower interpretations of the standards determining refugee status. However, it is important to note that the tests' consistency in showing that the international legal criterion of well-founded fear of persecution is applicable to all situations is noteworthy. The reasonable possibility, reasonable likelihood, and reasonable chance tests share a common core. These tests are each employed differently to ascertain if a person has a well-founded fear of persecution. There is no practical distinction in the legal use of these exams, according to reliable sources.

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Hence, in order to maintain the status of as a refuge for refugees, great obstacles to expanding the definition of persecution must be overcome. Human rights and the refugee regime are linked, which presents a challenge. It is obvious that future advancements in the legal framework of human rights have had an impact on the notion of persecution. The current universal norms for human rights must be taken into consideration while interpreting the concept of persecution.

Human rights principles have significantly expanded the scope of protection available to people in general. Furthermore, the human rights concept, which embellishes humanitarian principles, forms the foundation of the Convention. In fact, the UN Charter's basic right that all people should have equal access to their fundamental freedoms is reaffirmed in the preamble to the Convention Relating to the Status of Refugees. The Convention recognizes persecution based on the same grounds that general international law forbids discrimination under human rights standards: race, religion, nationality, political opinion, or membership in a specific social group.

4.3 Recommendations

Perpetrators intend to circumvent accountability for transnational crimes by challenging the International Court of Justice's erga omnes principle. Nonetheless, the pursuit of international justice and the significance of sovereign equality and state sovereignty serve as the foundation for this proposition.

4.3.1 Amendment to the International Court of Justice's Statute to establish pure obligatory jurisdiction for jus cogens prerequisites and erga omnes obligations

The ICJ's foundation legislation ought to be changed to provide for the court's pure obligatory jurisdiction in situations involving erga omnes obligations and norms jus cogens. In situations where it can be demonstrated that the obligations erga omnes and norms jus cogens have been violated, the ICJ Statute's *Art. 36* should be modified to provide for the court's pure compulsory jurisdiction.

The International Court of Justice's (ICJ) pure compulsory jurisdiction provides a juridical solution for international disputes. It does this by interpreting the international community of states' legal duties in an independent or collective manner,

thus upholding the idea of sovereignty equality. Protecting the tenets and regulations of international law is the ultimate result of this. In terms of state sovereignty, it also strikes a fair compromise. Since no state has access to a lethal weapon, weaker states are protected without necessarily suffering harm from stronger governments. Rather than eradicating consent entirely, this type of political compromise raises the chances of triumph.

In order to gain pure compulsory jurisdiction of the ICJ, amending the ICJ Statute is the most practical recommendation. The modification grants the ICJ direct jurisdiction without explicitly needing the signature and approval of a universal special treaty by every state. Additionally, it avoids the United Nation General Assembly Resolutions' constant objector states, which are a reflection of customary international law. Numerous other shortcomings of the other suggestions put out to accomplish the implementation of the ICJ's pure obligatory jurisdiction are also addressed in the ICJ amendment.

BIBLIOGRAPHY

LIST OF INTERNATIONAL INSTRUMENTS

Conventions

The Convention on the Prevention and Punishment of the Crime of Genocide 1948

The International Convention on Civil and Political Rights 1966

Vienna Convention on the Law of Treaties, May 23, 1969.

The Organization of African Unity (now African Union) Convention governing the Specific Aspects of Refugee Problems in Africa 1969, adopted in Addis Adaba, 10 September 1969.

Convention Relating to the Status of Refugees 1951 Art 38, Apr. 22, 1954, 189 U.N.T.S 150.

The 1926 Slavery Convention.

The 1951 Refugee law convention.

The 1954 Status of stateless person's convention.

Statutes

Statute of the International Court of Justice, 1946

The Statute of the Permanent Court of International Justice 1920

Charters

Charter of the United Nations, 1945

LIST OF CASES

Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 1996 I.C.J. 595, 626, 4 (July 11) [hereinafter Bosnian Genocide] (declaration of Oda, J.)

Application of Convention on Prevention and Punishment of Crime of Genocide (*Gam. v. Myan.*), Provisional Measures, 42 (Jan. 23, 2020) [hereinafter *The Gambia v. Myanmar*].

Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. 43 (Feb. 26).

Application of Convention on Prevention and Punishment of Crime of Genocide (Gam. v. Myan.), Provisional Measures, 2 (Jan. 23, 2020) [hereinafter The Gambia v. Myanmar].

Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel) 29 December 2023.

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Application Instituting Proceedings, 11 November 2019.

Application of the Convention on the Prevention and Punishment of the Crimes of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections, Judgment, I.C.J. Reports 1996.

Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukr. v. Russ.), Provisional Measures, 2017 I.C.J. Rep. 104, 63 (Apr. 19).

Austria v. Italy, App. No. 788/60, 1961 Y.B. Eur. Conv. on H.R. 4, 19–20 (Eur. Comm'n on H.R.)

Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain), Second Phase, Judgment, 1970 I.C.J. 3.

Ethiopia v South Africa; Liberia v South Africa, (Second Phase) [1966] ICJ Rep 6.

Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, Advisory Opinion, United Nations High Commissioner for Refugees, (Jan. 26, 2007).

Factory at Chorzów (Claim for Indemnity) (Jurisdiction) (Ger. v. Pol.), Judgment, 1927 P.C.I.J. (ser. A) No. 9, at 21 (July 26).

Gabcˇıˊkovo-Nagymaros Project (Hung. v. Slvk.), Judgment, 1997 I.C.J. Rep. 7 (Sep. 25) (separate opinion by Weeramantry, J.).

Gabcˇıˊkovo-Nagymaros Project (Hung. v. Slvk.), Judgment, 1997 I.C.J. Rep. 7 (Sep. 25)

Interpretation of Statute of Memel Territory (U.K., Fr., It. & Japan v. Lith.), Preliminary Objection, 1932 P.C.I.J. (ser. A/B) No. 47, at 251 (June 24).

Italy v France, United Kingdom of Great Britain and Northern Ireland and United States of America - Monetary Gold Removed from Rome in 1943 - Judgment of 15 June 1954 - Preliminary question - Judgments [1954] ICJ 2;

Judicial endorsement of “community values” could be seen in Austria v. Italy, App. No. 788/60, 1961 Y.B. Eur. Conv. on H.R. 4, 19–20 (Eur. Comm’n on H.R.) 18

Las Palmeras v. Colombia, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 67, 9–12 (Feb. 4, 2000)

Legal Consequences of Construction of a Wall in Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, 157 (July 9).

Legal Consequences of Construction of a Wall in Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, 157 (July 9)

Legal Consequences of Separation of Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 2019 I.C.J. 95, 180 (Feb. 25).

Legal Consequences of Separation of Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 2019 I.C.J. 95, 180 (Feb. 25)

Mavrommatis Palestine Concessions (Greece v. U.K.), Judgment, 1924 P.C.I.J. (ser. A) No. 2, at 12 (Aug. 30);

Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Merits Judgment, 1986 I.C.J. 14 (June 27)

Nottebohm (Liech. v. Guat.), Second Phase, Judgment, 1955 I. C.J. 4, at 24 (Apr. 6).

Panevezys-Saldutiskis Railway (Est. v. Lith.), Judgment, 1939 P.C.I.J. (ser. A/B) No. 76, at 16 (Feb. 28);

Prosecutor v. Blasˇkicˊ, Case No. IT-95-14/14-T

Prosecutor v. Nahimana, Case No. ICTR-99-52-T

Prosecutor v. Nzabonimana, Case No. ICTR-98-44D-T

Questions Relating to Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgment, 2012 I.C.J. 422, 68 (July 20).

Questions relating to the Obligation to Prosecute or Extradite, Belgium v Senegal, Judgment, ICJ GL No 144, ICGJ 437 (ICJ 2012), 20th July 2012.

South West Africa (Eth. v. S. Afr.; Liber. v. S. Afr.), Second Phase, Judgment, 1966 I.C.J. 6, 41–59 (July 18)

The Case of the Law of the Sea, 15 Max Planck Y.B. U.N. L. Online 15 (2011).

The *Chinn* Case, 16 BRITISH Y.B. INT'L L. 164–66 (1935)

Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria), Provisional Measures, 1996 I.C.J. 13 (Mar. 15).

Abaclat and Others v. Arg. Republic, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, Dissenting Opinion of Georges Abi-Saab,18, 126 (Aug. 4, 2011)

BOOKS AND ARTICLES.

A. K. M. Ahsan Ullah, Rohingya Crisis in Myanmar: Seeking Justice for the “Stateless,” 32 J. CONTEMP. CRIM. JUST. 285 (2016).

Alain Pellet, The ILC’s Articles on State Responsibility for Internationally Wrongful Acts and Related Texts, in THE LAW OF INTERNATIONAL RESPONSIBILITY 75, 77 (James Crawford, Alain Pellet, Simon Olleson & Kate Parlett eds., 2010).

Alden, Dauril. Late Colonial Brazil, 1750-1808. In: BETHELL, Leslie (ed.). Colonial Brazil. New York: Cambridge University Press, 1987, p. 284-343.

Alexander, Atul, The Curious Case of South Africa v. Israel – Preliminary Reflections (January 26, 2024).

Annemarieke Vermeer-Ku¨nzli, Invocation of Responsibility, in Principles Of Shared Responsibility In International Law: An Appraisal Of The State Of The Art 251, 257 (Andre´ Nollkaemper & Ilias Plakokefalos eds., 2014).

Banks, Kenneth J. Official Duplicity: The Illicit Slave Trade of Martinique, 1713-1763. In: COCLANIS, Peter A. (ed.). The Atlantic Economy during the Seventeenth and Eighteenth Centuries. Columbia: University of South Carolina Press, 2005, p. 229-251.

Ben Saul, *“Recognition” and the Taliban’s International Legal Status*, Int’l Ctr. for Counter-Terrorism (Dec. 15, 2021)

Boogaart, Ernst van den; EMMER, Pieter C. “The Dutch Participation in the Atlantic Slave Trade, 1596-1650” in: GEMERY, Henry A.; HOGENDORN, Jan S. (Eds.). The Uncommon Market: Essays in the Economic History of the Atlantic Slave Trade. New York: Academic Press, 1979, p. 353-375.

Chios Carmody, WTO Obligations as Collective, 17 EUR. J. INT’L L. 419 (2006); Joost Pauwelyn, A Typology of Multilateral Treaty Obligations: Are WTO Obligations Bilateral or Collective in Nature? 14 EUR. J. INT’L L. 907 (2003).

Chios Carmody, WTO Obligations as Collective, 17 EUR. J. INT’L L. 419 (2006);

Christian Dominice, The International Responsibility of States for Breach of Multilateral Obligations, 10 EUR. J. INT'L L. 353, 354 (1999).

Christian J. Tams, Enforcing Obligations Erga Omnes In International Law 15 (2005); Krystyna Marek, Criminalizing State Responsibility, 14 Revue Belge De Droit Int'l 460, 481–82 (1978–79);

Clyde Eagleton, International Organization and the Law of Responsibility, 76 RECUEIL DES COURS 319, 423 (1950)

Conceptualizing the Relationship between Jus Cogens and Erga Omnes Rules by M Byers (1997), page 66.

Conceptualizing the Relationship between Jus Cogens and Erga Omnes Rules by M Byers (1997), page 66.

D Ramenyi 'Field Methods for Academic Research: Interviews, Focus Groups Questionnaires' (2011) 2nd Ed. S.L.: Academic Publishing International Ltd.

Dino Kritsiotis, Imagining the International Community, 13 EUR. J. INT'L L. 961, 967 (2002)

Dino Kritsiotis, Imagining the International Community, 13 EUR. J. INT'L L. 961, 967 (2002)

Edith Brown Weiss, Invoking State Responsibility in the Twenty-First Century, 96 AM. J. INT'L L. 798, 805 (2002).

Egon Schwelb, The Actio Popularis and International Law, 2 ISR. Y.B. HUM. RTS. 46 (1992).

Egon Schwelb, The Actio Popularis and International Law, 2 ISR. Y.B. HUM. RTS. 46 (1992).

Elliott, J. H. Empires of the Atlantic World: Britain and Spain in America, 1492-1830. New Haven: Yale University Press, 2006.

Evan J. Criddle, Standing for Human Rights Abroad, 100 CORNELL L. REV. 269, 329 (2015.

Farid Ahmadov, The Right of Actio Popularis before International Courts and Tribunals 90 (2018).

Geggus, David. “The French Slave Trade: An Overview” William and Mary Quarterly, vol. 58, n. 1, p. 119-138, 2001.

Graham, Richard. Another Middle Passage: The Internal Slave Trade in Brazil. In: JOHNSON, Walter (ed.). The Chattel Principle: Internal Slave Trades in the Americas. New Haven: Yale University Press, 2004.

Gregory E. O'Malley and Alex Borucki, "Patterns in the intercolonial slave trade across the Americas before the nineteenth century," Tempo, 23 (May/Aug 2017): 315-338.

H I. Majamba ‘Fundamental of Legal Research: A Law Student’s Companion’ (2009) Draft for Students at Law School.

International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two.

International Law for Humankind: Towards a New Jus Gentium by C Trindade, 2nd edition, 2013, Volume 8, page 275.

International Law for Humankind: Towards a New Jus Gentium by C Trindade, 2nd edition, 2013, Volume 8, page 275.

James Crawford, Brownlie’s Principle Of Public International Law 21 (8th ed. 2012)

James Crawford, The International Law Commission’s Articles On State Responsibility: Introduction, Text And Commentaries 57–61 (2002).

Jean S. Pictet, Commentary on First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, in The Geneva Conventions Of 12 August 1949 (1952).

Joost Pauwelyn, A Typology of Multilateral Treaty Obligations: Are WTO Obligations Bilateral or Collective in Nature?, 14 EUR. J. INT'L L. 907 (2003).

Jordaan, Han. The Curaçao Slave Market: From Asiento Trade to Free Trade, 1700-1730. In: POSTMA, Johannes; ENTHOVEN, Vitor, (eds.). Riches from Atlantic Commerce: Dutch Transatlantic Trade and Shipping, 1585-1817. Leiden: Brill, 2003, p. 259-285.

Jure Vidmar, Protecting the Community Interest in a State Centric Legal System: The UN Charter and Certain Norms of 'Special Standing', in THE COMMON INTEREST IN INTERNATIONAL LAW 109, 113 (Wolfgang Benedek, Koen De Feyter, Matthias C. Kettemann & Christina Voigt eds., 2014

Krystyna Marek, Criminalizing State Responsibility, 14 REVUE BELGE DE DROIT INT'L 460, 481–82 (1978

Marco Longobardo, The Contribution of International Humanitarian Law to the Development of the Law of International Responsibility Regarding Obligations Erga Omnes and Erga Omnes Partes, 23 J. CONFLICT & SEC. L. 383, 397 (2018).

Mariko Kawano, Standing of a State in the Contentious Proceedings of the ICJ, 55 JAPANESE Y.B. INT'L L. 208, 215–16 (2012).

McGarry, B. (2023). Obligations Erga Omnes (Partes) and the Participation of Third States in Inter-State Litigation. The Law & Practice of International Courts and Tribunals, 22(2), 273-300.

Peter D. Coffman, Obligations Erga Omnes and The Absent Third State, 39 Ger. Y.B. Of Int'l L. 285, 296–97 (1996); Evan J. Criddle, Standing For Human Rights Abroad, 100 Cornell L. Rev. 269, 329 (2015).

Peter D. Coffman, Obligations Erga Omnes and the Absent Third State, 39 GER. Y.B. OF INT'L L. 285, 296–97 (1996);

Responsibility of States for Internationally Wrongful Acts, in Report of the International Law Commission on the Work of Its Fifty-third Session, [2001) 2 Y.B. Int'l L. Comm'n 1, U.N. Doc. A/CN.4/ SER.A/2001/Add.1 (Part 2), 43.

Responsibility of States for Internationally Wrongful Acts, *Yearbook of the International Law Commission*, Vol. II (2) (2001).

Richard A. Falk, The South West Africa Cases: An Appraisal, 21 INT'L ORG. 1, 2–5 (1967).

Richard B. Lillich, Two Perspectives on the Barcelona Traction Case, 65 AM. J. INT'L L. 522 (1971).

Samantha Besson, Community Interests in International Law: Whose Interests Are They and How Should We Best Identify Them, in Community Interests Across International Law 36, 37 (Eval Benvenisti & George Nolte eds., 2018).

Samantha Besson, Community Interests in International Law: Whose Interests Are They and How Should We Best Identify Them, in Community Interests Across International Law 36, 37 (Eval Benvenisti & George Nolte eds., 2018).

Sandesh Sivakumaran, Impact on the Structure of International Obligations, in The Impact Of Human Rights Law On General International Law 133, 146 (Menno Kamminga & Martin Scheinin eds., 2009) (describing notions such as jus cogens as representing a minimum threshold for community values in international law)

Santiago Villalpando, The Legal Dimension of the International Community: How Community Interests are Protected in International Law, 21 EUR. J. INT'L L. 387 (2010).

Second Report on the Law of Treaties, by Sir Humphrey Waldock, Special Rapporteur, 1963, volume II

Shapira, Amos, and Amos Shapia. "Comment: The Erga Omnes Applicability of Human Rights." *Archiv Des Völkerrechts*, vol. 30, no. 1, 1992, pp. 22–27. *JSTOR*.

Shapira, Amos, and Amos Shapia. "Comment: The Erga Omnes Applicability of Human Rights." *Archiv Des Völkerrechts*, vol. 30, no. 1, 1992.

Stephen Mccaffrey, Lex Lata or the Continuum of State Responsibility, In International Crimes Of State: A Critical Analysis Of The ILC's Draft Article 19 Of State Responsibility 242, 244 (Joseph Weiler, Antonio Cassese & Marina Spinedi Eds., 1989);

Stephen McCaffrey, Lex Lata or the Continuum of State Responsibility, in International Crimes of State: A Critical Analysis of the Ilc's Draft Article 19 Of State Responsibility 242, 244 (Joseph Weiler, Antonio Cassese & Marina Spinedi eds., 1989);

Third Report on the Law of Treaties by Fitzmaurice, 1958, Volume II, Paragraph 77, page 41. UN General Assembly, Draft Declaration on Rights and Duties of States, 6 December 1949.

Third Report on the Law of Treaties by Fitzmaurice, 1958, Volume II, Paragraph 77, page 41. UN General Assembly, Draft Declaration on Rights and Duties of States, 6 December 1949

Yoshifumi Tanaka, Protection of Community Interests in International Law: The Case of the Law of the Sea, 15 Max Planck Y.B. U.N. L. Online 15 (2011).

Annemarieke Vermeer-Ku¨nzli, Invocation of Responsibility, in Principles Of Shared Responsibility In International Law: An Appraisal Of The State Of The Art 251, 257 (Andre´ Nollkaemper & Ilias Plakokefalos eds., 2014).

Fastenrath, Rudolf Geiger, Daniel-Erasmus Khan, Andreas Paulus, Sabine von Schorlemer & Christoph Vedder eds., 2011).

Allott P (1988) State responsibility and the unmaking of international law, Harvard ILJ, pp 3–26.

Boed R (2000) State of necessity as a justification for internationally wrongful conduct. Yale Hum Rights Dev Law J 3:1–43.

Cohan JA (2007) Torture and the necessity doctrine, Valparaiso Univ. LR 41, pp 1587–1632.

Jure Vidmar, Protecting the Community Interest in a State Centric Legal System: The UN Charter and Certain Norms of 'Special Standing', in The Common Interest In International Law 109, 113 (Wolfgang Benedek, Koen De Feyter, Matthias C. Kettemann & Christina Voigt eds., 2014).

Edith Brown Weiss, Invoking State Responsibility in the Twenty-First Century, 96 AM. J. INT'L L. 798, 805 (2002).