

Erga Omnes Obligations Reconsidered: State Responsibility, Jus Cogens Hierarchy, and the Normative Limits of Peremptory Norms in Contemporary International Law

Pat Scott

Professor

Humboldt-Universität zu Berlin

Unter den Linden 6, 10099 Berlin, Germany

Avery Brown

Associate Professor

Leiden University

Rapenburg 70, 2311 EZ Leiden, Netherlands

Jamie Campbell

PhD

McGill University, Faculty of Law

3644 Peel Street, Montreal, Quebec H3A 1W9, Canada

Jamie Davis

D.Sc

University of Tokyo, Graduate Schools for Law and Politics

7-3-1 Hongo, Bunkyo-ku, Tokyo 113-0033, Japan

Abstract. The doctrine of erga omnes obligations has long been regarded as a cornerstone of international legal order, yet its operational boundaries remain contested among scholars and adjudicative bodies alike. This article critically re-examines the relationship between erga omnes obligations and jus cogens norms in the context of evolving state responsibility frameworks under the 2001 ILC Draft Articles. Drawing on a systematic analysis of International Court of Justice jurisprudence, arbitral awards, and treaty practice from 1970 to 2024, the study demonstrates that conflation of these two normative categories produces significant doctrinal inconsistencies and impedes the effective invocation of collective legal standing. The authors propose a graduated normativity model that disaggregates peremptory content from actio popularis standing, offering a theoretically coherent framework for inter-state dispute resolution and accountability mechanisms in multilateral legal regimes.

Keywords: erga omnes obligations, jus cogens, state responsibility, peremptory norms, actio popularis, ILC Draft Articles on State Responsibility, graduated normativity, International Court of Justice jurisprudence, multilateral treaty regimes

Introduction

The architecture of contemporary international law rests, in significant measure, upon a hierarchical ordering of norms — an ordering that distinguishes ordinary treaty obligations from those owed to the international community as a whole. The concept of *erga omnes* obligations, authoritatively articulated by the International Court of Justice in the landmark *Barcelona Traction* case of 1970, was conceived as a mechanism to ensure that certain fundamental legal interests transcend the bilateral logic of reciprocal state consent. Similarly, the category of *jus cogens* — peremptory norms from which no derogation is permitted — was codified under Article 53 of the Vienna Convention on the Law of Treaties (1969), and reaffirmed in the ILC's 2022 Conclusions on Identification and Legal Consequences of Peremptory Norms. Together, these two doctrines are widely regarded as constituting the normative apex of the international legal system. Yet, as the international legal order confronts an unprecedented array of systemic challenges in the period spanning 2024 to 2026 — including the proliferation of unilateral coercive measures, the erosion of multilateral dispute settlement mechanisms, and mounting state practice that tests the enforceability of fundamental prohibitions — the functional coherence of this normative hierarchy has come under acute scrutiny. Adjudicative bodies, most notably the ICJ in proceedings concerning alleged violations of the Genocide Convention and the prohibition on the use of force, have been compelled to revisit the precise contours of *erga omnes* standing and its relationship to substantive peremptory content. The divergence between procedural *locus standi* and substantive norm quality — a distinction frequently glossed over in both judicial reasoning and academic commentary — has produced doctrinal ambiguities with far-reaching consequences for state accountability and the invocability of collective legal responsibility. Despite a substantial corpus of scholarly literature addressing each category in isolation, the systematic decoupling of *erga omnes* standing from *jus cogens* normativity remains undertheorized. Existing frameworks tend either to treat the two concepts as functionally coextensive or to assert their distinctiveness without articulating the operative criteria by which the distinction should be drawn. This analytical lacuna is not merely theoretical: it bears directly on the capacity of third states to invoke responsibility, the admissibility of interstate claims before international tribunals, and the scope of obligations not to aid or assist in internationally wrongful acts under Article 16 of the ILC Draft Articles. The present article addresses this gap through a systematic doctrinal and jurisprudential analysis. Section II provides a genealogy of the *erga omnes* doctrine, tracing its evolution through ICJ jurisprudence. Section III examines the normative architecture of *jus cogens* as reconstituted by the ILC's 2022 Conclusions. Section IV identifies and diagnoses the key points of doctrinal conflation in state practice and judicial reasoning. Section V advances the graduated normativity model as a corrective framework, distinguishing *actio popularis* standing from the substantive peremptory threshold. Section VI considers the implications of this model for multilateral treaty enforcement and collective countermeasures.

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