ARTICLE

INTERNATIONAL LAW DUTIES NOT TO RECOGNIZE, NOT TO ASSIST, AND TO COOPERATE AGAINST PEREMPTORY NORM (*JUS COGENS*) VIOLATIONS

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ABSTRACT

Peremptory norms (jus cogens) are the highest norms of international law. When these norms are violated, all States and international organizations have, at a minimum, three international legal duties to discharge while the violation is occurring: (1) the duty of non-recognition, where no State or international organization should recognize the situation caused by the violation; (2) the duty of non-assistance, where no State or international organization should render any aid or assistance to maintain this situation caused by the violation; and (3) the duty of cooperation, where all States and international organizations should cooperate to bring the violation to an end through lawful means. These international legal duties of non-recognition, non-assistance, and cooperation to end peremptory norms (jus cogens) violations through lawful means are particular consequences for third States and international organizations when such violations occur. Contrary to some misconceptions, these international legal duties do not comprise non-forcible third-party countermeasures, which are purposely designed by either an injured State or affected third party, at their discretion, to induce the State

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violator to return to compliance with international law. Rather, the international legal duties of non-recognition, non-assistance, and cooperation to end peremptory norm (jus cogens) violations operate as minimum safety valves for all States and international organizations to vindicate collective interests in the international system whenever any State violates the highest norms of international law. Unlike the right of injured States or affected third parties to impose countermeasures against a violating State which can be exercised at the legal discretion and political wherewithal of the injured State or affected third party, I argue that—as affirmed by the increasing jurisprudential practices of the International Court of Justice—it is already legally mandatory for all States and international organizations to discharge their respective international legal duties of non-recognition, non-assistance, and cooperation to end peremptory norm (jus cogens) violations. To this end, all States and international organizations should be conducting their respective legal audits that assess their utterances, conduct, acts, and measures in relation to situations caused by peremptory norm (jus cogens) violations. Saying nothing or doing nothing—whether through diplomatic silence or omission to act—will not suffice to discharge these duties that are triggered as a particular consequence of the collective impact of peremptory norm (jus cogens) violations on community interests[1] *in the international system.*

Historically, these international legal duties are thinly elaborated in international jurisprudence, as well as rarely invoked by States and international organizations, due to the: (1) alleged interpretive indeterminacy of these international legal duties; (2) political and jurisdictional infeasibility due to continued sovereigntist emphasis on consent as an auto-limitation to international law; and (3) lack of prioritization of these international legal duties in diplomatic efforts as well as international and domestic law-making to address jus cogens violations in international law.[2] *I argue that these international legal duties are central to the lasting durability of the Charter-based international system's collective purposes (e.g., to maintain peace*

1. *See* FROM BILATERALISM TO COMMUNITY INTEREST: ESSAYS IN HONOUR OF BRUNO SIMMA (Ulrich Fastenrath et al. eds., 2011).

2. *See e.g.*, Lea Brilmayer & Isaias Yemane Tesfalidet, *Third State Obligations and the Enforcement of International Law*, 44 N.Y.U. J. INT'L L. & POL. 1, 21–26 (2011).

and international security, ensure respect for equal rights and the self-determination of peoples, and to promote and encourage respect for human rights and fundamental freedoms without distinction), because these duties create minimum safety valve conditions for the exercise of collective State and international organization responsibilities in the international system to lawfully bring to an end jus cogens violations that cause injury and harm to all. Finally, I show that the trajectory of jurisprudence of international courts and arbitral tribunals draw more on their contentious and advisory jurisdiction to adjudicate reparations to give meaningful and enforceable content to the international legal duties of non-recognition, non-assistance, and cooperation to end jus cogens violations in international law, in a manner that could also be strategically emulated by national judiciaries around the world.

Keywords:

Jus cogens violations, duty not to recognize jus cogens violations, duty not to assist jus cogens violations, duty to cooperate to end jus cogens violations, international jurisprudence on reparations

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While international law cannot as yet (and maybe never will) be described as a solidarity-based system, it is beyond dispute that the international legal system has moved beyond the era of pure bilateralism, which was the hallmark of traditional international law . . . . With or without the United Nations' special institutional responsibility, the deprivation of some of the most fundamental rights of a people is an issue which concerns all of humanity. There is little bilateral about a situation in which generations of a people are forced to live a life of subjugation and indignity, as orphans without rights that the rest of us take for granted.[3]

- Judge Dire Tladi, International Court of Justice

I. THEORIZING NON-RECOGNITION, NON-ASSISTANCE, AND COOPERATION TO END JUS COGENS VIOLATIONS IN INTERNATIONAL LAW

Peremptory norms (*jus cogens)*[4] are the highest norms of international law[5] that are rooted in natural law prohibitions against conduct that egregiously violates the common good.[6] Both written and unwritten peremptory norms (*jus cogens*) of international law prohibit and create consequences when States commit the most egregious offenses against human life, the dignity

3. *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem,* Advisory Opinion, 2024 I.C.J. 186, ¶ 11 (July 19) (declaration of Judge Tladi).

4. *See, e.g.*, THOMAS WEATHERALL, JUS COGENS: INTERNATIONAL LAW AND SOCIAL CONTRACT (2015); DINAH SHELTON, JUS COGENS (2021); ULF LINDERFALK, UNDERSTANDING JOS COGENS IN INTERNATIONAL LAW AND INTERNATIONAL LEGAL DISCOURSE (2020); PEREMPTORY NORMS OF GENERAL INTERNATIONAL LAW (JUS COGENS): DISQUISITIONS AND DISPUTATIONS (Dire Tladi ed., 2021); THE FUNDAMENTAL RULES OF THE INTERNATIONAL LEGAL ORDER (Christian Tomuschat & Jean-Marc Thouvenin eds., 2006); ROBERT KOLB, PEREMPTORY INTERNATIONAL LAW *JUS COGENS:* A GENERAL INVENTORY (2015); THE PRESENT AND FUTURE OF JUS COGENS (Enzo Cannizzaro ed., 2015).

5. Vienna Convention on the Law of Treaties art. 53, May 23, 1969, 1153 U.N.T.S. 331 ("For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.").

6. *See* Stephen Hall, *Natural Law, Human Rights, and Jus Cogens, in* THE CAMBRIDGE HANDBOOK OF NATURAL LAW AND HUMAN RIGHTS (Tom Angier et al. eds., 2022); DINAH SHELTON, JUS COGENS 3–12 (2021).

of every human person, and the very notion of humanity itself.[7] A State or an international organization's legal responsibility for violating peremptory norms (*jus cogens*) cannot be excused or justified through any circumstance precluding wrongfulness under the general law of international responsibility.[8]

Since 1970, the jurisprudence of the International Court of Justice and the codifications of the International Law Commission both contributed to the continuing global recognition of peremptory norms (*jus cogens*). In its famous *obiter dictum* in its 1970 Judgment on Preliminary Objections in the *Barcelona Traction* case, the Court first identified "obligations of a State towards the international community as a whole" that derive from "outlawing acts of aggression, and of genocide . . . the principles and rules concerning the basic rights of the human person . . . protection from slavery and racial discrimination".[9] The Court thereafter interchangeably refers to either obligations *erga omnes* or peremptory norms (*jus cogens*) in its jurisprudence, including, among others: (1) the prohibition of genocide;[10] (2) the prohibition of the threat or use of force under Article 2(4) of the Charter of the United Nations;[11] (3) the prohibition against torture, including specific State obligations to investigate and prosecute under Articles 6(2) and 7(1) of the Convention Against Torture;[12] (4) the rights of peoples to self-determination as it evolved from the

7. *See* ALEXANDER ORAKHELASHVILI, PEREMPTORY NORMS IN INTERNATIONAL LAW 37–38 (2008); BRIAN D. LEPARD, CUSTOMARY INTERNATIONAL LAW: A NEW THEORY WITH PRACTICAL APPLICATIONS 243–60 (2012) (on defining *jus cogens* customary norms); THOMAS WEATHERALL, JUS COGENS: INTERNATIONAL LAW AND SOCIAL CONTRACT 41–66 (2015).

8. Gabcikovo-Nagymaros Project (Hung./Slovk.), Judgment, 1997 I.C.J. 7, ¶ 50 (Sept. 25).

9. Barcelona Traction, Light & Power Co. (Belg. v. Spain), Judgment, 1970 I.C.J. 3, ¶¶ 33–34 (Feb. 5).

10. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.), Judgment, 2007 I.C.J. 43, ¶ 161 (Feb. 26).

11. Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶¶ 99, 190 (June 27) (stating that the prohibition is "frequently referred to in statements by State representatives as being not only a principle of customary international law but also a fundamental or cardinal principle of such law" and noting the International Law Commission's (ILC) view that such law "constitutes a conspicuous example of a rule in international law having the character of *jus cogens*.").

12. Questions Relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgment, 2012 I.C.J. 422, ¶ 69 (July 20).

Charter of the United Nations and from United Nations practice;[13] (5) obligations under the Genocide Convention;[14] and (6) obligations under international humanitarian law that are

> so fundamental to the respect of the human person and elementary considerations of humanity . . . that they are to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of customary law . . . these rules incorporate obligations which are essentially of an *erga omnes* character.[15]

In its 19 July 2024 Advisory Opinion in *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem*, the International Court of Justice would categorically declare that "in cases of foreign occupation *such as the present case*, the right to self-determination constitutes a peremptory norm of international law (*jus cogens*)."[16]

In turn, the International Law Commission has also attempted progressive codification of peremptory norms (*jus cogens*) of international law through its 2022 *Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens).*[17] Conclusion 23 of the 2022 Draft Conclusions provides a non-exhaustive list of norms that the International Law Commission refers to as already having the status of peremptory norms of international law (*jus cogens*), namely:

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13. East Timor (Port. v. Austl.), Judgment, 1995 I.C.J. 90, ¶ 29 (June 30); *see also* Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶¶ 88, 155 (July 9) (citing East Timor).

14. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.), Provisional Measures, Order, 2020 I.C.J. 3, ¶ 41 (Jan. 23) (stating that "all the States parties to the Genocide Convention have a common interest to ensure that acts of genocide are prevented" and that such obligations "are owed by any State party to all the other States parties . . ."); *see also* Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Rwanda), Judgment, 2006 I.C.J. 6, ¶ 64 (Feb. 3); Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Yugoslavia), Counter-Claims, Order, 1997 I.C.J. 243, ¶ 35 (Dec. 17).

15. Construction of a Wall, Advisory Opinion, 2004 I.C.J. ¶ 157.

16. Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Advisory Opinion, 2024 I.C.J. ¶ 233 (July 19) (italics added).

17. Int'l Law Comm'n, Rep. on the Work of Its Seventy-Third Session, U.N. Doc. A/77/10, at 10 (2022); see *also* DIRE TLADI, THE INTERNATIONAL LAW COMMISSION'S DRAFT CONCLUSIONS ON PEREMPTORY NORMS (2024).

> (a) the prohibition of aggression; (b) the prohibition of genocide; (c) the prohibition of crimes against humanity; (d) the basic rules of international humanitarian law; (e) the prohibition of racial discrimination and apartheid; (f) the prohibition of slavery; (g) the prohibition of torture; and (h) the right of self-determination.[18]

This list is more extensive than the peremptory norms (*jus cogens*) of international law that the International Court of Justice has recognized in its jurisprudence, understandably because the Commission's mandate is not limited to *lex lata* codification of international law, but also the progressive development of international law.[19]

Notwithstanding these developments from decades of judicial recognition, progressive development, and codification of peremptory norms of international law (*jus cogens*), however, there still remains much legal ambiguity[20] on what is required of States and international organizations in order to respect peremptory norms (*jus cogens*),[21] prevent their violation,[22] or bring any such violation to an end as soon as possible.[23] What does it mean for all States and international organizations not to recognize violations of peremptory norms of international law; not to assist or render aid in the maintenance of situations created by such violations; and to cooperate to bring to an end through lawful means such violations of peremptory norms of international law?[24]

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18. TLADI, *supra* note 17, at 6 n.22.

19. U.N. Charter art. 13, ¶ 1(a).

20. *See* G. Alex Sinha, *Euphemism and Jus Cogens,* 19 NW. J. HUM. RTS. 1, 1–29 (2020).

21. *See* Evan J. Criddle & Evan Fox-Decent, *A Fiduciary Theory of Jus Cogens,* 34 YALE J. INT'L L. 331, 333–46 (2009).

22. *See* Helene Ruiz Fabri & Edoardo Stoppioni, *Jus Cogens Before International Courts: The Mega-Political Side of the Story,* 84 LAW & CONTEMP. PROBS. 153, 153–80 (2021).

23. *See* Criddle & Fox-Decent, *supra* note 21, at 333–46.

24. The doctrinal analysis of these duties of non-recognition and non-assistance is, of course, well-established from existing commentaries and treatises. *See* Yaël Ronen, *The obligation of non-recognition, in* TRANSITION FROM ILLEGAL REGIMES UNDER INTERNATIONAL LAW 71–102 (2011); Eric Wyler & Leon Castellanos-Jankiewicz, *Serious Breaches of Peremptory Norms, in* PRINCIPLES OF SHARED RESPONSIBILITY IN INTERNATIONAL LAW: AN APPRAISAL OF THE STATE OF THE ART 284, 284–311 (André Nollkaemper & Ilias Plakokefalos eds., 2014); Martin Dawidowicz, *The Obligation of Non-Recognition of an Unlawful Situation, in* THE LAW OF INTERNATIONAL RESPONSIBILITY 677, 684 (James Crawford et al. eds., 2010)("Where the Security Council and the General Assembly have elaborated upon the content of the obligation of non-recognition, they have generally defined it broadly to include any dealings with the responsible State which could imply formal recognition of

In this Article, I show that the three international legal duties of non-recognition, non-assistance, and cooperation to bring peremptory norm (*jus cogens*) violations to an end through lawful means, together comprise a *mandatory safety valve minimum* for all States and international organizations to collectively vindicate and defend community interests in the international system whenever any State violates a peremptory norm (*jus cogens*) of international law, consistent with the duties of the United Nations and Member States of the United Nations to "take joint and separate action in cooperation with the [United Nations] for the achievement of purposes set forth in Article 55", namely, in Article 55(c) "promot[ing] universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."[25] However, these three international legal duties of non-recognition, non-assistance, and cooperation to bring to an end peremptory norm (*jus cogens*) violations through lawful means, are not often publicly invoked or visibly exercised, since States tend to take more escalatory responses such as non-forcible countermeasures by injured States or third party States,[26] or Chapter VII measures (coercive

an unlawful situation, save where humanitarian considerations apply . . . the Security Council and the General Assembly have referred to obligations not to recognize passports or travel documents issued by a regime, to withdraw consular representation, to withdraw diplomatic missions, to deny the legal validity of any public or official acts of the regime, and to refuse any claim to membership of an international organization."); Nina HB Jørgensen, *The Obligation of Non-Assistance to the Responsible State, in* THE LAW OF INTERNATIONAL RESPONSIBILITY, *supra*, at 687, 691 (noting "[t]he obligation not to assist the responsible State is limited to acts that would assist in preserving the situation created by the breach. It does not cover international cooperation with the responsible State in unrelated fields. In other words, it does not require the complete isolation of the responsible State. However, a State may legitimately avoid all types of international cooperation with the responsible State if it so wishes."); Nina HB Jørgensen, *The Obligation of Cooperation, in* THE LAW OF INTERNATIONAL RESPONSIBILITY, *supra*, at 695, 700 (stating "[a]n authoritative prior determination as to the nature of the wrongful act is desirable, if not a necessity, if the obligation to cooperate is to be meaningful. Otherwise it is up to the individual States to decide for themselves whether a breach is gross and systematic and it can only be inferred that a breach has that character if all States cooperate in bringing the breach to an end."); *see also* Ulf Linderfalk, *The legal consequences of jus cogens and the individuation of norms*, 33 LEIDEN J. INT'L L. 893, 893–909 (2020).

25. U.N. Charter, *supra* note 19, art. 56, *in relation to* art. 55(c).

26. *See* Int'l Law Comm'n, Rep. on the Work of Its Fifty-Third Session, *Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries*, arts. 49–54, U.N. Doc. A/56/10, at 129–40 (2001)[hereinafter *ARSIWA*]; Int'l Law Comm'n, Rep.

measures short of force or actual authorized use of force) approved by the United Nations Security Council.[27] This Article seeks to provide further doctrinal explanation and normative justification for all States and international organizations to mandatorily resort to exercising the duties of non-recognition, non-assistance, and cooperation as the global starting point for collective action in responding to peremptory norm (*jus cogens*) violations by any State.

In Part I (*Theorizing Non-Recognition, Non-Assistance, and Cooperation to End Jus Cogens Violations in International Law)*, I trace the origins of these three duties in State practices and natural law, before undertaking a comparative examination of the theoretical and interpretive approaches of both the International Court of Justice and the International Law Commission to these three international legal duties, pointing out some significant content and function divergences in these duties as recognized by the Court, and as progressively codified by the Commission. In Part II *(Substantive and Procedural Issues Arising from Duties of Non-Recognition, Non-Assistance, and Cooperation)*, I engage the legal complexities arising from duties of non-recognition and non-assistance operating as international legal duties of abstention, alongside the duty of cooperation as a positive duty to act of all States and international organizations. In Part III (*Overcoming Inertia Towards International Legal Duties of Non-Recognition, Non-Assistance, and Cooperation to End Jus Cogens Violations)*, I show pathways for circumventing prominent objections raised by States and international organizations against the wider practice and collective observance of the international legal duties of non-recognition, non-assistance, and cooperation, and propose both legal audits and reparative design as pathways that can aid States and international organizations in discharging these duties. The Conclusion articulates a plea for interdisciplinary international

on the Work of Its Fifty-Third Session, *Draft Articles on the Responsibility of International Organizations*, arts. 51–57, U.N. Doc. A/66/10, at 92–97 (2011) [hereinafter *Draft Articles on the Responsibility of International Organizations*]. For a comprehensive dataset documenting economic sanctions worldwide from 1950 to 2001, *see also* the GLOBAL SANCTIONS DATABASE, https://www.globalsanctionsdatabase.com [perma.cc/8SKF-72DS] (last visited Mar. 27, 2026).

27. U.N. Charter, *supra* note 19, ch. VII.

law and human rights research to best inform global use of these three duties against peremptory norm (*jus cogens*) violations.

A. Origins of Duties of Non-Recognition, Non-Assistance, and Cooperation

The historical origins of the international legal duties of non-recognition, non-assistance, and cooperation to end peremptory norm (*jus cogens*) violations by lawful means might appear to rest entirely on positivist foundations in international law.[28] However, these three international legal duties also bear some normative and conceptual resemblance to key natural law norms on fraternity, common good, and solidarity.[29] The positivist and natural law moorings of these three international legal duties assume different purposes behind these duties.

1. State Practice: The United States' Stimson Doctrine and International Practices

Scholars have attributed the origins of the international legal duty of non-recognition to various State practices, most prominently to the United States' 'Stimson Doctrine', named after

28. *See ARSIWA*, *supra* note 26, at 114–16, ¶¶ 6–14.

29. *See* Joachim Ostermann, OFM, *Fraternity as Natural Being*, RELIGIONS, Sep. 2022, at 5, https://www.mdpi.com/2077-1444/13/9/812 [perma.cc/J53R-VN4R] ("The meaning of fraternity in Franciscan life is best seen when the Franciscan rule is considered against the background of the oldest rule for Christian religious life still in use today. This is the Rule of St. Benedict . . . The mutuality of responsibility of a community living in the way of the Gospel seems a much more secure way to ensure that leadership cannot do evil in the hearts of the brothers. It may not be the most efficient way when there is a task to accomplish, but it is the safest way to ensure that everyone is well cared for while also doing his or her share in caring for others . . . ."); George Duke, *The Common Good*, *in* THE CAMBRIDGE COMPANION TO NATURAL LAW JURISPRUDENCE 369, 374 (2017)("For Aquinas the common good is an analogical concept applicable not only to political communities, but also to the universal good of God . . . the common good of a political community is a unity of order that is distinguishable from a mere aggregate of individual goods. A structured unity that derives from the ordering of different individuals towards the goal that they have in common."); *Solidarity in Social and Political Philosophy*, STAN. ENCYC. PHIL. (Mar. 25, 2023), https://plato.stanford.edu/entries/solidarity/ [perma.cc/JPZ3-QFDC] (see § 2.4 on Christian Solidarity) ("it is not just the shared experience of human suffering, or the understanding of the human being as *imago dei*, but a recognition of the interdependence of human beings in society that grounds a demand to share one another's fate . . . we are meant to recognize how both our flourishing and our suffering is a result of mutual influence and mutual reliance in and through the multiple associations to which we belong; in response, we have obligations to share others' fates by coming to others' aid and by limiting the harm we do.").

the former United States Secretary of State, who declared to the governments of China and Japan that the United States "did not intend to recognize any situation, treaty or agreement which may be brought about by means contrary to the covenants and obligations of the Pact of Paris of August 27, 1928, to which Treaty both China and Japan, as well as the United States, are parties."[30] Quincy Wright points to policies of non-recognition as a "constant feature of international practice" included in international law treatises published in the 1700s, where "refusal of recognition is, upon analysis, a declaration that the particular attempt to create new title, treaty or situation is contrary to international law or, what is often the same, to the acquired rights of the non-recognizing State; that accordingly it is not a source of legal right; that it is a nullity; and that it is proposed to treat it as such in the future. The object of the policy or obligation of non-recognition is not to render illegal an otherwise lawful and valid act; its object is to prevent the validation of what is a legal nullity . . . illegal acts cannot produce legal results beneficent to the wrongdoer."[31] The International Law Commission's commentaries on the duties of non-recognition and non-assistance likewise point to extensive State practices and policies before and during the era of the Charter of the United Nations.[32]

The general international legal duty to cooperate is also traced to widespread State practice before and during the Charter-based international system.[33] The general international legal duty to cooperate is defined as "the obligation to enter into such coordinated action so as to achieve a specific goal."[34] Article 1(3)

30. DANIEL COSTELLOE, *Legal Consequences in the Law of International Responsibility*, *in* LEGAL CONSEQUENCES OF PEREMPTORY NORMS IN INTERNATIONAL LAW, 184–241, 194 (2017); Arnold D. McNair, *Stimson Doctrine of Non-Recognition*, 14 BRIT. Y.B. INT'L L. 65, 65–74 (1933); John Trone, *The Stimson Doctrine of Non-Recognition of Territorial Conquest*, 19 U. QUEENSL. L.J. 160, 160–64 (1996).

31. COSTELLOE, *supra* note 30, at 133.

32. *See ARSIWA*, *supra* note 26, at 114–15, ¶¶ 4–8; *Draft Articles on the Responsibility of International Organizations*, *supra* note 26, at 83–84, ¶¶ 4–8.

33. *See, e.g.*, Richard J. Barnet, *Coexistence and Cooperation in International Law*, 18 WORLD POL. 82, 82–91 (1965); Julien Dellaux, *Duty to Cooperate*, *in* ENCYCLOPEDIA OF LAW AND DEVELOPMENT 68, 68–71 (Koen De Feyter et al. eds., 2021); Theo van Boven, *Duty of States to Cooperate*, 5 MENNESKER OG RETTIGHETER, no. 3, 1987, at 8–9; James Brown Scott, *International Cooperation and the Equality of States,* 18 AM. J. INT'L L. 116, 116–19 (1924).

34. Rüdiger Wolfrum, *International Law of Cooperation*, MAX PLANCK ENCYC. PUB. INT'L L., https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1427 [perma.cc/4X3C-FK3A] (last updated Apr. 2010).

of the United Nations sets forth as one of the Purposes of the United Nations the achievement of "international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."[35] Article 56 in Chapter IX (International Economic and Social Cooperation) of the Charter of the United Nations makes international cooperation obligatory for all Members of the United Nations to achieve purposes indicated in Article 55 of the same Charter: "all Members pledge themselves to take joint and separate action in cooperation with [the United Nations] for the achievement of purposes set forth in Article 55."[36] These purposes specified in Article 55 of the Charter of the United Nations are:

> (a) higher standards of living, full employment, and conditions of economic and social progress and development; (b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.[37]

United Nations General Assembly Resolution 2625, the *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,* otherwise known as the Friendly Relations Declaration, extensively elaborates on the duty of States to cooperate with one another in accordance with the Charter:

> States have the duty to cooperate with one another, irrespective of the differences in their political, economic, and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination based on such differences.
>
> To this end:

35. U.N. Charter, *supra* note 19, art. 1(3).
36. *Id.* art. 56.
37. *Id.* art. 55(a)–(c).

> (a) States shall cooperate with other States in the maintenance of international peace and security;
>
> (b) States shall cooperate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance;
>
> (c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention;
>
> (d) States Members of the United Nations have the duty to take joint and separate action in cooperation with the United Nations in accordance with the relevant provisions of the Charter.
>
> States should cooperate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international and educational progress. States should cooperate in the promotion of economic growth throughout the world, especially that of developing countries.[38]

Various treaty regimes in international law, such as international environmental law, international human rights law, and international economic law,[39] incorporated various forms of the above duty of all States to cooperate. By the time the International Law Commission included an international legal duty for all States and international organizations to cooperate to bring to an end peremptory norm (*jus cogens*) violations through lawful

38. G. A. Res. 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations at 123, ¶ 1 (Oct. 24, 1970).

39. *See e.g.*, Neil Craik, *The Duty to Cooperate in International Environmental Law: Constraining State Discretion through Full Respect*, 30 Y.B. INT. ENV'T L. 22, 22–4 (2019); Lawrence O. Gostin & Robert Archer, *The Duty of States to Assist Other States in Need: Ethics, Human Rights, and International Law*, 35 J.L., MED. AND ETHICS, no. 4, 2007, at 526–33; Michail Risvas, *The Duty to Cooperate and the Protection of Underwater Cultural Heritage*, 2 CAMBRIDGE J. INT. & COMPAR. L., no. 3, 2013, at 562–90; Roisin Hennessy, *Defining States' International Legal Obligations to Cooperate for the Achievement of Human Development: One Aspect of Operationalising a Human Rights-Based Approach to Development*, 8 HUM. RTS. IN DEV. Y.B. 71–98 (2002); LUCIA SATRAGNO, MONETARY STABILITY AS A COMMON CONCERN IN INTERNATIONAL LAW: POLICY COOPERATION AND COORDINATION OF CENTRAL BANKS 92–123 (Brill Nijhoff ed., 2022); Kenneth W. Abbott & Duncan Snidal, *Pathways to International Cooperation, in* THE IMPACT OF INTERNATIONAL LAW ON INTERNATIONAL COOPERATION 50–84 (Eyal Benvenisti & Moshe Hirsch eds., 2004).

means,[40] there were already strong positivist foundations for the duty to cooperate in international law.

2. Natural Law Norms on Fraternity and the Common Good

The international legal duties of non-recognition, non-assistance, and cooperation to end peremptory norms (*jus cogens*) violations bear some conceptual linkages to natural law norms involving fraternity and the common good. Emmerich de Vattel's *Law of Nations* famously argued that the

> object of the natural society established between all mankind is that they should lend each other mutual assistance in order to attain perfection themselves and to render their condition as perfect as possible . . . the object of the great society established by nature between all nations is also the interchange of mutual assistance for their own improvement and that of their condition.[41]

Vattel declared that States had "common duties" or "offices of humanity" towards each other, where "one State owes to another State whatever it owes to itself, so far as that other stands in real need of its assistance, and the former can grant it without neglecting the duties it owes to itself. Such is the eternal and immutable law of nature."[42] These ideas anticipated the general international law duty of States to cooperate. Vattel also proffered that States have a "right to form a coalition in order to repress and chastise" another State that is "ever ready to injure others, to traverse their designs, and to excite domestic disturbances in their dominions", and that such States in coalition having the right to "put it forever out of the [offending State's] power to injure them."[43] Likewise from Vattel's perspective, if a sovereign prince or government, "by violating the fundamental laws, gives his subjects a legal right to resist him—if tyranny becoming insupportable obliges the nation to rise in their own defence—every power has a right to succour an oppressed people who

40. *See supra* note 31.

41. EMMERICH DE VATTEL, *Preliminaries*, *in* THE LAW OF NATIONS, OR, PRINCIPLES OF THE LAW OF NATURE, APPLIED TO THE CONDUCT AND AFFAIRS OF NATIONS AND SOVEREIGNS, WITH THREE EARLY ESSAYS ON THE ORIGIN AND NATURE OF NATURAL LAW AND ON LUXURY 73 (Bela Kapossy & Richard Whitmore eds. 2008).

42. *See id.* Book II, ch. 1 §3.

43. VATTEL, Of a Nation Considered in its Relations to Others Book II, Chapter 4 §53.

implore their assistance."[44] In many respects, these ideas from Vattel as to the common duties reciprocally owed by States to each other also anticipated today's international legal duties of all States and international organizations not to recognize situations caused by any State's peremptory norm (*jus cogens*) violations, not to assist or aid in the maintenance of such situations, and to cooperate to put an end to such violations through lawful means.

Hersch Lauterpacht also elaborated on the natural law foundations of the principle of non-recognition, adopting

> the view that acts contrary to international law are invalid and cannot become a source of legal rights for the wrongdoer. That view applies to international law one of the general principles of law recognized by civilized nations. The principle *ex injuria jus non oritur* is one of the fundamental maxims of jurisprudence. An illegality cannot, as a rule, become a source of legal right to the wrongdoer.[45]

This legal principle from Roman law also relates to another principle, *nullus commodum capere (potest) de sua iniuria propria,* which means that no advantage may be gained from one's own wrong.[46]

Most importantly, however, it may also be said that the international legal duties of all States with respect to non-recognition, non-assistance, and cooperation to end peremptory norms (*jus cogens*) violations could also be reflective of a natural law ethos focused on fraternity and the common good:

> The person is at the centre of the political and social order because he is an end and not a means. The person is a social being by nature, not by choice or in virtue of a pure contractual convention. In order to flourish as a person, he needs the structure of relations that he forms with other persons. He

44. VATTEL, Of a Nation Considered in its Relations to Others Book II, Chapter 4 §56.

45. HERSCH LAUTERPACHT, RECOGNITION IN INTERNATIONAL LAW 420–21 (Cambridge Univ. Press 1947); *see also* AARON X. FELLMETH & MAURICE HORWITZ, GUIDE TO LATIN IN INTERNATIONAL LAW (2d ed. 2021) (The definition of *Ex iniuria ius non oritur* is "[a] right does not arise from wrongdoing." A maxim meaning that one cannot generally rely on a violation of law to establish a new legal right or to confirm a claimed right); Sherman L. Cohn, *Ex Injuria Jus Non Oritur: A Principle Misapplied*, 3 SANTA CLARA L. 23, 23–42 (1962); Marc-Antoine Gignac, *Le Principe Ex Injuria Jus Non Oritur En Droit International*, 30 REVUE QUEBECOISE DE DROIT INTERNATIONAL 261, 261–66 (2017)(book review).

46. *See* FELLMETH & HORWITZ, *supra* note 45, at 203 (defining *Nullus commodum capere (potest) de sua iniuria propria* as a maxim meaning that the law will not recognize or validate any profit a person derives from his own wrongdoing).

> thus finds himself at the centre of a network formed by concentric circles: the family, the sphere of life and work, the neighbourhood community, the nation, and finally humanity . . .
>
> By the fact that human beings have the vocation to live in society with others, they have in common an ensemble of goods to pursue and values to defend. This is what is called the 'common good'. If the person is an end in himself, the end of society is to promote, consolidate and develop its common good. The search for the common good allows the city to mobilize the energies of all its members. At a first level, the common good can be understood as the ensemble of conditions that allow a person to be a more human person. While being articulated in its external aspects – the economy, security, social justice, education, access to employment, spiritual searching, and other things – the common good is always a human good. At a second level, the common good is that which assigns an end to the political order and to the city itself. The good of all and of each one in particular, it expresses the communal dimension of the human good . . . if it concerns the essential requirements of the common good of every society, the vision of the common good evolves with the societies themselves, according to conceptions of the person, justice, and the role of public power . . .
>
> This natural order of society at the service of the person is indicated, according to the social doctrine of the [Catholic] Church, by four values that follow from the natural inclinations of the human being and which delineate the contours of the common good that society must pursue, namely: freedom, truth, justice, and solidarity. These four values correspond to the requirements of an ethical order in conformity with natural law. If one of these is lacking, the city will tend towards anarchy or rule of the strongest. Freedom is the first condition of a humanly acceptable political order. Without the liberty to follow one's conscience, express one's own opinions and pursue one's own plans, there is no human city, even if the pursuit of private goods must always be related to the promotion of the common good of the city. Without the search and respect for truth, there is not a society but a dictatorship of the strongest. Truth, which is not the property of anyone, is alone capable of bringing all human beings together in view of pursuing common objectives. If it is not truth that imposes itself, it is the most clever who imposes 'his' truth. Without

> justice there is no society, but the reign of violence. Justice is the highest good that the city can procure. It means that what is just is always sought, and that the law is applied with attention to the particular case, since equity is the highest part of justice. Finally, it is necessary for society to be regulated by a kind of solidarity which assures mutual assistance and responsibility for others, as well as the use of society's goods in response to the needs of all.[47]

In his Treatise on Law in the *Summa Theologica,* St. Thomas Aquinas emphasized that "every law is ordained to the common good,"[48] and that "law should be framed, not for any private benefit, but for the common good of all the citizens . . . human laws should be proportionate to the common good."[49] This conception of the common good, according to scholars, "reminds persons of the claims of ties that bind as well as of the importance of moral and civic virtue for personal flourishing and societal welfare."[50] This reasoning resonates for international law scholar Mark Retter, who has argued that peremptory norms of international law (*jus cogens*) cannot be seen only from the formal sources of international law, but

> should instead be understood as shaped by the common good of the international community, and particularly as fundamental legal means for the international community to be able to achieve, or coordinate towards this common good.[51]

From this framing of peremptory norms (*jus cogens*) as intrinsic to the common good, one can view the international legal duties of all States and international organizations to observe non-recognition, non-assistance, and cooperation to end peremptory norm (*jus cogens*) violations through lawful means as necessary axioms of virtue and responsibility that bind all towards the

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47. *In Search of Universal Ethic: A New Look at Natural Law*, INT'L THEOLOGICAL COMMM'N (May 20, 2009), https://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20090520_legge-naturale_en.html#* [perma.cc/PG2W-LTAC] (see, in particular, ¶¶ 84, 85, 87) (last visited July 15, 2025).

48. SAINT THOMAS AQUINAS, SUMMA THEOLOGICA, TREATISE ON LAW art. 2, https://www.ccel.org/a/aquinas/summa/FS/FS090.html#FSQ90OUTP1 [perma.cc/UB2H-Z9PF].

49. *Id.* art. 1.

50. MARY M. KEYS, AQUINAS, ARISTOTLE, AND THE PROMISE OF THE COMMON GOOD 9 (2009).

51. Mark Retter, *Jus Cogens: Towards an International Common Good,* 2 TRANSNAT'L LEGAL THEORY 537, 537 (2011).

realization of the common good for all humanity. These international legal duties of non-recognition, non-assistance, and cooperation comprise necessary consequences of peremptory norms (*jus cogens*) forming part of the common good for all humanity. When States and international organizations diligently exercise their duties not to recognize situations caused by violations of peremptory norms (*jus cogens*), scrupulously deny assistance or aid to maintain situations arising from such violations, and deliberately cooperate to end such violations by lawful means, all States and international organizations are acting collectively to advance the common good by not permitting States violating peremptory norms (*jus cogens*) to profit or benefit from the most egregious offenses against human life and the dignity of the human person (e.g., genocide, torture, aggression, crimes against humanity, violations of the most fundamental rules of international humanitarian law and international human rights law, erasure of the right of peoples to self-determination, slavery and racial discrimination) through any form of recognition for situations resulting from these violations. Likewise, all States and international organizations may also be seen as acting collectively to advance the common good when they deny any form of assistance or aid that would maintain situations resulting from a State's violation of peremptory norms (*jus cogens*). When all States and international organizations engage in cooperation to end such violations through lawful means, they harness virtues of fraternity, solidarity, justice, and responsibility to advance the common good for all humanity.

B. Divergent Approaches of the International Court of Justice and the International Law Commission

1. Juxtaposing the International Court of Justice's jurisprudence and the International Law Commission's codifications

A careful incrementalism has marked the International Court of Justice's jurisprudence on peremptory norms (*jus cogens*) and the non-recognition, non-assistance, and cooperation duties of all States and international organizations. The Court has tended to

elaborate more on peremptory norms (*jus cogens*) and duties of non-recognition, non-assistance, and cooperation from the Court's advisory opinions, while giving sparse treatment to these norms and duties in the Court's judgments in contentious cases. In contrast, the International Law Commission progressively developed and codified peremptory norms (*jus cogens*) and the duties of non-recognition, non-assistance, and cooperation in a fairly sustained manner since the drafting of the 2001 *Draft Articles on the Responsibility of States for Internationally Wrongful Acts*, the 2011 *Draft Articles on the Responsibility of International Organizations*, up to the 2022 *Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens)*.[52]

The International Law Commission differs from the International Court of Justice on the content of peremptory norms (*jus cogens*) and the three international legal duties of non-recognition, non-assistance, and cooperation. First, with respect to the actual peremptory norms (*jus cogens*) identified by the Commission in Conclusion 23 of the *2022 Draft Conclusions* as opposed to those recognized in the jurisprudence of the International Court of Justice,[53] the International Law Commission has a more expansive list of peremptory norms (*jus cogens*) than what the Court has recognized thus far in its jurisprudence. The International Law Commission's list mostly refers to specific prohibitions and one right (e.g., the right of self-determination), while the International Court of Justice's recognized peremptory norms have included obligations requiring States to engage in specific conduct to give effect to such prohibitions (e.g., conduct inquiries or prosecute persons alleged to have committed torture if such persons are not extradited, in Articles 6(2) and 7(1) of the Convention Against Torture, as well as State obligations stipulated under the Genocide Convention separately from the prohibition of genocide, such as the duty to enact necessary legislation to implement the Genocide Convention under Article V of the Convention or to call upon competent organs of the United Nations

52. *See* Int'l Law Comm'n, Rep. on the Work of its Seventy-Third Session, *Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens)*, U.N. Doc. A/77/10, at 5 (2022); *see also* DIRE TLADI, THE INTERNATIONAL LAW COMMISSION'S DRAFT CONCLUSIONS ON PEREMPTORY NORMS 1 (2024).

53. *See supra* pp. 5–6.

to take such action as appropriate for preventing and suppressing acts of genocide under Article VIII of the Convention).

Notably, the International Court of Justice and the International Law Commission differ slightly on the duties not to recognize as lawful any situations created by violations of peremptory norms of international law, not to render aid or assistance in maintaining such situations, and to cooperate to bring such violations to an end. Conclusion 19 of the International Law Commission's 2022 *Draft Conclusions* qualifies violations of peremptory norms of international law by introducing the concept of a "serious breach":

> Conclusion 19 Particular consequences of serious breaches of peremptory norms of general international law
>
> 1. States shall cooperate to bring to an end through lawful means any serious breach by a State of an obligation arising under a peremptory norm of general international law (jus cogens).
>
> 2. No State shall recognize as lawful a situation created by a serious breach by a State of an obligation arising under a peremptory norm of general international law (jus cogens), nor render aid or assistance in maintaining that situation.
>
> 3. A breach of an obligation arising under a peremptory norm of general international law (jus cogens) is serious if it involves a gross or systematic failure by the responsible State to fulfil that obligation.
>
> 4. This draft conclusion is without prejudice to the other consequences that any breach by a State of an obligation arising under a peremptory norm of general international law (jus cogens) may entail under international law.[54]

The concept of a "serious breach" of peremptory norms of international law that operates to trigger States' duties of non-recognition, non-assistance, and cooperation is nowhere to be found in the jurisprudence of the International Court of Justice, even if it was already stressed by the International Law Commission in Article 40 in relation to Article 41 of the 2001 *Draft Articles on the Responsibility of States for Internationally Wrongful Acts* as well as in Article 41 in relation to Article 42 of the Commission's 2011 *Draft Articles on the Responsibility of*

54. *See id.* at 5.

International Organizations.[55] The International Law Commission specifically requires an intensity threshold for the violation of a peremptory norm to be at the level of a "*serious breach*", meaning one involving "a gross or systemic failure by the responsible State to fulfill the obligation", where "the word '*serious*' signifies that a certain order of magnitude of violation is necessary in order not to trivialize the breach", while

> to be regarded as "*systematic*", a violation would have to be carried out in an organized and deliberate way . . . the term '*gross*' refers to the intensity of the violation or its effects; it denotes violations of a flagrant nature, amounting to a direct and outright assault on the values protected by the rule.[56]

A scholar opines that this threshold of a "serious breach" was allegedly "designed to avoid trivialization",[57] and purposely created limits to the consequences of violations of peremptory norms (*jus cogens*) tethered to notions of enforcement of peremptory norms in the international system:

> a feature of the position taken by the 2001 [International Law Commission" Articles is that, while in the event of a serious breach particular obligations arise for other States, no obligations peculiar to such a breach arise for the wrongdoing State that do not also arise in the event of the breach of an ordinary obligation. A serious breach does not result in aggravated responsibility for the wrongdoing State. Rather, the enforcement of an obligation under a peremptory norm relies on decentralized mechanisms. It is primarily non-injured States that must tailor their relations towards the wrongdoing State in such a way as to enforce compliance with the obligation.[58]

The jurisprudence of the International Court of Justice in contentious inter-State disputes also demonstrates much less elaboration on peremptory norms (*jus cogens*) and the three international legal duties of non-recognition, non-assistance, and cooperation to end peremptory norm (*jus cogens*) violations through lawful means. The Court cautioned early on that "the mere

55. *See ARSIWA*, *supra* note 26, art. 41; *Draft Articles on the Responsibility of International Organizations*, *supra* note 26, arts. 41–42.

56. *See ARSIWA*, *supra* note 26, at 113.

57. COSTELLOE, *supra* note 30, at 187.

58. *Id*. at 190.

fact that rights and obligations *erga omnes* or peremptory norms of general international law (*jus cogens*) are at issue in a dispute cannot in itself constitute an exception to the principle that jurisdiction always depends on the consent of the parties".[59] Thus, when the Court first identified peremptory norms of international law in its contentious jurisprudence, it did so by way of *obiter dictum* in its 1970 Judgment on Preliminary Objections in the *Barcelona Traction* case, where it declared that

> obligations *erga omnes* . . . [are] the obligations of a State towards the international community as a whole . . . 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. Some of the corresponding rights of protection have entered into the body of general international law; others are conferred by international instruments of a universal or quasi-universal character."[60]

The Court's judgments in contentious cases are just as sparse on the duties of non-recognition, non-assistance, and cooperation to end by lawful means any violation of peremptory norms of international law. In its 2012 Judgment on the Merits in *Jurisdictional Immunities of the State (Germany v. Italy; Greece, intervening),*[61] Italy attempted to argue that the doctrine of State immunity invoked by Germany (to demand that Italy stop all post-World War II claims litigation in Italian courts) ultimately violated the obligation of all States not to recognize or assist in the maintenance of situations arising from violations of peremptory norms of international law. The Court, however, did not accept this argument, stating that

> recognizing the immunity of a foreign State in accordance with customary international law does not amount to recognizing as lawful a situation created by the breach of a *jus cogens* rule, or rendering aid and assistance in maintaining that situation, and so cannot contravene the principle in Article 41 of the

59. *See* Dem. Rep. Congo v. Rwanda, 2006 I.C.J., ¶ 125; *see* also Bosn. & Herz. v. Serb. & Mont., 2007 I.C.J., ¶ 147.

60. *See* Belgium v. Spain, 1970 I.C.J., ¶ 33–34.

61. *See* Jurisdictional Immunities of the State (Ger. v. It.; Greece, intervening), Judgment, 2012 I.C.J. 1031 (Feb. 3).

> International Law Commission's Articles on State Responsibility.[62]

In its 2012 Judgment on the Merits in *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*,[63] while the Court recognized that the prohibition of torture is "part of customary international law and it has become a peremptory norm (*jus cogens*)",[64] the Court mainly focused on declaring Senegal's international responsibility for failing to comply with two *erga omnes* obligations under Articles 6(2) and 7(1) of the Convention against Torture, and ordered Senegal to "take without further delay the necessary measures to submit the case [against former president of Chad and later convicted war criminal Mr. Hissene Habre] to its competent authorities for the purpose of prosecution, if it does not extradite Mr. Habre."[65]

In its 2005 Judgment on the Merits in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*,[66] the Court made extensive determinations of Uganda's numerous violations of international law, such as the "principle of non-use of force in international relations and the principle of non-intervention";[67] and that Uganda,

> by the conduct of its armed forces, which committed acts of killing, torture, and other forms of inhumane treatment of the Congolese civilian population, destroyed villages and civilian buildings, failed to distinguish between civilian and military targets and to protect the civilian population in fighting with other combatants, trained child soldiers, incited ethnic conflict and failed to take measures to put an end to such conflict; as well as by its failure, as an occupying Power, to take measures to respect and ensure respect for human rights and international humanitarian law in Ituri district, violated its obligations under international human rights law and international humanitarian law.[68]

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62. *Id.* ¶ 93.
63. *See* Belg. v. Sen., 2012 I.C.J.
64. *Id.* ¶ 99.
65. *Id.* ¶ 121.
66. Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), Judgment, 2005 I.C.J. 168 (Dec. 19).
67. *Id.* ¶ 345.
68. *Id.*

Many of these norms identified, such as the prohibition against torture and basic principles of international human rights law and international humanitarian law, are themselves peremptory norms of international law (*jus cogens*), but the Court did not pronounce on the legal duties of all States not to recognize situations arising from the violations of peremptory norms and not to render aid or assistance to maintain these situations, as well as the duty to cooperate to bring to an end through lawful means all such violations of peremptory norms (*jus cogens)*. The Court was even more opaque in not specifying any peremptory norm or *jus cogens* violations in its 1980 Judgment on the Merits in *Case Concerning United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*—a case that notoriously involved what would undoubtedly be called today *jus cogens* violations or violations of peremptory norms of international law, acts such as hostage-taking, torture, and other serious violations of key principles of international human rights law and international humanitarian law against nationals of the United States.[69] The Court instead somewhat vaguely decided that

> the Islamic Republic of Iran, by the conduct which the Court has set out in this Judgment, has violated in several respects, and is still violating, obligations owed by it to the United States of America under international conventions in force between the two countries, as well as under long-established rules of general international law,[70]

and was completely silent on the duties of all States not to recognize nor to render aid or assistance to maintain situations created by Iran's violations of peremptory norms of international law, let alone to cooperate to bring all such continuing violations to an end through lawful means. Instead, the Court remained silent on this front.

In contrast, the Court has been prolific throughout its Advisory Opinions on peremptory norms (*jus cogens*) and the three international legal duties of non-recognition, non-assistance, and cooperation to end violations of peremptory norms (*jus cogens*) through lawful means. In its 1971 Advisory Opinion in

69. *See* United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), Judgment, 1980 I.C.J. 3 ¶¶ 17-32, 26-29 (May 24).

70. *Id.* at 45.

Legal Consequences for States of the Continued Presence of South Afric in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), the Court gave advice on

> those dealings with the Government of South Africa which, under the Charter of the United Nations and general international law, should be considered as inconsistent with the declaration of illegality and invalidity made in paragraph 2 of [Security Council] Resolution 276 (1970), because they may imply a recognition that South Africa's presence in Namibia is legal.[71]

Member States of the United Nations were then declared by the Court to have extensive obligations to:

> . . . abstain from entering into treaty relations with South Africa in all cases in which the Government of South Africa purports to act on behalf of or concerning Namibia. With respect to existing bilateral treaties, member States must abstain from invoking or applying those treaties or provisions of treaties concluded by South Africa on behalf of or concerning Namibia which involve active intergovernmental cooperation. With respect to multilateral treaties, however, the same rule cannot be applied to certain general conventions such as those of a humanitarian character, the non-performance of which may adversely affect the people of Namibia. It will be for the competent international organs to take specific measures in this respect. Member States, in compliance with the duty of non-recognition imposed by paragraphs 2 and 5 of resolution 276 (1970), are under obligation to abstain from sending diplomatic or special missions to South Africa including in their jurisdiction the Territory of Namibia, to abstain from sending consular agents to Namibia, and to withdraw any such agents already there. They should also make it clear to the South African authorities that the maintenance of diplomatic or consular relations with South Africa does not imply any recognition of its authority with regard to Namibia. The restraints which are implicit in the non-recognition of South Africa's presence in Namibia and the explicit provisions of paragraph 5 of resolution 276 (1970) impose upon member States the obligation to abstain from

71. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 I.C.J. 16 ¶ 121 (June 21).

> entering into economic and other forms of relationship or dealings with South Africa on behalf of or concerning Namibia which may entrench its authority over the Territory."[72]

The Court also identified obligations *erga omnes* that even applies to non-member States of the United Nations who might not deem themselves bound by UN Security Council Resolution 276:

> . . . in the view of the Court, the termination of the Mandate [of South Africa over Namibia] and the declaration of the illegality of South Africa's presence in Namibia are opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law: in particular, no State which enters into relations with South Africa concerning Namibia may expect the United Nations or its Members to recognize the validity or effects of such relationship, or of the consequences thereof. The Mandate having been terminated by decision of the international organization in which the supervisory authority over its administration was vested, and South Africa's continued presence in Namibia having been declared illegal, it is for non-member States to act in accordance with those decisions . . . all States should bear in mind that the injured entity is a people which must look to the international community for assistance in its progress towards the goals for which the sacred trust was instituted.[73]

Decades since this landmark Advisory Opinion, the Court again had the opportunity in another advisory opinion to interpret the necessary obligations of States to cooperate to bring peremptory violations to an end, as well as not to recognize or assist in the maintenance of situations arising from violations of peremptory norms of international law. In its 2004 Advisory Opinion in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* the Court observed that "the obligations violated by Israel include certain obligations *erga omnes . . .* The obligations *erga omnes* violated by Israel are the obligation to respect the right of the Palestinian people to self-determination, and certain of its obligations under international humanitarian law."[74] From this observation, the International

72. *Id.* ¶¶ 122–24.

73. *Id.* ¶¶ 126–27.

74. *See* Legal Consequences Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J., ¶ 155.

Court of Justice extrapolated upon the three duties of non-recognition, non-assistance, and cooperation to end violations of peremptory norms of international law, without requiring that such violations amount to serious breaches of such norms:

> [g]iven the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction. It is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end.[75]

The Court's 2019 Advisory Opinion in *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* considered the arguments of several participating States in these advisory proceedings, stressing that "as regards the consequences for third States, some participants have maintained that those States have an obligation not to recognize the unlawful situation resulting from the United Kingdom's continued administration of the Chagos Archipelago and not to render assistance in maintaining it."[76] The Court ultimately did not address this point directly, instead referring to all States' duty to cooperate to complete the decolonization of Mauritius,

> since respect for the right to self-determination is an obligation *erga omnes,* all States have a legal interest in protecting that right . . . the Court considers that, while it is for the General Assembly to pronounce on the modalities required to ensure the completion of the decolonization of Mauritius, all Member States must cooperate with the United Nations to put those modalities into effect.[77]

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75. *Id.* ¶ 159.

76. Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 2019 I.C.J. 95, ¶ 176 (Feb. 25).

77. *Id.* ¶ 180; *see also id.* ¶183 ("By thirteen votes to one, [the Court] is of the opinion that all Member States are under an obligation to cooperate with the United Nations in order to complete the decolonization of Mauritius.").

Fifty-four years after the *Barcelona Traction*'s famous obiter dictum that started the Court's jurisprudence on peremptory norms (*jus cogens*), the Court, in its 19 July 2024 Advisory Opinion in *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory*, *Including East Jerusalem*, would categorically declare that

> in cases of foreign occupation *such as the present case*, the right to self-determination constitutes a peremptory norm of international law (*jus cogens*).[78]

The same Advisory Opinion would mention the term "serious breach"[79] of peremptory norms of international law, although not in the same sense as that used by the International Law Commission in its codifications.

By the time the Court issued its 2024 Advisory Opinion in *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem*,[80] it would be the first time in the Court's jurisprudence involving advisory and contentious proceedings that the Court would categorically pronounce on the three duties of non-recognition, non-assistance, and the duty to cooperate of all States (or third States not party to proceedings before the Court) to bring to an end through lawful means any and all violations of peremptory norms of international law (*jus cogens*). The Court's language in the last three dispositive paragraphs of this 2024 Advisory Opinion is remarkably explicit in being directed towards all States:

> (7) By twelve votes to three, [the Court] is of the opinion that all States are under an obligation not to recognize as legal the situation arising from the unlawful presence of the State of Israel in the Occupied Palestinian Territory and not to render aid or assistance in maintaining the situation created by the continued presence of the State of Israel in the Occupied Palestinian Territory;
>
> (8) By twelve votes to three, [the Court] is of the opinion that international organizations, including the United Nations, are under an obligation not to recognize as legal the situation

78. Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem, Advisory Opinion, 2024 I.C.J. 754, 836 ¶ 233.

79. *Id.* ¶ 280.

80. *Id.* ¶ 77.

> arising from the unlawful presence of the State of Israel in the Occupied Palestinian Territory;
>
> (9) By twelve votes to three, [the Court] is of the opinion that the United Nations, and especially the General Assembly, which requested this opinion, and the Security Council, should consider the precise modalities and further action required to bring to an end as rapidly as possible the unlawful presence of the State of Israel in the Occupied Palestinian Territory.[81]

The Court (which was noticeably silent in proclaiming these duties in any contentious proceedings involving alleged violations of peremptory norms of international law), notably expanded its elaboration of these duties far beyond what the Court did in the 1971 *South West Africa* Advisory Opinion, the 2004 *Wall* Advisory Opinion, and the 2019 *Chagos* Advisory Opinion. The 2024 *Policies and Practices of Israel* Advisory Opinion discussed in detail not just the legal consequences for Israel from any internationally wrongful acts, but most especially the legal consequences for all States as well as the United Nations.[82] The Court stressed that "among the obligations *erga omnes* violated by Israel are the obligation to respect the right of the Palestinian people to self-determination and the obligation arising from the prohibition of the use of force to acquire territory as well as certain of its obligations under international humanitarian law and international human rights law."[83] The Court invoked Security Council Resolutions 465 (1980) and 2334 (2016) to emphasize the duties of all States not to recognize any changes to the pre-1967 borders other than those agreed by the parties through negotiations, and not to render aid or assistance to illegal settlement activities, also noting General Assembly Resolutions 77/126 and 32/161 (1977), ultimately to conclude that *all* States have extensive duties of non-recognition, non-assistance, and cooperation to bring to an end through lawful means the violations of peremptory norms in the context of Israel's policies and practices involving the Occupied Palestinian Territory:

> . . . Member States [of the United Nations] are under an obligation not to recognize any changes in the physical character or demographic composition, institutional structure

81. *Id.* ¶ 285.
82. *See id.* ¶ 265–84.
83. *Id.* ¶ 274.

> or status of the territory occupied by Israel on 5 June 1967, including East Jerusalem, except as agreed by the parties through negotiations and to distinguish in their dealings with Israel between the territory of the State of Israel and the Palestinian territory occupied since 1967. The Court considers that the duty of distinguishing dealings with Israel between its own territory and the Occupied Palestinian Territory encompasses, *inter alia,* the obligation to abstain from treaty relations with Israel in all cases in which it purports to act on behalf of the Occupied Palestinian Territory or a part thereof on matters concerning the Occupied Palestinian Territory or a part of its territory; to abstain from entering into economic or trade dealings with Israel concerning the Occupied Palestinian Territory which may entrench its unlawful presence in the territory; to abstain, in the establishment and maintenance of diplomatic missions in Israel, from any recognition of its illegal presence in the Occupied Palestinian Territory; and to take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory . . . It is for all States, *while respecting the Charter of the United Nations and international law*, to ensure that any impediment resulting from the illegal presence of Israel in the Occupied Palestinian Territory to the exercise of the Palestinian people of its right to self-determination is brought to an end. In addition, all the States parties to the Fourth Geneva Convention have the obligation, while respecting the Charter of the United Nations and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.[84]

The Court also applied the duty of non-recognition specifically to "international organizations, including the United Nations, in view of the serious breaches of obligations *erga omnes* under international law."[85] This extraordinary elaboration of duties of non-recognition, non-assistance, and cooperation to bring to an end through lawful means all violations of peremptory norms of international law is specific, detailed, and prescriptive, and quite unlike the Court's jurisprudence (contentious or advisory) before this Advisory Opinion.

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84. *Id.* ¶¶ 278–79 (emphasis added).
85. *Id.* ¶ 280.

Finally, the Court did not cite the International Law Commission's 2022 *Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens)*, nor refer to the Commission's formulation of these duties under Conclusion 19 in the 2022 *Draft Conclusions.* The Court drew the content of these three duties from pre-existing international law under Security Council Resolutions 465 (1980) and 2334 (2016), which have precedence over any conflicting obligations of States under any other international agreement.[86] The *2024 Policies and Practices of Israel* Advisory Opinion thus constitute, as of this writing, the most extensive jurisprudential articulation by the International Court of Justice of the duties of non-recognition, non-assistance, and cooperation to bring violations of peremptory norms of international law through lawful means.

2. Pending cases at the International Court of Justice involving the duties of non-recognition, non-assistance, and cooperation to end peremptory norm (*jus cogens*) violations by lawful means

As of this writing, there are multiple pending matters at the International Court of Justice that will involve the interpretation of the international legal duties of States and international organizations with respect to non-recognition, non-assistance, and cooperation to end peremptory norm violations through lawful means. Barely half a year after the Court issued its 2024 *Policies and Practices of Israel* Advisory Opinion, the Court received another request for an advisory opinion on December 20, 2024,[87] that was sought by the United Nations General Assembly through its Resolution 79/232 dated 19 December 2024. Resolution 79/232 reiterated the duties

86. U.N. Charter, *supra* note 19, art. 103 ("In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.").

87. *See generally* Obligations of Israel in Relation to the Presence and Activities of the United Nations, Other International Organizations and Third States In and In Relation to the Occupied Palestinian Territory, Request for Advisory Opinion, 2024 I.C.J. Pleadings (Dec. 20).

> for all States, while respecting the Charter of the United Nations and international law, to ensure that any impediment resulting from the illegal presence of Israel in the Occupied Palestinian Territory to the exercise of the Palestinian people of its right to self-determination is brought to an end.[88]

To this end, the pending question seeks the Court's Advisory Opinion on the following question:

> What are the obligations of Israel, as an occupying Power and as a member of the United Nations, in relation to the presence and activities of the United Nations, including its agencies and bodies, other international organizations and third States, in and in relation to the Occupied Palestinian Territory, including to ensure and facilitate the unhindered provision of urgently needed supplies essential to the survival of the Palestinian civilian population as well as of basic services and humanitarian and development assistance, for the benefit of the Palestinian civilian population, and in support of the Palestinian people's right to self-determination?[89]

More recent contentious cases that also involve claims of a State's violation of peremptory norms such as alleged genocide, torture, grave breaches of international humanitarian law and serious breaches of international human rights law, among others, appear to be also seeking clarity from the International Court of Justice about the scope, extent, and effect of the legal duties of non-recognition, non-assistance, and cooperation of third States and international organizations to bring to an end peremptory norm violations through lawful means. In the pending (as of this writing) case of *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*,[90] South Africa's Application Instituting Proceedings emphasized that South Africa is "mindful of the *jus cogens* character of the prohibition of genocide and the *erga omnes* and *erga omnes partes* character of the obligations owed by States under the Genocide Convention."[91] In its 26 January 2024 Order on Provisional Measures, the International Court of Justice upheld the

88. *Id.* at 7.

89. *Id.* at 10.

90. *See* Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Application Instituting Proceedings containing a Request for the Indication of Provisional Measures, 2023 I.C.J. Pleadings (Dec. 23).

91. *Id.* ¶ 5.

standing of South Africa to institute the Application against Israel, noting its previous decision in *The Gambia v. Myanmar* to the effect that

> all the States parties to the [Genocide] Convention have a common interest to ensure the prevention, suppression, and punishment of genocide, by committing themselves to fulfilling the obligations contained in the Convention. Such a common interest implies that the obligations in question are owed by any State party to all the other States parties to the relevant convention; they are obligations *erga omnes partes*, in the sense that each State party has an interest in compliance with them in any given case. The common interest in compliance with the relevant obligations under the Genocide Convention entails that any State party, without distinction, is entitled to invoke the responsibility of another State party for an alleged breach of its obligations *erga omnes partes* . . . any State party to the Genocide Convention may invoke the responsibility of another State party, including through the institution of proceedings before the Court, with a view to determining the alleged failure to comply with its obligations *erga omnes partes* under the Convention and to bringing that failure to an end.[92]

As of this writing, thirteen States (Nicaragua, Colombia, Libya, Mexico, Palestine, Spain, Türkiye, Chile, Maldives, Bolivia, Ireland, Cuba, and Belize) have filed applications to the International Court of Justice for permission to intervene, all asserting their interests in compliance with the Genocide Convention.[93] The Court has not, as of this writing, resolved the requests for intervention.

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92. S. Afr. v. Isr., Order on Request for the Indication of Provisional Measures, 2024 I.C.J. 3, ¶ 33 (Jan. 26).

93. *See e.g.*, S. Afr. v. Isr., Declaration of Intervention of Colombia, 2024 I.C.J. Pleadings, at 1 (Apr. 5); S. Afr. v. Isr., Declaration of Intervention of Libya, 2024 I.C.J. Pleadings, at 1 (May 10); S. Afr. v. Isr., Declaration of intervention of Mexico, 2024 I.C.J. Pleadings, at 1 (May 24); S. Afr. v. Isr., Application for permission to intervene and declaration of intervention submitted by Palestine, 2024 I.C.J. Pleadings, at 1 (June 3); S. Afr. v. Isr., Declaration of Intervention of Spain, 2024 I.C.J. Pleadings, at 1 (June 28); S. Afr. v. Isr., Declaration of intervention of Türkiye, 2024 I.C.J. Pleadings, at 1 (Aug. 7); S. Afr. v. Isr., Declaration of Intervention of Chile, 2024 I.C.J. Pleadings, at 1 (Sep. 12); S. Afr. v. Isr., Declaration of intervention of Maldives, 2024 I.C.J. Pleadings, at 1 (Oct. 1); S. Afr. v. Isr., Declaration of Intervention of Bolivia, 2024 I.C.J. Pleadings, at 1 (Oct. 8); S. Afr. v. Isr., Declaration of Intervention of Ireland, 2025 I.C.J. Pleadings, at 1 (Jan. 6); S. Afr. v. Isr., Declaration of Intervention of Cuba, 2025 I.C.J. Pleadings, at 1 (Jan. 10); S. Afr. v. Isr.,

On March 1, 2024, Nicaragua brought an Application Instituting Proceedings with a Request for the Indication of Provisional Measures against Germany in *Alleged Breaches of Certain International Obligations in Respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*.[94] Nicaragua alleges that Germany's support and arms trade with Israel violates "obligations for Germany under international law to prevent genocide, to not aid and assist or be complicit in genocide, and to ensure respect for international humanitarian law and other peremptory norms of international law."[95] Among its various requests for declaratory judgment from the Court, Nicaragua specifically asked that the Court declare that Germany

> has breached and continues to breach its conventional and customary law obligations, including the obligation to facilitate and cooperate in bringing about the Palestinian people's right to self-determination, by providing aid and particularly military equipment to Israel that is used to deny this right of self-determination and moreover helps to maintain and impose an apartheid regime.[96]

The Court rejected Nicaragua's request for the indication of provisional measures, finding that "[b]ased on the factual information and legal arguments presented by the Parties . . . the circumstances are not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures."[97] The Court also did not grant Germany's request to remove the case from its General List due to manifest lack of jurisdiction, noting the duties of all States Parties to the Geneva Conventions and counterpart general principles of humanitarian law, as well as the Genocide Convention, for which

> the Court considers it particularly important to remind all States of their international obligations relating to the transfer of arms to parties to an armed conflict, in order to avoid the

Application for permission to intervene and declaration of intervention submitted by Belize, 2025 I.C.J. Pleadings, at 1 (Jan. 30).

94. *See* Alleged Breaches of Certain International Obligations in Respect of the Occupied Palestinian Territory (Nicar. v. Ger.), Application Instituting Proceedings, 2024 I.C.J. 3 (Mar. 1).

95. *Id.* ¶ 12.

96. *Id.* ¶ 67.

97. Nicar. v. Ger., Reports of Judgements, Advisory Opinions and Orders, 2024 I.C.J. 560, ¶ 20 (Apr. 30).

> risk that such arms might be used to violate [these] Conventions. All of these obligations are incumbent upon Germany as a State party to the said Conventions in its supply of arms to Israel.[98]

Other pending cases at the International Court of Justice also involve third States asserting their legal interests in other States' compliance with international human rights law treaties, out of some sense that instituting such cases at the Court ensures that they are not recognizing the legality of situations resulting from peremptory norm violations, rendering assistance or aid in the maintenance of such situations, as well as cooperating to use lawful means to bring such peremptory norm violations to an end. Canada and the Netherlands filed their Joint Application instituting Proceedings against Syria in 2023,[99] invoking

> the international responsibility of Syria for its gross and systematic failure to fulfill its obligations regarding the prohibition against torture and other Cruel, Inhuman or Degrading Treatment or Punishment, as well as its other numerous violations of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the legal consequences flowing therefrom.[100]

Canada and the Netherlands specifically invoked the prohibition against torture as a peremptory norm of international law (*jus cogens*), which cannot be derogated from at all even with Syria's alleged defense of anti-terrorism.[101] Australia, Canada, Germany and the Netherlands announced in 2024 that they intend to file a contentious case against Afghanistan at the International Court of Justice, alleging violations of the Convention of the Elimination of All Forms of Discrimination Against Women.[102] In *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, the Court upheld

98. *Id.* ¶ 24.

99. *See* Application of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Can. and Neth. v. Syrian Arab Rep.), Joint Application Instituting Proceedings, 2023 I.C.J. 2 (June 8).

100. *Id.* ¶ 3.

101. *See id.* at ¶ 5.

102. *See* Alice Johnson, *Afghanistan: potential ICJ case a step towards justice for Afghan women*, INT'L BAR ASSOC. (Oct. 24, 2024), https://ibanet.org/afghanistan-icj [perma.cc/N3WE-UAMB].

the admissibility of declarations of intervention of various third States (Maldives, Canada, Denmark, France, Germany, Netherlands, and the United Kingdom) seeking to participate in the proceedings as intervenors,[103] and other States (Slovenia, Democratic Republic of the Congo, Belgium, Ireland) have followed suit with other declarations of intervention.[104] Various applications or declarations for intervention (from Belize, Cuba, Ireland, Bolivia, Maldives, Chile, Turkiye, Spain, Palestine, Mexico, Libya, Colombia, Nicaragua) were also filed in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* and remain pending as of this writing.[105] Extraordinarily, the Court has found in favor of the admissibility of declarations of intervention coming from 32 States (Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom) in *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*.[106]

On May 19, 2025, Lithuania instituted proceedings against Belarus in the International Court of Justice in *Alleged Smuggling of Migrants (Lithuania v. Belarus),*[107] asserting its rights as both an injured and directly affected State, as well as a third State that is also a party to a multilateral treaty (the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime) to which Belarus is a party. In many respects, this application by Lithuania comes on the heels of the successful application made by The Gambia in *The Gambia v. Myanmar*—a third State which itself is not experiencing direct harm from

103. Gam. v. Myan., Order on the Admissibility of the Declarations of Intervention, 2024 I.C.J. 729 (July 3).

104. *See id.*

105. *See e.g.*, S. Afr. v. Isr., Declarations of Intervention, 2023 I.C.J.

106. *See* Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukr. v. Russ. Fed'n), Order on the Admissibility of the Declarations of Intervention, 2023 I.C.J. 354 (June 5).

107. *See* Alleged Smuggling of Migrants (Lith. v. Belr.), Application Instituting Proceedings, 2025 I.C.J. 3 (May 19).

alleged breaches of the Genocide Convention by the Respondent State, but is a fellow State Party to the Convention—and where the alleged illegal acts of genocide by the Respondent State are not taking place in the territory of the applicant State.[108]

3. Judicial versus Legislative perspectives

The foregoing discussion demonstrates distinct similarities and differences in the respective approaches taken by the International Court of Justice and the International Law Commission on the triad duties of non-recognition, non-assistance, and cooperation to end peremptory norm violations (*jus cogens*) in international law. The International Law Commission has not only drawn on the jurisprudential practices of the International Court of Justice, but also progressively codified a specific intensity threshold (e.g., "serious breach") for what qualifies as a peremptory norm (*jus cogens*) violation by a State, which is a "gross or systematic failure by the responsible State to fulfill that [peremptory norm or *jus cogens*] obligation." The International Law Commission intentionally repeats this specific intensity threshold in its formulation of the duties of non-recognition, non-assistance, and cooperation in Conclusion 19 of the 2022 Draft Conclusions. In the same Conclusion 19, the Commission has also only limited these duties to States, without referring to international organizations or other non-State actors at all. The International Law Commission has also produced its own list under Conclusion 23 of the 2022 *Draft Conclusions* of what norms, in its view, have already attained the status of peremptory norms (*jus cogens*) under international law, which in themselves possess space for future interpretation. Conclusion 23 specifies "basic principles of international humanitarian law", for example, without specifying what these principles are and whether they are to be sourced solely in treaties or conventions (e.g., the 1949 Geneva Conventions, the 1907 Hague Conventions, among a vast corpus of treaties or conventions in international humanitarian law), or from customary international law or general principles of law.[109]

108. *See* Gam. v. Myan., 2022 I.C.J. ¶ 477.

109. *See* MARCO SASSÒLI, *The Sources of International Humanitarian Law*, *in* INTERNATIONAL HUMANITARIAN LAW 35, 36–48 (2024).

In contrast, while the International Court of Justice is more restrictive in its contentious jurisprudence, but liberal in its advisory opinions, when it comes to judicially recognizing peremptory norms of international law (*jus cogens*), the Court has not injected any specific intensity threshold of "serious breach" to trigger the duties of non-recognition, non-assistance, and cooperation to end peremptory norm violations (*jus cogens*) in international law. Neither has the Court limited these duties of non-recognition, non-assistance, and cooperation to States alone, but even deemed them applicable to international organizations in the 2024 *Policies and Practices of Israel* Advisory Opinion, as well as to non-Members of the United Nations as early as the 1971 *South West Africa* Advisory Opinion.

The divergence between the approaches of the International Court of Justice's jurisprudence and the International Law Commission's codifications reflects significant institutional differences as to the functional uses and purposes of these three duties of non-recognition, non-assistance, and cooperation to end peremptory norm violations (*jus cogens*) in international law. The Court's jurisprudence indicates a fairly restrictive list of judicially recognized peremptory norms (*jus cogens*) thus far. However, this list also augurs for broad application of these duties to State and non-State actors, given the *erga omnes* nature of disputes involving peremptory norm violations (*jus cogens*). The ultimate purpose of these duties that apply to both States and international organizations, at least from the perspective of the history of jurisprudence at the International Court of Justice, is to expedite global collective action to avoid prolonging the harm caused by peremptory norm violations (*jus cogens*) through any recognition of the situation caused by such violations, or any aid or assistance to maintain these situations. In its 2019 *Chagos* Advisory Opinion, the Court even went so far as to declare that cooperation between all States was mandatory to end the peremptory norm (*jus cogens)* violation that had long denied the people of the Chagos Archipelago their right to self-determination.[110]

In contrast, the International Law Commission appears more restrained and focused on constraining the discretion of States

110. *See* Legal Consequences Arising from Policies and Practices of Israel in Occupied Palestinian Territory, Including East Jerusalem, Advisory Opinion, 2024 I.C.J. ¶ 74.

discharging such duties of non-recognition, non-assistance, and cooperation to end peremptory norm violations (*jus cogens*). Its 2022 *Draft Conclusions* reiterate as criteria for the identification of a peremptory norm of general international law (*jus cogens*) under Conclusion 4, essentially the same criteria found in Article 53 of the Vienna Convention on the Law of Treaties,[111] which the International Court of Justice has not even explicitly adopted as identification criteria in its own jurisprudence. The ILC created the specific intensity threshold to be a necessary precondition. The International Law Commission also refrained in its 2022 *Draft Conclusions* from recognizing these duties as applicable to international organizations, despite its own previous codification of these duties in Article 42 in relation to Article 41 of the 2011 *Draft Articles on the Responsibility of International Organizations*. It appears that the International Law Commission's focus is on enabling wider recognition of peremptory norms of international law (*jus cogens*), while also imposing stricter legal criteria before third State duties could be triggered in the international legal system.

The distinctions are of serious consequence to the global effort to respond and end peremptory norm (*jus cogens*) violations. If the International Law Commission's codifications of the three duties of non-recognition, non-assistance, and cooperation were to prevail over the interpretation found in the International Court of Justice's jurisprudence, these duties would be applicable to all States and international organizations i*f and only if the specific intensity threshold is reached.* This element creates an easy screen for all States and international organizations to, by default, avoid exercising the duties of non-recognition, non-assistance, and cooperation to end peremptory norm (*jus cogens*) violations through lawful means, until they are satisfied that a serious breach of peremptory norms (*jus cogens*) is indeed taking place. Moreover, the ILC's interpretation of these duties falls only on States, and not international organizations, contrary to the International Court of Justice's expansive application of these duties to *both* States and international organizations in the 1971 *Namibia* Advisory Opinion, the 2019 *Chagos* Advisory Opinion, and the 2024 *Policies and*

111. *See Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens)*, *supra* note 52, ¶ 2; *see also* Vienna Convention on the Law of Treaties art. 53, May 23, 1969, 1155 U.N.T.S. 331.

Practices of Israel Advisory Opinion. International organizations have tremendous roles to play in recognizing or maintaining the situations that are caused by peremptory norm (*jus cogens*) violations. International organizations discharge a wide range of activities that do bear on whether peremptory norm (*jus cogens*) violations could be sustained by States or non-State actors. For example, international financial institutions' international development lending portfolios could be used by States or non-State actors to maintain situations that seriously violate human rights while implementing economic reforms.[112] International scientific organizations might facilitate State and non-State access to scientific and dual-use technologies that could be thereafter used to wage wars of aggression, invasions, or illegal annexations of territory.[113] Global telecommunications access through satellites can also be weaponized in armed conflicts to the detriment of civilian populations.[114] Trade facilitated by international trading organizations that enable access through transnational value chains could also serve as the material and resource infrastructure that contributes to the continued pervasiveness of genocide and crimes against humanity.[115] Foreign

112. *See* Juan Pablo Bohoslavsky, *Complicity of International Financial Institutions in Violation of Human Rights in the Context of Economic Reforms*, 52 COLUM. HUM. RTS. L. REV. 203, 224 (2020).

113. *See e.g.*, Jiayue Lu, Xiaoli Chen, & Xuezhao Wang, *Discourse Analysis of International Scientific Organizations in the 2022 Russia-Ukraine Conflict: A Natural Language Processing Approach*, 16 INFO., no. 2, 2025, at 4; Lidiya Zubytska, *The Challenges and Efficacy of International Organizations in the Context of Russia's War in Ukraine*, 36 PEACE REV., no. 1, 2024, at 99–114.

114. *See e.g.*, Julia Siegel, *Commercial satellites are on the front lines of war today. Here's what this means for the future of warfare*, ATLANTIC COUNCIL (Aug. 30, 2022), https://www.atlanticcouncil.org/content-series/airpower-after-ukraine/commercial-satellites-are-on-the-front-lines-of-war-today-heres-what-this-means-for-the-future-of-warfare/#:~:text=Here%20are%20some%20ways%20that%20commercial%20satellites,areas%20lacking%20sufficient%20infrastructure%20or%20Internet%20connection [perma.cc/AT57-YVAN]; Kari A. Bingen, *Extending the Battlespace to Space*, CTR. FOR STRATEGIC & INT'L STUDIES (Sept. 16, 2025), https://www.csis.org/analysis/chapter-8-extending-battlespace-space#:~:text=On%20the%20battlefield%2C%20commercial%20satellites,centralized%20and%20conventionally%20superior%20adversary [perma.cc/A27A-LSYX].

115. *See* Mia Bonardi, *The World Trade Organization and Jus Cogens Norms*, 23 INT'L TRADE AND BUS. L. REV. 109, 111 (2022); Francesca Albanese (Special Rapporteur on the Occupied Palestinian Territories), *From Economy of Occupation to Economy of Genocide: Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967*, U.N. Doc. A/HRC/59/23 (Jul. 2, 2025).

investment activities in energy, infrastructure, transport, prison management, border security, could potentially be used by States to commit genocide, torture, and the full spectrum of peremptory norm (*jus cogens)* violations.[116] Insulating by default all international organizations from being bound to observe the international legal duties of non-recognition, non-assistance, and cooperation is an act of surrender to the seeming futility of ending peremptory norm (*jus cogens*) violations, without trying to do anything.

Of course, one could say that these doctrinal gaps could be readily resolved by denying the status of the International Law Commission's codifications as any authoritative or normative source of law, unlike the jurisprudence of the International Court of Justice which are subsidiary means of determining international law. But rejecting the Commission's codifications wholesale also risks throwing the baby out with the bathwater. One can accept the Commission's codifications to the extent that they are consistent with international law and jurisprudence *lex lata,* while separating out the *lex ferenda* progressive development aspects of the Commission's drafts.

Most importantly, the International Court of Justice's jurisprudence on the duties of non-recognition, non-assistance, and cooperation to end peremptory norm (*jus cogens*) violations is even more laudable for its embrace of a vision of the common good for all humanity—one that does not brook any degree of indifference or inaction from all States and all international organizations when it comes to any State's violation of peremptory norms (*jus cogens*), which by their very definition will involve the most egregious atrocities against human life and the dignity of human persons. The Court's incrementalist, but at the same time expansive, approach since 1970 to recognizing peremptory norm (*jus cogens*) violations and the duties of non-recognition, non-assistance, and cooperation of *all* States and international organizations, in my view, ultimately vindicates the global common good and upholds the very essence of what makes us all human.

116. *See* Annika Weikinnis, *Analysis: Towards Greater Accountability for Corporate Involvement in International Crimes*, QUEEN'S L. GLOB. JUST. J. (Aug. 13, 2018), https://globaljustice.queenslaw.ca/news/analysis-towards-greater-accountability-for-corporate-involvement-in-international-crimes [perma.cc/83WM-W9M7].

II. SUBSTANTIVE AND PROCEDURAL ISSUES ARISING FROM DUTIES OF NON-RECOGNITION, NON-ASSISTANCE, AND COOPERATION

Setting aside the superfluous element of a "serious breach" of peremptory norms (*jus cogens*) and the exclusion of international organizations from the duties of non-recognition, non-assistance, and cooperation, therefore, this Part II proceeds to the analysis of these international legal duties and identifies the substantive and procedural issues that have contributed to the dormancy of these duties in the practices of States and international organizations in contemporary times. It is important to map and anticipate these doctrinal issues before proposing any strategies for a wider global use of the international legal duties of non-recognition, non-assistance, and cooperation to end peremptory norm (*jus cogens*) violations through lawful means.

A. Duties of Non-Recognition and Non-Assistance as "Duties of Abstention"

The International Law Commission conceptualized the international legal duty of non-recognition and duty of non-assistance as "*duties of abstention*",[117] with the duty of non-recognition referring to "the collective non-recognition by the international community as a whole of the legality of situations resulting directly from serious breaches [of peremptory norms of international law",[118] and the duty of non-assistance being that dealing with

> conduct "after the fact" which assists the responsible State in maintaining the situation 'opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law . . . [extending] beyond the commission of the serious breach itself to the maintenance of the situation created by that breach, and it applies whether or not the breach itself is a continuing one.[119]

The conceptual complexities of both these legal duties have not been fully explored thus far in international adjudication, given

117. *ARSIWA*, *supra* note 26, arts. 40–41 (2001).
118. *Id.* art. 41 ¶ 5.
119. *Id.* art. 41 ¶ 11.

the thinness of current international jurisprudence on the duties of non-recognition, non-assistance, and cooperation to end peremptory norm violations through lawful means.

As seen below, however, there are both theoretical as well as practical challenges for States and international organizations that are expected to implement such duties of non-recognition and non-assistance as duties of abstention:

1. Triggering Duties through Authoritative Determination of the Existence of a Peremptory Norm Violation

A State could very well determine on its own knowledge and legal evaluation that peremptory norm violations (*jus cogens*) are taking place in another country, and assert thereafter that it is exercising its duties of non-recognition and non-assistance with respect to situations arising from the alleged illegality determined by that State. However, this assertion alone will not necessarily be authoritative insofar as third States or other international organizations are concerned, and delayed collective responses to the peremptory norm violation will appear inevitable so long as third States or other international organizations are not alert to, or otherwise do not reach, an authoritative determination that a peremptory norm violation already exists. More likely, third States and international organizations would prefer to wait for a Security Council resolution that determines the existence of a peremptory norm violation, or an adjudicated decision by an international court such as the International Court of Justice reaching the same end, as 'authoritative' triggers for third States and international organizations to exercise their duties of non-recognition and non-assistance.

Thus, the critical difficulty with how the International Law Commission conceptualizes the duties of non-recognition and non-assistance as "duties of abstention" is that States can all too easily abstain from such recognition and assistance, justifying this delay with plausible reasoning that one State's determination of the existence of a peremptory norm violation in another State is not binding on all other States. A crystal example of this is the well-documented international paralysis and institutional inertia in

responding to the 1994 genocide in Rwanda.[120] The *1999 Report of the Independent Inquiry Into the Actions of the United Nations during the 1994 Genocide in Rwanda* was damning in its findings about the failure of Member States and the United Nations not to recognize situations arising from genocide, not to assist situations arising from genocide, and to cooperate on ending genocide through lawful means:

> The failure by the United Nations to prevent, and subsequently, to stop the genocide in Rwanda was a failure by the United Nations system as a whole. The fundamental failure was the lack of resources and political commitment devoted to developments in Rwanda and to the United Nations presence there. *There was a persistent lack of political will by Member States to act, or to act with enough assertiveness*. This lack of political will affected the response by the Secretariat and the decision-making by the Security Council, but was also evident in the recurrent difficulties to get the necessary troops for the United Nations Assistance Mission for Rwanda (UNAMIR). Finally, although UNAMIR suffered from a chronic lack of resources and political priority, it must also be said that serious mistakes were made with those resources which were at the disposal of the United Nations . . . The Independent Inquiry finds that the response of the United Nations before and during the 1994 genocide in Rwanda failed in a number of fundamental respects. *The responsibility for the failings of the United Nations to prevent and stop the genocide in Rwanda lies with a number of different actors, in particular the Secretary-General, the Secretariat, the Security Council, UNAMIR, and the broader membership of the United Nations*. This international responsibility is one which warrants a clear apology by the Organization and by Member States concerned to the Rwandese people . . . .
>
> The overriding failure in the response of the United Nations before and during the genocide in Rwanda can be summarized as a lack of resources and a lack of will to take on the commitment which would have been necessary to prevent or

120. *See* Dorinda Lea Peacock, *It Happened and It Can Happen Again: The International Response to Genocide in Rwanda*, 22 N.C.J. INT'L L. & COM. REGUL. 899, 900–01 (1996–1997); *see also* Anne Mackintosh, *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience*, 9 J. REFUGEE STUD. 326, 334 (1996); Tamsin Phillipa Paige, *Willfully Blind: The Security Council's Response to Genocide in Rwanda*, 22 J. INT'L PEACEKEEPING 136, 137 (2018).

> to stop the genocide. UNAMIR, the main component of the United Nations presence in Rwanda, was not planned, dimensioned, deployed, or instructed in a way which provided for a proactive and assertive role in dealing with a peace process in serious trouble. The mission was smaller than the original recommendations from the field suggested. It was slow in being set up, and was beset by debilitating administrative difficulties. It lacked well-trained troops and functioning materiel. The mission's mandate was based on an analysis of the peace process which proved erroneous, and which was never corrected despite the significant warning signs that the original mandate had become inadequate. By the time the genocide started, the mission was not functioning as a cohesive whole: in the real hours and days of deepest crisis, consistent testimony points to a lack of political leadership, lack of military capacity, severe problems of command and control and lack of coordination and discipline.[121]

The 1999 Report went on to identify other crucial failures that compounded the failure to act by the United Nations and Member States of the United Nations, such as: (1) the inadequacy of UNAMIR's mandate; (2) the manner in which UNAMIR implemented its mandate; (3) confusion over the rules of engagement; (4) failure to respond to the genocide; (5) overburdened peacekeeping with inadequate resources and logistics; (6) the position taken for the UN to refrain from undertaking further peace enforcement actions in internal conflicts of States after the killing of UN peacekeepers in Somalia; (7) the focus on achieving a ceasefire instead of paying attention to the ongoing massacres; (8) the lack of analytical capacity at UNAMIR and UN Headquarters; (9) the lack of political will of Member States of the United Nations to give UNAMIR the personnel and material resources needed for its mission; (10) the failure to protect political leaders; (11) failure to protect civilians; (12) failure to protect UN national staff; (13) problems with information flows and organizational problems at the UN; (143) lack of coordination on evacuations on the ground; (154) the commitment of resources by France and other countries to another operation, Operation Turquoise, instead of being put at the

121. *See Report on 1994 Genocide in Rwanda: Independent Inquiry into Rwandan Genocide Faults U.N. and Member States for Inadequate International Response*, 11 FOREIGN POL'Y BULL. 137, 137–38 (2000) (emphasis added).

disposal of UNAMIR; and (165) Rwanda's membership in the Security Council and the attempt by Rwandan representatives to influence Council decision-making on behalf of the Habyarimana government that was pursuing genocidal policies.[122]

One could reasonably argue that the above failures to act of Member States of the United Nations (as well as the United Nations system as a whole) in relation to the genocide in Rwanda ought not, in themselves, amount to violations of the duty of non-recognition and the duty of non-assistance. However, the duty not to recognize as lawful the situations created by peremptory norm (*jus cogens*) violations could not have meant condoning the utter silence and complete inaction of the United Nations or any Member State to the Charter of the United Nations during the ongoing genocide in Rwanda. Article 55(c) of the Charter of the United Nations explicitly requires the United Nations to "promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all,", while Article 56 of the same Charter states that all Members of the United Nations "pledge . . . to take joint and separate action in cooperation with [the United Nations] for the achievement of the purposes set forth in Article 55."[123] In the face of these fundamental and mandatory Charter obligations that compel action from both the United Nations and the Members of the United Nations, the widespread silence and outright inaction of Member States of the United Nations during the slaughter of nearly a million civilians in the Rwandan genocide could also be construed as forms of tacit recognition of the lawfulness of the situations ensuing from the genocide.[124]

Not acting, despite being required to act, could also be seen, at the very least, as an admission that the Members of the United Nations did not yet see the situation ensuing from the Rwandan genocide as one arising from peremptory norm (*jus cogens*) violations. The denotative meaning of "*recognize*," as defined in Merriam-Webster's Legal Dictionary, includes "to acknowledge formally, as to admit as being of a particular status . . . or

122. *See id.* at 138–49.

123. U.N. Charter, *supra* note 19, arts. 55(c) and 56.

124. *See* M.J. PETERSON, RECOGNITION OF GOVERNMENTS: LEGAL DOCTRINE AND STATE PRACTICE, 1815-1995 87 (1997) ("Tacit recognition occurs when a government performs an act regarding, or establishes a contact with, a new regime that is inconsistent with nonrecognition.").

specifically to acknowledge (as a right, cause of action or defense) as valid.".[125] When Member States of the United Nations, as well as the United Nations itself, did not act to respond to the Rwandan genocide as they were obligated to under the Charter of the United Nations, did they thereby acknowledge the ostensible defenses of alleged foreign invasion by the Rwandese Patriotic Front (RPF) that the very same regime of Rwandan President Juvenal Habyarimana had alleged to the UN Security Council?[126] Did Members of the United Nations extend some kind of tacit recognition to the Habyarimana regime's genocidal conduct?

It could also be argued that the failures of the United Nations and the Member States of the United Nations relative to the 1994 Rwandan genocide also implicated their collective duties not to render aid or assistance to the maintenance of situations arising from peremptory norm (*jus cogens*) violations. Recall that such aid or assistance towards the maintenance of situations arising from peremptory norm (*jus cogens*) violations "does not require intent or knowledge"[127] of third States or international organizations to establish that the duty of non-assistance has been breached. The failures of Member States of the United Nations and the United Nations did not just grant impunity to those committing the ongoing genocide, but some scholars argued that such failures to act ultimately amounted to unintended or unplanned assistance in the maintenance of the situation arising from the ongoing genocide.[128]

The example of the failures of third States and international organizations such as the United Nations to act during the 1994 Rwandan genocide starkly illustrates the conundrum of determining *when* the duties of non-recognition and non-

125. *See Recognize*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/recognize#legalDictionary [perma.cc/5ZHC-8J2N] (last visited July 15, 2025).

126. *See* Linda Melvern, *The Security Council in the Face of Genocide,* 3 J. INT'L CRIM. JUST. 847, 854–55, 858 (2005); *see also* Colin Keating, *Rwanda: The Political Failure of the UN Security Council*, 22 J. INT'L PEACEKEEPING 17, 23–24, 28–30 (2018); Jason A. Dzubow, *The International Response to the Civil War in Rwanda*, 8 GEO. IMMIGR. L.J. 513, 514–16, 519 (Summer 1994); Ike Minta, *Rwanda Conflict: With the Failure of Peacekeeping, is Peacemaking still Possible*, 4 AFR. Y.B. INT'L L. 19, 20–21, 27–31 (1996).

127. Georg Nolte & Helmut Philipp Aust, *Equivocal Helpers – Complicit States, Mixed Messages, and International Law*, 58 INT'L & COMP. L. Q. 1, 16 (2009).

128. *See* Larry May, *Complicity and the Rwandan Genocide*, 16 RES PUBLICA 135, 137–38, 143–46 (2010); *see also* David Scheffer, *Lessons from the Rwandan Genocide*, 5 GEO. J. INT'L AFFS. 125, 126–130 (2004).

assistance are triggered for third States and international organizations. Waiting for an adjudicated decision finding that a peremptory norm (*jus cogens*) has been violated before such duties are triggered for third States and international organizations, could ironically exacerbate the very same peremptory norm violations which the duties of non-recognition and non-assistance are meant to address. Conversely, if the third State or international organization were too precipitate in exercising such duties of non-recognition or non-assistance based on the third State's or international organization's *unilateral* conclusion that a peremptory norm (*jus cogens*) is being violated by another State, these very same duties might also furnish convenient pretexts for new unilateral actions causing unwarranted prejudice and unjustifiable harm to the allegedly violating State. An extreme example of the danger of misinterpreting the duties of non-recognition and non-assistance of third States is the United Kingdom's decision under then Prime Minister Tony Blair to "stand shoulder to shoulder" with the United States after the terrorist attacks of September 11, 2001, including taking protracted military action and initiating a unilateral war for regime change in Iraq due to Iraq's alleged possession of nuclear stockpiles—weapons of mass destruction that were later found did not exist at all.[129] Clearly, third States and international organizations would have to reach a median position on the authoritativeness of any particular determination (either made by them or by other entities such as the UN Security Council or the International Court of Justice, or any other international organization tasked with the investigation of certain violations of peremptory norms, such as the United Nations Committee against Torture, the International Criminal Court and its Office of the Prosecutor, and the United Nations Human Rights Committee, among others) that does not make it too easy for third States and international organizations to abdicate their duties of non-recognition and non-assistance in the maintenance of situations resulting from peremptory norm (*jus cogens*) violations. At the same time, neither should these duties be invoked hastily and pretextually to engage in actions in the name

129. *See* UK PRIVY COUNSELLORS, THE REPORT OF THE IRAQ INQUIRY: EXECUTIVE SUMMARY, U.K. Privy Counsellors 4–12, 18(July 6, 2016) (otherwise known as the "Chilcot Report"), https://assets.publishing.service.gov.uk/media/5a80f42ced915d74e6231626/The_Report_of_the_Iraq_Inquiry_-_Executive_Summary.pdf [perma.cc/7PD9-NUB7].

of duties of non-recognition and non-assistance in a manner that itself generates further violations of international law.

I am of the view that the authoritative determination that should trigger the duties of non-recognition and non-assistance of third States and international organizations should be, at a minimum, independent and impartial, and not just sourced exclusively from any gratuitous or self-interested determination made by the said States and organizations that peremptory norm (*jus cogens*) violations are allegedly taking place. Given the state of the international legal system at the time of writing, there will hardly be any violations of peremptory norms (*jus cogens*) that will not be brought to the attention of the United Nations—for a certain degree of outside verification that such peremptory norm (*jus cogens*) violations appear or are indeed taking place, as would warrant triggering the duties of non-recognition and non-assistance for third States and international organizations. This can happen, for example, at the Security Council, which is tasked with the maintenance of international peace and security, or at the General Assembly and the United Nations Secretariat, including the Office of the High Commissioner for Human Rights which is purposely tasked with monitoring, investigating, and promoting human rights.

Article 55 of the Charter of the United Nations mandates its respective organs (namely, the Security Council, the General Assembly, the Economic and Social Council, the Office of the High Commissioner for Human Rights, the Human Rights Council) to themselves abide by their responsibilities to promote, observe, and respect human rights and fundamental freedoms for all as is consistent with fulfilling the Purposes of the United Nations.[130] Relying on independent and impartial findings at the United Nations that determine the evidence or existence of peremptory norms (*jus cogens*) violations will, at the very least, enable third States and international organizations to act in good faith[131] and

130. *See* U.N. Charter, *supra* note 19, art. 55.

131. *See* Michel Virally, *Review Essay: Good Faith in Public International Law*, 77 AM. J. INT'L L. 130, 130–134 (1983); *see also* Robert Kolb, *Principles as Sources of International Law (With Special Reference to Good Faith)*, 53 NETH. INT'L L. REV. 1, 1–36 (2006); Steven Reinhold, *Good Faith in International Law*, 2 U.C.L. J.L. & JURIS. 40, 63 (2013) ("Whether in general international law or in the law of treaties, good faith acts as a limitation. The

without dereliction of duties or undue delay in exercising their duties of non-recognition and non-assistance.[132]

An example of good-faith exercise by third States and international organizations of their duties of non-recognition and non-assistance can be seen in the international responses to the Russian Federation's open war of aggression against Ukraine, beginning with the illegal annexation of Crimea in 2014,[133] and later the full-scale aggressive war of Russian Federation troops invading Ukraine's territory since February 24, 2022.[134] The Russian Federation has consistently vetoed any proposed United Nations Security Council resolution demanding the cessation of such prohibited aggression against Ukraine and the withdrawal of all Russian Federation troops,[135] and as of March 2026 there is no judgment from the International Court of Justice concluding that the Russian Federation has violated peremptory norms (*jus cogens*) in its war of aggression against Ukraine.[136] However, given the notorious and openly admitted fact of the Russian Federation's annexation of Crimea in 2014 and open invasion of Ukraine since

limitations that the observation of good faith places on States regulate the performance of rights and obligations in international discourse. As well as the explicit duties of good faith in treaty law, general international law places legal consequences on actions that are predicated on good faith.").

132. *See* Louise Arbour, *The Responsibility to Protect as a Duty of Care in International Law and Practice*, 34 REV. INT'L STUD. 445, 450 (2008).

133. *See* Thomas D. Grant, *Annexation of Crimea*, 109 AM. J. INT'L L. 68, 87–88, 93 (2015); Juergen Bering, *The Prohibition of Annexation: Lessons from Crimea*, 49 N.Y.U. J. INT'L L. & POLS. 747, 758–759, 779, 786–787, 800, 831 (2017); Lauri Malksoo, *The Annexation of Crimea and Balance of Power in International Law*, 30 EUR. J. INT'L L. 303, 303–05 (2019).

134. *See* Resolution on the Armed Aggression of the Russian Federation against Ukraine, 2023 O.J. (C 229/06); G.A. Res A/ES-11/L.10, Advancing a comprehensive, just and lasting peace in Ukraine, ¶ 4 (Feb. 18, 2025).

135. *See Russia Blocks Security Council Action on Ukraine*, U.N. NEWS (Feb. 26, 2022), https://news.un.org/en/story/2022/02/1112802 [perma.cc/LE9F-SJLZ]; *Security Council Fails to Adopt Resolution Condemning Moscow's Referenda in Ukraine's Occupied Territories, as Permanent Member [Russia] Employs Veto*, U.N. NEWS (Sep. 30, 2022), https://press.un.org/en/2022/sc15046.doc.htm [perma.cc/KAH4-5779]; Anne Peters, *The War in Ukraine and Legal Limitations on Russian Vetoes*, 10 J. ON USE FORCE & INT'L L. 162, 162 (2023).

136. *But see* Ukr. & The Neth. v. Russ., Eur. Ct. H.R. (2025), https://hudoc.echr.coe.int/#{%22itemid%22:[%22001-244292%22]} [perma.cc/885T-RU3U], (describing the extensive and egregious international human rights violations declared to have been committed by the Russian Federation against Ukraine).

2022,[137] many third States and international organizations have acted to ensure that they are not recognizing the Russian invasion of Ukraine and not assisting in the maintenance of the situation flowing from the Russian invasion of Ukraine. With the exception of Syria, Venezuela, and Nicaragua, the overwhelming majority of States in the world has not recognized the lawfulness of the Russian Federation's annexation of Crimea nor do they consider Crimea to be the territory of the Russian Federation.[138] 141 States voted for United Nations General Assembly Resolution ES-11/1 on March 2, 2022,[139] which condemned the Russian Federation's war of aggression against Ukraine, while 5 States voted against (Belarus, North Korea, Eritrea, Russian Federation, and Syria) and 35 other States abstained from voting.[140] Member States of the European Union have demonstrated their own exercise of the duty of non-assistance in the maintenance of situations flowing from the Russian Federation's war of aggression against Ukraine. The comprehensive European Union sanctions against Russia following its invasion of Ukraine has been designed to "reduce the Kremlin's ability to finance the war, impose clear economic and political costs on Russia's political elite, and diminish Russia's economic base," accordingly spanning sanctions on individuals, companies, and organizations, visa measures, import and export bans, financial and business service measures, sanctions on

137. *See* Vladimir Putin, *Address by the President of the Russian Federation* (Feb. 24, 2022), http://en.kremlin.ru/events/president/news/67843 [perma.cc/944V-7SB9].

138. *See* Antonino Ali, *The Non-Recognition of the Separatist Republics of Luhansk and Donetsk and their Subsequent Accession to Russia with Kherson and Zaporizhzhia*, 32 ITALIAN Y.B. INT'L L. 491 (2022); Robin Geifs, *Russia's Annexation of Crimea: The Mills of International Law Grind Slowly But They Do Grind*, 91 INT'L L. STUD. 425, 426 (2015); Juan Francisco Escudero Espinosa, *The Principle of Non-Recognition of States Arising from Serious Breaches of Peremptory Norms of International Law*, 21 CHINESE J. INT'L L. 79, 80 (2022); Adrian Corobana, *Non-Recognition of States as a Specific Sanction of Public International Law*, 9 JURID. TRIB. 589, 591 (2019); Adam Saltzman, *Developing the Principle of Non-Recognition*, 43 OHIO N.U. L. REV. 1, 2–3 (2017).

139. *See* G.A. Res. ES-11/1, Aggression Against Ukraine (Mar. 18, 2022).

140. *See* Press Release, Gen. Assembly, General Assembly Overwhelmingly Adopts Resolution Demanding Russian Federation Immediately End Illegal Use of Force in Ukraine, Withdraw All Troops, U.N. Press Release GA/12407 (Mar. 2, 2022), https://press.un.org/en/2022/ga12407.doc.htm [perma.cc/8369-RUDT].

energy, sanctions on transport, sanctions on dual-use goods, asset recovery and confiscation.[141]

In sum, there should be a prior authoritative determination of a State's violation of peremptory norms (*jus cogens)* that is concluded in the international legal system through political deliberations (such as in the United Nations), international adjudication (such as in the International Court of Justice, or other regional or international courts), or a State's international admission (as in the case of the Russian Federation's openly admitted invasion of Ukraine in 2022), that can trigger in good faith the duties of non-recognition and non-assistance of third States and international organizations against the maintenance of situations flowing from such peremptory norm (*jus cogens*) violations. If third States and international organizations were themselves to unilaterally determine that a State is violating peremptory norms (*jus cogens*) in order to exercise duties of non-recognition and non-assistance through certain specific measures, conduct, or utterances against the alleged violating State, third States and international organizations imposing such measures, observing certain conduct, or making such utterances against the allegedly violating State will themselves not be immune from scrutiny as to the international legality of such measures, conduct, and utterances.

2. Defining Scope of Duties Between Minimalism and Maximalism

As previously discussed, while the International Law Commission injected an intensity threshold of "serious breach" (e.g., meaning a "gross or systematic failure by the responsible State to fulfil the obligation") of peremptory norms (*jus cogens*) before the duties of non-recognition and non-assistance could be triggered for third States and international organizations, the International Court of Justice did not impose the same intensity threshold as a required element of the duties of non-recognition and non-assistance that the Court has recognized throughout its jurisprudence. This raises questions about whether the duties of

141. *EU Sanctions Against Russia Following the Invasion of Ukraine*, EUR. COMM'N, https://commission.europa.eu/topics/eu-solidarity-ukraine/eu-sanctions-against-russia-following-invasion-ukraine_en [perma.cc/2CC6-CK7L] (last visited July 15, 2025).

non-recognition and non-assistance should be interpreted by third States and international organizations in a *maximalist* sense (e.g., avoiding any and all acts, measures, conduct, or utterances from which a reasonable inference could be drawn that the third State or international organization somehow recognizes the lawfulness of the situations created by the breach of the peremptory norm or *jus cogens*, as well as avoiding any form of aid or assistance whatsoever that could reasonably be inferred as maintaining such a situation created by the breach), or a *minimalist* sense (e.g., limiting non-recognition to formal acts, measures, and utterances that intentionally and directly signify the third State or international organization's recognition of the situation created by the breach of the peremptory norm, or withholding direct aid or forms of direct assistance to maintain such a situation).

I favor the International Court of Justice's formulation of the duties of non-recognition and non-assistance for violations of peremptory norms (*jus cogens*) of international law, without need of demonstrating that such violations indeed meet the intensity threshold or otherwise amount to "serious breaches" as defined by the International Law Commission (e.g., "a gross or systematic failure by the responsible State to fulfill the obligation"). The International Court of Justice's position is more in accord with fulfilling the extensive continuing duties of the United Nations and Member States of the United Nations under Article 56 in relation to Article 55(c) of the Charter of the United Nations, to "take joint and separate action in cooperation with the [United Nations] for the achievement of purposes set forth in Article 55", namely, in Article 55(c) "promot[ing] universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."[142] Commenting on Article 55(c) of the Charter of the United Nations, international judge Professor Rüdiger Wolfrum and former Committee on Economic, Social and Cultural Rights chair Professor Eibe H. Riedel both emphasized that

> the political and judicial organs of the [United Nations] have consistently interpreted Article 55(c), addressed to the UN, and Article 56, involving its members, as a whole to constitute legal obligations. Even if the legal obligation is general in

142. U.N. Charter, *supra* note 19, arts. 55(c), 56.

> character, there can be no doubt that responsibility exists for any substantial infringement of the provisions, and that Articles 55 and 56 impose the legal obligation on member States singly or jointly to stand up for respecting human rights.[143]

Joint action "can be understood to signify any conduct by two or more members, which is coordinated in some way . . . [while] separate action can be understood as an action which is 'independent, separate, and national'."[144] Third States and international organizations will act more consistently with their continuing legal obligations under Articles 55 and 56 of the Charter of the United Nations—while also avoiding any conflicts between these Charter obligations and duties under any other international agreement—[145] if the duties of non-recognition and non-assistance to any violations of peremptory norms (*jus cogens*) of international law were applied without requiring the International Law Commission's intensity threshold of demonstrating a "serious breach" or a "gross or systematic failure by the responsible State to fulfill the [peremptory norm or jus cogens] obligation."[146]

I do not, however, favor either a maximalist or minimalist interpretation by third States and international organizations of their duties of non-recognition and non-assistance, for the same reason that this could result in interpretations that would not be in good faith and would invite conflict with continuing international legal obligations under Article 56 in relation to Article 55(c) of the Charter of the United Nations. A maximalist interpretation of the duties of non-recognition and non-assistance could prevent the third State or international organization from undertaking any acts, implementing any measures, observing any conduct, speaking any utterances, or rendering any form of aid or assistance at all with respect to the maintenance of situations arising from a State's violation of a peremptory norm (*jus cogens*). This maximalist interpretation could itself imperil the enjoyment of human rights by the population of the violating State due to the latter's resulting

143. Rüdiger Wolfrum & Eibe H. Riedel, *Article 55(c)*, *in* THE CHARTER OF THE UNITED NATIONS: A COMMENTARY 1565, 1573 (Bruno Simma, Daniel-Erasmus Khan & George Nolte, eds., 3d eds. 2012).

144. Tobias Stoll, *Article 56*, *in* THE CHARTER OF THE UNITED NATIONS: A COMMENTARY 1603, 1604 (Bruno Simma, Daniel-Erasmus Khan & George Nolte, eds., 3d ed. 2012).

145. U.N. Charter, *supra* note 19, art. 103.

146. *See supra* note 53.

wholesale isolation from the international system. An example of such a maximalist interpretation that could potentially or actually imperil the enjoyment of human rights by the population of the violating State is the European Union's wide-ranging sanctions since 2006 on North Korea due to North Korea's commission of torture, forced labor, and crimes against humanity,[147] with such sanctions including travel bans, asset freezes, suspension of any scientific or technical cooperation, and complete bans on financial assistance.[148] In 2019, the United Nations *Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009)* reported at length on the global sanctions on North Korea, including sectoral and maritime sanctions, embargoes and designation of entities and individuals subject to sanctions, finance restrictions, among others, which contributed to

> unintended consequences on [United Nations agencies and humanitarian organizations'] humanitarian programmes that make it impossible to operate normally in the Democratic People's Republic of Korea. The six main areas of concern communicated to the Panel are: delays in receiving exemptions [from sanctions coverage]; the collapse of the banking channel; delays in customs clearance; a decrease in willing foreign suppliers; the increased cost of humanitarian-related items and operations; and diminished funding for operations . . . These are negatively affecting their ability to implement humanitarian-related programmes. In particular, the sectoral sanctions are affecting the delivery of a number of humanitarian-sensitive items . . . .[149]

The UN Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea called for a comprehensive assessment of all UN Security Council sanctions

147. *See* Hum. Rts. Council, *Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea*, U.N. Doc A/HRC/25.CRP.1.

148. *See EU Sanctions Against North Korea*, EUR. COUNCIL & COUNCIL EUR. UNION, https://www.consilium.europa.eu/en/policies/sanctions-against-north-korea/#:~:text=In%202016%2C%20the%20Council%20of,admission%20and%20residence%20restrictions [perma.cc/EK29-KUK9] (last visited July 15, 2025).

149. Rep. of the Panel of Experts Established Pursuant to Res. 1874 (2009), at 66–67, transmitted by letter dated Feb. 1 2019 from the Panel of Experts Established Pursuant to Res. 1718 (2006), U.N. Doc. S/2019/171 (Mar. 5, 2019).

put in place because such "measures might have prevented medical assistance and equipment from reaching the country."[150]

Neither is a minimalist interpretation of the duties of non-recognition and non-assistance conducive to ensuring that the United Nations and Members of the United Nations continue to fulfill their Charter obligations under Articles 56 in relation to Article 55(c). If third States and international organizations restrict the duty of non-recognition to simply refraining from *formal acts of recognition* of the situation caused by a State's violation of peremptory norms (*jus cogens*), and the duty of non-assistance only to avoid extending aid or assistance that *directly* maintains the situation of resulting from peremptory norm (*jus cogens*) violations, the fundamental purpose of the duties of non-recognition and non-assistance—global collective action to bring peremptory norm (*jus cogens*) violations to an end by lawful means—could still be thwarted.

An example of the hazards of the minimalist interpretation of the duties of non-recognition and non-assistance could be seen from China's avowed neutrality on the Russian Federation's war of aggression against Ukraine while still allegedly enabling the Russian war effort, such as by providing restricted items and technologies for the production of Russian missiles, tanks, and aircraft and giving the Russian Federation geospatial intelligence to aid the ongoing invasion of Ukraine, as well as assisting the Russian Federation to evade or circumvent global sanctions through economic or financial arrangements as well as material support.[151] While there do not appear to be any formal statements from the Government of the People's Republic of China that officially extend recognition of any alleged lawfulness in the Russian Federation's continuing occupation of Ukraine's territory,

150. *See Sanctions, Harsh Rhetoric Eroding Human Rights in Democratic People's Republic of Korea, Expert Tells Third Committee, as Mandate-Holders Present Findings*, U.N. Doc. GA/SHRC/4212 (2017).

151. *See* Katherine Spencer, *Kyiv Accuses China of Deepening Involvement in Russia's Ukraine War*, ATLANTIC COUNCIL (Apr. 29, 2025), https://www.atlanticcouncil.org/blogs/ukrainealert/kyiv-accuses-china-of-deepening-involvement-in-russias-ukraine-war/ [perma.cc/K8TC-23A5]; *see also* U.S. OFF. OF THE DIR. OF NAT'L INTEL., *Support Provided by the People's Republic of China to Russia* (July 2023), https://democrats-intelligence.house.gov/uploadedfiles/odni_report_on_chinese_support_to_russia.pdf [perma.cc/2EVC-SWGE].

the declared "no limits partnership"[152] between China and the Russian Federation, implicates, at the very least, urgent questions about how China is observing its duties of non-recognition and non-assistance with respect to the situation caused through all of the peremptory norms (*jus cogens*) violations[153] arising from Russia's open aggression and continuing invasion of Ukraine. This is all the more urgent for China, which is also legally bound under Common Article 1 of the 1949 Geneva Conventions to "undertake to respect and to ensure respect for the [1949 Geneva Conventions] *in all circumstances.*"[154]

In my view, the good faith interpretation of the duties of non-recognition and non-assistance requires third States and international organizations to contextually, deliberatively, and intentionally examine the nexus of their respective conduct, measures, and utterances with the situation caused by a State's peremptory norm (*jus cogens*) violations, to determine whether such conduct, measures, and utterances, in their totality, amount

152. *See* Andras Racz & Alina Hrytsenko, *Partnership Short of Alliance: Military Cooperation Between Russia and China*, CTR. FOR EUR. POL'Y ANALYSIS (Jun. 16, 2025), https://cepa.org/comprehensive-reports/partnership-short-of-alliance-military-cooperation-between-russia-and-china/ [perma.cc/7RWD-9Q4K]; Antoni Slodkowski & Laurie Chen, *China's Xi Affirms 'No Limits' Partnership with Putin in Call on Ukraine War Anniversary*, REUTERS (Feb. 24, 2025), https://www.reuters.com/world/xi-putin-hold-phone-call-ukraine-war-anniversary-state-media-says-2025-02-24/ [perma.cc/8KZ3-RB3J].

153. *See* Hum. Rts. Council, *Report of the Independent International Commission of Inquiry on Ukraine*, U.N. Doc. A/HRC/55/66 (Mar. 18, 2024); *see e.g.*, ORG. FOR SEC'Y & COOP. IN EUR. OFF. FOR DEMOCRATIC INSTS. & HUM. RTS. [OSCE ODIHR], INTERIM REPORT ON REPORTED VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW IN UKRAINE 9 (JULY 2022), https://odihr.osce.org/odihr/523081 [perma.cc/3R65-4QVL]; OSCE ODIHR, SECOND INTERIM REPORT ON REPORTED VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW IN UKRAINE 9 (Dec. 2022), https://odihr.osce.org/odihr/534933 [perma.cc/HDW6-UJZ4]; OSCE ODIHR, THIRD INTERIM REPORT ON REPORTED VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW IN UKRAINE 6 (July 2023), https://odihr.osce.org/odihr/548629 [perma.cc/PJ6R-Y3DV]; OSCE ODIHR, FOURTH INTERIM REPORT ON REPORTED VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW IN UKRAINE 7 (Dec. 2023), https://odihr.osce.org/odihr/560325 [perma.cc/JT53-3ERP]; OSCE ODIHR, FIFTH INTERIM REPORT ON REPORTED VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW IN UKRAINE 5 (July 2024), https://odihr.osce.org/odihr/573346 [perma.cc/34VC-HEFM]; OSCE ODIHR, SIXTH INTERIM REPORT ON REPORTED VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW IN UKRAINE 7 (Dec. 2024), https://odihr.osce.org/odihr/582835 [perma.cc/8SGZ-XKPT].

154. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 1, Aug. 12, 1949, 75 U.N.T.S. 31 (emphasis added).

to the third State or international organization's recognition of situations arising from peremptory norm (*jus cogens*) violations or comprise forms of aid or assistance to maintain such situations. Third States and international organizations cannot observe these duties of non-recognition and non-assistance by mere diplomatic silence or omission to act in any way, since silences and omissions can also contribute to recognition or assistance in the maintenance of situations arising from peremptory norm (*jus cogens*) violations. Neither is it prudent to assume that taking either a maximalist or minimalist perspective on the interpretation of duties or non-recognition and non-assistance would be some reliable predictor of a third State or international organization's good faith in discharging the duties of non-recognition and non-assistance. Continuing legal assessment and audit of the acts, utterances, measures, and conduct of the third State or international organization and how they impact the situation arising from peremptory norm (*jus cogens*) violations is imperative to demonstrate the third State or international organization's good faith approach to discharging their respective duties of non-recognition and non-assistance to avoid prolonging, exacerbating, or worsening such situations caused by peremptory norm (*jus cogens*) violations.

3. Verifying Consistency in the Exercise of Duties with International Law

Duties of non-recognition and non-assistance with respect to situations caused by peremptory norm (*jus cogens*) violations are not, in themselves, non-forcible third-party countermeasures in international law that are designed to induce the violating State to return to compliance with international law.[155] On the contrary, duties of non-recognition and non-assistance, as "duties of abstention",[156] were described by the International Law Commission as "particular consequences" of the "serious breach" of peremptory norms (*jus cogens)* of international law. Under the International Law Commission's *2001 Draft Articles on the*

155. *See* MARTIN DAWIDOWICZ, THIRD-PARTY COUNTERMEASURES IN INTERNATIONAL LAW 30 (2017).

156. *ARSIWA*, *supra* note 26, at 114, ¶ 4.

Responsibility of States for Internationally Wrongful Acts, the duty of non-recognition

> refers to the obligation of collective non-recognition by the international community as a whole of the legality of situations resulting directly from serious breaches . . . the obligation applies to 'situations' created by these breaches, such as, for example, attempted acquisition of sovereignty over territory through the denial of the right of self-determination of peoples. It not only refers to the formal recognition of these situations, but also prohibits acts which would *imply* such recognition.[157]

Note that the International Court of Justice had long prohibited any such acts that would imply recognition of situations caused by peremptory norm (*jus cogens*) violations in its 1971 *Namibia* Advisory Opinion.[158] The duty of non-assistance, in turn,

> deals with conduct "after the fact" which assists the responsible State in maintaining a situation 'opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violations of international law'. It extends beyond the commission of the serious breach itself to the maintenance of the situation created by that breach, and it applies whether or not the breach itself is a continuing one.[159]

Unlike countermeasures in international law, the acts, utterances, measures, or conduct of third States or international organizations pursuant to their duties of non-recognition and non-assistance cannot, in themselves, also constitute violations of international law. This point significantly distinguishes the duties of non-recognition and non-assistance as community-driven norms in the international system (and which are meant to preserve, vindicate, and defend community interests that are implicated by peremptory norm (*jus cogens)* violations of international law),[160] from that of countermeasures which are, in

157. *ARSIWA*, *supra* note 26, ¶ 5.

158. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 I.C.J., at 16.

159. *Id*. at 115, ¶ 11.

160. *See* Agnese Vitale, *The Higher Law and the Principle of Non-Recognition*, 22 CHINESE J. INT'L L. 11, 11–38 (2023); Alison Pert, *The 'Duty' of Non-Recognition in*

essence, temporary, proportional, and otherwise unlawful conduct permitted against the responsible State due to the injury experienced by the State imposing the countermeasure seeking to induce the responsible State to return to compliance with international law. Because international legal duties of non-recognition and non-assistance are *particular consequences* that arise when peremptory norms (*jus cogens*) of international law are violated, they are addressed to the characterization of the legal relationships existing between all States and international organizations when such violations occur. The exercise of these triggered duties of non-recognition and non-assistance should not exacerbate, aggravate, prolong, or worsen the peremptory norm (*jus cogens*) violation that is already affecting the community interests of all States and international organizations in the international system, but should instead create the minimum safety valve or starting point for responses from all States and international organizations the moment the peremptory norm (*jus cogens*) violation occurs.

The architectural change to the global landscape of legal relations in the law of international responsibility affecting all States and international organizations happens, precisely because the "particular consequences" of peremptory norm (*jus cogens*) violations involve the triggering of the international legal duties of non-recognition and non-assistance—twin duties of abstention—for all States and international organizations.[161] The legal situation between all States and international organizations and the violating State undergoes a specific initial transformation when all States and international organizations become duty-bound to deny any lawful recognition or material support to the situation caused by the violating State's conduct breaking a peremptory norm (*jus cogens*) of international law. Apart from these twin duties of

Contemporary International Law: Issues and Uncertainties, 30 CHINESE (TAIWAN) Y.B. INT'L L. & AFFS. 48, 57–59 (2012); Gordon A. Christenson, *Jus Cogens: Guarding Interests Fundamental to International Society*, 28 VA. J. INT'L L. 585, 608–09, 627 (1988); Juan Francisco Escudero Espinosa, *The Principle of Non-Recognition of States Arising from Serious Breaches of Peremptory Norms of International Law*, 21 CHINESE J. INT'L L. 79, 93–103 (2022).

161. *See* Daniel Costelloe, *Legal Consequences in the Law of International Responsibility*, *in* LEGAL CONSEQUENCES OF PEREMPTORY NORMS IN INTERNATIONAL LAW 184, 190 (2017).

abstention, a positive duty to act is also triggered for all States and international organizations, all of whom must cooperate to bring the peremptory norm (*jus cogens*) violation to an end through lawful means.

B. Duty to Cooperate to End Peremptory Norm Violations through Lawful Means

As previously mentioned, the general duty to cooperate in international law is defined as an obligation to enter into some coordinated action towards a specific goal. In the particular case of the international legal duty of all States and international organizations to cooperate, the specific goal of such cooperation is to end peremptory norm (*jus cogens*) violations through lawful means. This duty thus does not contemplate that States or international organizations should do nothing or does not have to take positive action when there is a peremptory norm (*jus cogens*) being violated. At the very minimum, all States and international organizations have to enter into some kind of coordinated action to end a State's peremptory norm (*jus cogens*) violation through lawful means. While this is not an obligation of result that prescribes any specific kind of cooperative action should ultimately prove successful in ending the violation, it is nonetheless an obligation of conduct for all States and international organizations to at least enter into coordinated action targeted at ending the State's violation of peremptory norms (*jus cogens*) through lawful means.

Scholars have argued various modalities or forms of cooperation that could fulfil this duty to cooperate. Rebecca Barber argued that States can use the United Nations General Assembly as a forum for establishing such a cooperation.[162] Carlo Focarelli skeptically looks to cooperation, at best, that could be facilitated by courts that would "prove that the special effect [of peremptory norms or *jus cogens*] that they are willing to apply because it reflects a superior, fundamental, and common value which no sensible man or state would deny,"[163] while Helene Ruiz Fabri and

162. Rebecca Barber, *Cooperating through the General Assembly to End Serious Breaches of Peremptory Norms*, 71 INT'L & COMP. L. Q. 1 (2022).

163. Carlo Focarelli, *Promotional Jus Cogens: A Critical Appraisal of Jus Cogens' Legal Effects*, 77 NORDIC J. INT'L L. 429, 457 (2008).

Edoardo Stoppioni view the "judicialization of mega-political issues to international law" through *jus cogens* as a matter for taking serious precaution.[164] Mia Bonardi proposes that the Member States of the World Trade Organization enter into a new agreement that conditions WTO membership on compliance with peremptory norms (*jus cogens*).[165] Stacie Strong argues in favor of expanding currently recognized peremptory norms (*jus cogens*) towards "procedural *jus cogens"* that establishes, as the particular consequences of these norms, a set of "minimum standards of procedural justice in national and international proceedings."[166] Hannah Yiu advocates resurrecting the "Responsibility to Protect (R2P)" doctrine for all States to deal with *jus cogens* violations when any of the Permanent Members (United States, United Kingdom, France, Russian Federation, China) of the United Nations Security Council exercises a veto over any proposed Security Council action under Chapter VII of the Charter of the United Nations.[167]

Regardless of the particular form of cooperation chosen, there are three minimum conditions for all States and international organizations to satisfy their international legal duty to cooperate to end a peremptory norm (*jus cogens*) violation through lawful means. First, the State or international organization must rely in good faith on some authoritative determination that a State is violating a peremptory norm (*jus cogens*), without necessarily waiting for a final court-adjudicated decision by any international, regional, or national court that such a violation is indeed occurring. Second, the State or international organization must deliberately enter into coordinated action with other States or international organizations, where such coordinated action is targeted towards or has the specific purpose of ending the violation. Finally, the coordinated action must only involve lawful means to end the peremptory norm (*jus cogens*) violation.

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164. Helene Ruiz Fabri & Edoardo Stoppioni, *Jus Cogens before International Courts: The Mega-Political Side of the Story*, 84 L. & CONTEMP. PROBS. 153(2021).

165. Mia Bonardi, *The World Trade Organization and Jus Cogens Norms*, 23 INT'L TRADE & BUS. L. REV. 109 (2022).

166. Stacie I. Strong, *General Principles of Procedural Law and Procedural Jus Cogens*, 122 PENN ST. L. REV. 347, 408 (2018).

167. Hannah Yiu, *Jus Cogens, the Veto and the Responsibility to Protect: A New Approach*, 7 N.Z. Y.B. INT'L L. 207, 232–33 (2009).

1. Uneven International Practices on The Duty to Cooperate

There is wide variation in the international practices of States and international organizations when it comes to acknowledging and discharging their duty to cooperate to end peremptory norm violations through lawful means. The open invasion and armed aggression of the Russian Federation in Ukraine since 2022 was not met by all States and international organizations with similar cooperative efforts to end such peremptory norm (*jus cogens*) violations through lawful means. Countries in the Global South, in particular, either declared their policy of neutrality or continued to engage in either the same or even much deeper economic activities (trade, investment, finance, monetary transactions, telecommunications, infrastructure, transport, maritime and aerial shipping) with the Russian Federation, notwithstanding these activities' direct contributions to generating the resources used for the Russian Federation's relentless armed aggression, invasion, and occupation of Ukraine.[168] Various Global South states either consistently abstained or voted against resolutions at the United Nations General Assembly that sought to condemn the Russian Federation's invasion, armed aggression, and occupation of Ukraine.[169] Many States from the Global South declared their own policies of non-alignment so as not to side with any sanctions regimes instituted against the Russian Federation by the European Union, the United States, Canada, Australia, among others,[170] while the same "non-aligned" States also did not enter into any specific coordinated action or cooperation targeted at ending by lawful means the Russian Federation's peremptory norm (*jus cogens*) violations with respect to the armed aggression, invasion, and occupation of Ukraine.[171] Notwithstanding well-documented and

168. Roberto Rabel, *Global South and western divergence on Russia's war in Ukraine: implications for world order*, 101 INT'L AFF. 1005 (2025).

169. *See* Chris Alden, *The Global South and Russia's Invasion of Ukraine*, 3 LSE PUB. POL'Y, no. 1, 2023, at 1; Kristen Eichensehr, *Russian Invasion of Ukraine Draws Widespread—but Not Universal—Condemnation*, 116 AM. J. INT'L L. 605, 610–13 (2022).

170. *See* Jorge Heine, *Active Non-Alignment and Global Governance: From Latin America to the Global South*, 30 GLOB. GOVERNANCE 214, 216–220 (2024).

171. *See* Mandy Turner, *The Global South and the Russia-Ukraine War: Nonalignment and Western Responses on the Cusp of A Multipolar World*, *in* SECURITY IN CONTEXT REPORT: THE GLOBAL SOUTH IN AN ERA OF GREAT POWER COMPETITION 37 (2024),

widely reported violations against the prohibition of torture, targeting civilians and civilian objects and cultural heritage and religious worship sites in violation of fundamental rules of international humanitarian law,[172] many States from the Global South maintained their distance as more countries that have illiberal or undemocratic societies stretching from East Asia through the Middle East and West Africa have steadily increased support for the Russian Federation and China.[173]

Most importantly, neither have I been able to find evidence that there has been any Global South coordinated action specifically targeted towards ending the Russian Federation's peremptory norm (*jus cogens*) violations,[174] even after the European Court of Human Rights' Grand Chamber delivered its 1600-page Judgment on the Merits in *Case of Ukraine and the*

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https://cdn.prod.website-files.com/63624397be3141e7fd81285d/660df35da2cda6c7bd693229_SICReport.pdf [perma.cc/P999-U3SJ]; Vidya Nandkarni, Paul D'Anieri, Sydney Kerr, et al., *Forum: The Russia-Ukraine War and Reactions from the Global South*, 17 CHINESE J. INT'L POL. 449 (2024) (describing countries' perceived support).

172. *See* COUNCIL OF EUROPE, LEGAL AND HUMAN RIGHTS ASPECTS OF THE RUSSIAN FEDERATION'S AGGRESSION AGAINST UKRAINE 2, 4 (2024), https://rm.coe.int/committee-on-legal-affairs-and-human-rights-legal-and-human-rights-asp/1680b5d90b [perma.cc/YMQ6-QERD]; Off. of the High Comm'r for Hum. Rts., Rep. on the Hum. Rts. Situation in Ukraine (1 December 2024 to 31 May 2025), at 2, U.N. Doc. A/HRC/59/CRP.3 (2025); Off. of the High Comm'r for Hum. Rts., Rep. on the Hum. Rts. Situation in Ukraine (1 September to 30 November 2024), at 2 (2024); Off. of the High Comm'r for Hum. Rts., Treatment of Prisoners of War and Update on the Hum. Rts. Situation, 1 June to 31 August 2024, at 2 (2024), https://ukraine.ohchr.org/en/Treatment-of-prisoners-of-war-and-Update-on-the-human-rights-situation-1-June-to-31-August-2024 [perma.cc/N5P3-HBTF]; Off. of the High Comm'r for Hum. Rts., Rep. on the Hum. Rts. Situation in Ukraine: 1 March to 31 May 2024, at 2 (2024); Off. of the High Comm'r for Hum. Rts., Report on the Human Rights Situation in Ukraine, 1 December 2023 to 29 February 2024, at 3 (2024). For all United Nations reports on the human rights situation in Ukraine since the start of the Russian Federation's invasion, see the following URL at https://ukraine.ohchr.org/en/reports [perma.cc/3P6K-AM27].

173. *See* Fred Lewsey, *War in Ukraine has widened a global divide in public attitudes toward US, China and Russia*, UNIV. OF CAMBRIDGE https://www.cam.ac.uk/stories/worlddivided [perma.cc/M3AV-8SZ4] (last visited July 15, 2025); IVOR ROBERTS ET AL., PERSPECTIVES ON RUSSIA-UKRAINE WAR: THE WEST VS. THE REST? (Oxford Glob. Soc'y Paper, 2022), https://oxgs.org/wp-content/uploads/2022/11/OXGS-report-perspectives-on-Russia-Ukraine-war.pdf [perma.cc/Y9BS-J9A4]; Francis Ghiles, *Global South does not buy western stance on Ukraine*, BARCELONA CTR. FOR INT'L AFF. (2023), https://www.cidob.org/en/publications/global-south-does-not-buy-western-stance-ukraine [perma.cc/8693-PFCW].

174. *See supra* note 171.

Netherlands v. Russia.[175] This Judgment conclusively found that the Russian Federation committed numerous egregious violations of the European Convention on Human Rights in the invasion and occupation of Ukraine, including peremptory norms (*jus cogens*) such as the prohibition on torture, innumerable acts of forced labour and displacement of civilians, the extrajudicial killing of civilians, persecution of religious groups, destruction of civilian property, suppression of the Ukrainian language and indoctrination in education, the abduction and forced transfer of Ukrainian children to the Russian Federation, among others.[176] While these States certainly could have chosen not to follow the same path of sanctions and military assistance for Ukraine undertaken by the United States, the European Union, and other western allies, many States in the Global South have instead observed silence as of this writing and are not even entering into any coordinated action at all to end the Russian Federation's peremptory norm (*jus cogens*) violations against the population of Ukraine. Taking a diplomatic position of "non-alignment"[177] does not meet the minimum requirements of the international legal duty of all States and international organizations to take coordinated action to end peremptory norm (jus cogens) violations through lawful means. Neither is this duty fulfilled by simply saying that "Ukraine is not a priority for the Global South",[178] since all States and international organizations are obligated to enter into some kind of coordinated action aimed at ending the peremptory norm (*jus cogens*) violation.

In contrast, various States from the Global South and the Global North have shown that they are indeed capable of entering into coordinated actions aimed at ending a State's peremptory norm (*jus cogens*) violation in the context of Israel's military operations in Gaza in the aftermath of Hamas' invasion into Israel's territory on October 7, 2023 that killed more than 1,200 Israeli civilians including sixty-eight foreign nationals using mass

175. *See generally* Ukr. & The Neth. v. Russ., Eur. Ct. H.R. (2025), https://hudoc.echr.coe.int/#{%22itemid%22:[%22001-244292%22]} [perma.cc/885T-RU3U].

176. *See id.* ¶ 1331.

177. Turner, *supra* note 171, at 38.

178. *See* Howard W. French, *Why Ukraine Is Not a Priority for the Global South*, FOREIGN POL'Y (Sep. 19, 2023), https://foreignpolicy.com/2023/09/19/unga-ukraine-zelensky-speech-russia-global-south-support/ [perma.cc/5LMY-PW5A].

atrocities such as torture and sexual violence,[179] while also taking around 250 Israelis and foreign nationals hostage and subjecting them to further atrocities. After Israel undertook its military operations against Hamas after the events of October 7, 2023, many States from the Global South and Global North argued that Israel's use of force against Palestinian civilians in Gaza violated peremptory norms (*jus cogens*) in international law. South Africa filed its application against Israel at the International Court of Justice, protesting Israel's peremptory norm (*jus cogens*) violations resulting from genocide allegedly being conducted in Gaza.[180] Various States from the Global South and Global North filed their declarations of intervention soon afterwards.[181] After the 2024 *Policies and Practices of Israel* Advisory Opinion issued by the International Court of Justice (where many States from the Global South participated in the proceedings) resulted in the Court's ruling requiring all States to uphold their duties of non-recognition, non-assistance, and cooperation to end peremptory norm (*jus cogens*) violations through lawful means,[182] around thirty States from the Global South held meetings to organize, coordinate, and campaign for the enforcement of international law and court adjudications against Israel.[183]

Both Ukraine and Gaza provide starkly contrasting examples of the selectivity of international practice when it comes to how third States and international organizations exercise and discharge their international legal duty to cooperate to end violations of peremptory norms (*jus cogens*) through lawful means. Some third States and international organizations exhibit inertia when it comes to the duty to cooperate to end the Russian Federation's peremptory norm (*jus cogens*) violations in Ukraine, who could themselves exercise prompt diligence and political wherewithal to

179. *See* Hum. Rts. Council, Detailed Findings on Attacks Carried Out on and After 7 October 2023 in Israel, U.N. Doc. A/HRC/56/crp.3, ¶¶ 20–199 (2024).

180. *See* S. Afr. v. Isr., Order on Provisional Measures, 2024 I.C.J. 649, 650–51 (Jan. 26).

181. Nicar. v. Ger., Application Instituting Proceedings, 2024 I.C.J. Pleadings, at 5–6.

182. Legal Consequences arising from the Policies and Practices of Israel, Advisory Opinion, 2024 I.C.J., at 760.

183. *See* Kate McMahon, *To End the Gaza Genocide, the Global South Takes Justice Into Its Own Hands*, NEW INTERNATIONALIST (July 18, 2025), https://newint.org/peace/2025/end-gaza-genocide-global-south-takes-justice-its-own-hands [perma.cc/6AWT-YTRK].

exercise this duty to end peremptory norm (*jus cogens*) violations in Gaza. The vicissitudes of international politics and diplomacy cannot excuse the failure of all States and international organizations to equally and consistently exercise and discharge the international legal duty to cooperate to end all peremptory norm (*jus cogens*) violations through lawful means. Cooperation to end one situation of peremptory norm (*jus cogens*) violations does not exculpate one from the duty to cooperate in other situations that also involve peremptory norm (*jus cogens*) violations.

2. Consistency with Article 55(c) and Article 56 of UN Charter

Were all States and international organizations to take seriously their international legal duty to cooperate to end a State's peremptory norm (*jus cogens*) violations through lawful means, they would be acting consistently with fundamental obligations under Article 56 in relation to Article 55(c) of the Charter of the United Nations.[184] There is a wealth of international practice that shows how States have entered into cooperation with the United Nations to undertake joint and separate action targeted towards urgent and sensitive human rights situations such as between 1995 and 1999 where peremptory norm (*jus cogens*) violations had been alleged in Cuba, Sudan, Haiti, Guatemala, El Salvador, Bosnia and Herzegovina, Afghanistan, Iran, and the Democratic Republic of the Congo.[185] Some of the forms of cooperation in these cases involved assistance in monitoring, reporting, and information exchanges, support for international missions of the United Nations in these countries, support for institution-building and rule of law initiatives to train law enforcement and the judiciary, cooperation and support for multilateral peace processes, and the implementation of peace agreements, among others.

Cooperation has famously taken place through the United Nations General Assembly to end peremptory norm (*jus cogens*) violations through lawful means. The 1966 UNGA Resolution 2144 (XXI), *Question of the violation of human rights and fundamental*

184. *See* U.N. Charter, *supra* note 19, arts. 55, 56.

185. *See* UNITED NATIONS, ANALYTICAL SUMMARY OF PRACTICE ON ARTICLE 56 OF THE CHARTER OF THE UNITED NATIONS, 1995–1999 ¶¶ 72–112.

freedoms, including policies of racial discrimination and segregation and of apartheid, in all countries, with particular reference to colonial and other dependent countries and territories, the Assembly called on all States not to encourage and to cooperate globally to end the apartheid policies of South Africa in the Territory of South West Africa and racial discrimination in the colonies of Southern Rhodesia, Angola, Mozambique, Portuguese Guinea, Cabinda, Sao Tome and Principe.[186] The twenty-year global response and collective action taken by all States to apartheid in South Africa (and as practiced by South Africa in its colonies in Namibia and Southern Rhodesia) provides an apt historical example of how a State's peremptory norm (*jus cogens*) violations could end through lawful means when all States and international organizations observe their international legal duties of non-recognition, non-assistance, and cooperation.[187]

Cooperation to end peremptory norm (*jus cogens*) violations, as championed through the United Nations General Assembly, was also the foundation of the successful global campaign to end the United Kingdom's occupation of the Chagos Archipelago and facilitate its restoration and transfer to Mauritius. In 2017, ninety-four Member States of the United Nations voted in favor of United Nations General Assembly Resolution 71/292, which requested the International Court of Justice to provide an advisory opinion on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965.[188] The Court issued its Advisory Opinion in 2019, finding the United Kingdom's continued occupation of the Chagos Archipelago to be unlawful and requiring its return to Mauritius, and ordering all States to engage in cooperation through the United Nations towards completing the decolonization of Mauritius.[189] When the United Kingdom persisted in occupying the

186. *See* G. A. Res. 2144 (XXI) A, (Oct. 26, 1966).

187. *See* Kevin Hopkins, *Assessing the World's Response to Apartheid: A Historical Account of International Law and Its Part in the South African Transformation*, 10 U. MIAMI INT'L & COMPAR. L. REV. 241, 250 (2001); Ian L. Courts, *Crimes Against Humanity, Apartheid: History, and the Modern Global Response*, 44 N.C. CENT. L. REV. 120, 125–26 (2022); Jack Marcou, Rachel Smith & Ali Williams, *International Response to Apartheid from 1960-1980*, AFR. LETTERS PROJECT, https://africanlettersproject.tulane.edu/2023/07/27/auto-draft/ [perma.cc/98B6-3SEM] (last visited July 15, 2025).

188. *See* G.A. Res. 71/292 (June 22, 2017).

189. *See* Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion 2019 I.C.J. 95, ¶ 183 (Feb. 25).

Chagos Archipelago, States engaged in various forms of cooperation at the United Nations General Assembly towards ending the United Kingdom's peremptory norm (*jus cogens*) violation in failing to recognize the right to self-determination of the Chagos Archipelago. These cooperative actions included, among others, voting for the first time not to elect a judge at the International Court of Justice (in this case, the reelection of the British Judge Sir Christopher Greenwood), breaking the norm that the Court has always historically had a Judge hailing from each of the five Permanent Member States of the United Nations Security Council.[190] In 2022, talks began for the United Kingdom to hand over the Chagos Islands to Mauritius, and agreement was reached by 2024.[191] The full text of the treaty, *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Mauritius concerning the Chagos Archipelago including Diego Garcia,* was approved and released to the public on May 22, 2025.[192]

The two examples of dismantling apartheid in South Africa and its colonies and ending British occupation of the Chagos Archipelago that violated the right to self-determination of the Chagossian people, provide useful case studies of how successful international cooperation by all States and international organizations could indeed contribute to ending peremptory norm (*jus cogens*) violations through lawful means. When all States and international organizations consistently and in a sustained way demonstrate their collective global resolve to observe and practice their international legal duties of non-recognition, non-assistance, and cooperation to end a State's peremptory norm (*jus cogens*) violations, such violations cannot long endure. It is when all States and international organizations remain inert and only selectively

190. *See* Owen Bowcott, *No British Judge on World Court for First Time in Its 71-Year History*, GUARDIAN (Nov. 20, 2017), https://www.theguardian.com/law/2017/nov/20/no-british-judge-on-world-court-for-first-time-in-its-71-year-history#:~:text=The%20UK%20will%20not%20have%20a%20judge,British%20candidate%20withdrew%20following%20an%20acrimonious%20competition [perma.cc/95MD-YJJF].

191. *See Chagos Islands: UK's last African colony returned to Mauritius*, UNITED NATIONS (Oct. 3, 2024), https://news.un.org/en/story/2024/10/1155326 [perma.cc/LE9F-SJLZ].

192. *See* Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Mauritius concerning the Chagos Archipelago including Diego Garcia, U.K.-Mauritius, May 22, 2025, 001/2025 CP 1334.

engage and exercise their international legal duties of non-recognition, non-assistance, and cooperation that any State's violations of peremptory norms (*jus cogens*) will continue to thrive.

C. Distinguishing Duties of Non-Recognition, Non-Assistance, and Cooperation from Countermeasures

Significantly, the international legal duties of non-recognition, non-assistance, and cooperation to end peremptory norm (*jus cogens*) violations should also not be confused with the right of States to take countermeasures under the law of international responsibility. In the first place, the international legal duties of non-recognition, non-assistance, and cooperation are *mandatory* duties that apply to *all* States and international organizations when any State violates a peremptory norm (*jus cogens*), whereas the right to take countermeasures is generally reserved for the State injured by a violation of international law,[193] where the injured State may choose to exercise this right or not based on its sole discretion.[194] Of course, the legal status of "third-party countermeasures" or "collective countermeasures" remains unsettled in international law.[195]

Secondly, the international legal duties of non-recognition, non-assistance, and cooperation are particular consequences that apply to all States and international organizations, without any temporal limits whatsoever, in order to end or not prolong situations resulting from peremptory norm (*jus cogens*) violations. In contrast, countermeasures are taken by the injured State "in order to induce [the violating State] to comply with its obligations", and by nature are "limited to the non-performance for the time being of international obligations of the [State imposing countermeasures] towards the responsible State."[196] The injured State that is exercising the right to take countermeasures thus chooses not to perform some international legal obligations

193. *See ARSIWA*, *supra* note 26, art. 49.

194. *See id.* art. 49, ¶ 1.

195. *See* MARTIN DAWIDOWICZ, THIRD-PARTY COUNTERMEASURES IN INTERNATIONAL LAW 3 (Larissa van den Herik & Jean D'Aspremont eds., 2017).

196. *See ARSIWA*, *supra* note 26, art. 49, ¶¶ 1–2.

towards the violating State, but only in a temporary way so as to eventually "permit the resumption of the performance of the obligations in question."[197]

Thirdly, the nature of the international legal duties of non-recognition, non-assistance, and cooperation towards ending peremptory norm (*jus cogens*) violations requires specific or definite forms of conduct (e.g., withholding recognition, aid or assistance from situations resulting from peremptory norm or *jus cogens* violations, while also positively undertaking cooperation to end the peremptory norm or *jus cogens* violations) from all States and international organizations, as previously discussed in Parts I and II of this Article. Countermeasures, on the other hand, can extend to a wide and general range of temporary non-performance of any international legal obligations owed to the violating State, so long as such countermeasures do not themselves affect specific obligations to refrain from the threat or use of force under Article 2(4) of the Charter of the United Nations, obligations for the protection of fundamental human rights, obligations of a humanitarian character prohibiting reprisals, and other obligations under peremptory norms of general international law, as well as obligations under any dispute settlement procedure between the State imposing the countermeasure and the responsible State, and the obligation to respect the inviolability of diplomatic or consular agents, premises, archives, and documents.[198]

The pending disputes between Mexico and Ecuador over the treatment of Mr. Jorge David Glas Espinel, an Ecuadorian national and former Vice President of Ecuador convicted of criminal offenses in Ecuadorian courts, well illustrates the differences between the right of an injured State to take countermeasures vis-à-vis the international legal duties of all States and international organizations to observe non-recognition, non-assistance, and cooperation towards ending peremptory norm (*jus cogens*).[199] Mexico's application to the International Court of Justice argued

197. *See id.*art. 49, ¶ 3.

198. *See id.* art. 50.

199. *See* Embassy of Mexico in Quito (Mex. v. Ecuador), Application Instituting Proceedings and Request for the Indication of Provisional Measures, 2024 I.C.J. Pleadings, at 7 (Apr. 11); Glas Espinel (Ecuador v. Mex.), Application Instituting Proceedings, 2024 I.C.J. Pleadings, at 5 (Apr. 29).

that on December 17, 2023, Mr. Glas Espinel sought asylum at the Mexican Embassy in Ecuador, requesting protection due to his fear for his personal security and bodily integrity.[200] Mexico granted Mr. Glas Espinel's request for asylum sometime shortly before April 4 or 5, 2024,[201] when Ecuadorian law enforcement agents thereafter allegedly harassed members of the Mexican Embassy, before deploying force to enter the premises of the Mexican Embassy to forcibly take custody of Mr. Glas pursuant to an Ecuadorian arrest warrant, in what Mexico argues was an international abduction in violation of international law.[202] Among the many items of relief sought by Mexico, it also asked the International Court of Justice to

> suspend Ecuador as member of the United Nations until it does [sic] issue a public apology recognizing its violations to the fundamental principles and norms of international law, to guarantee the reparation to the moral harm inflicted upon [Mexico] and its affected nationals . . . to set a precedent stating that a State or nation that acts as Ecuador did in the present case will ultimately be expelled from the United Nations in accordance with the procedure foreseen under article 6 of the United Nations Charter.[203]

For its part, Ecuador argued in its application to the International Court of Justice that

> Mexico used the premises of its diplomatic mission in Quito between December 2023 and April 2024 to shield Mr. Glas from enforcement by Ecuador of its criminal law. Despite Ecuador's repeated requests that Mexico cooperate with the competent Ecuadorean authorities and hand over Mr. Glas, Mexico announced, in a press release on 5 April 2024, a decision to grant him 'asylum' with a view to removing him from Ecuador. These actions, which obstructed the proper administration of justice in Ecuador, constituted, among other things, a blatant misuse of the premises of a diplomatic mission. By this unacceptable conduct, Mexico has

200. *See* Mex. v. Ecuador, 2024 I.C.J. Pleadings at 7, ¶ 3.

201. The application does not indicate the specific date of the grant of asylum, but only that there were harassment and escalations that occurred from Ecuador on April 4 and 5, 2024, "as consequence of Mexico's press release informing that the national Government had granted asylum to Mr. Glas . . . ." *See id.* ¶ 13.

202. *See* Mex. v. Ecuador, 2024 I.C.J. Pleadings, ¶¶ 14–21.

203. *See id.* ¶¶ 52.

> breached . . . the Vienna Convention on Diplomatic Relations of 1961, the Convention on Political Asylum of 1933 (Montevideo Convention), the Convention on Diplomatic Asylum of 1954 (Caracas Convention), the Inter-American Convention against Corruption of 1996, and the United Nations Convention against Corruption of 2003 (Merida Convention) . . . Mexico has breached the principles of sovereign equality, territorial integrity and non-intervention in the internal affairs of other States enshrined in the Charter of the United Nations, the Charter of the Organization of American States, and customary international law.[204]

Are any violations of peremptory norms (*jus cogens*) involved in this case that would trigger the international legal duties of non-recognition, non-assistance, and cooperation to end such violations? At first glance, it is hard to ascertain from the facts alleged by both Mexico and Ecuador whether Mr. Glas Espinel asserted serious violations of his fundamental human rights (including the prohibition against torture) as the basis for seeking asylum, which could implicate peremptory norms (*jus cogens*). Neither is it clear from the records of these pending cases as of this writing whether there was any allegation of violation of the prohibition against aggression, either against the extension of Mexico's territory (through its diplomatic premises) or Ecuador itself. Assuming, for the sake of the thought experiment, that violations of peremptory norms (*jus cogens*) were authoritatively determined to be involved in the circumstances of Mr. Glas Espinel, it could be argued that Mexico's actions to permit Mr. Glas Espinel's presence at the Mexican Embassy pending the grant of asylum would fall under the rubric of the international legal duties of non-recognition, non-assistance, and cooperation to end such violations. However, it should be noted that as of this writing, there is no authoritative determination yet anywhere in the United Nations or in international adjudication that there are or appear to be any violations of peremptory norms (*jus cogens*) in Ecuador's treatment of Mr. Glas Espinel. Mexico would thus be hard put to resort to international legal duties of non-recognition, non-assistance, and cooperation to end such violations as Mexico's legal justification against Ecuador's claims.

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204. *See* Ecuador v. Mex., I.C.J. Pleadings, ¶¶ 3–4.

However, assuming no such peremptory norms (*jus cogens*) were involved in this case, the right of Ecuador to take countermeasures—specifically to suspend performance of any international obligations owed to Mexico—also requires scrutiny. While Ecuador can well claim that it was acting in good faith to execute an arrest warrant against its former Vice President and determined that Mexico was somehow misusing the diplomatic inviolability of its premises, Ecuador likewise cannot feasibly argue that all of its actions amounted to lawful countermeasures against Mexico's supposed failure to abide by international law. Countermeasures do not eliminate Ecuador's continuing duty to respect the inviolability of diplomatic or consular agents, premises, archives, and documents, as well as to comply with Ecuador's human rights obligations under treaties and customary international law. It remains to be seen whether the forceful taking of Mr. Glas Espinel from the Mexican Embassy by Ecuadorian State agents amounted to an international abduction, or to any violation of civil and political rights to due process, equal protection, and rights to life, liberty, and bodily integrity.

In sum, the international legal duties of non-recognition, non-assistance, and cooperation to end peremptory norm (*jus cogens*) violations apply to all States and international organizations as soon as there is an authoritative determination that any State is violating a peremptory norm (*jus cogens*). The non-recognition and non-assistance duties of all States and international organizations can continue well after the actual violation, since they are addressed to situations resulting from such violations of peremptory norms (*jus cogens*). The duty to cooperate of all States and international organizations, on the other hand, is specifically limited to ending the said violation. By their very nature, these duties extend well beyond any State injured by the violation, since *all* States and international organizations bear these duties. In contrast, the right of countermeasures under international law pertains to the injured State (although it is still debated whether third States can assert this right), with respect to any violation of international law whatsoever by another State. The countermeasure available is that of the injured State's suspension of performance of its own obligations towards the violating State, on a temporary and proportional basis, in order to induce the violating State's compliance with international law and ultimately

for the injured State to resume its own performance of international legal obligations towards the violating State. The countermeasure also cannot violate existing obligations in international law on the prohibition against the threat or use of force, international human rights law, other peremptory norms of international law, and obligations owed during dispute settlement procedures and with respect to the inviolability of diplomatic premises, agents, and documents.

III. OVERCOMING INERTIA TOWARDS INTERNATIONAL LEGAL DUTIES OF NON-RECOGNITION, NON-ASSISTANCE, AND COOPERATION TO END JUS COGENS VIOLATIONS

There is no reason why peremptory norm (*jus cogens*) violations should endure, let alone proliferate, around the world when all States and international organizations bear the same international legal duties of non-recognition, non-assistance, and cooperation to end such violations. These are binding international legal duties that have been both codified by the International Law Commission as well as judicially recognized by the International Court of Justice, but States and international organizations are obviously falling well short of fulfillment of these three duties. Populations that are reported to be at risk of violations of peremptory norms (*jus cogens*) (such as genocide, torture, war crimes, crimes against humanity, aggression, and fundamental human rights violations including the right of peoples to self-determination) include countries such as Afghanistan, Belarus, Burundi, Cameroon, Central Africa, the Central African Republic, Central Sahel, China, Cote d'Ivoire, North Korea (Democratic People's Republic of Korea), Democratic Republic of the Congo, Egypt, Eritrea, Ethiopia, Guinea, Haiti, and Iraq,[205] as well as countries such as Myanmar, Ukraine, Syria, Israel-Palestine, Venezuela, India, Eritrea, South Sudan, Sudan, Iran, Russia, Somalia, Pakistan, Yemen, Libya, Mexico, Mauritania, Nigeria, and

205. *See Populations at Risk*, GLOB. CTR. FOR THE RESP. TO PROTECT, https://www.globalr2p.org/populations-at-risk/ [perma.cc/FM7N-S8MG] (last visited July 15, 2025).

Brazil.[206] More countries in Asia, Europe, Africa, and Latin America have also been reported to be at risk of intrastate mass killings,[207] as well as reported widespread torture.[208] The United Nations Secretary-General's April 22, 2025 *Report on the responsibility of all States to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity* provides concrete evidence of the leakages when it comes to compliance by all States and international organizations with their international legal duties of non-recognition, non-assistance, and cooperation to end peremptory norm (*jus cogens*) violations:

> At the 2005 World Summit, Member States unanimously committed to the responsibility to protect as a principle for action. In paragraphs 138 and 139 of the 2005 World Summit Outcome, world leaders affirmed the responsibility of individual States to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity, including through the prevention of these crimes and their incitement. World leaders also agreed to encourage and help other States, as appropriate, to exercise that responsibility. To that end, they committed to the responsibility to use appropriate diplomatic, humanitarian, and other peaceful means, in accordance with Chapters VI and VIII of the Charter of the United Nations; they also expressed readiness to take timely and decisive collective action through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations. Furthermore, they agreed that the international community should, as appropriate, support the United Nations in establishing an early warning capability . . . In summary, the past 20 years have seen a significant decline

206. *See* Sylvia Morna Freitas, *A Grim 2024: Reports from the Perceived Mass Atrocities Dataset*, JOSEF KORBEL SCH. GLOB. AFFS. (Feb. 13, 2025), https://korbel.du.edu/pardee-resources/grim-2024-reports-perceived-mass-atrocities-dataset/ [perma.cc/T57A-C6QA].

207. *See Countries at Risk for Intrastate Mass Killing 2024-25: Early Warning Project Statistical Risk Assessment Results*, EARLY WARNING PROJECT (Dec. 17, 2024), https://earlywarningproject.ushmm.org/reports/countries-at-risk-for-intrastate-mass-killing-2024-25-early-warning-project-statistical-risk-assessment-results [perma.cc/S2P3-7QC4].

208. *See Global Torture Index*, WORLD ORG. AGAINST TORTURE, https://www.omct.org/en/global-torture-index [perma.cc/BNU6-FH3D].

> in respect for international humanitarian law and international human rights law by both State and non-State actors. This deterioration is also evident from the recurrent failure to prevent and protect populations against atrocity crimes . . . the systematic integration of an atrocity prevention lens across all these efforts, and across the three pillars of the responsibility to protect, could enhance the capacity of the international community both to prevent atrocity crimes in a timely manner and to boost the effectiveness of protection measures for vulnerable communities . . .
>
> Today, three main areas for possible action emerge. First, a greater emphasis should be placed on developing permanent prevention mechanisms at the national level. Second, regional consultations would be helpful for sharing experiences and lessons learned and strengthening relations between national and regional entities. Third, the development of strategic and technical guidance on implementing the responsibility to protect at the domestic, regional and multilateral levels should be explored.[209]

The above action areas identified by the United Nations Secretary-General, placing emphasis on prevention mechanisms and heightened multi-level cooperation between States and international organizations, lend purchase to a growing sense of the "permanency"[210] of mass atrocities and their seeming inevitability throughout the world.[211] Scholars argue that there is no such thing as "optimal ending of mass atrocities—rescue of vulnerable civilians, the punishment of perpetrators, and a just reconstruction of the state to address the conditions that enabled violence to occur—rarely, if ever is [this] achieved . . . Actual

209. *See* U.N. Secretary-General, *Responsibility to Protect: 20 years of Commitment to Principled and Collective Action*, ¶¶ 1, 35, 76, U.N. Doc. A/79/875-S/2025/248 (Apr. 22, 2025).

210. Adrian Gallagher et al., *The Permanency of Mass Atrocities: The Fallacy of 'Never Again'?*, 27 BRIT. J. POL. & INT'L RELS., no. 1, 310, 322 (2025).

211. *See generally* STEPHAN MCLOUGHLIN, THE STRUCTURAL PREVENTION OF MASS ATROCITIES: UNDERSTANDING RISK AND RESILIENCE (2014) (describing the long duration and systemic causes and factors that prolong mass atrocities); Keith A. Petty, *Humanity and National Security: The Law of Mass Atrocity Operations*, 34 MICH. J. INT'L L. 745, 754, 827 (2013) (noting the prolonged duration of mass atrocities).

endings are suboptimal."[212] In my view, the continuing inertia that States and international organizations demonstrate towards their international legal duties of non-recognition, non-assistance, and cooperation to end peremptory norm (*jus cogens*) violations likewise contributes to the increasing prevalence and proliferation of such violations and the mass atrocities they create. These three international legal duties of all States and all international organizations are a crucial shield against the global pathology of mass atrocities and widespread harms resulting from peremptory norm (*jus cogens*) violations. All States and all international organizations could do more to take seriously their international legal duties of non-recognition, non-assistance, and cooperation.

A. Circumventing Objections

1. Impasses from Alleged Interpretive Indeterminacy

As discussed in Part II, States and international organizations can overlook or neglect the mandatory and global scope of the international legal duties of non-recognition, non-assistance, and cooperation to end peremptory norm (*jus cogens*) violations, when States or international organizations claim that the indeterminate interpretation of these duties makes their transformation into concrete actions, measures, and conduct a highly intersubjective exercise. A glaring example of this is the years of failure of the United Nations Security Council to act on mass atrocities in Syria committed by the Assad regime.[213] The Security Council was unable to pass key resolutions on humanitarian assistance, sanctions, and other forms of measures against the Assad regime's atrocities against its own civilian population, largely due to vetoes exercised by Permanent Members the Russian Federation and

212. Alex De Waal, Jens Meierhenrich & Bridget Conley-Zilkic, *How Mass Atrocities End: An Evidence-Based Counter-Narrative*, 36 FLETCHER F. WORLD AFFS. 15, 27 (2012); *see generally* HOW MASS ATROCITIES END: STUDIES FROM GUATEMALA, BURUNDI, INDONESIA, THE SUDANS, BOSNIA-HERZEGOVINA, AND IRAQ (Bridget Conley-Zilkic, ed., 2016); Bridget Conley and Chad Hazlett, *How very massive atrocities end: A dataset and typology,* 58 J. PEACE RSCH. 612–20 (2019).

213. *See* Seema Kassab, *When the Security Council Fails to Intervene in Mass Atrocities, Who Else Can Act?*, MICH. J. INT'L L.: BLOG (Feb. 2017), https://www.mjilonline.org/when-the-security-council-fails-to-intervene-in-mass-atrocities-who-else-can-act/ [perma.cc/HZ59-L67E].

China, both of whom alleged different interpretations of realities and conditions facing the Syrian population that denied the existence of peremptory norm (*jus cogens*) violations.[214] In the course of the stalemate at the United Nations Security Council, very few States and international organizations acted to exercise their duties of non-recognition, non-assistance, and cooperation to end peremptory norm (*jus cogens*) violations, with only a few States such as Canada and the Netherlands instituting an application at the International Court of Justice to hold Syria internationally responsible for all human rights violations, humanitarian violations, and mass atrocities committed against the Syrian civilian population since 2011.[215] The United States announced in 2025 that it will not recognize the Syrian mission to the United Nations and that it will not recognize any entity in Syria as a government,[216] after many years of imposing sanctions and designating Syria as a State Sponsor of Terrorism since 1979.[217] States such as Iran and the Russian Federation provided military and material support to the Assad regime as it targeted the Syrian civilian population, while the United States, France, the United Kingdom, Qatar, and Saudi Arabia formed their own coalition to oppose the Assad regime's mass atrocities and rule by torture.[218]

As early as 2012, the United Nations Independent International Commission of Inquiry on the Syrian Arab Republic, created by the Human Rights Council, already issued its first damning report about the mass atrocities from peremptory norm (*jus cogens*) violations being committed against the Syrian civilian population.[219] With over a decade of failed UN Security Council action, it is an open question if any of the 193 States of the United

214. *See* BETH VAN SCHAACK, IMAGINING JUSTICE FOR SYRIA 56 (Michael N. Schmitt et al. eds., 2020).

215. *See* Philippa Webb, *The Security Council Veto in Syria: Imagining a Way Out of Deadlock*, ARTICLES OF WAR (Aug. 12, 2021), https://lieber.westpoint.edu/security-council-veto-syria-imagining-way-out-deadlock/ [perma.cc/294G-B7RJ].

216. *See US says no entity in Syria is currently recognized as a government*, NEW ARAB (Apr. 10, 2025, 9:13 AM), https://www.newarab.com/news/us-says-no-entity-syria-recognised-government [perma.cc/4RSH-XA65].

217. *See Syria Sanctions*, U.S. DEP'T OF STATE, https://www.state.gov/syria-sanctions [perma.cc/X8LX-3QET] (last visited Mar. 30, 2026).

218. *See Syria's Civil War: The Descent into Horror*, COUNCIL ON FOREIGN RELS. *(*Dec. 20, 2024), https://www.cfr.org/article/syrias-civil-war [perma.cc/TZ4U-6JHN].

219. *See* Hum. Rts. Council*,* Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, U.N. Doc. A/HRC/19/69 (Feb. 22, 2012).

Nations discharged their international legal duties of non-recognition, non-assistance, and cooperation to end peremptory norm (*jus cogens*) violations in the context of the widespread violations of Bashar al-Assad's regime in Syria.[220] The failure of the United Nations Security Council to act due to the interpretive indeterminacies asserted by vetoing Permanent Members China and the Russian Federation should not, and never ought to have, inhibited all other States and all international organizations in the world from independently exercising their respective individual and collective international legal duties of non-recognition, non-assistance, and cooperation to end peremptory norm (*jus cogens*) violations in Syria.[221]

2. Political and Jurisdictional Limitations

All States and all international organizations bear international legal duties of non-recognition, non-assistance, and cooperation towards ending peremptory norm (*jus cogens*) violations, but in the *realpolitik* of the international system, it is rare to see the full, consistent, and impartial exercise of these legal duties by all States and international organizations. As discussed in Part II, some countries gravitated towards exercising these duties in the context of the Russian Federation's aggression, invasion, occupation, and continuing mass atrocities in Ukraine, while other countries preferred to exercise these duties in the context of Israel's military operations against Hamas in Gaza and the lived suffering of Palestinian civilians during this conflict. International organizations apart from the United Nations have by and large been silent on how to exercise their duties of non-recognition and non-assistance for situations resulting from peremptory norm (*jus cogens*) violations, or how to cooperate with all other organizations and States to bring such violations to an end through lawful means. In 1998, the World Bank Group (International Bank for Reconstruction and Development) articulated a role for its own operations in post-conflict

220. *See Syria,* GLOB. CTR. FOR RESP. TO PROTECT (Nov. 14, 2025), https://www.globalr2p.org/countries/syria/ [perma.cc/RL7Q-5PJG].

221. *See A Decade of Atrocities and International Failure in Syria*, RELIEFWEB (Mar. 16, 2021), https://reliefweb.int/report/syrian-arab-republic/decade-atrocities-and-international-failure-syria [perma.cc/E9WF-8X8E].

reconstruction,[222] but it was not until 2020 that the World Bank Group formulated its *Strategy for Fragility, Conflict, and Violence 2020-2025* that committed the Bank to concrete cooperation and engagement on preventing mass atrocities from violent conflict, as well as addressing populations' fragility from conflicts and violence.[223]

Not unsurprisingly, States and international organizations that exhibit inertia (or even outright shirking) towards duties of non-recognition, non-assistance, and cooperation against peremptory norm (*jus cogens*) violations prominently invoke political or jurisdictional limitations against non-recognition, non-assistance, and cooperation. These limitations have to be evaluated according to their asserted international legal justifications, since all States and international organizations continue to have a *pacta sunt servanda* obligation to discharge their mandatory duties of non-recognition, non-assistance, and cooperation. The example of the *Chagos* Advisory Opinion could well be remembered for how most, if not the majority, of States in the United Nations General Assembly voted for the referral of the request for an advisory opinion to the International Court of Justice, out of the global sense that the right to self-determination of the Chagossian population and diaspora was still being violated by the United Kingdom in obstructing the completion of Mauritius' decolonization process by withholding possession of the Chagos Archipelago and executing the notorious Lease Agreement with the United States over Diego Garcia for military basing purposes. Global non-recognition and non-assistance for the United Kingdom's continued retention of Chagos even after the International Court of Justice issued its 2019 Advisory Opinion, incentivized the United Kingdom to conclude its treaty with Mauritius in 2025, officially returning and handing

222. *See generally* THE WORLD BANK GRP., POST-CONFLICT RECONSTRUCTION: THE ROLE OF THE WORLD BANK (1998) (describing the World Bank Group's lending operations for post-conflict reconstruction programs affecting various countries); ALCIRA KREIMER ET AL., THE WORLD BANK'S EXPERIENCE WITH POST-CONFLICT RECONSTRUCTION (1998), https://ieg.worldbankgroup.org/sites/default/files/data/reports/postcon.pdf [perma.cc/2TQF-EV3F] (detailing specific outcomes from the Bank's collaborations with various countries on post-conflict reconstruction).

223. *See* WORLD BANK, WORLD BANK GROUP STRATEGY FOR FRAGILITY, CONFLICT, AND VIOLENCE 2020-2025 viii (2020), https://documents1.worldbank.org/curated/en/844591582815510521/pdf/World-Bank-Group-Strategy-for-Fragility-Conflict-and-Violence-2020-2025.pdf [perma.cc/P88Y-WGSP] (containing the Bank's governing strategy for its assistance to States affected by fragility, conflict, and violence).

over the Chagos Archipelago back to Mauritius. This example shows that there are operational, legal, and diplomatic workarounds to asserted political and jurisdictional limitations of States or international organizations that still do not practice non-recognition, non-assistance, and cooperation to end peremptory norm (*jus cogens*) violations through lawful means. What is required is for every State and international organization to internalize the three legal duties of non-recognition, non-assistance, and cooperation as their baseline minimum of expected conduct whenever any violation of peremptory norms (*jus cogens*) is authoritatively determined. These three duties do not presuppose execution at the expense of legality, but rather, these duties have to be implemented only through full consistency with applicable international law.

3. Lack of Priority in International Diplomacy or States' Foreign Policies

Agenda-setting in international organizations and internal sovereign decisions of States over their respective foreign policies will also be crucial to the establishment of the duties of non-recognition, non-assistance, and cooperation as effective minimum safety valves in the international system against peremptory norm (*jus cogens*) violations. But the reality of international politics and domestic politics is that not all peremptory norms (*jus cogens*) violations rise to immediate prominence and awareness in the international, regional, and domestic governance systems. States and international organizations may end up not discharging their duties of non-recognition, non-assistance, and cooperation simply because these are not diplomatic priorities or foreign policies.

Victims of States' peremptory norm (*jus cogens*) violations (through mass atrocities such as genocide, torture, violations of international human rights law and international humanitarian law, and conflicts and occupation resulting from violating the prohibition of aggression) cannot be expected to effectively shape diplomatic priorities or the content of foreign policies of all States and international organizations. It falls on all States and international organizations to be vigilant and proactive about their international legal duties of non-recognition, non-assistance, and cooperation to end by lawful means any and all peremptory norm (*jus cogens*) violation. One area that would vastly improve from

such vigilance is information-sharing and early-warning systems identifying mass atrocity situations. States and international organizations have intelligence networks and information resources at their disposal that can be contributed towards international authoritative determinations of the existence of any peremptory norm (*jus cogens*) violation. But most often, reports of States' peremptory norm (*jus cogens*) violations instead originate from domestic and international civil society actors that mobilize campaigns to raise awareness about mass atrocity contexts.[224] This was the situation involving the Rohingya communities in Myanmar, who were reported to have been subjected to mass atrocities during the August 25, 2017 military offensive launched by Myanmar's Tatmadaw (military), seeking to drive the ethnic minority of over one million Muslim Rohingya people out of the northern Rakhine State in Myanmar. In 2023, the United Nations Special Rapporteur on the Situation of Human Rights in Myanmar noted the "paralysis of indifference" around the world against the genocidal attacks against the Rohingya communities forced to flee to neighboring Bangladesh:

> The international community has also failed its responsibility to the Rohingya. After six years, the Security Council has not referred the situation in Myanmar to the International Criminal Court, despite the overwhelming evidence of atrocity crimes. Some countries continue to sell weapons to the military that attacked and murdered the Rohingya and is now turning its guns on civilian populations throughout the country. Those nations who support human rights have failed to take the coordinated action necessary to deny the military junta of Myanmar what it requires to sustain its attacks – money, weapons and legitimacy. The international community has also failed to adequately support the Rohingya in their hour of need. The World Food Programme has been forced to implement devastating rations cuts in the camps in Bangladesh because of dwindling financial contributions from

224. *See generally* FRANK CHALK, ROMEO DALLAIRE, KYLE MATTHEWS, CARLA BARQUEIRO, & SIMON DOYLE, MOBILIZING THE WILL TO INTERVENE: LEADERSHIP TO PREVENT MASS ATROCITIES 114 (2010) (describing mobilization campaigns around the world for mass atrocity prevention); Susan Appe, Nadia Rubaii, & Kerry Whigham, *Civil society organizations and the prevention of mass atrocities: Perspectives from South Sudan*, 43 PUB. ADMIN. & DEV. 14 (2022) (illustrating the work of civil society organizations in relation to mass atrocity prevention efforts for South Sudan).

> UN Member States. Some governments are backing a short-sighted plan to repatriate Rohingya refugees from Bangladesh before their safety and human rights in Myanmar can be ensured. Few countries have stepped up to support resettlement or other durable solutions for Rohingya.[225]

Similar observations could also be made about the global indifference and paralysis of many States and international organizations as to their international legal duties of non-recognition, non-assistance, and cooperation to end peremptory norm (*jus cogens*) violations through lawful means, in the specific context of China's treatment of Uyghur Muslim communities, where the United Nations Office of the High Commissioner for Human Rights issued its damning 2022 Assessment concluding that China had committed and is continuing to commit serious violations of civil, political, economic, social and cultural rights, including the peremptory norms or *jus cogens* norms such as the right to self-determination and China's commission of various crimes against humanity against Uyghur Muslim communities in Xinjiang.[226] China's powerful role as a Permanent Member of the United Nations Security Council prevented in 2022 any discussion of the UN OHCHR report and debate at the UN Human Rights Council on China's Xinjiang policies towards Uyghur Muslims.[227] Since that failure to open debate at the UN Human Rights Council, the rest of the member States of the United Nations "have engaged in little collective action against the crimes [against humanity]

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225. Press Release, Off. High Comm'r for Hum. Rts., *UN expert demands accountability for the Rohingya and an end to 'paralysis of indifference'* (Aug. 24, 2023), https://www.ohchr.org/en/press-releases/2023/08/un-expert-demands-accountability-rohingya-and-end-paralysis-indifference [perma.cc/T79N-C4FY].

226. *See* OFF. HIGH COMM'R FOR HUM. RTS., ASSESSMENT OF HUMAN RIGHTS CONCERNS IN THE XINJIANG UYGHUR AUTONOMOUS REGION, PEOPLE'S REPUBLIC OF CHINA 143 (2022).

227. *See* Delisha Valacheril, *UN Human Rights Council Votes Against Debate Over China's Xinjiang Policies After Releasing Report Detailing Human Rights Violation of Uyghur Muslims*, UAB INST. FOR HUM. RTS.: BLOG (Oct. 31, 2022), https://sites.uab.edu/humanrights/2022/10/31/un-human-rights-council-votes-against-debate-over-chinas-xinjiang-policies-after-releasing-report-detailing-human-rights-violation-of-uyghur-muslims/#:~:text=China's%20hardline%20policies%20in%20the,UN's%20own%20human%20rights%20office [perma.cc/82N5-3KV5]; Emma Farge, *UN body rejects debate on China's treatment of Uyghur Muslims in blow to West*, REUTERS (Oct. 6, 2022), https://www.reuters.com/world/china/un-body-rejects-historic-debate-chinas-human-rights-record-2022-10-06/ [perma.cc/3TZS-3K4N].

being committed against Uyghurs and others."[228] Only a grouping of Western countries (the United States, the European Union, the United Kingdom, and Canada) voluntarily pursued any concrete cooperative actions seeking to end by lawful means China's peremptory norm (*jus cogens*) violations against the Uyghur Muslim communities.[229] As of July 2025, neither the peremptory norm (*jus cogens*) violations committed by Myanmar against the Rohingya Muslim population, or China's peremptory norm (*jus cogens*) violations against the Uyghur Muslim population in Xinjiang, have ever risen prominently in international diplomatic efforts or most States' foreign policies to ensure their prompt discharge and good faith performance of international legal duties of non-recognition, non-assistance, and cooperation to end by lawful means such peremptory norm (*jus cogens*) violations.[230]

B. Proposals for Institutional Reporting, Reparative Design, International Responsibility

This Article has established the incipient, sporadic, and selective practices to date on the fulfilment and performance by all States and international organizations of their international legal duties of non-recognition, non-assistance, and cooperation to end by lawful means any and all peremptory norm (*jus cogens*) violations. I have two modest proposals that, in my view, will help shift all States and international organizations towards better compliance with these international duties.

1. Institutional Reporting

Nowhere in any State's Universal Periodic Review or reportorial process involving any of the nine fundamental human

228. *China: UN Needs to Address Crimes Against Humanity*, HUM. RTS. WATCH (Aug. 27 2024), https://www.hrw.org/news/2024/08/27/china-un-needs-address-crimes-against-humanity [perma.cc/5G8S-B5E8].

229. *See Uighurs: Western countries sanction China over rights abuses*, BBC (Mar. 22, 2021), https://www.bbc.com/news/world-europe-56487162 [perma.cc/NP2D-2PD3].

230. *See Myanmar: four years after coup, the world must demand accountability for atrocity crimes*, AMNESTY INT'L (Jan. 31, 2025), https://www.amnesty.org/en/latest/news/2025/01/myanmar-four-years-after-coup-world-must-demand-accountability-for-atrocity-crimes/ [perma.cc/GY76-CMMR]; *see also International responses to the Uyghur crisis in Uyghur Human Rights Projec*t, UYGHUR HUM. RTS. PROJECT, https://uhrp.org/responses/ [perma.cc/N8VU-YGVM] (last visited Feb. 15, 2026).

rights treaties (e.g., International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention Against Torture; International Convention on the Elimination of All Forms of Racial Discrimination; International Convention Against Enforced Disappearances; Convention on the Rights of the Child; Convention on the Elimination of All Forms of Discrimination Against Women; Convention on the Rights of Persons with Disabilities; International Convention on the Protection of Migrant Workers and their Families) is there any requirement for a State to submit information on what it is doing to ensure compliance with the international legal duty not to recognize situations resulting from peremptory norm (*jus cogens*) violations, the international legal duty not to assist or render aid to maintain such situations, as well as the international legal duty to cooperate to end by lawful means such peremptory norm (*jus cogens*) violations. Likewise, there is no such requirement to submit information on compliance with these duties anywhere else in the United Nations system. This information vacuum is a significant problem that compounds the selectivity and inconsistency of the actions taken by States and international organizations when it comes to different situations or contexts involving mass atrocities or other situations resulting from any State's peremptory norm (*jus cogens*) violations. The international legal duties of non-recognition, non-assistance, and cooperation against peremptory norm (*jus cogens*) violations tend to fade into the ether of international discourse when States and international organizations are not reminded of the binding legal nature of these duties and required to report on their *pacta sunt servanda* fulfillment of these duties for any and all peremptory norm (*jus cogens*) violations.

When information about compliance and non-compliance with these duties is not reported or made available, it becomes all too easy for any State or international organization to simply remain silent and not act to cooperate to end such peremptory norm (*jus cogens*) violations through lawful means, or to continue economic or cross-border activities that can materially aid or assist in the maintenance of situations resulting from such violations, or even to act in ways that can extend either implicit or explicit recognition for such situations resulting from such violations. To this end, the international reportorial mechanisms at the United

Nations should go well-beyond topics such as "responsibility to protect", and instead focus on Member States' actual compliance with the international duties of non-recognition, non-assistance, and cooperation, as part of their continuing obligations under Article 56 in relation to Article 55(c) of the Charter of the United Nations. Civil society organizations and other groups should be permitted transparent access to information about what all States and international organizations are doing or not doing to comply and perform their continuing international legal duties of non-recognition, non-assistance, and cooperation to end by lawful means any and all peremptory norm (*jus cogens*) violations. Enabling global access to such information, such as when the information is stored in public indices at the United Nations, could help depoliticize adversarial "Global South versus Global North" discourses on the selectivity of non-recognition, non-assistance, and cooperation to end by lawful means any and all peremptory norm (*jus cogens*) violations. When all States and international organizations themselves can see what is being done and what is not being done on mass atrocities and other situations resulting from peremptory norm (*jus cogens*) violations, better policies, decisions, statements, and conduct can be intentionally undertaken at a global level to create the minimum safety valve against such violations. Other scholars have proposed other information and data collection exercises, such as "atrocity impact assessments."[231] Whatever form such information on the international legal duties of non-recognition, non-assistance, and cooperation is presented or collected, there has to be systematic and periodic reporting required from all States and international organizations that bear these legal obligations.

Embedding these three international legal duties within existing frameworks of institutional reporting to United Nations treaty bodies, specialized agencies, the General Assembly, the Human Rights Council, and the Security Council, is a crucial first step to shifting all States and international organizations towards the routine fulfillment and good faith performance of the duties of non-recognition, non-assistance, and cooperation as the default expectation and norm of behavior to be practiced in the

231. *See e.g.*, Federica D'Alessandra & Shannon Raj Singh, *Operationalizing Obligations to Prevent Mass Atrocities: Proposing Atrocity Impact Assessments as Due Diligence Best Practice*, 14 J. HUM. RTS. PRAC. 769, 770 (2022).

international system. Institutional reporting subverts the current implied dialectic that these international legal duties do exist for all States and international organizations, but they somehow need not be practiced, implemented, or discharged faithfully, in good faith, and consistently with international law. Institutional reporting avoids the leakages and failures that have been tolerated for so long when it comes to global responses to mass atrocities and other situations resulting from peremptory norm (*jus cogens*) violations.

2. International Responsibility

Moreover, since the international legal duties of non-recognition, non-assistance, and cooperation to end by lawful means any and all peremptory norm (*jus cogens*) violations are themselves continuing and binding international legal obligations of all States and international organizations, they themselves could be the subject of breaches resulting in internationally wrongful acts for which the international responsibility of any State or international organization could be engaged. This theory has been attempted, but under a different source of international law. In May 2025, the International Court of Justice issued its Order in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in Sudan (Sudan v. United Arab Emirates),* where it dismissed Sudan's request for the indication of provisional measures and ordered the removal of this case from the Court's General List due to manifest lack of jurisdiction (e.g., the UAE had entered a reservation against Article IX of the Genocide Convention).[232] Sudan's theory was that the UAE was complicit in genocide in Darfur due to the material and unlimited support extended by the UAE to the Rapid Support Forces (RSF) and militia groups that Sudan alleged committed the destruction of the Masalit people.[233] In its Application, Sudan focused entirely on anchoring its theory of complicity in the Genocide Convention as the applicable law to its dispute with the UAE, and wholly omitted to discuss the international legal duties of non-recognition, non-assistance, and cooperation to end by lawful means any and all

232. *See* Application of the Convention on the Prevention and Punishment of the Crime of Genocide in Sudan (Sudan v. U.A.E.), 2025 I.C.J. 197, at 9 ¶ 35 (May 5).

233. *See id.* ¶¶ 4–5, 9–10.

peremptory norm (*jus cogens*) violations, as codified by the International Law Commission, and recognized throughout the jurisprudence of the International Court of Justice. While this would not necessarily resolve the thorny issue of jurisdiction through State consent for contentious disputes submitted to the International Court of Justice, Sudan could have invoked the UAE's alleged international responsibility through a United Nations General Assembly request for an advisory opinion, similar to the successful 2019 *Chagos Advisory Opinion,* the 1971 *Namibia Advisory Opinion,* and the *2024 Policies and Practices of Israel Advisory Opinion*.

A full-blown analysis of the possible international responsibility of States and international organizations that fail to perform their international legal duties of non-recognition, non-assistance, and cooperation to end by lawful means any and all peremptory norm (*jus cogens*) violations is well beyond the scope of this Article. Neither is it intended or at all recommended, for the sake of responding to mass atrocities and other situations of peremptory norm (*jus cogens*) violations, that States should simply resort to litigation against other States for any perceived failures to discharge any of these three duties. That will not address the crux of present and future problems involving proliferating and enduring mass atrocities throughout the world. Recognizing that the duties of non-recognition, non-assistance, and cooperation are binding sources of international law is simply the first step in any future legal scaffolding towards international legal responsibility. For the present, it should suffice that the binding international obligations flowing from these international legal duties of non-recognition, non-assistance, and cooperation are themselves sources of international law for which future disputes could be anchored on seeking international responsibility for internationally wrongful acts of States or international organizations. Much, of course, will turn on the qualification and characterization of the internationally wrongful act, its attribution to a State or international organization, and the applicability of any legal, factual, or evidentiary defenses before any such conclusion of international responsibility could be drawn against any State or international organization that does not perform its duties of non-recognition, non-assistance, and cooperation.

3. Reparations Design

Finally, it is essential, for the duties of non-recognition, non-assistance, and cooperation to end by lawful means any and all peremptory norm (*jus cogens*) violations to be consistently reflected in the design of both negotiated, as well as adjudicated reparations for such violations. Negotiated reparations do not simply involve the parties seeking reparation for peremptory norm (*jus cogens*) violations, but also transformative societal changes and policy directions for the States and international organizations involved in any such transitional justice mechanisms or processes that involve negotiating reparations.[234] Embedding, monitoring, and verifying the implementation by States and international organizations of their duties not to recognize situations resulting from peremptory norm (*jus cogens*) violations, not to assist or render aid to maintain such situations, and to cooperate to end by lawful means any and all such violations, exemplifies a whole-of-society process that ensures continued global involvement and vigilance as a minimum safety valve to help end mass atrocities. Similarly, adjudicated reparations that incorporate the continuing performance of international legal duties of non-recognition, non-assistance, and cooperation of all States and international organizations affirms the global scope and impact of any peremptory norm (*jus cogens*) violation and the continuing obligations of all States and international organizations not to recognize, not to assist, and to cooperate to end by lawful means any and all such violations.

From the perspective of victims of a State or international organization's peremptory norm (*jus cogens*) violations, internalizing the non-recognition, non-assistance, and cooperation duties of all States and international organizations provides the victims with added dimensions of repair that transcends the narrow confines of perpetrators, to also acknowledge the structural global architecture that is involved in preventing, addressing, and redressing mass atrocities from violations of peremptory norms (*jus cogens*) such as genocide, torture, crimes against humanity, violations of international human rights law and international humanitarian law, and the United Nations Charter

234. *See* David C. Gray, *A No-Excuse Approach to Transitional Justice: Reparations as Tools of Extraordinary Justice*, 87 WASH. UNIV. L. REV. 1043, 1085 (2010).

prohibitions against aggression, annexation, violations of the right to self-determination, the dignity of the human person, and the fundamental freedoms and rights of all individuals and peoples of the United Nations. If there truly is a responsibility to protect against mass atrocities that is reflected in the minimum safety valve of the international legal duties of non-recognition, non-assistance, and cooperation of all States and international organizations to end such atrocities by lawful means, then this global responsibility should also be translated in the envisaged long-term repair that can help make victims whole and hopefully, make mass atrocities a thing of the past for the victims and not a looming danger in their reparative futures. Reimagining reparations for victims of violations of peremptory norms (*jus cogens*) must begin with treating these violations ultimately as collective harms to the common good.

IV. CONCLUSION

Given the traditionally broad legal defenses of State immunity and the immunities of international organizations that would ordinarily bar tort claims against States or international organizations that do not give their consent to be sued, more individual criminal cases are instead being brought before national courts that assert violations of peremptory norms (*jus cogens*).[235] There is no reported national court decision, as of this writing, that involves civil causes of action (e.g., tort claims) by victims against a State or international organization for violating the international legal duties of all States and international organizations not to recognize situations arising from peremptory norm (*jus cogens*) violations, not to assist or render aid in maintaining such situations, and to cooperate to bring to an end by lawful means any and all such peremptory norm (*jus cogens*) violations. Assuming a foreign State or international organization has given consent to be

235. *See generally* Brianne McGonigle Leyh, *Using Strategic Litigation and Universal Jurisdiction to Advance Accountability for Serious International Crimes*, 16 INT'L J. TRANSITIONAL JUST. 363 (2022) (exploring various efforts towards strategic litigation in foreign courts for *jus cogens* violations such as torture, crimes against humanity); Kristin E. Boon, *The United Nations as Good Samaritan: Immunity and Responsibility*, 16 CHI. J. INT'L L. 340 (2016); Jam et al. v. Int'l Fin. Corp, 586 U.S. 199 (2019) (discussing the lingering challenges of immunity for the UN as an international organization and its counterpart responsibility for the conduct of UN operatives in various countries).

sued before a national court, however, then depending on how any national legal system internalizes international law (monist, dualist, hybrid), all States and international organizations' continuing international legal duties of non-recognition, non-assistance, and cooperation could someday also form part of the applicable law in disputes involving the conduct of such States and international organizations in relation to victims' claims arising from peremptory norm (*jus cogens*) violations.

This Article unravels the convoluted doctrinal and jurisprudential threads on the international legal duties of non-recognition, non-assistance, and cooperation to end by lawful means any and all peremptory norm (*jus cogens*) violations, revealing that the critical functions of these international legal duties applicable to all States and international organizations remains underutilized today against continuing and proliferating mass atrocities throughout the world. I have shown that these international legal duties are mandatory, applicable to all States and international organizations, and are not so interpretively indeterminate as to justify the continuing failures of all States and international organizations in the international system to perform the international legal duties of non-recognition, non-assistance, and cooperation in good faith and *pacta sunt servanda.* These international legal duties are not merely convenient options for all States and international organizations to performatively demonstrate charity or solidarity during mass atrocities and other situations resulting from peremptory norm (*jus cogens*) violations. Rather, they are imperative legal duties imbued with moral content—collectively, non-recognition, non-assistance, and cooperation is the minimum safety valve of a global response when mass atrocities and other peremptory norm (*jus cogens*) violation occurs anywhere. And yet, they remain selectively and inconsistently discharged by all States and international organizations to date, because there is neither information reported on compliance and non-compliance with these international legal duties, and no international responsibility could be exacted by victims of peremptory norm (*jus cogens*) violations for the neglect or omission of all States and international organizations to fulfill these mandatory duties under international law. This Article advances the conversation to have all States and international organizations examine their own conduct, inaction,

policies, and measures in the face of mass atrocities, to at least determine if they have met the minimum standard of collective legal duties of non-recognition, non-assistance, and cooperation that the survival of the international system requires.