

The Untold Truths of International Law

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Reçu: 27/10/2025

Accepté: 28/11/2025

Abstract:

The tragedy of Gaza, marked by the systematic and large-scale crimes committed by the Zionist regime, has highlighted an unprecedented crisis of international law, revealing its structural inability to fulfill its universal vocation of justice. Far from embodying a bulwark against oppression, this body of law is manipulated by power relations, applied selectively and unequally, leaving the most egregious crimes unpunished when shielded by dominant powers. The paralysis of international institutions, the ineffectiveness of their mechanisms, and the normalization of impunity enshrine a normative failure that undermines the legitimacy of the global legal order. Gaza thus emerges as the symbol of a historic turning point where international law, supposedly meant to protect peoples and guarantee peace, is transformed into a silent witness to horror, deepening a chasm of mistrust and disillusionment that humanity had never experienced with such intensity.

Keywords : genocide – international responsibility – state crime – peremptory norms – obligations erga omnes.

Introduction

Since the emergence of modern international law, its fundamental objective has consistently been to safeguard peace, security, and universal justice by protecting the fundamental rights of humanity. However, the recent events in Gaza marked by an unprecedented escalation of war crimes and massive violations of human rights perpetrated by the Zionist regime have exposed the profound weaknesses and contradictions of a system that is supposed to embody the very ideal of justice. What is at stake here goes far beyond the tragedy of an besieged people; it represents a true test of legitimacy for the international legal order itself.

Indeed, the spectacle of international law being applied selectively and subject to the political will of dominant powers entrenches a profound normative inequality. While some states or leaders from the Global South are swiftly sanctioned, others, benefiting from strategic support, systematically escape any form of accountability. This reality is not merely a technical shortcoming; it reflects a structural crisis in which impunity becomes the norm and human suffering remains unremedied.

The situation in Gaza sharply illustrates the paralysis of international institutions, incapable of ensuring the enforceability of their own decisions, as well as the progressive erosion of peoples confidence in international law. The pressing question, therefore, is whether international law can still be regarded as a credible instrument of protection and justice, or whether it has become nothing more than an expression of a world order dominated by force and power dynamics.

This study seeks to address that central question by analyzing how the crimes committed in Gaza reveal not only the extent of the current crisis facing international law, but also the urgent necessity of a profound re-foundation of its mechanisms, in order to restore its primary vocation: the defense of humanity and the preservation of global peace.

Chapter I: International Law as an Organizing Framework

The world has always required legal norms to govern human conduct and to set limits on individual behavior, particularly with regard to the rights vested in them whether these be natural rights acquired through customary practice, or divine rights acknowledged by the various revealed legislations that have accompanied humanity since its very origin.

Section 1: The Remote Origins and Progressive Formation of the Law of Nations

From Antiquity onward, one can indeed discern certain customary practices foreshadowing a rudimentary law of nations such as the protection of ambassadors, the conclusion of peace treaties, or the relative limitation of wartime violence. Yet these practices were more empirical behaviors than components of a coherent normative order.

The true turning point came during the Renaissance with the rise of the School of Salamanca. Francisco de Vitoria, in his *Relectiones* (1539), laid the groundwork for a universal law aimed at protecting the dignity and rights of indigenous peoples in the face of colonial conquest. However, it was Hugo Grotius, through his seminal work *De Jure Belli ac Pacis* (1625), who truly enshrined the idea of a common law of humanity one independent of religious affiliations and grounded instead in natural reason. As Robert Kolb observes, Grotius sought to liberate the law of nations from the exclusive hold of theology by grounding it in human reasonⁱ.

Yet this universalist ambition, admirable in theory, quickly revealed its practical and ideological limits. Behind the proclamation of a rational law lay a project deeply marked by European and colonial influence, in which legal norms were instrumentalized to justify expansion and the subjugation of non-European peoples. As Alain Pellet points out, classical international law long remained the law of European sovereign States alone, excluding the vast majority of humanity from its scopeⁱⁱ.

Thus, far from constituting a true emancipatory rupture, the progressive formation of the law of nations unfolded within an ambiguous dynamic universalist in aspiration but selective and hierarchical in practice. This tainted legacy, where reason allied itself with domination, largely explains why contemporary international law remains haunted by an original contradiction: it proclaims universality

while perpetuating mechanisms of exclusion and injustice which, even today, underpin its inability to respond effectively to mass crimes, such as those being committed in Gaza.

Section 2: The Classical Consolidation of International Law (17th–19th Centuries)

The Treaties of Westphalia (1648) marked a major rupture: they enshrined the principle of state sovereignty and inaugurated the Westphalian order. As Alan Pellet notes, classical international law was defined first and foremost as a law of sovereign States, organizing their external relations without any claim to regulate the internal sphere ⁱⁱⁱ.

During the classical period of international law (17th–19th centuries), the international legal system was characterized by three essential features which, far from constituting elements of solidity, in fact revealed its fragility and structural biases.

First, the predominance of custom and bilateral treaties reflected a legal order that was essentially consensual and unstable, in which only the great powers could impose norms, relegating other States to the role of mere spectators. As Pellet recalls, classical international law was nothing more than a law of minimal coexistence, elaborated by and for sovereigns, devoid of universalist ambition and reduced to the codification of opportunistic practices ^{iv}.

Second, this body of law presented itself as ostensibly universal, but in reality it was profoundly Eurocentric, shaped by the great colonial powers that used it as an instrument of hegemony and as a means to legitimize their imperial enterprises. This critique has been extensively developed by Robert Kolb, who observes that the proclaimed universality of classical international law in truth concealed a normative project dominated by Europe, where the implicit hierarchy between the civilized and the non-civilized served to justify colonial expansion^v.

Third, the complete absence of binding mechanisms enshrined the system's inherent weakness. International law was conceived as a horizontal order, dependent solely on the consent of States, and thus incapable of sanctioning massive violations or effectively protecting peoples. As Pellet further emphasizes, the authority of international norms remained subject to the good will of powerful States, which nullified any claim to universality or objectivity ^{vi}.

Thus, far from paving the way for a just world order, classical international law laid the foundations of an unequal, selective, and ineffective system a law of exclusion, fashioned by and for the powerful, serving colonial interests and structures of domination. The current impotence of international law in the face of contemporary tragedies foremost among them the crimes committed in Gaza should not be seen as an accidental anomaly, but rather as the logical consequence of a tainted legacy, in which legal norms have always yielded to force and the proclaimed universal has functioned merely as a legal mask for hegemony.

As Prosper Weil reminds us, the proclaimed universality of international law was for a long time nothing more than a façade universality, in reality concealing a European law unilaterally exported ^{vii}.

From its very origins, therefore, international law has carried within it a fundamental ambiguity: while proclaimed universal, it was nonetheless constructed on the exclusion of vast parts of the world subjected to colonial domination.

Section 3: The Dialectic of the Beginnings of Transformation (20th Century)

The traumatic experience of the two World Wars marked a decisive turning point in the evolution of international law, brutally exposing the limits of the classical model, which had proved incapable of preventing mass atrocities or protecting civilian populations from the most heinous crimes. The creation of the League of Nations in 1919, followed by the establishment of the United Nations in 1945, constituted a major milestone in the process of institutionalizing international law, now intended to serve as a guarantor of peace and collective security.

Yet, as Antonio Cassese forcefully observed, the Second World War demonstrated that interstate international law was powerless to prevent mass atrocities; hence the emergence of a law of humanity ^{viii}. Two major developments marked this transformation: on the one hand, the rise of international

human rights law, embodied in the Universal Declaration of 1948 and later consolidated by the 1966 Covenants; on the other hand, the development of international criminal law, initiated by the Nuremberg and Tokyo trials (1945–1946) and subsequently enshrined in the 1998 Rome Statute and the creation of the International Criminal Court in 2002.

Within this dynamic, Georges Scelle could speak of a genuine socialization of international law, emphasizing that the individual ceased to be a mere object of legal norms and became instead a true subject^{ix}. Similarly, Hersch Lauterpacht proposed conceiving international law as an order aiming to subordinate power to justice^x. an idealistic ambition that, however, soon collided with the harsh reality of power politics.

Indeed, while the 20th century witnessed an unprecedented normative expansion, it also confirmed the persistence of selective application of the law. The universality so often proclaimed was constantly belied by practice, in which legal norms gave way to the geopolitical interests of the powerful. As Robert Kolb writes, international law is a fragile edifice, oscillating between normative ideal and political constraints^{xi}.

It is precisely this structural fragility fueled by the gap between proclaimed ideals and the reality of domination that today stands fully exposed in the face of the crimes committed in Gaza. By tolerating the systematic impunity of such massive violations, the international community confirms that international law, far from embodying a credible instrument of universal justice, remains captive to a tainted legacy and a chronic inability to restrain the powerful. Gaza thus emerges as the most brutal illustration of an unprecedented structural crisis, one that undermines the founding promise of a law intended to protect humanity from barbarism.

Chapter II: From Law to a Legal Order (Supposedly International)

The emergence of international law as a regulator of relations among its subjects, combined with the progressive evolution of international society, has made inevitable its transformation from a mere normative corpus into a genuine international legal order. This transformation has unfolded across three complementary dimensions: institutionally, through the creation of international organizations ensuring the permanence of collective action; substantively, by the expansion of the normative scope to essential domains such as human rights, trade, the environment, and international criminal law; and procedurally, with the establishment of judicial and quasi-judicial mechanisms intended to guarantee the application and interpretation of rules. In this way, international law is no longer confined to a set of inter-State regulations, but increasingly tends to constitute an autonomous, structured, and coherent legal order designed to regulate the full spectrum of interactions within the international community.

Section 1: The Identity Crisis of International Law (Rules or General Principles?)

According to Professor Alain Pellet, international law as enshrined in its texts is no longer merely a set of rules in the classical sense, but is increasingly tending to transform into general principles binding upon the entire international community. This evolution follows a logic akin to the theory of the social contract, insofar as States accept to limit part of their sovereignty in order to make peaceful and organized coexistence possible. It is also manifested through the progressive affirmation of the general principles of contemporary international law, which today constitute the normative foundation of a global legal order in search of legitimacy and universality^{xii}.

The development of international law, as analyzed by Alain Pellet in his doctoral thesis^{xiii}, illustrates a gradual shift from a set of classical inter-State rules towards a systematization of binding general principles. According to him, these principles cannot be reduced to mere supplementary norms, but rather tend to constitute an autonomous and objective source of the law of nations, on par with custom and treaties^{xiv}. This evolution reflects the aspiration to transcend a purely horizontal legal orderone dependent exclusively on State consent towards a structured order in which normativity is grounded in shared universal values. In this perspective, Pellet implicitly likens this transformation to the logic of the social contract: by agreeing to submit to superior principles, States renounce part of their sovereignty in order to ensure peaceful coexistence and legal predictability^{xv}.

Nevertheless, this transformation remains profoundly ambivalent. Pellet himself acknowledges that general principles function above all as normative bridges, that is, tools designed to fill the gaps of a fragmented international law^{xvi}. Their imprecise and transitional nature has prompted criticisms from positivist doctrine. Thus, Charles Rousseau argued that such principles, owing to their lack of precision, remain too vague to constitute operational rules^{xvii}. Similarly, Paul Guggenheim maintained that one cannot confuse general principles of law with truly binding norms^{xviii}. Other scholars, however, such as Michel Virally, viewed them as an instrument of normative consolidation, considering that general principles meet a need for law inherent to any international society^{xix}.

Ultimately, Pellet highlights the identity crisis of international law: on the one hand, a growing aspiration to normative objectivity and universality embodied by general principles; on the other hand, the persistence of a system dominated by State voluntarism and power relations. As Robert Kolb aptly notes, international law is a fragile edifice, oscillating between normative ideal and political constraints^{xx}. This tension explains why general principles, far from representing a fully accomplished advance, also appear as indicators of an unfinished transformation, unable to prevent impunity in the face of massive violations of the law such as those being perpetrated today in Gaza.

Section 2: Jus Cogens (as an Unwanted Newborn)

The emergence of peremptory norms of general international law (*jus cogens*) has often been presented as a major step forward in consolidating a more coherent and hierarchical international legal order. These norms, supposedly binding on all States without the possibility of derogation, embody in theory the expression of a universal consensus aimed at protecting the fundamental values of the international community. Yet this normative newborn, far from being welcomed with enthusiasm, has often been perceived as an unwanted child both in doctrine and in practice. Indeed, many States have expressed reluctance to recognize the existence of rules superior to their sovereign will, fearing that such norms could become a political instrument serving the interests of the great powers. As Michel Virally observed, *jus cogens*, although legally necessary, has suffered from a deficit of practical acceptability^{xxi}. Similarly, Prosper Weil warned of the risk of an arbitrary use of these norms, suggesting that they might become a tool of manipulation rather than a genuine universal advance^{xxii}.

Thus, although the emergence of peremptory norms theoretically represents a decisive step toward the humanization of international law, their ambiguous, contested, and selectively applied status paradoxically makes them an unwanted newborn, exposing the deep contradictions of a legal system still trapped in power relations. The appearance of *jus cogens* marked a break with the classical conception of international law, historically dominated by State voluntarism. As early as 1937, Alfred Verdross argued that a treaty could be void if it contravened certain higher values of the international legal order^{xxiii}. He later deepened this reflection in *Jus dispositivum* and *jus cogens* in international law^{xxiv}, distinguishing between dispositive norms and peremptory norms. This genesis was also influenced by natural law thinking, notably in Vattel^{xxv}, and was consolidated after 1945 by the rise of human rights and the United Nations Charter. As Bedjaoui observed^{xxvi}, the international system gradually recognized that certain values human dignity, the prohibition of genocide, and the prohibition of slavery transcend State consent. Yet this genesis was shaped by controversy and conceptual ambiguity, which explains the subsequent difficulties in defining and applying these rules.

The introduction of *jus cogens* triggered deep doctrinal divisions. On the one hand, radical positivists such as Dionisio Anzilotti^{xxvii} denied any hierarchy imposed on States independently of their consent, maintaining that sovereign equality must remain absolute. On the other hand, scholars such as Antonio Gómez Robledo^{xxviii} and Alain Pellet^{xxix} argued that international public order required the recognition of peremptory norms.

This controversy was not merely theoretical. As Morsli Mohamed explains^{xxx}, it reflected a political confrontation between, on the one hand, powers in favor of limiting sovereignty through the consecration of *jus cogens*, and, on the other, States unwilling to accept any external restrictions on their contractual freedom. The Vienna Convention on the Law of Treaties (1969) enshrined the legal recognition of *jus cogens*. Article 53 defines peremptory norms as norms accepted and recognized by the international community of States as a whole, invalidating any treaty that conflicts with them. Article 64 further provides that the emergence of a new peremptory norm renders incompatible treaties

automatically void. Yet the Vienna Conference did not eliminate all ambiguities. Mustafa Kamil Yasseen, during the debates^{xxxix}, clarified that recognition of a peremptory norm did not require unanimity but only a broad majority, thereby opening the door to contestation. David Ikoghou-Mensah^{xxxii} criticized this imprecision, arguing that it weakened the binding force of the framework. As Olivier Corten and Pierre Klein note^{xxxiii}, the integration of jus cogens into treaty law has primarily declaratory value, given the absence of clear institutional mechanisms to ensure its application.

Despite its consecration, the application of jus cogens remains hampered by major difficulties. First, the identification of its content remains uncertain: while the prohibitions of aggression, genocide, and torture are widely recognized^{xxxiv}, other areas remain controversial^{xxxv}. highlights the absence of an objective mechanism to determine these norms. Second, international jurisprudence has revealed its limited application. In *Jurisdictional Immunities of the State*^{xxxvi}, the Court refused to give precedence to jus cogens over State immunity, demonstrating the tension between normative imperativity and the stability of international relations^{xxxvii}. even speaks of a normative paradox: jus cogens is proclaimed as superior but neutralized in practice. Finally, as Morsli has shown^{xxxviii}, jus cogens is often politically instrumentalized, used to legitimize certain diplomatic positions, and remains more of a rhetorical tool than an effective legal instrument.

In sum, jus cogens represents an undeniable conceptual advance but suffers from considerable practical limitations. The absence of a supervisory body, the ambiguity of its content, and the resistance of States reveal the contradictions of an international legal order still dominated by sovereignty.

Section 3: Erga Omnes Obligations (Trojan Horse)

The jurisprudence of the ICJ in the *Barcelona Traction* case^{xxxix} was the first to establish the category of erga omnes obligations. By emphasizing that certain obligations are owed to the international community as a whole, the Court opened the way to a conception of international law no longer founded exclusively on bilateral relations, but on the safeguarding of universal collective values. Cassese^{xl} observed that this innovation introduced a paradigmatic rupture: the recognition of collective legal interests distinct from the particular interests of States. However, as Dupuy recalled^{xli}, this innovation preceded the codification of jus cogens in the 1969 Vienna Convention, thereby demonstrating the functional priority of the notion of erga omnes obligations.

In practice, the international community has often relied on the category of erga omnes obligations to give concrete content to jus cogens, whose definition remains abstract. Thus, Simma^{xlii} emphasizes that the list of erga omnes obligations operates as a normative compass for determining peremptory norms in the absence of any formal mechanism. Roberto Ago, in his work for the ILC^{xliii}, stressed that erga omnes obligations form the basis for establishing a special regime of responsibility, which necessarily overlaps with violations of jus cogens. From this perspective, the two notions are mutually reinforcing: one provides the substantive content (jus cogens), while the other defines the procedural scope (erga omnes).

As Morsli forcefully argues, this constant recourse to erga omnes obligations highlights a structural weakness of international law: in the absence of an objective mechanism to identify peremptory norms, practice is content to infer their existence from obligations already recognized as erga omnes^{xliv}. Many scholars have criticized the conflation of the two concepts. Kolb^{xlv} points out that jus cogens represents a norm of substantive validity, while erga omnes obligations relate to standing to bring an action in case of violation. Alain Pellet, in his study on the codification of the law of international responsibility, insists that responsibility can no longer be conceived in an exclusively bilateral framework; it must be understood as a mechanism reflecting the protection of the common interest of the international community, directly tied to the philosophy of jus cogens^{xlvi}. He further draws a parallel between the notion of the international crime of the State and that of peremptory norms, both aiming to sanction violations that affect the entire international community^{xlvii}. Yet, as Joe Verhoeven notes, while the proximity is undeniable, their methodological confusion undermines the analytical precision of international law^{xlviii}. This confusion, he warns, opens the door to political instrumentalization. Indeed, the indistinct invocation of jus cogens and erga omnes obligations allows powerful States to select which violations to denounce, while ignoring those that do not serve their interests.

The proclaimed value of the *erga omnes/jus cogens* pair has repeatedly clashed with the limits of practical enforcement. As the ICJ demonstrated in the *Jurisdictional Immunities of the State* case^{xlix}, the existence of a peremptory norm (the prohibition of war crimes) was not sufficient to override State immunity. Such restraint reveals judicial timidity in the face of a fragile normative hierarchy. Antonio Cassese^l went so far as to assert that the rhetorical reliance on *erga omnes* obligations merely conceals a lack of real coercive mechanisms. Likewise, Dupuy and Kerbrat^{li} note that *jus cogens* and *erga omnes* are often invoked to legitimize collective responses (sanctions, interventions), but in practice such measures remain selective and dependent on international power relations. As Morsli stresses, the invocation of *erga omnes* and *jus cogens* serves more to construct diplomatic legitimacy than to impose genuine legal constraint^{lii}.

In the end, the functional precedence of *erga omnes* obligations over *jus cogens* has not prevented the two from merging discursively. While this articulation strengthens the communal dimension of international law, it also reveals profound conceptual insecurity. Far from constituting a tool of effective constraint, the constant recourse to *erga omnes* obligations to identify *jus cogens* reflects both methodological fragility and political instrumentalization, thereby weakening the authority of these supposedly superior norms.

Section 4: The International Community as a Whole (Does It Exist?)

The cardinal error of those defending a simple definition of *jus cogens* such as that of Article 53 of the Vienna Convention, which refers to norms accepted and recognized by the international community of States as a whole is to have anchored a supreme category of treaty law in an indeterminate referent. What, then, is this whole of the international community? Where does it begin and end? Who speaks in its name, through what vote, and according to what threshold? In the absence of an authenticating body, one substitutes for a theory of substantive validity a fiction of collective acceptance, thereby constructing a hierarchy of norms on shifting sands.

A substantial part of doctrine has highlighted this ambiguity: the formula of Article 53 is more a stylistic clause than an operative criterion. Alain Pellet demonstrates, in his analysis of international responsibility, that the transition from an exclusively bilateral legal order to the protection of a common interest results less from the creation of any representative institution than from a discursive evolution; communitarianism does exist, yet without any institutional body capable of giving it concrete expression^{liii}. He further draws a parallel between the logic of State crimes and that of *jus cogens*: in both cases, the existence of an interest of the international community as a whole is assumed, without any stable mechanism of determination^{liv}. Along similar lines, Frowein notes that the ICJ in *Barcelona Traction* recognized *erga omnes* obligations in 1970, after the Vienna Convention (1969) had consecrated *jus cogens*, but emphasizes that these two notions, though distinct, are constantly placed in resonance for lack of a better criterion shifting the problem rather than resolving it^{lv}. Thus, the reference to the community becomes more a semantic screen than a legal test.

Lacking an organ or procedural test of identification, practice relies on circular reasoning: *jus cogens* norms are those protecting *erga omnes* interests, and *erga omnes* obligations are those which the community deems fundamental. Frowein describes precisely this argumentative capillarity between *jus cogens* and *erga omnes*^{lvi}. Yet to qualify a norm as opposed to the international community as a whole explains nothing; it already presupposes the existence of such a whole, and avoids specifying according to which indicators (gravity, universality of practice, qualified *opinio juris*, normative irreversibility) the threshold of imperativity is crossed. As Morsli has forcefully denounced, the rhetorical use of the *erga omnes/jus cogens* pair conceals the absence of an objective mechanism of identification, and exposes the proclaimed hierarchy to the play of power politics: imperativity is recognized when convenient, and ignored when it proves inconvenient^{lvii}. The reliance on an elusive community authorizes the political selection of supposedly imperative causes.

Practice recalled by Frowein (Iran sanctions in 1980; Argentina in 1982; civil aviation cases) illustrates reactions by non-injured States invoking *erga omnes*, but in a discontinuous and opportunistic manner^{lviii}. For its part, the ICJ has remained cautious: even in the presence of norms considered *jus cogens*, the Court has sometimes refused to deploy their full effect, as seen in its reluctance to give precedence to imperativity in the absence of a robust procedural framework^{lix}.

Rather than relying on the uncertain formula of the international community as a whole as consecrated by Article 53 of the Vienna Convention of which no one can say precisely where it lies nor by what mechanisms it speaks it appears more rigorous, and above all more consistent with the requirement of legal certainty, to ground the imperativity of international norms in a bundle of cumulative indicators that transcend mere normative slogans. These include: the intrinsic gravity of the protected value, such as the integrity of the human person or absolute prohibitions like slavery or genocide; the universality of practice and qualified *opinio juris*, attested by a hard core of international jurisprudence and quasi-universal instruments; textual non-derogability and recognized prevalence in the resolution of normative conflicts; and finally, the existence of at least a minimal procedural mechanism allowing determination by a court or qualified body and the triggering of common consequences^{lx}.

This reconstruction echoes Pellet's intuition that the common interest of the international community cannot remain a mere rhetorical proclamation but must be legally equipped in order to avoid remaining ineffective^{lxi}. It also confirms Frowein's earlier observation that the conflation of *jus cogens* and *erga omnes* obligations leads to a *petitio principii*, whereby one purports to demonstrate the existence of a peremptory norm by invoking the very category whose definition is problematic^{lxii}. Finally, this approach converges with the critique developed in Morsli's doctoral research, which underlines the fictitious character of the international community as a whole and advocates for a positive clarification of the conditions of access to imperativity, so as to prevent the international normative hierarchy from being instrumentalized by power relations^{lxiii}.

Chapter III: International Law (Between Proclamation and Practice)

It has today become almost commonplace to observe the abyssal gap that separates the noble proclamations of international law solemnly articulated in conventions, resolutions, and the judgments of international courts from their effective implementation in the practice of States. For while this law presents itself as a system founded on universal values human dignity, the prohibition of the use of force, the protection of peoples, and cooperation among nations it is all too often relegated to the status of a performative discourse devoid of real effect. The reality of international relations is instead marked by the primacy of power dynamics, the selectivity in the application of norms, and the instrumentalization of legal concepts by the great powers. Thus, one may legitimately question the relevance of continuing to speak of a binding international law when it becomes evident that the gap between what is proclaimed and what is practiced remains structural, constant, and at times even openly acknowledged.

Section 1: The Domination of Power Relations over Normativity

Despite the solemn proclamation of binding universal norms whether the prohibition of aggression, genocide, or slavery it is clear that their respect, and above all their implementation, depend largely on the political, economic, and military weight of States. This structural dependence reveals that international law has not succeeded in escaping the logic of power relations, resulting in the selective and unequal application of rules. As Cassese notes, the international community continues to function in a mode where powers impose their own conception of legality^{lxiv}, which renders sovereign equality little more than a formal principle, emptied of substance in practice.

Alain Pellet similarly stresses that the notion of the common interest can only be understood as a performative discourse if it is not accompanied by genuine institutional mechanisms capable of translating it into binding obligations^{lxv}. In the same vein, René-Jean Dupuy observes that the recurrent reference to the international community as a whole is often nothing more than a legitimizing formula, serving to conceal the persistence of hegemonic logic^{lxvi}.

The contrast is all the more striking in light of the ICJ's recognition of *erga omnes* obligations in 1970^{lxvii}. Yet this recognition has remained largely ineffective when confronted with the practice of the great powers, which invoke such obligations selectively: violations committed by some States lead to swift sanctions, while those perpetrated by dominant actors or their allies are downplayed or ignored. As Frowein has denounced, this asymmetry in invocation undermines the very credibility of *jus cogens*, transforming it into a rhetorical tool rather than a genuinely binding norm^{lxviii}.

Finally, Morsli forcefully highlights that the universality of international law is only apparent: the effectiveness of peremptory norms remains captive to the balance of power, which determines the convenience of their application^{lxxix}. Thus, the gap between proclaimed normativity and actual practice is not a mere accident, but a structural feature of international law, one that casts serious doubt on its claim to embody an autonomous and binding legal order.

Section 2: The Opportunistic Instrumentalization of International Law

If one accepts that peremptory norms and erga omnes obligations form the foundation of the international normative hierarchy, it must nevertheless be acknowledged that their invocation often occurs in an opportunistic and selective manner, revealing a genuine political instrumentalization of international law. As Joe Verhoeven points out, reference to jus cogens may be a formidable tool of legitimation, but it becomes dangerous when used in a discriminatory and circumstantial way^{lxxx}. Likewise, Bruno Simma emphasizes that the extension of the notions of common interest and erga omnes obligations has, in certain cases, served as a Trojan horse to justify unilateral sanctions or armed interventions clothed in the legal veneer of defending the international community^{lxxxi}.

This tendency is particularly evident in the practice of the great powers, which do not hesitate to portray the conduct of their adversaries as violations of jus cogens, while relativizing or downplaying similar breaches when committed by their own allies. Alain Pellet, in his analysis of State crimes, shows that such asymmetry distorts the very idea of a common interest, which can only subsist if applied in a coherent and universal manner^{lxxxii}. In the same vein, Cassese warns of the risk that international human rights law or humanitarian law might become an instrument of foreign policy rather than a truly universal normative corpus^{lxxxiii}.

Your own research also highlights this recurrent manipulation, noting that the invocation of jus cogens is often less a legal act than a diplomatic act, aimed at legitimizing a political or strategic position^{lxxxiv}.

This reality underscores the intrinsic fragility of the normative edifice: far from ensuring stability and universality, jus cogens and erga omnes obligations have evolved into malleable notions, selectively invoked to serve contingent interests. The result is a gradual erosion of their credibility and the consolidation of an international law shaped to measure, dictated by the balance of power^{lxxxv}.

Section 3: The Structural Deficit of Institutional Effectiveness

Public international law, despite its claim to embody a universal and binding legal order, suffers from a chronic institutional deficit that empties the very notion of peremptory norms (jus cogens) of its substance. Unlike domestic legal systems, where normative authority is accompanied by institutions of oversight and sanction, the international order rests on a horizontal structure dominated by State sovereignty and the absence of a central enforcement authority. This gap is all the more serious given that Article 53 of the 1969 Vienna Convention elevates jus cogens to the rank of a superior norm, yet provides no institution formally empowered to establish violations or impose consequences. As Kolb states, the proclamation of a hierarchy of norms is not enough; in the absence of a clear procedural mechanism, jus cogens remains an abstraction^{lxxxvi}.

International courts reflect this fragility. The International Court of Justice, which is supposed to act as the guardian of international legality, has adopted a contradictory posture: while it has recognized in several decisions the peremptory character of certain norms (such as the prohibitions of aggression, genocide, and war crimes), it has refused to draw all the corresponding legal consequences. The case of *Germany v. Italy* (2012) illustrates this inconsistency: although the ICJ acknowledged that prohibitions relating to war crimes constitute jus cogens, it nonetheless upheld State immunity, thereby neutralizing the practical effect of normative hierarchy^{lxxxvii}. This excessive prudence embodies what Cassese has called a paralyzed judicialization, where judges prefer to preserve the political balance among States rather than strengthen legal constraint^{lxxxviii}.

Frowein's analysis supports this view: in the absence of a collective mechanism capable of determining and sanctioning violations of erga omnes obligations, such obligations remain proclamations devoid of effectiveness^{lxxxix}. In other words, international law erects a façade of universal normativity but fails to establish procedures capable of guaranteeing its enforcement. The Security Council, ostensibly the

executive organ of the international community, has only reinforced this imbalance: on the one hand, it is theoretically competent to act in the face of threats to peace; on the other, its chronic paralysis due to the veto power of permanent members results in a selective and politicized application of peremptory norms. Far from serving as a guarantor of universality, the Security Council reflects the raw balance of power.

Morsli has rightly emphasized that this structural deficit constitutes the true stumbling block of *jus cogens* : as long as no independent and legitimate institution is vested with the power to establish violations and impose binding sanctions, *jus cogens* will remain captive to the power relations and strategic calculations of the great powers^{lxxx}. In this sense, rather than reinforcing normative coherence, the consecration of *jus cogens* and *erga omnes* obligations has exposed a fundamental contradiction: the existence of a proclaimed hierarchy without a hierarchical organ, a proclaimed universality without institutional universality.

Thus, the deficit of institutional effectiveness is not a secondary flaw but a constitutive defect of contemporary international law. It reveals that the proclaimed order exists only through textual and jurisprudential instruments, while its effectiveness remains conditioned by the fluctuating and selective will of powerful States. This radical hiatus between normativity and effectiveness fuels the critique that *jus cogens* is not a genuinely binding norm, but rather a performative fiction, invoked as an argument of political legitimacy without any institutional anchor capable of ensuring its universal application.

Conclusion

Although international law has historically presented itself as an instrument designed to organize and facilitate relations among the subjects of the international community, with the aim of laying the foundations for peaceful and harmonious coexistence among peoples, reality reveals a very different truth: that of a system conceived from the outset with calculated ambiguities, in which the founders proclaimed lofty intentions of humanity and peace while simultaneously concealing objectives of domination and control. This original duplicity has manifested itself in all the deadlocks highlighted throughout our research: dependence on power relations, the instrumentalization of concepts such as *jus cogens* and *erga omnes*, and a chronic institutional deficit paralyzing any effective implementation.

The mask has definitively fallen in the face of contemporary crises, and most strikingly in the tragedy of Gaza, where crimes of unprecedented scale unfold before our eyes: indiscriminate bombardments, systematic massacres, organized famine, deprivation of medical care, and inhuman treatment. All of these acts unmistakably amount to a policy of extermination and genuine ethnic cleansing, surpassing in horror what history has witnessed since the Second World War. This situation, which can without exaggeration be described as genocide, constitutes the ultimate demonstration of the ineffectiveness of international law. While all peremptory norms, all universal instruments, and all *erga omnes* obligations should converge to prevent such crimes, the international legal machinery remains silent, blocked by the cynical exercise of the veto power.

The attitude of the United States repeatedly wielding its veto in the Security Council to shield and prolong the massacres committed by the Israeli regime illustrates to the extreme the criminal instrumentalization of the international legal system. Far from being the guarantor of peace and justice, this system becomes the objective accomplice of impunity, thereby revealing the true nature of the international order: not an order of law, but an order of power, where legal discourse serves only as a veil covering the brutal practices of domination. In this sense, Gaza is not only a humanitarian catastrophe; it is also the ultimate revelation of the failure of international law a law proclaimed as universal and binding, but which in reality dissolves into complicity, silence, and double standards.

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