

---

## UNDERSTANDING JUS COGENS: THE EVOLUTION OF PEREMPTORY NORMS IN INTERNATIONAL LAW

---

N. Ajith Chakravarthy, Assistant Professor of Law, Dr. Ambedkar Law University, Chennai

### ABSTRACT

The doctrine of jus cogens occupies a central position in contemporary international law by establishing a category of peremptory norms from which no derogation is permitted. These norms reflect the fundamental values shared by the international community and prevail over conflicting treaty provisions, customary international law, and domestic legislation. They serve as the legal foundation for the protection of human dignity, fundamental human rights, and the maintenance of the international legal order. This paper examines the concept of jus cogens by analysing its legal foundations, defining characteristics, practical application, and continuing relevance in international law. Relying on the Vienna Convention on the Law of Treaties (1969), customary international law, and the decisions of international courts and tribunals, the study explains how peremptory norms establish a hierarchy within international law and contribute to legal certainty and state accountability. It discusses widely recognised examples of jus cogens, including the prohibitions against genocide, slavery, torture, crimes against humanity, racial discrimination, and the unlawful use of force. The paper further explores the broader significance of jus cogens in shaping the international legal system by limiting the exercise of state sovereignty, strengthening the protection of fundamental rights, encouraging international cooperation, and resolving conflicts between domestic legislation, treaty obligations, and peremptory norms. It also addresses key challenges surrounding the doctrine, including the absence of a definitive list of jus cogens norms, uncertainties in their identification, limitations in enforcement, and the risk of political influence in their application. The study concludes that jus cogens represents more than a technical legal doctrine; it embodies the universal moral and legal principles upon which the international legal order is founded. Its continued recognition and effective implementation remain essential for promoting justice, ensuring accountability, and preserving the integrity and stability of international law by safeguarding norms that admit no exception.

**Keywords:** Jus Cogens, Peremptory Norms, International Law, Vienna Convention on the Law of Treaties, State Sovereignty, Human Rights.

## **1. Introduction**

Unlike domestic legal systems, international law functions without a central legislature or a supreme governing authority. Instead, it is built upon treaties, customary international law, general principles of law, and judicial decisions that collectively regulate the conduct of States. Despite this decentralised structure, international law recognises certain fundamental norms that occupy the highest position in the legal hierarchy. These norms, known as jus cogens or peremptory norms, are binding on all States and cannot be modified or set aside through treaties, customary practices, or domestic legislation. The doctrine of jus cogens places important limits on State sovereignty. Although States generally enjoy the freedom to enter into treaties, formulate foreign policy, and regulate their internal affairs, this freedom is not absolute. Certain universally accepted principles, such as the prohibitions against genocide, slavery, torture, and aggression, cannot be waived or overridden, even with the consent of the States concerned. In this way, jus cogens serves as both a legal safeguard and an expression of the fundamental values shared by the international community. The legal foundation of the doctrine is found in the Vienna Convention on the Law of Treaties, 1969 (VCLT). Article 53 defines a peremptory norm as a rule "accepted and recognised by the international community of States as a whole" from which no derogation is permitted and which may only be modified by another norm of the same character. This definition highlights two essential features of jus cogens: universal acceptance and non-derogability. The importance of jus cogens extends beyond its legal status. It protects fundamental human rights, reinforces accountability, and ensures that international law reflects universally accepted values rather than the political interests of individual States. At the same time, the doctrine continues to generate debate. Questions remain regarding the precise identification of peremptory norms, the criteria for their recognition, and the institutions responsible for determining their scope. Against this background, this paper examines the concept of jus cogens by analysing its legal foundations, historical development, judicial recognition, practical significance, and continuing challenges. It argues that jus cogens is more than a theoretical doctrine; it represents the core values of the international legal order and plays a vital role in preserving justice, protecting human dignity, and maintaining the integrity of international law.

## **2. Emergence and Development of Jus Cogens**

The doctrine of jus cogens emerged to address the need for a stronger normative foundation

within international law by recognising certain fundamental principles that override ordinary legal rules. Its development reflects the growing integration of legal and ethical values in the international legal order, extending beyond the law of treaties and State responsibility to influence general international law and its foundational principles.<sup>1</sup> The concept received formal recognition through Articles 53 and 64 of the Vienna Convention on the Law of Treaties, 1969 (VCLT), which introduced *jus cogens* as peremptory norms of general international law capable of rendering conflicting treaties invalid or terminated. Although the Convention did not adopt the theory that treaties could create objective legal regimes binding on third States, it firmly established the concept of *jus cogens* as a superior category of legal norms. The inclusion of these provisions attracted significant scholarly attention and became a major development in international legal doctrine. During the preparatory debates preceding the Vienna Convention, particularly in the Sixth Committee of the United Nations General Assembly (1963-1966) and at the Vienna Conference on the Law of Treaties (1968-1969), broad support for the doctrine emerged, especially from developing countries and Eastern European States. While several Western States accepted the concept, they emphasised the need for objective criteria to identify which rules qualified as *jus cogens*. The content of *jus cogens* gradually evolved through the work of the International Law Commission (ILC) and international judicial decisions. In its *travaux préparatoires* on the law of treaties, the ILC identified treaties permitting the unlawful use of force, slave trading, piracy, or genocide as examples of agreements contrary to peremptory norms<sup>2</sup>. Earlier, in its Advisory Opinion on Reservations to the Genocide Convention (1951), the International Court of Justice (ICJ) recognised that the humanitarian principles underlying the Genocide Convention were binding on States even in the absence of treaty obligations. The doctrine was reaffirmed in the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (1986), demonstrating that *jus cogens* had evolved beyond the law of treaties into a broader principle governing the international legal order. Its recognition also challenged the traditional voluntarist view that international law derives solely from State consent, confirming that certain fundamental norms exist independently of the individual will of States<sup>3</sup>.

---

<sup>1</sup> The Juridical Condition and Rights of Undocumented Migrants (Advisory Opinion) OC-18/03 (IACtHR, 17 September 2003) paras 98-99.

<sup>2</sup> IM Sinclair, *The Vienna Convention on the Law of Treaties* (2nd edn, Manchester University Press 1984) 124-129.

<sup>3</sup> UN, *United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations (Vienna, 1986): Official Records*, vol I (United Nations 1995) 187-88

## 2.1. The Evolving Scope of Jus Cogens

The doctrine of jus cogens has progressively expanded beyond its original association with the law of treaties to become a broader principle of general international law. Although Articles 53 and 64 of the Vienna Convention on the Law of Treaties formally recognise peremptory norms in the context of treaty validity, contemporary international legal developments indicate that jus cogens extends to all juridical acts, including unilateral acts of States and the broader framework of international responsibility.

Judge Antonio Augusto Cançado Trindade has consistently argued that jus cogens is not a closed or static category but one that evolves alongside the universal juridical conscience of the international community. In his Concurring Opinion in *The Juridical Condition and Rights of Undocumented Migrants* (Advisory Opinion OC-18/03), he observed that the scope of jus cogens extends beyond treaty law into general international law and expands as the international community increasingly recognises the need to protect the inherent rights of every human being<sup>4</sup>. He further emphasised that the absolute prohibitions of torture, enforced disappearance, and summary or extrajudicial executions have become integral components of the contemporary jus cogens regime. The evolution of jus cogens is evident both horizontally and vertically. Horizontally, its application has expanded from treaty law to encompass general international law and State responsibility. Vertically, it increasingly shapes the relationship between international and domestic legal systems by invalidating national legislative, administrative, or judicial measures that authorise or tolerate conduct prohibited under peremptory norms, particularly torture and other serious violations of fundamental human rights. This broader understanding is reflected in regional human rights instruments. During the drafting of the Inter-American Convention to Prevent and Punish Torture (1985), jus cogens was expressly linked to the protection of values shared by the international community. Similarly, the preparatory work of the Inter-American Convention on Forced Disappearance of Persons (1994) emphasised the absolute prohibition of enforced disappearance. These developments contributed to the emergence of an international legal regime prohibiting torture, enforced disappearance, arbitrary detention, and extrajudicial executions. International jurisprudence has further reinforced this expansion. The Inter-American Court of Human Rights (IACtHR) has repeatedly recognised that torture, inhuman treatment, and extrajudicial

---

(statement by Antônio Augusto Cançado Trindade, Deputy Head of the Brazilian Delegation).

<sup>4</sup> *The Juridical Condition and Rights of Undocumented Migrants* (Advisory Opinion) OC-18/03 (IACtHR, 17 September 2003), Concurring Opinion of Judge Antônio Augusto Cançado Trindade, paras 68-73.

executions violate *jus cogens*, including in *Cantoral Benavides v Peru*, *Maritza Urrutia v Guatemala*, *Gomez Paquiyauri Brothers v Peru*, and *Tibi v Ecuador*<sup>5</sup>. Together with the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia, these decisions have significantly contributed to clarifying the substantive content and contemporary scope of *jus cogens* within international law.

The concept of *jus cogens* extends beyond the law of treaties and applies equally to the law governing the international responsibility of States. The extension of *jus cogens* into the law of State responsibility is closely connected with the concept of objective illegality. Certain acts are regarded as inherently unlawful under international law, irrespective of treaty obligations or State consent. Contemporary international law universally recognises genocide, systematic torture, enforced disappearances, summary and extrajudicial executions, and other crimes against humanity as violations of peremptory norms. These acts are condemned by the international community as offences against fundamental values and attract international responsibility regardless of the existence of specific treaty commitments. The jurisprudence of the International Court of Justice (ICJ) further reinforces this position. In the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (1996), the Court affirmed that the rights and obligations contained in the Genocide Convention are obligations *erga omnes*, owed to the international community as a whole<sup>6</sup>. Similarly, in its 1951 *Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, the ICJ held that the humanitarian principles underlying the Convention are binding on all States, even in the absence of conventional obligations. These decisions demonstrate that fundamental norms such as the prohibition of genocide derive their authority not merely from treaty law but from their status as universal and peremptory principles of international law.

### 3. Sources and Legal Foundations of Jus Cogens

#### 3.1. Treaty Recognition: The Vienna Convention on the Law of Treaties

The primary treaty-based recognition of *jus cogens* is contained in the Vienna Convention on

---

<sup>5</sup> Egon Suy, 'The Concept of *Jus Cogens* in Public International Law' in *Papers and Proceedings of the Conference on International Law* (Langonissi, Greece, 3-8 April 1966) (Carnegie Endowment for International Peace 1967) 17.

<sup>6</sup> *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (Advisory Opinion)* [1951] ICJ Rep 15, 23.

the Law of Treaties (VCLT), 1969. Article 53 defines a peremptory norm of general international law as a norm accepted and recognised by the international community of States as a whole, from which no derogation is permitted and which can only be modified by another norm of the same character. Consequently, any treaty that conflicts with a jus cogens norm is rendered void. This provision establishes a hierarchy of norms within international law by placing peremptory norms above ordinary treaty obligations and preventing States from contracting out of fundamental legal principles through bilateral or multilateral agreements. The dynamic character of jus cogens is reinforced by Article 64 of the VCLT, which provides that where a new peremptory norm of general international law emerges, any existing treaty inconsistent with that norm becomes void and terminates. This ensures that international law evolves alongside universally accepted moral and legal standards. Although not all States are parties to the VCLT, the provisions relating to jus cogens are generally regarded as reflecting customary international law and therefore bind all States irrespective of treaty ratification.

### 3.2. Customary International Law

Apart from treaty law, jus cogens derives substantial authority from customary international law. Customary international law develops through consistent State practice accompanied by *opinio juris*, namely the belief that such practice is legally obligatory<sup>7</sup>. Peremptory norms represent the highest category of customary international law because they embody universally accepted principles that protect the fundamental interests of the international community. Unlike ordinary customary rules, these norms cannot be modified or excluded through State consent or treaty arrangements. Examples of widely recognised jus cogens norms include the prohibitions against genocide, slavery, torture, crimes against humanity, racial discrimination, piracy, and aggressive war. These prohibitions derive their authority not only from widespread State practice but also from their recognition as indispensable norms safeguarding human dignity and international peace and security.

### 3.3. Judicial Recognition of Jus Cogens

International courts and tribunals have played a significant role in confirming the existence and legal consequences of jus cogens. Although the International Court of Justice (ICJ) did not expressly refer to the doctrine in *Barcelona Traction, Light and Power Company, Limited*

---

<sup>7</sup> *North Sea Continental Shelf Cases (Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands)* [1969] ICJ Rep 3, para 77.

(Belgium v Spain), it recognised the concept of obligations *erga omnes*, namely obligations owed to the international community as a whole<sup>8</sup>. This judgment laid the conceptual foundation for recognising norms that transcend reciprocal obligations between individual States. The doctrine received explicit judicial recognition in *Prosecutor v Furundzija*, where the International Criminal Tribunal for the Former Yugoslavia (ICTY) held that the prohibition of torture had attained the status of a jus cogens norm. The Tribunal emphasised that torture is absolutely prohibited under international law and that no State may authorise or permit its commission, regardless of treaty obligations or domestic legislation<sup>9</sup>. Similarly, in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, the ICJ reaffirmed that the obligations contained in the Genocide Convention are obligations *erga omnes*, reflecting the fundamental importance of preventing genocide<sup>10</sup>. Earlier, in its Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (1951), the Court observed that the humanitarian principles underlying the Convention are binding upon all States even in the absence of conventional obligations, thereby reinforcing the peremptory character of the prohibition of genocide. The interaction between jus cogens and other principles of international law was further examined in *Jurisdictional Immunities of the State (Germany v Italy: Greece Intervening)*. While the ICJ acknowledged the superior status of jus cogens norms, it held that the procedural rules governing State immunity operate independently of substantive peremptory norms. Accordingly, violations of jus cogens do not automatically remove a state's entitlement to jurisdictional immunity before foreign domestic courts<sup>11</sup>. This decision demonstrates that although the existence of jus cogens is firmly established, questions regarding its procedural consequences continue to generate legal debate.

### 3.4. International Law Commission and State Responsibility

The doctrine of jus cogens extends beyond treaty law and is equally relevant to the law governing the international responsibility of States. The International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts (2001) acknowledge that peremptory norms operate in contexts beyond the validity of treaties. The accompanying

---

<sup>8</sup> *Barcelona Traction, Light and Power Company, Limited (Belgium v Spain)* [1970] ICJ Rep 3, paras 33-34.

<sup>9</sup> *Prosecutor v Anto Furundzija* (Judgment) ICTY-95-17/1-T (10 December 1998) paras 153-157.

<sup>10</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Preliminary Objections)* [1996] ICJ Rep 595, para 31.

<sup>11</sup> *Jurisdictional Immunities of the State (Germany v Italy: Greece Intervening)* [2012] ICJ Rep 99, paras 93-97.

commentary notes that numerous national and international tribunals have recognised the application of jus cogens outside treaty law, thereby confirming its broader normative significance<sup>12</sup>. This development establishes a close relationship between jus cogens and the concept of objective illegality, whereby certain acts are inherently unlawful irrespective of State consent. Practices such as genocide, systematic torture, enforced disappearance, slavery, apartheid, and crimes against humanity are universally regarded as violations of peremptory norms, giving rise to international responsibility regardless of whether a treaty obligation exists.

#### **4. Recognition of *Jus Cogens* under the Vienna Convention on the Law of Treaties, 1969**

The Vienna Convention on the Law of Treaties (VCLT), 1969 constitutes the principal treaty instrument recognising the doctrine of jus cogens in international law. Before the adoption of the Convention, the existence of peremptory norms had largely been acknowledged through scholarly writings, customary international law, and judicial reasoning. The VCLT provided the first comprehensive legal framework defining jus cogens and clarifying its consequences for the validity and operation of treaties. By incorporating the doctrine into treaty law, the Convention established that certain fundamental norms occupy a superior position within the international legal order and cannot be derogated from by agreement between States. The cornerstone of this framework is Article 53<sup>13</sup>, which defines a jus cogens norm as "a norm accepted and recognised 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." The provision further declares that any treaty which, at the time of its conclusion, conflicts with a peremptory norm of general international law is void ab initio. This represents a significant departure from the traditional principle of State consent by recognising that the freedom of States to conclude treaties is subject to fundamental limitations imposed by the international legal order. Consequently, States cannot lawfully enter into agreements permitting genocide, slavery, torture, aggressive war, or other conduct prohibited by jus cogens norms. The dynamic nature of jus cogens is reflected in Article 64 of the Convention. Unlike Article 53, which addresses treaties conflicting with existing peremptory norms at the time of their conclusion, Article 64 deals

---

<sup>12</sup> International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries* (2001) UN Doc A/56/10, commentary to art 26.

<sup>13</sup> Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 53.

with the emergence of new *jus cogens* norms after a treaty has entered into force. It provides that where a new peremptory norm of general international law emerges, any existing treaty that conflicts with the newly recognised norm becomes void and terminates. This provision ensures that international treaty obligations remain consistent with the evolving fundamental values of the international community. It also demonstrates that *jus cogens* is not a static doctrine but one capable of adapting to developments in international law and global legal consciousness.

The legal consequences of treaty termination under Article 64 are elaborated in Article 72(2) of the VCLT. This provision states that, following the termination of a treaty due to the emergence of a new *jus cogens* norm, the parties are released from any further obligation to perform the treaty. However, rights, obligations, or legal situations created through the execution of the treaty before its termination remain valid, provided that their continued existence does not itself conflict with the newly established peremptory norm. This rule promotes legal certainty by preventing unnecessary disruption of completed legal acts while simultaneously ensuring that no continuing legal effect is given to obligations contrary to *jus cogens*. Collectively, Articles 53, 64, and 72<sup>14</sup> Establish a coherent legal framework governing the relationship between treaties and peremptory norms. They confirm that the validity and continued operation of treaties depend upon their conformity with *jus cogens*. The Convention thereby introduces a hierarchy of norms into international law, placing peremptory norms above ordinary treaty obligations and reinforcing the principle that State consent cannot legitimise conduct contrary to the fundamental values of the international community. Accordingly, the Vienna Convention remains the principal legal instrument affirming the supremacy, non-derogability, and evolving character of *jus cogens* within the contemporary international legal system.

## 5. Judicial Recognition of Jus Cogens: Landmark Case Law

International courts and tribunals have played a crucial role in recognising and developing the doctrine of *jus cogens*. Although the Vienna Convention on the Law of Treaties (1969) provides the principal treaty basis for peremptory norms, judicial decisions have clarified their content, legal consequences, and relationship with other rules of international law. Through their jurisprudence, international courts have affirmed that certain fundamental norms bind all

---

<sup>14</sup> Ibid.

States irrespective of treaty obligations or consent.

### ***5.1. Bosnia and Herzegovina v Serbia and Montenegro (2007)***

One of the most significant decisions concerning jus cogens is the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro). The case arose from allegations that Serbia was responsible for genocide committed against Bosnian Muslims during the Bosnian conflict. The International Court of Justice (ICJ) concluded that Serbia was not directly responsible for committing genocide or conspiring to commit genocide<sup>15</sup>. However, it held that Serbia had breached its international obligations by failing to prevent genocide and by failing to cooperate with the International Criminal Tribunal for the Former Yugoslavia (ICTY). The judgment reaffirmed the fundamental character of the prohibition of genocide under international law. Judge Lauterpacht, in his separate opinion in earlier proceedings, emphasised that jus cogens occupies a superior position within the hierarchy of international law, prevailing over both treaty obligations and customary international law. He further observed that peremptory norms derive from principles of natural law and represent fundamental values essential to the international legal order. The decision strengthened the recognition of the prohibition of genocide as a universally binding jus cogens norm.

### ***5.2. Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Rwanda) (2006)***

Another important decision concerning the doctrine of jus cogens is Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Rwanda). The case was instituted before the International Court of Justice (ICJ) on 28 May 2002, when the Democratic Republic of the Congo (DRC) alleged that Rwanda had committed serious violations of international human rights law and international humanitarian law through acts of armed aggression within Congolese territory. The DRC claimed that Rwanda's military activities violated its sovereignty and territorial integrity, contrary to the United Nations Charter and the Charter of the Organization of African Unity<sup>16</sup>. In its judgment delivered on 3 February 2006, the ICJ held that it lacked jurisdiction to hear the dispute. The Court observed that Rwanda had either not become a party to certain treaties relied upon by the DRC, including the Convention against

---

<sup>15</sup> [2007] ICJ Rep 43.

<sup>16</sup> [2006] ICJ Rep 6.

Torture, or had entered reservations to dispute settlement provisions in treaties such as the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention on the Elimination of All Forms of Racial Discrimination. Consequently, the jurisdictional requirements necessary for the Court to adjudicate the dispute had not been satisfied. The case is particularly significant because it contains one of the earliest explicit discussions of jus cogens by the ICJ. The DRC argued that Article 66 of the Vienna Convention on the Law of Treaties (1969) conferred jurisdiction upon the Court in disputes involving violations of peremptory norms of international law. It further contended that the prohibition of genocide constituted a jus cogens norm binding upon all States and that Rwanda's reservation to the Genocide Convention was therefore invalid. The ICJ acknowledged the peremptory status of the substantive prohibition of genocide but rejected the DRC's argument that the existence of a jus cogens norm automatically established the Court's jurisdiction. The Court clarified that although the obligations contained in the Genocide Convention may possess the character of jus cogens and create obligations erga omnes, this does not, by itself, confer jurisdiction upon the ICJ. Jurisdiction remains dependent upon the consent of States expressed through treaty provisions, declarations accepting compulsory jurisdiction, or other recognised jurisdictional bases. The judgment is significant because it distinguishes the substantive supremacy of jus cogens norms from the procedural rules governing the jurisdiction of international courts. While the Court reaffirmed the fundamental status of peremptory norms such as the prohibition of genocide, it held that these norms do not override the principle of State consent in determining the Court's jurisdiction. Accordingly, the case illustrates that the existence of a jus cogens obligation does not automatically create judicial competence to adjudicate disputes concerning its violation, thereby highlighting the continuing distinction between substantive international obligations and procedural jurisdictional rules.

### ***5.3. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (1986)***

The Nicaragua Case concerned allegations that the United States had unlawfully supported military and paramilitary operations against Nicaragua by assisting the Contra rebels and mining Nicaraguan ports. The ICJ held that the United States had violated the customary international law principle prohibiting the use of force and the principle of non-intervention in the internal affairs of another State<sup>17</sup>. Although the Court did not expressly characterise the

---

<sup>17</sup> [1986] ICJ Rep 14.

prohibition of the use of force as a *jus cogens* norm, the judgment significantly contributed to the development of the doctrine by affirming that customary international law derives from consistent State practice accompanied by *opinio juris*, namely the belief that such practice is legally obligatory. The Court recognised that the prohibition on the unlawful use of force constitutes one of the fundamental principles governing international relations and is widely regarded as possessing a peremptory character.

#### **5.4. Jurisdictional Immunities of the State (Germany v Italy: Greece Intervening) (2012)**

The relationship between *jus cogens* and State immunity was directly examined by the International Court of Justice (ICJ) in *Jurisdictional Immunities of the State (Germany v Italy: Greece Intervening)*<sup>18</sup>. The dispute arose after Italian courts entertained civil claims against Germany for atrocities committed by German armed forces during the Second World War. Italy argued that Germany could not invoke sovereign immunity because the underlying acts, war crimes, crimes against humanity, and forced labour constituted violations of *jus cogens* norms. Germany, however, maintained that State immunity is a procedural rule of customary international law and remains applicable irrespective of the substantive nature of the alleged violations. Germany instituted proceedings before the ICJ in 2008, contending that Italy had violated international law by permitting civil claims against Germany and by enforcing Greek judgments concerning the Distomo massacre against German property located in Italy. Italy defended its position on the ground that violations of peremptory norms override the procedural doctrine of sovereign immunity. Greece participated in the proceedings because one of its judgments had been recognised and enforced by Italian courts. In its judgment of 3 February 2012, the ICJ held that Germany was entitled to jurisdictional immunity under customary international law. The Court acknowledged the fundamental and non-derogable character of *jus cogens* norms, including the prohibitions of war crimes and crimes against humanity. Nevertheless, it distinguished between substantive rules prohibiting such conduct and the procedural rule of State immunity. According to the Court, no conflict existed between the two because State immunity merely determines whether a national court may exercise jurisdiction and does not validate or excuse violations of peremptory norms. Consequently, Italy had breached its international obligations by denying Germany immunity before its domestic courts. The judgment is significant because it clarified that, although *jus cogens* norms occupy the highest position in the hierarchy of international law, they do not automatically displace

---

<sup>18</sup> [2012] ICJ Rep 99.

procedural rules governing jurisdiction. At the same time, the Court emphasised that State immunity does not prevent the prosecution of individuals responsible for international crimes before competent criminal tribunals. Thus, the decision illustrates both the strength and the practical limits of jus cogens in contemporary international law.

### **5.5. *Pablo Najera Arbitration (1928)***

An earlier indication of the emergence of jus cogens principles can be found in the Pablo Nájera Arbitration (France v Mexico). The dispute concerned issues relating to treaty obligations and the legal consequences of treaty registration. The Arbitration Commission recognised that certain obligations could not be disregarded by States and relied upon principles that anticipated the later doctrine of jus cogens<sup>19</sup>. Although the concept had not yet been formally codified, the Commission treated fundamental legal obligations as overriding ordinary treaty arrangements and justified the invalidity of treaties that failed to comply with essential legal requirements. The decision is therefore regarded as an early example of judicial reasoning that foreshadowed the modern doctrine of peremptory norms in international law.

## **6. Limitations of the Doctrine of Jus Cogens**

### **6.1. Constraints on the Principle of State Sovereignty**

One of the foremost criticisms of jus cogens is that it limits the sovereign equality and autonomy of States. Traditional international law is primarily based on the principle of consent, under which States voluntarily assume international obligations through treaties or customary practice. However, jus cogens operates independently of state consent by rendering void any treaty or agreement that conflicts with a peremptory norm. Critics argue that this hierarchical superiority restricts the freedom of States to negotiate and regulate their international relations according to their own interests. Consequently, the doctrine is viewed by some scholars as incompatible with the voluntarist foundation upon which classical international law is built.

### **6.2. Departure from the Principle of State Consent**

Another major criticism concerns the mandatory nature of jus cogens. Unlike conventional treaty obligations, peremptory norms bind all States irrespective of whether they have expressly

---

<sup>19</sup> *Pablo Nájera Arbitration (France v Mexico)* (1928) France-Mexico General Claims Commission.

accepted or ratified them. States are not permitted to derogate from these norms or invoke domestic legislation as justification for non-compliance. While such universality is essential for safeguarding fundamental values such as human dignity and international peace, critics contend that it undermines one of the cardinal principles of international law that international obligations arise primarily through the consent of sovereign States. The compulsory character of *jus cogens* therefore creates an inherent tension between universal legal obligations and the doctrine of sovereign equality.

### **6.3. Ambiguity in the Identification of Peremptory Norms**

A further challenge lies in determining which rules qualify as *jus cogens*. Although Article 53 of the Vienna Convention on the Law of Treaties, 1969, defines a peremptory norm, it does not provide an exhaustive list of such norms. Consequently, the identification of *jus cogens* depends largely upon judicial interpretation, State practice, and scholarly opinion. While prohibitions against genocide, slavery, torture, aggression, piracy, and crimes against humanity are generally accepted as peremptory norms, disagreement persists regarding the inclusion of other principles. The absence of universally accepted criteria creates legal uncertainty and increases the likelihood of inconsistent or selective application.

### **6.4. Challenges in the Enforcement of Jus Cogens**

The practical enforcement of *jus cogens* remains another significant concern. International law lacks a central legislative authority, executive body, or compulsory judicial mechanism capable of ensuring universal compliance with peremptory norms. Although treaties conflicting with *jus cogens* are considered void and States may incur international responsibility for violations, enforcement frequently depends upon political cooperation, domestic implementation, or the willingness of international courts to exercise jurisdiction. Consequently, serious violations of peremptory norms often remain inadequately addressed, leading critics to argue that the doctrine possesses greater moral and normative authority than practical effectiveness.

### **6.5. Possibility of Political Misuse and Selective Interpretation**

The evolving nature of *jus cogens* has also raised concerns regarding its potential misuse for political purposes. Since international law does not prescribe a definitive mechanism for recognising new peremptory norms, States and international actors may invoke *jus cogens*

selectively to advance political, diplomatic, or strategic interests. Such selective reliance risks undermining the consistency, predictability, and impartiality of international law. Critics therefore emphasise that the continued development of *jus cogens* should be guided by broad international consensus and objective legal principles rather than political expediency.

## **7. Relevance of Jus Cogens in Contemporary International Law**

The doctrine of *jus cogens* has evolved from a theoretical concept into a practical and influential principle governing contemporary international law. Its relevance extends beyond the law of treaties and significantly influences international criminal law, human rights law, humanitarian law, and the law of State responsibility. Modern international legal instruments and judicial decisions consistently demonstrate that peremptory norms serve as the foundation of the international legal order by protecting fundamental values from derogation.

### **7.1. Invalidity of Treaties Contrary to Jus Cogens**

The most direct legal consequence of *jus cogens* is found in the Vienna Convention on the Law of Treaties, 1969 (VCLT). Article 53 declares that any treaty conflicting with a peremptory norm of general international law is void *ab initio*, while Article 64 provides that if a new *jus cogens* norm emerges, any existing treaty inconsistent with that norm automatically becomes void and terminates. These provisions establish a hierarchy of norms, placing *jus cogens* above treaty obligations and reinforcing that States cannot contract out of universally accepted fundamental principles. This principle has particular significance in preventing treaties that authorise or legitimise genocide, slavery, torture, apartheid, or aggressive war. Even if all treaty parties consent, such agreements have no legal validity under international law because they conflict with peremptory norms recognised by the international community.

### **7.2. Protection of Fundamental Human Rights**

*Jus cogens* plays a vital role in strengthening the international human rights regime by ensuring that certain rights remain absolute and non-derogable. Several international human rights instruments reflect these peremptory obligations. The Convention on the Prevention and Punishment of the Crime of Genocide, 1948, obliges States to prevent and punish genocide, while the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT) absolutely prohibits torture under all circumstances. Similarly, the

International Covenant on Civil and Political Rights, 1966 (ICCPR) recognises that certain rights, including the prohibition of torture, slavery, and arbitrary deprivation of life, cannot be suspended even during public emergencies (Article 4). International courts have consistently recognised these prohibitions as reflecting jus cogens.

### **7.3. Promotion of International Criminal Accountability**

The doctrine of jus cogens has become central to international criminal justice by ensuring that individuals responsible for the most serious international crimes cannot evade accountability. The Rome Statute of the International Criminal Court, 1998, empowers the International Criminal Court (ICC) to prosecute individuals for genocide, crimes against humanity, war crimes, and the crime of aggression. Although the Rome Statute does not expressly refer to jus cogens, the offences within its jurisdiction largely correspond to conduct prohibited by peremptory norms of international law. Similarly, the statutes of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) were established to prosecute serious violations of international humanitarian law, including genocide and crimes against humanity. These tribunals have reinforced the understanding that certain international crimes violate obligations owed to the international community as a whole and therefore engage universal legal responsibility.

### **7.4. Universal Jurisdiction over International Crimes**

Another significant implication of jus cogens is the recognition of universal jurisdiction. Under this principle, States may prosecute individuals responsible for certain international crimes irrespective of where the offence occurred or the nationality of the offender or victim. Universal jurisdiction has traditionally been recognised in relation to piracy and has gradually expanded to encompass genocide, torture, crimes against humanity, and war crimes. The Convention against Torture, 1984, embodies this principle through the doctrine of *aut dedere aut judicare* ("extradite or prosecute"), requiring States either to prosecute alleged torturers found within their territory or extradite them to another competent jurisdiction. Likewise, the Geneva Conventions of 1949 require States to search for and prosecute or extradite persons responsible for grave breaches of international humanitarian law. These treaty obligations reflect the peremptory nature of the norms prohibiting torture and serious war crimes.

### **7.5. Influence on State Responsibility**

The relevance of jus cogens also extends to the law of State responsibility. The International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts, 2001 (ARSIWA) recognise the special legal consequences arising from serious breaches of obligations owed under peremptory norms. Articles 40 and 41 provide that all States have a duty to cooperate to bring such breaches to an end, refrain from recognising situations created by serious violations, and avoid rendering aid or assistance in maintaining unlawful situations. These provisions reinforce the collective responsibility of the international community to respond to violations involving genocide, aggression, apartheid, and other breaches of jus cogens, thereby extending the doctrine beyond treaty law into the broader framework of international responsibility.

### **7.6. Influence on International Judicial Practice**

International courts have repeatedly affirmed the legal significance of jus cogens. In *Bosnia and Herzegovina v Serbia and Montenegro* (2007), the International Court of Justice (ICJ) confirmed that the prohibition of genocide constitutes an obligation owed to the international community and emphasised States' duty to prevent and punish genocide. Similarly, in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Rwanda)* (2006), the ICJ acknowledged the peremptory nature of the prohibition of genocide, although it clarified that the existence of a jus cogens norm does not by itself establish the Court's jurisdiction.

## **8. Conclusion**

The doctrine of jus cogens constitutes one of the cornerstones of contemporary international law by establishing a hierarchy of norms that safeguards the fundamental interests of the international community. Unlike ordinary rules derived from treaties or customary international law, peremptory norms are universally binding and permit no derogation. Their recognition under Articles 53 and 64 of the Vienna Convention on the Law of Treaties, 1969, together with their affirmation in the jurisprudence of international courts and tribunals, demonstrates that certain principles of international law transcend state consent and contractual obligations. In this respect, jus cogens represents not merely a legal doctrine but the collective conscience of the international community, reflecting universally accepted values of justice,

humanity, and the rule of law. The practical significance of jus cogens is evident in its application across diverse branches of international law. The prohibitions of genocide, slavery, torture, crimes against humanity, racial discrimination, piracy, and aggression have attained the status of peremptory norms and have been consistently recognised by international judicial bodies, including the International Court of Justice (ICJ), the International Criminal Tribunal for the Former Yugoslavia (ICTY), and other international tribunals. Through instruments such as the Convention on the Prevention and Punishment of the Crime of Genocide, 1948, the Geneva Conventions, 1949, the Convention against Torture, 1984, the Rome Statute of the International Criminal Court, 1998, and the Articles on Responsibility of States for Internationally Wrongful Acts, 2001, the doctrine has evolved from a theoretical principle into a practical mechanism for promoting accountability, protecting human rights, and strengthening international criminal justice. At the same time, the doctrine continues to face significant challenges. Questions concerning the identification of new jus cogens norms, the relationship between peremptory norms and state sovereignty, the absence of a central enforcement mechanism, and the potential for selective political application remain subjects of ongoing scholarly and judicial debate. Decisions such as *Jurisdictional Immunities of the State (Germany v Italy)* illustrate that, although jus cogens enjoys superior normative status, its interaction with procedural rules of international law continues to generate complex legal questions. These challenges, however, do not diminish the authority of the doctrine; rather, they highlight the dynamic and evolving nature of international law. Ultimately, jus cogens has emerged as an indispensable safeguard against the gravest violations of international law. By limiting the exercise of state sovereignty where fundamental human values are at stake, it reinforces the principles of legality, accountability, and respect for human dignity. As global challenges including armed conflicts, transnational terrorism, mass atrocities, forced displacement, and emerging technologies continue to test the resilience of the international legal order, the doctrine of jus cogens will remain central to preserving international peace, protecting fundamental rights, and promoting cooperation among States. Its continued development and consistent application are essential to ensuring that the most fundamental norms of international law remain inviolable and capable of responding effectively to the evolving needs of the international community.