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The Implications of the Peremptory Prohibition of Slavery and its Accompanying Erga Omnes Obligations

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Abstract: The prohibition of slavery, enshrined in the 1926 Slavery Convention and its 1956 Supplementary Convention, constitutes a fundamental principle of international law with the status of an erga omnes partes obligation. This article examines the prohibition's legal foundation and its recognition as a non-derogable norm essential to protecting human dignity. Utilizing the framework articulated by the International Court of Justice in Belgium v. Senegal, the work establishes that the abolition of slavery aligns with the treaty's object and purpose, reflects a shared interest among states, and is integral to achieving the Convention's aims. As a cornerstone of international human rights law and policy, this prohibition represents an indispensable element of the global legal order, commanding universal adherence. However, widespread evasion of this prohibition, particularly among others in the context of sexual slavery, highlights significant deficiencies in enforcement, political will, and structural reforms. The persistence of such practices undermines the moral authority of international law and perpetuates systemic injustices. The analysis underscores the need for a unified global effort to uphold the prohibition as a universal obligation, advocating for enhanced cooperation, robust accountability mechanisms, and the political commitment necessary to translate the commitments of the 1926 Slavery Convention into effective protections against this grave human rights breach.

Keywords: Slavery slavery convention of 1926 prohibition jus cogens; erga omnes partes obligations ICJ human rights International Criminal Court general international law human dignity

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(A) INTRODUCTION

In the realm of public international law, the prohibition of slavery[1] occupies a central position within the framework of humanitarian and general international law. As a

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[1] Article 1 (1) of the Slavery Convention defines slavery as 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.'" See also J. Allain, 'The Definition of Slavery in International Law' (2009) 52 Howard Law Journal, 239-275, stressing that: "the legal definition of slavery, first established in 1926 through the interplay between anti-slavery advocates and members of the League of Nations, was reaffirmed in 1998 with its inclusion in an international legal instrument once again: the Rome Statute of the International Criminal Court."; S. Scarpa, 'Contemporary Forms of Slavery' (European Union 2018), available at: <www.europarl.europa.eu/RegData/etudes/STUD/2018/603470/EXPO_STU(2018)603470_EN.pdf >; C. Espaliu Berdud, 'La definición de esclavitud en el Derecho Internacional a comienzos del siglo XXI' (2014) 28 Revista electrónica de estudios internacionales (REEI); M. Giuliano, 'Schiavitù' (1939) Nuovo Dig. it., Torino, p. 1162 ff; S. Scarpa, 'Conceptual unclarity, human dignity and contemporary forms of slavery: An appraisal and some proposals' (2015) QIL, 2019, available

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grave violation of human rights, slavery embodies the denial of fundamental freedoms and the degradation of human dignity.[2] It is a violation that contravenes the foundations and object of international human rights law in ways that are inimical in particularly egregious, intense, and evident ways. In this regard, one can say that it is a direct affront to the recognition of the unconditional and inherent inestimable *worth* of every human being; that it openly prevents individuals from acting in *autonomous* ways because of the dictates of others they are made subject to; and that it entails a refusal to acknowledge the other human being as *equals* by slavers all of which openly contravenes what has been recognized in case law and elsewhere as foundations and guiding values and principles of human rights law.[3] Moreover, all individuals can expect "in every possible case […] that all rational beings outside [them] recognize [them] as a rational being", as Fichte said, and that they are treated as an end in themselves instead of mostly as means, in Kantian terms.[4] Slavery precisely objectifies and treats individuals as mere objects, thus constituting an undeniable and great affront to human dignity and liberty.[5]

The 1926 Slavery Convention[6] and its Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956,[7] and general human rights treaties' provisions against slavery such as Art. 8 of the International Covenant on Civil and Political Rights and Art. 4 of the Universal Declaration of Human Rights, both of which state that "[n]o one shall be held in slavery", among others, form a *corpus juris* that enshrines the prohibition of slavery in all its forms, including sexual slavery,[8] as a relatively *recent* cornerstone of international legal obligations. This is so because, regretfully, as explored in the first section below, international law actually endorsed slavery practices for some periods of its history, being thus an instrument

at: https://www.qil-qdi.org/conceptual-unclarity-human-dignity-and-contemporary-forms-of-slavery-an-appraisal-and-some-proposals/

2 See P. De Sena, 'Slaveries and New Slaveries: Which Role for Human Dignity' (2019) 64 QIL-Questions Intl L, 7, 10 and 12 See also D. Luban, 'Human Rights Pragmatism and Human Dignity' in R. Cruft, M. Liao, M. Renzo (eds), Philosophical Foundations of Human Rights, Oxford, Clarendon Press, 2015, p. 274 ff.

3 I/A Court H.R., Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights). Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, paras. 61, 85-89; I/A Court H.R., Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No.18, paras. 73, 87, 89, 91, 100, 157; Vienna Declaration and Programme of Action, 1993, Preamble.

4 J. G. Fichte, Foundations of Natural Right, Cambridge University Press, 2000, at 43; Immanuel Kant, Toward Perpetual Peace and Other Writings on Politics, Peace, and History, Yale University Press, 2006, pp. 37, 141.

5 Jenny S. Martinez, The Slave Trade and the Origins of International Human Rights Law, Oxford University Press, 2012, at 20.

6 League of Nations, Convention to Suppress the Slave Trade and Slavery, 60 LNTS 253, Registered No. 1414, 25 September 1926, https://www.refworld.org/legal/agreements/lon/1926/en/13684

7 UN Economic and Social Council (ECOSOC), Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 7 September 1956, https://www.refworld.org/legal/resolution/ecosoc/1956/en/116014

8 See J. Roux, 'L'esclavage sexuel en droit international pénal', available at: https://dumas.ccsd.cnrs.fr/dumas-01523857 See also J. Cockayne, 'The Anti-Slavery Potential of International Criminal Justice' (2016) 14 JICJ, 469-481.

of oppression during them. It is remarkable, however, that slavery came to be treated in terms of an absolute and inexcusable prohibition that admits no exceptions under contemporary international law, which reveals a welcome and dramatic paradigm shift in comparison to bygone times.

The prohibition thus reveals much about some of the important current values and principles underlying international law nowadays. Slavery, defined as the exploitation of individuals in conditions where they are deprived of personal autonomy and subjected to forced servitude, [9] is universally condemned,[10] both when there are "*de jure* situations of legal ownership" and "contemporary situations where a person is held in a *de facto* condition of slavery", in accordance to the 1926 instrument, according to Allain.[11]

That said, in the case law of the European Court of Human Rights a distinction has been made between slavery as entailing a "right of ownership over" a human being, and other violations of human dignity such as servitude, forced, and compulsory labor, which lack such a(n abusive) title but still "reduc[e] [someone] to the status of an "object"".[12] Conversely, the Inter-American Court of Human Rights put forward in its *Hacienda Brasil Verde* an argument with which we agree: that slavery can exist both in *de jure* and *de facto* forms, with a formal document or legal norm referring to 'ownership' over an individual not being necessary to exist for there to be slavery, as in traditional notions of it.[13] In our opinion this latter approach is wiser and permits to identify as such all manners of pretended appropriation of *fellow* human beings, with abusers not being able to claim they are not engaging in slavery due to the absence of a 'formality'. The condemnation of slavery is merited in both situations. The strength of the stigma may spur more action even absent traditional formal ownership. Which, all things being said, reveals how extremely unjust[14] situations and conduct have been endorsed by the law throughout history.

Treaties addressing slavery establish obligations for states to eliminate such practices and ensure accountability for violations. The prohibition of slavery extends beyond treaty law and duties, being also part of customary international law.[15] Custom against

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9 As Nicole Siller aptly observes, the term 'slavery' should be clearly distinguished from 'modern slavery,' particularly within the context of international law. While the term 'slavery' is firmly rooted in legal frameworks such as the 1926 Slavery Convention and enjoys a well-defined status under international law, 'modern slavery' lacks a precise legal definition and carries little to no formal meaning in this context. The ambiguity of the term 'modern slavery' may undermine efforts to address specific practices effectively, as it risks conflating distinct legal concepts and diluting the normative clarity provided by established international instruments on slavery and related practices. Amplius, see N. Siller, "'Modern Slavery': Does International Law Distinguish between Slavery, Enslavement and Trafficking?" (2016) 14 Journal of International Criminal Justice, pp. 405–427.

10 For references, see J. Allain, Slavery in International Law: Of Human Exploitation and Trafficking, Leiden, 2013, p. 9 ff.

11 J. Allain, The Law and Slavery: Prohibiting Human Exploitation, Brill Nijhoff, 2013, at XIII.

12 European Court of Human Rights, Guide on Article 4 of the European Convention on Human Rights: Prohibition of slavery and forced labour, Council of Europe, 2025, at 8.

13 I/A Court H.R., Case of the Hacienda Brasil Verde Workers v. Brazil, op cit., para. 270.

14 Nicolás Carrillo Santarelli, "On the Virtuousness of Certain Refusals to Comply with Legal Demands Prompted by Other Normativities", Díkaion, Vol. 32, 2023.

15 See, for example, Rule 94 of the Rules of Customary International Humanitarian Law identified by the International Committee of the Red Cross ("Slavery and the slave trade in all their forms are prohibited"), available at: <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule94>, last visit: 10 February 2025; Sivia

it exists both during armed conflicts, as revealed in Rule 94 of the Rules of Customary International Law identified by the International Committee of the Red Cross, according to which "[s]lavery and the slave trade in all their forms are prohibited";[16] and in the absence of armed conflicts, with it being prohibited under customary human rights law[17] as a peremptory standard, no less.[18] Such a prohibition reflects a broader commitment to fundamental principles of humanity that resonate across the international legal order.[19]

Notably, the prohibition of slavery is recognized as being of a peremptory or *jus cogens* nature in both doctrine and case law; and as imposing obligations *erga omnes*. Peremptory law is that which admits no exceptions and thus demands absolute observance, which is imposed on all States and other subjects of international law. In turn, *erga omnes* obligations are those that are opposable to all members of the international community. Both generally and in the specific case of the law against slavery, it has been recognized that obligations related to peremptory law always have an *erga omnes* character. Because of the nature of those obligations, all States also have a legal interest in the respect of such duties. Additionally, it must be pointed out that enslavement amounts to an international crime, specifically the crime of enslavement.[20] i.e., towards all

This paper seeks to explore the ways in which the prohibition of slavery constitutes an obligation *erga omnes partes*, meaning an obligation that a state party has towards all other state parties to a given instrument, and the reasons why such duties have been adopted and the implications thereto. Drawing on a test articulated by the International Court of Justice (ICJ) in the *Belgium v. Senegal* case, this work examines the object and purpose of instruments as the 1926 Slavery Convention, the common interest of states in compliance with its obligations, and the integral nature of the prohibition of slavery within its normative frameworks.

Scarpa, "Slavery", in: Oxford Bibliographies of International Law, 2014 ("Prohibitions of slavery and the slave trade in times of both peace and war are unanimously considered to be customary rules of international law, and they have attained the level of peremptory norms (jus cogens principles)"), available at: <https://www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0097.xml>, last visit: 10 February 2025.

16 ICRC, Jean-Marie Henckaerts and Louise Doswald-Beck (Eds.), Customary International Humanitarian Law. Volume I : Rules, Cambridge University Press, 2005, at 327.

17 Yasmine Rassam, "International Law and Contemporary Forms of Slavery: An Economic and Social Rights-Based Approach", Penn State International Law Review, Vol. 23, 2005, pp. 809-810.

18 Ibid.

19 See M. Erpelding, 'L'esclavage en droit international: aux origines de la relecture actuelle de la définition conventionnelle de 1926' (2015) 17 Journal of the History of International Law / Revue d'histoire du droit international, 17(2), 170-220; F. Marchadier (dir.), La prohibition de l'esclavage et de la traite des êtres humains, Paris, 2022,

20 David Weissbrodt and Anti-Slavery International, "Abolishing Slavery and its Contemporary Forms", HR/PUB/02/4, Office of the United Nations High Commissioner for Human Rights, 2002, paras. 6-7; Art. 7.1.c of the Rome Statute of the International Criminal Court; Antonio Remiro Brotóns et al., Derecho internacional: curso general, Tirant Lo Blanch, 2010, at 231. Article 53 of the 1969 Vienna Convention on the Law of Treaties stipulates that: 'A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character'.

The legal nature of the prohibition of slavery and its accompanying fundamental obligations has further implications in terms of responsibility. the universal responsibility of states to enforce this prohibition and some of the challenges that hinder its effective realization. In this regard, it is necessary to point out that when State agents are involved in acts related to slavery, both their individual responsibility and that of the States they are agents of will be engage, insofar as each subject would have breached duties through conduct attributable to each of them the individuals, by virtue of their acts, and the States that of their agents. This is consistent with individual responsibility, which is not collectivized and takes note of through whom States act.[21] If private parties are the ones involved in acts of slavery, apart from the individual responsibility of human beings, States can also be responsible if they fail to diligently strive to protect human beings from it in accordance to their duty to ensure or protect, which requires preventing and responding to violations, among others to make sure that victims are repaired. A manifestation of the faculties of States to counter slavery is found in the law of the sea. For instance, after prohibiting the transport of slaves under Art. 99 and commanding States to "prevent and punish the transport of slaves in ships authorized to fly [their] flag ", in Art. 110 the United Nations Convention on the Law of the Sea entitles warships to visit and inspect foreign ships when there are reasonable grounds for suspecting that it is engaged in slave trade.

Finally, it must be noted that given the peremptory status of the norm and the seriousness of the breaches against it, oftentimes third States will not only be empowered to resort to the invocation of the responsibility of those responsible for the violations for example, exercising universal jurisdiction , but will also be required to cooperate to peacefully bring an end to the abuses and to not recognize their consequences. This follows from Arts. 40, 41, 48, and 54, of the International Law Commission's 2001 Articles on the Responsibility of States for Internationally Wrongful Acts.

By demonstrating the *erga omnes partes* nature[22] of the prohibition of slavery, this work also underscores the shared obligation of the international community to combat this egregious violation of human rights. It advocates for strengthened mechanisms to hold states accountable,[23] and calls for greater international cooperation to fulfill the promise of the 1926 Slavery Convention and its Supplementary Convention. Only

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21 I/A Court H.R., International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No.14, para. 56.

22 On the subject, see A. Hachem, O. A. Hathaway, J. Cole, 'A New Tool for Enforcing Human Rights: Erga Omnes Partes Standing' (2023) 62 Colum. J. Transnat'l L. 62, p. 259 ff; Pok Yin S. Chow, 'On Obligations Erga Omnes Partes' (2020) 52 Geo. J. Int'l L., p. 469 ff; M. Longobardo, 'The Contribution of International Humanitarian Law to the Development of the Law of International Responsibility regarding Obligations Erga Omnes and Erga Omnes Partes' (2018) 23 Journal of Conflict and Security Law, pp. 383-404.

23 Amplius, see K. Schwarz, Reparations for slavery in international law: transatlantic enslavement, the maangamizi, and the making of international law, New York, NY: Oxford University Press, 2022; N. Boschiero, 'Giustizia e riparazione per le vittime delle contemporanee forme di schiavitù. Una valutazione alla luce del diritto internazionale consuetudinario, del diritto internazionale privato europeo e dell'agenda delle Nazioni Unite 2030' (2021) *Stato, Chiese* e Pluralismo Confessionale, also available at: https://air.unimi.it/retrieve/dfa8b9a6-00ab-748b-e053-3a05fe0a3a96/Boschiero.M_Giustizia_%28parte_prima%29.pdf

through collective efforts can the fundamental prohibition of slavery be fully realized and protect human beings from those who would deny and trample on their dignity.[24]

(B) THE EVOLUTION OF INTERNATIONAL LAW TOWARDS A CONTEMPORARY GENERAL PROHIBITION OF SLAVERY IN ABSOLUTE TERMS BY MEANS OF *ERGA OMNES* DUTIES

Today's absolute framing of the prohibition of slavery echoes the condemnation of it by civil society and the official position of States, that deem it an abhorrent practice. These stances are by no means performative or unnecessary in terms of their being merely condemnations of abuses in times gone by. On the contrary, most regrettably slavery is a persistent phenomenon in different ways, both including a wide array of modern slavery phenomena and dynamics and of traditional ways of slavery in certain social contexts.[25]

It can also be understood that the international legal prohibition of slavery is both a somewhat recent thus contemporary historical phenomenon[26] that responds to extra-legal demands. In the nineteenth century, for instance, the United Kingdom displayed a policy seeking to embark Latin American republics in official positions against slavery practices of their own or of third parties.[27] The United States of America likewise engaged in initiatives to make "slave trading punishable as piracy" during that century.[28] As to that period, it is noteworthy that several states agreed to deem slavery as a form of piracy, so as to permit the exercise of criminal jurisdiction against perpetrators beyond the national jurisdictions of victims and offenders, effectively treating slavers as *hostis homani generis* or 'enemies of all humanity'.[29] What is remarkable about these initiatives, which produced a necessary radical change in the legal conscience in relation to practices that had hitherto horrendously been deemed as 'legitimate' in legal terms,

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24 See H. TIgroudja, 'La répression internationale de l'esclavage', in Tanguy Le Marc 'Adour et Manuel Carius (dir.), Esclavage et droit, Paris: Artois Presses Université, 2010, pp. 139-150.

25 See, among others: United Nations Human Rights Office of the High Commissioner, "Libya must end "outrageous" auctions of enslaved people, UN experts insist", Press Releases, 30 November 2017; Human Rights Council, Contemporary forms of slavery as affecting currently and formerly incarcerated people, Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Tomoya Obokata, A/HRC/57/46, 19 July 2024; United Nations Human Rights Office of the High Commissioner, "Libya must end "outrageous" auctions of enslaved people, UN experts insist", Press Releases, 30 November 2017; Human Rights Council, Contemporary forms of slavery, including its causes and consequences, Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Tomoya Obokata, A/78/161, 12 July 2023, paras. 1-10; Human Rights Council, Contemporary forms of slavery affecting persons belonging to ethnic, religious and linguistic minority communities, Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Tomoya Obokata, A/HRC/51/25, 19 July 2022, paras. 38, 51-54.

26 I/A Court H.R., Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, paras. 248-249.

27 Nicolás Carrillo Santarelli, Carolina Olarte Bacarés, "From Swords to Words: the Intersection of Geopolitics and Law, and the Subtle Expansion of International Law in the Consolidation of the Independence of the Latin American Republics", Journal of the History of International Law, Vol. 21, 2019, pp. 5, 16, 18-20.

28 Jenny S. Martinez, The Slave Trade and the Origins of International Human Rights Law, Oxford University Press, 2012, at 123.

29 Ibid., Chapter 6.

was that the condemnation was made towards something that "is not a statist offense, but a human offense".[30]

Furthermore, it is a stain in the history of international law to note that during some periods in its practice standards of its own actually endorsed and promoted slavery. For example, agreements regulated slavery aspects such as quotas, access, etc., among others,[31] and slavery was deemed consistent with domestic and international norms.[32] Given the contemporary peremptory status of the prohibition, one must recall that there can be supervenient breaches of peremptory law by dispositive law standards which originally were not contrary to the former.[33]

It must be noted that the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery itself noted in Art. 5 that there were countries "where the abolition or abandonment of slavery, or of the institutions or practices mentioned in article 1 of this Convention, [was] not yet complete", evincing how developments as that agreement were stepping stones that, continuing, expanding the reach of, and building on the initiatives of the nineteenth century, *paved the way* towards the full proscription of slavery. Furthermore, this dark episode in the history of international law has been noted by the International Law Commission, which has written about the principle of intertemporality on how States are only responsible for breaches when they contravene an obligation at the time a conduct of theirs takes place, and that therefore:

> "International tribunals have applied the principle stated in article 13 in many cases. An instructive example is provided by the decision of Umpire Bates of the United States-Great Britain Mixed Commission concerning the conduct of British authorities who had seized United States vessels engaged in the slave trade and freed slaves belonging to United States nationals. The incidents referred to the Commission had taken place at different times and the umpire had to determine whether, at the time each inci dent took place, slavery was "contrary to the law of nations". Earlier incidents, dating back to a time when the slave trade was considered lawful, amounted to a breach on the part of the British authorities of the international obligation to respect and protect the property of foreign nationals. The later incidents occurred when the slave trade had been "prohibited by all civilized nations" and did not involve the responsibility of Great Britain."[34]

Without a doubt, nowadays slavery is to be regarded as forbidden under peremptory law. This is so because its prohibition is unconditional and absolute, admitting no exceptions. According to the International Law Commission, the prohibition of slavery

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30 David Luban, "The Enemy of all Humanity", Netherlands Journal of Legal Philosophy, Vol. 47, 2018, at 123.

31 Ralph J. Lowery, "The English Asiento and the Slave Trade", TNH Bulletin, Vol. 23, 1960 one must note how odious the name of the journal itself is, reminding of past racial discriminative speech.

32 Mark D. Welton, "International Law and Slavery", Military Review, 2008.

33 Cf. Art. 64 of the Vienna Convention on the Law of Treaties adopted in 1969; Antonio Gómez Robledo, El ius cogens internacional: estudio histórico-crítico, Universidad Nacional Autónoma de México, 2003, pp. 99-118.

34 International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001, para. 2 of the commentary to article 13, at 58.

is among "[t]hose peremptory norms that are clearly accepted and recognized".[35] The Inter-American Court of Human Rights has likewise pronounced as to its peremptory nature.[36] Hence, the criticism that some in doctrine have levied against some regional decisions identifying the *erga omnes* status of obligations against slavery that rely, according to it, on misinterpretations of previous case law,[37] ultimately does not disprove or challenge the peremptory nature of the prohibition. And, given its *jus cogens* status, the obligations it generates have an *erga omnes* character.

Additionally, one can look at its international criminalization as further confirmation of the peremptory nature of the prohibition. Authors as Antonio Gómez Robledo have explained how the criminal condemnation of human rights violations by international standards can be seen as evidence of the *jus cogens* status of the prohibition of said abuses.[38] One can argue that, along the same lines, when international standards order states to criminalize a given conduct they confirm the absolute character of its prohibition, and thus of its peremptory status which amounts to admitting no exceptions whatsoever to it.[39] Altogether, these considerations confirm that, by virtue of being forbidden in terms of *peremptory* law, the obligation prohibiting acts of slavery has a general *erga omnes* nature.

This is the conclusion that follows the consideration that the obligations of every peremptory norm can be deemed to be general *erga omnes* duties.[40] It should therefore come as no surprise that the International Law Commission has identified those against slavery as having such a nature.[41] The Commission has said that while it would be "of limited value" or little use that and it was beyond the function of its 2001 articles on the Responsibility of States for Internationally Wrongful Acts to list "those obligations which under existing international law are owed to the international community as a whole […] the principles and rules concerning the basic rights of the human person, including protection from slavery", can clearly be deemed of an *erga omnes* nature.[42] In this regard, one can point to the criminalization of sexual slavery in Arts. 7.1.g, 8.2.b.xxii, and 8.e.vi of the Rome Statute of the International Criminal Court; as well as to Arts. 3, 5, and 6 of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, which oblige states parties to it to criminalize and persecute the conveyance of slaves, physical harms caused against slaves, and the acts of enslaving others.

Having addressed the path towards the peremptory and *erga omnes* prohibition of slavery in all its forms and manifestations, one may well pose the question of whether

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35 International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001, para. 5 of the commentary to article 26, at 85.

36 I/A Court H.R., Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, paras. 249, 342.

37 J. Allain, The Law and Slavery, op. cit., pp. 235, 248.

38 Antonio Gómez Robledo, El ius cogens internacional: estudio histórico-crítico, Universidad Nacional Autónoma de México, 2003, pp. 169-170.

39 Art. 53 of the Vienna Convention on the Law of Treaties adopted in 1969.

40 Antonio Remiro Brotóns et al., op. cit., at 231.

41 International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001, para. 9 of the commentary to article 48, at 127.

42 Ibid.

further international legal developments are necessary or convenient for the sake of the achievement of its purposes, or whether they end up adding nothing and are mere reminders. Granted, the impunity with which it is sometimes committed, and the perpetration of violations reveal that there is an effectiveness issue. But that is not what we are asking presently. Instead, we wonder what benefits, if any, further or previous regulation by means of *erga omnes partes* and procedural developments could bring to the table. And the answer is that they are many. For the sake of such an analysis, it is important to note that unlike the general ones, *erga omnes partes* obligations "constitute a "smaller circle" with respect to the former category", in the words of Eugenio Carli.[43]

Firstly, as to the road towards the absolute and peremptory prohibition of slavery in all its forms and manifestations, one can say the following. On the one hand, that precedents as those explored herein were stepping stones that ended up forming a regime or *corpus juris* against slavery that has peremptory and *erga omnes* features, as we will further argue in section IV, infra. On the other hand, despite progress, it is important to come up with ways that bring an end to material, procedural and technical loopholes that lower the chances of there being an actual prosecution of abuses against the prohibition and a protection of victims. New *erga omnes partes* obligations can help to achieve this, as we will also say below. Furthermore, specialized standards, be it in general or regional international law, in particular agreements or in custom at different levels of governance, can provide specific instruments and mechanisms that can be resorted to in ways that increase the effectiveness of the norm; tackle specific manifestations of violations that occur frequently or in any other way in a given region or at the world level; and further refine the regime against slavery and fill gaps that are identified in practice in terms of circumvention of the prohibition or repression and protection towards its violation. This can be done by means of clarifying definitions that help to identify certain manifestations of slavery practices; by creating new cooperation or accountability mechanisms, or in other ways. We will now proceed to explore some of these aspects.

(C) THE NECESSITY TO IMPROVE COMPLIANCE WITH THE PROHIBITION OF SLAVERY

The prohibition of slavery is, on moral grounds, as finally recognized in international law in relatively recent times (sadly, too late for too many victims), absolute and fundamental. But despite this, human concupiscence and abuses against fellow human beings have made this central tenet be violated, still in recent times. Apart from direct violations, obligations related to actions against slavery have also been circumvented or breached by action and omission states in recent years.[44] This troubling phenomenon exposes

[43] Eugenio Carli, "Community Interests Above All: The Ongoing Procedural Effects of Erga Omnes Partes Obligations Before the International Court of Justice", EJIL Talk, 29 December 2023.

[44] See Y. Hamuli Kabumba, 'LA RÉPRESSION INTERNATIONALE DE L'ESCLAVAGE: LES LEÇONS DE L'ARRÊT DE LA COUR DE JUSTICE DE LA COMMUNAUTÉ ÉCONOMIQUE DES ÉTATS DE L'AFRIQUE DE L'OUEST DANS L'AFFAIRE HADIJATOU MANI KORAOU c. NIGER (27 octobre 2008)' (2008) 21 Revue québécoise de droit international, available at: https://www.erudit.org/fr/revues/

fundamental deficiencies in political commitment, legal frameworks, and mechanisms of accountability;[45] and makes it necessary to discuss certain issues related to the effectiveness of the primary obligations and standards discussed in this article. While norms are no less legal as a result of their breach, such a breach — especially in serious matters as the one presently discussed — is concerning.

Despite the binding obligations enshrined in instruments such as the Slavery Convention, the Supplementary Convention, and the Rome Statute of the International Criminal Court (ICC),[46] many states have consistently failed to fulfill their duties to prevent, prosecute, and redress acts of slavery,[47] and to criminalize slavery itself in their domestic legislation, despite the existence of international standards requiring this.[48] These failures undermine not only the credibility of international law but also foster a culture of impunity surrounding one of the gravest violations of human rights; and leave human beings unprotected from abuses that undermine their wellbeing in extreme ways

Instances of state evasion are particularly evident in contexts such as those of certain conflict zones in which sexual slavery has been systematically employed as a weapon of war.[49] Armed groups operating in regions such as Syria, Iraq, and the Democratic Republic of Congo have committed widespread acts of sexual slavery.[50] However, states with jurisdiction over such crimes have frequently failed to prosecute perpetrators.[51] This inaction is often attributed to challenges including fragile political transitions, competing military priorities, or, in some cases, overt indifference. In certain contexts, government complicity has also been evident, with state actors either providing material support to groups engaged in sexual slavery or deliberately avoiding accountability measures to preserve political alliances. In other contexts, the nonexistence or fragility of a central government may lead to non-state actors carrying out acts of slavery exploiting the absence of state presence and enforcement.

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rqdi/2008-v21-n2-rqdi05250/1068878ar/; M. Cavallo, 'Formes contemporaines d'esclavage, de servitude et travail forcé. TPIY et la CEDH entre passé et avenir' (2006) 5 Droits fondamentaux, 2006, p. 2.

45 Amplius, see D. Weissbrodt, 'Slavery', Max Planck Encyclopaedia of Public International Law, available at: MPEPIL <http://www.mpepil.com>

46 See e.g. Harmen van der Wilt, 'Slavery prosecutions in international criminal jurisdictions' (2016) 14 Journal of International Criminal Justice, 269-283; M.C. Bassiouni, 'Enslavement as an international crime' (1990) 23 NYUJ Int'l L. & Pol., 445. See also Esteban Juan Pérez Alonso, 'Tratamiento jurídico-penal de las formas contemporáneas de esclavitud' (2019) 23 Revista de Estudos Jurídicos da UNESP, 38 ff.

47 See also R.B. Achour, 'Le cadre juridique international de la prohibition de l'esclavage' (2021) Ordine Internazionale e Diritti Umani, available at: https://www.rivistaoidu.net/wp-content/uploads/2021/12/1_Ben-Achour_2.pdf

48 J. Allain, "Slavery and its Obligations Erga Omnes", Australian Year Book of International Law Online, Vol. 36, 2019.

49 See ex multis US Department of State, 'Modern Slavery as a Tactic in Armed Conflicts', available at: https://2009-2017.state.gov/j/tip/rls/fs/2015/250664.htm; M. Bastick, K. Grimm, R. Kunz, Sexual Violence in Armed Conflict — Global Overview and Implications for the Security Sector, Geneva Centre for the Democratic Control of Armed Forces, Genève, 2007.

50 Amplius, see S. Meger, Rape loot pillage: The political economy of sexual violence in armed conflict, Oxford, 2016.

51 See E.S. Janus, Failure to protect: America's sexual predator laws and the rise of the preventive state, New York, 2006.

Economic exploitation of migrants and rural workers could likewise be carried out in ways that amount to modern slavery.[52]

Altogether, this reveals that evasion of the prohibition is not limited to contexts of armed conflict but extends into peacetime scenarios as well.[53] In various regions, such as Southeast Asia, the Middle East, and parts of Africa, insufficient labor protections and entrenched cultural discrimination have, for example, facilitated the trafficking and exploitation of women and girls under the pretense of domestic servitude or forced marriage.[54] Although international legal instruments unequivocally prohibit these practices, many states have failed to take effective countermeasures against them.[55] Sovereignty and cultural relativism are often invoked as justifications to resist external scrutiny, allowing systemic exploitation to persist unchecked.[56]

The complicity of transnational criminal networks further exacerbates this issue.[57] Human trafficking networks exploit weak border controls and inconsistent law enforcement across jurisdictions, particularly in states with fragile governance structures.[58] States frequently neglect their obligations to combat such networks, failing to align national legislation with international standards or to allocate sufficient resources for the investigation and prosecution of trafficking-related crimes.[59] International frameworks, such as the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the so called 'Palermo Protocol'),[60] emphasize the necessity of robust counter-trafficking measures. Yet, their implementation remains inconsistent, superficial, and sometimes even subordinated to other policy priorities,[61] in spite of the seriousness of the abuses and the necessity to better tackle them, in order to prevent victims, who are deceived or otherwise abused in their places of origin so as to enslave them, forcing them to provide services that have been considered to be either

52 IOM UN Migration, Migrants and their Vulnerability to Human Trafficking, Modern Slavery and Forced Labour, 2019, pp. 4-5; I/A Court H.R., Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, para. 112.

53 See E.S. Janus, op. ult. cit.

54 See e.g., B. Balos, 'The wrong way to equality: privileging consent in the trafficking of women for sexual exploitation' (2004) 27 Harv. Women's LJ, p. 137 ff; B. Faedi, 'The double weakness of girls: Discrimination and sexual violence in Haiti' (2008) 44 Stan. J. Int'l L., p. 147 ff.

55 Amplius, see C.V. Chitupila, Gold between their legs? Trafficking in women for sexual exploitation: An analysis of the SADC response at national and regional level, MS thesis. University of Pretoria, 2009.

56 See e.g., J. C. Goltzman, 'Cultural Relativism or Cultural Intrusion Female Ritual Slavery in Western Africa and the International Covenant on Civil and Political Rights: Ghana as a Case Study' (1998) 4 New Eng. Int'l & Comp. L. Ann., p. 53 ff.

57 See L. Shelley, Human trafficking as a form of transnational crime, Willan, 2013, pp. 116-137.

58 See N. Avdan, 'Human Trafficking, Organized Crime, and Border Control: Vicious or Virtuous Cycle?', APSA 2011 Annual Meeting Paper.

59 See J. Lindley, 'Policing and prosecution of human trafficking', in Research Handbook on Transnational Crime, London, 2019, pp. 247-260.

60 UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, https://www.refworld.org/legal/agreements/unga/2000/en/23886

61 Amplius, see E. K. Hyland, 'The impact of the protocol to prevent, suppress and punish trafficking in persons, especially women and children' (2001) 8 Human Rights Brief, p. 12 ff.

or almost next to slavery in practice, with distinctions between the concepts being prone to exploitations that can weaken the human rights framework.[62]

Economic and social factors further contribute to the evasion of obligations. Structural gender inequality, systemic poverty, and the normalization of exploitative practices, can render marginalized populations, particularly women and girls and persons in rural areas, disproportionately vulnerable to different forms of slavery including that of sexual kind.[63] States exacerbate this vulnerability by failing to address these underlying conditions and to adequately respond to the violations with impunity entrenching the odious practices. Instead of viewing structural inequality as integral to the eradication of sexual slavery, many states prioritize short-term criminal justice measures that inadequately address the root causes of exploitation[64] and fail to systemically and sufficiently tackle it in society. Geopolitical considerations also play a significant role in obstructing accountability.[65] Efforts by international mechanisms such as the International Criminal Court (ICC) or UN-mandated investigative bodies [66] to address sexual slavery have often been stymied by states' reluctance to cooperate, with their commitments being but merely of a token nature in practice. Some states have weaponized jurisdictional loopholes to shield perpetrators from prosecution, while others have actively obstructed investigations, particularly when crimes implicate their allies. For example, allegations of states blocking ICC inquiries into acts of sexual slavery committed by aligned parties demonstrate a clear erosion of the universality of the prohibition.[67] Such selective and double standards demonstrate a lack of an actual unconditional commitment to the fight against slavery and the prioritization of strategic foreign relations.

Accordingly, we put forward that general and regional specialized standards of a procedural or substantive nature that address loopholes and tackle specific challenges that contribute to the lack of a fully effective enforcement of anti-slavery provisions must continue to be studied for the sake of eradicating the scourge of slavery. Likewise, case law developments that identify different forms of slavery calling them as such, and hold perpetrators and accomplices alike accountable, are necessary, both by international/regional and by domestic judicial authorities exercising universal and other jurisdictions. The former developments will likely create new *erga omnes* obligations, while the latter i.e., judicial pronouncements will enforce them and lead to their effective implementation.

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62 Waldimeiry Correa Da Silva, "La explotación y la trata laboral desde el contexto de la investigación participativa", in: Julio Alberto Rodríguez Vásquez (Ed.), V Congreso Jurídico Internacional sobre formas contemporáneas de esclavitud: Veinte años después del Protocolo de Palermo, Tome II, CICAJ PUCP, 2023, pp. 220, 237.

63 See E. Decaux, Les formes contemporaines de l'esclavage, Leiden/Boston, 2009, pp. 119-134.

64 For references, see e.g., D. Tolbert, L. A. Smith, 'Complementarity and the investigation and prosecution of slavery crimes' (2016) 14 Journal of International Criminal Justice, pp. 429-451.

65 See G. Fitzgerald, 'Putting trafficking on the map: The geography of feminist complicity', in Demanding sex: Critical reflections on the regulation of prostitution, London, 2016, pp. 99-120.

66 See M. O'Brien, 'Sexual exploitation and beyond: Using the Rome Statute of the International Criminal Court to prosecute UN peacekeepers for gender-based crimes' (2011) 11 International Criminal Law Review, pp 803-827; N. Quénivet, 'The Role of the International Criminal Court in the Prosecution of Peacekeepers for Sexual Offenses' (2008) 14 Law enforcement within the framework of peace support operations, pp. 411-412.

67 See N. Quénivet, op. ult. cit., p. 411 ff.

(D) THE PROHIBITION OF SLAVERY AS AN *ERGA OMNES PARTES* PROHIBITION

According to the International Court of Justice (ICJ),a "common interest implies that […] obligations in question are owed by any State party to all the other States parties to the Convention. All the States parties "have a legal interest" in the protection of the rights involved […] These obligations may be defined as "obligations *erga omnes partes*" in the sense that each State party has an interest in compliance with them in any given case".[68] Therefore, in other words, *erga omnes partes duties* protect common interests and as a result all other states participating in the regime in which such obligations are present have an interest of a *legal* nature in the integrity of those obligations and compliance with them, having therefore standing to invoke breaches of them. Interestingly, *even* back then, the compromissory clause found in Art. 8 of the 25 September 1926 Slavery Convention indicates that the integrity and respect of a treaty was seen as of legal interest for the parties to it, entitling them to raise disputes related to its interpretation and implementation. It must be said that the League of Nations-era or Inter-war-era judicial institution mentioned in that provision have been superseded by the International Court of Justice, according to Art. V of the 1953 Protocol amending the Slavery Convention signed at Geneva on 25 September 1926.[69] All of this can point towards the identification of (at least some) elements of *erga omnes* obligations before the coining of the expression in the case law of the ICJ and in doctrine being present before such a formal recognition. In the end, the potentialities of the law can exist before their *conscious* and more cohesive identification of them with a given formula.

In turn, the International Law Commission has referred to two elements the concurrent presence of which reveals the existence of an *erga omnes* partes obligation: first, it must be an obligation that is "owed to a group to which the State invoking responsibility belongs; and secondly, the obligation must have been established for the protection of a collective interest". Moreover, the Commission admits that in terms of their sources, such duties can "derive from multilateral treaties or customary international law".[70]

In order to identify *erga omnes partes obligations*, it may be important to examine three key criteria: (1) the object and purpose of a regime e.g., a given treaty , which identifies the overarching goals and intentions underpinning the agreement; (2) the common interest of state parties in ensuring compliance with the treaty's duties and obligations, reflecting a collective commitment to uphold its principles; and (3) whether

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68 International Court of Justice, Questions relating to the obligation to prosecute or extradite (Belgium v. Senegal), Judgment, 20 July 2012, para. 68.

69 The Article of the Protocol reads: "In article 8 "the International Court of Justice" shall be substituted for the "Permanent Court of International Justice", and "the Statute of the International Court of Justice" shall be substituted for "the Protocol of December 16th, 1920, relating to the Permanent Court of International Justice".

70 International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001, para. 6 of the commentary to article 48, at 126.

the obligation in question is so integral to achieving the treaty's purpose that its fulfillment is indispensable.[71]

Applying this analytical framework to regimes such as that of the prohibition of slavery under the 1926 Slavery Convention clearly supports the assertion of finding the *erga omnes partes* nature of this norm, underscoring its universal significance and the collective responsibility of state parties to enforce and uphold it.[72]

Interestingly, this would imply that there were *erga omnes* obligations before their *eo nomine* identification as such by the International Court of Justice in its famous *obiter dictum* in the Barcelona Traction case. And that is precisely what we argue: this pronouncement consisted in a *recognition* of an existing normative phenomenon, as one can glean from its wording: after all, the Court said then that obligations towards the community of all states in the case of general ones, and to a circle within them in relation to those that are *partes*, we might add "[b]y their very nature *are* the concern of all States [in the respective group, we add]. In view of the importance of the rights involved, all States *can be held to have a legal interest* in their protection; *they are* obligations *erga omnes*" (emphasis added).[73] The Court's use of words such as "are", "can be held to", and alike, suggests that it is merely *acknowledging* a legal reality. And the Latin expression employed is merely a translation of the fact that the obligations in question are relevant 'towards all'. According to Jean Allain, the ICJ "identified protection from slavery as one of two specific examples of obligations erga omnes obligations owed to the international community as a whole arising out of human rights law, as early as 1966", which in his opinion is an important precedent at the world stage on developments against slavery and in relation to its use in the past, alongside compensations.[74]

Moreover, even if there were doubts as to their intertemporal status as such, from a contemporary perspective it is also possible to reach a conclusion in favor of the *erga omnes partes* status of duties found in instruments such as the aforementioned treaty that preceded the consolidation of the doctrinal identification of the obligations by way of example, with the same logic being applicable elsewhere. This can be done easily with a logic that goes from the general to the specific, insofar as if the general prohibition of slavery has been widely accepted to enjoy a (general) *erga omnes* nature. Hence, it stands to reason that specific manifestations of such a prohibition in "smaller

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71 International Court of Justice, Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda), 18 September 2002, para. 34.

72 In its 2012 judgment in the case of Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), the International Court of Justice (ICJ) determined that Belgium had ius standi to hold Senegal accountable for the alleged violations of its obligations under Articles 6(2) and 7(1) of the Convention Against Torture. and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 The ICJ further declared these claims admissible without requiring Belgium to demonstrate that it was "specially affected" or "injured." This decision was grounded in the concept of "obligations erga omnes partes," which the Court described as obligations for which all states share a "common interest" in ensuring compliance, as is the case with the provisions in question.

73 International Court of Justice, Case concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), Judgment, 5 February 1970, para. 33.

74 J. Allain, The Legal Understanding of Slavery: From the Historical to the Contemporary, Oxford University Press, 2012, at 119.

circles" will likewise reflect a collective interest in their respective regimes, entitling its participants to seek their effectiveness, as a manifestation of what they are already entitled to generally.

In any case, what can be considered to be beyond doubt is the fact that developments such as this treaty and others mentioned in section II, *supra*, contributed to the increasing condemnation in absolute terms of slavery, in expanding concentric circles that would eventually reach the world stage beyond the circles of specific regimes. Therefore, the latter, which had duties with features corresponding to what we today call *erga omnes partes* obligations, paved the way towards the general prohibition of slavery practices. This was thanks to the formation of a legal conscience – a sort of what has been called a 'Grotian moment'[75] – openly and unconditionally opposed to slavery, thanks to how the *erga omnes partes* regimes transformed networks of accountability and obligations, conscience and identification of duties, and practices, which ended up compounding with others and consolidating a general international regime of prohibitions.

(1) Object and Purpose of the 1926 Slavery Convention

The Slavery Convention was adopted to suppress and prevent slavery in all its forms, including slavery-like practices such as slavery. Its preamble refers to ongoing efforts towards "securing the complete suppression of slavery in all its forms". Under the 1969 Vienna Convention on the Law of Treaties (VCLT), the preamble and the treaty's text provide key insights into its object and purpose. The aspiration present in the preamble in absolute and unequivocal terms refers to a collective aspiration to completely eradicate all the forms of this grave violation of human dignity.

From a contemporary perspective, it is impossible to underestimate the tremendous importance of the 1926 Convention. It opposed and contributed to countering slavery practices by means of its aim to globally suppress slavery, which has effects that are dehumanizing and brutalizing.[76] Even though the words 'human rights' do not appear therein, which can be explained because the (increasingly) widespread express internationalization of human rights in conscious and literal terms would take place after World War II, the treaty is considered today to be a human rights one, as is revealed in its inclusion as such in the webpage of the Office of the High Commissioner of Human Rights of the United Nations.[77] Developments as the treaty helped to make slavery be recognized not only as a violation of fundamental human rights but as an institution that shocks the conscience of humanity due to its inherent violence and exploitation of individuals. Considering that its Preamble and provisions as Art. 2.b talk of the objective "to bring about […] the complete abolition of slavery in all its forms", we can both consider that it encompasses different manifestations of the odious practice,

75 Michael P. Scharf, "The "Grotian Moment" Concept", *ILSA Quarterly*, Vol. 19, 2011, at 16.

76 Amplius, see C. Gevers, 'Refiguring slavery through international law: The 1926 slavery convention, the 'native labor Code'and racial capitalism' (1922) 25 *Journal of International Economic Law*, 312-333.

77 Source: <https://www.ohchr.org/en/instruments-mechanisms/instruments/slavery-convention>, last visit: 04 February 2025.

including those that existed already and those that could arise with new features. In this context, sexual slavery, as one of the most extreme and devastating forms of slavery, is particularly relevant. It entails the systematic and coercive use of individuals, often women and children, for sexual exploitation, thereby stripping them of their autonomy, dignity, and basic human rights.

Sexual slavery, as an extreme manifestation of slavery, indeed directly aligns with the object and purpose of the 1926 Convention, which sought to eradicate all forms of slavery and servitude. The Convention's overarching goal was to put an end to the commodification of human beings, with the prohibition of sexual slavery being a crucial component of this aim. By recognizing sexual slavery as a severe violation of human dignity, the Convention enshrines the need to take decisive action against such practices, ensuring that they are not only condemned but eradicated globally. Thus, the Convention's central objective to abolish all forms of slavery carries with it a clear and unambiguous prohibition of sexual slavery, as we said above. The inextricable link between the two underscores the importance of addressing the horrific and ongoing issue of sexual slavery within the broader framework of global human rights protections and international law.

(2) Common Interest in Compliance with the 1926 Slavery Convention

A second element that can aid to identify *erga omnes partes* mentioned in the beginning of this section IV worth considering involves determining whether state parties to a particular treaty share a common interest in ensuring compliance with the obligations enshrined within that treaty. This assessment focuses not merely on the bilateral or individual interests of the states involved, but on a broader, collective understanding of the treaty's objectives and the principles it upholds.

In the case of *Belgium* v. *Senegal*, the ICJ underscored the notion that human rights treaties, including the Convention Against Torture (CAT), go beyond the narrow interests of the states that are parties to the treaty.[78] These treaties impose obligations that are not solely dependent on the agreements between the signatories; instead, they establish a collective and universal interest in ensuring that fundamental human rights are respected and upheld. The Court highlighted that the duties enshrined in such treaties, particularly the prohibition of torture, are based on universally recognized principles of humanity and are of such a nature that they bind all parties to act, even in the absence of direct bilateral relationships.[79]

In this context, the ICJ emphasized that the obligations under the Convention Against Torture reflect global consensus on the importance of preventing torture and other forms of ill-treatment, and therefore, states have a shared responsibility to uphold these obligations for the greater good of humanity. This collective interest transcends the individual or regional concerns of the states involved, aligning them

78 See ICJ, Questions Concerning the Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgment (Jul. 20, 2012)], para. 13. See also ICJ, Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain), Second Phase, Judgment, 1970 I.C.J. 3, paras. 33 to 35.

79 See ICJ, Questions Concerning the Obligation to Prosecute or Extradite (Belg. v. Sen.) cit.

with the broader international community's commitment to ensuring the protection of human dignity and rights. Thus, the ICJ's ruling in *Belgium* v. *Senegal* reaffirms that human rights treaties such as the Convention Against Torture impose obligations that are inherently linked to global norms and values, compelling states to act not just in their own interest but in the collective interest of preserving and promoting fundamental human rights for all.[80]

Similarly, under the 1926 Slavery Convention, the abolition of all forms of slavery, including sexual slavery, transcends any concept of reciprocal benefit between specific states. The Convention's objective is not confined to the interests of individual signatories but reflects a universal and collective commitment to the fundamental principle of human rights. The abolition of slavery is seen not as a matter of mutual benefit among the parties involved, but as a moral imperative for the international community as a whole. States parties to the 1926 Convention share a common legal duty to ensure that the prohibitions on slavery, including sexual slavery, are respected, and enforced, as any continued existence of slavery in any form serves to undermine the core values and ethical foundation of the international order. This shared legal interest is emphasized by the fact that the obligations enshrined in the 1926 Slavery Convention are owed to all states parties, regardless of whether a direct or bilateral relationship exists between a state and the perpetrator or victim of slavery. In this sense, the obligations are not purely bilateral but extend universally to all members of the international community. This universal framework reflects a global consensus on the abhorrent nature of slavery and underscores that its abolition is a collective responsibility. Just as the ICJ noted with respect to the Convention Against Torture, states do not enforce these prohibitions solely for their own benefit or out of bilateral concerns; rather, they do so in the service of the Convention's broader humanitarian goals.

In this light, states are empowered not only to demand compliance with the Convention from other states parties, but also to hold violators accountable, regardless of whether there is a direct link to the state making the demand. This further reinforces the concept of *erga omnes* obligations that is, obligations owed to the international community as a whole and highlights the fundamental, universal nature of the prohibition against slavery, including sexual slavery. By framing these obligations as binding on all state's parties and beneficial to humanity at large, the 1926 Convention emphasizes that the fight against slavery is not a matter of individual state interests, but a shared commitment to safeguarding human dignity worldwide.

(3) Integral Nature of the Prohibition of Sexual Slavery to the Convention's Purpose

A third criterion involves determining whether the prohibition of slavery is so integral to the purpose of the treaty that it cannot be derogated from. Under the 1926 Slavery

[80] Ibidem, para. 13. See also Manuel J. Ventura,. Victor Baiesu, 'The ICJ's Senegal v. Belgium Judgment and the Obligation to Prosecute or Extradite Alleged Torturers: The Case of Al Bashir and the ICC (June 11, 2019), in Sharon Weill, Kim Thuy Seelinger & Kerstin Bree Carlson (eds), The President on Trial: Prosecuting Hissène Habré, Oxford, 2020, pp. 295-308.

Convention, the eradication of slavery in all its manifestations including sexual slavery is paramount. This is evident in the unequivocal language of the treaty and its supplementary instruments, such as the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, [81] which explicitly address slavery-like practices, including sexual slavery.

No reservations or derogations are permissible under the 1926 Slavery Convention that would undermine the core obligation to abolish slavery and its manifestations, implicitly including sexual slavery which, despite not being mentioned as such in its text, falls within its scope. The absolute nature of this prohibition ensures that no state can justify or condition its compliance with the Convention based on political, cultural, or legal considerations. The abolition of slavery is an imperative that transcends national interests and local contexts; it is a fundamental human right that must be respected without exception. This unqualified commitment ensures that the core purpose of the Convention the eradication of all forms of slavery remains intact, irrespective of any external factors or potential conflicts of interest. In this sense, the prohibition of slavery operates as a non-negotiable standard within international law, reinforcing its fundamental importance within the global legal order. As we demonstrated in section II, the prohibition of slavery is universally recognized as a peremptory norm of customary international law, also known as *jus cogens*. This status grants the prohibition an elevated position in the hierarchy of international legal norms, signifying that it cannot be derogated from under any circumstances. The fact that the prohibition against slavery has attained this elevated status further reinforces its centrality to the 1926 Slavery Convention and to the broader international legal framework. As a norm of customary international law, the prohibition against slavery binds all states, whether they are parties to the specific treaties that address it. This universality underscores the widespread acknowledgment of slavery's extreme inhumanity and the collective global commitment to its abolition. As a cornerstone of the Convention's object and purpose, the prohibition of slavery constitutes a non-derogable obligation. This means that it is an absolute and indivisible duty that all states parties must respect and enforce, without exception, in all circumstances.

The core principle of abolishing slavery is so deeply embedded within the treaty that it cannot be subject to reservations or any form of conditional application. It is an enduring and universal obligation that reflects the commitment of the international community to protect the human dignity and human rights of all individuals, and particularly those vulnerable to exploitation and oppression through slavery. As such, the prohibition against slavery, in all its forms, holds a central and binding place within the structure of general international law, compelling all states parties to uphold and ensure its effective implementation.

[81] See J. A. C. Gutteridge, 'Supplementary Slavery Convention, 1956' (1957) 6 *International & Comparative Law Quarterly*, 449-471.

(E) CHALLENGES TO THE REALIZATION OF *ERGA OMNES* PARTES OBLIGATIONS

Having satisfied the criteria established by the ICJ in *Belgium* v. *Senegal*, the prohibition of slavery under the Slavery Convention constitutes an *erga omnes partes* obligation. The Convention's object and purpose — to eradicate slavery in all its forms — cannot be fulfilled without the absolute prohibition of slavery. State parties share a collective legal interest in ensuring compliance with this prohibition, reflecting its universal significance and the non-reciprocal nature of obligations under the Convention. Finally, the prohibition of sexual slavery is integral to the Convention's purpose and is recognized as a norm of customary international law, further affirming its *erga omnes partes* character. While we have referred to this specific type of slavery, the same considerations are applicable to other ones.

While the prohibition of slavery undoubtedly meets the theoretical criteria for an erga omnes partes norm — meaning it is a rule binding on all states and applicable universally — its practical implementation continues to encounter significant challenges. While the legal framework established by the 1926 Slavery Convention provides a solid foundation for the abolition of slavery in all its forms, in practice, the effective enforcement of this prohibition remains elusive. One of the major obstacles to ensuring compliance is the frequent lack of political will among contracting states. States, particularly those with limited resources or unstable governance structures, may be unable or unwilling to take the necessary steps to combat slavery within their borders. These challenges are compounded by competing national interests, internal political dynamics, and the reluctance of certain governments to confront or address systemic exploitation and human rights abuses. But one cannot ignore that also in those states with greater resources abuses contrary to the prohibition of slavery may be perpetrated with impunity. Transnational networks, criminal practices, and other factors may play a part in this, reminding us about the importance of effectively implementing standards against transnational organized crime — something that is evident in the text of Art. 3.a of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime —, of universal jurisdiction, and the guarantee of judicial cooperation and access to justice, among others provided by contemporary international law.

In addition to political challenges, practical barriers such as insufficient resources and inadequate legal frameworks often undermine efforts to prevent or punish slavery. Many states, especially those with developing economies or fragile institutions, struggle to allocate the necessary resources or establish the infrastructure needed for the effective enforcement of anti-slavery laws. As a result, slavery persists in various forms, including forced labor and sexual slavery, despite its clear prohibition under the Convention. Geopolitical considerations and structural inequalities further complicate the situation, as they frequently inhibit the collective action required to address slavery as an international issue. States may be unwilling to intervene in or criticize the practices of other states due to diplomatic, economic, or strategic concerns. Additionally, powerful countries or those with significant influence may shield or overlook violations committed by their allies or within their spheres of influence in a perverted way that shows how

humanity considerations are still far from being given the priority they deserve. Such political dynamics create a fragmented approach to enforcing the prohibition of slavery, undermining the collective responses and cooperation *on behalf of fellow human beings* that are essential to the *erga omnes* nature of the obligation.

These and other shortcomings underscore the critical need for strengthened international cooperation and the development of more robust enforcement mechanisms. States must renew their commitment to the principles enshrined in the Slavery Convention and take active steps to ensure that slavery, in all its forms, is eradicated. This requires greater accountability, increased support for anti-slavery programs, and the implementation of more effective monitoring and reporting mechanisms. Furthermore, a collective global effort that is victim and human-centered is necessary to address the structural inequalities that allow slavery to persist, with a focus on addressing the root causes of exploitation, such as poverty, discrimination, and conflict. Only through a coordinated and resolute approach can the international community ensure the full realization of the prohibition of slavery as an *erga omnes partes* obligation.

(F) CONCLUDING REMARKS

This article has critically examined the historical and contemporary prohibition of slavery, paying attention to the past and potential contributions and relevance of an *erga omnes partes* obligation developments. The findings of this analysis affirm that the prohibition of slavery in all its forms, such as sexual slavery, holds an *erga omnes* status be it general or *partes*, depending on the level of the 'circle' of the participants. By evaluating the object and purpose of the 1926 Slavery Convention as a way of example, one can identify the shared legal interest of state parties in its enforcement, and the integral nature of the prohibition within the broader framework of the Convention, this prohibition is universally binding upon all states, irrespective of their direct relationship with the violator or victim. Interestingly, that *legal* interest may fail to be corresponded by an actual *political* (cynical) interest of politicians. But its existence itself provides a means to invoke the standards in question, countering wrongful practices and omissions.

The prohibition of slavery, as enshrined in the 1926 Slavery Convention and its Supplementary Convention, reflects a fundamental commitment to human dignity and the protection of human rights and freedoms. As a *jus cogens* norm, the prohibition is absolute, with no derogation allowed. This status highlights the collective responsibility of states to ensure the eradication of all forms of slavery, including the particularly egregious form of sexual slavery. However, while the legal framework is firmly established, its practical realization remains a significant challenge.

Despite the binding nature of the Slavery Convention and its associated instruments, numerous states persistently fail to uphold their obligations. The persistence of slavery in various forms whether in conflict zones, such as the use of sexual slavery as a weapon of war, or in peacetime practices, such as human trafficking demonstrates a troubling lack of political will, inadequate legal structures, and often outright evasion of international duties. In some cases, states' failure to prosecute slavery-related crimes is compounded by

complicity in trafficking or the exploitation of vulnerable populations. This undermines the global actions against slavery that are *possible* under international law and hinders the effective enforcement of international law. That said, as we have argued elsewhere, the existence of *erga omnes* obligations provides *reasons* of moral action, in the following sense. Just as not everything permitted under the law may be morally upright, the opposite can also be true, as is the case here. States authorities and non-state actors alike when empowered to are ethically called to *resort to the possibilities* permitted by the existence of general and *partes erga omnes* obligations, with the omission of doing so being morally wrong and unethical, because they can be the only means available to protect those who have not been protected otherwise. As we then wrote:

"[I]t is also possible to identify a second scenario with circumstances under which failing to dosomething that the law permitsthe moral agent to do will be wrong from the perspective of other normativities […] ust as doing what the law permits is, in some circumstances, contrary to the standards, reasons, and criteria found in other normativities; likewisenot doing what the law permits to do is sometimes contrary to morals and prudence, such as when such failure cannot be expected to become a universal maxim of con-duct; and/or when it fails to take into account virtues such as solidarity which can connect "compassion and justice" in contexts that call for it, from a virtue ethics perspective […] One must thus use what the law allows. The law is, after all, instrumental, and sometimes the possibilities it offers can be the only lifeline for those whose lives and essential wellbeing depend on at least a third party acting on their behalf, interacting with the law by invoking it or otherwise".[82]

Moreover, international efforts to address sexual slavery and other forms of exploitation face significant obstacles, including political and economic considerations, cultural relativism, and the influence of transnational criminal networks. Despite the establishment of frameworks such as the Palermo Protocol and the Rome Statute of the International Criminal Court, state actors have frequently invoked sovereignty or indifference to resist external scrutiny and evade accountability for slavery-related violations. Geopolitical interests also often obstruct the pursuit of justice, as evidenced by instances in which states have shielded perpetrators from prosecution or obstructed investigations into slavery-related crimes.

This study concludes that while the prohibition of slavery under the 1926 Slavery Convention is theoretically an *erga omnes partes* obligation, the gap between legal obligations and actual enforcement remains vast. To realize the full potential of this prohibition, the international community must redouble its efforts to address the root causes of slavery, strengthen enforcement mechanisms, and ensure that accountability mechanisms are robust and universally applied. States must also work to eliminate systemic inequalities that facilitate the exploitation of marginalized groups, particularly women and children, who remain disproportionately vulnerable to sexual slavery and other forms of exploitation.

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[82] Nicolás Carrillo Santarelli, "*Erga omnes* obligations as key pieces to build community and fair relations", *Revista Electrónica de Derecho Internacional Contemporáneo*, Vol. 7, 2024, pp. 7, 9-10.

Considering the significant challenges to the effective implementation of the prohibition of slavery, it is imperative that the international community, both through multilateral organizations and bilateral efforts, commit to a renewed and focused approach to the eradication of slavery in all its manifestations.[83] The persistence of slavery, whether in the form of forced labor, human trafficking, or sexual slavery, as identified in cases such as the one related to crimes perpetrated in Guatemala against persons from Sepur Zarco and neighboring communities,[84] underscores the urgent need for a coordinated global response. It is not enough to rely solely on legal frameworks and conventions; sustained political will, concrete action, and robust enforcement mechanisms are necessary to translate the prohibition of slavery into meaningful protection for all individuals. That said, in addition to make legal practice and legal standards more fully and effectively provide protection to victims in the future, the peremptory or absolute nature of the prohibition of slavery almost permits to rethink responses to past abuses contravening it and identify pending and potential reparations to its victims.

In this regard, after identifying that it admits no exceptions, Kohki Abe persuasively and interestingly argued that the issue of the "comfort women" who were subjected to sexual slavery by Japanese agents during the Second World War cannot be considered to have been fully and finally closed or settled; arguing, persuasively in our opinion, that law is contingent and contested during its different eras by voices that disagree as to their content. Accordingly, past responses to past slavery problems such as the one raised in that author's article might have been flawed or challenged even then, or possible responses to them might have been overlooked. This demands not applying the law retroactively, but to diligently look for all of the possibilities it offers throughout this era. For the future, one might call for progressive development standards and practices that complement and operationalize the core peremptory tenets; but also for the identification of possibilities not yet fully identified or realized. The author's reliance on the notion of trans-temporal justice is quite pertinent, and we cite it here:

"[T]he trans-temporal pursuit of justice is an attempt to refine legal rules so that they may be made relevant in the past that has been revisited from the perspective of the "Other". Put differently, it is an endeavor to respond to the suppressed voices of the past and resuscitate potentialities of law that have been silenced by the dominant master-narrative. It is not a fabrication of the past or a retroactive application of present legal standards; it is a re-acknowledgement of the then-existing legal realities from the perspective of trans-temporal justice. In other words, it is an endeavor to break away the paradigm of presentism that excludes the past from the scope of law, and stretch the reach of justice to the past."[85]

The eradication of slavery requires a multi-faceted approach, which includes stronger legal enforcement, the provision of resources for anti-slavery initiatives, and the strengthening of international cooperation to hold perpetrators accountable. States must

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83 See also N. Siller, "'Modern Slavery' Does International Law Distinguish between Slavery, Enslavement and Trafficking?" *Journal of International Criminal Justice* (2016) 14, pp. 405-427.

84 Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente of Guatemala, Judgment C-01076-2012-00021, Of. 2°, pp. 152, 488.

85 Kohki Abe, "International Law as Memorial Sites: The "Comfort Women" Lawsuits Revisited", *The Korean Journal of International and Comparative Law*, Vol. I, 2013, at 175.

take ownership of their obligations under the 1926 Slavery Convention and demonstrate a genuine commitment to combating modern forms of slavery through domestic legal reforms, effective law enforcement, and the implementation of comprehensive victim support programs. Moreover, international intergovernmental organizations, including the United Nations and regional human rights bodies, must play a more active role in monitoring compliance, providing technical assistance to states in need, and facilitating cross-border collaboration to address transnational slavery networks.

Even though the article has examined in detail State obligations, the multi-dimensional approach referred to in the previous paragraph entails a multi-subject dimension, which can make the fight against slavery more effective. Indeed, the engagement of non-governmental organizations (NGOs) and civil society actors is quite important. They can play a crucial role in raising awareness, providing support to victims, obtaining and providing information, and advocating for policy changes at the national and international levels. These actors, working alongside governments and international organizations, can help ensure that the voices of those affected by slavery are heard and that their rights are upheld. Through sustained cooperation, increased political will, and the establishment of concrete actions, the international community can better fulfill its promise of abolishing slavery and ensuring that its prohibition remains a core and effective principle of general international law.