



## IMPLICATIONS OF THE ERGA OMNES PRINCIPLE ON THE MECHANISM OF WAR CRIMES PROSECUTION

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Article	Abstract
<p><b>Keywords:</b> Erga Omnes; War Crimes; Prosecution; International Law.</p> <p><b>DOI:</b> 10.28946/scls.v3i2.5109</p>	<p>This research examines the implications of the erga omnes principle in the prosecution of war crimes within the framework of international law. The principle, which reflects obligations owed to the international community as a whole, reinforces the universality of accountability and collective responsibility in addressing serious violations of humanitarian norms. The need for this research arises from the persistent gap between normative development and practical enforcement of war crimes prosecution, particularly amidst ongoing conflicts in regions such as Syria, Yemen, Ukraine, and Myanmar. The study aims to analyze the role and implications of the erga omnes principle in strengthening the mechanisms for prosecuting war crimes and to identify the main challenges that hinder its effective implementation. Employing a qualitative normative legal research method with a descriptive-analytical approach, this study relies on the interpretation of international legal instruments, jurisprudence, and scholarly opinions. The findings highlight that while the erga omnes principle provides a strong moral and legal foundation for universal jurisdiction and complementarity, its realization is often obstructed by political resistance, limited national capacity, and inconsistency in international cooperation. The paper concludes that reinforcing erga omnes obligations requires harmonization between national and international frameworks, and sustained political will from the global community. Ultimately, erga omnes is not a mere theoretical doctrine but a vital instrument for ensuring justice, preventing impunity, and affirming the supremacy of international law.</p>

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## A. INTRODUCTION

The evolution of war crimes and their prosecution reflects humanity's enduring struggle to reconcile justice, accountability, and sovereignty within the framework of international law. Since ancient times, unwritten moral customs have governed the conduct of warfare, seeking to mitigate its brutality. However, systematic codification of humanitarian norms only began in the late nineteenth century through the Hague Conventions of 1899 and 1907, which established the first set of rules on humane treatment, protection of civilians, and limitations on weapon use.<sup>1</sup> This development reached a decisive milestone after World War II, when the Nuremberg and Tokyo Tribunals introduced the concept of individual criminal responsibility for gross violations of international law, affirming that crimes against peace and humanity transcend national boundaries.<sup>2</sup>

These post-war precedents laid the groundwork for modern international criminal law, further consolidated by the 1949 Geneva Conventions and the creation of ad hoc tribunals—the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)—which expanded the global scope of accountability.<sup>3</sup> The subsequent establishment of the International Criminal Court (ICC) in 2002 through the Rome Statute institutionalized a permanent mechanism to prosecute genocide, crimes against humanity, and war crimes. Yet, despite these normative advancements, the gap between law and enforcement persists. Selective justice, political non-cooperation, and the inconsistent exercise of jurisdiction continue to undermine efforts to eradicate impunity for war crimes.

Data and figures related to war crimes demonstrate the enormity of their impact and the challenges of enforcement. According to UN data, during World War II, approximately 70–85 million people died, including millions of victims of the Holocaust and other war crimes. In the Yugoslav conflict, an estimated 140,000 people were killed and millions displaced due to war crimes including massacres, mass rape, and ethnic cleansing. In Rwanda, approximately 800,000 people died in less than 100 days during the 1994 genocide. In modern conflicts such as those in Syria, Yemen, Ukraine, and Myanmar, thousands to millions of civilians have been victims of murder, torture, sexual violence, and forced displacement.<sup>4</sup> As of 2024, the International Criminal Court (ICC) had opened more than 30 investigations and issued over 40 arrest warrants, yet only a small number of perpetrators had been successfully prosecuted and convicted.<sup>5</sup> Key challenges in prosecuting war crimes include difficulties in collecting evidence from conflict zones, ensuring witness protection, political obstruction by perpetrator states, and the lack of international resources and cooperation. This demonstrates that despite significant progress in developing laws and institutions for the enforcement of war crimes, achieving justice for victims remains a long and challenging road.

In this context, the principle of *erga omnes* emerges as a critical normative and moral foundation for strengthening international accountability. Derived from Latin meaning

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<sup>1</sup> Daimeon Shanks, "Martens' Clause: Irony and Codification at the Birth of Modern Humanitarian Law," *SSRN Electronic Journal*, January 2020, <https://doi.org/10.2139/ssrn.3772320>.

<sup>2</sup> *Ibid.*

<sup>3</sup> Richard Goldstone, "International Criminal Court and Ad Hoc Tribunals," in *The Oxford Handbook on the United Nations*, ed. Thomas G. Weiss and Sam Daws (Oxford University Press, 2018), 567–582, <https://doi.org/10.1093/oxfordhb/9780198803164.013.31>.

<sup>4</sup> Lewi Stone, "Quantifying the Holocaust: Hyperintense Kill Rates during the Genocide," *Science Advances* 5, no. 1 (2019): 1–10, <https://doi.org/DOI: 10.1126/sciadv.aau7292>.

<sup>5</sup> Tri Rahmawati et al., "The Role of the International Criminal Court (ICC) in the Enforcement of International Law," *INNOVATIVE: Journal Of Social Science Research* 5, no. 2 (2025): 252–65, <https://doi.org/https://doi.org/10.31004/innovative.v5i2.18128>.

"towards all," *erga omnes* denotes obligations owed to the entire international community.<sup>6</sup> Violations such as genocide, torture, and systematic attacks on civilians are thus not injuries to individual states but offenses against humanity as a whole. The principle establishes that every state bears a universal responsibility to prevent and prosecute war crimes, regardless of territorial, national, or political affiliation.<sup>7</sup> It also underpins the logic of universal jurisdiction and complements the principle of complementarity under the Rome Statute, affirming that sovereignty must not serve as a shield for impunity. However, in contemporary international relations, the *erga omnes* principle faces new complexities. Armed conflicts in Syria, Yemen, Ukraine, Myanmar, and Gaza have demonstrated the fragility of international legal enforcement. Despite overwhelming evidence of atrocities, prosecutions often stagnate due to political interests, veto powers in the UN Security Council, and the reluctance of certain states to recognize ICC jurisdiction.

Therefore, this study seeks to examine the implications of the *erga omnes* principle in the prosecution of war crimes and to identify the challenges that hinder its effective implementation. The research aims to clarify how this principle functions as both a legal obligation and a collective moral duty in upholding accountability for gross violations of humanitarian law. Specifically, it addresses two main problems:

1. What is the relevance and implication of the *erga omnes* principle for the contemporary mechanism of war crimes prosecution?
2. What obstacles and systemic challenges impede the realization of *erga omnes* in international practice?

This research holds both theoretical and practical significance. Theoretically, it contributes to the development of international criminal law by analyzing *erga omnes* as an evolving instrument of global justice beyond mere declarative norms. Practically, it highlights the importance of harmonizing national and international legal frameworks to ensure that universal accountability can function even in politically divided environments. The novelty of this study lies in its attempt to contextualize *erga omnes* not merely as a historical legal doctrine but as a living principle relevant to current global crises. Previous research has often confined discussions of *erga omnes* to its emergence in jurisprudence—such as in the Barcelona Traction case or the Rome Statute—without exploring its implementation amid modern geopolitical realities. This study, by contrast, situates the principle within the dynamic interplay between state sovereignty, international cooperation, and political resistance, thereby offering a more contemporary and policy-oriented understanding of its role in promoting accountability. Ultimately, realizing the promise of *erga omnes* requires more than legal recognition; it demands consistent political will, institutional capacity, and a shared commitment to uphold justice for victims of war crimes. By revisiting the *erga omnes* principle in light of twenty-first-century conflicts, this paper contributes to the broader discourse on how international law can evolve from declarative norms into enforceable mechanisms that embody the collective conscience of humanity.

## B. RESEARCH METHODS

This research employs a qualitative normative legal method with a descriptive-analytical approach. The study is centered on the analysis of international legal instruments, jurisprudence, and academic opinions regarding the principle of *erga omnes* and its implications for the prosecution of war crimes.

<sup>6</sup> Diajeng Wulan Christianti, "The 'Modern' Concept of *Erga Omnes* to Establish the Obligation of Impunity Eradication: Towards the Primacy Jurisdiction of the International Criminal Court," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 5, no. 2 (2018): 211–30, <https://doi.org/10.22304/pjih.v5n2.a1>.

<sup>7</sup> Ibid.

The primary sources used include international treaties such as the Geneva Conventions of 1949 and the Rome Statute of the International Criminal Court (1998), along with decisions from international tribunals such as the Nuremberg and Tokyo Tribunals, the International Criminal Tribunal for the former Yugoslavia (ICTY), and the International Criminal Tribunal for Rwanda (ICTR). In addition, secondary sources consist of books, journal articles, and authoritative commentaries from international law scholars.

The method of analysis is qualitative and descriptive, aiming to explain the application of the *erga omnes* principle as a foundation for universal accountability. The study does not employ statistical data but instead relies on doctrinal interpretation and comparison of legal frameworks at both international and national levels. Through this approach, the research seeks to provide a comprehensive understanding of how the *erga omnes* principle strengthens mechanisms for the prosecution of war crimes, while also identifying the challenges and potential solutions in its implementation.

## C. ANALYSIS AND DISCUSSION

### 1. The Erga Omnes Principle and Its Relevance in War Crimes

#### a. Understanding and Delination of the Erga Omnes Principle

The principle of erga omnes is one of the fundamental pillars of international law which emphasizes the existence of legal obligations that apply to all countries without exception, whether or not they are directly involved in an incident of violation.<sup>8</sup> Etymologically, the term erga omnes comes from Latin meaning “towards everyone”, which in the context of international law refers to norms or obligations whose application is universal.<sup>9</sup> This obligation arises from peremptory norms or *jus cogens*, namely international legal norms that cannot be deviated from by conflicting bilateral or multilateral agreements.<sup>10</sup> Examples of erga omnes obligations include the prohibition of genocide, the prohibition of slavery, the prohibition of aggression, the prohibition of torture, and the obligation to respect the right to self-determination.

The main characteristics of this principle include: (1) universality, namely that all states are bound to respect and uphold it without exception; (2) non-derogability, namely that the obligation cannot be ignored or limited even in emergency situations; and (3) the existence of legal legitimacy for every state to prosecute its violations, regardless of the direct relationship with the victim or the location where the violation occurred.<sup>11</sup> In practice, the erga omnes principle positions violations of certain norms not simply as disputes between states, but as attacks on the international legal order as a whole. Therefore, states have a collective responsibility to ensure law enforcement, including through mechanisms for investigation, prosecution, and punishment of perpetrators.

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<sup>8</sup> Pok Yin S. Chow, “On Obligations Erga Omnes Partes,” *GEORGETOWN JOURNAL OF INTERNATIONAL LAW* 52, no. 2 (2020): 469–504, <https://doi.org/10.2139/ssrn.3699982>.

<sup>9</sup> Fadzlun Budi Sulistyo Nugroho, “The Nature of the Applicability of the Erga Omnes Principle,” *Gorontalo Law Review* 2, no. 2 (2019): 95–104, <https://doi.org/10.32662/golrev.v2i2.739>.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

### b. **Erga Omnes in the Context of War Crimes**

Viewed from the realm of war crimes, the principle of erga omnes functions as a normative basis for enforcing universal accountability, namely the obligation of all states to demand accountability for serious violations of international humanitarian law. War crimes, which include the killing of civilians, torture, attacks on civilian objects, the use of prohibited weapons, and the inhumane treatment of prisoners of war, not only cause harm to the victim nation but also disrupt international legal order and global humanitarian values. Because of their threat to the entire international community, war crimes create a shared obligation for all states to prevent, prosecute, and punish their perpetrators.

The application of the erga omnes principle in this context is realized through the mechanism of universal jurisdiction, which allows a country to prosecute perpetrators of war crimes even if the crimes were committed outside its territory and did not involve its citizens. This principle also prevents the emergence of safe havens for perpetrators, namely situations where perpetrators of war crimes can avoid legal proceedings by taking refuge in countries that have no commitment to prosecution.<sup>12</sup> Furthermore, the erga omnes principle is in line with the complementarity principle in the Rome Statute, which places primary responsibility for prosecution on the state, but authorizes the International Criminal Court (ICC) to act when a state is unable or unwilling to prosecute the perpetrator.<sup>13</sup> Thus, erga omnes not only broadens the legal basis for prosecution, but also ensures that state sovereignty is not used as a pretext to obstruct the enforcement of international law against war crimes.

### c. **Implementation of Erga Omnes in International Legal Practice**

The principle of erga omnes has been recognized as a fundamental pillar of international law, referring to obligations owed to the international community as a whole. The ICJ in the *Barcelona Traction* case affirmed that obligations erga omnes include the prohibition of aggression, genocide, racial discrimination, slavery, and the right to self-determination.<sup>14</sup> This shows that war crimes are not only bilateral disputes but collective concerns of humanity, creating universal responsibility for states. In treaty law, the Rome Statute particularly Articles 5–8 provides the legal foundation for prosecuting genocide, crimes against humanity, and war crimes, thereby transforming erga omnes obligations into enforceable international norms.<sup>15</sup> Similarly, the Statutes of the ICTY (1993) and ICTR (1994) embody the same principle by granting jurisdiction over serious breaches of humanitarian law as obligations of the international community. A concrete illustration can be seen in the *Omar al-Bashir* case before the ICC, where the Court issued arrest warrants for genocide and crimes against humanity in Darfur. This prosecution reflected the erga omnes character of such crimes: all states

<sup>12</sup> Prosecuting International Crimes, "Accountability: The Role of Universal Jurisdiction in Prosecuting International Crimes", 2020.

<sup>13</sup> Heribertus JakaTriyana, "The Significance Ofthe Complementarityprinciplewithin The Rome Statute In Internationalcriminallaw," *MIMBAR HUKUM* 3, no. 25 (2013): 505–515, <https://doi.org/https://doi.org/10.22146/jmh.16074>.

<sup>14</sup> Alona E. Evans, "Case Concerning the *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Second Phase," *American Journal of International Law* 64, no. 3 (1970): 653–693, <https://doi.org/https://doi.org/10.2307/2199214>.

<sup>15</sup> William A. Schabas, "The International Criminal Court at Twenty: Reflections on Complementarity, Cooperation, and Universal Jurisdiction," *Leiden Journal of International Law* 33, no. 3 (2020): 939–962, <https://doi.org/https://doi.org/10.1017/S0922156520000371>.

were bound to cooperate in his arrest, regardless of nationality or territorial links. However, many states refused to surrender al-Bashir, citing political interests and sovereignty,<sup>16</sup> which highlights the gap between legal obligation and enforcement. From a theoretical perspective, *erga omnes* is inseparable from *jus cogens*, since prohibitions against genocide and torture are peremptory norms from which no derogation is allowed.<sup>17</sup> Moreover, the complementarity principle under the Rome Statute ensures that when states fail to prosecute, the ICC may step in, preventing impunity while respecting sovereignty. Together with the doctrine of universal jurisdiction, these concepts confirm that *erga omnes* provides not only a normative but also a practical framework for global accountability. Nonetheless, challenges remain in enforcement. The refusal of several states to cooperate with the ICC in the al-Bashir case exemplifies how political interests undermine *erga omnes* obligations. This indicates that while the principle holds strong normative force, its effectiveness ultimately depends on political will, stronger international cooperation, and harmonization of domestic and international frameworks.

## 2. Mechanism for Prosecution of War Crimes

### a. The International Court of Justice and Its Role

International courts play a central role in upholding accountability for perpetrators of war crimes, particularly when national justice systems are unable or unwilling to act. These institutions were established to ensure that serious violations of international humanitarian law, including war crimes, do not go unpunished. One key instrument is the International Criminal Court (ICC), established by the Rome Statute of 1998 and beginning operations on July 1, 2002. The ICC has permanent jurisdiction over four categories of international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression. The ICC's jurisdiction is complementary to national jurisdiction, meaning it will only act if the state concerned is unable or unwilling to conduct a legitimate prosecution.<sup>18</sup>

History records the existence of ad hoc courts such as the International Criminal Tribunal for the former Yugoslavia (ICTY) established by the UN Security Council in 1993, and the International Criminal Tribunal for Rwanda (ICTR) in 1994. These two tribunals were established in response to major violations of international humanitarian law in their respective regional conflicts.<sup>19</sup> The ICTY, for example, successfully prosecuted several prominent figures, including Slobodan Milošević, for war crimes, crimes against humanity, and genocide. The ICTR, on the other hand, prosecuted perpetrators of the 1994 Rwandan genocide, including former Prime Minister Jean Kambanda, who was convicted.<sup>20</sup> The success of this ad hoc court demonstrates the effectiveness of international mechanisms in enforcing the law, despite its temporary nature and limited to certain geographical and temporal jurisdictions.

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<sup>16</sup> Paola Gaeta, "Does President Al-Bashir Enjoy Immunity from Arrest?", *Journal of International Criminal Justice* 7, no. 2 (2009): 315–332, <https://doi.org/10.1093/jicj/mqp030>.

<sup>17</sup> Erika de Wet, "The Prohibition of Torture as an International Norm of *Jus Cogens* and Its Implications for National and Customary Law," *European Journal of International Law* 15, no. 1 (2004): 97–121, <https://doi.org/10.1093/ejil/15.1.97>.

<sup>18</sup> Heribertus JakaTriyana, "THE SIGNIFICANCE OF THE COMPLEMENTARITY PRINCIPLE WITHIN THE ROME STATUTE IN INTERNATIONAL CRIMINAL LAW."

<sup>19</sup> Alif Daffa Raditya and Diani Sadiawati, "The Handling of the ICTY and ICTR Courts in the Perspective of International Law," *National Conference on Law Studies (NCOLS)* 5, no. 1 (2023): 175–96.

<sup>20</sup> Ibid.

In addition, there are also hybrid tribunals or mixed courts that combine elements of international and national law, such as the Special Court for Sierra Leone (SCSL) or the Extraordinary Chambers in the Courts of Cambodia (ECCC).<sup>21</sup> This model aims to leverage national capacities while integrating international standards into the prosecution process. All of these mechanisms affirm that international tribunals, whether permanent or provisional, serve as a key pillar in closing the impunity gap and providing justice for victims of war crimes.

**b. Reconceptualization of the Prosecution Mechanism**

The mechanism for prosecuting war crimes still faces serious challenges, ranging from jurisdictional limitations, political obstacles, and a lack of resources. In this context, the application of the principles of *erga omnes* and universal accountability can serve as a foundation for reforms that strengthen the effectiveness of the prosecution system. The *erga omnes* principle ensures that the obligation to prosecute war crimes is not limited to the victim or perpetrator state, but applies to the entire international community.<sup>22</sup> Its implementation can be realized through strengthening universal jurisdiction, so that every country can try perpetrators of war crimes regardless of the location of the incident or the nationality of the parties involved.

The reconceptualization also includes increased coordination between international courts and national justice systems. This aligns with the principle of complementarity, which places the state as the primary actor, while international courts serve as supervisors and complements. A peer review model among countries in handling war crimes cases can be implemented to ensure that national prosecution processes meet international legal standards. Furthermore, the integration of digital forensic technology, the use of open-source intelligence (OSINT) evidence, and collaboration with independent investigative bodies can expedite the collection and verification of evidence in conflict zones. Other reforms include the establishment of a sustainable funding mechanism for international tribunals, so that their independence and effectiveness are not hampered by dependence on political contributions from specific countries. Thus, reconceptualizing the prosecution mechanism is not simply about improving procedures but also about building a more inclusive, transparent, and responsive international legal architecture, where *erga omnes* and universal accountability are its driving principles.

**c. The Role of the State and the International Community**

States and the international community play crucial roles in supporting or hindering the prosecution of war crimes. On the one hand, states have a primary obligation under international law to investigate, prosecute, and punish perpetrators of war crimes within their jurisdiction. This commitment is reflected in the ratification of international instruments such as the Rome Statute, the Geneva Conventions, and their additional protocols. State support for international tribunals includes the provision of evidence, extradition of suspects, witness protection, and the enforcement of judgments.<sup>23</sup> A positive example is seen in the cooperation of various countries in arresting and handing over suspects to the ICC or ad hoc tribunal.

Political interests and sovereignty considerations often become obstacles. Some countries refuse to cooperate with the ICC or even withdraw from the Rome Statute

<sup>21</sup> Arie Siswanto, "Alternative Approaches to Addressing International Crimes," *Refleksi Hukum* 10, no. 1 (2016): 33-54, <https://doi.org/https://doi.org/10.24246/jrh.2016.v10.i1.p33-54>.

<sup>22</sup> Nugroho, "The Nature of the Applicability of the *Erga Omnes* Principle."

<sup>23</sup> Rahmawati et al., "The Role of the International Criminal Court (ICC) in the Enforcement of International Law."

because they consider it a threat to national sovereignty or politically targets specific countries.<sup>24</sup> The refusal to arrest figures like Omar al-Bashir despite an ICC warrant demonstrates a lack of adherence to international obligations when they clash with domestic political agendas and strategic alliances.

The international community, including the United Nations (UN), regional organizations, and international NGOs, plays a role in facilitating coordination, applying diplomatic pressure, and providing technical and financial support for the prosecution process. The UN Security Council has the authority to refer situations to the ICC, as it did in the cases of Darfur and Libya. Regional organizations such as the European Union and the African Union can also influence the course of prosecution through sanctions policies, conditional humanitarian aid, or technical support to law enforcement agencies.<sup>25</sup> The role of NGOs such as Human Rights Watch or Amnesty International is crucial in the initial documentation and advocacy, which often form the basis of formal investigations. Therefore, the success of war crimes prosecution mechanisms is determined not only by the effectiveness of international tribunals, but also by strong synergy between states, international organizations, and global civil society. Without this collective commitment, the principles of universal accountability and *erga omnes* will be difficult to fully realize.

### **3. Challenges and Solutions in the Prosecution Formation Mechanism**

#### **a. Issues of Jurisdiction and State Sovereignty**

The conflict between the principle of state sovereignty and international obligations is the most common structural obstacle faced in prosecuting war crimes. Sovereignty is defined as a state's absolute right to regulate its internal affairs and determine policy without external interference.<sup>26</sup> Within this framework, states often view the transfer of jurisdiction to international courts as a threat to political integrity and national security.

State sovereignty is often used as a reason to refuse investigation or prosecution by international institutions, especially when the perpetrators of the crimes are military or political officials who are still in power.<sup>27</sup> For example, several African states that are parties to the Rome Statute have refused to comply with the ICC's arrest warrant against Omar al-Bashir, citing protection of the head of state and non-intervention. Another obstacle arises when the international court's jurisdiction is limited: the ICC can only act if the perpetrator is a party to the Rome Statute, if the crime occurred on the territory of that party, or if the UN Security Council makes a referral under Chapter VII of the UN Charter. In the case of states that are not parties to the Rome Statute and are not referred by the Security Council, war crimes often escape prosecution at the international level.

This situation is exacerbated by the fact that not all countries have incorporated war crimes provisions into their national laws. Consequently, when international jurisdiction is inapplicable, perpetrators can escape legal responsibility due to the lack of a domestic criminal basis. This conflict between the principles of sovereignty and

<sup>24</sup> Sefriani, "The Jurisdiction of the ICC Over Non-Member States of the 1998 Rome Statute," *Jurnal Hukum IUS QUA IUSTUM* 14, no. 2 (2009): 314–32, <https://doi.org/10.20885/iustum.vol14.iss2.art5>.

<sup>25</sup> Carissa Adelia Z, Aurora Salsabila A, and Putri Tiara Sari, "The Role of International Organizations Within a State," *Journal of Social Sciences Research* 1, no. 6 (2024): 121–26, <https://doi.org/10.5281/zenodo.10492347>.

<sup>26</sup> Sigit Riyanto, "State Sovereignty in the Framework of International Law," *Yustisia Law Journal* 1, no. 3 (2012): 5–14, <https://doi.org/10.20961/yustisia.v1i3.10074>.

<sup>27</sup> Ibid.

international jurisdiction creates a "space of impunity" that perpetrators of war crimes can exploit to evade justice.

### **b. International Politics and Obstacles to Prosecution**

International political dynamics often determine, or even hinder, the mechanism for prosecuting war crimes. The UN Security Council, which has the authority to refer situations to the ICC or establish ad hoc tribunals, can be hampered by the veto power of the permanent members (P5).<sup>28</sup> The strategic interests of major powers often dominate, so that the enforcement of international law often appears selective.

For example, despite allegations of serious violations in Syria, the UN Security Council failed to refer the case to the ICC due to vetoes from Russia and China, which have political interests in the region.<sup>29</sup> In contrast, the referrals to the cases of Darfur (Sudan) and Libya were successful due to the political consensus among the permanent members at the time. This demonstrates that the enforcement of international law is often not simply a legal matter, but also the result of geopolitical negotiations and compromise.

Political obstacles don't just occur at the Security Council level. Political alliances and bilateral diplomatic relations often hinder the extradition or surrender of suspects. Some countries refuse to cooperate with the ICC or other international tribunals, viewing them as instruments of Western politics. In some peace processes, granting amnesty to perpetrators of war crimes is even made part of the agreement to end armed conflict.<sup>30</sup> While pragmatic in the short term, this policy sacrifices the principle of accountability and has the potential to create a precedent that undermines international law.

The perception of regional bias against the ICC, perceived as overly focused on cases in specific regions, has fueled political resistance that threatens the institution's legitimacy. This political pressure often undermines states' willingness to ratify international instruments or cooperate in prosecutions.

### **c. Implementable Solutions**

Addressing the above challenges requires structural reform, increased national capacity, and strengthened international cooperation. Some strategic steps that can be implemented include:

#### **a. Reconceptualizing Universal Accountability**

The principles of *erga omnes* and universal accountability must be positioned as legal obligations binding on all states, whether or not parties to the Rome Statute. This can be achieved by encouraging the creation of new international legal instruments or amendments to the Rome Statute that extend the ICC's jurisdiction to non-party states in certain cases, particularly for crimes recognized as *jus cogens*. This mechanism should be accompanied by provisions for international sanctions for states that deliberately evade prosecution obligations.

#### **b. Strengthening Universal Jurisdiction at the National Level**

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<sup>28</sup> Indra Kusumawardhana, "Understanding The Dynamic of International System Through The Lens of Complex System Approach," *Journal of International Relations* 10, no. 1 (2017): 90–105, <https://doi.org/10.20473/jhi.v10i1.5115>.

<sup>29</sup> Shary Charlotte Henriette Pattipeilhy, "The Failure of UN Security Council Resolutions in the Syrian Conflict 2011–2019," *Journal of International Relations* 14, no. 2 (2021): 188–206, <https://doi.org/https://ejournal.unair.ac.id/JHI/article/view/32331>.

<sup>30</sup> Suheflihusnaini Ashady and Aryadi Almau Dudy, "Amnesty for Perpetrators of International Crimes," *Tirtayasa Journal of International Law* 1, no. 2 (2023): 114, <https://doi.org/doi.org/10.51825/tjil.v1i2.17454>.

States should adopt universal jurisdiction in their national laws to allow the prosecution of war crimes perpetrators within their territory, regardless of nationality or location of the crime. This would expand the global law enforcement network and reduce sole reliance on the ICC. Successful examples include Belgium and Spain, which have used universal jurisdiction to prosecute perpetrators of international crimes from other countries.

c. Reform of the UN Referral Mechanism

To overcome the political veto barrier, consideration should be given to limiting the use of the veto in cases of serious international crimes, or granting the UN General Assembly alternative authority to refer cases to the ICC through the Uniting for Peace procedure. This would reduce the reliance on the political consensus of the five permanent members of the Security Council.

d. Strengthening National Capacity and Technical Cooperation

Many countries, especially those emerging from conflict, lack the legal capacity and infrastructure to prosecute war crimes. International support in the form of training law enforcement officials, strengthening forensic investigative capabilities, witness protection, and court funding is crucial. These technical assistance mechanisms can be integrated into UN programs, regional organizations, or partnerships with international NGOs.

e. Increasing Transparency and Public Participation

The legitimacy of the prosecution mechanism can be strengthened by increasing the transparency of the legal process and involving civil society in oversight. Independent documentation by NGOs like Human Rights Watch or Amnesty International can provide crucial evidence and increase public pressure on the government to act.

By combining structural reforms, technical support, and consistent political commitment, the *erga omnes* principle can be effectively implemented, reducing the space for impunity, and ensuring that the war crimes prosecution mechanism truly becomes a universal instrument of international justice.

#### D. CONCLUSION

This study affirms that the *erga omnes* principle is a fundamental cornerstone in the prosecution of war crimes, as it imposes obligations on all states, regardless of their direct involvement in a conflict. The principle transforms war crimes from being seen as bilateral disputes into violations against the entire international community, thereby requiring collective responsibility. Its legal force is supported by international instruments such as the Geneva Conventions, the Rome Statute of the International Criminal Court (ICC), and precedents set by international tribunals like the ICTY and ICTR. These mechanisms demonstrate that *erga omnes* enhances the legitimacy of international legal intervention and fosters cooperation between states to bring perpetrators to justice. However, the implementation of this principle is hampered by persistent challenges. Conflicts with the principle of state sovereignty, political interests of powerful states, limited resources in conflict-affected countries, and inconsistent national legal frameworks often undermine the effective enforcement of international obligations. The reluctance of some states to ratify or comply with the Rome Statute further widens the accountability gap. These factors contribute to the persistence of impunity, where many perpetrators of war crimes escape justice despite existing legal mechanisms.

To address these challenges, stronger international cooperation, reforms within the UN and ICC, and harmonization of domestic laws with international standards are urgently needed. States must incorporate universal jurisdiction into their national legal systems, while

international institutions should ensure impartiality and independence in prosecutorial processes. Civil society and academia also play a role in advocacy, monitoring, and raising awareness about the universal nature of *erga omnes* obligations. In conclusion, the *erga omnes* principle is not only a theoretical doctrine but also a practical and necessary instrument for realizing universal accountability. By reinforcing cooperation and closing gaps in enforcement, this principle can contribute to ending impunity, ensuring justice for victims, and safeguarding the supremacy of international law in addressing war crimes.

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