THE SELF-DEFEATING REVOLUTION: HOW ERGA OMNES PARTES STANDING COULD DRIVE STATES AWAY FROM THE ICJ

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In July 2019, Gambia, a State with no discernible connection to Myanmar or to the Rohingyas, instituted proceedings before the International Court of Justice (ICJ) alleging genocide. Its standing rested on the proposition that the Genocide Convention creates obligations owed by every State party to every other State party, such that any one of them may invoke a breach. Four years later, Canada and the Netherlands used the same logic against Syria under the Convention Against Torture. In December 2023, South Africa did the same against Israel. In July 2025, the International Court of Justice went even further. It held, in its Advisory Opinion on the Obligations of States in respect of Climate Change, that obligations under the UNFCCC, and the Paris Agreement, are themselves owed erga omnes partes.

These developments have been described as an "erga omnes partes revolution", an expansion of who may bring a claim before the Court, from the historically injured to any State bound by the same treaty. However, this description obscures the legal requirement of which is actually two-fold: the ICJ does not only need the state to have a standing but for itself to have jurisdiction over the case. Where a treaty obligation is owed erga omnes partes i.e. to all States parties to a treaty collectively having common interest in its performance, a State party need not demonstrate an injury to hold another party responsible for breach. This widens the rule about standing, about who is legally entitled to bring a claim. However, what it is not and the Court has never treated it as such, is a rule of jurisdiction. It does not expand the Court's authority to hear and adjudicate upon the dispute in the first place. While the potential claimants have been increased by way of obligation erga omnes partes, jurisdiction before the ICJ retains its narrow form. It remains a matter of State consent, expressed through a compromissory clause, a declaration under Article 36(2), or a special agreement.

This distinction gives rise to the central problem that this essay tries to tackle. So far, every case in which the Court has recognised erga omnes partes standing has arisen under a treaty that contained a broad, unqualified compromissory clause: Article IX of the Genocide Convention, or Article 30 of the Convention Against Torture. No case has tested whether the doctrine applies where such a clause is absent or contested. The treaties having such clauses were signed and ratified before obligations erga omnes partes were even conceptualised. However, with the states being aware of such liability, when negotiating future treaties now have a demonstrated model of what an unqualified compromissory clause can expose them to, i.e. being sued by a State with no injury of its own, over conduct within their own territory, at the initiative of a party acting as a guardian of the treaty they had signed and not considered. That knowledge increases the cost of consenting to broad or unqualified ICJ jurisdiction in future instruments, or of maintaining it in existing ones.

This is essentially what this essay claims: that the interaction between a standing that has been expanded and a jurisdiction that remains unchanged and strictly consensual creates an incentive for States to either exclude clauses that submit disputes to the ICJ or narrow down such jurisdictional commitments. Moreover, the prevailing patterns of fragmentation of international law and the shrinking number of Article 36(2) declarations make this risk one that the international legal system should address before it is confirmed by State practice. Ultimately, the central question this piece addresses is how international law can preserve the enforcement of community-interest treaty obligations without undermining the consensual basis of adjudication in the international legal system.

From Bilateral Injury to Community Interest

Classical international law conceived State responsibility in bilateral terms, i.e. only a state whose right had been violated could raise a claim against a breach of an international obligation. However, this conception proved ineffective when States began entering into multilateral treaties with shared commitments, such as the prevention of genocide, in which a breach by one was a concern to all parties. The ICJ recognised this gap in Barcelona Traction, Light and Power Co. Ltd, distinguishing between obligations owed to a particular State and obligations erga omnes, owed to the international community as a whole, in which "all States can be held to have a legal interest in their

protection". A narrower category of erga omnes obligations is the category of erga omnes partes obligations. While the former is owed to the international community as a whole under general international law, the latter is owed specifically to the States that are parties to a particular treaty, in recognition of their common interest in its performance.

The recognition of erga omnes partes standing has developed over a series of ICJ decisions. The proposition was first tested in Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal). Belgium sought to compel Senegal to prosecute or extradite Hissène Habré under the Convention Against Torture, notwithstanding that Belgium had no connection to Habré's victims. The Court held that, given the common interest of all States parties in compliance with the Convention's obligations to prevent and punish acts of torture, those obligations were owed erga omnes partes. Each State party has a legal interest in compliance, "even if it has no special interest" of its own. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), extended the same reasoning to the Genocide Convention. The Court held that the common interest of States parties in preventing genocide meant that any State party could invoke another's responsibility for breach without demonstrating individual injury.

Similarly, on the basis of their standing under the erga omnes partes principle, Canada and the Netherlands brought a case against Syria under the Convention Against Torture. More recently, South Africa instituted proceedings against Israel, alleging violations of the Genocide Convention in relation to Israel's military operations in the Gaza Strip. The cases are a clear illustration of the practical stakes of erga omnes partes standing. However, an important point to emphasise here is that while it gave to Belgium, Gambia, Canada, the Netherlands and South Africa a locus standi to raise a claim, it was not the principle that gave the ICJ the power to entertain the case. The Court could exercise its jurisdiction in Belgium v. Senegal due to Article 30 of the Convention Against Torture, the Convention's compromissory clause, which submits disputes over interpretation or application to the Court without qualification once negotiation and arbitration have been attempted and failed, while in Gambia v. Myanmar and South Africa v. Israel, it was Article IX of the Genocide Convention.

Standing Is Not Jurisdiction

The aforementioned cases share a feature: in each case, there was a coexistence of the erga omnes partes character of the obligation and a compromissory clause serving as the basis of jurisdiction. The Court's reasoning moved between the two without needing to ask what would happen were only one was present.

Article 36 of the ICJ Statute identifies the basis of the Court's jurisdiction: matters that the parties refer to it by special agreement, and matters "specially provided for... in treaties and conventions in force", the compromissory-clause route relied upon in each of the four cases above, together with declarations accepting the Court's jurisdiction as compulsory, the so-called Optional Clause. A fourth route, forum prorogatum, allows a respondent to consent to jurisdiction after proceedings have already been instituted against it. What becomes important, therefore, is the consent of the states party one way or another for the ICJ to have jurisdiction. UN membership or Article 93 of the UN Charter alone does not supply this consent. They only make the Court institutionally available to a State.

The Court has confirmed through several decisions that the erga omnes or erga omnes partes character of an obligation cannot substitute for this consent. In East Timor (Portugal v. Australia), the Court accepted that the right of self-determination possesses an erga omnes character, but held that it could not exercise jurisdiction over Portugal's claim because a necessary third party (Indonesia) had not consented to the Court's jurisdiction over the underlying dispute. The erga omnes character of the right invoked did not, and could not, cure that absence of consent. Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda), said that neither the jus cogens character of a norm nor an obligation erga omnes can confer jurisdiction on the Court if a state does not consent to it. But not every treaty giving rise to erga omnes partes obligations contains a compromissory clause, not every country makes an Article 36(2) declaration, and not every state consents to a proceeding against itself.

The Self-Defeating Framework

The cases were made possible by compromissory clauses agreed upon by states decades before any State had a working model of what an unqualified clause could expose it to. In 1948 and 1984, no State accepting Article IX of

the Genocide Convention or Article 30 of the Convention Against Torture could have seen a non-injured State use that clause to bring another before the Court on behalf of victims with whom the applicant had no connection. The possibility that a compromissory clause might function this way had not yet been demonstrated. That is no longer the position. States negotiating future multilateral instruments on subjects as varied as artificial intelligence (AI) governance, pandemic preparedness, or further climate measures now negotiate with the knowledge of how any clause granting jurisdiction to the world Court will impact them, how it can be used by a State with no injury of its own to bring binding proceedings, including requests for provisional measures with immediate practical consequences.

As of 2026, only a minority of UN member States maintain declarations in force under Article 36(2) of the Statute. The United States made such a declaration in 1946 and withdrew it in 1985, in the aftermath of Military and Paramilitary Activities in and against Nicaragua v. United States. Where declarations do exist, they are frequently qualified. For instance, India's declaration of 2019 has 13 reservations. It excludes, among other categories, disputes concerning a multilateral treaty unless every party to that treaty is also a party to the case before the Court. Such a reservation would practically exclude a third State's erga omnes partes claim.

The practice of reservation with respect to the Genocide Convention tells a similar story from a different angle. In the 1951 Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, the Court held that reservations to the Convention are permissible provided they are compatible with its object and purpose. In 2006, the Court confirmed in Armed Activities (DRC v. Rwanda) that a reservation to Article IX, specifically the compromissory clause, as distinct from the substantive prohibition of genocide, is not incompatible with that object and purpose. However, a number of States parties currently maintain such reservations.

This indicates a pattern in international law: state consent to ICJ jurisdiction has, for decades, been treated by States as a matter demanding careful, often heavily qualified, calibration, frequently withdrawn or reserved once its practical consequences become apparent. For instance, After Right of Passage over Indian Territory (Portugal v. India), India explicitly excluded disputes arising from facts and situations that occurred prior to its entry into force. India has been adding reservations to its Article 36(2) declaration, practically ensuring that no successful application can be made against it.

The risk has two separate dimensions. The first concerns treaties that have not yet been framed. Negotiators of new instruments, on AI governance or further climate measures, to take two examples, will negotiate with the erga omnes partes principle already established. States will weigh the litigation exposure a compromissory clause can bring. The second concerns treaties that already exist with jurisdictional gaps. For instance, CEDAW, which requires mandatory arbitration before bringing a case to the ICJ, is not an obvious candidate for correction by protocol now that the practical consequences of an open clause are better understood. Closing such gaps would mean that States are knowingly inviting exposure that other States have only recently experienced.

This leads to a distinct and independent concern about the fragmentation of international law into self-contained regimes, each equipped with its own dispute-settlement body. If future treaty-makers respond to the erga omnes partes principle by routing new community-interest obligations through arbitration, regional courts, or no compulsory mechanism at all, the practical consequence, over time, would lead to the ICJ's compulsory jurisdiction, treaty by treaty, becoming confined to an ageing set of mid-twentieth-century instruments, while the live edges of international law-making move elsewhere.

Making The Erga Omnes Partes Principle Sustainable

This raises the question of how international law can preserve enforcement of community-interest obligations while maintaining consent of states as the foundation on which ICJ jurisdiction has rested. The solutions developed in this section share a common design: to preserve the consent requirement without diminishing the ICJ's jurisdiction.

Graduated dispute-settlement

The primary proposal is that future compromissory clauses adopt the following structure: notice of a dispute, followed by a defined period for negotiation or exchange of views, followed by fact-finding or mediation, followed by arbitration or a treaty-specific procedural mechanism, with recourse to the Court reserved for disputes that remain unresolved once these stages have been exhausted.

This is not a speculative proposal. Two working legal analogues of such a structure exist which demonstrate that States do accept jurisdiction on these terms. Article 30(1) of the Convention Against Torture requires an unresolved dispute to be submitted to arbitration at the request of one party, with recourse to the Court available only if the parties cannot agree on the organisation of that arbitration within six months of the request. Part XV of the UN Convention on the Law of the Sea gives an even more elaborate model: Section 1 requires States to pursue negotiation or conciliation, and only where these fail does Section 2's compulsory phase apply, under which a State party may choose in advance among the International Tribunal for the Law of the Sea, the ICJ, or arbitration.

The value of this structure is that it answers the specific fear a state may have that it might be sued suddenly, by a State it has no prior relationship with, without any opportunity to resolve the matter through lower-cost, lower-visibility means first. This should make compromissory clauses somewhat palatable to States concerned chiefly about unpredictability, even if it does nothing for States whose objection is to erga omnes partes litigation of any kind.

An important point to keep in mind while drafting such a clause is that it should not be limited by the respondent's non-cooperation. The case of Canada and Netherlands v. Syrian Arab Republic is illustrative in this regard. Syria's persistent refusal to engage meaningfully with either the negotiation stage or the arbitration request did not prevent the applicants from eventually reaching the Court, because Article 30(1) sets a fixed time limit after which recourse to the Court becomes available regardless of the respondent's wishes. This design feature should be regarded as essential to any compromissory clause. Otherwise, a graduated structure would function as a respondent-controlled veto over the applicant's access to adjudication.

Preserving Unilateral Standing through Collective Participation

The second proposal preserves the principle established in Belgium v. Senegal and The Gambia v. Myanmar that a single State party, without demonstrating injury, has standing to invoke another party's responsibility for breach of an erga omnes partes obligation. What is not recommended here is a precondition that a certain number of states must join the proceeding to have standing. Such a rule would defeat the doctrine's own logic that a single State's interest in compliance is sufficient because the obligation is owed to it, individually and collectively. Instead, it is proposed to strengthen the mechanisms available to other States parties to participate in proceedings initiated by a single State. Article 63 of the Statute already supplies the legal basis for this. It says that whenever the construction of a convention to which States other than the parties to the case are themselves parties is in question, the Registrar must notify all such States, each of which then has the right to intervene. Its usage has grown markedly in recent cases, for instance, multiple European States sought to intervene in The Gambia v. Myanmar on the construction of the Genocide Convention. The value of this approach, therefore, lies in changing the perception of erga omnes partes litigation. Rather than appearing as a unilateral action by a single State, proceedings can reflect the collective concern of the wider community of States Parties to a treaty.

Conclusion

This essay revolves around a paradox that a principle developed to demonstrate what community-interest obligations before the ICJ can achieve, that a State with no injury of its own may compel another to answer for a breach of obligations owed to the community of treaty parties as a whole, may, by demonstrating exactly that, give state negotiating future treaties a clear reason to withhold the jurisdictional consent on which any such enforcement depends. This, however, is not a criticism of the doctrine itself. The erga omnes partes standing rests on sound and well-established authority. It is, rather, an observation about the relationship between an expanding entitlement to invoke responsibility and an unchanged, strictly consensual nature of jurisdiction at the ICJ. The answer to this problem, which may arise, is not to reverse the expansion of erga omnes partes standing. It is to recognise that the sustainability of such an expansion of locus standi depends on the way in which institutional structures meet States' consent-related concerns on their own terms. A graduated procedure that converts sudden exposure to litigation into a predictable and discussed path with strict timelines, as well as a show of support for the claim raised by way of

collective participation under Article 63, are the two ways that this essay prescribes to avoid making the ICJ an institution that is confined to redressal of obligations with respect to treaties formed before the conception of erga omnes partes standing.