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## A comparative study of the rule of "Erq Zalim" in Imamiyah jurisprudence and "Commitment to non-recognition of the situation caused by a serious violation of the *jus cogens*" in international law

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### Article Info

### Abstract

#### 1. Introduction

This article is based on the fundamental question of what is the relationship between the jurisprudential rule of the Erq Zalim in Imami jurisprudence and the commitment not to recognize an illegal situation in international law? It seems that despite the very intertwined affinities between these two jurisprudential and legal institutions, there are differences between the two institutions in terms of scope, unlike the executive effects.

In explaining *jus cogens*, it is also worth mentioning that in the pyramid of international law norms, international legal rules have different values. What is at the top of this pyramid is a group of international legal rules called "jus cogens." *Jus cogens* refers to a set of legal rules that are accepted by the entire international community, and the international legal order is so dependent on them that their violation leads to damage to the entire structural framework of international law. Cruelty can be interpreted not as a lack of justice, but as an existential matter and a form of behavior. In the meantime, other definitions have also been used, including the definition of cruelty as a defect and as encroachment and seizure of another's property.

#### 2. Literature Review

The distinguishing features of this work from previous works are that, so far, the few works written in the field of the rule of Erq Zalim have not paid attention to the extra-private legal effects of this rule and have only analyzed it in interpersonal relations. Regarding the works written in the field of international law, it should be said

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	<p>that the main issue examined in these writings is the feasibility of the “interests of the occupied peoples” criterion in assessing the legitimacy of the administrative and executive actions of illegal ruling authorities, and they have not addressed the dimensions of the obligation not to recognize the illegal situation and its documentation.</p>
	<p><b>3. Methodology</b> Descriptive-analytical and based on library studies.</p>
	<p><b>4. Results</b> Regarding the similarities between the rule of the Erq Zalim in Imami jurisprudence and the obligation not to recognize the illegal situation resulting from a serious violation of <i>jus cogens</i>, both institutions can be considered a reflection of the preventive and, at the same time, punitive response of the jurisprudential and legal order to the violation of a certain range of fundamental norms. By breaking this privacy and encroaching on “justice” and “right” in the rule of the Erq Zalim and <i>jus cogens</i> in international obligations, this situation and the rights arising from it will not be subject to recognition and validity.</p> <p>However, in the area of differences between these two institutions, as well as in the numerous works on these two institutions, successful links can be established. For example, due to the connection of <i>jus cogens</i> with the interests of the international community as a whole, the obligation not to recognize the situation resulting from the violation of <i>jus cogens</i> is not subject to the existence of contractual obligations, and even non-member states are also obliged not to violate the obligation of non-recognition. Any state will have the possibility of resorting to the rules of international responsibility law based on the violation of the aforementioned obligation. The same approach regarding the lack of application of the “principle of relativity” to the effects of the obligation is also applicable to the rule of the Erq Zalim, and third parties are also considered to be bound by it.</p> <p>However, with respect to the differences, the violated rule in international law and jurisprudence can be considered different. In a sense, <i>jus cogens</i> refers to a set of legal rules that are accepted by the entire international community. However, with regard to oppression, identification through the fatwa of a jurist and, in terms of application, custom, reason, rationality, or consensus and doctrine can introduce examples in society and in social relations. Also, the benefits resulting from oppression include any right resulting from encroachment and violation of rights, law, prevailing custom, orders of the Mawlawi, and the guidance of the Holy Law. On the other hand, jurisprudence considers any instance of oppression to be a cause for the invalidation of the rights and obligations arising from it, while in the obligation not to recognize, a violation of a mandatory and serious rule must be established; that is, a systematic</p>

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	<p>and severe violation (on a large scale and repeatedly). Therefore, unlike the obligation not to recognize, in the obligation not to recognize the oppressor, the condition of seriousness, scope, and repetition is not included, and recognizing the oppressor in any form, including "participation, assistance, and supervision," will not be legitimate. Therefore, both are based on the common principle of "denying the legitimacy of the results of oppression and serious violations of mandatory rules."</p> <p>This alignment can be a basis for designing national and international policies and laws that aim to prevent the legitimization of oppressive and illegal situations. Islamic states can, inspired by the jurisprudential rule of the Erq Zalim, institutionalize the moral principles of avoiding cooperation with manifestations of oppression, such as legitimate sanctions, in their legal systems. At the international level, based on the principle of non-recognition, governments can refrain from recognizing situations resulting from aggression, occupation, or racial discrimination in their foreign policy and, in the form of regional coalitions or the Organization of Islamic Cooperation, develop common guidelines for implementing this commitment.</p>
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