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The Obligation to Prosecute or Extradite (Belgium v. Senegal)

TREY PROFFITT*

I. Introduction and Background

Hissene Habre ruled as the dictator of Chad from 1982-1990, taking power in 1982 with the support of the United States and France.¹ Throughout his reign, Habre was alleged to have committed a number of atrocities: including torture, war crimes, summary executions, kidnapping, and murder, among other charges.² Specifically, Chad committed ethnic cleansing while Habre was in power.³ Additionally, the Chadian government was accused of systematic torture of detainees, for being responsible for over 40,000 deaths, and committing another 12,321 human rights violations.⁴ These human rights violations by Habre's regime included "subjecting detainees to forced swallowing of water, spraying of gas into the nose and mouth, forced ingestion of exhaust pipe fumes, burns, prolonged 'cohabitation with corpses . . . [in] an advanced stage of decomposition', food and water deprivation, flogging and electric shocks."⁵ A large number of these atrocities were performed by the Documentation and Security Directorate, which was a state security force that Habre had direct supervision over.⁶ In 1990, Habre was overthrown by Idriss Deby Itno as the ruler of Chad and fled the country to Senegal.⁷ Habre lived as a "political asylee" in Senegal after being overthrown in Chad.⁸

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1. *Q&A: The Case of Hissene Habre Before the Extraordinary Chambers in Senegal*, HUM. RTS. WATCH (May 3, 2016, 6:00 AM), <https://www.hrw.org/news/2016/05/03/qa-case-hissene-habre-extraordinary-african-chambers-senegal> [<https://perma.cc/J8T8-KATT>] [hereinafter *Q&A*].

2. *Id.*

3. Reed Brody, *Bringing a Dictator to Justice*, 13 J. INT'L CRIM. JUST. 209, 209 (2015).

4. *Id.* at 209-10.

5. Sangeeta Shah, *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, 13 HUM. RTS. L. REV. 351, 351 (2013).

6. Trent Butte, *The Time of Human Justice & The Time of Human Beings: Belgium v. Senegal & Temporal Restraints on the Duty to Prosecute*, 45 GEO. WASH. INT'L L. REV. 349, 354 (2013).

7. Brody, *supra* note 3, at 209.

8. Cindy Galway Buys, *Introductory Note to the International Court of Justice: Obligation to Prosecute or Extradite*, 51 INT'L LEGAL MATERIALS 706, 706 (2012).

In light of these heinous acts committed by Habre throughout his rule, there were multiple efforts to bring him to justice and hold him accountable for these actions.⁹ In 2000, multiple Chadian nationals filed complaints against Habre with several national courts, including Belgium and Senegal.¹⁰ In their respective cases, Senegal found they lacked jurisdiction to decide the case, while Belgium indicted Habre and requested his extradition.¹¹ The Brussels District Court submitted an international arrest warrant for Habre in 2005.¹² Senegal refused the extradition request and referred the case to the African Union, which instructed Senegal to prosecute Habre.¹³ Senegal still refused to prosecute or extradite Habre, even after the African Union's ruling and Belgium's issuance of an international arrest warrant.¹⁴ Senegal claimed that they did not have jurisdiction because Habre was afforded Head of State immunity concerning these alleged acts.¹⁵ A small effort was made by Senegal when they amended their penal code in recognition of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT),¹⁶ but they still refused to begin the process of prosecuting Habre.¹⁷ As a result, Belgium filed suit with the International Court of Justice (ICJ) in 2009, alleging that Senegal, by refusing to prosecute or extradite Habre, had failed to perform its obligations under the CAT.¹⁸

Belgium alleged that Senegal had failed to fulfill its obligations under Articles Six and Seven of the CAT.¹⁹ A violation of any part of either Article was enough to show that Senegal had breached its obligations under the CAT.²⁰ Prior to the ICJ's decision, it was common for states to neglect their responsibilities under CAT, as it "has not been a priority" for states to prosecute nationals from other states that reside within their borders.²¹ In 2012, the ICJ held that Senegal's failure to prosecute or extradite Habre in a timely manner was a violation of its obligations under the CAT.²² The ICJ's

9. See Shah, *supra* note 5, at 352.

10. *Id.*

11. *Id.*

12. Buatte, *supra* note 6, at 350-51.

13. *Id.*

14. Mads Andenas & Thomas Weatherall, *International Court of Justice: Questions Relating to the Obligation to Extradite or Prosecute (Belgium v Senegal) Judgment of 20 July 2012*, 62(3) INT'L COMP. L. Q. 753, 753 (2013).

15. Shah, *supra* note 5, at 352.

16. See generally Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter Convention Against Torture].

17. Buatte, *supra* note 6, at 351.

18. Andenas & Weatherall, *supra* note 14, at 753.

19. *Id.* at 756.

20. See *id.*

21. See Thordis Ingadottir, *The Role of the International Court of Justice in the Enforcement of the Obligation to Investigate and Prosecute Serious Crimes at the National Level*, 47 ISR. L. REV. 285, 285 (2014).

22. Shah, *supra* note 5, at 352.

holding in this case was a landmark decision, holding states accountable to the obligations they had agreed to fulfill. The International Court of Justice's opinion in this case correctly created actionable precedent for parties to the Convention Against Torture to hold country leaders responsible for the atrocities that occurred during their rule.

It is important to understand the CAT and its purpose prior to discussing the case itself. The CAT did not outlaw torture and other cruel, inhuman, or degrading treatment; these types of acts were already outlawed throughout international law.²³ Instead, the CAT's purpose was to enhance the current prohibitions against these types of acts.²⁴ Additionally, the CAT does not apply to private parties, no matter how abhorrent their actions may be.²⁵ Instead, the CAT only applies to individuals that are acting "in an official capacity."²⁶ Habre was the President of Chad at the time these acts were committed, so there is not a question as to whether or not his actions fall under the purview and purpose of the CAT.²⁷

II. ICJ's Analysis of the Case

The three most important considerations the Court had before them were whether they had competent jurisdiction, if Belgium had standing, and whether Senegal had violated Articles Six or Seven of the Convention Against Torture.

A. JURISDICTION

The ICJ has jurisdiction to hear two kinds of cases: legal disputes between states (contentious cases) and advisory opinions on legal questions submitted by United Nations organizations.²⁸ The ICJ does not allow private individuals access to the Court for private disputes.²⁹ States must have accepted the Court's jurisdiction through one of several avenues, one of these being a jurisdictional clause that is present in a treaty they are party to.³⁰ This type of provision is present in the CAT, specifically in Article Thirty, which states:

(1) Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted

23. HANS DANIELIUS & J. HERMAN BURGERS, *THE UNITED NATIONS CONVENTION AGAINST TORTURE*, 1 (1988).

24. *Id.*

25. *Id.*

26. *Id.*

27. See *Q&A*, *supra* note 1.

28. *How the Court Works*, INT'L CT. JUST., <https://www.icj-cij.org/en/how-the-court-works> [<https://perma.cc/Q8X3-4X62>] (last visited Jan. 18, 2021).

29. John R. Crook, *The International Court of Justice and Human Rights*, 1 NW. J. INT'L HUM. RTS. 1, 2 (2004).

30. *How the Court Works*, *supra* note 27.

to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.³¹

There are two requirements laid out in Article Thirty: the first requires that the parties have already tried negotiation and the second requires that the parties cannot come to an agreement on organizing the arbitration process.³² The test for determining whether the parties have met the negotiation requirement and arbitration requirement is set forth in *Georgia v. Russian Federation*.³³ The ICJ summarized these requirements in the case at bar, stating that there needs to have been "at the very least, a genuine attempt" by either party to attempt to work with the other party to quell the dispute.³⁴ Additionally, to meet the negotiation requirement, talks need to "have become futile or deadlocked."³⁵ The requirement that negotiation will not solve the dispute, means that there is not a "reasonable possibility" that further negotiations will lead to a resolution.³⁶ Belgium and Senegal met multiple times to try to come to a solution regarding Habre, but neither country's position changed as a result of the meetings, and the ICJ held that this satisfied that the dispute could not be settled through negotiation.³⁷

As for the arbitration requirement, Belgium sent a request to Senegal for arbitration, however Senegal did not respond.³⁸ This request for arbitration was sent to Senegal over two years prior to Belgium filing suit with the ICJ.³⁹ The Court held that the test set forth in *Georgia v. Russian Federation* had been met, and that they did have competent jurisdiction to hear the case.⁴⁰ This test is not a high bar to meet but is merely minimum steps that must be displayed to establish the necessity for ICJ intervention.⁴¹

B. STANDING

Generally, in American law, standing requires a concrete and particularized injury, causation, and redressability by a favorable court decision.⁴² Similarly, Senegal argued that Belgium did not have standing and thus the suit was inadmissible, on the grounds that none of Habre's victims

31. See Convention Against Torture, *supra* note 16, at art. 30(1).

32. See *id.*

33. Andenas & Weatherall, *supra* note 14, at 765.

34. Questions Relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgement, 2012 I.C.J. 423, 445-46 (July 20).

35. *Id.* at 446.

36. *Id.*

37. See *id.*

38. *Id.* at 447.

39. *Id.*

40. Andenas & Weatherall, *supra* note 14, at 765.

41. *Id.*

42. See, e.g. Lujan v. Defs. Wildlife, 504 U.S. 555, 560, (1992).

were citizens of Belgium when these alleged acts were committed.⁴³ In response to this argument, the Court relied on the principle of *erga omnes partes* to evaluate Belgium's standing.⁴⁴ This principle stands for the proposition that one state party to a convention is able to hold another state party to the convention accountable to fulfill their obligations under the convention.⁴⁵ This principle rests on the notion that parties to a convention owe a responsibility to the other members of the convention to uphold their obligations.⁴⁶ Because this responsibility is owed to all parties to the CAT, each member is afforded standing before the ICJ to file suit regarding another parties failure to fulfill their obligations under the CAT.⁴⁷

The preamble and purpose of the CAT was an important consideration for the ICJ in deciding to invoke *erga omnes partes*.⁴⁸ The ICJ focused on and quoted the CAT's purpose as stated in the preamble, which is "to make more effective the struggle against torture . . . throughout the world."⁴⁹ As a result of this purpose, states have a "common interest" to hold state parties accountable that refuse to prosecute or extradite individuals that have committed torture or other acts prohibited by the CAT.⁵⁰ The ICJ's decision to allow standing solely based on the principle of *erga omnes partes* was an unprecedented decision by the Court, because they had never granted standing based on a state party's interest in another state's unfulfilled obligation before.⁵¹ It is unlikely that Belgium would have had standing before the Court had the ICJ refused to allow standing based on *erga omnes partes*, because Senegal correctly pointed out that Habre's victims were not citizens of Belgium.⁵²

There was some contentiousness between the ICJ Judges when it came to the concept of *jus cogens*, which means a peremptory norm.⁵³ The role of this concept in the case is whether the Court actually declared obligations to prosecute and punish those who are accused of torture *jus cogens*.⁵⁴ The importance of a *jus cogens* classification is that this would create an obligation for states to punish and take action to effectuate the prohibition of torture regardless of any treaty agreements.⁵⁵ The language of the judgment would

43. Claire Nielsen, *Prosecution or Bust: The Obligation to Prosecute Under the Convention Against Torture*, 72 CAMBRIDGE L. J. 240, 241 (2013).

44. Prajwol Bickram Rana, *An Analysis of Principle of Erga Omnes Partes with Special Reference to the Case of Belgium v. Senegal*, 6 KATHMANDU SCH. L. REV. 193, 194 (2018).

45. See *id.* at 194.

46. *Id.*

47. Brody, *supra* note 3, at 358.

48. Rana, *supra* note 44, at 195.

49. Questions Relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgment, 2012 I.C.J. 423, 449 (July 20).

50. *Id.*

51. Shah, *supra* note 5, at 358.

52. See Nielsen, *supra* note 43, at 241.

53. Andenas & Weatherall, *supra* note 14, at 760.

54. See *id.*

55. See *id.* at 761.

seem to suggest that the obligation for prohibition of torture was declared *jus cogens*, stating “the prohibition of torture is part of customary international law and it has become a peremptory norm (*jus cogens*).”⁵⁶ But this was disputed by Judge Sur, who stated that the majority’s reference to *jus cogens* was “superfluous and does not contribute to the settlement of the dispute.”⁵⁷ Judge Sur went further, arguing that any discussion of *jus cogens* was merely dicta, and its applicability to the facts was not settled.⁵⁸ This will likely be an issue that will have to be settled decisively by the Court in a later case, but it appears the majority of the ICJ is prepared to allow standing in cases relating to torture based solely on the principle of *jus cogens*, even if the states are not party to the CAT.⁵⁹

C. SENEGAL’S OBLIGATIONS UNDER ARTICLES 6 AND 7 OF THE CAT

Under the CAT, Senegal had several obligations to fulfill with regards to Habre: (1) to make a preliminary inquiry into the facts and (2) to either extradite or prosecute him.⁶⁰ The principle of *aut dedere aut judicare* is helpful to understand these obligations.⁶¹ This principle stands for the proposition that the responsibility does not fall on one state alone, but that the state must either “perform the obligation itself or allow another state to do so.”⁶² Applying this to Article Seven of the CAT, which states:

The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article four is found shall in the cases contemplated in article five, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.⁶³

Senegal must either send the case to its authorities to prosecute the case or extradite Habre and allow another state to prosecute.⁶⁴ Pursuant to this obligation, Senegal enacted legislative reforms with the stated intention of prosecuting Habre in response to the United Nations Committee against Torture’s (UNCAT) finding that Senegal had failed to uphold its Article Seven obligations.⁶⁵

56. Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgement, 2012 I.C.J. 423, ¶ 99 (July 20).

57. Obligation to Prosecute or Extradite (Belg. v. Sen.), Diss. Op. Sur, 2012 I.C.J. 605, ¶ 4 (July 20).

58. *Id.*

59. See Belg. v. Sen., Judgement, 2012 I.C.J. ¶ 99.

60. Convention Against Torture, *supra* note 16, at art. 6, ¶ 2 & 7, ¶ 1.

61. Andre Nollkaemper, *Wither Aut Dedere? The Obligation to Extradite or Prosecute After the ICJ’s Judgment in Belgium v. Senegal*, 4 J. INT’L DISP. SETTLEMENT 501, 502 (2013).

62. *Id.*

63. Convention Against Torture, *supra* note 16, at art. 7, ¶ 1.

64. See *id.*

65. *Id.* at 503.

However, Senegal did not submit the Habre case to its authorities for prosecution for multiple years, citing a myriad of reasons, including financial difficulty.⁶⁶ The Court found that this violated Article Seven, and that the article implies a “reasonable time” standard for states to fulfill their Article Seven obligation.⁶⁷ The ICJ did not articulate what specifically constituted a “reasonable time,” but this was not a borderline case, as it had been nearly twelve years since the initial complaints were filed in Belgium.⁶⁸ In the same vein, the Court found that Senegal had also failed to fulfill its obligations with respect to Article Six, by failing to “immediately initiate a preliminary inquiry as soon as they had reason to suspect Mr. Habre, who was in their territory, of being responsible for acts of torture.”⁶⁹

Additionally, the Court also established a hierarchy between the alternative obligations of prosecution and extradition, placing greater weight on prosecution than extradition.⁷⁰ The ICJ went on to say that the failure to prosecute is a “wrongful act,” while extradition is offered as an alternative to performing the obligation.⁷¹ The preference given to prosecution is a practical one; the option of extradition can only be available when there has been a request for extradition by another state.⁷² The alternative of extradition is offered to further serve the purpose of punishing acts of torture, in the event that a country is unwilling or unable to prosecute the accused.⁷³ The import of the Court’s language is that states are required to submit to its competent authorities the case for prosecution, but in the event that there is a request for extradition, the state can “relieve itself” of the obligation to prosecute by extraditing the individual.⁷⁴

D. THE ICJ’S RULING

The ICJ ultimately ruled in Belgium’s favor, finding that Belgium had standing, the ICJ had competent jurisdiction, and that Senegal had violated the CAT by failing to fulfill its obligations under Articles Six and Seven.⁷⁵ Additionally, the Court unanimously ruled that Senegal “must, without further delay” submit Habre’s case to authorities for the purpose of prosecution, or in the alternative, extradite him.⁷⁶ The Court noted that the purpose of the CAT was an important consideration, to keep those who

66. Andenas & Weatherall, *supra* note 14, at 759.

67. Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgement, 2012 I.C.J. 423, 460 (July 20).

68. *See id.*

69. *Id.* at 454.

70. *Id.* at 456.

71. *Id.*

72. Nollkaemper, *supra* note 61, at 510.

73. *Id.*

74. *See* (Belg. v. Sen.), 2012 I.C.J. at 456.

75. *Id.* at 462.

76. *Id.* at 463.

commit acts of torture from avoiding responsibility in a state party to the CAT.⁷⁷

III. Analysis and Implications of the Decision

The ICJ's decision in *Belgium v. Senegal* will have several key and lasting effects going forward for parties to the CAT: including clarity for state parties, the possibility of *jus cogens* status for prohibition of torture, and the ability to hold individuals accountable for their atrocities. The importance of this decision to the 151 state parties to the CAT cannot be understated, because it allows each state to hold fellow member states accountable to the obligations they agreed to.⁷⁸

This was the first time that the ICJ found it had competent jurisdiction to hear a dispute solely based on parties being member to the CAT.⁷⁹ Additionally, the Court's opinion sets actionable precedent for state parties to draw upon when there is a question of whether or not they are obligated to act. Moreover, the Court established the standard for when these obligations must be performed; the preliminary inquiry must be performed "immediately" and the individual's case must be submitted for prosecution or otherwise extradited within a "reasonable time."⁸⁰ Scholars have also noted that there is an implied duty of good faith for states prosecutorial efforts.⁸¹ This implicit duty is understood to require states to prosecute in a manner that is fair and effective.⁸² This will allow for states to point to these timetables and avoid resorting to the ICJ when the next dispute relating to prosecuting an individual accused of acts of torture arises.

While the standard for an immediate preliminary inquiry is easy to apply, it is unclear what exactly constitutes a reasonable time. This will likely be an issue that the ICJ or another court will have to weigh in on for a more borderline case. In the case at hand, Senegal clearly failed to prosecute in a reasonable time by waiting over a decade to prosecute,⁸³ but it is unclear how they would have ruled had the delay been shorter.⁸⁴ Other provisions provide marginal clarity, including Article Twelve, which requires a "prompt and impartial" investigation by competent authorities.⁸⁵ However, this language is still imprecise and was likely drafted this way on purpose, so states would have the flexibility to determine if prosecution is proper and build a case if it is. The implicit duty of good faith is helpful in interpreting whether a state has complied with its temporal requirements under the

77. *Id.* at 461.

78. *See* Buys, *supra* note 8, at 706.

79. *Id.* at 707.

80. (Belg. v. Sen.), 2012 I.C.J. at 460.

81. Buatte, *supra* note 6, at 374.

82. *Id.*

83. *See generally* (Belg. v. Sen.), 2012 I.C.J.

84. *See id.* at 460.

85. Convention Against Torture, *supra* note 16, at art. 12.

CAT.⁸⁶ If a state has made a good faith effort to prosecute fairly and effectively, they likely will be found to have complied with their CAT obligations.⁸⁷

Another key takeaway from this case is the apparent confusion regarding the *jus cogens* nature of the prohibition against torture. The ramifications of this classification are important, because states that have not ratified the CAT would also have to be responsible for the prohibition against torture.⁸⁸ It is clear that the majority's judgment intended to establish the *jus cogens* status of states obligations pertaining to torture, and Judge Sur's dissenting opinion does not change this.⁸⁹ There is support in prior ICJ case law for this classification, in *Republic of Guinea v. Democratic Republic of Congo*, the ICJ unanimously declared that the obligations pertaining to inhuman and degrading treatment are binding on all states, regardless of treaty agreements.⁹⁰ If the Court found it appropriate to hold any state accountable for its actions related to inhumane and degrading treatment, it would not make sense to draw a distinction for the prohibition of torture. The mere presence of a dissenting opinion is not enough to create ambiguity when the Court has clearly expressed its opinion on the prohibition of torture as a universal obligation.

Finally, the ICJ's decision unequivocally will not allow individuals, acting in an official capacity, who have committed acts of torture and other atrocities, to find safe haven in states party to the CAT.⁹¹ Additionally, if states correctly read that this obligation is *jus cogens* and applies to all states, there should not be any place for those accused of torture to find refuge on Earth.⁹² The Court's decision and *jus cogens* classification of prohibition of torture both further serve the purpose of the CAT, which is to hold those who perpetuate acts of torture accountable for their actions.⁹³

IV. Relevant News About the Case

After this case was decided by the ICJ, Senegal has since tried Habre for the crimes committed during his time as President of Chad.⁹⁴ Habre's trial began in 2015 in front of the Extraordinary African Chambers in the Senegal court system.⁹⁵ This was a landmark trial, as a former ruler of a

86. See Buatte, *supra* note 6, at 374.

87. *Id.*

88. See Andenas & Weatherall, *supra* note 14, at 761.

89. See *Obligation to Prosecute or Extradite (Belg. v. Sen.)*, Judgement, 2012 I.C.J. 423, 457 (July 20).

90. Andenas & Weatherall, *supra* note 14, at 761.

91. See *(Belg. v. Sen.)*, 2012 I.C.J. at 461.

92. See *id.*

93. See *id.*

94. *Senegal/Chad: Court Upholds Habre Conviction*, HUM. RTS. WATCH (Apr. 27, 2017, 12:37 PM), <https://www.hrw.org/news/2017/04/27/senegal/chad-court-upholds-habre-conviction> [<https://perma.cc/7RTT-XF7N>].

95. *Id.*

country had never been tried by another country's courts for human rights crimes.⁹⁶ On May 30, 2016, Habre was sentenced to life in prison for his crimes, and this decision was upheld by the Extraordinary African Chambers on April 27, 2017.⁹⁷ Not only did Senegal submit the case to its authorities for prosecution to fulfill its obligation, but they carried out a complete prosecution effort.⁹⁸

V. Conclusion

The ICJ correctly held that Senegal had failed to fulfill its obligations under the CAT.⁹⁹ In doing so, the Court relied on the test established in *Georgia v. Russian Federation* to interpret whether Belgium and Senegal had met Article Thirty's requirements for jurisdiction.¹⁰⁰ Additionally, the Court relied solely on the principle of *erga omnes partes* for standing.¹⁰¹ This will allow for parties to international treaties to file suit and hold other member states accountable to their obligations in the future.¹⁰² The ICJ also provided clarity for requirements of states under Articles Six and Seven of the CAT, establishing the timeline for a preliminary inquiry and for either prosecution or extradition.¹⁰³ The exact timeline for prosecution is not entirely clear and will likely be decided on a case by case, fact dependent basis.

The Court clearly articulated that the prohibition of torture is a peremptory norm, or *jus cogens*.¹⁰⁴ Every state is obligated to hold individuals that perpetuate acts of torture accountable, regardless of participation in a treaty or convention.¹⁰⁵ The misguided dissent of Judge *ad hoc* Sur does not undermine the clear language of the majority's judgment.¹⁰⁶ This case has critical implications for individuals that commit acts of torture: there is nowhere that they will be able to escape the consequences of their actions. Additionally, states commitments to preventing and punishing torture cannot be a hollow one, they can and will be held responsible by other states to fulfill their obligations.¹⁰⁷ Victims are denied justice if there is not an effort to prosecute or extradite officials acting in the manner that Habre did, and this decision ensures that victims have a chance to receive justice.¹⁰⁸

96. *Id.*

97. *Id.*

98. *Id.*

99. *See* (Belg. v. Sen.), 2012 I.C.J. at 456.

100. *Id.* at 442.

101. *See id.*

102. *Id.* at 512.

103. *Id.* at 535.

104. *Id.* at 522.

105. *See* (Belg. v. Sen.), 2012 I.C.J. at 449.

106. *Id.* at 605.

107. *Id.* at 587.

108. *See* Buatte, *supra* note 6, at 380.

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