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The concept of *erga omnes* obligations in international law

Ardit Memeti
Faculty of Law, Southeast European University, Tetovo
PhD candidate, University of Maastricht
a.memeti@seeu.edu.mk

Bekim Nuhija
Faculty of Law, Southeast European University, Tetovo
b.nuhija@seeu.edu.mk

Abstract

In international law, the concept of *erga omnes* obligations refers to specifically determined obligations that states have towards the international community as a whole. In general legal theory the concept "*erga omnes"* (Latin: 'in relation to everyone') has origins dating as far back as Roman law and is used to describe obligations or rights towards all. In municipal law it has the effect towards all in another, general context.

The concept is very important because in today's structure of international society, composed of independent entities giving rise, as a rule, to legal relations on a consensual basis, *erga omnes* obligations can further enable the International Court of Justice to go beyond reciprocal relations among states based on consent in further developing international law on the basis of a natural law approach. By its very nature this affects the freedom of state consent and the sovereignty of states.

This paper will try to shed some light on this concept by analysing its meaning in international law, starting from its appearance, consequent development and its position at the present time.

Key words: erga omnes obligations, ratio decidendi, obiter dicta, stare decisis, jus cogens norms, aggression, genocide, slavery, racial discrimination, torture, self-determination.

Introduction

In its dictum on the Barcelona Traction case, the International Court of Justice, as the primary judicial organ of the United Nations, gave rise to the concept of *erga omnes* obligations in international law. The World Court specifically enumerated four *erga omnes* obligations: the outlawing of acts of aggression; the outlawing of genocide; protection from slavery; and protection from racial discrimination.[i] In this judgment the Court drew a distinction between the *erga omnes* obligations that a state has towards the international community as a whole and in whose protection all states have a legal interest, and the obligations of a state vis-à-vis another state.

In international law, the concept of *erga omnes obligations* refers to specifically determined obligations that states have towards the international community as a whole. Such obligations, as enumerated above, have been determined by the Barcelona Traction case, together with other subsequently developed obligations, such as the obligation to respect the principle of self-determination in the Case Concerning East Timor[ii] and the Advisory Opinion on the Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory,[iii] and the *erga omnes* obligation prohibiting the use of torture which was recognized by the International Criminal Tribunal for Yugoslavia (hereinafter, the ICTY) in the Furundzija case[iv].

While *erga omnes* obligations are specifically determined in international law, in general legal theory the concept "*erga omnes"* (Latin: 'in relation to everyone') has origins dating as far back as Roman law and is used to describe obligations or rights towards all. In municipal law it has the effect towards all in another, general context. For example, a property right is an *erga omnes* right while a right based on a contract is only enforceable towards the contracting party and is "*inter partes"* (Latin: between the parties) (Emanuel 1999: 186).

The concept is very important because in today's structure of international society, composed of independent entities giving rise, as a rule, to legal relations on a consensual basis, e*rga omnes* obligations can further enable the International Court of Justice to go beyond reciprocal relations among states based on consent in further developing international law on the basis of a natural law approach. By its very nature this affects the freedom of state consent and the sovereignty of states.

This paper will try to shed some light on this concept by analysing its meaning in international law, starting from its appearance, consequent development and its position at the present time.

The appearance of the concept in international law

The concept of *erga omnes* appears in international law for the first time in two paragraphs of the judgment in the Barcelona Traction Case (Second Phase), Belgium v. Spain which the I.C.J. delivered on February 5, 1970.[v] The relevant text of the paragraphs 33 and 34 follow:

> 33. In particular, an essential distinction should be drawn between the obligations of a state towards the international community as a whole, and those arising vis-a vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. 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 omens*.
>
> 34. Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of human person, including protection from slavery and racial discrimination.[vi]

The facts of the Barcelona Traction Case do not give grounds for a pronouncement as the one that the court made on the *erga omnes* obligations and the impact it produced. This actually is the main basis for criticism and calls for a brief summary of the case and a comprehensive analysis on the significance of the pronouncement. The case arose out of the adjudication in a bankruptcy case by a Spanish court of the Barcelona Traction Light and Power Company, Limited, a Canadian company. Belgium filed an application seeking reparation for damages sustained by Belgium nationals, shareholders in the company, as a result of acts contrary to international law committed by organs of the Spanish state. The Spanish Government raised four preliminary objections to the application (Ragazzi 2002: 3). The court rejected the first and the second objections concerning the jurisdiction of the court and ruled on the merits of the third and the fourth objections. The third objection of the Spanish Government was that the Belgium

Government lacked capacity to submit any claim for wrongs done to a Canadian company even if the shareholders were Belgian.

On the third preliminary question, the court reasoned that an injury to the shareholder's interests did not confer rights on the shareholder's national state to exercise diplomatic protection for the purposes of seeking redress. That right is conferred on the national state of the company alone. No international law rule expressly confers such a right on the shareholder's national state. The possession by the Belgian Government of a right of protection was a prerequisite for examination, and since no *jus standi* before the Court had been established, it was not for the Court to pronounce upon any other aspect of the case.

As seen above, since the Court dealt with Belgium's right to *jus standi* in seeking compensation for Belgian shareholders, the *erga omnes* obligations pronouncement is not strongly related to the merits of the case. This calls for us to first address briefly the issue of *jus standi* and *actio popularis* and, more extensively, the criticisms of the pronouncement (Ragazzi 2002: 7).

Erga omnes* and *actio popularis.

According to the pronouncement in the Barcelona Traction case, all states have legal interests in the protection of the rights involved in the pronouncement (Jennings and Watts 1997: 5). The pronouncement in the Barcelona Traction case is stated in regard to *erga omnes* obligations in the line of reasoning related to standing (*jus standi*), and this raises the issue of the existence of *actio popularis* in international law.

The concept of *actio popularis* derives from Roman law and indicates an action brought by a citizen asking the court to protect a public interest, without any need to show an individual interest in pursuing its claim (Hsiung 2004: 19).

However, the International Court of Justice in the South West Africa case held that proceedings in defence of legal rights and interests require those rights or interests to be clearly vested in those who claim them and that *actio popularis* is not known to international law as it stands at present (Jennings and Watts 1997: 5). Although the concepts of *actio popularis* and *erga omnes* are in some respects associated, the two are distinct and independent of each other.

Criticism of the pronouncement

The judgment has not been immune from criticism. Some scholars have raised doubts as to whether this reference to obligations *erga omnes* was necessary or appropriate for the court to reach its conclusion on *jus standi*.

McCaffrey, a former member of the International Law Commission, has expressed the view that this reference was a "gratuitous statement" which was made in the context of a case "whose facts and legal issues hardly required such a pronouncement" (Ragazzi 2002: 5). Mann has written that *obiter dicta* like that on the obligations *erga omnes* "convey the impression of having been studiously planted in the text or artificially dragged into the arena" and that it was a reaction to the I.C.J judgment on the South West Africa case.[vii]

As it appears from the facts of the case and from the main criticisms of the judgment, we have to reflect on the distinction between *ratio decidendi* and *obiter dicta* in international law and, more specifically, in terms of the pronouncement of the Court in regards to *erga omnes* obligations.

Since the basis for criticisms of the pronouncement are mainly based on the distinction between *ratio decidendi* and *obiter dicta*, an analysis of the distinction follows.

Article 38 (d) of the Statute of the I.C.J defines judicial decisions as subsidiary means for the determination of rules of law, while Article 59 reads that: "the decision of the Court has no binding force except between the parties and in the respect of that particular case (Shahabudeen 1997: 55-107). Strictly speaking, the I.C.J. does not observe a doctrine of precedent but strives to maintain judicial consistency (Brownlie 2003: 21).

In a situation where the doctrine of precedent is not or cannot be strictly observed, and the *erga omnes* pronouncement of the court is not *ratio decidendi* but *obiter dicta*, it is legitimate to try to determine its importance.

Ratio decidendi is a term in widespread use in common law municipal legal systems, denoting general reasons or grounds given for a judicial or arbitral decision (Grant and Barker 2003: 416). According to the doctrine of precedent (*stare decisis*), the only part of a decision that is binding for future cases is the *ratio decidendi* (Grant and Barker 2003: 416). It essentially includes the principal proposition or propositions of law determining the outcome of a case, or

the only legal considerations necessary for the decision of a particular case (Brownlie 2003: 42). This should constitute the precedent for future cases containing similar facts and circumstances. *Obiter dicta* would than include all the propositions of law which are not part of the *ratio decidendi*. According to Brownlie, *obiter dicta* are those lesser propositions of law stated by tribunals or individual members of tribunals, i.e., propositions not directed to the principal matter in issue (Brownlie 2003: 42).

This distinction should not be especially significant for I.C.J. decisions, because if the court draws the distinction this would mean that it accepts the doctrine of *stare decisis* at a theoretical level (Shahabudeen 1997: 152). However, individual judges have regarded some of the reasons given by the court as *ratione decidendi* and others as *obiter dicta* (Shahabudeen 1997: 155). In fact, Judge de Castro referred to what he considered to be "the obiter reasoning expressed" on the *erga omnes* pronouncement of the court on the Barcelona Traction case (Shahabudeen 1997: 155). Judge Lachs, too, later observed of the *erga omnes* pronouncement that the statement "was not necessary in the judgment, but it was a good opportunity to nail down certain provisions of the law and indicate where states are obliged to act vis-à-vis the international community as a whole" (Shahabudeen 1997: 159). Thus it is difficult to deny the existence of the distinction in the jurisdiction of the court.

To sum up, there is strong recognition that the pronouncement of the court is *obiter dicta*. However, this conclusion on its own does not diminish the value of the pronouncement in itself. As noted by Ragazzi, the value of each *obiter dicta*, or even of a *ratio decidendi*, can be only based on the merits of a pronouncement that considers the background, content and consequent development of the pronouncement itself. This conclusion applies especially to our case.

The significance of the pronouncement concerning *erga omnes* obligations

In order to determine the value of the pronouncement, an analysis is required of the background, content and consequent development of the pronouncement.

The very expression "obligations *erga omnes*" predates the dictum of the International Court. For example, among others, Lachs, a member of the International Law Commission, used the term *erga omnes* in the course of a debate on draft Article 62 of the Vienna Convention on the Law of Treaties (treaties providing for the obligations or rights of third states) (Ragazzi 2002: 8). Lachs was elected a judge and took part in the decision on the Barcelona Traction case. The pronouncement names four *erga omnes* obligations: the outlawing of acts of aggression; the outlawing of genocide; protection from slavery; and protection from racial discrimination. Why did the Court enumerate exactly these specific examples and not others? When analysed, the examples will justify their presence in the pronouncement since their position has been well established in international law and has developed from numerous treaties, judicial decisions, state practice, declarations and resolutions, etc., which have evolved to customary rules of international law of a peremptory character. The brief summary that follows of each of the four *erga omnes* obligations will serve to shed light on their importance.

a. The outlawing of acts of aggression

The outlawing of acts of aggression is the first example of the dictum (Ragazzi 2002: 5). The United Nations Charter gives the basic framework on the issue of the use of force.[viii] Thus, Article 2, paragraph 4 states:

> "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations."

The term 'aggression' is not stated in the Article, suggesting that not all forms of illegal use of force amount to aggression. According to Article 1 of UN General Assembly Resolution 3314, adopted by consensus in 1974, "aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in the definition" (Jennings and Watts 1997: 429). During the work of codification of the law of treaties, the prohibition of aggression and the prohibition of the use of force were actually the most cited

example of peremptory norms, or rules *jus cogens* norms. (*Jus cogens* is defined as: "a peremptory norm of general international law 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.")[ix] While in the Barcelona Traction case the outlawing of acts of aggression is mentioned as an *erga omnes* obligation, I.C.J. in the case of Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)[x] stated that the prohibition of the use of force as mentioned in the Charter has achieved the status of customary international law and called it a "fundamental or cardinal principle of such law".[xi] Judge Sette-Camara filed a separate opinion in which he named the prohibition of use of force a peremptory rule of international law.[xii]

Therefore, from the character of the prohibition of use of force, which is widely recognized as a *jus cogens* norm it is incontrovertible that the prohibition of aggression is valid *erga omnes*, i.e., it is opposable to all states without exception and affects the interests of all (Ragazzi 2002: 74-79).

b. The outlawing of genocide

Governments and human rights organizations have often termed genocide the most heinous of international crimes (Ratner and Abrams 2001: 26-46; The origins of the term genocide can be traced back to the Second World War barbarism of the Holocaust. Apparently it was a Polish Lawyer, Raphael Lemkin, who coined the term genocide in 1944. For an insightful discussion on genocide, see Power 2007). The first official documents related to genocide can be traced to the Nuremberg trials. The principles proclaimed in Nuremberg were recognized as principles of international law by Resolution 95, unanimously adopted by the General Assembly of the United Nations. Then the Convention for the Prevention and Punishment of Genocide was introduced. Article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide reads:

> "The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish."[xiii]

Today there is wide support for the view that the customary rule against genocide, like the rule outlawing acts of aggression, belongs to *jus cogens* (Cassese 2003: 98).

In addition, at the level of state responsibility it is now widely recognized that customary rules on genocide impose *erga omnes* obligations on all member states of the international community, granting the right to require that acts of genocide be discontinued (Cassese 2003: 98).

In the case of the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), both parties referred to the concept of obligations *erga omnes*.[xiv] The Court adopted the view that territorial restrictions do not apply to rights and obligations that are *erga omnes* (Brownlie 2003: 568).

> "The rights and obligations enshrined by the [Genocide] Convention are rights and obligations *erga omnes*. The Court notes that the obligation each State thus has to prevent and to punish the crime of genocide is not territorially limited by the Convention".[xv]

The other important I.C.J. opinion related to genocide is the Advisory Opinion on the Genocide Convention.[xvi] In November 1950, the General Assembly asked the Court to give an advisory opinion on certain questions relating to reservations relating to the Genocide Convention (Ragazzi 2002: 98). The I.C.J. remarked that the parties to the Genocide Convention were able to make reservations, but not all kind of reservations indiscriminately (Ragazzi 2002: 100). The court further declared that the principles underlying the Genocide Conventions are principles which are recognized by civilized nations as binding on states, even without any conventional obligation.[xvii]

In the Barcelona Traction case the Court distinguished between two kinds of obligations while addressing the issue of legal standing; whereas in the advisory opinion on the Genocide Convention, the International Court was addressing an issue relating to the law of treaties (Ragazzi 2002: 102).

The universal opposability of the prohibition of genocide in the International Court's advisory opinion on the Genocide Convention presents clear elements of analogy with the

dictum on obligations *erga omnes* with respect to both its substance and terminology, and the advisory opinion may be regarded as a "precedent" of the dictum on obligations *erga omnes* (Ragazzi 2002: 104).

c. Protection from slavery

International efforts to abolish slavery are more than two centuries old, leading to some eighty conventions and documents on the subject (Ratner and Abrams 2001: 112-116).

While the dictum on obligation *erga omnes* in the Barcelona Traction case refers only to slavery, it would be logical to assume that the prohibition extends to the slave trade, since if slavery is prohibited then there cannot be any trade in slaves (Ragazzi 2002: 106). The emergence of the prohibition of slavery and the slave trade can be well explained through the Enterprise and the Lawrence cases (Ragazzi 2002: 107).

Enterprise, an American brig, was sailing in 1835 from the District of Columbia to South Carolina with a large number of slaves on board. The ship entered a port in Bermuda due to some problems it encountered on the journey. The captain was served a writ of *habeas corpus* requiring his appearance before the court and the production of the slaves. The British commissioner noted that when a vessel with a cargo of slaves travels out of a territory where a law protecting slavery prevails, then the natural right of the slaves to freedom revives. Most of the slaves chose to remain on shore since they were told that they were free. The United States then claimed compensation for the loss suffered under the exclusive jurisdiction rule, which applied to the ship even if the vessel was forced by unavoidable circumstances into a port of a foreign country. The umpire of the case, Mr. Bates, noted that the *Enterprise* had entered the port in distress and therefore had an absolute right to protection under the law of nations and the laws of hospitality and of compensation. He noted that it would have been different if, at the time of the American claim, slavery could be regarded as prohibited under international law, but it could not.

The *Lawrence*, an American brig on voyage from Cuba to Cabenda at the end of 1848, was forced into the Freetown port in Sierra Leone. The *Lawrence* was considered to be a slave-trading vessel because it was well equipped for the slave trade. The same umpire, Mr. Bates, 13

years after the *Enterprise* case, decided that the owners of the *Lawrence* had no claim because at the time of condemnation the African slave trade "was contrary to the laws of nations" and prohibited by all civilized nations and by the laws of the United States (Ragazzi 2002: 112).

The reasoning employed by Mr. Bates drew the attention of the International Law Commission in its work on the law of state responsibility. The question set forth was: *Would a modern umpire decide in the same way if the same case arose again?* (Ragazzi 2002: 113) The answer is 'no', because today slavery and the slave trade are prohibited not only by the law of "civilized nations", but also by an international rule that the international community as a whole regards as peremptory (*jus cogens*) (Ragazzi 2002: 115). Slavery and the slave trade, once lawful practices in international society, have gradually become unlawful and are now prohibited *erga omnes* . (Ragazzi 2002: 116). As a matter of customary international law, the slave trade itself incurs criminal responsibility insofar as all states would appear to have at least permissive jurisdiction to proscribe domestic law against it when committed anywhere (Ratner and Abrams 2001: 26-46; 114).

d. Protection from racial discrimination

A convenient starting-point from which to examine this obligation is the principle that all human beings are equal (Ragazzi 2002: 118). The Charter of the United Nations and the Universal Declaration of Human Rights, as well as many other international and regional instruments and municipal law constitutional provisions, provide for basic provisions on equality. Racial discrimination is universally rejected as an inadmissible derogation from this principle of equality. Specific provisions against racial discrimination can be found in general and regional treaties, including: the International Covenant on Civil and Political Rights (in particular, the Preamble and Article 2); the International Covenant on Economic, Social and Cultural Rights (in particular, Articles 2, 7 and 13); as well as International Declarations such as the Final Act of Helsinki, Article 7, etc (Ragazzi 2002: 118).

A decisive step in the emergence of a general prohibition on racial discrimination was taken in the 1960s with the adoption of the United Nations Declaration on the Elimination of All

Forms of Racial Discrimination, and then again in a Convention with the same title. Article 1, paragraph 1 of this Convention defines racial discrimination as follows:

> "Any distinction, exclusion, restriction or preference based on race, color, descent, or nationality or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

Furthermore, even the I.C.J. in its advisory opinion on Namibia affirmed that South Africa, as the former mandatory for South West Africa, was bound to respect human rights and fundamental freedoms for all without racial discrimination, any contrary policy being a flagrant violation of the purposes and principles of the Charter (Ragazzi 2002: 118).

Today there is overwhelming support for the view that the prohibition of racial discrimination is the subject of an international custom and that this international custom belongs to *jus cogens* (Brownlie 2003: 489). Moreover, in his dissenting opinion on the case of South West Africa, Judge Tanaka discussed the prohibition of racial discrimination and concluded that that the prohibition of racial discrimination, which is in itself contrary to the principle of equality among human beings, is subject to a prohibition opposable to all states (Ragazzi 2002: 130). Thus it shares the same peremptory character as the rules giving rise to other obligations *erga omnes* listed by the International Court in its judgment in the Barcelona Traction case.

Consequent development

After the pronouncement, references to the concept of obligations *erga omnes* have occurred both in the judgments and advisory opinions rendered by the International Court, some of which will also be addressed in the following pages.[xviii] In his dissenting opinion on the East Timor[xix] case (where references to *erga omnes* obligations were also made), Judge Weeramantry listed the following cases as those in which the International Court dealt with the question of obligations *erga omnes*: *Northern Cameroon, South West Africa, Nuclear Tests, Hostages, and Border and Transborder Armed Actions (Nicaragua v. Honduras)*.

However, the most important evolution beyond the Barcelona Traction Case was the emergence of the *erga omnes* obligation to respect the right to self-determination in the East Timor case and in the advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, and the *erga* omnes obligation on the prohibition of torture recognized by the ICTY in the Furundzija case.[xx]

In the East Timor case, the court dealt with the application of Portugal against Australia, according to which Australia had by its conduct failed to observe the obligation to respect the duties and powers of Portugal as the administering power and the right of the people to self-determination and related rights.[xxi] Relevant to our case is the pronouncement in regard to the right of self-determination. In the Court's view, the right of peoples to self-determination is irreproachable, since it evolved from the Charter and from United Nations practice, and has an *erga omnes* character. It is significant, it should be noted, that the Court did not say "*erga omnes* obligations" but rather "*erga omnes* character".

However, paragraph 155 of the I.C.J. advisory opinion requested by the General Assembly on the "Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory" states that obligations *erga omnes* are the obligation to respect the right to self-determination and certain obligations under international humanitarian law.[xxii] Obviously, the court expressly states the "*erga omnes* obligation" to respect the right to self-determination and also refers to the East Timor case as a source on the same line of reasoning.[xxiii]

Since the right to self determination, according to some scholars, is a *jus cogens* norm (Brownlie 2003: 489) and since the I.C.J. has clearly referred to it as an *erga omnes* obligation, by drawing an analogy with the other *erga omnes* obligations in the Barcelona Traction case deriving from *jus cogens* norms, it is safe to regard the obligation to respect the right to self determination as an *erga omnes* obligation.

Furthermore, in the Furundzija case, the International Criminal Tribunal for Yugoslavia in paragraph 151 held that:

> "Furthermore, the prohibition of torture imposes upon States obligations erga omnes, that is, obligations owed towards all the other members of the international community, each of which then has a correlative right. In addition, the violation of such an obligation simultaneously constitutes a breach of the correlative right of all members of the international community and

> gives rise to a claim for compliance accruing to each and every member, which then has the right to insist on fulfilment of the obligation or in any case to call for the breach to be discontinued."

The Tribunal clearly refers to the prohibition of torture as an *erga omnes* obligation. Furthermore, the prohibition of torture is also frequently referred to as a *jus cogens* norm (a norm of a peremptory character) in international law. Again, by drawing analogy with the obligations specified in the Barcelona case, it is safe to add the *erga omnes* obligation of the prohibition of torture to the group of well established *erga omnes* obligations in international law to date.

Conclusion

The significance of *erga omnes* obligations as analysed above has been growing tremendously in international law. The Court's pronouncement on the Barcelona Traction case on obligations *erga omnes,* while *obiter dictum,* is relevant and has been gaining increasing significance ever since.

The concept was not unknown and had evolved prior to the pronouncement. Moreover, the examples enumerated by the court originated from peremptory norms of international law, for the character of which there is overwhelming acceptance.

The concept of *erga omnes* obligations was used on numerous occasions in the pleadings of parties and by the Court after it first appeared in the Barcelona Traction case.

Last but not least, the concept is further recognized and established by adding the respect of the right to self-determination to the group of *erga omnes* obligations and the *erga omnes* obligation on the prohibition of torture.

This paper presents strong arguments that e*rga omnes* obligations have enabled the International Court of Justice to make use of, as Sir Herch Lauterpacht said of the advisory opinion on the Genocide Convention, "judicial legislation" (Shaw 2003: 24-26; 48-53) for obligations on states that are by "their nature" the concern of the international community as a whole, on the character of which a decision is given by the I.C.J. as the primary judicial body in international law.

The importance of the existence of *erga omnes* obligations lies in the attempt to go beyond reciprocal relations among states based on consent.

Although the future of the concept and its further evolution is unclear due to its potential implications for relations among states, there are strong arguments that the concept has established itself in international law and that there exist prospects for its own future development as well as implications for international law by doing so.

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[i] I.C.J. Reports, 1970, Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (1962–1970), Second Phase, Judgment, I.C.J Reports 1970.

[ii] I.C.J. Reports, 1995 (Portugal v. Australia).

[iii] I.C.J. Reports, 2003 (Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory), paras. 88, 155, 156. Also see: I.C.J. Reports, 1995 (Portugal v. Australia). Also see: Geoffrey R. Watson, The ''Wall'' Decision in Legal and Political Context, 99 American Journal of International Law, 6 (2005).

[iv] Prosecutor v. Anto Furundzija, Decision of December 1998, para. 151.

[v] I.C.J. Reports, 1970, Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (1962–1970), Second Phase, Judgment, I.C.J Reports 1970.

[vi] *I* I.C.J. Reports, 1970, Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (1962–1970), Second Phase, Judgment, I.C.J Reports 1970, paras. 33–34. Available at: http://www.icj-cij.org/icjwww/idecisions.htm. The authoritative text is in French.

[vii] South West Africa (Ethiopia v. South Africa; Liberia v. South Africa) (1960–1966), I.C.J. Reports 1962/1966.

[viii] United Nations Charter, especially Articles 1 & 2 and Chapter VII of the Charter.

[ix] Vienna Convention on the Law of Treaties, Article 53.

[x] I.C.J. Reports 1986 (Nicaragua v. United States of America).

[xi] I.C.J. Reports 1986 (Nicaragua v. United States of America).

[xii] I.C.J. Reports 1986 (Nicaragua v. United States of America).

[xiii] GA Resolution 260 A (III), 9 December 1948, entered into force on 12 January 1951.

[xiv] I.C.J. Reports 1996 (Bosnia and Herzegovina v. Serbia and Montenegro).

[xv] I.C.J. Reports 1996 (Bosnia and Herzegovina v. Serbia and Montenegro), para. 31.

[xvi] I.C.J. Reports 1951 (Advisory Opinion on the Genocide Convention).

[xvii] I.C.J. Reports 1951 (Advisory Opinion on the Genocide Convention), para. 23.

[xviii] I.C.J. Reports 1996 (Bosnia and Herzegovina v. Serbia and Montenegro).

[xix] I.C.J. Reports, 1995 (Portugal v. Australia).

[xx] Prosecutor v. Anto Furundzija, Decision of December 1998, para. 151.

[xxi] I.C.J. Reports, 1995 (Portugal v. Australia), para. 1.

[xxii] I.C.J. Reports, 2003 (Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory), para.155

[xxiii] *I* I.C.J. Reports, 2003 (Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory), paras. 88 & 156.

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