Public International Law

Using only the resources provided on page two, consider the following hypothetical:

Following a military coup in 2021, Min Aung Hlaing has served as acting President of Myanmar. In addition to The Gambia’s ICJ case regarding allegations of Genocide against Rohingya Muslims, he has been accused of torturing political prisoners and a variety of other human rights violations.[[1]](#footnote-2) Assume for this question that Min Aung Hlaing is deposed and flees to China or India - countries who abstained from the recent UN Security Council measure on the issue and who still maintain a reservation to Article IX of the Genocide Convention related to compulsory jurisdiction for the ICJ for any disputes arising under the Convention. Two countries, one receiving a significant amount of Rohingya refugees (lets called them Burkey) and one without any refugees (lets call them Telgium), each begin domestic national cases against Min Aung Hlaing charging him with international law crimes. They each request the country he resides in to prosecute or extradite him. That country (India or China) refuse to extradite, citing the lack of a requirement under the Genocide Convention or customary international law, and they promise to open up an investigation. Several months after the investigation goes nowhere, the two countries (Burkey and Telgium) come to you seeking an explanation of their options under universal jurisdiction to prosecute or extradite.

Question one (15 marks): Considering that in the Obligation to Prosecute or Extradite Case, Belgium raised the claim that the responsibility to prosecute or extradite these serious international law crimes was part of customary international law but the ICJ did not rule on this question and instead proceeded to determine jurisdiction under the Torture Convention,[[2]](#footnote-3) explain whether or not you believe the obligation to prosecute or extradite for these certain serious international law crimes is part of customary international law.

- You may do additional research into order to cite cases related to state practice related to this obligation in order to make your determination is to its status in customary international law.

**Sources:**

* Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment of 20 July, 2012, available at: <https://www.icj-cij.org/sites/default/files/case-related/144/144-20120720-JUD-01-00-EN.pdf>
  + Any separate opinions, dissents, or declarations from this case
* Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar):
  + Judgment of 22 July, 2022, available at: <https://www.icj-cij.org/public/files/case-related/178/178-20191211-ORA-01-00-BI.pdf>.
    - Dissenting Opinion of Judge Xue, Declaration of Judge ad hoc Kress
  + Order of 23 January 2020, available at: <https://www.icj-cij.org/sites/default/files/case-related/178/178-20200123-ORD-01-00-EN.pdf>
    - Separate opinions of Vice-President Xue, Judge Cancado Trindade, Declaration of Judge ad hoc Kress
* The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>
* Convention on the Prevention and Punishment of the Crime of Genocide, 1948, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-prevention-and-punishment-crime-genocide>
* The Princeton Principles on Universal Jurisdiction, 2001, available at: <https://lapa.princeton.edu/hosteddocs/unive_jur.pdf>
* International Law Commission, 2014 Final Report on The Obligation to Extradite or Prosecute, available at: <https://legal.un.org/ilc/texts/instruments/english/reports/7_6_2014.pdf>

1. Amnesty International, Myanmar 2022, available at: https://www.amnesty.org/en/location/asia-and-the-pacific/south-east-asia-and-the-pacific/myanmar/report-myanmar/ [↑](#footnote-ref-2)
2. Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment of 20 July, 2012, paragraphs 53-55, available at: <https://www.icj-cij.org/sites/default/files/case-related/144/144-20120720-JUD-01-00-EN.pdf> [↑](#footnote-ref-3)