

**A STUDY OF THE RESPONSIBILITY
DOMAIN OF STATES TOWARD
HUMAN RIGHTS BASED ON
RULINGS OF THE INTERNATIONAL
COURT OF JUSTICE AND UNITED
NATIONS DRAFT ARTICLES ON
RESPONSIBILITY OF STATES FOR
INTERNATIONALLY WRONGFUL
ACTS**

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I. INTRODUCTION

Human Rights is one of the most debated topics in the world; and violating these rights can sometimes endanger peace and security of the world, such as the grave human rights violations by the Muammar Gaddafi government in 2011 through the Libyan Civil War, which resulted in the engagement of United Nations (the “UN”) Security Council.¹ Violation of human rights may be a wrongful act by

¹ Ryan Timothy Jacobs, *A History of Conflict and International Intervention in Libya*, 6 GLOBAL SECURITY STUDIES 1, 1-3 (2015).

the State, even though it does not threaten world peace or security within any nation; for example, deprivation of nationality to more than 330 individuals, including leading Shiite cleric Sheikh Isa Qassim by the Bahraini government.² Sometimes, also, a government may not have a direct or indirect role through support and control in human rights violation; for instance, prostitution has been banned by the UN Convention on the Elimination of All Forms of Discrimination Against Women.³ Many countries, such as Russia, have labeled prostitution as an illegal activity through legislation, but this deviance has not been stopped in these countries.⁴ Such actions also may include the genocide of Yazidis by the Islamic State of Iraq and the Levant (“ISIL”) in 2014 during the take-over in Northern

² Institute for Rights and Democracy, *Article 19 and the Bahrain Institute for Rights and Democracy (BIRD) Joint Submission for the UPR of Bahrain*, 9-10 (2016), available at <https://www.article19.org/data/files/medialibrary/38515/A19-&-BIRD-Joint-Submission-to-UPR-of-Bahrain.pdf>.

³ Grégoire Théry, *PROSTITUTION UNDER INTERNATIONAL HUMAN RIGHTS LAW: AN ANALYSIS OF STATES’ OBLIGATIONS AND THE BEST WAYS TO IMPLEMENT THEM* (2016), at 4.

⁴ Ivakhnyuk Ivakhnyuk and Vladimir Iontsev, *Human Trafficking: Russia*, CARIM East Project, Note 13/55, 3-4 (2013).

Iraq, which led to the killing of at least 5,000 Yazidi civilians.⁵ The grave violation of human rights by ISIL has endangered global security, but one is not able to invoke the responsibility of the Iraqi government since Baghdad has lost its control over the fallen parts of the country.⁶ Furthermore, according to available documents, there is no link between the Iraqi government and ISIL to prove that the government supports or had control over this terrorist group.⁷

Therefore, it is important to clarify whether the obligation of states in enforcing human rights rules originates merely from an ethical obligation or from a contractual and an *erga omnes* obligation.⁸ Undoubtedly, any comments made by a State or international community on the human rights record of another State could be called an intervention in

⁵ The UN Human Rights Council, “*They Came to Destroy: ISIS Crimes Against the Yazidis*,” A/HRC/32/CRP.2 (2016).

⁶ *Id.*

⁷ The UN Security Council, *Report of the Secretary-General on the threat posed by ISIL (Da’esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat* (2016). S/2016/92.

⁸ *Id.*

internal affairs, which international law and the United Nations Charter have been banned;⁹ and it could be a violation of international law. As stated in Section 7 of Article 2 of the United Nations Charter:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters that are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter V.¹⁰

Inappropriately addressing this issue has caused disputes over whether UN General Assembly's Human Rights Resolutions against one country or official comments against human rights situation in another country is according to UN goals or beyond its authority.¹¹

⁹ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.

¹⁰ *Id.*

¹¹ *Id.*

Complications arise when under Section 3 of Article 1 of the UN Charter¹² promoting human rights is recognized as a UN goal:

To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.¹³

In addition, the second part of Section 1 of Article 13,¹⁴ in describing duties of the General Assembly in accordance with goals of the Charter, mentions helping to accomplish human rights, a task of the General Assembly.¹⁵ The purpose is to promote “international co-operation in the economic, social, cultural, educational, and health fields, an assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex,

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ United Nations, Charter of the United Nations, 1 UNTS XVI, October 24, 1945.

language, or religion.”¹⁶ Therefore, it is important to clarify the limits of the authority of UN and global States in accomplishing human rights in other countries to prevent political use of human rights issues as pressure against States defying an existing world order.¹⁷ This research describes decisions made by international legal tribunals and UN Draft Articles on Responsibility of States for Internationally Wrongful Acts¹⁸ to meet the need so that, firstly, the obligation of States in human rights is explicated, and secondly, the possibility of claiming responsibility against them is made clear.¹⁹

II. PRECEDENCE

Some research shows that although Article 34 of the International Court of Justice (ICJ)²⁰ only recognizes the right of countries to litigate in court,

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, Supplement No. 10 (A/56/10), chp.IV.E.1, November 2001.

¹⁹ *Id.*

²⁰ United Nations, Statute of the International Court of Justice, April 18, 1946.

and the court's decisions have generally included human rights in international law and have caused the spread of human rights.²¹ Therefore, some ICJ decisions have addressed human rights issues alongside other subjects. Based on Article 38.1 of the Statute of ICJ, court rulings are recognized as sources of international law and are binding for countries.²²

Sufficient international legal rules may exist to refer the issue to court.²³ One instance affected Rohingya Muslims in Myanmar.²⁴ Rohingya Muslims are an ethnic and religious minority in Myanmar, who have suffered from wide spread discrimination and lack of access to many of their own human rights, such as the right to citizenship, health, education, life, security, and liberty; they are under constant threat.²⁵ Since a request for advisory

²¹ *Id.*

²² Eva Rieter, *International human rights law and the International Court of Justice*, 22-3 (2014), available at <http://ssrn.com/abstract=2393651>.

²³ *Id.*

²⁴ *Id.*

²⁵ The UN Human Rights Council, *Situation of Human Rights of Rohingya Muslims and Other Minorities in Myanmar*, A/HRC/32/18 (2016).

opinions from the ICJ by any State or by the UN secretary general would be possible on the situation facing Rohingya Muslims in Myanmar and concerns over human rights violation against them, ICJ could have capacity to address this issue.²⁶ In addition, acceptance of many human rights conventions by the global community has made some rules in this area accepted as conventional international rules and binding.²⁷

The hypothesis that the author is seeking to prove indicates that States are obligated to abide by human rights under international law.²⁸ International documents, international law, and decisions of international tribunals demonstrate that integrity and authenticity of terms used in legal documents and related decisions make it possible for scholars, politicians, and members of the justice system to analyze and participate in the political process.²⁹

²⁶ *Id.*

²⁷ Lee J. F. Deppermann, *Increasing the ICJ's Influence as a Court of Human Rights: The Muslim Rohingya as a Case Study*, 14 CHICAGO JOURNAL OF INTERNATIONAL LAW 291 (2013).

²⁸ *Id.*

²⁹ *Id.*

III. STUDY OF THE RESPONSIBILITY OF STATES TOWARD HUMAN RIGHTS BASED ON RULING OF INTERNATIONAL COURT OF JUSTICE AND THE UN DRAFT ARTICLES ON RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS

In 2001, the UN International Law Commission drafted the Articles on Responsibility of the States for internationally wrongful acts.³⁰ Based on Article 1 of the draft:³¹ “Every internationally wrongful act of a State entails the international responsibility of that State.”³² This violation may include one or several acts, an omission, or a combination of an act and an omission.³³ This commentary emphasizes that violation of affirmative or privative obligations of States will hold them responsible, no matter if the violation is an act taken or not taken or a combination of the two.³⁴

³⁰ International Law Commission, *op. cit.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

In fact, the violation of an obligation entails international responsibility regardless of its origin.³⁵ In other words, one cannot distinguish between conventional or unconventional obligations.³⁶ The *Rainbow Warrior*³⁷ case in the arbitration tribunal, *Corfu Channel*,³⁸ and *Military and Paramilitary Activities in and against Nicaragua*³⁹ cases in the ICJ addressed this conclusion. Generally, *Rainbow Warrior* was a dispute between New Zealand and France.⁴⁰ On July 10, 1985, the French military security service sank the Greenpeace ship *Rainbow Warrior* through an undercover operation in the port of Auckland in New Zealand.⁴¹ Finally, France admitted its responsibility for the breach of international law.⁴² The *Corfu Channel* case,

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Rainbow Warrior* (New Zealand/France) R.I.A.A., vol. XX, p. 217 (1990).

³⁸ *Corfu Channel*, Merits, I.C.J Reports 1949, p. 4, at p. 23.

³⁹ *Military and Paramilitary Activities in and against Nicaragua*, Merits, I.C.J. Reports 1986, p.14, at pp. 142, para. 283, 149, para. 292.

⁴⁰ *Rainbow Warrior* (New Zealand/France) R.I.A.A., vol. XX, p. 217 (1990).

⁴¹ *Id.*

⁴² *Id.*

however was a dispute between the United Kingdom and Albania at the ICJ over the damages to two British ships and a large number of deaths in the Corfu Channel in 1946 through a direct or indirect encounter with Albania.⁴³ Following the incidents, the UK brought suit in the ICJ, and the Court found Albania responsible for them; and awarded the UK £843,947.⁴⁴ In addition, the *Military and Paramilitary Activities in and against Nicaragua* case was a dispute between Nicaragua and the United States over the military and paramilitary activities of Contras militant in Nicaragua, who were under support of the U.S. government.⁴⁵ Nicaragua brought the suit in the ICJ in 1986, and the Court awarded reparation to Nicaragua and found the United States to be responsible for violating international law.⁴⁶

Article 2 of UN draft on Responsibility of States⁴⁷ recognizes an element for international

⁴³ Corfu Channel, Meritis, I.C.J Reports 1949, p. 4, at p. 23.

⁴⁴ *Id.*

⁴⁵ *Military and Paramilitary Activities in and against Nicaragua*, Meritis, I.C.J. Reports 1986, p.14, at pp. 142, para. 283, 149, para. 292.

⁴⁶ *Id.*

⁴⁷ International Law Commission, op. cit.

responsibility that is considered to be a “breach of an international obligation of the State.”⁴⁸ Needless to say, treaties, conventions, and all agreements on human rights to which a State joins and makes itself obligated are binding;⁴⁹ and violations of these obligations might have consequences for States.⁵⁰ However, even if a State has not joined any human rights treaty or convention, it will not entail that the State does not hold any responsibility for human rights.⁵¹

The first and third Articles of the UN charter⁵² State, respectively:

(1) To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² United Nations, *op. cit.*

settlement of international disputes or situations which might lead to a breach of the peace;⁵³

(3) To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.⁵⁴

Therefore, respecting human rights and principal liberties for all people similar to the problem of international peace and security are part of the charter's goals.⁵⁵ Members of the UN Charter are obligated and committed to the goals of the charter based on Article Two⁵⁶ and arrangements thereunder.

Also, Section 5 of first chapter of the Vienna Declaration of Human Rights and Programme of

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

Action⁵⁷ (VDPA) States: “All human rights are universal, indivisible and interdependent and interrelated.”⁵⁸

This declaration was ratified following the World Conference on Human Rights in June 1993.⁵⁹ The VDPA clearly states that the obligation of States, and particularly members of the UN to follow human rights include all rules and laws on this field.⁶⁰

However, some lawyers may believe that States’ international responsibility is limited to cases related to other States or the global community as a whole,⁶¹ since in terms of States’ international responsibility, the violating State lies on one side and the injured State lies on the other.⁶² While for violations of human rights, no injured State exists on either side.⁶³ Therefore, on one side of the violation of human rights is citizens and nationals of the same State

⁵⁷ UN General Assembly, Vienna Declaration and Programme of Action, A/CONF.157/23 (July 12, 1993).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ UN General Assembly, Vienna Declaration and Programme of Action, A/CONF.157/23 (July 12, 1993).

opposed to the other side and the people affected by the other side; and State relationships block formation of international responsibility.⁶⁴ Nonetheless, it cannot be acceptable because States have territorial authority based on the principle of sovereignty, and the new world approach to sovereignty is equivalent to territorial responsibility.⁶⁵ Therefore, member States of the UN are responsible for enforcing human rights.⁶⁶

On the other hand, it can be claimed that Section 7 of Article 2 of the UN charter,⁶⁷ which emphasizes non-intervention in internal affairs of States, stops the UN and other nations from monitoring human rights issues within sovereign States.⁶⁸ The ICJ has responded to this viewpoint in an advisory opinion of the case *Legal Consequences for States of the Continued Presence of South Africa in Namibia*.⁶⁹

⁶⁴ *Id.*

⁶⁵ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Canada 2001). 12-3.

⁶⁶ *Id.*

⁶⁷ United Nations, *op. cit.*

⁶⁸ *Id.*

⁶⁹ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security*

Following occupation of Namibia by South Africa, the United Nations issued a resolution and outlawed occupation.⁷⁰ After the ignorance of South Africa toward the UN General Assembly's resolution, the UN Security Council requested an advisory opinion from the International Court of Justice on the following questions: "What are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)?"⁷¹ The court condemned South Africa for violating the principle of non-discrimination and contents of the charter regarding respect for human rights and principal liberties.⁷² Therefore, human rights and principal liberties are not issues over which monitoring contradicts the principle of territorial sovereignty.⁷³ In addition, Articles 1, 13, 55, 62, 68, and 76 of the

Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports, 16 (1971).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

UN charter⁷⁴ have specified the struggle to spread the human rights as part of UN duties.

Furthermore, as stated by the ICJ in the *Barcelona Traction*⁷⁵ case, if principal rights and *erga omnes* norms are violated, then each State according to its membership in the international community has a right to support these principal rights, including during problems such as torture and racial discrimination, and can take action against the violating State.⁷⁶ Therefore, a responsible relationship will be formed between the human rights violating State and all other States; and thus, the injured States, which are all States based on the ICJ decisions, may invoke the responsibility of the human rights violator.⁷⁷

According to Article 42 of the UN draft on Responsibility of States,⁷⁸ “a State is entitled as an

⁷⁴ United Nations, op. cit. (English version)

⁷⁵ *Barcelona Traction, Light and Power Company, Limited, Second Phase*, I.C.J. Reports 1970, p. 3, at 32-3.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ International Law Commission, op. cit.

injured State to invoke the responsibility of another State if the obligation breached is owed to”:

A group of States including that State, or the international community as a whole, and the breach of the obligation:

- i. Specially affects that State; or
- ii. Is of such a character as radically to change the position of all the other States to which the obligation is owed with respect to the further performance of the obligation.⁷⁹

Also, Article 46 of the draft⁸⁰ about the plurality of injured States on fulfillment of a single violating act that can be highlighted by the human rights violation explains:

Where several States are injured by the same internationally wrongful act, each injured State may separately invoke the responsibility of the State that has committed the internationally wrongful act.⁸¹

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

Undoubtedly, grave violations of human rights will create international State responsibility, which is evident in the ICJ ruling on *Barcelona Traction* case and Article 42 of the UN draft⁸² on Responsibility of States. Other States have the right to invoke the responsibility of the violating State.⁸³

It should be noted that the international responsibility of a State toward human rights includes providing security, healthcare, education, economic and social facilities, and vital infrastructures, such as public transportation, etc.⁸⁴ One may hardly find a State today that can or will abide fully by all human rights principles.⁸⁵ For instance, according to Article 6 of the UN Convention on the Elimination of All Forms of Discrimination against Women, prostitution has been banned⁸⁶ and the State parties of the Convention

⁸² *Id.*

⁸³ *Id.*

⁸⁴ See Grégoire Théry, *PROSTITUTION UNDER INTERNATIONAL HUMAN RIGHTS LAW: AN ANALYSIS OF STATES' OBLIGATIONS AND THE BEST WAYS TO IMPLEMENT THEM* (2016).

⁸⁵ *Id.*

⁸⁶ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 1249 United Nations, Treaty Series 12 (December 18 1979), at Art. 6.

should implement it. The Article says, “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”⁸⁷

Among the State parties of the convention, the Russian government has made prostitution illegal.⁸⁸ Yet, human trafficking and illegal prostitution is one of important problems and challenges for Russia.⁸⁹ In contrast, other States, such as Germany in 2002, have legalized prostitution in order to improve the legal position and social situation of prostitutes.⁹⁰ Since 1999, Sweden has opened a third way—criminalizing the purchase of sexual services without prohibiting prostitution; Swedish lawmakers believe that prostitutes are victims of male violence against

⁸⁷ *Id.*

⁸⁸ See Grégoire Théry, PROSTITUTION UNDER INTERNATIONAL HUMAN RIGHTS LAW: AN ANALYSIS OF STATES’ OBLIGATIONS AND THE BEST WAYS TO IMPLEMENT THEM (2016).

⁸⁹ Ivakhnyuk & Iontsev, *op. cit.* at 3-4.

⁹⁰ Barbara Kavemann & Heike Rabe, *The Act Regulating the Legal Situation of Prostitutes-Implementation, Impact, Current Development* (2007). Available at www.cahrv.uni-osnabrueck.de/reddot/BroschuereProstGenglisch.pdf

women, and such women are not responsible for prostitution.⁹¹

Any struggle to obligate a State to enforce all rules and laws in this field may not only fail to help spread human rights, because no State is willing or has ability to assume such a function, but States also may fail to fulfill their responsibility and draw an international reaction.⁹² Accordingly, world States would be able to intervene in each other's domestic affairs following any violation against human rights or failure to enforce all rules in this field by other States.⁹³

Article 55 of the UN draft⁹⁴ draws a solution for the above issue. Under this Article:

These Articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international

⁹¹ Laura Bernett & Lyne Casavant, *Prostitution: A Review of Legislation in Selected Countries*, Legal and Social Affairs Division Parliamentary Information and Research Service, 12-14 (2011).

⁹² *Infra* note.

⁹³ *Id.*

⁹⁴ International Law Commission, *op. cit.*

responsibility of a State are governed by special rules of international law.⁹⁵

The Article has limited the possibility of invoking international responsibility of States toward breaching human rights obligations. Accordingly, until signatory States of a human rights convention have the right to benefit and the rights to reserve and interpret, in order to reduce obligating power of that convention, the possibility to invoke the responsibility of the States is limited.⁹⁶

Therefore, the obligation of States for enforcing most human rights rules lacks the quality to be absolute; and obligation of States towards them is relative and depends on the authority of each State to abide by them.⁹⁷ In spite of that, grave or systematic violations of human rights are excluded from this rule.⁹⁸ States are obligated to avoid committing grave violation of human rights, which can have consequences for them.⁹⁹ Violation of *erga omnes* in

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

the domain of human rights might be translated into violating international peace and security, and the Security Council can take action against it under Chapter 7 of the UN charter such as imposing sanctions against a violator State.¹⁰⁰

An example is that the Security Council has taken action in regards to Libya.¹⁰¹ Following the civil war in Libya in 2011, the UN Security Council issued two binding resolutions, in both 1970¹⁰² and 1973,¹⁰³ under Chapter 7 of the UN Charter.¹⁰⁴ Both resolutions take punitive action against the Libyan State and demand it to allow visits by international monitors to Libya in order to prepare reports.¹⁰⁵ In addition, the Libyan State was obligated to fulfill all of its commitments to international law, including

¹⁰⁰ United Nations, op. cit.

¹⁰¹ Ryan Timothy Jacobs, *A History of Conflict and International Intervention in Libya*, 6 GLOBAL SECURITY STUDIES 1, 1-3 (2015).

¹⁰² UN Security Council, Security Council resolution 1970 (2011) [on establishment of a Security Council Committee to monitor implementation of the arms embargo against the Libyan Arab Jamahiriya], 26 February 2011, S/RES/1970 (2011).

¹⁰³ UN Security Council, Security Council resolution 1973 (2011) [on the situation in the Libyan Arab Jamahiriya], 17 March 2011, S/RES/1973 (2011).

¹⁰⁴ United Nations, op. cit.

¹⁰⁵ *Id.*

human rights, through such resolutions.¹⁰⁶ However, the Libyan State's failure to comply with the resolutions led to military intervention of a group of countries as permitted by Resolution 1703, which caused an overthrow of the Muammar Gaddafi regime.¹⁰⁷ The Resolutions, ratified based on the UN doctrine of the Responsibility to Protect, express a new approach toward the concept of sovereignty.¹⁰⁸ Based on the mentioned doctrine, the concept of sovereignty prior to being defined by governance and control must be identified with responsibility; and therefore, if a State is not willing or able to fulfill its responsibilities correctly, then its functions and responsibilities should be delegated to the global community.¹⁰⁹ Therefore, in the case of an *erga omnes* human rights violation, in an attempt to stop UN and global community intervention in its internal affairs, a State will not be able to invoke Section 7 of

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Simon Adams, *Libya and the Responsibility to Protect* (2012). Occasional Paper Series, No. 3. p. 3.

¹⁰⁹ *Id.*

Article 1 of the UN Charter¹¹⁰ and Article 55 of the UN draft on Responsibility of States.¹¹¹

It can be concluded, despite the fact that States are obligated to human rights, only a few actions, such as grave and systematic violations of human rights that violate peace and security of the world, including genocide, war crimes, racial segregation, and crimes against humanity, can justify any response from the global community. Other human rights such as welfare, social, and cultural rights can be binding only when a State has taken an obligation to enforce them and can make it responsible. However, the tendency of the global community and international law to better identify human rights principles as *erga omnes* cannot be ignored. For example, the UN Human Rights Commission's General Comment No. 3 on Article 2 of International Covenant on Civil and Political Rights generally leaves human rights obligations "to the States parties concerned to choose their method of implementation

¹¹⁰ United Nations, op. cit.

¹¹¹ Parvin Dadandish, *Developments in Libya and Doctrine of Responsibility to Protect*, 21 RAHBORD JOURNAL 169-92 (2012).

in their territories within the framework set out in that Article.”¹¹² However, the General Comment No. 31¹¹³ of the Commission in 2004 that substituted the previous general comment lacks flexibility. Therefore, this change indicates international development of human rights principles from soft law to hard law.

IV. FINDINGS

Based on the UN charter,¹¹⁴ the ICJ ruling on *Barcelona Traction*¹¹⁵ case, and Security Council Resolutions 1700¹¹⁶ and 1703,¹¹⁷ States are obligated and responsible for enforcing human rights. These

¹¹² UN Human Rights Committee (HRC), CCPR General Comment No. 3: Article 2 (Implementation at the National Level), July 29, 1981.

¹¹³ UN Human Rights Committee (HRC), General comment no. 31 [80], The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, May 26, 2004.

¹¹⁴ United Nations, op. cit.

¹¹⁵ *Barcelona Traction, Light and Power Company, Limited, Second Phase*, I.C.J. Reports 1970, p. 3, at p. 32, para. 33.

¹¹⁶ UN Security Council, Security Council resolution 1970 (2011) [on establishment of a Security Council Committee to monitor implementation of the arms embargo against the Libyan Arab Jamahiriya], 26 February 2011, S/RES/1970 (2011).

¹¹⁷ UN Security Council, Security Council resolution 1973 (2011) [on the situation in the Libyan Arab Jamahiriya], 17 March 2011, S/RES/1973 (2011).

resolutions, the UN charter, tribunal affirmation in *Rainbow Barrier*¹¹⁸ arbitration case, and the UN draft on Responsibility of States pose the UN and global community in the position to react to human rights violations by States.

V. CONCLUSION

In discussing the domain and quality of States' obligations to enforce human rights, all *erga omnes* obligations of States to human rights principles, such as prohibition of torture, genocide, and slavery are absolutely binding.¹¹⁹ Therefore, global reactions may follow. However, the responsibility of States toward other human rights principles depends on the will of that State in abiding by specific human rights obligations. Therefore, members of the European Union, because of voluntary acceptance of the

¹¹⁸ *Rainbow Warrior* (New Zealand/France) R.I.A.A., vol. XX, p. 217 (1990).

¹¹⁹ Christian J. Tams, *Enforcing Obligations Erga Omnes in International Law*, Cambridge University Press, 306-311 (2005).

European Convention on Human Rights,¹²⁰ and in particular, Protocol 6,¹²¹ are obligated to abolish capital punishment in their countries. The violation of this obligation by any member of the Convention can have international consequences for that State.¹²² Moreover, acceptance of a human rights convention cannot impose an obligation on a State, whether because some Articles of the convention are non-binding or because the right to reserve and to interpret the convention enables the joining States to free them partially from the load of some obligations. For example, countries such as China, Saudi Arabia, and United States have not approved the obligation to end capital punishment. Therefore, regarding recent rules of human rights, any behavior from authorized State officials or international organizations against a human rights situation of another State, including through sanctioning and

¹²⁰ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5.

¹²¹ Council of Europe, Protocol 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of Death Penalty, 28 April 1983, ETS 114.

¹²² *Id.*

condemning a human rights situation by a resolution, are invalid under international law and is an intervention into domestic affairs of a State.

When a State is not obligated to something or this obligation does not originate from a binding rule such as *erga omnes* obligations or a binding UN Security Council resolution, that State is not accordingly responsible. Therefore, failure to enforce specific human rights norms to which a State is not obligated will not be a breach of obligation or a violation toward the international community and no responsible relationship will form between that State and the global community. Under such conditions, the global community will not have the right to invoke the responsibility of the State for violations of human rights obligation and take action against that State or intervene in its internal affairs.