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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by International-Lawyers.Org, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Extraterritorial Obligations for Human Rights in light of the Nicaragua Case

On 27 June 1986, 30 years ago, the International Court of Justice reconfirmed that international law prohibits the use of force by one State against another in the Merits phase of the Nicaragua Case. While this judgement focused on armed conflicts, it is also important to understanding the principle of extraterritorial responsibility for violations of international human rights law. This is the case because of the Court's finding that States who act through the instrumentality of non-State actors may themselves be responsible for the action of the non-State actors.

The Court found that a State was acting contrary to international law when it supported non-State actors to use force against another States. The Court stated that it

sees no reason to deny that, in customary law, the prohibition of armed attacks may apply to the sending by a State of armed bands to the territory of another State, if such an operation, because of its scale and effects, would have been classified as an armed attack rather than as a mere frontier incident had it been carried out by regular armed forces.¹

The Court also found "that no such general right of intervention, in support of an opposition within another State, exists in contemporary international law."²

Despite the substantial support that the ICJ lent to solidifying the law prohibiting States from interfering in the affairs of other States in the *Nicaragua Case* 30 years ago, still today we see States intervening in conflicts in other States by supporting the use of force by non-State actors against a government that is recognized under international law.

Perhaps the most obvious contemporary case of such acts of violence by proxy is the use of force by States against the government of Syria. In this case, governments ranging from the United States and the European Union's Member States to Turkey and Saudi Arabia have been supporting non-State actors in Syria to use force against the government of Syria. While these same States have been quick to point out alleged violations of human rights by the Syrian government, they have ignored the responsibility of States that are supporting non-State actors that are using force for which they might bear international responsibility.

As a sovereign State the government of Syria is bound to respect its international legal obligations. Among these international legal obligations are those concerning human rights and humanitarian law. They include the duty not to attack civilians and to take all necessary precautions to ensure civilians are protected from the scourge of war, including allowing them to receive humanitarian assistance even when they are under power of an enemy entity with only necessary administrative regulation of the delivery of assistance.

Also among the responsibilities of a State is the duty to restore order and ensure public safety. The maintenance of for public order and safety may be said to be at the very heart of a State's responsibility towards its citizens. Equally when this authority is challenged by non-State actors seeking to remove the government by force, these non-State actors are acting in violation of the Constitutional order of the State. Perhaps even more serious is the situation when foreign government supports the non-State actors to use violence against the sovereign government and the people under its control. This has happened in Syria with deadly consequences.

The Syria conflict is a sad reminder that even thirty years after the *Nicaragua Case* some States refuse to respect the rule of international law that prohibits support to non-State actors using violence against the government and the people under its control.

¹ *Id.* p. 103, para. 195.

² *Id.* p.109, para. 209.

While Russia has come to the assistance of Syria at its request, other States are interfering in the affairs of Syria with deadly consequence. These interferences have led to massive, widespread serious violations of human rights. While the actual perpetrators of these human rights violations are often non-State actors the States providing logistics, support, training, money, and the weapons to these purveyors of violence also have State responsibilities internationally wrongful acts. This is what the ICJ confirmed in the *Nicaragua Case* more than thirty years ago. It is time that this lesson was learnt and this law implemented without delay. Wealth and/or military powerful States cannot be allowed to continue to support non-State actors to interfere with and destroy functioning States.

Iraq was one of the most developed States in the Middle East before the United States and its allies' illegal used force against it and drove the country into decades of turmoil and countless human rights violations. Afghanistan was a poor developing States, but even in this circumstance and even through prior wars, never suffered the death and devastation brought upon it by the United States and NATO's illegal destruction of the country. In Iraq and Afghanistan an estimated 3 million people have lost their lives to the violence. In Libya, the richest country in African that was on track to achieve all the MDGs has been turned into a failed State by the wealthy and militarily powerful countries led by the United States. Now the same is being attempted in Syria. In all of these examples wealthy, militarily powerful States not only wreaked havoc on these countries directly, but supported their efforts by funding and supporting non-State actors to continue their work. Of course, direct use of force is prohibited by international law, but additionally we have known that supporting non-State actors to continue illegal actions that massively violate human rights is also illegal. Yet for the better part of the past thirty years the same wealthy and military powerful States have continued to act with impunity, as if they are above the law.

While international law applies to all States, it is when it is applied to the richest and most powerful States that it really matters. It is in such circumstances that a powerful message is sent to all States that the law must be respected. When rich and power States are allowed to flaunt the law with impunity the exact opposite message is sent.

We urge the Human Rights Council and the Member States of the United Nations to honor the important legacy of the International Court of Justice judgment in the *Nicaragua Case* and to focus its efforts on securing respect for the rule of law among the wealthiest and most militarily powerful States. When they are made to respect the law other will follow. We realize that this is a difficult task and that the experience of the international community has not been one of success to date, but we strong believe that there is no other option for a world in which all people live in peace with their human rights respected to the greatest degree possible.

We therefore call on the Council and States to reaffirm the principles that the ICJ stated in the *Nicaragua Case* and to ensure the consideration of the extraterritorial responsibility of States in the case of human rights situations involving the use of force by non-State actors.
