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## PROBLEM - THE SAWHOMAYAXA CASE (PART 5) (1/1 point)

5. The Inter-American Court of Human Rights could base its argument on the fact that human rights treaties such as the American Convention on Human Rights impose obligations *erga omnes*, i.e., that are owed to the international community as a whole.

- ☐ valid
 ☒ invalid 

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### EXPLANATION

This argument is *invalid*, or more precisely, it is irrelevant here. International law includes duties that are imposed on States not in the interest of one other State alone (as most bilateral treaties do) or even of a group of States (as is typically the case for multilateral treaties), but in the interest of the international community as a whole: they are said to be owed *erga omnes* (see articles 42, b), (ii), and 48, 1., b), of the International Law Commission's *Draft Articles on the Responsibility of States for Internationally Wrongful Acts* (<http://www.un.org/documents/ga/docs/56/a5610.pdf>)). This is the case for the duty to respect human rights, as famously affirmed by the International Court of Justice in the *Barcelona Traction* case: where it stated: "An essential distinction should be drawn between the obligation of a State towards the international community as a whole, and those arising vis-à-vis another State ... 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 omnes*. 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 the human person, including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law; others are conferred by international instruments of a universal or quasi-universal character" (International Court of Justice, case concerning the *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)* (<http://www.icj-cij.org/docket/files/50/5341.pdf>), Second phase (judgment), judgment of 5 February 1970, I.C.J. Reports 1970, 3 at 32 (paras. 33–4)). However, this simply means that, provided there is a forum that has jurisdiction to receive a claim, any State is considered to have a legally recognized interest to seek to engage the responsibility of a State that it considers to have acted in violation of the requirements of human rights. This is distinct from any question of hierarchy between rules setting out human rights obligations, and any other rules with which they may be conflicting. Although obligations that are owed to the international community as a whole are presumed to be particularly important, they are not, per se, hierarchically superior: they simply will be easier in principle to enforce, because of the decentralized monitoring, in the hands of all States, that they allow. (Note however that in practice,

the exact opposite result may follow: where an obligation owed to all States is violated, the incentive for any single State to file a claim alleging a violation is weak, since the diplomatic costs of doing so may be high and various retaliatory measures may be feared. A classic collective action problem emerges in such situations, where the norms rely on enforcement by a large number of actors and where such enforcement can be costly to the State taking on that role).

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