**HUMAN RIGHTS COMMITTEE GENERAL COMMENT**

**ON ARTICLE 6**

**Independent Submission for the 114th session**

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**by the HUMAN RIGHTS PROGRAM**

**UNIVERSITY OF MINNESOTA**

**THE OBLIGATION TO RESPECT AND PROTECT THE RIGHT TO LIFE UNDER ARTICLE 6 FROM FIREARM-RELATED VIOLATIONS**

RECOMMENDATIONS

The Committee’s new General Comment 36 on Article 6 should:

1. Reaffirm that the State’s obligation to respect the right to life requires it to take concrete steps to prevent the excessive use of force by law enforcement officers by ensuring compliance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and other human rights standards, including training State agents on the limitations of and alternatives to the use of firearms.
2. Reaffirm that the intentional lethal use of small arms may only be made when strictly unavoidable in order to protect life. State agents, including law enforcement officials, must not use small arms against persons except in the extremely limited circumstances described in the Basic Principles on the Use of Force and Firearms.
3. Clarify that to protect the right to life, States must take steps to prevent firearm violence by private actors, including the establishment of appropriate legislative, administrative and other measures, consistent with international human rights law, to ensure that civilian acquisition, possession and use of firearms are effectively regulated to prevent possession of arms by persons who are at risk of misusing them.
4. Clarify that, to protect the right to life, States must prohibit international transfers of small arms which would violate their obligations under international law, including in circumstances in which such arms will foreseeably be used to commit serious human rights violations, including a pattern of extra-judicial killings.

BACKGROUND

The international community’s human rights concern with small arms and light weapons (“SALW” or “firearms”) is intrinsically linked to the fundamental right to life under Article 6 of the International Covenant on Civil and Political Rights (ICCPR),[[1]](#footnote-1) as well as other major regional human rights treaties.[[2]](#footnote-2) The first paragraph of Article 6 of the ICCPR provides the scope of the right: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”[[3]](#footnote-3) This non-derogable[[4]](#footnote-4) right is understood to be a *jus cogens* or *erga omnes* right,[[5]](#footnote-5) and it obligates States Parties to uphold both positive and negative duties.[[6]](#footnote-6) Because of the broad and fundamental nature of the right to life, it serves as the basis for several core international instruments regarding the use of force with firearms.[[7]](#footnote-7)

In General Comments, jurisprudence, and concluding observations, the Human Rights Committee has repeatedly recognized that the ICCPR creates duties for States Parties to respect and protect their populations from all forms of violence,[[8]](#footnote-8) including firearms excesses by law enforcement officers,[[9]](#footnote-9) and harm caused by private misuse of firearms.[[10]](#footnote-10)

The 2006 Principles adopted by the Sub-Commission on the Prevention of Human Rights Violations Committed with Small Arms and Light Weapons (SALW Principles)[[11]](#footnote-11) provide a useful restatement of international human rights standards on the protection of the right to life with respect to small arms and light weapons.

The SALW Principles, through the ICCPR and other instruments upon which they are based,[[12]](#footnote-12)elaborate the responsibilities of States related to firearms.[[13]](#footnote-13) Negatively, a state may not violate the right to life of persons by the armed actions of military personnel, law enforcement officials, or other official state actors. Affirmatively, a state must protect the right to life from violations by non-state actors within its control or power. Related to this affirmative obligation, a state should prevent transfers of small arms and light weapons from territory or actors within its control that the exporting state has knowledge will lead to likely violations of the right to life in receiving states.

1. **Obligation to Respect the Right to Life with regard to Firearms**

A state’s first duty with regard to firearms is not to misuse them in direct violation of the right to life, or any other human rights.[[14]](#footnote-14) The Human Rights Committee has repeatedly held States parties in violation of article 6 protections on the grounds of extrajudicial killings and/or excessive use of force with firearms.[[15]](#footnote-15)

Regarding those circumstances in which the use of force may be justified, the Basic Principles on Use of Force and Firearms, article 9, prohibits the use of firearms against persons “except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives.” The limited exceptions for allowing the use of firearms are based on the international requirement of “proportionality,” and the principle invokes “necessity” by reference to the use of less extreme means where sufficient.[[16]](#footnote-16) Additionally, in order to comply with ICCPR Article 6, States must “establish effective reporting and investigative procedures” that are conducted “by independent and competent authorities.”[[17]](#footnote-17)

The SALW Principles promote proactive and preventive measures, including the adoption of rules and regulations on the use of force and small arms against persons,[[18]](#footnote-18) strict enforcement of such rules under a “clear chain of command” that allows for criminal sanctions for arbitrary or abusive use of force carried out with small arms.[[19]](#footnote-19) States must provide adequate procedures both for the maintenance of the small arms and light weapons themselves[[20]](#footnote-20) and for the screening and training of the persons tasked with their proper use.[[21]](#footnote-21) Most importantly, the training of state agents and the execution of their duties must be informed by human rights norms, specifically the respect for the right to life.[[22]](#footnote-22)

1. **Obligation to Use Due Diligence to Prevent Violations of the Right to Life**

 Article 6 imposes affirmative duties on states to protect the right to life[[23]](#footnote-23) by other state actors[[24]](#footnote-24) and private parties.[[25]](#footnote-25) United Nations Human Rights Council Resolution 29, adopted July 2, 2015, calls upon member States to “do their utmost to take appropriate legislative, administrative and other measures, consistent with international human rights law and their constitutional frameworks, in order to ensure that civilian acquisition, possession and use of firearms are effectively regulated with the aim of enhancing the protection of human rights, in particular the right to life and security of person.”[[26]](#footnote-26) As discussed above, the SALW Principles recognize states’ due diligence requirements in relation to private actors.[[27]](#footnote-27) The human rights duties of states apply to domestic non-state actors as well as to transfers of small arms and light weapons to foreign actors. These two obligations will be taken in turn.

 ***A. State Obligation to Prevent Firearms Violations by Non-State Actors***

The state responsibility for the conduct of private parties is well-established within the Human Rights Committee’s comments,[[28]](#footnote-28) concluding observations,[[29]](#footnote-29) and communications.[[30]](#footnote-30) This obligation has been recognized by the Committee on the Elimination of Discrimination against Women,[[31]](#footnote-31) the Committee on the Elimination of Racial Discrimination,[[32]](#footnote-32) and UN special procedures.[[33]](#footnote-33)

Commentators have identified at least four ways in which a state may be liable for private conduct because it is attributed to the state.[[34]](#footnote-34) First, the actions of private parties may be attributed to the state when “the person or group of persons is in fact acting on the instructions of, or under the *direction or control* of, that State in carrying out the conduct.”[[35]](#footnote-35) Second, conduct that is not otherwise attributable to the state subsequently may be so considered “if and to the extent that the State *acknowledges and adopts* the conduct in question as its own.”[[36]](#footnote-36) Third, states are responsible for acts of an entity “which is empowered by the law of that State to exercise elements of the *governmental authority* . . . .”[[37]](#footnote-37) Fourth, conduct in which states and private parties are accomplices gives rise to state responsibility “for the acts of its agents as well as for those perpetrated by individuals who acted with their complicity . . . .”[[38]](#footnote-38) Additionally, actions that cannot be attributed to the state may still give rise to state responsibility when it fails to exercise “due diligence,” an issue now discussed.

Due diligence provides the standard by which a state’s regulation of private conduct is judged.[[39]](#footnote-39) The import of this standard was highlighted by the Inter-American Court of Human Rights:

An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.[[40]](#footnote-40)

The SALW Principles rely on this standard of state responsibility. Principle 10 calls upon governments to incorporate into their national laws licensing requirements to prevent possession of arms by persons who are at risk of misusing them. The commentary to SALW Principle 10 on licensing requirements for private arms ownership explains “that States are bound to act with due diligence to protect human rights by reducing arms-related violence committed by private actors.”[[41]](#footnote-41) In addition to the licensing requirements,[[42]](#footnote-42) states are required to regulate the manufacture, identification, and tracing of small arms and light weapons,[[43]](#footnote-43) to criminalize their illicit manufacture, possession, or misuse,[[44]](#footnote-44) and to implement disarmament and demobilization plans.[[45]](#footnote-45) The Human Rights Committee has encouraged States dealing with the aftermath of armed conflict to develop proper controls over stockpiles of weapons and take active measures to prevent the proliferation of small arms.[[46]](#footnote-46)

The due diligence standard to protect the right to life from violence by small arms and light weapons includes the responsibility “to take steps to prevent reasonably foreseeable abuses by private actors.”[[47]](#footnote-47) Due diligence places a strict standard of conduct upon a state to protect “all individuals within its territory and subject to its jurisdiction.”[[48]](#footnote-48) The jurisprudence of the Human Rights Committee provides some guidance. In case of *Jiménez Vaca v. Colombia*, the complainant received multiple death threats and an attempted murder by shooting, yet the state did not undertake sufficient measures to investigate these events, forcing him to seek asylum and live in exile.[[49]](#footnote-49) The Committee found that the failure to protect the complainant gave rise to a violation of the right to life because these threats were reported to the state and the violence was foreseeable.[[50]](#footnote-50)

Based on the ICCPR and international jurisprudence, the first affirmative obligation to protect the right to life requires prevention of violence by private actors, under a strict due diligence standard. This duty extends to active prevention and response to extra-judicial killings, torture and other crimes by private vigilante groups.[[51]](#footnote-51) Recently, the Human Rights Committee also articulated a duty under article 6 for States to ensure strict adherence to principles of necessity and proportionality in legal frameworks that allow for deadly force in self-defense.[[52]](#footnote-52)

The second affirmative obligation requires states to prevent violations in foreign states through transfers of small arms and light weapons over which they have effective control. This extraterritorial aspect of the affirmative obligation to prevent small arms and light weapons abuses is taken up next.

***B. State Obligation to Prevent Illicit Transfers of Small Arms and Light Weapons***

Regarding the transfer of small arms and light weapons, an emerging “human rights rule of transfers” is developing based on state practice and *opinio juris*.[[53]](#footnote-53) This customary norm is one aspect of states’ affirmative obligation to protect the right to life from violations with small arms and light weapons. This rule is grounded firmly in human rights principles, applying the positive duties discussed above in an extraterritorial context.

Article 2 of the ICCPR makes clear that states have affirmative duties to protect the right to life from abuses within their territory or jurisdiction,[[54]](#footnote-54) and General Comment 31 reveals that this duty requires of states the due diligence to prevent foreseeable private violations.[[55]](#footnote-55) That Comment and recent concluding observations obligate states to exercise due diligence even when such persons or events operate extraterritorially.[[56]](#footnote-56) The test of whether a state is responsible for extraterritorial conduct hinges on its “power or effective control.”[[57]](#footnote-57)

The recent entry into force of the Arms Trade Treaty reinforces the international commitment to assess the human rights impact of arms, including small arms, sent from one country to another. Article 6 states that “A State Party shall not authorize any transfer of conventional arms if it has knowledge at the time of authorization that the arms or items would be sued in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.”[[58]](#footnote-58) Article 7 adds to this restriction that States Parties must assess the potential that arms “could be used to…commit or facilitate a serious violation of international human rights law…”[[59]](#footnote-59) and balance this potential against mitigating factors and/or potential positive consequences of the exports. [[60]](#footnote-60) While this treaty represents an important development in the area of disarmament and security, its reliance upon judgments regarding what constitutes a serious violation of international human rights law calls for more robust engagement by this Committee and other political and expert bodies with authority in the field.

 The SALW Principles recognize this extraterritorial due diligence requirement of the ICCPR and base upon it Principle 14—the human rights rule of transfer: “Governments shall prohibit international transfers of small arms which would violate their obligations under international law, including in circumstances in which such arms are likely to be used to commit serious human rights violations.”[[61]](#footnote-61) Additionally, Principle 15 requires extraterritorial duties insofar as it mandates cooperation and information-sharing between states, including “information regarding the ownership or purchase of small arms and light weapons in the former State.”[[62]](#footnote-62)

 Having established the foundation for the human rights rule of transfer, it bears noting the standard for such a rule. In analyzing state practice in upholding the rule, three considerations are paramount: “the seriousness of the violation that results from the transfer; the degree of knowledge of the transferring state regarding likely violations; and the capacity of the transferring state to prevent the violations."[[63]](#footnote-63) The greater applicability of each of these factors in a given state’s actions and circumstances, the more likely that a state is in violation of its obligations under the ICCPR. A flexible approach that considers these three factors as a whole, rather than individually, provides insight into whether to hold a state accountable for transfers of small arms and light weapons that are likely to be used to violate the right to life.

The human rights rule of transfer is grounded on well-established treaty obligations and international human rights principles. Reading together the affirmative obligations of states to prevent abuses by private actors and the extraterritorial scope of those obligations, it becomes clear that transferring small arms and light weapons into situations where the abuse of the human right to life is serious, foreseeable, and preventable gives rise to violations of state obligations. States must be held accountable to protect the right to life as far as they are capable from violations by state actors, domestic private actors, and foreign state and non-state actors.

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1. International Covenant on Civil and Political Rights, Art. 6, ¶ 1, Dec. 16, 1966, 999 U.N.T.S. 171 [*hereinafter* ICCPR]. [↑](#footnote-ref-1)
2. *See* Barbara Frey, *Obligations to Protect the Right to Life: Constructing a Rule of Transfer Regarding Small Arms and Light Weapons*, 36 in Universal Human Rights and Extraterritorial Obligations (Mark Gibney and Sigrun Skogly, eds.): Univ. of Penn. Press (2010) (citing both international and regional mechanisms). [↑](#footnote-ref-2)
3. ICCPR, *supra* note 1. [↑](#footnote-ref-3)
4. *See id.* at Art. 4, ¶ 2; *see also* Human Rights Committee, General Comment No. 29, *State of Emergency (Article 4)*, ¶ 11, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (Aug. 31, 2001) [*hereinafter* HRC Comment 29] (noting that many of the non-derogable rights—including Article 6—are “peremptory” but that the list of peremptory rights “extends beyond the list” of rights in this provision). [↑](#footnote-ref-4)
5. *See* Human Rights Committee, General Comment 6, Article 6 (Sixteenth session, 1982), ¶ 1, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 6 (1994) [*hereinafter* HRC Comment 6] (describing this “supreme right” as one “which should not be interpreted narrowly”). [↑](#footnote-ref-5)
6. Human Rights Committee, General Comment No. 31, *Nature of the General Legal Obligation Imposed on States Parties to the Covenant (Article 2)*, ¶ 6, U.N. Doc. CCPR/C/21/Rev. 1/Add. 13 (Mar. 29, 2004) [*hereinafter* HRC Comment 31]. [↑](#footnote-ref-6)
7. *See* Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, at preambular paragraph and Principle 20, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990) [*hereinafter* Basic Principles]; Code of Conduct for Law Enforcement Officials, Art. 2 G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979) [*hereinafter* Code of Conduct]. [↑](#footnote-ref-7)
8. Specifically noting violence against categories of victims, including journalists and human rights defenders, retaliation against witnesses, violence against women, including domestic violence, the hazing of armed forces conscripts, violence against children, violence against persons on the basis of their sexual orientation or gender identity, violence against persons with disabilities. General Comment No. 35, Art. 9, ¶ 9 (CCPR/C/GC/35). We would add violence against persons on the basis of their race or ethnicity. The Human Rights Committee has also expressed particular concern over the failure to properly enforce SALW bans on persons with a history of domestic violence. Concluding Observations: United States of America ¶ 10 (CCPR/C/USA/CO/4). [↑](#footnote-ref-8)
9. See, e.g., Concluding observations: Dominican Republic ¶ 13 (CCPR/C/DOM/CO/5); Concluding observations: Armenia ¶ 13 (CCPR/C/ARM/CO/2); Concluding observations: Kenya ¶ 11 (CCPR/C/KEN/CO/3); Concluding observations: Indonesia ¶ 16 (CCPR/C/IDN/CO/1). [↑](#footnote-ref-9)
10. General Comment No. 35, Art. 9, ¶ 9 (CCPR/C/GC/35); 613/1995, *Leehong v. Jamaica*, paras. 9.3; Concluding observations: United States of America ¶ 10 (CCPR/C/USA/CO/4). [↑](#footnote-ref-10)
11. *See* Human Rights Commission, Prevention of Human Rights Violations Committed with Small Arms and Light Weapons, endorsed by Sub-Com. on the Promotion and Protection of Human Rights res. 2006/22, U.N. Doc A/HRC/Sub.1/58/L.11/Add.1 at 3 (24 Aug. 2006) [*hereinafter* SALW Principles] (“[r]eaffirming the importance of the right to life as a fundamental principle of international human rights law . . . .”). [↑](#footnote-ref-11)
12. *See* Ms. Barbara Frey, Sub-Commission on the Promotion and Protection of Human Rights, Prevention of human rights violations committed with small arms and light weapons, Principle 1, comm. b U.N. Doc. E/CN.4/Sub.2/2005/35 (2005) [*hereinafter* Annotated SALW Principles] (expounding the various sources of each principle through the rapporteur’s commentary). [↑](#footnote-ref-12)
13. *Id.* at 45–46 (considering state agents’ obligations, states’ due diligence obligations, and the issue of transfers of small arms and light weapons). [↑](#footnote-ref-13)
14. *See* SALW Principle 1, *supra* note 11. [↑](#footnote-ref-14)
15. Concluding observations: Dominican Republic ¶ 13 (CCPR/C/DOM/CO/5); Concluding observations: Armenia ¶ 13 (CCPR/C/ARM/CO/2); Concluding observations: Kenya ¶ 11 (CCPR/C/KEN/CO/3); Concluding observations: United States of America ¶ 11 (CCPR/C/USA/CO/4); Concluding observations: Indonesia ¶ 16 (CCPR/C/IDN/CO/1); Concluding observations: Mozambique ¶ 11 (CCPR/C/MOZ/CO/1); Concluding observations: Bolivia ¶ 15 (CCPR/C/BOL/CO/3); Concluding observations: Nepal ¶ 10 (CCPR/C/NPL/CO/2); Concluding observations: Sudan ¶ 22 (CCPR/C/SDN/CO/4); Concluding observations: Israel ¶ 13 (CCPR/C/ISR/CO/4); Concluding observations: Haiti ¶ 10 (CCPR/C/HTI/CO/1).

 [↑](#footnote-ref-15)
16. Code of Conduct, Art. 3, G.A., *supra* note 7. [↑](#footnote-ref-16)
17. *See* SALW Principle 9, *supra* note 11; *see also* Code of Conduct, *supra* note 7, at Art. 8 (discussing need for reporting and reviewing mechanisms); Basic Principles 22–26, *supra* note 7 (same); and Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions [hereinafter, Death Investigation Principles], recommended by Economic and Social Council res. 1989/65 of 24 May 1989, available at http://www2.ohchr.org/english/law/executions.htm (requiring a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions). These requirements are further developed by the Human Rights Committee: Concluding observations: Jamaica ¶ 16 (CCPR/C/JAM/CO/3); Concluding observations: Dominican Republic ¶ 14 (CCPR/C/DOM/CO/5); Concluding observations: Armenia ¶ 12 (CCPR/C/ARM/CO/2); Concluding observations: Kenya ¶ 11, ¶ 13 (CCPR/C/KEN/CO/3); Concluding observations: Philippines ¶ 14 (CCPR/C/PHL/CO/4); Concluding observations: United States of America ¶ 11 (CCPR/C/USA/CO/4); Concluding observations: Indonesia ¶ 16 (CCPR/C/IDN/CO/1); Concluding observations: Mozambique ¶ 11 (CCPR/C/MOZ/CO/1); Concluding observations: Djibouti ¶ 15 (CCPR/C/DJI/CO/1); Concluding observations: Bolivia ¶ 15 (CCPR/C/BOL/CO/3); Concluding observations: Nepal ¶ 10 (CCPR/C/NPL/CO/2); Concluding observations: Sudan ¶ 22 (CCPR/C/SDN/CO/4); Concluding observations: Malawi ¶ 13 (CCPR/C/MWI/CO/1/Add.1); Concluding observations: Israel ¶ 13 (CCPR/C/ISR/CO/4); Concluding observations: Haiti ¶ 10 (CCPR/C/HTI/CO/1). [↑](#footnote-ref-17)
18. *See* SALW Principle 2 *supra* note 11; *see also* Basic Principle 1, *supra* note 7. [↑](#footnote-ref-18)
19. *See* SALW Principle 3, *supra* note 11; *see also* Death Investigation Principles, *supra* note 17, article 2. [↑](#footnote-ref-19)
20. *See* SALW Principle 4, *supra* note11; *see also* UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, UN Document A/CONF.192/15 (2006) (discussing requirement of “adequate and detailed standards and procedures relating to the management and security of their stocks of these weapons”). [↑](#footnote-ref-20)
21. *See* SALW Principles 5–7, *supra* note 11. The Human Rights Committee has consistently mandated that security personnel be trained in accordance with the United Nations Basic Principles, and that the Principles be reflected in domestic laws regulating security force conduct *supra* note 7. Concluding observations: Dominican Republic ¶ 13 (CCPR/C/DOM/CO/5); Concluding observations: Armenia ¶ 13 (CCPR/C/ARM/CO/2); Concluding observations: United States of America ¶ 11 (CCPR/C/USA/CO/4); Concluding observations: Indonesia ¶ 16 (CCPR/C/IDN/CO/1); Concluding observations: Mozambique ¶ 11 (CCPR/C/MOZ/CO/1); Concluding observations: Kenya ¶ 11 (CCPR/C/KEN/CO/3); Concluding observations: Djibouti ¶ 15 (CCPR/C/DJI/CO/1); Concluding observations: Bolivia ¶ 15 (CCPR/C/BOL/CO/3); Concluding observations: Nepal ¶ 10 (CCPR/C/NPL/CO/2); Concluding observations: Sudan ¶ 22 (CCPR/C/SDN/CO/4); Concluding observations: Malawi ¶ 13 (CCPR/C/MWI/CO/1/Add.1); Concluding observations: Israel ¶ 13 (CCPR/C/ISR/CO/4); Concluding observations: Haiti ¶ 10 (CCPR/C/HTI/CO/1). [↑](#footnote-ref-21)
22. *See* Annotated SALW Principle 6, comms. a and e, *supra* note 12; *see also* Basic Principle 20, *supra* note 7 (emphasizing both human rights norms and alternatives to lethal force). Concluding observations: Dominican Republic ¶ 13 (CCPR/C/DOM/CO/5); Concluding observations: Kenya ¶ 11 (CCPR/C/KEN/CO/3); Concluding observations: Djibouti ¶ 15 (CCPR/C/DJI/CO/1); Concluding observations: Bolivia ¶ 15 (CCPR/C/BOL/CO/3); Concluding observations: Malawi ¶ 13 (CCPR/C/MWI/CO/1/Add.1); Concluding observations: Haiti ¶ 10 (CCPR/C/HTI/CO/1). The Human Rights Committee has also requested compliance with the Code of Conduct, *supra* note 7, as a necessary means to prevent SALW violations of ICCPR article 6. Concluding observations: Nepal ¶ 10 (CCPR/C/NPL/CO/2). [↑](#footnote-ref-22)
23. *See* ICCPR, *supra* note 1, Art. 2 (requiring broadly that a state not only “respect” but also “ensure” the Covenant rights of “all individuals within its territory and subject to its jurisdiction”). [↑](#footnote-ref-23)
24. *See* HRC Comment 31, *supra* note 6, at ¶ 2 (noting that “every State Party has a legal interest in the performance by every other State Party of its obligations”). [↑](#footnote-ref-24)
25. *See id.* at ¶ 8 (finding that states’ “positive obligations” require protection “against acts committed by private persons or entities”). [↑](#footnote-ref-25)
26. Human Rights Council, Resolution 29/2015 ¶ 2 (A/HRC/29/L.18) (2015). [↑](#footnote-ref-26)
27. *See supra* notes 11–15 and accompanying text. [↑](#footnote-ref-27)
28. *See* HRC Comment 6, *supra* note 5, at ¶ 3; Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), ¶ 9, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 26 (1994); Human Rights Committee, General Comment 27, Freedom of movement (Art.12), ¶ 6, U.N. Doc CCPR/C/21/Rev.1/Add.9 (1999). [↑](#footnote-ref-28)
29. Concluding observations: Yemen ¶ 16 (CCPR/C/YEM/CO/5); Concluding observations: Angola ¶ 12 (CCPR/C/AGO/CO/1); Concluding observations: Kenya ¶ 11 (CCPR/C/KEN/CO/3); Concluding observations: Philippines ¶ 14 (CCPR/C/PHL/CO/4); Concluding observations: United States of America ¶ 10 (CCPR/C/USA/CO/4). [↑](#footnote-ref-29)
30. *Jimenez Vaca v. Colombia*, Commc’n No. 859/1999, ¶¶ 7.3, 9, U.N. Doc. CCPR/C/74/D/859/1999 (Mar. 22, 2002) (finding a violation of Article 6 where the state failed to prevent attempted murder by private actors). [↑](#footnote-ref-30)
31. *See* General recommendation No. 19 – Violence Against Women ¶ 9 (11th session, 1992) (“States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights . . . .”). [↑](#footnote-ref-31)
32. *See L.K. v. The Netherlands*, Comm’n No. 4/1991 (CERD/C/42/D/4/1991) (finding that “it is incumbent upon the State to investigate with due diligence and expedition” racial threats, “especially when they are made in public and by a group ); Concluding Observations on United Arab Emirates, U.N. Doc A/50/18, at 570 (recommending "that the State party show the utmost diligence in preventing acts of ill-treatment . . and take all appropriate measures to ensure” workers are not discriminated). [↑](#footnote-ref-32)
33. *See* Philip Alston, Civil and Political Rights, Including the Questions of Disappearances and Summary Executions, U.N. Doc. E/CN.4/2006/53, ¶ 47 (“States have a legal duty to exercise “due diligence” in protecting the lives of individuals from attacks by criminals, including terrorists, armed robbers, looters, and drug dealers.”). [↑](#footnote-ref-33)
34. *See* John Cerone, *The Human Rights Framework Applicable to Trafficking in Persons and its Incorporation into UNMIK Regulation 2001/4*, 7 International Peacekeeping: The Yearbook of International Peace Operations 55-61 (2002) (discussing the Responsibility of States for Internationally Wrongful Acts and international jurisprudence). [↑](#footnote-ref-34)
35. Responsibility of States for Internationally Wrongful Acts, Art. 7, G.A. Res. 56/83, U.N. Doc. A/Res/56/83 (Jan. 28, 2002) [*hereinafter* Responsibility of States], Art. 8 (emphasis added). The Human Rights Committee accordingly determined that in order to fulfill its treaty obligations, the State of Israel must ensure “prompt, thorough, effective, independent and impartial investigations…into all incidents involving the use of firearms by law enforcement officers…*including…private security personnel contracted by the State party’s authorities*” Concluding observations: Israel ¶ 13 (CCPR/C/12R/CO/4) (emphasis added). [↑](#footnote-ref-35)
36. Responsibility of States, supra note 36 at Art. 11 (emphasis added). [↑](#footnote-ref-36)
37. *Id.* at Art. 5 (emphasis added). [↑](#footnote-ref-37)
38. *Riofrio Massacre*, Inter-American Commission on Human Rights, Report No. 62/01, Case 11.654, COLOMBIA, April 6, 2001, ¶ 57. [↑](#footnote-ref-38)
39. *See* Frey, *supra* note 2, at 33–34 (describing the standard); Cerone, *supra* note 34, at 61–68 (showing the wide acceptability of the standard in “reports of UN special rapporteurs, UN special representatives, and the Secretary-General; comments, views, and concluding observations of human rights treaty bodies; reports on expert group meetings; resolutions of the Commission on Human Rights and the Economic and Social Council; Declarations by the General Assembly, and the writings of publicists.”) (citations omitted). [↑](#footnote-ref-39)
40. *Velásquez-Rodriguez case*, Judgment of July 29, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4, ¶ 172 (1988). [↑](#footnote-ref-40)
41. *See* Annotated SALW Principle 10 comm. a., *supra* note 12. [↑](#footnote-ref-41)
42. *See* SALW Principle 10, *supra* note 11. [↑](#footnote-ref-42)
43. *See* SALW Principle 11, *supra* note 11. [↑](#footnote-ref-43)
44. *See* SALW Principle 12, *supra* note 11. [↑](#footnote-ref-44)
45. *See* SALW Principle 13, *supra* note 11. Concluding observations: Yemen ¶ 16 (CCPR/C/YEM/CO/5); Concluding observations: Philippines ¶ 14 (CCPR/C/PHL/CO/4). [↑](#footnote-ref-45)
46. Concluding observations: Yemen ¶ 16 (CCPR/C/YEM/CO/5); Concluding observations: Angola ¶ 12 (CCPR/C/AGO/CO/1). [↑](#footnote-ref-46)
47. *See* Frey, *supra* note 2, at 34. [↑](#footnote-ref-47)
48. ICCPR, *supra* note 1, at Art. 2 ¶ 1. [↑](#footnote-ref-48)
49. *See* *Jimenez Vaca v. Colombia*, Commc’n No. 859/1999, ¶¶ 2.1–2.15, U.N. Doc. CCPR/C/74/D/859/1999 (Mar. 22, 2002). [↑](#footnote-ref-49)
50. *Id.* at ¶¶ 7.1–7.2; *see also* *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.A.)*, 1986 I.C.J. 14, 130, 148 (Jun. 27, 1986) (finding the U.S. responsible for encouraging violations of humanitarian law by other parties when the “encouragement was offered to persons in circumstances where the commission of such acts was likely or foreseeable,” though the violations were not “imputable” to the U.S.). [↑](#footnote-ref-50)
51. Concluding observations: Kenya ¶ 11 (CCPR/C/KEN/CO/3); Concluding observations: Philippines ¶ 14 (CCPR/C/PHL/CO/4). [↑](#footnote-ref-51)
52. Concluding observations: United States of America ¶ 10 (CCPR/C/USA/CO/4). [↑](#footnote-ref-52)
53. *See* Frey, *supra* note 2, at 51. [↑](#footnote-ref-53)
54. ICCPR, *supra* note 1, at Art. 2 ¶ 1. [↑](#footnote-ref-54)
55. *See* HRC Comment 31, *supra* note 6, at ¶ 8. [↑](#footnote-ref-55)
56. *Id.* at ¶ 10 (“This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, *even if not situated within the territory of the State Party*.”) (emphasis added). Concluding observations: United States of America ¶4 (CCPR/C/USA/CO/4) (obligating the State party to “Interpret the Covenant in good faith … and review its legal position so as to acknowledge the extraterritorial application of the Covenant under circumstances, as outlined, inter alia, in the Committees general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant.”). Concluding observations: Germany ¶ 16 (CCPR/C/DEU/CO/6) (encouraging State party to hold business enterprises domiciled in the territory or jurisdiction of the State party accountable to the human rights standards laid out in the Covenant). [↑](#footnote-ref-56)
57. HRC Comment 31, *supra* note 6, at ¶ 8. [↑](#footnote-ref-57)
58. Arms Trade Treaty, Art 6. April 2, 2013, I-52373. [↑](#footnote-ref-58)
59. *Id*. Art. 7. [↑](#footnote-ref-59)
60. *Id*. [↑](#footnote-ref-60)
61. *See* SALW Principle 14, *supra* note 11. [↑](#footnote-ref-61)
62. *See* SALW Principle 15, *supra* note 11. [↑](#footnote-ref-62)
63. *See* Frey, *supra* note 2, at 51–53 (explaining each element). [↑](#footnote-ref-63)