**Submission by the Norwegian Government**

**Draft General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life**

The Norwegian Government refers to the invitation from the Human Rights Committee to submit written contributions on the draft for a General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life.

Norway has been a party to the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) since 1972. The Government would first like to underline the importance it attaches to the Covenant, and confirm its commitment to fully comply with Norway’s treaty obligations.

Norway welcomes the Committee’s efforts to formulate General Comments with regard to articles or specific themes concerning the Covenant and appreciates this opportunity to submit its observations on the draft General Comment concerning article 6. Where Norway has not provided specific comments on issues raised in the draft General Comment, this should not be interpreted as either agreement or disagreement with its substance.

In **paragraph 10**, the Committee states:

*“[While acknowledging the central importance to human dignity of personal autonomy, the Committee considers that States parties should recognize that individuals planning or attempting to commit suicide may be doing so because they are undergoing a momentary crisis which may affect their ability to make irreversible decisions, such as to terminate their life. Therefore,] States should take adequate measures, without violating their other Covenant obligations, to prevent suicides, especially among individuals in particularly vulnerable situations.  At the same time, States parties [may allow] [should not prevent] medical professionals to provide medical treatment or the medical means in order to facilitate the termination of life of [catastrophically] afflicted adults, such as the mortally wounded or terminally ill, who experience severe physical or mental pain and suffering and wish to die with dignity.  In such cases, States parties must ensure the existence of robust legal and institutional safeguards to verify that medical professionals are complying with the free, informed, explicit and, unambiguous decision of their patients, with a view to protecting patients from pressure and abuse.”*

Norway is concerned that the Committee's statements in paragraph 10 goes further than and is inconsistent with a widely accepted and longstanding interpretation of article 6. In Norway's view the right to life cannot, without a distortion of language, be interpreted as conferring the diametrically opposite right, namely a right to die and to be helped to do so. The member States are far from having reached a consensus as regards the right of an individual to choose how and when to end his or her life. Although assistance in suicide has been decriminalized in certain member States, the vast majority of them appear to attach more weight to the protection of the individual’s life than to his or her right to end it. Norway therefore strongly advises a deletion of paragraph 10, sentences 3 and 4.

In **paragraph 12 first sentence**, the Committee states that “*States parties engaged in the use of existing weapons and in the study, development, acquisition or adoption of new weapons, and means or methods of warfare must always consider their impact on the right to life”.*

This sentence does not mention, and does not seem to take into account, the rules of international humanitarian law concerning legal assessment of weapons, means and methods intended for use in warfare, which must be considered “lex specialis” in this regard. As the Committee itself states in the draft General Comment para. 67 “[u]ses of lethal force authorized and regulated by and complying with international humanitarian law are, in principle, not arbitrary”. Reference is also made to the 1996 “Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons” (paragraph 25) of the International Court of Justice, where the Court stated:

“The Court observes that the protection of the International Covenant of Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency. Respect for the right to life is not, however, such a provision. In principle, the right not arbitrarily to be deprived of one’s life applies also in hostilities. The test of what is an arbitrary deprivation of life, however, then falls to be determined by the applicable *lex specialis*, namely the law applicable in armed conflict which is designed to regulate the conduct of hostilities. Thus whether a particular loss of life, through the use of certain weapon in warfare, is to be considered an arbitrary deprivation of life contrary to Article 6 of the Covenant, can only be decided by reference to the law applicable in armed conflict and not deduced from the terms of the Covenant itself.”

In Norway’s opinion, the first sentence in paragraph 12 should therefore be clarified, by elaborating on and taking into account the correlation that exists in international law between the Covenant and the relevant rules of international humanitarian law in this context.

In **paragraph 12 last sentence**, the Committee states (in square brackets) with regard to “new lethal autonomous robotics”:

“*The Committee is therefore of the view that such weapon systems should not be [developed and] put into operation, either in times of war or in times of peace, unless and until a normative framework has been established ensuring that their use conforms with article 6 and other relevant norms of international law*”.

Norway fully agrees with the view expressed by the Committee that the development of fully autonomous weapons systems raises many difficult legal and ethical questions, including related to the right to life. At the same time, Norway would stress that international law already contains a number of restrictions which would prohibit the use of weapons which cannot be operated within the limitations of the law. For instance, all weapon systems developed must be able to be used in a manner consistent with applicable international law, including international humanitarian law and international human rights law, and in particular with the fundamental principles of distinction, proportionality and precautions in attack. Norway therefore finds that the Committee’s recommendation in brackets in paragraph 12 last sentence goes beyond what is considered natural to include in a General Comment on article 6 of the Covenant on the right to life. In addition, it might also be difficult for states to relate to the comment, in the absence of an internationally agreed definition of the term “lethal autonomous weapons”. Norway would therefore prefer that the recommendation in brackets be deleted.

In **paragraph 25** **last sentence**, the Committee states:

*“States parties must further take adequate measures of protection, including continuous supervision, in order to prevent, investigate, punish and remedy arbitrary deprivation of life by private lawful entities, such as private transportation companies, private hospitals and private security firms.”*

In our opinion, it could be useful to clarify what we understand to be the intention behind this sentence by stating explicitly that this it refers to situations where the State has delegated the rendering of services to private institutions (outsourcing), ref. paragraph 96 of the case of *Ximines-Lopes v. Brazil* (judgment of the Inter-American Court of Human Rights of 4 July 2006) referred to in footnote 67. Norway would also ask the Committee to clarify what is meant by “continuous supervision”, for instance whether this refers to monitoring or if it is intended to have a different meaning.

In **paragraph 26 second sentence**, the Committee states that States parties *“must also ensure that all activities taking place in whole or in part within their territory and in other areas subject to their jurisdiction, but having a [direct], significant and foreseeable impact on the right to life of individuals outside their territory, including activities taken by corporate entities, are consistent with article 6, taking due account of related international standards of corporate social responsibility*”.

In footnotes 71 and 72 to this statement, the Committee makes references to its Concluding Observations on the sixth periodic report of Canada, paragraph 6, and to the UN Guiding Principles on Business and Human Rights, principle 2.[[1]](#footnote-1)

Norway agrees with the Committee that, in line with principle 2 of the UN Guiding Principles on Business and Human Rights, States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations. However, as is also stated in the commentary to Guiding Principle 2, “States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction”. Norway is concerned that the Committee’s statement in paragraph 26 second sentence would impose legal obligations on States that go beyond the wording of the Covenant article 2. Norway therefore wishes to emphasize the clear territorial and jurisdictional limits to the obligations under the Covenant. According to article 2(1), a State Party’s obligation is to ensure the Covenant rights with respect to “individuals within its territory and subject to its jurisdiction”. Individuals who can be affected by the activities of for instance companies operating abroad are not, generally speaking, within a State’s territory and subject to its jurisdiction.

Against the background above, Norway is of the view that the second sentence in paragraph 26 should be redrafted, to for instance:

“States parties (…) ~~must~~ **should** also **set out clearly the expectation** ~~ensure~~ that all activities taking place in whole or in part within their territory and in other areas subject to their jurisdiction, but having a [direct], significant and foreseeable impact on the right to life of individuals outside their territory, including activities taken by corporate entities, are consistent with article 6, taking due account of related international standards of corporate social responsibility.”

The word “direct” in brackets should be retained.

**Paragraph 66 first sentence** reads as follows**:**

*“In light of article 2, paragraph 1, of the Covenant, a State party has an obligation to respect and to ensure the rights under article 6 of all persons who are found within its territory and all persons subject to its jurisdiction, that is, all persons over whose enjoyment of the right to life it exercises power or effective control.”*

Norway takes note of the formulation bythe Committee that a State Party has an obligation to respect and to ensure the rights under article 6 of all persons “*over whose enjoyment of the right to life it exercises power or effective control”*. In footnote 250 to the text, the Committee makes reference to its General Comment No. 31 paragraph 10, where the Committee states 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 Part*y”. In Norway’s opinion, paragraph 66 first sentence of the draft General Comment No. 36 should be redrafted in line with the wording of General Comment No. 31, to make it clear that it is the *person* who must be within the power and/or effective control of the State. This can be done by replacing the wording “whose enjoyment of the right to life” with the word “whom”:

“In light of article 2, paragraph 1, of the Covenant, a State party has an obligation to respect and to ensure the rights under article 6 of all persons who are found within its territory and all persons subject to its jurisdiction, that is, all persons over ~~whose enjoyment of the right to life~~ **whom** it exercises power or effective control.”

In **paragraph 66 second sentence**, the Committee states that “*[i]n light of article 2, paragraph 1, of the Covenant, a State party has an obligation to respect and ensure the rights under article 6 of all persons (…) subject to its jurisdiction (...) This includes persons located outside any territory effectively controlled by the State who are nonetheless impacted by its (….) activities in a [direct], significant and foreseeable manner.*”

Norway is concerned that the criteria “persons located outside any territory effectively controlled by the State *who are nonetheless impacted by its (….) activities in a [direct], significant and forseeable manner*”, would extend the scope of the Covenant beyond existing practices and the wording of the Covenant article 2. In Norway’s opinion, this statement should be reconsidered and preferably deleted.

In **paragraph 66 fourth sentence**,the Committee states that States parties “*are also required to respect and protect the lives of all individuals located on marine vessels or aircrafts registered by them,…*”.

Norway would first like to comment that the Norwegian criminal legislation applies according to the Norwegian Penal Code section 4 to acts committed “on a Norwegian vessel, including an aircraft, and a drilling platform or similar movable installation”. Furthermore according to the same provision, “if the vessel or the installation is on or over the territory of another state, the criminal legislation applies […] to an act committed by a person on board the vessel or installation”. Norway, therefore exercises prescriptive jurisdiction to protect the lives of individuals located on marine vessels or aircrafts registered in Norway.

It is, however, Norway’s view that the statement in paragraph 66 fourth sentence is too general, and that it could expand the scope of application of the Covenant beyond existing practices in regard to for instance private ships or aircrafts registered in a State Party. As it follows from longstanding jurisprudence, the notion of jurisdiction in human rights conventions requires more than that a vessel or aircraft is registered in that State. It requires authority and control over the persons onboard.

Norway refers in this regard to the jurisprudence of the European Court of Human Rights concerning jurisdiction on board ships, in particular the Grand Chamber judgment in the case of *Hirsi Jamaa and others v. Italia* (application no. 27765/09) and the judgement in the case of *Medvedyev and others v. France* (application no. 3394/03).

In “Extraterritorial Application of Human Rights Treaties” (Oxford University Press, 2011, page 167), Marko Milanovic sums up the relevant case law of the European Court of Human Rights at the time, including *Medvedyev and others*:

“In sum, the European cases cited above most certainly do *not* support the proposition that because international law recognizes that the flag state or the state in which ships and aircrafts are registered may prescribe legal rules regulating conduct occurring on them, this means that ships and aircraft somehow present a special justification for extending the spatial concept of jurisdiction in human rights treaties. Indeed, except perhaps for *Medvedyev*, the cases do not even stand in favour of a purely factual notion of jurisdiction as control over ships and aircraft, regardless of the flag of registration. Rather, it is the control over individuals that forms the basis of state jurisdiction.”

In *Hirsi Jamaa and others v. Italy* of 23 February 2012, the European Court of Human Rights confirmed the above. The Court stated:

“73. (…) In each case, the question whether exceptional circumstances exist which require and justify a finding by the Court that the State was exercising jurisdiction extraterritorially must be determined with reference to the particular facts, for example full and exclusive control over a (…) a ship. (….)

75. There are other instances in the Court’s case-law of the extraterritorial exercise of jurisdiction by a State in cases involving the activities of its diplomatic or consular agents (…) on board craft and vessels registered in, or flying the flag of, that State. In these specific situations, the Court, basing itself on customary international law and treaty provisions, has recognised the extraterritorial exercise of jurisdiction by the relevant State (see Banković and Others, cited above, § 73, and Medvedyev and Others, cited above, § 65).”

The Court concluded in *Hirsi Jamaa* that the events giving rise to the alleged violations in the case fell within Italy’s “jurisdiction” within the meaning of article 1 of the European Convention on Human Rights because “in the instant case the events took place entirely on board ships of the Italian armed forces, the crews of which were composed exclusively of Italian military personnel”.

Against the above background, Norway asks that the sentence in paragraph 66 referred to, is redrafted to for instance: “They are also required to respect and protect the lives of all individuals**~~,~~** located on marine vessels or aircrafts ~~registered by them~~ **who are under their power and/or effective control**”.

In **paragraph 66 fourth sentence**, the Committee states that States parties “*are also required to respect and protect the lives of (…) those individuals who due to a situation of distress in sea found themselves in an area of the high seas over which particular States parties have assumed de facto responsibility, including pursuant to the relevant international norms governing rescue at sea*”.

Norway cannot accept the view that persons on the high seas in areas over which a particular State party has assumed responsibility, for instance according to the law of the sea, are within the jurisdiction of that State in the sense of the Covenant article 2, without the State actually exercising authority and control over the individuals. This would be to extend the State Parties obligations beyond existing practices and the wording of the Covenant. Norway therefore asks that the statement referred to, be deleted.

In **paragraph 67 fifth sentence**,the Committee states that *“States parties should [, subject to compelling security considerations,] disclose the criteria for attacking with lethal force individuals or objects whose targeting is expected to result in deprivation of life, including the legal basis for specific attacks, the process of identification of military targets and combatants or persons taking a direct part in hostilities, the circumstances in which relevant means and methods of warfare have been used, and whether non-lethal alternatives for attaining the same military objective were considered”.*

Norway fully support the view expressed by the Committee that a certain openness is expected in order to comply with the obligations set out in article 6. It is, however, Norway’s view that “should” and “subject to compelling security considerations” must be retained.

Against the above background, Norway is of the opinion that the draft General Comment No. 36 should be carefully reconsidered on several accounts, taking into consideration the prevalent understanding among the States Parties of the obligations assumed under the Convention.

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1. UN Guiding Principle 2 reads: “States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations”. [↑](#footnote-ref-1)