**Submission to the UN Human Rights Committee on Draft General Comment No 35 (Article 9 ICCPR)**

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This submission is a response to the UN Human Rights Committee’s invitation for comments on its Draft General Comment No 35 concerning Article 9 of the International Covenant on Civil and Political Rights.

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**I. Introduction**

1. We are responding to the request of the UN Human Rights Committee (HRC) for submissions and comments on its Draft General Comment 35 on Article 9 of the International Covenant on Civil and Political Rights (ICCPR).

2. We consider the current draft to represent an excellent clarification, restatement and reference point for the current law on arbitrary detention, both under the ICCPR and, generally, under other human rights treaty regimes and customary international law. It is an important and timely contribution to the field and we applaud the work of the Committee. The International Court of Justice over 30 years ago recognised that ‘wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights’.[[1]](#footnote-1) A comprehensive elaboration of the norms of international law applicable to detention serves to protect these fundamental principles. Our comments below merely seek to highlight several points that we feel could be expanded or elaborated upon, in order to facilitate the work of the Committee.

**II. General Remarks**

3. Draft General Comment 35 states that ‘States parties must take appropriate measures for the purpose of protecting individuals against abduction or detention by individual criminals or irregular groups, including armed or terrorist groups, operating within their territory.’[[2]](#footnote-2) We feel that this issue of positive obligations under Article 9 ICCPR requires elaboration. This is particularly the case for persons detained by non-State actors in territory under the control of those non-State actors. Some have suggested that all positive obligations are subject to a due diligence test, even in the territory of the State, such that a State is unlikely to have such positive obligations in areas under the control of insurgents.[[3]](#footnote-3) Others appear not to take this view, such that a State’s positive obligations would apply even in territory over which they did not exercise effective control.[[4]](#footnote-4) This latter view appears to offer the most protection to persons deprived of their liberty. We feel that the General Comment would benefit from a clarification of the Committee’s view on this.

4. Draft General Comment 35 also states that ‘States parties should do their utmost to take appropriate measures to protect personal liberty against the activities of another State within their territory.’[[5]](#footnote-5) This suggests that the host State remains subject to the positive obligation to ‘do their utmost’ to prevent violations by the assisting State. Whilst we agree with this, we suggest that this aspect of the Draft General Comment would benefit from further clarification and nuance. First, where organs of another State are operating on the territory of the host State, but have been ‘placed at the disposal’ of the host State, then the host State’s negative (as well as positive) obligations under the ICCPR will be engaged by actions of those organs ‘in the exercise of elements of the governmental authority of the state at whose disposal it is placed’.[[6]](#footnote-6) Second, where organs of another State operate in the territory of the host State under the authority of that other State, responsibility for the actions of those organs that are inconsistent with the ICCPR will fall on the host State where the host State’s positive obligations are engaged. As noted above, the test to be used for determining the extent of positive obligations under the ICCPR requires clarification. Finally, in this second scenario, although the host State’s negative obligations under the ICCPR will not be engaged, the other State’s negative obligations under the human rights treaties by which *it* is bound will apply to those over whom that State exercises jurisdiction. Indeed, with regard to Article 9 ICCPR, extra-territorial detention of persons necessarily brings such persons within the detaining State’s jurisdiction for the purposes of the Covenant; this has been confirmed in the jurisprudence of a number of human rights treaty bodies.[[7]](#footnote-7)

5. The present authors feel that Draft General Comment 35 would benefit from a fuller elaboration of the HRC’s view of the relationship between Article 9 ICCPR and international humanitarian law (IHL). For example, whilst it is noted that the rules of IHL applicable in international armed conflicts might help inform the interpretation of Article 9(1) ICCPR,[[8]](#footnote-8) it is unclear whether the same is true regarding Article 9(4) ICCPR, which does not, on its face, appear open to interpretation consistent with IHL. Indeed, we submit that the HRC might overplay the extent to which relevant rules of IHL are consistent with Article 9 ICCPR. The Committee states that the ‘detailed substantive and procedural rules of international humanitarian law … inform the interpretation of Article 9, paragraph 1’.[[9]](#footnote-9) In reality, however, the relevant IHL rules are far from detailed and, without regard to other applicable rules including international human rights law, leave considerable discretion to the detaining authorities.[[10]](#footnote-10) Moreover, in non-international armed conflicts, applicable treaty rules of IHL provide no guidance on the rules governing detention. Whilst reference is often made in this area to the principle of *lex specialis*,[[11]](#footnote-11) this is not sufficient to answer the pressing questions posed here. Indeed, *lex specialis* is simply a principle that points to one among many factors that are of relevance in interpreting treaty provisions; it is not a decisive reference point.[[12]](#footnote-12) We feel that the Committee should elaborate its views on the relationship between these rules and Article 9 ICCPR in order to ensure that the protections afforded by the latter are not undermined.

6. Our final general observation concerns derogation. We agree that the ‘guarantee against arbitrary detention is non-derogable’.[[13]](#footnote-13) However, we feel that this should be even more clearly justified. In particular, the present authors take the view that the arbitrary deprivation of liberty prohibition is non-derogable on the basis that the necessity-based concerns for which derogation is designed to give effect have already been factored into the arbitrariness standard. Thus, it can never be necessary to detain someone arbitrarily.[[14]](#footnote-14)

**III. The Prohibition of Arbitrary and Unlawful Detention**

7. Draft General Comment 35 excellently summarises the Committee’s jurisprudence on the cumulative requirements of legality and non-arbitrariness for any arrest or detention to be in conformity with Article 9(1) ICCPR.[[15]](#footnote-15) As the Comment notes, ‘[t]he notion of “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability, and due process of law, as well as elements of reasonableness, necessity, and proportionality.’[[16]](#footnote-16) This is supported by the jurisprudence of other human rights treaty bodies, including the European Court of Human Rights (ECtHR),[[17]](#footnote-17) the Inter-American Court of Human Rights (IACtHR),[[18]](#footnote-18) and the African Commission on Human and Peoples’ Rights (ACiHPR).[[19]](#footnote-19)

8. As a result of these dual requirements of legality and non-arbitrariness, international jurisprudence has confirmed that the law permitting detention ‘be clearly defined and that the law itself be foreseeable in its application.’[[20]](#footnote-20) The authors feel that this in particular requires emphasising given the increasing tendency of certain States to rely on very vague legal bases and grounds to justify detention, particularly in the context of national security. For example, the commentary to the 2012 Copenhagen Principles on the Handling of Detainees in International Military Operations refers to the possibility of relying on UN authorisations to detain in specific circumstances.[[21]](#footnote-21) Whilst this is certainly possible and has indeed been invoked by particular States,[[22]](#footnote-22) in our view it could be highlighted that, in order to comply with the requirements of non-arbitrariness and legality under Article 9 ICCPR (and equivalent obligations under other human rights treaties), such sources of legal authority must be explicit in both their authorisation of detention and the particular grounds on which detention is so authorised. Indeed, both of these requirements appear entirely to be absent in certain cases. This is true, for example, in the recent case of *Serdar Mohammed v Ministry of Defence* in the High Court of England & Wales, in which the Ministry of Defence unsuccessfully sought to rely on an implicit legal basis in international humanitarian law to intern persons in non-international armed conflicts.[[23]](#footnote-23) A similar example may be seen in the US government’s reliance on the general authorisation by the US Congress to use ‘all necessary and appropriate force’ to combat those responsible for the 9/11 attacks as providing a legal basis to detain individuals associated with the war on terror.[[24]](#footnote-24) The authors feel that it would be appropriate, in light of developments in the jurisprudence of the Human Rights Committee and other bodies, to emphasise the need for certainty and clarity in the authorisation and grounds on which a State relies when detaining. This not only ensures the effectiveness of the principle enshrined in Article 9(1) ICCPR, but it also ensures that States do not circumvent Article 9(4) ICCPR through the adoption of malleable standards governing detention, against which a court is to judge its legality.

**IV. Reasons for Arrest/Detention**

9. Draft General Comment 35 correctly notes that the requirement that detainees be informed of the reasons for their detention serves the overriding goal of providing them with the necessary information to challenge the basis for their detention.[[25]](#footnote-25) It is then noted that ‘[t]he reasons must include not only the general legal basis of the arrest, but enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim’.[[26]](#footnote-26)

10. The present authors entirely agree with this. However, we feel that, as has been supported in the jurisprudence of the UN Working Group on Arbitrary Detention, the object and purpose of this right, as confirmed above, should inform the content of this norm, such that the amount and quality of information provided should always be sufficient so as to allow an effective challenge of the basis of detention. This is necessary to state explicitly given the security-based claims sometimes raised by States that seek to justify a narrowing of this right. For example, the commentary to the Copenhagen Principles states that ‘[o]perational necessities or resource constraints, such as force protection or the availability of interpreters, may sometimes make it difficult to advise the detainee of the specific reasons for the detention at the precise moment of detention.’[[27]](#footnote-27) Whilst other treaty bodies have accepted that the particular circumstances may well be relevant to the precise operation of this norm,[[28]](#footnote-28) the present authors feel it necessary to emphasise that such circumstances should never be invoked to undermine the core of this right, given its role as a *sine qua non* to the effective exercise of the right to *habeas corpus*.

**V. Judicial Control of Criminal Detention**

11. The present authors fully agree with the Committee’s view that, whilst the ‘promptness’ requirement in Article 9(3) ICCPR ‘may vary depending on objective circumstances … delays should not exceed a few days from the time of arrest’, and that ‘forty-eight hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than forty-eight hours must remain absolutely exceptional and be justified under the circumstances’.[[29]](#footnote-29) We feel that this is important to emphasise given that this concerns an issue for which international supervision is especially necessary, as domestic authorities seek solutions to pressing problems. The ECtHR, with the narrowest possible majority, in *Medvedyev and others v France* held that the ‘wholly exceptional circumstances’ where detainees had been intercepted on the high seas and then taken back to France could justify a delay of 13 days.[[30]](#footnote-30) The minority (Judges Tulkens, Bonello, Zupančič, Fura, Spielmann, Tsotsoria, Power and Poalelungi) referred to *Brogan and Others v United Kingdom[[31]](#footnote-31)* where the Court held that a period of detention in police custody amounting to four days and six hours without judicial review fell outside the strict constraints permitted by Article 5 § 3 of the European Convention on Human Rights (ECHR), notwithstanding the fact that it was aimed at protecting the community as a whole from terrorism. The minority also referred to *Öcalan v Turkey[[32]](#footnote-32)* where a period of seven days’ detention without being brought before a judge was held to be incompatible with Article 5 § 3 ECHR. Whilst the minority did not exclude the possibility that there may, at times, exist ‘wholly exceptional circumstances’, they demonstrated that a number of alternative options existed that would have enabled France to comply with their obligations to provide access to a lawyer and to bring detainees promptly before a judge. The European Court has narrowed down the ‘wholly exceptional circumstances’ in several decisions, including *Vassis and Others v France*,*[[33]](#footnote-33)* in which France was held to be in breach as the detainees had to wait an additional 48 hours before they were brought before a judicial authority after their arrival in France. In the aftermath of *Medvedyev and others v France* some States have legislated in a manner that exploits this apparent exception to Article 5(3) ECHR for the period in transit, no matter how long. This is already in breach of the restrictions on what constitutes ‘wholly exceptional circumstances’ and will no doubt fall afoul of the subsequent case law of the ECtHR here in which it can be expected to give incremental effect to the promptness requirement.

12. The present authors cannot accept the view in *Medvedyev* that the promptness requirement is effectively suspended until a detainee is taken to an appropriate place where they can appear before a judicial officer. We feel this is a worrying suggestion especially in light of the development of anti-piracy measures, as part of which individuals could be detained on board ships. In such circumstances, their right to judicial control of detention must not unduly be restricted by virtue of their location.

**VI. *Habeas Corpus***

13. We agree with the Human Rights Committee that the ‘court’ reviewing the legality of detention under Article 9(4) ICCPR, although not defined in strict terms, must always be a body that is impartial and independent of the authority that ordered the initial detention,[[34]](#footnote-34) and have the authority to order release where detention is found to be unlawful.[[35]](#footnote-35) We do, however, feel that this point could be made more strongly by relying on the object and purpose of the right to *habeas corpus*. Thus, international jurisprudence has confirmed that the object and purpose of this right is to provide a check on the detention authority of the State and enforce the basic prohibition of arbitrary detention.[[36]](#footnote-36) This can only be achieved if the reviewing body is impartial and independent from the State authority that ordered the initial detention and has the power to order release where it finds detention to be unlawful. Indeed, other human rights treaty bodies have confirmed these requirements.[[37]](#footnote-37)

14. We consider this point to be especially worthy of clarification given that certain (minority) jurisprudence appears to accept a far less stringent standard, permitting the use of non-judicial bodies for the purposes of *habeas* review.[[38]](#footnote-38) Furthermore, certain recent practice appears to attempt to transgress the requirement that the reviewing body have the power to order release. Thus, the commentary to the Copenhagen Principles suggests that the review body need not necessarily have the power to order release, whether from preventive, security detention or penal detention.[[39]](#footnote-39) It is clear that this would entirely undermine the core of the right to *habeas corpus* and would thus be inconsistent with Article 9(4) ICCPR.

15. Draft General Comment 35 also correctly acknowledges that the right to *habeas corpus* contains within it a right to periodic review.[[40]](#footnote-40) As the Comment notes, the appropriate length of time between reviews will vary according to the particular circumstances.[[41]](#footnote-41) The present authors wish at this point to emphasise their concern with the claim by certain States that, in particular circumstances, subsequent periodic review may be more delayed where a previous review has been especially rigorous.[[42]](#footnote-42) We cannot accept this. Periodic review serves the purpose of reassessing the necessity of detention in light of changing circumstances and ensuring no person is held beyond the point at which it is necessary;[[43]](#footnote-43) the degree of rigour in any previous reviews has no effect on the subsequent necessity of detention in light of changed circumstances. As soon as detention is no longer necessary, it becomes arbitrary and release must follow. It is especially in cases of preventive, administrative detention that frequent periodic review is essential to protect against breaches of Article 9(1) ICCPR.

**VII. Concluding Remarks**

16. Having set out our comments above, we wish to reiterate our support for the excellent work of the Human Rights Committee on its Draft General Comment 35. The need for legal clarity in this area is great, and the Draft General Comment contributes to this endeavour hugely.

17. As a final remark, the present authors wish to note that certain issues relating to detention generally are in need of further research. In particular, detention is a profoundly political tool that appears to have been employed, both overtly and covertly, by States and non-State actors in a highly partial manner. Susan Marks and Andrew Clapham have suggested a need to ask not merely under what conditions and procedures persons are deprived of their liberty, but for what reasons different persons are held and with what consequences.[[44]](#footnote-44) This has received attention in recent years in light of administrative detention of terror suspects throughout the post-9/11 world. But, as Marks and Clapham point out, it appears highly relevant even to the more accepted, institutionalised detentions related to penal processes, whereby those most vulnerable to detention are also those most vulnerable to other human rights violations, including minorities and the impoverished. Elsewhere, Susan Marks has emphasised the need to explore the ‘root causes’ of human rights violations, referring to recent UN practice that seems to get closer to this core issue.[[45]](#footnote-45) We submit that this issue is in need of further investigation. In particular, whilst Draft General Comment 35 excellently notes the relationship between Article 9 ICCPR and other paragraphs of the Covenant, further consideration is now needed regarding its relationship with other human rights outside the Covenant, particularly socio-economic rights. This is an essential element in considering the root causes of growing prison populations globally.

1. *United States Diplomatic and Consular Staff in Tehran (United States of America v Iran)*, Judgment (Merits) [1980] ICJ Rep 42, para 91. [↑](#footnote-ref-1)
2. HRC, Draft General Comment No. 35, Article 9: Liberty and Security of Person, Revised Draft Prepared by the Rapporteur for General Comment No. 35, Mr. Gerald L. Neuman, para 8. [↑](#footnote-ref-2)
3. See, e.g., M Milanović, *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy* (OUP, Oxford 2011), pp 106–7. [↑](#footnote-ref-3)
4. ECtHR, *Ilascu and others v Moldova and Russia*, App No 48787/99, Judgment (Grand Chamber), 8 July 2004, paras 322–52. [↑](#footnote-ref-4)
5. Draft General Comment 35, *supra* note 2, para 8. [↑](#footnote-ref-5)
6. International Law Commission’s Articles on State Responsibility, art 6, in Report of the International Law Commission on the Work of its Fifty-Third Session, UN GAOR, 56th Sess, Supp No 10, at 43, UN Doc A/56/10 (2001). [↑](#footnote-ref-6)
7. HRC, *Lopez-Burgos v Uruguay*, CCPR/C/13/D/52/1979, 29 July 1981, para 12.1; European Court of Human Rights (ECtHR), *Medvedyev and others v France*, App No 3394/03, Judgment, Grand Chamber, 29 March 2010, paras 66–7; ECtHR, *Al-Skeini and others v United Kingdom*, App No 55721/07, Judgment, Grand Chamber, 7 July 2011, para 136; Inter-American Commission on Human Rights (IACiHR), *Coard* et al *v United States*, Report No 109/99, 29 September 1999, para 37. [↑](#footnote-ref-7)
8. Draft General Comment 35, *supra* note 2, para 15. [↑](#footnote-ref-8)
9. *Ibid*. [↑](#footnote-ref-9)
10. See, e.g., Geneva Convention Relative to the Treatment of Prisoners of War (adopted 12 August 1949, opened for signature 12 August 1949, entered into force 21 October 1950) 75 UNTS 135, art 21; Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, opened for signature 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, arts 27(4), 42–3 and 78. [↑](#footnote-ref-10)
11. See the jurisprudence of the International Court of Justice on this: *Legality of the Threat or Use of Nuclear Weapons,* Advisory Opinion[1996] ICJ Rep 226, para 25; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion [2004] ICJ Rep 136, para 106. [↑](#footnote-ref-11)
12. On this, see L Hill-Cawthorne, ‘Just Another Case of Treaty Interpretation? Reconciling Humanitarian Law and Human Rights Law in the ICJ’ in M Andenæs and E Bjorge (eds), *From Fragmentation to Convergence in International Law* (CUP, *forthcoming*). [↑](#footnote-ref-12)
13. Draft General Comment 35, *supra* note 2, para 65. [↑](#footnote-ref-13)
14. Similarly, see UN Working Group on Arbitrary Detention, ‘Deliberation No 9 Concerning the Definition and Scope of Arbitrary Deprivation of Liberty under Customary International Law’ in UN Human Rights Council, ‘Report of the Working Group on Arbitrary Detention’, A/HRC/22/44, 24 December 2012, para 48. [↑](#footnote-ref-14)
15. Draft General Comment 35, *supra* note 2, para 12. [↑](#footnote-ref-15)
16. *Ibid*. [↑](#footnote-ref-16)
17. *Saadi v United Kingdom*, App No 13229/03, Judgment, 29 January 2008, paras 67–74. [↑](#footnote-ref-17)
18. *Tibi v Ecuador*, Judgment, IACtHR (Ser C) No 114, 7 September 2004, para 98. [↑](#footnote-ref-18)
19. *Amnesty International and others v Sudan*, Communication Nos 48/90, 50/91, 52/91, and 89/93 (2003), paras 58–9. [↑](#footnote-ref-19)
20. ECtHR, *Medvedyev and others v France*, *supra* note 7, para 80. Similarly, see IACiHR, *Dayra Maria Levoyer Jimenez v Ecuador*, Report No 66/01, 14 June 2001, para 37; ACiHPR, *Amnesty International v Sudan*, *ibid*. [↑](#footnote-ref-20)
21. ‘The Copenhagen Process on the Handling of Detainees in International Military Operations, The Copenhagen Process: Principles and Guidelines’ (October 2012) (‘Copenhagen Principles’), para 4.3 <http://um.dk/en//media/UM/English-site/Documents/Politics-and-diplomacy/Copenhangen%20Process %20Principles%20and%20Guidelines.pdf>. [↑](#footnote-ref-21)
22. See, e.g., ECtHR, *Al-Jedda v United Kingdom*, App No 27021/08, Grand Chamber, Judgment, 7 July 2011, para 16 (the UK’s reliance on UN Security Council Resolution 1546 as providing the legal basis for Al-Jedda’s internment). [↑](#footnote-ref-22)
23. [2014] EWHC 1369 (QB). [↑](#footnote-ref-23)
24. *Hamdi v Rumsfeld*, 542 US 507, 519 (2004) (US Supreme Court). [↑](#footnote-ref-24)
25. Draft General Comment 35, *supra* note 2, para 25. [↑](#footnote-ref-25)
26. *Ibid*. [↑](#footnote-ref-26)
27. The Copenhagen Process, *supra* note 21, para 7.1. [↑](#footnote-ref-27)
28. See, e.g., ECtHR, *Kerr v United Kingdom*, App No 40451/98, Admissibility Decision, 7 December 1999. [↑](#footnote-ref-28)
29. Draft General Comment 35, *supra* note 2, para 33. [↑](#footnote-ref-29)
30. *Medvedyev and others v France*, *supra* note 7, paras 127–34. [↑](#footnote-ref-30)
31. *Brogan and Others v United Kingdom*, App Nos 11209/84, 11234/84, 11266/84, 11386/85, Judgment, 29 November 1988. [↑](#footnote-ref-31)
32. *Öcalan v Turkey*, App No 46221/99, Judgment, Grand Chamber, 12 May 2005. [↑](#footnote-ref-32)
33. *Vassis and Others v France*, App No 62736/09, Judgment, 27 June 2013. [↑](#footnote-ref-33)
34. Draft General Comment 35, *supra* note 2, paras 39 and 45. [↑](#footnote-ref-34)
35. *Ibid*, para 41. [↑](#footnote-ref-35)
36. ECtHR, *Brannigan and McBride v United Kingdom*, App No 14553/89 and 14554/89, Judgment, 25 May 1993, para 63; ECtHR, *Khudyakova v Russia*, App No 13476/04, Judgment, 8 January 2009, para 93; IACtHR, *Tibi v Ecuador*, *supra* note 18, para 129; IACtHR, *Habeas Corpus in Emergency Situations (Arts 27(2) and 7(6) of the American Convention on Human Rights)*, Advisory Opinion OC-8/87, IACtHR (Ser A) No 8 (1987), para 33; ACiHPR, *Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda v Nigeria*, Communication Nos 140/94, 141/94, and 145/95 (1999), para 33. [↑](#footnote-ref-36)
37. IACtHR, *Habeas Corpus in Emergency Situations*, *ibid*, para 30; ACiHPR, *Amnesty International and others v Sudan*, *supra* note 19, para 60; ECtHR, *Stephens v Malta (No 1)*, App No 11956/07, Judgment, 21 April 2009, para 95. The requirement of independence also features consistently in the jurisprudence of the UN Working Group on Arbitrary Detention. [↑](#footnote-ref-37)
38. See, e.g., IACiHR, *Coard* et al *v United States*, *supra* note 7, para 58. The IACtHR has not accepted this, instead emphasising the *judicial* character of *habeas* review: *Habeas Corpus in Emergency Situations*, *supra* note 36, para 30. [↑](#footnote-ref-38)
39. Compare The Copenhagen Process, *supra* note 21, paras 12.2 and 13.2. See the discussion on this in L Hill-Cawthorne, ‘The Copenhagen Principles on the Handling of Detainees: Implications for the Procedural Regulation of Internment’ (2013) 18 *Journal of Conflict & Security Law* 481, 489. [↑](#footnote-ref-39)
40. Draft General Comment 35, *supra* note 2, para 43. [↑](#footnote-ref-40)
41. *Ibid*. [↑](#footnote-ref-41)
42. This claim is made in The Copenhagen Process, *supra* note 21, para 12.3. [↑](#footnote-ref-42)
43. HRC, *A v Australia,* CCPR/C/59/D/560/93, 3 April 1997, para 9.4; ECtHR, *Luberti v Italy*, App No 9019/80, Judgment, 23 February 1984, para 31; ECtHR, *Bezicheri v Italy,* App No 11400/85, Judgment, 25 October 1989, para 20; ECtHR, *Lebedev v Russia*, App No 4493/04, Judgment, 25 October 2007, paras 78–9. [↑](#footnote-ref-43)
44. S Marks and A Clapham, *International Human Rights Lexicon* (OUP, Oxford 2005). [↑](#footnote-ref-44)
45. S Marks, ‘Human Rights and Root Causes’ (2011) 74 *Modern Law Review* 57. [↑](#footnote-ref-45)