

# Protecting the right to life in protracted conflicts: The existence and dignity dimensions of General Comment 36

**Mona Rishmawi\***

Mona Rishmawi is the Chief of the Rule of Law, Equality and Non-Discrimination of the Office of the UN High Commissioner for Human Rights. She was the Executive Director of the UN International Commission of Inquiry on Darfur, worked in the Occupied Palestinian Territory and Iraq, and was the UN Independent Expert on Human Rights in Somalia.

## Abstract

*With a focus on situations of protracted conflict, this article explores the new horizons offered by the recent explanation by the United Nations Human Rights Committee on the right to life in its General Comment 36. The freshly formulated contours of this right not only present normative clarity but are also valuable for conflict management and resolution. Considering the articulation by the Human Rights Committee, we can now see two dimensions of this right: existence and dignity. Although the existence dimension is not new, one now finds additional insights concerning the legality, transparency and accountability of the use of lethal force that have particular relevance to armed conflict. The new dignity dimension has practical implications for the conditions of life in protracted conflicts, taking us beyond norms to the policy spheres of humanitarian action and development.*

\* The author writes in her personal capacity. The views expressed in this piece do not necessarily reflect those of the United Nations or any other institution.

*Tracing the origins of the term “protracted conflict” to the late Lebanese scholar Edward Azar, the article also introduces the reader to some of his work and thinking.*

**Keywords:** dignity, grievances, Human Rights Committee, human rights, identity, identity conflicts, investigation, law enforcement, lethal force, protracted conflict, right to life, Sustainable Development Goals.

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## Introduction

This article will focus on the right to life in protracted conflict. This right is chosen for three reasons. First, it is a supreme right that is precious not only on its own but also because it affects the enjoyment of other human rights, irrespective of the circumstances. Second, it is an umbrella right whose content can be informed by other human rights and legal regimes. Third, its scope has been freshly reformulated by the United Nations (UN) Human Rights Committee to guide our approach to addressing the challenges to the right to life in today’s world, including for those living in situations of armed conflict.

On 18 October 2018, the UN Human Rights Committee adopted a groundbreaking General Comment on Article 6 of the International Covenant on Civil and Political Rights (ICCPR), which pertains to the right to life.<sup>1</sup> General Comment 36 synthesizes this right’s main elements, drawing on the experience of the Committee over decades of engagement with States on the implementation of Article 6.

In several ways, General Comment 36 opens fresh horizons in normative thinking. It proposes, for instance, that the right to life concerns our entitlement as human beings not only “to be free from acts and omissions that are intended or may be expected to cause [our] unnatural or premature death”, but also “to enjoy a life with dignity”.<sup>2</sup> Relating the right to our existence as well as to our dignity is significant as it invokes our entitlement to certain commodities, services and protections, as will be explained later. Other developments in General Comment 36 include linking the realization of this right to the attainment of other non-ICCPR rights, weaving in economic, social and cultural rights. Also explained is the relevance of this right to a range of other legal regimes, including international humanitarian law (IHL).<sup>3</sup>

In today’s world there are around sixty-five armed conflicts, many of which have been running for decades.<sup>4</sup> What most of these conflicts have in common is

1 Human Rights Committee, General Comment No. 36, “Article 6 (Right to Life)”, UN Doc. CCPR/C/GC/36, 30 October 2018 (General Comment 36).

2 *Ibid.*, para. 3.

3 *Ibid.*, Section V.

4 According to the Geneva Academy, in 2018, at least sixty-nine armed conflicts occurred on the territory of thirty States. A large number of them were of long duration, lasting for more than a decade. Annyssa Bellal (ed.), *The War Report: Armed Conflicts in 2018*, Geneva Academy, April 2019, available at: [www.geneva-academy.ch/joomlatools-files/docman-files/The%20War%20Report%202018.pdf](http://www.geneva-academy.ch/joomlatools-files/docman-files/The%20War%20Report%202018.pdf) (all internet references were accessed in June 2020).

that they are long-lasting, causing human suffering through competitive violence and a spiral of grievances. They also have a social and economic dimension and are frequently fought along ethnic, religious or linguistic lines, leading to concerns over the security and well-being of individuals and groups. Rivalry over territorial control and other natural resources is often combined with quests for security and political and economic power. The main demands of victims of these conflicts are often centred around survival and dignity. General Comment 36 articulates an approach that helps in probing these factors.

This article applies the framework proposed for the right to life in General Comment 36 to situations of protracted conflict. It proposes that the freshly formulated contours of this right not only offer normative clarity but are also valuable for conflict management and resolution. The article will first trace the origins of the notion of “protracted conflict”, and will then consider how the UN Human Rights Committee articulates the various components of the human right to life. It will conclude by offering some thoughts on some of the broader impacts of the formulations in General Comment 36.

## Who invented the term “protracted conflict”?

The phrase “protracted conflict” appears neither in the Geneva Conventions nor in their Additional Protocols. Perhaps the only international treaty reference to the expression is found in the Rome Statute of the International Criminal Court. Article 8(2)(f) of the Statute identifies certain war crimes that take place in the context of an armed conflict not of an international character on the territory of a State “when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups”.<sup>5</sup>

In law, the term “protracted” has mostly been combined with the noun “violence”. As is well known, the notion of “protracted armed violence” appeared in the 1995 decision of the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) in the *Tadić* case. It served as a criterion for the determination of the existence of a non-international armed conflict, particularly with regard to temporal scope.<sup>6</sup> In subsequent jurisprudence, the ICTY clarified that the term could also be used to refer to the intensity of the

5 Rome Statute of the International Criminal Court, 2187 UNTS 90, 17 July 1998 (entered into force 1 July 2002), Art. 8(2)(f).

6 In *Tadić*, the ICTY states that “an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.” ICTY, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 70, available at: [www.icty.org/x/cases/tadic/acdec/en/51002.htm](http://www.icty.org/x/cases/tadic/acdec/en/51002.htm).

armed violence.<sup>7</sup> The indicative factors relevant to assessing the “intensity” criterion include the following:

the number, duration and intensity of individual confrontations; the type of weapons and other military equipment used; the number and calibre of munitions fired; the number of persons and type of forces partaking in the fighting; the number of casualties; the extent of material destruction; and the number of civilians fleeing combat zones.<sup>8</sup>

The “protracted armed violence” phrase continued to be used to clarify, for instance, the legal regime applicable to counter-terrorism operations.<sup>9</sup>

The notion of “protracted” conflicts is often used beyond the meaning of military confrontations. It also has a long history beyond the legal field. An excellent report by the International Committee of the Red Cross (ICRC) attributes the term to the Lebanese scholar Professor Edward Azar.<sup>10</sup> Azar was a scholar who taught in several universities in the United States. In the 1980s, he was a professor of government and politics and the director of the Center for International Development and Conflict Management at the University of Maryland at College Park.<sup>11</sup> Although his research and publications are difficult to find nowadays, the present author was able to get her hands on two of his works.<sup>12</sup>

Azar indicates that already in the late 1970s, he had started to associate the terms “protracted” and “conflict”, and to combine them with the word “social”.<sup>13</sup> He appears to have developed his understanding of this type of conflict as he started “to look for patterns and to deal with the existential experience of Lebanon and the Middle East situation”.<sup>14</sup> The formulation he thus used was “protracted social conflicts”.<sup>15</sup> He clarified that the types of armed conflicts he studied had “several unique properties” and were characterized by their complexity and long duration.<sup>16</sup>

7 ICTY, *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-T, Judgment, 3 April 2008, para.49, available at: [www.icty.org/x/cases/haradinaj/tjug/en/080403.pdf](http://www.icty.org/x/cases/haradinaj/tjug/en/080403.pdf).

8 *Ibid.*

9 “Annex: Leiden Policy Recommendations on Counter-Terrorism and International Law”, in Larissa van den Herik and Nico Schrijver (eds), *Counter-Terrorism Strategies in a Fragmented International Legal Order: Meeting the Challenges*, Cambridge University Press, Cambridge, 2013, p. 721, para. 62.

10 ICRC, *Protracted Conflict and Humanitarian Action: Some Recent ICRC Experiences*, Geneva, 2016, p. 9.

11 “Edward E. Azar, 53, A Middle East Scholar”, obituary, *New York Times*, 21 June 1991, p. B7 (Azar Obituary).

12 Edward E. Azar and John Wear Burton (eds), *International Conflict Resolution: Theory and Practice*, Wheatsheaf Books, Sussex, and Lynne Rienner, Boulder, CO, 1986 (copy available from the present author); Edward E. Azar, *The Management of Protracted Social Conflict: Theory and Cases*, Dartmouth Publishing Company, Dartmouth, 1990 (copy available at the library of the Graduate Institute of International and Development Studies, Geneva).

13 E. E. Azar, *The Management of Protracted Social Conflict*, above note 12, citing his own early work from 1986, 1984 and 1979.

14 *Ibid.*, p. 36.

15 *Ibid.*

16 E. E. Azar and J. W. Burton (eds), *International Conflict Resolution*, above note 12, p. 2.

We understand more of Azar's thinking when we examine his own chapter in the 1986 book that he co-edited with John Wear Burton.<sup>17</sup> There, Azar elaborates on the features that led him to combine the three terms, explaining that "protracted social conflicts have typical characteristics that account for their prolonged nature"; these include "economic and technological under-development [and] distributive injustice which require the elimination or substantial modification of economic, social and extreme disparities in levels of political privilege and opportunity".<sup>18</sup> In 1990, Azar asserted that the trigger for protracted social conflicts is social, reflecting "religious, cultural, or ethnic communal identity, which in turn is dependent upon the satisfaction of basic needs such as those for security, communal recognition and distributive justice".<sup>19</sup>

Azar recounts that there were sixty active conflicts in 1986.<sup>20</sup> They were situations that developed out of attempts to combat conditions of perceived victimization.<sup>21</sup> The infrastructure for these conflicts consisted of "multi-ethnic and communal cleavages and disintegration, underdevelopment and distributive injustices".<sup>22</sup> Azar's work leads to the conclusion that protracted conflicts are defined not only by their longevity but also by their intensity and multilayered complexity, ending with grievances that entrench them further.

Azar's research was operating in the policy domain, and his observations did not differentiate between international and non-international armed conflicts.<sup>23</sup> The State nexus, which often characterizes the distinction between these types of conflicts, was for him irrelevant. In fact, in the context of these conflicts, he saw the State as a "fiction".<sup>24</sup> At the end, "power ... rests with the identity group", he wrote.<sup>25</sup> This group identity, whether racial, religious, ethnic or cultural, is the most influential unit to study, and its analysis gives the best clue to the motivations, interests and needs of the group.<sup>26</sup>

In reflecting on the role of the State versus the identity of the group, Azar was not interested in only making a theoretical point. His main concern was to develop a policy framework that could facilitate the management and resolution of these conflicts.<sup>27</sup> He therefore focused on the main players and on understanding the polarities involved in order to reduce or eliminate need deficiencies as causes for conflict. For these purposes, "the domestic and international are only arenas .... The motivations for action are internal, not systemic or international."<sup>28</sup> The origins of international conflicts, he thought, are

17 *Ibid.*

18 *Ibid.*, pp. 28–29.

19 E. E. Azar, *The Management of Protracted Social Conflict*, above note 12, p. 2.

20 E. E. Azar and J. W. Burton (eds), *International Conflict Resolution*, above note 12, p. 30.

21 *Ibid.*

22 *Ibid.*, p. 29.

23 The conflicts he studied include Israel/Palestine, Lebanon, Sri Lanka and the Falkland/Malvinas. *Ibid.*, p. 5.

24 E. E. Azar, *The Management of Protracted Social Conflict*, above note 12, p. 31.

25 *Ibid.*

26 *Ibid.*, pp. 31–32.

27 E. E. Azar and J. W. Burton (eds), *International Conflict Resolution*, above note 12, p. 2.

28 E. E. Azar, *The Management of Protracted Social Conflict*, above note 12, p. 33.

“in domestic movements for the satisfaction of needs and in the drives of nations and states to satisfy the same needs”.<sup>29</sup> In the end, “there is really only one social environment and its domestic face is the more compelling”, he wrote.<sup>30</sup>

The analytical framework Azar developed for the consideration of the genesis and dynamics of such conflicts was presented in his study *The Management of Protracted Social Conflict*.<sup>31</sup> This framework helps us to dig deep beneath the surface and unearth the social, economic and political factors which give rise to perceived grievances that lead to conflicts. It underlines questions of existence and dignity, including discrimination, disempowerment, inequitable access to resources and worries not only about the present but also the future, bringing us to the essence of what individuals and groups are entitled to and aspire to in life. For Azar, the causes for the grievances contributing to a conflict’s longevity are complex and are often expressed, as he sums up, in terms of cultural values, human rights and security.<sup>32</sup> Fully understanding these concerns brings us closer to the management of such conflicts and contributes to their resolution. Azar died in June 1991. He was only 53.<sup>33</sup>

## The human right to life

Human rights law provides a powerful tool for individuals and communities to articulate their grievances and needs. The cardinal human right is our inherent right to life. A perceived unjustified attack on this right has a profound impact not only on the individual who died but also on his or her community and social group. It may also lead to a vicious cycle of violence and revenge.

Article 3 of the Universal Declaration of Human Rights (UDHR) enshrines the right to life in a simple formulation: “Everyone has the right to life, liberty and security of person.” Article 6 of the ICCPR, which bestows legal obligations on States Parties, is much more complex in its elaboration of the obligations to respect, protect and fulfil this right. It recognizes that this right is not absolute, but can be limited under very strict circumstances.<sup>34</sup>

Article 6 is composed of six paragraphs. Paragraph 6(1) sets out the general principle with regard to the right to life. It states: “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.” Four of the paragraphs that follow are devoted to the question of the death penalty. Paragraph 6(3) establishes the nexus between the deprivation of life and

29 *Ibid.*

30 *Ibid.*

31 E. E. Azar and J. W. Burton (eds), *International Conflict Resolution*, above note 12, Chap. 1.

32 *Ibid.*, p. 2.

33 Azar Obituary, above note 11. In an article published in 2005, Oliver Ramsbotham paid tribute to Azar, thirteen years after the latter’s death. He assessed the originality and significance of Azar’s work, proposing that it continues to offer pointers for understanding major armed conflicts. See Oliver Ramsbotham, “The Analysis of Protracted Social Conflict: A Tribute to Edward Azar”, *Review of International Studies*, Vol. 31, No. 1, 2005.

34 General Comment 36, above note 1, para. 10.

the crime of genocide, prohibiting derogation from any obligation assumed under the Convention on the Prevention and Punishment of the Crime of Genocide.

In the discussion below, we will focus in particular on how the UN Human Rights Committee clarified the meaning of paragraph 6(1) of the ICCPR as contained in General Comment 36, and we will relate this analysis to situations of protracted armed conflict. Like other thematic outputs of human rights treaty bodies, General Comment 36 is intended to provide guidance to the 173 States party to the ICCPR. The UN Human Rights Committee's General Comments are based on regular dialogue between the Committee and States Parties in the context of the examination of periodic reports, and on the views expressed following the considerations of individual complaints. For coherence, they also take into account the formulations advanced by other treaty monitoring bodies, UN special procedures, regional bodies and other relevant sources.

Over time, these General Comments have gained legal authority. The International Court of Justice (ICJ) has specifically recognized their significance, clarifying that while it is not obliged to model its own interpretation of the ICCPR on that of the Committee, "it believes that it should ascribe great weight to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty".<sup>35</sup> The ICJ also points out that the goal "is to achieve the necessary clarity and the essential consistency of international law, as well as legal security, to which both the individuals with guaranteed rights and the States obliged to comply with treaty obligations are entitled".<sup>36</sup>

The majority of States rely on the General Comments. A recent attempt by some States to question the legal value of such comments failed at the UN Human Rights Council.<sup>37</sup> The International Law Commission (ILC) also continues to cite them as an authoritative source of human rights law interpretation.<sup>38</sup>

General Comment 36 updates two earlier General Comments on Article 6 of the ICCPR.<sup>39</sup> The previous texts were short and limited in scope: General Comment 6, adopted in 1982, considered the impact of war on human life, arbitrary deprivation of life (including arbitrary killings and enforced disappearances), and the question of the death penalty, while General Comment 14, adopted in 1984, was devoted to the impact of nuclear weapons on the right to life. By contrast, General Comment 36 is elaborate and comprehensive. It is twenty-four pages long, offering a new way of considering this right in the modern context.

35 ICJ, *Case Concerning Ahmadou Sadio Diallo*, Judgment, 30 November 2010, para. 66, available at: [www.icj-cij.org/files/case-related/103/103-20101130-JUD-01-00-EN.pdf](http://www.icj-cij.org/files/case-related/103/103-20101130-JUD-01-00-EN.pdf).

36 *Ibid.*

37 On 27 September 2019, the UN Human Rights Council rejected an amendment to its resolution on the death penalty by a vote of eighteen for, twenty-three against, and five abstentions. The rejected text read: "Affirming that the general comments adopted by the treaty bodies are not legally binding on State parties, and do not constitute binding interpretations of treaties". Amendment L.46 to UN Doc. A/HRC/42/L.37.

38 See, for example, ILC, *Report of the International Law Commission, Seventy-first Session (29 April–7 June and 8 July–9 August 2019)*, UN Doc. A/74/10, 2019.

39 General Comment No. 6, adopted by the Human Rights Committee at its 16th Session in 1982, and General Comment No. 14, adopted at its 23rd Session in 1984.

Considering this fresh pronouncement by the UN Human Rights Committee, we can now see two dimensions of the right to life: existence and dignity. This deeper approach offers an additional tool for the management of armed conflicts and their eventual resolution.

As already indicated, General Comment 36 reminds us that we are entitled not only to be protected from acts and omissions that could cause our unnatural or premature death, but also “to enjoy a life with dignity”.<sup>40</sup> Accordingly, our right to life has two intertwined components: our inherent right to exist and survive, and our right to enjoy a life with dignity.

We will examine these two components below. Before we do so, however, it should be stated that while each of these dimensions has its own distinct features, they often cannot be easily de-linked. For instance, the use of armed force may not lead to immediate death but could cause an impairment that could impact a person’s ability to enjoy life with dignity. Consider also the use of the death penalty. While it is clearly a matter of existence, it has a strong dignity component too. It is not only the methods and circumstances of execution that affect dignity; the mere fact of its practice in some countries also affects human dignity, and its abolition “is both desirable and necessary for the enhancement of human dignity”, as the Human Rights Committee tells us.<sup>41</sup>

## The existence dimension

In this part, we will focus on some aspects related to the use of lethal force against individuals outside and within the context of armed conflict. As stated before, while the right to life is supreme, it is not absolute and can be legitimately limited under very strict circumstances.<sup>42</sup> It cannot, however, be entirely suspended, and it continues to apply even in situations of armed conflict and other public emergencies that threaten the life of the nation.<sup>43</sup>

Article 6(1) of the ICCPR protects against arbitrary deprivation of life. The term “arbitrary” appears in the first paragraph of Article 6. It is a term commonly used in domestic law, particularly in constitutional, administrative and criminal law. It generally indicates that a decision or action is not supported by fair or substantial cause or reason.<sup>44</sup> In the ICCPR, the term appears in the context of prohibiting the deprivation of or interference in four rights: life, liberty, movement and privacy. In its General Comment 35 on Article 9, which prohibits arbitrary deprivation of liberty, the UN Human Rights Committee states:

The notion of “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness,

40 General Comment 36, above note 1, para. 3.

41 *Ibid.*, para. 50.

42 *Ibid.*, para. 10.

43 *Ibid.*, para. 2.

44 See: <https://dictionary.law.com/Default.aspx?typed=arbitrary&type=1>.

injustice, lack of predictability and due process of law,<sup>45</sup> as well as elements of reasonableness, necessity and proportionality.<sup>46</sup>

General Comment 36 adopts the same formulation regarding the arbitrary deprivation of life.<sup>47</sup>

Below, we will explore the new insights offered by General Comment 36 concerning the legality, transparency and accountability of the use of lethal force, outside and within armed conflict settings. The two contexts will be examined by contrasting some paragraphs that deal with the law enforcement context, notably paragraphs 12, 13, 27, 28 and 29, with the formulations that appear in paragraph 64 focused on the situation of armed conflict. While General Comment 36 confirms some already established principles as will be seen below, it specifies some significant measures that bring the use of force within the framework of the rule of law.

### *The legal framework*

To control the use of lethal force by law enforcement officials, General Comment 36 indicates that a clear legal framework must be put in place. This generally entails the adoption of appropriate legislation.<sup>48</sup> General Comment 36 insists on the conformity of this legal framework with human rights.<sup>49</sup> Even if lethal force is authorized under national law, it may be considered arbitrary under international law when certain standards are not met. Building on established formulations,<sup>50</sup> conformity with national legislation is not sufficient to render a measure not arbitrary under international human rights law. Other criteria kick in, such as establishing that the measure was necessary and proportionate.

In addition, procedures must exist to ensure that the risks posed to human life through law enforcement action are minimized.<sup>51</sup> These measures include

procedures designed to ensure that law enforcement actions are adequately planned in a manner consistent with the need to minimize the risk they pose to human life ... and supplying forces responsible for crowd control with effective, less-lethal means and adequate protective equipment in order to obviate their need to resort to lethal force.<sup>52</sup>

45 See Human Rights Committee, *Gorji-Dinka v. Cameroon*, Communication No. 1134/2002, 17 March 2005, para. 5.1; Human Rights Committee, *Van Alphen v. Netherlands*, Communication No. 305/1988, 23 July 1990, para. 5.8 (footnote added).

46 Human Rights Committee, General Comment No. 35, "Article 9 (Liberty and Security of Person)", UN Doc. CCPR/C/GC/35, 16 December 2014, para. 12.

47 General Comment 36, above note 1, para. 12.

48 *Ibid.*, para. 13.

49 *Ibid.*

50 See, for example, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, 1990 (BPUFF), para. 9, available at: [www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx](http://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx).

51 *Ibid.*

52 General Comment 36, above note 1, para. 13.

In particular, General Comment 36 recommends that all law enforcement officials engaged in such operations should be trained to comply with relevant international standards, including the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF).<sup>53</sup> The aim is “to ensure, in all circumstances, the fullest respect for the right to life”.<sup>54</sup> The use of potentially lethal force for law enforcement purposes “is an extreme measure, which should be resorted to only when strictly necessary in order to protect life or prevent serious injury from an imminent threat”.<sup>55</sup> The footnote to this text indicates that this last sentence derives from Principle 9 of the BPUFF.

Principle 9 specifies, however, that the use of potentially lethal force can be authorized only when “unavoidable to protect life”.<sup>56</sup> It does not mention the possibility of using potentially lethal force to “prevent serious injury from an imminent threat”. While the addition of this last phrase in General Comment 36 could be viewed as widening the authority to use lethal force, in reality, it may not be such a major departure from the standard; it might not be an obvious matter for law enforcement officials to distinguish between preventing a loss of life and preventing serious injury.

Paragraph 64, which is devoted to the application of Article 6 in situations of armed conflict, does not explicitly necessitate national legislation for the use of lethal force. It does, however, require that the action be in conformity with IHL, which itself requires that its rules be incorporated into national law and regulations.<sup>57</sup> There is also a transparency requirement, guiding States, as a general rule, to “disclose the criteria for attacking with lethal force individuals or objects whose targeting is expected to result in deprivation of life”.<sup>58</sup> The paragraph gives a non-exhaustive list of some elements that should be considered when assessing these criteria. These include:

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 less harmful alternatives were considered.<sup>59</sup>

The list stems from earlier observations made by the UN Human Rights Committee.<sup>60</sup> Examining these observations, further elements emerge. These

53 *Ibid.*, para. 13.

54 *Ibid.*, para. 13.

55 *Ibid.*, para. 12.

56 Principle 9 of the BPUFF, above note 50, states: “Law enforcement officials shall not use 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. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

57 See Inter-Parliamentary Union and ICRC, *International Humanitarian Law*, Handbook for Parliamentarians No. 25, 2016.

58 General Comment 36, above note 1, para. 64.

59 *Ibid.*

60 The footnote to the relevant section of General Comment 36 refers to UN Doc. A/HRC/11/2/Add.4, 6 May 2009, para. 89.

include: the need for a definition and geographical and temporal scope of the armed conflict, clarification on who is a combatant or a civilian taking direct part in hostilities, and the position on the nexus that should exist between any particular use of lethal force and any specific theatre of hostilities, as well as the precautionary measures taken to avoid civilian casualties in practice.<sup>61</sup> These indications are significant particularly as the military manuals of some countries, or parts of them, are not publicly available for examination.<sup>62</sup>

### *Reporting, review and investigation*

General Comment 36 lays down an accountability regime for the use of lethal force by requiring States to establish rules and procedures for mandatory reporting, review and investigation of lethal and other life-threatening incidents.<sup>63</sup> These measures must also apply to soldiers charged with law enforcement missions.<sup>64</sup> But what about a situation of armed conflict?

Recalling a principle that has been enshrined since the ICJ's Nuclear Weapons Advisory Opinion,<sup>65</sup> paragraph 64 affirms that the human right to life continues to apply, where IHL is also applicable, "even during the conduct of hostilities". The paragraph skips the reference to "mandatory reporting and review", but it insists on the duty to investigate.

When it comes to the scope of the investigation, General Comment 36 uses different formulations outside and within armed conflict. As a general principle, States have a general duty to investigate and where appropriate prosecute incidents involving "potentially unlawful deprivations of life".<sup>66</sup> Paragraph 29 specifies that outside the immediate context of an armed conflict, there is "a particular duty to investigate allegations of violations of Article 6 whenever State authorities have used or appear to have used firearms or other potentially lethal force". As for the armed context setting, paragraph 64 indicates that States "must also investigate alleged or suspected violations of Article 6 in situations of armed conflict."

Outside armed conflict, the use of force – particularly lethal force – is an extreme and exceptional measure.<sup>67</sup> As stated earlier, it can only be resorted to "when strictly necessary in order to protect life or prevent serious injury from an imminent threat".<sup>68</sup> Moreover, "the intentional taking of life by any means is permissible only if it is strictly necessary in order to protect life from an imminent

61 Human Rights Committee, *Concluding Observations on the Fourth Periodic Report of the United States of America*, UN Doc. CCPR/C/USA/CO/4, 23 April 2014, para. 9.

62 See Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, Edward Elgar, Cheltenham, 2019, p. 48.

63 General Comment 36, above note 1, para. 13.

64 *Ibid.*

65 ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, para. 25, available at: [www.icj-cij.org/files/case-related/95/095-19960708-ADV-01-00-EN.pdf](http://www.icj-cij.org/files/case-related/95/095-19960708-ADV-01-00-EN.pdf).

66 General Comment 36, above note 1, para. 27.

67 *Ibid.*, para. 12.

68 *Ibid.*

threat”.<sup>69</sup> There is therefore mandatory reporting, review and investigation each time potentially lethal force is used. These can also extend to the permissible categories for the use of firearms included in Principle 9 of the BPUFF, as General Comment 36 brings in these principles as part of the framework. The reporting, review and investigation would be carried out to establish whether force was used

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 [the police’s] authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives.<sup>70</sup>

Within the context of armed conflict, the use of lethal force is assumed and is subject to IHL constraints related to necessity, proportionality and distinction. While these principles, largely derived from IHL treaties and custom, might differ in their meaning from when they are used in a human rights law context, they are important safeguards for preventing the arbitrary deprivation of life.<sup>71</sup> In any case, allegations of violations that would amount to arbitrary deprivation of life in the context of armed conflict must be investigated. They may amount to a grave breach of the Geneva Conventions, which requires investigating, and may involve the prosecution of acts such as wilful killings of protected persons.

Paragraph 64 clarifies that when lethal force is used in a manner consistent with IHL and other applicable international law norms, then in general, it is not arbitrary. This leaves open the way for concluding that some practices may be seen at face value as consistent with IHL, but could be in violation of human rights. Andrew Clapham reads this specific formulation in light of the ICJ determination in *Croatia v. Serbia*,<sup>72</sup> where the Court stated:

There can be no doubt that, as a general rule, a particular act may be perfectly lawful under one body of legal rules and unlawful under another. Thus it cannot be excluded in principle that an act carried out during an armed conflict and lawful under international humanitarian law can at the same time constitute a violation by the State in question of some other international obligation incumbent upon it.<sup>73</sup>

Clapham suggests that as human rights law is concerned with all lives and not only those of civilians and persons *hors de combat*, some measures could be considered lawful under IHL but not under human rights law. He gives the example of where there are less lethal alternatives to achieve the same military objective or action that

69 *Ibid.*

70 See BPUFF, above note 50, para. 9.

71 Marco Sassòli, above note 62, pp. 53–54.

72 Andrew Clapham, “The Limits of Human Rights in Times of Armed Conflict and Other Situations of Armed Violence”, in Bardo Fassbender and Knut Traisbach (eds), *The Limits of Human Rights*, Oxford University Press, Oxford, 2019, p. 307.

73 ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, 3 February 2015, para. 474, available at: [www.icj-cij.org/files/case-related/118/118-20150203-JUD-01-00-EN.pdf](http://www.icj-cij.org/files/case-related/118/118-20150203-JUD-01-00-EN.pdf).

is illegal under another branch of international law, such as an act of aggression.<sup>74</sup> One may also add the example of a killing that is motivated by race or ethnic identity and could constitute genocide. This was the question before the ICJ in the *Croatia v. Serbia* case, though the Court found that the killings in question did not meet the genocide criteria.

More straightforward is the statement in paragraph 64 that practices which are inconsistent with IHL entailing a risk to the lives of civilians and other persons protected by IHL are considered violations of human rights. The paragraph lists examples of these inconsistencies, including the targeting of civilians, civilian objects and objects indispensable to the survival of the civilian population; indiscriminate attacks; failure to apply the principles of precaution and proportionality; and the use of human shields.<sup>75</sup> Additional examples can be drawn from the source of the enumeration. These include direct targeting of civilians and civilian infrastructure, such as wastewater plants and sewage facilities; the use of civilians as human shields; refusal to evacuate the wounded; firing live bullets during demonstrations against a military operation; and detention in degrading conditions in violation of Articles 6 and 7 of the ICCPR.<sup>76</sup>

There is also some difference in the standards of investigations outside and within the context of conflict. As a general proposition, investigating allegations of a violation of the right to life must always be carried out in an independent, impartial, prompt, thorough, effective and transparent manner.<sup>77</sup> As the relevant footnotes in General Comment 36 indicate, these standards stem from earlier Concluding Observations of the UN Human Rights Committee.

By contrast, paragraph 64 requires that the investigations be carried out in accordance with “relevant international standards”. This implies that some international investigation standards may not be “relevant” to the situation of armed conflict. The citation to these obligations refers to certain paragraphs in the Minnesota Protocol on the Investigation of Potentially Unlawful Death,<sup>78</sup> which indicate that the standards for investigating potentially unlawful death apply generally in “peacetime, situations of internal disturbances and tensions, and armed conflict”.<sup>79</sup> The same elements and principles related to independence, impartiality, promptness, thoroughness, effectiveness and transparency are spelled out in the Minnesota Protocol.<sup>80</sup>

The Minnesota Protocol recognizes, however, that in certain situations such as armed conflict, there might be some practical challenges in fully applying these standards. The example that is given is “the obligation on a State, as opposed to another actor, to investigate deaths linked to armed conflict when they occur on

74 A. Clapham, above note 72, p. 307.

75 General Comment 36, above note 1, fn. 259.

76 *Ibid.*

77 *Ibid.*, para. 28.

78 Minnesota Protocol on the Investigation of Potentially Unlawful Death, 2016 (Minnesota Protocol), paras 20–22, available at: [www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf](http://www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf).

79 *Ibid.*, para. 20.

80 *Ibid.*, pp. 7–10.

territory the State does not control”.<sup>81</sup> Here the suggestion is to record the constraints and reasons for non-compliance and publicly explain them. In other words, while the investigation may not be thorough, it should still be transparent and its limited scope justified.<sup>82</sup>

Confidential operational briefings would not be sufficient to replace an investigation in the context of military operations.<sup>83</sup> The Minnesota Protocol touches on the particularities of investigations related to the conduct of hostilities.<sup>84</sup> In case of casualties, it requires a post-operation assessment to establish the facts, including the accuracy of the targeting. If there are “reasonable grounds” to suspect that a war crime was committed, the State is obliged to carry out a full investigation and prosecute those who are responsible.<sup>85</sup> At a minimum, further inquiry is necessary even if the death resulted from a violation of IHL that would not amount to a war crime, and “where an investigation ... into the death is not specifically required under IHL”.<sup>86</sup>

## The dignity dimension

A significant addition to our understanding of the right to life is the new formulation in General Comment 36 that we are entitled “to enjoy a life with dignity”.<sup>87</sup> The ICCPR makes three references to dignity: twice in the preamble and once in Article 10 regarding the deprivation of liberty. The references in the preamble are rooted in the classical philosophical position that human rights derive from the inherent dignity of the individual, which is “the foundation of freedom, justice and peace in the world”.<sup>88</sup>

There is no reference to dignity in Article 6 of the ICCPR, and the term does not appear in the previous General Comments on this provision.<sup>89</sup> General Comment 36, however, refers to this notion seven times: when commenting on euthanasia, the impact of the denial of basic rights such as food, water and shelter, the effects of poverty, and environmental degradation.<sup>90</sup>

Nowhere in General Comment 36 do we find a definition of dignity, but paragraph 26 offers some indications as to how the notion connects to the right

81 *Ibid.*, para. 20.

82 *Ibid.*

83 Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee*, UN Doc. CCPR/C/ISR/CO/3, 3 September 2010, para. 9.

84 Minnesota Protocol, above note 78, para. 21.

85 *Ibid.*

86 *Ibid.* See also Office of the UN High Commissioner for Human Rights (OHCHR), *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law, Guidance and Practice*, New York and Geneva, 2015, available at: [www.ohchr.org/Documents/Publications/CoI\\_Guidance\\_and\\_Practice.pdf](http://www.ohchr.org/Documents/Publications/CoI_Guidance_and_Practice.pdf); Geneva Academy and ICRC, *Guidelines on Investigating Violations of International Humanitarian Law*, Geneva, September 2019, available at: [www.geneva-academy.ch/joomlatools-files/docman-files/Guidelines%20on%20Investigating%20Violations%20of%20IHL.pdf](http://www.geneva-academy.ch/joomlatools-files/docman-files/Guidelines%20on%20Investigating%20Violations%20of%20IHL.pdf).

87 General Comment 36, above note 1, para. 3.

88 Universal Declaration of Human Rights, UNGA Res. 217 A (III), 10 December 1948, Preamble.

89 See above note 39.

90 General Comment 36, above note 1, paras 9, 26, 50, 62.

to life. This is done through providing examples of the type of general conditions in society that could threaten life and by specifying measures that could be taken to establish adequate conditions to protect life.

### *Understanding “dignity”*

“Dignity” is an old notion with historic, religious, moral and philosophical connotations.<sup>91</sup> Since its inclusion in normative legal documents, scholars have been grappling with the question of whether it has normative content.

Multiple references to dignity in human rights and IHL can be found in instruments adopted in the immediate aftermath of World War II. In 1945, the UN Charter used two terms, “dignity” and “worth”, when reaffirming faith in every human being, while also referring to equality. In 1948, the UDHR echoed the Charter by asserting in its first article that all human beings are born free and equal in dignity and rights. The 1949 Geneva Conventions prohibit outrages against personal dignity in their Article 3 common to the four Conventions. These references reflect the belief that the restoration of human dignity was a main challenge in the post-war era.

An important early consideration of the meaning of dignity in modern international law came in the work of Oscar Schachter. Schachter, a UN legal adviser in the 1940s,<sup>92</sup> published in 1983 an article on the normative meaning of dignity.<sup>93</sup> Tracing the term to its etymological Latin root, he concluded that “when the UN Charter refers to the ‘dignity and worth’ of the human person, it uses two synonyms for the same concept”.<sup>94</sup>

Schachter reviewed the reference to dignity in a number of human rights treaties to establish whether it has a coherent normative content.<sup>95</sup> His aim was to see if there are practical consequences arising from invoking this notion, particularly “whether violations of dignity should as a rule be dealt with through legal action and the assertion of rights”.<sup>96</sup> When concretely invoked, “it has been generally assumed that a violation of human dignity can be recognized even if the abstract term cannot be defined”.<sup>97</sup> He concludes, however, that the meaning of dignity is better left “to intuitive understanding”.<sup>98</sup>

Looking afresh at how the term “dignity” features in human rights law today, one finds it in articulating the principle of equality,<sup>99</sup> the protection of

91 Jack Donnelly, “Human Rights and Human Dignity”, in *Protecting Dignity: An Agenda for Human Rights*, Swiss Initiative to Commemorate the 60th Anniversary of the UDHR, June 2009.

92 Wolfgang Saxon, “Oscar Schachter, 88, Law Professor and U.N. Aide”, obituary, *New York Times*, 17 December 2003.

93 See Oscar Schachter, “Human Dignity as a Normative Concept”, *American Journal of International Law*, Vol. 77, No. 4, 1983.

94 *Ibid.*, p. 849.

95 *Ibid.*, pp. 848–854.

96 *Ibid.*

97 *Ibid.*, pp. 849.

98 *Ibid.*

99 UDHR, Preamble and Art. 1.

persons deprived of liberty,<sup>100</sup> the right to education,<sup>101</sup> the rights of children with disabilities, discipline of children at school, and with regard to juvenile justice.<sup>102</sup> The Convention on the Rights of Persons with Disabilities includes the most references to dignity, as the term appears in the general principles, and with regard to non-discrimination, individual autonomy, freedom from exploitation and violence and abuse, as well as health, education and awareness-raising.<sup>103</sup> None of these provisions offers a legal definition of dignity, however.

As the ICRC president has noted, dignity is among the principles that IHL and international human rights law hold in common.<sup>104</sup> Additional Protocols I and II<sup>105</sup> broaden the scope of personal dignity beyond what appears in common Article 3 by adding references to “enforced prostitution and any form of indecent assault”.<sup>106</sup> Protocol I relating to international armed conflicts takes the issue a step further by considering that attacks against dignity committed on racial grounds may constitute war crimes.<sup>107</sup> The term “dignity” also appears in the Commentaries to the Geneva Conventions, and in multiple explanations of customary IHL rules, concerning the treatment of prisoners of war, the treatment of the sick, wounded and dead and in the context of detention or internment,<sup>108</sup> enforced disappearances, collective punishment, and rape and sexual violence.<sup>109</sup> The notion of dignity is also used in the context of humanitarian relief – as an illustration, in some conflicts, relief workers distribute “dignity kits” containing hygiene and sanitary items, as well as other items explicitly tailored towards the local needs of women and girls of reproductive age.<sup>110</sup>

As Christopher McCrudden points out, there is reference to dignity in national constitutions, laws and court decisions.<sup>111</sup> Despite its inclusion in the

100 ICCPR, Art. 10.

101 International Covenant on Economic, Social and Cultural Rights, Art. 13.

102 See, for instance, Convention on the Rights of the Child, Preamble and Arts 23, 28, 37, 39, 40.

103 See, for instance, Convention on the Rights of Persons with Disabilities, Preamble and Arts 1, 3, 8, 24.

104 Dignity is a common principle underlining the complementary relationship between human rights and IHL, as the ICRC president has stated. He has noted that IHL and international human rights law both “hold some of the answers, and they are crystalized in the principles of impartiality, non-discrimination, inclusion, equality and in humanity, dignity and agency.” ICRC, “The Law Does Not Discriminate: Neither Can We”, President’s Address to the Human Rights Council, 26 February 2019, available at: [www.icrc.org/en/document/law-does-not-discriminate-nor-can-we](http://www.icrc.org/en/document/law-does-not-discriminate-nor-can-we).

105 Additional Protocol I (AP I), Art. 75; Additional Protocol II (AP II), Art. 4. See also the ICJ *Nicaragua* case.

106 AP I, Art. 75; AP II, Art. 4.

107 AP I specifies that “practices involving outrages upon personal dignity, based on racial discrimination” are a grave breach of the Protocol, when committed wilfully and in violation of the Geneva Conventions or the Protocol (Art. (85(4)(c)). Outrages upon personal dignity are always prohibited, “whether committed by civilian or military agents” (Art. 75(2)(6)).

108 Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005, Rules 87, 90, 113, available at: <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1>.

109 *Ibid.*, Rules 90, 93, 98, 148, 187.

110 See, for example, Global Protection Cluster, GBV Sub-Cluster Turkey (Syria), “Dignity Kit Guidance Note”, Turkey, 2015, available at: [www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/dignity\\_kits\\_guidance\\_note\\_en.pdf](http://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/dignity_kits_guidance_note_en.pdf).

111 Christophe McCrudden, “Human Dignity and Judicial Interpretation of Human Rights”, *European Journal of International Law*, Vol. 19, No. 4, 2008.

statutes of the international criminal tribunals,<sup>112</sup> there is no international jurisprudence that defines dignity. In reviewing the case law of the *ad hoc* tribunals for the former Yugoslavia and Rwanda, one finds reference to the formulation in common Article 3.<sup>113</sup> Nonetheless, the jurisprudence of these judicial bodies does not provide further indications as to the normative elements of dignity. There is mention of this notion in the context of other violations, such as hate speech towards members of certain groups,<sup>114</sup> violations of physical integrity and in relation to protection from sexual assault, and the respect of the dead.<sup>115</sup>

The Rome Statute of the International Criminal Court refers to dignity when incorporating common Article 3 of the Geneva Conventions.<sup>116</sup> The Statute also requires the taking of appropriate measures to protect the dignity and privacy of victims and witnesses.<sup>117</sup> The Court's jurisprudence has not tackled these elements, however.

While the above overview indicates that it is difficult to ascribe a precise legal meaning to the notion of human dignity, we can identify some of its contours. McCrudden considers that there are three dimensions to dignity.<sup>118</sup> The first is that every human being possesses an intrinsic worth of just being human. The second is that this intrinsic worth should be respected and recognized by others; McCrudden calls this a "relational claim".<sup>119</sup> He suggests that human rights standards add a third important element: "the claim that the state should be seen to exist for the sake of the individual human being, and not vice versa".<sup>120</sup>

Frédéric Mégret and Florian Hoffmann also emphasize the inner worth and relational elements of this notion.<sup>121</sup> They stress that dignity is influenced by a host of psychological, cultural and social factors. Even if dignity belongs to each individual, it is constructed by and dependent on relations of the individual with others. It is also a holistic concept that is dependent on particular constellations of certain rights, and is in fact always something more than the sum of these

112 Article 4 of the Statute of the International Criminal Tribunal for Rwanda (ICTR) gives the Tribunal explicit jurisdiction over violations of common Article 3 and AP II.

113 In several pieces of ICTY and ICTR jurisprudence, the various chambers refer to "the right to respect for dignity". See, for example, ICTY, *Prosecutor v. Vojislav Šešelj*, Case No. MICT-16-99-A, Judgment (Appeals Chamber), 11 April 2018, para. 163; ICTR, *Prosecutor v. Ferdinand Nahimana et al. (Media Case)*, Case No. ICTR-99-52-A, Judgment (Appeals Chamber), 28 November 2007, paras 986–987. Also see: <http://cld.irmct.org/advanced-search/?&keyword=dignity>.

114 ICTY, *Šešelj*, above note 113; ICTR, *Nahimana*, above note 113.

115 ICTY, *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-A; ICTR, *Prosecutor v. Théoneste Bagosora et al. (Military I)*, Case No. ICTR-98-41-A.

116 Rome Statute, above note 5, Arts 8(2)(b)(xxi), 8(2)(ii).

117 *Ibid.*, Art. 68(1).

118 C. McCrudden, above note 111, pp. 679–680.

119 *Ibid.*

120 *Ibid.*

121 Frédéric Mégret *et al.*, "Human Dignity: A Special Focus on Vulnerable Groups", in *Protecting Dignity: An Agenda for Human Rights*, Swiss Initiative to Commemorate the 60th Anniversary of the UDHR, June 2009, available at: [www.researchgate.net/publication/254903575\\_Dignity\\_A\\_Special\\_Focus\\_on\\_Vulnerable\\_Groups](http://www.researchgate.net/publication/254903575_Dignity_A_Special_Focus_on_Vulnerable_Groups).

rights.<sup>122</sup> The notion of dignity therefore affects the content of various rights, through the recognition of individual worth and the demand of conduct that is consistent with such recognition.

Is there a value, then, in referring to the notion of dignity when exploring the content of the right to life? In responding to this question, it is instructive to recall the work of Jack Donnelly, who suggests that human dignity can be considered an objective that is achieved through the respect of human rights.<sup>123</sup> Human rights provide “a road map and a set of practices for constructing a life of dignity in the conditions of the contemporary world”.<sup>124</sup> In other words, human dignity becomes the sum of all human rights. In this way, human rights not only provide the elements for understanding dignity, but also offer the mechanisms and fora for its realization.

### *General conditions and policy measures*

General Comment 36 suggests that dignity serves a policy objective, particularly through its relational dimension. Paragraph 26 invites States to take “appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity”.<sup>125</sup>

The term “conditions” appears in the ICCPR. Its fourth preambular paragraph recognizes the need to create conditions “whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights”, asserting therefore the indivisibility and interdependence of rights. The ICCPR’s sixth preambular paragraph recalls the realization that individuals have duties to each other and to the community to which they belong, and that they are under the responsibility to strive for the promotion and observance of human rights.

Seen from the relational perspective, the right to enjoy a life with dignity is dependent on the conditions created in society by individuals, the community and the State. The State must take “appropriate measures” to prevent these conditions from deteriorating in a way that could affect human dignity. The examples provided in General Comment 36 help in shedding light on the areas that require attention. These include:

high levels of criminal and gun violence, pervasive traffic and industrial accidents, degradation of the environment, deprivation of land, territories and resources of indigenous peoples, the prevalence of life threatening diseases, such as AIDS, tuberculosis or malaria, extensive substance abuse, widespread hunger and malnutrition and extreme poverty and homelessness.<sup>126</sup>

Some of the examples cut across the survival and dignity dimensions of the right to life. The illustrations above are also taken from both conflict and non-conflict

122 *Ibid.*, p. 10.

123 J. Donnelly, above note 91, p. 13.

124 *Ibid.*

125 General Comment 36, above note 1, para. 26.

126 *Ibid.*, para. 26.

settings, as the footnotes to paragraph 26 indicate. They mix civil and political dimensions with economic, social and cultural issues and touch on the basic protections that need to be established to ensure survival and protect dignity. The examples appear to correspond as well to the category of “minimum core obligations”, as elaborated by the Committee on Economic, Social and Cultural Rights.<sup>127</sup> These include addressing threats such as starvation,<sup>128</sup> lack of access to the minimum essential amount of water,<sup>129</sup> the absence of essential primary health care, including essential drugs,<sup>130</sup> and lack of essential basic shelter and housing, including sanitation.<sup>131</sup> They also correspond to prohibitions under IHL and international criminal law.<sup>132</sup>

Paragraph 26 further proposes some structural measures and policy responses and encourages the adoption of strategic plans. The language in this paragraph demonstrates how the various human rights obligations could be integrated into a road map that aims at transforming policies and perspectives. They help to identify the specific results that need to be realized for accomplishing the overall goal of the enjoyment of a right to life with dignity.

These considerations are also relevant to the situation of protracted conflicts. In its report *Protracted Conflict and Humanitarian Action*,<sup>133</sup> the ICRC draws on its operational experience to describe its approach to humanitarian assistance. The report emphasizes that in conjunction with protection, humanitarian assistance becomes essential to addressing the social, economic and personal needs of individuals and communities during the span of such a conflict.

There is an ongoing debate about the extent to which humanitarians should be involved in responding to systemic failures in protecting the basic rights and needs of individuals during an armed conflict. Should they worry about emergency relief

127 Committee on Economic, Social, and Cultural Rights (CESCR), General Comment No. 3, “The Nature of States Parties’ Obligations”, UN Doc. E/1991/23, 14 December 1990 (General Comment 3).

128 *Ibid.*; CESCR, General Comment No. 12, “The Right to Adequate Food”, UN Doc. E/C.12/1999/5, 12 May 1995.

129 CESCR, General Comment No. 15, “The Right to Water”, UN Doc. E/C.12/2002/11, 20 January 2003.

130 General Comment 3, above note 127; CESCR, General Comment No. 14, “The Right to the Highest Attainable Standards of Health”, UN Doc. E/C.12/2000/4, 11 August 2000.

131 General Comment 3, above note 127; CESCR, General Comment No. 4, “The Right to Adequate Housing”, UN Doc. E/1992/23, 13 December 1991; CESCR, General Comment No. 7, “The Right to Adequate Housing: Forced Evictions”, UN Doc. E/1998/22, 20 May 1997.

132 Deliberately inflicting on a group conditions of life calculated to bring about its physical destruction, in whole or in part, may meet the threshold of the crime of genocide: Rome Statute, above note 5, Art. 6 (c). The crime against humanity of extermination entails intentional infliction of conditions such as deprivation of access to food and medicine, calculated to bring about the destruction of part of the population: *ibid.*, Art. 7(2)(b). With regard to war crimes, in international armed conflict, for example, it is a crime to use the starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies: *ibid.*, Art. 8(b)(xxv). In both international and non-international armed conflict, there is the crime of intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not military objectives: *ibid.*, Arts 8(b)(ix), 8(e)(iv).

133 ICRC, *Protracted Conflict and Humanitarian Action: Some Recent ICRC Experiences*, Geneva, 2016, available at: [www.icrc.org/sites/default/files/document/file\\_list/protracted\\_conflict\\_and\\_humanitarian\\_action\\_icrc\\_report\\_lr\\_29.08.16.pdf](http://www.icrc.org/sites/default/files/document/file_list/protracted_conflict_and_humanitarian_action_icrc_report_lr_29.08.16.pdf).

response or system support and long-term activities that may intersect with development programmes? How can they ensure that such activities are sustainable and can easily transform from relief to development? Is this their role as humanitarians? Can they and should they assume the legal obligation of the duty barriers, States and non-State actors, as relevant? Support for systems sometimes indeed blurs the lines regarding legal obligations and the distinction between the supporting role of humanitarian assistance and that of development activities.

For some, humanitarian action is for addressing the immediate needs of humans to survive, rather than structural issues. One humanitarian worker puts it this way: “Would you want ambulance teams to aim at strengthening the hospital system or improving nutrition? No. Should humanitarians be held accountable for ending hunger? No. They should be held accountable for feeding people who are starving.”<sup>134</sup> Others consider that humanitarians must play a role in addressing structural challenges,<sup>135</sup> particularly in the context of the implementation of the international policy framework of the Sustainable Development Goals (SDGs).<sup>136</sup> As one commentator put it, “the commitment and cooperation of humanitarian actors is imperative to the achievement of the SDGs and focusing efforts on realizing the agenda is key to building resilience to and preventing complex emergencies”.<sup>137</sup>

Looking at humanitarian action from the perspective of the enjoyment of the right to life with dignity is also important from the perspective of intergenerational rights. Here, we are confronted with law and policy considerations regarding the protection of the environment, for instance. General Comment 36 contributes to this debate by linking the right to life to broader international law regimes. Invoking the obligations under international environmental law, it considers the threats to a life with dignity that stem from environmental degradation, climate change and unsustainable development.<sup>138</sup> It points to the particular importance of ensuring respect for the right to life with dignity when designing environmental policies, including protection from “harm, pollution and climate change caused by public and private actors”.<sup>139</sup> Applying these principles to a specific case, the UN Human Rights Committee emphasized the State’s positive obligations in this regard, recalling that the State Party in question is also bound by the Stockholm Convention on Persistent Organic Pollutants in addition to its ICCPR obligations.<sup>140</sup>

134 Marc DuBois, “Don’t Blur the Lines between Development and Humanitarian Work”, *The Guardian*, 12 May 2016, available at: [www.theguardian.com/global-development-professionals-network/2016/may/12/dont-blur-the-lines-between-development-and-humanitarian-work](http://www.theguardian.com/global-development-professionals-network/2016/may/12/dont-blur-the-lines-between-development-and-humanitarian-work).

135 Alex Lia, “What Role do Humanitarians Play in the Achievement of the Sustainable Development Goals?”, Humanitarian Advisory Group, available at: <https://humanitarianadvisorygroup.org/what-role-do-humanitarians-play-in-the-achievement-of-the-sustainable-development-goals/>.

136 See the SDGs website, available at: [www.un.org/sustainabledevelopment/](http://www.un.org/sustainabledevelopment/).

137 A. Lia, above note 135.

138 General Comment 36, above note 1, para. 62.

139 *Ibid.*

140 OHCHR, “Paraguay Responsible for Human Rights Violations in Context of Massive Agrochemical Fumigations”, 14 August 2019, available at: [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24890&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24890&LangID=E).

The entitlement of the future generation, including those living in conflict settings, to enjoy a life with dignity was recently highlighted by the work of the ILC, building on the linkages between environmental law, human rights law and IHL.<sup>141</sup> In seeking authority for its draft principles on the protection of the environment in relation to armed conflict, the ILC draws attention to paragraph 26 of General Comment 36. It notes that “degradation of the environment” was listed “among general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity”.<sup>142</sup> This tells us that the two components of existence and dignity are essential for realizing the right to life in armed conflict.

## Final remarks

For decades, human rights defenders and humanitarian practitioners have been working to develop ways to assist those living under protracted conflicts. With the elaboration of General Comment 36, the UN Human Rights Committee is offering us an additional sophisticated tool to assist all individuals, including those living in conflict, in attaining their right to life in its full meaning. We can now view this right from the two dimensions of existence and dignity and be backed by the Committee’s authoritative legal approach.

General Comment 36 takes us beyond legal norms and into the practical and policy spheres of humanitarian action, conflict management and resolution, recovery and development. Tracing the term “protracted conflict” to its initiator Professor Edward Azar, we can see how it was intended to speak of the complexity of identity, the social dimension and the grievances that brew over time. Azar’s pioneering work invites us to deepen our understanding of what causes the conflict in the first place and of the entitlements and aspirations of individuals and groups. His hope was that this more profound approach would strengthen the ability to assist in convincing people to come out of armed conflict. Time has shown that his analysis remains relevant and is enhanced by the contemporary experience of today’s conflicts. General Comment 36 takes us further on this path by highlighting that all people, including those living in protracted conflict, have the right not only to survive but also to live in dignity. It is now up to all those working to manage and end conflicts to take these principles forward in a practical way.

141 ILC, above note 38, Chap. VI, “Protection of the Environment in Relation to Armed Conflicts”.

142 *Ibid.*, p. 271, fn. 1304.