# **Submission to the Human Rights Committee on its** [**Draft General Comment on Article 6 of the International Covenant on Civil and Political Rights – Right to life**](https://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/GCArticle6_EN.pdf)

Dr Natasa Mavronicola, Senior Lecturer in Law, University of Birmingham ([n.mavronicola@bham.ac.uk](mailto:n.mavronicola@bham.ac.uk))

**Professional Background**

**1.** I am a Senior Lecturer in Law at the University of Birmingham in the United Kingdom, teaching and researching in human rights law. I have several publications on the right not to be subjected to torture or to inhuman or degrading treatment or punishment and on the right to life.[[1]](#footnote-1) I have acted as Special Adviser to the United Nations Special Rapporteur on Torture, Professor Nils Melzer, since March 2017. The comments below reflect solely my own views.

**Summary**

**2.** My submission relates to the intersection between violations of the right to life and individual criminal liability. In summary, I argue that the Human Rights Committee must clarify that circumstances triggering State liability for arbitrary deprivations of life should not be seen as entirely coterminous with circumstances giving rise to individual criminal liability. This is because equating, or appearing to equate, the two can lead to either coercive overreach or dilution of the right to life.

**3.** I propose that the Committee should clarify that the circumstances in which a breach of the right to life can occur at the hands of State agents and thus render the State liable are broader than those that will engage the State’s positive obligation to criminalise and prosecute. The State commits a breach of the negative obligation under the right to life if its agents take life in circumstances in which the force used (which resulted in the taking of life) went beyond what was strictly necessary to protect life and limb, assessed through an objective test. This objective test will result in finding the State responsible for a breach of the right to life where the State has not produced objectively good reasons for considering that force was strictly necessary in the circumstances. This demands that the State show adequate objective reasons establishing both the need to use force and that the force used was strictly proportionate – that is, strictly not excessive – to the risk to life and limb at issue in the circumstances. The latter aspect requires alternatives, such as retreat, warnings, and other non-lethal or less-lethal means to be available, used, or considered first. On the other hand, the positive obligation to protect the right to life includes but is evidently not limited to criminal law provisions and prosecutions in circumstances disclosing individual criminal liability; the latter is best delimited by States themselves, subject to a check on reasonableness and adequacy by international mechanisms such as the Committee.

**Analysis**

**4.** I welcome much of the Human Rights Committee’s elaboration of the duty to protect life. The relevant section of the [Draft General Comment](https://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/GCArticle6_EN.pdf) (paragraphs 22-35) unpacks positive obligations on States that are underpinned and informed by the duties’ widely cast protective orientation. For example, paragraph 30, on the duty to take appropriate measures to address general conditions in society that may give rise to threats to life, offers vital guidance on the considerable substantive scope of States’ positive duties to protect life. My analysis below in no way aims to denounce the significant step taken by the Human Rights Committee to elaborate States’ positive duties, with the effective safeguarding of human life firmly at their core.

**5.** With that said, I wish to address the punitive dimension of these protective duties, found especially in paragraphs 23, 24, 25 and 31 of the [Draft General Comment](https://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/GCArticle6_EN.pdf). I refer, in particular, to the following passages:

23. The duty to protect by law the right to life entails that any substantive ground for deprivation of life must be prescribed by law, and defined with sufficient precision to avoid overly broad or arbitrary interpretation or application. Since deprivation of life by the authorities of the State is a matter of the utmost gravity, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities and the States parties must ensure full compliance with all of the relevant legal provisions. The duty to protect by law the right to life also requires States parties to organize all State organs and governance structures through which public authority is exercised in a manner consistent with the need to respect and ensure the right to life, including establishing by law adequate institutions and procedures for preventing deprivation of life, *investigating and prosecuting potential cases of unlawful deprivation of life, meting out punishment* and providing full reparation.

24. States parties must enact a protective legal framework which includes effective *criminal prohibitions* *on all forms of arbitrary deprivations of life by individuals*, including intentional and negligent homicide, disproportionate use of firearms, infanticide, “honour” killings, lynching, violent hate crimes, blood feuds, death threats, terrorist attacks and *other manifestations of violence or incitement to violence that are likely to result in a deprivation of life. The criminal sanctions attached to these crimes must be commensurate with their gravity, while remaining compatible with all provisions of the Covenant.*

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

[assuming, in conjunction with other paragraphs, that the duty to ‘punish’ extends beyond legal entities to individual persons]

(…)

31. An important element of the protection afforded to the right to life by the Covenant is *the obligation to investigate and prosecute* allegations of deprivation of life by State authorities or by private individuals and entities, *including allegations of excessive use of lethal force*. This obligation is implicit in the obligation to protect and is reinforced by the general duty to ensure the rights recognized in the Covenant, which is articulated in article 2, paragraph 1, when read in conjunction with article 6, paragraph 1, and the duty to provide an effective *remedy* to victims of human rights violations and their families, which is articulated in article 2, paragraph 3 of the Covenant, when read in conjunction with article 6, paragraph 1. *Investigations and prosecutions of alleged deprivations of life must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity*, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations. They should explore, inter alia, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates. *Given the importance of the right to life, States parties must generally refrain from addressing violations of article 6 merely through administrative or disciplinary measures, and a criminal investigation, which should lead if enough incriminating evidence is gathered to a criminal prosecution, is normally required.* Immunities and amnesties provided to perpetrators of intentional killings and to their superiors, and comparable measures leading to de facto or de jure impunity, are, as a rule, incompatible with the duty to respect and ensure the right to life, and to provide victims with an effective remedy. (citations omitted, emphasis added)

**6.** I suggest that the comment be redrafted (a) to avoid conflating the negative obligation to refrain from arbitrary deprivations of life with circumstances giving rise to individual criminal liability; and (b) to avoid any indication that criminal redress is a ‘remedy’ to which victims of human rights violations are entitled. The reason for suggesting this re-drafting is that a path which aligns human rights violations and (domestic) criminal liability risks either coercive overreach or dilution of the right to life itself.[[2]](#footnote-2) I consider coercive overreach in paras 7-12 below, and dilution in paras 13-17 below.

*Coercive Overreach*

**7.** It is well established that ‘the law must strictly control and limit the circumstances in which a person may be deprived of his life by the authorities of a State’.[[3]](#footnote-3) As explained in paragraph 18 of the [Draft General Comment](https://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/GCArticle6_EN.pdf), arbitrary deprivation of life will be found to have occurred in a range of circumstances (with varying degrees of individual culpability involved in any of these circumstances):

A deprivation of life may be authorized by domestic law and still be arbitrary. The 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. For example, in order not to be qualified as arbitrary under article 6, the application of lethal force by a person acting in self-defense, or by another person coming to his or her defence, must be reasonable and necessary in view of the threat posed by the attacker; it must represent a method of last resort after non-lethal alternatives, including warnings, have been exhausted or deemed inadequate; the amount of force applied cannot exceed the amount strictly needed for responding to the threat; the force applied must be carefully directed, as far as possible, only against the attacker; and the threat responded to must be extreme, involving imminent death or serious injury.* The deliberate use of potentially lethal force for law enforcement purposes which is intended to address threats, not of extreme gravity, such as protecting private property or preventing the escape from custody of a suspected criminal or a convict who does not pose a serious and imminent threat to the lives or bodily integrity of others, cannot be regarded as a proportionate use of force. ([Draft General Comment](https://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/GCArticle6_EN.pdf), para 18, citations omitted, emphasis added)

**8.** The Committee – like other human rights bodies – rightly holds the State to a very high standard in terms of the compatibility with the right to life of its agents’ deployment of (potentially) lethal force. In particular, the practice of treaty bodies in general is consistent with the UN Basic Principles on the Use of Force and Firearms, as the late Sir Nigel Rodley affirms, and establishes that the use of (potentially) lethal force must be strictly necessary, i.e. the means used must be no more than necessary to achieve the objective, and proportionate, that is, the level of force must be ‘no more than the harm to be avoided’.[[4]](#footnote-4) The assessment involved encompasses considerations of legality, necessity, proportionality, and precautions, as unpacked by Professor Nils Melzer.[[5]](#footnote-5)

**9.** The stringent test outlined above is notmodelled on a criminal law standard of liability for homicide, which will often encompass narrower *mens rea* and wider scope for defence or mitigation. The standard for State responsibility for human rights breaches can appropriately be and isstricter, demanding more from the State. This position is premised not only on the significant value placed on human life under human rights law, which requires that the State show a particularly high regard for human life, but also on the context in which the State obligation is located, namely the distribution of power: there is a legitimate presumption that, in contexts in which the State’s agents may resort to force capable of being lethal, it is they – rather than their potential targets – who hold the superior capacity to kill but also to react to threats or acts of violence using non-lethal means or means less likely to be lethal. Indeed, the State’s agents may well hold a monopoly on the legitimate use of certain types of potentially lethal force. In light of this, the right to life is rightly read as placing the onus on the State to offer robust justification for not just the perceived necessity, but the strict objective necessity and proportionality of the force used.

**10.** If State liability for Article 6 violations on the one hand, and *individual* liability *for criminal wrongs* on the other were to be seen as coterminous, this would amount to what Professor Liora Lazarus has referred to as coercive overreach.[[6]](#footnote-6) Equating the two would significantly shrink the circumstances in which individuals tend to be absolved or excused in a criminal context for taking life. In particular, individual culpability may be vitiated or mitigated – per (varied) domestic laws – on the basis of subjective perceptions of the danger posed, which may prove to be mistaken.[[7]](#footnote-7) This is not – nor should it be – the approach applicable to determining whether the State is liable for violating the right to life. Professor Anja Seibert-Fohr has put the matter in the following terms, in relation to the European Court of Human Rights, in her monograph on prosecuting serious human rights violations:

The argument has been made that domestic criminal law should mirror the defence standards developed by the European Court of Human Rights… But these standards were developed to determine State responsibility for the taking of life and do not mean that States parties must criminalize the acts accordingly. State responsibility should not be confused with individual criminal responsibility.[[8]](#footnote-8)

**11.** There is therefore a risk of substantive coercive overreach but also one of institutional overreach. Human rights law and human rights bodies are not arenas of criminal law-making or criminal justice. Equating Article 6 breaches with criminal offences via positive obligations is bordering on supranational criminal law-*making*. Demanding that particular acts and omissions are criminalised and/or that criminal procedures and redress mechanisms are set in motion in a number of circumstances might unduly come to resemble a supranational criminal adjudication in the absence of a criminal procedure.

**12.** Additionally, it is worth considering Article 15 of the ICCPR:

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.
2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

It is by no means clear that acts which violate human rights – including such fundamental rights as the right to life – are automatically recognised as criminal offences at international law or according to general principles of law; therefore an indication that the two might be equated may be contrary to Article 15 ECHR. This arises not least on account of the fact that, as the Committee highlights in paragraph 18 of the [Draft General Comment](https://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/GCArticle6_EN.pdf), a ‘deprivation of life may be authorized by domestic law and still be arbitrary’.

*Dilution*

**13.** A blurring of boundaries between State responsibility for violations of the right to life and individual criminal liability also risks the dilution of the right to life itself. As I argue in a forthcoming article, this has materialised in the case law of the European Court of Human Rights (ECtHR) on Article 2 of the European Convention on Human Rights (ECHR).[[9]](#footnote-9) Having made criminalisation central to the implications of (some) breaches of the right to life and effectively come close to equating State liability with individual criminal liability, the ECtHR has simultaneously taken to applying a criminal-law-styled standard of culpability to finding a breach of the right to life by the State. In this way, the absolute necessity test by which the ECtHR has determined whether the State’s use of (potentially) lethal force violated the right to life, which is proclaimed to be very stringent in principle,[[10]](#footnote-10) has been significantly diluted.

**14.** The way this has occurred is as follows. After pronouncing that only circumstances of absolute necessity can justify the use of lethal force, the ECtHR proceeds to assess the State agent’s use of such force through an ‘honest belief’ test:

The use of force by agents of the state in pursuit of one of the aims delineated in para.2 of art.2 of the Convention may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken.[[11]](#footnote-11)

This test of ‘honest belief’ is not only applied to the State agent’s assessment of the danger at issue, but also to their choice of reaction. It can therefore play a decisive role not only in assessing the necessity of using force to repel an attack on one of the grounds outlined in Article 2(2) ECHR, but also in determining the *absolute* necessity – which requires force to be both necessary and strictly proportionate to the threat at issue – of the use of lethal force. Whilst the quoted excerpt indicates an objective element within the Court’s assessment, with ‘honest belief’ being circumscribed by the ‘for good reasons’ criterion, the case law shows a readiness to find that mistaken beliefs legitimise the use of lethal force in circumstances which objectively did not disclose an absolute necessity to use lethal force or even any objectively good reasons to do so. Equating the breach of Article 2 ECHR with criminal liability, *Da Silva* cements this, with the ECtHR’s Grand Chamber stating that ‘the existence of “good reasons” should be determined subjectively’[[12]](#footnote-12) and suggesting that ‘the Court has not treated reasonableness as a separate requirement but rather as a relevant factor in determining whether a belief was honestly and genuinely held’,[[13]](#footnote-13) referencing prior case law in which this approach had been effectively adopted if not explicitly affirmed, such as *Bubbins* *v UK*.[[14]](#footnote-14)

**15.** In *Bubbins*, a police-officer shot and killed an unarmed man who was mistaken for an intruder in his own home and appeared to be aiming a weapon from the window of his flat towards police-officers surrounding it. The substantive complaint on Article 2 grounds was that there had been a breach of Article 2 both in the actions of the officer who shot and killed the man, and in the overall planning and control of the operation which led to the use of lethal force which was not absolutely necessary. The ECtHR applied the ‘honest belief’ test *both* on the question of whether the victim posed a danger *and* on the question whether it was (absolutely) necessary to respond to this danger by opening fire: ‘The Court sees no reason to doubt that Officer B honestly believed that his life was in danger and that it was necessary to open fire on Michael Fitzgerald in order to protect himself and his colleagues.’[[15]](#footnote-15) The ECtHR suggested that ‘[t]o hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and the lives of others’.[[16]](#footnote-16) It also indicated that ‘detached from the events at issue, it cannot substitute its own assessment of the situation for that of an officer who was required to react in the heat of the moment to avert an honestly perceived danger to his life’,[[17]](#footnote-17) before concluding that ‘the use of lethal force in the circumstances of this case, albeit highly regrettable, was not disproportionate and did not exceed what was absolutely necessary to avert what was honestly perceived by Officer B to be a real and immediate risk to his life and the lives of his colleagues’.[[18]](#footnote-18) These prudential and institutionally grounded arguments act to insulate operational decisions from intensive scrutiny – that is, both in terms of the substantive standard of assessment and in terms of the onus of justification on the State. Professor Andrew Ashworth has suggested that *Bubbins* effectively embodies a subjective test.[[19]](#footnote-19) Neil Martin has commented on the case that the ‘robust stance’ signified by the absolute necessity test ‘was somewhat tempered…with the Court reminding itself of the risks of substituting its own assessment of events, made with the “wisdom of hindsight'”, for the view of a state agent acting in the heat of the moment’; he thus argued that ‘[g]iven that there were a number of noticeable errors and questionable decisions made in the conduct of the operation, it would seem that the Court will require *an extremely high level of error, ineptitude or bad judgement* before it will find a breach of Art.2’.[[20]](#footnote-20)

**16.** Attesting further to the problem of dilution is the case of *Giuliani*. In *Giuliani*, concerning an anti-globalisation protester who was shot by a carabiniero when a jeep carrying three carabinieri was surrounded by violent protesters including the victim during the G8 summit in Genoa, the Court reasoned similarly to *Bubbins* through the ‘honest belief’ test.[[21]](#footnote-21) Applying it both to the question of whether circumstances called for force and the question of whether the force ultimately used by the carabiniero – shooting blindly from the jeep – was strictly proportionate to the risk posed,[[22]](#footnote-22) it found no violation of Article 2. The court also found the organisational deficiencies which resulted in three highly inexperienced carabinieri armed with only lethal weapons at their disposal being surrounded by protesters in the context of a pre-planned, highly securitised event – the G8 summit – not to fall foul of its stringent standards in minimising the likelihood of loss of life.[[23]](#footnote-23)

**17.** To avoid the prospect of dilution of the right to life, it must be clarified that the necessity and proportionality principles by which it is determined whether the use of (potentially) lethal force violates the right to life represent an objective standard of assessment, and not one of which only an extremely high level of error, ineptitude or bad judgement would fall foul. Whilst the subjective perception of the perpetrator may suitably play a role in determining individual criminal liability, the right to life standard is not whether the person inflicting such force considered it, in good faith, to be (strictly) necessary. Thus, the objective criterion ought to take centre stage in a human rights assessment, while individual criminal liability may appropriately be carved through a an assessment of subjective perception and intent – an assessment which only a full fair trial can provide.

**Proposal**

**18.** My proposal is for the General Comment to be re-drafted to reflect the points made in paragraph 7 of my submissions above. In particular:

* 1. . The obligation to investigate should not be seen as indelibly linked to prosecutions, but rather to establishing truth and pursuing reparations and accountability, the latter being broader than punishment. These goals better reflect the protective orientation of States’ positive duties, both in terms of offering adequate redress to victims and with a view to revising practices and avoiding repeated violations.[[24]](#footnote-24) This obligation demands an effective investigation aimed at establishing whether the State has violated the right to life, and determining and pursuing individual liability according to the domestic substantive parameters of liability. The latter should be seen as an obligation not of result – guaranteeing that individuals will be held liable – but of means, i.e. ensuring that the necessary processes are available and pursued to determine liability. Therefore, any indication that punishment is a ‘remedy’ for victims should be avoided.
  2. . It should be made clear that the framework duty to establish a law and enforcement system that protects the right to life does not require that all deprivations of life that violate Article 6 ICCPR be rendered criminal offences. Rather, a holistic legal and administrative framework is required that protects life and seeks to prevent circumstances in which violations of Article 6 occur, and ensures that accountability and reparations are offered where the State violates Article 6.
  3. The stringency of the negative obligation not to use (potentially) lethal force should be cemented, and the objective standards by which it is to be determined should be elaborated, as follows:
* The State commits a breach of the negative obligation under the right to life if its agents take life in circumstances in which the force used (which resulted in the taking of life) went beyond what was strictly necessaryand proportionate, assessed through an objective test. This objective test will find the State responsible for a breach of the right to life in circumstances in which *the State has not produced objectively good reasons* for considering that force was strictly necessary and proportionate in the circumstances. This demands that the State show adequate objective reasons establishing both the need to use force and that the force used was strictly proportionate – that is, strictly not excessive – to the risk to life and limb at issue in the circumstances. The latter aspect requires alternatives, such as retreat, warnings, and other non-lethal or ‘less-lethal’ means to be available, used, or considered first.
* The State is also to be found responsible for a breach of the right to life in circumstances in which the planning of a particular operation, capable of resulting in the use of such force, was mismanaged in such a way as to create the conditions for (potentially) lethal force which was not strictly necessary to be used. The test should consider whether the State took all reasonable and adequate steps within its power to avert or minimise such risks.[[25]](#footnote-25) Findings of a breach of Article 6 in circumstances of operational mismanagement of the use of force entail that the *State* has violated Article 6, not necessarily that the individual perpetrator is or ought to be held criminally liable, nor necessarilythat the officials involved in directing and organising the particular operation which failed to minimise the risk to life ought to be held liable individually – on a civil or criminal basis. This is the approach ultimately taken by the ECtHR in *McCann*.[[26]](#footnote-26) Such an approach ensures that whilst individuals are not necessarily criminally punished for systemic errors – either their own or their superiors’ – the State may nonetheless be found responsible for violating the right to life and proceed to refine its operations accordingly, in line with the protective orientation of the right to life and the Committee’s approach to the right to life.

**19.** Both the right to life and human freedom are fundamental to human rights. My submission supports clarifications that safeguard both.

Dr Natasa Mavronicola

Birmingham Law School

University of Birmingham, UK

([n.mavronicola@bham.ac.uk](mailto:n.mavronicola@bham.ac.uk))

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1. N. Mavronicola, ‘Taking Life and Liberty Seriously: Reconsidering Criminal Liability under Article 2 of the ECHR’ (2017) *Modern Law Review* (forthcoming); N. Mavronicola, ‘Is the Prohibition against Torture and Cruel, Inhuman and Degrading Treatment Absolute in International Human Rights Law? A Reply to Steven Greer’ (2017) 17(3) *Human Rights Law Review* 479–498; N. Mavronicola, ‘Crime, Punishment and Article 3 ECHR: Puzzles and Prospects of Applying an Absolute Right in a Penal Context’ (2015) 15(4) *Human Rights Law Review* 721-743; N. Mavronicola and F. Messineo, ‘Relatively Absolute? The Undermining of Article 3 ECHR in *Ahmad v UK*’ (2013) 76(3) *Modern Law Review* 589-603; N. Mavronicola, ‘*Güler and Öngel v Turkey*: Article 3 of the European Convention on Human Rights and Strasbourg’s Discourse on the Justified Use of Force’ (2013) 76(2) *Modern Law Review* 370-382; N. Mavronicola, ‘What is an “absolute right”? Deciphering Absoluteness in the Context of Article 3 of the European Convention on Human Rights’ (2012) 12(4) *Human Rights Law Review* 723-758; Ν. Μαυρονικόλα, ‘Το δικαίωμα στη ζωή στο πλαίσιο βίαιων διαδηλώσεων: *Giuliani και Gaggio κατά Ιταλίας*’ (2011) II *Εφαρμογές Δημοσίου Δικαίου* (transl: N. Mavronicola, ‘The right to life in the context of violent demonstrations: *Giuliani and Gaggio v Italy*’ (2011) II *Public Law Applications*). [↑](#footnote-ref-1)
2. For a critical examination of European Court of Human Rights doctrine in this area, see N. Mavronicola, ‘Taking Life and Liberty Seriously: Reconsidering Criminal Liability under Article 2 of the ECHR’ (2017) *Modern Law Review* (forthcoming). [↑](#footnote-ref-2)
3. Communication No. R.11/45, Suarez de Guerrero v. Colombia, Views adopted on 31 March 1982, para. 13.2. See Human Rights Committee, General Comment 6, para 3; [Draft General Comment](https://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/GCArticle6_EN.pdf), para 23. [↑](#footnote-ref-3)
4. See N. Rodley, ‘Integrity of the Person’ in D. Moeckli, S. Shah and S. Sivakumaran, *International Human Rights Law* (2nd edn, OUP 2014) at 186. [↑](#footnote-ref-4)
5. N. Melzer, *Targeted Killing in International Law* (OUP 2009), chapter 6, especially at 100-102. [↑](#footnote-ref-5)
6. See L. Lazarus, ‘Positive Obligations and Criminal Justice: Duties to Protect or Coerce?’, in L. Zedner and J. Roberts (eds), *Principles and Values in Criminal Law and Criminal Justice: Essays in Honour of Andrew Ashworth* (OUP 2012) at 149. [↑](#footnote-ref-6)
7. See, on this, S. Uniacke, ‘Proportionality and Self-defense’ (2011) 30 *Law & Philosophy* 253, at 256: ‘Someone who maintains that exact proportionality would be discernable to a suitably informed impartial observer in a calm frame of mind could concede some leeway in practice given the pressures on the actor in the situation. A familiar legal specification that self-defense must not be “substantially disproportionate” would be consistent with such a view, for instance.’ See further J. Horder (ed), *Homicide Law in Comparative Perspective* (Hart Publishing 2007) chapter 2; A. Duff, *Answering for Crime: Responsibility and Liability in the Criminal Law* (Hart Publishing 2007) chapters 9 and 11; F. Leverick, *Killing in Self-defence* (OUP 2006) chapter 1; B. Sangero, *Self-Defence in Criminal Law* (Hart Publishing 2006) chapter 1. See also J. Horder, ‘Self-Defence, Necessity and Duress: Understanding the Relationship’ (1998) 11(1) *The Canadian Journal of Law and Jurisprudence* 143. [↑](#footnote-ref-7)
8. A. Seibert-Fohr, *Prosecuting Serious Human Rights Violations* (OUP 2009) 147, at fn 232, citing B. Emmerson, A. Ashworth and A. MacDonald, *Human Rights and Criminal Justice* (2nd edn, Sweet & Maxwell 2007) 750, 756. [↑](#footnote-ref-8)
9. N. Mavronicola, ‘Taking Life and Liberty Seriously: Reconsidering Criminal Liability under Article 2 of the ECHR’ (2017) *Modern Law Review* (forthcoming). [↑](#footnote-ref-9)
10. In the case of Article 2 ECHR, this is reflected in the wording of ‘no more than absolutely necessary’ found in Article 2(2) ECHR. See also, for example, *Nachova v Bulgaria* (2006) 42 EHRR 43, paras 94-97. [↑](#footnote-ref-10)
11. *Giuliani and Gaggio v Italy* (2012) 54 EHRR 10,para 178. [↑](#footnote-ref-11)
12. *Armani Da Silva v UK* (2016) 63 EHRR 12,para 247. [↑](#footnote-ref-12)
13. *Armani Da Silva v UK* (2016) 63 EHRR 12,para 248. [↑](#footnote-ref-13)
14. *Bubbins v UK* (2005) 41 EHRR 24. [↑](#footnote-ref-14)
15. *Bubbins v UK* (2005) 41 EHRR 24, para 138. [↑](#footnote-ref-15)
16. *Bubbins v UK* (2005) 41 EHRR 24, para 138. [↑](#footnote-ref-16)
17. *Bubbins v UK* (2005) 41 EHRR 24, para 139. [↑](#footnote-ref-17)
18. *Bubbins v UK* (2005) 41 EHRR 24, para 140. [↑](#footnote-ref-18)
19. A. Ashworth, *Positive Obligations in Criminal Law* (Hart Publishing 2015) at 205. [↑](#footnote-ref-19)
20. N. Martin, ‘*Bubbins v United Kingdom*: Civil Remedies and the Right to Life’ (2006) 69(2) *Modern Law Review* 242, at 246 (citations omitted, emphasis added). [↑](#footnote-ref-20)
21. *Giuliani and Gaggio v Italy* (2012) 54 EHRR 10, para 178. [↑](#footnote-ref-21)
22. *Giuliani and Gaggio v Italy* (2012) 54 EHRR 10, paras 178-195. [↑](#footnote-ref-22)
23. *Giuliani and Gaggio v Italy* (2012) 54 EHRR 10, paras 244-262. [↑](#footnote-ref-23)
24. On the aim of non-repetition, see Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 8 March 2006, para 41. [↑](#footnote-ref-24)
25. This approach is generally adopted in relation to regulating policing by the ECtHR: see, for example, *Osman v UK* (2000) 29 EHRR 245,para 115; *Makaratzis v Greece* (2005) 41 EHRR 49,para 58; *McCann v UK* (1996) 21 EHRR 97, paras 150, 213-214. [↑](#footnote-ref-25)
26. *McCann v UK* (1996) 21 EHRR 97,paras 213-214. [↑](#footnote-ref-26)