

IN THE EUROPEAN COURT OF HUMAN RIGHTS (THIRD SECTION)

Allahverdiyev v Armenia (Application No. 25576/16)

Hakobyan v Azerbaijan (Application No. 74566/16)

**WRITTEN SUBMISSIONS ON BEHALF OF THE
THIRD PARTY INTERVENERS**

**European Human Rights Advocacy Centre and the
Allard K. Lowenstein International Human Rights Clinic**

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I. Introduction

1. These submissions are made by the European Human Rights Advocacy Centre (EHRAC) and the Allard K. Lowenstein International Human Rights Clinic at Yale Law School (“Lowenstein Clinic”) (together, “the Interveners”), pursuant to the leave to intervene as a third party granted by the President of the Third Section on 21 October 2019 in accordance with Rule 44 § 3 of the Rules of Court. By the Court’s letters of 14 November 2019, the Interveners were granted extensions until 3 January 2020 to lodge the submissions.
2. The *Allahverdiyev* and *Hakobyan* cases raise questions about the proper approach to determining the Court’s jurisdiction where States parties’ conduct has extraterritorial effects. The cases concern the renewal of hostilities on 2 April 2016 between Armenia and Azerbaijan relating to the ongoing dispute over Nagorno-Karabakh. Both Armenian and Azerbaijani forces launched shells and rockets from their respective territories into villages a few kilometres beyond the line of contact. Affected civilians from both States have lodged complaints alleging violations of their rights under the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), including violations of their right to life under Article 2.
3. In this submission, the Interveners provide the European Court of Human Rights (“the Court”) with observations concerning States’ exercise of extraterritorial jurisdiction. The Interveners briefly address the Court’s established case-law on extraterritorial jurisdiction (including the “effective control” and “state agent control” tests); consider how an underlying “cause-and-effect” jurisdictional principle allows the Court to ensure State accountability for violations of the Convention resulting from the use of lethal force; and outline the “direct and foreseeable effects” jurisdictional test under international law.

II. The Court has historically recognized extraterritorial jurisdiction under the principles of “effective control” and/or “state agent control”, both of which rely on an underlying principle of cause-and-effect.

4. It is well established in the Court’s case-law that a State may have human rights obligations beyond its national borders. Article 1 of the Convention provides that Contracting States shall secure the Convention’s rights and freedoms to everyone “within their jurisdiction.” The European Commission of Human Rights (“the Commission”) historically interpreted Article 1 to bind States to secure the rights of “all persons under [the States’] actual authority and responsibility, whether that authority is exercised within their own territory or abroad”.¹ In so doing, the Commission took account of the language of Article 1 (both

¹ *Cyprus v. Turkey*, nos. 6780/74 and 6950/75, Commission decision of 26 May 1975, DR 2, p. 125, at p. 136.

the English and the French texts) and its object, as well as the purposes of the Convention as a whole.²

5. The Court has found that a State exercises extraterritorial jurisdiction primarily in two circumstances. First, the Court has indicated that a State has human rights obligations outside its national borders in territory over which the State exercises “effective control.”³ The Court has found effective control when a State assumes some of the public powers normally exercised by a sovereign government.⁴ A State might also be found responsible for human rights violations perpetrated by a separatist regime in a second State to which the original State provided vital military, economic, financial, and political support.⁵
6. Second, the Court has recognized that a State agent’s use of force against an individual outside the State’s national borders may bring the affected individual under the jurisdiction of the State.⁶ The Court has applied this principle of “state agent control” when State agents take an individual into their custody abroad, implicating Article 1 jurisdiction.⁷ In *Issa v. Turkey*, the Court found that Turkey exercised extraterritorial jurisdiction when its armed

² *Id.*

³ The Court has based jurisdiction on claims of effective control in a number of situations. *See, e.g., Cyprus v. Turkey* [GC], no. 25781/94, §§ 77-78, ECHR 2001-IV (noting that Turkey had “effective overall control over northern Cyprus” because Turkey had military control and continuously prevented Cyprus from “exercising their Convention obligations in northern Cyprus”); *Ilascu and Others v. Moldova and Russia* [GC], no. 48787/99, §§ 392-94, ECHR 2004-VII (finding that Russia exercised effective control in the disputed territory of Transnistria because the governing authority in the area was “under the decisive influence [] of the Russian Federation, and . . . that [the governing authority] survives by virtue of the military, economic, financial and political support given to it by the Russian Federation”); *see also Solomou and Others v. Turkey*, no. 36832/97, 24 June 2008; *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04, 8252/05 and 18454/06, ECHR 2012.

⁴ *Al-Skeini and Others v. United Kingdom* [GC], no. 55721/07, § 149, 7 July 2011 (finding that the United Kingdom exercised effective control as it assumed authority and responsibility for the maintenance of security in south-east Iraq).

⁵ *Ilaşcu and Others v. Moldova and Russia*, cited above, §§ 138-139; *Ivanțoc and Others v. Moldova and Russia*, no. 23687/05, § 115, 15 November 2011.

⁶ The Court has found jurisdiction on the basis of agent control in several cases. *See, e.g., Öcalan v. Turkey* [GC], no. 46221/99, § 91, ECHR 2005-IV (finding that “directly after being handed over to the Turkish officials by the Kenyan officials, the applicant was effectively under Turkish authority and therefore within the ‘jurisdiction’ of that State”); *Al-Saadoon and Mufdhi v. the United Kingdom*, no. 61498/08, § 140, ECHR 2010 (reasoning that the applicants fell within the United Kingdom’s jurisdiction because “the respondent State’s armed forces, having entered Iraq, took active steps to bring the applicants within the United Kingdom’s jurisdiction, by arresting them and holding them in British-run detention facilities”); *Medvedyev and Others v. France* [GC], no. 3394/03, § 67, ECHR 2010 (finding that because French naval officers “exercised full and exclusive control” over the applicants, even if “de facto” rather than de jure, “the applicants were effectively within France’s jurisdiction”); *Al-Skeini and Others v. the United Kingdom* [GC], cited above, § 149 (determining that United Kingdom soldiers “exercised authority and control over individuals killed” in Basrah, resulting in a finding of jurisdiction); *Jaloud v. Netherlands* [GC], no. 47708/08, § 152, 20 November 2014 (finding that the death of the applicant’s relative occurred “within the ‘jurisdiction’ of the Netherlands” because that State’s agents had “assert[ed] authority and control over persons passing through the checkpoint”).

⁷ *See, e.g., Öcalan v. Turkey*, cited above; *Al-Saadoon and Mufdhi v. the United Kingdom*, cited above.

forces exerted lethal force on individuals in foreign territory.⁸ Other examples of agent control include extraterritorial acts of diplomatic and consular representatives that may entail State responsibility under the Convention,⁹ as well as the activity of State agents on board aircraft or ships registered in, or flying the flag of, the State.¹⁰

7. When relying on the effective control or state agent control jurisdictional tests, the Court holds a State responsible for conduct that is attributable to that State and that has the effect of violating rights and freedoms protected under the Convention. The Commission's early jurisprudence established the connection between State conduct and extraterritorial effects,¹¹ and, as early as 1992, the Court reiterated that State responsibility "can be involved because of acts of their authorities producing effects outside their own territory".¹² This "cause-and-effect" language is prevalent throughout the Court's discussion of States' extraterritorial jurisdiction, both in effective control cases and in state agent control cases.¹³ The Court's case law in this area predominantly relates to the use of force (including lethal force) by a State's armed forces or security forces. Indeed, the Court has acknowledged that the very notion of "effective control" is predicated on "military

⁸ *Issa v. Turkey*, no. 31821/96, § 74, 16 November 2004. The case involved allegations of Turkish armed forces firing and killing individuals in northern Iraq. The Court ultimately found that the applicants had not met the standard of proof for finding that Turkish agents were responsible for the deaths. See also *Mansur Pad and Others v. Turkey* (dec.), no. 60167/00, 28 June 2007. There, the Court found that the victims of the events in question (at or near the border between Iran and Turkey) had been within the jurisdiction of Turkey, on the basis that "the Government had already admitted that the fire discharged from the helicopters had caused the killing of the applicants' relatives." *Id.* § 54.

⁹ See, e.g., *X. v. Germany*, no. 1611/62, Commission decision of 25 September 1965, Yearbook 8, p. 158; *X. v. the United Kingdom*, no. 7547/76, Commission decision of 15 December 1977, DR 12, p. 73; *M. v. Denmark*, no. 17392/90, Commission decision of 14 October 1992, DR 73, p. 193.

¹⁰ See, e.g., *Mansur Pad and Others v. Turkey*, cited above.

¹¹ *X. v. Germany*, cited above ("Whereas, in certain respects, the nationals of a Contracting State are within its 'jurisdiction' even when domiciled or resident abroad; whereas, in particular, the diplomatic and consular representatives of their country of origin perform certain duties with regard to them which may, in certain circumstances, make that country liable in respect of the Convention."); *Cyprus v. Turkey*, cited above, 26 May 1975 ("It is clear from the language, in particular of the French text, and the object of [Article 1], and from the purpose of the Convention as a whole, that the High Contracting Parties are bound to secure the said rights and freedoms to all persons under their actual authority and responsibility, whether that authority is exercised within their own territory or abroad."); *Hess v. the United Kingdom*, no. 6231/73, Commission decision of 28 May 1975 ("As the Commission has already decided, a State is under certain circumstances responsible under the Convention for the actions of its authorities outside its territory."); *X. and Y. v. Switzerland*, nos. 7289/75 and 7349/76, Commission decision of 14 July 1977 ("The Commission first recalls its earlier case law where it has already been established that the Contracting Parties' responsibility under the Convention is also engaged insofar as they exercise jurisdiction outside their territory and thereby bring persons or property within their actual authority or control.").

¹² *Drozd and Janousek v. France and Spain*, judgment of 26 June 1992, Series A no. 240, p. 34, § 91.

¹³ See, e.g., *Loizidou v. Turkey* [GC], no. 15318/89, judgment of 23 March 1995, Series A no. 310, § 62 ("[T]he responsibility of Contracting Parties can be involved because of acts of their authorities, whether performed within or outside national boundaries, which produce effects outside their own territory."); *Issa v. Turkey*, cited above, § 68 ("In exceptional circumstances the acts of Contracting States performed outside their territory or which produce effects there ('extra-territorial act') may amount to exercise by them of their jurisdiction within the meaning of Article 1 of the Convention."); *Medvedyev v. France*, cited above, § 64 ("In keeping with the essentially territorial notion of jurisdiction, the Court has accepted only in exceptional cases that acts of the Contracting States performed, or producing effects, outside their territories can constitute an exercise of jurisdiction by them for the purposes of Article 1 of the Convention.").

action – whether lawful or unlawful”.¹⁴ In the state agent control cases, the Court has emphasized that what is decisive is the exercise of physical power and control over a person.¹⁵

8. Furthermore, in applying its jurisdictional tests, the Court takes account of the extent of State control in order to assess the extent of that State’s Convention obligations. For example, as Turkey was deemed to have “effective overall control” over northern Cyprus, its jurisdiction extended “to securing the entire range of substantive rights” in the Convention (and the relevant Protocols).¹⁶ By contrast, where a State exercises control over an individual through its agents, the State is only under an obligation to secure the Convention rights “that are relevant to the situation of that individual”.¹⁷
9. The Grand Chamber of the Court has also recently confirmed that, in light of the procedural obligation arising under Article 2 – to carry out an effective investigation – a jurisdictional link pursuant to Article 1 may arise concerning a death that has occurred outside a State’s jurisdiction (even where it is not alleged that state agents were involved), either (i) where the investigative or judicial authorities of the State institute their own criminal investigation, or (ii) if “special features” apply.¹⁸

III. The cause-and-effect jurisdictional principle allows the Court to ensure State accountability for violations of the Convention resulting from the use of lethal force.

10. The Court has recognized extraterritorial jurisdiction as a way to ensure that States are accountable for their human rights violations committed in other countries:

“Accountability in such situations stems from the fact that Article 1 of the Convention cannot be interpreted so as to allow a State party to perpetrate violations of the Convention on the territory of another State, which it could not perpetrate on its own territory.”¹⁹

11. Article 2 prohibits a State from intentionally and arbitrarily depriving any person of life. The Court has, of course, applied this prohibition to cases in which State agents use lethal force within their national borders,²⁰ but it has also applied it when State agents use lethal

¹⁴ See, e.g., *Loizidou v. Turkey*, cited above, § 62.

¹⁵ See, e.g., *Al-Skeini and Others v. the United Kingdom*, cited above, § 136.

¹⁶ *Cyprus v. Turkey*, cited above, § 77, ECHR 2001-IV.

¹⁷ In this way, the Court has explicitly acknowledged that Convention rights can be “divided and tailored.” *Al-Skeini and Others v. the United Kingdom*, cited above, § 137.

¹⁸ *Güzelyurtlu and Others v. Cyprus and Turkey*, no. 36925/07, §§ 188-190, 29 January 2019. The Court stipulated that the “special features” “will necessarily depend on the particular circumstances of each case and may vary considerably from one case to the other.” *Id.* § 190.

¹⁹ *Issa v. Turkey*, cited above, § 71.

²⁰ See, e.g., *Isayeva v. Russia*, no. 57950/00, 24 February 2005.

force outside their national borders.²¹ The Court's longstanding inclusion in its jurisprudence of the concept of an "extra-territorial act" precludes an interpretation of Article 1 that could otherwise lead to unconscionable results. Without this concept, a State would have jurisdiction if an Article 2 violation both originated and produced effects within that State's borders, but the same State might not have jurisdiction if the effects of the actions resulted in the deprivation of life at any distance (however small) beyond the State's borders. This would be an untenable distortion of the Convention.

12. The Court addressed this issue in the connected cases of *Solomou and Others v. Turkey*²² and *Andreou v. Turkey*.²³ In *Solomou and Others v. Turkey*, Turkish soldiers shot and killed Mr Solomou as he climbed a flagpole during a demonstration taking place close to the UN buffer zone in Cyprus. Although Turkey did not have effective control over the buffer zone, the Court, nevertheless, found that Turkey had jurisdiction over Mr Solomou. In reaching this decision, the Court took account of three factors: (i) the acts complained of took place partly outside territory controlled by Turkey (in the UN buffer zone); (ii) the flag pole that Mr Solomou had been climbing when he was shot was situated in territory that was deemed to be under Turkey's "effective control"; and (iii) Turkish-Cypriot forces fired the shots that killed Mr Solomou.

13. In *Andreou*, the applicant was shot while standing completely outside Turkish-occupied territory. Nevertheless, the Court found that Turkey had jurisdiction, reiterating that "in exceptional circumstances, the acts of Contracting States which produce effects outside their territory and over which they exercise no control or authority may amount to the exercise by them of jurisdiction within the meaning of Article 1 of the Convention". The Court found that Turkey had jurisdiction because (i) Turkish or Turkish Cypriot uniformed personnel from the territory of the Turkish Republic of Northern Cyprus fired shots that caused the applicant's injuries; and (ii) the applicant was standing outside territory controlled by Turkey, but within territory controlled by Cyprus, a State party to the Convention.²⁴ The Court concluded that Turkey's jurisdiction was engaged because the opening of fire on a crowd at close range was the "direct and immediate cause" of the applicant's injuries.

14. Given that the violations under Article 2 of the Convention in both *Solomou and Others* and *Andreou* originated from the same event and were perpetrated by the same actors,

²¹ See, e.g., *Isaak v. Turkey* (dec.), no. 44587/98, 28 September 2006; *Al-Saadoon and Mufdhi v. the United Kingdom*, cited above, § 140.

²² *Solomou and Others v. Turkey*, no. 36832/97, ECHR 2008.

²³ *Andreou v. Turkey* (dec.), no. 45653/99, ECHR 2009.

²⁴ Compare to *Banković and Others v. Belgium and Others* (dec.) [GC], no. 52207/99, ECHR 2001-XII, in which the Court did not find jurisdiction, in part because the actions in *Banković and Others* occurred entirely outside of territory covered by the Convention. The reasoning in *Banković and Others* does not apply in the instant cases because the territory which is the subject of these cases is covered by the Convention.

finding jurisdiction in *Solomou and Others* and failing to find jurisdiction in *Andreou* would have produced an incompatible result. Instead, the Court found jurisdiction in *Andreou* by relying on the underlying principle of cause-and-effect, expressed as a test of whether a State's action was the *direct and immediate* cause of the violations of the Convention.

15. A “direct and immediate cause” test reflects the notion of proximity of effects, which was expressly recognized by the Grand Chamber in *Ilaşcu and Others v. Moldova and Russia*:

“A State's responsibility may also be engaged on account of acts which have sufficiently proximate repercussions on rights guaranteed by the Convention, even if those repercussions occur outside its jurisdiction.”²⁵

16. The particular context in which the Court applied the “direct and immediate cause” test in *Andreou* entails an element of *foreseeability* – in other words, it was foreseeable that opening fire on a crowd at close range would result in personal injury. The Court already incorporates an underlying principle of foreseeability into its assessment of responsibility under the positive obligations to prevent violations of Articles 2 and 3. It is reflected in the “real and immediate risk to life” test, which was laid down by the Grand Chamber of the Court in the *Osman* judgment: “...[I]t is sufficient for an applicant to show that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge”.²⁶ Equally, the Court's evaluation of responsibility for violations of Article 3 occurring beyond the territorial jurisdiction of a State, and in territory over which it has no control, is also premised on the foreseeability of harm. For example, in *El-Masri*, the Grand Chamber assessed the action taken by the respondent State which had “as a direct consequence the exposure of an individual to proscribed ill-treatment”, requiring an examination of the “foreseeable consequences” of sending the applicant to the receiving country.²⁷

17. The “direct and immediate cause test” and the element of foreseeability have been applied by a range of international actors when assessing questions of jurisdiction, which is considered in the next section.

²⁵ Cited above, § 317.

²⁶ *Osman v. United Kingdom*, no. 23452/94, § 116, 28 October 1998.

²⁷ *El-Masri v. the former Yugoslav Republic of Macedonia*, no. 39630/09, §§ 212-213, 31 December 2012. See also *Soering v. United Kingdom*, 7 July 1989, no. 14038/88, para. 90.

IV. A “direct-and-foreseeable effects” test for extraterritorial jurisdiction in international law.

18. A “direct-and-foreseeable effects” test would ensure that the Court meets its Convention obligations in a way that is also consistent with international law. The United Nations Human Rights Committee and the Inter-American and African human rights systems recognize such a principle through their respective jurisdictional tests. The 2011 Maastricht Principles also support this test.
19. The UN Human Rights Committee has recently and expressly confirmed that, where military or other state activity affects the right to life, extraterritorial jurisdiction incorporates a direct-and-foreseeable effects test. The Committee’s General Comment No. 36 (2018) on the right to life, under Article 6 of the International Covenant on Civil and Political Rights (ICCPR), states that:

... a State party has an obligation to respect and to ensure the rights under article 6 of all persons who are within its territory and all persons subject to its jurisdiction, that is, all persons over whose enjoyment of the right to life it exercises power or effective control. This includes persons located outside any territory effectively controlled by the State, whose right to life is nonetheless impacted by its military or other activities in a *direct and reasonably foreseeable manner*.²⁸

The 2018 General Comment builds on early jurisprudence of the Human Rights Committee noting that jurisdiction in Article 1 of the First Optional Protocol to the ICCPR refers “not to the place where the violation occurred, but rather to the relationship between the individual and the State in relation to a violation of any of the rights set forth in the Covenant, wherever they occurred”.²⁹

20. The Inter-American Court of Human Rights has embraced a version of a “direct-and-foreseeable effects” test for extraterritorial jurisdiction. In a 2017 advisory opinion in response to a request submitted by the Republic of Colombia regarding the environment and human rights,³⁰ the Inter-American Court interpreted jurisdiction to encompass cross-border “effects” where there is a direct causal relationship between activities in one State and violations of the rights of people in another State. If such a causal relationship exists, any person whose rights are affected is deemed to fall within the jurisdiction of the State

²⁸ ICCPR, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, 30 October 2018, § 63 (emphasis added).

²⁹ *Sergio Euben Lopez Burgos v. Uruguay*, Communication No. R.12/52, U.N. Doc. Supp. No. 40 (A/36/40) at 176, § 12.2 (1981); *Lilian Celiberti de Casariego v. Uruguay*, Communication No. 56/1979, UN Doc. CCPR/C/OP/1 at 92, § 10.2 (1984).

³⁰ IACtHR, Advisory Opinion OC-23/17, November 15, 2017.

in which the harm originated.³¹ This is true whether or not the person was physically within the responsible State's territory and regardless of whether the person was under the responsible State's control at the time the victim experienced the harm.³²

21. The Inter-American Court qualified this direct-cause principle by noting that not all State actions that result in cross-border harm will necessarily trigger the responsible State's jurisdiction.³³ Instead, such jurisdiction arises only when the relevant State authorities knew, or should have known, of a real and immediate risk to the right to life and took no action to prevent this infringement on the right.³⁴ The Inter-American Court thus limits its recognition of jurisdiction to cases where the effects of a State's action are both foreseeable and violate the right to life.

22. The decision of the Inter-American Commission on Human Rights in *Armando Alejandro Jr. and others v. Cuba*³⁵ also supports a jurisdictional test of direct-and-foreseeable effects. In that case, Cuban agents, flying Cuban military aircraft and acting under instructions from the military control tower in Havana, shot down civilian airplanes in international airspace. In finding that the victims were within Cuban jurisdiction, the Commission relied on the fact that the victims in the case "died as a consequence of *direct* actions" taken by the Cuban agents.³⁶ Here, although the Commission used the language of agent control, the underlying principle in finding extraterritorial jurisdiction was the direct and foreseeable effects that the State's act caused.

³¹ *Id.* § 101 ("A efectos de la Convención Americana, cuando ocurre un daño transfronterizo que afecte derechos convencionales, se entiende que las personas cuyos derechos han sido vulnerados se encuentran bajo la jurisdicción del Estado de origen si existe una relación de causalidad entre el hecho que se originó en su territorio y la afectación de los derechos humanos de personas fuera de su territorio."); *id.* § 102 ("El ejercicio de la jurisdicción por parte del Estado de origen frente a daños transfronterizos se basa en el entendimiento de que es el Estado, en cuyo territorio o bajo cuya jurisdicción se realizan estas actividades, quien tiene el control efectivo sobre las mismas y está en posición de impedir que se cause un daño transfronterizo que afecte el disfrute de los derechos humanos de individuos fuera de su territorio. Las posibles víctimas de las consecuencias negativas de esas actividades se encuentran bajo la jurisdicción del Estado de origen, a efecto de la posible responsabilidad del Estado por el incumplimiento de su obligación de prevenir daños transfronterizos. Ahora bien, no cualquier afectación activa esta responsabilidad. Los límites y características de esta obligación se explican en mayor detalle en el capítulo VIII de esta Opinión."); *id.* § 103 ("Ahora bien, en todo supuesto, debe existir una relación de causalidad entre el daño ocasionado y la acción u omisión del Estado de origen frente a actividades en su territorio o bajo su jurisdicción o control. En el Capítulo VIII de esta Opinión se detallan el contenido, alcance, términos y características de estas obligaciones.").

³² *Id.* §§ 101-03.

³³ *Id.* § 102 ("Ahora bien, no cualquier afectación activa esta responsabilidad.").

³⁴ *Id.* § 120 ("Adicionalmente, teniendo en cuenta las dificultades que implican la planificación y adopción de políticas públicas y las elecciones de carácter operativo que deben ser tomadas en función de prioridades y recursos, las obligaciones positivas del Estado deben interpretarse de forma que no se imponga a las autoridades una carga imposible o desproporcionada. Para que surja esta obligación positiva, debe establecerse que: (i) al momento de los hechos las autoridades sabían o debían saber de la existencia de una situación de riesgo real e inmediato para la vida de un individuo o grupo de individuos determinados, y no tomaron las medidas necesarias dentro del ámbito de sus atribuciones que razonablemente podían esperarse para prevenir o evitar ese riesgo, y (ii) que existe una relación de causalidad entre la afectación a la vida o a la integridad y el daño significativo causado al medio ambiente.").

³⁵ *Armando Alejandro Jr. and Others v. Cuba* (Brothers to the Rescue), IACHR Report No. 86/99, Case No. 11.589, 29 Sept. 1999, Ann. Rep. IACHR 1999.

³⁶ *Id.* § 25 (emphasis added).

23. The African human rights system takes a similar approach. The African Charter on Human and Peoples' Rights guarantees the right to life. The African Commission on Human and Peoples' Rights has stated that the nature of a State's obligations to individuals outside that State's territory depends, in part, on "whether the State engages in conduct which could *reasonably be foreseen* to result in an unlawful deprivation of life."³⁷
24. The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights ("Maastricht Principles")³⁸ also make clear that courts should adopt a broad understanding of extraterritorial jurisdiction. The Maastricht Principles not only recognize that a State has jurisdiction in "situations over which it exercises authority or effective control,"³⁹ but also include within the scope of a State's jurisdiction "situations over which State acts or omissions bring about *foreseeable effects* . . . outside its territory."⁴⁰

IV. Conclusion.

25. The Court has recognized that acts which a State carries out within its national borders that produce effects in territory over which the State exercises no control or authority may engage that State's jurisdiction within the meaning of Article 1 of the Convention.⁴¹ When a State's use of force beyond its territory infringes upon a person's right to life, particularly when that person is in territory covered by the Convention, the Court can determine jurisdiction under Article 1 by applying a "direct-and-foreseeable effects" test. Invoking such a test would ensure that the Court meets its Convention obligations in a way that is consistent with its jurisprudence on extraterritorial jurisdiction and with international human rights law more broadly.

³⁷ African Commission on Human and People's Rights, § 14 *General Comment No. 3 on the African Charter on Human and People's Rights: The Right to Life (art.4)*, adopted during its 57th Ordinary Session, held in Banjul, The Gambia, in November 2015 (emphasis added).

³⁸ Available at: https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23 (Accessed 19 December 2019).

³⁹ *Id.* § 9(a).

⁴⁰ *Id.* § 9(b) (emphasis added).

⁴¹ See, e.g., *Öcalan v. Turkey*, cited above; *Andreou v. Turkey*, cited above; *Al-Saadoon and Mufdhi v. the United Kingdom*, cited above; *Medvedyev v. France*, cited above; *Al-Skeini and Others v. the United Kingdom*, cited above; *Jaloud v. Netherlands*, cited above; see also *Cyprus v. Turkey*, cited above, ECHR 2001-IV.