

# Legal Exceptions to the Inalienable Right to Life

By DR. WASEEM AHMAD QURESHI\*

## Introduction

THE RIGHT TO LIFE is the most fundamental and imperative human right.<sup>1</sup> All other human rights depend on it<sup>2</sup> because a human cannot enjoy other human rights without it.<sup>3</sup> Therefore, it is imperative to understand the true meaning and scope of the right to life in human rights law and the ways in which humanity is protected by it. This piece tries to answer the following questions: (1) whose right to life is protected by human rights law? (2) Is the right to life limited in any way by the law? (3) Is it even absolute, when millions of people are being killed to protect others' right to life in the ongoing onslaught against humanity in armed conflicts and wars?<sup>4</sup> The right to life is, perhaps, the most protected right among all others,<sup>5</sup> present in nearly every major human rights treaty<sup>6</sup> and included in numerous national

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\* Advocate Supreme Court of Pakistan

1. See WILLIAM SCHABAS, *IRISH CTR. FOR HUMAN RIGHTS & NAT'L UNIV. OF IRELAND, GALWAY, THE ABOLITION OF THE DEATH PENALTY IN INTERNATIONAL LAW* 8 (3d ed., 2002).

2. *Id.* at 8.

3. LINDA HAJJAR LEIB, *HUMAN RIGHTS AND THE ENVIRONMENT: PHILOSOPHICAL, THEORETICAL AND LEGAL PERSPECTIVES* 72 (2011).

4. See DAVID K. CHAN, *BEYOND JUST WAR: A VIRTUE ETHICS APPROACH* 60–61 (2016).

5. See Noëlle Quénivet, *The Right to Life in International Humanitarian Law and Human Rights Law*, in *INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW: TOWARDS A NEW MERGER IN INTERNATIONAL LAW* 331, 331 (Roberta Arnold & Noëlle Quénivet eds., 2008).

6. *Id.*; see also G.A Res. 217 A (III), Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR]; see also G.A. Res. 2200 A (XXI), at 60 (Mar. 23, 1976) [hereinafter ICCPR]; see also League of Arab States, Arab Charter on Human Rights art. 5, May 22, 2002, 12 INT'L HUM RTS. REP. 893 [hereinafter ArCHR]; see also Org. of African Unity [OAU] African Charter on Human and Peoples' Rights art. 4, at 246 (June 27, 1981) [hereinafter ACHPR]; see also Article 4, American Convention on Human Rights (1978) [hereinafter ACHR]; see also American Declaration on the Rights and Duties of Man, art. I, O.A.S. Res. XXX, O.A.S. Doc. OAS/Ser.L.V/I.4 Rev.9 (1948), [https://www.aaas.org/sites/default/files/American\\_Declaration\\_Rights\\_and\\_Duties\\_Man\\_Eng.pdf](https://www.aaas.org/sites/default/files/American_Declaration_Rights_and_Duties_Man_Eng.pdf) [hereinafter ADRDM]; see also European Convention on Human Rights art. 2, Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter ECHR]; see also United Nations Convention for the Protection of

constitutions around the world.<sup>7</sup> Yet, domestic law and constitutions help very little in explaining the protection and scope of the right to life.<sup>8</sup> Hence, this piece explores the international treaties and customary international law that revolve around the right to life and delves into the acknowledged principles of the right to life to acquire a comprehensive understanding of the right to life and its constraints. Accordingly, to define its scope, this piece tries to determine all the legal exceptions and constraints to the right to life in treaty, customary international, and domestic law.

Section I of this piece tries to define the right to life by discussing its codifications in major international human rights law treaties, regional human rights instruments, and select constitutions, addressed in I(A), I(B), and I(C), respectively.

Sections II, III, IV, and V of this piece try to define the legal exceptions to the right to life. Section II discusses the right to life within the context of capital punishment. Section II(A) discusses the debate on capital punishment, and section II(B) outlines practices of capital punishment around the world. Section III discusses abortion as a legal exception to the right to life. Section III(A) discusses the debate surrounding it, and section III(B) its practices. Section IV of this piece discusses the right to life and euthanasia. Section IV(A) explains its classifications and connotations, Section IV(B) the debate surrounding it, and Section IV(C) its practices. The last section of this piece, section V, discusses the right to life in the context of law enforcement and armed conflicts. Section V(A) discusses the principles of shooting, necessity, proportionality, and precaution in law enforcement under human rights law. Section V(B) briefly explains the protection and violability of the right to life under international humanitarian law.

## I. The Right to Life

Because the right to life is the most fundamental human right and a foundation for all other human rights,<sup>9</sup> this section defines the

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Human Rights and Fundamental Freedoms art. 2, Nov. 4, 1950, 213 U.N.T.S. 222 (entered into force Sept. 3, 1953) [hereinafter CPHRFF].

7. U.S. CONST. amend. XIV, § 1; *see also* Canada Act, 1982, c11 (U.K.); *see also* KONSTITUTSIJA ROSSISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 20 (Russ); *see also* PAKISTAN CONST. art. 9; *see also* INDIA CONST. art. 21; *see also* Türkiye Cumhuriyeti Anayasası Madde 17.

8. APHRODITE SMAGADI, BRITISH INST. OF INT'L AND COMPARATIVE LAW, SOURCEBOOK OF INTERNATIONAL HUMAN RIGHTS MATERIAL 82 (2008).

9. *See* SCHABAS, *supra* note 1, at 8.

right to life in general and discusses what it entails as well as the extent of its incorporation in international, regional, and constitutional law.

The right to life is an inherent right under human rights law, which all human beings possess naturally as their birthright.<sup>10</sup> The former judge Kate O'Regan of the South African Constitutional Court<sup>11</sup> articulated the importance of the right to life beautifully in the case *S v. Makwanyane*:

[T]he right to life is in one sense, antecedent to all the other rights in the constitution. Without life in the sense of existence, it would not be possible to exercise rights or to be the bearer of them. But the right to life as was included in the Constitution not simply to enshrine the right to existence. It is not a mere organic matter the constitution cherishes, but the right to human life, the right to share in the experience of humanity. This concept of human life is at the center of our Constitutional values. The constitution seeks to establish a society where the individual value of each member of the community is recognized and treasured . . . . The right to life is more than existence; it is the right to be treasured as human being with dignity, without such dignity, human life is substantially diminished. Without life, there cannot be dignity.<sup>12</sup>

Owing to its intrinsic importance, relative to all other fundamental human rights, courts in countries such as South Africa have applied wide margins in the application of the right to life, which means that the right to life is routinely included in the complementary human rights that support or sustain life.<sup>13</sup> Such court practices reflect the reasoning that the right to life is consistent with all other human rights and that other human rights are interconnectedly dependent on the right to life.<sup>14</sup> Therefore, it can be rightfully assumed that the right to life is indispensable because, without it, humans cannot exist,<sup>15</sup> and because all other human rights are validated through it.<sup>16</sup>

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10. Francesca Puigpelat Marti, *Cloning, human dignity and the Spanish Constitution*, 5 JORNADES CIENTIFIQUES DE L'INSTITUT D'ESTUDIS CATALANS 78–79 (1999).

11. See *Kate O'Regan: Director of the Bonavero Institute of Human Rights*, UNIVERSITY OF OXFORD FACULTY OF LAW, <https://www.law.ox.ac.uk/people/kate-oregan> [<https://perma.cc/X6V2-SK4Z>].

12. *S v. Makwanyane*, 1995 (SA) 391 (CC) at para. 318 (S. Afr.).

13. Kgorohlo Micro Moabelo, *Inconsistency in Judicial Decisions: The Right to Life in Perspective*, 54 (Feb. 2014) (unpublished LLM dissertation, University of South Africa).

14. *Id.*; see also SCHABAS, *supra* note 1, at 8.

15. LEIB, *supra* note 3, at 72.

16. SCHABAS, *supra* note 1, at 8.

This deduction is also reflected in case law. In the case of *Khalidova et al. v. Russia*,<sup>17</sup> the European Court of the Human Rights (“Eur. Ct. H.R.”), which enforces the European Convention on Human Rights,<sup>18</sup> concluded that Russia violated its citizens’ right to life by not effectively investigating disappearances.<sup>19</sup> In this case, the Eur. Ct. H.R. reasoned that, since the right to life is the most fundamental human right, it cannot be derogated from in any circumstance.<sup>20</sup> The same principles were affirmed in *McCann and Others v. United Kingdom*.<sup>21</sup> In this case, the Eur. Ct. H.R. interpreted Article 2 of the European Convention on Human Rights and considered the circumstances where deprivation of life may be justified under its exceptions.<sup>22</sup> In *McCann*, soldiers shot down terrorists on suspicion of attempting to trigger a car explosion in a public place.<sup>23</sup> However, no explosives or detonators were found on the scene, but a vehicle that was headed to the same spot was laced with a time-bomb was registered under the suspects’ names.<sup>24</sup> The court reasoned that the use of force must be “absolutely necessary” and “strictly proportionate” to achieving a legitimate aim.<sup>25</sup> Similarly, in *Pretty v. United Kingdom*, the Eur. Ct. H.R. also recognized that “without life, one cannot enjoy any of the other rights.”<sup>26</sup> Within the same context, the Hungarian Constitutional Court went a step further by stating that the right to life is the “mother right” of all other rights.<sup>27</sup>

However, similar to other human rights, the right to life is not unconditional or absolute, because the same codifications that foster the right to life also constrain it.<sup>28</sup> For the purposes of this piece, such

17. *Khalidova and Others v. Russia*, App. No. 22877/04, Merits & Just Satisfaction, para. 98, (Eur. Ct. H.R. Oct. 11, 2008).

18. MARK TUSHNET, *WEAK COURTS, STRONG RIGHTS: JUDICIAL REVIEW AND SOCIAL WELFARE RIGHTS IN COMPARATIVE CONSTITUTIONAL LAW* 70–71 (2009).

19. *Khalidova*, para. 98, 124.

20. *Khalidova*, para. 88.

21. *McCann and Others v. U.K.*, App. No. 18984/91, 21 Eur. H.R. Rep. 97, 137.

22. *Id.* at 160–61.

23. *Id.*

24. *Id.*

25. *Id.*

26. Cristian Claudiu Teodorescu, *The Right to Life Guaranteed by the European Convention on Human Rights and its Exceptions*, DNY PRAVA – 2010 – DAYS OF LAW, 1. ED. BRNO: MASARYK UNIVERSITY § 1, [https://www.law.muni.cz/sborniky/dny\\_prava\\_2010/files/prispevky/11\\_evropa/TEODORESCU\\_Cristian%20Claudiu\\_\(4344\).pdf](https://www.law.muni.cz/sborniky/dny_prava_2010/files/prispevky/11_evropa/TEODORESCU_Cristian%20Claudiu_(4344).pdf) [https://perma.cc/4FCF-44LR].

27. Teodorescu, *supra* note 26, at § 1.

28. See U.S. CONST. amend. XIV, § 1; see also Canada Act, 1982, c11 (U.K.); see also KONSTITUTSIJA ROSSISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 20 (Russ); see also PAKISTAN CONST. art. 9; see also INDIA CONST. art. 21; see also Türkiye Cumhuriyeti Anayasası Madde 17; see also UDHR, *supra* note 6; see also ICCPR, *supra* note 6; see also ArCHR, *supra*

constraints on the right to life will be referred to as “exceptions” to the right to life under law. Hence, in order to comprehend the exceptions to the right to life, it is vitally important to first understand what, generally, the right to life is and what it entails.

At its most basic, the right to life means the right of a person to live and not die.<sup>29</sup> The right to life also means that the state must protect, promote, and preserve people’s right to life,<sup>30</sup> such that no one may be arbitrarily deprived of his or her life.<sup>31</sup> As such, the state owes certain duties toward its people.<sup>32</sup> For instance, every state has a duty to ensure that a person’s life is not taken unlawfully.<sup>33</sup> Similarly, every state has a duty to protect human life in instances that involve risk, for example, where death is preventable through medical treatment.<sup>34</sup> The state’s failure to save the lives of people with treatable medical conditions would infringe on the right to life<sup>35</sup> because it has a duty to avoid such preventable death.<sup>36</sup> Furthermore, a state can prevent the deaths of its law enforcement agents by simply providing helmets and bulletproof vests.<sup>37</sup> Similarly, a state can prevent the death of its citizens by capturing and punishing criminals.<sup>38</sup> Law enforcement agents may even take a person’s life in order to protect another person’s right to life.<sup>39</sup>

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note 6, *see also* ACHPR, *supra* note 6; *see also* ACHR, *supra* note 6; *see also* ADRDM, *supra* note 6; *see also* ECHR, *supra* note 6; *see also* CPHRFF, *supra* note 6.

29. ERNEST VAN DEN HAAG & JOHN PHILLIPS CONRAD, *THE DEATH PENALTY: A DEBATE* 261 (2013).

30. *See* JENNY STEELE, *TORT LAW: TEXT, CASES, AND MATERIALS* 171 (4th ed. 2010).

31. HAAG & CONRAD, *supra* note 29, at 261.

32. *See* STEELE, *supra* note 30, at 171.

33. BRID MORIARTY & EVA MASSA, *LAW SOCIETY OF IRELAND, HUMAN RIGHTS LAW* 225 (4th ed. 2012).

34. Elizabeth Wicks, *Positive and Negative Obligations under the Right to Life in English Medical Law: Letting Patients Die*, in *THE RIGHT TO LIFE AND THE VALUE OF LIFE: ORIENTATIONS IN LAW, POLITICS AND ETHICS* 311, 330–31 (Jon Yorke ed., 2016).

35. *See id.*

36. *See* Oscar Parra-Vera, *The Protection of the Right to Health through Individual Petitions before the Inter-American System of Human Rights*, in *LITIGATING THE RIGHT TO HEALTH IN AFRICA: CHALLENGES AND PROSPECTS* 256 (Ebenezer Durojaye ed., 2016).

37. *See* IAN PARK, *THE RIGHT TO LIFE IN ARMED CONFLICT* 27 n.96 (2018).

38. RHONA SMITH, *INTERNATIONAL HUMAN RIGHTS LAW* 220 (7th ed. 2018) [hereinafter “INTERNATIONAL HUMAN RIGHTS LAW”].

39. Gloria Gaggioli, *Lethal Force and Drone: The Human Rights Question*, in *LEGITIMACY AND DRONES: INVESTIGATING THE LEGALITY, MORALITY AND EFFICACY OF UCAVs* 91, 102 (Steven Barela ed., 2015).

All human rights in the global community are either contained in international laws<sup>40</sup> or provisioned in domestic laws through constitutional guarantees. Yet, several major countries like China<sup>41</sup> and Australia<sup>42</sup> have not incorporated the right to life into their constitutional laws. However, since the right to life is widely protected under domestic and international law, all domestic<sup>43</sup> and international courts<sup>44</sup> must also enforce it. Where constitutions do not guarantee the right to life, domestic courts must protect the right by enforcing international law.<sup>45</sup>

Some people only recognize a person's right to life after he or she is born,<sup>46</sup> while others recognize the right to life of unborn children.<sup>47</sup> As compared to international law, domestic and constitutional laws do not give a detailed insight into the right to life.<sup>48</sup> Therefore, it is reasonable to review international human rights law on the right to life, as this right is binding and enforceable in each and every contracting state. Accordingly, section I(A) assesses the right to life under international human rights law instruments, section I(B) addresses the right to life under regional human rights instruments, and section I(C) examines the right to life under select constitutional laws.

### A. The Right to Life in International Human Rights Law

A number of international and regional human rights instruments explicitly protect the right to life.<sup>49</sup> This section provides select provisions from international human rights law.

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40. See e.g., United Nations, Office of the High Commissioner for Human Rights, *The Core International Human Rights Treaties*, Volume 918 (UNITED NATIONS PUBLICATIONS, 2006).

41. Jing Men, *The EU and China: Norms vs. Pragmatism*, in AN EU INNOVATIVE EXTERNAL ACTION? 93 (Ludovica Marchi Balossi-Restelli, 2011).

42. Paul Stein & Susan Mahony, *Incorporating Sustainability Principles in Legislation*, in ENVIRONMENTAL OUTLOOK NO 3: LAW AND POLICY 61 (Paul Leadbeter, Neil Gunningham, & Ben Boer eds., 1999).

43. See MATHIEU, *THE RIGHT TO LIFE IN EUROPEAN CONSTITUTIONAL AND INTERNATIONAL CASE-LAW* 45 (2006).

44. See generally RESEARCH HANDBOOK ON INTERNATIONAL COURTS AND TRIBUNALS (William Schabas & Shannonbrooke Murphy eds., 2017) (analyzing the recent increase in the number of international courts and the resulting expansion of their jurisdiction).

45. OLIVIER DE SCHUTTER, *INTERNATIONAL HUMAN RIGHTS LAW: CASES, MATERIALS, COMMENTARY* 40 (2d ed. 2014).

46. JO SAMANTA & ASH SAMANTA, *MEDICAL LAW* 185 (2011).

47. RITA JOSEPH, *HUMAN RIGHTS AND THE UNBORN CHILD* 84 (2009).

48. SMAGADI, *supra* note 8, at 82.

49. Quénivet, *supra* note 5, at 331–32.

## 1. The Universal Declaration on Human Rights, 1948 (“UDHR”)

The UDHR represents the fundamental values of all the members of the global community.<sup>50</sup> Article 3 of the UDHR states that “[e]veryone has the right to life, liberty and security of person.”<sup>51</sup>

As is clear from this provision, the UDHR only protects the right to life generally along with the right to a person’s liberty and security,<sup>52</sup> and does not define the right to life or go into the details of what that right entails.

## 2. The International Covenant on Civil and Political Rights, 1976 (“ICCPR”)

The ICCPR has 172 party states and seventy-four signatory states.<sup>53</sup> Article 6 of the ICCPR reads:

1. 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.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

50. Bradley R. Munro, *The Universal Declaration of Human Rights, Maritain and the Universality of Human Rights*, in *PHILOSOPHICAL THEORY AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* 109, 109 (William Sweet ed., 2003).

51. UDHR, *supra* note 6.

52. Lars Adam Rebof, *Article 3*, in *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A COMMON STANDARD OF ACHIEVEMENT* 89, 89 (Guðmundur Alfreðsson & Asbjørn Eide eds., 1999); *see also* UDHR, *supra* note 6.

53. *International Covenant on Civil and Political Rights*, U.N. TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-4&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en) [<https://perma.cc/HR38-7UXN>] [hereinafter ICCPR, UN Treaty Collection].

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.<sup>54</sup>

In protecting the right to life, unlike the UDHR, Article 6 of the ICCPR gives detailed definition and instances of what the right to life is and the exceptions to it.<sup>55</sup> The provision begins with the three most crucial elements in the right to life: (1) it is given to every human being, (2) it must be protected by law,<sup>56</sup> and (3) and no one may be arbitrarily deprived of it.<sup>57</sup> It further states that the right to life may not be derogated from in any circumstances<sup>58</sup> and that provisions for the death penalty are permissible only for serious crimes.<sup>59</sup> It also acknowledges that minors and pregnant women may not be deprived of their lives through capital punishment.<sup>60</sup>

## B. The Right to Life in Regional Human Rights Law

In respect to regional human rights instruments, this subsection reproduces provisions that protect the right to life from select Arabian, African, American, and European human rights instruments.

### 1. The Arab Charter on Human Rights, 2008 (“ArCHR”)

The ArCHR has thirteen ratifications.<sup>61</sup> Article 5 of the ArCHR reads that “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”<sup>62</sup>

Similar to the ICCPR, Article 2 of the ArCHR protects the right to life by stating two of its most important elements: (1) every human

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54. ICCPR, *supra* note 6.

55. *Id.*

56. JAN RÖMER, KILLING IN A GRAY AREA BETWEEN HUMANITARIAN LAW AND HUMAN RIGHTS: HOW CAN THE NATIONAL POLICE OF COLOMBIA OVERCOME THE UNCERTAINTY OF WHICH BRANCH OF INTERNATIONAL LAW TO APPLY? 94 (2010); *see also* ICCPR, *supra* note 6.

57. ICCPR, *supra* note 6.

58. *Id.*

59. LILLIAN MANKA CHENWI, TOWARDS THE ABOLITION OF THE DEATH PENALTY IN AFRICA: A HUMAN RIGHTS PERSPECTIVE 36 (2007); *see also* ICCPR, *supra* note 6.

60. JONATHAN TODRES ET AL., THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: AN ANALYSIS OF TREATY PROVISIONS AND IMPLICATIONS OF U.S. RATIFICATION 279 (2006); *see also* ICCPR, *supra* note 6.

61. Basel Akar & Maria Ghosn-Chelala, *Education for Cosmopolitan Citizenship in the Arab Region*, in THE SAGE HANDBOOK OF RESEARCH IN INTERNATIONAL EDUCATION 523 (Mary Hayden et al. eds., 2015).

62. ArCHR, *supra* note 6.

enjoys the right to life, and (2) it must be protected by law.<sup>63</sup> A third element is that any exception to the right to life must not be arbitrary.<sup>64</sup>

## 2. The African Charter on Human and Peoples' Rights, 1986 ("ACHPR")

The ACHPR has fifty-three signatories and ratifications.<sup>65</sup> Article 4 reads that "[h]uman beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."<sup>66</sup>

The ACHPR protects the right to life by declaring that the integrity of a person's life may not be violated.<sup>67</sup> Yet, this is followed by a paradoxical statement that identifies an exception to the right to life, where it may be violated in a nonarbitrary fashion.

## 3. The American Convention on Human Rights, 1978 ("ACHR")

The ACHR has twenty-five ratifications and nineteen signatories.<sup>68</sup> Article 4 of the ACHR states:

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.
2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.
3. The death penalty shall not be reestablished in states that have abolished it.
4. In no case shall capital punishment be inflicted for political offenses or related common crimes.
5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of

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63. DARAGH MURRAY, PRACTITIONERS' GUIDE TO HUMAN RIGHTS LAW IN ARMED CONFLICT 118 n. 39 (Dapo Akande et al. eds., 2016).

64. ArCHR, *supra* note 6.

65. African Charter on Human and Peoples' Rights, <http://www.achpr.org/instruments/achpr/ratification/> (last visited Mar. 22, 2018).

66. ACHPR, *supra* note 6.

67. *Id.*

68. SIGNATORIES AND RATIFICATION TO THE AMERICAN CONVENTION ON HUMAN RIGHTS, [https://seafarersrights.org/legal\\_database/signatories-and-ratification-to-the-american-convention-on-human-rights/](https://seafarersrights.org/legal_database/signatories-and-ratification-to-the-american-convention-on-human-rights/) [<https://perma.cc/83RV-R5JF>].

age or over 70 years of age; nor shall it be applied to pregnant women.

6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.<sup>69</sup>

Similar to the ICCPR, the ACHR provides detailed analyses of the right to life while also providing exceptions where this right may be legally curtailed. It starts off with the three most basic elements of the right to life: (1) every human has the right to life, (2) it must be protected by law, and (3) no one may be arbitrarily deprived of it.<sup>70</sup> The third element is an exception to the right to life, which means that anyone may be deprived of his or her life in a nonarbitrary fashion.<sup>71</sup> The ACHR then provides another exception to the right to life: capital punishment (“CP”).<sup>72</sup> However, it also restricts CP by preventing states that have already abolished it from legalizing it again.<sup>73</sup> Similarly, to minimize the risk of abuse of CP and to avoid irreversible actions in political rivalries under the guise of CP, it states that CP may not be applied in political matters.<sup>74</sup>

#### 4. The American Declaration on the Rights and Duties of Man, 1948 (“ADRDM”)

The ADRDM is binding on all OAS member states.<sup>75</sup> Article I of the ADRDM reads that “[e]very human being has the right to life, liberty and security of his person.”<sup>76</sup>

The ADRDM only generally protects the right to life by stating that all human beings enjoy the right to life,<sup>77</sup> without going into any detail about what it means and without providing any exceptions to it under law.

69. ACHR, *supra* note 6.

70. WINSTON P. NAGAN ET AL., HUMAN RIGHTS AND DYNAMIC HUMANISM 376 (2016).

71. *Id.*

72. Leena Kurki, *International Standards for Sentencing and Punishment*, in SENTENCING AND SANCTIONS IN WESTERN COUNTRIES 331, 371 (Michael Tonry & Richard Frase eds., 2001); *see also* CHENWI, *supra* note 59, at 24; *see also* ACHR, *supra* note 6.

73. Kurki, *supra* note 72, at 371; *see also* CHENWI, *supra* note 59, at 24.

74. *See* CHENWI, *supra* note 59, at 24.

75. *See Organization Of American States (OAS)*, NUCLEAR THREAT INITIATIVE, <http://www.nti.org/learn/treaties-and-regimes/organization-american-states-oas/> [<https://perma.cc/E7CP-TA6B>].

76. ADRDM, *supra* note 6.

77. Susanna Villani, *The EU’s Strategy to Tackle Environmentally Induced Migration While Protecting Human Security*, in BLURRING BOUNDARIES: HUMAN SECURITY AND FORCED MIGRATION 161, 166 (Stefan Salomon et al. eds., 2017).

## 5. The European Convention on Human Rights, 1953 (“ECHR”)

The ECHR has forty-seven party states.<sup>78</sup> Article 2 of the ECHR titled *Right to life* reads:

1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
  - (a) in defense of any person from unlawful violence;
  - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.<sup>79</sup>

In contrast to other international human rights instruments, the ECHR provisions the right to life in a rather different way. It says that the right to life must be protected by law<sup>80</sup> and then provides very detailed exceptions to the right to life to clarify what actions do not infringe the right to life: (1) CP by law does not violate the right to life;<sup>81</sup> (2) law enforcement agents may legally deprive a person of his or her life in situations of absolute necessity without violating the right to life.<sup>82</sup> This includes situations of self-defense or defense of others: an agent may take the life of a subject in a situation where the life of any person is endangered if the response is reasonable.<sup>83</sup> Similarly, an agent may also take a life in situations of arrest and when quelling a riot.<sup>84</sup> These circumstances where the right to life may be legally curtailed during law enforcement will be discussed in more detail in section V(A).

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78. See Treaty Office of Council of Eur., *Simplified Chart of signatures and ratifications*, COUNCIL OF EUR., <https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/chartSignature/3> [<https://perma.cc/7WEY:JJK8>] [hereafter SIMPLIFIED CHART].

79. ECHR, *supra* note 6.

80. Chris Gastmans & Herman Nys, *End of Life*, in ROUTLEDGE HANDBOOK OF MEDICAL LAW AND ETHICS 112, 114 (Yan Joly & Bartha Maria Knoppers eds., 2015).

81. SCHABAS, *supra* note 1, at 260.

82. ELIZABETH WICKS, THE RIGHT TO LIFE AND CONFLICTING INTERESTS 138 (2010) [hereinafter “THE RIGHT TO LIFE AND CONFLICTING INTERESTS”].

83. DAVID ORMEROD & KARL LAIRD, SMITH AND HOGAN’S TEXT, CASES, AND MATERIALS ON CRIMINAL LAW 431 (11th ed. 2014).

84. ECHR, *supra* note 6.

## 6. The Convention for the Protection of Human Rights and Fundamental Freedoms, 1953 (“CPHRFF”)

The CPHRFF has forty-seven party states.<sup>85</sup> Article 2 of the CPHRFF reads:

1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary.
  - (a) in defense of any person from unlawful violence;
  - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - (c) in action lawfully taken for the purposes of quelling a riot or insurrection.<sup>86</sup>

The CPHRFF states two basic elements: (1) every human being enjoys the right to life, and (2) it must be protected by law.<sup>87</sup> Then it provides exceptions<sup>88</sup> to the right to life similar to those of ECHR.<sup>89</sup> These are capital punishment and the lethal use of force by law enforcement in situations of defense, arrest, or riot.<sup>90</sup>

### C. The Right to Life in Constitutional Law

This subsection includes excerpts of right to life provisions in constitutions from select countries around the world: the United States, Canada, Russia, Pakistan, India, and Turkey.

#### 1. The United States Constitution, 1789

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law

85. See SIMPLIFIED CHART *supra* note 78.

86. CPHRFF, *supra* note 6.

87. Hans-Georg Ziebertz & Marion Reindl, *Religion and Attitudes towards Euthanasia and Abortion An Empirical Study among Young Christians and Muslims in Germany*, in HUMAN RIGHTS AND THE IMPACT OF RELIGION 119, 119 (Johannes A. van der Ven & Hans-Georg Ziebertz eds., 2013).

88. CPHRFF, *supra* note 6.

89. ECHR, *supra* note 6; see also SCHABAS, *supra* note 1, at 260; see also THE RIGHT TO LIFE AND CONFLICTING INTERESTS, *supra* note 82, at 138; see also ORMEROD & LAIRD, *supra* note 83, at 431; see also ALASTAIR MOWBRAY, CASES, MATERIALS, AND COMMENTARY ON THE EUROPEAN CONVENTION ON HUMAN RIGHTS, 480 (2012).

90. CPHRFF, *supra* note 6; see also William Schabas, *The Right to Life*, in THE OXFORD HANDBOOK OF INTERNATIONAL LAW IN ARMED CONFLICT 365, 368 (Andrew Clapham & Paola Gaeta eds., 2014); see also CHRISTINA McALHONE, CORE STATUTES ON EVIDENCE 187 (2013).

which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.<sup>91</sup>

It states that no person shall be deprived of his or her life without the due process of law,<sup>92</sup> which means that life may be taken only following due process of law, with the lawful use of force, or as a result of law enforcement.

## 2. The Constitution of Canada, 1867

Constitution Act 1982, E 7 titled *Life, liberty and security of person*: “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”<sup>93</sup>

Canada’s constitution also protects everyone’s right to life along with the right to liberty and security and states that people may not be deprived of their lives without principles of justice.<sup>94</sup>

## 3. The Constitution of the Russian Federation, 1993

Article 20 of the Russian constitution has two provisions. The first states that “[e]veryone shall have the right to life.”<sup>95</sup> The second provision adds that “[c]apital punishment until its complete abolition may be established by federal law as an exclusive form of punishment for particularly grave crimes against life, and the accused shall be granted the right to have his case examined by a court with the participation of a jury.”<sup>96</sup>

The Russian constitution protects the enjoyment of the right to life but provides that CP is an exception to the right until the punishment is abolished.<sup>97</sup> Russia suspended CP decades ago.<sup>98</sup>

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91. U.S. CONST. amend. XIV, § 1.

92. LYLE R. STRATHMAN, *TOWARD PEACE: TRUTH IS THE AGENT THAT MEDIATES HARMONY* 176 (2013).

93. Canada Act, 1982, c11 (U.K.).

94. Canada Act, 1982, c11 (U.K.).

95. KONSTITUTSIIA ROSSISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 20 (Russ).

96. *Id.*

97. MARK GIBNEY & STANISLAW FRANKOWSKI, *JUDICIAL PROTECTION OF HUMAN RIGHTS: MYTH OR REALITY?* 35 (1999); *see also* KONSTITUTSIIA ROSSISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 20 (Russ).

98. JONATHAN DANIEL WEILER, *HUMAN RIGHTS IN RUSSIA: A DARKER SIDE OF REFORM* 24 (2004).

#### 4. The Constitution of the Islamic Republic of Pakistan, 1973

Article 9: “No person shall be deprived of life or liberty save in accordance with law.”<sup>99</sup>

The Constitution of Pakistan only provides one exception to the right to life: the lawful use of force or law enforcement may deprive a person of his or her life.<sup>100</sup>

#### 5. The Constitution of India, 1950

Article 21 of the Indian Constitution: “No person shall be deprived of his right to life or personal liberty except according to procedure established by law.”<sup>101</sup>

Similar to the constitution of Pakistan, the Indian constitution only provides one exception to the right to life: the law may deprive someone of the right to life.<sup>102</sup> This means that the right to life is only protected against the unlawful use of force under Indian law.

#### 6. The Constitution of Turkey, 1982

Article 17 of the Turkish constitution:

Everyone has the right to life and the right to protect and develop his material and spiritual entity.

The physical integrity of the individual shall not be violated except under medical necessity and in cases prescribed by law; he shall not be subjected to scientific or medical experiments without his consent.

No one shall be subjected to torture or ill-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity.

The cases of carrying out of death penalties under court sentences, the act of killing in self-defence, the occurrences of death as a result of the use of a weapon permitted by law as a necessary measure in cases of: apprehension, or the execution of warrants of arrest, the prevention of the escape of lawfully arrested or convicted persons, the quelling of a riot or insurrection, the execution of the orders of authorized bodies during martial law or state of emergency, are outside of the scope of the provision of paragraph 1.<sup>103</sup>

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99. PAKISTAN CONST. art. 9.

100. SHAHEEN SARDAR ALI & JAVAID REHMAN, INDIGENOUS PEOPLES AND ETHNIC MINORITIES OF PAKISTAN: CONSTITUTIONAL AND LEGAL PERSPECTIVES 28 (2013).

101. INDIA CONST. art. 21.

102. *Id.*

103. Türkiye Cumhuriyeti Anayasası Madde 17.

The Turkish constitution provides a detailed definition of right to life. It states that every human being enjoys the right to life and that it must be protected by law.<sup>104</sup> Then it provides exceptions to the right to life: CP and acts of law enforcement do not infringe on the right to life.<sup>105</sup>

After analyzing these diverse definitions and provisions of the right to life, it is apparent that various provisions do not offer much in defining what the right to life is. However, there are certain characteristics that commonly recur in these provisions out of which we can derive a general working definition of the right to life and have an overall idea of its scope. For instance, the first frequent characteristic of the right to life is that every human being has a right to life.<sup>106</sup> The second common feature is that it must be protected by law.<sup>107</sup> The last attribute of the right to life is that people must not be arbitrarily deprived of their lives.<sup>108</sup> It is interesting to note that, the right to life imposes a positive duty on states to protect its people's lives from everything that is unlawful and unreasonable.<sup>109</sup> For example, they must provide the medical treatment that their citizens needed.<sup>110</sup> However, the right to life also imposes a negative duty on a state, prohibiting it from depriving a person of his or her life with the unlawful use of force.<sup>111</sup> This means that, under the same provisions, states do have the capacity to nonarbitrarily deprive human lives in a lawful and reasonable way.<sup>112</sup> This could be the deprivation of life in self-defense,<sup>113</sup>

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104. *See id.*

105. YONAH ALEXANDER ET AL., TURKEY: TERRORISM, CIVIL RIGHTS, AND THE EUROPEAN UNION 53 (2008); *see also* Türkiye Cumhuriyeti Anayasası Madde 17.

106. UDHR, *supra* note 6; *see also* ICCPR, *supra* note 6; *see also* ArCHR, *supra* note 6; *see also* ACHPR, *supra* note 6; *see also* ACHR, *supra* note 6; *see also* ADRDM, *supra* note 6, Article I, 1948; *see also* ECHR, *supra* note 6; *see also* CPHRFF, *supra* note 6; *see also* U.S. CONST. amend. XIV, § 1; *see also* Canada Act, 1982, c11 (U.K.); *see also* KONSTITUTSIIA ROSSISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 20 (Russ); *see also* PAKISTAN CONST. art. 9; *see also* INDIA CONST. art. 21; *see also* Türkiye Cumhuriyeti Anayasası Madde 17.

107. ICCPR, *supra* note 6; *see* ArCHR, *supra* note 6; *see* ACHPR, *supra* note 6; *see* ECHR, *supra* note 6; *see* CPHRFF, *supra* note 6.

108. ICCPR, *supra* note 6; *see* ArCHR, *supra* note 6; *see* ACHPR, *supra* note 6; *see* ACHR, *supra* note 6; *see* CPHRFF, *supra* note 6; *see also* U.S. CONST. amend. XIV, § 1; *see* Canada Act, 1982, c11 (U.K.); *see* KONSTITUTSIIA ROSSISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 20 (Russ); *see* PAKISTAN CONST. art. 9; *see* INDIA CONST. art. 21.

109. *See* PHILIP LEACH, TAKING A CASE TO THE EUROPEAN COURT OF HUMAN RIGHTS 191 (4th ed. 2017).

110. *See* Wicks, *supra* note 34, at 330–31.

111. LEACH, *supra* note 109, at 219.

112. *Id.*

113. Federico Lenzerini & Francesco Francioni, *The Role of Human Rights in the Regulation of Private Military and Security Companies*, in WAR BY CONTRACT: HUMAN RIGHTS, HUMANI-

the legal use of force, or CP.<sup>114</sup> However, critics of CP argue that under moral philosophy, CP still infringes upon the right to life.<sup>115</sup> Similarly, in addition to CP, other exceptions to the right to life are enshrined in international and domestic law, where the right to life is legally constrained by the use of force by law enforcement personnel.<sup>116</sup> However, there are gray areas in these exceptions where it is not clear whether an action is allowed under the right to life provisions<sup>117</sup> or whether it infringes on the right.<sup>118</sup>

## II. The Right to Life and Capital Punishment

Capital punishment is an exception to the right to life in a number of jurisdictions around the world<sup>119</sup> and under major international human rights treaties,<sup>120</sup> although more than half of the world has abolished CP either in its legislation or in practice.<sup>121</sup> CP is better known as the death penalty<sup>122</sup> and is the most severe punishment a state can impose, where individuals convicted of the most serious of crimes may be executed after following due process.<sup>123</sup> CP is usually

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TARIAN LAW, AND PRIVATE CONTRACTORS 55, 61 (Francesco Francioni & Natalino Ronzitti eds., 2011).

114. KONSTITUTSIJA ROSSISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 20 (Russ); see also Nigel Li, *Taiwan: Cutting the Gordian Knot – Applying Article 16 of the ICCPR to End Capital Punishment*, in CAPITAL PUNISHMENT: NEW PERSPECTIVES 212 (Peter Hodgkinson ed., 2016).

115. Joel Feinberg, *Voluntary Euthanasia and the Inalienable Right to Life*, in MEDICINE AND MORAL PHILOSOPHY: A “PHILOSOPHY AND PUBLIC AFFAIRS” READER 245, 255 (Michael Cohen, Thomas Nagel, & Thomas Scanlon eds., 2014).

116. ROLAND OTTO, TARGETED KILLINGS AND INTERNATIONAL LAW: WITH SPECIAL REGARD TO HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW, 120 (2011).

117. See *id.*

118. Feinberg, *supra* note 115, at 255.

119. See Oliver Smith, *Mapped: The 53 Countries That Still Have The Death Penalty – Including Japan*, THE TELEGRAPH (last updated Sept. 1, 2016, 12:00 PM), <https://www.telegraph.co.uk/travel/maps-and-graphics/countries-that-still-have-the-death-penalty/> [https://perma.cc/BLU6-AA7T].

120. ICCPR, *supra* note 6; see also ACHPR, *supra* note 6; see also CPHRFF, *supra* note 6.

121. RITA JAMES SIMON & DAGNY A. BLASKOVICH, A COMPARATIVE ANALYSIS OF CAPITAL PUNISHMENT: STATUTES, POLICIES, FREQUENCIES, AND PUBLIC ATTITUDES THE WORLD OVER 17 (2007).

122. *What is the Death Penalty and Capital Punishment?*, PROCON.ORG (last updated May 20, 2018, 6:18 PM), <https://deathpenalty.procon.org/view.answers.php?questionID=000988> [https://perma.cc/5G7C-8QZV].

123. See ROGER HOOD & CAROLYN HOYLE, THE DEATH PENALTY: A WORLDWIDE PERSPECTIVE 148-154 (2015). Within Hood see, chapter 4 The Scope of Capital Punishment The Law and Practice: 4.1. The Range of Capital Crimes, 4.2. What are the Most Serious Crimes.

handed down for the most serious crimes such as murder, rape, drug trafficking, or treason.<sup>124</sup>

### A. Debate

Supporters of CP argue that CP is paradoxically focused on safeguarding the enjoyment of other human rights; however CP does not violate human rights specifically in the context of drug trafficking.<sup>125</sup> Similarly, the Republic of Trinidad and Tobago also maintained that “the death penalty is not a human rights issue.”<sup>126</sup> On the other side, opponents of CP argue that it violates all human rights<sup>127</sup> and, more specifically, it violates the right to life, the most fundamental human right. For example, Switzerland stated that CP is “a flagrant violation of the right to life and dignity.”<sup>128</sup> Similarly, South Africa maintained that the right to life is the most fundamental human right, and that the same belief should be reflected in its criminal penalties.<sup>129</sup>

Moreover, there are other noteworthy rationales behind practices of CP. For instance, the first argument by CP supporters is that the death penalty is a fair and proportionate punishment for heinous crimes like murder.<sup>130</sup> This argument is known as the “eye for an eye” rationale,<sup>131</sup> which has its basis in retributivism<sup>132</sup> and the Abrahamic religions such as Islam.<sup>133</sup> The CP supporters’ second argument is that criminals that deserve capital punishment are beyond the realms of rehabilitation<sup>134</sup> and can reoffend,<sup>135</sup> therefore, capital punishment

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124. IDA WALKER, *THE DEATH PENALTY* 9 (2008).

125. SANGMIN BAE, *WHEN THE STATE NO LONGER KILLS: INTERNATIONAL HUMAN RIGHTS NORMS AND ABOLITION OF CAPITAL PUNISHMENT* 64 (2007).

126. JATINDRA KUMAR DAS, *HUMAN RIGHTS LAW AND PRACTICE*, 162 (2016).

127. MATHIEU, *supra* note 43, at 48.

128. MICHAEL L. PERLIN, *MENTAL DISABILITY AND THE DEATH PENALTY: THE SHAME OF THE STATES* 142 (2013).

129. Richard C. Dieter, Executive Director, Death Penalty Information Center, *The Death Penalty and Human Rights: U.S. Death Penalty and International Law* 3–4 <https://deathpenaltyinfo.org/files/pdf/Oxfordpaper.pdf> [<https://perma.cc/U9GN-T2MJ>].

130. Samuel Gross & Phoebe C. Ellsworth, *Second Thoughts: American’s Views on the Death Penalty at the Turn o the Century*, in *BEYOND REPAIR?: AMERICA’S DEATH PENALTY* 7, 33 (Stephen Garvey ed., 2003).

131. *Id.* at 33–34.

132. JOHN HOFFMAN & PAUL GRAHAM, *INTRODUCTION TO POLITICAL THEORY* 147 (3d ed. 2015).

133. LLOYD STEFFEN, *ETHICS AND EXPERIENCE: MORAL THEORY FROM JUST WAR TO ABORTION* 164 (2012).

134. NORMAN J FINKEL, *COMMONSENSE JUSTICE: JURORS’ NOTIONS OF THE LAW* 214 (2009).

135. JOANNE CLEAVE, *THE ROMAN CATHOLIC TRADITION: CHRISTIAN LIFESTYLE AND BEHAVIOUR* 52 (2002).

defends the rights of the general public. In this context, CP saves the state money as well as time, because it costs less than life imprisonment.<sup>136</sup> The third most prominent argument by CP supporters is that CP acts as a magnificently powerful deterrent against heinous crimes.<sup>137</sup> They back up their argument by using statistical data<sup>138</sup> to show that CP is correlated with lower rates of murder and rape: if the subject is aware that the penalty for a crime could include CP, he or she will be deterred from committing such crime.<sup>139</sup>

In contrast, opponents of CP argue that CP is the only punishment that is irreversible and that wrongful execution cannot be reversed.<sup>140</sup> That said, all punishments are irreversible, as no one can return the years spent in jail.<sup>141</sup> Furthermore, opponents of CP present similar statistical data to prove that the deterrence effect is indeterminate<sup>142</sup> and maintain that states that have abolished CP, such as New York, have deterred homicides.<sup>143</sup> As a result, they deny that CP deters crimes.<sup>144</sup> They also argue that CP is more expensive than life imprisonment in nation-states like the United States where costs of extended trials are more expensive than life imprisonment.<sup>145</sup> Moreover, they argue that delays in CP not only emotionally traumatize the perpetrators and their families<sup>146</sup> but also create stressful and traumatic situations for the families of the victims.<sup>147</sup> They also argue that CP violates the right to life.<sup>148</sup> In response, proponents of CP argue

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136. PHILIP P. PURPURA, *CRIMINAL JUSTICE: AN INTRODUCTION* 250 (1997).

137. NATIONAL RESEARCH COUNCIL OF THE NATIONAL ACADEMIES, *DETERRENCE AND THE DEATH PENALTY* 10 (Daniel S. Nagin & John V. Pepper eds., 2012).

138. STUART BANNER, *THE DEATH PENALTY: AN AMERICAN HISTORY* 218 (2009).

139. BARBARA MACKINNON & ANDREW FLALA, *ETHICS: THEORY AND CONTEMPORARY ISSUES, CONCISE EDITION*, 164 (2012).

140. See Chenwi, *supra* note 59, at 193.

141. HAAG & CONRAD, *supra* note 29, at 257.

142. LOUIS P. POJMAN & JEFFREY REIMAN, *THE DEATH PENALTY: FOR AND AGAINST* 44 (2000).

143. SIMON & BLASKOVICH, *supra* note 121, at 40.

144. LARRY WAYNE KOCH ET AL., *THE DEATH OF THE AMERICAN DEATH PENALTY: STATES STILL LEADING THE WAY* 26–28 (2012).

145. Deborah Denno, *Foreword* to LEIGH B. BIENEN, *MURDER AND ITS CONSEQUENCES: ESSAYS ON CAPITAL PUNISHMENT IN AMERICA*, at xxiv (2010); see also JOHN T. WHITEHEAD ET AL., *CORRECTIONS: EXPLORING CRIME, PUNISHMENT, AND JUSTICE IN AMERICA* 329 (3d ed. 2012); see also EVAN MANDERY, *CAPITAL PUNISHMENT IN AMERICA: A BALANCED EXAMINATION* 98 (2d ed. 2011).

146. HOOD & HOYLE, *supra* note 123 at 206.

147. Bruce Winick, *Determining When Severe Mental Illness Should Disqualify a Defendant from Capital Punishment*, in *MENTAL DISORDER AND CRIMINAL LAW: RESPONSIBILITY, PUNISHMENT AND COMPETENCE* 45, 63 (Robert Schopp et al. eds., 2008).

148. LOUIS J. PALMER, JR., *ENCYCLOPEDIA OF CAPITAL PUNISHMENT IN THE UNITED STATES* 405 (2d ed. 2008).

that the criminals forfeited their right to life by violating the right to life of an innocent person.<sup>149</sup> Lastly, opponents of CP argue that CP leaves room for abuse against political opponents, as the death penalty may be awarded to eliminate political opponents.<sup>150</sup> As a result, the ACHR has abolished CP for political matters.<sup>151</sup>

## B. Practices

Among CP proponent states, CP is acknowledged as a serious punishment for heinous crimes,<sup>152</sup> and major international human rights instruments have acknowledged it as a legal exception to the right to life.<sup>153</sup> Worldwide, about fifty-three countries still practice CP,<sup>154</sup> including major countries such as the United States, India, China, Japan, Singapore, the United Arab Emirates, Saudi Arabia, and Pakistan.<sup>155</sup> Of all the international human rights instruments, the ICCPR is revered as the most significant<sup>156</sup> because it has been endorsed by 172 party states.<sup>157</sup> It also acknowledges CP as an exception to the right to life.<sup>158</sup> Article 6(2) of the ICCPR states that CP may be practiced only against the most heinous crimes in countries that have not yet abolished CP.<sup>159</sup> However, Article 6(5) of the ICCPR exempts juveniles and pregnant women from CP.<sup>160</sup> Similarly, the ACHR acknowledges CP in its Article 4(5) and excludes juveniles, pregnant women, and the elderly.<sup>161</sup>

Almost 138 countries—more than two-thirds of the world—have officially abolished CP.<sup>162</sup> Russia has abolished CP only in practice.<sup>163</sup>

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149. CHENWI, *supra* note 59, at 59.

150. *See generally* THE POLITICS OF THE DEATH PENALTY IN COUNTRIES IN TRANSITION (Madoka Futamura & Nadia Bernaz eds., 2013).

151. ACHR, *supra* note 6.

152. *See* Smith, *supra* note 119.

153. ICCPR, *supra* note 6; *see also* ACHR, *supra* note 6; *see also* CPHRFF, *supra* note 6.

154. *See* Smith, *supra* note 119.

155. *Id.*

156. Theresa Degener, *Disability and Freedom: The International Covenant on Civil and Political Rights (ICCPR)*, in HUMAN RIGHTS AND DISABILITY: THE CURRENT USE AND FUTURE POTENTIAL OF UNITED NATIONS HUMAN RIGHTS INSTRUMENTS IN THE CONTEXT OF DISABILITY 29, 53 (2002).

157. ICCPR, UN Treaty Collection, *supra* note 55.

158. ICCPR, *supra* note 6.

159. *Id.*

160. *Id.*

161. ACHR, *supra* note 6.

162. DIANA MEYERS, VICTIMS' STORIES AND THE ADVANCEMENT OF HUMAN RIGHTS 221 (2016).

163. WEILER, *supra* note 98, at 24.

Almost all of Europe has abolished CP,<sup>164</sup> except for Belarus, where CP is still in operation.<sup>165</sup> The European Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty abolishes CP, yet it is interesting to note that CP was allowed under the same protocol in times of war or threat of war.<sup>166</sup> Following criticism that CP was still recognized in Europe in limited circumstances, Protocol No. 13 to the European Convention abolished the death penalty even during wartime.<sup>167</sup> Amnesty International considers CP as “the ultimate, irrevocable punishment.”<sup>168</sup> Similarly, several United Nations General Assembly nonbinding resolutions in 2007, 2008, 2010, 2012, and 2014 have encouraged and supported CP abolishment.<sup>169</sup>

### III. The Right to Life and Abortion

Abortion is another exception to the right to life,<sup>170</sup> where during a medical procedure, a prenatal person may be ruthlessly killed during pregnancy<sup>171</sup> without any legal consequences.<sup>172</sup> However, unsafe abortions may have serious health consequences.<sup>173</sup>

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164. ROBERT BADINTER, *ABOLITION: ONE MAN’S BATTLE AGAINST THE DEATH PENALTY* xv (2008).

165. *Id.*

166. William A. Schabas, *International Law and the Death Penalty: Reflecting or Promoting Change?*, in *CAPITAL PUNISHMENT: STRATEGIES FOR ABOLITION* 36, 42 (Peter Hodgkinson & William A. Schabas eds., 2004).

167. *Id.*

168. *Death Penalty*, AMNESTY INTERNATIONAL, <https://www.amnesty.org/en/what-we-do/death-penalty/> [https://perma.cc/K5HX-44BP].

169. Robert Kissack, *The EU in the World: From Multilateralism to Global Governance*, in *FOREIGN POLICIES OF EU MEMBER STATES: CONTINUITY AND EUROPEANISATION* 247, 250 (Amelia Hadfield et al. eds., 2017):

A resolution calling for a moratorium on the use of the death penalty and for the UN Secretary General to report on the use of death penalty worldwide A/Res/62/149 was passed in 2007. In 2008 a shorter resolution acknowledging the report presented by the secretary general and calling for the issue to be revisited in two years was also passed. Since then, in 2010, 2012, and 2014, gradually more ambitious resolutions have been passed by greater margins.

170. See ROCCO J. GENNARO, *A DIALOGUE ON ETHICAL ISSUES OF LIFE AND DEATH* 54 (2002).

171. TOM J. OBENGO, *THE QUEST FOR HUMAN DIGNITY IN THE ETHICS OF PREGNANCY TERMINATION* 16 (2016).

172. See Fereniki Panagopoulou-Koutnatzi, *Abortion: The Legal Voyage of the Unwanted Child*, in *PROTECTING THE GENETIC SELF FROM BIOMETRIC THREATS: AUTONOMY, IDENTITY, AND GENETIC PRIVACY* 114, 117 (Christina Akrivopoulou ed., 2015).

173. See Susheela Singh et al., *Abortion: A Worldwide Overview*, in *THE SOCIOCULTURAL AND POLITICAL ASPECTS OF ABORTION: GLOBAL PERSPECTIVES* 15, 36 (Alaka Malwade Basu ed., 2003).

## A. Debate

Advocates for the lives of unborn children, known as the subscribers of the pro-life school of thought, argue that abortion violates the right to life of unborn children,<sup>174</sup> which arises at the time of conception,<sup>175</sup> and maintain that abortions are morally unacceptable.<sup>176</sup> The pro-life school proposes a number of arguments to prove that a fetus has a right to life: since every human has a right to life, so does a fetus automatically (the right-based argument) as it is a human being.<sup>177</sup> The fact that it belongs to our species creates its right to life (the species-based argument).<sup>178</sup> The time when a zygote is formed generates the right to life because the zygote has the potential of becoming a person (the potential argument)<sup>179</sup> like all other people (the future like ours argument)<sup>180</sup> because at one point in time all people were zygotes as well. If fetuses could opine about abortions, they would choose to live (actual versus ideal desires), as we do (the essential property argument). To rebut that, as an analogy, why should life not be protected at the level of sperm? They argue that the difference between the potential of a sperm and zygote to become a person is huge (the probability argument).<sup>181</sup>

By contrast, pro-choice proponents argue that it is a woman's right to choose to abort or not to abort a pregnancy.<sup>182</sup> The pro-choice group denies all rights (including the right to life) of an unborn child by arguing that unborn children cannot be considered legal persons.<sup>183</sup> The pro-choice group also argues that the rights of a woman along with her bodily integrity override the rights of an un-

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174. JAMES FIESER, *MORAL PHILOSOPHY THROUGH THE AGES* 244 (2000).

175. Nic Samojluk, *From Pro-life to Pro-choice: The Dramatic Shift in Seventh-day Adventist's Attitudes Towards Abortion*, 22 (2011) (unpublished Ph.D. Dissertation, Andre Jackson University).

176. DAVID BOONIN, *A DEFENSE OF ABORTION* 16–18 (2003).

177. Kate Greasley, *A Reply to Kaczor*, in *ABORTION RIGHTS* 165, 167 (Kate Greasley & Christopher Kaczor eds., 2017).

178. STEPHEN D. SCHWARZ & KIKI LATIMER, *UNDERSTANDING ABORTION: FROM MIXED FEELINGS TO RATIONAL THOUGHT* 25 (2012).

179. BOONIN, *supra* note 176, at 46.

180. *See id.* at 56.

181. *Id.* at 85.

182. JAMES R. BOWERS, *PRO-CHOICE AND ANTI-ABORTION: CONSTITUTIONAL THEORY AND PUBLIC POLICY* 2 (1994).

183. Eileen McDonagh, *Models of motherhood in the abortion debate: self-sacrifice versus self-defence*, in *ETHICAL ISSUES IN MATERNAL-FETAL MEDICINE* 213, 222 (Donna Dickenson ed., 2002).

born (nonperson) child.<sup>184</sup> However, even many proponents of abortion would not allow abortion after a certain point in time, which is the twenty-fourth week<sup>185</sup> of pregnancy, acknowledging that life has begun and, therefore, killing a child after that time would be immoral.<sup>186</sup> In the infamous case of *Roe v. Wade*, the United States Supreme Court applied this timeline scheme to determine the legality of abortions, but it did not decide when life begins.<sup>187</sup> Therefore, there is a controversial debate about the exact moment at which life begins.<sup>188</sup> For example, if someone argues that life begins after twenty-four weeks,<sup>189</sup> their opponents can respond by asking whether life in this case did not exist a day before, or even a second before, the end of the first twenty-four weeks. Science has resolved this conflict by concluding that life begins at the moment of conception,<sup>190</sup> far before the end of the first trimester or the twenty-four-week time frame. So, in the famous *Planned Parenthood v. Casey* United States Supreme Court case,<sup>191</sup> this argument shifted the debate toward the viability of the fetus outside the womb of a woman: if the fetus is able to survive without the womb of the mother, then abortion is not permissible.<sup>192</sup> The argument of fetus viability was soon rejected by pro-lifers, because with the advancement of science, the prenatal lives of fetuses are now sustainable before twenty-eight weeks.<sup>193</sup> Therefore, the timeline of fetus viability outside the womb of a mother fluctuates in accordance with advancements in human knowledge.<sup>194</sup>

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184. JO SAMANTA & ASH SAMANTA, *MEDICAL LAW CONCENTRATE: LAW REVISION AND STUDY GUIDE* 92 (2014) [hereinafter "MEDICAL LAW CONCENTRATE"].

185. FRANK NEWPORT, *THE GALLUP POLL: PUBLIC OPINION* 2011 262 (2012).

186. SHARON SMITH MURRAY & EMILY SLONE MCKINNEY, *FOUNDATIONS OF MATERNAL-NEWBORN AND WOMEN'S HEALTH NURSING* 31 (6th ed. 2013).

187. McDonagh, *supra* note 183, at 222.

188. *Id.*; see also INA TAYLOR, *RELIGION AND LIFE WITH CHRISTIANITY* 30–31 (2005).

189. See MURRAY & MCKINNEY, *supra* note 186, at 31.

190. William W. Lowrance, *The Relation of Science and Technology to Human Values*, in *TECHNOLOGY AND VALUES: ESSENTIAL READINGS* 38, 41 (Craig Hanks ed., 2009).

191. LAWRENCE M. HINMAN, *CONTEMPORARY MORAL ISSUES: DIVERSITY AND CONSENSUS* 58 (4th ed. 2016).

192. John Harris & Søren Holm, *Abortion*, in *THE OXFORD HANDBOOK OF PRACTICAL ETHICS* 112, 127 (Hugh LaFollette ed., 2005).

193. See GEORGE KEGODE, *ABORTION AND MORALITY DEBATE IN THE AFRICAN CONTEXT: A PHILOSOPHICAL ENQUIRY* 79 (2010).

194. See *id.*

## B. Practices

The international law of human rights is almost silent on the issue of abortion.<sup>195</sup> In the case of *A, B, and C v. Ireland*, the Eur. Ct. H.R. established that ECHR does not include a right to abort a child.<sup>196</sup> Therefore, the source of laws on abortion comes from the national laws of states.<sup>197</sup> Abortion is completely unlawful—without any exceptions—in only a handful of micro-countries like the Vatican City and Malta,<sup>198</sup> whereas abortion is legally permissible in the majority of the world, given certain conditions.<sup>199</sup> The conditions in which an abortion may be allowed or restricted vary from jurisdiction to jurisdiction.<sup>200</sup> From the most restrictive to the most liberal, these conditions include: (1) saving the woman's life, (2) protecting the woman's physical health, (3) protecting the woman's mental health, (4) rape or incest cases, (5) for fetal impairment reasons, (6) social or economic reasons, and (7) upon request (without a reason).<sup>201</sup> Interestingly, Islam forbids abortion,<sup>202</sup> save for narrow circumstances, such as when the life of a mother is in danger,<sup>203</sup> which is category (1). Therefore, this rule is reflected in a number of Muslim states.<sup>204</sup>

Several major countries, such as the United States, Canada, China, Russia, and the European states, where more than forty percent of the world population resides,<sup>205</sup> allow abortion on request, without any condition.<sup>206</sup> Countries that allow abortion on request obviously allow abortions for all other reasons and conditions as well. However, there is still one condition even in these countries, which is the limitation of time. Even in the states that have the most liberal

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195. MICHAEL L. COULTER ET AL., *ENCYCLOPEDIA OF CATHOLIC SOCIAL THOUGHT, SOCIAL SCIENCE, AND SOCIAL POLICY: SUPPLEMENT 156* (2012).

196. See *A, B & C v. Ireland*, 2010-VI Eur. Ct. H.R. 185, 189.

197. COULTER ET AL., *supra* note 195, at 156.

198. KATHERINE SMITS, *APPLYING POLITICAL THEORY: ISSUES AND DEBATES*, 128 (2d ed. 2016).

199. See Panagopoulou-Koutnatzi, *supra* note 172, at 117.

200. *World Abortion Policies 2013*, UNITED NATIONS, [http://www.un.org/en/development/desa/population/publications/pdf/policy/WorldAbortionPolicies2013/WorldAbortionPolicies2013\\_WallChart.pdf](http://www.un.org/en/development/desa/population/publications/pdf/policy/WorldAbortionPolicies2013/WorldAbortionPolicies2013_WallChart.pdf) [<https://perma.cc/4KB5-VM72>] [hereinafter *World Abortion Policies 2013*].

201. *Id.*

202. Donna Lee Bowen, *Abortion and the Ethics of Life*, in *EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST* 169, 172 (Donna Lee Bowen & Evelyn A. Early eds., 2002).

203. *Id.*

204. *World Abortion Policies 2013*, *supra* note 200.

205. *Countries in the World by Population (2018)*, WORLDMETERS, <http://www.worldometers.info/world-population/population-by-country/> (last visited Mar. 28, 2018).

206. *World Abortion Policies 2013*, *supra* note 200.

regulation of abortions, women are not allowed to abort a fetus when it has viability outside the mother's womb, a condition based on time limits.<sup>207</sup> This time limitation on abortions varies from state to state, from twelve weeks to twenty-four weeks of pregnancy.<sup>208</sup> For example, English law allows abortion only up until twenty-four weeks of pregnancy upon request,<sup>209</sup> but after this time limit, abortion becomes illegal and is considered to violate the right to life of the unborn child under the Abortion Act 1967,<sup>210</sup> unless conducted to save the life of the mother.<sup>211</sup> Similarly in 1973, the United States Supreme Court held in the famous *Roe v. Wade*<sup>212</sup> case that abortion is permissible on request during the first trimester.<sup>213</sup> It is also permissible during the second trimester, but only to protect the health of the mother, and during the third trimester only following a threat to the life of the mother.<sup>214</sup> In 1990, the United States Supreme Court validated abortions upon request in the case of *Planned Parenthood v. Casey*<sup>215</sup> based on fetal viability outside the womb of the mother,<sup>216</sup> which was determined to start between twenty-two and twenty-three weeks.<sup>217</sup> In Sweden, abortion on request is only allowed up until eighteen weeks of pregnancy,<sup>218</sup> owing to advancements in science.

In moderate pro-abortion nations such as Finland and Iceland, abortion is allowed for all reasons other than on request.<sup>219</sup> Similarly, in Indian law, abortions are only allowed up until twenty weeks of pregnancy if the mother's life is in danger, the unborn child has a risk of forming deformities or mental abnormalities, or for socioeconomic reasons.<sup>220</sup> It can be argued that such permissibility of abortion based

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207. HINMAN, *supra* note 191, at 58–59; *see also* HARRIS & HOLM, *supra* note 192, at 127; *see also* KEGODE, *supra* note 193, at 79.

208. FIONA DE LONDRAS & MAIREAD ENRIGHT, REPEALING THE 8TH: REFORMING IRISH ABORTION LAW 91 (2018).

209. Abortion Act 1967, 15 Eliz. 2 c. 87, § 1.

210. The Abortion Act 1967, c. 87 (Eng.).

211. ALASDAIR MACLEAN, BRIEFCASE ON MEDICAL LAW 123 (2013).

212. *Roe v. Wade*, 410 U.S. 113, 171–72 (1973).

213. ENCYCLOPEDIA OF HUMAN DEVELOPMENT 5 (Neil Salkind ed., 2005).

214. *Id.*

215. *Planned Parenthood v. Casey*, 505 U.S. 833, 846 (1992).

216. *Id.*

217. ISABEL V. SAWHILL, GENERATION UNBOUND: DRIFTING INTO SEX AND PARENTHOOD WITHOUT MARRIAGE 101–02 (2014).

218. SWEDEN ABORTION ACT OF 1974.

219. *World Abortion Policies 2013*, *supra* note 200.

220. *World Abortion Policies 2013*, *supra* note 200; CENTER FOR REPRODUCTIVE RIGHTS, ENSURING REPRODUCTIVE RIGHTS: REFORM TO ADDRESS WOMEN'S AND GIRLS' NEED FOR ABORTION AFTER 20 WEEKS IN INDIA 8 (2018).

on wide socioeconomic reasoning in India<sup>221</sup> has created room for abuse, where families routinely abort female children while preferring male breadwinners for the families.<sup>222</sup> Moreover, in exceptional cases, abortion is allowed beyond the twenty-week point if the health providers in good faith believe that it falls within the parameters of the legislation.<sup>223</sup> In response, pro-choicers callously state that such practices keep the ever-growing population under control,<sup>224</sup> which is vital for the sustainable development of this world,<sup>225</sup> and that the unborn fetuses cannot be considered a legal person.<sup>226</sup>

Likewise, in Thailand, Israel, and Cyprus, abortions are allowed for all of the aforementioned conditions except for socioeconomic reasons.<sup>227</sup> Whereas, at the other extreme, in nations like the Republic of Ireland, Syria, Yemen, and the Philippines, abortion is only allowed to save a person's life and is unlawful under all other conditions.<sup>228</sup> In countries with limited grounds for abortion, like Pakistan and Saudi Arabia, abortion is permissible to save the woman's life, and also to protect her physical and mental health.<sup>229</sup> According to the United Nations, almost ninety-seven percent of countries allow abortion when the life of the pregnant mother is in danger,<sup>230</sup> because the bodily integrity and right to life of a mother supersede the rights of an unborn child due to health and life concerns.<sup>231</sup> By contrast, Nicaragua and Malta do not allow abortion in any circumstance.<sup>232</sup>

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221. *World Abortion Policies 2013*, *supra* note 200.

222. See Surya Deva, *No 'Child Policy' vs. 'One-Child Policy' in Emerging Free Markets: Has It Mattered for Women in India and China?*, in *SOCIO-ECONOMIC RIGHTS IN EMERGING FREE MARKETS: COMPARATIVE INSIGHTS FROM INDIA AND CHINA* 342, 352 (Surya Deva ed., 2015).

223. *World Abortion Policies 2013*, *supra* note 200.

224. CHARLES ZASTROW, *BROOKS/COLE EMPOWERMENT SERIES: INTRODUCTION TO SOCIAL WORK AND SOCIAL WELFARE* 561 (11th ed. 2013).

225. K. Ravi Srinivas, *Population and Demographic Change*, in *PEACE STUDIES, PUBLIC POLICY AND GLOBAL SECURITY, VOLUME VI* 28, 40 (Ursula Oswald Spring et al. eds., 2010).

226. See McDonagh, *supra* note 183, at 222.

227. *World Abortion Policies 2013*, *supra* note 200.

228. *Id.*

229. *Id.*

230. Panagopoulou-Koutnatzi, *supra* note 172, at 117.

231. See, e.g., *MEDICAL LAW CONCENTRATE*, *supra* note 184, at 90–92.

232. *World Abortion Policies 2013*, *supra* note 200.

#### IV. The Right to Life and Euthanasia

Euthanasia is another exception to the right to life,<sup>233</sup> which is allowed in a few jurisdictions around the world.<sup>234</sup> Generally, euthanasia is the intentional and painless killing of a person to relieve him or her of incurable pain or suffering with the help of a physician.<sup>235</sup> Assisted suicide under euthanasia is a very controversial practice.<sup>236</sup> The Eur. Ct. H.R. decided in the *Pretty v. U.K.* case that the “‘right to life’ does not mean a right to die by assisted suicide.”<sup>237</sup>

##### A. Definition

Euthanasia has been defined as the painless inducement of a quick death.<sup>238</sup> But this definition raises some serious questions. For example, if murders were undertaken in a painless manner, would they still be considered legal practices of euthanasia?<sup>239</sup> The Oxford English Dictionary defines euthanasia as the “painless killing of a patient suffering from an incurable and painful disease or in an irreversible coma.”<sup>240</sup> Within the definition of euthanasia, it is also established that the element of good intention or motive is also a prerequisite.<sup>241</sup> The good motive prerequisite means that euthanasia is meant to be a “merciful death,” only to be undertaken in the best

233. See TERRANCE MCCONNELL, *INALIENABLE RIGHTS: THE LIMITS OF CONSENT IN MEDICINE AND THE LAW* 96 (2000).

234. See ATTILIO STAJANO, *ONLY LOVE REMAINS: LESSONS FROM THE DYING ON THE MEANING OF LIFE - EUTHANASIA OR PALLIATIVE CARE?* 136–37 (2015).

235. KRISHAN VIJ, *TEXTBOOK OF FORENSIC MEDICINE & TOXICOLOGY: PRINCIPLES & PRACTICE*, 374 (5th ed. 2014).

236. Timothy E. Quill & Franklin G. Miller, *Physician-Assisted Death*, in *PALLIATIVE CARE AND ETHICS* 247, 247 (Timothy Quill & Franklin G. Miller eds., 2014).

237. HERMAN WHEELER, *LAW, ETHICS AND PROFESSIONAL ISSUES FOR NURSING: A REFLECTIVE AND PORTFOLIO-BUILDING APPROACH* 247 (2013). Accord Herman Wheeler, *The Law and the Older Person*, in *NURSING CARE OF OLDER PEOPLE* 51, 52 (Andrew Hindle & Alison Coates eds., 2011); see also *Pretty*, 2002-III Eur. Ct. H.R. 155, 158. The *Pretty* court held:

Article 2 is unconcerned with issues to do with the quality of living or what a person chooses to do with his or her life and it cannot, without a distortion of language, be interpreted as conferring a right to die, nor can it create a right to self-determination in the sense of conferring on an individual the entitlement to choose death rather than life. Accordingly, no right to die, whether at the hands of a third person or with the assistance of a public authority, can be derived from Article 2.

238. KIERAN BEVILLE, *DYING TO KILL: A CHRISTIAN PERSPECTIVE ON EUTHANASIA AND ASSISTED SUICIDE* 189–90 (2014).

239. *Id.*

240. Michael Lacewing, *Moral Philosophy*, in *PHILOSOPHY FOR AS AND A2*, 44, 58 (Elizabeth Burns & Stephen Law eds., 2004).

241. See MARGARET OTLOWSKI, *VOLUNTARY EUTHANASIA AND THE COMMON LAW* 15–16 (1997).

interests of the patient.<sup>242</sup> English law defines euthanasia as “a deliberate intervention undertaken with the express intention of ending a life to relieve intractable suffering.”<sup>243</sup> Similarly, Belgium and the Netherlands define euthanasia as the act of “intentionally terminating life by someone other than the person concerned, at the latter’s request.”<sup>244</sup>

## 1. Classification

Based on the kinds of consents involved in euthanasia, it can be classified into three main kinds: (1) voluntary euthanasia, (2) involuntary euthanasia, and (3) nonvoluntary euthanasia.<sup>245</sup>

### a. Voluntary Euthanasia

Voluntary euthanasia is the practice of euthanasia where the patient gives consent for his or her life to be taken, unlike other kinds of euthanasia, where patients do not expressly provide consent for their deaths.<sup>246</sup> Moreover, there are two further subcategories of voluntary euthanasia based on the procedure through which the life is to be ended: active voluntary euthanasia and passive voluntary euthanasia.<sup>247</sup>

#### i. Active Voluntary Euthanasia

Active voluntary euthanasia is a kind of voluntary euthanasia where life is ended with the consent of the patient through proactive procedures such as the use of lethal injections, unlike passive procedures, where the treatment is merely halted to end the life.<sup>248</sup> Active voluntary euthanasia is the type of euthanasia commonly referred to when a person simply says euthanasia.<sup>249</sup> Assisted suicide is another name for active voluntary euthanasia, and it is highly controversial in

242. See BEVILLE, *supra* note 238, at 191.

243. JANE E. SEYMOUR ET AL., END-OF-LIFE CARE: PROMOTING COMFORT, CHOICE AND WELL-BEING FOR OLDER PEOPLE 45 (2005).

244. Gastmans & Nys, *supra* note 80, at 120.

245. GARY STEWART ET AL., BASIC QUESTIONS ON SUICIDE AND EUTHANASIA: ARE THEY EVER RIGHT? 25 (1998).

246. *Id.* see also Vij, *supra* note 235, at 374

247. RICHARD A. GLENN, THE RIGHT TO PRIVACY: RIGHTS AND LIBERTIES UNDER THE LAW, 149–150 (2003).

248. *Id.*

249. Ho Mun Chan & Chun Yan Tse, *The Case of Ah Bun: Euthanasia and Other Alternatives*, in ETHICAL DILEMMAS IN PUBLIC POLICY: THE DYNAMICS OF SOCIAL VALUES IN THE EAST-WEST CONTEXT OF HONG KONG 23, 29 (Betty Yung & Kam-por Yu eds., 2016).

medical<sup>250</sup> and legal spheres,<sup>251</sup> most of the world does not accept this practice.<sup>252</sup>

## ii. Passive Voluntary Euthanasia

Passive voluntary euthanasia is also induced through the consent of the patient but only involves reactive actions to induce a medical killing through procedures such as withholding medical treatment.<sup>253</sup> This practice is also known as “pulling the plug.” For instance, “Do not Resuscitate” (DNR) is the most common practice of passive voluntary euthanasia, where doctors do not intervene in the process of a natural death.<sup>254</sup>

## b. Involuntary Euthanasia

Involuntary euthanasia is another controversial kind of euthanasia, where the patient wants to live, but his or her relatives choose to end the patient’s life against his or her will.<sup>255</sup> Involuntary euthanasia can be both active and passive and is generally considered murder, which is illegal.<sup>256</sup> Here, the patient has either expressed his intention to not be clinically assisted in killing through writing, or the patient is conscious and has conveyed his or her dissent to the killing but is still euthanized.<sup>257</sup> An example of involuntary euthanasia would be a severely injured person who wants to live despite being put to death involuntarily.<sup>258</sup>

250. See CLAUDIA CARR, UNLOCKING MEDICAL LAW AND ETHICS 2E, 353–54 (2d ed. 2014).

251. See CRAIG PATERSON, ASSISTED SUICIDE AND EUTHANASIA: A NATURAL LAW ETHICS APPROACH 1–2 (2008).

252. Chun Yan Tse & Samantha Mei Che Pang, *Euthanasia and Forgoing Life-sustaining Treatment in the Chinese Context*, in DEATH, DYING AND BEREAVEMENT: A HONG KONG CHINESE EXPERIENCE, VOLUME 1, 169, 169 (Cecilia Lai Wan Chan & Amy Yin Man Chow eds., 2006).

253. Mostafa H. Nagi, *Clinical Imperatives versus Ethical Commitments in Euthanasia: The Perspectives of Nurses*, in NURSING EDUCATION IN THANATOLOGY: A CURRICULUM CONTINUUM 99, 104 (Florence Selder et al. eds., 2015); See also, MEGAN-JANE JOHNSTONE, ALZHEIMER’S DISEASE, MEDIA REPRESENTATIONS AND THE POLITICS OF EUTHANASIA: CONSTRUCTING RISK AND SELLING DEATH IN AN AGEING SOCIETY 64 (2016).

254. *Understanding Do Not Resuscitate (DNR) Orders*, BRIGHAM AND WOMEN’S FAULKNER HOSPITAL, <https://www.brighamandwomensfaulkner.org/patients-and-families/advance-care-directives/dnr-orders> [<https://perma.cc/5F9N-HEKG>].

255. See VIJ, *supra* note 235, at 374.

256. THE ENCYCLOPEDIA OF LIBERTARIANISM 157–158 (Ronald Hamowy ed., 2008)

257. See ANIL AGRAWAL, APC ESSENTIALS OF FORENSIC MEDICINE AND TOXICOLOGY 35 (2014).

258. *Id.*; see also VIJ, *supra* note 235, at 374.

### c. Nonvoluntary Euthanasia

Nonvoluntary euthanasia is another kind of euthanasia, where the patient's consent is either unavailable or unobtainable at the end of the patient's life, owing to medical reasons like irreversible coma.<sup>259</sup> Under such conditions, medical experts—with the consent of the close relatives on behalf of the patient—decide the best interests of the patient. It is also known as “mercy killing” and can be both active and passive.<sup>260</sup>

### B. Debate

No one wants to die or kill his or her beloved relatives in a clinically induced procedure without major reasons.<sup>261</sup> It is only when a person is suffering from unfathomable and never-ending pain or incurable diseases like an irreversible coma that people choose to end the misery of that person in an act of mercy.<sup>262</sup> However, there is room for abuse in medically assisted suicide or euthanasia,<sup>263</sup> where a depressed person may wish to end his or her life in a legal and painless way, or when a family chooses to pull the plug on a patient because the family cannot afford the medical bills and there is hope that the patient can recover in the future.<sup>264</sup> Therefore, there are moral and logical rationales on both sides of the euthanasia debate.

Proponents of euthanasia have five major arguments to defend this practice. Firstly, they argue that euthanasia is a merciful and humane act, undertaken because we cannot allow the continuation of a patient's agonizing and painful suffering.<sup>265</sup> Secondly, in circumstances where there is no chance that the patient's quality of life will improve, the patient must have the liberty and choice to end his or her own suffering.<sup>266</sup> Thirdly, euthanasia is very similar to other medical procedures, where it is the duty of physicians to relieve the patient's pain regardless of the side effects.<sup>267</sup> The supporters of

259. THE ENCYCLOPEDIA OF LIBERTARIANISM, *supra* note 256, at 157–58; *see also* VIJ, *supra* note 235, at 374.

260. THE ENCYCLOPEDIA OF LIBERTARIANISM, *supra* note 256, at 157–58.

261. LEWIS TAGLIAFERRE, *BABY BOOMER LAMENTATIONS: METAPHYSICAL ESSAYS TO DIE FOR* 63 (2d ed. 2013).

262. OTLOWSKI, *supra* note 241, at 203.

263. SELECT COMMITTEE ON THE ASSISTED DYING FOR THE TERMINALLY ILL BILL, REPORT, 2004-5, HL, at 39 (U.K.).

264. *See* TAGLIAFERRE, *supra* note 261, at 63.

265. BEVILLE, *supra* note 238, at 189–91.

266. Eur. Parl. Ass. Deb. 45 319 (Apr. 26-30, 2004) [hereinafter “Council of Europe”].

267. *See* Stuart G. Selkin & S. Sandy Sanbar, *Physician-Assisted Suicide and Palliative Sedation*, in *LEGAL MEDICINE* 245, 246 (7th ed. 2007).

euthanasia wrongfully compare intentional killing and unintentional killing, by arguing that this sort of intentional killing in euthanasia is a sort of relief of a pain, similar to other medical procedures that may also cause death.<sup>268</sup> They believe that euthanasia should only be considered as a medical procedure, relieving the patient's mental and physical agonies.<sup>269</sup> Fourthly, patients should have the right to discontinue their treatment in order to avoid the pain of facing slow but imminent and excruciating death.<sup>270</sup> Lastly, euthanasia could also save billions of dollars in treatment costs of significant health complications, where the families have to bear acute financial burdens.<sup>271</sup>

Similarly, opponents of euthanasia have six major arguments on why euthanasia is not morally acceptable. First, euthanasia violates the inalienable right to life of a person and is illegal.<sup>272</sup> Second, euthanasia is homicide,<sup>273</sup> because a human life is taken, which is morally unacceptable,<sup>274</sup> euthanasia cannot be acceptable.<sup>275</sup> Third, if a depressed person chooses euthanasia because he or she believes there is no hope left, various counselling techniques can help change his or her choice,<sup>276</sup> therefore, in this case, euthanasia is counterproductive, and it unnecessarily takes a life. Fourth, there is perceived room for abuse of euthanasia,<sup>277</sup> for example, greedy close relatives can induce the patient's death to inherit the patient's wealth.<sup>278</sup> Fifth, there are cases in which a person has been cured, having previously been told there is no cure and no hope.<sup>279</sup> For instance, famous physicist Ste-

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268. *See id.*

269. *See id.*

270. *See* JOHN ANDELIN, BIOLOGY, MEDICINE, AND THE BILL OF RIGHTS: SPECIAL REPORT 113 (1988).

271. *See* TAGLIAFERRE, *supra* note 261, at 61–63.

272. A. Redelbach, *Protection of the Right to Life by Law and by Other Means*, in *THE RIGHT TO LIFE IN INTERNATIONAL LAW* 182, 199 (Bertrand G. Ramcharan ed., 1985).

273. HAZEL BIGGS, EUTHANASIA, DEATH WITH DIGNITY AND THE LAW 25 (2001).

274. John J. Conley, *Narrative, Act, Structure: John Paul II's Method of Moral Analysis*, in *CHOOSING LIFE: A DIALOGUE ON EVANGELIUM VITAE* 3, 10 (Kevin Wildes & Alan Mitchell eds., 1997).

275. *Id.* at 10.

276. *See* BENJAMIN J. SADOCK ET AL., *KAPLAN & SADOCK'S SYNOPSIS OF PSYCHIATRY: BEHAVIORAL SCIENCES/CLINICAL PSYCHIATRY* 1368 (10th ed. 2007).

277. SELECT COMMITTEE ON THE ASSISTED DYING FOR THE TERMINALLY ILL BILL, *supra* note 263, at 39.

278. Robin Martin & Miles Hewstone, *Majority Versus Minority Influence, Message Processing and Attitude Change: The Source-Context-Elaboration Model*, in *40 ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY*, 237, 274 (Mark Zanna ed., 2008).

279. Katherine Harmon, *How Has Stephen Hawking Lived Past 70 with ALS?*, *SCI. AM.* (Jan. 7, 2012), <https://www.scientificamerican.com/article/stephen-hawking-als/> [https://perma.cc/RB6A-XKFX].

phen Hawking was diagnosed with ALS, also known as Lou Gehrig's disease, with an expectation of 4 years of lifespan. But against all odds, he lived for 45 more years than the predicted lifespan, and achieved wonders.<sup>280</sup> Therefore, active voluntary euthanasia unreasonably ends lives where there may still be hope of life. Lastly, mercy killing in an active involuntary euthanasia case is not the right to die, it is rather a right to kill a person without consent, and there is huge room for abuse,<sup>281</sup> which violates that person's right to life.<sup>282</sup>

### C. Practices

Active or passive involuntary euthanasia is generally considered illegal, akin to murder.<sup>283</sup> Nonvoluntary euthanasia is illegal, and even criminalized as murder in the law.<sup>284</sup> Active voluntary euthanasia is better known as "assisted suicide,"<sup>285</sup> "physician-assisted suicide,"<sup>286</sup> or is generally referred to only as "euthanasia."<sup>287</sup> The legality of active voluntary euthanasia is controversial around the world.<sup>288</sup> However, it has been legalized in a few exceptional jurisdictions including Belgium, the Netherlands,<sup>289</sup> and some states in the United States including Washington, Oregon, Colorado, Vermont, and California.<sup>290</sup> Passive voluntary euthanasia (better known as pulling the plug)<sup>291</sup> is generally an acceptable practice around the world.<sup>292</sup> For instance, in India,<sup>293</sup> Ireland,<sup>294</sup> Japan,<sup>295</sup> Sweden,<sup>296</sup> and Israel, the practice is al-

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280. *Id.*

281. SELECT COMMITTEE ON THE ASSISTED DYING FOR THE TERMINALLY ILL BILL, *supra* note 263, at 24.

282. See James Rachels, *Active and Passive Euthanasia*, in CONTEMPORARY MORAL PROBLEMS 155, 158 (James E. White ed., 2008).

283. THE ENCYCLOPEDIA OF LIBERTARIANISM, *supra* note 256, at 156.

284. Chan & Tse, *supra* note 249, at 29.

285. See STEPHEN W. SMITH, END-OF-LIFE DECISIONS IN MEDICAL CARE: PRINCIPLES AND POLICIES FOR REGULATING THE DYING PROCESS 13 (2012).

286. Ralf Stoecker, *Dignity and the Case in Favor of Assisted Suicide*, in HUMAN DIGNITY AND ASSISTED DEATH 30, 33 (Sebastian Muders eds., 2017).

287. Chan & Tse, *supra* note 249, at 29.

288. Stoecker, *supra* note 286 at 33.

289. Chan & Tse, *supra* note 249, at 29.

290. Stoecker, *supra* note 286, at 33.

291. SMITH, *supra* note 285, at 13.

292. P. AARNE VESILIND & ALASTAIR S. GUNN, HOLD PARAMOUNT: THE ENGINEER'S RESPONSIBILITY TO SOCIETY 40 (3d ed. 2010).

293. AGRAWAL, *supra* note 257, at 34.

294. See DEIRDRE MADDEN, MEDICAL LAW IN IRELAND 159 (2d ed. 2011).

295. SUSAN ORPETT LONG, FINAL DAYS: JAPANESE CULTURE AND CHOICE AT THE END OF LIFE 197 (2005).

296. FRED ROSNER, BIOMEDICAL ETHICS AND JEWISH LAW, 240 (2001).

lowed.<sup>297</sup> However, the laws in these jurisdictions have limited the circumstances in which it is permissible.<sup>298</sup>

Furthermore, in the Abrahamic religions, including Judaism,<sup>299</sup> Christianity,<sup>300</sup> and Islam,<sup>301</sup> euthanasia is considered a crime against humanity.<sup>302</sup> In Christianity, the Catholic Church stated that “intentional Euthanasia, whatever its form or motives, is murder. It is gravely contrary to the dignity of the person and to the respect due to God, his Creator.”<sup>303</sup> Similarly, in Islam, under the teachings of the Quran and the Sunnah, any suicide or assistance in suicide is sternly forbidden.<sup>304</sup> Therefore, euthanasia is not permissible in the Muslim world.<sup>305</sup> Likewise, the Jewish teachings regard life as the most valuable gift from God, therefore anything that shortens it is not permissible.<sup>306</sup>

## V. The Right to Life During Law Enforcement and Armed Conflicts

The right to life is constrained during law enforcement, when government agents take the life of a person during an activity as an exception to the right to life.<sup>307</sup> Similarly, many people lose their rights to life by being collateral damage during armed conflict.<sup>308</sup> Therefore, the legal use of force during law enforcement and armed

297. BEVILLE, *supra* note 238, at 388.

298. AGRAWAL, *supra* note 257, at 34; *see also* MADDEN, *supra* note 294, at 159; *see also* LONG, *supra* note 295, at 197; *see also* ROSNER, *supra* note 296, at 240; *see also* BEVILLE, *supra* note 238, at 388.

299. *See* BEVILLE, *supra* note 238, at 388.

300. *See* James F. Childress, *Christian Ethics, Medicine, and Genetics*, in *THE CAMBRIDGE COMPANION TO CHRISTIAN ETHICS* 261, 270 (Robin Gill ed., 2001).

301. *See* JENNIFER M. SCHERER & RITA J. SIMON, *EUTHANASIA AND THE RIGHT TO DIE: A COMPARATIVE VIEW*, 97 (1999).

302. *See id.*

303. RONIEL ALEDO, *COMPENDIUM OF THE TRADITIONAL CATECHISM OF THE CATHOLIC CHURCH* 351 (2013).

304. MOHAMMED ALI AL-BAR & HASSAN CHAMSI-PASHA, *CONTEMPORARY BIOETHICS: ISLAMIC PERSPECTIVE* 257 (2015).

305. Mohammad Hedayati-Kakhiki, *Islamic Law*, in *CONSENT: DOMESTIC AND COMPARATIVE PERSPECTIVES* 280, 291 (Alan Reed et al. eds., 2016).

306. MARY WARNOCK & ELISABETH MACDONALD, *EASEFUL DEATH: IS THERE A CASE FOR ASSISTED DYING?* 67 (2009).

307. SARAH JOSEPH & MELISSA CASTAN, *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS, AND COMMENTARY* 168 (3d ed. 2013); *see also* ANNA-LENA SVENSSON-McCARTHY, *THE INTERNATIONAL LAW OF HUMAN RIGHTS AND STATES OF EXCEPTION* 559 (1998).

308. PARK, *supra* note 37, at 130.

conflicts acts as an exception to the right to life.<sup>309</sup> This section explores the governing rules of law enforcement and armed conflict to understand the extent to which law enforcement and armed conflict curtail the right to life. Section V(A) discusses exceptions to the right to life during law enforcement and section V(B) outlines legal constraints on the right to life during armed conflicts.

### A. Law Enforcement

Under international human rights standards, law enforcement agents may use lethal force in certain settings strictly based on standard criteria set forth by the law, and they are allowed to take the life of a person in certain circumstances.<sup>310</sup> Such use of lethal force by law enforcement agents is legally allowed under international and domestic laws around the world.<sup>311</sup> However, the basic principles of permissibility of law enforcement ensure that every person's right to life is respected and that damage to precious life is minimized during the use of force.<sup>312</sup> The key sources of international human rights standards for law enforcement include the International Human Rights Standards for Law Enforcement, the United Nations Crime Congress,<sup>313</sup> the Code of Conduct for Law Enforcement Officials of 1979 ("CCLEO"),<sup>314</sup> the ECHR,<sup>315</sup> and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990 ("FLEO").<sup>316</sup> The standards and principles set forth by these laws are based on "customary and general principles" and are binding laws, as illustrated by the practices of the Eur. Ct. H.R. and the Inter-American

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309. JOSEPH & CASTAN, *supra* note 307, at 168; *see also* SVENSSON-McCARTHY, *supra* note 307, at 559; *see also* PARK, *supra* note 37, at 130; *see also* THE RIGHT TO LIFE AND CONFLICTING INTERESTS, *supra* note 82, at 80.

310. *See* Türkiye Cumhuriyeti Anayasası Madde; *see also* KONSTITUTSIIA ROSSISKOI FEDERATSIH [KONST. RF] [CONSTITUTION] art. 20 (Russ).

311. Türkiye Cumhuriyeti Anayasası Madde; *see also* KONSTITUTSIIA ROSSISKOI FEDERATSIH [KONST. RF] [CONSTITUTION] art. 20 (Russ).

312. JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW: VOLUME II - PART I 2065 (2005); *see also* Gaggioli, *supra* note 39, at 108.

313. *See* "UN Crime Congress," a policymakers' gathering by the UN.

314. G.A. Res. 34/169, Code of Conduct for Law Enforcement Officials (Dec. 17, 1979) [hereinafter CCLEO].

315. ECHR, *supra* note 6.

316. U.N. Secretariat, *Report of the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, at 110–16, U.N. Doc. A/CONF.144/28/Rev.1 (Mar. 1, 1991) [hereinafter FLEO].

Court of Human Rights.<sup>317</sup> In this regard, the Human Rights Committee stated that:

[A]ll operations of law enforcement agents should 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 (1990), and law enforcement agents should undergo appropriate training designed to inculcate these standards so as to ensure, in all circumstances, the fullest respect for the right to life.<sup>318</sup>

There are three main principles involved in the law enforcement standards that are universally binding: the principles of “necessity, proportionality and precaution.”<sup>319</sup> These are common principles in humanitarian law and human rights law.<sup>320</sup> The first two principles, necessity and proportionality, are applicable to agents of law enforcement.<sup>321</sup> Breach of either one of them means that the state has infringed on the right to life of a person killed<sup>322</sup> by its law enforcement agents.<sup>323</sup> The principle of precaution is also applicable to governments, and it is the state’s duty to provide the necessary tools for the safety of law enforcement agents and to avoid possible injury or death of an agent.<sup>324</sup> Failure to do so would mean that a state has violated the right to life of the enforcement agent killed during law enforcement.<sup>325</sup>

## 1. Necessity

The principle of necessity in law enforcement delineates that law enforcement agents must use only the force that is required by the circumstances.<sup>326</sup> This principle is codified under the Article 3 of

317. Stuart Casey-Maslen, *Use of Force in Law Enforcement and the Right to Life: The Role of the Human Rights Council*, Academy In-Brief No. 6, GENEVA ACAD. OF INT’L HUMAN RIGHTS LAW AND HUMAN RIGHTS, 5–6, [https://www.geneva-academy.ch/joomlatools-files/docman-files/in-brief6\\_WEB.pdf](https://www.geneva-academy.ch/joomlatools-files/docman-files/in-brief6_WEB.pdf) [hereinafter Casey-Maslen, *Use of Force*].

318. STUART CASEY-MASLEN & SEAN CONNOLLY, *POLICE USE OF FORCE UNDER INTERNATIONAL LAW* 80 (2017).

319. See Nils Melzer, *Targeted Killings in Operational Law Perspective*, in *THE HANDBOOK OF THE INTERNATIONAL LAW OF MILITARY OPERATIONS* 277, 282 (Terry D. Gill & Dieter Fleck eds., 2011).

320. Gloria Gaggioli, *Remoteness and Human Rights Law*, in *RESEARCH HANDBOOK ON REMOTE WARFARE* 133, 159 (Jens David Ohlin ed., 2017).

321. Casey-Maslen, *Use of Force*, *supra* note 317, at 6–9.

322. CASEY-MASLEN & CONNOLLY, *supra* note 318, at 82–83.

323. Casey-Maslen, *Use of Force*, *supra* note 317, at 6–9.

324. See *id.* at 9–10.

325. See *id.*

326. See CASEY-MASLEN & CONNOLLY, *supra* note 318, at 82–83.

CoCEO,<sup>327</sup> where the use of force by law enforcement agents is permissible only if three elements are met.<sup>328</sup> Firstly, law enforcement agents must exhaust all possible peaceful measures, such as persuasion, mediation, and arrest, before resorting to lethal force.<sup>329</sup> Secondly, the force must only be used for a lawful measure. For example, a law enforcement agent may not use force as punishment for a crime.<sup>330</sup> Inversely, he may use lethal force to effectively arrest the suspect, to halt a crime, to defend a civilian life, or in self-defense.<sup>331</sup> Accordingly, an agent may not use lethal force for extrajudicial killings, unlawful arrests, personal vendettas, minority discrimination, and in unnecessary situations (such as scenarios where the subject has been peacefully detained).<sup>332</sup> Thirdly, law enforcement agents must only use force that is necessary, which means that agents may not use lethal force in addition to that required in the case at hand.<sup>333</sup> Killing is not required in a situation where a criminal can easily be arrested, such as where a wanted criminal is found shopping in a mall with his family by law enforcement agents. In this situation, merely detaining him for investigation and other purposes would be reasonable. However, lethal force may be used based on the resistance of the subject.<sup>334</sup> For instance, in the same criminal example, if the criminal takes his own family hostage with a knife found at the store, now the agents may use lethal force to defend the lives of the criminal's family members. Moreover, lethal force may be used against terrorists before other peaceful measures are exhausted to prevent large-scale attacks that are either in the process of being planned or will occur at some point in the near future.<sup>335</sup>

Interestingly, in a similar situation in *Suarez de Guerro v. Colombia* case, the Human Rights Committee found that police agents had used

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327. CCLEO, *supra* note 314.

328. Stuart Casey-Maslen, *The Use of Firearms in Law Enforcement*, in *WEAPONS UNDER INTERNATIONAL HUMAN RIGHTS LAW* 3, 5 (Stuart Casey-Maslen ed., 2014).

329. Casey-Maslen, *Use of Force*, *supra* note 317, at 9–10.

330. *Id.* at 7.

331. *Id.* at 7. (“The accompanying official commentary clarifies that law enforcement officials may use such force, and no more, ‘as is reasonably necessary under the circumstances’ to prevent crime or to effect or assist in the lawful arrest of criminals or suspected criminals”, the emphasis of using force for certain defined scenarios are impliedly added (emphasis added)).

332. *Id.*

333. *Id.*

334. *Id.*

335. Jennifer M. Welsh, *Morality of “Drone Warfare”*, in *DRONES AND THE FUTURE OF ARMED CONFLICT: ETHICAL, LEGAL, AND STRATEGIC IMPLICATIONS* 24, 36 (David Cortright et al. eds., 2015).

unnecessary force by killing suspected terrorists without warning.<sup>336</sup> However, some argue that, in matters involving terrorists, people's lives are at risk,<sup>337</sup> in circumstances that involve weapons such as when suicide vests are involved.<sup>338</sup> Therefore, warnings may be counter-productive in such cases.<sup>339</sup> They reason that terrorists can get away or detonate their vests in response to such warnings.<sup>340</sup> Therefore, it is reasonable to kill a known and identified terrorist on the spot without giving them a warning.<sup>341</sup> The same reasoning was used by the United States in the Osama bin Laden raid in Pakistan.<sup>342</sup> The United States believed that if bin Laden and Pakistan were forewarned of any use of force or actual action, the terrorists would have gotten away.<sup>343</sup>

## 2. Proportionality

The principle of proportionality in law enforcement means that law enforcement agents may only use the force required to meet the legal objective, and not use force that is not necessary under the Article 3 of CoCEO.<sup>344</sup> However, this principle is often misinterpreted as the force having to be at the same level as that used by subjects, which means that officers may only shoot a bullet when the subject shoots a bullet.<sup>345</sup> However, the true understanding of the principle of proportionality means that an officer may use force that is proportionate to attaining a legal objective.<sup>346</sup> Therefore, according to the principle of

336. U.N. Human Rights Comm., *Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights concerning Communication No. R.11/45*, ¶ 13.2, U.N. Doc. CCPR/C/15/D/45/1979, annex XI (Mar. 31, 1982), [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f15%2fd%2f45%2f1979&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f15%2fd%2f45%2f1979&Lang=en) [<https://perma.cc/UW36-A6PK>]; see also LINDSEY CAMERON & VINCENT CHETAU, *PRIVATIZING WAR: PRIVATE MILITARY AND SECURITY COMPANIES UNDER PUBLIC INTERNATIONAL LAW* 506 (2013).

337. See Welsh, *supra* note 335, at 36.

338. See MŪSĀ K\_H\_ĀN JALĀLZĀ'Ī, *FIXING THE EU INTELLIGENCE CRISIS: INTELLIGENCE SHARING, LAW ENFORCEMENT AND THE THREAT OF CHEMICAL BIOLOGICAL AND NUCLEAR TERRORISM* 146 (2016).

339. Alastair Finlan, *The Perils of Special Approaches to Counterterrorism: The Shooting of Jean Charles de Menezes*, in *THE TEST OF TERRORISM: RESPONDING TO POLITICAL VIOLENCE IN THE TWENTY-FIRST CENTURY* 14, 18 (Alastair Finlan ed., 2016).

340. *Id.*

341. See *id.*

342. MARK JONES & PETER JOHNSTONE, *HISTORY OF CRIMINAL JUSTICE*, 379 (5th ed. 2011).

343. *Id.*

344. CCLEO, *supra* note 314.

345. Casey-Maslen, *Use of Force*, *supra* note 317, at 9.

346. JOE STORK, HUMAN RIGHTS WATCH, *EGYPT: SECURITY FORCES ABUSE OF ANTI-WAR DEMONSTRATORS*, 19 (2003).

proportionality, an agent may shoot a bullet without any use of a bullet by the suspect, in self-defense or in the defense of another's life. Similarly, the use of lethal force by an agent in circumstances where the suspect can be easily arrested would be considered a violation of the principle of proportionality.<sup>347</sup>

### 3. Precaution

In addition to the principles of proportionality and necessity, the duty of precaution rests on the state, and it requires the state to avoid foreseeable injuries and deaths of the public and law enforcement agents<sup>348</sup> as stated in the FLEO.<sup>349</sup> Within the notion of precaution, the principles of necessity and proportionality are also included, because these principles help in reducing foreseeable injuries and deaths.<sup>350</sup> Therefore, a state is also obliged to exhaust peaceful measures under the duty of precaution and take all necessary precautions to minimize the foreseeable loss of lives,<sup>351</sup> as established and demonstrated by the Eur. Ct. H.R.,<sup>352</sup> the Inter-American Court,<sup>353</sup> and the Human Rights Committee ("HRC") in the cases of *McCann v. U.K.*, ECtHR, 1995,<sup>354</sup> *Detention Centre of Catia v Venezuela*, IAmCtHR, 2006,<sup>355</sup> *Ergi v. Turkey*,<sup>356</sup> and *Isayeva, Yusupova & Bazayeva v. Russia*.<sup>357</sup> In these cases, the states were found in violation of the duty of

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347. Casey-Maslen, *Use of Force*, *supra* note 317, at 9.

348. CASEY-MASLEN & CONNOLLY, *supra* note 318, at 95.

349. See FLEO, *supra* note 316.

350. Casey-Maslen, *Use of Force*, *supra* note 317, at 9–10.

351. CASEY-MASLEN & CONNOLLY, *supra* note 318, at 95.

352. See generally *Ergi v. Turkey*, App. No. 23818/94, 32 Eur. H.R. Rep. 18 (1998) (the applicant filed this case in regards to the shooting that occurred in his village where his sister was killed); see also HENCKAERTS & DOSWALD-BECK, *supra* note 312, at 383; see also *Isayeva, Yusupova, & Bazayeva v. Russ.*, App. Nos. 57947/00, 57948/00, & 57949/00, Merits & Just Satisfaction, paras. 166, 171, & 199 (Eur. Ct. H.R. Feb. 24, 2005); see also Dominik Steiger, *Enforcing International Humanitarian Law Through Human Rights Bodies*, in *INDUCING COMPLIANCE WITH INTERNATIONAL HUMANITARIAN LAW: LESSONS FROM THE AFRICAN GREAT LAKES REGION* 263, 293–94 (Heike Krieger & Jan Willms eds., 2015).

353. See *Detention Centre of Catia v. Venez.*, Case No. 11.699, Inter-Am. Comm'n H.R., Report No. 79/04, IACHR/Ser.C (2006); see also CASEY-MASLEN & CONNOLLY, *supra* note 318, at 95.

354. See *McCann*, 21 Eur. H.R. Rep. at 160–61; see also CASEY-MASLEN & CONNOLLY, *supra* note 318, at 95.

355. See *Detention Centre of Catia v. Venez.*, Case No. 11.699, Inter-Am. Comm'n H.R., Report No. 79/04, IACHR/Ser.C (2006); see also CASEY-MASLEN & CONNOLLY, *supra* note 318, at 95.

356. *Ergi*, 32 Eur. H.R. Rep. 18; see also HENCKAERTS & DOSWALD-BECK, *supra* note 312, at 383.

357. *Isayeva*, paras. 166, 171, & 199; see also Steiger, *supra* note 352, at 293–94.

precaution by fighting armed groups and rebels.<sup>358</sup> It is also established that the use of lethal force short of last resort is permissible against terrorists,<sup>359</sup> armed groups, and organized groups, because arrest of such groups is difficult and dangerous,<sup>360</sup> as demonstrated by the example of the raid against Osama bin Laden<sup>361</sup> noted in section V(A)(1). Under the reasonableness criterion, the HRC further notes that an arrest is to be made only in circumstances when it is possible.<sup>362</sup> Of course, it is unreasonable to seek arrest in a situation when arrest is impossible. In addition to this, a state is obliged to provide lifesaving equipment to its law enforcement agents as a precautionary measure to minimize injuries or deaths.<sup>363</sup> For instance, the simple provisioning of helmets, bulletproof vests, and shields to officers can save numerous precious lives.<sup>364</sup> This is also the case under the duty of precaution.<sup>365</sup>

#### 4. Shooting Principles

After the principles of necessity, proportionality, and precaution, there are two—and only two—other prescribed situations where law enforcement agents may use lethal force.<sup>366</sup> One is “shoot to stop” and the other is “shoot to kill.”<sup>367</sup> In both situations, death as a possible outcome would not be considered a violation of a person’s right to life because the use of force under the notions of “shooting to kill” or “shooting to stop” in a prescribed manner is permissible under law.<sup>368</sup>

In a “shooting to stop” situation, according to the ECHR,<sup>369</sup> FLEO,<sup>370</sup> and the United Nations General Assembly,<sup>371</sup> law enforce-

358. *Ergi*, 32 Eur. H.R. Rep. 18; see also HENCKAERTS & DOSWALD-BECK, *supra* note 312, at 383; see also *Isayeva*, paras. 199–200; see also Steiger, *supra* note 352, at 293–94; see also *McCann*, 21 Eur. H.R. Rep. at 179; see also *Detention Centre of Catia v Venez.*, Case No. 11.699, Inter-Am. Comm’n H.R., Report No. 79/04, IACHR/Ser.C (2006); see also CASEY-MASLEN & CONNOLLY, *supra* note 318, at 95.

359. Welsh, *supra* note 335, at 36; see also Finlan, *supra* note 339, at 18.

360. Welsh, *supra* note 335, at 36; see also Finlan, *supra* note 339, at 18.

361. JONES & JOHNSTONE, *supra* note 342, at 379.

362. Louise Doswald-Beck, *The Right to Life in Armed Conflict: Does International Law Provide all the Answers?*, 88 INT’L REV. THE RED CROSS 881, 885 (2006).

363. Casey-Maslen, *Use of Force*, *supra* note 317, at 9–10.

364. *Id.*

365. *Id.*; see also CASEY-MASLEN & CONNOLLY, *supra* note 318, at 95; see also FLEO, *supra* note 316.

366. Casey-Maslen, *Use of Force*, *supra* note 317, at 11–15.

367. *Id.*

368. See *id.*

369. ECHR, *supra* note 6.

370. FLEO, *supra* note 316.

371. G.A. Res. 45/166; see also, Doswald-Beck, *supra* note 362, at 887.

ment agents may shoot a subject in order to stop him from doing certain proscribed activities that pose a threat to a person's life, or help or resist the subject's escape.<sup>372</sup> Accordingly, an agent may shoot to stop in self-defense, to prevent a crime, to enable an arrest, or to prevent the resistance of an arrest.<sup>373</sup> However, it is pertinent to note that the use of lethal force in "shooting to stop" situations is aimed at stopping the subject from doing certain activities, and the intention is purely to stop the act and not to kill the person, but such shooting might or might not cause the death of the subject in the process.<sup>374</sup> For instance, if a subject is trying to escape lawful arrest by running, a shot to his leg is sufficient and permissible under law to stop the subject. However, if the same subject dies due to the injury on his leg and excessive bleeding, the kill was legal as the intention of the agent was to stop the subject and not kill him.

Whereas, in "shooting to kill" situations, a law enforcement agent may legally shoot with the intent to kill the subject only if the actions of the subject posed a threat to the life of another person.<sup>375</sup> This principle is known as the "protect life principle,"<sup>376</sup> which states that a life may be taken to protect another life.<sup>377</sup> Therefore, under this principle, an officer may shoot to kill the subject in order to save his or her own life or the life of any other person.<sup>378</sup>

## B. Armed Conflicts

Similar to law enforcement regulations that protect people's right to life, the International Humanitarian Laws ("IHL") that lay the principles of conducting war or armed conflict<sup>379</sup> try to protect the right to life of civilians and all people during armed conflicts,<sup>380</sup> be they a domestic armed conflict between a state and nonstate actors such as terrorist groups and rebels, a conflict between states in an interna-

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372. ECHR, *supra* note 6; *see also* FLEO, *supra* note 316; *see also* G.A. Res. 45/166, *supra* note 371; *see also* Doswald-Beck, *supra* note 362, at 886–87.

373. Casey-Maslen, *Use of Force*, *supra* note 317, at 11–15.

374. *Id.*

375. *Id.*

376. Gaggioli, *Lethal Force and Drone*, *supra* note 39, at 102.

377. *Id.*

378. *Id.*

379. *See* JONATHAN CROWE & KYLIE WESTON-SCHEUBER, *PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW* 44–115 (2013) (this section explores the protection of civilians and combatants during warfare and the role of combatants in it).

380. Irina Lediakh, *Protecting the Right to Life During Armed Conflicts*, in *INTERNATIONAL AND NATIONAL LAW IN RUSSIA AND EASTERN EUROPE: ESSAYS IN HONOR OF GEORGES GINSBURGS* 207, 207 (Roger Clark et al. eds., 2001).

tional armed conflict, or a full-fledged war.<sup>381</sup> The Geneva Conventions, along with their protocols<sup>382</sup> (instruments of IHL),<sup>383</sup> protect the wounded, sick, civilians, noncombatants, women, children, and prisoners of war, include principles that protect peoples' right to life, and act as instruments to limit the devastation of war and the use of lethal force.<sup>384</sup> These instruments are universally applicable to every state, where, similar to the principles of law enforcement,<sup>385</sup> they set out the principles of necessity, proportionality, and distinction.<sup>386</sup> The principles of necessity and proportionality under armed conflict are

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381. See generally CROWE & WESTON-SCHEUBER, *supra* note 379, at 70–164 (exploring the liability of states and non-states as well as the protection of civilians and combatants during warfare and the role of combatants in it).

382. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, ch.I, Aug. 12, 1949, 75 U.N.T.S. 31 [hereinafter Geneva Convention, Armed Forces in the Fields]; see also Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea ch.II, Aug. 12, 1949, 75 U.N.T.S. 85 [hereinafter Geneva Convention, Armed Forces at Sea]; see also Geneva Convention Relative to Treatment of Prisoners of War, Aug. 12, 1949, 75 U.N.T.S. 135 [hereinafter Geneva Convention, Treatment of Prisoners of War]; see also Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12 1949, 75 U.N.T.S. 287 [hereinafter Geneva Convention, Protection of Civilian Persons]; see also Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol), June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Geneva Conventions, Protection of Victims]; see also Regulations Concerning Identification to the Above-Mentioned Protocol as Amended on 30 November 1993 (Annex I), Nov. 30, 1993, 1920 U.N.T.S. [hereinafter Geneva Conventions, Amended Protocol]; see also Annex (I) AP (I), 1977, and its commentary (June 8, 1977); see also Annex (II) AP (I), 1977, and its commentary (June 8, 1977); see also Additional Protocol (II) to the Geneva Conventions, 1977, and its commentary (June 8, 1977); see also Additional Protocol (III) to the Geneva Conventions, 2005, and its commentary (Dec. 8, 2005); See *Geneva Conventions of 1949 and Additional Protocols, and their Commentaries*, INTERNATIONAL COMMITTEE OF THE RED CROSS, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp> [<https://perma.cc/7FN7-QRE4>].

383. CROWE & WESTON-SCHEUBER, *supra* note 379, at 24–44.

384. Geneva Convention, Armed Forces in the Field, *supra* note 382; see also Geneva Convention, Armed Forces at Sea, *supra* note 382; see also Geneva Convention, Treatment of Prisoners of War, *supra* note 382; see also Geneva Convention, Protection of Civilian Persons, *supra* note 382; see also Geneva Conventions, Protection of Victims, *supra* note 382; see also Geneva Convention, Amended Protocol; see also Annex (I) AP (I), 1977, and its commentary (June 8, 1977); see also Annex (II) AP (I), 1977, and its commentary (June 8, 1977); see also Additional Protocol (II) to the Geneva Conventions, 1977, and its commentary (June 8, 1977); see also Additional Protocol (III) to the Geneva Conventions, 2005, and its commentary (December 8, 2005); see *Geneva Conventions of 1949 and Additional Protocols, and their Commentaries*, *supra* note 382.

385. See Gaggioli, *supra* note 39, at 159 (stating that although IHL and HRL have common principles, “they operate differently . . . and their application in specific situations may well lead to contradictory results.”).

386. Nicholas Rostov & Harvey Rishikof, *9/11 and After: Legal Issues, Lessons, and Irregular Conflict*, in LESSONS ENCOUNTERED: LEARNING FROM THE LONG WAR 345, 373–74 (Richard D. Hooker, Jr., & Joseph J. Collins eds., 2017).

the same as the principles of necessity and proportionality discussed in section V(A). Therefore, this subsection will only briefly discuss the principle of distinction under IHL. Under the principle of distinction in Protocol I to the Geneva Conventions,<sup>387</sup> the use of force must not purposefully target civilians or noncombatants in order to protect people's right to life during armed conflicts.<sup>388</sup> The overall objective behind the international humanitarian law in the Geneva Conventions was to limit the horrors of war and its devastation with the major concern of reducing the loss of human life.<sup>389</sup> Therefore, all of humanitarian law is focused on reducing human suffering.<sup>390</sup> Accordingly, it can be rightfully deduced that humanitarian law protects peoples' right to life during armed conflicts.<sup>391</sup>

## Conclusion

The right to life is the most fundamental and imperative human right.<sup>392</sup> All other human rights are dependent on it.<sup>393</sup> It is the most protected right,<sup>394</sup> protected by nearly all major human rights treaties<sup>395</sup> and constitutions around the world.<sup>396</sup> Yet, several major countries like China<sup>397</sup> and Australia<sup>398</sup> have not incorporated the right to life into their constitutional laws. At its most basic, the right to life generally means the right of a person to live and the right not to die.<sup>399</sup> It also means that the state must protect, promote, and pre-

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387. See Geneva Convention, Protection of Civilian Persons, *supra* note 382; see also Geneva Conventions, Protection of Victims, *supra* note 382; see *Geneva Conventions of 1949 and Additional Protocols, and their Commentaries*, *supra* note 382.

388. Patrick Hayden, *The War on Terror and the Just Use of Military Force, in AMERICA'S WAR ON TERROR* 49, 53–54 (Robert P. Watson et al. eds., 2013).

389. Lediakh, *supra* note 380, at 207.

390. See *id.*

391. *Id.*

392. See SCHABAS, *supra* note 1, at 8; see *Khalidova*, para. 88; see also Moabelo, *supra* note 14, at 58; see also *McCann*, 21 Eur. H.R. Rep. at 97 (the Eur. Ct. H.R. revitalizing the importance of right to life); see also Teodorescu, *supra* note 26, at 4.

393. SCHABAS, *supra* note 1, at 8; see also Moabelo, *supra* note 14, at 54.

394. Quénivet, *supra* note 5, at 331–32.

395. *Id.*; see also UDHR, *supra* note 6; see also ICCPR, *supra* note 6; see also ArCHR, *supra* note 6; see also ACHPR, *supra* note 6; see also ACHR, *supra* note 6; see also ADRDM, *supra* note 6; see also CPHREFF, *supra* note 6.

396. U.S. CONST. amend. XIV, § 1; see also Canada Act, 1982, c11 (U.K.); see also KONSTITUTSIJA ROSSISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 20 (Russ); see also PAKISTAN CONST. art. 9; see also INDIA CONST. art. 21; see also Türkiye Cumhuriyeti Anayasası Madde 17.

397. Men, *supra* note 41, at 93.

398. Stein & Mahony, *supra* note 42, at 57, 61.

399. See HAAG & CONRAD, *supra* note 29, at 261.

serve lives of human beings,<sup>400</sup> and that no one may be arbitrarily deprived of his or her life.<sup>401</sup> As a result, the state owes certain duties towards its people.<sup>402</sup> For instance, every state has a duty to ensure that the life of a person is not taken unlawfully.<sup>403</sup> Similarly, every state has a duty to protect human life in instances that involve risk, for instance where death is preventable through medical treatment.<sup>404</sup> A state's failure to save the lives of people with treatable medical conditions is an infringement of the right to life.<sup>405</sup> It is the duty of all states to take appropriate actions to safeguard lives of its people by stopping the preventable deaths of its citizens. For instance, a state can prevent deaths in its law enforcement agencies by simply providing helmets and bulletproof vests to its law enforcement agents.<sup>406</sup> Similarly, a state can prevent death by capturing and punishing criminals,<sup>407</sup> whereas, law enforcement agents may even take a person's life in order to protect the right to life of another person.<sup>408</sup> Categorically, the right to life places duties on a state to protect, preserve, and promote the lives of its people.<sup>409</sup> Frequent characteristics of the right to life under different treaties and laws are that every human being has a right to life,<sup>410</sup> that it must be protected by law,<sup>411</sup> and that people must not be arbitrarily deprived of their lives.<sup>412</sup> The right to life is

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400. STEELE, *supra* note 30, at 171.

401. HAAG & CONRAD, *supra* note 29, at 261.

402. STEELE, *supra* note 30, at 171.

403. MORIARTY & MASSA, *supra* note 33, at 225; *see also* STEELE, *supra* note 30, at 171.

404. WICKS, *supra* note 34, at 330.

405. *See id.* at 330–31.

406. PARK, *supra* note 37, at 27.

407. INTERNATIONAL HUMAN RIGHTS LAW, *supra* note 38, at 220.

408. Gaggioli, *supra* note 39, at 102.

409. GITANJALI NAIN GILL, ENVIRONMENTAL JUSTICE IN INDIA: THE NATIONAL GREEN TRIBUNAL 45 (2016).

410. RÖMER, *supra* note 56, at 94; *see also* UDHR, *supra* note 6; *see also* ICCPR, *supra* note 6; *see also* ArCHR, *supra* note 6; *see also* ACHPR, *supra* note 6; *see also* ACHR, *supra* note 6; *see also* ADRDM, *supra* note 6; *see also* ECHR, *supra* note 6; *see also* CPHRFF, *supra* note 6; *see also* U.S. CONST. amend. XIV, § 1; *see also* Canada Act, 1982, c11 (U.K.); *see also* KONSTITUTSIIA ROSSISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 20 (Russ); *see also* PAKISTAN CONST. art. 9; *see also* INDIA CONST. art. 21; *see also* Türkiye Cumhuriyeti Anayasası Madde 17.

411. RÖMER, *supra* note 56, at 94; *see also* ICCPR, *supra* note 6; MURRAY, *supra* note 63, at 118; *see also* ArCHR, *supra* note 6; *see also* NAGAN ET AL., *supra* note 70, at 376; *see also* ACHR, *supra* note 6; *see also* ECHPR, *supra* note 6; *see also* CPHRFF, *supra* note 6.

412. ICCPR, *supra* note 6; *see also* ArCHR, *supra* note 6; *see also* ACHPR, *supra* note 6; *see also* ACHR, *supra* note 6; *see also* ECHR, *supra* note 6; *see also* CPHRFF, *supra* note 6; *see also* U.S. CONST. amend. XIV, § 1; *see also* Canada Act, 1982, c11 (U.K.); *see also* KONSTITUTSIIA ROSSISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 20 (Russ); *see also* PAKISTAN CONST. art. 9; *see also* INDIA CONST. art. 21.

also inalienable, which is why it may not be derogated from a person in any circumstances.<sup>413</sup> Similar to other human rights, though, the right to life is not unqualified, because the same codifications<sup>414</sup> that foster the right to life also constrain it.<sup>415</sup> It is interesting to note that, first, the right to life imposes a positive duty on states to protect the lives of its people from all that is unlawful and unreasonable, for example, to protect human beings from unlawful use of force from other people<sup>416</sup> or to protect human lives from curable or preventable diseases.<sup>417</sup> The right to life also imposes a negative duty on a state, prohibiting it from depriving a person of life arbitrarily or from unlawfully using force.<sup>418</sup> This means that, under the same right to life, states do have the capacity to deprive human lives nonarbitrarily if that is done in a lawful and reasonable way.<sup>419</sup> Scholars see the use of the word “arbitrarily” as indicating the unlawful and unreasonable deprivation of life, prohibited under the right to life;<sup>420</sup> whereas they see “nonarbitrary” as lawful, and reasonable deprivation of life and as an exception to the right to life,<sup>421</sup> such as the deprivation of life in self-defense<sup>422</sup> or the legal use of force such as CP.<sup>423</sup> Categorically, CP,<sup>424</sup> abortion,<sup>425</sup> euthanasia,<sup>426</sup> and the use of force for law

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413. MARC J. BOSSUYT, GUIDE TO THE “TRAVAUX PRÉPARATOIRES” OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 136 (1987). *see also* ICCPR, *supra* note 6; *see also* NAGAN ET AL., *supra* note 70, at 376; *see also* ACHR, *supra* note 6.

414. U.S. CONST. amend. XIV, § 1; *see also* Canada Act, 1982, c11 (U.K.); *see also* KONSTITUTSIIA ROSSISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 20 (Russ); *see also* PAKISTAN CONST. art. 9; *see also* INDIA CONST. art. 21; *see also* Türkiye Cumhuriyeti Anayasası Madde 17; *see also* UDHR, *supra* note 6; *see also* ICCPR, *supra* note 6; *see also* ArCHR, *supra* note 6; *see also* ACHPR, *supra* note 6; *see also* ACHR, *supra* note 6; *see also* ADRDM, *supra* note 6; *see also* ECHR, *supra* note 6; *see also* CPHRFF, *supra* note 6.

415. U.S. CONST. amend. XIV, § 1; *see also* Canada Act, 1982, c11 (U.K.); *see also* KONSTITUTSIIA ROSSISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 20 (Russ); *see also* INDIA CONST. art. 21; *see also* Türkiye Cumhuriyeti Anayasası Madde 17; *see also* ICCPR, *supra* note 6; *see also* ArCHR, *supra* note 6; *see also* ACHPR, *supra* note 6; *see also* ACHR, *supra* note 6; *see also* ADRDM, *supra* note 6; *see also* ECHR, *supra* note 6; *see also* CPHRFF, *supra* note 6.

416. *See* LEACH, *supra* note 109, at 191.

417. WICKS, *supra* note 34, at 330.

418. LEACH, *supra* note 109, at 219.

419. *Id.*

420. OTTO, *supra* note 116, at 54.

421. RÖMER, *supra* note 56, at 94.

422. Lenzerini & Francioni, *supra* note 113, at 61.

423. OTTO, *supra* note 116, at 120.

424. *Id.* at 54; *see also* Kurki, *supra* note 72, at 371; *see also* CHENWI, *supra* note 59, at 24, 36; *see also* ACHR, *supra* note 6; *see also* ICCPR, *supra* note 6; *see also* SCHABAS, *supra* note 1, at 260; *see also* ECHR, *supra* note 6; *see also* KONSTITUTSIIA ROSSISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 20 (Russ); *see also* Türkiye Cumhuriyeti Anayasası Madde 17

425. *See* GENNARO, *supra* note 170, at 65.

426. McCONNELL, *supra* note 233, at 96.

enforcement and armed conflict are exceptions to the right to life.<sup>427</sup>

CP is an exception to the right to life in fifty-three jurisdictions around the world<sup>428</sup> and under major international human rights treaties,<sup>429</sup> though more than half of the world has abolished CP either in legislation or in practice.<sup>430</sup> The practice of CP means that states execute criminals/convicts after following due process<sup>431</sup> of domestic law as the most severe punishment<sup>432</sup> for the most serious crimes such as murder, rape, treason, or drug trafficking.<sup>433</sup> The law acknowledges that minors and pregnant women may not be deprived of their lives through CP.<sup>434</sup> Similarly, to minimize the risk of abuse of CP and to avoid irreversible actions against political rivals under the guise of CP, CP may not be applied in political matters.<sup>435</sup> Proponents of CP argue that it is a fair and proportionate punishment for heinous crimes like murder,<sup>436</sup> because people who commit such crimes are beyond the realms of rehabilitation<sup>437</sup> and can strike back.<sup>438</sup> Therefore, CP defends the general public's right to life.<sup>439</sup> The proponents maintain that CP also saves states money,<sup>440</sup> acts as a deterrent,<sup>441</sup> and contributes to lowering rates of murder and rape.<sup>442</sup> However, critics of CP argue that, in moral philosophy, CP still infringes upon the right to life.<sup>443</sup> Opponents of CP argue that it is irreversible.<sup>444</sup> They deny CP's deterrent effect<sup>445</sup> and cost efficiency<sup>446</sup> and maintain that

427. JOSEPH & CASTAN, *supra* note 307, at 168; *see also* SVENSSON-McCARTHY, *supra* note 307, at 559; *see also* PARK, *supra* note 37, at 130; *see also* THE RIGHT TO LIFE AND CONFLICTING INTERESTS, *supra* note 82, at 80.

428. *See* Smith, *supra* note 119.

429. ICCPR, *supra* note 6; *see also* ACHR, *supra* note 6; *see also* CPHRFF, *supra* note 6.

430. SIMON & BLASKOVICH, *supra* note 121, at 17.

431. ROZA PATI, DUE PROCESS AND INTERNATIONAL TERRORISM: AN INTERNATIONAL LEGAL ANALYSIS 34 (2009).

432. HAAG & CONRAD, *supra* note 29, at 259.

433. WALKER, *supra* note 124, at 9.

434. TODRES ET AL., *supra* note 60, at 279; *see also* ICCPR, *supra* note 6.

435. CHENWI, *supra* note 59, at 24; *see also* ACHR, *supra* note 6.

436. GROSS & ELLSWORTH, *supra* note 130, at 33.

437. FINKEL, *supra* note 134, at 214.

438. HOOD & HOYLE, *supra* note 123, at 320; *see also* CLEAVE, *supra* note 135, at 52.

439. BAE, *supra* note 125, at 64.

440. THE GALLUP POLL CUMULATIVE INDEX: PUBLIC OPINION, 1935-1997 52 (Alec M. Gallup ed., 1999); *see also* PURPURA, *supra* note 136, at 250.

441. MACKINNON & FIALA, *supra* note 139, at 323; *see also* BANNER, *supra* note 138, at 218.

442. *See* MACKINNON & FIALA, *supra* note 139, at 329.

443. *See* Feinberg, *supra* note 115, at 255.

444. CHENWI, *supra* note 59, at 193.

445. POJMAN & REIMAN, *supra* note 142, at 26, 27, 28, & 44.

CP causes emotional trauma in the victims and their families.<sup>447</sup> They also maintain that CP violates the right to life.<sup>448</sup> In response, proponents of CP argue that murderers forfeited their right to life by choosing to violate the rights of other innocent people.<sup>449</sup>

Abortion is considered by some as another exception to the right to life,<sup>450</sup> which is a medical procedure used to ruthlessly kill a prenatal person during pregnancy<sup>451</sup> without any legal consequences,<sup>452</sup> though it can have physical consequences.<sup>453</sup> Pro-choicers argue that unborn children cannot be considered legal persons before birth,<sup>454</sup> and maintain that the bodily integrity of a mother overrides the rights of an unborn (nonperson) child.<sup>455</sup> But the public does not allow abortions after a certain limit,<sup>456</sup> based on the viability of the child outside the womb of a mother,<sup>457</sup> which varies from twelve weeks<sup>458</sup> to twenty-three weeks<sup>459</sup> depending upon the technology that would be used to keep the child viable.<sup>460</sup> Pro-lifers argue that abortion is morally unacceptable<sup>461</sup> and that it violates unborn children's right to life.<sup>462</sup> They base their stance on the species-based argument,<sup>463</sup> the potential argument,<sup>464</sup> the "future like ours argument,"<sup>465</sup> the actual versus ideal desires argument,<sup>466</sup> the essential property argument,<sup>467</sup> and the probability argument.<sup>468</sup> Abortion is completely unlawful

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446. Denno, *supra* note 145, at xxiv; *see also* WHITEHEAD ET AL., *supra* note 145, at 329; *see also* MANDERY, *supra* note 145, at 98.

447. HOOD & HOYLE, *supra* note 123, at 183–84.

448. PALMER, *supra* note 148, at 405.

449. CHENWI, *supra* note 59, at 59.

450. *See* GENNARO, *supra* note 170, at 65.

451. OBENGO, *supra* note 171, at 16.

452. *See* Panagopoulou-Koutnatzi, *supra* note 172, at 117.

453. *See* Singh et al., *supra* note 173, at 36.

454. McDonagh, *supra* note 183, at 222.

455. MEDICAL LAW CONCENTRATE, *supra* note 184, at 92.

456. *See* NEWPORT, *supra* note 185, at 262; *see also* MURRAY & MCKINNEY, *supra* note 186, at 31.

457. HINMAN, *supra* note 191, at 58–59; *see also* Harris & Holm, *supra* note 192, at 127.

458. DE LONDRAS & ENRIGHT, *supra* note 208, at 91.

459. SAWHILL, *supra* note 217, at 101–02.

460. KEGODE, *supra* note 193, at 79.

461. BOONIN, *supra* note 176, at 16–18.

462. *See* NEWPORT, *supra* note 185, at 262; *see also* MURRAY & MCKINNEY, *supra* note 186, at 31.

463. SCHWARZ & LATIMER, *supra* note 178, at 25.

464. BOONIN, *supra* note 176, at 45.

465. *Id.* at 56.

466. *Id.* at 70.

467. *Id.* at 49.

468. *Id.* at 85.

without any exceptions in only a handful of micro-countries like the Vatican City and Malta,<sup>469</sup> whereas it is a legally permissible practice in the overwhelming majority of countries, under certain conditions.<sup>470</sup> The conditions under which an abortion is allowed or restricted vary from jurisdiction to jurisdiction.<sup>471</sup> From the most restrictive to the most liberal, conditions that have been commonly applied by nations to allow abortions include (1) to save the woman's life, (2) to protect the woman's physical health, (3) to protect the woman's mental health, (4) in rape or incest cases, (5) for fetal impairment reasons, (6) for social or economic reasons, and (7) on request (without any reason).<sup>472</sup> According to the United Nations, almost ninety-seven percent of countries allow abortion where the life of the pregnant mother is in danger<sup>473</sup> because the bodily integrity and right to life of a mother supersede the rights of an unborn child in such practice.<sup>474</sup> By contrast, Nicaragua, the Dominican Republic, and Malta do not allow abortion in any circumstance.<sup>475</sup> Several major countries, including the United Kingdom, the United States, Canada, China, the Russian Federation, and European states, where more than forty percent of the world's population resides,<sup>476</sup> allow abortion on request, without any condition,<sup>477</sup> up until a timeline based on the viability of the fetus outside the mother's womb.<sup>478</sup> This limitation on abortions varies from state to state, from twelve weeks to twenty-four weeks of pregnancy.<sup>479</sup>

Euthanasia is another exception to the right to life of a human being.<sup>480</sup> Killing a patient by a physician<sup>481</sup> is legally permissible in some jurisdictions around the world.<sup>482</sup> It is essentially an intentional and painless killing of a person to relieve that person's incurable pain

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469. SMITS, *supra* note 198, at 128.

470. See Panagopoulou-Koutnatzi, *supra* note 172, at 117.

471. *World Abortion Policies 2013*, *supra* note 200.

472. *Id.*

473. Panagopoulou-Koutnatzi, *supra* note 172, at 117.

474. SAMANTA & SAMANTA, *supra* note 46, at 92.

475. *World Abortion Policies 2013*, *supra* note 200.

476. *Countries in the World by Population (2018)*, WORLDOMETERS, <http://www.worldometers.info/world-population/population-by-country/> [<https://perma.cc?G7HT-X5FB>].

477. *World Abortion Policies 2013*, *supra* note 200.

478. Harris & Holm, *supra* note 192, at 127; see also KEGODE, *supra* note 193, at 79.

479. DE LONDRAS & ENRIGHT, *supra* note 208, at 91.

480. McCONNELL, *supra* note 233, at 96.

481. See Helga Kushe, *The Case for Active Voluntary Euthanasia*, 14 L. MED. & HEALTH CARE 145 (1986).

482. See STAJANO, *supra* note 234, at 136.

or suffering with the help of a physician.<sup>483</sup> Proponents of euthanasia argue that it is only a merciful act<sup>484</sup> against incurable suffering,<sup>485</sup> similar to other medical procedures to relieve pain.<sup>486</sup> They maintain that it's a matter of choice<sup>487</sup> that saves billions of dollars.<sup>488</sup> By contrast, opponents of euthanasia argue that it violates the inalienable right to life.<sup>489</sup> It is homicide,<sup>490</sup> which is morally unacceptable.<sup>491</sup> They argue that some cases of euthanasia—including depression—are curable,<sup>492</sup> which is why it is a waste of life,<sup>493</sup> and that there is room for abuse. For instance, greedy for wealth or inheritance, relatives can seek euthanasia.<sup>494</sup> Based on the consent of the patient, and its method of application, euthanasia can be classified as “voluntary euthanasia,” “involuntary euthanasia,” “nonvoluntary euthanasia,”<sup>495</sup> “active voluntary euthanasia,” and “passive voluntary euthanasia.”<sup>496</sup> Involuntary euthanasia (active and passive) is generally considered illegal or as murder.<sup>497</sup> Nonvoluntary euthanasia is illegal, and even criminalized as murder in domestic law.<sup>498</sup> Active voluntary euthanasia (known variously as “assisted suicide,”<sup>499</sup> “physician-assisted suicide,”<sup>500</sup> or simply “euthanasia”<sup>501</sup>) is controversial.<sup>502</sup> However, it is legalized in a few jurisdictions including Belgium, Canada, the Netherlands, Luxemburg, Switzerland,<sup>503</sup> and some states of the United States such as Washington, Oregon, Colorado, Vermont, and California.<sup>504</sup> Passive voluntary euthanasia (pulling the plug)<sup>505</sup> is gen-

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483. Vlj, *supra* note 235, at 374.

484. See BEVILLE, *supra* note 238, at 189–191.

485. Council of Europe, *supra* note 266.

486. SELKIN & SANBAR, *supra* note 267, at 246.

487. See ANDELIN, *supra* note 270, at 113.

488. CHARLES A. SALTER, *THE RIGHT WAY*, 48 (2004).

489. Redelbach, *supra* note 272, at 199.

490. BIGGS, *supra* note 273, at 25.

491. Conley, *supra* note 274, at 10; see also BIGGS, *supra* note 273, at 25.

492. SADOCK ET AL., *supra* note 276, at 1368.

493. SADOCK ET AL., *supra* note 276, at 1368.

494. Martin & Hewstone, *supra* note 278, at 274.

495. STEWART ET AL., *supra* note 245, at 25.

496. GLENN, *supra* note 247, at 149–50.

497. THE ENCYCLOPEDIA OF LIBERTARIANISM, *supra* note 256, at 157–58; see also Vlj, *supra* note 235, at 374.

498. Chan & Tse, *supra* note 249, at 29.

499. SMITH, *supra* note 285, at 13.

500. Stoecker, *supra* note 286, at 33.

501. Chan & Tse, *supra* note 249, at 29.

502. Stoecker, *supra* note 286, at 33.

503. *Id.*

504. Stoecker, *supra* note 286, at 33.

505. SMITH, *supra* note 285, at 13.

erally acceptable practice around the world.<sup>506</sup> For instance passive voluntary euthanasia is legal in India,<sup>507</sup> Ireland,<sup>508</sup> Denmark,<sup>509</sup> Japan,<sup>510</sup> Sweden,<sup>511</sup> and Israel (only in certain cases).<sup>512</sup> By contrast, it is considered illegal and a crime against humanity in Judaism,<sup>513</sup> Christianity,<sup>514</sup> and Islam.<sup>515</sup>

The legal and lethal use of force during law enforcement and armed conflicts is also an exception to the right to life.<sup>516</sup> Agents of law enforcement may legally deprive a person of life in an absolutely necessary situation.<sup>517</sup> The principles of necessity, proportionality, and precaution<sup>518</sup>—common principles of humanitarian law and human rights law<sup>519</sup>—are three main principles involved in the law enforcement standards that are universally binding on every state in the world.<sup>520</sup> The principle of necessity in law enforcement demands that law enforcement agents must only use the force necessary to meet their legal objective.<sup>521</sup> Law enforcement agents may use lethal force for effecting arrest, halting a crime, defending a civilian life, and defending themselves.<sup>522</sup> Accordingly, an agent may not use lethal force for extrajudicial killings, unlawful arrests, personal vendettas, minority discrimination, or unnecessary situations (such as where the subject has been peacefully detained).<sup>523</sup> The principle of proportionality in law enforcement means that law enforcement agents may only use the force required to meet the legal objective and not force that is unne-

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506. VESILIND & GUNN, *supra* note 292, at 40.

507. AGRAWAL, *supra* note 257, at 34.

508. MADDEN, *supra* note 294, 159.

509. Council of Europe, *supra* note 266, at 25.

510. LONG, *supra* note 295, at 197.

511. ROSNER, *supra* note 296, at 240.

512. See BEVILLE, *supra* note 238, at 388.

513. BEVILLE, *supra* note 238, at 388.

514. See Childress, *supra* note 300, at 270.

515. See SCHERER & SIMON, *supra* note 301, at 97.

516. JOSEPH & CASTAN, *supra* note 307, at 168; see also SVENSSON-McCARTHY, *supra* note 307, at 559; see also PARK, *supra* note 37, at 130; see also THE RIGHT TO LIFE AND CONFLICTING INTERESTS, *supra* note 82, at 80.

517. THE RIGHT TO LIFE AND CONFLICTING INTERESTS, *supra* note 82, at 138; see also ECHR, *supra* note 6; see also CPHRFF, *supra* note 6; see also Türkiye Cumhuriyeti Anayasası Madde 17; see also PAKISTAN CONST. art. 9; see also INDIA CONST. art. 21.

518. Melzer, *supra* note 319, at 282.

519. *Id.*

520. *Id.*

521. CASEY-MASLEN & CONNOLLY, *supra* note 318, at 82–83; see also CCLEO, *supra* note 314.

522. CPHRFF, *supra* note 6; see also ECHR, *supra* note 6.

523. *Id.*

essary under Article 3 of CoCEO.<sup>524</sup> Moreover, in law enforcement, the duty of precaution rests on the state to avoid foreseeable injuries and deaths to the public or law enforcement agents<sup>525</sup> under FLEO.<sup>526</sup> Within the notion of precaution, the principles of necessity and proportionality are also included, because these principles also help in reducing foreseeable injuries and deaths. Therefore, a state is also obliged to exhaust all peaceful measures under the duty of precaution and take all necessary precautions to minimize foreseeable losses of lives.<sup>527</sup> For instance, the simple provisioning of helmets, bulletproof vests, and shields to officers can save numerous precious lives.<sup>528</sup> Accordingly, under the duty of precaution it is the duty of a state to provide such lifesaving equipment to its law enforcement forces.<sup>529</sup> Moreover, the principles of “shoot to stop” and “shoot to kill”<sup>530</sup> do not violate the right to life.<sup>531</sup> In “shoot to stop” situations, according to the ECHR,<sup>532</sup> FLEO,<sup>533</sup> and the United Nations General Assembly,<sup>534</sup> law enforcement agents may shoot a subject in order to stop the person from doing certain prescribed activities that pose a threat to the life of a person or help the subject escape or resist his escape.<sup>535</sup> In the “shooting to kill” or “protect life principle,”<sup>536</sup> a life may be legally taken to protect another life<sup>537</sup> without violating the right to life. Under this principle, an officer may shoot to kill the subject to save his own life or life of any other person.<sup>538</sup> Similar to regulations of law enforcement as measures to protect the right to life, the International Humanitarian Laws (IHL) that lay the principles of conducting a war or armed conflict<sup>539</sup> also try to protect the right to life and minimize human suffering during armed conflicts,<sup>540</sup> be they do-

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524. CCLEO, *supra* note 314.

525. CASEY-MASLEN & CONNOLLY, *supra* note 318, at 95.

526. *See* FLEO, *supra* note 316.

527. *See* CASEY-MASLEN & CONNOLLY, *supra* note 318, at 95.

528. Casey-Maslen, *Use of Force*, *supra* note 317, at 10.

529. *Id.*; CASEY-MASLEN & CONNOLLY, *supra* note 318, at 95; *see also* FLEO, *supra* note 316.

530. *See* Casey-Maslen, *Use of Force*, *supra* note 317, at 11–14.

531. *See id.*

532. ECHR, *supra* note 6.

533. FLEO, *supra* note 316.

534. G.A. Res. 45/166, *supra* note 371; *see also* Doswald-Beck, *supra* note 362, at 887.

535. ECHPR, *supra* note 6; *see also* FLEO, *supra* note 316; *see also* G.A. Res. 45/166, *supra* note 371; *see also* Doswald-Beck, *supra* note 362, at 887.

536. Gaggioli, *supra* note 39, at 102.

537. *Id.*

538. *See id.*

539. *See* CROWE & WESTON-SCHEUBER, *supra* note 379, at 44–115.

540. Lediakh, *supra* note 380, at 207.

mestic armed conflict between a state and nonstate actors such as terrorist groups and rebels, a conflict between states in an international armed conflict, or a full-fledged war.<sup>541</sup> The Geneva Conventions and their protocols as instruments of international humanitarian law<sup>542</sup> protect the wounded, sick, civilians, noncombatants, women, children, and prisoners of war, and include principles that protect the right to life and act as instruments to limit the devastation of war and the use of force.<sup>543</sup> These instruments are universally applicable, where—similar to the principles of law enforcement<sup>544</sup>—they offer the principles of necessity, proportionality, and distinction.<sup>545</sup> The principles of necessity and proportionality under armed conflict are same as the principles of necessity and proportionality under law<sup>546</sup> enforcement.<sup>547</sup> The principle of distinction under Protocol I to the Geneva Conventions<sup>548</sup> maintains that the use of force must not be purposefully targeted at civilians or noncombatants in order to protect the right to life during armed conflicts.<sup>549</sup> The overall reason and objective behind international humanitarian law in the Geneva Conventions are to limit the horrors of war and limit its devastation, and the major concern is to restrain the loss of human lives.<sup>550</sup> Therefore, all of humanitarian law is focused on restricting human suffering<sup>551</sup> and protecting the inalienable right to life.

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541. See CROWE & WESTON-SCHEUBER, *supra* note 379, at 70–164.

542. See *id.* at 24–44.

543. Geneva Convention, Armed Forces in the Field, *supra* note 382; see also Geneva Convention, Armed Forces at Sea, *supra* note 382; see also Geneva Convention, Treatment of Prisoners of War, *supra* note 382; see also Geneva Convention, Protection of Civilian Persons, *supra* note 382; see also Geneva Conventions, Protection of Victims, *supra* note 382; see also Geneva Convention, Amended Protocol, *supra* note 382; see also Annex (I) AP (I), 1977, and its commentary (June 8, 1977); see also Annex (II) AP (I), 1977, and its commentary (June 8, 1977); see also Additional Protocol (II) to the Geneva Conventions, 1977, and its commentary (June 8, 1977); see also Additional Protocol (III) to the Geneva Conventions, 2005, and its commentary (December 8, 2005); see *Geneva Conventions of 1949 and Additional Protocols, and their Commentaries*, *supra* note 382.

544. See Gaggioli (Research Handbook on Remote Warfare), *supra* note 320, at 159.

545. Rostov & Rishikof, *supra* note 386, at 373–74.

546. See Gaggioli (Research Handbook on Remote Warfare), *supra* note 320, at 159.

547. See *id.*

548. See also Geneva Convention, Protection of Civilian Persons, *supra* note 382; see also Geneva Conventions, Protection of Victims, *supra* note 382; see *Geneva Conventions of 1949 and Additional Protocols, and their Commentaries*, *supra* note 382.

549. Hayden, *supra* note 388, at 53–54.

550. Lediakh, *supra* note 380, at 207.

551. *Id.*