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**SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY
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Honourable Chair,
Distinguished Delegates,
Ladies and Gentlemen,

It is a pleasure for me to address the 3rd Committee of the General Assembly for the first time since I took up functions as Special Rapporteur on extrajudicial, summary or arbitrary executions, in August 2016. I am very grateful to the members of the UN Human Rights Council for having given me this opportunity. In the next three years, I hope to build an open and fruitful engagement with States and other relevant stakeholders present in New York, which will assist me in fulfilling this mandate.

In today's address before this Committee, I am honoured to present the final report of my predecessor Christof Heyns being a reflection upon his time as the mandate holder.

My presentation will follow as closely as possible the report itself, to ensure the outgoing SR's views are accurately reflected. However, for the purpose of answering any questions you may have, I will rely on my own views.

I - General Reflections on the outgoing SR approach to his mandate:

This mandate provides a singular opportunity to be at the cutting edge of development of international law but also to make a direct difference to the lives of people.

The right not to be arbitrarily deprived of life is a foundational and universally recognized right, applicable at all times and in all circumstances. It has been called the "supreme right"¹.

The outgoing Special Rapporteur emphasized two elements of the right to life: prevention and accountability². Accountability for violation of the right to life was a particularly central focus during his tenure.

Certainty of effective accountability is an important component of deterrence. This was concretely addressed in the updating of the Manual on the Effective Prevention and Investigation of Extra-legal, Summary or Arbitrary Executions (the Minnesota Protocol).

The outgoing Special Rapporteur also emphasized that the right to life protects not merely a right to continued physical existence, but rather that to a dignified life. This found particular expression in his work on autonomous weapons.

¹ The "protect life" principle is an important lodestar for the international protection of the right to life and thus for the mandate. As a general rule, the deprivation of life cannot be justified on any other basis than that it is required to save life. This is a minimum requirement and applies in particular to the intentional deprivation of life. Limitations on the right to life cannot be justified on the grounds that they are required in order to pursue objectives such as asserting the authority of the State, protecting property or imposing moral or religious values.

² There are two dimensions of the right to life: prevention (the substantive) and accountability (the procedural). States must prevent the "arbitrary" deprivation of life, including through an appropriate framework of laws. They must also ensure accountability of those responsible for the unlawful deprivation of the right to life.

He also recalled that in keeping with the “protect life” principle, the deprivation of life cannot be justified on any other basis than that it is required to save life.

The outgoing Special Rapporteur’s work encompassed a number of other outputs and contributions to normative developments – I will highlight a few here³:

Mr. Heyns authored or co-authored 753 communications to States. In 47 per cent of cases, some form of State response (ranging from mere acknowledgements of receipt to substantive comments) was received.

He prioritised working with regional human rights mechanisms especially in the context of the broader effort of human rights Special Procedures to work more closely with the African Commission on Human and People’s Rights through the Addis Ababa road map.

The outgoing Special Rapporteur also spearheaded normative developments, in response to emerging issues and worked to strengthen existing guidelines. For example,

- The African Commission on Human and Peoples’ Rights adopted its general comment No. 3 on the African Charter on Human and Peoples’ Rights: the right to life in November 2015. A new General Comment on the Right to Life is under development by the Human Rights Committee.
- The Minnesota Protocol has been updated: a central tool for the implementation of the duty to investigate⁴ was in need of updating to take account of various legal and technological developments. In collaboration with OHCHR, the Special Rapporteur initiated extensive consultation with experts and member states, which resulted in a final updated document on 31 July 2016.
- The use of armed drones and autonomous weapons, during armed conflict as well as in law enforcement operations, has highlighted the necessity of new laws. These are considered in the Convention on Certain Conventional Weapons and will be considered again during a meeting in December 2016.

³ Others include: Study on the proper management of assemblies, commissioned by the Human Rights Council and presented in March 2016. The United Nations Office on Drugs and Crime (UNODC) and the United Nations High Commissioner for Human Rights are developing a handbook on Use of Force and Firearms in Law Enforcement (expected in late 2016).

⁴ The duty to investigate: applies in relation to persons within the territory of a State or otherwise subject to its jurisdiction; applies to all States that may have contributed to the death or which have failed to protect the right to life; applies generally during peacetime, situations of internal disturbances and tensions and armed conflict.

- Target 1 of Goal 16 of the Sustainable Development Goals focuses attention on the ability of States to address violence across societies. Mr Heyns highlighted an emerging body of scholarship pointing to a significant reduction in interpersonal violence over the last several centuries in the world as whole. This suggests that violence is not as endemic or as intractable as is often suggested, and that creative steps can and must be found to protect the right to life, including through technology.
- The SR has also focused on the use of statistics: Documenting homicides, and sharing those statistics with appropriate global monitoring bodies, represents an important dimension of accounting for the right to life. This is particularly important in view of Sustainable Development Goal 16 and the global commitment to take measures to reduce violence.⁵

Excellencies,

I will now turn my attention to some of the themes prioritised by my predecessor:

Death Penalty

The outgoing Special Rapporteur promoted the understanding that international law requires the progressive abolition of the death penalty. This is well supported by the fact that 80 per cent of States have now abolished it in law or in practice.

Article 6 (2) of the International Covenant on Civil and Political Rights, requires that States that still apply the death penalty do so only for the most serious crimes, a category now understood to cover, at most, intentional killing — murder.

Mr. Heyns regrets that a small number of States persistently and openly flout this widely acknowledged international standard. Thirty States still have legal provisions for the death penalty for drug-related crimes.

He also emphasised that the death penalty can no longer be regarded as compatible with the prohibition of cruel, inhuman or degrading treatment and States should recognize that the world is moving in that direction, requiring at least the progressive abolition of the death penalty. This was the

⁵ Research conducted worldwide on violence reduction. In many cases this includes case studies aimed at determining the reasons why violence has reduced in a particular community during a specific period. Continuing this research, especially in those areas of the world with the highest incidences of violence, including Latin America and Africa, should be a high priority for the scientific community, including local universities.

approach of the African Commission on Human and Peoples' Rights in its recent general comment on the right to life.

Mr. Heyns further recommended that:

- Failing abolition of the death penalty States should implement a moratorium or failing that execute fewer people year on year and reduce the number of offences for which the death penalty may be imposed.
- Technical assistance provided for combating drug crime, whether directly or via a multilateral agency such as UNODC, must begin with the assertion that the imposition of the death penalty for drug offences is a flagrant violation of international law.
- States must be fully transparent in the use of the death penalty⁶.

Use of force in law enforcement

The intentional lethal use of force by law enforcement officials and others is permissible in very exceptional cases only, namely when its use against a perpetrator is strictly unavoidable in order to protect human life from unlawful attack (making it proportionate) and all other means are insufficient to achieve that objective (making it necessary).

The outgoing Special Rapporteur consistently highlighted the importance and meaning of the necessity and proportionate principles⁷. He also promoted the view that precaution should be seen as a separate requirement for the use of force, and in particular, for lethal force.

He emphasised, for instance, the precautionary steps necessary for the proper management of public **demonstrations**, which is a way to reduce the risk of confrontation. Management of demonstrations must be holistic. A wide range of rights applies to demonstrations, including the rights to peaceful assembly, freedom of expression and rights related to bodily security. These are indivisible and must be protected as a whole for the right to life to be secured. Even if violence occurs during demonstrations, and individual participants have lost the protection of the right to peaceful assembly, these other rights still pertain.

⁶ In some States (such as Belarus, China and Viet Nam), information about the death penalty is a State secret; in others only very limited information is made available, often when it is too late.

⁷ The evaluation of necessity is a factual cause and effect assessment of whether the use of force is actually required to achieve the desired outcome (qualitative necessity) and, if so, how much force is unavoidable for that purpose (quantitative necessity). The requirement of necessity raises the question of whether the threat could not be averted by resort to less harmful means and thus requires a graduated approach to the use of force. The proportionality requirement relates to the question of whether the benefit expected to result from the use of force, that is, neutralizing a threat, justifies the harm likely to be caused by it. While establishing necessity requires a factual cause-and-effect assessment, proportionality entails a value judgment that balances harm and benefit.

Less-lethal weapons may in some cases provide officials with less dangerous options than the use of firearms and thus may save lives. The duty of precaution requires that States equip their law enforcement officials with appropriate less-lethal weapons. However, while less-lethal weapons should, in general, be welcomed, it must be remembered that almost any use of force against the human person can lead to loss of life or serious injury⁸.

The outgoing Special Rapporteur recommended that: A process involving States and the international community, in addition to civil society, is needed to set out how the standards established by the Basic Principles on the use of force and firearms and other relevant jurisprudence should be applied to the scenarios created by new technology.

Regarding private security provision, Mr. Heyns underlined that the same precautionary principle applied to State law enforcement officials must also apply to private actors.

Technological developments

Excellencies,

Ours is an era largely defined by revolutionary developments in technology, including in information technology⁹ and robotics. These have increasing impacts on the protection of the right to life and prompted the outgoing Special Rapporteur to devote a substantial time to their study.

The introduction of two new unmanned weapons, namely armed drones and fully autonomous weapons, in armed conflict and in law enforcement, has seen a depersonalization of the use of force with many consequences for key principles, including for prevention and accountability.

With respect to drones: The outgoing SR reported key findings and recommendations including that:

- International law does not provide that the law of self-defence in inter-State use of force can be a “stand-alone” basis for the use of force against an individual.
- The use of drones in a context where international human rights law is the applicable legal regime can only be justified if it is necessary in order to save lives against a threat that is truly imminent, as required by the last sentence of principle 9 of the Basic Principles

⁸ He has also recommended that private security providers should be held to a modified standard of strict liability, as might be expected from a company handling hazardous waste, for example.

⁹ The emergence of a wide range of potential sources of information, enabled or created by information and communications technologies (ICTs), about violations presents a significant opportunity to human rights practitioners and for investigations concerning right-to-life violations.

- One of the most important ways to guard against the risks posed by drones is transparency about the factual as well as the legal situation pertaining to their use.
- The use of military-style weapons in law enforcement in general should be questioned. Using such weapons implies that the citizens and the population at large are being treated as a threat¹⁰.

With respect to autonomous weapons: which are weapon platforms that, once activated, can select and engage targets without further human intervention, the outgoing Special Rapporteur has shown that a vast number of critical questions have been raised with few answers offered and little reassurance in terms of their human rights compliance.

- Can they carry out lawful targeting, and should they be permitted to carry out targeting of human beings?
- Will autonomous weapons be equipped to make the necessary distinctions, as well as the proportionality judgements required to ensure the protection of the right to life?
- If there is a low level of human control, what happens to the central legal principle of legal accountability?
- On whose conscience does the death of the person targeted lie when the killing is done by an algorithm?
- The use of autonomous weapons also raises another fundamental challenge to international human rights: In order not to be “arbitrary”, a deprivation of life may require a deliberative human decision. Killing by a machine may thus inherently be a violation of the right to life.

In light of these matters:

- **The former Special Rapporteur called for a moratorium on the development of autonomous weapons, until a principled basis could be found to distinguish acceptable and autonomous weapons.**
- **He also supported the approach that weapons with full autonomy — those without meaningful human control¹¹ —should be banned. They are unlikely to ever have the ability to make proper targeting decisions.**

¹⁰ Using, for example, automatic firing mode in law enforcement operations does not comply with the requirement that every shot has to be separately justified. Using remote-controlled force during domestic policing, for example during the management of demonstrations, raises particular problems. The police have a duty to protect the public, and by using remote control they distance themselves from the public, and may not be able to fulfil this function.

¹¹ The concept of “meaningful human control” over critical functions (most saliently, the release of force) has subsequently been elaborated in the context, inter alia, of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects to fill this void.

Other killings

Mr. Heyns also pointed to failures by the State to address systematic patterns of violence, including failure to protect against killings motivated by discriminatory prejudice.

In keeping with the “protect life” principle, suppressing free expression or political dissent, killing so called “witches”, saving the “family honour”, or imposing one’s own concept of morality cannot justify the taking of life, and the perpetrators must be held accountable.

A failure by the State to address systematic patterns of violence through precautionary measures opens it up to violations of the right to life, as does the absence of accountability measures where such violence does occur. This is evident in regards to particular groups:

- Journalists and Human Rights Defenders: There is a casual correlation between these killings and impunity or state passivity/complicity. Increased international attention to this type of violence is yet to significantly improve the safety of journalists. More must be done.
- Witchcraft: States have a responsibility not only to investigate individual cases of such killings, but also, where a pattern is discernible, to actively discourage them, potentially through heightened sentencing, together with community-level advocacy and awareness-raising.
- Honor Killings: The Special Rapporteur can play a role by monitoring incidents of “honour killings” where the State either approves of and supports such acts, or extends a form of impunity to the perpetrators by giving tacit or covert support.
- Killings on the basis of gender or sexual identity: life may not be taken in order to impose moral values — and that, where that is done, there should be accountability. Yet, at least 10 States have laws allowing for death sentences for “crimes related to sexual orientation, a clear violation of international law in that the death sentence is imposed for a crime that should not even be a crime, let alone one that meets the threshold of “most serious”. But a problem in a far larger number of States is that of the State’s failure to protect persons from violence on the basis of their real or imputed sexual or gender identity.
- Migrants and refugees: Instances where a deliberate policy has impeded the flow of refugees, particularly where it denies them asylum and places them at mortal risk, appear to amount to a violation¹². Equally important are questions about the responsibilities coastguard or other naval assets have to rescue migrants in distress on international waters.

¹² For example, where closing a border leads to an accumulation of internally displaced persons within a war zone that can then be targeted

Mr. Heyns also addressed the role of ICTs, regional systems, investigations and statistics in protecting, and accounting for, the right to life.

CONCLUSIONS:

Excellencies,

The outgoing Special Rapporteur's key recommendations include:

1. A call for a continuing focus on the relationship between the right to life and technology - in all its forms — weapons (perhaps also cyberweapons) and information technology;
2. That vulnerable groups be given special attention. Patterns of discrimination in the use of force by law enforcement officials should be the subject of a study.
3. That the progressive abolition of the death penalty warrants close attention and further guidance.
4. That the impact of terrorism on the right to life remains a concern: on the one hand because of over-reaction by States, but on the other hand because terrorists themselves pose serious threats to the right to life.
5. That the use of force by non-state actors, and accountability for this, has been largely underexplored and should be addressed.
6. That accountability for violations of the right to life is of on-going importance. The new Minnesota Protocol must be made accessible and known to the full range of those engaged in investigations — from police officers to forensic pathologists to lawyers and non-governmental organizations.