United Nations A/HRC/26/36

General Assembly

Distr.: General
1 April 2014

Original: English

Human Rights Council
Twenty-fifth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns

Summary

The report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, submitted to the Human Rights Council pursuant to its Resolution 17/5, discusses the protection of the right to life during law enforcement and makes the case for the need for a concerted effort to bring domestic laws on the use of (especially lethal) force by the police in line with the international standards.

The report suggests that the Council articulates the basic outline of the legal framework for the use of remotely piloted aircraft or armed drones and calls on the Council to remain engaged with the matter of autonomous weapons systems.

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I. Activities of the Special Rapporteur

A. Communications

1. The present report covers communications sent by the Special Rapporteur between 1 March 2013 and 28 February 2014, and replies received between 1 May 2013 and 30 April 2014. The communications and responses from Government are included in the following communications reports of special procedures: A/HRC/24/21, A/HRC/25/74 and A/HRC/26/21.

2. Observations on the communications sent and received during the reporting period are also reflected in an addendum to the present report.

B. Visits

3. The Special Rapporteur visited Mexico from 22 April to 2 May 2013 and Papua New Guinea from 3 to 14 March 2014.

4. The Special Rapporteur has sent country visit requests to the Governments of Yemen, the Islamic Republic of Iran, Iraq and Ukraine. The Special Rapporteur thanks the Governments of the Gambia and Yemen, who have responded positively to his requests, and encourages the Governments of Sri Lanka, Pakistan, Islamic Republic of Iran, Iraq and Madagascar to accept his pending requests for a visit.

C. Press Releases[1]

5. On 4 May 2013, the Special Rapporteur jointly with other mandate holders stressed the importance of stopping violent acts against persons with albinism in the United Republic of Tanzania.

6. On 5 August 2013, the Special Rapporteur issued a joint statement on the situation of human rights in the Central African Republic. Another joint statement on 19 December 2013 urged all parties in the Central African Republic to call for an immediate halt to the violence.

7. A joint statement was issued on 25 October 2013 advocating for commitments in the Post-2015 Development Agenda on reducing inequalities, promoting social protection and ensuring accountability.

8. On 10 December 2013, the independent experts in the United Nations Human Rights joint system urged world governments to cooperate with them, and allow human rights organizations and individuals to engage with the United Nations "without fear of intimidation or reprisals."

9. On 9 December 2013, the Special Rapporteur issued a joint press release calling on the Government of Iraq to establish the fate of seven residents of Camp Ashraf.

[1] Press releases of the Special Rapporteur are available at http://www.ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?MID=SR_Summ_Executions.

10. On 26 December 2013, he issued a joint press release to express serious concern about lethal drone airstrikes, allegedly conducted by United States forces in Yemen, that resulted in civilian casualties.

11. The Special Rapporteur also issued additional joint statements with other mandate holders on the death penalty.

D. International and national meetings

12. On 3 and 4 October 2013, the Special Rapporteur participated in the Expert Meeting on Promotion and Protection of Human Rights in Assemblies and Protest held at the University of Pretoria, South Africa and co-organized by the Geneva Academy.

13. On 22 October 2013, he delivered a Statement on Lethal Autonomous Robots at an event organized by the United Nations Institute for Disarmament Research (UNIDIR) in New York.

14. On 25 October 2013, he jointly organized a side event on the theme "Drones and the Law" in New York.

15. On 29 October 2013, he participated in an event on drone strikes and targeted killings co-hosted by New York University and the Open Society Institute.

16. On 2 December 2013, he attended a seminar organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the promotion and protection of human rights in the context of peaceful protests.

17. From 3 to 5 December 2013, he took part in an Expert Meeting on Drones and Robots under international law organized by the Geneva Academy in partnership with UNIDIR, held in Divonne, France.

18. On 6 December 2013, he participated in the "Alkarama Award" prize-giving ceremony, held in honour of a Yemeni journalist, Abdulelah Haider, in Geneva.

19. The Special Rapporteur took part in an Expert Meeting on transparency and the death penalty organized by International Commission against the Death Penalty on 21 January 2014.

20. From 24 to 25 February 2014, he delivered a paper on lethal autonomous robots at the conference organized by Chatham House in London.

21. On 27 February 2014, the Special Rapporteur organized an Expert Meeting on the Use of Force by Law Enforcement Officials, held in Geneva, Switzerland. The purpose of the meeting was to inform the present report.

II. Protecting the right to life in law enforcement: The need for domestic law reform

A. Background and rationale

22. Law enforcement officials worldwide play an important role in protecting society from violence, enforcing justice, and securing the rights of people. (Law enforcement officials are also referred to as "the police" in this report for short, but the term includes all officers of the law who exercise police powers, especially the powers of arrest or detention,

including members of the military forces who have such powers).[2] They often do so under difficult and dangerous circumstances, and in some cases they cannot fulfil their functions without resorting to force. The modern State, which has to deal with a range of challenges, cannot function without the police. The human rights system as such also cannot be effective without the police and, in some cases, without the use of force.

23. Power, of course, comes with responsibility. The extensive powers vested in the police are easily abused in any society, and it is in everyone's interests for it to be the subject of constant vigilance. To function properly, the police need proper guidelines on the use of force and appropriate mechanisms for accountability to be in place.

24. The police may cause as many as 1 out of every 25 violent deaths in the world, in some cases in conformity with the law but in others not. It is estimated that 21,000 people were killed worldwide in 2011 by law enforcement officials (of an overall estimate of 526,000 violent deaths).[3] Reports of impunity where people have died at the hands of the police are likewise common.

25. Some cases of unlawful killings by law enforcement officials involve the use of force that no one would argue is lawful under either international or domestic law, as with politically motivated hit squads and extrajudicial executions. This report does not deal with such situations: instead, it focuses on those cases where it is widely accepted that the police may use some force but where the domestic law poses lower standards for the use of force than those set by international law and/or where domestic law does not make provision for proper accountability mechanisms.

26. There are a number of reasons why this topic is important. One of the State's central duties is to protect life. It is a particularly serious breach of this duty when its own agents violate this right – leaving little hope that they will be effective in preventing violations by others. The first step of securing the right to life is thus the establishment of an appropriate legal framework for the use of force by the police, which sets out the conditions under which force may be used in the name of the State and ensuring a system of responsibility where these limits are transgressed.

27. However, it is not only violations of the right to life that are at stake when the police use force. Open-ended and unchecked powers of the police intimidate and preclude those who wish to exercise other rights and freedoms. Latitude for the police to use force at will is often an integral part of authoritarian rule, where "might is right". It is widely accepted today that, as part of democratic policing, law enforcement officials should be accountable to the population. They are citizens in uniform, performing a function on behalf of other citizens and their powers thus need to be constrained.

28. The relevance of an inquiry into the question whether proper constraints on police power are in place is further enhanced by the increased prevalence of demonstrations as a method of political and social participation. Lives on all sides of the spectrum, including those of police officers, are lost unnecessarily when the way in which protest is managed leads to an escalation of violence on all sides. Political and other freedoms are brought under threat and the security of the State may eventually be put at risk if the power of the police is not properly controlled.

29. The specific relevance of domestic law in this context stems from the fact that the laws of each State remain the first line and in many cases effectively the last line of defence

[2] General Assembly resolution 34/169, Code of Conduct for Law Enforcement Officials, commentary to art.1, (1979).

[3] Geneva Declaration Secretariat, *Global Burden of Armed Violence 2011: Lethal Encounters*, Cambridge, CUP, 2011.

for the protection of the right to life, given the irreversibility of its violation. National and local laws play an important role in defining the understanding by law enforcement officials and the population alike of the extent of the police powers, and the conditions for accountability. As such, there is a strong need to ensure that domestic laws worldwide comply with international standards. It is too late to attend to this when tensions arise.

30. This is obviously not to say that once proper domestic laws are on the statute books the protection of the right to life is guaranteed. Implementation is in many instances lacking. However, the focus of this report is not on implementation. Instead, its ambitions are confined to a necessary but insufficient component of protecting the right to life – the question whether appropriate domestic laws on the use of force are in place. In particular, the report seeks ways to contribute towards law reform in those States that are most out of line with the international standards as a first step towards greater global protection of the right to life.

31. While many States have reformed their laws during the last few decades to give greater expression to the international rules and standards, in others the laws in force today date (in form or in substance) from the pre-human rights era – in particular from colonial times[4] – or form part of the legacy of former dictatorial regimes.

32. Moreover, in some cases progress that has been made is under threat. For example, in Peru, a January 2014 law grants exemption from criminal liability to law enforcement officials who cause injury or death in the performance of their duties through the use of weapons, or any other means.[5] In Kenya, a law that incorporates most of the international requirements risks being repealed.[6] In particular, the threat of terrorism is used to legitimize far-reaching infringements of civil liberties during protest.[7] There is also a danger that laws such as the one recently adopted by Honduras entitling the State to shoot down civilian airplanes may be used to violate the right to life, for example in the name of drug control.[8]

33. This report – building on earlier reports that explored some of the same issues[9] – makes the case for the need for ongoing legal reform, in States across the world, to bring domestic laws on the use of force into conformity with international law.

34. The Special Rapporteur intends to remain involved in this issue for the rest of his term as mandate-holder, and wants to express his willingness to provide or arrange assistance to States who want to take this issue forward.

B. Methodology, limitations and sources

35. The legislation of 146 countries was considered for the purposes of this report. In September 2013, the Special Rapporteur sent out a *note verbale* to all permanent missions of United Nations member States represented in Geneva, informing them of the upcoming report and asking them, in order to ensure that their domestic laws are accurately represented, to provide him with copies of their national laws on the use of force. He

[4] The British Riot Act of 1714, for example, served as a model for many former British colonies. In the case of France, the *Loi du 7 juin 1848 sur les attroupements* (modified in 1943) was likewise copied in overseas territories.

[5] Law 30151 (2014).

[6] National Police Service (Amendment) Bill, 2013 and National Police Service Commission (Amendment) Bill, 2013.

[7] See http://www.bbc.co.uk/portuguese/noticias/2014/02/140213_leis_protestos_pai.shtml (in Portuguese).

[8] See http://www.reuters.com/article/2014/01/18/us-honduras-drugs-idUSBREA0H04920140118.

[9] A/66/330 and A/HRC/17/28.

wishes to express his thanks to the 25 States that responded by providing their laws and in many cases also detailed commentary: Argentina, Austria, Azerbaijan, Chile, Cuba, Cyprus, Ecuador, Estonia, Georgia, Germany, Greece, Guatemala, Iraq, Ireland, Mexico, Monaco, Norway, Pakistan, Qatar, Russian Federation, Spain, Sri Lanka, Sweden, Switzerland and the Syrian Arab Republic.

36. In the case of States that have not responded, legislation was obtained from what is available in the public domain.

37. The study looks only at legislation, and not at other sources of law, such as legal precedents (which in some States are a source of law) or at the operational orders of the police. Some of the elements of a comprehensive system regulating the use of force may not be recognized in the statutory provisions, but could be contained in other parts of the law.

38. Importantly, the study also does not consider the practical implementation of the laws in question. This is a massive task to which the international research community – in particular those researchers based in the societies in question – should pay more attention.

39. The study concentrates only on the use of force as part of law enforcement operations, and does not deal with the use of force in the conduct of hostilities during armed conflict.

40. The laws that were accessed during the course of this study are available at www.use-of-force.info. This website will be maintained and updated in the future. States that have not yet submitted their laws to the Special Rapporteur, and other interested parties, are encouraged to send their laws and additional material, including new laws, judicial decisions and operational orders, as well as training material.

41. In this report, not all of the full names and references of the laws cited are provided, in the interests of space, and because the aim is rather to provide an example of a wider practice than to single out specific States.

C. The right to life

42. The right to life is often described as a fundamental human right; a right without which all other rights would be devoid of meaning.[10] The right is recognized in a variety of widely ratified global and regional treaties and other instruments.[11] Article 6(1) of the International Covenant on Civil and Political Rights provides that "every human being has the inherent right to life [which] right shall be protected by law. No one shall be arbitrarily deprived of his life." The right to life is also a rule of customary international law[12] and it has been described as part of *jus cogens*.[13] Extensive jurisprudence has been developed on all levels, on the limits on the use of force by law enforcement officials.

43. On the global stage, two main "soft law" instruments set out in some detail the conditions under which force may be used by law enforcement officials and the

[10] Manfred Nowak, *UN Covenant on Civil and Political Rights. CCPR Commentary*, Kehl am Rhein. Engel, 2005, p. 121.

[11] African Charter on Human and Peoples' Rights, art. 4; American Convention on Human Rights, art. 4; Arab Charter on Human Rights, art. 5; European Convention on Human Rights, art. 2; and ASEAN Human Rights Declaration, art. 11.

[12] Moeckli *et al.* (eds.) *International Human Rights Law*, New York, Oxford University Press, 2010, p. 221.

[13] See Nowak (footnote 10), p. 122.

requirements of accountability: The Code of Conduct for Law Enforcement Officials (Code)[14] and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990 (Basic Principles).[15] The Code is provided with a commentary, further elaborating on its articles.

44. These two instruments have been developed through intensive dialogue between law enforcement and human rights experts, and have been endorsed by a large number of States.[16] They are widely accepted as authoritative statements of the law.[17]

45. These instruments are available in all six United Nations languages and in a number of other languages as well.[18] At the same time, it is a matter of concern that important constituencies do not seem to know about them – for example, standard textbooks on "police use of force" fail to cite them.

46. The right to life has two components. The first and material component is that every person has a right to be free from the arbitrary deprivation of life: it places certain limitations on the use of force. The second and more procedural component is the requirement of proper investigation and accountability where there is reason to believe that an arbitrary deprivation of life may have taken place.

47. As is the case with other rights, States are required to respect and to protect the right to life. This, in the words of article 6(1) of the International Covenant on Civil and Political Rights, includes the duty to do so "by law". The police in any society will at some point be confronted with a situation where they have to decide whether to use force and, if so, how much. Enacting an adequate domestic legal framework for such use of force by police officials is thus a State obligation, and States that do not do this are in violation of their international obligations.

48. According to the United Nations Human Rights Committee:

> States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.[19]

49. In *Nadege Dorzema and others v. Dominican Republic* the Inter-American Court of Human Rights (24 October 2012) held that the Dominican State had failed to comply with its obligation to protect the right to life because it had failed to adopt adequate legal

[14] Adopted by the General Assembly in its resolution 34/169 (1979). See also, Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, E.S.C Res. 1989/65, 24 May 1989.

[15] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Cuba, 1990. United Nations General Assembly resolution 45/111 adopted without a vote the same year welcomed the Basic Principles.

[16] A/61/311, para. 35.

[17] For example, it served expressly as the model for the National Guidelines on the Use of Force in Australia. Bronitt *et al.* (eds.), *Shooting to kill*, Hart, 2012, p. 153. In 2011, the Government of Brazil established Guidelines on the Use of Force by Agents of Public Safety, based on the Basic Principles – see http://www.unodc.org/lpo-brazil/en/frontpage/2011/01/05-governo-brasileiro-estabelece-diretrizes-sobre-o-uso-da-forca-por-agentes-de-seguranca-publica.html.

[18] See http://www.hrea.org/index.php?base_id=103&language_id=1&lnk_count=20&month=&year=&category_id=12&category_type=3&group.

[19] Human Rights Committee General Comment No. 6 (1982), para. 3; and Nils Melzer, *Targeted Killing in International Law*, Oxford University Press, 2008, pp. 104 and 105.

provision on the use of force. It was ordered that the State must, within a reasonable time, adapt its domestic law, incorporating the international standards on the use of force by law enforcement agents.

50. The Basic Principles provide that "Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials"[20] and that they shall ensure that "arbitrary or abusive use of force or firearms by law enforcement officials is punished as a criminal offence under law."[21]

51. States are also required to take reasonable precautions to prevent loss of life, wherever necessary in legislation or subordinate law. This includes putting in place appropriate command and control structures; providing for the proper training of law enforcement officials in the use of force, including less lethal techniques; where possible, requiring the issuing of a clear warning before using force; and ensuring medical assistance is available.[22] In the specific case of demonstrations, it also arguably entails adhering to the standards on the facilitation and control of demonstrations to prevent volatile situations from escalating out of control.

52. The Basic Principles require that governments and law enforcement agencies "should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms… For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment."[23] The point is thus not merely that it should be used if available (as is required by necessity), but that such equipment will be made available in the first place. States shall also ensure that "all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force".[24]

53. An increasing body of knowledge is available on how crowds can be handled in ways that can defuse as opposed to escalate the tension,[25] and it is the responsibility of the commanding leadership of law enforcement to ensure that this knowledge is used in the planning, preparation and concrete policing of assemblies. Failure to take note of such information and repeating the mistakes of the past with deadly consequences run contrary to the duty to protect life, and would have to be considered a failure in command responsibility. Indeed, making sure that domestic law complies with the international standards on the use of force (and, arguably, human rights standards in general) is an important preventative measure.

54. Human rights law recognizes that, in times of public emergency, States may within specified limits take measures derogating from their obligations under international human rights treaties.[26] While certain rights may be restricted or suspended during times of public emergency, the right to life is non-derogable and must be respected, even during such times.[27]

[20] Principle 1 and Principle 11.
[21] Principle 7.
[22] See Melzer (footnote 19), p. 203.
[23] Principle 2.
[24] Principle 19. Also Principles 18 and 20.
[25] A/HRC/17/28, pp. 17-18.
[26] International Covenant on Civil and Political Rights, art. 4; American Convention on Human Rights, art. 27; Arab Charter on Human Rights, art. 4; European Convention on Human Rights, art. 15.
[27] Human Rights Committee General Comment No. 29 (2001) and Basic Principle 8.

1. Requirements for the use of force

55. Everyone has a right not to be arbitrarily deprived of his or her life, with "arbitrary" being understood here to mean unlawful in terms of international standards. This implies that the right to life is not an absolute right – it may be legitimately deprived under certain circumstances, but the limitations to this right are exceptional and must meet certain standards. The onus is on those who claim they were justified in taking a life – here the State – to show that it was done within the confines of these limits. Any deprivation of life must meet each of the following requirements, which together form the comprehensive or holistic set of requirements that should be posed by the domestic legal system. If any of these requirements is not met the deprivation of life will be arbitrary.

(a) Sufficient legal basis

56. For the use of lethal force not to be arbitrary there must, in the first place, be a sufficient legal basis. This requirement is not met if lethal force is used without the authority being provided for in domestic law, or if it is based on a domestic law that does not comply with international standards.[28]

57. The laws in question must also be published and be accessible to the public.[29]

(b) Legitimate objective

58. Rights may be limited – and force may likewise be used – only in the pursuit of a legitimate objective. As will be discussed below, the only objective that can be legitimate when lethal force is used is to save the life of a person or to protect a person from serious injury.

(c) Necessity

59. The use of force can be necessary only when a legitimate objective is pursued. The question is whether force should be used at all, and if so how much. This means that force should be the last resort (if possible, measures such as persuasion and warning should be used), and if it is needed, graduated force (the minimum required) should be applied. Any such force may also only be used in response to an imminent or immediate threat – a matter of seconds, not hours.[30]

60. Necessity in the context of lethal force has been said to have three components.[31] *Qualitative* necessity means that the use of potentially lethal force (such as through a firearm) is not avoidable to achieve the objective. *Quantitative* necessity means the amount of force used does not exceed that which is required to achieve the objective. *Temporal* necessity means the use of force must be used against a person who presents an immediate threat. In the context of the use of lethal (or potentially lethal) force, absolute necessity is required.

61. Principle 4 mandates that law enforcement officials must, as far as possible, apply non-violent means before resorting to the use of force and firearms. Where non-violent means prove ineffective or without promise of achieving the intended result, necessity requires that the level of force used should be escalated as gradually as possible.

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[28] Human Rights Committee (see footnote 19 above).

[29] *Nachova and Others v. Bulgaria*, European Court of Human Rights, application Nos. 43577/98 and 43579/98 (6 July 2005), para. 102; also, see Melzer (footnote 19 above), p. 114.

[30] A/68/382, paras. 33-37 and A/HRC/14/24.

[31] Melzer (see footnote 19 above), p. 101.

62. Governments and law enforcement agencies must "develop a range of means, as broad as possible, and… equip officials with various types of weapons and ammunition, thus allowing for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations."[32]

(d) Prevention/precaution

63. To this should be added the – often-overlooked – requirement of prevention or precaution.[33] Once a situation arises where the use of force is considered, it is often too late to rescue the situation. Instead, in order to save lives, all possible measures should be taken "upstream" to avoid situations where the decision on whether to pull the trigger arises, or to ensure that all the possible steps have been taken to ensure that if that happens, the damage is contained as much as is possible.

64. A failure to take proper precautions in such a context constitutes a violation of the right to life. In *McCann and Others v the United Kingdom*, for example, the European Court of Human Rights (application No. 18984/91, 27 September 1995) held that the use of lethal force by soldiers who erroneously but in good faith believed that a group of terrorists were about to trigger an explosion did not violate the right to life, but that the lack of control and organization of the operation as a whole did violate the right.

(e) Proportionality

65. The use of lethal force must also meet the requirement of proportionality. In general terms, when any right is limited, proportionality requires that the good that is done must be compared with the threat posed.[34] The interest harmed by the use of force is measured against the interest protected; where force is used, whether lethal or not, the same norm applies. According to the Basic Principles: "Whenever the lawful use of force and firearms is unavoidable, law enforcement officers shall… exercise restraint and act in proportion to the seriousness of the offence and legitimate objective to be achieved."[35]

66. Proportionality sets a maximum on the force that might be used to achieve a specific legitimate objective. It thus determines at what point the escalation of force that is necessary to achieve that objective must stop.[36] If necessity can be visualized as a ladder, proportionality is a scale that determines how high up the ladder of force one is allowed to go. The force used may not go above that ceiling, even if it might otherwise be deemed "necessary" to achieve the legitimate aim.

67. Special considerations apply when (potentially) lethal force is used. In the context of such use of force, the requirement of proportionality can be met only if such force is applied in order to save life or limb. What is required in respect of lethal force is thus not ordinary proportionality but strict proportionality.

68. According to article 3 of the Code, law enforcement officials may "use force only when strictly necessary and to the extent required for the performance of their duty". The Commentary further explains: "[e]very effort shall be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected

[32] Principle 2.
[33] International Committee of the Red Cross (ICRC), *Violence and the Use of Force*, Geneva, 2011, p. 17; and Melzer (footnote 19 above), pp. 101 and 199.
[34] See *Nachova* (footnote 29 above).
[35] Principle 5.
[36] A/61/311, para. 42.

offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender."[37]

69. The pivotal Principle 9 does not use the term "force and firearms", as do the preceding provisions, but merely refers to the use of firearms. It poses a higher threshold for the use of firearms than for force in general and provides that "Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against an imminent threat of death or serious injury… and only when less extreme measures are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

70. Principle 9 is a strong affirmation of the principle of proportionality: All uses of firearms against people should be treated as lethal or potentially lethal. The first part of Principle 9 provides that potentially lethal force may be used only to avert a potentially lethal threat or a risk of a similarly serious nature (e.g. self-defence against a violent rape). The second part deals with the intentional lethal use of force, which in any event may only be used when strictly unavoidable to protect life. What will be called the "protect life" principle – a life may be taken intentionally only to save another life – may be described as the guiding star of the protection of the right to life.

71. A common sense understanding of the scope of application of Principle 9 suggests that all weapons that are designed and are likely to be lethal should be covered, including heavy weapons such as bombs and (drone) missiles, the use of which constitutes an intentional lethal use of force.

72. The "protect life" principle demands that lethal force may not be used intentionally merely to protect law and order or to serve other similar interests (for example, it may not be used only to disperse protests, to arrest a suspected criminal, or to safeguard other interests such as property). The primary aim must be to save life. In practice, this means that only the protection of life can meet the proportionality requirement where lethal force is used intentionally, and the protection of life can be the only legitimate objective for the use of such force. A fleeing thief who poses no immediate danger may not be killed, even if it means that the thief will escape.

73. This is where fundamental differences between the general orientation of international law and many domestic human rights systems lie. While international law is aimed primarily at the preservation of life and limb, some domestic legal systems have as their first priority the protection of law and order. Drawing the line for the use of lethal force at violations of law and order, and not asking in addition whether there is a real danger, carries grave risks for lives and for a society based on human rights. The challenge is to bring the blunt generalizations of some domestic systems in compliance with the more principled requirements set by the international standards.

(f) Non-discrimination

74. At times, the police exercise higher levels of violence against certain groups of people, based on institutionalized racism or ethnic discrimination.[38] Discrimination on these, and other, grounds also impacts on patterns of accountability. States must instead adopt both a reactive and a proactive stance, encompassing all available means, to combat racially motivated and other similar violence within law enforcement operations.[39]

[37] Code, commentary to art. 3.
[38] A/HRC/14/24/Add.8.
[39] See *Nachova* (footnote 29 above), paras. 145 and 161.

(g) Special provisions on demonstrations

75. It is widely accepted that it is the task of the police to facilitate and, if necessary, manage peaceful protest. In addition to the general provisions outlined above, three principles deal with the specialized case of policing of assemblies in the Basic Principles.[40] In the case of lawful and peaceful assembly, no force may be used.[41] If there is good reason to disperse an unlawful assembly that is peaceful, only the minimum force necessary may be used.[42] Lethal force clearly has no role to play. The mere fact that some protesters in the crowd are violent does not turn the demonstration as a whole into a non-peaceful assembly.[43] In violent assemblies (that are both unlawful and not peaceful) minimum force should also be used, and firearms may be used only in accordance with Principle 9. Indiscriminate fire into a crowd is never allowed.[44]

(h) Special provisions on people in custody or detention

76. Law enforcement officials, in their relations with persons in custody or detention, are required not to use firearms except in self-defence or defence of others "against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in Principle 9".[45]

(i) Requirements after the use of force

77. In addition to the need for accountability, medical assistance must be provided to injured persons after the use of force or firearms by law enforcement,[46] and relatives or close friends of injured or affected persons must be notified at the earliest possible moment.[47] The Code and Basic Principles provide that effective reporting and review procedures must be established to address any incident in which a potentially unlawful use of force occurs.[48]

2. Accountability

78. The procedural component of the right to life requires that States investigate apparently unlawful or arbitrary killings.[49] States are obliged, under article 2(3) of the International Covenant on Civil and Political Rights, to "ensure that any person whose rights or freedoms… are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in official capacity". States parties are required to ensure that all persons shall have the right for a remedy to be determined by a competent authority and for the authority to enforce remedies when granted.[50]

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[40] The heading "policing of unlawful assemblies" is not appropriate since lawful assemblies are also covered.

[41] Principle 12.

[42] Principle 13.

[43] A/HRC/17/28.

[44] Geneva Academy, *Facilitating Peaceful Protests*, Geneva, 2014, p. 21.

[45] Principle 16.

[46] Principle 5(c) and art. 6, with commentary, of the Code.

[47] Principle 5(d).

[48] Principle 22 and art. 8, with commentary, of the Code.

[49] Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (see footnote 14 above).

[50] Universal Declaration of Human Rights, art. 8; International Covenant on Civil and Political Rights, art. 2(3)(b) and (c); and Human Rights Committee General Comments No. 31 (2004).

79. The failure of the State to properly investigate cases of death following the use of force is a violation of the right to life itself.[51] At times there are "numerous findings of state violations of the right to life because of the absence of an effective investigation, even when the killing could not be found on the evidence to be firmly attributable to the state".[52]

80. Human rights treaty bodies, too, have recognized the obligation on States wherever a death results from the use of force, as a component of the right to life.[53] Content has been provided to the term "exhaustive and impartial investigations" as including the following factors: an official investigation initiated by the State; independence from those implicated; capability of leading to a determination of whether force used was justified in the circumstances; the requirement of a level of promptness and reasonable expedition; and a level of public scrutiny.[54]

81. To enable investigations, accountability and redress for the victims, important measures, including the following must be put in place: States are obliged to provide a system of reporting for whenever firearms are used by law enforcement officials[55]; investigations should also seek to establish command responsibility; and law enforcement officials must promptly report incidents where the use of force or firearms results in injury or death, to their superiors.[56]

82. This framework must include criminal, administrative and disciplinary sanctions. Modes of criminal accountability must include command or superior responsibility. The general existence of laws is not enough to ensure accountability of State officials – special measures are needed to ensure that those in office are held responsible. Many States lack such mechanisms.

83. An effective remedy is dependent on an effective investigation. The General Assembly has addressed the obligation of all States "to conduct exhaustive and impartial investigations… to identify and bring to justice those responsible… and to adopt all necessary measures… to put an end to impunity."[57]

84. Independent, external oversight of police is a best practice.[58] However, mere establishment of an external oversight body itself is insufficient. An effective external police oversight agency requires the necessary powers, resources, independence, transparency and reporting, community and political support, and civil society involvement.[59] In addition, a high degree of transparency is also required to ensure the long-term success of the oversight agency.[60]

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[51] *Kaya v. Turkey*, European Court of Human Rights, application No. 22729/93 (19 February 1998) paras. 86-92. and *McCann and Others v the United Kingdom*, European Court of Human Rights, application No. 18984/91 (27 September 1995) para. 169.

[52] Moeckli *et al.* (eds.) (footnote 12 above), p. 228.

[53] *Finucane v. The United Kingdom,* European Court of Human Rights, application No. 29178/95 (1 July 2003).

[54] *Isayeva v. Russia,* European Court of Human Rights, application No. 57950/00 (24 February 2005).

[55] Principle 11(f) and commentary to art 3 of the Code.

[56] Principle 6.

[57] General Assembly resolution 63/182.

[58] A/HRC/14/24/Add.8 at para 73. Also, African Commission on Human and Peoples' Rights, *Resolution on police reform, accountability and civilian police oversight in Africa* (2006).

[59] A/HRC/14/24/Add.8 at para. 74.

[60] *Ibid.,* paras. 61–63.

85. The Basic Principles provide that Governments shall ensure that an effective review process is available and that persons affected by the use of force and firearms have access to an independent process, including a judicial process.[61]

D. Domestic laws on the use of lethal force by law enforcement officials

1. Requirements for the use of force

(a) Sufficient legal basis

86. As a general concern, review of the laws studied for this report reveals that some States either explicitly allow the use of lethal force in violation of international standards, or leave the standards so widely open that it amounts to the same result. The twin requirements of necessity and proportionality are often either presented too weakly, or one, or both, are missing altogether.

(b) Necessity

87. To start on a positive note: some domestic laws do contain clear requirements of necessity and proportionality in their use of force provisions. For example, "[a] police officer shall always attempt to use non-violent means first and force may only be employed when non-violent means are ineffective or without any promise of achieving the intended result."

88. The laws of some countries provide that force "not greater than that required" or as "little force as necessary" shall be used. As an expression of the necessity requirement, this is not problematic, but without accompanying provisions on proportionality, such statements set the bar too low, and will allow the fleeing thief, posing no immediate danger, to be shot with apparent impunity.

89. Provisions that regulate the use of force in a large number of the States considered for this Report are vague and loosely defined. Terms such as "use all reasonable means necessary", "do all things necessary", and "use such means as are necessary to effect the arrest" are frequently used as the standard for the application of force. Provisions such as these, if not narrowed by accompanying requirements of proportionality and necessity, allow for wide and uncontrolled discretion to be exercised by the law enforcement official, without any additional safeguards. Wide personal discretion on the part of law enforcement officials rules out effective accountability.

90. Another concern also regards those States that allow law enforcement officials, after unsuccessful attempts to disperse an assembly, to "cause it to be dispersed by military force".

91. In those countries that provide that warning shall be given, many provide for two (or three) warnings before force may be used. Some countries, however, provide that once a warning has been issued for dispersal of an assembly, and the warning is not heeded, law enforcement officials may proceed summarily to disperse the assembly, by force. Some States have detailed provisions in police operational orders on the measures to be taken before dispersal of an assembly is allowed. This includes giving sufficient warning of the intention to disperse the assembly, as well as further warning before the dispersal takes place. Some countries also provide that any warning should be made in two or more languages, widely understood.

[61] Principles 22–26.

(c) Proportionality

92. As was stated above, in the case of many laws, proportionality is not recognized at all, but others do contain a reference to proportionality in some form or another. For example, "[t]he force used shall be proportional to the objective to be achieved, the seriousness of the offence, and the resistance of the person against whom it is necessary, and only to the extent necessary while adhering to the provisions of the law and Standing Orders." While this represents a clear exposition of the requirement of proportionality for the use of force in general, it does not address and thus leaves open the special case where lethal force is used and strict proportionality is the norm. Somewhere in the legal system – whether in the legislation or in court decisions or elsewhere – the "protect life" principle must be incorporated.

93. The emphasis in the laws reviewed is often placed merely on law enforcement objectives and not on the question of whether the person concerned poses a threat. The domestic laws of some States do not explicitly require either necessity or proportionality in the use of force by law enforcement officials. For example, "[i]f upon being so commanded, such assembly does not disperse … [a police officer] may proceed to disperse such assembly by force." These laws still largely follow the colonial model. In a striking example of an exclusive emphasis on law and order, one law allows for a police officer to use force as may be necessary to prevent any person involved in a demonstration from passing a barrier (erected by the police), "which force may extend to the use of lethal weapons".

94. While in the majority of countries considered there is a general provision regulating the use of force by any means, some countries do in fact make special provision for the use of firearms. This constitutes good practice. Some such domestic laws are in compliance with the international principles regarding the use of lethal force. For example, "[t]he use of firearms shall be allowed only if strictly necessary to preserve human life", and "[f]irearms may only be used [for] saving or protecting the life of the officer or other person, and in self-defence or in defence of other person against imminent threat of life or serious injury." However, in other countries the threshold is set very low. The following provision is a case in point: "Police may use weapons [where] public order or security [is] at stake."

95. In the context of arrest or escape, the use of force is often determined purely by the crime the person is suspected to have committed. A typical provision reads as follows: in the prevention of the crimes of burglary, housebreaking or forcible unnatural crimes, among others, "a person may justify any necessary force or harm, extending, in the case of extreme necessity, even to killing". Offences that are classified as felonies and crimes such as kidnapping in other cases permit the lethal use of force in effecting arrest or preventing escape. Some countries allow the use of lethal force based on the penalty for the suspected criminal offence; frequently where life imprisonment or imprisonment for 10 years or more is prescribed, but this does not constitute a reliable proxy for the question whether the person concerned is dangerous.

96. Similarly, some States allow for the use of firearms against prisoners or convicted persons, suspected of attempting to escape, without additional safeguards. In some of the States considered for this Report, lethal force is allowed in the protection of property.

2. Provisions on accountability

97. The laws of some States contain extensive accountability procedures. However, in many other States there are no such provisions, though it cannot be excluded that provisions on reporting injury or death, or the use of firearms, may in some cases be contained in subordinate regulations.

98. Especially worrying, however, are laws that provide explicit immunity to law enforcement officials who have used force. These laws relate to the use of force by police generally or in specific circumstances. Despite acting outside of the scope of the law, these officials are granted lesser sentences and, at times, full immunity from prosecution. This is sometimes tied to the condition that they acted in "good faith", but often there is a blanket ousting of the jurisdiction of the courts, mostly in the context of assembly.

99. The laws of some States require that criminal prosecutions can only be instituted against law enforcement officials when authorized by some arm of the State.

100. The practical result of a lack of proper accountability regarding violations of the right to life is that a situation is created where police officers are above the law. They are in effect given the power in their subjective discretion to create a situation that is worse than a "mini state of emergency" in two important ways: under a normal state of emergency the right to life is non-derogable, and the declaration of a state of emergency is subject to strict restraints.

E. Less-lethal weapons

101. The Basic Principles require States to develop and use so-called "non-lethal incapacitating weapons" where appropriate.[62] Given the relative lack of information on the risks associated with various weapons when the Basic Principles were drafted, it is not surprising that this reads almost like an unqualified endorsement of what today are commonly referred to in law enforcement as "less-lethal weapons". Modern developments require a more nuanced and analytical approach.

102. The increasing availability of various "less-lethal weapons" over the last few decades has been a significant development in law enforcement. Their availability can lead to greater restraint in the use of firearms and can allow for graduated use of force. However, this depends on the characteristics of the specific weapons and the context of its use.

103. The manufacture and sale of a wide variety of "less-lethal weapons" has become a veritable industry and is expanding. The weapons promoted in this category have diverse characteristics, mechanisms of injury and associated risks. They include chemical, blunt trauma, electric-shock, acoustic weapons and directed energy weapons.[63]

104. The problem is that in some cases "less-lethal weapons" are indeed lethal and can lead to serious injuries. The risks will be dependent on the type of weapon, the context of its use, and the vulnerabilities of the victim or victims. Innocent bystanders may also be affected where weapons cannot be directed at one individual.

105. The growing, largely self-regulated market of "less-lethal weapons" cannot solely determine policing weapons technology, especially when it could involve unacceptable human cost.[64] Clear and appropriate international standards are needed.[65]

106. There is a need for independent guidelines on the development and use of these weapon technologies, over and above standards that may be set by individual police forces or the manufacturers. Likewise, it may be necessary to place restraints on the international

[62] Principle 2.

[63] Davison, *"Non-lethal" weapons,* Palgrave, Macmillan, 2009.

[64] Corney, *Less Lethal Systems and the Appropriate Use of Force,* Omega Research Foundation, 2011, p. 2.

[65] For example, Basic Principle 3.

trade and proliferation of these weapons. Training of law enforcement officials in the use of new weapons should be relevant, regular and integrate a human rights law approach.

107. ICRC has made the argument that the use of toxic chemicals as weapons for law enforcement should be limited solely to riot control agents, i.e. "tear gas", highlighting the risks of using other chemical agents and the strict constraints of the current international legal framework. Their concern is that the use of some toxic chemicals for law enforcement presents serious risks of death and permanent disability to those exposed, risks undermining international law prohibiting chemical weapons, and could ultimately erode the consensus against the use of poison as a weapon during armed conflict.[66]

F. Opportunities to engage in, encourage and support domestic law reform

108. A wide range of actors are or may become involved in law reform of the kind described here. Clearly, the States in question are the main actors. However, there are also numerous other actors that can support or encourage such changes. These include non-governmental organizations (NGOs), academics, National Human Rights Institutions (NHRIs) and international human rights supervisory bodies.

109. Some existing initiatives and entry points in this regard may be highlighted. The mandate of OHCHR presents an opportunity for consultation with States to encourage domestic law reform and to promote cooperation at the multinational and regional levels.

110. The United Nations Office on Drugs and Crime (UNODC) has a special responsibility to promote the Code and the Basic Principles. UNODC's field offices work in, and provide further opportunity for, law reform with States. The upcoming United Nations Crime Congresses provide excellent opportunities to take this further. The United Nations Commission on Crime Prevention and Criminal Justice presents an opportunity for further work, reform of domestic laws and the monitoring or review of implementation of the Code and Basic Principles by States.

111. ICRC, among other activities, works with governments all over the world on the development of law, building respect for the law and the protection of persons in armed conflict and other situations of violence. The Organization for Security Cooperation in Europe and the Office for Democratic Institutions and Human Rights, work in police education and training, community policing and administrative and structural reforms. The European Commission for Democracy through Law provides assistance to members on human rights and rule of law.

112. The Pan-African Parliament has the capacity to adopt model laws of to conduct studies aimed at harmonization of laws. The African Commission on Human and Peoples' Rights is seeking to build synergies with NHRIs and NGOs with experience in the area of policing and human rights in Africa. A thematic study on the right to life, conducted by the Association of Southeast Asian Nations Intergovernmental Commission on Human Rights, presents a good opportunity for reform. The mandate of the African Union Commission on International Law also provides opportunities to engage in and support domestic law reform.

113. There is a dearth of research on the law and on the practice of the use of force in many countries around the world – in many cases in those societies where such engagement

[66] See http://www.icrc.org/eng/resources/documents/legal-fact-sheet/2013-02-06-toxic-chemicals-weapons-law-enforcement.htm.

is the most necessary. Local researchers should make this a priority. Moreover, law faculties and other similar institutions around the world should make sure that the Code and the Basic Principles are part of the curriculum.

114. In addition, awareness should be raised about the Code and the Basic Principles. This should be done broadly within law enforcement agencies, governments, universities, and society as a whole.

G. Conclusions

115. **There is considerable and widespread divergence between the international standards regulating the use of lethal force by law enforcement officials and accountability, and the domestic law in many countries.**

116. **Bringing domestic laws on the use of force into line with international standards should be a top priority of States and of the international community.**

117. **As a starting point, all States should be asked the question whether their laws, seen as a whole, recognize the "protect life" principle.**

H. Recommendations

1. To the United Nations

118. **United Nations bodies involved in human rights monitoring, including treaty bodies, special procedures and the Universal Periodic Review, should closely scrutinize the laws and practices of States. There should also be scrutiny of mechanisms for accountability of law enforcement officials, in law and practice. The failure of a State to put into place a legal framework for the use of force by law enforcement officials that complies with international standards should be identified as a violation of the right to life itself.**

119. **The Human Rights Committee should consider undertaking another General Comment on the right to life. The Human Rights Council should consider appointing an expert body to develop standards and guidelines on the range of less-lethal weapons that would allow for a differentiated use of force consistent with international rules and standards.**

120. **The United Nations should engage with regional, as well as domestic, human rights initiatives, including academia, as entry points in order to ensure greater compliance with and knowledge of the international standards.**

2. To States

121. **Domestic laws regulating the use of force by law enforcement officials, where necessary, be brought in line with international standards. These reforms should not be limited to legislation alone, and include operational procedures and instruments for training.**

122. **Proper consideration should be given to whether law enforcement officials are properly trained and equipped to prevent situations where the need for the use of force may arise, particularly when monitoring assemblies.**

123. **There should be a focus on effective independent accountability mechanisms. This should be done in consultation with NHRIs or ombudsman offices and civil society.**

124. **States must make their laws on the use of force publicly available.**

125. **States should not use emergency situations or terrorist threats as a pretext to erode the right to life by granting unchecked powers to use force to their law enforcement officials.**

3. To regional bodies

126. **The right to life should be a top priority for regional human rights systems. The emerging systems should link up with the United Nations and with other regional systems in this regard.**

127. **Regional bodies should engage with subregional bodies that have particular insight into the law and practice of States in the region, with a view to bringing about necessary law reform. Partnerships should be created to promote necessary reforms.**

128. **Regional bodies should monitor domestic laws on the use of force and accountability mechanisms, and consider adopting resolutions on strengthening these mechanisms.**

4. To National Human Rights Institutions

129. **NHRIs must make the protection of the right to life a matter of priority. In this context they must establish to what extent the domestic laws comply with international standards, and work towards law reform where necessary.**

5. To NGOs and civil society

130. **NGOs and civil society should engage with States on the applicable laws, and use all available entry points on the international front (such as shadow reports) to raise problems that are encountered with the status quo.**

131. **University-based and other researchers across societies should make the study and teaching of the rules on the use of force a priority.**

6. To donors

132. **The need to bring the domestic law in line with international standards should be a priority for those who provide financial and other assistance to States.**

III. Remotely piloted aircraft or armed drones and emerging autonomous weapons systems

133. The mandate has engaged with the Human Rights Council and the General Assembly on the issues raised by remotely piloted aircraft or armed drones over a number of years,[67] and has recently also done so on autonomous weapons systems (or lethal autonomous robots (LARs)).[68] While neither system has a human physically in the aircraft, in the case of armed drones, there are at least human operators on the ground taking decisions on who to target and when to release deadly force. Autonomous weapons systems have not yet been deployed, but if that were to happen, these weapons platforms, once

[67] A/HRC/4/20/Add.1 pp.245-246, 359; A/HRC/11/2/Add.5 p. 32; A/HRC/14/24/Add.6, paras. 79–86; and A/HRC/20/22/Add.3 para. 81. See also General Assembly documents A/65/321; A/68/382 and Corr. 1; A/68/389.

[68] A/HRC/23/47 and A/65/321.

activated, will select and engage targets in an autonomous way, without further human intervention. The debates in the Human Rights Council thus far on these issues have been fruitful and productive. The Council has also recently adopted a resolution to organize an interactive panel discussion of experts on the topic.[69]

134. Both armed drones and autonomous weapons systems raise complicated questions and issues of international humanitarian law as well as human rights – and in particular right to life – issues. The detailed arguments made in earlier Special Rapporteur reports to the Human Rights Council and the General Assembly will not be repeated here. However, the current moment seems to provide a good opportunity to make brief comments.

A. Remotely piloted aircraft (or armed drones)

135. It has been more than 10 years since the first reported armed drone strike in Yemen outside the scope of a traditional armed conflict, took place, on 3 November 2002.[70] Since then, and as at February 2014, according to some sources, a minimum estimate of 2,835 individuals have been killed in drone attacks in Pakistan, Yemen and Somalia alone.[71]

136. In some cases, such armed drone attacks may have been subject to and conformed with the rules of international humanitarian law (IHL), while in others there are serious concerns that they may not have met the IHL requirements. Some attacks also may not have occurred within the confines of an armed conflict, and as such should be measured by the more stringent requirements of international human rights law, which they almost certainly did not meet. There are also cases where there is genuine uncertainty. While there is agreement on most aspects of the international legal framework that is applicable to armed drones, there are some areas where its interpretation is still being debated.

137. Legal uncertainty in relation to the interpretation of important rules on the international use of force presents a clear danger to the international community. To leave such important rules open to interpretation by different sides may lead to the creation of unfavourable precedents where States have wide discretion to take life and there are few prospects of accountability. Such a situation undermines the protection of the right to life. It also undermines the rule of law, and the ability of the international community to maintain a solid foundation for international security.

138. To contribute towards a stronger global consensus on the regulation of armed drone strikes (by international law), it is proposed that the Council, among other relevant bodies, consider expressing its views on the applicable legal framework on drones, as has to some extent already been done by the General Assembly.[72]

139. The intervention by the European Union (EU),[73] with which the United Kingdom aligned itself,[74] during the debate in the Third Committee of the General Assembly, in

[69] A/HRC/25/22, para. 4.

[70] E/CN.4/2003/3, para. 39.

[71] See http://www.thebureauinvestigates.com/category/projects/drones/.

[72] On 18 December 2013 the General Assembly adopted by consensus resolution 68/178, which in para. 6 (s) urges States "to ensure that any measures taken or means employed to counter terrorism, including the use of remotely piloted aircraft, comply with their obligations under international law, including the Charter of the United Nations, human rights law and international humanitarian law, in particular the principles of distinction and proportionality".

[73] See http://webtv.un.org/watch/third-committee-27th-meeting-68th-general-assembly/2777317047001/#full-text, at 1:30:10; and European Parliament Resolution on the use of armed drones (2014/2567(RSP)).

[74] See http://webtv.un.org/watch/third-committee-27th-meeting-68th-general-

October 2013, on the report by the Special Rapporteur, provides an important point of reference. The EU expressed its view that:

(a) The current international legal framework is adequate to govern drone strikes;

(b) The right to life can only be adequately protected if all constraints on the use of force set out by international law are complied with;

(c) International central norms on the use of force must not be abandoned to suit the current use of drones;

(d) There should be transparency surrounding all drone operations to enhance accountability.

140. The above is a minimalist position. An intervention by the Council in similar terms, to which the following point may be added, will help to narrow down at least the outer limits of the debate:

(e) Outside of the narrow confines of armed conflict, any killing must meet the requirements of human rights law, and be strictly necessary and proportionate.

Recommendation

141. The Human Rights Council should express its views on how the relevant normative framework applies to remotely piloted aircraft or armed drones, setting out the basic interpretations of international law that it considers to be applicable.

B. Autonomous weapons systems

142. Not much time has elapsed since the Council considered the issue of autonomous weapons systems in May 2013.[75] With commendable speed, the issue has been taken up by various United Nations bodies. It was amongst other things considered by the First Committee of the General Assembly[76] and the Office of Disarmament Affairs of the United Nations.[77] The United Nations Institute for Disarmament Research has also initiated an expert process.

143. Perhaps most visible in Geneva was the fact that the State parties of the Convention on Certain Conventional Weapons agreed to place the issue on their agenda in May 2014.[78] This is to be welcomed as an important and serious step forward.

144. While the issue of autonomous weapons systems is clearly among other things a disarmament issue, and needs to be addressed in that context, it also has far-reaching potential implications for human rights, notably the rights to life and human dignity, and as such it is also a human rights issue. Based on the experience with armed drones, there is also a danger that such weapons will be used outside the geographical scope of established armed conflicts. Autonomous weapons systems therefore should remain on the agenda of the Council. It will lessen the chances for the international community to find a sustainable

assembly/2777317047001/#full-text at 1:48:36.

[75] A/HRC/23/47.

[76] See http://www.stopkillerrobots.org/2013/10/unga2013/.

[77] For example, www.un.org/disarmament/content/spotlight/index_2013.shtml; and www.un.org/disarmament/special/meetings/firstcommittee/68/pdfs/TD_29-Oct_CW_Netherlands.pdf.

[78] See http://www.reachingcriticalwill.org/news/latest-news/8583-ccw-adopts-mandate-to-discuss-killer-robots.

and comprehensive solution to the matter of autonomous weapons systems if it were to be dealt with only in either the disarmament or the human rights context, with the one lacking the perspective of the other on this vital issue.

Recommendations

145. The Human Rights Council should remain seized with the issue of autonomous weapons systems, in particular, as far as the rights to life and dignity are concerned. The Council, as the supreme United Nations body in the field of human rights, should engage with the work done by the disarmament structures in this regard and make its voice heard as the international debate unfolds.