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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Investigation of, accountability for and prevention of
intentional State killings of human rights defenders,
journalists and prominent dissidents****Report of the Special Rapporteur on extrajudicial, summary or
arbitrary executions****Summary*

In the present report, the Special Rapporteur on extrajudicial, summary or arbitrary executions focuses on the investigation of, accountability for and prevention of intentional State killings of human rights defenders, journalists and prominent dissidents, including those who have sought safety abroad. She begins by summarizing the legal findings and conclusions of her international human rights inquiry into the unlawful death of Saudi journalist Jamal Khashoggi. The full results of the inquiry are provided in the report on the investigation into the unlawful death of Jamal Khashoggi (A/HRC/41/CRP.1). The Special Rapporteur then focuses on the legal and policy implications related to the responsibility to protect and the duty to warn those who are the subject of credible threats from States and non-State actors. She then proposes new United Nations mechanisms to strengthen accountability for and prevention of arbitrary killings, and concludes by recommending a number of measures to ensure accountability for the killing of Jamal Khashoggi.

* The present report was submitted after the deadline so as to include the most recent information.



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I. Introduction

1. The present report is submitted to the Human Rights Council in accordance with Council resolution 35/15. It provides a summary of the human rights inquiry initiated by the Special Rapporteur on extrajudicial, summary or arbitrary executions in January 2019 into the unlawful death of Jamal Khashoggi, a journalist from Saudi Arabia. The full results of the inquiry are provided in the report on the investigation into the unlawful death of Jamal Khashoggi.¹

II. Human rights inquiry into the execution of Jamal Khashoggi

2. In January 2019, the Special Rapporteur initiated a human rights inquiry, in accordance with the terms of her mandate,² into the unlawful death of Saudi journalist Jamal Khashoggi.

3. The execution of Mr. Khashoggi is emblematic of a global pattern of targeted killings of journalists and media workers, as well as human rights defenders and political activists, that is regularly denounced by States, United Nations agencies, special procedure mandate holders and a large number of international and national human rights organizations. In response, the General Assembly, in its resolution 68/163, proclaimed 2 November as the International Day to End Impunity for Crimes against Journalists and urged Member States to implement measures to counter the current culture of impunity. In 1998, the Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, a milestone in the protection of human rights defenders.³

4. The execution of Mr. Khashoggi sits at the intersection of trends and concerns which not only feature prominently among the priorities of the international community and the United Nations, but which have also proven challenging to address effectively. The human rights inquiry into the execution of Mr. Khashoggi therefore seeks to shed light on the normative, legal and policy issues that Member States, the United Nations, civil society and corporate actors must consider in order to strengthen the effectiveness of their preventive and protective mechanisms.

State responsibility

5. Evidence collected by the Special Rapporteur shows that the interception of Mr. Khashoggi in the Saudi consulate was the result of elaborate planning, involving extensive coordination and significant human and financial resources. It was overseen, planned and endorsed by high-level officials, as identified by the Saudi prosecutor. The evidence that the killing was premeditated is credible and includes the presence of a forensic doctor on the Saudi special operations team who, while in the consulate, described his methods of dismemberment only an hour before Mr. Khashoggi entered the consulate building.

6. The circumstances of Mr. Khashoggi's death have led to numerous theories and allegations, but none alters the responsibility of the State of Saudi Arabia. In determining State responsibility, it is legally irrelevant which State officials ordered Mr. Khashoggi's death, or whether one or all of them ordered a rendition which, having been botched, ended in an accidental killing, or whether the officers acted on their own initiative to render Mr. Khashoggi back to Saudi Arabia but killed him in the process, or whether the officers acted *ultra vires* (the so-called "rogue State agents" theory) and killed him intentionally.

7. The killing of Mr. Khashoggi constituted an extrajudicial killing for which the State of Saudi Arabia is responsible. His attempted kidnapping would also constitute a violation under international human rights law. His killing further constituted a violation of the

¹ A/HRC/41/CRP.1.

² See www.ohchr.org/EN/Issues/Executions/Pages/Inquiry.aspx.

³ See www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx.

Vienna Convention on Consular Relations and of the prohibition against the extraterritorial use of force in time of peace (in accordance with customary law and the Charter of the United Nations). In killing a journalist, the State of Saudi Arabia also committed an act that is inconsistent with a core tenet of the United Nations, namely the protection of freedom of expression. As such, it can be credibly argued that the State of Saudi Arabia used force extraterritorially in a manner inconsistent with the purposes of the United Nations. Furthermore, the circumstances of the killing of Mr. Khashoggi may constitute an act of torture under the terms of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Saudi Arabia. Lastly, the killing of Mr. Khashoggi also constitutes to this date an enforced disappearance, since the location of his remains has not been established.

Individual liability

8. The Special Rapporteur has determined that there is credible evidence warranting further investigation of the individual liability of high-level Saudi officials, including the Crown Prince. She warns against a disproportionate emphasis on identifying who ordered the crime, pointing out that the search for justice and accountability is not singularly dependent on finding a “smoking gun” and the person holding it. The search is also, if not primarily, about identifying those who, in the context of the commission of a violation, have abused, or failed to fulfil, the responsibilities of their positions of authority.

Duty to investigate and consular immunity

9. The Special Rapporteur has found that the investigations conducted both by Saudi Arabia and by Turkey failed to meet international standards regarding investigation into unlawful death.

10. The Special Rapporteur found that, under the terms of the Vienna Convention, Saudi authorities were under no legal obligation to grant the Turkish investigators access to the consular premises. However, Saudi Arabia was under an international obligation to cooperate with the Turkish authorities in the investigation of the killing of Mr. Khashoggi. Such cooperation necessarily demanded that Saudi Arabia grant the Turkish authorities access to the consulate in a prompt and effective fashion and in good faith. Consular immunity was never intended to enable impunity.

11. The Special Rapporteur found credible evidence pointing to the crime scenes having been thoroughly, even forensically, cleaned, which indicates that the Saudi investigation was not conducted in good faith and that it may amount to obstructing justice.

12. Turkish investigators, accompanied by Saudi investigators, only had access to the consulate on 15 October 2018 for 6 hours and to the consular residences on 17 October for around 13 hours, where they also had to search the entire consular vehicle fleet. Their scientific and forensic inquiries were limited to “swabbing” and they were not allowed to drain a well located in the residence. The limitations imposed by Saudi Arabia on the Turkish investigation cannot be justified by the need to protect consular operations.

13. Turkish investigators decided not to search the Saudi consulate without proper authorization from the Saudi authorities. The Special Rapporteur found that this was the appropriate way to proceed: creating an exception to the Vienna Convention, which states that consular premises are inviolate, for the purpose of an investigation would have been unnecessary and disproportionate.

14. The Special Rapporteur also found that the fear expressed by Turkey of an escalation of the situation and retribution meant that the consular residences and consular cars were also not searched without permission, even though they are not protected by the provisions of the Vienna Convention.

15. The Special Rapporteur regrets that it appears that no international body or other State came forward with an offer to mediate between the two parties to negotiate prompt and effective access to the crime scene. That could also have helped to de-escalate the crisis, protect equally the Vienna Convention and human rights and address the fear of retaliation. Instead, it appears that other Member States pondered rather only their own national and

strategic interests. The United Nations considered either that it had no evident means of intervention or elected not to intervene. In retrospect, it is evident that the ultimate casualty of those considerations was justice and accountability for Jamal Khashoggi.

Duty to protect and duty to warn

16. On the basis of credible information at her disposal, the Special Rapporteur has concluded that there is insufficient evidence to suggest that either Turkey or the United States of America knew, or ought to have known, of a real and imminent or foreseeable threat to the life of Mr. Khashoggi. There was credible evidence to suggest that, had Mr. Khashoggi returned to Saudi Arabia, or been lured there, he would have been detained, possibly disappeared, and harmed. Those risks were not linked to his life or presence in his countries of residence, namely the United States and Turkey. The Special Rapporteur did not secure credible evidence that United States authorities had intercepted the communications of the Saudi Crown Prince or that such intercepts had been assessed before the time of the killing of Mr. Khashoggi.

Duty to prosecute and reparations

17. Saudi Arabia has taken timid steps towards addressing its State responsibilities in terms of prosecution and reparation. However, those steps stop short of what is required under international law. The accountability gap is all the more worrying given that it concerns a crime that has received an unprecedented level of attention and outcry internationally, including official public condemnation around the world.

18. The ongoing trial in Saudi Arabia of 11 suspects in the killing of Mr. Khashoggi, while an important step towards accountability, fails to meet procedural and substantive standards. The trial is being held behind closed doors; the identity of those charged and those facing the death penalty has not been released. At the time of writing, at least one of those identified as responsible for the planning and organizing of the execution of Mr. Khashoggi has not been charged.

19. The Government of Saudi Arabia has invited representatives of Turkey and of the permanent members of the Security Council to attend at least some of the hearings. It is particularly concerning that, given the identity of the observers, the institution of the Security Council has itself been made complicit in what may well amount to a miscarriage of justice.

20. The Special Rapporteur has been told that observation of the trial was conditional upon agreement not to disclose its details. Trial observation under such conditions cannot provide credible validation of the proceedings or of the investigation itself.

21. In view of her concerns regarding the trial of the 11 suspects in Saudi Arabia, the Special Rapporteur calls for the suspension of the trial.

22. To date, the State of Saudi Arabia has failed to offer public recognition of its responsibility for the killing of Mr. Khashoggi and has failed to offer an apology to Mr. Khashoggi's family, friends and colleagues for his death and for the manner in which he was killed. The Special Rapporteur obtained information regarding a financial package offered to the children of Mr. Khashoggi, but it is questionable whether such package amounts to compensation under international human rights law.

23. The restructuring of the Saudi intelligence services announced by King Salman Bin Abdulaziz Al-Saud is a step towards non-repetition, but it is insufficient. For instance, no subsequent information has been provided elaborating on the impact of the restructuring on the decision-making, training and codes of ethics of the security agencies. Instead, it would be expected that Saudi Arabia would demonstrate non-repetition, including by: releasing all individuals imprisoned for the peaceful expression of their opinions and beliefs; investigating all allegations of torture and lethal use of force in formal and informal places of detention and of enforced disappearances; and making public the whereabouts of disappeared individuals. Saudi Arabia should also undertake an in-depth assessment of the actors, institutions and circumstances that made it possible for the execution of Mr. Khashoggi to be carried forward, and identify the reforms required to ensure non-repetition.

Universal jurisdiction

24. The Special Rapporteur has found that the killing of Mr. Khashoggi constitutes an international crime over which States should claim universal jurisdiction. The killing of Mr. Khashoggi is a violation of a *jus cogens* norm. It violates the provisions of the Vienna Convention and the prohibition against the extraterritorial use of force in times of peace. The circumstances of the execution may amount to an act of torture under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It is a continuing case of enforced disappearance since the remains of Mr. Khashoggi have not been located. It concerns a journalist in self-imposed exile. His execution has an enduring international impact.

Accountability

25. The Special Rapporteur is concerned that legal accountability for the execution of Mr. Khashoggi is being made difficult to obtain. The trial under way in Saudi Arabia will not deliver credible accountability; Turkey has not yet initiated proceedings and hopes for credible accountability are weak in countries with a track record of imprisonment of journalists. Jurisdictional challenges and the impossibility of conducting a trial in absentia mean that a trial in the United States will face many challenges. In the present report, the Special Rapporteur makes a number of proposals on how some of those issues may be addressed, while warning that no single proposal on its own will deliver credible accountability.

III. Responsibility to protect and duty to warn

26. The right to life is a foundational and universally recognized right, applicable at all times and in all circumstances, including during armed conflict or other public emergencies. It is a norm of *jus cogens*, and is protected by international and regional treaties, customary international law and national legal systems. The “preservation of this right is one of the essential functions of the State and numerous provisions of national legislation ... establish guarantees to ensure the enjoyment of this right”.⁴ The responsibility to respect the right to life applies extraterritorially, at a minimum to those under the effective control of the State.⁵ Irrespective of the applicability of treaty provisions recognizing the right to life, States are bound to ensure the realization of the right to life when they use force, whether inside or outside their borders.⁶

27. 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.

28. States are required to respect and to protect the right to life “by law”. “Deprivation of life is, as a rule, arbitrary if it is inconsistent with international law or domestic law.”⁷ Arbitrary deprivation of life includes targeted, intentional killing by States, also referred to as extrajudicial execution.

29. A State is obligated to take all necessary steps to ensure that its officials do not perpetrate an attack causing an extrajudicial killing or arbitrary deprivation of life.⁸ In particular, a State must take all necessary steps to prevent killings, including by ensuring “strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment” and prohibiting “orders from

⁴ A/37/564, para. 22.

⁵ Human Rights Committee, general comment No. 36 (2018), para. 63.

⁶ A/68/382, para. 43.

⁷ Human Rights Committee, general comment No. 36, para. 12.

⁸ Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

superior officers or public authorities authorizing or inciting other persons to carry out” any such killings.⁹ In other words, State officials have an obligation both to control and adequately supervise their officers and to ensure that their own statements cannot be construed, correctly or incorrectly, as encouraging the deprivation of life.

30. International human rights law imposes on States a duty to respect, protect and ensure human rights. In the present report, the Special Rapporteur focuses on the nature and extent of the obligation of States to protect against extrajudicial execution and, more generally, against unlawful death, including:

- (a) When and how an obligation to protect individuals against risks to their life may be invoked;
- (b) Whether States have an obligation to protect against actions by other States and what the implications of that are;
- (c) Whether such an obligation to protect applies to non-citizens;
- (d) Whether such an obligation includes a duty to warn;
- (e) Whether such an obligation may be invoked extraterritorially.

A. Standard of due diligence

31. The responsibility to protect has been the object of much elaboration, including by treaty bodies, special procedure mandate holders, regional and national courts around the world, and expert legal and policy scholars. A key source for understanding the obligation to protect the right to life is Human Rights Committee general comment No. 36 (2018) on the right to life, which summarizes the Committee’s main observations and jurisprudence on the right to life, along with that of other well-recognized sources under international law. In particular:

States parties must respect the right to life. This entails the duty to refrain from engaging in conduct resulting in arbitrary deprivation of life. States parties must also ensure the right to life and exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities whose conduct is not attributable to the State. The obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 even if such threats and situations do not result in loss of life.¹⁰

32. It is worth repeating here that article 6 of the International Covenant on Civil and Political Rights recognizes and protects the right to life of all human beings. Paragraph 1 of article 6 lays the foundation for the obligation of States parties to respect and ensure the right to life, to give effect to it through legislative and other measures, and to provide effective remedies and reparation to all victims of violations of the right to life.¹¹

33. There is thus no question that the obligation of States to protect applies both to citizens and to non-citizens alike on the territory of the State. This is emphasized by the Human Rights Committee when it explains that “a State party has an obligation to respect and ensure the rights under article 6 of all persons who are within its territory and all persons subject to its jurisdiction, that is, all persons over whose enjoyment of the right to life it exercises power or effective control”.¹² Immigration status has no bearing on the responsibility of States to protect against foreseeable threats to the lives of individuals.

34. According to general comment No. 36, the obligation to protect includes establishing by law adequate institutions and procedures for preventing deprivation of life; States parties are under a due diligence obligation to take reasonable, positive measures that

⁹ *Ibid.*, paras. 2–3.

¹⁰ Human Rights Committee, general comment No. 36, para. 7.

¹¹ *Ibid.*, paras. 2 and 4.

¹² *Ibid.*, para. 63.

do not impose disproportionate burdens on them in response to reasonably foreseeable threats to life.¹³

35. The principle of due diligence as applied to protection against unlawful death has been articulated by a range of courts around the world, which tend to assess due diligence on the basis of: (a) how much the State knew or should have known; (b) the risks or likelihood of foreseeable¹⁴ harm; and (c) the seriousness of the harm.¹⁵

36. It is worth highlighting the judgment of the European Court of Human Rights in *Osman v. the United Kingdom*, which involved claims against British police for failing to act appropriately on information indicating that a local schoolteacher was going to harm one of his students and the student's family.¹⁶ The European Court of Human Rights interpreted the protection of the right to life as imposing a duty on government authorities "to take appropriate steps to safeguard the lives of those within its jurisdiction" and "to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual".¹⁷ Further:

Where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person ... it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.¹⁸

In order to sue government authorities for failing to comply with this duty, "it is sufficient for an applicant to show that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge".¹⁹ "This is a question which can only be answered in the light of all the circumstances of any particular case."²⁰

37. In determining whether authorities did all that could be reasonably expected of them to avoid a real and immediate risk to life of which they had or ought to have knowledge, and particularly whether the authorities "ought to have known", a common feature in rulings around the world is the degree to which State authorities had already recognized a risk of harm to the victim and/or the victim's family members, but had failed to act diligently to protect them.²¹ A representative of the Staffordshire police reportedly commented that authorities ought to have recognized that "a threat to life exists after following a logical staged process for researching and managing a threat to life by making further enquiries or investigations".

38. The jurisprudence on the implementation of the due diligence principle and its operationalization by police forces point to consideration of the following elements:

¹³ Ibid., para. 21.

¹⁴ Regional and national jurisprudence includes a test of "immediacy" or "imminence" in addition to foreseeability.

¹⁵ European Court of Human Rights, *Osman v. the United Kingdom* (application No. 23452/94), judgment of 28 October 1998, paras. 115–116.

¹⁶ The Osman family brought a case under the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) because its negligence case was dismissed in the English courts.

¹⁷ European Court of Human Rights, *Osman v. the United Kingdom*, para. 115.

¹⁸ Ibid., para. 116.

¹⁹ Ibid.

²⁰ Ibid., para. 139. The European Court of Human Rights noted that, under British law, in order for a private citizen to make out a negligence claim based on a violation by a government authority of its duty, they must show that they were "in a relationship of proximity to the [authority], that the harm caused was foreseeable and that in the circumstances it was fair, just and reasonable" to hold the authority liable.

²¹ Inter-American Commission on Human Rights, *Jessica Lenahan (Gonzales) et al. v. United States*, report No. 80/11, case 12.626, 21 July 2011.

- (a) Whether there are credible threats that are objectively verifiable; in other words, whether they are supported by reference to a range of sources of information;
- (b) Whether the perpetrators have the intention to implement their threats, whether they are in a position, including physical proximity, and have the capabilities to carry out the threats;
- (c) Whether the risk is immediate, meaning continuing and soon;
- (d) Whether the identity of the victim places the victim in specific situations of vulnerability or risk;
- (e) Whether there are patterns of violence against groups of individuals by virtue of their identities.

39. The normative and practical implication is that States must be particularly aware of the vulnerabilities of some individuals whose lives may be particularly at risk because of their activities or their identity. As highlighted by the Human Rights Committee, such individuals include “human rights defenders, officials fighting corruption and organized crime, humanitarian workers, journalists, prominent public figures, witnesses to crime and victims of domestic and gender-based violence and human trafficking”.²²

40. Crucially, as repeatedly highlighted by women journalists and human rights defenders, along with human rights experts and special procedure mandate holders, the assessment of risks of harm must be gender-sensitive and intersectional.²³

B. Responsibility to protect against actions by other States

41. Although the responsibility to protect has been invoked largely in response to threats originating from private persons and entities (for example, in the context of preventing domestic violence and femicide), it may also be invoked against threats by other States, international organizations and foreign corporations operating within the territory of a State or in other areas subject to their jurisdiction.²⁴

42. That recognition is particularly important in view of the patterns of the extraterritorial outreach of States for the purpose of human rights violations, including the right to life, but also the right to freedom of expression or privacy through surveillance and harassment.

43. The extraterritorial use of force is defined in the present report as the use of potentially lethal force by a State against an individual or a group of individuals located on the territory of another State. Extraterritorial use of force is not a new phenomenon. It has been repeatedly invoked in the name of self-defence and countering terrorism and is the object of many legal analyses which are beyond the focus of the present report.²⁵ Previous Special Rapporteurs on extrajudicial, summary or arbitrary executions have thoroughly analysed the extraterritorial use of force, including targeted killings through drones.²⁶ For the purpose of the present report on the responsibility to protect and warn, the Special Rapporteur highlights the following aspects of extraterritorial use of force.

44. First, it is important to highlight and insist that Article 2 (4) of the Charter of the United Nations and customary international law prohibit the threat or use of inter-State force, subject to limited exceptions: consent and self-defence. A State may consent to the use of force on its territory by another State, while the Charter allows action taken in self-defence.

²² Human Rights Committee, general comment No. 36, para. 23.

²³ See, for example, A/HRC/40/60 and A/72/290.

²⁴ Human Rights Committee, general comment No. 36, para. 22.

²⁵ For an in-depth review of the jurisprudence, State positions and academic literature, see, for example: Noam Lubell, *Extraterritorial Use of Force Against Non-State Actors* (Oxford, Oxford University Press, 2010); and Jan Arno Hessbruegge, *Human Rights and Personal Self-Defense in International Law* (Oxford, Oxford University Press, 2017).

²⁶ See, for example, A/68/382 and A/HRC/14/24/Add.6.

45. Outside those narrowly defined conditions, the use of extraterritorial force is unlawful under international law governing inter-State relationships. Extraterritorial force is also unlawful under international human rights law, in that a State party cannot perpetrate violations of its obligations on the territory of another State that it could not perpetrate on its own territory.²⁷ The application of human rights treaty obligations to the conduct of a State outside its territory has been confirmed by, among others, the International Court of Justice, the Human Rights Committee, the Inter-American Commission on Human Rights and the European Court of Human Rights.²⁸

46. Furthermore, customary law prohibits States from sending their agents to the territory of another State to execute their own laws or policies:

This ban on the extraterritorial enforcement of a State's laws or policies comes from international law's basic rules on jurisdiction. While States enjoy jurisdiction to prescribe laws governing some conduct beyond their borders – e.g., by their own nationals – and States can use their courts to adjudicate matters taking place abroad, enforcement of a State's laws or policies on another State's territory without the permission of the other State is unlawful.²⁹

The jurisprudence on rendition and extraordinary rendition further suggests that the obligation to protect against acts by foreign States may be invoked whether or not those foreign States acted with the acquiescence or agreement of the receiving State.³⁰

47. One evident implication of the obligation to protect against actions by other States is that its implementation is likely to involve intelligence agencies whose mandates include monitoring foreign States within and outside national territories.

48. The responsibility of intelligence agencies to protect the right to life stems from the well-recognized principle according to which the obligation of a State to protect applies to all government institutions:

The duty to protect by law the right to life also requires States parties to organize all State organs and governance structures through which public authority is exercised in a manner consistent with the need to respect and ensure the right to life, including establishing by law adequate institutions and procedures for preventing deprivation of life, investigating and prosecuting potential cases of unlawful deprivation of life, meting out punishment and providing full reparation.³¹

C. Extraterritorial application

49. The analysis by and understanding of the Human Rights Committee of the scope of the responsibility to protect is that it extends to all persons subject to the State's jurisdiction, that is, all persons over whose enjoyment of the right to life it exercises power or effective control. This includes persons located outside any territory effectively controlled by the

²⁷ See A/68/382.

²⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, para. 109; Human Rights Committee, general comment No. 31 (2004), para. 10; and Inter-American Commission on Human Rights, *Coard and Others v. United States*, report No. 109/99, case 10.951, 29 September 1999, para. 37.

²⁹ See www.lawfareblog.com/khashoggi-murder-how-mohammed-bin-salman-underestimated-international-law.

³⁰ CCPR/C/POL/CO/6, para. 15. The Committee ruled that to surrender a prisoner knowingly to another State where there are substantial grounds for believing that the prisoner would be in danger of being tortured runs counter to the object and purpose of the prohibition against torture enshrined in article 7 of the International Covenant on Civil and Political Rights. The same conclusion applies to surrendering a prisoner to a situation where the prisoner could be killed or disappeared. See articles 2, 3, 10 and 14 of the Declaration on the Protection of All Persons from Enforced Disappearance.

³¹ Human Rights Committee, general comment No. 36, para. 19.

State whose right to life is nonetheless affected by its military or other activities in a direct and reasonably foreseeable manner.³²

50. This analysis of the responsibility to protect the right to life is in keeping with developments with regard to the protection of economic rights, where it has been determined that extraterritorial obligations arise when a State party may influence situations located outside its territory, consistent with the limits imposed by international law, by controlling the activities of corporations domiciled in its territory and/or under its jurisdiction, and thus may contribute to the effective enjoyment of economic, social and cultural rights outside its national territory,³³ and to the protection of children's rights.³⁴

51. As emphasized by Marko Milanovic, the Human Rights Committee, in its general comment No. 36, thus "shifted the focus of the jurisdictional inquiry from that of power or control over territory or over the person, to that of power or control over the enjoyment of the right to life. In doing so, the Committee effectively endorsed the functional theory of the extraterritorial application of human rights treaties".³⁵

52. The Special Rapporteur therefore deduces that the responsibility of a State to protect may be invoked extraterritorially in circumstances where that particular State has the capacity to protect the right to life of an individual against an immediate or foreseeable threat to his or her life.³⁶

53. Such understanding of the scope of the responsibility to protect is particularly relevant when applied to agencies whose mandate may have an extraterritorial scope. To the extent that such agencies perform their functions outside national borders, or that their functions concern other States, such functions should include, wherever they may reasonably do so, the protection of those whose lives are under a foreseeable threat.

D. Duty to warn

54. Once a risk to life has been identified:

States parties must respond urgently and effectively in order to protect individuals who find themselves under a specific threat, by adopting special measures such as the assignment of around-the-clock police protection, the issuance of protection and restraining orders against potential aggressors and, in exceptional cases, and only with the free and informed consent of the threatened individual, protective custody.³⁷

55. Various authoritative sources around the world have recognized a duty by law enforcement authorities to warn intended victims of threats to their safety. For instance, British police departments have responded to the aforementioned *Osman v. the United*

³² Ibid., para. 63.

³³ Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017), para. 28.

³⁴ Committee on the Rights of the Child, general comment No. 16 (2013), paras. 18–20.

³⁵ Marko Milanovic, "The murder of Jamal Khashoggi: immunities, inviolability and the human right to life", *Human Rights Law Review* (forthcoming), p. 25; Yuval Shany, "Taking universality seriously: a functional approach to extraterritoriality in international human rights law", *Law and Ethics of Human Rights*, vol. 7, No. 1 (2013), p. 47. Andrew Clapham has adopted a capacity-based approach to the human rights obligations of non-State actors. See Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford, Oxford University Press, 2006). In her report on the human rights obligations of non-State actors (A/HRC/38/44), the Special Rapporteur also suggests that the obligations of armed non-State actors stem from their (uniquely located) capacities to respect or protect the human rights, including the right to life, of people over whom they have some degree of control.

³⁶ In addition, it is worth highlighting that the Human Rights Committee imposes on Member States a duty to protect individuals outside their territories against foreseeable threats to life by corporations headquartered on their territories.

³⁷ Human Rights Committee, general comment No. 36, para. 23; regional courts have further given practical meaning to the responsibility of States to protect through the enactment of protective, interim or urgent measures that States must take to avoid irreparable harm to persons or groups of persons in imminent peril.

Kingdom ruling by enacting policies that require officers to warn intended victims if they have intelligence of a real and immediate threat to the intended victim's life. In fact, in 2017, the police in England and Wales issued more than 776 so-called "Osman warnings" or "threat to life" notices.³⁸ Between 2012 and 2015, police forces throughout the United Kingdom of Great Britain and Northern Ireland issued 1,948 such notices.³⁹

A warning to an identified victim may be issued when the officer in charge of the threat, believes that the identified victim should be made aware of the threat/risk against them ... The purpose of a Warning Notice is to notify the potential victim of the existence of a threat or risk towards them and to allow the potential victim to take precautionary steps to protect themselves, or to allow the victim an opportunity to consider the protective measures proposed by the police. The Warning Notice can be for two purposes. The Threat to Life Warning Notice is to be issued where the threat is considered as being "real" and "immediate". A Personal Safety Advice Warning Notice is to be issued where there is intelligence to suggest that the individual's personal safety is at risk, but the threat is not "real" and "immediate", but may involve some form of lesser violence.⁴⁰

56. With respect to intelligence agencies operating within or outside States, a particularly well-developed and public elaboration of the duty to warn is found in United States Intelligence Community Directive 191, issued in 2015 by the then Director of National Intelligence, James Clapper.⁴¹ Its key features are as follows:

(a) If a United States intelligence agency "acquires credible and specific information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping", that agency has a duty to warn the intended victim;

(b) The duty to warn is owed to all intended victims, regardless of whether they are United States or non-United States persons. Specifically, intelligence agencies have a "requirement to warn U.S. and non-U.S. persons of impending threats of intentional killing, serious bodily injury, or kidnapping";

(c) Importantly, however, Directive 191 explicitly does not create a legal right under which citizens may sue. It states: "This Directive is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States ... its departments, agencies, or entities, its officers, employees, or agents, or any other person."⁴²

57. How the duty to warn is actually implemented by intelligence agencies may only be inferred from such anecdotes, given the secrecy under which most intelligence operations are conducted, including those aimed at protecting an individual's life. Of particular concern are the circumstances under which intelligence agencies determine that the duty to warn should not be pursued. For example, Directive 191 allows for a waiver of the duty in limited circumstances, including when: (a) the intended victim is already aware of the threat, is at risk only as a result of participation in an armed conflict or is involved in drug trafficking or violent crime; (b) any attempt to warn the intended victim would unduly endanger the personnel, sources, methods, intelligence operations or defence operations of the Government of the United States or a foreign Government with whom the United States

³⁸ Jon Rogers, "What is an Osman warning, why do police issue threat to life notices and what do they tell death threat victims?", *The Sun*, 3 August 2018.

³⁹ Louise Ridley, "Osman 'threat to life' letters have warned thousands of people their lives are in danger", *Huffington Post*, 28 October 2015.

⁴⁰ Police Scotland, "Threats to life warnings: standard operating procedure" (2018).

⁴¹ See www.justsecurity.org/wp-content/uploads/2018/10/Intelligence-Community-Directive-ICD-191-duty-to-Warn.pdf.

⁴² Following the execution of Mr. Khashoggi, the Knight Institute and the Committee to Protect Journalists sought documents from the Office of the Director of National Intelligence, the National Security Agency, the Central Intelligence Agency, the Federal Bureau of Investigation and the Department of State on the implementation of the duty of United States intelligence agencies to warn. See <https://knightcolumbia.org/content/knight-institute-and-committee-protect-journalists-v-cia-foia-suit-records-governments-duty>.

has formal agreements or liaison relationships; and (c) there is no reasonable way to warn the intended victim.

58. Although Directive 191 stipulates that issues concerning whether threat information meets the duty to warn threshold “should be resolved in favor of informing the intended victim”, there is no way of knowing whether this is faithfully implemented, in the absence of public reporting on the implementation of the duty to warn, in the United States or elsewhere.

59. Anecdotal evidence indicates that intelligence agencies do warn individuals against imminent risks to their life, although they do not report or comment publicly on this role. For instance, in 2018, Hasan Cücük, a Turkish reporter, who had been in Denmark since the 1990s, was reportedly rushed to a safe place by the Danish Security and Intelligence Service (Politiets Efterretningstjeneste) after a serious threat to his life was detected.⁴³ In 2018, a number of European security agencies took action to protect Iranian dissidents residing on their territories against credible threats to their life.⁴⁴ In May 2019, Norwegian security authorities took action to protect a dissident living on their territory against credible threats from Saudi Arabia.⁴⁵

E. Implementation of the duty to warn extraterritorially

60. Directive 191 suggests that the duty to warn may be implemented outside the territory of the United States. Paragraph 9 (f) of Directive 191 stipulates that “if the intended victim is located in the U.S. and its territories, IC [intelligence community] elements shall consult with the Federal Bureau of Investigation (FBI) to determine how best to communicate threat information to the intended victim”. It can only be inferred from this provision (and from the mandate and operations of the Central Intelligence Agency) that the duty to warn of the Central Intelligence Agency extends both to United States and to non-United States persons located inside and outside the territories of the United States.⁴⁶

61. Implementation of the duty to protect extraterritorially raises complex legal and operational questions. This section of the present report focuses on the duty to protect and warn extraterritorially against threats by other States.

62. First, as highlighted by Yuval Shany in 2013, whether States can take on the obligation to protect and warn will depend on the context; there is “no one-size-fits-all approach”.⁴⁷ One key contextual consideration is the nature and extent of the extraterritorial activities of the State, such as its intelligence activities. The Special Rapporteur will not comment on generic and most specific aspects of surveillance carried out by a State, except for calling for surveillance to be carried out in accordance with human rights law.⁴⁸ She emphasizes, though, that if a State is engaged in such activities directed at specific countries, and comes across information indicating that individuals may be at risk of human rights violations, including violations of the right to life, then it has the obligation to assess the nature and imminence of the risks and threats and to determine how it may protect those whose lives may be at risk.

63. Secondly, while the assessment of those threats and risks may follow similar approaches to such an assessment at the national level, the responses will have to be adjusted to the context. The measures at the disposal of security agencies operating

⁴³ See https://observatoryihr.org/priority_posts/erdogans-thugs-plot-to-kill-turkish-journalist-in-denmark/. Efforts by the Special Rapporteur to obtain confirmation of the alleged incident elicited “No comment” from the Danish authorities.

⁴⁴ In January 2019, the Government of the Netherlands alleged that Iranian authorities were behind the murder of two citizens of the Netherlands on its territory. The allegations, which were based on credible evidence, led the European Union to adopt a range of sanctions against the Islamic Republic of Iran. See www.consilium.europa.eu/en/policies/sanctions/iran/.

⁴⁵ Personal communication.

⁴⁶ CCPR/C/USA/CO/4, para. 4.

⁴⁷ Shany, “Taking universality seriously”, p. 22.

⁴⁸ See, for example, A/HRC/40/63.

nationally will not work or may not work extraterritorially, such as around-the-clock surveillance, unless they are done with the consent of the State where the individuals at risk reside.

64. Of all the activities possibly triggered by the responsibility to protect, the duty to warn may be the one imposing a minimum burden on the States concerned. In an extraterritorial context, it is likely to be implemented through the security agencies of the States where the person at risk is located. For instance, it has been widely reported that the Central Intelligence Agency informed the Norwegian Police Security Service that Palestinian-born Arab Spring activist Illia Baghdadi, residing in Norway, was facing credible threats originating from Saudi Arabia. Mr. Baghdadi and others were warned against travelling to specific countries where Saudi Arabia is said to have influence and were instructed to take a wide range of precautions.⁴⁹

65. Where cooperating with the security agencies of other States is not feasible, intelligence agencies or national authorities may be in a position to inform the States concerned that they are aware of credible risks to the right to life of specific individuals, thus possibly preventing further escalation.

66. Intelligence agencies or national authorities may also be in a position to directly warn the individual concerned, even if they cannot implement any other specific protection measures themselves. There is no evidence that such a warning could constitute, under Directive 191, one of the circumstances for which a waiver of the duty may be granted. Warnings could be framed in such a way that the individuals whose lives are at risk would not know anything about the methods used to obtain the relevant information, so that there was no risk that the methods in question could be compromised or publicly exposed.⁵⁰

67. The question may be raised as to whether such direct warnings to individuals could violate the principle according to which a State cannot take measures on the territory of another State by means of enforcement of national laws without the consent of the latter. The Special Rapporteur takes the position that there must be a presumption that such warnings, which are aimed at protecting a *jus cogens* norm such as the right to life,⁵¹ or an obligation *erga omnes*, or at preventing a crime that may be the object of universal jurisdiction, do not violate the aforementioned principle and should not be opposed by other States.⁵²

IV. Conclusion: strengthening protection and accountability

68. The responsibility to protect has a long history in the international legal system and in standards on State responsibility. It has been applied in a range of circumstances to mandate States to prevent acts of violence, when committed either by State actors or by non-State actors.⁵³ Such a principle has not been widely analysed with regard to the content of the legal obligations of States towards the protection of citizens or non-citizens living in exile on, or passing through, their territories who may be facing threats from their State of origin. These include, in the first place, journalists, human rights defenders or so-called dissidents.

69. The killing of Mr. Khashoggi has highlighted the vulnerabilities and the risks that those individuals face of covert actions by the authorities of their countries of origin or non-

⁴⁹ Personal communication.

⁵⁰ Extrapolation from the thoughtful analysis by Milanovic in “The murder of Jamal Khashoggi” (p. 21) of the responsibility to protect Mr. Khashoggi.

⁵¹ Such a presumption applies with particular force to situations involving individuals with whom States have a special relationship that renders them particularly well placed to protect those individuals. See Shany, “Taking universality seriously”, p. 69.

⁵² This proposal is in keeping with a range of doctrinal and strategic developments, such as the responsibility to protect, the protection of civilians, the development of early warning capacity and, more recently, the call by the Secretary-General for a culture of prevention within the United Nations and among Member States. See www.un.org/sg/en/priorities/prevention.shtml.

⁵³ See *Jessica Lenahan (Gonzales) et al. v. United States*, para. 19.

State actors. Such actions amount to human rights violations and may include extrajudicial execution, abduction and enforced disappearance, threats, harassment and electronic surveillance. They may also include threats against loved ones who have remained in their countries of origin or elsewhere.

70. The States of the countries where journalists, human rights defenders or dissidents have found residence or exile are under an obligation to respect their human rights, and to protect them against violence by the States of the countries from which they have escaped. Obligations to protect the rights of that community, including their right to life, should figure highly among the priorities of a State.

71. In this section of the present report, the Special Rapporteur has provided an analysis of what the obligation to protect should entail, namely:

(a) The duty to protect is triggered whenever a Government knows or ought to know of a real and immediate threat or risk to an individual's life;

(b) Such an obligation to protect includes, but is not limited to, a duty to warn the individual of an imminent threat to his or her life;

(c) The obligation to protect, including the duty to warn, is imposed on all government agencies and institutions, and thus includes intelligence agencies;

(d) The obligation to protect is triggered regardless of the status of the citizen or alien on the territories of the State;

(e) The obligation to protect, including the duty to warn, demands that the risk assessment consider whether some individuals may be particularly at risk because of their identity or activities, such as journalists or human rights defenders;

(f) The obligation to protect, including the duty to warn, may be triggered extraterritorially whenever States exercise power or control over an individual's enjoyment of the right to life.

72. The Special Rapporteur recommends that Governments review their policies and procedures to determine whether they are meeting their due diligence obligation to protect the right to life and prevent threats and violence by foreign States and non-State actors against their citizens or non-citizens on their territories. She notes that there is evidence of an increase in the number of persons seeking safety abroad, including journalists, human rights defenders or political dissidents. Anecdotal evidence also indicates that the extraterritorial use of targeted force against people perceived as "dissidents" is on the increase. She thus advises that existing policies and procedures may need updating and upgrading to meet the challenges of the changing global environment.

73. The large number of killings of human rights defenders and journalists and the associated high rate of impunity for such killings also point to the need for a stronger and more effective role for the United Nations. The Special Rapporteur welcomes the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity and calls on the Secretary-General to strengthen its implementation, including as part of the United Nations reform process.

74. The failure to investigate effectively, impartially, independently, in good faith and promptly constitutes a key driver for impunity. Given that investigations and prosecutions take place within States, it is at that level that the failure of the system has to be addressed.⁵⁴ However, the Special Rapporteur also believes that the United Nations system has a role to play beyond that of capacity-building. She therefore suggests the following three mechanisms that could work side by side.

75. First, the Special Rapporteur recommends a comprehensive and international review of best practices regarding the investigation and assessment of, and responses to, threats, and the underlying national and international legal frameworks, including laws and jurisprudence. Such a review will seek to achieve the following outputs: (a) setting

⁵⁴ See A/HRC/20/22.

standards to guide national and local authorities, as well as civil society, and journalists and human rights defenders, in their response to threats; and (b) strengthening the institutional capacity of States to protect and investigate, and to empower those who are under threat. The Special Rapporteur will be prepared to take the lead in coordinating such a standard-setting exercise with States, other relevant Special Rapporteurs, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and civil society, such as the Centre for Justice and International Law, which is spearheading the development of the “Esperanza” protocol that is seeking to place the obligation to investigate threats within broader public policy efforts.⁵⁵

76. The second mechanism will be the establishment of a prevention and accountability task force within the special procedures. In response to situations of violence towards or killings of journalists, human rights defenders or dissidents, where such cases meet certain criteria, such as those related to the prevalence or likelihood of impunity, the task force could undertake rapid response missions and engage with the authorities, the media and civil society to: (a) advocate for, and support, effective investigations or monitor their progress; (b) review or seek to strengthen prevention and protection measures; (c) undertake fact-finding on specific situations or allegations; and (d) identify and call on international or regional actors to support protective measures.

77. Thirdly, the United Nations should equip itself with the means to effectively investigate targeted killings and disappearances. The Special Rapporteur recommends the establishment of a standing instrument with the following interrelated functions:

(a) Investigate, in accordance with criminal law standards (international or national), allegations of targeted killing or disappearance by collecting and analysing evidence of such violations;

(b) Facilitate strengthened judicial accountability, including by identifying possible avenues for the administration of justice for those purposes at the national, regional and international levels;

(c) Prepare files to facilitate and expedite fair and independent criminal proceedings, in accordance with standards of international, regional or national law, in courts or tribunals that have or may in the future have jurisdiction over the crimes being investigated;

(d) Identify other mechanisms for delivering justice and ending impunity, including at the political and diplomatic levels.

78. Such an instrument could be established through a resolution of the General Assembly or of the Human Rights Council. It could be activated by a Member State writing to the Secretary-General or to the President of the Human Rights Council.

79. The standing instrument should be composed of independent international experts in investigations and prosecutions, as well as special procedure mandate holders and members of treaty bodies. It should be supported by a secretariat that could already be in use for other purposes, such as that of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, or the Secretary-General’s Mechanism for Investigation of Alleged Use of Chemical and Biological Weapons. The secretariat should have operational and administrative autonomy and flexibility to allow for the realization of the mandate of that instrument to be fully implemented.

⁵⁵ See www.cejil.org/en/hope-defenders-addressing-investigation-threats-international-level-promote-local-change.

V. Recommendations

Recommendations to the Secretary-General

80. The Secretary-General should initiate a follow-up criminal investigation into the killing of Mr. Khashoggi to build strong files on each of the alleged perpetrators and identify mechanisms for formal accountability, such as an ad hoc or hybrid tribunal. The Secretary-General should himself be able to establish an international follow-up criminal investigation without any trigger by a State.

81. As part of the United Nations reform process, the Secretary-General should strengthen system-wide capacity to promote the safety of journalists and ensure that United Nations country teams are fully equipped to implement the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity at the local level in the countries concerned.

Recommendations to the members of the Security Council

82. The members of the Security Council should convene an Arrria formula meeting to consider the implications for peace and stability of the execution of Mr. Khashoggi and, more generally, of the extraterritorial targeting of individuals.

Recommendations to the Human Rights Council or the General Assembly

83. The Human Rights Council or the General Assembly should establish a standing instrument for the criminal investigation of allegations of targeted killing or other acts of violence against journalists, human rights defenders or others targeted because of their peaceful activities or expressions. The instrument should: (a) investigate such violations in accordance with criminal law standards; (b) identify possible avenues for the administration of justice at the national, regional and international levels; (c) prepare files to facilitate and expedite fair and independent criminal proceedings in accordance with the standards of international, regional or national law in courts or tribunals that have or may in the future have jurisdiction over the crimes being investigated; and (d) identify other mechanisms for delivering justice and ending impunity, including at the political and diplomatic levels. It should be composed of special procedure mandate holders, members of treaty bodies and other experts in investigation and prosecution and be supported by a secretariat that may already be in use for other purposes, such as that of the International, Impartial and Independent Mechanism or the Secretary-General's Mechanism for Investigation of Alleged Use of Chemical and Biological Weapons.

Recommendations to the Human Rights Council

84. The Human Rights Council should support the establishment of a special procedures task force to: undertake rapid-response missions; engage with authorities to support and ensure effective investigations; and engage in fact-finding in response to the unlawful death of, acts of violence towards or credible threats against journalists, human rights defenders or other individuals targeted for the peaceful expression of their opinion.

Recommendations to the United Nations Educational, Scientific and Cultural Organization and the United Nations network of focal points to ensure the safety of journalists

85. The United Nations Educational, Scientific and Cultural Organization (UNESCO) and the United Nations network of focal points to ensure the safety of journalists should take action to ensure the implementation of the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity at the local level in the countries concerned.

Recommendations to special procedure mandate holders and the Office of the United Nations High Commissioner for Human Rights

86. The special procedure mandate holders and OHCHR should establish a prevention and accountability task force, located within the OHCHR special procedures, composed of individual special procedure mandate holders and other experts, to undertake rapid-response missions, engage with authorities to support and ensure effective investigations and prevention and protection measures and/or engage in fact-finding in response to the unlawful death of, acts of violence towards or credible threats against journalists, human rights defenders or other individuals targeted for the peaceful expression of their opinion.

Recommendations to Saudi Arabia

87. Saudi Arabia should issue a public recognition of and apology to Mr. Khashoggi's family, friends and colleagues for his execution. Accountability demands that the Government of Saudi Arabia accept State responsibility for the execution, including State-based financial reparations for the family of Mr. Khashoggi.

88. Saudi Arabia should also:

(a) Apologize to the Government of Turkey for the abuse of its diplomatic privileges and the violation of the prohibition against extraterritorial use of force;

(b) Apologize to the United States for executing its resident and, through that act, attacking a fundamental freedom;

(c) Demonstrate non-repetition by: releasing all individuals imprisoned for the peaceful expression of their opinion and belief; independently investigating all allegations of torture and lethal use of force in formal and informal places of detention; and independently investigating all allegations of enforced disappearances and making public the whereabouts of disappeared individuals;

(d) Undertake an in-depth assessment of the actors, institutions and circumstances that made it possible for the execution of Mr. Khashoggi to be carried out, issue a public report and identify the reforms required to ensure non-repetition. The relevant agencies of the United Nations should offer their assistance to the Saudi authorities in that reform process;

(e) Suspend the current trial, collaborate with and support an additional criminal investigation led by the United Nations and implement decisions regarding the location and structure of a future trial. Failing that, undertake additional investigations and a retrial with input, support and oversight from the United Nations and international actors, in full accordance with fair trial guarantees under international law;

(f) Reply exhaustively to the request of the Director General of UNESCO for information on the steps taken in response to the execution of Mr. Khashoggi, in accordance with the Decisions on the Safety of Journalists and the Issue of Impunity adopted by the Intergovernmental Council of the International Programme for the Development of Communication (IPDC) in 2008, as well as UNESCO General Conference resolution 53 of 2011 that charged the organization with monitoring "the status of press freedom and safety of journalists, with emphasis on cases of impunity for violence against journalists, including monitoring the judicial follow-up through the ... IPDC and to report on the developments in these fields to the General Conference";

(g) Ratify the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

Recommendations to Turkey

89. Turkey should:

- (a) Officially request the Office of the Secretary-General to implement a follow-up criminal investigation and fully collaborate with the process;
- (b) Conduct a public inquest into the killing of Mr. Khashoggi, releasing the information and evidence at its disposal;
- (c) Erect a statue representing freedom of the press in front of the Saudi consulate (the Special Rapporteur has been able to ascertain that there is enough space for such a statue). Alternatively, as was attempted in Washington, D.C., rename the street where the consulate is located in honour of Mr. Khashoggi;
- (d) Take all necessary measures to implement related recommendations of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on Enforced or Involuntary Disappearances, following their respective missions to Turkey in 2016 and subsequently. Those include dropping all charges against journalists, academics and others targeted for the peaceful expression of their opinions;
- (e) Reply exhaustively to the request of the Director General of UNESCO for information on the steps taken in response to the execution of Mr. Khashoggi, in accordance with the IPDC Decisions on the Safety of Journalists and the Issue of Impunity and UNESCO General Conference resolution 53 of 2011.

Recommendations to the United States of America

90. The United States should:

- (a) Open an investigation to be conducted by the Federal Bureau of Investigation into the execution of Mr. Khashoggi, if one is not already open, and pursue criminal prosecutions within the United States, as appropriate;
- (b) Provide a determination under section 1263 (d) of the Global Magnitsky Human Rights Accountability Act of 2016 as to the responsibility of the Crown Prince of Saudi Arabia, as well as the relevant information documenting how the Administration reached that determination;
- (c) Hold hearings within the United States Congress to determine the responsibility of high-level Saudi officials, and demand access to the underlying classified materials;
- (d) To the greatest extent possible consistent with national security, declassify and release to the public all materials relating to the murder of Mr. Khashoggi, including all intercepts.

Recommendations to Member States

91. Member States should:

- (a) Support international statements, calls or resolutions that seek to ensure or strengthen accountability for the execution of Mr. Khashoggi;
- (b) Take the necessary measures to establish their competence to exercise jurisdiction over the execution of Mr. Khashoggi under international law when the alleged offender(s) is present in any territory under their jurisdiction, unless they extradite or surrender the alleged offender to another State in accordance with their international obligations or surrender the alleged offender(s) to an international tribunal which has jurisdiction over the alleged offences;
- (c) Adopt legislation for designating and sanctioning individuals, including high-level State officials, against whom there is credible evidence that they are responsible for, or have benefited from, human rights violations, including the killing of Mr. Khashoggi;

(d) **Impose targeted sanctions against individuals allegedly involved in the killing of Mr. Khashoggi, including the Crown Prince of Saudi Arabia, focusing on his personal assets abroad, until and unless evidence has been produced that he bears no responsibility for the execution of Mr. Khashoggi;**

(e) **Respond to the execution of Mr. Khashoggi through symbolic measures such as awards, scholarships, art or events in his honour;**

(f) **Allocate funds to support projects and programmes for the protection of freedom of expression, freedom of the media and freedom of opinion in the Gulf region. Establish a Jamal Khashoggi fund for the purpose of supporting freedom of expression and democracy in the Middle East;**

(g) **Impose an immediate moratorium on the export, sale, transfer, use or servicing of privately developed surveillance tools to Saudi Arabia and other States until a human rights-compliant safeguards regime is in place; any allegations that such equipment may have been misused should be the object of independent and transparent investigations by the relevant authorities. Implement other measures recommended by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in his report of 2019;⁵⁶**

(h) **Review and, if needed, strengthen policies and procedures to ensure that security agencies and other relevant actors are meeting their due diligence obligation to protect the right to life of those who may be targeted by States and non-State actors for their peaceful expression and activities, both online and offline. In particular, assess and strengthen the implementation of the duty to warn, including in situations outside national territories where States have power, control or authority over the enjoyment of the right to life;**

(i) **Strengthen the development of both formal and informal national mechanisms for the prevention of and protection against threats and attacks on journalists and freedom of expression; and support the development and implementation of national action plans for the safety of journalists;**

(j) **Assess steps taken towards implementing the recommendations related to the safety of journalists⁵⁷ and the safety of women human rights defenders and women journalists⁵⁸ and adopt remedial measures, where required;**

(k) **Support the establishment of a standing instrument for criminal investigation and accountability (see paras. 77–79 above);**

(l) **Support the establishment of a fact-finding task force, hosted by the OHCHR special procedures (see para. 76 above);**

(m) **Support and contribute to the proposal of the Special Rapporteur to undertake a comprehensive review of laws and best practices regarding the investigation, assessment and/or responses to threats against, and risks faced by, journalists, human rights defenders or others targeted for their peaceful expression and activities, with a view to developing a protocol on the investigation of and response to threats and risks.**

Recommendations to corporations

92. Corporations should:

(a) **Affirm their commitment to human rights standards and make Saudi Arabia aware of those commitments; use leverage to ensure that their business partners in Saudi Arabia adhere to those commitments; and establish a monitoring mechanism to ensure that their own conduct and the conduct of their associates does not cause any harm to human rights;**

⁵⁶ A/HRC/41/35, para. 66.

⁵⁷ See A/HRC/20/22.

⁵⁸ See A/HRC/40/60 and A/72/290.

(b) Establish explicit policies to avoid entering into business deals with businesses, businesspeople or organs of the State that have had a direct or indirect role in the execution of Mr. Khashoggi, or other grave human rights violations;

(c) Adhere to international human rights standards within their own operations and use their leverage to address human rights concerns with their associates, including, for example: determining whether their functions and outputs could be used to violate human rights or cover up violations; turning down such contracts; and speaking up in the face of systematic or continuous human rights abuse;

(d) Private surveillance companies should implement measures recommended by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in his report of 2019.⁵⁹

Recommendations to the World Economic Forum

93. As part of its annual meeting in Davos, Switzerland, the World Economic Forum should constitute a standing annual panel discussion in the name of Jamal Khashoggi and other journalists who have been killed, addressing issues related to the social and economic merits of investigative journalism, the fight against corruption and the role of corporate actors in the global governance of respect for human rights and related issues.

Recommendations to civil society

94. Civil society should advocate, support and contribute to the implementation of the above recommendations.

⁵⁹ A/HRC/41/35, para. 67.