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**Statement of
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OR ARBITRARY EXECUTIONS**

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Honorable Chair,
Excellencies,
Distinguished Delegates,
Ladies and Gentlemen,

A. Annual report

In the present report (A/66/330) I analyse the international standards applicable to the use of lethal force during arrest. The research addresses the reality that law enforcement officials in countries around the world continue to use excessive force, often leading to arbitrary and therefore unlawful loss of life. At the same time, the obligation on law enforcement officials and on States in general to protect the public at large – if need be through the use of force and also lethal force – has to be recognised and accounted for.

In the report I outline the international safeguards that regulate the use of force during arrest, emphasizing compliance with the principles of necessity and proportionality. I have identified five models by which States currently regulate the use of lethal force in the context of arrest. As will be demonstrated, in many cases the approaches followed do not meet international standards. The report also briefly discusses the legal framework applicable to targeted killings where arrest could have been an option.

The present report complements the report that I presented to the Human Rights Council at its June session, in which I addressed the issue of protection of the right to life and the use of force by the police during demonstrations.

For the purposes of developing this report, I reviewed the relevant legislation of 101 countries. This exercise is part of the on-going efforts by my mandate to collect legislation regulating the use of force by the police and to make it accessible. The legislation I have obtained on the powers of the police during arrest – like the legislation on demonstrations – will be posted on the mandate's website. I would like to extend a request to Member States to assist, by verifying that the legislation we have is up to date and, if it is not, by sending me the relevant legislation. I believe that such a resource base is critical for law reform and comparative assessments and that it will aid in the development of best practices by enabling

decision-makers in different countries to measure their laws against those of other countries, in addition to gauging it against international standards.

Honorable Chair,

I now turn to the substantive discussion of my report. The topic of the use of force is broad, and in order to undertake a thorough analysis I have limited my research to focus on the use of force in situations where police attempt to effect an arrest for a suspected criminal offence, but the suspect resists such arrest by refusing to cooperate, offering resistance or – most pertinently – trying to flee. The question at issue is whether law enforcement officials have special powers to use lethal force in such a scenario.

The legal power for use of force in the context of arrest is not unfettered. International law imposes stringent safeguards and limitations regarding its use. This is necessary not only to protect the rights of the individuals concerned but also to maintain social order. We have learned from recent events that indiscriminate or disproportionate use of force by law enforcement officials – even against someone with as low a profile as a vegetable vendor on the streets of Tunisia – can lead to widespread demonstrations and riots.

The report focuses its discussion on the legal framework for arrest, recognizing that law is the paramount impulse for best practices. Nonetheless, it is equally clear that the factors behind *real* practices must be better understood and addressed. The factors leading to the excessive use of force by law enforcement officers are multifaceted and mostly grounded in institutional and rule of law deficiencies as well as social dynamics.

The general rule is that individuals who are suspected of having committed crimes should as far as possible be brought before a court of law, where their guilt must be proven in accordance with fair trial rights. The rule of law requires this. However, in some exceptional cases the threat is so urgent and serious that it pre-empts the general rule, and police officers are granted the right to take immediate decisions on whether to use lethal force against those suspected of crime, lest the lives of others be lost.

It is important to ensure that practical and implementable legal provisions are in place on the domestic level and that they are comprehensible to those law enforcement officials responsible for applying and abiding by them. While the report is largely conceptual, I hope that it will provide a framework to enable such legal provisions. The right balance must be struck between idealism and the demands of the streets. The starting point is that life should not be taken by the State, and any action that seeks to fall in the narrow confines of exceptions to this rule requires strong motivation.

In an attempt to identify when the right to life may be limited by law enforcement officials, I have submitted in my report that the guiding star should be the 'protection of life principle'. This maintains that while life may not as a general rule be sacrificed to protect other values, under closely defined circumstances life may be taken as a last resort *in order to protect another life or lives*.

This occurs for example where a robber threatens someone's life such that negotiation or alternate elimination of the threat is impossible. Where the police have no choice because of the imminence of the threat but to shoot the robber, such action may be considered justified as an act of private defence, because the purpose is to save life, and the innocent life is prioritised over that of the aggressor. Provided the requirements of proportionality and necessity are met, such conduct will not be considered arbitrary or unlawful. While the right to life may not be an absolute right in the same sense as, for example, the right to be free from torture, since under certain exceptional circumstances it may be limited, this could be done only in order to protect life, not to protect other rights and interests.

By international standards, lethal force during arrest may be used by the police, in addition to the ordinary power of private defence that everyone has, only where the suspect has committed or threatened a crime involving serious violence; poses an immediate or on-going threat; if such action is otherwise 'proportional' (it is aimed at protecting life); and if it is 'necessary' (no less harmful means to achieve this objective are available).

Honorable Chair,

As indicated earlier, I undertook an overview of domestic legislation relating to the use of force. This review indicates that in many jurisdictions the determining consideration regarding the use of force by the police has been the seriousness of the crime committed by the suspect. In other words, the approach is to look backwards. However, there has been progress. Domestic provisions increasingly also focus on objective indicators of the danger posed by suspects, which adds a forward-looking element that fits in better with the ‘protection of life’ principle mentioned earlier.

Many domestic legal systems impose the general requirement of ‘reasonableness’ on the part of the police, which could be interpreted to entail immediacy, proportionality, and necessity, but in some cases could also be understood by law enforcement officials and others to impose a less exacting standard.

From my evaluation of a cross-section of the available domestic legislation I have concluded that the approaches followed by States can usefully be categorised into five different models in terms of which lethal force may be used during arrest:

- (a) Model 1: Lethal force may be used where a fleeing suspect has committed a felony or any other crime listed, which need not involve violence;
- (b) Model 2: The suspect has committed a violent crime;
- (c) Model 3: The suspect has committed a violent crime OR poses a danger to society;
- (d) Model 4: The suspect poses a danger to society (whether a violent act has been committed or not is irrelevant);
- (e) Model 5: The suspect has committed a violent crime AND poses a danger to society. This is the model that gives the strongest embodiment to the protection of life principle.

It should be noted, however, that the danger posed by the suspect referred to above must be immediate, or on-going, but not remote and uncertain. In my report, I assess the legal sufficiency of these models against international standards, and I conclude that model 5 – if achieved through law or in practice – represents the ideal.

It is important to note that in my view the real question is not whether the legislation of a particular country, seen in isolation, meets the standards I have set out as model 5. The question is rather whether the combination of legislation, court decisions, police training and practice as a whole in that country ensures that any use of lethal force during arrest meets these standards.

Questions are often raised about the safety of the police, and this is obviously a valid concern. The right to life that international law protects pertains to all lives, including those of law enforcement officers. I would therefore emphasise that my discussion here does not detract in any way from the right of private defence that everyone possesses, including the police. If their lives are directly threatened, they may of course defend themselves. However, because they have the duty to apprehend and where possible arrest suspects, law enforcement officials have greater – although still limited – powers than other citizens to use deadly force.

Honorable Chair,

This brings me to targeted killing, in the form of drone attacks or raids, which obviously raises serious right to life issues. Of particular concern for our current purposes is the situation where a target in a foreign country is identified in advance and a decision is taken to kill the specific person. The decision is then left to the military or intelligence services to implement at an opportune moment, with no chance for the target to surrender and be arrested or taken prisoner. There has been a dramatic increase in the number of such targeted killings in the recent past, also in countries that are far away from established armed conflicts, and in some cases the targets are nationals of the targeting state.

Where this is done outside the context of an armed conflict, it clearly flies in the face of the human rights framework described above. Where it happens in a non-international armed conflict, international human rights as well as humanitarian law apply. The latter imposes

requirements such as military necessity and direct participation in hostilities before someone may be targeted, which also makes some forms of targeted killing highly problematic. Without an imminent attack, the right to self-defence does not come into play.

The problems caused by terrorism and asymmetrical warfare are real and cannot be ignored. However, part of the concern about a State killing its opponents in other countries half-way around the world, far from any armed conflict, is the precedent it sets for all States to act in this way.

Drone warfare, in particular, challenges the assumptions of international humanitarian law and holds the potential of doing deep structural damage to a system that has been built up over many years, and that will be a central ingredient in dealing with the potential conflicts of the future.

The term ‘targeted killing’ may be accurate in the sense that collateral damage in each individual killing could be limited through the technology involved, but in actual fact the ready availability of drone technology and the safety it offers to its operators spreads out the range of potential targets across the globe. It allows States that use it to eliminate their opponents wherever they are.

After the First World War the international community had to take stock and decide how to deal with the advent of airplanes as tools of war that could carry bombs deep into enemy territory and drop them on unsuspecting towns and villages. It seems that the time has come for the international community to engage in a similar stock-taking exercise in respect of drones.

In the meantime, the current legal regime needs to provide the framework within which States should act. States that wish to stretch established categories and rules of international law beyond their established meaning should bear a heavy burden of justification. The more continuous and systematic a practice of questionable targeted killing becomes, the more questions will be raised and the greater the implications for right to life will become.

Honorable Chair,

In concluding, I wish to emphasize that the fact that one must deal with a threatening situation is not itself sufficient to permit deviation or distortion of the established norms of

international law. Indeed, the norms were developed to deal with situations that may be life threatening.

In the report I make several recommendations. I will highlight only a few. Firstly, law reform should be undertaken to bring domestic laws on arrest into conformity with international standards. Use of force policies should be developed that provide guidance to police on the laws and values which should inform their use of force, on the permissible levels of force, and on other issues such as the need to give priority to the safety of civilians. States should revoke laws that allow the use of lethal force in defence of property and those that give citizens the same powers as the police during arrest.

Secondly, Governments should ensure that police agencies focus on developing tools and strategies for minimizing the need for use of lethal force during arrest. Thirdly, police and independent monitoring agencies should keep comprehensive data on the use of lethal force and ideally other dangerous forms of coercion. Fourthly, targeted killing should not be undertaken in ways that undermine human rights or humanitarian law. The practice of such killings should be subjected to a comprehensive overview by the international community.

B) Future Areas of Research

Finally, I want to mention that my next report to the Human Rights Council will deal with the protection of the right to life of journalists. My next report to you, the General Assembly, will deal with aspects of the death penalty. I invite any and all of you and your colleagues to engage with me on these issues, to ensure the reports are as useful and as informed as possible.

I thank you for your attention.