Chapter 1
Historical Introduction

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This introduction traces the steps that led to the creation of the mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions by the then United Nations Commission on Human Rights (now the UN Human Rights Council) in 1982. It places the decision to create the mandate in the context of a broader range of international responses to brutal government crackdowns on political opponents throughout the 1950s, 60s, and 70s. It also briefly reflects on the role of the more jurisprudential work of the mandate since its creation.

A. The Path to Creating a Mechanism Dealing with Unlawful Killings

All too little of the work of the United Nations in the human rights field has developed in a smooth, methodical, or even logical way. This is partly because of the unavoidably political dimensions involved, and partly because of the unplanned exigencies and opportunities that arise at particular historical moments as well as the role of the individuals involved. Nevertheless, there is a clearly discernible logic that guided the way in which the UN came to focus on extrajudicial executions in the early 1980s. Governments intent on eliminating their political opponents and other critics who might stand in their way have a range of brutal options at their disposal. These include imprisonment, torture, 'disappearance', or killing. In retrospect, even though there was never any master plan to that effect, it can be seen that the principal UN human rights bodies proceeded to address each of these forms of gross abuse in turn, gradually widening the scope so as eventually to cover all forms of unlawful killings wherever they occur.[1]

Almost from the UN's inception in 1945, efforts were made to condemn such practices. Over time, specific initiatives were undertaken not only to define and prohibit abuses, but also to establish mechanisms to respond to violations of the emerging norms. Those norms were first brought together in the Universal Declaration of Human Rights in 1948, but that was only the beginning of a long process that involved giving more detailed content to them and enabling the Commission on Human Rights and other bodies to take measures to uphold the standards in particular contexts. The first concrete step in the UN's efforts to promote and enforce respect for minimum standards of decency actually predated by one day the proclamation of the UDHR. It involved the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide on 9 December 1948. Among the crimes listed, and for which prevention efforts as well as prosecution and punishment were required, was the killing of members of any "national, ethnical, racial or religious group", with the intent of destroying the group, in whole or in part.[2] Subsequent efforts were taken to address violations of the rights of people detained by the state, torture, and disappearances.

1. Imprisonment

Genocide was at the extreme end of the spectrum of abuses and the UN's efforts to address more systematically the broader range of brutal violations of rights began with a focus in the 1950s on conditions of imprisonment, before widening its scope. The Standard Minimum Rules for the Treatment of Prisoners were adopted in 1955 and approved by the UN's Economic and Social Council in 1957. Although they were given the all-important imprimatur of the UN, their origins lay in the efforts of the International Penal and Penitentiary Commission which had been affiliated with the League of Nations and had adopted an earlier draft of the rules in 1934.[3]

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1 It is significant that the textbook that for a long time dealt in the most detail with violations such as extrajudicial executions, torture, and disappearances did so under the rubric of the treatment of prisoners. See Nigel Rodley and Matt Pollard, *The Treatment of Prisoners Under International Law* (3rd ed., 2009).

2 Convention on the Prevention and Punishment of the Crime of Genocide, General Assembly resolution 260 A (III) of 9 December 1948, Article II (a).

3 Daniel L. Skoler, 'World Implementation of the United Nations Standard Minimum Rules for Treatment of Prisoners,' *Journal of International Law and Economics* 10 (1975) p. 454.

The most prominent and active international organisation working on this broad range of issues in the years before and after World War II was the International Committee of the Red Cross. It focused on prison conditions and carried out the only systematic monitoring work on the subject. But its work was grounded in international humanitarian law rather than international human rights law, and it did not publicize the nature or the results of its work, thus leaving a major gap for the UN to seek to fill.

2. Torture

The move from conditions of imprisonment to a sustained focus on torture began with various civil society movements, notably including those in France concerned with the use of torture in Algeria, and in the United Kingdom in relation to abuses committed in Kenya.[4] In 1961, Amnesty International was set up and it too moved rapidly from a focus on the release of political prisoners to a broader campaign against torture. Its landmark *Report on Torture* published in 1973 was produced in the years following the seizure of power in Greece by the military junta and detailed reports of torture that were examined by the Council of Europe. It also focused on torture by the UK in Northern Ireland, and by Israel in the Occupied Territories. In the same year, General Pinochet's coup in Chile also focused world attention on torture.

It was in this context, and based on a concerted campaign by Amnesty International and NGOs like the *Vicaria di Solidaridad* in Chile, that the UN General Assembly first acknowledged the need to take action of some sort against torture in a resolution in 1973.[5] By this time, the process of decolonization during the 1950s and 1960s had begun to transform the balance of membership within the UN and many governments and civil society groups were keen to draw attention to the widespread use of torture by western powers during the colonial years. Within two years, the Assembly had adopted the Declaration against Torture, which would eventually be developed in treaty form as the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

3. Disappearances

It was also during the 1970s that the practice of enforced disappearances emerged on the international agenda, primarily as a result of it having been widely used by various governments in Latin America (who were often actively assisted by the United States government), although they were by no means alone. While governments and their proxies have always kidnapped and often killed their opponents without acknowledging the fact of their involvement, the 1970s saw a spate of such 'disappearances' not only in Latin America but also in Democratic Kampuchea (now Cambodia), Afghanistan, Cyprus, Ethiopia, Nicaragua, Uganda, and elsewhere.

But it was the extent of the documentation available about the practice in both Chile and Argentina, generated by leading domestic groups and given prominence by international NGOs that was probably most responsible for catapulting the issue on to the international human rights agenda. The UN Commission on Human Rights began to focus on Chile in 1975 and took a series of steps in the years following, the most notable of which in the present context was the appointment in 1978 of an expert to investigate the problem of 'missing and disappeared persons in Chile'. When the Expert, Felix Ermacora, reported back, he noted that the problem of disappearances extended beyond the case of Chile and merited wider attention by the UN.[6]

It was against the background of major fact-finding activities by both United Nations and Inter-American Commission of Human Rights bodies, in relation to both Argentina and Chile, that the generic question of disappearances was taken up successively by the UN General Assembly in 1978,[7] the Commission on Human Rights, the Economic and Social Council, and the Sub-Commission on Prevention of Discrimination

4 Darius Rejali, *Torture and Democracy* (2007) pp. 41-42.
5 General Assembly Res. 3059 (XXVIII) (2 Nov. 1973).
6 Report of Mr. Felix Ermacora on Disappeared Persons in Chile, A/34/583/Add.1, 21 November 1979.
7 General Assembly Res. 33/173 (20 Dec. 1978).

and Protection of Minorities in 1979,[8] and then decisively by the Commission by means of a resolution in 1980.[9]

In addition to marking a major breakthrough in terms of the issues on which the UN human rights programme was taking action, the Commission's 1980 resolution was path-breaking in two ways that would come to be of major importance in relation to extrajudicial executions.[10] First, it set the precedent of establishing a mechanism to focus on a particular type or form of human rights violation, rather than on the situation in a given country. These would later come to be called 'thematic mechanisms'. And second, it appointed a working group of five experts to undertake the work. While the experts were, in this case, representatives of states in the Commission, they were explicitly appointed 'in their individual capacities'. The Working Group on Enforced or Involuntary Disappearances proceeded to set a range of procedural precedents which would be important reference points for the next thematic mechanism, which was to focus on extrajudicial executions, as well as for the development of Special Procedures more broadly.[11]

B. The United Nations Responds to Unlawful Killings

Unlike the case of disappearances, where a couple of country situations played an outsized role in persuading states of the need to act, the initiative to create a mechanism for dealing with extrajudicial executions does not seem to have been driven by killings in a few specific countries. Instead, it appeared more as the culmination of a number of egregious situations that occurred during the 1970s in different parts of the world. One guide is the range of situations involving alleged violations dealt with for the first time internationally between the mid-1970s and 1982 by the UN Commission on Human Rights, in its public and confidential procedures. They included: Democratic Kampuchea, Nicaragua, Equatorial Guinea, Ethiopia, Guatemala, Indonesia, Republic of Korea, Argentina, Malawi, El Salvador, Bolivia, German Democratic Republic, Japan, and Mozambique. These added to what had up until then been the 'unholy trinity' of South Africa, the Occupied Territories, and Chile which the UN had dealt with up until then. While the actions of the UK in Northern Ireland were raised internationally, the Commission remained generally reluctant to challenge powerful western states over their responsibility for human rights violations, an omission that accelerated the Commission's eventual demise in 2005.

In a number of these new situations, widespread killings were alleged to have taken place. But the list is by no means comprehensive. An important example in that regard was the coup led by Master Sergeant Samuel K. Doe that overthrew long-time Liberian President, William Tolbert, in April 1980. In the immediate aftermath, some soldiers from the new junta lined up 13 senior officials on the beach in Monrovia, including a number of prominent former Cabinet Ministers, and shot them dead. The killings were filmed and the footage was widely disseminated.[12]

As a result of these various cases, there was considerable public attention, reflected also in the debates within the United Nations during the early 1980s, on unlawful killings as a global phenomenon. They included the genocidal slaughter undertaken by the Khmer Rouge in Democratic Kampuchea, killings by the military

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8 Commission on Human Rights Decision 15 (XXXV) (14 March 1979); Economic and Social Council Res. 1979/38 (10 May 1979); and Sub-Commission on Prevention of Discrimination and Protection of Minorities Res. 5B (XXXII) (5 September 1979).

9 Commission on Human Rights Res. 20 (XXXVI) (29 Feb. 1980).

10 See generally David Kramer and David Weissbrodt, 'The 1980 U.N. Commission on Human Rights and the Disappeared', *Human Rights Quarterly* 3 (1981).

11 It could be argued that there was an intervening precedent in the Commission's appointment in March 1981 of a Special Rapporteur, Sadruddin Aga Khan, to prepare a "study on human rights and massive exoduses". But although he was asked to report on a 'theme' or 'phenomenon', it was a study of the issues, rather than an analysis of state practice and violations, and it did not amount to the creation of a mechanism with some ongoing functions designed to respond to the issues identified. The resulting study was published as E/CN.4/1503 (31 December 1981).

12 William O'Neill, 'Liberia: An Avoidable Tragedy', *Current History* 92:574 (May 1993) pp. 213-18.

in a range of situations, police killings, and killings by rebel groups as in central America. In addition, the main UN human rights bodies had long been considering reports on violations, including killings by the security forces and other actors in the context of the policy of apartheid in South Africa and the liberation struggles in surrounding countries.

1. Committee on Crime Prevention and Control

It was not directly as a result of the examination of any of these specific situations that extrajudicial executions were to be placed on the official UN agenda. This occurred instead in the context of the work of the Vienna-based Committee on Crime Prevention and Control and the related biennial Congresses on the Prevention of Crime and the Treatment of Offenders. Partly because the Committee was comprised of independent experts, and partly because the biennial Congress was less politicized than the Commission on Human Rights, the agendas pursued were more responsive to current concerns in at least some areas than was the case in the Commission.

Thus in 1980, at the Sixth UN Congress, held in Caracas, a group of western European countries (Austria, Denmark, Finland, the Netherlands, Norway, and Sweden) joined together with Venezuela, the host country, to sponsor what became Resolution 5 entitled "extra-legal executions". Although not able to be agreed on the basis of consensus, the resolution was nevertheless adopted unopposed with 74 countries in favour and none against. But seven countries recorded their abstention: Argentina, Chile, Egypt, Ethiopia, Indonesia, Philippines, and Uruguay.[13] All were countries in which significant numbers of killings had taken place. The resolution was careful to situate the "new" subject of concern within a long-established framework by referring in the preamble to: (i) human rights norms affirming the right to life, (ii) the international humanitarian law prohibition of wilful killings, (iii) the general principle of law reflected in the outlawing of murder by domestic legal systems, (iv) the UN's condemnations of disappearances, and (v) the UN's 1975 Torture Declaration. Particular emphasis was placed on the link between extra-legal executions and disappearances, with the preamble noting that the latter "are frequently related to murder committed or tolerated by Governments".

Rather than define what was meant by "extra-legal executions", the resolution singled out for condemnation a range of quite diverse phenomena: "the practice of killing and executing political opponents or suspected offenders carried out by armed forces, law enforcement or other governmental agencies or by paramilitary or political groups acting with the tacit or other support of such forces or agencies".[14] The key element that brought such killings together was a link of some sort to the government. In other words, the list did not seek to encompass killings carried out by non-state actors or rebel groups, unless they were receiving some form of official support from the state. The acts listed were characterized as constituting "particularly abhorrent crime[s] the eradication of which is a high international priority",[15] and the Congress called on all UN bodies dealing with crime prevention and human rights to do all they could to bring an end to such acts.

In 1980 and 1981, the General Assembly responded by requesting the Secretary-General to submit a report to the Committee's 1982 session on the question of arbitrary or summary executions and calling on the latter to make recommendations.[16] After considering the report,[17] the Committee recommended that its parent body, the Economic and Social Council, should adopt a resolution on arbitrary or summary executions, which it duly did in 1983.[18] However, from this point on, the work of the Committee on Crime Prevention and Control focused essentially on standard-setting, which was appropriate in light of

13 For the text of the resolution see Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, Venezuela, 25 August-5 September 1980, A/CONF.87/14/Rev.1 (1981), p.8; for the sponsorship, see para. 203(a); and for details of voting, see para. 214.

14 Ibid. Res. 5, para. 1.

15 Ibid., para. 2.

16 General Assembly Res. 35/172 (15 December 1980), and Res. 36/22 (9 November 1981).

17 Report of the Committee on Crime Prevention and Control, E/AC.57/1982/4 and Add.1, 22 January 1982.

18 Economic and Social Council Res. 1983/24 (26 May 1983).

the parallel developments in the human rights forums, which were engaged in developing institutional arrangements for responding to such killings.

In the years that followed, the Committee took the lead in developing a set of Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty in 1984,[19] and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, in 1989.[20] These principles subsequently exerted very considerable influence over the way in which these issues were addressed by human rights bodies and provided a significant impetus to the work of civil society groups focused on the death penalty and unlawful killings more generally.

2. The Commission on Human Rights

Meanwhile, the then Commission on Human Rights, and its subsidiary body, the Sub-Commission, began the process of expanding beyond the work described above that had drawn attention to unlawful killings in a range of specific country contexts, by taking up the generic issue of extrajudicial executions. In 1981, Theo van Boven, head of the UN's human rights' secretariat (then known as the Division of Human Rights, the forerunner of the Office of the High Commissioner for Human Rights), called the attention of the Sub-Commission's annual session to a range of issues including what he termed "political murders".[21] The Sub-Commission's Working Group on Detention observed in its report that "arbitrary or summary executions … all too often took place during detention".[22] In response, the Sub-Commission adopted a resolution, in the framework of examining problems of detention, in which it expressed concern over "the scale of executions in various parts of the world, particularly of political opponents and imprisoned and detained persons". It then officially drew the attention of the Commission to that problem, and called for it to be given "the most urgent consideration in order to bring an end to these irreversible violations of human rights".[23]

Somewhat surprisingly, given the potential significance of the measure, it was adopted without a vote and thus by consensus. Part of the explanation might be that the issue seemed to arise in an odd twilight zone between debates on detention (although in the overall scale of extrajudicial executions, relatively few occur in detention) and the death penalty. The focus of the latter was arguably on the abuse of the death penalty for political reasons, rather than on capital punishment itself.

Six months later, Van Boven raised the stakes considerably by challenging the Commission on Human Rights at the opening of its 1982 session to focus on the right to life, and in particular, "to prevent deliberate killing perpetrated by organized power".[24] His speech effectively consisted of three themes: an appeal to the responsibility of Commission members; a nascent legal analysis of the bases for action; and suggestions as to possible approaches. In terms of the first theme, he sought to mobilize the Commission by describing "deliberate killing" as among the "most severe and shocking violations of human rights", and opining that "[i]t was difficult to conceive that the United Nations could shut its eyes to" the pleas of victims. He concluded his speech by arguing that, in the absence of urgent and meaningful action, the Commission "would hardly be deserving of its name and the anguish of people on the edge of survival would weigh upon everyone's conscience".

The legal analysis consisted of several parts. One was the recitation of precedents for addressing such issues at the international level. He relied upon the 1981 resolution of the General Assembly and the Sub-Commission's detention resolution, which required the approval of the Commission, as well as invoking

19 Economic and Social Council Res. 1984/50 (25 May 1984), Annex.
20 Economic and Social Council Res. 1989/65 (24 May 1989).
21 Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its Thirty-Fourth Session, Geneva, 17 August-11 September 1981, E/CN.4/1512, 28 September 1981, para. 151.
22 Ibid., para. 175, sub-para. 8.
23 Ibid.; See also Res. 1 (XXXIV) (3 Sept. 1981), para. 1.
24 Summary Record of the 1st Meeting of the 38th session of the UN Commission on Human Rights, E/CN.4/1982/SR.1, 2 February 1982, paras. 6-14.

the latest report of the Inter-American Commission on Human Rights which pointed, in his words, to "an alarming number of summary, illegal and extrajudicial executions". He then added a reference to the International Court of Justice's *erga omnes* jurisprudence, in order to argue that killings by governments were a legitimate cause of concern for the international community as a whole.

Another strand of the legal argument focused on the legal responsibility of governments to neither engage in nor condone killings, and also to take action to prevent killings by other actors. The illustrations that he gave of relevant killings were also designed to ensure that the responsibility of the state was engaged. He listed: "genocide or political liquidation, mass killings, arbitrary or summary executions, disappearances, tortures [sic], the killing of refugees, or the indiscriminate killings of civilians during armed conflicts".

The third theme of his speech was to canvass options for action by the Commission. In the broadest of terms he suggested that the right to life could be the Commission's priority theme in future years. More specifically, he suggested that it "could designate a special rapporteur to examine the question and situations of deliberate killings and taking of human lives by organized power, and submit a report to the Commission at one of its future sessions". He was careful not to suggest any particular details of how such a mandate might operate.

The ensuing debates in the Commission saw a number of state representatives calling for action, although the debate was not particularly prominent or contentious.[25] The terminology used varied and included "summary", "extra-legal", and "arbitrary", and several speakers appeared to be addressing capital punishment as much as killings that occurred outside the legal framework. The latter suggestion was reinforced by the principal sponsor of the resolution, Denmark, whose representative, in proposing the appointment of a special rapporteur, relied significantly on a report by Amnesty International detailing over 3,000 executions that had occurred in 1981 around the world. The sponsors emphasized that the resolution was not "directed towards particular countries but to the tragic phenomenon itself".[26]

The resolution itself was to prove relatively uncontroversial. The representative of the Soviet Union referred to executions as "a basic problem" and agreed that it was "inadmissible that arbitrary executions, without trial, were continuing to take place". He therefore "had no difficulty in endorsing the substance" of the proposed resolution.[27] This was an especially important concession in the context of a session whose debates were dominated by Western-sponsored condemnation of the state of emergency declared in Poland and the determined insistence by the Soviet Union and its allies that there should be no interference in the domestic affairs of a state.

The only contentious issue was whether a special rapporteur should be appointed, or the matter referred to the Sub-Commission for further study. The Soviet representative argued that more special rapporteurs were not needed and the scope of the proposed study was so broad that it would better be undertaken by a group. He was supported in this dissent by the representative of Senegal, but a separate vote on the institutional dimensions was still adopted by 31 in favour of the appointment of a special rapporteur, 6 against, and 6 abstentions. The final text of the resolution was adopted with 33 in favour, the USSR against, and 8 abstentions.[28] The Soviet Union and its allies could hardly have stood up to oppose action against extrajudicial killings, but it nonetheless remained concerned that important precedents were

25 E.g. Summary Record of the 51st Meeting of the 38th session of the UN Commission on Human Rights, E/CN.4/1982/SR.51/Add.1, 10 March 1982: Mr Bettini (Italy), para. 17; Mr Koojimans (Netherlands) paras. 23, 25, and 29; Mr Jahn (Federal Republic of Germany), para. 49; Mr Hutton (Australia), para. 61 Mr Repsdorph (Denmark) paras. 62, 66, 67, and 69.

26 Mr Dyrlund (Denmark), see Summary Record of the 57th Meeting of the 38th session of the UN Commission on Human Rights, E/CN.4/1982/SR.57, 18 March 1982, para. 28. The other sponsors of the resolution were Costa Rica, Cyprus, and Zambia.

27 Summary Record of the 59th Meeting of the 38th session of the UN Commission on Human Rights, E/CN.4/1982/SR.59, 17 March 1982, para. 42.

28 Ibid., paras. 39-53. The Resolution (1982/29) was titled "Summary or arbitrary executions"..

being established in terms of the mechanisms being employed by the Commission to focus on different thematic violations.

C. The Establishment of the Mandate

The resolution establishing the mandate did not fully follow the formula adopted in setting up the Working Group on Enforced or Involuntary Disappearances. Both the Working Group and the Special Rapporteur were called upon "to examine" the relevant questions, but where the former was empowered "to respond effectively to information that comes before it", the latter was only asked "to submit a comprehensive report to the Commission … on the occurrence and extent of the practice of such executions together with his conclusions and recommendations".[29]

Like the Working Group, however, the Special Rapporteur was authorized to seek and receive information from a wide range of sources, including non-governmental organizations in consultative status with the Economic and Social Council. This was an extremely important provision, given that Governments were most unlikely sources of detailed information about killings.

The first mandate-holder, Amos Wako, initially sought more or less to follow the precedent set by the Working Group not just in terms of working methods but also—significantly—of reporting on the situation in specific countries.[30] The Commission considered that it was beyond the mandate of the Special Rapporteur to prepare such a report, and the approach was scaled back until the mandate was renewed again in 1984, at which time the Commission authorized the mandate holder to "examine situations" involving executions, "to pay special attention to cases in which [an execution] is imminent or threatened", and to "respond effectively to information that comes before him".[31] The following chapter on "mandate and working methods" describes the principal working methods that evolved in the subsequent years.

Over the first couple of decades, definitions were a crucial part of the debate over executions. Amnesty International engaged in intense debates over the difference between the three categories (the term "extrajudicial" having been added to the name of the mandate by the Commission's 1992 resolution) and the legal principles that applied most clearly to each of them. The eye-witness descriptions by Nigel Rodley[32] (who was then the Legal Adviser to Amnesty and played a key role in drafting the Convention against Torture) and the scholarly and highly informative analysis undertaken by Anne Marie Clark,[33] provide clear testimony to the importance of these debates. However, over the years, as practice accumulated, and as precedents were established, the definitional boundaries became much less significant and what might be termed a constructive blurring took place.

By 2005, Philip Alston reported to the Commission on Human Rights that the mandate's terms of reference were "not best understood through efforts to define individually the terms 'extrajudicial', 'summary' or 'arbitrary', or to seek to categorize any given incident accordingly." The report noted that while those terms had been significant in terms of the mandate's historical evolution, by 2005 "they tell us relatively little about the real nature of the issues." Instead, the mandate was best defined on the basis of the issues that had been identified in the relevant resolutions of the Commission and the General Assembly in the intervening two decades or more.[34] Christof Heyns continued the trend and started routinely to refer to the subject matter of the mandate as "unlawful killings" and its object of protection as aspects of

29 Commission on Human Rights Res. 1982/29 (11 March 1982), para. 5.

30 See generally David Weissbrodt, "The Three 'Theme' Special Rapporteurs of the UN Commission on Human Rights", *American Journal of International Law* 80 (1986) p.685-99.

31 Commission on Human Rights Res. 1984/50 (14 March 1984), paras. 5-6.

32 Rodley and Pollard, *supra* note 1.

33 Anne Marie Clark, *Diplomacy of Conscience: Amnesty International and Changing Human Rights Norms* (2001) Chapter 5.

34 Report of the Special Rapporteur, Philip Alston, E/CN.4/2005/7, 22 Dec. 2004, para. 6.

"the right to life".[35] This was also a period during which greater attention was paid to the importance of international humanitarian law in the context of unlawful killings.

D. The Significance of the Jurisprudence and the Impact of the Mandate

An important issue that arises in the context of a *Compendium* that presents an overview of the "jurisprudence" developed in connection with the mandate during a specific period concerns the normative value or broader legal significance that should be attached to such analyses. The starting point in response to such questions is to acknowledge the inadequacy of any purported binary characterizations such as those between "hard" law and "soft" law. Commentators and UN experts themselves have invoked various terms in order to describe their outputs, and often these terms are designed to emphasize the weight that should be accorded to them. Thus the treaty bodies are often described as being "quasi-judicial" and their outputs are termed "authoritative". There is, of course, considerable substance underlying such claims but there is also a risk that they are designed to avoid or short-circuit more sophisticated discussions about the weight that different actors should accord to the outputs of the relevant expert bodies.

Every term seems loaded in the sense of being designed to locate the outputs closer to the hard or soft end of the spectrum. In the case of the "pronouncements" of a Special Rapporteur on an issue such as extrajudicial executions it seems reasonable to say that they are not *per se* either binding or non-binding, authoritative views, or merely personal opinions, official statements or unofficial observations, and so on. Without purporting to offer an exhaustive review, it must suffice to say that the significance to be attached to the views expressed by a Special Rapporteur will reflect, *inter alia*: the nature of the issue at hand, the identity and function of the body that might make use of the views, the purposes for which they are being cited, the professional standing of the individual expert, the extent to which the expert has endeavoured to formulate the analysis in legally grounded terms, the logic of the argument, and so on.

By the same token, the weight given to the Special Rapporteur's outputs inevitably reflects the fact that he or she functions under the imprimatur of the United Nations. As a result, they enjoy a certain presumption that they reflect the distilled wisdom that has emerged from within the UN's broader human rights mechanisms, and accordingly deserve an appropriate degree of deference. This is, of course, a rebuttable presumption and if a Special Rapporteur fails to take adequate account of the relevant accumulated law and practice, it will generally be all the easier to reject the proffered analysis and recommendations.

It should also be noted that the official characterization given to the outputs of Special Rapporteurs by a government, a court, or other actors, should not necessarily be taken as the last word. It is not uncommon for such bodies to be somewhat dismissive of the relevance, utility, or persuasiveness of a particular analysis but then to proceed—in the short but also in some cases in the long term—in ways that effectively take some degree of account of the views.

These reflections lead inexorably to one of the most frequently asked but consistently inadequately answered questions that plagues the human rights field as a whole: what impact has the mandate had, and how should or could such impact be meaningfully and convincingly evaluated? While the present volume does not attempt to provide answers in that regard, it does bring together a lot of the information that would help others to seek plausible answers to such questions. And it points to the fact that the formal institutional structure within which the position of Special Rapporteur is located is of limited significance in terms of assessing impact. In other words, even though the various reports written by the Special Rapporteur are formally presented to the Human Rights Council and/or the General Assembly, neither the debates ("interactive dialogues") nor the resolutions that ensue are likely to engage in any depth with the specific findings or recommendations. Notwithstanding that reality, both bodies play essential roles by authorizing the mandate, endorsing the nomination of the Special Rapporteur, providing an official

35 Report of the Special Rapporteur, Christof Heyns, A/71/372, 2 September 2016, para. 17.

UN platform for the mandate holder from which to present the reports, and providing opportunities for interested governments and other stakeholders to engage in the process. This in turn provides the legitimating backdrop against which the various stakeholders are potentially able to make effective use of the interpretations put forward.

During the years covered in this *Compendium*, the mandate has in some cases met with fierce resistance. At the same time, it has had an influence on many fronts. An example of resistance was the effort mounted by a group of Kenyan Government Ministers at the Human Rights Council after the presentation of a report on Kenya in 2009. At their behest, the African Group in the Council made an official statement characterizing the Special Rapporteur's call for the Attorney-General to resign as "not only unprecedented but also illegal", and called for the termination of the rapporteur's mandate. No action was taken, however, after the Prime Minister of Kenya flew to Geneva to intervene and indicated that his country "recognised that extrajudicial killings were a serious problem in our country, and accepted most of Prof Alston's recommendations on how to put an end to this terrible scourge."[36]

While many instances of impact could be cited, one of the most easily documentable was the initial impact of reporting on the situation in the Philippines. The Government eventually acknowledged what it had long denied, which was that the military was responsible for many of the killings that had consistently been attributed to leftist groups. The highest official under the President made a special trip to meet with the Special Rapporteur in New York to update him on progress,[37] and the rapporteur was able to report in a follow-up report two years after the 2007 visit that there had "been a drastic reduction in the number of leftist activists killed. The Supreme Court has promulgated and improved the operation of two important writs. And the Commission on Human Rights is taking serious steps to begin investigations of unlawful killings".[38]

As this *Compendium* illustrates, the mandate has offered significant opportunities for the Rapporteurs to engage directly, at the highest level, with governments about issues related to unlawful killings (see for example the cases of Kenya (chapter 6), Sri Lanka (chapters 9 and 10), and India (chapter 3)).

Especially in recent years, the mandate has also played an increasing role in norm setting or interpretation on the international level. Examples covered in this *Compendium* include the interventions of the mandate on the death penalty (chapter 8), targeted killings (chapter 5), armed drones and autonomous weapons (chapter 11), and the use of force by law enforcement officials—including in the context of the management of assemblies (chapter 3). In some instances, such norm setting took the form of the development or revision of comprehensive international instruments devoted to a particular topic, at the mandate's initiative, as was the case with the *Minnesota Protocol on the Investigation of Potentially Unlawful Death* (2016) (see chapter 9) and the *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement* (2020) (see chapter 3).

The outputs of the mandate are widely used also by other human rights bodies within the United Nations system. This is evident for example from the numerous citations to the work of the Rapporteurs in the UN Human Rights Committee's 2018 General Comment 36 on the right to life.

The jurisprudence of the mandate is also used by the regional human rights tribunals.[39] A recent example from the Inter-American Court of Human Rights included a challenge to the way in which the death penalty was carried out in Guatemala. The court cited the view of the Special Rapporteur that public executions breach the prohibition against cruel, inhuman, or degrading treatment or punishment.[40]

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36 Raila Odinga, 'Africans Must Lead the Global Struggle against Impunity', *Daily Nation*, 17 June 2009.

37 Lira Dalangin-Fernandez, "Ermita in UN to defend gov't vs rights report—Palace exec", Inquirer.net, 10/22/2007, at http://newsinfo.inquirer.net/breakingnews/nation/view_article.php?article_id=95964

38 Report of the Special Rapporteur, Philip Alston, Follow-up to recommendations: Philippines, A/HRC/11/2/Add.8, 29 April 2009, p. 2.

39 See e.g. *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, judgment of 7 July 2011, para 93.

40 Inter-American Court of Human Rights *Girón and Others v. Guatemala*, Case 11.686 (15 October 2019) para. 82, n. 76.

National courts have also referred to some of the interpretations put forward by the Special Rapporteur. One such, which is of particular interest from an international law perspective, is a 2010 judgment of Singapore's highest court, the Court of Appeal. While the Court rejected the views expressed by two Special Rapporteurs (Asma Jahangir and Philip Alston) that the mandatory imposition of the death penalty for a drug-related crime contravened the individual's right to have all of the relevant circumstances taken into account during the sentencing phase, it nonetheless considered those views under the rubric of one of the sources of international law recognized in the Statute of the International Court of Justice. The Court of Appeal thus evaluated the Special Rapporteurs' views on the basis that they constituted "the teachings of the most highly qualified publicists of the various nations", as provided for in the Statute of the ICJ.[41]

Rightsholders, social movements, and civil society actors around the world have extensively relied on the work of the mandate—including the mandate's articulations of the relevant international law, its factual findings in relation to country missions, and groups have successfully engaged with the mandate to bring global attention to local or national issues of concern or to bolster local civil society advocacy efforts.[42] One final example of influence was the decision by the International Committee of the Red Cross to address the specific international law issues raised by the use of autonomous weapons systems. The decision was announced in 2010, very soon after Special Rapporteur Alston had effectively put the issue on the UN agenda for the first time in his report of August 2010.[43] In a 2011 report, the ICRC called on States "to carefully consider the fundamental legal, ethical and societal issues raised by these weapons before developing and deploying them".[44] Following Special Rapporteur Heyns' report taking the issue further in June 2013, and following debates in the Human Rights Council, the question was taken up by the Convention on Certain Conventional Weapons in November, and Heyns was invited to serve as a human rights advisor to that body for four years.

The work of the Special Rapporteur and the normative approaches put forward are thus of relevance to a wide range of actors engaged in one way or another with human rights. This includes government officials and legislators seeking to ensure that their laws and practices on the domestic level are in compliance with international standards, courts handing down judicial decisions, the victims who seek to understand better what is required of governments in situations involving actual or potential killings, and other key actors in the international human rights regime such as advocates, experts, treaty body members, and officials in inter-governmental and regional organizations. It is hoped that by bringing together the combined work of twelve years of reports and communications, and through indexing and organizing thematically the work of the mandate, this material will be made more accessible.

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41 See *Yong Vui Kong v. Public Prosecutor* [2010] 2 Singapore Law Reports 192, para. 97, Court of Appeal (Singapore). For a detailed assessment, see Yvonne McDermott, '*Yong Vui Kong v. Public Prosecutor* and the Mandatory Death Penalty for Drug Offences in Singapore: A Dead End for Constitutional Challenge?', *International Journal of Human Rights and Drug Policy* 1 (2010) p.35. More recently, while avoiding having to resolve it, the UK Supreme Court cited with approval Special Rapporteur Heyns' argument of an inconsistent application of the norm that an abolitionist state cannot make a material contribution toward the execution of an individual in another jurisdiction. See *Elgizouli v. Secretary of State for the Home Department* [2020] UKSC 10, para. 141.

42 When, for example, in 2015 Amnesty International published a major study on the use of force by the police to coincide with the 25th anniversary of the Basic Principles on the Use of Force and Firearms, it cited extensively from various reports of the mandate over the previous decade. See Amnesty International *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (London, 2015).

43 Report of the Special Rapporteur, Philip Alston, A/65/321, 23 August 2010.

44 *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*. Report for the 31st International Conference of the Red Cross and Red Crescent, Geneva, 28 November to 1 December 2011, pp. 39-40, available at: https://www.icrc.org/eng/assets/files/red-cross-crescent-movement/31st-international-conference/31-int-conference-ihlchallenges-report-11-5-1-2-en.pdf; see also ICRC, *Autonomous weapon systems: Technical, military, legal and humanitarian aspects*: Expert meeting, Geneva, Switzerland, 26-28 March 2014.