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Keynote speech and acceptance of the Don and Arvonne Fraser Human Rights Award

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Ladies and Gentlemen, dear Jennifer

I am always interested to listen to whether people get the impossibly long title that the UN gave my mandate right when they introduce me – ‘Special Rapporteur on extrajudicial, summary or arbitrary executions’ - not least because I took me some time to get it right myself. Jennifer did well. Recently a colleague who had to make the introduction in Geneva got halfway through the title and then gave up, saying: ‘Let’s just say he works on all kinds of terrible things’.

From one perspective the mandate that I hold does focus on all kinds of terrible things. The cases it deals with often involve the excessive use of force by the police; political hit squads; custodial death; the failure by the State to protect people from inter-personal violence; and the fate of civilians during armed conflict. But seen from another point of view the subject matter is quite uplifting. It is about the protection of that most basic right, and a pre-condition for all the

other things we want to do – the right to life. And with the term ‘right to life’ I do not mean it in the then sense that it is sometimes used in abortion debates – I mean the right of each one of us to be free from arbitrary violence, and indeed to live a dignified life.

It is great to be among so many of you who share the objective of a world where the life of every human being is considered important and protected. I am in particular inspired to be on the home ground of The Advocates for Human Rights, an organisation that has shone a bright light across the world on many human rights issues, and has made the name ‘Minnesota’ famous across the world.

I am touched by the recognition you give to my work and those who have worked with me tonight. It has been six full and at times challenging but very gratifying years.

I would like to thank those who worked closely with me, both those in UN office in Geneva and those outside the UN system.

In the UN Brenda Vukovic and Jon Izagirre Garcia are the human rights officers currently assigned to my mandate and before them people like Vanessa Asensio Perez, Irina Tabirta and Alice Mauske. Their line-managers have in turn been Orest Nowosad and Christophe Peschoux. Cecile Aptel’s wisdom and insight guided me on several occasions. Outside the UN, I want to single out Gift Kgomoosotho, Petronell Kruger, Romi Brammer and Thompson Chengeta, as well

as my assistant Pumeza Matwa. Tess Borden brought immense commitment to the initial stages. Stu Maslen and Sarah Knuckey provided invaluable technical assistance. Thomas Probert was at the core of everything the mandate did during the last three years.

Closer to home I want to thank my wife, Fearika, who is here tonight, as well as our children Willemien, Adam and Renee. I also want to thank the University of Pretoria, and in particular the Vice-Chancellor Prof Cheryl de la Rey for the great latitude and support they gave me to serve as rapporteur.

Part of why this is such a special occasion for me is that it provides an opportunity to reflect a bit on what has happened in the last 6 years. I have three points I want to share with you.

The first point is what is my main impression concerning this foundational right: the state of the right to life in the world today?

Part of any job like mine is to be relive the pain and trauma that violations of the right to life leave in their wake in the many places around the world that you visit. One cannot but be moved on country visits to the far-flung parts of India and Turkey and Mexico by mothers who travel for days to come and tell you about their children who were killed in their prime and show you their school trophies; or a father in Odessa who tells you his life stopped with that of his son when a fire-bomb set the labour union building alight. One sees the intestines of

societies, and it's never a pretty sight. We have a very long way to go towards the protection of the lives of all, let alone a dignified life for all.

And yet, and this is the point I want to make: I am sure we have in many ways make significant strides in the right direction. I do not share the scepticism that some have voiced about the 'end' or 'twilight' of the human rights project, or for that matter about the UN human rights machinery, and certainly not about the protection of the life.

It was a revelation to me when I started to read about this to find out the the popular belief that the world is becoming more violent – as reflected in the saying that the 20th century was so far the most violent century of them all, and it is getting worse - is simply not true.

For at least four centuries the percentage of the population of the world which has come to a violent end has gone down. Not everywhere, and not in a linear fashion, and there is no guarantee that this will be permanent, but overall the world has for a significant period now become a less violent place. What has gone up is our standards, and our level of awareness about unlawful killings. This does not relieve the plight of those trapped at this very moment in Fallujah, or Syria or the CAR, or those who are facing a grim fate at the hands of ISIS, but it is important to know that much of what we are doing to protect life and contain violence is working. We should do more, not less of it.

Secondly: What did I try to emphasise during my term as Special Rapporteur?

- **The 'protect life' principle.** I have argued that the loadstar of the right to life, in law enforcement and in armed conflict, is the general rule that life may be taken only if that is the only way to protect another life. The 'protect life principle' is the ideal, and the question whether we are moving closer to this ideal should guide any changes to the legal framework that we may consider, outside armed conflict as well as during such conflict.

- **Accountability.** I have emphasised the idea that the right to life has two elements: 1) prevention of arbitrary killings, and 2) accountability where that occurs. A lack of accountability is a violation of the right to life in its own right. This is not yet universally accepted but I am sure one day it will be. If the proverbial body is found on the street with a knife in its back, and this is not properly investigated, it is a violation of the right to life. It is in this context that the Minnesota Protocol on the investigation of potentially unlawful deaths occupies a central place in the protection of human rights.

- **Technology is a tool,** which can be used for good or bad purposes, and international law must provide the framework to ensure the latter. As for armed drones, I have argued that they are not unlawful weapons as such, but 'drones should follow the law, not the other way around'. Established legal principles should not be stretched beyond recognition to justify the remote use of force. On the other hand I have argued that fully

autonomous weapons – some call it ‘killer robots’ – should be banned.

Death by algorithm is inherently arbitrary and undignified. At the same time new technologies can in some cases help to better protect life and ensure accountability, for example body worn cameras and cell phone during demonstrations.

- **International law is abolitionist as far as the death penalty is concerned.** The conventional approach is to say that international law is retentionist, in that it does not prohibit the imposition of this form of punishment as long as certain minimum standards are met. I have argued, however, that international law requires at least the “progressive abolition of the death penalty”. In other words, a State that does not take concrete steps to reduce the application of the death penalty over a period of time is in violation of international law. It is encouraging to see the death penalty disappearing and becoming obsolete also in the USA. We need more of the same.

But, to conclude, let me tell a story.

Just more than 10 years ago I started teaching an annual seminar at Oxford. One of my colleagues there was someone called David Weissbrodt, who was there with his wife Pat. I was much his junior, and was in truth a little bit intimidated by this august and clearly brilliant scholar. But we struck up a rapport and went to see plays in Stratford upon Avon and stayed in touch.

Many years later – it was 2012 - I started going on country missions to places such as the Ukraine and Papua New Guinea and last week Honduras.

Everywhere I went I encountered the Minnesota Protocol on autopsies and investigations in practice, as the gold standard in its field. At the same time it was clear that in order to remain relevant and retain its influence the Protocol had to be updated to account for developments in international law, investigative practice, and forensic science. So I became interested in its future – and eventually also in its past, which brought me back to David.

The name ‘Minnesota Protocol’ —new recognised around the world - already shows that we are gathered here tonight close to its origins, but how did that come about?

It turns out that our mutual friend David – who is here tonight - was on a sabbatical from the University of Minnesota Law School in 1982 at Amnesty International’s Legal Office, in London. He starting working on this, and developed a first draft by asking what is now the Advocates for Human Rights to put to paper what medical practitioners back home here in Minnesota do when they conduct autopsies.

Barbara Frey – then executive director of the Advocates - recruited local and international experts as volunteers, and they researched, drafted and presented the documents to the UN that were eventually adopted as the UN Principles and the UN Manual ‘on the effective prevention and investigation of extra-legal,

summary and arbitrary executions'. Today the Minnesota Protocol is the global standard as far as various aspects of accountability for right to life violations are concerned.

Turning to the future of the document – since the Minnesota Protocol is a foundational document of my mandate with the UN I started a process to update it. Two years ago, in collaboration with the Office of the High Commissioner, we got together a team of international experts, 73 top people - including Barbara and Jennifer - and started revising every aspect of this document. We will submit the new document to the Human Right Council on June 20 this year.

We hope that this revision will allow this seminal human rights instrument to retain and indeed to increase its relevance and impact, and I hope for the support of the US government in making this a reality.

I find this story also to be hugely inspiring. As an academic I am of course delighted to be able to show how productive sabbaticals can be! But what is truly gripping is that it is the story of individuals who were not part of any formal international structure – and they did not have complicated UN titles - who simply did what they thought would help. And what they did, set the standards for the way in which suspicious deaths are treated around the world today. It also became the model for other international initiatives, such as the Istanbul Protocol on torture. It had a far and deep reaching impact on the development of international human rights law.

To conclude: I am of the school that believes that if the world is left to its own devices, it's a tie between good and bad. Each one of us thus holds the power to tip it this or that, even if the result is temporary. 'Ordinary' people like those whom I mentioned tonight – you and me - have the power to bring some change in the world. And that is the message I take with me – the one of agency, of being able to fight back when the values of decency are challenged. I was inspired by everyone who received a prize tonight, and everyone who spoke. Everyone in this room has the ability to do that, each in our own way. I want to laud The Advocates for Human Rights and the community of Minnesota for what you have done to protect human rights worldwide, and encourage each one here tonight to carry the torch into the future.