Mr. President, Distinguished Representatives, Ladies and Gentlemen,

I have the honour of presenting my report to the Human Rights Council in my position as Special Rapporteur on the right to privacy. My report focuses on governmental surveillance activities from a national and international perspective. Before sharing some of the findings, allow me to provide more context.

First, I have published a statement entitled “Planned thematic reports and call for consultations”, which presents the issues to be tackled in this and future reports as well as providing a timeline for their delivery. This statement should be considered a standing invitation to all stakeholders in all countries around the world who wish to engage with the mandate. If you wish to contribute to or otherwise be involved in any of the mentioned initiatives all you need to do is to contact me and my team.

Secondly, work on the other Thematic Actions Streams as presented in my report to the General Assembly in October 2016 continues. Working groups are set up to tackle the issues of “Big Data and Open Data” and “Health Data”. On the issue of “personal data held by corporations”, I have begun with consultations with leading actors in the area. The results of these efforts will be published when this process has matured.

Furthermore, the work on “a better understanding of privacy” will continue. Two events are planned for 2017 to continue the event series entitled “Privacy, Personality and Free Flows of Information”. Under the auspices of the mandate of the United Nations Special Rapporteur on Privacy, in partnership with The National Authority for the Protection of Personal Data of Tunisia (INPDP), Access Now Tunisia, the iGMENA network and the Center of Arab Woman for Training and Research (CAWTAR), the Security, Technology & e-Privacy Research Group at the University of Groningen in the Netherlands, the Department of Information Policy and Governance of the University of Malta and the MAPPING Project (Managing Alternatives for Privacy, Property and Internet Governance) a workshop will be held on the 22nd and 23rd of May 2017 in Tunisia.

The key idea is to explore the notions "Whose Privacy?”, “Why Privacy?" and “Privacy Where?”. This event will focus on the Middle East and North Africa region. Additionally, work has begun on another event to explore this subject, probably held in Hong Kong, China on the 28th and 29th of September 2017. We are currently working on topics and partners to contribute to this event. As always, feel free to contact me anytime if you wish to add to the success of these efforts.

Mr. President, Distinguished Representatives, Ladies and Gentlemen,

Thirdly, I wish to report that many of the findings presented in my current report have been developed as a result of the First International Intelligence Oversight Forum (IIOF), which was held in Bucharest, Romania on the 11th and 12th of October 2016. The follow-up event IIOF 2017 will take place in Brussels, Belgium on the 20th and 21st of November 2017. While the Belgian Data Protection Authority has already confirmed their willingness to help organize the Forum, I hope for more contributions from governmental agencies to increase the dialogue on the subject. **Better thought-out and better resourced oversight of intelligence activities are considered by many as being one of the many complementary initiatives that may help improve the protection of the right to privacy world-wide.**

Mr. President,

The issue of governmental surveillance deserves more attention than ever. I am deeply concerned that the right to privacy will simply not experience a full transition to the digital age. Despite efforts by human rights experts, Non-Governmental Organizations and judgments by several national and regional high courts in Europe and across the world, governments continue to increase their capabilities to carry out surveillance. While doing so, it seems there is little (if any) time being spent to properly assess the impact of using technologies that are capable of recording and intercepting every electronic stream of information.

Mr. President and distinguished delegates,

If we continue on this path we sacrifice our civil liberties and freedoms for a notion of security which will remain both incomplete and fragile. However, these fundamental human rights are essential to the development of personality, as I have outlined in my report to the Human Rights Council last year.

Deeply concerning, the status of the right to privacy has not improved since the last SRP report to this distinguished body. The states that reacted, started to work on and pass new laws on the subject that only, if at all, contain minor improvements in limited areas. In general, these laws have been drafted and rushed through the legislative process with political majorities to legitimize practices that should never have been implemented.

The SRP monitors to the extent possible relevant new laws drafted world-wide and reports that concern use or abuse of surveillance. As a result, surveillance-related activity is one of the principal considerations when requesting formal country visits. This may be seen especially in the choice of requested country visits: the United States of America (19-24 June 2017), France (requested for 13-17 November 2017), the United Kingdom (late 2017, possibly 11-17 December), Germany (requested for 29 January-02 Feb 2018) and South Korea (03-15 July 2018).

These are countries with strong democratic pedigrees and are states that the SRP expects to take a leadership role, in defining best practices and safeguards in the field of surveillance and fundamental human rights, especially privacy. Additionally, these countries have been particularly active in this area during the past several years, both in terms of applied surveillance technologies as well as new legislation.

Each of these visits includes requests to meet intelligence services, oversight authorities, and ministers responsible for both law enforcement agencies (LEAs) and security and intelligence services (SIS). Moreover, to avoid re-inventing the wheel and with the objective of maximising synergy, the mandate is very closely following the proceedings and outcomes of other parallel initiatives such as the European Union-supported MAPPING project.

The latter, launched in 2014, i.e. over a year before the HRC created the post of SRP and 18 months before the incumbent SRP entered into his role, has initiated various, relatively well-resourced, on-going discussions amongst stakeholders including one about the creation of an international legal instrument regulating surveillance. Those discussions are set to run for at least another year, i.e. end February 2018.

The SRP intends to monitor the outcomes of these processes and then aims at taking a position about the desirability and feasibility of such an international legal instrument between March and July of 2018. It is possible that any position will be expressed in the report to be presented to the General Assembly in October 2018, again probably making related “recommendations to ensure the promotion and protection of privacy, including in connection with the challenges arising from new technologies” and this specifically in fulfilment of the mandate outlined in Art 4 (a) of A/HRC/31/64, annex.

The SRP is also in contact and is collaborating with other entities or individuals who are taking initiatives to introduce a coherent framework to internationally coordinated intelligence oversight. The past 18 months of intensive work as SRP have established or further improved many fruitful working relationships globally, with authorities keen to work on some kind of instrument articulating common standards for the conduct of particularly foreign signals intelligence functions.

Mr. President,

We need to find a positive way forward. We must not give up working for fundamental human rights, also in the digital age. Research and exchange with several national authorities, civil society and corporations from different global regions, especially within IIOF2016, have shown the emergence of several themes in the area of governmental surveillance. These are:

(1) A need for internationalization and standardization of terms and language used;

(2) A need for a confidential and open dialogue to better understand national systems, their similarities and differences;

(3) The promotion and protection of Fundamental Human Rights in relation to the methods used;

(4) Safeguards and Remedies – preferably on an international level;

(5) Accountability and transparency;

(6) Collection and discussion of good and bad practices;

(7) A more evolved discussion on how to structure oversight of governmental surveillance;

(8) Answers to the question on how to engage with the public;

(9) The need to be less secretive and more proactive in explaining the work of secret services and law enforcement authorities when carrying out surveillance;

(10) A need for more fora to make progress on the subject.

Mr. President,

In my report I have elaborated on the dimension of these themes. I will continue to work on them in the next months. I am also happy to discuss this with the distinguished representatives in the interactive dialogue. However, for now allow me to continue with five distinct recommendations I would like to make at this stage. They deal with:

(a) WHY populism and privacy are inimical to security;

(b) HOW states may engage to improve privacy protection through better oversight of intelligence;

(c) WHO deserves to enjoy the right to privacy i.e. everybody, everywhere – the universality of the right to privacy has a special meaning in this context;

(d) HOW this right to privacy could possibly be better protected through developments in domestic and international law and;

(e) WHEN some developments in international law, especially those concerning a legal instrument regulating surveillance may possibly soon be at a stage of maturity where they could benefit from a wider discussion;

Mr. President, Distinguished Representatives, Ladies and Gentlemen,

On the WHY Dimension, 2015-2017 have seen a growing tendency, especially though not exclusively in Europe, to indulge in “gesture-politics”. In other words, the past eighteen months have seen politicians who wish to be seen to be doing something about security, legislating privacy-intrusive powers into being – or legalise existing practices – without in any way demonstrating that this is either a proportionate or indeed an effective way to tackle terrorism or significantly increase security.

The new laws introduced appear to be predicated on the psychology of fear: the disproportionate though understandable fear that electorates may have in the face of the threat of terrorism. The level of the fear prevents the electorate from objectively assessing the effectiveness of the privacy-intrusive measures proposed.

There is little or no evidence to persuade the SRP of either the efficacy or the proportionality of some of the extremely privacy-intrusive measures that have been introduced by new surveillance laws in France, Germany, the UK and the USA.

Therefore, my recommendation is: Desist from playing the fear card, and improve security through proportionate and effective measures, not with unduly disproportionate privacy-intrusive laws. To cite Cardinal Vincent Nichols “I don’t believe that any form of leadership is best exercised by using fear. True political leadership does not play the fear card.”

When it comes to the HOW - Assist the SRP in identifying and developing best practices in the oversight of intelligence.

IIOF2016 has demonstrated that the discussion on oversight of intelligence in a way that reinforces privacy safeguards is a complex process which requires much time, resources, occasionally culture change, political will and the generation of trust. There are no short cuts to identifying and further developing best practices.

The ensuing recommendation is a simple but important one: all member states of the UN should engage in the painstaking discussion of oversight of intelligence initiated by the SRP in IIOF2016 and to be continued in IIOF2017. Governments should encourage and facilitate participation in IIOF2017 by oversight bodies and intelligence agencies.

WHO deserves the right to privacy = everybody, everywhere. My recommendation is therefore: States should prepare themselves to ensure that both domestically and internationally, Privacy be respected as a truly universal right – and, especially when it comes to surveillance carried out on the Internet, privacy should not be a right that depends on the passport in your pocket.

When it comes to the HOW, there is a role for international law. Whereas the previous recommendation dealt largely with opportunities to protect the universality of privacy within domestic law, this section will contemplate opportunities to complement domestic measures through international law. **What the world needs is not more state-sponsored shenanigans on the Internet but rational, civilised agreement about appropriate state behaviour in cyberspace.**

In summary, a legal instrument regulating surveillance in cyberspace would be another step, complementary to other pieces of existing cyberlaw such as the Cybercrime Convention, one which could do much to provide concrete safeguards to privacy on the Internet. Happily for the SRP’s mandate, a pre-existing initiative, the EU-supported MAPPING project is actually exploring options for a legal instrument regulating surveillance in cyberspace.

A draft text exists, is being debated by experts from civil society and some of the larger international corporations and it is expected that this text will get a public airing some time in 2017 and certainly before the spring of 2018. It would be premature for anybody including the SRP to take a position on such a text.

Hence, my recommendation: In the same way that the SRP is preparing to deliberate further on this subject, especially between March and July 2018, it would appear sensible for many executive branches of government to be given a mandate by their parliaments – and their electorates where elections are being held in 2017-2018 - to actively explore such options for proper regulation of surveillance and the introduction of privacy-friendly safeguards and remedies in cyberspace.

Mr. President, Distinguished Representatives, Ladies and Gentlemen,

However difficult for it to be brought about, it is not impossible. Indeed, **it is both plausible and reasonable that a significant number of states would eventually coalesce around a legal instrument which would regulate surveillance and protect privacy in cyberspace. This would be good for citizens, good for governments, good for privacy and good for business**. The number of states coalescing around newly-articulated principles and newly created mechanisms could gradually grow to provide critical mass.

This has been the lesson we have learned from the development of international law over the past couple of centuries. To cite but one example, it took decades to agree the United Nations Convention on the Law of the Sea but eventually that effort bore fruit. That legal instrument established the principle of common heritage of mankind. There has been some discussion recently as to whether the Internet is a common good or whether it should also be treated as common heritage of mankind. Whatever the distinction, if any, it is time to start reclaiming cyberspace from the menace of over-surveillance. There is no reason as to why we should ignore the lessons learned from UNCLOS when it comes to privacy, surveillance and cyberspace. Everything I have seen in my role as SRP to date has persuaded me that a legal instrument regulating surveillance in cyberspace may be the wisest path to tread when its time will come. That time may be sooner than some may wish us to think.

**Thank you and I look forward to the dialogue!**