Check against delivery

Statement by Mr. Ben Emmerson  
SPECIAL RAPPORTEUR ON THE PROMOTION AND  
PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL  
FREEDOMS WHILE COUNTERING TERRORISM  

68th session of the General Assembly  
Third Committee  
Item 69 (b and c)  

25 October 2013  
New York
Mr Chair,
Excellencies,
Distinguished delegates,
Ladies and gentlemen,

At the Human Rights Council in June 2012, a group of 16 States, including two Permanent Members of the Security Council, made a joint statement urging this mandate to focus on the use of drones in counter-terrorism operations by reference to international law principles governing the use of force, as well of course as international humanitarian law and international human rights law.

In response to this request, I set up a team of researchers and consultants to look into the legal issues, and to examine the allegation that the use of drones in various theatres of conflict has resulted in disproportionate civilian casualties. That process began in January of this year and is continuing.

I want to start by identifying three key challenges that we have faced. The first is the need to identify what we mean by civilian casualties. Drone technology was developed specifically for use in asymmetrical conflicts with non-State armed groups. As we know, these groups often intermingle with the civilian population, whose members may provide varying degrees of voluntary or involuntary support. The question which then arises is whether civilians who provide this kind of support are to be regarded as taking part in hostilities, or as enjoying protected civilian status under international humanitarian law. Differences of view about the forms of activity that amount to direct participation in hostilities under international humanitarian law will almost inevitably result in different assessments of civilian casualty levels. It is therefore critical to achieve clarity on this question, and to achieve consensus on the applicability of the guidance issued by the International Committee of the Red Cross.

The second key challenge is lack of transparency. This is the single greatest obstacle to an evaluation of the civilian impact of drone strikes, which makes it extremely difficult to assess claims of precision targeting objectively.

The third challenge is the uncertainty that surrounds some of the key principles of international law and their relevance to modern forms of asymmetrical conflict. Despite the proliferation of this technology, and its impact on international counter-terrorism and counter-
insurgency operations, there is a lack of consensus on the core legal principles that are engaged by this technology. There is a pressing need for the international community now to come together and try to seek agreement on the correct interpretation of the law.

This morning's interactive dialogue will mark the first time that States have publicly discussed the use of drones – or remotely piloted aircraft - for the purposes of lethal extra-territorial counter-terrorism operations.

Today's report sets out some interim conclusions, and identifies the key areas of legal controversy. I hope I have succeeded in describing the facts accurately, and in setting out both sides of the legal arguments fairly. That was certainly my intention. This report, together with the report of my colleague the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, are the start of an important conversation, and not the end of one.

My next report to the Human Rights Council will examine the facts surrounding a sample of particular drone strikes. In the meantime all Member States will be provided with an opportunity to set their own understanding of the key legal issues in dispute. My intention is to report to the Human Rights Council on the responses I receive.

The aim is to promote an informed international debate between States. But there is only so far that the Special Procedures mandates can take this process. We can raise the issues for discussion and we can pose the difficult questions. The General Assembly has two reports before it today which do just that. Given time and co-operation from States, we can also provide a reasonable amount of factual context against which to debate the issues. In the end though it will be for Member States to promote and support efforts to agree on a framework which is consistent with international law including, in particular, international humanitarian and human rights law.

I want, if I may, just to emphasise * points about the interim report I am presenting today.

First, whilst the report focusses on the use of armed drones by the United States, the United Kingdom and Israel, the issues raised are not specific to any particular State. The rate of proliferation of this technology is such that in the coming years there are likely to be more and more States using armed drones. Whilst many of the legal issues raised in these two
reports are not specific to drone technology, the particular suitability of drones for counter-insurgency and counter-terrorism operations has brought into sharp focus the evolving debate concerning the geographical boundaries of the battlefield. In view of the increasingly asymmetrical nature of armed conflict these issues now call for urgent consideration at an international level.

Secondly, in the discussions that I have attended there doesn't seem to be any serious appetite for either a specific international agreement, or any express amendment to the Geneva Conventions. Indeed, as I have pointed out in my report, if used in strict compliance with the principles of international humanitarian law, the use of drones is capable of reducing the risk of civilian casualties in armed conflict by significantly improving the situational awareness of military commanders. So rather than new law, as my colleague Christof Heyns has pointed out in his report, the imperative is to achieve clarity about the existing legal framework and then to ensure that it is implemented.

Thirdly, my report does not use the expression “targeted killing”. The expression is potentially misleading because the key issue is not whether a killing is “targeted”, but whether it takes place within or outside a situation recognised as armed conflict under international humanitarian law. In a situation qualifying as an armed conflict, the adoption of a pre-identified list of individual military targets is not unlawful. It is a paradigm application of the principle of distinction. Conversely, outside situations of armed conflict, international human rights law prohibits almost any counter-terrorism operation that has the infliction of deadly force as its sole or main purpose. So the key question is when does a non-international armed conflict come into existence, and what, if any, are the geographical limitations to the application of the law of armed conflict in this context.

The fourth point is that if used in strict compliance with the principles of international humanitarian law, drones are capable of reducing the risk of civilian casualties in armed conflict by significantly improving the situational awareness of military commanders.

And the fifth point I want to highlight is that the recommendation that in any case in which civilians have been, or appear to have been, killed the State responsible is under an obligation to conduct a prompt, independent and impartial fact-finding inquiry and to provide a detailed public explanation. This obligation is triggered whenever there is a plausible indication from any source that civilian casualties may have been sustained, including where
the facts are unclear or the information is partial or circumstantial. The obligation arises whether the attack occurred within or outside an area of active hostilities.

I would like to record my thanks to all those who are contributing to this review, as well as to the international law academic community that has been wrestling with these issues for some time. I should also record my thanks to the States with whom I have been liaising. I have so far received exemplary levels of co-operation from all States I have approached, other than the State of Israel which has suspended its relations with the Human Rights Council. I would urge all Member States, including Israel, to engage in the next stage of the process, which aims to shed further light on some of the contentious issues.

Thank you.