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

25 October 2013
New York
Honourable Chair,
Distinguished Delegates,
Ladies and Gentlemen,

It is my pleasure to address today the Third Committee on the occasion of the 68th session of the General Assembly. This year, I had the honour to end my first term of activity as Special Rapporteur on extrajudicial, summary or arbitrary executions, as well as to embark on my second term in this capacity. The context this year offered me a valuable opportunity to reflect upon my further activities in this capacity and the major issues that need to be addressed under my mandate in the future years. In this regard, I would like to reiterate my full commitment to continuing work towards upholding the right to life across the world, as reflected in the General Assembly Resolution 67/168. I am grateful to your Excellencies for the adoption of this resolution last year.

This year, I considered it to be important to address the issue of warfare technology and implications for the right to life. As a consequence, my report to the General Assembly this year is dedicated to the use of armed drones and legal aspects of the protection of the right to life. Earlier this year, I presented my report to the Human Rights Council on lethal autonomous robots and the protection of life.

To briefly refer to my other main activities carried out since my last presentation before this Committee, I shall specify that I also presented to the Human Rights Council reports of my country visits in 2012 to India and Turkey, as well as follow-up reports on the visits undertaken by my predecessor to Albania and Ecuador. I would like to reiterate my gratitude to the Governments of all these countries for their cooperation with my mandate. Finally, another addendum to the Human Rights Council report included my observations on the communications sent under my mandate during the period under review.

At the end of April until early May this year, I conducted an official visit to Mexico, whose Government I also thank for inviting me and its continuing cooperation. The visit report with my findings and recommendations will be presented to the Human Rights Council in 2014.

In parallel, I continued to send visit requests to various States. I encourage those Governments to accept them. In this regard, I thank the Governments of Mali and Papua New Guinea for accepting my respective visit requests, and reiterate my commitment to continuing dialogue with them in view of the conduct of the visits.

During the last year, I have participated in expert consultations and seminars, including two expert meetings which were crucial in informing my reports to the Human Rights Council and the General Assembly. I have also issued a number of press releases on various subjects falling under my mandate, and delivered a statement during the urgent debate on the deteriorating situation of human rights in the Syrian Arab Republic, held during the twenty-third session of the Human Rights Council.

A. Annual Report to the General Assembly

Ladies and Gentlemen,

As mentioned, this year’s report focuses on the use of lethal force through armed drones from the perspective of the right to life. It is presented in parallel to the report submitted by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, who examines the issue of armed drones from the perspective of his own mandate. While the two reports are separate and independent, I take the opportunity to thank Ben Emmerson for the regular exchanges we had during the preparation of these reports.
Drones present States with unprecedented opportunities to link the acquisition of on the spot intelligence with the immediate and targeted deployment of lethal force at a long distance – at little or no risk to their own forces. This aspect of the new technology has been covered widely in the literature and debates of the last decade. While the reasons to be cautious about drones – as is the case with many weapons systems – are well documented, it should also be recognised that it is widely accepted that drones are not illegal weapons systems.

Drones are here to stay – in fact we can expect that more States will acquire this technology. The core questions are now about its use – the law, policy and practices around the use of drones, especially in extraterritorial counter-terrorism operations by all States that employ or will in future employ these weapons systems. The current moment provides an opportunity to take stock of where we are and to ask questions about the future. We need to ask the question how the world as a whole should deal with drones, and greater common adherence to this agreed upon framework should be obtained, especially since an increasing number of States may get access to this technology. Global security requires that drones should follow the law; the law should not follow drones.

I make the point that a holistic approach to all the regimes of international law that are applicable to the use of force is needed to ensure the protection of the right to life when drones or similar technologies are used and the nature of future anti-terrorism campaigns in general is considered. This right can only be adequately secured if all the distinct requirements of international human rights law (IHRL), international humanitarian law (IHL) and the law on the inter-State use of force, as applicable, are met.

New law is not needed – the existing international framework should be applied, and attempts to lower the standards for the use of force in these various regimes or in their interplay should be resisted. Special insistence should be placed on the need for greater transparency and accountability. The default legal regime is human rights, which is premised on the protection of life principle: life may be taken only when there is no other way (it is thus necessary) to protect another life (it is also proportionate). To be necessary, the danger to life must be imminent and any option other than the immediate exercise of deadly force must be inadequate to protect life (as is the case in some hostage situations). The possibility of capture should be sought out. This rule against the arbitrary deprivation of life is to be found in customary international law and the general principles of law as well as in human rights treaties that recognise the right to life. The onus is on States that engage in intentional killing to prove that it is justified and in compliance with international norms.

One of the questions raised in the context of drone attacks – which largely occur against non-State actors in other countries – is whether States are also bound by this rule outside their own territory. Since the right to life is recognised as part of international custom and general principles of law, the answer must be yes. This is also reinforced by the widely-held view that human rights treaties can in principle also apply extraterritorially. States should not be allowed to take life outside their borders on a different basis from that which applies within their own borders.

If the conflict is between a State and an armed group that is sufficiently organised to be seen as a ‘party’ to a conflict (‘terrorism’ as such cannot be a party to a conflict), and the violence has reached a certain threshold of intensity, it may be regarded as a non-international armed conflict, even if it occurs outside the borders of the State. Not only IHRL but also IHL applies in this context. In such a case, not all members of the armed group may be targeted – only those who participate directly in hostilities, and possibly those with a continuing combat function. Claims that legitimate targets include all members of enemy forces, wherever they may find themselves, including any and all members of ‘associated forces’ should be refuted.

An integral part of the protection of people – and the right to life – is the prohibition on the use of inter-State force without the consent of the State concerned, under article 2 (4) of the United Nations
(UN) Charter. The immediate objective of this rule is to secure State sovereignty, but it also serves to protect life by containing the geographical spread of violence.

While States may use force in self-defence against an armed attack, the limits of such self-defence needs to be recognised. The force used has to be necessary and proportionate. Anticipatory self-defence may be justified only against a truly imminent threat. Any purported exercise of this right to self-defence has to be reported to the Security Council. In the report, I emphasize that when the material facts of an initial invocation of the right to self-defence has changed – for example when new parties are added or force is used on the territory of an additional State – a fresh report has to be submitted to the Security Council.

The issue of imminence – required as part of individual self-defence under IHRL as well as part of State self-defence under the inter-State use of force – has been the subject of considerable controversy. While the established norm, in both legal regimes, is one of temporal immediacy, there are claims that immediacy should be interpreted in a flexible way, to include threats that might arise in the future. Under both frameworks – and whether drones or other weapons are used – such an approach will significantly increase the authority of States to use lethal force.

I am in particular concerned about the emergence of an approach in terms of which self-defence, especially interpreted in this way, would be seen as a stand-alone or independent defence of the deadly use of drones or targeted killing, in general. In terms of such an approach, the risk is that neither IHRL nor IHL norms are applied as a secondary regime, to govern the use of force against individuals. The effect of an approach that self-defence is an independent and sole justification for targeted killing would risk expanding, for all States, the notion of who can be targeted and killed, as well as the notion of where such killings may take place.

Official assurances have recently been given by some of the States using drones that, as a matter of policy, they do not exercise the full authority to use force that they claim to have under law, at least away from established zones of conflict. The approach seems to be that, even in the context where IHL applies, in reality individuals are targeted only where they pose a “continuing imminent” threat. While such a policy approach is, on the one hand, to be welcomed to the extent that it reflects the practice, it nevertheless creates the problem that it argues in favour of a permissive legal framework which risks to potentially serve as an example for the use of drones by other States.

Of particular importance is that the States that use drones need to be more transparent about the law, policy, and facts concerning the use of drones. They also need to provide mechanisms for investigation, accountability, and redress for past potentially unlawful strikes. Moreover, those States on whose territories drones are used must also take into account that they cannot consent to violations of the right to life – or any other human rights violations.

My broader concern about drones is what a former Secretary of State of the USA has reportedly called the “drones only” approach. In other words, there is a danger that an increased reliance on drones will lead to a decreased emphasis on peaceful ways of resolving disputes: diplomatic; creating long-term alliances; and, in individual cases, arrest and trial.

It is widely recognised, even by the proponents of drones, that all wars must come to an end. However, in practice an over-reliance on drones by the various States that have acquired or will still acquire them, may lead to long, drawn out and low intensity conflicts that know few geographical boundaries. This would run counter to the notion that war must be of limited duration and scope, and that there should be a time for healing and recovery following conflict. To conclude, international norms protecting the right to life would be significantly undermined if States around the world claimed and exercised the authority to ‘right wrongs’ anywhere in the globe as they perceive them to occur – with drones or any other weapons.
B. Future Areas of Research

Ladies and Gentlemen,

I would like finally to share with you my plans to devote the next years of my activities to a number of subjects that I identified as of crucial relevance for the global efforts to uphold the right to life. Within my mandate, I intend to focus my future research and reporting to such issues as national legislation on the use of force, particularly of lethal force; and the role of forensic examinations as well as of commissions of enquiry in ensuring protection of the right to life.

I thank you for your attention and trust we will continue with commitment and in close cooperation with your Excellencies, to further our efforts for better protection of the right to life globally.