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**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Summary of the Human Rights Council interactive panel discussion of experts on the use of remotely piloted aircraft or armed drones in compliance with international law**

#### **Report of the Office of the United Nations High Commissioner for Human Rights**

##### *Summary*

The present report is submitted pursuant to Human Rights Council resolution 25/22. It provides a summary of the interactive panel discussion of experts on the use of remotely piloted aircraft or armed drones, held on 22 September 2014, during the twenty-seventh session of the Human Rights Council.



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## I. Introduction

1. Pursuant to its resolution 25/22, the Human Rights Council held an interactive panel discussion of experts on “ensuring use of remotely piloted aircraft or armed drones in counterterrorism and military operations in accordance with international law, including international human rights and humanitarian law” on 22 September 2014. The panel discussion examined issues related to the use of remotely piloted aircraft or armed drones in counterterrorism and military operations in accordance with international law, including international human rights and humanitarian law. It also addressed questions raised in the report of the Special Rapporteur on the protection of human rights and fundamental freedoms while countering terrorism (A/HRC/25/59).

2. The panel discussion was chaired by the President of the Human Rights Council and moderated by Dapo Akande, Co-Director of the Oxford Institute for Ethics, Law and Armed Conflict, Oxford University. The United Nations Deputy High Commissioner for Human Rights gave an opening address. The panellists were Shahzad Akbar, Legal Director of the Foundation for Fundamental Rights; Alex Conte, Director of International Law and Protection Programmes at the International Commission of Jurists; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on extrajudicial, summary, or arbitrary executions and Pardiss Kebriaei, Senior Attorney at the Center for Constitutional Rights.

3. In resolution 25/22, the Council requested the Office of the High Commissioner for Human Rights to present a summary of the deliberations of the panel discussion at its twenty-eighth session and the present report is submitted pursuant to that request.

## II. Opening statement by the United Nations Deputy High Commissioner for Human Rights

4. The Deputy High Commissioner noted that the discussion on the use of remotely piloted aircraft or armed drones in compliance with international law was both very timely and essential, because the development of such technologies was running ahead of our understanding of their human rights implications. The recent emergence of a range of new weapons technologies has raised a number of legal questions, including under international human rights law. She stated that, since its emergence 15 years ago, drone technology had developed remarkably and the use of drones had grown exponentially in the context of military operations and counter-terrorism measures. An increasing number of States were seeking to acquire armed drone technologies and there was concern that non-State actors might possess such technology as well.

5. The Deputy High Commissioner made clear that States had the duty under international law to take measures to protect individuals from terrorist acts, but those measures must be consistent with international human rights law.

6. The Deputy High Commissioner made three main points. The first related to the legal framework applicable to the use of armed drones. She emphasized that international human rights law applied at all times, including in situations of armed conflict. She noted that the human right to life placed stringent conditions on the use of lethal force. In any situation other than active hostilities in an armed conflict, the prohibition of the arbitrary deprivation of life implied that the intentional use of lethal force was lawful only when an individual posed an imminent threat to the life of another and where the use of lethal force was strictly unavoidable to protect life. Additionally, such use of lethal force would be lawful only where other, less lethal, measures – including restraint, capture, and the

graduated use of force – could be employed. Those international human rights standards governed the use of armed drones in law enforcement situations.

7. The Deputy High Commissioner's second point dealt with the human rights impact of the use of drone strikes. Research had highlighted the grave and wide-ranging impact strikes were having on individuals – including children, the elderly and disabled – and their communities. In some situations, drone strikes had compromised the daily life of the society affected and the enjoyment by individuals of their human rights including their right to peaceful assembly, freedom of association, freedom of religion, education and health, among others. She stressed that irrespective of claims related to their precision, the use of armed drones created an atmosphere of fear in affected communities. In addition to the documented loss of life through individual casualties, including bystanders, in some places the fear of drone strikes had had a negative impact, resulting in education being interrupted, as families kept children home from school; in interrupted cultural and religious practices, as community members avoided gathering in groups for fear of being targeted; or in reluctance to assist victims, for fear of being caught in secondary strikes.

8. Third, the Deputy High Commissioner referred to the concepts of transparency and accountability. She noted that both were key to ensuring the enjoyment by victims of human rights violations of their associated right to a meaningful remedy. Lack of transparency concerning the circumstances in which armed drones were used, as well as the involvement of intelligence agencies in their use, created obstacles to determining the applicable legal framework and ensuring compliance. It also hampered the delivery of justice and redress for victims, and was a barrier to preventing violations from occurring in the first place. The Deputy High Commissioner recalled that the previous High Commissioner had expressed particular concern at the lack of transparency surrounding drone strikes, for those reasons. It was important that State policies on the use of armed drones be spelled out more clearly, including the legal basis that would legitimate specific attacks. The Deputy High Commissioner also recalled that the Secretary-General had urged States to take all necessary measures to ensure that attacks involving drones complied with applicable international law. She emphasized that States had an obligation to carry out prompt, independent and impartial investigations whenever there were credible indications of a serious violation of international human rights law and, where applicable, international humanitarian law, which had allegedly occurred because of an armed drone strike. As an inherent part of the right to life, international human rights law required accountability for any violation of that right. Perpetrators of any such violation must be held to account.

9. Finally, the Deputy High Commissioner drew attention to the important work that had been done on those issues by the special procedures mandate holders. She recalled that, 12 years earlier, the then Special Rapporteur on extrajudicial, summary or arbitrary executions had raised concerns about targeted killings through the use of drone strikes in Yemen. In 2010, her successor had conducted a critical study on targeted killings, including through the use of armed drones. The Deputy High Commissioner noted that the panel discussion would benefit from the analysis of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on extrajudicial, summary or arbitrary executions, as they had continued to address those issues. Finally, the Deputy High Commissioner highlighted that, as more States and non-State actors obtained the technology that enables the deployment of armed drones, compliance with international human rights law and accountability for their use would become increasingly urgent.

### III. Contributions of the panellists

10. In response to questions from the moderator, the panellists' initial remarks focused on issues linked to the international legal framework applicable to the use of drones. They highlighted the aspects of international human rights law relating to the use of armed drones, including the human rights standards applicable to the use of lethal force.

11. The Special Rapporteur on extrajudicial, summary or arbitrary executions noted that, while armed drones are not illegal per se, because of the ease with which they could unlawfully be used for targeted killings, they created specific challenges and were therefore necessarily subject to special scrutiny. He noted that armed drones were used in the counter-terrorism and military contexts, but also increasingly in ordinary policing and law enforcement contexts, when they might be weaponized with, inter alia, tear gas and tasers. He stated that the key issue was the legality of the use of armed drones and emphasized that the law should not follow drones; rather, the use of drones must follow the law.

12. Regarding the protection of the right to life under international human rights law, the Special Rapporteur noted that international human rights law applied to all positive actions of the State. As a rule of customary international law and a general principle of international law, the obligation to protect the right to life applied at all times, including when a State was acting on the territory of another State, irrespective of the treaties they were bound by. He noted that the right to life included a prohibition of arbitrary deprivation of the right to life. That implied that an agent of the State might take or endanger the life of an individual only if it was strictly necessary and proportionate to protect against an imminent threat to life. There must be no other means than the use of lethal force, such as capture or incapacitation, to protect the life of another person. In its second component, however, the right to life also required that those responsible for violations be held to account. He reiterated a point made by the Deputy High Commissioner that where there were allegations that the right to life had been violated, States had a duty to carry out prompt, independent and impartial investigations and, where applicable, punish those responsible. A failure to do so would in itself constitute a violation of the right to life. In cases where it had been established that an armed conflict existed, international human rights law continued to apply, but the protection afforded to the right to life was interpreted in accordance with international humanitarian law. Accountability for the arbitrary deprivation of the right to life was also a key element of international humanitarian law, including a duty to investigate and, where appropriate, punish those responsible.

13. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism recalled that in situations of armed conflict, international human rights law and international humanitarian law both applied and overlapped – it was not a question of choosing between the two. He noted that the notion of targeted killings had a very different connotation, depending upon the prism of law through which it was approached. Under international humanitarian law, “targeting” was usually considered positively, whereas under international human rights law, the targeting of individuals was rarely lawful. The critical question when examining targeted killings in this context was whether the use of armed drones had taken place within a situation of armed conflict.

14. The Special Rapporteur noted that the key criteria for determining whether a non-international armed conflict existed between a State and a non-State armed group, or between two non-State armed groups, were the intensity and length of the conflict and the degree of organization of the parties. He explained that those criteria were based on an assumption of territorial limitation. By way of example, intensity was a relative criterion traditionally measured by analysing the frequency and severity of an armed attack in a defined geographic area.

15. The Director of International Law and Protection Programmes at the International Commission of Jurists noted that the application of international law to the use of armed drones was too often based on an incorrect point of departure. He noted that, as was concluded by the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights of the International Commission of Jurists, States had inappropriately used the war paradigm to contextualize counter-terrorism operations, and that this also applied to the use of armed drones.<sup>1</sup> He noted first, that armed drones had not always been used in situations of armed conflict under international humanitarian law. Many instances of targeted killings appeared to have occurred outside the context of hostilities between two or more parties to an identifiable conflict within the meaning of international humanitarian law (see, for example, A/68/389 and A/HRC/25/59). In a number of instances in which drones had been deployed, including in the context of countering terrorism, the level of intensity of armed operations and/or of organization of the armed groups had not reached the level which would engage international humanitarian law. He also emphasized that a careful assessment must be made as to whether each situation did in fact rise to the level of armed conflict. When armed drones were not used in a situation of armed conflict, domestic law and international human rights law were the primary laws that applied to the lethal use of drones. In a situation that did rise to the level of an armed conflict, international humanitarian law was relevant in determining whether a killing was unlawful or arbitrary, but international human rights law remained applicable concerning investigations, criminal accountability and the need for effective remedies and reparations.

16. The Legal Director of the Foundation for Fundamental Rights elaborated on the principles of proportionality and necessity in the use of lethal force. He recalled that where a State claimed that it was necessary to use deadly force because it had no other means of capturing a suspected terrorist, it must prove that the individual in question posed an imminent threat to human life. He noted that armed drones were often not used to counter an imminent threat or where there were no other alternatives and that he had documented dozens of drone strikes in North Waziristan where there was no evidence that the individual killed posed an imminent threat to another individual, or to the State. In order to illustrate the point, he referred to the case of Tariq Aziz, a teenager involved in documenting the effect of drone strikes in North Waziristan. Three days before he died, he had attended an international conference on drones in Islamabad. Upon his return home, he was killed in a drone strike together with his younger cousin, outside his aunt's house. Mr Akbar recalled that in all cases, the onus was on the State using armed drones to prove that the use of force was absolutely necessary and proportional.

17. Mr. Akbar also referred to the practice of engaging in "signature strikes", a term used to distinguish strikes conducted against individuals who match a pre-identified "signature" of behaviour, which is said to be linked to militant behaviour, which takes no account of the principles of necessity and proportionality in the use of force. To illustrate this, he referred to three drone strikes between 2006 and 2009, on a *jirga* (grand council) meeting in which 40 attendees were killed; on a madrasa, in which 80 children, the youngest aged seven, were killed; and on a funeral at which 80 individuals were killed. He stressed that in none of those cases was there evidence, or even a claim, that "high value targets" or "named, known militants" were killed. He concluded that the current use of drones in Pakistan threatened and undermined the right to life and the rule of law more broadly.

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<sup>1</sup> Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights, *Assessing Damage, Urging Action* (International Commission of Jurists, Geneva, 2009).

18. The panel discussion addressed questions of accountability for, and transparency in, the use of armed drones, with a focus on the rights of victims to reparations and the right to the truth.

19. Focussing on the right of access to justice for people affected by the use of drones, the Senior Attorney at the Center for Constitutional Rights noted that it was important to remember that when a person was killed – whether because of an erroneous interpretation of the law or faulty intelligence – the harm was irreparable. The most that could be sought were answers to questions about whether the power of the State was lawfully exercised and the right to life fully respected and, where wrongdoing was found, acknowledgement made, redress offered and corrective measures taken to prevent the same harm from recurring.

20. Ms. Kebriyai noted that the main obstacle faced by claimants trying to access courts was the position taken by States that judicial inquiry into decisions regarding the use of drones was inappropriate. Drawing on her experience of courts in the United States of America, she noted that responses to requests for judicial review had included assertions of exclusive executive decision-making authority in matters of national security, immunity for officials, and the need for secrecy with regard to relevant government information. She noted that similar arguments had been made in the past decade with regard to national security policies in the context of detention, where gross human rights violations were alleged and those had presented obstacles to accountability. Ms. Kebriyai stressed that when courts deferred to those kinds of arguments, they left victims unable even to be heard in court and without hope of the possibility of any justice, with serious allegations of human rights violations left unaddressed.

21. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism noted that the lack of transparency by States regarding their use of drones was the single greatest obstacle to an evaluation of the impact of armed drones on civilians, as it made it extremely difficult to assess the legality of their use and ensure accountability. Regarding the duty of States to investigate, he noted that under international human rights law, whenever there was evidence of an alleged violation of the right to life, there was an obligation on States to conduct a prompt, independent and impartial investigation, with transparent results. Turning to the obligations of States under international humanitarian law, he highlighted the work done by the Public Commission to Examine the Maritime Incident of 31 May 2010, the Turkel Commission,<sup>2</sup> which had examined the extent to which the obligation to investigate applies as a matter of international humanitarian law in situations where an armed conflict has arisen. The view of the Commission, which he shared, was that, in any case where there were unintended or unanticipated civilian casualties, there was an obligation to conduct an independent and impartial investigation. That did not preclude an investigation in the context of military justice systems, as long as those conducting the investigation were genuinely independent of those under investigation and not subject to the same chain of command. The Commission found that there was, first, an obligation to conduct a fact-finding inquiry, and if circumstances gave rise to a reasonable suspicion of of international humanitarian law having been violated, there should be a full criminal investigation. The results of both processes should be made public. He noted that as Special Rapporteur, he had applied that test to 37 drone strikes, where it was alleged that civilian casualties had occurred and had found that 30 cases required an independent and impartial investigation and transparent results.

22. The Special Rapporteur on extrajudicial, summary or arbitrary executions focused on the importance of accountability for violations of the prohibition of the arbitrary

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<sup>2</sup> Available from <http://www.turkel-committee.gov.il/files/wordocs/8808report-eng.pdf>.

deprivation of life under international human rights law. He noted that irrespective of the context, there must be accountability if there was arbitrary deprivation of the right to life. That obligation was reflected in customary, international and regional human rights law, and had been elaborated on in non-binding law instruments. Regardless of the language used in the instrument considered, where a case or allegation was made, the State must investigate the situation and the investigation must be prompt, effective, independent and thorough.<sup>3</sup> He emphasized the importance of transparency as a precondition to accountability, noting that it was a composite concept that involved public scrutiny and public trust that ensuring accountability was possible. Transparency applied both to the decision-making process to use force, which meant that there must be a legal framework within which force was used, and also to the investigative process.

23. The Director of International Law and Protection Programmes at the International Commission of Jurists looked at the two key requirements to be considered when examining the legality of targeted killings under international humanitarian law. First, the principle of distinction, which must be observed to ensure that the target was either a combatant (within an international armed conflict), or a civilian participating directly in hostilities (within either an international or non-international armed conflict). He noted the position taken by the International Commission of Jurists according to which the lethal use of armed drones by the United States did not currently take place in the context of an international armed conflict. The United States drone programme might therefore in principle only target a civilian who was directly participating in hostilities in the context of a non-international armed conflict. Second, the principle of proportionality of measures in armed conflict, which required a graduated response that was proportional in its effects. Mr. Conte referred to rule 14 of the Study on customary international humanitarian law of the International Committee of the Red Cross (ICRC), which made it clear that launching an attack, which might be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, was prohibited.<sup>4</sup> He further emphasized that violation of that rule might amount to a war crime under the Rome Statute of the International Criminal Court.<sup>5</sup>

24. Mr. Conte stated that the lack of transparency associated with the use of armed drones prevented external and objective verification of whether drone targets were legitimate and the distinction and proportionality requirements were satisfied in each case, giving States “a virtual and impermissible licence to kill” (see A/HRC/14/24/Add.6, para. 88). That lack of transparency also obstructed the right to a remedy and reparation, as well as the requirement to hold persons criminally accountable for crimes under international law. It potentially involved a violation of common article 51 of the Geneva Conventions, which prohibited any contracting party from absolving itself of any grave breach of the Conventions.

25. In examining the requirements for transparency, the Senior Attorney at the Center for Constitutional Rights highlighted the fact that there must be transparency about the law itself. There should be no secret laws relating to the right to life: respect for, and protection

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<sup>3</sup> The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials also require that there be transparency in the investigation process, as well as participation by those affected: see principles 22–24.

<sup>4</sup> See Jean-Marie Henckaerts, “Study on customary international humanitarian law: a contribution to the understanding and respect for the rule of law in armed conflict”, *International Review of the Red Cross*, vol. 87, No. 857 (March 2005) and the database on customary international humanitarian law, available from [www.icrc.org/customary-ihl/eng/docs/home](http://www.icrc.org/customary-ihl/eng/docs/home).

<sup>5</sup> See article 8 (2) (b) (iv) of the Statute.

of, the right to life required that individuals know the circumstances in which they might be subject to lethal force by a Government. She also noted that meaningful responses needed to be provided when plausible allegations of violations of the right to life were presented. Those should include a careful explanation regarding the circumstances in which armed drones had been used.<sup>6</sup> She noted that this was a challenge. She referred to a drone strike that took place in Yemen in 2013, in which at least 27 people attending a wedding procession were killed or injured. While there was acknowledgement of the strike and an investigation, the official response was that there had been no civilian casualties. She suggested that meaningful accountability required more than a statement that there were no violations of the right to life or that the operations complied with the principle of legality.

26. Ms. Kebriyai noted that States must be transparent about the legal criteria that were applied including when, where and against whom lethal force could be used, as well as the number of casualties, where the armed drone had been used, who the individuals killed were, and how they were classified. She noted that there was consensus across the political divide in the States concerned that Governments could and should be more transparent. While States had taken some steps in that direction, which was proof in itself that it could be done, further urgent steps were needed.

27. Turning to the rights of victims of drone strikes to an effective remedy, the Legal Director of the Foundation for Fundamental Rights said that since June 2014, 77 more people had been killed in drone strikes in Pakistan. Like thousands of other victims, their identity was not known. There were also tens of thousands of other individuals who suffered psychologically from living under the constant threat of being targeted. As the States using armed drones refused to disclose the numbers of casualties or the dates of drone strikes, or investigate when there were credible reports that civilians had been killed, the Foundation for Fundamental Rights had been trying to identify those who were “on the other side of the missile” as a first step towards accountability.

28. Mr. Akbar noted that judicial review in the domestic courts had so far been the most successful accountability strategy for victims of armed drones. Referring to his own work, he highlighted two successful cases before the courts in Pakistan. On 11 May 2013, the Peshawar High Court<sup>7</sup> declared drone strikes illegal, ordered the Government of Pakistan to stop them and gave comprehensive orders to the Government to seek international redress on behalf of the victims.<sup>8</sup> A court-ordered investigation also showed that over the course of five years, drone strikes had killed 1,449 civilians, in contrast to a small number of militants. A recent ruling by the High Court in Islamabad requested that the officials responsible for the use of drones inside Pakistan be held criminally responsible for the violation of the right to life and ordered the initiation of criminal proceedings against them. However, he noted that despite those judgments, drone strikes continued and not a single victim in over 350 drone strikes had been compensated, nor had any information been released as to why those individuals had been targeted.

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<sup>6</sup> This was recalled by the European Parliament in its resolution on the use of armed drones (2014/2567(RSP)).

<sup>7</sup> See *Foundation for Fundamental Rights v. Federation of Pakistan and four others* (PLD 2013 Peshawar 94).

<sup>8</sup> This included orders to take the matter to the Security Council and, in the event that it did not succeed there, to request an urgent meeting of the General Assembly in order to resolve the matter, as well as to request formally that the Secretary-General establish a war crimes tribunal to investigate the matter.

## IV. Summary of the discussion

29. During the plenary discussion, delegations from Algeria, Bolivia (Plurinational State of), Brazil, Chile, China, Cuba, Ecuador, France, Germany, Indonesia, Iran (Islamic Republic of), Ireland, Malaysia, the Netherlands, Nigeria, Pakistan, the Russian Federation, South Africa, Sri Lanka, the Sudan, Switzerland, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Venezuela (Bolivarian Republic of) took the floor.

30. Delegates of the following non-governmental organizations (NGOs) also took the floor: Amnesty International, the Organization for Defending Victims of Violence, the American Civil Liberties Union, the Open Society Institute (on behalf of Open Society Foundations), and the Women's International League for Peace and Freedom. A representative of ICRC also took the floor.

### A. General remarks

31. Most delegations welcomed the discussion at the Human Rights Council of the human rights implications of countering terrorism, including the use of armed drones. Some delegations suggested that the issue of armed drones should also be discussed in other forums, to encompass the wide-ranging aspects of the topic. Some States noted that the conduct of military operations in conformity with international humanitarian law was not of primary relevance to the mandate of the Human Rights Council, with one delegation referring to the initiative of Switzerland and ICRC on enhancing compliance with international humanitarian law, as a forum more conducive to engagement on issues involving the law of armed conflict. Other delegations noted that discussions on weapons on a thematic basis would be more appropriate in the context of arms control and disarmament forums, with the informal meeting of experts on the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects noted by way of example.

32. In their responses to the questions and remarks of delegations the panellists all emphasized the relevance of the Human Rights Council to any discussion on the use of armed drones. The Special Rapporteur on extrajudicial, summary or arbitrary executions recalled that the essence of the discussion related to targeted killings, which was an issue of primary relevance to the "supreme" human right to life. As the Human Rights Council was the prime international body for the examination of human rights issues, the discussion fell squarely within its jurisdiction. He noted that the international law principles relating to the right to life and the use of force were well established and tested over time and that the Human Rights Council should not relinquish its responsibility as their custodian. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism noted that the discussion was not about arms control, but about the human rights implications of the use of armed drones. That required consideration of the applicable legal regime, to determine whether international human rights law operated alone or together with international humanitarian law, noting that whatever the context, international human rights law applied to the use of armed drones and governed the situation. It was also about the duty to investigate violations of the right to life and the duty to be transparent about the results of the investigations, which was "classic" human rights law territory.

33. Delegations recalled the obligation to respect the general principles of international law in the use of drones. Respect for State sovereignty, territorial integrity, including sovereign air space, and the political independence of all States were referred to. Speakers

emphasized that non-armed drones were widely and effectively used for peaceful purposes, for example in disaster relief, while others noted their effective use in countering terrorism, in particular in the areas of intelligence and reconnaissance. Some suggested that the surveillance capabilities of drones in an armed conflict could help to improve overall situational awareness before an attack, thereby reducing the risk of casualties resulting from an attack.

34. Some delegations recalled that armed drones were not illegal and that their use, like any other weapon, must comply with long-standing rules of international law. In the case of the use of armed drones, reference was made to Article 2, paragraph 4, of the Charter of the United Nations, noting that, except where the use of force takes place with the express consent of the State on whose territory force is employed, in strict accordance with a Security Council resolution based on Chapter VII of the Charter, or in a legitimate act of self-defence against an armed attack, the use of force on the territory of a third State may amount to an act of aggression. Other delegations raised ethical questions regarding the use of armed drones and some raised doubts as to the ability to use them in compliance with international law, with particular concerns relating to the ability to comply with the principles of distinction, precaution and proportionality. Some referred to the involvement of the intelligence agencies in their use and the remoteness of the operator from the battlefield as factors hindering proper accountability. Some delegations called for their use to be regulated at the international level and one delegation suggested that a moratorium be placed on the use of new forms of warfare until issues of the legality of their use had been clarified under international law. Delegations also referred to concerns related to the acquisition or development of armed drones by non-State actors, which would create a serious threat to international peace, security and human rights.

35. In response to delegations' comments, the Senior Attorney at the Center for Constitutional Rights noted that there were legal and ethical questions linked to the use of armed drones, as well as the impact that the weapons technology might have on human rights. Concerns over the "individualization" of warfare (through the targeting of specific individuals); de-sensitization to the use of force, owing to the remoteness of the drone operator; and sharpened asymmetry between State and non-State actors, were also raised. Ms. Kebraiei suggested that there was a risk that claims of enhanced precision targeting provided by drones might be understood as equivalent to claims of enhanced legality provided by the use of drones, as opposed to other weapons, in the use of force. There were also concerns that the use of armed drones might lead to a lowering of the threshold for the use of force. Finally, she highlighted the psychological impact of drones, both on affected communities and on the remote drone operators.

## **B. International human rights framework**

36. Many States reaffirmed the broad consensus that all measures adopted by States to counter terrorism must comply with international law, including international human rights and humanitarian law. That applied to the use of drones which needed to be in accordance with the Charter of the United Nations, international human rights law and, in situations of armed conflict, international humanitarian law, in particular the principles of precaution, distinction, humanity and proportionality. Many speakers noted that the existing international legal framework constituted an adequate and sufficient framework to regulate the use of drones. Some States noted that there was a need to clarify international law obligations, with guidance on how they should be implemented by States in that context. One delegation noted that it was important to distinguish between principles that were desirable and those that followed from existing legal obligations. It was also stressed that the limitations imposed by international law on the use of lethal force must not be weakened by relaxing interpretations of international legal standards. One delegation noted

that standards for the respect of international law should not be lowered in the fight against terrorism, while another stated that the gruesome activities of terrorists should not blind States to their human rights obligations.

37. Many delegations expressed concern that armed drones had been used outside the international legal framework. Some expressed specific concerns that drone strikes could amount to extrajudicial or arbitrary executions or, depending on the context, war crimes. It was recalled that outside armed conflict, the key international framework was international human rights law and some delegations recalled that international law prohibited arbitrary and extrajudicial executions as a violation of the most fundamental right to life. Some suggested that targeted killings could almost never be legal, either under international human rights law, because of the strict conditions for the use of force, or under international humanitarian law, because the killing of an individual could never be considered as the only goal of a military operation. Some reiterated concerns over the practices of “signature strikes” and “secondary strikes” aimed at those rescuing the victims of the first drone strike, while others noted the disproportionate impact of drone strikes on individuals, including women and children.

38. In response to a question on the international standards for the use of lethal force outside armed conflict, the Special Rapporteur on extrajudicial, summary or arbitrary executions reiterated that the use of lethal force might be lawful under international human rights law in a limited set of very exceptional situations, where there was absolute necessity and an imminent threat. The Director of International Law and Protection Programmes at the International Commission of Jurists noted that the principle of proportionality required a graduated response, both in the context of law enforcement and in the context of non-international armed conflicts. In the context of law enforcement, the use of lethal force was lawful only if it was strictly and directly necessary to save lives. Proportionality required an examination as to whether other measures could be employed to protect the threatened person, while necessity required an examination as to whether some lesser degree of force could be employed, such as the use of warnings, restraint, or capture.<sup>9</sup>

39. Some speakers noted that international humanitarian law and international human rights law were principally aimed at protecting human life and that international human rights law was applicable to everyone within the jurisdiction of a State in both times of peace and of armed conflict. In that regard, one delegation expressed the view that in a time of armed conflict, international humanitarian law constituted *lex specialis*. In relation to one speaker’s comment about the extraterritorial use of drones, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism recalled that article 2 of the International Covenant on Civil and Political Rights required each State party to respect and ensure to all persons subject to its jurisdiction the rights guaranteed by the Covenant without any distinction of any kind. Guided by the principle that a State cannot avoid its international human rights obligations by taking action outside its territory which it would be prohibited from taking at home, State parties were required to respect and ensure the rights laid down in the covenant to anyone within their power or effective control, even if not situated within the territory of a State party.<sup>10</sup> He noted that States could not avoid their human rights responsibilities simply by refraining from bringing some powers within the bounds of the law, as this would undermine both the

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<sup>9</sup> See also ICRC, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law* (adopted by the Assembly of ICRC on 26 February 2009) and CCPR/CO/78/ISR, para. 15.

<sup>10</sup> See Human Rights Committee general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant.

universality and the essence of international human rights law, as well as create structural incentives for States to outsource human rights violations.

40. One observer made the point that that in all cases where the use of armed drones under international humanitarian law was being assessed, a careful evaluation should be undertaken to establish whether an armed conflict existed and if so, what type. However, States had sometimes denied that international humanitarian law applied to a situation that might be said to amount to an armed conflict, whereas on other occasions they had extended the applicability of international humanitarian law to situations that did not fit the legal description of an armed conflict. The observer noted that many questions related to the applicability of humanitarian law to drone strikes could be more easily resolved if the classification of situations of violence were carried out with a focus on the existing legal criteria.

41. In response to a question about the criteria used to determine the existence of a non-international armed conflict, particularly with regard to non-State armed groups, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism noted that the two core criteria used were the degree of organization of the armed groups involved and the intensity of hostilities. Indicators of the degree of organization included a common command structure, adequate communications, joint mission planning and execution and cooperation in the acquisition and distribution of weaponry. In that respect, he noted that many had questioned whether Al-Qaida continued to meet the criterion of organization, because its leadership and command structure might appear to have become so degraded that it no longer constituted in itself a sufficiently organized armed group. Regarding the question of “co-belligerency”, he noted that there was considerable doubt that the various armed groups that operated under the name of Al-Qaida in different parts of the world, or claimed to be affiliated to Al-Qaida, shared a sufficiently integrated command structure or mounted enough joint operations as to be regarded as a single armed group. Turning to the criterion of intensity of conflict, he noted that it had been argued with some justification that this criterion was no longer being met outside the battlefields of Afghanistan and Iraq, given the time that had elapsed since the events of 11 September 2001 and the relative infrequency of organized armed attacks against the United States since then.

42. Many delegations expressed concerns that armed drones had a negative impact on families and communities, on the right to education and to religion and on individuals that tried to assist victims for fear of secondary strikes. Some noted that the deaths of civilians could not be qualified as “collateral damage”, while another noted that no threat to security could justify such attacks. Some speakers noted that victims of armed drones did not benefit from due process rights, access to judicial review or rights of defence. One NGO noted that States had an obligation to provide due process to individuals suspected of acts of terrorism.

43. It was stressed that States must honour their legal obligations with regard to targeted killings taking place within their territory, including by recognizing that they could not consent to violations of international human rights law or international humanitarian law committed on their territory by foreign States. The Director of International Law and Protection Programmes at the International Commission of Jurists noted that, before giving consent to a particular operation, a State must, at a minimum, require the targeting State to demonstrate verifiably that the person against whom lethal force was to be used was a legitimate target, to ensure that the targeting State would comply with all applicable law, including the requirement to use a graduated response before resorting to lethal force, and would comply with the prohibition against excessive or disproportionate loss of civilian life or damage to civilian objects.

44. One State emphasized that the use of drones was counterproductive, as it fomented hatred in a population, further nurturing and fuelling terrorism. Another delegation noted

that it was essential that States focus on support for victims of terrorism as this would reduce social tensions, as well as other conditions conducive to terrorism. The Legal Director of the Foundation for Fundamental Rights noted that, as part of an effective counter-terrorism strategy, States should bring to justice any person suspected of acts of terrorism, and respect their rights of access to justice and due process. The use of drones, combined with the absence of any accountability and reparation for victims, brought new threats and was in fact counterproductive.

### **C. Accountability and transparency**

45. Many delegations emphasized that States must take responsibility for their actions and that there could not be impunity for violations of international law that might result from the use of armed drones. States must make every effort to avoid casualties and take steps to address and investigate the harm caused to individuals because of their use.

46. Many delegations emphasized that lack of transparency created an accountability vacuum and prevented access to an effective remedy for victims. Transparency played an important role in assessing and enhancing respect for the rule of law. It was required for an evaluation of the consequences of the use of armed drones, a determination of the applicable legal framework and, consequently, a determination of the lawfulness of each strike. States that were using drones were urged to be as transparent as possible concerning the use of armed drones, as a significant step towards ensuring accountability.

47. It was emphasized, therefore, that States should release information about their use of armed drones. It was noted that they should publicly disclose the legal criteria governing their lethal targeting operations, including any legal advice received, the records of their targeting decisions and operations, and should specify the safeguards in place to ensure compliance with international law. Speakers also noted that States must make public the identity and number of individuals killed or injured in targeted killing operations and the measures in place to prevent civilian casualties, and ensure redress when such casualties occurred. It was noted that the onus is on the State to provide the basic information and to demonstrate the legality of such operations and any consent or assistance provided.

48. The Senior Attorney at the Center for Constitutional Rights recalled that transparency was connected to accountability, which was an obligation under international law, not a policy choice. She noted that, despite a commitment to greater transparency, States that used drones had publicly acknowledged very few strikes and had not made their legal standards public. In addition to more transparency about the law and the criteria that governed the use of armed drones, States should also offer public explanations to satisfy the right to truth of victims when investigations were conducted.

49. Delegations also noted that States must facilitate prompt, independent and impartial investigations where civilian deaths or injuries were reported, and victims must have access to an effective remedy. A coalition of NGOs noted that much more could be done by States to provide redress for victims whose harm had been well documented, but who were denied much needed assistance, as well as their basic dignity. Other speakers noted that victims must be appropriately compensated and that there must be judicial accountability at the national level. One delegation noted that its Government was committed, in its use of armed drones, to providing the greatest possible transparency consistent with national security needs. It noted that, where civilians were killed or injured, after-action reviews were conducted to determine why and to ensure that effective steps were taken to minimize the risk of civilians being killed or injured in the future. In addition, condolences or ex gratia payments might be available.

50. The Director of International Law and Protection Programmes at the International Commission of Jurists addressed the specific obligations of a State on whose territory a drone strike had taken place, as a result of which there had been casualties, whether the State had consented to the use of drones on its territory or not. He noted that in addition to the obligation to investigate if there was any doubt that the killing was unlawful, the State must ensure, where applicable, that individuals were held criminally responsible if they were within the power or effective control of that State, and ensure the provision of effective remedies and adequate reparation to victims, including in upholding the right to the truth.

51. In response to a question on best practices for accountability and transparency, the Special Rapporteur on extrajudicial, summary or arbitrary executions underscored the importance of action at different levels, noting a role for the international community, for regional bodies, for United Nations field offices and for domestic institutions, such as the legislature and national human rights institutions. He also referred to the transparency requirement enshrined in Article 51 of the Charter of the United Nations, which provided that a State acting in self-defence must report the measures it had adopted in that regard to the Security Council, noting that this could apply to the use of drones. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism emphasized that there was no justification for States to keep secret their own estimates of the number of civilian casualties that had been inflicted by drone strikes. The obligation to investigate and to make public the results was triggered whenever there was a plausible indication from any source that civilian casualties might have been sustained, including when the facts were unclear, or the information was partial or circumstantial. He further noted that to entrust methods of warfare to a secret intelligence agency that by nature cannot confirm or deny the existence of its operations, necessarily frustrated the duties of accountability and transparency and made it impossible for the State involved to make public the results of its post-strike investigations. Military activity that claimed the lives of human beings could never lawfully reach the requirements of accountability and transparency if it was carried out by secret intelligence agencies.

## V. Conclusions

52. **In their concluding remarks, the panellists emphasized that the human rights implications of the use of armed drones was an issue firmly within the remit of the Human Rights Council. They affirmed that the existing legal framework was sufficient and clear. They recalled that international human rights law was applicable at all times and that armed drones were not always used in the context of an armed conflict. In such situations, international human rights law and domestic law were the primary, and often the exclusive, sources of law applicable to the use of armed drones. Where the situation did amount to an armed conflict, international human rights law remained applicable and the right to life was interpreted through the lens of international humanitarian law.**

53. **The panellists emphasized that current practices in the use of drones raised serious questions regarding compliance with international law, including international human rights law. The right to life must be respected in its two components: the right not to be subject to arbitrary deprivation of life and accountability for violations of the right to life. The violation of either is a violation of the right to life itself. There were serious concerns related to the ability of signature strikes and other such practices to comply with international law that needed to be addressed.**

54. **The lack of accountability for violations of international human rights law, in particular the right to life, must be addressed. Where there were credible allegations**

of violations of international law, States were under an obligation to carry out prompt, independent and impartial investigations, and to make the results publicly available. States had a duty of public explanation to victims and to the international community. States should permit judicial review of the claims alleging grave violations of domestic and international law, and should be more transparent in their use of drones as a precondition to any meaningful accountability, including by providing information about the legal basis for the use of drones and facts about specific strikes.

55. The plight of victims must be recognized, and their rights to effective remedy, including reparation and the right to truth, must be respected. The impact of drone strikes on individuals and communities must also be recognized, including their impact on the right to work, to education, to health, to religion and to association. With regard to individuals suspected of terrorist activity, the rights of due process, to a fair trial, to the presumption of innocence, and to respect for the rule of law must also be respected.

56. Finally, the panellists noted that it was important that the Human Rights Council remain actively engaged on issues related to the human rights aspects of the use of armed drones. The starting point of any legal analysis on armed drones should be existing international law, in particular the prohibition against the arbitrary deprivation of life. Modifying well-established rules of international law to accommodate the use of drones might have the unintended long-term consequence of weakening those rules. The existing legal framework was sufficient and did not need to be adapted to the use of drones, rather, it was the use of armed drones that must comply with international law.

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