**Statement by Ben Emmerson, Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism at the 25th session of the Human Rights Council**

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Mr. President, Distinguished Delegates, Ladies and Gentlemen,

The report that I am presenting today arises out of an inquiry that began in January of last year into the use of armed drones.

This inquiry has had three central objectives. The first was to evaluate claims that the use of armed drones in counter-terrorism and counter-insurgency operations has resulted in disproportionate levels of civilian casualties.

The second objective of the inquiry was to make recommendations concerning the duty of States to conduct independent and impartial investigations into allegations that civilians have been killed or injured in particular strikes, and to make public the results.

And the third objective was to identify certain disputed issues of international law that are relevant to the use of armed drones in counter-terrorism operations, and to make recommendations aimed at promoting an international consensus on these questions.

Just over four months ago I presented an interim report to the General Assembly that set out the conclusions that I was able to reach at that time and made certain recommendations.

First, the interim report presented an outline of the technical capabilities of armed drones and concluded that if they are used in strict compliance with international law drones are capable of improving the situational awareness of military commanders, and thus reducing the levels of unintended civilian casualties in armed conflict.

The second part of the interim report presented an overview of the civilian casualty levels arising from the use of armed drones in counter-insurgency operations in Afghanistan, Pakistan, Yemen, Somalia and in Gaza. The report concluded that the highest numbers of civilian deaths, both in absolute terms and as a proportion of overall fatalities, had occurred as the result of the use of drones by the CIA in the Federally Administered Tribal Areas of Pakistan – or FATA as it is known.

The third section of the interim report set out the principal disputed issues of international law, identifying those areas in which the law is uncertain or in which the practice of some States appears to challenge established legal norms.

And finally the report made specific recommendations on accountability and transparency.

Mr. President, the importance of this issue to the international community is clear. As the High Commissioner for Human Rights observed in opening the present session of the Council, the use of armed drones is “pushing us to the outer edge of our thinking on how to ensure our rights are protected” in counter-terrorism and military operations.

The growing calls for scrutiny were underlined by the adoption, in December of last year, of General Assembly Resolution 68/178 emphasising the need to ensure that drones are used within the framework of international law.  The report that I am presenting today takes three further steps towards promoting that central objective.

First, it updates the Council on the patterns of civilian casualties arising from the use of armed drones.  I am pleased to be able to report a significant de-escalation in the use of drones by the United States in the FATA region of Pakistan.  The total number of reported strikes during 2013 was down to 27, from a peak of 128 in 2010.  For the first time in nine years there were *no* *reports* of civilian casualties. The diplomatic and political efforts of Pakistan to bring these strikes to a halt, so as to enable peace talks with the Tehrik-i-Taliban (TTP) to take place, appear to have borne fruit. So far this year no drone strikes have taken place at all. This is the longest period without a drone strike in Pakistan since 2009.

That is the positive news. But the picture in Afghanistan and Yemen is much less reassuring.

In its most recent report on civilian casualties, the United Nations Assistance Mission in Afghanistan, UNAMA, found that during 2013 there had been a three-fold increase in the number of civilian casualties in the conflict from the use of armed drones as compared with the previous year. Drones accounted for almost 40 per cent of civilian casualties inflicted as the result of aerial attacks by pro-Government forces in Afghanistan during 2013.

The picture in Yemen is also a cause for concern. The frequency of armed drone strikes appears to have intensified during the closing months of 2013 with a sharp escalation in the number of reported civilian casualties. Mr. President, I am very much hoping that a long-delayed country visit to Yemen will be able to go ahead in the near future.

Before I turn to the main conclusions and recommendations of the report, may I take a moment to extend my thanks to the State of Israel for its decision to engage positively in this process. In a significant step forward, I met with representatives of Israel in January of this year. The meeting was called at Israel's request and involved an extended and informative exchange of information which is summarised in the report. I have invited Israel to answer some key questions, and look forward to further co-operation in the coming months.

During the course of my inquiries I have also received exemplary levels of co-operation from the United States, the United Kingdom and Pakistan. I conducted a visit to Pakistan in March of last year and collected valuable data on the number of civilians who had lost their lives. In June I met with senior officials of the US Administration, including the Director of the CIA.  I was treated with courtesy and co-operation throughout. And in August I was given a detailed legal and technical briefing on the use of armed drones by the United Kingdom's Ministry of Defence. As will become clear, there are further questions that still need to be answered, but I currently have no reason to believe that any of the States involved will decline or limit their co-operation in what is an ongoing and iterative process.

Mr. President, the two main pillars of the report I am presenting today relate to accountability and transparency, and to the need to promote an international consensus on the core legal principles applicable to the use of armed drones in counter-terrorism operations.

Over the past 14 months I have been examining the evidence relating to 37 individual drone strikes in various parts of the world in which it is alleged that civilians were killed or injured. The threshold test I adopted for including a strike in my report was the test laid down in my interim report for requiring an independent, impartial and transparent investigation. I decided to include a strike in this list only if there was an allegation emanating from an apparently reliable source, or from multiple independent sources, that civilians had been killed, seriously injured or had their lives put at immediate risk in an operation in which remotely piloted aircraft or drones are alleged to have been involved. I looked for indicia of reliability in the sources available to me, and only included a strike if there was sufficient information as to the location, date and approximate time of the incident.

In the end the list of sample strikes was culled down to 30.  I am able to say in respect of each of those strikes that in the absence of any official public explanation from the State responsible, the number or proportion of civilians reportedly harmed raises a reasonable suspicion that the action taken may have been unlawful.

It is important to emphasise that the mere existence of credible allegations that civilians were killed or injured in these incidents does not necessarily establish any violation of international humanitarian law or international human rights law. Still less does it provide clear evidence of a war crime.

But in each of these cases the evidence is sufficient to cross the threshold identified in my interim report as imposing a duty on the relevant States to provide a public explanation of the circumstances and the justification for the use of deadly force.

I make it clear that in calling for an explanation I am not making a *political* demand. In my judgment the States responsible for these strikes are under a present and continuing legal obligation to disclose the results of their own fact-finding inquiries or to explain why no such inquiries have so far taken place.

I am conscious that this process will take time. I have therefore taken the step of establishing an interactive web platform which provides an up-to-date analysis of each strike and, in some cases, a forensic reconstruction of the events. May I encourage delegates to visit the site which can be found at unsrct-drones.com. As further information is received it will be uploaded onto the site.

The second key objective of the report is to make recommendations aimed at promoting an international consensus on the applicable legal principles.
Just last month the European Parliament adopted, by 534 votes to 49, Resolution 2567 which expressed grave concern over the use of armed drones outside an agreed international law framework and urged the Council to adopt an EU common position on the use of armed drones.

But it is important now that consensus be achieved not just at regional level but internationally. In Part D of the report I have listed eight key legal questions which need to be urgently debated and, if possible, resolved. I have therefore recommended that the Human Rights Council should convene an interactive panel discussion of experts at its twenty-seventh session to further deliberate on the issues raised in the report, and should mandate the Office of the High Commissioner for Human Rights to present a summary of the deliberations of the panel discussion at the twenty-eighth session of the Council.

I am also inviting all Member States that wish to express their views on these issues to do so in writing prior to the twenty-seventh session of the Council.

There is currently a draft resolution co-sponsored by a number of States, including Pakistan that would implement the recommendations in this report.  May I commend this initiative and urge Member States to support it.

*Victims of Terrorism*

Mr. President, I turn now to other matters. When I took over this mandate I made it clear that I intended to ensure that proportionate attention was paid to the victims of terrorism.

My first report to the Council took the form of Framework Principles for Protecting and Promoting the Human Rights of Victims of Terrorism. In that report I called for the adoption of a specific international instrument at UN level that would spell out the rights of victims of terrorism, including the rights to effective protection, effective participation in the criminal justice process and reparation.

I am delighted to be able to say that a number of States, including Egypt, have taken up that call, and are in the process of seeking to negotiate a cross-regional statement calling for an international instrument based on the Framework Principles I set out in my first report to the Council.

It is a startling reality that despite the proliferation of international agreements that address mutual co-operation in the investigation, suppression and prosecution of acts of terrorism, there is not a single instrument that deals specifically with the rights of the victims.  May I take this opportunity to commend the efforts of Egypt and other States on this important topic and invite the UN Counter-Terrorism Implementation Task Force (CTITF) to make the necessary facilities available to make an international instrument a reality.

*Country visits*

Finally, Mr. President, a few short words on the subject of my recent country visits. From 8 to 12 April 2013, I conducted an official visit to Burkina Faso, one of the three first partnering Member States of the Integrated Assistance for Countering Terrorism Initiative (I-ACT Initiative) of the CTITF.
Burkina Faso is a country that to date has escaped the threat of terrorist attack, the spread of armed conflict across its borders, and religious intolerance, radicalization and violent extremism among its population.  The political will of the Government to effectively counter terrorism is confirmed by the number of international counter-terrorism instruments to which it is a party.  But threats remain. Within Burkina Faso, poverty and perceived inequality are sources of increasing levels of frustration among poorer sections of the population.

The country is in need of further international support and assistance to guarantee the security of its borders and the safety of its citizens and others within its territory. I call upon the international community to ensure that the material and other resources necessary to protect this small and peaceful State from both external and internal threats are made available to it as a matter of regional priority

*Chile*

Mr. President, from 17 to 30 July 2013, I conducted a country visit to Chile at the invitation of the Government. The main focus of my visit was the use of the anti-terrorism legislation in connection with protests by Mapuche activists aimed at reclaiming their ancestral lands and asserting their right to collective recognition as an indigenous people and respect for their culture and traditions.

During the course of my visit, I had the opportunity to meet with all stakeholders, including the victims of rural violence, many representatives of the Mapuche community, politicians, public officials and a cross-section of civil society representatives. I found sharp divergences of opinion on the question of whether Mapuche land protests can or should be stigmatised as acts of terrorism.

I also found that the anti-terrorism legislation has been disproportionately and unfairly applied against Mapuche accused, and has been implemented without a coherent policy for distinguishing those cases that meet the threshold test for an act of terrorism and those that do not. This has resulted in real injustice, has undermined the right to a fair trial, and has been perceived as stigmatising and de-legitimising the Mapuche land claims and protests.

At the end of my visit, I therefore called on the Government to place the Mapuche question as one of the top priorities of the national political dialogue.

One of the recommendations in my report was that Chile should refrain from applying anti-terrorism legislation in connection with the Mapuche indigenous peoples’ land protests.  I am therefore very pleased to note that the President-elect has publicly expressed her strong commitment to adopting precisely this approach for the future.  That is an important step forward.

Other recommendations in my report include the urgent adoption of a National Strategy aimed at comprehensively addressing the Mapuche question within a defined and relatively short timeframe.  I also recommend that the responsibility for devising and implementing the National Strategy be devolved to a partnership between Government and a newly established National Consultative Commission and urge the Government of Chile to prioritise and accelerate the process of land repatriation or restitution.

Thank you Mr. President.