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Statement by Ben Emmerson

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Mr. President, Excellencies, Ladies and Gentlemen,

I would like to begin with an apology for the late submission of this report. I appreciate that this may have made it more difficult for some States to participate to the fullest extent possible during the interactive dialogue, particularly as the report has not yet been translated into all official languages of the UN.

Mr. President,

I want to make three points about this if I may at the outset. First, as you will appreciate, I have been heavily committed with other aspects of the mandate over recent months – and in particular the inquiry that I have launched into the use of drones and the civilian impact of this technology. As many of you will recall that is an issue which a number of States asked me to focus upon during the last interactive dialogue here at the Council in June 2012.

Secondly, whilst the report is not yet edited or translated, I can assure you all that this is the start of a conversation between my mandate and the relevant States on the issue of accountability, rather than the conclusion of a conversation. I will be following up the issues raised in this report with each and every State to whom recommendations have been made, and I will be reporting back to the General Assembly in the Autumn on their responses. So all of the States that are implicated in this report will have ample opportunity to interact with my mandate and to state their positions in formal correspondence.

Thirdly, the two States to whom I have made specific recommendations for the release of classified reports, that is the United States and the United Kingdom,

will not have been taken by surprise in any way since I have been engaged in dialogue with both States for some time about these issues, and both have been on notice for some time that I would be making the recommendations that are contained in paragraphs 53(c) and 53(d). I very much hope that the United Kingdom and the United States will feel able to respond to these recommendations in substance during today's interactive dialogue.

More generally, let me say this: The failure of the relevant States to secure full accountability for the international crimes committed by the Bush-era CIA and their allies in other States has been characterised by the taking of technical and procedural objections in every possible forum in an effort to avoid revealing and facing the truth. Can I ask all States not to allow that to happen in the course of this interactive dialogue. The issues set out in my report are not complicated, and they are, in my view at least, of the highest importance. I would therefore ask all States who intend to make interventions in this interactive dialogue to respond substantively to the report, and not to attempt to sideline it with procedural filibustering of the kind that has bedevilled this issue for a decade.

Mr. President,

Many of the States involved, including of course the US, have made strenuous efforts over the past decade to keep their involvement in the CIA programme of international crimes hidden from public scrutiny. But despite the care with which this wall of silence has been so painstakingly erected, it has not proved to be impenetrable. Through the dedicated and persistent work of a small number of Parliamentarians, particularly in Europe, the ICRC, and NGO's like OSJI, the facts have gradually emerged over the last decade, piecemeal at first. But over the last three or four years the process of seeking the truth has

gathered momentum, and calls for accountability are fast approaching a critical mass.

I want, if I may, to set the tone by recalling the words of the United States representative at a meeting on the right to truth in international law during the 13th Session of the Human Rights Council. The United States said this:

> "To borrow a phrase, sunlight is the best disinfectant. Similarly, respect for the right to truth serves to advance respect for the rule of law, transparency, honesty, accountability, justice and good governance – all key principles underlying a democratic society…We see the right to truth as closely linked to the right to seek, receive and impart information under Article 19 of the International Covenant on Civil and Political Rights…In conclusion, we underscore that the right to truth is inextricably intertwined with the promotion of democratic ideals, human rights and justice"[1].

Mr. President,

It is important to place the issues raised in this report in their political and security context. The threat posed by groups that are inspired by the philosophy of Al Qaida is now ideologically, geographically and organisationally more diverse than at any time since 2001. In understanding and meeting these new threats, local knowledge and the support of Islamic civil society in the MENA region – the Middle East and North Africa – is essential.

[1] Representative of the United States of America, panel discussion, 13th Session of the Human Rights Council, 9 March 2010.

Specialist advisers to the Security Council, and senior politicians in the West have spoken publicly of the need for international capacity-building and confidence-building initiatives to address this changing profile of extremist violence.

That in turn of course depends upon building trust among those peoples of MENA that are most immediately and directly affected by these phenomena, and persuading Islamic civil society in these regions that the West is genuinely committed to upholding the rule of the law and respecting human rights, as emphasised in Pillar I and Pillar IV of the UN Global Counter-Terrorism Strategy.

Mr. President,

Two vital components of this international framework are the right to truth and the duty of accountability. The international community's expressed commitment to ending impunity is fundamentally antithetical to the maintenance of a policy of *de facto* immunity for public officials who engaged in acts of torture, rendition and secret detention, and their superiors and political masters who authorised these acts.

The building blocks of stable democracy for societies in transition in MENA will take time to put in place. But it will also take time for the Western democracies to restore the confidence that was shattered among Muslim communities by the CIA policy of secret detention, rendition and torture, and the decade of impunity that has followed.

But it is difficult to win over “hearts and minds” in the face of a steady stream of official Parliamentary inquiries, reliably sourced NGO reports,

and court judgments that contain shocking details of the systematic violation of human dignity committed by the Bush-era CIA in the name of democracy.

Mr. President,

The recent judgment of the European Court of Human Rights in *El-Masri v Macedonia* is a good example. Last December the Grand Chamber of the Court found it proved beyond reasonable doubt that Khaled El-Masri, a German citizen, was abducted in 2003 as he tried to enter Macedonia, in the mistaken belief that he was associated with Al Qaida. After 23 days incommunicado detention in a hotel room, during which time he was repeatedly beaten, he was handed over to masked men at Skopje airport where he was severely beaten, stripped naked and anally penetrated with an object.

He was then flown to Afghanistan where he was detained in a secret CIA black site known as the "Salt Pit" for over four months, during which time he was routinely and repeatedly subjected to torture for the purposes of interrogation. When they were finished with him, those responsible flew him, still in shackles, to Albania where they dumped him on the side of the road. All of these allegations were found proved beyond reasonable doubt.

But the El-Masri case is just the first of a series of cases currently pending in the European Court of Human Rights. The next in line is the case of Al-Nashiri v Poland and Romania. With the permission of the President of the Court I have intervened in that case to file an amicus curiae brief. There are also cases pending in Strasbourg against Lithuania and Italy, cases pending against the United States in the Inter-American Court of Human Rights, and

at least one case pending before the African Commission of Human and Peoples' Rights against Djibouti.

Mr. President,

I want to take this opportunity to urge all States that are engaged in this international litigation to review their legal strategies and submissions in accordance with the principles laid down in the present report, to ensure that they are not making unjustifiably broad claims to maintain secrecy on grounds of national security, a phenomenon that has been used to considerable effect over the past decade as part of States' efforts to obstruct the search for the truth.

But these efforts have not always succeeded. Just two months ago, the Criminal Tribunal in Milan finally convicted the former Director of the Italian Military Intelligence Service for collaborating in the abduction and rendition of Hasan Mustafa Osama Nasr, a dual Egyptian-Italian national, also known as Abu Omar. He was abducted in broad daylight in a Milan street, bundled into an unmarked white van, and eventually rendered to Cairo where he was detained for 14 months and repeatedly tortured by the thugs of the Mubarak regime with whom the CIA was collaborating. The former Director of Italian Military Intelligence was sentenced to ten year imprisonment. The Italian Court also convicted 22 CIA agents, including the Milan station chief at the time, for their role in these crimes, and sentenced them *in absentia* to terms of imprisonment of between 7 and 9 years.

Mr. President,

In December of last year the United Kingdom paid £2.23 million in compensation to Sami Al-Saadi and his family, a man who had been subjected to rendition from Thailand to Libya in a joint US/UK operation, and subsequently detained and tortured there. And just yesterday, another victim of rendition by the UK and the US to Libya offered to settle his claim against the UK for three english pounds, provided the authorities acknowledged what had been done and apologised. Providing they upheld the right to truth in other words.

These reports and judgments, and others like them, taken together with the inquiries conducted by the Parliamentary Assembly of the Council of Europe and the European Parliament, have provided unequivocal evidence of sophisticated cover-ups, secret flights, falsified documents, and the creation of false companies.

All of this has been buttressed by years of official denials, sophistry and prevarication. As the European Court of Human Rights observed in the El-Masri case, the investigations conducted in Europe had revealed that the States concerned were not interested in seeing the truth come out.

Mr. President,

Overall, this presents an image of lawlessness and hypocrisy that is antithetical to building international co-operation with the Islamic peoples of MENA. The exposure of the criminal matrix organised by the Bush-era CIA, from the heart of the world's most powerful democracy, now calls for an unequivocal response from all of the States that took part in the programme.

Western democracies must not only disavow the crimes that were committed under former administrations, but also evince a genuine determination to bring the perpetrators to justice.

Words are not enough. Platitudinous repetition of statements affirming opposition to torture ring hollow to many in those parts of MENA that have undergone (or are undergoing) major upheaval, since they have first-hand experience of living under repressive regimes that used torture in private whilst making similar statements in public.

The scepticism of these communities can only be reinforced if Western governments continue to demonstrate resolute indifference to the crimes committed by their predecessor administrations.

Mr. President,

The urgent and imperative need to develop an international consensus in favour of ethical counter-terrorism policies has given an added impetus to initiatives aimed at eradicating the legacy of impunity. There are a number of innovative initiatives being pursued at UN level that are aimed at promoting an ethical and sustainable approach to counter-terrorism.

I am pleased to record today the significant efforts being made by the Government of Iraq, for example, in tackling entrenched cross-sectarian violence. My mandate has been working closely with the Government of Iraq to devise and deliver initiatives aimed at conflict-resolution and peace-building in the context of the terrorist violence perpetrated by Sunni and Shia extremists on innocent civilians in Iraq.

This link between ethical counter-terrorism initiatives and the eradication of impunity was underlined by the current British Foreign Secretary in an important speech on ethical counter-terrorism delivered recently at the Royal United Services Institute in London:

> "[I]n standing up for freedom, human rights and the rule of law ourselves, we must never use methods that undermine these things. As a democracy we must hold ourselves to the highest standards. This includes being absolutely clear that torture and mistreatment are repugnant, unacceptable and counter-productive. Our bottom line is always that we are determined to uphold the law. Any allegation of UK complicity in the sorts of practices I've just mentioned must be fully investigated."

As the British Foreign Secretary rightly appeared to acknowledge, the case is steadily building for the adoption of a comprehensive strategy to secure public accountability for the past, and for bringing to justice those officials within the US, Europe and elsewhere, that were complicit in this global network of crimes and systematic human rights violations. The calls for the past to be confronted are fast approaching a critical mass.

Mr. President,

Official stonewalling or filibustering at this critical juncture is a dangerous course. It threatens the success of collaborative initiatives, whilst at the same time providing distorted arguments to those seeking to recruit others to violent extremism.

The failure to address the past inevitably generates the misperception that the perpetrators remain as beneficiaries of official toleration or collusion. However inaccurate some of these perceptions may be, they will endure until decisive action is taken. Holding those responsible to account is now the only way of genuinely drawing a line under the past.

Mr. President,

I want to conclude by underlining and briefly elaborating on three of the recommendations in today's report. The first, which is addressed at paragraphs 44 and 52 of the report relates to the UN Joint Study on Secret Detention. Following the presentation of that report to the Human Rights Council in 2010 the joint special procedures mandate-holders sent follow-up questionnaires to 59 States seeking their response to the concerns raised in the report. Only a dozen States responded, and a number of those responses simply challenged the mandate-holders' right to ask the questions in the first place.

I am proud to associate myself with that report, as are all of the current holders of the mandates in question. In today's report I call on those States that have not so far responded to do so without further delay. I have not named and shamed these States in the report itself, mainly because they are too numerous to list. But you know who you are. I will be actively following up this recommendation in correspondence with each of the relevant States, and will be reporting the results to the General Assembly in the Autumn.

Mr. President,

The second recommendation is directed specifically to the United States. In March 2009 the United States Senate Select Committee on Intelligence began a comprehensive investigation into the CIA's secret detention and interrogation programme, chaired by Senator Dianne Feinstein.

Under the publicised terms of reference the Committee was to inquire, *inter alia*, "whether the CIA implemented the program in compliance with official guidance, including covert action findings, Office of Legal Counsel opinions, and CIA policy".

I was concerned to read reports that the Chair and Vice Chair of the Committee have given assurances that the investigation will not lead to the prosecution of any official who followed the flawed guidance issued by the Department of Justice. Nonetheless, the establishment of an independent investigation which has reportedly had access to all relevant classified material is clearly a welcome development. However it is a matter of regret that the report has still not been made public and remains classified.

On 1 December 2011 Senator Feinstein announced that the Committee was close to the completion of the comprehensive review and the report has since been approved and adopted by the Committee.

On 30 April 2012 Senator Feinstein announced that it would "provide a detailed factual description of how interrogation techniques were used, the conditions under which the detainees were held, and the intelligence that was – or wasn't – gained from the program"[2]. She has indicated publicly

[2] News release 20 April 2012, http://www.feinstein.senate.gov/public/index.cfm/2012/4/feinstein-levin-statement-on-cia-coercive-interrogation-techniques. See also the answers of the Director-designate of

that the majority of the Committee believed that the creation of CIA "black sites" and the use of so-called "enhanced interrogation techniques" were "terrible mistakes", and that the report would "settle the debate once and for all over whether our nation should ever employ coercive interrogation techniques such as those detailed in the report".

Today's report calls on the United States to release the Senate Select Committee report as soon as possible, subject only to the specific redaction of information where this is strictly necessary to safeguard legitimate national security interests or the physical safety of persons identified in the report.

Given that the report concerns practices now abandoned, the Special Rapporteur expects any redactions on national security grounds to be relatively minor in scope and number; and it will only be appropriate to redact the identities of any personnel involved in the commission or authorisation of these international crimes, if there are objective grounds to conclude that the publication of their identities would endanger their lives or physical safety.

I am particularly concerned at reports that the Committee plans to release no more than a summary of its findings and recommendations and I would urge the United States to release the report in full immediately.

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the CIA John Brennan, during his Senate confirmation hearings to the effect that having read a summary of the Select Committee report, he found the findings to be "very concerning and disturbing", that he was no longer satisfied that valuable intelligence had been obtained by so-called "enhanced interrogation techniques" used by the Bush-era CIA, and undertaking that once confirmed he would look into the issues raised in the report: http://www.guardian.co.uk/world/2013/feb/07/john-brennan-cia-torture-claims-senate-hearing.

Mr. President,

I turn now to the United Kingdom. On 6 July 2010 the Prime Minister announced an independent inquiry by members of the Privy Council under the Chairmanship of Sir Peter Gibson to consider whether, and to what extent, the United Kingdom Government and its security and intelligence agencies were involved in, or aware of, the improper treatment or rendition of detainees held by other countries in counter terrorism operations outside the United Kingdom.

A decision was taken that the inquiry could not begin its work formally until related police investigations into events in Afghanistan and Pakistan had been concluded. The inquiry published its terms of reference on 6 July 2011.

Because the Prime Minister had decided not to invoke the power to set up a statutory under the Inquiries Act 2005, the inquiry lacked the power to compel the attendance of witnesses or the production of documents, and had to rely on voluntary co-operation from the Cabinet Office, the intelligence and security services, and the Ministry of Defence. Nor did the inquiry have any power to request the production of evidence from other States, or their personnel.

The Government gave a public assurance that it would make available to the inquiry all documents it requested, regardless of their sensitivity. However, under the protocol established for the inquiry, the final decision as to whether any document would thereafter be released to the public was vested not in the independent members of the inquiry, but in the Cabinet Secretary (a senior civil servant answerable to the Government).

The Government indicated that it did not intend the Gibson Inquiry to meet the requirements of an independent investigation as laid down in the European Convention on Human Rights, and in particular indicated that it would not have power to make findings of legal liability. Rather, its function was to "identify lessons learned and make recommendations to the Prime Minister".

As a result of these limitations, most of the detainees whose cases were under consideration, and the lawyers and NGO's who were supporting them, withdrew their co-operation with the Gibson Inquiry[3]. The Special Rapporteur, acting together with the Special Rapporteur on torture Mr. Juan E. Mendez, engaged the United Kingdom in correspondence raising certain concerns about the limitations that had been imposed on the powers, terms of reference and protocol for the Gibson Inquiry.

On 12 January 2012 the Crown Prosecution Service announced that no criminal prosecutions would be commenced arising out these investigations. Meanwhile, however, the Metropolitan Police had begun a fresh criminal investigation into allegations of United Kingdom involvement in the unlawful rendition of two individuals to Libya, following the discovery of official documents in government offices in Tripoli by filed researchers working for Human Rights Watch. On 18 January 2012 the Justice Secretary announced in Parliament that these further investigations, which were expected to take some time, had to be concluded before the Gibson Inquiry could begin its formal work. He said that in the circumstances, the Government had concluded that there was no prospect of the Inquiry being

[3] Joint letter addressed to the Detainee Inquiry, 3 August 2011. Available from www.amnesty.org/en/library/asset/EUR45/010/2011/en/daf5cd13-dea8-47d2-99d2-6628b963f511/eur450102011en.pdf.

able to start in the foreseeable future and had therefore decided to terminate it.

The Justice Secretary told Parliament however that the Gibson Inquiry had already reviewed a large volume of material supplied by the Government, and that accordingly it would supply an interim report to the Government recording its findings on the governmental material that had so far been reviewed. He went on to say that the Government was "clear that as much of this [interim] report as possible will be made public". He also confirmed that the Government fully intended to hold an independent judge-led inquiry once the criminal investigations into the two Libyan rendition cases had been concluded, in order "to establish the full facts and draw a line under these issues".

On 17 July 2012 the Justice Secretary issued a further statement indicating that Sir Peter Gibson had delivered his interim report to the Prime Minister on 27 June 2012, and that the Government was now "looking carefully at its contents" but remained committed to publishing as much of the interim report as possible.

The United Kingdom Government has not so far published any part of the interim report, or given any public justification for this delay. Nor has it indicated when the proposed judge-led inquiry is likely to commence work, or what its terms of reference and powers will be.

It does not appear that the delayed publication of the interim report can be the result of any perceived risk of prejudicing ongoing criminal investigations or proceedings since final decisions have already been taken

not to bring criminal proceedings in the cases that were under consideration when the Gibson Inquiry was wound up.

It also seems apparent that a considerable amount of progress has already been made in establishing the facts of the two Libyan rendition cases that caused the abandonment of the Gibson Inquiry since, in one of those cases, the Government made an out of court settlement of £2.23 million in December 2012 from which it can be inferred that the Government's legal adviser (the Treasury Solicitor) must by then have been in possession of sufficient facts in at least one of the two Libyan cases to conclude that such a substantial payment was justified.

Today's report therefore calls upon the United Kingdom to publish the interim report of the Gibson Inquiry, subject only to such redactions as are strictly necessary to safeguard legitimate national security interests or the physical safety of persons identified in the report.

It also invites the United Kingdom to state publicly when the proposed judge-led inquiry is likely to begin its work, and what its powers and terms of reference will be; and recommends that the shortcomings in the powers of the Gibson Inquiry should be remedied in the resumed inquiry.

I would like to invite the United States and the United Kingdom to give at least a preliminary response to these recommendations, which they have both been expecting for some time, during today's interactive dialogue.

Thank you Mr. President.