

**United Nations Human Rights Council
25th Regular Session, 3 to 28 March 2014
Agenda Item 3**

**ICJ Oral Statement in the Interactive Dialogue with the Special Rapporteur
on the promotion and protection of human rights and fundamental freedoms while
countering terrorism, Ben Emmerson**

USE OF REMOTELY PILOTED AIRCRAFT IN COUNTER-TERRORISM OPERATIONS

11 March 2014

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Mr. Special Rapporteur on human rights while countering terrorism,

The International Commission of Jurists (ICJ) appreciates that you have focused your attention in reports to this Council and the General Assembly on the use of remotely piloted aircraft in counter-terrorism operations (A/68/389 and A/HRC/25/59).

We concur with your assessment that the single greatest obstacle to an evaluation of the impact of drone strikes is lack of transparency (A/68/389, para. 41). As noted by the High Commissioner for Human Rights, this creates an accountability vacuum and prevents effective access to justice. Lack of transparency prevents external/objective verification of the numerous facts that must be determined – and then assessed within the applicable legal framework – in order to ascertain whether a person may be targeted and whether the subsequent use of lethal force is lawful under international law. Lack of disclosure: (a) gives States “a virtual and impermissible licence to kill” (A/HRC/14/24/Add.6, para. 88); (b) obstructs the right to remedy and reparation for gross human rights violations and serious violations of international humanitarian law (IHL), as well as the requirement to hold persons criminally accountable for crimes under international law; and (c) potentially also involves a violation by States of Common Article 51 of the Geneva Conventions, which prohibits any Contracting Party from absolving itself of any grave breach of the Geneva Conventions.

The Global Principles on National Security and the Right to Information, elaborated by 22 organizations and academic centres in consultation with experts including the Special Rapporteur on human rights while countering terrorism, emphasize that “there is an overriding public interest in disclosure of information regarding gross violations of human rights or serious violations of international humanitarian law, including crimes under international law, an systematic or widespread violations of the rights to personal liberty. Such information may not be withheld on national security grounds in any circumstances” nor “in a manner that would prevent accountability for the violations or deprive the victim of access to an effective remedy” (Principle 10(A)(1) and (2)).

The ICJ would stress that many of the instances of targeted killing identified by the Special Rapporteur appear to have occurred outside of the context of hostilities between two or more parties to an identifiable armed conflict, within the meaning of IHL. As noted in the 2010 report of the Special Rapporteur on extrajudicial, summary and arbitrary executions, human rights law is the legal regime applicable to such situations.

The ICJ considers that you have rightfully identified a number of contentious issues in para. 71 of your report to the Council. However, while consensus on these issues would be helpful, we would remind the Council, and its members and observers, that determining the legal position on these points must be assessed according to general international law, including treaty law and customary international law (CIL), the latter of which does not rely merely on the ‘position’ of States on the questions you have identified. Given the importance of the questions raised in your report – including on access to justice for victims and their families,

and for the accountability of States and individuals directly involved in, or consenting to, the use of remotely piloted aircraft – any attempt to conclusively answer these questions must therefore be as a result of a legal analysis and application of treaty law and of CIL.

The ICJ would further suggest, Mr. Special Rapporteur, that conclusions to those questions should subsequently form the basis for the establishment of principles and guidelines on the use of remotely piloted aircraft in counter-terrorism operations, framed from the perspective of ensuring States' compliance with international law; and justice and redress for victims of human rights violations and/or violations under international humanitarian law.

I thank you.

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