**Human Rights Council holds panel on remotely piloted aircraft or armed drones in counterterrorism and military operations**

Human Rights Council
MORNING

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The Human Rights Council this morning held a panel discussion on ensuring 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.

Moderating the discussion was Dapo Akande, Co-Director, Oxford Institute for Ethics, Law and Armed Conflict, Oxford University.  The panellists were Shahzad Akbar, Legal Director, Foundation for Fundamental Rights; Alex Conte, Director of International Law and Protection Programmes, International Commission of Jurists; Ben Emmerson, United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Christoph Heyns, United Nations Special Rapporteur on extrajudicial, summary, or arbitrary executions; and Pardiss Kebriaei, Senior Attorney, Centre for Constitutional Rights.

Flavia Pansieri, Deputy High Commissioner for Human Rights, in an opening statement said that in the past 15 years the use of remotely piloted aircraft or armed drones in the context of military operations and counterterrorism measures had grown significantly.  Accordingly, discussion of armed drones focused on the question of whether their use was compatible with the rules and principles of international humanitarian law.   Ms. Pansieri underlined that the right to life placed stringent conditions on the use of lethal force, and referred to the human rights impact on the use of drones.   In spite of precision claims, the use of armed drones created an atmosphere of fear in the affected communities, and had a negative effect in the everyday life of the affected population.

Mr. Heyns said the issue with drones was not the legality of the weapon but the legality of their use.  Drones were often being used in an unlawful way.  The use of armed drones happened in conflict and counterterrorism situations, but also increasingly in ordinary policing and law enforcement.   If there was an allegation of arbitrary execution that was not investigated, that in itself constituted a human rights violation as well.  The legal framework was already established, and what was needed was implementation and respect of this law.

Mr. Emmerson said that both international human rights law and international humanitarian law regimes applied and overlapped.  In international human rights law, the targeted killing of an individual was rarely justifiable or lawful and had different connotations.  The question was whether they were dealing with a state of armed conflict, and they should focus on the intensity of the conflict.  These criteria were essentially geographical in nature, based on territorial limitation.

Mr. Conte said that States had inappropriately used war paradigm to contextualize counter-terrorism operations and this applied also to the use of armed drones.  A careful assessment must be made as to whether each situation did rise to an armed conflict because where armed drones were not used in situations of armed conflict, domestic law and international human rights law were the primary laws and other exclusive laws were applicable regarding the lethal use of armed drones.

Mr. Akbar said that a State could not use deadly force merely because capture was not feasible; the individual in question must pose an imminent threat to human life.  The experience in Pakistan showed that this simply was not the case.  The obligation was not upon individuals to prove they posed no threat but the obligation was upon the State firing armed drones to show that their use of force was necessary.  The whole idea of necessity and proportionate use of force became blurred when people were killed on mere suspicion.

Ms. Kebriaei said that the most important thing to remember in considering the right of remedy for victims in this context was that in cases where a wrong might have been done, the harm was irreparable.  The challenge of accountability in this area, of which judicial accountability was just one part, underscored the importance of the Human Rights Council in serving as a “forum and springboard for action”, as put by the Secretary-General.

In the discussion, speakers said that the use of armed drones was a very complex issue that the international community was actively exploring and that the use of armed drones should abide by the United Nations Charter and international humanitarian law, and respect the provisions of international humanitarian law.  The use of armed drones should comply with the principles of precaution, distinction and proportionality.  The  issues of territorial integrity, sovereignty and human rights had to be put into balance in the concerted efforts to combat terrorism.  Concern was expressed about the lack of transparency and accountability with regards to the use of armed drones, and States concerned were called upon to undertake proper investigations and provide reparation to victims.
Some speakers said that the examination of the conformity of the military conduct with international humanitarian law was not within the mandate of this Council.  The Council was not the appropriate forum to discuss weapons on a thematic basis, and the existing strict legal framework at the international level was capable of ensuring that they were used lawfully in appropriate circumstances.
Speaking in the discussion were France, China, Ireland, Venezuela, Netherlands, United Kingdom, United States, Germany, Cuba, Pakistan and Ecuador, Indonesia, Russian Federation, Sri Lanka, Malaysia, Bolivia, Switzerland, Iran, Chile, Brazil, South Africa, Algeria, Nigeria, and Sudan.

International Committee of the Red Cross, Amnesty International, Organization for Defending Victims of Violence, American Civil Liberties Union, Open Society Institute, American Civil Liberties Union, and Women’s International League for Peace and Freedom also spoke.

The Human Rights Council during its noon meeting will continue its general debate on human rights bodies and mechanisms, followed by a general debate on the Universal Periodic Review.  It will then hear the presentation of the report of the High Commissioner on the human rights situation in Palestine and other Arab Occupied Territories.

**Opening Statement**

FLAVIA PANSIERI, United Nations Deputy High Commissioner for Human Rights, opened the panel discussion on the use of remotely piloted aircraft or armed drones in compliance with international law.  In the past 15 years their use in the context of military operations and counter-terrorism measures had grown significantly.  Accordingly, discussion of armed drones focused on the question of whether their use was compatible with the rules and principles of international humanitarian law.   Ms. Pansieri underlined that the right to life placed stringent conditions on the use of lethal force.   The intentional use of lethal force would be lawful only in a law enforcement context, when an individual posed a threat to the life of another.  She further referred to the human rights impact on the use of drones.   In spite of precision claims, the use of armed drones created an atmosphere of fear in the affected communities, and had a negative effect in the everyday life of the affected population.  The concepts of transparency and accountability were thus key in ensuring the protection of the human rights of the affected population.  Former Human Rights High Commissioner Navi Pillay had expressed particular concern about the lack of transparency in the use of drone strikes, and for that reason it was important for States to outline their armed drones’ policies more clearly.  The Secretary-General had urged States to take all measures to ensure that drone attacks complied with international law.  In addition, States had an obligation to carry out prompt, independent and impartial investigations on credible indications of violations of international human rights law.  In her concluding remarks, Ms. Pansieri stressed the need to comply with international human rights law and the principle of accountability in a context when more and more State and non-State actors obtained technology for the deployment of armed drones.

**Statements by the Panel Moderator and Panellists**

DAPO AKANDE, Co-Director, Oxford Institute for Ethics, Law and Armed Conflict (ELAC), Oxford University and Panel Moderator, introduced panel members and hoped this debate would allow them to define a legal framework for the use of armed drones in conflict situations.  To the Special Rapporteur on extrajudicial, summary, or arbitrary executions, he asked what protections international law provided with regards to the right to life, and how the principles of international human rights law applied to the issue of drones.

CHRISTOPH HEYNS, Special Rapporteur on extrajudicial, summary, or arbitrary executions, said the issue with drones was not the legality of the weapon but the legality of their use.  Drones were not unlawful weapons but were often being used in an unlawful way.  The use of armed drones happened in conflict and counterterrorism situations, but also increasingly in ordinary policing and law enforcement.  The right to life was recognised as a general rule of international law.  International human rights law allowed State officers to use lethal force only to protect the life of others.  If there was an allegation of arbitrary execution that was not investigated, that in itself constituted a human rights violation as well.  Drones were a form of weapon that posed challenges.  The legal framework was already established, and what was needed was implementation and respect of this law.

DAPO AKANDE, Co-Director, Oxford Institute for Ethics, Law and Armed Conflict (ELAC), Oxford University and Panel Moderator, asked the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism about key elements to take into consideration to determine whether international human rights law or international humanitarian law was applicable with regards to targeted killings.

BEN EMMERSON, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, said that both international human rights law and international humanitarian law regimes applied and overlapped.  In international human rights law, the targeted killing of an individual was rarely justifiable or lawful and had different connotations.  The question was whether they were dealing with a state of armed conflict, and they should focus on the intensity of the conflict.  These criteria were essentially geographical in nature, based on territorial limitation.  The key challenge was the question of geographic limitation and assessment of the intensity and organization of the conflict, and the frequency and seriousness of the conflict.

DAPO AKANDE, Co-Director, Oxford Institute for Ethics, Law and Armed Conflict (ELAC), Oxford University and Panel Moderator, referred to the applicable legal framework and asked about key challenges to the application of the armed conflict model and military paradigms to the use of armed drones.

ALEX CONTE, Director of International Law and Protection Programmes, International Commission of Jurists, said that States had inappropriately used the war paradigm to contextualize counter-terrorism operations and this applied also to the use of armed drones.  Many instances of targeted killing appeared to have occurred outside the context of hostilities between two or more parties to an identifiable armed conflict within the meaning of international humanitarian law.  A careful assessment must be made as to whether each situation did rise to an armed conflict because where armed drones were not used in situations of armed conflict, domestic law and international human rights law were the primary laws and other exclusive laws were applicable regarding the lethal use of armed drones.

DAPO AKANDE, Co-Director, Oxford Institute for Ethics, Law and Armed Conflict (ELAC), Oxford University and Panel Moderator, turning to Mr. Akbar asked about his views on the arguments that the use of armed drones was necessary where States had no other way of capturing terrorist suspects.

SHAHZAD AKBAR, Legal Director-Foundation for Fundamental Rights, said that a State could not use deadly force merely because capture was not feasible; the individual in question must pose an imminent threat to human life.  The experience in Pakistan showed that this simply was not the case.  The obligation was not upon individuals to prove they posed no threat but the obligation was upon the State firing the armed drone to show that their use of force was necessary.  The whole idea of necessity and proportionate use of force became blurred when people were killed on mere suspicion.  In March 2011, more than 40 people had been killed who had gathered in a public place to attend a tribal elders meeting to resolve a dispute in an open space; not a single named militant had been killed in this attack.  The right to life was the most fundamental right of all human rights and the rule of law was the most precious form of governance.  The current use of armed drones in Pakistan threatened and undermined both.

DAPO AKANDE, Co-Director, Oxford Institute for Ethics, Law and Armed Conflict (ELAC), Oxford University and Panel Moderator, asked about Ms. Kebriaei’s views on how some of the challenges outlined by the panellists influenced the cases that were brought and about the impact of the use of armed drones on the rights of those seeking justice.

PARDISS KEBRIAEI, Senior Attorney-Centre for Constitutional Rights, said that the most important thing to remember in considering the right of remedy for victims in this context was that in cases where a wrong might have been done, the harm was irreparable.  The first difficulty that claimants faced in trying to access the courts was when States took the position that judicial inquiry into decisions in this area was inappropriate, as was the case in the United States, justified by the assertions of exclusive executive decision-making, authority in matters of national security, official immunity and the need for secrecy of government information.  Those arguments were not new and had been made in cases alleging grave human rights violations in the context of other national security policies over the past decades which had presented serious challenges to accountability.  When courts deferred those kinds of arguments, the effect was to leave victims alleging the most fundamental violations unable to even be heard in court and quite hopeless about the possibility of any justice.  The challenge of accountability in this area, of which judicial accountability was just one part, underscored the importance of the Human Rights Council in serving as a “forum and springboard for action”, as put by the Secretary-General.

Responding to the question on key measures to ensure accountability in the use of armed drones, BEN EMMERSON, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, said that the single greatest obstacle of the impact of armed drones on civilians was the lack of transparency, which also prevented the ability to assess the damage of targeting.  Under international human rights law, States had an obligation to conduct impartial investigations.  Referring to the Turkel Commission, which investigated alleged human rights violations in Gaza in 2010, he said that unintended civilian casualties had to be the subject of an independent and impartial investigation, and not subject to the same chain of command.  In addition, a fact finding inquiry had to be conducted , and if there was reasonable suspicion, a full criminal investigation as well.  Results of such investigations had to be made public.

Responding to a question about specific obligations in case of the violation of the right to life, CHRISTOF HEYNS, Special Rapporteur on extrajudicial, summary, or arbitrary executions, said that persons could not be subject to arbitrary death, adding that the underlying principle of investigations of such violations was accountability.  In human rights law, the source of accountability lay in the customary law and a variety of soft law provisions.  The onus was on the State, it had to investigate alleged violations.  Investigations had to be prompt, thorough and transparent, and  an effective review process had to be conducted. Affected persons had to have access to the review process.  There also had to be transparency concerning the decision making process to use force.

DAPO AKANDE, Co-Director, Oxford Institute for Ethics, Law and Armed Conflict (ELAC), Oxford University and Panel Moderator, asked Alex Conte about the key elements to take into account when seeking accountability for armed drones activities.

ALEX CONTE, Director of International Law and Protection Programmes, International Commission of Jurists, said that the principle of distinction had to be observed to ensure that the target was either a combatant (applicable only in the context of an international armed conflict) or a civilian who directly participated in hostilities (applicable to both international and non-international armed conflicts).  The lethal use of drones by the United States did not currently take place in the context of an international armed conflict and should in principle only target civilians directly participating in hostilities.  Proportionality of measures in armed conflicts required a graduate response proportional to the effects.  Launching an attack that may cause excessive loss of civilian lives in relation to the military advantage anticipated constituted a war crime.  In this context, the lack of transparency gave States a licence to kill, obstructed the right to remedy and reparation, and potentially involved a violation of common article 51 of the Geneva Conventions.

DAPO AKANDE, Co-Director, Oxford Institute for Ethics, Law and Armed Conflict (ELAC), Oxford University and Panel Moderator, asked Ms. Kebriaei about transparency as a requirement of both international human rights law and international humanitarian law, and whether transparency was a realistic requirement.

PARDISS KEBRIAEI, Senior Attorney-Centre for Constitutional Rights, agreed that transparency was an important requirement.  What the law required was firstly transparency about itself.  There could not be secret laws with regards to the right to life.  An essential component was also accountability and meaningful responses.  Credible allegations of abuses had been reported by credible human rights allegations, but often States do not acknowledge the existence of civilian casualties.  This kind of information could realistically be provided and made available.  There was a consensus that Governments could and should be more transparent, and steps had already been taken in that direction although much more remained to be done.

DAPO AKANDE, Co-Director, Oxford Institute for Ethics, Law and Armed Conflict (ELAC), Oxford University and Panel Moderator, took up the situation of those affected by the use of armed drones and asked about the recourse offered by international courts and the law.

SHAHZAD AKBAR, Legal Director-Foundation for Fundamental Rights, said that his organization had spent the past four years putting names and faces to the numbers of those killed and stressed that the States using armed drones refused to do that.  They refused to disclose the number and dates of strikes and refused to investigate when there were credible reports that they might have gotten it wrong.  The first step to accountability was to identify those who were on the other side of the missile.  There had been some success in courts but with limited practical effect.  In May 2013 the Peshawar High Court declared drone strikes illegal and ordered the Pakistani Government to stop them and demanded that the victims be compensated invoking international law.  The court had also ordered the local administration in Waziristan to gather initial data of civilians and militants killed in strikes for the period 2008 to 2012, which found 1,449 civilians killed in contrast to a negligible number of militants.  Not a single victim had been compensated.

**Discussion**

France said that the examination of the conformity of the military conduct with international humanitarian law was not within the mandate of this Council and said that it was still important to find a balance between the need for States to comply with their obligations under humanitarian and human rights law and the duty that every State had to protect its population against the growing threat of terrorism.  China said that the use of armed drones was a very complex issue that the international community was actively exploring and believed that the use of armed drones should abide by the United Nations Charter and international humanitarian law and respect the provisions of international humanitarian law.  There was a need to address and investigate possible disproportionate civilian casualties caused by the use of armed drones, which must be done in accordance with international law, said Ireland, and urged States to be transparent in the use of armed drones.  Venezuela said that the United States had carried more than 376 drone attacks in Pakistan and Afghanistan killing hundreds of women and men and this was an example of State terrorism.

Netherlands underlined the importance of maximum transparency in the use of armed drones, and supported holding an international dialogue to clarify the interplay between human rights and international humanitarian law.  United Kingdom said that the Human Rights Council was not the appropriate forum to discuss weapons on a thematic basis, and that the existing strict legal framework at the international level was capable of ensuring that they were used lawfully in appropriate circumstances.  United States said it was committed to ensuring that United States’ counter-terrorism operations were  undertaken in accordance with all applicable international and domestic legal provisions, with the greatest possible transparency, consistent with the national security needs of the United States.  Germany reaffirmed its position that States had an obligation to protect all human rights, but noted that an in-depth discussion of specific weapons-delivery systems would be better placed in the context of arms control and disarmament fora.

Cuba was very concerned about the use of armed drones and said these weapons should not be considered legal as they could not guarantee the distinction between persons involved in combat activities and civilians.  International Committee of the Red Cross said that in the case of drone strikes against persons participating directly in hostilities from the territory of a non-belligerent State, international humanitarian law would not be applicable, and other frameworks would govern such cases, in particular international human rights law and domestic law.  Pakistan said the use of armed drones should comply with the principles of precaution, distinction and proportionality.  Ecuador was concerned at the ethical implications and the lack of transparency of the use of armed drones, as well as at the accountability vacuum on this issue.

Amnesty International had serious concern that the United States had unlawfully killed people in drone strikes in Pakistan and that such killings could amount in some cases to extra-judicial executions or war crimes, while the Pakistani authorities had failed to protect the rights of those affected by drone strikes.  Organization for Defending Victims of Violence said that the widespread killing of civilians in drone strikes might constitute war crimes, condemned drone attacks on vulnerable civilians and called on the Council to adopt more effective accountability mechanisms for human rights violations using armed drones.  American Civil Liberties Union said that transparency was key and urgently needed and said that States had made minimal progress on this front.

**Comments by Panellists**

DAPO AKANDE, Co-Director, Oxford Institute for Ethics, Law and Armed Conflict (ELAC), Oxford University and Panel Moderator, said that a question that arose concerning the extraterritorial use of drones was whether international human rights law applied to persons taking actions outside of their States.

BEN EMMERSON, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, said that a clear view of the majority of those who had approached the issue was that Article 2 of the International Covenant on Civil and Political Rights required each State to ensure and protect the rights of all persons subject to its jurisdiction.  The International Covenant on Civil and Political Rights applied to the use of force by States outside of their territory and this applied also to the use of drones.

DAPO AKANDE, Co-Director, Oxford Institute for Ethics, Law and Armed Conflict (ELAC), Oxford University and Panel Moderator, said that speakers agreed that the use of drones per se was not illegal, and asked what it was that made it illegal.

PARDISS KEBRIAEI, Senior Attorney-Centre for Constitutional Rights, agreed that it was not about the weapon but the use of the weapon, which she stressed must be governed by international human rights law, unless used in the context of the armed conflict.  There was a risk of deflating precision with legality and the concern that the use of those weapons lowered the threshold for the use of force.  Further, damage caused by drones had an impact on human rights; the capacity of drones to linger caused a specific psychological damage in communities, and also had particular specific impact on those who operated drones.

DAPO AKANDE, Co-Director, Oxford Institute for Ethics, Law and Armed Conflict (ELAC), Oxford University and Panel Moderator, said speakers had referred to the need to examine the possible disproportionate use of force in the context of drone strikes.  Proportionality was an important principle in international humanitarian law.  What exactly did this principle require in this context of targeting and use of force?

ALEX CONTE, Director of International Law and Protection Programmes, International Commission of Jurists, said one important aspect of the proportionality principle was that  it required a graduated response under the law enforcement model and international humanitarian law.  Lethal force was legal only if absolutely necessary.  Proportionality required asking whether the use of force was absolutely required or whether other measures could be used.  This necessity requirement imposed an obligation to minimize the level of force used.

DAPO AKANDE, Co-Director, Oxford Institute for Ethics, Law and Armed Conflict (ELAC), Oxford University and Panel Moderator, in the context of the use of armed drones as a response to counter-terrorism, asked what role did the principles play?

SHAHZAD AKBAR, Legal Director-Foundation for Fundamental Rights, said the importance of these principles could not be stressed more than already stressed by the panellists.  There was a serious requirement for access to justice and due process.  There was no due process on strikes in Pakistan, where there were hundreds of civilians that had not been given justice or remedy.  Extrajudicial killing was not conducive to counter-terrorism measures.

Responding to the question on the possibility of the use of armed drones outside the context of conflict, BEN EMMERSON, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, said that armed drones could be used in law enforcement contexts, such as hostage situations or armed bombers.  In such situations, lethal force had to be used.  However, it was difficult to justify the use of lethal force in such situations because there had to be proof of imminent threat.  Reacting to comments made by some delegations that the Human Rights Council was not appropriate forum to discuss the effect of armed drones on human rights, he said that the Council was the primary institution looking at human rights, and that as such it also regulated the use of armed drones outside the conflict context.   The Council’s jurisdiction emanated from the fact that the real issue of the panel discussion was targeted killings and the right to life.

**Discussion**

Indonesia said the issues of territorial integrity, sovereignty and human rights had to be put into balance in the concerted efforts to combat terrorism.  The use of drones had to respect the principles of precaution, distinction and proportionality.  Russian Federation said that armed drones in warfare had to be handled with great care, and was concerned about allegations of the death of civilians caused by indiscriminate drone attacks by the United States and the United Kingdom.  Sri Lanka was concerned about the increasing use of armed drones for countering terrorism in violation of the principles of precaution, distinction and proportionality, violating other States’ air space and causing civilian casualties.  Malaysia noted that the deployment of drones in engaging targets had to be made in accordance with the principles of international law, and was deeply concerned about the disregard of the principles of precaution, distinction, proportionality and State sovereignty during drone strikes.  Bolivia was concerned about the lack of transparency and accountability with regards to the use of armed drones, and called on States concerned to undertake proper investigations and provide reparation to victims.  Switzerland noted that armed drones as such were not prohibited under international law, but had to be used in full compliance with international law and with more transparency.

Iran said that any use of force in the territory of a third State without justification recognized in international law was a violation of the United Nations Charter and might qualify as an act of aggression.  Chile said that the Human Rights Council was duty bound to discuss the indiscriminate use of drones, and said that the use of remote weapons systems must be regulated, particularly given the growing interest of States to acquire and use those weapon systems.  Brazil said that the compatibility of the use of armed drones with international law was a pivotal issue for current international relations both from a security and human rights perspective, and asked about the possibility of judicial review or legal control of attacks and the need to ensure that victims had access to effective compensation.  South Africa was extremely concerned that the use of armed drones violated pertinent provisions of the International Covenant on Civil and Political Rights and the 1949 Geneva Conventions on the protection of civilians in armed conflicts.  Algeria said there were differing views on the politically difficult issue of the use of drones and stressed that their use must be done in strict respect for the sovereignty of States and must not bring with it collateral damage affecting the civilians.  Nigeria took seriously States’ efforts to counter terrorism and believed that in all circumstances the fight against terrorism must remain within the confines of international humanitarian law.  Sudan was concerned as to the increasing use of drones in past years, especially after the horrendous accidents that had led to the killing of innocent civilians without accountability and prosecution.  The Council had to ensure greater protection to human rights when carrying out counterterrorism operations.

Open Society Institute reiterated that views expressed today had reflected those of many civil society organizations that were seriously concerned by the use of armed drones and the threats they posed.  Much more could be done by States to provide redress for harm done.  Transparency was key and urgently needed.  Women’s International League for Peace and Freedom was extremely concerned by the use of armed drones.  Based on available information, it was difficult to see how their use was in compliance with international law.  It was concerned by lack of due process for violations of international human rights law and international humanitarian law, and by lack of transparency

**Concluding Remarks**

PARDISS KEBRIAEI, Senior Attorney-Centre for Constitutional Rights, said much more needed to be done for the commitment to transparency to become real.   She stressed that accountability was an obligation of States, and not a policy choice.   Accountability required public explanations and information regarding the decision making on the use of armed drones, as well as information about those killed, the number of civilian deaths, and how civilian deaths could be prevented in future.

DAPO AKANDE, Co-Director, Oxford Institute for Ethics, Law and Armed Conflict (ELAC), Oxford University and Panel Moderator, asked about the role that the Human Rights Council should play in relation to the issue of targeted killings.

CHRISTOF HEYNS, Special Rapporteur on extrajudicial, summary, or arbitrary executions, said that the challenge posed by drones and targeted killings should be on the Council’s agenda.  The Council had a responsibility to be a custodian of the established principles of international human rights law.  The potential use of drones in domestic law enforcement activities also had to be on the agenda.  The Council had the responsibility to address and monitor the respect for the right to life by these activities.

DAPO AKANDE, Co-Director, Oxford Institute for Ethics, Law and Armed Conflict (ELAC), Oxford University and Panel Moderator, asked about the applicability of international humanitarian law and reminded that issues relating to the use of armed drones concerned mostly non-international conflicts.

BEN EMMERSON, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, said that the core criteria for determining the existence of an international armed conflict were understood in different ways depending on the transnational context.  One criterion was that one party to the conflict had to be an armed organization.  There were divergences on how to define what was an armed organization.  The transnational dimension of groups such as Al Qaeda also made it difficult to determine whether they filled the organized group criteria.  The intensity of the conflict was also a criterion, and posed difficulties as well.  The situation in Afghanistan for example was not currently as intense as it used to be.

Taking up the question asked by Brazil on the possibility of the judicial review in relation to the use of armed drones and where appropriate fora for such review would be, SHAHZAD AKBAR, Legal Director-Foundation for Fundamental Rights, said that judicial review in domestic context had been the only option open and in Pakistan the 2013 High Court judgement declared the use of drones illegal; another judgement of the court in Islamabad called for accountability of those who participated in the use of drones and initiated legal proceeding against them.  There had been efforts in the United States to make the use of drones’ accountability through judicial review but this was not very successful, mainly because of the lack of transparency.

Responding to the question on the obligation of States on whose territory drones were being used, ALEX CONTE, Director of International Law and Protection Programmes, International Commission of Jurists, stressed the need to distinguish the obligations of consenting States before the operation and after the operation.  Targeting States must demonstrate that a targeted individual was indeed a suspect and must conduct the operation within the limits of international law; it must guarantee that it would use graduated approach and guard against damages to civilians and civilian objects.  After a strike, there was an obligation to undertake a prompt and independent investigation in the circumstances of the killing if that killing was illegal.  There must be criminal responsibility of individuals in the State’s jurisdiction and States must also ensure adequate remedy, reparation and the right to truth.

CHRISTOF HEYNS, Special Rapporteur on extrajudicial, summary, or arbitrary executions, in concluding remarks said that a question was asked on best practices on transparency.  In addition to the role of the international community, domestic overview was important, such as in congress and legislature, as well as human rights commissions, and regional human rights bodies.  United Nations field offices may play a more active role in terms of casualties and reporting.  The United Nations Charter required a State that acted in self-defence to report to the Security Council.  If a State was involved in using drones outside of a territory, that was a requirement and that was also something to be emphasized.  The right to life had two components, namely not to be subjected to arbitrary use of lethal force, and accountability.  It was important to think about the long term.  The starting point was international law and drones should fit in with that and not the other way around.  International law should not be changed to accommodate armed drones.

PARDISS KEBRIAEI, Senior Attorney-Centre for Constitutional Rights, in concluding remarks echoed statements that the existing legal norms were adequate and largely clear.  Any analysis as to whether new, more flexible interpretation was needed had to remember general prohibitions on the use of lethal force.  Whatever the disagreement about the appropriate frameworks, there were credible allegations of violations under international human rights law and international humanitarian law that deserved a response.  There was a duty of States for investigation, public explanation, and effective remedies.  There was a real challenge of accountability at the domestic level.

ALEX CONTE, Director of International Law and Protection Programmes, International Commission of Jurists, in concluding remarks said that this issue was well within the jurisdiction of the Council.  States had inappropriately used the counter-terrorism paradigm to contextualize counter-terrorism operations.   Where a situation did not rise to an armed conflict within the meaning of international humanitarian law, domestic and international human rights law were the primary and often exclusive sources of law applicable to the use of armed drones.  Where a situation did rise to a situation of armed conflict, international humanitarian law remained applicable.

SHAHZAD AKBAR, Legal Director-Foundation for Fundamental Rights, said the panel was really discussing extrajudicial killings.  There already existed laws that needed to be obeyed and a new legal framework was not necessary to regulate the use of armed drones.  The violation of State sovereignty was an extremely dangerous side effect of their use, and if followed by other States, chaos could ensue.  The necessity of strikes needed to be established with complete transparency.  The killing of unnamed individuals had to stop, whereas counter-terrorism actions had to transform into law enforcement  and cooperative actions.

BEN EMMERSON, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, reiterated that the panel discussion was indeed Council business because it dealt with human rights and not arms control.  There was a lot of debate on what the applicable legal regime for the use of armed drones was.  Either way, international human rights law applied, as well as classic human rights law.  The principles of transparency and accountability were important to uphold.  In any case where civilians were killed, the responsible State was obliged to conduct a transparent and impartial investigation, and to publish the results of that investigation.  However, if such cases were handled by intelligence agencies, the principles of transparency would never be achieved