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Drones and targeted killings: the need to uphold human rights and international law

Reply to Recommendation[1]: Recommendation 2069 (2015)
Committee of Ministers

1. The Committee of Ministers has studied Parliamentary Assembly Recommendation 2069 (2015) on "Drones and targeted killings: the need to uphold human rights and international law" and has forwarded it to the Committee of Legal Advisers on Public International Law (CADHI) and the Steering Committee for Human Rights (CDDH), for information and possible comments.

2. The Committee of Ministers notes that the CAHDI uses the terms "unmanned aerial vehicle" (UAV) when referring to "drones". The Committee of Ministers will use both terms. The Committee of Ministers notes that the use of armed drones is relatively recent and has greatly increased in the past years. It also notes that there is a broad agreement that armed drones themselves are not illegal weapons and that relevant rules of international law regulating the use of force and the conduct of hostilities as well as of international human rights law apply to their use. However, different views have been expressed in the international community concerning the interpretation or application of these rules.

3. The international community has made efforts to address the issues raised by the increasing use of armed UAVs. The Committee of Ministers notes that wide academic literature has been developed and that armed UAVs have been debated in various forums of the United Nations, intergovernmental bodies and national governments and courts.

4. In particular, two reports have been submitted by Mr Ben Emmerson, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, respectively on 18 September 2013 to the United Nations General Assembly and on 10 March 2014 to the Human Rights Council, in which Mr Emmerson examines the use of armed UAVs in extraterritorial lethal counter-terrorism operations, including in the context of asymmetrical armed conflicts, and allegations that the increasing use of armed UAVs has caused a disproportionate number of civilian casualties. Furthermore, a report has been submitted by Mr Christof Heyns, Special Rapporteur on extrajudicial, summary or arbitrary executions on 13 September 2013 to the United Nations General Assembly, in which Mr Heyns focuses on the use of lethal force through armed UAVs from the perspective of protection of the right to life. In these three reports, the Special Rapporteurs examine the ways in which the constituent regimes of international law, including international human rights law, international humanitarian law and the law on inter-State use of force are applicable to the use of armed UAVs. They make conclusions and recommendations, notably to the United Nations and in particular their Human Rights Council, to States using armed UAVs, States on whose territory armed UAVs are used as well as other actors.

5. Furthermore, the Committee of Ministers notes that the Human Rights Council, in Resolution 25/22 of 24 March 2014 has urged States "to ensure that any measures employed to counter terrorism, including the use of remotely piloted aircraft or armed drones, comply with their obligations under international law, including the Charter of the United Nations, international human rights law and international humanitarian law, in particular the principles of precaution, distinction and proportionality". Pursuant to this resolution, the

1. Adopted at the 1242nd meeting of the Ministers' Deputies (1-2 December 2015).

Human Rights Council decided to organise on 22 September 2014 an interactive panel discussion of experts in order to examine issues related to ensuring the use of armed UAVs in counterterrorism and military operation in accordance with international law, including international human rights and humanitarian law. In addition, in Resolution 28/3 of 19 March 2015, the Human Rights Council has decided to "[invite] the United Nations High Commissioner for Human Rights and relevant special procedures of the Human Rights Council and the human rights treaty bodies to pay attention, within the framework of their mandates, to violations of international law as result of the use of remotely piloted aircraft or armed drones" as well as to remain seized of the matter.

6. As it also appears in the above-mentioned reports and resolutions, the Committee of Ministers agrees with the Parliamentary Assembly and with the CAHDI that given the fact that the number of States with the capacity to use armed drones is likely to increase, a greater consensus on the terms of their use should be reached in order to ensure compliance with public international law. The Committee of Ministers notes in this regard that the CAHDI underlines that for a particular armed UAV strike to be lawful under international law, it must satisfy the relevant and applicable requirements under the law applicable for the use of inter-State force, international humanitarian law and international human rights law.

7. Concerning the law applicable for the use of inter-State force, the Committee of Ministers recalls that under the United Nations Charter and customary international law, States are prohibited from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations. However, as the CAHDI points out on the subject of applicable legal regimes, even if there is a valid legal basis for the use of force, a drone strike may, depending on the circumstances, still be deemed unlawful under international humanitarian law and/or international human rights law.

8. Concerning international humanitarian law applicable during armed conflict, the Committee of Ministers recalls that all attacks on persons and/or objects are subject to the rules on conducting hostilities. In particular, in the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects. More specifically, those who plan or decide upon an attack shall do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives. Furthermore, precautions should also be taken in the choice of means and methods of attack with a view to avoiding, and in any event to minimising, incidental loss of civilian life, injury to civilians and damage to civilian objects.

9. Concerning international human rights law, the Committee recalls the relevant jurisprudence of the European Court of Human Rights, according to which, consistently with the jurisprudence of the International Court of Justice, "even in situations of international armed conflict, the safeguards under the Convention continue to apply, albeit interpreted against the background of the provisions of international humanitarian law".

10. In the light of what it has stated above, the Committee of Ministers considers that many legal issues raised by the increasing use of armed UAVs need to be addressed while taking into account the work of the United Nations as well as of the International Committee of the Red Cross (ICRC). It does not find that there is a need at the present stage to draft guidelines along the lines suggested by the Assembly, but will ask the CAHDI to keep the issue on its agenda and follow developments closely. It will expect CAHDI to signal any major developments to the Committee of Ministers and also to signal whether there is a need, in CAHDI's opinion, for the Council of Europe to take further action. The Committee of Ministers will keep the Assembly informed.