

BACKGROUND NOTE ON DRONES

1. Introduction

The use of Armed Unmanned Aerial Systems (henceforth drones) for the purpose of surveillance is well established; for example, they were used in Kosovo and during the first Gulf War.¹ However, the arming of drones only occurred after 9/11. Though primarily used in the war in Afghanistan, in November 2002, the United States launched an attack in Yemen which killed six men; this was reportedly carried out with the cooperation and approval of the Yemini authorities, which subsequently provided information confirming that the men had been involved in terrorist attacks.²

Drones have been used by Israel over Gaza, Sudan and Lebanon and have been purchased and/or developed by states including France, Australia and Iran.³ In early October 2012, a drone claimed to be owned by Hezbollah, was flown 35 miles inland, over Israel, before being shot down by the Israeli military; Hezbollah's leader, Sheikh Nasrallah, commented that the drone was assembled in Lebanon but made in Iran.⁴ Further details on international drone development and ownership can be found at the end of this Note.⁵

2. Human rights and the United Nations

A range of human rights, found in the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) and the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), are engaged by the domestic and international use of drones.

Reference may also be made to the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. The use of drones has been examined by the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, via fact-finding visits to countries and the submission of annual reports to the Human Rights Council and General Assembly. In 2003, the first drone attack in Yemen was described by the Special Rapporteur as a 'truly disturbing development' and concern was raised that 'such actions appear to have set an alarming

1 Drone Wars UK, *Drone Wars Briefing: Examining the growing threat of unmanned warfare*, January 2012.

2 United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, *Interim report of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions*, 1 September 2004, A/59/319, p. 10.

3 See:
http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=8606:weekly-report-on-israeli-human-rights-violations-in-the-occupied-palestinian-territory-28-;
<http://www.haaretz.com/news/report-israel-used-unmanned-drones-to-attack-sudan-convoys-1.273099>; <http://www.telegraph.co.uk/news/worldnews/middleeast/israel/8913283/Israel-accused-of-blowing-up-booby-trapped-drone-in-Lebanon.html>; <http://www.defenseindustrydaily.com/Apres-Harfang-Frances-Next-High-End-UAV-06451/>; <http://www.abc.net.au/news/2012-06-08/australias-drone-war-in-afghanistan/4058058>; <http://www.bbc.co.uk/news/world-middle-east-17805201>

4 BBC News, *Hezbollah admits launching drone over Israel*, 11 October 2012, <http://www.bbc.co.uk/news/world-middle-east-19914441>

5 United States Government Accountability Office, *Nonproliferation Agencies Could Improve Information Sharing and End-Use Monitoring on Unmanned Aerial Vehicle Exports Report to the Ranking Member, Subcommittee on National Security, Homeland Defense, and Foreign Operations, Committee on Oversight and Government Reform, House of Representatives*, 2012, p.10.

precedent for the carrying out of extrajudicial or summary executions by consent of Governments'.⁶ In reference to the killing of Hamas leader Sheikh Yassin in 2004 in the Occupied Palestinian Territories, the Special Rapporteur concluded 'that aerial bombing or targeted assassinations in areas populated by civilians resulting in deaths would constitute extrajudicial or summary executions'. The use of armed drones appeared in each of the Special Rapporteur's annual reports from 2004 onwards. In 2010, the Special Rapporteur produced a report focused on targeted killings which highlighted: the failure by states to specify the legal justification of their policies or have safeguards in place, the absence of relevant accountability mechanisms and the failure of states to provide information on the victims of attacks and any collateral consequences. The Special Rapporteur concluded: 'the result has been the displacement of clear legal standards with a vaguely defined licence to kill, and the creation of a major accountability vacuum.'⁷

The use of drones by the United States gives rise to significant questions on the status of the conflict in Pakistan and elsewhere and the legitimacy of US actions under international law. In essence, arguments have been made that: drone attacks violate the territorial sovereignty of Pakistan; these attacks do not meet the criteria of self-defence under the United Nations Charter; that Al-Qaeda, as a non-state actor, cannot be considered sufficient to trigger a response under the self-defence criteria; that drone attacks violate the *jus ad bellum* requirements of necessity and proportionality; that countering terrorism should be a matter for law enforcement rather than the military.⁸ As has been noted by O'Connell, at the time of the first drone attack in Yemen in 2002, the US was not at war with that state nor did Yemen recognise an armed conflict on its territory at that time.⁹ Similar issues arise with the use of drones by the United States in Somalia.

It is important to note that international human rights law applies at all times, though some human rights treaties allow for derogations in a 'state of emergency'.¹⁰ The applicability of international human rights law to this situation was robustly examined by Stanford University and New York University. Their report found:

IHRL [international human rights law] permits the intentional use of lethal force only when strictly necessary and proportionate. Thus, "targeted killings" as typically understood (intentional and premeditated killings) cannot be lawful under IHRL, which allows intentional lethal force only when necessary to protect against a threat to life, and where there are "no other means, such as capture or non-lethal incapacitation, of preventing that threat to life." There is little public evidence that many of the targeted killings carried out fulfill this strict legal test. Indeed, and as described above, many particular strikes and practices suggest breaches of the test, including: signature strikes; strikes on rescuers; the

6 UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Report of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, 2003.

7 UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Report of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Study on targeted killings*, 2010.

8 See, for more detailed discussion on this issue: Mary Ellen O'Connell, *Unlawful Killing with Combat Drones A Case Study of Pakistan, 2004-2009*, Notre Dame Law School Legal Studies Research Paper No. 09-43, July 2010; Kurt Larson and Zachary Malamud, *The United States, Pakistan, the law of war and the legality of the drone attacks*, The Journal of International Law and Business, 2011; Columbia Law School, *Targeting Operations with Drone Technology: Humanitarian Law Implications*, 2011; ICRC, *How is the Term "Armed Conflict" Defined in International Humanitarian Law?* 2008 <http://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf>

9 See the case of Anwar Al-Aulaqi, a joint US-Yemini citizen killed by a drone strike, which is currently the subject of legal action in the United States.

10 See, International Court of Justice, Nuclear Weapons case, Advisory Opinion, § 25.

administration's apparent definition of "militant;" the lack of evidence of imminent threat; and the practice of extensive surveillance and presence on a list before killing.¹¹

At the most basic level, it is clear that drone strikes currently form an integral part of the United States' counterterrorism strategy and their use has increased significantly under President Obama. As noted above, while questions may arise as to the status and nature of the conflict in Pakistan, Yemen and Somalia, which subsequently impact upon which international legal frameworks can be applied to these contexts, the US is committed to the use of this weapon. In a speech, John Brennan, President Obama's Counter-terrorism Advisor, justified the ongoing use of drones in the following manner: the United States is at war and has the right to self-defence; there is nothing in international law banning the use of drones or using lethal force outside an active battle ground, particularly when the state involved either consents to the attack or is unable/unwilling to take action; targeted strikes are ethical as they conform with the principle of necessity; Al-Qaeda and associates are considered legitimate targets.¹² However, it can be argued that the validity of the self-defence argument and reservations over the necessity and proportionality of the attacks casts doubt over this justification.

3. The UK: accountability and oversight

The legal, ethical and moral implications of the use of drones by the UK armed forces has not, to date, been the subject of public consideration by government. The Defence Committee, in a report from 2008, commented that it looked to the Ministry of Defence (MoD) to set out the legal and ethical issues surrounding the use of drones. The government responded:

UK Reaper [drone] operates to the same Rules of Engagement and complies with the Law of Armed Conflict in exactly the same way as manned platforms such as Tornado or Harrier. ... ethical and legal issues are not currently seen as a critical issue for armed UAVs. Looking to the future, the Department is fully aware of the legal and ethical issues surrounding the employment of UAVs outside of the current operations.¹³

However, the MoD did not set out these issues nor make reference to the UK's relevant human rights obligations. Further, a 2009 report by the Foreign Affairs Committee, focused on Afghanistan and Pakistan, concluded:

that the use of US drones to attack Al Qaeda targets in Pakistan may have resulted in serious damage to Al Qaeda's network and capabilities. However, we also conclude that these attacks have damaged the US's reputation among elements of the Pakistani population who regard them as a violation of Pakistani sovereignty. We further conclude that drone attacks remain a high-risk strategy and must not become a substitute for the challenging yet vital task of building a Pakistani civilian government counter-terrorist capacity and army capable of conducting counter-insurgency operations and dealing with extremist threats.¹⁴

11 Stanford University and New York University, *Living under drones*, September 2012, p. 117

12 Extract of speech see BBC News, *White House in first detailed comments on drone strikes*, 1 May 2012.

13 Defence Committee, *The contribution of Unmanned Aerial Vehicles to ISTAR capability: Government response to The Committee's Thirteenth Report of Session 2007–08*, 2008.

14 Foreign Affairs Committee, *Global Security: Afghanistan and Pakistan*, 2009.

The government, in response, stated: 'The UK supports Pakistan's democratically elected government, together with the sovereignty and territorial integrity of Pakistan. Drone strikes are primarily a matter for the US and Pakistan.'¹⁵

In the *Joint Doctrine Note 2/11: The UK approach to unmanned aircraft*, published in 2011, the MoD set out its position on the use of drones and noted that such use was governed by the Law of Armed Conflict. It further noted that the use of drones reduced the risk to British forces. However, comment was made that one risk associated with the use of drones is the potential for an escalation of a conflict and the perception of the 'fairness' of such a war. While the *Joint Doctrine* engages with its obligations under the Additional Protocol of the Geneva Conventions 1949 in reference to its treatment of civilians; it makes no mention of the UK's other human rights or international legal obligations in relation to the use of drones.

Most recently, a letter from the Prime Minister to Human Rights Watch highlighted the fact that the Government appears to have taken an ambiguous position on the use of drones by the United States outside of the conventional battlefield. His letter stated:

The UK Government's position is that the use of Unmanned Aerial Vehicles (UAV) against terrorist targets is a matter for the States involved. We expect all concerned to act in accordance with international law including taking all feasible precautions to avoid civilian casualties when conducting military operations.

As you acknowledge, both the US Attorney-General and President Obama's Deputy National Security Advisor have in recent months spoken publicly about the legal, practical and ethical framework for the United States' targeted strikes policy. Their position is that targeted strikes are legal as a matter of both domestic and international law, and that powers exercised are necessary, proportionate and effective, and subject to rigorous checks and balances.¹⁶

4. Increased radicalisation?

A key concern of opponents to the use of drones is the relationship between drone attacks and radicalisation, leading to questions as to the efficacy of this weapon to meet the military objectives of the US and the UK governments. A report by the US based Pew Research Center found widespread global opposition to drone strikes. In response to the question: 'Do you approve or disapprove of the United States conducting missile strikes from pilotless aircraft called drones to target extremists in countries such as Pakistan, Yemen and Somalia?'; the disapproval ratings were found to be: Greece (90%), Egypt (89%), Jordan (85%), Turkey (81%), Spain (76%), Brazil (76%) and Japan (75%). In the UK, 47% disapproved of such action.¹⁷ A separate report focusing on Pakistan found:

... Just over half of Pakistanis (55%) say they have heard a lot or a little about the drone attacks. Among those who have heard at least a little, nearly all (97%) consider them a bad thing. Those who are familiar with the drone campaign also overwhelmingly believe the

15 Foreign Affairs Committee, *The UK's foreign policy approach to Afghanistan and Pakistan response of the Secretary of State for Foreign and Commonwealth Affairs*, 2011.

16 The full correspondence can be found here:
<http://www.hrw.org/news/2012/07/16/letter-uk-prime-minister-david-cameron-targetted-killings>

17 Pew Global Attitudes Project, 2012 Spring Survey Topline Results
<http://www.pewglobal.org/files/2012/06/Pew-Global-Attitudes-U.S.-Image-TOPLINE-FINAL-June-13-2012.pdf>

attacks kill too many innocent people (94%). About three-quarters (74%) say they are not necessary to defend Pakistan from extremist organizations.¹⁸

Further, a recent report by Stanford University and New York University argued that:

It is clear from polling and our research team's interviews that drone strikes breed resentment and discontent toward the US, and there is evidence to suggest that the strikes have aided militant recruitment and motivated terrorist activity.¹⁹

Similarly, in Yemen, interviews with tribal leaders, human rights activists and others, indicated that such attacks were directly contributing to radicalisation.²⁰

5. Statistics

A number of NGOs and others record the numbers of US drone strikes. The most reliable figures are those gathered and analysed by the Bureau of Investigative Journalism.

CIA Drone Strikes in Pakistan 2004 – 2012

Total US strikes: 349

Obama strikes: 297

Total reported killed: 2,593-3,365

Civilians reported killed: 474-884

Children reported killed: 176

Total reported injured: 1,249-1,389

US covert action in Yemen 2002 – 2012

Total confirmed US operations (all): 52-62

Total confirmed US drone strikes: 40-50

Possible additional US operations: 119-138

Possible additional US drone strikes: 63-76

Total reported killed (all): 357-1,038

Total civilians killed (all): 60-163

Children killed (all): 24-34

18 Pew Center, *17% - Little Support in Pakistan for American Drone Strikes Targeting Extremist Leaders*, June 2012.

19 Stanford University and New York University, *Living under drones*, September 2012, p. 132.

20 Washington Post, *In Yemen, U.S. airstrikes breed anger, and sympathy for al-Qaeda*, 30 May 2012.

US Covert Action in Somalia 2007 – 2012

Total US strikes: 10-23

Total US drone strikes: 3-9

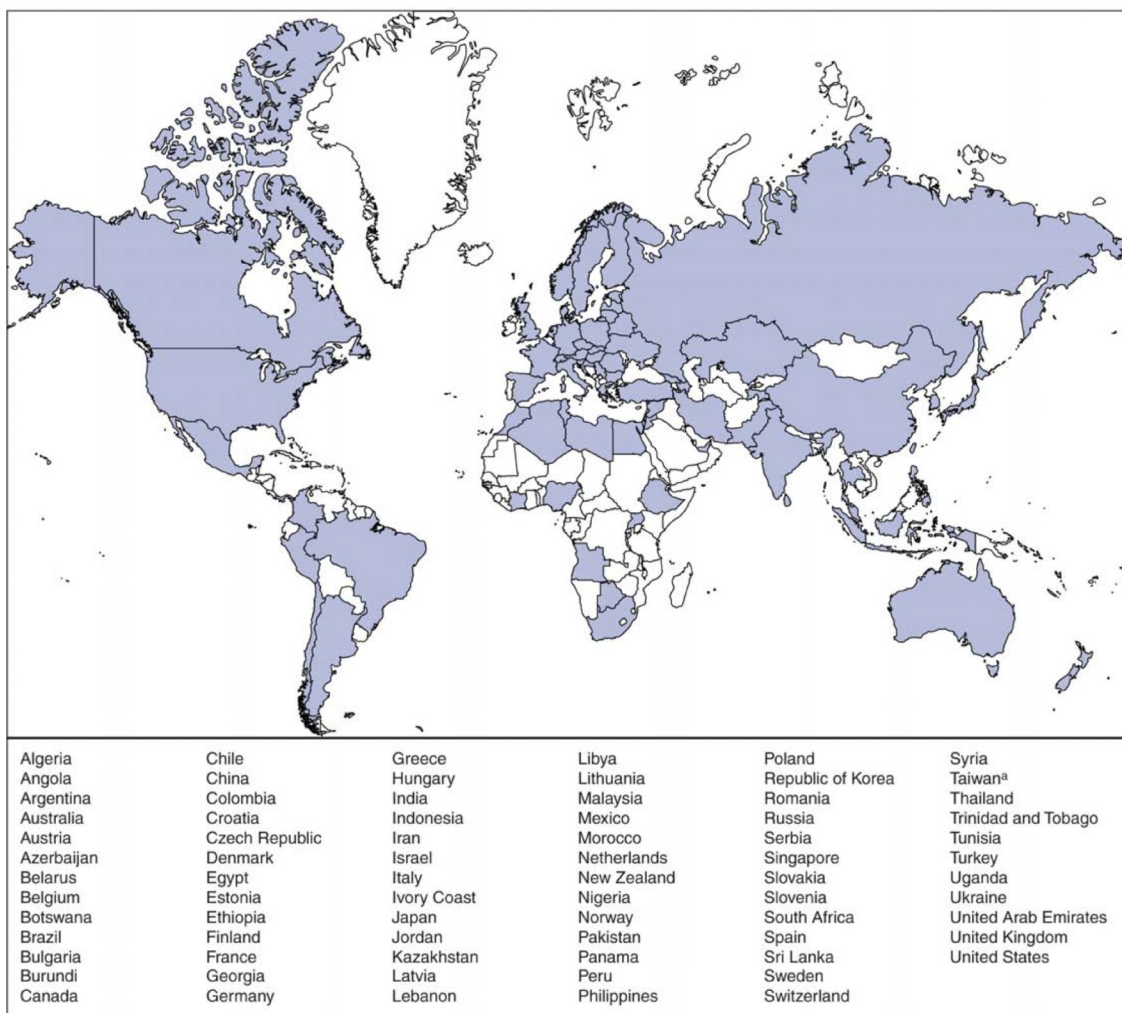
Total reported killed: 58-170

Civilians reported killed: 11-57

Children reported killed: 1-3 ²¹

6. International drone ownership

Countries that have drones (though only the US, UK and Israel are currently understood to have armed drones).



Sources: GAO analysis of various unclassified sources; Map Resources (map).

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21 Sourced from the Bureau of Investigative Journalism,
<http://www.thebureauinvestigates.com/category/projects/drones/>, accessed 15 October 2012.