



DEADLY ASSISTANCE: THE ROLE OF EUROPEAN STATES IN US DRONE STRIKES

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INTERNATIONAL**



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Cover: Women walk past a graffiti, denouncing strikes by US drones in Yemen, painted on a wall in Sana'a, the capital of Yemen. © REUTERS/Khaled Abdullah

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EXECUTIVE SUMMARY

“I remember the question being asked even then: Is it permissible to use another country as a platform for these types of operations? Some would strongly suggest that there are major questions and issues about the complicity or the implications involved in assassination programs of people in other countries facilitated by this partnership [between Germany and the USA].”

Former National Security Agency (NSA) employee and whistleblower Thomas Drake addressing a German parliamentary committee established to investigate NSA activities in Germany in 2014.

In July 2012, multiple drone strikes hit an impoverished village in Pakistan, near the border with Afghanistan, killing 18 labourers, including a 14-year-old boy, as they were about to enjoy an evening meal at the end of a long day of work. In October 2012, 68-year-old Mamana Bibi was killed in a double strike, apparently by a Hellfire missile, as she picked vegetables in the family's fields while surrounded by some of her grandchildren. They recounted in painful detail to Amnesty International the moment when Mamana Bibi was blasted into pieces before their eyes.

These are just two of the 45 reported drone strikes carried out by the United States of America (USA) in North Waziristan, northwestern Pakistan between January 2012 and August 2013 that Amnesty International reviewed in its ground-breaking 2013 report *“Will I be next?": US drone strikes in Pakistan*. Amnesty International conducted detailed research into nine of those drone strike cases, including the two above. This research revealed that the USA had carried out unlawful drone killings in Pakistan, some of which could amount to war crimes or extrajudicial executions. Five years later, US authorities have failed to acknowledge responsibility for the strikes documented by Amnesty International, let alone establish a mechanism for investigating potentially unlawful killings and providing redress where appropriate.

The reach of the US lethal drone programme is extensive, going beyond Pakistan, to countries such as Somalia, Yemen, Iraq and Syria and including areas outside of armed conflict. For this, the USA relies heavily on assistance from many States, including European States. The United Kingdom (UK), Germany, the Netherlands and Italy have played a significant role in supporting the US's lethal operations, including its drone programme.

This assistance takes the form of general intelligence-sharing as part of historical alliances such as the Five Eyes alliance, a global surveillance network which includes the UK, as well as specific intelligence support which has been provided by various States, including the Netherlands, and used to locate and identify targets for US drone strikes. The UK, Germany and Italy also provide operational support for US surveillance and drone operations, including by providing infrastructure to assist with communications and allowing the USA to use military bases on their territory.

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BY SOME OF HER GRANDCHILDREN**

Since taking office, President Donald Trump has reportedly made changes to US policy on the use of force outside areas of conflict – including through drone strikes – rolling back already-limited protections for civilians. Combined with the current administration's reported dramatic expansion in lethal drone operations, there is a real risk of an increase in unlawful killings and civilian casualties, and consequently, a heightened risk that States providing assistance to the US lethal drone programme could be responsible for assisting unlawful drone strikes.

In light of these concerns, this report examines the role played by the UK, Germany, the Netherlands and Italy in that programme, and analyses whether assistance provided by them could be aiding potentially unlawful US drone strikes in violation of international law.

THE US LETHAL DRONE PROGRAMME

Initially launched by the administration of President George W. Bush early in the so-called “War on Terror”, the USA has developed an extensive lethal drone programme, which it uses to carry out extra-territorial so-called targeted killings around the world. Although many US drone strikes have taken place as part of actual armed conflicts, the USA also asserts the right to target and deliberately kill individuals, members of particular groups who they deem to be a threat to the USA or those believed to have an association with certain of those groups, wherever they are and often far from any recognised battlefield.

Successive US administrations have justified these types of strikes either as part of a “global war” doctrine, which essentially treats the whole world as a battlefield, or on the basis of a purported right of self-defence against individuals and groups of people who they claim pose a real and imminent threat to the USA.

Over the years, experts, non-governmental organizations (NGOs) and media have consistently questioned the USA's legal justification and expressed concerns at the number of civilian casualties. Amnesty International's 2013 report, highlighted that – although the organization was not in a position to independently verify these figures – according to NGO and Pakistan government sources the USA launched between 330 and 374 drone strikes in Pakistan between 2004 and September 2013, killing between 400 and 900 civilians and injuring at least 600 people.

The USA's use of armed drones outside areas of active hostilities has also been marked by a lack of transparency around the legal and policy standards and criteria the USA applies to the use of armed drones. This has made it extremely difficult to establish the relevant facts around the strikes, including what legal framework applies and the number of casualties, which has prevented accountability and access to justice and effective remedies for victims of unlawful US drone strikes and their families.

Drone strikes increased significantly under President Obama, who oversaw more strikes during his first year in office than were carried out under the entire Bush administration. And while he did undertake some limited reforms, the US lethal drone programme continued to be characterised by a lack of transparency and accountability under his administration.

Since President Donald Trump took office, the US drone programme has seen a further dramatic expansion. US-based think tank the Council on Foreign Relations estimated that, as of 2 March 2017, he had approved at least 36 drone strikes or special operations raids in his first 45 days in office – one every 1.25 days. In March 2017, President Trump granted a request by the Pentagon (the headquarters of the US Department of Defense) to designate parts of three provinces in Yemen as “areas of active hostilities” and in the same month signed a similar directive for Somalia, allowing looser standards for the use of lethal force outside situations of armed conflict.

In addition, it has been reported that President Trump has rolled back Obama-era restrictions, including removing the requirement that drone strikes outside of recognised conflict zones target only high-level members of enemy armed forces and permitting the targeting of a much larger number of individuals even if they have not been clearly identified. The new, still-secret policy also reportedly allows intentional lethal force to be used away from situations of armed conflict against individuals posing no imminent threat to life.

While Amnesty International does not oppose the use of armed drones, it has consistently called on the USA to ensure that the use of armed drones complies with its obligations under international law, including international human rights law and international humanitarian law. In its 2013 report on drone strikes in Pakistan, Amnesty International concluded that the USA had, by justifying the so-called targeted killing of individuals or groups suspected of involvement in any kind of terrorism against the USA, adopted a radical re-interpretation of the concept of “imminence” under the purported right of self-defence, in violation of international human rights law.

In particular, by permitting the intentional use of lethal force outside recognised conflict zones and in a manner incompatible with applicable human rights standards, the USA’s policies and practices regarding the use of drones violate the right to life. Furthermore, drone strikes carried out by the USA outside conflict zones against persons who were not posing an imminent threat to life may constitute extrajudicial executions. There have also been drone strikes in armed conflict situations that appear to have unlawfully killed civilians as they were carried out in a manner that failed to take adequate precautions or otherwise violated international humanitarian law.

President Trump’s reported dismantling of the limited restrictions imposed by the Obama administration on the US drone programme therefore increases the risk of civilian casualties and unlawful killings.

EUROPEAN ASSISTANCE TO THE US LETHAL DRONE PROGRAMME

Set against this troubling context, many European States have for years been providing crucial assistance to the US lethal drone programme, as well as to other US surveillance and intelligence operations that may support that programme. While the nature of this assistance has long been shrouded in secrecy, disclosures made in 2013 by Edward Snowden, a whistleblower who worked at the National Security Agency (NSA) (a national-level intelligence agency within the US Department of Defense), shed some light on the scale of this assistance and the way in which it is being provided.

PRESIDENT TRUMP’S REPORTED DISMANTLING OF THE LIMITED RESTRICTIONS IMPOSED BY THE OBAMA ADMINISTRATION ON THE US DRONE PROGRAMME THEREFORE

**INCREASES THE RISK OF CIVILIAN
CASUALTIES AND UNLAWFUL KILLINGS.**



WHILE **AMNESTY INTERNATIONAL** DOES NOT OPPOSE THE USE OF ARMED DRONES, IT HAS CONSISTENTLY CALLED ON THE USA TO

ENSURE THAT THE USE OF ARMED DRONES COMPLIES WITH ITS OBLIGATIONS UNDER INTERNATIONAL LAW, INCLUDING INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW

These disclosures revealed that European States had been sharing intelligence with the USA that was used to locate and identify targets for US drone strikes, as well as metadata from mobile phone networks (for example, the time a call was made, its location, the duration of the call, the originators and recipients of calls) that could then be used for targeting. They also revealed that these States have provided operational support, such as assisting with communications for drone strikes by hosting critical infrastructure, or by allowing the USA to utilise bases on their territory for surveillance and intelligence operations.

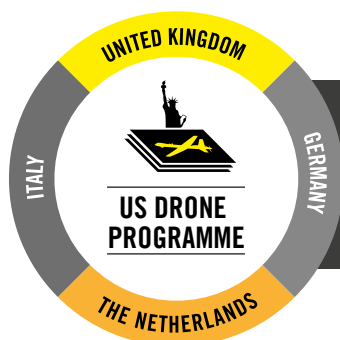
In particular, Edward Snowden's disclosures revealed that European States provide some assistance to the USA in the form of signals intelligence (SIGINT), gathered through the monitoring of electronic communications such as mobile phones and computers. In 2015, an anonymous whistleblower released documents from a study by the Pentagon Task Force on Intelligence, Surveillance and Reconnaissance (ISR) highlighting the reliance of the US lethal drone programme on SIGINT, often from foreign partners, to discover information about the nature and whereabouts of potential targets, particularly in "reduced access environment[s]". The study shows that, in more than 50 percent of the cases assessed, targets in Yemen and Somalia were identified on the basis of SIGINT in 2012.

Worryingly, the documents also acknowledge that SIGINT is an inferior form of intelligence. Lt. Gen. Michael Flynn, who was head of the Defense Intelligence Agency from July 2012 to August 2014, described how "SIGINT is an easy system to fool and that's why it has to be validated by other INTs — like HUMINT [human intelligence]" in order to validate whether the intended target is at the location where a telephone call has been intercepted. According to the documents, during one five-month period of Operation Haymaker (a special operations campaign in northeastern Afghanistan) in 2013, 90 percent of those whom the US government killed by drone strike were unintended targets.

The UK, Germany, the Netherlands and Italy have played a significant role in providing intelligence, operational and logistical support to the US lethal drone programme, as well as in providing broader assistance to US surveillance and intelligence operations that may support that programme.

There are therefore concerns about the lawfulness of the US lethal drone programme and high number of civilian casualties, as well as the accuracy and reliability of surveillance and intelligence information (such as SIGINT) used by the USA to locate and identify targets for that programme. This raises serious questions as to whether the UK, Germany, the Netherlands and Italy are assisting or at risk of assisting in potentially unlawful drone strikes. This report uses publicly available information and other disclosures to analyse the assistance that these four States are providing to the USA under the international legal framework on assistance.

However, the lack of transparency around both the US drone programme and the assistance being provided by European States does mean that it remains difficult to comprehensively assess what assistance is being provided and whether this assistance is supporting potentially unlawful US drone strikes. In particular, intelligence sharing arrangements between the European States and the USA, while extensive, are often informal and ad hoc. In the vast majority of cases there are no publicly available guidelines governing such arrangements. Clarification over the role European States play in the US drone programme has been extremely limited, contributing to the general climate of secrecy that characterises the use of armed drones.



THE UK, GERMANY, THE NETHERLANDS AND ITALY HAVE PLAYED A SIGNIFICANT ROLE IN PROVIDING INTELLIGENCE, OPERATIONAL AND LOGISTICAL SUPPORT TO THE US LETHAL DRONE PROGRAMME

UNITED KINGDOM

In 2015 Government Communications Headquarters (GCHQ) documents provided to The Guardian by Edward Snowden showed how a programme codenamed OVERHEAD – a surveillance capability located in UK military base Royal Air Force (RAF) Menwith Hill which uses US government satellites to locate and monitor wireless communications, such as mobile phone calls and WiFi traffic – had facilitated a drone strike in Yemen in March 2012 which targeted and killed two men described as members of al-Qa’ida in the Arabian Peninsula (AQAP). According to the Bureau of Investigative Journalism (BIJ), a total of five men were killed, four of whom were suspected AQAP members and one civilian, a 60-year-old man who was reportedly walking on the road near the site of the strike. The BIJ also reported between six and nine civilians injured, including six children between the ages of 10 and 14. The children were playing near the site of the strike and were wounded by shrapnel.

In addition, UK RAF bases, including RAF Croughton, RAF Menwith Hill, RAF Molesworth and RAF Digby, all appear to contribute critical support to the US lethal drone programme or US surveillance and intelligence operations that may support that programme. These bases provide crucial communications and intelligence infrastructure, allowing the USA to put in place surveillance programmes to gather and analyse intelligence to identify and target individuals for further surveillance or for drone strikes across the Middle East, North Africa and South Asia. For example, RAF Croughton has a direct communications link with Camp Lemonnier, a US military base in Djibouti which is the primary base of operations for the US Africa Command in the Horn of Africa and from which most drone strikes on Yemen and Somalia are carried out.

UK personnel have also been embedded in US lethal drone operations. For example, British RAF pilots have been assigned to the command of the US Air Force’s 432d wing, which operates drones out of Creech Air Force Base in Nevada, USA for operations in Afghanistan and Pakistan. The role of these pilots is unclear but this does raise concerns that UK pilots under US command may have been ordered to carry out drone strikes and could therefore implicate them in these violations.

GERMANY

In Germany, the US Air Force’s Ramstein Air Base forms part of the US’s vast, interconnected surveillance armoury which allows it to carry out drone strikes around the world and other surveillance and intelligence operations that may support drone strikes. A geolocation system named GILGAMESH, run by the NSA, is understood to be key to these operations. A media investigation in 2014, uncovered how the GILGAMESH platform effectively turns a device attached to the bottom of a drone (a ‘virtual base-tower transceiver’) into a fake mobile phone receiver, which forces a target’s mobile phone signal to connect, without their knowledge, to the device. This allows an individual’s precise location to be pinpointed and this information to be fed via a satellite to Ramstein base and on to ground control facilities across the USA via fibre optic cables, including Creech Air Force Base in Nevada.

Other media reports have claimed that Germany cooperates with US agencies to provide intelligence used to locate and kill individuals outside of recognised conflict zones, including – on occasion – intelligence on its own citizens. In 2011, the first known killing of a German citizen, Bunyamin Erdogan, in a US drone strike in Pakistan in 2010 was reported. A subsequent parliamentary inquiry and media reports raised serious questions about the nature of Germany's involvement in the intentional, potentially unlawful, killing of its nationals and whether the State was complicit. According to documents released by Edward Snowden, Germany's foreign intelligence agency, the Bundesnachrichtendienst (BND), regularly passes to the NSA "massive amounts of connection data relating to the communications it had placed under surveillance" including "telephone numbers, email addresses, IP connections".

THE NETHERLANDS

The Netherlands is involved in extensive anti-piracy operations in Somalia. In March 2014, media reports surfaced revealing that the USA was using data gathered by the Netherlands to target individuals it suspected of being members of al-Shabaab in Somalia. These reports were based on documents made public by Edward Snowden and a later admission by the Dutch Ministries of Defence and Interior and Kingdom Relations, in which they stated in a letter that they had provided the USA with 1.8 million metadata records of telephone conversations. As part of the anti-piracy operations, the Netherlands collects metadata from Somalia via – amongst other means and locations – the Netherlands' ground station located in Burum, in Friesland. The Netherlands is also reported to have engaged in surveillance of telephone and internet communications of Somali individuals living in the Netherlands.

ITALY

In January 2016 the Italian government granted authorization for the USA to launch armed drones from the US Navy's Naval Air Station Sigonella (Sigonella air base) in Sicily. An initial agreement limited this authorization to 'defensive' strikes to protect Special Forces conducting operations against the armed group calling itself Islamic State (IS) in Libya. On 1 August 2016 the media reported that MQ-9 Reaper drones based at Sigonella air base had been used to carry out strikes against IS positions around Sirte, Libya.

Sicily is also home to important communications infrastructure used for US lethal operations, including the US drone programme, hosting one of four ground station facilities comprising the US Department of Defense's Mobile User Objective System (MUOS); a global satellite communication system for US military forces which aims to integrate the worldwide US naval, air and ground forces, facilitating data communications, audio and video. Work is currently underway for the construction of UAS SATCOM [satellite communications] Relay Pads and Facility, which will provide satellite communications support for US lethal operations, including drone operations. It will also provide "critical backup for its sister SATCOM relay station in Ramstein, Germany".

Assistance to the US lethal drone programme by the UK, Germany, the Netherlands and Italy has sparked much public and parliamentary debate around the role these States play in US drone strikes. In the Netherlands, the Dutch Review Committee on the Intelligence and Security Services (*Commissie van Toezicht op de Inlichtingen- en Veiligheidsdiensten, CTIVD*) launched an extensive inquiry to examine the potential use of Dutch intelligence for the unlawful use of force by other States in the period between 1 January 2013 and 31 December 2015. The UK, Germany, the Netherlands and Italy have also faced legal action over their role in assisting in US drone strikes, and the lack of transparency around standards which govern such assistance.

INTERNATIONAL LEGAL FRAMEWORK ON ASSISTANCE

Under Article 16 of the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts (Articles on State Responsibility), a State can be considered to be responsible for assisting in a violation of international human rights or humanitarian law:

1. When providing assistance, the assisting State has "knowledge of the circumstances of the internationally wrongful act";
2. The act is such that it would have been wrongful had it been committed by the assisting State itself.



Publicly available information, media reports and other disclosures indicate that the UK, Germany, the Netherlands and Italy all provide differing forms of assistance to the USA for use in its drone programme. In particular, the UK, Germany and the Netherlands share intelligence which allows the USA to locate potential individuals for further surveillance or drone strikes, and Germany and the Netherlands provide metadata that could be used for such targeting. The UK, Germany and Italy allow the USA to operate bases on their territory, which provide crucial communications and intelligence infrastructure, enabling the transmission of information between drone operators in the USA and armed drones carrying out lethal strikes across the globe. Italy also allows the USA to launch armed drones from a US base in Sicily for defensive strikes.

In light of Article 16, this means that – where specific organs or officials of those States are knowingly assisting in drone strikes by the USA in violation of international law – that State may be responsible for aiding or assisting such violations.

Further, courts and United Nations treaty bodies have found that a State's obligations to respect human rights (including the right to life) entails an obligation not to assist in violations of human rights by others when it knows or should have known of the violations. This includes treaty obligations such as Article 2 of the International Covenant on Civil and Political Rights (ICCPR), which requires States parties to respect and ensure respect for the rights recognized in the ICCPR to all individuals subject to their jurisdiction. The Human Rights Committee has recognised that in certain circumstances a State may be responsible for extra-territorial violations of the ICCPR where it has contributed to a violation in another country.

In addition, the European Court of Human Rights has interpreted Article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which requires States Parties to secure, to everyone within their jurisdiction, the Convention's rights and freedoms, to include the obligation not to facilitate violations by others, including when those violations occur outside its jurisdiction. The obligation to respect human rights, including the right to life, includes the obligation to investigate allegations of violations, bring perpetrators to justice and provide reparation to victims.

CONCLUSION AND RECOMMENDATIONS

Amnesty International and other NGOs have documented unlawful US drone strikes over the course of more than a decade, exposing how these strikes have violated the right to life, in some cases amounting to extrajudicial executions and other unlawful killings. Additionally, US drone strikes have caused a significant number of civilian casualties, and in some instances appear to have violated international humanitarian law, with some attacks amounting to possible war crimes. Given the well-known and serious concerns regarding the US lethal drone programme's compliance with international law, providing material or intelligence support to US strikes could mean that the UK, Germany, the Netherlands and Italy are responsible for assisting in potentially unlawful US drone operations and may have violated their own obligations under international human rights law and international humanitarian law.

As such, and in light of reports that US President Donald Trump's administration has loosened the rules governing the USA's expanded lethal drone programme, including outside situations of armed conflict, this report makes the following recommendations to the UK, Germany, the Netherlands and Italy:

- Refrain from assisting in any way in US drone strikes that may amount to or result in a violation of international human rights law or international humanitarian law – including by allowing the use of military bases, the sharing of intelligence or other information, or the provision of personnel;
- If not already done, initiate a full public inquiry into the State's assistance to the US drone programme, including intelligence sharing arrangements with the USA;
- Provide urgent public clarification on the safeguards they have in place to ensure they are not aiding and assisting in potentially unlawful US drone strikes;
- Ensure prompt, thorough, independent and impartial investigations into all cases where there are reasonable grounds to believe that the State has provided assistance to a US drone strike that has resulted in unlawful killings and/or any civilian casualties;
- Bring to justice in public and fair trials anyone reasonably suspected of being responsible for assisting a US drone strike that has resulted in unlawful killings;
- Ensure that any assistance that is or may be provided for any lethal drone operations complies with international human rights law and international humanitarian law, in particular the right to life, by establishing – and disclosing publicly – robust binding standards to govern the provision of all forms of assistance for lethal drone operations.

THE REPORT ALSO RECOMMENDS THAT:

- The USA should publicly disclose its new rules governing the use of lethal force abroad, including specific rules on targeting for lethal operations, and ensure prompt, thorough, independent and impartial investigations into all cases where there are reasonable grounds to believe that drone strikes resulted in unlawful killings and/or civilian casualties, including cases documented by Amnesty International. Where there is sufficient admissible evidence, the USA should bring those responsible to justice in public and fair trials without recourse to the death penalty and ensure that victims of unlawful drone strikes, including family members of victims of unlawful killings, have effective access to remedies.
- Any regional or international standards developed to govern the use of armed drones must regulate not only their direct use by States but also the provision of all forms of assistance to other States' (or non-state actors') use of armed drones.

METHODOLOGY

This report is based on extensive desk-based research regarding the United States' (US) lethal drone programme as well as assistance provided to the United States of America (USA) by the United Kingdom (UK), Germany, the Netherlands and Italy for both that programme and more generally as part of other intelligence-sharing or operational assistance arrangements. Given the lack of transparency in this area, the report relies substantially on open source documents, including intelligence documents released by US National Security Agency (NSA) whistleblower Edward Snowden from June 2013 onwards, which revealed the extent of global mass surveillance by States including the USA and the UK. The report also relies on transcripts of parliamentary questions and debates, parliamentary committee reports, policy documents, independent oversight committee reports, agreements between the USA and some countries mentioned in the report (where they are publicly available), statements made by government ministers and officials, media investigations and reports, court case reports and other open source materials.

The report draws on Amnesty International's 2013 report *"Will I be next?" US drone strikes in Pakistan*, as well as reports from a number of other non-governmental organizations (NGOs) who monitor and carry out research on the US lethal drone programme and assistance provided by the UK, Germany, the Netherlands and Italy. Amnesty International also spoke to numerous NGOs and experts who monitor and carry out research in this area; they include Drone Wars UK, The European Center for Constitutional and Human Rights, PAX and Rete Disarmo.

Although Amnesty International is aware of States providing assistance to the USA for air strikes and special operations that could be unlawful, this report focuses only on strikes carried out by armed drones under the US lethal drone programme and assistance that is or could be provided to that programme. Similarly, Amnesty International is aware that States other than those mentioned in this report provide assistance to the USA which could be used in its lethal drone programme. This includes those States in the global Five Eyes alliance surveillance arrangement, comprised of the NSA, the UK's Government Communications Headquarters (GCHQ), Canada's Communications Security Establishment Canada (CSEC), the Australian Signals Directorate (ASD), and New Zealand's Government Communications Security Bureau (GCSB). However, this report focuses only on European States that have played a particularly significant role in supporting the US lethal drone programme.

Amnesty International sent summaries of our findings and concerns, and sought information and comment from the governments of the UK, Germany, the Netherlands and Italy. At the time of publication, only the government of the Netherlands had responded (see Annex I).



1 THE US LETHAL DRONE PROGRAMME: A CONTROVERSIAL AND SECRET HISTORY



The use of remotely piloted aircraft or unmanned aerial vehicles (UAVs), most commonly known as drones, has grown rapidly in recent years. Drones can be operated over vast distances through satellite links and, once launched, can be controlled remotely by pilots thousands of miles away. Drones are also able to remain airborne for far longer than piloted aircraft. For instance, Predator drones and Reaper drones can carry out missions lasting for up to 20 hours,¹ and technological advancements mean that the flight time for drones is increasing. Both States and armed forces see these capabilities, coupled with the lower physical risk to military forces and the perception that drones can increase precision, as presenting important strategic advantages.

Drones were initially developed and deployed for reconnaissance missions, for example, in support of UN forces in the former Yugoslavia, in the Balkans and in Kosovo during the 1990s. Drones were later armed and deployed by the United States (US) military in Afghanistan, as part of the so-called “War on Terror” launched by the administration of President George W. Bush in the aftermath of the 11 September attacks in the United States of America (USA) in 2001. In 2002² the first reports emerged of the use of armed drones for intentional killings targeting al-Qa’ida and Taliban fighters in Afghanistan.

Since then, the USA has developed an extensive lethal drone programme, which it has used to carry out intentional killings in various countries outside the USA including Pakistan, Libya, Yemen, Somalia, Iraq and Syria. The USA significantly expanded its drone operations under President Barack Obama, overseeing more drone strikes during his first year in office than were carried out under the entire Bush administration,³ and there has been a further dramatic expansion of strikes under President Donald Trump.⁴

While many US drone strikes have taken place as part of actual armed conflicts, the USA has asserted the right to target and deliberately kill individuals, members of particular groups or those believed to have an association with certain groups, wherever they are and often far from any recognised battlefield. Successive US administrations have justified such strikes either as part of a “global war” doctrine, which essentially treats the whole world as a battlefield, or on the basis of a purported right of self-defence to use lethal force across borders against individuals and groups of people who they claim pose a real and imminent threat to the USA.

The USA has acknowledged since 2012 that it conducts drone strikes outside of recognised conflict zones, in countries such as Yemen, Somalia and Pakistan. These strikes have been carried out by both the Central Intelligence Agency (CIA) and the US military’s Joint Special Operations Command (JSOC), both of which operate with little or no public transparency regarding their actions or adherence to US and international law.⁵ The US drone programme is supported by a vast global surveillance and intelligence network which allows it to locate and target individuals for further surveillance or drone strikes.

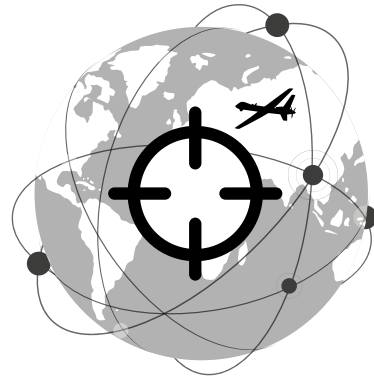
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Over the years, experts, non-governmental organizations (NGOs) and media have consistently questioned the USA's legal justification for drone strikes and expressed concerns at the number of civilian casualties resulting from these strikes.⁶ In 2013, Amnesty International released a ground-breaking report, *"Will I be next?": US drone strikes in Pakistan*, for which it reviewed 45 drone strikes that took place in North Waziristan in northwestern Pakistan between January 2012 and August 2013 and conducted detailed field research into nine of these strikes.⁷

The cases documented by Amnesty International included multiple drone strikes on an impoverished village close to the border with Afghanistan in July 2012, which killed 18 labourers, including a 14-year-old boy, as they were about to enjoy an evening meal at the end of a long day of work.⁸ They also included a double strike in October 2012, apparently by a Hellfire missile, in which 68-year-old Mamana Bibi was killed as she picked vegetables in the family's fields while surrounded by some of her grandchildren. They recounted in painful detail to Amnesty International the moment when Mamana Bibi was blasted into pieces before their eyes.⁹

The report provided new evidence showing that, through drone strikes, the USA killed people who were not directly participating in hostilities or posed no imminent threat to life. It therefore concluded that the USA had carried out unlawful drone killings in Pakistan, some of which could amount to war crimes or extrajudicial executions. It also concluded that the USA had, by justifying the targeted killing of individuals or groups suspected of involvement in any kind of terrorism against the USA, adopted a radical re-interpretation of the concept of "imminence" under the purported right of self-defence in violation of international human rights law. Since the report was published, the US administration has neither publicly committed to investigating the cases of potentially unlawful killings that Amnesty International documented, nor provided its own account of what occurred.

The USA's use of armed drones outside areas of recognized armed conflict has also been marked by a lack of transparency around the legal and policy standards and criteria the USA applies to the use of armed drones. This has both impeded an assessment of the relevant facts surrounding drone strikes, including the applicable legal framework, and prevented accountability and access to justice and effective remedies for victims of unlawful US drone strikes and their families.



**THE US DRONE PROGRAMME
IS SUPPORTED BY A VAST**

**GLOBAL SURVEILLANCE
AND INTELLIGENCE
NETWORK**

**WHICH ALLOWS IT TO LOCATE
AND TARGET INDIVIDUALS
FOR FURTHER SURVEILLANCE
OR DRONE STRIKES**

6 See for example: Columbia Law School Human Rights Clinic, *Counting drone strike deaths*, October 2012, <http://www.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/COLUMBIACountingDronesFinal.pdf> and; UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report to the Human Rights Council, UN Doc. A/HRC/25/59, 28 February 2014, and; Open Society Justice Initiative and Mwatana Organization for Human Rights, *Death by Drone: Civilian harm caused by US targeted killings in Yemen*, 2015, <https://www.opensocietyfoundations.org/sites/default/files/death-drones-report-eng-20150413.pdf>, and; Foreign Policy, *Do Not Believe the U.S. Government's Official Numbers on Drone Strike Civilian Casualties*, 5 July 2016, www.foreignpolicy.com/2016/07/05/do-not-believe-the-u-s-governments-official-numbers-on-drone-strike-civilian-casualties/

7 Amnesty International, *"Will I be next?": US drone strikes in Pakistan*, October 2013, p.49, (Index: ASA 33/013/2013), www.amnesty.org/en/documents/ASA33/013/2013/en/

8 Amnesty International, *"Will I be next?": US drone strikes in Pakistan*, October 2013, p.24, (Index: ASA 33/013/2013), www.amnesty.org/en/documents/ASA33/013/2013/en/

9 Amnesty International, *"Will I be next?": US drone strikes in Pakistan*, October 2013, Pp.18-23, (Index: ASA 33/013/2013), www.amnesty.org/en/documents/ASA33/013/2013/en/

THE ROLE OF EUROPEAN STATES IN US DRONE STRIKES

The USA relies heavily on assistance from many States, including European States, for its drone operations abroad.¹⁰ The United Kingdom (UK), Germany, the Netherlands and Italy have played a significant role in supporting the US's lethal operations, including its drone programme. This assistance takes the form of general intelligence-sharing as part of historical alliances such as the Five Eyes alliance, a global surveillance network which includes the UK, as well as specific intelligence support which has been provided by various states, including the Netherlands, and used to locate and identify targets for US drone strikes. The UK, Germany and Italy also provide operational support for US surveillance and drone operations, such as assisting with communications by hosting critical infrastructure, or by allowing the USA to use bases on their territory.

While President Obama did make some limited reforms to the US drone programme for the protection of civilians,¹¹ since taking office President Donald Trump has reportedly made changes to US policy on the use of force outside areas of conflict – including through drone strikes – rolling back those already-limited protections.¹²

Combined with the current administration's reported dramatic expansion in lethal drone operations,¹³ there is therefore a real risk of an increase in unlawful killings and civilian casualties and, consequently, a heightened risk that States providing assistance to the US lethal drone programme could be responsible for assisting unlawful drone strikes. In particular, several troubling reports have emerged in the past demonstrating that over-reliance on signals intelligence provided by foreign partners has resulted in flawed targeting and civilian casualties.¹⁴

In light of this, as well as the above substantial concerns around the US lethal drone programme and reports of unlawful drone strikes, this report outlines the assistance provided to the USA by the UK, Germany, the Netherlands and Italy, both for the US's drone programme and more generally as part of other intelligence-sharing or operational assistance arrangements, and analyses whether that assistance could be aiding potentially unlawful US drone strikes in violation of international law.

there is therefore a real risk of an increase in unlawful killings and civilian casualties and, consequently, a heightened risk that States providing assistance to the US lethal drone programme could be responsible for assisting unlawful drone strikes.

10 Jack McDonald, *Drones and the European Union: Prospects for a Common Future*, Chatham House International Security Department, 5 February 2018, p.3, <https://www.chathamhouse.org/sites/files/chathamhouse/publications/research/2018-02-05-drones-eu-mcdonald.pdf>

11 Council on Foreign Relations, *Evaluating the Obama Administration's Drone Reforms*, 31 January 2017, <https://www.cfr.org/report/evaluating-obama-administrations-drone-reforms>

12 The New York Times, *Trump Poised to Drop Some Limits on Drone Strikes and Commando Raids*, 21 September 2017, www.nytimes.com/2017/09/21/us/politics/trump-drone-strikes-commando-raids-rules.html?_r=0

13 The Guardian, *US air wars under Trump: increasingly indiscriminate, increasingly opaque*, 23 January 2018, <https://www.theguardian.com/us-news/2018/jan/23/us-air-wars-trump>

14 Ars Technica, *The NSA's SKYNET program may be killing thousands of innocent people*, 16 February 2016, www.arstechnica.com/information-technology/2016/02/the-nsas-skynet-program-may-be-killing-thousands-of-innocent-people/

2 THE US LETHAL DRONE PROGRAMME UNDER THE OBAMA AND TRUMP ADMINISTRATIONS



“We kill people based on metadata.”

General Michael Hayden, Former Director of both the Central Intelligence Agency (CIA) and the National Security Agency (NSA), 2014

US-based think tank the Council on Foreign Relations (CFR) estimated in March 2017 that, during President Obama’s two terms in office, he approved 542 drone strikes and special operations raids in non-battlefield settings (namely, in Pakistan, Yemen, and Somalia) in 2,920 days – one every 5.4 days. As of 2 March 2017, the CFR estimated that President Trump had approved at least 36 drone strikes or special operations raids in his first 45 days in office – one every 1.25 days.¹⁵

This chapter looks at the lethal drone programme under the Obama and Trump administrations, before examining the international legal framework applicable to US drone strikes in the following chapter.

2.1 DRONE STRIKES UNDER THE OBAMA ADMINISTRATION

The operational expansion of the drone programme under the Obama administration gave rise to concerns regarding unlawful killings and civilian casualties, as well as accountability and transparency around the US drone programme. For example, as mentioned above, Amnesty International’s 2013 report provided new evidence showing that, through drone strikes, the USA had killed people who were not directly participating in hostilities or posed no imminent threat to life, including a 68-year-old woman, Mamana Bibi, and a 14-year-old boy, Saleh Khan. The report therefore revealed that the USA had carried out unlawful drone killings in Pakistan, some of which could amount to war crimes or extrajudicial executions.¹⁶

Amnesty International repeatedly called on the Obama administration to disclose who was being targeted with drone strikes and on what basis. Amnesty International also called on the Obama administration to carry out investigations into all credible reports of unlawful drone killings to ensure that victims of unlawful drone strikes, including family members of victims of unlawful killings, have effective access to remedies and, where there was sufficient admissible evidence,

The operational expansion of the drones programme under the Obama administration gave rise to concerns regarding unlawful killings and civilian casualties, as well as accountability and transparency.

15 According to the Council on Foreign Relations these include three drone strikes in Yemen on 20, 21, and 22 January 2017; a Navy SEAL raid in Yemen on 28 January; one reported drone strike in Pakistan on 1 March; more than thirty drone strikes in Yemen on 2 and 3 March; and at least one more on 6 March. Amnesty International recognises this is a short period of time and therefore only provides an indication. At the time of writing this is the most up-to-date information available. See the Council on Foreign Relations, *The (Not-So) Peaceful Transition of Power: Trump’s Drone Strikes Outpace Obama*, 2 March 2017, www.cfr.org/blog/not-so-peaceful-transition-power-trumps-drone-strikes-outpace-obama

16 Amnesty International, *“Will I be next?: US drone strikes in Pakistan*, October 2013, p.49, (Index: ASA 33/013/2013), www.amnesty.org/en/documents/ASA33/013/2013/en/



A pilot at Creech Air Force Base in Nevada, USA, flies a drone over Afghanistan. © Rick Loomis/Los Angeles Times/Getty

to bring those responsible to justice.¹⁷ Despite extensive documentation, as well as worldwide media attention, the US government neither confirmed nor denied Amnesty International's findings, nor explained Mamana Bibi's or Saleh Khan's death.

While the Obama administration consistently failed to adequately address these concerns, President Obama did undertake some limited reforms to the US drone programme. This included the Presidential Policy Guidance (PPG), which was issued in May 2013 but not declassified until litigation by the American Civil Liberties Union (ACLU) forced its disclosure in August 2016.¹⁸

This PPG put in place higher standards for strikes, for example requiring "near certainty that non-combatants will not be injured or killed" and stating that lethal force would only be used to prevent or stop attacks against the USA and even then only when "capture is not feasible" and "no other reasonable alternatives exist". The PPG also clarified that "it is not the case that all military-aged males in the vicinity of a target are deemed to be combatants".¹⁹ The PPG included a requirement that targets of a drone strike pose a "continuing, imminent threat" to the USA.²⁰ The PPG did nothing, however, to address the significant shortcomings of the wider legal framework under which drone strikes were justified, specifically the "global war" paradigm which treats the entire world as a battlefield.

17 For example, see: Amnesty International USA, *Amnesty International calls on President Obama: Stop evading accountability for potentially unlawful drone killings*, 1 July 2014, www.amnestyusa.org/press-releases/amnesty-international-calls-on-president-obama-stop-evading-accountability-for-potentially-unlawful-drone-killings/

18 American Civil Liberties Union, *U.S. Releases Drone Strike 'Playbook' in Response to ACLU Lawsuit*, 6 August 2016, www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit

19 Procedures for Approving Direct Action against Terrorist Targets Located Outside the United States and Areas of Active Hostilities, 22 May 2013, https://www.justice.gov/oip/foia-library/procedures_for_approving_direct_action_against_terrorist_targets/download

20 Procedures for Approving Direct Action against Terrorist Targets Located Outside the United States and Areas of Active Hostilities, 22 May 2013, https://www.justice.gov/oip/foia-library/procedures_for_approving_direct_action_against_terrorist_targets/download

In July 2016, the Obama administration released aggregate civilian casualty data, claiming that between 64 and 116 “non-combatants” had been killed in counter-terrorism strikes in Pakistan, Yemen, Somalia and Libya between 20 January 2009 and 31 December 2015.²¹ While Amnesty International has not compiled overall data on drone killings, this estimate is far lower than the Bureau of Investigative Journalism’s (BIJ) assessment of civilian casualties over the same period (between 380 and 801).²² It is unclear how the USA counted individuals killed in these strikes (for example, who it treated as combatants or non-combatants), or the basis on which specific individuals were targeted. It is also not clear how the USA investigated civilian casualties after strikes, and whether those investigations included any interviews with witnesses, victims or relatives of deceased victims of these strikes.

Additionally, President Obama issued an Executive Order in July 2016 requiring a series of steps to prevent civilian casualties, to acknowledge them when they occur, and to provide compensation to victims.²³ However, it was left unclear in the Order whether credible cases of potentially unlawful drone strikes documented by Amnesty International as well as Human Rights Watch and other NGOs would be acknowledged or investigated. In the immediate aftermath of the announcement of the Executive Order, Amnesty International wrote jointly with other human rights, civil liberties and faith organizations to the Obama administration, calling for investigations into 10 drone strikes, including strikes documented by Amnesty International, as well as other strikes where there are credible allegations of civilian casualties.²⁴ Again, the US government neither confirmed nor denied these drone strikes.

2.2 DRONE STRIKES UNDER THE TRUMP ADMINISTRATION, AND A LOOSENING OF PROTECTIONS

In September 2017, Amnesty International raised fresh concerns²⁵ over the US drone programme following reports that President Trump was planning to roll back the limited restrictions on drone strikes placed by the previous administration. Specifically, unnamed officials speaking to the New York Times suggested that the Trump administration was planning to remove the requirement that drone strikes target only high-level members of enemy armed forces and to permit the targeting of a much larger number of individuals even if they are not clearly identified, including “foot-soldier jihadists with no unique skills or leadership roles” regardless of where they are and what threat, if any, they pose.²⁶ Media reports in October 2017 cited two unnamed US government officials confirming that President Trump had moved forward and signed-off on these rule changes.²⁷

The new, still-secret policy, referred to as the Principles, Standards and Procedures (PSP) reportedly also removes an earlier requirement of high-level interagency vetting before lethal strikes are

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- 21 Summary of Information Regarding U.S. Counterterrorism Strikes outside Areas of Active Hostilities, <https://www.dni.gov/files/documents/Newsroom/Press%20Releases/DNI+Release+on+CT+Strikes+Outside+Areas+of+Active+Hostilities.PDF>. The Obama Administration also released further data claiming that only one “non-combatant” had been killed between 1 January 2016 and 31 January 2016. See Summary of 2016 Information Regarding United States Counterterrorism Strikes Outside Areas of Active Hostilities, <https://www.dni.gov/files/documents/Summary%20of%202016%20Information%20Regarding%20United%20States%20Counterterrorism%20Strikes%20Outside%20Areas%20of%20Active%20Hostilities.pdf>
 - 22 The Bureau of Investigative Journalism, *Obama drone casualty numbers a fraction of those recorded by the Bureau*, 1 July 2016, www.thebureauinvestigates.com/stories/2016-07-01/obama-drone-casualty-numbers-a-fraction-of-those-recorded-by-the-bureau
 - 23 Executive Order -- United States Policy on Pre- and Post-Strike Measures to Address Civilian Casualties in U.S. Operations Involving the Use of Force, 1 July 2016, <https://obamawhitehouse.archives.gov/the-press-office/2016/07/01/executive-order-united-states-policy-pre-and-post-strike-measures>. See also Amnesty International, *Amnesty International USA responds to drone casualty disclosure*, 1 July 2016, www.amnestyusa.org/press-releases/amnesty-international-usa-responds-to-drone-casualty-disclosure/
 - 24 Joint letter to President Obama on implementation of Executive Order on targeted killing, 6 October 2016, www.hrw.org/news/2016/10/06/joint-letter-president-obama-implementation-executive-order-targeted-killing
 - 25 Amnesty International, *Trump administration should not gut drone protections*, 21 September 2017, www.amnestyusa.org/press-releases/trump-administration-should-not-gut-drone-protections/
 - 26 The New York Times, *Trump Poised to Drop Some Limits on Drone Strikes and Commando Raids*, 21 September 2017, www.nytimes.com/2017/09/21/us/politics/trump-drone-strikes-commando-raids-rules.html?_r=0
 - 27 The New York Times, *Will Congress Ever Limit the Forever-Expanding 9/11 War?*, 28 October 2017, www.nytimes.com/2017/10/28/us/politics/aumf-congress-niger.html

approved.²⁸ This would give more authority to the CIA and the Pentagon (the headquarters of the US Department of Defense) to carry out drone strikes and other lethal operations outside conventional conflict zones, which in turn could mean fewer safeguards against the CIA killing people without sufficient legal justification.²⁹

In addition, there are worrying reports that the revised policy lowers the Obama-era standard of “near certainty” that a lawful target is present to “reasonable certainty”,³⁰ increasing the risk of mistakenly targeting individuals and of higher civilian casualties. It is unclear whether the PSP eliminates an earlier requirement to capture individuals whenever feasible, rather than using lethal force. States are required by international law to have in place and implement such a policy outside situations of armed conflict.³¹ Even in situations of armed conflict, lethal force may, in certain circumstances, be prohibited where capture is possible.³² Reports also indicate that the Trump administration is giving the CIA an expanded role in carrying out drone strikes.³³

On 30 October 2017, the ACLU filed a Freedom of Information Act (FOIA) request to the Department of Defense (DoD), Department of Justice (DoJ), and the Department of State (State Department) seeking public disclosure of the PSP.³⁴ The US government refused to release the PSP, and in response the ACLU filed a complaint for injunctive relief on 21 December 2017 to force their disclosure.³⁵ The US government responded on 2 January 2018, neither admitting nor denying the existence of the PSP “as doing so would reveal information exempt from disclosure under FOIA.”³⁶

THERE ARE WORRYING REPORTS THAT THE REVISED POLICY
LOWERS THE OBAMA-ERA STANDARD OF “NEAR CERTAINTY”
THAT A LAWFUL TARGET IS PRESENT TO “REASONABLE CERTAINTY”



INCREASING THE RISK OF MISTAKENLY TARGETING INDIVIDUALS AND OF HIGHER CIVILIAN CASUALTIES

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- 28 The New York Times, *Trump Poised to Drop Some Limits on Drone Strikes and Commando Raids*, 21 September 2017, www.nytimes.com/2017/09/21/us/politics/trump-drone-strikes-commando-raids-rules.html?_r=0
- 29 Human Rights Watch, *How Obama's Drones Rulebook Enabled Trump*, 26 September 2017, www.hrw.org/news/2017/09/26/how-obamas-drones-rulebook-enabled-trump
- 30 Just Security, *“Reasonable Certainty” vs “Near Certainty” in Military Targeting—What the Law Requires*, 15 February 2018, www.justsecurity.org/52343/reasonable-certainty-vs-near-certainty-military-targeting-what-law-requires/
- 31 See Principles 9 and 10 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and article 3 of the UN Code of Conduct for Law Enforcement Officials and its Commentary. “A State killing is legal only if it is required to protect life (making lethal force proportionate) and there is no other means, such as capture or non-lethal incapacitation, of preventing that threat to life (making lethal force necessary). The proportionality requirement limits the permissible level of force based on the threat posed by the suspect to others. The necessity requirement imposes an obligation to minimize the level of force used, regardless of the amount that would be proportionate, through, for example, the use of warnings, restraint and capture”, UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Study on targeted killings, Report to the Human Rights Council, A/HRC/14/24/Add.6, para 32.
- 32 As regards the possibility that a requirement to capture rather than kill members of armed groups wherever practically possible may apply, see e.g. the judgment of the High Court of Justice of Israel in The Public Committee against Torture in Israel v. Gov't of Israel et al., HCJ 769/02 (11 December 2005), at paragraph 40. See also Concluding Observations of the Human Rights Committee on the third periodic report of Israel, UN Doc CCPR/C/ISR/CO/3 (3 September 2010) paragraph 10.
- 33 NBC News, *Trump Administration Wants to Increase CIA Drone Strikes*, 18 September 2017, <https://www.nbcnews.com/news/military/trump-admin-wants-increase-cia-drone-strikes-n802311>
- 34 American Civil Liberties Union, Request Under Freedom of Information Act, 30 October 2017, www.aclu.org/legal-document/psp-foia-request
- 35 *American Civil Liberties Union and American Civil Liberties Union Foundation V. Department of Defense, Department of Justice, and Department of State*, Complaint for Injunctive Relief, 1:17-cv-09972, 21 December 2017, www.aclu.org/legal-document/aclu-v-dod-complaint
- 36 *American Civil Liberties Union and American Civil Liberties Union Foundation V. Department of Defense, Department of Justice, and Department of State*, Answer, 1:17-cv-09972, 2 January 2018, www.aclu.org/legal-document/aclu-v-dod-government-answer-0

In legislation passed last year, the Trump administration was required to report to Congress any changes to the legal or policy framework that governs its use of lethal force by 12 March 2018.³⁷ President Trump sent the 'Legal and Policy Frameworks Guiding the United States Use of Military Force and Related National Security Operations' to Congress, which claims to outline the legal, factual and policy bases for US military force and national security operations.³⁸ However, the report fails to provide sufficient clarity about the current rules related to targeting in US lethal force operations, including drone operations, particularly whether these have changed under President Trump's tenure, as the media has reported, and the notable rise in lethal strikes over the past year suggests.

More significantly, the report does not even acknowledge the applicability of international human rights law to US lethal operations, and simply presumes that all US actions are taking place within the context of armed conflict. This perpetuates the dangerous notion, initiated during the Bush administration and continued under the Obama administration, of a global "War on Terror" against any individuals suspected of terrorism, and applies the more permissive targeting rules of international humanitarian law in areas where international human rights law should apply and would prohibit the use of lethal force unless strictly necessary to prevent an imminent threat to human life.

Reports that President Trump has rolled-back the limited restrictions placed by the previous administration on drone strikes therefore increases the risk of the USA carrying out unlawful killings and places civilians at greater risk. As with the Obama administration's policy, this new policy would be contrary to international law and its implementation would result in violations of the right to life, for the reasons outlined in Chapter 3 below. For the reasons also outlined in Chapter 3, even in situations of armed conflict, targeting individuals according to the new policy may be unlawful, depending on whether those targeted are directly participating in hostilities and whether the strike is carried out as part of an armed conflict to which the USA is a party. Giving more authority to the CIA and the Pentagon to carry out drone strikes and other lethal operations outside conventional conflict zones would also have significant implications on the transparency of the US drone programme, as the CIA's activities are shrouded in secrecy, which would impede effective public oversight and accountability for unlawful attacks and redress for victims and their families.

FEATURES OF THE US DRONE PROGRAMME: A SYSTEM RELIANT ON SIGNALS INTELLIGENCE DESPITE ITS SHORTCOMINGS

In 2014, a former director of both the CIA and the USA's National Security Agency (NSA) (a national-level intelligence agency within the Department of Defense), General Michael Hayden, stated at a symposium at John Hopkins University that "we [US government] kill people based on metadata".³⁹ More specifically, he affirmed that the US government only kills "foreigners" in this way, not US citizens.⁴⁰

37 Section 1264 of the 2018 National Defense Authorization Act requires the Trump administration to submit a report to Congress on the legal and policy frameworks for the US' use of military force and related national security operations, including the legal, factual, and policy justifications for any changes. See H.R.2810 - National Defense Authorization Act for Fiscal Year 2018, www.congress.gov/bills/115/congressional-legislation/2810/text/toc/HCD6D2292ED55453CB3348CD46983DE10

38 Legal and Policy Frameworks Guiding the United States Use of Military Force and Related National Security Operations, March 2017, <https://assets.documentcloud.org/documents/4411804/3-18-War-Powers-Transparency-Report.pdf>

39 Just Security, *Video Clip of Former Director of NSA and CIA: "We Kill People Based on Metadata"*, 12 May 2014, www.justsecurity.org/10318/video-clip-director-nsa-cia-we-kill-people-based-metadata/ and www.youtube.com/watch?v=UdQizOVavmc

40 The Guardian, *Death by drone strike, dished out by algorithm*, 21 February 2016, www.theguardian.com/commentisfree/2016/feb/21/death-from-above-nsa-csa-sky-net-algorithm-drones-pakistan

This claim was given credence in papers released by NSA whistleblower Edward Snowden. On 5 June 2013, a British newspaper, The Guardian, published the first in a series of revelations about indiscriminate mass surveillance by the NSA and the UK's Government Communications Headquarters (GCHQ).⁴¹ Edward Snowden also provided concrete evidence of global communications surveillance programmes that monitor the internet and phone activity of hundreds of millions of people across the world.⁴²

In particular, Snowden released papers to The Intercept in 2015 uncovering SKYNET, an extensive surveillance programme which conducts mass surveillance of mobile phone networks in Pakistan and then uses the metadata (for example, the time a call was made, its location, the duration of the call, the originators and recipients of calls) and a machine learning algorithm to identify and target potential members of al-Qa'ida's Senior Leadership (AQLS) and other individuals suspected of being "terrorists" or people linked to them.⁴³ The metadata

hoovered up by SKYNET is then used to define particular behavioural patterns like a "pattern-of-life", "social network" and "travel behaviour".⁴⁴ The NSA algorithms in the SKYNET programme use 80 features to score individuals on the likelihood of them being members of AQLS.⁴⁵

Patrick Ball, a renowned data scientist and the director of research at the Human Rights Data Analysis Group, a non-profit, non-partisan organization that applies rigorous science to the analysis of human rights violations, was highly critical of the NSA's methods, describing them as "ridiculously optimistic" and "completely bullshit".⁴⁶ Based on his analysis of the documents shared with The Intercept, Patrick Ball identified a flaw in the way the NSA trains the algorithm, referring to the method as "scientifically unsound", as it was liable to identify false positives when applied.

The leaked documents showed how, when the NSA applied their methodology to a full data set of 55 million individuals, only one of the seven "known terrorists" was in the top 100 suspects, and only five were in the top 500. According to the NSA slides, 0.18 percent of the 55 million would be expected to be falsely categorised as "terrorists". This is an incredibly high margin of error when applied to the data of 55 million people, meaning that 99,000 of them would be wrongly identified.⁴⁷ Although it is unclear what additional checks occur after the algorithm flags people, for drone strike targeting to be done on the basis of this algorithm alone would lead to mistaken identification and targeting of a very high number of people.

Patrick Ball, a renowned data scientist, identified a flaw in the way the NSA trains the algorithm, referring to the method as "scientifically unsound", as it was liable to identify false positives when applied.

41 The Guardian, *NSA leaks: US and Britain team up on mass surveillance*, 22 June 2013, <https://www.theguardian.com/world/2013/jun/22/nsa-leaks-britain-us-surveillance>

42 Amnesty International and Privacy International joint briefing, *Two years after Snowden: Protecting human rights in an age of mass surveillance*, 4 June 2015, <https://www.amnesty.org/en/documents/act30/1795/2015/en/>

43 Pakistan was the only country referred to in documents so it is unclear whether the same programme is being used elsewhere around the world. See also The Guardian, *Has a rampaging AI algorithm really killed thousands in Pakistan?*, 18 February 2016, <https://www.theguardian.com/science/the-lay-scientist/2016/feb/18/has-a-rampaging-ai-algorithm-really-killed-thousands-in-pakistan>

44 The Intercept, *SKYNET: Courier Detection via Machine Learning*, 8 May 2015, www.theintercept.com/document/2015/05/08/skynet-courier/

45 The Intercept, *SKYNET: Courier Detection via Machine Learning*, 8 May 2015, www.theintercept.com/document/2015/05/08/skynet-courier/

46 Ars Technica, *The NSA's SKYNET program may be killing thousands of innocent people*, 16 February 2016, www.ars Technica.com/information-technology/2016/02/the-nsas-skynet-program-may-be-killing-thousands-of-innocent-people/

47 Global Research, *Inaccurate Metadata Analysis Used to Kill Thousands in US Drone Strikes*, 24 February 2016, www.globalresearch.ca/inaccurate-metadata-analysis-used-to-kill-thousands-in-us-drone-strikes/5510049

In October 2015, an anonymous whistleblower released documents to The Intercept from a study by the Pentagon Task Force on Intelligence, Surveillance and Reconnaissance (ISR),⁴⁸ which highlighted the reliance of the US drone programme on signals intelligence (SIGINT) – intelligence received from the monitoring of electronic communications such as mobile phones and computers, often by foreign partners – to discover information about the nature and whereabouts of potential targets, particularly in “reduced access environment[s]”.⁴⁹

The US relies on monitoring electronic communications for identifying and targeting individuals in Yemen and Somalia in particular, due to the limited capacity of JSOC to carry out on-the-ground raids and seize relevant materials in those countries.⁵⁰ In more than 50 percent of the cases in the ISR study, targets in Yemen and Somalia were identified on the basis of SIGINT in 2012.⁵¹ This is despite the documents stating that SIGINT is an inferior form of intelligence, with much of the intelligence collected coming from foreign partners.

Lt. Gen. Michael Flynn, who was head of the Defense Intelligence Agency from July 2012 to August 2014, describes how “SIGINT is an easy system to fool and that’s why it has to be validated by other INTs [intelligence] — like HUMINT [intelligence gathered by agents or others]” in order to validate whether the intended target is at the location where a telephone call has been intercepted.⁵²

If confirmed, The Intercept’s revelations paint an alarming picture. According to the documents released by the anonymous whistleblower, during one five-month period of Operation Haymaker (a special operations campaign in northeastern Afghanistan) in 2013, almost 90 percent of those whom the US government killed by drone strike were unintended targets.⁵³ The documents also show that those killed by strikes are considered an “enemy killed in action” even if they were not the intended target, unless evidence emerges after their death to prove otherwise. In light of Amnesty International’s research on the operation of the US drone programme in Pakistan and requests to the US government going unanswered, it is not clear that the US conducts any after-action investigations that might reveal such evidence. This is completely inconsistent with the Obama administration’s policy guidelines, announced in May 2013, stating that drone strikes will only occur with “near certainty” that there will be no civilian casualties and demonstrates that the Obama administration’s policy was ineffective, as it is highly likely that a large number of unintended targets were killed.

These revelations offered further damning evidence that the Obama administration was continuing the Bush-era project of treating the world as a global battlefield while evading public scrutiny and accountability.

48 The Intercept, *Small Footprint Operations 2/13*, 15 October 2015, www.theintercept.com/document/2015/10/14/small-footprint-operations-2-13/#page-1

49 The Intercept, *Firing blind: Flawed intelligence and the limits of drone technology*, 15 October 2015, www.theintercept.com/drone-papers/firing-blind/?_sp=c58d2419-77a5-4f97-8552-b1da0dcf052c.1511034137476

50 The Intercept, *Firing blind: Flawed intelligence and the limits of drone technology*, 15 October 2015, www.theintercept.com/drone-papers/firing-blind/?_sp=c58d2419-77a5-4f97-8552-b1da0dcf052c.1511034137476

51 See: <https://theintercept.com/document/2015/10/14/small-footprint-operations-2-13/#page-9>

52 The Intercept, *Firing blind: Flawed intelligence and the limits of drone technology*, 15 October 2015, www.theintercept.com/drone-papers/firing-blind/?_sp=c58d2419-77a5-4f97-8552-b1da0dcf052c.1511034137476

53 The Intercept, *The assassination complex: Secret military documents expose the inner workings of Obama’s drone wars*, 15 October 2015, www.theintercept.com/drone-papers/the-assassination-complex/ and <https://theintercept.com/document/2015/10/14/operation-haymaker/#page-1>

3 US DRONE STRIKES UNDER INTERNATIONAL LAW



As highlighted in the previous chapters, US authorities have consistently failed to provide an adequate legal and factual justification for its drone programme, instead justifying the use of lethal force against individuals in other countries on the basis of either a “global war” doctrine that essentially treats the whole world as a battlefield or a purported right of self-defence against individuals and groups of people who they claim pose a real and imminent threat to the USA. This, and the secrecy under which US drone strikes are carried out, poses a significant challenge in assessing the legality of US drone strikes around the world, as it creates uncertainty about which set of international laws and standards apply. For example, international human rights law applies to the use of drones by the USA at all times. However, when drone strikes are carried out as part of an actual armed conflict international humanitarian law also applies. Uncertainty as to whether there is an armed conflict in some areas where drones operate therefore makes it difficult to make a conclusive assessment of the applicable laws and the legality of US drone strikes.

As Amnesty International has previously stated, by permitting the intentional use of lethal force outside recognised conflict zones and in a manner incompatible with applicable human rights standards, the USA’s policies and practices regarding the use of drones violate the right to life. Furthermore, drone strikes carried out by the USA outside conflict zones against persons who were not posing an imminent threat to life may constitute extrajudicial executions. There have also been drone strikes in armed conflict situations that appear to have unlawfully killed civilians as they were carried out in a manner that failed to take adequate precautions or otherwise violated international humanitarian law.

Against that background, this chapter examines the USA’s obligations under international human rights law and, where applicable, international humanitarian law, with regards to its lethal drone programme.

3.1 THE PROHIBITION ON ARBITRARY DEPRIVATION OF LIFE

The International Court of Justice (ICJ) has stated that the obligations under the International Covenant on Civil and Political Rights (ICCPR) apply to a State that exercises its jurisdiction even outside its own territory.⁵⁴ The United Nations Human Rights Committee, the expert body that monitors the implementation of the ICCPR, has also affirmed that the ICCPR can apply to a State’s actions outside its territory.⁵⁵ A State Party has an obligation to respect and ensure the rights under Article 6 (right to life) wherever it exercises authority, power or effective control over a person’s enjoyment of its right to life.⁵⁶ This includes through the extraterritorial use of force (for example, through drone strikes) by government agencies, including military and non-military agencies, against persons located on a territory or in a place outside the State’s authority, power or effective control.⁵⁷

54 International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 2004, para. 111; ICJ, *Congo v. Uganda*, ICJ Reports [2005] at paras. 216-217.

55 United Nations Human Rights Committee General Comment 31, *Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 26 May 2004, para. 10.

56 Amnesty International, *Submission To The United Nations Human Rights Committee On The Revised Draft General Comment No. 36*, 6 October 2017, pp.26-28, <https://www.amnesty.org/en/documents/ior40/7150/2017/en/>

57 Amnesty International, *Submission To The United Nations Human Rights Committee On The Revised Draft General Comment No. 36*, 6 October 2017, pp.26-28, <https://www.amnesty.org/en/documents/ior40/7150/2017/en/>

THE USA'S OBLIGATION TO RESPECT THE RIGHT TO LIFE APPLIES TO ITS LETHAL DRONE OPERATIONS



This approach to extraterritorial jurisdiction applies equally to the obligation to respect the right to life under customary law, independent of any treaty adherence: “if the affected right is part of customary international law then, by taking the extraterritorial forcible measure, a state may have violated its international legal obligations”.⁵⁸ Therefore, the USA's obligation to respect the right to life under customary law applies to its lethal drone operations.

Whether or not US drone strikes occur in the context of an armed conflict, the USA must abide by Article 6(1) of the ICCPR, an international treaty that it has ratified. Article 6(1) states that “every human being has the inherent right to life. No one shall be arbitrarily deprived of his life.” This right is a peremptory norm of international law and can never be suspended or otherwise derogated from, be it in times of peace or in times of war.⁵⁹

However, if a killing by drone strike takes place in a conflict zone and is committed as part of an armed conflict, the question of whether this constitutes an arbitrary deprivation of life will be determined by the relevant rules of international humanitarian law. Under those rules, intentionally targeting and killing a civilian who is not directly participating in hostilities would constitute an arbitrary deprivation of life (as further described in section 3.3 below).

3.2 DRONE STRIKES OUTSIDE OF ARMED CONFLICT

In situations outside of armed conflict (where international humanitarian law does not apply), the intentional use of lethal force by the USA is governed by international law enforcement standards under international human rights law, such as the UN Basic Principles on the Use of Force and Firearms (UNBPUFF). In particular, Principle 9 of the UNBPUFF⁶⁰ reflects binding international law. Under international policing standards, the US authorities must demonstrate, in each strike, that intentional lethal force was only used when strictly unavoidable to protect life, no less harmful means such as capture or non-lethal incapacitation was possible, and the use of force was proportionate in the

58 Noam Lubell, *Extraterritorial Use of Force Against Non-State Actors*, Oxford University Press, 2011.

59 See article 4(2) of the ICCPR and, inter alia, Human Rights Committee, General Comment No. 29 on states of emergency, UN Doc. CCPR/C/21/Rev.1/Add.11, paras 7 and 11; see also Human Rights Committee, General Comment No 31 on the nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13, para 11.

60 Basic Principle 9 “Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.” See Basic Principles on the Use of Force and Firearms by Law Enforcement Officials Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>



A Yemeni boy walks past a mural depicting a US drone on December 13, 2013 in the Yemeni capital Sana'a.
© Mohamed Huwais/AFP/Getty Images

prevailing circumstances.⁶¹ Unlawful and deliberate killings carried out by order of government officials or with their complicity or acquiescence amount to extrajudicial executions; they are prohibited at all times and constitute crimes under international law.⁶²

Amnesty International believes it is highly unlikely that US drone strikes outside of armed conflict, including in Pakistan, Yemen and Somalia, satisfy the law enforcement standards that govern intentional use of lethal force outside armed conflict. As such, whether or not the individuals or groups targeted are considered enemies of the USA, or have carried out or planned crimes against US nationals or others, their deliberate killing by drones outside an armed conflict would very likely violate the prohibition of arbitrary deprivation of life and may constitute extrajudicial executions. Deliberate killings by drones, taking place outside armed conflict, without first attempting to arrest suspected offenders, without adequate warning, without the suspects offering armed resistance, and in circumstances in which suspects posed no imminent threat to security forces, would be considered extrajudicial executions in violation of international human rights law.⁶³

61 See Principles 9 and 10 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and article 3 of the UN Code of Conduct for Law Enforcement Officials and its Commentary. "A State killing is legal only if it is required to protect life (making lethal force proportionate) and there is no other means, such as capture or non-lethal incapacitation, of preventing that threat to life (making lethal force necessary). The proportionality requirement limits the permissible level of force based on the threat posed by the suspect to others. The necessity requirement imposes an obligation to minimize the level of force used, regardless of the amount that would be proportionate, through, for example, the use of warnings, restraint and capture", UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Study on targeted killings, Report to the Human Rights Council, UN Doc. A/HRC/14/24/Add.6, para. 32.

62 See UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Principle 1. See also Human Rights Committee, General Comment No. 31 on the nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13, para. 18.

63 UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Study on targeted killings, Report to the Human Rights Council, UN Doc. A/HRC/14/24/Add.6, para. 33.

3.3 DRONE STRIKES AS PART OF AN ARMED CONFLICT

It is possible that some US drone strikes are carried out as part of non-international armed conflicts. According to the International Committee of the Red Cross (ICRC), a non-international armed conflict is a “protracted armed confrontation occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State [party to the Geneva Conventions]. The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum of organisation”.⁶⁴ However, international humanitarian law does not apply to “situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature”.⁶⁵

It should however be noted that whether US drone strikes are carried out in this context can only be assessed on a case-by-case basis. The USA's lack of transparency around its drone programme and the legal framework under which it operates makes this very difficult to assess.

If a US drone strike does occur in a specific zone of armed conflict and in connection to that conflict, then both international human rights law and international humanitarian law will apply. For example, if a drone strike targets an individual who is directly participating in a non-international armed conflict in that country and to which the USA is a party, the USA must abide by the non-derogable international human rights law prohibition of the arbitrary deprivation of life (which applies even if that country has declared a state of emergency). However, in such circumstances, respect for this prohibition is normally assessed according to international humanitarian law's rules governing the conduct of hostilities, in particular the principle of distinction and, flowing from that, the prohibitions on indiscriminate and disproportionate attacks.

Under international humanitarian law, US drone operators must at all times abide by the principle of distinction; namely, distinguish between civilians and combatants.⁶⁶ All members of the armed forces of a party to the conflict are combatants, except medical and religious personnel. A civilian is any individual who is not a member of the armed forces.⁶⁷ In armed conflict situations US drone strikes may only be directed against combatants⁶⁸ and civilians are protected against attack unless and for such time as they take a direct part in hostilities.⁶⁹ All feasible precautions must be taken in determining whether a person is a civilian and, if so, whether that civilian is directly participating in hostilities.⁷⁰ In case of doubt, the person must be presumed to be protected against direct attack.⁷¹ Making the civilian population or individual civilians not taking direct part in hostilities the object of attack is a war crime.⁷²

If individuals are taking a direct part in hostilities, it is lawful under international humanitarian law for US drones to target them. However, this question must be determined by looking at whether the acts carried out by the relevant individual amount to directly participating in hostilities (and if so, when such participation begins and ends). According to the ICRC, an act constitutes direct participation in hostilities if it meets three cumulative criteria: it must reach a requisite threshold of harm (likely

64 International Committee of the Red Cross, *How is the Term “Armed Conflict” Defined in international humanitarian law?*, Opinion Paper, March 2008, p 5. See also Article 3 Common to the Geneva Conventions of 12 August 1949 (Common Article 3) and; Protocol II Additional to the Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts (hereinafter Protocol II) and authoritative interpretations, particularly by the International Criminal Tribunal for the former Yugoslavia (ICTY).

65 Article 1(2) of Protocol II, 8 June 1977.

66 International Committee of the Red Cross, *Customary international humanitarian law* (hereinafter ICRC, *Customary IHL*), Volume I: Rules, Rule 1.

67 ICRC, *Customary IHL*, Volume I: Rules, Rules 3 and 5.

68 ICRC, *Customary IHL*, Volume I: Rules, Rule 1.

69 ICRC, *Customary IHL*, Volume I: Rules, Rule 6.

70 International Committee of the Red Cross, *Interpretative Guidance on the Notion of Direct Participation in Hostilities under international humanitarian law* (hereinafter ICRC, *Interpretive Guidance*), Recommendation VIII.

71 *Interpretive Guidance*, Recommendation VIII.

72 ICRC, *Customary IHL*, Volume I: Rules, Rule 156.

ALL FEASIBLE PRECAUTIONS MUST BE TAKEN

IN DETERMINING WHETHER A PERSON IS A CIVILIAN AND, IF SO, WHETHER THAT CIVILIAN IS DIRECTLY PARTICIPATING IN HOSTILITIES



to adversely affect the military operations or capacity of the opposing party); there must be direct causation between the act and the harm; and there must be a belligerent nexus (it must be specifically designed to cause the harm to a party to the conflict).⁷³ As regards duration of direct participation, the ICRC has argued that “measures preparatory to the execution of a specific act of direct participation in hostilities, as well as the deployment to and the return from the location of its execution, constitute an integral part of that act.”⁷⁴

In addition to distinguishing between civilians and combatants, an attack must “distinguish between civilian objects and military objectives”.⁷⁵ Civilian objects are protected against attack, unless and for such time as they are part of military objectives; that is, “objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage”.⁷⁶ Making civilian objects the object of attack is a war crime.⁷⁷

Flowing from the principle of distinction is the prohibition of indiscriminate attacks; that is, attacks that do not distinguish between military objectives and civilians or civilian property.⁷⁸ In addition, attacks must not be disproportionate. An attack would be disproportionate if it “may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”.⁷⁹ Launching an indiscriminate attack resulting in death or injury to civilians, or an attack in the knowledge that it will cause excessive incidental civilian loss, injury or damage, is a war crime.⁸⁰

The protection of the civilian population and civilian objects is further underpinned by the requirement that all parties to a conflict take precautions in attack, and in defence. In the conduct of military operations, then, “constant care must be taken to spare the civilian population, civilians and civilian objects”; “all feasible precautions” must be taken to avoid and minimize incidental loss of civilian life, injury to civilians and damage to civilian objects.⁸¹ Everything feasible must be done to verify that targets are military objectives, to assess the proportionality of attacks, and to halt attacks if it becomes apparent they are wrongly-directed or disproportionate.⁸² Where circumstances permit, parties must give effective advance warning of attacks which may affect the civilian population.⁸³

73 ICRC, *Interpretive Guidance*, Recommendation V.

74 ICRC, *Interpretive Guidance*, Recommendation VI.

75 ICRC, *Customary IHL*, Volume I: Rules, Rule 7.

76 ICRC, *Customary IHL*, Volume I: Rules, Rules 8 and 10.

77 ICRC, *Customary IHL*, Volume I: Rules, Rule 156.

78 ICRC, *Customary IHL*, Volume I: Rules, Rule 12.

79 ICRC, *Customary IHL*, Volume I: Rules, Rule 14.

80 ICRC, *Customary IHL*, Volume I: Rules, Rule 156.

81 ICRC Customary IHL Study, Rule 15. See also Protocol II, article 13(1).

82 ICRC Customary IHL Study, Rules 16-19.

83 ICRC Customary IHL Study, Rule 20.

Forces also must take all feasible precautions in defence to protect civilians and civilian objects under their control against the effects of attacks by the adversary.⁸⁴ In particular, each party must to the extent feasible avoid locating military objectives within or near densely populated areas, and remove civilian persons and objects under its control from the vicinity of military objectives.⁸⁵

3.4 USE OF FORCE IN ANOTHER STATE'S TERRITORY

Separate to the rules governing international humanitarian law and international human rights law, is the international law governing the use of force in another State's territory, known as extraterritorial force. This would require the State carrying out the attack to: obtain the consent of the State in whose territory the attack is taking place; obtain a specific mandate of the UN Security Council under Chapter VII of the UN Charter; or be acting within the specific requirements of the right to self-defence under article 51 of the UN Charter.⁸⁶ It has also been argued that the USA may be justifying lethal drone strikes in another State's territory by claiming that there exists a so-called "right to anticipatory self-defence" under international law, according to which there would be a "right to use force against a real and imminent threat when 'the necessity of that self-defence is instant, overwhelming, and leaving no choice of means, and no moment of deliberation'".⁸⁷

Amnesty International does not take a position on the issue of when the use of extraterritorial force is justified or legal. But the issue of whether a State consents to US drone strikes in its territory is relevant to whether it shares responsibility for violations by the USA on its territory and to the relevant legal regimes applicable (including the question of whether there is an international armed conflict). Regardless of whether or not its use of drones is lawful under the law on use of extraterritorial force, the USA would need to adhere to its obligations under international human rights law and, where applicable, international humanitarian law.

As outlined in the previous chapters, the policy of successive US administrations under which individuals can be targeted in the US drone programme suggests the USA believes that it can lawfully target people based merely on their membership of armed groups, rather than on the basis of their conduct or direct participation in hostilities. However, as demonstrated above and on the basis of the ICRC's guidance on this issue, it is clear that membership of an armed group alone is not a sufficient basis to directly target an individual. Additionally, reports⁸⁸ that the US targets individuals on a 'kill list' suggest the US is not doing a case-by-case analysis of whether those persons are taking direct part in hostilities at the time they are targeted.

84 ICRC Customary IHL Study, Rule 22.

85 ICRC Customary IHL Study, Rules 23 and 24.

86 For a discussion about the very limited set of circumstances where the right to self-defence against attacks by non-state actors, such as armed groups, can be validly claimed, see UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Study on targeted killings, Report to the Human Rights Council, UN Doc. A/HRC/14/24/Add.6, paras 40-41.

87 See, inter alia, UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Study on targeted killings, Report to the Human Rights Council, UN Doc. A/HRC/14/24/Add.6, paras 45 and 86.

88 Washington Post, *Plan for hunting terrorists signals US intends to keep adding names to kill lists*, 23 October 2012, https://www.washingtonpost.com/world/national-security/plan-for-hunting-terrorists-signals-us-intends-to-keep-adding-names-to-kill-lists/2012/10/23/4789b2ae-18b3-11e2-a55c-39408f6e6a4b_story.html?utm_term=.71ddf7ce0f8f

MEMBERSHIP OF AN ARMED GROUP

ALONE IS NOT A SUFFICIENT BASIS TO DIRECTLY TARGET AN INDIVIDUAL



In the Obama Administration's Presidential Policy Guidance (PPG), the term "non-combatant" was defined as "individuals who may not be made the object of attack under the law of armed conflict". The PPG explained that "the term "non-combatant" did not include an individual who is targetable as part of a belligerent party to an armed conflict, an individual who is taking a direct part in hostilities, or an individual who is targetable in the exercise of national self-defense."⁸⁹ This was already an overly broad definition of combatant which goes beyond international humanitarian law. Even more concerning was the fact the PPG set out the guidance applicable to operations outside areas of active hostilities – that is to operations that should be governed by international policing standards, not international humanitarian law. The PPG is therefore certainly not a sound basis for ensuring respect for the right to life and preventing unlawful killings.

Nevertheless, there are now multiple reports that President Trump has rolled-back the limited restrictions placed by the previous administration on drone strikes and the use of lethal force outside of recognised conflict zones. This includes, amongst other things already discussed in the previous chapter, plans to remove the requirement that drone strikes target only high-level members of enemy armed forces and to permit the targeting of a much larger number of individuals who are not clearly identified, including "foot-soldier jihadists with no unique skills or leadership roles" regardless of where they are and what threat, if any, they pose.⁹⁰

89 Procedures for Approving Direct Action against Terrorist Targets Located Outside the United States and Areas of Active Hostilities, 22 May 2013, https://www.justice.gov/oip/foia-library/procedures_for_approving_direct_action_against_terrorist_targets/download

90 Details of these policy changes can be found in: Amnesty International, *NGO Statement on Reported Changes to U.S. Policy on Use of Armed Drones and Other Lethal Force*, 7 March 2018, www.amnestyusa.org/press-releases/ngo-statement-on-reported-changes-to-u-s-policy-on-use-of-armed-drones-and-other-lethal-force/

4 INTERNATIONAL LEGAL FRAMEWORK ON ASSISTANCE



Despite the troubling context of the US drone programme, European States, including the UK, Germany, the Netherlands and Italy, have been providing the USA with intelligence which has been used to locate and identify targets for US drone strikes. These States have also provided operational support for US surveillance and drone operations, including assisting with communications by providing live feeds via satellite and allowing the USA to use military bases on their territory.

Although there are no specific regional and international guidelines on the provision of assistance to US lethal operations, States that provide assistance to the USA for its drone programme have certain obligations under international law, including international human rights law and international humanitarian law. This Chapter examines the international legal framework around assistance and how it may apply to drone strikes. Chapters 5 to 8 then outline the assistance being provided by the UK, Germany, the Netherlands and Italy to the US drone programme as well as other US surveillance and intelligence operations that may support that programme, and those States' potential legal responsibilities under international law.

INTERNATIONAL EFFORTS TO DEVELOP STANDARDS ON THE USE OF ARMED DRONES

In February 2014, the European Parliament called for a European Union (EU) common position on the use of armed drones in order to promote greater transparency and accountability on the part of third countries in the use of armed drones with regard both to the legal basis for their use and to operational responsibility.⁹¹ In addition, the Council of Europe's (CoE) Parliamentary Assembly has recommended that the Committee of Ministers (comprising of foreign ministers representing the Council of Europe's 47 member states) draft guidelines for member states on "targeted killings, with special reference to those carried out by combat drones" in a manner which reflects their obligations under international humanitarian law and international human rights law, in particular the standards in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).⁹² There are currently no EU or CoE guidelines that govern the provision of assistance by European States to US drone strikes and national guidelines are typically not publicly available or are non-existent.

In the international context, there are efforts underway by States to develop politically-binding international standards on the export and subsequent use of armed drones, arising from a US-led Joint Declaration for the Export and Subsequent Use of Armed or Strike-Enabled Unmanned Aerial Vehicles (UAVs) in 2016, initiated by the Obama Administration.⁹³ This is now being taken forward by the Trump administration, with the USA and its partners due to convene discussions in summer 2018.

91 European Parliament resolution 2014/2567(RSP), available at: www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P7-RC-2014-0201+0+DOC+XML+V0//EN

92 Council of Europe Parliamentary Assembly, Recommendation 2069 (2015), *Drones and targeted killings: the need to uphold human rights and international law*, www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21747&lang=en

93 Published in October 2016 with 53 endorsing states, available at: <https://www.state.gov/t/pm/rls/fs/2017/274817.htm>

In addition, building on a 2015 study on armed UAVs prepared by the United Nations Office for Disarmament Affairs (UNODA)⁹⁴ with the assistance of the United Nations Institute for Disarmament Research (UNIDIR), a project was initiated by UNIDIR to facilitate a multilateral dialogue on UAVs. The project focused on improving knowledge around and engagement on issues related to UAV transparency, oversight and accountability at the multilateral level, culminating in the publication of a report in December 2017.⁹⁵ The report recommends the establishment of a mandate for work on improving transparency, accountability and oversight of armed UAVs in all their aspects, potentially through process by the UN General Assembly (UNGA), which should be ambitious, inclusive, and comprehensive. This could take form in a UNGA resolution as early as 2018.⁹⁶

4.1 STATE RESPONSIBILITY FOR ASSISTANCE

The rules on state responsibility are rules of customary international law. They are reflected in the International Law Commission's (ILC) Articles on Responsibility of States for Internationally Wrongful Acts (Articles on State Responsibility).⁹⁷ They have been endorsed by the UN General Assembly in a number of Resolutions, and approved *ad referendum*, that is, without prejudice to the question of their future adoption or other appropriate action.⁹⁸

Under these rules, a State bears direct responsibility if its organs or agents violate international human rights or humanitarian law, including extraterritorially. According to Article 16 of the Articles on State Responsibility, a State can be considered to be responsible for assisting, or complicit in, a violation of international human rights or humanitarian law:

- 1 When providing assistance, the assisting State “does so with knowledge of the circumstances of the internationally wrongful act”;
- 2 The act is such that it would have been wrongful had it been committed by the assisting State itself.⁹⁹

The rule of responsibility set out in Article 16 contains three main conditions, based on the wording of Article 16 and the ILC's accompanying Commentary to the Articles on State Responsibility:¹⁰⁰

- 1 That the assisting State, when it provides assistance, has ‘knowledge of the circumstances of the internationally wrongful act’ by the other State;¹⁰¹
- 2 That the assistance provided by the State must be given with a view to facilitating the commission of that act, and must actually do so.¹⁰²

94 United Nations Office for Disarmament Affairs, *Study on Armed Unmanned Aerial Vehicles*, 2015, www.un.org/disarmament/publications/more/drones-study/

95 United Nations Institute for Disarmament Research, *Increasing Armed UAV Transparency, Oversight and Accountability*, December 2017, <http://www.unidir.org/files/publications/pdfs/increasing-transparency-oversight-and-accountability-of-armed-unmanned-aerial-vehicles-en-692.pdf>

96 United Nations Institute for Disarmament Research, *Increasing Armed UAV Transparency, Oversight and Accountability*, December 2017, <http://www.unidir.org/files/publications/pdfs/increasing-transparency-oversight-and-accountability-of-armed-unmanned-aerial-vehicles-en-692.pdf>

97 International Law Commission, *Responsibility of States for internationally wrongful acts*, (hereinafter ILC, *Articles on State Responsibility*), annexed to UN General Assembly Resolution 56/83, Yearbook of the International Law Commission 2001, vol. II (Part 2).

98 UN General Assembly Resolution 71/133, www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/133

99 ILC, *Articles on State Responsibility*, Article 16.

100 International Law Commission, “Draft articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries”, http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf

101 See Article 16(a); ILC Commentary on Article 16, [4].

102 ILC Commentary on Article 16, [5] and [10].

- 3 That the contemplated act ‘must be such that it would have been wrongful had it been committed by the assisting State itself’.¹⁰³

Under Article 2 of the Articles on State Responsibility, there is an internationally wrongful act “when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State”. This includes conduct of any State organ, whether it exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.¹⁰⁴ A State organ also includes any person or entity which has that status in accordance with the internal law of the State.¹⁰⁵

There has been substantial discussion and commentary on the “knowledge” threshold outlined in Article 16 and its accompanying Commentary.

Amnesty International has argued that the assisting State (State A) may have “knowledge” of an internationally wrongful act by the State receiving assistance (State B), without the need for a court (whether international or domestic) to have determined the wrongfulness of State B’s conduct.¹⁰⁶ Furthermore, the ‘knowledge’ threshold does not require for State A itself to have carried out an analysis or determined that State B has acted or will act in a way that is internationally wrongful.¹⁰⁷ It is sufficient if State A has “knowledge” – to the degree required – that the bare facts which comprise State B’s wrongful acts will occur in the future.

This also applies to the provision of aid or assistance in dynamic situations and not only to those where aid and assistance relates to a future potential breach by State B. This would include provision of intelligence or operational support by State A in ongoing situations. As Harriet Moynihan of Chatham House’s International Law Programme argues in her paper on the law on aiding and assisting, “Where the situation is dynamic, the responsibility of the assisting state may evolve as the facts, and its level of knowledge, develop.”¹⁰⁸ Amnesty International has therefore argued that the degree of knowledge that State A needs to possess is actual knowledge of the relevant circumstances, meaning “near-certainty” or something approaching practical certainty as to the circumstances of the wrongful act would be sufficient.¹⁰⁹ The degree of knowledge required also needs to take account of the fact that the assisting State is assessing whether relevant events will occur in the future and therefore there can never be absolute certainty.¹¹⁰

Moynihan also argues that, while the phrase itself does not appear in Article 16 or ILC Commentary, “wilful blindness” may make State A responsible for assisting an internationally wrongful act, such as a

103 See Article 16(b); ILC Commentary on Article 16, [6].

104 *ILC, Articles on State Responsibility*, Article 4.

105 *ILC, Articles on State Responsibility*, Article 4.

106 *R (on the application of Campaign Against The Arms Trade) v The Secretary of State for International Trade and interveners*, Written Submissions on Behalf of Amnesty International, Human Rights Watch and Rights Watch (UK), p.8, www.caat.org.uk/resources/countries/saudi-arabia/legal-2016/2017-01-16.ai-hrw-rw-submission.pdf

107 *R (on the application of Campaign Against The Arms Trade) v The Secretary of State for International Trade and interveners*, Written Submissions on Behalf of Amnesty International, Human Rights Watch and Rights Watch (UK), www.caat.org.uk/resources/countries/saudi-arabia/legal-2016/2017-01-16.ai-hrw-rw-submission.pdf

108 Harriet Moynihan, *Aiding and Assisting: Challenges in Armed Conflict and Counterterrorism*, *International Law Programme*, Chatham House, November 2016, p.24, www.chathamhouse.org/sites/files/chathamhouse/publications/research/2016-11-11-aiding-assisting-challenges-armed-conflict-moynihan.pdf

109 *R (on the application of Campaign Against The Arms Trade) v The Secretary of State for International Trade and interveners*, Written Submissions on Behalf of Amnesty International, Human Rights Watch and Rights Watch (UK), www.caat.org.uk/resources/countries/saudi-arabia/legal-2016/2017-01-16.ai-hrw-rw-submission.pdf

110 *R (on the application of Campaign Against The Arms Trade) v The Secretary of State for International Trade and interveners*, Written Submissions on Behalf of Amnesty International, Human Rights Watch and Rights Watch (UK), p.11, www.caat.org.uk/resources/countries/saudi-arabia/legal-2016/2017-01-16.ai-hrw-rw-submission.pdf

violation of international human rights or humanitarian law.¹¹¹ While Moynihan notes this concept should be applied with caution, she argues that it should be applied where there is readily available “credible evidence of present or future illegality” by State B and State A is “deliberately avoiding knowledge of such evidence”.¹¹²

It has been argued by at least one eminent legal scholar that there is no requirement under Article 16 for “proof that the aiding State actually desires or intends that the receiving State should use the aid for the commission of an internationally wrongful act” and the “fact that the unlawful conduct is foreseen, or foreseeable, as a sufficiently probable consequence of the assistance must surely suffice.”¹¹³ Nevertheless, to the extent that there is a requirement of intention, the widely held view is that intention does not require State A to intend to assist in the commission of a violation of international human rights or humanitarian law by State B; the intention requirement is satisfied through State A’s knowledge of the circumstances of the internationally wrongful act.

Finally, the assistance provided need not be essential to the performance of an internationally wrongful act; it is sufficient if it contributed significantly to the wrongful act.¹¹⁴ The ILC Commentary to Article 16 also gives specific examples of when conduct may amount to assistance in an internationally wrongful act. For example in relation to the use of force in another State’s territory (see Section 3.5 above), the Commentary states that “the obligation not to use force may also be breached by an assisting State through permitting the use of its territory by another State to carry out an armed attack against a third State”. The Commentary also states that the “obligation not to provide aid or assistance to facilitate the commission of an internationally wrongful act by another State is not limited to the prohibition on the use of force,” but can include “material aid to a State that uses the aid to commit human rights violations.”¹¹⁵

the assistance provided need not be essential to the performance of an internationally wrongful act; it is sufficient if it contributed significantly to the wrongful act.

Responsibility under Article 16 for the internationally wrongful act rests primarily with State B. State A is only responsible for the assistance provided to State B to commit the internationally wrongful act.¹¹⁶ State A’s responsibility therefore arises from the fact that it facilitated the wrongful act. Similarly, the ILC Commentary states that State A “will only be responsible to the extent that its own conduct has caused or contributed to the internationally wrongful act”.¹¹⁷ This means State B remains primarily responsible for compensating for the internationally wrongful act itself.

111 Harriet Moynihan, *Aiding and Assisting: Challenges in Armed Conflict and Counterterrorism*, International Law Programme, Chatham House, November 2016, www.chathamhouse.org/sites/files/chathamhouse/publications/research/2016-11-11-aiding-assisting-challenges-armed-conflict-moynihan.pdf

112 Harriet Moynihan, *Aiding and Assisting: Challenges in Armed Conflict and Counterterrorism*, International Law Programme, Chatham House, November 2016, www.chathamhouse.org/sites/files/chathamhouse/publications/research/2016-11-11-aiding-assisting-challenges-armed-conflict-moynihan.pdf

113 *R (on the application of Campaign Against The Arms Trade) v The Secretary of State for International Trade and Interveners*, Written Submissions on Behalf of Amnesty International, Human Rights Watch and Rights Watch (UK), pp.11-12, www.caat.org.uk/resources/countries/saudi-arabia/legal-2016/2017-01-16.ai-hrw-rw-submission.pdf

114 *R (on the application of Campaign Against The Arms Trade) v The Secretary of State for International Trade and Interveners*, Written Submissions on Behalf of Amnesty International, Human Rights Watch and Rights Watch (UK), p.13, www.caat.org.uk/resources/countries/saudi-arabia/legal-2016/2017-01-16.ai-hrw-rw-submission.pdf

115 International Law Commission, “Draft articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries” http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf

116 ILC Commentary on Article 16, paras (1) and (10).

117 ILC Commentary on Article 16, para. (1): “... the assisting State will only be responsible to the extent that its own conduct has caused or contributed to the internationally wrongful act. Thus, in cases where that internationally wrongful act would clearly have occurred in any event, the responsibility of the assisting State will not extend to compensating for the act itself.”

4.2 INTERNATIONAL HUMAN RIGHTS LAW, THIRD-STATE RESPONSIBILITY AND ACCOUNTABILITY

Where provision of assistance for US drone strikes would contribute to human rights violations, the assisting State would be acting contrary to its positive obligation to co-operate towards universal respect for human rights set out in the UN Charter and enshrined in the Universal Declaration of Human Rights.¹¹⁸ Further, courts and authoritative bodies have found that a State's treaty obligations to respect human rights (including the right to life) entails an obligation not to assist in violations of human rights by others when it knows or should have known of the violations. And the obligation to respect human rights, including the right to life, includes the obligation to investigate allegations of violations, bring perpetrators to justice and provide reparation to victims.

Such treaty obligations include Article 2 of the International Covenant on Civil and Political Rights (ICCPR), which requires States Parties to respect and ensure respect for human rights recognized in the ICCPR to all individuals subject to their jurisdiction. As the Human Rights Committee, the body of experts that oversees States' compliance with the ICCPR, has explained:

“[E]very State Party has a legal interest in the performance by every other State Party of its obligations. This follows from the fact that the ‘rules concerning the basic rights of the human person’ are erga omnes obligations and that, as indicated in the fourth preambular paragraph of the Covenant, there is a United Nations Charter obligation to promote universal respect for, and observance of, human rights and fundamental freedoms.”¹¹⁹

The Committee has also confirmed that in a number of circumstances a State Party's obligations can extend beyond their territory, for instance:

“[A] State party may be responsible for extraterritorial violations of the Covenant, if it is a link in the causal chain that would make possible violations in another jurisdiction. Therefore, in certain circumstances a State may be responsible for extra-territorial violations of the ICCPR where it has contributed to a violation in another country. Thus, the risk of an extraterritorial violation must be a necessary and foreseeable consequence and must be judged on the knowledge the State party had at the time.”¹²⁰

118 For example, Article 56 of the UN Charter requires Member States “to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55”. These purposes include “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.”

119 Human Rights Committee (HRC) General Comment 31, para. 2.

120 *Munaf v. Romania*, HRC, UN Doc. CCPR/C/96/DR/1539/2006, 2009, para. 14.2.

While those observations were made regarding a case alleging *refoulement*, the logic could apply equally well to providing intelligence or rendering other significant assistance for use by another State in a violation of the right to life under Article 6(1) of the ICCPR.

Article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) requires States Parties to secure, to everyone within their jurisdiction, the Convention's rights and freedoms. The European Court of Human Rights has interpreted Article 1 to include the obligation not to facilitate violations by others, including when those violations occur outside its jurisdiction.¹²¹ This obligation applies even when a State that is not party to the ECHR commits a violation.

For example, in the case of *Ilaşcu and others v. Moldova and Russia*, the European Court of Human Rights stated that the question of extraterritorial obligations of a State may arise "on account of acts which have sufficiently proximate repercussions on the rights guaranteed by the Convention, even if those repercussions occur outside its jurisdiction."¹²²

In the case of *El-Masri*, which concerned a German national who had been subjected to various human rights violations by the US Central Intelligence Agency (CIA) within but also outside of the territory of the 'Former Yugoslav Republic of Macedonia' (FYROM), the occurrence of which had been facilitated by the conduct of this member state to the ECHR, the Court ruled that Macedonia violated its obligations under the ECHR – including the prohibition of torture and other ill-treatment – by having "fail[ed] to take reasonable steps to avoid a risk of ill-treatment about which they knew or ought to have known".¹²³ Furthermore, the Court held the Macedonian authorities were responsible, under Article 5 of the ECHR (right to liberty), for the conduct of US authorities including for the period where that person was detained overseas: "The Macedonian authorities not only failed to comply with their positive obligation to protect the applicant from being detained in contravention of Article 5 of the Convention, but they actively facilitated his subsequent detention in Afghanistan by handing him over to the CIA, despite the fact that they were aware or ought to have been aware of the risk of that transfer. The Court considers therefore that the responsibility of the respondent State is also engaged in respect of the applicant's detention between 23 January and 28 May 2004".¹²⁴

Once again, a similar reasoning could arguably apply to providing intelligence or rendering other significant assistance for use by another State in unlawful killings, thus engaging the responsibility under Article 2 of the ECHR (right to life) of the State's procuring such assistance.

Finally, States have obligations to investigate allegations of human rights violations promptly, thoroughly and effectively through independent and impartial bodies and a failure to do so can in and of itself constitute a violation.¹²⁵ As regards allegations of a violation of the right to life: "Where the duty to investigate applies, it applies to all States that may have contributed to the death or which may have failed to protect the right to life."¹²⁶ States must make reparation to those whose rights have been violated, including by bringing perpetrators to justice.¹²⁷

121 See *Ilaşcu and Others v. Moldova and Russia*, App no 48787/99, ECtHR (2004), para 317, and *El-Masri v. The Former Yugoslav Republic of Macedonia*, App. No. 39630/09, ECtHR (2012), para. 198.

122 *Ilaşcu and Others v. Moldova and Russia*, App no 48787/99, ECtHR (2004), para. 317.

123 *El-Masri v. The Former Yugoslav Republic of Macedonia*, App. No. 39630/09, ECtHR (2012), para. 198.

124 *El-Masri v. The Former Yugoslav Republic of Macedonia*, App. No. 39630/09, ECtHR (2012), para. 239.

125 HRC General Comment 31, para. 15.

126 Office of the High Commissioner for Human Rights (OHCHR), *The Minnesota Protocol on the Investigation of Potentially Unlawful Deaths*, 2016, UN Doc. HR/PUB/17/4, Section II, C, para. 19.

127 HRC General Comment 31, para. 16.

4.3 COMMON ARTICLE 1 OF THE GENEVA CONVENTIONS

In the context of armed conflict, international humanitarian law requires all States to “respect and ensure respect” for international humanitarian law under Common Article 1 of the Geneva Conventions. This includes both a positive obligation and a negative obligation on States providing assistance to another State which is then used to commit a violation of international humanitarian law. The positive obligation includes the prevention of violations where there is a foreseeable risk they will be committed and prevention of further violations where they have already occurred.¹²⁸ The negative obligation is not to encourage, aid or assist in violations of international humanitarian law by parties to a conflict.¹²⁹

4.4 ASSISTANCE FOR DRONE STRIKES

In light of the above, States providing assistance to the US drone programme or US surveillance and intelligence operations that may support that programme may be responsible for assisting in potentially unlawful US drone operations and may be violating their own obligations under international human rights law (such as to respect the right to life) and international humanitarian law.

In particular, on the basis of Article 16 and related analysis, where a State – through its organs or agencies – knowingly assists in drone strikes by the USA that constitute an internationally wrongful act, the assisting State may be responsible for assisting that act.¹³⁰

In terms of knowledge, having the requisite knowledge that the USA was going to launch drone strikes that would violate international human rights or humanitarian law would be sufficient to incur responsibility for assisting that unlawful act. In Amnesty International’s view, requisite knowledge could arise because the State knows – with actual or near or practical certainty – of the circumstances of an unlawful drone strike, or was wilfully blind to it despite readily available credible evidence of present or future unlawful strikes. The civilian toll of the US drone programme and the use of lethal drone strikes outside of situations of armed conflict have been widely documented by civil society organizations, the media and academics. The assisting State does not need to know the motivation or objective of carrying out such strikes for it to be responsible for assisting any unlawful strike. At least one eminent international law expert has argued that the assisting State does not need to desire or intend that assistance to be used in an unlawful drone strike; it is sufficient that it has foreseen that its assistance would be used in an unlawful drone strike.¹³¹

In terms of assistance, as noted above, the assistance provided need not be essential to the performance of an internationally wrongful act; it is sufficient if it contributed significantly to the wrongful act. Assistance in the context of drone strikes could therefore include the provision of territory, such as bases for launching aerial attacks; intelligence, for example to locate targets for attack by armed drone; and other operational support such as vital communications and satellite technology that facilitate attacks.

128 2016 Commentary to the First Geneva Convention.

129 2016 Commentary to the First Geneva Convention.

130 For a detailed discussion on the law on aiding and assisting, as well as practical recommendations for States to reduce the risk of assisting unlawful acts by other States, see Harriet Moynihan, *Aiding and Assisting: Challenges in Armed Conflict and Counterterrorism*, International Law Programme, Chatham House, November 2016, www.chathamhouse.org/sites/files/chathamhouse/publications/research/2016-11-11-aiding-assisting-challenges-armed-conflict-moynihan.pdf

131 *R (on the application of Campaign Against The Arms Trade) v The Secretary of State for International Trade and Interveners*, Written Submissions on Behalf of Amnesty International, Human Rights Watch and Rights Watch (UK), pp.11-12, www.caat.org.uk/resources/countries/saudi-arabia/legal-2016/2017-01-16.ai-hrw-rw-submission.pdf

...WHERE A STATE – THROUGH ITS ORGANS
OR AGENCIES KNOWINGLY ASSISTS IN DRONE
STRIKES BY THE USA THAT CONSTITUTE

AN INTERNATIONALLY WRONGFUL ACT

THE ASSISTING STATE MAY BE RESPONSIBLE FOR ASSISTING THAT ACT

Amnesty International has also argued that responsibility could extend to situations in which State A deliberately assists in unlawful drone strikes carried out by State B, when State B employs a different interpretation of international law.¹³² For example, State A allows State B to deploy armed drones from a military base on State A's territory. State A employs a definition of the term "combatant" that complies with international humanitarian law but State B employs an overly broad definition and therefore directly targets a drone strike at individuals in another State (State C) whom State B incorrectly classifies as "combatants", but whom State A would consider civilians. In State A's view, the attack on State C would therefore constitute a violation of international humanitarian law. If State A has knowledge of State B's overly broad definition of "combatant", and provides assistance to the attack in such knowledge, and the attack constitutes an internationally wrongful act, then State A could be responsible for assisting that act.

132 Amnesty International, *Key Principles on the Use and Transfer of Armed Drones*, October 2017, <https://www.amnesty.org/en/documents/act30/6388/2017/en/>

5 ASSISTANCE PROVIDED BY THE UNITED KINGDOM



The United Kingdom (UK) provides assistance to the US drone programme, as well as to other US surveillance and intelligence operations that may support that programme, in the form of intelligence sharing, the embedding of UK personnel in US lethal drone operations and provision of military bases on UK soil which provide crucial communications and intelligence infrastructure.

The UK and the USA have a longstanding relationship of cooperation and intelligence sharing spanning the Second World War, the Cold War and the so-called global “War on Terror”. Shortly after the Second World War, a UK-US Communication Intelligence Agreement was drafted, allowing UK and US agencies to share, by default, raw intelligence and methods and techniques related to the gathering of such intelligence.¹³³ This agreement was updated in 1955 and is the most recent public version available, and therefore is unlikely to reflect the significant changes in intelligence gathering and sharing since 1955. The UK also shares intelligence with the USA by default as part of the ‘Five Eyes’ alliance, a 70-year-old integrated global surveillance network which also includes Australia, Canada, and New Zealand. The UK’s most recent National Security Strategy and Strategic Defence and Security Review states that the extent of UK-US cooperation is “unparalleled”, including on intelligence, and plays a vital role in guaranteeing the UK’s national security.¹³⁴

The Snowden revelations brought into sharp public focus the proximity of this relationship, exposing the great extent to which intelligence was being gathered and shared.

Documents leaked in 2008 revealed that the NSA and GCHQ had developed intelligence programmes operated from within UK bases, including Royal Air Force (RAF) Menwith Hill, which the documents stated were “a tool that enabled a significant number of capture-kill operations against terrorists”, including in the Middle East.¹³⁵ Moreover, reports surfaced showing that US intelligence agencies are able to collect intelligence and operate from within the UK under these intelligence sharing arrangements, to support various types of operations including drone operations.¹³⁶ As well as conducting its own armed drone strikes, mainly against the armed group calling itself Islamic State (IS) targets in Iraq and Syria, the UK also provides operational support to the US drone programme, allowing US personnel to use UK bases and embedding UK personnel in US bases and as part of US lethal operations.

133 Privacy International, *Briefing – UK-US Intelligence Sharing Arrangements*, July 2017, <https://privacyinternational.org/feature/688/briefing-uk-us-intelligence-sharing-arrangements>

134 HM Government, *National Security Strategy and Strategic Defence and Security Review 2015: A secure and prosperous United Kingdom*, November 2015, p.51, www.gov.uk/government/uploads/system/uploads/attachment_data/file/478933/52309_Cm_9161_NSS_SD_Review_web_only.pdf

135 The Intercept, *APPARITION becomes a reality: New Corporate VSAT Geolocation Capability Sees Its First Deployment*, 11 November 2008, theintercept.com/document/2016/09/06/apparition-becomes-a-reality-new-corporate-vsate-geolocation-capability-sees-its-first-deployment/

136 The Guardian, *GCHQ taps fibre-optic cables for secret access to world's communications*, 21 June 2013, www.theguardian.com/uk/2013/jun/21/gchq-cables-secret-world-communications-nsa and; The Guardian, *NSA collects millions of text messages daily in 'untargeted' global sweep*, 16 January 2014, www.theguardian.com/world/2014/jan/16/nsa-collects-millions-text-messages-daily-untargeted-global-sweep



The radar domes of RAF Menwith Hill in north Yorkshire on 30 October, 2007, Harrogate, England.
©Christopher Furlong/Getty Images

5.1 INTELLIGENCE SHARING IN SUPPORT OF THE US DRONE PROGRAMME IN AFGHANISTAN, PAKISTAN AND YEMEN

Questions surrounding the role GCHQ plays in supporting the US drone programme arose even before disclosures made by Edward Snowden revealed the scale of numerous global surveillance programmes run by the NSA and the Five Eyes intelligence alliance, with the cooperation of European governments. In 2010 news reports based on information from official sources revealed that GCHQ was involved in locating suspected al-Qa'ida and Taliban fighters in Pakistan and Afghanistan by intercepting telephone communications and sharing this intelligence with the USA for targeting in its lethal drone operations.¹³⁷

Noor Khan, whose father was killed in a US drone strike in March 2011 in North Waziristan, Pakistan brought a case¹³⁸ against the then Secretary of State for Foreign and Commonwealth Affairs, William Hague, on his father's behalf in 2012.¹³⁹ Malik Daud Khan was one of 40 people killed while he presided over a Jirga (a village council made up of tribal elders) when a missile was fired from what was believed to have been a CIA-operated drone. Khan's case challenged the legality of assistance provided by GCHQ to the USA for targeting in its drone operations, arguing that provision of locational intelligence to the USA posed a significant risk that GCHQ officials could be implicated in murder and crimes against humanity and/or war crimes under English law.¹⁴⁰ The court held that it would be a wrong exercise of its discretion to adjudicate on a case which would necessarily "entail a condemnation of the activities of the United States".¹⁴¹ Significantly, however, the court found that it was "certainly not clear" that UK personnel complicit in US drone strikes would be immune from prosecution for murder.¹⁴² Additionally, in legal advice commissioned by the Chair of the UK All Party Parliamentary Group (APPG) on drones, an interest group comprising politicians from all political parties, it was expressed that anyone who transfers data to facilitate an unlawful drone strike would be an accessory to an unlawful act under English law.¹⁴³

137 The Times, *GCHQ finds Al Qaeda for American strikes*, 25 July 2010, www.thetimes.co.uk/article/gchq-finds-al-qaeda-for-american-strikes-26rjwrgxq7n

138 *R (Noor Khan) v Secretary of State for Foreign and Commonwealth Affairs* [2014] EWCA Civ 24, https://www.reprive.org.uk/wp-content/uploads/2015/04/2014_01_20_PUB-Noor-Khan-Court-of-Appeal-judgement.pdf

139 Leigh Day, *High Court Challenge to Hague over UK complicity in CIA drone attacks*, 12 March 2012, www.leighday.co.uk/News/2012/March-2012/High-Court-Challenge-to-Hague-over-UK-complicity-i

140 Khan's lawyers argued there would not be a need to establish that any US official had committed an offence falling within the jurisdiction of an English court for GCHQ officials to be liable, but rather, the question would be whether any conduct in which a UK national is assisting would be within the jurisdiction of the English court if the individual concerned were a UK national. See *R (Noor Khan) v Secretary of State for Foreign and Commonwealth Affairs* [2014], EWCA Civ 24, para. 47.

141 *R (Noor Khan) v Secretary of State for Foreign and Commonwealth Affairs* [2014], EWCA Civ 24, para. 37.

142 *R (Noor Khan) v Secretary of State for Foreign and Commonwealth Affairs* [2014], EWCA Civ 24, para. 19.

143 Jemima Stratford QC and Tim Johnston, In the matter of State surveillance, Advice, 22 January 2014, para. 83, [http://www.brickcourt.co.uk/news-attachments/APPG_Final_\(2\).pdf](http://www.brickcourt.co.uk/news-attachments/APPG_Final_(2).pdf)

Afghanistan and Pakistan are not the only theatres in which the US carries out drone strikes based on intelligence shared by the UK. The UK's intelligence sharing arrangements with the USA are so extensive that experts, NGOs and the media have highlighted how intelligence shared by the UK could be used in any one of the USA's drone programmes. In 2013 the then UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, affirmed during a parliamentary event on drones that it was "inevitable" that UK intelligence shared with the USA would be used in US drone strikes.¹⁴⁴ Various reports by NGOs¹⁴⁵ and the media have claimed that UK intelligence has been used by the USA to locate suspected targets for drone strikes in Iraq,¹⁴⁶ Syria,¹⁴⁷ Yemen,¹⁴⁸ as well as in Pakistan and Afghanistan.¹⁴⁹

In 2015, GCHQ documents provided to The Guardian by Edward Snowden raised yet more questions over the UK's role in US drone strikes in Yemen.¹⁵⁰ These documents showed how a programme codenamed OVERHEAD – a surveillance capability located in UK base RAF Menwith Hill which uses US government satellites to locate and monitor wireless communications, such as mobile phone calls and WiFi traffic¹⁵¹ – had facilitated a drone strike in Yemen in March 2012 which targeted and killed two men described as members of al-Qa'ida in the Arabian Peninsula (AQAP). According to the Bureau of Investigative Journalism (BIJ), a total of five men were killed by a drone strike in March 2012, four of whom were suspected AQAP members and one of whom was civilian, a 60-year-old man who reportedly was walking on the road near the site of the strike. The BIJ also reported between six and nine civilians injured, including six children between the ages of 10 and 14. The children were playing near the site of the strike and were wounded by shrapnel.¹⁵²

GCHQ declined to comment when asked by The Guardian whether the strike described in the leaked GCHQ documents was the same one documented by the BIJ.¹⁵³ In an answer to a parliamentary question in 2014 asking whether the UK conducts assessments of the impact of drone strikes in Yemen, the then UK Defence Minister, Mark Francois, stated in a written answer that "U.A.V. strikes against terrorist targets in Yemen are a matter for the Yemeni and U.S. governments."¹⁵⁴

144 The Bureau of Investigative Journalism, *UK complicity in US drone strikes is 'inevitable', Emmerson tells parliament*, 5 December 2013, www.thebureauinvestigates.com/stories/2013-12-05/uk-complicity-in-us-drone-strikes-is-inevitable-emmerson-tells-parliament

145 See Reprieve's Submission to the APPG Inquiry into the Use of Armed Drones: Working With Partners, April 2017, <http://appgdrone.org.uk/wp-content/uploads/2014/08/Submission-from-Reprieve.pdf> and its submission in November 2017, <http://appgdrone.org.uk/wp-content/uploads/2014/08/2.-2017-11-27-INT-Reprieve-Additional-Submission-to-the-APPG-Inquiry-Final-as-submitted.pdf>; Drone Wars UK's Submission to the APPG Inquiry into the Use of Armed Drones: Working With Partners, March 2017, <http://appgdrone.org.uk/wp-content/uploads/2014/08/Submission-from-Reprieve.pdf>; Remote Control Project's UK's Submission to the APPG Inquiry into the Use of Armed Drones: Working With Partners, December 2017, <http://appgdrone.org.uk/wp-content/uploads/2014/08/3.-UPDATED-Remote-Control-Project-submission-05.12.2017.pdf>

146 The Independent, *Britain's tactics from Operation Shader in Iraq will be repeated in Syria following Commons vote*, 2 December 2015, www.independent.co.uk/news/uk/politics/britains-operation-shader-in-iraq-will-extend-to-syria-with-air-strikes-coming-straight-after-vote-a6757971.html Bureau of Investigative Journalism, *Revealed: Britain has flown 301 Reaper drone missions against ISIS in Iraq, firing at least 102 missiles*, 10 May 2015, <https://www.thebureauinvestigates.com/stories/2015-05-15/revealed-britain-has-flown-301-reaper-drone-missions-against-isis-in-iraq-firing-at-least-102-missiles>

147 The Guardian, *GCHQ documents raise fresh questions over UK complicity in US drone strikes*, 24 June 2015, www.theguardian.com/uk-news/2015/jun/24/gchq-documents-raise-fresh-questions-over-uk-complicity-in-us-drone-strikes and The Telegraph, *How the US and UK tracked down and killed Jihadi John*, 13 November 2015, www.telegraph.co.uk/news/worldnews/islamic-state/11993569/How-the-US-and-UK-tracked-down-and-killed-Jihadi-John.html

148 The Guardian, *GCHQ documents raise fresh questions over UK complicity in US drone strikes*, 24 June 2015, www.theguardian.com/uk-news/2015/jun/24/gchq-documents-raise-fresh-questions-over-uk-complicity-in-us-drone-strikes

149 The Guardian, *Concern mounts over UK role in Pakistan drone attacks*, 12 September 2015, <https://www.theguardian.com/world/2015/sep/12/uk-role-in-pakistan-drone-attacks-concern-mounts>

150 The Guardian, *GCHQ documents raise fresh questions over UK complicity in US drone strikes*, 24 June 2015, www.theguardian.com/uk-news/2015/jun/24/gchq-documents-raise-fresh-questions-over-uk-complicity-in-us-drone-strikes

151 The Intercept, *Inside Menwith Hill: The NSA's British Base at the Heart of U.S. Targeted Killing*, 6 September 2016, www.theintercept.com/2016/09/06/nsa-menwith-hill-targeted-killing-surveillance/

152 The Bureau of Investigative Journalism, *Yemen: Reported US covert action 2012*, www.thebureauinvestigates.com/drone-war/data/yemen-reported-us-covert-action-2012#YEM046

153 The Guardian, *GCHQ documents raise fresh questions over UK complicity in US drone strikes*, 24 June 2015, www.theguardian.com/uk-news/2015/jun/24/gchq-documents-raise-fresh-questions-over-uk-complicity-in-us-drone-strikes

154 UK Parliament, *Yemen: Military Intervention: Written question - 198640*, 4 June 2014, www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2014-06-04/198640

NGOS AND THE MEDIA HAVE CLAIMED THAT UK INTELLIGENCE HAS BEEN USED BY THE USA



TO LOCATE SUSPECTED TARGETS FOR DRONE STRIKES IN IRAQ, SYRIA, YEMEN, AS WELL AS IN PAKISTAN AND AFGHANISTAN

In 2016, an investigation carried out by VICE News revealed how intelligence provided by the UK to the USA was instrumental in the killing in a drone strike on 6 May 2012 of Fahd al-Quso, a senior field commander in AQAP who was involved in the bombing of the USS Cole in 2000 and had issued threats to attack US embassies.¹⁵⁵ According to both VICE News and the BIJ, the drone strike also killed 19-year old Nasser Salim, a student who had returned home between school terms to help out on the family farm in Wadi Rafad, and who bore no relation to al-Quso.¹⁵⁶ VICE News revealed how a British Secret Intelligence Service (SIS) agent who had infiltrated AQAP had provided the CIA with al-Quso's location, allowing an armed drone to target him. The VICE News investigation also uncovered the decade-long involvement of UK forces in finding and fixing targets for the CIA's drone strikes, carrying out assessments of the effect of strikes, and providing training to Yemeni intelligence agencies for location and identification of targets for the US drone programme.¹⁵⁷

5.2 THE ROLE OF UK BASES IN US DRONE STRIKES

One of the ways in which the UK provides assistance to different types of US operations, including the US drone programme is through its military bases, including Royal Air Force (RAF) Croughton, RAF Menwith Hill, RAF Molesworth and RAF Digby. These bases provide crucial operational and logistical support for US drone operations.

RAF CROUGHTON – SUPPORTING US DRONE STRIKES IN YEMEN AND SOMALIA

Several UK bases have direct communication with US bases around the world. This includes RAF Croughton, where the US 422nd Air Base Group – responsible for providing “combat support enabling communications and global strike operations”¹⁵⁸ – is headquartered. Located in Northamptonshire, RAF Croughton has a direct communications link through a fibre-optic communications system¹⁵⁹ with

155 VICE News, *Britain's Covert War in Yemen: A VICE News Investigation*, 7 April 2016, <https://news.vice.com/article/britains-covert-war-in-yemen-a-vice-news-investigation>

156 The Bureau of Investigative Journalism, *Yemen: Reported US covert action 2012*, www.thebureauinvestigates.com/drone-war/data/yemen-reported-us-covert-action-2012#YEM046

157 VICE News, *Britain's Covert War in Yemen: A VICE News Investigation*, 7 April 2016, www.news.vice.com/article/britains-covert-war-in-yemen-a-vice-news-investigation

158 See: www.501csw.usafe.af.mil/units/croughton/

159 This was provided by British Telecommunications (BT), in response to which Reprieve submitted two to the National Contact Point (NCP), a UK Government body responsible for overseeing business compliance with human rights guidance. Reprieve claimed the service being provided by BT was playing a key role in the US drone programme by providing communications infrastructure crucial for the programme. However, the NCP rejected Reprieve's complaints on the basis that the evidence presented did not demonstrate a “specific link” between services provided by BT and the human rights impact of drone strikes in Yemen. See Reprieve, *UK Government urged to act on fresh evidence of BT drones link*, 28 August 2014, https://reprieve.org.uk/press/2014_08_28_BT_second_drone_complaint/; and Initial Assessment by the UK National Contact Point for the OECD Guidelines For Multinational Enterprises, January 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/401340/bis-15-86-uk-ncp-initial-assessment-complaint-by-Reprieve-against-BT-equipment-provided-to-US-defence-agency.pdf

Camp Lemonnier,¹⁶⁰ a US military base in Djibouti, which is the primary base of operations for the US Africa Command in the Horn of Africa and from where most drone strikes on Yemen and Somalia are carried out. Approximately a third of all US military communications in Europe pass through RAF Croughton.¹⁶¹ This communications link-up allows analysis of full-motion video footage taken by drones and surveillance aircraft to identify potential targets.

The full extent of cooperation and coordination between RAF Croughton and other US military bases and the significance of its role in US drone strikes is unclear. The Ministry of Defence (MoD) has stated that RAF Croughton is made available for use by the United States visiting forces under the terms of the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA) of 1951. When questioned on whether this agreement has been updated to reflect developments in communications technology since the conclusion of SOFA, the UK Ministry of Defence stated that there “is no requirement for an additional agreement regarding the use of RAF Croughton by the United States visiting forces ... The Department has no plans to review this arrangement nor review the activities undertaken by the US at the base”.¹⁶²

RAF CROUGHTON HAS A DIRECT COMMUNICATIONS LINK THROUGH A FIBRE-OPTIC COMMUNICATIONS SYSTEM WITH CAMP LEMONNIER, A US MILITARY BASE IN DJIBOUTI,

WHICH IS THE PRIMARY BASE OF OPERATIONS FOR THE US AFRICA COMMAND IN THE HORN OF AFRICA AND FROM WHERE MOST DRONE STRIKES ON YEMEN AND SOMALIA ARE CARRIED OUT



RAF MENWITH HILL

RAF Menwith Hill is a base located in Yorkshire, which is owned by the Ministry of Defence and “made available” to the US Department of Defense (DoD).¹⁶³ The official RAF Menwith Hill website refers to the close defence and security cooperation between the US and the UK and describes how this relationship “was significantly strengthened in WWII and further demonstrated in the Desert Storm conflict, operations in the Balkans, Op Telic/Iraqi Freedom and in the ongoing campaign against international terrorism”.¹⁶⁴ It goes on to say that it would be “inappropriate to go into any detail about operations carried out at RAF Menwith Hill in support of national security” but that work is carried out by teams of UK and US personnel. It also affirms that tasks carried out at the base are in accordance with the law, including the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the Human Rights Act 1998.¹⁶⁵

160 In the form of a high-speed fibre optic line between RAF Croughton and Camp Lemonnier. See: The Independent, *Washington spends £200m creating intelligence hub in Britain*, 17 May 2014, <http://www.independent.co.uk/news/uk/politics/washington-spends-200m-creating-intelligence-hub-in-britain-9391406.html>

161 RAF Croughton was also implicated in surveillance of German Chancellor Angela Merkel’s telephone calls, from which material gathered from the US embassy in Berlin would have been relayed back to the joint CIA/NSA Special Collection Service headquarters in College Park, Maryland, USA, via RAF Croughton. See: The Guardian, *US personnel ‘targeting killer drones from Britain’*, 30 October 2016, www.theguardian.com/world/2016/oct/29/drones-us-kill-chain-raf-britain; The Balance, *RAF Croughton in England*, 5 February 2018, <https://www.thebalance.com/raf-croughton-installation-overview-3344148>

162 UK Parliament, Defence Reform Bill, Committee (2nd Day), 5 February 2014, www.publications.parliament.uk/pa/ld201314/ldhansrd/text/140205-gc0001.htm

163 See: www.raf.mod.uk/organisation/rafmenwithhill.cfm

164 See: www.raf.mod.uk/organisation/rafmenwithhillusukcooperation.cfm

165 See: www.raf.mod.uk/organisation/rafmenwithhillaccountability.cfm

RAF MENWITH HILL PLAYS A CRITICAL ROLE IN THE TARGETING OF INDIVIDUALS IN US

“CAPTURE-KILL OPERATIONS”

ACROSS THE MIDDLE EAST AND NORTH AFRICA



An investigation by The Intercept in September 2016 revealed that RAF Menwith Hill plays a critical role in the targeting of individuals in US “capture-kill operations” across the Middle East and North Africa, through the use of surveillance technology that is able to collect data from more than 300 million emails and phone calls per day.¹⁶⁶ In remote parts of the world internet connections and phone calls are more commonly routed over satellites as there are no fibre-optic cable links, which explains why Menwith Hill became strategically crucial in US counterterrorism operations, including the drone programme, following the attacks of 11 September 2001 (9/11).¹⁶⁷

Top-secret documents released by Edward Snowden describe how the NSA had developed surveillance programmes at RAF Menwith Hill in order to target individuals accessing the internet around the world.¹⁶⁸ These documents uncovered two main spying capabilities based at RAF Menwith Hill: FORNSAT,¹⁶⁹ which uses powerful antennae located in golf ball-like domes to intercept communications that flow between foreign satellites; and OVERHEAD,¹⁷⁰ which locates and monitors wireless communications such as mobile phone and WiFi traffic via US government satellites orbiting above targeted countries. This information is signals intelligence (SIGINT) of the type used to support drone strikes.

Surveillance programmes codenamed GHOSTHUNTER and GHOSTWOLF were also developed to support US and UK military operations in Afghanistan and Iraq, as well as covert operations outside traditional battlefields in countries including Yemen and Somalia.

A 2010 document leaked by Edward Snowden shows how the NSA developed a new technique at RAF Menwith Hill to allow more effective targeting of suspected al-Qa’ida fighters in Yemeni cafes, primarily based on metadata.¹⁷¹ This technique was connected to GHOSTWOLF, a broader classified programme which aimed to “capture or eliminate key nodes in terrorist networks” through primarily focusing on “providing actionable geolocation intelligence derived from [surveillance] to customers and their operational components.”¹⁷² The document states that analysts at RAF Menwith Hill “envisioned a new way to geolocate targets [for capture or kill] who are active at internet cafés in Yemen”, effectively confirming the base was and continues to be used to support US lethal operations in Yemen, and providing evidence that implicates the UK in these operations.¹⁷³

166 The Intercept, *Inside Menwith Hill: The NSA’s British Base at the Heart of U.S. Targeted Killing*, 6 September 2016, www.theintercept.com/2016/09/06/nsa-menwith-hill-targeted-killing-surveillance/

167 The Intercept, *Inside Menwith Hill: The NSA’s British Base at the Heart of U.S. Targeted Killing*, 6 September 2016, www.theintercept.com/2016/09/06/nsa-menwith-hill-targeted-killing-surveillance/

168 See: <https://www.documentcloud.org/documents/3089514-New-technique-geolocates-targets-active-at.html>

169 See: <https://www.documentcloud.org/documents/3089495-MHS-collection-assets.html>

170 See: <https://www.documentcloud.org/documents/3089509-APPARITION-becomes-a-reality-new-corporate-VSAT.html>

171 See: <https://www.documentcloud.org/documents/3089514-New-technique-geolocates-targets-active-at.html>

172 See: <https://www.documentcloud.org/documents/3089514-New-technique-geolocates-targets-active-at.html>

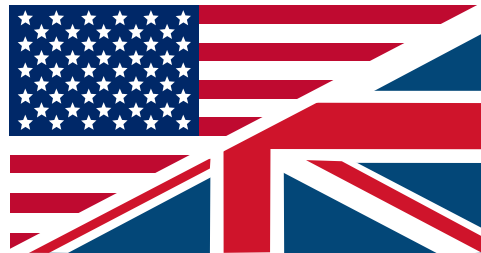
173 The Intercept, *Inside Menwith Hill: The NSA’s British Base at the Heart of U.S. Targeted Killing*, 6 September 2016, www.theintercept.com/2016/09/06/nsa-menwith-hill-targeted-killing-surveillance/

Another leaked Snowden document uncovered how the GHOSTHUNTER surveillance programme led to the detention by the US Marine Corps of Abu Sayf, an alleged “facilitator for the insurgency in Iraq” suspected of ties to al-Qa’ida.¹⁷⁴ The document demonstrates that his detention was made possible by locational information provided through Menwith Hill that was based on tip-offs from NSA Georgia at Fort Gordon, one of the NSA’s Regional Security Operations Centers. His internet activities in an internet café in Iraq were monitored, through which the GHOSTHUNTER programme was able to locate him. This indicates the central role Menwith Hill plays in US counterterrorism operations.

In addition, the documents leaked by Edward Snowden showed that UK officials from the Ministry of Defence were aware of the operations being carried out and that the UK was not merely supporting these operations through intelligence sharing and analysis but also appeared to be carrying them out jointly with the USA. For instance, the leaked document describing the new technique developed to geolocate targets in Yemeni cafes boasts “In the short time that results from this technique have been available, many targets have been located to these cafes, including targets tasked by several target officers at NSA and GCHQ.”¹⁷⁵

Additionally, Ministry of Defence information suggests that UK personnel may work closely with their US counterparts in RAF Menwith Hill. In response to a parliamentary question regarding the number of personnel stationed at RAF Menwith Hill, the Ministry of Defence provided the following numbers, stating they were current as of 8 November 2017.¹⁷⁶

US Military	33
US Contractors	344
US Civilians	250
UK Military	7 (5 Royal Navy; 2 Royal Air Force)
UK Contractors	85
UK Civilians	486



The Ministry of Defence stated that GCHQ employees were included in the overall figure for UK civilians but that “it is Government practice not to disclose the number of personnel working in intelligence at specific locations.”¹⁷⁷

Additionally, the Ministry of Defence stated to The Intercept that “For operational security reasons and as a matter of policy, neither the MoD nor the DoD publicly discuss specifics concerning military operations or classified communications regardless of unit, platform or asset.”¹⁷⁸ Questions therefore remain over whether UK personnel at Menwith Hill have played a role in lethal drone operations led by their US counterparts.

174 See: www.documentcloud.org/documents/3089506-SIGINT-target-package-leads-to-USMC-capture-of.html

175 See: www.documentcloud.org/documents/3089514-New-technique-geolocates-targets-active-at.html

176 UK Parliament, RAF Menwith Hill: Written question - 112002, 7 November 2017, www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-11-07/112002/

177 UK Parliament, RAF Menwith Hill: Written question - 112002, 7 November 2017, www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-11-07/112002/

178 The Intercept, *Inside Menwith Hill: The NSA’s British Base at the Heart of U.S. Targeted Killing*, 6 September 2016, www.theintercept.com/2016/09/06/nsa-menwith-hill-targeted-killing-surveillance/

RAF MOLESWORTH

RAF Molesworth in Cambridgeshire houses the US European Command's Joint Analysis Centre (JAC), which carries out military intelligence analysis. In October 2016 news reports revealed that US personnel serving in RAF Molesworth were assisting in the identification of targets for US drone strikes.¹⁷⁹ This was following the discovery of several job advertisements at RAF Molesworth for “full motion video analysts” to study footage taken by drones and other surveillance aircraft in order to identify potential targets.¹⁸⁰ Another job advertisement was for an “all source analyst” to support US operations in Africa, responsible for performing “a variety of advanced targeting operations ... in support of employment of GPS guided weapons, weaponeering and collateral estimation, as well as utilizing the tools required for advanced targeting.”¹⁸¹

This has led to concerns by civil society and media over the possibility that the US is using bases on UK soil to support its lethal drone programme.¹⁸² In January 2015 the US Department of Defense communicated its decision to withdraw from RAF Molesworth, with the activities undertaken there to be consolidated at RAF Croughton.¹⁸³ The base closure is expected to take place between 2018 and 2020.

RAF DIGBY

In September 2017, media reports revealed the role of another UK military base in acquiring intelligence via the UK's surveillance drones and sharing it with the USA.¹⁸⁴ Located in Lincolnshire in the East Midlands, RAF Digby is, according to its website, host to the Joint Service Signals Organization (JSSO) and the Joint Service Signal Unit (JSSU) which conduct and support “research into new communications systems and techniques in order to provide operational support to static and deployed MoD units”.¹⁸⁵ But documents released by Edward Snowden indicate that it is also a signals interception base, host to US civilian personnel from the NSA working closely with UK personnel “to produce critical intelligence on an amazing variety of targets, all tasked by GCHQ”.¹⁸⁶ This “critical intelligence” includes analysis of geolocation data gathered from mobile phone signals via surveillance equipment attached to drones – known as the AIRHANDLER platform.¹⁸⁷

According to an NSA civilian based at RAF Digby, “DIRNSA's [Director of the National Security Agency] vision of increasing collaboration with Second Party partners is a reality on the Digby ops floor every day, with collectors, linguists, and analysts working as a virtual team with their counterparts at GRSOC [Gordon Regional Security Operations Center], MRSOC [Medina Regional Security Operations Center], and the new Alaska Mission Operations Center.”¹⁸⁸ The GRSOC, at Fort Gordon in Georgia, USA, is the NSA's primary listening post for monitoring activity in the Middle East, North Africa and South Asia, and was an integral source of intelligence during the invasion of Afghanistan in 2001.¹⁸⁹

179 The Guardian, *US personnel 'targeting killer drones from Britain'*, 30 October 2016, www.theguardian.com/world/2016/oct/29/drones-us-kill-chain-raf-britain

180 The Guardian, *US personnel 'targeting killer drones from Britain'*, 30 October 2016, www.theguardian.com/world/2016/oct/29/drones-us-kill-chain-raf-britain

181 The Guardian, *US personnel 'targeting killer drones from Britain'*, 30 October 2016, www.theguardian.com/world/2016/oct/29/drones-us-kill-chain-raf-britain

182 Reprieve, *UK bases used for targeting in secret US drone war, documents indicate*, 30 October 2016, www.reprieve.org.uk/press/uk-bases-used-targeting-secret-us-drone-war-documents-indicate/

183 The Independent, *US military withdraws from three RAF bases*, 8 January 2015, www.independent.co.uk/news/world/americas/us-military-withdraws-from-three-raf-bases-9966088.html

184 The Intercept, *NSA's quiet presence at a base in England's countryside revealed in Snowden documents*, 13 September 2017, www.theintercept.com/2017/09/13/digby-uk-nsa-gchq-surveillance/

185 See: www.raf.mod.uk/rafdigby/aboutus/hqjssso.cfm

186 See: www.theintercept.com/snowden-sidtoday/3991133-the-other-end-to-end-sigint-site-in-the-uk/; and www.theintercept.com/document/2017/09/12/uk-airhandler-trainees/

187 See: www.theintercept.com/document/2017/09/12/uk-airhandler-trainees/

188 See: www.theintercept.com/snowden-sidtoday/3991133-the-other-end-to-end-sigint-site-in-the-uk/

189 Matthew M. Aid, *The Explosive Growth of NSA*, 6 March 2012, www.matthewaid.com/post/18854291523/the-explosive-growth-of-nsa

Though its exact role in the US drone programme is unclear, what is clear is that RAF Digby conducts surveillance and geolocal tracking in a number of countries where the US conducts drone strikes, including Iraq and Syria.

5.3 EMBEDDING OF UK PERSONNEL IN US OPERATIONS

In addition to UK bases supporting US drones operations, UK personnel have been embedded within US units and form part of US operations. For example, a 2015 parliamentary research briefing showed that UK personnel flew US drones (Predators) during Operation Ellamy, the codename for the UK's participation in the military intervention in Libya in 2011.¹⁹⁰ UK personnel embedded with the US Air Force have also operated US armed and unarmed drones in Afghanistan and Iraq.¹⁹¹

In July 2015, a Memorandum of Understanding (MOU) between the UK and US Governments, obtained under Freedom of Information by Reprieve, showed that British RAF pilots had been assigned to the command of the US Air Force's 432d wing, which operates drones out of Creech Air Force Base in Nevada for operations in Afghanistan and Pakistan.¹⁹² The role of these pilots is unclear but it does raise concerns that UK pilots under US command may have been ordered to carry out drone strikes, some of which could be contrary international law and UK policy and could therefore implicate them in these violations.

As mentioned above, in 2016, a major VICE News investigation uncovered how a team of surveillance operatives from the British Secret Intelligence Service (SIS) in Yemen were mentoring the Yemeni intelligence services to help them find and track targets as part of the US drone programme.¹⁹³ According to the investigation, the SIS had also assisted in identifying and locating targets for US drone strikes from 2010 onwards, using double agents, surveillance, and electronic tagging. In response to this investigation, a MoD spokesperson stated that "The MoD does not comment on special forces operations, or intelligence matters."¹⁹⁴

5.4 SECRECY OF UK ASSISTANCE TO US LETHAL OPERATIONS

Shortly after the Second World War, a UK-US Communication Intelligence Agreement was drafted, allowing UK and US agencies to share, by default, raw intelligence and methods and techniques related to the gathering of such intelligence.¹⁹⁵ This agreement was updated in 1955 and is the most recent public version available. There is no publicly available information regarding the UK's specific policy around the sharing of intelligence and the provision of other assistance in support of US drone strikes any safeguards put in place to ensure the UK is not providing assistance for unlawful US drone strikes. However, such guidance appears to exist according to Admiral Lord West, a former counter-terrorism minister who was also head of the Royal Navy, who has called for the UK government to publish the guidance, stating it leaves UK personnel on "hazy ground".¹⁹⁶

190 House of Commons Library, Briefing Paper, *Overview of military drones used by the UK armed forces*, 8 October 2015, www.researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06493#fullreport

191 House of Commons Library, Briefing Paper, *Overview of military drones used by the UK armed forces*, 8 October 2015, p.39, www.researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06493#fullreport

192 Ministry of Defence, Response to a Freedom of Information Act request, 8 September 2015, www.gov.uk/government/uploads/system/uploads/attachment_data/file/462375/20150908-UK_Personnel_stationed_Creech_Air_Force_Base.pdf

193 VICE News, *Britain's Covert War in Yemen: A VICE News Investigation*, 7 April 2016, www.news.vice.com/article/britains-covert-war-in-yemen-a-vice-news-investigation

194 VICE News, *Exclusive: How the UK Secretly Helped Direct Lethal US Drone Strikes in Yemen*, 7 April 2016, <https://news.vice.com/article/exclusive-how-the-uk-secretly-helped-direct-lethal-us-drone-strikes-in-yemen>

195 Privacy International, *Briefing – UK-US Intelligence Sharing Arrangements*, July 2017, <https://privacyinternational.org/feature/688/briefing-uk-us-intelligence-sharing-arrangements>

196 The Guardian, *UK faces calls for intelligence-sharing guidance over drone attacks*, 26 June 2015, <https://www.theguardian.com/uk-news/2015/jun/26/uk-intelligence-sharing-guidance-drone-war-zone>

There also appears to be no policies or oversight mechanisms to prevent UK intelligence from being shared for use in US lethal operations, including drone strikes, or with other States. An NSA memo¹⁹⁷ dated April 2013, and which sets out talking points for a meeting between the former Head of GCHQ, Sir Iain Lobban, and General Keith Alexander, then Director of the NSA, cautions that GCHQ's "activities and operations [are] being subject to increased scrutiny and oversight from their government (and public)."¹⁹⁸ The memo goes on to say that Lobban may raise questions around "what safeguards NSA may be putting in place to prevent UK data from being provided to others, the Israelis for instance, who might use that intelligence to conduct lethal operations."

MEMBERS OF PARLIAMENT AND PARLIAMENTARY BODIES DEMAND ANSWERS

"If we know we're handing intelligence over which will be used in a killing then we ought to be confident that it meets our own rules and guidelines. If there are deaths of civilians there's a moral and legal problem."

David Davis MP, April 2016

Concerns over the UK's role in potentially unlawful US drone strikes have also consistently been raised in the British Parliament and by parliamentary bodies, but the government has repeatedly refused to provide sufficient information or otherwise increase transparency over the UK's role in the USA's lethal drone programme.

In October 2012, Rehman Chishti MP asked the Government whether it has shared intelligence on locations with the USA leading to drone strikes in Pakistan, and if so, under what legal basis such information was shared.¹⁹⁹ Then-Secretary of State for Defence Philip Hammond MP refused to respond fully, stating:

"We do not discuss in this Chamber matters relating to intelligence ... The United States operates in Afghanistan under a different basis of law from the one under which we operate. I can assure my hon. Friend and the House that everything we do complies with the law under which we operate."²⁰⁰

A month later, Rehman Chishti MP again sought clarification as to whether the UK's intelligence sharing with the USA had assisted US drone strikes in Pakistan during a Westminster Hall debate on 6 November 2012, asking "under what legal basis do the Government believe the United States to operate, and why is that so different from international law?" He further sought answers on whether

197 The Intercept, *Lobban NSA Visit Précis*, 30 April 2014, www.theintercept.com/document/2014/04/30/lobban-nsa-visit-precis/

198 The Intercept, *British spy chiefs secretly begged to play in NSA's data pools*, 30 April 2014, www.theintercept.com/2014/04/30/gchq-prism-nsa-fisa-unsupervised-access-snowden/

199 See: <https://hansard.parliament.uk/Commons/2012-10-22/debates/1210222000020/TopicalQuestions#contribution-1210222000154>

200 See: <https://hansard.parliament.uk/Commons/2012-10-22/debates/1210222000020/TopicalQuestions#contribution-1210222000154>

the UK has shared locational intelligence with the US which has led to drone strikes in Pakistan, and asked the government to clarify its policy on the circumstances in which intelligence may be lawfully transferred.²⁰¹

Again, the UK Government failed to adequately respond to these concerns or to comment on the legality of US drone strikes to which UK intelligence-sharing may have contributed. On the issues, Parliamentary Under-Secretary of State for Defence Philip Dunne MP simply stated:

“I am not going to comment on the operations of our allies and—this is long-standing Government policy—for reasons of operational security, the Ministry of Defence does not comment on its intelligence-sharing arrangements with coalition partners. Countries can, of course, make their own interpretation of what they are permitted to do under international law, and it is a matter for the US Administration ... to assure themselves that the actions they undertake are lawful.”²⁰²

Similar questions from Rehman Chishti have been repeatedly rebuffed with the “no comment” policy by MoD and Foreign and Commonwealth Office Ministers during debates and oral questions in the House of Commons.

In 2013, former head of GCHQ, David Omand, submitted evidence to the Home Affairs Select Committee’s counter-terrorism inquiry, in which he raised concerns about the “ethically ambiguous position of the British public that has benefitted in that respect from the US armed UAV programme that has removed several leading terrorists who had been associated with plans to attack the UK and UK interests, measures that would not legally be permitted to the UK under the overseas part of the Pursue strategy”,²⁰³ the UK’s own counter-terrorism strategy.

This evidence was cited by then-chair of the APPG on drones, Tom Watson MP in a subsequent (October 2013) Westminster Hall debate on intelligence and security services:

“The British public would surely be alarmed to hear that data collected in the UK might end up being used to implement the US targeted killing programme described as a “war crime” by Amnesty International.”²⁰⁴

This specific point did not receive a response from the government.

In November 2014, a joint letter led by David Omand, MPs David Davis and Tom Watson, and Baroness Vivien Stern also urged the government to publish its policy on sharing intelligence that could be used for the US drone programme, stating that this would “reassure an anxious public that the UK

201 See: <https://publications.parliament.uk/pa/cm201213/cmhansrd/cm121106/halltext/121106h0001.htm>

202 See: <https://publications.parliament.uk/pa/cm201213/cmhansrd/cm121106/halltext/121106h0001.htm>

203 Home Affairs Committee, *Written evidence counter terrorism*, 8 April 2014, www.parliament.uk/documents/commons-committees/home-affairs/CT-Written-Evidence.pdf

204 See: <https://publications.parliament.uk/pa/cm201314/cmhansrd/cm131031/halltext/131031h0001.htm>

government will protect personnel from inadvertent collusion in counter-terrorism operations contrary to our understanding of the law.”²⁰⁵ Again, the UK government refused to disclose the policy.

In December 2015, Mark Field MP also raised questions about the legal position of UK support for US drone strikes. He highlighted that knowledge by the UK’s security services that intelligence shared with their US counterparts is used to launch drone strikes “without, for example, any clear imminent threat to national security, potentially places the UK military, and our own workers, in a legal quagmire.”²⁰⁶

Responding for the Government, Minister for the Armed Forces, Penny Mordaunt, stated that the UK’s doctrine and rules of engagement are in line with international law, including international humanitarian law. She did not, however, respond on the application of this doctrine with regards to intelligence sharing with other States.²⁰⁷

In response to the 2016 VICE News investigation, which uncovered extensive collaboration between the SIS and the CIA in the USA’s targeted killing programme in Yemen, David Davis MP, then-chair of the APPG on drones, expressed concern about the secrecy surrounding the UK’s involvement by emphasising:

“If we know we're handing intelligence over which will be used in a killing then we ought to be confident that it meets our own rules and guidelines. If there are deaths of civilians there's a moral and legal problem.”²⁰⁸

In a written question in October 2017, Lucy Powell MP asked the UK Attorney General Jeremy Wright about the UK’s compliance with Article 16 of the International Law Commission’s Articles on the Responsibility of States for Internationally Unlawful Acts, with specific reference to the sharing of intelligence to identify targets with our coalition partners.²⁰⁹ Mr Wright responded that the government is “committed to upholding international law and when cooperating with other States the Government will always seek to ensure that its actions remain lawful at all times”, though he again expressed that “the Government does not comment on specific matters concerning the sharing of intelligence.”²¹⁰

The Joint Committee on Human Rights (JCHR) has also raised strong concerns about the UK’s involvement in the US targeted killings programme, noting that then-Prime Minister David Cameron had in 2015 stated that the UK’s intelligence agencies work “hand in glove” with the USA.²¹¹ In May 2016, the JCHR released its report into the use of armed drones for targeted killing.²¹² One of the main issues it urged the government to clarify was the legal basis on which the UK takes part in or contributes to the use of lethal force outside armed conflict by the USA or any other country. The government responded

205 See: <http://im.ft-static.com/content/images/38d6c1ca-7581-11e4-a1a9-00144feabdc0.pdf>

206 Mark Field, Text of speech during Westminster Hall debate on drones, 1 December 2015, www.markfieldmp.com/speeches/armed-drones/

207 See: <https://publications.parliament.uk/pa/cm201516/cmhansrd/cm151201/halltext/151201h0001.htm>

208 VICE News, *Britain's Covert War in Yemen: A VICE News Investigation*, 7 April 2016, www.news.vice.com/article/britains-covert-war-in-yemen-a-vice-news-investigation

209 Lucy Powell, International Law: Written question – 110693, 31 October 2017, <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-10-31/110693/>

210 Lucy Powell, International Law: Written question – 110693, 31 October 2017, <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-10-31/110693/>

211 Joint Committee on Human Rights (JCHR), *The Government’s policy on the Use of Drones for Targeted Killing*, 10 May 2016, p.16, www.publications.parliament.uk/pa/jt201516/jtselect/jtrights/574/574.pdf

212 JCHR, *The Government’s policy on the Use of Drones for Targeted Killing*, 10 May 2016, www.publications.parliament.uk/pa/jt201516/jtselect/jtrights/574/574.pdf

to the Committee's report in October 2016²¹³ but failed to clarify several important issues, including the question of how it ensures that UK support to other states using lethal drone strikes does not contravene international human rights law or does not risk UK personnel being liable to future criminal prosecution.

The APPG on drones has held several inquiries to examine the use of armed drones, particularly looking at how the UK works with partners and has requested written evidence from experts on the issue.²¹⁴

UK GOVERNMENT'S REFUSAL TO RELEASE INTELLIGENCE-SHARING GUIDELINES

The UK government has consistently refused to make public any guidelines around how it shares intelligence and provides other assistance to the lethal operations, including armed drone operations, of other States. It is therefore unclear what safeguards – if any – are in place to ensure that provision of assistance does not violate domestic or international law. The UK has, however, published information on other forms of intelligence cooperation, and thus could do so in the context of lethal operations.

In 2013 Amnesty International, along with nine other human rights and civil liberties organizations, sought to challenge the legality of UK-US intelligence sharing before the Investigatory Powers Tribunal (IPT), an independent public body exercising judicial functions which investigates complaints about the alleged use of surveillance by public bodies. The government alluded to secret internal guidelines governing intelligence sharing during the hearing but has consistently refused to make them publicly accessible or subject to parliamentary scrutiny. The government presented this secret guidance to the IPT in a closed hearing, following which it disclosed a “note” containing no heading and just a few paragraphs of text, which appear to summarise some of the arrangements.²¹⁵ However, the content and status of the note is unclear (for example, whether all the guidelines were disclosed and whether the guidelines are binding or still valid). More importantly, the note only governs UK “receipt” of intelligence gathered by the USA, but not when and how the UK shares information in the opposite direction.²¹⁶ The Investigatory Powers Act 2016 which overhauled the existing, piecemeal domestic legislation on surveillance, also fails to provide safeguards or an oversight mechanism regarding intelligence sharing for use in lethal drone operations.

However, the UK has previously published guidance on other forms of cooperation on intelligence. The UK's Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to

IT IS UNCLEAR WHAT SAFEGUARDS
– IF ANY – ARE IN PLACE TO ENSURE THAT
PROVISION OF ASSISTANCE DOES NOT
VIOLATE DOMESTIC OR INTERNATIONAL LAW



213 JCHR, *The Government's Policy on the Use of Drones for Targeted Killing: Government Response to the Committee's Second Report of Session 2015–16*, 19 October 2016 www.publications.parliament.uk/pa/jt201617/jtselect/jtrights/747/747.pdf

214 See: www.appgdrones.org.uk/category/inquiry/

215 Privacy International, *Briefing – UK-US Intelligence Sharing Arrangements*, July 2017, p.2 <https://privacyinternational.org/feature/688/briefing-uk-us-intelligence-sharing-arrangements>

216 Privacy International, *Briefing – UK-US Intelligence Sharing Arrangements*, July 2017, p.2 <https://privacyinternational.org/feature/688/briefing-uk-us-intelligence-sharing-arrangements>

Detainees²¹⁷ (Consolidated Guidance to Intelligence Officers) was published in 2010 following legal action by Reprieve. The UK has also published guidance on how to ensure the UK's overseas security and justice assistance work meets the UK's human rights obligations.²¹⁸ These documents set out the procedures that the UK government should follow when assisting other States and lays out strategies to identify and mitigate risks.

5.5 UK ASSISTANCE IN UNLAWFUL US DRONE STRIKES

Under Article 16 of the Articles on State Responsibility, if the UK – through its organs or agencies – knowingly assists in drone strikes by the USA that constitute an internationally wrongful act, the UK may be responsible for assisting that act. In Amnesty International's view, requisite knowledge for these purposes could arise because the UK knows – with actual or near or practical certainty – of the circumstances of an unlawful drone strike, or was wilfully blind to it despite readily available, credible evidence of present or future unlawful US drone strikes. The assistance provided need not be essential to the performance of an internationally wrongful act; it is sufficient if it contributed significantly to the wrongful act. Furthermore, Amnesty International takes the view that it is not necessary for the UK to desire or intend the assistance it provides to be used in an unlawful drone strikes; it is sufficient that the UK has foreseen that its assistance would be used in an unlawful drone strike.

Additionally, as a party to both the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, the UK may violate its own obligations under international human rights law if it assists in violations of human rights by others – such as a violation of the right to life – when it knows or should have known of the violations (including when those violations occur outside its jurisdiction or territory). As a party to the Geneva Conventions, the UK should also not encourage, aid or assist in violations of international humanitarian law by parties to an armed conflict as part of its obligation under Common Article 1.

The UK provides assistance to the US drone programme, as well as other US surveillance and intelligence operations that may support that programme, in the form of intelligence sharing, the embedding of UK personnel in US lethal drone operations and the provision of bases which provide crucial communications and intelligence infrastructure. This assistance is absolutely crucial to the US lethal drones programme, providing support for various US surveillance programmes, vital intelligence exchanges and in some cases direct involvement from UK personnel in identifying and tracking targets for US lethal operations, including drone strikes that may have been unlawful. Reports also suggest that UK personnel have been embedded within the US Air Force.

Issues concerning the US drone programme have been extensively documented for more than a decade by credible organizations like Amnesty International, Human Rights Watch, the Bureau of Investigative Journalism, UN Special Rapporteurs and Reprieve amongst others – from general concerns over the legal framework under which the programme operates to specific examples of unlawful drone killings in Pakistan and elsewhere, some of which could amount to war crimes or extrajudicial executions.

Amnesty International is therefore of the view that the UK is providing significant assistance to the USA in the knowledge that this could assist potentially unlawful drone strikes. It is not clear what safeguards the UK has in place to ensure that any assistance it provides is not used potentially unlawful drone strikes. The UK has in fact refused to publicly disclose guidance it provides to UK personnel involved in US drone strikes. The UK government has stated that the USA can make its own interpretation of what it is permitted to do under international law, and that it is a matter for the US administration to ensure

217 HM Government, *Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees*, July 2010, www.gov.uk/government/uploads/system/uploads/attachment_data/file/62632/Consolidated_Guidance_November_2011.pdf

218 Foreign & Commonwealth Office, *UK's Overseas Security and Justice Assistance (OSJA), Human rights guidance*, 15 December 2011, www.gov.uk/government/publications/overseas-security-and-justice-assistance-osja-guidance

its actions are lawful. The UK's approach therefore seems to be one which grants a wide margin of discretion to the US government, despite the extremely problematic nature of the US drone programme and the legal basis (or lack thereof) under which it is conducted.

The UK is therefore at risk of being responsible under international law for assisting in unlawful drone strikes by the USA and at risk of violating its own obligations under international human rights law and international humanitarian law. The UK's Joint Committee on Human Rights also highlighted the issue of liability under national law in its 2016 report:

“The possibility of criminal prosecution for complicity in murder also arises for all those UK personnel who have a role in assisting or facilitating the use of lethal force by coalition allies, such as the US, which has a much wider approach to the use of lethal force outside of armed conflict. Such assistance might take the form of logistical support (for example, permitting US jets to use UK airbases), or the provision of intelligence about targets gathered by UK surveillance and reconnaissance.”²¹⁹

In particular, allowing the USA to use various RAF bases in support of lethal drone strikes around the world may amount to a breach of the obligation under international law not to use force in another State's territory (see Section 3.5 above). As outlined in the International Law Commission's Commentary to Article 16 of the Articles on State Responsibility, “the obligation not to use force may also be breached by an assisting State through permitting the use of its territory by another State to carry out an armed attack against a third State”.²²⁰

Furthermore, Amnesty International takes the view that the UK can be responsible for assisting an unlawful drone strike under Article 16 even if a court (whether international or domestic) has not determined the wrongfulness of the USA's conduct and even if the UK itself has not carried out an analysis or determined that the USA has acted or will act in a way that is internationally wrongful. It is sufficient that the UK had the requisite knowledge (i.e., either with actual or near or practical certainty or due to wilful blindness) that the bare facts which comprise the unlawful strikes will occur in the future.

The failure of the US authorities to provide an adequate legal and factual justification for drone strikes, and the secrecy around the US drone programme and the UK's role in it, means that Amnesty International is unable to definitively conclude that the UK is responsible for assisting unlawful US drone strikes or violating its own obligations under international human rights or humanitarian law.

Set against this – and in the context of a dramatically expanding US drone programme under the Trump administration under which the already inadequate rules and procedures governing the use of lethal force outside of recognised conflict zones are being loosened, increasing the likelihood of unlawful killings, including extrajudicial executions, and an increase in civilian casualties – it is more important than ever for the UK government to urgently provide public clarification on the safeguards it has in place to ensure the UK is not aiding and assisting in potentially unlawful US drone strikes.

219 CHR, *The Government's policy on the use of drones for targeted killing*, 10 May 2016, p. 24, <https://publications.parliament.uk/pa/jt201516/jtselect/jtrights/574/574.pdf>

220 International Law Commission, “Draft articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries”, pp. 66-67, http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf

6 ASSISTANCE PROVIDED BY GERMANY



Germany provides critical assistance to the US drone programme, as well as to other US surveillance and intelligence operations that may support that programme, through provision of crucial communications and intelligence infrastructure, as well as Ramstein air base, which allows information to be transmitted between drone operators in the USA and armed drones carrying out lethal strikes across the globe. In some cases, this assistance has been provided in relation to US drone strikes that may be unlawful, including strikes targeting German nationals.

6.1 GERMANY AT THE HEART OF US DRONE OPERATIONS: RAMSTEIN AIR BASE

The USA has a long history of intelligence partnership with Germany and conducting intelligence operations from German territory in the post-World War II period. During the Cold War, the Federal Republic of Germany cooperated on intelligence activities against the German Democratic Republic and the Soviet Union. Counter-terrorism intelligence cooperation between Germany and the USA extends back to the 1960s²²¹ through to the post-9/11 period and the global “War on Terror”.

This relationship of close cooperation has continued to the present day, with Ramstein air base – a US Air Force (USAF) base located in southwest Germany and one of the USA's largest overseas military bases – playing a critical role in the US drone programme.²²² Germany has played a crucial part in the US drone programme since 2000, when the CIA's search for al-Qa'ida's Osama bin Laden relied on US operatives controlling unarmed surveillance drones relaying video footage via satellite from Afghanistan to Ramstein air base.²²³ According to a media investigation, initial plans were made to assassinate bin Laden using a drone-launched missile, targeted and operated from Germany. This plan met a legal obstacle when US Department of Defense lawyers warned that launching such an attack from German soil without the express permission of the German government would breach existing agreements, and so an alternative was sought.²²⁴

Ramstein underwent an expansion in 2015. In December 2016, a representative from the German Ministry of Foreign Affairs (MoFA) reported in a parliamentary hearing that the US Embassy in Germany had provided detailed information about the substantial role that Ramstein played in the use of drones by the USA in a meeting with the MoFA in August 2016.²²⁵ A joint investigation by The Intercept and German newspaper Der Spiegel also exposed the ongoing role of Ramstein in the USA's drone operations, despite it not being possible to directly control strikes from the base.²²⁶

221 Stéphane Lefebvre, 'The Difficulties and Dilemmas of International Intelligence Cooperation', *International Journal of Intelligence and CounterIntelligence*, 16:4, p.532, www.tandfonline.com/doi/pdf/10.1080/716100467?needAccess=true

222 Deutsche Bunderstag, Plenarprotokoll 18/205, 30.11.2016, S. 20452-20453

223 The Intercept, *Germany is the tell-tale heart of America's drone war*, 17 April 2015, www.theintercept.com/2015/04/17/ramstein/ and; Jeremy Scahill, *The Assassination Complex: Inside the Government's Secret Drone Warfare Program*, 2016, pp.79-80.

224 Der Spiegel, *US Ramstein Base Key in Drone Attacks*, 22 April 2015, www.spiegel.de/international/germany/ramstein-base-in-germany-a-key-center-in-us-drone-war-a-1029279.html

225 Deutscher Bundestag, Stenografischer Bericht, 205. Sitzung, p.20451, <http://dip21.bundestag.de/dip21/btp/18/18205.pdf>

226 The Intercept, *Germany is the tell-tale heart of America's drone war*, 17 April 2015, www.theintercept.com/2015/04/17/ramstein/



The flags of the United States and Germany fly behind a sign at Ramstein Air Base in Ramstein-Miesenbach, July 30, 2014.
©REUTERS/Lucas Jackson

According to classified slides provided by US intelligence sources as part of that investigation, Ramstein sits at the heart of a complex network of facilities across the USA and the globe, through which “most paths within America’s drone maze run”.²²⁷

The distance and curvature of the earth between the USA and fields of operation in places like Yemen, Pakistan and Afghanistan is too great for direct communication between pilots and drones.²²⁸ Adding additional satellite relays between Germany and the USA would cause excessive delays to video feeds and communication, therefore affecting the precision and swiftness of monitoring and targeting.²²⁹ Therefore, instead of US operators sitting in Ramstein and firing drone missiles from German territory, an underwater fibre-optic cable was installed across the Atlantic, connecting the USA to Ramstein. This allows drone operators stationed in facilities in the USA to send and receive “lightning fast communications” from their drones in the Middle East via Ramstein.²³⁰ Providing testimony before a German Parliamentary Committee established to investigate NSA activities in Germany, Brandon Bryant, a former US drone operator and now whistleblower, described in detail how Ramstein was used by US drone operators based in the USA.²³¹ In his testimony he states that “All data - every single piece of data and information - that was transferred between aircraft and air crew was done through Ramstein Air Force Base.”²³²

A geolocation system named GILGAMESH and run by the NSA is understood to be key to these operations. In a 2014 investigation *The Intercept*, uncovered how the GILGAMESH platform effectively turns a device attached to the bottom of a drone (a ‘virtual base-tower transceiver’) into a fake mobile phone receiver, which forces a target’s mobile phone signal to connect, without their knowledge, to the

227 See: <https://firstlook.org/wp-uploads/sites/1/2015/04/ramstein-final.pdf>

228 Der Spiegel, *US Ramstein Base Key in Drone Attacks*, 22 April 2015, www.spiegel.de/international/germany/ramstein-base-in-germany-a-key-center-in-us-drone-war-a-1029279.html

229 Der Spiegel, *US Ramstein Base Key in Drone Attacks*, 22 April 2015, www.spiegel.de/international/germany/ramstein-base-in-germany-a-key-center-in-us-drone-war-a-1029279.html

230 Jeremy Scahill, *The Assassination Complex: Inside the Government’s Secret Drone Warfare Program*, 2016, p.80.

231 Deutscher Bundestag, *Committee of Inquiry 67th session*, 15 October 2015, http://cdn.netzpolitik.org/wp-upload/2017/09/NSAUA-Abschlussbericht-Dokumente/D_I_Stenografische_Protokolle/Protokoll%2067%20I.%20Teil%20I.pdf

232 Deutscher Bundestag, *Committee of Inquiry 67th session*, 15 October 2015, http://cdn.netzpolitik.org/wp-upload/2017/09/NSAUA-Abschlussbericht-Dokumente/D_I_Stenografische_Protokolle/Protokoll%2067%20I.%20Teil%20I.pdf

THE GILGAMESH PLATFORM

EFFECTIVELY TURNS A DEVICE ATTACHED TO THE BOTTOM OF A DRONE INTO A

FAKE MOBILE PHONE RECEIVER, WHICH FORCES A TARGET'S MOBILE PHONE SIGNAL TO CONNECT, WITHOUT THEIR KNOWLEDGE, TO THE DEVICE



device.²³³ This allows the target's precise location to be pinpointed and this information to be fed via a satellite to Ramstein base and on to ground control facilities across the USA via fibre optic cables, including Creech Air Force base in Nevada, from where drone operations in Afghanistan and Pakistan are controlled.²³⁴ According to The Intercept's 'Secret Surveillance Catalogue', GILGAMESH also seems to be linked to the AIRHANDLER platform in RAF Digby, in that it requires AIRHANDLER to operate.²³⁵

Ramstein is therefore host to a communications system which enables information to be transmitted between drone operators in the US and armed drones carrying out lethal and potentially unlawful strikes across the globe. It is considered by the USA to perform an integral function in their military and CIA operations. According to a 2010 US budget request, this is a function without which drone "strikes cannot be supported".²³⁶ According to The Intercept, the "German government has granted the U.S. the right to use the property, but only under the condition that the Americans do nothing there that violates German law".²³⁷

6.2 INTELLIGENCE GATHERING AND SHARING

"Some would strongly suggest that there are major questions and issues about the complicity or the implications involved in assassination programs of people in other countries facilitated by this partnership [between the USA and Germany]."

Thomas Drake, NSA whistleblower, July 2014

Documents released by whistleblower Edward Snowden in 2014 revealed that US functions in Germany also extend to intelligence collection. A leaked internal NSA post from October 2011 reported on a modernisation project to provide "reliable and robust" communications and data-transport services via the European Technical Center (ETC) in Wiesbaden, Germany.²³⁸ This centre, the post reports, "is the NSA's primary communications hub in that part of the world, providing communications connectivity, SIGINT [signals intelligence] collection, and data-flow services to NSAers, warfighters and foreign partners in Europe, Africa and the Middle East."

233 The Intercept, *The NSA's secret role in the US assassination program*, 10 February 2014, www.theintercept.com/2014/02/10/the-nsas-secret-role/

234 The Intercept, *Germany is the tell-tale heart of America's drone war*, 17 April 2015, www.theintercept.com/2015/04/17/ramstein/

235 See: <https://theintercept.com/surveillance-catalogue/airhandler/>

236 The Intercept, *Germany is the tell-tale heart of America's drone war*, 17 April 2015, www.theintercept.com/2015/04/17/ramstein/

237 The Intercept, *Germany is the tell-tale heart of America's drone war*, 17 April 2015, www.theintercept.com/2015/04/17/ramstein/

238 See: www.search.edwardsnowden.com/docs/NSACommunicationsHubinEuropeisModernized2014-06-18_nsadocs_snowden_doc

The Intercept has suggested that this intelligence gathering may support or enable US drone strikes, as a drone architecture slide deck obtained by The Intercept²³⁹ shows the ETC appears to have satellite links to Bagram air base in Afghanistan and a fibreoptic connection to the NSA's facilities in Georgia, where many GILGAMESH operators supporting drone operations are based.²⁴⁰

In 2013 German media reported on the construction of the new US Army Consolidated Intelligence Centre (CIC), also in Wiesbaden, with the facility set to be responsible for military intelligence gathering from 51 countries.²⁴¹ At the time of writing Amnesty International was unable to find publicly available confirmation that the CIC's construction has been completed. Media reports have also uncovered the "massively expanding" presence of the NSA in Germany, with at least 12 active collection sites which are reportedly used to search for potential targets through analysis of a "Pattern of Life".²⁴² According to one classified report leaked by Snowden, information collected in NSA/CSS [Central Security Service] Europe - an NSA division focused on SIGINT in Europe near Stuttgart in Germany - is used for the "capture or kill" of individuals suspected of terrorism.²⁴³ This could be through the use of drone strikes, though it is not clear in the documents themselves.

According to the "Snowden papers", Germany's foreign intelligence agency, the Bundesnachrichtendienst (BND) regularly passes to the NSA "massive amounts of connection data relating to the communications it had placed under surveillance" including "telephone numbers, email addresses, IP connections" metadata.²⁴⁴ It is unclear whether the BND places restrictions to ensure that data is not used to unlawfully locate and kill individuals as part of the US lethal drone programme.

6.3 PARLIAMENTARY SCRUTINY OVER THE ROLE OF RAMSTEIN AND NSA ACTIVITIES IN GERMANY

"...we were briefed and told that members of the German government do know exactly what was going on Ramstein Air Force Base. And they approved of it all."

Brandon Bryant, former US Drone Pilot, October 2015.

In 2014 a German Parliamentary Committee was established to investigate NSA activities in Germany.²⁴⁵ Former NSA employee and whistle-blower Thomas Drake gave testimony to the committee, outlining the importance of Germany to the US drone programme:

239 See: <https://firstlook.org/wp-uploads/sites/1/2015/04/ramstein-final.pdf>

240 The Intercept, *Germany is the tell-tale heart of America's drone war*, 17 April 2015, www.theintercept.com/2015/04/17/ramstein/

241 Deutsche Welle, *German spy agency: 'No plan for NSA base in Wiesbaden'*, 18 July 2013, www.dw.com/en/german-spy-agency-no-plan-for-nsa-base-in-wiesbaden/a-16961511

242 Der Spiegel, *Inside Snowden's Germany File*, 18 June 2014, www.spiegel.de/international/germany/new-snowden-revelations-on-nsa-spying-in-germany-a-975441.html

243 See: <http://www.spiegel.de/media/media-34091.pdf>

244 Der Spiegel, *Transfers from Germany Aid US Surveillance*, 5 August 2013, www.spiegel.de/international/world/german-intelligence-sends-massive-amounts-of-data-to-the-nsa-a-914821.html

245 Deutscher Bundestag, *Beschlussempfehlung und Bericht des 1. Untersuchungsausschusses gemäß Artikel 44 des Grundgesetzes*, 23 June 2017, <http://dip21.bundestag.de/dip21/btd/18/128/1812850.pdf> The committee was tasked with examining a series of issues, including the following in relation to lethal targeting operations: "Have US bodies carried out or initiated telecommunications surveillance, arrests, or targeted killings through the deployment of combat drones on or from German territory? If so, what knowledge did German federal agencies have of this at what time? If applicable, were they involved in the preparation or implementation of such measures in any form whatsoever or did they approve them? If applicable, what action should they have taken in response to such knowledge and what action was actually taken?"

“There was a program that was affectionately referred to at NSA as “We track ‘em, you whack ‘em”. Part of this involved types of intelligence that would find and locate threats. You had to have places in which you would operate those drones as well as provide the intelligence. Given the nature of certain facilities within Germany, it’s fair to say ... that Germany itself was being used for in an extraconstitutional manner, its own security service to help facilitate those types of operations. The electronic intelligence is extraordinarily powerful in terms of signals and being able to pick up other types of signatures. And then you run all that into the algorithms that are used to determine where the drones will be sent and what types of targets they’ll actually acquire and then launch against. That’s part of the arrangement.

“I remember the question being asked even then: Is it permissible to use another country as a platform for these types of operations? Some would strongly suggest that there are major questions and issues about the complicity or the implications involved in assassination programs of people in other countries facilitated by this partnership.”²⁴⁶

In 2016 Heinz Fromm, the former head of Germany’s intelligence service, the Bundesamt für Verfassungsschutz (BfV), testified on the extent to which German intelligence sharing may have supported the USA’s lethal drone operations in Afghanistan and Pakistan,²⁴⁷ telling the committee “It is entirely conceivable that information delivered by our agency became part of a whole picture that facilitated the execution of such attacks”. He went on to stress however that the agency “did not support such attacks directly”, and that while mobile phone data collected by Germany may have been shared with the NSA, GPS data was not.²⁴⁸

In December 2016 the “Research and Documentation Service” of the German Parliament issued an expert opinion on the role of Ramstein and commented on various legal questions, including whether Germany could be complicit in unlawful drone strikes.²⁴⁹ The expert opinion concluded that the German government could not be complicit in unlawful drone strikes, as there is no way for the German government to know about all US activities carried out in Ramstein. The German government relies on information that the US exchanges with it in this regard. The opinion offered a wide margin of discretion to the German government on foreign policy matters, suggesting that German responsibility would only be triggered if no action was taken by the German government with regards to Ramstein; thus arguing that it is enough that the German government is simply in touch with its US counterparts. However, this is contradicted by testimony provided by former US drone pilot Brandon Bryant during the German NSA parliamentary inquiry, in which he stated “we were briefed and told that members of the German government do know exactly what was going on Ramstein Air Force Base. And they approved of it all”.²⁵⁰ This shows at the very least that the German government has a high level of awareness of US activities in Ramstein.

In addition, in an answer to a parliamentary inquiry by German political party Die Linke in January 2017, the German government admitted that the information provided by the US embassy to the German

246 NSA Untersuchungsausschuss, 11. Sitzung des 1. Untersuchungsausschuss, p.175 www.wikileaks.org/bnd-nsa/sitzungen/11/page-175.html

247 Deutsche Welle, *Ex-German intel chief: Germany may have helped US with drone attacks*, 9 June 2016, www.dw.com/en/ex-german-intel-chief-germany-may-have-helped-us-with-drone-attacks/a-19319830.

248 Deutsche Welle, *Ex-German intel chief: Germany may have helped US with drone attacks*, 9 June 2016, www.dw.com/en/ex-german-intel-chief-germany-may-have-helped-us-with-drone-attacks/a-19319830.

249 Deutscher Bundestag, *Zur Rolle des Militärstützpunktes Ramstein im Zusammenhang mit US-amerikanischen Drohneneinsätzen: Rechtsfragen und Entwicklungen*, 15 December 2016, <http://bundestag.de/blob/490500/7299816e2b2d684467772f817df8d517/wd-2-149-16-pdf-data.pdf>.

250 Deutscher Bundestag, *Committee of Inquiry 67th session*, 15 October 2015, p.62, http://cdn.netzpolitik.org/wp-upload/2017/09/NSAUA-Abschlussbericht-Dokumente/D_1_Stenografische_Protokolle/Protokoll%2067%20I.%20Teil%20I.pdf

foreign affairs ministry in August 2016 included the fact that the Ramstein base – beyond serving as a crucial communications hub for the US’ drone operations – served several other critical functions, such as planning, conducting surveillance and assessments of air operations.²⁵¹

6.4 TARGETING OF GERMAN NATIONALS IN US DRONE STRIKES

In 2010 the first known killing of a German citizen in a US drone strike in Pakistan was reported, and from it arose serious questions about the nature of Germany’s involvement in the intentional, potentially unlawful, killing of its nationals and whether the State was complicit.

According to information uncovered during the parliamentary inquiry into the NSA’s activities in Germany, Bunyamin Erdogan and his brother, Emrah Erdogan, both German citizens, travelled to Pakistan from the town of Velbert in Rhineland, Germany separately in 2010.²⁵² Calls from Emrah Erdogan to their family in Germany were recorded by the German intelligence service, and indicated that they were being trained to use weapons and that Bunyamin Erdogan was allegedly “preparing to become a suicide bomber”.²⁵³ Bunyamin Erdogan was killed by a CIA-controlled drone strike on 4 October 2010 in Mir Ali, Pakistan, though Emrah Erdogan survived. Four other people also died in the attack. The target of the strike was reportedly a Pakistani Taliban commander staying in the same building, who was thought to have been behind an attack on a US base in Afghanistan a year prior but who was not inside the property at the time of the strike.²⁵⁴

Der Spiegel, a German news magazine, reported that the German authorities had informed the US authorities of Bunyamin Erdogan’s departure from Germany and handed them his mobile telephone number, that of a contact of his in Turkey, and the address of a café Bunyamin Erdogan was known to frequent in Pakistan.²⁵⁵ When the killing came to light, Amnesty International called on the German government to comment on the possible role of the Federal Police and the BfV in preparing and sharing intelligence used by the US for drone strikes in Pakistan.²⁵⁶

Obligated under national law and having determined that the Federal Court of Justice had jurisdiction to look into the case, Germany’s Federal Prosecutor General opened a formal criminal investigation into the death of Bunyamin Erdogan in 2012.²⁵⁷ The investigation was closed the following year, with the Prosecutor General finding no initial suspicion of a crime. This is because Bunyamin Erdogan was seen as a legitimate target carrying out a continuous combat function within a non-international armed conflict, and Bunyamin Erdogan’s death was therefore held to be lawful as his status as a member of an armed group with a continuous combat function meant that, under international humanitarian law, he did not enjoy civilian immunity from being directly targeted.²⁵⁸

251 Deutscher Bundestag, *Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Andrej Hunko, Niema Movassat, Dr. Alexander S. Neu, weiterer Abgeordneter und der Fraktion DIE LINKE: Die US-Basis Ramstein als wichtiger Knoten im weltweiten Drohnenkrieg*, 25 January 2017, pp.1-2, <http://dipbt.bundestag.de/dip21/btd/18/110/1811023.pdf>

252 Deutscher Bundestag, *Beschlussempfehlung und Bericht des 1. Untersuchungsausschusses gemäß Artikel 44 des Grundgesetzes*, 23 June 2017, www.dip21.bundestag.de/dip21/btd/18/128/1812850.pdf

253 Deutscher Bundestag, *Beschlussempfehlung und Bericht des 1. Untersuchungsausschusses gemäß Artikel 44 des Grundgesetzes*, 23 June 2017, www.dip21.bundestag.de/dip21/btd/18/128/1812850.pdf

254 Der Spiegel, *Germany Limits Information Exchange with US Intelligence*, 17 May 2011, www.spiegel.de/international/germany/drone-killing-debate-germany-limits-information-exchange-with-us-intelligence-a-762873-2.html

255 Der Spiegel, *Germany Limits Information Exchange with US Intelligence*, 17 May 2011, www.spiegel.de/international/germany/drone-killing-debate-germany-limits-information-exchange-with-us-intelligence-a-762873-2.html

256 Der Spiegel, *Germany Limits Information Exchange with US Intelligence*, 17 May 2011, www.spiegel.de/international/germany/drone-killing-debate-germany-limits-information-exchange-with-us-intelligence-a-762873-2.html

257 European Center for Constitutional and Human Rights, *Targeted Killing by Combat Drone: Expert opinion on the decision (File no. 3 BJs 7/12 of the Federal Prosecutor General at the Federal Court of Justice to discontinue investigatory proceedings into the killing of German national Bünyamin E. on 4 October 2010 in Mir Ali / Pakistan*, October 2013, p.2, available at: www.ecchr.eu/en/international-crimes-and-accountability/drones/pakistan.html

258 European Center for Constitutional and Human Rights (ECCHR), *Targeted Killing by Combat Drone: Expert opinion on the decision (File no. 3 BJs 7/12 of the Federal Prosecutor General at the Federal Court of Justice to discontinue investigatory proceedings into the killing of German national Bünyamin E. on 4 October 2010 in Mir Ali / Pakistan*, October 2013, p.2, available at: www.ecchr.eu/en/international-crimes-and-accountability/drones/pakistan.html

This decision came under strong criticism from human rights organization the European Center for Constitutional and Human Rights (ECCHR), who argued in an expert opinion that the Federal Prosecutor General had failed to adequately establish that the attack which killed Bunyamin Erdogan was carried out within the context of an armed conflict. Similarly, ECCHR argued that there was a failure by the Federal Prosecutor General to distinguish between various types of conflict in the region, i.e. whether the attack on Bunyamin Erdogan took place in the context of the conflict in Afghanistan, as there was insufficient information regarding which parties to the Afghan conflict use Pakistani territory as a safe zone and whether Bunyamin Erdogan was a member of such a group.²⁵⁹ It is therefore clear that key questions regarding the legality of Bunyamin Erdogan's killing were not adequately addressed, thus leading to a fundamentally flawed reasoning by the Federal Prosecutor General.

The killing did, however, mark a turning point in German-US intelligence sharing and in early 2011 Germany's Interior Ministry issued an urgent instruction for its security agencies to cease sharing information with the USA if there was a risk it could be used to facilitate the unlawful killing of German nationals.²⁶⁰ Significantly, this instruction applies only to German nationals, not individuals from other countries who are the most commonly targeted by the US drone programme. Nevertheless, this order appears not to have stemmed the flow of information – retired Pakistani intelligence officials told Amnesty International that, in 2012 and 2013, German intelligence agencies continued to cooperate with the USA and its drone operations in Pakistan.²⁶¹

According to Der Spiegel, Germany continues to share information for “intelligence” or “protective” purposes, and shares telephone numbers but not exact location information with the USA on the proviso that it can only be used to facilitate the capture of a German target.²⁶² In addition, a German official told Der Spiegel that when providing information to their US counterparts, German intelligence agencies “include wording” placing restrictions on what the information can be used for, in turn effectively preventing German intelligence from being used to plan a drone attack. In August 2011, representatives of Die Linke referred to the Der Spiegel article in a parliamentary inquiry, asking the government whether, when passing information to the USA, the Office for the Protection of the Constitution includes ‘wording’ stipulating that it can only be used for the capture, not killing, of targets, and if so, whether this applies to both German and foreign national targets. The government simply replied “No”.²⁶³

THE KILLING OF BUNYAMIN ERDOGAN DID, HOWEVER, MARK A TURNING POINT IN GERMAN-US INTELLIGENCE SHARING

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A RISK IT COULD BE USED TO FACILITATE THE **UNLAWFUL KILLING OF GERMAN NATIONALS**



259 European Center for Constitutional and Human Rights, *Targeted Killing by Combat Drone: Expert opinion on the decision (File no. 3 BJs 7/12 of the Federal Prosecutor General at the Federal Court of Justice to discontinue investigatory proceedings into the killing of German national Bunyamin E. on 4 October 2010 in Mir Ali / Pakistan*, October 2013, available at: www.ecchr.eu/en/international-crimes-and-accountability/drones/pakistan.html

260 Chris Woods, *Sudden Justice: America's Secret Drone Wars*, Oxford University Press, USA; 1 edition, p.127, 2015.

261 Amnesty International, *"Will I be next?": US drone strikes in Pakistan*, October 2013, p.73 (endnote), (Index: ASA 33/013/2013), www.amnesty.org/en/documents/ASA33/013/2013/en/

262 Der Spiegel, *Germany Limits Information Exchange with US Intelligence*, 17 May 2011, www.spiegel.de/international/germany/drone-killing-debate-germany-limits-information-exchange-with-us-intelligence-a-762873-2.html

263 Deutscher Bundestag, *Die Antwort wurde namens der Bundesregierung mit Schreiben des Bundesministeriums des Innern vom 16. August 2011 übermittelt, Weitergabe von Geheimdienstdaten an die USA*, 23 August 2011, <https://dip21.bundestag.de/dip21/btd/17/068/1706828.pdf>

6.5 ATTEMPTS TO LITIGATE OVER RAMSTEIN-SUPPORTED DRONE STRIKES

In October 2014, ECCHR and Reprieve initiated legal proceedings before Cologne's administrative court in response to the killing of two members of the Bin Ali Jaber family, who were killed in a US drone strike in Yemen in the summer of 2012. They asked the court to grant protection for three surviving family members from future attacks. The Ramstein base, being on German soil, was central to the case, with ECCHR and Reprieve arguing that Germany "is violating its constitutional and human rights obligation to protect because it has, thus far, not taken appropriate measures to prevent the US from using its bases and facilities on German territory for drone attacks," and that "by not preventing the use of Ramstein, the German government bears co-responsibility for the use of drones that constitutes a violation of international law".²⁶⁴

Though the court accepted that the claim was admissible, it ultimately rejected the complaint in 2015, as the court was unwilling to adjudicate on foreign policy matters. The judge stated it was not "politically realistic" to terminate Germany's contract with the USA for Ramstein, and argued that "the German government is not obliged to prohibit the USA from using Ramstein airbase for the execution of drone attacks in Yemen."²⁶⁵ ECCHR argued that this "granted the German government extremely broad discretion on the matter, effectively freeing the state from any court oversight on this issue," and appealed in August 2015.²⁶⁶ At the time of writing, the legal proceedings are ongoing.

Similarly, in September 2015, the Open Society Justice Initiative (OSJI) supported legal proceedings (a criminal complaint and a separate administrative action) on behalf of the son of a herdsman killed in a US drone strike in Somalia in February 2012.²⁶⁷ The strikes had actually been directed at Mohamed Sakr, a British-born Somali who had been stripped of British citizenship on the basis that he was involved in terrorism.

OSJI filed the criminal complaint on the basis that, by allowing US drone strike planning and operation to be facilitated on German territory at Ramstein base and the US 'Africa command headquarters' (AFRICOM) in Stuttgart, German officials held joint responsibility for these deaths. OSJI submitted a further administrative - action to the Administrative Court in Cologne, asserting that by supporting these lethal US drone strikes, Germany had breached its obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and violated provisions of the German constitution which should have prevented German support for the US programme of targeted killings.²⁶⁸

In April 2016, the Cologne Administrative Court rejected the claim holding that the case was inadmissible due to "an insufficient link between the inaction of the German government and the constitutional rights of the complainant," while also finding that the criminal complaint was "a more

264 ECCHR, *Targeted Killing by Combat Drone: Expert opinion on the decision (File no. 3 BJs 7/12 of the Federal Prosecutor General at the Federal Court of Justice to discontinue investigatory proceedings into the killing of German national Bünyamin E. on 4 October 2010 in Mir Ali / Pakistan)*, October 2013, available at: www.ecchr.eu/en/international-crimes-and-accountability/drones/pakistan.html and https://www.ecchr.eu/en/our_work/international-crimes-and-accountability/drones/q-a.html?file=tl_files/Dokumente/Education%20Programm/Call%20for%20Scholarships%202018.pdf

265 The Guardian, *Court dismisses claim of German complicity in Yemeni drone killings*, 27 May 2015, www.theguardian.com/world/2015/may/27/court-dismisses-yemeni-claim-german-complicity-drone-killings

266 The Guardian, *Court dismisses claim of German complicity in Yemeni drone killings*, 27 May 2015, www.theguardian.com/world/2015/may/27/court-dismisses-yemeni-claim-german-complicity-drone-killings

267 Open Society Justice Initiative (OSJI), *New Legal Action Targets Germany's Support for U.S. Drone Strikes*, 21 September 2015, www.opensocietyfoundations.org/press-releases/new-legal-action-targets-germanys-support-us-drone-strikes

268 OSJI, *New Legal Action Targets Germany's Support for U.S. Drone Strikes*, 21 September 2015, www.opensocietyfoundations.org/press-releases/new-legal-action-targets-germanys-support-us-drone-strikes

appropriate forum for the complainant to seek relief.”²⁶⁹ However, in June 2017 German prosecutors announced that they would not pursue the criminal complaint, claiming insufficient evidence of criminal activity and arguing that criminal liability for US personnel stationed in Germany lay with the USA not Germany.²⁷⁰

In December 2016, Hans- Christian Ströbele, a member of the German Green Party member and – until 2017 – a member of the Bundestag, as well as a member of the committee overseeing the NSA parliamentary inquiry, filed a criminal complaint with the Federal General Prosecutor over the role of Ramstein in the US drone programme. The complaint is directed against officials in Germany and the USA responsible for “any form of participation - including through criminal negligence - in the control of the use of US combat drones in Asia, Africa and the Middle East and the US base in Ramstein”.²⁷¹

6.6 GERMAN ASSISTANCE IN UNLAWFUL US DRONE STRIKES

Under Article 16 of the Articles on State Responsibility, if Germany – through its organs or agencies – knowingly assists in drone strikes by the USA that constitute an internationally wrongful act, Germany may be responsible for assisting that act. In Amnesty International’s view, requisite knowledge for these purposes could arise because Germany knows – with actual or near or practical certainty – of the circumstances of an unlawful drone strike, or was wilfully blind to it despite readily available, credible evidence of present or future unlawful US drone strikes. The assistance provided need not be essential to the performance of an internationally wrongful act; it is sufficient if it contributed significantly to the wrongful act. Furthermore, Amnesty International takes the view that it is not necessary for Germany to desire or intend the assistance it provides to be used in an unlawful drone strikes; it is sufficient that Germany has foreseen that its assistance would be used in an unlawful drone strike.

Additionally, as a party to both the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, Germany may violate its own obligations under international human rights law if it assists in violations of human rights by others – such as a violation of the right to life – when it knows or should have known of the violations (including when those violations occur outside its jurisdiction or territory). As a party to the Geneva Conventions, Germany should also not encourage, aid or assist in violations of international humanitarian law by parties to an armed conflict as part of its obligation under Common Article 1.

**GERMANY MAY VIOLATE ITS OWN OBLIGATIONS
UNDER INTERNATIONAL HUMAN RIGHTS LAW**

**IF IT ASSISTS IN VIOLATIONS OF HUMAN RIGHTS
BY OTHERS – SUCH AS A VIOLATION OF THE RIGHT
TO LIFE – WHEN IT KNOWS OR SHOULD HAVE KNOWN OF THE VIOLATIONS**



269 OSJI, *New Legal Action Targets Germany's Support for U.S. Drone Strikes*, 27 April 2016, www.opensocietyfoundations.org/press-releases/lawyers-say-court-errs-ignoring-german-role-us-drone-strikes

270 OSJI, *Prosecutors Whitewash Germany's Role in Civilian Drone Strike Death*, 30 August 2017, www.opensocietyfoundations.org/press-releases/prosecutors-whitewash-germany-s-role-civilian-drone-strike-death

271 Der Spiegel, *Ströbele stellt Strafanzeige wegen Drohnenangriffen*, 15 December 2016, www.spiegel.de/politik/deutschland/hans-christian-stroebele-stellt-straftanzeige-wegen-drohnen-angriffen-a-1126127.html

As with the UK, Germany provides critical assistance to the US drone programme through provision of crucial communications and intelligence infrastructure, as well as Ramstein air base, which allows information to be transmitted between drone operators in the USA and armed drones carrying out lethal strikes across the globe. In some cases, this assistance has been provided in relation to US drone strikes that may be unlawful, including strikes targeting German nationals.

Issues concerning the US drone programme have been extensively documented for more than a decade by credible organizations like Amnesty International, Human Rights Watch, the Bureau of Investigative Journalism, UN Special Rapporteurs and Reprieve amongst others – from general concerns over the legal framework under which the programme operates to specific examples of unlawful drone killings in Pakistan and elsewhere, some of which could amount to war crimes or extrajudicial executions. It is also clear that the German government is fully aware of the ways in which Ramstein air base is used to support the US drone programme, as has been uncovered the German NSA parliamentary inquiry.

Amnesty International is therefore of the view that Germany is providing significant assistance to the USA in the knowledge that this could assist potentially unlawful drone strikes. Germany has provided little public information on what safeguards it has put in place to ensure that any assistance it provides is not used for potentially unlawful drone strikes. It instead continues to assert that it has a good relationship with the USA, based on confidence and has no reason to doubt US assurances that its armed drone operations comply with international law standards – an implausible position given Germany and the USA's differing legal interpretations around this issue.²⁷² While the German Interior Ministry issued an urgent instruction in 2011 for its security agencies to cease sharing information with the USA if there was a risk it could be used to facilitate the unlawful killing of German nationals, this is wholly inadequate, as Germany's extraterritorial obligation to prevent unlawful killings also extends to foreign nationals.

Germany is therefore at risk of being responsible under international law for assisting in unlawful drone strikes by the USA and at risk of violating its own obligations under international human rights law and international humanitarian law. This may also give rise to liability under national law. Germany's 2002 Act to Introduce the Code of Crimes Against International Law allows the domestic prosecution of crimes under international law – including the killing of protected persons within an international or non-international armed conflict – “even when the offense was committed abroad and bears no relation to Germany.”²⁷³

In particular, allowing the USA to use Ramstein air base to support lethal drone strikes around the world may amount to a breach of the obligation under international law not to use force in another State's territory (see Section 3.5 above). As outlined in the International Law Commission's Commentary to Article 16 of the Articles on State Responsibility, “the obligation not to use force may also be breached by an assisting State through permitting the use of its territory by another State to carry out an armed attack against a third State”. The Commentary specifically highlights a historic example involving the Government of the Federal Republic of Germany in 1960 and allegations it had participated in a wrongful use of force by allowing the US to use its airfields to stage a military intervention in Lebanon two years prior:

272 Deutscher Bundestag, *Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Andrej Hunko, Niema Movassat, Dr. Alexander S. Neu, weiterer Abgeordneter und der Fraktion DIE LINKE: Die US-Basis Ramstein als wichtiger Knoten im weltweiten Drohnenkrieg*, 25 January 2017, p.7, <http://dipbt.bundestag.de/dip21/btd/18/110/1811023.pdf>

273 Article 1, Part 1, Section 1 of Act to introduce the Code of Crimes against International Law of 26 June 2002, available at: <http://www.iuscomp.org/gla/statutes/VoeStGB.pdf>

“While denying that the measures taken by the United States and the United Kingdom in the Near East constituted intervention, the Federal Republic of Germany nevertheless seems to have accepted that the act of a State in placing its own territory at the disposal of another State in order to facilitate the commission of an unlawful use of force by that other State was itself an internationally wrongful act.”²⁷⁴

The failure of the US authorities to provide an adequate legal and factual justification for drone strikes, and the secrecy around the US drone programme and Germany's role in it, means that Amnesty International is unable to definitively conclude that Germany is responsible for assisting unlawful US drone strikes or violating its own obligations under international human rights law or international humanitarian law. However, ongoing litigation in German courts may conclude that it is.

Set against this – and in the context of an expansion of the US drone programme under President Trump which would see looser standards for use of lethal force outside situations of armed conflict – it is imperative that the German government provide urgent public clarification on the safeguards it has in place to ensure Germany is not aiding and assisting in potentially unlawful US drone strikes.

274 International Law Commission, “Draft articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries” http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf

7 ASSISTANCE PROVIDED BY THE NETHERLANDS



The Netherlands collects and shares intelligence data with the USA as part of general intelligence cooperation that may support US drone strikes, as well as use of force operations including drone strikes.

Since 2014, questions have been raised about the extent and nature of the Dutch government's role in and potential responsibility for assisting US drone operations in Somalia. The USA has been conducting armed drone strikes in Somalia within the paradigm of its so-called global "War on Terror" since at least June 2011, when a strike was confirmed to have killed two men said to be leaders of the armed group al-Shabaab in the southern port city of Kismayo.²⁷⁵ This strike was carried out amid claims by the USA that al-Shabaab members had been closely collaborating with al-Qa'ida to carry out attacks beyond Somalia.²⁷⁶

Since 2011 [and as of February 2018], the Bureau of Investigative Journalism (BIJ) has counted at least 70 possible and confirmed US drone strikes in Somalia, killing between 500 and 655 people, including between three and 17 civilians, and injuring between seven and 26 people.²⁷⁷ Since President Trump came into office there has been a dramatic surge in air strikes (including drone strikes) in Somalia, with the BIJ reporting they had doubled in 2017.²⁷⁸ This seems to be consistent with an investigation carried out by The Guardian, during which it checked claims of strikes in the local media with western and local officials, medical staff, witnesses and relatives of victims, and found that there had been 34 US air strikes (including drone strikes) in Somalia in the last six months of 2017 – at least twice the total for the whole of 2016.²⁷⁹

Amnesty International documented a US drone strike on an al-Shabaab convoy which took place on 1 September 2014, killing key leaders of the movement including Moktar Ali Zubeyr (known also as "Ahmad Abdi Godane" or "Godane").²⁸⁰ Godane's death was announced by the US DoD on 5

275 The Washington Post, *US drone targets two leaders of Somali group allied with al-Qaeda*, 29 June 2011, www.washingtonpost.com/national/national-security/us-drones-target-two-leaders-of-somali-group-allied-with-al-qaeda/2011/06/29/AGJFzrH_story.html?hpid%3Dz1&sub=AR&utm_term=.74fe4f725eb1

276 The Washington Post, *US drone targets two leaders of Somali group allied with al-Qaeda*, 29 June 2011, www.washingtonpost.com/national/national-security/us-drones-target-two-leaders-of-somali-group-allied-with-al-qaeda/2011/06/29/AGJFzrH_story.html?hpid%3Dz1&sub=AR&utm_term=.74fe4f725eb1

277 This is based on data collected by the Bureau of Investigative Journalism (BIJ) – the first strike is dated 23 June 2011 and the last strike is dated 26 February 2018. These strikes include possible and confirmed strikes which involve drone strikes. Some are marked as "Drone or air Strike" while others are marked "Air operation – drone strike" in the BIJ data, and so some may involve multiple strike methods. The data includes one strike marked as "Drone Strike Helicopter Raid" (23 June 2011) and another marked as "Air operation - drone or airstrike, US-Somali ground troops" (10 August 2017). Amnesty International is not in a position to verify these figures.

278 Bureau of Investigative Journalism, *US counter terror air strikes double in Trump's first year*, 19 December 2017, <https://www.thebureauinvestigates.com/stories/2017-12-19/counterterrorism-strikes-double-trump-first-year>

279 The Guardian, *Somali citizens count cost of surge in US airstrikes under Trump*, 23 January 2018, <https://www.theguardian.com/world/2018/jan/23/somali-citizens-count-cost-of-surge-in-us-airstrikes-under-trump>

280 Amnesty International, *Forced returns to south and central Somalia, including to al-Shabaab areas: A blatant violation of international law*, 23 October 2014, (Index: AFR 52/005/2014), www.amnesty.org/download/Documents/4000/afr520052014en.pdf

SINCE PRESIDENT TRUMP CAME
INTO OFFICE THERE HAS BEEN

A DRAMATIC SURGE IN AIR STRIKES (INCLUDING DRONE STRIKES) IN SOMALIA



September 2014,²⁸¹ and confirmed by al-Shabaab on 6 September 2014 when it announced a new leader, Abu Umar (known as “Abu Ubaidah”), while declaring its intention to avenge the death of Godane.²⁸² A week later, reports emerged alleging that France provided the USA with the intelligence that led to drone strike that killed Godane.²⁸³ That was at least the second US drone strike targeting Godane. In 2015, two Somali shepherds initiated legal action against the Dutch government, claiming that Dutch intelligence had contributed to another drone strike in 2014, which had been targeting Godane but had resulted in the death of the shepherds’ relatives and livestock.

7.1 SHARING OF METADATA

In March 2014, media reports²⁸⁴ surfaced suggesting that the USA could be using data gathered by the Netherlands to target individuals in drone strikes it suspected of being members of al-Shabaab in Somalia. These reports were based on documents made public by NSA whistleblower Edward Snowden and a later admission by the Dutch Ministry of Defence and Ministry of Interior and Kingdom Relations, in which they stated in a letter that they had provided the USA with 1.8 million metadata records of telephone conversations. This metadata consists of the time of the call, the originating phone number and the number called. The Ministries of Defence and Interior and Kingdom Relations stated that this was collected by the Dutch National Signals Intelligence Organisation (NSO) in the context of counter-terrorism and military operations abroad and was lawfully shared with the USA in light of international cooperation on the latter.²⁸⁵

The Netherlands is involved in extensive anti-piracy operations in Somalia, including the European Union Naval Force (Operation Atalanta) Somalia, in which it has participated since 2009.²⁸⁶ As part of this, the Netherlands gathers telephone and other data from Somalia via – amongst other means and locations – its ground station located in Burum in Friesland to aid its operations. The Netherlands is also reported to have engaged in surveillance of telephone and internet communications of Somali

281 US Department of Defense, *Statement from Pentagon Press Secretary Rear Admiral John Kirby on Ahmed Godane*, 5 September 2014, <http://www.defense.gov/releases/release.aspx?releaseid=16924>

282 Al-Shabaab, *Statement from HSM Leadership*, September 2014, http://www.halgan.net/kutub/Abu_Zuber_En.pdf

283 See the following French media reports: Le Point, *François Hollande a ordonné l'exécution du chef djihadiste somalien Ahmed Godane*, 13 September 2014, www.lepoint.fr/editos-du-point/jean-guisnel/exclusif-francois-hollande-a-ordonne-l-execution-du-chef-djihadiste-somalien-ahmed-godane-12-09-2014-1862586_53.php and; 20 Minutes, *Exécution du chef des shebab: François Hollande a coopéré avec les Etats-Unis*, 13 September 2014, www.20minutes.fr/monde/1442443-20140913-execution-chef-shebab-francois-hollande-coopere-etats-unis and; Le Parisien, *Elimination du chef des shebab : Hollande a coopéré avec Washington*, 13 September 2014, www.leparisien.fr/international/elimination-du-chef-des-shebab-hollande-a-coopere-avec-washington-13-09-2014-4132173.php and; Le Monde, *François Hollande a coopéré avec Washington pour éliminer le chef des Chabab*, 13 September 2014, www.lemonde.fr/afrique/article/2014/09/13/francois-hollande-a-coopere-avec-washington-pour-eliminer-le-chef-des-chabab_4487094_3212.html

284 NRC Handelsblad, *The secret role of the Dutch in the American war on terror*, 5 March 2014, www.nrc.nl/nieuws/2014/03/05/the-secret-role-of-the-dutch-in-the-american-war-on-terror-a1426677

285 Tweede Kamer der Staten-Generaal, *Brief van de Ministers van Binnenlandse Zaken en Koninkrijksrelaties en van Defensie*, 4 February 2014, <https://zoek.officielebekendmakingen.nl/kst-30977-79.html>

286 Ministry of Defence, *Counterpiracy*, www.english.defensie.nl/topics/somalia/counterpiracy

individuals living in the Netherlands.²⁸⁷ The 2009 annual report of the Dutch General Intelligence and Security Service (AIVD) stated that the AIVD had identified “signs that the jihadist struggle there [Somalia] is being supported from this country”.²⁸⁸

NSA documents leaked by Edward Snowden revealed that the USA assisted the Netherlands – at the request of the Dutch Military Intelligence and Security Service (*Militaire Inlichtingen- en Veiligheidsdienst, MIVD*) – in building its capabilities through providing advanced technology for marine vessel HMS Rotterdam in order to enable it to intercept communications as part of the North Atlantic Treaty Organization (NATO) anti-piracy operation Ocean Shield.²⁸⁹ This in turn strengthened US capabilities by allowing it to carry out its operations more effectively.²⁹⁰

As discussed in Chapter 1, metadata plays a crucial role in the US drone programme and is frequently used to target and kill specific individuals. A former drone operator for the US military’s Joint Special Operations Command (JSOC) High Value Targeting taskforce, which carries out counter-terrorism operations abroad, and who also worked with the NSA, provided a sobering insight into the extensive use of metadata by the USA in its targeting practices.²⁹¹ He revealed that targets are often identified through metadata analysis and mobile phone GPS tracking technologies. The activity of sim cards is studied and analysts develop a pattern of behaviour according to who individuals speak to, carving out potential relationships individuals have with these people (friends, commanders, subordinates, etc.), which is then put into a matrix. The “target” is then located on the basis of the activity and location of the mobile phone they are believed to be using, and the strike is subsequently launched.²⁹²

The former drone operator stated that this technique has had success in penetrating networks of individuals identified by the USA as so-called terrorists but that overreliance on the data had “absolutely” resulted in the death of innocent people. The use of signals intelligence has often – as noted in Chapter 1 – proven to be unreliable, resulting in the deaths of many civilians and individuals whose identity has yet to be determined.

7.2 LEGAL ACTION OVER DUTCH ASSISTANCE

In 2015, legal action was initiated by two Somali shepherds against the Dutch government for war crimes. It is the first time victims of a US drone strike have applied to a Dutch court.²⁹³ The Somali shepherds, one of whom lost a leg in a US drone strike, claim that intelligence data supplied by the Netherlands was used by the USA to target the al-Shabaab leader known as “Godane”, and other suspected al-Shabaab fighters travelling in a convoy, in a drone strike in January 2014. Whilst Godane escaped unscathed²⁹⁴ – reports suggest he was in the vicinity of the strike and had been due to travel in the car that day²⁹⁵ – several suspected al-Shabaab fighters were killed, along with, the shepherds claim, two young daughters of one of the shepherds. Both shepherds claim they also lost most of their

287 Mary Manjikian, ‘But My Hands Are Clean: The Ethics of Intelligence Sharing and the Problem of Complicity’, *International Journal of Intelligence and Counterintelligence*, Vol. 28, Iss. 4, 2015, pp.692-709.

288 General Intelligence and Security Service, *Annual Report 2009*, September 2010, p.14, <https://english.aivd.nl/publications/annual-report/2010/09/29/annual-report-2009>; and Radio Netherlands Worldwide, *Freed Somalis demand security service probe*, <https://www.rnw.org/archive/freed-somalis-demand-security-service-probe>

289 See: <https://cryptome.org/2014/03/nsa-dutch-assist.pdf>

290 See: <https://cryptome.org/2014/03/nsa-dutch-assist.pdf>

291 The Intercept, *The NSA’s secret role in the US assassination program*, 10 February 2014, www.theintercept.com/2014/02/10/the-nsas-secret-role/

292 The Intercept, *The NSA’s secret role in the US assassination program*, 10 February 2014, www.theintercept.com/2014/02/10/the-nsas-secret-role/

293 De Volkskrant, *Somali victims of US drone strike take legal action against The Netherlands*, 28 November 2015, www.volkskrant.nl/buitenland/somali-victims-of-us-drone-strike-take-legal-action-against-the-netherlands~a4196845/

294 He was later killed in a US drone strike in September 2014.

295 Voice of America, *Sources: US Drone Strike Nearly Hits al-Shabab Leader*, 29 January 2014, www.voanews.com/a/sources-us-drone-strike-nearly-hit-alshabab-leader/1840174.html

THE ACTIVITY OF SIM CARDS IS STUDIED AND ANALYSTS DEVELOP A PATTERN OF BEHAVIOUR ACCORDING TO WHO INDIVIDUALS SPEAK TO, CARVING OUT POTENTIAL RELATIONSHIPS INDIVIDUALS HAVE WITH THESE PEOPLE



cattle in the drone strike. These civilian casualty claims were not cited in any initial US reports, which stated only that the strike had hit a vehicle and killed an al-Shabaab commander and others about 200 miles south of Mogadishu.²⁹⁶

One lawyer representing the Somali shepherds argues that the USA should have seen there were bystanders in the area when the hellfire missile was fired, as “There were a lot of livestock around, always a clear indication that people are nearby”.²⁹⁷ Following delays due to legal costs attached to the claim, at time of writing the case is expected to proceed to the Dutch Court of First Instance in the near future.²⁹⁸

7.3 PARLIAMENTARY SCRUTINY AND INQUIRY INTO USE OF DUTCH INTELLIGENCE BY OTHER STATES

In April 2014, the Dutch Minister of Defense, Jeanine Hennis-Plasschaert, responded to a series of parliamentary questions about the Netherlands’ reported involvement in US drone strikes in Somalia.²⁹⁹ The Minister confirmed the MIVD’s role in providing intelligence for the anti-piracy operation Ocean Shield, but stated the government would not expect to be informed by another State if the information they provide for such operations is then used for other purposes. She went on to state that “The Netherlands does not cooperate in illegal targeted killings” but that she is not aware of the factual basis on which such killings are carried out. Nonetheless, she said, the Dutch government would reassess their intelligence sharing if a foreign partner appears to carry out unlawful killings of this nature.³⁰⁰ When questioned as to the USA’s legal basis for targeted killings in Somalia and its validity, the Minister responded that the Dutch government did not have the information necessary to assess the legality of the use of force in specific incidents, but that it had “no indications” that its intelligence “has been used for acts that are contrary to international law.”³⁰¹

296 The Bureau of Investigative Journalism, *Somalia: reported US covert actions 2001-2017*, 22 February 2012, <https://v1.thebureauinvestigates.com/2012/02/22/get-the-data-somalias-hidden-war/>

297 The Irish Times, *Dutch court to hear action by tribesmen devastated by drones*, 7 December 2015, www.irishtimes.com/news/world/europe/dutch-court-to-hear-action-by-tribesmen-devastated-by-drones-1.2456454

298 Nuhanovic Foundation, *Somali drones victims pursue their lawsuit against the Dutch State*, www.nuhanovicfoundation.org/en/litigation-projects/somali-drone-victims-vs-the-dutch-state/

299 NRC Handelsblad, *The secret role of the Dutch in the American war on terror*, 5 March 2014, www.nrc.nl/nieuws/2014/03/05/the-secret-role-of-the-dutch-in-the-american-war-on-terror-a1426677

300 Tweede Kamer der Staten-Generaal, *Vragen gesteld door de leden der Kamer, met de daarop door de regering gegeven antwoorden* 15 April 2014, <https://zoek.officielebekendmakingen.nl/ah-tk-20132014-1710.html?zoekcriteria=%3fzkt%3dEenvoudig%26pst%3d%26vrt%3dNederland%2bwerkt%2bniet%2bmee%2baan%2billegele%2bliquidaties%2bmet%2bdrones%26zkd%3dInDeGeheleText%26dpr%3dAfgelopenDag%26sdt%3dDatumBrief%26ap%3d%26pnr%3d1%26rpp%3d10&resultIndex=6&sorttype=1&sortorder=4>

301 Tweede Kamer der Staten-Generaal, *Vragen gesteld door de leden der Kamer, met de daarop door de regering gegeven antwoorden* 15 April 2014, <https://zoek.officielebekendmakingen.nl/ah-tk-20132014-1710.html?zoekcriteria=%3fzkt%3dEenvoudig%26pst%3d%26vrt%3dNederland%2bwerkt%2bniet%2bmee%2baan%2billegele%2bliquidaties%2bmet%2bdrones%26zkd%3dInDeGeheleText%26dpr%3dAfgelopenDag%26sdt%3dDatumBrief%26ap%3d%26pnr%3d1%26rpp%3d10&resultIndex=6&sorttype=1&sortorder=4>



The ground station of the Dutch Nationale SIGINT Organisatie in Burum, the Netherlands, from where the Netherlands collects metadata from Somalia. © Wutsje CC

The Snowden revelations uncovering the extent of Dutch intelligence sharing with the USA, coupled with the legal challenge in a Dutch court, sparked much public and parliamentary debate around the role the Netherlands was playing and continues to play in the USA's lethal drone programme. This culminated in an extensive inquiry by the Dutch Review Committee on the Intelligence and Security Services (*Commissie van Toezicht op de Inlichtingen- en Veiligheidsdiensten, CTIVD*) examining the potential use of Dutch intelligence for the unlawful use of force by other states, covering the period between 1 January 2013 and 31 December 2015. Of particular focus were the activities and role of the Dutch Military Intelligence and Security Service in targeting in so far as this can give rise to the use of force, including through use of drones; the applicable legal framework; and the legality of its activities. The review committee published its findings in a report in September 2016, in which it concluded that the policy currently applied by the MIVD to the provision of intelligence does not sufficiently address the risk that intelligence could facilitate the unlawful use of force.³⁰² It also concluded that the MIVD had made a conscious decision to share intelligence to assist in targeting in two military operations in which it was involved, and that this assistance was in accordance with the law. It further stated that, apart from military missions in which the Netherlands was involved, the MIVD had not provided intelligence to foreign partners for the express purpose of contributing to targeting, but that despite this, some of this intelligence could in principle be used for targeting.³⁰³

The review committee did not make a determination on whether lethal force had been used as a result of intelligence provided by the MIVD, as it does not possess the power to investigate the recipients of such intelligence. It did, however, determine that assistance provided by the MIVD would be unlawful if such assistance posed an "unacceptable risk" that it could contribute to the unlawful use of force by a foreign partner or a military coalition.

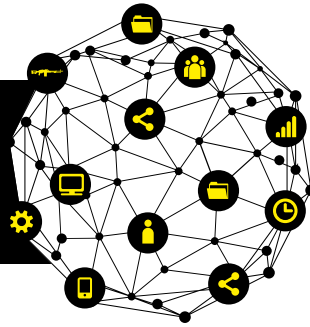
302 Review Committee on the Intelligence and Security Services (Review Committee), *Review Report on contributions of the MIVD to targeting*, 3 August 2016, <https://english.ctivd.nl/documents/reports/2017/02/23/index>.

303 Review Committee, *Review Report on contributions of the MIVD to targeting*, 3 August 2016, <https://english.ctivd.nl/documents/reports/2017/02/23/index> p.2-5.

THE NEW LAW ALLOWS, IN COMPELLING SITUATIONS, FOR

**RAW INTELLIGENCE TO BE SHARED
WITH THE INTELLIGENCE AND
SECURITY SERVICES OF ANY COUNTRY**

IRRESPECTIVE OF ITS HUMAN RIGHTS RECORD



The review committee's report made a series of recommendations³⁰⁴ aimed at clarifying the legal framework under which the MIVD should operate, as follows:

1. When deciding whether to assist a foreign partner, the MIVD must make an assessment of the risk that the sharing of intelligence (such as the provision of personal data and unevaluated data) could contribute to the violation of international legal standards, including the unlawful use of force;
2. In cases where it is unclear whether the recipient state is engaged in the lawful use of force the MIVD should seek legal advice, for example, from the Legal Affairs Department of the Dutch Ministry of Defence and/or the Ministry of Foreign Affairs;
3. This assessment must be made in writing for each individual provision of intelligence that may reasonably be used for targeting;
4. Each provision of intelligence must contain a written condition that such intelligence cannot be passed on or used for violations of international law, including the unlawful use of force;
5. Following the provision of intelligence, if there is suspicion that any intelligence data provided by the MIVD has contributed to the unlawful use of force, it must investigate (so-called feedback loop). If such misuse is established, this must be taken into account in subsequent intelligence sharing with the recipient state.³⁰⁵

The report acknowledged that even the application of the legal framework recommended by the review committee would not guarantee that intelligence provision would not contribute to the unlawful use of force, but that nevertheless it could significantly reduce the risk of this materialising.

Following publication of the review committee's report, the Dutch Minister of Defence stated that she would implement the report's recommendations. However, to date, it is unclear how many and to what extent, if any, the recommendations have been implemented.³⁰⁶

In July 2017 a new Act was adopted in the Netherlands (*Wet op de inlichtingen- en veiligheidsdiensten 2017, Wiv 2017*), extending the powers of the Dutch intelligence and security services. The law provides for the possibility of the Dutch intelligence services sharing raw, unprocessed data – meaning they may not be fully aware of the contents and any potential risks associated with sharing it – within the framework of “cooperative relations with eligible intelligence

304 Review Committee, *Review Report on contributions of the MIVD to targeting*, 3 August 2016, p.39, <https://english.ctivd.nl/documents/reports/2017/02/23/index>

305 Review Committee, *Review Report on contributions of the MIVD to targeting*, 3 August 2016, p.39, <https://english.ctivd.nl/documents/reports/2017/02/23/index>

306 Jessica Dorsey, *Towards an EU Common Position on the Use of Armed Drones*, European Parliament Directorate-General for External Policies of the Union, Directorate B, Policy Department, 2017, p.18, [www.europarl.europa.eu/RegData/etudes/STUD/2017/578032/EXPO_STU\(2017\)578032_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578032/EXPO_STU(2017)578032_EN.pdf)

and security services of other countries".³⁰⁷ Before entering into such relations with another State, several criteria must be weighed up, including the extent of the other State's respect for human rights by the country concerned. In compelling situations however, raw data can be shared with the intelligence and security services of any country irrespective of its human rights record.³⁰⁸ The Act is expected to enter into force in May 2018. In November 2017 the Electoral Council of the Netherlands (Kiesraad) announced that an advisory referendum on the Act would be held, following 384,000 signatures from members of the public requesting it.³⁰⁹ The referendum took place on 21 March 2018. A majority of 49.5% voted against the act (46.5% voted in favour and 4% abstained). At the time of writing a formal government response had yet to follow.³¹⁰ Amnesty International has raised various concerns about this law, including the risk that raw data may be shared with foreign intelligence services.³¹¹

7.4 DUTCH ASSISTANCE IN UNLAWFUL US DRONE STRIKES

Under Article 16 of the Articles on State Responsibility, if the Netherlands – through its organs or agencies – knowingly assists in drone strikes by the USA that constitute an internationally wrongful act, the Netherlands may be responsible for assisting that act. In Amnesty International's view, requisite knowledge for these purposes could arise because the Netherlands knows – with actual or near or practical certainty – of the circumstances of an unlawful drone strike, or was wilfully blind to it despite readily available, credible evidence of present or future unlawful US drone strikes. The assistance provided need not be essential to the performance of an internationally wrongful act; it is sufficient if it contributed significantly to the wrongful act. Furthermore, Amnesty International takes the view that it is not necessary for the Netherlands to desire or intend the assistance it provides to be used in an unlawful drone strikes; it is sufficient that the Netherlands has foreseen that its assistance would be used in an unlawful drone strike.

Additionally, as a party to both the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the Netherlands may violate its own obligations under international human rights law if it assists in violations of human rights by others – such as a violation of the right to life – when it knows or should have known of the violations (including when those violations occur outside its jurisdiction or territory). As a party to the Geneva Conventions, the Netherlands should also not encourage, aid or assist in violations of international humanitarian law by parties to an armed conflict as part of its obligation under Common Article 1.

AMNESTY INTERNATIONAL IS THEREFORE OF THE VIEW
THAT THE NETHERLANDS IS PROVIDING ASSISTANCE
TO THE USA IN THE KNOWLEDGE THAT THIS COULD

ASSIST POTENTIALLY UNLAWFUL DRONE STRIKES



307 Article 88 of the Law on the Intelligence and Security Services 2017, available at: <https://zoek.officielebekendmakingen.nl/stb-2017-317.html>

308 Article 64 of the Law on the Intelligence and Security Services 2017.

309 The Library of Congress, *Netherlands: Referendum to Be Held on Surveillance Law*, 17 November 2017, www.loc.gov/law/foreign-news/article/netherlands-referendum-to-be-held-on-surveillance-law/

310 49.44% voted against (3,317,496 voters), 46.53% in favour (3,122,628 voters), 4.03% abstained (270,288 voters). Kiesraad, *Results of the referendum on the Intelligence and Security Services Act*, 29 March 2018, <https://english.kiesraad.nl/latest-news/news/2018/03/29/results-of-the-referendum-on-the-intelligence-and-security-services-act>

311 Amnesty International Netherlands, *Veiligheid en mensenrechten*, www.amnesty.nl/wat-we-doen/themas/veiligheid-en-mensenrechten

As outlined above, the Netherlands collects and shares raw intelligence information with the USA as part of general intelligence cooperation, which may then be used by the USA to target individuals in drone strikes particularly in Somalia. The Dutch Review Committee on the Intelligence and Security Services itself has recognised that, while it could not find evidence that data shared with the USA was used to carry out unlawful drone strikes, it could not exclude the possibility of this. However, issues concerning the US drone programme have been extensively documented for more than a decade by credible organizations like Amnesty International, Human Rights Watch, the Bureau of Investigative Journalism, UN Special Rapporteurs and Reprieve amongst others – from general concerns over the legal framework under which the programme operates to specific examples of unlawful drone killings in Pakistan and elsewhere, some of which could amount to war crimes or extrajudicial executions.

Amnesty International is therefore of the view that the Netherlands is providing assistance to the USA in the knowledge that this could assist potentially unlawful drone strikes. Furthermore, if specific intelligence provided by the Netherlands is used by the USA to target someone for a drone strike, this may amount to a significant contribution to a potentially unlawful strike. The Netherlands has subsequently taken some positive steps towards putting in place safeguards to ensure against providing intelligence to the USA and other States that could contribute to violations of international human rights or humanitarian law. However the extent of Dutch intelligence sharing with the USA, as revealed by Edward Snowden, means the Netherlands remains at risk of being responsible under international law for assisting in unlawful drone strikes by the USA and at risk of violating its own obligations under international human rights law and international humanitarian law.

Furthermore, Amnesty International takes the view that the Netherlands can be responsible for assisting an unlawful drone strike under Article 16 even if it has not itself carried out an analysis or determined that the USA has acted or will act in a way that is internationally wrongful. The Dutch Minister of Defence has stated that the Dutch government does not have information necessary to assess the legality of the use of force by the USA. However, responsibility can arise because the Netherlands had the requisite knowledge (i.e., either with actual or near certainty or due to wilful blindness) that the bare facts which comprise the unlawful strikes will occur in the future.

Additionally, as highlighted above, under international human rights law the Netherlands may have violated its obligation to respect the right to life if it provides assistance when it *should have known* of the unlawful drone strikes by the USA. And, with regards to international humanitarian law (IHL), in response to a parliamentary question in 2016 regarding whether it was possible that Dutch intelligence had been used to locate individuals as part of the US drone programme, the Dutch government acknowledged its duties under Common Article 1. It explained that “when the Government knows that a partner is using or will use intelligence that has been shared by the Netherlands to commit a violation of international law and/or IHL, the question whether such intelligence is shared will have to be reconsidered”.³¹²

The failure of the US authorities to provide an adequate legal and factual justification for drone strikes, and the secrecy around the US drone programme and the Netherlands’ role in it, means that Amnesty International is unable to definitively conclude that the Netherlands is responsible for assisting unlawful US drone strikes or violating its own obligations under international human rights law or international humanitarian law.

Ongoing litigation in Dutch courts may shed further light on the Netherlands’s responsibility. Set against this, and in the context of an expansion of the US drone programme under President Trump which would see looser standards for use of lethal force outside situations of armed conflict, it is crucial that the Netherlands urgently implement the recommendations of the Review Committee on the Intelligence and Security Services and ensure that the new surveillance Act does not permit the sharing of raw intelligence data with other States.

312 Vergaderjaar 2015–2016, Aanhangsel van de Handelingen, 15 January 2016, www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2015Z23454&did=2016D01462

8 ASSISTANCE PROVIDED BY ITALY



Italy provides active assistance to the US drone programme by allowing US forces to carry out intelligence gathering missions and launch drone strikes from the US Navy's Naval Air Station Sigonella (Sigonella air base). Facilities based in Sigonella air base also provides satellite communications support for US operations, including drone operations, and further facilities are under construction for a global satellite communication system for US military forces.

8.1 SIGONELLA AIR BASE: "HUB OF THE MED"

Sigonella is a North Atlantic Treaty Organization (NATO) and Italian air base, as well as a US Navy installation, located in Sicily, Italy, and is of great strategic and military importance to US operations in North Africa. Strategically situated in the heart of the Mediterranean and referred to as "Hub of the Med" on the official Sigonella Naval Air Station (NAS) website,³¹³ Sigonella was used to support the Sixth Fleet of the US Navy until the end of the Cold War, thereafter being used to provide support to operations in the Mediterranean and the Sahel for different US forces.³¹⁴ Currently stationed in Sigonella are the Aircraft Intermediate Maintenance Detachment, the Naval Computer and Telecommunications Station, Commander Task Force 67 and the Naval Supply Systems Fleet Logistics Center.³¹⁵

The base is frequently used for NATO military operations in the Mediterranean and played a major role in NATO operations in Libya in 2011. According to US government cables published on Wikileaks, in 2008 the Italian Ministry of Defence approved the permanent deployment of a US UAV RQ-4 "Global Hawk" Unit at Sigonella base, which would become the USA's "primary overhead reconnaissance asset in the Mediterranean, the Middle East and North Africa".³¹⁶ The base now also houses Reaper and Predator armed drones.³¹⁷

US surveillance drones have launched from the Sigonella air base since 2011.³¹⁸ According to media reports, it was only in January 2016, however, that the Italian government agreed to allow armed drones to launch from the site, linked with the Obama administration's more comprehensive strategy against the armed group calling itself Islamic State (IS) in Libya. According to US officials, the initial agreement provided that each drone launch must be pre-agreed on a case-by-case basis by the Italian government, and operations launched from Sigonella were to be limited to 'defensive' strikes to protect special forces conducting operations against IS.³¹⁹ Amnesty International was unable to verify this information as no official documents on this have been published.

313 See: www.cnric.navy.mil/regions/cnreurafswa/installations/nas_sigonella/about/mission_and_vision.html

314 Istituto di Ricerche Internazionali IRIAD, Sistema Informativo a Schede, *Droni Militare: Proliferazione o Controllo?*, Numero speciale febbraio-marzo 2017, Aprile 2017.

315 See: www.cnric.navy.mil/regions/cnreurafswa/installations/nas_sigonella/about/tenant_commands.html

316 See: https://wikileaks.org/plusd/cables/O8ROME398_a.html

317 The Aviationist, *The Italian Air Force Predator A+ Drones Appear With Brand New Markings At New Squadron Activation Ceremony*, 11 July 2017, www.theaviationist.com/2017/07/11/the-italian-air-force-predator-a-drones-appear-with-brand-new-markings-at-new-squadron-activation-ceremony/

318 The Washington Post, *U.S. has secretly expanded its global network of drone bases to North Africa*, 26 October 2016, www.washingtonpost.com/world/national-security/us-has-secretly-expanded-its-global-network-of-drone-bases-to-north-africa/2016/10/26/ff19633c-9b7d-11e6-9980-50913d68eacb_story.html?utm_term=.b2161db3c4b4

319 The Wall Street Journal, *Italy Quietly Agrees to Armed U.S. Drone Missions Over Libya*, 22 February 2016, www.wsj.com/articles/italy-quietly-agrees-to-armed-u-s-drone-missions-over-libya-1456163730

In 2016 the Obama administration declared the area around Sirte in Libya an “area of active hostilities”, after which it began a sustained campaign of air strikes targeting IS fighters in the area between August and December 2016.³²⁰ The Aviationist reported on 1 August 2016 that armed MQ-9 Reaper drones based at Sigonella air base had been used to carry out air strikes against IS positions around the northern city of Sirte, with air strikes also being carried out by helicopters aboard the US amphibious assault ship USS Wasp.³²¹

Sigonella air base fits into the broader network of capabilities facilitating the USA’s lethal drone programme.³²² For example, work is currently underway at Sigonella for the construction of UAS SATCOM Relay Pads and Facility,³²³ which will provide satellite communications support for US operations, including drone operations. According to the website³²⁴ of the architects building the facility, it will also provide “critical backup for its sister SATCOM relay station in Ramstein, Germany”, which is connected to Creech Air Force base in Nevada. The estimated date of completion is 2018.

In addition, from 2018-2019 this facility will also host the operational base of a Broad Area Maritime Surveillance programme for the MQ-4C Triton UAV, designed to complement the US navy’s existing maritime patrol and reconnaissance systems and to deliver SIGINT and maritime strike capabilities.³²⁵

8.2 GLOBAL SATELLITE COMMUNICATION SYSTEM

Sicily is also the site of one of four ground station facilities comprising the US Department of Defense’s Mobile User Objective System (MUOS); a global satellite communication system for US military forces. The construction of the station at Niscemi, 60km from Sigonella, was the subject of protests and a legal challenge in the Italian courts, with opponents citing concerns over health risks and the possibility that it would “implicate Italy in U.S. foreign policy and its activities in the Middle East”.³²⁶ The system aims to integrate the worldwide US naval, air and ground forces (allowing data communications, audio and video) and has a capacity ten times higher than current systems. Although the works were temporarily blocked, including via the intervention of judicial authorities, the Niscemi station has been completed.³²⁷

320 The New York Times, *U.S. Removes Libya From List of Zones With Looser Rules for Drone Strikes*, 20 January 2017, www.nytimes.com/2017/01/20/us/politics/libya-drone-airstrikes-rules-civilian-casualties.html

321 The Aviationist, *U.S. Marine Corps helicopters aboard amphibious assault ship and USAF drones lead new round of U.S. air strikes on ISIS in Libya*, 1 August 2016, www.theaviationist.com/2016/08/01/u-s-marine-corps-amphibious-assault-ship-and-usaf-drones-lead-new-round-of-u-s-air-strikes-on-isis-in-libya/

322 Sigonella air base was also chosen as the main operating base for the NATO Alliance Ground Surveillance (AGS) system, acquired jointly by 15 NATO allies including Italy and the USA, which will contribute to a range of missions, including “the fight against terrorism”, raising concerns that it could potentially play a role in US drone operations. See: https://www.nato.int/cps/ua/natohq/topics_48892.htm

323 Budget for this was reported in the 2012 Department of Defense Report to Congress on Future Unmanned Aircraft Systems Training, Operations, and Sustainability, p.14, available at: https://www.wired.com/images_blogs/dangerroom/2012/06/06132012_uas1.pdf

324 See: www.rlfarchitects.com/federal/unmanned-aircraft-system-uas-satellite-communications-relay-station/

325 See: www.naval-technology.com/projects/mq-4c-triton-bams-uas-us/

326 Time, *Why the U.S. Military’s New Global Communications System Has Been Held Back By Protesters in Sicily*, 17 March 2016, www.time.com/4252292/why-the-u-s-militarys-new-global-communications-system-has-been-held-back-by-protesters-in-sicily/

327 Time, *Why the U.S. Military’s New Global Communications System Has Been Held Back By Protesters in Sicily*, 17 March 2016, www.time.com/4252292/why-the-u-s-militarys-new-global-communications-system-has-been-held-back-by-protesters-in-sicily/

US DRONE STRIKE TARGETING ITALIAN NATIONAL

The real danger of civilians being caught up in US drone programme was underscored in January 2015 when a US drone strike killed two hostages held by al-Qa'ida in Shawal Valley, Pakistan – an Italian humanitarian worker, Giovanni Lo Porto, and Dr Warren Weinstein, an American humanitarian worker. The strike also reportedly killed four al-Qa'ida fighters, one of whom (Ahmed Farouq) was a US citizen.³²⁸ President Obama acknowledged the strike in April 2015 and issued a public apology to the Lo Porto and Weinstein families, immediately committing to launching an investigation into the circumstances of their death.³²⁹ This was the first time the USA had publicly accepted it was responsible for a drone strike in Pakistan.

In September 2015 reports emerged that the CIA's Inspector-General was investigating what the Washington Post described as a "surveillance lapse" in the operation. The CIA reportedly detected a Western hostage held by al-Qa'ida in Pakistan a year before this strike, but "did not keep the person under drone surveillance".³³⁰

The US government subsequently paid approximately €1.2 million to Lo Porto's family in compensation in the form of an ex gratia payment, meaning the payment was made voluntarily and as a result the US government accepts no legal liability or obligation. The settlement made with the Lo Porto family also states that the US government and its officials retain their right to immunity from prosecution for the drone strike itself in an Italian court.³³¹ According to US officials, the US government has yet to reach a settlement with Weinstein's family.³³²

In October 2016, a complaint was lodged on behalf of the Lo Porto family with the Italian Public Prosecutor, requesting that a criminal investigation be opened into Giovanni Lo Porto's kidnapping and death. The prosecutor determined in July 2017 that, in his view, it would be impossible to ascertain responsibility for the killing and asked for the closure of the investigation.³³³ However, in March 2018, following opposition from the Lo Porto family's legal representatives, an Italian judge rejected the prosecutor's request, ordering the continuation of the investigations and for the prosecutor to formally follow-up with the USA on a request for judicial assistance, including information from the CIA about the drone strike.³³⁴

328 Bureau of Investigative Journalism, *Pakistan: Reported drone strikes 2015*, www.thebureauinvestigates.com/drone-war/data/obama-2015-pakistan-drone-strikes

329 Office of the Press Secretary, *U.S. Removes Libya From List of Zones With Looser Rules for Drone Strikes*, 23 April 2015, www.obamawhitehouse.archives.gov/the-press-office/2015/04/23/statement-president-deaths-warren-weinstein-and-giovanni-lo-porto

330 The Washington Post, *Officials fear CIA missed opportunity to identify Western hostage*, 10 September 2015, www.washingtonpost.com/world/national-security/officials-fear-cia-missed-opportunity-to-identify-western-hostage/2015/09/10/6a159bf6-571e-11e5-b8c9-944725fcd3b9_story.html

331 The Intercept, *US Government finally pays family of Italian aid worker killed in drone strike*, 28 July 2016, www.theintercept.com/2016/07/28/us-government-finally-pays-family-of-italian-aid-worker-killed-in-drone-strike/

332 Financial Times, *US donates €1.2m to family of Italian drone victim*, 16 September 2016, <https://www.ft.com/content/239e3ca8-7c22-11e6-ae24-f193b105145e>

333 La Repubblica, *Morte Lo Porto, inchiesta da archiviare. I pm: "Impossibile indagare sui droni Usa"*, 24 July 2017, www.repubblica.it/esteri/2017/07/24/news/morte_lo_porto_inchiesta_da_archiviare_impossibile_indagare_sui_droni_usa_-171501629/

334 *Corriere della Sera*, *Giovanni Lo Porto, l'italiano ucciso in un raid della Cia. Il giudice: «Aprite gli archivi»*, 8 March 2018, http://roma.corriere.it/notizie/cronaca/18_marzo_08/giovanni-porto-italiano-ucciso-un-raid-cia-giudice-aprite-archivi-024c0f70-223f-11e8-a665-a35373fafb97.shtml?refresh_ce-cp

While the USA's public admission of this drone strike was welcome, it is unfortunate that the US administration has not adopted the same approach to all other US counter-terror strikes in which civilians have been unlawfully injured or killed—regardless of their nationalities. In May 2015 Amnesty International and its civil society partners wrote to President Obama, calling on the US administration to establish a systematic and transparent mechanism for post-strike investigations, which are made public, and provide appropriate redress to civilian victims, citing ten specific cases of strikes that have caused civilian casualties in Pakistan and Yemen and which should be transparently investigated.³³⁵

8.3 SECRECY AROUND ITALY-USA AGREEMENT

There is no publicly available information on the guidelines or terms under which Italy allows the USA to carry out armed drone strikes from Italian soil. The latest publicly available document outlining guidelines surrounding the use of Sigonella is a 2006 Technical Arrangement between the Italian Ministry Of Defence and the US Department of Defense regarding the use and operation of military installations and infrastructure in Sigonella.³³⁶ The arrangement lays out guidelines regarding issues such as the use and operation of the base, command procedures and training and operational activities. The arrangement includes provisions whereby “the Italian Commander will advise the US Commander if he believes US activities are not respecting applicable Italian law and will immediately seek advice from higher Italian Authorities if there are differences of opinion regarding whether a specific activity should be undertaken”³³⁷ and “will coordinate, as agreed, all matters of common interest and, to this end, he will be kept constantly informed on all US activities and initiatives” laid out in the agreement.³³⁸ This agreement therefore relies on the Italian authorities being fully aware of the activities carried out in Sigonella and intervening in the event Italian law is contravened.

The 2016 agreement to allow US armed drones to operate from Sigonella base was not subjected to parliamentary scrutiny, with then Italian Foreign Minister Paolo Gentiloni asserting that “the use of the bases does not require a specific communication to the Parliament”.³³⁹ However, it is not known whether the 2006 Technical Arrangement is still valid or if it is applicable to the deployment of armed drones by the USA. There is no publicly available information regarding any additional agreement that regulates the presence or use of armed drones at Sigonella, highlighting the secrecy that surrounds these operations. Similarly, there is no information regarding how many authorizations for drone strikes have been granted or denied to the USA by the Italian government under the 2016 agreement and on what basis.

The European Center for Constitutional and Human Rights (ECCHR) has sought this information through Freedom of Information Act requests to obtain more information about the actual use of armed drones located in Sigonella, particularly Italy's role in US drone operations. The requests were submitted to the Air Naval Commander at Sigonella, the Ministry of Defence and the Presidency of the Council of Ministries and all were either denied or went unanswered. In response to this, in July 2017 ECCHR filed a judicial complaint to the administrative court in Rome to obtain access to this information on the basis that there was insufficient justification for not releasing the information and a failure to take due consideration of the public interest in this matter. At the time of writing no decision had been given by the administrative court.³⁴⁰

335 Amnesty International, *USA: Joint Letter on Public Acknowledgement and Investigations of U.S. “Targeted Killings” and Drone Strikes*, (Index: AMR 51/1655/2015), 13 May 2015, www.amnesty.org/en/documents/amr51/1655/2015/en/

336 Available at: <https://www.state.gov/documents/organization/107265.pdf>

337 Annex 5 of the Technical Arrangement.

338 Section VI, 6, of the Technical Arrangement.

339 La Repubblica, *Si ai droni Usa da Sigonella: ecco i paletti messi dell'Italia. Renzi: autorizzazioni caso per caso*, 23 February 2016, www.repubblica.it/politica/2016/02/23/news/droni_usa_renzi_autorizzazioni_caso_per_caso_italia_fa_la_sua_parte_-134031386/?refresh_ce

340 European Center for Constitutional and Human Rights, *Questions and Answers: Italy's Role in the US Drone Warfare*, https://www.ecchr.eu/en/our-work/international-crimes-and-accountability/drones.html?file=tl_files/Dokumente/Universelle%20Justiz/Drones_Italy_QA_eng.pdf



Then US Secretary of Defense Leon Panetta addresses personnel in front of a drone at the Sigonella Naval Air Station on October 7, 2011 in Sigonella, Italy. © Win McNamee/Getty Images

8.4 ITALIAN ASSISTANCE IN US DRONE STRIKES

Under Article 16 of the Articles on State Responsibility, if Italy – through its organs or agencies – knowingly assists in drone strikes by the USA that constitute an internationally wrongful act, Italy may be responsible for assisting that act. In Amnesty International’s view, requisite knowledge for these purposes could arise because Italy knows – with actual or near or practical certainty – of the circumstances of an unlawful drone strike, or was wilfully blind to it despite readily available, credible evidence of present or future unlawful US drone strikes. The assistance provided need not be essential to the performance of an internationally wrongful act; it is sufficient if it contributed significantly to the wrongful act. Furthermore, Amnesty International takes the view that it is not necessary for Italy to desire or intend the assistance it provides to be used in an unlawful drone strikes; it is sufficient that Italy has foreseen that its assistance would be used in an unlawful drone strike.

Additionally, as a party to both the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, Italy may violate its own obligations under international human rights law if it assists in violations of human rights by others – such as a violation of the right to life – when it knows or should have known of the violations (including when those violations occur outside its jurisdiction or territory). As a party to the Geneva Conventions, Italy should also not encourage, aid or assist in violations of international humanitarian law by parties to an armed conflict.

As outlined above, Italy provides significant assistance to the US drone programme by allowing US forces to carry out intelligence gathering missions and launch drone strikes from the US Navy’s Naval Air Station at Sigonella air base. The fact that Sigonella air base plays a central role in the US drone programme, particularly in the Middle East and North Africa, is evidenced by the agreement of the Italian government to allow the USA to launch defensive strikes against IS targets from Sigonella air base. Once constructed, the UAS SATCOM Relay Pads and Facility at Sigonella will also provide satellite communications support for US operations, including drone operations, as will the US Department of Defense’s Mobile User Objective System (MUOS) in Niscemi, outside Sigonella.

Issues concerning the US drone programme have been extensively documented for more than a decade by credible organizations like Amnesty International, Human Rights Watch, the Bureau of Investigative Journalism, UN Special Rapporteurs and Reprieve amongst others – from general concerns over the legal framework under which the programme operates to specific examples of unlawful drone killings in Pakistan and elsewhere, some of which could amount to war crimes or extrajudicial executions.

Amnesty International is therefore of the view that Italy is providing significant assistance to the USA in the knowledge that this could assist potentially unlawful drone strikes. Italy provides no public information on what safeguards it has put in place to ensure that any assistance it provides is not used for potentially unlawful drone strikes. This means that Italy is at risk of

being responsible under international law for assisting in unlawful drone strikes by the USA and at risk of violating its own obligations under international human rights law and international humanitarian law. Giving the USA permission to launch only defensive strikes against IS targets from Sigonella does not fully mitigate this risk, because of the problematic and highly expansive notion of self-defence that the US uses to justify against individuals and groups of people who they claim pose a real and imminent threat to the USA.

In particular, allowing the USA to use Sigonella air base may amount to a breach of the obligation under international law not to use force in another State's territory (see Section 3.5 above). As outlined in the International Law Commission's Commentary to Article 16 of the Articles on State Responsibility, "the obligation not to use force may also be breached by an assisting State through permitting the use of its territory by another State to carry out an armed attack against a third State".³⁴¹

Furthermore, the fact that the agreement between Italy and the USA allows US forces to operate armed drones from Sigonella upon formal authorization by the Italian Commander, puts Italy at heightened risk of directly assisting an unlawful drone strike. In this case, it would be enough that Italy had requisite knowledge that the USA was going to launch a drone strike contrary to international human rights or humanitarian law; it would not need to know the motivation or objective of carrying out such strikes.

The failure of the US authorities to provide an adequate legal and factual justification for drone strikes, and the secrecy around the US drone programme and Italy's role in it, means that Amnesty International is unable to definitively conclude that Italy is responsible for assisting unlawful US drone strikes or violating its own obligations under international human rights law or international humanitarian law.

As such, and in the context of an expansion of the US drone programme under President Trump which would see looser standards for use of lethal force outside situations of armed conflict, it is crucial that the Italian government disclose information about the actual use of armed drones located in Sigonella and, in particular, the role played by Italy in US drone operations. This should include the number of remotely piloted aircraft based at Sigonella, as well as the number and scope of authorizations given by the Italian Commander to the US Commander for extraterritorial operations carried out by armed drones. Furthermore, it is crucial that the Italian government provide urgent public clarification on the safeguards it has in place to ensure the Italian government is not assisting in potentially unlawful US drone strikes.

Italy provides no public information on what safeguards it has put in place to ensure that any assistance it provides is not used for potentially unlawful drone strikes

³⁴¹ International Law Commission, "Draft articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries" http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf, p.66-67.

9 CONCLUSION AND RECOMMENDATIONS



Amnesty International and other NGOs have documented unlawful US drone strikes over the course of more than a decade, exposing how these strikes have violated the right to life, in some cases amounting to extrajudicial executions and other unlawful killings.

These have included people who were not directly participating in hostilities or posed no imminent threat to life, including a 68-year-old grandmother, Mamana Bibi, and a 14-year-old boy, Saleh Khan in Pakistan. Additionally, US drone strikes within recognised conflict zones have caused a significant number of civilian casualties, and in some instances appear to have violated international humanitarian law, with some attacks amounting to possible war crimes. Given the well-known and serious concerns regarding the US lethal drone programme's compliance with international law, providing material or intelligence support to US strikes could mean that the UK, Germany, the Netherlands and Italy are responsible for assisting in potentially unlawful US drone operations and may have violated their own obligations under international human rights law and international humanitarian law.

As such, and in light of reports that US President Donald Trump's administration has loosened the rules governing the USA's expanded lethal drone programme, including outside situations of armed conflict, this report makes the following recommendations:



Mamana Bibi's son Rafi qul Rehman (left) and his children Safdar (back), Nabeela, Zubair and Asma. © Amnesty International

TO THE GOVERNMENTS OF THE UK, GERMANY, THE NETHERLANDS AND ITALY:

- Refrain from assisting in any way in US drone strikes that may amount to or result in a violation of international human rights law or international humanitarian law – including by allowing the use of military bases, the sharing of intelligence or other information, or the provision of personnel;
- If not done already, initiate a full public inquiry into the State's assistance to the US drone programme, including intelligence sharing arrangements with the USA, which should examine: (a) the sufficiency of existing safeguards and oversight mechanisms for ensuring the State is not assisting unlawful or potentially unlawful US drone strikes; and (b) whether intelligence provided by them to the USA has played a role in such strikes;
- Such inquiries must have legal powers to gather all relevant evidence and compel witness testimony; have procedures that are transparent and that allow public scrutiny of the nature of the evidence received, the findings and results; and recommend criminal investigations where the inquiry finds potential crimes under international or national law;
- Provide urgent public clarification on the safeguards they have in place to ensure they are not aiding and assisting in potentially unlawful US drone strikes;
- Ensure prompt, thorough, independent and impartial investigations into all cases where there are reasonable grounds to believe that the State has provided assistance to a US drone strike that has resulted in unlawful killings and/or any civilian casualties. This must include all attacks in which civilians are reported to have been killed or injured;
- Bring to justice in public and fair trials anyone reasonably suspected of being responsible for assisting a US drone strike that has resulted in unlawful killings;
- Ensure that any assistance that is or may be provided for any lethal drone operation complies with international human rights law and international humanitarian law, in particular the right to life, by establishing – and disclosing publicly – robust binding standards to govern the provision of all forms of assistance for lethal drone operations. Such standards should in particular:
 - Require a comprehensive risk assessment before the State provides assistance to another State for lethal drone operations and set out the circumstances under which the State must not provide such assistance. In particular, the State must assess whether the provision of that assistance could contribute to a human rights violation or abuse or a violation of international humanitarian law and not provide such assistance where there is a reasonably foreseeable risk that they will contribute to such violations or abuses;
 - Where intelligence is provided to another State, require a written agreement with that State requiring that such intelligence must not be passed on to any other State that may use it in violation of international law or for lethal drone operations that may amount to or result in violations of international law, including the unlawful use of force;
 - Where there is credible information that any assistance provided to another State for lethal drone operations has amounted to or resulted in human rights violations or violations of international humanitarian law, require the assisting State to automatically suspend any assistance to that State. Any assistance should not resume as long as there is a foreseeable risk that such assistance would be used for lethal drone operations that may amount to or result in such violations.
- Put in place a fully independent and effective oversight mechanism to ensure that any intelligence sharing or assistance provided to lethal drone operations does not contribute to human rights violations or abuses or violations of international humanitarian law.

TO ALL OTHER STATES:

- Ensure that any assistance that is or may be provided for any lethal drone operation complies with international human rights law and international humanitarian law, in particular the right to life, by establishing – and disclosing publicly – robust binding standards to govern the provision of all forms of assistance for lethal drone operations. Such standards should in particular:
 - Require a comprehensive risk assessment before the State provides assistance to another State for lethal drone operations and set out the circumstances under which the State must not provide such assistance. In particular, the State must assess whether the provision of that assistance could contribute to a human rights violation or abuse or a violation of international humanitarian law and not provide such assistance where there is a reasonably foreseeable risk that they will contribute to such violations or abuses;
 - Where intelligence is provided to another State, require a written agreement with that State requiring that such intelligence must not be passed on to any other State that may use it in violation international law or used for lethal drone operations that may amount to or result in violations of international law, including the unlawful use of force;
 - Where there is credible information that any assistance provided to another State for lethal drone operations has amounted to or resulted in human rights violations or violations of international humanitarian law, require the State to automatically suspend any assistance to that State. Any assistance should not resume as long as there is a foreseeable risk that such assistance would be used for lethal drone operations that may amount to or result in such violations;
- Put in place a fully independent and effective oversight mechanism to ensure that any intelligence sharing or assistance provided to lethal drone operations does not contribute to human rights violations or abuses or violations of international humanitarian law.

TO THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

- Publicly disclose US policies governing the use of lethal force, including the Trump Administration's new rules governing the use of lethal force abroad, known as the "Principles, Standards, and Procedures" (PSP);
- Disclose the criteria used to determine civilian and "militant" or "combatant" status, as well as available information on the number of people killed or injured in US drone strikes, including the number categorized as "civilians," "militants" or "combatants";
- Ensure that any use of lethal force outside of specific recognized zones of armed conflict complies with international human rights standards, including as set out in international law enforcement standards;
- Ensure that any use of lethal force within specific recognized zones of armed conflict and connected to the conflict taking place in that zone complies fully with the USA's obligations under international human rights and humanitarian law, including the rule that if there is doubt as to whether a person is a civilian protected against attack, the person is to be considered a civilian protected against attack;
- Cease to invoke the "global war" doctrine, and fully recognize and affirm the applicability of international human rights obligations to all US counter-terrorism measures, including those outside US territory;

- Ensure prompt, effective, independent and impartial investigations into all cases where there are reasonable grounds to believe that drone strikes resulted in unlawful killings and/or civilian casualties, including cases documented by Amnesty International. This must include all attacks in which civilians are reported to have been killed or injured;
- Where there is sufficient admissible evidence, bring those responsible to justice in public and fair trials without recourse to the death penalty;
- Ensure that victims of unlawful drone strikes, including family members of victims of unlawful killings, have effective access to remedies, including in the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;
- Offer compensation to families of civilians killed or injured even when investigations suggest that, in a particular killing of civilians, casualties did not result from violations of applicable international law.

TO THE EUROPEAN UNION, THE UNITED NATIONS AND OTHER INTERGOVERNMENTAL ORGANIZATIONS:

- Oppose unlawful US policies and practices on the deliberate use of lethal force, and urge the USA to implement the recommendations outlined above;
- Member States should officially protest and pursue remedies under international law when lethal force is unlawfully used by the USA or other states, in violation of the right to life, against individuals on their territory or against their nationals;
- Ensure that any international standards developed to govern the use of armed drones regulate not only their direct use by States but also the provision of assistance to other States' use of armed drones. This includes: sharing intelligence which is then used to locate and identify targets for drone strikes; providing operational and logistical support, such as providing military bases or personnel or assisting with communications for lethal drone strikes by providing live feeds via satellite; or allowing another State to deploy armed drones from their territory.



ANNEX



> Return address: P.O. Box 20701, 2500 ES The Hague, Netherlands

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Date 5 April 2018
Subject Request for information regarding US drone strikes

Reference
BS2018007564

*Please refer to the date, our
reference and subject when
replying.*

Dear [REDACTED]

By letter of 22 February 2018 you requested the Minister of Foreign Affairs and the Minister of Defence to respond to a number of findings and answer several questions concerning the Netherlands' supposed assistance to the United States' drone programme. Please consider this letter as an answer to both requests.

Before discussing your findings and questions, it should first be emphasised that the Netherlands does not cooperate with unlawful targeted killings. The government has a duty under international humanitarian law to comply and ensure compliance with international humanitarian law in situations of armed conflict. It should also be emphasised that promoting respect for human rights is a cornerstone of Dutch foreign policy.

I will first respond to the points you raised in your letter, in the order in which you raised them. Then I will answer the questions you posed.

With regard to your findings, the government can inform you as follows:

- The Dutch government has indeed confirmed that around 1.8 million metadata records collected by the National SIGINT Organisation (NSO)¹ in the context of counterterrorism and military operations abroad were lawfully shared with the United States in the framework of international cooperation on the above-mentioned topics. These records concern data collected in the context of the statutory task performed by the Dutch intelligence and security services.
- It is public knowledge that the Defence Intelligence and Security Service (MIVD) supports the EU operation Atalanta and the EU training mission in

¹ Now part of the Joint Sigint Cyber Unit, a joint unit of the General Intelligence and Security Service (AIVD) and the Defence Intelligence and Security Service (MIVD).

Somalia, providing intelligence products on political developments and the security situation in Somalia. It is also public knowledge that the NSO was responsible for satellite interception activities. Command of the NSO in this respect is based on the allocation of tasks to the services. The government is unable to comment publicly on the manner in which the MIVD's intelligence products are developed. To do so would be to divulge the organisation's current level of knowledge and working method(s).

- The Netherlands does not cooperate with unlawful targeted killings. With reference to the parliamentary papers you cited, the government would again confirm that it is not known what information is used to underpin such activities. The Dutch government exercises caution when it comes to publicly assessing the legality of armed drone strikes by other states in specific cases, because it is not possible for the facts and circumstances surrounding such attacks to be shared. If it should emerge that a foreign power is performing demonstrably unlawful targeted killings for which Dutch intelligence is being used, the question of whether such intelligence will be shared with that partner in future will have to be reassessed. The government will return to this point below when responding to your questions.
- It is not customary practice for services to inform each other of whether (and if so, what) information is used for purposes other than that for which it was originally intended. It is not known what information and intelligence (whether in-house or acquired) other countries use to underpin their operations.
- The Minister of Defence adopted all the recommendations contained in the report by the Review Committee on the Intelligence and Security Services (CTIVD) on contributions of the MIVD to targeting, and has implemented them in both policy and practice.²

Answers to questions

The exchange of data with partner services abroad is governed by the Intelligence and Security Services Act 2002 (WIV 2002). Otherwise, the Netherlands has no specific policy governing the provision of assistance, in whatever form, to the United States' lethal operations, including its drone programme. The Netherlands makes no public comment on its cooperation with other countries' services. However, it is possible to set out the general framework that applies to the exchange of data with other services.

Under Dutch law the disclosure of such data is subject to a closed disclosure system. This means that only the WIV 2002 provides grounds on the basis of which data can be disclosed to foreign services. This legal framework, supplemented by the relevant CTIVD recommendations the Netherlands has adopted, thus regulates the disclosure of data to the intelligence and security services, including those of the United States.

² Parliamentary papers II 2016/2017, 29 924, no. 144.

Whenever the Netherlands works (or plans to work) with another service, an assessment is made against the statutory criteria for cooperation with foreign services. These include the degree to which the service in question is rooted in the country's democracy, the human rights policy in the country concerned, and the professionalism and reliability of the service. On 30 June 2016, further to a report by the CTIVD,³ two criteria were added: 1. the powers and (technical) capabilities of the foreign service, and 2. the degree of data protection offered by the service. These criteria will ultimately be codified in the new Intelligence and Security Services Act 2017. The outcome of this assessment is set out in a 'weighting note' and determines whether – and if so what form of – cooperation (such as the exchange of data) is considered permissible. The Minister of Defence must give permission before the Netherlands enters into partnership with a foreign service if assessment against the above criteria results in the conclusion that such a partnership would entail risks, including the risk of contributing to the (unlawful) use of violence by a foreign intelligence or security service (or its government) in ongoing armed conflicts.

The MIVD assesses each individual data disclosure against the weighting note and against the statutory requirements of necessity, reasonableness, and due care. If the MIVD discloses data for the purpose of a targeting process to a foreign partner service (or its government) or a military coalition in which the Netherlands is participating, an assessment must be made as to whether sharing the information is compatible with the legal principle of 'ensuring respect' for international humanitarian law. The same requirements apply when data is disclosed without the intention of its being used for target selection but it could nevertheless be used for that purpose.⁴ In such cases, caution is exercised when disclosing data. The Netherlands examines whether, for example, the country in question applies the same interpretation of international law standards as the Netherlands. Another relevant factor is the historical cooperation between the MIVD and the foreign service concerned: has the service adhered in the past to the conditions the MIVD has attached to the disclosure of data?

When disclosing data that could be used for targeting and may relate to the use of violence by the government of a foreign service, the Netherlands sets out written conditions for the data's use: the data may not be passed to third parties without explicit permission, and the data may not be used for any purpose that constitutes a violation of international law.

If there are indications that intelligence is being used to contribute to the unlawful use of violence, the MIVD actively requests clarification from the party concerned. The response may cause the MIVD to reassess its cooperation with that party. This approach minimises the risk of the Netherlands unintentionally contributing to the unlawful use of violence.

³ CTIVD Review report 48 on implementation of cooperation criteria by the AIVD and MIVD, www.ctivd.nl.

⁴ CTIVD Review report 50 on contributions of the MIVD to targeting, www.ctivd.nl.

For the record, the government would note that the CTIVD concluded in its study of the MIVD's contributions to targeting that there were no concrete indications that the MIVD had accepted an unacceptable risk of a contribution to the unlawful use of force.

Yours sincerely,



Director General of Policy (acting)

for

The Minister of Defence of the Kingdom of the Netherlands

NOTES



**AMNESTY INTERNATIONAL
IS A GLOBAL MOVEMENT
FOR HUMAN RIGHTS.
WHEN INJUSTICE HAPPENS
TO ONE PERSON, IT
MATTERS TO US ALL.**

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The reach of the US lethal drone programme is extensive, reaching countries such as Pakistan, Somalia, Yemen, Iraq and Syria and including areas outside of armed conflict.

For this, the USA relies heavily on assistance from many States, including European States. The United Kingdom (UK), Germany, the Netherlands and Italy have played a significant role in supporting the US's lethal operations, including its drone programme. Since taking office, President Donald Trump has reportedly made changes to US policy on the use of force outside areas of conflict – including through drone strikes – rolling back already-limited Obama-era protections for civilians. Combined with the current administration's reported dramatic expansion in lethal drone operations, there is a real risk of an increase in unlawful killings and civilian casualties, and consequently, a heightened risk that States providing assistance to the US lethal drone programme could be responsible for assisting unlawful drone strikes. In light of these concerns, this report examines the role played by the UK, Germany, the Netherlands and Italy in that programme, and analyses whether assistance provided by them could be aiding potentially unlawful US drone strikes in violation of international law.