



ODUMUNC 2013
Issue Brief for the
GA Sixth Committee: LEGAL



Re-evaluating Drone Attacks Under International Law

By: Mary S. Bell

Graduate Program in International Studies, Old Dominion University

Introduction: The use of unmanned aircraft (drones) for reconnaissance and ground attack has emerged as an incendiary issue for the international community. The rise of new technical capabilities creates unprecedented military capabilities. These pit rival beliefs about international law and world order. At stake are

- State self-defense versus state sovereignty.
- Counter terrorism versus protection of human rights.
- Legal due process and the presumption of innocence versus targeting assassination.
- Pressure to act expediently versus the strengthening long-term rules of acceptable international behavior.

There have been as many as 4,400 people killed by United States drone attacks alone. While there has been considerable discussion of the legality of such strikes among experts on human rights law and international humanitarian law, there has been much less public discussion about drone attacks among policymakers at the international level.

Background on Drones: The first modern drones (also commonly called Unmanned Aerial Vehicles or UAVs, or Remotely Piloted Vehicles, RPVs) were tested in Israel and the U.S. in the early 1990s. Drone technology advanced slowly over the century. Drones were used in many different wars from WWII to Vietnam where they were primarily used for stealth reconnaissance. Unlike modern versions, these flew to pre-set instructions and could not deviate. Modern drones can fly autonomously or under remote control. Depending on the model, they can loiter for long periods and deviate for specific purposes as opportunities rise.



U.S. Predator Drone

The US military first started using armed drones in Afghanistan in late 2001. The US Central Intelligence Agency (CIA) first used an unmanned Predator drone in a targeted killing in Afghanistan on February 4, 2002. The first targeted killing by the CIA outside a war zone was on November 3, 2002 in Yemen. Only the US, United Kingdom (UK) and Israel are known to have launched drone strikes against their adversaries. Recently Hezbollah (in Lebanon) and Iran also have claimed to have launched drone operations.



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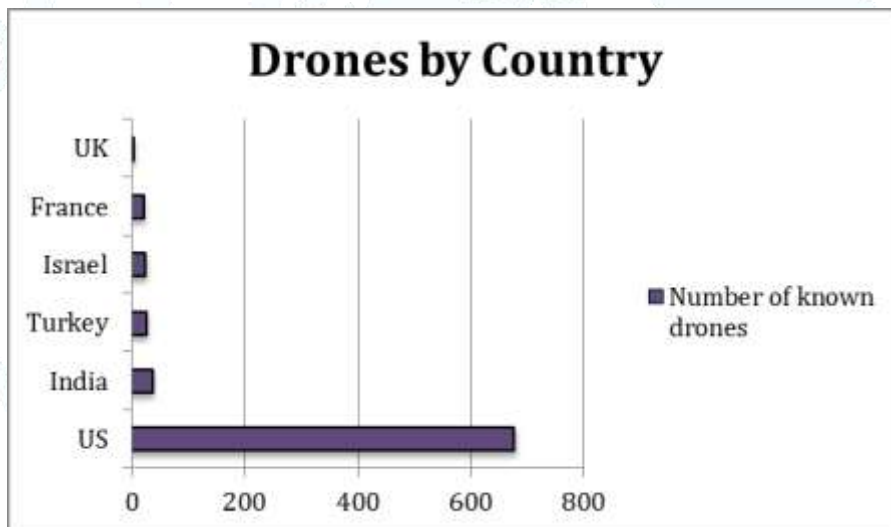
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International definition of legal killing: Drone attacks are permitted in armed conflict situations when used against combatants or fighters, or civilians who directly engage in combat-like activities.

According to UN special rapporteur (or investigator), Christopher Heyns, US policy of using aerial drones to carry out targeted killings presents a major challenge to the system of international law that has endured since WWII.

Current situation: A decade ago the U.S. had a virtual monopoly on drone technology. That is no longer true; more than 70 countries now own some type of drone. Though just a small number of those nations possess armed drone aircraft, drone technology is proliferating rapidly. A 2011 study estimated that there were around 680 active drone development programs run by governments, companies and research institutes around the world, compared with 195 in 2005.



Data from the International Institute of Strategic Studies

International Issues that need to be resolved: According to Philip Alston, UN special rapporteur on extrajudicial executions, there are two primary issues regarding drone attacks:

1. Are drone strikes outside of the immediate combat area of operations legal? Discourse on the subject is extremely limited. International law on killing is extremely



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complicated. To make the legal argument against targeted killing requires sophisticated knowledge of international law. In fact, the law is more complicated on killing than it is on torture although one would assume it was the other way around.

2. How does the international community maintain accountability on the use of drone strikes? Because the CIA program remains shrouded in official secrecy, the international community does not know when and where the CIA is authorized to kill, the criteria for individuals who may be killed, how it ensures killings are legal, and what follow-up there is when civilians are illegally killed. In a situation in which there is no disclosure of who has been killed, for what reason, and whether innocent civilians have died, the legal principle of international accountability is, by definition, comprehensively violated. Alston argues this lack of accountability will become more problematic as more countries acquire drone technology and can carry out cross-border drone strikes.

“This expansive and open-ended interpretation of the right to self-defence goes a long way towards destroying the prohibition on the use of armed force contained in the UN Charter. If invoked by other States, in pursuit of those they deem to be terrorists and to have attacked them, it would cause chaos,” Mr. Alston writes in his report to the UN Human Rights Council on June 2, 2010.¹

Within the UN there has been surprisingly little discussion on drone strikes. In the Security Council, action is prevented by the threat of American veto. Other bodies have more freedom, especially the General Assembly. Special investigator Christof Heyns, stressed that countries must respect international standards on the use of lethal force during arrests, and cautioned the emerging trend of using unmanned aircraft to kill suspects. He emphasized the use of armed drones into countries where there is not a recognized armed conflict to kill an opponent, such as in Pakistan or Yemen, is highly problematic. Heyns, a South African law professor, has gone as far as to say that drone strikes outside a combat zone may constitute a war crime and is urging the UN to establish an investigative body.

There is a common belief that without an international framework governing the use of drone attacks, the US is setting a dangerous precedent for other nations with its aggressive and

¹ UN News Centre. [“UN Independent Expert Voices Concerns Over the Practice of Targeted Killings.”](#) June 2, 2010.



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secretive drone programs in Pakistan and Yemen, which are aimed at suspected members of al Qaeda and their allies.

Country positions:

China – China issued a statement in June 2012 to the UN Human Rights Council condemning the U.S. use of drone strikes. There is very little information available about China’s drone program. At the Chinese airshow in Zhuhai in 2010, China unveiled 25 new drone models. It is unknown which drones are operational. Several drones are designed to fire missiles and use jet engines. China issued a joint statement with Russia condemning the US drone attacks outside an immediate war zone.

Russia – Russia issued a statement in June 2012 to the UN Human Rights Council condemning the U.S. use of drone strikes. Russia has a drone program, but there is very little information available about it.

United Kingdom – The UK actively supports U.S. drone strikes by providing targeting information. The UK began using drones in Iraq and Afghanistan in 2007 and has conducted drone strikes in those countries. They are very secretive about their drone use and there is no public information on how many casualties they have inflicted.

United States – The US is the most open about its drone program and is widely believed to have the largest and most active program. It currently has over 675 drones. According to the US Government, an estimated 4,400 people have been killed by U.S. drone strikes in just over 10 years. Other governments use much higher estimates. There also is sharp disagreement on the numbers of civilians killed in these attacks.

Israel – Israel has the second most advanced drone program and uses armed drones, especially over Occupied Palestinian Territories (OPT), as well as neighboring States Israeli drones are a major arms export for its industries, equipping dozens of militaries.

Iran – Iran has a fledgling drone program with a self-reported drone that has the range to fly 2,000 kilometers. The range is far enough to reach Israel.



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Pakistan - Pakistani officials publicly denounce the U.S. drone campaign as a violation of national sovereignty. The issue has become highly controversial there, provoking vigorous nationalist criticism. The U.S. government interprets the Pakistani intelligence agency's lack of response to a monthly memo in August 2012 informing them of the general locations of planned drone strikes as tacit consent for the program.

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The author: Mary S. Bell is a PhD student at Old Dominion University's Graduate Program in International Studies and recently retired from the U.S. Army. She has over 2,500 hours flying a variety of aircraft including the UH-60 Blackhawk helicopter and Airborne Reconnaissance Low (ARL).