

Drone Warfare and International Law: Findings of U.N. Reports on Extrajudicial and Arbitrary Executions

By [Chris Cole](#)

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Four important reports relating to the use of armed drones have been published over the past ten day. Two official reports by UN Special Rapporteurs examine the legal issues surrounding the use of armed drones. These were closely followed by [a detailed report from Amnesty International on the impact of drones in Pakistan](#) and [a related report by Human Rights Watch on the impact of drones in Yemen](#). All four are important and worth reading in detail.

Here we focus on the two UN reports, particularly how they relate to the UK use of armed



drones.

Christof Heyns, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, states that his [report](#) is aimed at “clarifying the application of [international Law] rules and to reiterate their authority, from the perspective of protection of the right to life.” In some ways, the 25-page report can be read as a direct challenge to the US use of drones for targeted killing in Pakistan, Yemen and elsewhere. Heyns challenges, for example, the US position, most apparent in the leaked DoJ White Paper, of a much broader concept of ‘imminence’ which would mean in effect that no immediate threat is necessary with regard to using lethal force under self-defence rules. Heyns states:

“The view that mere past involvement in planning attacks is sufficient to render an individual targetable even where there is no evidence of a specific and immediate attack distorts the requirements established in international human rights law. [Para. 37]

Heyns also argues forcefully that only a State’s highest authority can give permission to another State to use force on its territory and if that permission is withdrawn, such force must cease (see Para. 82-84). This is clearly a reference to arguments within the US that

despite Pakistan Government announcements urging an end to US drone strikes, authority has previously been given or alternatively that secretly, Pakistan continues to give permission for the strikes through the ISI, the Pakistan security service.

Heyns also calls for follow-up drone strikes, if aimed at the wounded, rescuers and medical personnel – dubbed as ‘double-tap’ strikes by the media – war crimes [Para. 73]. There have been [reports](#) that US have carried out such strikes in Pakistan and Yemen.

However Heyns does not just focus on the US use of drones for targeted killing in Pakistan but also raises the wider questions about drones and their challenge to international peace and security

“The expansive use of armed drones by the first States to acquire them, if not challenged, can do structural damage to the cornerstones of international security and set precedents that undermine the protection of life across the globe in the longer term.” [Para. 16]

“Given that drones greatly reduce or eliminate the number of casualties on the side using them, the domestic constraints — political and otherwise — may be less restrictive than with the deployment of other types of armed force. This effect is enhanced by the relative ease with which the details about drone targeting can be withheld from the public eye and the potentially restraining influence of public concern. Such dynamics call for a heightened level of vigilance by the international community concerning the use of drones.” [Para. 18]

Heyns also challenges, as we have tried to do, the uncritical acceptance that drone are more precise than other weapons [Para. 75]. There is little if any empirical data in the public domain for such claims. This leads to the main thrust of Heyns’ report – the need for greater transparency on the use of drones – not just from the US but from all States using armed drones. Heyns says:

“The first step towards securing human rights in this context is transparency about the use of drones. A lack of appropriate transparency and accountability concerning the deployment of drones undermines the rule of law and may threaten international security. [Para. 96/7]



The second [report](#), from UN Special Rapporteur on human rights and counter terrorism, Ben Emmerson, is an update on his inquiry on behalf of the UN into the use of drones in counter-terrorism operations, [launched in January 2013](#). The inquiry was originally to be

completed in time for the UN General Assembly this month but has taken longer than expected and this is therefore only an interim report with the complete findings now not expected to be presented until 2014.

While originally focusing on a sample of 25 'case studies' of drone strikes, Emmerson says this has now been expanded to 33 case studies. This has unfortunately been [misreported by several news outlets](#) as the UN having found only 33 drone strikes that have killed civilians.

Like Heyns, Ben Emmerson examines the "principal areas of legal controversy" surrounding the use of armed drones, focusing on when an individual may or may not be targeted and whether the US can be said to be acting in self-defence.

The report also reviews briefly the use of armed drones – and reports of civilian casualties – in Afghanistan, Pakistan, Yemen, Libya, Iraq, Somalia and Gaza before examining how States investigate reports of civilian casualties.

Ben Emmerson met with senior MoD officials in Whitehall and the report contains some helpful information about the UK's use of armed Reaper drones that clearly came from this contact.

With regard to weapon launches from Reapers and possible civilian casualties, the report states:

"The Ministry [of Defence] has informed the Special Rapporteur that, under operating procedures followed by the United Kingdom in Afghanistan, every remotely piloted aircraft weapons discharge is the subject of internal review involving the senior qualified weapons instructor. A mission report is prepared and is then reviewed by the most senior British officer at the Combined Air Operations Centre in Afghanistan and his or her legal adviser. This includes a review of video footage and communications reports. If there is any indication of civilian casualties, the incident is referred to the Joint Incident Assessment Team at ISAF, whose personnel are independent of the chain of command involved in any strike. Individuals are presumed to be civilian for this purpose unless it can be established that they were directly involved in immediate attempts or plans to threaten the lives of ISAF personnel. [Para. 49]

Further:

"While Israel has sometimes invoked the principle of proportionality to justify civilian casualties sustained in the course of lethal counterterrorism operations in Gaza, the United Kingdom has specifically informed the Special Rapporteur that in making targeting decisions involving the use of remotely piloted aircraft in Afghanistan it does not authorize strikes on the basis that the infliction of civilian casualties would be proportionate to a high-value military target. It is the policy of the Ministry of Defence that weapons should not be discharged from any aerial platform unless there is a zero expectation of civilian casualties, and that any individual or location should be presumed to be civilian in nature unless there is clear evidence to the contrary. [Para. 74]

This is helpful to know and one wonders why the MoD has not stated this clearly and succinctly before.

The UK has acknowledged [one UK drone strike in which Afghan civilians have been killed](#), but the government [refuses to publish the investigation](#) into the killings.

Like Christof Heyns, Ben Emmerson argues strongly for much greater transparency around the use of armed drones, especially incidents where there have been reports of harm to civilians. He states:

“Put simply, there is an onus on any State using lethal force to account for civilian casualties... Subject to redactions on grounds of national security, a full explanation should be made public in each case [of civilian casualties]. In the view of the Special Rapporteur, this obligation ought to be viewed as an inherent part of the State’s legal obligations of accountability under international humanitarian law and international human rights law.” [Para. 45]

Christof Heyns ends his report by urging civil society to “continue and, where possible, expand its assessment and monitoring of the use of drones.” We, if we may be so bold, in turn thank Mr Heyns and Mr Emmerson for their work and urge them too, to continue to hold States using armed drones to account.

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