

Towards a European Position on Armed Drones and Targeted Killing: Surveying EU Counterterrorism Perspectives

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This ICCT Research Paper gauges the extent to which European Union (EU) governments share the United States' position on armed drones and targeted killing. In doing so, it aims to assist in distilling a Common EU position on the use of armed drones and a legal framework for counterterrorism-related uses of force. The paper includes the results of a questionnaire sent to the Ministries of Foreign Affairs, Defense, Justice and intelligence services of all 28 EU Member States. The authors also parsed other relevant sources that could evince governments' official positions (e.g., public statements, policy documents, etc.). In addition to this, the paper explores more normative pronouncements from entities other than states, including international organizations, advisory committees and commentators, who have articulated how the issue of armed drones and targeted killing *should* be approached within the European context. In the paper's conclusion, the authors summarize the findings and provide concrete recommendations toward a cohesive European position on targeted killings and drone use in counterterrorism.

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Executive Summary

Introduction

On 23 May 2013, United States (US) President Obama, for the very first time, comprehensively addressed drones in a speech at the National Defense University.¹ The speech made clear that the US sees itself in a just armed conflict against al Qaeda, the Taliban, and their associated forces, which legally justifies the drone strikes, and these strikes, outside of a “hot battlefield” (but still within the US armed conflict paradigm), will be targeted, *as a matter of policy*, against al Qaeda and its associated forces when capture is not feasible, whenever they “pose a continuing and imminent threat to the American people and when there are no other governments capable of effectively addressing the threat”² and when there is “near certainty that no civilians will be killed or injured”.³

Human rights organisations cautiously welcomed Obama’s apparent efforts to bring the secretive US drone policy more into the open, but also remained vigilant. However, European Union (EU) Member States remained rather quiet. Anthony Dworkin, whose seminal paper is examined in more detail in the Research Paper, remarked in this context:

Torn between an evident reluctance to accuse Obama of breaking international law and an unwillingness to endorse his policies, divided in part among themselves and in some cases bound by close intelligence relationships to the US, European countries have remained essentially disengaged as the era of drone warfare has dawned. Yet, as drones proliferate, such a stance seems increasingly untenable [original footnotes omitted].⁴

Indeed, the relative silence from the EU, one of strongest allies of the US, could be more problematic than one might initially think. It might give the impression that European states may be implicitly consenting to the (criticised) US’ use of armed drones and targeted killings, hence giving it more legitimacy.

The Research Paper gauges the extent to which EU governments share the US’ position on armed drones and targeted killing. In the end, this could assist in distilling an EU Common Position on the use of armed drones, which the European Parliament called for in February 2014, when it “[e]xpress[ed] its grave concern over the use of armed drones outside the international legal framework”⁵ and when it “urge[d] the EU to develop an appropriate policy response at both European and global level which upholds human rights and international humanitarian law”.⁶

The paper includes the results of a questionnaire sent to the Ministries of Foreign Affairs, Defense, Justice and intelligence services of all 28 EU Member States (see the annex of the Research

¹ The White House, Office of the Press Secretary, “Remarks by the President at the National Defense University”, National Defense University, Fort McNair, Washington, D.C., 23 May 2013, <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>.

² *Ibid.*

³ *Ibid.*

⁴ A. Dworkin, “Drones and Targeted Killing: Defining a European Position”, *European Council on Foreign Relations Policy Brief*, July 2013, http://www.ecfr.eu/page/-/ECFR84_DRONES_BRIEF.pdf, p. 2.

⁵ The joint motion for a resolution on the use of armed drones (2014/2567 (RSP)), dated 25 February 2014, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+MOTION+P7-RC-2014-0201+0+DOC+PDF+V0//EN>, was adopted two days later by 534 votes to 49 with 10 abstentions, see <http://www.europarl.europa.eu/oeil/popups/summary.do?id=1340215&t=e&l=en>.

⁶ *Ibid.*

Paper). The authors also parsed other relevant sources that could evince governments' official positions (e.g., public statements, policy documents, etc.).

In addition to this, the Research Paper explores more normative pronouncements from entities other than states, including international organisations, advisory committees and commentators, who have articulated how the issue of armed drones and targeted killing *should* be approached within the European context.

In the remainder of this Executive Summary, one will find the conclusions with respect to the questionnaire and the publicly available information on this topic, the authors' own view and finally concrete recommendations toward a cohesive European position on targeted killings and drone use in counterterrorism.

Conclusions

The first conclusion the authors can draw is that the quantitative results from the questionnaire are disappointing, with only five (Czech Republic, the Netherlands and three anonymous responses) of 28 EU Member States (eighteen percent) filling in (most of) the questionnaire. Therefore, the results of this questionnaire clearly do not constitute the final say on this matter, as many more reactions are needed to create a valid and representative picture. Nonetheless, the comprehensive and detailed way in which a few countries reacted, coupled with the publicly available information, led to some important conclusions worth mentioning. Only a few findings will be presented in this Executive Summary. The rest, especially the more technical ones, can be found in Section 2.4 of the Research Paper.

Specific findings regarding the five questionnaires that were returned (Czech Republic, the Netherlands and the three anonymous responses):

- Whereas the completed questionnaires from some EU Member States, in particular the Netherlands, were very clear, others seemingly contradicted themselves.
- Three EU Member States (the Czech Republic, the second and the third anonymous respondents) agreed with the statement of Dworkin that "European and US officials might be able to agree that the deliberate killing of terrorist suspects outside zones of conventional hostilities is only permissible when they pose a serious and imminent threat to innocent life that cannot be deflected in any less harmful way". The Netherlands offered a slightly different version, namely that in a situation where only international human rights law (IHRL) is applicable, deadly use of force is only permissible when the person forms a direct, serious threat to the lives of others and there is no alternative available. Interestingly, the first anonymous respondent did not want to comment on Dworkin's suggestion. This person was very outspoken about the illegality under international law of targeting people outside of an armed conflict, but stated later that under domestic law, a deliberate killing may be permissible, leaving the reader in doubt as regards the lawfulness under international law of that national act.
- Two EU Member States (the Netherlands and the third anonymous respondent) stated that it is not possible to be in a general armed conflict with a non-state actor (NSA) unless specifics on the ground are accounted for, whereas the Czech Republic argued this was possible. The first and second anonymous respondents did not address this question.

- Two EU Member States (the Netherlands and the third anonymous respondent) indicated that a non-international armed conflict (NIAC) without finite geographical boundaries is not possible, whereas one EU Member State (the second anonymous respondent) felt this was actually possible. The Czech Republic noted that this is potentially possible and the first anonymous respondent did not address this question.
- The Netherlands and the Czech Republic thought that more transparency was necessary regarding the use of armed drones (the latter with respect to drones and targeted killing outside armed conflicts), but the third anonymous respondent felt this was not necessary. The first and second anonymous respondent did not address this question.
- The Netherlands was the only EU Member State that had called for greater transparency before. The Czech Republic and the second anonymous respondent indicated they hadn't called for more transparency and the first and third anonymous respondent did not address this question.
- The first and second anonymous respondents found that drones can, in principle, be effective weapons and that generally, the current use of drones is in conformity with international law. The Czech Republic noted that "[t]he question is not about whether using drones is an effective measure but about the context in which and how drones are used. [...] [What poses d]ifficulty in our view [is the] use of drones outside of any norms of international law, such as for extrajudicial killing purposes". The Netherlands noted that "[t]he legitimacy of the current use of drones is not easily evaluated in general. Whether or not the use of armed drones is in conformity with international law has to be appraised on a case-by-case basis, considering all the facts and circumstances of the case". Finally, the third anonymous respondent did not address these matters.
- Three EU Member States noted explicitly that public silence on the issue of drone use by other states may not necessarily signify acquiescence or consent (the Czech Republic, the Netherlands and the second anonymous respondent). The first and third anonymous respondents did not address this.
- Two EU Member States concluded that drones, in their opinion, would not lead to a lower threshold in using force (Czech Republic and the third anonymous respondent). The other EU Member States did not address this question.

More general findings:

- Only the UK currently uses armed drones, but twenty EU Member States own unarmed drones for, e.g., surveillance purposes. These might be armed in the future.
- Seventeen EU Member States are actively involved in the development of drones.
- As most EU Member States currently do not have armed drones, they also might not have a specific policy for the use of armed drones (see the Czech Republic, the second anonymous respondent and Poland).
- In general, EU Member States find that drones as such are not illegal, but that their use may be.
- It seems that EU Member States more generally agree that current international law is suitable to deal with drones (see, e.g., Ireland, the Netherlands, Sweden and the UK). No new rules are needed, but there must be better compliance with the existing system. (See,

e.g., Denmark.) However, the Czech Republic mentioned that the current international law on self-defense was not sufficient and that “sometimes ambiguous case-law does not help to ease current challenges”.

- That more transparency is needed in the context of drones and targeted killings (see the specific findings regarding the five questionnaires that were returned) was also confirmed by Germany and Ireland.
- Five EU Member States call for a further discussion on the use of drones and their compliance with international law (Austria, Ireland, the Netherlands, Portugal and the UK).
- One state called for the identification of potential best practices (Ireland).
- That public silence on the issue of drone use by other states may not necessarily signify acquiescence or consent (see the specific findings regarding the five questionnaires that were returned) was also confirmed by the publicly available information, see, e.g., Germany and Sweden. The silence may also have to do with a lack of precise knowledge of a specific attack or there may be diplomatic discussions occurring outside the public eye.
- The internal coordination within EU Member States did not appear to be entirely flawless, with some agencies not knowing (exactly) which ministry/service of their own country would be in the best position to complete the questionnaire.

Authors’ own view

When responding to Dworkin’s outline of a possible EU Common Position, see the second bullet point on page two of this Executive Summary, the authors stress that it would be better to strictly follow the current law – both the legal basis for the use of force and the specific requirements of the applicable legal regime – rather than following what seems to be a slightly different version of existing standards and a conflation of different fields, apparently suggested to find a compromise to bring both the US and EU together. Not only because this will lead to more confusion about concepts, during a time when clarity on these fundamental issues is needed more than ever, but also – and more importantly – because concepts such as imminence should arguably be as strictly interpreted as possible so as to minimise the incidence of ever-expanding battlefields (something that Dworkin also and rightly warns about) and the increased risk of harm to civilians. A very worrisome US interpretation of the concept of imminence has already been disclosed, and one must be careful that this broad interpretation does not find its way into other legal frameworks. The authors feel that the existing legal principles are simply too important to dilute, “just” for the sake of finding global policy norms/international legal principles. Drone technology is only one step in the development of weapons and technology, but the principles of law will remain. Watered-down standards may henceforth also be applied to weapons after drones, such as fully autonomous weapons systems, or to conflicts in cyberspace. One has to be aware that “negotiating” principles now will have a longer-lasting impact than one may now be able to foresee, and which requires the utmost attention and care.

What the EU should do is keep stressing the importance of transparency, oversight and accountability and respect for international law, including international humanitarian law (IHL) and IHRL while countering terrorism. It should also resolutely reconfirm that the international legal framework is suitable to address issues that arise with drones, that there must be a legal basis for drone strikes, that drone strikes in the context of an armed conflict must fully comply with IHL and IHRL, and that drone strikes outside of armed conflict situations must be governed by the law enforcement paradigm, IHRL and the requirements of necessity, proportionality and precaution,

which will almost *never* lead to a lawful targeted killing/use of armed drones. In that respect, we *do* fully agree with Dworkin when he writes: “Committed as it is to the international rule of law, the EU must do what it can to reverse the tide of US drone strikes before it sets a new benchmark for the international acceptability of killing alleged enemies of the state”.⁷ Also very important in this context is the resolute rejection of the notion of a global battlefield without clear geographical boundaries.⁸

The authors realise that the Research Paper is just the first brick they are laying in a long-term project, and they hope it serves as a jumping-off point for interested parties to work together to advance the discussion on the EU position on armed drones and targeted killing, including assisting in making the EU Member State positions as comprehensive as possible. They also would like to encourage the Netherlands in following-up on the statements of former Dutch Minister of Foreign Affairs Timmermans as well as those of the Dutch representative to the Human Rights Council debate in September 2014 that the Netherlands ought to play a (leading) role in this process. As a firm EU *and* transatlantic partner, and as host of the city of The Hague, the legal capital of the world, and finally as a country having a clear interest in this topic – not only evidenced by the clear way in which it filled in this questionnaire, but also by the various statements by country representatives to that effect – this EU Member State would be ideally suited to facilitate the discussion on the international legal aspects of the use of armed drones and targeted killings.

To conclude, it is only possible to say that a unified EU voice is still elusive with respect to drones and targeted killings, a fact that can be viewed as unsurprising, given the nature of the topic, the varying state positions on acquisition and use of drones in varying fora, but an interesting conclusion nonetheless when starting with the assumption that the “Europeans” diverge greatly from the “Americans” on this topic.

It may also be very difficult to achieve this unified EU voice in the future. The EU rarely speaks with one voice in the context of foreign policy, security and defense, and the issue of the use of armed drones is perhaps even more sensitive than many other topics in this context. Moreover, the responses to this questionnaire have shown that there is still a lack of agreement among EU Member States concerning, for instance, the customary international law status or scope of certain concepts.

Notwithstanding this observation, the authors are convinced it is worthwhile to strive toward as much of a consensus within the EU as possible. A solid EU position based on the rule of law is necessary as a counterweight against the current US position, which still raises serious questions under international law. The EU will be stronger in its criticism of the US if it speaks with a unified voice. Several EU Member States have already critiqued the US’ approach (e.g., Sweden, UK, the Netherlands, and Denmark) which can be helpful in elucidating their positions, but in order to be most effective in engagement with the US, additionally, a single EU voice, or at least a chorus of a larger number of EU Member States, is preferable. The authors understand that whereas criticism about a specific incident may be very difficult and even impossible to convey in view of the lack of access to information, it is not difficult to respond to general and public policies, such as those outlined in Obama’s May 2013 speech and the subsequent speeches made by administrative officials.

⁷ A. Dworkin, “Drones and Targeted Killing: Defining a European Position”, *European Council on Foreign Relations Policy Brief*, July 2013, http://www.ecfr.eu/page/-/ECFR84_DRONES_BRIEF.pdf, p. 10.

⁸ See *ibid.*, p. 7.

The US has often been criticised for various aspects of its foreign policy. However, the fact that the US seems to participate (in some respect) in the drone discussion, is something to be welcomed, and something EU Member States should do now as well despite any differences in perspective.

Recommendations

When formulating an EU Common Position on the use of armed drones, which will require more public debate, discussion and official statements from Member States on the use of armed drones and targeted killing, the EU Member States should include the following elements:

- An EU Common Position should be first and foremost based in the rule of law. Unlawful acts “undermine the concept of rule of law, which is a key element in the fight against terrorism”. It should thus fully respect international law, including IHL and IHRL. This includes respect for another state’s sovereignty. Targeting under the IHRL paradigm moreover requires strict compliance with the principles of necessity, proportionality and precaution, which will almost *never* lead to a lawful targeted killing/use of armed drones.
- An EU Common Position should be clear about having a two-step legal justification for using armed drones; one concerning the legal basis (consent, mandate UN Security Council and self-defense), and one concerning the applicable legal framework (IHL (in armed conflict situations) and IHRL (always)).
- An EU Common Position should recognise that the current international law is fully capable of addressing legal issues arising with armed drones and targeted killing and that new law is not necessary. Therefore, an EU Common Position should first of all focus on a better enforcement of the existing international law.
- An EU Common Position should admit however that more consensus should be achieved when it comes to the interpretation and application of the existing law to situations on the ground. Where interpretation is possible, the EU should follow the most restricted reading, so that the use of force is restrained as much as possible (an example relates to the concept of imminence).
- An EU Common Position should clearly outline the relationship and interplay between IHRL and IHL in situations of armed conflict, while recognising that both fields of law co-apply in these situations.
- An EU Common Position should resolutely reject the idea of a global battlefield without finite geographical borders.
- An EU Common Position should stress the importance of transparency, oversight and accountability. Unlawful drone strikes should be followed by proper and independent investigations, with victims of such strikes having access to effective remedies. There is also a need for clear procedures regarding the authorisation of drone strikes.
- An EU Common Position should also address the responsibility of third States for unlawful drone attacks by another State, including addressing/reconsidering current positions on:
 - a) Consent to use their air bases for the launch of unlawful attacks
 - b) Sharing of secret information where in the past this has contributed to extra-judicial killings.

In addition to these elements, the authors recommend the following:

- Individual EU Member States are urged to clarify their positions and contribute to the debate and discussion. Very concretely, states should respond to the Research Paper with confirmations, clarifications, revisions, corrections and any additional information that can assist in clarifying the EU position on armed drones.
- EU State Members are also urged to discuss these matters and their positions in all relevant fora. This would entail cooperation with the two relevant UN Special Rapporteurs, as well as cooperation with the Human Rights Council. It must be stressed again that IHRL is always applicable, also in times of armed conflict, and thus that discussion within this latter forum is fitting.
- The Netherlands should take a leading role, also within the context of the EU, in the discussion on the international legal aspects of armed drone use and targeted killing. In the context of this discussion, best practices could be formulated, see also the call for such principles by Ireland.
- The EU should be willing to discuss potential avenues of cooperation and agreement with the US on counterterrorism principles (especially to establish more clarity on the US views on such concepts as “associated forces” and the definition of a “continuing and imminent” threat),⁹ but not at the cost of diluting or re-interpreting long-standing legal rules or principles as applicable under international law. International consensus should not be a goal *coûte que coûte*.
- More clarity is desired on the outcomes of the informal US-EU Legal Advisors dialogue.

⁹ See *ibid.*, p. 8.

1. Introduction¹

1.1. US policy on the use of armed drones and targeted killing

On 23 May 2013, United States (US) President Obama, for the very first time, comprehensively addressed drones² in a speech, which *The New York Times'* Editorial called “the most important statement on counterterrorism policy since the 2001 attacks, a momentous turning point in post-9/11 America”.³ In his speech, Obama noted that “this new technology raises profound questions about who is targeted and why, about civilian casualties and the risk of creating new enemies, about the legality of such strikes under U.S. and international law, about accountability and morality”.⁴ After stating that drones strikes are “effective”⁵ and “have saved lives”,⁶ Obama turned to their legality, explaining that these strikes take place in the context of “a just war [against al Qaeda, the Taliban, and their associated forces], a war waged proportionally, in last resort and in self-defense”.⁷

Obama subsequently went on to state that even if legal or effective, this “is not to say it is wise or moral in every instance”.⁸ He continued: “And that’s why, over the last four years, my administration has worked vigorously to establish a framework that governs our use of force against terrorists – insisting upon clear guidelines, oversight and accountability that is now codified in presidential policy guidance that I signed yesterday”.⁹

Interestingly, Obama presented his presidential policy guidance (PPG) in the framework of the question in which cases it would be wise or moral to use strikes, not in the context of their legality. That latter issue seems rather unproblematic to Obama. As mentioned above: the argument is made that drone strikes are legal because they take place in the context of “a just war, a war waged proportionally, in last resort and in self-defense”. This shows that the US’ use of drones is viewed to take place in one paradigm only: the war/armed conflict paradigm, meaning that according to the US, all of its drone strikes take place in an armed conflict situation. In his explanation, Obama seems to refer to both *jus ad bellum* (the law regulating *when* states can use force) concepts and *jus in bello* (the law governing the way in which warfare is conducted) concepts, thus alluding to both the legality of the (start of the) “war”, and the legality of the individual strikes. However, how the US views the relationship between these two fields of law is not clear.

As to the question in which cases it is wise or moral to execute those – according to the US, legally justified – strikes, Obama explained that in the Afghan war theater, “we will continue to take strikes against high-value al-Qaida targets, but also against forces that are massing to support attacks on coalition forces”, whereas

¹ The authors would like to thank their intern Alina Balta for her outstanding assistance in the preparation of this paper, as well as the researchers and analysts from the Open Society European Policy Institute, who provided the authors with relevant background information. Moreover, they would like to thank their intern Anna Benedetti for providing feedback as regards Sections 2.4 and 4. Translations found in several instances are unofficial translations by the authors themselves unless otherwise explicitly noted. Of course, any mistakes are the authors’ own.

² With the term “drones”, the authors mean remotely piloted air systems (RPAS) or unmanned aerial vehicles (UAV). These terms are used interchangeably throughout this paper.

³ “The End of the Perpetual War”, *The New York Times*, 23 May 2013, <http://www.nytimes.com/2013/05/24/opinion/obama-vows-to-end-of-the-perpetual-war.html?pagewanted=all&r=0>.

⁴ The White House, Office of the Press Secretary, “Remarks by the President at the National Defense University”, National Defense University, Fort McNair, Washington, D.C., 23 May 2013, <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.* For a summary/fact sheet of this (classified) presidential policy guidance (PPG), see The White House, Office of the Press Secretary, “Fact Sheet: U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities”, 23 May 2013, <http://www.whitehouse.gov/the-press-office/2013/05/23/fact-sheet-us-policy-standards-and-procedures-use-force-counterterrorism>.

[b]eyond the Afghan theater, we only target al-Qaida and its associated forces, and even then the use of drones is heavily constrained. America does not take strikes when we have the ability to capture individual terrorists. Our preference is always to detain, interrogate and prosecute them. America cannot take strikes wherever we choose. Our actions are bound by consultations with partners and respect for state sovereignty. America does not take strikes to punish individuals. We act against terrorists who pose a continuing and imminent threat to the American people and when there are no other governments capable of effectively addressing the threat. And before any strike is taken, there must be near certainty that no civilians will be killed or injured, the highest standard we can set.¹⁰

In short, the US sees itself in a just armed conflict against al Qaeda, the Taliban, and their associated forces, which legally justifies the strikes, and these strikes, outside of a “hot battlefield” (but still within the US armed conflict paradigm), will be targeted, *as a matter of policy*, against al Qaeda and its associated forces when capture is not feasible, whenever they “pose a continuing and imminent threat to the American people and when there are no other governments capable of effectively addressing the threat” and when there is “near certainty that no civilians will be killed or injured”.¹¹

1.2. Initial reactions to US policy

Human rights organisations cautiously welcomed Obama’s apparent efforts to bring the secretive US drone policy more into the open,¹² but also remained vigilant.¹³ Dixon Osburn from Human Rights First for instance stated: “It looks like Obama is trying to return his counter-terrorism strategy to something that operates within the law. We want to know what that legal framework is though”.¹⁴ The authors of this paper share this view. The earlier-mentioned PPG fact sheet, which, it must be stressed, only applies to operations conducted outside “areas of active hostilities”, which “may leave completely untouched some of the most significant parts of the existing drone program”,¹⁵ is only a summary of the confidential PPG, is very generally drafted, and raises many questions. As to its general language: it states that “[o]ne constant is our *commitment* [and not obligation] to conducting counterterrorism operations lawfully” [emphasis added], it only generally explains that “there must be a legal basis for using lethal force” (which still does not say much, although the mandatory verb “must” should be welcomed) and as to international law, it again only generally notes that

¹⁰ *Ibid.*

¹¹ For more details, see again the PPG fact sheet in n. 9.

¹² There are more clues, such as this leaked (and more specific) white paper: US Department of Justice, “Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who Is a Senior Operational Leader of Al-Qa’ida or An Associated Force”, undated, http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf. In addition, there are several public speeches by US officials, including Brennan, Holder, former State Department Legal Adviser Koh and former Defense Department General Counsel Johnson that have outlined certain aspects of the US counterterrorism legal framework. The latest of such speeches, came in a “major policy address” on the “Development of the Legal Framework for the United States’ Use of Military Force since 9/11” by U.S. Department of Defense General Counsel Stephen Preston at the American Society of International Law Annual Meeting 10 April 2015 (see here for more information: <http://www.defense.gov/Speeches/Speech.aspx?SpeechID=1931>). In this speech, Preston mentioned that the Islamic State has been an enemy of the US within the scope of the AUMF continuously since at least 2004 (and the President’s authority to fight ISIL is reinforced by the 2002 authorisation for military force against Iraq). US is using force against ISIL in Syria in collective self-defense of Iraq and US national self-defense. In Afghanistan, despite reduced presence, the US remains in armed conflict against the Taliban, al-Qaida and associated forces, and 2001 AUMF provides authority for use of force. In the future, President Obama is committed to refine and ultimately repeal the 2001 AUMF. Additionally, the intention is to work with Congress on a new bipartisan, ISIL-specific AUMF.

¹³ See D. Roberts, “Obama restricts drone killings and foresees end to ‘perpetual war’”, *The Guardian*, 23 May 2013, <http://www.theguardian.com/world/2013/may/23/obama-drone-policy-counter-terrorism>.

¹⁴ *Ibid.*

¹⁵ R. Goodman and S. Knuckey, “What Obama’s New Killing Rules Don’t Tell You”, *Esquire*, 24 May 2013, <http://www.esquire.com/news-politics/news/a22769/obama-counterterrorism-speech-questions-052413/?click=news>.

whenever the United States uses force in foreign territories, international legal principles, including respect for sovereignty and the law of armed conflict, impose important constraints on the ability of the United States to act unilaterally – and on the way in which the United States can use force. The United States respects national sovereignty and international law.

However, if one delves deeper, things get more confusing, such as the fact that the PPG fact sheet, in its only footnote, explains that “[t]he term ‘non-combatant’ does not include [...] an individual who is targetable in the exercise of national self-defense”, hereby conflating the *jus in bello* (combatant status) and *jus ad bellum* (national self-defense).¹⁶ Another worrisome point is that the PPG fact sheet, which again spells out the policy, not the law, explains that the US “will use lethal force only against a target that poses a continuing, imminent threat to U.S. persons”. One of the current authors has already explained elsewhere the problematic nature of the US’ imminence standard,¹⁷ and both authors agree with Hernández when he notes:

[T]he elasticity of these terms raises serious questions, not least about the self-judging aspect of ‘imminence’, but also raises the curious question as to how something can be simultaneously imminent and continuing. Prior statements (and the leaked DOJ White Paper of 4 February 2013) suggest that the United States has embraced an ‘elongated’ concept of imminence that has attracted criticism for its inconsistency with the international law on anticipatory self-defence.¹⁸

In addition to these, and many other points,¹⁹ including the problematic US view it is operating within an armed conflict paradigm, when one can critically question whether certain drone strikes have taken place in the context of an armed conflict situation in the first place (and thus whether international humanitarian law, and not international human rights law, is applicable),²⁰ it has been put forward by commentator Peter Van Buren, referring to the same PPG fact sheet, that “[w]hile that sounds like a pretty imposing set of hurdles to leap, all of the ‘legal’ criteria are determined in secret by the White House with advice from the Justice Department, but with no oversight or accountability”.²¹

¹⁶ See also G. Hernández, “Obama’s Counter-Terrorism Speech: A Turning Point or More of the Same?”, *EJIL: Talk!*, 27 May 2013, <http://www.ejiltalk.org/obamas-counter-terrorism-speech-a-turning-point-or-more-of-the-same/>.

¹⁷ See Ch. Paulussen and K. Tibori Szabó, “Testing the validity of US self-defence arguments against the Khorasan group in Syria”, *ICCT Commentary*, 4 November 2014, <http://www.icct.nl/publications/icct-commentaries/testing-the-validity-of-us-self-defence-arguments-against-the-khorasan-group-in-syria>.

¹⁸ See G. Hernández, “Obama’s Counter-Terrorism Speech: A Turning Point or More of the Same?”, *EJIL: Talk!*, 27 May 2013, <http://www.ejiltalk.org/obamas-counter-terrorism-speech-a-turning-point-or-more-of-the-same/>.

¹⁹ See *ibid.* And see also, *inter alia*, R. Goodman and S. Knuckey, “What Obama’s New Killing Rules Don’t Tell You”, *Esquire*, 24 May 2013, <http://www.esquire.com/news-politics/news/a22769/obama-counterterrorism-speech-questions-052413/?click=news>.

²⁰ See J. Dorsey and Ch. Paulussen, “The Boundaries of the Battlefield: A Critical Look at the Legal Paradigms and Rules in Countering Terrorism”, *ICCT Research Paper*, April 2013, http://www.icct.nl/download/file/ICCT-Dorsey-Paulussen-Boundaries-of-the-Battlefield-Report-April-2013_docx.pdf, p. 11.

²¹ P. Van Buren, “Obama’s itchy trigger finger on drone strikes: what happened to due process?”, *The Guardian*, 17 February 2014, <http://www.theguardian.com/commentisfree/2014/feb/17/obama-drone-strikes-due-process>. Although Obama, in his speech, does refer to two *potential* oversight mechanisms (“the establishment of a special court to evaluate and authorize lethal action” and “the establishment of an independent oversight board in the executive branch”), and although the PPG fact sheet explains: “[A]ppropriate Members of the Congress will be regularly provided with updates identifying any individuals against whom lethal force has been approved. In addition, the appropriate committees of Congress will be notified whenever a counterterrorism operation covered by these standards and procedures has been conducted”, “[s]uch judicial or executive oversight is confined to advance scrutiny of operations, to ensure that appropriate measures are taken *before* an attack. No accountability mechanism to review operations *after* they have occurred would be put into place, though there is a suggestion of ‘notification’ post facto. This is a one-sided notion of accountability: there is no acknowledgment of the duty to investigate operations and provide reparations for victims of strikes that kill or injure civilians. What is more, there is no mention of transparency to persons outside of Congress, including the communities affected by the strikes and the State where the attack takes place.” (G. Hernández, “Obama’s Counter-Terrorism Speech: A Turning Point or More of the Same?”, *EJIL: Talk!*, 27 May 2013, <http://www.ejiltalk.org/obamas-counter-terrorism-speech-a-turning-point-or-more-of-the-same/>.)

Finally, the argument was made that even though “Obama’s explicit discussion of the ‘ultimate’ ending of the war on terror can be reasonably viewed as positive [...] it signals nothing about what he actually will do”.²² Indeed, on 11 December 2013, a wedding convoy in Yemen was hit by a drone strike, killing 14 persons²³ and prompting Kenneth Roth, Executive Director of Human Rights Watch, to tweet: “So much for Obama’s promise that drones wouldn’t be used unless there’s a ‘near certainty’ of no civilian casualties”.²⁴ Less than two months earlier, Amnesty International had published its report “*Will I be next? US drone strikes in Pakistan*”,²⁵ concluding (and referring to Obama’s speech):

These policy disclosures are an important step towards greater transparency and accountability in the use of drones, but they fall far short of satisfying the USA’s international human rights obligations. Moreover, although these disclosures might defuse political and public scrutiny of the USA’s policies and practices, they do not adequately ensure that the use of drones does not result in violations of human rights. As noted below, there are several key areas where the Administration’s promises mask the reality of continued secrecy and potential illegality, in breach of international human rights standards.²⁶

On the same day, Human Rights Watch released its own report, focusing on drone strikes in Yemen, and concluded likewise that “[b]eyond international legal considerations, the evidence strongly suggests that the strikes did not adhere to policies for targeted killings that US President Barack Obama disclosed in a speech in May 2013”.²⁷

In short, whereas the US may have made a (welcome) *public* move to bring the US drone policy more out of the shadows, how the US is *actually, in practice*, employing armed drones and executing targeted killings still raises serious international legal questions.²⁸

1.3. Possible consequences of public silence from EU Member States

And while all of this is happening, it remains rather silent on the other side of the pond.²⁹ Anthony Dworkin, whose seminal paper will be examined in more detail later, remarked in this context:

²² G. Greenwald, “Obama’s terrorism speech: seeing what you want to see”, *The Guardian*, 27 May 2013, <http://www.theguardian.com/commentisfree/2013/may/27/obama-war-on-terror-speech>. See also P. Baker, “Pivoting From a War Footing, Obama Acts to Curtail Drones”, *The New York Times*, 23 May 2013, <http://www.nytimes.com/2013/05/24/us/politics/pivoting-from-a-war-footing-obama-acts-to-curtail-drones.html>: “Col. Morris D. Davis, a former chief prosecutor at Guantánamo who has become a leading critic of the prison, waited until after the speech to express disappointment that Mr. Obama was not more proactive. ‘It’s great rhetoric,” he said. “But now is the reality going to live up to the rhetoric?”

²³ See H. Alasmari, “Yemen says U.S. drone struck a wedding convoy, killing 14”, *CNN*, 13 December 2013, <http://edition.cnn.com/2013/12/12/world/meast/yemen-u-s-drone-wedding/>.

²⁴ Available at: <https://twitter.com/KenRoth/status/411710276573351936>.

²⁵ Amnesty International, “*Will I be next? US drone strikes in Pakistan*”, 2013, <http://www.amnestyusa.org/sites/default/files/asa330132013en.pdf>.

²⁶ *Ibid.*, p. 51.

²⁷ Human Rights Watch, “*Between a Drone and Al-Qaeda The Civilian Cost of US Targeted Killings in Yemen*”, 2013, http://www.hrw.org/sites/default/files/reports/yemen1013_ForUpload_1.pdf. Human Rights Watch admitted that “[w]hile the attacks detailed in this report predate Obama’s speech”, it also noted that “the White House said on the day he disclosed the policies that they were “either already in place or will be transitioned into place over time.” (*Ibid.*, p. 2.). For more on drone strikes and Yemen, the Open Society Justice Initiative published “*Death by Drone: Civilian Harm Caused by US Drone Strikes in Yemen*,” April 2015, <http://www.opensocietyfoundations.org/reports/death-drone>.

²⁸ Scahill more bluntly noted that Obama’s speech could be seen as “a rebranding of the Bush era policies with some legalese that is very articulately delivered from our constitutional law professor, Nobel Peace Prize-winning president. But effectively, Obama has declared the world a battlefield and reserves the right to drone bomb countries in pursuit of people against whom we have no direct evidence or who we’re not seeking any indictment against”. (M. Wilstein, “*The Nation’s Jeremy Scahill To CNN: Obama Terrorism Speech A ‘Rebranding of Bush Era Policies’*”, *Mediaite*, 23 May 2013, <http://www.mediaite.com/tv/the-nations-jeremy-scahill-to-cnn-obama-terrorism-speech-a-rebranding-of-bush-era-policies/>.)

The US use of drones for targeted killing away from any battlefield has become the focus of increasing attention and concern in Europe. In a recent opinion poll, people in all European countries sampled were opposed to the use of drones to kill extremists outside the battlefield and a large majority of European legal scholars reject the legal justification offered for these attacks. But European leaders and officials have responded to the US campaign of drone strikes in a muted and largely passive way. Although some European officials have made their disagreement with the legal claims underlying US policies clear in closed-door dialogues and bilateral meetings, EU member state representatives have said almost nothing in public about US drone strikes. The EU has so far failed to set out any vision of its own about when the use of lethal force against designated individuals is legitimate. Nor is there any indication that European states have made a serious effort to influence the development of US policy or to begin discussions on formulating common standards for the kinds of military operations that UAVs facilitate. Torn between an evident reluctance to accuse Obama of breaking international law and an unwillingness to endorse his policies, divided in part among themselves and in some cases bound by close intelligence relationships to the US, European countries have remained essentially disengaged as the era of drone warfare has dawned. Yet, as drones proliferate, such a stance seems increasingly untenable [original footnotes omitted].³⁰

Indeed, the relative silence from the European Union (EU), one of strongest allies of the US, could be more problematic than one might initially think. It might give the impression that European states may be implicitly consenting to the (criticised) US' use of armed drones and targeted killings, hence giving it more legitimacy.³¹ In theory, it could thus even lead to the formation of customary international law, "as evidence of a general practice accepted as law".³² This concept of international custom entails two elements, namely 1) state practice, that is: how states behave in practice, and 2) *opinio juris*, namely "the belief by a state that behaved in a certain way that it was *under a legal obligation* to act that way [emphasis added]".³³ Abstention of protest could also assist in the process of law-making. In the words of Shaw:

Generally, where states are seen to acquiesce in the behaviour of other states without protesting against them, the assumption must be that such behaviour is accepted as legitimate. Some writers have maintained that acquiescence can amount to consent to a customary rule and that the absence of protest implies agreement. In other words where a state or states take action which they declare to be legal, the silence of other states can be used as an expression of *opinio juris* or concurrence in the new legal rule. This means that actual protests are called for to break the legitimising process [original footnotes omitted].³⁴

²⁹ See L. Tayler, "EU should press Obama on drone secrecy", *Human Rights Watch*, 27 March 2014, <http://www.hrw.org/news/2014/03/27/eu-should-press-obama-drone-secrecy>; "EU states often deplore legally questionable actions by foreign governments. Yet they have hesitated to do the same when it comes to their close ally, the United States."

³⁰ A. Dworkin, "Drones and Targeted Killing: Defining a European Position", *European Council on Foreign Relations Policy Brief*, July 2013, http://www.ecfr.eu/page/-/ECFR84_DRONES_BRIEF.pdf, p. 2.

³¹ See also *ibid.*, p. 4: "As one former Obama administration official put it, the US government is subject to few domestic checks on its interpretation of international law in this area, so the reaction of allies is 'the main test and constraint for the administration [...] if other states don't object, the conclusion is that they are not concerned.'" [original footnote omitted]

³² See Art. 38, para. 1 (b) of the Statute of the International Court of Justice.

³³ M.N. Shaw, *International Law*, seventh edition, Cambridge University Press: Cambridge 2014, p. 53.

³⁴ *Ibid.*, pp. 63-64. Cf. also M. Aronsson, "Remote Law-Making? American Drone Strikes and the Development of *Jus Ad Bellum*", *Journal on the Use of Force and International Law*, Vol. 1 (2014), No. 2, pp. 273-298.

While not necessarily agreeing with this – as silence can have other origins as well – it is important for EU Member States to understand that silence from their side *might* have a contributing effect to legitimising a certain practice and thus that it is important to speak up, if they believe a certain practice or a specific incident is problematic.

Dworkin assumed in the statement quoted above that European states are unwilling to endorse Obama's policies. The current authors disagree on this point. We simply do not know this, given the lack of information on the European stance. However, what we do know is that there is a risk that European states may indeed be unwilling to endorse the policies, but, by being silent, give the impression of acquiescing to the policies nonetheless.

1.4. Purpose and outline of this paper

Therefore, the purpose of this Research Paper is to present statements that could lead to (indications for) a certain position from the side of EU Member States. In the end, this could assist in distilling an EU Common Position on the use of armed drones, which the European Parliament called for in February 2014, when it “[e]xpress[ed] its grave concern over the use of armed drones outside the international legal framework”³⁵ and when it “urge[d] the EU to develop an appropriate policy response at both European and global level which upholds human rights and international humanitarian law”.³⁶

Section 2 of this research paper will present the results of a questionnaire the authors sent to the Ministries of Foreign Affairs, Defense, Justice and intelligence services of all 28 EU Member States (see Annex 1). In addition, other relevant sources that could evince governments' official positions (e.g., public statements, policy documents, etc.) were examined.

The next section – Section 3 – explores more normative pronouncements from other entities than states, including international organisations, advisory committees and commentators, who have articulated how the issue of armed drones and targeted killing *should* be approached within the European context.

Finally, in Section 4, the authors will conclude this paper by providing their own view and concrete recommendations toward a cohesive European position on targeted killings and drone use in counterterrorism.

2. The Position of EU Member States on the Use of Armed Drones and Targeted Killing

2.1. Introduction

In this Section, the authors will look into the position of EU Member States on the use of armed drones and targeted killing. To this end, they have sent a questionnaire to the Ministries of Foreign Affairs, Defense, Justice and intelligence services of all 28 EU Member States. In Subsection 2.2, the methodology and content of the questionnaire will be briefly explained, whereas in Subsection 2.3, its results will be addressed. Because the authors anticipated that the respondents might not be extremely forthcoming with their answers, they also parsed other relevant sources that could evince governments' official positions (e.g., public statements, policy documents, etc.). These will also be addressed in Section 2.3, so that the reader can readily identify a certain state's position on this matter, without having to compare different subsections of this paper. Finally, Section 2.4 will conclude this descriptive part of the paper before moving to the normative one.

³⁵ The joint motion for a resolution on the use of armed drones (2014/2567 (RSP)), dated 25 February 2014, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+MOTION+P7-RC-2014-0201+0+DOC+PDF+V0//EN> was adopted two days later by 534 votes to 49 with 10 abstentions, see <http://www.europarl.europa.eu/oeil/popups/summary.do?id=1340215&t=e&l=en>.

³⁶ *Ibid.*

2.2. Methodology and content of the questionnaire

On 12 November 2014, the authors sent the aforementioned e-mail to the various ministries,³⁷ containing a detailed questionnaire, with both multiple choice and open questions (see Annex 1). The aim of the questionnaire was to obtain more clarity on the position that various EU Member States take vis-à-vis the use of armed drones, as well as on countries' positions concerning more general pertinent international law questions. The survey questions encapsulated unresolved issues garnered from a number of sources, including the authors' first Research Paper on this topic,³⁸ reports written by UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson,³⁹ UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns,⁴⁰ the European Council on Foreign Relations,⁴¹ Amnesty International,⁴² Human Rights Watch⁴³ and other sources.⁴⁴ The addressees were requested to submit their completed questionnaire by 1 February 2015. On 15 January 2015, a first reminder was sent,⁴⁵ and on 6 February 2015, a final reminder was communicated,⁴⁶ in which it was explained that the authors could not incorporate feedback after 1 March 2015.

2.3. The results of the questionnaire and the position of EU Member States

Unfortunately, the EU Member States were not very forthcoming in their responses, although a few countries completed most of the questionnaire, which showed that there was adequate time for representatives to fill in the answers. In more detail, e-mail responses were received from fourteen different countries (50 percent of the total EU Member States). Two ministries submitted a report seemingly on behalf of the entire country. The authors received one response from the national police, two responses from intelligence services, three responses from ministries of justice, two responses from ministries of foreign affairs and six responses from ministries of defense. However, of those fourteen responses, nine (32 percent of the total EU Member States) indicated they did not have or could not fill in the required information and only five (18 percent of the total EU

³⁷ This e-mail was sent to 200 e-mail addresses, with eight failed deliveries. All e-mail addresses are on file with the authors. A response was received the day after, indicating that another state organ was competent to deal with this question. That particular state organ was contacted on the same day (on 13 November). On 18 November, another response followed, indicating that another contact person was to be contacted. This happened later. On 21 November, the authors received a response from another state organ, indicating they had not received a readable version of the questionnaire, after which a new version was sent on 25 November.

³⁸ See J. Dorsey and Ch. Paulussen, "The Boundaries of the Battlefield: A Critical Look at the Legal Paradigms and Rules in Countering Terrorism", *ICCT Research Paper*, April 2013, http://www.icct.nl/download/file/ICCT-Dorsey-Paulussen-Boundaries-of-the-Battlefield-Report-April-2013_docx.pdf.

³⁹ The interim report can be found on the UNGA website: "Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism", A/68/389, 18 September 2013, <http://www.un.org/Docs/journal/asp/ws.asp?m=A/68/389>. The Special Rapporteur's final report can be found on the Human Rights Council's website: "Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson", A/HRC/25/59, 11 March 2014, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Pages/ListReports.aspx>.

⁴⁰ UNGA, "Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions", A/68/382, 13 September 2013, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/68/382.

⁴¹ See n. 30.

⁴² See n. 25.

⁴³ See n. 27.

⁴⁴ See e.g., American Civil Liberties Union, Amnesty International, Center for Human Rights & Global Justice, and the Global Justice Clinic, NYU School of Law, Center for Civilians in Conflict, Center for Constitutional Rights, Human Rights Clinic, Columbia Law School, Human Rights First, Human Rights Watch, International Commission of Jurists, Open Society Foundations, "Joint Letter to the UN Human Rights Council on Targeted Killings and the Use of Armed Drones", 18 September 2014, <http://www.hrw.org/news/2014/09/18/joint-letter-un-human-rights-council-targeted-killings-and-use-armed-drones>.

⁴⁵ This e-mail was sent to 199 e-mail addresses (some initial e-mail addresses were replaced), with five failed deliveries. Of these five, two failed in the first round as well. The other three were new failures as compared to the first round. Obviously, the authors did try to find the correct e-mail addresses, but this was not always possible.

⁴⁶ This e-mail was sent to 166 e-mail addresses (excluding those ministries/services that had already reacted positively, saying that the response would come, or those explaining that they did not have or could not find the requested information), with six failed deliveries. Of these six, four also failed in the second round. One e-mail address failed in the third round only (and not in the first and second round).

Member States) filled in (most of) the questionnaire. Additionally, one EU Member State provided a brief substantive answer in an e-mail to us, but did not fill in the questionnaire.

In the following pages, the answers from the respective EU Member States' ministries and services will be addressed.⁴⁷ Where the authors received an official response, they have tried to avoid summarising texts, in view of the delicacy of the topic. They realise that this has led to substantive quotations, which may not be very reader-friendly. However, the objective behind this Research Paper is to present any relevant information that can assist in unraveling the position of EU Member States on the use of armed drones and targeted killing. It should thus be seen and read as a guide – the very first of its kind – which may assist in clarifying how the 28 EU Member States look at this important subject. As explained before, where the authors did not receive an official response, they have tried to construct the countries' positions with help of other relevant publicly available sources. The authors fully recognise that this runs the risk of not presenting the correct stance and hope that if this has unfortunately occurred, the state in question will contact the authors so that its exact position can be duly presented in subsequent publications.

Finally, it should be noted that at times, the authors refer also to the acquisition and use of *unarmed* drones for surveillance or reconnaissance purposes. Though that may not seem directly relevant to the position a particular country may have on *armed* drones, there are several instances wherein unarmed surveillance/reconnaissance drones have been used (and likely will be used in the future) to contribute to gathering intelligence used in the targeting and firing upon of individuals by the US and others, and therefore has a direct relevance to the complicity of states in targeted killings. It also has implications under obligations of various EU Member States, specifically with respect to – but not limited to – the legal framework of the European Convention on Human Rights (ECHR), to which all EU Member States are bound.

A final explanation that should be mentioned before turning to the results is that some countries sent in a non-official response and preferred that their results be conveyed anonymously. That means that where there is an indication that no official response was received, this does not necessarily mean that the authors received no response at all.

Austria:

Questionnaire Response(s)

The only Austrian response the authors received to the questionnaire was from a representative from the Criminal Intelligence Service who explained: "The Austrian Police does not use and has no intentions to use armed drones. Therefore I am not competent to fill in your questionnaire".⁴⁸ When asked for the proper Ministry, the representative responded: "I think that the Ministry of Defense (Bundesministerium für Landesverteidigung und Sport) might be the competent body [...]. I regret that I can't indicate a person or an organization within the MoD that will probably be the first address for your questionnaire".⁴⁹

Government, Media and Other Sources

From public sources, it appears that as of this writing, Austria has not acquired armed drones. However, the country reportedly has plans to purchase eighteen light tracker drones,⁵⁰ with the aim of helping to protect

⁴⁷ The authors would like to thank Ms. Lisa Klingenberg, Independent Consultant for the Open Society European Policy Institute, for her invaluable research assistance pertaining to a number of State positions researched.

⁴⁸ E-mail response from a representative of the Criminal Intelligence Service of Austria, 9 February 2015, on file with authors.

⁴⁹ *Ibid.*

⁵⁰ "Österreichs Bundesheer kauft 18 Drohnen", *Futurezone Technology News*, 6 April 2013, <http://futurezone.at/netzpolitik/oesterreichs-bundesheer-kauft-18-drohnen/24.595.222>. See also D. Kotrba, "Austrian army drones can recognize a lot, but not everything", *Futurezone*

soldiers in the field (to be used for surveillance at home and abroad).⁵¹ It was also reported that it has used surveillance drones in Kosovo to monitor activities related to a bishop being consecrated.⁵² At this point, Austria does not seem to have the capability to arm the drone fleet they currently have.⁵³ However, Austria reportedly has domestic production of drones, including the Camcopter drone (manufactured by Schiebel) being used by the OSCE in surveillance missions on the border between Russia and Ukraine.⁵⁴ Schiebel has run into controversy in the past about the ability of the Camcopter to be weaponised, and for the sale or appearance of these and other unmanned aerial vehicles (UAVs) in Jordan, the United Arab Emirates, the US, Italy, China and South Korea.⁵⁵ During the Thematic Discussion on Conventional Weapons at the UN in 2013, the Austrian Representative said the following on this Research Paper's topic:

The use of armed drones in conflict situations is increasing, causing far too many collateral civilian deaths. We believe that the implications of these developments on humanitarian and human rights law require urgent further discussion with an aim to ensure that these weapons will not be used in a way that violates universally recognised principles of international law. Austria therefore strongly supports [Special Rapporteur Emmerson's] engagement on this issue and encourages [him] to continue identifying possible human rights violations as a result of the use of armed drones.⁵⁶

The authors were regrettably unable to locate additional publicly available statements from Austrian officials regarding the legality of drone strikes or the Austrian position on the use of armed drones.

Belgium:

Questionnaire Response(s)

The authors received no official response from any Belgian ministry or governmental office to the questionnaire.

Government, Media and Other Sources

Various media report that the Belgian armed forces own drones, but they are neither armed nor are they used in lethal missions and that the main tasks for the deployment of drones are recognition and monitoring areas of Belgian territory.⁵⁷ It was also reported that the twelve Israeli-manufactured unarmed Belgian B-Hunter drones available to the army (acquired in 1998) will be withdrawn from service in 2017 and there is currently no plan to

Technology News, 30 November 2013, <http://futurezone.at/english/austrian-army-drones-can-recognize-a-lot-but-not-everything/37.999.654>.

⁵¹ "Austria: Drones to be used for surveillance at home and abroad", *Huffington Post*, 4 June 2012, http://www.huffingtonpost.com/2012/06/04/austria-drones_n_1569352.html.

⁵² *Ibid.*

⁵³ See the following list of states with drones, *New America Foundation*, undated, <http://newamericafoundation.github.io/worldofdrones/source.pdf>.

⁵⁴ J. Cochrane, "At Asia Air Show, Plenty of Competition for Sales of Drones", *The New York Times*, 16 February 2014, <http://www.nytimes.com/2014/02/17/business/international/competition-fierce-for-sales-of-unarmed-drones.html>. See also, "Austro-Drohnen überwachen Waffenruhe in Ukraine", *Kronen Zeitung*, 12 September 2014, http://www.krone.at/Oesterreich/Austro-Drohnen_ueberwachen_Waffenruhe_in_Ukraine-OSZE-Mission-Story-419141.

⁵⁵ *Ibid.*

⁵⁶ Permanent Mission of Austria to the United Nations, "Statement by Ambassador Thomas Hajnoczi Permanent Representative of Austria to the United Nations in Geneva at the Thematic Discussion on Conventional Weapons of the First Committee", New York, 28 October 2013, http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com13/statements/30Oct_Austria.pdf.

⁵⁷ See B. Theunissen, "L'Armée belge possède ses propres drones mais à quoi servent-ils?", *Apache*, 9 January 2013, <http://www.apache.be/fr/2013/01/09/larmee-belge-possede-ses-propres-drones-mais-a-quoi-servent-ils-diaporama-sonore/>.

replace these with a successor model, according to the Minister of Defence, Pieter De Crem.⁵⁸ Additionally, Minister De Crem stated that the Belgian Ministry of Defence is not engaged in any development or acquisition program of UAVs, and does not have any specific information related to a European development or initiative in the area.⁵⁹ The authors were regrettably unable to locate publicly available statements from Belgian officials regarding the legality of drone strikes or the Belgian legal position on the use of armed drones.

Bulgaria:

Questionnaire Response(s)

The authors received only one response from Bulgarian officials, which was from the State Agency for National Security that stated: “Further to your questionnaire on the use of the armed drones and the limitations of international humanitarian law we would like to inform you that these issues are beyond the sphere of competences of the State Agency for National Security”.⁶⁰

Government, Media and Other Sources

The US has reportedly given the Bulgarian armed forces two unarmed RQ-11 Raven drones, used to provide information to land forces about potential mission dangers, or to supply humanitarian assistance in disaster areas.⁶¹ Bulgaria has contributed to the 13-nation procurement of unmanned drones and other equipment such as deployable ground stations to support the Alliance Ground Surveillance (AGS) initiative of NATO (a fleet of five Global Hawk surveillance drones for monitoring purposes during NATO missions)⁶² along with the Czech Republic, Estonia, Germany, Italy, Latvia, Lithuania, Luxembourg, Norway, Romania, Slovakia, Slovenia and the US.⁶³ The authors were regrettably unable to locate publicly available statements from Bulgarian officials regarding the legality of drone strikes or the Bulgarian legal position on the use of armed drones.

Croatia:

Questionnaire Response(s)

The authors received no official response from any Croatian ministry or governmental office to the questionnaire.

Government, Media and Other Sources

Croatia reportedly purchased two Elbit Hermes 450 drones and two smaller Skylark drones (unconfirmed) from Israel in 2006, which were delivered in 2007.⁶⁴ The Hermes 450 is primarily utilised as a reconnaissance drone, but there is at least some evidence that shows weaponisation is possible.⁶⁵ There is no evidence that Croatia plans to

⁵⁸ See “Les drones B-Hunter retirés du service en 2017, pas de successeur prévu (De Crem)”, *L’Avenir*, 9 July 2013, http://www.lavenir.net/article/detail.aspx?articleid=DMF20130709_00334268.

⁵⁹ *Ibid.*

⁶⁰ E-mail response from a representative of the State Agency for National Security of Bulgaria, 3 February 2015, on file with authors.

⁶¹ See “US gives Bulgarian Army two drones worth USD 3 M”, *Standart News*, 15 May 2014, http://www.standartnews.com/english/read/us_gives_bulgarian_army_two_drones_worth_usd_3_m-3651.html.

⁶² N. Chamberlain, “NATO Drones – the ‘game-changers’”, *NATO Watch*, 26 September 2013, <http://www.natowatch.org/node/1204>.

⁶³ J. Pawlak, “NATO to buy U.S.-made unmanned drone aircraft”, *Reuters*, 15 February 2012, <http://www.reuters.com/article/2012/02/15/us-nato-drones-idUSTRE81E1SD20120215>.

⁶⁴ See M. Dobbing and Ch. Cole, “Israel and the Drone Wars. Examining Israel’s production, use and proliferation of UAVs”, *Drone Wars UK*, January 2014, p. 19, <https://dronewarsuk.files.wordpress.com/2014/01/israel-and-the-drone-wars.pdf>.

⁶⁵ *Ibid.*

arm its drone fleet. The authors were regrettably unable to locate publicly available statements from Croatian officials regarding the legality of drone strikes or the Croatian legal position on the use of armed drones.

Cyprus:

Questionnaire Response(s)

The authors received no official response from any Cypriot ministry or governmental office to the questionnaire.

Government, Media and Other Sources

As recently as 12 February 2015, reports indicated that Cyprus is investigating the option to purchase a number of UAVs for surveillance purposes in monitoring the exclusive economic zone along its coast.⁶⁶ It is not known which types of drones are being considered nor is it known from which country these may be purchased, though Italy, Israel and France have reportedly shown interest. The US will likely not sell its drones to Cyprus due to an arms embargo enacted in 1992.⁶⁷ The authors were regrettably unable to locate publicly available statements from Cypriot officials regarding the legality of drone strikes or the Cypriot legal position on the use of armed drones.

Czech Republic:

Questionnaire Response(s)

A representative from the Czech Ministry of Defence submitted responses to the questionnaire.⁶⁸ With respect to conformity of drone strikes with the *jus ad bellum*, the representative mentioned that self-defense, a Security Council Resolution and consent from the territorial state would be permissible (question 3.1.1 of the questionnaire). In response to question 3.1.2 addressing self-defense against non-state actors, the response was as follows:

States are no longer [the] exclusive actors [on the] international scene. Because of [the] growing number of NSA[s] and [their] armed activities it has to be acknowledged that NSAs are one of the present components [on the] international scene whether we like it or not. In our view states have a right to protect themselves by recourse to self-defence against an armed [attack] no matter whether the attack was initiated by autonomous NSAs or NSAs with a subsequent attribution to a state. However, both cases may present a significant challenge for attribution of acts of a[n] NSA to states. How may [we] be certain that NSA actions are really autonomous, that there is not even [an] indirect connection with any state? Or, where [do] we place a threshold for proving [the] existence of any linkages between a state and a[n] NSA? A key issue that needs to be addressed before resorting to self-defence against [an] NSA is whether such actions could violate [the] territorial sovereignty of a state on which territory the NSA is operating.

Question 3.1.3 deals with the “unable or unwilling criterion” and the Czech representative’s response was:

⁶⁶ See D. Kyprianou, “Μονάδα επίθεσης η ΕΛΔΥΚ, λέει ο Καμμένος”, *Protothema*, 12 February 2015,

<http://www.protothema.gr/politics/article/450971/kammenos-proteinei-sti-leukosia-na-agorasei-mahitika-aeroskafi-/>.

⁶⁷ See D. Kyprianou, “Με μη επανδρωμένα αεροσκάφη και πλοία εξοπλίζεται η Λευκωσία”, *Protothema*, 11 January 2015, <http://ow.ly/JRuSC>.

⁶⁸ E-mail response from a representative of the International Law Department at the Ministry of Defence of the Czech Republic, 27 February 2015, on file with authors.

As a first pre-requisite it is important that the acts in self-defence are always linked with an armed attack (see the wording of Art. 51 of the UN Charter “if an armed attack occurs”). In our [view] it is important that an armed attack “occurs”[,] without this condition we do not foresee a possibility to neutralize [the] alleged threat. However, another related question that needs to be answered is the threshold of an “armed attack”[,] a debate that is currently extremely relevant due to [the] many cyber attacks launched by NSA[s]. According to a settled jurisprudence of [the] ICJ expressed in [the] Corfu Channel case[,] every state is obliged “*not to allow knowingly its territory to be used for acts in a manner contrary to the rights of other States*”.⁶⁹ So if a territorial state is unable to act against a[n] NSA[,] such [a] state must be prepared to limit its own sovereignty in order to allow a victim state to redress the situation. If a territorial state would be unwilling[,] the consequences may differ[,] as acts of such [a] state could be interpreted as a certain degree of support to [the] NSA. It is acknowledged that state sovereignty should not serve as a protection of a State if such [a] state is unable or unwilling to exercise its sovereignty within its territory. This confirms settled jurisprudence such as Lotus case[:] “*a State is bound to use due diligence to prevent the commission within its dominions of criminal acts against another nation or its people*”.⁷⁰ At this point we are not sure whether [the] criterion [of] unable or unwilling represents part of the customary international law requirement of necessity.

In the follow-up 3.1.4 question, asking for the criteria of assessment of unable or unwillingness, the Czech representative responded:

There is no uniform state practice with regard [to] assessing criteria for unwillingness or inability of the territorial state, as well as [...] very little guidance provided by jurisprudence. Generally, it is important to differ[entiate] between inability and unwillingness of a territorial state. In order to respond[,] it is important to lay down a few points. Firstly, [the] victim state has a right [to] protection and therefore to [...] [a] right [of] self-defence under international law. As already pointed [out] by some academics one should distinguish between respon[ses] of a victim state to an armed attack coming from [an] NSA and a possible violation of [the] sovereignty of the territorial state related to this respon[se]. [A] [t]hird important point that needs to be made is that despite of [the] unprecedented [rise] of NSA[s], states are still [the] primary subjects of international law and [the] key players at [the] international scene. Sovereignty is a key feature of states and therefore within their territories[,] states are supreme and exclusive authorities. Being a sovereign gives a state certain rights but that equally links with correspond[ing] obligations. If a state allows a [rise] of a[n] NSA to such [an] extent that this NSA is able to endanger other states[,] then this state is either connected to such [an] NSA or it clearly fail[s] to exercise its sovereign authority within its territory. In our opinion at first instance it is [the] victim state that has a right to assess criteria whether [the] territorial state is unable or unwilling.

It is the position of the responding ministry that self-defence is only possible if an armed attack occurs (in response to 3.1.5) and the respondent referred to the aforementioned answer given at 3.1.3. The response to 3.1.7 on the sufficiency of the current international law on self-defence was that it is not, and the rationale was:

⁶⁹ Source provided by respondent: ICJ, Corfu Channel Case, 1949, para 4, 22. [Emphasis in original.]

⁷⁰ Source provided by respondent: P.C.I.J., The Case of S.S. Lotus (Fr. v. Turk.), 1927, (Ser.A), No.10 (Sept. 7), at 4, 88. [emphasis in questionnaire]

We think that current international law[,] its interpretation and [its] application [show] that there is a diverse practice of states when dealing with current issues. Unfortunately, sometimes ambiguous case-law does not help to ease current challenges. Generally, it can be observed that states primarily affected with one of the raised problems tend to deal with issues differently than [sic] states which are not directly involved. This trend is observed in both *ius ad bellum* and *ius in bello* areas. The world in 2015 is significantly different than in 1945 when the UN Charter with its principles was adopted. Therefore, in our opinion issues like NSA[s], continued unsettlement of R2P/humanitarian intervention or rescue of nationals abroad represent ongoing and longstanding challenges for [the] international community.

The respondent offered the following in response to 3.1.8 on inferred or established consent:

As mentioned above, first of all[,] [the] exercise of state sovereignty should not serve as a protection of State's interests, in case this [state] breaches its responsibility not to allow knowingly its territory to be used for acts contrary to the rights of other states. To provide [a] response to your question depends on an ad hoc situation and mainly [factual] determination whether a territorial state has or has not been involved in support or connection with a[n] NSA. Art. 51 of the UN Charter [gives] a victim state a right to redress an armed attack by [...] resort to self-defence. The UN Charter does not require a victim state to inform a perpetrator about [the] start of such [a] self-defence operation. If a territorial state [were] unable to prevent [the] NSA [from] [using] [...] its territory for [the] NSA's own violent attacks then it should be in [the] interest of such a territorial state to cooperate with a victim state and to suppress the NSA. However, if a territorial state was unwilling then there may be a good reason for a victim state not to cooperate and not to ask for approval or involve this state in the coordination of self-defence response[s]. If a territorial state welcomes the strikes afterwards then a general problem of violation of his [sic] territorial integrity by resort to self-defence against [the] NSA located on his [sic] territory disappears.

Moving onto the law and the boundaries of the battlefield section, the first response was: "If the conflict is classified as an armed conflict then IHL is its main governing body. IHRL, if applicable, may only fill possible gaps" (3.2.1). When questioned further about the role of human rights law in armed conflict (3.2.2), the respondent answered:

Yes [IHRL would have a role in armed conflicts]. Due to [the] ICJ advisory opinion [in the] Nuclear Weapons case and other following opinions and cases of [the] ICJ, as well as ECHR case law, applicable norms of IHRL have to be taken into consideration when dealing with situation of armed conflict. However, in practice the biggest challenge for states [is] [...] which rights exactly are to be applied and to which extent. Our position is that IHRL may only complement IHL norms and IHL should play a first and most important role in governing [...] armed conflicts. Any application and interpretation of IHRL should be done in order to fill possible gaps and should be rather restrictive and realistic in order to still permit effective conduct of military operations.

To question 3.2.3, the response was: "The applicable legal framework for use of drones outside of situation of armed conflict should be the set of rules that governs such situations, e.g. international human rights law, domestic law and constitutional law etc.". Turning to the extraterritorial applicability of human rights treaties such as the ICCPR and ECHR, the Czech respondent stated:

We recognize the extraterritorial application of [the] ICCPR and ECHR through its case law interpretation of “jurisdiction”. However, the main question lies in [the] extent of its application. It is important [to] give a consideration of [the] limited possibilities that armed forces may [have] in order to secure IHRL requirements in [the] course of [...] military operation[s]. [The] [a]mbiguous and sometimes even overruling jurisprudence of [the] ECHR show[s] how this issue is extremely unsettled in [the] modern warfare of expeditionary forces.

As for who would be targetable outside of armed conflict (3.2.5), the respondent answered:

It is not appropriate to use a word targetable in relation to situations outside of armed conflicts. For such purposes only persons that breach a provision of domestic criminal law or [commit] any crime included in [the notion of] universal jurisdiction [...would be targetable]. All procedures required by law must be followed.

The respondent agreed with the statement by Dworkin that “European and US officials might be able to agree that the deliberate killing of terrorist suspects outside zones of conventional hostilities is only permissible when they pose a serious and imminent threat to innocent life that cannot be deflected in any less harmful way” (3.2.6).

Turning to current situations around the world, the Czech ministry respondent classified the situation in Pakistan (3.2.7) as an armed conflict and then offered this rationale:

The government does not have an effective control over the northern territory of the country. All publicly available news shows that [the] Taliban and other terrorist armed organizations are taken safe haven in [the] remote tribal areas mainly adjacent to Afghanistan. [Whether there is a] [s]ituation of armed [conflict] is a question of fact[.]. [H]owever, it is important that both parties to the conflict behave accordingly and adhere to applicable laws of war. To our information, however[,] the government does not recognize a situation of armed conflict [taking place] [...] in Pakistan and therefore it deals with [this] situation under [the] law enforcement paradigm.

In Yemen, the respondent also classified the situation as an armed conflict (3.2.8) because:

Yemen represents a failed state where [the] government does not exercise its effective authority, especially after [the] fleeing of its president. The main actors are Al Qaeda [and the] Al Hourthi [sic] militia radicals[,] but generally the current violent developments are too chaotic in order to properly asses[s] [this point] at this stage.

The respondent continued under 3.2.9 with: “In our opinion Somalia still continues to be a failed state with [an] ongoing armed conflict. Despite efforts of African Union troops to restore [the] government[,] control of all major cities [by] Al Shabab militants still represent[s] a threat to peace”.

The Czech respondent, when questioned about the US’ claim that it is in an armed conflict with Al Qaeda and associated forces and whether it was possible to generally be in an armed conflict with an NSA without taking into account the specifics on the ground, replied: “Yes because of the nature and modus operandi of this NSA” (3.2.10).

About whether the *Tadić* criterion⁷¹ regarding the intensity of hostilities necessitates an assessment of frequency and gravity within a geographically confined territory, the response was: “Definitely the test applies within a geographically confined territory. However, due to [the] nature and modus operandi of the most recent NSA[s] this test should be applicable to address the acts of [an] NSA that [does] not limit itself [to] one geographical area” (3.2.11). The respondent continued, when asked about whether an aggregation of armed attacks in various geographic locations would satisfy the intensity threshold (3.2.12): “[y]es, the test[,] as it represents [...] settled jurisprudence should be the starting point, [but] because of [the] transnational operation[s] [of these NSAs] all pertinent states should be involved”. Regarding the question whether a potentially geographically boundless non-international armed conflict (NIAC) could occur: “[This is a] [v]ery difficult question to answer but potentially yes[,] [...] [H]owever[,] such [a] scenario would need to be carefully develop[ed] in order not to violate international and national law” (3.2.13).

Turning to direct participation in hostilities (3.2.14), the respondent noted:

If [an] [actor] DPH [is] located in a non-belligerent state then the possibilities to target such [an] individual are very limited. First of all it should be [done] in cooperation with a state on which territory such [a] person is located. [The] [l]aw enforcement paradigm should be applied. Then [the] [...] question of [an] unable or unwilling state may come to [the fore] if a person DPH commits an armed attack.

On whether the ICRC’s notion of continuous combat function reflected customary international law (3.2.15), the respondent stated:

No, because this test is not undisputed. There is a lot of controversy when applying this test in practice. In order to [trigger⁷²] [the] logic of [the] IHL regime and mainly its principle of distinction[,] NSA[s] should be viewed in the same [way as] state actors. NSA[s] should not be accorded [the] same protection as [...] is reserved for innocent civilians[,] just because they intentionally fail to distinguish themselves from the population. In our view[,] membership of organized armed groups should be approximated as much as possible to the affiliation of a regular armed force. In this regard the controversy represents the ICRC requirement “for such time” which increase[s] the threshold instead of equa[t]ing it with regular armed forces. By this requirement[,] [the] ICRC guidance [approximates] member[s] of organized armed group[s] to spontaneous or sporadic civilians DPH.

The respondent continued commenting on the ICRC’s DPH study, finding that it also does not reflect customary international law (3.2.16) for the following reasons:

No, because there is a lot of disagreement about the ICRC’s DPH study. It is a guidance that has an aspiration to reflect a current situation. However, [a] number of states actively involved in dealing with situation[s] of armed conflict and addressing DPH oppose [...] the study because of its

⁷¹ See International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, *Prosecutor v. Duško Tadić a/k/a “Dule”*, “Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction”, Case No. IT-94-1-AR72, 2 October 1995, <http://www.icty.org/x/cases/tadic/acdec/en/51002.htm>, para. 70: “an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State”. These two criteria, those of intensity of fighting and the level of organisation of the armed group, have come to be known as the “*Tadić* Criteria” for classification of non-international armed conflict.

⁷² Remark from the authors: the original text uses the verb “prevent”, but it is assumed the verb “trigger” or “activate” is meant here.

unrealistic application in practice. The Czech Republic [has] not issued an official position towards the ICRC's study on DPH.

In response to question 3.2.17 on an individual no longer directly participating and whether s/he would still be targetable, the response was:

This is a very difficult question to answer[, because] it all depends on [the] intelligence information about such [a] person. What kind of activities did this person carr[y] out? What was the affiliation of such a person with a[n] NSA? Was it a random innocent civilian who independently started to DPH? Or was it because of [his/her] connection with some [organization]? It has to be noted that [the] DPH concept should not be used to shield members of organized armed groups as [...] is a case within current armed conflicts. Such [an] approach brings an extremely high long term risk for truly innocent civilians.

In terms of providing material support and whether that might also fall under direct participation in hostilities (3.2.18), the respondent answered:

Partly yes and partly no, as mentioned above it is important to know their affiliation. In [the] majority of these cases[,] the answer would most probably be no because the direct causation is missing. However, providing logistical support in terms of [the] delivery [of] weapons to the spot is a direct support to military operations

and indicated that logistical support would be a category that would fall under DPH (3.2.19). For capture versus kill situations and obligations under IHL (3.2.20), the respondent stated:

Under IHL there is no lawful requirement to give priority of capturing over killing with respect to a legitimate military target. It all depends on operational circumstances and [the] given military mission. Priority may be given from a military point of view to rather capture than kill because of a possible exploit[ation] of intelligence information.

Turning more specifically to the use of armed drones, the Czech respondent affirmed that the Czech Republic does in fact own drones, but uses them only for surveillance and reconnaissance purposes and furthermore stated: "They are not armed" (3.3.1). With respect to a particular policy in the Czech Republic on the use of armed drones, the following statement was made: "No, the Czech Republic does not have any specific policy on [the] use of armed drones. Obviously if drones [were to] be used in situation[s] of armed conflict the applicable legal framework for its use would [be] IHL" (3.3.2) When asked about whether more transparency is necessary regarding the use of armed drones, the response was as follows:

The Czech Republic generally promotes transparency in any kind of decision-making process. If drones are used in situation[s] of armed conflict and IHL rules are violated[,] individual and [command] responsibilities are triggered. In line with IHL and ROE requirements, every use of force is registered and stored for any possible future investigation. More international transparency should be put in place for [the] use of drones for targeted killing outside of situation of armed conflict. It is important that [the] international community is aware and closely monitors whether states used [...] force in accordance with international law (UN Charter) or not (extrajudicial killing).

Despite this answer, the Czech Republic has not been active in calling for more transparency (3.3.4).

On the long-term effectiveness of the use of armed drones in counterterrorism (3.3.5), the Czech respondent stated: “Drones are just a weapon to be used. Any weapon can be used in accordance with [the] law as well as in violation of [the] law. The question is not about whether using drones is an effective measure but about a context in which and how drones are used”. On balance, when questioned about whether the current use of armed drones was in conformity with international law (3.3.6), the response was:

Use of drones in “ius in bello”[,] in situations of armed conflict and in conformity with IHL norms[,] does not pose a difficulty in our view. Similarly, use of drones in [a] “ius ad bellum” context may be used as a lawful response to an armed attack. [What poses d]ifficulty in our view [is the] use of drones outside of any norms of international law, such as for extrajudicial killing purposes.

On whether silence from the Czech Republic and other states might be interpreted as implicit consent to the way drones are currently being used (3.3.8), the response was: “No. In our opinion silence cannot be interpreted as implicit consent as to how drones are currently being employed. There is no such principle in international law indicating that silence means consent”. The respondent did not think that using drones might lead to a lower threshold in using force (3.3.10).

On the available accountability mechanisms in the Czech Republic in the case of unlawful drone strikes (3.4.1), the response was: “No citizen of the Czech Republic has been affected or become a victim of [a] drone strike, so far. The Czech Republic offers standard access to justice to any victim of a crime, be it of national or international character”. Furthermore, “[t]he Czech Republic promotes equality of access to justice and therefore does not favor to introduce any special mechanisms for victims of drone strikes only” (3.4.3).

Government, Media and Other Sources

The New America Foundation has reported that the Czech Republic has domestic production of drones.⁷³ The Czech Republic has contributed to the aforementioned NATO AGS initiative.

Denmark:

Questionnaire Response(s)

The authors received no official response from any Danish ministry or governmental office to the questionnaire.

Government, Media and Other Sources

The New America Foundation reported that Denmark has imported reconnaissance drones from France and possibly from the US and there is also domestic production of drones in cooperation with the Netherlands and Sweden.⁷⁴ The Center for Military Studies at the University of Copenhagen reported in March 2014 that Danish drones

⁷³ See the following list of states with drones, *New America Foundation*, undated, <http://newamericafoundation.github.io/worldofdrones/source.pdf>, specifically n. 119, citing to J. Pawlak, “NATO to buy U.S.-made unmanned drone aircraft”, *Reuters*, 15 February 2012, <http://www.reuters.com/article/2012/02/15/us-nato-drones-idUSTRE81E1SD20120215>.

⁷⁴ See the following list of states with drones, *New America Foundation*, undated, <http://newamericafoundation.github.io/worldofdrones/source.pdf>.

have...played an increasingly important role [in Danish military operations]. In Afghanistan, they provided the information necessary to conduct operations against the Taliban. In Libya, they provided the detailed, real-time targeting information necessary for Danish aircraft to find and hit their targets as well as the data necessary for maintaining command and control of Allied air operations.⁷⁵

After criticism arose from several Danish lawmakers in 2012,⁷⁶ former Foreign Minister Villy Søvndal commented that Denmark does not use armed drones itself and “that International rules must be adhered to”.⁷⁷ A high-profile story broke in September 2011, by the Danish newspaper *Jyllands-Posten* about Morten Storm, a Danish citizen and a double agent who infiltrated Al Qaeda and collected information on the whereabouts of Anwar al-Awlaki to give to the Americans for his targeted killing in Yemen in 2011.⁷⁸ The Danish Intelligence Services (PET) are reported to have worked together with the CIA and the British MI5 and MI6 (though the British opted out of the mission ultimately) to carry out the lethal operation and Storm contends that it was through his intelligence that Al-Awlaki was found and ultimately killed. The CIA would not comment on this operation, but the Danish PET offered this:

Out of consideration for PET’s operational work, the PET neither can nor will confirm publicly that specific persons have been used as sources by the PET. Furthermore, the PET is prevented from publicly passing on information about specific source operations. However, the PET does not participate in or support operations where the objective is to kill civilians. The PET did therefore not contribute to the military operation that led to the killing of al-Awlaki in Yemen.⁷⁹

With respect to questions about the applicable legal framework for the use of armed drones, Søvndal stated in an answer to a parliamentary question by Nikolaj Villumsen that the use of armed drones must be in respect of international humanitarian law, that everything has to be done to avoid civilian casualties, and that “no new rules for engagement are needed”, but that the challenge “is rather to ensure fair and uniform compliance with existing international law rules. It is also important to establish clear and adequate national procedures for the use of drones”.⁸⁰

In an answer from the Danish Ministry of Foreign Affairs to a question from the Foreign Committee in the Danish Parliament,⁸¹ the former Foreign Minister took the position that the US has a “maximalist approach” to

⁷⁵ G. Schaub, Jr., K.S. Kristensen and F. Pradhan-Blach, “Long Time Coming: Developing and Integrating UAVs into the American, British, French and Danish Armed Forces”, Centre for Military Studies, University of Copenhagen, March 2014, http://cms.polsci.ku.dk/publikationer/longtimecoming/Long_Time_Coming.pdf, pp. 23-24.

⁷⁶ In 2012, several Danish lawmakers expressed concerns about the US’ use of drones in Somalia, Pakistan and Yemen, branding the US strategy “targeted assassination” and claiming it runs contrary to international legal obligations. In the *Copenhagen Post*, Rasmus Helveg Petersen (the former Danish Social Liberal Party’s foreign policy spokesperson, and current Minister of Climate and Energy) stated: “It’s terrible. The United States has no right to carry out these types of executions of suspected political adversaries. It contravenes international law.” Søren Pind, former Minister of Integration, Refugees and Immigrants and current MP and Foreign Affairs Spokesperson of the Liberal opposition party, made the comparison of drone attacks to “assassinations” and stated that what Obama and his administration were doing “violates the principles of the Western world.” Additionally, those from the Red-Green Alliance party vowed to voice their concern with the Danish Parliament’s foreign policy committee. See “Political leaders call Obama assassin for use of drones”, *Copenhagen Post*, 25 July 2012, <http://cphpost.dk/news/political-leaders-call-obama-assassin-for-use-of-drones.2269.html>.

⁷⁷ *Ibid.*

⁷⁸ O. Borg, “The Double Agent Who Infiltrated Al Qaeda”, *Newsweek*, 10 February 2013, <http://www.newsweek.com/double-agent-who-infiltrated-al-qaeda-63259>.

⁷⁹ *Ibid.*

⁸⁰ Udenrigsministeriet, “Besvarelse af § 20-spørgsmål nr. 486 af 16. november 2012 om droner til udenrigsministeren stillet af Nikolaj Villumsen”, 22 November 2012, <http://www.ft.dk/samling/20121/almindel/upn/bilag/71/1191587.pdf>.

⁸¹ The translation of the question posed by Søren Pind to the Foreign Minister is as follows: “Will the Minister send a complete list of dates and the circumstances under which the Minister has criticized the US drone program, including a literal rendering of the minister’s criticism where possible? Reference is made to the Minister’s opinion in Ritzau, 24 May 2013: “Søvndal: Obama stops Bush’s war on terror”, where

the interpretation of international law.⁸² The translation of the former Foreign Minister's response includes, at the outset, a statement that IHL must be respected regardless of the weapons platform and that drones are not per se illegal weapons platforms as they do not differ significantly from other weapons platforms and therefore do not require new special rules. He continued:

The relevant question is, therefore, whether the drones are being used in accordance with the rules of international law. The legality depends upon the specific circumstances of the individual operation, and especially the nature of the objectives behind it, including the link between the target and the armed conflict. Furthermore, the specific use of drones must always be proportional, and must do everything possible to avoid civilian casualties. Public international law already contains quite detailed rules on these issues. However, there is some room for interpretation, and this is where countries sometimes do not have quite the same approach. The challenge is to ensure fair and uniform compliance with the existing rules of international law, and, where appropriate, clear and reassuring national procedures for the military use of drones. [...] The EU and US have also had an ongoing dialogue about these issues, and already the Danish EU Presidency in May 2012 raised the subject with the State Department's chief legal adviser. The US is thus fully aware of the government's views in this area, and I am convinced that dialogue including with European partners about these questions have helped to refine the debate in the United States and thus have contributed to the fact that the US now has adjusted certain procedures, which will hopefully support a restrictive military use of drones.⁸³

Though Søvndal was rather critical in his statement to the parliament regarding the US position, in February 2013, the Danish Prime Minister Helle Thorning-Schmidt tried to distance herself from the criticism put forth by her compatriots, singling out MP Pind, criticising him at a press conference.⁸⁴ Thorning-Schmidt declared that she would never express herself in the way Pind did (calling the drone strikes "assassinations"), and that drones were not illegal weapons. To the argument that drone strikes targeted civilians without trial she responded by saying that it was not up to her to decide that issue. According to an article from Amnesty International Denmark, she also accused Pind in his criticism of the US drone strike policy "of being populist and damaging Denmark's relationship with the United States".⁸⁵

In terms of the Danish position on drone strikes within armed conflicts, Defense Minister Nick Hækkerup declared in a parliamentary debate on armed drones that if there is an armed conflict,

it is regulated by the provisions of international humanitarian law. This means that a state's armed forces are authorized to use deadly force to defeat the other party in the conflict. Civilians enjoy legal protection from the fighting, and should not be targeted in the conflict. It is, however,

the Minister in relation to changes in the US drone program is quoted as saying "We have criticized the Americans for having a too maximalist approach". The question, dated 28 May 2013, is available at:

<http://www.ft.dk/samling/20121/almindel/uru/spm/155/index.htm>.

⁸² Minister Søvndal was openly critical of the US' "war on terror" and welcomed Obama's change in terminology, but he remained skeptical with respect to drones. A translation of a Danish news item: "We have criticized the Americans for having a maximalist approach. Yesterday he stressed the legal certainty of using drones. He also stressed that one should be sure that they are not used against innocent civilians." Ritzau, "Søvndal: Obama stopper Bush's krig mod terror", *Information.dk*, 23 May 2013, <http://www.information.dk/telegram/461510>.

⁸³ For the original, Danish, text, see Udenrigsministeriet, "Spørgsmål fra Udenrigsudvalget til udenrigsministeren af 28. maj 2013 (URU spørgsmål 155) stillet efter ønske fra Søren Pind (V)", <http://www.ft.dk/samling/20121/almindel/upn/bilag/255/1263514.pdf>.

⁸⁴ Ritzau, "Thorning om snigmord: Sådan vil jeg aldrig udtrykke mig", *Information.dk*, 5 February 2013, <http://www.information.dk/telegram/450212>.

⁸⁵ Amnesty International Denmark, "Amnesty støtter kritik af droneangreb", 6 February 2013, <http://www.amnesty.dk/presse/amnesty-stotter-kritik-af-droneangreb>.

a protection that is limited to the civilians not taking direct part in hostilities. If they do so, they lose their protected status and may therefore be a legitimate objective.⁸⁶

Estonia:

Questionnaire Response(s)

The authors only received a response from a legal advisor at the Ministry of Defence which stated: “I am afraid we will not be able to provide our contribution due to a very tight schedule. I hope it does not hamper your project in any way”.⁸⁷

Government, Media and Other Sources

The New America Foundation has reported that Estonia has purchased drones from the US for use in Afghanistan.⁸⁸ In 2013, there were reports that Estonia plans to purchase surveillance drones, such as the RQ-4 Global Hawk UAV⁸⁹ within the next few years. They have domestically produced the unarmed UAS Swan III by ELI Military Simulations, which are also exported to Georgia.⁹⁰ Estonia has contributed to the aforementioned NATO AGS initiative. The authors were regrettably unable to locate publicly available statements from Estonian officials regarding the legality of drone strikes or the Estonian legal position on the use of armed drones.

Finland:

Questionnaire Response(s)

The authors received no official response from any Finnish ministry or governmental office to the questionnaire.

Government, Media and Other Sources

The New America Foundation has reported that Finland has domestic production of drones but has also imported from Israel, a point quite controversial in Finland because of Israel’s military action in Gaza.⁹¹ The authors were

⁸⁶ Danish Parliamentary debate on armed drones, 11 April 2013,

<http://www.ft.dk/samling/20121/forespoergsel/f24/beh1/forhandling.htm?startItem=6&noThread=1&singleItem=1%20-%20nav>.

⁸⁷ E-mail response from a Legal Advisor (International Law) within the Legal Department, Estonian Department of Defence, 8 April 2015, on file with authors.

⁸⁸ See the following list of states with drones, *New America Foundation*, undated,

<http://newamericafoundation.github.io/worldofdrones/source.pdf>.

⁸⁹ “Estonia plans to purchase Global Hawk drone to increase its military reconnaissance capabilities”, *Army Recognition*, 11 January 2013, http://www.armyrecognition.com/january_2014_global_defense_security_news_industry/estonia_plans_to_purchase_global_hawk_drone_to_increase_its_military_reconnaissance_capabilities_110.html.

⁹⁰ N. Clayton, “How Russia and Georgia’s ‘little war’ started a drone arms race”, *Minneapolis Post*, 23 October 2012, <http://www.minnpost.com/global-post/2012/10/how-russia-and-georgias-little-war-started-drone-arms-race>.

⁹¹ B. Jäntti, “Despite opposition, Finland proceeds with Israel arms deal”, *The Electronic Intifada*, 20 July 2011,

<http://electronicintifada.net/content/despite-opposition-finland-proceeds-israel-arms-deal/10196>. See also: B. Jäntti and J. Johnson, “Finland shopping for “battle-tested” Israeli weaponry”, *The Electronic Intifada*, 18 January 2011,

<http://electronicintifada.net/content/finland-shopping-battle-tested-israeli-weaponry/9847>: “The Finnish-Israeli arms trade has received negative coverage in Finland’s mainstream media. More than 225 influential Finnish public figures — including eminent professors of international law and dignitaries of the arts, sciences and politics — are publicly calling for the immediate end to all forms of Finnish-Israeli military trade and cooperation (“Public statement by Finnish dignitaries”). Additionally, for years Finland has pushed for an international and legally-binding arms trade treaty that would ban all forms of arms trade — import, export, transfer — with countries that violate human rights (“Arms trade treaty supported by Finland progresses at UN,” 27 October 2006). However, since 1994, Finland has bought

regrettably unable to locate publicly available statements from Finnish officials regarding the legality of drone strikes or the Finnish legal position on the use of armed drones.

France:

Questionnaire Response(s)

The authors received no official response from any French ministry or governmental office to the questionnaire.

Government, Media and Other Sources

France has domestic production of drones, but also has been known to import from both Canada and Israel.⁹² France reportedly purchased 16 MQ-9 Reaper drones from the US in June of 2013, and began deploying the drones from bases in Niger to support the mission in Mali in reconnaissance capacity only.⁹³ The New America Foundation has reported that France owns drones in tier I, II and III (low altitude, long endurance; medium altitude, long endurance; high altitude, long endurance, respectively). France is currently a member of the “drone users club”, along with Germany, Greece, Italy, the Netherlands, Poland and Spain, investigating the joint production of tier II drones for Europe,⁹⁴ and has also become part of a “joint users club” for the MQ-9 Reaper consultation with the US and other European countries such as Germany, Italy, the Netherlands and the UK, that are specifically using MQ-9 Reaper drones.⁹⁵ It has been reported that France and the UK agreed in 2012 to jointly develop a new armed drone.⁹⁶ France is at the forefront (with France’s Dassault Aviation as the manufacturer) of the development of the nEUROn UAV, meant to compete with American-manufactured drones.⁹⁷ The nEUROn programme is a collaboration between defense firms in France, Sweden, Greece, Spain, Italy and Switzerland.⁹⁸

At the 27th session of the Human Rights Council: Panel discussion on the use of armed drones (22 September 2014), the representative of France made the following statement:

France is committed to the promotion and protection of human rights under all circumstances, including in the context of counter-terrorism. In this regard, France estimates that the assessment of conformity of military operations with international humanitarian law does not fall under the first competence of the Council. Despite this, it is essential to find the right balance between the need for states to comply with their obligations under international humanitarian law and human rights law, and the responsibility of every state to protect its population against the growing threat of terrorism. The use of armed drones in the context of counter-terrorism operations

Israeli weapons for more than 170 million euros (“[sic]Finnish-Israeli arms trade,” June 2010). Moreover, it continues to serve as an occasional arms supplier for Israel, as The Electronic Intifada has previously reported.” [original hyperlinks removed].

⁹² See the following list of states with drones, *New America Foundation*, undated,

<http://newamericafoundation.github.io/worldofdrones/source.pdf>.

⁹³ P. Tran, “French AF Conducts First Reaper Flight”, *Defense News*, 16 January 2014,

<http://www.defensenews.com/article/20140116/DEFREG01/301160030/>.

⁹⁴ “Euro-UAVs: Europe opens ‘drone club’ to compete with US, Israel”, *RT News*, 20 November 2013, <http://rt.com/news/drones-europe-nato-eu-us-008/>.

⁹⁵ France-UK Summit, “Declaration on Security and Defence”, 31 January 2014,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277167/France-UK_Summit-Declaration_on_Security_and_Defence.pdf.

⁹⁶ “France and Britain to Develop ‘Armed Combat Drones’ to Attack both Aerial and Ground Targets”, *Global Research News*, 28 November 2014, <http://www.globalresearch.ca/france-and-britain-to-develop-armed-combat-drones-to-attack-both-aerial-and-ground-targets/5416777>.

⁹⁷ M. Rundle, “Neuron, Europe’s First Stealth Drone ‘Killer Robot,’ Makes Test Flight”, *Huffington Post UK*, 3 December 2012,

http://www.huffingtonpost.co.uk/2012/12/03/neuron-europes-first-stealth-drone-test-flight_n_2230316.html.

⁹⁸ *Ibid.*

seems not to be distinct from other means that are used for these operations. In any case, these operations have to be in full compliance with international law.⁹⁹

On 31 March 2015, the Associated Press reported that France and Germany were planning to work together with Italy to develop military surveillance drones that also have the capacity to become armed somewhere between 2020 and 2025.¹⁰⁰

Germany:

Questionnaire Response(s)

The only response the authors received from German governmental officials was from the Federal Ministry of Justice, Public International Law department, which read:

Your questionnaire touches a subject that is very much discussed these days and – as you already realized – questions that arise are not often easy to answer. The Federal Ministry of Justice and Consumer Protection is not the leading Ministry within the German Government regarding this topic. Thus it is not in our competence to [answer] your questionnaire for Germany.¹⁰¹

Upon follow-up with the official, it was not clear to the official which Ministry would be the appropriate one in Germany.¹⁰²

Government, Media and Other Sources

Germany domestically produces drones and also leases drones from Israel that have been used in Afghanistan.¹⁰³ Germany also has drones imported from the US. In addition, Germany is a member of the aforementioned “drone users club” and of the NATO AGS initiative. Medium altitude, long endurance (MALE, or tier II) UAVs are reportedly being used by the armed forces and intelligence services of Germany, mostly for reconnaissance purposes, but they may not be far from incorporating weapons systems.¹⁰⁴ The German armed forces (Bundeswehr) have employed the Israeli “Heron” in Afghanistan, though it is not likely that this was in an armed capacity (the Heron does have the capacity to be armed).¹⁰⁵

The political debate in Germany surrounding the acquisition of armed drones has been divided over the last several years, owing to the lack of clarity on how drones would be used, and in opposition to the way that the

⁹⁹ Statement available at:

<https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/27thSession/Pages/OralStatement.aspx?MeetingNumber=28&MeetingDate=Monday,%2022%20September%202014> (username: hrc extranet; password: 1session).

¹⁰⁰ “Germany, France, Italy Plan to Develop Military Drones”, *ABC News*, 31 March 2015,

<http://abcnews.go.com/International/wireStory/germany-france-italy-plan-develop-military-drones-30027388>.

¹⁰¹ E-mail response from a representative of the Bundesministerium der Justiz und für Verbraucherschutz, 18 February 2015, on file with authors.

¹⁰² E-Mail response from a representative of the Bundesministerium der Justiz und für Verbraucherschutz, 23 February 2015, on file with authors.

¹⁰³ See the following list of states with drones, *New America Foundation*, undated,

<http://newamericafoundation.github.io/worldofdrones/source.pdf>.

¹⁰⁴ M. Dickow and H. Linnenkamp, “Combat Drones –Killing Drones, A Plea against Flying Robots”, February 2013, *SWP Comments 4*, Stiftung Wissenschaft und Politik, German Institute for International and Security Affairs, http://www.swp-berlin.org/fileadmin/contents/products/comments/2013C04_dkw_lnk.pdf.

¹⁰⁵ P. La Franchi, “Israel fields armed UAVs in Lebanon”, *Flightglobal*, 8 August 2006, <http://www.flightglobal.com/news/articles/israel-fields-armed-uavs-in-lebanon-208315/>.

US (specifically the CIA) are employing drones in its targeted killing program.¹⁰⁶ Former German Defence Minister Thomas de Maizière ruled out the possibility that the German armed forces would conduct targeted killings similar to those of the CIA. During the discussion on the use of armed drones with military bishops (April 2013) he stressed that extrajudicial killings are not an option for Germany¹⁰⁷ and that drones would only be able to be deployed in a territory clearly defined by a mandate.¹⁰⁸ According to De Maizière, a deployment of armed drones outside of this mandate would not be in accordance with the law and would not take place.¹⁰⁹

Germany's Defence Minister, Ursula Von der Leyen, announced in July of 2014 that Germany should acquire armed drones, but that they would only be deployed with parliamentary approval.¹¹⁰ Political debates ensued and in February 2015, political pressure mounted for the decision to be taken quickly on the purchasing of drones.¹¹¹ The Christian Democratic Union-Christian Social Union (CDU/CSU) fraction in parliament supports the acquisition of drones, and high-ranking military officials are also supporting these calls. It is the opinion of the chairman of the German Armed Forces Association, Lt. Col. André Wüstner, that all future conflicts (and current ones, referencing those in Africa, Syria and Iraq), will be fought with drones, and therefore the time is right to purchase and develop armed drone technology in Germany.¹¹² Though the Social Democratic Party (SPD), a coalition partner in the current government, inserted a clause in the coalition agreement that the new government "categorically rejects illegal killing with armed drones",¹¹³ the party also more recently took the stance that drones would be necessary for the military intelligence, and pleaded for a quick answer from the Minister of Defence.¹¹⁴

¹⁰⁶ "Armed drone debate divides Germany", *The Local*, 30 June 2014, <http://www.thelocal.de/20140630/armed-drone-debate-splits-german-government>.

¹⁰⁷ E. Chauvière, "Von guten und bösen Waffen", *Das Parlament*, 2013, http://www.das-parlament.de/2013/25_26/Thema/45452662/323956.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ "German defense minister seeks armed drones for military", *Deutsche Welle*, 1 July 2014, <http://www.dw.de/german-defense-minister-seeks-armed-drones-for-military/a-17752054>. Furthermore, Minister Von der Leyen stated: "The federal government categorically rejects extrajudicial killings which are contrary to international law. This applies to any weapon system. [...] Our rejection stems from known cases, in which drones that are piloted from a large distance are used for targeted killings of individuals, accepting that innocent persons are hurt. [...] This has nothing to do with the requirement of the Bundeswehr that we are discussing now and in the future. I can say this with such a high level of certainty because the Bundeswehr is a parliamentary army. [...] Therefore the deployment of drones by the Bundeswehr is only possible, when all rules of international and national law are respected, and only after the consent of the German Bundestag...Soldiers decide within clearly defined and legally validated rules of engagement. This is the framework we are interested in. And this is the framework we want to set". More on this debate is available at: <http://dip21.bundestag.de/dip21/btp/18/18045.pdf>. However, the rejection of targeted killings has not been directly or publically addressed to the US government. In May 2013, in an answer to a parliamentary question on US targeted killings, the German government stated: "The question of conformity of military actions with international law cannot be answered in general but only in relation to the concrete cases. A judicial judgment requires precise knowledge of the individual case. Therefore, the Federal Government is not in the position to judge, whether the use of armed UAS has always been legitimate." (<http://dip21.bundestag.de/dip21/btd/17/136/1713655.pdf>). With regard to drone strikes in Pakistan, the Government explained that it did not have any officially confirmed information about the use of armed drones in Pakistan. (*Ibid.*)

¹¹¹ T. Jungholt, "SPD fordert Beschaffung neuer Kampfdrohnen", *Die Welt*, 1 February 2015, <http://www.welt.de/politik/deutschland/article136988448/SPD-fordert-Beschaffung-neuer-Kampfdrohnen.html>. For English coverage, see J. Stem, "German military experts demand purchase of drones", *World Socialist Website*, 3 February 2015, <https://www.wsws.org/en/articles/2015/02/03/dron-f03.html>.

¹¹² *Ibid.*

¹¹³ B. Smith, "The Trouble with Drones: A Brief Overview of Problems Surrounding German Drone Usage and Armament", American Institute for Contemporary German Studies, Johns Hopkins University, 10 June 2014, <http://www.aicgs.org/2014/06/the-trouble-with-drones-a-brief-overview-of-problems-surrounding-german-drone-usage-and-armament/>. The extended quotation of the clause is as follows: "We categorically reject extrajudicial killings with armed drones violating international law. Germany will advocate for the inclusion of armed unmanned vehicles into international disarmament and arms control regimes and for the international ban of fully autonomous weapons that deprive human beings from taking the decision to deploy weapons. Before deciding on the procurement of qualitatively new weapons systems we will examine all related international and constitutional, security and ethical questions carefully. This is especially true for new generations of unmanned aircraft which, besides reconnaissance capabilities, have also combat capabilities." "Deutschlands Zukunft gestalten" (Koalitionsvertrag zwischen CDU, CSU und SPD), <https://www.cdu.de/sites/default/files/media/dokumente/koalitionsvertrag.pdf>, p. 124.

¹¹⁴ T. Jungholt, "SPD fordert Beschaffung neuer Kampfdrohnen", *Die Welt*, 1 February 2015, <http://www.welt.de/politik/deutschland/article136988448/SPD-fordert-Beschaffung-neuer-Kampfdrohnen.html>. For English coverage, see

German newspaper *Welt am Sonntag* has reported that the Defence Ministry was working on a policy, with an alleged budget of 323 million euros, “allocated for the purchase of three combat-ready aircraft and two ground control stations”.¹¹⁵

With respect to operations in Afghanistan, German newspaper *Bild* reported at the end of December 2014 that Germany has already been more broadly involved in drone warfare than previously reported. Documents from the German army and foreign intelligence service (BND) allegedly contain information that Maj. Gen. Markus Kneip (former commander of Germany’s ISAF troops in Afghanistan, and currently heading the strategy and deployment department of the German Ministry of Defence) assisted in the selection of individual targets for the US targeted killing program.¹¹⁶ In the past, this has been cause for concern in Germany, with reports that intelligence sharing was curbed by the Germans when information procured was used in aiding US targeted killings (specifically of German citizens).¹¹⁷

Additionally, in Afghanistan, differences in legal approaches reportedly caused friction between Germans and Americans.¹¹⁸ In one particular cooperation effort, “Center Ice” (a platform of the “14 Eyes” intelligence-sharing group¹¹⁹ including other EU countries Italy, Spain, Belgium, the Netherlands, Denmark, France, the UK and Sweden, used to monitor and exchange data), the Germans apparently shared mobile phone numbers of suspected individuals, but denied that these numbers were used in targeted killings since 2005. For the Germans to nominate a person to the Joint Prioritized Effects List (JPEL, a list of individuals in Afghanistan for capture or kill), *Spiegel Online* reported that a detailed file had to first be sent to the Joint Operations Command in Potsdam and then to the German Defence Ministry for approval. The legal criteria for a name to be added by the Germans were that the “individual had ordered, prepared or participated in attacks”,¹²⁰ which diverges from the more lenient US approach.¹²¹

As a final point, Hans Schumacher, the Permanent Representative to the United Nations (UN) spoke on behalf of Germany during a UN discussion in the context of autonomous weapons and said the following, which also has direct relevance to the discussion regarding armed drones:

In the first analysis let me highlight the following recommendations, which Germany believes to be worth considering. First, states should subscribe to a commitment to abide by international law. International humanitarian law as *lex specialis* in all situations of armed conflict and, where applicable, international human rights law has to be observed while studying, developing, acquiring or adopting new weapons or means of warfare be they manned or unmanned. This should set certain limits to the use of fully autonomous weapons systems. Second, governments

J. Stem, “German military experts demand purchase of drones”, *World Socialist Website*, 3 February 2015, <https://www.wsws.org/en/articles/2015/02/03/dron-f03.html>.

¹¹⁵ *Ibid.*

¹¹⁶ J. Reichelt, “Geheimpapier über Killer-Kommandos”, *Bild*, 30 December 2014, <http://www.bild.de/politik/ausland/bundeswehr/und-bnd-halfen-bei-toetung-der-taliban-isaf-todesliste-afghanistan-39139920.bild.html>. For English coverage, see N. Conrad, “German Bundeswehr’s role in targeted Taliban killings in Afghanistan”, *Deutsche Welle*, 31 December 2014, <http://www.dw.de/german-bundeswehrs-role-in-targeted-taliban-killings-in-afghanistan/a-18164323>.

¹¹⁷ H. Stark, “Germany Limits Information Exchange with US Intelligence”, *Spiegel Online*, 17 May 2011, <http://www.spiegel.de/international/germany/0,518,762873,00.html>.

¹¹⁸ “Obama’s Lists: A Dubious History of Targeted Killings in Afghanistan”, *Spiegel Online*, 28 December 2014, <http://www.spiegel.de/international/world/secret-docs-reveal-dubious-details-of-targeted-killings-in-afghanistan-a-1010358.html>.

¹¹⁹ For an explanation of what the 14-eyes program is, see E. MacAskill and J. Ball, “Portrait of the NSA: no detail too small in quest for total surveillance”, *The Guardian*, 2 November 2013, <http://www.theguardian.com/world/2013/nov/02/nsa-portrait-total-surveillance>: “The NSA operates in close co-operation with four other English-speaking countries - the UK, Canada, Australia and New Zealand - sharing raw intelligence, funding, technical systems and personnel. Their top level collective is known as the ‘5-Eyes’. Beyond that, the NSA has other coalitions, although intelligence-sharing is more restricted for the additional partners: the 9-Eyes, which adds Denmark, France, the Netherlands and Norway; the 14-Eyes, including Germany, Belgium, Italy, Spain and Sweden; and 41-Eyes, adding in others in the allied coalition in Afghanistan.”

¹²⁰ “Obama’s Lists: A Dubious History of Targeted Killings in Afghanistan”, *Spiegel Online*, 28 December 2014, <http://www.spiegel.de/international/world/secret-docs-reveal-dubious-details-of-targeted-killings-in-afghanistan-a-1010358.html>.

¹²¹ *Ibid.*

should be as transparent as possible regarding the development and evaluation of new weapon technology. We believe that additional transparency measures should be taken into consideration. Germany strongly supports the idea to include unmanned systems in national reports to the UN Register of Conventional Arms. Further steps to achieve this should be considered.¹²²

Regarding the use of armed drones outside situations of armed conflict, the German government declared in an answer to a parliamentary question:¹²³ “Below the threshold of armed conflict, the international and constitutional basic conditions for the use of armed drones are the same as for any other armed system”. At the UN HRC panel discussion on armed drones in September 2014 Germany stated that, in its view, IHL becomes *lex specialis* in all situations of armed conflict. This view did not correspond to the law interpretation presented by the UN Special Rapporteurs Ben Emmerson and Christof Heyns.¹²⁴

As mentioned in the context of France, on 31 March 2015, the Associated Press reported that Germany and France were planning to work together with Italy to develop military surveillance drones that also have the capacity to become armed somewhere between 2020 and 2025.¹²⁵

Greece:

Questionnaire Response(s)

The authors received no official response from any Greek ministry or governmental office to the questionnaire.

Government, Media and Other Sources

Greece is reported to have domestic production of drones, as well as to import from France. Greece is also a member of the aforementioned “drone users club” and has, moreover, contributed to the development of the nEUROn drone (manufactured by France’s Dassault) along with Switzerland, Spain, France, Italy and Sweden, launched for the first time in December 2012.¹²⁶ The authors were regrettably unable to locate publicly available statements from Greek officials regarding the legality of drone strikes or the Greek legal position on the use of armed drones.

Hungary:

Questionnaire Response(s)

The authors received no official response from any Hungarian ministry or governmental office to the questionnaire.

¹²² Campaign to Stop Killer Robots, “Report on outreach on the UN report on ‘lethal autonomous robotics’”, 31 July 2013, http://www.stopkillerrobots.org/wp-content/uploads/2013/03/KRC_ReportHeynsUN_Jul2013.pdf, p. 15.

¹²³ The answer is available at: <http://dip21.bundestag.de/dip21/btd/17/136/1713655.pdf>. The parliamentary question on the Government’s attitude on the acquisition and deployment of armed drones was asked by the SPD on 17 October 2012.

¹²⁴ Statement available at:

<https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/27thSession/Pages/OralStatement.aspx?MeetingNumber=28&MeetingDate=Monday,%2022%20September%202014> (username: hrc extranet; password: 1session).

¹²⁵ “Germany, France, Italy Plan to Develop Military Drones”, *ABC News*, 31 March 2015,

<http://abcnews.go.com/International/wireStory/germany-france-italy-plan-develop-military-drones-30027388>.

¹²⁶ M. Zenko and S.E. Kreps, *Limiting Armed Drone Proliferation*, Council on Foreign Relations, Council Special Report No. 69, June 2014, http://i.cfr.org/content/publications/attachments/Limiting_Armed_Drone_Proliferation_CSR69.pdf, p. 7.

Government, Media and Other Sources

The New America Foundation reported that Hungary has domestic production of unarmed drones and has acquired unarmed Elbit Skylark drones from Israel.¹²⁷ An additional report from 2013 outlines Hungary's intent to develop its own target drone into one for military use, with talks already underway with interested States such as Algeria, Libya, Mongolia and India, though those states indicated that the drones would be used for desert border control and oil pipeline protection operations rather than as an armed platform in combat.¹²⁸ The authors were regrettably unable to locate publicly available statements from Hungarian officials regarding the legality of drone strikes or the Hungarian legal position on the use of armed drones.

Ireland:

Questionnaire Response(s)

The authors received some correspondence from the Irish Department of Defence (International Security and Defence Policy Branch). Though they have not received a completed questionnaire (at the time of publication, it was being reviewed by the Department of Defence through official protocol), the authors received a general response to the questions. The relevant text is as follows:

Firstly, it should be noted that Ireland does not possess armed drones, nor [are] there any plans to procure such equipment. As such, it is extremely difficult to respond to many, if not all, the questions included in your questionnaire. Ireland is committed to the primacy of the United Nations in the maintenance of international peace and security. Generally, Ireland's position on the use of any force, regardless of its method of delivery, falls within the ambit of the Rules of Engagement that exist for the particular mission where Ireland is contributing its troops. Regardless of whether the use of force is carried out by armed drones or by more traditional weapons Ireland would always take the view that international humanitarian law and international human rights law is directly applicable to all situations.¹²⁹

Government, Media and Other Sources

On 26 June 2013, during a parliamentary debate, the former Tánaiste (Deputy Prime Minister) and Minister for Foreign Affairs and Trade, Eamon Gilmore followed the same course as outlined above, when discussing the importance of respect for international law, and noted that:

Together with our EU partners, we have regular discussions with the US about the legal aspects of combating international terrorism, and the US is well aware of our views on these issues. [...] We and our partners in the EU are strongly opposed to extra-judicial killings. Not only are these contrary to international human rights law, but they undermine the concept of the rule of law, which is a key element in the fight against terrorism. Unmanned aerial vehicles, UAVs, commonly

¹²⁷ "Hungarian drones create a buzz", *The Budapest Times*, 12 November 2012, <http://budapesttimes.hu/2012/11/12/hungarian-drones-create-a-buzz/>.

¹²⁸ "Drones for Hungarian military use in the making, report says", *Politics.hu*, 21 June 2013, <http://www.politics.hu/20130621/drones-for-hungarian-military-use-in-the-making-report-says/>.

¹²⁹ E-mail response from a representative of the International Security and Defence Policy Branch, Irish Department of Defence, 10 February 2015, on file with authors.

referred to as “drones”, are used for both civilian and military purposes. Under international law, there is no prohibition on UAVs as such. Their use in armed conflict is subject to international humanitarian law. This sets specific requirements in respect of the use of force in armed conflict, including the principles of necessity, proportionality and distinction. I am deeply concerned about any indiscriminate use of UAVs, which would clearly be contrary to international law, and by instances where innocent civilians have been killed by attacks using UAVs. [...] We have always led on the issue of disarmament. We want to reduce the use of weapons and the killing of people. This approach is very well known across the world. I do not see a prospect of an agreement to ban the use of UAVs. I want to see a reduction in the military use of drones, which is in line with our position in favour of disarmament and the protection of civilians.¹³⁰

In answering a Parliamentary question on 19 November 2013, Gilmore further commented:

In line with the UN Global Strategy on Counter Terrorism, we believe that effective counter terrorism and the protection and promotion of human rights are mutually reinforcing and not competing goals. This means that human rights law must apply, including the prohibition on extrajudicial killings, outside of an armed conflict situation where international humanitarian law is applicable.¹³¹

And finally, at a later answer to a parliamentary question, Gilmore stated:

Ireland welcomes the recent reports of UN Special Rapporteurs, Professor Christof Heyns and Ben Emerson [sic], which looked at the use of armed drones from the perspective of the use of lethal force and their impact on civilians. Ireland accepts the findings of these reports which include the view that the established international legal framework for the use of force – international human rights law, international humanitarian law and inter-State force – constitutes an adequate framework for regulating the use of drones.¹³²

Moreover, Ireland made a strong statement on armed drones at the 25th session of the HRC in March 2014. Ireland stated that it

takes a close interest in the issue of drones, or remotely piloted aircraft. [...] Having consistently taken the view that the use of drones must be in accordance with international law, Ireland agrees with the Special Rapporteur [SR] that states should take responsibility for their actions and welcomes the report’s attention to the issue of accountability. We are deeply concerned by reports of numerous instances in which the use of drones may have resulted in civilian casualties and deaths, including of women and children. In this respect, Ireland would be grateful if the SR could outline potential best practices of the use of armed drones in extraterritorial lethal counter-

¹³⁰ Parliamentary debate, 26 June 2013,

[http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/%28\\$VLookupByConstructedKey%29/dail~20130626/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/%28$VLookupByConstructedKey%29/dail~20130626/$File/Daily%20Book%20Unrevised.pdf?openelement).

¹³¹ Houses of the Oireachtas, Written Answers, Answer No. 97, 19 November 2013,

<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2013111900053#WRA03050>.

¹³² Houses of the Oireachtas, Written Answers, Answer No. 97, 19 November 2013,

<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2013111900053#WRA03050>.

terrorism operations.¹³³

At the same session, Ireland explained its vote in favor of Resolution L.32 (see Section 3.2), with the following statement from its representative:

My country believes that the Human Rights Council is an appropriate venue to discuss all issues relating to possible human rights violations, including possible human rights violations resulting from the use of armed remotely piloted aircraft, or drones. [...] These reports have raised a number of issues which we believe would benefit from further analysis and discussion.[...] We look forward to a thorough consideration of all relevant issues during the panel discussion [...].¹³⁴

At the 27th Session of the Human Rights Council (22 September 2014), Ireland made the following statement:

While armed drones as such are not illegal, there is a need to address and investigate possible disproportionate civilian casualties caused by their use. [...] Though drone technology continues to advance, and the use of drones proliferates, we recall the EU position that the established international law framework constitutes an adequate framework for the use of remotely piloted aircraft. [...] There is indeed a need to establish clear international consensus on a number of legal questions. The limitations imposed by international law on the use of lethal force must not be weakened by relaxing interpretations of international legal standards. States must take responsibility for their actions. They must make every effort to avoid civilian casualties, and must take steps to address and investigate harm caused to civilians. States must facilitate prompt, independent and impartial investigations where civilian deaths or injuries are reported. In cases where drone strikes are proven to have been unlawful, access to an effective remedy must be provided. Ireland commends efforts made to date to quantify the use of armed drones, and urges States to be as transparent as possible concerning their use. The release by States of information concerning the extent of use of armed drones, and the numbers and identities of casualties, would constitute a significant step forward in promoting greater accountability. *We would be grateful if the experts could outline further potential best practices on declassifying data, particularly in relation to civilian casualties and the use of drones.*[emphasis in original]¹³⁵

Italy:

Questionnaire Response(s)

The authors received no official response from any Italian ministry or governmental office to the questionnaire.

Government, Media and Other Sources

¹³³ Statement available at:

https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/25thSession/OralStatements/Ireland_ID_22.pdf (username: hrc extranet; password: 1session).

¹³⁴ Human Rights Council—25th Session, Explanation of vote by Ireland on draft resolution L.32 (“Ensuring use of remotely piloted aircraft or Armed Drones in Counter-terrorism & Military Operations in accordance with International Law including International Human Rights and Humanitarian Law”), 28 March 2014, <https://www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/int-priorities/humanrights/Irelands-Explanation-of-Vote-on-the-resolution-on-armed-drones.pdf>.

¹³⁵ Human Rights Council—27th Session, Panel discussion on ensuring use of remotely piloted aircraft or armed drones in counter-terrorism and military operations in accordance with international law, including international human rights and humanitarian law. Statement by Ireland, 22 September 2014, <https://www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/int-priorities/humanrights/Statement-by-ireland-at-panel-discussion-on-use-of-drones.pdf>.

The New America Foundation has reported that Italy has domestic production of unarmed Hammerhead drones (Piaggio Aero Company and Selex ES)¹³⁶ and has imported drones from the US, including the RQ-1B Reaper drone. Reports surfaced in 2012 that the US would sell Hellfire missiles to Italy in an effort to arm the drones,¹³⁷ but as of the date of publication, that has not come to fruition. Defense News reported in December 2014:

The [Italian] 28th Squadron operates six upgraded Predator As, known as A+, and six Reapers — all unarmed, despite Italian efforts to win US approval to arm them. The machines have been flown in the Balkans, Iraq, Afghanistan, Libya and over the Mediterranean where they have been used to spot migrant vessels sailing from [sic] Italy from Africa. A Predator A+ is also flying anti-piracy missions from Djibouti in Africa as part of a European Union mission. As Italy's commitment in Afghanistan winds down, Reapers deployed there are due to return home, while two Predator A+ have been dispatched to Kuwait to assist the effort against Islamic State fighters.¹³⁸

With respect to the recent campaign against the Islamic State, Italy has reportedly contributed two Predator drones with the purpose of helping US and allied manned aircraft in finding and attacking targets and to produce more intelligence for Operation Inherent Resolve.¹³⁹

Italy has contributed to the aforementioned NATO AGS initiative, is a part of the “drone users club”, and is involved in the development of the nEUOn drone. And as explained in the context of France and Germany, on 31 March 2015, the Associated Press reported that Italy plans to work with France and Germany to develop military surveillance drones that also have the capacity to become armed, somewhere between 2020 and 2025.¹⁴⁰ The authors were regrettably unable to locate publicly available statements from Italian officials regarding the legality of drone strikes or the Italian legal position on the use of armed drones.

Latvia:

Questionnaire Response(s)

The authors received no official response from any Latvian ministry or governmental office to the questionnaire.

Government, Media and Other Sources

The New America Foundation reported that Latvia has domestically produced drones from UAV Factory, a private company that manufactures drones that have the capability to capture real-time intelligence.¹⁴¹ No further

¹³⁶ See the following list of states with drones, *New America Foundation*, undated, <http://newamericafoundation.github.io/worldofdrones/source.pdf>.

¹³⁷ A. Entous, “US Plans to Arm Italy’s Drones”, *The Wall Street Journal*, 29 May 2012, <http://www.wsj.com/articles/SB10001424052702303395604577432323658176792>. Despite this reported story, Italy has never received permission from the United States to arm its Reaper drones, a situation deemed by the Italian Secretary of Defense and National Armaments Director “not very acceptable”, see A. Butler, “Italy Looking to Develop Black MALE UAV”, *Aviation Week*, 20 May 2013, <http://aviationweek.com/awin/italy-looking-develop-black-male-uav/>.

¹³⁸ T. Kington, “Italian Reaper Drones To Be Used for Crowd Monitoring”, *Defense News*, 17 December 2014, <http://www.defensenews.com/story/defense/international/europe/2014/12/17/italian-reaper-drones-to-be-used-for-crowd-monitoring/20528495/>.

¹³⁹ R. Whittle, “Drone Dealer: The Case for Selling Armed UAVs”, *The National Interest*, 20 February 2015, <http://nationalinterest.org/feature/drone-dealer-the-case-selling-armed-uavs-12300>. Operation Inherent Resolve is the US military name for the campaign against the Islamic State.

¹⁴⁰ “Germany, France, Italy Plan to Develop Military Drones”, *ABC News*, 31 March 2015, <http://abcnews.go.com/International/wireStory/germany-france-italy-plan-develop-military-drones-30027388>.

¹⁴¹ The UAV Factory Website is available at: <http://www.uavfactory.com>.

information was obtained regarding the ability or desire of Latvia to arm any drone in its arsenal in the future, though Latvia has contributed to the aforementioned NATO AGS initiative. The authors were regrettably unable to locate publicly available statements from Latvian officials regarding the legality of drone strikes or the Latvian legal position on the use of armed drones.

Lithuania:

Questionnaire Response(s)

The authors received no official response from any Lithuanian ministry or governmental office to the questionnaire.

Government, Media and Other Sources

Lithuania has contributed to the aforementioned NATO AGS initiative. The authors were regrettably unable to locate publicly available statements from Lithuanian officials regarding the legality of drone strikes or the Lithuanian legal position on the use of armed drones.

Luxembourg:

Questionnaire Response(s)

The authors received no official response from any Luxembourgish ministry or governmental office to the questionnaire.

Government, Media and Other Sources

No information was obtained about Luxembourg's currently owning any armed drones or its desire to acquire armed drones in the future. Information was obtained, however, about the investment into a military satellite, which will be used by NATO for military missions. Luxembourg's Minister of Defence, Etienne Schneider, confirmed these plans in October 2014, but assured critics within the parliament¹⁴² that the satellite would not be used for navigation of armed drones. The Grand Duchy has commissioned two legal assessments in order to confirm that there would be no state responsibility "in case something like that should happen".¹⁴³ Additionally, Luxembourg is a contributing member to the procurement of the aforementioned NATO AGS initiative. The

¹⁴² "Luxembourg in talks to launch military satellite", *Luxemburger Wort*, 24 July 2014, <http://www.wort.lu/en/politics/nato-luxembourg-in-talks-to-launch-military-satellite-53d0e562b9b398870804a0af>.

¹⁴³ "Ministers approve military satellite plans", *Luxemburger Wort*, 22 October 2014, <http://www.wort.lu/en/politics/defence-spending-ministers-approve-military-satellite-plans-5447c554b9b398870807d826>. Further to the statement made by the Minister, a translation of the Minister's guidance sought is as follows: "In the explanatory memorandum, the authors of the project address the key issue of state responsibility, stressing that 'the future Luxembourg GovSat is for communication purposes and not for piloting drones,' and that the State wants to ensure in the joint venture GovSat that contracts with customers and GovSat users are in conformity with international law and this especially in regards to the control of armed drones. The statement further reads that 'legal opinions were sought on the question of the possible liability of the Luxembourg State if capacity utilization of GovSat provided by satellite to a country or an international organization for the guidance of armed drones in violation of contractual commitment not to use the frequencies made available for armed drones, which cause injury to a third party.' The Council of State notes that such opinions have not been disclosed. It would refer to the obligations of the State of registration of a satellite under the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, assuming that this issue was discussed in the legal opinions expressed in the explanatory memorandum." For the original, French, text, see "Avis du Conseil d'État", No. 50.846, 18 November 2014, http://www.conseil-etat.public.lu/fr/avis/2014/11/50_846/50846.pdf.

authors were regrettably unable to locate publicly available statements from Luxembourgish officials regarding the legality of drone strikes or the legal position of the country on the use of armed drones.

Malta:

Questionnaire Response(s)

The authors received no official response from any Maltese ministry or governmental office to the questionnaire other than from a representative of the Community and Media Relations Unit of the Malta Police that stated: “With reference to your email below, kindly note that armed drones is not within the remit of the Police. You may wish to direct your questions to the Armed Forces of Malta”.

Government, Media and Other Sources

No information was obtained about Malta’s currently owning any armed drones or its desire to acquire armed drones in the future. The authors were regrettably unable to locate publicly available statements from Maltese officials regarding the legality of drone strikes or the Maltese legal position on the use of armed drones.

Netherlands:

Questionnaire Response(s)

The Netherlands Ministry of Foreign Affairs, Security Policy Department, was one of the few countries that filled in the questionnaire and authorised the publication of its responses. Most answers came under the sub-section 3.3, regarding the use of armed drones. The following are the responses from this ministry in the Netherlands.

In response to question 3.3.1 regarding possession of drones, the response was:

The Dutch Ministry of Defence uses Unmanned Aerial Vehicles for intelligence gathering, exploration and monitoring during military operations. At the moment, our armed forces have two types of UAV[s]: the Raven and the Scan Eagle. We are also in the process of purchasing a medium altitude, long endurance UAV. The Netherlands has currently no intention to arm UAVs.

In terms of desirability of transparency (3.3.3), the response was: “Yes, more transparency as regards these aspects is desirable”. The Netherlands has called for more transparency in the use of drones (3.3.4) in various stadia, including within its own parliamentary discussions. An example is the reaction from the Cabinet regarding the Dutch Advisory Committee on Issues of Public International Law’s Advisory Report on Armed Drones,¹⁴⁴ with the Minister of Foreign Affairs commenting about the report: “this underlines once again the importance of the strict observance of the law and transparency with respect to the use of armed drones”.¹⁴⁵ Additionally, the Netherlands also called for more transparency at the UN Human Rights Council debate on drones in September 2014, when the Dutch representative stated: “[The] Netherlands underlined the importance of maximum

¹⁴⁴ See in more detail Subsection 3.3 of this Research Paper.

¹⁴⁵ The original text, in Dutch, is: “Dit onderstreept eens te meer het belang van strikte naleving van het recht en van transparantie over het gebruik van bewapende drones”. Kabinetsreactie op advies nr. 23 van de Commissie van advies inzake volkenrechtelijke vraagstukken (CAVV) over bewapende drones (Tweede Kamer, vergaderjaar 2013-2014, 33 750 X, nr. 4), <http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/kamerstukken/2013/09/27/kabinetsreactie-op-advies-nr-23-van-de-commissie-van-advies-inzake-volkenrechtelijke-vraagstukken-cavv-over-bewapende-drones/kabinetsreactie-op-advies-nr-23-van-de-commissie-van-advies-inzake-volkenrechtelijke-vraagstukken-cavv-over-bewapende-drones.pdf>. For more on the CAVV report, please see Section 3.3 of this Research Paper.

transparency in the use of armed drones, and supported holding an international dialogue to clarify the interplay between human rights and international humanitarian law".¹⁴⁶

In response to questions about accountability mechanisms for unlawful drone strikes or for victims of drone strikes, the response was that "[t]he Netherlands does not own any armed UAVs and has currently no intention to arm UAVs".

In section 4, where the questionnaire asks for additional comments, the ministry official added the following:

1.1 *Ius ad Bellum*

The Netherlands takes the position that armed drones are not prohibited weapons. Therefore the conditions and circumstances under which they may be used are no different than the rules on any other weapon system. If force is used by means of armed drones, the same legal bases exist for the use of force in conformity with *ius ad bellum*. The legal basis and mandate for missions involving Dutch military units is described in a memorandum to the House of Representatives in 2007.¹⁴⁷ This memorandum outlines as legal bases; self-defence, a UN Security Council mandate and consent by the state where force is used.

1.2 Self-defence and consent

The Netherlands holds that self-defence under article 51 UN Charter can provide a legal basis to use force in case of an (imminent) armed attack.¹⁴⁸ The Caroline-criteria provide a useful instrument in order to assess whether an attack is imminent. From this it follows that general, non-specific, threats by terrorist organisations cannot be classified as an imminent attack. Under specific circumstances it is possible that force is used in self-defence against autonomous non-state actors.¹⁴⁹ This does not require attribution to a third state but a determining factor in such cases is whether or not a state is willing and/or able to respond to attacks by NSA[s] [i.e. Non-State Actors] from its territory.¹⁵⁰ With respect to consent the Netherlands endorses the conclusion of the Advisory Committee on Issues of Public International Law (CAVV) that valid consent for the use of force by third states on its territory must be given by the territorial state. The CAVV provides a number of criteria for assessing whether such consent is validly given. The committee refers to the requirements laid down in the Articles on the Responsibility of States for Internationally Wrongful [A]cts and the 1969 Vienna [C]onvention on the Law of Treaties. However, uncertainty may still arise; whether or not legally valid consent has been given by the territorial state can only be determined in specific instances when all the relevant facts have been taken into account. Moreover consent is typically, and primar[il]y, a bilateral matter. It must be noted that specific information is not always available as consent may be tacit and there is no requirement that it is made public. Consent may not be presumed and it must be given explicitly by the competent authorities.¹⁵¹ The Netherlands endorses the view expressed by the Advisory

¹⁴⁶ United Nations Office at Geneva, "Human Rights Council holds panel on remotely piloted aircraft or armed drones in counterterrorism and military options", 22 September 2014, http://www.unog.ch/unog/website/news_media.nsf/%28httpNewsByYear_en%29/BCE56ED914A46D40C1257D5B0038393F?OpenDocument.

¹⁴⁷ Source provided by respondent: Parliamentary Paper 29 521, No.41.

¹⁴⁸ Source provided by respondent: Parliamentary Paper 29 800 V, No.56. (reactie op CAVV advies over preëemptief optreden)

¹⁴⁹ Source provided by respondent: Parliamentary Paper 29 800 V, No.56. (reactie op CAVV advies over preëemptief optreden)

¹⁵⁰ Source provided by respondent: Parliamentary Paper 27 925, No.506.

¹⁵¹ Source provided by respondent: Parliamentary Paper 30 806, No.24.

Committee on Issues of Public International Law (CAVV) that there is no reason to consider the existing international legal framework inadequate to regulate the use of armed drones.¹⁵²

2.1 The law and boundaries of the battlefield and Human Rights Law

As indicated above the Netherlands holds that the same legal regimes are applicable to the use of armed drones as to any other weapon system. Thus in situations of armed conflict international humanitarian law (IHL) is applicable. In certain instances international human rights law (IHRL) can play a role but there is still uncertainty as to which norm has primacy when both IHL and IHRL norms are applicable. In the Netherlands' view this will depend on which provision relates more specifically to the particular case. Outside situations of armed conflict IHRL is the relevant framework. The question of extraterritorial application of IHRL is one that is not completely crystallised. In principle the assessment of whether or not a situation can be qualified as an armed conflict has to be made on the basis of the facts and circumstances of the case. In the case of a non-international armed conflict for such an assessment the level of organisation of NSA[s] and the intensity and duration of the fighting have to be taken into account.¹⁵³ In this context the Netherlands does not consider it possible that a non-international armed conflict (NIAC) can exist without finite geographical boundaries. The questionnaire mentions a statement by Dworkin; "European and US officials might be able to agree that the deliberate killing of terrorist suspects outside zones of conventional hostilities is only permissible when they pose a serious and imminent threat to innocent life that cannot be deflected in any less harmful way". The position of the Netherlands is that in a situation where only IHRL is applicable, deadly use of force is only permissible when the person forms a direct, serious threat to the lives of others and there is no alternative available.¹⁵⁴ This issue also relates to the matter of direct participation in hostilities (DPH) by civilians. Civilians who are directly participating in hostilities (DPH) but are located in a non-belligerent state can in principle only be treated in accordance with IHRL. The Netherlands broadly supports the outcomes of the ICRC study on direct participation in hostilities (DPH). With regard to the customary international law status of that study the Netherlands has no complete overview of state practice such as to be able to conclude that the study is part of customary international law. The same is true for the customary law status of ICRC's test of 'continuous combat function'. Providing material support such as housing, funding etc. is not considered by the Netherlands as constituting direct participation in hostilities. As to the question of capturing legitimate targets, the Netherlands holds that in a NIAC there is no obligation as such to capture legitimate targets. However, in practice it is sound policy to consider capturing targets if the circumstances allow for it. The legitimacy of the current use of drones is not easily evaluated in general. Whether or not the use of armed drones is in conformity with international law has to be appraised on a case-by-case basis, considering all the facts and circumstances of the case. Often, third states do not possess this information. Therefore, the fact that states do not pronounce themselves on the current use of drones cannot be interpreted as implicit consent as to the current use of drones.

¹⁵² Source provided by respondent: Parliamentary Paper 33 750 X, No.4. (reactie op CAVV advies over drones)

¹⁵³ Source provided by respondent: Parliamentary Paper 32 735, no.99. (Mensenrechten in het buitenlands beleid)

¹⁵⁴ Source provided by respondent: Parliamentary Paper 32 735, no.99. (Mensenrechten in het buitenlands beleid)

Government, Media and Other Sources

In addition to the answers provided by the Ministry of Foreign Affairs, the following information was obtained about the Netherlands and its position regarding armed drones.

On 16 July 2013, the Dutch Advisory Committee on Issues of Public International Law (*Commissie van Advies Inzake Volkenrechtelijke Vraagstukken* or CAVV), an independent body that advises the government, the House of Representatives and the Senate of the Netherlands on international law issues, published its advisory report no. 23 on armed drones.¹⁵⁵ This report will be covered in more detail in Section 3.3 of this Research Paper. On 27 September 2013, former Foreign Affairs Minister Frans Timmermans and Defence Minister Jeanine Hennis-Plasschaert sent a joint letter to Parliament, responding to the CAVV's advisory report on armed drones.¹⁵⁶ In it, the Cabinet endorsed the report and noted that

it shares the conclusion that there is no reason to assume that the existing international legal framework is inadequate to properly regulate the use of armed drones. It is about respecting the current rules. [...] It is not expected that armed drones will disappear from the scene. It is rather likely that more countries will proceed with their purchase or development. This underlines once again the importance of the strict observance of the law and transparency with respect to the use of armed drones. In this regard, the government welcomes the recent proposal by the United States to be more transparent about the use of drones.

It was (only) with respect to the interaction between international humanitarian law and international human rights law – when both are applicable – that the Dutch Cabinet offered a different view than the CAVV:

[a]ccording to the CAVV, IHL prevails over other applicable legal regimes wherever their provisions conflict, as IHL is specifically designed for the conduct of hostilities and thus forms the “lex specialis”. The cabinet is of the opinion that in such [a] case, it is determining which provision relates more specifically to the particular case. In certain circumstances, this could also be a provision from another legal regime than IHL.¹⁵⁷

Later that year, on 5 November 2013, Timmermans spoke about the government's position in response to an

¹⁵⁵ Commissie van Advies Inzake Volkenrechtelijke Vraagstukken, *Advies Inzake Bewapende Drones*, 16 July 2013, http://cms.webbeat.net/ContentSuite/upload/cav/doc/CAVV_ADVIES_BEWAPENDE_DRONES%281%29.pdf. The English translation of this report is available at: http://cms.webbeat.net/ContentSuite/upload/cav/doc/CAVV_advisory_report_on_armed_drones_%28English_translation_-_final%29_%282%29.pdf and the main conclusions are available at:

http://cms.webbeat.net/ContentSuite/upload/cav/doc/Main_conclusions_of_CAVV_advice_on_armed_drones%281%29.pdf. For more in-depth information on the CAVV report, please see Section 3.3 of this Research Paper.

¹⁵⁶ Kabinetsreactie op advies nr. 23 van de Commissie van advies inzake volkenrechtelijke vraagstukken (CAVV) over bewapende drones (Tweede Kamer, vergaderjaar 2013-2014, 33 750 X, nr. 4), <http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/kamerstukken/2013/09/27/kabinetsreactie-op-advies-nr-23-van-de-commissie-van-advies-inzake-volkenrechtelijke-vraagstukken-cavv-over-bewapende-drones/kabinetsreactie-op-advies-nr-23-van-de-commissie-van-advies-inzake-volkenrechtelijke-vraagstukken-cavv-over-bewapende-drones.pdf>.

¹⁵⁷ The original text, in Dutch, is: “Volgens de CAVV heeft het HOR voorrang op bepalingen uit andere toepasselijke rechtsregimes voor zover er strijdigheid is tussen onderlinge bepalingen, omdat het HOR specifiek is ontworpen voor het voeren van vijandelijkheden en daarom de “lex specialis” vormt. Het Kabinet is van mening dat in een dergelijk geval bepalend is welke bepaling meer is toegespitst op de betreffende casus. In bepaalde omstandigheden kan dit ook een bepaling uit een ander rechtsregime dan het HOR zijn.” Kabinetsreactie op advies nr. 23 van de Commissie van advies inzake volkenrechtelijke vraagstukken (CAVV) over bewapende drones (Tweede Kamer, vergaderjaar 2013-2014, 33 750 X, nr. 4), <http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/kamerstukken/2013/09/27/kabinetsreactie-op-advies-nr-23-van-de-commissie-van-advies-inzake-volkenrechtelijke-vraagstukken-cavv-over-bewapende-drones/kabinetsreactie-op-advies-nr-23-van-de-commissie-van-advies-inzake-volkenrechtelijke-vraagstukken-cavv-over-bewapende-drones.pdf>.

Amnesty International report on a particular US drone strike in Yemen in June 2009. He stated that

this case described by Amnesty International underlines the importance of transparency over the use of violence, including by drones. The government believes that, where evidence of wrongful acts exists, authorities are responsible for thorough further investigation of the specific facts and circumstances, and depending on the outcome, to take relevant measures.¹⁵⁸

The Ministry of Foreign Affairs also organised a roundtable discussion on the use of armed drones in January 2014. Following this meeting, Timmermans released a report.¹⁵⁹ Some of the main conclusions were that the Netherlands, with The Hague as the legal capital of the world, has a special role in this process and the Cabinet would like to have an open debate in the international context about how the current rules could be better applied, for example in the context of NATO or in the UN.¹⁶⁰ Timmermans considered it also possible that countries have interpreted the rules since 9/11 too expansively in order to protect their own citizens.¹⁶¹

Nevertheless, it was also stressed, this time by Hennis-Plasschaert, that “[w]hether in a particular case the requirements associated with the exercise of that right [of self-defense] are met cannot be judged by the government. Such an assessment requires specific, factual information about the relevant attack”.¹⁶²

In a parliamentary hearing on armed drones on 23 April 2014, Timmermans referred to the specific problem of drones and admitted, seemingly in contrast to the official Cabinet position, that he still had some doubts as regards the conclusion of the CAVV that this new phenomenon, applied in this new form of conflict, fits within the borders of international law.¹⁶³ He therefore stated:

I want to continue talking about this topic and I want the legal advisers of the Ministers of Foreign Affairs and other ministries like Defense, to talk about it as much as possible[...]. I also want to discuss it in the international context, to see how the issue is seen by other countries.¹⁶⁴

In this context, he underlined:

We are trying to map the fora – among allies or at the UN – that provide opportunities to bring this discussion further. We are now in the exploratory stage. I do not even have an overview of the number of countries that are interested in this. I also don’t know which aspects of the problem will raise their interest. I have stated that from the Dutch perspective these aspects are especially the international legal [...] aspects. [...] I want to assess how many other countries find it useful to bring the discussion forward and which forum is fitting in that respect.¹⁶⁵

Timmermans considered the UN as a suitable forum for the discussion and that the Netherlands would actively

¹⁵⁸ Tweede Kamer der Staten-Generaal, Vergaderjaar 2013-2014, 32 735, “Mensenrechten in het buitenlands beleid”, nr. 99, “Brief van de Minister van Buitenlandse Zaken”, 5 November 2013, <https://zoek.officielebekendmakingen.nl/kst-32735-99.pdf>, p. 2.

¹⁵⁹ Tweede Kamer der Staten-Generaal, Vergaderjaar 2013-2014, 30 806, “Onbemande vliegtuigen (UAV)”, nr. 19, “Brief van de Minister van Buitenlandse Zaken”, 12 February 2014, <https://zoek.officielebekendmakingen.nl/kst-30806-19.pdf>. Author J. Dorsey participated in the roundtable on behalf of the T.M.C. Asser Instituut.

¹⁶⁰ *Ibid.*, p. 4.

¹⁶¹ *Ibid.*

¹⁶² See Ministerie van Defensie, “Antwoorden op vragen over het bericht dat Nederlandse data mogelijk zijn gebruikt bij drone-aanvallen”, 8 April 2014, <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2014/04/08/beantwoording-kamervragen-over-gebruik-nederlandse-data-bij-drone-aanvallen.html>.

¹⁶³ Tweede Kamer der Staten-Generaal, Vergaderjaar 2013-2014, 30 806, “Onbemande vliegtuigen (UAV)”, nr. 24, “Verslag van een algemeen overleg”, 17 July 2014, <https://zoek.officielebekendmakingen.nl/kst-30806-24.pdf>, p. 21.

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*, p. 23.

participate, but expressed doubts that the UN General Assembly would be a suitable forum due to its politicised nature.¹⁶⁶ Regarding NATO and the EU, and responding to, *inter alia*, Member of Parliament Servaes, who had explicitly referred to the European Parliament's resolution calling for an EU Common Position on the use of armed drones,¹⁶⁷ and Member of Parliament Van Ojik, who had reminded the Foreign Minister about the promise of the Cabinet in respect to motion Klaver/Segers (21 501-20, nr. 828) to discuss these matters in the EU context,¹⁶⁸ Timmermans considered the NATO forum more appropriate.¹⁶⁹ He noted that he would not object to discussing it in the EU context, but that he was not sure whether this would be enticing to his colleagues.¹⁷⁰ Maybe it would be better suited for the context of the Common Foreign and Security Policy.¹⁷¹ According to him, the issue of armed drones involves two aspects:

The use in armed conflict and the deployment outside a war situation. The second question is also suitable for a discussion in the EU context. The first question is of course more difficult in the EU context. [...] On the first issue, a number of EU countries will quickly say: this is not the EU's competence, this belongs to NATO.¹⁷²

In the context of NATO, Timmermans explained that he could try to discuss with a few other Foreign Ministers whether the international legal aspects of the use of armed drones could also be discussed in a NATO framework.¹⁷³ Timmermans mentioned that there already is a small group of countries interested in the topic, including the US.¹⁷⁴

Nevertheless, even though Timmermans was of the opinion that NATO would be the most suitable forum, he admitted that parliament had asked the Cabinet to discuss, within the EU, the development of both ethical and legal norms, and that he would commit to that.¹⁷⁵

On the substance, on the question regarding the alleged illegality of targeted killings, Timmermans explained

In human rights situations in which there is no situation of war, targeted killings are only allowed in the most exceptional situations. Information about the threat should be very eminent¹⁷⁶ and accompanied by the risk of very serious violence. That is the only justification for deployment in non-war situations. Only then can it be considered proportionate and necessary.¹⁷⁷

However, he also explained that the government would not respond to the question whether attacks are illegal for the simple reason that the government does not have the information at its disposal to do so.¹⁷⁸ According to Timmermans, one needs factual information, such as which precautionary measures were taken to prevent

¹⁶⁶ *Ibid.*, p. 22.

¹⁶⁷ *Ibid.*, p. 7.

¹⁶⁸ *Ibid.*, p. 13.

¹⁶⁹ *Ibid.*, p. 22.

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*, p. 26.

¹⁷³ *Ibid.*, p. 22.

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*, p. 26.

¹⁷⁶ Although the original Dutch text speaks of "eminent" and although information could, with some imagination, be seen as "eminent" (in the sense of outstanding/of high quality), the remainder of the sentence shows that this is probably an error in the minute taking, as information cannot be accompanied by the risk of very serious violence. What is probably meant here is the following: "The threat should be very imminent and accompanied by the risk of very serious violence".

¹⁷⁷ Tweede Kamer der Staten-Generaal, Vergaderjaar 2013-2014, 30 806, "Onbemande vliegtuigen (UAV)", nr. 24, "Verslag van een algemeen overleg", 17 July 2014, <https://zoek.officielebekendmakingen.nl/kst-30806-24.pdf>, p. 25.

¹⁷⁸ *Ibid.*

civilian casualties, which third countries often do not have. This was the reason why third-country governments must be cautious to draw conclusions.¹⁷⁹ However, he shared the wish of the MPs to have maximum transparency on this topic, which was indeed the objective.¹⁸⁰ And as mentioned during the aforementioned round-table, he stated he would use all relevant fora for that and take initiatives himself as well, and noted that the Netherlands, in his opinion, could actually play a leading role in this process.¹⁸¹

On this topic, Hennis-Plasschaert also remarked that if a foreign partner demonstrably carried out illegal targeted killings, in which process Dutch information was used, then this would lead to a reassessment of the question whether such information is to be shared with that partner.¹⁸²

The current Foreign Affairs Minister, Bert Koenders, though known as rather progressive, has yet to make any substantive statements on armed drones and it is not clear whether he will continue the strategy begun by Timmermans, who has been serving since 1 November 2014 as the First Vice President of the European Commission.

More recently, on 6 February 2015, the Netherlands reportedly gained approval from the US State Department for the purchase of four MQ-9 Reaper drones and associated equipment.¹⁸³ There is a lack of clarification on whether there are plans to arm the Reapers in the future as Hennis-Plasschaert told the Dutch Parliament in November 2014 that she was not opposed to armed drones, but that in the case she wanted to arm them, she would inform the Parliament.¹⁸⁴ The Defence Minister has made statements in the past that there are no plans to arm the drones purchased for at least the next fifteen years, though she also mentioned that this is not set in stone.¹⁸⁵

On 5 March 2015, Hennis-Plasschaert responded to questions posed by a member of the Dutch Parliament in February 2015 (asked to gain clarification on issues related to the possible weaponisation of the MQ-9 Reapers, as well as the reason for purchasing additional equipment from the US [specifically the Multi-Spectral Targeting System, MTS-B],¹⁸⁶ which would allow for the armament of the Reapers, and finally, the question regarding whether Dutch military trained by the US would be at all involved in the targeted killings program of the US),¹⁸⁷ saying that the fact that the standard configuration of the Reaper contains an MTS-B with all its functionalities does not do away with the fact that the Dutch need is not related to the MALE-UAV as a weapons carrier. Once again she reiterated that if that need were to change in the future, she would inform the parliament accordingly.¹⁸⁸ She also ruled out that the Dutch military would be involved in the deployment of arms during their training.¹⁸⁹

Finally, it should be mentioned that the Netherlands is also part of the aforementioned drone user's club.

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*, p. 36.

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*, p. 29.

¹⁸³ Defense Security Cooperation Agency, News Release, "The Netherlands—MQ-9 Reapers", 6 February 2015, http://www.dsca.mil/sites/default/files/mas/netherlands_14-55.pdf.

¹⁸⁴ "Hennis geen tegenstander van bewapende drone en nieuwe onderzeeërs", *Trouw*, 3 November 2014, <http://www.trouw.nl/tr/nl/4492/Nederland/article/detail/3781875/2014/11/03/Hennis-geen-tegenstander-van-bewapende-drone-en-nieuwe-onderzeeërs.dhtml>.

¹⁸⁵ Tweede Kamer der Staten-Generaal, Vergaderjaar 2013-2014, 30 806, "Onbemande vliegtuigen (UAV)", nr. 24, "Verslag van een algemeen overleg", 17 July 2014, <https://zoek.officielebekendmakingen.nl/kst-30806-24.pdf>, pp. 28-29.

¹⁸⁶ According to manufacturer Raytheon, "[t]he MTS-B provides superior detecting, ranging, and tracking for the U.S. Air Force Predator B and for today's military forces worldwide. Using state-of-the-art digital architecture, this advanced system provides long-range surveillance, high-altitude target acquisition, tracking, rangefinding, and laser designation for the HELLFIRE missile and for all tri-service and NATO laser-guided munitions", http://www.raytheon.com/capabilities/products/mts_b/.

¹⁸⁷ Tweede Kamer der Staten-Generaal, Vergaderjaar 2014-2015, 2015Z02672, "Vragen van het lid Jasper van Dijk (SP) aan de Minister van Defensie over de mogelijke bewapening van Nederlandse onbemande vliegtuigen (drones) (ingezonden 13 februari 2015)", <http://www.tweedekamer.nl/downloads/document?id=a9a085ad-835e-4428-a9dc-269f51637e08&title=De%20mogelijke%20bewapening%20van%20Nederlandse%20onbemande%20vliegtuigen%20%28drones%29.pdf>.

¹⁸⁸ AH 1476, 2015Z02672, "Antwoord van minister Hennis – Plasschaert (Defensie) (ontvangen 6 maart 2015)", <https://zoek.officielebekendmakingen.nl/ah-472656.pdf>, p. 1.

¹⁸⁹ *Ibid.*, p. 2.

Poland:*Questionnaire Response(s)*

The authors did not receive a completed questionnaire from any of the Polish ministries or governmental offices to which it was submitted. However, the authors did receive one response from a Senior Specialist in the Polish Ministry of Defence:

It is of note that the subject of drones has recently gained more importance in the Polish Armed Forces (PAF) as one of the key elements of building our military might by enhancing our Joint Intelligence Surveillance and Reconnaissance (JISR) capability. This however, refers only to unarmed drones, which, as such, are going to be at the PAF's disposal in near future. At present PAF is not equipped with armed drones and therefore it does not have a concept of their combat use.¹⁹⁰

The authors followed-up with the official in light of the reported news in November 2014 that Poland would be acquiring armed drones amid the Ukraine crisis,¹⁹¹ but the official did not respond to repeated attempts at contact.

Government, Media and Other Sources

According to the New America Foundation, Poland domestically produces drones, as well as imports models from the US and Israel.¹⁹² In August 2012, Israel Defense reported that Poland will replace older models of fighter jets with armed drones as soon as 2014, to be fully operational in 2018.¹⁹³ In February 2014, reports surfaced of the capability of the Polish-produced Manta drone to be increased to carry weapons systems, though officials did not want to comment on the sensitive nature of arming the drone systems.¹⁹⁴ In the Committee on Legal Affairs and Human Rights' hearing on "Drones and targeted killings: the need to uphold human rights", at the Parliamentary Assembly of the Council of Europe, Ms. Irmina Pacho, Head of Strategic Litigation Program at the Polish Helsinki Foundation for Human Rights, noted that

Poland intended to spend, until 2022, 2.5 billion Polish zloty [almost 600 million euro] on the development of unmanned technology for the army, including both reconnaissance and combat drones, although information regarding precise numbers of drones was classified.¹⁹⁵

Because of the recent escalation of the Ukraine crisis, plans to purchase armed drones have been accelerated and may be fully operational by 2016.¹⁹⁶ Poland is also a part of the aforementioned drone user's club. The authors

¹⁹⁰ E-mail response from a representative of the Polish Ministry of Defense, 30 January 2015, on file with authors.

¹⁹¹ "Poland to Buy Armed Drones Amid Ukraine Crisis", *Defense News*, 4 November 2014, <http://mobile.defensenews.com/article/311040030>.

¹⁹² See the following list of states with drones, *New America Foundation*, undated, <http://newamericafoundation.github.io/worldofdrones/source.pdf>.

¹⁹³ "Will the real UAV revolution begin in Poland?", *Israel Defense*, 27 August 2012, <http://www.israeldefense.co.il/en/content/will-real-uav-revolution-begin-poland>.

¹⁹⁴ Z. Lentowicz, "Polskie drony nad Europą", *Ekonomia*, 7 February 2014, <http://www.ekonomia.rp.pl/artykul/1085039.html>. See also Z. Lentowicz, "Polskie firmy chcą zbudować uzbrojone drony", *Ekonomia*, 26 August 2013, <http://www.ekonomia.rp.pl/artykul/1042119.html>.

¹⁹⁵ Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights, Declassified Minutes of the hearing on "Drones and targeted killings: the need to uphold human rights", held in Strasbourg (Palais de l'Europe) on 30 September 2014 (on file with authors), p. 2.

were regrettably unable to locate publicly available statements from Polish officials regarding the legality of drone strikes or the Polish legal position on the use of armed drones.

Portugal:

Questionnaire Response(s)

The authors received no official response from any Portuguese ministry or governmental office to the questionnaire.

Government, Media and Other Sources

The New America Foundation reported that Portugal has domestic production of reconnaissance drones.¹⁹⁷ The only information regarding the legal aspects of armed drones the authors were able to locate was a statement by the Ambassador Extraordinary and Plenipotentiary to the UN, at the 69th Session of the UN General Assembly, in its General Debate of the First Committee in October 2014, wherein the Ambassador stated:

In the field of technologically advanced new weapons as armed drones and fully autonomous lethal weapons, Portugal is in favour of enhancing international discussions on ways to better address its regulation, particularly in light of international, human rights and humanitarian law requirements.¹⁹⁸

The authors were regrettably unable to locate additional publicly available statements from Portuguese officials regarding the legality of drone strikes or the Portuguese legal position on the use of armed drones.

Romania:

Questionnaire Response(s)

The authors received no official response from any Romanian ministry or governmental office to the questionnaire.

Government, Media and Other Sources

Romania is a contributing member to the procurement of the aforementioned NATO AGS initiative. Additionally, the New America Foundation reported that Romania has domestic production of drones as well as imported Scan Eagle reconnaissance drones from the US.¹⁹⁹ The authors were regrettably unable to locate publicly available statements from Romanian officials regarding the legality of drone strikes or the Romanian legal position on the use of armed drones.

¹⁹⁶ "Drony bojowe w Polsce już w 2016 roku", *Wyborcza.pl*, 29 April 2014,

http://wyborcza.pl/1,75478,15881244,Drony_bojowe_w_Polsce_juz_w_2016_roku.html. See also: M. Hola, "Polska przyspieszy zakup uzbrojonych dronów klasy MALE", *Zwojska*, 29 April 2014, <http://zwojska.pl/846/zakup-uzbrojonych-dronow-klasy-male/>.

¹⁹⁷ See the UA Vision Aeronautics website, <http://www.uavision.com/#!about2/c4nz>.

¹⁹⁸ Portugal, United Nations General Assembly, 69th Session, Statement by H.E. Mr. Alvaro Mendonça e Moura, Ambassador Extraordinary and Plenipotentiary, Permanent Representative, General Debate of The First Committee, 14 October 2014, <https://papersmart.unmeetings.org/media2/4653007/portugal.pdf>.

¹⁹⁹ "Ce drone mai are Armata Romana?!", *Romania Military*, 4 January 2015, <http://www.rumaniamilitary.ro/ce-drone-mai-are-armata-romana>.

Slovakia:*Questionnaire Response(s)*

The authors received no official response from any Slovakian ministry or governmental office to the questionnaire.

Government, Media and Other Sources

No information was obtained about Slovakia's currently owning any armed drones or its desire to acquire armed drones in the future, though it is a contributing member to the procurement of the aforementioned NATO AGS initiative. The authors were regrettably unable to locate publicly available statements from Slovakian officials regarding the legality of drone strikes or the Slovakian legal position on the use of armed drones.

Slovenia:*Questionnaire Response(s)*

The authors received no official response from any Slovenian ministry or governmental office to the questionnaire.

Government, Media and Other Sources

No information was obtained about Slovenia's currently owning any armed drones or its desire to acquire armed drones in the future, though it is a contributing member to the procurement of the aforementioned NATO AGS initiative. The authors were regrettably unable to locate publicly available statements from Slovenian officials regarding the legality of drone strikes or the Slovenian legal position on the use of armed drones.

Spain:*Questionnaire Response(s)*

The authors received no official response from any Spanish ministry or governmental office to the questionnaire.

Government, Media and Other Sources

Spain has its own domestic production of drones, and has joined the consortium with France, Greece, Italy, Switzerland and Sweden to build the nEUROn drone.²⁰⁰ Additionally, Spain is a partner in the "drone users club", along with France, Germany, Poland, the Netherlands, Italy and Greece, to compete against the US for drone development.²⁰¹ The authors were regrettably unable to locate publicly available statements from Spanish officials regarding the legality of drone strikes or the Spanish legal position on the use of armed drones.

²⁰⁰ P. Bergen and J. Rowland, "Nine facts on armed drones", *CNN*, 13 May 2014, <http://edition.cnn.com/2014/05/13/opinion/bergen-nine-facts-spread-of-armed-drones/>.

²⁰¹ J.-Th. Dahlburg, "Europeans form 'drone club' to compete with U.S.", *USA Today*, 19 November 2013, <http://www.usatoday.com/story/news/world/2013/11/19/europe-drones/3640273/>.

Sweden:*Questionnaire Response(s)*

The authors received no official response from any Swedish ministry or governmental office to the questionnaire.

Government, Media and Other Sources

Sweden has its own domestic production of drones (for example, the Skeldar UAV from manufacturer Saab), and Saab plans to break into medium altitude, long endurance manufacturing.²⁰² Additionally, Sweden has reportedly provided drones technology to Vietnam for development in the Southeast Asian country.²⁰³ Sweden has also made available a large swath of its land in the North European Aerospace Test Range, an area of 24,000 square kilometers used to test out aircraft and train personnel on application of new aerospace technology, such as drones.²⁰⁴ There is no evidence as of this writing that Sweden is planning to purchase or procure its own armed drone outside of its collaborative efforts in developing the European nEUROn drone.

On 14 June 2013, then Foreign Minister Carl Bildt stated in an answer to a parliamentary question from Valter Mutz that there is no need for a new legal framework to regulate armed drones:

The international law on the use of force and international humanitarian law are applicable as well as the rules of human rights. There is therefore no public legal vacuum with regard to the use of drones. If there is an armed conflict the laws of war apply. All weapons, including drones, shall be used in accordance with the international humanitarian law principles of distinction, proportionality and precaution. If a drone attack - or an attack with any other weapon - does not take place in the context of an armed conflict, the laws of war do not apply. States' ability to lawfully use force against individuals is thus sharply curtailed. The premise is that a suspect must be arrested and brought to justice in accordance with the procedural safeguards applicable under Human Rights Law. Attacks that take place without the permission of the state where the attack takes place may constitute an unlawful use of force and are therefore contrary to the UN Charter.²⁰⁵

To a follow-up question on possible international regulations, Bildt replied:

So far it is my fundamental belief that we do not need new regulations. On the contrary, it would risk weakening the existing regulations if we opened up the discussion. [...] The answer is no, do not open up to any alteration of the law or rules of war but be very vigilant when it comes to how they are used, how they are applied and strictly follow and participate in the international debate on this.²⁰⁶

²⁰² Saab Group, Airborne Solutions website, <http://www.saabgroup.com/en/Air/Airborne-Solutions/?tab=62>.

²⁰³ See the following list of states with drones, *New America Foundation*, undated, <http://newamericafoundation.github.io/worldofdrones/source.pdf>.

²⁰⁴ Epicos, North European Aerospace Test Range (NEAT), General Information, <http://www.epicos.com/EPCompanyProfileWeb/GeneralInformation.aspx?id=19197>. The website notes that the "marketing name NEAT is not used any longer, and instead Vidsel Test Range is used." More information is located on the Vidsel website, <http://www.vidseltestrange.com/>.

²⁰⁵ Answer available at: <http://www.riksdagen.se/sv/Debatter--beslut/Interpellationsdebatter1/Debatt/?did=H010477>.

²⁰⁶ *Ibid.*

With respect to drone strikes carried out specifically by the US, Bildt slightly changed position over time. On 13 February 2013, Bildt explained that he does not see a problem with the use of armed drones by the US

because we do not have complete knowledge. What we are familiar with are the efforts made against the terrorists who have been participating in acts of violence against the United States and other countries. And then we find ourselves on legally approved ground. When it goes beyond that it can be start to become questionable in relation to the existing laws of war.²⁰⁷

Bildt answered a question asked by Member of Parliament Anna-Lena Sörenson, related to US drone strikes in Pakistan, Yemen and Somalia. He underlined that

in the case of Pakistan, it is primarily a matter between the Pakistani government and the US, and they have to determine this. I assume that in one way or another there is an ongoing dialogue between the Government of Pakistan and the US on the various actions that take place.²⁰⁸

However, later, on 14 June 2013, Bildt changed his tone slightly, raising some concerns:

The US has no right to conduct operations over or on Pakistani territory that do not, in some way, have an approval from the relevant, appropriate and lawful Pakistani authorities...Have we raised concerns? Yes, we have been very concerned...The use of drones is subject to a growing debate in the USA. From the Swedish side, we follow the debate. The question of the use of drones is continuously discussed in the context of the Legal Counsel dialogue between the EU and the USA. In this dialogue a number of questions regarding the use of drones have been raised. This has been reported by the European Union's High Representative for Foreign Affairs and Security Policy, Catherine Ashton, in the European Parliament.²⁰⁹

The United Kingdom:

Questionnaire Response(s)

The authors received no official response from any British ministry or governmental office to the questionnaire, though the authors were in direct contact with the Foreign and Commonwealth Office with respect to the Bulletin that outlines the UK position on armed drones below.

Government, Media and Other Sources

The UK is the only EU Member State that currently has armed drones. It has underlined the need to avoid civilian casualties, as Prime Minister David Cameron did in an answer to a letter from Human Rights Watch UK.²¹⁰ In his response from 29 August 2012, Cameron urged those carrying out drone strikes "to act in accordance with international law" and to take "all feasible precautions to avoid civilian casualties". However, he avoided any

²⁰⁷ E. Stenberg, "Carl Bildt skeptisk till särskilda drönarregler", *Dagens Nyheter*, 13 February 2012, <http://www.dn.se/nyheter/sverige/carl-bildt-skeptisk-till-sarskilda-dronarregler/>.

²⁰⁸ Parliamentary protocol, http://www.riksdagen.se/sv/Dokument-Lagar/Kammaren/Protokoll/Riksdagens-protokoll-2012139_H00994/.

²⁰⁹ Parliamentary interpellation, <http://www.riksdagen.se/sv/Debatter--beslut/Interpellationsdebatter1/Debatt/?did=H010477>.

²¹⁰ D. Mepham, "Letter to UK Prime Minister, David Cameron on Targetted Killings", *Human Rights Watch*, 16 July 2012, <http://www.hrw.org/node/110231>.

direct criticism of the US and underlined that “the use of UAV against terrorist targets is a matter of States involved”.²¹¹

There was significant criticism on the lack of transparency of the British drone use, and in response, Philip Hammond, then Defence Secretary and current Foreign Secretary, defended the British drone policy. In his article in *The Guardian* from 18 December 2013, he stated:

One other favourite of the “drone” activists is the suggestion that the government’s use of unmanned and remotely piloted aircraft is shrouded in secrecy. Of course we have to safeguard information relating to our targeting and intelligence capabilities, but that applies across the board. The MoD is just as open about its use of unmanned aircraft as it is of its many other air assets.²¹²

Since 2013, the government has been trying to promote Britain’s use of armed drones in an attempt to gain broader public acceptance through greater communication and transparency on the British drone use. In this vein, the government affirmed that:

The Department intends to continue communicating with the public, the media and Parliamentarians on Unmanned or Remotely Piloted Aircraft Systems in the future, and promote a better understanding of what we do and why we do it. This will include information on operational activities where it is operationally secure to do so.²¹³

For the purpose of increasing transparency, the British government opened the air force base RAF Waddington to journalists in December 2013 to view the Reaper control center.²¹⁴ According to reports, the aim was to “subtly [point] out the differences between our approach to drones and that of our American allies”.²¹⁵ For the same reason, the UK government rejects the use of the negatively connoted term “drone” and consequently refers to this platform as “remotely piloted aircraft system” (RPAS).²¹⁶

On 30 January 2014, and with regard to counter-terrorism in Yemen, the then Minister of State Hugh Robertson replied to a question by Member of Parliament Tom Watson, that “drone strikes against terrorist targets in Yemen are a matter for the Yemeni and US Governments. We expect all concerned to act in accordance with international law and take all feasible precautions to avoid civilian casualties when conducting operations”.²¹⁷

In the context of the UN Human Rights Council, and with regard to the reports of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, the former Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office Baroness Warsi stated on 12 March 2014 that “[w]e welcome

²¹¹ Ch. Woods, “PM Cameron’s letter to HRW (UK) director Mepham”, *The Bureau of Investigative Journalism*, 20 September 2012, <http://www.thebureauinvestigates.com/2012/09/21/british-pm-cameron-we-expect-drone-strikes-to-avoid-civilian-casualties/minicam3/>.

²¹² Ph. Hammond, “In defence of drones”, *The Guardian*, 18 December 2013, <http://www.theguardian.com/commentisfree/2013/dec/18/in-defence-of-drones-keep-civilians-troops-safe>.

²¹³ House of Commons, Defence Committee, “Remote Control: Remotely Piloted Air Systems – current and future UK use: Government Response to the Committee’s Tenth Report of Session 2013–14”, <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmdfence/611/611.pdf>.

²¹⁴ O. Wright, “Don’t call them drones: RAF launches charm offensive for ‘unmanned aircraft’”, *The Independent*, 17 December 2013, <http://www.independent.co.uk/news/uk/home-news/dont-call-them-drones-raf-launches-charm-offensive-for-unmanned-aircraft-9011467.html>.

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

²¹⁷ The parliamentary response is available at

http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140130/text/140130w0002.htm#140130w0002.htm_wqn58.

the report of the UN Special Rapporteur which identifies a number of interesting legal questions. We are carefully considering the recommendations. The Government's position is that existing international law covers the use of Remotely Piloted Aircraft".²¹⁸ In another UN Human Rights Council statement, on 12 June 2014, during the session on the Report of the UN Special Rapporteur on extra-judicial, summary or arbitrary executions, Christof Heyns, the UK stated that it believed that

existing international law covers the use of RPAS. We regard them as subject to the same legal considerations as other weapons systems. In an armed conflict international humanitarian law governs military activity; and outside armed conflict any action must meet the requirements of international human rights law.²¹⁹

However, Baroness Warsi, in an oral evidence session on 8 July 2014, stated:

I think there is a real need for a debate about this weapons system. As weapons technology develops, it is important that there is international protocol and understanding about how those weapons systems are used. We just did not feel that the Human Rights Council was the right forum for it. We felt that it should be at the United Nations General Assembly or the Security Council.²²⁰

Up until now, the UK has not further advocated for an international debate or a regulation on the use of armed drones. In August 2014, the Ministry of Defence published the "Strategic Trends Programme, Global Strategic Trends - Out to 2045", in which it mentions that "there is unlikely to be global legal and ethical agreement on the way in which military unmanned systems should be employed".²²¹ The UK underlined in the UN HRC Panel discussion (22 September 2014) on armed drones that it "expects other States to act lawfully in accordance with the applicable legal framework including when using RPAS against terrorist targets. If armed RPAS were to be used outside the scope of an armed conflict, their use must be in accordance with international human rights law".²²² It further added that "we cannot, and should not let our standards drop as we combat the scourge of international terrorism".²²³ Moreover, at the UN HRC, the UK representative reiterated Baroness Warsi's statement from July 2014, "that the HRC is not the appropriate forum to discuss weapons on a thematic basis".²²⁴

With respect to the conclusion set out by UN Special Rapporteur Ben Emmerson in paragraph 78 of his interim report, that states are "under an obligation to conduct a prompt, independent and impartial fact-finding inquiry and to provide a detailed public explanation" (paragraph 78), Member of Parliament Mark Francois declared that the UK is

reviewing [its] practices against the position set out in paragraph 78. However, the UK already has strict procedures, updated in the light of experience, to minimise the risk of civilian casualties and

²¹⁸ The parliamentary response is available at: <http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/140403w0001.htm>.

²¹⁹ The UK response is available at: <http://qnadailyreport.blob.core.windows.net/qnadailyreportxml/Written-Questions-Answers-Statements-Daily-Report-Lords-2014-12-01.pdf>, p. 8.

²²⁰ See "Oral evidence: The FCO's human rights work in 2013", HC 551, 8 July 2014, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/foreign-affairs-committee/the-fcos-human-rights-work-in-2013/oral/11255.html>.

²²¹ See Ministry of Defence, *Strategic Trends Programme, Global Strategic Trends – Out to 2045*, fifth edition, 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/348164/20140821_DCDC_GST_5_Web_Secured.pdf.

²²² Statement available at: https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/27thSession/OralStatements/6_United%20Kingdom_PD_28.pdf (username: hrc extranet; password: 1session).

²²³ *Ibid.*

²²⁴ *Ibid.*

to ensure that any use of unmanned aerial vehicles that may have resulted in civilian casualties is identified and effectively investigated.²²⁵

In November 2014, the Foreign Affairs Committee outlined a government showed a significant shift in the government's view²²⁶ when, in its Sixth Report of the FCO's human rights work, it stated in its response to questions that "international law on the use of military force is absolutely clear"²²⁷ and that the Foreign Ministry had no plans to respond in writing to the report by the UN Special Rapporteur, arguing that the UK had already set out its position at the UN HRC panel discussion on 22 September 2014.²²⁸ The pertinent full text of the Sixth Report states:

84. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson QC, was commissioned by [the] UN Human Rights Council in June 2012 to report on the use of remotely piloted aircraft in extraterritorial lethal counter-terrorism operations. In his final report in March 2014, the Special Rapporteur concluded that the current legal uncertainty in relation to the interpretation and application of international law to the use of remotely piloted aircraft had left a "dangerous latitude" for differences of practice by states. He called for states to provide greater legal clarity and transparency on their use of remotely piloted aircraft, and to launch independent inquiries in all cases where use of such systems has resulted in civilian death or injury. The Defence Committee, in its report on the current and future use of RPAS, has recommended that the UK Government should "engage actively in the debate" on the matters raised by the UN Special Rapporteur. The Government, in its response to the Defence Committee report, observed that the "UN Special Rapporteur had identified a number of interesting legal questions" and said that it was "carefully considering the recommendation of the Special Rapporteur". 85. On 28 March 2014, the UN Human Rights Council adopted Resolution L32 on the use of remotely piloted aircraft in counter-terrorism and military operations, backing the main conclusions of the Special Rapporteur's report. However, the UK joined the US, South Korea, Japan, France and Macedonia in voting against the Resolution. The written submission from Human Rights Watch states that the resolution "simply called on states to comply with their obligations under international law and for application of principles of precaution, distinction and proportionality", and describes it as "regrettable" that the UK was described the one of six states that voted against this "modest" resolution. Amnesty International described the UK's failure to support it as a "black spot" in an otherwise good session. 86. In explaining its 'No' vote at the UN Human Rights Council, the UK questioned whether the issue lay within the scope of the Human Rights Council's mandate, arguing that the appropriate law was international humanitarian law, which the Council did not have a mandate to consider.... When pressed on the implications on the use of drones of international law and international humanitarian law, she wrote to us, stating that the Government believes that "existing rules of international law governing the use of force and armed conflict are sufficient to regulate the use of RPAS [drones]". 87. We wrote to the Foreign Secretary in September 2014, and asked two questions about the use of drones: i) What steps the Government was taking to satisfy itself that the use of armed drones by the UK was consistent with international law; and ii) Whether the FCO accepted the view of the UN Special Rapporteur

²²⁵ The report is available at: <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131118/text/131118w0003.htm>.

²²⁶ The pertinent text is available at: <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmaff/551/55112.htm>.

²²⁷ *Ibid.*

²²⁸ See Foreign and Commonwealth Office letter, 10 October 2014, <http://www.parliament.uk/documents/commons-committees/foreign-affairs/BokoHaram.pdf>.

that there was a lack of international consensus on various key legal questions on the use of RPAS, all of which needed to be resolved urgently. The Foreign Secretary, in his letter on 10 October, replied that before undertaking any form of military operation, the Government satisfied itself that the use of armed drones was lawful by undertaking an analysis of its legality, including how detailed rules of international humanitarian law might apply.²²⁹ With respect to the various legal questions raised by the UN Special Rapporteur, the Foreign Secretary told us that the “UK Government believes that international law on the use of military force is absolutely clear”, and that the “existing international legal framework is clear and robust”, and is “fully capable of governing” the use of drones. Baroness Anelay, the FCO Minister with responsibility for human rights, has said that the FCO had “no plans to respond in writing to the report by the UN Special Rapporteur” as the UK had set out its position on the legality of RPAS at the UN Human Rights Council ‘expert meeting’ on 22 September 2014. We see signs of a shift in the Government’s policy: when asked previously about the need for greater legal clarity, the Government had replied that the UN Special Rapporteur had raised important legal questions; but its recent answer to us appeared rather dismissive of his findings. **There is a clearly a difference of opinion between the UK Government and the UN Special Rapporteur on whether there is international consensus on the legal parameters surrounding the use of drones. We believe that the Government should acknowledge this and provide a written response detailing its points of disagreement with the UN Special Rapporteur’s findings to both Parliament and the UN Human Rights Council** [emphasis in original].²²⁹

In the context of the fight against the Islamic State it was reported that “[t]he government said the Reapers would not be authorised to carry out air strikes without parliamentary approval. However, David Cameron has indicated an exception would be made if urgent action was needed to prevent a humanitarian crisis or protect a British national interest, such as a hostage”.²³⁰ A spokeswoman for the government said: “We are clear what the legal case is – that’s collective and national self-defence [...] based on the ISIL threat.”²³¹ So far, the UK has only released weapons (Hellfire missiles) from Reapers in Iraq, as part of its mission against the Islamic State.²³² These Reapers are flown by satellite link from RAF Waddington in Lincolnshire, armed with Hellfire missiles, according to Michael Fallon (Defence Secretary), who also noted:

As well as their operations over Iraq, both Reapers and Rivet Joint surveillance aircraft will be authorized to fly surveillance missions over Syria to gather intelligence as part of our efforts to protect our national security from the terrorist threat emanating from there. Reapers are not authorized to use weapons in Syria; that would require further permission.²³³

²²⁹ Text available at: <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmcaff/551/55112.htm#n163>.

²³⁰ B. Farmer, “British to deploy armed Reaper drones in Syria in battle against Isis”, *The Telegraph*, 21 October 2014, <http://www.telegraph.co.uk/news/uknews/defence/11176406/RAF-Reaper-drones-to-be-used-over-Syria.html>.

²³¹ *Ibid.*

²³² An answer given to Drone Wars UK, dated 3 February 2015, as a response to a freedom of information act request from 3 January 2015 requesting the information about the number of Reaper missions flown and number/type of weapons released, indicated that in November and December of 2014, 38 Hellfire missiles were released in Iraq and none yet in Syria (though five Reaper missions were flown for reconnaissance purposes). See Ch. Cole: “Fol release shows high tempo of strikes in Iraq as Defence Select Committee urges more action”, *Drone Wars UK*, 5 February 2015, <http://dronewars.net/2015/02/05/foi-release-shows-high-tempo-of-strikes-in-iraq-as-defence-select-committee-urges-more-action/>.

²³³ *Ibid.*

The UK government has stated many times that its use of armed drones is only done in accordance with international law and strict rules of engagement,²³⁴ assuring the public that “UK forces operate in accordance with International Humanitarian Law, following the principles of humanity, proportionality, military necessity and ensuring that only appropriate military targets are selected”.²³⁵ On 24 February 2015, the UK FCO Legal Directorate put out the following Legal Directorate Outreach Bulletin, on the UK position on armed drones:

Historically, new weapons – from crossbows to fighter planes – have often given rise to questions and, in some cases, calls for a re-evaluation of the rules of warfare. Remotely Piloted Aircraft Systems (RPAS) have proven no different. In order to be transparent and accountable, the UK has repeatedly set out its position on RPAS including at the UN General Assembly and the UN Human Rights Council. We use RPAS legally, expect others to do so, and believe that the international legal framework is sufficient to govern their use. The UK Government currently uses armed RPAS in the Middle East in support of the Iraqi government and coalition allies’ ongoing operations to combat the threat of ISIL. The same Rules of Engagement that govern the use of conventional military aircraft apply equally to RPAS, and the UK always complies with applicable international law, including international humanitarian law, following the principles of distinction, humanity, proportionality and military necessity. The UK believes that existing international law sufficiently covers the use of RPAS, which are subject to the same legal considerations as other weapons systems. In an armed conflict international humanitarian law governs military activity. Outside armed conflict any action must be in accordance with applicable international human rights law. The UK expects all states to act in accordance with applicable international law and take all feasible precautions to avoid civilian casualties when conducting any form of military or counter-terrorist operations. RPAS can remain over areas of interest for a considerable period of time. This gives the crew time to conduct a detailed assessment of any target location, and the ability to select the optimum time for an attack which minimizes the risk of civilian casualties. RPAS are a relatively new military asset, and as the technology continues to evolve so might their use. But the existing international legal framework is clear and robust; and, as with any other weapons system, it is fully capable of governing their use. We do not need to rewrite the laws of war in order to be confident that, when used within the existing international legal framework, the use of RPAS – as with any other weapon system – is lawful.²³⁶

This is the first mission for the MQ-9 Reapers outside of Afghanistan (RAF’s 13 Squadron) and the MQ-9s will be moved from Afghanistan to a secret base somewhere in the Middle East. The UK has 10 such MQ-9 UAVs, and in Afghanistan, more than 4,500 sorties were carried out since 2008.²³⁷ Additionally, the UK claims that it investigates all allegations of civilian casualties though those investigations are not made public.²³⁸

²³⁴ For more information, See Foreign and Commonwealth Office letter, 10 October 2014, <http://www.parliament.uk/documents/commons-committees/foreign-affairs/BokoHaram.pdf>.

²³⁵ House of Commons, Defence Committee, “Remote Control: Remotely Piloted Air Systems – current and future UK use: Government Response to the Committee’s Tenth Report of Session 2013–14”, <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmdfence/611/611.pdf>.

²³⁶ E-mail correspondence: Legal Directorate Outreach Bulletin, “Remotely Piloted Aircraft Systems: the UK position”, Doug Wilson, Legal Director, on file with author (also available as .jpg format on Twitter at: <https://twitter.com/UKintlaw/status/570607733050904577>).

²³⁷ B. Farmer, “British to deploy armed Reaper drones in Syria in battle against Isis”, *The Telegraph*, 21 October 2014, <http://www.telegraph.co.uk/news/uknews/defence/11176406/RAF-Reaper-drones-to-be-used-over-Syria.html>.

²³⁸ For example, on 13 November 2012, Lord Astor of Hever (Conservative), Parliamentary Under-Secretary of State of the Ministry of Defence, replied to a parliamentary question by stating that “[...] in all circumstances where a possible civilian casualty is reported, UK forces will investigate the circumstances. The presumption of that investigation will be that any casualty is a civilian unless it can be established that the individual was directly involved in immediate attempts or plans to threaten the lives of International Security Assistance Force personnel”. Response available at:

Anonymous responses to questionnaire

Three ministries of EU Member States contacted were not open to the inclusion of their responses in any other way than anonymously. Therefore, in this section, the authors outline general remarks without attribution to the specific government or official who supplied the information.

First anonymous response:

In section 3.1, one respondent answered that self-defense is in fact possible against autonomous non-state actors (question 3.1.2) and that the “unwilling and unable” criterion was part of the general customary international law requirement of necessity (question 3.1.3). With respect to question 3.1.5, whether self-defense is only possible if an armed attack occurs (the language of article 51 of the UN Charter) or whether it is possible for a state to resort to self-defense in anticipation of an (imminent?) armed attack, the State responded “There is no correct answer to this. It depends on the situation”.

To question 3.1.8, the ministry answered:

Consent of a territorial state must be clear and explicit, acquiescence of a state does not suffice. A clear and explicit consent can be established when the government of a state unable to exercise its inherent right of SD [i.e. self-defense] addresses another state or the international community as a whole to perform measures in order to re-establish peace and security within its boundaries. Primarily a state may not take armed action in self-defense against a non-state actor in the territory or within the jurisdiction of another state without the consent of that state. However the approval of a state is not necessary if there is an applicable resolution of the UN Security Council authorizing the use of armed force under Chapter VII of the Charter or other relevant and applicable legal provision of similar effect.

In section 3.2, the ministry agreed that international humanitarian law (IHL) and international human rights law (IHRL) had roles in drone strikes in armed conflict (3.2.1 and 3.2.2) and that outside of armed conflict, only IHRL would be applicable (3.2.3). Regarding the extraterritorial application of human rights treaties (3.2.4), the ministry responded:

Based on different judicial decisions, one can say that human right treaties may have extraterritorial effect. A State is responsible for an act violating a human right treaty to which the States are parties, if that act performed outside its territory, or had an effect outside its territory, was under its authority or had effective control over it. As the UN Human Rights Committee held in *Lopez Burgos v. Uruguay and Celiberti de Casariego v. Uruguay*: States Parties are required by Article 2, paragraph 1 (ICCPR), to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State Party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party.

<http://www.publications.parliament.uk/pa/ld201213/ldhansrd/text/121113w0001.htm>. Another statement from July 2014 from the government said: “Following any incident in which a civilian has been or appears to have been killed by UK Forces a full investigation is undertaken, and if required, a special investigations team is deployed to conduct a quick and thorough assessment of the situation. [...] We do not routinely publish these reports for reasons of operational security.” For this statement, see House of Commons, Defence Committee, “Remote Control: Remotely Piloted Air Systems – current and future UK use: Government Response to the Committee’s Tenth Report of Session 2013–14”, <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmdfence/611/611.pdf>, pp. 14-15.

With respect to targeting individuals outside of armed conflict (3.2.5), the ministry's response was:

Targeting people outside of an armed conflict is not authorized by international law. The legality of a killing outside the context of armed conflict is governed by human rights standards, especially those concerning the use of lethal force. Under IHRL, and under the domestic law of most states, targeted killing in the sense of an intentional, premeditated and deliberate killing by law enforcement officials cannot be lawful.

When asked: what do you think about the statement by Dworkin that “European and US officials might be able to agree that the deliberate killing of terrorist suspects outside zones of conventional hostilities is only permissible when they pose a serious and imminent threat to innocent life that cannot be deflected in any less harmful way”? (3.2.6), the ministry responded: “No comment. There can be situations which are qualified as self-defence situations under domestic law, where deliberate killing may be permissible”.

The ministry declined to comment on several questions but on 3.2.14, with regard to actors directly participating in hostilities (DPH), but located in a non-belligerent state, in what circumstances – if any – does international law allow for their being targeted?, the ministry replied: “An actor located in a non-belligerent state, who directly participates in hostilities and he/she is in a continuous combat function falls under the non-belligerent state’ jurisdiction. Based on the law of this state, he/she shall be detained”. The ministry also asserted that the “continuous combat function” test outlined by the ICRC’s Direct Participation in Hostilities study reflects customary international law (3.2.15).

When asked in 3.2.20 about situations in NIACs where capture was obligated under IHL over a kill mission, the response was: “There is no obligation, but for humanitarian and practical purposes, when the target person can be detained without excessive threat to the forces, capture is the preferred option”.

Finally, in section 3.3, when questioned about whether the use of armed drones was an effective long-term measure in counterterrorism operations (3.3.5), the ministry responded: “Yes, it can be an effective [measure], but only as a supporting measure. Drone strikes alone are not enough to reach the desirable goal”. Regarding whether the current use of armed drones was in conformity with international law, the ministry answered:

Use of drones [is] not and shall not be different from the use of any other weapon or military technique. Comparing the numerous use of drones every day worldwide with the rare cases where the use of drones led to allegedly unlawful method of warfare indicate that in general the use of drones can be said to be in conformity of international law.

Second anonymous response:

A response was also received from another Member State, but the authors were asked to report the information received under the condition of anonymity.

Regarding how drone strikes can be executed in full conformity with the *jus ad bellum*, (3.1.1), the response instead focused on the *jus in bello*:

During armed conflicts, norms of International Humanitarian Law have to be applied. These norms establish the necessary conditions for an act of “targeted killing” to be legal: - the target should be a combatant; - the act should be necessary from the military point of view, with respect to the principle of proportionality between the anticipated military advantage and civilian

collateral damages. These standards should be applied not only to inter-states conflicts, but also to states-NSAs conflicts – terrorist organizations included.

The Ministry official also noted that his/her country's position is that self-defense is possible against autonomous NSAs (3.1.2) and added:

At the time being, there are different opinions on the applicability of art. 51 from [the] United Nations Charter. The UN Special Rapporteur's report no. A/HRC/14/24/Add.6 on extrajudicial, summary or arbitrary executions—A study on targeted killings, states that art. 51 does not reject the inherent right to self-defense, even against NSAs, invoking the UN Security Council's Resolutions no. 1368 and 1373 (following the events from 11 September 2001) and art. 5 of the North Atlantic Treaty.

With respect to 3.1.3 and the “unwilling or unable” criterion, the Ministry reported that it was a part of the customary international law requirement of necessity and added: “In our view, the decision for assessing unwillingness or inability should rest on [the] United Nations Security Council”. In question 3.1.5, the authors asked whether self-defense is only possible when an armed attack occurs, and the official replied that yes, it is only possible if an armed attack occurs.

In Section 3.2, dealing with the law and the boundaries of the battlefield, the official confirmed that both IHL and IHRL have a role with respect to drone strikes in Afghanistan and armed conflict, generally (3.2.1 and 3.2.2). To the question “would you agree that outside of armed conflicts, the only legal framework applicable to drone strikes would be IHRL?” the response was “no” without explanation or comment as to why. More on the issue of extraterritorial effect of human rights obligations (3.2.4), the Ministry stated: “Yes. A member state of such treaty should obey its provisions no matter the territory to protect the fundamental human rights of all persons”.

Despite the answer above in 3.1.5 about self-defense, the Ministry responded that “individuals or entities developing hostile activities that pose a threat to the combatants and civilians” would be targetable outside of an armed conflict (3.2.5). The respondent also agreed with the statement from Dworkin found in 3.2.6. Regarding the *Tadić* jurisprudence and the intensity of hostilities test outlined therein, the Ministry found that this did not necessitate assessing the frequency and gravity of armed attacks occurring within a geographically confined territory (3.2.11). For question 3.2.12, using the intensity of hostilities test regarding NSAs operating transnationally in an aggregation of attacks, and whether this would satisfy the intensity threshold to amount to a NIAC, the answer was “no”, though in the case a State and an NSA acting transnationally were in a NIAC, the Ministry responded that it is possible that the NIAC could exist without finite geographical boundaries (3.2.13).

The Ministry did not believe that the ICRC's continuous combat function test amounts to customary international law, though it did not expand upon what it believes to be the right test (3.2.15). Though the Ministry did not comment regarding whether the ICRC's DPH study reflected customary international law (3.2.16), it did respond that the targeting ability would suspend where there was a break in direct participation in hostilities (3.2.17).

With respect to providing material support amounting to direct participation in hostilities, the Ministry indicated that the following would indeed amount to DPH for targeting purposes: housing, funding, recruitment, sustenance, administrative support and logistical support. (3.2.19). When questioned about the obligation under IHL to capture rather than kill in a NIAC (3.2.20), the Ministry replied that “killing the target is to be avoided in all cases except when such a behavior poses a real threat to life”.

At the current time, the State in question only possesses unarmed drones and the Ministry official added: “So far, we haven't considered purchasing armed drones and we have no perspective for developing such a

program in the future”. For the same reasons, this particular State does not have a policy on armed drones (3.3.1 and 3.3.2). The Ministry official did state that using armed drones is an effective long-term counterterrorism measure (3.3.5) and elaborated:

In general, armed drones can be an effective asset in countering terrorism not only against states, but also non-sovereign entities that exercise significant power or influence at [the] national or international level, reducing the vulnerability of own personnel from being engaged by adversaries. Also, due to the complexity of the airborne sensors, ground targets can be engaged with great precision, reducing the risk of having collateral casualties.

Though the Ministry did not comment on whether this particular State deemed current practice of armed drones to be in conformity with international law, it did not think that silence from the State in question or other States might be interpreted as implicit consent as to how drones are currently being employed (3.3.8). Finally, the Ministry official indicated that the State in question had not taken measures to call for more accountability or transparency in the aftermath of drone strikes (3.4.3).

Third anonymous response

A third Member State also submitted answers to the questionnaire on condition of anonymity. When asked about the *ius ad bellum*, the respondent indicated that the three responses listed (self-defence, a mandate derived from a UN Security Council Resolution and consent from the territorial state) were the only possibilities when drone strikes would be executed in full conformity with the jus ad bellum (3.1.1). Regarding self-defense with respect to non-state actors (NSA) (3.1.2), the respondent stated that self-defense would only be possible if the actions of the NSA could be attributed to a state, either with overall control or when the state in question was unable/unwilling to respond to the threat posed by the NSAs itself, further mentioning that the “unwilling or unable” criterion is part of the customary international law requirement of necessity.

The respondent mentioned that it is possible for a state to resort to self-defense “in anticipation of an (imminent) armed attack” (3.1.5). The respondent stated that “[t]he distinction between States and NSA for the purpose of determining the degree of ‘imminence’ is irrelevant” (3.1.6). The current international law on self-defense is sufficient, according to the respondent, to counter the problems states face (3.1.7).

Turning to the law and the boundaries of the battlefield, the respondent stated that IHL applies to the drone strikes being carried out in armed conflict (3.2.1) and that human rights law would not have a role (3.2.2), except in situations outside of armed conflict, where it would then be the only applicable legal framework (3.2.3). In response to the question regarding extraterritorial effect of human rights treaties (3.2.4), the respondent stated:

In general terms, IHRL has extraterritorial effects in case of effective control of area (belligerent occupation,...) and/or effective control over persons (exercising state agent authority). However, the exact criteria to conclude that the State effectively controls a person remains unclear in situations of armed conflict, especially in combat zones and near combat zones (such as FOB (Forward Operating Bases), checkpoints (especially mobile checkpoints)).

Regarding action outside of an armed conflict, “targeting is regulated by the applicable IHRL instruments. The question who can legally be targeted can only be answered in relation to the relevant ‘right to life’ provision and on a case by case analysis” (3.2.5). The author agreed with the statement made by Dworkin in 3.2.6 that the deliberate killing of terrorist suspects outside of areas of hostilities can only occur when suspects pose a serious

imminent threat to innocent life that cannot be deflected in any way. The respondent did not comment on whether there were armed conflicts in Pakistan, Yemen or Somalia (3.2.7, 3.2.8, and 3.2.9) but was forthcoming in the answer to 3.2.10, when the respondent stated that it is not possible to be in a general armed conflict with an NSA unless specifics on the ground (intensity, for example) are accounted for.

The response to 3.2.11, regarding the *Tadić* criterion of intensity of hostilities, was that it did not necessitate assessing the frequency and gravity of armed attacks occurring within a geographically confined territory. The respondent answered yes when asked about whether an aggregation of armed attacks that took place in geographically varied locations would satisfy the intensity threshold so as to amount to a NIAC (3.2.12), though stated that a NIAC without finite geographical boundaries could not exist (3.2.13) and remarked:

This answer seems to contradict the answers provided in 3.2.11 and 3.2.12. However, the activities of the NSA should be analyzed in [a] holistic way as to determine the exact nature and existence of the violence/armed conflict. Consequently, transnational activities should be taken into consideration when making this analysis.

If there are actors directly participating in hostilities located in a non-belligerent state, and the territorial state is unable or unwilling to respond, those actors can – according to the respondent – be targeted under international law (3.2.14). The respondent was of the opinion that the ICRC's test of "continuous combat function" (3.2.15) in a NIAC does not reflect customary international law and elaborated by stating:

State practice indicates and proves that the correct criteria in relation to DPH is the membership approach, that is to say that members of NSA/organized armed groups, as Party to a NIAC, are and remain legitimate military targets for the entire duration of the NIAC (unless they become 'hors de combat'). The ICRC's "CCF" test is disconnected from reality, legally wrong, and does not reflect customary international law.

The respondent also answered that the ICRC's DPH study does not reflect customary international law (3.2.16) and that an individual who had been DPH-ing but then experienced a break in the activities would still be targetable (3.2.17). IHL "never" requires a capture rather than a kill in a NIAC with respect to a legitimate military target unless, according to the respondent, the person in question is *hors de combat* (3.2.20).

In the section on the use of armed drones, the author indicated that unarmed drones are currently being used, but at this point, there were no plans to acquire armed models (3.3.1). The respondent did not think more transparency is necessary regarding the use of armed drones (3.3.3), and gave no comment whether the country for which the respondent works has called for more transparency (3.3.4), whether using armed drones is an effective measure in long-term counterterrorism (3.3.5) and whether the current use of armed drones was in conformity with international law (3.3.6). Finally, the author stated that using drones would not lead to a lower threshold in using force (3.3.10)

2.4. Conclusion

As mentioned before, the first conclusion the authors can draw is that the quantitative results from the questionnaire are disappointing, with only five of 28 EU Member States (18%) filling in (most of) the questionnaire.²³⁹ Therefore, the results of this questionnaire clearly do not constitute the final say on this matter, as many more reactions are needed to create a valid and representative picture. Nonetheless, the comprehensive and detailed way in which a few countries reacted, coupled with the publicly available information, led to some

²³⁹ The authors very much appreciate that certain states have taken the time to fill in the questionnaire. The states in question are hereby thanked once again.

important conclusions worth mentioning. The following only consists of a selection of findings. More information can be derived from Section 2.3.

Specific findings regarding the five questionnaires that were returned (Czech Republic, the Netherlands and the three anonymous responses):

- Whereas the completed questionnaires from some EU Member States, in particular the Netherlands, were very clear, others seemingly contradicted themselves (see, e.g., the first anonymous respondent on whether a deliberate killing is possible outside of an armed conflict situation or the second anonymous respondent on whether anticipatory self-defense is possible).
- Four EU Member States believed that self-defense against an autonomous NSA is possible. Conversely, the third anonymous respondent indicated that self-defense would only be possible if the actions of the NSA could be attributed to a state. Nevertheless, this last state indicated that attribution could be achieved via a state's being unable or unwilling to respond to the threat posed by the NSA, a factor which was also relevant for, e.g., the Netherlands (but then only as a factor to consider using force in self-defense against an autonomous NSA).
- Three EU Member States (all three anonymous respondents) indicated that the unwilling or unable criterion forms part of the customary international law requirement of necessity. The Czech Republic was not sure about this and the Netherlands did not explicitly comment on this, although it did view the unable/unwilling criterion to be relevant in assessing whether a state can use force in self-defense against an autonomous NSA (see also the previous point).
- Two EU Member States (the Netherlands and the third anonymous respondent) believed that self-defense is possible in anticipation of an imminent armed attack (and also that the law on self-defense is sufficient), whereas two EU Member States were of the opinion that this is only possible if an armed attack occurs (Czech Republic (which also noted that the current law on self-defense is not sufficient) and the second anonymous respondent), although that latter country stated later that individuals or entities developing hostile activities that pose *a threat* to combatants and civilians would be targetable outside of an armed conflict. One state remarked that there is no correct answer to this and that it would depend on the situation (first anonymous respondent).
- Four EU Member States saw a role for IHRL in armed conflict situations (although some uncertainty was observed as regards the correlation between IHL and IHRL when both are applicable), the exception being the third anonymous respondent.
- Four EU Member States recognised the extraterritorial application of human rights treaties, although a lack of clarity was noted regarding the exact criteria/extent of this application (see the Czech Republic and the third anonymous respondent). The Netherlands was more hesitant, remarking that “[t]he question of extraterritorial application of IHRL is one that is not completely crystallised”.
- Three EU Member States (the Czech Republic, the second and the third anonymous respondents) agreed with the statement of Dworkin that “European and US officials might be able to agree that the deliberate killing of terrorist suspects outside zones of conventional hostilities is only permissible when they pose a serious and imminent threat to innocent life that cannot be deflected in any less harmful way”. The Netherlands offered a slightly different version, namely that in a situation where only IHRL is applicable, deadly use of force is only permissible when the person forms a direct, serious threat to the lives of others and there is no alternative available. Interestingly, the first anonymous respondent did not want to comment on Dworkin's suggestion. This person was very outspoken about the illegality under international law of targeting people outside of an armed conflict, but stated later that under domestic

law, a deliberate killing may be permissible, leaving the reader in doubt as regards the lawfulness under international law of that national act.

- Two EU Member States (the Netherlands and the third anonymous respondent) stated that it is not possible to be in a general armed conflict with an NSA unless specifics on the ground are accounted for, whereas the Czech Republic argued this was possible. The first and second anonymous respondents did not address this question.
- About whether the *Tadić* criterion regarding the intensity of hostilities necessitates an assessment of frequency and gravity within a geographically confined territory, two EU Member States (the second and third anonymous respondents) did not agree. The Czech Republic noted that “[d]efinitely the test applies within a geographically confined territory”, but “this test should [also] be applicable to address the acts of [an] NSA that [does] not limit itself [to] one geographical area”. The Netherlands and the first anonymous respondent did not address this question.
- Two EU Member States (the Czech Republic and the third anonymous respondent) agreed that an aggregation of armed attacks taking place in geographically varied locations can satisfy the intensity threshold so as to amount to a NIAC, whereas the second anonymous respondent did not agree. The Netherlands and the first anonymous respondent did not address this question.
- Two EU Member States (the Netherlands and the third anonymous respondent) indicated that a NIAC without finite geographical boundaries is not possible, whereas one EU Member State (the second anonymous respondent) felt this was actually possible. The Czech Republic noted that this is potentially possible and the first anonymous respondent did not address this question.
- Three EU Member States were of the opinion that the ICRC’s test of “continuous combat function” (CCF) in a NIAC does not reflect customary international law (the Czech Republic, the second and third anonymous respondent), whereas one EU Member State thought this was the case (first anonymous respondent). The Netherlands noted that its statement regarding the customary international law status of the ICRC’s Direct Participation in Hostilities (DPH) study (see below) holds true for the ICRC’s CCF test as well.
- As to the ICRC’s DPH study, two EU Member States thought this study does not reflect customary international law (the Czech Republic and the third anonymous respondent). The Netherlands broadly supported the outcomes of the ICRC’s DPH study, but also noted it had “no complete overview of state practice such as to be able to conclude that the study is part of customary international law”. The first and second anonymous respondent did not address this question.
- Four EU Member States were of the opinion that there is no obligation to capture rather than kill in IHL (unless the person in question is *hors de combat*, see the third anonymous respondent), although capture may be the preferred (policy) option. One EU Member State (second anonymous respondent) was less clear, but argued that “killing the target is to be avoided in all cases except when such a behavior poses a real threat to life”.
- The Netherlands and the Czech Republic thought that more transparency was necessary regarding the use of armed drones (the latter with respect to drones and targeted killing outside armed conflicts), but the third anonymous respondent felt this was not necessary. The first and second anonymous respondent did not address this question.
- The Netherlands was the only EU Member State that had called for greater transparency before. The Czech Republic and the second anonymous respondent indicated they hadn’t called for more transparency and the first and third anonymous respondent did not address this question.
- The first and second anonymous respondents found that drones can, in principle, be effective weapons and that generally, the current use of drones is in conformity with international law. The Czech Republic noted that “[t]he question is not about whether using drones is an effective measure but about the

context in which and how drones are used. [...] [What poses d]ifficulty in our view [is the] use of drones outside of any norms of international law, such as for extrajudicial killing purposes". The Netherlands noted that "[t]he legitimacy of the current use of drones is not easily evaluated in general. Whether or not the use of armed drones is in conformity with international law has to be appraised on a case-by-case basis, considering all the facts and circumstances of the case". Finally, the third anonymous respondent did not address these matters.

- Three EU Member States noted explicitly that public silence on the issue of drone use by other states may not necessarily signify acquiescence or consent (the Czech Republic, the Netherlands and the second anonymous respondent). The first and third anonymous respondents did not address this.
- Two EU Member States concluded that drones, in their opinion, would not lead to a lower threshold in using force (Czech Republic and the third anonymous respondent). The other EU Member States did not address this question.

More general findings:

- Only the UK currently uses armed drones, but twenty EU Member States own unarmed drones for, e.g., surveillance purposes. These might be armed in the future.
- Seventeen EU Member States are actively involved in the development of drones.
- As most EU Member States currently do not have armed drones, they also might not have a specific policy for the use of armed drones (see the Czech Republic, the second anonymous respondent and Poland).
- In general, EU Member States find that drones as such are not illegal, but that their use may be.
- It seems that EU Member States more generally agree that current international law is suitable to deal with drones (see, e.g., Ireland, the Netherlands, Sweden and the UK). No new rules are needed, but there must be better compliance with the existing system. (See, e.g., Denmark.) However, the Czech Republic mentioned that the current international law on self-defense was not sufficient and that "sometimes ambiguous case-law does not help to ease current challenges".
- That IHRL has a role to play in armed conflict (see the specific findings regarding the five questionnaires that were returned) was also confirmed by the publicly available sources from six EU Member States, with Ireland explicitly recognising that IHRL is directly applicable to all situations.
- That more transparency is needed in the context of drones and targeted killings (see the specific findings regarding the five questionnaires that were returned) was also confirmed by Germany and Ireland.
- Five EU Member States call for a further discussion on the use of drones and their compliance with international law (Austria, Ireland, the Netherlands, Portugal and the UK).
- One state called for the identification of potential best practices (Ireland).
- That public silence on the issue of drone use by other states may not necessarily signify acquiescence or consent (see the specific findings regarding the five questionnaires that were returned) was also confirmed by the publicly available information, see, e.g., Germany and Sweden. The silence may also have to do with a lack of precise knowledge of a specific attack or there may be diplomatic discussions occurring outside the public eye.
- The internal coordination within EU Member States did not appear to be entirely flawless, with some agencies not knowing (exactly) which ministry/service of their own country would be in the best position to complete the questionnaire.

3. Normative Pronouncements from Other Entities than States

3.1. Introduction

After having surveyed the various positions taken by EU Member States on the use of armed drones and targeted killings, this Research Paper now turns to the normative dimension. It will consider various statements from other entities than states, which have pronounced themselves on the question how EU Member States *should* deal with the use of armed drones and targeted killings. The Research Paper will focus on statements from international and regional organisations and institutions (3.2) and the Dutch Advisory Committee on Issues of Public International Law's (CAVV) Advisory Report on Armed Drones, to the knowledge of the authors the only advisory opinion in Europe addressing this topic in such detail (3.3). After that, the seminal European Council on Foreign Relations paper of Dworkin, the first commentator having outlined a proposal for an EU common stance, will be examined (3.4). Where useful, the different sections will also contain references to other experts, including civil society staff members and other commentators.

3.2. International and regional organisations and institutions

Council of Europe, Parliamentary Assembly:

In April 2013, the Parliamentary Assembly of the Council of Europe's Committee on Legal Affairs and Human Rights put forth a motion for a resolution expressing concern about the widening use of armed drones used to carry out strikes in a counterterrorism framework, specifically executed by the US (which has Observer status to the Council of Europe).²⁴⁰ Additionally, the Committee expressed its concern about the development of combat drones by several Member States, the fact that the killings may violate international humanitarian law, and the fact that some killings were occurring outside of the geographic scope of recognised armed conflicts. The Committee was concerned about the alarming increase in collateral damage from such attacks, calling into question whether principles of IHL were being fulfilled. Finally, concern was raised that killings occurring in the framework of law enforcement could potentially be violating fundamental rights protected by the ECHR or other treaties. The conclusion of the motion was to examine more closely issues raised in connection with armed drones implicating human rights or other legal obligations.²⁴¹

As a follow-up to this call for a closer examination, the Committee hosted an expert meeting in Strasbourg on 30 September 2014.²⁴² This expert meeting heard statements from UN Special Rapporteur Ben Emmerson; Head of Strategic Litigation Programme, Polish Helsinki Foundation for Human Rights, Warsaw, Irmina Pachó; and Associate Professor, School of Law, University of Miami, Florida, USA, Markus Wagner.

Ms. Pachó noted that due to the proliferation of drone technology, and the acquisition of drones by several European states, the European Court of Human Rights might be called upon in the future to assess the Convention compatibility with drone operations, given that "Council of Europe member States would possibly - or even probably - use drones for overseas targeted killing operations, for instance within the framework of a NATO operation".²⁴³

Mr. Wagner urged caution in any publicly available data or information, given that "the oftentimes secretive nature of targeted killings did not allow for definitive statements regarding the extent to which drones were used either as intelligence, surveillance, targeting and reconnaissance (ISTR) platforms or as weapons'

²⁴⁰ See Motion for a Resolution, Doc. 13200, "Drones and targeted killings: the need to uphold human rights", 29 April 2013, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19732&lang=en>. Note that this motion was not discussed in the assembly, and therefore is only a commitment with respect to the 20 members who signed it.

²⁴¹ *Ibid.*

²⁴² Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights, Declassified Minutes of the hearing on "Drones and targeted killings: the need to uphold human rights", held in Strasbourg (Palais de l'Europe) on 30 September 2014 (on file with authors).

²⁴³ *Ibid.*, p. 3.

platforms”.²⁴⁴ He also reiterated the problematic nature of “the extent to which the existing rules had been interpreted to allow for the use of targeted killing through the extension of the battlespace and the expansive interpretation of the principles of distinction and proportionality”.²⁴⁵ With specific reference to President Obama’s speech of May 2013, Mr. Wagner further commented on the expansiveness of the US position in urging the Council of Europe to diverge from the US position. The US’ interpretation of the concept of “imminence” in international law was rather broad, “encompassing ‘considerations of the relevant window of opportunity to act, the possible harm that missing the window would cause to civilians, and the likelihood of heading off future disastrous attacks’”. This stretches too far, according to Mr. Wagner, as “it would allow attacks on individuals as a deterrent on or punishment of those that had engaged in prior attacks, but were not in the process of carrying out renewed attacks. All other signatures would fail either the proportionality or the necessity test” outlined in IHL.²⁴⁶

Though the US had been using such an expansive interpretation, Ms. Pachó pointed out that European countries would not be allowed such an expansive interpretation given their obligations under the European Court of Human Rights, specifically with respect to the findings regarding extraterritorial application of human rights (Mr. Emerson pointed out that extraterritorial application of human rights obligations was a concept the US government did not accept, notwithstanding the UN High Commissioner for Human Rights’ stating that human rights law was applicable in such circumstances).²⁴⁷

On the subject of targeting, the legal framework was crucial to determining states’ obligations. Ms. Pachó pointed out that the creation of a “kill-list” would be contrary to obligations under the ECHR in times of peace, but it was context specific within armed conflict what the obligations might be.²⁴⁸

After hosting several debates before the Committee (outlined above), a resolution was adopted unanimously on 27 January 2015 recognising several legal issues still needing to be addressed with respect to the use of armed drones.²⁴⁹ The Parliamentary Assembly called on States to undertake several obligations in order to bring about more clarity and conformity with legal questions raised by the use of armed drones.

The legal issues that the Assembly identified were: national sovereignty and the respect for territorial integrity with respect to military interventions without consent²⁵⁰ where only combatants are targetable (and force must be necessary and proportionate, with precautions taken) to minimise harm to civilians;²⁵¹ under IHRL, targeted killing is only legal in narrow instances in protecting human life, and in situations where there is no other option;²⁵² under Article 2 of the ECHR (right to life), the strict requirement stands of absolute necessity when deciding to deprive one of his life;²⁵³ and the fact that some countries have used an extended interpretation of

²⁴⁴ *Ibid.*

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.*, p. 4.

²⁴⁷ *Ibid.*, p. 2.

²⁴⁸ *Ibid.*, p. 5.

²⁴⁹ See Council of Europe, Parliamentary Assembly, Committee on Legal Affairs and Human Rights, “Drones and Targeted Killings: the need to uphold human rights and international law”, Report, <http://website-pace.net/documents/19838/1085720/20150127-TargetedKillings-EN.pdf/6b637090-5af9-4d08-b9d4-7dc45dd09d2f>.

²⁵⁰ The pertinent text from the resolution is: “National sovereignty and the respect for territorial integrity under international law forbid military interventions of any kind on the territory of another state without valid authorisation by the legitimate representatives of the State concerned. Military or intelligence officials of the state concerned tolerating or even authorising such interventions without the approval or against the will of the state’s representatives (in particular the national parliament) cannot legitimise an attack; exceptions from the duty to respect national sovereignty can arise from the principle of the ‘responsibility to protect’ (e.g. in the fight against ISIS).” Section 6.1 of the resolution, see Council of Europe, Parliamentary Assembly, Committee on Legal Affairs and Human Rights, “Drones and Targeted Killings: the need to uphold human rights and international law”, Report, <http://website-pace.net/documents/19838/1085720/20150127-TargetedKillings-EN.pdf/6b637090-5af9-4d08-b9d4-7dc45dd09d2f>.

²⁵¹ *Ibid.*, Section 6.2.

²⁵² *Ibid.*, Section 6.3.

²⁵³ *Ibid.*, Section 6.4, with the pertinent text reading: “In particular, under Article 2 of the European Convention on Human Rights (the Convention) as interpreted by the European Court of Human Rights (the Court), the deprivation of the right to life must be absolutely

NIAC to encapsulate a larger “battlespace” and to justify a wider use of targeted killings, which “threatens to blur the line between armed conflict and law enforcement, to the detriment of the protection of human rights”.²⁵⁴

Therefore, the Assembly called on States to respect the limits under international law on targeted killing (including both international humanitarian and human rights law); establish clear procedures for the authorisation of strikes (and stated they must be subject to a supervisory high-level court as well as evaluation in an ex-post investigation by an independent body); avoid expanding the established notion of non-international armed conflict (including organisation and intensity criteria); investigate all deaths caused by drone strikes for accountability purposes and for compensation to victims’ relatives; openly publish procedures used for targeting (and the investigations mentioned above); not use intelligence for targeting based on communication pattern of the suspect, including for so-called “signature strikes” (pattern of behavior monitoring), except in armed conflict, and to avoid so-called “double-tap strikes” involving “a second strike targeting first responders”.²⁵⁵

Additionally, the Committee would in essence remain seized of the matter by calling for a thorough study on the lawfulness of combat drone use.²⁵⁶

European Commission and European Council:

On 4 February 2014, the former High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the Commission (HRVP) Catherine Ashton stated:

The EU raises these matters in its regular consultations with the US on human rights, and will continue to do so in forthcoming consultations, including as regards information on facts and legal basis and on possible investigations. The EU stresses that the use of drones has to conform to international law, including the law of armed conflict when applicable. The international legal framework regarding the use of drones is also addressed in the informal dialogue among EU and US legal advisers.²⁵⁷

Likewise, on 26 February 2014, Dimitrios Kourkoulas, President-in-Office of the European Council, made a statement during the European Parliament’s Plenary Session in Strasbourg on behalf of Catherine Ashton and remarked:

The use of drones has raised some concerns on respect for human rights and international law. Their use in countering terrorism has already been raised and questioned by the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms. Our

necessary for the safeguarding of the lives of others or protection of others from unlawful violence. Article 2 also requires timely, full and effective investigations to hold to account those responsible for any wrongdoing”.

²⁵⁴ *Ibid.*, Section 6.5.

²⁵⁵ *Ibid.*, Section 8.

²⁵⁶ The resolution concludes with the following: “The Assembly, referring to Resolution *** (2014), invites the Committee of Ministers to undertake a thorough study of the lawfulness of the use of combat drones for targeted killings and, if need be, develop guidelines for member states on targeted killings, with a special reference to those carried out by combat drones. These guidelines should reflect the states’ duties under international humanitarian and human rights law, in particular the standards laid down in the European Convention on Human Rights as interpreted by the European Court of Human Rights.” Council of Europe, Parliamentary Assembly, Committee on Legal Affairs and Human Rights, “Drones and Targeted Killings: the need to uphold human rights and international law”, Report, <http://website-pace.net/documents/19838/1085720/20150127-TargetedKillings-EN.pdf/6b637090-5af9-4d08-b9d4-7dc45dd09d2f>. The resolution itself is not binding, as no resolution coming from the Parliamentary Assembly is, but it does carry significant weight in influencing matters with specific relation to human rights and democracy. Furthermore, “[t]he Committee on Legal Affairs and Human Rights promotes the rule of law and defends human rights. It is also responsible for a whole variety of activities that make it, de facto, the Assembly’s legal adviser.” See Council of Europe, Parliamentary Assembly, Legal Affairs and Human Rights, <http://assembly.coe.int/nw/Committees/as-jur/as-jur-main-EN.asp>.

²⁵⁷ See European Parliament, Parliamentary questions, “Answer given by High Representative/Vice-President Ashton on behalf of the Commissions”, 4 February 2014, <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2013-012201&language=EN>.

position is very clear: we have to ensure that any use will be consistent with both European and international law. It is not the technology, but rather its use, that is key.²⁵⁸

EU Counter-Terrorism Coordinator Gilles De Kerchove and his advisor Christiane Höhn therefore concluded that “[t]he EU’s position is that RPAS, or drones, have to be used in full respect of international law, but there is no EU position on the interpretation of international law related to RPAS”.²⁵⁹

Kourkoulas’s statement was referred to on 9 February 2015 by current HRVP Federica Mogherini, who added that

the HRVP and her services take a keen interest in developments in these fields, and notably the EU Delegation and Member States who are also members of the UN Human Rights Council participated in a Panel in Geneva in September 2014 which discussed the following resolution: ‘Ensuring use of armed drones in counter-terrorism & military operations in accordance with international law including international human rights and humanitarian law’.²⁶⁰

This panel discussion will be addressed in more detail below.

European Parliament:

In May 2013, the Directorate-General for External Policies of the European Union published the study *Human Rights Implications of the Usage of Drones and Unmanned Robots in Warfare*, which was written by Nils Melzer at the request of the European Parliament’s Subcommittee on Human Rights. Although the disclaimer of the report clarifies that “[a]ny opinions expressed in this document are the sole responsibility of the author and do not necessarily represent the official position of the European Parliament”, it is still interesting to mention a few normative statements on how the EU should engage on this topic according to Melzer, author of the award-winning book *Targeted Killing in International Law* and one of the most renowned scholars on this subject.²⁶¹

Melzer notes that legal controversies, such as the threshold requirements for an armed conflict or the concept of imminence,

have resulted in a general sense of uncertainty as to the applicable legal standards. In conjunction with the rapid development and proliferation of drone technology and the perceived lack of transparency and accountability of current policies, this legal uncertainty has the potential of polarizing the international community, undermining the rule of law and, ultimately, of destabilizing the international security environment as a whole.²⁶²

However, in his view, this also leads to possibilities for the EU to promote transparency, accountability and the rule of law. As a result, he proposes the following policy recommendations for the EU:

²⁵⁸ European Parliament, Debates, Wednesday, 26 February 2014, Strasbourg, 15. Use of armed drones (debate), Dimitrios Kourkoulas, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20140226+ITEM-015+DOC+XML+V0//EN>.

²⁵⁹ G. De Kerchove and C. Höhn, “Counter-Terrorism and International Law Since 9/11, Including in the EU-US Context”, in: T.D. Gill, T. McCormack, R. Geiß, R. Heinsch, Ch. Paulussen and J. Dorsey (eds.), *Yearbook of International Humanitarian Law*, Vol. 2013, T.M.C. Asser Press: The Hague, 2015, p. 291.

²⁶⁰ European Parliament, Parliamentary questions, “Answer given by Vice-President Mogherini on behalf of the Commission”, 9 February 2015, <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2014-008989&language=EN>.

²⁶¹ Directorate-General for External Policies of the Union, Directorate B, Policy Department, *Human Rights Implications of the Usage of Drones and Unmanned Robots in Warfare*, May 2013, http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/410220/EXPO-DROI_ET%282013%29410220_EN.pdf.

²⁶² *Ibid.*, p. 44.

1. First, the EU should make the promotion of the rule of law in relation to the development, proliferation and use of unmanned weapons systems a declared priority of European foreign policy. 2. In parallel, the EU should launch a broad inter-governmental policy dialogue aiming to achieve international consensus: (a) on the legal standards governing the use of currently operational unmanned weapon systems, and (b) on the legal constraints and/or ethical reservations which may apply with regard to the future development, proliferation and use of increasingly autonomous weapon systems. 3. Based on the resulting international consensus, the EU should work towards the adoption of a binding international agreement, or a non-binding code of conduct, aiming to restrict the development, proliferation or use of certain unmanned weapon systems in line with the legal consensus achieved.²⁶³

With respect to the law on drone attacks outside military hostilities, Melzer explains that the principles of necessity, proportionality and precaution must be observed.²⁶⁴ He notes that although these principles may be open to interpretation, “they can in no case be derogated from so as to allow the use of force which is not necessary, which is likely to cause disproportionate harm, or which reasonably could have been avoided by feasible precautionary measures”.²⁶⁵ In more detail:

[A]rmed drone attacks directed against persons other than legitimate military targets can be permissible only in very exceptional circumstances, namely where they fulfil the following cumulative conditions: (a) they must aim at preventing an unlawful threat to human life; (b) they must be strictly necessary for achieving this purpose; (c) they must be planned, prepared and conducted so as to minimize, to the greatest extent possible, the use of lethal force. Moreover, national law must regulate such operations in line with international law.²⁶⁶

He therefore concludes that the bar is set “extremely high”:²⁶⁷

Not only will it be difficult to prove that the targeted person actually does pose a threat to human life requiring immediate action, but also that this threat is sufficiently serious to justify both the killing of the targeted person and the near certain infliction of incidental death, injury and destruction on innocent bystanders. As a result, the use of armed drones and other robotic weapons outside military hostilities may not be categorically prohibited, but their international lawfulness is certainly confined to very exceptional circumstances.²⁶⁸

On 27 February 2014, the European Parliament adopted its already-mentioned resolution on the use of armed drones.²⁶⁹ In it, the Parliament called on the High Representative for Foreign Affairs and Security Policy, the Member States and the Council to, among other things: “include armed drones in relevant European and international disarmament and arms control regimes”. It also “call[ed] on the EU to promote greater transparency and accountability on the part of third countries in the use of armed drones with regard to the legal basis for their use and to operational responsibility, to allow for judicial review of drone strikes and to ensure that victims of unlawful drone strikes have effective access to remedies”.

²⁶³ *Ibid.*, p. 1 (abstract).

²⁶⁴ *Ibid.*, p. 30.

²⁶⁵ *Ibid.*

²⁶⁶ *Ibid.*, p. 36.

²⁶⁷ *Ibid.*

²⁶⁸ *Ibid.*

²⁶⁹ See n. 35.

Human Rights Council:

On 28 March 2014, the UN Human Rights Council voted to approve a Pakistan-sponsored resolution (A/HRC/25/L.32) entitled, “Ensuring use of remotely piloted aircraft or armed drones in counter-terrorism and military operations in accordance with international law, including international human rights and humanitarian law”.²⁷⁰ It passed with 27 states in favor, six against, and fourteen abstentions.²⁷¹ One of the most important substantive elements in the Resolution is a provision on transparency and investigations, which

[c]alls upon States to ensure transparency in their records on the use of remotely piloted aircraft or armed drones and to conduct prompt, independent and impartial investigations whenever there are indications of a violation to international law caused by their use.

And one particular procedural element of note was a decision by the Council “to organize an interactive panel discussion of experts at its twenty-seventh session” on the issue of armed drones in September 2014.

As a follow-up to the resolution in March, in September 2014, the Human Rights Council indeed hosted a panel discussion on the use of armed drones.

The panel was convened as part of the Human Rights Council’s 27th regular session, and took the form of a discussion among a panel of experts, members of the Human Rights Council and observers. The panelists were Christof Heyns, UN Special Rapporteur on extrajudicial, summary or arbitrary executions; Ben Emmerson, UN Special Rapporteur on the protection of human rights and fundamental freedoms while countering terrorism; Shahzad Akbar, Legal Director, Foundation for Fundamental Rights; Alex Conte, Director of International Law and Protection Programmes, International Commission of Jurists; Dapo Akande, Professor of Public International Law at Oxford University; and Pardiss Kebriaei, Senior Attorney, Centre for Constitutional Rights. Flavia Pansieri, the UN’s Deputy High Commissioner for Human Rights, moderated. Not only did the experts exchange ideas, but more than twenty states also spoke. The relevant EU Member States’ statements have been included in Section 2.3 of this paper. Additionally, the International Committee of the Red Cross intervened as well.²⁷²

Issues covered related to targeted killings in counterterrorism and other operations. There was particular interest in considering the applicable legal framework regulating the use of armed drones with much focus on the applicability and interplay of international human rights law and international humanitarian law. Panelist Dapo Akande summarised:

In this context there was discussion of the substantive legal issues relating to the determination of the applicable legal framework – such as the classification of situations of violence (for the purpose of determining the applicability of IHL) and the extraterritorial application of the right to life. However, perhaps the most significant disagreement between states related to the question of institutional competence for discussing and monitoring compliance with the law. In a divide

²⁷⁰ The resolution (A/HRC/25/L.32, 24 March 2014) is available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/25/L.32.

²⁷¹ Breakdown by States voting, with EU countries highlighted in bold. States voting in favor (27): Algeria, Argentina, Botswana, Brazil, Chile, China, Congo, Costa Rica, Cuba, Gabon, Indonesia, **Ireland**, Kazakhstan, Kenya, Kuwait, Maldives, Mexico, Morocco, Pakistan, Peru, Philippines, Russian Federation, Saudi Arabia, Sierra Leone, South Africa, Venezuela and Vietnam. States voting against (6): **France**, Japan, Republic of Korea, The former Yugoslav Republic of Macedonia, **United Kingdom**, and United States of America. States abstaining (14): **Austria**, Benin, Burkina Faso, Côte d’Ivoire, **Czech Republic**, **Estonia**, Ethiopia, **Germany**, India, **Italy**, Montenegro, Namibia, **Romania**, and United Arab Emirates.

²⁷² ICRC, “Panel discussion on ‘Ensuring use of remotely piloted aircraft or armed drones in counterterrorism and military operations in accordance with international law, including international human rights and humanitarian law’”, 22 September 2014, https://www.icrc.org/en/download/file/1385/icrc_statement_to_hrc_22_sept_2014_drones_eng.pdf. The intervention is quite dense with relevant information, but one particular quote is of particular relevance: “In practice, many legal questions surrounding drone strikes have arisen when a person participates directly in hostilities from the territory of a non-belligerent State, or moves into such territory after taking part in an ongoing armed conflict. The issue is whether lethal force may be lawfully used against such a person and under what legal framework. As is well known, opinions differ. The ICRC is of the view that in this particular scenario IHL would not be applicable, meaning that such an individual should not be considered a lawful target under IHL.”

which appeared to mirror the range of views as to whether norms of human rights or IHL constitute part of, or the main applicable legal framework, some states (like the US, the UK and France) insisted that the Human Rights Council was not an appropriate forum for discussion of the use of armed drones whereas many other states, observers and panellists insisted that the Council was such a forum.²⁷³

Discussion ensued regarding the right to life with respect to the regulation of armed drones; IHL targeting principles; and other relevant human rights (such as the right to a remedy).²⁷⁴ A major part of the discussion centered on accountability and transparency in the use of drones, and all panelists addressed state obligations (IHL and IHRL)

to conduct investigations in cases where there was a credible allegation of violations, as well as the obligations relating to transparency with respect to drone operations. This issue was also raised by a number of states with some seeking examples of best practices that may be employed with respect to disclosure of data relating to drone operations.²⁷⁵

The Office of the High Commissioner for Human Rights plans to submit a finalised report²⁷⁶ on this panel discussion to the Human Rights Council's 28th regular session sometime in early in 2015.

3.3. Dutch Advisory Committee on Issue of Public International Law report

On 16 July 2013, the Dutch Advisory Committee on Issues of Public International Law (*Commissie van Advies Inzake Volkenrechtelijke Vraagstukken* or CAVV), an independent body that advises the government, the House of Representatives and the Senate of the Netherlands on international law issues, published its advisory report no. 23 on armed drones.²⁷⁷ Although there is no mention of a European stance in this report (the only references to Europe deal with case law from the European Court of Human Rights), the report is very relevant, not only for its detailed explanation of the law, but also because the Dutch Cabinet (almost, see Section 2.3 of this Research Paper) fully endorsed the report, thus providing a detailed explanation of the Netherlands stance towards armed drones. To the knowledge of the authors, it is also the only report of its kind in Europe that systematically addresses the international legal framework in the context of armed drones.

The CAVV concluded, among other things, that “[a]rmed drones are not prohibited weapons”,²⁷⁸ that “[a] state may use armed drones outside its own territory to attack enemy combatants in an armed conflict, provided there is a recognised legal basis for doing so”,²⁷⁹ and that

[a]rmed drones may also be deployed in exercise of the right of self-defence within the meaning of article 51 of the UN Charter, provided the conditions for the lawful exercise of this right have been satisfied. Self-defence is permitted only in response to an armed attack (or the imminent

²⁷³ D. Akande, “UN Human Rights Council Panel on Drones”, *EJIL: Talk!*, 1 October 2014, <http://www.ejiltalk.org/un-human-rights-council-panel-discussion-on-drones/>.

²⁷⁴ *Ibid.*

²⁷⁵ *Ibid.*

²⁷⁶ The draft report from 15 December 2014 is available at:

http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_38_ENG.doc.

²⁷⁷ Commissie van Advies Inzake Volkenrechtelijke Vraagstukken, *Advies Inzake Bewapende Drones*, 16 July 2013, http://cms.webbeat.net/ContentSuite/upload/cav/doc/CAVV_ADVIES_BEWAPENDE_DRONES%281%29.pdf. The English translation of this report, http://cms.webbeat.net/ContentSuite/upload/cav/doc/CAVV_advisory_report_on_armed_drones_%28English_translation_-_final%29_%282%29.pdf and the main conclusions are available at:

http://cms.webbeat.net/ContentSuite/upload/cav/doc/Main_conclusions_of_CAVV_advice_on_armed_drones%281%29.pdf.

²⁷⁸ Advisory Committee on Issues of Public International Law, *Main Conclusions of Advice on Armed Drones*, July 2013,

http://cms.webbeat.net/ContentSuite/upload/cav/doc/Main_conclusions_of_CAVV_advice_on_armed_drones%281%29.pdf, p. 1.

²⁷⁹ *Ibid.*

threat of such an attack) and must be exercised in accordance with the requirements of necessity and proportionality as laid down in customary international law.²⁸⁰

The CAVV also concluded that in addition to this legal basis, any use of force must comply with the applicable legal regime, which is international humanitarian law and/or international human rights law, depending on the situation on the ground. As mentioned before, see Section 2.3 of this Research Paper, it was (only) with respect to the interaction between these two legal regimes – when both are applicable – that the Dutch Cabinet offered a different view than the CAVV.

After commenting on such issues as the concept of Direct Participation of Hostilities, signature strikes, and the legality of drone strikes under IHL, the CAVV turned to arguably one of the most interesting points for the purpose of this Research Paper, namely the legality of drone strikes under IHRL (outside of an armed conflict). On this topic, the CAVV provided the following conclusion reminiscent of Melzer's observations (see Section 3.2, under European Parliament):

The targeted killing of an individual outside the context of an armed conflict is prohibited in all but the most exceptional situations and is subject to strict conditions. These situations are limited to the defence of one's own person or a third person from a direct and immediate threat of serious violence, the prevention of the escape of a person who is suspected or has been convicted of a particularly serious offence, or the suppression of a violent uprising where it is strictly necessary to employ these means (i.e. targeted killing) in order to maintain or restore public order and public safety and security. In situations of this kind, lethal force is always a last resort which may be used if there are no alternatives and only for as long and in so far as strictly necessary and proportionate. There must be a legal basis in national law and any indication of a violation of the right to life by the security services or other state organs must be investigated at the national level.^[281] The deployment of an armed drone in a law enforcement situation will hardly ever constitute a legal use of force. The principle of proportionality as it applies within the human rights regime is considerably stricter than under tIHL [sic], in particular to prevent innocent people falling victim to such attacks.²⁸²

The CAVV explained in more detail on this latter point that "injuring or killing third persons when using force is in principle prohibited under IHRL, other than in exceptional situations, and then only to the extent that this is strictly necessary and proportionate, subject to the aforementioned precautionary principle".²⁸³ To concretise

²⁸⁰ *Ibid.*, p. 2.

²⁸¹ In more detail, the CAVV noted on this topic: "In all situations where lethal force is or may be used, both in and outside the context of an armed conflict, IHRL, in addition to national law, requires that adequate, transparent and independent reporting and monitoring procedures be set in motion to ensure that the action is in accordance with all the legal requirements and, where necessary, to act adequately and expeditiously to prevent violations of the applicable law or investigate and prosecute violations. IHL includes the duty to investigate alleged violations and prosecute the perpetrators, or take measures to prevent any recurrence." Advisory Committee on Issues of Public International Law, *Advisory Report on Armed Drones, Translation*, July 2013, http://cms.webbeat.net/ContentSuite/upload/cav/doc/CAVV_advisory_report_on_armed_drones_%28English_translation_-_final%29_%282%29.pdf, pp. 20-21.

²⁸² Advisory Committee on Issues of Public International Law, *Main Conclusions of Advice on Armed Drones*, July 2013, http://cms.webbeat.net/ContentSuite/upload/cav/doc/Main_conclusions_of_CAVV_advice_on_armed_drones%281%29.pdf, p. 4.

²⁸³ The precautionary principle has been formulated in international case law and "requires that the question of whether lethal force is strictly necessary must be considered at each moment of the action. The necessity principle has qualitative, quantitative and temporal dimensions. Qualitatively, the force must be strictly necessary in relation to the objective to be attained. Quantitatively, the force used must not be excessive. Temporally, the use of force must still be necessary at the time of the action. The proportionality principle prescribes that use of force be justified in the light of the nature and seriousness of the threat." Advisory Committee on Issues of Public International Law, *Advisory Report on Armed Drones, Translation*, July 2013, http://cms.webbeat.net/ContentSuite/upload/cav/doc/CAVV_advisory_report_on_armed_drones_%28English_translation_-_final%29_%282%29.pdf, p. 23.

that under IHRL, targeted killing – which involves the use of deliberate, planned lethal force – is hard to reconcile with this precautionary principle, the CAVV provided as conceivable examples “hostage rescues, perhaps the arrest of armed, highly dangerous suspects posing a high level of risk to the arrest team or third persons, or the shooting-down of a ‘renegade’ aircraft that has been taken over by terrorists and may be about to be used as a flying bomb”.²⁸⁴ In this context, the CAVV also noted:

It has been suggested that the requirement of an ‘immediate’ threat of serious violence should be interpreted differently in the case of extraterritorial antiterrorist operations, since in such situations there is usually no available alternative to arrest by the operating state. The suggestion is then to exceptionally permit targeted killing if there is a very high risk of the person being directly involved in serious future terrorist activities [original footnote omitted].²⁸⁵

However, the CAVV was of the opinion that

[i]n most such scenarios, [...] the deployment of a military weapon such as an armed drone would be a suitable method only in highly exceptional cases. [...] [T]he use of such a relatively heavy military weapon for attacks on ground targets outside the context of an armed conflict would in most cases almost automatically conflict with the strict requirements of necessity and proportionality that apply under IHRL – especially if there were a risk that innocent civilians would also be victims of the drone attack.²⁸⁶

Interestingly, and directly relevant for this topic of this Research Paper, the CAVV also discussed the responsibility of third states and noted that “[i]n very specific circumstances, third states that assist [in] armed drone operations that contravene international law may be held responsible for their part in the operations concerned”.²⁸⁷ Although “[t]he mere fact that a third state takes part in a multinational military operation in which another state uses armed drones unlawfully does not suffice to render that state responsible”,²⁸⁸ this may be different for “third states consent[ing] to the use of their air bases for the launch of unlawful armed drone attacks”²⁸⁹ (if all the strict requirements of Article 16 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts²⁹⁰ have been satisfied, including prior knowledge of the unlawfulness of the attacks), and with respect to “[t]he sharing of secret information about individuals by a third state [...] if the information is used to carry out an unlawful targeted attack on a person”.²⁹¹ In that case, however, “[t]he information-sharing state must be aware of the fact that the operating state is pursuing a policy of targeted killing that contravenes international law and the shared information must make a significant contribution to the unlawful attack”.²⁹²

²⁸⁴ *Ibid.*

²⁸⁵ *Ibid.*, pp. 23-24.

²⁸⁶ *Ibid.*, p. 24.

²⁸⁷ Advisory Committee on Issues of Public International Law, *Main Conclusions of Advice on Armed Drones*, July 2013, http://cms.webbeat.net/ContentSuite/upload/cav/doc/Main_conclusions_of_CAVV_advice_on_armed_drones%281%29.pdf, p. 4.

²⁸⁸ *Ibid.*, p. 5.

²⁸⁹ *Ibid.*

²⁹⁰ This provision, entitled “Aid or assistance in the commission of an internationally wrongful act”, reads: “A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State.” See International Law Commission, “Responsibility of States for Internationally Wrongful Acts”, 2001, http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf.

²⁹¹ Advisory Committee on Issues of Public International Law, *Main Conclusions of Advice on Armed Drones*, July 2013, http://cms.webbeat.net/ContentSuite/upload/cav/doc/Main_conclusions_of_CAVV_advice_on_armed_drones%281%29.pdf, p. 5.

²⁹² *Ibid.*

The CAVV concluded, like other EU Member States did in the questionnaire, that “from an international law perspective, new law is not necessary to specifically regulate the use of armed drones”²⁹³ as “[c]urrent international law is adequate and capable of fully regulating operations of this kind”.²⁹⁴ But the committee also remarked that this does not mean that there are no general international law questions that are also relevant for the drone discussion and that still need further clarification, such as “the right to self-defence against non-state actors, the requirements relating to consent for the deployment of weapons on the territory of another state and the extraterritorial applicability of human rights law”.²⁹⁵

The CAVV concluded its advisory report saying that

Unmanned aircraft may be reasonably sophisticated, but they are not the exclusive domain of a handful of states, and the necessary technology is not so exotic or expensive as to prevent other states from developing their own capability in this area. To avoid setting precedents that could be used by other states or entities in the fairly near future, it is vital that the existing international legal framework for the deployment of such a weapons system be consistently and strictly complied with. States need to be as clear as possible about the legal bases invoked when deploying armed drones. There must also be sufficient procedural safeguards for assessing the selection of targets and the proportionality of attacks, allowing lessons to be learned for future interventions.²⁹⁶

3.4. European Council on Foreign Relations paper

Arguably the most interesting article on the European position on armed drones written so far is by Anthony Dworkin in July 2013. In his aforementioned European Council on Foreign Relations (ECFR) policy paper “Drones and Targeted Killing: Defining a European Position”,²⁹⁷ Dworkin notes the already mentioned²⁹⁸ “muted and largely passive way” in which European leaders and officials have responded to the US’ use of drones and how such a response is increasingly untenable as the era of drone warfare has dawned. Dworkin also correctly points to the danger of precedent, when he notes:

Perhaps the strongest reason for the EU to define a clearer position on drones and targeted killing is to prevent the expansive and opaque policies followed by the US until now from setting an unchallenged global precedent. [...] The US assertion that it can lawfully target members of a group with whom it declares itself to be at war, even outside battlefield conditions, could become a reference point for these and other countries. It will be difficult for the EU to condemn such use of drones if it fails to define its own position more clearly at this point.²⁹⁹

²⁹³ *Ibid.*

²⁹⁴ *Ibid.*

²⁹⁵ *Ibid.*

²⁹⁶ Advisory Committee on Issues of Public International Law, *Advisory Report on Armed Drones, Translation*, July 2013, http://cms.webbeat.net/ContentSuite/upload/cav/doc/CAVV_advisory_report_on_armed_drones_%28English_translation_-_final%29_%282%29.pdf, pp. 27-28.

²⁹⁷ A. Dworkin, “Drones and Targeted Killing: Defining a European Position”, *European Council on Foreign Relations Policy Brief*, July 2013, http://www.ecfr.eu/page/-/ECFR84_DRONES_BRIEF.pdf. (For a shorter version of this paper, see A. Dworkin, “Drones and targeted killing: Defining a European position”, in: N. Bhuta, C. Kreß, I. Seiderman, Ch. Heyns, N. Melzer, M. Scheinin, E. Benvenisti and A. Dworkin, *Targeted Killing, Unmanned Aerial Vehicles and EU Policy*, EU, Robert Schuman Centre for Advanced Studies and Global Governance, RSCAS PP 2013/17, <http://hdl.handle.net/1814/28500>, pp. 47-55.)

²⁹⁸ See Section 1.3 of this Research Paper.

²⁹⁹ A. Dworkin, “Drones and Targeted Killing: Defining a European Position”, *European Council on Foreign Relations Policy Brief*, July 2013, http://www.ecfr.eu/page/-/ECFR84_DRONES_BRIEF.pdf, p. 3.

Another reason why Europe should speak up now according to Dworkin is the evolution of US policy – and here, he of course refers to, among other things, Obama’s May 2013 speech. Because of this, there may now be a greater scope for a productive dialogue with the US.³⁰⁰ Dworkin therefore sketches the outline of a common European position, “rooted in the idea that outside zones of conventional hostilities, the deliberate taking of human life must be justified on an individual basis according to the imperative necessity of acting in order to prevent either the loss of other lives or serious harm to the life of the nation”.³⁰¹

In more detail, Dworkin explains that the European stance would include the rejection of the global war paradigm³⁰² and that outside of an armed conflict,

the threat of terrorism should be confronted within a law enforcement framework. This framework would not absolutely prohibit the deliberate killing of individuals, but it would set an extremely high threshold for its use – for example, it might be permitted where strictly necessary to prevent an imminent threat to human life or a particularly serious crime involving a grave threat to life. Where the threat was sufficiently serious, the state’s response might legitimately include the use of military force, but every use of lethal force would have to be justified as a necessary and proportionate response to an imminent threat. In any action that involved the deliberate taking of human life, there would have to be a rigorous and impartial post-strike assessment, with the government disclosing the justification for its action. Finally, EU states might perhaps agree that in the face of an armed attack or an imminent armed attack, states can use force on the territory of another state without its consent, if that state is unable or unwilling to act effectively to restrain the attack.³⁰³

The authors will come back to Dworkin’s piece when offering their own opinion on this matter in the now-following and final Section 4.

4. Conclusion

4.1. Authors’ response

The authors agree with much of what Dworkin argues and he should be praised for initiating the discussion as to how a European stance on drones should look. Dworkin is clearly taking the momentum of the US seemingly abandoning its old war paradigm to present this potential EU position. With the rapid proliferation of drone technology, it is indeed high time that the EU actively engages in the discussion, if it does not want certain standards and conduct to be possibly interpreted as (implicit) acceptance of the US position by other members of the international community. However, and while stressing that the authors are aware of Dworkin’s careful steps in this process, they wish to point out that there is also a risk. Although Dworkin sides with the CAVV and Melzer

³⁰⁰ *Ibid.*, p. 2.

³⁰¹ *Ibid.*, p. 2.

³⁰² In more detail: “The foundation of this common vision would be the rejection of the notion of a de-territorialised global armed conflict between the US and al-Qaeda. Across the EU there would be agreement that the confrontation between a state and a non-state group only rises to the level of an armed conflict if the non-state group meets a threshold for organisation, and if there are intense hostilities between the two parties. The consensus view within the EU would be that these conditions require that fighting be concentrated within a specific zone (or zones) of hostilities. Instead of a global war, Europeans would tend to see a series of discrete situations, each of which needs to be evaluated on its own merits to decide whether it qualifies as an armed conflict.” (*Ibid.*, p. 7.)

³⁰³ *Ibid.*, pp. 7-8. See also *ibid.*, p. 10: “At the heart of the EU position is the belief that the use of lethal force outside zones of active hostilities is an exceptional measure that can only be justified on the basis of a serious and imminent threat to human life.” (*Ibid.*, p. 8.) See also the following statement, which was also used in the authors’ questionnaire: “Under current circumstances, European and US officials might be able to agree that the deliberate killing of terrorist suspects outside zones of conventional hostilities is only permissible when they pose a serious and imminent threat to innocent life that cannot be deflected in any less harmful way.”

that the threshold of using drones in law enforcement settings is extremely high, one cannot escape the feeling that Dworkin's test is a bit lower. This feeling is not only engendered by Dworkin's test itself, which will be discussed below, but also by Dworkin's constant stressing that this is the moment to break the deadlock between the transatlantic partners.³⁰⁴ Because of that, one gets the impression he wants to seize the moment and approach the US position to a certain extent (though it would go too far to say he wants to meet the US halfway), thus necessitating a slight easing of the strict requirements of the current law enforcement paradigm. This will be addressed in greater detail below.

It must also be pointed out that the exact contours of Dworkin's test are not too clear, as the paper presents different versions. In the summary on page 1, the test speaks of lethal force "against individuals posing a serious and imminent threat to innocent life". However, on page 2, one can read that "the deliberate taking of human life must be justified on an individual basis according to the imperative necessity of acting in order to prevent either the loss of other lives or serious harm to the life of the nation". By adding the words "or serious harm to the life of the nation", Dworkin appears to mix self-defense arguments for states with self-defense arguments for the law enforcement officials executing the strike in one streamlined test.

The authors side with the view from the CAVV that one needs both a legal basis for using force on the territory of another state (consent, a mandate from the UN Security Council or self-defense) and a lawful strike pursuant to the applicable legal framework, which, outside of an armed conflict, would be international human rights law. Hence, if a State wants to use force on the territory of another state when there is neither consent nor a UN Security Council approval, that state would first have to comply with the requirements of self-defense, which allows a response to an armed attack. However, if this use of force takes place outside an armed conflict situation, the strike itself must also comply with all the requirements under IHRL. As explained in Section 3.2, this entails compliance with the (stricter) IHRL principles of necessity, proportionality and precaution.

In addition to this possible conflation, and as "announced" above, Dworkin's test under the IHRL framework – which should encompass the strict requirements of necessity, proportionality and precaution (see also the reports by Melzer and the CAVV) – seems less stringent; the element of proportionality is only explicitly mentioned one time³⁰⁵ – the focus is clearly on necessity – and the element of precaution is not mentioned at all.

There is thus a danger that Dworkin's well-intentioned and constructive move runs the risk of watering down well-established principles and standards of international law.

The authors stress that it would be better to strictly follow the current law – both the legal basis for the use of force and the specific requirements of the applicable legal regime – rather than following what seems to be a slightly different version of existing standards and a conflation of different fields, apparently suggested to find a compromise to bring both the US and EU together. Not only because this will lead to more confusion about concepts, during a time when clarity on these fundamental issues is needed more than ever, but also – and more importantly – because concepts such as imminence should arguably be as strictly interpreted as possible so as to minimise the incidence of ever-expanding battlefields (something that Dworkin also and rightly warns about) and the increased risk of harm to civilians. A very worrisome US interpretation of the concept of imminence has already been disclosed, and one must be careful that this broad interpretation does not find its way into other legal frameworks. The authors feel that the existing legal principles are simply too important to dilute, "just" for the sake of finding global policy norms/international legal principles. Drone technology is only one step in the development of weapons and technology, but the principles of law will remain. Watered-down standards may henceforth also be applied to weapons after drones, such as fully autonomous weapons systems, or to conflicts in cyberspace. One has to be aware that "negotiating" principles now will have a longer-lasting impact than one may

³⁰⁴ See *ibid.*, summary and pp. 2, 4, 7 and 10.

³⁰⁵ See *ibid.*, p. 8: "Where the threat was sufficiently serious, the state's response might legitimately include the use of military force, but every use of lethal force would have to be justified as a necessary and proportionate response to an imminent threat."

now be able to foresee, and which requires the utmost attention and care. Dworkin correctly points out this danger as well,³⁰⁶ but then notes that

it is at least worth exploring whether the notion of self-defence might provide the foundation for a meaningful degree of convergence between European and US views. Under current circumstances, European and US officials might be able to agree that the deliberate killing of terrorist suspects outside zones of conventional hostilities is only permissible when they pose a serious and imminent threat to innocent life that cannot be deflected in any less harmful way. However, much more discussion will be necessary to flesh out the terms of this statement [...].³⁰⁷

The authors believe that such a convergence, which again seems to focus much more on an inter-state concept of self-defence, and which pushes the *additional* and very strict IHRL requirements of necessity, proportionality and precaution to the background, should not be pursued. The authors might not rule out the exceptional situation that a person be lawfully targeted in the context of the law enforcement paradigm, but this would be an extremely rare exception. However, even though there may be fewer US strikes outside of hot battlefields than before, the authors would not be surprised, given the practice of the past few years, if such strikes continue to occur on a rather structural basis.³⁰⁸ They predict that even if not as frequent as in the past, they would still occur more often than under the exceptionally high standard prescribed by the law enforcement model. Therefore, the chance is considerable that the US practice of targeting, which seems particularly linked to the target's alleged past unlawful behaviour or the target's alleged future involvement in possible attacks (and less so to the imminent and concrete threat that that person constitutes *at that particular moment*) – this is linked to the already-discussed and worrisome US interpretation of the concept of imminence, to which Dworkin also rightly pays considerable attention –³⁰⁹ would never fit the law enforcement model.³¹⁰ Not the “traditional” and strict (and arguably only correct) model, but probably also not the slightly more lenient version proposed by Dworkin. If that guess is correct, then there is also no need for Dworkin to suggest looking for a compromise in the first place, however well-intentioned that move may be.

³⁰⁶ See *ibid.*, p. 10: “Some EU member states may be wary of searching for an agreement with the US that might lead to a weakening of what they regard as a clear legal framework based on a firm differentiation between armed conflict and law enforcement.”

³⁰⁷ *Ibid.*

³⁰⁸ See for the latest data on drone strikes the website of The Bureau of Investigative Journalism, <http://www.thebureauinvestigates.com/category/projects/drones/drones-graphs/>.

³⁰⁹ See A. Dworkin, “Drones and Targeted Killing: Defining a European Position”, European Council on Foreign Relations Policy Brief, July 2013, http://www.ecfr.eu/page/-/ECFR84_DRONES_BRIEF.pdf, p. 7. See also this statement from Human Rights Watch: “International human rights law provides every person with the inherent right to life. It permits the use of lethal force outside of armed conflict situations only if it is strictly and directly necessary to save human life. In particular, the use of lethal force is lawful only where there is an imminent threat to life and less extreme means, such as capture or non-lethal incapacitation, are insufficient to address that threat. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that the ‘intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.’ This standard permits using firearms only in self-defense or defense of others ‘against the imminent threat of death or serious injury’ or ‘to prevent the perpetration of a particularly serious crime involving grave threat to life’ and ‘only when less extreme means are insufficient to achieve these objectives.’ Under this standard, individuals cannot be targeted for lethal attack merely because of past unlawful behavior, but only for imminent or other grave threats to life when arrest is not a reasonable possibility. If the United States targets individuals based on overly elastic interpretations of the imminent threat to life that they pose, these killings may amount to an extrajudicial execution, a violation of the right to life and basic due process [original footnotes omitted].” (Human Rights Watch, “Between a Drone and Al-Qaeda” *The Civilian Cost of US Targeted Killings in Yemen*, 2013, http://www.hrw.org/sites/default/files/reports/yemen1013_ForUpload_1.pdf, pp. 87-88.) For the UN Basic Principles, see: “UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials”, Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, UN Doc. A/CONF.144/28/Rev.1 at 112 (1990), <http://www1.umn.edu/humanrts/instreet/i2bpuff.htm>.

³¹⁰ *Ibid.*, p. 10: “The shift in US policy towards a greater reliance on self-defence as an operational principle seems to offer an opening for further discussion. But US practice remains very far from what Europeans would like to see and its legal justification continues to rely on premises that most Europeans reject.”

Additionally, it should be stressed again – and this point was correctly observed by Dworkin as well –³¹¹ that it is still not certain whether the US is *really* making a move towards Europe with respect to its legal framework. Obama’s new line is merely about policy, and does not constitute the final say about the US’ view on the legal borders in using armed drones.

4.2. Looking ahead

What the EU should do is keep stressing the importance of transparency, oversight and accountability and respect for international law, including international humanitarian law and international human rights law while countering terrorism. It should also resolutely reconfirm, as some states and the CAVV have done, that the international legal framework is suitable to address issues that arise with drones, that there must be a legal basis for drone strikes, that drone strikes in the context of an armed conflict must fully comply with international humanitarian law and international human rights law, and that drone strikes outside of armed conflict situations must be governed by the law enforcement paradigm, international human rights law and the requirements of necessity, proportionality and precaution, which will almost *never* lead to a lawful targeted killing/use of armed drones. In that respect, we *do* fully agree with Dworkin when he writes: “Committed as it is to the international rule of law, the EU must do what it can to reverse the tide of US drone strikes before it sets a new benchmark for the international acceptability of killing alleged enemies of the state”.³¹² Also very important in this context is the resolute rejection of the notion of a global battlefield without clear geographical boundaries.³¹³

The authors realise that this Research Paper is just the first brick they are laying in a long-term project, and they hope it serves as a jumping-off point for interested parties to work together to advance the discussion on the EU position on armed drones and targeted killing, including assisting in making the EU Member State positions as comprehensive as possible. They also would like to encourage the Netherlands in following-up on the statements of former Dutch Minister of Foreign Affairs Timmermans as well as those of the Dutch representative to the Human Rights Council debate in September 2014³¹⁴ that the Netherlands ought to play a (leading) role in this process. As a firm EU *and* transatlantic partner, and as host of the city of The Hague, the legal capital of the world, and finally as a country having a clear interest in this topic – not only evidenced by the clear way in which it filled in this questionnaire, but also by the various statements by country representatives to that effect – this EU Member State would be ideally suited to facilitate the discussion on the international legal aspects of the use of armed drones and targeted killings.

Looking to the future with respect to acquisition of armed drone technology, the US has recently opened up the sale and export of its military technology to friendly countries interested. Within the policy released on 17 February 2015 by the US State Department, the guidelines for purchase include the following requirements:

- Recipients are to use these systems in accordance with international law, including international humanitarian law and international human rights law, as applicable;
- Armed and other advanced UAS are to be used in operations involving the use of force only when there is a lawful basis for use of force under international law, such as national self-defense;
- Recipients are not to use military UAS to conduct unlawful surveillance or use unlawful force against their domestic populations; and

³¹¹ *Ibid.*, p. 7.

³¹² A. Dworkin, “Drones and Targeted Killing: Defining a European Position”, *European Council on Foreign Relations Policy Brief*, July 2013, http://www.ecfr.eu/page/-/ECFR84_DRONES_BRIEF.pdf, p. 10.

³¹³ See *ibid.*, p. 7.

³¹⁴ Dutch intervention, United Nations Office at Geneva, “Human Rights Council holds panel on remotely piloted aircraft or armed drones in counterterrorism and military options”, 22 September 2014, http://www.unog.ch/unog/website/news_media.nsf/%28httpNewsByYear_en%29/BCE56ED914A46D40C1257D5B0038393F?OpenDocument “[The] Netherlands underlined the importance of maximum transparency in the use of armed drones, and supported holding an international dialogue to clarify the interplay between human rights and international humanitarian law.”

- As appropriate, recipients shall provide UAS operators technical and doctrinal training on the use of these systems to reduce the risk of unintended injury or damage.³¹⁵

Given that at this moment there is no consensus about the applicable framework of international law with respect to the use of armed drones, especially outside of recognised armed conflicts, it is very difficult to know if countries purchasing drones from the US are adhering to standards prescribed by international law. Additionally given that the US' interpretation of concepts such as imminence, the boundaries of self-defense or the interplay of international human rights law and international humanitarian law³¹⁶ within armed conflicts differ from some outlined by EU Member States, the authors are of the opinion that prior to a wide-scale proliferation and deployment of the technology, heeding the call of several relevant bodies outlined above to come to a common understanding of the relevant legal framework is imperative. This not only is relevant to the acquisition of drone technology, but also to the continued development toward more autonomous systems in the future.

Another facet of the discussion that the authors think needs to be brought to the forefront is the role of EU Member States in their intelligence-sharing programs with the US. At this point, at least four EU Member States (Denmark, Germany, the Netherlands and the United Kingdom) have reportedly provided information to the US that has assisted the US in its carrying out of targeted killings in various stadia.³¹⁷ This is problematic under various legal obligations, not the least of which is the ECHR. More research needs to go into the extent to which EU countries are sharing intelligence that is being used for extralegal action as well as to the role of private military contractors in service to EU Member States in this matter.³¹⁸

Additionally, matters raised by the Parliamentary Assembly of the Council of Europe in its 27 January 2015 resolution (See Section 3.2.) must be considered top-priority with respect to fleshing out a common European position.

To conclude, it is only possible to say that a unified EU voice is still elusive with respect to drones and targeted killings, a fact that can be viewed as unsurprising, given the nature of the topic, the varying state positions on acquisition and use of drones in varying fora, but an interesting conclusion nonetheless when starting with the assumption that the "Europeans" diverge greatly from the "Americans" on this topic.

It may also be very difficult to achieve this unified EU voice in the future. The EU rarely speaks with one voice in the context of foreign policy, security and defense, and the issue of the use of armed drones is perhaps even more sensitive than many other topics in this context. Moreover, the responses to this questionnaire have shown that there is still a lack of agreement among EU Member States concerning, for instance, the customary international law status or scope of certain concepts.

³¹⁵ U.S. Export Policy for Unmanned Aerial Systems, US State Department, 17 February 2015,

<http://www.state.gov/r/pa/prs/ps/2015/02/237541.htm>.

³¹⁶ This point seems particularly relevant. It was mentioned often in this paper and it was also the only point where the Dutch Cabinet had a slightly different opinion than the CAVV. The authors realise that the case law on this topic is currently in full development as well and may not have been entirely crystallised, which may assist in the current lack of clarity. Cf. L. Hill-Cawthorne, "The Grand Chamber Judgment in *Hassan v UK*", *EJIL: Talk!*, 16 September 2014, <http://www.ejiltalk.org/the-grand-chamber-judgment-in-hassan-v-uk/>.

³¹⁷ For example, Denmark (see A. Singh and J. Scholes, "Denmark, the CIA, and the Killing of Anwar al-Awlaki", *Open Society Foundations*, 30 April 2014, <http://www.opensocietyfoundations.org/voices/denmark-cia-and-killing-anwar-al-awlaki>), Germany (see "Spying Together: Germany's Deep Cooperation with the NSA, Part 2: German Aid for US Drone Attacks?", *Spiegel Online*, 18 June 2014, <http://www.spiegel.de/international/germany/the-german-bnd-and-american-nsacooperate-more-closely-than-thought-a-975445-2.html>), the Netherlands (see S. Derix and H. Modderkolk, "The secret role of the Dutch in the American war on terror", *NRC Handelsblad*, 5 March 2014, <http://www.nrc.nl/nieuws/2014/03/05/the-secret-role-of-the-dutch-in-the-american-war-on-terror/>), but Dutch cooperation in drone strikes is officially denied, see "Dutch do not take part in armed drone attacks, minister says", *Dutchnews*, 24 April 2014, <http://www.dutchnews.nl/news/archives/2014/04/dutch-do-not-take-part-in-armed/> and the United Kingdom (see J. Serle, "UK complicity in US drone strikes is 'inevitable', Emmerson tells parliament", *The Bureau of Investigative Journalism*, 5 December 2013, <http://www.thebureauinvestigates.com/2013/12/05/uk-complicity-in-us-drone-strikes-is-inevitable-emmerson-tells-parliament/>).

³¹⁸ For a background, see G. Zappalà, "Target killing and global surveillance: understanding the European role in drone warfare", paper for the Drones and International Security: A European Perspective Conference, hosted by Aarhus University, Denmark, 5-6 March 2015, on file with authors. See <http://ps.au.dk/aktuelt/arrangementer/arrangement/artikel/drones-and-international-security-a-european-perspective/>. Author J. Dorsey presented the provisional conclusions of the authors at the conference.

Notwithstanding this observation, the authors are convinced it is worthwhile to strive toward as much of a consensus within the EU as possible. A solid EU position based on the rule of law is necessary as a counterweight against the current US position, which still raises serious questions under international law. The EU will be stronger in its criticism of the US if it speaks with a unified voice. Several EU Member States have already critiqued the US' approach (e.g., Sweden, UK, the Netherlands, and Denmark) which can be helpful in elucidating their positions, but in order to be most effective in engagement with the US, additionally, a single EU voice, or at least a chorus of a larger number of EU Member States, is preferable. The authors understand that whereas criticism about a specific incident may be very difficult and even impossible to convey in view of the lack of access to information, it is not difficult to respond to general and public policies, such as those outlined in Obama's May 2013 speech and the subsequent speeches made by administrative officials.³¹⁹

The US has often been criticised for various aspects of its foreign policy. However, the fact that the US seems to participate (in some respect) in the drone discussion, is something to be welcomed, and something EU Member States should do now as well despite any differences in perspective.

4.3. Concrete recommendations

When formulating an EU Common Position on the use of armed drones, which will require more public debate, discussion and official statements from Member States on the use of armed drones and targeted killing, the EU Member States should include the following elements:

- An EU Common Position should be first and foremost based in the rule of law. Unlawful acts “undermine the concept of rule of law, which is a key element in the fight against terrorism”. It should thus fully respect international law, including IHL and IHRL. This includes respect for another state's sovereignty. Targeting under the IHRL paradigm moreover requires strict compliance with the principles of necessity, proportionality and precaution, which will almost *never* lead to a lawful targeted killing/use of armed drones.
- An EU Common Position should be clear about having a two-step legal justification for using armed drones; one concerning the legal basis (consent, mandate UN Security Council and self-defense), and one concerning the applicable legal framework (IHL (in armed conflict situations) and IHRL (always)).
- An EU Common Position should recognise that the current international law is fully capable of addressing legal issues arising with armed drones and targeted killing and that new law is not necessary. Therefore, an EU Common Position should first of all focus on a better enforcement of the existing international law.
- An EU Common Position should admit however that more consensus should be achieved when it comes to the interpretation and application of the existing law to situations on the ground. Where interpretation is possible, the EU should follow the most restricted reading, so that the use of force is restrained as much as possible (an example relates to the concept of imminence).
- An EU Common Position should clearly outline the relationship and interplay between international human rights law and international humanitarian law in situations of armed conflict, while recognising that both fields of law co-apply in these situations.
- An EU Common Position should resolutely reject the idea of a global battlefield without finite geographical borders.
- An EU Common Position should stress the importance of transparency, oversight and accountability. Unlawful drone strikes should be followed by proper and independent investigations, with victims of such strikes having access to effective remedies. There is also a need for clear procedures regarding the authorisation of drone strikes.

³¹⁹ See n. 12 of this Research Paper.

- An EU Common Position should also address the responsibility of third States for unlawful drone attacks by another State, including addressing/reconsidering current positions on:
 - a) Consent to use their air bases for the launch of unlawful attacks
 - b) Sharing of secret information where in the past this has contributed to extra-judicial killings.

In addition to these elements, the authors recommend the following:

- Individual EU Member States are urged to clarify their positions and contribute to the debate and discussion. Very concretely, states should respond to this paper with confirmations, clarifications, revisions, corrections and any additional information that can assist in clarifying the EU position on armed drones.
- EU State Members are also urged to discuss these matters and their positions in all relevant fora. This would entail cooperation with the two relevant UN Special Rapporteurs, as well as cooperation with the Human Rights Council. It must be stressed again that international human rights law is always applicable, also in times of armed conflict, and thus that discussion within this latter forum is fitting (see the (contra) UK position on this topic).
- The Netherlands should take a leading role, also within the context of the EU, in the discussion on the international legal aspects of armed drone use and targeted killing. In the context of this discussion, best practices could be formulated, see also the call for such principles by Ireland.
- The EU should be willing to discuss potential avenues of cooperation and agreement with the US on counterterrorism principles (especially to establish more clarity on the US views on such concepts as “associated forces” and the definition of a “continuing and imminent” threat),³²⁰ but not at the cost of diluting or re-interpreting long-standing legal rules or principles as applicable under international law. International consensus should not be a goal *coûte que coûte*.
- More clarity is desired on the outcomes of the informal US-EU Legal Advisors dialogue.

³²⁰ See also A. Dworkin, “Drones and Targeted Killing: Defining a European Position”, European Council on Foreign Relations Policy Brief, July 2013, http://www.ecfr.eu/page/-/ECFR84_DRONES_BRIEF.pdf, p. 8.

Bibliography

- Advisory Committee on Issues of Public International Law, *Advisory Report on Armed Drones, Translation*, July 2013, http://cms.webbeat.net/ContentSuite/upload/cav/doc/CAVV_advisory_report_on_armed_drones_%28English_translation_-_final%29_%282%29.pdf.
- Advisory Committee on Issues of Public International Law, *Main Conclusions of Advice on Armed Drones*, July 2013, http://cms.webbeat.net/ContentSuite/upload/cav/doc/Main_conclusions_of_CAVV_advice_on_armed_drones%281%29.pdf.
- Akande D., “UN Human Rights Council Panel on Drones”, *EJIL: Talk!*, 1 October 2014, <http://www.ejiltalk.org/un-human-rights-council-panel-discussion-on-drones/>.
- Almasmari H., “Yemen says U.S. drone struck a wedding convoy, killing 14”, *CNN*, 13 December 2013, <http://edition.cnn.com/2013/12/12/world/meast/yemen-u-s-drone-wedding/>.
- Amnesty International Denmark, “Amnesty støtter kritik af droneangreb”, 6 February 2013, <http://www.amnesty.dk/presse/amnesty-stotter-kritik-af-droneangreb>.
- Amnesty International, “Will I be next?” *US drone strikes in Pakistan*, 2013, <http://www.amnestyusa.org/sites/default/files/asa330132013en.pdf>.
- “Armed drone debate divides Germany”, *The Local*, 30 June 2014, <http://www.thelocal.de/20140630/armed-drone-debate-splits-german-government>.
- Aronsson M., “Remote Law-Making? American Drone Strikes and the Development of *Jus Ad Bellum*”, *Journal on the Use of Force and International Law*, Vol. (2014), No. 2.
- Lord Astor of Hever, Reply to a question regarding the criteria the UK is using to distinguish civilians from insurgents in Afghanistan when assessing deaths and injuries caused by United Kingdom forces and whether the same criteria apply to casualties caused by drone aircraft, 13 November 2012, <http://www.publications.parliament.uk/pa/ld201213/ldhansrd/text/121113w0001.htm>.
- “Austria: Drones to be used for surveillance at home and abroad”, *Huffington Post*, 4 June 2012, http://www.huffingtonpost.com/2012/06/04/austria-drones_n_1569352.html.
- “Austro-Drohnen überwachen Waffenruhe in Ukraine”, *Kronen Zeitung*, 12 September 2014, http://www.krone.at/Oesterreich/Austro-Drohnen_ueberwachen_Waffenruhe_in_Ukraine-OSZE-Mission-Story-419141.
- “Avis du Conseil d’État”, No. 50.846, 18 November 2014, http://www.conseil-etat.public.lu/fr/avis/2014/11/50_846/50846.pdf.
- Baker P., “Pivoting From a War Footing, Obama Acts to Curtail Drones”, *The New York Times*, 23 May 2013, <http://www.nytimes.com/2013/05/24/us/politics/pivoting-from-a-war-footing-obama-acts-to-curtail-drones.html>.
- Bergen P. and J. Rowland, “Nine facts on armed drones”, *CNN*, 13 May 2014, <http://edition.cnn.com/2014/05/13/opinion/bergen-nine-facts-spread-of-armed-drones/>.

- Bhuta N., C. Kreß, I. Seiderman, Ch. Heyns, N. Melzer, M. Scheinin, E. Benvenisti and A. Dworkin, *Targeted Killing, Unmanned Aerial Vehicles and EU Policy*, EUI, Robert Schuman Centre for Advanced Studies and Global Governance, RSCAS PP 2013/17, <http://hdl.handle.net/1814/28500>.
- Borg O., "The Double Agent Who Infiltrated Al Qaeda", *Newsweek*, 10 February 2013, <http://www.newsweek.com/double-agent-who-infiltrated-al-qaeda-63259>.
- British Embassy to the Netherlands, Foreign and Commonwealth Office, Legal Directorate Outreach Bulletin, "Remotely Piloted Aircraft Systems: the UK position", Doug Wilson, Legal Director, <https://twitter.com/UKintlaw/status/570607733050904577>.
- Buren P. Van, "Obama's itchy trigger finger on drone strikes: what happened to due process?", *The Guardian*, 17 February 2014, <http://www.theguardian.com/commentisfree/2014/feb/17/obama-drone-strikes-due-process>.
- Butler A., "Italy Looking to Develop Black MALE UAV", *Aviation Week*, 20 May 2013, <http://aviationweek.com/awin/italy-looking-develop-black-male-uav>.
- Campaign to Stop Killer Robots, "Report on outreach on the UN report on 'lethal autonomous robotics'", 31 July 2013, http://www.stopkillerrobots.org/wp-content/uploads/2013/03/KRC_ReportHeynsUN_Jul2013.pdf.
- "Ce drone mai are Armata Romana?!", *Romania Military*, 4 January 2015, <http://www.rumaniamilitary.ro/ce-drone-mai-are-armata-romana>.
- Chamberlain N., "NATO Drones – the 'game-changers'", *NATO Watch*, 26 September 2013, <http://www.natowatch.org/node/1204>.
- Chauvistré E., "Von guten und bösen Waffen", *Das Parlament*, 2013, http://www.das-parlament.de/2013/25_26/Thema/45452662/323956.
- Clayton N., "How Russia and Georgia's 'little war' started a drone arms race", *Minneapolis Post*, 23 October 2012, <http://www.minnpost.com/global-post/2012/10/how-russia-and-georgias-little-war-started-drone-arms-race>.
- Cochrane J., "At Asia Air Show, Plenty of Competition for Sales of Drones", *The New York Times*, 16 February 2014, <http://www.nytimes.com/2014/02/17/business/international/competition-fierce-for-sales-of-unarmed-drones.html>.
- Cole Ch., "Fol release shows high tempo of strikes in Iraq as Defence Select Committee urges more action", *Drone Wars UK*, 5 February 2015, <http://dronewars.net/2015/02/05/foi-release-shows-high-tempo-of-strikes-in-iraq-as-defence-select-committee-urges-more-action/>.
- Commissie van Advies Inzake Volkenrechtelijke Vraagstukken, *Advies Inzake Bewapende Drones*, 16 July 2013, http://cms.webbeat.net/ContentSuite/upload/cav/doc/CAVV_ADVIES_BEWAPENDE_DRONES%281%29.pdf.
- Conrad N., "German Bundeswehr's role in targeted Taliban killings in Afghanistan", *Deutsche Welle*, 31 December 2014, <http://www.dw.de/germanbundeswehrs-role-in-targeted-taliban-killings-in-afghanistan/a-18164323>.
- Council of Europe, Parliamentary Assembly, Committee on Legal Affairs and Human Rights, "Drones and Targeted Killings: the need to uphold human rights and international Law", Report, <http://websitepace.net/documents/19838/1085720/20150127-TargetedKillings-EN.pdf/6b637090-5af9-4d08-b9d4-7dc45dd09d2f>.

- Council of Europe, Parliamentary Assembly, Legal Affairs and Human Rights, <http://assembly.coe.int/nw/Committees/as-jur/as-jur-main-EN.asp>.
- Dahlburg J.-Th., “Europeans form ‘drone club’ to compete with U.S.”, *USA Today*, 19 November 2013, <http://www.usatoday.com/story/news/world/2013/11/19/europe-drones/3640273/>.
- Danish Parliamentary debate on armed drones, 11 April 2013, <http://www.ft.dk/samling/20121/forespoergsel/f24/beh1/forhandling.htm?startItem=&noThread=1&singleItem=1%20-%20nav>.
- Defense Security Cooperation Agency, News Release, “The Netherlands—MQ-9 Reapers”, 6 February 2015, http://www.dsca.mil/sites/default/files/mas/netherlands_14-55.pdf.
- Derix S. and H. Modderkolk, “The secret role of the Dutch in the American war on terror”, *NRC Handelsblad*, 5 March 2014, <http://www.nrc.nl/nieuws/2014/03/05/the-secret-role-of-the-dutch-in-the-american-war-on-terror/>.
- Deutscher Bundestag, “Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Dr. Rolf Mützenich, Dr. Hans-Peter Bartels, Rainer Arnold, weiterer Abgeordneter und der Fraktion der SPD – Drucksache 17/11102 – Haltung der Bundesregierung zum Erwerb und Einsatz von Kampfdrohnen”, 29 May 2013, <http://dip21.bundestag.de/dip21/btd/17/136/1713655.pdf>.
- Deutscher Bundestag, “Stenografischer Bericht”, 2 July 2014, <http://dip21.bundestag.de/dip21/btp/18/18045.pdf>.
- “Deutschlands Zukunft gestalten” (Koalitionsvertrag zwischen CDU, CSU und SPD), <https://www.cdu.de/sites/default/files/media/dokumente/koalitionsvertrag.pdf>.
- Dickow M. and H. Linnenkamp, “Combat Drones –Killing Drones, A Plea against Flying Robots”, February 2013, *SWP Comments 4*, Stiftung Wissenschaft und Politik, German Institute for International and Security Affairs, http://www.swpberlin.org/fileadmin/contents/products/comments/2013C04_dkw_Ink.pdf.
- Directorate-General for External Policies of the Union, Directorate B, Policy Department, *Human Rights Implications of the Usage of Drones and Unmanned Robots in Warfare*, May 2013, http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/410220/EXPO-DROI_ET%282013%29410220_EN.pdf.
- Dobbing M. and Ch. Cole, “Israel and the Drone Wars. Examining Israel’s production, use and proliferation of UAVs”, *Drone Wars UK*, January 2014, <https://dronewarsuk.files.wordpress.com/2014/01/israel-and-the-drone-wars.pdf>.
- Dorsey J. and Ch. Paulussen, “The Boundaries of the Battlefield: A Critical Look at the Legal Paradigms and Rules in Countering Terrorism”, *ICCT Research Paper*, April 2013, http://www.icct.nl/download/file/ICCT-Dorsey-Paulussen-Boundaries-of-the-Battlefield-Report-April-2013_docx.pdf.
- “Drones for Hungarian military use in the making, report says”, *Politics.hu*, 21 June 2013, <http://www.politics.hu/20130621/drones-for-hungarian-military-use-in-the-making-report-says/>.
- “Drony bojowe w Polsce już w 2016 roku”, *Wyborcza.pl*, 29 April 2014, http://wyborcza.pl/1,75478,15881244,Drony_bojowe_w_Polsce_juz_w_2016_roku.html.
- “Dutch do not take part in armed drone attacks, minister says”, *Dutchnews*, 24 April 2014,

http://www.dutchnews.nl/news/archives/2014/04/dutch_do_not_take_part_in_arme/.

Dworkin A., "Drones and Targeted Killing: Defining a European Position", *European Council on Foreign Relations Policy Brief*, July 2013, http://www.ecfr.eu/page/-/ECFR84_DRONES_BRIEF.pdf.

Entous A., "US Plans to Arm Italy's Drones", *The Wall Street Journal*, 29 May 2012, <http://www.wsj.com/articles/SB10001424052702303395604577432323658176792>.

Epicos, North European Aerospace Test Range (NEAT), General Information, <http://www.epicos.com/EPCompanyProfileWeb/GeneralInformation.aspx?id=19197>.

"Estonia plans to purchase Global Hawk drone to increase its military reconnaissance Capabilities", *Army Recognition*, 11 January 2013, http://www.armyrecognition.com/january_2014_global_defense_security_news_industry/estonia_plans_to_purchase_global_hawk_drone_to_increase_its_military_reconnaissance_capabilities_110.html.

European Parliament, "Joint motion for a resolution on the use of armed drones (2014/2567(RSP))", 25 February 2014, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=//EP//NONSGML+MOTION+P7-RC-2014-0201+0+DOC+PDF+V0//EN>.

European Parliament, "Text of the resolution adopted by the European Parliament by 534 votes to 49 with 10 abstentions a resolution on the use of armed drones", <http://www.europarl.europa.eu/oeil/popups/summary.do?id=1340215&t=e&l=en>.

European Parliament, Debates, Wednesday, 26 February 2014, Strasbourg, 15. Use of armed drones (debate), Dimitrios Kourkoulas, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=//EP//TEXT+CRE+20140226+ITEM-015+DOC+XML+V0//EN>.

European Parliament, Parliamentary questions, "Answer given by High Representative/Vice President Ashton on behalf of the Commissions", 4 February 2014, <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2013-012201&language=EN>.

European Parliament, Parliamentary questions, "Answer given by Vice-President Mogherini on behalf of the Commission", 9 February 2015, <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2014-008989&language=EN>.

"Euro-UAVs: Europe opens 'drone club' to compete with US, Israel", *RT News*, 20 November 2013, <http://rt.com/news/drones-europe-nato-eu-us-008/>.

Farmer B., "British to deploy armed Reaper drones in Syria in battle against Isis", *The Telegraph*, 21 October 2014, <http://www.telegraph.co.uk/news/uknews/defence/11176406/RAF-Reaper-drones-to-be-used-over-Syria.html>.

Folketinget, "Udenrigsudvalget, Alm. del 2012-13: Spørgsmål og svar", 28 May 2013, <http://www.ft.dk/samling/20121/almindel/uru/spm/155/index.htm>.

Foreign and Commonwealth Office letter, 10 October 2014, <http://www.parliament.uk/documents/commons-committees/foreignaffairs/BokoHaram.pdf>.

"France and Britain to Develop 'Armed Combat Drones' to Attack both Aerial and Ground Targets", *Global Research News*, 28 November 2014, <http://www.globalresearch.ca/france-and-britain-to-develop-armed-combat-drones-to-attack-both-aerial-and-ground-targets/5416777>.

- France-UK Summit, “Declaration on Security and Defence”, 31 January 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/27716/France-UK_Summit-Declaration_on_Security_and_Defence.pdf.
- Franchi P. La, “Israel fields armed UAVs in Lebanon”, *Flightglobal*, 8 August 2006, <http://www.flightglobal.com/news/articles/israel-fields-armed-uavs-in-lebanon208315/>.
- Francois M., Reply concerning the conclusion set out by UN Special Rapporteur Ben Emmerson in paragraph 78 of his interim report, that states are “under an obligation to conduct a prompt, independent and impartial fact-finding inquiry and to provide a detailed public explanation”, <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131118/text/13118w0003.htm>.
- “German defense minister seeks armed drones for military”, Deutsche Welle, 1 July 2014, <http://www.dw.de/german-defense-minister-seeks-armed-drones-for-military/a-17752054>.
- “Germany, France, Italy Plan to Develop Military Drones”, *ABC News*, 31 March 2015, <http://abcnews.go.com/International/wireStory/germany-france-italy-plan-develop-military-drones-30027388>.
- Goodman R. and S. Knuckey, ‘What Obama’s New Killing Rules Don’t Tell You’, *Esquire*, 24 May 2013, <http://www.esquire.com/newspolitics/news/a22769/obama-counterterrorism-speech-questions-052413/?click=news>.
- Greenwald G., “Obama’s terrorism speech: seeing what you want to see”, *The Guardian*, 27 May 2013, <http://www.theguardian.com/commentisfree/2013/may/27/obama-war-on-terror-speech>.
- Hammond Ph., “In defence of drones”, *The Guardian*, 18 December 2013, <http://www.theguardian.com/commentisfree/2013/dec/18/in-defence-of-drones-keep-civilians-troops-safe>.
- “Hennis geen tegenstander van bewapende drone en nieuwe onderzeeërs”, *Trouw*, 3 November 2014, <http://www.trouw.nl/tr/nl/4492/Nederland/article/detail/3781875/2014/11/03/Hennis-geen-tegenstander-van-bewapende-drone-en-nieuwe-onderzeeers.dhtml>.
- Hernández G., “Obama’s Counter-Terrorism Speech: A Turning Point or More of the Same?”, *EJIL: Talk!*, 27 May 2013, <http://www.ejiltalk.org/obamas-counterterrorism-speech-a-turning-point-or-more-of-the-same/>.
- Hill-Cawthorne L., “The Grand Chamber Judgment in *Hassan v UK*”, *EJIL: Talk!*, 16 September 2014, <http://www.ejiltalk.org/the-grand-chamber-judgment-in-hassan-v-uk/>.
- Hola M., “Polska przyspieszy zakup uzbrojonych dronów klasy MALE”, *Zwojska*, 29 April 2014, <http://zwojska.pl/846/zakup-uzbrojonych-dronow-klasy-male/>.
- House of Commons, Defence Committee, “Remote Control: Remotely Piloted Air Systems – current and future UK use: Government Response to the Committee’s Tenth Report of Session 2013–14”, <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmdfence/611/611.pdf>.
- House of Lords, Written Statements and Written Answers, Vol. 756, No. 66, 1 December 2014, <http://qnadailyreport.blob.core.windows.net/qnadailyreportxml/Written-Questions-Answers-Statements-Daily-Report-Lords-2014-12-01.pdf>.
- Houses of the Oireachtas, Written Answers, Answer No. 97, 19 November 2013,

<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takesdail2013111900053#WRA03050>.

- Human Rights Council, “Panel discussion on the use of remotely piloted aircraft or armed drones in counter-terrorism and military operations”, 22 September 2014,
<https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/27thSession/PagesOralStatement.aspx?MeetingNumber=28&MeetingDate=Monday,%2022%20Septeber%202014> (username: hrc extranet; password: 1session).
- Human Rights Council—25th Session, Clustered Interactive Dialogue with the Special Rapporteur on Freedom of Religion or Belief and the Special Rapporteur on Counter Terrorism. Ireland Statement, 10 March 2014,
https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/25thSession/OralStatements/Ireland_ID_22.pdf (username: hrc extranet; password: 1session).
- Human Rights Council—25th Session, Explanation of vote by Ireland on draft resolution L.32 (“Ensuring use of remotely piloted aircraft or Armed Drones in Counter-terrorism & Military Operations in accordance with International Law including International Human Rights and Humanitarian Law”), 28 March 2014,
<https://www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/intpriorities/humanrights/Irelands-Explanation-of-Vote-on-the-resolution-on-armedDrones.pdf>.
- Human Rights Council—27th Session, Panel discussion on ensuring use of remotely piloted aircraft or armed drones in counter-terrorism and military operations in accordance with international law, including international human rights and humanitarian law. Statement by Ireland, 22 September 2014,
<https://www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/intpriorities/humanrights/Statement-by-ireland-at-panel-discussion-on-use-of-drones.pdf>.
- Human Rights Council—28th Session, “Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General” (“Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development”), 15 December 2014,
http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_38_ENG.doc.
- Human Rights Council—28th Session, “Draft resolution A/HRC/25/L.32”, (“Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development”), 24 March 2014,
http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/25/L.32.
- Human Rights Watch, “Between a Drone and Al-Qaeda” *The Civilian Cost of US Targeted Killings in Yemen*, 2013,
http://www.hrw.org/sites/default/files/reports/yemen1013_ForUpload_1.pdf.
- “Hungarian drones create a buzz”, *The Budapest Times*, 12 November 2012,
<http://budapesttimes.hu/2012/11/12/hungarian-drones-create-a-buzz/>.
- ICRC, “Panel discussion on ‘Ensuring use of remotely piloted aircraft or armed drones in counterterrorism and military operations in accordance with international law, including international human rights and humanitarian law’”, 22 September 2014,
https://www.icrc.org/en/download/file/1385/icrc_statement_to_hrc_22_sept_2014_drones_eng.pdf.
- International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, *Prosecutor v. Duško Tadić a/k/a “Dule”*, “Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction”, Case No. IT-94-1-AR72, 2 October 1995,
<http://www.icty.org/x/cases/tadic/acdec/en/51002.htm>.
- International Law Commission, “Responsibility of States for Internationally Wrongful Acts”, 2001,
http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf.

- Irish Parliamentary debate, 26 June 2013,
[http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/%28\\$VLookupByConstructedKey%29/dail~20130626/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/WebAttachments.nsf/%28$VLookupByConstructedKey%29/dail~20130626/$File/Daily%20Book%20Unrevised.pdf?openelement)
- Jäntti B., “Despite opposition, Finland proceeds with Israel arms deal”, *The Electronic Intifada*, 20 July 2011,
<http://electronicintifada.net/content/despite-opposition-finland-proceeds-israel-arms-deal/10196>.
- Jäntti B. and J. Johnson, “Finland shopping for “battle-tested” Israeli weaponry”, *The Electronic Intifada*, 18 January 2011,
<http://electronicintifada.net/content/finland-shopping-battle-tested-israeli-weaponry/9847>.
- “Joint Letter to the UN Human Rights Council on Targeted Killings and the Use of Armed Drones”, *Human Rights Watch*, 18 September 2014, <http://www.hrw.org/news/2014/09/18/joint-letter-un-human-rights-council-targeted-killings-and-use-armed-drones>.
- Jungholt T., “SPD fordert Beschaffung neuer Kampfdrohnen”, *Die Welt*, 1 February 2015,
<http://www.welt.de/politik/deutschland/article136988448/SPD-fordert-Beschaffung-neuer-Kampfdrohnen.html>.
- Kabinetsreactie op advies nr. 23 van de Commissie van advies inzake volkenrechtelijke vraagstukken (CAVV) over bewapende drones (Tweede Kamer, vergaderjaar 2013-2014, 33 750 X, nr. 4),
<http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/kamerstukken/2013/09/27/kabinetsreactie-op-advies-nr-23-van-de-commissie-van-advies-inzake-volkenrechtelijke-vraagstukken-cavv-over-bewapende-drones/kabinetsreactie-op-advies-nr-23-van-de-commissie-van-advies-inzake-volkenrechtelijke-vraagstukken-cavv-over-bewapende-drones.pdf>.
- Kabinetsreactie op advies nr. 23 van de Commissie van advies inzake volkenrechtelijke vraagstukken (CAVV) over bewapende drones (Tweede Kamer, vergaderjaar 2013-2014, 33 750 X, nr. 4),
<http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/kamerstukken/2013/09/27/kabinetsreactie-op-advies-nr-23-van-de-commissie-van-advies-inzake-volkenrechtelijke-vraagstukken-cavv-over-bewapende-drones/kabinetsreactie-op-advies-nr-23-van-de-commissie-van-advies-inzake-volkenrechtelijke-vraagstukken-cavv-over-bewapende-drones.pdf>.
- Kabinetsreactie op advies nr. 23 van de Commissie van advies inzake volkenrechtelijke vraagstukken (CAVV) over bewapende drones (Tweede Kamer, vergaderjaar 2013-2014, 33 750 X, nr. 4),
<http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/kamerstukken/2013/09/27/kabinetsreactie-op-advies-nr-23-van-de-commissie-van-advies-inzake-volkenrechtelijke-vraagstukken-cavv-over-bewapende-drones/kabinetsreactie-op-advies-nr-23-van-de-commissie-van-advies-inzake-volkenrechtelijke-vraagstukken-cavv-over-bewapende-drones.pdf>.
- Kerchove G. De and C. Höhn, “Counter-Terrorism and International Law Since 9/11, Including in the EU-US Context”. T.D. Gill, T. McCormack, R. Geiß, R. Heinsch, Ch. Paulussen and J. Dorsey (eds.), *Yearbook of International Humanitarian Law*, Vol. 2013, T.M.C. Asser Press: The Hague, 2015.
- Kington T., “Italian Reaper Drones To Be Used for Crowd Monitoring”, *Defense News*, 17 December 2014,
<http://www.defensenews.com/story/defense/international/europe/2014/12/17/italian-reaper-drones-to-be-used-for-crowd-monitoring/20528495/>.
- Kotrba D., “Austrian army drones can recognize a lot, but not everything”, *Futurezone Technology News*, 30 November 2013,
<http://futurezone.at/english/austrian-army-drones-can-recognize-a-lot-but-not-everything/37.999.654>.

- Kyprianou D., “Με μη επανδρωμένα αεροσκάφη και πλοία εξοπλίζεται η Λευκωσία”, *Protothema*, 11 January 2015, <http://ow.ly/JRuSC>.
- Kyprianou D., “Μονάδα επίθεσης η ΕΛΔΥΚ, λέει ο Καμμένος”, *Protothema*, 12 February 2015, <http://www.protothema.gr/politics/article/450971/kammenos-proteinei-sti-leukosia-na-agorasei-mahitika-aeroskafi/>.
- Lentowicz Z., “Polskie firmy chcą zbudować uzbrojone drony”, *Ekonomia*, 26 August 2013, <http://www.ekonomia.rp.pl/artykul/1042119.html>.
- Lentowicz Z., “Polskie drony nad Europą”, *Ekonomia*, 7 February 2014, <http://www.ekonomia.rp.pl/artykul/1085039.html>.
- “Les drones B-Hunter retirés du service en 2017, pas de successeur prévu (De Crem)”, *L’Avenir*, 9 July 2013, http://www.lavenir.net/article/detail.aspx?articleid=DMF20130709_00334268.
- List of states with drones, *New America Foundation*, undated, <http://newamericafoundation.github.io/worldofdrones/source.pdf>.
- “Luxembourg in talks to launch military satellite”, *Luxemburger Wort*, 24 July 2014, <http://www.wort.lu/en/politics/nato-luxembourg-in-talks-to-launch-military-satellite-53d0e562b9b398870804a0af>.
- MacAskill E. and J. Ball, “Portrait of the NSA: no detail too small in quest for total Surveillance”, *The Guardian*, 2 November 2013, <http://www.theguardian.com/world/2013/nov/02/nsa-portrait-total-surveillance>.
- Mepham D., “Letter to UK Prime Minister, David Cameron on Targetted Killings”, *Human Rights Watch*, 16 July 2012, <http://www.hrw.org/node/110231>.
- Ministerie van Defensie, “Antwoorden op vragen over het bericht dat Nederlandse data mogelijk zijn gebruikt bij drone-aanvallen”, 8 April 2014, <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2014/04/08/beantwoording-kamervragen-over-gebruik-nederlandse-data-bij-drone-aanvallen.html>.
- “Ministers approve military satellite plans”, *Luxemburger Wort*, 22 October 2014, <http://www.wort.lu/en/politics/defence-spending-ministers-approve-military-satellite-plans-5447c554b9b398870807d826>.
- Ministry of Defence, *Strategic Trends Programme, Global Strategic Trends – Out to 2045*, fifth edition, 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/348164/20140821_DCDC_GST_5_Web_Secured.pdf.
- Motion for a Resolution, Doc. 13200, “Drones and targeted killings: the need to uphold human rights”, 29 April 2013, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19732&lang=en>.
- MTS-B Multi-Spectral Targeting System, “Superior Detecting, Ranging, and Tracking”, http://www.raytheon.com/capabilities/products/mts_b/.
- “Obama’s Lists: A Dubious History of Targeted Killings in Afghanistan”, *Spiegel Online*, 28 December 2014, <http://www.spiegel.de/international/world/secret-docs-reveal-dubious-details-of-targeted-killings-in-afghanistan-a-1010358.html>.

- Open Society Justice Initiative, “Death by Drone: Civilian Harm Caused by US Drone Strikes in Yemen,” April 2015, <http://www.opensocietyfoundations.org/reports/death-drone>.
- “Oral evidence: The FCO’s human rights work in 2013”, HC 551, 8 July 2014, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/foreign-affairs-committee/the-fcos-human-rights-work-in-2013/oral/11255.html>.
- “Österreichs Bundesheer kauft 18 Drohnen”, *Futurezone Technology News*, 6 April 2013, <http://futurezone.at/netzpolitik/oesterreichs-bundesheer-kauft-18-drohnen/24.595.222>.
- Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights, Declassified Minutes of the hearing on “Drones and targeted killings: the need to uphold human rights”, 30 September 2014.
- Paulussen Ch. and K. Tibori Szabó, “Testing the validity of US self-defence arguments against the Khorasan group in Syria”, *ICCT Commentary*, 4 November 2014, <http://www.icct.nl/publications/icct-commentaries/testing-the-validity-of-us-self-defence-arguments-against-the-khorasan-group-in-syria>.
- Pawlak J., “NATO to buy U.S.-made unmanned drone aircraft”, *Reuters*, 15 February 2012, <http://www.reuters.com/article/2012/02/15/us-nato-dronesidUSTRE81E1SD20120215>.
- Permanent Mission of Austria to the United Nations, “Statement by Ambassador Thomas Hajnoczi Permanent Representative of Austria to the United Nations in Geneva at the Thematic Discussion on Conventional Weapons of the First Committee”, New York, 28 October 2013, http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com13/statements/30Oct_Austria.pdf.
- “Poland to Buy Armed Drones Amid Ukraine Crisis”, *Defense News*, 4 November 2014, <http://mobile.defensenews.com/article/311040030>.
- “Political leaders call Obama assassin for use of drones”, *Copenhagen Post*, 25 July 2012, available at: <http://cphpost.dk/news/political-leaders-call-obama-assassin-for-use-of-drones.2269.html>.
- Portugal, United Nations General Assembly, 69th Session, Statement by H.E. Mr. Alvaro Mendonça e Moura, Ambassador Extraordinary and Plenipotentiary, Permanent Representative, General Debate of The First Committee, 14 October 2014, <https://papersmart.unmeetings.org/media2/4653007/portugal.pdf>.
- Preston S. W., “The Legal Framework for the United States' Use of Military Force Since 9/11”, U.S. Department of Defense, *Annual Meeting of the American Society of International Law, Washington, DC, 10 April 2015*, <http://www.defense.gov/Speeches/Speech.aspx?SpeechID=1931>.
- Reichelt J., “Geheimpapier über Killer-Kommandos”, *Bild*, 30 December 2014, <http://www.bild.de/politik/ausland/bundeswehr/und-bnd-halfen-bei-toetung-der-taliban-isaf-todesliste-afghanistan-39139920.bild.html>.
- “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism”, A/68/389, 18 September 2013, <http://www.un.org/Docs/journal/asp/ws.asp?m=A/68/389>.
- “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson”, A/HRC/25/59, 11 March 2014, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Pages/ListReports.aspx>.
- Ritzau, “Svøndal: Obama stopper Bush’s krig mod terror”, *Information.dk*, 23 May 2013,

<http://www.information.dk/telegram/461510>.

Rizau, "Thorning om snigmord: Sådan vil jeg aldrig udtrykke mig", *Information.dk*, 5 February 2013, <http://www.information.dk/telegram/450212>.

Roberts D., "Obama restricts drone killings and foresees end to 'perpetual war'", *The Guardian*, 23 May 2013, <http://www.theguardian.com/world/2013/may/23/obama-drone-policy-counter-terrorism>.

Robertson H., Reply to a question concerning what assessment his Department has made of the effect on security in Yemen of drone strikes in that country, http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140130/text/140130w0002.htm#140130w0002.htm_wqn58.

Roth K., "So much for Obama's promise that drones wouldn't be used unless there's a "near certainty" of no civilian casualties", *Twitter*, 13 December 2013, <https://twitter.com/KenRoth/status/411710276573351936>.

Rundle M., "Neuron, Europe's First Stealth Drone 'Killer Robot,' Makes Test Flight", *Huffington Post UK*, 3 December 2012, http://www.huffingtonpost.co.uk/2012/12/03/neuron-europes-first-stealth-drone-test-flight_n_2230316.html.

Saab Group, Airborne Solutions website, <http://www.saabgroup.com/en/Air/Airborne-Solutions/?tab=62>.

Schaub G., Jr., K.S. Kristensen and F. Pradhan-Blach, "Long Time Coming: Developing and Integrating UAVs into the American, British, French and Danish Armed Forces", Centre for Military Studies, University of Copenhagen, March 2014, http://cms.polsci.ku.dk/publikationer/longtimecoming/Long_Time_Coming.pdf.

Serle J., "UK complicity in US drone strikes is 'inevitable', Emmerson tells parliament", *The Bureau of Investigative Journalism*, 5 December 2013, <http://www.thebureauinvestigates.com/2013/12/05/uk-complicity-in-us-drone-strikes-is-inevitable-emmerson-tells-parliament/>.

Shaw M. N., *International Law*, seventh edition, Cambridge University Press: Cambridge 2014.

Singh A. and J. Scholes, "Denmark, the CIA, and the Killing of Anwar al-Awlaki", *Open Society Foundations*, 30 April 2014, <http://www.opensocietyfoundations.org/voices/denmark-cia-and-killing-anwar-al-awlaki>.

Smith B., "The Trouble with Drones: A Brief Overview of Problems Surrounding German Drone Usage and Armament", American Institute for Contemporary German Studies, Johns Hopkins University, 10 June 2014, <http://www.aicgs.org/2014/06/the-trouble-with-drones-a-brief-overview-of-problems-surrounding-german-drone-usage-and-armament/>.

"Spying Together: Germany's Deep Cooperation with the NSA, Part 2: German Aid for US Drone Attacks?", *Spiegel Online*, 18 June 2014, <http://www.spiegel.de/international/germany/the-german-bnd-and-american-nsacooperate-more-closely-than-thought-a-975445-2.html>).

Stark H., "Germany Limits Information Exchange with US Intelligence", *Spiegel Online*, 17 May 2011, <http://www.spiegel.de/international/germany/0,518,762873,00.html>.

Stem J., "German military experts demand purchase of drones", *World Socialist Website*, 3 February 2015, <https://www.wsws.org/en/articles/2015/02/03/dron-f03.html>.

Stenberg E., "Carl Bildt skeptisk till särskilda drönarregler", *Dagens Nyheter*, 13 February 2012, <http://www.dn.se/nyheter/sverige/carl-bildt-skeptisk-till-sarskilda-dronarregler/>.

- Swedish Parliament, Parliamentary interpellation, 14 June 2013, <http://www.riksdagen.se/sv/Debatter--beslut/Interpellationsdebatter1/Debatt/?did=H010477>.
- Swedish Parliament, Parliamentary protocol 2012/13, http://www.riksdagen.se/sv/Dokument-Lagar/Kammaren/Protokoll/Riksdagens-protokoll-2012139_H00994/.
- Taylor L., “EU should press Obama on drone secrecy”, *Human Rights Watch*, 27 March 2014, <http://www.hrw.org/news/2014/03/27/eu-should-press-obama-drone-secrecy>.
- The Bureau of Investigative Journalism Drone Graphics, <http://www.thebureauinvestigates.com/category/projects/drones/drones-graphs/>.
- “The End of the Perpetual War”, *The New York Times*, 23 May 2013, http://www.nytimes.com/2013/05/24/opinion/obama-vows-to-end-of-the-perpetual-war.html?pagewanted=all&_r=0.
- The White House, Office of the Press Secretary, “Fact Sheet: U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities”, 23 May 2013, <http://www.whitehouse.gov/the-press-office/2013/05/23/fact-sheet-us-policy-standards-and-procedures-use-force-counterterrorism>.
- The White House, Office of the Press Secretary, “Remarks by the President at the National Defense University”, National Defense University, Fort McNair, Washington, D.C., 23 May 2013, <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>.
- Theunissen B., “L’Armée belge possède ses propres drones mais à quoi servent-ils? ”, *Apache*, 9 January 2013, <http://www.apache.be/fr/2013/01/09/larmee-belge-possede-ses-propres-drones-mais-a-quoi-servent-ils-diaporama-sonore/>.
- Tran P., “French AF Conducts First Reaper Flight”, *Defense News*, 16 January 2014, <http://www.defensenews.com/article/20140116/DEFREG01/301160030/>.
- Tweede Kamer der Staten-Generaal, AH 1476, 2015Z02672, “Antwoord van minister Hennis – Plasschaert (Defensie) (ontvangen 6 maart 2015)”, <https://zoek.officielebekendmakingen.nl/ah-472656.pdf>.
- Tweede Kamer der Staten-Generaal, Vergaderjaar 2013-2014, 30 806, “Onbemande vliegtuigen (UAV)”, nr. 19, “Brief van de Minister van Buitenlandse Zaken”, 12 February 2014, <https://zoek.officielebekendmakingen.nl/kst-30806-19.pdf>.
- Tweede Kamer der Staten-Generaal, Vergaderjaar 2013-2014, 30 806, “Onbemande vliegtuigen (UAV)”, nr. 24, “Verslag van een algemeen overleg”, 17 July 2014, <https://zoek.officielebekendmakingen.nl/kst-30806-24.pdf>.
- Tweede Kamer der Staten-Generaal, Vergaderjaar 2013-2014, 32 735, “Mensenrechten in het buitenlands beleid”, nr. 99, “Brief van de Minister van Buitenlandse Zaken”, 5 November 2013, <https://zoek.officielebekendmakingen.nl/kst-32735-99.pdf>.
- Tweede Kamer der Staten-Generaal, Vergaderjaar 2014-2015, 2015Z02672, “Vragen van het lid Jasper van Dijk (SP) aan de Minister van Defensie over de mogelijke bewapening van Nederlandse onbemande vliegtuigen (drones) (ingezonden 13 februari 2015)”, <http://www.tweedekamer.nl/downloads/document?id=a9a085ad-835e-4428-a9dc-269f51637e08&title=De%20mogelijke%20bewapening%20van%20Nederlandse%20onbemande%20vliegtuigen%20%28drones%29.pdf>.

U.S. Export Policy for Unmanned Aerial Systems, US State Department, 17 February 2015, <http://www.state.gov/r/pa/prs/ps/2015/02/237541.htm>.

UA Vision Aeronautics website, <http://www.uavision.com/#!about2/c4nz>.

UAV Factory Website, <http://www.uavfactory.com>.

Udenrigsministeriet, "Besvarelse af § 20-spørgsmål nr. 486 af 16. november 2012 om droner til udenrigsministeren stillet af Nikolaj Villumsen", 22 November 2012, <http://www.ft.dk/samling/20121/almdel/upn/bilag/71/1191587.pdf>.

Udenrigsministeriet, "Spørgsmål fra Udenrigsudvalget til udenrigsministeren af 28. maj 2013 (URU spørgsmål 155) stillet efter ønske fra Søren Pind (V)", <http://www.ft.dk/samling/20121/almdel/upn/bilag/255/1263514.pdf>.

"UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials", Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, UN Doc. A/CONF.144/28/Rev.1 at 112 (1990), <http://www1.umn.edu/humanrts/instree/i2bpuff.htm>.

UN HRC Panel discussion, "UK statement for Panel on Remotely Piloted Aircraft Systems", 22 September 2014, https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/27thSession/OralStatements/6_United%20Kingdom_PD_28.pdf (username: hrc extranet; password: 1session).

UN Human Rights Council, "UK's participation in the UN Human Rights Council", *UK Parliament*, <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmcaff/551/55112.htm>.

UNGA, "Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions", A/68/382, 13 September 2013, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/68/382.

United Nations Office at Geneva, "Human Rights Council holds panel on remotely piloted aircraft or armed drones in counterterrorism and military options", 22 September 2014, http://www.unog.ch/unog/website/news_media.nsf/%28httpNewsByYear_en%29/BCE56ED914A46D40C1257D5B0038393F?OpenDocument.

US Department of Justice, "Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who Is a Senior Operational Leader of Al-Qa'ida or An Associated Force", undated, http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf.

"US gives Bulgarian Army two drones worth USD 3 M", *Standart News*, 15 May 2014, http://www.standartnews.com/english/read/us_gives_bulgarian_army_two_drones_worth_usd_3_m-3651.html.

Baroness Warsi, Reply to a question regarding the reports of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, <http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/140403w0001.htm>.

"What could you find out more about?", *Vidset Test Range*, <http://www.vidsetstrange.com/>.

Whittle R., "Drone Dealer: The Case for Selling Armed UAVs", *The National Interest*, 20 February 2015, <http://nationalinterest.org/feature/drone-dealer-the-case-selling-armed-uavs-12300>.

"Will the real UAV revolution begin in Poland?", *Israel Defense*, 27 August 2012,

<http://www.israeldefense.co.il/en/content/will-real-uav-revolution-begin-poland>.

Wilstein M., “The Nation’s Jeremy Scahill To CNN: Obama Terrorism Speech A ‘Rebranding of Bush Era Policies’”, *Mediaite*, 23 May 2013, <http://www.mediaite.com/tv/the-nations-jeremy-scahill-to-cnn-obama-terrorism-speech-a-rebranding-of-bush-era-policies/>.

Woods Ch., “PM Cameron’s letter to HRW (UK) director Mepham”, *The Bureau of Investigative Journalism*, 20 September 2012, <http://www.thebureauinvestigates.com/2012/09/21/british-pm-cameron-we-expect-drone-strikes-to-avoid-civilian-casualties/minicam3/>.

Wright O., “Don’t call them drones: RAF launches charm offensive for ‘unmanned aircraft’”, *The Independent*, 17 December 2013, <http://www.independent.co.uk/news/uk/home-news/dont-call-them-drones-raf-launches-charm-offensive-for-unmanned-aircraft-9011467.html>.

Zappalà G., “Target killing and global surveillance: understanding the European role in drone Warfare”, paper for the Drones and International Security: A European Perspective Conference, hosted by Aarhus University, Denmark, 5-6 March 2015.

Zenko M. and S.E. Kreps, *Limiting Armed Drone Proliferation*, Council on Foreign Relations, Council Special Report No. 69, June 2014, http://i.cfr.org/content/publications/attachments/Limiting_Armed_Drone_Proliferation_CSR69.pdf.

Annex 1: The Questionnaire

Questionnaire

1. Introduction & explanation:

Dear Sir/Madam,

In 2013, we organized a high-level seminar entitled [The Boundaries of the Battlefield](#) (BoB), which looked at the geographical and temporal limitations of international humanitarian law when it comes to countering terrorism. One of the panels addressed the topic of targeted killings and drones, and the BoB 2.0. project will focus more on that subject. For BoB 2.0., we are preparing a research paper for the International Centre for Counter-Terrorism – The Hague (ICCT) that will look at the various EU member state positions on armed drones—an important, but still very uncharted area, as underlined inter alia by the call of the European Parliament in February of this year to adopt an EU common position on the use of armed drones.

With your help, we are trying to obtain more clarity on the position that various EU member states take vis-à-vis the use of armed drones, as well as on countries' positions concerning more general pertinent international law questions. The following survey encapsulates unanswered issues garnered from a number of sources, including our own BoB research paper, reports written by UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, [Ben Emmerson](#); UN Special Rapporteur on extrajudicial, summary or arbitrary executions, [Christof Heyns](#); the [European Council on Foreign Relations](#); [Amnesty International](#); [Human Rights Watch](#) and [other sources](#). Often research reports conclude with questions that still need to be answered. The BoB 2.0 project aims at answering some of these in the European context, with your assistance.

Thank you very much in advance for your time and consideration. Your assistance is highly appreciated!

We ask that you send this back to us no later than **1 February 2015** (please send electronically to A.Balta@asser.nl).

Please do get in touch with us if you have any questions or comments.

Kind regards,

[Christophe Paulussen](#) & [Jessica Dorsey](#)

Researchers at the T.M.C. Asser Instituut &
the International Centre for Counter-Terrorism – The Hague

2. Information about the respondent:

2.1. Please indicate the country you work for:

2.2. Please indicate the governmental department you work for:

- Ministry of Defence
- Ministry of (Security &) Justice
- Ministry of Foreign Affairs
- Intelligence Service
- Other, namely:

2.3. Please indicate your function:

- Legal advisor
- Policy maker
- Other, namely:

2.4. Please indicate your name and e-mail:

2.5. Can we contact you in case we have further questions? Please indicate the correct answer:

- Yes
- No

2.6. Please indicate if we can or cannot connect statements that you might make below to your ministry and/or country. Note that we will never mention your name, let alone your e-mail address, in our published findings. Please indicate the correct answer:

-You **can** connect statements I might make below to the information from section 2. Example of a sentence that could find its way into the final report: “a policy maker from the UK Ministry of Defence noted that...”

-You **cannot** connect statements I might make below to the information from section 2. Example of a sentence that could find its way into the final report: “a policy maker noted that...”

3. Questions about armed drones and international law

3.1. Inter-state use of force (*ius ad bellum*)

3.1.1. In your view, how can drone strikes be executed in full conformity with the *ius ad bellum*? Are the possibilities restricted to:

- 1) Self-defence (SD);
- 2) A mandate derived from a UN Security Council Resolution;
- 3) Consent from the territorial state

Or do you accept other possibilities? If you think there are more possibilities than the just-mentioned three options, please explain:

- 3.1.2. In your view, is SD possible against autonomous non-state actors (NSAs) or must the actions of these actors somehow be attributed to a state? Please indicate the correct answer:

-SD is possible against autonomous NSAs.
 -SD is only possible against NSAs if their actions can somehow be attributed to a state.

If you chose the second answer, what sort of relationship between a state and NSAs is needed for SD to be lawful? Please indicate the correct answer:

-Complete dependence,
 -Overall control,
 -Significant support,
 -Unwilling and/or unable.
 -Other, namely (please specify):

- 3.1.3. In the discussion about the scope for the use of force in SD against NSAs, the ‘unwilling or unable’ criterion is sometimes referred to. Do you consider this criterion part of the customary international law requirement of necessity¹ or is SD possible more generally against NSAs active in the territory of a state which is unwilling or unable to neutralize the alleged threat posed by these NSAs (without the requirement of an (imminent) armed attack)? Please indicate the correct answer:

-The ‘unwilling or unable’ criterion is part of the customary international law requirement of necessity.
 -SD is possible more generally against NSAs active in the territory of a state which is unwilling or unable to neutralize the alleged threat posed by these NSAs (without the requirement of an (imminent) armed attack).

- 3.1.4. And if the latter is the case, then what are the criteria for assessing unwillingness or inability? And who should in the end decide whether the state has been unwilling or unable to respond? Please explain:

- 3.1.5. Is SD only possible if an armed attack occurs (the language of article 51 of the UN Charter) or is it possible for a state to resort to SD in anticipation of an (imminent?) armed attack? Please indicate the correct answer:

-SD is only possible if an armed attack occurs.
 -It is possible for a state to resort to SD in anticipation of an (imminent) armed attack.

- 3.1.6. If you agree that anticipating an imminent armed attack is possible, then how would you define imminence? Are there different standards of imminence for state actors versus NSAs? Is SD possible

¹ In the sense that the unwillingness or inability of a state to do something about armed attacks being launched from its territory by NSAs can increase the necessity to do something about this, on the condition that an armed attack has occurred or is imminent.

against NSAs which have made general threats, but where uncertainty remains as to the time and place of the NSA attack? Please explain:

3.1.7. Do you think the current international law on SD is sufficient to counter the problems states face these days? Please indicate the correct answer:

- Yes
- No
- I do not know
- No comment

If you have indicated 'no', then how should the law be modified? Please explain:

3.1.8. With respect to territorial sovereignty, when can consent to the exercise of SD being carried out within the boundaries of a territorial state be established or inferred? What if a state has been informed about upcoming strikes, but has not been asked for approval, nor been involved in the coordination? What if the territorial state welcomes the strikes afterwards? Please explain:

3.2. The law and boundaries of the battlefield

3.2.1. Would you agree that international humanitarian law (IHL) applies to drone strikes in armed conflicts such as Afghanistan? Please indicate the correct answer:

- Yes
- No
- I do not know
- No comment

3.2.2. Would international human rights law (IHRL) also have a role in armed conflicts? Please indicate the correct answer and explain in the box below, if necessary:

- Yes
- No
- I do not know
- No comment

3.2.3. Would you agree that outside of armed conflicts, the only legal framework applicable to drone strikes would be IHRL? Please indicate the correct answer:

- Yes
- No
- I do not know
- No comment

3.2.4. Can and if so, how can human right treaties such as the ICCPR and the ECHR have extraterritorial effect? What is the scope of application of these treaties? Please explain.

- 3.2.5. Who would be targetable outside of an armed conflict? Please explain:
- 3.2.6. What do you think about the statement by [Dworkin](#) that “European and US officials might be able to agree that the deliberate killing of terrorist suspects outside zones of conventional hostilities is only permissible when they pose a serious and imminent threat to innocent life that cannot be deflected in any less harmful way”? Please indicate the correct answer:
- I agree
 - I do not agree
 - I do not know
 - No comment
- If you do not agree, please explain why not:
- 3.2.7. Do you think an armed conflict is present in Pakistan? Please indicate the correct answer:
- Yes (if so, please indicate what kind of conflict and who the actors are)
 - No
 - I do not know
 - No comment
- 3.2.8. Do you think an armed conflict is present in Yemen? Please indicate the correct answer:
- Yes (if so, please indicate what kind of conflict and who the actors are)
 - No
 - I do not know
 - No comment
- 3.2.9. Do you think an armed conflict is present in Somalia? Please indicate the correct answer:
- Yes (if so, please indicate what kind of conflict and who the actors are)
 - No
 - I do not know
 - No comment
- 3.2.10. The US claims that it is in an armed conflict with Al Qaeda and associated forces. What do you think about this claim? Is it possible to make the statement that one is in a general armed conflict with an NSA, without taking the specifics on the ground (such as the intensity of the fighting in a specific situation) into account? Please indicate the correct answer, and explain your answer, if necessary.
- Yes
 - No
 - I do not know
 - No comment

- 3.2.11. Does the intensity of hostilities test outlined in *Tadic* and other jurisprudence of the ICTY/ICTR used for determining whether a non-international armed conflict (NIAC) exists, necessitate assessing the frequency and gravity of armed attacks that occur only within a geographically confined territory? Please indicate the correct answer:
- Yes
 - No
 - I do not know
 - No comment
- 3.2.12. When using this test with respect to NSAs that operate transnationally, would an aggregation of armed attacks occurring in geographically varied locales satisfy the intensity threshold so as to amount to a NIAC? Please indicate the correct answer:
- Yes
 - No
 - I do not know
 - No comment
- 3.2.13. If the possibility exists that a State and a transnationally active NSA are involved in a NIAC, does that mean a NIAC could potentially exist without finite geographical boundaries? Please indicate the correct answer:
- Yes
 - No
 - I do not know
 - No comment
- 3.2.14. With regard to actors directly participating in hostilities (DPH), but located in a non-belligerent state, in what circumstances—if any—does international law allow for their being targeted? Please explain:
- 3.2.15. In a NIAC, does the ICRC’s test of “continuous combat function” with respect to being able to target such a person with lethal force at all times reflect customary international law? Please indicate the correct answer:
- Yes
 - No
 - I do not know
 - No comment
- If you have indicated ‘no’, then what is the proper test? Please explain:
- 3.2.16. Does the ICRC’s DPH study reflect customary international law? Please indicate the correct answer, and please explain where necessary:
- Yes

- No
- I do not know
- No comment

3.2.17. More specifically, would an individual who had been DPH-ing no longer be targetable when there was a break in the activities amounting to his or her DPH? Please indicate the correct answer:

- Yes
- No
- I do not know
- No comment

3.2.18. Would providing material support, such as housing, funding, recruitment, sustenance or administrative/logistical support also be DPH with respect to being able to target an individual? Please indicate the correct answer:

- Yes
- No
- I do not know
- No comment

3.2.19. If you indicated yes, what kind of material support would be relevant? (indicate as many as relevant and add others if necessary)

- a. housing
- b. funding
- c. recruitment
- d. sustenance
- e. administrative support
- f. logistical support
- g. other(s) (please specify):

3.2.20. In a NIAC, when and under which conditions would IHL obligate capturing rather than killing with respect to a legitimate military target? Please explain:

3.3. The use of armed drones

3.3.1. Does your country currently own drones? If so, what kind and are they in use? If in use, are they armed? If not, is it considering purchasing or using armed drones in the future? How long might you estimate that that will take?

3.3.2. Does your country have a policy in which situations armed drones can be used and if so, is it publicly available? If so, where, and if not, why not? Please explain:

3.3.3. Do you think more transparency is necessary as regards the use of drones, including the criteria and procedures of their use and clarity about who is targeted? Please indicate the correct answer:

- Yes
- No
- I do not know
- No comment

3.3.4. Has your country called for more transparency in the use of drones? Please explain the correct answer:

- Yes
- No
- I do not know
- No comment

If so, is this information publicly available (and if so: where can it be found)? Please explain:

3.3.5. Do you think in general that using armed drones is an effective measure in countering terrorism in the long-term? Please indicate the correct answer:

- Yes
- No
- I do not know
- No comment

In case you have indicated 'yes' or 'no', please explain. If you have indicated 'no', is it possible to repair this deficiency by adopting better procedures (and if so: which?), or is the use of armed drones inherently problematic and unsolvable? Please use this box:

3.3.6. All things considered, do you think that, generally speaking, the current use of drones is in conformity with international law? Please indicate the correct answer:

- Yes
- No
- I do not know
- No comment

3.3.7. If not, has your country taken steps to transmit its concerns to the involved states? Please indicate the correct answer:

- Yes
- No
- I do not know
- No comment

If you have indicated 'no', can you explain why? Please use this box:

- 3.3.8. If not, might silence from your state and others be interpreted as implicit consent as to how drones are currently being employed? Please indicate the correct answer:
- Yes
 - No
 - I do not know
 - No comment
- 3.3.9. To what extent could such consent constitute a risk that other countries or NSAs will use the current situation as precedence to use drones in the same way? Please explain:
- 3.3.10. Do you think that using drones might lead to a lower threshold in using force? Please indicate the correct answer and please explain:
- Yes
 - No
 - I do not know
 - No comment
- 3.4. The aftermath
- 3.4.1. Which kinds of accountability mechanisms in your country are place in case of unlawful drone strikes? Is there for instance a *duty* to investigate in case a drone strike leads to civilian casualties, and if so, what would this investigation encompass/entail exactly? Please explain:
- 3.4.2. Is there a (special?) mechanism in place in your country for victims of drone strikes to receive more information on strikes that allegedly occurred (access to justice) and/or compensation? Please explain:
- 3.4.3. Has your country called for more accountability and transparency with specific reference to the aftermath of drone strikes, including reporting on the number of victims resulting from drone strikes, and if so, is this information publicly available (and if so: where can it be found)? Please explain:

4. Please feel free to use this space to add any comments/questions that you might have.

Thank you again for your assistance in this research!

Christophe Paulussen & Jessica Dorsey
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