(U) Targeted Killing: Policy, Legal and Ethical Controversy

TOP SECRET//SI/TK

From Intellipedia
Jump to: navigation, search

Main article: Manhunting

(U) Manhunting, **targeted killing, preemption and the employment of remotely piloted aircraft raise challenging legal issues**. Israel has practiced "precise prevention" operations since the Munich massacre. Since the September 11, 2001, terrorist attacks, the United States has conducted "targeted killings" against "enemy combatants," stating terrorist activities constitute legitimate targets for military action.[1]

(U) There is growing international opposition to the practice of targeted killing, in particular by civil rights activists, the United Nations Human Rights Council, and several international law professors. Those opposing targeted killing are increasing their organization and activities. If timing is more than coincidental, activists may coordinate their opposition efforts.

Contents

[hide]

- 1 Recent Articles on Ethics, Legality or Policy Issues Related to Targeted Killing (U)
- 2 (U) Basis in International Law
- 3 (U) Israeli Supreme Court Ruling on Targeted Killing
- 4 (U) Israel Conducts Internal Review of 2002 Targeted Killing Incident
- 5 (U) United Nations Human Rights Commission
- 6 (U) American Civil Liberties Union
- 7 (U) US Policy on Targeted Killing
- 8 (U) What Does the Law of Armed Conflict Actually Say?
- 9 (U) Legal Debate Continues Despite Policy Announcement
  - 9.1 (U) Academics Testify Before Congress
  - 9.2 (U) UN Special Rapporteur Study on Targeted Killings
  - 9.3 (U) The ACLU Sues on Behalf of Anwar Awlaki's Father
  - 9.4 Muammar al-Gaddafi's Daughter Sues NATO Over Air Strike (U)
  - 9.5 (U) Defending Targeted Killing Policy
  - 9.6 (U) New Weapons, New Rules?
  - 9.7 (U) Remotely Piloted Vehicles and Public Relations
  - 9.8 (U) To Kill or Not to Kill
  - 9.9 (U) Lawfare: British Human Rights Group Seeks Arrest of Former CIA Legal Counsel
  - 9.10 (U) Lawfare: British Human Rights Group Reprieve Files Suit Against British SIGINT Authorities
  - 9.11 (U) Mexican High Court Subjects Military Conduct to Civil Court Jurisdiction
- 10 (U) Related Issues: Surveillance, Detention and Interrogation Controversy
- 11 (U) References

[edit] Recent Articles on Ethics, Legality or Policy Issues Related to Targeted Killing (U)

- (U) UK High Court blocks drone intelligence challenge
- (U) Court blocks drone attack challenge
- (U) Pentagon Wants To Sell Israel More Satellite-Guided Bombs Early Bird banner.PNG
- (U) Iran Says It Decoded Data From Captured CIA Drone Early Bird banner.PNG
- (U) Another Secretive Drone Set For Space Early Bird banner.PNG
- (U) America's Covert Drone War Is Out Of Control Early Bird banner.PNG
- (U) New Tactics For War's New Face Early Bird banner.PNG
- (U) Sorting The Terrorists Early Bird banner.PNG
- (U) Pakistan Moves To Build Its Own Drones, Push Aside U.S. Early Bird banner.PNG
- (U) A case for targeted killings
- (U) Envoy Is Seeking a Deal to Oust Assad From Syria
- (U) A Drone Strike On Democracy Early Bird banner.PNG
- (U) Pentagon Lawyer Looks Post-Terror Early Bird banner.PNG
- (U) War On Al-Qaida Drawing To A Close, Says Obama Lawyer Early Bird banner.PNG
- (U) Drone Crashes Pile Up Abroad Early Bird banner.PNG

[edit] (U) Basis in International Law

(U) Contemporary international law provides two distinct normative paradigms which govern targeted killings in situations of law enforcement and the conduct of hostilities. Any targeted killing not directed against a legitimate military target remains subject to the law enforcement paradigm, which imposes extensive restraints on the practice. Even under the paradigm of hostilities, no person can be lawfully liquidated without further considerations.[2]

(U) Targeted aerial killings are further complicated by the U.S. twin-track approach, using weaponized drone aircraft maintained and controlled by the uniform-wearing military to attack targets in Afghanistan, and using civilian contract personnel and clandestine CIA officers to maintain and operate armed drones over neighboring Pakistan. Legal experts point out that the latter group fits the very definition of "illegal combatants", arguing they are engaged in armed warfare but they do not wear uniforms and take shelter within civilian centers.[3] (*Of note, the Geneva Conventions only require lawful combatants to wear uniforms when in view of the enemy, and do not require that lawful combatants operate exclusively from government or military facilities.*)

[edit] (U) Israeli Supreme Court Ruling on Targeted Killing

(U) On December 14, 2006 the Israeli Supreme Court ruled that targeted killing is a legitimate form of self-defense against terrorists, and outlined several conditions for its use.[4] This decision, arrived at after four years of deliberation, may establish precedent for international law. Israel's policy of targeted killing had been censured by the United Nations Human Rights Council (UNHRC) in the past. These actions had been widely discredited as a disproportionate UNHRC bias against Israel. Even the UN Secretary General has expressed disappointment at UNHRC's apparent focus on Israel, while other nations' human rights violations were left unaddressed.[5][6] See Israeli Targeted Killing Operations for more background on this issue.

[edit] (U) Israel Conducts Internal Review of 2002 Targeted Killing Incident

(U) In July 2002, at the height of the second Palestinian uprising, an Israeli F-16 dropped a one-ton bomb on the building where Sheik Salah Shehada, a founder of the Islamic militant group Hamas and its chief of operations, was staying. Israel said it was imperative to kill Sheik Shehada because he was directly involved in the planning and execution of deadly terrorist attacks that killed many Israeli civilians. Ariel Sharon, the Israeli prime minister at the time, initially called the airstrike "one of our major successes." But as the extent of the civilian casualties became clearer, Israeli officials expressed regret for the loss of life. The airstrike, carried out in a densely packed residential neighborhood of Gaza, caused several buildings to collapse. Sheik Shehada's wife and 15-year-old daughter were killed. Most of the other Palestinian civilians killed were women and children. Nearly nine years after an Israeli assassination of a Hamas leader in Gaza killed at least 13 civilians and led to widespread international condemnation, a government-appointed panel of inquiry concluded Sunday that the operation was flawed but that the consequences "did not stem from disregard or indifference to human lives." The three-member panel, headed by a retired Israeli Supreme Court justice, found that the collateral damage was "disproportionate." But it said that its examination of the operation according to the rules of Israeli and international law "unequivocally" removed any suspicion that the Israelis responsible for the attack committed a criminal offense. It attributed the deadly results of the operation to "incorrect assessments and mistaken judgment based on an intelligence failure in the collection and transfer of information" among the different agencies involved.[7]

[edit] (U) United Nations Human Rights Commission

(U) In 2009, Phillip Alston, an Australian human rights lawyer, presented a report to the United Nations Human Rights Commission that Predator drone strikes may violate international law. Spokesmen for the Central Intelligence Agency responded that the Agency "uses lawful, highly accurate, and effective tools and tactics to take the fight to Al Qaeda and its violent allies. That careful, precise approach has brought major success against a very dangerous and deadly enemy." The Department of Defense program, which is publicly acknowledged, operates in the recognized war zones of Afghanistan and Iraq, and targets enemies of U.S. troops stationed there. As such, it is an extension of conventional warfare.[8] CIA Director Leon Panetta defended the practice, stating that CIA targets enemies of the United States, "and we have deliberately made sure that only those that represent those kinds of targets are the ones we're going to go after."[9]

(U) The United Nations Special Rapporteur on Human Rights issued two reports regarding the use of "erosion of fundamental rights" to counter terrorism, and secret detention. Western governments widely criticized the reports as politically-motivated and hypocritical, as many of the countries seated on the United Nations Human Rights Commission have questionable human rights histories.

[edit] (U) American Civil Liberties Union

(U) On January 13, 2010, the American Civil Liberties Union filed a Freedom of Information Act (FOIA) request to the United States Government, including the Department of Defense, Central Intelligence Agency, Department of State and Department of Justice. The FOIA request asked the government to disclose the legal basis for its use of predator drones to conduct "targeted killings" overseas. In particular, the ACLU seeks to find out when, where and against whom drone strikes can be authorized, and how the United States ensures compliance with international laws relating to extrajudicial killings.[10] [11] The FOIA request was followed up when the ACLU filed suit on 16 Mar 2010. In particular, the lawsuit asks for information on when, where and against whom drone strikes can be authorized, the number and rate of civilian casualties, and other basic information essential for assessing the wisdom and legality of using armed drones to conduct targeted killings. According to the ACLU, State Department spokesman Harold Koh announced in March 2010 that State will provide a legal justification at a date to be determined.[12] See also: Threats to UAVs, Opposition Through Activism and Legal Challenges.

[edit] (U) US Policy on Targeted Killing

(U) In a 26 March 2010 speech, Department of State Legal Advisor Harold Koh outlined United States policy with regard to targeted killing. Koh first stated that "U.S. targeting practices, including lethal operations conducted with the use of unmanned aerial vehicles (UAVs), comply with all applicable law, including the laws of war." He further explained that the United States is in "an armed conflict with al Qaeda, the Taliban, and the associated forces" and thus has the lawful right to use force "consistent with its inherent right to self-defense" under international law in response to the 9/11 attacks. Under domestic law, he stated that targeted killings are authorized by the 2001 Authorization for Use of Military Force (AUMF). Although he contended that these international and domestic legal grounds "continue to this day," he also provided additional justification for current U.S. actions based on continued attacks and intent by al Qaeda. He concluded that the existence of this "ongoing armed conflict" grants legal authority to the United States to protect its citizens through the use of force, including lethal force, as a matter of self-defense. Upon establishing the larger framework for his justification in context of armed conflict, self-defense, and the laws of war, Koh then addressed specific legal reasoning and standards considered by the United States "when defending itself against high-level leaders planning the attacks." He reiterated the widely accepted conceptualization of an "organized terrorist enemy" as one that does not have conventional forces. Instead, such an enemy plans and executes its attacks while hiding among civilian populations, he said. As such, "that behavior simultaneously makes the application of international law more difficult and more critical for the protection of innocent civilians." Koh identified three elements related to situational considerations that the United States uses when determining whether a specific targeted drone killing at a particular location will occur:

- (U) Imminence of the threat
- (U) Sovereignty of other States involved
- (U) Willingness and ability of those States to suppress the threat the target poses

(U) He stated that the "rules" of targeting operations used by the United States are consistent with principles under the laws of war. He cited two well-known principles that govern the State's use of force during an armed conflict: distinction and proportionality. These principles are designed to protect civilians once armed conflict has begun. They are recognized under customary international law as part of *jus in bello* (conduct during war). Yet, Koh omitted any reference to the role of distinction and proportionality in assessing the third principle of military necessity. He provided the well-established legal rules related to the two principles:

- (U) Distinction: Requires that attacks be limited to military objectives and that civilians or civilian objects shall not be the object of the attack.
- (U) Proportionality: Prohibits attacks that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, that would be excessive in relation to the concrete and direct military advantage anticipated.

(U) Koh said that the United States adheres to these standards and that the United States takes great care in the "planning and execution to ensure that only legitimate objectives are targeted and that collateral damage is kept to a minimum."[13] [14] [15] [16] [17] [18]

(U) Michael Leiter, director of the National Counterterrorism Center, justified targeting with "all elements of U.S. national power" those plotting to kill U.S. citizens during remarks at the Aspen Security Forum on 30 Jun 2010. "Individuals aren't targeted because they have bad ideas, they aren't targeted because they inspire people. They are targeted because they are involved in operations directed against the United States." Acknowledging the hard choices involved in targeting someone to be killed, Leiter said such a decision "certainly gives me pause." He added that President Barack Obama and CIA Director Leon Panetta also wrestle with similar deliberations "to issue orders to end an individual's life." Leiter explained that while "a police officer does need a court order to go after a house," the lawman "has a right of self-defense if someone pulls out a gun." The U.S. government, Leiter insisted, has the same right. He added that there is congressional oversight of such actions. [19] [20] [21]

(U) In a speech at 5 March, 2012 speech at Northwestern University School of Law, Attorney General Eric Holder clarified U.S. policy on targeted killing. "The president may use force abroad against a senior operational

leader of a foreign terrorist organization with which the United States is at war -- even if that individual happens to be a U.S. citizen." Holder elaborated on this statement with assurances that such decisions would only take place in a time of war; with a clear, imminent threat; after a thorough review determined other means would entail increased risk or less likelihood of success; and either with the consent of the government on whose territory the act would be considered, or in the absence of that nation's ability to resolve the issue. "Although I cannot discuss or confirm any particular program or operation, I believe it is important to explain these legal principles publicly," Mr. Holder said. Mr. Holder said the 5th Amendment's right to due process does not guarantee citizens the right to a court hearing before the government takes action.[22] [23] [24] [25]

(U) Critics, such as Anthony D. Romero, the executive director of the American Civil Liberties Union, contend that **imminent threat** needs to be a key factor in sanctioning targeted killings outside of Iraq and Afghanistan, arguing that lethal force should be authorized for use outside armed-conflict zones only when there is imminent threat of deadly attack.[26] [27] [28]

[edit] (U) What Does the Law of Armed Conflict Actually Say?

(U) According to the Geneva Conventions, the following categories of combatants are considered "legal combatants" and qualify for prisoner-of-war status on capture:

(U) 1. Members of the armed forces of a Party to the conflict

(U) 2. Members of militias not under the command of the armed forces, with the following traits:

- that of being commanded by a person responsible for his subordinates;
- that of having a fixed distinctive sign recognizable at a distance;
- that of carrying arms openly;
- that of conducting their operations in accordance with the laws and customs of war.

(U) 3. Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

(U) 4. Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war. For countries which have signed the "Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts" (Protocol I), combatants who do not wear a distinguishing mark still qualify as prisoners of war if they carry arms openly during military engagements, and while visible to the enemy when they are deploying to conduct an attack against them.

[edit] (U) Legal Debate Continues Despite Policy Announcement

[edit] (U) Academics Testify Before Congress

(U) On 28 Apr 2010, several top U.S. law professors debated the legality of drone attacks in a hearing before the House Subcommittee on National Security and Foreign Affairs, the second such hearing held by the subcommittee within the past two months. During the hearings, two of the international lawyers asserted opinions that UAV strikes violated international law, and that CIA personnel who carry out drone attacks may be tried as war criminals.[29] [30] Opponents also suggested the employment of targeted killing was a violation of Executive Order 12333, a Presidential order that resulted from concerns about assassination expressed by the Church Committee investigations during the 1970s.

(U) Also on 28 Apr 2010, the ACLU issued an Open Letter to President Obama, outlining the ACLU's position that drone attacks violate international law.

[edit] (U) UN Special Rapporteur Study on Targeted Killings

(U) On 28 May 2010, Philip Alston filed a Study on targeted killings pdfInfo with the United Nations Human Rights Council in Geneva, Switzerland. In his report, Alston states that, "In recent years, a few States have adopted policies that permit the use of targeted killings, including in the territories of other States. Such policies are often justified as a necessary and legitimate response to 'terrorism' and 'asymmetric warfare', but have had the very problematic effect of blurring and expanding the boundaries of the applicable legal frameworks." The report "describes the new targeted killing policies and addresses the main legal issues that have arisen." Alston expanded on the report in inteviews with Damien Carrick on the Australian Broadcasting Company's Law Report docInfo and Scott Horton of *Harpers* docInfo

[edit] (U) The ACLU Sues on Behalf of Anwar Awlaki's Father

(U) 3 Aug 2010: the American Civil Liberties Union and the Center for Constitutional Rights filed a lawsuit on behalf of the father of American-born Islamic cleric Anwar al-Awlaki. The younger Mr. Awlaki, who is of Yemeni descent, has become an Internet guru for terror recruits via his widely distributed sermons and writings. He is believed to be targeted for killing in the drone program. The lawsuit serves as a proxy challenge to what the government calls its "targeted killing" program, which mostly uses drones operated by the Central Intelligence Agency to hunt down suspected terror leaders. In July 2010, the Department of the Treasury, which administers U.S. financial sanctions against alleged terrorists, designated Mr. Awlaki a "global terrorist." The Treasury Department restrictions mean that in some instances lawyers may have to obtain a special license granting permission to do legal work on behalf of designated terrorists. ACLU lawyers said Tuesday they have applied for a license but haven't received one.[31] Federal authorities on 3 Aug 2010 granted the two civil liberties groups a license they need in challenging the government's authority to use lethal force against U.S. citizens designated as terrorists.[32]

(U) On 30 August 2010, the ACLU and the Center for Constitutional Rights filed a lawsuit in U.S. District Court for the District of Columbia for the father of cleric Anwar al-Awlaki, who is believed to be hiding in his parents' native Yemen. Defendants were President Barack Obama, CIA Director Leon C. Panetta and Secretary of Defense Robert M. Gates. The groups, both based in New York, said it was unconstitutional to intentionally try to kill al-Awlaki unless he presents a specific imminent threat to life or physical safety, and only if killing him will eliminate the threat.[33] The case was heard 8 Nov before the district court in Washington DC, with a ruling expected in several weeks on whether the lawsuit should move forward.[34] U.S. District Judge John Bates dismissed the case on 7 Dec 2010, stating the plaintiff, the elder Awlaki, lacked legal standing to bring the case and that his claims presented an issue that could not be decided by the courts. "The serious issues regarding the merits of the alleged authorization of the targeted killing of a US citizen overseas must await another day or another (non-judicial) forum," the judge said in his ruling. The judge acknowledged the "somewhat unsettling nature" of his conclusion "that there are circumstances in which the (president's) unilateral decision to kill a U.S. citizen overseas" is "judicially unreviewable." Judge Bates wrote that Mr. Awlaki had used the Internet in recent months to issue anti-American messages, while taking no action to indicate he wants the U.S. judicial system to hear his case. To the contrary, the judge wrote, Mr. Awlaki wrote an article in April asserting that Muslims "should not be forced to accept rulings of courts of law that are contrary to the law of Allah."[35]

(U) In the first formal legal action by Yemen against Anwar al-Awlaki, on 27 Oct 2010, Yemeni prosecutors charged in absentia the New Mexico-born, al-Qa'ida linked cleric with plotting to kill foreigners. The charges were brought against Awlaki in the wake of AQAP's failed attempt to destroy aircraft during international air cargo flights.[36] When Awlaki failed to present himself for trial, Yemeni prosecutors issued a warrant to bring him in "dead or alive." If captured, Yemeni law precludes Awlaki's extradition to the United States[37]

(U) **Death of Anwar Nasser Aulaqi**: According to open source reporting, on 30 September 2011 Aulaqi was killed by an airstrike in Yemen. [38]. Officials reported the strike killed four operatives in all, including Samir Khan, editor of AQAP's Inspire magazine. President Obama described the killing as a "major blow" to al-Qaeda's affiliate in Yemen and a "significant milestone" in the broader fight against al Qaeda.[39] Aulaqi's death reignited controversy over terrorism, civil liberties and the law. [40]

(U) See also: Threats to UAVs: Opposition through Political Activism and Legal Challenges

[edit] Muammar al-Gaddafi's Daughter Sues NATO Over Air Strike (U)

(U) Aisha Gaddafi, daughter of Libyan leader Muammar el-Gaddafi, filed a war crimes complaint against NATO in Belgium, claiming NATO knowingly bombing a civilian target, killing her daughter and other family members. The complaint, a copy of which was seen by AFP, relates to an April 30 NATO assault on Tripoli, which, according to Libyan officials, killed the strongman's youngest son and three grand-children. "The decision by NATO to target a civilian home in Tripoli constitutes a war crime," said Luc Brossollet, one of Aisha Gaddafi's lawyers. Aisha's brother, Saif al-Arab Gaddafi, 29, her four-month-old daughter Mastoura, and nephews Seif and Carthage, both two years old, died in the raid, according to officials in Tripoli.[41] Aisha Qaddafi's lawyers argue that Belgian courts have jurisdiction over NATO as the military alliance is headquartered in Brussels.[42]

(U) See also: Collateral damage

[edit] (U) Defending Targeted Killing Policy

(U) In response to the civil suit challenge to targeted killing, two former Reagan Administration attorneys made a public argument that the ACLU challenge violates traditional US government separation of powers. The attorneys also state that the Awlaqi issue has been resolved, citing *Ex parte Quirin*, a 1941 case against a Nazi who had US citizenship. The U.S. Supreme Court determined that "citizenship in the United States of an enemy belligerent does not relieve him from the consequences of belligerency."[43] Editorials and interviews in media also have challenged the ethical stance of those who defend terrorists, and urged national leaders to more aggressively explain and defend the legality of strikes.[44] [45] [46] [47] [48] Some point to the irony that it appears more acceptable to kill terrorists than to capture and interrogate them.[49]Other editorials have gone further, charging that the ACLU case is a subtle effort, establishing precedent to impose real-time non-government legal oversight of executive decisions regarding the conduct of warfare.[50]

[edit] (U) New Weapons, New Rules?

(U) Some, including the UN Rapporteur mentioned above, posit that the precision engagement capabilities afforded by the nexus of new technology; integration of operations, intelligence and command and control capabilities; and policy shifts means that the Laws of Armed Conflict should be reexamined. In particular, the employment of UAVs and satellite-guided munitions have resulted in calls to establish new rules for the employment of these capabilities.[51]

(U) An international group including artificial intelligence researchers, arms control specialists, human rights advocates and government officials called for agreements to limit the development and use of tele-operated and autonomous weapons after an October 2010 conference held in Germany. The group, known as the International Committee for Robot Arms Control, said warfare was accelerated by automated systems, undermining the capacity of human beings to make responsible decisions. For example, a gun that was designed to function without humans could shoot an attacker more quickly and without a soldier's consideration of subtle factors on the battlefield.[52]

[edit] (U) Remotely Piloted Vehicles and Public Relations

(U) On 9 Jul 2012, The Association for Unmanned Vehicle Systems International, a trade group for drone aircraft manufacturers and operators released the unmanned aerial vehicle industry's first code of conduct in response to growing privacy concerns. The Association for Unmanned Vehicle Systems International announced that the recommendations for "safe, non-intrusive operation" are meant to guide operators and reassure a public leery of the possibility of spy drones flying undetected over their homes.[53]

[edit] (U) To Kill or Not to Kill

(U) In the wake of Operation NEPTUNE SPEAR, which resulted in the death of Usama bin Ladin, debate arose in world media outlets as to whether or not bin Ladin should have been captured or killed. Varying viewpoints were expressed. Many legal experts argued that the killing was justified, provided bin Ladin did not attempt to surrender. Others disagreed, arguing that capturing bin Ladin and delivering him to the United States for trial and imprisonment should have been the goal. While their arguments are rendered moot by bin Ladin's timely demise, such debate warrants long-term attention, because legal backlash could result in activitsts pressing for additional legal constraints on future special operations and covert action.[54]

(U) Attorney General Eric Holder on 4 May 2011 outlined the US case for the legality of the raid, saying it was "conducted in a way that was consistent with our law, with our values". Mr Holder said Bin Ladin's killing was "an act of national self-defence", calling the al-Qa'ida leader "a lawful military target" who had acknowledged his role in the 9/11 attacks. "It's lawful to target an enemy commander in the field," he said.[55]

(U) The United Nations special rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, and the special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, have raised concerns. "In certain exceptional cases, use of deadly force may be permissible as a measure of last resort... including in operations against terrorists," they said in statement. However, the norm should be that terrorists be dealt with as criminals, through legal processes of arrest, trial and judicially decided punishment," they added. "Actions taken by states in combating terrorism, especially in high profile cases, set precedents for the way in which the right to life will be treated in future instances."[56]

(U) By way of contrast, considerable debate emerged over NATO operations conducted against Libya for the month preceding bin Ladin's death. Some NATO officials have gone to great lengths to avoid the perception that Muammar Gaddafi was the target of NATO air strikes.[57] This became especially apparent in the aftermath of a raid which killed Gaddafi's son, when NATO said the strike was part of its strategy to disrupt the Libyan government's command and control systems. "All NATO's targets are military in nature and have been clearly linked to the Gaddafi regime's systematic attacks on the Libyan population and populated areas. We do not target individuals," said Lt. Gen. Charles Bouchard, commander of NATO's Operation Unified Protector.[58] [59] A rift between several NATO member nations emerged when British Defence Secretary Liam Fox held talks in the US over the bombing of command and control centers that could be sheltering Muammar Gaddafi, in the increasingly desperate search for an endgame in Libya. After meeting with Robert Gates, his U.S. counterpart, to discuss "targeting," Dr. Fox suggested on 25 April that the Libyan dictator was, effectively, always a target. "All parts of command and control are legitimate targets so long as they are attacking civilians," he said. "Those who are involved need to recognize we regard them as a legitimate target." Officially, the NATO air offensive attacks only physical structures rather than individuals, as an explicit assassination strategy could be ruled illegal under United Nations Security Council Resolution 1973. On 25 April, NATO aircraft bombed Colonel Gaddafi's compound in Tripoli, destroying an office, library, and reception hall. A security official said that four people were injured. The attack was the second on the compound in five weeks.[60] [61] [62]

(U) See also:

- (U) White House Weighs Limits Of Terror Fight Early Bird banner.PNG

[edit] (U) Lawfare: British Human Rights Group Seeks Arrest of Former CIA Legal Counsel

(U) Amid growing concern around the world over the use of drones, lawyers and relatives of some of those killed are seeking an international arrest warrant for John Rizzo, until recently acting general counsel for the Central Intelligence Agency. Now retired, Rizzo, 63, is being pursued after admitting in an interview with the magazine Newsweek that since 2004 he had approved one drone attack order a month on targets in Pakistan.

(U) The attempt to seek an international arrest warrant for Rizzo is being led by the British human rights lawyer Clive Stafford Smith of the campaign group Reprieve, and lawyers in Pakistan. "The US has to follow the laws of war," he said. "The issue here is that this is not a war. There is zero chance, given the current political situation in Pakistan, that we will not get a warrant for Rizzo. The question is what happens next. We can try for extradition and the US will refuse.... Interpol, I believe, will have to issue a warrant because there is no question that it is a legitimate complaint."

(U) The warrant will be sought on the basis of two test cases. The first centres on an incident on 7 September 2009 when a drone strike hit a compound during Ramadan, brought by a man named Sadaullah who lost both his legs and three relatives in the attack. The second complaint was brought by Kareem Khan over a strike on 31 December 2009 in the village of Machi Khel in North Waziristan which killed his son and brother. Both men allege Rizzo was involved in authorizing the attack. The CIA refused to comment on the allegations. The lawyers are also building cases against other individuals, including drone operators interviewed or photographed during organized press events.[63][64]

(C/NF) The effort may indicate a concerted effort by human rights organizations, activist international lawyers and opposition forces to undermine the use of remotely piloted vehicles, targeted killing, preemption and other direct action as elements of United States policy. To date, no direct evidence of violent extremist sponsorship for these legal challenges has been detected.

[edit] (U) Lawfare: British Human Rights Group Reprieve Files Suit Against British SIGINT Authorities

(U) 12 Mar 2012: The London-based charity Reprieve and the law firm Leigh Day & Co. filed papers to the UK High Court claiming that civilian staff at Britain's electronic listening agency, Government Communications Headquarters or GCHQ, could be "secondary parties to murder" for providing "locational intelligence" to the CIA in directing its drone attack program. Reprieve was acting on behalf of Noor Khan, 27, a Pakistani whose father was killed by a drone strike in northwest Pakistan in March 2011 while attending a gathering of elders. More than 40 other people were killed in that attack, according to Reprieve. "What has the government got to hide? If they're not supplying information as part of the CIA's illegal drone war, why not tell us?" Reprieve director Clive Stafford Smith said. The Foreign Office and GCHQ declined comment on the legal action Monday, saying they could not speak about ongoing legal proceedings or intelligence matters.[65]

(U) On 21 Dec 2012, UK High Court judges refused to allow Noor Khan to bring a legal challenge to examine whether Britain intelligence officials assisted the action and whether they may be liable for prosecution, saying his lawyer's arguments had been an "attempt to shroud" a real goal of getting the court to publicly denounce U.S. drone strikes. "The real aim is to persuade this court to make a public pronouncement designed to condemn the activities of the United States in North Waziristan, as a step in persuading them to halt such activity," judge Alan Moses said, adding that Khan's lawyer "knows he could not obtain permission overtly for such a purpose." Law firm Leigh Day & Co., which is representing Khan along with legal aid charity Reprieve, said it was disappointed by the ruling and that Khan planned to appeal. The ruling was a victory for the British government, whose lawyers had said that ties between Britain, the U.S. and Pakistan could be jeopardized if a judge granted Khan's request. [66]

[edit] (U) Mexican High Court Subjects Military Conduct to Civil Court Jurisdiction

(C//NF) 12 Jul 2011: A unanimous ruling by Mexico's Supreme Court of Justice exposed Mexican military personnel to civilian prosecution for all human rights crimes and conflicts with Article 57 of the country's military justice code, under which military personnel are tried in military courts. Military leaders nominally supported the ruling but quickly met with a bicameral group of legislators to express concerns about the negative effects on the military. Press indicates the military is outraged at the ruling and threatens to reduce operations if subjected to civilian courts for alleged violations; any slowdown will undermine President Calderon's reliance on the military to fight drug organizations while building police capacity. Legal resolution depends on legislation to reform the National Security Law.[67]

[edit] (U) Related Issues: Surveillance, Detention and Interrogation Controversy

- (U) Efforts to capture and interrogate terrorist suspects have also resulted in controversy.[68] The practice of extraordinary rendition has been called into question by human rights organizations and international law experts, because it circumvents standard criminal law processes and methods. Methodology employed for the interrogation of terrorist suspects have also raised ethical, moral and legal concerns. Enhanced interrogation techniques authorized during the first decade of the 21st century were deemed by many to violate the spirit, if not the letter of the United States Code and international law, including the Hague Convention and Geneva Conventions.

- (U) Surveillance, both domestic and abroad, has also been the subject of controversy. Activities carried out under the President's Surveillance Program have generated significant debate and discussion, as well as legal challenges.

- (U) Individual citizens have challenged the right of FBI and other domestic law enforcement organizations to attach tracking devices to personal vehicles, charging that GPS trackers and similar devices emplaced without a search warrant represent an illegal search or seizure under the Fourth Amendment. Court rulings differ from state to state on the issue, with the US 9th Circuit Court of Appeals ruling that a warrant is not needed to install a tracking device on a suspect vehicle, while the US Court of Appeals for the District of Colombia ruled against GPS tracking without a warrant.[69] [70]

- (U) Legal Status of Terrorists. A little-noticed provision of the 2011 National Defense Authorization Act would put all terror suspects into immediate military custody, a controversial change that would have significant legal repercussions for the ongoing war on terror. The measure was tucked into the Senate's version of the omnibus Pentagon spending measure shortly before Congress adjourned for its summer recess. Similar language had been in the House version of the bill, but it was stripped out after intensive back-channel lobbying by senior White House and Pentagon officials. The measure's future will be decided when lawmakers from the two chambers meet in conference later this month to reconcile the two versions of the massive bill. If the measure goes into effect, militants arrested while planning or carrying out a terror attack -- or in the aftermath of such a strike -- would be placed under military custody rather than being left to civilian law enforcement agencies like the FBI. The measure wouldn't apply to American citizens, but legal experts believe that it is written broadly enough to encompass large numbers of terror suspects.[71]

[edit] (U) References

1. ↑ Kristen Eichensehr, "On the Offensive - Assassination Policy Under International Law," *Harvard International Review,* From Leadership, Vol. 25 (3) - Fall 2003

2. ↑ Nils Melzer, www.amazon.com/dp/0199533164 *Targeted Killing in International Law (Oxford Monographs in International Law)*, Oxford University Press, USA (August 10, 2008)