

The Bare Minimum!

Access to an Effective Remedy and Reparations for Civilian Victims of Armed Drone Strikes

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Abstract

In the international arena there are some encouraging developments in relation to accountability and transparency for the use of armed drones. It is increasingly recognized that remote pilotless aircraft have become part of modern warfare, and that sometimes they are also used outside the context of armed conflict. Subsequently, both international humanitarian and human rights law can apply. The issue of access to justice, however, receives less explicit socio-political attention. Victims of armed remote pilotless aircraft strikes meet countless challenges in effectuating their right to an effective remedy. Often even a formal recognition that a strike has taken place is lacking. Furthermore, the states involved fail to publicly release information about their own investigations. This makes it difficult for those affected to substantiate their status as a victim and seek justice, including reparations. The international community should, in addition to urging involved states to independently and impartially investigate all armed drone strikes, ensure that access to an effective remedy for civilian victims, whether on an international, transnational or national level, becomes a reality.

Keywords

armed drones – targeted killings – counter-terrorism – effective remedy – reparations – victims

Introduction

During the last two years there has been more international awareness and acknowledgement of the use of remotely piloted aircraft, commonly referred to as drones, for targeted killings by states including the United States of America (US), the United Kingdom (UK) and Israel. A targeted killing is the intentional, premeditated and deliberate use of lethal force, by states or their agents acting under the colour of law, or by an organized armed group in armed conflict, against a specific individual who is not in the physical custody of the perpetrator.¹ The US has allegedly targeted members of Al-Qaeda and associated forces in Afghanistan, Pakistan, Yemen and Somalia, whereas armed drones under the control of Israel have been used for similar purposes in Gaza.² Across the globe public outcries regularly occur and demands for the protection of human rights are expressed. Nonetheless, those affected are severely hindered in finding an effective remedy such as financial compensation. Even though the UN, through the Human Rights Council, has requested a follow-up to the investigation into the civilian impact and human rights implications³ of armed drones in counter-terrorism and military operations, most victims have so far received little concrete support in their efforts to seek justice.⁴ As a civilian victim of an alleged armed drone strike in the border region of Pakistan and Afghanistan told US Members of Congress in October 2013:

1 United Nations (UN) Human Rights Council, Special Rapporteur on Extrajudicial Killings, Summary or Arbitrary Executions (UN Special Rap.) 'Study on Targeted Killings', UN doc hrc/14/24 add.6, para. 1, May 2010.

2 The US has also engaged in this practice in Pakistan, Yemen and Somalia. See Ben Emmerson, 'Report of the Special Rapporteur on the Promotion and Protection of human rights and fundamental freedoms while countering terrorism', A/25/59, 2014, pp. 10–18; Ben Emmerson, 'Report of the Special Rapporteur on the Promotion and Protection of human rights and fundamental freedoms while countering terrorism', 68/389, 2013, pp. 6–11; Blum, Gabriella and Heymann, Philip. B. 'Law and Policy of Targeted Killings', in Harvard Journal of National Security, 2012, 1(145): pp. 119–34.

3 UN Human Rights Council, 'Ensuring Use of Remotely Piloted Aircraft or Armed Drones in Counter-Terrorism and Military Operations in Accordance with International Law, including Human Rights and Humanitarian Law', UN doc a/hrc/25/l.32, March 2014.

4 Bureau of Investigative Journalism, 'Get the Data Drone Wars', 2009, Retrieved 26 August 2014, <http://www.thebureauinvestigates.com/category/projects/drones/drones-graphs>; Human Rights Watch, 'The Wedding that Became a Funeral: US drone attack on marriage procession in Yemen', 2014, Retrieved 26 August 2014, http://www.hrw.org/sites/default/files/reports/yemen0214_ForUpload_0.pdf; Stanford/NYU International Human Rights and Conflict Resolution Clinic at Stanford Law School and Global Justice Clinic at NYU School of Law, 'Living under Drones: Death, Injury and Trauma to Civilians from US Drone Practices in Pakistan', 2012, Retrieved 26 August 2014, www.livingunderdrones.org/download-report/; Centre for Civilians in Conflict & Columbia Law School, 'The Civilian Impact of Drones: Unexamined costs, unanswered questions', 2012, Retrieved 26 August 2014, http://civiliansinconflict.org/uploads/files/publications/The_Civilian_Impact_of_Drones_w_cover.pdf.

“In the end I would just like to ask the American public to treat us as equals. Make sure that your government gives us the same status of a human with basic rights as they do to their own citizens. We do not kill our cattle the way US is killing humans in Waziristan with drones. This indiscriminate killing has to end and justice must be delivered to those who have suffered at the hands of unjust”⁵

Almost one year after an armed drone killed his 68-year old mother and injured nine relatives (all children), there was still no effective remedy: neither the Pakistani nor the American government had offered any meaningful compensation (for example, for medical costs).⁶

This article focuses on the challenges for victims of armed drone strikes to seek justice. First, the evolution of the practice of targeted killings by armed drones is considered from an international law perspective. Second, a well-documented case study, the US position on the practice of targeted killings by remote pilotless aircraft, is reviewed. Third, key international developments are discussed, followed by an analysis of the right to an effective remedy and in particular reparations for the victims. Finally, the long-term effect of the denial of justice for the victims is reflected upon.

An International Law Perspective

In order to assess the legality and legitimacy of targeted killings by armed drones, a distinction must be made between a situation of armed conflict (for example, military necessity) and outside of armed conflict (for example, organized crime purposes).⁷ Thus, when there is no legitimate military target, targeted killings fall under (stricter) international human rights and/or domestic rule of law criteria. For example, for a member state of the Council of Europe (CoE) this would probably entail that if the state exercised authority or control over the involved persons or territories outside of Europe, it would enjoy the extraterritorial protection of the European Convention on Human Rights.⁸

In the context of counter-terrorism operations, however, including asymmetrical armed conflict between states and non-state actors, the distinction between armed conflict and non-armed conflict is interpreted ambiguously. There is a debate about, among other things, whether or not there is a non-international conflict between Al-Qaida and affiliated organizations.⁹ And, if this is indeed the case, whether or not the application of armed force can be justified in geographically different locations and against a transnational non-state armed group.¹⁰ Is there, for example in the border region of Pakistan and Afghanistan, an internal armed conflict between militants and the Taliban or an internal armed conflict between different Pakistani militant groups? Or, is the conflict international: between different states, Afghanistan, Pakistan and countries contributing to the International Security Assistance Force (ISAF) and non-state actors: Al-Qaida and affiliated organizations. If not, foreign initiated

5 Reprive, ‘Statement of Rafiq Ur Rehman (Oral)’, 2013, Retrieved 26 August 2014, http://www.reprive.org.uk/press/2013_10_29_child_drone_victims_lawyer_congress/.

6 Amnesty International, ‘Will I be Next?: US Drone Strikes in Pakistan Return’, 2013, pp. 39–41/62, Retrieved 26 August 2014, <http://www.amnestyusa.org/research/reports/will-i-be-next-US-drone-strikes-in-pakistan>.

7 Melzer, Nils, ‘Human Rights Implications of the Usage of Drones and Unmanned Robots in Warfare’, expo/b/droi/2012/12, Brussels: European Union, 2013; Melzer, Nils, *Targeted Killing in International Law*, Oxford: Oxford University Press, 2008.

8 Rosén, Frederik, ‘Extremely Stealthy and Incredibly Close: Drones, Control and Legal Responsibility’, in *Journal of Conflict & Security Law*, 2014, 19(1): pp. 113–131; Melzer 2013, pp. 16–18.

9 UN General Assembly (UNGA), ‘Report of the Special Rapporteur on the Promotion and Protection of human rights and fundamental freedoms while countering terrorism’, UN Doc A/25/59, March 2014, p. 5; UNGA, ‘Report of the Special Rapporteur on the Promotion and Protection of human rights and fundamental freedoms while countering terrorism’, A/68/389, September 2013.

10 UNGA, ‘Report of the Special Rapporteur on the Promotion and Protection of human rights and fundamental freedoms while countering terrorism’, A/25/59, March 2014, pp. 18–19.

drone attacks in Pakistan should be assessed from an international humanrights point of view. In order to determine this, the responsible state(s) should,as many human rights stakeholders advocate, be more transparent about their targeted killing policy and practice and make a substantial effort to clarify its/their (legal) position. For example, the involved state(s) could identify hostilities as a non-international armed conflict.¹¹

Furthermore, under Article 2(4) of the UN Charter, states are forbidden from using force in the territory of another state.¹² The use of force challenges sovereignty. A targeted killing, however, conducted by one state on the territory of a second state does not violate the second state's sovereignty, if this state consents or the UN Security Council has given permission. For instance, in the context of US drone strikes in Yemen there has been permission from the government,¹³ whereas in Pakistan¹⁴ it is not entirely clear whether the government and which part thereof (for example, the prime minister, the military or the security and intelligence services) during particular periods in time have given valid authorization to enter its territory in order to carry out an attack. Furthermore, consent does not absolve either the state concerned from its obligation to abide by human rights law and international humanitarian law with respect to the use of lethal force against a specific person. It is the consenting state's responsibility to protect those on its territory from arbitrary deprivation of the right to life, which applies at all times.¹⁵ A consenting state may only lawfully authorize a killing by the targeting state to the extent that the killing is carried out in accordance with applicable international humanitarian law or human rights law.¹⁶

The US Position

Both domestic and international law define the legal basis surrounding the practice of targeted killings by the American Department of Defense, in particular the Joint Special Operations Command (JSOC) and the Central Intelligence Agency (CIA). The domestic legal basis for US counter-terrorism operations and the targeted killing of members of the Taliban and Al-Qaeda and its affiliates is the 2001 Authorization for the Use of Military Force (AUMF), which the US Congress passed just days after 9/11. The White House maintains that the US' right to self-defence, as laid down in Article 51 of the UN Charter, may include the targeted killing of persons who are planning attacks, both within and outside the theatres of war. Since then a higher threshold, to be extended to non-citizens as well, was stated to be in place. A policy that, according to President Obama, "respects the inherent dignity of every human life."¹⁷

11 Moir, Lindsay 'Towards the Unification of International Humanitarian law' in Burchill, Richard., White, Nigel D., and Morris, Justice (eds), *International Conflict and Security Law: Essays in Memory of Hiliare McCoubery*, Cambridge: Cambridge University Press, 2005, pp. 108.

12 UN Charter, art. 51.

13 Human Rights Watch, 'Between a Drone and Al-Qaeda: The Civilian Cost of US Targeted Killings in Yemen', October 2013, Retrieved 26 August 2014, <http://www.hrw.org/reports/2013/10/22/between-drone-and-al-qaeda-0>.

14 Pakistan Prime Minister Nawaz Sharf's Speech at the UN General Assembly, Pakistan Ministry of Foreign Affairs, Transcript of the Prime Minister's Address in the UN General Assembly, September 2013; Muhammad, Peer, 'Drone-Campaign: Tacit understanding but no deal with is, lower house told', *Tribune Express*, 2013; Roberston, Nic and Greg Botelho, 'Ex-Pakistani President Musharraf Admits Secrete Deal with U.S. on Drone Strikes', *CNN*, April 2013; Wikileaks Cables, 'National Assembly Begins Formal Debate on Kerry-Lugar', August 2011, Retrieved 25 August 2014 <http://www.cablegatesearch.net/cable.php?id=09iSLAMABAD2448&q=gilani>.

15 Council of Europe (CoE), 'European Convention on Human Rights', Rome, 4.ix 1950, art. 2(1) (ECHR); UNGA, 'International Covenant on Civil and Political Rights', UNGA Res 2200A (xxi), 999, 1976, art. 6 (ICCPR), March 1976; UNGA, 'Resolution on the Protection of Human Rights and Fundamental Freedoms While Countering Terrorism', UNDOC A/Res/51/19, para. 1, March 2005.

16 Human Rights Council, 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions', 2010, a/hrc/14/24/Add.6.

17 Prepared remarks by the President of the United States at the National Defense University on the Administration's Counter-Terrorism Policy, May 2013, Retrieved 24 August 2014, <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>.

Furthermore, in May 2013 the US armed drone policy was publically recognized by the President in his now famous speech on counter-terrorism at the National Defense University. Until this speech there had been a veil of secrecy surrounding American responsibility for lethal counter-terrorism operations. This was surprising, because since President Obama assumed office in 2009 a dramatic increase in targeted killings in a military and counter-terrorism context had been witnessed and a number of journalists and 6 NGOs had reported 'on' it.¹⁸ Among others, the US Commander in Chief stated that more transparency (for example, standards) and accountability (for example, judicial public oversight) would become a priority.¹⁹ Since then modest progress appears to have been made regarding an – independent – assessment of possible war crimes or extrajudicial executions.²⁰ Furthermore, there is little or no information sufficient information on the criteria and context concerning the situation where 'signature attacks' are resorted to. This is also the case with people scrutinized for attacks by armed drones. This situation reflects the desirability of a national and international framework that guarantees transparency, accountability and justice for civilians who have been affected by the use of armed drones.²¹

International Human Rights Developments

Within the international arena and in particular in the affected states growing political and public concerns have arisen about the fate of those affected by armed drone strikes. Public outcries frequently occur in certain countries. However, to date, no government has disclosed the full legal basis for targeted killings, including its interpretation of the legal challenges discussed earlier. Nor has any state disclosed the procedural and other safeguards in place to ensure that targeted killings are lawful and justified, and the accountability mechanisms that ensure that extrajudicial killings are investigated and prosecuted. A state that conducts targeted killings and refuses to provide transparency about its policies does not take full political responsibility. It ignores the international legal framework on the limitation of the

18 McCrisken, Trevor and Mark Phythian, 'US Intelligence and the "War on Terror"' in Pamar, Inderjeet, Linda B. Miller, Mark Ledwidge (eds.), *Obama and the World: New Directions in US Foreign Policy* [nook Book], 2014, London: Taylor & Francis; Stanford/NYU International Human Rights and Conflict Resolution Clinic at Stanford Law School and Global Justice Clinic at NYU School of Law, 'Living under Drones: Death, Injury and Trauma to Civilians from US Drone Practices in Pakistan', 2012, Retrieved 26 August 2014, www.livingunderdrones.org/download-report/; The Bureau of Investigative Journalism, 'Get the Data Obama's Terror Drones', 2012, Retrieved 24 August 2014, <http://www.thebureauinvestigates.com/2012/02/04/get-the-data-obamas-terror-drones/>.

19 Prepared remarks by the President of the United States at the National Defense University on the Administration's Counter-Terrorism Policy, 'Fact Sheet: U.S. Policy Standards and Procedures for the Use of Force in Counter-Terrorism Operations outside the United States and Areas of Active Hostilities', May 2013, Retrieved 24 August 2014, <http://www.whitehouse.gov/the-press-office/2013/05/23/fact-sheet-us-policy-standards-and-procedures-use-force-counterterrorism>.

20 ProPublica, '6 Months after Obama Promised to Divulge More on Drones, Here's What We Still Don't Know: The Civilian Cost of US Targeted Killings in Yemen', October 2013, Retrieved 24 August 2014 <http://www.propublica.org/article/6-months-after-obama-promised-to-divulge-more-on-drones-heres-what-we-still>; Harold, Hongju Koh, 'Ending the Forever War: A Progress Report', Just Security, October 2013, Retrieved 28 August 2014, <http://justsecurity.org/2013/10/28/ending-war-progress-report>; Human Rights Watch, 'Between a Drone and Al-Qaeda: The Civilian Cost of US Targeted Killings in Yemen', October 2013, Retrieved 26 August 2014, <http://www.hrw.org/reports/2013/10/22/between-drone-and-al-qaeda-0>; Amnesty International 'Will I be Next?: US Drone Strikes in Pakistan Return', 2013, Retrieved 26 August 2014, <http://www.amnestyusa.org/research/reports/will-i-be-next-us-drone-strikes-in-pakistan>.

21 See among others John P. Abizaid and Rosa Brooks, 'Recommendations and Report of the Task Force on US Drone Policy', Stimson, June 2014, Retrieved 24 August 2014, http://www.stimson.org/images/uploads/research-pdfs/task_force_report_FINAL_WEB_062414.pdf; Human Rights Watch, 'Between a Drone and Al-Qaeda: The Civilian Cost of US Targeted Killings in Yemen', October 2013, Retrieved 26 August 2014, <http://www.hrw.org/reports/2013/10/22/between-drone-and-al-qaeda-0>; Amnesty International 'Will I be Next?: US Drone Strikes in Pakistan Return', October 2013, Retrieved 26 August 2014, <http://www.amnestyusa.org/research/reports/will-i-be-next-us-drone-strikes-in-pakistan>; Stanford/NYU International Human Rights and Conflict Resolution Clinic at Stanford Law School and Global Justice Clinic at NYU School of Law, 'Living under Drones: Death, Injury and Trauma to Civilians from US Drone Practices in Pakistan', Retrieved 26 August 2014, www.livingunderdrones.org/download-report/.

unlawful use of lethal force against individuals.²² Both international humanitarian law²³ and human rights law²⁴ require transparency.

According to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, states must take (and disclose) procedural safeguards with respect to targeted killings in armed conflict.²⁵ States must also specifically disclose the measures in place to investigate alleged unlawful targeted killings and either to identify, prosecute the perpetrators, or to extradite them to another state that has made out a prima facie case for the unlawfulness of a targeted killing.²⁶ Yet until now states have refused to provide or confirm factual information about who has been targeted under their policies and with what outcome, including whether innocent civilians have been collaterally killed or injured. In some instances, targeted killings take place in easily accessible areas. In those cases journalists, human rights monitors and civil society are able to document the impact. However, in other cases, due to remoteness or security concerns, it has been challenging for – independent – observers to assess whether killings were lawful or not. States tend to hide behind tactical or security reasons for not disclosing the criteria for selecting specific targets. But without the disclosure of information and the legal basis for targeted killings, states are operating in an accountability vacuum. It is not possible for the international community, affected states or civil society to verify the legality of a killing, to challenge the authenticity of the intelligence relied upon, or to ensure that unlawful targeted killings do not result in impunity.²⁷ The fact that there is no existing legal framework with a ‘one size fits all’ formula for such disclosure does not mean that states do not need to adopt explicit policies.

Furthermore, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions and the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism stress the importance of access to information and an investigation (the criteria differ slightly depending on whether they are violations in the context of armed conflict or not).²⁸ Whereas some states and international human rights NGOs, including Human Rights Watch and Amnesty International as well as (local) civil society organizations such as the Foundation for Fundamental Rights, Reprieve and the Centre for Civilians in Conflict,²⁹ emphasize that in addition to more transparency and accountability, access to justice, an effective remedy and reparations should become a key priority in relation to the civilian impact of armed drone strikes.

22 Human Rights Committee, General Comment No. 6 (1982), Doc. ccpr/c/21/Rev.1; Neira Alegria Case, Judgment of 19 January 1995, Inter-American Court of Human Rights (Ser.C) No.20 (1995).

23 Geneva Conventions, art. 1; ap i, articles 11, 85 (grave breaches), 87(3); Geneva Conventions i-iv, articles 50/51/130/147.

24 Economic and Social Council Resolution (24 May 1989), 1989/65.

25 Human Rights Council, ‘Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions’, 2010, a/hrc/14/24/Add.6; UNGA, ‘Report of the Special Rapporteur on the Promotion and Protection of human rights and fundamental freedoms while countering terrorism’, a/68/389, September 2013.

26 Human rights law / Geneva Conventions (I-IV), articles. 49/50/129/146; Geneva Convention (IV), articles. 3 and 4. AP I, art 75.

27 UNGA, ‘Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions’, a/hrc/14/24/Add.6, 2010; UNGA ‘Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions’, a/68/382, 2010.

28 UNGA ‘Report of the Special Rapporteur on the Promotion and Protection of human rights and fundamental freedoms while countering terrorism’, a/68/389, 2013; UNGA ‘Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions’, a/68/382, 2013.

29 UN Human Rights Council, 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”, draft notes, September 2014, Retrieved 28 September 2014, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15080&LangID=E>; Centre for Civilians in Conflict & Colombia Law School. ‘The Civilian Impact of Drones: Unexamined costs, unanswered questions’, 2012, Retrieved 26 August 2014, http://civiliansinconflict.org/uploads/files/publications/The_Civilian_Impact_of_Drones_w_cover.pdf.

Effective Remedy and Reparations

As suggested by the civilian victim quoted in the introduction, effective remedies for the victims of armed drone strikes hardly appear to exist. Even though under international law, human rights law and international humanitarian law the responsible state has a duty to investigate unlawful killings, these investigations and procedures, if they exist at all, are not made public or shared with those affected. This lack of information hinders victims in their efforts to seek an effective remedy including compensation for medical costs, the loss of income or property. How else can they credibly substantiate that they were the victims of an armed drone strike or that it was not justified to target them? Furthermore, informed consent does not absolve the affected state of its responsibility to protect those on its territory from arbitrary deprivation of the right to life. Henceforth, it has a duty to investigate potential unlawful killings and those responsible should be held accountable. This applies to alleged serious human rights violations as well as war crimes.³⁰

From a human rights and humanitarian law perspective, states that are responsible for an unlawful killing have a duty to provide those affected with adequate, effective and prompt reparations.³¹ To illustrate this, on 28 March 2011 the Pakistani Government decided to compensate the families of civilians killed or injured in a US drone strike in North Waziristan that had taken place on 17 March 2011. Before this decision, victims did not receive anything for their losses. A Pakistani government representative travelled to the area on 24 March to offer an apology to the victims and, two days later, a Pakistani tribal administration official announced that a compensation package of 300,000 rupees (approximately 3,000 USD) would be paid to each of the 39 families of victims killed in the strike and six injured civilians would receive 100,000 rupees (approximately 1,000 USD). The US Special Representative for Afghanistan and Pakistan, Ambassador Marc Grossman, expressed regret for any civilian casualties resulting from any US operations on 17 March while speaking to the media in Brussels. Nonetheless, this example is an exception: the US apologies as well as compensation, sometimes referred to as condolence – or *ex gratia* – payments, for the victims of drone strikes is not something that happens structurally in Pakistan, nor in Yemen or Somalia.³² Additionally, one can question whether the amount of money that was compensated was reasonable for the harm inflicted.

Last but not least, despite the fact that in an armed conflict context it is not required by international humanitarian law, compensating civilian victims *per se*, is in some of the affected countries an ancient custom. Also in past conflicts the US military appears to have been engaged in giving some form of reparations to victims.³³ For instance, in Afghanistan a compensation scheme was implemented, but there is little documentation of where and how compensation payments were being made and the local population often lacked awareness about such payments. However, partly due to the secrecy surrounding the US legal basis for and the practice of armed drone strikes, there appears to be no – transparent – American policy on reparations for Pakistan, Yemen or Somalia. In rare reported cases, civilian casualties sustained in armed drone strikes have been compensated through local governments after public outcries. On 19 August 2014, for instance, the Yemeni government paid compensation

30 UNGA, 'Basic Principles and Guidelines on the Right on Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Human Violations of International Humanitarian Law', UNGA Res. 60/147, December 2005.

31 *Idem*; Human Rights Committee, General Comment 31 on the Nature of the General Legal Obligation on States Parties to the Convention, 2004, ccpr/c/Rev.1/Add.13, para. 16.

32 Amnesty International, 'Will I be Next?: US Drone Strikes in Pakistan Return', October 2013, Retrieved 26 August 2014, <http://www.amnestyusa.org/research/reports/will-i-be-next-US-drone-strikes-in-pakistan>; Human Rights Watch, 'Between a Drone and Al-Qaeda: The Civilian Cost of US Targeted Killings in Yemen', October 2013, Retrieved 24 October 2014, <http://www.hrw.org/reports/2013/10/22/between-drone-and-al-qaeda-0>.

33 Centre for Civilians in Conflict & Colombia Law School. 'The Civilian Impact of Drones: Unexamined costs, unanswered questions', 2012, Retrieved 26 August 2014, http://civilian-sinconflict.org/uploads/files/publications/The_Civilian_Impact_of_Drones_w_cover.pdf.

for all 12 people killed and all 24 injured in the December 2013 strike.³⁴ US officials declined to comment on the strike or any US role in the payments but acknowledged offering money to victims and their families when civilians are injured or killed.³⁵ WikiLeaks information is available that US attacks are sometimes covered up by the Yemeni government. President Saleh informed the US Central Command's General Petraeus by stating "*We'll continue saying the bombs are ours, not yours*".³⁶ The compensation payments made by the Yemeni government – which in 2013 received \$256m in aid from the US government – directly contradict claims by anonymous Obama administration sources that those killed were militants. Since Yemen is one of the poorest countries in the Middle East, it is not unthinkable that Yemen was reimbursed. Yemeni officials did not want to respond to the alleged payments either. This shows that victims are compensated on an ad-hoc basis and in a non-transparent manner.

In order to obtain justice, it is important to facilitate the accountability process by not just making compensation payments, but also to, for example, support independent and impartial investigations and/or issuing a public apology. For example, shaking hands as a form of recognition could have some impact on the victims or surviving relatives.³⁷ Nonetheless, none of these remedies can be interpreted as an admission that the law has been broken and, overall, the issue remains shrouded in secrecy.

Reflection

Even though under international law there are standards that indicate that the victims of armed drone strikes in counter-terrorism and sometimes military operations have a right to an effective remedy, including the right to reparation, the challenges to effectuate them have so far been enormous. In many cases there is no formal public recognition that an armed strike has actually taken place. Neither do the states involved, either the affected or responsible foreign governments, appear to investigate an alleged attack and publically release the outcome. This makes it very difficult for those affected to actually substantiate their status as a victim and seek any form of justice. As the 2014 drone strikes in Iraq and Syria against non-state armed groups such as the Islamic State in Iraq and the Levant (now, the Islamic State, is), in the Gaza Strip and in Pakistan, Yemen and Somalia against alleged militants or terrorists suggest, remote pilotless aircraft have become part of modern warfare and are used outside of the context of armed conflict too. Henceforth both international humanitarian law and human rights law can apply.

Despite the fact that on an international political level there are encouraging developments in relation to debates surrounding accountability and transparency in relation to the use of armed drones, effective remedies and in particular reparations for the victims receive less explicit attention. For example, in a 2014 panel at the Human Rights Council two of the 23 states explicitly raised the issue of reparations.³⁸ Subsequently, the discussion about the use of

34 On 12 December 2013, a United States' aerial drone launched four Hellfire missiles on a convoy of 11 cars and pickup trucks during a counter-terrorism operation in rural Yemen. The strike killed at least 12 men and wounded at least 15 others, 6 of them seriously. Witnesses and relatives of the dead and wounded interviewed by Human Rights Watch in Yemen said the convoy was a wedding procession. Human Rights Watch, 'US Drone Attack on Marriage Procession in Yemen', February 2014, Retrieved 5 September 2014, <http://www.hrw.org/reports/2014/02/19/wedding-became-funeral>.

35 ProPublica, 'Hearts Minds and Dollars: Condolence Payments in the Drone Strike Age', April 2013, Retrieved 2 September 2014, <http://www.propublica.org/article/hearts-minds-and-dollars-condolence-payments-in-the-drone-strike-age>.

36 Woods, Chris, 'Who is Held to Account for Deaths by Drone in Yemen?', The Guardian, September 2012.

37 Idem.


38 UN Human Rights Council, 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", draft notes, September 2014, Retrieved 28 September 2014, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?Newsid=15080&Langid=E>.

armed drones should move forward by recognizing the challenges the victims face both within as well as outside the context of armed conflict. In addition, urging states to independently and impartially investigate all armed drone strikes, in which they are involved or that have taken place on their territory, access to justice for victims of violations, whether on an international, transnational or national level, should become a key priority. Especially because whereas today's armed drones are mostly manned remotely by a human military operator, this may soon become subject to artificial intelligence control of unmanned fleets: also known as 'Autonomous Intelligence Systems'. The technological development in relation to armed drones is moving more quickly than the development of international legal standards that apply to it. Because it is even less clear which entity can be held accountable when a drone, instead of a person, assesses whether it is going to target someone, this may become even more difficult in the case of 'Autonomous Intelligence Systems'.

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