



# ARMED DRONES IN EUROPE

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**Cover photo:** A member of the Iraqi forces looks up at a drone in Mosul, Iraq, on March 13, 2017.

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# FOREWORD

This publication has been prepared in collaboration with the European Forum on Armed Drones (EFAD) — an umbrella organisation working to obtain more clarity and better policy-making on the use and acquisition of armed drones in European states and at the EU level — and the Amnesty Secretariat in London, which has helped with the UN-level research.

The report is intended to provide European policy makers, industries, the public and the media with a comprehensive account of armed drones in Europe since the Open Society Foundations started working on the issue in 2015. Senior policy analyst Srdjan Cvijic and two consultants, Lisa Klingenberg and Delina Goxho, have collated and analyzed the

main statements, commitments, publications and debates around the issue of armed drones in five European countries and at the EU level. We hope this publication will serve as a general guide for the incoming European Parliament and people interested in learning more about the issue.

Drones are here to stay: this report should help readers understand how and why they came into use and to shed light on some of the controversies around the use of this technology. Our aim is to ensure that their future acquisition is not taken for granted and their use does not become normalized. We would like to spark a more mature debate about the direction of drone use in EU member states.

# INTRODUCTION

This report analyses the use of armed drones in five European countries: Germany, the Netherlands, France, Italy and the UK. It then covers developments at the EU level before providing a brief overview of the debate at UN.

In Germany, the issue of armed drone procurement has sparked a large debate in Parliament and in the media. The decision to lease Israeli drones was met first with legal action on the part of the U.S. company General Atomics and then with disapproval by members of the German Parliament, who rejected the lease. As these objections are now easing, Chapter 1 analyses the response of the German parliament and government to drone acquisition, and the reaction of the public and the media. Germany has been criticized by various civil society groups for facilitating U.S. strikes, as Ramstein base is used by the U.S. to coordinate strikes in Somalia and elsewhere on the African continent. With increased U.S. remote presence in the Sahel, there is widespread concern that Germany will play a crucial role in transferring intelligence through Ramstein. The chapter analyses the legal implications and controversies around complicity charges, and briefly mentions successful litigation carried out by the European Centre for Constitutional and Human Rights and Reprieve on behalf of three Yemeni victims.

Chapter 2 focuses on the acquisition of weapons-capable drones by the Netherlands: it gives an overview of the current climate in the country through government statements and commitments, discussions in Parliament and the different

approaches of the Ministry of Foreign Affairs and Ministry of Defense. As the Dutch government has supported the UN-led process (Chapter 7), a subsection of Chapter 2 analyses the international debate from the point of view of The Hague. Finally, given that complicity charges have been raised against the Dutch government for allegedly sharing intelligence with the U.S. drone programme, various civil society groups, such as PAX and Amnesty, have been monitoring the Dutch legal position. This chapter summarizes their concerns.

In the UK, the issue of armed drones has sparked lively debate, which has been accompanied by legal action against targeted killing operations. At present the UK fleet consists of ten Reapers, and by 2021 it may have doubled that number. The UK has deployed its Reapers against Daesh in Iraq, Syria and allegedly Libya, after the former Prime Minister David Cameron announced he had ordered them to be used to target terrorists in Syria. Chapter 3 analyses the legal implications of this step, and issues of transparency regarding both complicity with U.S. remote operations and UK operations themselves. It lists government statements and commitments, gives an overview of reactions in Parliament and then outlines the law affecting the deployment of armed drones. It also sets out civil society, academic and media efforts to demand greater transparency. The chapter also summarizes UK involvement at the UN level and its multilateral engagement.

In France, the debate around the acquisition of military drones has largely focused on effectiveness and security, principally sparked by the terrorist



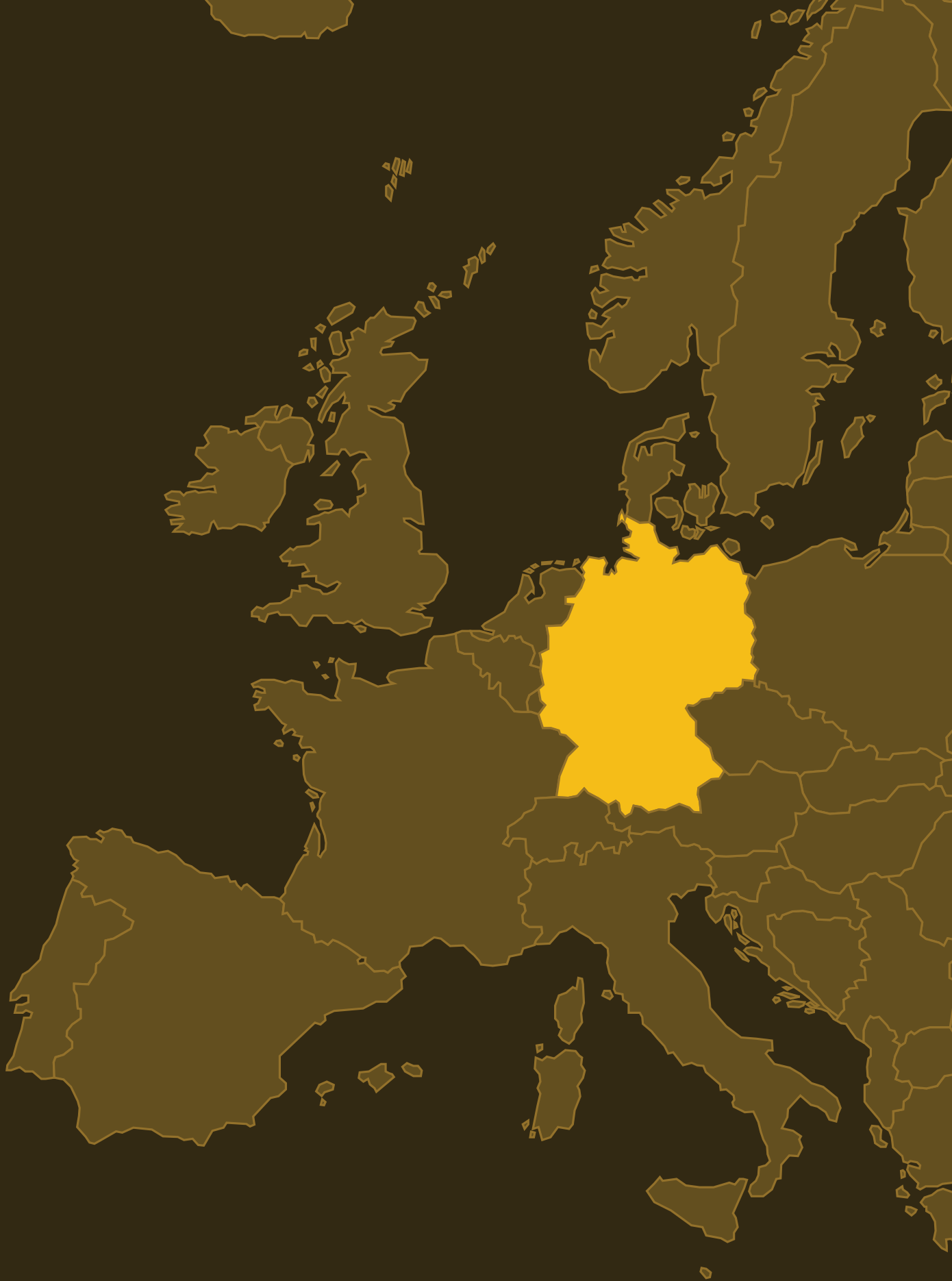
attacks in Paris and Nice. From a transparency point of view, the French military has historically been rather secretive and not particularly engaged with civil society groups, which in turn have not created a consistent debate about armed drones. In recent years the government has stressed the importance of arming French drones for operations in the Sahel, but has not drawn precise legal lines around how such drones will be operated. A few government statements around the issue of targeted killings have alarmed civil society groups and some members of parliament. Questions in Parliament largely focus on appropriate supplier issues, pushing for domestic manufacturing rather than dependence on U.S. acquisitions. After setting out government and parliamentary statements, Chapter 4 gives a brief overview of the drones France has already acquired and plans to obtain, focusing on the legal implications for France. It then gives an account of media coverage and the civil society response to French acquisitions and the future uses for its armed drones.

Chapter 5 analyses the role of Italy in the U.S. drone programme, its current stance and its lengthy efforts to acquire armed Reaper drones from General Atomics. It outlines the issues surrounding the Sigonella airbase, used by U.S. forces to conduct operations in Northern Africa. Although this Italian military base has been used by U.S. forces for a number of years, no Italian government has made any public statement about the legal implications of these strikes. The issue of armed drones in Italy became widely known in 2015, after Italian aid worker Giovanni Lo Porto was killed in error by a U.S. drone strike in Pakistan. Despite appeals by the family and legal representatives of Lo Porto and by the Italian Network on Disarmament, Research Institute Archivio Disamo and the European Network for Constitutional and Human Rights, the use of the base and the acquisition of U.S. drones has been largely ignored by the Italian public and government. The chapter outlines the parliamentary debates and questions about the issue since 2013, the law around the use of such weapons, and the legal implications of allowing U.S. forces to use the Sigonella airbase.

It then proceeds to clarify Italy's current drone possessions and how it intends to use them in future. The chapter also mentions civil society debates both nationally and at the European level, and lists the most relevant publications and media debates on the topic of armed drones in Italy.

From a multilateral point of view, the role of the European Union has been largely non-existent in recent years, as matters of EU defense lie with member states and are not a prerogative of the Union. However, aside from dual-defense technology development, which will be mentioned further, Chapter 6 focuses on the most recent developments with regard to the European Defense Fund, which poses significant challenges to the peaceful nature of the EU's action in the world. The chapter gives an overview of the statements and commitments made by Members of the European Parliament and the EU Commission concerning armed drones since 2014, largely analyzing Parliament actions towards obtaining a common EU position on armed drones. The EU Defense Fund will probably partly finance the development of a European armed drone, the nEUROn, with contributions from member states' industries. This poses significant legal challenges, as member states do not have in place a mechanism to ensure that the conduct of hostilities in drone warfare abides by international human rights and humanitarian law.

Finally, we briefly mention the most recent developments at UN level, such as the remarks by the new UN Secretary General António Guterres in his Disarmament agenda and studies conducted by the UN Research Institute for Disarmament Research (UNIDIR). Part of Chapter 7 focuses on the U.S. Joint Declaration, which was a process initiated by the Obama administration and which continues alongside UN negotiations. To conclude, we mention the interventions by UN member states on the topic of armed UAVs and the increased interest in the past year in making statements at the First Committee.





# 1. GERMANY: POSITIVE RESULTS OF LITIGATION EFFORTS

## INTRODUCTION

The decision by the German government to procure drones capable of being armed by the Bundeswehr (the German armed forces) has provoked widespread debate among both the public and in Parliament. When the German MoD tried to lease five Israeli Heron TP drones, U.S. General Atomics took legal action, claiming that the MoD should have invited offers by several companies and justified its selection through a competitive bidding process. Ultimately, General Atomics delayed the lease, as the claim was rejected<sup>1</sup>. The lease was delayed again in 2017 when the German Parliament's budget committee rejected the deal on the grounds that the drones could potentially be armed, as Social Democratic party MPs were skeptical of the deal. In February 2018

Angela Merkel's coalition decided to approve the deal, but they put the acquisition of armed drones on hold until lawmakers responded to all their concerns about the drones<sup>2</sup>. These objections are, however, easing because Germany wants to align itself with other major European powers that already possess and use drones — the UK among them.

The Bundeswehr currently possesses five types of intelligence, surveillance and reconnaissance drones<sup>3</sup> and most recently Germany has also taken the lead in a joint European initiative to create a European version of the U.S. Reaper drone, the MALE (Medium-Altitude-Long-Endurance), which is nominally used for surveillance but can also be armed.<sup>4</sup> According to Elsa Rassbach, a U.S. filmmaker, German public opposition to armed

1 Ben Knight, 'What Germany's first armed drones could do', *Deutsche Welle* (June 21 2017) available at: <http://p.dw.com/p/2f82D>.

2 *DefenseNews* (2018) <https://www.defensenews.com/global/europe/2018/02/07/political-deal-may-mean-german-defense-boost-but-puts-armed-drones-acquisition-on-hold/>

3 Germany is using the *Luftgestützte Unbemannte Nahaufklärungs-Ausstattung* (LUNA), or airborne unmanned close reconnaissance system; the *Kleinfluggerät für Zielortung* (KZO), or small target-locating drone; the *Abbildende luftgestützte Aufklärungsdrohne im Nächstbereich* (ALADIN), or airborne reconnaissance drone for close area imaging; the *Mikroaufklärungsdrohne für den Ortsbereich* (MIKADO) and the Israeli-built Heron 1. Apart from the latter, all drones are German-made. Since the turn of the century these drones have been introduced in combat situations, supporting U.S. airstrikes in Afghanistan for example. Knight, 'What Germany's first armed drones could do'

4 Reuters <https://www.reuters.com/article/germany-airshow-europe-drone/europe-seeks-sovereignty-with-unveiling-of-male-drone-model-idUSL8N1S38LM>

drones can be explained by the broad rejection of German military intervention in other countries<sup>5</sup>. Such engagement is often seen as violating Article 26 of the 1949 German basic law (*Grundgesetz*) that prohibits the planning of aggressive war on German soil.<sup>6</sup>

## GOVERNMENT STATEMENTS AND COMMITMENTS

German former defense minister (as of July 2 2019 president of the European Commission) Ursula von der Leyen has said that the country intends to acquire armed drones in the near future<sup>7</sup>. But she added that any use of armed drones by the German military would only take place in armed conflict, in accordance with international law, and mainly to protect soldiers - all within a concrete parliamentary mandate<sup>8</sup>. The government has spoken in favor of regulating armed drones through arms control and disarmament regimes.

The official federal government position on armed drones was agreed upon in the Coalition Agreement<sup>9</sup> between the CDU/CSU (Christian Democrats) and SPD (Social Democrats) first in November 2013 and then in the 2018 Coalition Agreement<sup>10</sup>. It reads: “*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, also have combat capabilities.*”

Another former German defense minister, Thomas de Maizière (CDU), ruled out the possibility of the German armed forces (Bundeswehr) conducting targeted killings similar to those carried out by the CIA. During a discussion with military bishops on the use of armed drones in April 2013, he underlined<sup>11</sup> that “*extrajudicial killings are not an option for us*” and that “*drones can only be deployed in a territory clearly defined by a mandate.*” According to De Maizière, to deploy armed drones “*outside of this mandate*” would not be in accordance with the law and would not happen. In a plenary debate<sup>12</sup> on the acquisition of armed drones in the German Bundestag on 2 July 2014 von der Leyen (CDU) reiterated this rejection of unlawful targeted killings and implicitly distanced herself from the U.S. practice. She stated:

5 Cvijic and Klingenberg (2017), available at <https://www.ecchr.eu/en/publication/litigating-drone-strikes-challenging-the-global-network-of-remote-killing/>.

6 Deutscher Bundestag: Basic Law for the Federal Republic of Germany Article 26 (1): “Acts tending to and undertaken with intent to disturb the peaceful relations between nations, especially to prepare for a war of aggression, shall be unconstitutional. They shall be made a criminal offence”. Available at <https://www.bundestag.de/blob/284870/ce0-03414872b427e57fceb703634dcd/basic-law-data.pdf>.

7 *The Local* <https://www.thelocal.de/20180614/german-military-to-get-its-first-ever-combat-capable-drones>

8 EFAD report on Germany, <https://www.efadrones.org/wp-content/uploads/2017/12/Germany.pdf>; Cvijic and Klingenberg, Armed drones policy in the EU, p38, available at: <https://www.ecchr.eu/en/documents/publications/articles/litigating-drone-strikes-eng-neu.html>; DIP Bundestag: ‘Aktuelle Stunde auf Verlangen der Fraktion DIE LINKE – Beschaffungsprogramm von Drohnen für die Bundeswehr’ (July 2 2014) available at: <http://dip21.bundestag.de/dip21/btp/18/18045.pdf>

9 Translated text available at [https://www.kas.de/c/document\\_library/get\\_file?uuid=d58641a0-02ab-935a-c295-1148b45cc426&groupId=252038](https://www.kas.de/c/document_library/get_file?uuid=d58641a0-02ab-935a-c295-1148b45cc426&groupId=252038)

10 Bundesregierung (Federal Government website) <https://www.bundesregierung.de/breg-de/themen/koalitionsvertrag-zwischen-cdu-csu-und-spd-195906>

11 Only available in German at [http://www.das-parlament.de/2013/25\\_26/Thema/45452662/323956](http://www.das-parlament.de/2013/25_26/Thema/45452662/323956)

12 In German at <http://dip21.bundestag.de/dip21/btp/18/18045.pdf>

*“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”.*

Although von der Leyen implicitly rejected the U.S. practice, Germany would not criticize the U.S. government explicitly and directly. In May 2013, in an answer<sup>13</sup> to a parliamentary question on U.S. 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.”*

## THE LEGAL VIEW

Concerning the use of drones within armed conflicts, the German government stated in an answer to a parliamentary question tabled by the Left party

(Die Linke)<sup>14</sup>: *“The general rules of international law, in particular the rules of international humanitarian law, apply to the use of any armed systems in armed conflict. According to the Federal Government, the use of these systems [armed drones] is already limited through international humanitarian law.”*

In another parliamentary answer, it set out how drones could be used outside armed conflict:<sup>15</sup> *“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 Human Rights Council (HRC) panel discussion on armed drones in September 2014 Germany stated that, in its view, international humanitarian law becomes *lex specialis* in all situations of armed conflict<sup>16</sup>. Defense minister Ursula von der Leyen did not address the question of international debate and regulation of armed drones. During the parliamentary plenary debate she simply said that *“we are all constantly challenged to find the balance between what is technically possible and what is ethically justifiable, here in the Bundestag, in the EU, in NATO and in the United Nations.”*

At the panel discussion, Germany did not repeat its call for transparency and did not consider any further steps, except the inclusion of drones in arms control regimes. Furthermore, the country asked how far states were obliged to provide effective remedy to victims and their families or whether it *“is already enshrined in concrete existing legal obligations”*.

Indeed, the German statement at the UN HRC argued that it was not the appropriate forum to discuss the use of armed drones: *“It is the German*

13 In German at <http://dip21.bundestag.de/dip21/btd/17/136/1713655.pdf>

14 The parliamentary question focused on the military drone strategy of the Federal Government and in particular on combat drones. It was asked by parliamentarians of Die Linke party on March 13 2013.

15 The parliamentary question on the Government's attitude towards the acquisition and deployment of armed drones was asked by the SPD on October 17 2012.

16 Human Rights Council, Twenty-eighth session, Agenda items 2 and 3, Annual report of the UNHC for Human Rights and reports of the office of the High Commissioner and the Secretary General, interactive panel discussion of experts on the use of remotely piloted aircraft or armed drones in compliance with international law, September 22 2014.

*view that an in-depth discussion of specific weapon delivery systems would be better placed in the context of arms control and disarmament fora.”<sup>17</sup>*

Germany does appear to favor this approach. In May 2013, Germany had declared in a statement at the UN HRC that it “*strongly supports the idea of including unmanned systems in national reports to the UN Register of Conventional Arms*”.

Nevertheless, there appears to have been a shift in the German position at the UN since the beginning of 2013. In May 2013, during a dialogue with the Special Rapporteur on extrajudicial executions, Germany’s statement was relatively strong. Germany called for greater transparency in the use of drones, stating “*We believe that additional transparency measures should be taken into consideration.*” In addition, it explained that as well as the inclusion of drones in arms control regimes, “*further steps should be considered*”.

In terms of proliferation, however, Germany signed the Joint Declaration for the Export and Subsequent Use of Armed and or Strike-Enabled Unmanned Aerial Vehicles on October 28 2016<sup>18</sup>. This means that it has agreed to regulate the production, export and use of such technology. In addition, as mentioned by Cvijic and Klingenberg<sup>19</sup>, Berlin has shown support for multilateral initiatives in the disarmament and arms control framework, such as the United Nations Disarmament (UNIDIR) Research Project Increasing UAV Transparency, Oversight and Accountability.<sup>20</sup> However, this is ambiguous, as it does not discuss human rights law and does not provide for sanctioning mechanisms in case these regulations are not in place. Although it is one of the few large European countries that has not begun arming its

fleet, since 2013 Germany’s position has increasingly aligned with those of France, Italy, Spain and the UK.

The public debate on the use of armed drones and plenary debates in the German Parliament (Bundestag) have revealed a divide between the German political parties. Whereas the Green party (Bündnis90/Die Grünen) and the far left party (Die Linke) reject the German acquisition of armed drones, the Christian Democratic Party CDU/CSU, which forms part of the governing coalition, has spoken in favor of acquiring and using them. The CDU sees the security and protection of soldiers as the highest priority. The social-democratic SPD, which also forms part of the coalition, adopts a skeptical position that sticks to the Coalition Agreement. It rejects targeted killings, but generally supports the German acquisition and use of armed drones and the development of a European armed drone under the condition that it follows a substantive public debate. The SPD also highlights the necessity of including armed drones in disarmament and arms control regimes.

It is instructive to watch how the debate has unfolded in Germany. In August 2012, the then defense minister De Maizière had announced for the first time<sup>21</sup> that he was in favor of the German acquisition of armed drones, triggering a political debate on the issue. By 2013, armed drones had moved up the parliamentary and political agenda. On April 25 2013, the first parliamentary debate on targeted killings and armed drones<sup>22</sup> was held. Despite the divisions over whether Germany should acquire armed drones, all parties clearly rejected their use for targeted killings in the context of counter-terrorism activities. In the debate, the SPD was critical about the German

17 Ibid.

18 U.S. Department of State, ‘Joint Declaration for the Export and Subsequent Use of Armed or Strike-Enabled Unmanned Aerial Vehicles (UAVs)’ (October 28 2016) available at: <https://2009-2017.state.gov/r/pa/prs/ps/2016/10/262811.htm>.

19 Available at <https://www.echr.eu/en/publication/litigating-drone-strikes-challenging-the-global-network-of-remote-killing/>

20 Cf. United Nations Disarmament Research: “Research project- Increasing UAV Transparency, Oversight and Accountability”, available at <http://www.unidir.org/programmes/security-and-society/increasing-uav-transparency-oversight-and-accountability>

21 In German here <http://www.spiegel.de/politik/deutschland/de-maiziere-will-bundeswehr-mit-bewaffneten-drohnen-ausstatten-a-848144.html>

22 In German here [http://www.das-parlament.de/2013/18\\_20/Innenpolitik/44545066/323276](http://www.das-parlament.de/2013/18_20/Innenpolitik/44545066/323276)

acquisition of armed drones but did not follow the far left and Green parties' categorical rejection. According to the SPD defense spokesperson Klaus-Peter Bartels, there was no immediate need for the weapons. He added that ethical and legal questions had to be tackled before the acquisition of armed drones. An SPD motion on drones (17/13192)<sup>23</sup>, submitted on April 23 2013, was not adopted in the vote that followed the debate. The motion said that it was necessary to examine how far the use of armed drones would lower the threshold for the use of force and influence military decision-making. It added:

*"The deployment of unmanned armed systems is only allowed on the basis of a mandate from the Bundestag. [...] A deployment that affects the protection of the civilian population and is directed against non-combatants, is not allowed. This can be prohibited by including armed drones into the arms control process and disarmament negotiations."*

In the motion, the SPD asked the federal government:

- *"To refrain from the decision to acquire combat drones until all security, legal and ethical questions have been answered in an extensive social and political debate. [...]"*
- *To advocate for the inclusion of drones into arms control policies.*
- *To advocate for the international ban of fully autonomous weapon systems.*
- *To position itself clearly with regard to extrajudicial killings, declaring these killings as violations of international law and advocate for an end of these deployments in the future".*

In June 2013, the SPD issued a press release<sup>24</sup> in which it declared that *"targeted killings by combat drones in countries with which no war has been declared, violate the UN Charter and undermine the international legal order. Extrajudicial killings by armed drones are a violation of international law."*

Researcher Ulrike Esther Franke has analyzed German parliamentary questions on drones and concluded<sup>25</sup> on June 20 2014 that *"102 questions and minor interpellations pertaining to drones have been posed to the government by members of the Bundestag. Of these, 40 discussed or questioned U.S. drone use. Three-quarters of those questions pertained to the U.S. tactic of "targeted killings" in Pakistan, Somalia, or Yemen (the others mainly discussed the stationing and testing of U.S. drones on German soil)".* The majority of critical questions were asked by Die Linke MP Andrej Hunko.

## COMPLICITY CHARGES

According to media reports and to Amnesty's report *Deadly Assistance: the Role of European States in U.S. Drone Strikes*<sup>26</sup>, the German government has facilitated U.S. targeted drone strikes in Pakistan, Yemen and Somalia. On the one hand, it has shared intelligence with the U.S., which facilitated a targeted drone killing in Pakistan. On the other hand, the U.S. uses its airbases in Germany to coordinate drone strikes in Somalia and to transfer data for drone operations conducted in Pakistan, Yemen and Somalia. In short, the German government does not prevent U.S. bases in Germany from being involved in drone activities.

23 Available in German at <http://dip21.bundestag.de/dip21/btd/17/131/1713192.pdf>

24 Available in German at <https://www.spd.de/fehler-404/>

25 In German <https://isnblog.ethz.ch/technology/the-flawed-german-debate-on-armed-drone-acquisition-what-does-this-have-to-do-with-our-procurement-plans-for-gods-sake>

26 Amnesty International, 2018, found in <https://www.amnesty.org/download/Documents/ACT3081512018ENGLISH.PDF>.



These allegations have generated public controversy about possible German complicity in U.S. drone strikes. In October 2010, the German government came under strong domestic criticism for this stance after a U.S. drone strike killed Bünyamin E, a German citizen of Turkish descent in Pakistan<sup>27</sup>, amid claims that the German police had provided U.S. intelligence agencies with information about his movements. In December 2010, the far left MP Wolfgang Neskovic called for more transparency<sup>28</sup> about the case and demanded answers from Angela Merkel's administration. *"Such attacks are happening outside the law. International law does not provide any legal basis for the killing of suspected terrorists outside of a combat situation,"* he argued.

The Attorney General of Germany investigated the case in order to determine whether a war crime as defined by the German Code of Crimes against International Law<sup>29</sup> might have been committed against Bünyamin E. However, in July 2013, he abandoned the case, arguing<sup>30</sup> that Bünyamin E. had been a member of an armed group involved in an armed conflict. He was therefore not a person protected under international humanitarian law<sup>31</sup> and German complicity was therefore not an issue.

Nevertheless, in reaction to the allegations, the then interior minister Thomas de Maizière had his staff prepare a report examining the legality and constitutionality of the practice of passing on information. According to an article<sup>32</sup> in *Der Spiegel*, published on May 17 2011, the German Interior Ministry also issued *"new, more restrictive*

*rules and has instructed the BfV [German Intelligence Organisation] to stop providing the Americans with current information that would make it possible to determine the location of German citizens. [...] When providing information, the German intelligence agencies include wording to the effect that the Americans can use it 'for intelligence purposes only' or 'to protect against threats.'*" According to a German official, these instructions *"rule out the possibility that German information could be used to plan a drone attack."*

However, in May 2013, German TV news show *Panorama* and the newspaper *Süddeutsche Zeitung* revealed that U.S. military bases in Germany play a substantial role in American drone operations. U.S. AFRICOM (United States Africa Command) is based in Stuttgart, in the south of Germany. According to the report, the responsibility for all African operations, including drone strikes, lies with AFRICOM. This information was confirmed by the U.S. military. The report also revealed AFRICOM's intention of internally recruiting 'intelligence analysts' who would nominate possible drone targets in Africa. The U.S. Air Force base of Ramstein in Rhineland-Palatinate also plays a crucial role in U.S. drone attacks<sup>33</sup>. The report revealed that the U.S. uses the Ramstein satellite relay station of the Air Operations Centre (AOC) to monitor African airspace. Moreover, the report quoted a U.S. Air Force paper saying that without this station U.S. drone attacks would not be possible.

Shortly after the publishing of the *Panorama* report on AFRICOM and Ramstein, President Obama

27 Cvijic and Kilingerberg (2017)

28 *Der Spiegel* <http://www.spiegel.de/international/world/obama-is-not-god-us-drone-attack-raises-uncomfortable-questions-for-germany-a-732684.html>

29 Available in German at <http://www.generalbundesanwalt.de/de/showpress.php?themenid=15&newsid=482>

30 Ibid.

31 ECCHR has published an expert opinion on this here: [https://www.ecchr.eu/fileadmin/Juristische\\_Dokumente/Gutachterliche\\_Stellungnahme\\_Drohnen\\_Pakistan\\_2013-10-23.pdf](https://www.ecchr.eu/fileadmin/Juristische_Dokumente/Gutachterliche_Stellungnahme_Drohnen_Pakistan_2013-10-23.pdf)

32 *Der Spiegel* <http://www.spiegel.de/international/germany/drone-killing-debate-germany-limits-information-exchange-with-us-intelligence-a-762873-2.html>

33 Global Security <https://www.globalsecurity.org/military/facility/ramstein.htm>

denied<sup>34</sup> drones had been launched from Germany. But *Süddeutsche Zeitung* had never claimed that AFRICOM had *launched* the drones from Germany. It only revealed that U.S. military and satellite bases in Germany, such as AFRICOM, were *involved* in drone strikes. Thilo Marauhn, an international law professor, argued<sup>35</sup> in reaction to the revelations: “*When the German government knows about the killing of a terror suspect by drone outside a war zone and doesn’t protest against it, this could constitute a violation of international law.*” The German constitution also prohibits<sup>36</sup> conducting military activities contrary to international law from German territory.

In September 2014, *Süddeutsche Zeitung* revealed<sup>37</sup> further information about U.S. Ramstein’s involvement in drone operations. The article showed that the U.S. administration could not have fired its armed Predator drone against Osama Bin Laden from German territory without German consent, as this would violate the troop deployment agreement. The American government therefore developed a new system which is still used for American drone activities in Africa and the Middle East: the drone sends a signal to Ramstein by satellite, which then transfers the signal to the U.S. through a fiber cable. This allows drone pilots in the U.S. to control the drone in real time. Drone signals are transferred via Germany, but the pilot who triggers the weapon is based in the U.S.. The German government’s only comment on this revelation was that the U.S. had given a reassurance that U.S. drones are “*neither launched nor piloted from Germany*”.

Amnesty International’s 2018 report on European state complicity in U.S. drone strikes<sup>38</sup> says: “Counter-terrorism intelligence cooperation between Germany and the U.S.A extends back to the 1960s through to the post-9/11 period and the global “War on Terror”. This relationship has continued to the present day, with Ramstein airbase [...] playing a critical role on the U.S. drone program”.<sup>39</sup>

In October 2014, the British organisation Reprieve and German ECCHR issued a lawsuit<sup>40</sup> against the German Ministry of Defense which provides more detailed information about Ramstein’s involvement in drone attacks. Whereas drone operations against Yemeni alleged terrorists are piloted from the U.S., analysts in Germany are connected with the U.S. through the Distributed Ground System (DGS). The DGS-4 is located in Ramstein, at the Air Operations Centre. The DGS analysts monitor the drone operation and analyze the live images coming from the drones. Thus, the analysts directly support U.S. drone pilots in real time. Moreover, the drone receives its technical orders via the station in Ramstein.

On behalf of three Yemeni drone victims, Reprieve and ECCHR have sued the German government<sup>41</sup> for failing to prevent U.S. Ramstein involvement in American targeted drone killings in Yemen. The organizations argue that the German fundamental law (*Grundgesetz*), together with customary international law, prohibit the use of German territory for drone attacks that violate international law. It also points out that the U.S. should be bound

34 Panorama <https://daserste.ndr.de/panorama/archiv/2013/Obama-Deutschland-nicht-Startpunkt-der-Drohnen-Einsaetze,ramstein129.html>

35 Deutsche Welle <https://www.dw.com/en/germany-shies-away-from-comment-on-possible-role-in-us-drone-war/a-16852606>

36 Der Spiegel <http://www.spiegel.de/politik/ausland/us-basis-in-deutschland-soll-drohnen-angriffe-in-afrika-steuern-a-902910.html>

37 Süddeutsche Zeitung <https://www.sueddeutsche.de/politik/us-basis-ramstein-us-drohnen-wurden-aus-rheinland-pfalz-gesteuert-1.2142955-2>

38 Amnesty International <https://www.amnesty.org/download/Documents/ACT3081512018ENGLISH.PDF>

39 Ibid. p.51

40 The complete lawsuit can be requested from ECCHR or Reprieve.

41 Reprieve <https://reprieve.org.uk/press/2014/10/15/drone-victims-sue-german-govt/>



by the IHRL obligations of the right to life when conducting drone attacks in Yemen, as the country is not part of an armed conflict and thus international humanitarian law is not applicable. In May 2015, the Administrative Court (*Verwaltungsgericht*) of Cologne dismissed this claim on the grounds that the Court can only judicially review decisions by the executive branch if they are completely inactive or obviously insufficiently active to protect constitutional rights<sup>42</sup>. However, in March 2019, the Higher Administrative Court in Münster ruled that the German government must take action to ensure that the U.S. respects international law in its use of Ramstein Air Base. In its judgment the court found in favor of the claimants from Yemen on several key aspects, as the German government has a third-party responsibility to prevent any unlawful U.S. military action when it is supported from German territory.<sup>43</sup>

## PLANNED ACQUISITION OF ARMED DRONES

During the conflict in Afghanistan, Germany used unarmed Heron 1 surveillance drones that it leased from Israeli Aerospace Industries. At the same time, the German armed forces in Afghanistan have occasionally been supported and protected by armed drones belonging to allies.

As mentioned above, the Bundeswehr currently only possesses five types of drones exclusively used for intelligence, surveillance and reconnaissance (ISR), but it has also taken the lead in the joint European

initiative to produce a rival for the American produced Reaper, the Medium-Altitude Long-Endurance (MALE) drone.

In February 2013, the Ministry of Defense submitted<sup>44</sup> an urgent demand to the Federal Government to find a bridging solution for MALE UAS for the German Bundeswehr and the possibility of arming these drones. However, during the parliamentary election campaigns and the Euro Hawk affair<sup>45</sup>, the political debate on the acquisition of armed drones was postponed. After the parliamentary elections in September 2013, the SPD and CDU formed a grand coalition government and decided in the Coalition Agreement that the procurement of armed drones would only take place after the careful examination of all “*all related international and constitutional, security and ethical questions*”. Nevertheless, after the June 2014 public hearing, Ursula von der Leyen spoke in favor of the acquisition of combat drones<sup>46</sup> for the German armed forces and the development of a European armed drone. In the plenary debate four days later, she justified this position with the need to protect German soldiers and reaffirmed parliamentary participation in the decision to deploy armed drones<sup>47</sup>. In the parliamentary debate, she rejected the use of armed drones outside of a defined mandate for the German armed forces.

Leaks to the *Süddeutsche Zeitung* in the spring of 2018 show that the Bundeswehr requested €900 million to lease five Heron TP drones from Israel over the next nine years—a huge upgrade from the Heron

42 Open Society Foundations <https://www.opensocietyfoundations.org/press-releases/prosecutors-whitewash-germany-s-role-civilian-drone-strike-death>

43 ECCHR <https://www.ecchr.eu/en/case/important-judgment-germany-obliged-to-scrutinize-us-drone-strikes-via-ramstein/>

44 Bundesministerium file <https://www.andrej-hunko.de/start/download/dokumente/497-beschaffung-bewaffnungsfaehiger-drohnen-nach-ende-der-gesellschaftlichen-debatte/file>

45 In the Euro Hawk affair, De Maizièr was “accused of wasting €600m of taxpayers’ money by ordering the [unarmed] Euro Hawk drone from the U.S. manufacturer Northrop Grumman, only to establish – five years after signing the contract – that the European Aviation Safety Agency would not allow the drone to fly in Europe. Among other deficiencies, the Euro Hawk was found not to have a proper collision-avoidance system.”

46 Tagesschau <https://www.tagesschau.de/thema/drohnen/index.html>

47 Euractiv <https://www.euractiv.com/section/global-europe/news/german-defense-minister-backs-european-armed-drone/>

1 ISR drones it currently leases. The weapons are not part of the deal, and may only be acquired once “comprehensive international legal, constitutional, and ethical assessments” have been made, according to the government coalition contract signed by Merkel’s Christian Democrat Union (CDU) and the Social Democratic Party (SPD) in February 2018. The historian Wolfgang Krieger notes that this deal ‘makes the issue of any future use of these Heron TP even foggier, if only because Israel would have to consent to any operation launched from its soil’<sup>48</sup>. In June 2013, the U.S. had offered Germany four unarmed MQ-9A Predator B drones<sup>49</sup> which could be armed through re-equipment, but the German government decided not to order them.

The justification by the Bundeswehr for the acquisition of drones capable of being armed is that they are needed to protect troops on the ground. As Franke puts it, “I’ve interviewed several German Heron 1 pilots, and they have testified how frustrating it can be to be above troops on the ground, and help them by telling them what’s going on, and then when the troops are attacked, all they can do is let them know where they’re being attacked from”.<sup>50</sup>

This is perfectly understandable, but measures should be taken to prevent these weapons from being used illegally. There is no political will, nor the capacity in Germany to follow the U.S. example in terms of illegal targeting, but the need for regulation is vital nonetheless. As well as Afghanistan, Germany is involved militarily in Mali and in the anti-IS coalition in Syria and Iraq<sup>51</sup>.

## CIVIL SOCIETY RESPONSE

German public opinion broadly rejects German military interventions abroad. In early March 2013, representatives of numerous German peace and civil rights organizations launched a campaign opposing the German government’s plans “to use drone technology for purposes of combat, surveillance and oppression” and drafted the appeal “No Combat Drones!”<sup>52</sup>, which included a call for signatures. This called for the German government to work towards a worldwide ban of combat drones on the grounds that the deployment of such drones “lowers the threshold to armed aggression even further; entails ‘targeted’ killing of people within and outside warzones — without indictment, trial and conviction; terrorizes the population of the targeted territory by threatening life and limb; encourages the development of autonomous killer robots, thereby making more horrifying wars likely; (and) initiates a new round in the arms race.”

In December 2013, Drone Campaign Germany together with Code Pink, Peace Coordination Berlin, International Network of Engineers and Scientists for Global Responsibility (INES), International and Association of Lawyers against Nuclear Arms (IALANA) organized an international working meeting on drones. As well as a meeting with the U.S. activist Medea Benjamin, author of the book *Drone Warfare*<sup>53</sup>, the participants discussed the experiences in their respective countries. They included Chris Cole (UK), Elsa Rassbach and Agneta Norberg (Sweden). Peace organizations have since expanded their efforts to challenge drones: the European Centre for Constitutional and Human Rights

48 Found in EFAD drones, Germany, from Wolfgang Krieger, *The German Approach to Drone Warfare, Intelligence and National Security* 32.4 (May 9 2017), p.421

49 Wiwo <https://www.wiwo.de/politik/deutschland/bundeswehr-usa-bieten-deutschland-reaper-drohnen-an/8703594.html>

50 Deutsche Welle <https://www.dw.com/en/why-is-germany-leasing-armed-drones/a-44025798>

51 Ibid.

52 Drohnen Kampagne <https://drohnen-kampagne.de/files/2013/03/list-of-signatures-no-combat-drones.pdf>

53 Available at The Guardian <https://www.theguardian.com/books/2013/may/09/drone-warfare-medea-benjamin-review>

(ECCHR) is an active member of the European Forum on Armed Drones and pursues advocacy goals through legal means. ECCHR does not only operate within Germany, but also actively engages in Italy through FOIA on the Italian drone base at Sigonella and its complicity with U.S. drone strikes.

ECCHR also analyzed the German prosecutor's decision to discontinue the investigation into the U.S. drone strike that killed German citizen Bünyamin E. in Pakistan in 2010. According to ECCHR's lawyers, the decision raised a number of doubts about the application and interpretation of the law and the investigation had been inadequate. ECCHR supported Bünyamin's family members, produced a 3-D reconstruction<sup>54</sup> of the strike together with Forensic Architecture, and took part in an exhibition, play and several expert talks and public debates about the case.<sup>55</sup>

In Germany, the issue of armed drones is often tackled via its implications for international law. Several international law experts and academics have issued papers on drones and targeted killings, and they have been vocal in the public debate, participating in interviews and panel discussions. Some examples are the ECCHR reports *Expert Opinion: Targeted killing by combat drone* (2013)<sup>56</sup>, *Unlimited use of armed drones in the fight against terrorism in Syria? Germany must oppose the erosion of international law* (Andreas Schueller, 2017)<sup>57</sup>, *Litigating Drone Strikes, Challenging the global network of remote killing* (2017)<sup>58</sup>. The Centre for New American Security (CNAS) published a report by

Ulrike Esther Franke in 2015, *Proliferated drones, a perspective on Germany*<sup>59</sup>. In Intelligence and National Security in 2017, Wolfgang Krieger published an article titled *The German Approach to Drone Warfare*<sup>60</sup>.

## CONCLUSION

In Germany the issue of armed drones has received media, political and public attention, possibly more than in any other European state. The presence of Ramstein and a vivacious debate in Parliament and amongst civil society has produced mixed results: on the one hand there has been a need to distance Germany from any drone-related technological development. This has slowed down acquisition and development, but it has also not pushed towards a discussion on the implications of hosting a U.S. base. Until the most recent ECCHR legal victory, complicity charges with regard to Ramstein had not been addressed in government. Developments at the EU level are indicating a more consistent German presence in the defense sector and the fact that the newly appointed president of the European Commission is Germany's former minister of defense indicates that German defense debates will be more audible at EU level. Von der Leyen's position on armed drones, as mentioned above, has been positive towards procurement and development alike, but she has called for parliamentary oversight in case of deployment. However, the most urgent priority would be to see a governmental follow up on Ramstein after the Münster court ruling.

54 Forensic Architecture <https://www.forensic-architecture.org/case/drone-strikes/#toggle-id-5>

55 ECCHR <https://www.ecchr.eu/en/case/the-case-of-buenyamin-e-in-pakistan/>

56 ECCHR [https://www.ecchr.eu/fileadmin/Juristische\\_Dokumente/Gutachterliche\\_Stellungnahme\\_Drohnen\\_Pakistan\\_2013-10-23.pdf](https://www.ecchr.eu/fileadmin/Juristische_Dokumente/Gutachterliche_Stellungnahme_Drohnen_Pakistan_2013-10-23.pdf)

57 ECCHR [https://www.ecchr.eu/fileadmin/Publikationen/PositionPaper\\_ArmedDrones\\_Germany\\_EN\\_2017Sep.pdf](https://www.ecchr.eu/fileadmin/Publikationen/PositionPaper_ArmedDrones_Germany_EN_2017Sep.pdf)

58 ECCHR [https://www.ecchr.eu/fileadmin/Publikationen/Litigating\\_Drone\\_Strikes\\_PDF.pdf](https://www.ecchr.eu/fileadmin/Publikationen/Litigating_Drone_Strikes_PDF.pdf)

59 CNAS <http://drones.cnas.org/wp-content/uploads/2016/05/A-Perspective-on-Germany-Proliferated-Drones.pdf>

60 Wolfgang Krieger, *The German Approach to Drone Warfare*, *Intelligence and National Security* 32.4 (May 9 2017)





## 2. THE NETHERLANDS: A GAP BETWEEN MINISTRIES

### INTRODUCTION

The Netherlands does not possess armed drones, but is currently in the process of acquiring four of the General Atomics MQ-9 Reaper type.<sup>61</sup> The purchase of the first Reapers was supposed to happen in 2016 but was postponed for budgetary reasons.<sup>62</sup> The Dutch government has often stated that it would use MQ-9 Reaper drones solely for intelligence, surveillance and reconnaissance (ISR) purposes,<sup>63</sup> but the country's political parties are divided about their procurement. The fact that these drones are capable of being armed has made their purchase controversial. In addition, in 2015 the Dutch government and aerospace service company StratAero discussed establishing a Unmanned Aerial Vehicle (UAV) Training Centre in the Netherlands.<sup>64</sup> Frans Timmermans, the former Minister of Foreign Affairs, has underlined the need for a clear policy and the *'importance of strict observance of the law and*

*transparency with respect to the use of armed drones'*.<sup>6</sup>

After several months of negotiations, a new coalition came to power in October 2017 made up of the People's Party for Freedom and Democracy (VVD), the Christian Democratic Party (CDA), Democrats 66 (D66) and the Christian Union (CU). Each of these parties has a different position on the arming of drones, though none oppose drones *per se*. As the European Forum on Armed Drones (EFAD) coalition points out, despite an extensive debate in the Dutch Parliament, the Reaper drone is designed to be a 'hunter killer' type drone, and is not intended for reconnaissance and surveillance. Given the most recent developments in other EU member states (*see UK, Italy, France and Germany chapters*) and the increased budget for EU defense spending, the procurement of Reaper drones by the Netherlands without clear regulation on their use is all the more worrisome.

61 Ministerie van Defensie, 'Defensie kiest Reaper als onbemand vliegtuig' (November 21 2013) available at: <https://www.defensie.nl/actueel/nieuws/2013/11/21/defensie-kiest-reaper-als-onbemand-vliegtuig>.

62 *Flight Global*, 'RNLAf commander hopeful for Reaper funding challenge resolution' (November 11 2015) available at: <https://www.flightglobal.com/news/articles/rnlaf-commander-hopeful-for-reaper-funding-challenge-418676/>.

63 Jessica Dorsey, 'Wat wil Hennis echt met de Reaper-drone?', *NRC Dagblad* (May 9 2017) available at: <https://www.nrc.nl/nieuws/2017/05/09/wat-wil-hennis-nu-echt-met-de-reaper-8754175-a1557852>

64 *UAS Vision*, 'Northern Europe's First UAV Pilot Training Base' (January 14 2014) available at: <http://www.uasvision.com/2015/01/14/northern-europes-first-uav-pilot-training-base/>.

## GOVERNMENT STATEMENTS AND COMMITMENTS

Until 2015 the political process on armed drones in the Netherlands was mainly led by Timmermans in close cooperation with the defense minister, Jeanine Hennis-Plasschaert (People's Party for Freedom and Democracy (VVD)). Both Dutch civil society groups and the Liberal Democrats and Socialists had strived to keep this issue on the agenda. More recently, however, developments within the Netherlands after the formation of the coalition and a wider European interest in acquiring armed drones has made the issue less salient. In January 2013, Timmermans made an official request<sup>65</sup> for advice on the legal issues related to the use of armed drones to the Foreign Affairs Ministry's Advisory Committee on Issues of Public International Law (CAVV). The questions included: "How do you rate on the basis of international law (*jus ad bellum*, *jus in bello*, human rights), the legality of the use of violence by armed drones, partly in connection with the distinction between situations within and outside armed conflict?"

Six months later, the Advisory Committee duly released its *Advice on Armed Drones*<sup>66</sup>. This paper examines the applicable legal regimes for the deployment of armed drones, in particular the legality of targeted killings under International Human Rights Law (IHL) and whether the human rights regime applies to targeted killings outside the context of armed conflict. The CAVV underlined that under international law, a 'war' against terror does not exist, because an armed conflict ('war') can only be conducted "against one or more specific parties if the conditions for the existence of an armed conflict are met".

The CAVV further argues that "a planned drone attack is lawful under IHL if (1) the conditions for the existence of an armed conflict are fulfilled, (2) the attack is carried out within the area to which IHL applies and (3) the attack complies with all the applicable rules and restrictions laid down under IHL concerning the conduct of hostilities." The advice further underlined that "Outside the context of an armed conflict IHL is not applicable, and the use of force (lethal or otherwise) is mainly regulated by the IHRL (as elaborated in national legislation that will not be further discussed here). When there is effective control of territory or persons in situations of armed conflict, IHL is not the only applicable legal regime; it is then supplemented by human rights law. 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."

Finally, the advice recommends: "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."

65 Volkskrant <https://www.volkskrant.nl/nieuws-achtergrond/advies-aan-ministerie-drones-bewapenen-mag~b76e55e4/>

66 Advisory Committee on Issue of Public International Law CAVV <http://www.cavv-advies.nl/3bz/home.html>



In September 2013, Timmermans and Hennis-Plasschaert sent a joint letter<sup>67</sup> to Parliament, presenting the Cabinet's opinion on the CAVV's advice on armed drones. They pointed out that the Cabinet endorsed the report and noted that *"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 once again underlines the importance of strict compliance with the law and transparency about 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."*

In response to the CAVV advice, the Ministries of Foreign Affairs and Defense decided to organize a civil society roundtable on the topic 'Armed weapons – ethic, technology, law',<sup>68</sup> in January 2014. Timmermans highlighted the leading role the Netherlands could play in the international debate,<sup>69</sup> which subsequently led to the Netherlands playing a more vital role at the UN level. He summarized the issues related to the use of armed drones: *"The problems are the lack of transparency, clarity on the legal basis of the attack, accountability for drone attacks, and investigation of the facts and reparations for the victims."*

Within the Dutch Parliament, there seems to be a broad consensus that existing international law is sufficient to regulate the use of armed drones, but that it needs to be better clarified and applied. Moreover, all the parties (except PVV) seem to agree that the use of drones outside armed conflict is problematic and almost always results in illegal targeted killings.

However, there are certain differences in the parties' positions. The VVD, CDA and PVV are in favor of the deployment of armed drones for targeting terrorists, whereas Labour, Socialists, Social-Liberals (D66) and Greens are skeptical about their use. The latter four parties have called for discussion and regulation at the international and European level and for better transparency and investigations into drone strikes. The Socialist Party, D66 and Greens have also raised concerns about the government's possible complicity in U.S. drone strikes, in particular through intelligence sharing in Somalia.

One of the most critical MPs is Harry Van Bommel, who was a member of the Socialist Party until 2014. He submitted critical parliamentary questions on the killing of civilians in a drone strike in Yemen, the legality of U.S. drone strikes in Pakistan, the consequences of American drone attacks for the civilian population of Pakistan and the revelation that Dutch data may be used for drone attacks. He also met Pakistani victims of drone attacks<sup>70</sup> in February 2014 and laid down a motion<sup>71</sup> on the use of Dutch intelligence on drone strikes. In general, most of the critical parliamentary questions are submitted by the Socialist party.

## INTERNATIONAL ENGAGEMENT

Timmermans' position was reiterated in the UN Human Rights Council (HRC) statement at the panel discussion on armed drones<sup>72</sup> on September 22 2014. On that occasion, the Netherlands stated that it *"underscores the importance of maximum transparency concerning the use of drones. Transparency*

67 Openkamer <https://www.openkamer.org/kamervragen/?page=9&submitter=harry-van-bommel>

68 Zoek <https://zoek.officielebekendmakingen.nl/dossier/30806/kst-30806-19?resultIndex=6&sorttype=1&sortorder=4>

69 Ibid.

70 International SP <https://international.sp.nl/news/2014/04/van-bommel-netherlands-must-speak-out-against-drones>

71 Available in Dutch at <https://zoek.officielebekendmakingen.nl/kst-33750-V-21.html>

72 Zoek <https://bit.ly/2WHsO6M>

*can play an important role in assessing and enhancing respect for the law.”* In order to ensure greater respect for international law, Timmermans declared at the parliamentary hearing on armed drones his intention to bring the discussion on armed drones onto the national, international and European agendas: *“I want the legal advisers of the Ministers of Foreign Affairs and other ministries like Defense, to talk about it as much as possible, even in an international context. [...] I want to have a discussion on the issue in the international context to see how the issue is seen by other countries.”*

*“We are trying to map the forums — among allies or at the UN — that provide opportunities to take this discussion further. We are now at the exploratory stage. I do not have an overview of the number of countries that are interested in this. I also don’t know which aspects of the problem they are interested in. I have stated that from the Dutch perspective these aspects are especially the international law and international legal aspects. [...] I will see how many countries find it useful to bring the discussion forward and which fora will be most suitable for this.”*

Timmermans considered the United Nations a suitable forum for the discussion and announced that “the Netherlands will actively participate in the UN”. Nevertheless, he expressed doubts that the UN General Assembly would be suitable because it would politicize the discussion and would only lead to open criticism of the U.S. without a deliberate exchange on the legal issues.<sup>73</sup>

Between NATO and the EU, Timmermans considered NATO to be the most appropriate forum for the debate. 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 at the EU level. The first question is of course more difficult at EU level. [...] On the first issue, a number of EU countries will quickly say: this does not go to the EU, this belongs to NATO.”*<sup>74</sup> Within NATO, Timmermans explained that he wanted to discuss with several other foreign ministers if international legal aspects could be put on the agenda. He said a small group of countries were already interested in the topic, including the U.S..

At the EU level, he stated that the issue would be discussed in the Common Foreign and Security Policy. Timmermans announced that the Netherlands would continue bilateral dialogue with allies: *“I will continue to look for ways to have a constructive discussion with allies. The route that we follow now, through legal advisers, seems to be the most promising at present. However, I also want to explore with think tanks as well, which other subjects are possible there.”*

## ACTUAL AND PLANNED POSSESSION AND USE OF MILITARY DRONES

As mentioned above, the purchase of the first Reapers was supposed to occur in 2016 but was postponed for budgetary reasons.<sup>75</sup> The four MQ-9 Reaper drones could potentially be armed but the government has not yet declared its intention to do so. Jeanine Hennis-Plasschaert has clearly stated that the Ministry of Defense does not plan to arm Reaper drones in the near future, and if an armament should be necessary in the future, Parliament would be informed beforehand. The former defense minister explained that the “current Defense Ministry does not contribute to the

73 Dorsey and Paulssen (2017), *Towards an EU Common Position on Armed Drones and Targeted Killing?* Available at <file:///Users/delinagoxho/Downloads/9789462650862-c2.pdf>

74 Ibid.

75 *Flight Global*, ‘RNLAf commander hopeful for Reaper funding challenge resolution’ (November 11 2015) available at: <https://www.flightglobal.com/news/articles/rnlaf-commander-hopeful-for-reaper-funding-challenge-418676/>.

development of a new generation of UAVs, even in the longer term. The Netherlands does not have the ambition to participate in the development process of a European UAV". Besides the Reaper drones, the Netherlands possesses smaller Raven and Scan Eagle drones, which are unarmed and can be used for reconnaissance and surveillance purposes. While only the Raven is used in the Netherlands, particularly for criminal investigations, both drones are deployed in missions abroad for tactical or strategic purposes. The Raven is deployed in Afghanistan and the Scan Eagle on the Somali coast during anti-piracy missions. Both drones were also deployed in Mali, where Dutch troops used them to gather intelligence on the armed Islamist insurgents operating in the desert.<sup>76</sup> Bert Koenders, the former Dutch foreign affairs minister and the UN Secretary-General's former Special Representative for Mali<sup>77</sup>, spoke in favor of the deployment of unarmed drones in Mali within the MINUSMA mission.

As far as proliferation is concerned, the Netherlands signed the Joint Declaration for the Export and Subsequent Use of Armed or Strike-Enabled Unmanned Aerial Vehicles in October 2016.<sup>78</sup> In so doing it agreed to regulate the production, export and use of armed and strike-enabled drones so that international law, including human rights law, is 'upheld'.<sup>79</sup> As mentioned in the EFAD country profile for the Netherlands, the Declaration remains ambiguous as it *"does not specify how international and human rights law must be interpreted and applied, nor is the Declaration legally or politically*

*binding*".<sup>80</sup> The follow-up process that should have developed the necessary international standards remains opaque and does not include civil society. The current definitions with regard to arms export control regimes are increasingly blurred due to the new developments around this particular technology and the ease with which civilian drones can be transformed into military-capable drones, as shown in the PAX report *Unmanned Ambitions, Security Implications of Growing Proliferation in Emerging Military Drone Markets*.<sup>81</sup> Most recently, in April 2017, the Dutch aerospace production company Fokker initiated a collaboration with the leading U.S. manufacturer General Atomics (GA-ASI) to produce landing gear systems for the MQ-9 Reaper in Helmond.

## LEGAL VIEW

Although the Netherlands currently does not own or use armed drones, complicity charges have been raised against the Dutch government. In 2015 the Dutch human rights law firm Prakken d'Oliveira took legal action against the government on behalf of two Somali nomads who were hit by a U.S. missile in January 2014.<sup>82</sup> The two herdsmen claimed that Dutch intelligence had helped a U.S. strike that had killed their relatives and livestock. Prakken d'Oliveira claim that *'the Dutch state has committed a wrongful act by violating international law, in particular, human rights and international humanitarian law'*.<sup>83</sup>

76 Ministry of Defense <https://www.defensie.nl/onderwerpen/materieel/vliegtuigen-en-helikopters/scaneagle-analoog-en-digitaal>

77 ECN Mag <https://www.ecnmag.com/news/2014/06/un-says-unmanned-drones-will-be-deployed-mali>

78 U.S. Department of State, 'Joint Declaration for the Export and Subsequent Use of Armed or Strike-Enabled Unmanned Aerial Vehicles (UAVs)' (October 28 2016) available at: <https://2009-2017.state.gov/r/pa/prs/ps/2016/10/262811.htm>.

79 Ibid.

80 See <https://www.efadrones.org/countries/the-netherlands/>

81 Available at <https://www.paxforpeace.nl/publications/all-publications/unmanned-ambitions>

82 De Volkskrant, 'Somali victims of U.S. drone strike take legal action against the Netherlands' (November 28 2015) available at: [https://www.volkskrant.nl/buitenland/somali-victims-of-us-drone-strike-takelegal-action-against-the-netherlands~a4196845; Shares, 'Facilitating drone strikes: sharing responsibility for sharing intelligence' \(April 3 2014\) available at: http://www.sharesproject.nl/facilitating-drone-strikes-sharing-responsibility-for-sharing-intelligence/](https://www.volkskrant.nl/buitenland/somali-victims-of-us-drone-strike-takelegal-action-against-the-netherlands~a4196845;Shares,'Facilitating drone strikes: sharing responsibility for sharing intelligence' (April 3 2014) available at: http://www.sharesproject.nl/facilitating-drone-strikes-sharing-responsibility-for-sharing-intelligence/).

83 Prakken d'Oliveira, 'Dutch State held accountable for drone attacks Somalia by lawyers Prakken d'Oliveira' (November 30 2015), available at: <http://www.prakkendoliveira.nl/en/news/dutch-state-held-accountable-for-drone-attacks-somalia-by-lawyers-prakken-doliveira/>.

No legal investigation was made, but this particular incident pushed the Dutch Parliament's Review Committee on Intelligence and Security (CTIVD) to initiate an investigation on the contribution of the Military Intelligence and Security Service (MIVD) to unlawful targeted killings. The Committee's final report, which was published in September 2016, concluded that the MIVD's legal provisions are insufficient to assess the risk of contributing to the unlawful use of drones by sharing data with allies. In other words, not enough information was available on this case to assess the legality of the Dutch involvement.

In a parliamentary hearing on armed drones in April 2014, Frans Timmermans explained in an answer to Van Bommel that *"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 obvious and accompanied by the risk of very serious violence. That is the only justification for deployment in non-war situations. Only then it can be considered proportionate and necessary."* However, he also added that the government has never officially declared any targeted drone strike in Pakistan as illegal, because there is insufficient information about these attacks. According to Timmermans, this was the reason why third country governments must take care not to draw unfounded conclusions. When Van Bommel asked<sup>84</sup> the former foreign affairs minister in February 2014 about his opinion on the U.S. drone attack against a wedding convoy in Yemen two months earlier<sup>85</sup>, Timmermans replied similarly, explaining that his government did not have sufficient factual information to declare the strike a violation of international law, even if it was

aware civilians had been killed. Nevertheless, he underlined that the government *"is in favor of an investigation into the facts of this airstrike"*.<sup>86</sup>

Although Hennis-Plasschaert insisted<sup>87</sup> that she and the foreign affairs minister would speak with one voice concerning the issue of drones, her opinion on U.S. targeted killings slightly differed from Timmerman's view. In April 2014 she replied<sup>88</sup> to a parliamentary question by saying that the U.S. government justified its use of drones in Pakistan and other areas with the right of self-defense in the context of an armed conflict with Al-Qaeda and associated groups. *"Like the United States, the Netherlands generally recognises that the right to self-defense applies in relation to organized armed groups. Whether in a particular case the requirements associated with the exercise of that right are met cannot be judged by the government. Such an assessment requires specific, factual information about the relevant attack."*

## COMPLICITY CHARGES

In terms of complicity charges, the most detailed account of Dutch involvement in U.S. drone operations can be found in Amnesty's report, *Deadly Assistance: the Role of European States in U.S. Drone Strikes*. In March 2014 information made available by NSA whistleblower Edward Snowden revealed that the U.S. government could be using data gathered from the Netherlands to target alleged Al-Shabab members in Somalia. Both the Dutch Ministry of Defense and the Ministry of Interior admitted sharing metadata, which was collected by the Dutch National Signals Organisation (NSO) with the U.S. government. According to the NSA

84 SP International <https://international.sp.nl/news/2014/04/van-bommel-netherlands-must-speak-out-against-drones>

85 CNN <https://edition.cnn.com/2013/12/12/world/meast/yemen-u-s-drone-wedding/index.html>

86 Politiek <https://politiek.tpo.nl/2013/06/10/interview-timmermans-moet-opheldering-geven-over-volkel/>

87 Zoek <https://zoek.officielebekendmakingen.nl/kst-30806-22.html>

88 Rijksoverheid <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2014/04/08/beantwoording-kamervragen-over-gebruik-nederlandse-data-bij-drone-aanvallen/beantwoording-kamervragen-over-gebruik-nederlandse-data-bij-drone-aanvallen.pdf>

documents the Netherlands intercepts “*vast amounts of Somali telephone traffic and shares it with the NSA. The Dutch use the information to combat piracy. But the Americans may possibly use the information for [...] taking out terrorism suspects by attacking them with armed drones.*” The metadata consists of the time of call, originating telephone number and the called number. A former drone pilot affirmed that Dutch metadata was “essential for the U.S. drone program”. Furthermore, it appears that “the American National Security Agency relies heavily on Dutch intelligence on Somalia”.<sup>89</sup>

In an op-ed ‘No Dutch data for illegal American drone programme’<sup>90</sup>, published in April 2014, Jan Gruijters, general director at PAX, and Kat Craig, legal director of Reprieve, set out the findings of a commission that monitors Dutch Intelligence and Security services. This report “*stated that Dutch intelligence services ‘trust heavily in the idea that foreign intelligence services respect human rights and act according to their own national laws’, but also that ‘in light of recent events it is necessary to check if this trust is still justified.’*”

In 2014, in answer<sup>91</sup> to a written question by Van Bommel on the use of Dutch intelligence for drone strikes in Somalia and other countries outside of armed conflict, the former defense minister replied that the government had no information about whether Dutch intelligence was involved in targeted killings. She gave further assurances that “*if it turns out that a foreign partner arguably conducts illegal targeted killings, for which Dutch information is used, this will lead to a reassessment of whether such information will be shared with that partner.*”

Plasschaert later insisted that the Netherlands does “*not cooperate in American targeted killings*” and declared that “*we do not cooperate in any request for information from another country or make a contribution in another sense if there are indications that cooperation from Netherlands would lead to an act which is contrary to international law.*”

In November 2013, Van Bommel laid a motion on the issue of intelligence sharing in the context of drone strikes<sup>92</sup> which was adopted by the Parliament. It noted that Dutch intelligence may be used for the U.S. targeted drone strikes. Consequently, it requested that the government should make it an explicit condition for the sharing of Dutch intelligence that this intelligence may not be used for illegal targeted killings. He criticized the answers to his written questions, in which the government had declared that it “*is not known on which basis of information the United States conducts these operations*”. Similarly, MPs from the Socialist, D66 and Green parties claimed that the government does not have enough information to be certain that Dutch intelligence is not used for these purposes. This is why transparency concerns are at the core of Dutch civil society advocacy efforts. The call for transparency was reiterated by the former foreign affairs minister Bert Koenders at the Conference on Disarmament (CD) in Geneva in September 2016. He said that there is a “*need for debate on armed unmanned aerial vehicles, or drones. We are concerned about the growing worldwide use of UAVs, whether armed or unarmed, by states and by non-state actors. I would like to call for an open debate within the CD and the First Committee on the use of armed drones, and on transparency regarding their use.*”<sup>93</sup>

89 Amnesty Report <https://www.amnesty.org/download/Documents/ACT3081512018ENGLISH.PDF>

90 Pax Netherlands <https://www.paxforpeace.nl/stay-informed/news/no-dutch-data-for-illegal-american-drone-programme>

91 Rijksoverheid <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2014/04/08/beantwoording-kamervragen-over-gebruik-nederlandse-data-bij-drone-aanvallen/beantwoording-kamervragen-over-gebruik-nederlandse-data-bij-drone-aanvallen.pdf>

92 Zoek <https://zoek.officielebekendmakingen.nl/kst-33750-V-21.html>

93 Dutch Government <https://www.government.nl/documents/speeches/2016/02/29/statement-by-foreign-minister-koenders-to-the-conference-on-disarmament>



## CIVIL SOCIETY RESPONSE

In the Netherlands, many think tanks and experts have been working on the issue of drones - both from a European and UN perspective - since their larger area of competence is disarmament. The main NGO campaigning for a regulation of armed drones is PAX, although a few other organizations work more occasionally on the issue of armed drones.

- PAX<sup>94</sup> studies the use of armed drones and its implications for human security. The Coordinator of the European Forum on Armed Drones, Wim Zwijnenburg, is also a member of PAX and organises regular EFAD meetings in the Netherlands, Brussels, London and Milan. In February 2014, PAX and the British NGO Reprieve invited two Pakistani victims of drone strikes<sup>95</sup>, Kareem Khan and Noor Behram, to the Netherlands where they spoke to Dutch politicians (including Van Bommel) and journalists about the lack of accountability and transparency of U.S. drones strikes. PAX's latest publication *Unmanned Ambitions* (2018) analyses drone proliferation globally. It also does a lot of work at the UN, and takes part in both the UN General Assembly, and work on the Arms Trade Treaty and the Convention on Certain Conventional Weapons.
- Amnesty International Netherlands<sup>96</sup> is also mobilizing against the use of drones for targeted killings and calls for more transparency, accountability, oversight and justice for victims of drone strikes.
- TMC Asser Instituut<sup>97</sup> is a non-profit foundation with the purpose of supporting scientific research and education in the areas of international and European law. Jessica Dorsey previously worked as a researcher both at TMC Asser Institute and with

PAX, and drafted the report *Towards a European Position on the Use of Armed Drones* which was presented at the European Parliament in 2017.

- The International Center for Counter-Terrorism (ICCT) – The Hague<sup>98</sup> is an independent knowledge center that focuses on information creation and dissemination on the preventative and international legal aspects of counter-terrorism. The Center worked closely with the TMC Asser Instituut in activities and publications on counter-terrorism, including on the use of drones.

There is now a broad media debate on the issue of armed drones, particularly the possible use of Dutch intelligence for U.S. drone strikes and the defense ministers' response. PAX, in particular, has published op-eds on the complicity charges against the Dutch government and on the use of armed drones in general.

## CONCLUSION

In the Netherlands there has been debate both in Parliament and with the public, but a division between the Ministry of Defense and the Foreign Ministry remains. The Netherlands does not currently own drones, but are in the process of acquiring them. At the same time, the Hague is one of the main sponsors of a UN-led process to regulate the possession and use of armed drones globally. If the Dutch government increased its transparency efforts, the Netherlands would be a positive example of how drones could be acquired and used within a parliamentary framework and with all necessary regulations in place both ministries would be able to attain their objectives with regard to drone use.

94 PAX Netherlands <https://www.paxforpeace.nl>

95 PAX Netherlands <https://www.paxvoorvrede.nl/actueel/agenda/living-under-drones>

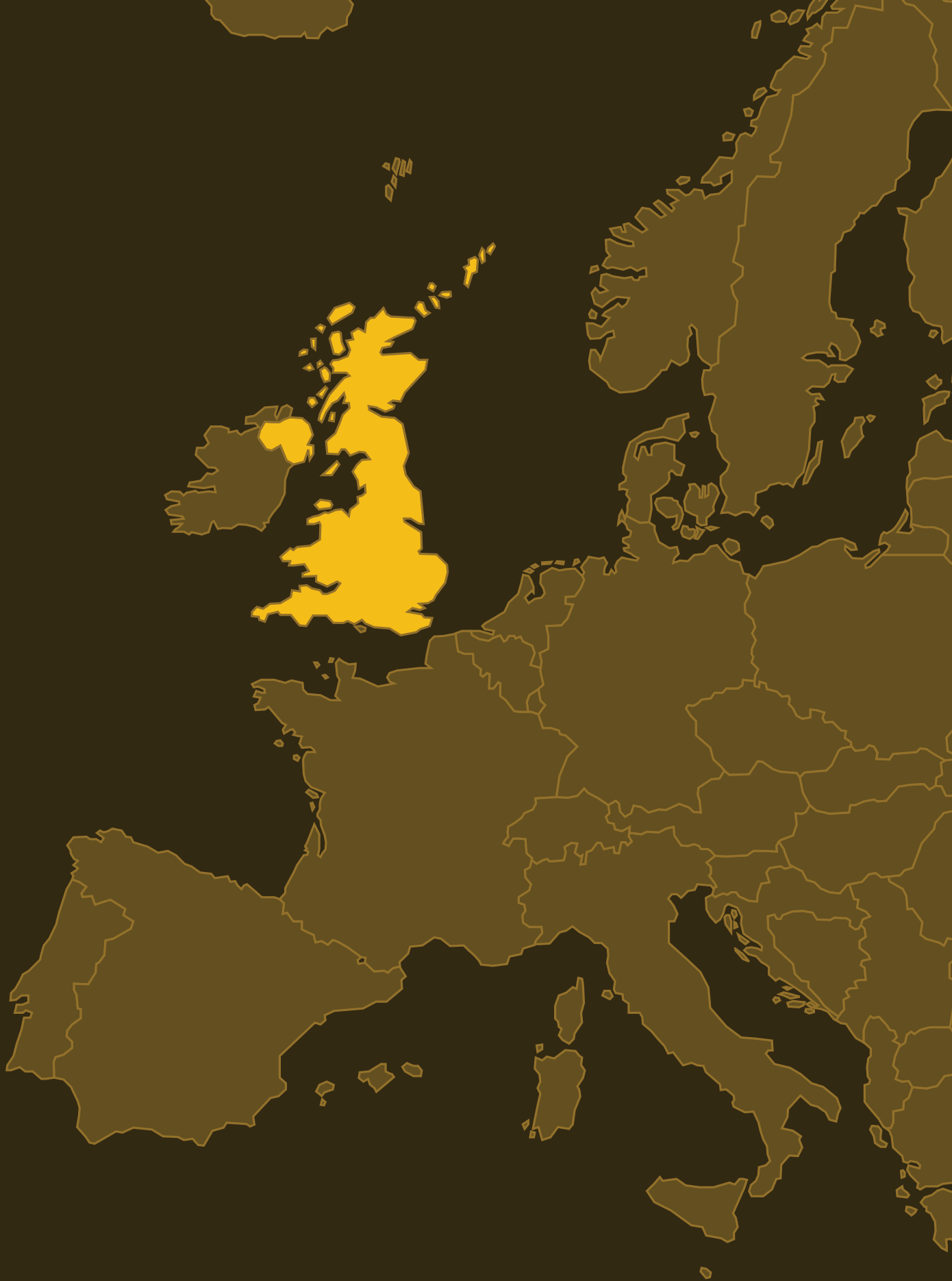
96 Amnesty Netherlands <https://www.amnesty.nl>

97 TMC Asser Instituut [https://www.asser.nl/Default.aspx?site\\_id=24](https://www.asser.nl/Default.aspx?site_id=24)

98 International Center for Counter-Terrorism The Hague <https://icct.nl>







# 3. UNITED KINGDOM: CIVIL SOCIETY FIGHTS OPACITY

## INTRODUCTION

At present, the UK's drone fleet consists of ten Reaper drones, and it is planning to replace them with between 20 and 26 new Reaper drones (rebranded as 'Protector' drones) by 2021.<sup>99</sup>

Data collected by the Stockholm International Peace Research Institute (Sipri) suggests that the UK is one of the largest drone importers in the world - having ordered three MQ-9 Reaper drones from the U.S. and 55 'Watchkeeper' drones from Israel since 2007<sup>100</sup>. A number of the armed Reaper drones have been deployed to the Middle East as part of Operation Shader<sup>101</sup>, and UK armed drones have been and are being deployed against ISIS in Iraq, Syria<sup>102</sup> and allegedly Libya<sup>103</sup>.

The true watershed for British drone counter-terrorism operations was the 2015 announcement by the former Prime Minister David Cameron

that British Reapers had been used at least once outside Operation Shader, when Reyaad Khan and Ruhul Amin were targeted in Syria<sup>104</sup>. The British government is also funding the development of an advanced unmanned aerial vehicle.<sup>105</sup>

According to the British lobbying organisation Rights Watch UK, the UK approach to drone warfare is 'opaque at all levels of policy and practice'. The Ministry of Defense has often insisted that armed drones are no different from other military aircraft. However, they are clearly being treated differently, as the ministry is refusing to release detailed information about the deployment of its MQ-9 Reapers, although the use of other armed aircraft is much more transparent. According to the European Centre for Constitutional and Human Rights (ECCHR), the UK government has from the beginning tried to distance itself from the U.S. policy of targeted killings by stressing that the British drones were operating in support of the UK and

99 EFAD website, Country profile: United Kingdom <https://www.efadrones.org/countries/united-kingdom/>

100 <https://www.theguardian.com/news/datablog/2015/mar/16/numbers-behind-worldwide-trade-in-drones-uk-israel> and from SIPRI: [https://www.sipri.org/sites/default/files/2018-03/fssipri\\_at2017\\_0.pdf](https://www.sipri.org/sites/default/files/2018-03/fssipri_at2017_0.pdf) p.10

101 On UK government website: <https://www.gov.uk/government/news/uk-deploys-reaper-to-the-middle-east>

102 UK Parliament publication <https://publications.parliament.uk/pa/ld201516/ldhansrd/text/151126-0001.htm>

103 *The Guardian* <https://www.theguardian.com/commentisfree/2016/may/11/the-guardian-view-on-armed-drones-a-new-code-for-a-new-form-of-warfare>

104 *The Guardian* <https://www.theguardian.com/world/2015/sep/07/drone-british-citizens-syria-uk-david-cameron>

105 EFAD website, Country profile: United Kingdom

the International Security Assistance Force (ISAF) ground forces in Afghanistan, and only with the consent of the Afghan and Iraqi government. This defense crumbled in September 2015, when Cameron told the House of Commons that the lethal drone strike against Reyaad Khan and Ruhul Amin in Raqqa was a ‘new departure’<sup>106</sup> for the UK armed forces. The targeted strike did not form part of military action against the Islamic State in Syria, but was a way to deal with a terrorist threat. For the first time, a British military asset had been used outside of armed conflict. The Joint Committee on Human Rights (JCHR) subsequently launched an inquiry into the UK’s policy on the use of drones for the elimination of terrorist targets. The watering down of the definition of whether an attack is imminent is a major cause for concern.

## GOVERNMENT STATEMENTS AND COMMITMENTS

The most comprehensive document outlining the British government’s policy on the use of its armed drones is its response in July 2014 to the Defense Committee’s inquiry on remotely controlled aircraft<sup>107</sup>. In this response, as well as on several other occasions, the British government claimed that its use of armed drones is submitted to strict rules of engagement and is in accordance with international humanitarian law. It also says that all allegations of civilian casualties are properly investigated. Even though the government affirmed that outside an armed conflict, international human rights law must apply, the UK has not openly commented on the legality or illegality of U.S. drone strikes in Pakistan, Yemen or Somalia. The UK also seems unwilling

to engage in an international debate on the use of armed drones and their legal implications.

The government has stated on many occasions that it uses armed drones in accordance with international law and strict rules of engagement. The former foreign secretary Philip Hammond confirmed in his letter to the Foreign Affairs Committee in October 2014: *“Before undertaking any form of military operation, we satisfy ourselves that it is lawful by undertaking an analysis of its legality, including how the detailed rules of international humanitarian law might apply. Currently the UK’s armed Remotely Piloted Aircraft Systems (RPAS), the REAPER system, only operate in support of UK, and ISAF, ground forces in Afghanistan. All military operations in Afghanistan operate under a Chapter VII mandate with the legal authority of UN Security Council resolutions and with the consent of the Government of Afghanistan. UK personnel embedded with U.S. units also flew RPAS missions against Muammar Gaddafi’s forces in Libya in 2011, in support of the NATO humanitarian mission authorized under UNSCR 1973, and also during the Iraq War.”*<sup>108</sup> In July 2014, the government declared in its response to the Defense Committee’s inquiry on remotely controlled aircraft 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.”*

Furthermore, the former minister for defense procurement Philip Dunne argued in a Westminster Hall debate on drones in November 2012 that *“the strict rules of engagement for the use of weapons are the same as those that apply to manned combat aircraft, which have been designed to minimize the risk to*

106 University of Birmingham <https://www.birmingham.ac.uk/news/thebirminghambrief/items/2015/10/ANewDeparture.aspx>

107 On March 25 2014 the UK Parliament’s Defense Select Committee published its Tenth Report of Session 2013-14 on Remote Control: Remotely Piloted Air Systems - current and future UK use and questioned the government. After the Committee’s request for a revised and expanded answer, on June 25 2014, the government’s final revised response was received on July 17 2014.

108 Global Security [https://www.globalsecurity.org/intell/library/reports/2014/remotely-piloted-air-systems-vol1\\_uk-hcdc\\_20140325.pdf](https://www.globalsecurity.org/intell/library/reports/2014/remotely-piloted-air-systems-vol1_uk-hcdc_20140325.pdf)

*civilians. The selection and prosecution of all targets is based on a rigorous scrutiny process that is compliant with international law.*"<sup>109</sup> According to UN Special Rapporteur Ben Emmerson's interim report from September 2013, the Ministry of Defense even has a policy *"that weapons should not be discharged from any aerial platform unless there is a zero expectation of civilian casualties"*.<sup>110</sup>

The British government also claims that it investigates all allegations of civilian casualties, though it does not make the investigations public. For example, in November 2012 Lord Astor of Hever, the former parliamentary under-secretary of state at the Ministry of Defense, 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."*<sup>111</sup> Likewise, the British government stated in July 2014 that *"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."*<sup>112</sup>

The former minister Mark Francois also commented on the conclusion of Ben Emmerson's report, saying that the state responsible for a civilian casualty *"is under an obligation to conduct a prompt, independent and impartial fact-finding inquiry and to provide a detailed public explanation"* (paragraph 78). 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 minimize the risk of civilian casualties and to ensure that any use of unmanned aerial vehicles that may have resulted in civilian casualties is identified and effectively investigated."*<sup>113</sup>

UK participation in drone warfare is hidden from the public. The lethal drone strike in which the RAF killed three people in August 2015<sup>114</sup> was authorized by Cameron without informing Parliament<sup>115</sup>. In this case, Cameron relied upon a limited parliamentary convention which allows the UK to act immediately if its self-defense is threatened<sup>116</sup>. Cameron explained that Khan posed a direct threat to the UK, but it is unclear how British authorities qualified imminence in this particular case<sup>117</sup>. FOIA requests put forward by both DroneWars and RightsWatch UK have recently yielded some results, which will be discussed in the legal section of this chapter.

In response to criticism of the lack of transparency about British drone use, Hammond defended it. In an

109 Text can be found here (Chap. 6) <https://fas.org/irp/world/uk/drones.pdf>

110 Available at <https://lawfare.s3-us-west-2.amazonaws.com/staging/s3fs-public/uploads/2013/10/Emmerson-Report.pdf>

111 The declaration is cited by Dapo Akande in <https://www.ejiltalk.org/the-uks-use-of-drones-in-afghanistan-and-its-definition-of-civilians/>

112 Available at <https://www.ejiltalk.org/the-duty-to-investigate-civilian-deaths-in-armed-conflict-looking-beyond-criminal-investigations/>

113 <http://unsrct-drones.com/report/176>

114 BBC report: <https://www.bbc.com/news/uk-34178998>

115 Adriana Edmeades Jones on Just Security <https://www.justsecurity.org/42935/hidden-public-united-kingdoms-drone-warfare/>

116 Elizabeth S. Wilmschurst, *Counterterrorism Strategies in a Fragmented International Legal Order*, 2013, Cambridge University Press <https://www.cambridge.org/core/books/counterterrorism-strategies-in-a-fragmented-international-legal-order/anticipatory-selfdefense-against-terrorists/731DCFCE135EAC94D2238927B828B8B8>

117 Jones, *Ibid.*

article *In Defense of Drones*<sup>118</sup> from December 2013 he stressed the necessity of safeguarding security information: “One other favorite 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.”<sup>119</sup>

Most recently, in July 2018, the former foreign secretary and current Prime Minister Boris Johnson suggested that Britain has used drone strikes as “payback” for atrocities committed by terrorist groups<sup>120</sup>. This statement is in obvious contravention of international law.

Since 2013, the government has actively tried to promote the British use of armed drones and to gain broader public acceptance through greater transparency and communication about it. The government’s response<sup>121</sup> to the Defense Committee’s inquiry struck a conciliatory note: “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.” With this in mind, the British government opened the drone programme at RAF Waddington to some journalistic scrutiny<sup>122</sup> in December 2013. According to the Independent, it was “subtly pointing out the differences between our approach to drones and that of our American allies”. For the same reason, the

UK government rejects the use of the word ‘drone’ because of its negative connotations, preferring to use the term “remotely piloted aircraft system” (RPAS).

## PARLIAMENTARY DEBATES AND QUESTIONS

The UK Parliament has been fairly active on drones through the work of several committees (Defense, Foreign Affairs, Human Rights and Arms Control). The most consistently engaged parliamentary body is the All-Party Parliamentary Group on Drones (APPG), which is unique among EU member states.

In December 2012, the House of Commons Library published the note *Unmanned Aerial Vehicles (drones): an introduction*,<sup>123</sup> written by Louisa Brooke-Holland, a defense analyst at the Library. The report gives an update on the UK’s use of drones but, because the Library is deliberately neutral, does not offer policy recommendations.

In March 2014, the House of Commons Defense Select Committee published its *Tenth Report on Remote Control: Remotely Piloted Air Systems - current and future UK use*<sup>124</sup>. The Defense Committee insisted that it is of “vital importance that a clear distinction be drawn between the actions of UK Armed Forces operating remotely piloted air systems in Afghanistan and those of other states elsewhere”. Regarding targeted killings, the Committee underlined that “we do believe that there should be greater transparency in relation to

118 Published in the *Guardian*: <https://www.theguardian.com/commentisfree/2013/dec/18/in-defense-of-drones-keep-civilians-troops-safe>

119 Ibid.

120 *The Times* <https://www.thetimes.co.uk/article/drone-strikes-are-retribution-for-atrocities-boris-johnson-suggests-p8rg90db7>

121 UK Parliament publication <https://publications.parliament.uk/pa/cm201415/cmselect/cmdfence/611/61104.htm>

122 *The Independent* <https://www.independent.co.uk/news/uk/home-news/don-t-call-them-drones-raf-launches-charm-offensive-for-unmanned-aircraft-9011467.html>

123 The information is provided to Members of Parliament in support of their parliamentary duties and should not be considered as legal or professional advice. Available here <https://www.files.ethz.ch/isn/157096/SN06493.pdf>

124 UK Parliament publication <https://publications.parliament.uk/pa/cm201415/cmselect/cmdfence/611/611.pdf>

*safeguards and limitations the UK government has in place for the sharing of intelligence*". The Committee further reiterated the recommendation of the UN Special Rapporteur on Counter-terrorism, demanding that *"to the extent that it is operationally secure to do so, following an event which has resulted in confirmed civilian casualties the MoD should seek to publish details about the incident and any lessons learned from the review process."*

In March 2014 the Joint Committee on Human Rights heard evidence<sup>125</sup> from UN Special Rapporteur Ben Emmerson and the Independent Reviewer of Terrorism Legislation David Anderson QC on drones, counter-terrorism and human rights. However, the issue of drones was addressed only marginally, when Baroness Buscombe raised concerns about the use of drones and suggested that the UN should take a more decisive role. Emmerson agreed, but added that the UK was *"not terribly keen that the Human Rights Council was the right place for that debate to take place"*.

In recent years, MPs have asked many parliamentary questions<sup>126</sup> on the civil and military use of armed drones. The APPG on drones has created an extremely comprehensive overview table of these, which includes hundreds of questions and government answers on this technology. The existence of this group<sup>127</sup> in the UK is vital to the drone debate in the country, as most of its former and current members are very outspoken regarding the use of drones. Most of the critical parliamentary

questions and APPG motions have been initiated by the Labour party, in particular its deputy leader Tom Watson. The APPG was launched in October 2012 *"to examine the use of drones (unmanned aerial vehicles) by governments, for domestic and international, military and civilian purposes."* It uses parliamentary procedures (questions, debates, consultations, early day motions etc.) *"to try and increase transparency and accountability on the use and impact of drones in diverse military and civil contexts"*. The APPG published its inquiry report *Working with Partners* in 2018. Its aim is to analyze this emerging technology and the ways in which the UK works with allies and make recommendations to ensure an appropriate level of transparency and accountability for these operations in Parliament.<sup>128</sup> The foundation for this report was within the Joint Committee on Human Rights<sup>129</sup>, which has cast doubts on the legal basis for UK use and the UK's support for the United States' covert drone programme.

In December 2017 the Royal Air Force (RAF) announced that British Reaper drones had reached the significant milestone of flying 100,000 hours of combat operations.<sup>130</sup> British drones were first deployed in Afghanistan in 2007 and later on in 2014 in Iraq and Syria. UK Reapers and other RAF aircraft have been engaged in Operation Shader at the invitation of the Iraqi government, under what international law calls collective self-defense<sup>131</sup>. However, the situation is now rapidly changing, as the Iraqi government declared a final victory over ISIS on December 9 2017<sup>132</sup>. President Donald

125 UK Parliament publication [https://www.parliament.uk/documents/joint-committees/human-rights/JCHR\\_HC\\_1202\\_TRANSCRIPT\\_Anderson\\_Emmerson\\_260314.pdf](https://www.parliament.uk/documents/joint-committees/human-rights/JCHR_HC_1202_TRANSCRIPT_Anderson_Emmerson_260314.pdf)

126 APPG on Drones <http://appgdrones.org.uk/parliamentary-questions/>

127 APPG on Drones <http://appgdrones.org.uk>

128 APPG on Drones <http://appgdrones.org.uk/launch-of-appg-inquiry-the-uks-use-of-armed-drones-working-with-partners/>

129 UK Parliament <https://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/inquiries/parliament-2015/uk-drone-policy-15-16/>

130 Dronewars <https://dronewars.net/2018/01/02/2018-british-armed-drone-operations-reach-a-crossroads/>

131 <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/individual-and-collective-selfdefense-in-article-51-of-the-charter-of-the-united-nations/6503C6622F31575AB631D5C7E02DBF70> and <https://www.e-ir.info/2016/02/05/the-fight-against-the-islamic-state-in-syria-and-the-right-to-self-defense/>

132 New York Times <https://www.nytimes.com/2017/12/09/world/middleeast/iraq-isis-haider-al-abadi.html>



Trump announced a year later that U.S. forces had defeated ISIS.<sup>133</sup> Given that Iraq has declared victory over ISIS, Operation Shader should in theory now come to an end.

But statements from various UK ministers and officials indicate they intend to keep British drones in the region<sup>134</sup>. In November 2017, the British air component commander, Air Commodore Johnny Stringer, said that while manned aircraft are likely to be withdrawn soon, UK drones and other surveillance aircraft would continue to fly over Iraq and Syria.<sup>135</sup> A month earlier the former international development secretary Rory Stewart argued that the “only way” to deal with British members of Islamic State is “in almost every case” to kill them.”<sup>136</sup> A few weeks later, the former defense secretary Gavin Williamson also stated that all British-born Isil fighters should be killed, as they pose a huge threat to Britain.<sup>137</sup>

Anthony Dworkin, a senior policy fellow at the European Council on Foreign Relations, has responded that membership of a terrorist organisation alone is not a sufficient criterion under international law for targeted killings:

*“Government officials’ talk of eliminating ISIS members on the battlefield may simply be a way to sound tough in the face of public concerns about the return of foreign fighters. But it reinforces a dangerous and flawed vision of military action against terrorist organizations that equates armed conflict with a license to kill all members*

*of an opposing group. Such a vision is not compatible with the understanding of the international rule of law that Western nations should be committed to uphold”.*<sup>138</sup>

## LEGAL VIEW

The UK does not directly comment on the lawfulness of the American use of armed drones for targeted killings in Pakistan, Yemen or Somalia. Nevertheless, it underlined in the UN HRC Panel discussion on armed drones<sup>139</sup> 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.*” It further added that “*we cannot, and should not let our standards drop as we combat the scourge of international terrorism.*”

The UK underlines the need to avoid civilian casualties, as Cameron did in an answer to a letter from Human Rights Watch UK in 2012<sup>140</sup>. The former PM called<sup>141</sup> for 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 direct criticism of the U.S. and underlined that “*the use of UAV against terrorist targets is a matter for the states involved*”. The position was reiterated in January 2014 regarding counter-terrorism in Yemen, when the then minister Hugh Robertson replied to a question by Tom Watson that “*drone strikes against terrorist targets in Yemen are a*

133 CNBC <https://www.cnn.com/2018/12/19/us-wants-to-pull-troops-from-syria-as-trump-declares-victory-over-isis.html>

134 Dronewars <https://dronewars.net/2018/01/02/2018-british-armed-drone-operations-reach-a-crossroads/>

135 The Times <https://www.thetimes.co.uk/article/raf-ready-to-withdraw-as-isis-battle-enters-endgame-jj713b02v>

136 The entire sentence is here: <https://www.bbc.com/news/uk-politics-41717394>

137 The Telegraph <https://www.telegraph.co.uk/news/2017/11/14/british-born-isil-fighters-must-kill-drone-new-defense-secretary/>

138 Dronewars <https://dronewars.net/2018/01/02/2018-british-armed-drone-operations-reach-a-crossroads/>

139 Find an overview of EU Member State statements at UNHCR in Annex A. Available at OHCHR extranet

140 On HRW website <https://www.hrw.org/news/2012/07/16/letter-uk-prime-minister-david-cameron-targeted-killings>

141 The Bureau of Investigative Journalism <https://www.thebureauinvestigates.com/stories/2012-09-21/british-pm-cameron-we-expect-drone-strikes-to-avoid-civilian-casualties>

*matter for the Yemeni and U.S. governments. We expect all concerned to act in accordance with international law and take all feasible precautions to avoid civilian casualties when conducting operations.”*

In 2015 Rights Watch UK, a human rights group based in London, began legal action against the UK government over the killings of Reyaad Khan and Ruhul Amin. The legal justification for the strike is in article 51 of the UN Charter, which is the state self-defense guarantee.<sup>142</sup>

In December 2017 the upper tribunal administrative appeals chamber ruled that Freedom of Information requests in such policy areas should be subject to qualified exemptions, where security concerns are balanced against wider public interest. The government’s power to block requests for information has thus been significantly curtailed, as the court said officials could not rely on a blanket ban preventing the release of all relevant details.<sup>143</sup>

As detailed in the Amnesty International report *Deadly Assistance* (2018)<sup>144</sup>, the UK provides assistance to the U.S. drone programme in the form of intelligence sharing, the embedding of UK personnel in U.S. lethal drone operations and the provision of military bases on UK soil, which provide the U.S. government with communications and intelligence infrastructure. The extent of this relationship is widely accepted in the UK: the most

recent National Security Strategy and Strategic Defense and Security Review states that the extent of UK-U.S. cooperation is “unparalleled” and plays a vital role in guaranteeing the UK’s national security.<sup>145</sup>

The disclosures made by Edward Snowden in 2008 revealed the scale of global surveillance programmes run by the NSA (National Security Agency), with the cooperation of some European governments<sup>146</sup>. In 2012, Noor Khan, whose father was killed in a U.S. drone strike in March 2011 in North Waziristan, Pakistan opened a case<sup>147</sup> against the then foreign secretary William Hague. This case challenged the legality of assistance provided by the UK Government Communications Headquarters (GCHQ) to the U.S.A for drone operations targeting. As Amnesty reported: “The court held that it would be a wrong exercise of its discretion to adjudicate on a case which would necessarily entail a condemnation of the activities of the United States. Significantly, however, the court found that it was certainly not clear that UK personnel complicit in U.S. drone strikes would be immune from prosecution for murder.”<sup>148</sup> The Chair of the UK All Party Parliamentary Group (APPG) on drones, an interest group comprising politicians from all political parties, in its legal advice stated that “anyone who transfers data to facilitate an unlawful drone strike would be an accessory to an unlawful act under English law”.<sup>149</sup>

142 *The Guardian* <https://www.theguardian.com/politics/2015/sep/08/human-rights-group-legal-action-uk-government-syria-isis-drone-strike>

143 *The Guardian* <https://www.theguardian.com/politics/2018/jan/04/tribunal-rules-against-total-secrecy-over-uk-drone-strikes>

144 Amnesty International <https://www.amnesty.org/download/Documents/ACT3081512018ENGLISH.PDF>

145 HM Government, *National Security Strategy and Strategic Defense and Security Review 2015: A secure and prosperous United Kingdom*, November 2015, p.51 available at [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/478933/52309\\_Cm\\_9161\\_NSS\\_SD\\_Review\\_web\\_only.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/478933/52309_Cm_9161_NSS_SD_Review_web_only.pdf)

146 Amnesty report p.37

147 (*Noor Khan*) v *Secretary of State for Foreign and Commonwealth Affairs* [2014] EWCA Civ 24, [https://www.reprive.org.uk/wp-content/uploads/2015/04/2014\\_01\\_20\\_PUB-Noor-Khan-Court-of-Appeal-judgement.pdf](https://www.reprive.org.uk/wp-content/uploads/2015/04/2014_01_20_PUB-Noor-Khan-Court-of-Appeal-judgement.pdf)

148 Amnesty report cites *R (Noor Khan) v Secretary of State for Foreign and Commonwealth Affairs* [2014], EWCA Civ 24

149 Amnesty report cites *Jemima Stratford QC and Tim Johnston, In the matter of State surveillance, Advice*, January 22 2014, para. 83, [http://www.brickcourt.co.uk/news-attachments/APPG\\_Final\\_\(2\).pdf](http://www.brickcourt.co.uk/news-attachments/APPG_Final_(2).pdf)

## COMPLICITY CHARGES

The alleged cases of UK complicity in U.S. drone strikes fall into several different categories: involvement in the targeting of terrorists in Afghanistan and Pakistan; sharing intelligence with the U.S.; cooperation with the U.S. in embedded drone programs; drone data transfer through the UK; and the revocation of British passports. The most serious concerns were raised in October 2014 by the *Birmingham Policy Commission on the Security Impact of Drones*<sup>150</sup>, chaired by former GCHQ director Sir David Omand.

The UK government has always insisted that it conducted targeted drone strikes only in Afghanistan and has refused to comment on any possible involvement in CIA drone strikes in Pakistan. But in December 2014 the German magazine *Der Spiegel* revealed leaked documents that provide evidence that UK and NATO forces in Afghanistan also planned to target and kill alleged terrorists in Pakistan<sup>151</sup>. The documents included the first known complete list (Joint Prioritized Effects List (JPEL)) of the Western alliance's "targeted killings" in Afghanistan<sup>152</sup>. At times, this list included more than 750 people, among them individuals located on Pakistani territory. The documents revealed by *Der Spiegel* also apparently show that the JPEL did not only include key Taliban leaders, but extended to mid- and lower-level members of the group as well as alleged drug dealers. Jennifer Gibson, staff attorney at Reprieve, commented: "*Today's revelations offer the*

*most damning evidence to date of UK complicity in the covert drone war in Pakistan. (...) The UK now needs to come clean about its role in executing a 'kill list' that goes far beyond targeting only militant leaders.*"<sup>153</sup>

In addition, British officials have been accused of intelligence sharing with the U.S., leading to targeted drone killings. In 2012, the British organisation Reprieve helped Noor Khan, a British citizen, to bring a lawsuit to the British High Court<sup>154</sup>. Noor Khan was the son of one of 40 alleged civilian victims of the North Waziristan in March 2011. The lawsuit accused British officials of complicity with the U.S. by passing intelligence to American officials that was later used in drone strikes. In this context, the New York Times revealed that "in interviews, current and former British government and intelligence officials, some of whom worked closely with the United States after the drone campaign's inception in 2004, said Britain does provide intelligence to the United States that is almost certainly used to target strikes." The British government neither refused nor denied intelligence sharing with the U.S.. Nevertheless, a London court rejected<sup>155</sup> the case, saying that it could "imperil international relations". In February 2014, the Court of Appeal also rejected<sup>156</sup> the challenge, arguing Khan was inviting a UK court to sit in judgement of the United States. During the case, Foreign Office lawyers argued that "a ruling in favor of Mr Khan could have damaged relations between the UK and U.S.". The court also noted<sup>157</sup> that it was "not clear that the defense of combat immunity would be available to a UK national" tried for "murder by drone strike."

150 <https://www.birmingham.ac.uk/research/impact/policy-commissions/index.aspx>

151 More information here <http://www.spiegel.de/international/world/secret-docs-reveal-dubious-details-of-targeted-killings-in-afghanistan-a-1010358.html>

152 *Der Spiegel* <http://www.spiegel.de/media/media-35508.pdf>

153 *Infoal desnudo* <http://infoal desnudo.com/leaked-documents-show-the-us-used-drone-strikes-to-target-afghan-drug-lords/>

154 *New York Times* [https://www.nytimes.com/2013/01/31/world/drone-strike-lawsuit-raises-concerns-on-intelligence-sharing.html?\\_r=0](https://www.nytimes.com/2013/01/31/world/drone-strike-lawsuit-raises-concerns-on-intelligence-sharing.html?_r=0)

155 *The Bureau of Investigative Journalism* <https://www.thebureauinvestigates.com/stories/2012-12-22/high-court-rejects-first-uk-challenge-to-cias-drone-campaign>

156 BBC <https://www.bbc.com/news/uk-25809756>

157 Reprieve <https://reprieve.org.uk/case-study/noor-khan/>

Ben Emmerson argued<sup>158</sup> in 2013 that the closeness of the UK-U.S. relationship made it “inevitable” that British spies were sharing intelligence with the U.S. that was then used in drone strikes in Pakistan and Yemen. At the same time, Professor Michael Clarke, the then director-general of the military think tank RUSI, warned<sup>159</sup> that there is a “reasonable presumption” that the sharing of information makes the UK complicit in an American policy. Shortly afterwards lawyers from Brick Court Chambers<sup>160</sup> provided a legal opinion<sup>161</sup> concerning the lawfulness of the UK government’s interception, use and transfer of intelligence data, at the request of APPG chair Tom Watson. The barristers concluded that the transfer of British data is probably unlawful “if the British government knows that it is transferring data that may be used for drone strikes against non-combatants (for example in Yemen or Pakistan)”. But as the government is not always aware of the final use of that data, it is very unlikely that it could be prosecuted.

The Birmingham Policy Commission’s Report of October 2014, *Security Impact of Drones: Challenges and Opportunities for the UK*<sup>162</sup>, recommended that the UK should reveal any guidance to “ensure that in sharing intelligence with the U.S. government and military [...] does not inadvertently collude in RPA or other counter-terrorist actions contrary to international law”. The Commission argued that the UK had already published similar Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing

of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees. The Commission did not know whether such guidance exists for intelligence sharing in relation to drone strikes, but it argued that the UK government should confirm any such guidance.

In November 2014, the APPG Chair, its vice-chairs - as well as Sir David and Michael Clark - followed up on the Commission’s recommendations. They wrote to the foreign secretary<sup>163</sup> to request the disclosure of “*the Guidance to Intelligence Officers and Service Personnel applicable to the passing of intelligence relating to individuals who are at risk of targeted lethal strikes outside traditional battlefields*”. The authors of the letter argued that the disclosure of this guidance would “reassure an anxious public that the UK government will protect personnel from inadvertent collusion in counter-terrorism operations contrary to our understanding of the law. It would also underline the distinction between Reaper strikes by our armed forces in Afghanistan, and now Iraq, and those of other states elsewhere.”

The foreign minister replied explaining that “it has been a principle of successive governments neither to confirm nor to deny speculation, allegations and assertions in relation to intelligence matters. This question equally extends to the question of intelligence sharing between the United Kingdom and other states on the topic and the existence or otherwise of guidance relating to the intelligence exchange as identified. (...) I do not propose to deviate from the principle in relation to your inquiries.”

158 *The Bureau of Investigative Journalism* <https://www.thebureauinvestigates.com/stories/2013-12-05/uk-complicity-in-us-drone-strikes-is-inevitable-emmerson-tells-parliament>

159 Ibid.

160 <http://www.brickcourt.co.uk>

161 [http://www.brickcourt.co.uk/news-attachments/APPG\\_Final\\_\(2\).pdf](http://www.brickcourt.co.uk/news-attachments/APPG_Final_(2).pdf)

162 University of Birmingham <https://www.birmingham.ac.uk/Documents/research/policycommission/remote-warfare/final-report-october-2014.pdf>

163 <http://im.ft-static.com/content/images/38d6c1ca-7581-11e4-a1a9-00144feabdc0.pdf>

In Afghanistan, Libya and Iraq, British personnel embedded with the U.S. AF have flown American drones. In April 2013, the then defense minister Andrew Robathan revealed in an answer to a parliamentary question<sup>164</sup> that the UK had flown approximately 2,150 operational missions with U.S. Reaper and Predator drones in Afghanistan and Libya, in the period between October 2006 and December 2012. He could not provide information on embedded programs in Iraq as this information was “not [...] held centrally”. The Birmingham Policy Commission’s report had said that the British government had confirmed that embedded personnel had used lethal force in Afghanistan and Iraq, but the number of attacks in both countries has not been made public. Moreover, the government did not disclose whether embedded personnel has conducted drone strikes in Libya. Responding to this information, the Conservative MP Rehman Chishti warned<sup>165</sup> that joint RAF and USAF armed drone operations in Afghanistan had become so interchangeable that Britain “*may no longer be able to determine accountability and responsibility if civilians are killed*”.

There have also been indications that U.S. drone data passes through the UK. The *Mail on Sunday*<sup>166</sup> reported in March 2013 that Camp Lemonnier – the U.S. base in Djibouti, from which the U.S. conducts drone strikes in Yemen and Somalia – has a “secure military communication link” to USAF Croughton airbase in the UK. This airbase belongs to an intelligence network coordinated by Menwith Hill, the RAF base that provides communications

and intelligence support services to the UK and the U.S.. According to Chris Cole<sup>167</sup> from Drone Wars UK, the existence of this data transfer link between Camp Lemonnier and the UK shows “*Croughton and Menwith Hill are no doubt involved in analyzing information and video from U.S. drone flights in that area [Yemen and North Africa]. It is also possible that information obtained in this way and analyzed by U.S. personnel in the UK could be used to direct further U.S. drone strikes.*”

At least two British nationals have been killed or wounded by U.S. drone strikes<sup>168</sup> in Pakistan and in Somalia soon after their passports were unilaterally revoked by the British Home Office. The Bureau of Investigative Journalism found evidence in the case of Bilal al-Berjawi<sup>169</sup>, a British-Lebanese citizen, who reportedly became involved with Somalia’s al Shabaab. British intelligence put him under extensive surveillance and in 2010 the British Home Office revoked his passport. In June 2011 “Berjawi was wounded in the first known U.S. drone strike in Somalia and [in 2012] he was killed by a drone strike”.

During a parliamentary hearing on human rights and counter-terrorism in March 2014, Baroness Kennedy of The Shaws raised concerns about this issue, stressing<sup>170</sup> that “*by removing someone’s citizenship and rendering them stateless, when illegal things happen to them, such as them being either airlifted or droned or whatever, we are less able to be accused of being complicit in actions that involve illegality because we are no longer the state that has responsibility for such persons. Such a thing is a very serious matter, if that were the situation.*”

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164 Question by Rehman Chishti (Conservative) to the Secretary of State for Defense on “how many times (a) British forces have flown U.S. unmanned aerial vehicles and (b) U.S. forces have flown British unmanned aerial vehicles”.

165 *The Bureau of Investigative Journalism* <https://www.thebureauinvestigates.com/stories/2013-04-29/protesters-march-against-uk-drones-as-mod-reveals-drone-sharing-with-us>

166 *Daily Mail* <https://www.dailymail.co.uk/news/article-2290842/U.S.-Drones-bombing-Africa-operated-RAF-bases-heart-Lincolnshire-countryside.html>

167 Dronewars <https://dronewars.net/2013/03/18/drones-news-round-up/>

168 *The Bureau of Investigative Journalism* <https://www.thebureauinvestigates.com/stories/2013-02-27/former-british-citizens-killed-by-drone-strikes-after-passports-revoked>

169 Ibid.

170 UK government [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/518120/David\\_Anderson\\_QC\\_-\\_CITIZENSHIP\\_REMOVAL\\_web\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/518120/David_Anderson_QC_-_CITIZENSHIP_REMOVAL_web_.pdf)



## INTERNATIONAL ENGAGEMENT

Until now, the UK has not advocated for an international debate or any regulation on the use of armed drones. In August 2014, the Ministry of Defense published the *Strategic Trends Programme – Global Strategic Trends - Out to 2045*<sup>171</sup>, 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*”. And at the UN HRC, the UK has repeatedly argued “that the HRC is not the appropriate forum to discuss weapons on a thematic basis.” Baroness Warsi, then a foreign minister, explained to the Committee in an oral evidence session in July 2014<sup>172</sup> that she thinks “*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.*”

Nonetheless, the UK has not yet made a public effort to put the issue of armed drones on the international agenda. The government’s response to the recommendations of the parliamentary committee on arms control<sup>173</sup> stressed that “export licences for all UAVs are approved in accordance with the Consolidated Criteria, which include an explicit requirement to comply with the UK’s international commitments (Criterion 1) and to consider human

rights and fundamental freedoms in the country of final destination (Criterion 2). The government always acts in accordance with international humanitarian law and international standards.”

## PROLIFERATION

The British government was strongly opposed to the development of a European armed drone, as David Cameron said<sup>174</sup> ahead of the December 2013 European Council: “*There can be no question of the Commission owning dual use military capabilities such as drones. Defense kit must be nationally owned and controlled and that should be clear to everyone.*”

In addition, the UK has signed the Joint Declaration for the Export and Subsequent Use of Armed or Strike-Enabled Unmanned Aerial Vehicles on October 28, 2016. By signing this declaration the UK has agreed to the development of policy regulating the production, export and use of armed and strike enabled drones and that international law is ‘upheld’<sup>175</sup>. Cameron’s stance subsequently changed: in 2016 he announced that the UK had agreed to collaborate with France and Italy to develop an advanced aerial combat system. The UK has invested £2bn (€2.3bn) in the Future Combat Air System (FCAS)<sup>176</sup>, the successor to the Typhoon, which should be operational by 2035. In addition, BAE Systems will continue to develop its Tanaris combat drone, which features stealth capabilities

171 UK government [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/654717/GST4\\_v9\\_Feb10\\_archived.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/654717/GST4_v9_Feb10_archived.pdf)

172 Available here <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/foreign-affairs-committee/the-fcas-human-rights-work-in-2013/oral/11255.html>

173 <https://publications.parliament.uk/pa/cm201415/cmselect/cmquad/186/186iii.pdf>

174 <https://www.telegraph.co.uk/news/uknews/defense/10526612/David-Cameron-flies-to-Brussels-determined-to-fight-EU-drones-programme.html>

175 For an analysis of this statement, see EFAD, United Kingdom country profile

176 “In mid-July 2018, Britain announced it is developing its new stealth fighter plane, the Tempest, to replace the Eurofighter Typhoon. The UK’s defense secretary, Gavin Williamson, unveiled a life-size model of the fighter jet — dubbed Tempest — in July 2018 at the UK’s prestigious Farnborough Air Show. Williamson said the “world-beating” jet can be used unmanned, as a drone, or with pilots. It was scheduled to be operational by 2035. The UK is to invest £2bn (\$2.7bn, €2.3bn) to 2025 in the stealth warplane, which will involve British companies BAE Systems and Rolls-Royce as well as Anglo-Italian Leonardo and pan-European MBDA.” <https://www.globalsecurity.org/military/world/europe/fcas.htm>



and advanced autonomous functions<sup>177</sup>. The UK is also advancing its own drones project: in 2015 the UK armed drone Scavenger replaced the Protector drone project<sup>178</sup>, which means the ten U.S.-made Reaper drones will be replaced by 20 UK-manufactured drones.

## CIVIL SOCIETY RESPONSE

The pressure groups advocating for the regulation or ban of armed drones are very broad and active. They include NGOs that collect information on the U.S. and European drone programs, organizations that give legal advice and file lawsuits, as well as peace and anti-war movements. Reprieve investigates extra-judicial killing and detention around the world and have tried to sue the British government for sharing intelligence with the U.S. for use in drone strikes in Pakistan. Together with the German European Centre for Constitutional and Human Rights, Reprieve also works on the case of Faisal bin Ali Jaber, a Yemeni citizen who sued the German government for facilitating U.S. drone strikes in Yemen. (For more information, see the chapter on Germany).

- The Bureau of Investigative Journalism (TBIJ)<sup>179</sup> is a non-profit research organisation which produces in-depth journalism for public benefit. It leads a comprehensive ongoing investigation into drone strikes<sup>180</sup>. The Bureau publishes and maintains extensive and evolving databases on U.S. drone strikes in Pakistan, Yemen and Somalia, which cover more than 1,000 violent incidents since

2002. In addition, it has published data on UK and U.S. drone strikes in conventional conflicts including Afghanistan, Libya and Iraq. Chris Woods, a former journalist at TBIJ, is a widely-published investigative journalist who specialises in conflict and national security issues. He has authored some of the key investigations into covert U.S. drone strikes and their effects and is the founder of Airwars<sup>181</sup>, a rapidly growing investigative journalism platform monitoring airstrikes and civilian casualties in Iraq, Syria and Libya.

- Drone Wars UK<sup>182</sup> aims to be a comprehensive source of information on the growing use of armed drones. Based in the UK, it focuses on the use of British drones but also includes information about armed drones in general. Its website includes a Drone Wars Library, a Drone Crash Database and UK Drone strike statistics, together with a number of Freedom of Information requests.
- Chatham House, the Royal Institute of International Affairs, is an independent policy institute based in London. In November 2013 it organized a panel discussion on “Targeted Killings and Drones: A Global Battlefield”<sup>183</sup> chaired by Dr Patricia Lewis, Research Director for International Security at Chatham House, with Ben Emmerson and Jeremy Scahill (National Security Correspondent of U.S. journal *The Nation* and Author of the film *Dirty Wars*) as participants. It then organized several further workshops on drones.

177 For a description and video of test flight see <http://home.bt.com/tech-gadgets/future-tech/taranis-unmanned-aerial-vehicle-stealth-11364110510493>

178 <https://www.flightglobal.com/news/articles/protector-uav-fleet-to-replace-raf-reapers-417391/>

179 <https://www.thebureauinvestigates.com>

180 <https://www.thebureauinvestigates.com/projects/drone-war>

181 <https://airwars.org>

182 <https://dronewars.net>

183 Video can be found here: <https://www.chathamhouse.org/file/targeted-killings-and-drones-global-battlefield>

- The European Council on Foreign Relations (ECFR) London<sup>184</sup> organized a discussion on drone strikes and civilian casualties in December 2013, chaired by Anthony Dworkin, the author of the paper *Drones and targeted killing: defining a European position*.
- Oxford Research Group (ORG)<sup>185</sup> is an independent London-based think tank on global security which promotes approaches to defense, development and foreign policies that are inclusive, accountable, sustainable and effective. Some of their work has also been centred on drones and they have set up extremely useful meetings with UK military officials, trying to improve decision making on remote warfare.
- Royal United Services Institute (RUSI)<sup>186</sup> is an independent think tank engaged in defense and security research which publishes various articles on the military use of drones, particularly in counter-terrorism operations.

## CONCLUSION

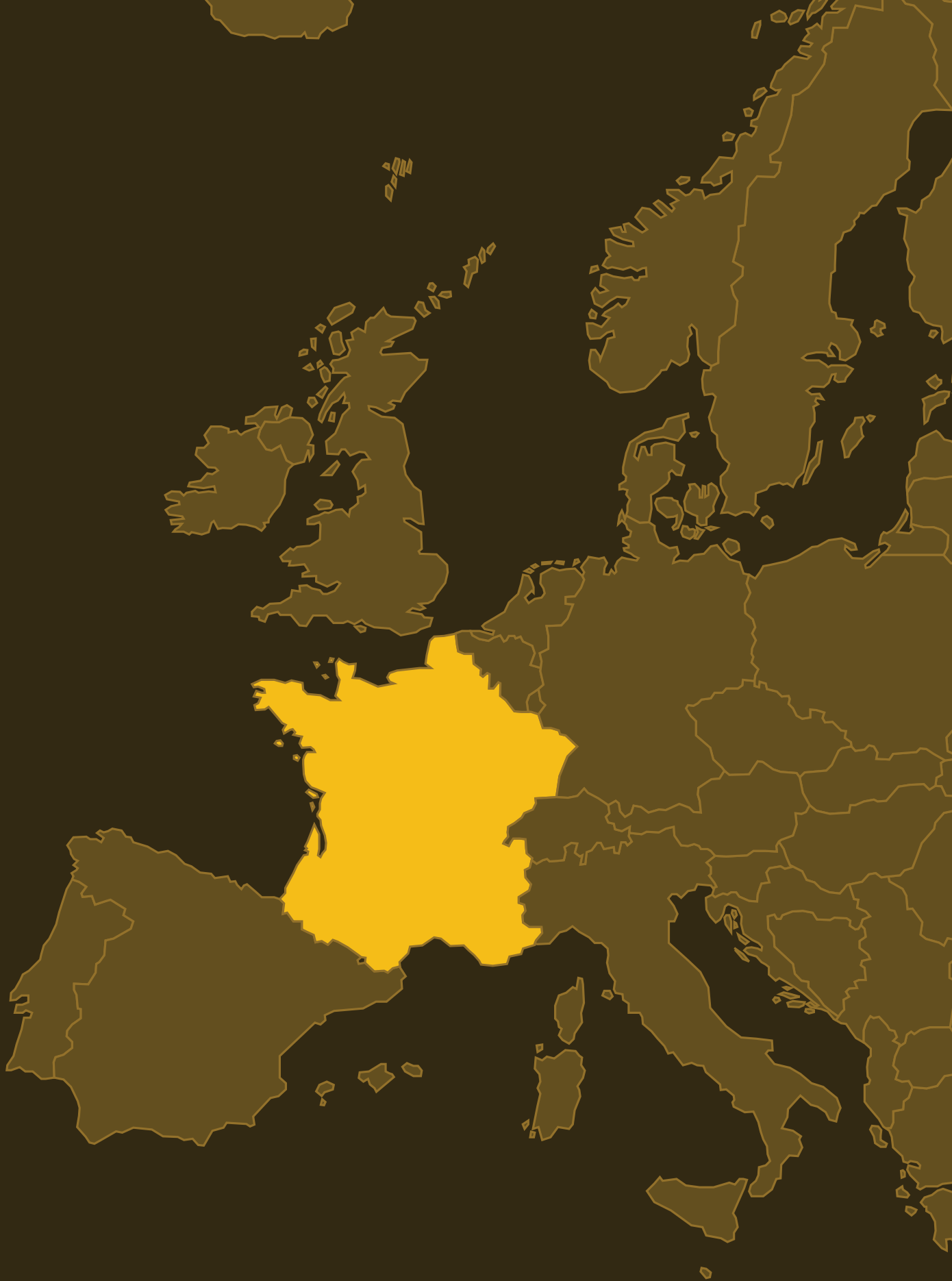
The UK has distanced itself from the U.S. policy on armed drones, but in both continuing to provide the U.S. with intelligence and in developing indigenous armed drones without establishing clear regulations and limits on their use, UK policymakers do not seem to behave very differently from their U.S. allies. Current UK practice and plans are unlikely to meet international legal standards, and could amount to further violations of international law. The lack of transparency on this particular subject in the UK does not allow for an informed debate, and risks eroding those norms that make the UK different from other countries which use or intend to use this technology.

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184 <https://www.ecfr.eu>

185 <https://www.oxfordresearchgroup.org.uk>

186 <https://www.rusi.org>



# 4. FRANCE: LA GRANDE MUETTE MAY STAY QUIET

## INTRODUCTION

The political debate on drones in France is focused on military effectiveness and security. The terror attacks at Charlie Hebdo and Bataclan in Paris in January and November 2015 respectively and at Promenade des Anglais in Nice the following year led to calls for more emphasis on security and the role of the French military. From the point of view of transparency – as mentioned by the Director of the defense ministry's research institute IRSEM, Jean Baptiste Jeangène Vilmer – the French military has historically been dubbed “La Grande Muette”<sup>187</sup> (the great mute), which prompts for calls for more transparency from European civil society networks, such as EFAD<sup>188</sup>. Government representatives have mainly stressed the necessity of developing France's drone capacity, and in an official statement in September 2017 the French armed forces minister announced that France will be arming its six Reaper drones in 2019<sup>189</sup>.

Terror attacks on French soil, historical reticence about transparency at the MoD level and a long-standing but frustrated desire to develop a French drone capability explain why there have been not, as yet, been any high-level political statements in France on the legal implications of the use of armed drones.

## GOVERNMENT STATEMENTS AND COMMITMENTS

France currently owns five unarmed drones: three MQ-9 Reaper drones and two EADS Harfang drones (a French-modified Heron drone)<sup>190</sup>. The Reaper drones were used in Operation Serval in Mali in 2013 and Operation Barkhane in the G5 Sahel countries in 2014. The Reapers operated by the Air Force 1/33 Belfort Drone Squadron are the drones that France intends to arm<sup>192</sup>, and in September 2018 it was announced that the army would acquire

187 Bryon-Portet C. (2006), 'Quand la Grande Muette communique: exemple d'une conduite de changement', Communication & Organisation, available at <https://journals.openedition.org/communicationorganisation/3349>

188 <https://www.efadrones.org/countries/france/>

189 Florence Parly, 'Discours de clôture de Florence Parly - Université d'été de la Défense 2017' (September 5 2017) available at: <http://www.defense.gouv.fr/salle-de-presse/tout-discours/discours-de-cloture-de-florence-parly-universite-d-ete-de-la-defense-2017>

190 <https://www.efadrones.org/countries/france/>

191 Jean-Baptiste Jeangène Vilmer, 'A Perspective on France', *Center for a New American Security*, pp: 2-3, available at: <http://drones.cnas.org/reports/a-perspective-on-france/>; Srdjan Cvijic and Lisa Klingenberg, 'Armed drones policy in the EU: the growing need for clarity', in: European Center for Constitutional and Human Rights, *Litigating Drone Strikes: Challenging the Global Network of Remote Killing* (May 2017) p: 34, available at: <https://www.ecchr.eu/en/documents/publications/articles/litigating-drone-strikes-eng-neu.html>

192 Ibid.

six of them.<sup>193</sup> France is also an active member of the ‘Drone Users Club’ and the ‘Joint Users Club’ of MQ-9 Reaper drones. Together with Italy and Germany, it is involved in the development of the Eurodrone. Finally, aerospace manufacturer Dassault is leading on the development of the nEUROn combat drone with the British BAE Systems for the Future Combat Air System (FCAS) umbrella project<sup>194</sup>. In the light of its significant use of lethal force in counter-terrorism operations – including allegations of an increase in covert targeted killing operations against individuals by the secret service Direction générale de la sécurité extérieure in Libya and the Sahel since 2012<sup>195</sup> – it is not unlikely that France might consider using armed drones for lethal anti-terrorist operations<sup>196</sup>.

Despite general public silence on the drone issue in France, these developments have not gone entirely unnoticed. In March 2014, the Defense Ministry and the think tank IRIS<sup>197</sup> published a study, “*Legal and ethical aspects of remote strikes against strategic human targets*”<sup>198</sup> (*Aspects juridiques et éthiques des frappes à distance sur cibles humaines stratégiques*). This paper includes recommendations for political and military decision-making. Based on large-scale questioning of representatives of the main political parties, media and NGOs as well as thinkers and religious leaders, the paper examines under what conditions targeted killings are ethically and legally justified and could be accepted by public opinion. On the legal implications of drone killings, it says that those who manipulate the drone and give the order to shoot “*could be held accountable for the violation of the principle of*

*distinction between civilians and combatants (broadly defined). In a majority of cases, they will be prosecuted for war crimes, which require the existence of an armed conflict.*” They may even be accused of crimes against humanity, in cases of “*widespread or systematic attack against the civilian population*”.

Consequently, the use of drones for targeted killings should be subject to certain limitations: targeted killings should be ‘exceptional’ and restricted; decisions on targeted killings should be taken on the highest political level (i.e. by the President); external control over drone strikes should be ensured; and a clear distinction between armed drones and autonomous weapons should be made in the public debate. Thus far, it is unclear how far the Defense Ministry will use this report as a guideline. The publication appears to be directed at shaping public opinion to accept targeted killings, in order to avoid the opposition encountered in the U.S. by both the CIA and the Pentagon.

Like the UK, France stressed to the Human Rights Council panel discussion on the use of armed drones in September 2014 that the “*assessment of conformity of military operations with international humanitarian law does not fall under the first competence of the Council.*” Moreover, it said that “*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.*” This statement is intended to justify the use of armed drones by the DGSE.

193 Budget 2019: l’armée se débarrasse de ses vieilleries, L’Express, September 25 2018, [https://www.lexpress.fr/actualite/politique/budget-2019-l-armee-se-debarrasse-de-ses-vieilleries\\_2036930.html](https://www.lexpress.fr/actualite/politique/budget-2019-l-armee-se-debarrasse-de-ses-vieilleries_2036930.html)

194 Declaration on Security and Defense, ‘France – UK Summit: 31 January 2014’ (January 31 2014) available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/277167/France-UK\\_Summit\\_Declaration\\_on\\_Security\\_and\\_Defense.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277167/France-UK_Summit_Declaration_on_Security_and_Defense.pdf); ‘UK-France declaration on security and defense’ (February 17 2012) available at: <https://www.gov.uk/government/news/uk-france-declaration-on-security-and-defense>

195 Cf. Slate: ‘Dans le secret des «opérations homo»’, March 29 2015, available at: <http://www.slate.fr/story/99473/operations-homo>

196 Cvijic and Klingenberg, ‘Armed drones policy in the EU’, pp: 34-35, available at: <https://www.ecchr.eu/en/documents/publications/articles/litigating-drone-strikes-eng-neu.html>

197 <https://theatrum-belli.com>

198 <https://theatrum-belli.com/iris-cicde-aspects-juridiques-et-ethiques-des-frappes-a-distance-sur-cibles-humaines-strategiques/>

In April 2017, the Ministry of Defense published an opinion poll<sup>199</sup> on arming French drones. The results were emphatic: 74% were in favor, 13% against.

One of the most interesting aspects of this survey is the fact that the majority of interviewees believe that France is not well equipped to ensure the safety of its citizens<sup>200</sup> at home. The biggest threat, according to the survey, comes from terror attacks on French soil, and these attacks are more likely to come from the Middle East and North Africa. Among the main priorities identified after the terror attacks in Paris and Nice, most of the interviewees stated that France should focus its efforts on the fight against transnational terrorism<sup>201</sup>. The survey asked: ‘Just as the U.S. is doing, do you think that it is necessary for the Defense Ministry to arm its aerial drones, in order to be able to strike clearly identified targets?’ This is a leading question that clearly favors the use of armed drones.

The main controversy around the use of armed drones by the French military derives from a lack of clear boundaries: the French Defense Ministry has declared that armed drones could be used to kill high-value targets outside the traditional battlefield, as long as the use is ‘exceptional’ and ‘restricted’<sup>202</sup>. In addition, as mentioned in *Un President ne devrait pas dire ça*, by Gerard Davet and Fabrice Lhomme, the former President François Hollande gave permission to conduct targeted killings, ‘without bothering with the cumbersome paths of justice’<sup>203</sup>. Between 2013 and 2016 Hollande

authorized 40 targeted killings (known as ‘homo’, or homicide operations) and the lack of public criticism following this statement may have been a contributing factor in the arming of French drones. During the 2017 Presidential elections, most of the left-wing candidates criticized Hollande not for ordering the strikes, but for disclosing this ‘sensitive’ information to the public. This lack of transparency has been criticized both at home by the President of the French Magistrates Union, Clarisse Taron<sup>204</sup> and internationally by the UN Special Rapporteur for extra-judicial executions, Agnes Callamard<sup>205</sup>.

## PARLIAMENTARY DEBATES

The Green Party is the only French political party that explicitly rejects the acquisition and use of armed drones: “*The environmental group is opposed to the use of armed drones and wants this crucial issue to be subject to parliamentary debate. A dangerous gap has opened up between the rapid development of technology and the law*”<sup>206</sup>.

The far-left MP Jean-Jacques Candelier, vice president of the Committee of Defense, is, however, not opposed to the use of drones - but raises concerns about their use for targeted killings, which he calls “problematic”<sup>207</sup>. According to him, “the use of UCAVs [armed drones], even against terrorists, cannot derogate from the legal precautions for the use of France’s armed forces abroad.”

199 [http://data.over-blog-kiwi.com/1/11/98/19/20170513/ob\\_cfc92\\_barometre-externe-de-la-defense-et-d.pdf](http://data.over-blog-kiwi.com/1/11/98/19/20170513/ob_cfc92_barometre-externe-de-la-defense-et-d.pdf)

200 Ibid. Question 1

201 [http://data.over-blog-kiwi.com/1/11/98/19/20170513/ob\\_cfc92\\_barometre-externe-de-la-defense-et-d.pdf](http://data.over-blog-kiwi.com/1/11/98/19/20170513/ob_cfc92_barometre-externe-de-la-defense-et-d.pdf)

202 Florence Parly, ‘Discours de clôture de Florence Parly - Université d’été de la Défense 2017’ (September 5 2017) available at: <http://www.defense.gouv.fr/salle-de-presse/tout-discours/discours-de-cloture-de-florence-parly-universite-d-ete-de-la-defense-2017>

203 [https://www.lemonde.fr/societe/article/2017/01/04/comment-hollande-autorise-l-execution-ciblee-de-terroristes\\_5057421\\_3224.html](https://www.lemonde.fr/societe/article/2017/01/04/comment-hollande-autorise-l-execution-ciblee-de-terroristes_5057421_3224.html)

204 France 24, ‘Targeted killings necessary ... just don’t tell anyone’, say French leftist candidates’ (January 13 2017) available at: <http://www.france24.com/en/20170113-executing-terrorists-abroad-french-leftist-primary-debate-candidates-agree>

205 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/the-uk-governments-policy-on-the-use-of-drones-for-targeted-killing/written/25641.html>, available at <https://www.ohchr.org/en/issues/executions/pages/srexecutionsindex.aspx>

206 <https://www.bastamag.net/Drones-militaires-La-France-s>

207 <https://jjcandelier.wordpress.com/tag/securite/>



Despite these party positions, debates in the National Assembly and Senate focused solely on the efficacy and security aspects of the use of armed and unarmed drones, without discussing their legal implications. The only controversial debates dealt with the issue of the appropriate supplier. When the French government opted to acquire American Reaper drones, some MPs opposed the decision, arguing that this would reduce French military independence and weaken the French drone industry. Parliamentary questions focus on whether France should acquire American (armed) drones or if it should support the development of a French or European armed drones industry.

Parliament's focus on security issues is apparent in the National Assembly's *Report on drones*<sup>208</sup> from 2009, presented by Yves Vandewalle (from the centre-right UMP party) and Jean-Claude Viollet (Parti Socialiste). This report focuses solely on the efficacy and operability of drones. The authors listed certain organisational and financial obstacles to the French deployment of armed drones, but argued in favor of the acquisition of new military drone systems.

In August 2014, the Green MP Noël Mamère criticized the U.S. policy in Iraq, without focussing directly on American drone policy. During a joint hearing on the situation in Iraq<sup>209</sup> with foreign minister Laurent Fabius, Mamère said that France should not take part in U.S. airstrikes because it should not associate itself with a new enterprise outside international law. Fabius replied that France had not been asked to participate in U.S. air strikes

in Iraq. He added that in any case France has established that it would only act with UN Security Council authorization.<sup>210</sup>

## POSSESSION AND USE OF MILITARY DRONES

From 2012 onwards, François Hollande and the former defense minister Jean-Yves Le Drian regularly signalled that they intended to equip the French military with armed drones<sup>211</sup>. For a long time, the political debate on the acquisition of armed drones<sup>212</sup> focussed on the question of whether to buy them from the U.S. or to develop a French or European armed drone. In November 2014, the head of arms procurement Laurent Collet-Billon announced<sup>213</sup> that France planned to buy a new MALE drone system from the U.S. consisting of three new Reaper drones. He refused, however, to comment on whether they would be armed, saying: *"Please let's not open this debate. It is most important that we obtain them quickly. We will figure out the rest afterwards."*<sup>214</sup>

France possesses unarmed DRAC, Sperwer and Harfang reconnaissance drones, and has used four of the Harfang drones (which are based on Israel's Heron drone model) in Afghanistan, Libya and Mali. Additionally, in August 2013, the U.S. administration agreed to allow France to acquire two unarmed MQ-9 Reaper drones<sup>215</sup>. Five months later, France deployed these two Reapers for the first time in Niamey, in order to control the area and collect counter-terrorism intelligence in the Sahel. The French government then announced it would buy a third

208 [http://www.assemblee-nationale.fr/13/rap-info/i2127.asp#P321\\_36054](http://www.assemblee-nationale.fr/13/rap-info/i2127.asp#P321_36054)

209 [http://www.assemblee-nationale.fr/14/cr-cdef/13-14/c1314064.asp#P8\\_414](http://www.assemblee-nationale.fr/14/cr-cdef/13-14/c1314064.asp#P8_414)

210 On September 19 2014, France nevertheless started to conduct airstrikes in Iraq and has already conducted about 11 strikes with fighter aircraft.

211 [https://www.lesechos.fr/07/09/2017/LesEchos/22524-078-ECH\\_pourquoi-la-france-a-decide-d-armer-ses-drones.htm](https://www.lesechos.fr/07/09/2017/LesEchos/22524-078-ECH_pourquoi-la-france-a-decide-d-armer-ses-drones.htm)

212 <https://www.latribune.fr/entreprises-finance/industrie/aeronautique-defense/20130403trib000757355/defense-la-france-veut-se-doter-d-un-drone-male-arme.html>

213 <https://www.latribune.fr/entreprises-finance/industrie/aeronautique-defense/20141118trib4af816af3/nouveaux-drones-reaper-ce-que-va-faire-la-france.html>

214 Ibid.

215 <http://theatrum-belli.org/les-premiers-drones-reaper-deployes-au-sahel-serviront-pour-le-controle-de-zone-et-au-renseignement-contre-terroriste/>

Reaper drone before the end of 2014, completing the first MALE system. The French defense companies Thales, Dassault, EADS and Sagem receive funding from the EU to obtain military drones.

In terms of proliferation, concerns around the development of armed drones are frequently justified by the fact that these tools can have both civilian and military uses. This is why drones are not always included in the international legal frameworks that regulate arms trade. France is a party to the Arms Trade Treaty, but has not signed the U.S. Joint Declaration for the Export and Subsequent Use of Armed or Strike-enabled Unmanned Aerial Vehicles<sup>216</sup>. The former U.S. President Barack Obama led this initiative, which was signed by 53 countries. France - along with Russia, China and Israel - chose not to sign, which makes the recent decision to arm its drones all the more worrisome.

## LEGAL VIEW

From a legal perspective, France has not formulated a clear policy on the use of armed drones, and its air force adopts the legal principle of territorially limited campaigns. In other words, armed drones — when acquired — will be used in ‘active battlefields’, which means in the G5 Sahel countries, once permission is granted by the host country. In both the Serval and Barkhane operations, France understands

its presence as participation in an active conflict, as it was invited to fight terror groups by Mali’s government. France has therefore made a clear distinction between terrorists and other parties to the conflict<sup>217</sup>. This is the legal principle which justifies the French presence and future use of armed drones on African soil and, according to exchanges with MoD officials, this sets France apart from the U.S..

As previously mentioned, the Defense Ministry/IRIS study on ‘*Legal and ethical aspects of remote strikes against strategic human targets*’<sup>218</sup> concluded that armed drones could be used to kill high value targets outside the traditional battlefield, as long as this use was ‘exceptional’ and ‘restricted’.<sup>219</sup> The study tries to provide an innovative interpretation of international law, promoting an “*exceptional approach that recognises the illegality of the action while justifying the exceptional violation of law (...) in operations, which always need to be specified as not being a precedent*”<sup>220</sup>.

With the consent of neighbouring countries, France can pursue members of jihadist groups linked to the conflict in Mali across national borders. Similarly, against ISIS, France limits the conflict to a specific territory across the borders of Iraq and Syria. In these areas, France distinguishes between those members of terrorist groups who take part in hostilities and those who play other roles and cannot be directly targeted.<sup>221</sup>

216 U.S. Department of State, ‘Joint Declaration for the Export and Subsequent Use of Armed or Strike-Enabled Unmanned Aerial Vehicles (UAVs)’ (October 28 2016) available at: <https://2009-2017.state.gov/r/pa/prs/ps/2016/10/262811.htm>

217 Anthony Dworkin, “Drones and targeted killing: defining a European position”, the European Council on Foreign Relations, July 3 2013, available at [https://www.ecfr.eu/publications/summary/drones\\_and\\_targeted\\_killing\\_defining\\_a\\_european\\_position211](https://www.ecfr.eu/publications/summary/drones_and_targeted_killing_defining_a_european_position211).

218 Institut de Relations Internationales et Stratégiques – Ministère de la Défense: ‘Aspects juridiques et éthiques des frappes à distance sur cibles humaines stratégiques’, March 26 2014, available at: [http://www.iris-france.org/docs/kfm\\_docs/docs/analyses-iris/20140114\\_np\\_iris-cicde\\_aspects-juridiques-ethiques-frappe-distance-cibles-humaines.pdf](http://www.iris-france.org/docs/kfm_docs/docs/analyses-iris/20140114_np_iris-cicde_aspects-juridiques-ethiques-frappe-distance-cibles-humaines.pdf)

219 Srdjan Cvijic and Lisa Klingenberg, ‘Armed drones policy in the EU: the growing need for clarity’, in: European Center for Constitutional and Human Rights, *Litigating Drone Strikes: Challenging the Global Network of Remote Killing* (May 2017) p: 34, available at: <https://www.ecchr.eu/en/documents/publications/articles/litigating-drone-strikes-eng-neu.html>; Jean-Baptiste Jeangène Vilmer: ‘Quand la France armera ses drones’, in Les Cahiers de la Revue Défense Nationale, June 2015, available at: [http://www.jbjv.com/IMG/pdf/JBJV\\_2015\\_-\\_Quand\\_la\\_France\\_armera\\_ses\\_drones.pdf](http://www.jbjv.com/IMG/pdf/JBJV_2015_-_Quand_la_France_armera_ses_drones.pdf)

220 Ibid. p. 103. (Non-official translation). For an additional legal rationale of French ‘homo’ operations see the interview with Olivier Chopin (Ecole des hautes études en sciences sociales, EHESS): “Les assassinats ciblés relèvent de la raison d’Etat”, *Le Monde* (Print Edition), January 4 2017, p. 22.

221 Ibid.; Cvijic and Klingenberg, Ibid.

Hitherto France has not been involved in any complicity-related charges; however, in 2013 the defense ministry reported that intelligence gathered by its drones was used by both Malian and French forces to kill ten terrorist fighters<sup>222</sup>.

## CIVIL SOCIETY RESPONSE

French civil society has not been particularly active on the issue of armed drones. Amnesty International France<sup>223</sup> has recently started to focus on them, and it will follow developments closely. The *Observatoire des armements* in Lyon produced a report on killer robots in 2014, but not done any work on armed drones since<sup>224</sup>.

Theatrum Belli<sup>225</sup> is a blog edited by journalist Stéphane Gaudin, which covers security and defense issues. Although it is not explicitly focussed on drones, Gaudin has published a number of articles about the French development of an armed drone<sup>226</sup> <sup>227</sup> (i.e. partnership with the UK, development of nEURO.).

Several French think tanks have published articles and research papers on armed drones, targeted killings and autonomous weapons. These papers are mainly analytical and describe the new use of drones in counter-terrorism operations. Both the Institut français des relations internationales (IFRI) and

IRSEM have published papers and articles on this issue, and organized a number of events<sup>228</sup>.

The Institute of international and strategic relations (IRIS) is a private, independent French think tank which has published a number of articles<sup>229</sup> and interviews<sup>230</sup> on the implications of armed drones for European security.

More critical work comes from the Group for research and information on peace and security (GRIP), a Belgian Francophone think tank, which has published *Use of armed drones: Judicial and practical considerations* (French: *Utilisation des drones armés: Considérations juridiques et pratiques*<sup>231</sup>) by Mélanie De Groof, a researcher at GRIP who focuses on arms transfers, drones and legal aspects of the use of force.

Media coverage of armed drones and targeted killings has improved since France announced it would arm its drones. Several newspapers had reported the French purchase of American Reaper drones and the development of the nEUROn by the French company Dassault before 2017. But the reports failed to raise legal or ethical questions. An article by Rachel Knaebel for Basta! Magazine in December 2014 criticized the French government's drone policy and the absence of a public and parliamentary debate. In *Is France ready to carry out targeted assassinations with military drones?*<sup>232</sup> (in French: *La France s'apprête-t-elle à mener des assassinats ciblés avec ses drones*

222 *National Turk*, 'French-Islamists Battle in Mali: French Troops Kill 10 Islamists in Northern Mali / Africa News' (March 7 2014) available at: <http://www.nationalturk.com/en/french-islamists-battle-in-mali-french-troops-kill-10-northern-africa-news-48172/>.

223 <https://www.amnesty.fr>

224 <http://obsarm.org/spip.php?article231>

225 <https://theatrum-belli.com>

226 <https://theatrum-belli.com/drone-europeen-male-rpas-le-programme-officialise/>

227 <https://theatrum-belli.com/airbus-dassault-aviation-et-leonardo-reaffirment-leur-engagement-total-envers-le-premier-programme-de-drone-male-100-europeen/>

228 Among others, *Legality and legitimacy of armed drones* by JB Jeangene Vilmer (IFRI) available at [http://www.jbjv.com/IMG/pdf/JBJV\\_2013\\_-\\_2\\_-\\_Legalite\\_et\\_legitimite\\_des\\_drones\\_armes.pdf](http://www.jbjv.com/IMG/pdf/JBJV_2013_-_2_-_Legalite_et_legitimite_des_drones_armes.pdf); Colloque *Quels drones pour quel usage à l'Horizon 2020?*, available at <https://www.defense.gouv.fr/irsem/page-d-accueil/nos-evenements/quels-drones-pour-quels-usages-a-l-horizon-2020-le-mercredi-18-mai-2016>

229 <http://www.iris-france.org/44518-pour-un-programme-de-drone-europeen/>

230 <http://www.iris-france.org/71929-les-drones-quels-usages-queelles-problematiques/>

231 <https://www.grip.org/fr/node/1279>

232 <https://www.bastamag.net/Drones-militaires-La-France-s>

*militaires*?), Knaebel warns that the Ministry plans to conduct targeted killings against terrorists in Mali or Afghanistan once it has armed its Reaper drones: “The challenge is to prepare people’s minds and to prevent French killer drones from evoking the same distrust as U.S. drones”.

French lieutenant-colonel Christophe Fontaine, a specialist on drones, expressed his concerns in a long article published in April 2013 in *L’Express*<sup>233</sup>. He argued that drones should not be confused with autonomous weapons, as drone strikes are not illegal - but they should be subject to the same parliamentary and democratic oversight as any other military operation.

In an article in *Le Monde* in June 2014, the former foreign affairs minister Dominique de Villepin denounced the war on terror and the use of armed drones as a means to counter terrorism<sup>234</sup>:

*“Militarised democracies impose a drone war without men and without loss, on one side at least; a judicial and punitive war in which the punishment falls from the sky, remotely controlled and safe for the army who takes the initiative; a perpetual war that has no beginning or end, invisible as far from the cameras. There is not one year without desire or decision for a military expedition of the Americans or Europeans. In Libya, Mali, Central Africa, Syria, and Iraq today, it is always the same logic [...]”*

In 2016 he said that war against terrorism is a “mistake, as there is no true understanding of what terrorism means. Waging a war against terrorism is counterproductive, as it gives it status, more resonance”.<sup>235</sup>

Finally, perhaps the most vocal critic of the use of armed drones in France is philosopher Grégoire Chamayou. In *A Theory of the Drone*, Chamayou tries to understand how drones have revolutionized contemporary warfare and to deconstruct the various narratives around such weapons. Dismantling the myth of precision is central to his work<sup>236</sup>. The ideas expressed in this book chime with those of the director of the Centre for Autonomy and Artificial Intelligence in the U.S., Larry Lewis<sup>237</sup>, who argues that in most cases ‘collateral damage’ in war theaters occurs when the target is misidentified, dismantling the ‘surgical warfare’ argument put forward by governments.

## CONCLUSION

To date, the French government has not formulated a policy on the use of armed drones. This is alarming, as targeted killing operations by armed drones would be in line with the ‘homo’ operations mentioned above and approved by the French President. Any further terrorist attacks on French soil will only contribute to calls for more aggressive defense policies and are likely to increase secrecy. This, coupled with the French desire to develop its own drone capability, will make drone proliferation more likely.

233 [https://www.lexpress.fr/actualite/monde/c-est-la-partie-humaine-d-un-drone-qui-releve-de-machiavel\\_1235509.html](https://www.lexpress.fr/actualite/monde/c-est-la-partie-humaine-d-un-drone-qui-releve-de-machiavel_1235509.html)

234 [https://www.lemonde.fr/idees/article/2014/09/30/cessons-ces-guerres-suicidaires-et-donnons-enfin-une-chance-a-la-paix\\_4496657\\_3232.html](https://www.lemonde.fr/idees/article/2014/09/30/cessons-ces-guerres-suicidaires-et-donnons-enfin-une-chance-a-la-paix_4496657_3232.html)

235 <https://www.humanite.fr/dominique-de-villepin-le-travail-politique-et-diplomatique-na-pas-ete-suffisamment-mene-628153>

236 “The problem with precision is that it conflates the technical precision of the weapon and its capacity to discriminate in the choice of targets.” Available at <https://www.theguardian.com/books/2015/jan/21/drone-theory-by-gregoire-chamayou-review-provocative-investigation>

237 <http://appgdrone.org.uk/wp-content/uploads/2014/08/Prepared-comments-Larry-Lewis.pdf>



# 5. ITALY: ARMED DRONES TO REINFORCE THE TRANSATLANTIC ALLIANCE

## INTRODUCTION

Italy currently owns six General Atomics MQ-1C Predator B (Reapers), which are stationed at Amendola airbase in Foggia and supplied to 28th Group “Streghe”. It also has six ‘Predator’ drones that it acquired in 2001. In November 2015 the U.S. government approved Italy’s request to arm its drones<sup>238</sup> with Hellfire missiles, laser-guided bombs and other munitions<sup>239</sup>.

The Italian army has a decade of experience of using drones in ISTAR (intelligence, surveillance, targeting and reconnaissance) operations in Iraq, Afghanistan, Libya, Djibouti and Somalia, Kosovo, Syria and Iraq, in the Mediterranean and in domestic theaters (such as the 2009 G8 summit). The latest report by Archivio Disarmo (IRIAD) and the Italian Disarmament Network<sup>240</sup> envisages that in the coming years Italy will increase its use of drones, whether armed or unarmed, as they have features

that are particularly important for Italian armed forces - such as durability, connectivity, flexibility, autonomy and efficiency.

In addition, the Italian public are relatively opposed to sending troops to foreign theaters, which makes drones a more congenial option. Italian defense doctrine does not consider drones to be a separate weapon, and they are included in the category of aircraft<sup>241</sup>, without acknowledging the features that could make drone missions different from other types of missions. While the Italian public is more opposed to foreign intervention than other European countries, Italians are ill-informed about whether Italy possesses drones. In 2015 less than 40% of interviewees were aware of the existence of such a weapon<sup>242</sup>.

Drone acquisition is not the only controversy surrounding this weaponry in Italy, because the country hosts the ‘Mediterranean hub’ Sigonella in

238 <https://www.reuters.com/article/us-italy-usa-drones/u-s-government-approves-italys-request-to-arm-its-drones-idU.S.KCNOST1V20151104>

239 The proposed sale includes 156 AGM-114R2 Hellfire II missiles built by Lockheed Martin Corp, 20 GBU-12 laser-guided bombs, 30 GBU-38 Joint Direct Attack Munitions and other armaments, according to the Pentagon Cooperation agency

240 <https://www.disarmo.org/rete/docs/5137.pdf>

241 <https://www.disarmo.org/rete/docs/5139.pdf>

242 Doxa survey, chap. 3



Sicily. Sigonella is a U.S. naval air station which since 2008 has been heavily used by U.S. forces to launch Global Hawk operations in the Mediterranean and North Africa<sup>243</sup>. According to an agreement said to have been negotiated with the Italian government, U.S. drone missions may be authorized on a case-by-case basis by Italian authorities and only for defense purposes (ie. in case ground troops need support). In 2019 Sigonella will also become one of the most important U.S. Navy MQ-4C Triton BAMS-D (Broad Area Maritime Surveillance) bases, which will monitor all activity in the Mediterranean. The base will also host the UAS SATCOM Relay Pads and Facility, a satellite infrastructure operating in ways similar to Ramstein base in Germany<sup>244</sup>. Not too far from Sigonella, Niscemi hosts the Naval Radio Transmitter Facility, one of the four Mobile User Objective System (MUOS) ground stations, which supports the drone communication infrastructure. Sigonella will also be the principal operating base of the Alliance Ground Surveillance (AGS) programme and its five Global Hawks aircraft, which will be used by both NATO and other allies.<sup>245</sup>

## GOVERNMENT STATEMENTS AND COMMITMENTS

Italy was the second European country after the UK to arm its drones. Although the Italian military base at Sigonella<sup>246</sup> is used by U.S. forces to launch

strikes on Libya and Northern Africa,<sup>247</sup> the Italian government has not made any statements or commitments on the legal implications of the use of armed drones or the illegality of targeted killings outside situations of armed conflict, despite calls from the Italian Disarmament Network<sup>248</sup> and Freedom of Information requests by the European Centre for Constitutional and Human Rights for it to do so<sup>249</sup>. Nonetheless, the accidental killing of Italian aid worker Giovanni Lo Porto in Pakistan by a U.S. drone in 2015 brought the issue of armed drones to public attention.

Italy has clear restrictions and caveats on the use of American drones in Sicily in order to ensure that their deployment is in accordance with the law.<sup>250</sup> Federica Mogherini, the former Foreign Minister of Italy and current EU High Representative, said at the EU Commissioner-designates hearing<sup>251</sup> in October 2014 that she was aware of the European Parliament's resolution on armed drones. She added that the use of drones is not "good or bad in itself", but dependent on how they are used: "It is the policy that makes the difference". More recently, in September 2018, Mogherini mentioned autonomous weapons and stated that they should remain "under human control"<sup>252</sup>.

In 2015, the former defense minister Roberta Pinotti (Democratic Party, PD) referred to the use of drones in the context of European defense policy and better

243 [https://www.washingtonpost.com/gdpr-consent/?destination=%2fworld%2fnational-security%2fus-has-secretly-expanded-its-global-network-of-drone-bases-to-north-africa%2f2016%2f10%2f26%2fff19633c-9b7d-11e6-9980-50913d68each\\_story.html%3f&utm\\_term=.550a5c987379](https://www.washingtonpost.com/gdpr-consent/?destination=%2fworld%2fnational-security%2fus-has-secretly-expanded-its-global-network-of-drone-bases-to-north-africa%2f2016%2f10%2f26%2fff19633c-9b7d-11e6-9980-50913d68each_story.html%3f&utm_term=.550a5c987379)

244 This satellite communications facility provides critical backup for its sister SATCOM relay station in Ramstein, Germany. <http://rlfarchitects.com/federal/unmanned-aircraft-system-uas-satellite-communications-relay-station/>

245 <https://www.disarmo.org/rete/docs/5139.pdf>

246 [https://rep.repubblica.it/pwa/esclusiva/2018/06/20/news/la\\_guerra\\_segreta\\_dei\\_droni\\_svelati\\_550\\_raid\\_americani\\_in\\_libia\\_quasi\\_tutti\\_da\\_sigonella-199568872/](https://rep.repubblica.it/pwa/esclusiva/2018/06/20/news/la_guerra_segreta_dei_droni_svelati_550_raid_americani_in_libia_quasi_tutti_da_sigonella-199568872/)

247 <https://www.disarmo.org/rete/a/45527.html>

248 <https://www.disarmo.org/rete/a/44321.html>

249 <https://www.ecchr.eu/en/case/sicily-airbase-freedom-of-information-litigation-on-italys-involvement-in-us-drone-program/>

250 <https://www.disarmo.org/rete/a/44321.html>

251 <http://www.europarl.europa.eu/hearings-2014/resources/library/media/20141022RES75841/20141022RES75841.pdf>

252 <https://eeas.europa.eu/headquarters/headquarters-homepage/50465/autonomous-weapons-must-always-remain-under-human-control-mogherini-says-european-parliament-en>

co-operation<sup>253</sup>. At the beginning of 2018, Pinotti issued a ministerial decree allowing €766m to be spent on the acquisition of 20 P2HH drones in the next 20 years<sup>254</sup>. The UAE would pay the remaining €766m needed to produce these aircraft, as Piaggio is now entirely owned by the UAE Mubadala fund.<sup>255</sup> The decree was a matter of some controversy and in summer 2018 two parliamentary hearings were set up to discuss it. The former defense minister Mario Mauro (Popolari per l'Italia) mentioned drones in the context of the migration crisis in 2018: *“Unmanned drone aircraft based in Sicily could also be used to identify the packed and precarious migrant vessels, as well as a new radar to track the boats”*.<sup>256</sup>

After the Wall Street Journal revealed<sup>257</sup> a secret deal between the U.S. and Italian governments to station U.S. armed drones in Sigonella, some Italian officials released statements on U.S. drone programmes on Italian territory. Former foreign minister Paolo Gentiloni, ex-defense minister Roberta Pinotti and the former Prime Minister Matteo Renzi stated that Italy would authorize, on a case-by-case basis, the use of armed drones for defense purposes<sup>258</sup>. However, as the criminal lawyer and professor Chantal Meloni has explained, the deal has not been made public and the latest open document is the Technical Arrangement, which was published by the U.S. government in 2006<sup>259</sup>.

## PARLIAMENTARY DEBATES AND QUESTIONS

The left-wing Italian Green party Sinistra Ecologia Libertà (now Sinistra Italiana) has been the most critical and active party when it comes to the issue of drones, and Donatella Duranti has been the most vocal MP. During a parliamentary debate<sup>260</sup> on Eurofighters in June 2013, she asked why Italy still wants to obtain armed drones and urged Parliament to exert more control over governmental drone projects. Movimento 5 Stelle (5 Star Movement), which is currently in government, was opposed to the acquisition of armed drones prior to the 2018 elections. Many M5S MPs argued that the use of drones would radicalize terrorists instead of bringing about peace and security: MPs Luca Frusone, Massimo Artini and Gianpiero Scanu in particular have expressed doubts about further investment in this technology<sup>261</sup>.

The current debate in Italy has mostly focussed on migration and the refugee crisis (often seen as the main threats to national security), and military spending or complicity issues arising from the Sigonella airbase have not been central. However, in June 2018 a parliamentary hearing took place to discuss the acquisition of the P2HH drones produced

253 <https://www.msn.com/en-in/autos/more-autos-video/pinotti-«accordo-su-droni-fondamentale-per-futuro-difesa»/vi-BBjU.S.Jh>

254 This would amount to €38.3m per vehicle (a Predator – the U.S.-produced version only costs €20m)

255 <https://it.businessinsider.com/guerra-dei-droni-766-milioni-a-piaggio-aerospace-per-un-progetto-a-rischio-avverte-lex-capo-di-stato-maggiore-dellaeronautica-pasquale-preziosa/>

256 <https://www.independent.co.uk/news/world/europe/italy-will-use-drones-and-tripled-sea-patrols-in-bid-to-halt-deadly-migrant-boat-wrecks-8879844.html>

257 <https://www.wsj.com/articles/italy-quietly-agrees-to-armed-u-s-drone-missions-over-libya-1456163730>

258 <https://icct.nl/wp-content/uploads/2016/10/ICCT-Paulussen-Dorsey-Boutin-Towards-a-European-Position-on-the-Use-of-Armed-Drones-October2016-2.pdf>

259 Philip di Salvo, Esquire <https://www.esquire.com/it/news/attualita/a13056381/le-guerre-secrete-dei-droni/>

260 [http://dati.camera.it/ocd/aic.rdf/aic7\\_00209\\_17](http://dati.camera.it/ocd/aic.rdf/aic7_00209_17)

261 <https://www.pressenza.com/it/2017/04/presentato-ieri-alla-camera-rapporto-ricerca-droni-militari-proliferazione-controllo/>

by Piaggio Aerospace. Pasquale Preziosa, a former chief of the Italian Air Force, warned MPs that the deal could be risky given the problematic experience with the P1HH drone, which crashed during a test: “*Piaggio Aerospace was not able to successfully complete its first industrial mandate with P1HH, which is not a good indicator for future endeavors*”<sup>262</sup>. The investigation into why the first flight failed has never been made public by Piaggio.

Moreover, many parliamentarians expressed concerns about the fact that Piaggio is now entirely owned by the Mubadala fund of the UAE and its finances are struggling: if the Italian Parliament chose not to approve the spending, Piaggio would inevitably succumb to bankruptcy. The current Air Force chief of staff Enzo Vecciarelli, however, who appeared before Parliament in May<sup>263</sup>, asked it to approve the acquisition as it would protect “our troops in ambush situations”.

A number of MPs (mostly from the Democratic Party and M5S) said that they were not interested in going ahead with the acquisition: they believe Italy should take advantage of research done in other countries, and not finance the work necessary to produce a drone within Italy.

Throughout 2017 the Italian Disarmament Network and research institute Archivio Disarmo IRIAD worked on inserting new provisions on the use of armed drones for Italian external military missions. These would have called for a ban on using armed drones in missions abroad. However, the Italian Parliament was dissolved before voting on these provisions, and in January it voted to send a military

mission to Sahel/Niger (with surveillance drones) to combat migrant smuggling and for counterterrorism purposes. IRIAD is now working to insert this provision into the plans for the 2019 missions. In total, 500 troops were sent to Libya, 470 to Niger and 60 to Tunis (for training purposes). There was also an increase in military spending of about €80m.

From a historical perspective, in September 2013, the Defense and Foreign Affairs Committees of the Parliament (Committees III and IV) held a joint session<sup>264</sup> ahead of the European Council on December 20. Two resolutions were proposed. Donatella Duranti’s resolution was backed by Sinistra Ecologia Libertà and M5S, but not adopted. It read:

*“The European Union and the Member States should refrain from the intensification of cooperation at EU level in the field of RPAS (drones); the total lack of EU-wide discussions about the rules that should govern the development, acquisition, use and export of armed and unarmed drones, as well as research in this area should move the European Union to guarantee that the legal basis for the use of drones, the operational responsibility, the establishment of targeting criteria, their impact as well as information about alleged violations, criminal investigations and prosecutions are made public and to ensure that statistical data and basic methodologies are not kept secret under the guise of security.”*<sup>265</sup>

The second proposal - for a Common Security and Defense Policy (CSDP) resolution ahead of the European Council on December 19-20 2013 - was adopted during the session<sup>266</sup>. Andrea Manciuilli and Gianpiero Scanu from the Democratic Party

262 <https://it.businessinsider.com/guerra-dei-droni-766-milioni-a-piaggio-aerospace-per-un-progetto-a-rischio-avverte-lex-capo-di-stato-maggiore-dellaeronautica-pasquale-preziosa/>

263 <https://valori.it/italia-divisa-sui-droni-militari-e-piaggio-aerospace-resta-appesa-alla-politica/>

264 [http://www.camera.it/leg17/1079?idLegislatura=17&tipologia=indag&sottotipologia=c04\\_arma&anno=2013&mese=09&giorno=13&idCommissione=04&numero=0003&file=indice\\_stenografico](http://www.camera.it/leg17/1079?idLegislatura=17&tipologia=indag&sottotipologia=c04_arma&anno=2013&mese=09&giorno=13&idCommissione=04&numero=0003&file=indice_stenografico)

265 [http://www.camera.it/leg17/1079?idLegislatura=17&tipologia=indag&sottotipologia=c04\\_arma&anno=2013&mese=09&giorno=13&idCommissione=04&numero=0003&file=indice\\_stenografico](http://www.camera.it/leg17/1079?idLegislatura=17&tipologia=indag&sottotipologia=c04_arma&anno=2013&mese=09&giorno=13&idCommissione=04&numero=0003&file=indice_stenografico)

266 <http://documenti.camera.it/leg17/resoconti/commissioni/bollettini/pdf/2013/12/18/leg.17.bol0145.data20131218.com0304.pdf>

(PD) proposed the resolution and the Democratic Party, Popolari per l'Italia (Christian democratic), Forza Italia (liberal) and Fratelli d'Italia (nationalist conservative) supported it. Unlike the SEL and M5S resolution, this only called for the development of new European consortiums in the field of drones and did not mention the critical paragraph on armed and unarmed drones. During the debate on these two resolutions, the issue of drones was not discussed. On the same day, a joint hearing with the foreign minister and defense minister took place. However, the issue of drones was not discussed in detail at that debate either.

In July 2014, MPs Duranti, Arturo Scotto, Michele Piras, Giulio Marcon, Gianni Melilla, Serena Pellegrino, Filiberto Zaratti, Erasmo Palazzotto and Annalisa Pannarale - all Green party members - asked a question for written answer in which they raised concerns about U.S. targeted killings. The question read:

*“In recent years the United States increased the use of unmanned and remotely controlled vehicles capable of performing military operations in complex, difficult and hostile scenarios as in Afghanistan, Pakistan, Yemen, Somalia, Mali and Niger”. [...] Major international organizations and non-governmental human rights organizations and even the UN itself, which has opened an investigation into the use of drones and their legality under international law, have repeatedly drawn attention to the collateral effects of the use of drones which in most cases have led to targeted killings and outright massacres in the countries mentioned above”.*

In the second part of the question, they called on the Italian government to be more transparent about American use of the Sigonella airbase and the deployment of drones at the station.

In February 2016, a joint commission brought up<sup>267</sup> the issue of armed drones on Libyan territory in the Assembly, asking whether the government intended to disassociate itself from U.S. raids on Libyan soil, despite these actions being conducted by allied forces<sup>268</sup>. Erasmo Palazzotto added that the answers provided by the government were insufficient, especially with regard to Sigonella<sup>269</sup>. As U.S. troops are using the Italian base, Italy may be complicit in strikes on Libyan soil, which would make it vulnerable to legal challenges. This means that the government should not make such decisions autonomously. Palazzotto also mentioned the “drone precision myth”, giving the examples of the death of Italian humanitarian worker Lo Porto and the *Médecins Sans Frontières* bombing in Afghanistan<sup>270</sup>. Both mistakes happened because of a lack of precise intelligence, and Italy should not be complicit in such strikes.

## LEGAL VIEW

Italy was the first European country to adopt a law on the use of drones. Provisions on remotely piloted aircraft of the Armed Forces<sup>271</sup> (Italian: *Disposizioni in materia di aeromobili a pilotaggio remoto delle Forze armate*) was adopted in July 2004 by the Italian Parliament.<sup>272</sup> It allows Italian armed forces to use

267 [http://www.camera.it/leg17/410?idSeduta=0576&tipo=documenti\\_seduta](http://www.camera.it/leg17/410?idSeduta=0576&tipo=documenti_seduta)

268 “e il Governo non reputi di doversi dissociare da iniziative unilaterali nei confronti della Libia anche se effettuate da parte di alleati e se non intenda per questo negare l'autorizzazione ad ogni supporto logistico, droni compresi, – attivo o passivo – delle infrastrutture militari nazionali e Nato presenti nel nostro Paese ad iniziative di guerra come quella riportata in premessa.” (3-02043)

269 <http://documenti.camera.it/leg17/resoconti/commissioni/bollettini/pdf/2016/03/03/leg.17.bol0604.data20160303.com04.pdf>

270 <https://www.msf.org/kunduz-hospital-attack>

271 <http://www.camera.it/parlam/leggi/041781.htm>

272 Borgia Fiammetta, *L'uso militare dei droni, profili di diritto internazionale* (2018), Editoriale Scientifica

drones in operations and training missions to ensure national defense and security. The second and third paragraphs provide restrictions on the flying of drones to avoid any interference with civil air traffic.

At the end of September 2017, the Obama administration revealed that it had been operating drone strikes against ISIS in Libya from an Italian base, but the Italian government has not yet revealed any details of these operations, nor even admitted that they took place. The information that public and civil society organizations have obtained is only partial: on the Sigonella airbase, for instance, the only public document is the Technical Arrangement 2006, which has not been corroborated by any new development related to the use of drones.

After the U.S. government admitted carrying out drone attacks from Libya, the NGOs the European Center for Constitutional and Human Rights (ECCHR), CILD (the Italian Coalition for Civil Liberties and Rights) and the Italian Network on Disarmament demanded more transparency about them. In 2016 ECCHR also filed requests under Italy's 2016 Freedom of Information Act (FOIA) seeking access to information on the legal framework regulating the presence and use of U.S. drones at and from Sigonella. In each case the authorities either denied the request or failed to respond. In July 2017, ECCHR filed a judicial complaint to the administrative tribunal (*Tribunale Amministrativo Regionale*, TAR) in Rome to obtain access to the documents. In December 2018, the TAR declared the complaint inadmissible on procedural grounds.

In March 2019, ECCHR appealed this decision to the Supreme Administrative Court (*Consiglio di Stato*) and the hearing has yet to be scheduled.<sup>273</sup>

## ACTUAL AND PLANNED POSSESSION AND USE OF MILITARY DRONES

Italy was the first country to buy unarmed Predator drones from the U.S.<sup>274</sup>. In 2001 it had already purchased six of them, followed by six MQ-9 Reaper (alias Predator B) drones in 2006. In 2011, Italy requested U.S. permission to weaponize its fleet<sup>275</sup>. The Italian government initially made the case for arming its drones<sup>276</sup> in order to better protect its forces in western Afghanistan. It renewed the request during the Libyan conflict. In May 2012, the *Wall Street Journal* revealed<sup>277</sup> that the U.S. had agreed to the request to arm the Predator and Reaper drones with Hellfire missiles and satellite-guided bombs. According to the article, the Obama administration had announced it would notify U.S. Congress of plans to sell “weaponization” kits to Italy, which “could open the door for sales of advanced hunter-killer drone technology to other allies.” According to an *Aviation News* article from May 2013, Italy became frustrated by U.S. ambivalence and began “looking for alternatives”, including supporting a European armed drone project. In November 2013, Italy and six other countries created a ‘club’ to produce military drones from 2020 onwards<sup>278</sup>.

273 <https://www.ecchr.eu/en/case/sicily-airbase-freedom-of-information-litigation-on-italys-involvement-in-us-drone-program/>

274 <https://www.efadrones.org/wp-content/uploads/2017/12/Italy.pdf>

275 <https://www.efadrones.org/wp-content/uploads/2017/12/Italy.pdf>

276 <https://truthout.org/articles/how-europeans-are-opposing-drone-and-robot-warfare-an-overview-of-the-anti-drone-movement-in-europe/>

277 <https://www.wsj.com/articles/SB10001424052702303395604577432323658176792>

278 <http://www.leonardocompany.com/en/-/alenia-aermacchi-neuron-european-ucav-technological-demonstrator>



The Italian company Finmeccanica AleniaAermacchi was significantly involved in the development of the Dassault nEUROn drone<sup>279</sup>, the experimental European unmanned combat vehicle which is currently being developed in collaboration with France, Sweden, Spain, Switzerland and Greece<sup>280</sup>.

Archivio Disarmo IRIAD is currently drafting a report about Italian military expenditure on drones. It is confirmed that Italy spent \$130m on having its drones armed by General Atomics (*Milex 2018* report) and will have spent \$5m in 2018<sup>281</sup>.

As outlined above, Italy owns six Reaper and six Predator drones and has been operating them alongside the U.S. in Libya<sup>282</sup> and Afghanistan<sup>283</sup>. Italian armed forces have experience in the use of drones, as they have used them in intelligence, surveillance, target acquisition and reconnaissance (ISTAR) operations globally. The Italian Air Force has flown Reaper<sup>284</sup> missions in 2011 in Libya as part of its contribution to NATO's Operation Unified Protector. In Afghanistan, it deployed both Predator and Reaper drones and then redeployed its Predator drones in Djibouti<sup>285</sup> in 2015 in order to support European anti-piracy operations. The Italian airforce reported that the Predator drones first arrived in Djibouti in October 2014. Indeed, in June 2014 the UN announced that it would purchase Italian Selex ES Falco drones for its MINUS.MA mission in Mali<sup>286</sup>, after their successful deployment by the UN peacekeeping force in the Democratic Republic of Congo.

ENAV, the company responsible for air traffic services in Italy, recently found an industrial partner for the creation of a drone operational branch. The branch will be in charge of registering and monitoring all drone air traffic. This newly founded drone company is part of ENAV's five year investment plan, worth €650m. The development of the platform will be managed by a conglomerate in which ENAV will hold 60% of the shares and a group led by Leonardo SpA, with stakes owned by Telespazio SpA and IDS Ingegneria dei Sistemi SpA, will acquire 40%.<sup>287</sup>

## COMPLICITY CHARGES

As mentioned in previous chapters, the Naval Air Station (NAS) Sigonella, also known as "the hub of the Med", is one of the main U.S. military installations in Italy. The base has had a central role in American drone warfare since 2008 when the U.S., in agreement with the Italian government, installed their unarmed reconnaissance drones, Northrop Grumman RQ-4B Global Hawks. In January 2016, the Italian government accepted the deployment of the U.S. armed Reapers to conduct operations in Libya and North Africa. Italy allowed the U.S. drones to take off from the Sigonella air base on a case by case basis, and only for defensive missions to protect personnel on the ground. According to news sources, American authorities are still trying to convince the Italian government to allow the drones to take part in offensive operations. At the request of the Italian Parliament, Francesco Tosato, head of the

279 The nEUROn program represents an important effort to develop new technologies and setting the basis for future military unmanned aircraft programs. This initiative envisages the manufacturing and first test flight of the first full-scale technological demonstrator of a Combat Unmanned Aerial Vehicle. The nEUROn recorded its first successful flight on December 1 2012.

280 <http://www.air-cosmos.com/le-neuron-en-essai-avec-le-charles-de-gaulle-78499>

281 <http://milex.org/2018/05/30/il-dossier-milex-sui-droni-militari-italiani/>

282 Strikes in Libya are monitored and reported here <https://airwars.org/conflicts/libya/news-analysis/>

283 <https://dronewars.net/2016/07/19/european-use-of-military-drones-expanding/>

284 [http://www.defenseweek.co.za/index.php?option=com\\_content&view=article&id=18077:italian-predator-completes-first-mission-over-libya&catid=35:Aerospace&Itemid=107](http://www.defenseweek.co.za/index.php?option=com_content&view=article&id=18077:italian-predator-completes-first-mission-over-libya&catid=35:Aerospace&Itemid=107)

285 <https://www.defensenews.com/global/europe/2014/12/17/italian-reaper-drones-to-be-used-for-crowd-monitoring/>

286 <http://www.leonardocompany.com/en/-/falco-un-peacekeeping>

287 <https://www.enav.it/sites/public/en/Media/Comunicati/Traduzione-di-droni-gara.html>



military affairs desk at Ce.S.I.<sup>288</sup>, wrote a report on the use of Global Hawk aircraft at the military base in Sigonella<sup>289</sup>. Published in May 2013, it revealed that the U.S. permanently stationed three unarmed RQ-4B Global Hawks in Sigonella and that NATO planned to station five additional Global Hawk drones at the airbase as part of its Alliance Ground Surveillance Program<sup>290</sup>.

Furthermore, the report underlined that — mindful of the instability in North Africa and the Sahel — the Italian government granted the U.S. temporary authorization to base six MQ-1 Predators in Sigonella, in addition to the three permanent Global Hawks: “By granting these authorizations, however, the Italian authorities have set strict limits and constraints to the missions of these specific platforms, in particular:

- any transaction which originates from the Italian territory is to be conducted as determined by bilateral agreements in force and in terms approved in Communications 135/11/ 4th Sec. September 15, 2012 and 135/10063 of 17 January 2013;
- permission to carry out flight departures is guaranteed only under the following conditions:
  - To lead Combatant Evacuation Operations and Hostage Rescue Operations;
  - To support the Government of Mali as provided in the Resolution of the Security Council of the United Nations in 2085;
  - If the Italian Authorities are notified prior to the execution of any activity;
  - U.S. Authorities shall inform the Governments of the Nations concerned about the activity at the same time.

[..] The structures temporarily deployed are subject to specific constraints:

- Transactions for the evacuation of civilian, and more generally non-combatant, personnel from war zones.
- Hostage Rescue Operations;
- The execution of all the activities of the flight shall be subject to the national requirements and previously coordinated with the ATC (Controllo Traffico Aereo) and the Office of Operations of the host base; [...]
- The activity of the MQ-1 structure must be conducted strictly in accordance with the operating procedures in force.

The temporary presence of the Predator in Sigonella, therefore, is subject to precise and rigorous caveats imposed by the Italian government and is essentially intended to allow American authorities to determine the deployment of these devices in case of crises in North Africa and the Sahel.”

In June 2014, journalists Alberto Bonanno and Alessandro Puglia published *The secret hangar of Sigonella with American spy drones*<sup>291</sup> (Italian: *L’hangar segreto di Sigonella con i droni spia americani*). This article confirmed the presence of Predator drones in Sigonella, highlighting that they are “capable of carrying arms and bombs”. This revelation led Green MPs to ask a critical parliamentary question for written answer<sup>292</sup> in July 2014. The MPs raised concerns about U.S. targeted killings in counter-terrorism and called for greater transparency about the deployment of American drones in Sigonella. They underlined:

288 <https://cesi-italia.org>

289 <http://www.parlamento.it/application/xmanager/projects/parlamento/file/repository/affariinternazionali/osservatorio/approfondimenti/PI0074App.pdf>

290 [https://www.nato.int/cps/en/natolive/topics\\_48892.htm](https://www.nato.int/cps/en/natolive/topics_48892.htm)

291 [https://www.repubblica.it/cronaca/2014/06/29/news/hangar\\_segreto\\_sigonella\\_droni\\_usa-90269461/](https://www.repubblica.it/cronaca/2014/06/29/news/hangar_segreto_sigonella_droni_usa-90269461/)

292 [https://palermo.repubblica.it/cronaca/2014/06/29/news/droni\\_di\\_sigonella\\_sel\\_il\\_governo\\_riferisca\\_in\\_parlamento-90296230/](https://palermo.repubblica.it/cronaca/2014/06/29/news/droni_di_sigonella_sel_il_governo_riferisca_in_parlamento-90296230/)

*“The Italian government has approved, in September 2012, the installation of drones in the area, including the ‘Predator’, but the government has never released any information, nor informed the Parliament about the operations and the use of drones installed at Italian bases and in particular in Sigonella. In the opinion of the questioners the supply of military infrastructure for the exclusive use of the United States armed forces, as well as other foreign military installations in the area, without any information about the operations the drones are involved in, is no longer tolerable, and stands often in conflict with constitutional and parliamentary provisions.”* Finally, the MPs asked whether the government is aware of the number and type of drones stationed at Sigonella; whether it is aware of the unmanned aircraft military operations conducted from the Sigonella base; and if, in the absence of information, the government intends to seek clarification from the U.S. government about the operations at the Sigonella base.

In 2016 the MP Fabrizio Cicchitto (Alternativa Popolare) made a statement regarding the legality of U.S. drones leaving from Sigonella, explaining that these strikes are not a ‘declaration of war’, but simply a necessity given the formation of terrorist cells in Libya and the need for counterterrorist measures.<sup>293</sup> Most recently, Intercept and La Repubblica have revealed that about 550 drone missions have been conducted from the Sigonella airbase since the start of the military intervention in Libya in 2011<sup>294</sup>. The former defense minister Roberta Pinotti has declared that all this takes place within the framework of the

secret pact between Rome and Washington and that there have been no civilian casualties: only terrorists have been targeted.<sup>295</sup>

In October 2014, Italy sent its Predator drones from Afghanistan to Djibouti to support the European anti-piracy operations. However, by September 2013 the journalist Manlio Dinucci had already claimed in his article *Tricoloured military base in Djibouti*<sup>296</sup> (*Base militare tricolore in Gibuti*) that “in reality Italian forces are sent to Djibouti as part of the ‘covert war’ conducted in Africa and the Middle East by United States Joint Forces Command’s special operations”.

According to the article, published in *Il Manifesto*, every day “U.S. spy drones, killer drones and F-15E Strike Eagles, take off from the U.S. airbase [in Camp Lemonnier in Djibouti] and are directed in particular to the neighbouring countries Somalia and Yemen. [...] They leave at night, with helicopters and airplane special commandos who carry out the raids. They operate incognito, so that their names are unknown even to the American military stationed at the base. [...] French legionnaires have the same tasks.” The article claimed that the Italian military would now join these operations.

In response, four Green MPs asked<sup>297</sup> the foreign affairs and defense ministers about the possible involvement of Italian drones in U.S. covert drone war in Djibouti. Nearly six years on, they have not received an answer.

293 <https://www.youtube.com/watch?v=wufb5JnZaf8>

294 [https://rep.repubblica.it/pwa/esclusiva/2018/06/20/news/la\\_guerra\\_segreta\\_dei\\_droni\\_svelati\\_550\\_raid\\_americani\\_in\\_libia\\_quasi\\_tutti\\_da\\_sigonella-199568872/](https://rep.repubblica.it/pwa/esclusiva/2018/06/20/news/la_guerra_segreta_dei_droni_svelati_550_raid_americani_in_libia_quasi_tutti_da_sigonella-199568872/)

295 <https://www.liberoquotidiano.it/news/italia/13352549/guerra-libia-550-attacchi-coi-droni-lanciati-da-italia-sigonella.html>  
*“Come ho dichiarato in Parlamento, il governo ha autorizzato di volta in volta le richieste americane di usare la base di Sigonella per compiere attacchi con droni contro obiettivi terroristici in Libia e per l’operazione del 2016 contro l’ Isis a Sirte. Non sono mai stati segnalati danni collaterali né vittime civili”*

296 <https://ilmanifesto.it/base-militare-tricolore-a-gibuti/>

297 [http://banchedati.camera.it/sindacatoispettivo\\_17/showXhtml.Asp?idAtto=6881&stile=7&highlight=1&paroleContenute=%27droni%27+%7C+%27INTERROGAZIONE+A+RISPOSTA+IN+COMMISSIONE%27](http://banchedati.camera.it/sindacatoispettivo_17/showXhtml.Asp?idAtto=6881&stile=7&highlight=1&paroleContenute=%27droni%27+%7C+%27INTERROGAZIONE+A+RISPOSTA+IN+COMMISSIONE%27)

Brigadier General Dick Swijgman, the deputy Operation Commander of the EU Naval Force explained: *“In the coming months, the remotely-piloted aircraft will be used to monitor the coast of Somalia, where pirates have operated, and the unit will be tasked with alerting competent authorities in case of possible attacks.”*<sup>298</sup>

## CIVIL SOCIETY RESPONSE

Over the past two years, the debate about armed drones among Italian civil society organizations has grown. In November 2013, the NGO *Rete Italiana per il Disarmo* (Italian Disarmament Network) organized a debate titled “Peace and disarmament in the near future: From the banning of landmines and cluster munitions to the mobilisation against drones and killer robots.” Four years later the network set up an event which attracted academics, national media and a large international presence at the Università Statale in Milan<sup>299</sup>. This generated considerable debate in the national press and prompted the Italian Research Institute Archivio Disarmo to start a series of focus group surveys across the country in order to gauge public perceptions about the use of armed drones. In addition, the University of Catania and ECCHR have organized a day-long conference in Catania on the legal implications of U.S. strikes for Italy in terms of complicity. As well as Archivio Disarmo and IRIAD, CILD is another Italian civil society group working on drones and extrajudicial killings. In Sicily the No MUOS<sup>300</sup> movement campaigns against the Mobile User Objective System (MUOS). This system is installed in Niscemi and is used to coordinate U.S. military systems, in

particular drones that are stationed in Sigonella. The movement’s opposition to MUOS, however, mainly stems from environmental concerns rather than about armed drones per se.

Cento Studi Internazionali (Ce.S.I.) is a think tank on international studies whose analysts have published a few articles on drones:

- *European perspectives in the field of UAV and UCAV*<sup>301</sup> (Italian: *Prospettive europee nel settore UAV e UCAV*) (June 2013) by Davide Corazzini.
- *Use of “Global Hawk” aircraft at the military base in Sigonella*<sup>302</sup> (Italian: *Impiego di velivoli “Global Hawk” presso la base militare di Sigonella*) (March 2013) by Francesco Tosato.

Francesco Tosato is the head of the Military Affairs Desk of the Ce.S.I. and collaborates with the Italian Defense Magazine and the Military Review. He works on issues related to the defense industry and the modernization of the national armed forces, and analyses specific weapon systems in foreign armies. He focuses in particular on the problem of transparency with regard to the use of drone strikes for targeted killings, but sees a general advantage of the use of armed drones if they are deployed according to international law.

Istituto Affari Internazionali (IAI) is one of the leading Italian defense and security think tanks. The Institute provides a lot of research about the Italian armed forces, but few of its publications are specifically on drones:

298 [http://www.defenseweb.co.za/index.php?option=com\\_content&view=article&id=36539:italian-air-force-predators-supporting-somali-anti-piracy-ops&catid=35:Aerospace&Itemid=107](http://www.defenseweb.co.za/index.php?option=com_content&view=article&id=36539:italian-air-force-predators-supporting-somali-anti-piracy-ops&catid=35:Aerospace&Itemid=107)

299 <http://amista.unimi.it/2017/09/14/droni-armati-italia-europa-problemi-prospettive-strategie-militari-esigenze-trasparenza-tutela-dei-diritti-fondamentali/>

300 <http://nomuos.org/en>

301 <https://cesi-italia.org/index.php?page=articoli&id=160>

302 <http://www.parlamento.it/application/xmanager/projects/parlamento/file/repository/affariinternazionali/osservatorio/approfondimenti/PI0074App.pdf>

- *Vested Interest or Moral Indecisiveness? Explaining the EU's Silence on the U.S. Targeted Killing Policy in Pakistan*<sup>303</sup> (March 2012) is a Working Paper on drones by Nathalie Van Raemdonck, a guest researcher at Istituto Affari Internazionali (IAI) within the framework of the Leonardo Da Vinci Programme.
- *UAVs and European Security*<sup>304</sup> (Italian: *I velivoli a pilotaggio remoto e la sicurezza europea*, July 2016) is a Working Paper by Alessandro Ungaro and Paola Sartori, discussing the use of armed drones within a European perspective, which also focuses on the vulnerability of these weapons to cyber attacks.<sup>305</sup>

The main publication on the issue of armed drones in Italy is by IRIAD, the Italian Research Institute for Disarmament. *Armed Drones, proliferation or control?* was launched in Rome in April 2017 and gave an overview of the legal, political and multilateral situation regarding drones in Italy<sup>306</sup>. The report was well received by the public and attracted considerable media coverage on *EUNews*<sup>307</sup>, *Repubblica*<sup>308</sup> - which is the main Italian newspaper - and a number of other publications.

Maurizio Simoncelli (Deputy Director at Archivio Disarmo) published an article in the Italian magazine *Mosaico di Pace*, where he discusses the dangers of lethal autonomous weapons (LAWS)<sup>309</sup>. The article mentions a Stockholm International Peace Research Institute dataset which outlines the existence of

approximately 381 drone systems (175 of which are armed). Finally, Srdjan Cvijic at the Open Society European Policy Institute and Francesco Vignarca at IRIAD published an article in the Catholic newspaper *Avvenire* in November 2016<sup>310</sup> calling for better regulation of such systems.

## MEDIA DEBATE

Policy discussions about Italy's drone use are largely part of a broader geopolitical debate on the Italian involvement in global (especially Middle Eastern and North African) affairs and the nature of its U.S. and NATO partnership. Public opinion, political elites and civil society in the country remain barely acquainted with the legal and ethical dimension of the armed drones program.<sup>311</sup> If anything, the use of lethal drones and more broadly air warfare (if conducted within the framework of multilateral operations) is preferred by the majority of the public to the deployment of troops on the ground<sup>312</sup>. "Operation Ancient Babylon" - the deployment of Italian forces during the Iraq war from 2003 to 2006, and the loss of lives of the Italian military during that operation - remains a bitter reminder of the political cost of foreign intervention via deployment of the troops on the ground. The armed drones program and air warfare, especially if conducted under the politically more acceptable international (UN) or coalition (NATO) frameworks, are largely seen as safer alternatives to military engagement abroad.

303 <http://www.iai.it/sites/default/files/iaiw1205.pdf>

304 [http://www.iai.it/sites/default/files/iaiq\\_16.pdf](http://www.iai.it/sites/default/files/iaiq_16.pdf)

305 *I velivoli a pilotaggio remoto e la sicurezza europea: Sfide tecnologiche e operative*, Alessandro R. Ungaro e Paola Sartori

306 <https://www.disarmo.org/rete/docs/5137.pdf>

307 <http://www.eunews.it/2017/05/04/droni-militari-la-minaccia-volante/84542>

308 [https://www.repubblica.it/politica/2017/04/19/news/droni\\_armati\\_alla\\_camera\\_l\\_allarme\\_degli\\_studiosi-163403270/](https://www.repubblica.it/politica/2017/04/19/news/droni_armati_alla_camera_l_allarme_degli_studiosi-163403270/)

309 <https://www.mosaicodipace.it/mosaico/a/44521.html>

310 <https://www.avvenire.it/opinioni/pagine/i-droni-con-le-armi-uccidono-due-volte>

311 <http://antoniomazzeoblog.blogspot.com/2013/04/droni-frontiere-tecnologiche.html>

312 <https://www.disarmo.org/rete/docs/5138.pdf>

Nevertheless, when people were asked about the U.S. use of armed drones (Pew Research Centre poll in July 2014<sup>313</sup>), an overwhelming majority were against (74% against, 18% for; among left wing voters, 82% against and on the right, 63% against).

Much like Germany, Italy – because of the political legacy of the second world war – takes a different approach to war and defense from France or the UK. Article 11 of the foundational document of the Italian Republic, the 1948 Constitution, states that “Italy rejects war as an instrument of aggression against the freedoms of other peoples and as a means for settling international controversies”. This has become a battle cry for pacifist organizations in the country. It explains the opposition to the lethal use of armed drones.

IRIAD organized a poll on the media debate on drones in Italy in 2016, and found that no more than 40% of a sample of 1000 Italian citizens were “informed” about the drones issue (Doxa CATI opinion poll)<sup>314</sup>.

Moreover, when mentioning drones, the Italian daily newspaper *La Stampa* tended to analyze their commercial rather than their military use. Media interest grew after the death of Giovanni Lo Porto in 2015<sup>315</sup> and thanks to the active work of the Italian Disarmament Network. Through public events and campaigning in schools and universities, the issue is becoming more and more salient<sup>316</sup>.

Until the Italian Network on Disarmament started discussing this issue more in depth, much media debate focussed solely on the U.S. and did not make the link to Italian policy or Italian complicity in drone strikes. Currently most of it focuses on the

ongoing Lo Porto case and the military expenditure that the Piaggio PHH2 acquisition would involve. Gino Strada, the founder of the independent Italian humanitarian organisation ‘Emergency’, has criticized Federica Mogherini’s decision to arm the Kurdish army and warned the Italian government and western democracies against responding to jihadist terrorism by violence<sup>317</sup>. According to him, drone attacks are comparable to terrorist attacks and could actually strengthen the latter. The M5S parliamentarian Alessandro Da Battista has used the same argument in an article, With drones, terrorism is the only weapon left to those who rebel<sup>318</sup>.

## CONCLUSION

The main issue with regard to Italy does not just lie with possession and upcoming use of its newly armed Reaper drones, but rather with the dangerous precedent of U.S. use of its Sigonella airbase in Sicily. The lack of publicly available information on how such base is used by U.S. drones and the absence of a mature debate in Parliament over the nature of Sigonella does not allow for further developments at this point. The most recent legal victory – which is somewhat connected to this issue – was obtained by Italian civil society with regard to the conflict in Yemen. On June 26 2019, the Italian lower chamber committed to “*adopting the necessary acts to suspend the export of aircraft bombs, missiles and their components that can be used to hit the civilian population of Saudi Arabia and the United Arab Emirates until there are concrete developments in the peace process with Yemen*”. This is a positive development, but does not address the Sigonella issue or future use by Italy of its armed drones.

313 <https://www.disarmo.org/rete/docs/5137.pdf>

314 <https://www.disarmo.org/rete/docs/5137.pdf>

315 <https://www.disarmo.org/rete/docs/5137.pdf>

316 <https://www.disarmo.org/rete/docs/5137.pdf>

317 <https://it.blastingnews.com/politica/2014/08/armi-ai-curdi-gino-strada-con-il-m5s-e-critica-la-posizione-della-sinistra-00121323.html>

318 <http://www.ilfattoquotidiano.it/2014/08/16/iraq-di-battista-il-terrorismo-e-la-sola-arma-rimasta-a-chi-si-ribella/1092081/>



## 6. EUROPEAN UNION: A ZERO ACCOUNTABILITY BUCK-PASSING GAME

### INTRODUCTION

In the past few years, European institutions have become increasingly engaged with the topic of military drones, their development, proliferation and use for targeted killings. This has led to European Parliament (EP) resolutions, public hearings, and a draft Common Position proposed by the EP. In April 2012, several Members of the European Parliament (MEPs) issued a written declaration on the use of armed drones for targeted killings, in which they urged the EU to ban combat drone missions unless the criteria leading to these operations are declassified, so as to prohibit targeted killings and to penalize their perpetrators. These developments have not led to any concrete action on the part of the European Commission or European Council to regulate the use and acquisition of these weapons — though the Parliament and the Council of Europe, as we shall see, have acted. In addition, competition with drone manufacturers outside Europe — coupled with increasing instability in its eastern and southern neighbourhoods and British and U.S. disengagement — has prompted larger European investments in the defense sector, and an emerging trend for more defense spending<sup>319</sup>. One of the reasons EU Member

States and the EU in general have yet to release guidance on drone technology may be because it would be a pre-emptive step. Very few EU Member States are using armed drones at the moment, so the creation of a legal normative framework is perceived as unnecessary. In addition, the EU has argued that issues of this nature are the prerogative of member states. For their part, Member States argue that a multilateral process could push them towards action<sup>320</sup>, creating a “catch-22” situation.

### EU STATEMENTS AND COMMITMENTS

Although the EU has not formulated a clear common position on the use of armed drones, some answers to MEPs’ questions, a few statements at UN bodies and the most recent increase in the EU Defense Fund (EDF) budget reveal its current approach to armed drones and targeted killings. In February 2014, the European Parliament adopted Resolution 2014/2567(RSP)<sup>321</sup> on the use of remotely piloted aircraft systems, urging the EU to ‘*develop an appropriate policy response at both European and global level which upholds human rights and international humanitarian law*’. The resolution condemns the

319 Goxho (2019), European defense fund and European drones: mirroring U.S. practice?, *Global Affairs*, DOI: 10.1080/23340460.2019.1600379

320 <http://www.strifeblog.org/2018/10/11/the-buck-passing-stops-here-on-european-norms-for-drones/>

321 <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2014-0172>



illegal use of armed drones, especially the practice of targeted killings outside declared war zones and outside the international legal framework, because *‘unknown numbers of civilians have been killed, seriously injured or traumatized in their daily lives by drone strikes outside declared conflict zones’*<sup>322</sup>. The resolution also calls upon EU member states to strictly refrain from facilitating or taking part in the practice of extrajudicial targeted killings. It points out that participation also means sharing relevant information, which would make a state complicit in unlawful acts. If there are civilian losses, *‘states are under the obligation to conduct prompt, independent investigations and, if the allegations are proved correct, to proceed to public attribution of responsibility, punishment of those responsible and provision of access to redress, including payment of compensation to the families of victims’*.

Moreover, the resolution emphasizes the need to include European production of armed drones in multilateral arms control regimes, as the military drone market is growing rapidly in a “regulatory lacuna”<sup>323</sup>. The Parliament recalled that ‘any expenditure arising from operations having military or defense implications is excluded from EU budget funding’. (Since then, the situation has changed, as the new European Defense Fund will be devolved to the research and development of indigenous drone technology.)

Almost a year after this resolution, the Parliamentary Assembly of the Council of Europe unanimously adopted another resolution, *Drones and Targeted Killings: the Need to Uphold Human Rights and International Law*<sup>324</sup>. The Assembly identified some

legal issues which could emerge because of lack of clarity and non-compliance with national and international law. It called upon states to respect the limits of international humanitarian law (IHL) and international human rights law (IHRL), as there should not be a permissive interpretation of the judicial concept ‘imminent threat’. In addition, states should be transparent about their authorization procedures for targeted killings, and investigate all deaths caused by drone strikes for accountability purposes and for compensation to victims’ relatives.

The former EU High Representative Catherine Ashton stated in an answer<sup>325</sup> to a parliamentary question<sup>326</sup> from MEP Monica Luisa Macovei (EPP) in February 2014 that *“With regard to drone strikes, there exists already a legal framework concerning the Law of Armed Conflict, including International Humanitarian Law. The EU’s position is that drone strikes should be consistent with these norms.”* She explained the EU’s international engagement by saying that *“the Commission is not in a position to initiate global standards for drone strikes, but participates in international fora, particularly the UN, to the extent that its status permits.”*

Responding to an MEP question on the strong UN resolution on armed drones<sup>327</sup>, the former High Representative replied<sup>328</sup> very vaguely by saying that *“there are existing national, EU and international norms regarding the use of force, surveillance and data protection. The EU’s position is that they must be respected. The adoption of resolutions at the UN level is subject to prior consultations between Member States and the EU regarding respective positions.”*

322 EFAD drones, Country profile: the EU <https://www.efadrones.org/countries/european-union/>

323 Ibid.

324 Document available here <http://website-pace.net/documents/19838/1085720/20150127-TargetedKillings-EN.pdf/6b637090-5af9-4d08-b9d4-7dc45dd09d2f>

325 <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2013-011894&language=EN>

326 <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2013-011894&language=EN>

327 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bWQ%2bE-2014-000012%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>

328 <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2014-000012&language=EN>

Regarding U.S. targeted killings, Ashton said in an answer to a parliamentary question on killings by drones in Pakistan that *“the EU raises these matters in its regular consultations with the U.S. 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 U.S. legal advisers. The EU has neither the authority nor the means to conduct investigations into specific cases occurring in third countries such as Pakistan. It does not have the authority or the means to bring individuals to justice or provide compensation or redress for possible victims.”*

The EU issued a statement in the same year at the clustered interactive dialogue with the special rapporteur on counter-terrorism<sup>329</sup>, which focussed on Ben Emmerson’s report on the use of remotely piloted aircraft, or drones, in extraterritorial lethal counter-terrorism operations. According to the statement, the EU expects *“states to act in conformity with their international obligations and to refrain from perpetrating unlawful targeted killings inside and outside their territory.”*

The EU promised to give Emmerson’s report “due attention.” In a previous statement at the General Debate of the UN HRC<sup>330</sup> in March 2013 the EU did not mention the use of drones explicitly, but underlined that *“states must ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular, international human rights, refugee and humanitarian law”* and

*“that criminal justice systems based on respect for human rights and the rule of law [...] continue to be the best means of effectively countering terrorism and ensuring accountability.”*

In October 2016, a group of states led by the U.S. published a Joint Declaration on the Use and Export of UAVs. The declaration put forward suggestions linking export of armed drones with international legal principles on their use and potential misuse. Thirty-two European states supported the call, yet EU members did not make clear what their national policies are on the use of armed drones in relation to targeted killings.

The most recent high level EU statements have decisively shifted towards the use of autonomous weapons and artificial intelligence. At the European Defense Agency conference From Unmanned to Autonomous Systems: Trends, Challenges and Opportunities, the High Representative Federica Mogherini said: *“We are entering a world where drones could independently search for a target and kill without human intervention. Artificial intelligence could take decisions on life and death, with no direct control from a human being. The warning about the dangers ahead is coming from the very people who are working on artificial intelligence: researchers, pioneers, and business people as well, who don’t want to see their own discoveries exploited for malicious goals”*.<sup>331</sup>

Most EU statements on defense and security focus on the increase in EU defense funds<sup>332</sup>, and even though drones are often mentioned, there is still no clarity regarding how much of that spending will be dedicated to drones, both in terms of research and development.<sup>333</sup>

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329 Available at OHCHR Extranet

330 Ibid.

331 Text available here <https://www.eda.europa.eu/info-hub/press-centre/latest-news/2018/11/29/federica-mogherini-opens-annual-conference-focused-on-unmanned-and-autonomous-systems>

332 <https://euobserver.com/opinion/142205>

333 <https://www.irishtimes.com/news/world/europe/eu-reveals-plans-to-boost-spending-on-military-capabilities-1.2887642>

## ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament has been key in pushing the EU towards a stronger position on the use of armed drones. The European Green and Social Democratic (GUE/NGL) parties have been the most critical of the use of armed drones and targeted killings, but individual MPs from the European United Left and Nordic Green Left and the European People's Party (EPP) have also been outspoken on the issue. The Progressive Alliance of Socialists and Democrats (S&D), Greens, the Alliance of Liberals and Democrat for Europe, EPP and GUE/NGL parties also issued a strong joint motion for a resolution on the use of armed drones<sup>334</sup>. This shows that all the main European parties are concerned about the lack of regulation of armed drones and extrajudicial targeted killings, and claim a common European position.

As previously mentioned, in February 2014 the European Parliament adopted the cross-party resolution on the use of armed drones<sup>335</sup>. Concretely, MEPs called on the High Representative for Foreign Affairs and Security Policy, the Member States and the Council to:

- “oppose and ban the practice of extrajudicial targeted killings;
- ensure that the Member States, in conformity with their legal obligations, do not perpetrate unlawful targeted killings or facilitate such killings by other states;
- include armed drones in relevant European and international disarmament and arms control regimes;

- commit to ensuring that, where there are reasonable grounds for believing that an individual or entity within their jurisdiction may be connected to an unlawful targeted killing abroad, measures are taken in accordance with their domestic and international legal obligations;” [...]
- “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”.

During the debate<sup>336</sup> on this resolution, Barbara Lochbihler (Greens), Ana Gomes (S&D), Sabine Lösing (GUE/NGL), Richard Howitt (S&D) and Christian Dan Preda (EPP) called for a firm European position and greater regulation of the use of armed drones. In addition, Gomes argued that: “[ ] the truth is that when used in situations and areas where there is no armed conflict declared, their use is clearly illegal and a violation of international law, in particular human rights law, and also humanitarian law. That is why, at a time when several Member States of the European Union are preparing to develop this technology, it is imperative that this is accompanied by explicit regulations on the use of drones and the responsibilities under international law, criminal law and international criminal law. [...] This means that any extrajudicial execution outside the context of war is a summary execution rendered punishable, and can even be a territorial violation of third countries. [...] So it is also urgent for the EU to engage for the inclusion of drone technology in international arms control and non-proliferation agreements and treaties.”

334 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P7-RC-2014-0201+0+DOC+XML+V0//EN>

335 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FTEXT%2BTA%2BP7-TA-2014-0172%2B0%2BDOC%2BXML%2BV0%2F%2FEN&language=EN>

336 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20140226+ITEM-015+DOC+XML+V0//EN&language=EN>

The European Parliament DROI (Human Rights) and SEDE (Security and Defense) Subcommittees held a public hearing<sup>337</sup> in April 2013 on the human rights implications of the use of drones. MEPs raised concerns about drones being used for targeted killings and called for a worldwide debate on the use of unmanned aircraft and the creation of global standards. During the hearing, Gomes was particularly vocal and called on EU governments to be more outspoken. A DROI study, *'Human rights implications of the usage of drones and unmanned robots in warfare'*,<sup>338</sup> was presented. The report made three main recommendations:

- *"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.*
- *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.*
- *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."*

MEPs also regularly used parliamentary questions to raise concerns on the American drone policy and European financing of drone research. Most of the critical MEPs were part of the Greens and S&D

groups, but some MEPs from other groups also raised critical questions. Alyn Smith and Lochbihler asked the High Representative about steps taken following the Parliament's resolution on drones<sup>339</sup>. They cited new *"reports that U.S. military bases in Germany play a role in targeted killings by drones in Yemen and Somalia"* and a British expert commission that *"called for guarantees to ensure that the UK, through its military and intelligence cooperation with the U.S.A, does not collude with drone strikes that could breach international law."*

Additionally, the MEPs asked whether the High Representative agreed *"that states conducting drone strikes outside of armed conflict are obliged to conduct transparent investigations into all allegations of arbitrary killings and to provide effective remedies where violations are confirmed, as stated by UN Special Rapporteurs Christoph Heyns and Ben Emmerson?"*

One of the most critical questions MEP asked about the legal framework for the use of armed drones<sup>340</sup> was raised by Green MEPs (Barbara Lochbihler, Tarja Cronberg, Ulrike Lunacek, Jean Lambert, Reinhard Bütikofer, Nicole Kiil-Nielsen, Judith Sargentini) in February 2014: *"Has there been any discussion within the Council or the EEAS or in third countries on the issue of targeted killing by drones? If so, could the Council comment on these discussions? Does the Council agree that the targeted killings by drones outside situations of armed conflict violate international law and should be opposed? Would the Council agree with the suggestion to adopt an EU common position on a legal framework for the use of armed drones before taking any further decisions on the development of drone programmes at Member State and EU levels? Is the Council willing to take initiatives at international level to ensure the compatibility of the use of armed drones*

337 <http://www.europarl.europa.eu/news/en/headlines/world/20130426ST007642/meps-call-for-a-global-debate-on-the-use-of-drones>

338 [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/410220/EXPO-DROI\\_ET\(2013\)410220\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/410220/EXPO-DROI_ET(2013)410220_EN.pdf)

339 [http://www.europarl.europa.eu/doceo/document/E-8-2014-008989\\_EN.html?redirect](http://www.europarl.europa.eu/doceo/document/E-8-2014-008989_EN.html?redirect)

340 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FTEXT%2BQ%2BQ-2014-000031%2BQ%2BDOC%2BXML%2BV0%2F%2FEN&language=EN>

*with international law and to prevent extrajudicial executions by drones? Is the Council willing to promote the inclusion of drone technology in relevant European and international arms control regimes?”*

Marc Tarabella asked another critical question in October 2013 about killings by drones in Pakistan<sup>341</sup>. The MEP referred to Amnesty International’s report, which revealed that some of the U.S. drone strikes in Pakistan could be considered war crimes. Tarabella asked whether *“European authorities intend to ask the U.S. authorities to disclose the facts and legal basis for the drone strikes in Pakistan and information on any investigations into killings by these drones.”* Monica Luisa Macovei (EPP) also asked a question on the EU approach to drone strikes<sup>342</sup>. After referring to the American use of lethal force outside zones of active hostilities, in particular in Pakistan, Yemen and Somalia, and the work on drone programs in China, Russia, Saudi Arabia and Turkey, the MEP asked: *“What is the EU’s stance on drone strikes and on developing an EU drone programme? What policy initiatives has the Commission proposed to define global standards for drone strikes that cover targeting, transparency, accountability and other topics?”*

Before the new EDF budget proposal was made public, a number of MEPs raised concerns about EU funding for drone research programmes, which are part of the budget for military projects. Given the recent increase in EU defense spending, this is particularly relevant. Rina Ronja Kari (GUE/NGL) asked a question for written answer on EU support for drone research<sup>343</sup> in March 2014. Later that year Barbara Lochbihler and Alyn Smith asked a question about EU funding of drone research for civilian and military use<sup>344</sup> and pointed out the fact

that ‘dual use technologies’ allow defense companies to benefit from EU research grants. They asked the Commission what steps it would undertake to better inform the European Parliament about EU funding on drone technologies.

In 2015, Howitt and Khan asked Federica Mogherini how the Commission plans to implement the EP resolution on armed drones and targeted killing<sup>345</sup>, but received a standard reply from the Cabinet: *“The Commission would recall the HR/VP’s statement to the EP Plenary on 27 February 2014 which stresses the importance of any use of armed drones being consistent with international law”*.<sup>346</sup>

In 2016 Hilde Vautmans (ALDE) asked a parliamentary question for written answer to the European Council: *“Although it is the task of the Member States to deploy drones, it would probably still be a good idea to establish a legal framework at European level for the use of armed drones. 1. Does the Council regard armed drones as ordinary weapons that can be used to combat terrorism and in time of war? 2. What steps has the Council taken to act on the European Parliament Resolution of 27 February 2014 [...] calling on it to adopt an EU common position on the use of armed drones?”*<sup>347</sup>

Since 2015, most parliamentary questions have focused on drones patrolling the Mediterranean or on Frontex operations, and some of the original focus on regulations for procurement, development and use of armed drones has been lost. MEPs have asked whether drones are being used safely within European borders and about how the Commission plans to regulate them in order to avoid privacy breaches, but there have been no recent questions

341 <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2013-012201&language=EN>

342 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bWQ%2bE-2013-011894%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>

343 <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=P-2014-002891&language=EN>

344 [http://www.europarl.europa.eu/doceo/document/E-8-2014-008990\\_EN.html?redirect](http://www.europarl.europa.eu/doceo/document/E-8-2014-008990_EN.html?redirect)

345 [http://www.europarl.europa.eu/doceo/document/P-8-2015-013461\\_EN.html](http://www.europarl.europa.eu/doceo/document/P-8-2015-013461_EN.html)

346 [http://www.europarl.europa.eu/doceo/document/P-8-2015-013461-ASW\\_EN.html](http://www.europarl.europa.eu/doceo/document/P-8-2015-013461-ASW_EN.html)

347 [http://www.europarl.europa.eu/doceo/document/E-8-2016-005453\\_EN.html](http://www.europarl.europa.eu/doceo/document/E-8-2016-005453_EN.html)



on targeted killings or on establishing a clear regulatory framework for armed drones. Despite a recent parliamentary report, *Towards an EU Common Position on the Use of Armed Drones*, and the increase in EU funds for the development of such technology, there seems to have been a shift in MEPs' focus due to more pressing issues, such as border patrolling and the migration crisis.

In April 2016 the EP adopted Resolution 2016/2662(RSP), on the targeting of hospitals and schools as violations of international humanitarian law. It briefly refers to resolution 2014/2567(RSP), and while condemning the attacks on humanitarian aid workers, the resolution reiterated '*its grave concern over the use of armed drones outside the international legal framework, and insists on its call on the Council to adopt an EU common position on the use of armed drones*'.

The EP subcommittees on Human Rights and on Security and Defense held a hearing in Brussels in June 2016 which focused on how the use of drones in the fight against terrorism affects human rights. During the first session, experts Jennifer Gibson (Reprieve), Radhya Almutawakel (Yemeni Mwatana Organisation for Human Rights) and drone strike victim Faisal Bin Ali Gaber told the Parliament about issues related to civilian casualties and affected communities, focusing on the applicable legal frameworks, transparency, accountability and the question of meaningful compensation mechanisms. During the second session, Peter Round (European Defense Agency) and Francois Rivasseau (European External Action Service) told the Parliament about the development of European Remotely Piloted Aircraft Systems and what the EU policy response could be.

The following month the European Forum on Armed Drones (EFAD) launched the Call to Action during a roundtable in Brussels. EFAD calls upon states to establish clear policies, prevent complicity, provide transparency, and establish accountability

regarding the use of armed drones, and to prevent the proliferation of these instruments.

In June 2017, the Human Rights Subcommittee of the EP commissioned a paper drafted by Jessica Dorsey, former coordinator of EFAD and Associate Fellow at the International Centre for Counter-Terrorism at The Hague, which includes a briefing with recommendations on what a future Council decision on the use of armed drones should entail. *Towards an EU Common Position on the Use of Armed Drones*<sup>348</sup> stipulates the elements necessary for a European-wide policy and describes the legal framework and the criteria needed at national levels in order to reflect the EU's commitment to the rule of law and former EP Resolutions, especially Resolution 2014/2567(RSP). Various EFAD members provided input for the paper, which was arguably the most relevant development with regard to armed drones at the EU level since the formation of EFAD.

In January 2018, in an effort to move the debate on armed drones forward, Green/European Free Alliance MEPs attempted to link draft legislation on EU-wide promotion of research, development and production of armed drones to the human rights implications of their use. The EP's Committee on Foreign Affairs inserted an amendment to the draft opinion, calling for the exclusion of armed drones in the initiative until there is a Council decision which upholds human rights and international humanitarian law, and addresses the issues surrounding the use of armed drones. The amendment was rejected by the European Parliament.

## ACTUAL AND PLANNED POSSESSION OF MILITARY DRONES

The EU does not possess armed drones yet, but recent changes to its defense budget and bilateral plans amongst Member States to develop indigenous drones - coupled with a stated Franco-German

348 [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578032/EXPO\\_STU\(2017\)578032\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578032/EXPO_STU(2017)578032_EN.pdf)



intention to create a European army - could lead to significant militarization of the EU budget for research and development of such technology.

In addition, apart from the bilateral European Member State projects that are currently underway (see previous chapters) the nEUROn project is also being developed. This is aimed at creating a stealth platform, equivalent in size to a fighter plane and capable of detecting a ground target autonomously, and carrying out an air strike using an internal bomb bay<sup>349</sup>. The French procurement agency Direction Générale de l'Armement (DGA) manages the project, and a single contractor, Dassault Aviation<sup>350</sup>, is in charge of the implementation of the main contract. Ever since the beginning of the program, French authorities have said they want the UCAV technological demonstrator project to contribute to the build-up of a European defense identity, by opening it up to cooperation with other European Member State industries such as Italy's Alenia, Sweden's SAAB, Spain's EADS-CASA, Greece's HAI and finally Switzerland's RUAG.<sup>351</sup> A platform similar to the nEUROn could be used in collaboration with the Future Combat Air System (FCAS), the fighter programme developed by France and Germany that should have the capacity to operate a "swarm of drones".<sup>352</sup>

The fact that Europe does not possess armed drones has given the EU an excuse not to examine the issue in more depth. In a 2012 *New York Times* article<sup>353</sup>, Reinhard Bütikofer, a German MEP and former Green Party leader, warned that Europeans should be "asking questions about the use of the drones in the context of international law" and explained that

due to a "moral detachment from the issue because, in the case of Germany, we don't have armed drones" the EU is ignoring this issue.

One year later, in October 2013, the EU High Representative released a Final Report entitled *Preparing the European Council in December 2013: Report on CSDP*<sup>354</sup>. The report highlighted that "*Remotely Piloted Aircraft Systems (RPAS) are very likely to constitute a key capability for the future. They offer a broad spectrum of capabilities that can contribute to various aspects of EU-led military and civilian operations. [...] The objective is to promote a European approach for developing this key future capability.*"

The Conclusions<sup>355</sup> following the European Council on Defense in December 2013 underlined the European commitment to developing key capabilities and addressing shortfalls through concrete projects by Member States, supported by the European Defense Agency (EDA). It also stated its "commitment to the development of Remotely Piloted Aircraft Systems (RPAS) in the 2020-2025 timeframe".

The recent increase in the EU defense budget confirms these intentions. Until that, most EU work on drones had been around a dual-use technology research and development strategy. In July 2013, the Commission published a *Communication*<sup>356</sup> that contains an Action Plan for a more competitive and efficient defense and security sector. The Communication announced a set of measures to foster synergies between civil and military research (dual-use research). Since research on drone

349 <https://www.aerotime.aero/clement.charpentreau/22231-european-partners-begin-stealth-tests-of-neuron-drone>

350 <https://www.dassault-aviation.com/en/defense/neuron/organization-program/>

351 <https://www.dassault-aviation.com/en/defense/neuron/introduction/>

352 <https://www.aerotime.aero/clement.charpentreau/22231-european-partners-begin-stealth-tests-of-neuron-drone>

353 Available here <https://www.nytimes.com/2012/06/12/world/europe/12iht-letter12.html>

354 Only available in Spanish. <http://www.ieee.es/en/publicaciones-new/documentos-informativos/2013/DIEEI27-2013.html>

355 [http://eeas.europa.eu/archives/docs/top\\_stories/pdf/100914\\_implementing\\_the\\_dec\\_2013\\_european\\_council\\_conclusions\\_on\\_security\\_and\\_defense.pdf](http://eeas.europa.eu/archives/docs/top_stories/pdf/100914_implementing_the_dec_2013_european_council_conclusions_on_security_and_defense.pdf)

356 <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0542:FIN:EN:PDF>

technologies is also considered as ‘dual-use research’, defense companies can benefit from EU research grants for the development of drone technologies - despite rules prohibiting EU research grants for military projects.

In reaction to the criticism that the EU was financing the development of the civilian drone industry in a way that could also help military technology, the former European Commissioner Michel Barnier replied that<sup>357</sup> *“any proposal for funding in Horizon 2020 has to pass several checks. The first step consists of a general evaluation performed by independent experts, followed by an ethical review for those proposals, which were earmarked as ethically sensitive (this includes human rights and privacy aspects) by the evaluators. All research in FP7 and H2020 focuses exclusively on civilian application.”*

It is not clear how much money the EU has already invested in drone technologies. While the report *Eurodrones Inc.* (see below) estimated that the EU has spent at least €315m on developing the civilian drone industry, Barnier said in May 2014, on behalf of the Commission<sup>358</sup> in an answer to a parliamentary question,<sup>359</sup> that “the funding to research aiming to develop drones-specific technologies in FP7 security research only amounts in the tens of millions of euros [...]”. But as previously mentioned, the EU Defense Fund will be devolving around €13bn for research and development projects in military technologies during the next multi-financial framework. Forty-four non-profit organizations across Europe<sup>360</sup> have warned of the risks of the current proposal, saying that it diverts funds from civilian priorities and gives the arms industry too much influence. They also warn of the development of killer robots<sup>361</sup> and what might become of EU-funded technology if it is exported.

## THINK TANKS AND EXPERT PAPERS

Apart from the research papers already cited, the International Centre for Counter-Terrorism at The Hague (ICCT) published a paper in April 2015 assessing the extent to which Member States are following the example of the United States in using armed drones for (unlawful) targeted killings. Based on questionnaires sent to the ministries of all 28 EU Member States asking for their official positions on the legal issues related to the use of armed drones, the authors concluded that the EU does not yet have a unified voice and legal position on the use of armed drones.

In 2013 Anthony Dworkin, senior fellow at the European Council on Foreign Relations (ECFR)<sup>362</sup> published *Drones And Targeted Killing: Defining a European Position*<sup>363</sup> in which he described the EU’s position:

*“The era of drone warfare is underway, but the European Union has been largely passive in its response. It has not reacted publicly to the U.S. campaign of drone strikes or tried to develop an alternative standard for the use of lethal force. As EU states seek to acquire drones themselves, and with the technology spreading around the world, the EU should take a more active stance.*

*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 U.S. until now from setting an unchallenged global precedent.*

*EU member states have not yet tried to formulate a common position on the use of lethal force outside battlefield conditions.”*

357 <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2014-003020&language=EN>

358 <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2014-003020&language=EN>

359 <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2014-003020&language=EN>

360 <http://enaat.org/2018/11/15/42-non-profit-organizations-across-europe-alert-on-4-major-risks-the-europeandefensefund-entails>

361 Ibid. and <https://euobserver.com/science/141885>

362 <https://www.ecfr.eu>

363 <https://www.ecfr.eu/publications/summary/drones-and-targeted-killing-defining-a-european-position211>

Dworkin recommended that the EU base “its position on the idea that lethal force should only be used outside theaters of conventional military operations against individuals posing a serious and imminent threat to innocent life. [...] The EU should press [Barack] Obama to follow through on his rhetoric by further restricting U.S. strikes and begin discussions to explore the idea of self-defense as the basis for lethal strikes outside the battlefield. It should also encourage greater transparency and accountability from the U.S..” He also suggested that “the most constructive way for Europeans to address the dangers posed by UAVs is likely to be through working towards a clearer international standard for the use of force outside battlefield conditions, covering substantive questions of targeting as well as transparency and accountability, both through discussions within the EU and dialogue with the U.S..”

The following year Dworkin published an article entitled ‘The politics behind the European Parliament resolution on drones’<sup>364</sup>, where he explained that “[...] despite the public concern reflected in the cross-party support for the Parliament’s resolution, there are several reasons why we are unlikely to see a common EU position on drones any time soon. The resolution was drafted to emphasise the common European dimension to the issue, but security policy remains an area of member state competence, so any policy statement would require the support of all EU members. European countries remain strongly divided about the desirability of adopting a common policy in this area. Attempts to promote a discussion of the European position on drones or to put the subject on the agenda of official EU-U.S. international law dialogues have faltered in recent months because of the opposition of some member states.”

His subsequent policy brief<sup>365</sup> raises concerns regarding the proper conduct of hostilities in drone warfare, specifically the unlawful targeting of individuals. It argues that European countries are not clear enough about their views on targeted killings or what standard of proof is required before the taking of life is permitted, and that this helps set damaging precedents.

In June 2014, Raluca Csernatonu at the International Security Institute ISIS published a policy brief ‘The Game of Drones’ – Hybrid Unmanned Vehicles as the Next Step in EU Defense<sup>366</sup> in which she focused on the problems posed by ‘dual-use research’ on drone technologies. “With dual-use technologies, the EDA has now access to the EU’s massive Structural Funds (SF) to boost the European defense industry.” She raised a further concern that “decisions are being taken at the EU level in the absence of genuine democratic control over the EU institutions and agencies responsible for drones development and their impact upon civil liberties.”

In their report *Eurodrones Inc*<sup>367</sup>, published in February 2014, the Transnational Institute (a research body in Amsterdam) and the London-based advocacy group Statewatch reveal that the EU is estimated to have invested at least €315m in drone research. Moreover, the report raised concerns that the European Defense Agency (EDA) and the European Space Agency have both carried out drone work that could have military uses that skirt European funding rules. The report found that despite “the plethora of initiatives, the EU’s drone policy has coalesced around a decision taken by the European Commission – with no further debate – that drones should be introduced into civilian airspace as soon as is practicably possible.”

364 [https://www.ecfr.eu/blog/entry/the\\_political\\_support\\_and\\_divisions\\_behind\\_the\\_european\\_parliament\\_resoluti](https://www.ecfr.eu/blog/entry/the_political_support_and_divisions_behind_the_european_parliament_resoluti)

365 [https://www.ecfr.eu/publications/summary/europes\\_new\\_counter\\_terror\\_wars7155](https://www.ecfr.eu/publications/summary/europes_new_counter_terror_wars7155)

366 <https://isiseurope.wordpress.com/2014/06/25/policy-brief-the-game-of-drones-hybrid-unmanned-vehicles-as-the-next-step-in-eu-defense/>

367 [http://statewatch.org/observatories\\_files/drones/eu/eurodrones.htm](http://statewatch.org/observatories_files/drones/eu/eurodrones.htm)

It added that the agenda for drone research and defense subsidies has been set by “thinly accountable officials” and the representatives of defense corporations, and as a result is “heavily skewed toward the interests of the big defense contractors.” The most notable follow-up research on drone investment has been conducted by Bruno Oliveira Martins at the Peace Research Institute Oslo (PRIO). *Hidden Security: EU Public Research Funds and the Development of European Drones*<sup>368</sup> links the “ongoing exponential growth of the drone industry in Europe with the vast amounts of EU public research funding channelled to drone research. These projects typically configure partnerships that are neither strictly public, nor strictly private, and it is precisely a combination of their hybrid nature with the centrality of technological expertise that makes them less visible. This partial invisibility is particularly relevant in the context of a dual-use technology that enables new forms of surveillance, poses societal challenges, and can be used as a lethal weapon”. Martins argues that “these tactics are largely aimed at fostering a common EU security and defense research and development culture in a time of international security uncertainty”.

## CONCLUSION

As mentioned above, one of the reasons the EU has chosen not to release guidance on the use and acquisition of drone technology may be the pre-emptive nature of such a decision: very few EU member states are using armed drones at the moment, so the creation of a legal normative framework is arguably perceived as redundant or unnecessary. However, the U.S. example should serve as a cautionary tale for the EU, which has the opportunity to respond to criticism by the European Parliament and civil society groups through the creation of safeguards, which would prevent these weapons from being used outside the current legal frameworks.

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368 For full article see <https://onlinelibrary.wiley.com/doi/abs/10.1111/jcms.12787?af=R&>

# 7. UNITED NATIONS: COMPETING PROCESSES

## INTRODUCTION

Little or no progress has been seen at the UN level in the past couple of years regarding development of international standards around armed drone technology. Despite hopes raised by efforts from the UN Institute for Disarmament Research (UNIDIR), the more recent establishment of a U.S.-led Joint Declaration on armed drones has contributed to creating confusion and insecurity over which process Member States should focus on. In May 2018, however, the new UN Secretary General António Guterres called for better standards on drone technology, which brought the issue of armed drones to the multilateral forum once again, but this did not ultimately lead to more concrete steps forward.

## SECRETARIAT'S VIEW

Following a recommendation by the UN Secretary General's Advisory Board on Disarmament Matters,<sup>369</sup> the UN Office for Disarmament Affairs (UNODA) - with assistance from UNIDIR and the Human Rights Institute at the Columbia University School of Law - prepared a *Study on Armed Unmanned Aerial Vehicles*. The study was published

in October 2015<sup>370</sup> and examined the characteristics of armed drones, the application of international law to their use outside areas of armed conflict and ways of improving transparency and accountability around their use and proliferation. Amongst other recommendations, the study proposed that UNIDIR undertake further research on the development of international mechanisms to foster transparency and accountability and oversight of armed drones.

In September 2015, Kim Won-soo, the UN Under-Secretary General and Acting High Representative for Disarmament also raised concerns that armed drones possess “*unique characteristics that make them particularly susceptible to misuse in comparison to other technologies. These include their low costs, which can aid their rapid proliferation; their loitering persistence and precision, which can tempt covert armed forces and non-State actors to use them secretly and without appropriate transparency, oversight and accountability; and the minimal risk to their operators, which can lower political thresholds for the use of force.*”<sup>371</sup>

Most recently, in May 2018, in remarks at the University of Geneva on his new Disarmament Agenda, António Guterres brought armed drones to the fore of his plans, noting that while new

369 <https://undocs.org/A/69/208>

370 <https://www.un.org/disarmament/publications/more/drones-study/>

371 UNIDIR, *Increasing Transparency, Oversight and Accountability of Armed Unmanned Aerial Vehicles*, 2017, p.2, <http://www.unidir.org/files/publications/pdfs/increasing-transparency-oversight-and-accountability-of-armed-unmanned-aerial-vehicles-en-692.pdf>



technologies are bringing important benefits to society, some — such as armed drones — also pose a threat to “long-standing interpretations of international law” and necessitate common standards to address transparency and accountability.<sup>372</sup> Fostering such principles in the use and transfer of armed UAVs could, the Disarmament Agenda advised, increase protection of civilians, promote international peace and security, support implementation of arms export controls and help stop unlawful transfers.<sup>373</sup>

## RESEARCH AT UNIDIR

Building on Kim Won-soo’s concerns and recommendations in UNODA’s 2015 study, UNIDIR launched a project on the issue of armed drones in 2016, through which it has since conducted research and convened meetings and events on UAV use and proliferation.

In 2017 UNIDIR published a study entitled *Increasing Transparency, Oversight and Accountability of Armed Unmanned Aerial Vehicles*.<sup>374</sup> The study was based on four symposiums convened by UNIDIR and attended by government representatives, international organizations, academics and members of civil society between November 2016 and June 2017. Each symposium considered a different aspect of armed drone use and proliferation and the resulting study put forward a number of conclusions and recommendations to address concerns.

In particular, the study noted that whilst not intrinsically unlawful, “*there are growing concerns that [armed UAVs] will bring about a dangerous expansion in the use of armed force*” and that a lack of transparency by states on their use of armed drones has contributed to armed UAVs “*increasingly being used in situations characterised by a troubling lack of clarity as*

*to how international norms apply*”. In light of the rapid proliferation of the technology, the study pointed out, there is an urgent need for a multilateral process to “*develop common understandings and standards to improve transparency, oversight and accountability of armed UAVs in order to reduce potential for their misuse, and thus enhance civilian protection, ensure the rule of law, and help to maintain stability*.” Such a process should engage not only with the acquisition of armed drones but also take an in-depth look at their use, and take place under the auspices of the UN. In conclusion, the study recommended states submit a UN General Assembly resolution to establish a mandate for the development of such international standards.

Following UNIDIR’s study, little progress was made on the creation of an inclusive process, and some states have even rolled back national policies to address concerns around their use. To date, no state has put forward a resolution as recommended by UNIDIR. A second phase of the UNIDIR project is now in progress and UNIDIR has continued to host events and published additional research papers.

## U.S. JOINT DECLARATION PROCESS

Separate to efforts at the UN, the United States is leading what is known as the “joint declaration process”. In October 2016, the Obama administration issued the U.S. Joint Declaration for the Export and Subsequent Use of Armed or Strike-Enabled Unmanned Aerial Vehicles (Joint Declaration), a political declaration aiming to develop a set of global, politically-binding standards on the sale, transfer and subsequent use of armed drones. The Joint Declaration put forward five principles, noting that none of these “*should be construed to undermine the legitimate interest of any State to indigenously produce, export, or acquire such systems for legitimate purposes*:

372 <https://www.un.org/sg/en/content/sg/speeches/2018-05-24/launch-disarmament-agenda-remarks>

373 [https://front.un-arm.org/documents/SG+disarmament+agenda\\_1.pdf](https://front.un-arm.org/documents/SG+disarmament+agenda_1.pdf)

374 UNIDIR, *Increasing Transparency, Oversight and Accountability of Armed Unmanned Aerial Vehicles*, 2017, <http://www.unidir.org/files/publications/pdfs/increasing-transparency-oversight-and-accountability-of-armed-unmanned-aerial-vehicles-en-692.pdf>



- A. *The applicability of international law, including both the law of armed conflict and international human rights law, as applicable, to the use of armed or strike-enabled UAVs, as with other weapon systems;*
- B. *The importance of engaging in the responsible export of armed or strike-enabled UAVs in line with existing relevant international arms control and disarmament norms that help build confidence as to the peaceful intention of States;*
- C. *That the export of armed or strike-enabled UAVs should be done consistent with the principles of existing multilateral export control and nonproliferation regimes, taking into account the potential recipient country's history regarding adherence to its relevant international obligations and commitments;*
- D. *The importance of appropriate voluntary transparency measures on the export of armed or strike-enabled UAVs including reporting of military exports through existing mechanisms, where appropriate, and with due regard to national security considerations; and*
- E. *That in light of the rapid development of UAV technology and the benefit of setting international standards for the export and subsequent use of such systems, we are resolved to continue discussions on how these capabilities are transferred and used responsibly by all States."*

More than 50 states signed up to the 2016 Declaration, including all EU members except France, Croatia and Cyprus.<sup>375</sup> Since then, a core group of states, including Germany, Italy, Japan, the Netherlands, the United Kingdom and the United States have been undertaking efforts to develop international standards emanating from the Joint Declaration.

Whilst it may indicate growing concern about the use and proliferation of armed drones, the joint declaration process has attracted criticism from both civil society and governments due to its weak language and voluntary nature. In a joint public statement in September 2017, 19 civil society organizations raised concerns that the initiative risks setting standards that are too low and that will not "adequately address the full range of risks and harm associated with the use of drones".<sup>376</sup> In particular, there are concerns that the process fails to address problematic behaviours by current users – including members of the core group itself – which are using the technology in ways that undermine international law and standards, for example in the conduct of so-called 'targeted killings' outside of conventional battlefields.

At present the process continues to move forward, though concerns remain that it is not inclusive – it has largely been open only to a select group of states, and civil society and other experts have not been consulted or kept informed of progress.<sup>377</sup>

## INTERVENTIONS BY MEMBER STATES

A limited number of UN member states have voiced concerns in the UN, particularly during the General Assembly's First Committee, around the use of armed UAVs. Statements have been made each year in various sessions, including the General Debate and debates on conventional weapons and other disarmament issues.

From 2015 to 2017 only a handful of states raised the issue of armed drones in their interventions at the First Committee, ranging from between seven and 10 states in total.<sup>378</sup> Among the concerns and calls raised during these statements were:

375 <https://www.state.gov/t/pm/rls/fs/2017/274817.htm>

376 <https://www.amnesty.org/download/Documents/ACT3070932017ENGLISH.pdf>

377 <https://www.stimson.org/sites/default/files/file-attachments/Stimson%20Action%20Plan%20on%20U.S.%20Drone%20Policy.pdf>

378 In 2016, the ten states were: Bangladesh, Botswana, Costa Rica, Ecuador, Ireland, Lebanon, the Netherlands, Pakistan, Venezuela, and the United States. See: <http://www.article36.org/updates/discussion-on-armed-drones-at-the-un-general-assembly-first-committee/>

- The human rights and humanitarian impact that drone strikes are having - for example civilian deaths, the use of armed drones for ‘targeted killings’ outside of armed conflict, and the lack of accountability surrounding their use.
- The need to adhere to international human rights and humanitarian law and other existing laws and standards;
- Moral and ethical questions around their use;
- Issues around proliferation of the technology, including amongst non-state actors;
- Calls for increased transparency and accountability;
- Calls for further debate and development of national and international regulatory frameworks.

In 2018, there was a significant increase in the number of states mentioning armed drones in their First Committee statements. Sixteen states included the issue in their interventions, some on multiple occasions across the session.<sup>379</sup> A number of states, namely Brazil, Chile, Mexico, Nepal, Thailand and Trinidad and Tobago raised armed drones for the first time in First Committee.

Five countries – Portugal, Pakistan, Costa Rica, Ecuador and Ireland – have consistently included drones in their interventions over the past four years.

## CONCLUSION

All disarmament processes at the UN level are consensus based and therefore take significant time to be agreed upon. However, despite significant developments and mounting concerns around the use of armed drones - including to carry out serious violations of human rights - since the issues were first brought to the fore of the UN, little attention has been afforded to their use and proliferation, and little progress made to address these issues. Although the Joint Declaration may indicate growing concern about the use and proliferation of armed drones, the process has attracted criticism from both civil society and governments due to its weak language and voluntary nature: without addressing the practice of current armed drone users — including the U.S. itself — it will be extremely limited in addressing the many associated human rights concerns. This, coupled with the perception amongst some states that it is a U.S.-driven process could potentially lead to its dismissal.

At a time when drone technology is rapidly developing and proliferating and the need for clarity is ever more urgent, the existence of a number of activities around the issue of armed drones at the UN level – led by both UN agencies and states themselves – certainly contributes to confusion around which process is more legitimate or politically relevant; but it also helps keep the issue on the First Committee agenda and pushes more states to think about the impact of this rapidly developing technology.

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379 <http://www.article36.org/updates/fc-2018-statements/>

## 8. CONCLUSION

This publication intends to provide a historical tool to understanding the issue of armed drones within the European space from the perspective of five European states which use, are acquiring or intend to acquire this technology. It also elaborates on developments at the European Union level: more coordination among European defense industries would arguably not be perceived as problematic by civil society groups, if it did not occur at the expense of human rights in foreign theaters.

The main assumption behind this work is enshrined in the *Call to Action*<sup>380</sup> of the European Forum on Armed Drones: unmanned aerial vehicles could bring a number of advantages to governments and troops alike, and could potentially have a positive effect on the battlefield, but only if used in accordance with the main principles of International Human Rights Law and International Humanitarian Law.

Providing a tool for understanding the process that in the past few years has led a number of European states and the EU towards a shared interest in acquiring and using this weapon is what lies at the heart of this publication. As argued by Snetselaar (2018)<sup>381</sup> it is fundamental to understand the efforts made by civil society organizations in the European space and better analyses how they operate with each other and their transatlantic and regional partners through the European Forum on Armed Drones. Each chapter analyzes the stance of the government and parliament of a given country, the advocacy efforts made up to now, the legal limitations and

challenges, the strategies adopted by civil society networks and the debates that these have produced in the media.

European states are speeding up the acquisition, development and use of armed drones. Despite having had Reaper drones for a number of years and currently being in the process of arming them, the French government has yet to formulate a policy that would ensure that such technology is not misused. The developments with the EU defense budget and a more consistent engagement in the Sahel mean that remote presence in the region can only increase. It is vital to be aware of how Paris intends to use its drone technology, given its relevance in the region, but this can only be done once the French government chooses to be more transparent about its legal framework in counterterrorism operations.

Because of its complicity implications, the issue of armed drones in Germany is often tackled from a legal perspective. The European Centre for Constitutional and Human Rights has been extremely vocal in advocating for better policy through court cases, public events and publications. Their efforts have slowed down the lease of Israeli drones in Germany, which has allowed for more time for reflection within the country and a more mature debate. The most recent decision of the Higher Administrative Court in Münster ruled that the German government must take action to ensure that the United States respect international law when using the German base at Ramstein: this will

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<sup>380</sup> <https://www.efadrones.org/call-to-action/>

<sup>381</sup> Snetselaar D. (2018), *Remote Warfare: Remote Justice? An assemblage approach to civil society in an age of Remote Warfare*, Utrecht University

hopefully pave the way for regulation of both the German base and the acquisition or development of drones capable of being armed by the Bundestag.

In the Netherlands, there has been a disconnect between statements and commitments on the part of the Ministry of Foreign Affairs and the Ministry of Defense. The fact that the Dutch government intends to acquire drones capable of being armed has made their purchase extremely controversial in Parliament. A space where Dutch policy could be challenged is the legality of the intelligence the Netherlands provides to the U.S. government to conduct strikes in Somalia. The most recent Amnesty International report on U.S. strikes<sup>382</sup> paints a dramatic picture of civilian casualties in Somalia and the response the Dutch government, and the Ministry of Defense should consider a lengthier discussion following the publication of the report.

Although it is in the process of arming its drone fleet, it is clear that the main issue with regard to this technology in Italy is the use of Sigonella airbase in Sicily by U.S. forces. Under a legal agreement stipulated in 2006, U.S. drones are allowed to depart from Sigonella to conduct raids in Libya: as mentioned in Chapter 5, however, the arrangement is yet to be made public. Following a particular case brought forward by the Italian Network on Disarmament, the European Centre for Constitutional and Human Rights<sup>383</sup> and Airwars, the high profile Italian MP Laura Boldrini asked the government to provide more information on U.S. operations conducted from Italian soil.<sup>384</sup> The United Kingdom has on more than one occasion distanced

itself from U.S. behaviour with drones in foreign theaters: Chapter 3 indicates why UK policy with regard to armed drones does not appear to differ in substance to that of the U.S.: if anything it is even less transparent, as London is not admitting to causing civilian casualties in areas where its armed forces are operating. Despite limited progress with the Ministry of Defense on this issue, the UK has a mature network of civil society groups, which advocate with the executive, in parliament and lead public campaigns, while taking an active part in drafting a European strategy through the European Forum on Armed Drones (EFAD).

This publication provides a record of the major developments with regard to armed drone technology in Europe. Rather than aspiring to be an analysis deriving from a number of findings, it solely wishes to provide policy makers, media representatives and the general public with a broad overview of the current developments, climates and reactions to the behavior of European member states with regard to armed drones.

As developments in this sphere will continue and often intersect with studies on the nature of contemporary war and on the evolution of artificial intelligence, it would be relevant to monitor such developments while keeping in mind the work of the European Forum on Armed Drones. The legal and ethical debates that have been sparked by drone technology, first in the U.S. and more recently in Europe, will be at the forefront of future debates on remote warfare, artificial intelligence and changing defense landscapes in the years to come.

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382 <https://www.amnesty.org/download/Documents/AFR5299522019ENGLISH.PDF>

383 <https://www.ecchr.eu/en/case/sicily-airbase-freedom-of-information-litigation-on-italys-involvement-in-us-drone-program/>

384 <https://www.tpi.it/2019/06/18/droni-usa-libia-coinvolgimento-italia/>







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