

News Release

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UN expert criticizes “illegal” targeted killing policies and calls on the US to halt CIA drone killings

GENEVA – “Targeted killings pose a rapidly growing challenge to the international rule of law, as they are increasingly used in circumstances which violate the relevant rules of international law,” warned on Wednesday Philip Alston, the UN Special Rapporteur on extrajudicial executions, launching his report* to the Human Rights Council on legal issues raised by targeted killing.

“The result is that the rules being set today are going to govern the conduct of many States tomorrow,” Mr. Alston said. “The international community needs to be more forceful in demanding accountability.”

“The most prolific user of targeted killings today is the United States, which primarily uses drones for attacks,” said the independent expert noting that “some 40 states already possess drone technology, and some already have, or are seeking, the capacity to fire missiles from them.”

“I’m particularly concerned that the United States seems oblivious to this fact when it asserts an ever-expanding entitlement for itself to target individuals across the globe. But this strongly asserted but ill-defined license to kill without accountability is not an entitlement which the United States or other States can have without doing grave damage to the rules designed to protect the right to life and prevent extrajudicial executions.”

Legality and accountability

The report identifies two major problems: the excessively broad circumstances in which targeted killings are alleged to be legal, and the absence of essential accountability mechanisms in situations where they are used.

“In terms of the first problem, there are indeed circumstances in which targeted killings may be legal. Targeted killings are permitted in armed conflict situations when used against combatants or fighters, or civilians who directly engage in combat-like activities,” Mr. Alston noted, “but they are increasingly being used far from any battle zone.”

According to the UN Special Rapporteur, the United States, in particular, has put forward a novel theory that there is a ‘law of 9/11’ that enables it to legally use force in the territory of other States as part of its inherent right to self-defence on the basis that it is in an armed conflict with al-Qaeda, the Taliban and ‘associated forces’, although the latter group is fluid and undefined.

“This expansive and open-ended interpretation of the right to self-defence goes a long way towards destroying the prohibition on the use of armed force contained in the UN Charter. If invoked by other States, in pursuit of those they deem to be terrorists and to have attacked them, it would cause chaos,” he said.

Mr. Alston emphasised that “I do not for a moment question the seriousness of the challenges posed by terrorism. I condemn wholeheartedly the actions of al-Qaeda and all other groups that kill innocent civilians, as well as any groups that increase the danger of attacks on civilians by hiding in their midst. These actions unequivocally violate international law. But the fact that such enemies do not play by the rules does not mean that a Government can cast those rules aside or unilaterally re-interpret them. The credibility of any Government’s claim that it is fighting to uphold the rule of law depends on its willingness to disclose how it interprets and applies the law – and the actions it takes when the law is broken.”

In terms of the second problem – accountability – Mr. Alston observed that “it is an essential requirement of international law that States using targeted killings demonstrate that they are complying with the various rules governing their use in situations of armed conflict.”

The clearest challenge to this principal today, according to the independent expert, comes from the program operated by the US Central Intelligence Agency in which targeted killings are carried out from unmanned aerial vehicles or drones. “It is clear that many hundreds of people have been killed, and that this number includes some innocent civilians. Because the program remains shrouded in official secrecy, the international community does not know when and where the CIA is authorized to kill, the criteria for individuals who may be killed, how it ensures killings are legal, and what follow-up there is when civilians are illegally killed.”

The UN Special Rapporteur stressed that “in a situation in which there is no disclosure of who has been killed, for what reason, and whether innocent civilians have died, the legal principle of international accountability is, by definition, comprehensively violated.”

Mr. Alston noted that “the easiest contrast to draw is with the well-established practice of the US Department of Defense. While it is by no means perfect, the US military has a relatively public accountability process, as demonstrated earlier this week by its report on the incident in Uruzgan, Afghanistan, in which at least 23 civilians were killed based on erroneous intelligence from surveillance drone operators. Intelligence agencies, which by definition are determined to remain unaccountable except to their own paymasters, have no place in running programs that kill people in other countries.”

Among the issues addressed in Mr. Alston’s report (A/HRC/14/24/Add.6) are: the legality of targeted killings under the laws of war, international human rights law, and the law applicable when States invoke their right to self-defence; the definition and scope of armed conflicts in which the laws of war apply; the definition of who may be targeted and killed, when, and by whom, in the context of armed conflict; the rules governing the

amount of force that may be used; the legality of drone killings in particular, and the international law requirements of transparency and accountability.

(*) Check Mr. Alston's full report to the UN Human Rights Council on legal issues raised by targeted killing: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf>.

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Philip Alston is John Norton Pomeroy Professor of Law and co-Director of the Center for Human Rights and Global Justice at New York University School of Law. He was appointed UN Special Rapporteur on extrajudicial executions in 2004 and reports to the United Nations Human Rights Council and the General Assembly. He has had extensive experience in the human rights field, including eight years as Chairperson of the UN Committee on Economic, Social and Cultural Rights, principal legal adviser to UNICEF in the drafting of the Convention on the Rights of the Child, and Special Adviser to the UN High Commissioner for Human Rights.

More information about the mandate of the Special Rapporteur is at www.extrajudicialexecutions.org

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