

United States, Use of Armed Drones for Extraterritorial Targeted Killings

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. OBAMA'S SPEECH ON DRONE POLICY

[Source: Remarks by the President at the National Defense University, The White House, 23 May 2013, available at: <https://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university><http://www.nytimes.com/2013/05/24/us/politics/transcript-of-obamas-speech-on-drone-policy.html>]

[...]

[1] It seemed the 21st century would be a tranquil time. And then, on September 11, 2001, we were shaken out of complacency. Thousands were taken from us, as clouds of fire and metal and ash descended upon a sun-filled morning. This was a different kind of war. No armies came to our shores, and our military was not the principal target. Instead, a group of terrorists came to kill as many civilians as they could.

[2] And so our nation went to war. We have now been at war for well over a decade. I won't review the full history. What is clear is that we quickly drove al Qaeda out of Afghanistan, but then shifted our focus and began a new war in Iraq. And this carried significant consequences for our fight against al Qaeda, our standing in the world, and — to this day — our interests in a vital region.

[...]

[3] So after I took office, we stepped up the war against al Qaeda but we also sought to change its course. We relentlessly targeted al Qaeda's leadership. [...] We pursued a new strategy in Afghanistan, and increased our training of Afghan forces. We unequivocally banned torture, affirmed our commitment to civilian courts, worked to align our policies with the rule of law, and expanded our consultations with Congress.

[4] Today, Osama bin Laden is dead, and so are most of his top lieutenants. There have been no large-scale attacks on the United States, and our homeland is more secure.

[...]

[5] Now, make no mistake, our nation is still threatened by terrorists. From Benghazi to Boston, we have been tragically reminded of that truth. But we have to recognize that the threat has shifted and evolved from the one that came to our shores on 9/11. With a decade of experience now to draw from, this is the moment to ask ourselves hard questions — about the nature of today's threats and how we should confront them.

[...]

[6] Today, the core of al Qaeda in Afghanistan and Pakistan is on the path to defeat. Their remaining operatives spend more time thinking about their own safety than plotting against us. They did not direct the attacks in Benghazi or Boston. They've not carried out a successful attack on our homeland since 9/11.

[7] Instead, what we've seen is the emergence of various al Qaeda affiliates. From Yemen to Iraq, from Somalia to North Africa, the threat today is more diffuse, with Al Qaeda's affiliates in the Arabian Peninsula (AQAP) the most active in plotting against our homeland. And while none of AQAP's efforts approach the scale of 9/11, they have continued to plot acts of terror, like the attempt to blow up an airplane on Christmas Day in 2009.

[8] Unrest in the Arab world has also allowed extremists to gain a foothold in countries like Libya and Syria. But here, too, there are differences from 9/11. In some cases, we continue to confront state-sponsored networks like Hezbollah that engage in acts of terror to achieve political goals. Other of these groups are simply collections of local militias or extremists interested in seizing territory. And while we are vigilant for signs that these groups may pose a transnational threat, most are focused on operating in the countries and regions where they are based. And that means we'll face more localized threats like what we saw in Benghazi, or the BP oil facility in Algeria, in which local operatives — perhaps in loose affiliation with regional networks — launch periodic attacks against Western diplomats, companies, and other soft targets, or resort to kidnapping and other criminal enterprises to fund their operations.

[9] And finally, we face a real threat from radicalized individuals here in the United States. Whether it's a shooter at a Sikh Temple in Wisconsin, a plane flying into a building in Texas, or the extremists who killed 168 people at the Federal Building in Oklahoma City, America has confronted many forms of violent extremism in our history. Deranged or alienated individuals — often US citizens or legal residents — can do enormous damage, particularly when inspired by larger notions of violent jihad. And that pull towards extremism appears to have led to the shooting at Fort Hood and the bombing of the Boston Marathon.

[10] So that's the current threat — lethal yet less capable al Qaeda affiliates; threats to diplomatic facilities and businesses abroad; homegrown extremists. This is the future of terrorism. We have to take these threats seriously, and do all that we can to confront them. But as we shape our response, we have to recognize that the scale of this threat closely resembles the types of attacks we faced before 9/11.

[...]

[11] Moreover, we have to recognize that these threats don't arise in a vacuum. Most, though not all, of the terrorism we faced is fueled by a common ideology — a belief by some extremists that Islam is in conflict with the United States and the West, and that violence against Western targets, including civilians, is justified in pursuit of a larger cause. Of course, this ideology is based on a lie, for the United States is not at war with Islam.

[...]

[12] Nevertheless, this ideology persists, and in an age when ideas and images can travel the globe in an instant, our response to terrorism can't depend on military or law enforcement alone. We need all elements of national power to win a battle of wills, a battle of ideas. So what I want to discuss here today is the components of such a comprehensive counterterrorism strategy.

[...]

[13] We must define our effort not as a boundless 'global war on terror,' but rather as a series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America. In many cases, this will involve partnerships with other countries. Already, thousands of Pakistani soldiers have lost their lives fighting extremists. In Yemen, we are supporting security forces that have reclaimed territory from AQAP. In Somalia, we helped a coalition of African nations push al-Shabaab out of its strongholds. In Mali, we're providing military aid to French-led intervention to push back al Qaeda in the Maghreb, and help the people of Mali reclaim their future.

[14] Much of our best counterterrorism cooperation results in the gathering and sharing of intelligence, the arrest and prosecution of terrorists. And that's how a Somali terrorist apprehended off the coast of Yemen is now in a prison in New York.

[...]

[15] But despite our strong preference for the detention and prosecution of terrorists, sometimes this approach is foreclosed. Al Qaeda and its affiliates try to gain foothold in some of the most distant and unforgiving places on Earth. They take refuge in remote tribal regions. They hide in caves and walled compounds. They train in empty deserts and rugged mountains.

[16] In some of these places — such as parts of Somalia and Yemen — the state only has the most tenuous reach into the territory. In other cases, the state lacks the capacity or will to take action. And it's also not possible for America to simply deploy a team of Special Forces to capture every terrorist. Even when such an approach may be possible, there are places where it would pose profound risks to our troops and local civilians — where a terrorist compound cannot be breached without triggering a firefight with surrounding tribal communities, for example, that pose no threat to us; times when putting US boots on the ground may trigger a major international crisis.

[...]

[17] So it is in this context that the United States has taken lethal, targeted action against al Qaeda and its associated forces, including with remotely piloted aircraft commonly referred to as drones.

[18] As was true in previous armed conflicts, this new technology raises profound questions — about who is targeted, and why; about civilian casualties, and the risk of creating new enemies; about the legality of such strikes under US and international law; about accountability and morality.

[...]

[19] To begin with, our actions are effective.

[...]

[20] Moreover, America's actions are legal. We were attacked on 9/11. Within a week, Congress overwhelmingly authorized the use of force. Under domestic law, and international law, the United States is at war with al Qaeda, the Taliban, and their associated forces. We are at war with an organization that right now would kill as many Americans as they could if we did not stop them first. So this is a just war — a war waged proportionally, in last resort, and in self-defense.

[21] And yet, as our fight enters a new phase, America's legitimate claim of self-defense cannot be the end of the discussion.

To say a military tactic is legal, or even effective, is not to say it is wise or moral in every instance. For the same human progress that gives us the technology to strike half a world away also demands the discipline to constrain that power — or risk abusing it. And that's why, over the last four years, my administration has worked vigorously to establish a framework that governs our use of force against terrorists — insisting upon clear guidelines, oversight and accountability that is now codified in Presidential Policy Guidance.

[...]

[22] In the Afghan war theater, we must — and will — continue to support our troops until the transition is complete at the end of 2014. And that means we will continue to take strikes against high value al Qaeda targets, but also against forces that are massing to support attacks on coalition forces. But by the end of 2014, we will no longer have the same need for force protection, and the progress we've made against core al Qaeda will reduce the need for unmanned strikes.

[23] Beyond the Afghan theater, we only target al Qaeda and its associated forces. And even then, the use of drones is heavily constrained. America does not take strikes when we have the ability to capture individual terrorists; our preference is always to detain, interrogate, and prosecute. America cannot take strikes wherever we choose; our actions are bound by consultations with partners, and respect for state sovereignty.

[24] America does not take strikes to punish individuals; we act against terrorists who pose a continuing and imminent threat to the American people, and when there are no other governments capable of effectively addressing the threat. And before any strike is taken, there must be near-certainty that no civilians will be killed or injured — the highest standard we can set.

[25] Now, this last point is critical, because much of the criticism about drone strikes — both here at home and abroad — understandably centers on reports of civilian casualties. There's a wide gap between US assessments of such casualties and non-governmental reports. Nevertheless, it is a hard fact that US strikes have resulted in civilian casualties, a risk that exists in every war. And for the families of those civilians, no words or legal construct can justify their loss.

[...]

[26] But as Commander-in-Chief, I must weigh these heartbreaking tragedies against the alternatives. To do nothing in the face of terrorist networks would invite far more civilian casualties — not just in our cities at home and our facilities abroad, but also in the very places like Sana'a and Kabul and Mogadishu where terrorists seek a foothold. Remember that the terrorists we are after target civilians, and the death toll from their acts of terrorism against Muslims dwarfs any estimate of civilian casualties from drone strikes. So doing nothing is not an option.

[27] Where foreign governments cannot or will not effectively stop terrorism in their territory, the primary alternative to targeted lethal action would be the use of conventional military options. As I've already said, even small special operations carry enormous risks. Conventional airpower or missiles are far less precise than drones, and are likely to cause more civilian casualties and more local outrage. And invasions of these territories lead us to be viewed as occupying armies, unleash a torrent of unintended consequences, are difficult to contain, result in large numbers of civilian casualties and ultimately empower those who thrive on violent conflict.

[28] So it is false to assert that putting boots on the ground is less likely to result in civilian deaths or less likely to create enemies in the Muslim world. The results would be more US deaths, more Black Hawks down, more confrontations with local populations, and an inevitable mission creep in support of such raids that could easily escalate into new wars.

[...]

[29] For the record, I do not believe it would be constitutional for the government to target and kill any US citizen — with a drone, or with a shotgun — without due process, nor should any President deploy armed drones over US soil.

[30] But when a US citizen goes abroad to wage war against America and is actively plotting to kill US citizens, and when neither the United States, nor our partners are in a position to capture him before he carries out a plot, his citizenship should no more serve as a shield than a sniper shooting down on an innocent crowd should be protected from a SWAT [Special Weapons and Tactics] team.

[...]

[31] Of course, the targeting of any American raises constitutional issues that are not present in other strikes [...]. But the high threshold that we've set for taking lethal action applies to all potential terrorist targets, regardless of whether or not they are American citizens. This threshold respects the inherent dignity of every human life.

[...]

[32] And that brings me to my final topic: the detention of terrorist suspects. I'm going to repeat one more time: As a matter of policy, the preference of the United States is to capture terrorist suspects. When we do detain a suspect, we interrogate them. And if the suspect can be prosecuted, we decide whether to try him in a civilian court or a military commission.

[33] During the past decade, the vast majority of those detained by our military were captured on the battlefield. In Iraq, we turned over thousands of prisoners as we ended the war. In Afghanistan, we have transitioned detention facilities to the Afghans, as part of the process of restoring Afghan sovereignty. So we bring law of war detention to an end, and we are committed to prosecuting terrorists wherever we can.

[34] The glaring exception to this time-tested approach is the detention center at Guantanamo Bay [GTMO]. The original premise for opening GTMO — that detainees would not be able to challenge their detention — was found unconstitutional five years ago. In the meantime, GTMO has become a symbol around the world for an America that flouts the rule of law. Our allies won't cooperate with us if they think a terrorist will end up at GTMO.

[...]

[35] As President, I have tried to close GTMO. I transferred 67 detainees to other countries before Congress imposed restrictions to effectively prevent us from either transferring detainees to other countries or imprisoning them here in the United States.

[...]

[36] I have asked the Department of Defense to designate a site in the United States where we can hold military commissions. I'm appointing a new senior envoy at the State Department and Defense Department whose sole responsibility will be to achieve the transfer of detainees to third countries.

[37] I am lifting the moratorium on detainee transfers to Yemen so we can review them on a case-by-case basis. To the greatest extent possible, we will transfer detainees who have been cleared to go to other countries.

[...]

[38] Now, even after we take these steps one issue will remain — just how to deal with those GTMO detainees who we know have participated in dangerous plots or attacks but who cannot be prosecuted, for example, because the evidence against them has been compromised or is inadmissible in a court of law. But once we commit to a process of closing GTMO, I am confident that this legacy problem can be resolved, consistent with our commitment to the rule of law.

[...]

B. US POLICY STANDARDS AND PROCEDURES FOR THE USE OF FORCE IN COUNTERTERRORISM OPERATIONS OUTSIDE THE UNITED STATES AND AREAS OF ACTIVE HOSTILITIES

[Source: US Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities, The White House, 23 May 2013, available at: http://www.whitehouse.gov/sites/default/files/uploads/2013.05.23_fact_sheet_on_ppg.pdf; footnotes were omitted]

[...]

[1] This document provides information regarding counterterrorism policy standards and procedures that are either already in place or will be transitioned into place over time. As Administration officials have stated publicly on numerous occasions, we are continually working to refine, clarify, and strengthen our standards and processes for using force to keep the nation safe from the terrorist threat. One constant is our commitment to conducting counterterrorism operations lawfully. In addition, we consider the separate question of whether force should be used as a matter of policy. The most important policy consideration, particularly when the United States contemplates using lethal force, is whether our actions protect American lives.

Preference for Capture

[2] The policy of the United States is not to use lethal force when it is feasible to capture a terrorist suspect, because capturing a terrorist offers the best opportunity to gather meaningful intelligence and to mitigate and disrupt terrorist plots. Capture operations are conducted only against suspects who may lawfully be captured or otherwise taken into custody by the United States and only when the operation can be conducted in accordance with all applicable law and consistent with our obligations to other sovereign states.

Standards for the Use of Lethal Force

[3] Any decision to use force abroad – even when our adversaries are terrorists dedicated to killing American citizens – is a significant one. Lethal force will not be proposed or pursued as punishment or as a substitute for prosecuting a terrorist suspect in a civilian court or a military commission. Lethal force will be used only to prevent or stop attacks against US persons, and even then, only when capture is not feasible and no other will be used outside areas of active hostilities only when the following preconditions are met:

[4] First, there must be a legal basis for using lethal force, whether it is against a senior operational leader of a terrorist organization or the forces that organization is using or intends to use to conduct terrorist attacks.

[5] Second, the United States will use lethal force only against a target that poses a continuing, imminent threat to US persons. It is simply not the case that all terrorists pose a continuing, imminent threat to US persons; if a terrorist does not pose such a threat, the United States will not use lethal force.

[6] Third, the following criteria must be met before lethal action may be taken:

(1) Near certainty that the terrorist target is present;

(2) Near certainty that non-combatants will not be injured or killed;

(3) An assessment that capture is not feasible at the time of the operation;

(4) An assessment that the relevant governmental authorities in the country where action is contemplated cannot or will not effectively address the threat to US persons; and

(5) An assessment that no other reasonable alternatives exist to effectively address the threat to US persons.

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

[...]

Other Key Elements

[10] **US Persons.** If the United States considers an operation against a terrorist identified as a US person, the Department of Justice will conduct an additional legal analysis to ensure that such action may be conducted against the individual consistent with the Constitution and laws of the United States

[...]

C. UN HUMAN RIGHTS COMMITTEE'S OBSERVATIONS ON THE STATE'S PRACTICE OF TARGETED KILLINGS USING DRONES

[Source: UN Human Rights Committee, Concluding observations on the fourth periodic report of the United States of America, UN Doc. CCPR/C/USA/CO/4, 23 April 2014, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FUSA%2FCO%2F4]

[...]

Targeted killings using unmanned aerial vehicles (drones)

9. The Committee is concerned about the State party's practice of targeted killings in extraterritorial counter-terrorism operations using unmanned aerial vehicles (UAV), also known as "drones", the lack of transparency regarding the criteria for drone strikes,

including the legal justification for specific attacks, and the lack of accountability for the loss of life resulting from such attacks. The Committee notes the State party's position that drone strikes are conducted in the course of its armed conflict with Al-Qaida, the Taliban and associated forces in accordance with its inherent right of national self-defence, and that they are governed by international humanitarian law as well as by the Presidential Policy Guidance that sets out standards for the use of lethal force outside areas of active hostilities. Nevertheless, the Committee remains concerned about the State party's very broad approach to the definition and geographical scope of "armed conflict", including the end of hostilities, the unclear interpretation of what constitutes an "imminent threat", who is a combatant or a civilian taking direct part in hostilities, the unclear position on the nexus that should exist between any particular use of lethal force and any specific theatre of hostilities, as well as the precautionary measures taken to avoid civilian casualties in practice (arts. 2, 6 and 14).

The State party should revisit its position regarding legal justifications for the use of deadly force through drone attacks. It should:

- (a) Ensure that any use of armed drones complies fully with its obligations under article 6 of the Covenant, including, in particular, with respect to the principles of precaution, distinction and proportionality in the context of an armed conflict;
- (b) Subject to operational security, disclose the criteria for drone strikes, including the legal basis for specific attacks, the process of target identification and the circumstances in which drones are used;
- (c) Provide for independent supervision and oversight of the specific implementation of regulations governing the use of drone strikes;
- (d) In armed conflict situations, take all feasible measures to ensure the protection of civilians in specific drone attacks and to track and assess civilian casualties, as well as all necessary precautionary measures in order to avoid such casualties;
- (e) Conduct independent, impartial, prompt and effective investigations of allegations of violations of the right to life and bring to justice those responsible;
- (f) Provide victims or their families with an effective remedy where there has been a violation, including adequate compensation, and establish accountability mechanisms for victims of allegedly unlawful drone attacks who are not compensated by their home governments.

Discussion

I. Classification of the Conflict and Applicable Law

1. (Document A, paras [1]-[17])

- a. Does President Obama consider the United States to be involved in an armed conflict? Against whom? Where? What is his opinion concerning the 'global war on terror'? ([GC I-IV, Common Arts 2 and 3](#); [P I, Art. 1](#))
 - b. Can fighting against a terrorist organization amount to an armed conflict? What criteria shall be fulfilled for such fighting to be regarded as an armed conflict? Does IHL apply to armed conflicts against terrorist groups? ([GC I-IV, Common Arts 2 and 3](#); [P I, Art. 1](#); [P II, Art. 1](#))
 - c. How would you classify the situation between the US and Al Qaeda and other terrorist groups? Does it involve one single armed conflict? Several? Is it/are they international or non-international in character? ([GC I-IV, Art. 3](#))
 - d. Is an armed conflict between the United States and Al Qaeda and other terrorist groups limited to the territory of one or more states? Using the information provided in Document A, do you think that there is an armed conflict between the United States and Al Qaeda in Pakistan? In Yemen? In Iraq? In Somalia? In the United States? What additional information, if any, would you need to make such a determination? Does IHL apply to the entire territory of these States or only the parts where the fighting, if any, is taking place? Does IHL apply to the fighting between the United States and Al Qaeda outside the territory of these countries? ([GC I-IV, Art. 3](#))
2. Can a single terrorist act amount to an armed conflict that would trigger the applicability of IHL? ([GC I-IV, Arts 2 and 3](#), [P I, Art. 1](#); [P II, Art. 1](#))
3. Can a single drone attack trigger the applicability of IHL? ([GC I-IV, Common Arts 2 and 3](#), [P I, Art. 1](#); [P II, Art. 1](#))
4. (Document C, para. 9) Can a State use force in self-defence against an armed group? Within its borders? Beyond its borders? Does the threat have to be imminent? What does this mean? Does the right to self-defence have any bearing on the application of IHL? Does IHL necessarily apply when a State uses force in self-defence? Against another State? Against an armed group? Does International Human Rights Law (IHRL) always apply when a State uses self-defence outside its territory?

II. Conduct of Hostilities

5. (Document A, paras [18]-[31], Document B, paras [1]-[10]) What does IHL say about drone strikes? Is use of drones as a weapons platform per se prohibited under IHL? Do IHL rules on conduct of hostilities apply to drone strikes? If the drone strike is carried out in the context of an international armed conflict? Non-international armed conflict? If the target is located on the land? On the sea? Outside the territories of States in which the US is involved in an armed conflict? ([GC I-IV, Common Arts](#)

[2](#) and [3](#); [P I, Arts 1](#) and [49](#); [P II, Art. 1](#))

6. (Document A, para. [23]; Document B, paras [2]-[6]) Is there an obligation under IHL to capture rather than kill an enemy combatant? A civilian directly participating hostilities? Is your answer different for international and non-international armed conflicts? What does International Human Rights Law (IHRL) say about using lethal force against terrorist suspects? ([CIHL, Rule 1](#); [P I, Arts 43, 48, 50, 51, 52](#); [P II, Art. 13](#); see also, Document, [ICRC, Interpretive Guidance on the Notion of Direct Participation in Hostilities](#) (May 2009), also available at www.icrc.org)

7. (Document C, para. 9)

a. Does IHRL apply to the US's extraterritorial use of armed drones against terrorist suspects? If yes, how?

b. How does the Committee view the application of the right to life in armed conflicts? Do you agree with its approach? How would you describe the relationship between the right to life under IHRL and the rules on targeting under IHL? Do the standards of IHRL on this issue differ from those of IHL? Are "precaution, distinction and proportionality" principles of IHRL, or of IHL? What do they mean in IHRL?

c. Are the obligations to investigate the same under IHL and under IHRL? What are the aims of the investigations under IHL and under IHRL? Does IHL contain any general obligation to investigate deaths caused by the use of lethal force by state authorities? Does it contain an obligation to investigate the deaths of civilians killed in the conduct of hostilities? Incidentally killed during an attack directed at a legitimate target? Of civilians killed during a law enforcement operation in an occupied territory? Of persons who die in detention or internment? Does IHL contain an obligation to conduct investigations into alleged violations of IHL? Into alleged grave breaches of IHL? ([GC I, Arts 49](#) and [50](#); [GC II, Arts 50](#) and [51](#); [GC III, Arts 121, 129](#) and [130](#); [GC IV, Arts 131, 146](#) and [147](#); [P I, Art. 87](#))

d. For those cases where IHL does not require an investigation, when could it be argued that this absence of obligation prevails over the IHRL obligation to investigate? Why? In which cases would the obligation under IHRL prevail? Why?

8. (Document B, para. [6]) Are the criteria listed in Document B for using the lethal force against an identified target in conformity with IHL? IHRL? Are any of them problematic? For what reasons? ([CIHL, Rules 1-21](#); [P I, Arts 35-36](#); [48, 50, 51, 52](#) and [57](#); [P II, Art. 13](#))

9. (Document A, paras [29]-[31]) Are IHL rules on the conduct of hostilities different for own and enemy nationals? In international armed conflicts, are different rules to be applied when using lethal force against nationals as opposed to against non-nationals? In non-international armed conflicts? Are these relevant considerations under IHRL? Why/Why not? ([CIHL, Rules 1-21](#); [P I, Arts 35-36](#); [48, 50, 51](#) and [57](#); [P II, Art. 13](#))

10. (Document A, paras [24]-[28]; Document B, para. [6]; Document C, para. 9) What does IHL say about the incidental loss of civilian lives? Is IHRL concerned only with the loss of civilian lives as a result of military operations? According to the Human Rights Committee, in paragraph (d)? Do you agree with the Committee's recommendation? What does IHL say about the incidental loss of civilian lives? Is IHRL concerned only with the loss of civilian lives as a result of military operations? ([CIHL, Rules 1-21](#); [P I, Arts 48, 50, 51](#) and [57](#); [P II, Art. 13](#))

III. Treatment of Persons – Detention

11. (Document A, paras [24]-[28]; Document B, para. [6])

a. May the United States detain terrorist suspects without trying them under IHL of international armed conflicts (if applicable)? Under IHL of non-international armed conflicts (if applicable)? Under IHRL? Are the rules of IHL and IHRL different on this matter? If so, which prevails in a non-international armed conflict, and under which circumstances? ([CIHL, Rule 99](#); [GC I-IV, Art. 3](#); [GC III, Art. 21](#); [GC IV, Arts 42-43](#) and [78](#); [P I, Art. 75](#))

b. Does IHL provide for a sufficient legal basis to detain members of Al Qaeda (if IHL applies at all)? ([CIHL, Rule 99](#); [GC I-IV, Art. 3](#); [P II, Arts 4](#) and [5](#); [GC III, Art. 21](#); [GC IV, Arts 42-43](#) and [78](#); [P I, Art. 75](#))

c. Do the persons detained in armed conflicts have a right to challenge the legality of their detention? Under IHL? Under IHRL? ([CIHL, Rule 99](#); [GC I-IV, Art. 3](#); [P II, Arts 4](#) and [5](#); [GC III, Art. 21](#); [GC IV, Arts 42-43](#) and [78](#); [P I, Art. 75](#))

IV. Treatment of Persons – Transfer to Third States

12. (Document A, para. [36]) What does IHL say about transfer of detainees to third states? When are such transfers prohibited under IHL of international armed conflicts? Under IHL of non-international armed conflicts? Under IHRL? What set of rules is more protective of the persons concerned? ([GC I-IV, Art. 3](#); [GC III, Art. 12](#); [GC IV, Arts 45](#) and [49](#))

V. Reparation

13. (Document C, para. 9) In the event of an unlawful drone attack, what measures must the US take to repair the damage caused? Are these the same under IHL and IHRL?