

Five Reasons Drone Assassinations are Illegal (abridged)

By Bill Quigley, Pax Christi USA, Teacher of Peace

One. Assassination by the US government has been illegal since 1976

Drone killings are acts of premeditated murder. Premeditated murder is a crime in all fifty states and under federal criminal law. These murders are also the textbook definition of assassination, which is murder by sudden or secret attack for political reasons.

In 1976 U.S. President Gerald Ford issued Executive Order 11905, Section 5(g), which states "No employee of the United States Government shall engage in, or conspire to engage in, political assassination." President Reagan followed up to make the ban clearer in Executive Order 12333. Section 2.11 of that Order states "No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination." Section 2.12 further says "Indirect participation. No agency of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this Order." This ban on assassination still stands.

The reason for the ban on assassinations was that the CIA was involved in attempts to assassinate national leaders opposed by the US. Among others, US forces sought to kill Fidel Castro of Cuba, Patrice Lumumba of the Congo, Rafael Trujillo of the Dominican Republic, and Ngo Dinh Diem of South Vietnam.

Two. United Nations report directly questions the legality of US drone killings

The UN directly questioned the legality of US drone killings in a May 2010 report by NYU law professor Philip Alston. Alston, the UN special rapporteur on extrajudicial, summary, or arbitrary executions, said drone killings may be lawful in the context of authorized armed conflict (eg Afghanistan where the US sought and received international approval to invade and wage war on another country). However, the use of drones "far from the battle zone" is highly questionable legally. "Outside the context of armed conflict, the use of drones for targeted killing is almost never likely to be legal." Can drone killings be justified as anticipatory self-defense? "Applying such a scenario to targeted killings threatens to eviscerate the human rights law prohibition against arbitrary deprivation of life." Likewise, countries which engage in such killings must provide transparency and accountability, which no country has done. "The refusal by States who conduct targeted killings to provide transparency about their policies violates the international law framework that limits the unlawful use of lethal force against individuals."

Three. International law experts condemn US drone killings

Richard Falk, professor emeritus of international affairs and politics at Princeton University thinks the widespread killing of civilians in drone strikes may well constitute war crimes. "There are two fundamental concerns. One is embarking on this sort of automated warfare in ways that further dehumanize the process of armed conflict in ways that I think have disturbing implications for the future," Falk said. "Related to that are the concerns I've had recently with my preoccupation with the occupation of Gaza of a one-sided warfare where the high-tech side decides how to inflict pain and suffering on the other side that is, essentially, helpless."

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Human rights groups in Pakistan challenge the legality of US drone strikes there and assert that Pakistan can prosecute military and civilians involved for murder.

While stopping short of direct condemnation, international law expert Notre Dame Professor Mary Ellen O'Connell seriously questions the legality of drone attacks in Pakistan. In powerful testimony before Congress and in an article in *America* magazine she points out that under the charter of the United Nations, international law authorizes nations to kill people in other countries only in self-defense to an armed attack, if authorized by the UN, or is assisting another country in their lawful use of force. Outside of war, she writes, the full body of human rights applies, including the prohibition on killing without warning. Because the US is not at war with Pakistan, using the justification of war to authorize the killings is "to violate fundamental human rights principles."

Four. Military law of war does not authorize widespread drone killing of civilians

According to the current US Military Law of War Deskbook, the law of war allows killing only when consistent with four key principles: military necessity, distinction, proportionality, and humanity. These principles preclude both direct targeting of civilians and medical personnel but also set out how much "incidental" loss of civilian life is allowed. Some argue precision-guided weapons like drones can be used only when there is no probable cause of civilian deaths. But the US military disputes that burden and instead directs "all practicable precautions" be taken to weigh the anticipated loss of civilian life against the advantages expected to be gained by the strike.

Even using the more lenient standard, there is little legal justification of deliberately allowing the killing of civilians who are "incidental" to the killings of people whose identities are unknown.

Five. Retired high-ranking military and CIA veterans challenge the legality and efficacy of drone killings

Retired US Army Colonel Ann Wright squarely denies the legality of drone warfare, telling *Democracy Now*: "These drones, you might as well just call them assassination machines. That is what these drones are used for: targeted assassination, extrajudicial ultimate death for people who have not been convicted of anything."

Drone strikes are also counterproductive. Robert Grenier, recently retired Director of the CIA Counter-Terrorism Center, wrote, "One wonders how many Yemenis may be moved in the future to violent extremism in reaction to carelessly targeted missile strikes, and how many Yemeni militants with strictly local agendas will become dedicated enemies of the West in response to US military actions against them."

Recent polls of the Pakistan people show high levels of anger in Pakistan at US military attacks there. This anger in turn leads to high support for suicide attacks against US military targets.