

# **UNITED STATES OF AMERICA**

**'TARGETED KILLING'  
POLICIES VIOLATE THE  
RIGHT TO LIFE**

**AMNESTY  
INTERNATIONAL**



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## SUMMARY

A series of speeches over the past two years by officials from the administration of President Barack Obama, and an article published in the New York Times on 29 May 2012, have revealed some details of the purported legal rationale for current policies and practices of the United States of America (USA) in the deliberate killing of terrorism suspects, including far from any recognized battlefield, and particularly through the use of unmanned aerial vehicles (popularly known as drones). The picture slowly emerging gives grounds to conclude that US policies and practices are unlawful, violating the fundamental human right not to be arbitrarily deprived of one's life.

While some of the killings in question, if conducted in the context of specific armed conflicts, for instance in Afghanistan or at some times in some parts of Pakistan, Yemen or Somalia, may not violate international human rights or international humanitarian law, the policy appears also to permit extrajudicial executions in violation of international human rights law, virtually anywhere in the world. Among the particular concerns of Amnesty International are:

- ☒ the administration's continued reliance on a "global war" legal theory that treats the entire world as a battlefield between the USA and armed groups, on which lethal force may apparently be used without regard to human rights standards;
- ☒ the administration's invocation of the right to use force in self-defence to justify the deliberate killing of virtually anyone suspected of involvement of any kind in relation to a range of armed groups and/or terrorism against the USA, particularly through the adoption of a radical re-interpretation of the concept of "imminence";
- ☒ reports that a "guilty until proven innocent" approach is taken to military-age males who are killed by a strike, even if there is no specific evidence that they were directly participating in hostilities in a specific armed conflict;
- ☒ the fact that key factual and legal details of the killing programme remain shrouded in secrecy.

These aspects of US policy and practice are not only of concern in their own right: they also weaken the credibility of the USA as an advocate for respect for human rights by other states; they set dangerous precedents that other states may exploit to avoid responsibility for their own unlawful killings; and if unchecked there is a real risk that the US "global war" doctrine will further corrode the foundations of the international framework for protection of human rights. There has also been widespread speculation that current US policies and practices with respect to such killings may inadvertently be building support for the very armed groups and terror attacks that US officials say provide its justification.

Amnesty International calls on all states to refrain from the unlawful use of lethal force, including against individuals suspected of terrorism, and to cooperate, bilaterally and through intergovernmental organizations, to ensure that those responsible for the 11 September 2001 attacks in the USA, and for planning or carrying out attacks of a similar nature, are brought to justice for their crimes in fair and public trials without recourse to the death penalty.

Amnesty International calls on the US administration, Congress and the courts to:

- disclose further legal and factual details about US policy and practices for so-called 'targeted killings', 'signature strikes', and "Terrorist Attack Disruption

Strikes”;

- end claims that the USA is authorized by international law to use lethal force anywhere in the world under the theory that it is involved in a “global war” against al-Qa'ida and other armed groups and individuals;
- recognize the application of international human rights law to all US counter-terrorism operations including those outside US territory;
- bring US policies and practices in line with the USA's international human rights obligations, particularly, by:
  - ensuring that any use of lethal force outside of specific recognized zones of armed conflict complies fully with the USA's obligations under international human rights law, including by limiting the use of force in accordance with law enforcement standards.
  - Ensuring that any use of lethal force within specific recognized zones of armed conflict complies fully with the USA's obligations under international human rights and humanitarian law, including by recognizing and respecting the rule that if there is doubt as to whether a person is a civilian, the person is to be considered a civilian.
  - Ensuring independent and impartial investigations in all cases of alleged extrajudicial executions or other unlawful killings, respect for the rights of family members of those killed, and effective redress and remedy where killings are found to have been unlawful.

Amnesty International calls on other states, and intergovernmental organizations including the United Nations, explicitly to reject and oppose as unlawful the current US policies and practices on the deliberate use of lethal force against terrorism suspects, and to urge the USA to take the measures outlined above.

## **US POLICY ON INTENTIONAL USE OF LETHAL FORCE AGAINST TERRORISM SUSPECTS**

Deliberate killings of terrorism suspects by the USA far from any recognized battlefield and without charge or trial has been reported since at least 2002,<sup>1</sup> but the policies and practices for such killings appear to have undergone rapid expansion in recent years. While Amnesty International does not have comprehensive data of its own on the totality of such killings, and is not in a position to endorse the findings of others, the Bureau of Investigative Journalism, a not-for-profit organization based at City University, London, has published figures that give some sense of the scale of such US operations.<sup>2</sup> For example, according to the Bureau:

- In Pakistan between 2004 and 2012, there have been some 330 strikes, with the total reported number killed being between 2,479 and 3,180 people (and more than 1,000 other people being injured); 278 of the 330 strikes were carried out under the Obama administration.
- In Yemen between 2002 and 2012, there have been between 44 and 54 confirmed US operations (including 31 to 41 drone strikes), with a possible further 87 to 96 operations (including 49 to 55 drone strikes). The total number reported killed was between 317 and 826 people. All but one of these operations were carried out under the Obama administration.

- In Somalia between 2007 and 2012, there have been some 10 to 21 US strikes (including three to nine drone strikes), with the total number of people reported killed as being between 58 and 169.

Across these three countries, then, the Bureau estimates there have been a total of some 2854 to 4175 people reported killed.<sup>3</sup>

Like the gradual unveiling of torture and secret detention carried out by the Central Intelligence Agency (CIA) operating under the authority of then President George W. Bush, over the past decade the public face of the so-called 'targeted killing' programme has moved from official silence (or outright denial), to unofficial acknowledgement of the facts by unnamed officials, and ultimately to very public attempts by named officials to legally justify what can no longer plausibly be denied. On coming to office, President Obama ordered an end to the use of "enhanced interrogation techniques" and long-term secret detention by the CIA, but his administration has markedly expanded the programmes of premeditated and opportunistic killing outside of zones of armed conflict, primarily though not exclusively through the use of unmanned aerial vehicles popularly known as "drones". As will be described in greater detail below, the administration deems as legal and acceptable the killing of a certain number of other persons who are in the vicinity of any individual being targeted, even if they are themselves in no way involved in terrorism. At the same time, the administration reportedly applies a "guilty until proven innocent" approach to a significant number of unknown bystanders. The administration has also reportedly approved practices of so-called "signature strikes" and "Terrorism Attack Disruption Strikes" where the identity of the person or people targeted for killing is not known, but their activities (presumably as viewed from the sky) appear to fit into a pattern that has been deemed suspicious.

Unlike torture, which is absolutely prohibited in all circumstances, intentional killing by the state can sometimes be justified under international law, both in situations of armed conflict and in law enforcement situations. However, as will be explained below, based on what officials from the administration have stated publicly, and what has been reliably reported by news media, current US policy and practices for the intentional use of lethal force against terrorism suspects and other people who happen to be near such suspects appear to go far beyond what international human rights law permits. Indeed, from what has been publicly disclosed, the policy and its implementation seem simply to disregard international protections for the right to life and the prohibition of the arbitrary deprivation of life. In at least some cases, the policy appears to allow for unlawful killings referred to in human rights terms as "extra-legal, arbitrary and summary executions" or "extrajudicial executions". As with the Bush administration's approach to torture, the Obama administration's approach to deliberate killings of terrorism suspects relies to a significant extent on the unilateral re-definition of established legal concepts in radical ways, with key details kept secret. As with the Bush administration's attempts to justify acts that constituted torture and other cruel, inhuman or degrading treatment, efforts by the current administration to justify the current scope and character of its programme of deliberate killing, risks doing immeasurable damage to the international framework for protection of human rights.

A series of speeches by officials from the administration and reliable news reports have gradually revealed some details of the purported legal rationale for the policies on drone (and other) killings and their implementation. The picture slowly emerging gives grounds for serious concern that the policies and practices violate the fundamental human right not to be arbitrarily deprived of one's life.

Speeches by the Legal Adviser to the Department of State,<sup>4</sup> the General Counsel of the Department of Defense,<sup>5</sup> the US Attorney General,<sup>6</sup> the CIA General Counsel,<sup>7</sup> and the Assistant to the President for Homeland Security and Counterterrorism,<sup>8</sup> have argued that US policy and practices for deliberate and premeditated "targeted killing" of individuals identified as terrorism suspects are lawful under international law on two grounds (the

officials have, it must be noted, carefully avoided directly addressing the so-called 'signature strikes' or 'Terrorist Attack Disruption Strikes'<sup>9</sup>):

- That the USA is engaged in an armed conflict with "al-Qa'ida, the Taliban, and associated forces" that is global in scope, allowing for US use of lethal force, virtually anywhere in the world, against anyone it believes to be sufficiently involved with these groups, and further permitting the killing of a "proportionate" number of civilians in the vicinity of that person, whether or not there is any real reason to believe that they themselves are involved in terrorism;
- That the USA is entitled to use lethal force against terrorism suspects in a very wide range of situations on the basis of its right under international law to self-defence.

A number of other factors have been mentioned as matters of policy, not necessarily legal requirements, which inform the decision whether to carry out a killing:

- A stated "preference" to capture rather than kill, where feasible;
- Whether the state where the person is located is itself willing and able to capture or kill him or her;
- Careful consideration, both before and after attacks, by members of the executive branch. At the same time it is explicitly denied that such decisions are subject to any restriction or legal review by the courts, or that family members or other interested parties are entitled to disclosure of any details of such considerations in relation to a given killing;
- A higher standard, or at least more rigorous scrutiny, is applied to proposed killings of US citizens than to killings of non-citizens.

While purporting to respond to questions about and criticism of US policies and practices on the use of lethal force against terrorism suspects, not one of the discourses by various administration officials on such killings has even mentioned the words "human rights".<sup>10</sup> Instead of attempting to explain how the policies and practices on such killings comply with human rights standards, or at least explaining why the US administration believes its human rights obligations do not apply to the killings, the human rights standards and any criticisms based upon them have simply been ignored.

A 29 May 2012 New York Times article, based on interviews with "three dozen" of the President's current and former advisers, offered a few further details of the operation of the killing policy in practice.<sup>11</sup> The article reported that the administration adopted "a disputed method for counting civilian casualties" that "in effect counts all military-age males in a strike zone as combatants...unless there is explicit intelligence posthumously proving them innocent." It described the process by which names are added to the US government's list of suspects to be killed: "Every week or so, more than 100 members of the government's sprawling national security apparatus gather, by secure video teleconference, to pore over terrorist suspects' biographies and recommend to the president who should be the next to die". Names are then sent to the White House for approval by the President, in consultation with the Assistant to the President for Homeland Security and Counterterrorism. The entire process is conducted in secret.

The New York Times article also confirmed a policy allowing for so-called "signature strikes" against targets where no individual whose identity was known to the USA was known to be present, but suspicious buildings or activities were observed. Apparently this practice, applied in Pakistan, does not involve any requirement of evidence of a threat to the USA, as the article indicates it is this criterion that distinguishes "signature strikes" from "Terrorist Attack Disruption Strikes". According to the article, "Terrorist Attack Disruption Strikes" are another category of attack, authorised in Yemen, which are carried out against persons who



have not been identified, but in respect of whom there is “evidence of a threat to the United States”.

Further operational details and the precise legal interpretations upon which the “targeted killing”, “Terrorist Attack Disruption Strike” and “signature strikes” policies are based remain secret, despite ongoing attempts by US civil rights organizations and the families of individuals killed in such attacks to obtain further information.<sup>12</sup> However, even with the limited information publicly available at this time, it is apparent that the USA’s policy and at least some of its practices are inconsistent with its obligations under international human rights law.

## **CURRENT US POLICY AND PRACTICES VIOLATE THE RIGHT TO LIFE**

Amnesty International fully recognizes the USA’s duty to take robust action to protect the life and physical integrity of people within its jurisdiction, and to bring to justice perpetrators of crimes under international law. But in doing so, the US government must respect its obligations under international human rights law and, in the exceptional situations where it applies, under international humanitarian law as well. Those responsible for the attacks in the USA on 11 September 2001, attacks that deliberately targeted civilians and which Amnesty International has repeatedly condemned as a crime against humanity, should be brought to justice through fair criminal trials without recourse to the death penalty, as should anyone responsible for planning further such attacks. This is a realistic aim that can and should be achieved through cooperation between states in accordance with their international obligations. Under the law enforcement standards applicable in such circumstances, situations can arise where the intentional use of lethal force might be justified in the course of attempts to arrest such persons, i.e. where strictly unavoidable to protect against immediate threats to the life of the persons carrying out the arrests, or to the lives of others, posed by individuals who resist arrest.

Amnesty International also recognizes that where the USA is a party to a specific armed conflict, lethal attacks conducted within the zone of the conflict that comply with the laws of armed conflict generally will not violate the right to life as protected under international human rights law.<sup>13</sup>

However, as will be described below, current US policies and practices on intentional killing of terrorism suspects appear to go substantially beyond what is permitted under the rules of international law.

It is a fundamental rule of international human rights law that no-one may be arbitrarily deprived of his or her life. Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), for instance, provides as follows:

“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

This is a provision of international human rights law that can never be suspended or otherwise derogated from even “in time of public emergency which threatens the life of the nation”.<sup>14</sup> Indeed even in situations of full-blown armed conflict, the right not to be arbitrarily deprived of one’s life continues to apply, including in respect of acts outside a state’s ordinary territory, though in zones of armed conflict what is “arbitrary” generally falls to be determined by the rules of international humanitarian law.<sup>15</sup>

The fact a person may have been responsible for murder, even mass murder, or is planning such crimes, does not in itself legally justify his killing at the hands of state authorities without a criminal trial.<sup>16</sup> The circumstances in which international human rights law allows an individual to be lawfully deprived of his life are very restricted.

In general, the intentional use of lethal force is lawful only if, at the time of its use, it is "strictly unavoidable" in order to meet an "imminent threat of death" in self-defence or defence of others. Principle 9 of the 1990 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials states as follows:

"Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."<sup>17</sup>

Even where such circumstances exist, there are additional requirements for the use of force to be lawful. Principle 10 of the Basic Principles provides that:

"In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident."

The UN Basic Principles reflect the legal obligations of states under, for instance, article 6 of the ICCPR.<sup>18</sup> As such, while framed in terms of "law enforcement officials", they apply equally to "military authorities, whether uniformed or not" and "State security forces" when those authorities are exercising "police powers" (including any use of force outside of a situation of armed conflict).<sup>19</sup>

The only exception to the ordinary "law enforcement" rules in relation to the use of lethal force and the right to life, as set out above, is in the exceptional situation of zones of armed conflict. In the context of an international armed conflict, a person who is a member of the armed forces of a state, or a civilian who is at the relevant time directly participating in hostilities, may be lawfully targeted for attack (and killed), if the attack complies with the rules of international humanitarian law. Applying this rule to non-international armed conflict may, at least in some circumstances, require attempting to capture, rather than kill, members of armed groups wherever practically possible.<sup>20</sup>

Among the fundamental rules of international humanitarian law are the prohibition of indiscriminate attacks (i.e. those that are of a nature to strike military objectives and civilians or civilian property without distinction)<sup>21</sup> and the prohibition of attacks that are disproportionate (i.e. those that may be expected to cause incidental loss of civilian life, injury to civilians or damage to civilian property, that would be excessive in relation to the concrete and direct military advantage anticipated).<sup>22</sup>

Under international humanitarian law, if there is doubt as to whether a person is a civilian, the person is to be considered a civilian.<sup>23</sup> In the conduct of military operations, states must take "constant care" to "spare the civilian population, civilians and civilian objects"; specifically, "all feasible precautions must be taken to avoid, and in any event to minimise, incidental loss of civilian life, injury to civilians and damage to civilian objects."<sup>24</sup>

Deliberate killings that do not comply with the relevant rules of international law are often referred to as "extra-legal, arbitrary or summary executions" or "extra-judicial executions". Principle 1 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions provides:

"Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal

laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.”

Where the state deliberately kills someone, the onus is on the state to demonstrate that the killing is lawful.<sup>25</sup> Family members of a person who is killed have the right to receive the results of an independent and impartial investigation, including a judicial process.<sup>26</sup>

The main argument presented by administration officials for the lawfulness of US ‘targeted killings’ (and presumably by implication for ‘signature strikes’ and ‘Terrorist Attack Disruption Strikes’ as well) is that the USA is involved in a global armed conflict with al-Qa’ida and other groups and individuals. This “global war” argument seeks to extend the application of the more permissive rules of international humanitarian law, which were designed for the exceptional situation of armed conflict, to the world as a whole, while completely ignoring the entire body of international human rights law. This in turn is used to justify a policy that would allow the USA to carry out killings, including of persons the USA admits may simply be unfortunate bystanders, virtually anywhere in the world at virtually any time. The “global war” doctrine – today largely accepted across the three branches of the US government – was originally developed by the administration of President George W. Bush. Under its logic, multiple human rights violations, including the crimes under international law of torture and enforced disappearance, have been carried out by US personnel, crimes for which impunity and absence of remedy remain hallmark characteristics to this day. The “global war” theory also underlies the continued detention and military trial regime at the US naval base at Guantánamo Bay in Cuba, as well as the assertion by some US politicians of a much broader power to detain terrorism suspects indefinitely, including perhaps US citizens, without criminal trial.

Amnesty International will continue to urge the USA to cease to invoke, indeed to publicly disavow, the “global war” doctrine, and to fully recognize and affirm the applicability of international human rights obligations to all US counter-terrorism measures.<sup>27</sup> This is so whether those measures are taken in the context of specific geographically-circumscribed non-international armed conflicts or away from any armed conflict, and whether on the ordinary territory of the USA or elsewhere. In taking these steps, the USA would simply be joining the opinion of the vast majority of the international community, as expressed in resolutions of the United Nations (UN) General Assembly, judgments of the International Court of Justice, UN and regional human rights bodies established by treaties and inter-governmental organizations, and international legal experts.<sup>28</sup>

It would also constitute an important step towards the USA better fulfilling in practice its pledges made, for instance to the UN Human Rights Council in 2010, to “strengthen our own system of human rights protections and encourage others to strengthen their commitments to human rights”.<sup>29</sup> Both as a matter of international legal obligation under the ICCPR and to demonstrate the USA’s full commitment to promoting human rights at home and abroad, Amnesty International considers that US officials, and particularly those in position such as the Attorney General, the Legal Adviser to the State Department, and the President himself, should do all they can to put human rights at the heart of public discourse on national security.

Amnesty International considers that the “global war” framework – interpreted in US law as being underpinned by the Authorization for Use of Military Force (AUMF) passed by US

Congress on 14 September 2001 and signed into law by President Bush four days later, which itself was reaffirmed in the National Defense Authorization Act (NDAA) signed by President Obama on 31 December 2011 – is an unacceptably unilateral and wholesale departure from the very concept of the international rule of law generally, and the limited scope of application of the law of armed conflict in particular, as it has existed to date. The USA has in effect declared the whole world as a battleground governed by the law of war as unilaterally interpreted by the USA.<sup>30</sup>

Amnesty International recognizes that international law allows for the use of lethal force in particular circumstances where it would normally be prohibited, in situations that meet the international legal definition of an armed conflict. The organization also recognizes that the USA has, over the past decade, participated in a number of specific armed conflicts, both of an international and non-international character, on the territory of several states, some of which continue today. However, it considers that there is no reasonable basis in international humanitarian and human rights law for the invocation by one state of its view that it is engaged in a global and pervasive armed conflict against a diffuse network of non-state actors, as providing permission under international law to kill individuals anywhere in the world at any time, whenever that state deems, based on secret information, such actions to be appropriate. To accept such a theory would obviously be to twist international human rights and humanitarian law and other basic rules of public international law to their breaking points. It would also fundamentally undermine crucial protections for human rights of civilians and others that have been painstakingly developed over more than a century of international law-making.

It is not entirely clear whether the US administration considers that the USA's right of self-defence under international law provides an independent legal justification for killings, separate from the justification it asserts under its "global war" theory. As a matter of policy, Amnesty International generally takes no position on the desirability or otherwise of particular military interventions or other forms of armed conflict, other than to demand that all participants respect international human rights and humanitarian law. Amnesty International does not here take a position for or against the involvement of the USA in any specific armed conflicts; the organization is however concerned that the administration seems to invoke such a broad right to use force in self-defence as would justify the deliberate killing of virtually any individual suspected of involvement of any kind in relation to a range of armed groups and/or terrorism against the USA, particularly through the adoption of a radical re-interpretation of the concept of "imminence", in violation of international human rights law.

The main contemporary reference to states' right of self-defence in an international treaty is found in Article 51 of the Charter of the United Nations, which states in relevant part as follows:

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."

Article 51 appears then to recognize an exception to the rule in article 2(4) of the UN Charter that, "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." The only other exception in the UN Charter is use of force authorized by the Security Council under Chapter VII.

On its face, article 51 appears to allow for use of force in self-defence only after an attack has already taken place and only on a temporary basis pending action by the UN Security Council. Clearly an armed attack did occur against the USA on 11 September 2001. However, more than a decade has now passed, with a series of relevant Security Council

resolutions over the intervening years. It is difficult to see how on such an interpretation the right preserved by article 51 of the UN Charter could properly be invoked to justify the very broad US policy and programme, global in reach, of "targeted killings", "signature strikes", and "Terrorist Attack Disruption Strikes", allowing the deliberate killing of virtually any individual suspected of involvement of any kind in relation to a range of armed groups and/or terrorism against the USA.

Some states and scholars, however, assert that a potentially broader right to use force in self-defence continues to exist under customary international law and has not been disturbed by the UN Charter. They argue that states have a right of "anticipatory" defence that allows the use of force to stop imminent attacks before they occur.<sup>31</sup> This line of argument relies for evidence of the rule primarily on an exchange of correspondence between the USA and the United Kingdom between 1838 and 1842, known as the *Caroline* case.<sup>32</sup> The *Caroline* case arose from acts by British forces in American territory. The British attacked, seized and destroyed a vessel (the *Caroline*) used by persons assisting in an armed rebellion in Canada, then a British territory. The US Secretary of State protested the British acts, asserting that for the acts to be lawful, the British government would need to show the existence of:

"...a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation. It will be for it to show, also, that the local authorities of Canada, even supposing the necessity of the moment authorized them to enter the territories of the United States at all, did nothing unreasonable or excessive; since the act justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it. It must be shown that admonition or remonstrance to the persons on board the 'Caroline' was impracticable, or would have been unavailing; it must be shown that daylight could not be waited for; that there could be no attempt at discrimination, between the innocent and the guilty; that it would not have been enough to seize and detain the vessel; but that there was a necessity, present and inevitable, for attacking her, in the darkness of the night, while moored to the shore, and while unarmed men were asleep on board, killing some, and wounding others, and then drawing her into the current, above the cataract, setting her on fire, and, careless to know whether there might not be in her the innocent with the guilty, or the living with the dead, committing her to a fate, which fills the imagination with horror."

The British government did not dispute the US Secretary of State's description of the law, and the exchange has subsequently been treated as accurately defining a rule of customary international law and, particularly, as defining the "imminence" of any threat that might potentially justify such use of force.

It seems likely that it is the rule articulated in the *Caroline* case that administration officials meant to invoke by referring to the right of self-defence as a source of legal justification for the policy of "targeted killings" (and, by implication, "signature strikes" and/or "Terrorist Attack Disruption Strikes"). Yet when the detailed requirements of such a rule as described in the *Caroline* case are examined, it is difficult to see how, so far as information is publicly available, the broad scope for attacks allowed by the policy, or for that matter the actual situations on the ground at the time the killings were carried out in most if not all of the cases, could reasonably be said to satisfy the requirement of imminence. Only by radically and unilaterally re-interpreting the meaning of "imminent" under this rule could the right of self-defence be made to seem remotely applicable to a policy that effectively allows for the deliberate killing of virtually any individual suspected of involvement of any kind in relation to a range of armed groups and/or terrorism against the USA.<sup>33</sup> The "self-defence" argument, then, appears incapable of adding any independent legal support for the current US policies and practices. When closely examined, it appears either to collapse into just another variant of the "global war" theory or simply to be legally implausible as a basis for the very wide scope for killing permitted by the policies.

The invocation of the “global war” legal theory and the absence of consideration of universal human rights in the justifications offered by administration officials have grave implications.

First, everyone in the world, particularly but not exclusively non-US citizens, risks coming to be seen not as a human being equally endowed with fundamental rights, but merely as a possible enemy who if suspected by US officials of involvement in terrorism may be targeted for death, especially if detention and trial is calculated to be too difficult or costly. Alternatively, individuals risk being defined as the faceless bystander who might lawfully be killed or injured for no reason other than that they happen to be in the wrong place at the wrong time – in other words, in the terms of the Attorney General’s speech, “collateral damage”.

Second, many of the legal arguments made by the administration imply that US officials, in deciding whether conditions exist to allow the deliberate killing of a person, draw significant distinctions between the rights of US citizens and the rights of everyone else in the world. Yet it is fundamental to the very concept of universal human rights, and it is expressly provided for in the particular human rights treaties to which the USA is party, that the right to life, to liberty, and to fair trial of every human being is to be respected without discrimination on the basis of their nationality. Article 2(1) of the ICCPR, for instance, provides:

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, **national** or social **origin**, property, birth or other status.” [emphasis added]

Article 26 further provides:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, **national** or social **origin**, property, birth or other status.” [emphasis added]

These provisions apply, of course, to the right not to be arbitrarily deprived of one’s life, under article 6 of the ICCPR.<sup>34</sup>

Current US policies and practices clearly allow for intentional use of lethal force, in places other than specific recognized zones of armed conflict such as in Afghanistan and at least at some times in some parts of Pakistan, in circumstances and in a manner incompatible with the applicable human rights standards. As such, the current policies and practices violate the international legal obligations of the USA with respect to the right to life. As mentioned earlier, UN standards that reflect the obligations of states to respect the right not to be arbitrarily deprived of life in such situations provide that in all such circumstances “intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life” and articulate other conditions and restrictions on the use of potentially deadly force. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has concluded that in this context:

“...a targeted killing in the sense of an intentional, premeditated and deliberate killing by law enforcement officials [here defined to include military and security forces] cannot be legal because, unlike in armed conflict, it is never permissible for killing to be the sole objective of an operation. Thus, for example, a “shoot-to-kill” policy violates human rights law.”<sup>35</sup>

In these situations, outside of specific recognized zones of armed conflict, the insistence by the USA that the international law of armed conflict is the sole governing framework, and its consequent failure to observe the applicable "law enforcement" standards for use of intentional lethal force under its human rights obligations, means current US policy and practices violate the right to life as protected by international law. As such, some or all of the attacks that the USA has actually carried out, outside of zones of armed conflict, constitute unlawful killings, that can reasonably be described as "extrajudicial, summary or arbitrary executions" or "extrajudicial executions" in human rights terms.

On the other hand, where the USA has carried out drone attacks or other premeditated killings in areas where there was in fact a specific armed conflict taking place at the time, such as at some times in certain areas of Pakistan, some or all of those particular attacks may not have violated international human rights or international humanitarian law. However, evaluation of the lawfulness of such attacks under international humanitarian and human rights law has frequently been impeded by secrecy around such attacks. This situation arises from, among other things: the fact the CIA appears to have operational responsibility for some or all such attacks but that agency's actions, command and accountability structure, and indeed the very existence of any CIA drone programs, are classified; the failure to disclose information about rules of engagement for such attacks; and the refusal to provide verifiable information about the evidentiary basis for or actual consequences of such attacks.

In this regard, similar concerns about the USA's use of drones in zones of armed conflict were raised in late 2009 by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, who concluded that the lawfulness of such operations could only be determined "in light of information about the legal basis on which particular individuals have been targeted, the measures taken to ensure conformity with the international humanitarian law principles of discrimination, proportionality, necessity and precaution, and the steps taken retrospectively to assess compliance in practice."<sup>36</sup> Without such information, the Special Rapporteur suggested, the USA would "increasingly be perceived as carrying out indiscriminate killings in violation of international law."<sup>37</sup>

The speeches by US administration officials have disclosed little that was not known in late 2009 in terms of concrete and definitive details as to how such decisions are actually made and what accountability structures exist around those who make them. Nor has the US government generally been willing to disclose the factual grounds for or operational details of particular killings. The New York Times article provides a few further hints as to operational practice, albeit without necessarily representing official confirmation. To the extent that any legal arguments have been offered in official speeches, these appear not directly to address so-called "signature" or "Terrorist Attack Disruption Strikes" at all. The concerns raised by the Special Rapporteur in 2009 thus remain as valid today.

Further, the reports in the New York Times article that the administration uses a method for counting civilian casualties that in effect registers all military-age males in a strike zone as combatants unless there is explicit intelligence proving them innocent, calls starkly into question US claims of compliance with international humanitarian law even in respect of attacks conducted in zones of armed conflict. As was mentioned previously, to comply with the laws of war, attacks must distinguish between on the one hand combatants and individuals who are directly participating in hostilities and on the other hand civilians, and they must not cause civilian casualties disproportionate to the concrete and direct military advantage anticipated by the attack. In the case of doubt as to the civilian or military character of an individual they are to be presumed to be a civilian. If US policy is indeed to deem all military-age males in a strike zone as combatants unless proven otherwise, this would at minimum seriously skew the analysis of whether given attacks satisfy the requirement of proportionality and could thereby render such attacks unlawful even if they are clearly within a zone of armed conflict and the specific target of the attack is clearly a

lawful target.

The USA's continuing promotion of a sweeping "global war" legal theory also undoubtedly risks deeper and broader consequences for human rights and the international rule of law. It creates the real possibility, perhaps even likelihood, that other states will similarly consider themselves to have a very wide latitude to kill people on the territory of virtually any other state, while refusing to acknowledge responsibility for particular attacks or asserting the right to keep the precise grounds for doing so secret. That risk can only increase as other governments acquire technologies, such as drones, that reduce the cost and increase the deniability of such attacks. Further, the same "global war" reasoning applies not only to the use of lethal force in ways incompatible with human rights standards: the USA uses it as well to justify a wider range of human rights violations, including those associated with the indefinite detentions and military trials at Guantánamo. As long as the USA continues to do so, the risk of other governments adopting similar reasoning to justify their own human rights violations remains.

## **CONCLUSION**

Amnesty International calls on all states to refrain from the unlawful use of lethal force, including against individuals suspected of terrorism, and to cooperate, bilaterally and through inter-governmental organizations, to ensure that those responsible for the 11 September 2001 attacks in the USA, and for planning or carrying out similar such attacks anywhere in the world, are brought to justice for their crimes in fair and public trials without recourse to the death penalty.

Amnesty International calls on the US administration, Congress and the courts:

- To disclose further legal and factual details about US policy and practices for so-called 'targeted killings', 'signature strikes', and "Terrorist Attack Disruption Strikes".
- To end claims that the USA is authorized by international law to use lethal force anywhere in the world under the theory that it is involved in a 'global war' against al-Qa'ida and other armed groups and individuals.
- To recognize the application of international human rights law to all US counter-terrorism operations including those outside US territory.
- To bring US policies and practices in line with the USA's international human rights obligations, particularly, by:
  - ensuring that any use of lethal force outside of specific recognized zones of armed conflict complies fully with the USA's obligations under international human rights law, including by limiting the use of force in accordance with UN standards for the use of force in law enforcement;
  - Ensuring that any use of lethal force within a specific recognized zone of armed conflict complies fully with the USA's obligations under international human rights and humanitarian law, including by recognizing and respecting the rule that if there is doubt as to whether a person is a civilian, the person is to be considered a civilian.
  - Ensuring independent and impartial investigations in all cases of alleged extrajudicial executions or other unlawful killings, respect for the rights of



family members of those killed, and effective redress and remedy where killings are found to have been unlawful.

Amnesty International calls on other states, and intergovernmental organizations including the United Nations, explicitly to reject and oppose as unlawful the current US policies and practices on the deliberate use of lethal force against terrorism suspects, and to urge the USA to ensure that all measures it takes in the name of countering terrorism fully comply with its international human rights obligations. States should officially protest and pursue remedies under international law when lethal force is unlawfully used by the USA or other states, in violation of the right to life, against individuals on their territory or against their nationals.

## ENDNOTES

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<sup>1</sup> For example, see Yemen/USA: Government must not sanction extrajudicial executions, 8 November 2002, <http://www.amnesty.org/en/library/info/AMR51/168/2002/en>

<sup>2</sup> <http://www.thebureauinvestigates.com/category/projects/drones/> (accessed 7 June 2012).

<sup>3</sup> The Bureau explains its methodology here: <http://www.thebureauinvestigates.com/2011/08/10/pakistan-drone-strikes-the-methodology2/> (accessed 7 June 2012). The Bureau also estimates that across these countries 551 to 1027 of those killed were reported to have been “civilians” (meaning individuals who are not alleged to have been “militants”) and 200-202 have been children. In its explanation of methodology, the Bureau states, “Although we show a minimum and maximum range of civilians killed, other civilian deaths are likely to remain unreported, based on the findings of our field workers and others” and “When reporting on casualties among children we employ the United Nations-designated age range of 0-17 years inclusive.” Amnesty International notes that, in respect of attacks carried out in the context of an armed conflict, international humanitarian law does not prohibit incidental killing of civilians, including children, so long as among other things the attack is not indiscriminate, civilian losses are minimized as much as is feasible, and the civilian losses are not disproportionate to the military objective that was the target of the attack. The New York Times reported that an anonymous “senior American counterterrorism official” questioned the Bureau’s findings, but rather than backing up his criticism with figures the administration would claim to be more accurate, the official attacked the motivations behind the Bureau’s research, appearing to suggest the research was the result of either the journalists or their sources or both being al-Qa’ida sympathisers: “One must wonder why an effort that has so carefully gone after terrorists who plot to kill civilians has been subjected to so much misinformation. Let’s be under no illusions — there are a number of elements who would like nothing more than to malign these efforts and help Al Qaeda succeed.” Scott Shane, ‘U.S. Said to Target Rescuers at Drone Strike Sites’, New York Times, 5 February 2012. Particularly since the administration refuses to provide official and verifiable figures of its own, the Bureau research appears currently to be the best estimate publicly available of the overall scope and impact of these operations.

<sup>4</sup> Legal Adviser to the US Department of State Harold Koh, “The Obama Administration and International Law” remarks to the American Society of International Law, 25 March 2010, <http://www.state.gov/s/l/releases/remarks/139119.htm>.

<sup>5</sup> General Counsel of the Department of Defense Jeh Charles Johnson, “National security law, lawyers and lawyering in the Obama Administration”, remarks at Yale Law School, 22 February 2012, <http://www.lawfareblog.com/2012/02/jeh-johnson-speech-at-yale-law-school/>.

<sup>6</sup> US Attorney General Eric Holder, remarks at Northwestern University School of Law, Chicago, 5 March 2012, <http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-1203051.html>.

<sup>7</sup> CIA General Counsel Stephen W. Preston, remarks at Harvard Law School, 10 April 2012, <https://www.cia.gov/news-information/speeches-testimony/2012-speeches-testimony/cia-general-counsel-harvard.html>.

<sup>8</sup> Assistant to the President for Homeland Security and Counterterrorism John O. Brennan, "The Ethics and Efficacy of the President's Counterterrorism Strategy" remarks at the Woodrow Wilson International Center for Scholars, 30 April 2012, <http://www.wilsoncenter.org/event/the-ethics-and-ethics-us-counterterrorism-strategy>.

<sup>9</sup> See, e.g., Charlie Savage, "Top U.S. Security Official Says 'Rigorous Standards' Are Used for Drone Strikes" New York Times, 30 April 2012; and Assistant to the President for Homeland Security and Counterterrorism John O. Brennan, "The Ethics and Efficacy of the President's Counterterrorism Strategy" remarks at the Woodrow Wilson International Center for Scholars, 30 April 2012, <http://www.wilsoncenter.org/event/the-ethics-and-ethics-us-counterterrorism-strategy>, answer to a question from the audience ["You make reference to signature strikes that are frequently reported in the press. I was speaking here specifically about targeted strikes against individuals who are involved."]

<sup>10</sup> The only speech to mention "human rights" at all was Harold Koh's March 2010 speech, which included a section on the administration's general approach to the UN Human Rights Council, but made no mention of "human rights" in the separate section on "The Law of 9/11" where he discussed detention, use of lethal force against, and prosecution of terrorism suspects. In January 2012, President Obama himself had commented on the programme of drone killings in Pakistan and elsewhere during a question and answer session broadcast on YouTube. He also made no mention of human rights, though his remarks were in any event at a much more general level than those by his officials. See [www.youtube.com/watch?v=2rPMPMqOjKY](http://www.youtube.com/watch?v=2rPMPMqOjKY), 30 January 2012 (accessed 7 June 2012).

<sup>11</sup> Jo Becker and Scott Shane, "Secret 'Kill List' Proves a Test of Obama's Principles and Will" New York Times, 29 May 2012.

<sup>12</sup> See for instance, <http://www.aclu.org/national-security/anwar-al-awlaki-foia-request> and <http://ccrjustice.org/ourcases/current-cases/al-majalah-freedom-of-information-act-request> (accessed 7 June 2012).

<sup>13</sup> Zones of armed conflict have existed in recent years in Afghanistan and at some times in some parts of Pakistan, Yemen and Somalia. For reasons including US officials' secrecy about the factual basis for particular operations as discussed later in this paper, it is frequently difficult for Amnesty International or other civil society organizations to determine definitively whether or not a particular attack was carried out in a place, at a time, and against a target, linked to the local armed conflict in question. Clearly, however, in Yemen and perhaps elsewhere there have been attacks by the USA that were not connected to any local armed conflict. See, for example, "Abyan attack", pages 31-33 of Yemen: Cracking down under pressure, 25 August 2010, <http://www.amnesty.org/en/library/info/MDE31/010/2010/en>.

<sup>14</sup> See article 4(2) of the ICCPR; Human Rights Committee, General Comment no 29 on States of Emergency (31 August 2001), paragraph 7; Human Rights Committee, General Comment no 6 on the Right to Life (30 April 1982), paragraphs 1 to 3.

<sup>15</sup> See International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, ICJ Reports 1996, paragraph 25; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, ICJ Reports 2004, paragraph 106; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, ICJ Reports 2005, paragraphs 216-20, 345(3); Human Rights Committee, General Comment no 31 on the nature of the general legal obligation imposed on States parties to the Covenant UN Doc CCPR/C/21/Rev.1/Add.13 (2004), paragraph 11. See also Reports of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions: UN Doc E/CN.4/2005/7 (22 December 2004), paras 41-54, 77-79, 84 and 86; UN Doc A/HRC/4/20 (29 January 2007), paragraph 19; UN Doc

A/HRC/4/20/Add.1 (12 March 2007), pages 342-363; UN Doc A/62/265 (16 August 2007), paras 27-32; UN Doc A/HRC/14/24/Add.6 (28 May 2010) ['Study on targeted killings'], paragraphs 28-36;

<sup>16</sup> Amnesty International opposes the death penalty in all circumstances, including after a criminal trial. Many states, however, including the USA, consider that international law permits the imposition of the death penalty after a trial fully meeting international fair trial standards in which the person is convicted of one of the most serious crimes. Amnesty International opposes the USA's current pursuit of the death penalty against six individuals charged for trial by military commission at Guantánamo not only on policy grounds – the organization's absolute opposition to the death penalty – but also on legal grounds, namely that the military commissions do not meet international fair trial standards and that any imposition of the death penalty after such trials will violate the right to life under international law.

<sup>17</sup> UN Basic Principles on the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 27 August to 7 September 1990. While the Basic Principles are not in themselves legally binding, they reflect states' legal obligations under, for instance, article 6 of the ICCPR. See also article 3 and its commentary in the UN Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979, as well as the Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, 'Study on Targeted Killings', UN Doc A/HRC/14/24/Add.6 (28 May 2010), paras 31-33.

<sup>18</sup> See for instance the decision of the Human Rights Committee finding violations of article 6 of the ICCPR in *Suárez de Guerrero v Colombia*, UN Doc CCPR/C/15/D/45/1979 (31 March 1982), paragraphs 13.1 to 13.3; Concluding Observations of the Human Rights Committee on periodic reports by the USA: UN Doc CCPR/C/USA/CO/3/Rev.1 (18 December 2006), para 30; UN Doc CCPR/C/79/Add.50 (3 October 1995), para 297. See also Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, 'Study on Targeted Killings', UN Doc A/HRC/14/24/Add.6 (28 May 2010), paragraphs 31-33.

<sup>19</sup> See note 1 to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the commentary to article 1 of the UN Code of Conduct for Law Enforcement Officials.

<sup>20</sup> The ICRC Study of Customary International Humanitarian Law concluded that, as rules applicable to both international and non-international armed conflicts, "...Attacks may only be directed against combatants. Attacks must not be directed against civilians" (Rule 1) and, "Civilians are protected against attack unless and for such time as they take a direct part in hostilities." (Rule 6). Common article 3 to the 1949 Geneva Conventions provides that in "the case of armed conflict not of an international character ... each Party to the conflict shall be bound to apply, as a minimum, the following provisions: ...Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: ... violence to life and person, in particular murder of all kinds..." As regards the possibility that a requirement to capture rather than kill members of armed groups wherever practically possible may apply, see e.g. the judgment of the High Court of Justice of Israel in *The Public Committee against Torture in Israel v. Gov't of Israel et al.*, HCJ 769/02 (11 December 2005), at paragraph 40. See also Concluding Observations of the Human Rights Committee on the third periodic report of Israel, UN Doc CCPR/C/ISR/CO/3 (3 September 2010) paragraph 10. The International Committee of the Red Cross (ICRC) has identified a similar principle in its *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, adopted by the Assembly of the International Committee of the Red Cross on 26 February 2009 and reprinted in Vol 90 (no 872) *International Review of the Red Cross* (December 2008) 991-1047, at 1043-1044. The ICRC presents this conclusion as based solely on a consideration of international humanitarian law, and adds on this issue that the Guidance is "without prejudice to

additional restrictions on the use of force, which may arise under other applicable frameworks of international law such as, most notably, international human rights law". It should be noted that Amnesty International does not necessarily agree with all of the views expressed by the ICRC in the Guidance on this and other issues, particularly since, as the document itself states, it does not on the whole take international human rights law into consideration; Amnesty International therefore considers it to be at most an incomplete summary of international law applicable to armed conflicts, particularly those of a non-international character.

<sup>21</sup> See ICRC Study, Rules 11 and 12, pp 37-43.

<sup>22</sup> See ICRC Study, Rule 14, pp 46-50.

<sup>23</sup> See article 50(1) of the 1977 Protocol I to the Geneva Conventions; ICRC Study of Customary International Humanitarian Law pp 23-24, noting that even taking into account reservations expressed by certain states in relation to article 50(1), "One cannot automatically attack anyone who might appear dubious." The ICRC Study was also cited in *The Public Committee against Torture in Israel v. Gov't of Israel et al.*, HCJ 769/02 (11 December 2005), at paragraph 40.

<sup>24</sup> See ICRC Study Rule 15, pp 51-55. See also rules 16-21, pp 55-66.

<sup>25</sup> See for instance the decision of the Human Rights Committee finding a violation of article 6 in *Baboeram-Adhin v Suriname*, UN doc CCPR/C/24/D/154/1983 (4 April 1985), paragraphs 14.1 to 15. See also Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, 'Study on Targeted Killings', UN Doc A/HRC/14/24/Add.6 (28 May 2010), paragraphs 87-92.

<sup>26</sup> See Principles 22 and 23 of the 1990 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and Principles 9 to 17 of the 1989 UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Economic and Social Council resolution 1989/65 of 24 May 1989.

<sup>27</sup> The Fourth Periodic Report of the USA under the ICCPR (30 December 2011), <http://www.state.gov/j/drl/rls/179781.htm>, paras 506-507, states that the USA accepts that human rights protections do not cease to apply in time of war, but implies that the USA does not necessarily accept that human rights law applies to all or any of "a State's actions in the actual conduct of an armed conflict". Given that the USA now claims that many of the acts it takes in the name of countering terrorism are in fact part of "the actual conduct of an armed conflict" worldwide and within the USA against al-Qa'ida, the continuing failure positively to affirm the applicability of human rights obligations to such measures remains a matter of deep concern. The current position of the USA regarding whether it considers itself to have any obligation to respect the human rights of individuals outside of its ordinary territory, including for instance the right to life, also remains ambiguous (para 505) despite, as the Periodic Report acknowledges, clear affirmations by the International Court of Justice and others that states do indeed have such obligations.

<sup>28</sup> See, e.g., UN General Assembly, "The United Nations Global Counter-Terrorism Strategy", resolution 60/288, adopted 8 September 2006; Security Council resolution 1456 (2003); International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, ICJ Reports 1996, paragraph 25; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, ICJ Reports 2004, paragraph 106; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, ICJ Reports 2005, paragraphs 216-20, 345(3); Human Rights Committee, General Comment no 31 on the nature of the general legal obligation imposed on States parties to the Covenant UN Doc CCPR/C/21/Rev.1/Add.13 (2004), paragraph 11.

<sup>29</sup> UN Doc.: A/HRC/WG.6/9/USA/1 (23 August 2010), US national report to the UN Human Rights Council under the Universal Periodic Review process.

<sup>30</sup> See for example, USA: Doctrine of pervasive 'war' continues to undermine human rights. A reflection on the ninth anniversary of the AUMF, 15 September 2010, <http://www.amnesty.org/en/library/info/AMR51/085/2010/en>

<sup>31</sup> It must be noted that this is a different argument than that frequently made during the Bush administration for a much broader right of so-called "pre-emptive" self-defence.

<sup>32</sup> See documents reproduced at [http://avalon.law.yale.edu/19th\\_century/br-1842d.asp](http://avalon.law.yale.edu/19th_century/br-1842d.asp) by the Yale Law School "Avalon Project" (accessed 7 June 2012).

<sup>33</sup> Only the Attorney General made more than a passing reference to the concept of "imminent attack", and then only in reference to the US constitution rather than the right of self-defence under international law per se. His remarks on their face apply only to US citizens, not to people of other nationalities, and would appear to consider as constituting an "imminent threat" a far wider range of circumstances than that contemplated by the rule under customary international law described in the *Caroline* case. Another area in which domestic critics have argued that the administration is relying on radical re-interpretations of legal concepts in order to justify its policies and practices is with respect to the provision of the US Constitution that provides that no-one shall "be deprived of life, liberty, or property, *without due process of law*" [emphasis added]. This is one of the fundamental ways in which the USA satisfies the requirement in article 6 of the ICCPR that the right to life "be protected by law" and so is also of significance from an international human rights perspective. The Attorney General argued that as "the conduct and management of national security operations are core functions of the Executive Branch", a process of selection and killing of individuals suspected of being members of "a foreign terrorist organization with which the United States is at war", including US citizen, would satisfy the requirement of "due process" even if it were not subject to any judicial control, secret, and entirely internal in its operation to the executive branch (albeit subject to ongoing notification of Congress). This interpretation of US law has been criticised by some US organizations: see for example American Civil Liberties Union, Press Release "ACLU Credits White House for Drone Strike Transparency, but Says Program Still Unlawful", 30 April 2012: "...to propose that a secret deliberation that takes place entirely within the executive branch constitutes 'due process' is to strip the Fifth Amendment of its essential meaning." It may be noted that the process of a council of some 100 officials and the President meeting on a weekly basis to compile a secret "kill list", as subsequently described by the New York Times article, resembles the executive process to which the Attorney General referred.

<sup>34</sup> See also articles 1-3 of the Universal Declaration of Human Rights adopted 10 December 1948 by the United Nations General Assembly.

<sup>35</sup> Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, 'Study on Targeted Killings', UN Doc A/HRC/14/24/Add.6 (28 May 2010), para 33.

<sup>36</sup> See <http://www.un.org/apps/news/story.asp?NewsID=32764> (28 October 2009). See also for example Amnesty International, 'As if Hell Fell On Me: The Human Rights Crisis in Northwest Pakistan', AI Index ASA 33/004/2010, pp 87-90, <http://www.amnesty.org/en/library/info/ASA33/004/2010/en>

<sup>37</sup> See <http://www.un.org/News/Press/docs/2009/gashc3960.doc.htm> (27 October 2009). See also Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, 'Summary of cases transmitted to Government and replies received', UN Doc A/HRC/4/20/Add.1 (12 March 2007), pp 342-58. 'Mission to the United States of America', UN Doc A/HRC/11/2/Add.5 (28 May 2009), paras 71-73 and 83; 'Study on Targeted Killings', UN Doc A/HRC/14/24/Add.6 (28 May 2010), paras 87-92.