

**Submission by the International Association of Democratic Lawyers (IADL) on the Subject of the Report of Christof Heyns, Special Rapporteur on extrajudicial, summary or arbitrary executions, regarding his Follow up to Country Recommendations-United States of America.**

IADL submits this statement to support and elaborate on the findings of the Special Rapporteur Christof Heyns regarding one aspect of his report: Targeted Killings.

The IADL, since its inception in 1946, has supported the goals of the United Nations Charter in particular the goals “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained..”

IADL has opposed targeted killing for many years. IADL lawyers filed an amicus brief in 2005 with the Israeli Supreme Court when it was addressing the case regarding Israel’s policy of targeted killings. The IADL brief emphasized the violations of the international human rights law, primarily the right to life, when pre- meditated lethal force is used against a person who has not been convicted of any crime.

IADL also questioned whether in the context of the occupation, whether use of lethal force could ever be based on claims of self defense against a people Israel already occupied and who have a right to self determination. The Israeli Supreme Court, however, without approving or prohibiting the practice of targeted killing said some targeted killing could be legally permitted (based only on International Humanitarian Law in international conflicts) requiring, *inter alia*, proof that the target was “directly participating in hostilities” against Israel. IADL does not agree with the decision of the Court because it failed to address human rights law or international humanitarian law in the non international context. Nonetheless, the prior mandate holder (Professor Alston) has commented on the failure of Israel to abide by this decision.<sup>1</sup>

Special Rapporteur Heyns “like his predecessor, is seriously concerned that the practice of targeted killing [as justified by the United States] could set a dangerous precedent, in that any Government could, under the cover of counter-terrorism imperatives, decide to target and kill an individual on the territory of any State if it considers that said individual constitutes a threat.”

IADL agrees that this precedent is not only dangerous but also, the claimed right by any country, especially a country like the United States with its massive military might, to target a person for death based on a suspicion of terrorism undermines international law most particularly International Human Rights law, and most notably the right to life. This right is protected in many human rights instruments. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) states: “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.” The United States has ratified this Covenant. The ICCPR in Article 14 further guarantees those accused of a crime the right to

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<sup>1</sup> See, A//HRC/14/24/Add.6 paragraphs 18-19.

be presumed innocent and to a fair trial by an impartial tribunal. Targeted killing abrogates these rights.

Since the United States has now placed its policy of targeted killing in the right to self defense, as the United States is “in and armed conflict with Al-Qaeda as well as the Taliban and associated forces” the illegality of the policy is starkly brought into focus.

The claim of self defense now used by the United States to justify its policy of using lethal force against those suspected of being members of Al-Qaeda or the Taliban cannot be countenanced by the international community regardless of their heinous actions.

Self defense under Article 51 of the United Nations Charter is a narrow exception to the United Nations Charter provisions which prohibit countries from resorting to force or the threat of force in settling international disputes. It is defined as allowing individual or collective action only in the face of an armed attack. To the extent the United States claims the right to kill suspected terrorists or their allies before they act that right is circumscribed by the *Caroline* case strictures.<sup>2</sup> While IADL does not oppose legal means to prevent further terrorist attacks, it is a dangerous precedent to allow any country, and in the case of the United States the Chief Executive to be judge jury and executioner of persons suspected of being in Al-Qaeda or the Taliban.<sup>3</sup>

The United States’ resort to ever increasing targeted killings is a direct result of the United States declaring a “War on Terror” after 9/11. Declaring a perpetual war on a tactic and claiming all Al-Qaeda and Taliban are terrorists who may be preemptively killed as a form of self defense, rather than being arrested and tried for criminal acts in using a law enforcement approach to terrorism, is a product of a powerful military industrial complex in the United States which sees use of force as the first step to resolving disputes rather than a last resort.

The United States began a war in Afghanistan against the Taliban government citing its harboring of the “terrorists” responsible for 9/11. While scholars disagreed whether an attack on Afghanistan was justified “self defense” after 9/11, the IADL stated the war against the Taliban government, was itself illegal even though IADL did not support the Taliban.<sup>4</sup> We argued as we

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<sup>2</sup> The *Caroline* case established that in order to use anticipatory self defense, there had to exist "a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment of deliberation," and furthermore that any action taken must be proportional, "since the act justified by the necessity of self-defense, must be limited by that necessity, and kept clearly within it."

<sup>3</sup> The drone strikes fall into two categories. Signature strikes where the US will target an area where it believes terrorists are training or living. The other is personality strikes where the US targets a particular person who is believed to be a terrorist. The New York Times on May 29, 2012 addressed the policy as well but did not address any of the legal issues except to say that the President believes that the vetting of the people on the “kill list” (for the personality strikes) done by the executive branch is sufficient due process, and that military age males in the vicinity of “signature” strikes are not civilians. (<http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-al-qaeda.html>)

<sup>4</sup> After the 9/11 attacks, the Security Council passed two resolutions, neither of which authorized the use of military force in Afghanistan. Resolutions 1368 and 1373 condemned the September 11 attacks, and ordered the

argued regarding Iraq, that the attack on the World Trade Center was a criminal act, and did not give the United States license to ignore international law by bombing and invading the country as a whole as such an action stretched the meaning of self defense in Article 51 of the United Nations Charter beyond recognition.

We posited the right of the United States to demand the government of Afghanistan to arrest and detain for trial those suspected of planning and implementing the 9/11 attacks, and suggested that the United Nations would have had the power to enforce that right if the Afghanistan government did not comply, but we opposed the invasion and believe the rule of law would have been best served if the United States had followed the path of arrest and incapacitation rather than war.

If the international community does not heed the Special Rapporteur's warning regarding the dangerous precedent and end targeted killing, respect for international treaties and law will be further undermined.<sup>5</sup> The world needs the rule of law and international norms it can count on to apply and regulate the behaviors of people in nations large and small, rich and poor. The United States is not exempt from or above the law.

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freezing of assets; the criminalizing of terrorist activity; the prevention of the commission of and support for terrorist attacks; the taking of necessary steps to prevent the commission of terrorist activity, including the sharing of information; and urged ratification and enforcement of the international conventions against terrorism.

<sup>5</sup> In the United States the Center for Constitutional Rights and the American Civil Liberties Union brought a case on behalf of Anwar Al-Awlaki's father who wanted to challenge his son's name being on the list of people who were targeted. The court would not entertain the suit not wanting to interfere with military intelligence. Al-Awlaki was killed along with his 16 year old son.