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# **Drones, State Terrorism and International Law**

**Professor Ruth Blakeley**

## **Key words**

State terrorism, targeted killings, drones, international law

## **Abstract**

US officials have made much of the benefits of deploying drones to carry out targeted killings of suspected terrorist leaders. The conventional wisdom among US foreign policy makers is that drones enable precise strikes, and therefore limit collateral damage. In contrast, critics of the programme point out that many civilian casualties have ensued, and they variously cite poor intelligence and imprecision of the strikes as reasons for this. Legal experts have been unable to draw decisive conclusions on whether US targeted killings can be justified under international law, in part because the Department of Justice advice to the president remains classified. The paper will argue that by conceptualising the targeted killings programme as a form of state terrorism, we are better equipped to provide a critical analysis of the drones programme within the context of a long history of violence and terrorism which has underpinned the imperial and neo-imperial projects of the US and UK. The paper will then argue that there are important similarities between the targeted killings programme, and previous US and UK counterinsurgency operations, including operations involving the internment of terror suspects, and the targeting of specific individuals for interrogation and torture or disappearance. Common to these programmes is that they are intended to terrorise populations beyond those directly targeted. Also common to these programmes are the attempts made either to conceal these actions or, in the event they are exposed, to shroud them in a veil of legitimacy. The paper concludes by offering some brief reflections on why we should not abandon the quest to resolve the thorny legal questions around the targeted killings programme.

## Introduction

US officials have made much of the benefits of deploying drones to carry out targeted killings of suspected terrorist leaders. The conventional wisdom among US foreign policy makers is that drones enable precise strikes, and therefore limit collateral damage. In contrast, critics of the programme point out that many civilian casualties have ensued, and they variously cite poor intelligence and imprecision of the strikes as reasons for this. It is the case that thousands of people have been killed or injured by drone strikes in Pakistan, Yemen, Somalia, Afghanistan, Iraq, Syria and Libya, many of them civilians. Data collected by the Bureau of Investigative Journalism Drone Wars project and the Air Wars project estimate that since 2004, drone strikes in Pakistan have killed 2,499 and 4,001 people, of which between 424 and 966 are thought to be civilians, and between 172 and 207 are children. Between 1,161 and 1,744 have been injured. In Yemen as a result of confirmed drone strikes since 2002, at least 601 people have been killed, and as many as 871, and of these, between 65 and 101 are thought to be civilians, between 8 and 9 of them children. The Bureau estimates that between 357 and 509 more have been killed in unconfirmed drone strikes. In Somalia, between 59 and 160 have been killed in drone strikes since 2007, and of these between 3 and 12 are thought to be civilians. From 2015 onwards in Afghanistan, between 2,472 and 3,196 people have been killed by drone strikes, and of these, between 142 and 200 are thought to be civilians.<sup>1</sup> Airwars estimates that at least 2,358 civilians have been killed in drone strikes across Iraq, Syria and Libya.<sup>2</sup> In addition to large numbers of casualties, the targeted killings programme has had traumatic impacts on the communities affected. The terrorising effects of the drones programme raise important questions about whether it really is less detrimental for civilian populations than conventional aerial bombardment.

The bulk of the academic literature on the targeted killings programme using drones has tended to focus on the legality and legitimacy of targeted killings, in relation to International Humanitarian Law and International Human Rights Law (Aslam 2011, 313-29; Benjamin 2013; Braun and Brunstetter 2013, 304-24; Brunstetter and Braun 2011, 337-58; Dill 2015, 51-8; Downes 2004, 277-94; Drake 2010, 629-59; Epstein 2010, 723-44; Gregory 2011, 188-215; Gregory 2015, 197-212; Heyns and Knuckey 2013; Jaffer 2013, 185-7; Lewis 2011, 293-314; McDonnell 2012, 243-316; McKelvey 2011, 1353-84; Paust 2010, 569-83; Ramsden 2011, 385-406; Rothe and Collins 2014, 373-88; Sandvik and Lohne 2014, 145-64; Sharkey 2010, 369-83; 2011, 229-40; Sterio 2012, 197-214; Thorp 2011; Vlastic 2011, 259-77; Whetham 2013, 22-32). Some scholars have also examined the adequacy of the mechanisms for accountability of the targeted killings programme (Alston 2011, 283-446; Alston, Morgan-Foster, and Abresch 2008, 183-209; Buchanan and Keohane 2015b, 67-70; Crawford 2015, 39-49; Buchanan and Keohane 2015a, 15-37; Whetham 2015, 59-65). Some work has explored the extent to which the programme is effective in achieving its stated aims of diminishing the threat from groups such as Al Qaida and ISIS, by killing their leaders (Byman 2013, 32-43; Carvin 2012, 529-55; Cobain 2013; Cronin 2013, 44-54; Dunn 2013, 1237-46; Hudson, Owens, and Flannes 2011, 122-32; Plaw and Fricker 2012, 344-65; Price 2012, 9-46; Smith and Walsh 2013, 311-27). The academic work on legality and accountability is supplemented by academic studies and the work of journalists and NGOs that have attempted to either uncover aspects of the targeted killings programme (Cole 2012; Cobain 2013; Mayer 2009, 36-45; Whitlock 2012, 26), or to assess the impact on civilian populations, including by counting the number of casualties that result from drone strikes, both combatants and civilians, but also assessing its wider effects.<sup>3</sup> A small body of literature provides accounts of the origins and

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<sup>1</sup> <https://www.thebureauinvestigates.com/category/projects/drones/drones-graphs/>

<sup>2</sup> <https://airwars.org/>

<sup>3</sup> The *Covert Drone War* programme run by the Bureau of Investigative Journalism systematically gathers data on the casualties of US and allied drone strikes in Afghanistan, Pakistan, Yemen and Somalia:

<https://www.thebureauinvestigates.com/category/projects/drones/>.

The *Air Wars* programme tracks casualties from strikes in Iraq, Syria and Libya: <https://airwars.org/>.

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development of drones for use in combat (Fuller 2015, 769-92; Grayson 2012, 120-8; Hall and Coyne 2014, 445-60; Satia 2014, 1-31). Finally, work is beginning to emerge which draws on poststructuralist approaches to consider how biopower operates through the targeted killings programme (Fuller 2015, 769-92; Grayson 2012, 120-8; Hall and Coyne 2014, 445-60; Satia 2014, 1-31). Concerns have been raised by Dawn L Rothe and Victoria E Collins that in focusing on the question of legality, scholars are colluding in attempts to legitimise human rights violations (Rothe and Collins 2014, 378-88). This concern is shared by the convenors of the 'Drones and State Terrorism' panel at the 2017 ISA Convention, who suggest that by examining the targeted killings programme through the lens of state terrorism, we can get beyond the discourse of legality and engage more critically with the broad range of effects that military drones have on the victims. They state:

The drone is presented as a technological innovation that transforms war into individual targeted strikes – a surgical, precise, and humane way of dispatching one's enemy. In the juridico-ethical discourse within which this narrative operates, the effects of drone bombing are strictly reduced to the relation of the drone to individual targets. The language of the courtroom, or of the just war theorist – problematic as it is on its own accord – thus becomes incapable of exploring the broad range of effects that military drones have on the victims. By making lethal violence the starting point through which drone warfare is to be subsequently analysed, there is a lack, or an intentional abolition, of a critical vocabulary that might render the drone intelligible as an apparatus of state terror.

To some extent, I am sympathetic to these concerns, and agree that situating the targeted killings programme within the wider context of state terrorism is a necessary addition to existing literature. The aim of this paper, though, is not simply to frame targeted killings delivered by drones as a form of terroristic state violence, important as that is.

The paper is intended to situate the targeted killings programme within the context of the neo-imperialist projects of the US and the UK, both of which have been underpinned by state terrorism. The paper makes a novel contribution in so far as the literature to date has offered no real account of the targeted killings programme within the wider framing of imperialism, neo-imperialism or the global political economy of violence. In this regard, the assumptions underpinning this paper chime with efforts by others to explore the interplay between state power, capitalist elite interests and the use of disciplinary state violence from above (Barkawi and Laffey 1999, 403-34; Colás 2008, 619-43; Herring and Stokes 2011, 5-21; Jarvis and Lister 2014, 43-61; Joseph 2011, 23-37; McKeown 2011, 75-93; Maher and Thomson 2011, 95-113; Raphael 2009b, 163-80). Examining targeted killings from this perspective is also a lens through which to view the evolving nature of neo-imperialism in the 21<sup>st</sup> Century. I will begin by firstly, providing a brief account of the literature to date on the role of state terrorism in imperial and neo-imperial projects. This will include offering some brief reflections on the evolving relationship between the US and UK in their shared quest for hegemony in global politics. I will then argue that there are important similarities between the targeted killings programme, and previous counterinsurgency operations, including operations involving the internment of terror suspects, and the targeting of specific individuals for interrogation and torture or disappearance. A common thread running through these programmes are the terrorising effects they have, and are intended to have. Another is the attempt either to conceal these actions or, in the event they are exposed, to shroud them in a veil of legitimacy. Here I will draw important parallels with the CIA's Rendition, Detention and Interrogation programme. In the conclusion I will offer some brief reflections on why I do not think we should abandon the quest to resolve the thorny legal questions around the targeted killings programme.

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A study by academics has assessed the societal impacts of the drones programme in Pakistan: (International Human Rights and Conflict Resolution Clinic and Global Justice Clinic 2012).

## Imperialism, neo-imperialism and state terrorism

State violence has been central to the imperial and neo-imperial projects of powerful states for centuries. Its use is deliberately intended to instil fear among populations to quell dissent and to force populations to acquiesce to the agendas of powerful political and economic elites. (For discussions on how state terrorism is defined, identified and evaluated, see: Gurr 1986, 45-71; Mitchell et al. 1986, 1-26; Nicholson 1986, 27-44; Stohl 2006, 1-25; Stohl and Lopez 1984, 1986; Blakeley 2009b, 12-27). Terrorism was used widely by European colonial powers as they colonised and policed their colonies. Early European imperialism was characterised by expropriation of territory, settlement and resource extraction. Subduing local populations tended to involve mass enslavement and forced labour (Bethell 1984). From the 1800s onwards, European empires were commercial as well as extractive, developing trade, and adding value to the expropriated land and resources, including slave labour (Wood 2003, 45; 61-7; 82-3). This was particularly true of the British Empire, which was built on a logic of capitalism, and which marks a transition from pre-modern mercantilist imperialism to a capitalist system of states. This helps explain why at its most powerful, the British Empire covered a quarter of the earth's land mass and comprised approximately 500 million subjects by 1921. This, would, however, also be its undoing.

A key feature of imperialism during the nineteenth century, as Alejandro Colás has argued, was the 'export of the territorially exclusive state as the dominant form of rule' (Colás 2008, 628). A preoccupation, therefore, of the later British Empire for example, was 'closing frontiers and guaranteeing a monopoly over the means of violence within delimited borders' (Colás 2008, 629). Coercion was central to these efforts both to maintain primacy, and to enforce sovereign rule over territorial entities, not just for Britain but for fellow European colonial powers, just as it underpinned efforts to extract taxes, exploit labour or crush rebellions. Violence was widespread and very public, serving as a warning to those who would resist (For detailed accounts see: Arendt 1966; Beckett 2001; Elkins 2005; Bethell 1984; Killingray 1986, 411-27; 1973; Porter 1968; Suret-Canale 1971 [1964]; Bush and Maltby 2004, 5-34; Glancey 2003; Welch 1974, 233-53).

Britain, however, was not prepared for the enormous task of administering its extensive territories and their populations. It found itself completely over-stretched by the early twentieth century. As Colás argues:

The need for industrial capital to exercise spatio-temporal control over both property and labour through the institutions of the territorially exclusive colonial state, coupled with the rise of mass politics which contested such social control with reference to the authority of this very state, rapidly undermined London's capacity to hold onto its imperial primacy across the globe (Colás 2008, 629-30).

These dynamics resulted in Britain's eventual retreat from Empire in the post-World War period, and the emergence of the US as the dominant global power. Imperialism would take on a different form. As British Imperialism declined, its legacy was the modern capitalist system of states, or, as Colás argues, a world dominated by closed frontiers, in which its main task was to 'continue opening doors to capitalist markets' (Colás 2008, 630). US neo-imperialism since 1945 contrasts with previous forms of imperialism in that it promotes political sovereignty elsewhere on the condition that the reproduction of capital is not undermined, and the US secures unfettered access to resources and markets. Where such access is threatened, the US projects its power, deploying violence to terrorise those who would resist, sometimes directly, but frequently through proxies.

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As I have argued elsewhere, there has been relatively little scholarship on the use of state terrorism by liberal democratic states (Blakeley 2007, 2009a, 2008). The academic and policy worlds are both fixated on the threat from terrorism to Western states, such that the complicity of state terrorism tends to be side-lined (George 1991; Herman and O'Sullivan 1989; Raphael 2009a, 49-65; Miller and Mills 2009, 414-37). There are some notable exceptions. Noam Chomsky and Ed Herman led the way in developing an argument, meticulously defended with detailed empirical evidence (Chomsky and Herman 1979b, 1979a), that US support for state terrorism during the Cold War was part of a process of organising under US sponsorship 'a neo-colonial system of client states ruled mainly by terror and serving the interests of a small local and foreign business and military elite' (Chomsky and Herman 1979b, ix). Indeed, the national security states across Latin America during the Cold War used violence on an industrial scale, disappearing hundreds of thousands of people, torturing political dissenters all with substantial US military and political support (Chomsky and Herman 1979b; Dinges 2004; Doyle and Kornbluh 1997; Esparza, Huttenbach, and Feierstein 2009; Galeano 1973; Huggins 1998; Koonings 1999; Koonings and Kruijt 2004; McClintock 1992). (Blakeley 2009a) The same was true in the Philippines and Vietnam (Welch 1974, 233-53; Valentine 2000; Chomsky and Herman 1979a). Mark Curtis and Ian Cobain have followed up with contributions that have documented the use of state terror as a central component of UK foreign policy, although Curtis has been more focused than Cobain on the political economy dimension of state terrorism (Cobain 2012; Curtis 2003). Doug Stokes has explored the extent to which state terrorism has featured in US counterinsurgency doctrine for decades, also with an eye to the political economy dimension of the violence and terror (Stokes 2005).

In an attempt to update Chomsky's and Herman's work, I explored the centrality of state terrorism to processes of neoliberalisation, tracing the historical use of state terrorism as part of European and then American imperial and neo-imperial projects (Blakeley 2009b). I documented how efforts led by the US to roll out neoliberalism across the globe have often been accompanied by considerable violence and terrorism by states and state-sponsored paramilitaries. I contend that at the core of this neo-imperial project by leading capitalist states, the UK included, is the objective of securing unfettered access to key markets, as well as core assets such as oil. While the post-Cold War preference has been to achieve these ends through consensual means, where significant obstacles arise in the form of political dissent and resistance, the US tends to resort to coercion. In a similar vein, Doug Stokes and Sam Raphael have explored the use of state terrorism in oil-rich regions as a way of 'armouring' the neoliberalisation process and insulating local elites from dissent, thereby stabilising the production and flow of oil that underpins US hegemony (Stokes and Raphael 2010).

Despite the decline of British Empire, the UK has continued to play a role as a strategic partner of the US in its neo-imperial projects. Since the decline of the British Empire, the UK has tended to focus its military power on curtailing or destroying opposition to British and American interests, including by shoring up regimes considered friendly to US and UK interests. It has been the US' closest ally in this regard, collaborating on intelligence sharing, investing in military bases in areas of key strategic significance, and partnering with the US in numerous actions to thwart challenges to their neo-imperial ambitions, including the 1991 Gulf War following Saddam Hussein's invasion of Kuwait, and the wars in Afghanistan in 2001 and Iraq in 2003. Looking at contemporary UK military investment overseas, it is heavily concentrated on the Persian Gulf. As Sam Raphael and Jac St John have argued, Britain has a long history in the region; even after the break-up of British Empire, British oil companies were heavily invested there, and Britain continued to play an important role in supporting the region's regimes against internal instability, as well as defending the Suez Canal and keeping the shipping lanes open. The UK continues both to play a supporting role to US hegemony in the region, and to enhance its own capacity to use the region as a base from which to project its power beyond the Gulf into Africa, the Indian Ocean and Asia (Raphael and St. John 2016, 3). As Raphael and St John show, the UK's strategy has been to treat the Gulf States as 'vital partners' through establishing new

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arrangements for the establishment of military bases, military and police training with a particular focus on managing civil unrest, and arms sales, all to the tune of millions of pounds. Partners are both states and military companies (Raphael and St.John 2016). Controversy surrounds the on-going support of regimes in the region, given their poor human rights records. Most recently, human rights NGOs have succeeded in launching a Judicial Review of UK arms sales to Saudi Arabia, given the alleged use of those arms against Yemeni civilians as part of Saudi Arabia's proxy war with Iran in Yemen, in which Saudi Arabia is seeking to destroy the Houthi militia, and in doing so, has killed thousands of civilians, allegedly deliberately targeted, and has left 19 million people in need of humanitarian assistance as the state infrastructure has collapsed (Ross 2017). The US' role in the conflict has been significant, not least because of its on-going campaign of targeted killings of individuals in Yemen suspected of involvement with Al Qaida.

The attacks by Al Qaida on the 11<sup>th</sup> September 2001, as well as prior Al Qaida attacks on US interests in the Middle East, including the bombing of the USS Cole, were an affront to US primacy. They also presented a challenge to the US' own understanding of world order. These attacks emanated from a non-state global entity over which no other state seemed able to exert control or influence. The US was used to dealing with rebellions within states, using clients to crush dissent and eliciting consent from its own or other populations in these endeavours. Faced with Al Qaida, the US response was to deploy its overwhelming ground, air, and marine force in Afghanistan and then Iraq. The enormous displays of force in Afghanistan and Iraq have been accompanied by and followed up with various covert 'unconventional war' efforts, characteristic of US Cold War approaches to dealing with supposed enemies who would threaten US strategic interests. The missions in Afghanistan and Iraq failed to curtail the threat. Indeed they splintered it. In Iraq the consequences were particularly disastrous, as the Chilcot Inquiry into Britain's role concluded, since it resulted in thousands of civilian casualties, the entrenching of political instability, economic collapse, and Islamic state in control of large areas of the country. The response of the US has been to resort to supporting proxy wars, as well as to increasing its reliance on the drones programme to target suspected enemies, unwilling as it is to commit substantial ground forces to fighting ISIS on the ground.

By situating the drones programme for the targeted killing of terror suspects within this wider historical materialist framing, we can start to understand the programme not as a unique and novel development in warfare, but as a continuation of the imperial and neo-imperial violent practices of powerful liberal states that have their origins in early European colonialism. We can also tease out the continuities with US military doctrine developed during the Cold War which was characterised by covert operations often involving human rights violations, and considerable effort to evade accountability for these. The analysis that follows therefore examines the targeted killing programme in relation to the US' unconventional war doctrine, characterised by illicit actions that violate international law. It also looks at the mechanisms by which the US and UK have sought to conceal their complicity in human rights violations, and in case of exposure, have attempted to establish mechanisms for evading accountability. This includes putting in place architectures aimed at shielding those responsible from prosecution under national and international law. In this sense, I seek to show how the targeted killings programme represents the most recent iteration of decades-long efforts by powerful liberal states to identify and target insurgents considered a substantial threat to US material interests for interment, interrogation or killing, and to legitimise their actions and evade accountability for these extensive human rights violations. It is my contention that rather than eschew the law, it is more important than ever in the quest to hold these states accountable.



### The targeted killings programme and its pre-cursors

As knowledge of the US' targeted killings programme has grown, one surprising aspect of it has been the role President Obama opted to play in targeting decisions. For every operation the Department of Defense proposed, Obama would take the decision on whether or not to approve it. Those decisions are based on assessments made of specific individuals whose biographies have been compiled and recorded in a sophisticated database known as the 'disposition matrix', on the grounds that they are considered to pose a threat to US interests. The matrix also contains their suspected locations as well as options for eliminating them. The matrix was compiled by the US Counter-Terrorism Center and brought together existing kill lists compiled by the CIA and by US Special Forces. Legal advice was sought on its compilation, much of which remains classified. However, a US Department of Justice memo that was leaked in February 2013 indicated that the killing of US citizens was deemed lawful if they pose an 'imminent threat' of violent attack and capture is not feasible (Cobain 2013). As discussed above, the legal basis (or otherwise) has been a subject of much debate. Rather than rehearse the issues here, my aim is to show that the US' current approach to identifying and dealing with individuals considered a threat to its material interests builds on its unconventional warfare doctrine developed by the CIA and US military during the Cold War. The current approach may appear more sophisticated in some respects, thanks to advances in technology, but the underlying assumptions and principles would suggest continuity.

#### *Unconventional war*

We do not know the precise details of the biographical information collected on those who are added to the disposition matrix, or importantly, the criteria for including someone. The process is secret and the US Executive has gone to great lengths to evade any accountability. However, US military doctrine that developed during the Cold War for use in its proxy wars in Indochina and Latin America, to thwart the emergence of political movements that would threaten US access to resources and markets, may provide some clues. The US' unconventional warfare doctrine, was established in the 1950s 'to give the military a capability previously restricted to the CIA' (McClintock 2001, 6). As Michael McClintock explains, US Special Forces developed expertise in offensive guerrilla warfare against a standing government, and after 1960, in counterinsurgency. He states:

This form of warfare was "unconventional" in that its tactical options went beyond those of conventional military operations and extended even beyond the framework of armed conflict itself. Operations were intended to be covert and were largely unconstrained by consideration of the laws of war. The practical constraints of deniability and the need to evade accountability were matched by a rationale that extraordinary measures were justified that would not be allowed in conventional armed conflict (McClintock 2001, 6).

There ensued an extensive programme to offer military training along these lines across Latin America. The US also sought to dominate intelligence sharing and communications across the region. A particularly striking aspect of this, was the emphasis on intelligence gathering which enables the categorisation of people according to their loyalties. Politicisation, intensification of religious unrest, and engagement in labour movement activity were all considered indicators that an individual was a threat (McClintock 2001, 10). As Michael McClintock explains, a 1985 manual, *Tactical Intelligence*, issued by US Southern Command, states that "battlefield preparation" means collecting information on civil society: who stands for what, which groups or individuals can be mobilized for counterinsurgency and which must be neutralized' (McClintock 2001, 10). A 1983 manual, *Psychological Operations in Guerrilla Warfare*, instructed Nicaraguan contras advocated assassination and related terror tactics. The *Human Resource Exploitation* manual, distributed among Latin American military personnel, advocated torture during interrogation (Blakeley 2006, 1441-43). As I



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have argued elsewhere, dozens of passages in multiple manuals distributed widely among the Latin American military encouraged numerous human rights violations, at a time when authoritarian regimes across the region were seizing power and going to extreme lengths to curtail any challenge, including widespread disappearances, torture and murder of political opponents (Blakeley 2006, 1439-61; 2009a, 85-105).

It was within this context that Operation Condor emerged. This was a covert network linking the intelligence agencies of the Southern Cone states of Argentina, Bolivia, Brazil, Chile, Paraguay, and Uruguay with the CIA, bears all the hallmarks of the US' approach to counter-insurgency. Operational by 1975, its aims were to streamline information sharing so that covert agents could move through the region evading law enforcement, in their efforts to interdict insurgents for detention, but more often than not, elimination (McClintock 2001, 2). A 1976 CIA Cable baldly states that 'security officials of Chile, Argentina, and Uruguay are reportedly expanding their cooperative anti-subversive activities to include assassination of top-level terrorists in exile in Europe,' and that the programme involved 'the development of a centralised data collection capability' (McClintock 2001, 3). Evidence to show direct US involvement in Operation Condor has been limited, but declassified documents obtained by J.Patrice McSherry indicate that the US facilitated the establishment of a regional secure telecommunications network between the various participating states (McSherry 2002, 144-75). There is also evidence that the source of much of the intelligence gathered by Paraguayan officials which resulted in the kidnapping and torture of hundreds of people by either the Paraguayans themselves, or by Argentina's Secretariat of State Intelligence was the CIA (Slack 1996, 498).

Operation Condor would appear to bear the hallmarks of the CIA's earlier programme, Operation Phoenix, which operated in Vietnam in the late 1960s. It too involved mass intelligence gathering on suspected insurgents with the aim of wiping out what was assumed to be the Vietcong's leadership. Characterised by mass incarceration, torture and assassinations, in hearings in 1971, CIA officer William Colby, who directed Phoenix between 1968 and 1971, claimed that over 20,000 Vietcong leaders were killed under the programme (Valentine 2000, 85). The reality is that the programme was intended not simply to destroy the leadership of the Vietcong, but to instil terror among the wider population. Furthermore, detailed research by Douglas Valentine shows that the killings were not limited to the Vietcong's leadership, but also their families, their neighbours, and anyone suspected of having connections to them (Valentine 2000, 13 and 131).

The unconventional warfare doctrine, embedded in the US military during the Cold War, appears to have shaped the approach the US has taken to counter-terrorism since the attacks of 9/11. A key element that tie programmes like Operations Phoenix and Condor to firstly, the CIA's Rendition, Detention and Interrogation (RDI) programme, and secondly, the targeted killings programme that followed it, is the method of developing lists of individuals to be targeted. These lists are compiled through extensive intelligence gathering and sharing with allies, with no apparent accountability or oversight of the assumptions that result in someone being added to these lists. There are compelling reasons to conclude that the intelligence resulting in the listing of an individual is likely to have been obtained through torture. The training manuals referred to above indicated that key aims of counterinsurgency interrogations were to obtain information about others associated with opposition movements, and that torture was condoned and encouraged. We also know from the US Senate Select Committee investigation into CIA torture that a core aim of the CIA's RDI programme was to subject detainees to torture in order to identify who the leadership of Al Qaida were and what other terrorist acts they were plotting (SSCI 2014, 13 of 499). As the Senate investigation found, in fact the use of the so-called 'enhanced interrogation techniques' were not an effective means of acquiring intelligence or gaining cooperation from detainees (SSCI 2014, Findings and Conclusions: 2 of 19).

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### ***Terrorising civilian populations***

A further similarity between the targeted killings programme, the RDI programme, and their precursors is the terror they instil in a wider population. The terrorising impacts of programmes such as Operation Phoenix, Condor, and related counter-insurgency campaigns by the Latin American national security states have been well-documented, for example by the reports of the Truth Commissions for El Salvador, Guatemala and Chile (CNCTR 1991; UNSC 1993; Tomuschat, Lux-de-Cotí, and Balsells-Tojo 1999). They each show that the targeting of individuals thought to be involved in insurgent activities, or those associated with them, for disappearance, torture and murder has a traumatic effect on those left behind, who fear that they will be next. An added dimension of the terror suffered by populations where the US and its allies are carrying out targeted killings by drones is the constant presence and noise of the drones overhead. In this regard, there are striking similarities with earlier aerial bombing campaigns deployed both by the British in the Middle East in the early twentieth century, and by the allies during World War II. As early as 1920, the British air force carried out night 'terror' raids to crush a rebellion against British occupation of Iraq. These raids, 4,800 flying missions in total, were described by Wing Commander J.A. Chamier as the best way to demoralise the local population by concentrating bombing on villages, houses, inhabitants, crops and cattle, continuously (Glancey 2003). During World War II, the allies subjected whole cities, targeting civilians, to relentless bombardment with the aim of terrorising the German population to turn against Hitler (Grosscup 2006).

A study by Stanford University provides a disturbing account of the trauma the drone strikes have had in areas frequently targeted in Pakistan. Health professionals, journalists and community members interviewed for the *Living Under Drones* study described how the constant presence of US drones increases the sense of fear in the community. The local populations are terrified, and they scream in fear at the sound of the drones. One Pakistani psychiatrist described patients presenting with symptoms he attributed to anticipatory anxiety, as they fear the next attack could be any time and they could be the next victim. Their own powerlessness to do anything further heightens the sense of trauma. Those who have witnessed strikes describe symptoms of post-traumatic stress disorder, emotional breakdowns, nightmares, disturbed sleep and insomnia, loss of appetite, and hallucinations (International Human Rights and Conflict Resolution Clinic and Global Justice Clinic 2012, 80-4). These accounts present an important challenge to the assumption that drone strikes are 'surgical' and 'precise', and therefore less harmful to the wider population than conventional air campaigns. What they show is that there is a far less sharp distinction than the terrorising effects of drone strikes compared with conventional aerial bombardment than tends to be assumed.

### ***Evading accountability***

A second key element that ties the unconventional warfare programmes of the Cold War to the 'war on terror' CIA RDI and targeted killings programme is the deliberate intent to carry out human rights violations, whether torture or assassination in contravention of international law, while at the same time, evading accountability for these actions. The mechanisms for evading accountability have been markedly different during the 21<sup>st</sup> Century. During the Cold War, US officials simply implemented programmes like Phoenix without any attempt to seek any legal justification or legitimacy for them. They simply sought to keep them secret. The various truth commissions and inquiries that exposed the extent of US support for and involvement in human rights abuses during the Cold War rather set the tone for its actions following 9/11. The CIA had outlawed torture in 1988, following exposure of its role in authoring and developing training manuals that advocated it, during the Cold War. The then CIA Director asserted that the CIA rejected it not only because it is wrong, but because it has historically proven ineffective. This was also the official position articulated in the US Army Field Manual 'Intelligence and Interrogation' (SSCI 2014, 18 of 499). Given the CIA and US Department of

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Defense position that they would uphold the anti-torture norm, it becomes clear why the Bush administration went to great lengths to try and secure legal justifications from the Department of Justice, both for the RDI programme and for its treatment of prisoners detained in US Department of Defense facilities, including in Guantánamo Bay. These efforts were of course highly secretive, and involved the exchange of a whole series of memos between the White House, CIA and Department of Defense, which are now declassified and have been extensively analysed (SSCI 2014; Greenberg and Dratel 2005; Blakeley 2011, 544-61; Sands 2008). The explicit aim of these endeavours was to try and shield those involved in rendition, secret detention and torture from prosecution, in other words, evading any accountability. Key to this was the attempt to put in place a legal architecture justifying their actions as somehow short of torture, hence the use of the euphemism 'enhanced interrogation techniques', the claims that unless detainees suffered pain akin to organ failure it did not count as torture, and the attempt to categorise those targeted as both guilty of terrorism, despite the absence of any legitimate due process to test that, and as somehow inhuman and therefore worthy of this treatment (Jackson 2005, 353-71; 2007, 394-426).

The findings of the US Senate Select Committee on Intelligence completely discredit the claims that the rendition and torture of terror suspects as part of the RDI programme could in any way be justified on legal grounds. By contrast, the wrangling over the legality or otherwise of the targeted killings programme has not been resolved. What is clear, however, is that just as the US Executive sought to assure itself that rendition and torture could be justified, it has sought similar reassurances from the Department of Justice in relation to targeted killings. The difficulties, as already stated, are that the much of the legal opinion obtained by the Bush and Obama administration remain classified. Nevertheless, it is the case that the Executive's aim is to ensure that those involved can be shielded from any liability.

There are huge commonalities but also some subtle differences in how the US and the UK have managed their respective efforts to evade accountability. As I have argued elsewhere (Blakeley and Raphael 2016), in relation to the CIA RDI programme, whereas the US went to great lengths to develop a legal framework to justify the use of torture, by contrast, the British government repeatedly insisted on its commitment to upholding the torture prohibition. Specifically, whereas, the US suspended core commitments under international law and developed specific politico-legal justifications for the indefinite detention and torture of 'terror suspects', UK authorities sought to maintain a level of procedural adherence to human rights norms and commitments, instructing its personnel to avoid taking formal legal custody of prisoners, and to ensure they were not directly involved in prisoner abuse. This gave huge latitude to UK personnel to share intelligence with the US even though it was widely known among UK intelligence personnel that the US was abusing prisoners, to receive intelligence from the US, even where it was likely torture had taken place, and to turn a blind eye when prisoner abuse was reported to them. Meanwhile, British authorities could continue to insist British personnel were compliant with international law.

The US and UK approaches to legitimising the targeted killings programme are rather more uniform, although both continue to be shrouded in a degree of secrecy. Their justifications, as far as they can be established, are both founded on the assumption that it is legal to target an individual who poses an imminent threat. In the case of the US, indications of these justifications first came to light when a white paper from the Justice Department was leaked in 2012. As Jameel Jaffer summarises:

The targeted killing programme is predicated on sweeping constructions of the 2001 Authorization for Use of Military Force (AUMF) and the President's authority to use military force in national self-defense. The government contends, for example, that the AUMF authorizes it to use lethal force against groups that had nothing to do with the 9/11 attacks and that did not even exist when those attacks were carried out. It contends that the AUMF

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gives it authority to use lethal force against individuals located far from conventional battlefields. As the Justice Department's recently leaked white paper makes clear, the government also contends that the President has authority to use lethal force against those deemed to present "continuing" rather than truly imminent threats (Jaffer 2013, 185-7).

As indicated above, there is considerable dissent on whether the US government's position is justifiable under US and international law. My aim is not to rehearse the issues, but to show that the UK government seems to have adopted a very similar position. That said, the UK government has refused to publish a detailed explanation of its position in relation to international legal frameworks, despite repeated requests to do so from the Parliamentary Joint Committee on Human Rights (HRC) (HRC 2016, 38-9). We only therefore have a sense of the UK's position from efforts by the HRC to piece it together. While then Prime Minister David Cameron and the Attorney General have not disclosed the contents of the attorney general's advice on targeted killings, both give some indication that self-defence in the face of an imminent threat underpins their position. The first indication that the UK's position was based on self-defence came when Cameron gave a statement in the House of Commons on 7 September 2015, following the drone strike on Reyaad Khan in Syria:

I am clear that the action we took was entirely lawful. The Attorney General was consulted and was clear that there would be a clear legal basis for action in international law. We were exercising the UK's inherent right to self-defence. There was clear evidence of these individuals planning and directing armed attacks against the UK. These were part of a series of actual and foiled attempts to attack the UK and our allies, and given the prevailing circumstances in Syria, the airstrike was the only feasible means of effectively disrupting the attacks that had been planned and directed. It was therefore necessary and proportionate for the individual self-defence of the United Kingdom. The United Nations charter requires members to inform the President of the Security Council of activity conducted in self-defence, and today the UK permanent representative will write to the President to do just that (HRC 2016, 40).

This was further elaborated by the Attorney General when giving evidence to the HRC on 15 September 2015, in which he made reference to the imminent nature of the supposed threat from Khan. He stated:

...in order for any state to act in lawful self-defence, it is necessary to demonstrate that there is an imminent threat that needs to be countered and that, in countering that threat, the action taken is both necessary and proportionate, and it is necessary to demonstrate that what you do complies with international and humanitarian law. In all of those respects I was satisfied that this was a lawful action (HRC 2016, 41).

As the HRC report indicates, the Committee was far from convinced that it could judge the legitimacy of the UK government's position, and raised a series of significant concerns about how convincing the position was, given the lack of clarity over what 'imminent' might mean, how 'armed attack' was understood, and whether the UK government was correct or not in grounding its position in relation to the Laws of Armed Conflict, given that the drone strikes referred to happened outside a theatre of war (HRC 2016, 43-51).

There remains a considerable lack of clarity on the legal advice the US and UK governments are relying on to justify their claims that targeted killings by drones are legal. What we do get a glimpse of is the common approach they seem to be taking in justifying their positions. Both are claiming executive authority to carry out these killings, based on secret processes for determining who poses an imminent threat to their interests at home or abroad, and secret processes for determining what is legal and what is not. As with the RDI programme, shrouding their actions in legal justifications is part of a

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process of shielding those responsible from being held accountable for their actions. If the Department of Justice or Attorney General approve it, then there are no grounds for challenge.

The US and UK approaches to the legal questions surrounding the targeted killings programme seem to be indicative of attempts to insulate sovereign power from accountability. This was challenged by the UK's Joint Human Rights Committee, which called on the UK government to 'reconsider its apparent position that there should be no accountability through the courts for any action taken pursuant to its policy of using lethal force outside areas of armed conflict' (HRC 2016, 86). This would also seem to be indicative of an emerging trend. Whereas during the Cold War, the tendency was to simply carry out covert operations and hope that these were not detected, since 9/11 the US and UK have sought to provide some form of protection for those involved in covert operations. Those protections, however, are being arrived at in secret, and in ways intended to try and thwart any legal challenge.

### Conclusion

In this paper I have argued that by situating the targeted killing programme within historical context, we can start to understand the programme less as a unique and novel development in warfare, and more as a continuation of the imperial and neo-imperial violent practices of powerful liberal states that have their origins in early European colonialism. Specifically, the targeted killings programme is simply the latest tool deployed by the US to facilitate the occupation 'of the dangerous void of open or undefined frontiers', where 'territorially sealed political authority' (Colás 2008, 621), has failed to deliver security for capitalism and for US primacy. Viewing the targeted killings programme through historical materialist lenses, we can also tease out the continuities with US military doctrine developed during the Cold War. This was characterised by covert operations often involving human rights violations, and considerable effort to evade accountability for these. I have attempted to show that the targeted killing programme has a number of precursors. What ties the targeted killings programme to its antecedents is that they are all underpinned by the doctrine of unconventional war that the US developed in the Cold War era. Central to these programmes is the acquisition of intelligence on specific individuals considered a threat to US interests, with a view either to capturing and interrogating them, including through torture, to obtain further intelligence on other suspects, or to eliminating them. A further continuity between the Cold War programmes and the RDI and targeted killings programme is the complete lack of transparency around the assumptions and methods used to gather and evaluate the veracity of the intelligence which informs the targeting decisions. Finally, a continuity running through each of these programmes is the attempts the US and UK have made to evade accountability for them, either by operating covertly in ways that facilitate plausible deniability, or (and) by putting in place an architecture aimed at shielding those involved from prosecution for violations of international human rights and international humanitarian law. These amount to attempts to vest sovereign power in the Executive and shield it from any credible accountability.

I do not share the view that that in focusing on the question of legality, scholars are colluding in attempts to legitimise human rights violations (Rothe and Collins 2014). This is not a new argument. Marx criticised human rights as constructs of the state and the law to entrench elite dominance and privilege. As I have previously argued, rights, and for that matter, the law, can be deployed in emancipatory ways, but they can also be subject to manipulation (Blakeley 2013). This does not make them in and of themselves false or oppressive. Indeed, as Costas Douzinas argues, what can save human rights is that in the tradition of natural law and right there is, historically a, 'human trait to resist domination and oppression' (Douzinas 2000, 176). As such, and in agreement with Judith Butler, I conclude that the law has an incredibly significant role to play in 'the articulation of an international conception of rights and obligations that limit and condition claims of state sovereignty' (Butler 2004,

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98). Sustained scrutiny, activism and litigation by organisations representing victims of the CIA's RDI programme eventually led to the closing of the programme and the decision by first the Bush administration and then Obama to reinstate the prohibition on torture. It also led to the most comprehensive investigation in the history of the US Senate's Select Committee on Intelligence, the findings of which continue to reverberate within the CIA and US policy circles. As the death tolls increase, and the devastating societal impacts of the targeted killing programme escalate in growing numbers of countries, the struggle to wrest unaccountable sovereign power from the state and its agents should continue. With that in mind, human rights enshrined in international law will continue to play an incredibly important role in seeking to hold officials to account when they seek to allocate sovereign power to themselves, free of accountability. By situating the targeted killings programme in historical context, we are better placed to understand how challenges to its precursors were mounted, and what strategies were most successful in seeking redress for victims and pushing the state to roll back some of its more repressive policies.



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