

ACTION IO-00

INFO	LOG-00	AF-00	AID-00	AMAD-00		INL-00	DODE-00
	DOFE-00	WHA-00	EAP-00	EB-00	EUR-00	FAAE-00	UTED-00
	FRB-00	H-00	TEDE-00	INR-00	LAB-01	L-00	NEA-00
	DCP-00	NSAE-00	ISN-00	NSCE-00	OIC-00	OIG-00	NIMA-00
	PA-00	GIWI-00	PRS-00	P-00	ISNE-00	DOHS-00	SP-00
	IRM-00	SS-00	STR-00	TRSE-00	FMP-00	PRM-00	DRL-00
	G-00	SCA-00	SAS-00	SWCI-00	/001W		

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 FM USMISSION GENEVA  
 TO SECSTATE WASHDC 8804  
 USMISSION USUN NEW YORK

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 B3, NSA50

UNCLAS GENEVA 000568

STATE FOR IO/SHA, DRL/MLA

E.O. 12958: N/A

TAGS: PHUM, UNHRC-1

SUBJECT: COMMUNICATION FROM SRS ON ESA EXECUTIONS AND HR AN  
 COUNTER TERRORISM REGARDING THREE AIR STRIKES IN PAKISTAN

1. Mission received a communication from Philip Alston, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, and Martin Scheinin, Special Rapporteur on Human Rights and Counter Terrorism, regarding three incidents of air strikes by U.S. unmanned aircraft against targets in Pakistan. This communication has been sent via e-mail to IO/SHA. This communication is number 7 on the Geneva 2006 Communications Log.

2. Begin text of letter:

7 March 2006

REFERENCE: AL G/SO 214 (33-23) USA 4/2006

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Commission on Human Rights resolutions 2004/37 and 2005/80 respectively.

We would like to bring to your Excellency's attention

UNITED STATES DEPARTMENT OF STATE  
 REVIEW AUTHORITY: ARCHIE M BOLSTER  
 DATE/CASE ID: 23 JUN 2011 201000373

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information we have received regarding the incidents of air strikes by United States unmanned aircraft against targets in Pakistan, each of them resulting in the death of several civilians. We have written to the Government of Pakistan in this matter as well.

On 5 November 2005, an unmanned aircraft operated by the US Central Intelligence Agency (CIA) fired a missile at a house in North Waziristan, Pakistan (no further details of the location reported). The CIA had received information that al-Qaeda operative Hamza Rabia, a citizen of Egypt alleged to have been involved in an attempt on the life of President Pervez Musharraf in December 2003, was staying there with his wife and children. While an overall eight persons, including his wife and children, were reportedly killed in the attack, Hamza Rabia managed to escape with an injured leg.

On 1 December 2005, an unmanned drone operated by the CIA fired a missile at a house in the village Haisori, near the town of Mir Ali, North Waziristan, about 30 kms from the Afghani border, killing five persons. It would appear that the dead are Hamza Rabia, two other foreign men, and the 17-year-old son and an eight-year-old nephew of the owner of the house. While Pakistani authorities stated that the blast that resulted in the deaths was caused by explosives handled or stored in the house, reports indicate that residents of the area saw an unmanned aircraft fire a missile at the house and recovered fragments of the missile.

In the early morning hours of 13 January 2006 a remote-piloted Predator aircraft of the United States security services launched a strike with "Hellfire" missiles on the village of Damadola in the Bajaur Agency, North Western Pakistan, close to the border with Afghanistan. Reports indicate that US Predator drones were circling the area of Damadola village during the three days preceding the missile strike. The attack is reported to have killed 18 persons, including women and children. The target of the strike reportedly was Ayman al-Zawahri, who is commonly referred to as the "number two" of al-Qaeda. He was reportedly expected at a dinner in Damadola on the evening of 12 January 2006. However, he appears not to have been in the village at the time of the attack. The Pakistani Federal authorities are reported to have stated that 5 senior al-Qaeda figures were among those killed, including a chemical and explosives expert, Midhat Mursi al-Sayed alias Abu Abu Khabab, Abu Obaidah al-Misri, allegedly al-Qaeda chief of operations for Afghanistan's eastern Kunar province, and Ayman al-Zawahiri's son-in-law Abdur Rehman al-Maghribi. However, the

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reports we have received indicate that the bodies of the five "Arab fighters" killed in the strike were pulled out of the rubble and taken away from the scene soon after the strike, so that only the bodies of 13 Pakistani victims could be identified.

It is our understanding that the US Central Intelligence Agency (CIA) is authorized to operate such Predator operations under presidential authority signed after the September 11, 2001 terrorist attacks. The Government of Pakistan is reported to have lodged a diplomatic protest over the incident on 14 January 2006. Pakistan's Prime Minister, Mr. Shaukat Aziz, reportedly stated publicly that such attacks are not acceptable to Pakistan.

In drawing the attention of your Excellency's Government to this information and seeking clarification thereof, we are

fully aware of the stance taken by your Government in correspondence with the predecessor to the Special Rapporteur on extrajudicial, summary or arbitrary executions with respect to the mandate's competence regarding killings that are said to have occurred within the context of an armed conflict (we refer to your Government's letters dated 22 April 2003 and 8 April 2004). As explained in the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions to the 61st Commission on Human Rights, as well as in a letter to your Excellency's Government of 26 August 2005, however, both the practice of the General Assembly and of the independent experts successively holding the mandate since its creation in 1982 make it clear that questions of humanitarian law fall squarely within the Special Rapporteur's mandate (See E/CN.4/2005/7, at par. 45). As to the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, it should be pointed out that reference to "fundamental freedoms" in the title of the mandate established by paragraph 14 of Commission on Human Rights resolution 2005/80 is to be understood in the light of operative paragraph 1 of the same resolution which explicitly refers to, inter alia, international humanitarian law.

In the light of these considerations, we would express the concern (stated by the Special Rapporteur on extrajudicial, summary or arbitrary executions in his Report to the 61st Commission on Human Rights and in his letter of 26 August 2005 concerning the killing of Haitham al-Yemeni, which unfortunately has remained without a reply from your

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Government), that empowering Government to ~~kill~~ and kill "known terrorists" places no verifiable obligation upon them to demonstrate in any way that those against whom lethal force is used are indeed terrorists, or to demonstrate that every other alternative has been exhausted. (See E/CN.4/2005/7, at par. 41). Moreover, as these incidents dramatically illustrate, such "targeted killings" may (and all too often do) result in the death of numerous bystanders, while missing the target.

We would also recall that the Human Rights Committee has held that a State party can be held responsible for violations of rights under the Covenant where the violations are perpetrated by authorized agents of the State on foreign territory, "whether with the acquiescence of the Government of [the foreign State] or in opposition to it". (See Lopez v. Uruguay, communication No.52/1979, CCPR/C/OP/1 at 88 (1984), paras. 12.1-12.3.)

Finally, we wish to remind you that UN GA Resolution 59/191 of 10 March 2005, in its paragraph 1, stresses that "States must ensure that any measure to combat terrorism complies with their obligation under international law, in particular international human right, refugee and humanitarian law", the latter to the extent it is indeed applicable.

Without in any way wishing to pre-judge the accuracy of the information received, we would be grateful for a reply to the following questions. (These questions repeat the unanswered questions in letter of the Special Rapporteur on extrajudicial, summary or arbitrary executions of 26 August 2005):

1. Are the reports according to which the target of the missile strike against Damadola was Ayman al-Zawahri accurate? On what basis was it decided to kill, rather than capture, Ayman al-Zawahri (considering also the reported presence of US military aircraft in the area during the three days preceding the attack)? On what basis was it decided to kill, rather than capture, Hamza Rabia?
2. Did the Government of Pakistan agree to the killing of Ayman al-Zawahri? Did the Government of Pakistan agree to the killing of Hamza Rabia?
3. What rules of international law does your Excellency's Government consider to govern these incidents? If your Excellency's Government considers the incidents to have been governed by humanitarian law, please clarify which treaty instruments or customary norms are considered to apply.

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4. What procedural safeguards, if any, were employed to ensure that these killings complied with international law?

5. Does your Excellency's Government intend to provide compensation to the families of the civilians killed in these air strikes? If so, what steps have been taken in this direction?

It is our responsibility under the mandate provided to us by the Commission on Human Rights and reinforced by the

appropriate resolutions of the General Assembly, to seek to clarify all such cases brought to our attention. Since we are expected to report on these cases to the Commission, we would be grateful for your cooperation and your observations. We undertake to ensure that your Government's response is accurately reflected in the reports we will submit to the Commission on Human Rights for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Philip Alston  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Martin Scheinin Special Rapporteur on Human Rights and counter terrorism

End text of letter.

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