LOSING SIGHT OF THE HUMAN COST

Casualty recording and
remote control warfare

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CONTENTS

EXECUTIVE SUMMARY

Casualty recording is not yet a universally acknowledged or practised principle

Every life lost to armed violence should be promptly recorded, correctly identified and publicly acknowledged. Despite the casualty recording work currently done by civil society, and some intergovernmental organisations and states, the transparent recording of every casualty still faces obstacles to becoming a universally acknowledged, accepted and practiced principle. The practical capacity and political will of states and other actors are key challenges. However, with the increased recognition of the importance of casualty recording by states and within the UN system including by the Secretary-General,[1] as well as by civil society,[2] the call for states, in partnership with other actors, to ensure the recording of every casualty of armed violence, is increasingly gaining traction.

Remote control warfare poses additional challenges to casualty recording

Against this background, this paper examines the additional challenges that the tactics of remote-control warfare pose to the practice of casualty recording – and the call on states to carry it out. Remote-control warfare is an emerging concept, and rapidly evolving trend, defined as strategies and tactics that allow for armed force to be actioned at a greater distance or with a lighter footprint than conventional military deployments. This includes the use of armed drones; the potential development of lethal autonomous weapons; the use of special forces; and the contracting of private military and security companies. Each of these tactics are examined in this paper for their implications for casualty recording.

These challenges have consequences for victims of violence and the analysis of these tactics

The use of remote-control warfare can inhibit the ability to scrutinise actions of armed force and record the casualties they cause. The physically remote or concealed nature of these tactics, as well as their use in covert military action, militates against states' transparency regarding those killed and injured by their use. These features can also render independent investigation more difficult. The barriers to accurately identifying and acknowledging the casualties of these tactics not only potentially denies individuals the basic dignity of recognition, but also obscures the full human costs of warfare, impedes efforts for victim redress, and prevents evidence-based analysis of these tactics' acceptability and effectiveness.

State and independent casualty recording must be strengthened

National and international policy and practice in casualty recording urgently needs to meet these challenges. Data on remote-control warfare's casualties, and the challenges these tactics pose to casualty recording, should be carefully considered in any evaluations of the use of remote control tactics. All states must recognise the importance of casualty recording, and take steps to ensure that every casualty is recorded. This includes the casualties caused by remote control warfare, despite the opacity, distancing of personnel and fragmentation of responsibility that its tactics can potentially entail. Additionally, in particular where the call on states to transparently record casualties is especially challenging politically, and casualties and how they are classified are highly politically charged, it is also crucial that robust, independent and impartial casualty recording is undertaken and supported. That the lives lost to remote control tactics are properly recorded is vital towards ensuring that these new forms of warfare are properly regulated and that civilians in armed conflict are adequately protected.

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[1] See Elizabeth Minor and Serena Olgiati (2014) 'Casualty Recording: Assessing State and United Nations Practices', Action on Armed Violence and Oxford Research Group http://ref.ec/joint p1

[2] See www.everycasualty.org/campaign

1. INTRODUCTION

To fully understand the human costs of conflict, and to assess the impact of particular tactics of violence, knowing the specifics about the casualties of violence – including where, when, and how people have been killed and injured, and who they were – is of primary importance. Deaths and injuries are far from the only human costs of violence that should be considered in policy-making. Yet where there is a lack of credible and transparent data on casualties, the impact and acceptability of certain tactics cannot be assessed, with consequent negative repercussions for victims, communities and policy-makers.

Casualty recording is a practice that strives to achieve the comprehensive, systematic and continuous documentation of individual deaths or injuries from armed violence and the incidents in which they occur. It involves documenting as much distinguishing information as possible about incidents or individuals.[3] Good casualty recording practice also includes the transparent publication of this information as soon as possible, so long as this does not threaten the safety of casualty recorders, their witnesses or affected communities.[4]

The core premises of casualty recording are that no individual should die as a result of armed violence without their death being acknowledged, and that recognition should be afforded to all victims of violence (which includes survivors and the families of those killed) in a way that upholds their rights and dignity. Other documented benefits of the detailed casualty information that results from casualty recording include: informing the assessment of conflict environments for protective action by humanitarian responders; advocacy and dialogue with conflict parties to influence future operations and so reduce civilian casualties; evidence-based policymaking by states to reduce armed violence; supporting victims' rights (such as the right to know the fate of loved ones) and survivors' assistance (such as compensation); memorialisation; and contributions to accountability procedures and truth and reconciliation processes.[5]

Governments, inter-governmental organisations, and civil society groups can and do currently undertake this work,[6] but it is nowhere near a universally implemented practice, as the practical capacity and political will for casualty

Protestors from US non-governmental organisation Code Pink read the names of children killed in drone strikes
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[3] At a minimum: the date of an incident; its location; individual identities (or the numbers killed/injured, if identities are not yet available and require further investigation); a description of the violence that has led to deaths or injuries, for example by documenting the weapons or tactics used; and a record of the sources used to document this information.

[4] For detailed definitions, see Elizabeth Minor (2012) 'Toward the Recording of Every Casualty: Policy Recommendations and Analysis From a Study of 40 Casualty Recorders', Oxford Research Group http://ref.ec/towards, Section 1.2 p4; and Mirko Miceli and Serena Olgiati (2014) 'Counting the Cost: Casualty Recording Practices and Realities Around the World', Action on Armed Violence www.aoav.org.uk/2014/counting-the-cost

[5] For specific examples and case studies, see sources cited in footnotes 2 and 3, and Julia Knittel (2014) 'How the Counts Reduce the Casualties' Action on Armed Violence http://aoav.org.uk/wp-content/uploads/2014/06/AOAV.How-the-Counts-reduce-the-Casualties1.pdf

[6] ibid. and Jacob Beswick and Elizabeth Minor (2014) 'The UN and Casualty Recording: Good Practice and the Need for Action', Oxford Research Group http://ref.ec/un

recording among states and other actors is often absent. The ultimate responsibility for ensuring transparent casualty recording should lie with states:[7] however, achieving the recording of every casualty will require the commitment and practical engagement of governments, international organisations and civil society.

This paper explores the additional challenges that the tactics of remote-control warfare pose to the practice of transparent casualty recording, done either by states or other organisations. The paper looks at the consequences of these challenges both for the victims of violence and for fully understanding the impact and implications of these new ways of warfare. Finally, this paper examines how these challenges might be confronted. Remote-control warfare is an emerging concept and evolving trend in the use of armed force, defined by the Remote Control Project, a civil-society research and policy initiative based in London,[8] as strategies and tactics "that allow for conflict to be actioned at a distance. It incorporates technologies and light-footprint deployments that enable policymakers and military planners to approve actions that would unlikely be considered if using conventional means."[9] Examples of remote-control tactics include the use of armed drones; the potential development of lethal autonomous weapons; the low-key or covert use of special operations forces; and the use of private military and security companies (PMSCs).

In section 3 (p5-17), this paper individually examines each of these four remote-control tactics, conceptualising the challenges their specific use poses, or might pose, to casualty recording and its stated benefits, including advocacy, policy making and civilian redress.

Further to the challenges of capacity and political will that casualty recording already faces in a range of circumstances, warfare that is covert, or conducted using capabilities that allow humans belonging to one party to the conflict to remain absent from the battlefield, presents a conceptual and practical challenge to a call for systematic and transparent casualty recording. Specifically, it poses a fundamental challenge to the demand that the states using these tactics transparently record casualties. In section 4 (p18-21), this paper gives recommendations to states, civil society and other actors towards meeting the challenges posed to casualty recording by remote-control warfare. These recommendations address both policy and the development of casualty recording practice. As this paper gives only a brief examination of these important and complex themes, the authors also provide recommendations for further investigations that would be helpful on this subject.

7   See the call of the Every Casualty Campaign, of which the Every Casualty programme is a member: "The Every Casualty Campaign calls on states,in partnership with other actors, to recognise every casualty of armed violence by ensuring that all casualties are promptly recorded, correctly identified and publicly acknowledged." http://www.everycasualty.org/campaign
8   See the Project's website: http://remotecontrolproject.org/
9   Open Briefing (2014) 'Remote-control warfare briefing #01' http://remotecontrolproject.org/wp-content/uploads/2014/03/Open-Briefing-remote-control-warfare-briefing-1-240414.pdf

2. NOTE ON METHODOLOGY AND LIMITATIONS OF THIS PAPER

This briefing paper is based primarily on a review of key literature on the four remote control tactics examined in detail (armed drones, lethal autonomous weapons, special operations forces, PMSCs), and the application of the Every Casualty programme's understanding of casualty recording's methodologies, benefits, and challenges. This included review of materials published by casualty recording practitioners who document casualties caused by remote-control tactics. Our research also involved reviewing data collected during previous Every Casualty programme investigations into casualty recording practice and its challenges – primarily semi-structured qualitative interviews with practitioners about their work – for material specific to the use of remote control tactics. Lastly, we gathered, through informal interviews and email exchanges, further or updated experiences and data samples on relevant topics from a small number of members of the International Practitioner Network (IPN) of casualty recording practitioners,[10] to enhance the examples and operational understanding given in the paper.

This briefing paper intends to give an introductory or scoping overview based on a systematic review of the materials available. Given the mode of investigation, the country examples given should be seen as illustrations of particular cases that could give themes for consideration. The examples may not be representative of the whole field of practice, or represent the impact of particular remote-control tactics on casualty recording definitively or in all contexts. The analysis and recommendations given are for consideration, improvement, and debate by all those addressed, including casualty recorders - given the wealth of expertise that exists on the topics analysed. Finally, this paper does not represent a consensus view from casualty recorders, or any organisation apart from the Every Casualty programme, which remains responsible for the contents of the paper.

Afghan National Army Commandos depart for a mission in Chapahar district in Nangarhar province, 2013
(© US Army photo by Staff Sgt. Kaily Brown/Released, https://flic.kr/p/eaGo42)

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[10] The Every Casualty Programme coordinates this network. See www.everycasualty.org/ipn

3. CASUALTY RECORDING UNDER REMOTE CONTROL WARFARE: SIGNIFICANCE AND CHALLENGES

As the appetite for prolonged conventional ground deployments – and significant military casualties – diminishes, and is replaced by remote, clandestine, or private military force, the ability and willingness of states and other actors to record data on the casualties of conflict, which already faces considerable challenges, is further compromised.

The merging of intelligence operations with the use of force – seen currently with the use of armed drones and special operations forces by the United States – is one particularly problematic trend for casualty recorders. This greatly increases the opacity of state force, posing a range of potential difficulties to systematic, accurate and public recording efforts, including a lack of official disclosure of information and greater difficulty conducting field investigations. A consequent lack of verifiable data on casualties impedes the impartial evaluation of tactics' impacts on civilian populations and decreases accountability for the states engaging in them – both domestically and in the locations where these remote-control tactics are employed. This may ultimately be damaging to the strategic interests of the state employing the tactics, where the political support

of the host population is important – a lesson that the United States (US) has already learnt in the context of conventional operations in Afghanistan, for example.[11]

The use of PMSCs, which operate in a largely unregulated environment, also decreases the transparency of military force. A failure by contracting states to sufficiently manage or oversee their operations has resulted in a dearth of data regarding PMSC-related civilian harm, despite numerous well-publicised incidents of PMSC abuse, including the torture and killing of civilians.[12] While the use of PMSCs – and other remote-control tactics – may allow for states to pursue security aims while limiting the number of military casualties, it also potentially shifts the burden of conflict from the military to the civilian populations in which these tactics are deployed. These additional challenges to both state-led and others' casualty recording, and so to the recognition this affords, mean that civilians may face greater difficulty in pursuing redress or accountability for harm. It is thus imperative that the challenges to casualty recording that arise from the use of these new forms of warfare be met with equally robust efforts by states and other actors to overcome them.

Although instances of covert action, and remote-control tactics as a whole, pose particular challenges to the a call for transparent state-led casualty recording, states should significantly develop and improve their ability to record the casualties of these new forms of warfare. This is necessary in order to ensure the recognition of every casualty, as well as for accountability, adherence to legal frameworks, and the protection of civilians. Other actors, including the United Nations and civil society organisations, should also take steps to improve their independent recording of the casualties of remote control warfare, if these new tactics are to be fully understood and properly regulated.

Interactive report released in March 2014 by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, following the review of 30 drone strikes where civilian casualties were reported. (Screen shot of the report taken 17 July 2014: http://unsrct-drones.com/report/159)

On the following pages, the significance of and challenges to casualty recording under the use of armed drones, lethal autonomous weapons, special operations forces and PMSCs are explored in detail.

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[11] See for example Sarah Holewinski and Larry Lewis (2013) 'Changing of the Guard: Civilian Protection for an Evolving Military' Prism, Vol. 4, No. 2. http://civiliansinconflict.org/resources/pub/prism-changing-of-the-guard
[12] See: Jose Gomez del Prado (2012) 'The Role of Private Military and Security Companies in Modern Warfare: Impacts on Human Rights.' The Brown Journal of World Affairs, August 2012. https://www.globalpolicy.org/pmscs/51834-the-role-of-private-military-and-security-companies-in-modern-warfare-impacts-on-human-rights.html; and Human Rights First (2010) 'State of Affairs: Three years after Nisoor Square, Accountability and Oversight of US Private Security and Other Contractors', http://www.humanrightsfirst.org/wp-content/uploads/pdf/State_Of_Affairs.pdf

3.1 ARMED DRONES

ARMED DRONES: WHO USES THEM AND WHERE

Estimates vary, but around 75 states reportedly have drones, otherwise known as Unmanned Aerial Vehicles (UAVs) or Remotely Piloted Air Systems (RPAS), with around 20 currently in possession of armed or combat drones that can carry and deploy weapons.[13] The proliferation to non-state armed groups of drones that are capable of being used to launch weapons currently includes Hezbollah.[14] Only three actors are so far confirmed to have used armed drones for attacks that have resulted in deaths and injuries (giving the main frame of reference for this section): the United States, who have used armed drones for targeted killings in Pakistan since 2004, Yemen since 2002, and Somalia since 2007 and also in Afghanistan since 2001; the United Kingdom, who have used armed drones in Afghanistan since 2007;[15] and Israel, who have used armed drones in the Occupied Palestinian Territories including Gaza since the Second Intifada in 2000, and in particular in Gaza during Operation Cast Lead in 2008-9, Operation Pillar of Defence in 2012 and most recently Operation Protective Edge in 2014. The United States and United Kingdom also used armed drones in operations in Iraq after 2003 and in Libya in 2011.[16]

Armed drones have therefore been deployed in situations that can be classified as armed conflict, or more conventional battlefield scenarios, as well as under circumstances where this definition cannot be applied unequivocally. Controversy has attended US use of armed drones for targeted killings in Pakistan, Yemen, and Somalia, where a body of legal opinion (which has been disputed by the US government[17]) does not consider the relationship between the US and its targets to amount to armed conflict (during which targeted killings of military adversaries can be permissible). If this is the case, these armed drone strikes are governed by much stricter requirements regulating when individuals can be deprived of life according to international human rights and criminal law, potentially rendering many of the killings illegal. Even if the strikes are part of an inter-national or non-international armed conflict and so governed by International Humanitarian Law, some may still fall foul of laws of war requirements to make distinction between civilians and combatants in attacks, and to ensure that the damage to civilian life and property resulting from any given attack is proportionate to the military advantage gained.[18]

IMPORTANCE OF AND CHALLENGES TO CASUALTY RECORDING

It is beyond the scope of this paper to contribute to these legal debates, but they show one reason why the comprehensive, detailed, and systematic recording of casualties from armed drone strikes[19] is important: such casualty recording could contribute vital information to evaluations of the compliance with the law of the range of current armed drone use. It could also, likewise, assist all those carrying out drone strikes to better understand the impact of their actions, particularly on civilians, and hence improve the protection of civilians.[20] Such casualty information could also contribute to policy debates in the states which undertake or host armed drone strikes, giving some evidence towards discussion of: whether the strikes achieve their stated aims; their wider impact; and what the acceptable parameters of their use should be, within or outside of armed conflict. A robust record of all casualties from all forms of violence is also crucial to states and other agencies providing assistance to those who become victims of violence.

Where armed drone strikes are carried out by operators at a considerable distance with little or no associated on-the-ground presence, and/or covertly or with deniability as with the US programme in Pakistan, Yemen, and Somalia, the potential practical and political barriers to accurate and transparent official casualty recording that can help with evaluating impact, providing redress, and informing future decision-making by the drone-operating state (as well as the host state) are clear. Where armed drones are used by conventional military forces operating alongside ground

13 Rob O'Gorman and Chris Abbott (2014) 'Remote control war: Unmanned combat air vehicles in China, India, Iran, Israel, Russia and Turkey', Open Briefing http://remotecontrolproject.org/wp-content/uploads/2014/03/Remote-Control-War.pdf p2

14 Yochi Dreazen (26 Mar 2014) 'The Next Arab-Israeli War Will Be Fought with Drones', New Republic http://www.newrepublic.com/article/117087/next-arab-israeli-war-will-be-fought-drones (accessed 9 Jul 2014)

15 Now making up the majority of airstrike deployments - see Hansard: http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm140707/text/140707w0006.htm#1407083000001 (accessed 9 Jul 2014)

16 Sources: The Bureau of Investigative Journalism http://www.thebureauinvestigates.com/category/projects/drones/; Drone Wars UK http://dronewars.net/; Nils Melzer (2013) 'Human Rights Implications of the Usage of Drones and Unmanned Robots in Warfare', Directorate-General For External Policies, Policy Department, European Parliament http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/410220/EXPO-DROI_ET(2013)410220_EN.pdf; Ben Emmerson (2013) Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, UN General Assembly, A/68/389 http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N13/478/77/PDF/N1347877.pdf?OpenElement

17 Micah Zenko (2013) 'Reforming U.S. Drone Strike Policies', Council on Foreign Relations http://www.cfr.org/wars-and-warfare/reforming-us-drone-strike-policies/p29736 p17

18 A considerable amount has been written about this. See for example Melzer (2013) cited in footnote 16 and Professor Susan Breau, Marie Aronsson, and Rachel Joyce (2011) 'Discussion Paper 2: Drone Attacks, International Law, and the Recording of Civilian Casualties of Armed Conflict', Oxford Research Group http://ref.ec/drone-obligation

19 In particular gathering as much information as possible about individuals and their possible involvement in conflict-related or criminal activities

20 There is precedent for this kind of feedback loop of casualty information into improved conflict-party conduct, which should already apply to the use of armed drones by conventional international forces in Afghanistan. See: Jennifer Keene (2014) 'Civilian Harm Tracking: Analysis of ISAF Efforts in Afghanistan' Center for Civilians in Conflict http://civiliansinconflict.org/uploads/files/publications/ISAF_Civilian_Harm_Tracking.pdf

troops in an armed-conflict setting, as with at least some of the drone strikes in Afghanistan undertaken by the US and United Kingdom (UK) and by Israel in Gaza, the barriers to transparent and effective state-led casualty recording which facilitates dialogue and scrutiny might *potentially* be reduced (as the strikes' official status is not clandestine), dependent on political will.

Some of the actual challenges faced by independent actors documenting the casualties of drone strikes, reported in the literature and practitioner experiences consulted for this paper (which principally cover the US covert drone programme, and operations in Afghanistan),[21] reflect those common across the field of casualty recording: difficulties accessing remote or dangerous areas to gather information; lack of data from local institutions which may or may not be present in the affected areas (such as hospitals, police, or local government) due to poor state reach; lack of physical evidence due to cultural practices of quick burial, armed groups concealing their losses, and the nature of the fatal injuries and after-effects that drone-fired (and other) missiles cause, such as the destruction or burning of the human body; the biases that different sources of information may give (e.g. officials, armed groups, eyewitnesses) with few possibilities for independent corroboration; difficulties identifying the weapons platform used (i.e. was a missile fired from a drone or another type of aircraft); difficulties identifying whether women, children, or individuals from outside the area had been killed or injured, due to local culture and taboos; and the reflection of source biases (including non-reporting of incidents).

Further specific barriers reportedly encountered by casualty recorders and others undertaking documentation where drone strikes were launched by unconventional or covert forces, or with deniability, include: lack of official disclosure of information about strikes – even in circumstances where dialogue exists with conventional forces with respect to casualties from other actions; the blocking in some circumstances by host states or local authorities of access to affected areas by independent investigators or media; as a result, in some circumstances a near monopoly by anonymous officials on information coming out of affected areas, whose interests or biases may be unclear or vary over time. Under these conditions, the locations where and ways in which armed drone strikes are deployed potentially pose a core challenge to their examination via robust casualty recording.

Rather than the technology itself, it is how drone strikes are used practically and under what political or strategic consid-

erations, as well as what possibilities exist for transparent, on-the-ground investigation by states or other actors as a result, that ultimately determines the challenge armed drones pose to casualty recording.

RECORDING DRONE STRIKE CASUALTIES: REVIEW OF CURRENT KNOWN PRACTICES AND IMPACTS

State-led casualty recording

No public, systematic, comprehensive casualty records, produced by any of the states involved in launching or hosting drone strikes, were identified from the limited survey and review that was possible for this paper. However, the state-led recording of drone strike casualties is undertaken to various extents in different contexts, and the information we were able to gather within the limitations of this research is summarised here. Academic, UN, and civil society analysis has drawn attention to the obligation on states to investigate possible civilian casualties as a result of drone strikes, and also proposed or recommended that all casualties should be recorded and reported upon.[22]

Regarding the US drone strike programme in Pakistan, Yemen, and Somalia, which is operated by the CIA and JSOC (Joint Special Operations Command, a part of the US Special Operations Command that is under the Department

Protests against the use of drones by the United States government in Pakistan, 8 July 2012. (© Yu Pong https://flic.kr/p/ctWtjL)

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21 Including for example: International Human Rights and Conflict Resolution Clinic at Stanford Law School and Global Justice Clinic at NYU School of Law (2012) 'Living Under Drones: Death, Injury, and Trauma to Civilians From US Drone Practices in Pakistan' http://www.livingunderdrones.org/wp-content/uploads/2013/10/Stanford-NYU-Living-Under-Drones.pdf; Amnesty International (2013) 'Will I be next? US Drone Strikes in Pakistan' http://www.amnesty.org/en/library/asset/ASA33/013/2013/en/041c08cb-fb54-47b3-b3fe-a72c9169e487/asa330132013en.pdf; United Nations Assistance Mission in Afghanistan: Reports on the Protection of Civilians http://unama.unmissions.org/Default.aspx?tabid=13941&language=en-US; as well as Every Casualty's formal and informal interviews with casualty-recording practitioners for this and previous research projects.
22 See for example Melzer (2013) cited in footnote 16, Breau et al (2011) cited in footnote 18 and Emmerson (2013) cited in footnote 16.

of Defence, and operates with considerable secrecy), data about casualties is being collected by those operating the drone strikes. This has never been released in full: information has been leaked, and anonymous officials as well as those speaking on the record have made comments regarding overall numbers and proportions of civilian casualties.

Studies focusing on Pakistan in particular have suggested that the information the CIA are likely able to gather about who they will or have killed may be only partial and not necessarily robust: Battle Damage Assessments carried out remotely via drone surveillance are unlikely to be able to observe all those killed or injured, due to physical barriers for example, and are even less likely to establish their identities; it is unknown the extent to which the drone-operating agencies have a presence on the ground with good situational awareness, cultural intelligence, and investigative skills to gather accurate casualty information;[23] paid informants used may have their own agendas that render the information provided less reliable; and the likelihood of good signals intelligence (the interception of phone calls, emails etc.) is reduced by poor communications infrastructure in the affected areas.[24]

Analysis by journalist Jonathan Landy of leaked US intelligence reports indicates that whilst there may be a count, establishing the exact identities of many individuals is not attempted. Instead, they may be categorised only according to their presumed affiliation with 'militant' groups (difficulties with this category are discussed below p10).[25] On civilian casualties specifically, a National Security Council spokesperson has stated that "when we **believe** that civilians may have been killed, we investigate thoroughly" and that condolence payments[26] have been made "where appropriate and possible".[27] No further details on what these investigations or payments entail or how often they are conducted have been released.[28] That they may only be carried out when it is believed that civilian casualties have occurred suggests that they may be infrequent (see the discussion of the definitions of 'civilian' and 'militant' below (p10)).

Of the host states of the US programme, the authors could not find information on any official efforts in Somalia to record or monitor drone strike casualties. In Yemen, the website of the Ministry of Defence intermittently releases the names of targets killed (though this information is sometimes contradicted by other sources[29]). Authorities in Yemen have provided condolence payments to families where civilians have been harmed by drone strikes, possibly with the involvement of the US.[30] Whether these are based on a comprehensive record of civilian casualties, or an ad hoc response to cases that cause particular outrage, could not be determined. In Pakistan, drone strike casualty records are suspected or known to exist across different Pakistani government ministries and agencies (including the military, and intelligence services), and at central and local levels (including the collection of data by Political Agents – civil servants working under the Governor on behalf of the President in the Federally Administered Tribal Areas – who are known to administer assistance or, very occasionally, condolence payments). The extent and quality of this recording, and how the information is used (e.g. for policy-making or the assistance of those affected), has not been definitively established. The opacity of Pakistan's data may in part be due to the complex and changing relationship that Pakistan has with the drone strikes.[31]

In Afghanistan, where drone strikes are carried out by conventional international forces, their casualties will be tracked by the tracking cell of ISAF's[32] Civilian Casualties Mitigation Team, who do not attempt comprehensive casualty recording nor release their data, but do investigate all allegations of civilian casualties and aim to use their data to improve procedures in future operations to better protect civilians.[33] Where drone strikes are not carried out by ISAF conventional forces (for example, if they are undertaken by special forces), casualties are not tracked by the Kabul-based team in this way. The state of Afghanistan currently has a low capacity to record civilian casualties,[34] and the authors could not confirm whether drone strikes are tracked by any state agency.

[23] The maintenance of substantial numbers of informants and cooperation with military and intelligence services in Pakistan has been reported – see Zenko (2013) cited in footnote 17 p7

[24] See for example Columbia Law School and Center for Civilians in Conflict (2012) 'The Civilian Impact of Drones: Unexamined Costs, Unanswered Questions' http://civiliansinconflict.org/uploads/files/publications/The_Civilian_Impact_of_Drones_w_cover.pdf p36-41, 47; and Stanford and NYU (2012) cited in footnote 21 p33

[25] See Jonathan Landy (9 Apr 2013) 'Obama's drone war kills "others", not just al Qaida leaders' McClatchy Newspapers http://www.mcclatchydc.com/2013/04/09/188062/obamas-drone-war-kills-others.html (accessed 9 Jul 2014)

[26] 'Condolence payments' are payments for losses made outside of normal legal procedures and without any admission of culpability on the part of those issuing them. They are thus distinguished from 'compensation' payments, as well as from 'reparation'. Reparation can include compensation within a broader set of possible measures to right the wrongs suffered by victims of legal violations

[27] Email to Human Rights Watch, in Human Rights Watch (2014) 'A Wedding That Became a Funeral: US Drone Attack on Marriage Procession in Yemen' http://www.hrw.org/sites/default/files/reports/yemen0214_ForUpload_0.pdf p15, emphasis added

[28] Though their results of some have anonymously been commented on – see for example Associated Press (20 Feb 2014) 'Report: US drone strike may have killed dozens of civilians' http://bigstory.ap.org/article/report-us-drone-may-have-killed-dozen-civilians (accessed 20 Jul 2014)

[29] See for example strike "YEM137" in the Bureau of Investigative Journalism's data: http://www.thebureauinvestigates.com/2013/01/03/yemen-reported-us-covert-actions-2013/#YEM137

[30] See Human Rights Watch (2013) 'Between a Drone and Al-Qaeda: The Civilian Cost of US Targeted Killings in Yemen' http://www.hrw.org/sites/default/files/reports/yemen1013_ForUpload.pdf p77, p88

[31] See for example Amnesty International (2013) cited in footnote 21 p54

[32] The International Security Assistance Force - the NATO-led UN Security Council mandated international forces in Afghanistan

[33] For a definition of 'civilian casualty tracking', an internal military procedure to monitor casualties caused by the tracking forces, and a case study of ISAF's tracking work, see Keene (2014) cited in footnote 20. The UK has stated that any indication of civilian casualties from conventional forces' uses of drone strikes is referred for investigation in this way (see Emmerson (2013) cited in footnote 16)

[34] See Beswick and Minor (2014) cited in footnote 6 p27

Finally, in Israel, procedures exist for the investigation of violations of law; the IDF often makes statements following particular combat events; and the Israeli Supreme Court has issued guidance that after targeted attacks, including drone strikes, an independent investigation should be carried out regarding the identification of the target and the circumstances of the attack.[35] Whether detailed casualty data exists as a result was not confirmed by the authors.

Casualty recording by other actors

Given the lack of adequate, transparent state-produced casualty records across the contexts in which armed drone strikes are currently conducted, non-governmental organisations currently provide the predominant source of information about drone-strike casualties.

Several organisations, whose practices have been profiled and evaluated elsewhere in detail,[36] collate continuous data on drone strikes in Pakistan, including organisations operating from the UK, US, Pakistan, and India.[37] Many release data disaggregated to the level of incidents or individuals on their websites, and some explain their methodologies, definitions, and assumptions in detail:[38] a good practice that allows assessment of the quality of the data that they provide. All of these organisations operate remotely, with the capacity to conduct on-the-ground investigations limited to a minority of cases, posing the challenges to data collection and corroboration described above (p7). Their data and methodologies have been criticised, including by US officials,[39] but in the absence of a release of state data (which as explored above p7-9 may or may not be of a higher quality) and the challenges to comprehensive on-the-ground investigation, the organisations which apply most rigour and transparency in their methodologies provide vital baseline information in what would otherwise be a data vacuum. As the Every Casualty programme has argued before, it is important particularly in emergency or developing situations to always gather what data about casualties is available, for initial analysis and for the sake of victims of violence with immediate needs, and to follow up with more detailed investigations when possible.[40]
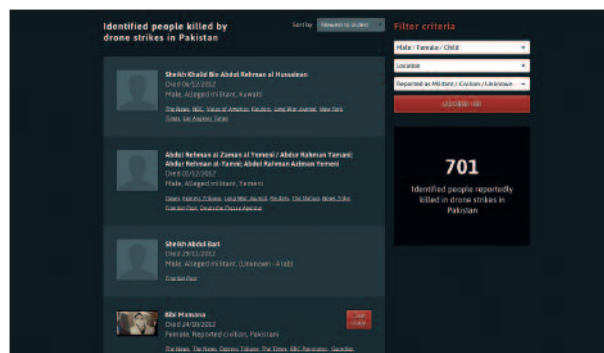
Naming the Dead, a project of the Bureau for Investigative Journalism, hosts an online database of people identified killed by drone strikes in Pakistan. (Screen shot of Naming the Dead website taken 4 August 2014 © The Bureau of Investigative Journalism http://www.thebureauinvestigates.com/namingthedead/?lang=en)

The Bureau of Investigative Journalism (TBIJ), based in London, UK, has recently launched the project Naming the Dead[41] to identify all those who have died from drone strikes in Pakistan individually by name.[42] The project aims not only to humanise the numbers in the counts of drone strike deaths, but also to investigate the profile of those killed in terms of their reported level of involvement in 'militant' activities.[43] Both of these objectives are highly important to the debate around the effectiveness and acceptability of the use of drone strikes in Pakistan. The project's data will help to establish if the strikes are killing their stated intended targets, and so assist in an evaluation of the strikes on their own terms. One key reason to deploy drone strikes and other remote-control warfare tactics may be the reduction of casualties to conventional forces on the side deploying them – for strategic reasons and given the public controversy, scrutiny of conflicts, and political pressures military casualties may cause.[44] A public record of individual casualties, such as will be provided by Naming the Dead, is therefore also of key importance if it might help re-establish a human dimension to these policy debates – even if deaths in far-away populations have less domestic impact.

In Yemen and Somalia, TBIJ also records drone strike casualties, but no other systematic, continuous records appear to be available publicly.[45] Various actors including NGOs such

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[35] Emmerson (2013) cited in footnote 16 p14

[36] See: Jacob Beswick (2011) 'Working Paper: The Drone Wars and Pakistan's Conflict Casualties, 2010', Oxford Research Group http://ref.ec/drone-practitioners; Stanford and NYU (2012) (referenced in footnote 23); and Columbia Human Rights Clinic (2012) 'Counting Drone Strike Deaths' http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/COLUMBIACountingDronesFinalNotEmbargo.pdf

[37] These include: The Bureau of Investigative Journalism http://www.thebureauinvestigates.com/category/projects/drones/; the New America Foundation http://securitydata.newamerica.net/drones/pakistan/analysis; the Long War Journal http://www.longwarjournal.org/pakistan-strikes.php; the Conflict Monitoring Centre http://www.cmcpk.net/; Pakistan Body Count http://pakistanbodycount.org/drone_attack; the Pak Institute for Peace Studies http://san-pips.com/; and the South Asia Terrorism Portal http://www.satp.org/ (all accessed 9 Jul 2014)

[38] See for example The Bureau of Investigative Journalism's published methodology: http://www.thebureauinvestigates.com/2011/08/10/pakistan-drone-strikes-the-methodology2/ (accessed 20 Jul 2014)

[39] And briefings to journalists from the CIA: see this account from the Bureau of Investigative Journalism on how their work has previously been attacked: http://www.thebureauinvestigates.com/2011/08/12/attacking-the-messenger-how-the-cia-tried-to-undermine-drone-study/ (accessed 9 Jul 2014)

[40] See Minor (2012) cited in footnote 4

[41] See http://www.thebureauinvestigates.com/namingthedead/?lang=en. The Every Casualty programme supported the public launch of this project and acts as an advisor to it

[42] The project has initially gathered names from media reports and other open-source material, but will also involve undertaking investigations in Pakistan to seek out other documents and speak to people with information locally. The project faces considerable challenges including poor official documentation, difficulties accessing relevant individuals due to logistical and cultural reasons, and the common use of multiple aliases by individuals in Pakistan's tribal areas. Despite this, at the time of writing the project had named 701 individuals

[43] See http://www.thebureauinvestigates.com/namingthedead/about/?lang=en

[44] A point also made by the Christof Heyns (UNGA) (2013) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN General Assembly, A/68/382 http://www.un.org/en/ga/third/68/documentslist.shtml

as Amnesty International, Human Rights Watch and Reprieve, as well as the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, have investigated in detail specific sets of incidents in countries covered by the US strike programme without attempting to achieve a comprehensive picture. In Israel and the Occupied Palestinian Territories several human rights organisations systematically document casualties from hostilities as well as human rights abuses,[46] with some publishing detailed case-by-case information on their websites. For example, B'Tselem, an Israeli human rights organisation, produces statistics which include descriptions of drone strikes and their casualties, though does not disaggregate or analyse drone strikes as a particular category.[47]

In Afghanistan, the Afghanistan Independent Human Rights Commission (AIHRC) and the Human Rights Unit of the United Nations Assistance Mission in Afghanistan (UNAMA) both systematically record civilian casualties from the armed conflict through the detailed investigation of multiple sources, prioritising on-the-ground investigation.[48] Neither release case-by-case data, but UNAMA has included sections highlighting the harm caused by drones in its twice-yearly Protection of Civilians reports since 2012.[49]

UNAMA has established a productive dialogue on civilian casualties and improving the protection of civilians with international forces, based on the data and trends from their casualty recording.[50] On drone strikes, this has included dialogue on targeting policies and the identification of targets, as well as on accountability mechanisms.[51] UNAMA's work highlights the benefits of having both military-led casualty tracking and independent casualty recording for the evidence-based scrutiny of conflict parties' operations and policies.[52] Such scrutiny can benefit conflict parties, where they are concerned with civilian protection, as well as civilian populations. Where drone strikes are operated by non-conventional forces, who are not covered by ISAF's tracking mechanisms and not prepared to otherwise report on the consequences of their actions, the possibilities for such dialogue or scrutiny are greatly reduced. This may

have consequences for the adequate protection of civilians in the armed conflict in Afghanistan: UNAMA has expressed concern that special forces and CIA drone strikes may not be operating to the same standards of civilian protection as those deployed by conventional forces.[53]

US COVERT STRIKES: ANALYSIS, EVIDENCE-BASED POLICY-MAKING, AND REDRESS

In relation to US covert drone strikes in particular, poor, incomplete, or secret official casualty recording by states, an aspect of an official lack of recognition of these actions, can create additional burdens and difficulties for those harmed. This may include for example limiting the routes by which to pursue grievances, or for having losses officially recognised such that appropriate redress can be obtained.[54] The remote and officially unacknowledged nature of drone strikes in Pakistan on the part of the US, and Pakistan's ambiguity in relation to the programme and limited governance in the affected areas, has meant that whilst both states arguably have obligations to investigate and respond to cases of harm, in practice it appears from the research done for this paper that such investigations have not been forthcoming, and some of those affected have pursued litigation in search of official recognition.[55] In Yemen, relatives of drone strike victims have recently formed an association to pressure the US and Yemeni governments to investigate the deaths of their relatives.[56] Where host states have an incomplete knowledge of drone strike casualties, it is probable that they will be unable to provide appropriate services and assistance to those harmed by the attacks.

UN special rapporteurs, civil society within and outside the US (including academics, NGOs, and think tanks), and politicians have called (and litigated) for greater transparency by the US about its targeted killing programme in Pakistan, Yemen, and Somalia. This has included calling for data about casualties, in particular civilian casualties, to be released.[57] A requirement to report annually on the number of civilians and others killed by drone strikes was proposed and dropped from the Intelligence Authorisation Act in the US in April 2014.[58] This would have been a step towards

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[45] Civil society groups in Somalia reported that they were undertaking this documentation, but not currently publishing the results

[46] Including: the Palestinian Center for Human Rights http://www.pchrgaza.org/portal/en/, Al Mezan http://www.mezan.org/en/, and B'Tselem http://www.btselem.org/ (all accessed 9 Jul 2014)

[47] See http://www.btselem.org/statistics

[48] The Every Casualty programme recently conducted a case study of UNAMA's civilian casualty recording and its impact. See Beswick and Minor (2014) cited in footnote 6

[49] These reports focus on particular trends in harm to civilians that UNAMA concentrates their advocacy on, rather than on reviewing all trends in civilian casualties in Afghanistan. See United Nations Assistance Mission in Afghanistan: Reports on the Protection of Civilians http://unama.unmissions.org/Default.aspx?tabid=13941&language=en-US

[50] For examples and analysis, see Beswick and Minor (2014) cited in footnote 6

[51] UNAMA (2013) 'Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict inAfghanistan' http://unama.unmissions.org/LinkClick.aspx?fileticket=6ca_2GLcqS0%3d&tabid=12254&language=en-US p40; UNAMA has also emphasised that ISAF's tracking of drone strike casualties should continue after ground forces have left p9

[52] See Beswick and Minor (2014) cited in footnote 6

[53] UNAMA (2013) cited in footnote 51. p41

[54] This is explored in Columbia Law School and Center for Civilians in Conflict (2012) cited in footnote 24

[55] See Amnesty International (2013) cited in footnote 21

[56] See Al Jazeera (31 Mar 2014) 'Yemenis affected by U.S. drone strikes to launch victims' union' http://america.aljazeera.com/articles/2014/3/31/families-of-dronevictimslaunchdroneunion.html (accessed 9 Jul 2014)

[57] This includes many of the materials already cited in this paper. Recently, see for example The Stimson Center (2014) 'Recommendations and Report of the Task Force on US Drone Policy' http://www.stimson.org/images/uploads/research-pdfs/task_force_report_FINAL_WEB_062414.pdf

[58] See for example Thomas Earnest (30 Apr 2014), 'Drone Casualty Reporting Requirement Dropped from Intel Authorization Bill' Just Security http://justsecurity.org/10032/drone-casualty-reporting-requirement-dropped-intel-authorization-bill/ (accessed 9 Jul 2014)

the release of transparent casualty records. However, given that only total yearly numbers would have been released, detailed comparison with other incident-level data, and of the assumptions behind the data (for example of who counts as a civilian) would still not have been possible.

Greater transparency on casualties has been called for from the point of view of the need for evidence for democratic debate on the costs and benefits of the policy, including the oversight, accountability and review of the drone programme's effectiveness in achieving its goals and avoiding civilian harm, ensuring 'lessons learned' and improved targeting procedures, as well as for the sake of the US's reputation.[59] Whilst the release of state data is crucial, in a context where casualties and their identities is highly politically charged, and where the state has a stake in the results of casualty recording and how casualties are categorised, strengthening independent and impartial casualty recording is also crucial. Systematic civil-society recording and analysis, despite its limitations, has already highlighted policies that need greater examination and scrutiny, for example the practice of 'double-tap' or rescuer strikes on those coming to the assistance of individuals at the site of a drone strike.[60]

A key claim made of drone strikes for the purpose of the US programme of targeted killing is their "surgical precision"[61] in killing 'militant' targets whilst minimally affecting 'civilians': hence, the proportion of 'civilian' casualties incurred by drone strikes is politically crucial to their justification. Several aspects of this need robust examination. Precision, considered as who a particular weapon kills and whether they were the right people, depends not only on the physical characteristics of that weapon, its ability to hit a certain target, and the damage it will cause to people and objects other than that target, but whether the targets have been correctly, legally, and accurately determined in the first place. The quality of intelligence used to select targets is crucial to this,[62] as is consideration of the legal framework as discussed earlier in this section. One key issue relevant to this is definitions. The term 'militant', which is widely used to refer to those who have some sort of affiliation with the armed groups that are targeted by these strikes, does not have any agreed definition. Whilst having no specific meaning in law, it appears to be equated by the US with either combatancy or otherwise status as a legitimate target. Indications that 'militants' are defined very

broadly by the US, to include all military aged males in the vicinity of a target unless their 'civilian' status is later established, as well as those displaying patterns or 'signatures' of behaviour, were officially denied in 2013.[63] If these indications are correct, however, they suggest a definition of a legitimate target so wide that the 'civilian' (or maybe more accurately 'non-target'[64]) proportion of casualties reported by the US can only be extremely low. This has obvious dangers for individuals on the ground, but also potentially for the drone strike policy itself, as it may create a false impression of precision and effectiveness.

To approach any assessment of 'precision' based in part on casualty ratios,[65] both casualty data and the methodologies and definitions used to produce it must be transparent and part of the discussion.[66] It is not only casualties' identities and organisational affiliations, but also how these are officially considered in terms of legitimacy of killing that must be scrutinised and debated in this case.[67] Such scrutiny would be greatly enhanced by the ability to compare state-produced records with independent casualty records on a case-by-case basis. Consequently, it is impeded by the officially covert nature of the US drone programme, and the non-release of state casualty records, as well as by the current challenges posed to independent casualty recording and resultant limitations to data, which render definitive assessments difficult.

3.2 LETHAL AUTONOMOUS WEAPONS
Several countries have indicated their intentions to increase autonomy in the weapons systems they use.[68] Incentives to do so might include force multiplication (carrying out more tasks using fewer people) and force protection (reducing possibilities of military casualties on the side deploying the technology). Both of these apply to remotely piloted armed drones as discussed in section 3.1 (p6-11), and are potentially greater with lethal autonomous weapons. While evaluation of whether lethal autonomous weapons should continue to be developed must be based on a range of ethical and policy issues that are beyond the scope of this paper,[69] the potential challenges posed by the development of lethal autonomous weapons to the recording and recognition of every casualty must also be considered.

The casualties that lethal autonomous weapons might cause or prevent are already part of the debate on their desirability.

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[59] See for example Chris Jenks (5 Jun 2014) 'US military should publish all investigations of civilian deaths' Al Jazeera http://america.aljazeera.com/opinions/2014/6/military-investigationstransparencyobamadrones.html (accessed 9 Jul 2014)
[60] See for example http://www.thebureauinvestigates.com/2013/08/01/get-the-data-the-return-of-double-tap-drone-strikes/
[61] Quote from John Brennan, now director of the CIA, in 2012. Quoted in Stanford and NYU (2012) cited in footnote 21
[62] A point explored for example in Zenko (2013) cited in footnote 17 p7
[63] See Human Rights Watch (2013) cited in footnote 30 p90
[64] Given the legal ambiguities referred to earlier in this section (p6)
[65] Other aspects of assessing the precision of drone strikes relate to what precision is considered in relation to, in terms of other weapons or techniques. A broader, related question is whether the strategic goals the strikes aim to contribute to would be better served by tactics other than targeted killing, however precise this can be made
[66] The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has also called for methodological transparency. See Emmerson (2013) cited in footnote 16
[67] A point also made by Heyns (UNGA) (2013) cited in footnote 44
[68] Melzer (2013) cited in footnote 16 p9
[69] Including concerns around the proliferation of this technology once it exists; the potential modes of its use and whether these are likely to increase insecurity rather than address its root causes; and other issues relevant to civilian protection and the impact of violence, including for

The potential accuracy or precision of lethal autonomous weapons, and the lives they might save (on the side that deploys them as well as among civilians in the target population) are proposed as reasons to advance their development.[70] There is of course currently no way of knowing whether greater or fewer casualties would be caused by lethal autonomous weapons that have not yet been developed in comparison to existing weapons. Even if reducing casualties would be part of their design, the technology is unprecedented. More importantly, as with existing remotely operated armed drones, the level and profile of the casualties these weapons might cause will depend on how they are deployed and what information and intelligence these deployments are based on. The scope and definition of a legitimate target[71] applied in programming these weapons and recording their casualties would be the crucial element to their impact on populations, rather than other features of the technology. This applies to the current use of armed drones (see p6-11), and indeed to other tactics. How far potential developments in technology may improve the accuracy of these weapons and their ability to avoid 'collateral damage', and the potentials for describing the complex and ambiguous laws of war for the purposes of programming robots, should be considered against this background.[72]

Lethal autonomous weapons, if further developed, may pose specific challenges to the practice of casualty recording. If they are deployed at a considerable physical distance to the battlefield (i.e. from another non-neighbouring state), ensuring the credible and thorough investigation of the casualties caused would be even more problematic than with armed drones that are deployed remotely and with no on-the-ground presence. Lethal autonomous weapons may be able to retain a digital trail that would assist investigators,[73] but it can only be conjectured what information about casualties this would be able to provide. Whatever information a weapon itself could provide about its actions, independent corroboration of any given source is a key good practice in casualty recording, and the weapon's own assessments of who had been killed would need critical evaluation in order to achieve an accurate record of casualties. Using data collected by the weapon alone to investigate and determine the profile and identities of casualties would therefore not be sufficient. Obligations would have to be put in place to

ensure the systematic review of a weapon's digital trail, given that there would by definition be no human involvement or supervision of the lethal actions of the lethal autonomous weapon at the time they occurred. If lethal autonomous weapons were used in combination with the deployment of ground forces, as for example armed drones are currently in Afghanistan, barriers to casualty recording by parties to violence might be lowered.

Jean-Hugues Simon-Michel, Permanent Representative of France to the Conference of Disarmament, during the press conference of the Convention on Certain Conventional Weapons Informal Meeting of Experts on Lethal Autonomous Weapons Systems in May 2014. (© UN Photo / Jean-Marc Ferré https://flic.kr/p/nm7joS)

Without systems in place to ensure the transparent recording of casualties, including transparency on the criteria used to classify individuals, evidence-based evaluation of the deployment of these weapons, and routes of redress and recognition for any individuals harmed by them,[74] would be significantly impeded – as with the current use of covertly-operated armed drones. In the event that such weapons are developed, recording the casualties that they cause should be mandatory to their use. The need to record casualties and to ensure transparency on the definitions and categories applied should be built into any discussions on advancing the development of these weapons – and should contribute to caution in consideration of their desirability given the challenges outlined above. This should be the case for any use of armed force by states and other actors, and in particular given the need to record the specific human consequences of any new weapons technologies.[75] Casualty information can be crucial to evaluating the legality and acceptability of existing weapons and categories of weapons.[76]

example environmental impacts. A civil-society coalition is currently raising a range of concerns in relation to fully autonomous weapons: see http://www.stopkillerrobots.org/

[70] Christof Heyns (HRC) (2013) 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, to the Human Rights Council', UN General Assembly, A/HRC/23/47 http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-47_en.pdf p12

[71] Including whether this is based on individual identification or 'signature'

[72] For an elaboration of the concerns around how targeting decisions may be made by lethal autonomous weapons, including an examination of existing technologies around which there is already a lack of transparency, see Article 36 (2014) 'Key areas for debate on autonomous weapons systems' http://www.article36.org/wp-content/uploads/2014/05/A36-CCW-May-2014.pdf. The authors thank Richard Moyes of Article 36 for input on section 3.2 of this paper

[73] Heyns (HRC) (2013) cited in footnote 70 p10

[74] Which would be further complicated by the question of how to assign legal responsibility for their actions: see for example Human Rights Watch and The International Human Rights Clinic (IHRC) at Harvard Law School (2013) 'Losing Humanity: The Case Against Killer Robots' http://www.hrw.org/sites/default/files/reports/arms1112ForUpload_0_0.pdf

[75] See for example 'International Humanitarian Law and New Weapon Technologies, 34th Round Table on current issues of international humanitarian law, San Remo, 8–10 September 2011' International Review of the Red Cross, Volume 94 Number 886 Summer 2012 p815 http://www.icrc.org/eng/resources/international-review/review-886-new-technologies-warfare/review-886-all.pdf

[76] See Article 36 (2013) 'Casualty recording, critical argument and campaigning against weapons' http://www.article36.org/casualty-recording/casualty-recording-critical-argument-and-campaigning-against-weapons/

3.3 SPECIAL OPERATIONS FORCES

The past decade has seen a sharp increase in the use of special operations forces (SOF) across the globe.[77] As the appetite for large-scale military interventions continues to diminish, many nations, particularly the US and the UK, have begun to prioritise the use of low profile, small, and highly trained combat units over traditional military interventions. The growing utilisation of SOF reflects the prioritisation of 'small-footprint' approaches to achieve security aims in the face of 'irregular' threats such as terrorists, insurgents, and criminal networks.[78]

The US has been at the forefront of this rapid escalation – more than doubling the size of the US Special Operations Command (SOCOM) since 2001.[79] With SOCOM personnel levels expected to reach 69,700 in 2014, and a general shift in US strategy from large counter-insurgency operations to discreet counter-terrorism measures, this trend is only likely to continue.[80]

The privileging of so-called 'surgical strikes' by highly trained SOF over large ground invasions may or may not result in fewer civilian – and combatant – casualties of conflict (the data on this is limited).[81] However, the reliance of SOF on classified intelligence to carry out these missions, coupled with their clandestine nature, also presents a new, and less accountable form of warfare. In environments

Iraqi Special Operations Forces training in Al Asad, Iraq, 2009.
(© US Air Force TSgt Shelly Branch, Special Operations Task Force – West https://flic.kr/p/6Qqy8J)

where transparently recording the casualties of traditional forces is already a challenge, the increased opacity of SOF missions, coupled with the dangerous environments in which they inevitably take place, presents an even greater challenge to casualty recording, and in turn to the contribution it can make to civilian protection and redress.

LACK OF TRANSPARENCY

By their nature, SOF operate without publicity or attention. Their missions are often clandestine and their presence in a conflict zone unknown, sometimes even to their own militaries.[82] SOF collaboration with intelligence agencies to track targets only further elevates the shadowy nature of their operations.[83] While SOF may conduct their own post-attack assessments and collect data on any resultant casualties, this data is likely to remain classified and inaccessible to any external actors. Such opacity challenges efforts to record and acknowledge casualties of SOF actions – either by the SOF's larger military command, other state agencies, the United Nations, or civil society organisations.

In Afghanistan, where systematic casualty recording has been undertaken by UNAMA since 2007,[84] gathering verifiable data on the casualties of SOF has proved difficult due to the confidential classification of such information by the military. To give a case example of the impact of this, around 2009/2010, SOF tactics became a high-profile issue in Afghanistan, when 'night raids' largely conducted by SOF caused outrage from the public and government due to deaths, injuries and cultural affront. UNAMA noted in their annual report on the protection of civilians in 2010 that due to "tactical reasons and deliberate lack of information about such operations" they found it "very difficult to monitor and adequately document the activities of Special Forces, particularly US Special Operations Forces".[85] Human rights organisations operating in Afghanistan, including Amnesty International and Human Rights Watch, also reported that they were unable to verify casualties of SOF due to the security classification of these operations.[86] Even within the NATO-led International Security Assistance Force (ISAF) in Afghanistan, efforts to investigate and track reported casualties of special operations forces by the Civilian Casualties Mitigation Team have been challenged

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[77] See: Tom Shanker (2 Apr 2013). 'Military Plans Broader Role for Special Operations Forces in Peace and War'; Nick Turse (7 Jan 2014) 'Special Ops Goes Global', Tom Dispatch, http://www.tomdispatch.com/blog/175790/tomgram%3A_nick_turse,_special_ops_goes_global; Jim Lobe (25 Feb 2014) 'Hagel Urges Less Money for U.S. Army, More for Special Forces'
[78] Holewinski and Lewis (2013) cited in footnote 11
[79] Turse (2014) cited in footnote 77
[80] See: Andrew Feickart (2012) 'U.S. Special Operations Forces: Background and Issues for Congress'. Congressional Research Services, http://fas.org/sgp/crs/natsec/RS21048.pdf; Rowan Scarbourough (11 Mar 2014). 'Obama Runs Special Forces Into the Ground' Washington Times http://www.washingtontimes.com/news/2014/mar/11/special-ops-forces-wearing-thin-from-high-demand/?page=all
[81] See: Connor Friedersdorf (27 Sep 2012) 'Calling U.N. Drone Strikes Surgical is Orwellian Propaganda'. The Atlantic http://www.theatlantic.com/politics/archive/2012/09/calling-us-drone-strikes-surgical-is-orwellian-propaganda/262920/; Tom Parker (1 May 2012) 'Drones: The Known Knowns'. Amnesty International. http://blog.amnestyusa.org/us/drones-the-known-knowns/
[82] See: Amnesty International (2009).'Getting Away with Murder? The Impunity of International Forces in Afghanistan' http://www.amnesty.org/en/library/info/ASA11/001/2009 p13
[83] Kate Clark (2012) 'War Without Accountability: The CIA, Special Forces and Plans for Afghanistan's Future'. Afghanistan Analysts Network http://www.afghanistan-analysts.org/war-without-accountability-the-cia-special-forces-and-plans-for-afghanistans-future/
[84] See Beswick and Minor (2014) cited in footnote 6
[85] United Nations Assistance Mission in Afghanistan (UNAMA) (2011) 'Annual Report 2010: Protection of Civilians in Armed Conflict' http://www.unama.unmissions.org/Portals/UNAMA/human%20rights/March%20PoC%20Annual%20Report%20Final.pdf
[86] See: Keene (2014) cited in footnote 20, p17; Amnesty International (2009) cited in footnote 82, p13

over the years by a "lack of transparency" and the fact that those engaged in gathering this data did not have the necessary security clearance to access such information.[87]

These challenges to casualty recording inhibited efforts by UNAMA to collect comprehensive data and analyse the impact of special forces operations on the civilian population.[88] Despite this, UNAMA and others, including the AIHRC, still engaged in advocacy with international forces using the casualty data and case documentation they had available. The advocacy of these groups was supported by a very public backlash from Afghans against a range of tactics particular to SOF, centring on the use of 'night raids'. In part as a result of pressure from these groups and the Afghan government, ISAF subsequently issued a number of tactical directives aimed at improving the conduct of SOF in night raids and reducing civilian casualties.[89] Casualty recording can make a contribution to encouraging such improved conduct from conflict parties when it is used as a basis for evidence-based dialogue, in particular where the support and protection of the civilian population is an operational imperative for the conflict party.[90] Casualty recording, and evidence-based dialogue with conflict parties is however jeopardised, as in this case, where operations are non-transparent and independent investigation is therefore inhibited.

LACK OF ACCESS

Further to this lack of transparency, efforts to record and identify casualties of SOF may also be hampered by lack of access to the sites of their missions, which invariably take place in particularly harsh environments.[91] The hostile nature of such areas means that casualty recorders may have limited physical access to sites, or may lack the networks or safe modes of access to witnesses required to gather details about casualties in the field. In 2011, anonymous officials from the AIHRC, which worked alongside UNAMA in 2010 to produce its annual report on the protection of civilians, drew attention to this challenge by informing the media that UNAMA was likely unable to investigate the majority of night raids, as they occurred in districts dominated by the Taliban – making it harder for witnesses to come forward.[92] UNAMA itself has acknowledged in their reports that "limitations due to the operating environment" of special operations missions in Afghanistan prevent them from comprehensively recording the casualties of such engagements.[93]

LACK OF ACCOUNTABILITY

The combined lack of transparency and access greatly constrains efforts to record casualties, and raises serious concerns about the accountability of SOF. Not only can accurate casualty records help with assessing and ensuring the compliance of conflict parties to International Humanitarian Law, they can provide official acknowledgement of harm caused to any victims. Identification of who caused the harm, alongside its formal recognition, can be essential for victims seeking assistance or redress, from either the conflict party or from their own government.[94] Yet, in the case of clandestine SOF, the soldiers who caused the harm may be nowhere to be found, while local forces may not have the authority to investigate claims of civilians casualties caused by SOF or provide redress to the victims.

In Afghanistan, non-US ISAF forces are unable to conduct investigations into harm caused by US SOF that occur in their 'areas of responsibility' (AOR). A report from the Center for Civilians in Conflict on addressing civilian harm in Afghanistan noted that:

> **❝** *Polish military officials confirm that US SOF operate in their AOR and cause civilian casualties for which Polish troops often bear the blame. In such cases Polish troops…cannot offer compensation or assistance to victims because their operations did not cause the harm.*[95]

It is thus up to the civilian victims to identify their attackers as SOF, which may not be possible given the lack of transparency about night raids and the special forces conducting them. This shifts the burden of investigation and of proof unacceptably on to the victim. Consequently, civilians harmed by SOF may be overlooked. If all casualty records or post-attack assessments of special operations missions are classified, civilian victims will be left without answers, acknowledgement or recourse for harm caused. It is therefore essential that states and other actors ensure that all casualties of SOF be recorded and recognised, and as a result, victims assisted.

3.4 PRIVATE MILITARY AND SECURITY COMPANIES

The widespread outsourcing of military and security functions to private companies marks another phenomenon of modern warfare. Providing armed and unarmed services to a range of actors, including governments, transnational cor-

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87 See: Keene (2014) cited in footnote 20 p17
88 UNAMA (2011) cited in footnote 85 p33;
89 See: Open Society Foundations (2011) 'The Cost of Kill/Capture: Impact of Night Raid Surge on Afghan Civilians'
    http://www.opensocietyfoundations.org/sites/default/files/Night-Raids-Report-FINAL-092011.pdf; and United Nations Assistance Mission
    in Afghanistan (UNAMA) (2012), 'Annual Report 2011: Protection of Civilians in Armed Conflict'
    http://www.unama.unmissions.org/Portals/UNAMA/Documents/UNAMA%20POC%202011%20Report_Final_Feb%202012.pdf p22-23.
90 See Beswick and Minor (2014) cited in footnote 6 for further elaboration regarding the case of UNAMA
91 Holewinski and Lewis (2013) cited in footnote 11 p6
92 Gareth Porter (25 Oct 2011) 'U.N. Tally Excluded Most Civilian Deaths in Night Raids' Interpress Service News Agency
    http://www.ipsnews.net/2011/10/un-tally-excluded-most-afghan-civilian-deaths-in-night-raids/ (accessed 28 Jul 2014)
93 UNAMA (2012) cited in footnote 89 p7, 36
94 Center for Civilians in Conflict (2010) 'Addressing Civilian Harm in Afghanistan: Policies and Practices of International Forces'
    http://civiliansinconflict.org/resources/pub/addressing-civilian-harm-in-afghanistan, p14
95 Ibid. p7

porations, NGOs and the United Nations, private military and security companies (PMSCs) operate both within, and outside of conflict zones. While contractors have traditionally been relegated to combat support roles, including logistics, translation, and construction, in recent years PMSCs operating in Afghanistan have undertaken roles including expeditionary warfare, irregular warfare, special operations, and reconstruction and stabilisation operations.[96] The outsourcing of military functions previously considered the domain of states – including combat and the use of direct force – marks a fundamental shift with regard to state monopoly on the legitimate use of force.

The past decade has seen a marked increase in the use of PMSCs, due in large part to the conflicts in Iraq and Afghanistan. These two countries now represent the largest theatres for PMSC operations, with the United States representing their principal employer. In Iraq, US-employed contractor numbers surpassed US troop levels in 2008, 2010 and 2011,[97] while in Afghanistan, as conventional forces continue to drawdown (ISAF troops numbered 49,902 at the time of this report), PMSC numbers remain high, with over 11,332 private security contractors still employed by the US Department of Defence in February 2014.[98] The rapid proliferation of PMSCs has not, however, been matched by an adequate increase in oversight mechanisms to monitor their activities, posing a severe problem for any civilians harmed by PMSC employees. Due to the puzzle of regulations for PMSC contractors, and their unclear status within International Humanitarian Law,[99] it is often unclear who has responsibility for monitoring and controlling their activities and ensuring accountability for any resultant human rights violations or civilian deaths.

The conducting of comprehensive and systematic casualty recording by contracting states and independent actors is of fundamental importance, and may also be one means towards ensuring greater accountability of PMSCs and the states that contract them. A robust record of those killed and injured by PMSCs, as well as data on the deaths of contractors themselves, can help contracting states evaluate the consequences of PMSC activities, provide redress to civilian victims, ensure compliance with the law, and create policy regulations and frameworks to reduce PMSC-related

civilian harm. The lack of coherent regulatory frameworks for PMSC activities, however, as well as a general lack of transparency surrounding the actions of PMSCs and their subcontractors, hinders attempts to accurately record casualties.

CHALLENGES POSED BY LIMITED REGULATION AND OVERSIGHT

The lack of binding national or international regulatory frameworks for the behaviour of PMSCs presents a serious barrier to accurate and transparent casualty recording. Unlike militaries, which generally have strict procedures for conducting damage assessments following any operation (whether these result in transparent casualty recording or not), when and if there are casualties resulting from PMSC activities it is often unclear how, when, where, and which authorities are responsible for investigating and reporting on such incidents. Indeed, in Iraq, where the US Department of Defence (DoD) has employed a greater number of private contractors than troops[100] no mechanisms requiring PMSCs to report on casualties existed until nearly six years after the start of the conflict.[101] This lack of regulation – resulting in inconsistent oversight and a level of opacity surrounding the actions of PMSCs – presents a significant barrier to any efforts to systematically collect data on PMSC casualties by the states that contract them.

In 2007 and 2008, largely in response to a number high-profile human rights violations by PMSCs in Iraq, the US Congress required the DoD and Department of State to ensure that all contractors involved in combat operations report on all serious incidents, including deaths, injuries and property damage.[102] In any instance of the use of force, contractors in Iraq were required to contact coalition forces within in an hour so that an investigation could be conducted by the US military.[103] However, a 2009 report from the Special Inspector General for Iraq Reconstruction (SIGIR) noted that information on serious incidents were inaccurate, inconsistent and had failed to track 57% of serious incidents, revealing continued problems with reporting despite improved regulations.[104]

A number of international efforts to improve the regulation of PMSCs have also been developed, including the 2008 Montreux Document and the 2012 International Code of

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[96] Tim Shorrock (28 May 2014) 'Exlusive New Document Details America's War Maching and Secret Mass of Contractors in Afghanistan' Salon http://www.salon.com/2014/05/28/exclusive_new_document_details_americas_war_machine_and_secret_mass_of_contractors_in_afghanistan/

[97] Moshe Schwartz and Joyprada Swain (2011) 'Department of Defense: Contractors in Afghanistan and Iraq: Background and Analysis'. Congressional Research Service http://psm.du.edu/media/documents/us_research_and_oversight/csr_reports/us_crs_R40764.pdf p14

[98] See: International Assistance Force Afghanistan (1 Jun 2014) 'Troop Numbers and Contributions'. http://www.isaf.nato.int/troop-numbers-and-contributions/index.php; Professional Overseas Contractors (2014) 'Iraq-Afghanistan Contractor Census, 1st Quarter (Oct-Dec 2014)' http://www.your-poc.com/iraq-afghanistan-contractor-census-1st-quarter-oct-jan-2014/

[99] See: International Committee for the Red Cross (10 Dec 2013) 'International Humanitarian Law and private military/security companies' http://www.icrc.org/eng/resources/documents/faq/pmsc-faq-150908.htm; Chatham House (22 Jan 2008) 'Chatham House International Law Discussion Group: Private Military and Security Companies' https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/International%20Law/il220108.pdf

[100] Schwartz and Swain (2011) cited in footnote 97 p14

[101] ibid.

[102] See: National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 862, 122 Stat. 253 (2008) http://www.dod.gov/dodgc/olc/docs/pl110-181.pdf

[103] 'Memorandum of Understanding (MOU) Between the U.S. Department of Defense and the U.S. Agency for International Development (USAID) Relating to Contracting in Iraq and Afghanistan' (Jul 2008) http://www.defense.gov/pubs/pdfs/signed%20MOA%20Dec%205%202007.pdf

[104] Human Rights First (2010) 'State of Affairs: Three years after Nisoor Square, Accountability and Oversight of US Private Security and Other Contractors' http://www.humanrightsfirst.org/wp-content/uploads/pdf/State_Of_Affairs.pdf, p5

Conduct for Private Security Service Providers (ICoC). While these are both non-binding documents, they contain clauses on incident reporting that would prove essential to any casualty recording efforts conducted by contracting states or other actors. Article 63 of the ICoC requires PMSCs to prepare an incident report and conduct an inquiry whenever there is "injury to persons". The inquiry must determine: time and location of the incident; identity and nationality of persons involved including their addresses and other contact details; injuries/damages sustained; circumstances leading up to the incident; and any measures taken by the company in response.[105] While the ICoC has been signed by 58 companies, and represents an important step towards ensuring that data on casualties caused by PMSCs is recorded, attempts by states or others to conduct accurate or transparent casualty recording currently continue to face the challenges presented by limited oversight and implementation.

The opacity with which PMSCs operate is increased by their use of further subcontractors, for whom oversight is even more severely limited. States contracting with PMSCs may not have any knowledge of consequent subcontractors, creating a further barrier to the collection of accurate and transparent data on PMSC-related casualties. Regarding subcontractors employed by the US DoD in Iraq, the SIGIR reported in 2009 that no organisation appeared to have visibility over sub-contractor PMSCs.[106] Similarly, the Special Inspector General for Afghanistan Reconstruction testified before US Congress that "the US government has difficulty

identifying and monitoring second and third tier subcontractors...multi-tiered subcontracting is problematic and results in weak oversight, control and accountability".[107]

All these factors create an environment that inhibits the collection of data on casualties. Of fundamental importance in itself, this also prevents the examination through robust casualty records of PMSC's actions and the acceptability and effectiveness of PMSCs' use by states.

CURRENT EFFORTS TO RECORD CASUALTIES OF PMSCS

The literature review undertaken for this paper did not reveal any intergovernmental body, civil society organisation, or state conducting comprehensive casualty recording in relation to PMSCs. While it was not possible for this paper to conduct a survey of PMSCs themselves, no data was found to suggest that any particular PMSC is conducting systematic casualty recording in relation to its own operations. It was also not possible to locate a comprehensive collection of "serious incident reports" that could provide data relevant to casualty recording efforts. However, a number of documents released in the WikiLeaks War Logs[108] reveal that efforts were made by the US Military to collect "incident reports" following the use of force by contractors in Iraq. These documents, however, are hardly comprehensive and do not always appear to capture relevant data on civilian casualties.[109] In Afghanistan, where UNAMA has been recording civilian casualties since 2007, no disaggregated data on contractor-related casualties is publicly available. Data on PMSC casualties is also reported to be not

A Marine Special Operations Team member fires a machine gun during training in Helmand province. Marine Special Operations Team members are deployed in Helmand province to train and mentor Afghan National Security Forces. (© US Marine Corps, Sgt. Pete Thibodeau https://flic.kr/p/e74iYS)

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105 'International Code of Conduct for Private Security Service Providers' (2010) http://www.icoc-psp.org/uploads/INTERNATIONAL_CODE_OF_CONDUCT_Final_without_Company_Names.pdf p15
106 Human Rights First (2010) cited in footnote 104 p5
107 'How Good is Our System for Curbing Contract Waste, Fraud, and Abuse?', Hearing Before the Commission on Wartime Contracting in Iraq and Afghanistan, 111th Cong. (2010) (Statement by Raymond J. DiNuzio, Special Inspector General for Afghanistan Reconstruction) http://cybercemetery. unt.edu/archive/cwc/20110929220049/http://www.wartimecontracting.gov/docs/hearing2010-05-24_statement-SIGAR-DiNunzio.pdf
108 There are a collection of US military documents leaked to and published by the organisation WikiLeaks, which report day to day military activities in Afghanistan http://wikileaks.org/afg/ and Iraq http://wikileaks.org/irq/
109 See: James Glanz and Andrew Lehren (23 Oct 2010) 'Growing Use of Contractors Added to War's Chaos in Iraq'. The New York Times http://www.nytimes.com/2010/10/24/world/middleeast/24contractors.html?_r=0

"recorded or available" to ISAF – although ISAF engage in the tracking of civilian casualties caused by all coalition forces.[110]

One possible means for recording PMSC-related casualties is through collecting and corroborating media reports. The media have often captured information on civilian deaths from PMSCs – particularly for high-profile instances of contractor abuse, such as the killing of 17 civilians by private security contractor Blackwater in the Nisour Square incident in Iraq in 2007.[111] Iraq Body Count (IBC), a UK-based civil society organisation, has recorded "violent civilian deaths" resulting from the conflict since 2003, using open-source material to create a transparent, corroborated record of reported deaths.[112] Their public database, which draws its figures from crosschecked media reports and is supplemented by the review and integration of hospital, morgue, NGO, and official figures, has recorded between 76-81 fatalities resulting from PMSCs between 20 March 2003 and 8 July 2014. Due to the difficulty in establishing the identity of PMSC employees, not only because of their use of unidentified subcontractors, but also because they often operate without a recognisable uniform, it is likely that a number of further PMSC-caused casualties have been recorded by IBC under the category of "unknown perpetrator".[113]

It is clear that a more rigorous implementation of internationally recommended good conduct regulations, as well as more stringent oversight, would greatly improve the ability of states to conduct accurate and systematic recording of PMSC-related casualties. However, even if PMSCs and their contracting states strictly followed suggested guidelines on incident reporting, there is no guarantee that this information would be made publicly available by contracting states. Indeed, previous cases of contractor abuse suggest that this data may not be made transparent: within its database, much of the information collected by IBC on PMSC-caused casualties only became available through the WikiLeaks Iraq War Logs release.[114] This suggests that where the US did log cases of PMSC-caused casualties, it intended to keep this material classified.[115]

ACCOUNTABILITY AND CIVILIAN REDRESS

The difficulties surrounding the collection of casualty data contributes to a picture of poor accountability for PMSC actions. While this is largely the result of PMSCs' unclear status in international law, various immunity agreements related to contractors in combat zones, and a frequent lack of sufficient local authority in the states in which they operate, a lack of rigorous and robust casualty records further hinders attempts to hold PMSCs accountable for any casualties that they cause, or that occur among their staff. A more concerted effort should be made by all states contracting PMSCs to institute the guidelines offered by the ICoC on incident reporting and improve oversight of PMSCs, in order to collect and release data on casualties, which can also help ensure PMSC accountability.

Haji Sharbuddin holds money (that he will be rejecting) given to him for the death of two sons. They were among five people killed during a joint US-Afghan night raid in Paktia province, Afghanistan, 2010. (© James Gordon https://flic.kr/p/cmtq3f)

[110] Keene (2014) cited in footnote 20 p17
[111] In the Public Interest (2014) 'Blackwater Shooting at Nisoor Square' http://www.inthepublicinterest.org/case/blackwater-shooting-nisoor-square
[112] See www.iraqbodycount.org
[113] Conversation with Iraq Body Count co-founder Hamit Dardagan (8 July 2014)
[114] See http://www.wikileaks.org/irq/
[115] Conversation with Iraq Body Count co-founder Hamit Dardagan (8 July 2014)

4. ENSURING CASUALTY RECORDING: RECOMMENDATIONS AND WAYS FORWARD

Each of the remote-control tactics described in section 3 seek to, or have the effect of, decreasing the possibilities for scrutiny of how military activities, or political objectives pursued through armed force, are carried out – including the human costs they incur. Delegating to forces or organisations whose activities are classified or secretive, as with SOF and the use of armed drones by special forces or covert agencies; subcontracting the use of force to private companies without clear lines of accountability and little regulation; developing new technologies to remove military personnel of one party to the conflict from the battlefield, and even from life and death decisions completely: all potentially pose crucial challenges to casualty recording.

Transparent casualty recording, of fundamental importance in itself across all instances of armed violence, can make a crucial contribution to bringing the impacts of these specific tactics back into public debate and to accountability, and to increasing possibilities for recognition and redress for individuals harmed by their use. However, the different levels of opacity and inaccessibility these tactics necessarily engender – either purposefully or not – pose challenges to the call on states to transparently record casualties (as they may be unable or unwilling to do so), as well as creating practical difficulties for independent actors who carry out casualty recording. It is essential to call for states to take ultimate responsibility for casualty recording in all situations where they use or contract force, and to release the information they collect as soon as it is safe to do so without undue delay. However, in circumstances such as the deployment of remote-control tactics (but also other situations of conventional warfare and the use of armed force) where such a call is especially politically challenging, it is essential that robust, independent casualty recording is also undertaken.

Our major recommendations, focusing on remote control tactics but towards the recording of every casualty of armed violence, are as follows:

1. THE INDEPENDENT RECORDING OF CASUALTIES FROM REMOTE-CONTROL TACTICS SHOULD BE ENHANCED:

a. Impartial actors such as civil society and UN entities should engage in casualty recording, and their work should be supported

Where UN entities, civil society groups, academics, or other entities such as regional organisations can impartially engage in casualty recording, this can complement and may often provide greater value than a state-run casualty-recording mechanism alone. This applies in particular where a state is unable or unwilling to undertake casualty recording. We encourage the UN, civil society, and others to engage in casualty recording and analysis in all circumstances where they can add this value, including where remote-control tactics are used. Such work should be recognised and supported (including by states who are concerned about the impact of remote control tactics) so that it can be more effectively carried out. Specific recommendations to the UN on developing its casualty recording are given in our recent report 'The UN and Casualty Recording: Good Practice and the Need for Action'.[116]

b. Casualty recorders should apply common standards including transparency, and ensure that they use a robust methodology

For the recognition of every casualty, it is crucial that independent casualty data is credible and robust. Casualty data produced by independent actors can encourage dialogue and the evaluation of tactics by conflict parties and policymakers. It can also contribute to oversight and accountability, and encourage better casualty recording or the release of data for comparison by states.[117] Standards are important to fulfilling these functions. Casualty recorders documenting the impacts of remote-control tactics should adopt and apply common standards, a set of which are currently under development by the Every Casualty programme in partnership with the International Practitioner Network of casualty recorders.[118] Key principles include: impartiality in documentation practices; transparency in methodology and definitions; applying a methodology that involves the evaluation and corroboration of multiple sources, checking procedures, contextual understanding, and the incorporation of corrections and updates; and ensuring that the casualty recording itself does no harm.

c. The structure of casualty recorders' records should assist the evaluation of different tactics and deployments of force

A description of the violence that has caused casualties in an incident, where possible by documenting the tactics or weapons used, is one of the fundamental elements of casualty data. Casualty recorders should classify their data in as much detail as possible according to the tactics or weapons used, including identification of the different remote-control tactics profiled here, to facilitate recognition of the cost in human lives of these tactics, and for analysis of their impact. This is important to assessing the acceptability and contributing to policy debates about different tactics and weapons. Casualty recorders should also, as far as they are able, collect information useful to determining the combat status of individual casualties (for example their membership of and function in any armed group) to assist in such classifications. As well as being fundamentally important to understanding human losses from armed violence, such information is needed for evaluating the acceptability of different weapons and tactics.

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[116] Beswick and Minor (2014) cited in footnote 6
[117] Miceli and Olgiati (2014) cited in footnote 4
[118] See Hana Salama (2013) 'Developing Standards for Casualty Recording', Oxford Research Group http://ref.ec/standards-brief

d. Independent casualty recording should be commenced as soon as possible, and followed up with more detailed investigations as necessary

Despite the challenges to recording the casualties of remote-control tactics detailed in this paper, casualty recorders should always seek to promptly collect and investigate whatever information is available, and follow-up when possible.[119] Such initial data can still make a crucial contribution: despite its limitations, the information that casualty recorders have produced about drone strikes in Pakistan has for example allowed important analysis of practices that require further scrutiny, such as rescuer or 'double-tap' strikes.[120]

e. Where possible, casualty recorders should act in alliance and with other independent actors, to bring the meaning of their data to policymakers and those who can assist victims

Producing data will in itself often not be adequate to ensuring action upon what it shows. Where possible, casualty recorders, if appropriate in partnership with others such as academics, should therefore analyse and present their data about the casualties of remote-control tactics to policymakers and others that can provide assistance and protection to violence-affected populations. Where different independent organisations' data show similar conclusions, casualty recorders should, where appropriate, act in alliance on the strength of their evidence. Casualty recorders should attempt to help bridge the gap between those authorising and deploying remote-control tactics, and those who experience their effects.[121]

2. STATE CASUALTY RECORDING, ACCOUNTABILITY, TRANSPARENCY, AND OVERSIGHT OF REMOTE-CONTROL TACTICS SHOULD ALSO BE ENHANCED AS MUCH AS POSSIBLE:

a. States should transparently record the casualties of the remote-control tactics they use or host

States should ensure the recording of every casualty of armed violence within their territory or where they undertake or commission operations elsewhere. This means that both states using and hosting remote-control tactics should record, and states using PMSCs should ensure the recording of PMSC-related casualties. This information should be released as soon as possible – it may not be possible to release casualty information straight away for tactical reasons, for example, but release should not be unduly delayed. States should adhere to principles of good practice in casualty recording, including transparently publishing the definitions and methodologies they use.

b. States should not obstruct the work of independent casualty recorders, and should engage in evidence-based dialogue with them

Dialogue between states or conflict parties and independent casualty recorders on the basis of casualty data can contribute to procedures to better protect civilians. For this reason, among others, states using or hosting remote-control tactics should both record casualties themselves and not seek to obstruct the work of independent casualty recorders or other investigators.

In relation to the specific tactics discussed in section 3:

ARMED DRONES

c. Whether operated from near or far from the target or battlefield, casualties from drone strikes must be properly investigated

Weapons operated from a distance without a counterpart on-the-ground presence pose a challenge to the adequate investigation of casualties and to the credibility of claims about their impact.[122] The transparent recording of casualties from drone strikes by states should always include detailed on-the-ground investigation to ensure that the most accurate information about who has been killed is gathered. This should be conducted in partnership with the host state if possible.

LETHAL AUTONOMOUS WEAPONS

d. The potential challenges posed by lethal autonomous weapons to the transparent recording and recognition of every casualty should be considered

The development and use of lethal autonomous weapons could pose important challenges to the transparent and impartial investigation of casualties. If their development continues (a decision which should also depend on ethical and policy considerations beyond the scope of this paper), the need to transparently record their casualties, and how adequate systems to carry this out effectively including through independent on-the-ground investigation could be implemented, must be part of future discussions of this technology. This should, crucially, include a requirement of transparency about the definitions and categories that would be applied to all casualties recorded including those targeted, for the independent evaluation of how these weapons are used. How targets and casualties are considered and described would determine the impact of these weapons on populations. This requirement should arguably apply to the use of any weapons system, including the introduction and use of any new weapons.

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[119] This was also established as a valuable practice by a previous Every Casualty programme study. Minor (2012) cited in footnote 4
[120] See for example http://www.thebureauinvestigates.com/2013/08/01/get-the-data-the-return-of-double-tap-drone-strikes/
[121] As suggested of civil society in general in relation to weapons technologies in Brian Rappert, Richard Moyes, Anna Crowe, and Thomas Nash (2012) 'The roles of civil society in the development of standards around new weapons and other technologies of warfare' International Review of the Red Cross, Volume 94 Number 886 Summer 2012
http://www.icrc.org/eng/resources/international-review/review-886-new-technologies-warfare/review-886-all.pdf
[122] For a discussion of this issue in relation to airstrikes in Libya, see Jacob Beswick and Elizabeth Minor (2013) 'Casualty Recording as an Evaluative Capability: Libya and the Protection of Civilians' in Michael Aaronson and Adrian Johnson, Hitting the Target? How New Capabilities are Shaping International Intervention, RUSI, Whitehall Report 2-13 http://ref.ec/libya-poc

SPECIAL OPERATIONS FORCES

e. States must ensure that casualties caused by special operations forces are recorded, recognised, and assisted

The use of SOF, particularly for covert operations or in partnership with intelligence agencies, poses a challenge to the adequate investigation of resultant casualties and the recognition of harm. States must ensure that the increased use of clandestine force does not prevent robust investigation and collection of data on all casualties. This information should not be unduly restricted from those seeking to analyse the effectiveness of SOF engagement or provide redress to civilian populations.

PRIVATE MILITARY AND SECURITY COMPANIES

f. State contracts with PMSCs should include provisions to ensure that casualty recording is conducted by PMSCs

Where states employ private military and security companies to provide armed services, contracts should include provisions requiring robust and systematic recording of casualties by the companies themselves, either through the filing of "serious incident reports" or other means. In line with Article 63 of the International Code of Conduct for Private Security Service Providers,[123] these reports should include at a minimum data on: time and location of the incident, identity and nationality of any persons involved including their addresses and contact details; injuries and damage sustained; circumstances leading up to the incident; and any measures taken by the Signatory Company in response to it.

g. States should provide adequate resources to ensure effective management and oversight of PMSC's serious incident and casualty recording practices.

States that engage the services of private military and security companies should ensure that they have adequately planned for the thorough and continuous management and oversight of these companies' incident reporting and casualty recording practices. This should include providing substantial resources for the development of dedicated oversight bodies that can undertake sustained and diligent oversight of PMSC activity on the ground in the countries in which they operate. These oversight bodies should ensure that PMSCs engage in rigorous and robust casualty recording processes, using Article 63 of the ICoC as a baseline for reporting. States remain ultimately responsible for ensuring that the casualties of the PMSCs they contract are transparently recorded.

A helicopter operated by PMSC Blackwater (renamed Academi in 2010) aids in securing the site of a car bomb explosion in Baghdad, Iraq 2004. (©U.S. Air Force Photo by Master Sgt. Michael E. Best, Date Shot: 4 Dec 2004 http://bit.ly/1AHHVsV)

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[123] 'International Code of Conduct for Private Security Service Providers' (2010) cited in footnote 105 p15

3. RECOMMENDATIONS TO THE REMOTE CONTROL PROJECT, FOR FURTHER RESEARCH:

a. The Remote Control Project should consider commissioning further scoping studies into the potentials and challenges to casualty recording in a range of remote-control contexts

The Remote Control project commissioned from the Bureau of Investigative Journalism an important scoping study, which looked at the possibilities for recording drone strike casualties in Afghanistan using open-source material (published in July 2014).[124] Similar studies investigating the methodologies available and challenges to casualty recording in other specific situations where different remote-control tactics are used would be highly beneficial, in order to deepen knowledge and make further recommendations on this issue.

b. The Remote Control Project should consider commissioning wider investigations of human costs

Key to assessing the impact and acceptability of remote-control tactics, and developing policy positions on their use, is the investigation and articulation of their human costs. Further to attempting to understand these through looking at casualty recording and its data, the Remote Control Project should also consider undertaking a wider investigation. This could include facilitating the gathering of evidence from affected communities on the many different dimensions of harm (including psychological harm, forced migration, and other social, economic or environmental impacts) that remote-control tactics may contribute to. Some of these impacts may be connected to remote-control warfare's lethal effects.

c. The Remote Control Project should consider commissioning in depth research into the impact of the privatisation of military force on civilian populations

The increasing privatisation of military force presents a range of challenges not only to casualty recording but also International Humanitarian Law, International Human Rights Law and the protection of civilians in armed conflict. Key to assessing these challenges is data on the casualties of PMSCs and the instances in which these have occurred. In order to better understand how the increased use of private soldiers will affect the protection of civilians, the Remote Control Project should consider commissioning a wider investigation of the human costs of privatisation, with a particular focus on issues of accountability and redress.

To conclude, this paper has examined the very real and specific challenges to casualty recording posed by remote-control tactics. It is essential that the field of casualty recording, and the civil-society led call for casualty recording's universal implementation, responds and adapts to these and other changes in the use of armed force across the world. Continuing the development of casualty recording policy and practice is crucial to the recognition of and adequate response to every individual casualty that results from armed violence.

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124 See Alice K Ross, Jack Serle, and Tom Wills (2014) 'Tracking Drone Strikes in Afghanistan: A Scoping Study' The Bureau of Investigative Journalism http://remotecontrolproject.org/wp-content/uploads/2014/03/TBIJ-Afghanistan-Report1.pdf

5. SUGGESTED FURTHER READING

The materials below are a selection of some key articles and resources relevant to casualty recording and remote-control warfare (they do not represent a full bibliography of the sources consulted for this paper):

CASUALTY RECORDING

Jacob Beswick and Elizabeth Minor (2013) 'Casualty Recording as an Evaluative Capability: Libya and the Protection of Civilians' in Michael Aaronson and Adrian Johnson, Hitting the Target? How New Capabilities are Shaping International Intervention RUSI, Whitehall Report 2-13 http://ref.ec/libya-poc

Jacob Beswick and Elizabeth Minor (2014) 'The UN and Casualty Recording: Good Practice and the Need for Action', Oxford Research Group http://ref.ec/un

Julia Knittel (2014) 'How the Counts Reduce the Casual-ties' Action on Armed Violence http://aoav.org.uk/wp-content/uploads/2014/06/AOAV.How-the-Counts-reduce-the-Casualties1.pdf

Mirko Miceli and Serena Olgiati (2014) 'Counting the Cost: Casualty Recording Practices and Realities Around the World', Action on Armed Violence www.aoav.org.uk/2014/counting-the-cost

Elizabeth Minor and Serena Olgiati (2014) 'Casualty Recording: Assessing State and United Nations Practices', Action on Armed Violence and Oxford Research Group http://ref.ec/joint

Elizabeth Minor, John Sloboda and Hamit Dardagan (2012) 'Good Practice in Conflict Casualty Recording: Testimony, Detailed Analysis and Recommendations From a Study of 40 Casualty Recorders', Oxford Research Group http://ref.ec/practice-study

Elizabeth Minor (2012) 'Toward the Recording of Every Casualty: Policy Recommendations and Analysis From a Study of 40 Casualty Recorders', Oxford Research Group http://ref.ec/towards

Hana Salama (2013) 'Developing Standards for Casualty Recording', Oxford Research Group http://ref.ec/standards-brief

ARMED DRONES

Jacob Beswick (2011) 'Working Paper: The Drone Wars and Pakistan's Conflict Casualties, 2010', Oxford Research Group http://ref.ec/drone-practitioners

Professor Susan Breau, Marie Aronsson, and Rachel Joyce (2011) 'Discussion Paper 2: Drone Attacks, International Law, and the Recording of Civilian Casualties of Armed Conflict', Oxford Research Group http://ref.ec/drone-obligation

Columbia Law School and Center for Civilians in Conflict (2012) 'The Civilian Impact of Drones: Unexamined Costs, Unanswered Questions' http://civiliansinconflict.org/uploads/files/publications/The_Civilian_Impact_of_Drones_w_cover.pdf

Columbia Human Rights Cinic (2012) 'Counting Drone Strike Deaths' http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/COLUMBIACountingDronesFinalNotEmbargo.pdf

Ben Emmerson (2013) Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, UN General Assembly, A/68/389 http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N13/478/77/PDF/N1347877.pdf?OpenElement

Christof Heyns (UNGA) (2013) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN General Assembly, A/68/382 http://www.un.org/en/ga/third/68/documentslist.shtml

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