

FRANCE

Introduction

France currently has five unarmed drones in service: three MQ-9 Reapers and two French EADS Harfang drones (modified Heron drones).¹ The Reaper drones were first deployed during *Operation Serval*, a mission launched to assist the Malian government in its efforts to fight insurgents. The Reapers were again deployed in the subsequent *Operation Barkhane* (2014), which covered the Sahel region in Northern Africa.² Impressed with the Reapers' performance, France is committed to acquire nine additional Reapers by 2019.³ On the 5th of September 2017, French Minister of the Armed Forces, Florence Parly, announced the decision to arm French surveillance drones, beginning with the Medium-Altitude Long-Endurance (MALE) MQ-9 Reapers operated by the Air Force 1/33 Belfort Drone Squadron.⁴ However, the French Ministry of Defense has not taken a legal position on how to use the armed drones. Notably, there has been little public opposition against armed drone operations by France, while there should be a strong concern about how the armed drones will be used.

Besides acquiring, arming and deploying its drone fleet, France is also actively collaborating with other EU member states, within the 'Drones Users Club'⁵ and the 'Joint Users Club' of MQ-9 Reapers.⁶ In addition, France is collaborating with Germany and Italy to develop a European Medium-Altitude, Long-Endurance drone to decrease its dependence on the United States and Israel as drone producers.⁷ Furthermore, French Aerospace manufacturer Dassault has taken the lead in developing the nEUOn⁸ (an experimental combat drone) which has joined together with British BAE Systems on the Future Combat Air

¹ Jean-Baptiste Jeangène Vilmer, 'A Perspective on France', *Center for a New American Security*, pp: 2-3, available at: <http://drones.cnas.org/reports/a-perspective-on-france/>; Srdjan Cvijic and Lisa Klingenberg, 'Armed drones policy in the EU: the growing need for clarity', in: European Center for Constitutional and Human Rights, *Litigating Drone Strikes: Challenging the Global Network of Remote Killing* (May 2017) pp: 34, available at: <https://www.echr.eu/en/documents/publications/articles/litigating-drone-strikes-eng-neu.html>.

² Chris Cole, 'European use of military drones expanding', *Drone Wars UK* (19 July 2016) available at: <https://dronewars.net/2016/07/19/european-use-of-military-drones-expanding/>.

³ Jeangène Vilmer, 'A Perspective on France', pp: 2-3, available at: <http://drones.cnas.org/reports/a-perspective-on-france/>.

⁴ Florence Parly, 'Discours de clôture de Florence Parly - Université d'été de la Défense 2017' (5 September 2017) available at: <http://www.defense.gouv.fr/salle-de-presse/tout-discours/discours-de-cloture-de-florence-parly-universite-d-ete-de-la-defense-2017>; Jean-Baptiste Jeangène Vilmer, 'The French Turn to Armed Drones' (22 September 2017) available at: <https://warontherocks.com/2017/09/the-french-turn-to-armed-drones/>.

⁵ During a meeting of the European Defence Agency (EDA) on the 19th of November 2013, a group of seven Defence ministers signed a 'letter of intent', tasking the EDA to draw up a study on joint production of MALE craft. In a press release the EDA said that 'the objective of this community is to exchange information as well as to identify and facilitate co-operation amongst member states which currently operate or plan to operate RPAS [Remotely Piloted Aircraft Systems]'. ; EU Observer, 'Seven EU States Create Military Drone 'Club'' (20 November 2013) available at: <https://euobserver.com/foreign/122167>; Christophe Paulussen, Jessica Dorsey and Bérénice Boutin, 'Towards a European Position on the Use of Armed Drones? A Human Rights Approach', *The International Centre for Counter-Terrorism - The Hague* (October 2016) pp: 21, available at: <https://www.icct.nl/download/file/ICCT-Dorsey-Paulussen-Towards-A-European-Position-On-Armed-Drones-And-Targeted-Killing-Surveying-EU-Counterterrorism-Perspectives.pdf>.

⁶ Paulussen, Dorsey and Boutin, 'Towards a European Position on the Use of Armed Drones?' (October 2016) pp: 21, available at: <https://www.icct.nl/download/file/ICCT-Dorsey-Paulussen-Towards-A-European-Position-On-Armed-Drones-And-Targeted-Killing-Surveying-EU-Counterterrorism-Perspectives.pdf>.

⁷ Jeangène Vilmer, 'A Perspective on France', *Center for a New American Security*, pp: 2-3, available at: <http://drones.cnas.org/reports/a-perspective-on-france/>.

⁸ Ibidem, pp: 2-3; Paulussen, Dorsey and Boutin, 'Towards a European Position on the Use of Armed Drones?' (October 2016) available at: <https://www.icct.nl/download/file/ICCT-Dorsey-Paulussen-Towards-A-European-Position-On-Armed-Drones-And-Targeted-Killing-Surveying-EU-Counterterrorism-Perspectives.pdf>.

System (FCAS) project.⁹ Additionally, in July 2017, France and Germany announced their agreement to 'jointly develop a future combat air system'.¹⁰

Articulate Clear Policies

France has, as mentioned in the introduction, not yet formulated a clear policy on the use of armed drones. Presently, the French air force uses the principle of territoriality limited campaigns as a guiding legal rationale, only deploying its drones to collect intelligence with the consent of the host country.¹¹ In the case of the *Serval* and *Barkhane* operations, France considered itself to be engaged in an armed conflict based on the invitation of the Malian government.¹² According to senior policy fellow at European Council on Foreign Relations, Anthony Dworkin, France has made a distinction during these operations between members of terrorist groups and those who play other roles but cannot be directly targeted.¹³ Hence, France does not appear to provide an extensive interpretation of international law.

However, the prospect is that France will consider using armed drones for lethal anti-terrorist operations. The French Defense Ministry has declared that armed drones could be used to kill high-value targets outside the traditional battlefield, as long as the use is 'exceptional' and 'restricted' (the meaning of 'exceptional' and 'restricted' are not specified).¹⁴ In a similar line, Jean-Baptiste Jeangène Vilmer, mission head at the Center for Analysis, Prevision and Strategy, which is affiliated with the Ministry of Foreign Affairs, has even argued for the use of armed drones by the French Secret Service (DGSE) to execute targeted killings outside the recognized armed conflict. On top of this, according to Gerard Davet and Fabrice Lhomme, the authors of *Un président ne devrait pas dire ça*, Hollande himself said he has given permission to conduct targeted killings, 'without bothering with the cumbersome paths of justice'.¹⁵ In the light of these developments, clear and concise policy is needed to ensure that legal obligation are met by providing clear definitions of i.e. the 'exceptional' and 'restricted' use of armed force and prescribing criteria to determine what individuals may be engaged as enemies.

Prevent Complicity

Despite the fact that France primarily used its drones to provide logistical support, preventing complicity must remain a priority. For example, in March 2013 the spokesperson of the French ministry of defense, Gilles Jaron, reported that intelligence gathered by Reaper drones was used by Malian and French forces to kill ten suspected Islamist fighters.¹⁶ France, however, must ensure that the data they share is under no circumstances used for illegal targeted killings. Another reason why preventing complicity is of importance for France, is because it is collaborating with the UK on the development of an armed drone. On 17 February

⁹ 'France and Britain to Develop "Armed Combat Drones" to Attack both Aerial and Ground Targets', *Global Research News* (28 November 2014) available at: <http://www.globalresearch.ca/france-and-britain-to-develop-armed-combat-drones-to-attack-both-aerial-and-groundtargets/5416777>.

¹⁰ Chris Pocock, 'France and Germany To Develop New Fighter Without UK?' (2 August 2017) available at: <http://www.ainonline.com/aviation-news/defense/2017-08-02/france-and-germany-develop-new-fighter-without-uk>.

¹¹ Cvjic and Klingenberg, 'Armed drones policy in the EU', pp: 34-35, available at: <https://www.ecchr.eu/en/documents/publications/articles/litigating-drone-strikes-eng-neu.html>.

¹² Ibidem, pp: 35.

¹³ Ibidem, pp: 35.

¹⁴ Ibidem: pp: 34-35.

¹⁵ Stéphanie Maupas, 'Targeted State killings abroad as a new form of war' (17 January 2017) available at: <http://www.justiceinfo.net/en/justice-reconciliation/31727-targeted-state-killings-abroad-as-a-new-form-of-war.html>.

¹⁶ National Turk, 'French-Islamists Battle in Mali: French Troops Kill 10 Islamists in Northern Mali / Africa News' (7 March 2014) available at: <http://www.nationalturk.com/en/french-islamists-battle-in-mali-french-troops-kill-10-northern-africa-news-48172/>.

2012 the British Prime Minister Cameron and French President Sarkozy agreed upon a new declaration on security and defense, in which they affirmed their long-term strategic partnership and common will to undertake a joint FCAS Programme, that will develop the concepts and technologies to provide an Unmanned Combat Aerial Vehicle (UCAV) for the European Armed Forces.¹⁷ To prevent complicity, therefore, France must develop the necessary policies that guide the use of its drones, the FCAS and the sharing of intelligence with other countries. The fact that France has decided to arm its drones, makes this call to prevent complicity all the more pressing.

Ensure Transparency

Essential for developing adequate policy and preventing complicity is transparency, which is a point of concern. Jeangène Vilmer's proposition to justify the use of armed drones by the DGSE (the French equivalent of the CIA) in combination with the opposition of France to the United Nations Human Rights Council resolution in 2014, which called for drone transparency and accountability, show a lack of political will.¹⁸ Moreover, it has recently been reported that former French President Francois Hollande authorized at least 40 targeted killings between 2013 and 2016. Such killings, often called 'homo' (shortened from homicide) operations, are executed in secret by elite DSGE agents who operate outside of a legal framework. The operations are justified as being in the interest of national security and are framed as acts of self-defense.¹⁹ Notably, left-wing candidates leading up to the 2017 presidential elections criticized Hollande, not for ordering target killings, but rather for disclosing this information to the public.²⁰

Establish Accountability

The lack of transparency prevents the Ministry of Defense, and specifically the DSGE, from being held accountable for actions they may take, such as illegal targeted killings described above. The President of the French Magistrates Union, Clarisse Taron, rightly points out about the victims that *'These are people who are subjected to targeted executions without justice being done. (...) In a trial and in an investigation, there are buffers and one can attempt to approach the truth. Here, we don't know the evidence in the hands of executive power that orders these executions. In democracy, this raises questions.'*²¹ Those who support the Ministry of Defense, such as judge Jean-Louis Bruguiere, argue that the individuals in question do not have the right to a trial because they are "waging war". Notwithstanding, this does not justify the secrecy of the French administration, which must be held accountable for its actions. It is for this very reason that the previously mentioned UNHRC resolution called *'upon States to ensure transparency in their records on*

¹⁷ Declaration on Security and Defence, 'France – UK Summit: 31 January 2014' (31 January 2014) available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277167/France-UK_Summit-Declaration_on_Security_and_Defence.pdf; 'UK-France declaration on security and defence' (17 February 2012) available at: <https://www.gov.uk/government/news/uk-france-declaration-on-security-and-defence>.

¹⁸ Ryan Goodman, 'United Nations Human Rights Council Adopts Resolution Calling for Drone Transparency and Accountability', *Just Security* (28 March 2014) available at: <https://www.justsecurity.org/8712/unhrc-adopts-drones-resolution/>.

¹⁹ Henry Samuel, 'François Hollande has personally authorised "at least 40" targeted killings abroad, says new book', *The Telegraph* (5 January 2017) available at: <http://www.telegraph.co.uk/news/2017/01/05/francois-hollande-has-personally-authorized-least-40-targeted/>.

²⁰ France 24, "'Targeted killings necessary ... just don't tell anyone', say French leftist candidates' (13 January 2017) available at: <http://www.france24.com/en/20170113-executing-terrorists-abroad-french-leftist-primary-debate-candidates-agree>.

²¹ Ibidem.

*the use of remotely piloted aircraft or armed drones and to conduct prompt, independent and impartial investigations whenever there are indications of a violation to international law caused by their use’.*²²

Control Proliferation

Though there are international legal frameworks in place that regulate the arms trade, to which France is a party, there are concerns that the development of new drone technologies will blur existing definitions and especially because certain drones can serve both civilian and military purposes.²³ Efforts made to meet these new challenges include the Joint Declaration for the Export and Subsequent Use of Armed or Strike-enabled Unmanned Aerial Vehicles, an initiative of the United States that has been signed by 53 countries at the time of writing.²⁴ However, along with Russia, China and Israel, France has not signed the Declaration. As mentioned in the introduction, France has been working on developing its own Unmanned Combat Aerial Vehicles as well as collaborating with the UK and Germany to develop a new FCAS.²⁵ It is therefore of great importance that France is aware of the full potential of the combat drones it is developing and their implications for France’s international legal obligations, and that thorough and clear risk assessments are made before drawing up end-user licenses for importing countries. Furthermore, it should ensure that the weapon platforms it is developing and ultimately will export conform to and uphold existing criteria.

²² Goodman, 'United Nations Human Rights Council Adopts Resolution', available at: <https://www.justsecurity.org/8712/unhrc-adopts-drones-resolution/>.

²³ U.S. Department of State, 'Joint Declaration for the Export and Subsequent Use of Armed or Strike-Enabled Unmanned Aerial Vehicles (UAVs)' (28 October 2016) available at: <https://2009-2017.state.gov/r/pa/prs/ps/2016/10/262811.htm>.

²⁴ Ibidem.

²⁵ 'France and Britain to Develop "Armed Combat Drones" to Attack both Aerial and Ground Targets', *Global Research News* (28 November 2014) available at: <http://www.globalresearch.ca/france-and-britain-to-develop-armed-combat-drones-to-attack-both-aerial-and-groundtargets/5416777>.