

THE NETHERLANDS

Introduction

Presently, the Netherlands does not possess armed drones, but is in the process of acquiring four General Atomics MQ-9 Reaper drones.¹ The purchase of the first Reapers was planned for 2016 but was postponed due to budgetary considerations.² Although the Dutch government officially announced to use the MQ-9 Reaper drones for intelligence, surveillance and reconnaissance (ISR) missions,³ political parties are divided regarding the procurement and use of armed drones. It is expected that the Reaper drone will be armed within the near future, as will be explained in more detail in the section on the articulation of clear policy. Additional developments in the Dutch drone program include conversations held in 2015 between the government and aerospace services company *Strat Aero* on establishing a UAV Training Center in the Netherlands, which would be the first in Northern Europe.⁴

Articulate Clear Policies

According to the authors of the report 'Armed drones policy in the EU: the growing need for clarity', the Netherlands appears to have adopted a less permissive interpretation of international law than for example the US has in the last few years.⁵ This can also be concluded from the results of a questionnaire published by the International Centre for Counter-Terrorism (ICCT), gauging the extent to which EU member states share the position of the United States on armed drones and targeted killing. Frans Timmermans, former Minister of Foreign Affairs, underlined the need for a clear policy and the '*importance of strict observance of the law and transparency with respect to the use of armed drones*'.⁶ However, there are still a number of areas where Dutch policy can be much clearer – especially in the light of the plans to acquire Reaper drones that can potentially be armed.

After seven months of negotiations a new coalition was formed in October 2017 by the People's Party for Freedom and Democracy (VVD), the Christian Democratic Party (CDA), Democrats 66 (D66) and the Christian Union (CU), each party with a different position in the long-standing debate on the arming of drones. Previously, two parties, the liberal-democratic D66 and GreenLeft, have shown concern regarding the use of armed drones, while their counterparts, such as the conservative CDA and the extreme-right

¹ Ministerie van Defensie, 'Defensie kiest Reaper als onbemand vliegtuig' (21 November 2013) available at: <https://www.defensie.nl/actueel/nieuws/2013/11/21/defensie-kiest-reaper-als-onbemand-vliegtuig>.

² Flight Global, 'RNLAf commander hopeful for Reaper funding challenge resolution' (11 November 2015) available at: <https://www.flightglobal.com/news/articles/rnla-f-commander-hopeful-for-reaper-funding-challenge-418676/>.

³ Jessica Dorsey, 'Wat wil Hennis echt met de Reaper-drone?', *NRC Dagblad* (9 May 2017) available at: <https://www.nrc.nl/nieuws/2017/05/09/wat-wil-hennis-nu-echt-met-de-reaper-8754175-a1557852>.

⁴ UAS Vision, 'Northern Europe's First UAV Pilot Training Base' (14 January 2014) available at: <http://www.uasvision.com/2015/01/14/northern-europes-first-uav-pilot-training-base/>.

⁵ Srđjan 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: 36, available at: <https://www.ecchr.eu/en/documents/publications/articles/litigating-drone-strikes-eng-neu.html>; Christophe Paulussen, Jessica Dorsey and B  r  nice 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) 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: 31, 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>; The original text, in Dutch, is: 'Dit onderstreept eens te meer het belang van strikte naleving van het recht en van transparantie over het gebruik van bewapende drones'. Kabinetsreactie op advies nr. 23 van de Commissie van advies inzake volkenrechtelijke vraagstukken (CAVV) over bewapende drones (Tweede Kamer, vergaderjaar 2013-2014, 33 750 X, nr. 4), available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2013/09/27/kabinetsreactie-op-advies-nr-23-van-de-commissie-van-advies-inzake-volkenrechtelijke-vraagstukken-cavv-over-bewapende-drones>.

Party for Freedom (PVV), advocate the necessity of speeding up the process of acquiring and arming drones.⁷ Despite the salience of this debate in Dutch politics there is sufficient reason to be cautious. First of all, the MQ-9 Reaper is designed to function primarily as an armed ‘Hunter-Killer’ drone with an extended weapon payload,⁸ rather than surveillance. This, in combination with the fact that no political party opposes armed drones per se, makes the armed use of the MQ-9 Reapers in the near future seem likely.⁹

Prevent Complicity

The fact that the Netherlands currently does not own or use armed drones does not rule out the possibility of its complicity in the unlawful use of armed drones. In 2015 the Dutch human rights law firm Prakken d’Oliveira took legal action against the Dutch government on behalf of two Somali nomads who became victims of a drone attack when they were hit by a US missile in January 2014.¹⁰ Prakken d’Oliveira claim that ‘*the Dutch state has committed a wrongful act by violating international law, in particular, human rights and international humanitarian law*’.¹¹ Despite the fact that no legal investigation was held, the incident with the Somali herdsmen did prompt an investigation by the Dutch Parliament’s Review Committee on Intelligence and Security (CTIVD) on the contribution of the Military Intelligence and Security Service (MIVD) to unlawful targeted killings. The Committee’s final report, published in September 2016, concluded that the MIVD’s legal provisions are insufficient to assess the risk of contributing to the unlawful use of drones by sharing data with allies.¹² It is therefore of utmost importance that the MIVD improve its policy concerning the sharing of intelligence in order to prevent future complicity in unlawful targeting.¹³

Ensure Transparency

In September 2014 the Netherlands called, in line with our call to action, for more transparency at the UN Human Rights Council debate on armed drones, when a Dutch representative said that ‘*the Netherlands underlined the importance of maximum transparency in the use of armed drones, and supported holding an international dialogue to clarify the interplay between human rights and international humanitarian law*’.¹⁴

⁷ Jaap Jansen, ‘D66 en GroenLinks twifelen over aanschaf grote drones door defensie’ (26 April 2017) available at: <https://www.bnr.nl/nieuws/politiek/10321934/d66-en-groenlinks-twijfelen-over-aanschaf-grote-drones-door-defensie>; NOS, ‘CDA wil bewapende drones aanschaffen’ (15 February 2017) available at: <https://nos.nl/artikel/2158302-cda-wil-bewapende-drones-aanschaffen.html>; PAX for Peace, ‘Drones achter de Dijken: het politieke debat in Nederland over de inzet van onbemande vliegtuigen’ (1 March 2017) available at: <https://www.paxvoorvrede.nl/publicaties/alle-publicaties/drones-achter-de-dijken>.

⁸ Defense Tech, ‘The Air Force’s Newest MQ-9 Reaper Drone Is Now Hunting ISIS’ (30 June 2017) available at: <https://www.defensetech.org/2017/06/30/air-forces-newest-mq-9-reaper-drone-now-hunting-isis/>; U.S. Air Force, ‘MQ-9 Reaper’ (23 September 2015) available at: <http://www.af.mil/About-Us/Fact-Sheets/Display/Article/104470/mq-9-reaper/>.

⁹ On 1 March 2017, a survey-based report written by the Dutch NGO PAX, concluded that a majority of Dutch political parties remain concerned about the use of armed drones for extrajudicial killings, but no political party opposes armed drones; Defense Update, ‘Netherlands to field four MQ-9 Reaper drones by 2017’ (8 February 2015) available at: http://defense-update.com/20150208_dutch_reapers.html.

¹⁰ De Volkskrant, ‘Somali victims of US drone strike take legal action against The Netherlands’ (28 November 2015) available at: <https://www.volkskrant.nl/buitenland/somali-victims-of-us-drone-strike-takelegal-action-against-the-netherlands~a4196845>; Shares, ‘Facilitating drone strikes: sharing responsibility for sharing intelligence’ (3 April 2014) available at: <http://www.sharesproject.nl/facilitating-drone-strikes-sharing-responsibility-for-sharing-intelligence/>.

¹¹ Prakken d’Oliveira, ‘Dutch State held accountable for drone attacks Somalia by lawyers Prakken d’Oliveira’ (30 November 2015) available at: <http://www.prakkenoliveira.nl/en/news/dutch-state-held-accountable-for-drone-attacks-somalia-by-lawyers-prakken-doliveira/>.

¹² Commissie van Toezicht op de Inlichtingen- en Veiligheidsdiensten, ‘Toezicht rapport 50 over bijdragen van de MIVD aan targeting’ (26 September 2016) pp: 35-36, available at: www.ctivd.nl/documenten/rapporten/2016/09/26/index.

¹³ See also: PAX for peace, ‘Data, drones and death’ (27 September 2016) available at: <https://www.paxforpeace.nl/stay-informed/news/data-drones-and-death>.

¹⁴ United Nations Office at Geneva, ‘Human Rights Council holds panel on remotely piloted aircraft or armed drones in counterterrorism and military options’ (22 September 2014) available at: http://www.unog.ch/unog/website/news_media.nsf/%28httpNewsByYear_en%29/BCE56ED914A46D40C1257D5B0038393F?Open

The aforementioned questionnaire published by the ICCT explicitly asked whether more transparency is needed, and the Netherlands confirmed that more transparency is necessary, both within the international debate and during its own parliamentary discussions.¹⁵ The call for transparency was reiterated by former Minister of Foreign Affairs Bert Koenders at the Conference on Disarmament (CD) in 2016, stating that he wanted *'to highlight the need for debate on armed unmanned aerial vehicles, or drones. We are concerned about the growing worldwide use of UAVs, whether armed or unarmed, by states and by non-state actors. I would like to call for an open debate within the CD and the First Committee on the use of armed drones, and on transparency regarding their use'*.¹⁶ With regard to the sharing and publication of information that can contribute to targeted killings, like we have seen in the abovementioned Somalia case, the Dutch government remains quiet. It is unclear which data is shared with whom.

Establish Accountability

As a means of establishing accountability, EFAD calls upon all European governments to conduct prompt, thorough, independent and impartial investigations into allegations of unlawful death or civilian harm when states are directly or indirectly involved in drone strikes. As mentioned above in relation to the Somali-case, no investigation was held by the government, but the report published by the *Parliament's Review Committee on Intelligence and Security* did spark a political debate. In April 2014, the Dutch parliament questioned the then Minister of Interior Affairs and Kingdom Relations and the Minister of Defense concerning the cooperation between the MIVD and their American counterparts.¹⁷ The ministers acknowledged the critique of the parliamentary review committee and expressed their commitment to address the issues identified.¹⁸ When pressed to elaborate on the nature of the cooperation, the then Minister of Defense, Jeanine Hennis-Plasschaert, said that she was unable to make a statement about the capacity and operation of American intelligence services, and therefore was unable to say if these killings were 'illegal'.¹⁹ As a result, the role of Dutch intelligence in drones strikes, such as in Somalia, remained vague. Furthermore, she also emphasized the importance of the cooperation with the intelligence services of other countries for the safety of Dutch military personnel deployed in missions such as in Mali and Afghanistan.²⁰ However, the minister did state that if there is sufficient reason to believe that Dutch intelligence is being used for unlawful targeted killings, cooperation with the country in question would be reassessed.²¹ This debate in 2014 illustrates both the challenges in ensuring accountability and the division of Dutch politics over the subject. A more unified position on the functioning of intelligence services and specifically the sharing intelligence is needed to promote a culture of accountability.

[Document](https://www.icct.nl/download/file/ICCT-Dorsey-Paulussen-Towards-A-European-Position-On-Armed-Drones-And-Targeted-Killing-Surveying-EU-Counterterrorism-Perspectives.pdf) ; Paulussen, Dorsey and Boutin, 'Towards a European Position on the Use of Armed Drones?', pp: 31-32, 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>.

¹⁵ Paulussen, Dorsey and Boutin, 'Towards a European Position on the Use of Armed Drones?', pp: 31-32, 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>.

¹⁶ Rijksoverheid, 'Statement van minister Koenders aan de conferentie over ontwapening' (29 February 2016) available at: <https://www.rijksoverheid.nl/documenten/toespraken/2016/02/29/statement-van-minister-koenders-aan-de-conferentie-over-ontwapening-in-english>.

¹⁷ Tweede Kamer der Staten-Generaal, 'Afluisteren door de NSA', identifier: h-tk-20132014-73-8, date of discussion 9 April 2014 (16 May 2014) available at: <https://zoek.officielebekendmakingen.nl/h-tk-20132014-73-8>.

¹⁸ Tweede Kamer der Staten-Generaal, 'Afluisteren door de NSA' (16 May 2014) pp: 31, available at: <https://zoek.officielebekendmakingen.nl/h-tk-20132014-73-8>.

¹⁹ Ibidem, pp: 32-33.

²⁰ Ibidem, pp: 32.

²¹ Ibidem, pp: 32.

Control Proliferation

Regarding proliferation controls, the Netherlands has signed the Joint Declaration for the Export and Subsequent Use of Armed or Strike-Enabled Unmanned Aerial Vehicles on October 28th, 2016.²² By signing this declaration the Netherlands has agreed to the regulation on the production, export and use of armed and strike enabled drones to that end that international law, including human rights law, is 'upheld'.²³ Upheld between brackets because the Declaration remains ambiguous, as it does not specify how international and human rights law must be interpreted and applied, nor is the Declaration legally or politically binding. The follow-up process that should have developed strong international standards remains opaque and non-inclusive to civil society. Hence, increased proliferation and the growing deployment of drones remain key challenges that need to be addressed. Existing definitions in arms export control regimes are increasingly blurred due to new developments surrounding armed drones and related technologies and the ease with which civilian drones can be transformed into military capable drones.²⁴ This is of specific importance for the Netherlands as the Dutch aerospace production industry Fokker began collaborating with leading manufacturer General Atomics (GA-ASI) in producing landing gear systems for the MQ-9 Reaper in Helmond in April, 2017. This means the Netherlands is actively contributing to the production, export and use of armed drones at the international level and should enact stricter control of transfers of drones and drone-related technology.

²² 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>.

²³ U.S. Department of State, 'Joint Declaration', available at: <https://2009-2017.state.gov/r/pa/prs/ps/2016/10/262811.htm>.

²⁴ Jessica Dorsey, 'Towards an EU common position on the use of armed drones', *EU Directorate-General for External Policies* (5 June 2017) pp: 31, available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578032/EXPO_STU\(2017\)578032_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578032/EXPO_STU(2017)578032_EN.pdf).