Dear Minister

Re: Response to correspondence on drones

On 4th March 2014 we received correspondence from Mr Greg French written on your behalf. Mr French was responding to previous letters that we had sent to you on 23rd January 2014 and 11th November 2013.

Two key issues we raised in our letters to you related to (a) Australia’s purported involvement in the deployment of US weaponised drones and (b) the legality of the use of weaponised drones including the constraints imposed on the deployment of these weapons by international law.

1. Australia’s involvement in the deployment of US weaponised drones

While Mr French specifically cited our query relating to Australia’s purported involvement in the deployment of US weaponised drones, he did not address it in his letter.

Our query is based upon an article by Philip Dorling (’Pine Gap drives US drone kills’, The Age, 21st July 2013). Mr Dorling and Fairfax Media claim that information acquired by the joint signals intelligence Pine Gap facility “has been used to identify the location of terrorist suspects which then feed into the United States drone strike program and other military operations.”

Mr Dorling’s article cites figures on the number of al-Qaeda and Taliban militants killed by the drone program but also notes that “hundreds of civilians have also been killed, causing anti-American protests in Pakistan, diplomatic tensions between Washington and Islamabad and accusations the “drone war” has amounted to a program of “targeted killing” outside of a battlefield”. The article also notes that “the Obama administration acknowledged four American citizens has been killed by (drone) strikes in Pakistan and Yemen since 2004.”
Given the above claims, we would like to ask the question once again: **Is Australia either directly or indirectly involved with the operation of the US weaponised drones program via the joint signals intelligence facility at Pine Gap?** We note that this question, while posed in previous letters, has not been directly answered in correspondence received from your office. As a result, we are curious as to why your office has failed to respond to this straightforward query.

2. **Legal constraints on the deployment of weaponised drones**

In his letter dated 4th March 2014, Mr French notes that “to be lawful, drone attacks by one State into the territory of another must comply with the law on inter-State use of force and, to the extent they are applicable in any given factual situation, international humanitarian law and international human rights law.”

Mr French goes on to say that the use of drones for “targeted killing” is not unlawful so long as such operations comply with the principles of international humanitarian law. He also states that “there is no settled view on the applicability of human rights law to drone strikes”.

May we say that Mr French’s response fails to acknowledge concerns expressed about the use of weaponised drones by the governments of countries impacted by drone strikes (e.g. Afghanistan and Pakistan), the United Nations and its representatives (e.g. UN Special Rapporteur on Counter-Terrorism and Human Rights), lawyers and academic commentators and from groups such as ours within civil society.

Legal arguments against the deployment of weaponised drones include the following:

(a) The unlawful killing of suspects i.e. that no one should be subjected to a violation of his or her rights without due process and a fair and speedy trial. (The killing of the American cleric, Anwar al-Awlaki, in Yemen along with four others in September 2011 is one such example of this).

(b) The use of drones should not violate the UN Charter including the narrow exception stipulated in Article 51 which allows for the use of force without UN authorisation together with the principle of ‘anticipatory self-defense’ in the face of ‘imminent attack’ described as being “instant, overwhelming, and leaving no choice of means, and no moment for deliberation”. (Refer to the Caroline Doctrine in international law). It is obvious that the killing of the American cleric, Anwar al-Awlaki, along with many others, violates this principle.

Other concerns relating to drone strikes include:

(c) The rising toll of civilian casualties (injuries and deaths) exacerbated by the reported use of ‘double tap’ strikes i.e. follow-up drone strikes aimed at the wounded, rescuers and medical personnel at the site of drone strikes.

(d) The fact that the expanding deployment of weaponised drones effectively constitute weapons of terror in relation to civilian communities.

(e) The fact that weaponised drones are terror generating weapons and therefore counter-productive in the ‘war on terror’.
3. UN reports on drone strikes – additional questions posed

The use and impacts of drones strikes, particularly US drones strikes, has been the subject of UN reports. These include:

- Christof Heyns (UN Special Rapporteur on extrajudicial, summary or arbitrary executions) Report on the use of lethal force through armed drones from the perspective of protection of the right to life, released 13th September 2013.
- Ben Emmerson (UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism) Final report on the use of drones in counter-terrorism operations, released 28th February 2014.

These reports call into question an uncritical acceptance of the use and impacts of weaponised drones.

The Heyns Report

Christof Heyns, for example, calls into question the US position which employs an unjustifiably broad concept of ‘imminence’ which effectively means no immediate threat needs to exist with respect to deploying lethal force under self-defence rules.

Heyns argues that “(t)he view that mere past involvement in planning attacks is sufficient to render an individual targetable even where there is no evidence of a specific and immediate attack distorts the requirements established in international human rights law.” (Para. 37)

However Heyns does not just focus on the US use of drones for “targeted killing” but also poses broader questions about drones and their challenge to international peace and security. For example, he claims that the “expansive use of armed drones by the first States to acquire them, if not challenged, can do structural damage to the cornerstones of international security and set precedents that undermine the protection of life across the globe in the longer term.” (Para. 16)

One of the report’s key recommendations is stated in the following terms: “The establishment an international legal framework for the use of force (international human rights law, international humanitarian law and inter-State force) should be regarded as setting forth an adequate framework for the use of armed drones.” (Para. 104).

The Emmerson Report

Ben Emmerson’s investigations had the following goals:
(1) “(T)o look at the evidence that drone strikes and other forms of remote targeted killing have caused disproportionate civilian casualties in some instances.”
(2) “(T)o make recommendations concerning the duty of States to conduct thorough independent and impartial investigations into such allegations, with a view to securing accountability and reparation where things can be shown to have gone badly wrong with potentially grave consequences for civilians.”
Emmerson dedicated a significant portion of his report on identifying specific drone strikes involving civilians. The report found that of the 37 drone attacks investigated, 30 involved civilians that had been killed, suffered life-threatening injuries or been put at risk.

The report’s recommendations included the following:

- To encourage “all States to respond to his requests for clarification of their position in relation to the questions raised in paragraph 71 of the present report.” (Para 75c)
- To recommend “to the Human Rights Council that it should adopt a resolution in the terms outlined in paragraphs 73 and 74 of the present report.” (Para. 75d).

Given the international disquiet surrounding drone strikes as evidenced in the Heyns and Emmerson reports, we would like to ask the follow question: **Will Australia either initiate or support moves within the Security Council and/or other forums within the United Nations to implement the recommendations of these two reports?**

4. **Summary**

Given Australia’s election as a non-permanent member of the UN Security Council, we believe Australia can play a leading role in seeing the recommendations of these two reports implemented during the remainder of its two year term.

In doing so, it is our sincere belief that Australia would substantially contribute towards protecting both international security and basic human rights across the globe in the longer term.

We look forward to receiving a considered response from you to the two questions above namely:

(1) **Is Australia either directly or indirectly involved with the operation of the US weaponised drones program via the joint signals intelligence facility at Pine Gap?**
(2) **Will Australia either initiate or support moves within the Security Council and/or other forums within the United Nations to implement the recommendations of the Heyns and Emmerson reports cited above?**

Yours sincerely

Jon Atkins
On behalf of the Marrickville Peace Group