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U.N. Official Set to Ask U.S. to End C.I.A. Drone Strikes

By **CHARLIE SAVAGE**

WASHINGTON — A senior **United Nations** official is expected to call on the United States next week to stop **Central Intelligence Agency drone** strikes against people suspected of belonging to **Al Qaeda**, complicating the Obama administration's growing reliance on that tactic in Pakistan.

Philip Alston, the United Nations special rapporteur on extrajudicial, summary or arbitrary executions, said Thursday that he would deliver a report on June 3 to the United Nations Human Rights Council in Geneva declaring that the "life and death power" of drones should be entrusted to regular armed forces, not intelligence agencies. He contrasted how the military and the C.I.A. responded to allegations that strikes had killed civilians by mistake.

"With the Defense Department you've got maybe not perfect but quite abundant accountability as demonstrated by what happens when a bombing goes wrong in Afghanistan," he said in an interview. "The whole process that follows is very open. Whereas if the C.I.A. is doing it, by definition they are not going to answer questions, not provide any information, and not do any follow-up that we know about."

Mr. Alston's views are not legally binding, and his report will not assert that the operation of combat drones by nonmilitary personnel is a war crime, he said. But the mounting international concern over drones comes as the Obama administration legal team has been quietly struggling over how to justify such counterterrorism efforts while obeying the laws of war.

In recent months, top lawyers for the State Department and the Defense Department have tried to square the idea that the C.I.A.'s drone program is lawful with the United States' efforts to prosecute Guantánamo Bay detainees accused of killing American soldiers in combat, according to interviews and a review of military documents.

Under the laws of war, soldiers in traditional armies cannot be prosecuted and punished for killing enemy forces in battle. The United States has argued that because Qaeda fighters do not obey the requirements laid out in the [Geneva Conventions](#) — like wearing uniforms — they are not “privileged combatants” entitled to such battlefield immunity. But C.I.A. drone operators also wear no uniforms.

Paula Weiss, a C.I.A. spokeswoman, called into question the notion that the agency lacked accountability, noting that it was overseen by the White House and Congress. “While we don’t discuss or confirm specific activities, this agency’s operations take place in a framework of both law and government oversight,” Ms. Weiss said. “It would be wrong to suggest the C.I.A. is not accountable.”

Still, the Obama administration legal team confronted the issue as the Pentagon prepared to restart military commission trials at Guantánamo Bay. The commissions began with pretrial hearings in the case of [Omar Khadr](#), a Canadian detainee accused of killing an Army sergeant during a firefight in Afghanistan in 2002, when Mr. Khadr was 15.

The Pentagon delayed issuing a 281-page manual laying out commission rules until the eve of the hearing. The reason, officials say, is that government lawyers had been scrambling to rewrite a section about murder because it has implications for the C.I.A. drone program.

An earlier version of the manual, issued in 2007 by the Bush administration, defined the charge of “murder in violation of the laws of war” as a killing by someone who did not meet “the requirements for lawful combatancy” — like being part of a regular army or otherwise wearing a uniform. Similar language was incorporated into a draft of the new manual.

But as the Khadr hearing approached, Harold Koh, the State Department legal adviser, pointed out that such a definition could be construed as a concession by the United States that C.I.A. drone operators were war criminals. Jeh Johnson, the Defense Department general counsel, and his staff ultimately agreed with that concern. They redrafted the manual so that murder by an unprivileged combatant would instead be treated like espionage — an offense under domestic law not considered a war crime.

“An accused may be convicted,” the final manual states, if he “engaged in conduct traditionally triable by military commission (e.g., spying; murder committed while the accused did not meet the requirements of privileged belligerency) even if such conduct does not violate the international law of war.”

Under that reformulation, the C.I.A. drone operators — who reportedly fly the aircraft from agency headquarters in Langley, Va. — might theoretically be subject to prosecution in a

Pakistani courtroom. But regardless, the United States can argue to allies that it is not violating the laws of war.

Mr. Alston, the United Nations official, said he agreed with the Obama legal team that “it is not per se illegal” under the laws of war for C.I.A. operatives to fire drone missiles “because anyone can stand up and start to act as a belligerent.” Still, he emphasized, they would not be entitled to battlefield immunity like soldiers.

Mary Ellen O’Connell, a Notre Dame University law professor who has criticized the use of drones away from combat zones, also agreed with the Obama administration’s legal theory in this case. She said it could provide a “small modicum” of protection for C.I.A. operatives, noting that Germany had a statute allowing it to prosecute violations of the Geneva Conventions, but it does not enforce domestic Pakistani laws against murder.

In March, Mr. Koh delivered a speech in which he argued that the drone program was lawful because of the armed conflict with Al Qaeda and the principle of self-defense. He did not address several other murky legal issues, like whether Pakistani officials had secretly consented to the strikes. Mr. Alston, who is a [New York University](#) law professor, said his report would analyze such questions in detail, which may increase pressure on the United States to discuss them.