

Senate Judiciary Committee
Subcommittee on Constitution, Civil Rights and Human Rights
Hearing on “Drone Wars: The Constitutional and Counterterrorism Implications of Targeted Killing”
April 23, 2013

Questions for the Record for Colonel Martha McSally

- The U.S. government has conducted a number of signature strikes against alleged members of al- Qaeda. Do you know what the government’s process is for verifying that a target is indeed a member of al-Qaeda? Similarly, do you know how the administration determines what are “associated forces” of al-Qaeda?

I recommend you request a classified meeting with appropriate leadership and experts in the Intelligence Community and the Pentagon to discuss the process for approval of the use of lethal force against specific individuals. In my experience with the process while serving at United States Africa Command and at the unclassified level, it is my understanding that the process included building an intelligence case using multiple sources of intelligence over an extended period of time as well as a legal analysis as to whether the individual meets the criteria for use of lethal force as authorized by the Authorization for the Use of Military Force (AUMF). In my opinion for the AFRICOM theater, the intelligence and legal thresholds were very high.

A similar process was conducted to assess whether a group was considered an “associated force” of Al Qaeda, and in Africa, that threshold was also quite high. Additionally, just because an individual was approved in theory for use of lethal force, that did not mean we had permission to conduct a strike when all criteria were met. We required strike approval at very high levels of the chain of command with input from the Intelligence Community (IC), Pentagon, State Department, and National Security Council for each use of lethal force. A classified briefing with appropriate leadership and experts can provide details on the process and any variances in other theaters of operations.

- Can you explain when a lawful, tactically feasible drone strike on a potential target outside a clear battlefield -- for example in Yemen or Somalia -- becomes strategically unwise, and how that decision gets made?

I recommend you request a classified meeting with leadership and experts in the IC, Pentagon, State Department, and National Security Council to have a detailed discussion on current strategy in the war on terrorism and the role of lethal force in that strategy. As I mentioned in my testimony, once it is determined that the use of lethal force is legal by domestic and international law, there needs to be a determination as to whether a strike against a specific individual in a specific geographic location under specific circumstances is wise counter-terrorism strategy. The legal threshold usually is much broader than what could be strategically wise in the war on terrorism. Based on my experience and education in national/international security, counter terrorism, and security strategy, some of the strategic considerations are: the value of the individual in

terrorism leadership, planning, and operations; the positive or negative value in psychological and information operations; the willingness and/or ability of the host nation to conduct a capture/kill operation; the consent of the host nation and potential negative or positive impact on relations; the risk of civilian casualties; the cost of the operation; the risk to American lives; and the potentially negative or positive regional political impact. In AFRICOM's theater, this decision was made at very high levels of the chain of command with input from the Pentagon, State Department, Intelligence Community, and National Security Council.