

**INTERNATIONAL LAW AND
CONTEMPORARY WARFARE:
*CHALLENGES AND PRECEDENTS***

SEPTEMBER 16, 2010

**RICHARD D. ROSEN
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DRONES



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ISSUES

- **Governing law**
 - ⇒ **International Humanitarian Law?**
 - ⇒ **Self-Defense?**
 - ⇒ **Human Rights Law?**
 - ⇒ **U.S. Constitution?**

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AUMF

“[T]he President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”

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JUSTIFICATION

“[I]n this ongoing conflict, the United States has the authority under international law, and the responsibility to its citizens to use force, including lethal force, to defend itself, including by targeting persons such as high-level al-Qaeda leaders who are planning attacks. . . .”

**— Harold Hongju Koh, Legal Adviser, U.S.
Department of State**

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JUSTIFICATION

“[I]ndividuals who are part of . . . armed groups [such as al-Qaeda] are belligerents and, therefore, lawful targets under international law”

[A] state that is engaged in armed conflict or in legitimate self-defense is not required to provide targets with legal process before the state may use legal force.”

**— Harold Hongju Koh, Legal Adviser, U.S.
Department of State**

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JUSTIFICATION

Self-defense is only justified “if the necessity of that self-defense is instant, overwhelming, and leaving no choice of means, and no moment for deliberation.”


— *Caroline* Doctrine

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JUSTIFICATION

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence **if an armed attack occurs** against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. . . .”

— U.N. Charter art. 52



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ISSUES

Al-Aulaqi v. Obama, No. 1-10-cv-01469
(D.D.C. filed Aug. 30, 2010)

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Anwar Al Aulaqi

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Nasser Al Aulqi

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Al-Aulaqi v. Obama

- **Violation of Fourth Amendment.**
- **Violation of Fifth Amendment.**
 - ⇒ **Deprivation of life without due process of law**
 - ⇒ **Denial of due process' notice requirements**



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ISSUES

- **Identity of “pilots”**
 - ⇒ **Military personnel?**
 - ⇒ **CIA?**
 - ⇒ **Contractors?**

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ISSUES

- **Location of “pilots”**
 - ⇒ **Afghanistan/Iraq?**
 - ⇒ **United States?**

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ISSUES

- **Location of targets**
 - ⇒ **Afghanistan/Iraq?**
 - ⇒ **Pakistan?**
 - ⇒ **Yemen/Somalia**
 - ⇒ **Belgium?**

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ISSUES

- **Principles of Distinction & Proportionality**
 - ⇒ **Determination of targets?**
 - ⇒ **Collateral damage?**



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