The Great Drone Debate

Amitai Etzioni

Unmanned aviation systems, popularly known as drones, are playing an increased role in armed conflicts.[1] They are used both for collecting intelligence and for deploying lethal force. In 2007 there were 74 U.S. drone strikes in Afghanistan.[2] That year, there were five strikes in Pakistan.[3] By 2012, the American military was executing an average of 33 drone strikes per month in Afghanistan, and the total number in Pakistan has now surpassed 330.[4] Recently the United States has proposed further expanding its deployment of drones, developing plans to set up additional Predator drone bases in Africa that would allow these drones to cover much of the Saharan region.[5]

Drones have been employed in multiple theaters of the counterterrorism campaign, including Yemen, Somalia, Iraq, and Libya. They are now included in the arsenal of many nations including Israel, China, and Iran. They have even been operated by a non-state actor, Hezbollah, which has flown at least two drones over Israel.[6] Several nations are currently developing drones that will be able to carry out highly-specialized missions, for instance tiny drones able to enter constricted areas through narrow passages. If the American military continues to move away from deploying conventional forces on the ground (in Iraq and Afghanistan) to a "light footprint" strategy of "offshore balancing" (as employed in Libya), drones are likely to play an even more important role in future armed conflicts. Like other new armaments (e.g., long-range cruise missiles and high-altitude carpet bombing) the growing use of drones has triggered a considerable debate over the moral and legal grounds on which they are used. This debate is next reviewed.

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PHOTO: An MQ-1C Gray Eagle unmanned aerial vehicle prepares for launch at Michael Army Airfield, Dugway Proving Ground, Utah, 15 September 2011. (U.S. Army, SPC Latoya Wiggins)

Excessive Collateral Damage?

Critics argue that a large number of civilians, including women and children, are killed by drones. Some hold that the number of civilians killed amounts to an overwhelming majority of all those killed. Syed Munawar Hasan, who heads the influential Islamic political party Jamaat-e-Islami in Pakistan, has claimed that the drone strikes "are killing nearly 100 percent

innocent people."[7] Former military officers David Kilcullen and Andrew Exum argued in the *New York Times* that in Pakistan drones kill 50 civilians for every militant. Other critics put forward somewhat lower numbers. A study conducted by the Columbia Law School estimates that 35 percent of the victims of drone strikes in 2011 were civilians. In contrast, American counterterrorism officials put the number as low as 2.5 percent. Deputy National Security Advisor for Homeland Security and Counterterrorism John Brennan claimed that "there hasn't been a single collateral death because of the exceptional proficiency, precision of the capabilities we've been able to develop."[8]

Researchers who conduct comprehensive analyses of the data often provide statistics that fall between these two extremes, though their numbers also differ considerably from one another and fall across a wide range. While the Bureau of Investigative Journalism puts the number as high as 26.5 percent, others estimate that the percentage of civilian casualties falls between 4 percent and 20 percent, and The New America Foundation put the number at a low of 8 percent.[9]

There is no way to settle these differences because often the drone strikes are in areas that are inaccessible to independent observers and the data includes reports by local officials and local media, neither of whom are reliable sources.[10] The most cited statistics on the drone strikes in Pakistan—a data set compiled by the New America Foundation and Peter Bergen—relies completely on media reports.[11] It is a problem that plagues a majority of the media stories on any particular strike: estimates of civilian casualties are often based upon other media reports, producing what the Human Rights Clinic at Columbia Law School calls "an echo chamber" effect.[12]

In short, there is no fully reliable—or even highly reliable—way to determine the ratio of civilian to militant casualties caused by drone strikes. For reasons that follow we shall see that it stands to reason that these strikes cause less collateral damage than other instruments of warfare, though unfortunately are still likely to cause some.

Promiscuous Use?

Critics like *The Atlantic's* Conor Friedersdorf argue that the drone campaign is an "unprecedented campaign of assassination with no apparent end," while Glen Greenwald, writing in *Salon.com*, has described it as a set of "ongoing policies of rampant slaughter, secrecy and lawlessness."[13] Army Chaplain D. Keith Shurtleff, as quoted by P.W. Singer in *The New Atlantis*, warns that "as war becomes safer and easier, as soldiers are removed from the horrors of war and see the enemy not as humans but as blips on a screen, there is a very real danger of losing the deterrent that such horrors provide."[14] Actually the use of drones is kept in check by an extensive set of rules, is subject to considerable *a priori* and *a posteriori* review, and is regulated by Congressional oversight.

Drones are used by the U.S. military—especially the Joint Special Operations Command (JSOC)—and by the CIA. Much more is known about the rules that the military is using in its attempts to limit collateral damage in general (that of drones included) than those used by the CIA. Of the three existing drone programs, the one run by the Air Force in Afghanistan (and to a much lesser extent in Iraq) has the most clearly defined scope and targeting procedures. Drone strikes in Pakistan, which are mostly under the charge of the CIA, and those in Yemen, some of which are operated by the CIA and others by the JSOC, operate with a greater degree of secrecy. As far as is known, these CIA and JSOC strikes follow targeting procedures similar to those used by the military.

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The military rules include a long list of "no strike" targets including diplomatic offices, medical facilities, prisons, schools, and structures whose destruction will result in uncontainable environmental damages.[15] They also include a host of other structures which are generally restricted from being targeted, including agricultural facilities, water and power utilities, recreational complexes, parks, restaurants, and retail stores. These regulations also cover a range of potential "dual-use" targets—targets that

perform a combination of civilian and military functions—which are generally disallowed for military targeting absent higher-level authorization or specific intelligence demonstrating that only the military functions of the building in question are being used.

The more sensitive the target, (i.e., the more likely that innocent civilians might be involved), the higher in the ranks that approval must be sought, sometimes extending all the way to the president or the director of the CIA. President Obama is reported to personally review the files of all known terrorists before he approves their inclusion in a hit list.[16]

Michael Scheuer, formerly of the CIA, scoffs at the charge that the review process is not rigorous. He reports that the procedure for nominating individuals for targeted killings is so exhaustive that the CIA often failed to kill those who ought to have been eliminated. Quoted in a 2011 article for *Newsweek,* Scheuer stated that each nomination, including a short document and "an appendix with supporting information," was passed along to departmental lawyers, who were "very picky. Often this caused a missed opportunity. The whole idea that people got shot because someone has a hunch—I only wish that was true."[17]

John Brennan puts together a weekly "potential target list" based on Pentagon recommendations, which his staff then discusses with other agencies (such as the State Department) before making final recommendations to the president, according to the Associated Press. It is the president who then makes the final decision regarding whether to target someone with a kinetic strike.

Further, the Department of Defense (DOD) employs multiple teams of lawyers that are responsible for determining the legality of specific strikes. These lawyers have undergone "special training in the Geneva conventions," and are instructed to guarantee that each targeted killing upholds international humanitarian law, official rules of engagement, and mission-specific instructions, reports *The Guardian's* Pratap Chatterjee.[18] The DOD employs some 12,000 lawyers.[19] During the Iraq War surge, there was one lawyer for every 240 combatants.[20] Some may wish there were even more, but no one should argue that orders to kill terrorists were not subject to close review.

In an op-ed for *Foreign Policy*, Jack Goldsmith argues that the review process for designating an

(Official White House Photo by Pete Souza)

President Barack Obama listens as Defense Secretary Leon Panetta speaks during a Cabinet meeting, 28 November 2012.

individual for a strike "goes far beyond any process given to any target in any war in American history."[21] In effect, these lawyers and other staff conduct hearings of a sort, in which evidence is presented and lawyers are instructed to guarantee that each targeted killing upholds all applicable laws and rules before the target is approved. I would add to this process a position for a lawyer explicitly charged with acting as a "guardian" of the terrorists who, in effect, are tried *in absentia*. All lawyers of course have and ought to have the proper level of security clearance.

The Senate Foreign Relations committee reports that the military requires "two verifiable human sources" and "substantial additional evidence" that a potential target is an enemy.[22] The first requirement for all drone strikes is to establish "positive identification" of the target in question, which constitutes "reasonable certainty that a functionally and geospatially defined object of attack is a legitimate military target in accordance with the law of war and applicable ROE [rules of engagement]."[23]

As for oversight, Senator Dianne Feinstein, who according to *The Los Angeles Times*, had been previously critical of the drone program's lack of transparency, released a statement on 7 March 2012 affirming that the "Senate Intelligence Committee is kept fully informed of counterterrorism operations and keeps close watch to make sure they are effective, responsible and in keeping with U.S. and international law."[24] Specifically, staffers from the intelligence committees watch footage of the previous month's drone strikes and review the intelligence used to justify the killings. They also learn about the number of civilian casualties. According to Feinstein, the staffers "question every aspect of the program including legality, effectiveness, precision, foreign policy implications and the care taken to minimize noncombatant casualties."[25]

In early February 2013, the media obtained a confidential Department of Justice white paper detailing the conditions under which the Obama Administration considers the overseas targeted killing of U.S. citizens who are "senior operational leaders" of Al-Qaeda or "an associated force" to be legal. The memo, which had been distributed to members of the Senate Intelligence and Judiciary committees in June of 2012, states three criteria that must be met if a strike is to be judged lawful.

Commandant of the Marine Corps GEN James T. Conway speaks with BG Larry D. Nicholson, the commanding general of Marine Expeditionary Brigade-Afghanistan, at Camp Leatherneck, Afghanistan, 23 August 2009. (U.S. Marine Corps, SGT Joshua Greenfield)

First, the target must be considered an "imminent threat." The white paper's definition of "imminent" is an expansive one. According to the paper, the government can label a threat as "imminent" even if it does not have "evidence that a specific attack on U.S. persons and interests will take place in the immediate future."[26] Rather, a person might be viewed as an "imminent threat" if an "informed, high-level" government official determines that the target has been recently involved in activities that pose a threat of violent attack and "there is no evidence suggesting that [the target] has renounced or abandoned such activities."[27] This definition has troubled some legal observers such as Jameel Jaffer, deputy director of the ACLU, who contends that the white paper "redefines the word imminence in a way that deprives the word of its ordinary meaning."[28] As I see it Al-Qaeda and such other groups are not dual-purpose organizations; one does not join them to provide social services and maybe engage in terrorism. They are dedicated to perpetrating

harm. Being a member seems enough to condemn someone—just as if he were a solider in an attacking army. He would qualify as a target even when not actually engaging in an attack but say training, or regrouping, or taking a break.

The second criterion for a targeted killing to be considered lawful by the administration is that the capture of the target must be "infeasible." This is understood to mean "undue risk to U.S. personnel conducting a potential capture operation."[29] Good enough for any sensible person.

The third criterion is that such strikes must be in accordance with "fundamental law-of-war principles," namely that they do not violate principles of "necessity, distinction, proportionality, and humanity (the avoidance of unnecessary suffering)."[30]

Critics of the program argue that such standards are an insufficient check upon the powers of the executive. For instance, James Downie argues in the *Washington Post* that the willingness of the memo's authors to favorably interpret various terms within the criteria suggests that the administration could functionally "set its own standards" based upon how it decides to interpret phrases like "informed, high-level officials."[31] Similarly, the ACLU's Jameel Jaffer argues that the document "recognizes some limits on the authority it sets out, but the limits are elastic and vaguely defined, and it's easy to see how they could be manipulated."[32] This point was made perhaps most clearly by Law Professor Mary Ellen O'Connell, who argues in The New York Times that:

> The paper's sweeping claims of executive power are audacious. For a threat to be deemed "imminent," it is not necessary for a specific attack to be under way. The paper denies Congress and the federal courts a role in authorizing the killings — or even reviewing them afterward. In doing so, it cites the authorization of force that Congress granted to President George W. Bush after 9/11.[33]

These concerns might be addressed by adding what in effect amounts to a drone or counterterrorism court. Senator Feinstein has recently proposed developing a special court to oversee the implementation of lethal drone strikes—one that might serve as a check on executive power.[34] Similar to the Foreign Intelligence Surveillance Court, a court which meets in secret to rule on requests to wiretap suspected terrorists, this proposed court would grant judges some oversight of who could be targeted by drones.

James Robertson, a retired federal judge, has argued in The Washington Post that monitoring and approving policy runs counter to a long and widely-accepted view of the role of the judiciary in government. He contends that a judge issuing an "advisory opinion" to condemn a person who is not present to defend himself is a violation of the defining features of American justice. Instead, Robertson argues that such decisions should be left to Congress or the executive branch. [35]

Indeed, others have argued that such an approach jeopardizes counterterrorism efforts and that oversight would be best located within the executive branch. Former solicitor general Neal Kaytal, for example, has argued that federal judges lack expertise and could delay counterterrorist operations, as they are unused to operating on fast timetables or making the sort of pre-emptive judgments that would be required of a court that oversees drones.[36] Rather, he argues that a better review process would be one that takes place within the executive branch, with the most senior national security advisors adjudicating cases argued by expert lawyers.[37]

One can disagree about which reviews by what kind of authority would serve best our system of justice while not unduly hobbling security. And adding a layer of review might be justified. However no one can argue that these decisions are made lightly and without careful deliberations, both about the individuals involved and the principles that guide these deliberations.

These restraints are maintained despite evidence showing that terrorists are both aware of these self-imposed limitations and use them to their advantage by stationing combatants, supplies, and weapons in mosques, schools, and private homes. In his book *The Wrong War: Grit, Energy, and the Way Out of Afghanistan*, Bing West quotes American servicemen reporting that the "Taliban fight from compounds where there are women and children . . . [so] we can't push the Talibs [sic] out by mortar fire without being blamed for civilian casualties."[38] West also reports that Taliban troops often fired at American soldiers from private homes, mosques, buildings owned by the Red Crescent, and other locales where civilians were likely to be.

Rajiv Chandrasekaran, author of another book on the war in Afghanistan, notes how "In many cases, insurgents would seek refuge in compounds inhabited by women and children—so as to use them as human shields or, if the house was bombed to bits, as pawns in their propaganda campaign to convince the Afghan people that coalition forces were indiscriminate murderers of the innocent."[39] This problem was exacerbated by the fact that the "new rules prevented air strikes on residential buildings unless troops were in imminent danger of being overrun or the house had been observed for more than twenty-four hours to ensure no civilians were inside. If the bad guys ran into a home, they would have a free pass, unless the Americans were willing to wait them out."[40] Chandrasekaran further quotes Brigadier General Larry Nicholson, who, citing these rules, worried that "If we have to treat every house like a mosque, it'll result in a whole lot more casualties."[41]

The discussion over drones tends to conflate two issues: should the United States set out to kill the particular person in question—and, if so, should drones be used rather than Special Forces, bombers, cruise missiles, or some other tool? The drone issue is irrelevant to the first question. At the same time it is clear–or at least should be–that *if kill we must*, drones are the preferable instrument. Compared to Special Forces and even bombers, the use of drones precludes casualties on our side—not a trivial matter.[42] Moreover, because drones can linger over the target for hours if need be, often undetected, they allow for a much closer review and much more selective targeting process than do other instruments of warfare. This important fact is even recognized by the President of the International Committee of the Red Cross, Jakob Kellenberger. In his 2011 keynote address at the 34th Round Table on Current Issues of International Humanitarian Law, Kellenberger conceded that because drones have "enhanced real-time aerial surveillance possibilities," they "thereby [allow] belligerents to carry out their attacks more precisely against military objectives and thus reduce civilian casualties and damage to civilian objects—in other words, to exercise greater precaution in attack."[43]

Other critics argue that drones strikes engender much resentment among the local population and serve as a major recruitment tool for the terrorists, possibly radicalizing more individuals than they neutralize. This argument has been made especially in reference to Pakistan, where there were anti-American demonstrations following drones strikes, as well as in Yemen.[44] However, such arguments do not take into account the fact that anti-American sentiment in these areas ran high before drone strikes took place and remained so during periods in which strikes were significantly scaled back. Moreover, other developments—such as the release of an anti-Muslim movie trailer by an Egyptian Copt from California or the publication of incendiary cartoons by a Danish newspaper—led to much larger demonstrations. Hence stopping drone strikes—if they are otherwise justified, and especially given that they are a very effective and low-cost way to neutralize terrorist violence on the ground[45]—merely for public relations purposes seems imprudent.

"Extrajudicial Killing" and outside "Theaters of War"?

Critics employ two lines of legal criticism. One labels the killing of terrorists by drones (or other means) as "extrajudicial killings," implying that only courts can legitimately mete out a death sentence. Michael Boyle, for example, contends in *The Guardian* that "the president has routinized and normalized extrajudicial killing from the Oval Office, taking advantage of America's temporary advantage in drone technology to wage a series of shadow wars."[46] Similarly Conor Friedersdorf has argued in *The Atlantic* that the drone policy is passing death sentences "based on the unchecked authority of the president, who declares himself judge, jury, and executioner."[47] The assumption underlying these criticisms is that terrorists (those who are non-Americans and operating overseas)

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(U.S. Army , SPC Latoya Wiggins)

Workers prepare an MQ-1C Gray Eagle unmanned aerial vehicle for static display at Michael Army Airfield, Dugway Proving Ground, in Utah, 15 September 2011.

are nevertheless to be treated as ordinary criminals (i.e., captured and tried in American civilian courts). However, these critics do not address the question of how America is to treat terrorists that either cannot be captured or can only be captured at a very great risk to our troops and, most likely, following the invasion of other countries (for instance, capturing those that make Northern Waziristan their base).

Nor is it clear on what grounds citizens of other nations, attacking our embassies, ships, and forces overseas, should be treated as American citizens, with all the rights thereof. Obviously if they were wearing a uniform or otherwise distinguish themselves from the civilian population (as the rules of armed conflict require) they would be killed and no one would see this as a legal issue. This is what takes place in all instances of war. Why one would hold that we ought to grant numerous extra rights to people just because they fight us in an unfair way (so to speak), and, at the very least, illegally, seems difficult to comprehend. In addition, as Philip Bobbitt and Benjamin Wittes have pointed out, trying terrorists in civilian courts would not only force us to reveal sensitive sources and methods used to gather evidence in the first place, but such trials would also tend to lead to plea bargains because the evidence—collected in combat zones—often does not meet the stringent standards of civilian courts.[48]

We would also be forced to let terrorists loose once they completed their—historically short—sentences. (By the end of 2011, civilian courts had adjudicated 204 cases of terrorism: 63 percent of convictions were garnered through a plea bargain, 40 percent of the sentences were under 5 years in length, and 30 percent were between 5 and 10 years. These statistics and others have been diligently recorded by Karen J. Greenberg et al., in a report published by the Center on Law and Security at the NYU School of Law.) To reiterate, as the preceding discussion has shown, terrorist

executions are carefully and extensively reviewed, albeit by different authorities and according to different procedures than those of our civilian courts.

Another line of criticism takes the opposite viewpoint, treating terrorists not as if they were criminals but as if they were soldiers. They hence are to be treated in accordance with the rules of warfare, such as the Geneva Conventions. These rules require that America strike terrorists only in "declared theaters of war," and treat those it captures as prisoners of war. In a 2010 debate at Fordham Law School, Mary Ellen O'Connell contended that "Targeting with the intent to kill an individual is only lawful under international humanitarian law or LOAC (the Law of Armed Conflict) within armed conflict hostilities, and then only members of regular armed forces, members of organized armed groups, or direct participants in those hostilities . . . [thus, because] the United States is only engaged in armed conflict in Afghanistan, targeted killing elsewhere is not commensurate with the law."[49] By this view, drone strikes in Pakistan and elsewhere are legally impermissible.

Regarding the first point—that we must only target terrorists within declared theaters of war—one notes that terrorists readily move from one country to another. Taliban and Al-Qaeda move often and rather freely between Afghanistan and Pakistan. For example, the Pakistani Inter-Services Intelligence is working with the Haqqani network that has offshoots in Afghanistan and elsewhere according to the Council on Foreign Relations. Further, the Council reports that Al-Qaeda members and Jihadist fighters are moving in and out of Yemen, Somalia, Mali, and Libya. If we can confirm that a person either is a terrorist or has plans to—or has planned on—killing our troops, civilians, or allies, then the fact that they disregard and cross an unenforced line hardly seems a reasonable criteria for shielding them.

Critics often ask "well if the whole world is now treated as a theater of war, would you kill terrorists even when they were located in a democratic nation?" The question is asked rhetorically, the absurdity of such a move assumed to be self-evident. However, one should not be too quick to concede this point, for if Washington had reliable intelligence that some terrorists based in Germany were preparing to strike us, we would ask the German government to deal with them. If the German government refused—perhaps on the grounds that German laws do not allow a response—we surely would neutralize these terrorists one way or another. This is what we are doing in Pakistan, a democratic country who we consider to be our ally, and this is what we did when we captured and surreptitiously removed suspected terrorist Osama Moustafa Hassan Nasr from Italy. If the current counterterrorism campaign takes the whole world as its theater, the distinction between democratic and authoritarian allies is quickly replaced by the distinction between cooperative and non-compliant counterterrorism partners.

Once captured, treating terrorist suspects as prisoners of war presumes that they can be held until the war is over. However, counterterrorism campaigns as a rule have no clear starting or ending dates; as it has been put elsewhere, in these campaigns there is no signing ceremony of peace treaties on aircraft carriers. Rather, they tend to peter out slowly, leaving no clear guide for how long we can hold captured terrorists if we to treat them by the rules of war.

As others have pointed out, we need distinct legal procedures and authorities for dealing with

CW2 Dylan Ferguson, a brigade aviation element officer with the 82nd Airborne Division's 1st Brigade Combat Team, launches a Puma unmanned aerial vehicle, 25 June 2012. (U.S. Army, SGT Jonathan Shaw)

terrorists who are neither criminals nor soldiers. So far they have been left in a sort of legal limbo, a legal ambiguity that surrounds not merely drone strikes, but all counterterrorism endeavors.[50] The proper legal status of these individuals will not be cleared up until we move beyond the simplistic dichotomy that terrorists must be viewed either as criminals or as soldiers and instead recognize that they are a distinct breed of enemy, with a distinct legal status: that of fighters who violate the rules of armed conflict and often deliberately target civilian populations in order to wreak terror. To call them soldiers is to unduly honor them; to view them as garden variety criminals is to undervalue both their misbegotten deeds and the danger they pose.

The media carried a report on 4 February 2013 about a "white paper" that reflects the Obama Administration's rationale for carrying out what are called "extrajudicial killings." Accordingly, the Administration is considering as legal and legitimate the killing of terrorists—including Americans overseas—as long as such action meets three criteria: the targets are considered an imminent threat to the United States, with imminence being broadly defined to include individuals judged by "high-level" personnel to have been recently involved in activities that posed a threat of violent attack with no evidence that said individual has "renounced or abandoned such activities"; their capture was "infeasible"; and the strike was to be conducted according to "the law of war principles."[51]

The memo shows the deliberations to be far from complete given that the third criterion raises more questions that it answers. Critics correctly point out that the memo basically stated that such strikes are legal—if a high ranking administration official so rules.[52]

Critics argue that drone strikes alienate the population and thus help Al-Qaeda's recruitment, generating more terrorists than are killed. These statements, which may at first seem "obviously true," are not supported by data. In fact, the resentment of the United States has many sources, and this resentment was high before drones were used and is high in several nations in the Middle East where drones were never used.

For example, a comparison of drone strike frequency in Pakistan and anti-American sentiment in the country reveals little correlation. From 2004 to 2007, there were few drone strikes in that country (only 10 over the four year span).[53] However, starting in 2008 the United States carried out a total of 36 drone strikes, with this number increasing in subsequent years to 54 strikes and 122 strikes, respectively.[54] From this peak in 2010, the number of drone strikes per year began to decline with 73 strikes in 2011 and 48 in 2012. [55] In the same years, data from the Pew Global Attitudes Project reveals that the percentage of Pakistanis who held an "unfavorable" view of the United States remained relatively steady from 2008 to 2010, beginning to increase only after the United States scaled back the number of drone strikes starting in 2011.[56] Moreover anti American sentiments were as high or higher in the same years in Jordan, Egypt, Turkey, and the Palestinian territories.[57]

Thus, in 2007, 2009, and 2010, the United States' unfavorability in Pakistan held steady at 68 percent (dropping briefly to 63 percent in 2008), but then began to increase, rising to 73 percent in 2011 and 80 percent in 2012—even as the number of drone strikes was dropping significantly.[58] At the same time, anti-American sentiment was on the rise in countries where no drone strikes were taking place. In Jordan, for example, U.S. unfavorability rose from 78 percent in 2007 to 86 percent in 2012 while Egypt saw a slight rise from 78 percent to 79 percent over the same period.[59] Notably, the percentage of respondents reporting an "unfavorable" view of the United States in these countries is as high, or higher, than in drone-targeted Pakistan.

Other critics contend that by the United States using drones, it leads other countries into making and using them. For example, Medea Benjamin, the co-founder of the anti-war activist group CODEPINK and author of a book about drones argues that, "The proliferation of drones should evoke reflection on the precedent that the United States is setting by killing anyone it wants, anywhere it wants, on the basis of secret information. Other nations and non-state entities are watching—and are bound to start acting in a similar fashion."[60] Indeed scores of countries are now manufacturing or purchasing drones. There can be little doubt that the fact that drones have served the United States well has helped to popularize them. However, it does not follow that United States should not have employed drones in the hope that

such a show of restraint would deter others. First of all, this would have meant that either the United States would have had to allow terrorists in hard-to-reach places, say North Waziristan, to either roam and rest freely—or it would have had to use bombs that would have caused much greater collateral damage.

Further, the record shows that even when the United States did not develop a particular weapon, others did. Thus, China has taken the lead in the development of anti-ship missiles and seemingly cyber weapons as well. One must keep in mind that the international environment is a hostile one. Countries—and especially non-state actors—most of the time do not play by some set of self-constraining rules. Rather, they tend to employ whatever weapons they can obtain that will further their interests. The United States correctly does not assume that it can rely on some non-existent implicit gentleman's agreements that call for the avoidance of new military technology by nation X or terrorist group Y—if the United States refrains from employing that technology.

I am not arguing that there are *no* natural norms that restrain behavior. There are certainly some that exist, particularly in situations where all parties benefit from the norms (e.g., the granting of diplomatic immunity) or where particularly horrifying weapons are involved (e.g., weapons of mass destruction). However drones are but one step—following bombers and missiles—in the development of distant battlefield technologies. (Robotic soldiers—or future fighting machines—are next in line). In such circumstances, the role of norms is much more limited.

Industrial Warfare?

Mary Dudziak of the University of Southern California's Gould School of Law opines that "[d]rones are a technological step that further isolates the American people from military action, undermining political checks on . . . endless war." Similarly, Noel Sharkey, in *The Guardian*, worries that drones represent "the final step in the industrial revolution of war—a clean factory of slaughter with no physical blood on our hands and none of our own side killed."

This kind of cocktail-party sociology does not stand up to even the most minimal critical examination. Would the people of the United States, Afghanistan, and Pakistan be better off if terrorists were killed in "hot" blood—say, knifed by Special Forces, blood and brain matter splashing in their faces? Would they be better off if our troops, in order to reach the terrorists, had to go through improvised explosive devices blowing up their legs and arms and gauntlets of machinegun fire and rocket-propelled grenades—traumatic experiences that turn some of them into psychopath-like killers?

Perhaps if *all* or *most* fighting were done in a cold-blooded, push-button way, it might well have the effects suggested above. However, as long as what we are talking about are a few hundred drone drivers, what they do or do not feel has no discernible effects on the nation or the leaders who declare war. Indeed, there is no evidence that the introduction of drones (and before that, high-level bombing and cruise missiles that were criticized on the same grounds) made going to war more likely or its extension more acceptable. Anybody who followed the American disengagement in Vietnam after the introduction of high-level bombing, or the U.S. withdrawal from Afghanistan (and Iraq)—despite the considerable increases in drone strikes—knows better. In effect, the opposite argument may well hold: if the United States could not draw on drones in Yemen and the other new theaters of the counterterrorism campaign, the nation might well have been forced to rely more on conventional troops and prolong our involvement in those areas, a choice which would greatly increase our casualties and zones of warfare.

This line of criticism also neglects a potential upside of drones. As philosopher Bradley Strawser notes, this ability to deploy force abroad with minimal United States casualties may allow America to intervene in emerging humanitarian crises across the world with a greater degree of flexibility and effectiveness.[61] Rather than reliving another "Black-hawk down" scenario, the United States can follow the model of the Libya intervention, where drones were used by NATO forces to eliminate enemy armor and air defenses, paving the way for the highly successful air campaign which followed, as reported by *The Guardian's* Nick Hopkins.

As I see it, however, the main point of moral judgment comes earlier in the chain of action, well before we come to the question of which means are

to be used to kill the enemy. The main turning point concerns the question of whether we should go to war at all. This is the crucial decision because once we engage in war, we must assume that there are going to be a large number of casualties on all sides—casualties that may well include innocent civilians. Often, discussions of targeted killings strike me as being written by people who yearn for a nice clean war, one in which only bad people will be killed using surgical strikes that inflict no collateral damage. Very few armed confrontations unfold in this way.

Hence, when we deliberate whether or not to fight, we should assume that once we step on this train, it is very likely to carry us to places we would rather not go. Drones are merely a new stepping stone on this woeful journey. Thus, we should carefully deliberate before we join or initiate any new armed fights, but draw on drones extensively, if fight we must. They are more easily scrutinized and reviewed, and are more morally justified, than any other means of warfare available. ***MR***

NOTES

1. I am indebted to Jeffrey Gianattasio for research assistance and to Jesse Spafford for editorial comments.

2. Christopher Drew, "Drones are playing a growing role in Afghanistan," *The New York Times*, 19 February 2010.

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