COUNCIL on FOREIGN RELATIONS

Center for Preventive Action

Council Special Report No. 65
January 2013

Micah Zenko

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Foreword

Over the last ten years, drones have become a critical tool in the war against terrorist and militant organizations worldwide. Their advantages over other weapons and intelligence systems are well known. They can silently observe an individual, group, or location for hours on end, but take immediate action should a strike opportunity become available—all without putting a pilot at risk. This combination of capabilities is unique and has allowed the United States to decimate the leadership of al-Qaeda in Afghanistan and disrupt the activities of many other militant groups.

Yet, as Micah Zenko writes in this Council Special Report, drones are not without their drawbacks, especially with regard to targeted killings. Like any tool, drones are only as useful as the information guiding them, and for this they are heavily reliant on local military and intelligence cooperation. More important, significant questions exist about who constitutes a legitimate target and under what circumstances it is acceptable to strike. There is also the question of net utility: To what extent are the specific benefits derived from drone strikes offset by the reality that the strikes often alienate the local government and population? And there is the reality that drones are proliferating but, as is often the case with new technologies, the international legal and regulatory framework is lagging behind.

Zenko puts forward a substantive agenda. He argues that the United States should end so-called signature strikes, which target unidentified militants based on their behavior patterns and personal networks, and limit targeted killings to a limited number of specific terrorists with transnational ambitions. He also calls Congress to improve its oversight of drone strikes and to continue restrictions on armed drone sales. Finally, he recommends that the United States work internationally to establish rules and norms governing the use of drones.

Reforming U.S. Drone Strike Policies raises an important and underexamined set of issues. It analyzes the potentially serious consequences, both at home and abroad, of a lightly overseen drone program and makes recommendations for improving its governance. The result is a provocative report that is well worth reading and contemplating.

Richard N. Haass
President
Council on Foreign Relations
January 2013

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Micah Zenko

Council Special Report

Introduction

Over the past decade, the use of unmanned aerial systems—commonly referred to as drones—by the U.S. government has expanded exponentially in scope, location, and frequency.[1] From September 2001 to April 2012, the U.S. military increased its drone inventory from fifty to seventy-five hundred—of which approximately 5 percent can be armed.[2] Yet despite the unprecedented escalation of its fleet and missions, the U.S. government has not provided a clear explanation of how drone strikes in nonbattlefield settings are coordinated with broader foreign policy objectives, the scope of legitimate targets, and the legal framework. Drones are critical counterterrorism tools that advance U.S. interests around the globe, but this lack of transparency threatens to limit U.S. freedom of action and risks proliferation of armed drone technology without the requisite normative framework.

Existing practices carry two major risks for U.S. interests that are likely to grow over time. The first comes from operational restrictions on drones due to domestic and international pressure. In the United States, the public and policymakers are increasingly uneasy with limited transparency for targeted killings.[3] If the present trajectory continues, drones may share the fate of Bush-era enhanced interrogation techniques and warrantless wiretapping—the unpopularity and illegality of which eventually caused the policy's demise. Internationally, objections from host states and other counterterrorism partners could also severely circumscribe drones' effectiveness. Host states have grown frustrated with U.S. drone policy, while opposition by nonhost partners could impose additional restrictions on the use of drones. Reforming U.S. drone strike policies can do much to allay concerns internationally by ensuring that targeted killings are defensible under international legal regimes that the United States itself helped establish, and by allowing U.S. officials to openly address concerns and counter misinformation.

The second major risk is that of proliferation. Over the next decade, the U.S. near-monopoly on drone strikes will erode as more countries develop and hone this capability. The advantages and effectiveness of drones in attacking hard-to-reach and time-sensitive targets are compelling many countries to indigenously develop or explore purchasing unmanned aerial systems. In this uncharted territory, U.S. policy provides a powerful precedent for other states and nonstate actors that will increasingly deploy drones with potentially dangerous ramifications. Reforming its practices could allow the United States to regain moral authority in dealings with other states and credibly engage with the international community to shape norms for responsible drone use.

The current trajectory of U.S. drone strike policies is unsustainable. Without reform from within, drones risk becoming an unregulated, unaccountable vehicle for states to deploy lethal force with impunity. Consequently, the United States should more fully explain and reform aspects of its policies on drone strikes in nonbattlefield settings by ending the controversial practice of "signature strikes"; limiting targeted killings to leaders of transnational terrorist organizations and individuals with direct involvement in past or ongoing plots against the United States and its allies; and clarifying rules of the road for drone strikes in nonbattlefield settings. Given that the United States is currently the only country—other than the United Kingdom in the traditional battlefield of Afghanistan and perhaps Israel—to use drones to attack the sovereign territory of another country, it has a unique opportunity and responsibility to engage relevant international actors and shape development of a normative framework for acceptable use of drones.

Although reforming U.S. drone strike policies will be difficult and will require sustained high-level attention to balance transparency with the need to protect sensitive intelligence sources and methods, it would serve U.S. national interests by

- allowing policymakers and diplomats to paint a more accurate portrayal of drones to counter the myths and misperceptions that currently remain unaddressed due to secrecy concerns;
- placing the use of drones as a counterterrorism tactic on a more legitimate and defensible footing with domestic and international audiences;

- increasing the likelihood that the United States will sustain the international tolerance and cooperation required to carry out future drone strikes, such as intelligence support and host-state basing rights;
- exerting a normative influence on the policies and actions of other states; and
- providing current and future U.S. administrations with the requisite political leverage to shape and promote responsible use of drones by other states and nonstate actors.

As Obama administration officials have warned about the proliferation of drones, "If we want other nations to use these technologies responsibly, we must use them responsibly."[4]

How Drones Are Different

The U.S. use of armed drones has two unique advantages over manned aircraft, distant missile strikes, and special operations raids when it comes to destroying targets. First, drones allow for sustained persistence over potential targets. The existing U.S. arsenal of armed drones—primarily the Predator and Reaper—can remain aloft, fully loaded with munitions, for over fourteen hours, compared to four hours or less for F-16 fighter jets and A-10 ground attack aircraft.[5] And unlike manned aircraft or raids, drones fly directly over hostile territory without placing pilots or ground troops at risk of injury, capture, or death.

Second, drones provide a near-instantaneous responsiveness—dramatically shrinking what U.S. military targeting experts call the "find-fix-finish" loop—that most other platforms lack. For example, a drone-fired missile travels faster than the speed of sound, striking a target within seconds—often before it is heard by people on the ground. This ability stands in stark contrast to the August 1998 cruise missile salvo targeting Osama bin Laden, which had to be programmed based on projections of where he would be in four to six hours, to allow time to analyze the intelligence, obtain presidential authorization, program the missiles, and fly them to the target.[6] Intercontinental ballistic missiles (ICBMs) loaded with conventional munitions can reach distant targets much faster than cruise missiles, but they carry the dire risk of misattribution as a U.S. nuclear first strike against Russia or China, for instance. Finally, drone-fired missiles can be—and have been—diverted at the last moment if noncombatants enter the likely blast radius.[7]

Altogether, such advantages result in far less collateral damage from drones than other weapons platforms or special operations raids, according to U.S. military officials.[8] However, drones suffer two limitations. First, the precision and discrimination of drones are only as good as the supporting intelligence, which is derived from multiple sources.

In the tribal areas along the border of Afghanistan and Pakistan, for instance, the Central Intelligence Agency (CIA) reportedly maintains a paramilitary force of three thousand ethnic Pashtuns to capture, kill, and collect intelligence.[9] The CIA and U.S. military also cooperate with their Pakistani counterparts to collect human and signals intelligence to identify and track suspected militants.[10] In addition, the Pakistani army clears the airspace for U.S. drones, and when they inadvertently crash, Pakistani troops have repeatedly fought the Taliban to recover the wreckage.[11] In states without a vast network of enabling intelligence, the CIA or Joint Special Operations Command (JSOC) have significantly less situational awareness and precise targeting information for drones.

Second, U.S. drones have benefited from host-state support, which the United States has helped to secure with extensive side payments in foreign aid and security assistance. The few hundred Predator and Reaper drones that currently conduct distant airstrikes leverage a system-wide infrastructure that includes host-state permission to base drones and associated launch and recovery personnel, overflight rights in transit countries, nearby search-and-rescue forces to recover downed drones, satellites or assured access to commercial satellite bandwidth to transmit command-and-control data, and human intelligence assets on the ground to help identify targets.[12] To this end, the United States takes advantage of relatively permissive environments, largely unthreatened by antiaircraft guns or surface-to-air missiles, in the countries where nonbattlefield targeted killings have occurred. According to Lieutenant General David Deptula, former Air Force deputy chief of staff for intelligence, "Some of the [drones] that we have today, you put in a high-threat environment, and they'll start falling from the sky like rain." In fact, in 1995, relatively unsophisticated Serbian antiaircraft guns shot down two of the first three Predator drones deployed outside of the United States, and Iraqi jet fighters shot down a Predator in 2002.[13] Although the next generation of armed drones should be more resilient, current versions lack the speed, stealth, and decoy capabilities to protect themselves against even relatively simple air defense systems.

The combination of persistence and responsiveness, high-quality intelligence infrastructures, and tacit host-state support have made drones the preeminent tool for U.S. lethal operations against suspected terrorists and militants where states are unable to singlehandedly deal with the threat they pose. As a result, drones are not just another

weapons platform. Instead, they provide the United States with a distinct capability that significantly reduces many of the inherent political, diplomatic, and military risks of targeted killings.

Compared to other military tools, the advantages of using drones—particularly, that they avoid direct risks to U.S. servicemembers—vastly outweigh the limited costs and consequences. Decision-makers are now much more likely to use lethal force against a range of perceived threats than in the past. Since 9/11, over 95 percent of all nonbattlefield targeted killings have been conducted by drones—the remaining attacks were JSOC raids and AC-130 gunships and offshore sea- or air-launched cruise missiles. And the frequency of drone strikes is only increasing over time. George W. Bush authorized more nonbattlefield targeted killing strikes than any of his predecessors (50), and Barack Obama has more than septupled that number since he entered office (350). Yet without any meaningful checks—imposed by domestic or international political pressure—or sustained oversight from other branches of government, U.S. drone strikes create a moral hazard because of the negligible risks from such strikes and the unprecedented disconnect between American officials and personnel and the actual effects on the ground.[14] However, targeted killings by other platforms would almost certainly inflict greater collateral damage, and the effectiveness of drones makes targeted killings the more likely policy option compared to capturing suspected militants or other nonmilitary options.

Drone strikes outside of defined battlefields are inherently difficult to assess and analyze. Programs and missions are highly classified. Unlike other controversial counterterrorism programs that expanded in the wake of 9/11, the Bush administration never openly discussed any aspects of its targeted killing policies. In comparison, the Obama administration has been much more transparent, beginning with its first official acknowledgment of the practice of targeted killings by drones in April 2012. Nevertheless, strikes by the CIA remain covert, defined by law as "an activity or activities . . . where it is intended that the role of the United States Government will not be apparent or acknowledged publicly," while drone strikes conducted by JSOC in Yemen or Somalia are publicly reported to Congress as "direct actions," albeit with no specificity.[15]

Issues in U.S. Drone Strike Policies

There are four critical issues confronting U.S. drone strike policies: coordination with broader U.S. foreign policy objectives, signature strikes and civilian casualties, transparency and oversight, and legality.

COORDINATION WITH BROADER U.S. FOREIGN POLICY OBJECTIVES

The Obama administration argues that drone strikes are only one tool of national power that is carefully integrated into broader foreign policy objectives. For example, operations conducted by JSOC are "coordinated" with the local U.S. ambassador and fall under the command of the regional combatant commander. Drone strikes conducted by the CIA in nonbattlefield settings are not similarly coordinated, however, and successive U.S. ambassadors to Pakistan have objected to the intensity and timing of certain CIA drone strikes.[16]

The articulated objective of the U.S. counterterrorism strategy is to destroy and eliminate al-Qaeda from "Afghanistan, Pakistan, Yemen, Africa, and other areas," according to White House senior counterterrorism adviser John Brennan.[17] In a narrow military sense, drone strikes have proven effective in achieving their initial objective: killing suspected "high-value" al-Qaeda leaders. In 2009, CIA director Leon Panetta observed that drones are "the only game in town in terms of confronting or trying to disrupt the al-Qaeda leadership," which remains the position of the Obama administration.[18] By December 2011, President Obama boasted, "twenty-two out of thirty top al-Qaeda leaders [have] been taken off the battlefield"—all but Osama bin Laden via drone strikes. In one of his final letters to his followers, bin Laden warned of "the importance of the exit from Waziristan of the brother leaders . . . and that you choose distant locations to which to move them,

away from aircraft photography and bombardment."[19] Altogether, U.S. drone strikes in Pakistan, Yemen, and Somalia have significantly degraded the capability of al-Qaeda to plan or conduct acts of international terrorism.

From a strategic perspective, however, it remains unclear if drone strikes are successful or sustainable. There is a clear disconnect between whom the Obama administration claims to target with drones and who has actually been killed. According to U.S. officials, individuals targeted by drones are limited to "high-level al-Qaeda leaders who are planning attacks"; "individuals who are a threat to the United States"; individuals involved in "some sort of operational plot against the United States"; and "specific senior operational leaders of al-Qaeda and associated forces."[20] Of the estimated three thousand people killed by drones, however, the vast majority were neither al-Qaeda nor Taliban leaders. Instead, most were low-level, anonymous suspected militants who were predominantly engaged in insurgent or terrorist operations against their governments, rather than in active international terrorist plots.[21] By targeting individuals who are not terrorist leaders and who do not pose a direct threat to the United States or its allies—but are predominantly fighting insurgent operations—the United States risks being dragged further into internal armed struggles, because it is explicitly intervening on behalf of the government.

Some former and current U.S. officials maintain that the United States relies too much on drone strikes at the expense of longer-term strategies to prevent conditions that foster international terrorism.[22] At best, targeted killings appear to be a stalemate. By some accounts, however, drone strikes may be indirectly increasing the number of militants. In Yemen, for example, in 2010 the Obama administration described al-Qaeda in the Arabian Peninsula (AQAP) as encompassing "several hundred al-Qaeda members"; two years later, it increased to "more than a thousand members." By July 2012, AQAP had "a few thousand members."[23] The evidence that U.S. drone strikes create "blowback"—whereby killing suspected militants or civilians leads to the marked radicalization of local populations that join or sympathize with al-Qaeda or affiliated organizations—varies widely within the affected states, and it is difficult to determine motivations for joining domestic insurgencies and groups dedicated primarily to international terrorism like AQAP, which has made several attempts to attack the United

States. Nevertheless, there appears to be a strong correlation in Yemen between increased targeted killings since December 2009 and heightened anger toward the United States and sympathy with or allegiance to AQAP.[24]

At the same time, some drone strikes contradict stated nonmilitary foreign policy objectives. In February 2012, at a press conference for the International Contact Group on Somalia, Secretary of State Hillary Clinton remarked: "I know enough to say airstrikes would not be a good idea. And we have absolutely no reason to believe anyone—certainly not the United States—is considering that."[25] Within hours, a convoy was attacked in the Shabelle region of Somalia, killing between four and seven suspected Islamic militants.[26] An anonymous U.S. official confirmed that a JSOC drone killed the militants.[27]

Even where military commands are responsible for advancing U.S. interests within a region, coordination with other military branches and the CIA or JSOC is negligible, according to current and former intelligence and military officials. Lieutenant General Sam Helland, who led Combined Joint Task Force–Horn of Africa from 2004 to 2005, described the division as such: "[It was like] the separation of church and state—they were state, I was church. [The CIA and JSOC] did what they did. . . . We stayed on the civil affairs side, drilling wells, building roads, schoolhouses, churches."[28]

In countries where drone strikes have occurred, some State Department and U.S. Agency for International Development (USAID) officials strongly believe that the broadly unpopular attacks overshadow and diminish the effectiveness of civilian assistance programs. One former senior military official closely involved in U.S. targeted killings argued that "drone strikes are just a signal of arrogance that will boomerang against America," while former U.S. ambassador to Pakistan Cameron Munter explained, "The problem is the political fallout. . . . Do you want to win a few battles and lose the war?"[29] In Pakistan, the continuation of drone strikes has exposed fault lines between the army and the democratically elected parliament, which in April 2012 demanded "an immediate cessation of drone attacks inside the territorial borders of Pakistan."[30] However, the central governments of Yemen and Somalia (as represented by the Transitional Federal Government) have provided either public or private consent for U.S. drone strikes within their territories.

SIGNATURE STRIKES AND CIVILIAN CASUALTIES

Whereas previously President George W. Bush had only permitted the targeted killing of specific individuals, in 2008 he authorized the practice of so-called signature drone strikes against suspected al-Qaeda and Taliban fighters in Pakistan. Also termed "crowd killing" or terrorist attack disruption strikes by CIA officials, signature strikes target anonymous suspected militants "that bear the characteristics of Qaeda or Taliban leaders on the run."[31] President Obama extended and expanded this practice into Yemen, which "in effect counts all military-age males in a strike zone as combatants . . . unless there is explicit intelligence posthumously proving them innocent."[32] Human rights advocates, international legal experts, and current and former U.S. officials dispute whether this post hoc methodology meets the principle of distinction for the use of lethal force.

In addition to targeting individuals on "kill lists" vetted by an opaque interagency process and nearby military-age males, U.S. drone strikes have also killed innocent civilians. In a few instances, civilians were knowingly killed when a senior member of al-Qaeda was the intended target, although the vast majority of collateral deaths were unintentional. The U.S. military has a collateral damage estimate methodology—known as the "bug splat"—which the CIA also employs, according to former senior intelligence officials. Despite what Air Force and intelligence officials describe as rigorous methodology, various U.S. government estimates of cumulative civilian casualties range from zero to sixty.[33] It is unclear if JSOC maintains a similar or different method for compiling civilian casualties, but according to a Pentagon spokesperson, "We're very confident that the number is very low."[34] Estimates of civilian casualties from drone strikes by research organizations are presented in Table 1. These estimates—based on publicly available news reports—are between two and ten times higher than those provided by U.S. government officials, and are further complicated by the fact that some groups targeted by drones purposefully operate out of civilian facilities in an effort to avoid being killed; by the lack of reliable direct access for journalists due to threats from governments or nonstate actors; and by the Islamic practice of washing, wrapping, and burying an individual on the date of death.

TABLE 1: ESTIMATES OF U.S. DRONE STRIKES AND FATALITIES

Source/Year	*Number of Strikes*	*Total Killed*	*Number of Civilians Killed*	*Percentage of Civilians Killed*
Pakistan				
NAF	340	2,572	175	7
2004–2007	10	178	101	58
2008	36	282	25	10
2009	54	536	25	6
2010	122	818	14	2
2011	72	483	6	1
2012	46	277	5	2
LWJ	325	2,592	142	5
2004	1			
2005	1			
2006	3	142	20	14
2007	5	73	0	0
2008	35	317	31	10
2009	53	506	43	9
2010	117	815	14	2
2011	64	435	30	7
2012	46	304	4	1
TBIJ	358	3,019	681	23
Yemen				
NAF	42	655	44	7
LWJ	59	386	82	21
2002	1	6	0	0
2009	2	55	41	74
2010	4	16	6	37
2011	10	81	0	0
2012	42	228	35	16
TBIJ	59	724	54	8
Somalia				
TBIJ	17	114	8	7
Est. Total*	**411**	**3,430**	**401**	**12**

Sources: New America Foundation (NAF); Long War Journal (LWJ); The Bureau of Investigative Journalism (TBIJ)

*Based on averages within the ranges provided by the organizations monitoring each country through December 2012.

Obama administration officials have also failed to address other troubling questions about the scope of drone strikes. For instance, do legitimate targets include children, individuals attempting to rescue drone strike victims, and the funeral processions of deceased militants? U.S. drones have reportedly targeted all three on multiple occasions.[35] Presumably, the United States deliberately targets these groups, but when asked, U.S. officials will not acknowledge such practices. In addition, it is unclear if there is a process in place to investigate accidental civilian casualties, hold willful perpetrators of those actions accountable, or provide compensation to the families of unintended victims—similar to the process for accidental civilian casualties as a result of U.S. military operations in Afghanistan. (Some families or tribes that suffered the effects of collateral damage from U.S. targeted killings claim that they received compensation from the host state, while others have not.) None of these targeting issues stems directly from drones themselves, but instead from the policy choices about how targets are selected, public articulation of who is targeted, and the maintained position that highly publicized CIA drone strikes are covert and thus cannot be acknowledged.

TRANSPARENCY AND OVERSIGHT

Breaking with precedent, the Obama administration began to acknowledge the broad outlines of select drone strikes in early 2012. Initially, the Obama administration maintained that all targeted killings in nonbattlefield settings were classified as covert, and officials refused to admit their existence on the record while candidly discussing the strikes off the record. But in January 2012, President Obama unexpectedly answered a pointed question about drones: "A lot of these strikes have been in the FATA [Federally Administered Tribal Areas of Pakistan] going after al-Qaeda suspects . . . actually, drones have not caused a huge amount of civilian casualties."[36] His unprecedented candor was closely followed by a succession of major policy speeches by Attorney General Eric Holder, John Brennan, and the general counsels of the Pentagon and the State Department discussing some of the legal and political principles that apply to U.S. counterterrorism operations. This progress was short lived, however; President Obama and senior administration officials have subsequently refused to clarify lingering questions about drone strikes,

and have instead invited journalists and researchers to reread the earlier policy speeches.

The problem with maintaining that drone strikes are covert is that both the American and international publics often misunderstand how drones are used. And in affected states, citizens often blame the United States for collateral damage that could have been caused by the host states' own weapon systems. According to a recent report from Yemen:

> It's extremely difficult to figure out who is responsible for any given strike. . . . It could be a manned plane from the Yemeni Air Force or the U.S. military. Or it could be an unmanned drone flown by the U.S. military or the CIA. . . . But no matter who launches a particular strike, Yemenis are likely to blame it on the Americans. What's more, we found that many more civilians are being killed than officials acknowledge.[37]

Congressional oversight of drone strikes varies depending on whether the CIA or the U.S. military is the lead executive authority. The CIA, according to the chair of the Senate Select Committee on Intelligence, Senator Dianne Feinstein, meets its "fully and currently informed" legal obligations through "monthly in-depth oversight meetings to review strike records and question every aspect of the program."[38] Individual JSOC strikes are not reported to the relevant armed services committees, but are covered under the broad special access program biannual reporting to Congress. According to senior staff members on the Senate Foreign Relations Committee and House Foreign Affairs Committee, many of their peers have little understanding of how drone strikes are conducted within the countries for which they are responsible for exercising oversight. Even serving White House officials and members of Congress repeatedly make inaccurate statements about U.S. targeted killings and appear to be unaware of how policies have changed over the past decade.[39] At the same time, the judiciary committees have been repeatedly denied access to the June 2010 Office of Legal Counsel memorandum that presented the legal basis for the drone strike that killed U.S. citizen and alleged leader of AQAP Anwar al-Awlaki in September 2011.[40] Finally, despite nearly ten years of nonbattlefield targeted killings, no congressional committee has conducted a hearing on any aspect of them.

LEGALITY

The Obama administration contends that its practice of targeted killings in nonbattlefield settings is consistent with all applicable domestic and international laws. The domestic rationale is based on the Authorization for the Use of Military Force (AUMF) joint resolution that was passed by Congress on September 18, 2001, which authorizes the president

> [t]o 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.[41]

Based on the interpretation of the AUMF by the Obama administration, the scope of targets includes individuals who are part of al-Qaeda, the Taliban, or associated forces, whether they are located on "hot" battlefields like Afghanistan, or somewhere else. Though the Obama administration takes the legal position that targeted killings do not require "a separate self-defense analysis each time," it similarly claims that each legitimate target must pose "an imminent threat of violent attack against the United States."[42] According to Director of National Intelligence James Clapper, the same legal rationale applies to all U.S. counterterrorism operations, regardless of whether the lead executive authority is the CIA or JSOC. However, some legal scholars argue that, since the death of Osama bin Laden and decimation of al-Qaeda, the White House should seek congressional approval beyond the post-9/11 AUMF to conduct drone strikes in Yemen and Somalia.[43]

The Obama administration offers several international legal justifications for U.S. drone strikes that stem from the assertion that the United States is in a continuous state of international armed conflict with al-Qaeda and associated forces. As a result, the laws of armed conflict (or international humanitarian law) apply, including necessity, proportionality, distinction, and humanity. The Obama administration argues that the treaty provisions of the International Covenant on Civil and Political Rights, of which the United States is a signatory, applies only to persons within the United States.[44]

In defense of sovereignty violations, American officials contend that the United States is exercising its inherent right to self-defense under Article 51 of the United Nations (UN) charter by using lethal force when a targeted country is unable or unwilling to counter imminent and significant threats. What remains unclear to many legal scholars is to what degree international humanitarian law and/or human rights law should apply. U.S. officials will not state if they do, but maintain that the two bodies of law are complementary and reinforcing.[45] Although no other countries have publicly condoned the U.S. international legal justification of drone strikes, they also have refrained from raising the issue of targeted killings in relevant forums such as the UN Human Rights Council.

The UN special rapporteur on extrajudicial, summary, or arbitrary executions repeatedly requests information about U.S. nonbattlefield targeted killings, including what international laws apply, whether the targeted states provide consent, and which specific procedural safeguards are in place. Although Pentagon, State Department, and CIA legal officials routinely discuss counterterrorism policies with the special rapporteur, the official U.S. position is that "inquiries related to allegations stemming from military operations conducted during the course of an armed conflict with Al Qaida do not fall within the mandate of the Special Rapporteur."[46] The special rapporteur recently warned that drone strikes intentionally targeting civilians—including individuals rescuing victims of prior drone strikes or simply attending funerals—would likely constitute war crimes.[47] Like all other signature strikes, the Obama administration will not acknowledge or defend this practice.

Drone Strikes by Other States or Nonstate Actors

The fact that drones lower the threshold for the use of force, combined with the U.S. justification for the scope of legitimate targets, creates a precedent that other states and nonstate actors could eventually adopt for drone strikes. For the foreseeable future, however, the U.S. military will be the unrivaled leader in developing medium-altitude long-endurance (MALE) armed drone technology; it is projected to account for 62 percent of all drone research and development and 55 percent of all procurement over the next decade.[48] With a projected $80 billion in global spending over the next ten years, drones constitute a potential growth industry for the aerospace and defense sectors. Nevertheless, there is not yet public evidence of non-U.S. states—except Israel—developing an armed drone capability.

STATE ACTORS

It is estimated that the number of states that have acquired a complete drone system has grown from forty-one in 2005 to seventy-six in 2012.[49] Over that same period of time, the number of total drone programs within those states increased from one hundred ninety-five to nine hundred.[50] Like the United States, the vast majority of all drones developed by other countries will be used exclusively for government or civilian intelligence, surveillance, and reconnaissance (ISR) missions. Some advanced industrial economies—such as Russia, Taiwan, and South Korea—have developed increasingly sophisticated and largely indigenous drone capabilities, but they have also missed deadlines for when they would field armed drones, according to their own defense ministries. There is no international association for drone manufacturers and operators—similar to those that exist for civilian nuclear facilities or commercial space launches—that provides reliable information

on drones or serves as a forum to exchange best practices to limit the associated risks and costs. Since most publicly available information is limited to air shows and the defense trade press, it is possible that there have been intentionally hidden advances toward states' development of weaponized drones.

Russian armed forces currently do not have armed drones, although the Ministry of Defense signed contracts with domestic aerospace firms to build a prototype by 2014, with the goal of the drones entering service by 2020.[51] Russia claims to have developed the Lutch, an armed drone capable of holding 350 pounds of munitions and remaining aloft for eighteen hours, although there are no known sales.[52] China is investing in drone programs, with at least twenty-five prototypes in development, including armed variants potentially for export. A Chinese aerospace spokesperson remarked, "The United States doesn't export many attack drones, so we're taking advantage of that hole in the market."[53] However, Chinese displays at air shows have been limited to models and computer graphics. Little is known about the Chinese program; according to a recent Pentagon report, "Data on the actual extent of [drone] production is nearly non-existent, and there is little available information on China's overall procurement objectives."[54] Iran also touts its nascent program, but most of its drones are extremely crude and primarily used for antiaircraft target practice. Several of Iran's more capable spy drones, like the Ababil III, were easily tracked down over Iraq by U.S. fighter jets.[55] Iran also claims to have fielded an armed drone called the Ambassador of Death, which would effectively function as an imprecise one-time-only cruise missile.

In the absence of an indigenous armed drone capacity, interested states are looking to buy. Thus far, the United States has refrained from selling armed drones to states, such as Pakistan, Turkey, Saudi Arabia, and the United Arab Emirates (UAE), that have requested the technology, though it has made exceptions for Great Britain and possibly Italy. U.S. aerospace companies have lobbied to relax the export regulations for drones, primarily those that conduct surveillance missions.[56] One hurdle is that the United States is a member of the 1987 Missile Technology Control Regime (MTCR), an informal and voluntary multilateral arrangement comprising thirty-four states that attempts to constrain ballistic missile proliferation. Under the MTCR, drones capable of delivering at least a five-hundred-kilogram payload a minimum of three hundred kilometers are classified as Category I items, for which "there will be a strong

presumption to deny such transfers." So far, the United States has largely followed the Category I guidelines. General Atomics, manufacturer of the Predator, recently unveiled the Predator XP surveillance drone, which lacks the hard points—or mounting brackets for aerial munitions—wing strength, and fire control system required for weaponization.

There are also few examples of armed drone sales by other countries. After the United States, Israel has the most developed and varied drone capabilities; according to the Stockholm International Peace Research Institute (SIPRI), Israel was responsible for 41 percent of drones exported between 2001 and 2011.[57] While Israel has used armed drones in the Palestinian territories and is not a member of the MTCR, it has predominantly sold surveillance drones that lack hard points and electrical engineering. Israel reportedly sold the Harop, a short-range attack drone, to France, Germany, Turkey, and India. Furthermore, Israel allows the United States to veto transfers of weapons with U.S.-origin technology to select states, including China.[58] Other states invested in developing and selling surveillance drones have reportedly refrained from selling fully armed versions. For example, the UAE spent five years building the armed United-40 drone with an associated Namrod missile, but there have been no reported deliveries.[59] A March 2011 analysis by the marketing research firm Lucintel projected that a "fully developed [armed drone] product will take another decade."[60]

Based on current trends, it is unlikely that most states will have, within ten years, the complete system architecture required to carry out distant drone strikes that would be harmful to U.S. national interests. However, those candidates able to obtain this technology will most likely be states with the financial resources to purchase or the industrial base to manufacture tactical short-range armed drones with limited firepower that lack the precision of U.S. laser-guided munitions; the intelligence collection and military command-and-control capabilities needed to deploy drones via line-of-sight communications; and cross-border adversaries who currently face attacks or the threat of attacks by manned aircraft, such as Israel into Lebanon, Egypt, or Syria; Russia into Georgia or Azerbaijan; Turkey into Iraq; and Saudi Arabia into Yemen. When compared to distant U.S. drone strikes, these contingencies do not require system-wide infrastructure and host-state support. Given the costs to conduct manned-aircraft strikes with minimal threat to pilots, it is questionable whether states will undertake the significant investment required for armed drones in the near term.

NONSTATE ACTORS

Though industry, researchers, hobbyists, and activists have been at the forefront of drone innovation, few nonstate actors with a history of acting against U.S. interests have developed armed drones. Among the few groups that have used drones, the leader is Hezbollah, which has flown the Iranian-supplied Abibil that reportedly boasts an eighty-eight-pound explosive triggered by crashing the drone into a target. In 2006, Israel easily shot down several such drones with fighter jets.[61] Given that Hezbollah reportedly has over sixty thousand rockets and missiles of varying degrees of accuracy, drones would provide little additional attack capability.[62]

Other nonstate actors could easily carry out similar terrorist attacks with explosives-laden drones, but that would inflict little damage. In July 2012, for example, U.S. citizen Rezwan Ferdaus pleaded guilty to two counts: attempting to damage and destroy a federal building, and attempting to provide material support to terrorists. Ferdaus plotted to attack the Pentagon and U.S. Capitol with three remotely piloted aircraft, ranging from sixty to eighty inches in length, with a wingspan between forty-four and sixty-three inches. Each of the drones would have been directed to their targets via Global Positioning System (GPS) coordinates laden with five pounds of homemade explosives, which would cause insignificant damage to either building.

Given their size, weight, and power limitations, primitive drones like those Ferdaus sought to build could become more prevalent in domestic terror attacks and against U.S. bases or diplomatic outposts abroad. They would likely contain amounts of explosive similar to that of a suicide attack, but certainly less than that found in a typical car bomb. Moreover, the United States does not face a plausible or imminent threat of armed drone attack on the U.S. homeland.

Recommendations

In his Nobel Peace Prize acceptance speech, President Obama declared: "Where force is necessary, we have a moral and strategic interest in binding ourselves to certain rules of conduct. Even as we confront a vicious adversary that abides by no rules, I believe the United States of America must remain a standard bearer in the conduct of war."[63] Under President Obama drone strikes have expanded and intensified, and they will remain a central component of U.S. counterterrorism operations for at least another decade, according to U.S. officials.[64] But much as the Bush administration was compelled to reform its controversial counterterrorism practices, it is likely that the United States will ultimately be forced by domestic and international pressure to scale back its drone strike policies. The Obama administration can preempt this pressure by clearly articulating that the rules that govern its drone strikes, like all uses of military force, are based in the laws of armed conflict and international humanitarian law; by engaging with emerging drone powers; and, most important, by matching practice with its stated policy by limiting drone strikes to those individuals it claims are being targeted (which would reduce the likelihood of civilian casualties since the total number of strikes would significantly decrease).

The choice the United States faces is not between unfettered drone use and sacrificing freedom of action, but between drone policy reforms by design or drone policy reforms by default. Recent history demonstrates that domestic political pressure could severely limit drone strikes in ways that the CIA or JSOC have not anticipated. In support of its counterterrorism strategy, the Bush administration engaged in the extraordinary rendition of terrorist suspects to third countries, the use of enhanced interrogation techniques, and warrantless wiretapping. Although the Bush administration defended its policies as critical to protecting the U.S. homeland against terrorist attacks, unprecedented domestic political pressure led to significant reforms or termination.

Compared to Bush-era counterterrorism policies, drone strikes are vulnerable to similar—albeit still largely untapped—moral outrage, and they are even more susceptible to political constraints because they occur in plain sight. Indeed, a negative trend in U.S. public opinion on drones is already apparent. Between February and June 2012, U.S. support for drone strikes against suspected terrorists fell from 83 percent to 62 percent—which represents less U.S. support than enhanced interrogation techniques maintained in the mid-2000s.[65] Finally, U.S. drone strikes are also widely opposed by the citizens of important allies, emerging powers, and the local populations in states where strikes occur.[66] States polled reveal overwhelming opposition to U.S. drone strikes: Greece (90 percent), Egypt (89 percent), Turkey (81 percent), Spain (76 percent), Brazil (76 percent), Japan (75 percent), and Pakistan (83 percent).[67]

This is significant because the United States cannot conduct drone strikes in the most critical corners of the world by itself. Drone strikes require the tacit or overt support of host states or neighbors. If such states decided not to cooperate—or to actively resist—U.S. drone strikes, their effectiveness would be immediately and sharply reduced, and the likelihood of civilian casualties would increase. This danger is not hypothetical. In 2007, the Ethiopian government terminated its U.S. military presence after public revelations that U.S. AC-130 gunships were launching attacks from Ethiopia into Somalia. Similarly, in late 2011, Pakistan evicted all U.S. military and intelligence drones, forcing the United States to completely rely on Afghanistan to serve as a staging ground for drone strikes in Pakistan. The United States could attempt to lessen the need for tacit host-state support by making significant investments in armed drones that can be flown off U.S. Navy ships, conducting electronic warfare or missile attacks on air defenses, allowing downed drones to not be recovered and potentially transferred to China or Russia, and losing access to the human intelligence networks on the ground that are critical for identifying targets.

According to U.S. diplomats and military officials, active resistance—such as the Pakistani army shooting down U.S. armed drones—is a legitimate concern. In this case, the United States would need to either end drone sorties or escalate U.S. military involvement by attacking Pakistani radar and antiaircraft sites, thus increasing the likelihood of civilian casualties.[68] Beyond where drone strikes currently take place, political pressure could severely limit options for new U.S. drone bases.

For example, the Obama administration is debating deploying armed drones to attack al-Qaeda in the Islamic Maghreb (AQIM) in North Africa, which would likely require access to a new airbase in the region. To some extent, anger at U.S. sovereignty violations is an inevitable and necessary trade-off when conducting drone strikes. Nevertheless, in each of these cases, domestic anger would partially or fully abate if the United States modified its drone policy in the ways suggested below.

The United States will inevitably improve and enhance the lethal capabilities of its drones. Although many of its plans are classified, the U.S. military has nonspecific objectives to replace the Predators and Reapers with the Next-Generation Remotely Piloted Aircraft (RPA) sometime in the early-to-mid 2020s. Though they are only in the early stages of development, the next generation of armed drones will almost certainly have more missiles of varying types, enhanced guidance and navigation systems, greater durability in the face of hostile air defense environments, and increased maximum loiter time—and even the capability to be refueled in the air by unmanned tankers.[69] Currently, a senior official from the lead executive authority approves U.S. drone strikes in nonbattlefield settings. Several U.S. military and civilian officials claim that there are no plans to develop autonomous drones that can use lethal force. Nevertheless, armed drones will incrementally integrate varying degrees of operational autonomy to overcome their most limiting and costly factor—the human being.[70]

Beyond the United States, drones are proliferating even as they are becoming increasingly sophisticated, lethal, stealthy, resilient, and autonomous. At least a dozen other states and nonstate actors could possess armed drones within the next ten years and leverage the technology in unforeseen and harmful ways. It is the stated position of the Obama administration that its strategy toward drones will be emulated by other states and nonstate actors. In an interview, President Obama revealed, "I think creating a legal structure, processes, with oversight checks on how we use unmanned weapons is going to be a challenge for me and for my successors for some time to come—partly because technology may evolve fairly rapidly for other countries as well."[71]

History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past. Furthermore, norms can deter states from acquiring new technologies.[72] Norms—sometimes but not always codified as legal regimes—have dissuaded states from deploying blinding lasers and landmines, as well as chemical, biological, and nuclear weapons. A

well-articulated and internationally supported normative framework, bolstered by a strong U.S. example, can shape armed drone proliferation and employment in the coming decades. Such norms would not hinder U.S. freedom of action; rather, they would internationalize already-necessary domestic policy reforms and, of course, they would be acceptable only insofar as the limitations placed reciprocally on U.S. drones furthered U.S. objectives. And even if hostile states do not accept norms regulating drone use, the existence of an international normative framework, and U.S. compliance with that framework, would preserve Washington's ability to apply diplomatic pressure. Models for developing such a framework would be based in existing international laws that emphasize the principles of necessity, proportionality, and distinction—to which the United States claims to adhere for its drone strikes—and should be informed by comparable efforts in the realms of cyber and space.

In short, a world characterized by the proliferation of armed drones—used with little transparency or constraint—would undermine core U.S. interests, such as preventing armed conflict, promoting human rights, and strengthening international legal regimes. It would be a world in which targeted killings occur with impunity against anyone deemed an "enemy" by states or nonstate actors, without accountability for legal justification, civilian casualties, and proportionality. Perhaps more troubling, it would be a world where such lethal force no longer heeds the borders of sovereign states. Because of drones' inherent advantages over other weapons platforms, states and nonstate actors would be much more likely to use lethal force against the United States and its allies.

Much like policies governing the use of nuclear weapons, offensive cyber capabilities, and space, developing rules and frameworks for innovative weapons systems, much less reaching a consensus within the U.S. government, is a long and arduous process. In its second term, the Obama administration has a narrow policy window of opportunity to pursue reforms of the targeted killings program. The Obama administration can proactively shape U.S. and international use of armed drones in nonbattlefield settings through transparency, self-restraint, and engagement, or it can continue with its current policies and risk the consequences. To better secure the ability to conduct drone strikes, and potentially influence how others will use armed drones in the future, the United States should undertake the following specific policy recommendations.

EXECUTIVE BRANCH

The president of the United States should

- limit targeted killings to individuals who U.S. officials claim are being targeted—the leadership of al-Qaeda and affiliated forces or individuals with a direct operational role in past or ongoing terrorist plots against the United States and its allies—and bring drone strike practices in line with stated policies;
- either end the practice of signature strikes or provide a public accounting of how it meets the principles of distinction and proportionality that the Obama administration claims;
- review its current policy whereby the executive authority for drone strikes is split between the CIA and JSOC, as each has vastly different legal authorities, degrees of permissible transparency, and oversight;
- provide information to the public, Congress, and UN special rapporteurs—without disclosing classified information—on what procedures exist to prevent harm to civilians, including collateral damage mitigation, investigations into collateral damage, corrective actions based on those investigations, and amends for civilian losses; and
- never conduct nonbattlefield targeted killings without an accountable human being authorizing the strike (while retaining the potential necessity of autonomous decisions to use lethal force *in warfare* in response to ground-based antiaircraft fire or aerial combat).

U.S. CONGRESS

The relevant Senate and House committees should

- demand regular White House briefings on drone strikes and how such operations are coordinated with broader foreign policy objectives, in order to hold the executive branch accountable for its actions;
- hold hearings with government officials and nongovernmental experts on the short- and long-term effects of U.S. targeted killings;
- hold hearings to assess the geographic and temporal limits of the AUMF and the legal justifications for targeted killings of U.S. citizens;

- maintain the MTCR Category I constraints on the export of armed drones and limit the retrofitting of drones already exported to U.S. allies that allow them to be weaponized; and
- withhold funding and/or subpoena the executive branch if cooperation is not forthcoming.

INTERNATIONAL COOPERATION

The United States should

- promote Track 1.5 or Track 2 discussions on armed drones, similar to dialogues with other countries on the principles and limits of weapons systems such as nuclear weapons or cyberwarfare;
- create an international association of drone manufacturers that includes broad participation with emerging drone powers that could be modeled on similar organizations like the Nuclear Suppliers Group;
- explicitly state which legal principles apply—and do not apply—to drone strikes and the procedural safeguards to ensure compliance to build broader international consensus;
- begin discussions with emerging drone powers for a code of conduct to develop common principles for how armed drones should be used outside a state's territory, which would address issues such as sovereignty, proportionality, distinction, and appropriate legal framework; and
- host discussions in partnership with Israel to engage emerging drone makers on how to strengthen norms against selling weapons-capable systems.

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