State of the Union: A Decade of Armed Drones

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ABSTRACT

Over the course of the intervening decade, drones have become the centerpiece in U.S. counterterrorism operations and over 400 strikes have been reported in Pakistan, Somalia and Yemen. Proponents have lauded drones as the weapon of choice for future presidents and a step forward in humanitarian technology. Their use, however, has been the subject of ongoing controversy. Journalists report significant civilian casualties, while legal scholars challenge the legitimacy of targeted killing and political scientists and philosophers raise deep concerns about the ethics guiding U.S. policy makers. The purpose of this article is threefold: to map out the authorities and precedents that enabled the U.S drone program, to critically engage the U.S. government’s opaque language by employing the principles of the just war tradition which President Obama has openly endorsed, and to provide a history of the use and rhetoric of drones that can serve as the basis for robust public debate.

Introduction

In November 2002, a CIA drone loitering over the deserts of Yemen carried out the first reported drone strike outside of Afghanistan, killing Abu Ali al-Harethi, a senior al Qaeda leader and suspect in the bombing of the USS Cole. Over the course of the intervening decade, drones have become the centerpiece in U.S. counterterrorism operations and over 400 strikes have been reported in Pakistan, Somalia and Yemen.¹ Proponents have lauded drones as the “weapon of choice for

future presidents” and “a step forward in humanitarian technology.” Their use, however, has been the subject of ongoing controversy. Journalists report significant civilian casualties, while legal scholars challenge the legitimacy of targeted killing and political scientists and philosophers raise deep concerns about the ethics guiding U.S. policy makers. All of these critics point to the need for more transparency regarding the government’s drone program to better assess their (il)legitimate use.

In 2011, two New York Times reporters and the American Civil Liberties Union filed a request under the Freedom of Information Act for the release of classified documents discussing the targeted killing program. On January 2, 2013, U.S. District Judge Coleen McMahon ruled that the court had no authority to order such documents disclosed given the “thicket of laws and precedents that effectively allow the Executive Branch of our Government to proclaim as perfectly lawful certain actions that seem on their face incompatible with our Constitution and laws, while keeping reasons for their conclusion a secret.” She described the U.S. government’s engagement in the public discussion of the drone program as “cryptic and imprecise,” and went on to conclude that “more fulsome disclosure” would permit “intelligent discussion and assessment of a tactic that… remains hotly debated.”

The purpose of this article is threefold: to map out the authorities and precedents that enabled the U.S drone program, to critically engage the U.S. government’s opaque language by employing the principles of the just war tradition which President Obama has openly endorsed, and to provide a history of the use and rhetoric of drones that can serve as the basis for robust public debate.

indicated, all subsequent references to the number of drone strikes and casualty statistics are derived from these databases.


The Evolution of U.S. Drone Policy

The armed Predator drone was created in the months prior to 9/11 as a potential option for carrying out a lethal attack on Osama bin Laden. In September 2000 the CIA had secretly deployed a reconnaissance Predator over Afghanistan in an attempt to gather actionable intelligence on Bin Laden’s location. Although he was spotted by the drone’s long range cameras on two separate occasions during the 60-day trial operation, in both instances, the White House decided not to act because cruise missiles would have taken hours to arrive and the intelligence was unable to determine how long Bin Laden would remain in that location. Recognizing the drone’s potential to deliver an immediate attack, the U.S. began working to develop a Predator equipped with laser guided Hellfire missiles.

Throughout the spring and summer of 2001, members of the National Security Council debated whether the CIA could employ the armed Predator when it became operational. CIA Director George Tenet was “skeptical about whether a military weapon should be fired outside of the military chain of command.” While others within the CIA were more at ease with using lethal drones, Tenet insisted that during peacetime, no one at the CIA, including the director, had the legal authority to fire a missile.

However, the attacks on 9/11 transformed the lens through which the use of lethal force was interpreted. On September 15, Tenet briefed President Bush and the War Cabinet at Camp David, outlining an ambitious plan to use small teams of CIA operatives and U.S. special forces to overthrow the Taliban and kill or capture the al Qaeda leadership. The newly armed Predator was to

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5 George Tenet and Bill Harlow. At the Center of the Storm: My Years at the CIA, 1st ed. (New York: HarperCollins, 2007) p. 160
be at the heart of this operation. This was a dramatic reversal of Tenent’s earlier position, but one that reflected the radically different political and legal conditions following the attacks. As he later reflected, “Now that we had been thrown on to a war footing, issues that had seemed intractable just days earlier suddenly seemed far less set in concrete.”

In the weeks following 9/11, the CIA was granted wide-sweeping authorities to target members of al Qaeda. The Authorized Use of Military Force (AUMF), approved by Congress on September 14, empowered the president to use “all necessary and appropriate force” against the perpetrators of the attacks. President Bush then quietly signed a secret Memorandum of Notification, authorizing the CIA to use lethal covert action against al Qaeda and other terrorist networks across the globe. That same week, Tenet sent a memo entitled “We’re at War” to the Agency’s top officials. In it, he wrote, “All the rules have changed.”

Tenet’s reference to war was not merely rhetorical. The CIA believed that the more permissive laws of armed conflict now governed all operations against al Qaeda and members of al Qaeda or the Taliban were considered militants who could be justly targeted with lethal force. Throughout the initial weeks of Operation Enduring Freedom, CIA operated Predators mapped vast tracks of the Afghan hinterland, identified targets for U.S. bombers, conducted battlefield reconnaissance, and provided combat-air-support to ground troops. Only one of the CIA’s two drones was armed, but it was used on numerous occasions to destroy anti-aircraft guns, bomb al Qaeda fighters, lay siege to enemy forces and target individual terrorist leaders. The Predator’s capacity for persistent stare and its ability to take risks that would have been unconscionable for manned aircraft made it a revolutionary weapons system.

Within the context of a designated combat operation, drones raised few legal and ethical concerns. However, over the course of the next six years, the drone program underwent a

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6 Tenet, At the Center of the Storm, p. 179
7 Ibid.
progressive development from combat-air-support to expansive targeted killings outside declared battlefields. The first such strike was on November 3, 2002, when a CIA-operated drone flying over Yemen killed Abu Ali al-Harethi, a known al Qaeda leader and suspect in the bombing of the USS Cole. The Pentagon and the CIA declined to comment on the attack, but two days later, Deputy Secretary of Defense Paul Wolfowitz appeared on CNN and called the attack “a very successful tactical operation.”

In the face of international criticism, the Bush administration staunchly defended the legality of the attack. Secretary of State and former chairman of the Joint Chiefs, Colin Powell, argued that the operation was hardly unprecedented. “I don’t know what you called it when President Clinton launched cruise missiles into Afghanistan some years ago,” he said, referring to the U.S. retaliation for the 1998 bombings of U.S. Embassies in Kenya and Tanzania by al Qaeda. “That was not intended to knock down a tent. So I don’t know that previous administrations have completely avoided this kind of action.” Secretary Powell’s statement suggested that drone strikes were no different than other military operations short of war, including exceptions the U.S. made to its stated ban on assassinations – e.g. attempted bombings of locations suspected to be harboring Muammar Qadhafi and Slobodan Milosevic. Had the al-Harethi strike remained an isolated incident, Powell might have been correct in asserting that the attack was unremarkable. However, ten years later it is clear the strike established a precedent that targeted killing by drone strikes was an acceptable counterterrorism tactic, thus enabling their expanded use in the future.

Between 2002-2007, drones were a small part of the U.S. led global war on terror, never exceeding more than four lethal strikes per year outside of Iraq and Afghanistan. However, their use changed dramatically towards the end of Bush’s second term. By the spring of 2008, with the Iraq

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War winding down, the Bush administration began reorienting its attention toward Afghanistan, and the growth of militant activity in Pakistan. When Pakistan’s President, Pervez Musharraf, a longtime favorite of the Bush administration, was forced to resign in August, the U.S. decided that the new Pakistani government would no longer be asked to approve individual strikes before they occurred. The CIA also convinced President Bush to approve a policy of “signature strikes” whereby individuals could be targeted based on activities such as frequenting an al Qaeda compound or possessing explosives, even when their identity was unknown.\(^{11}\) This dramatically increased the range of targets, and drone strikes soared from about one a month to nine strikes in October alone. Although the drone program had previously been focused almost exclusively on high-level militants, the CIA believed this was not enough to incapacitate al Qaeda. Rather than decapitating al Qaeda, the new objective was to erode their operational capabilities by targeting the foot soldiers and thwarting the organization’s ability to plan new attacks.

When President Obama took office in January 2009, his foreign policy platform rejected the Bush doctrine that had justified the Iraq war. And, while he has been widely credited with expanding the drone program as an alternative strategy for advancing U.S. national security, President Obama’s practices are largely the implementation of policies adopted during the waning days of the Bush administration. During his last four months in office, President Bush was averaging six drone strikes per month. Over the course of Obama’s first term, he too has averaged six strikes a month. Yet because this intensity has been sustained over the course of four years, Obama’s drone policies have had a much larger cumulative effect, with 294 strikes as opposed to Bush’s 46. What is distinctive about President Obama’s drone operations are not the policies themselves, but the White House’s attempts to develop a narrative of legitimacy by referencing international law and just war theory to respond to public concerns.

The Contours of the Debate

Until 2012, the official U.S. policy regarding drone strikes was one of plausible deniability – that is, refraining from publicly acknowledging an operation so that Washington, and potentially its allies, could deny U.S. involvement. However, by the spring of 2010, the consistent use of drones had drawn widespread public attention. The 36 strikes in 2008 were followed by 54 in 2009. In March 2010, the House Committee on Oversight and Government Reform convened a series of hearings – “Rise of the Drones: Unmanned Systems and the Future of War” – to discuss the growth of unmanned systems, their implications for U.S. national security and the attendant political, ethical and legal challenges.

During the second hearing, Kenneth Anderson, a law professor at American University, made a distinction between the use of drones on the battlefield and covert counterterrorism operations conducted by the CIA. “Used as a weapon in counterinsurgency by the U.S. military, it is just another weapon,” he argued. However, Anderson went on to defend drone use as a tactic in counterterrorism, claiming “the use of drones, or other use of force by civilian CIA agents in covert operations is not contrary to international law insofar as it is an exercise of lawful self-defense.”  

Mary Ellen O’Connell, of the University of Notre Dame Law School, disagreed. While she applauded drones’ capacity for discrimination and proportionality on the battlefield, she maintained that all uses of military force outside of combat zones are a violation of international law. She also argued that armed conflict is geographically determined, meaning the U.S. cannot plausibly be

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engaged in a global armed conflict recognized under international law, and CIA personnel are not lawful combatants under the rules of war.\textsuperscript{13}

The divergent positions advanced by Anderson and O'Connell have become emblematic of the overarching debate that emerged in the ensuing years. Anderson’s arguments reflect the same legal reasoning expressed by U.S. State Department Legal Adviser, Harold Koh, in March 2010. In a speech that offered perhaps the first public justification of the Obama administration’s use of drones, Koh asserted “it is the considered view of this Administration—and it has certainly been my experience during my time as Legal Adviser—that U.S. targeting practices, including lethal operations conducted with the use of unmanned aerial vehicles, comply with all applicable law, including the laws of war.” Koh articulated a legal justification that characterized U.S. actions as part of an “ongoing armed conflict” in “legitimate self-defense” against an armed group of belligerents who were therefore “lawful targets under international law.”\textsuperscript{14}

O’Connell was of the same school of thought as the American Civil Liberties Union, Human Rights Watch and the United Nations, all of which criticized the expansive use of drones by the U.S. In May 2010, the United Nations Human Rights Council published a report by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston. The report did not take a definitive position on the legality of the U.S. drone program, but expressed skepticism regarding whether the U.S. could satisfy the high legal threshold of anticipatory self-defense and noted concern about “the scope of the armed conflict in which the U.S. asserts it is engaged, the criteria for individuals who may be targeted and killed, the existence of any substantive or procedural safeguards to ensure the legality and accuracy of killings, and the existence of accountability


mechanisms.” Alston concluded by asking the U.S. government to release information about the legal basis for drone operations and the measures taken to conform with international law. The U.S. declined to answer the UN’s request. Throughout 2010 and 2011, while drones operations continued to the tune of 194 strikes in Pakistan, the U.S. government remained a silent party to the ongoing debate about the virtue of targeted killing.

Controlling the Conversation

In early 2012, with the U.S. presidential elections looming, the White House’s top lawyers finally responded to public calls for more transparent moral guidelines governing the use of drones. In a series of speeches following on the heels of Obama’s first public acknowledgment of drone operations in January, General Counsel for the Department of Defense Jeh Johnson, Attorney General Eric Holder, and CIA General Counsel Stephen Preston defended U.S. national security policies and attempted to legitimize the practice of targeted killings by outlining the legal principles according to which strikes were executed. These speeches were followed by the most candid ethical rationalization to date – the address by John Brennan, deputy National Security Adviser and Obama’s primary counselor on counterterrorism, delivered in April 2012.

Brennan is reputed to be the moral compass of the Obama administration’s covert operations and the architect of the current drone policy. He characterized the strikes as “legal”, “ethical” and “wise”, arguing that the drone’s surgical precision and the operators’ extraordinary care clearly satisfied the jus in bello principles of “proportionality” and “distinction” by reducing the danger to innocent civilians. Citing the previous speeches by Koh, Holder, Johnson and Preston, Brennan outlined the legal justification for the strikes and the policies for identifying targets. Finally,

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his speech alluded to “the rigorous standards and process of review to which we hold ourselves
today when considering and authorizing strikes against a specific member of al Qaida outside the
hot battlefield of Afghanistan.” Echoing the jus ad bellum language of last resort, Brennan professed
“our unqualified preference is to only undertake lethal force when we believe that capturing the
individual is not feasible.”

Brennan and other government officials have avoided any direct reference to the CIA and
have carefully evaded revealing the details of drone operation, because such disclosures would risk
destroying Pakistan’s plausible deniability and opening the U.S. government to public disclosure
requests and legal attacks. However, through a succession of government leaks, elements of these
standards and the bureaucracy behind them have since emerged in a series of press articles. The New
York Times reported that every week over 100 officials from the national security community meet to
review dossiers on individuals who have been proposed for the Pentagon’s target list. Following the
meeting, the approved names are submitted to President Obama for final decision. The president is
said to sign off on every strike in Yemen and Somalia, and the high-risk CIA strikes in Pakistan.

The Washington Post exposed how dossiers on potential targets are integrated into a larger “disposition
matrix,” a catalog complete with relevant indictments, intelligence reports and plans for potential
“dispositions,” a euphemism for military operations, against the targets. The disposition matrix is
part of an overarching set of policies intended to govern the selection of targets, the decision about
which agency will carry out the lethal strikes, and the requisite legal authorities. The developing

17 John Brennan, “The Ethics and Efficacy of the President’s Counterterrorism Strategy” (remarks, Woodrow Wilson
International Center for Scholars, Washington, D.C., April 30, 2012), www.cfr.org/counterterrorism/brennans-speech-
counterterrorism-april-2012/p28100.
http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-al-
qaeda.html?_r=1&pagewanted=%E2%80%A6.
Post, October 24, 2012, washingtonpost.com/world/national-security/…/4789b2ae-18b3-11e2-a55c-
39408fbeb6a4b_print.html.
“playbook,” as Brennan calls it, will formalize the policies and processes that have slowly evolved over the course of Obama’s presidency.\textsuperscript{20}

**The Disconnect Between Principles and Policy**

In his Nobel Prize acceptance speech during his first year in office in 2009, President Obama touted the importance of the just war tradition in guiding the use of force: “All nations, strong and weak alike, must adhere to standards that govern the use of force….Where force is necessary, we have a moral and strategic interest in binding ourselves to certain rules of conduct.” The rules Obama referenced include the principles of *jus ad bellum* (how one determines the justice of going to war) and *jus in bello* (how one determines what one can do in war). Rather than advocating for mere adherence to those rules, Obama insisted that the United States “must remain a standard bearer in the conduct of war.”\textsuperscript{21} But is the U.S. establishing a standard that is consistent with its principles? And is it a standard it will be prepared to tolerate from other countries?

*Capture or Kill: When to Use Drones*

Just cause and last resort are the two principles of *jus ad bellum* Obama referred to in his Nobel Prize speech – (scholars tend to identify four others: legitimate authority, proportionality, probability of success, and right intention). The principle of just cause states that you only use force in self-defense against an enemy who has attacked you or in the case of an imminent threat. Last resort means that you only use lethal force when all other reasonable options have been tried first. The purpose of these principles is to help government officials think through whether it is appropriate to use lethal force in a given instance.


In a recent article exploring the implications of drones on the principles of just war, we questioned whether the current use of drones satisfies these criteria. We argued that the ease and success of drone use poses an ethical risk, namely that government leaders will bypass nonlethal alternatives, such as apprehending alleged terrorists and continued surveillance, and move directly to targeted killing as the standard procedure for mitigating the perceived threats. This would effectively lower the threshold of last resort for drone strikes compared to other uses of force. As a result, “the use of drones as a means to enhance a state’s capacity to act on just cause proportionately and discriminately may lead to the propensity to do the opposite”. While others have disagreed – Anderson objects that drones “can make the decision to resort to force ‘easier;’ that is not the same, however, as making it ‘too easy’” – concerns nevertheless remain.

Daniel Klaidman describes the U.S. drone policy as being defined by a dichotomy between kill or capture. To the extent that the U.S. elects to rely on the former, this points to a disconnect between rhetoric and action– namely that the Obama administration speaks the language of last resort while proliferating drone strikes. The National Counterterrorism Center maintains a list of terrorist leaders who have been killed or captured since the World Trade Center attack in 1993. Since September 11, 2001, 35 names have been added to the list, including 20 during the Bush presidency (with 12 killed and 8 captured). During President Obama’s first term, his administration has added 15 names: 14 of whom were killed, but only one who was captured. Add to this the widening target list to include signature strikes, and one can begin to doubt a sincere commitment to using non-lethal methods instead of drones. Brennan admits that opportunities for capture have become “exceedingly rare”, and argues there are “many reasons why capture might not be feasible,

in which case lethal force might be the only remaining option to address the threat, prevent an
attack, and save lives.” But therein lies the rub. If one sees the battlefield through the lens of the
capture or kill dichotomy – the near impossibility of the former makes the latter the only logical
choice. Here is where the principle of last resort should play a role in limiting drone strikes to
instances of necessity.

If a suspected terrorist cannot be captured, the question of whether or not he can be killed
hinges largely on whether he poses an imminent threat to U.S. national security. Defining what
constitutes an imminent threat is both difficult and controversial. According to Attorney General
Holder, “evaluation of whether an individual presents an ‘imminent threat’ incorporates
considerations of the relevant window of opportunity to act, the possible harm that missing the
window would cause to civilians, and the likelihood of heading off future disastrous attacks against
the United States.” Brennan has argued that individuals who pose a “significant” threat include
operational leaders of al Qaeda, operatives “in the midst of actually training for or planning to carry
out attacks”, and individuals possessing “unique operational skills that are being leveraged in a
planned attack.” These definitions paint a picture of very nefarious individuals threatening the U.S.
who need to be dealt with, but a diluted notion of imminence and vague conception of who
constitutes a legitimate target that could easily be abused.

Looking at the numbers, drone strikes in Pakistan peaked under Obama in 2010 (122), but
have steadily declined in 2011 (72) and 2012 (53), with a corresponding decrease in militant deaths
and civilian casualties. This might suggest there is some mechanism of last resort operating to limit
strikes – one that parallels the purported coalescing of clear rules that began as early as 2010.
However, the data reveal two worrisome patterns within this general trend: In early 2011, at the

26 Brennan, “The Ethics and Efficacy of the President’s Counterterrorism Strategy.”
27 Eric Holder, (remarks, Northwestern University School of Law, Chicago, March 5, 2012),
28 Brennan, “The Ethics and Efficacy of the President’s Counterterrorism Strategy.”
29 For a comprehensive discussion, see Daniel Brunsstetter, “Can We Wage a Just Drone War?” The Atlantic (July 2012);
height of the signature strike campaign, analysis of drone casualties in Pakistan indicated that 94 percent of those being killed were low-level militants. Peter Bergen, a national security expert and a director at the New America Foundation, raised serious concerns about whether these drone strikes satisfy the last resort criteria: "I think it's hard to make the case that the 94 percent cohort threaten the United States in some way." Moreover, the recent decline in strikes in Pakistan has been matched by a corresponding increase in strikes in Yemen, with over 30 in the spring and summer of 2012. However, the important question is not whether the rate of drone strikes is declining, but whether they have just cause and are used as a last resort. Both of the aforementioned patterns illustrate a reduced last resort threshold, and a predilection for killing instead of capturing.

Our point is that government officials profess to use targeted killing only as a last resort, but it remains unclear the extent to which this is really the case. Given standards that are opaque and cloaked in secrecy, coupled with morally incongruent trends that point to an increased willingness to use lethal force, the decisions made by the Obama administration could have more to do with operational expediency than supposedly stringent ethical standards. To the extent they result from the former, this sets a dangerous precedent that other nations may elect to follow when they acquire lethal drone technology.

_Drones and Proportionality: What is the Standard of Comparison?_

President Obama’s Nobel Prize speech also referenced proportionality and discrimination, the key principles of _jus in bello_ that guide what countries can do in war. Proportionality attempts to balance the harm inflicted with the anticipated military advantage of an action, while discrimination entails making all efforts to distinguish between combatants and noncombatants, and avoiding harm to the latter while still fulfilling the military mission.

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30 Miller, “Increased U.S. Drone Strikes in Pakistan Killing Few High-Value Militants.”
Proponents of drones claim they satisfy both of these better than conventional weapons platforms, while also keeping U.S. soldiers out of harm’s way. In the words of former CIA director Leon Panetta, drones are the “most accurate weapon system in the history of warfare.” However, the expansive authorizations provided by the Bush and Obama administrations indicate the government may have been taken in by what we characterize as the “drone myth” - the belief that the technical sophistication of drones increases their ability to achieve military objectives while reducing the risk of collateral damage and the danger to soldiers. Enticing as this sounds, overconfidence in the tactical utility of drones may lead to more frequent applications of force and less stringent interpretations of just cause, which may actually undermine the U.S. ability to defeat al Qaeda. As Kreps and Kaag argue, such use distorts the meaning of proportionality: “Instead of the ends of a war determining the appropriate means of war (which is prescribed in the norm of proportionality), the means of modern warfare are determining objectives.” More drone strikes translate into elevated risk for collateral damage, which may violate the discrimination principle.

The challenge for policy makers is that drones are only as discriminate and proportionate as the policies by which they are governed. Regarding discrimination, those who say the drone program is discriminate may be right, but this depends on the standard of comparison. If they are comparing collateral damage from drone strikes to ground operations - such as the recent hostilities in Iraq that have killed 116,409 civilians since 2003, or the 13,667 civilians who have died in armed conflicts between the Pakistani government and groups in the tribal regions along the Afghanistan-Pakistan border from 2007 to 2012 – then they are correct. However, this does not mean drones are sufficiently proportionate to satisfy the standards of international law or even to constitute a prudent

The U.S. government may execute strikes with the best of intentions, but limitations in intelligence reporting frequently contribute to civilian casualties. Admittedly, the percentage of civilian casualties as a portion of the total number of people killed has fallen significantly since 2008. According to research by New America, during Obama’s tenure, the number of civilians, plus “unknowns” - those individuals whose precise status could not be determined from media reports - has fallen from 33 percent under Bush to 11 percent under Obama. While this suggests drone strikes have become more discriminate over time, the technology’s capacity for precision should not overshadow the fact that during President Obama’s first term, at least 142 to 169 civilians have died while the identity of 132 to 253 victims remains unknown. To put these numbers in perspective, while civilians and unknowns account for 20 percent of those killed during drone operations in Pakistan, the 49 militant leaders killed in the last eight years account for just 2 percent of all drone related fatalities. The upshot is that if we are to really understand what discrimination means for drone strikes, then we must begin to look at which types of targeting practices and conditions are more discriminate than others, rather than just comparing drones to conventional weapons or rejecting their use outright.

Regarding proportionality, when assessing the military effectiveness of drones, it is important to look at their broader impact on the ground. Reports suggest that in areas where drones are active, civilians, especially children, suffer from severe PTSD. Drone strikes have also contributed to reprisals by tribal militias in northern Pakistan, contributing to a decline in living conditions for civilians there. Moreover, growing anti-American sentiment in response to drone

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36 Bergen, “Drone is Obama’s Weapon of Choice.”
use weakens the U.S. by diminishing its capacity to use soft power across the globe. In the words of one analyst, “If the price of the drone campaign that increasingly kills only low-level Taliban is alienating 180 million Pakistanis that is too high a price to pay.”  

Finally, while a recent study by the RAND Corporation disproves the oft-cited assumption that there is a correlation between drone strikes and increased terrorist activity, individuals implicated in attempted attacks on the U.S., including Faisal Shahzad, who attempted to detonate a car bomb in Times Square, cited drone strikes as part of their motivation. These effects, perhaps as much as body count numbers, need to be incorporated into ethical claims regarding drone use and adherence to *jus in bello* principles.

### Conclusion: The Need for Greater Transparency and Accountability

Renowned just war theorist Michael Walzer, in his now classic account of just war thinking, wrote “there can be no justice in war if there are not, ultimately, responsible men and women.”

The U.S. drone program was cloaked in the shadows of secrecy until early 2012, when the Obama administration’s public acknowledgment of its existence marked a first step towards greater transparency and accountability. However, while the White House has been happy to accept the credit for successful drone operations, it is unclear if anyone has been made responsible for their failings. Nor is it clear whether government officials or Congress are holding President Obama accountable to his professed principles or effectively challenging the administration to critically examine the long-term effectiveness of drone operations. As former CIA director Michael Hayden observed, “This program rests on the personal legitimacy of the president, and that's not

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38 Bergen, “Drone is Obama’s Weapon of Choice.”
Echoing Judge McMahon’s concerns cited above, greater transparency – disclosing the legal memos justifying the CIA’s use of force, releasing the identity of those who were killed, and making public information about after-action investigations and disciplinary proceedings that followed strikes resulting in civilian casualties - would open the way to public scrutiny of the government’s decisions to use, or not use, lethal drones. Absent this, there is reason to fear the U.S. targeted killing program, characterized by a disconnect between the government’s vague ethical pronouncements and controversial lethal actions, is setting a dangerous precedent for the future use of drones by other countries. If other great powers emulate U.S. practices, a decade from now we may see a world riddled by targeted killings of individuals whose identity is unclear and whose guilt is a matter of doubt.

41 Shane, “Secret ‘Kill List’ Tests Obama’s Principles.”