

Chapter 12

Legal and Moral Dilemmas of Targeted Killing by Drones

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If we are to ignore the pain of others, how are we to heal the damage?

Former drone operator, Brandon Bryant

Abstract The essay makes a critical review of the legal debate in the USA and in the United Nations on moral and legal issues involved in military use of drones in wars of today. The main goal was to study the main lines of argument and its relevance to military practice of targeted killing. We found that legal criticism is on the increase but the military practice continues. We stress the moral risk of using the autonomous weapons. In conclusion, we suggest the need for new both domestic and international regulations of any use of drones before they become fully autonomous and beyond control. Timing is crucial. If humans will not control the technology, the technology will control humans. New UN convention on smart weapons and the conditions under which its use should be allowed is a matter of practical necessity as the number of states using it increases so fast.

Keywords Targeted killing · Legality of drones · American debate · United Nations' reports · Limits of law

What is the Military Drone and for What Purposes We Build It?

An unmanned aerial vehicle (UAV), known as a drone, is an aircraft without a human pilot on board. Its flight is controlled either autonomously by computers in the vehicle, or under the remote control of a pilot on the ground or in another vehicle.

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They are deployed predominantly for military applications, but also used in a growing number of civil applications, such as policing, firefighting, and non-military security work, such as surveillance of pipelines or state borders. UAVs are often preferred for missions that are too “dull, dirty, or dangerous” for manned aircraft. Governments, corporations, cops, and criminals want them—peace and privacy and human rights lovers left and right don’t. You can run but you cannot hide from the drone—this an obvious threat to human privacy and dignity.

The drone-industrial complex wants 30,000 eyes in the sky looking down on Americans by 2020. In 2015, a new law on civilian uses of drones in the United States shall be adopted. A legal and political debate on this issue will get hot.

A Short History of the UAVs as Combat Weapons

The vision of Nikola Tesla, an American constructor, who imagined a fleet of unmanned aerial combat vehicles in 1915 was the beginning of this story. The first reported use of a “drone” was in 1919, when the inventor of autopilot technology and the gyroscope, Elmer Sperry, sunk a German battleship with a pilotless aircraft.

More were made in the technology rush during World War II; these were used both to train anti-aircraft gunners and to fly attack missions. Nazi Germany also produced and used various UAV aircraft during the course of WWII.

Jet engines were applied after World War II. Nevertheless, they were little more than remote-controlled airplanes until the Vietnam War in the 1960s.

The birth of US UAVs began in 1959 when United States Air Force (USAF) officers, concerned about losing pilots over hostile territory, began planning for the use of unmanned flights. This plan became intensified when Francis Gary Powers and his secret U-2 were shot down over the Soviet Union in 1960. Within days, the highly classified UAV program was launched under the code name of “Red Wagon.” The August 2 and August 4, 1964, clash in the Tonkin Gulf between naval units of the USA and North Vietnamese Navy initiated America’s highly classified UAVs into their first combat missions of the Vietnam War. During the Vietnam War, the United States fitted drones with cameras and deployed them for reconnaissance.

The United States used predator drones for the same purpose during the Gulf War of 1990–1991 and the Balkan conflicts of the 1990s. President William J. Clinton used drones in both Bosnia and Kosovo. They flew out of a hangar in Albania that the CIA had rented in exchange for two truckloads of wool blankets. Drones were first used (like balloons) for surveillance.

Targeted Killings by Drones: Where and When? Who Are the Targets and Who Gets Hit?

By 2001, the United States began arming drones with missiles and using them to strike targets during combat in Afghanistan. Predators were successfully armed

at a Nevada Air Force base just as George W. Bush was taking office, and drone strikes began in Afghanistan in the weeks after the September 11 attacks. A November 2002 Predator strike in Yemen killed Abu Ali al-Harithi, a mastermind of the 2000 bombing of the USS Cole. It was the first time in decades that the United States had publicly confirmed an assassination outside a declared war zone, and the strike also claimed the first American drone victim, Ahmed Hijazi (Luban 2013). On November 3, 2002, CIA agents in Djibouti fired laser-guided Hellfire missiles from a drone at a passenger vehicle in Yemen, killing all passengers on board, including an American citizen. During the invasion of Iraq that began in March 2003, the United States regularly used reconnaissance and attack drones. That use seems to have ended along with combat operations in 2009. The United States has been using combat drones in Somalia since at least 2006.

Israeli-developed Samson drone successfully triggered Syrian radar systems in the Beqaa Valley. This allowed Israel to destroy Syria's considerable surface-to-air missile arsenal. Israeli drones also proved effective in monitoring Syrian-operated air bases and allowed the Israel Defense Forces (IDF) to track Syrian and Palestine Liberation Organization fighters.

The United States began using attack drones in Pakistan in 2004. President G. W. Bush expanded the drone war in Pakistan in his final year in office. "Signature strikes," targeting as-yet-unidentified suspects on the basis of their behavior alone, entered the American repertoire around this time and the Obama administration expanded it still further. The number of attacks jumped dramatically in 2008 and continued to climb in 2009. There were 51 reported strikes in 2009, more than during the entire Bush administration, in which there were 45 only. In 2010, the United States launched twice as many drone attacks in Pakistan as in 2009. So far 2010 stands as the peak of the drone war, according to the Bureau of Investigative Journalism, with 127 strikes in Pakistan alone.

Suspects of terrorism and civilian noncombatant persons, non-US citizens and US citizens are becoming victims of targeted killings. It is well documented, but the number of victims presented by various reporting sources differs quite a lot. Between 2004 and 2013, CIA drone attacks in Pakistan killed up to 3461 people—up to 891 of them civilians, according to research by the Bureau of Investigative Journalism. The 2010 *Report of the United Nations Commission of Inquiry into the Facts and Circumstances of the Assassination of Former Pakistani Prime Minister Mohtarma Benazir Bhutto* (Bhutto Report) illustrates the extent to which Islamist terror has come to debilitate the Pakistani State and establish northwest Pakistan as a virtually autonomous terrorist controlled territory.

From June 2004 through mid-September 2012, available data indicate that drone strikes killed 2562–3325 people in Pakistan, of whom 474–881 were civilians, including 176 children (Covert War on Terror 2012).

Peter Bergen and Katherine Tiedemann of the New America Foundation in their latest study into the use of drones in Pakistan claimed that overall, during the almost six years and two months covered by the study, the United States carried out 114 drone attacks, resulting in between 830 and 1210 total deaths. A third of those have been civilians; two-thirds have been militants. Pakistanis hate the drone attacks. Only 9 % of Pakistanis approve of their use (The Year of the Drone 2012).

The bottom line, however, seems to be that drones' usefulness is limited: The US drone strikes don't seem to have had any great effect on the Taliban's ability to mount operations in Pakistan or Afghanistan or deter potential recruits, and they no longer have the element of surprise. Still, heavy use of drones is likely to continue, despite strategic concerns about blowback and the possibility that the strikes themselves are illegal—both because they've been successful at hitting certain high value military targets and because it's the only way for the USA to target its enemies inside Pakistan. Drones hover 24 h a day over communities in northwest Pakistan, striking homes, vehicles, and public spaces without warning. Their presence terrorizes men, women, and children, giving rise to anxiety and psychological trauma among civilian communities.

The USA has deployed more than 11,000 military drones, up from fewer than 200 in 2002. John Pike, a defense expert at the think tank GlobalSecurity.org., predicts that the F-35 Lightning II, now under development by Lockheed Martin, might be “the last fighter with an ejector seat, and might get converted into a drone itself.”

At least 50 other countries have drones, and some, notably China, Israel, and Iran, have their own manufacturers. Aviation firms—as well as university and government researchers—are designing a flock of next-generation aircraft, ranging in size from robotic moths and hummingbirds to Boeing's Phantom Eye, a hydrogen-fueled behemoth with a 150-foot wingspan that can cruise at 65,000 feet for up to four days (Horgan 2013).

More than a thousand companies, from tiny start-ups like Miser's to major defense contractors, are now in the drone business—and some are trying to steer drones into the civilian world. Predators already help Customs and Border Protection agents' spot smugglers and illegal immigrants sneaking into the US. NASA-operated Global Hawks record atmospheric data and peer into hurricanes. Drones have helped scientists gather data on volcanoes in Costa Rica, archeological sites in Russia and Peru, and flooding in North Dakota.

Threat of abuses of drones with the capability of launching missiles and dropping bombs increased and must be managed somehow. Each new development in military weapons technology invites assessment of the relevant international law.

Moral Legitimacy and the Fundamental Strategic Choices

The fundamental strategic choice in the counterterrorism policy planning is as follows.

- Is it better to be less efficient and more legitimate in both moral and legal terms?
- Is it better to be more legitimate and more efficient?

It refers to a military wisdom *might is right*. If this is true, there is no need of moral or legal justifications for the use of military might. If we feel that there shall

be some valid and morally relevant reason or ground for the use of military power by the state or non-state actors, the military wisdom *might is right* cannot be recognized by critical human mind.

Legitimacy of war and the war on terror, as many strategy makers call it nowadays, may not focus on combat efficiency alone, but must consider rules and underpinning values both moral and legal. If there is some valid reason to kill the enemy, it is not allowed at any moment and at any situation. Modern military strategy of counterterrorism is based on the permanent search for a proper balance between the military/political efficiency (might prevails over right) and moral legitimacy for the use of military power (right prevails over might). The stronger the state the more its strategy makers tend to make the first choice. It is perhaps the reason why the American military and political establishment is keener to believe in the use of pure power than the ruling elites of the European Union which would never accept the principle of *might is right* (Lamentowicz 2009).

Under Bush II administration after 9/11 legal changes were made in order to say that these targeted killings were not assassinations, they were just a simple extension of combat in a global war on terror. It is obvious that the US top leaders wanted to provide a legal legitimation for their secret police operations overseas.

Legal Debate on Targeted Killings: Criticisms by Some Lawyers and NGOs

The legal debate got started in the United States first and was launched by the critics of the military policy of President Bush against terrorism across the globe. The legal argument of the critics of targeted killings was and still is as follows.

- The way the drone attacks are made is an extrajudicial killing without the due process of law; thus, it is illegal death penalty executed by the administration of the President.
- This killing happens somewhere else than in the battlefield and during the military conflict that is not in accordance with the *ius in bello* (*The Hague Treaties*).
- Another breach of the *ius in bello* is the fact that many victims are among civilians, as well.
- The killings is organized and implemented under the authority of the CIA or by the CIA and not by the US armed forces. The legal problem is that the CIA has no authority to operate outside the USA as if it was a military (O'Connell 2010).
- Targeted killing by CIA is an act of assassination that is not allowed under US law.
- Current US targeted killings and drone strike practices undermine respect for the rule of law and international legal protections and may set dangerous precedents. International law of self-defense has been damaged and distinctive lines were blurred.

Jane Mayer's outstanding report of October 26, 2009, in *New Yorker* on the ethics of drone strikes in Pakistan made another strong point (Mayer 2009). There are two separate drone killing programs; first is run by the military as an extension of operations on a specific battlefield and the second is run by the CIA as a covert operation of killing instead of arresting suspects and bringing them to the court of justice. Jane Mayer claimed the CIA drone strikes in Pakistan were probably illegal but quite efficient in military sense, as the Taliban and al-Qaeda have failed to capitalize on anger surrounding the strikes because of their own brutal reactions, which involve killing nearby civilians who they suspect of being CIA informants. Cruelty and suspicions by Taliban fighters are presented by Mayer as a kind of excuse for drone US military operators and their commanders.

Gerald Ford in 1976 banned American intelligence forces from engaging in assassination. Before 9/11 the US was against the targeted killing by Israel because it was perceived in Washington as an illegal assassination. In this article, Mayer rightly points out that the use of predator drones is directly in conflict with this executive order and against American law. The article further argues that the use of drones is against international law: In order to target civilian terror suspects, the terrorist group must be engaging in armed conflict, the use of force must be a military necessity, and the force used must be proportionate to the threat. This is clearly not the case. The CIA leaders and the President perceive the entire world as a battlefield within the framework of the war on terror, perhaps.

Mayer's argument continues "some Predator pilots suffer from combat stress that equals, or exceeds, that of pilots in the battlefield. This suggests that virtual killing, for all its sterile trappings, is a discomfiting form of warfare. Meanwhile, some social critics, such as Mary Dudziak, a professor at the University of Southern California's Gould School of Law, argue that the Predator strategy has a larger political cost. As she puts it, "Drones are a technological step that further isolates the American people from military action, undermining political checks on... endless war." The article concludes that while this operation goes on and the benefits of drones are not without costs, there don't appear to be any good alternatives.

Recent reports from Amnesty International and Human Rights Watch have also challenged the legality of drone strikes. The protests reflect a general unease in many quarters with the increasingly computerized nature of waging war. Looking well beyond today's drones, a coalition of non-governmental organizations—the Campaign to Stop Killer Robots—is lobbying for an international treaty to ban the development and use of "fully autonomous weapons."

Computerized weapons capable of killing people sound like something from a dystopian film. So it is understandable why some, scared of the moral challenges such weapons present, would support a ban as the safest policy (Losing Humanity 2012).

Lethal autonomous robots (LARs), more advanced drones, are the reason for concern of campaign groups such as Human Rights Watch, the International Committee for Robot Arms Control, and the Stop the Killer Robots campaign.

The groups had been granted an audience with the UN General Assembly First Committee on Disarmament and International Security where 13 countries, including Canada, Egypt, the USA, the UK, India, Ireland and S. Korea, were represented.

Recently, the American Civil Liberties Union (ACLU) requested records from the CIA on January 13, 2009. The key questions asked by ACLU were as follows: Who may be targeted? How to limit civilian casualties? How the victims are identified? Can drones be used for military purposes outside Afghanistan and Iraq? Whether drones can be used by the CIA or any other government agency aside of armed forces?

CIA responded to this request in an arrogant way: We can neither confirm nor deny that we have any drone records because of security concerns. The ACLU filed in 2009 a lawsuit demanding the legal justification for the use of drone strikes in countries where the USA is not at war, following the government's refusal to provide any documents relating to their initial request on the subject. In early spring 2013, Federal Court of Appeals panel of three judges ruled unanimously that response by CIA to ACLU request was not sufficient and should be more transparent. Philip Alston, the U.N. Special Rapporteur on Extrajudicial Executions, has previously suggested the CIA operations may break international laws against assassination. He did it in many of his ten reports over 2005–2010 period and in his final report on targeted killing in a most systematic manner of course (Alston 2010).

The critics of drone killings proved that military efficiency of this strategy is doubtful. The number of high-level targets killed as a percentage of total casualties is extremely low—estimated at just 2%. Furthermore, evidence suggests that US strikes have facilitated recruitment to violent non-state armed groups and motivated further violent attacks. Many people believe that drones have replaced Guantánamo as the recruiting tool in Islamist communities. Both Guantanamo interrogations and targeted killings by drones increased an anger and hatred among Islamic communities. It makes easier to find young *shahid* (a fighter for Islam who is ready to die for this cause) when hatred to the West is high.

A detailed legal analysis, *Weapons under International Human Rights Law*, has been drafted by international experts and was published by Cambridge University Press in 2013. Edited by Stuart Casey-Maslen, it covers a range of weapons law issues, including the use of firearms, “less-lethal” weapons, drones, and chemical agents; cyber warfare; the use of weapons in prisons or for riot control; weapons in peace operations and armed conflict; the transfer of weapons; the use of weapons by non-state actors; corporate responsibility for the use of weapons; weapons and economic, social, and cultural rights; and remedies for the unlawful use of weapons. However, there are no new critical ideas on drones in contributions to this textbook collection of papers. The European voices in this debate seem to be hardly raised and heard. The outstanding exception is the group of experts in UK which makes valuable contributions at the Web sites <http://www.article36.org> and openly critical about war <http://dronewars.net>.

Harold Koh and John Brennan: First Approach to Legitimacy Reasoning by Obama Administration

On March 17, 2010, State Department Legal Adviser Harold Koh, the senior official responsible for international legal issues, shared his views after his public remarks at an American Bar Association speech (ASIL Keynote Highlight 2010). “I have studied this question,” Koh said. “I think that the legal objections that are being put on the table are ones that we are taking into account. I am comfortable with the legal position of the administration, and at an appropriate moment we will set forth that in some detail.” In a March 2010 speech, Koh voiced his strong support for the legality of targeted killing by aerial drone strikes in Pakistan, Yemen, and other countries included by the US government as being within the scope of the war on terror. The then State Department’s legal adviser said that “US targeting practices, including lethal operations conducted with the use of unmanned aerial vehicles (UAVs),” which the Obama administration has leaned on heavily in its efforts to eliminate al-Qaeda and other terrorist groups in Asia, “comply with all applicable law, including the laws of war,” citing the principles of distinction and proportionality. He said that the USA adheres to these standards, and takes great care in the “planning and execution to ensure that only legitimate objectives are targeted, and that collateral damage is kept to a minimum.” He said the USA is in “an armed conflict with al-Qaeda, the Taliban, and the associated forces,” and therefore has the lawful right to use force to protect its citizens “consistent with its inherent right to self-defense” under international law. Dr. Koh identified three elements that the USA considers when determining whether to authorize a specific targeted drone killing:

- Imminence of the threat;
- Sovereignty of other States involved; and
- Willingness and ability of those States to suppress the threat the target poses.

He also said that the drone strikes against al-Qaeda and its allies were lawful targeted killing, as part of the military action authorized by Congress, and not assassination, which is banned by executive order. Under domestic law, US targeted killings against 9/11-related entities are authorized by the Authorization for Use of Military Force against Terrorists.¹ The speech earned praise from the editorial board of *The Wall Street Journal*.

¹Harold Hongju Koh is the Legal Adviser of the Department of State, the 22nd to serve in that position. He is one of the country’s leading experts on public and private international law, national security law, and human rights. He is on leave from Yale Law School, where he is the Martin R. Flug ’55 Professor of International Law at Yale Law School. From 2004 to 2009, Koh served as the 15th Dean of Yale Law School. From 1993 to 2009, he was also the Gerard C. and Bernice Latrobe Smith Professor of International Law at Yale Law School. From 1998 to 2001, Koh served as Assistant Secretary of State for Democracy, Human Rights and Labor. He previously served on the Secretary of State’s Advisory Committee on Public International Law. A Marshall Scholar, Koh graduated from Harvard, Oxford, and Harvard Law School, and has received eleven honorary degrees and more than 30 awards for his human rights work, including awards from Columbia Law School and the American Bar Association for his lifetime achievements in International law.

One year later, when the criticism of drone targeted killing was mounting, John Brennan, a close adviser to President Obama on counterterrorism and home security, elaborated the basic ideas of Harold Koh. Brennan in his speech at Harvard University on September 16, 2011, made a point that drone strikes are based on the four core principles of counterterrorism strategy of President Obama. “First, our highest priority is—and always will be—the safety and security of the American people. Second, we will use every lawful tool and authority at our disposal. Third, we are pragmatic, not rigid or ideological—making decisions not based on preconceived notions about which action seems “stronger,” but based on what will actually enhance the security of this country and the safety of the American people. We address each threat and each circumstance in a way that best serves our national security interests, which includes building partnerships with countries around the world. Fourth—and the principle that guides all our actions, foreign and domestic—we will uphold the core values that define us as Americans, and that includes adhering to the rule of law. And when I say “all our actions,” that includes covert actions, which we undertake under the authorities provided to us by Congress. President Obama has directed that all our actions—even when conducted out of public view—remain consistent with our laws and values” (Brennan 2011).

Brennan has not put his message very sharp and said—“President Obama has made it clear—we must reject the false choice between our values and our security. We are constantly working to optimize both”(Brennan 2011).

In his 2011 remarks, John Brennan proposed a definition of the conflict. He said it was a “war with al-Qaida” and did not mention the war on terror as President G.W. Bush used to define it. So the enemy is named and identified by President Barack Obama in a clear and sharp way. The critics of the war on terror were questioning very blurred definition of the enemy by Bush administration. Brennan admitted that the US authorities and their international allies such as many NATO members disagree on the geographic scope of the conflict. The United States does not view its authority to use military force against al-Qaida as being restricted solely to “hot” battlefields like Afghanistan. They believe to have the authority to “take action against al-Qaida and its associated forces without doing a separate self-defense analysis each time. And as President Obama has stated on numerous occasions, we reserve the right to take unilateral action if or when other governments are unwilling or unable to take the necessary actions themselves” (Brennan 2011).

Brennan and his supreme commander are aware that even some of the US closest allies and partners take a different view of the geographic scope of the conflict, limiting it only to the “hot” battlefields in Afghanistan and they argue that, outside of those restricted areas, the United States can only act in self-defense against al-Qaida when “they are planning, engaging in, or threatening an armed attack against US interests if it amounts to an “imminent” threat.”

Brennan argued that understanding of “imminence” when dealing with terrorist groups should be more flexible and broader, because “al-Qaida does not follow a traditional command structure, wear uniforms, carry its arms openly, or mass its

troops at the borders of the nations it attacks. Nonetheless, it possesses the demonstrated capability to strike with little notice and cause significant civilian or military casualties.”

Obama and his closest assistant in targeted killing operations believed in convergence of views with their allies—“The more our views and our allies’ views on these questions converge, without constraining our flexibility, the safer we will be as a country.”

Brennan concluded his 2011 speech in a pathetic manner—“As a people, as a nation, we cannot—and we must not—succumb to the temptation to set aside our laws and our values when we face threats to our security, including and especially from groups as depraved as al-Qaida. We’re better than that. We’re better than them. We’re Americans.”

In his second presentation of moral and legal legitimization of targeted killing policy in April 2012 at Woodrow Wilson Center, John Brennan stressed legality of drone attacks again by saying—“The Authorization for Use of Military Force—the AUMF—passed by Congress after the September 11 attacks authorizes the president “to use all necessary and appropriate force” against those nations, organizations, and individuals responsible for 9/11. There is nothing in the AUMF that restricts the use of military force against al-Qaida to Afghanistan. As a matter of international law, the United States is in an armed conflict with al-Qaida, the Taliban, and associated forces, in response to the 9/11 attacks, and we may also use force consistent with our inherent right of national self-defense. There is nothing in international law that bans the use of remotely piloted aircraft for this purpose or that prohibits us from using lethal force against our enemies outside of an active battlefield, at least when the country involved consents or is unable or unwilling to take action against the threat it’s useful to consider such strikes against the basic principles of the law of war that govern the use of force” (Brennan 2012).

Self-defense argument has been supported by Brennan remarks of 2012 by quoting briefly four basic principles of international law about the use of force:

- The principle of **necessity**—the requirement that the target has definite military value. “We have the authority to target them with lethal force just as we targeted enemy leaders in past conflicts, such as German and Japanese commanders during World War II.”
- The principle of **distinction**—the idea that only military objectives may be intentionally targeted and that civilians are protected from being intentionally targeted. Brennan expressed the view that drones had “unprecedented ability to precisely target a military objective while minimizing collateral damage,” and that “never before has there been a weapon that allows us to distinguish more effectively between an al-Qaida terrorist and innocent civilians.”²
- The principle of **proportionality**—the notion that the anticipated collateral damage of an action cannot be excessive in relation to the anticipated

²The critics say this damage is unacceptable as too many civilians got killed or wounded.

military advantage. Again the point about precision of strikes has been made by J. Brennan at this junction.

- The principle of **humanity** which requires to use weapons that will not inflict unnecessary suffering.

Brennan concluded his legal reasoning with the strong thesis: “For all these reasons, I suggest to you that these targeted strikes against al-Qaida terrorists are indeed ethical and just.”

Brennan claimed that President Obama did a lot to foster transparency of military and security policies. He recalled –

- A new Executive Order on classified information that, among other things, reestablished the principle that all classified information will ultimately be declassified.
- A Freedom of Information Act Directive mandating that agencies adopt a presumption of disclosure when processing requests for information.
- The legislation that revised the process for reporting sensitive intelligence activities to Congress and created an Inspector General for the Intelligence Community.
- The combined budget of the intelligence community, and reconstituted the Intelligence Oversight Board, an important check on the government’s intelligence activities.

Despite all these steps, the 2013 sensations of Edward Snowden about National Security Agency secret operations made it clear that transparency is not strongest feature of Obama style of governance and his trust to his best allies is actually quite low.

Rand Paul, a Republican senator from Kentucky, commenced an old-fashioned country-style talking filibuster of Barack Obama’s nominee for CIA director, John Brennan, in protest over the administration’s policies on the use of drones. American drones are being used to kill suspected terrorists in entirely too cavalier a fashion, killing at a minimum hundreds of innocent civilians, and the administration’s procedures for deciding when to authorize drone strikes are opaque and lack due process. Senator Rand Paul tried to alert public opinion before appointment of John Brennan as a new CIA chief, by talking Senate filibuster, which continued for 13 h. After this filibuster, Brennan was confirmed by a Senate vote of 63–34.

Brennan was sworn into the office of CIA Director on March 8, 2013. President Obama confirmed his trust in professional skills and moral integrity of John Brennan with whom they operated a so called “kill list” for targeted executions by drones.

New Strategy of Obama Administration: The President’s Speech on May 2013

President Barack Obama, who vastly expanded US drone strikes against terrorism suspects overseas under the cloak of secrecy, has been openly seeking to influence global guidelines for their use as China and other countries pursue their own drone

programs. Obama's new position is not without irony. The White House kept details of drone operations—which remain largely classified—out of public view for years when the US monopoly was airtight. That stance is just now beginning to change, in part under pressure from growing public and Congressional discomfort with the drone program. US lawmakers have demanded to see White House legal justifications for targeting US citizens abroad, and to know whether Obama thinks he has the authority to use drones to kill Americans on US soil.

Remarks by the President at the National Defense University, in Washington, DC, on May 23, 2013, were quite soft. His speech was a kind of pragmatic adjustment to a new situation and a first draft of a new counterterrorism comprehensive strategy. He reminded first of all that USA was “at war for well over a decade” since September 11, 2001. “What is clear is that we quickly drove al-Qaeda out of Afghanistan, but then shifted our focus and began a new war in Iraq.” The US President admitted that “in some cases, I believe we compromised our basic values—by using torture to interrogate our enemies, and detaining individuals in a way that ran counter to the rule of law” (Obama 2013).

On the other hand, the President presented his efforts made so far “to change the course” of this war. “We relentlessly targeted al-Qaeda’s leadership. We ended the war in Iraq, and brought nearly 150,000 troops home. We pursued a new strategy in Afghanistan, and increased our training of Afghan forces. We unequivocally banned torture, affirmed our commitment to civilian courts, worked to align our policies with the rule of law, and expanded our consultations with Congress” (Obama 2013). After referring to positive results of his strategy (Osama bin Laden is dead, and so are most of his top lieutenants. The core of al-Qaeda in Afghanistan and Pakistan is on the path to defeat. There have been no large-scale attacks on the United States, and our homeland is more secure. Fewer of our troops are in harm’s way, and over the next 19 months they will continue to come home. Our alliances are strong, and so is our standing in the world. In sum, we are safer because of our efforts), he turned to some costs of the counterterrorism war such as over a trillion dollars spent on war by American nation over the last decade, 7000 dead service members and much more wounded and sufferings of their families.

To the set of premises for a new strategy, Barrack Obama added a very deep moral concern in a long term view to the future: “From our use of drones to the detention of terrorist suspects, the decisions that we are making now will define the type of nation—and world—that we leave to our children. So America is at a crossroads. We must define the nature and scope of this struggle, or else it will define us. We have to be mindful of James Madison’s warning that “No nation could preserve its freedom in the midst of continual warfare.”

The components of a new counterterrorism comprehensive strategy are to be the following:

1. Better supervised by the Congress and by the public opinion but a continued, targeted action against terrorists. The goal is to finish the work of defeating al-Qaeda and its associated forces. In Afghanistan—to complete a transition to

Afghan responsibility for that country's security in order to get American troops come home. Beyond Afghanistan, we must define our effort not as a boundless "global war on terror," but rather as a series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America—B. Obama defined a war in a new way because the old war on terror was over. Drone attacks he presented as effective,³ more precise than any other military action, and legal and just. "To say a military tactic is legal, or even effective, is not to say it is wise or moral in every instance. For the same human progress that gives us the technology to strike half a world away also demands the discipline to constrain that power—or risk abusing it. And that's why, over the last four years, my administration has worked vigorously to establish a framework that governs our use of force against terrorists—insisting upon clear guidelines, oversight and accountability that is now codified in Presidential Policy Guidance that I signed yesterday."⁴ The need of unmanned strikes will be reduced and collateral damage and civilian casualties, as well.

2. Effective partnerships with many countries in the gathering and sharing of intelligence, the arrest and prosecution of terrorists.
3. Diplomatic engagement in many countries. President asked for gratitude to American diplomats because *America cannot carry out this work if we don't have diplomats serving in some very dangerous places.*
4. Economic assistance in development and modernization of world regions where the conditions of living may foster extremism and aggressive political behavior—"for all the focus on the use of force, force alone cannot make us safe. We cannot use force everywhere that a radical ideology takes root; and in the absence of a strategy that reduces the wellspring of extremism, a perpetual war—through drones or Special Forces or troop deployments—will prove self-defeating, and alter our country in troubling ways." While solving "deep-rooted problems like poverty and sectarian hatred... We must help countries modernize economies, upgrade education, and encourage entrepreneurship—because American leadership has always been elevated by our ability to connect with people's hopes, and not simply their fear... the peaceful realization of individual aspirations will serve as a rebuke to violent extremists..."

While discussing tactical aspects of drone combat the President reminded that "we only target al-Qaeda and its associated forces. America does not take strikes when we have the ability to capture individual terrorists; our preference is always

³"In the intelligence gathered at bin Laden's compound, we found that he wrote, "We could lose the reserves to enemy's air strikes. We cannot fight air strikes with explosives." Other communications from al-Qaeda operatives confirm this as well"—*Remarks by the President of May 23, 2013.*

⁴*US Policy Standards and Procedures for the Use of Force in Counterterrorism Operations outside the United States and Areas of Active Hostilities* is a short brief made available on the White House Web site. The full document is classified.

to detain, interrogate, and prosecute. America cannot take strikes wherever we choose; our actions are bound by consultations with partners, and respect for state sovereignty.

America does not take strikes to punish individuals; we act against terrorists who pose a continuing and imminent threat to the American people, and when there are no other governments capable of effectively addressing the threat. And before any strike is taken, there must be near-certainty that no civilians will be killed or injured—the highest standard we can set...

Conventional airpower or missiles are far less precise than drones and are likely to cause more civilian casualties and more local outrage. And invasions of these territories lead us to be viewed as occupying armies, unleash a torrent of unintended consequences, and are difficult to contain, result in large numbers of civilian casualties and ultimately empower those who thrive on violent conflict”.

The very new component of domestic security presented by B. Obama is the idea about the cooperation with the Muslim American community which has consistently rejected fundamentalism. Obama said that “these partnerships can only work when we recognize that Muslims are a fundamental part of the American family. In fact, the success of American Muslims and our determination to guard against any encroachments on their civil liberties is the ultimate rebuke to those who say that we’re at war with Islam.”

The new strategy of targeted killing and the old one is supported by majority of American public opinion, and President Obama must not be afraid that his efforts will be disregarded by his fellow citizens. Although the United States has been killing suspected terrorists with drone strikes in non-battlefield settings for over ten years, public opinion polling of the controversial tactic began only a year and a half ago. Averaged together, the polls demonstrate that 65 % of Americans support the targeted killing of suspected terrorists, and 51 % approve killing US citizens who are suspected of terrorism⁵ (Zenko 2013). It is revealing that, according to a February 2013 poll, support for US military drone strikes (75 %) is considerably higher than for those conducted by the CIA (65 %). Finally, it is remarkable how normalized drone strikes have become over the years, to the point that Americans are more comfortable with killing suspected terrorists than torturing them for information.

The context and framing of the question in the polls varies widely. For example, targets are alternately described as “suspected terrorists,” “extremists,” those “deemed a threat to the United States,” and “high-level terrorism suspects.”

⁵Polling in this area of low knowledge is of limited value, however. It is instructive of public opinion any more than asking people on the street about the Higgs Boson particle. People are only aware of vague details and have absorbed willfully incorrect memes and images from the media. Explaining the military drone program and the issues surrounding it requires a minimum of a 20 min conversation.

United Nations Investigations and Reporting 2005–2013: Alston, Heyns, Emmerson, UN Secretary General

The source of the pressure upon Obama administration were not just lawyers and NGOs, and there were reports to the United Nations as well. First, it was Philip Alston, professor from the New York University School of Law, appointed in 2004, who presented 10 annual reports to the UN authorities over the years 2005–2010 (Alston 2010). Philip Alston, the UN Special Rapporteur on Extrajudicial Executions, made it clear in his reports that extrajudicial executions might break international prohibitions: In law enforcement operations there is no legal right of using lethal weapons but in case of self-defense of police forces ONLY. Therefore, launching missiles and throwing bombs in such circumstances on human beings is not allowed by the law. CIA operations are a variety of police actions.

Combatants and civilians do not wear uniforms and do not fight and thus are similar to undefended objects. Therefore, they should not be hit by missiles. It's not possible to differentiate precisely between militants and non-militants because militants live among the population and do not wear uniforms, and because government sources have the incentive to claim that only militants were killed, while militants often assert the opposite (Alston 2011).

Alston reporting paved the way to next reports of 2013 by Christof Heyns, by Ben Emmerson QC, and finally by Secretary General Ban Ki Moon.

Christof Heyns, the South African law professor, the next UN special rapporteur on extrajudicial, summary or arbitrary executions, submitted his report to the UN Human Rights Council in Geneva in April 2013 (Heyns 2013). His report called for moratorium on weapons that can kill targets without human involvement. Machines lack morality and mortality and should not have life and death powers over humans. “Lethal autonomous robotics” (LAR)—weapons systems that, once activated, can lock on and kill targets without further involvement of human handlers—are most questionable. Fully autonomous weapons have not yet been developed and exist only in the imaginations of military planners. However, experts in warfare technologies warn that the world's leading military powers are moving so rapidly in this direction that a preemptive ban is essential. In his submission to the UN, Heyns points that a drone technology has already moved a step closer to a fully autonomous state in the form of the X-47B, a super-charged UAV developed by the US Navy. Britain is developing its own next generation of drone, known as Taranis that can be sent to tackle targets at long range and can defend itself from enemy aircraft. Like X-47B, it has two in-built weapons bays, though is currently unarmed.

Heyns challenges the US position, most apparent in the leaked Department of Justice White Paper, of a much broader concept of “imminence” which would mean in effect that no immediate threat is with regard to using lethal force under self-defense rules. Heyns states: “The view that mere past involvement in planning attacks is sufficient to render an individual targetable even where there is no evidence of a specific and immediate attack distorts the requirements established

in international human rights law” (Para. 37). Heyns also argues that only a State’s highest authority can give permission to another State to use force on its territory and if that permission is withdrawn, such force must cease (see Para. 82–84). This is clearly a reference to arguments within the USA that despite Pakistan Government announcements urging an end to US drone strikes, authority has previously been given or alternatively that secretly, Pakistan continues to give permission for the strikes through the ISI, the Pakistan security service. Heyns also calls follow-up drone strikes, if aimed at the wounded, rescuers and medical personnel—dubbed as “double-tap” strikes by the media—war crimes. Heyns also challenges the uncritical acceptance that drone are more precise than other weapons. There is little if any empirical data in the public domain for such claims. This leads to the main thrust of Heyns’ report—the need for greater transparency on the use of drones—not just from the USA but from all States using armed drones. “A lack of appropriate transparency and accountability concerning the deployment of drones undermines the rule of law and may threaten international security.”

Article 2(4) of the UN Charter prohibits the threat or use of force by one state against another. Two exceptions to the Article 2(4) prohibition on the use of force are particularly relevant to the question of whether US targeted killings in Pakistan are lawful: (1) when the use of force is carried out with the consent of the host state; and (2) when the use of force is in self-defense in response to an armed attack or an imminent threat, and where the host state is unwilling or unable to take appropriate action.

Heyns did not say the use drones for executions is or must be inherently illegal. He suggests that targeted killing blurs some lines in legal reasoning and might be dangerous. His conclusion is as follows:

“While it is not clear at present how LARs (Lethal Autonomous Robotics) could be capable of satisfying IHL and IHRL requirements in many respects, it is foreseeable that they could comply under certain circumstances, especially if used alongside human soldiers. Even so, there is widespread concern that allowing LARs to kill people may denigrate the value of life itself.”

His main recommendation is that “the High Commissioner for Human Rights shall convene, as a matter of priority, a High Level Panel on LARs consisting of experts from different fields such as law, robotics, computer science, military operations, diplomacy, conflict management, ethics and philosophy.”

At the press conference on October 25, 2013, he said “drones were not illegal, but raised challenges... In general, drones should follow the law and not the other way round.” There was not a need for new treaties, but the application of the existing system more rigorously (Press Conference [2013](#)).

The issue was moving rapidly up the international agenda after China and Russia in October 2013 jointly issued a statement at the UN Human Rights Council, backed by other countries, condemning drone attacks.

A second UN rapporteur, the London-based barrister Ben Emmerson QC, who monitors counter-terrorism since January 2013, has not completed his final report on his inquiry on behalf of the UN into the use of drones in counter-terrorism operations, launched in January 2013. The inquiry was originally to be completed

in time for the UN General Assembly in October 25, 2013, but has taken longer than expected and there is therefore only an interim report available. The complete findings are to be presented in 2014. While originally focusing on a sample of 25 ‘case studies’ of drone strikes, this has now been expanded to 33 case studies (Emmerson 2013).

Like Heyns, Ben Emmerson examines the “principal areas of legal controversy” surrounding the use of armed drones, focusing on when an individual may or may not be targeted and whether the US can be said to be acting in self-defense. The report contains a brief “Conclusion and Recommendations” section, which reads as follows:

- “If used in strict compliance with the principles of international humanitarian law, remotely piloted aircraft are capable of reducing the risk of civilian casualties in armed conflict by significantly improving the situational awareness of military commanders.
- Having regard to the duty of States to protect civilians in armed conflict, the Special Rapporteur considers that, in any case in which civilians have been, or appear to have been, killed, the State responsible is under an obligation to conduct a prompt, independent and impartial fact-finding inquiry and to provide a detailed public explanation. This obligation is triggered whenever there is a plausible indication from any source that civilian casualties may have been sustained, including where the facts are unclear or the information is partial or circumstantial. The obligation arises whether the attack was initiated by remotely piloted aircraft or other means, and whether it occurred within or outside an area of active hostilities.
- The Special Rapporteur identifies herein a number of legal questions on which there is currently no clear international consensus. He considers that there is an urgent and imperative need to seek agreement between States on these issues. To that end, he is currently consulting Member States with a view to clarifying their position on these questions. He urges all States to respond as comprehensively as possible.
- In particular, the Special Rapporteur urges the United States to further clarify its position on the legal and factual issues raised herein; to declassify, to the maximum extent possible, information relevant to its lethal extraterritorial counter-terrorism operations; and to release its own data on the level of civilian casualties inflicted through the use of remotely piloted aircraft, together with information on the evaluation methodology used.”

Like Christof Heyns, Ben Emmerson argues strongly for much greater transparency around the use of armed drones, especially incidents where there have been reports of harm to civilians. Ben Emmerson believes that the UN itself should consider establishing an investigatory body. Drones attacks by the USA raise fundamental questions ... If they don’t investigate themselves, we will do it for them. The USA is not a signatory to the International Criminal Court (ICC) or many other international legal forums where legal action might be started. It is, however, part of the International Court of Justice (ICJ) where cases can be initiated by one state against another.

Heyns told *The Guardian* later that his future inquiries are likely to include the question of whether other countries, such as the UK, share intelligence with the USA that could be used for selecting individuals as targets. A legal case has already been lodged in London over the UK's alleged role in the deaths of British citizens and others as a consequence of US drone strikes in

There are three legal paradigms examined in all the reports:

- The law governing the inter-State use of force (the *jus ad bellum*).
- The law governing armed conflict (the *jus in bello*). The capture versus kill debate is of significance because many lawyers claim the state authorities should try to capture the enemy and to kill in last resort only.
- The law governing international human rights (this is referred to by Alston as “the law enforcement model”).

The reports have consistently found that the existing legal frameworks—*jus ad bellum*, *jus in bello*, and “the law enforcement model”—are not in issue, but rather the practical application of these paradigms by States, particularly in recent times during the “War on Terror,” are stretching widely accepted legal principles and norms.

The next step in the UN debate was a report of the Secretary General on the protection of civilians in armed conflict (United Nations S/2013/689.) submitted on November 22, 2013 (Report of the Secretary General 2013a, b).

It says that in Afghanistan, the first six months of 2013 saw a significant increase in civilian casualties compared with the same period in 2012. The number of deaths increased by 14 % (1319 deaths) and the number of injuries by 28 % (2533 injuries) owing to the more extensive use of improvised explosive devices by anti-government elements and increased casualties caused by ground engagements. This is a growing threat to life and security.

Secretary General has been concerned about the use of drones in Afghanistan and Pakistan. He was uncertain whether there was the compliance with international human rights law and with the international humanitarian law rules of distinction, proportionality, and precaution. He stressed that “the proliferation of drone technology and the increasing resort to such weapons systems will also further sharpen the asymmetry that exists in many conflicts between State and non-State parties. As technology allows one party to become increasingly removed from the battlefield, and the opportunities to fight against it are reduced, we may see technologically inferior parties increasingly resort to strategies intended to harm civilians as the most accessible targets. Moreover, drone technology increases opportunities to conduct attacks that might otherwise be considered unrealistic or undesirable through other forms of air power or the deployment of ground troops.”

His final appeal to UN member states was rather bleak and very cautious. Nothing more than the present law prescribes and much less in intellectual terms than the three reports by Alston, Heynes, and Emmerson offered.

The member states were called by Secretary General to do the following:

- (1) To ensure the protection of civilians in specific drone attacks;
- (2) To track and assess civilian casualties resulting from attacks in order to identify all measures feasible to avoid civilian casualties;
- (3) To investigate serious violations of international humanitarian law and international human rights law that are alleged to have occurred during such attacks.

The final report by Emmerson was submitted in 2014 and instead of some answers it proposed a list of legal questions to member states of United Nations (Emmerson 2014).

- (a) Does the international law principle of self-defense entitle a State to engage in non-consensual lethal counter-terrorism operations on the territory of another State against a non-State armed group that poses a direct and immediate threat of attack even when the armed group concerned has no operational connection to its host State? If so, under what conditions does such a right of self-defense arise? Does such a right arise where the territorial State is judged to be unable or unwilling to prevent the threat from materializing? If so, what are the criteria for determining “unwillingness” or “inability” to act?
- (b) Is the international law principle of self-defense confined to situations in which an armed attack has already taken place, or does it entitle a State to carry out preemptive military operations against a non-State armed group on the territory of another State, without the territorial State’s consent, where it judges that there is an imminent risk of attack to its own interests? If so, how is imminence to be defined?
- (c) Does the international humanitarian law test of intensity of hostilities (which is one of the criteria determining whether a non-international armed conflict exists) require an assessment of the severity and frequency of armed attacks occurring within defined geographical boundaries? In applying the intensity test to a non-State armed group operating transnationally, is it legitimate to aggregate armed attacks occurring in geographically diverse locations in order to determine whether, taken as a whole, they cross the intensity threshold so as to amount to a non-international armed conflict? If it is possible for a State to be engaged in a non-international armed conflict with a non-State armed group operating transnationally, does this imply that a non-international armed conflict can exist which has no finite territorial boundaries?
- (d) Does international humanitarian law permit the targeting of persons directly participating in hostilities who are located in a non-belligerent State, and if so, in what circumstances?
- (e) Does the pattern and frequency of the armed attacks currently being perpetrated by al-Qaida, and the various affiliate organizations in different parts of the world that claim allegiance to al-Qaida, satisfy (or continue to satisfy) the criteria of organization and intensity required under international humanitarian law to qualify as a state of armed conflict?

- (f) Assuming that a non-international armed conflict exists, does the test of “continuous combat function,” as elaborated by the International Committee of the Red Cross (“ICRC”) for determining whether a person is a “member” of an armed group (such that they may be targeted with lethal force at any time) reflect customary international law?

All questions asked by Ben Emerson are quite clever, but all proceedings of the UN in this matter are so clumsy and unfocused that one can expect a new convention in the year 2050 perhaps. His hope on consensus on these matters among member states is hopelessly naïve or cynical or both. We may conclude that the debate will go on and the targeted killing as well. What a nice new, brave world, isn't it?

Imagine the Next Stage of the Story: Fully Autonomous Weapons

Current drone computer programs merely advise human operators on the decision to launch an attack. In future, drone computers may be programmed to launch attacks on the basis of preset parameters without the need for a human being to make the real-time decision. Shift of responsibility triggered by fully automated warfare seems to be hardly predictable. According to a 2009 US Air Force report, by 2047 drones will be fully automated. Doubts are expressed by many experts, as to who should be held accountable for possible serious violations of the laws of war. Decisions are usually taken by responsible moral agents capable of rational judgment. The notions of moral agency and responsibility, however, are difficult to reconcile with algorithms. The human agent monitoring the execution of an operation does not take the decision to engage a target at present conditions. Should he be held accountable for having failed to intervene on time to prevent undesirable killings? Should commanders be responsible for having wrongly defined the parameters and rules of engagement? Or should the programmers be held to account for having instilled deficient assessment mechanisms into the machine?

When that ‘person’ is a machine, a crucial link is missing in the mental representation of responsibility. In the absence of a primary offender, the narrative of death is conceptually altered. Technological advances in unmanned warfare displace the burden of decision making and contribute to outsourcing and distorting responsibility. This is a gloomy future. Instead of more security, it may disperse responsibility and accountability completely. Many experts predict autonomous weapons systems will become the norm in the next 20 years.

Fully autonomous weapons, also known as “killer robots,” would be able to select and engage targets without human intervention. It is not certain that fully autonomous weapons do not exist yet, but it is obvious that they are being developed by several countries and precursors to fully autonomous weapons have already been deployed by high-tech militaries. The UK’s Taranis combat aircraft,

whose prototype was unveiled in 2010, is designed to strike distant targets, even in another continent. While the Ministry of Defiance has stated that humans will remain in the loop, the Taranis exemplifies the move toward increased autonomy (Autonomous weapons 2012). Some experts predict that fully autonomous weapons could be operational in 20 to 30 years.

These weapons would be incapable of meeting international humanitarian law standards, including the rules of distinction, proportionality, and military necessity. The weapons would not be constrained by the capacity for compassion, which can provide a key check on the killing of civilians. Fully autonomous weapons also raise serious questions of accountability because it is unclear who should be held responsible for any unlawful actions they commit. Human Rights Watch calls for a preemptive prohibition on fully autonomous weapons. Human Rights Watch is a founding member of the Campaign to Stop Killer Robots, and currently serves as the campaign's global coordinator.

Growing public concern and mounting opinions of critical experts inspired the Secretary General of the United Nations to include in his final report on protection of civilians in armed conflicts some vague recommendations (Report of the Secretary General 2013a, b).

First his report repeated some basic moral questions—"is it morally acceptable to delegate decisions about the use of lethal force to such systems? If their use results in a war crime or serious human rights violation, who would be legally responsible? If responsibility cannot be determined as required by international law, is it legal or ethical to deploy such systems?" Secretary General proposed only ... a debate. He has put it this way: "Although autonomous weapons systems as described herein have not yet been deployed and the extent of their development as a military technology remains unclear, discussion of such questions must begin immediately and not once the technology has been developed and proliferated. It must also be inclusive and allow for full engagement by United Nations actors, ICRC and civil society." It seems to be too little and too late. The Mountain gave birth to a mouse, again. Hopeless weakness of once quite powerful and reasonable organization one may say.

Conclusions

I would like to conclude this essay with some forecasts and recommendations of my own:

1. I endorse the general judgment of John Horgan "The invention that escapes our control, has been a persistent fear of the industrial age—with good reason. Nuclear weapons are too easy an example; consider what cars have done to our landscape over the past century, and it's fair to wonder who's in the driver's seat, them or us. Most people would say cars have, on the whole, benefited humanity. A century from now there may be the same agreement about drones, if we take steps early on to control the risks" (Horgan 2013).

2. Regardless of power game between superpowers on the legal rules of using drones in surveillance and combat missions, there is an obvious need to work on the new treaty arranged for by the United Nations after the final report of Ben Emmerson in 2014. If we do not develop the international law of war, the military technology will make the law obsolete and hopelessly old-fashioned and unable to regulate anything of significance. Do we expect future terrorists or partisans to use military uniforms and to carry a flag in order to be able to order our soldiers to fight against them? Are we to think that terrorist is a civilian protected by the law because he/she is operating in civilian clothes? If humans will not control the technology, the technology will control humans.
3. The beginnings of the British parliamentary debate on this matter show how hard it will be to reach a broader consensus on a new convention. At a parliamentary debate on June 17, 2013, the UK Minister for Counter Proliferation, Alistair Burt MP provided further information on British policy regarding fully autonomous weapons. The Minister stressed that the UK does not possess fully autonomous weapon systems and has no intention of developing them. (UK says killer robots will not meet requirements of international law 2013). By recognizing that fully autonomous weapons “will not” be able to meet the requirements of international humanitarian law, this position provides a significantly stronger barrier to the development of fully autonomous weapons than the government’s previously stated position, presented at the UN Human Rights Council on May 30, 2013, that existing International Humanitarian Law is sufficient to regulate the development and use of such weapons. However, a certain ambiguity reappeared when the Minister noted later in the debate that: “We think the Geneva conventions and additional protocols provide a sufficiently robust framework to regulate the development and use of these weapon systems.”
4. Many varieties of highly sophisticated and smart weapons should be covered by the future international treaty that must be negotiated as soon as possible.
5. The USA will probably adopt a new law on civilian use of drones in 2015, as we already know. The other states should follow as soon as possible with their own legislation regulating drone flights by private companies, by government agencies, and by individual hobbyists. The new law should require the aviation authorities to allow the safe integration of UAVs into national and international airspace. The civilian market for drones—and especially small, low-cost, tactical drones—could soon dwarf military sales. Drone fever might explode in the USA first and very soon after in many advanced countries.

Before it happens the clever law makers should do their job. But regulation should not mean prohibition, of course. Privacy, clean sky, personal safety is at stake if we regulate civilian drones in a wrong way.⁶

Schonfield seems to be right that “lawyers and judges now play starring roles both in making national security policy and in overseeing military operations. The

⁶The New York University School of Law professors have established in Autumn 2013 a successful Web site on <http://security-related.legalthinking/justsecurity.org/>.

result is that, when it comes to the American government's efforts to provide for the common defense, a far-reaching legalism has taken hold" (Schonfield 2011). In the USA, "significant intrusion by lawyers and courts into the conduct of national security and warfare is not something the framers of the Constitution even remotely envisioned. Under the arrangement they established, the political branches were to hold the reins in wartime." Lawyers have penetrated every crevice of the US national security machinery; there are more than 10,000 attorneys in the Defense Department alone, and they determine the conduct of war to a degree without any precedent.⁷

No wonder that legal regulation of military duties increased. In 1914, the War Department—fulfilling America's obligations under the Hague treaty—published its *Rules of Land Warfare*, which contained 139 pages of text. Today, many editions later, the Pentagon issued yet another update of its Law of War Manual, which exceeds 1100 single-spaced typewritten pages, with more than 3000 footnotes.

While planning new laws, it is wise to remember that—as Plato said—"The excessive increase of anything causes a reaction in the opposite direction."

References

- Alston P (2010) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum, Study on targeted killings. United Nations, General Assembly, Human Rights Council 28 May 2010
- Alston P (2011) The CIA and targeted killings beyond borders. *Harv Natl Secur J* 2:2011
- ASIL Keynote Highlight (2010) US legal adviser Harold Koh Asserts Drone Warfare is lawful self-defense under international law. http://insidejustice.com/law/index.php/intl/2010/03/26/asil_koh_drone_war_law
- Autonomous weapons—the risks of a management by 'partition'. 10 Oct 2012. <http://www.article36.org/other-issues/uncategorized/autonomous-weapons-the-risks-of-a-management-by-partition/>. The emergence of armed drones and how we assess the acceptability of new weapons, March 21, 2013. <http://www.article36.org/weapons-review/the-emergence-of-armed-drones-and-how-we-assess-the-acceptability-of-new-weapons/>
- Brennan JO (2011) Remarks "Strengthening our security by adhering to our values and laws. 16 Sep 2011. <http://www.whitehouse.gov/the-press-office/2011/09/16/remarks-john-o-brennan-strengthening-our-security-adhering-our-values-an>
- Brennan JO (2012) Assistant to the President for Homeland Security and Counterterrorism "The ethics and efficacy of the president's counterterrorism strategy". Woodrow Wilson International Center for Scholars, Washington, DC, Monday, 30 Apr 2012. <http://www.wilsoncenter.org/event/the-ethics-and-ethics-us-counterterrorism-strategy>
- Covert War on Terror (2012). <http://www.thebureauinvestigates.com/category/projects/drones/>. Visited 12 Sept 2012

⁷On the other hand, there is in the USA the "Guantánamo bar"—the 500 or so lawyers, many of them from top-drawer firms, leading law schools, and civil liberties organizations—who are representing terrorist defendants. Many of them have often gone far beyond providing competent counsel in court.

- Emmerson B (2013) Promotion and protection of human rights and fundamental freedoms while countering terrorism. United Nations A/68/389, General Assembly, 18 Sept 2013
- Emmerson B (2014) Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 28 Feb 2014, United Nations, A/HRC/25/5
- Horgan J (2013) Unmanned flight. http://ngm.nationalgeographic.com/2013/03/unmanned-flight/horgantext?rptregcta=reg_free_np&rptregcampaign=20131016_rw_membership_n1p_intl_ot_c1#. John Horgan's most recent book is *The End of War*, San Francisco: Sweeney's, 2012. He argues that war is neither necessary nor inevitable
- Heyns C (2013) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. United Nations, General Assembly, Human Rights Council, 9 Apr 2013
- Lamentowicz W (2009) Amerykański i europejski wariant atlantyckiej kultury strategicznej. In: *Bezpieczeństwo międzynarodowe: wyzwania i zagrożenia XXI wieku*, Wydawnictwo Wyższa Szkoła Handlowa, Radom 2009, pp 105–118. I claim that US and Western Europe are two different varieties of Atlantic strategic culture
- Losing Humanity. Report (2012) by Human rights watch. http://www.hrw.org/sites/default/files/reports/arms1112_ForUpload.pdf
- Luban D (2013) A strange and far-flung war, the dissent magazine October 23, 2013
- Obama B (2013) Remarks by the president at the National Defense University National Defense University. Fort McNair, Washington, DC, The White House, 23 May 2013
- O'Connell ME (2010) The international law of drones, 14 American Society of InternationalLawInsight. 12 Nov 2010. http://asil.org/files/2010/insights/insights_101112.pdf
- Mayer J (2009) The predator war, New Yorker, October 26, 2009. http://www.newyorker.com/reporting/2009/10/26/091026fa_fact_mayer#ixzz2NwZuvk2y
- Press Conference by Special Rapporteurs on Executions, Human Rights While Countering Terrorism (2013) 25 Oct 2013, Department of Public Information, News and Media Division, United Nations, New York
- Report of the Secretary-General on the protection of civilians in armed conflict (2013) United Nations S/2013/689 Security Council, 22 Nov 2013
- Schonfield G (2011) Legalism in wartime, national affairs. Number 7, Spring 2011
- The Year of the Drone: an analysis of U.S. Drone Strikes in Pakistan, 2004–2012. New America Foundation. <http://counterterrorism.newamerica.net/drones>. Last updated 4 Apr 2012
- Report of the Secretary-General on the protection of civilians in armed conflict (2013) United Nations S/2013/689 Security Council, 22 Nov 2013
- UK says killer robots will not meet requirements of international law (2013). <http://www.article36.org/weapons-review/uk-says-killer-robots-will-not-meet-requirements-of-international-law/>. Accessed 18 June 2013
- US Policy Standards and Procedures for the Use of Force in Counterterrorism Operations outside the United States and Areas of Active Hostilities is a short brief made available on the White House website. The full document is classified
- Zenko M (2013) US public opinion on drone strikes, March 18, 2013, Council on foreign relations, New York. Sources of data used are as follows: Washington Post/ABC News Poll, (1 Sep 2011), CBS News Poll (6–10 Nov 2011) Washington Post/ABC News Poll (1–4 Feb 2012) Pew Research Center (April 2012) Farleigh-Dickinson Public Mind Poll (7 Feb 2013) CBS News Poll (6–10 Feb 2013) YouTube/Huffington Post Poll (6 Mar 2013)