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America's questionable drone wars

By Barbara Lochbihler
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“Sometime they’ll give a war and nobody will come,” the American poet Carl Sandburg wrote hopefully in 1936. His sentiment seems more apt than ever nowadays, but not because humanity has turned pacifistic. Rather, wars are increasingly fought remotely, with drones – or unmanned aerial vehicles (UAVs) – doing the killing.

Under President Barack Obama, the number of drone strikes carried out by the United States has soared, with more than 300 UAV attacks reported in Pakistan alone. In March 2011, the U.S. Air Force for the first time trained more pilots for drones than for any other purpose.

This raises serious ethical questions. With no military personnel risking their lives, UAVs make it easier to kill, and to justify war operations to the public at home. Moreover, a human being’s reticence to kill is inversely related to the distance between attacker and target. In the case of a pilot flying drones over Yemen by operating a joystick in Nevada, the threshold to pulling the trigger is dangerously low. Killing is just a part of the job, to be followed by bowling, perhaps, or a quiet evening at home.

Meanwhile, the mere sound of drones terrorizes whole populations, indicating to enemies and civilians alike that they are being watched and might be attacked at any moment – which could well play into the hands of terrorist recruiters.

From a legal and human rights point of view, the U.S. drone program is even more alarming. After all, countries such as Pakistan, Yemen and Somalia do not belong to declared war zones. Outside the context of war, in turn, state killings are legal only if they prove absolutely necessary to save lives. They must be conducted either in self-defense after an attack, or in anticipatory self-defense against an immediate threat, when taking time to discuss non-lethal alternatives is not feasible.

More than a decade after Sept. 11, America's drone program does not fall into the first category of reactive self-defense. Likewise, there is no evidence that any presumed terrorist who was killed outside of official war zones in the last few years represented a threat so immediate to U.S. citizens' lives that preventive and premeditated killing was the only option. Unless U.S. leaders prove otherwise in every case, American UAV attacks in countries like Pakistan or Yemen should be called what they are: extrajudicial killings.

U.S. State Department legal adviser Harold Koh disagrees, arguing that America is involved in a worldwide "armed conflict with Al-Qaeda, as well as the Taliban and associated forces." So, Koh claims, drone attacks are part of a global war, fought both in declared war zones and non-war countries; therefore, they are legal.

But, even under this adventurous assumption, human rights issues arise. The laws of war condone targeted killings only of "combatants" who "directly participate in hostilities." The killings must be proportionate, strategically necessary, and publicly justified. Avoiding harm to civilians should be the top priority. At the slightest sign of illegality, an investigation must be conducted, offenders prosecuted, and victims compensated.

The U.S. drone program's legal basis is entirely unclear, however. Given that most information about UAV activity is classified, it is impossible to know whether all drone targets directly participated in hostilities. And, while the Obama administration's claim of zero or single-digit civilian fatalities may be true according to the official definition, it rests on the premise that any military-age male killed in a drone strike is a militant, unless intelligence posthumously proves otherwise.

A recent report by the law schools at Stanford University and New York University concludes that, in reality, civilian casualties in Pakistan may have accounted for up to 75 percent of all UAV victims between 2008 and 2011. Others estimate a lower, but still alarming, rate of 30 percent. The legal obligation of proportionality is clearly being violated.

Accountability is also being flouted. Drone operations are carried out by the Central Intelligence Agency, an organization whose activities are shrouded in secrecy. And unlike military personnel, CIA agents enjoy extensive immunity, undermining international legal standards.

Without increased transparency, to declare America's UAV campaign legal is impossible, both in the context of war and outside of armed conflict. As long as the U.S. keeps the rest of the

world in the dark, illegal acts – including possible war crimes – may be committed with impunity.

Just as citizens worldwide are demanding increased economic and financial accountability, more pressure must be placed on the U.S. to either prove that its drone activities are necessary and legal, or to stop them immediately. Victims of UAV attacks, their families, and civil-society groups have begun to speak out against America's questionable drone campaign, and to pursue legal action. Others should feel encouraged to follow suit.

In the meantime, every drone strike will not only undermine human rights and international humanitarian law, but will also further widen a legal loophole that other governments and armed groups will not hesitate to exploit. The U.S. drone program does not make the world a safer place; it creates an environment in which unlawful killings can happen virtually anywhere, at any time, violating the fundamental human right not to be arbitrarily deprived of one's life.