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Drone Warfare and Just War Theory

Harry van der Linden

INTRODUCTION

Unmanned aerial vehicles (UAVs), better known as drones, have been used by the United States in conventional war situations in Afghanistan, Iraq, and Libya. Their most controversial purpose has been their use, especially by the Obama administration, in the targeted killing of suspected terrorists in non-battlefield settings, notably in the Federally Administered Tribal Areas (FATA) in Pakistan and Yemen.ⁱ Targeted killing of civilian “militants” can also take place through cruise missile strikes, manned aircrafts, and “boots on the ground” (as is illustrated by the killing of Osama bin Laden), but targeted killing by drones has several distinct advantages for the United States.

Unlike targeted killing executed by counterinsurgency troops, drone targeted killing poses few risks to the lives of US soldiers because the teams that launch and recover drones are typically hundreds of miles away from the search and strike area, while the teams that fly the plane (consisting of a pilot and a sensor operator controlling the cameras), together with their supporting teams of data analysts, etc., are thousands of miles away in the United States, watching or searching for their target until the optimal moment has arrived to unleash the missiles. Moreover, drones are considerably cheaper strike platforms than manned aircrafts and can stay in the air much longer (over twenty hours). And, like cruise missiles, drones do not turn the target area into a battlefield where humans face one another as enemies, but they are superior to cruise missiles in terms of a much shorter strike time so that the killing can be executed on the basis of a last- moment assessment of the intended target.ⁱⁱ Accordingly, it not surprising that most US targeted killings have been executed by remote-controlled aircraft.

The targeted killings by the Obama administration show that drones enable war to be fought in a fundamentally new way. My main aim here is to argue that drone warfare poses moral problems and risks of such nature and magnitude that we should support an international ban on weaponized drones and, certainly, that we should seek an international treaty against drone systems that operate without the remote-control link; namely, autonomous, lethal UAVs (and killer robots in general). My argument will develop in two steps.

First, I will articulate some moral objections to drone warfare on the basis of a just war theory analysis of the Obama administration's targeted killings. To make my analysis manageable, I will focus on the drone targeted killings executed mostly under Central Intelligence Agency (CIA) supervision in the FATA, but, on the whole, the analysis also applies to the drone killings in Yemen.

The CIA drone campaign in Pakistan peaked in 2010 with 128 strikes and 751 to 1,109 "militant" and civilian casualties, and ceased as of January 2014, at the request of the Pakistani government in order to facilitate its peace talks with the Pakistan Taliban, one of the main armed groups operating in the FATA.ⁱⁱⁱ The respite in drone strikes might become permanent, but this would not signal a change in US policy because the drone targeted killing is ongoing in Yemen with several strikes a month in early 2014.

Second, I will explore some additional moral objections to combat drones on the basis of principles of "just military preparedness" or *jus ante bellum* (justice before war), a new category of just war thinking. Let me begin by introducing traditional just war theory and its normative principles.

JUST WAR THEORY

Just war theory consists of a historically evolved set of normative principles for determining when resort to military force is just (*jus ad bellum* principles) and how war can be justly executed (*jus in bello* principles). The most important *jus ad bellum* principle is that war must have a just cause, i.e., a goal of a kind and weight that seems to make resort to military force appropriate. Further, war must be declared by a legitimate or right authority, and must be pursued with right intention or the just cause as its primary motive. The three final *jus ad bellum* principles are that war must be a last-resort measure (diplomacy and other nonviolent measures should generally be pursued first); that it must have a reasonable chance of success in realizing its intended goal; and that it must be proportional in the sense that the anticipated goods of militarily pursuing the just cause must be commensurate with the expected harms.

The most essential *jus in bello* principle is the principle of discrimination, or noncombatant immunity, which requires that combatants distinguish between civilians and enemy combatants, and only directly attack the latter. Unintended civilian deaths are permitted, but due care must be taken to minimize their number, and the value of the military target must make it worth the civilian cost of life. There is also a separate *jus in bello* principle of micro-proportionality, stipulating that military force should be used economically in that the anticipated harms of a military action should not be excessive in proportion to its military value. Traditionally, the *jus ad bellum* decision was seen as chiefly the responsibility of political leaders, while using force in accordance with the *jus in bello* principles fell on the shoulders of soldiers. But in a modern democracy this

seems no longer tenable: war in all its aspects has also become the responsibility of the citizens, and, arguably, a volunteer army entails that soldiers also have *jus ad bellum* responsibility and should refuse to fight unjust wars or, at least, not re-enlist for them.

The just war principles are quite broad and general, and contemporary just war theorists offer slightly different sets of principles, interpret the individual principles in dissimilar ways, and give different weight to the various principles. Thus just war theorists end up defending views that range from being rather bellicose and generally supportive of US interventionist policies, to views that are in practice close to pacifism and oppose most, if not all, recent US wars. Still, just war theory provides a widely shared moral framework for addressing new moral concerns raised by the ever-changing nature of warfare. This seems particularly important when the United Nations (UN) Charter and International Humanitarian Law (IHL) (which embody many just war principles) may not cover new military developments and threats, such as targeted killing by drones in response to the dangers posed by “global terrorism.” Thus the moral analysis offered by just war theory may lead to a desire to revise the UN Charter and IHL, or may lead one to argue against misguided efforts in that direction.

DRONE WARFARE AND *JUS AD BELLUM*

In a speech at the National Defense University on May 23, 2013, President Barack Obama defended the targeted killings under his administration as morally and legally justified acts of war, as a part of a war of self-defense against al-Qaeda and its “associated forces” authorized by Congress in response to 9/11 in the 2001 Authorization for Use of Military Force (AUMF).^{iv} No doubt, in light of the scope and nature of the targeted killings executed under his authority, Obama rightly viewed them as acts of war rather than, say, as last-resort acts of law enforcement. But were they *justified* acts of war? Did they have a just cause? More specifically, the question is whether the “militants” targeted by the Obama administration’s drone killings constituted a clear threat against the United States of a magnitude and type such that war acts against them were warranted. Jeff McMahan argues that the targeted killing of terrorists as an act of self-defensive war is morally quite similar to the killing of aggressor combatants who are asleep.^v Aggressor combatants (who are in uniform), unlike civilian aggressors (“terrorists”), have a legal right to kill on the battlefield. But like civilian aggressors, they do not have a moral right to kill, and they intend to be instrumental in killing persons who have done nothing to warrant this fate. We may therefore kill both types of aggressors in order to prevent wrongful harm from being inflicted.

This analysis provides moral support for targeted killing as an act of war only in terms of the *type* of threat that is posed. What is also required for “just cause” is that the threat has a *magnitude* large enough so that war becomes a reasonable option. After all,

a limited threat does not justify the initiation of war with all its inevitable, and often unexpected, harms. (The proportionality principle further assesses in particular cases whether the threat outweighs the harms involved in eliminating the threat; the just cause principle only requires the existence of a threat that meets the threshold of a serious threat.)

Moreover, it is only when the threat to a political community is very substantive that we may adopt the morally deeply-disconcerting war standard of killing on the basis of hostile status (as happens in drone strikes) in addition to the commonly accepted standard of killing in strict self-defense. Similarly, the threat must be great to warrant the adoption of a less strict standard in war than in law enforcement for avoiding the unintentional killing of non-hostile civilians. Typically, terrorists lack the weaponry, the organization, and the number of participants for meeting the threat threshold of just cause, and in that case civilian aggressors should be approached as very dangerous criminals who should be arrested, extradited if needed, and who may only be killed or incapacitated when they use lethal force or seek to escape. The horrific events of 9/11, however, gave credibility to the idea that al-Qaeda posed a danger that went above the threshold necessary for war. To be sure, the virtually unanimous support for war at the time might have been rooted more in retributive feelings than in the conviction that war was necessary to prevent large-scale future harms. But this only shows that the understanding of war as punishment, rejected by most modern just war theorists, is still prevalent.^{vi}

Credible just war thinking must see war as not only in need of justification at the point of its initiation, but should also assess its continuation and its various stages on the basis of *jus ad bellum* principles (i.e., we should temporalize the principles).^{vii} The Bush administration initiated a conflict in Pakistan (beyond the conflict in Afghanistan) with the targeted killing of civilian “militants” in the FATA. Obama hugely stepped up these killings immediately after his inauguration in 2009: about 85 percent of around 380 strikes in Pakistan were performed under Obama’s orders.^{viii} Did this new campaign have a just cause? By 2009, the case that al-Qaeda constituted a threat serious enough to qualify as a just cause had greatly weakened. Surely, no major attacks had been launched or plotted against the United States after 9/11 that gave credibility to the view that law-enforcement measures would be largely inadequate to meet future al-Qaeda threats. Moreover, the war in Afghanistan had weakened al-Qaeda in this region and led to its dispersal to other countries. It may also be noted that other countries that suffered from horrendous terrorist attacks in the years after 2001, such as Indonesia (Bali bombing in 2002) and Spain (Madrid bombing in 2004), had not moved away from the law-enforcement model.

The Obama administration has never really tried to make the case that its drone killings in Pakistan were justified in terms of self-defense, since it executed these killings largely in secrecy. The only data we have about the number of strikes and

people killed have been tabulated by civilian groups, based on reports by local individuals, government officials, and journalists in a region with rather limited access. This lack of transparency violates the requirements of the principle of legitimate authority. Congress failed in its responsibility as legitimate authority when it authorized the president, in the AUMF, to use US armed forces against any state, organization, or person linked to 9/11. Obama exploited this extremely open-ended authorization in his approval of greatly expanding US targeted killing in Pakistan, sidestepping the fact that the CIA is not part of the “armed forces.” It should also be noted that the AUMF only authorized the president to take action against people connected to 9/11, not those suspected of other terrorist actions. The principle of legitimate authority demands full transparency (rather than limited reporting to some members of Congress) because it is only on the basis of debate and access to all facts that a body representing the people can declare war, as a communal enterprise, in the name of the people. The same can be said of new stages of development in a continuing war. Remarkably, it was not until early 2012 that Obama for the first time publicly discussed his drone program, and Congress has still not demanded a tally of the number of civilian and militant casualties in US targeted killings.^{ix}

Secrecy has also enabled the Obama administration to violate the principle of right intention in its targeted killing campaign in Pakistan. Even though the killings were justified as self-defense, they must have served other goals. Notably, in drone strikes on Pakistan during the Obama administration, fewer than 10 percent of the identified targets were directed against al-Qaeda, and less than 2 percent of all “militants” killed were named leaders of al-Qaeda or other targeted organizations.^x In short, it seems that the militants killed were mostly low-level insurgents with local aims (such as members of the Pakistan Taliban), and most strikes were not aimed at named individuals (so-called personality strikes) but rather at individuals who fit the profile of a militant (so-called signature strikes). The US goals (other than self-defense) seem to have been to weaken the FATA as a basis of support for the Afghanistan Taliban and to assist the Pakistani government in its struggle with various armed opposition groups, such as the Pakistan Taliban, in the FATA. More broadly, the United States seems to have been guided by the motive of maintaining, and even extending, its role as global military hegemon. I will later suggest that the United States morally erred in pursuing these goals; what matters now is to note that the goals show a lack of “right intention” behind the Obama administration’s drone killings.

The various violations of the first three *jus ad bellum* principles by the targeted killings in Pakistan point to several moral dangers of drone warfare. It is easy to use drones for preventing threats or harms that remain under the threshold of just cause, since drone warfare poses few risks for those who execute it, at least in asymmetric conflicts. And what greatly adds to this danger is that active public support is not needed to execute drone warfare, and that this type of war, accordingly, can easily be

undertaken largely in secret without proper authorization and public debate, even in an “open” society.

Moreover, drone warfare makes it easy to pursue goals that are different from the stated goal of security that generally appeals to the public. Thus drone warfare seems to be thus far the best enabler of war as “alienated war,” that is, war as a collective activity that no longer requires public sacrifice and moral commitment.^{xi} The volunteer army, the use of private military contractors, the technology of precision bombs, and, now, drone warfare, are all steps toward normalizing war for US citizens: war no longer feels like war, it no longer disrupts everyday life, and, so, war becomes acceptable. Long-term “boots on the ground,” even if they are the boots of volunteers, threatens this normalization, as the wars in Afghanistan and Iraq have illustrated, but there is no such time-limit problem in drone warfare. Combat drones also have been proven to be very effective in conventional wars, as illustrated by the war in Libya. No troops on the ground were necessary for “success” in that war, and this played a role in President Obama simply announcing this war, rather than seeking public approval and congressional authorization. Drone warfare, then, as almost risk-free war for US soldiers, minimizes the number of occasions that the public is left wondering whether war and the United States playing “global cop” is worth the sacrifices of its soldiers. With drone warfare, the public is left free to admire the military in a cultural sort of way only (video games, technological awe, “support the troops,” parades, etc.), while the government is left free to pursue its political and military interests.

Drone warfare shields the US public from the reality of war, but war is still very real at the receiving end. The buzz of the combat drones is heard overhead for hours on end in Pakistan, leaving the local people in enduring states of deep fear since the missiles could strike at any moment. And the strikes wreak human devastation: the total casualties (from 2004–2013) are between 2,296 and 3,719; the non-hostile civilian casualties are between 416 and 957, including as many as 202 children. Another 1,089 to 1,639 people have been injured.^{xii}

Other costs of the drone strikes were that Pakistan’s sovereignty has been violated and that the strikes have led to growing resentment among the Pakistani people against the United States. Moreover, the strikes created fertile recruiting grounds in the FATA for new civilian aggressors and set a bad precedent for future targeted killing campaigns by other countries. It seems that all these costs could reasonably have been foreseen when the drone campaign in Pakistan was expanded in 2009, and so it should have been clear to the Obama administration that the campaign, with its uncertain and limited threat prevention impact, would violate the proportionality principle. And, surely, the more these costs have become impossible to ignore in subsequent years, the stronger the case has become in terms of proportionality considerations that the campaign has to stop.

The Obama administration, however, claimed that its drone strikes did not violate Pakistan's sovereignty because that government permitted the strikes. This defense has merit but is ultimately not convincing. A visible sign of Pakistan's permission, at least in the early years of the Obama drone attacks, is that the CIA launched drones not only from Afghanistan but also from Shamsi air base in Pakistan (the United States was evicted from the base in December 2011).^{xiii} Similarly, we may see the fact that the Pakistani government claimed responsibility for some drone strikes prior to 2008 as reflective of its permission.^{xiv} We should ask, though, how did Pakistan's permission come about? Was it the result of undue political pressure and conditional financial and military aid promised by the United States, or was it significantly the outcome of the Pakistani government's desire to combat (with US assistance) the growing oppositional violence and flagrant human rights violations by the Pakistan Taliban and other militant groups in the FATA? Similarly, it is unclear what we should make of the Pakistani government's frequent public protests against the US drone strikes. Did the protests reflect genuine concerns about violations of Pakistan's sovereignty, or were they mostly attempts to pacify the growing strong public opposition among the Pakistani people to the strikes? So, at least, the claim that the United States did not violate the sovereignty of the Pakistani government (state) is questionable.

But the real issue at stake is sovereignty in a broader sense, the sovereignty of the people of Pakistan, and here the picture is much clearer: the majority of the Pakistani people have consistently opposed drone strikes, even if the strikes were presented (in polls) as necessary to reduce militant violence against Pakistani citizens.^{xv} The obvious lesson is that most Pakistanis thought (and still think) that oppositional violence in their country is their battle to fight, and for good reason. US intervention has served as a destabilizing force and even might have fueled the flames of the violent opposition, exploiting anger at the "untouchability" of US military force and its arrogance of engaging in widespread killing in "secret." Likewise, the United States had no right to extend its war in Afghanistan to Pakistan in order to address its failure to prevent al-Qaeda and many Afghanistan Taliban fighters from making the FATA their new staging ground after the war was "won" in Afghanistan.

The Obama administration's drone killings violate the last resort principle. Alternatives, whether in the form of negotiations or law-enforcement measures, do not seem to have been considered. In fact, a remarkable feature of the Obama administration's counterterrorism strategy is that no prisoners are taken, and thus the problem so central to the Bush administration of how to treat captured suspected terrorists is largely avoided. It is certainly ironic that in the same year Obama reached out to the Islamic world and received the Nobel Peace Prize, he also greatly stepped up the drone strikes in the FATA. The brief hope for a more multilateral and cooperative American foreign policy was betrayed in secret by a continuation of the usual

militarized foreign policy, clouding the prospect of finding enduring solutions for terrorism. Thus the principle of reasonable chance of success was also violated, because military force in accordance with this principle must lead to long-term threat reduction. The drone strikes in the FATA might have reduced some threats posed by al-Qaeda for the United States, but at the cost of worsening the economic and political conditions in the area and so inducing new threats in the long run, especially for the Pakistani people. Generally, militarized foreign policy errs in thinking that war is the answer; it fails to recognize that military force, at best, can bring people to the point of renewing cooperative efforts and finding nonviolent, enduring solutions for what gave rise to violent conflict in the first place.

These violations of the final three *jus ad bellum* principles further underline how drone warfare enables “alienated” war. Since targeted killing by drones does not place US soldiers in the areas under attack, it seems that sovereignty is not violated and that no war has been waged against the Pakistani people. Drone strikes, in other words, appear to eliminate only “terrorists” from afar, and drones, touted as very precise weapons,^{xvi} can carefully excise this evil. With this mode of thought, the very fact that drones have been harming the Pakistani people has remained largely outside the US national discourse, and there were no US soldiers on the ground to report otherwise and bring stories home of great human suffering. Our news about drones at war is not the news of a country at war; at most, drone strikes are reported in the sidelines with the number of estimated terrorists killed and the occasional mention of civilians who also may have died. “Alienated” war is war for which people do not take full responsibility, and combat drones facilitate this denial of responsibility.

DRONE WARFARE AND *JUS IN BELLO*

Granted that the Obama drone campaign in the FATA was unjust in *jus ad bellum* terms, it follows that all US drone killings during this campaign were wrongful killings, and that the just course of action would have been to request Pakistan to arrest all those civilian militants against whom US courts would have a legal case. No doubt, this would have been a tall order and success might have been limited, even if the Pakistani government would have accepted US assistance. But justice comes with a price, and the moral costs of drone killings as the alternative were much greater. Still, it remains important to address the wrongful drone killings in *jus in bello* terms, both in order to rebut the Obama administration’s view that the drone strikes were justly executed and to point out *jus in bello* moral dangers of drone warfare in general. Limited data and the scope of this chapter make it impossible to assess individual drone attacks, but the aggregate data allow for *jus in bello* assessment of the Pakistani drone campaign over the years.

The United States has frequently executed several missile strikes in short succession on the same target in the FATA with the result that responders to the first strike, such as rescue workers and family members, were killed.^{xvii} This policy violates the principle of discrimination or noncombatant immunity because it reflects lack of due care in seeking to minimize civilian casualties; worse even, it suggests the intentional killing of civilians, a war crime. Besides requiring due care, the principle of discrimination also demands that the civilian costs of individual strikes are not excessive in light of the military value of the strikes. The percentage of civilians killed was approximately 22 percent in 2009, 11 percent in 2010, 14 percent in 2011, 7 percent in 2012, and as low as 0 percent in 2013.^{xviii} Is this range of killing civilians proportionate?

How do you decide this question? A recent defender of the drone strikes suggests that “we can compare the number of civilians that targets are killing and the number of civilians killed in the targeting to see which number is bigger.”^{xix} Noting that al-Qaeda (and its affiliates) had been responsible for over 4,400 civilian deaths throughout the years and that at most 700 civilians had been killed in Pakistan (through 2011), this supporter of drone strikes concludes that the civilian deaths in Pakistan were clearly not excessive. I have already pointed out the flaw in this reasoning: the total number of civilians killed by al-Qaeda is as such not an adequate reflection of the threat level posed by this group in 2009, when Obama stepped up the drone warfare in Pakistan. Certainly, there is no evidence to support the notion that the drone campaign against al-Qaeda has saved the lives of even remotely as many US civilians as the number of Pakistani civilians killed during this campaign. Proportionality seems to demand that the estimated number of saved lives should be much higher.^{xx}

Another argument to the effect that the civilian-killing percentage of the drone warfare in Pakistan was acceptable is that alternative military strategies, such as putting boots on the ground, would have led to greater numbers of civilians killed.^{xxi} Generally, it might be true that non-drone counterterrorism operations may result in more civilian deaths—soldiers, for example, may be more discriminate than drones (they know who shoots at them), but more civilians might be caught in crossfire in a ground battle. But one cannot conclude that since one operational strategy brings fewer civilian deaths than another that, therefore, this strategy has an acceptable rate of civilian deaths. After all, the other strategy might be grossly disproportionate. At best, the comparative proportionality advantage of drone warfare helps to explain why drone warfare is a preferred US option. It also might be a factor in the United States opting for drone warfare in regions where it would not use traditional conventional military force.

Officials of the Obama administration have regularly emphasized that combat drones are very accurate weapons and so lead to very minimal civilian deaths. Former

defense secretary Leon Panetta, for example, claimed in 2011 that drones “are probably the most precise weapons in the history of warfare.”^{xxii} However, the very fact that drone technology has accurate capabilities in terms of identifying its target and then striking the target with a limited blast area does not mean that due care is taken to avoid civilian casualties. The fact that the number of civilian casualties decreased greatly the more drone warfare in Pakistan was protested and subjected to public scrutiny suggests that the capability of technological accuracy in the early years of the Obama drone campaign in Pakistan went hand in hand with a lack of “moral accuracy.” Relatedly, precision in finding and hitting the target does not imply that there is precision in the *selection* of the target.^{xxiii}

The Obama administration’s process of naming the militants it puts on its killing lists is shrouded in secrecy and might not be very reliable. Flawed intelligence may lead to misidentification of civilians as hostile militants. It also should be noted that there is no general agreement on the criteria for determining the hostile status of civilians in the first place. The bomb maker of al-Qaeda is a threat, but what about the propaganda maker, the paid armed chauffeur, or a seemingly inactive member? The little we know about the identities of “militants” killed by the Obama administration suggests that it adheres to a rather broad understanding of what counts as being militant. Signature strikes, with their vague killing standard of “fitting the profile of hostile militants,” add greatly to the problem that many people killed might have been misidentified or mischaracterized. Accordingly, the Obama administration’s claim of limited unintended civilian deaths, even if taken at face value, is misleading in that drone strikes may have killed many people conceived of as militants who were actually civilians. Even the data gathered by various civilian groups might over-report the number of genuine militants, since often the only evidence for claiming that the casualties were militants is the reporting by “anonymous Pakistani officials,” presumably army officials with an interest in having broad standards of militancy and pleasing the US military.^{xxiv} Thus the unintended civilian deaths of the drone campaign in Pakistan might be considerably greater than the mere numbers or percentages of “civilians killed” suggest, so that the campaign, even in its later years, might have been to some degree disproportionate.

The principle of micro-proportionality prohibits excessive use of force, taking into consideration both civilian and militant casualties. Based on the assumption that the goal of the drone campaign in Pakistan was to eliminate threats posed by al-Qaeda, signature strikes violate this principle because, surely, there was no way of telling whether an individual who fit the profile of “militant” belonged to al-Qaeda or some other militant group. Moreover, since, as previously noted, less than 10 percent of all drone strikes in Pakistan (during the Obama administration) were specifically directed against al-Qaeda, military force was used excessively in terms of the stated goal of combatting “global terrorism” because no attempt was made to avoid the killing of

militants with local aims only, and their deaths had only marginal value with respect to the goal of weakening al-Qaeda.

In sum, all the praise of combat drones as very precise killing machines obscures difficult moral problems of setting (and executing) morally convincing standards for determining the hostile status of civilians and of deciding what counts as disproportionate civilian deaths. Similar problems also emerge with regard to defining military targets in civilian settings. Technological accuracy lulls people into thinking that “moral accuracy” has been reached, making drone warfare a more acceptable form of warfare. What further enables the comfort of drone warfare as “alienated war” is that US military superiority leaves people unconcerned that drone warfare brings war home in a manner that raises significant *jus in bello* concerns: military drone pilots are combatants during their working hours on their base and they “hide” their combatant status after work when they mix into the civilian population and return home. Moreover, the CIA agents who assist in drone strikes are civilians who help to kill civilian militants who are blamed for hiding their hostile intentions.^{xxv}

TARGETED KILLING: BETWEEN WAR AND LAW ENFORCEMENT

In his speech at the National Defense University, Obama not only defended his drone warfare record, but he also looked at the future of the war against global terrorism.^{xxvi} He said: “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.’” More specifically, Obama reiterated his commitment to bring the troops home from Afghanistan and proposed that we no longer define US counterterrorism as a “global war on terror,” but rather “as a series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America.” These “targeted efforts” foremost refer to drone strikes, and, apparently, Obama seems to think that the continuation of targeted killing strikes, at a reduced rate thanks to “the progress we’ve made against core al-Qaeda,” is no longer really war. Correspondingly, he said that he would like Congress and the American people to engage “in efforts to refine, and ultimately repeal, the AUMF’s mandate.”

Concomitant with the speech at National Defense University, the White House released a fact sheet,^{xxvii} outlining standards (taken from a classified Presidential Policy Guidance on targeted killing) for how to use lethal force against terrorists in countries where the United States is not at war. In short, the standards permit a drone attack against a terrorist only if capture is not feasible, local authorities will not or cannot take effective measures to deal with the “imminent threat to U.S. persons,” and there is “near certainty that the terrorist target is present” and “near certainty that non-combatants will

not be injured or killed.” The “fact sheet” maintains that the standards “are either already in place or will be transitioned into place.”

What are we to make of these standards and the proclaimed “end” of the war on terror? It is clear that the standards have not been fully implemented in the ongoing drone war in Yemen, but then an Obama administration spokesperson said in April 2014, almost a year after the first announcement of the new standards, that “I’m not going to speculate on how long the transition [toward the new standards] will take, but we’re going to ensure that it’s done right and not rushed.”^{xxviii} The “end” of the war on terror and the new standards are attempts to normalize war and so ensure that war remains “alienated war.” By emphasizing that the continuation of drone killings of civilian militants is not a continuation of the “war on terror” and can be done with a refinement or even repeal of the AUMF, Obama seems to want the American public to accept a permanent war that is no longer called war. And, of course, the legal restrictions of the homeland security state, so typical of being at war, will largely remain in effect. What the Obama administration also seems to be doing is to push targeted killings by drones in the direction of a hybrid model of the war and law-enforcement legal models of the use of force, following the example of the Bush administration’s hybrid treatment of captured terrorists. Targeted killing by drones might not meet the level of intensity of conflict to be legally counted as war (it is “force away from hot battlefields”), but it still uses force in a manner typical of war, that is, hostile status killing (with some fine-tuning perhaps in terms of the scope of acceptable civilian deaths). And so a hybrid model might give greater respectability to US targeted killing by drones, avoiding censure that might come from either the war model or law-enforcement model of the use of force. Further, combat drones, it is widely admitted, do not meet legal obstacles as such when used in conventional war theaters. Thus, we would be led toward a world in which drone warfare would be the new legal “normal,” both in international conflicts and armed conflicts with non-state actors. Would a just military and society want such a world?

COMBAT DRONES, KILLER ROBOTS, AND *JUS ANTE BELLUM*

Just war theorists tend to look at each war as a separate moral event, paying little attention to the fact that how we prepare for war has a great impact on how likely it is that war will be justly initiated and executed. To address this shortcoming I have articulated in some prior essays a new category of just war thinking, “just military preparedness,” with principles that set forth requirements for the military as a just institution.^{xxix} In line with the commonly used naming of the other just war theory categories, the new category may be called *jus potentia ad bellum* or, more briefly (but less accurately), *jus ante bellum*. Just military preparedness addresses two justice

concerns. First, it raises questions about whether the military preparation of a country is just toward its military personnel, places a fair burden on the civilian population, and the like. Second, it raises questions about whether the military preparation of a country is such that it is conducive to the country resorting to force only when justice is on its side and to executing war justly. The ultimate concern of *jus ante bellum* as part of just war theory is military preparedness that is just in the second sense, but justice in the first sense must also be addressed since it impacts the possibility of justice in the second sense. In what follows, I will discuss five *jus ante bellum* principles, emphasizing the first two principles since they have the greatest bearing on the question of whether a just military would want to include drones in its preparation for the possibility of war.

The first principle says that the basic defense structure of a country should accord with its general purpose of using military force only for the sake of protecting people against extensive basic human rights violations caused by large-scale armed violence. This principle of “just purpose” requires that a country is able to meet acts of aggression and has the capacity to contribute to the collective tasks of assisting other countries in their self-defense and preventing humanitarian catastrophes caused by armed force (humanitarian intervention). The United States, with its relentless pursuit of military superiority, its professional army of around 1.4 million active duty personnel, its “empire of bases,”^{xxx} and its military expenditures close to 50 percent of global military spending and five times the size of the second-largest spender (China), is in clear violation of this principle. The US military does not seek capability of self-defense and global security through collective efforts, but rather aims at military hegemony and global “power” projection to serve its political and economic needs.

The first principle requires that new military technology is introduced only if it is necessary for, or conducive to, the global protection of basic human rights. In the past, new military technology has often been developed by a party in order to gain advantage in a conflict that otherwise could not have been won or only won at very great human costs. But this does not describe how during the past few decades the United States has introduced new military technology. The main motivations behind its continuous military technological innovations seem to be the desire to maintain military superiority and dominance and to satisfy huge financial interests at stake in the research, development, production, and sale of new weapons. The introduction of combat drones illustrates this point. Drone warfare extends the global reach of US military power, and major weapon industries are increasingly investing in further developing and producing combat drones. A recent report for Congress, for example, projects that the Department of Defense will spend around \$13 billion on the Reaper, the current combat drone of choice in targeted killing, between 2011 and 2020.^{xxxi} Now the problem with new military technologies is that they tend to spread to other countries, and this is certainly happening with combat

drones. Thus we may fairly soon live in a world in which a significant number of countries (e.g., China, Russia, India, and Iran) will use combat drones in war zones as well as nonwar zones and engage in the targeted killing of their “terrorists,” their militants seeking secession, etc. This danger of a highly destabilized world with military violence exercised by many countries outside their borders and off the battlefield is a clearly foreseeable risk. So, had the US military been just in terms of military preparedness, it would not have introduced combat drones.

Some recent defenders of combat drones have argued that they might actually be used in the service of protecting human rights. The basic argument is that countries such as the United States with a low tolerance for casualties among its troops might use drones to execute humanitarian interventions it would otherwise not have executed for being too risky to the troops.^{xxxii} Here the argument that combat drones make war too easy is turned around: it is a good thing that it becomes easier to intervene in unfolding humanitarian crises. And the punch line is that “humanitarian drones” were already very effective in the “humanitarian intervention” in Libya, and that future “ground drones” (remote-controlled mobile strike platforms) would be of even greater assistance in meeting humanitarian goals.^{xxxiii}

One problem with this argument is that most of what happened in Libya was not a humanitarian intervention in accordance with U.N. Security Council Resolution 1973,^{xxxiv} but rather NATO choosing a side in a civil war and actively supporting the overthrow of Qaddafi. Another problem is that it is unclear how combat drones could effectively protect populations under threat and actually stop génocidaires in their tracks. What seems more plausible is that killing from above would fan the flames on the killing fields. Similarly, drones on the ground would not seem particularly effective in defusing human hatred in action. A much better alternative is to create a permanent rapid intervention force under UN authority, specially trained for peacekeeping and dealing with violent humanitarian conflicts and composed of soldiers from across the globe. This would avoid reinforcing the role of the United States as military hegemon and it would make addressing humanitarian crises a collective responsibility, not requiring US soldiers alone to risk their lives.

Combat drones are quite vulnerable to attack from modern air-defense systems, and so the United States is developing stealth drones and drones with air-to-air attack abilities. Especially noteworthy is the stealth X-47B with its ability to land and take off from aircraft carriers.^{xxxv} It has a much larger flying range than current weaponized UAVs and it can fly itself. So the future seems to be that US combat drones will be used in more conflicts, will begin to replace even the most advanced manned aircrafts, and can reach all the corners of the world. Also, the X-47B points to a future where the human role is limited to overriding the decisions of

unmanned killing systems, as a step toward fully autonomous systems where humans are taken out of the loop altogether, and the killer robots “select” their own targets and “decide” on their own when to pull the trigger. Generally, drone pilots and sensors have limitations of concentration, duration, and processing data, and so there is a push toward taking them out of the loop or at least limiting their role. Other developments in the US military pipeline include the miniaturization of UAVs (micro killer drones), drones operating in swarms, and weaponized underwater unmanned vehicles (UUVs).

The move toward autonomous lethal systems, or “killer robots,” in the air, on the ground, or undersea will further increase some of the moral dangers noted with regard to remote-control killing. The threshold for resorting to force will be further lowered because the risks to soldiers will be further minimized. The illusion that borders can be crossed without violation of sovereignty will become even more compelling, and political leaders will be even less inclined to seek public authorization for war. Robotic warfare is also likely to strengthen war as alienated war for those who have the robots on their side. Robots seem to promise security without human costs; no tears need be shed over fallen robots. But, here again, we must wonder what would happen if other countries catch up with the United States, or even surpass it in killer robot innovations. Robotic killers have neither loyalty nor mercy and will kill for all who can afford them, the just and unjust alike, including non-state actors. Their presence will be a great threat to human rights unless one assumes that in the future all centers of political and economic power somehow miraculously coalesce with all the centers of justice, leaving robots only to fight unjust militants at the periphery. More likely, it will be a world of extreme asymmetric warfare, in which robots fight civilian militants who in some cases rightfully and other cases wrongfully refuse to obey the policies of the controllers of the killer robots. Ironically, in a world in which there is a diminishing number of human soldiers to fight, militant civilians might increasingly turn in desperation to attacking civilians under the protection of killer robots.

The second *jus ante bellum* principle—the moral competency and autonomy principle—demands that military personnel be educated and trained with the just purpose of resort to force (articulated in the first principle) in mind, and be treated as morally competent and autonomous agents. Part of the rationale of this principle is that it is deeply immoral to turn soldiers into mere instruments of the state, deny them the opportunity to exercise their *jus ad bellum* responsibility, and let them pay the moral and psychological costs of coming to reject a war through the experience of fighting the war. All too often soldiers come to regret their participation in war. Yet, it does not seem to be the case that the US military is encouraging any independent *jus ad bellum* thinking among its troops or even officers.^{xxxvi} The second principle further requires that combatants are trained to become experts in

protecting human rights, and this includes, but is not limited to, taking on *jus in bello* responsibility. The US military is somewhat more successful in training its soldiers in *jus in bello* responsibility, partly because the changed nature of warfare, notably counterinsurgency by US ground troops in Iraq and especially Afghanistan, has necessitated better training in this regard: military success requires winning the hearts and minds of local civilian populations. Nevertheless, there are many documented instances of the commission of war crimes by US forces.^{xxxvii}

Drone warfare is likely to have some eroding impact on soldiers taking on *jus ad bellum* responsibility and strictly adhering to *jus in bello* norms. The justice of their war should be of equal concern to remote-control soldiers and soldiers on the physical battlefield. But remote-control soldiers have a reduced incentive to ponder the issue since they are not risking their lives as are the traditional soldiers. Moreover, since drone operators are not directly experiencing the consequences of their actions, they are less likely to come to question whether justice is indeed on their side. Also, unlike traditional soldiers, drone soldiers cannot get feedback from enemy soldiers or local civilians that might lead them to address *jus ad bellum* issues.

With regard to *jus in bello* norms, killing in a remote-controlled way seems to invite less due care in trying to avoid violating these norms because one can experience the harm that one has caused only in a mediated way. To be sure, remote-control killers, like killers on the physical battlefield, see the harm they have caused—and PTSD has been reported among drone operators.^{xxxviii} But it is also the case that the drone killers are only watching a monitor, that they watch without being seen, that they do not hear the sounds of suffering, and that they watch with others, and all these features seem to create emotional distance and with it moral distance and greater risk of moral indifference.^{xxxix} What seems to add to the unreality of the harm and the risk of moral sliding is that the mediated battlefield experience is an interruption of everyday life with family, driving to and from work, and so on.

Even if one were to conclude that drone warfare as such is not likely to have some erosive moral impact on a military that seeks to adhere to moral standards, there is still the problem that effective drone operators may simply be skilled gamers who think flying a drone is a cool video game. The drone soldiers do not need courage; they do not need to feel a loyalty to fellow soldiers or country that requires them to be prepared to risk their lives; they do not have to face their victims and confront the fact that the video game is not really a game; and they do not even have to be paid very well (say, as compared to mercenaries, who risk their lives but fight without political allegiance). In short, drone warfare enables war to be partly executed by human agents who are the very opposite of the human agents who may justifiably use force according to the second *jus ante bellum* principle: agents committed to protecting

human rights and using force only for the sake of this purpose. For a just military, the fact that flying drones might be outsourced to skilled gamers with no concern for protecting human rights would be an additional reason not to embrace drone warfare.

Combat drones operative in war zones do not seem to pose direct moral problems for soldiers on the ground as long as a clear command structure is in place. However, once drones morph into autonomous lethal systems, this will change. When human soldiers and killer robots fight side by side, the robots will place significant limits on the scope of decision making of human soldiers, and the human soldiers may be helpless to prevent situations when robots malfunction, misjudge a threat, use excessive force, or violate the laws of war. And, these *jus in bello* violations may also emerge when robots fight on their own in both war and non-war zones. Proponents of fully autonomous killing systems have argued that such problems can be circumvented by designing killer robots so that *jus in bello* constraints are integrated into their artificial intelligence. Even better, they argue, killer robots lack emotions of anger and hatred that may lead human soldiers to commit *jus in bello* crimes. In response, it should be noted that it is doubtful that machines will any time soon, if ever, have the capacity to act in accordance with the laws of war, and so there is the definite danger that killer robots will be developed and used that fall significantly short in this regard. Moreover, why should we assume that all militaries would even want to build these constraints into their killer robots? To be sure, unjust militaries may also use and train rogue soldiers, but unlike rogue killer robots, most human killers have some emotive resistance to killing that may at least offer some protection for non-hostile civilians, surrendering combatants, and the like.^{xl}

The third principle of just military preparedness—the principle of priority to nonviolence—demands that preference be given to nonmilitary means of preventing extensive basic human rights violations caused by armed force. In theory, the Obama administration seems to agree with this principle and the criticism it implies with regard to US military preparation. In his speech at the National Defense University, Obama said: “[F]oreign assistance cannot be viewed as charity. It is fundamental to our national security. And it’s fundamental to any sensible long-term strategy to battle extremism. Moreover, foreign assistance is a tiny fraction of what we spend fighting wars that our assistance might ultimately prevent.”^{xli} Similarly, Obama’s first defense secretary, Robert M. Gates, argued for a “balanced strategy,” noting that there is a definite misbalance in US spending on the “war on terror” because “over the long term, the United States cannot kill or capture its way to victory.” He continued, “Where possible, what the military calls kinetic operations should be subordinated to measures aimed at promoting better governance, economic programs that spur development, and efforts to address the grievances among the discontented, from whom the terrorists recruit.”^{xlii}

In practice, however, the Obama administration has done little to bring US military preparation closer to satisfying the third *jus ante bellum* principle. The State Department/USAID budget, which also includes billions of dollars in military assistance, has been flat under the Obama administration after significant increases during the Bush administration, and has been consistently less than 10 percent of the Department of Defense budget (which in itself is considerably less than total US military spending). In short, the Obama administration's foreign policy is thoroughly militarized, and this supports my earlier argument that it is implausible to see the drone warfare in Pakistan as satisfying the *jus ad bellum* principle of last resort. More broadly, as long as the United States spends so little on foreign aid, diplomacy, peace education, arms control, refugee assistance, and the numerous nonmilitary programs of the United Nations as compared to its military spending, we have good reason to doubt that any future US war will satisfy the principle of last resort.

The fourth *jus ante bellum* principle—the principle of proper balance of values and resource allocation—requires that the value of security (against the threat of widespread basic human rights violations by armed force) and the resources committed to this value are carefully balanced against other values that good government should promote (e.g., education and health) and the resources set aside for their realization. US governments after World War II have consistently violated this principle by disproportionate military spending, and one enabling factor has been to stoke the flames of fear, from exaggerating the threat of communism to exaggerating the threat of terrorism. Surely, if, say, 50 percent of the money spent on the war on terrorism would have been spent on improving traffic safety, preventive health care, cancer research, and a cleaner environment, many more human life years in the United States would have been saved than this war, even on the most fantastic threat assumptions, ever could have prevented.^{xliii} Moreover, the money so spent would have enhanced the quality of life for millions of Americans. But the politics of fear sells. Politicians, the military brass, weapons producers, and many research scientists profit from the “military-industrial complex.” And the “empire of bases” guarantees access to essential material resources. All these interests are extraneous to the concern of having a military for protecting human rights, and they cast into doubt the *jus ad bellum* required “right intention” behind any (future) US interventions.

Military research and development (R&D) may have significant civilian payoffs. For example, the civilian drone industry is expected to boom in the coming years, and the current R&D in robotic warfare systems may sooner or later also bring considerable civilian benefits. This very fact, however, does not mean that the typically more than 50 percent of the government-supported R&D spent on defense is not a violation of the fourth *jus ante bellum* principle. For one thing, the road

through military R&D to various civilian applications is an indirect one, and so it is a road that costs much more in terms of human resources and talent than it would had the civilian products been pursued directly. For another thing, we cannot assume that the civilian payoffs of military R&D always match with items high on our civilian R&D lists. Relatedly, the argument that military spending is good for the economy fails. Military production comparatively creates few jobs, and so we would create many more employment opportunities by, say, investing in mass transit or installing solar panels than by manufacturing combat drones.^{xliv}

The fifth and final *jus ante bellum* principle—the principle of competent and right authority—demands that matters of military preparedness be settled by a recognized authority competent to make such decisions, with the right intention, aiming for just military preparedness rather than extraneous interests. In a democratic society, the representatives of the people should be this competent and right authority, requiring them to communicate openly and honestly with the citizens about the costs and benefits of alternative “just military preparedness” proposals. The defense budget should be transparent to the representatives. Guided by broad public input, they should allocate resources on the basis of careful balancing of the value of security against other governmental goals. Clearly, US military preparedness fails to satisfy these guidelines in several respects. Congressional representatives relentlessly push for military investments to keep jobs in their districts and please their campaign contributors, even beyond what the Pentagon might want (as illustrated by the budget fight over the F-22 Raptor aircraft).^{xlv} Significant parts of the Pentagon budget are secret, including allocations for special operation forces. Weapons industries routinely have huge overruns and are a revolving door for politicians and military brass. And, the corporate media seldom question global US military presence.

The introduction of drone warfare illustrates how the United States fails in terms of the competent and right authority principle. The first combat drone, the Predator, was developed as a surveillance system and used as such in the Balkan wars in the mid-1990s. After 9/11, the Bush administration authorized the CIA to retrofit the Predator with Hellfire missiles and kill “high-value targets” of its own choosing, and in early 2002 this form of warfare was first executed. In short, drone warfare became deeply embedded in US counterinsurgency strategy before it came to public awareness. Similarly, it is not clear how far the Pentagon has traveled down to the road to robotic warfare and where it actually wants to go, but at least public concerns are being raised now. Perhaps in response, the Department of Defense issued a directive on “Autonomy in Weapon Systems” on November 21, 2012.^{xlvi} A somewhat positive point is that the directive approves only the development of fully autonomous weapon systems with nonlethal capabilities, but the restriction is in effect for only five years and can be waived by top officials.^{xlvii} A clear negative point is that “semi-autonomous

weapon systems” with lethal capabilities are fully embraced. The dividing line between semi- and full autonomy is that humans in semi-autonomous systems must select the target that the systems pursue and destroy, and this line can be easily crossed once the R&D for semi-autonomous weapons systems has been completed.^{xlvi}

WHAT IS TO BE DONE?

In 2009, the International Committee for Robot Arms Control (ICRAC) called for a discussion to consider an international ban on autonomous weapon systems, and in 2012, Human Rights Watch actually called for a ban. In April 2013, Christof Heyns, UN Special Rapporteur on extrajudicial, summary or arbitrary executions, wrote a comprehensive report on lethal autonomous robotics (LARs). He noted, “there is widespread concern that allowing LARs to kill people may denigrate the value of life itself.” Heyns called on all countries “to declare and implement national moratoria on at least the testing, production, assembly, transfer, acquisition, deployment and use of LARs until such time as an internationally agreed upon framework on the future of LARs has been established.”^{xlix} And also in April 2013, a broad international coalition of nongovernmental organizations (NGOs) launched the Campaign to Stop Killer Robots. The proposal for a global ban on fully autonomous weapons is morally convincing and politically tenable. The moral risks involved in the use of these weapons are easy to recognize. Since the weapons are still in a state of development, we are not faced with the hard task of trying to turn back the clock, as a proposal to ban remote-controlled weaponized UAVs would imply. Indeed, the political tenability of “stop killer robots” is underlined by the fact that during the 2013 meeting of states party to the Convention on Conventional Weapons (CCW), it was decided to organize a four-day meeting of experts in May 2014 on “lethal autonomous weapons systems.”^l So should we forget about trying to ban our current combat drones?

One major concern with our current combat drones is that they are a stepping stone to fully autonomous weapons. A ban of killer robots would take care of this concern. Another major worry is that our current combat drones enable targeted killing campaigns in nonwar zones. These campaigns violate international law,^{li} and so we may wish to call for a stricter enforcement of international law rather than a campaign to stop remote-control killing by drones. Still, for three reasons, we should continue to work toward banning our present combat drones. First, it is the case that killing by remote control makes it too easy to resort to war, enables alienated war, and places too few demands on its executioners. Second, it is not at all clear that calling for stricter international law enforcement will be successful. International law is fluid and the US drone campaigns seem to gradually create their own legal norms. Third, killing by drones is an affront to humanity, a form of killing that we should ban on this ground alone.^{lii}

Robert Sparrow recently noted that “there is something inherently dishonorable about killing people one is observing on a video screen from thousands of kilometers away and who have no opportunity to return fire.” He adds, “[t]his is, I think, a widespread and powerful intuition but it turns out to be remarkably hard to unpack.”^{liii} I agree on both scores, but let me nonetheless try to say a few words about what might be behind the intuition. There are several features of drone killing that raise moral concerns, but these features are shared with other weapons that don’t raise the same moral recoiling. Drone killing is risk-free killing, but in current modern warfare this is hardly a distinctive feature of drone killing. Due to US military superiority, pilots of manned planes run very few risks (other than mechanical failings and pilot errors), and unleashing cruise missiles from a ship is also virtually risk-free. Fighters killed by drones have no opportunity to return fire, but this is also true for cruise missiles. Similarly, militants killed by drones are not given an opportunity to surrender, but again, this is also true for cruise missiles. Drones have been criticized as fundamentally asymmetric weapons, giving no fighting chance to the enemy, but again this is not unique to drones: witness the utter destruction wrought by US aerial bombing campaigns. What is, however, distinctive about drones is that they are deadly *surveillance* platforms. The target is watched, sometimes for days on end, and then killed. Is it the power of being able to extinguish life at the moment of one’s choosing that is deeply morally disturbing here? That surely seems important, but the most morally disturbing feature is that in watching the militant to be killed, one is gradually watching a person to be killed. In other words, during the time of watching, the target turns from a threat into a human being, and then the kill becomes the kill of this human being. So, to come back to McMahan’s claim that the targeted killing of a militant is similar to killing a sleeping aggressor soldier, it should be noted that an attack at night when enemy soldiers are asleep might not be wrong, but to watch a soldier asleep for some time and experience his humanity rather than his hostile status, and then pull the trigger, is deeply wrong. To go after humanity instead of the threat is an affront to humanity, and this is what remote killing by drones often involves.^{liv}

NOTES

ⁱ A limited number of targeted killings have also taken place in Somalia. The conflict between Yemen and al-Qaeda in the Arabian Peninsula is a traditional armed conflict, but the United States is not an official party to this conflict and views its direct military role as limited to the targeted killing of civilian “militants” who are a threat to the United States. See *Between a Drone and Al-Qaeda: The Civilian Cost of US Targeted Killings in Yemen*, HUMAN RIGHTS WATCH (Oct. 22, 2013), www.hrw.org/reports/2013/10/22/between-drone-and-al-qaeda.

ⁱⁱ Cf. MICAH ZENKO, REFORMING U.S. DRONE STRIKE POLICIES 6 (2013).

ⁱⁱⁱ For these figures, see The Bureau, *Get the Data: Drone Wars - Obama 2010 Pakistan Strikes*, BUREAU OF INVESTIGATIVE JOURNALISM (Aug. 10, 2011), www.thebureauinvestigates.com/2011/08/10/obama-2010-strikes/; see Ross chapter 7.

^{iv} Authorization for Use of Military Force, 115 Stat 224 (2001); Barack Obama, President, United States, Remarks by the President at the National Defense University (May 23, 2013), available at www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university.

^v Jeff McMahan, *Targeted Killing: Murder, Combat or Law Enforcement?*, in TARGETED KILLING: LAW AND MORALITY IN AN ASYMMETRICAL WORLD 137-41 (Claire Finkelstein, Jens David Ohlin, & Andrew Altman eds. 2012). McMahan speaks of unjust combatants, but aggression is the main reason that wars are unjust.

^{vi} McMahan notes the same with regard to the public response to the killing of Osama bin Laden. The typical response was vindictive satisfaction rather than relief that a great danger had passed. McMahan, *id.*, at 135-36.

^{vii} See JOHN W. LANGO, THE ETHICS OF ARMED CONFLICT: A COSMOPOLITAN WAR THEORY 37 (2014).

^{viii} See *Get the Data: Drone Wars – Pakistan Drone Statistics Visualized*, BUREAU OF INVESTIGATIVE JOURNALISM (last visited May 15, 2014), <http://www.thebureauinvestigates.com/2012/07/02/resources-and-graphs/>. It may also be noted that all but one of the 93 drone strikes in Yemen (as of mid-April 2014) were executed under Obama's orders. See *Drone Wars Yemen: Analysis*, NEW AMERICAN FOUNDATION (last visited May 14, 2014), natsec.newamerica.net/drones/yemen/analysis.

^{ix} See JEREMY SCAHILL, DIRTY WARS: THE WORLD IS A BATTLEFIELD 515-16 (Nation Books 2013). The occasion was a Google+ video forum on January 30, 2012. In a response to a question from the audience, Obama said that “drones have not caused a huge number of civilian casualties” and they are aimed at “active terrorists” who are trying to “harm Americans . . .” David Jackson, *Obama Defends Drone Strikes*, USA TODAY (Jan. 31, 2012), available at content.usatoday.com/communities/theoval/post/2012/01/obama-defends-drone-strikes/1#.U3QIr8uYaFk. A few members of Congress have introduced a bill (without success) that would require the Obama administration to provide casualty figures. Zoë Carpenter, *Lawmakers Ask Obama for a Tally of People Killed by Drones*, THE NATION (April 2, 2014), www.thenation.com/blog/179165/lawmakers-ask-obama-tally-people-killed-drones#.

^x The figures were considerably higher during the Bush administration. See *Drone Wars Pakistan: Analysis*, NEW AMERICAN FOUNDATION (last visited May 14, 2014), natsec.newamerica.net/drones/pakistan/analysis; see *Drone Wars Pakistan: Leaders Killed*, NEW AMERICAN FOUNDATION (last visited May 15, 2014), natsec.newamerica.net/drones/pakistan/leaders-killed.

^{xi} See CHEYNEY RYAN, *THE CHICKENHAWK SYNDROME: WAR, SACRIFICE, AND RESPONSIBILITY* 5 (2009). Medea Benjamin raises similar concerns in *DRONE WARFARE: KILLING BY REMOTE CONTROL* 145–60 (2013). My understanding of drone warfare has profited from this excellent work.

^{xii} *Monthly Updates on the Covert War*, BUREAU OF INVESTIGATIVE JOURNALISM (last visited May 14, 2014), www.thebureauinvestigates.com/category/projects/drones/monthly-updates/. The New American Foundation provides a much lower number of civilian casualties, listing many casualties as “unknown.” A recent report of the Human Rights Clinic at Columbia Law School claims that the figures of the Bureau of Investigative Journalism are more reliable. Chantal Grut & Naureen Shah, *Counting Drone Strike Deaths*, COLUMBIA LAW SCHOOL HUMAN RIGHTS CLINIC 29 (Oct. 2012), web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/COLUMBIACountingDronesFinal.pdf.

^{xiii} For more details, see BRIAN GLYN WILLIAMS, *PREDATORS: THE CIA’S DRONE WAR ON AL QAEDA* 121-23 (2013).

^{xiv} Stanford Law Sch. & New York Univ. Sch. of Law, “Living Under Drones: Death Injury, and Trauma to Civilians from US Drone Practices in Pakistan” 15 (2012), *available at* www.livingunderdrones.org/wp-content/uploads/2013/10/Stanford-NYU-Living-Under-Drones.pdf [hereinafter “Living Under Drones”].

^{xv} *Id.* at 16-17. Widespread demonstrations against drone attacks point in the same direction. The current Pakistani government seems more unambiguously opposed to the drone strikes than prior governments.

^{xvi} See *infra* section Drone Warfare and *Jus in Bello*.

^{xvii} “Living Under Drones,” *supra* note xiv, at 74-76.

^{xviii} These figures are derived from comparing the minimum estimated number of civilian deaths each year to the minimum estimated number of total deaths. Obviously, the percentage of civilian deaths for each year would be much lower if one compares the minimum number of civilian deaths to the maximum of total deaths and much higher if one compares the maximum number of civilian deaths to the minimum of total deaths. Thus the range of percentages is 14–45% for 2009, 8–26% for 2010, 8–42% for 2011, 3–32% for 2012, and 0–4% for 2013. The numbers for each year can be found at the Bureau of Investigative Journalism, *Get the Data: Drone wars. Obama 2009 Pakistan strikes*, BUREAU OF INVESTIGATIVE JOURNALISM (last visited May 23, 2014), www.thebureauinvestigates.com/2011/08/10/obama-2009-strikes/. This page provides access to the data for 2010-13.

^{xix} See Avery Plaw, *Counting the Dead: The Proportionality of Predation in Pakistan*, in *KILLING BY REMOTE CONTROL: THE ETHICS OF AN UNMANNED MILITARY* 144 (Bradley Jay Strawser ed. 2013).

^{xx} Why much higher? One reason is that it is a matter of conservative risk-taking: the deaths one seeks to prevent are not certain, unlike the civilian deaths that result from the use of force, and so

one must err on the side of the number of deaths prevented. Another reason is that it is better for a community to suffer wrongful harm than to inflict it, unless indeed the harm suffered becomes a very high and intolerable price to pay. Still, people have different moral intuitions about this issue and it is an unresolved matter among just war theorists.

^{xxi} Plaw develops this argument by comparing the Pakistani drone campaign to several traditional counterterrorism campaigns. Plaw, *supra* note xix, at 147-50. Obama made a similar argument in his National Defense University speech.

^{xxii} Interview by Charlie Rose with Leon Panetta, Secretary of Defense, PBS (Sept. 6, 2011), available at www.defense.gov/transcripts/transcript.aspx?transcriptid=4872.

^{xxiii} My comments here have profited from Sarah E. Kreps & John Kaag, *The Use of Unmanned Aerial Vehicles in Contemporary Conflict: A Legal and Ethical Analysis*, 44 *POLITY* 260, 260-285 (2012).

^{xxiv} See Grut & Shaw, *supra* note xii, at 17-18, 26.

^{xxv} Cf. Claire Finkelstein, *Targeted Killing as Preemptive Action*, in *TARGETED KILLING: LAW AND MORALITY IN AN ASYMMETRICAL WORLD* 164 (Claire Finkelstein, Jens David Ohlin, & Andrew Altman eds. 2012).

^{xxvi} Obama, *supra* note iv.

^{xxvii} Press Release, Fact Sheet: U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities (May 23, 2013), available at www.whitehouse.gov/the-press-office/2013/05/23/fact-sheet-us-policy-standards-and-procedures-use-force-counterterrorism; see Appendix B.

^{xxviii} Mark Marzetti, *Delays in Effort to Refocus C.I.A. From Drone War*, *N.Y. TIMES* (April 5, 2014), www.nytimes.com/2014/04/06/world/delays-in-effort-to-refocus-cia-from-drone-war.html?_r=0 (quoting Caitlin Hayden, spokeswoman of the National Security Council).

^{xxix} The essays are available at [SELECTED WORKS OF HARRY VAN DER LINDEN](http://SELECTEDWORKSOFHARRYVANDERLINDEN.works.bepress.com/harry_vanderlinden/), works.bepress.com/harry_vanderlinden/ (last visited May 14, 2014). The number of principles and their wording varies slightly between the essays. The most detailed discussion can be found in *From Hiroshima to Baghdad: Military Hegemony versus Just Military Preparedness*, in *PHILOSOPHY AFTER HIROSHIMA* (Edward Demenchonok ed. 2010). Another new category of just war thinking is *jus post bellum*, first articulated in the work of Brian Orend. “Justice after war” has received much attention in recent years, but is less relevant than the other categories for the assessment of drone warfare.

^{xxx} See CHALMERS JOHNSON, *THE SORROWS OF EMPIRE: MILITARISM, SECRECY, AND THE END OF THE REPUBLIC* 151-185 (2004).

^{xxxi} JEREMIAH GERTLER, *CONG. RESEARCH SERV.*, R42136, *U.S. UNMANNED AERIAL SYSTEMS* 33 (January 3, 2012).

^{xxxii} Zack Beauchamp & Julian Savulescu, *Robot Guardians: Teleoperated Combat Vehicles in Humanitarian Military Intervention*, in *KILLING BY REMOTE CONTROL: THE ETHICS OF AN UNMANNED MILITARY* (Bradley Jay Strawser ed. 2013).

^{xxxiii} *Id.* at 119-20.

^{xxxiv} See Harry van der Linden, *Barack Obama as Just War Theorist: The Libyan Intervention*, works.bepress.com/harry_vanderlinden/49/; See also Marjorie Cohn, *The Responsibility to Protect – The Cases of Libya and Ivory Coast*, MARJORIE COHN (May 15, 2011), www.marjoriecohn.com/2011/05/responsibility-to-protect-cases-of.html.

^{xxxv} Sharon Weinberger, *X-47B Stealth Drone Targets New Frontiers*, BBC (Dec. 19, 2012), www.bbc.com/future/story/20121218-stealth-drone-targets-life-at-sea.

^{xxxvi} See generally Roger Wertheimer, *The Morality of Military Ethics Education*, in *EMPOWERING OUR MILITARY CONSCIENCE* (Roger Wertheimer ed. 2010).

^{xxxvii} Even after the adoption of the Counterinsurgency Field Manual 3-24 (2006), which emphasizes the importance of protecting the civilian population in counterinsurgency operations, U.S. soldiers still regularly commit war crimes. See, e.g., CHRIS HEDGES & LAILA AL-ARIAN, *COLLATERAL DAMAGE: AMERICA'S WAR AGAINST IRAQI CIVILIANS* (2009), see also Mark Boal, *The Kill Team: How U.S. Soldiers in Afghanistan Murdered Innocent Civilians*, ROLLING STONE (Mar. 27, 2011), www.rollingstone.com/politics/news/the-kill-team-20110327.

^{xxxviii} See Reifer chapter 5.

^{xxxix} Cf. Derek Gregory, *Drone geographies*, *RADICAL PHILOSOPHY* 183 (Jan/Feb 2014), 7-19, 9-10.

^{xl} My discussion here has benefited from International Human Rights Clinic at Harvard Law School & Hu

man Rights Watch, “Losing Humanity: The Case Against Killer Robots” (Nov. 12, 2012), www.hrw.org/reports/2012/11/19/losing-humanity-0 [hereinafter “Losing Humanity”].

^{xli} Obama, *supra* note iv.

^{xlii} Robert M. Gates, *A Balanced Strategy: Reprogramming the Pentagon for a New Age*, 88 *FOREIGN AFFAIRS* 28, 28-40 (Jan. 2009).

^{xliii} The same basic point is forcefully made by Thomas W. Pogge in *POLITICS AS USUAL: WHAT LIES BEHIND THE PRO-POOR RHETORIC* ch. 7 (2010).

^{xliv} Cf. Robert Pollin & Heidi Garrett-Peltier, *The Employment Effects of Downsizing the U.S. Military*, *POLITICAL ECONOMY RESEARCH INSTITUTE* 3 (2007), www.peri.umass.edu/fileadmin/pdf/working_papers/working_papers_151-200/WP152.pdf. They conclude that \$1 billion in new spending would create around 50 percent more jobs if spent on

construction targeted at home weatherization and infrastructure repair rather than on military, and investment in mass transit would create more than twice the number of jobs.

^{xlv} See generally WILLIAM D. HARTUNG, *PROPHETS OF WAR: LOCKHEED MARTIN AND THE MAKING OF THE MILITARY-INDUSTRIAL COMPLEX* 1-30 (2011).

^{xlvi} Department of Defense, Directive No. 3000.09, *Autonomy in Weapon Systems* (2012).

^{xlvii} *Id.*

^{xlviii} Cf. Mark Gubrud, *US Killer Robot Policy: Full Speed Ahead*, *BULLETIN OF THE ATOMIC SCIENTISTS* (Sept. 20, 2013), thebulletin.org/us-killer-robot-policy-full-speed-ahead.

^{xlix} Human Rights Council, Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, UN Doc A/HRC/23/47, 23rd sess. (2013), www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-47_en.pdf.

¹ *Disarmament: Lethal Autonomous Weapons*, UNOG, [www.unog.ch/80256EE600585943/\(httpPages\)/6CE049BE22EC75A2C1257C8D00513E26?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/6CE049BE22EC75A2C1257C8D00513E26?OpenDocument) (last visited May 14, 2014).

ⁱⁱ See *Mirer* chapter 8.

ⁱⁱⁱ In “Losing Humanity,” Human Rights Watch argues that the Martens Clause provides a legal ground for prohibiting killer robots. “Losing Humanity,” *supra* note xl, at 25–26, 35–36. This clause, first stated in the 1899 Hague Conventions, requires that the means of warfare are evaluated in terms of the “principles of humanity” and the “dictates of public conscience.” Drone killings, in my view, should be banned on basis of this clause.

^{liii} Robert Sparrow, *War without Virtue?*, in *KILLING BY REMOTE CONTROL: THE ETHICS OF AN UNMANNED MILITARY* 98-99 (Bradley Jay Strawser ed. 2013) .

^{liv} Cf. Thomas Nagel, *War and Massacre*, vol. 1 no. 2 *PHILOSOPHY & PUBLIC AFFAIRS* 123-138 (Winter 1972). Of course, drone killings do not always take the form of drone operators recognizing humanity only to extinguish it, but we prohibit weapons (e.g., chemical weapons) on the basis of the kind of moral wrongs that they enable, fully recognizing that in some situations they can be used so that the wrong will not occur.