



Department of Justice, Peace and Human Development Office of International Justice and Peace

Background on Armed Drones January 2014

[T]here exists ... a right to defend oneself from terrorism. However, this right cannot be exercised in the absence of moral and legal norms, because the struggle against terrorists must be carried out with respect for human rights and for the principles of a State ruled by law. The identification of the guilty party must be duly proven, because criminal responsibility is always personal....

Compendium of the Social Doctrine of the Church, No. 514

Background: The Administration's use of unmanned aerial vehicles (UAVs) as military attack drones in targeted killings around the world has provoked public discussion and raised serious moral questions. Since September 2001, the number of U.S. drones has grown exponentially from 60 to over 6,000 today and their use has expanded correspondingly. During President George W. Bush's Administration, the United States began using armed drones to strike at suspected terrorists in Afghanistan where America, along with other allies, is engaged in declared active combat, and also in Pakistan. Under President Barack Obama, the number of drone strikes expanded significantly and were also used in Yemen, Somalia and Libya, places (like Pakistan) where American forces are not actually engaged in military operations. Some were "signature" strikes, in which individuals were targeted, not because of who they are, but because of their behavior or associations. The 2011 killing of an American-born Muslim cleric and his son in Yemen by drones highlighted doubts about the legality of armed drones used in counter-terrorism operations since Constitutional due process is circumvented, i.e. people are assassinated, rather than captured for questioning and trial.

The majority of those killed in drone strikes are Pakistani, with estimates ranging from 1,600 to over 2,600 during the period 2004-2011, but these numbers are difficult to verify given the remote location of the strikes. Most of those killed are considered militants, but inevitably there were also civilian casualties. The Taliban and extremists claim much higher civilian casualties and have used drone strikes as a recruiting tool. These strikes have undoubtedly fueled anti-American sentiment, particularly among the Pakistani populace, and increased tensions between the U.S. and the Afghan and Pakistani governments.

Pressure mounted for fuller disclosure about who is conducting drone attacks, how targets are selected, and the accuracy of those strikes. In May 2013, President Obama announced that he was tightening policies on targeting killings by armed drones so their use would only be against "terrorists who pose a continuing and imminent threat to the American people" and when there was "near certainty that no civilians would be killed or injured." Critics argue there is still a lack of clarity over how an individual is determined to be a "continuing and imminent threat" and the legal rationale behind targeted killings. The number of drone attacks decreased in 2013, but questions as to the long term efficacy and morality of using armed drones for targeted killing remain. While the United States has led the development and use of this technology, over 50 nations now have UAVs, most of them unarmed. The Defense Department requested over \$4 billion in funding for military drones in 2014.

USCCB Position: The Committee on International Justice and Peace (CIJP) brought in experts to discuss moral questions related to the use of armed drones in targeted killings to combat terrorism. The Pontifical Council for Justice and Peace recommended that the Committee consider specific

sections of the *Catechism of the Catholic Church* and the *Compendium of the Social Doctrine of the Church* with particular attention to “international humanitarian law.” Based on these deliberations, in May 2013 CIJP Chair Bishop Richard Pates wrote to then National Security Advisor Thomas Donilon and key Congressional leaders raising significant moral concerns and questions. Although most counter-terrorism efforts take place outside of war zones, and thus fall outside the framework of just war, several elements of that tradition pose appropriate moral questions, including imminence of the threat, discrimination, proportionality, and probability of success.

Imminence: Applying deadly force without clear evidence of an imminent attack is contrary to both the rules of just war and international humanitarian law. The *Compendium* reminds us that “engaging in a preventive war without clear proof that an attack is imminent cannot fail to raise serious moral and juridical questions” (No. 501). By analogy, the use of deadly force in a specific counter-terrorism action before there is an imminent threat of death or injury to innocents poses ethical problems. In counter-terrorism, determining imminence is particularly difficult.

Discrimination: Identifying targets raises other moral issues. The Administration’s reported policy of “signature” attacks is highly problematic. Designation of all males of a certain age in areas of Afghanistan and Pakistan as combatants is morally indefensible. In referring to terrorists, the *Compendium* states: “The identification of the guilty party must be duly proven, because criminal responsibility is always personal...” (No. 514). Force should only be undertaken outside war zones when there is reasonable certainty that innocent civilians will not be harmed. “Collateral damage” in war, when serious efforts are made to use proportionate and discriminate force, may be justified; but innocent civilians living outside war zones should not be subject to attack. Our society would not tolerate “collateral damage” in law enforcement actions in our nation and should not in other nations.

Proportionality/Probability of Success: An assessment of damage caused by deadly drone attacks should include not only deaths and injuries, but also the moral and political/societal damage done to the struggle against terrorism and the probability of success in this regard. The *Compendium* states: “International cooperation in the fight against terrorist activity ‘cannot be limited solely to repressive and punitive operations. It is essential that the use of force, even when necessary, be accompanied by a courageous and lucid analysis of the reasons behind terrorist attacks’. ... [T]he recruitment of terrorists in fact is easier in situations where rights are trampled and injustices are tolerated over a long period of time” (No. 514).

Several analysts have noted that targeted killings using drones can reinforce a community’s sense of vulnerability and injustice, fueling anti-American sentiment and threatening long-range U.S. goals to curb extremism. A proper understanding of proportionality and probability of success in counter-terrorism would elevate the bar against use of deadly force and call for a much wider range of economic, political and diplomatic responses to threats posed by extremists.

International Norms: While there may be a necessity for operational secrecy in counter-terrorism, there is also a need for transparency, accountability and guidance in overseeing drone operations and targeted killings. Political leaders seem to have found it easy to use armed drones, given their low financial and personnel costs and may be tempted to use them to excess, leading some to argue that the pattern of use violates the just war norm of last resort. Out of both humanitarian concerns and self-interest, the United States should demonstrate leadership in advancing international norms, standards and restrictions on the use of UAVs in counter-terrorism, and in advancing discussion of policies related to targeted killings in accordance with international law.

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