Thank you sincerely for the invitation to speak here today. I believe that just as with the use of torture, we need people of faith to add their voices and prayers for an end to targeted killing with drones outside armed conflict zones. Such killing contradicts our most fundamental legal principles but more importantly it offends fundamental morality.

Let me begin my explanation of these observations about law and morality with an excerpt from Jeremy Scahill’s book, DIRTY WARS:

The young teenager sat outside with his cousins as they gathered for a barbecue. He wore his hair long and messy. His mother and grandparents had repeatedly urged him to cut it. But the boy believed it had become his trademark look and he liked it. A few weeks earlier, he had run away from home, but not in some act of teenage rebellion. He was on a mission. In the note he left for his mother before he snuck out the kitchen window as the sun was just rising and headed to the bus station, he admitted that he had taken money from her purse—$40—for bus fare, and for that he apologized. He explained his mission and begged for forgiveness. He said he would be home soon. … [He went in search of his father, who was in hiding.]

Three weeks after he climbed out of the window, the boy was outdoors with his cousins—teenagers like him—laying a picnic for dinner beneath the stars. It was then he would have heard the drones approaching, followed by the whiz of the missiles. It was a direct hit. The boy and his cousins were blown to pieces. All that remained of the boy was the back of his head, his flowing hair still clinging to it. The boy had turned sixteen years old a few weeks earlier and now he had been killed by his own government. He was the third US citizen to be killed in operations authorized by the president in two weeks. The first was his father.1

This boy is one of almost 300 children killed between late 2002—when the United States began its campaign of targeted killing with drones—and early 2013.2 As many as 4500 people in total have been killed using this method, that is 4500 people all killed with military force beyond any battle zone. Most have been killed with Hellfire missiles launched from unmanned drone aircraft remotely piloted by the CIA. Make no mistake, the boy’s
father, Anwar al Awlaki, was accused of serious crimes, including aiding in plots to place bombs on passenger planes and in synagogues. But each one of these plots was thwarted by law enforcement efforts. More critically, when Awlaki, his son, and nephews were killed, the United States was not participating in an armed conflict in Yemen.

This is not the first period in American history in which such killing has been carried out, but in 1981, President Ronald Reagan signed an executive order following up on a ban instituted by President Gerald Ford that barred the CIA from assassinations. In 1998, President Bill Clinton took the first major step toward undermining the ban. He authorized the CIA to carry out the covert killing of Osama bin Laden. After 9/11, President George W. Bush expanded President Clinton’s authorization, issuing a presidential “finding” that if the president approved of a CIA killing, that killing would not violate the Reagan executive order. President Obama has since increased the pace of killing dramatically and has expanded the authorized targets to so-called “signature strikes”, which entail the killing of all males of a certain age in certain places. President Obama has also authorized the killing of Americans.

On May 23, 2013, President Obama gave a major speech at the National Defense University (NDU) announcing changes in several post-9/11 policies with respect to detention and targeted killing. The President’s NDU speech was clearly prompted by the growing chorus of criticism and concern respecting killing with drones. Catholics have joined in the criticism for many years now—Catholic Workers in Iowa, nuns in Michigan, the Catholic Institute for Peace and Theology in Hamburg, Germany, to name a few, who have organized, protested and prayed for an end to the killing and destruction. On May 17, 2003, Bishop Pates of the United States Conference of Catholic Bishops Committee on International Justice and Peace wrote to National Security Adviser Tom Donilon and Congressional leaders raising legal and moral issues respecting the U.S. campaign of targeted killing with drones.
In criticizing drone killings, Catholics are joining many other persons of faith and proponents of peace and human rights around the world. The most persuasive demands for an end to the practice are coming from the victims—the injured and the families and friends of the deceased.

Despite the rising demand to end drone attacks, President Obama said in his NDU speech that targeted killing would continue. Yes, he promised to take greater care, but, within days of his speech, more persons were killed. The following remarks will provide additional details about the eleven and a half years of U.S. targeted killing with drones. I will then discuss international law, which is my area of specialty. I will indicate how international human rights and humanitarian law reflect our most cherished moral principles, in particular, in this instance, the fundamental right to life of all persons from conception to natural death.

I. Targeted Killing with Drones

Unlike torture, “targeted killing” is not a term defined in international law, Church teaching, or Canon Law. It is a term of recent provenance, developed much like the expression “harsh interrogation” to create an impression of a tough but lawful and moral technique to enhance security. Targeted killing seems to have first been employed as a term to replace “assassination,” although the international law scholar Nehal Bhuta persuasively argues that there is no important distinction in international law between the terms “targeted killing” and “assassination.” Nils Melzer, a long-time legal adviser with the International Committee of the Red Cross in Geneva, developed a definition of targeted killing for his study of the phenomenon: “The use of lethal force attributable to a subject of international law with the intent, premeditation and deliberation to kill individually selected persons who are not in the physical custody of those targeting them.”
Christine Gray, of Cambridge University, writes in a forthcoming article that the “term - targeted killing - came into general use during the Second Intifada (the Palestinian uprising against Israeli occupation in the West Bank and Gaza) in 2000 when Israel made public its long-standing policy of killing alleged terrorists in the Occupied Palestinian Territories and elsewhere.” In response to the Israeli practice, U.S. Ambassador to Israel, Martin Indyk, stated on Israeli television in July 2001: “The United States government is very clearly on the record as against targeted assassinations. They are extrajudicial killings, and we do not support that.” Instead, the U.S. position with respect to terrorists has generally been to treat them as criminals. After the Al Qaeda attacks on American targets in 1993, 1998, and 2000, the United States successfully used criminal law and law enforcement measures to investigate, extradite, and try persons linked to the attacks.

Then 9/11 occurred. The United States, together with the United Kingdom and other nations, began a war of self-defense in Afghanistan on October 7, 2001. Targeted killing of enemy fighters on the battlefield is arguably permissible, so long as those carrying out the killing follow international humanitarian law (IHL). At the time of writing, the United States is involved in such targeted killing in one place only: Afghanistan. U.S. involvement in combat is scheduled to end there by 2014. Even during armed conflict combat, however, the selection of an individual by name to kill is questionable. I know of only one such targeted killing case in the Afghanistan War. This killing constituted the first use of a drone in a lethal operation. In November 2001, the U.S. fired missiles from a drone at a building near Kabul where Mohammed Atef was staying. Atef, the named target, was allegedly al Qaeda’s military leader in Afghanistan. He and several others were killed.

In November 2002, the U.S. carried out the first killings using a drone far from the battlefields of Afghanistan. The attack occurred in Yemen. In 2004, the U.S. carried out the first targeted killing attack in Pakistan using a drone. In 2006, similar attacks began in
New drone bases are being established around the world, raising the expectation of future drone attacks beyond armed conflict zones. And President Obama clearly indicated the attacks will continue in his May 23, 2013 NDU speech.

Attention and concern are growing, however. This event, a conference at Westminster Abbey in London in February 2012, and others bear similarities to the conference in Princeton that launched the National Religious Campaign Against Torture. People committed to promoting respect for human dignity owing to religious or moral beliefs are increasingly expressing concern about targeted killing with drones. Anti-drone demonstrators are facing arrest and jail in Hancock, New York. Other demonstrators demanded the closure of an exhibit on drones at the Smithsonian’s Air and Space Museum. Drones were denounced at many of the “Occupy” sites. Lawyers, human rights advocates, and others are becoming increasingly active in efforts to stop drone strikes outside Afghanistan. The American Civil Liberties Union and the Center for Constitutional Rights (CCR) in the U.S. represented the father of Anwar al Awlaki to try to remove him from the CIA’s “kill list.” CCR is now representing the father to win a damage award for the death of his son and grandson. Reprieve, a British human rights advocacy group, is conducting investigations of drone attacks in Pakistan. Reprieve and the Bureau for Investigative Journalism are bringing information to public attention about negative consequences of drone strikes. A lawsuit has also been filed in United Kingdom courts for a declaration that British intelligence services should not assist the CIA in targeted killing operations in Pakistan. The named plaintiff, Noor Khan, was a teenager when his father and others were killed attending a meeting of elders. In May 2013, the Peshawar High Court in Pakistan ordered the Pakistani government to stop U.S. drone strikes in the country. The court relied in part on a book chapter that I wrote on the subject.
Perhaps the most eloquent statement to date against the U.S. policy of targeted killing has come from President Jimmy Carter:

The United States is abandoning its role as the global champion of human rights.

Revelations that top officials are targeting people to be assassinated abroad, including American citizens, are only the most recent, disturbing proof of how far our nation’s violation of human rights has extended. This development began after the terrorist attacks of Sept. 11, 2001, and has been sanctioned and escalated by bipartisan executive and legislative actions, without dissent from the general public. As a result, our country can no longer speak with moral authority on these critical issues.16

Apparently in reaction to this increasingly critical attention, President Obama has received legal advice on targeted killing, including the targeted killing of American citizens.17 In a dark repetition of history, a memo justifying targeted killing has been authored by the same office in the U.S. Justice Department that prepared the legal memoranda designed to provide a defense for U.S. officials using or authorizing the use of torture and other violations of international law. A 16-page summary of one memo has been leaked.18 It cites only one legal scholar as being opposed to targeted killing beyond armed conflict zones: me. This is just one of the many patent errors in the memo. My position is the mainstream position on this question, as demonstrated by the fact that the memo also cites the International Criminal Tribunal for Yugoslavia as holding the same view. No court is cited for the administration’s position.

The first targeted killing beyond a battlefield was in November 2002 in Yemen. The operation was conducted by agents of the U.S. Central Intelligence Agency, not the U.S. military. The agents were based in the tiny former French colony of Djibouti and apparently had that state’s consent to conduct lethal operations from its territory. Yemen’s authoritarian ruler, Ali Abdullah Saleh, was informed or consented as well. The operation consisted of an attack with Hellfire missiles on a passenger vehicle driving in a remote part of Yemen. The attack killed all six passengers in the vehicle, including a 23-year old American from
Lackawanna, New York. We know this because CIA agents reportedly flew to the scene by helicopter within moments of the killing, rappelled down to the ground, and took DNA samples from the persons killed.

Targeted killings continued in Yemen, but Saleh wanted them carried out with cruise missiles launched from ships or piloted jet aircraft. He wanted to be able to claim that Yemen was doing this killing itself rather than acknowledging the U.S. was using military force in Yemen, but at the time, Yemen had no drones. As soon as pro-democracy groups challenged Saleh in 2010-2011, the U.S. returned to attacking with drones. The U.S. attacked multiple times in the first half of 2011 hoping to kill Anwar Al-Awlaki. By now, the U.S. has killed more than 200 people in Yemen with the attacks apparently increasing even while Yemen tried to hold elections to replace Saleh. Less than two weeks after President Obama’s NDU speech as many as 16 people were killed in Yemen, including one child, in attacks on June 1 and June 9.

The first U.S. targeted killing in Pakistan occurred in June 2004; when a Hellfire missile killed someone alleged to be a Taliban official named Nek Mohammed, along with five to seven other individuals, including two children. This killing was part of a deal between Pakistan and the CIA; in exchange for killing a Mohammed, who had fought against the Pakistani government, the CIA would be granted the use of Pakistani airspace to conduct more targeted killings. Since that strike, Pakistan has been the site of the majority of drone strikes carried out by the United States during the past decade. Up to four thousand people have been killed in Pakistan by U.S. drone strikes. The most recent attack, on June 7, 2013, killed seven to nine individuals. Shortly after the attack, the Pakistani government lodged a complaint with a United State envoy, suggesting the recently-elected Prime Minister of Pakistan, Nawaz Sharif, intends to keep his campaign promise of pushing for an end to the drone strikes in his country.
The United States has also carried out targeted killing operations in Somalia since 2006. The first reports came in articles on Ethiopia’s late 2006, intervention to depose a group known as the Islamic Courts, which was exercising increasing control of much of Somalia at the time. As Ethiopia invaded, members of the U.S. military, using helicopter gunships, pursued fleeing terrorism suspects, killing them from the air. The U.S. has continued to carry out targeted killing operations in Somalia ever since, killing as many as 27. The operations have for some years also included drone attacks carried out by the CIA.

Since 2008, the U.S. has “selected” persons not only by name but also based on “patterns of life.” These attacks are being referred to as “signature strikes” because they are not aimed at a named target. And at least since the Obama administration took over the practice, attacks have been launched at groups as well as individuals.

The United States has drone bases in the U.S., of course, but also in Djibouti, on the Saudi Peninsula, in the Seychelles, and in a growing number of other places. The CIA drone base in Pakistan was closed on orders of the Pakistani government after the November 2011 killing of 24 Pakistani soldiers on the border with Afghanistan by U.S. forces. The U.S. is creating more drone bases to, apparently, continue targeted killing after the withdrawal of U.S., ISAF and other international forces from Afghanistan. Then-Defense Secretary Leon Panetta said late in 2012 that the U.S. may be using drones to attack in Libya, Nigeria, and Mali. In 2013, in Congressional testimony, a high-ranking DOD official, Michael Sheehan, said current U.S. drone policy is set for the next 10-20 years.

II. International Law and the Human Right to Life

How should we assess this killing and the growing capacity and interest in killing far from armed conflict zones? The fact that killing with drones is sometimes lawful, namely on the battlefield, while the use of torture is never lawful helps explain why it has been more difficult for people to understand the problem with targeted killing. Torture is absolutely
prohibited; killing is not. Indeed, most moral philosophers and most international law scholars who reject any use of torture, accept broad justifications for killing. When the use of torture during the Bush administration came to public light, the primary response of the administration was to argue that it was not engaged in torture but, rather, was using “harsh interrogation tactics.” President Obama put an end to those tactics. By contrast, when targeted killing was first reported during the Bush administration, little notice was taken. President Obama not only failed to end the practice, he has authorized a dramatic increase in the number of drone strikes with the aim of targeted killing outside armed conflict zones. Finally, scholars, activists, allies, and people of faith are pushing back because neither law nor morality condones killing people based on suspected involvement in terrorism. It may seem to the President that using force in such situations is compelled morally despite the law but such an assumption ignores the fact that the law restricting the use of force is derived from fundamental moral and ethical considerations.

Contemporary rules on the use of force may be traced to the Just War Theories of Saints Augustine and Aquinas. Augustine drew on Aristotle and Cicero for the conception that peace is the normal state and that violence is justified only to restore peace. Moral philosophers continue to teach that the taking of human life may only be justified to protect human life. In other words, the exceptional right to resort to force rests squarely on a justification of necessity. Law and philosophy guide us in understanding what necessity means in the context of justifiable force.

To support these statements, I need to turn to the fundamental, legal and moral principle of the human right to life. Human beings have at all times a right to life. This is a fundamental, if not the most fundamental legal and moral principle. It is reflected in the Decalogue in the commandment not to kill and throughout the Gospel in Christ’s teaching to love one’s neighbor, to turn the other cheek, to put away swords, and to seek peace.
In current international law, the right to life is affirmed in all human rights treaties, including, most importantly, the International Covenant on Civil and Political Rights:

Article 6  Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his right to life.\(^{26}\)

The justification for any intentional taking of life is found in exceptions to the basic right. And, as is appropriate, the justifications are narrow and should be interpreted strictly. They fall into two categories: one applies in peacetime and the other under the law of armed conflict. In peace, a state may only take a human life when according to the European Court of Human Rights in the case of *McCann v United Kingdom* it is: “absolutely necessary in the defence of persons from unlawful violence.”\(^{27}\) Similarly, the United Nations Basic Principles for the Use of Force and Firearms by Law Enforcement Officials (*UN Basic Principles*), which are widely adopted by police throughout the world, provide in Article 9:

Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.\(^{28}\)

To get away from these restrictions on killing by government authorities in peacetime, the Bush administration argued within days of the 9/11 attacks that the U.S. was in a “global war on terror” that allowed the killing or detention of suspected members of Al Qaeda, the Taliban and other militant non-state actor groups wherever found in the world. As a presidential candidate, Obama was highly critical of the “global war” paradigm as asserting a right to limitless war in time and space. Upon taking office, however, his legal and policy advisers developed their own variation on the “global war” concept. Indeed, the Obama variation actually weakens the already flimsy arguments put forward by President Bush’s lawyers.
Former State Department Legal Adviser, Harold Koh, argued in 2010, that “U.S. targeting practices... comply with all applicable law, including the laws of war” and that “as a matter of international law, the United States is in an armed conflict with al-Qaeda, as well as the Taliban and associated forces, in response to the horrific 9/11 attacks, and may use force consistent with its inherent right to self-defence under international law.” This second statement indicates two attempts at justification. One is that the U.S. is in a worldwide war with terrorist groups. The other is that as against individual terrorists or terrorist groups, the United States is exercising its right of self-defence under the United Nations Charter Article 51.

While it may seem to be an improvement to wage war against people rather than a concept like terrorism that will never end, it is hard to conceive of a world in which all terrorist groups have ended. Even Al Qaeda may never end as my colleague John Mueller has written. Moreover, Koh made it clear that it is not really a war against terrorists but, rather, a claimed right to use military force in states experiencing instability. The President apparently will not be authorizing drone strikes in the UK, Germany, or the United States. Thus, the legal justification is not based on the permissibility of killing during an armed conflict. It is, rather, an assertion of a right to kill in countries with weak governments. Even if this made any sense from a policy perspective, there is certainly no international legal right to exercise military force on such a basis.

Similarly, little or no authority exists for the right to exercise self-defense against an individual or a non-state actor with no legal ties to a state. United Nations Charter Article 51 permits self-defense if an armed attack occurs, but, even then, only until the Security Council takes “measures necessary to maintain international peace and security.” The International Court of Justice (ICJ), the chief judicial organ of the United Nations and the only court with general jurisdiction over states on matters of international law, has found that the Article 51
right of self-defense may only be exercised against a significant attack. The ICJ has not ruled on anticipatory self-defense but by requiring a significant attack, the evidence of the nature of the attack must necessarily be of an attack that is at least underway if not completed. Moreover, the defender’s response in terms of a counter-attack may only be against the territory, planes, or ships of a state responsible for the initial significant attack. If the non-state actor’s attack is not attributable to a state, force in self-defense may not be exercised on any state’s territory.

Another limit on the use of force in self-defense is found in the principles of necessity and proportionality. The ICJ found in its *Nuclear Weapons* advisory opinion that “there is a ‘specific rule whereby self-defence would warrant only measures which are proportional to the armed attack and necessary to respond to it, a rule well established in customary international law.’ This dual condition applies equally to Article 51 of the Charter, whatever the means of force employed.” Fulfilling these conditions requires knowledge of the actual armed attack, not speculation about a future possibility.

The ICJ has also found that the attacks on Congo by non-state actor militant groups based in Uganda did not give rise to Uganda’s right to attack Congo. The ICJ did indicate that Uganda might have had the right to intervene in Congo if the attacks had been more significant—presumably of a kind that could only be carried out if the militant groups were the *de facto* government of an area. The situation the ICJ seems to be referring to would be like the Taliban’s control of most of Afghanistan in 2001 or the Kurds control of northern Iraq allowing attacks on Turkey aimed at gaining control of Kurdish enclaves.34 In carrying out targeted killing operations, the United States has not declared that it is attacking groups in control of any territory or in response to a significant armed attack by any state on the U.S.

Another argument attempting to justify killing far from armed conflict asserts a right to kill persons suspected of being part of a non-state actor militant group that is taking part in
an armed conflict somewhere in the world. The argument posits that any member of al-
Qaeda or an al-Qaeda affiliate may be lawfully targeted wherever found because of fighting
in Afghanistan. The argument extends to persons who have never even been part of fighting,
so long as they are in a so-called “continuous combat function.”35 The International
Committee of the Red Cross in its Interpretative Guidance on Direct Participation in
Hostilities introduced the term continuous combat function, but it also made clear that killing
someone suspected of being in such a status is only justifiable in a situation of necessity.36 It
is my interpretation that the standard of necessity that applies depends on the choice of law
principles. The peacetime standard applies if the person is not in a situation of armed conflict
hostilities.

As for the actual current rule about persons directly participating in hostilities, it is of
little practical use given the unlikelihood that the U.S. will ever have any evidence of direct
participation in hostilities by a person far from an armed conflict zone. The U.S. may have
evidence of persons directly participating in the hostilities in Afghanistan who are based in
Pakistan. Not surprisingly, U.S. officials do not use this more plausible argument for targeted
killing. First, it undermines the arguments for killing people in Yemen and Somalia, and
second, when the U.S. pulls its troops out of Afghanistan, it will no longer have the argument
even for Pakistan.

As just discussed, killing persons with drones far removed from armed conflict
hostilities violates the fundamental human right to life. It is equivalent to the excessive use
of military force by dictators such as Libya’s Ghaddafi and Syria’s Assad for dealing with
violence by those opposed to their regimes. Only when the violence amounted to an armed
conflict could the use of missiles, bombs, tanks, grenades, and the like become permissible.
III. Moral Underpinnings of the Legal Right to Life

Is there a moral argument in support of targeted killing? Jeremy Waldron has published a highly persuasive philosophical analysis concluding that there is no compelling reason to loosen the law against killing and every reason to strengthen it.

It seems that our first instinct is to search for areas where killing is already "alright"—killing in self-defence or killing of combatants in wartime—and then to see if we can concoct analogies between whatever moral reasons we presently associate with such licenses and the new areas of homicide we want to explore. In my view, that is how a norm against murder unravels. And it unravels in our moral repertoire largely because we have forgotten how deeply such a norm must be anchored in light of the temptations it faces and how grudging, cautious, and conservative we need to be—in order to secure that anchorage—with such existing licenses to kill as we have already issued.37

Within the teaching of the Roman Catholic Church, there is no room for expanding the justifications to kill. Our Church has supported with passion and eloquence the establishment of a peace order through international law and international institutions against war. In 1963, Pope John XXIII issued his powerful encyclical, *Pacem in Terris*, in which he extolled the United Nations and its Charter rules against resort to military force. In 1965, Pope Paul VI pleaded at the United Nations for “[n]o more war, war never again! Peace, it is peace which must guide the destinies of people and of all mankind.” And John Paul II said, most relevantly of all, as quoted in an article by Heinz-Gerhard Justenhoven:

> Violence only generates further violence, violence destroys and never builds up, no type of violence brings about a settlement to conflict between persons or nations.... ; the increase of violence in the world [can] … not be brought to a halt by responding with more [violence].38

Rather, John Paul II called for the “juridical presence” of human rights to be strengthened as the means to enhance respect for them.39

As mentioned above, Bishop Pates of the US Conference of Bishops’ Committee on International Justice and Peace has stated in a letter to the National Security Adviser and to Congressional leaders that military use of force in counter-terrorism, even against an organization like Al Qaeda, is not legitimate self-defense if it does not occur in a war zone.40
Pates cites to the Catechism and the Compendium to bolster his argument. He also argues that the proportionality requirement of Paragraph 2309 of the Catechism would make using military force against terrorists even more suspect than using it against aggressor nations. The moral and religious case against expanding the right to kill seems unassailable, but if it were, would counter-terrorism experts be able to make the case that such killing is effective in preventing terrorism? John Brennan who became the CIA Director in 2013 insists that targeted killing is successful because he can point to the large number of persons killed. A large number of dead is not, of course, a criterion of success. Both President Bush and Obama have indicated that this killing is being carried out to suppress terrorism. For this goal, however, independent counter-terrorism experts provide evidence that killing of this kind does not have longer-term positive effects. This view is shared widely from the Rand Corporation and Admiral Dennis Blair to scholars such as Louise Richardson of St. Andrew’s University, Audrey Kurth Cronin of George Mason University, and Jenna Jordan of Georgia Tech.

In his NDU speech, President Obama implicitly conceded that killing with drones beyond armed conflict zones is a use of military force without legal justification. Instead of citing the law, the President referred to costs, difficulties, preferences, last resort and new “rules” to constrain future presidents. He invoked plenty of rationales except the ones that count among the other 192 sovereign states in the world, rationales based on humanity’s common legal code.

A 2012 poll of Americans on their attitudes toward killing with drones found that 76% of likely U.S. voters “approve of the use of the unmanned aircraft to kill terrorists.” This figure has declined since Senator Rand Paul rallied Americans, finally, to look again at drone attacks. But remember, Senator Paul focused on killing Americans. He got the U.S.
Attorney General Eric Holder to promise not to carry out drone attacks in the United States. Sen. Paul got no such promise for the rest of the world.

I received this e-mail from a major in the United States Army Judge Advocate General Corps following a lecture I gave at the Army’s Judge Advocate General School in March 2012. This is his view as to why the U.S. persists with drone attacks despite the evidence such attacks are generally unlawful, immoral and ineffective:

You seem to assume that the United States, as the preeminent global superpower, wants to promote a world order in which the rule of law prevails over the rule of might. I am not convinced that this is accurate. Instead, since 9/11, U.S. policy makers have used international law as a tool for advancing strategic goals rather than a restraint on U.S. action, unilateral or otherwise. When international law threatens to curtail the United States' desired aims, our elected leaders and unelected executive officials have been quick to distinguish, re-imagine, minimize, or summarily ignore the law and the consensus of the international community.

The masses of Americans have been persuaded by more than a decade of bellicose, Orwellian propaganda that only the constant use of military force can bring security and peace to America. Your advocacy of security through adherence to the law-though reasonable, ethical, and utterly defensible-is at stark contrast to the ends-oriented, insular worldview embraced by an increasingly conservative American populace and, apparently, by many of the uniformed judge advocates who attended your lecture. I wish I could share your optimism about the underlying principles of America's people, its leaders, and our national defense establishment. As a nation we raced to the bottom after 9/11 and embraced every justification and pretense to exact our revenge. I wonder if we will ever find our way back.

### Conclusion

Words--“propaganda” in the terminology of the major--have led to the popularity in the United States of killing terrorism suspects wherever found with military force. The success of such words is due, at least in part, to the failure of international law specialists, ethicists, and theologians to teach publicly about the issues at stake, to teach respect for all human life. President Obama is a politician. To affect change respecting his position on killing terrorism suspects will require pressure from the courts, churches, and sovereign allies. This is sad to acknowledge given President Obama’s public commitment to
Christianity, his years as a law professor, his elite education, his experience in international relations, and, of course, his receipt of the Nobel Peace Prize. But it is the reality.

Catholics and all people of faith should have the courage to demand that the United States respect the right to life—that the lives of men, women, and children not be sacrificed for some increase in psychological security. There is no greater love than to lay down our lives for our brother—but we Americans are not even called upon to lay down our lives as an option in this controversy. We are only called upon to reject the politicians’ claims that they are keeping Americans safe by killing thousands elsewhere.

* Robert and Marion Short Professor of Law and Research Professor of International Dispute Resolution—Kroc Institute for Peace Studies, University of Notre Dame. With thanks for research assistance to Anthony J. Rooney, J.D.


2 The numbers mentioned in these remarks are from The Bureau of Investigative Journalism’s Covert Drone War Project at http://www.thebureauinvestigates.com/category/projects/drones/.


5 Of 370 attacks as of July 2012 in Pakistan, 318 have occurred under Obama. See the Website of The Bureau of Investigative Journalism, Covert War on Terror—The Datasets http://www.thebureauinvestigates.com/category/projects/drone-data/.


8 See Nehal Bhuta, States of Exception: Regulating Targeted Killing in a “Global Civil War”, in HUMAN RIGHTS, INTERVENTION, AND THE USE OF FORCE, 243, 246 n. 20 (Philip Alston and Euan MacDonald eds., 2008).

9 NILS MELZER, TARGETED KILLING IN INTERNATIONAL LAW 5 (Oxford University Press 2008).


11 After the 1998 attacks on the U.S. embassies in Kenya and Tanzania, in addition to law enforcement measures, President Bill Clinton ordered cruise missile strikes on a factory in Sudan and terrorist training camps
in Afghanistan. Military strikes of this type are unlawful reprisals under international law. In addition, the Sudanese factory was selected in error. The attacks in Afghanistan apparently struck largely empty camps doing little to deter Al Qaeda.


13 For more details on these events, see infra, and Mary Ellen O’Connell, Unlawful Killing with Combat Drones, in SHOOTING TO KILL: THE LAW GOVERNING LETHAL FORCE IN CONTEXT 263 (Simon Bronitt et al., eds., 2012); Seductive Drones: Learning from a Decade of Lethal Operations, 21 J. L. INFO. & SCI. (Special Edition on Unmanned Vehicles and the Law, 2011).


15 The decision of the Peshawar High Court may be found here: http://www.peshawarhighcourt.gov.pk/images/wp%201551-p%2020212.pdf.


24 For one of the few, if only scholarly critiques of U.S. targeted killing prior to 2010, see, Mary Ellen O’Connell, Ad Hoc War, in KRISSENSICHERUNG UND HUMANITÄRER SCHUTZ—CRISIS MANAGEMENT AND HUMANITARIAN PROTECTION 399 (Horst Fischer et al., eds., 2004).

25 See Germain G. Grisez, Toward a Consistent Natural Law Ethics of Killing, 15 AM. J. JUR. 6, 76 (1970) cited in DAVID HOLLENBACH, S.J., NUCLEAR ETHICS, A CHRISTIAN MORAL ARGUMENT 18-19 (1983). Hollenbach describes how the Just War Tradition evolved from Aquinas’s position presuming that war is sinful to one presuming war is just so long as it is waged by legitimate authorities. Hollenbach argues in favor of returning to the presumption that violent warfare is presumed to be morally wrong and that resort to war is justifiable only in exceptional situations. Id. at 14-16. Hollenbach’s position is consistent with current international law on the use of force, as reviewed above.

26 The Covenant may be found at http://www2.ohchr.org/english/law/ccpr.htm. The U.S. is a party.

27 McCann & Others v United Kingdom, Series A no 324, App no 18984/91 (1995).


U.N. Charter art. 51: Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.


For this basic argument see e.g., David Kretzmer, Targeted Killing of Suspected Terrorists: Extra-Judicial Executions or Legitimate Means of Defence? 16 EJIL 171, 212 (2005).


Id. at 2.


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