Are drone strikes in Pakistan legal?

The Obama administration has embraced the counterterrorism strategy of targeted killing using drone aircraft for many reasons. One is that it is successful and, as senior Obama officials have repeatedly said, one of the very few, if not the only, option for direct attack against Al Qaeda leadership.

A second reason why the Obama administration has embraced targeted killing is that it is targeted. The technology represents a step forward in discrimination in targeting that should be understood as a major humanitarian advance. Any collateral civilian death is tragic, but the alternative in Pakistan and Afghanistan is not non-violence but instead a rolling artillery barrage by the Pakistani army, with the results already seen in its campaign in the Swat Valley.

For 25 years, humanitarian advocates have been urging the United States to come up with less damaging and more discriminating ways of waging war. Targeted killing from drones is an enormous humanitarian step forward in that effort. Criticism that it still allows civilian collateral deaths is merely to engage in the fantasy game of “so what have you done for me lately?” Worse still is the claim that it allows the United States to use violence without exposing its own people to risk. Not subjecting U.S. servicemen and women to unnecessary risk, while ratcheting down risk to civilians, is a bad thing? Why?

The Obama administration’s senior lawyers, including Harold Koh, a leading human rights scholar and current legal adviser to the State Department, have made a close review of the law regarding targeted killing, both in the abstract and in its application in actual targeting by both the U.S. military and the CIA. They have concluded that it is lawful, in the abstract and as carried out. Targeted killing using Predator drone aircraft, Koh has said, is justified as attacks against combatants in an armed conflict by the military or associated U.S. forces, or as acts of force in legitimate self-defense by the CIA, or both. Warning is not required, nor is there an obligation to seek to arrest or detain prior to attacking with deadly force, and American citizens who take up the fight against the United States abroad are subject to the same conditions.

These legal propositions are correct, and represent the views of the United States going back many decades. Likewise, the legal proposition that if a state is unable or unwilling to control its territory where terrorists take safe haven, those havens are not immune from attack.

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