

## The Targeted Killings Debate

U.S. drone strikes and "kill/capture" missions against al-Qaeda operatives, particularly in Pakistan and Yemen, have gained new attention and notoriety this spring. Four experts debate the legality and efficacy of the controversial counterterrorism strategy.

Expert Roundup by Jonathan Masters, *Interviewer*

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The Obama administration has escalated the campaign of targeted killings against suspected terrorists worldwide, increasing the use of unmanned drone strikes (ForeignPolicy) and so-called kill/capture missions (PBS) on al-Qaeda and Taliban leadership both on and off the traditional battlefield. While some analysts tout successes, like the U.S. Navy SEAL raid that killed Osama bin Laden inside Pakistan, others say the strategy lacks proper legal boundaries, as in the targeting of an American jihadist, Anwar al-Awlaki (*WSJ*), in Yemen.

Should targeted killings continue? CFR's Matthew Waxman cautions against overreliance on them as a counterterrorism tool but says so far U.S. policy is within legal bounds. Constitutional lawyer Pardiss Kebriaei questions the legal basis that U.S.

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administrations have used to justify killing suspected terrorists off the battlefield, suggesting a violation of constitutional rights of due process. Decapitating terrorist networks is an effective strategy, says Georgetown's Daniel Byman, capable of robbing a group of charismatic

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leadership critical to its success. But Afghanistan expert Kate Clark argues that targeted killings often produce an organizational chaos that unleashes a more radical generation of subordinates.

### **Matthew C. Waxman**

U.S. strikes against senior al-Qaeda or affiliated terrorists in places like Pakistan or Yemen--most recently, the reported (but unverified) killing of al-Qaeda-linked Pakistani militant Ilyas Kashmiri (Reuters)--often give rise to accusations that the United States is engaged in unlawful "extrajudicial killing," "assassination," or violations of sovereignty. In part because of the secrecy surrounding these policies, such legal claims often don't get thoroughly and specifically answered. However, lethal force directed against particular individuals outside a combat zone like Afghanistan is legally and strategically appropriate in limited circumstances.

The 2010 public remarks by State Department Legal Adviser Harold Koh defending drone strikes (along with a 2006 speech (PDF) by his predecessor, John Bellinger, explaining the legal basis for the use of military force against al-Qaeda) are important documents because they outline some of the legal principles that govern U.S. targeting of al-Qaeda figures. They argue that traditional international legal paradigms of armed conflict and self-defense may apply to some non-state terrorist organizations like al-Qaeda and groups allied with it, but they also acknowledge that these legal paradigms--built primarily to deal with inter-state conflict--don't always fit well the challenges and dilemmas involved in combating non-state threats.

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Legal constraints on U.S. actions include respect for state sovereignty (limiting where and under what conditions the United States could target) and law-of-war principles such as proportionality and distinction (limiting when and how the United States could target). Applying these frameworks to the recent raid on Osama bin Laden, as Koh did publicly recently, the United States has a strong argument that he could be targeted as an enemy commander in the ongoing armed conflict with al-Qaeda. U.S. actions in Pakistan's territory were also defensible because the Pakistani government was not capable or willing to deal with this threat. So far as I can tell from available information, the operation was planned and carried out in strict accordance with the laws of war, including due care to protect innocent civilians and rules regarding surrender.

As to strategy, lethal targeting is but one important tool in the counterterrorism arsenal. Policymakers must be careful that the allure of lethal targeting operations, especially with high-tech weaponry like aerial drones, does not obscure the collateral damage that sometimes comes with such strikes--not only the human toll but the repercussions on other important elements of counterterrorism strategy.

### **Pardiss Kebriaei**

The aspect of the United States' targeted killing policy that is of greatest concern is that which permits deliberate, preemptive strikes outside zones in which the United States is engaged in active combat such as in Afghanistan. In such zones, the intensity of fighting between organized armed groups creates a certain exigency that permits killing outside the usual confines of the law, which would otherwise require due process or excuse the use of lethal force only in narrow circumstances of self-defense. It is that exigency--of war--that triggers the application of a different set of rules--the laws of war--and permits uses of force that would otherwise be unlawful and unacceptable.

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The Obama administration's position, however, like that of its predecessor, is that those exigent circumstances exist globally--that an attack on the United States nearly a decade ago triggered a conflict against al-Qaeda and the Taliban that is being waged not only in Afghanistan but extends potentially everywhere, or, as the administration ambiguously puts it, "elsewhere." But it takes more than declaring a global war for U.S. drone strikes to be lawful in countries as disconnected from the conflict in Afghanistan as Yemen. Whether a situation rises to the level of armed conflict and justifies more permissive rules for the use of force depends on how the facts on the ground, measured against objective criteria defined under international law, add up.

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Where conditions of armed conflict do not exist, the law that governs the actions of the United States is the Constitution and international human rights law, under which the government can only carry out a killing after due process or as a last resort to address an imminent threat of deadly harm. Those are the standards, for example, that should govern the United States' actions vis-à-vis U.S. citizen Anwar al-Awlaki in Yemen.

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Wherever one comes down in the debate, however, it is impossible to discuss the issues other than in the abstract without greater specificity from the Obama administration about its targeting policy. What, if any, geographical boundaries exist in this conflict, and how are they determined? What are the criteria for determining whether to target an individual? What are the criteria for determining whether a group is sufficiently "associated" with al-Qaeda? What are the conditions in which the administration believes it may act in self-defense? If imminence is part of the calculus, how is that term defined?

The abuse and arbitrariness that resulted from the Bush administration's insistence on secrecy, and the Obama administration's own purported embrace of greater transparency, should compel the administration to provide a fuller explanation of its targeting policy. Its failure to do so in more than broad strokes only adds fuel to existing questions and concerns.

### **Daniel L. Byman**

Killing terrorist leaders and key lieutenants not only brings justice to our enemies, but can devastate the group in question. Killing a leader like bin Laden removes a charismatic yet pragmatic leader--one who succeeded in transforming a small group into a household name and proved time and again he could attract recruits and funding. His replacement, be it Ayman al-Zawahiri or another senior al-Qaeda figure, may prove less charismatic and less able to unify this fissiparous movement. Some existing affiliates and cells may split off, and the core might be eclipsed by rivals.

Less dramatic, but no less important, is a campaign against lieutenants and bomb-makers, passport-forgers, travel-facilitators, and others whose skills cannot easily be replaced--essentially what the United States has been doing since the end of the Bush administration in Pakistan through drone strikes. When these individuals are hit, and hit again, it is possible to exhaust the terrorist group's bench. During the Second Intifada, Israel found that initial strikes

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against Palestinian cell leaders and bomb-makers had only a limited impact on the terrorist groups it faced, as eager replacements quickly took over. Eventually, however, there was a bottom to the barrel and less skilled, less motivated people took over.

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An often-neglected impact of killing terrorist leaders is on what they and their group do not do. When a campaign against lieutenants is in full-gear, they must spend much of their time in hiding or moving from place to place. Communicating by phone becomes risky, and the circle of trust shrinks, making meetings or large-scale training harder to pull off. The hunt for spies within can become all-consuming. In the end, leaders are less able to lead, and the group's cohesion and strategic direction suffer.

A targeted killing campaign, of course, is not a strategy by itself. At home and in most countries in the world, the United States can simply ask its allies to monitor suspected terrorists and arrest them--and, in so doing, gain intelligence--should they prove dangerous. And efforts to delegitimize terrorists and strengthen weak governments must also continue and become stronger. However, killing terrorists can complement other instruments of U.S. national policy.

### **Kate Clark**

In the summer of 2009, the friend of a veteran Afghan researcher on the Taliban was accused of spying. He was a known figure in his district, Zurmat, in Paktia province and was not too frightened when he was summoned to the "court," which was made up of elders that included a

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couple of Taliban representatives. It found him innocent. A year later, in the summer of 2010, a spate of suspected spies were murdered in Zurmat, their throats slit "like sheep" by unknown killers. The judicial system, however rudimentary, had broken down.

The researcher linked the violent shift to a general weakening of local Taliban command and control, and blamed the U.S. policy of targeted killing and detention of field commanders ("kill or capture") in Afghanistan. The local and indeed regional Afghan leadership no longer had the clout to discipline Pakistani Waziris and other foreign jihadists--what the researcher called "criminal Taliban"--who had streamed across the border from Pakistan.

The foreign jihadists, in particular, have few scruples in dealing with locals--no kindred ties and no fear of retribution. People went to Waziristan to the regional Taliban leadership council to complain about abuses, said the researcher, but they "just shrug their shoulders."

**The risk is that the insurgency is not halted, but just becomes more fragmented and brutal, as younger and more radical commanders, with no memories of a country at peace, step into the shoes of their dead (or detained) comrades.**

This is only one case, but detailed, in-depth research by AAN's Giustozzi and Reuter (PDF) in the north and Strick van Linschoten and Kuehn (PDF) in Kandahar present similar patterns.

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Where the Afghan government can take control of areas and governs well, the policy of targeted killings may benefit the local population. But where provincial government is corrupt and abusive, and where areas remain contested between the Taliban and the international

militia, weaker Taliban command and control may not look much like progress.

As for the other aim of the strategy--persuading the Taliban that fighting is futile and they should negotiate--the United States may find it is killing some of the very people who will be needed to make peace.

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