

# A New Kind of War Is Being Legalized

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[War Is A Crime](#)

Theme: [Law and Justice](#), [United Nations](#),  
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There's a dark side to the flurry of reports and testimony on drones, helpful as they are in many ways. When we read that Amnesty International and Human Rights Watch oppose drone strikes that violate international law, some of us may be inclined to interpret that as a declaration that, in fact, drone strikes violate international law. On the contrary, what these human rights groups mean is that some drone strikes violate the law and some do not, and they want to oppose the ones that do.

Which are which? Even their best researchers can't tell you. Human Rights Watch looked into six drone murders in Yemen and concluded that two were illegal and four might be illegal. The group wants President Obama to explain what the law is (since nobody else can), wants him to comply with it (whatever it is), wants civilians compensated (if anyone can agree who the civilians are and if people can really be compensated for the murder of their loved ones), and wants the U.S. government to investigate itself. Somehow the notion of prosecuting crimes doesn't come up.

Amnesty International looks into nine drone strikes in Pakistan, and can't tell whether any of the nine were legal or illegal. Amnesty wants the U.S. government to investigate itself, make facts public, compensate victims, explain what the law is, explain who a civilian is, and — remarkably — recommends this: "Where there is sufficient admissible evidence, bring those responsible to justice in public and fair trials without recourse to the death penalty." However, this will be a very tough nut to crack, as those responsible for the crimes are being asked to define what is and is not legal. Amnesty proposes "judicial review of drone strikes," but a rubber-stamp FISA court for drone murders wouldn't reduce them, and an independent judiciary assigned to approve of certain drone strikes and not others would certainly approve of some, while inevitably leaving the world less than clear as to why.

The UN special rapporteurs' reports are perhaps the strongest of the reports churned out this week, although all of the reports provide great information. The UN will debate drones on Friday. Congressman Grayson will bring injured child drone victims to Washington on Tuesday (although the U.S. State Department won't let their lawyer come). Attention is being brought to the issue, and that's mostly to the good. The U.N. reports make some useful points: U.S. drones have killed hundreds of civilians; drones make war the norm rather than an exception; signature strikes are illegal; double-tap strikes (targeting rescuers of a first strike's victims) are illegal; killing rather than capturing is illegal; imminence (as a term to define a supposed threat) can't legally be redefined to mean eventual or just barely imaginable; and — most powerfully — threatened by drones is the fundamental right to life. However, the U.N. reports are so subservient to western lawyer groupthink as to allow that some drone kills are legal and to make the determination of which ones so complex that nobody will ever be able to say — the determination will be political rather than empirical.

The U.N. wants transparency, and I do think that's a stronger demand than asking for the supposed legal memos that Obama has hidden in a drawer and which supposedly make his drone kills legal. We don't need to see that lawyerly contortionism. Remember Obama's speech in May at which he claimed that only four of his victims had been American and for one of those four he had invented criteria for himself to meet, even though all available evidence says he didn't meet those criteria even in that case, and he promised to apply the same criteria to foreigners going forward, sometimes, in certain countries, depending. Remember the liberal applause for that? Somehow our demands of President Bush were never that he make a speech.

(And did you see how pleased people were just recently that Obama had kidnapped a man in Libya and interrogated him in secret on a ship in the ocean, eventually bringing him to the U.S. for a trial, because that was a step up from murdering him and his neighbors? Bush policies are now seen as advances.)

We don't need the memos. We need the videos, the times, places, names, justifications, casualties, and the video footage of each murder. That is to say, if the UN is going to give its stamp of approval to a new kind of war but ask for a little token of gratitude, this is what it should be. But let's stop for a minute and consider. The general lawyerly consensus is that killing people with drones is fine if it's not a case where they could have been captured, it's not "disproportionate," it's not too "collateral," it's not too "indiscriminate," etc., — the calculation being so vague that nobody can measure it. We're not wrong to trumpet the good parts of these reports, but let's be clear that the United Nations, an institution created to eliminate war, is giving its approval to a new kind of war, as long as it's done properly, and it's giving its approval in the same reports in which it says that drones threaten to make war the norm and peace the exception.

I hate to be a wet blanket, but that's stunning. Drones make war the norm, rather than the exception, and drone murders are going to be deemed legal depending on a variety of immeasurable criteria. And the penalty for the ones that are illegal is going to be nothing, at least until African nations start doing it, at which point the International Criminal Court will shift into gear.

What is it that makes weaponized drones more humane than land mines, poison gas, cluster bombs, biological weapons, nuclear weapons, and other weapons worth banning? Are drone missiles more discriminate than cluster bombs (I mean in documented practice, not in theory)? Are they discriminate enough, even if more discriminate than something else? Does the ease of using them against anyone anywhere make it possible for them to be "proportionate" and "necessary"? If some drone killing is legal and other not, and if the best researchers can't always tell which is which, won't drone killing continue? The UN Special Rapporteur says drones threaten to make war the norm. Why risk that? Why not ban weaponized drones?

For those who refuse to accept that the Kellogg Briand Pact bans war, for those who refuse to accept that international law bans murder, don't we have a choice here between banning weaponized drones or watching weaponized drones proliferate and kill? Over 99,000 people have signed a petition to ban weaponized drones at <http://BanWeaponizedDrones.org> Maybe we can push that over 100,000 ... or 200,000.

It's always struck me as odd that in civilized, Geneva conventionized, Samantha Powerized war the only crime that gets legalized is murder. Not torture, or assault, or rape, or theft, or

marijuana, or cheating on your taxes, or parking in a handicapped spot — just murder. But will somebody please explain to me why homicide bombing is not as bad as suicide bombing?

It isn't strictly true that the suffering is all on one side, anyway. Just as we learn geography through wars, we learn our drone base locations through blowback, in Afghanistan and just recently in Yemen. Drones make everyone less safe. As Malala just pointed out to the Obama family, the drone killing fuels terrorism. Drones also kill with friendly fire. Drones, with or without weapons, crash. A lot. And drones make the initiation of violence easier, more secretive, and more concentrated. When sending missiles into Syria was made a big public question, we overwhelmed Congress, which said no. But missiles are sent into other countries all the time, from drones, and we're never asked.

We're going to have to speak up for ourselves.

I'll be part of a panel discussing this at NYU on Wednesday. See <http://NYACT.net>

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