

Guantanamo, Drone Strikes and the “Non-War Terror War”: Obama Speaks

By [Prof. Marjorie Cohn](#)

Global Research, May 24, 2013

[Truthout](#)

Region: [USA](#)

Theme: [Crimes against Humanity](#), [Law and Justice](#)

As one of the 1,200-plus signatories to the full-page ad that appeared in The New York Times, calling for the closure of Guantanamo, I was disappointed in President Barack Obama's speech Thursday on counterterrorism, drones and Guantanamo.

Torture and Indefinite Detention at Guantanamo

In a carefully crafted – at times defensive, [discourse](#), Obama said, “In some cases, I believe we compromised our basic values – by using torture to interrogate our enemies and detaining individuals in a way that ran counter to the rule of law,” adding, “We unequivocally banned torture.” But Obama failed to note that the United Nations Human Rights Commission determined in 2006 that the violent force-feeding of detainees at Guantanamo amounted to torture and that he has continued that policy.

More than half the remaining detainees are refusing food to protest their treatment and indefinite detention, many having been held for more than a decade with no criminal charges. In only a brief, but telling, mention of his administration's violent force-feeding of hunger strikers at Guantanamo, Obama asked, “Is that who we are? Is that something that our founders foresaw? Is that the America we want to leave to our children? Our sense of justice is stronger than that.”

One would hope that Obama's sense of justice would prevent him from allowing the tortuous force-feeding of people like Nabil Nadjarab, who has said, “To be force-fed is unnatural, and it feels like my body is not real. They put you on a chair – it reminds me of an execution chair. Your legs, arms and shoulders are tied with belts. If you refuse to let them put the tube in, they force your head back . . . [it is very risky] because if the tube goes in the wrong way, the liquid might get into your lungs. I know some who have developed infections in the nose. They now have to keep tubes in their noses permanently.” British resident Shaker Aamer reported being subjected to sleep deprivation and being dragged around like an animal at Guantanamo. David Remes, who represents two detainees, reported “shocking” genital searches “designed to deter” detainees from meeting with their lawyers. The “new military policy,” said Remes, “is to sexually abuse them in searches.”

And Obama asks, “Is that who we are?”

Obama did not say he would close Guantanamo. He criticized Congress for placing restrictions on transferring detainees who have been cleared for release, although he signed the legislation Congress passed. To his credit, Obama lifted the moratorium on detainee transfers to Yemen and appointed a new senior envoy at the State Department and

Department of Defense to oversee detainee transfers to third countries. But Obama did not pledge to use the waiver provision contained in Section 1028(d) of the 2013 National Defense Authorization Act that would allow the Secretary of Defense to authorize transfers when it is in the national security interest of the United States. Nor did he promise to stop blocking the release of detainees cleared by habeas corpus proceedings.

The Non-War Terror War

Obama explained how he plans to continue his war on terror without calling it a war on terror. He stated, "Under domestic law and international law, the United States is at war with al Qaeda, the Taliban and their associated forces."

While also saying, "Beyond Afghanistan, we must define our effort not as a boundless 'global war on terror' - but rather as a series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America," Obama listed Pakistan, Yemen, Somalia and Mali as places the United States is involved in fighting terror. Because, he said, "we are at war with an organization that right now would kill as many Americans as they could if we did not stop them first," Obama concluded, "This is a just war - a war waged proportionally, in last resort and in self-defense."

Obama understands that not all wars are just wars. He was referring to, but misapplied, three principles of international law that govern the use of military force. Proportionality means that an attack cannot be excessive in relation to the anticipated military advantage. Yet when drones are used to take out convoys, large numbers of civilians will be, and have been, killed. Last resort means that a country may resort to war only if it has exhausted all peaceful alternatives to resolving the conflict. By assassinating rather than capturing suspected terrorists and bringing them to trial, Obama has not used military force as a last resort. And self-defense is defined by the leading Caroline Case of 1837, which said that the "necessity for self-defense must be instant, overwhelming, leaving no choice of means and no moment for deliberation." The Obama administration has provided no evidence that the people it targeted were about to launch an imminent attack on the United States.

New Rules for Drone Strikes?

Although he defended the use of drones and targeted killing, Obama proclaimed, "America does not take strikes when we have the ability to capture individual terrorists - our preference is always to detain, interrogate and prosecute them." Yet, 4,700 people have been killed by [drone strikes](#), only two percent of whom were high-level terrorist suspects. And Obama has added only one person to the detention rolls at Guantanamo since he took office. "This [Obama] government has decided that instead of detaining members of al-Qaida [at Guantanamo] they are going to kill him," according to [John Bellinger](#), who formulated the Bush administration drone policy.

Obama referred to the killing of Osama bin Laden as exceptional because "capture, although our preference, was remote." Yet it was clear when the US soldiers arrived at bin Laden's compound that the people there were unarmed and bin Laden could have been captured. Obama admitted, "The cost to our relationship with Pakistan - and the backlash among the Pakistani public over encroachment on their territory - was so severe that we are now just beginning to rebuild this important partnership." Indeed, in light of Pakistan's considerable arsenal of nuclear weapons, Obama took a substantial risk to our national

security in breaching Pakistan's sovereignty by his assassination operation.

Ben Emmerson, UN special rapporteur on counterterrorism and human rights, said the drone strikes in Pakistan violate international law. "As a matter of international law, the US drone campaign in Pakistan . . . is being conducted without the consent of the elected representatives of the people or the legitimate government of the state," he noted. Obama said we are "narrowly targeting our action against those who want to kill us." He did not address his [administration's policy](#) of using drone strikes to kill rescuers and attendees at funerals after the original strike killings.

The day before his speech, Obama signed a Presidential Policy Guidance, which he said, provides "clear guidelines, oversight and accountability." As Obama delivered his speech, the White House issued a Fact Sheet regarding policies and procedures for counterterrorism operations, but did not release the policy guidance itself. That Fact Sheet says, "The policy of the United States is not to use lethal force when it is feasible to capture a terrorist suspect." It provides that "lethal force will be used outside areas of active hostilities" only when certain preconditions are met. But it does not define "areas of active hostilities."

Preconditions for using lethal force include:

1. The requirement of a "legal basis" for the use of lethal force. It does not define whether "legal basis" means complying with ratified treaties, including the UN Charter, which prohibits the use of military force except in self-defense or when approved by the Security Council.
2. The target must pose a "continuing, imminent threat to US persons." The Fact Sheet does not define "continuing" or "imminent." The recently leaked Department of Justice White Paper says that a US citizen can be killed even when there is no "clear evidence that a specific attack on US persons and interests will take place in the immediate future."
3. There must be "near certainty" that the terrorist target is present. Neither the Fact Sheet nor Obama in his speech addressed whether the administration will continue "signature strikes" (known as crowd killings), which don't target individuals but rather areas of suspicious activity.
4. There must be "near certainty" that noncombatants will not be injured or killed. This is apparently a departure from present practice, as numerous noncombatants have been killed in US drone strikes. The Fact Sheet changes the current policy of defining noncombatants as all men of military age in a strike zone "unless there is explicit intelligence posthumously proving them innocent."
5. There must be an assessment that "capture is not feasible" at the time of the operation. It is unclear what feasibility means. The White Paper appears to indicate that "infeasible" means inconvenient.

6. There must be an assessment that relevant governmental authorities in the country where the attack is contemplated cannot or will not effectively address the “threat to US persons,” which is left undefined.
7. There must be an assessment that no other reasonable alternatives exist to address the “threat to US persons,” also left undefined.

Finally, the Fact Sheet would excuse these preconditions when the president takes action “in extraordinary circumstances” which are “both lawful and necessary to protect the United States or its allies.” There is no definition of “extraordinary circumstances.”

A few days before Obama’s speech, Attorney General Eric Holder publicly acknowledged the killing of four US citizens, only one of which – Anwar Awlaki – was actually targeted, in 2011. That means 75 percent were “collateral damage,” including Awlaki’s 16-year-old son, Abdulrahman. In his speech, after affirming that a US citizen cannot be targeted and killed without due process (arrest and trial), Obama claimed that Awlaki was involved in terrorist plots in 2009 and 2010; this is long before Obama ordered that he be killed by drone strike in 2011, which would appear to violate the “imminence” requirement. Indeed, Lt. Col. Tony Schaefer, a former Army Intelligence officer, said on MSNBC that Awlaki could have been captured but the administration made a decision to kill instead of capture him.

The use of drones and targeted assassination and the continuing existence of Guantanamo engender hatred against the United States. Farea al-Muslimi, a Yemeni man who testified before the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, spoke about how his friends and neighbors reacted to a recent drone strike in his neighborhood. “Now, however, when they think of America, they think of the fear they feel at the drones over their heads. What the violent militants had failed to achieve, one drone strike accomplished in an instant.”

The Unanswered Questions

During Obama’s speech, Code Pink’s Medea [Benjamin](#) yelled out several questions before being escorted out of the room.

She asked the President:

- * What about the indefinite detention?
- * What about the 102 hunger strikers?
- * What about the killing of 16-year-old Abdulrahman al-Awlaki? Why was he killed?
- * Can you tell the Muslim people their lives are as precious as our lives?
- * Can you stop the signature strikes that are killing people on the basis of suspicious activities?
- * Will you apologize to the thousands of Muslims that you have killed?
- * Will you compensate the innocent family victims? That will make us safer here at home.

- * Can you take the drones out of the hands of the CIA?
- * You are commander-in-chief. You can close Guantanamo today! You can release those 86 prisoners [cleared for release]. It's been 11 years.
- * I love my country. I love the rule of law.
- * Abide by the rule of law. You're a constitutional lawyer.

Obama responded, "I'm willing to cut the young lady who interrupted me some slack because it's worth being passionate about. . . . The voice of that woman is worth paying attention to."

But he went on to say he obviously doesn't agree with much of what she said. One wonders what parts he does agree with.

Marjorie Cohn is a professor at Thomas Jefferson School of Law and the editor of The United States and Torture: Interrogation, Incarceration, and Abuse. She is working on a book about drones and targeted killing.

The original source of this article is [Truthout](#)
Copyright © [Prof. Marjorie Cohn](#), [Truthout](#), 2013

[Comment on Global Research Articles on our Facebook page](#)

[Become a Member of Global Research](#)

Articles by: [Prof. Marjorie Cohn](#)

Disclaimer: The contents of this article are of sole responsibility of the author(s). The Centre for Research on Globalization will not be responsible for any inaccurate or incorrect statement in this article. The Centre of Research on Globalization grants permission to cross-post Global Research articles on community internet sites as long the source and copyright are acknowledged together with a hyperlink to the original Global Research article. For publication of Global Research articles in print or other forms including commercial internet sites, contact: publications@globalresearch.ca
www.globalresearch.ca contains copyrighted material the use of which has not always been specifically authorized by the copyright owner. We are making such material available to our readers under the provisions of "fair use" in an effort to advance a better understanding of political, economic and social issues. The material on this site is distributed without profit to those who have expressed a prior interest in receiving it for research and educational purposes. If you wish to use copyrighted material for purposes other than "fair use" you must request permission from the copyright owner.

For media inquiries: publications@globalresearch.ca