

RELENTLESS EXPANSION OF THE GREAT WAR ON TERROR DESPITE ACHIEVING PRIMARY GOAL



Predator drone (US Air Force photo)

It is widely acknowledged that with the death of Osama bin Laden and a number of other high level leaders, al Qaeda is severely crippled in its one-time haven of Pakistan. Rather than acknowledging this victory in the primary objective of Authorization for the Use of Military Force in Afghanistan (passed on September 18, 2001 in response to the 9/11 attacks) and beginning to phase out the War on Terror, the US instead is finding a new target in Pakistan and building bases from which to launch even more drone attacks in Africa and the Arabian Peninsula, moves which amount to a significant expansion of the war effort.

In Pakistan, the Washington Post reports that the US is applying extreme pressure on Pakistan to dissolve the relationship between the ISI (Pakistan's intelligence service) and the Haqqani network:

The Obama administration has sharply warned Pakistan that it must cut ties with a

leading Taliban group based in the tribal region along the Afghan border and help eliminate its leaders, according to officials from both countries.

In what amounts to an ultimatum, administration officials have indicated that the United States will act unilaterally if Pakistan does not comply.

This threat of unilateral action is unlikely to be seen as mere bluster since the hit on bin Laden was unilateral.

It turns out that the Haqqani network is yet another example of a group the US helped to form only to become one of its targets:

The organization was formed by Jalaluddin Haqqani as one of the resistance groups fighting the Soviet occupation of Afghanistan in the 1980s, with U.S. and Pakistani assistance. In the Afghan civil war that followed, Haqqani sided with the Taliban forces that took power in Kabul in 1996. His fighters fled after the Taliban overthrow in late 2001 to Pakistan, where U.S. intelligence officials think they are in close coordination with al-Qaeda forces.

Pakistani intelligence maintained close connections to the network, now operationally led by Sirajuddin Haqqani, the founder's son, as a hedge against the future in Afghanistan.

The Post article goes on to speculate that the Haqqani network's attack on the US embassy in Kabul last week may have been final act to drive such strong language coming from Washington.

As if the declaration of a new enemy in Pakistan worthy of unilateral US action were not enough in the escalation of US war efforts, we also learn from the Washington Post that a new network of bases for drones is being built:

The Obama administration is assembling a constellation of secret drone bases for

counterterrorism operations in the Horn of Africa and the Arabian Peninsula as part of a newly aggressive campaign to attack al-Qaeda affiliates in Somalia and Yemen, U.S. officials said.

One of the installations is being established in Ethiopia, a U.S. ally in the fight against al-Shabab, the Somali militant group that controls much of that country. Another base is in the Seychelles, an archipelago in the Indian Ocean, where a small fleet of “hunter-killer” drones resumed operations this month after an experimental mission demonstrated that the unmanned aircraft could effectively patrol Somalia from there.

The U.S. military also has flown drones over Somalia and Yemen from bases in Djibouti, a tiny African nation at the junction of the Red Sea and the Gulf of Aden. In addition, the CIA is building a secret airstrip in the Arabian Peninsula so it can deploy armed drones over Yemen.

Recall that just last week, the Obama administration was depicted as being in an internal debate on the legality of expanding the drone war outside of Pakistan to these very areas where the bases are being built.

Considering that the bases are now already under construction, last week’s “debate” story would appear to have been nothing more than a mere academic exercise whose outcome had already been determined.

Only a fool would bet against Washington choosing more war in more locations.

SHOULD DAVID

PETRAEUS BE REPLACED WITH A COMPUTER?

[youtube]<http://www.youtube.com/watch?v=YX4A-iSoDiU>[/youtube]

Today's Washington Post brings an update on the work being done by the Pentagon to develop artificial intelligence to the point that a drone can be automated in its decision on whether to kill. The article points out that currently, when the CIA is making kill decisions on drone missions, that decision falls to the director, a position recently taken over by retired General David Petraeus. In other words, then, the project appears to be an effort to develop a computer that can replace David Petraeus in decision-making.

Of course, this prospect raises many issues:

The prospect of machines able to perceive, reason and act in unscripted environments presents a challenge to the current understanding of international humanitarian law. The Geneva Conventions require belligerents to use discrimination and proportionality, standards that would demand that machines distinguish among enemy combatants, surrendering troops and civilians.

More potential problems:

Some experts also worry that hostile states or terrorist organizations could hack robotic systems and redirect them.

Malfunctions also are a problem: In South Africa in 2007, a semiautonomous cannon fatally shot nine friendly soldiers.

The article notes that in response to issues surrounding the development of autonomy for weapons systems, a group calling itself the International Committee for Robot Arms Control (ICRAC) has been formed. On the ICRAC website, we see this mission statement:

Given the rapid pace of development of military robotics and the pressing dangers that these pose to peace and international security and to civilians in war, we call upon the international community to urgently commence a discussion about an arms control regime to reduce the threat posed by these systems.

We propose that this discussion should consider the following:

- Their potential to lower the threshold of armed conflict;
- The prohibition of the development, deployment and use of armed autonomous unmanned systems; machines should not be allowed to make the decision to kill people;
- Limitations on the range and weapons carried by “man in the loop” unmanned systems and on their deployment in postures threatening to other states;
- A ban on arming unmanned systems with nuclear weapons;
- The prohibition of the development, deployment and use of robot space weapons.

In the end, the argument comes down to whether one believes that computer technology can be

developed to the point at which it can operate in the war theater with autonomy. The article cites experts on both sides of the issue. On the positive side is Ronald C. Arkin, whose work is funded by the Army Research Office. Believing the issues can all be addressed, Arkin is quoted as saying "Lethal autonomy is inevitable."

On the negative side of the argument is Johann Borenstein, head of the Mobile Robotics Lab at the University of Michigan.

Borenstein notes that commercial and university laboratories have been working on the issue for over 20 years, and yet no autonomy is possible yet in the field. He ascribes this deficiency as due to the inability to put common sense into computers: "Robots don't have common sense and won't have common sense in the next 50 years, or however long one might want to guess."

As HAL said in *2001: A Space Odyssey*: "Dave, I'm scared."

**STATE DEPARTMENT,
DOD ARGUE OVER**

“RULES” FOR DRONE TARGETS OUTSIDE PAKISTAN

Ed: Now that he's on the mend from heart surgery, Jim is going to do some posting at EW. Welcome, Jim!

Charlie Savage notes in today's New York Times that the Departments of State and Defense are engaged in an argument over the choosing of targets for drone attacks outside Pakistan. The primary point of contention centers on whether only high level al Qaeda figures in places like Yemen and Somalia can be targeted or if even low level operatives in these areas can be targeted there, just as they are in Pakistan.

Arguing for a more constrained approach is Harold Koh at the State Department:

The State Department's top lawyer, Harold H. Koh, has agreed that the armed conflict with Al Qaeda is not limited to the battlefield theater of Afghanistan and adjoining parts of Pakistan. But, officials say, he has also contended that international law imposes additional constraints on the use of force elsewhere. To kill people elsewhere, he has said, the United States must be able to justify the act as necessary for its self-defense – meaning it should focus only on individuals plotting to attack the United States.

A more wide open approach is favored by Jeh Johnson at the Pentagon:

The Defense Department's general counsel, Jeh C. Johnson, has argued that the United States could significantly widen its targeting, officials said. His view, they explained, is that if a group has aligned itself with Al Qaeda against Americans, the United States can take aim at any of its combatants, especially in a country that is

unable or unwilling to suppress them.

Sensing an opportunity to add to his "tough on terrorism" credentials, Senator Lindsey Graham (R-SC) can't help but join in the DoD's line of argument:

"This is a worldwide conflict without borders," Mr. Graham argued. "Restricting the definition of the battlefield and restricting the definition of the enemy allows the enemy to regenerate and doesn't deter people who are on the fence."

However, there is a huge problem with the entire premise of this argument. It is extremely difficult to know with certainty who the high level and low level personnel are within any terrorist group. For example, earlier this month, we had this sobering reminder about the accuracy of targeting in night raids, which face many of the same targeting issues as drone strikes:

Every JSOC raid that also wounded or killed civilians, or destroyed a home or someone's livelihood, became a source of grievance so deep that the counterproductive effects, still unfolding, are difficult to calculate. JSOC's success in targeting the right homes, businesses and individuals was only ever about 50 percent, according to two senior commanders. They considered this rate a good one.

If targeting for night raids by JSOC is only about 50% accurate, how low is the accuracy for CIA drone strikes? The real world example of the strike carried out Sunday (DoD just couldn't resist a strike on the the 9/11 ten year anniversary, could they?). The New York Times dutifully announces in its headline that "C.I.A. Kills Top Queda Operative in Drone Strike", even though later in the article it is admitted that:

Little is known publicly about Mr. Shariri, a Saudi whom a senior administration official said acted as a liaison between Al Qaeda and the Pakistani Taliban, the group

that has directed a wave of attacks against Pakistani government installations and hotels frequented by Westerners. According to an Interpol alert, Mr. Shariri was 33.

Pakistan will not confirm Shariri's death or identity, according to Reuters:

Pakistan had no confirmation on Friday that al Qaeda's chief of operations in the country had been killed in a recent drone strike in the northwestern tribal region, as reported by American officials.

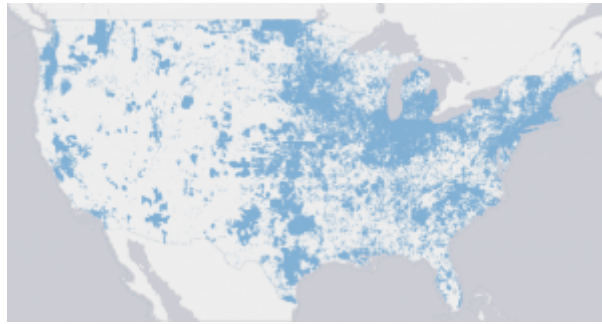
Further, Pakistani intelligence officials spoken to by Reuters claimed they had no knowledge of Shariri:

Intelligence officials operating in the tribal regions near the Afghan border also had no information on al Shahri.

"We have neither heard of this man operating in this region, nor can we confirm his death," said one.

With the identity of even high level terrorists so difficult to pin down, arguing in favor of allowing the targeting of low level terrorists seems to get dangerously close to a system where entire regions are targeted. It's nice that Lindsey Graham and Jeh Johnson can be so certain in their pronouncements because if I were in their positions, I'd be a lot more concerned about the reliability of the intelligence underlying all targeting decisions.

TONY FRATTO'S POST OFFICE FIELD TRIP



Ex-
Bush
flack
Tony
Fratto
set me
off on
a rant
this

morning when he tweeted this:

Over the past 10 yrs I might have visited a
post office 10 times, total.

(FWIW, Ed Henry also doesn't frequent post
offices, he mused from the luxury of Martha's
Vineyard.) Maybe I was misunderstanding what
Fratto meant by the tweet, but he seemed to
suggest that the frequency someone like
him—someone so successful he once worked at the
White House—used post offices should have any
bearing on policy regarding the postal service.
When I suggested that was, "probably why you
have little understanding oof [sic] ppl who do,"
he responded, "? Is there a certain "kind" of
person who visits post offices??"

I started listing the kinds of people who I see
when I go to the post office.

- Poorer people
- People using a post office
box (some who might have
unstable housing)
- Rural people who live
outside of delivery areas
and have to pick up their
mail
- E-bay type entrepreneurs
fulfilling sales orders
- Immigrants sending care
packages to people from
their country of origin
- Non-profits sending

newsletters

Now, that's an unscientific sample—it's just who I see using the post office when I go. But in spite of the fact that these people at least look like they're using the post office because it offers a reliable, accessible service for a price they can afford, I suggested the elite had access to a bunch of different services—like FedEx or UPS—that might make it easier to avoid the post office.

To which Fratto replied,

The issue isn't "elite" vs "poor"! Good grief. It's that we mail 1/10 of what we used to! My goodness...

Getting rid of post offices, Fratto said, was not "not 'tearing down a public good'. We're emailing."

Which I think proved my point. For someone who doesn't frequent a post office to see people who simply can't replace the postal service with the technologies Fratto described as having replaced the postal service—fax, email, and online payments—it's easy to forget that those technologies are simply inaccessible to a big chunk of the country—a chunk that is predominantly poorer.

The map above shows the non-mobile broadband access available in the country as of June 2010. As the NYT noted in an article earlier this year, 28% of America doesn't use the Toobz at all.

As the world embraces its digital age – two billion people now use the Internet regularly – the line delineating two Americas has become more broadly drawn. There are those who have reliable, fast access to the Internet, and those, like about half of the 27,867 people here in Clarke County, who do not.

In rural America, only 60 percent of households use broadband Internet service,

according to a report released Thursday by the Department of Commerce. That is 10 percent less than urban households. Over all, 28 percent of Americans do not use the Internet at all.

And some of these people live in places that may lose their post offices. Many of these people live in places that can't afford to be among the places that could lose some 220,000 postal jobs in upcoming years, on top of the 212,000 already lost.

Yet policy wonks who don't even use the post office (and presumably have the mobility that affluence offers) argue,

I'm fully aware of people who need the post office, but we can't have them on every corner. Always going to be a balance...

...& cost has to matter. At some point it's just not economically practical.

Fratto got a lot quieter when I pointed out the postal service deficit—\$238 billion over the next decade—was actually peanuts compared on what we spend dropping bombs in Afghanistan and other forever wars.

Elite pundits increasingly seem to be making the argument that we simply can't afford to be a nation-state anymore—we can't afford to offer the most basic federal services to our poor and rural citizens. Yet they rarely consider how easily we manage to come up with unbelievable sums to remain an empire.

Drone strike budgeting: ruining rural lives here and overseas for fun and profit!

MEXICO DRUG CARTELS:

FIGHTING TRANSNATIONALISM WITH TRANSNATIONALISM

Particularly in light of the Administration's recent rollout of its Transnational Criminal Organization program, the NYT's article on our escalating war in Mexico raises several concerns. As I laid out, that program basically applies a number of GWOT tools—such as freezing of funds—to the fight against completely arbitrarily designated TCOs.

The NYT article shows how a terrorist approach has already been applied against Mexico's drug cartels.

In recent weeks, small numbers of C.I.A. operatives and American civilian military employees have been posted at a Mexican military base, where, for the first time, security officials from both countries work side by side in collecting information about drug cartels and helping plan operations. Officials are also looking into embedding a team of American contractors inside a specially vetted Mexican counternarcotics police unit.

Officials on both sides of the border say the new efforts have been devised to get around Mexican laws that prohibit foreign military and police from operating on its soil, and to prevent advanced American surveillance technology from falling under the control of Mexican security agencies with long histories of corruption.

Let's unpack this language: The US is operating on Mexican soil at least partly to prevent "advanced American surveillance technology" from

falling into corrupt Mexican security agency hands. Any bets on what that advanced technology is, particularly given that we could presumably wiretap extensively from the comfort of our own Folsom Street room or similar? How about drones?

The U.S. government has begun deploying drones into Mexico after Mexican officials requested U.S. aircraft to help them fight drug-trafficking organizations.

Although U.S. agencies remained tight-lipped Wednesday on flying drones over Mexico, the chief of the Mexican National Security Council, Alejandro Poiré, admitted that his government asked for this type of support to gather intelligence.

Poiré in a statement said the Mexican government defines the operations, most of which take place in border areas.

"When these operations take place, they are authorized and supervised by national agencies, including the Mexican Air Force," Poiré said Wednesday.

Furthermore, Poiré said, the governments were not breaking any national sovereignty laws because they were simply assisting in gathering intelligence. The drones are for surveillance only and are not armed.

So, particularly given Benjamin Wittes' and my earlier agreement that one of the risks of drones is that some entity—a terrorist organization or a drug cartel—would gain control of one or more of them, reflect on the apparent fact that we're deploying to Mexico, in part, to make sure that Mexico's corrupt security agencies don't have control of the drones we've got flying over Mexico.

This feels a lot like Pakistan already: the unreliable partner, the transparent fictions to

make it appear as if a military invasion is not a military invasion.

Now add in the mercenar—um, I mean, the “team of American contractors.” A way to put boots on the ground while still pretending we’re not putting boots on the ground (don’t want to get into another one of those spats about what constitutes hostilities, you know).

“The government has argued that the number of deaths in Mexico is proof positive that the strategy is working and that the cartels are being weakened,” said Nik Steinberg, a specialist on Mexico at Human Rights Watch. “But the data is indisputable — the violence is increasing, human rights abuses have skyrocketed and accountability both for officials who commit abuses and alleged criminals is at rock bottom.”

Of course, our past use of mercenaries have shown they are susceptible to the same kind of corruption that we point to, in Mexico, as the reason why we need to station our own people there to keep (presumably) drones safe.

Now compare this report on Mexico from the NYT,

“The government has argued that the number of deaths in Mexico is proof positive that the strategy is working and that the cartels are being weakened,” said Nik Steinberg, a specialist on Mexico at Human Rights Watch. “But the data is indisputable — the violence is increasing, human rights abuses have skyrocketed and accountability both for officials who commit abuses and alleged criminals is at rock bottom.”

With this must-read story about how our night raids in Afghanistan—that get their target over 50% of the time (presumably meaning they hit the

wrong target almost as often)—have led locals in the area where the 30 Americans got shot down over the weekend to sympathize with the Taliban.

“There are night raids every day or every other day,” said a second doctor who asked not to be identified because he feared for his safety. He said he lives about 100 yards from the parched riverbed where the U.S. Chinook helicopter crashed.

“The Americans are committing barbaric acts in the area and this is the reason that the Taliban have influence,” he said.

We’ve been using the tactics we appear to be rolling out now in Mexico for a decade already in Afghanistan and Pakistan. And while we’re down to just 50 or so members of al Qaeda, we seem to be destabilizing two already dicey countries.

And that’s the thing—and the reason I keep saying that using drones and mercs maybe isn’t the way to fight these transnational threats.

We’re arguing that the Mexican government is not strong enough right now to fly its own drones, much less defeat the cartels (even putting aside questions of the market we refuse to address here in the US). Yet to combat that, we’re chipping away at Mexican sovereignty.

Why, if these transnational threats are so dangerous to nation-states, do we keep using transnational forces to combat them?

RICHARD BEN-VENISTE

CALLS OUT OBAMA FOR SPIKING THE PRIVACY BOARD

I just watched a scintillating panel at the Aspen Security Forum. It featured former LAPD Chief Bill Bratton, Alberto Gonzales, ACLU's Anthony Romero, John Yoo, and David Cole, moderated by Dahlia Lithwick.

The panel itself was notable for the staging of it. The panelists were seated right next to each other, with no table in front. Gonzales sat right next to Romero; Yoo sat right next to Cole. So when Romero corrected Lithwick's assertion that the Bush Administration had showed respect for using civilian trials with terrorists by recalling that Gonzales had argued for holding American citizen Jose Padilla without trial, Gonzales shifted notably, uncomfortably, by my read. And when Cole rehearsed the language people like Michael Mukasey and Jack Goldsmith used to describe Yoo's memo all the while pointing with his thumb at Yoo sitting next to him—"solvenly," he emphasized—Yoo also shifted, though aggressively towards Cole. Before it all ended, Romero started reading from Yoo's torture memo; Yoo accused him of using Dickensian dramatic delivery.

The physical tension of these men, attempting to contain the contempt they had for each other while sitting in such close proximity, was remarkable.

There were a number of other highlights: John Yoo made the ridiculous claim that no one in the human rights community had come out against drone strikes (Romero came back later and reminded him the ACLU had sued on precisely that issue, representing Anwar al-Awlaki's family). Gonzales insisted there should be accountability (no matter that he escaped it, both when he

politicized DOJ and when he took TS/SCI documents home in his briefcase). Romero hailed Obama's "willingness to shut down secret sites," apparently missing Jeremy Scahill's recent scoop about the CIA-paid prison in Somalia. Yoo, as is typical, lied to protect his actions, not only repeating that canard that torture helped to find Osama bin Laden (rather than delayed the hunt as is the case), but also to claim that warrantless wiertaps helped find the couriers; they did, but those were warrantless wiretaps in the Middle East, not the US!

Just as interesting, though, were the questions. Yoo was somewhat stumped when an IAVA member and former officer asked what an officer who had taken an oath to support and defend the Constitution should do if he received what he believed was an unconstitutional order.

Finally, most interesting came when Richard Ben-Veniste—the former Watergate prosecutor and 9/11 Commissioner—asked questions. He said, first of all, that Mohammed al-Qahtani had been providing information before he was tortured (a claim I'm not sure I've heard before, made all the more interesting given that we know the Commission received interrogation reports on a running basis). But then his torture turned him into a "vegetable," which meant the US was unable to prosecute him.

And then Ben-Veniste raised something that the panel, for all its discussion about accountability, didn't mention. The 9/11 Commission recommended a privacy board to ensure that there was some balance between civil liberties and security. Bush made a half-assed effort to fulfill that requirement; after 2006, at least, there was a functioning Privacy and Civil Liberties Oversight Board. But Obama has all but spiked it, killing it by not appointing the Board.

Particularly given Ron Wyden's and Mark Udall's concerns about secret law, it's time the civil liberties community returned its focus on Obama's refusal to fulfill the law and support

this board. That board is precisely the entity that should be balancing whether or not the government is making appropriate decisions about surveillance.

Update: David Cole corrected for John.

IS “NATIONAL SECURITY” A GOOD EXCUSE TO PURSUE POLICIES THAT UNDERMINE THE NATION-STATE?

Here I was steeling myself for a big rebuttal from Benjamin Wittes to my “Drone War on Westphalia” post on the implications of our use of drones. But all I got was a difference in emphasis.

In his response, Wittes generally agrees that our use of drones has implications for sovereignty. But he goes further—arguing it has implications for governance—and focuses particularly on the way technology—rather than the increasing importance of transnational entities I focused on—can undermine the nation-state by empowering non-state actors.

I agree emphatically with Wheeler’s focus on sovereignty here—although for reasons somewhat different from the ones she offers. Indeed, I think Wheeler doesn’t go quite far enough. For it isn’t just sovereignty at issue in the long run, it is governance itself. Robotics are one of several technological platforms that we can expect to greatly enhance the power of

individuals and small groups relative to states. The more advanced of these technological areas are networked computers and biotechnology, but robotics is not all that far behind—a point Ken Anderson alludes to at a post over at the Volokh Conspiracy. Right now, the United States is using robotics, as Wheeler points out, in situations that raises issues for other countries' sovereignty and governance and has a dominant technological advantage in the field. **But that's not going to continue. Eventually, other countries—and other groups, and other individuals—will use robotics in a fashion that has implications for American sovereignty, and, more generally, for the ability of governments in general to protect security.** [my emphasis]

Given DOD's complete inability to protect our computer toys from intrusion, I'll wager that time will come sooner rather than later. Iraqi insurgents already figured out how to compromise our drones once using off-the-shelf software.

Militants in Iraq have used \$26 off-the-shelf software to intercept live video feeds from U.S. Predator drones, potentially providing them with information they need to evade or monitor U.S. military operations. Senior defense and intelligence officials said Iranian-backed insurgents intercepted the video feeds by taking advantage of an unprotected communications link in some of the remotely flown planes' systems. Shiite fighters in Iraq used software programs such as SkyGrabber — available for as little as \$25.95 on the Internet — to regularly capture drone video feeds, according to a person familiar with reports on the matter.

It may not take long, then, for a country like Iran or an entity like a Mexican drug cartel to develop and disseminate a way to hack drones. And given the way other arms proliferate, it won't be long before drones are available on the private market. (Incidentally, remember how some of the crap intelligence used to trump up a war against Saddam involved a balsa-wood drone? Great times those were!)

So Wittes and I are in pretty close agreement here; he even agrees that the larger issue "ought to be the subject of wider and more serious public debate."

But shouldn't it be, then, part of the question whether facilitating this process serves national security or not?

In the interest of fostering some disagreement here—er, um, in an interest in furthering this discussion—I wanted to unpack the thought process in this passage from Wittes' response to Spencer with what appears to be Wittes' and my agreement in mind:

The point with merit is the idea that drones enable the waging of war without many of the attendant public costs—including the sort of public accounting that necessarily happens when you deploy large numbers of troops. I have no argument with him on this score, save that he seems to be looking at only one side of a coin that, in fact, has two sides. Ackerman sees that drones make it easy to get involved in wars. But he ignores the fact that for exactly the same reason, they make it easier to *limit involvement in wars*. How one feels about drones is partly conditioned by what one believes the null hypothesis to be. If one imagines that absent drones, our involvement in certain countries where we now use them would look more like law enforcement operations, one will tend to feel differently, I suspect, that if one thinks our

involvement would look more like what happened in Iraq. Drones enable an ongoing, serious, military and intelligence involvement in countries without significant troop commitments.

As I read it, the logic of the passage goes like this:

1. Drones minimize the costs of involvement in wars
2. We will either be involved in these countries in a war or a law enforcement fashion
3. Therefore, we're better off using drones than large scale military operations

Now, before I get to the implications of this logic, let me point out a few things.

First, note how Wittes uses "what happened in Iraq" as the alternative kind of military deployment? As I said in my last post in this debate, I do think Iraq may end up being what we consider our last traditional nation-state war for some time, so I suppose it's a fair invocation of an alternative. But Iraq was also characterized, for years, by willfully insufficient planning, and it was an illegal war of choice in any case. If the only option is military intervention, why not compare drones with a more effectively-run more legitimate war, like the first Gulf War? Or why not admit the possibility of what we've got in Afghanistan, another incompetently executed war (largely because Bush moved onto Iraq before finishing Afghanistan) which now seems almost to serve as an incredibly expensive excuse to keep drones in the neighborhood.

Also, note the things Wittes doesn't consider among the possibilities here, such as diplomacy or non-involvement. We're not using drones (not yet, anyway) against Syria, Bahrain, or Ivory

Coast, all of which share some similarities with Libya. So why—aside from the oil—should we assume we have to get involved in any case? Shouldn't we first consider using tools that don't create more failed states?

And even if we're going to be involved militarily, there's the additional choice of using just special forces, which has the same kind of small footprint and low cost, but—up until the point you use them to kill Osama bin Laden—slightly different legal and strategic implications than drones (though ultimately someone is going to capture members of our special forces and treat them as unlawful enemy combatants).

Mind you, I'm not saying these alternative tools necessarily are the ones we should be using, but we ought to remember the choice isn't as simple as war versus law enforcement.

That said, Wittes is coming to this—and to the larger question of counterterrorism—from a perspective supporting significant (though not complete) use of a war framework. For those who do, doesn't that make the logic I laid out above—added to the seeming agreement that drones are one new development undermining the nation-state—look something like this (the additions are in bold)?

1. Drones minimize the costs of involvement in wars **but undermine nation-states**
2. We will either be involved in these countries in a war or a law enforcement fashion
3. **Given that binary choice, we favor a military involvement in these countries**
4. Therefore, we're better off using drones than large scale military operations

5. A consequence of that choice will be popularizing a technology that will undermine nation-states, including our own

Admittedly, I may be pushing the logic here, as well as the extent to which Wittes and I agree about the implications of drones. Nevertheless, this logic summarizes the reason we need more debate here—partly because we’re using tools without consent, partly because we’re not considering potential unintended consequences—particularly in the form of more failed states—of our choices. But also because, in the name of “national security,” we seem to be pursuing policies that will weaken our own nation-state. (Compare this with cyberwar, where, after we ratcheted up the strategy with Stuxnet, we are at least now—perhaps cynically—trying to establish an international regime to cover the new strategy.)

Now consider what’s happening at the same time, in the absence of a real debate about whether we need to launch drones against another country. We had 159 and 238 Americans die in tornadoes this year that were almost certainly an early example of the kinds of severe natural disasters we can expect from climate change; but we’re doing nothing as a country to prepare for more such events (including the historical flooding and its significant economic cost), much less to try to prevent climate change. We continue to let multinational banks guide our national policy choices, in spite of warnings that such an approach will bring about another crash. And no matter how relatively inexpensive drones are, we are spending billions on them, even while we’re firing the teachers that should be educating our next generation of engineers—eating our national security seed corn, if you will—because of budget woes.

In short, in a push to address one diminishing

threat using the least costly military means, we may be hurting the viability of our nation-state. We're fighting a transnational threat by empowering transnational threats. Meanwhile, the US is betraying its responsibility to provide its citizens security in the face of a number of much more urgent threats.

If the state is crumbling—and ours seems to be, literally, politically, and legally—then what becomes of the responsibility for national security? And how do you define the nation that national security must serve?

Update: Balsa for balsam fixed per Synoia.

ERIC HOLDER, PREET BHRARA, AND RAY KELLY PLANNING CIVILIAN TERROR TRIAL IN MANHATTAN

Was it just a year ago when we were told it was impossible to hold a civilian terrorist trial in NY?

Because that seems to be what DOJ and the NYPD have in mind with alleged -Shabaab leader, Ahmed Abdulkadir Warsame, who is accused of multiple counts of material support for terrorism.

Our government's refound belief in the safety of terrorist trials in Manhattan is just one of the interesting details of today's announcement.

Another is whether the Republicans will let DOJ hold this trial—after all, they believe all accused terrorists must be put into the military commission system and have threatened to defund DOJ to make sure that happens.

The unusual conditions under which Warsame has been kept since he was captured on April 19 might make the Republicans more excited about Warsame's treatment. Apparently, he's been floating around on a ship being interrogated for over two months. Then just days ago, he was given a Miranda warning, and after it was waived, he reportedly spoke freely with prosecutors. I'll be curious to learn more about our new floating prisons!

I'm curious too how the NYPD got involved in this case. The indictment is not yet online, so I'm not sure how this arose out of NYC's JTTF (as it apparently does). But apparently the NYPD has been involved.

Finally, one more question: the US hit Somalia with a drone strike on June 23, and reportedly showed up after the fact (perhaps as late as this weekend) to retrieve the bodies hit in the strike. Is there a connection between that strike and the unsealing of this indictment?

THE DRONE WAR ON WESTPHALIA

I wrote a snippy post yesterday attacking Benjamin Wittes' claim that we've had a public debate about drones. But I wanted to do a more substantive post about something missing from the drone debate.

I believe that drones are a tool that presents a heightened threat to the concept of sovereignty, for better or worse. (Note, this is a really rough post, so I welcome historical and legal corrections. But hey, it's Independence Day, so why not launch a half-baked meditation on our loss of sovereignty?)

Drones change the relationship between the state and war

If you think about it, the system of sovereignty established by the Treaty of Westphalia in 1648 has been under increasing threat since World War II, a moment that brought many repressed peoples of the world closer to exercising their own sovereignty. While sovereignty never fully existed in practice, as we began to institute rules to enforce a more humane coexistence among sovereign nations, a number of forces starting chipping away at the concept of sovereignty. The chief threat to sovereignty is globalization—a force the US encouraged as a means to exercise global hegemony, but also one that (for example) makes it increasingly difficult for the US to fund its coffers or sustain the quality of life of its people. Terrorism as incarnated by al Qaeda did no more than capitalize on the globalized system the US championed; it used the same tools US-based multinationals exploit to maximize profit to strike at a much more powerful foe. And in response to 9/11, the US has both wittingly and unwittingly catalyzed the decline of sovereignty, both with its counterterrorism approaches and with its current form of capitalism.

Its embrace of drones, I believe, is an important part of that process.

Now, the crux of Wittes' argument is that any problem with drones would exist with any other kind of weapon—drones are technologically neutral.

Drones are a weapon. Their use raises some novel issues, but in many ways, those issues are more the logical extension of the issues raised by previous weapons technologies than departures from them. Ever since, once upon a primitive time, some neolithic fellow figured out that he would be safer if he *threw* his spear at the other guy from a distance, rather than running up to him and trying to jab him with it, people have been looking for ways to fight from more stand-off platforms—in

other words, trying to assume less risk in going into combat. Guns and arrows are technological efforts to kill accurately from a distance. Air power and artillery are both efforts to deliver explosions to places one doesn't want to risk sending people. Drones are merely the extension of this logic—a means of protecting one's people almost absolutely while they fight a nation's battles. I don't see that as intrinsically problematic, morally or legally. I see it, rather as consistent with the entire history of the development of weaponry, which one should understand as a technological trend towards greater lethality from positions of ever lessening exposure.

But that takes a very narrow view of weapons themselves, in isolation from the structure of government weapons co-evolve with. A caveman's spear is the weapon of individuals or clans fighting and feeding themselves, not of nation-states. Air power and artillery, by contrast, at least used to be weapons necessarily tied to a certain tax base and the ability to form armies that comes with that tax base (though the proliferation of such arms are one of the things that now empowers a new war-lordism). Drones, along with increasing reliance on mercenaries, are still tied to some source of revenue; but they're freed from a social contract between the nation-state and its people. Our elite, working in secret, can choose to target whoever whenever, and those of us forgoing pensions and infrastructure to pay for those drones and mercs, will have no say in the matter.

All of which is a point Spencer made in his excellent response to Wittes.

Ben is correct to note that [a drone] strategy is "technology neutral." But that observation overlooks the fact that that in this case, the technology *drives* the strategy. The vast improvement in

drone-derived intelligence (with some human intelligence, doubtfully) and weapons capability enabled a *huge* expansion in the ability to wage war while negating or reducing the constraining public costs to it, like troop deployments, financial drain, or conspicuous logistics trails. (You should see the command boxes that Army enlisted men and contractors sit in to operate these things from Bagram – the essence of modularity.) With that comes a lack of public accounting about the efficacy of the program and the criteria for targeting someone with a drone – and no objections from pesky congressmen.

That's what I would argue needs to change. There's an *elite* debate in your papers and think tanks about what smart people can *glean* about the drone war. It suffers from a dearth of information – not about *how* someone is targeted, which is properly classified, but *who* can be targeted; the specific authority for targeting; and the normative question of *where* the drone war ought to be waged. That, as Marcy points out, is a deliberate government choice. Factor out any ethical concerns: we can't even say with confidence that the drone war is *succeeding*, in any rigorous strategic sense of the term, just that it's killing a lot of people and unleashing a lot of missiles. July 4 seems as apt a day as any to point out that the public, through its elected representatives, is supposed to determine America's wars.

Five new ways to erode sovereignty with drones

One thing I think is stunning about our drone war is the degree to which it impacts issues of sovereignty almost everywhere we use it. The one exception is the latest member of our target club, Somalia, given that it is already a failed state (not that that justifies drones strikes.)

Consider:

Afghanistan: Of all of our drone wars, Afghanistan is the only one that started with traditional legitimacy (and like Somalia, its state was weak to begin with). Yet we're at the stage now where drones are a key weapon to defend Hamid Karzai—the "Mayor of Kabul"—in the absence of having a fully functional national army. Increasingly, though, we remain in Afghanistan to protect it as a launching pad for attacks on Pakistan, where the bulk of our real enemies are.

Iraq: While plenty of America's wars have been dubiously legitimate, Iraq certainly is at the top of that list. We trumped up a case against a sovereign nation-state (one with manufactured legitimacy internally, but no less than many of our allies in the region). In what may be the last traditional nation-state war we fight, we managed to (at least thus far and only barely) avoid breaking the country up into three or more parts and establish another leader with questionable legitimacy. In most of that, drones weren't key. But I'm betting that they will be going forward as a threat to Nuri al-Maliki that if he doesn't invite our troops to stay longer, we will feel free to use drones in his country. That's just a guess, mind you, but the evolution of our drone power (and the influence Iran has in Iraq) surely has a bearing on whether and how Iraq fully reasserts its sovereignty by kicking our troops out.

Pakistan and Yemen: Here's where the secrecy I discussed yesterday becomes so key. In both Pakistan and Yemen, we are using drones as a way to cooperate with a country's leadership to make war on—rather than employ police powers on—that country's own people. Obviously, police power was both untenable in those countries (because there isn't any in the areas of concern) and strategically unworkable (because both these countries have an ambivalent relationship with the terrorists in their own countries). But the key to this process is secrecy: the utterly

laughable fiction that drones were dropping down on these countries but no one had to explain the cooperation behind it. Now, in Pakistan, the example of the Osama bin Laden raid proves this doesn't have to do exclusively with drone technology. But up until the moment when you launch a raid on a figure like OBL, the drones serve as the most visible—and therefore dangerous, from a legitimacy standpoint—reminder of the lie of the country's sovereignty. To some degree the drone strikes are just a change in degree from the kind of secret big-footing the US and other neocolonial powers have used for decades, but they are more visible, and they allow the US to exercise a much greater degree of autonomy with regards to the partners in question. And for that reason, I believe, they will take fragile states and exacerbate the legitimacy concerns, making them much more likely to turn into even more dangerous (nuclear-armed, in Pakistan's case) failed states.

Libya: Libya is the most interesting of all these examples. That's true, first of all, because it demonstrates Spencer's point: that the US will use these weapons in defiance of any public costs to doing so (both literally—we're dumping billions into this campaign at the exact same time we're cutting trillions in domestic spending, but also figuratively, with Obama's defiance of the WPR). But one particular potential use of drones (or multinational air strikes, as we tried in our first attempt to decapitate Qaddafi) is to assassinate the leader we still recognize as the legitimate leader of Libya. Now I know we've assassinated the legally legitimate leaders of countries in the past. But doing so with such audacity, with so little plausible deniability, seems to mark a new step in our approach to rule of law. And if Qaddafi, in response, sets off a series of terrorist attacks in Europe and the US, we'll have a lot harder time appealing to the principles of sovereignty we did when al Qaeda attacked us, because we broke those laws first.

In all of these cases, it seems, we risk trading a failed state in pursuit of what the Executive Branch, often in secret, defines as our national interest. It not only risks exacerbating the risk failed states represent around the world—and the further proliferation of terrorism—but as Spencer lays out, the fact that the Executive can do so without balancing the political cost of doing so changes our relationship with our government. (It is no accident, I think, that these changes in strategy are occurring at precisely the same moment both parties are cooperating to dismantle the social safety network.)

Now, for the record, I'm not entirely certain whether chipping away at sovereignty is a good thing—will it allow oppressed people to band together to fight the global elite, or a terrible thing—will it allow weaponized elites to turn average people back into serfs in exchange for the security the nation-state used to offer (though of course I've repeatedly suggested we're headed for the latter condition). But our elected representatives are wittingly and unwittingly pursuing policies that accelerate the process.

So there are two public debates that we're not having. First, there's the debate about what standard the Executive needs to use before he assassinates a US citizen with no due process, or what standard the Executive needs to use before he launches new "hostilities" with no congressional mandate. Those are the old-style debates about public accounting that the Executive is using secrecy to try to avoid.

But there's a larger debate we need to be having. Our system of governance is changing, subtly but increasingly radically, with no discussion. Drones are one symptom and one catalyst of that. And before the consent of the governed is completely eliminated, it'd be nice to have a "public debate" about it.

Again, sorry if this is really rough. But I've got to go prepare to celebrate our nation's own

sovereignty by watching a bunch of pyrotechnics paid for by a multinational pyramid scheme.

Happy Independence Day, everyone!

Update: Thanks to everyone who corrected my very embarrassing (for someone who has studied the Czech lands' history) typo on Treaty of Westphalia. And for the grammatical fixes.

OUR “PUBLIC DEBATE” ABOUT DRONES IS A STATE SECRET

While I often disagree with Benjamin Wittes, I rarely think the stuff he writes is sheer nonsense.

This post, which attempts to rebut Eugene Robinson's column on Assassination by Robot, is an exception.

I disagree, respectfully, with most of his post. But this bit I find just mindboggling.

My former colleague Eugene Robinson has a column in the Washington post entitled “Assassination by Robot,” which seems to me to warrant a brief response. Robinson begins by saying that, “The skies over at least six countries are patrolled by robotic aircraft, operated by the U.S. military or the CIA, that fire missiles to carry out targeted assassinations. I am convinced that this method of waging war is cost-effective but not that it is moral.” And he complains that “There has been virtually no public debate about the expanding use of unmanned drone aircraft as killing machines – not domestically, at least.”

Robinson's complaint about debate is

false, at least in my view. **There has been a significant public debate on the subject.**

In half the countries in which we are known to be using drones—Pakistan, Yemen, and Somalia—these drone strikes are still highly, highly classified. (The acknowledged countries are Iraq, Afghanistan, and Libya.)

When Anwar al-Awlaki's family sued for due process, the government invoked state secrets, even as Crazy Pete Hoekstra and a stream of anonymous sources have leaked details of the drone targeting of him for over a year. One of the things Robert Gates specifically invoked state secrets over is whether or not we're engaged in military operations in Yemen. Another is details of our counterterrorism work with Yemen.

B. Information concerning possibly military operations in Yemen, if any, and including criteria or procedures DoD may utilize in connection with such military operations; and

C. Information concerning relations between the United States and the Government of Yemen, including with respect to security, military, or intelligence cooperation, and that government's counterterrorism efforts.

So in the most controversial case out there, our targeting of an American citizen with no due process, the government has said no one can know any details of it. No one.

The secrecy of the drone strikes is a point that Robinson makes, albeit somewhat obliquely.

Since the program is supposed to be secret, officials use euphemisms when speaking about it publicly. John Brennan, President Obama's counterterrorism adviser, said in a

recent speech that “our best offense won’t always be deploying large armies abroad but delivering targeted, surgical pressure to the groups that threaten us.”

But the point needs to be made much more strongly.

If the government says we can’t know about the drone strikes—if the government says we can’t even know that many of the drone strikes are going on—then what kind of “public debate” are we having? For the drone strikes that are a state secret, **Congress** can’t even engage in a “public debate.”

Yeah, I understand that a very limited set of elites argue about drones anyway. But it takes a really twisted understanding of democracy and public debate to claim that drone strikes the government won’t even acknowledge are the subject of a real debate.