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Drones as Strategic Airpower and the Counter-Raiding Light Cavalry?

Kenneth Anderson • February 25, 2010 10:43 am

David Rittgers, a Cato legal analyst and former Special Forces officer, has an excellent op-ed in today's Wall Street Journal on the use of Predator drones. He cautions, on the one hand, against reflexively regarding drone attacks as nonjudicial execution or, really, functionally different from other weapons that soldiers might use — as well as cautioning against the idea that Congress or courts could somehow micromanage the use of these weapons. On the other hand, he cautions against thinking that the problem of drones is that the US should be seeking to capture rather than kill because of the loss of intelligence; he notes that operationally, there are many reasons why capture is very often infeasible. It's a good piece, measured and sensible, and I highly recommend it.

I've been quiet around VC in the last little while as I, too, have been writing about Predators and targeted killing — expanding and moving beyond my book chapter from last year on this topic. Barring some big news on health care or some such, the Weekly Standard will be running a piece from me next week arguing something I've developed here at VC and at Opinio Juris blog: first, that the administration's lawyers need to step up to the plate and defend targeted killing using Predators and, second, the proper legal basis on which to defend it to the full extent undertaken by the Obama administration is the international law of self-defense, rather than simply the law of armed conflict, targeting combatants.

In another piece coming soon (this one a book chapter in a Hoover Institution online collection of essays from the Hoover Task Force on National Security and Law), I will be arguing a further step in this — one which relates to Rittgers WSJ

op-ed. Underlying much of the argument over drone warfare is a submerged factual and normative frame about who, what, and where. Rittgers, for example, is drawing upon his extensive experience as a Special Forces officer, and reserve judge advocate, with three tours in Afghanistan, to point out that it is a mistake and really not possible to micromanage military operations in the field. Nor is the use of a missile fired from a drone in battle significantly different from a missile fired from a manned aircraft, or a helicopter, or some other place.

Critics who call the practice extrajudicial execution, however, are frequently focused upon another scenario. The version of it furthest from the hot battlefield scenario is a CIA directed drone missile strike upon a target in a compound far away from any theatre of active fighting, such as AfPak — someone in Yemen or Somalia, to take the obvious examples. From the critics' standpoint, it is a bit of bait and switch to defend drone missile attacks on the basis of their use on a hot, active battlefield, or even in a general theatre of conflict — for which, the critic will note, one might or might not include the "Pak" part of "AfPak" — and then turn around and say, therefore, a CIA attack in Somalia is similarly okay. From the critics' view, even if the theatre of conflict use by uniformed military is okay on traditional military targeting terms (and for the human rights monitors, it likely is not — or, more precisely, permissible in principle, but somehow not in any particular circumstances), that is not the same as the CIA's global reach. From the critics' point of view, that is, what goes on operationally at ground level in Afghanistan somewhat misses the point. From my view, too, what needs to be defended as legal policy by the United States is not principally that use of drone attacks — that is not at that point so much questioned, although perhaps I am too sanguine about it — but instead the CIA, covert action as a category, and targeted killing outside of the traditionally understood idea of a zone of armed conflict.

This is one of the reasons that I regard the proper legal basis for Predator targeted killing to be the law of self-defense — it is what the Obama administration really intends, if it is not to fall back into the idea of a "global" war on terror, and yet *also* intends to preserve the traditional sovereign legal right to strike at non-state actor terrorists in their safe havens, if the relevant state cannot or will not deal with them. The President and Vice President have said repeatedly — and in so doing, merely re-stating what ever president has asserted since transnational terrorism rose as a threat to Americans — that the US will take the fight to the terrorists, and pointedly said wherever that is and that terrorists will not be allowed safe haven, and that the US will strike on the basis of the terrorists' intentions. Nothing new in that, but the legal basis for the United States to do so is different from the legal basis on which it is lawful to use drones and missiles from drones in a theatre of active armed conflict.

The legal, normative, and moral arguments over drones, then, are not so much about hot battlefields, nor even largely about theatres of active armed conflict.

The arguments are about the use of drones and targeted killing by the covert services, the CIA, beyond those confines. Understood that way, this is about

drone warfare as a form of strategic airpower. The attempt to dominate from the air on a global, or at least potentially extensive geographic, basis using unmanned airpower. Not all of this is about counterterrorism or the use of smaller and more discriminating, person-specific weaponry. The Israelis officially unveiled their massive, airliner sized drone aircraft, the purpose of which is presumably to be able to strike at nuclear facilities in Iran — not about targeted killing, but the classic projection of strategic airpower.

Again, one way of understanding the strategic frame is as strategic airpower — leveraging military capital over labor through drones, with the intention of developing a counter-raiding capability that extends over an ever greater geographic range, whether for large-weaponry anti-facility attacks or small-scale anti-individual targeted killing. Strategic airpower has long been a holy grail — but it has never worked quite as successfully as each new iteration hopes. The “light footprint” strategy based around counterterrorism, over the horizon drones and missiles, might or might not be a winning strategy; it might be, rather, that counterinsurgency through boots on the ground and denial of territory for safe havens is required, as many have believed in any sustained guerrilla conflict. I don’t know the answer to that question; the administration’s long delay in determining its Afghanistan strategy was presumably, at the most abstract level, about answering exactly that. What is clear is that *whether* pure counterterrorism without on-the-ground counterinsurgency, *or* counterinsurgency to control territory and population, drones are going to be important.

Put another way, particularly as they are used outside of the active counterinsurgency theatre of AfPak, drones, with sophisticated surveillance gear but also missiles, act as the lightest of light cavalry. They probe, surveil, and engage in pinprick attacks, behind enemy lines, far beyond one’s own lines. When the CIA engages in targeted killing against some Al Qaeda operative in Somalia, from a strategic perspective, it is a combat raiding strategy by very light cavalry indeed. But it is so far beyond one’s own lines, as it were, that from a *legal* standpoint, I would place it beyond the legal “armed conflict” altogether and treat this combat raiding use of force, as a matter of law, as an exercise in lawful self-defense.

But this will get discussed (in numbing detail, I’m afraid) in the Weekly Standard piece. How’s this for my proposed title — likely to be shot down — *Predators over Pakistan, Lawyers over Langley?* :)

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Kristof on Environmental Toxins and Autism

David Bernstein • February 25, 2010 9:07 am