

STIMSON CENTER: YES, THE DRONES ARE KILLING WESTPHALIA

Three years ago, I wrote a long post called the Drone War on Westphalia arguing that our use of drones was eroding state sovereignty in ways we hadn't considered – much less debated – the impact of.

[W]e 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.

Today, as part of a larger study on the impact of our use of drones, the Stimson Center makes a very similar argument I did.

Erosion of sovereignty norms: The US government takes the view that it has a legal right to use force in the territories of foreign sovereign states when those states are “unwilling or unable” to take what the United States considers appropriate action to eliminate what it sees as imminent threats. But inevitably, assessments of what constitutes an imminent threat to the United States and what would constitute appropriate action are somewhat subjective in nature; the United States may view the use of force as justified even when US allies and partners do not. The US use of force in sovereign nations whose consent is questionable or nonexistent may encourage other states to follow suit with their own military platforms or commercial entities.

[snip]

Democratic Accountability: Increased US

reliance on lethal UAVs in cross-border targeted strikes also poses challenges to democracy and the American system of checks and balances. While we understand the administration's reasons for considering additional transparency difficult, the effect of the lack of transparency is that the United States has been fighting what amounts to a covert, multi-year killing program. Without additional information, the citizenry cannot evaluate US targeted strikes.

Unmanned aerial vehicle strikes also raise questions about the continued efficacy of traditional congressional oversight mechanisms. The Obama administration continues to rely on the 2001 Authorization for Use of Military Force (AUMF) as the primary domestic legal basis for US targeted strikes outside of "hot" battlefields, but the administration's interpretation of the AUMF is extraordinarily broad – and even many former executive branch officials question whether Congress intended to authorize such an unbounded conflict when the AUMF was passed in 2001.

The covert or unacknowledged nature of most UAV targeted strikes also makes it difficult for Congress to perform its vital oversight functions. CIA UAV strikes constitute "covert action" under US law, which means that the CIA need not give prior notice of particular covert operations to any members of Congress except the so-called "Gang of Eight." After a covert action, the executive branch is required to notify the full intelligence committees, but not the full Congress.

By law, the US military is prohibited from engaging in covert action. It is important to emphasize, however, that the military is not prohibited from engaging in secret, unacknowledged activities that are intended to remain unacknowledged, as long as these activities constitute “traditional military activities” under US law.

From the perspective of laypersons, both the CIA and the military can thus engage in covert strikes in the colloquial sense of the term. But while covert action undertaken by the CIA requires a presidential finding and notification – even if after the fact – of the congressional intelligence committees, secret, unacknowledged strikes carried out by the US military need not be reported to the intelligence committees, as the military reports instead to the House and Senate Armed Services committees.

At best, this fragmented oversight system creates confusion and a danger that critical issues may slip through the cracks. This fragmented oversight system is particularly problematic given that in practice, the military and CIA generally work together quite closely when planning and executing targeted UAV strikes: few strikes are “all military” or “all CIA.” The differing CIA and military reporting requirements create a risk of executive branch “forum shopping,” tempting the executive branch to place a given targeted strike under the direction and control of whichever entity is deemed to have the most accommodating committee members. Even when the appropriate congressional committees are fully briefed, the

classified nature of targeted strikes, whether CIA or military, makes oversight a challenge.

There's a lot more, including recommendations that suggest the US actually conduct strategic analysis to see if this all makes sense.

But I'm glad a lot of smart people – the study was led by Rosa Brooks and General John Abizaid – are thinking these same things.