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Intelligence Gap: Advanced Military Technology and Law of War Compliance

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Abstract:
Many states justify their use of technology and tactics as consistent with international law. These appeals to legitimacy suggest that legal norms serve some role in limiting the use of force, particularly in promoting discrimination between combatants and civilians. The United States justifies drone attacks as more efficient means than the use of troops to attack suspected terrorists. Many civilian and military leaders argue that these attacks are more moral than alternative tactics because they target the individuals directly responsible for attacks on the United States and its allies. However, these justifications assume that the military has accurate intelligence. However, in Afghanistan, the military has killed many civilians in misdirected attacks. Why do civilian and military leaders contend that they have accurate intelligence when the empirical record shows that often information is erroneous and leads to unnecessary destruction and civilian casualties?

To answer this question, I will focus on the U.S. use of drone attacks in Afghanistan. I will first evaluate civilian and military leaders' justification of the use of targeted killings. What are their public justifications? I hypothesize that arguments based on efficiency and morality presume that civilian and government authorities have good intelligence about their targets and their participation in terrorist acts. Then, I examine this assumption and test the reliability of this evidence. I suspect, as Richard Betts has long argued, that intelligence failures are inevitable, and that intelligence is always going to have a margin of error. Finally, I ask how states have calculated the benefits of a policy of drone attacks in light of the costs of seemingly indiscriminate damage and non-combatant deaths. Is the policy of drone attacks really as moral and efficient as its proponents argue? I suspect that this tactic does lead to a short-term decrease in violence, but in the long run increases antagonism and anti-American violence.

When President Obama accepted the Nobel Peace Prize at the end of 2009, he reiterated America's commitment to the laws of war; "we have a moral and strategic interest in binding ourselves to certain rules of conduct."[1] Obama has been conscious to distinguish his record from President George Bush's approach to the laws of war. In the same speech, Obama noted that he has reiterated the intolerance for torture and pledged to close the Guantanamo Bay detention facility. U.S. civilian and military officials have been very direct in stating their commitment to international law and humanitarian principles, particularly in Afghanistan. General Stanley McChrystal, before his untimely exit, restricted the rules of engagement to help prevent civilian casualties.

While this rhetorical commitment to the laws of war and protection of civilians is clear, in practice the American record is murky. Under President Obama, the use of unmanned aerial vehicles, or drones, has dramatically increased.[2] Although the military primarily uses these drones for surveillance, they can and have fired missiles that kill militants and civilians. These weapons have drifted into a paradox of technology and the principles of the laws of war; while more precise targeting and surveillance allows the military to hit specific leaders, it also enables the military to hit targets in civilian areas that previously were off-limits. Some experts have argued that drones lift the "fog of war," but many of these same experts caution that more surveillance data may lull the military into a false sense of perfect knowledge that could increase the danger to civilians.

Military commanders, including both Generals McChrystal and Petraeus, see the use of drones as critical to a new counterinsurgency strategy that will take the fight directly to the insurgents and provide greater protection to civilians. However, this argument rests on the assumption that the military can accurately interpret this intelligence. However, decades of studies of intelligence suggest that some kind of failure in this endeavor is inevitable. Given the importance of

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[1] "Full text of Obama's Nobel Peace Prize Speech," *MSNBC.com* (10 December 2009): http://www.msnbc.msn.com/id/34360743/ (Last accessed 26 August 2010.

[2] Christopher Drew, "For Spying and Attacks, Drones Play a Growing Role in Afghanistan," *The New York Times* (20 February 2010): Accessed via Lexis-Nexis.

civilians in counterinsurgency warfare, are the benefits of drones worth the potential risk in civilian lives?

Civilian and military leaders seem to have given a resounding yes to this question. Drone use is exploding in the Afghanistan conflict, and manufacturers can hardly keep up with the demand. A lingering question, however, is how did civilian and military leaders evaluate the inevitable risks to civilians? Did they simply ignore the risks and try to build in more safeguards to the system? Or, did they actually confront the inevitable failure and deaths of civilians and decide that was a price worth paying?

In this paper I make two main arguments. First, I argue that civilian and military leaders are ignoring the "intelligence gap" – the gap between perfect and actual operations of the drones. I also argue that leaders rationalize this ignorance, whether conscious or unconscious, by shifting of the burden of counterinsurgency warfare from the combatants to the civilians. Although these decision makers claim that they are taking proactive steps to protect civilians, events suggest that they are using a cost-benefit analysis that accepts civilian casualties.

To support this argument, I will first discuss the military's use of drones in the Afghanistan/Pakistan theater and the justifications for their use. The military defends the use of drones as being more efficient and offering greater protection to soldiers and for their benefits to civilians. Then I will discuss the underlying assumption of these arguments, which are that there is good intelligence that allows these drones to target insurgents and avoid harming civilians. In this section I will draw on Charles Perrow's Normal Accident theory and Richard Betts's work on the inevitability of intelligence failures.

After establishing the existence of the "intelligence gap," I present two competing arguments as to how the intelligence gap persists. First, civilian and military leaders may believe that they can beat the intelligence gap through pursuing more intelligence and safeguards. These leaders believe

that they are upholding a doctrine of "double intention" that requires militaries to take on additional risks to protect civilians. While well intentioned, they have not yet grasped the inherent problems in intelligence gathering that make failures inevitable. Second, civilian and military leaders may have grasped the inevitability of failure, but find the risk to civilians to be acceptable in the context of the drone's objectives of killing militants and protecting U.S. forces. They fall back on the doctrine of "double effect" that only requires military forces to refrain from directly targeting civilians and to try to minimize civilian casualties. This cost-benefit calculation suggests that the traditional balance of risk in counterinsurgency, which has tilted toward the combatants, is now shifting to place a greater burden on civilians.

The Expanding Use of Drones in Afghanistan

While drones were not weapons available at the outset of the Afghanistan conflict, they are quickly becoming one of the most important tools in the counterinsurgency. Drones have launched over two hundred missile and bomb strikes in late 2009 and early 2010 and are generating over four hundred hours of surveillance video per day.[3] Colonel Jeff Kappenmann, director of the Center for Excellence in UAS Research Education Training at the University of North Dakota, points out, "There has been exponential growth in need and demand."[4] Drones are now an unmistakable part of the United States and NATO effort in Afghanistan.

The primary value of the drones is in providing surveillance; they allow the military to see wide swaths of land and track suspected militant activity. Air Force Major General Stephen Mueller is "counting on the drones to create a safer environment and give the counterinsurgency campaign

[3] Drew.
[4] Gordon Lubold, "As drones multiple in Iraq and Afghanistan, so their uses," *Christian Science Monitor* (2 March 2010): Accessed via Lexis-Nexis.

time to unfold."[5] General McChrystal noted in testimony to Congress that the drones have been "extraordinarily effective."[6] The drones now give ground commanders an opportunity to have a more expansive view of terrain and to anticipate potential approaching threats. While the military might have considered such an expansive view a luxury at the outset of the conflict, commanders now expect units to fully utilize the drones' intelligence. Air Force Secretary Michael Donley notes, "One thing that has happened in these conflicts that I think is a little bit irreversible is the expectation of combatant commanders for situational awareness 24/7/365; that appetite has been established and I do not see that changing."[7] Over the passage of the Afghan conflict, military leaders have placed drones at the center of their strategy and tactics.

Why have drones become so central to US counterinsurgency efforts in Afghanistan? Drones answer two of the main problems that military leaders see in the conflict; they provide opportunities for reducing military and civilian casualties. Drones, and the surveillance they provide, helps identify enemy activity, particularly the laying of roadside IEDs, which insurgents have increasingly turned to in Afghanistan.[8] They also allow tracking and observation of potential militant groups over a longer period of time, which ideally prevents accidental targeting of civilians. During General McChrystal's tenure, he set strict limits on targets to try to minimize civilian casualties that were undermining the overall counterinsurgency mission.

However, even the strictest regulations cannot prevent all mistakes. General McChrystal ordered new stricter rules of engagement after a drone strike attacked a home and killed twelve civilians, mostly children.[9] Just weeks later, a Predator drone ordered a strike on a suspected insurgent convoy that killed twenty-three civilians. In both cases, the surveillance from the drone,

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[5] Drew.
[6] Drew.
[7] Lubold.
[8] Jim Michaels, "Intel swap is key vs. Afghan IEDs," *USA Today* (7 January 2010): Accessed via Lexis-Nexis.
[9] Rajiv Chandrasekaran, "A bold offensive, tempered by caution," *The Washington Post* (16 February 2010): Accessed via Lexis-Nexis.

combined with observations on the ground, did not report that civilians were in the area. While McChrystal regretted both incidents as tragic, a simple apology for deaths during a counterinsurgency cannot always undo the damage to trust that is crucial to progress and ultimately success. While a zero-error rate is a high bar, it may be what is required in Afghanistan, especially in light of NATO's past record.

Investigations blamed the failures in these two cases on faulty intelligence analysis. Peter Singer, Director of the 21st Century Defense Initiative at The Brookings Institution and author of *Wired for War*, warns of the dangers of becoming over reliant on technology and ignoring the human element of intelligence. "Technology gives you incredible capabilities…but mistakes still happen. Don't expect technology to be the silver bullet for ethics."[10] While drones can provide voluminous satellite data and a powerful tool for precision strikes from the air, humans still decide on the targets and pull the trigger. After the February 12, 2010 attack that killed twelve civilians, General McChrystal gave new orders that drones could not strike targets close to homes unless troops were in imminent danger or there was visual confirmation that no civilians were in the homes. This directive, however, was not enough to stop the February 21, 2010 attack on the convoy, which led to the largest number of civilian deaths in the previous six months.[11] The investigation of this incident blamed the drone operators for "inaccurate and unprofessional reporting."[12] General McChrystal, after apologizing for the incident, noted that he would implement a "series of training measures to reduce the chances of similar events."[13] Singer, however, worries that the predator drone operators, who are at Creech Air Force Base in Nevada, may not be able to accurately interpret all of the data

[10] Craig and Marc Kielburger, "Drones keep soldiers safe, not civilians," The *Vancouver Sun* (17 May 2010): Accessed via Lexis-Nexis.
[11] David Zucchino, "Drone crew at fault in deaths," *Los Angeles Times* (30 May 2010): Accessed via Lexis-Nexis.
[12] Dexter Filkins, "U.S. assails drone operators in killing of Afghan civilians," *The International Herald Tribune* (31 May 2010): Accessed via Lexis-Nexis.
[13] Filkins.

coming through the numerous drone cameras; "Not everyone digging by the side of the road is automatically an insurgent."[14] While drones provide a valuable tool, they also face many of the same problems as other intelligence systems, and civilian and military leaders need to be aware of those inevitable system failures and take those into consideration when they decide to rely so heavily on a particular weapon.

Inherent Risks in Intelligence Systems

How can we be so sure that intelligence failure is inevitable? Intuitively, we might believe that if civilian and military leaders continue to refine and add safeguards to the policies surrounding the use of drones that they could assure their safe usage with a zero-error guarantee. Organizational theorists are skeptical that such safeguards can eliminate all possibility of failure, and those safeguards may in fact generate problems of their own. Charles Perrow, in his book Normal Accidents, argues that no technologically advanced system can account for all variables and operate correctly all of the time. However, the consequences for system failure, and our ability to tolerate that failure, differ. If the consequences of system failure are small and manageable, then the risk is tolerable. However, a meltdown of a nuclear power plant, and the ensuing environmental and health effects, requires more serious consideration.

Perrow sees the greatest chances and consequences for failure in "tightly coupled" systems. In these systems "processes happen very fast and can't be turned off, the failed parts cannot be isolated from other parts, or there is no other way to keep production going safely."[15] In a tightly coupled system, designers link all parts of the process together, so any one failure easily transfers throughout the system. Although additional safeguards can help reduce the chances of failure, they cannot eliminate risk, and may introduce problems of their own. Scott Sagan, who builds on

[14] Drew.
[15] Charles Perrow, *Normal Accidents* (New York: Basic Books, 1984): 8.

Perrow's work and applies the theory to nuclear weapons, notes that independent checks are rarely as independent as the designers think, and additional safeguards and oversight can make the process overly opaque and encourage operators to take greater risks.[16]

As an organizational theorist, Perrow also notes that people control organizations and systems, and they do not always follow policies or guidelines perfectly. He observes that "time an again warnings are ignored, unnecessary risks taken, sloppy work done, deception and downright lying are practiced…it occurs in all organizations, and it is part of the human condition."[17] A system that cannot tolerate some variance in implementation of policies will overlook possibilities for system failure deriving from human error. However, failures are not simply the result of human error, they are the inevitable result of a system that fails to account for it.

While Perrow's analysis focuses on high-risk technology, Richard Betts has applied many of the same insights to intelligence analysis. He argues that the inherent properties of ambiguity and ambivalence make intelligence failures inevitable.[18] Because information is often inconclusive, intelligence analysts can draw a number of different conclusions. And, because policymakers may have conflicting theories about actors and events, they may use intelligence to justify very different perceptions. Betts argues that this doesn't mean the situation is hopeless; there are some reforms that can improve the quality of intelligence. However, he cautions that some reforms can generate new pathologies that may make failure more likely. Assuming the worst can lead to self-fulfilling prophecies, allowing multiple perspectives may increase the politicization of intelligence, and consolidation may impede the collection of raw data because the analyst is looking for information

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[16] Scott Sagan, *The Limits of Safety: Organizations, Accidents, and Nuclear Weapons* (Princeton, NJ: Princeton University Press, 1993): 39-40.
[17] Perrow 10.
[18] Richard Betts, "Analysis, War, and Decision: Why Intelligence Failures Are Inevitable," *World Politics* 31:1 (October 1978): 61-89.

that fits within their cognitive frame.[19] He argues that some risk of failure must be expected, but also seen in context, since failure is relatively rare in comparison to the alternative of having no intelligence system at all. However, if failure means the death of civilians, that may not be tolerable in the particular context of counterinsurgency.

Using both Perrow and Betts' insights, I argue that the use of drones in the Afghanistan theater constitutes a tightly coupled system in which some failure is inevitable. The three criteria I use to establish this are: the multiple actors in the system which are to some degree dependent on each other (drone operators, ground commanders, intelligence analysts); the existence of policies and procedures for the use of force (either missiles directly from drones or other kinds of airpower); and the fact that these operators are humans with different levels of experience and expertise.

The use of drones in Afghanistan involves three primary groups of actors: the drone operators, the ground commanders, and the intelligence analysts. The drone operators and intelligence analysts operate in the United States; they see the footage from the multiple cameras on the drones. The drone operators can adjust the cameras to follow particular targets. Intelligence analysts try to understand the incoming data and interpret the behavior of potential insurgents. Ground commanders lead units in Afghanistan, and may be in the middle of operations when drone operators contact them about an approaching threat. They also count on those operators to confirm the nature of a potential target. All of these actors know that indecision could lead to the death of soldiers from an implanted IED; rash decisions could lead to attacks on civilians that also endanger soldiers from retaliation and revenge attacks and undermine the overall counterinsurgency strategy.

The military has strict restrictions on the use of airstrikes from drones. Command post officers analyze all of the information from the drones and follow long checklists before seeking authorization for a strike. They must also confer with ground commanders to confirm the targets

[19] Betts 73.

and ensure that there are no civilians in the area.[20] General McChrystal has emphasized the importance of these checks and has added new restrictions in response to civilian casualties.

All of the actors in this system are individuals subject to human frailties. Many of the drone operators currently are former Air Force fighter, bomber, or cargo plane pilots. This experience gives them a better perspective in analyzing the raw video footage. The Air Force, however, is training a new class of drone operators from computer operators and military police that might lack this crucial perspective. [21] Also, these drone operators often have little experience in Afghanistan, which limits their ability to understand what they are seeing on the screen. Ground commanders are managing a number of different activities at once, and may become overly reliant on the drone operators. Finally, as Betts notes, experience may build in perceptions or expectations that make quick analysis of the intelligence less objective, and could lead to failure.

While one incident cannot support a generalization, the February 21 missile attack on a convoy that killed 23 civilians accords with the description of a tightly coupled system. The drone operators followed the convoy for three and a half hours and did not report seeing any civilians. The ground commander also did not see civilians. Intelligence analysts warned about children seen near the trucks, but according to the official investigation, the drone operators downplayed those warnings. As a result of the investigation, General McChrystal disciplined the drone operators and some junior command officers, and ordered additional training. However, there was no acknowledgement of challenges in the system or the inevitability of such tragedies. In 2009, airstrikes accounted for sixty percent of the 596 civilian casualties caused by NATO and Afghan forces. Drones may be providing the military with unprecedented levels of intelligence in Afghanistan, but they are not perfect in terms of targeting, which leads to additional danger for civilians.

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[20] Zucchino.
[21] Zucchino.

Civilian and Military Leaders and the "Intelligence Gap"

If intelligence failures are inevitable, and civilian casualties are the outcome of that failure, how are civilian and military leaders weighing that outcome against the positive benefits of the drones? Given the seeming lack of reflection on the intelligence system surrounding drones, why do military and civilian policymakers continue to use them?

I present two possible explanations related to just war theory. One of the principles of the law of war is discrimination between combatants and civilians. Militaries are not to target civilians with attacks, since ostensibly civilians are not directly responsible for the actions of their governments or militaries.[22] Leaders often implement this principle using the doctrine of double effect, which argues that militaries cannot intentionally harm or target civilians. However, Michael Walzer, among others, argues that the standard of double effect is too weak, because it allows militaries to harm civilians as long as they are not the targets of the attack. A military can bomb a building housing soldiers, and if civilians die, that is unfortunate but not a violation of the laws of war. Walzer offers an alternative doctrine of double intention, in which he argues that not only can militaries not target civilians, they must take proactive steps to protect civilians from harm.[23]

I argue that the view of double intention is consistent with the "overcoming the fog of war" explanation for continued drone use. Civilian and military leaders may not recognize that failure is inevitable, but they take well-meaning steps to try to protect civilians. Some of these reforms may generate redundant or even contradictory outcomes in terms of civilian protection. However, this explanation reflects a commitment to international law and civilian protection, even if it leads to potentially misguided outcomes.

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[22] Steven Lee, "Double Effect, Double Intention, and Asymmetric Warfare," *Journal of Military Ethics* 3:3 (2004): 234.
[23] Lee 237.

The second explanation, "shifting the balance of responsibility," relies on the minimum protection of the doctrine of double effect. Civilian and military leaders will abstain from targeting civilians intentionally, but accept civilian casualties as a part of counterinsurgency warfare. They will likely blame the enemy for blending in with civilians for these casualties, and perhaps even blame the victims of these attacks for tacit or deliberate support for the insurgents. I would expect civilian and military leaders to offer rhetorical or vague prescriptions for increasing civilian protection, but little in terms of specifics. I would expect leaders to prioritize force protection over preventing civilian casualties.

To test these two potential explanations, I will examine civilian and military defenses of the military use of drones in the war in Afghanistan. I examine mainstream media reports for interviews and testimony by civilian and military representatives. While this is only a preliminary step to understanding the deliberations that go on inside the government and military, these public statements are what younger diplomats and members of the military see as the policy advocated by their leaders. These statements also inform the international community about the U.S. commitment to protect civilians.

Drones and Double Intention

Most of the civilian and military rhetoric on drones is in line with a strategy based on double intention, particularly since the beginning of the Obama administration and the appointment of General McChrystal. McChrystal tightened to the rules of engagement to address civilian casualties, which were hurting the overall strategy. He argued, "We must avoid the trap of winning tactical victories – but suffering strategic defeats – by causing civilian casualties."[24] Evidence supporting the theory of double intention includes discussion of the multiple actors and steps involved in the

[24] Noel Shachtman, "How the Afghanistan War Got Stuck in the Sky," *Wired* (8 December 2009): http://www.wired.com/magazine/2009/12/ff_end_air_war/all/1 (Last Accessed 26 August 2010).

process of turning drone intelligence into targets, a willingness to wait to confirm that targets will not involve civilians, and the assumption that in counter-insurgency, soldiers should take on the bulk of the risk.

Descriptions of the drone targeting process emphasize the cross-checking of video data with satellite imagery and the tracking of targets over periods of days or even hours. Soldiers involved in the process highlight at least two phases – targeteering, in which operators confer with other actors to confirm targets, and weaponeering, in which the drone operators consult ground commanders on which weapons would be most appropriate for the target.[25] The process includes the drone operators, ground commanders, military lawyers, and intelligence analysts. Singer, in his research for *Wired for War*, has witnessed this deliberation first-hand. In testimony before Congress, he observed, "When you discussed this [the laws of war] with people who are engaged in these operations there's a series of checks and balances and consultation [with] military lawyers they have to go through for authorizing and conducting a strike."[26] Drone operators have expressed some frustration that because of this detailed process, they get to drop very few bombs.[27]

While these operators may have some frustration, they do support the process and the time delay it creates. Col. Christopher R. Chambliss, commander of the Air Force unit in Nevada that is in charge of drone operations, noted that the numerous checklists allow the military to "wait for the right moment to make sure that we're going to alleviate any chances for collateral damage or casualties."[28] Drone operators may watch a house or other structure for hours or even days to try to ascertain its inhabitants and activities. Col. Bill Carranza, the chief JAG officer of the US Central Command Combined Air and Space Operations Center (COAC), takes an active role in ensuring

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[25] Shachtman.
[26] House Committee on Oversight and Government Reform, *Rise of the Drones: Unmanned Systems and the Future of War*, 111th Congress, 23 March 2010: Accessed via Lexis Nexis.
[27] Shachtman.
[28] Sara Carter, "Delivering Devastation," *Washington Times* (7 December 2008): Accessed via Lexis Nexis.

that civilian protection is a priority; he stated, "My job is to make certain that we've done everything we can before an air strike to ensure that civilians, noncombatants, are safe."[29] These operators and intelligence analysts, who are everyday receiving more and more raw video footage as a part of the exploding demand for drones and data, claim that they maintain vigilance in protecting civilians.

One of the justifications for this vigilance, as General McChrystal's comment makes clear, is the importance of combatants bearing the brunt of risk in a counterinsurgency. While a doctrine of double effect and toleration of civilian casualties might have made sense in past conventional conflicts, civilians and military now seem to recognize the importance of protecting civilians and rebuilding trust with local elites. Lt. Col Edward Barrett, Director of Research at the Stockdale Center for Ethical Leadership at the US Naval Academy, reiterated the importance of bearing this risk in testimony before Congress: "Once in war, harms must be necessary and proportionate, vis-à-vis uninvolved civilians who maintain their rights not to be harmed, soldiers incur additional risk to avoid foreseeable harm to innocents and assign greater weight to this harm."[30] Barrett emphasized that his students at the Naval Academy understand the power and potential of drones on the battlefield along with their ethical implications. Even frustrated soldiers recognize the wisdom of civilian protection. In the immediate aftermath of the February 12 airstrike that led to civilian casualties, General McChrystal again tightened the rules of engagement. Lt. Col. Cal Worth, who led a unit that was taking fire from a sniper hidden in a building, but was denied permission to call in an airstrike on the sniper's suspected location, reflected, "It's a frustration and a challenge…The enemy has read the tactical directive and he understands it. He knows our rules of engagement." But, Worth still supports the strict limits, "A professional fighting force needs to assume the preponderance of risk…That's the way it should be in a counterinsurgency."[31] While troops may be

[29] Carter.
[30] House Committee, *Rise of the Drones.*
[31] Chandrasekaran.

understandably frustrated by their inability to unleash the full force of the U.S. technological and military advantage, they understand that the only way that the war will end will be by rebuilding civilian trust and turning villages against the Taliban.

The Reality of Double Effect

While there is some evidence that civilian and military leaders understand the importance of proactive civilian protection, there is also some concern, in both civilian and military rhetoric, and in events, that suggests than underneath a veneer of double intention is a fall back of double effect. Harold Koh, prominent international lawyer and strong critic of the Bush administration's policies in the War on Terror, now finds himself in the awkward position of defending President Obama's increase in drone usage, both by the military and the CIA. In his March 2010 speech to the American Society of International Law, Koh argued that "In U.S. operations against al-Qaeda and its associated forces – including lethal operations conducted with the use of unmanned aerial vehicles – great care is taken to adhere to these principles in both planning and execution, to ensure that only legitimate objectives are targeted and that collateral damage is kept to a minimum."[32] This statement reflects the minimal commitment to double effect - continue to target high-value individuals, and try to minimize casualties, rather than taking proactive steps to protect civilians, even if it is at some cost to military operations. There is no acknowledgment of the role of that intelligence plays or the inevitable risks of the incomplete or incorrect information. Civilian and military leaders have endorsed the doctrine of double effect through their celebration of drones as providing power without vulnerability, placing a priority on force protection, and blaming civilian casualties on the enemy.

[32] Harold Hongju Koh, "The Obama Administration and International Law," (25 March 2010): http://www.state.gov/s/l/releases/remarks/139119.htm (Last accessed 26 August 2010).

The demand for drones over Afghanistan has increased exponentially, and for some civilian and military leaders, the reason is firepower logic that emerged during Vietnam – "send a bullet instead of a man." A senior Defense Department official celebrated the increase in drone use by noting their ability to replace frontline forces: "The technology allows us to project power without vulnerability…You don't have to deploy as many people. And in the modern age you want as little stuff forward as long as you can achieve the effects as if you had a lot of people forward."[33] This reluctance to accept risk on the battlefield to the combatants seems to presume that the drones can be as precise as troops on the ground; there is little recognition of the inevitable risk posed to civilians.

Civilian and military officials echo these sentiments in reinforcing the importance of force protection. Lt. Col Walt Manwill, chief of combat operations for the COAC, argues, "We are here to save our troops first and foremost. We're also constantly searching for insurgents, small groups out of place or enemy movement to aid commanders on the ground and provide intelligence."[34] While the JAG officer for the COAC may be focus on preventing civilian casualties, the combat officer focuses on force protection. This gap suggests there may be some disconnect in Gen. McChrystal's (now Gen. Petraeus's) counterinsurgency strategy that emphasizes eliminating civilian casualties.

When civilian casualties do occur, the military has a mixed record of response. While the Oruzgan killings resulted in an investigation and disciplinary action for the drone operators and junior command officers involved, military spokesmen blamed earlier civilian casualties on the enemy. In 2007, an airstrike against an al Qaeda leader led to the deaths of seven Afghan children. While the military expressed regret at the deaths, Maj. Chris Belcher, the Army public affairs offer, blamed the "cowardice" of Al Qaeda. A coalition press release argued, "witness statements taken

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[33] Julian Barnes, "Military Drones' Ability to 'Stare' Proves Revolutionary," *Pittsburg Post-Gazette* (8 November 2009): Accessed via Lexis Nexis.
[34] Carter.

early this morning clearly put the blame on the suspected terrorists, saying that if the children attempted to go outside they were beaten and pushed away from the door."[35] Unnamed military officials later disclosed to an NBC reporter that the Army knew that children were in the building but believed that the commander was a "high value target" that justified the risk.[36] The lack of consistency in the military's response to civilian casualties suggests that there is not agreement on the military's responsibilities to civilians.

One might argue that Obama's decision to implement a strategy in Afghanistan address some of these prior cases of civilian casualties. Gen. McChrystal did take swift action in early February 2010 when a drone airstrike hit a house and killed civilians. However, only weeks later, another drone operator ordered a strike on a convoy that killed twenty-three civilians. The investigative report noted that the predator drone operators downplayed intelligence analyst warnings of children in the area. While Gen. McChrystal ordered investigations and revised training schedules, he did not address the inevitable risk to civilians inherent in the drone intelligence system. Although much of the rhetoric at the highest levels seems to support a doctrine of double intention, events suggest an underlying acceptance of double effect.

The Importance of the Protecting Civilians in Counterinsurgency

Civilian and military leaders acknowledge the importance of reducing civilian casualties to the success of the counterinsurgency campaign in Afghanistan. The increasing reliance on drones, however, suggests a lack of understanding of the inevitable risks associated with the unmanned technology. While some ground commanders, and legal analysts, see little difference between drones and traditional missile strikes, a big difference comes in the assessments of the ability of those

[35] Barry Bearak and Taimoor Shaw, "7 Children Killed in Coalition Airstrike on Religious Compound in Afghanistan," *New York Times* (19 June 2007): Accessed via Lexis Nexis.
[36] Jim Miklaszewski, et al, "Attack that killed kids targeted al-Qaida leader," *MSNBC.com* (19 June 2007): http://www.msnbc.msn.com/id/19318805 (Last accessed 26 August 2010).

systems to discriminate between combatants and non-combatants and proportionality. When Gen. McChrystal arrived in Afghanistan to implement President Obama's new counterinsurgency strategy, he severely curtailed airstrikes as a way to reduce civilian casualties. The rise in the use, and dependence on drone technology, will either begin a new cycle of civilian deaths and defections to the Taliban or a more serious discussion in civilian and military circles about the inherent risks in drone weapons systems and the kind of approach to civilians that is appropriate in a counterinsurgency.

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