Innocent Until Proven Guilty: A Solution for America’s Failed Military Transparency

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Thesis
America’s lack of transparency with regards to civilian casualties caused by drone strikes has led to decreasing trust in government. By redefining “enemy combatant” in military reports from just “any military-age male in a strike zone” to “a person unambiguously engaged in hostilities against the United States,” the US can establish a healthier relationship with its citizens and foreign states.

Background Analysis
Since the first recorded kill by an American unmanned combat aerial vehicle (UCAV) – in Kandahar, Pakistan, in October 2001, by a Predator operated from Langley, Virginia\(^1\) – UCAVs have been deeply contentious. The capability of an American citizen to take a life from thousands of miles away is unpopular abroad and unnerving domestically.\(^2\)

Given the Obama administration’s significant use of combat drones\(^3\) and the expected increase of drone usage by the incoming president\(^4\), American drone policy with regards to civilian casualties must improve urgently. The public has the right to know if drones are killing non-combatants, but the administration’s operating definition of “enemy combatant” has been revised to be intentionally vague, from “a person engaged in hostilities against the United States or its coalition partners during an armed conflict” to “any military-age male in a drone strike zone.”\(^5\)^6

The administration’s extremely low bar for culpability – presuming that any man between the ages of 16 and 50 who happens to be within a target’s area is a terrorist himself – flouts the traditional American standard of “innocent until proven guilty” and weakens the fiber of trust both domestically and abroad around American military operations. International actors are angered by the undercounting of civilian deaths, which in turn threatens the security of Americans. Moreover, justifying drone strikes against ambiguous targets puts more disenfranchised foreign citizens in harm’s way. The continuous misrepresentation of civilian deaths will likely deeply harm the US in the short and long term.

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**KEY FACTS**

- Best estimates of all civilian deaths as a result of drone strikes over the past several years in Pakistan, Yemen, Somalia, and Afghanistan lie around 1,300 (of roughly 8,000 total deaths).\(^11\)
- Even when actual combatants are killed, drones are still remarkably imprecise; attempts to kill just 41 targeted men resulted in the deaths of an estimated 1,147 people as of 24 November 2014.\(^12\)
- In 39 of 44 countries surveyed in 2014, the majorities or pluralities of the populations opposed U.S. drone strikes targeting extremists abroad.\(^13\)
- Bush authorized approximately 50 drone strikes in his entire presidency; Obama had authorized 506 as of January 2016.\(^14\)
• Current American drone policy dictates that all “military-age males in a strike zone” are considered enemy combatants for the sake of casualty reports
• Systemic lack of military transparency is harmful to American image abroad, and even puts the legitimacy of the US government into question for its own citizens
• The US government should change the definition of “enemy combatant” to be in line with traditional and international standards to restore transparency and trust

Policy Idea
Current American policy in labeling casualties of drone strikes is a form of “guilty until proven innocent”: all military-age males killed in the strike zone are assumed to be somehow complicit and are thus “enemy combatants.” The US government, primarily through the work of the incoming president’s administration, the CIA, and the Department of Defense, should employ a version of the historic American definition of “enemy combatant” in considering casualties of drone strikes, replacing the current operational definition with “a person unambiguously engaged in hostilities against the United States.”

Policy Analysis
While ending American usage of drones would improve international sentiments towards the US and reduce the number of civilian casualties abroad, the cost and labor efficiency of drones mean that their complete abandonment is mere fantasy. Instead, changing the structure in which drones operate is the best solution to the problems caused by their existence.

The biggest concern that the general public harbors with combat drone strikes is a concern over civilian deaths. The definitional change would alleviate this tension in two key ways. First, by operating under a more legitimate definition of combatants, American military reports would be subject to less of the second-guessing than they are now. Accepting and publishing more representative statistics would reestablish American legitimacy and begin to mend trust lost from years of underreporting civilian casualties. Second, changing the definition incentivizes the US government to improve the precision of drone strikes so as to prevent the risk of having to admit to high civilian deaths. Even if improvements in military technology are only a long-term solution, in the short term the administration would be pushed to simply authorize fewer drone strikes, which is a marginal improvement on balance.

Holding the US government more responsible, and pushing back against the institutional lack of transparency and consistent human rights violations in the killing of civilians, saves actual lives. With hundreds of civilians dying unnecessarily every year, even marginally reducing the mortality rates of combat drones in just one country or region could save untold civilian lives. Directly affecting the safety of military-age males in drone-targeted countries, decreasing radicalization in these countries, and indirectly benefiting American citizens, this policy is both the rational and moral solution to a callous definition.
Next Steps

Because the existing policy is an internal procedure (as in, not a piece of legislation or an on-the-books ruling), changing it must be done primarily through indirect pressure on the president or CIA. Most specifically, the policy change would likely come from a bipartisan Congressional push through a formal letter or a sense of Congress resolution. Key allies on the matter are vast and varied, from dove-ish establishment liberals like Representatives Barbara Lee (D-CA) and Zoe Lofgren (D-CA), to conservatives concerned with government transparency including Representatives Lynn Jenkins (R-KS) and Mike Coffman (R-CO), to nonpartisan think tanks like the libertarian Cato Institute. The success of the outreach and subsequent policy change is measurable in two key data points — international approval rates of American drone usage, and civilian casualties from drone strikes. Keeping these two measurements as a gauge for the success of the policy in its next steps is invaluable.

End Notes

11 Ibid
