

Statement of Hina Shamsi
Senior Advisor to the Project on Extrajudicial Executions
Center for Human Rights and Global Justice
New York University School of Law

Prepared Testimony to the
Subcommittee on National Security and Foreign Affairs
Committee on Oversight and Government Reform
United States House of Representatives

April 28, 2010

Rise of the Drones II: Examining the Legality of Unmanned Targeting

**Written Testimony of Hina Shamsi
Senior Advisor to the Project on Extrajudicial Executions
Center for Human Rights and Global Justice
New York University School of Law**

**Before the
U.S. House of Representatives
Committee on Oversight and Government Reform
Subcommittee on National Security and Foreign Affairs**

**Hearing on “Rise of the Drones II: Examining the Legality of Unmanned Targeting”
April 28, 2010**

Chairman Tierney and Members of the Subcommittee, thank you for inviting me to submit testimony on this very important subject.

My name is Hina Shamsi and I am the Senior Advisor to the Project on Extrajudicial Executions at New York University School of Law’s Center for Human Rights and Global Justice, where my work has included a focus on the legal, factual and policy issues raised by targeted drone killings. I am also a Lecturer-in-Law on international human rights at Columbia Law School. My areas of specialty include the intersection of national security and counterterrorism policies and international human rights and humanitarian law.

A. The Importance of a Public Legal Rationale for Targeted Killing

Targeted drone killings raise critically important legal issues – with profound moral, ethical and policy implications – about when and where the United States can use lethal force, under what legal framework, against whom, and with what accountability. These issues are less controversial in the context of the armed conflicts in Afghanistan and Iraq, where the U.S. military conducts drone strikes, and where the laws of war apply. There is greater controversy about drone strikes in Pakistan and in other countries, such as Yemen and Somalia, with which and in which the United States is not at war, and where drone strikes are conducted by the CIA as part of a covert program.¹ Although the legal issues I discuss may arise in both contexts, my testimony focuses primarily on the international law issues raised by CIA drone killings outside Afghanistan and Iraq.

Until very recently, the United States refused to provide any justification for the CIA targeted drone killing program, beyond blanket assertions that it was effective.² According to Leon Panetta, the CIA Director, drones strikes are “the only game in town in terms of confronting or trying to disrupt the al Qaeda leadership.”³ Yet government

¹ See David Johnston and David E. Sanger, *Yemen Killing Based on Rules Set out by Bush*, N.Y. Times, Nov. 6, 2002; Yochi Dreazen, *Drone Attacks Kill 16 Afghan Militants*, Wall Street Journal, Jan. 13, 2010.

² See, e.g., Scott Shane, *C.I.A. to Expand Use of Drones in Pakistan*, N.Y. Times, Dec. 3, 2009.

³ *U.S. Airstrikes in Pakistan called ‘very effective’*, CNN, May 18, 2009, available at <http://www.cnn.com/2009/POLITICS/05/18/cia.pakistan.airstrikes/>.

officials have refused to disclose any legal rationales or information about factual outcomes that would allow such bland assurances to be tested.

Although international law permits targeted killings in limited circumstances, such as in armed conflict, it is rare (and perhaps unprecedented in American history), for a government to adopt a systematic, years-long policy of deliberate, pre-meditated killing of specific individuals in different parts of the world, including places removed from any traditional battlefield. That makes it all the more critical for the United States to make the legal case for its targeted drone killing policy public. Were the government of any other country to adopt such a policy, it would be incumbent upon it to provide justifications under both international and domestic law. Our government should be no different. Instead, policy-makers made the decision to evade transparency, which has been deeply detrimental to American interests.

Cloaking the legal justification for targeted drone killings in secrecy has inevitably given the impression that they are illegal, and has undermined the legitimacy of the tactic and the United States' reputation for upholding the rule of law. Military experts, who have learned the harsh lessons of Abu Ghraib and detention and interrogation policy failures, now emphasize the importance of making the public, legal case for war-time tactics, especially in the context of counter-insurgencies.⁴ In Pakistan, a failure to make that case for drone killings has contributed to resentment among the very people whose "hearts and minds" the United States needs to win.

Because of secrecy about who has been targeted and the number of casualties, independent human rights monitors and the public are unable to verify either government claims that targeting is legal and results in almost no civilian casualties, or opponents' claims that illegal attacks have killed hundreds of innocents. There has, as a result, been no basis to assess the success of the tactic, let alone accountability for any wrongdoing.

In short, secrecy about the legal basis for the targeted drone killing policy has left the United States with a credibility gap and an accountability vacuum.

That is why the March 2010 speech by State Department Legal Adviser Harold Koh, in which he discussed some of the legal underpinnings of the targeted killing policy, was such a welcome first step.⁵ For the first time, a senior Administration official laid out the basic international and domestic law authority for targeted killings, and affirmed the United States' commitment to upholding "all applicable law, including the laws of war."⁶ Yet the Legal Adviser's speech was only a starting point because many fundamental legal issues remain unclear.

⁴ Charles J. Dunlap, Jr., *Lawfare: A Decisive Element of 21st-Century Conflicts?*, 54 *Joint Force Q.* 34 (2009).

⁵ Harold Koh, Legal Adviser, Department of State, *The Obama Administration and International Law*, Keynote Address at the Annual Meeting of the American Soc'y of Int'l Law (Mar. 25, 2010).

⁶ *Id.*

It is now up to Congress to ask the questions that will assure the American public and the allies the United States needs abroad that the U.S. targeted killing policy complies with the law. It is critically important for the United States to consider its legal arguments carefully, because they are likely to be replicated by its friends and enemies alike. The militaries of Russia, Turkey, Israel, India, China, and Pakistan, among many others, either have or are seeking lethal drone technology. The rules applied by the United States today may be used against it or its allies tomorrow.

The testimony that follows sets out the key legal questions that Congress should ask the Administration in order to assess the legality of the targeted drone killing policy.

B. The Existence and Scope of Armed Conflict

Whether targeted drone killings are legal depends in the first instance on the context in which they are conducted and thus the legal framework that applies. Targeted killings may take place either (a) in the context of armed conflict, in which the more permissive lethal force rules of the laws of war generally apply, or (b) in the context of law enforcement operations, in which more restrictive human rights law applies. I discuss the specific rules in Section 4 below.

Both the Bush and Obama Administrations have asserted the authority to conduct drone strikes under the laws of war, but the scope of the asserted authority appears to differ. The Bush Administration, which began the CIA drone program, claimed the right to conduct strikes anywhere in the world as part of its “war on terror”, which it classified as an “international armed conflict” against al Qaeda.⁷ Much has been written and said about the unprecedented nature of the global “war on terror” and its lack of support under the laws of war, and I will not repeat those criticisms here. To its credit, the current Administration has rejected the concept of a global “war on terror”, but it has not explained the difference between the targeted killing authority it asserts and that asserted by the Bush Administration.

In his speech, the Legal Adviser has said only that the United States is “in an armed conflict with Al Qaeda, as well as the Taliban and associated forces.”⁸ Without more specificity about both the geographical scope of this conflict and the enemy – “associated forces” in particular is a term so vague as to be meaningless – the distinction between this Administration’s position and that of the previous Administration appears to be one without difference. In particular, it is unclear whether, outside the context of the conflict in Afghanistan and Pakistan, the current Administration takes the position that its struggle against al Qaeda, the Taliban and associated forces must meet law of war thresholds for the existence of an armed conflict (such as level and duration of violence), and what level of organization, if any, a foe must have to constitute a party to the conflict as opposed to a criminal group or gang.

⁷ Communication of the United States regarding the Killing of Harithi al-Yemeni, 4 May 2006, A/HRC/4/20/Add.1, p. 344, available at http://www.extrajudicialexecutions.org/application/media/A_HRC_4_20_Add_1.pdf

⁸ Koh, *supra* note 5

The Legal Adviser's definition of the enemy comes, as he noted, from the Authorization for Use of Military Force (AUMF). That Congress did not intend to authorize an unlimited armed conflict is clear both from the text of the AUMF, and from subsequent Congressional action. The AUMF authorizes the use of force against those who were responsible for, or aided or harbored those responsible for, the September 11, 2001 terrorist attacks.⁹ It does not contain broad authorization for the use of lethal force anywhere in the world, in conflicts unrelated to the 9/11 attacks, or where there is no conflict at all. Indeed, in 2002, at a time when it was thought that Iraq was harboring members of al Qaeda, Congress chose to authorize the war against Iraq in a separate resolution, rather than relying on the AUMF.¹⁰

Questions about scope also matter because al Qaeda and entities with various degrees of "association" with it are known to operate in numerous countries around the world including not just Pakistan, Yemen and Somalia – where U.S. drone strikes have taken place – but also in Saudi Arabia, Indonesia, Germany, the United Kingdom and Spain, among others. Congress should ask the Administration whether it claims the authority to conduct drone strikes in these other countries. The answer would seem to be "no", but we do not know whether any distinction is based on legal grounds or policy ones. Congress should ask, therefore, whether the Administration believes its armed conflict extends globally, or if it excludes countries in which, for example, al Qaeda members may be captured and prosecuted rather than killed. If the latter, does the Administration recognize an obligation to capture rather than kill, or does it consider capture merely to be a discretionary consideration? Are there other differences in the legal analysis applicable to targeted killings in different countries? Finally, Congress should ask about the degree of "association" with al Qaeda or the Taliban that could subject an individual or group of individuals to targeted killing.

Congress should, therefore, ask the Administration to clarify the scope of the armed conflict in which the United States is engaged, and to provide greater specificity about the groups against which it is waging that conflict.

C. The Right to Self-Defense

In addition to issues arising under the laws of war and international human rights law, targeted drone killings conducted in the territory of states with which the United States is not at war raise sovereignty concerns. Some have justified targeted drone killings in such states on the grounds either that the state in question has consented to the use of force on its territory, or that the United States has a right to use force in self-defense when a state is unwilling or unable to stop attacks from its territory. Both grounds are exceptions to the general international law ban, under Article 2(4) of the UN Charter, on states using force against, or in the territory of, another state.¹¹ Although these exceptions may apply

⁹ Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001).

¹⁰ Authorization for Use of Military Force Against Iraq, Pub. L. 107-243, 116 Stat 1498 (2002).

¹¹ U.N. Charter art. 2, para. 4 ("All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state . . .").

to U.S. targeted drone killings, their invocation is controversial for the reasons discussed below, and Congress should ask the Administration to clarify the conditions under which it may be invoking either exception, as well as any limitations it recognizes.

That a state may consent to the use of force on its territory by another state is not legally controversial (although it may be politically so).¹² From media accounts, it is likely that Pakistan and Yemen may have consented to the drone attacks on their territory.¹³ CIA Director Leon Panetta, in fact, recently acknowledged that Pakistan has been providing intelligence to the United States to support targeting decisions.¹⁴ Consent does not, however, absolve either the targeting state or the consenting one of their obligations to abide by international human rights and humanitarian law. The consenting state has its own responsibility to protect its citizens – and those of other countries – in its territory.¹⁵ To the extent Pakistan or Yemen may have consented to U.S. targeted drone killings, they can only do so if they themselves have the legal authority to target and kill particular individuals. Thus, for example, if the United States targets an individual in Pakistan who is not part of an armed conflict against Pakistan, or who does not present a lawful target for Pakistani authorities under law enforcement standards (discussed below), then the U.S. targeting would also be illegal.

The more likely justification for the CIA's drone strikes is the right to self-defense, which the United States has traditionally invoked for the legality of cross border attacks. Although there is some controversy about the scope of the right, there is growing agreement among practitioners and experts that international law permits the use of lethal force in self-defense not only in response to an "armed attack" as long as that force is necessary and proportionate,¹⁶ but also as an anticipatory measure against a real and imminent threat when "the necessity of that self-defense is instant, overwhelming, and

¹² ICJ, *Military and Paramilitary Activities in and against Nicaragua* (Nicar. vs. US) [1986] ICJ Rep., para. 246 ("intervention . . . is already allowable at the request of the government of a State."). Whether consent is legal and effective will depend in part on the legitimacy of the government that is consenting.

¹³ Eric Schmitt and Mark Mazzetti, *In a First, US Provides Pakistan with Drone Data*, N.Y. Times, May 13, 2009; Sudarsan Raghavan and Michael D. Shear, [U.S.-aided attack in Yemen though to have killed Aulaji, 2 al-Qaeda leaders](#), Wash. Post, Dec. 25, 2009.

¹⁴ Joby Warrick and Peter Finn, *CIA director says secret attacks in Pakistan have hobbled al-Qaeda*, Wash. Post., Mar. 18, 2010.

¹⁵ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), UN GAOR, 21st Sess., Supp. No. 16, at 52, UN Doc. A/6316 Dec. 16, 1966, *entered into force* 23 March 1976, 999 U.N.T.S. 171, art. 6 (non-derogability of the right to life); *see also*, U.N. General Assembly, *Resolution on the Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, A/Res/51/191, Mar. 10, 2005, para. 1 ("States must ensure that any measure to combat terrorism complies with their obligation under international law, in particular international human right, refugee and humanitarian law").

¹⁶ U.N. Charter art. 51 ("Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."); *see also* O. Schachter, *The Right of States to Use Armed Force*, 82 *Mich. L. Rev.* 1620, 1633–34 (1984).

leaving no choice of means, and no moment of deliberation.”¹⁷ “Anticipatory self-defense” thus also requires imminence (“instant, overwhelming”), necessity (“no choice of means”), and a proportionate use of force as a defensive measure (it cannot be invoked as a reprisal or punishment).¹⁸

There are two key areas of controversy with respect to self-defense in the context of U.S. targeted killings, about which Congress should question the Administration.

First, some U.S. scholars and commentators advocate a “robust” form of self-defense in which, once the doctrine is invoked, no other limiting principle would apply to targeted killings. This position is exceptional and, if applied, could constitute an arbitrary deprivation of life in violation of international law. What proponents of a “robust” self-defense justification fail to recognize is that the right only addresses the question of whether the use of force in another state’s territory is legal (a just war or *jus ad bellum* concept). Even if such inter-state force is justified, it does not obviate the further question of whether killing a particular individual or individuals is lawful. The legality of a specific killing depends on whether it meets the requirements of the law of war applicable to the conduct of hostilities and human rights law (in the context of armed conflict) or human rights law applicable to law enforcement operations (in all other contexts).

So if, for example, the United States were to invoke anticipatory self-defense as a justification for a drone strike in Pakistan, to be legal, (a) the strike would have to meet the self-defense requirements that it be a necessary and proportionate response to an imminent threat of armed attack, and (b) the killing of the specific individual posing the threat would separately have to conform to the law of war requirements for targeted killing in a non-international armed conflict.

The State Department Legal Adviser appeared to acknowledge that self-defense is not an alternative, but an additional, source of authority for targeted killing when he justified the United States’ use of lethal force both because of an armed conflict with al Qaeda, “*and . . . consistent with its inherent right to self-defense under international law*” (emphasis added).¹⁹

To the extent that there is ambiguity or disagreement about limitations on the right to self-defense, Congress should ask the Administration to clarify its position.

The second key area of controversy is the extent to which the United States may be invoking the right to self-defense not just in response to an armed attack, or in

¹⁷ See R.Y. Jennings, *The Caroline and McLeod Cases*, 32 Am. J. Int'l L. 82, 92 (1938).

¹⁸ *Id.*; see also ICJ, *Military and Paramilitary Activities in and against Nicaragua* (Nicar. vs. US) [1986] ICJ Rep. para. 194; ICJ, *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ rep. 226, para 41.

¹⁹ Koh, *supra* note 5.

anticipatory self-defense, but as a pre-emptive measure in response to a threat that is persistent and may take place in the future, but is not likely to take place imminently. The status of this last rationale, “pre-emptive self-defense”, is deeply contested under international law, but has been invoked by the United States.²⁰ To the extent that the Administration is relying on this rationale, its targeted killing policy is less likely to find international acceptance.²¹

D. Who May be Targeted

The Administration’s failure to disclose the criteria for who may be targeted for killing is perhaps the greatest source of the lack of clarity with respect to targeted drone attacks.

In the context of armed conflict and under the laws of war, killing is only lawful when the target is a “combatant” or “fighter” or, in the case of a civilian (a term of art that applies to alleged terrorists engaging in armed conflict), only for such time as the person “directly participates in hostilities.”²² Although the consequences of “direct participation” are so serious, the standard is not defined under international humanitarian law, and its content is disputed. It is, therefore, all the more important that the United States make public its definition of the kind of activities that could result in targeted killing and its determination of the period of time during which a person remains targetable. We do not accept secret or overly vague laws in the domestic context, and we especially do not accept them if their violation leads to death. The international targeted killing context should be no different.

Admittedly, it may be challenging to arrive at a definition of direct participation that protects civilians – the goal of international humanitarian law – and at the same time does not reward an enemy that itself fails to distinguish between civilians and lawful military targets, that may deliberately hide among civilian populations and put them at risk, or that

²⁰ United States’ National Security Strategy 2002 (2006 rev’n) at 6; *see also* W. Taft and A. Buchwald, ‘Pre-emption, Iraq and International Law’, (2003) 97 *AJIL* 557–563 at 557 (pre-emptive use of force “is sometimes lawful and sometimes not”).

²¹ *See also* L. Goldsmith, ‘Iraq: Resolution 1441’, Memo to the Prime Minister, Mar. 7, 2002, *available at* <http://image.guardian.co.uk/sys-files/Guardian/documents/2005/04/28/legal.pdf> (discussing questionable status of pre-emptive self defense in the context of justifications for Iraq war).

²² Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, *entered into force* Oct. 21, 1950, 6 U.S.T. 3316, 75 U.N.T.S. 135, art. 3; Geneva Convention Relative to the Protection of Civilian Persons in Times of War, Aug. 12, 1949, *entered into force* Oct. 21, 1950, 6 U.S.T. 3516, 75 U.N.T.S. 287, art. 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), *entered into force* Dec. 7, 1978, 1125 U.N.T.S. 609, art. 4.

The drone killing must also fulfill a military purpose, it may only be used if no alternative is reasonably possible, and the use of force must be proportionate so that any anticipated military advantage is considered in light of the expected harm to civilians in the vicinity. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), *entered into force* Dec. 7, 1978, 1125 U.N.T.S. 3, arts. 48, 50(1)-(4), 52(1)-(2), 51(5)(b) and 57..

may force civilians to engage in hostilities. The key is to recognize that regardless of the enemy's tactics, in order to protect the vast majority of civilians, only conduct close to that of a fighter, or direct combat support, should subject civilians to direct attack, while more attenuated support, such as financial or other non-combat aid, should not.

The International Committee of the Red Cross (ICRC) has provided guidance on the meaning of direct participation, and focuses on: (a) whether the person has a combat function; (b) the harm to military operations or military capacity that is likely to result from the conduct ("threshold of harm"); (c) whether there is a direct causal link between the conduct and the harm ("direct causation"); and (d) whether the harm is "specifically designed" to support one of the parties to the conflict to the detriment of the other.²³

It is fair to say that whatever definition the United States is using is more expansive than that of the ICRC. In Afghanistan, for example, the United States has said that drug traffickers who are on the "battlefield" and who have links to the insurgency may be targeted and killed.²⁴ This is not consistent with the laws of war – drug trafficking is generally understood as criminal conduct, and not an activity that would subject someone to a targeted killing under the laws of war.

A key question Congress should ask the Administration, therefore, is its definition of "direct participation in hostilities." To the extent the Administration's criteria for direct participation differ from the ICRC's guidance, Congress should ask the reasons for the difference. Congress should also ask whether there is any difference between the criteria applicable to U.S. citizens and non-U.S. citizens.

Outside the context of armed conflict, targeted killing is only legal under international law if it is required to prevent imminent death or serious physical injury (making lethal force proportionate) and there is no other means, such as capture or non-lethal incapacitation, of preventing that grave threat to life (making lethal force necessary).²⁵ Congress should ask the Administration whether and where this standard is being applied.

²³ See generally, International Committee of the Red Cross, *Interpretive Guidance on the Notion of Direct Participation in Hostilities* (2009).

²⁴ *Afghanistan's Narco War: Breaking the Link Between Drug Traffickers and Insurgents: Report to the Senate Committee on Foreign Relations.*, S. Rep. No. 111-29, at 16 (2009); James Risen, *U.S. to Hunt Down Afghan Drug Lords Tied to Taliban*, N.Y. Times, Aug. 9, 2009.

²⁵ Code of Conduct for Law Enforcement Officials, G.A. Res. 34/169, art. 3 (Dec. 17, 1979); Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth U.N. Congress on Prevention of Crime and Treatment of Offenders, Havana, Cuba, Aug. 27-Sept. 7, 1990, art. 9; Human Rights Committee, *General Comment No. 6*, U.N. Doc. HRI/GEN/1/Rev.6 (1982), para. 3; Inter-American Commission of Human Rights, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr. (2002).

E. The Legality of Drones Per Se

Some have suggested that the use of drones is per se illegal because the weapons cause, or have the effect of causing, indiscriminate killings of civilians, such as those in the vicinity of the targeted person, in violation of the laws of war. This argument is incorrect. The use of drones is no different from a pilot dropping a bomb from a fighter jet, or a soldier firing a gun. In each case, the legal question is whether the human beings who authorize the use of the weapon, and those who fire it, have abided by the requirements of the laws of war.

The greater concern with respect to the use of drones is that because drones make it easier to kill without risk to U.S. forces, policy makers and commanders will be tempted to interpret the legal limitations on who can be killed, and under what circumstances, too expansively. Accordingly, Congress should ask the Administration whether and how targeting criteria are different for drones than for other weapons.

Proponents of drones argue that they afford greater precision than other weapons and prevent collateral civilian casualties and injuries. This may well be true, but it presents an incomplete picture. The precision and accuracy – and therefore the legality – of any drone strike depend on the intelligence upon which the targeting decision is based. Given the record of intelligence failures in the lead up to the Iraq war and in the bases for capture and detention of prisoners at Guantanamo, Congress should ensure that the Administration has in place the procedural safeguards necessary for targeting decisions to be justified and verified.

F. Drone Attacks by the CIA vs. by the Military

Some commentators have argued that CIA personnel who conduct targeted drone killings are committing war crimes because they, unlike the military, are “unlawful combatants.” This argument, while incorrect, is unsurprising. It reflects the Bush Administration’s interpretation of the laws of war, under which civilians who engaged in hostilities had the status of “unlawful combatants” and could be prosecuted for war crimes.²⁶

Contrary to that interpretation, most experts agree that the laws of war do not prohibit civilians, such as CIA personnel, from participating in hostilities. Rather, the consequence of participation is that CIA personnel, unlike the armed forces, do not have immunity from prosecution under domestic law (as opposed to the laws of war) for their conduct. Thus, CIA personnel could be prosecuted for murder under the domestic law of any country in which they conduct targeted drone killings, whereas military personnel would generally be immune for prosecution for the same conduct (assuming they complied with the laws of war). A second consequence is that because CIA personnel are “directly participating in hostilities,” under the laws of war, they may themselves be targeted and killed.

²⁶ That interpretation has been incorporated in the Military Commissions Act of 2006, Pub. L. 109-366, 120 Stat. 2600 (amended by the Military Commissions Act of 2009, 10 USCA § 948a).

It is important to note that if a drone strike violates the laws of war (e.g., by targeting civilians who were not “directly participating in hostilities”), then regardless of who conducts it – the CIA or the military – the author, as well as those who authorized the strike, can be prosecuted for war crimes.

Unlike the military, the laws of war are not part of the “DNA” of the CIA, and it is this fact that raises legal concerns. Congress should ask whether and to what extent CIA personnel in the drone program have been trained in the laws of war. Congress should also question why the intelligence agency, as opposed to the more experienced armed forces, is engaging in what would ordinarily be military operations. Finally, Congress should ask whether the rules applicable to CIA targeted killings differ from those for the military and, if so, how and on what basis.

G. Compliance with the Law

The best assurance of the legality of targeted drone killings comes from transparency and accountability mechanisms. The Administration should make public the domestic and international laws bases for the drone program (consistent with genuine security needs). Congress should ensure that the Administration has in place the procedural safeguards necessary to meet its obligations under the law of war and international human rights law, including especially the obligation to minimize civilian casualties. Finally, Congress should ensure that the Administration has in place accountability mechanisms that allow for a retrospective and independent investigation into whether the right person was targeted and whether there were collateral civilian casualties. It is only through these mechanisms that the Administration can fulfill the promise made by President Obama in his June 2009 Cairo speech that, “America will defend itself respectful of the sovereignty of nations and the rule of law.”²⁷

* * *

Thank you again for giving me the opportunity to provide these views.

²⁷ The White House, Remarks by the President on a New Beginning, Cairo University, Cairo, Egypt, June 4, 2009, available at http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Cairo-University-6-04-09/.