CIA Drones Gone Wild?
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The *Wall Street Journal* reported last week that the U.S. government doesn't actually know who it's killing with many of its drone strikes in Pakistan. That suggests the United States may well be violating international law.

As the Journal reports, the bulk of the CIA's drone strikes are "signature strikes," which "target groups of men believed to be militants associated with terrorist groups, but whose identities aren't always known."

The Journal notes that the State Department had some concerns about the CIA's aggressiveness, since it was, not surprisingly, upsetting local Pakistanis. But what the Journal doesn't mention, and what's rarely mentioned in the media's coverage of the drone war, is the legal implications of targeting unknown people merely because they're "believed to be militants associated with terrorist groups." Sure, no court is likely to stop the administration from doing it, as we saw when a D.C. District Court dismissed a lawsuit challenging the CIA's targeting of the U.S.-born Muslim cleric Anwar al-Awlaki. But if the U.S. turns out to be blatantly violating the international laws of war, that sets a dangerous precedent — not only for the United States, but for our enemies.

Under international laws of war, a targeted killing, by drone or otherwise, is only lawful if the target was, at the time of the strike, either "directly participating in hostilities" or performing a "continuous combat function." Alternatively, the U.S. government could kill someone in self-defense if he poses an imminent threat to the United States. If the CIA is killing groups of unidentified individuals merely because it believes they're associated with terrorist groups, however, that doesn't meet the legal requirement.

As Spencer Ackerman posed the question on *Wired*'s Dangerroom blog: can CIA analysts, based on cameras strapped to their Predator and Reaper drones or information provided by local spies, distinguish the actual terrorists from "who, say, drops off the terrorists' laundry"? While that may be difficult in a war with shadowy terrorist groups, it's what the law – and common sense, and basic morality – requires.

Although the U.S. government doesn't even acknowledge it has a drone program, let alone provide evidence of who that program kills, there's reason to believe it's killing a significant number of innocent people.

Clive Stafford Smith, a U.S. lawyer at the UK-based legal organization Reprieve, wrote in the *New York Times* last week about a 16-year-old boy he'd met after convening a group of villagers living along the Afghan-Pakistan border to talk about the impact of the drone war. The teenager, Tariq Aziz, had volunteered to collect evidence about the casualties of drone strikes in his area. Three days later, he and his 12-year-old cousin, Waheed Khan, were killed by a CIA strike themselves, writes Smith.

Were the boys targeted, and had they been militants? It's impossible to know. The United States has not only classified its drone program, but refused to release information about who it's targeting and why, or about who else is getting killed in the process.

John Brennan, President Obama's senior counterterrorism advisor, has actually claimed "there hasn't been a single collateral death" from drone strikes, due to their precision.

But that stands in stark contrast to the findings of such groups as the Bureau for Investigative

Journalism, which has been reporting on the casualties of drone strikes since 2004. The team of British and Pakistani journalists in a report released in August documented 306 strikes from remotely piloted drones that killed between 2,359 and 2,959 people. The bureau reports that in Pakistan, it has found credible reports of 392 civilian deaths, include 175 children.

Even the New America Foundation, which accepts the U.S. government's definition of who is or is not a "militant," as reflected in press accounts of drone strikes in Pakistan, has found that 20 percent of those killed by drones have been civilians. Significantly, the government has refused to say how it defines a "militant," so it's not at all clear that its definition is consistent with international law. John Brennan's claim suggests it is not.

Some Americans might think that 20 percent is an acceptable casualty rate in a war, assuming such attacks are really necessary to stop terrorism. (That casualty rate is politically more palatable in the United States when the victims aren't American.) But international law also requires that the civilian deaths be "proportional" to the importance of the military target. Groups like the Bureau for Investigative Journalism report that of the militants killed, most are likely low-ranking footsoldiers. Only 150 have even been named since 2004.

And regardless of whether they're legal, are all these strikes really necessary? Lots of experts say no, and insist they could actually be counterproductive. That includes such senior former officials as retired admiral and former Director of National Intelligence Dennis Blair. The *Wall Street Journal* reports on growing dissent within the Obama administration:

"Many officials at the Pentagon and State Department privately argued the CIA pays too little attention to the diplomatic costs of air strikes that kill large groups of low-level fighters. Such strikes inflame Pakistani public opinion. Observers point to the rising power in Pakistan of political figures like Imran Khan, who held large rallies to protest the drones and could challenge the current government."

Retired Admiral Mike Mullen argued that the CIA needed to be "more selective" in its strikes, and former Defense Secretary Robert Gates reportedly feared that the drone program could lead the Pakistanis to block the flow of supplies to troops in Afghanistan.

In other words, the costs and benefits – and the legality – of the entire secret U.S. drone program remain unclear. At the very least, all this highlights the need for the Obama administration to lay out what exactly it is its "secret" drone policy, what legal criteria it follows in deciding whom to target, and who else is getting killed in the process. Lawmakers, policy experts and former government officials spanning the political spectrum argued for more transparency around the US drone program after the killing of al-Awlaki. The news that the CIA doesn't even know who it's targeting much of the time lends even more urgency to that call.

Conor Friedersdorf in *The Atlantic* reminds us that we learned, years later, that the Bush administration had imprisoned hundreds of innocent people at the Guantanamo Bay prison, notwithstanding former Defense Secretary Donald Rumsfeld's assurance that they were all "the worst of the worst."

With the Obama administration now killing hundreds of terrorism suspects abroad, we shouldn't be any more satisfied with its opaque assurances that it's only targeting the guilty ones.