

United States Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Senator Richard J. Durbin, Chairman

Drone Wars: The Constitutional and Counterterrorism Implications of Targeted Killing
Tuesday, April 23, 2013

Opening Statement

Today's hearing is the first-ever public hearing in the Senate to address the use of drones for targeted killing.

The Constitution bestows upon the President of the United States the unique responsibility and title of Commander in Chief. And with that title comes the responsibility to protect and defend our country from foreign and domestic enemies. To accomplish this goal the President has a military that is the best trained, best equipped and most effective fighting force in history.

While the tactics and tools used by our military are ever evolving, one thing must remain constant: ours is a democratic society where the rule of law prevails. The President must exercise his authority as Commander in Chief within the framework established by the Constitution and laws passed by Congress. Even as President Obama commands a military with the most sophisticated weapons known to man, including the weaponized drones used in targeted killing operations, his authority is still grounded in words written more than two hundred years ago.

At times, over the course of our history the rule of law has been abused during times of war. When this occurs it challenges America's moral authority and standing in the world.

This potential for abuse is a stark reminder of Congress's responsibility to authorize the use of force only in narrow circumstances and to conduct vigorous oversight once authorized. The heat of battle and the instinct to defend can create moral, legal and constitutional challenges. We can all recall the controversy surrounding the use of torture by the previous Administration. Torture, though clearly illegal under both domestic and international law, was rationalized by some as appropriate in our war against terrorism.

Today's subject, the targeted killing of combatants – in contrast to torture - has always been a part of warfare in areas of active hostilities. In recent years, however, it has been employed more frequently away from the traditional battlefield.

The use of drones has, in stark terms, made targeted killing more efficient and less costly – in terms of American blood and treasure. There are, however, long term consequences, especially when these air strikes kill innocent civilians. That's why many in the national security community are concerned that we may undermine our counter terrorism efforts if we do not carefully measure the benefits and the costs of targeted killing.

This Administration has not claimed the authority to override laws, like the criminal prohibition on torture. Instead, it has attempted to ground its use of drones in a statute, the 2001 Congressional Authorization to Use Military Force. And officials like Attorney General Eric Holder and CIA Director John Brennan have acknowledged the strikes and delivered speeches explaining the Administration's legal and policy positions.

In my view, more transparency is needed to maintain the support of the American people and the international community. For example, the Administration should provide more information about its analysis of its legal authority to engage in targeted killing and the internal checks and balances involved in U.S. drone strikes.

And the Administration must work with Congress to address a number of serious and challenging questions, some of which are being hotly debated even as we meet:

- What is the constitutional and statutory justification for targeted killing?
- What due process protections extend to an American citizen overseas before he is targeted and killed by a drone strike?
- What are the legal limits on the "battlefield" in the conflict with Al Qaeda? And is it legal to use drones not just in war zones like Afghanistan, but also to target terrorist suspects in places where the U.S. is not involved in active combat, such as Somalia and Yemen?
- What is the legal definition of a "combatant" in the conflict with Al Qaeda? And who qualifies as "associated forces" under the 2001 Authorization to Use Military Force?
- Should the U.S. lead an effort to create an international legal regime governing the use of drones?
- What moral and legal responsibility does the United States have to acknowledge its role in targeted killing and make amends for inadvertent destruction and loss of life, particularly where missiles kill or injure innocent civilians?

These are some of the questions that we will explore in today's hearing.

Speaking recently about the use of drones, President Obama said, "One of the things we've got to do is put a legal architecture in place, and we need Congressional help in order to do that, to make sure that not only am I reined in but any president is reined in."

I agree with President Obama on the need for a clear, legitimate, and transparent legal framework for targeted killing. Today is the first step in that process.

I do want to note for the record that I am disappointed that the Administration declined to provide witnesses to testify at today's hearing. I hope we have the opportunity to work with the Administration more closely moving forward.