# Toward a Drone Accountability Regime: A Rejoinder

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We very much appreciate the fact that Neta Crawford, Janina Dill, and David Whetham have taken our proposal for a Drone Accountability Regime (DAR) seriously and have offered various critiques and suggestions in their responses to it. In the lead article to this symposium we took pains to emphasize that the details of our proposal are clearly contestable; that there is no guarantee of political feasibility; and, indeed, that it would be desirable to establish what we called an "experimentalist regime" to take into account the need to adapt to circumstances that are not now foreseeable. We are therefore pleased to see that our article initiated a lively discussion of the characteristics of a Drone Accountability Regime, and of the international political and legal context within which its provisions should be framed.

The most important point to emphasize is the wide area of agreement between us and the commentators. Neta Crawford agrees that there should be a "robust and transparent system" of accountability for drone strikes; her principal critique is that in her view such a regime should be domestic rather than international. Janina Dill argues that the DAR gets the balance between being a "progressive ideal" and its acceptability to states "exactly right" with respect to the involvement of drones in hostilities. Her concern is that the regime needs to be designed so as not to undercut established international law with respect to the use of force. David Whetham declares himself enthusiastic about our proposal, citing Philip Alston as suggesting that "genuine transparency combined with genuine accountability may ultimately be the best safeguard." None of the commentators critiques the institutional provisions we outline for an informal regime, including *ex ante* and *ex post* accountability mechanisms, an Assembly of States, a Transnational Council, and an Ombudsperson; nor do any of them question our proposals for

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a *plurality of initiatives*, *multiple arrangements to ensure transparency*, and *mobilization of dynamic accountability*. In other words, all three commentators seem to accept both our basic normative argument for transparency and accountability, and our claim that robust institutional arrangements need to be established to ensure that transparent and accountable practices are followed.

It seems to us that even the criticisms by the commentators reinforce our argument. David Whetham correctly emphasizes that our proposal for a DAR applies to the use of *lethal* drones for targeted killings. We do make it clear on the first page of our article that our proposal concerns only lethal drone use, not all drone use, and that our description of our proposed institution as a "Drone Accountability Regime" is shorthand for what would be an awkward title, such as "Accountability Regime for Targeted Killings Using Drones."

Janina Dill worries about making drone use more legitimate; but our proposal makes it *harder* to justify the use of drones by creating a much more demanding standard than the current one for legitimate use, and by creating an international institution to oversee provisions for transparency and legitimacy. Her concluding concern that "the DAR risks reducing the reputational costs of unlawful resorts to force by offering procedures that legitimize actions that may not ultimately fulfill the legal criteria for self-defense" applies to the entire law of war. Since she seeks to uphold and reinforce the law of war, she cannot intend her concern about endowing resorts to force with legitimacy to apply to all provisions to limit and regulate warfare. The question is whether the risk of this "false legitimacy" is greater than the risks accruing to the absence of regulation. We argue that our Drone Accountability Regime would regulate problematic, nontransparent activity without bestowing inappropriate legitimacy on drone use.

Dr. Dill also questions our argument that states using lethal drones should face no requirement to gain consent from states that are unwilling or unable to control terrorist activities emanating from their territories. However, she applauds our requirement for rigorous procedures of *ex post* accountability under these circumstances, in particular the requirement that drone-using states must offer a public justification for their actions and submit to investigations by the Ombudsperson about the validity of such justifications. Since "failed states" by our definition cannot control terrorism within their borders, we argue that their consent or lack thereof does not have operational significance. The crucial safeguards against excessive or improper use of lethal drones must therefore depend on what we call provisions for *ex post* accountability.



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Neta Crawford questions our use of the "war paradigm," but she misinterprets our argument for this approach. We make it clear that we adopt the war paradigm —treating lethal drone use as an act of war, not policing—not because terrorist attacks are typically large-scale, but because "they have broad political purposes," they are not carried out by "individuals seeking personal advantage," they are part of a long-term struggle, and they involve actions taken in territories where the conditions for law enforcement are lacking. As Crawford recommends when she accepts the war paradigm for the sake of argument, we view drone use within the just war tradition, focusing specifically on the discrimination principle.

Professor Crawford's concluding argument is that "*domestic* accountability for drones is what is first required." We make it clear that domestic accountability is indeed a necessary condition for the effective regulation of lethal drones, criticizing U.S. drone use for its lack of institutionalized transparency and pointing out that the measures we propose "will only be effective if civil society is mobilized to monitor state action and demand accountability." Furthermore, the DAR provides for each member state to have a "national supervisory body," which would be required to conduct periodic reviews and to keep careful records. Therefore, in proposing a domestic accountability regime, Crawford is echoing *part* of our call for a Drone Accountability Regime.

Yet our proposal has huge advantages over a purely domestic regime. First, it would provide incentives for the United States to take more serious action to assure institutionalized transparency and accountability of its drone use. As we say, "The United States, as the first-mover, has incentives to try to shape the rules of the regime while it still has some leverage to do so . . . . By taking a leadership role, the United States could also gain reputational benefits and encourage other states to join the regime." Second, being part of an international regime, even an informal one, would make it more difficult for future U.S. administrations to backtrack on transparency and accountability pledges, since doing so would complicate relations with foreign governments. Finally, as we point out, "over time even an informal regime could gain credibility and specificity, adding more specific agreements going forward, increasing positive incentives to conform to it, and also increasing the costs of noncompliance." Seeking to establish an informal international regime generates all of the benefits of a purely domestic regime while both increasing incentives for serious domestic action and encouraging other states to make their lethal drone use more transparent and accountable.

In conclusion, we thank the three commentators once again both for their thoughtful arguments and for what we interpret as support for the basic principles underlying our proposed Drone Accountability Regime—and for its institutional provisions. We are not naïve enough to believe that persuading policymakers will be equally easy, but we are encouraged that, despite various criticisms, our colleagues see merit in our overall arguments.



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