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Underreporting the legal aspects of drone strikes in international conflicts: A case study of how *Aftenposten* and *The New York Times* cover drone strike

Kurzfassung: Gegenstand dieses Aufsatzes ist es, mittels einer Inhaltsanalyse von Aufsätzen, die in der *The New York Times* und in der norwegischen Tageszeitung *Aftenposten* erschienen sind, zu untersuchen, wie diese Zeitungen über die rechtlichen Aspekte des Drohneinsatzes in internationalen Konflikten berichtet haben. Drohnen wurden bei Luftangriffen des amerikanischen Militärs spätestens seit Oktober 2001 eingesetzt. Mittels kritischer Diskursanalyse und Framing-Theorie wurden ausgewählte Texte analysiert, in denen die beiden Zeitungen über Drohnenangriffe berichtet hatten. Gestützt auf einen Bericht über ein Hearing des US-Kongresses diskutiert der Aufsatz die Legalität des Einsatzes von Drohnen in internationalen Konflikten. Der Autor kommt zu dem Schluss, dass die beiden Zeitungen in ihrer Berichterstattung über amerikanische Drohnenangriffe ihre Funktion als Wächter über relevante rechtliche Belange nicht erfüllt haben.

Abstract: The purpose of this paper is to investigate, through content analyses of articles in *The New York Times* and the Norwegian newspaper *Aftenposten*, how these papers have reported on the legal aspects of drone strikes in international conflicts. Drones have been deployed in US military operations at least since the October 2001 air strikes in Afghanistan. Using critical discourse analysis and framing theory, selected texts were examined in which the two newspapers reported on the topic of drone strikes. Drawing on a report of an April 2010 hearing in the US House of Representatives, this paper discusses the legality of deploying drones in international conflicts. The author concludes that in their reportage on US drone strikes the newspapers failed as watchdogs for the relevant legal issues.

1. Introduction

Drones are unmanned aircraft used for surveillance and military air strikes, operated by remote control from bases around the globe. The main objective of this paper is to investigate how the use of drones was reported on in a sample of articles from the Norwegian newspaper *Aftenposten* and *The New York Times* (NYT).¹

Why were *Aftenposten* and *The New York Times* chosen for this investigation? They are both regarded as leading mainstream newspapers in their respective countries. Since news reportage in the mainstream media tends to reflect the security policy of their country, the coverage in the two newspapers can also be seen in relation to the historically close cooperation between Norway and the USA as NATO allies (van Dijk 1988). Both *Aftenposten* and the NYT are important participants in the public debate on serious political and legal issues in their respective countries.

Based on findings from earlier research, the hypotheses for this study are that the framing of the use of drones in *Aftenposten's* coverage was influenced by how *The New York Times* covered the issue, and that the legal issues are underreported in daily news coverage. Since it joined NATO in 1949, Norway has been a reliable partner of the US in the global arena. Despite some disagreements, such as on US policy in Central America during the 1980s, several different Norwegian governments have sided with the US on most important issues in international relations (Ottosen 2004). Since the fall of communism in the Soviet bloc, Norway has taken part in the NATO missions of the IFOR- and SFOR-forces in Bosnia, the KFOR-forces in Kosovo, and provided military support during the bombing of Serbia in 1999. Norway also participated in the US Enduring Freedom operation, with Norwegian special forces engaged in fighting against the Taliban and in the hunt for al-Qaeda terrorists. Norway also took an active part in the 2011 NATO air strikes in Libya. Against this background, and as a point of departure, I will assume that directly and indirectly US deployment of drones in international conflicts is relevant for Norwegian security policy.

2. Theoretical background

2.1 Journalism in the New World Order

In this study of newspaper reportage, I draw upon findings of the project "Journalism in the New World Order" (Nohrstedt & Ottosen, 2001), an international project involving comparative research on the media reporting of the 1990-91 Gulf War. In the project, 4,098 news items from television broadcasts and newspapers in six countries were analyzed for the period from August 1991 to January 1993. The European part of the sample included two NATO member countries, Germany and Norway, and two nonaligned countries, Finland and Sweden. Media in the NATO member countries used sources on the US Coalition side more than did media in the nonaligned countries. Media in Germany and Norway were also more likely to repeat the concrete content of US propaganda (such as framing Saddam Hussein as the "new Hitler") than were media in

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Finland and Sweden. The same pattern is evident when it comes to reportage on the UN's role – in NATO countries, media do not give this as much attention and are not as positive as the media in nonaligned countries. Similar patterns can also be found in the coverage of the Iraq war and the "Global War on Terror" (GWT) (Nohrstedt 2001; Nohrstedt & Ottosen 2004, 2012). Earlier research has also concluded that mainstream media coverage of security policy issues seems to reflect the orientation of foreign and security policy in a given country (van Dijk 1988).

2.2 McCombs' theory of agenda setting

I also draw upon Maxwell McCombs' theory of agenda setting by underlining the influence of elite news sources and the role of journalists' perceptions of news values in shaping the media agenda (McCombs 2004). The idea that institutional values and beliefs and legal issues contribute to news framing is vital for understanding how the news is handled in everyday newsroom routines. Previous studies have also underlined how legal issues are blurred in the coverage of international conflicts, because an objective analysis of whether or not a given military intervention is legal may conflict with the short-term interests of national politicians (Nohrstedt & Ottosen 2012). This is of particular interest in a Norwegian context, since traditionally Norwegian politicians have been eager to operate within the framework of the UN and international law. In a comprehensive study, Norwegian Law Professor Ståle Eskeland concluded that Norway violated international law by taking part in NATO operations without a UN mandate during the bombing of Yugoslavia in 1999 and by providing military support for Operation Enduring Freedom in Afghanistan. Eskeland further judges that this violated Norway's policy principle to take part only in UN-mandated international military operations (Eskeland 2011). Despite these serious reservations, Norwegian media have been reluctant to cover such legal issues (see also Nohrstedt & Ottosen 2014, forthcoming). A recent study suggests that the legal aspects of Norwegian military operations in Afghanistan are underreported in the mainstream media (Eide & Ottosen 2013). In academic journals, leading international law scholars have questioned several decisions by the Norwegian government with relevance for Norway's participation in the ISAF mission in Afghanistan (Ulfstein 2003, Eskeland 20011), and yet these issues are rarely addressed by Norwegian news media (Eide & Ottosen 2013: 14-15). Since Norway is allied with the USA in the Global War on Terror (GWT) in Afghanistan, the use of drones also has political and legal relevance for Norway.

2.3 Johan Galtung's theory of peace journalism

Relevant for this investigation is also Johan Galtung's model of war and peace journalism (Ottosen 2010). The theory of peace journalism builds on the dichotomy between what Galtung calls the approaches of "war journalism" and "peace journalism." His model includes four main points of contrast between the two approaches. 1. War journalism is violence-oriented, propaganda-oriented, elite-oriented and victory-oriented. It is often combined with a dualistic approach to conflict, seen as a zero-sum game where the winner takes all (as in sports journalism). A potential consequence is that war journalism contributes to escalating conflicts by reproducing propaganda and thereby encouraging continued violence (Galtung, 2002). 2. The peace journalism part of the model takes a moral and ethical point of departure, acknowledging the fact that media themselves play a role in the propaganda war. It involves a conscious choice to support peace: to identify alternative options for readers/viewers by offering a solution-oriented, people-oriented and truth-oriented approach. This, in turn, implies a focus on possible proposals for peace that the parties to the conflict (if they want it to continue fighting) might have an interest in suppressing. Peace journalism is people-oriented in the sense that it gives a voice to the voiceless. It is also truth-oriented, in the sense that it uncovers and exposes dishonest claims on all sides and investigates the role of propaganda as a means of perpetuating war (ibid.: 261-270). In the context of this study, a focus on short-term success in violent attacks on suspected al-Qaeda militants, without taking into consideration the negative consequences for the affected civilian population and the legal issues involved, appears to fall under the "war journalism" approach.

3. Drone strikes – some background details

Since 2001, the United States has been arming Unmanned Aircraft Systems (UAS), or drones, with missiles. They were first employed in combat early in October 2001. One of the first known controversial uses of drones was in Yemen in 2002, when specifically named individuals were killed. It was later revealed that for legal reasons the US Air Force (which was deploying drones at the time) had declined to conduct that mission; the CIA took over the operation and was willing to see it through (US Congress 2010:50). This appears to have paved the way for later drone deployment, in which the CIA organized and directed US drone strikes in Iraq and since 2004 against targets in Pakistan, Yemen, Afghanistan and Somalia. The number of drone strikes in Pakistan surged dramatically in 2008 and continued to climb in 2009; the numbers doubled between 2009 and 2010, and they became a key weapon in the warfare against al-Qaeda and the Taliban. Drone strikes have thus been a cornerstone of the Obama administration's military strategy. According to the report "Living Under Drones," 3,000 terrorists have been killed by drones, while as many as 800 civilians have also lost their lives as "collateral

damage." According to Jeremy Scahill's documentary film "Dirty Wars," 3,180 people were killed in Pakistan between 2004 and 2013 (Borgen 2013). In January 2012, President Obama made a rare acknowledgement of the use of drones during a video talk on Google+. He claimed that the drone strikes, carried out by the CIA rather than the military, were a "focused effort targeted at people who are on a list of active terrorists" (quoted from Amnesty International 2011). In another speech in May 2013, the President seemed to take cognizance of criticisms leveled against the use of drones and promised to restrict unmanned air strikes, shifting their operation from the CIA to the US military (NYT 22 May 2013). The report "Living Under Drones: Death, Injury, and Trauma to Civilians From US Drone Practice in Pakistan" describes the negative effects on civilians of drone strikes. It was published by the Stanford Law School International Rights and Conflict Resolution Clinic and the New York University School of Law Global Justice Clinic. In several points, the report underlines the serious consequences of drone attacks for the civilian population in the areas most heavily affected. While the press regularly reports on al-Qaeda suspects killed by drone strikes in Pakistan, Yemen or Somalia, it is the civilian population that suffers the most from the attacks:

„... US drone strike policies cause considerable and under-accounted-for harm to the daily lives of ordinary civilians, beyond death and physical injury. Drones hover twenty-four hours a day over communities in north-west Pakistan, striking homes, vehicles, and public spaces without warning. Their presence terrorizes men, women, and children, giving rise to anxiety and psychological trauma among civilian communities.“ (Living Under Drones 2012: vii)

4. Legal context: legal issues and the "Global War on Terror" (GWT).

The use of drones must, in my opinion, ultimately be seen in the context of the so-called "Global War on Terror" (GWT), where legal issues have also been underreported (Cole 2003). In his book *Enemy Aliens*, David Cole focuses on the treatment of suspected foreign nationals in the war on terror by so-called military tribunals (which operate outside the US judicial system). According to Cole, the lack of legal protection for suspected terrorists, who are subject to abuse and torture during interrogation, reflects an attitude of the US government that foreign nationals are not entitled to the same legal protections as American citizens (Cole 2003: 211). One consequence of this belief is a high level of torture and physical abuse of detainees by US forces and their allies during the "war on terror." Larry Siems examined over 140,000 government documents to prove that the level and amount of force used outside a legal framework is dramatically higher than has been acknowledged by US officials and the mainstream media (Siems 2011: 14-17). In my opinion, the systematic use of drones to kill suspected terrorists can be regarded in the same context. A complicating legal issue is related to the fact that four US citizens have already been killed in drone attacks. In an official statement, US Attorney General Eric Holder also defended the killing of two US citizens by drone attacks in 2011, when Anwar al-Awlaki and Samir Kahn were killed as al-Qaeda suspects in northern Yemen (*Klassekampen*, 7 March 2012). The American Civil Liberties Union (ACLU) protested against Holder's statements and expressed concern about the future of human rights in America (ibid.). When US officials defend the use of drones, they chiefly invoke the right of self-defense in the GWT. On 5 February 2013, NBC published a government white paper justifying the position that under certain circumstances US citizens could actually be killed by their own government outside the United States. Stipulated was that the targeted individual must be "a senior, operational leader of al-Qaeda or an associated force of al-Qaeda." The targeted person could be attacked, "without violating the Constitution or the federal statutes discussed in this white paper under the following conditions: (1) an informed, high-level official of the US government has determined that the targeted individual poses an imminent threat of violent attack against United States..." (Department of Justice 2013).

4.1 Legal controversy over use of drones

Speaking publicly in May 2013, President Obama gave a rare legal defense of drone strikes when he declared that the US was still at war with terrorist groups like al-Qaeda. "We are at war with an organization that right now would kill as many Americans as they could if we did not stop them first. So this is a just war – a war waged proportionally, as a last resort, and in self-defense," Obama declared at the National Defense University in Washington, DC (Frumin 2013). This "self-defense" argument is the main legal justification used by US officials for targeting both foreign nationals and US citizens (US Congress 2010). The president summarized the legal guidelines for the use of armed drones as follows, "I don't believe it would be constitutional for the government to target and kill any US citizen... Nor should any president deploy armed drones over US soil. But when a US citizen goes abroad to wage war against America and is actively plotting to kill US citizens... his citizenship should no more serve as a shield than a sniper shooting down an innocent crowd should be protected from a swat team" (quoted from Frumin 2013).

There are many legal aspects involved in the issue of drone use. While they cannot all be addressed in this paper, one fundamental question will be central to the discussion: Is it legal for one country to make drone strikes in another country, if the two countries are not officially at war? Some US politicians have condemned drone strikes, including former Representative Dennis Kucinich (Democrat from Ohio). He argued that when used against countries that are not at war with the

US, drones violate international law (De Beer 2011). An important legal issue often mentioned in the debate on the use of drones is that the drone strikes were conducted by the CIA in close cooperation with US President Obama. This means that the US Congress was not involved in the decision-making process, as is the case when conventional military operations involving US personnel take place in another country.

According to De Beer, another key legal issue is that according to international law the use of force must be necessary and must also comply with the principle of proportionality. This means that commanders must weigh the expected military benefits against the harm to civilians as a side-effect of a military attack, as reflected in Article 57 of the Geneva Convention on warfare. The Nuremberg Tribunal established the principle that an individual who violates the laws of war can be held accountable for his actions. Consider a case in which the mechanisms in a drone malfunction, causing harm for which specific persons would normally be held accountable. What about the person who targets a drone from a base in Nevada? Can he or she be legally included in the conventional definition of a battlefield combatant? (De Beer 2011: 23). De Beer's observation is that there are no cases where those operating drones on a daily basis have had to answer for their actions to a legal body. (De Beer 2011: 27).

4.2 US Congress and the legality of the use of drones

In a report of an 28 April 2010 hearing held by the Subcommittee on National Security and Foreign Affairs of the House Committee on Oversight and Government Reform, several of the principal issues mentioned above were discussed. The hearing was chaired by Representative John F. Tierney (Democrat from Massachusetts). In the summary of the minutes, the legal issues are presented as follows: "Although there were disagreements on several issues, most of the legal experts seemed to agree that there was no legal basis for the CIA to operate the drones. No, under the international law of armed conflict, the CIA does not have the right to carry out battlefield killings."

All the invited expert witnesses, Professor Mary Ellen O'Connell, David Glazier and Professor Kenneth Anderson, agreed that the international law applicable to warfare does not give combatants the right to kill – without warning and without facing prosecution – persons who are not members of the regular armed forces of a country, who are not subject to military discipline in a chain of command, and who are not instructed in the law of armed conflict. When Professor O'Connell was questioned about this, she went even further: "We are already facing 17 of our CIA agents under indictment in Italy for attempting to kidnap someone off the streets of Milan, an alleged person with ties to al-Qaeda. If that is what the rest of the world thinks is the right result with regard to kidnapping, you can imagine how the rest of the world views killing persons by the CIA. It is just a clear violation of international law" (all quotes from US Congress 2010).

In the subcommittee debate, Representative John Duncan (Republican from Tennessee) also raised the issue of double standards towards other countries that might be concerned about the use of drones. Would the US accept the right of other countries to use drones against criminals operating within the borders of the USA? Duncan expressed his view as follows:

„And I would just use an analogy. Think about the way the United States would feel. We have a lot of lawlessness on our border with Mexico. Mexico is justifiably unhappy that we are not able to restrain narcoterrorists from getting across the border, bringing weapons in, bringing persons back and forth. And they have made complaints to us and they have told us to stop these criminals from getting across the border. Should we allow their police or their military to use combat drones to strike at hotels or places in Arizona where the Mexican military thinks that some of these people are hiding? Absolutely not.“ (US Congress 2010)

5. Method

5.1 Empirical data

The sample for this study was collected by a systematic reading of articles in *Aftenposten* (print edition) and *The New York Times* (online edition) for the period 1 January 2012 - 30 June 2012. In addition, I used the search word "drone" in the searchable archives of *The New York Times* and *Aftenposten* (Retriever) for the same period. The period of investigation covered an early phase of the public debate on drone use and is not necessarily representative of the entire coverage of drone strikes in the two newspapers. I still find it important to know if the two newspapers addressed the question of whether or not the use of drones had a legal basis during this period, in an effort to help stimulate public debate on the topic.

5.2 Research questions

The research questions were:

1. (How) did *The New York Times* and *Aftenposten* address legal issues in their day-to-day news reporting on the use of drones?

2. (How) did *The New York Times* and *Aftenposten* address the legal aspects of the use of drones in editorials and commentaries?
3. (How) were the legal aspects of the use of drones discussed in letters to the editor?

The chosen method was a combination of quantitative and qualitative approaches.

5.3 Framing analysis

To identify the most relevant articles for investigating the research questions, all the articles identified by searching for the word "drone" in the databases were categorized according to pre-defined frames, and the stories about drones published in *Aftenposten* were compared to coverage in the *NYT* during the same time period.

This part of the research was inspired by the work of Robert Entman (1993), according to whom framing means to "select some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation for the item described" (Entman1993: 51).

In order to see how the major legal issues were dealt with in the overall coverage, the material was categorized according to the following frames:

1. *War on terror news frame*
In this frame, the major point is to highlight that al-Qaeda suspects were killed in a drone attack.
2. *Military technology frame*
In this frame, drone technology occupies the center of attention.
3. *Legal issues frame*
In this frame, international law is central. Included here are also stories asserting that the use of drones violates the UN Declaration of Human Rights.
4. *Diplomatic controversy frame*
In this frame, disagreements between governments on the drone issue are at the center of attention.
5. *Civilian casualties frame*
Here the consequences of drone warfare for the civilian population are the main focus.
6. *Civilian use/technology frame/entertainment*
This frame has little relevance to the research question, and the articles concentrate on the economic and technological aspects of drone warfare.
7. *Norwegian frame*
This frame is mainly preoccupied with Norwegian national politics.
8. *Other*

5.4 Genre

The material was also categorized according to genres. The following genres were used in the analysis:

1. News
2. Feature/reportage
3. Editorial
4. Letters to the editor
5. Blog/comment
6. Other

According to current journalistic practice, an editorial or a prominent commentary by a political editor reflects a newspaper's official position. A position on the use of drones expressed in an editorial will ordinarily carry more weight than a reference to a drone attack in a news report (Østbye 1989). Letters to the editor are also a means to contribute to the public debate. In deciding on whether to publish a letter on drones, an editor is choosing whether or not to make a position in the debate available to the reading public. Of course, if an editor defends a certain position, this will normally have more weight than a letter from a reader. This does, however, also depend on the authorship of a given letter to the editor. If the author is a former US president, his letter will usually be more influential than a letter from an ordinary reader.

5.5 Critical discourse analysis

As a second step, all the articles addressing the legal aspects were analyzed using Norman Fairclough’s principles of critical discourse analysis (Fairclough 1995, 2001). Norman Fairclough, strongly influenced by Foucault, emphasizes how the language used in a certain political or social setting constitutes the power to define which relevant discourses are placed at the front of the stage and which are kept in the background:

„This conception of power suggests that discourse and language are of central importance in the social process of modern society: the practices and techniques that Foucault places so much weight upon – interview counselling and so forth are to a substantial degree discursive practices. Thus analysing institutions and organisations in terms of power entails understanding and analysing their discursive practices.“ (Fairclough 2001: 50)

Based on the research questions, my hypothesis is that at least to a limited extent *Aftenposten* and *The New York Times* will approach legal issues starting from a principal point of departure. According to Fairclough’s line of reasoning, not paying attention to the issue of legality in using drones is in itself taking a partisan position. By ignoring the legal debate, or placing legal issues in the background, an author takes a discursive position.

5.6 The sample

The entire sample of material for the analyses consisted of 49 articles in *The New York Times* and 29 articles in *Aftenposten*. All the articles were analyzed and categorized.¹ This yielded the following results:

	News	Reportage	Editorial	Letter	Comm.	Total
WOT	11					11
Mil.Tech	2				1	3
Legal	3	1	1	8	2	15
Dipl. Contr.	6					6
Civilian cas.	2					2
Technology	2				2	2
Norwegian						
	28	1	1	8	5	49

Table 1: *New York Times* framing and genre 1.1.2012 to 1.7.2012

	News	Reportage	Editorial	Letter	Comm.	Other	Total
WOT	11			1		1	13
Mil.Tech	3				1		4
Legal	1	1	1	1	2		6
Dipl.Contr.	1						1
Civil. cas.							
Tech.	2						2
Norwegian	1						1
Other	2						2
Total	21	1	1	2	3	1	29

Table 2: *Aftenposten* framing and genre 1.1.2012 to 1.7.2012

A general observation based on these findings is that the news category is most significant for the further analysis. It should also be noted that although both of the newspapers published editorials on the drone issue, the *NYT* printed more letters to the editor than *Aftenposten*. One conclusion from this could be that the *NYT* is more willing than *Aftenposten* to encourage public discussion of the issue. A factor of uncertainty here is of course that we do not know how many letters each of the newspapers received on the topic.

1. A full overview of the coding is available in Ottosen 2012.

6. Results

To follow up on the research questions, I made a qualitative analysis of all the articles in frame category 3 (Legal issues frame), and also checked whether the legal issues come up in any of the other articles. Many articles on the civilian and commercial use of drones and on purely technological issues were not relevant to the research questions, and they will not be referred to below (see tables for full overview).

6.1 *New York Times* coverage of the legal issues

The largest category in the coverage of both the *NYT* and *Aftenposten* consists of articles in the "War on terror" frame. One such article was published by the *NYT* on 10 January under the heading "Three Killed as Drone Strikes Resume in Pakistan." The article is critical in the sense that it reveals problems, including the diplomatic tensions between Pakistan and the US. However, nowhere in the article is there any suggestion that these attacks might be illegal. I refer to this in such detail, because it is typical of how often news reports mention drone strikes as though they were "everyday occurrences" without contextualizing the legal issues involved.

President Obama is quoted in a rare pronouncement on the use of drones in a 30 January commentary article by Mark Lander, confirming that drones are actually used in the GWT: "Mr. Obama, in an unusually candid public discussion of the Central Intelligence Agency's covert program, said the drone strikes had not inflicted huge civilian casualties. We are very careful in terms of how it's been applied," he insisted. "It is important for everybody to understand that this thing is kept on a very tight leash." This rare admission of the use of drones did not cause immediate reactions in the columns of the *NYT*. However, a week later (on 5 February), in a small news item, Obama's assurance on civilian casualties was contradicted by a reference to a report by the London-based Bureau of Investigative Journalism, stating that rescuers hurrying to the scene of a drone strike to help victims often also become casualties ("collateral damage") in "a second follow-up strike." The report identified at least 50 civilians killed in such follow-up strikes.

In a 19 February news article entitled "Drones are playing a growing role in Afghanistan," the topic of legality is not mentioned, but the author compares the situation in Afghanistan with drone strikes in Pakistan and labels the use of drones "controversial." Then the author indirectly brings the legal issue into the picture: "The use of drones has expanded quickly and virtually unnoticed in Afghanistan. The Air Force now flies at least 20 Predator drones – twice as many as a year ago – over vast tranches of hostile Afghan territory each day. They are mostly used for surveillance, but have also carried out more than 200 missile and bomb strikes in the past in Pakistan, where the drones have gotten far more attention and proved more controversial for their use in a country where the United States does not have combat forces. There they are run by the CIA as opposed to the military, and the civilian casualties that they have caused as they have struck at leaders of al-Qaeda and the Taliban, amid Pakistani sensitivities over sovereignty, have stoked anger and anti-Americanism."

Since so many critical questions were asked about the use of drones, John O. Brennan, President Obama's top counter-terrorism adviser, responded in a speech referred to in the *NYT* on 20 April, under the title "Top US Official Says 'Rigorous Standards' Are Used for Drone Strikes." He offered what the *NYT* described as the "first extensive explanation of how American officials decide when to use drones to kill suspected terrorists." Defending drone strikes as "legal, ethical and wise," Mr. Brennan asserted that the president had directed officials to be more open about how they "carefully, deliberately and responsibly" decide to kill terrorist suspects – including what he described as "the rigorous standards and process of review to which we hold ourselves today when considering and authorizing strikes against a specific member of al-Qaeda outside the 'hot' battlefield of Afghanistan."

Brennan's legal position is presented in the form of a statement rather than an argument. He claimed that US drone deployment was "in full accordance with the law," but also admitted that civilian casualties are an issue: "We only authorize a strike if we have a high degree of confidence that innocent civilians will not be injured or killed, except in the rarest of circumstances." However, he also had to admit that, "despite the extraordinary precautions we take civilians have been accidentally injured, or worse, killed in these strikes."

6.2 *New York Times* opinion pages

In the opinion pages of the *NYT*, we find the most comprehensive framing of the legal issues. The editor of the *NYT* editorial page, Andrew Rosenthal, commented on the speech given by Brennan on 8 May in an editorial headed "Are Targeted Killings Legal?" The same issue was the topic of the only editorial in my sample of *NYT* articles published on 20 May. The title is "Too Much Power for a President." The editorial refers to a news article that appeared the day before that "revealed who was actually making the final decision on the biggest killings and drone strikes. President Obama himself. And that is very troubling." Even though the *NYT*'s editors were mostly concerned about the legal issues involving US citizens, contributors to the op-ed pages also touched upon other matters.

A 21 January opinion piece by political analyst Peter Singer discusses the legal issues under the heading "Do Drones Undermine Democracy?" The article asks concerned questions, stopping just short of challenging the legality of the operations: "For the first 200 years of American democracy, engaging in combat and bearing risk – both personal and political – went hand in hand. In the age of drones, that is no longer the case." Later in the article the lack of a democratic foundation for the use of drones is touched upon: "Yet this operation has never been debated in Congress; more than seven years after it began, there has not been a single vote for or against it." Singer ends the article with a warning about the potential violation of the US Constitution: "America's founding fathers may not have been able to imagine robotic drones, but they did provide an answer. The Constitution did not leave war, no matter how it was waged, to the executive branch alone. In a democracy, it is an issue for all of us."

On 24 June, former President Jimmy Carter joined in the debate. In a strongly-worded comment headed "A cruel and unusual record," he wrote: "The United States is abandoning its role as the global champion of human rights. Revelations that top officials are targeting people to be assassinated abroad, including American citizens, are only the most recent, disturbing proof of how far our nation's violation of human rights has extended. This development began after the terrorist attacks of Sept. 11, 2001 and has been sanctioned and escalated by bipartisan executive and legislative actions, without dissent from the general public. As a result, our country can no longer speak with moral authority on these critical issues." Using arguments compatible with Galtung's concept of peace journalism, Carter also referred to the UN Declaration of Human Rights and maintained that it represented "a bold and clear commitment that power would no longer serve as a cover to oppress or injure people, and it established equal rights of all people to life, liberty, security of person, equal protection of the law and freedom from torture, arbitrary detention or forced exile" (Carter 2012).

Carter judged that instead of strengthening these principles, the use of drones by the US government violated at least 10 of the Declaration's 30 articles, including the injunction against "cruel, inhuman or degrading treatment or punishment." He pointed to the ongoing use of drones in Pakistan, Somalia and Yemen and then expressed concern about civilian suffering: "These policies clearly affect American foreign policy. Top intelligence and military officials, as well as rights defenders in targeted areas, affirm that the great escalation in drone attacks has turned aggrieved families toward terrorist organizations, aroused civilian populations against us and permitted repressive governments to cite such actions to justify their own despotic behavior."

6.3 Coverage of drones in *Aftenposten*

An overview of the framing in *Aftenposten* articles shows that this newspaper featured a larger share of the "War on terror" news frame than did the *NYT*. Twelve of the 29 articles in *Aftenposten* fell in this category. The most dramatic difference between the two newspapers was that the "letters to the editor" category was quite large in the *NYT* (8 out of 49), but almost non-existent in *Aftenposten* (2 out of 29). Since the majority of critically-oriented articles about the legal issues appeared in the "letters to the editor" section of the *NYT*, I expected a less critical framing of legal issues in the overall *Aftenposten* sample compared to the *NYT*.

6.4 News category in *Aftenposten*

On 31 January, *Aftenposten* printed a short news article entitled "Eleven Killed in Drone Attack in Yemen." The story is based on a news item from the Norwegian News Agency (NTB). The short news brief is typical of other news stories with a primary focus on al-Qaeda as a target, rather than on legal matters: "Eleven militants, among them several alleged al-Qaeda leaders, were killed in a drone attack in Yemen the night before Tuesday, local inhabitants inform... it is not known who is behind the attacks, but the US is known to have used drones in earlier attacks."

On 9 February *Aftenposten* printed another similar news brief from Pakistan: "Four Killed in Drone Attack in Pakistan." The lead states: "In two days 14 people have now been killed in the north-western part of Pakistan." The main story is that two rockets had hit a house used by the Taliban. A related incident is mentioned – one in which ten people were killed in Miranshah in North Waziristan. No legal issue is raised, but at the end it is made clear that the US had halted its drone program in November 2011, when 24 Pakistani soldiers were accidentally killed.

Another news article using the "success in the war on al-Qaeda frame" was printed on 12 May with the title "This Is How Al Qaeda Was Tricked." This was an article about the CIA's success in preventing an attack on a passenger airplane on its way to the US. Here, the use of drones is only indirectly mentioned as a weapon in the war on terror.

A news article published on 14 May under the title "Bin Laden's Documents Released" refers to a statement by Bin Laden in one of the documents, where he blames American drones for causing "catastrophe after catastrophe."

In another news article published on May 26 under the heading "US Conducted New Drone Attack in Pakistan," the president of the Pakistani National Assembly was quoted as warning against the long-term consequences of drone warfare: "The

president said that Pakistan wishes to find a permanent solution to the drone issue, since they not only violate our sovereignty, but cause hatred in the population as a result of innocent civilians being killed," a spokesman said after the meeting.

The "civilian population" frame, with some tendencies to a peace journalism approach, was dominant in another news article by *Aftenposten*'s correspondent in the USA, Alf Ole Ask, published on June 4 and headed: "Obama – the Great Drone Warrior." Here, the report from the New American Foundation claimed that between 1,440 and 2,063 civilians were killed in Pakistan alone. This was followed up on the next day (June 5) by a mixed framing. The title, "Al-Qaeda's Second-in-Command Killed by Drones in Pakistan. Drones as a part of NATO Strategy," points to a victory-oriented "war on terror" frame. However, this is modified by a minor element of legal framing when a spokesman for the Pakistani Foreign Affairs Department is quoted as calling the attack "a violation of Pakistani sovereignty." On the next day (June 6), another story confirms that it was al-Qaeda's second-in-command, Abu Yahya al-Libi, who was targeted and killed in the attack.

6.5 Critical commentaries and editorials in *Aftenposten*

On June 7, *Aftenposten* journalist Kjell Dragnes published a critical commentary following up on stories from previous days about the killing of Abu Yahya al-Libi. The title of the article was "War by remote control." This article contextualized the recent events with background information, reflecting some of the principal issues connected with "distant warfare." Dragnes also touched upon the legal issues, raising the question: "Is the drone use a significant change in international law, a lower threshold for the use of weapons with unknown consequences?" He answers the question by quoting Peter W. Singer from the Brookings Institution, adding his own conclusion: "It's doubtful whether the civilian operators (from the CIA) can be called soldiers according to international law." He ends the article with a challenge to politicians: "Unmanned aircraft are not innocent computer games. They are war machines. The most important issue is whether the politicians who use the technology know what they are doing, before, if and when they are used." Dragnes also made another critical commentary during this period. On May 12 he published an article with the title "The dark side." He starts with a critical review of the use of torture in the GWT during the administration of George W. Bush. Even though President Bush's policy to employ harsh interrogation techniques was changed by Obama, Dragnes asks the rhetorical question: Is there a moral distinction between the methods of Bush and the ones Obama has continued (including the deployment of drones)? Instead of answering his question, Dragnes refers to former CIA-agent Jose Rodriguez, who had recently published a book with the title: *Hard Measures: How Aggressive CIA Actions Saved American Lives*. Rodriguez accuses Obama of applying a double standard, since he approves of the use of drones, even though he has discontinued the controversial interrogation methods. From a discourse-analytical viewpoint, Dragnes uses this debate to distance himself from the positions of both Obama and Bush with the following statement: "...the drone war against alleged al-Qaeda leaders continues: – We are the dark side, says Rodriguez. There are many dark aspects with the war on terror." The articles don't, however, give a clear answer on the legal issues, but at least they raise critical questions about them. On the whole, Dragnes contributes significantly to the public discussion by presenting critical perspectives on the drone issue.

Aftenposten's US correspondent, Alf Ole Ask, followed up on criticism by UN Special Rapporteur Christof Heynes (South Africa) in a commentary on June 22 with the title "US Criticized by UN for drone warfare." The report in question was presented to the UN Human Rights Council, which has 47 members, including Norway. Ask refers to Heynes' position that US deployment of drones violates several points of international law.

The legal issues are also brought into the picture by a statement of Pakistan's Ambassador Zamir Akram, who called drone attacks a violation of Pakistani sovereignty. Ask also obtained a comment from Norway's foreign minister, Jonas Gahr Støre, who in a rare statement affirmed that the use of drones raises "a number of demanding issues," such as international humanitarian law and international human rights. The minister underlined the assertion that according to humanitarian law the challenge is to ensure that attacks will be aimed solely at military targets. Støre also pointed out that drone strikes disproportionately affect any civilians who chance to be nearby when they occur. Stopping short of openly condemning US policy, Støre affirmed: "From the Norwegian side we have underlined expectations that states using such weapons would respect international law." Overall, the articles by *Aftenposten*'s US correspondent made a noteworthy contribution to the public debate on the drone strike issue.

The only editorial to appear in *Aftenposten* during the sampling period was published on 24 June under the title "Problematic Warfare with Drones." Interestingly enough, this was the very same day the *NYT* published Jimmy Carter's harsh condemnation of the use of drones, summarized above. The editorial refers to the above-mentioned criticism by Christof Heynes and does not take a clear stand on the legal aspects of the use of drones, but concludes that something has to be done in what are called "grey zones" of international law, dealing with drones in relation to "basic principles such as state sovereignty and the legal protection of individuals."

6.6 Letters to the editor in *Aftenposten*

In a discourse analytical context, it is of interest to know what views on the drone issue are made available in the public debate. There are only two "letters to the editor" in *Aftenposten* during this period. The first has the title "The War on Terror in the election campaign" and was written by Hilde E. Restad, who is a Research Fellow at the Norwegian Institute for Foreign Affairs. The drone issue receives only modest attention in the article. The author mentions the "use of drones and extra-judicial executions of US citizens abroad who are suspected of terrorist activities" as an example of Obama's taking one step further on the controversial legal issue. However, the author does not take a clear stand on the drone debate, as we saw with former President Jimmy Carter. This article confirms the same tendency we found in the *NYT* material, for the most critical articles to be published in the "letters to the editor" section. The second letter was published on June 28 by Mads Harlem, head of the Department of International Law in the Norwegian section of the Red Cross. Under the title "The rules must be adapted," he refers to the editorial mentioned earlier and makes the point that all parties are obligated to comply with humanitarian law, even if drones are explicitly mentioned. He makes his legal position clear: Instead of developing new rules for the use of drones, states should also seek to clarify how the current rules can be applied to drone deployment. If the Geneva Conventions still command universal assent, we must be able to adapt these legal prescriptions to high-tech developments. It is important that the debate over drone warfare should not undermine existing international law, but rather shore up its legal principles.

The fact that we found only two letters to the editor in the *Aftenposten* sample might give the impression that *Aftenposten* focused on legal principles to a lesser degree than did the *NYT*. On the other hand, each of these letters indirectly takes a stand against the use of drones on legal grounds. The commentaries by the *Aftenposten* journalists Ask and Dragnes contributed to the critical discourse on drones and contain elements of peace journalism. But all in all, the readers of the *NYT* were better informed in detail about the controversial legal issues involved in using drones than were *Aftenposten* readers.

7. Conclusions

Findings from earlier comparative studies suggest that Norwegian media depend on US perspectives and are loyal to the security-policy orientation of NATO cooperation (Nohrstedt & Ottosen 2001). An interesting finding of this study is that the comments and editorials in *Aftenposten* had some critical perspectives for dealing with the use of drones, as well as treating legal issues. Could it be that this was inspired by letters to the editor in the *NYT*? Perhaps only when influential voices in the American public debate challenged the use of drones could *Aftenposten* summon up the courage to raise critical questions. A follow-up study, including interviews with the participating journalists is needed to answer these questions.

The first research question dealt with the problematic of whether the legal issues were being adequately dealt with in daily news reportage. Here we see clear parallels between the news coverage in the *NYT* and in *Aftenposten*. The main framing in the day-to-day news reportage on drone use rarely made a point of discussing the legality issue. Sometimes legality is mentioned briefly in the text, but never in titles and leads. In the news articles, legal issues were usually brought up indirectly through references to state sovereignty in comments by politicians. But in headlines or as a main point in the news story, the issue is never addressed of whether the use of drones is illegal in a context in which the US is not engaged in a declared war with the country where it makes a drone strike.

The second research question was whether the legal aspects of the use of drones were mentioned in editorials and commentaries. *Aftenposten* and the *NYT* each published one such editorial. The editorial in the *NYT* indirectly touched on the legal aspects in a discussion about whether it was right to grant so much power to the president that he could decide at his own discretion when to use drones. The editorial did not, however, raise the question of the legal status of deploying drones in attacks as such, nor did it go into the core legal issues discussed in the hearing in the US Congress. In *Aftenposten* the editorial covered legal aspects, but did not take a clear stand on the legality of drones, instead framing the issue as located in a legal grey zone. In two commentaries, *Aftenposten's* journalists discuss the legality and challenge politicians to devote more serious attention to the principal issues raised by drone strikes. Even the Norwegian foreign minister is questioned on the legal issues, and somewhat vaguely admits that serious legal questions are involved – but without directly criticizing the US.

The third research question asked whether legal concerns are presented in letters to the editor. In the *NYT*, several articles directly discuss the legal issues and express concern that the long-term consequences of using drones without a legal justification and causing large numbers of civilian casualties might backfire on the US. The two letters to the editor in *Aftenposten* also clearly challenged the lack of a legal basis for the use of drones. The main difference between the *NYT* and *Aftenposten* is that there were many more contributions by readers in the *NYT*. Common to the two newspapers was that this clear message from readers (who included a former US president) was not reflected in the day-to-day reporting in short news stories on incidents where drones were used and suspected al-Qaeda fighters killed. Combs' argument that framing in day-to-day reportage is often influenced by elite sources could be part of the explanation. Since the legal aspects of the

use of drones were not part of the public discourse among politicians at the time, the mainstream media might be reluctant to bring up such provocative issues in ordinary news reporting. The lack of attention to the civilian population and the "win"-oriented style used in short reports on suspected al-Qaeda fighters killed is consistent with Johan Galtung's concept of war journalism. Since the concern expressed so clearly by readers was not reflected in news coverage, the conclusion is that during the period under investigation the *NYT* and *Aftenposten* did not live up to expectations that newspapers would challenge politicians by exercising their "watchdog function" on the issue of the legal aspects of drone strikes. When well-known persons such as former President Jimmy Carter so vigorously criticize US government policies, one might perhaps expect that this would in itself be relevant as a news story for the front pages of the *NYT*.

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Appendix

Quoted articles from *New York Times*:

- Killed as Drones Strikes Resume in Pakistan. 10.01.2012
- Do Drones Undermine Democracy? 21.01.2012
- Drones Are Playing a Growing Role in Afghanistan. 19.02.2012
- US Said to Target Rescuers at Drone Sites. 05.03.2012
- Top US Official Says 'Rigorous Standards' Are Used For Drone Strikes. 30.04.2012
- Are Targeted Killings Legal? 08.05.2012
- A Cruel and Unusual Record. 24.06.2012

Quoted articles from *Aftenposten* (author responsible for translation):

- Eleven Killed in Drone Attack in Yemen. 31.01.2012
- Four Killed in Drone Attack in Pakistan. 9.02.2012
- The War on Terror in the Election Campaign. 21.03.2012
- This Is How Al Qaida Was Tricked. 12.05.2012
- Bin Laden's Documents Released. 14.05.2012
- US Conducted New Drone Attack in Pakistan. 24.05. 2012
- Obama - The Great Drone Warrior. 04.06.2012
- Drone Attacks Against Al Qaida's Second in Command. 05.06.2012
- US has Killed Al Qaida's Second in Command. 06.06.2012
- War by Remote Control. 07.06.2012
- US Criticised by UN. 22.06.2012
- Problematic Warfare with Drones. 24.06.2012

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