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The role of the U.S. judicial branch during the long war : drone courts, damage suits, and Freedom of Information Act (FOIA) requests / Lesley Wexler

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Abstract:	<p>What role, if any, do courts have to play in regulating the use of drones for targeted killing? This chapter suggests that the judiciary may play an important role in the debate over the executive branch's decisions regarding IHL, even if it declines to speak to the substance of such cases. While this chapter remains skeptical that courts will ever reach the merits on IHL questions, the chapter concludes by suggesting that creative use of the judiciary has helped insert IHL into the public debate over targeted killings to encourage greater accountability. It discusses the executive branch's behavior in the shadow of the judicial and legislative branches. First, even as the Obama administration failed to acknowledge drone strikes explicitly, a number of government officials gave speeches providing some sense of the justifications for and the limitations upon targeted killings. Second, members of the Obama administration began leaking documents providing extensive details on legal questions surrounding targeted killings, including some relating to the application and interpretation of IHL norms. Lastly, the Obama administration efforts to institutionalize its targeted killing practices may enhance compliance with IHL norms and create more significant internal oversight and review. The final part concludes by noting additional reform measures to bolster these protections in the absence of a stronger judicial role.</p>
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