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Don't Fear the Reaper
An Analysis of the United States' Drones

A Capstone Project Submitted in Partial Fulfillment of the
Requirements of the Renée Crown University Honors Program at
Syracuse University

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Abstract

Wars and the strategies used to fight them have constantly evolved throughout the history of mankind, simultaneously revealing our innovative brilliance and our inherent inability to avoid conflict with one another. The current state of the United States' "War on Terror," composed of the Afghanistan conflict and outlying operations in countries such as Somalia, Yemen, Pakistan and elsewhere around the world, has spurred exemplary advances used to combat a new type of enemy. Thus enters the drone, a remotely piloted aircraft that can be used for reconnaissance purposes or offensive targeting operations.

The drone is unique in that the pilot is not located in the aircraft, but instead remotely controls the aircraft from a distance that can range from a few miles to halfway around the world. At a cruising altitude, cameras on the drone can zoom in on an object or person with such clarity that they can read license plate numbers and even allow the pilot to identify individuals on the ground. Such a tool has infinite uses in warfare, particularly against the insurgent enemy that the United States fights today. However, since their debut to the battlefield, the use of drones has been met with skepticism and claims of illegality.

The purpose of this capstone thesis will be to analyze the drone as an instrument of warfare and to determine: (1) whether drones are even a "legal weapon" to use in war; (2) whether the manner in which the United States' drones are being used in the Middle East today is legal and ethical; (3) and lastly, if indeed drones are a legitimate weapon of war, are they an effective contribution to the United States' strategy of counterinsurgency and counter-network operations worldwide.

To accomplish these three goals, an analysis will be conducted of both domestic and international laws regarding the conduct of warfare to establish whether drones and the manner in which the United States has been employing drones are legal. Secondly, this thesis will break down the United States' strategy and tactics in combating hostile non-state actors worldwide to first see what the objectives and end goals are, and then to see if the benefits of using drones outweigh the costs.

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Preface¹

“We are not fighting so that you will offer us something. We are
fighting to eliminate you.”
Hussein Massawi, Hezbollah

The Rise of al-Qaeda

¹ This preface is not designed to explain the entire history, nor all of the events that led to the United States' current military position in the Middle East. That task is large enough to have numerous books and theses written on it, in fact there are many such works in existence today. It is written as a basic introduction into the rise of the jihad movement, the creation of the al-Qaeda network and the United States' presence in the Middle East today for those readers who may not be familiar with that history.

There are two histories which are significant to understanding the rise of the al-Qaeda network and its reasons behind conducting the September 11, 2001 terrorist attacks: a history of the origins of jihad, and a history of the formation of the al-Qaeda network and how Osama bin Laden came to be its leader. Both of which will briefly be outlined in this section of the preface.

The concept of jihad is an ancient one in which each Muslim has an internal struggle to live by the Five Pillars of Islam in order to be a “good” human being in the eyes of Allah and, correspondingly, a violent external struggle for the Islamic religion.² These two struggles became known as the Greater and Lesser Jihad as well as the Defensive and Offensive Jihad. Throughout the history of the Islamic religion the concept of jihad has been used to mobilize Muslims to take up arms against numerous enemies that religious leaders have deemed worthy of fighting. In the mid-1900s, Sayyid Qutb, in addition to mentoring many future members of al-Qaeda’s leadership including Ayman al-Zawahiri, theorized that the world had fallen into Jahiliyya.^{3 4} He believed that Islam needed to return to its purest form, any nation with laws based on anything other than the Sharia⁵ were jahili and that Jihad was necessary to purify Islam and create the Muslim state. Most importantly however, Qutb stated that it was the duty of all Muslims to destroy all jahili systems because of the obstacles that they put in the way of a pure Islamic system. Qutb was executed in the 1960s before he could see his

² Sageman, Marc. "The Origins of Jihad." *Understanding Terror Networks*. Philadelphia: University of Pennsylvania, 2004. 1-24. Print.

³ The ignorance that plagued the world before the arrival of the Prophet

⁴ Sageman, Marc. "The Origins of Jihad." *Understanding Terror Networks*. Philadelphia: University of Pennsylvania, 2004. 1-24. Print.

⁵ Islamic Law derived from the Qur’an

dream realized, however, he, along with other Islamic scholars and religious leaders, redefined the jihad into a concept that would be used in the future to initiate war against the west.

The history of the creation of the al-Qaeda network began with Sheikh Abdallah Azzam. Azzam fought with the Egyptian Salafi Mujahed during the Afghan War against the Soviet Union. He believed in a jihad to cast the Christians out of the Muslim lands and used his association with the mujahed to create networks of the most influential, motivated and skilled mujahedin fighters around the world.⁶ However, Azzam's most famous and most interesting quality was that he was the teacher and mentor of Osama bin Laden prior to Azzam's death.⁷ With his death, Osama bin Laden became the undisputed leader of the network that he and Azzam had begun to create. All of Azzam's contacts and the details of his mujahed network passed to bin Laden, which would become a centerpiece of the future al-Qaeda network.

Osama bin Laden used his fortune to begin to train former mujahedin fighters in his training camps and then allowed them to travel back home to spread the jihad worldwide.⁸ The training camps were originally in Afghanistan, Bosnia, Yemen, the Philippines and the Sudan; the first al-Qaeda trainees were

⁶ Sageman, Marc. "The Origins of Jihad." *Understanding Terror Networks*. Philadelphia: University of Pennsylvania, 2004. 1-24. Print.

⁷ Abdallah Azzam was killed by a car bomb in 1989. Although no one took credit for the attack and no culprit was ever discovered, it was widely known that Azzam and bin Laden had numerous arguments about the future of jihad at the time. Bin Laden's involvement in the event is still unclear to this day.

⁸ An idea that greatly differed from Azzam's view, who believed that al-Qaeda should concentrate its efforts in Afghanistan to create an Islamist government and to combat Israel.

said to have spread to the Philippines, Yemen, Kashmir, Indonesia and Egypt.⁹ This process began the global jihad. Some of al-Qaeda's first operations were supporting other terrorist organizations, including the Egyptian Islamic Jihad (EIJ),¹⁰ bringing bin Laden and al-Zawahiri together. Al-Qaeda headquarters relocated from Pakistan to the Sudan and finally to Afghanistan in 1996.¹¹ The Taliban, the ruling authority in Afghanistan at the time, maintained good relations with Osama bin Laden and the al-Qaeda organization. This move allowed al-Qaeda complete freedom, which they had never had previously, within the Afghan borders to train and conduct operations.

With the move to Afghanistan, the final piece of the logistical puzzle that made al-Qaeda an international terrorist network capable of conducting a global jihad was in place. In August 1996 Osama bin Laden issued a fatwa,¹² and co-wrote another in February 1998 with Ayman al-Zawahiri, declaring war against the United States to Muslims worldwide.¹³ The end goal of bin Laden and al-Zawahiri's dream was the existence of an Islamic State, independent of western influence, and eventually, the eradication of western culture and society. The development of the idea of jihad, the historical development of the al-Qaeda network and the philosophy of Osama bin Laden ultimately led to the global jihad that we have seen in the past two decades.

⁹ Sageman, Marc. "The Evolution of Jihad." *Understanding Terror Networks*. Philadelphia: University of Pennsylvania Press, 2004. 25-59. Print.

¹⁰ Ibid.

¹¹ "The Foundation of New Terrorism." *9-11 Commission Report*. National Commission on Terrorist Attacks Upon the United States Web. 10/5/2011.

¹² bin Laden, Osama. "Osama bin Laden's 1996 Fatwa " 8/1996 Web. 10/5/2011 <http://www.pbs.org/newshour/terrorism/international/fatwa_1996.html>.

¹³ bin Laden, Osama, and Ayman al-Zawahiri. "Al Qaeda's 1998 Fatwa " 2/1998 Web. 10/5/2011 <http://www.pbs.org/newshour/terrorism/international/fatwa_1998.html>.

The Aftermath of 9/11/2001

Following the attacks of September 11, 2001, the United States became decisively engaged in an armed conflict with the al-Qaeda terror network as well as insurgents in Afghanistan. This conflict, labeled Operation Enduring Freedom (OEF), would completely redefine and restructure the manner in which the United States' military conducts offensive operations and counterinsurgency operations against non-state enemies. The al-Qaeda network was a type of enemy that U.S. forces were not accustomed to fighting, not confined by the limits of a state, it resided or held influence in Afghanistan, Somalia, Yemen, the Philippines, Pakistan and other locations around the world. It also was not limited by the restrictions of conventional warfare, choosing instead to conduct guerrilla warfare and establish insurgencies to fight the United States over the local populations of many countries around the world. This would give them an advantage, rather than conducting open assaults on U.S. forces, which would surely lead to defeat, they would fight to control local populations, which U.S. leaders and soldiers would most certainly be ignorant of. This idea, as U.S. strategists would discover, would prove to be al-Qaeda's greatest advantage and the United States' greatest obstacle in the conflict.

President George W. Bush theorized that the spread of democracy, in the long term, would be the solution to combating terrorism. In the short term, however, he outlined four goals for OEF: "preventing attacks by terrorist networks, denying Weapons of Mass Destruction to rogue states and terrorist

allies who seek to use them, denying terrorists the support and sanctuary of rogue states and denying terrorists control of any nation they would use as a base and launching pad for terror.”¹⁴ All of these goals, which were used as a starting point in the effort to defeat al-Qaeda, involved a campaign with many fronts, in many places around the world. As a state actor, the U.S. was limited in its ability to follow al-Qaeda across international borders. Al-Qaeda leaders quickly fled over the Pakistan-Afghanistan border to seek protection in the Federally Administered Tribal Areas (FATA) in Pakistan where they knew U.S. conventional forces could not follow. Without the refuge of Afghanistan, al-Qaeda reestablished its headquarters in Pakistan and began to send leaders and money to other locations around the world including Somalia and Yemen where they would not be as easily hunted, in an effort to re-strengthen the network’s ability to attack Europe and America. President Bush, recognizing that sending conventional forces to these locations would be costly and would take focus away from the fight in Afghanistan, began utilizing alternative forces and tactics to continue to fight al-Qaeda despite their ability to reestablish themselves in other countries around the world...

¹⁴ "National Strategy For Combating Terrorism "Web. 9/5/2011 <<http://georgewbush-whitehouse.archives.gov/nsc/nsct/2006/>>.

The Current Status of the United States' Drone Program¹⁵

“We have just won a war with a lot of heroes flying around in planes. The next war may be fought by airplanes with no men in them at all.... Take everything you've learned about aviation in war, throw it out the window, and let's go to work on tomorrow's aviation, it will be different from anything the world has ever seen.”

General of the Air Force Henry H. Arnold
Statement Made in 1949

The Drone

A new technological capability was developed by the United States in its effort to locate and destroy al-Qaeda and insurgent leaders in countries around the world. Unmanned Aircraft Systems (UASs), also known as Unmanned Aerial Vehicles (UAVs)¹⁶, were seen as one of the most effective means to reach terrorists anywhere in the world. More casually known as “drones,” these are

¹⁵ The content, statistics and facts of this section are accurate as of April 17, 2012

¹⁶ Although the academic community uses these terms to describe these aircraft, it is worth noting that operators and many military and political strategists dislike these two terms because of the implication that the aircraft are “unmanned” or not controlled by humans. The aircraft is “unmanned” in the sense that no one is physically in the vehicle, however, they are always controlled by a human pilot in a remote location.

fixed winged aircraft piloted remotely, sometimes from thousands of miles away. Although drones were originally designed as reconnaissance tools to be used by the military to simply locate enemy forces or scout terrain ahead of a ground force, drones quickly evolved with the capability to carry weapon systems. In fact, the military and CIA's drone fleets have been equipped with AGM-114R Hellfire Missiles, each costing roughly \$65,000,¹⁷ and each having a 20 pound warhead capable of reaching targets 8000 meters away.¹⁸ The most commonly used drones are the Predator and its larger brother the Reaper because of their status as "weaponized drones," capable of carrying Hellfire missiles for thousands of miles without needing to refuel.¹⁹ ²⁰ The ease of changing pilots at a control station rather than having to land a conventional fighter to switch pilots is an additional noteworthy benefit to utilizing drones.

Drones have been used heavily since the beginning of Operation Enduring Freedom and the United States' "War on Terror," killing many insurgents and al-Qaeda leaders around the world. The first known drone strike is believed to have occurred on November 3, 2002, when a Predator drone targeted a car traveling in Yemen, killing five men including Qaed Senya al-Harithi, a known al-Qaeda leader directly responsible for the bombing of the *USS Cole*.²¹ Since the first drone strike, the use of drones in combating insurgents and al-Qaeda has

¹⁷ "France To Buy Hellfire Missiles at U.S. Price - Defense News "Web. 9/5/2011 <<http://www.defensenews.com/story.php?i=3354207>>.

¹⁸ "Boeing/Lockheed Martin AGM-114 Hellfire "Web. 9/5/2011 <<http://www.designation-systems.net/dusrm/m-114.html>>.

¹⁹ "Factsheets : MQ-1B Predator "Web. 9/5/2011 <<http://www.af.mil/information/factsheets/factsheet.asp?id=122>>.

²⁰ "Factsheets : MQ-9 Reaper "Web. 9/5/2011 <<http://www.af.mil/information/factsheets/factsheet.asp?fsID=6405>>.

²¹ Alston, Philip. *Report of the Special Rapporteur on Extrajudicial, Summary Or Arbitrary Executions to the United Nations Human Rights Council, Philip Alston*. 3 Vol. , 2010. Print.

increased at an exponential rate. All branches of the U.S. military have used a wider variety of drones in Iraq and Afghanistan other than the Reaper and Predator to include smaller models, hand-held models and models that are designed for reconnaissance purposes only.

The CIA's Drone War

After the start of the Afghanistan conflict, al-Qaeda leaders and members fled across the border to Pakistan and to other locations that the organization had been spreading to prior to the invasion. It became clear at that time that the conventional war tactics of invading an enemy and destroying them was not going to be effective enough to completely destroy al-Qaeda. In response to this, special operations forces were used to hunt down al-Qaeda members who resided outside of the “hot battlefields” in Afghanistan and Iraq. Drones were exactly the technological innovation that was needed by the United States to track down and target al-Qaeda. They are capable of flying for much longer than conventional fighters and able to individually track the movements of select individuals or groups as a whole. They can fly at extremely high altitudes at a relatively slow speed while remaining with a target. Their classification as “unmanned” creates an attitude, in the political and legal realms, that they are less intrusive on a foreign nation’s sovereignty than ground forces or a traditional airstrike.

U.S. officials quickly realized that al-Qaeda had spread to numerous locations around the world: Pakistan, Yemen, Somalia and Libya to name a few. Although it had been suspected in the early to mid 2000s that the United States

had struck against al-Qaeda using drones in Yemen,²² it had been unconfirmed and it was presumed to be limited to a few isolated incidents. The bulk of the CIA's drone strikes occurred in Pakistan, particularly in the FATA region and along the Afghanistan-Pakistan border.²³ It is unknown exactly how many drone strikes have occurred since their first appearance in 2002 because the United States government has denied using drones outside of the Afghanistan and Iraq conflicts and refuses to disclose any information about the program or its activities. Despite the limit of open information, a small number of individuals studying drones have collected public data on drone strikes from news reports and compiled them. Massive discrepancies have surrounded the statistical performance of U.S. drones because of the United States government's refusal to release information about individual strikes. John Brennan, one of President Obama's top counterterrorism advisors, publicly stated early in 2011 that the surgical precision of drone strikes have led to no collateral damage within the past year.²⁴ Similar claims have been made by other U.S. officials, some even suggesting that the total amount of collateral damage for drones since their inception has been in the single digits of civilian casualties.

“The Long War Journal,” a project started by the Foundation for Defense of Democracies conducted a study of known drone strikes in Pakistan and reached

²² "Wikileaks cable corroborates evidence of US airstrikes in Yemen | Amnesty International" Web. 9/1/2011 <<http://www.amnesty.org/en/news-and-updates/wikileaks-cable-corroborates-evidence-us-airstrikes-yemen-2010-12-01>>.

²³ This statement is based upon the fact that while Pakistan is a more developed nation with an active media presence to monitor drone strikes, countries like Yemen and Somalia are not. It is assumed, with the information at hand, that this statement is true but there are likely to be a number of drone strikes conducted by the United States in Yemen that were never properly recorded or reported.

²⁴ Shane, Scott. "C.I.A. Claim of no Civilian Toll in Drone Strikes." Print. 8/11/2011 2011.

conclusions that generally supported the U.S. officials' claims of low collateral damage. "The Long War Journal" concluded, up to this point, that the United States has made roughly 290 airstrikes in Pakistan since 2004,²⁵ and that the vast majority of drone strikes in Pakistan took place in North or South Waziristan. The project also concludes that those strikes have led to 2,227 "al-Qaeda and affiliate deaths," with only 138 civilian casualties.²⁶ Although it does not arrive at the same conclusion as John Brennan and other government officials who have claimed low amounts of civilian casualties, the findings of this study certainly support the idea that U.S. drones have caused relatively little civilian harm when compared to the amount of military gain that they have provided.²⁷

Peter Bergen of the New America Foundation created a similar study called the "Year of the Drone" in which he used and cited individual news reports to come up with, what he claims, is the most accurate estimate of drone strike numbers and casualty statistics in existence today. Bergen concludes that 326 drone strikes have been conducted in Pakistan since the first known use of drones by the United States in that country, almost exactly what was found in the "Long War Journal."²⁸ Bergen also projects the same progression of strikes annually, building up to a peak in 2010. Bergen estimates that between 1,402 and 2,184 militants have been killed since 2004, and between 293 and 471 civilian casualties

²⁵ Roggio, Bill, and Alexander Mayer. "Charting the Data for US Airstrikes in Pakistan, 2004-2012." March 30, 2012. Web. The Long War Journal. April 17, 2012 <<http://www.longwarjournal.org/pakistan-strikes.php>>.

²⁶ Ibid.

²⁷ In this statement, "military gain" can be defined as the successful targeting and destruction of al-Qaeda members and affiliates.

²⁸ Bergen, Peter, and Katherine Tiedemann. "The Year of the Drone." April 4, 2012. Web. April 17, 2012 <<http://counterterrorism.newamerica.net/drones#2011chart>>.

have resulted in the drone strikes in that same time period.²⁹ Bergen goes even further by tallying the total amount of “militant leaders” who were killed in these strikes, and concludes that 43 have been killed since 2004.³⁰

The statistical data behind drone performance is certainly a source of debate and sparks arguments that have surrounded academic and strategic discussions of drones throughout the history of their use. Because of these debates and the United States government’s refusal to release information about drone strikes, the U.S. drone targeting program has undergone scrutiny from the international community. The United Nations and numerous human rights organizations have led the charge,³¹ claiming that the lack of transparency makes it impossible for a third party to determine if the program is being used in accordance with International Humanitarian Law and various treaties. Many ask from a legal perspective, and rightfully so, whether or not drones are being legally used or whether or not they can even be considered legal weapons of war because of their potential to provide results where civilian harm outweighs military gain.

The question of drone legality expands drastically in the strategy that the United States is using to employ drones in the fight against al-Qaeda. Drone strikes within Iraq and Afghanistan have been generally accepted as legal by the majority of supporters and critics of drones alike, however, the United States’ use of drones stretches well beyond the borders of Iraq and Afghanistan. As previously stated, Yemen, Somalia, Libya and Pakistan have all had drone strikes

²⁹ Ibid.

³⁰ Ibid.

³¹ Worsnip, Patrick. "U.N. official calls for study of ethics, legality of unmanned weapons" Web. 9/1/2011 <<http://www.washingtonpost.com/wp-dyn/content/article/2010/10/24/AR2010102400035.html>>.

occur within their borders. This has led many legal experts to question the legitimacy of a campaign to conduct targeted killings in multiple nations around the world and whether or not such action breaches the sovereignty of these nations. The last major source of legal problems with drones is the fact that all strikes occurring outside of Iraq and Afghanistan are conducted by the CIA. This is potentially problematic for two reasons: first, that the CIA is a civilian-run organization that is conducting targeted killings, an idea that many have challenged; second, that some legal scholars have argued that CIA operatives are not combatants and are therefore not afforded immunity for their actions.

Drones have been on the move at a strategic level. Drones entered the U.S. conflict with al-Qaeda as a tactic that could be used to surgically target and destroy al-Qaeda leaders in order to cripple the organization by removing any figureheads, financial backers, tacticians or philosophical leaders who recruit individuals and plan or conduct attacks for al-Qaeda. Progressing from their first use in Yemen in 2002, the drone strike tactic has been used more and more heavily in Pakistan. By the end of 2008, the level of drone usage became so high that drones, in the scope of the United States' conflict with al-Qaeda, merited reclassification in their role in the conflict. Drone strikes made a shift from a tactic to eliminate al-Qaeda leaders, to a strategy to combat al-Qaeda as a whole. Admittedly, not only was the number of drone strikes rising, but the geographic locations where they were occurring expanded from Pakistan and Yemen to an increased use in Yemen, Somalia and, most recently, the first instance of a drone

strike in Libya.³² All of which begs the question, just what is the role of drones in the ongoing fight against al-Qaeda and what will it become in the future?

The Big Question

Drones have become an intricate part of the United States' pursuit of al-Qaeda and its affiliates in the conflict. They have ultimately evolved from a tactic selectively used to eliminate key leaders to a strategy employed to combat the al-Qaeda network around the world. The question of drone legality could not be more complex and multifaceted. International Law was written and developed following the world wars with the intention of governing conduct in a conventional war. Little has been done to advance or evolve these frameworks in meaningful ways to make them applicable to unconventional wars against enemies that do not wear uniforms and in fact have chosen hiding among the civilian population as their method of fighting. Debate has surrounded the United States' counterinsurgency (COIN) doctrine since its development, and the role of drones within COIN has become a very polarizing discussion. It seems that COIN's objective to win the "hearts and minds" of the civilian population has led scholars and strategists to question whether or not aspects of COIN doctrine such as drone use are actually accomplishing that objective. Because drones are used for lethal purposes, and civilians are at times exposed to the attacks, it is not at all unreasonable to ask whether or not drones have a place within COIN operations.

³² Raddatz, Martha, and Kirit Radia. "Pentagon Confirms First Predator Drone Strike in Libya" Web. 9/25/2011 <<http://abcnews.go.com/International/pentagon-confirms-predator-drone-strike-libya/story?id=13442570>>.

The Legality of Targeted Killings and the United States' Drone Program

“In today's wars, there are no morals. We believe the worst thieves in the world today and the worst terrorists are the Americans. We do not have to differentiate between military or civilian. As far as we are concerned, they are all targets.”

Osama bin Laden
In his 1996 Fatwa

Imagine that today, right now, the deputy Director of the CIA receives confirmation that a terrorist on the president's "Kill or Capture List" has been located. Thirty minutes from now, a drone takes off from a classified airbase somewhere in the Middle East, flies to the location that the terrorist is said to be and confirms that the intelligence is indeed accurate. The drone operator receives an order to destroy the target and launches one of the Hellfire missiles on the aircraft. After the dust clears, the drone continues to fly over the target and confirms that the target was destroyed. The drone then flies back to the airbase and lands. Mission completed.

Although this sequence of events may seem surreal to many readers, it is the process that is occurring dozens, even hundreds, of times per year resulting in hundreds of fatalities. The question that must be asked now is whether or not this tactic of eliminating terrorists by the United States is legal. What if this terrorist was killed in Afghanistan? Would it still be legal if the strike had been conducted in Yemen? What if the Yemeni government told the United States that it did not consent to such a strike? If the terrorist was alone in a field, would it be different if he was hiding in a school or standing in the middle of a market? Would it make

a difference if the terrorist was a mid-level leader or if he was an al-Qaeda mastermind like Ayman al-Zawahiri?

These are the questions that U.S. strategists, international critics and the academic and legal communities have been asking over the last nine years since the first known use of drones. Unfortunately, international law and the laws of war allow each individual nation to interpret, relatively freely, much of what is written regarding concepts such as necessity and proportionality. As such, it is extremely difficult to ascertain a definite answer as to whether or not the manner in which the United States uses drones is legal and such an answer is often based on point of view rather than clearly defined laws, treaties and precedents. The following section will address the legality of “targeted killings” and the United States’ drone use around the world.

The Legality of Drones as a Weapon of War

When coming to a decision regarding the previously mentioned, hypothetical situation, the first question is whether or not a drone is even a legal weapon within the context of war. Numerous international treaties throughout history have been written for the purpose of limiting the weapons³³ that militaries around the world and throughout time can use to prevent suffering and collateral damage. The Geneva Conventions of 1949 specifically state that combating parties *do not* have unlimited choices in the weapons that they use.³⁴ The Geneva

³³ Examples of such weapons are chemical and biological weapons, triangular-shaped bayonets as well as land-mines. These are weapons that are not capable of discriminated between military and civilian targets or cause unnecessary injury.

³⁴ "The Geneva Convention of 1949 - Additional Protocol I 1977- Article 35, 1

Conventions limit any weapon that causes “superfluous injury or unnecessary suffering,”³⁵ the weapons used must be capable of discriminating between civilian and military targets with a high degree of accuracy³⁶ and precautions must be taken before each attack to prevent civilian loss of life.³⁷

In the early stages of drone use many legal scholars argued that drone aircraft are an illegal weapon because of a low accuracy rate, putting civilians at risk, the unprecedented safety that they afford their operators and because of a psychological effect known as the “PlayStation effect” or the “video game effect.” As the previous section showed, and as many of these scholars realized over time, drones are just as accurate and in fact are often more accurate than a traditional airstrike. Drone cameras are capable of identifying individuals during flight and are said to even be capable of reading license plate numbers from their cruising altitude. Additionally, it has been suggested by many that the act of having the pilot on the ground makes him or her less susceptible to human error due to fatigue, nervousness or the psychological effects of traveling faster than the speed of sound, which a traditional combat pilot experiences.

The safety that drones afford their operators was an issue used against drones in their early use, although it was also an argument that was quickly

. " *International Committee of the Red Cross*. 6/8/1977 1977.Web. 8/29/2011
<<http://www.icrc.org/ihl.nsf/full/470?opendocument>>.

³⁵ "The Geneva Convention of 1949 - Additional Protocol I 1977- Article 35, 2
." *International Committee of the Red Cross*. 6/8/1977 1977.Web. 8/29/2011
<<http://www.icrc.org/ihl.nsf/full/470?opendocument>>.

³⁶ "The Geneva Convention of 1949 - Additional Protocol I 1977- Article 51
." *International Committee of the Red Cross*. 6/8/1977 1977.Web. 8/29/2011
<<http://www.icrc.org/ihl.nsf/full/470?opendocument>>.

³⁷ "The Geneva Convention of 1949 - Additional Protocol I 1977- Article 57
." *International Committee of the Red Cross*. 6/8/1977 1977.Web. 8/29/2011
<<http://www.icrc.org/ihl.nsf/full/470?opendocument>>.

dismissed. Nearly every technological development in warfare has been for the sole purpose of killing a target more effectively, better protecting the individual using the new instrument or both. Saying that drones are illegal because of the safety that they provide to their pilots is like saying that rifles are illegal weapons because of the distance that they provide between the shooter and the person being shot. On a side note, the United States military qualification levels with an M-16 rifle are far less accurate than the accuracy rates of drones in practice.

The “PlayStation effect” was a theory that stated that drone operators would not appreciate the gravity of killing targets because of their distance both from the target and from the aircraft in which they are flying. A theory paralleling Lieutenant Colonel Dave Grossman’s who hypothesized that the farther from a target one becomes, the easier and less psychologically taxing the act of killing becomes.³⁸ Although it has not been proven that Grossman’s theory does not apply to drone operators, drone operators have not been immune to the psychological stresses that come with conducting military operations to include post-traumatic stress disorder.^{39 40} It has been hypothesized by some individuals within the drone community that drones provide more of an opportunity for PTSD to develop because, unlike traditional pilots, after a drone strike occurs, the drone continues to fly over the target to assess the damage and confirm the target’s destruction. The unusual expectation of the drone pilot to view the havoc

³⁸ Grossman, Dave. *On Killing: The Psychological Cost of Learning to Kill in War and Society*. New York: Back Bay Books, 1995. Print.

³⁹ "Remote-control warriors suffer war stress "Web. 10/4/2011
<<http://www.msnbc.msn.com/id/26078087/#.TosXBE-2nw4>>.

⁴⁰ Saletan, William. "Do remote-control war pilots get combat stress? "Web. 10/4/2011
<http://www.slate.com/articles/health_and_science/human_nature/2008/08/ghosts_in_the_machin_e.html>.

unleashed by the Hellfire missiles that he or she just fired certainly would be a source of psychological trauma that would conflict with the notion that drone pilots are somehow “just playing video games.”

Why U.S. Drone Strikes are Legal

In this analysis, there must be a clear distinction between domestic law and international law. Domestic and international law run in parallel and are both applicable to the use of drones because authority must be granted to the president of the United States by Congress to make drone use legal under domestic law; simultaneously, multiple requirements regarding the use of drones must be met to make drone use legal under international law. The possibility exists that drones could be acceptable under one legal code but not under the other.

With regard to domestic law, the president of the United States cannot simply decide to conduct attacks on individuals around the world as he deems sufficient. Section 2 of Article II in the U.S. Constitution states that the president is the, “Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States,” however, Section 8 of Article I of the U.S. Constitution reserves the right to declare war to Congress alone.⁴¹ Domestic law dictates that the president receives a declaration of war, or be in a situation so grave and immediate that the use of force would be necessary for the defense and survival of the United States in order to conduct any military attack without congressional approval. While the United States Congress did not declare war,

⁴¹ "Transcript of the Constitution of the United States "Web. 10/20/2011 <http://www.archives.gov/exhibits/charters/constitution_transcript.html>.

following the attacks of September 11, 2001 it passed a piece of legislation called the “Authorization for Use of Military Force,” which granted the president the right to use force against those “nations, organizations or persons” responsible for the 9/11 attacks and to continue to protect the United States against those parties.⁴² In retrospect, this legislation was somewhat of a “knee-jerk” reaction to the terrorist attacks, but gave the president almost unlimited power to go anywhere and use any legal means to find the culprits of the 9/11 attacks and bring them to justice, without any specified limits to the amount of force, time that it might take or any specific geographic limitations.

The “Authorization for Use of Military Force” is the strongest and most significant legal justification for why the president of the United States can authorize drone strikes against al-Qaeda and its affiliates around the world. It obeys all Constitutional requirements with regard to the use of force, was a voted-upon piece of legislation that the U.S. Congress passed and is consistent with the system of checks and balances within the system of the United States government. Although some argue that this legislation is unconstitutional, nothing could be further from the truth. In fact, this legislation is a perfect example of checks and balances, specifically congress’ ability to limit the president. More to the point, the “Authorization for Use of Military Force” was conceptualized and passed through congress with the specific intention of giving the president a blanketed power to bring the al-Qaeda organization to justice. It is important to note that, even though no time limit is specified in the “Authorization for Use of Military

⁴² "Authorization for Use of Military Force- Sept. 18, 2001 "Web. 9/26/2011 <<http://news.findlaw.com/wp/docs/terrorism/sjres23.es.html>>.

Force,” this legislation is not permanent. If congress felt that it no longer wished to permit the president this power, it could write another law revoking the “Authorization for Use of Military Force.”

It is important to define and identify the differences between *targeted killing*, *extrajudicial killing*, and *assassination*. The term “targeted killing” is not specifically defined in international or domestic law. Targeted killing can be defined as a specific attack with the intention of delivering lethal force against an individual of significant importance to the leadership or operational support of an enemy force within the context of self-defense or an armed conflict. The main separation between targeted killing and assassination is the context in which it is conducted. Domestic law permits the application of lethal force against individual “belligerent leaders” when acting in self-defense or within the scope of an armed conflict, and therefore does not conform to the definition of an assassination.⁴³ The “Authorization for Use of Military Force” is a legal power given to the president to bring al-Qaeda to justice, which allows the president to use force against individual al-Qaeda terrorists, should it be impossible to capture them or if they are continuing to plan attacks against the United States or its allies. The idea that drone strikes are extrajudicial killings ignores the fact that the United States’ drone strikes are occurring within the context of an armed conflict, where U.S. forces have the right to target individuals of the opposing force. There is no legal requirement of a state to legally process the targets of an attack

⁴³ Koh, Harold, Hongju. "The Obama Administration and International Law." March 25, 2010Web. February 28, 2011 <<http://www.state.gov/s/1/releases/remarks/139119.htm>>.

within an armed conflict.⁴⁴ Imagine U.S. soldiers having to put insurgents through a trial prior to firing at them in Afghanistan.

The realm of international law is far more multi-faceted than domestic law in this instance and requires many additional questions to be answered prior to labeling an attack as “legal.” Under international law, there are few legal reasons for a state to launch attacks against another state or within another state’s borders. One of the main legal precedents supporting the drone campaign in international law is Article 51 of the United Nations Charter, which states that a state has the inherent right to use force to defend itself and its people from an attack by another state, a state sponsored organization, a non-state sponsored organization or an individual.⁴⁵ ⁴⁶ Many opponents of the United States’ use of drones have argued that this legal precedent is irrelevant at this point because few, if any of the al-Qaeda terrorists are presenting an “imminent threat” to the United States at this time. While Article 51 does require that the threat presented be imminent, it is necessary for the term “imminent” to be redefined when applied to a terrorist attack. While in conventional warfare there are major signals of an impending attack such as the massing of troops along a border, few individuals will argue that a terrorist attack, such as the Christmas 2009 “underwear bomber” or any other terrorist attack, could have been stopped on the day of the attack. Because of the lack of visible preparation and the inability to stop an attack once it has

⁴⁴ Koh, Harold, Hongju. "The Obama Administration and International Law." March 25, 2010 Web. February 28, 2011 <<http://www.state.gov/s/1/releases/remarks/139119.htm>>.

⁴⁵ "Charter of the United Nations: Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression" Web. 8/9/2011 <<http://www.un.org/en/documents/charter/chapter7.shtml>>.

⁴⁶ Brennan, John. "Speech on Obama Administration Antiterrorism Policies and Practices" Web. 10/3/2011 <<http://opiniojuris.org/2011/09/16/john-brennan-speech-on-obama-administration-antiterrorism-policies-and-practices/>>.

begun, it has become customary in U.S. domestic law that the president be able to use deadly force if there is no way to arrest or stop an impending threat.⁴⁷ In all of the locations that the United States is striking with drones, there is almost always an inability to arrest the identified targets.

While it is significant that the inherent right to self-defense permits drone strikes to prevent al-Qaeda from attacking U.S. soil, it is not enough to legally justify the hundreds of drone strikes that have occurred in the past decade. The most significant international law argument for drones, and indeed the most unprecedented, is the argument that by passing the “Authorization for Use of Military Force,” starting the Afghanistan Conflict and developing the drone campaign, the United States entered into an armed conflict with the al-Qaeda organization to effectively defend itself under Article 51 of the UN Charter. This is immensely important because in an armed conflict a state has the ability to target an enemy force without having to evaluate whether or not each individual target presents a direct threat within that state’s borders.⁴⁸ This should come as no surprise to anyone, recognizing that the goal of an armed conflict, generally speaking, is to destroy enemy forces or hinder their ability to continue the conflict. Specifically targeting individuals within the opposing force is one such method of accomplishing this objective. Additionally, specifically killing key personnel within an enemy force in an armed conflict becomes a targeted killing,

⁴⁷ Banks, William, C. *Testimony of William C. Banks before the Subcommittee on National Security and Foreign Affairs, Committee on Oversight and Government Reform, U.S. House of Representatives*. Tran. U.S. House of Representatives. Washington, DC:, April 28, 2010. Print.

⁴⁸ Koh, Harold, Hongju. "The Obama Administration and International Law." March 25, 2010Web. February 28, 2011 <<http://www.state.gov/s/1/releases/remarks/139119.htm>>.

legal under international and domestic law, rather than an assassination or extrajudicial killing outside of the context of an armed conflict.

The previously mentioned idea that a state can be in a conflict with a non-state actor is not unprecedented. Starting a conflict with a “non-state” entity has been done by the United States when fighting the Confederacy, Indian Tribes and the Viet Cong.⁴⁹ The problem that arises in labeling the United States in an armed conflict is the fact that al-Qaeda, unlike other “non-state” entities that the United States has previously fought, does not reside in one specific nation. Therefore, defining the geographic limits of this conflict is critical, especially since the “Authorization for Use of Military Force” does not specify a geographic limit for where the president may pursue al-Qaeda. The United States has argued that its conflict with al-Qaeda is not limited to any specific nation or list of nations and instead extends anywhere that al-Qaeda may go. While this argument is rather convenient for the United States, it is also instrumental in its conflict with al-Qaeda. One of the main reasons that al-Qaeda was able to grow into a worldwide movement capable of launching terrorist attacks in the United States and Europe is because they had years to reside, train and plan in “safe havens” where no one would confront or attack them. Despite the strategic benefits of this argument for the United States and the generally accepted idea that the battlefield of an armed conflict exists wherever the enemy goes, this train of thought does raise a number of concerns regarding the United States’ use of interstate force and whether or not

⁴⁹ Glazier, David, W. *Statement of David W. Glazier. "Rise of the Drones II: Examining the Legality of Unmanned Targeting."* Committee on Oversight and Government Reform: Subcommittee on National Security and Foreign Affairs. Tran. U.S. House of Representatives. Washington, DC:, April 28, 2010. Print.

such force is violating other states' sovereignty. Article 51 of the UN Charter states that a state, or state sponsored organization cannot use force in the territory of another state, however, each state must be able to defend itself from attacks originating from other states.⁵⁰ Interstate force is legal if: the second state consents to the use of force; the second state is directly responsible for the attack against the first; or if the second state is unable or unwilling to prevent attacks by organizations or individuals within its borders against the first.⁵¹ In the individual countries that the United States has launched attacks, the United States claims that Pakistan has given permission to use drones in their country,⁵² and that the Yemeni, Somali and Libyan governments are not capable of dealing with the threats posed by al-Qaeda within their borders.

The distinction between states in this instance is critical. Many would argue that the United States' claim of an armed conflict against al-Qaeda, anywhere they would go, suggests that the United States believes that it could legally strike *anywhere* that an al-Qaeda terrorist resides. Obviously, the international community must maintain a principle of "sovereign equality" in the writing, interpreting and implementing of international law where all countries are

⁵⁰ "Charter of the United Nations: Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Agression "Web. 8/9/2011 <<http://www.un.org/en/documents/charter/chapter7.shtml>>.

⁵¹ Alston, Philip. *Report of the Special Rapporteur on Extrajudicial, Summary Or Arbitrary Executions to the United Nations Human Rights Council, Philip Alston*. 3 Vol. , 2010. Print.

⁵² Debate has surrounded the notion that Pakistan has given permission to the United States government to conduct drone strikes. The vast majority of U.S. drone operations have occurred in Pakistan, specifically the Federally Administered Tribal Area (FATA). Pakistan has publicly denounced drone use within its borders, however, secret cables brought to light by WikiLeaks have identified instances where Pakistani officials have directly asked the United States to launch attacks within its borders. Some have argued that "secret permission" is not enough justification for U.S. drone strikes in Pakistan because of the inability of the UN to check the validity of the attacks. International Humanitarian Law does not state that the permission must be publicly announced, in fact for political reasons it is far more beneficial for the United States and Pakistani governments to maintain the secrecy of their arrangements.

treated equally, but practically, most will acknowledge that that is simply not realistic. The United States makes a legal argument that because of its right to self-defense from Article 51 and the “Authorization for Use of Military Force,” it has the right to target al-Qaeda terrorists whether they be in Pakistan or France. Practically speaking, anyone with even the slightest understanding of international politics and military strategy will realize that the United States would never stretch the limits of its self-defense to conduct a drone strike in a nation such as France. Moreover, no one would suggest that the “Authorization for Use of Military Force” implies that because an al-Qaeda cell might reside in Paris, that that should mean that there is an active armed conflict in Paris. A perfect example of the distinction between the notion of “idealistic legality” and “practical legality” would be that of Saudi Arabia, possibly the state with the largest individual and organizational support for al-Qaeda, but also a state where the United States has not used drones because of good relations between the governments and the Saudis’ ability to fight al-Qaeda with their own military and law enforcement assets.

Domestic law and various aspects of international law apply to the legal ability of the United States to conduct drone strikes. A specific area of international law called International Humanitarian Law (IHL)^{53 54} applies to all uses of force in any context of an instance of self-defense, armed conflict or war. International Humanitarian Law places specific and important limitations on the

⁵³ Also known as the Law of Armed Conflict and the Law of War.

⁵⁴ International Humanitarian Law, and international law in general, is nothing more than a series of treaties that are fluid in nature. This is especially important with regard to warfare. New weapons and methods, such as drones, bring with them new legal challenges for the international community to address.

use of force by all states so that no state can endlessly target anyone without regard to some type of code of conduct to guide their discretion. Even within the scope of an armed conflict all parties⁵⁵ must adhere to International Humanitarian Law, and in some cases Human Rights Law.⁵⁶ One cannot over-stress the importance of this requirement, as it is the only limitation to a state's actions within the scope of an armed conflict and therefore International Humanitarian Law must be followed to ensure that all attacks are necessary and protect civilians as much as possible in the specific situation.⁵⁷ With respect to targeted killings, International Humanitarian Law states that all targets must be positively identified as a "combatant" or a civilian who is "directly participating in hostilities," additionally, all attacks must be necessary and proportionate so that military gain exceeds civilian harm and everything possible is done to minimize civilian casualties.⁵⁸ International Humanitarian Law applies to any armed conflict against a state or a non-state group and the United States has claimed in their limited statements about drone strikes that they are adhering to all International Humanitarian Law requirements for all of their drone strikes.⁵⁹

⁵⁵ The term "parties" is limited to the conventional war definition, which is only to state actors and a connection has not been drawn to non-state actors directly, only through progressive interpretation and precedent set since World War II. This is one example of how much of IHL, and international law in general, was written in the mindset of conventional conflicts between two states and was not written or designed to directly address issues of unconventional warfare, terrorism or non-state actors participating in conflict.

⁵⁶ Alston, Philip. *Report of the Special Rapporteur on Extrajudicial, Summary Or Arbitrary Executions to the United Nations Human Rights Council*, Philip Alston. 3 Vol. , 2010. Print.

⁵⁷ Ibid.

⁵⁸ Alston, Philip. *Report of the Special Rapporteur on Extrajudicial, Summary Or Arbitrary Executions to the United Nations Human Rights Council*, Philip Alston. 3 Vol. , 2010. Print.

⁵⁹ Jacobson, Louis. "Do drone attacks comply with international law?" 6/27/2010 2010.Web. 8/9/2011 <<http://www.politifact.com/truth-o-meter/article/2010/jul/01/do-drone-attacks-comply-international-law/>>.

Many human rights activists have recently attempted to argue that the United States is wrongfully targeting civilians who assist al-Qaeda whether it be directly or indirectly and are therefore in violation of International Humanitarian Law. It is critical to identify exactly when a civilian becomes a combatant and therefore a lawful target in an armed conflict. The claim that an individual can be a civilian at home, protected by International Humanitarian Law, assist al-Qaeda during the day as a combatant, and then return home and regain the status of civilian and retain the protection afforded to civilians is nothing short of ridiculous. Osama bin Laden would not have been considered a civilian shielded by International Humanitarian Law, sitting in his home, even if he was not at that moment working against the United States. David Glazier, a professor of law at Loyola Law School, put it perfectly stating, “once an individual affiliates with [an] armed force, they become a lawful object of attack, whether engaged in battle...or even at home on leave with their family.” Glazier goes on to say that International Humanitarian Law must be followed by protecting other civilians around the individual, but to say that a person can be protected as a civilian by International Humanitarian Law simply because they are not, in that instant, directly conducting or assisting in an attack is completely counter-intuitive to conducting and winning an armed conflict and indeed puts the civilian population at risk by allowing al-Qaeda a legal loophole to hide within the civilian population safe from attack.⁶⁰ A civilian becomes a lawful target of force as soon as he or she is connected and is assisting an enemy actor in an armed conflict.

⁶⁰ Glazier, David, W. *Statement of David W. Glazier. "Rise of the Drones II: Examining the Legality of Unmanned Targeting."* Committee on Oversight and Government Reform:

Unfortunately, the issue of distinguishing between civilians and lawful targets becomes much more of a heated issue considering the fact that select U.S. citizens have joined and are actively supporting al-Qaeda in its operations against the United States. Although the idea of the U.S. government ordering a targeted killing against a U.S. citizen is emotionally disturbing to many human rights activists and U.S. citizens, from a legal standpoint it is a very simple issue. The fact is simply this: U.S. citizenship does not immunize individual citizens who affiliate and assist the United States' enemies, including al-Qaeda, from trial and the use of force. It is the affiliation of the individual, rather than the citizenship that is significant.⁶¹ This was a legal precedent realized in World War II following the Supreme Court decision of *Ex Parte Quirin*, in which the court ruled that, "Citizens of the United States who associate themselves with the military arm of an enemy government...are enemy belligerents within the meaning of the Hague Convention and the law of war."⁶² Human rights activists still have argued that targeting a U.S. citizen is an extrajudicial killing, ignoring the results of *Ex Parte Quirin*, but these activists need to recognize that *fleeing from the judicial process is not a right afforded to any individual in the scope of domestic or international law*. If the U.S. citizens, who the United States claim are aiding al-Qaeda in its operations, are in fact innocent, then they should turn themselves in to the nearest U.S. embassy and argue their case in court. It is not the desire of the United States to kill these individuals, but to bring them to justice.

Subcommittee on National Security and Foreign Affairs. Tran. U.S. House of Representatives. Washington, DC:, April 28, 2010. Print.

⁶¹ Ibid.

⁶² "Ex Parte Quirin " 7/31/1942Web. 10/23/2011

<http://www.law.cornell.edu/supct/html/historics/USSC_CR_0317_0001_ZS.html>.

Up to this point the issues of how the United States can legally justify its drone campaign as well as who can be legally targeted have been addressed. The question now is who within the United States' government can conduct a drone strike. The United States military has been mainly responsible for drone strikes in the "hot battlefields" of Afghanistan and Iraq, while the Central Intelligence Agency has secretly been using drones to target individuals in other countries like Pakistan, Yemen, Somalia and Libya. The United States military is universally recognized in domestic and international law as legally able to use force against an enemy in an armed conflict, and few individuals would argue that the United States' presence in Afghanistan and Iraq is anything but an armed conflict. The debate stems from the question of whether or not the CIA, a civilian organization, can legally participate in an armed conflict and conduct targeted killings.

The National Security Act of 1947 granted the CIA the power to conduct "functions" related to the United States' national security if the president or the National Security Council ordered them to do so.⁶³ Although this legislation probably did not intend for targeted killings to be included in the term "functions," the CIA has been used to conduct similar operations throughout history. Gerald Ford's executive order preventing the CIA from conducting assassinations, often offered as an argument against the CIA using drones, most notably did not include any language regarding targeted killings.⁶⁴ In more recent history, George W. Bush created a "Kill or Capture" list, following the 9/11

⁶³ Banks, William, C. *Testimony of William C. Banks before the Subcommittee on National Security and Foreign Affairs, Committee on Oversight and Government Reform, U.S. House of Representatives*. Tran. U.S. House of Representatives. Washington, DC:, April 28, 2010. Print.

⁶⁴ Ibid.

attacks, of individuals that he gave the CIA authority to pursue and use force against around the world.⁶⁵ This move was not new or unprecedented. In fact, in the previous administration, Bill Clinton issued an executive order to create a similar list of “specially designated targets,” which, at the time, included Osama bin Laden.⁶⁶ Additional precedent of the CIA’s legitimate use of force in an armed conflict can be found in instances when the United States Congress authorized covert action in the past and deemed it to be legal so long as the Intelligence Committees are informed.⁶⁷ Bill Banks, a professor of law and public administration in the Maxwell School of Citizenship and Public Affairs and director of the Institute for National Security and Counterterrorism also concluded on this note that “intelligence laws permit the president broad discretion to utilize the nation’s intelligence agencies to carry out national security operations, implicitly including targeted killings.”

*Legal Debates Regarding Targeted Killings and Use of Drones by
the United States*

In the institutions of domestic and international law, in the United States government and the United Nations, the importance of questioning new policies and methods, especially with regard to warfare, cannot be dismissed or regarded as “soft policy.” Having said this, the vast majority of the United States legal defense of its drone use around the world is strong both in the

⁶⁵ Risen, James, and David Johnston. "Threats and Responses: Hunt for-Al-Qaeda; Bush has Widened Authority of CIA to Kill." Print. 12/15/2002 .

⁶⁶ Gellman, Barton. "CIA Weighs 'Targeted Killing' Missions " 10/28/2001Web. 10/21/2011 <<http://www.washingtonpost.com/ac2/wp-dyn/A63203-2001Oct27?language=printer>>.

⁶⁷ Banks, William, C. *Testimony of William C. Banks before the Subcommittee on National Security and Foreign Affairs, Committee on Oversight and Government Reform, U.S. House of Representatives*. Tran. U.S. House of Representatives. Washington, DC:, April 28, 2010. Print.

realm of domestic and international law. There are those who would argue against the concept that the United States is in an armed conflict or that they are acting in self-defense. Generally speaking, their arguments are not “wrong” but undervalue the meaning of the “Authorization for Use of Military Force” and the inherent right of self-defense. There are those who would argue more fine points of what the United States is doing, who generally have more valid cases that will be briefly discussed in this section.

Most individuals who argue against United States drone campaign, specifically in the U.S. armed conflict with al-Qaeda, do not argue that the armed conflict does not exist, but that there are limits of the armed conflict. The first way in which the armed conflict is attacked is the issue of who is being targeted and the idea that only high or mid-to-high level leadership can legally be targeted. This is more a question of strategy than legality, since the enemies of a state in an armed conflict who can be labeled “combatants” are all legally susceptible to targeted killing. The second legal concern of critics is that drones are legally only limited to the “hot battlefields” of Afghanistan and Iraq. This “legal argument” is in fact more of an ethical argument. The United States is in an armed conflict with an organization that has spread to multiple states around the world and it is therefore legal for the United States to target individuals of that organization in those states. However, the United States must abide by the laws of sovereignty and Article 51 of the UN Charter by asking for permission from the host nation or attacking when the state is not willing or able to neutralize the threat posed within its borders. This logic returns to the Pakistan versus France argument made

earlier. The United States has the right to target al-Qaeda members and bring them to justice. Should a target be in Pakistan, who grants the United States permission to strike, then the United States has the right to target that individual using drones; should a target reside in Paris, after informing French officials who would *never* grant the United States consent to use drones within its borders, the United States would provide intelligence that would lead to French officials arresting the individual and bringing him or her to justice.

Arguments are still made regarding sovereignty, despite the United States respecting and obeying all interstate force and sovereignty aspects of International Humanitarian Law. One such argument is that the United States will not stop with its strikes and will claim the right to conduct drone strikes anywhere in the world, including within the United States. Despite being based on speculation, emotion and utter fantasy, this argument has been made by numerous individuals within the legal community in the United States and around the world. The fact is that the United States has not and would not violate the sovereignty of another nation using drones; additionally, the United States would not deploy a drone when there is another option at its disposal such as allowing law enforcement to deal with the issue. On that note, the United States would not use drones within its own borders because of its ability to utilize its own law enforcement for such a situation. Another issue that is constantly brought up is that the United States' use of drones opens the door for other nations to use drones as well, more specifically on U.S. soil. Of course the United States' use of drones sets a precedent for other parties to use them as well, they are legal weapons of war that

other nations can use regardless of U.S. actions. More to the point, the idea that a nation such as China, Russia, North Korea or Iran would exogenously deploy a drone to attack a target within the United States ignores every other factor that would go into a decision of that magnitude. It ignores current political relations with the United States, it ignores the fact that the United States is in possession of nuclear weapons, it ignores the fact that the United States has not used drones against any of these nations and it ignores the fact that the United States has the most powerful military in the world and that the United States would retaliate against the aggressing actor.⁶⁸ Saying that the acquisition of drones by other nations makes the United States susceptible to attack is no different than discussing the threat of nuclear weapons or stealth bombers being acquired by other nations.

Conclusion

The prospect of being brought to court over a drone strike is more a question of theory versus reality for the United States. In theory, there is a possibility that an international court could reject the United States' claim that it is in an armed conflict and that it is obeying International Humanitarian Law. In reality the chances of this happening are small and the chances that a state would bring the case before a court is even smaller. The fact that most of the information regarding the strikes is classified limits the ability of another state to build a case against the U.S. and the consequences of doing so could be

⁶⁸ Additionally, it ignores the fact that none of these nations would be in an armed conflict or war with the United States and by exogenously launching a drone strike within U.S. borders would be violating International Humanitarian Law.

detrimental to political relations between the two nations.⁶⁹ However, it is still a major priority for the United States to obey international law because of the United States' desire for other countries to follow international law as well.

Having said this, the current state of international law that governs military action is not an ideal one. The design of international law is ideal, where the treaties and resolutions that compose it are continually updated throughout history to meet the legal challenges that arise. However, the guiding principles of international law are too broad, leaving much for interpretation and many of the concepts within this body of law to become outdated. Currently, the idea of political realism governs military action; that is to say that because there are certain actions that the U.S. cannot undertake or which would not benefit the U.S., such as striking terrorists in Europe, that the U.S. will not. The United States is arguably more ethical than other nations, certainly democracies tend to be more ethical than autocracies, eliminating much of the potential for unethical behavior, but this is not a situation that the world can afford to let stand. The incredibly complex nature of international law includes too many loopholes, exceptions to rules and concepts which were once applicable to most conflicts that are now up for interpretation in most circumstances. All of the aforementioned flaws are visible in the controversy over the United States' drone use today and signals that international law must advance in a legislative body rather than by precedent set by actors on the battlefield. Until this occurs, new technology and tactics which

⁶⁹ Most of the countries where drone strikes are occurring depend on the U.S. for security or financial assistance via global aid programs. Bringing the U.S. to court for many of these countries could jeopardize future good relations and assistance given by the United States.

are not specifically addressed in international law will continue to be governed by the discretion of individual nations.

Strategy

“Wisdom is better than weapons of war.”
Ecclisastes 9:18

Napoleon famously claimed that, “victory goes to the large battalion,”⁷⁰ suggesting that the most powerful⁷¹ side in any conflict will prevail. History has proved Napoleon wrong. Since 1800, strong actors have defeated weak actors in 70% of all conflicts; between 1960 and 1998 weak actors won 55% of the conflicts.^{72 73} How can this be? The only explanation for this phenomenon is that, given certain situations, power is not a variable, or not the only variable, in determining the outcome of a conflict.

Insurgent and Counterinsurgent Warfare Theory

In a conventional war, there are two or more state actors who employ their various conventional and unconventional military units to engage each other. Each actor has considerable resources, though there may be an imbalance in strength or resources between the various actors. Any of the actors can start a conventional war. More than likely, one actor will have a strategic “home advantage.” In a conventional war, the objective is to utilize terrain on the battlefield, to employ superior firepower and manpower to destroy the enemy’s military forces. Ultimately, the more of the enemy that are killed, and the more key terrain that is seized and held, the better. A conventional war will end when

⁷⁰ Quoted in: Galula, David. *Counterinsurgency Warfare: Theory and Practice*. Westport, CT: Praeger Security International, 1964, 2006. Print.

⁷¹ For the purpose of this section, the term “power” will refer to manpower, resources and technology in a conventional sense. Other factors such as strategy and tactics will be considered separately.

⁷² The study considers a conflict to be between a “weak” and a “strong” actor when the “strong” actor outnumbered the “weak” by a ratio of at least 5:1.

⁷³ Arreguin-Toft, Ivan. “How the Weak Win Wars: A Theory of Asymmetric Conflict.” *International Security* 26.1 (2001): 93-128. Print.

one side can no longer effectively attack the other, it can no longer defend itself, it may not be able to economically sustain wartime operations, it may become overrun by the enemy or both sides may reach some type of agreement to end the conflict. Regardless of how it ends, it will be complete when one side proves itself to be too strong for the other to defeat or both sides find it more beneficial to stop the conflict.

An insurgency-based war is unrecognizable, compared to a conventional war. In such a war, there are two sides: the insurgent and the counterinsurgent. The insurgent has its own independent cause, which it stands for and supports. This cause is directed against the current government in an effort to overthrow it and establish its own authority.⁷⁴ Regardless of the specific intentions of a particular insurgent, all insurgents stand to disrupt the status quo in some way. The counterinsurgent is a supporter of the current government, if not the current government itself. The counterinsurgent's strategy is to oppose whatever the insurgent's strategy is, literally to "counter" the insurgent.

The insurgent and the counterinsurgent, although in the same conflict with each other, fight different wars, with different abilities and rules. In terms of material resources, the counterinsurgent holds a massive advantage. The counterinsurgent is a legitimate authority, holds power and influence, maintains a trained and well supplied military, and has an economy to fund its endeavors.⁷⁵ In terms of "intangible advantages," the counterinsurgent is at a significant disadvantage. The insurgent develops a cause to mobilize a base following, the

⁷⁴ Kilcullen, David. *Counterinsurgency*. Oxford: Oxford University Press, 2010. Print.

⁷⁵ Galula, David. *Counterinsurgency Warfare: Theory and Practice*. Westport, CT: Praeger Security International, 1964, 2006. Print.

stronger this cause, the more of an advantage that the insurgent possesses. The insurgent is also free of any of the responsibility that the counterinsurgent is burdened with.⁷⁶ The counterinsurgent must consistently provide services, particularly security to the local population and cannot falter in its ability to do so. Because of this imbalance, it would be reckless of the insurgent to attack, or allow themselves to be attacked, by the counterinsurgent in an open battle. As the insurgent grows in power and success, the counterinsurgent will shrink; the initial imbalance of power and the manner in which it changes is one of the primary characteristics that separates insurgent warfare from conventional warfare.⁷⁷

As previously mentioned, conventional war focuses on the destruction of the enemy and the holding of decisive terrain, which insurgent warfare does not. In such a war, the counterinsurgent has dominion over virtually all terrain within its borders, though a strong insurgent presence may exist in certain areas. What is contrary to conventional warfare theory is that, in insurgent warfare, the battlefield is not a piece of land, but the local population who resides on it.⁷⁸ The war is won or lost based, not on how many enemy are killed, but on who can gain and control networks and information on the battlefield. In other words, who can gain and sustain the trust of the local population, and control how the population conducts itself. The locals can accept the insurgent and ultimately shield him from the aggressive intentions of the counterinsurgent, or they can give intelligence over to the counterinsurgent that will ultimately end in the destruction

⁷⁶ Galula, David. *Counterinsurgency Warfare: Theory and Practice*. Westport, CT: Praeger Security International, 1964, 2006. Print.

⁷⁷ Ibid.

⁷⁸ Ibid.

of the insurgent. The population will do this according to what will benefit them most, but it is important to emphasize that the cooperation of the local population does not have to be by choice.⁷⁹ The locals may choose the best option at hand, so long as it is more beneficial than the alternative, or forcing the local population to choose one side, though not the best outcome, is still an option for both actors.

The tactics of insurgent warfare reveal just how different the points of view are between the two sides. The counterinsurgent cannot exist independent of the presence of an insurgent, there must be an insurgent for there to be a counterinsurgent.⁸⁰ In this way, only an insurgent can initiate the conflict. This gives the insurgent the advantage of choosing an opportune moment to begin the struggle. As stated earlier, one of the insurgent's strongest weapons is the cause that they create for themselves. If it is strong enough, and exposes a major societal problem that the counterinsurgent has created, or failed to resolve, it will draw massive and passionate support. Should the insurgent's cause be weak or short-lived, the insurgent will be unsuccessful. The insurgent will politically reach out to the population to gain their support, or threaten them into supporting them. Additionally, the insurgent will attack the trust that the population has with the counterinsurgent. It will disrupt the natural order and create chaos to show that the counterinsurgent is incompetent and unable to protect the population. The insurgent is fluid in its movements, objectives and operations and will use hit and run tactics so that the counterinsurgent cannot respond effectively.

⁷⁹ Galula, David. *Counterinsurgency Warfare: Theory and Practice*. Westport, CT: Praeger Security International, 1964, 2006. Print.

⁸⁰ Ibid.

The counterinsurgent is rigid in almost every way. It must adhere to its responsibilities and maintain its assets constantly, unlike the insurgent who can cease operations for a time if it desires. The insurgent's ability to create disorder is relatively easy, inexpensive and at low risk of a loss.⁸¹ A simple grenade thrown into a market place causes disorder, makes the local population question the ability of the counterinsurgent and costs next to nothing in terms of financial costs or potential risk. The counterinsurgent's objective to maintain order and security is difficult, expensive and will present risks to agents of the counterinsurgent.⁸² It is because of the relatively low cost of insurgency and the difficulty that the counterinsurgent has of catching the insurgent that insurgent conflicts are generally prolonged conflicts. The lack of any decisive engagement removes the possibility of one side defeating the other quickly. In rare cases, counterinsurgencies fall quickly, but only due to their own internal problems.⁸³ Never has an insurgency completely crumbled early in a conflict.⁸⁴

Victory in an Insurgent Conflict

Insurgent warfare is clearly not based solely on which side is most powerful. By its nature, insurgent warfare is a struggle between a strong counterinsurgent and a weak insurgent. Given that weak actors have won 30% of

⁸¹ Galula, David. *Counterinsurgency Warfare: Theory and Practice*. Westport, CT: Praeger Security International, 1964, 2006. Print.

⁸² Ibid.

⁸³ Galula, David. *Counterinsurgency Warfare: Theory and Practice*. Westport, CT: Praeger Security International, 1964, 2006. Print.

⁸⁴ Ibid.

total conflicts in history and 55% of conflicts between 1960 and 1998,⁸⁵ factors other than power must play a decisive role in the outcome of an insurgent based conflict.

Andrew Mack's model to predict who is more likely to win a conflict between asymmetric actors suggests that the greater the gap in power is between the strong and the weak actors, the more secure of his survival the strong actor will become.⁸⁶ This sense of security will impact the strong actor's relative interest in the conflict, increasing the actor's political vulnerability. In other words, the idea that the strong actor is not fighting for his survival, combined with a prolonged conflict or a string of strategic failures, will ultimately diminish the strong actor's ability to continue the conflict. This model is fundamentally incomplete. It does not explain variation of conflict outcomes over time, nor does it explain why extremely strong actors do defeat extremely weak actors in conflicts throughout history. Mack's "Power Gap Model" is a good general predictor of how a strong actor can lose the political will to continue an asymmetric conflict. Power seems to be a variable in the type of war and strategy that will be seen, while the will to win is a variable that will determine the outcome, strategy⁸⁷ and tactics⁸⁸ play an extremely influential role.

⁸⁵ Arreguin-Toft, Ivan. "How the Weak Win Wars: A Theory of Asymmetric Conflict." *International Security* 26.1 (2001): 93-128. Print.

⁸⁶ Mack, Andrew. "Why Big Nations Lose Small Wars: The Politics of Asymmetric Conflict." 1/1975 1975. Web. <<http://www.jstor.org/stable/2009880>>.

⁸⁷ Strategy will be defined as the manner in which an actor's resources are used to achieve critical military, political and economic objectives.

⁸⁸ Tactics will be defined as the art of combating the enemy on the battlefield, utilizing military resources and assets in a manner that most benefits that actor while causing the most damage to the enemy.

The fact that conventional warfare tactics are ineffective in this style of warfare runs in parallel with the concept that the battlefield of this conflict is the population. Recognizing the reality that the counterinsurgent's greatest strength is his power, strength and resources, he would be best fit for conventional warfare. How then can the counterinsurgent not rely on these abilities, and how can he win if he does not?

Winning the favor of the population will win the conflict. With any issue, there will be a small minority who support it, a large majority who are neutral or indifferent and a small minority who are opposed to it.⁸⁹ It will be the objective of the counterinsurgent to maintain the support of the minority who supports him and mobilize them to win over the indifferent and neutral population. Security is a major issue for the population but the counterinsurgent must also radiate an image that he will ultimately defeat the insurgent.⁹⁰ In the end, a decisive victory will be achieved by the counterinsurgent when he is able to effectively separate the local population from the insurgents.⁹¹

Counterinsurgencies throughout history have shown that they do not take any set form or conduct themselves in any specific way other than to say that the “counterinsurgency will mirror the state that is conducting it.”⁹² That is to say, typically counterinsurgencies in authoritarian states tend to be more brutal, counterinsurgencies in democratic states tend to be far too eager to turn things

⁸⁹ Galula, David. *Counterinsurgency Warfare: Theory and Practice*. Westport, CT: Praeger Security International, 1964, 2006. Print.

⁹⁰ Galula, David. *Counterinsurgency Warfare: Theory and Practice*. Westport, CT: Praeger Security International, 1964, 2006. Print.

⁹¹ Ibid.

⁹² Kilcullen, David. *Counterinsurgency*. Oxford: Oxford University Press, 2010. Print.

over to the local authorities before they are prepared to do so. Although the counterinsurgency itself is dependent on the state conducting it, there are two fundamentals that all counterinsurgencies must establish if they are to be successful: (1) a detailed knowledge of the local area, population and what drives the conflict; (2) an attitude that puts the security and safety of the local population above all else, even killing the insurgent.⁹³ The local population is fixed as it is, but the insurgent is fluid and constantly moving. If the counterinsurgent can discriminate between the population and the insurgent, it can implement a strategy designed to extract the insurgent from the population. Theoretically, if a counterinsurgent accomplishes this objective, the insurgent will have no choice but to engage in open combat because its goal to win the population will be severely compromised.

In the beginning of the Afghanistan conflict, there was a clear disagreement between high level U.S. leaders who, for political reasons, argued that they were in a conventional invasion and occupation; and small unit military leaders on the ground who realized that they were not in any type of conventional war that they had been trained to fight.⁹⁴ President George W. Bush claimed that the United States was in a “War on Terror,” unwilling to acknowledge that terrorism is a tactic used, not an enemy to be destroyed. The mentality was simple: terrorism, by its very nature, strikes fear into those who experience it and is often described as evil. Easily justifying why the United States would want to go to war with an evil entity.

⁹³ Ibid.

⁹⁴ Kilcullen, David. *Counterinsurgency*. Oxford: Oxford University Press, 2010. Print.

The United States does not negotiate with terrorists. The main goal of terrorism is to achieve their goals by utilizing fear as a weapon. Insurgencies are not evil, the United States seeks to “win the hearts and minds” of insurgents to bring them to a similar way of thinking. In fact, western culture often celebrates peaceful insurgents such as Mohandas Gandhi.⁹⁵ The problem with insurgents is not their ideology, it is the methods of violence that they use to achieve their goals. To eliminate the ideology of an insurgent is to destroy the insurgent, while the only way to destroy a terrorist is by capturing or killing him. The Bush Administration and, in particular, the United States military began to see the error in their ways, moving to acknowledge the insurgency that they were fighting, writing the current counterinsurgency doctrine and focusing more on the local population than on the enemy.

The Drone's Place in Counterinsurgency

The United States is clearly the strong actor in its conflict with al-Qaeda. Moreover, there could not be a larger power gap than the one that exists between the United States, the current superpower, and al-Qaeda, a loosely affiliated network of insurgents. Suggesting that the United States, according to Mack's model, is likely to lose interest and political resolve in the conflict should it be prolonged or marked by strategic failures. The United States' decade long conflict in the Middle East has stretched long enough to be considered “prolonged,” and setbacks have been experienced throughout that time. Following in line with Mack's predictions, discussion of a “timetable for

⁹⁵ Ibid.

withdrawal” has been constantly present in the political theatre, even becoming a major topic of debate in presidential elections.

The United States’ current counterinsurgency is far more nuanced than it was in the early 2000s. A focus on fighting for the population has replaced the previous focus on killing the enemy and seizing terrain. Heavy utilization of conventional forces is shifting to a heavy use of special operations forces. Most importantly, conventional warfare techniques have been replaced with new methods like human terrain mapping and targeted killing. The United States is a counterinsurgent, and the United States is limited in the same theoretical ways that all counterinsurgents are. The United States’ conventional forces will never be as fast as the al-Qaeda insurgents, they will not know the local population as well and, most significantly, the United States is not without weakness in interest and political resolve.⁹⁶ However, drones have been one of the tactics that has evened the odds for the United States in the current conflict.

The drone’s reconnaissance ability is absolutely essential in a conflict, but particularly in the type of conflict that the United States finds itself in today. It is paramount for the counterinsurgent to be capable of monitoring the movements and activities of the local population in the conflict. The ability to do this allows the counterinsurgent to differentiate between civilians, who must be protected and reached out to, and insurgents, who must be isolated from the population. Drones are perfectly suited to these types of aerial reconnaissance missions. Their ability to fly at low speeds and view the situation on the ground with such clarity allows

⁹⁶ The use of military force by the United States in Vietnam, Somalia in the 1990s and Iraq in the 2000s all are prime examples of weakened political resolve that eventually led the United States to leave those conflicts. A series of withdrawals that al-Qaeda wishes to continue.

the operator to collect more intelligence related to the activities and movements of individuals on the ground that traditional aircraft would not be incapable of. Additionally, the longer flight time of drones permits a more complete and thorough observation of an area.

It is clear that reconnaissance is a primary mission of drones worldwide. The United States lost a model RQ-170 "Sentinel" stealth drone, a model previously not known to have existed, when it crashed inside the borders of Iran.⁹⁷ This incident reveals a number of critical aspects with regard to the United States' drone program and the strategy that it is using to employ drones. First, that drones are being manufactured on a much more advanced level, technologically speaking, than was previously thought. The existence of a stealth drone, while not exactly surprising, does show that the technology being used in conjunction with drones is constantly evolving. Given that drones are relatively new, the world can expect to see further advances in drone technology. The second striking fact that this incident sheds light on is that the drone crashed in Iran. The United States government claims that the drone was flying along the Afghanistan-Iran border, where they lost control of it and crashed in Iran.⁹⁸ It cannot be proven one way or the other, but it is safe to say that the drone was probably observing some area within the Iranian border. Given this information, it is not unimaginable to think that the United States may also have stealth drones flying

⁹⁷ Miller, Greg, and Joby Warrwick. "Stealth Drone Highlights Tougher U.S. Strategy on Iran." 12/7/2011 2011. Web. The Washington Post. <http://www.washingtonpost.com/world/national-security/stealth-drone-highlights-tougher-us-strategy-on-iran/2011/12/07/gIQAF6DkdO_story.html>.

⁹⁸ Kreider, Randy. "Iran Mocks US with Toy Drone." 1/7/2012 2012. Web. Yahoo News. <<http://news.yahoo.com/iran-mocks-us-toy-drone-174851478--abc-news.html>>.

over North Korea, Pakistan and other nations worldwide without that government's consent or knowledge. Throwing aside the ethical debate presented in this situation, the existence of a small stealth drone reconnaissance program that monitors key areas worldwide would be a critical piece of the United States' intelligence collecting ability. One that would allow the United States to monitor potential "problem areas" of the world, rather than use conventional, invasive means to ensure security. This is a program that most certainly will continue to be supported in the future.

In 1964, a french military officer named David Galula wrote a counterinsurgency theory that was greatly relied upon for the current counterinsurgency theory written for the Afghanistan conflict by the United States military. With regard to targeted killings, Galula concluded that, "targeted killing campaigns offer little hope of an eventual defeat of the insurgency because more will rise to replace the insurgents who are targeted."⁹⁹ Immediately prior to the 9/11 attacks, Ivan Arreguin-Toft produced his work on asymmetric warfare theory in which he too concluded that "strategic bombing campaigns" are rarely effective and generally tend toward barbarism.¹⁰⁰ In the beginning of the Afghanistan conflict, David Kilcullen, author of much of the United States' current counterinsurgency doctrine including the famous, "28 Articles,"¹⁰¹ considered to be the Holy Grail of modern counterinsurgency theory, concurred with Galula and

⁹⁹ Galula, David. *Counterinsurgency Warfare: Theory and Practice*. Westport, CT: Praeger Security International, 1964, 2006. Print.

¹⁰⁰ Arreguin-Toft, Ivan. "How the Weak Win Wars: A Theory of Asymmetric Conflict." *International Security* 26.1 (2001): 93-128. Print.

¹⁰¹ Kilcullen, David. "Twenty-Eight Articles: Fundamentals of Company-level Counterinsurgency." 3/2006 2006. Web.

<http://usacac.army.mil/cac2/coin/repository/28_Articles_of_COIN-Kilcullen%28Mar06%29.pdf>.

Arreguin-Toft. Kilcullen pushed for the strategy of attacking the insurgency's ideology rather than the insurgents themselves. He suggested, with regards to targeted killing programs, that although some insurgents cannot be turned and therefore will eventually need to be hunted down,¹⁰² that if the act of engaging highly valued targets comes in conflict with gaining the trust of the population that a targeted killing program would not be beneficial to the counterinsurgent.¹⁰³

Theoretically speaking, Galula, Arreguin-Toft and Kilcullen's view on targeted killing programs is the generally accepted conclusion on how effective a program such as drone striking would be if a counterinsurgent were to employ one against an insurgent. The United States' counterinsurgency doctrine preaches the importance of protecting the local population and how less emphasis should be placed on engaging the enemy, yet the United States' drone targeting program has continued to grow for as long as the conflict has persisted. How could such a fundamental conflict between theory and practice exist in the United States' conflict with al-Qaeda? The United States is a rational actor, it would choose a course of action that would bring positive utility as opposed to using a tactic that would ultimately harm its strategic objectives. Therefore, the United States' use of drones can be explained in one of two ways. First, that any negative effects produced by the drone program are eventually outweighed by the positive effects of either the drone program itself¹⁰⁴ or the United States' counterinsurgency

¹⁰² Kilcullen refers to this as "Counter-Network Operations."

¹⁰³ Kilcullen, David. *Counterinsurgency*. Oxford: Oxford University Press, 2010. Print.

¹⁰⁴ The drone strikes that occur have two effects on the al-Qaeda network. The first is that the elimination of highly valued targets that fill critical roles in al-Qaeda cause the network to function on a less than optimal level. Because al-Qaeda is a network, the breaking of these connections and relationships is one of the most crippling events that can take place, although it is difficult to determine exactly how much of an effect that this has. The second effect is that

strategy as a whole. Or second, that counterinsurgency theory's prediction that targeted killing programs will ultimately fail is based on the traditional methods of conducting such a program,¹⁰⁵ as opposed to drones. It is possible that drones are so precise and so advanced that the negative consequences that targeted killing programs would have produced in the past simply do not exist when drones are used.

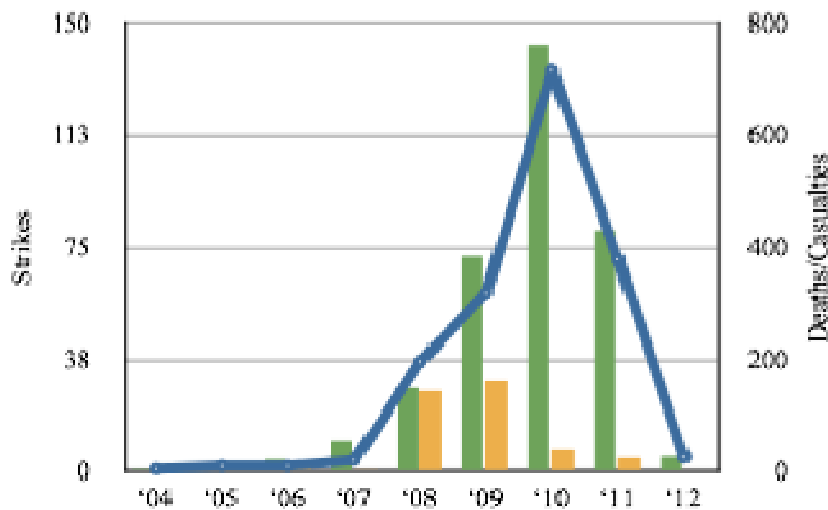
Peter Bergen's study of drones concluded that 326 drone strikes have been conducted in Pakistan since the first known use of drones by the United States in that country. Bergen estimates that between 1,402 and 2,184 militants have been killed since 2004, and between 293 and 471 civilian casualties have resulted in the drone strikes in that same time period.¹⁰⁶ Graph 1 shows the relationship between the total amount of drone strikes estimated to have been conducted in Pakistan and the amount of civilian casualties and militant deaths that occurred as a result.¹⁰⁷ The graph shows a direct correlation between the amount of drones strikes conducted and the amount of militant deaths that occurred. This should come as no surprise, drones are sent out on missions to target militants so one would expect this relationship to exist. However, no correlation seems to exist

targeting mid-level leaders on a large scale prevents al-Qaeda from being able to move freely, train and conduct operations.

¹⁰⁵ This is guaranteed to be a variable that plays a part in why the United States continues to conduct drone targeting despite the theoretical objections. Counterinsurgency theory, especially Galula and Arreguin-Toft's conclusions are based on historical targeted killings that took place in conflicts spread throughout history. Their conclusions are not inapplicable, however, the fact remains that comparisons between drone targeting today and bombing campaigns throughout history, such as Operation Rolling Thunder in the Vietnam conflict, are few.

¹⁰⁶ Bergen, Peter, and Katherine Tiedemann. "The Year of the Drone." April 4, 2012. Web. April 17, 2012 <<http://counterterrorism.newamerica.net/drones#2011chart>>.

¹⁰⁷ Ibid.



◆ Total Drone Strikes
 ■ Estimated Militant Deaths
 ■ Estimated Civilian Casualties

between the total amount of drone strikes and civilian casualties over time, illustrating no direct relation between the frequency of drone use and the amount of civilian casualties that occur. This is significant in that drones are proven capable of avoiding contact with civilians, other factors must contribute to the amounts of civilian casualties such as the quality of available intelligence.

The data points to an average ratio of 1.359 civilian casualties per drone strike over the seven year period. While there is no data to compare to other weapon systems, this data does show that drones are effective at discriminating between militants and civilians on the battlefield on a relatively accurate and consistent basis over time.

Bergen goes even further in his study by tallying the total amount of “militant leaders” who were killed in these strikes, and concludes that 43 have been killed since 2004.¹⁰⁸ Graph 2 shows the relationship between the number of

¹⁰⁸ Bergen, Peter, and Katherine Tiedemann. "The Year of the Drone." April 4, 2012. Web. April 17, 2012 <<http://counterterrorism.newamerica.net/drones#2011chart>>.

drone strikes that occurred in Pakistan and the amount of militant leader deaths that drones have been responsible for since 2004. Although in 2008, the amount of militant leaders killed spiked, the amount of militant leader deaths has been relatively consistent with the amount of drone strikes that have taken place.

Although 43 militant leader deaths appears to be a minuscule amount, consider that the al-Qaeda network can only have so many individuals that can fit the role of a highly valued leader, and therefore the number of these types of deaths, by the nature of the targets, will be small. The data from this chart indicates, first, that there is a direct correlation between the amount of drone strikes conducted and the amount of militant deaths that result. More specifically, the data reveals that it takes an average of 7.581 drone strikes to produce one militant leader death over the past seven year period of drone use. This value takes into consideration a great deal more than simply how many drone strikes occurred in that time.

Variables such as intelligence, strategic victories and failures, mistakes on the part of militant leaders and even chance come into play in the hunting of a small list of militant leaders. Having said this, the data clearly shows that al-Qaeda and its affiliates' networks of leaders have greatly suffered as a result of drones being implemented in the hunt for these individuals.

To say that targeted killing programs, historically, do not yield impressive results for the counterinsurgent is accurate, but to say that the United States' drone program is not achieving results is not accurate. Drones clearly are producing results for the United States in reconnaissance ability, human terrain mapping, targeting hundreds of low to mid-level leaders and targeting over 30

highly valued al-Qaeda leaders.¹⁰⁹ Results can also be seen in the operational capacity that al-Qaeda has dropped to in recent years. Al-Qaeda's major attacks plotted against the west in the last decade have been the World Trade Center attacks in the United States in 2001, the Madrid train bombings in 2004, the London subway bombings in 2005 and a foiled attempt to bomb a U.S.-bound plane by Umar Farouk Abdulmatallab in 2009.¹¹⁰ Major attempts to strike the west have decreased dramatically after 2005, right when drone use began. Attempts since 2005 have been mostly limited to the Middle East, as opposed to 2005 and prior where the reach of al-Qaeda clearly stretched worldwide. Additionally, the plots after 2005 have generally become smaller in the potential for casualties and incorporated less planning.¹¹¹

□

The disparity between United States counterinsurgency theory and practice is somewhat shocking at a first glance. Counterinsurgency theory based on the actions of counterinsurgents historically lead experts to believe that drone striking would be a strategy that is doomed to failure, while the reconnaissance ability of drones is shown to be invaluable for any counterinsurgent. The United

¹⁰⁹ Bergen, Peter, and Katherine Tiedemann. "The Year of the Drone." April 4, 2012. Web. April 17, 2012 <<http://counterterrorism.newamerica.net/drones#2011chart>>.

¹¹⁰ "9/11 Anniversary 2011: Over a Decade of Al Qaeda Terror Attacks (Timeline)." 11/7/2011 Web. <[http://www.huffingtonpost.com/2011/09/07/911-anniversary-2011-al-qaeda_n_953000.html#s272750&title=Al Qaeda Attacks](http://www.huffingtonpost.com/2011/09/07/911-anniversary-2011-al-qaeda_n_953000.html#s272750&title=Al%20Qaeda%20Attacks)>.

¹¹¹ This trend is also a result of heightened security in Europe and the United States because of previous success in terrorist attacks. However, the drone's ability to deny al-Qaeda cells safe havens to plan and train attacks is undeniably a contributing factor in al-Qaeda's limited attempts and success in its terrorist attacks over the past decade.

States has employed the drone in a targeted killing campaign against al-Qaeda despite this theoretical conclusion, and while it can be argued that drones are causing negative effects and not combating al-Qaeda's insurgent ideology, there is little doubt that drones have largely contributed to the elimination of numerous al-Qaeda leadership members and al-Qaeda's inability to move, train and conduct operations in the ways that it did prior to their use.

It is impossible to determine the direct, quantitative affect of drones on al-Qaeda's operational capacity or the severity of negative side effects that they produce.¹¹² Having acknowledged this fact, on a qualitative level, the assertions made in this section are valid, given the estimated performance of drones and the weakened ability of al-Qaeda to strike in the United States and Europe.¹¹³

¹¹² These affects would be extremely difficult to measure, not only because relatively little is known about the details of the al-Qaeda network but also because the United States government has classified its drone program.

¹¹³ Though al-Qaeda's ability to conduct terrorist attacks in the west does not necessarily indicate their operational capacity directly, given that one of their main objectives is the destruction of western governments and to strike within the borders of "infidel" nations, their failure to do so in recent years shows either a gross redirection of resources or a limited ability to accomplish their objectives.

The Future of Drone Warfare

“The belief that peace is desirable is rarely enough to achieve it.”
Barack Obama
Speech at His Acceptance of the Nobel Peace Prize

As the United States’ debt has climbed, approaching a level equal to its annual gross domestic product, and following the global economic crisis witnessed in 2008, talk of limiting government spending has been at the forefront of political debate. Most notably, and at the highest level of controversy, defense

spending has not been taken off of the table. Early in 2012, President Obama and Defense Secretary Leon Panetta developed a new “military approach” that would ultimately shrink the U.S. military and attempt to reduce spending as much as possible. This should come as no surprise; with the end of U.S. presence in Iraq and a plan to withdraw from Afghanistan currently being implemented, it is only logical that the additional troops and funding needed to conduct these conflicts will no longer be necessary.

The president’s plan has come up against strong opposition, certainly for political reasons, but also because of the lack of certainty that the United States will be safe with a smaller military that, within a few years, will not be conducting operations in Afghanistan. The primary reason, as cited by the 9/11 Commission Report, that al-Qaeda had the ability to conduct the September 11, 2001 attacks was the availability of a safe-haven that allowed them freedom of movement to train and prepare.¹¹⁴ By this vary logic, the president’s plan is immediately put into question based on the fact that if the United States withdraws from Afghanistan, and the Middle East region in general, terrorist organizations could take claim to another safe-haven. This is the inherent problem of leaving Afghanistan. Will the United States ever be able to leave the Middle East for fear that it will again become a breeding ground to insurgent movements, warlords and terrorist organizations?

It is most definitely in the best interest of the United States to end its conflicts in the Middle East and withdraw its conventional forces. The president

¹¹⁴ "The 9-11 Commission Report." Web. 10/5/2011 <<http://www.9-11commission.gov/report/index.htm>>.

is caught in a dilemma between limiting government spending and ensuring security for the United States. In President Obama's reevaluation of the military, he expressed slight concern over the al-Qaeda cells that currently exist in Pakistan, Afghanistan, Yemen, Somalia and in other parts of the region, suggesting that he fully recognizes the presence of a threat. The president also emphasized that these cells should be monitored and met with offensive force when they are deemed to be dangerous enough to merit such action, stating, "whenever possible, we will develop innovative, low-cost, and small-footprint approaches to achieve our security objectives...."¹¹⁵ This type of a statement, particularly in a document that outlines the future military strategy for the United States, suggests a great deal of investment and utilization of drones. Further evidence of this can be found in the media where, following the release of the president's plan, numerous unnamed defense officials were quoted stating that this would ultimately mean a heavier use of special operations forces and drone aircraft to target those cells who actually pose a threat to the continental United States.¹¹⁶

Multiple times in both Panetta and Obama's descriptions of the new direction that they will take the military in they used the phrase, "agile, flexible, ready and technologically advanced," to describe the shape that the military will

¹¹⁵ Obama, Barack, and Leon Panetta. "Sustaining U.S. Global Leadership: Priorities for 21st Century Defense." 1/2012 2012.Web. The Washington Post. <http://www.washingtonpost.com/blogs/checkpoint-washington/post/raw-doc-the-pentagons-unveils-new-strategy/2012/01/05/gIQACPwqcP_blog.html>.

¹¹⁶ Whitlock, Craig, and Greg Jaffe. "Obama Announces New, Leaner Military Approach." 1/5/2012 2012.Web. The Washington Post. <http://www.washingtonpost.com/world/national-security/obama-announces-new-military-approach/2012/01/05/gIQAFWcmcP_story.html?hpid=z1>.

take.¹¹⁷ While this would be a good description of a military no longer occupying two nations simultaneously, it also is in line with the president's goal of the restructuring and, "being able to fight a single large-scale war while retaining enough forces to deter or impose 'unacceptable costs on an opportunistic aggressor in a second region.'"¹¹⁸

Neither Panetta nor Obama openly state their specific intentions for how they will continue to engage al-Qaeda in the future, nor do they discuss in detail how operations in the Middle East will be conducted. This will prove to be one of the greatest challenges for the United States foreign policy and military strategy over the next decade. How to prevent al-Qaeda and its affiliates from launching attacks while maintaining a presence in the rest of the world and controlling defense spending? Both Obama and Panetta devoted a great deal of their statements to this topic, mainly oriented toward less than conventional measures. It is clear that Obama and Panetta do not wish to continue to engage al-Qaeda or insurgent organizations with the full force of the conventional military for much longer. What then will be the method in which al-Qaeda is combated and stopped if they continue to be a threat to the United States?

Although it is impossible to state with absolute certainty what the United States' course of action will be with regard to al-Qaeda in the future, there is no doubt that drones will become a significant, if not central, part of it. Countless

¹¹⁷ Obama, Barack, and Leon Panetta. "Sustaining U.S. Global Leadership: Priorities for 21st Century Defense." 1/2012 2012.Web. The Washington Post. <http://www.washingtonpost.com/blogs/checkpoint-washington/post/raw-doc-the-pentagons-unveils-new-strategy/2012/01/05/gIQACPwqcP_blog.html>.

¹¹⁸ Whitlock, Craig, and Greg Jaffe. "Obama Announces New, Leaner Military Approach." 1/5/2012 2012.Web. The Washington Post. <http://www.washingtonpost.com/world/national-security/obama-announces-new-military-approach/2012/01/05/gIQAFWcmcP_story.html?hpid=z1>.

counterinsurgency strategies and military strategists have hypothesized that targeted killing programs cannot succeed as a strategy to defeat an insurgent. At the same time, drones have also been cited as one of the most powerful and effective tools in the United States' counter-network operations, for their reconnaissance and targeting abilities as well as the psychological effect that they have on the insurgents. Given these two conflicting ideas, it can easily be expected that drones will be heavily used to monitor the activity and ability of insurgent groups in nations such as Pakistan, Afghanistan, Yemen, Somalia and others with al-Qaeda presence. Should these cells strengthen themselves and become dangerous to allies in the region, Europe or to the United States, there is little doubt that the United States will disrupt their activities in some way.

With respect to the United States' drone targeting program, it is relatively clear that the program will continue at some level. It is strategically important for the United States to have a list of select, critical leaders of the insurgency to constantly be tracking and/or hunting. More in line with current counterinsurgency theory, the president's rhetoric suggests that the targeting program may lighten up on mid-to-low level leaders. Returning to the legality portion of this thesis, it would be significantly more difficult to justify such a targeting campaign on mid-to-low level insurgent actors. Once the United States' conventional forces are moved out of Afghanistan, it will essentially mark the end of the armed conflict between the United States and al-Qaeda and therefore will end the United States' ability to target al-Qaeda as freely. Instead, the United States will have to individually justify that each target presents a threat to the

United States, which for the most part will only be possible with high level leaders and cells in the process of mobilizing for a strike against the United States.

□

Drones entered the worldwide stage nearly a decade ago, initially outside of public knowledge, and have continuously proved to be one of the most significant technological advancements in warfare to date. Following their inception, they sparked awe, debate and even fear; making the world wonder for a brief moment if drones would extract the “human element” from war. Instead they have been the tool that has helped to redefine how a counterinsurgent can properly engage an insurgent. Drones have afforded the United States the ability to effectively track and combat al-Qaeda and its affiliate organizations as a whole and on an individual level in ways that are infinitely more effective than the United States has been able to do in previous conflicts with similar enemies.

With the United States’ strategy to remove conventional forces from the Middle East, drones will prove to be infinitely more important in the United States’ objective to eliminate al-Qaeda’s networking and operational abilities. The drone’s reconnaissance and targeting abilities may be utilized as a way to monitor al-Qaeda and simply strike when they become too strong or their reach grows too large. In this way, drones, in conjunction with special operations

forces, have given the United States a feasible alternative to maintaining a conventional presence in the Middle East.

Drones are an incredible advancement. Their application - broad; their abilities - many; the fear that they strike - paralyzing; the havoc they wreak - devastating; their future potential - limitless.

Appendixes

APPENDIX A - Text of the “Authorization for Use of Military Force”
APPENDIX B - U.S. Air Force MQ-1B PREDATOR FACT SHEET
APPENDIX C - U.S. AIR FORCE MQ-9 REAPER FACT SHEET
APPENDIX D - Map of Afghanistan-Pakistan Border with Known Drone Strikes
APPENDIX E - Known Militant Leaders Killed by Drones
APPENDIX F - “Year of the Drone” Statistical Data on Drone Strikes and Casualties in Pakistan

APPENDIX A - Text of the “Authorization for Use of Military Force”¹¹⁹

Text of S.J. Res. 23 as passed September 14, 2001, and signed into law

Joint Resolution

To authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States.

Whereas on September 11, 2001, acts of treacherous violence were committed against the United States and its citizens;

Whereas such acts render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad;

Whereas in light of the threat to the national security and foreign policy of the United States posed by these grave acts of violence;

Whereas such acts continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States; and

¹¹⁹ "Authorization for Use of Military Force- Sept. 18, 2001 "Web. 9/26/2011 <<http://news.findlaw.com/wp/docs/terrorism/sjres23.es.html>>.

Whereas the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States; Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the “Authorization for Use of Military Force.”

SECTION 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

(a) IN GENERAL. — That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

(b) WAR POWERS RESOLUTION REQUIREMENTS —

(1) SPECIFIC STATUTORY AUTHORIZATION — Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

(2) APPLICABILITY OF OTHER REQUIREMENTS- Nothing in this resolution supersedes any requirement of the War Powers Resolution.

APPENDIX B - U.S. Air Force MQ-1B PREDATOR FACT SHEET¹²⁰

Mission

The MQ-1B Predator is a medium-altitude, long-endurance, unmanned aircraft system. The Predator's primary missions are close air support, air interdiction, and intelligence, surveillance and reconnaissance, or ISR. It acts as a Joint Forces Air Component Commander-owned theater asset for reconnaissance, surveillance and target acquisition in support of the Joint Forces Commander.

Features

The MQ-1B Predator is a system, not just an aircraft. A fully operational system consists of four aircraft (with sensors and weapons), a ground control station, or GCS, a Predator Primary Satellite Link, or PPSL, and spare equipment along with operations and maintenance crews for deployed 24-hour operations.

The basic crew for the Predator is a rated pilot to control the aircraft and command the mission and an enlisted aircrew member to operate sensors and weapons plus a mission coordinator, when required. The crew employs the aircraft from inside the GCS via a line-of-sight data link or a satellite data link for beyond line-of-sight operations.

The MQ-1B Predator carries the Multi-spectral Targeting System, or MTS-A, which integrates an infrared sensor, a color/monochrome daylight TV camera, an image-intensified TV camera, a laser designator and a laser illuminator into a

¹²⁰ "Factsheets : MQ-1B Predator "Web. 9/5/2011
<<http://www.af.mil/information/factsheets/factsheet.asp?id=122>>.

single package. The full motion video from each of the imaging sensors can be viewed as separate video streams or fused together. The aircraft can employ two laser-guided AGM-114 Hellfire missiles which possess a highly accurate, low collateral damage, and anti-armor and anti-personnel engagement capability.

The system can be deployed for worldwide operations. The Predator aircraft can be disassembled and loaded into a container for travel. The ground control system and PPSL are transportable in a C-130 Hercules (or larger) transport aircraft. The Predator can operate on a 5,000 by 75 foot (1,524 meters by 23 meters) hard surface runway with clear line-of-sight to the ground data terminal antenna. The antenna provides line-of-sight communications for takeoff and landing. The PPSL provides over-the-horizon communications for the aircraft and sensors.

An alternate method of employment, Remote Split Operations, employs a GCS for takeoff and landing operations at the forward operating location while the CONUS based crew executes the mission via beyond-line-of-sight links.

The aircraft has an ARC-210 radio, an APX-100 IFF/SIF with Mode 4, and an upgraded turbocharged engine. The latest upgrades, which enhance maintenance and performance, include notched tails, split engine cowlings, braided steel hoses and improved engine blocks.

Background

The Predator system was designed in response to a Department of Defense requirement to provide persistent intelligence, surveillance and reconnaissance information combined with a kill capability to the warfighter.

In April 1996, the secretary of defense selected the U.S. Air Force as the operating service for the RQ-1 Predator system. The "R" is the Department of Defense designation for reconnaissance aircraft. The "M" is the DOD designation for multi-role, and "Q" means unmanned aircraft system. The "1" refers to the aircraft being the first of the series of remotely piloted aircraft systems.

A change in designation from "RQ-1" to "MQ-1" occurred in 2002 with the addition of the AGM-114 Hellfire missiles, enabling reaction against ISR, CAS and interdiction targets.

Active-duty operational squadrons are the 15th and 17th Reconnaissance Squadrons at Creech Air Force Base, Nev. Another unit at Creech AFB, the 11th RS, is the formal training unit and provides initial training for MQ-1B crews. The 6th RS is standing up as a second FTU at Holloman AFB, N. M. Air Force Reserve Command operates the 78th RS also from Creech AFB. The Air National Guard operates the 111th RS in Texas, the 178th RS in North Dakota, the 196th RS in California and the 214th RS in Arizona.

General Characteristics

Primary Function: Armed reconnaissance, airborne surveillance and target acquisition

Contractor: General Atomics Aeronautical Systems Inc.

Power Plant: Rotax 914F four cylinder engine

Thrust: 115 horsepower

Wingspan: 55 feet (16.8 meters)

Length: 27 feet (8.22 meters)

Height: 6.9 feet (2.1 meters)

Weight: 1,130 pounds (512 kilograms) empty

Maximum takeoff weight: 2,250 pounds (1,020 kilograms)

Fuel Capacity: 665 pounds (100 gallons)

Payload: 450 pounds (204 kilograms)

Speed: Cruise speed around 84 mph (70 knots), up to 135 mph

Range: Up to 770 miles (675 nautical miles)

Ceiling: Up to 25,000 feet (7,620 meters)

Armament: Two laser-guided AGM-114 Hellfire missiles

Crew (remote): Two (pilot and sensor operator)

Initial operational capability: March 2005

Unit Cost: \$20 million (fiscal 2009 dollars) (includes four aircraft, a ground control station and a Predator Primary Satellite Link)

Inventory: Active force, 130; ANG, 8; Reserve, 0

Point of Contact

[Air Combat Command](#), Public Affairs Office; 130 Andrews St., Suite 202;
Langley AFB, VA 23665-1987; DSN 574-5007 or 757-764-5007; e-mail:
accpa.operations@langley.af.mil

APPENDIX C - U.S. AIR FORCE MQ-9 REAPER FACT SHEET¹²¹

Mission

The MQ-9 Reaper is a medium-to-high altitude, long endurance unmanned aircraft system. The Reaper's primary missions are close air support, air interdiction, and intelligence, surveillance and reconnaissance, or ISR. It acts as a Joint Forces Air Component Commander-owned theater asset for reconnaissance, surveillance and target acquisition in support of the Joint Forces Commander.

Features

The MQ-9 is a system, not just an aircraft. A fully operational system consists of several air vehicles (with sensors and weapons), a ground control station, or GCS, a Predator Primary Satellite Link, or PPSL, and spare equipment along with operations and maintenance crews for deployed locations.

The basic crew consists of a rated pilot to control the aircraft and command the mission and an enlisted aircrew member to operate sensors and weapons plus a mission coordinator, when required. To meet combatant commanders' requirements, the Reaper delivers tailored capabilities using mission kits that may contain various weapons and sensor payload combinations.

The MQ-9 baseline system carries the Multi-spectral Targeting System, or MTS-B, which has a robust suite of sensors for targeting. The MTS-B integrates an infrared sensor, a color/ monochrome daylight TV camera, an image-intensified TV camera, a laser designator and a laser illuminator into a single package. The full motion video from each of the imaging sensors can be viewed as separate video streams or fused together.

The unit also incorporates a laser rangefinder/designator which provides the capability to precisely designate targets for laser-guided munitions; such as the GBU-12 Paveway II. The Reaper is also equipped with a synthetic aperture radar to enable GBU-38 Joint Direct Attack Munitions targeting. The MQ-9B can also employ four laser-guided AGM-114 Hellfire missiles which possess a highly accurate, low collateral damage, anti-armor and anti-personnel engagement capability.

¹²¹ "Factsheets : MQ-9 Reaper "Web. 9/5/2011
<<http://www.af.mil/information/factsheets/factsheet.asp?fsID=6405>>.

Each MQ-9 aircraft system can be disassembled and loaded into a single container for deployment worldwide. The entire system can be transported in the C-130 Hercules or larger aircraft. The MQ-9 aircraft operates from standard U.S. airfields with clear line-of-sight to the ground data terminal antenna which provides line-of-sight communications for takeoff and landing. The PPSL provides over-the-horizon communications for the aircraft and sensors.

An alternate method of employment, Remote Split Operations, employs a GCS for takeoff and landing operations at the forward operating location, while the CONUS-based crew executes the mission via beyond-line-of-sight links.

Background

The U.S. Air Force proposed the MQ-9 system in response to the Department of Defense request for Global War on Terrorism initiatives. It is larger and more powerful than the MQ-1 Predator and is designed to go after time-sensitive targets with persistence and precision, and destroy or disable those targets. The "M" is the Department of Defense designation for multi-role and "Q" means unmanned aircraft system. The "9" indicates it is the ninth in the series of remotely piloted aircraft systems.

The MQ-9 is operated by the 17th Reconnaissance Squadron and the 42nd Attack Squadron, both at Creech Air Force Base, Nev., and the 29th Attack Squadron at Holloman AFB, N.M.

General Characteristics

Primary Function: Unmanned hunter/killer weapon system

Contractor: General Atomics Aeronautical Systems, Inc.

Power Plant: Honeywell TPE331-10GD turboprop engine

Thrust: 900 shaft horsepower maximum

Wingspan: 66 feet (20.1 meters)

Length: 36 feet (11 meters)

Height: 12.5 feet (3.8 meters)

Weight: 4,900 pounds (2,223 kilograms) empty

Maximum takeoff weight: 10,500 pounds (4,760 kilograms)

Fuel Capacity: 4,000 pounds (602 gallons)

Payload: 3,750 pounds (1,701 kilograms)

Speed: Cruise speed around 230 miles per hour (200 knots)

Range: 1,150 miles (1,000 nautical miles)

Ceiling: Up to 50,000 feet (15,240 meters)

Armament: Combination of AGM-114 Hellfire missiles, GBU-12 Paveway II and GBU-38 Joint Direct Attack Munitions

Crew (remote): Two (pilot and sensor operator)

Unit Cost: \$53.5 million (includes four aircraft with sensors) (fiscal 2006 dollars)

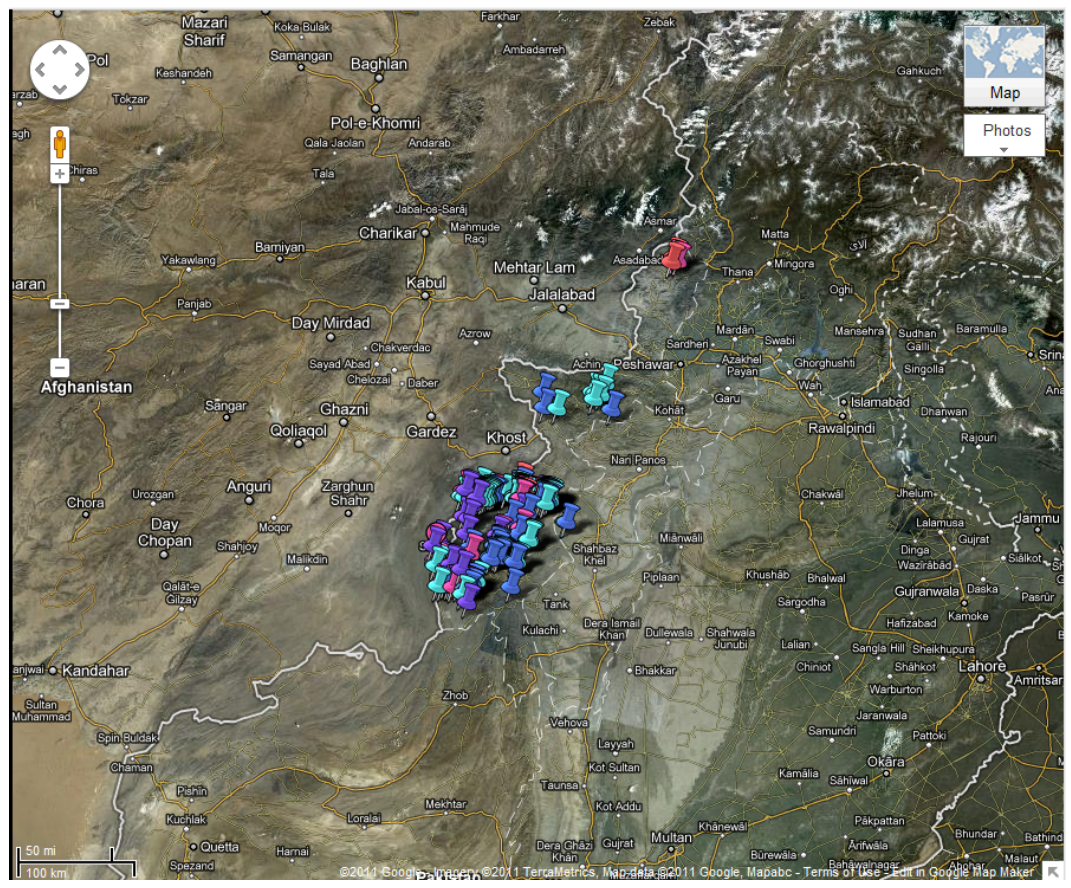
Initial operating capability: October 2007

Inventory: Active force, 47; ANG, 1; Reserve, 0

Point of Contact

[Air Combat Command](#), Public Affairs Office; 130 Andrews St., Suite 202;
Langley AFB, VA 23665-1987; DSN 574-5007 or 757-764-5007; e-mail:
accpa.operations@langley.af.mil

APPENDIX D - Map of Afghanistan-Pakistan Border with Known Drone Strikes¹²²



APPENDIX E - Known Militant Leaders Killed by Drones¹²³

¹²² Bergen, Peter, and Katherine Tiedemann. "The Year of the Drone." April 4, 2012. Web. April 17, 2012 <<http://counterterrorism.newamerica.net/drones#2011chart>>.

2011

- October 27, 2011: Khan Mohammad, Maulvi Nazir's deputy commander ([Reuters](#))
- October 13, 2011: Janbaz Zadran, senior Haqqani commander ([NYT](#))
- September 11, 2011: Abu Hafs al-Shahri ([NYT](#)).
- August 22, 2011: Atiyah Abd al-Rahman ([AP](#))
- June 3, 2011: Ilyas Kashmiri, al-Qaeda's commander in Pakistan ([BBC](#))
- February 20, 2011: Abu Zaid al-Iraqi, managed al-Qaeda's finances in Pakistan ([AP](#))

2010

- December 17, 2010: Ibne Amin, al-Qaeda linked Swat Taliban commander ([The News](#))
- December 17, 2010: Ali Marjan, local LeI commander ([CNN](#), [ET](#))
- September 25 or 26, 2010: Sheikh al-Fateh, AQ chief in Afghanistan and Pakistan ([BBC](#), [Geo](#), [AFP](#), [Reuters](#))
- September 14, 2010: Saifullah, Siraj Haqqani's cousin ([Dawn/AFP](#))
- June 29, 2010: Hamza al-Jufi, AQ commander ([NYT](#))
- May 22-23, 2010: Mustafa Abu al-Yazid ([FP](#))
- March 8, 2010: Sadam Hussein Al Hussami, also known as Ghazwan Al-Yemeni, al-Qaeda planner and explosives expert with contacts in AQAP and Afghan and Pakistani Taliban ([AP](#))
- February 24, 2010: Mohammad Qari Zafar, Taliban commander wanted in 2006 Karachi consulate bombing
- February 17, 2010: Sheikh Mansoor, Egyptian-Canadian al-Qaeda leader
- February 15, 2010: Abdul Haq al-Turkistani, al-Qaeda linked leader of a group called the Turkistani Islamic Party
- January 9, 2010: Jamal Saeed Abdul Rahim, wanted for his alleged role in the 1986 hijacking of Pan American World Airways flight during a stop in the southern Pakistani city of Karachi ([BBC](#), [AP](#), [Asian Tribune](#)) [Author note: *BBC says he "died" on Jan. 9, AP says he was killed by a drone on Jan. 9, and Asian Tribune says he died in the strike on Ismail Khel, which happened on Jan. 10 as per AFP, AP, CNN, Dawn, Times of India, and Geo.*]
- Early January, 2010: Mahmud Mahdi Zeidan, Jordanian Taliban commander, bodyguard of Mustafa Abu al-Yazid

2009

- December 31, 2009: Haji Omar, key Taliban commander in Mir Ali, North Waziristan
- December 17, 2009: Zuhair al-Zahibi, well-known al Qaeda commander in North Waziristan

¹²³ Bergen, Peter, and Katherine Tiedemann. "The Year of the Drone." April 4, 2012. Web. April 17, 2012 <<http://counterterrorism.newamerica.net/drones#2011chart>>.

- December 8, 2009: Saleh al-Somali, al Qaeda's external operations chief and link between al Qaeda in Afghanistan and Pakistan and al Qaeda abroad.
- September 14, 2009: Nazimuddin Zalalov alias Yahyo, a leader of the Islamic Jihad of Uzbekistan and a lieutenant of al Qaeda chief Osama bin Laden
- September 7, 2009: Ilyas Kashmiri, al Qaeda's chief of paramilitary operations in Pakistan [Author note: someone named Ilyas Kashmiri claiming to be the chief of al Qaeda in Afghanistan [gave an interview](#) to the Asia Times on October 15; he is now believed to be alive.]
- August 27, 2009: Tahir Yuldashev, leader of the Islamic Movement of Uzbekistan, linked to al Qaeda [Author note: Die Welt [unearthed a video](#) of him in January 2010; current status unclear.]
- August 5, 2009: Baitullah Mehsud
- [unknown, 2009]: Saad bin Laden, OBL's son ([NPR](#)) [Author note: Saad bin Laden was reported living in Iran by his brother, Omar, in December 2009: [AP](#). His current status is unclear.]
- April 29, 2009: Abu Sulayman al Jazairi, an Algerian Qaeda planner who American intelligence officials say they believe helped train operatives for attacks in Europe and the United States.
- January 1, 2009: Osama al Kini and Sheikh Ahmed Salim Swedan, who played central roles in the 1998 embassy bombings

2008

- November 22, 2008: Rashid Rauf, a British national who is a key suspect in the 2006 plot to bring down U.S. and Canadian airliners, and Abu Zubair al Masri, a senior member of al Qaeda (though Rauf has since been reported to be alive)
- November 19, 2008: Abdullah Azzam al Saudi, senior member of al Qaeda
- (sometime in October 2008): Abu Hassan al Rimi, al Qaeda "emir", led cross-border operations against coalition forces in Afghanistan
- October 31, 2008: Abu Jihad al Masri, Al Qaeda's propaganda chief, and Abu Kasha/Abu Akash, a key militant link who fought against the Soviets in the 1980s (unconfirmed; now believed to have escaped)
- October 26, 2008: Mohammad Omar, close associate of Nek Mohammed, Taliban commander
- October 16, 2008: Khalid Habib, senior member of al Qaeda
- September 17, 2008: Abu Ubaydah al Tunisi, high value target
- September 8, 2008: Abu Haris, Al Qaeda's chief in Pakistan
- September 4, 2008: Abu Wafa Al Saudi, al Qaeda commander and logistician
- Aug. 13, 2008: Abdul Rehman, a Taliban commander in South Waziristan
- July 28, 2008: Abu Khabab al Masri, al Qaeda's WMD expert
- May 14, 2008: Abu Sulayman Jazairi, another Algerian al Qaeda planner (distinct from person of same name killed April 29, 2009)

- January 29, 2008: Abu Laith al Libi, orchestrated a 2007 suicide attack targeting Vice President Dick Cheney while he was visiting Bagram; described as the number-three man in the al Qaeda hierarchy.

2007 – none known

2006 – none known

2005

- November 30, 2005: Abu Hamza Rabia, top al Qaeda official
- May 2005: Haitham al-Yemeni, al Qaeda explosives expert

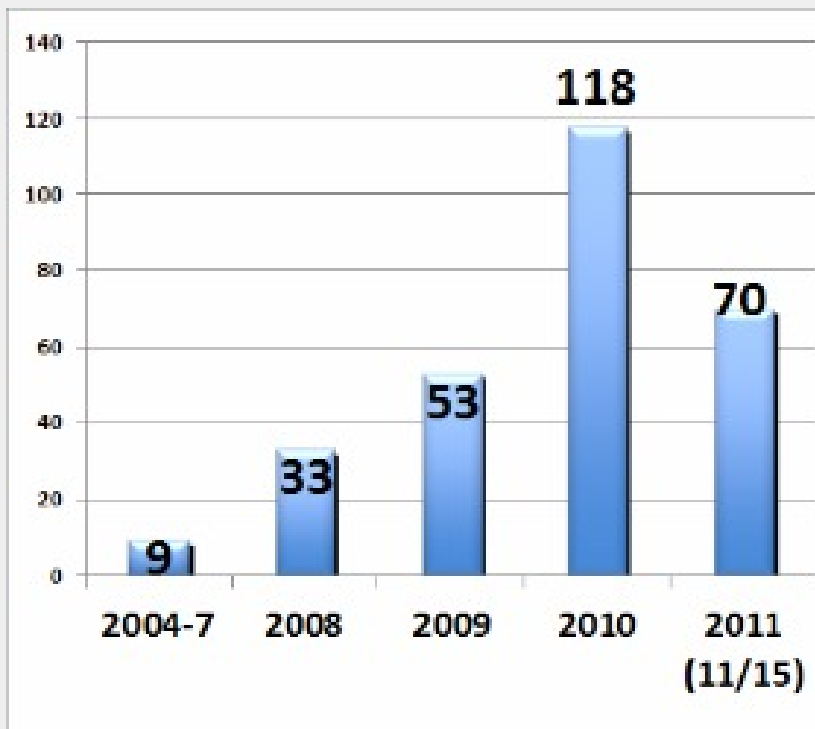
2004

- June 18, 2004: Nek Mohammed, Pakistani Taliban leader

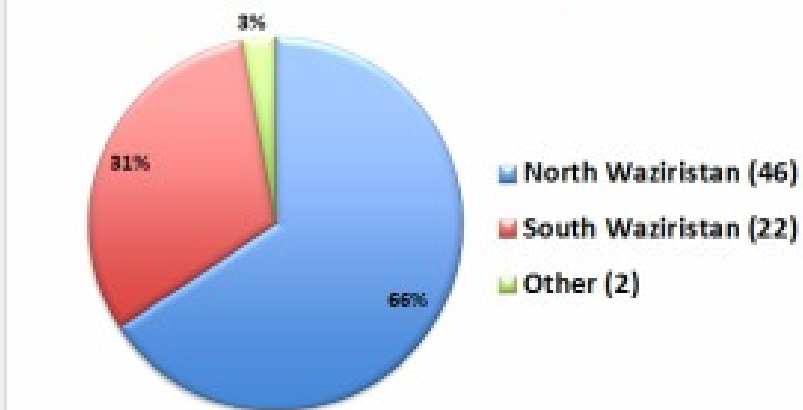
APPENDIX F - “Year of the Drone” Statistical Data on Drone Strikes and Casualties in Pakistan¹²⁴

¹²⁴ Bergen, Peter, and Katherine Tiedemann. "The Year of the Drone." April 4, 2012. Web. April 17, 2012 <<http://counterterrorism.newamerica.net/drones#2011chart>>.

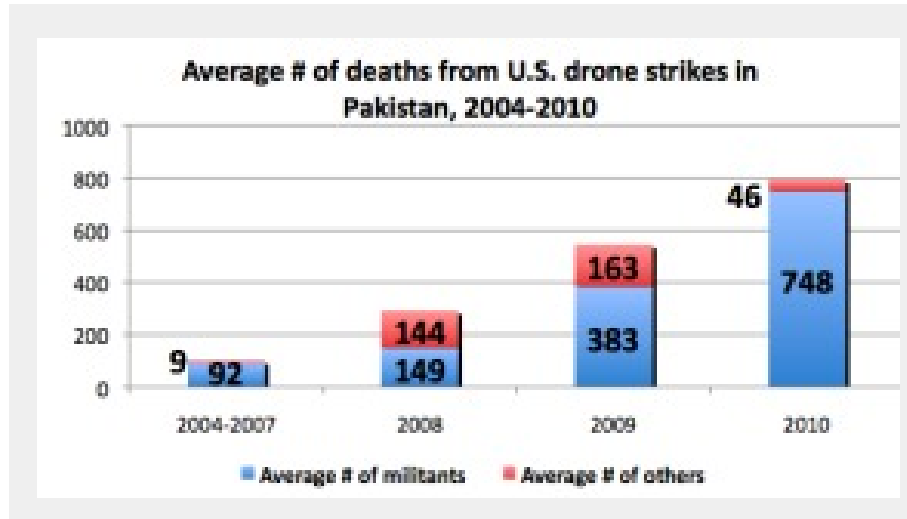
U.S. DRONE STRIKES 2004 - 2011



Location of 2011 drone strikes (11/15)



Appendix F (cont.) - "Year of the Drone" Statistical Data on Drone Strikes and Casualties in Pakistan



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Unmanned Aerial Vehicles (UAVs), Unmanned Aircraft Systems (UASs) or drones are remotely operated, fixed winged aircraft of infinite sizes and shapes that entered the world's stage in the early 2000s. What separates drones from traditional aircraft is the location of the pilot and the technological advances that have been incorporated into drones. Drone operators can be anywhere from a couple of miles to half a world away from the actual aircraft while it is in flight. The technology incorporated in these vehicles allows for unparalleled reconnaissance abilities. Drones can fly at their cruising altitudes far longer than traditional aircraft both because of technological capabilities as well as the reduced human limitations by the pilots. The cameras on most drones are capable

of reading license plate numbers or positively identifying specific individuals on the ground from its cruising altitude. Specialized drones have been developed with stealth capabilities, and some of the larger drones have been fitted with AGM-114R Hellfire Missiles in order to give these drones the capability of conducting offensive operations.

The emergence of drones was a frightening event for many legal scholars and defense strategists. Many fear that the absence of a pilot in the actual aircraft removes the “human element” to warfare, a phenomenon coined the “PlayStation Effect.” The manner in which drones have been used by the United States government is particularly disturbing to this group of intellectuals as well. Drones have been used in a targeted killing campaign against al-Qaeda and affiliate organization members for the past decade in nations around the world. While the world is in a general agreement that these individuals must be brought to justice, a legal question remains as to whether this campaign by the United States is legal under the various applicable bodies of law.

The United States’ strategy in combating al-Qaeda and its affiliates has drastically evolved since 2001. David Petraeus, David Kilcullen and others worked tirelessly in the early years of the “War on Terror” to develop a strategy to understand and defeat the al-Qaeda insurgency. The introduction of drones almost exactly at this time led many strategists to wonder if the use of drones worldwide to selectively destroy certain members of the al-Qaeda leadership was beneficial at all. The theory being that by killing an insurgent leader or member, that that would simply create local distrust, anti-American sentiment and lead to

more recruits for al-Qaeda, similar to the mythical hydra monster. Still, despite these theories and warnings that a targeted killing campaign could produce negative results in the United States' counterinsurgency strategy, the campaign expanded to hunt al-Qaeda insurgents in Pakistan, Yemen, Somalia, Libya and sparsely to other nations around the world.

The intention of this capstone is to analyze drones, their performance over years of use and the legal and strategic implications of their use to make a conclusion regarding the legality and strategic effectiveness of drones. Unfortunately, much of the information on drones, and drone strikes is classified by the United States government and will not be released anytime soon. This has become an inherent problem in the study of drones for many researchers, even on a professional level. Only a limited few studies exist on the statistical performance of drones in the field, these studies are largely based on estimations and mostly limited to Pakistan where the larger media presence makes it possible to track the drone strikes that were reported by the media. Having said this, the analysis of drone performance in this capstone will incorporate these studies, but not rely on them as a core of its conclusion. The method used to determine drone legality will be a thorough analysis of international law, domestic law and the opinions of legal scholars, with respect to war and armed conflict, to see if drones and drone use fit within these legal frameworks. This presents a particular challenge. International law is a sporadic, and often incomplete, series of treaties and agreements made to determine how an actor in war will conduct itself. As a result, a new tool or tactic, such as drones, is not specifically mentioned in

international law. Moreover, there are multiple authorities both for and against the use of drones, all of which have strong arguments and justifications.

Although a clear decision on drone legality, that all parties will accept, may be impossible to create, this capstone will develop a legal argument as to why drones are legal and why the United States' argument for drone use is strong. Lastly, the concept of an insurgent-based conflict and the United States' modern counterinsurgency strategy will be broken down to conclude whether drones have a fitting place in counterinsurgency warfare.

Research on drones and drone performance is significant in numerous ways. (1) Legal battles have occurred since drones' inception and will ultimately continue. For the meantime, it seems as if this clash of opinions will continue but eventually a consensus will be made as to whether or not the United States is crossing a legal or ethical line with its drone use. Continued research and formation of arguments will inevitably lead the international community to establish once and for all a legal precedent regarding drones and drone use. (2) The United States' current counterinsurgency theory is a strategy, and indeed a method of perceiving a conflict and an enemy, that is new to the United States' military and intelligence communities. The introduction of drones was a "game changing" moment in the formation of these strategies. The broad and seemingly unrestricted manner in which drones have been employed have resulted in consequences that are not fully understood as of yet. Drone strikes have the potential to cripple the al-Qaeda network, but they simultaneously have the potential to cause needless destruction and anti-American sentiment. Continued

research on these effects will assist policy makers and strategists in the future use of drones. (3) The U.S. public is unequivocally ignorant of the existence of drone use. Despite the blatant lack of secrecy surrounding this classified program, U.S. citizens are relatively unaware that its government is conducting this campaign around the world. Although some may argue that this is irrelevant, most citizens do not possess the knowledge or understanding to make an informed opinion regarding drones. However, it is important that the United States show that they are combating al-Qaeda to keep its citizens safe and that the actions that they take are necessary, proportional and legal.

Drones are, presently, significant in the United States' conflict with al-Qaeda's insurgency, but they will inevitably remain significant in the future. Drones are technologically advanced, but drones are still a new technology. The potential for growth and advancement in drones is infinite at this point, and while drones are currently a vital tool in the United States' asymmetric, counterinsurgent strategy, they could become a tool to be used in conventional war or even replace traditional aircraft completely.