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Where No Man Has Gone Before: A Critical Roadmap for the Use of Drones in Targeted Killing

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Where No Man Has Gone Before:

A Critical Roadmap for the Use of Drones in Targeted Killing

Valerie Heinmets
Fordham University
International Political Economy
Class of 2015

Geneva, Switzerland: Multilateral Diplomacy and International Relations
Fall 2013
Dr. Gyula Csurgai
Dr. Alexandre Lambert

Abstract

In the ongoing War on Terror, the Obama Administration has relied heavily on a new form of military technology: the Unmanned Aerial Vehicle, more popularly known as the drone. While the program has remained largely a covert operation, gradually more information about its effects, especially concerning civilian casualties, has begun to come to light. As a result of allegations over their allegedly indiscriminate use in Yemen and Pakistan, countries the U.S. is not at war with, a few questions arise. When do drones stop becoming a military precision tool for taking out Al-Qaeda senior command and move into a field of unchecked and rapidly proliferating military assassinations of terrorists and civilians alike? Have they crossed that line, and if so, are the actions of the United States legal under international law? In examining these key thoughts, the effectiveness and ultimately, alternatives to the Drone Doctrine must also be judged.

This report finds that the drone program has become counterproductive and should be stopped. The indiscriminate killings of civilians are in violation of International Human Rights Laws and have caused an environment where to continue drone strikes will only result in a permanently damaged relationship with the people of Yemen and Pakistan. The only way to carry out a successful drone program is to have it in the open, overseen by the international community. Even when that happens, drones are not a complete counterterrorism strategy. Other methods for building infrastructure and state empowerment must be used in conjunction with drones to stop terrorism and violence at their roots.

Preface

“We should all be clear that there is no trade-off between effective action against terrorism and protection of human rights. On the contrary, I believe that in the long term, we shall find that human rights, along with democracy and social justice, are one of the best prophylactics against terrorism.”

-Kofi Annan¹

“As part of our fact-finding mission in the investigation of this attack, we sought to obtain testimony directly from the eyewitnesses themselves. With the help of the victims' families, we managed to meet the wounded and record their testimony. Burns, swelling, and pyoderma, especially on their faces and limbs, were so severe that it was difficult to recognize the missile shrapnel that remained embedded in their bodies.”

-HOOD²

“The use of force must be seen as part of a larger discussion we need to have about a comprehensive counterterrorism strategy, because for all the focus on the use of force, force alone cannot make us safe”

-Barack Obama³

The new face of war is chillingly faceless. In operations across remote areas of Pakistan and Yemen, Unmanned Aerial Combat Vehicles (UACV) emanate a loud noise, a constant reminder that death is near and can be instantaneous. In these areas steeped with danger and terrorist influence, even an operation as well planned as the one that killed Osama Bin Laden can prove disastrous. The risk of putting boots on the ground seems too great to the United States, unwilling to slide back into another Iraq or Afghanistan. Instead, the drone has become the weapon of choice, the centerpiece of the Obama counterterrorism policy. They are a precision weapon, a mechanized killing system, and an intelligence breakthrough. From behind one, they are a godsend. From beneath one, they are an angel of death. Drones are the future of warfare, a future that still has the potential to be either miraculous or terrifying.

¹ Mary Robinson, “Human Rights Are as Important as Ever,” *International Herald Tribune*. Jun. 21, 2002.

² “This is the Year of Drones and Terror Security Forces,” HOOD. May 28, 2013.

³ “Remarks by the President at the National Defense University,” *Whitehouse.gov*. May 23, 2013.

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Thank you to my host parents for allowing me to sit on their couch, drink their tea, and write this paper for a month straight. Thank you to my own parents for sending me to Geneva for a semester to research a project you may be the only ones to read.

Thank you lastly to John Brennan, current director of the CIA, for graduating from Fordham and bringing my attention to drones in the first place. *Ad majorem Dei gloriam.*

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Abbreviation List

AQAP	Al-Qaeda in the Arabian Peninsula
IHL	International Humanitarian Law
IHRL	International Human Rights Law
UACV	Unmanned Aerial Combat Vehicle
UAV	Unmanned Aerial Vehicle

Introduction

This study was undertaken on two different levels: through academic research in explanations of International Humanitarian Law, transnationality, and counterterrorism policy as well as through personal interviews with experts in the field. The two different methods worked complementarily, with prior research giving breadth to intelligent questions for interviews, which lead to discussions much more nuanced and broader-reaching than most written reports. In gaining a broader and more well rounded view through interviews, more research could be done on new, specific aspects that had been brought up.

Much of the literature referenced in this report was produced by humanitarian non-governmental organizations including Amnesty International, Human Rights Watch, Al Karama, and the Pakistan Institute for Peace Studies on the affects of targeted killing in Pakistan and Yemen. It is interesting to note that most of these reports came out within a week of each other at the end of October, 2013, which was timed rather conveniently for use in this project. The majority of the data used for numbers of attacks and casualties were taken from these reports, as they provide more information than the statistics officially released by the U.S. government. Other literature used were reports published in international law journals on the legality of targeted killing, and many were written by, contributed to, or recommended to me by the experts I interviewed. The most heavily used in this report was a report written by Nils Melzer to the E.U. Parliament on drones and targeted killing. Also heavily referenced is a case study published in *The Atlantic* by Mark Bowden, author of *Black Hawk Down*, explaining the benefits and problems with drones.

Using these first sources, I formulated questions for interviews that allowed for in-depth answers that could be further researched. I explained to my interviewees my personal opinion that drones are an effective tool of warfare that are here to stay, but the way in which they are currently being used is unsustainable. From there, I asked about legal frameworks they thought would apply, the threat of proliferation, the idea that drones are now counterproductive, alternatives to military action, mechanisms for accountability, and what can be done internationally to change the current policy of the U.S.

The purpose of this paper is to assess the situations in both Pakistan and Yemen to determine the legality of the U.S. use of drones. In doing so, it can be seen that a military response covers only some of the issues that are at the root of terrorism in these countries. It has therefore reached a point where regardless of the legality of the strikes, they have become counterproductive and alternatives should be employed. A combination of the way the U.S. has used drones in these places coupled with the current political situations have made drones a counterproductive policy that should be readjusted. Transparency from the governments of the U.S., Yemen, and Pakistan as well as with the number of casualties should be a priority. Following, mechanisms for accountability and international oversight ought to be put into place to avoid any further situations where drones have to be stopped because of misuse. Drones are seen in Yemen and Pakistan as a harbinger of destruction and death. That does not have to be their reality. By making adjustments, the drone can continue to be useful for fighting counterterrorism, but only with restraint and alongside other social policies and reforms that cut to the roots of terrorism instead of only their most visible results.

Changing International Reality

One of the main reasons behind the debate over the use of drones is the changing nature of warfare itself. After the collapse of the Soviet Union, the world experienced a meltdown of the Cold War reality, where international relations would happen in terms of unified and largely predictable blocks.⁴ The current state of global affairs is much different from the world that the pre-existing laws of warfare were written in. No longer do conflicts simply happen internally or between state actors, in fact, most wars and especially those where drones are heavily featured, are between states and non-state actor groups.

One issue that has given rise to this is the proliferation of failed and failing states where governments are not strong enough to retain complete control over their territories. In these situations, political vacuums take over and allow for the rise of non-state actors to gain control often through violent means. When these situations arise, as they have in the cases of Afghanistan, Pakistan, Yemen, Somalia, and even Lebanon to an extent, it becomes increasingly difficult to monitor and control the movement of people, money, and goods, as well as to enforce and regulate overlapping legal frameworks and jurisdictions that result from non-state actors.⁵

This presents a challenge to international jurisdiction because though the basic laws of war should imply in theory, non-state actors were not party to agreements and therefore feel no obligation to follow them.⁶ The lack of accountability and structure of these groups also makes it difficult to target, punish, and negotiate with them when

⁴ Mohammad-Mahmoud Mohamedou, interview by author, November 7, 2013.

⁵ Andrea J. Dew, Mohammad-Mahmoud Ould Mohamedou, "Empowered Groups, Tested Laws, and Policy Options" Program on Humanitarian Policy and Conflict Research at Harvard University, 2007.

⁶ David Atwood, interview by author, October 31, 2013.

necessary.⁷ It is due to this unconventionality that these new and also unconventional methods for engaging non-state actors have arisen. The United States' War on Terror is not against an organized and unified movement. Instead, the U.S. faces an enemy that they increasingly do not understand in an area out of control of traditional government. None of this serves as a justification for the use of drones, but instead provides a context for why the international laws of war may have to be reassessed in light of new enemies and new weapons. In this view, laws must either constantly adapt to new technology⁸, or interpretations must be bold, rapid, and correct in order to keep technology from running free from jurisdiction.

History of Drones

The first thing to establish is that the drones themselves are not unconventional. Since the First and Second World Wars, the United States and the United Kingdom have been using unmanned aircraft to deploy bombs on enemies. The difference now is the range and accuracy with which these weapons operate.⁹ As opposed to the indiscriminate bombings of B-24's that characterized the Second World War in the bombings of Coventry and Dresden, the current drones have the ability of surveillance to aid their attacks.¹⁰ Although the methods for surveillance have also greatly improved, using cameras on planes has been in use since the Vietnam War.¹¹ So then what is it that is so unsettling about the newest incarnations of Unmanned Aerial Vehicles?

⁷ Andrea J. Dew, Mohammad-Mahmoud Ould Mohamedou, "Empowered Groups, Tested Laws, and Policy Options" Program on Humanitarian Policy and Conflict Research at Harvard University, 2007.

⁸ Marc Finaud, Interview with Author, November 5, 2013.

⁹ Michel Veuthey, in Interview with Author, October 31, 2013.

¹⁰ Mark Bowden, "How the Predator Drone Changed the Character of War," *Smithsonian Magazine*, November 2013.

¹¹ *Ibid.*

The U.S. currently uses two types of unmanned aircraft, the Predator and the Reaper. The Predator was first used in 2000 in missions aimed at locating Osama Bin Laden following the attacks on U.S. embassies in Africa in 1997.¹² The Predator drone was developed for surveillance, with a 60-mile panorama¹³ available from the plane that can stay airborne for anywhere from 19-40 hours without refueling.¹⁴ After September 11, the demand for a military reaction prompted Hellfire missiles to be attached to the Predator. This became the Predator's larger incarnation: the Predator B, known as the Reaper, which can carry twice as many missiles as its predecessor as well as two laser-guided bombs.¹⁵ Whereas the Predator is equipped largely for surveillance, there is no mistaking the purpose of the Reaper. The Reaper has advanced infrared sensors, radars, and cameras for detection all for the larger purpose of attack. Reapers have been active in Afghanistan since 2007.¹⁶ Because of its increased weight, the Reaper has less airtime than the Predator, though its increased speed still allows for more long-range missions.¹⁷

The biggest innovation in both the Predator and the Reaper from their 20th century incarnations is their global communications systems, which allowed for the UAV's to be piloted from anywhere in the world.¹⁸ The data link in drones allows for cheap, constant, real-time surveillance on suspected targets. The American drones' satellite links and data

¹² Mark Bowden, "How the Predator Drone Changed the Character of War," *Smithsonian Magazine*, November 2013.

¹³ *Ibid.*

¹⁴ Thomas Michael McDonnell, "Sow what you reap? Using predator and reaper drones to carry out assassinations or targeted killings of suspected Islamic terrorists," *George Washington International Law Review* 44, no. 2 (2012).

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Mark Bowden, "The Killing Machines," *The Atlantic*. Aug. 2013.

processors are what provide their technological strength,¹⁹ making it difficult for any other country to currently develop a rival system.²⁰

Technological shortcomings within the two main drone models are still to be expected in this early phase of their widespread use. Because of their absolute reliance on communication with the ground, if a worm is inserted, a drone can be corrupted.²¹ If this happens, and the encryption of a drone is broken, it can be taken over by an enemy.²² There has been one report of a drone malfunctioning over Afghanistan in 2009, sending the \$13 million aircraft into neighboring Tajikistan.²³ It is unclear the reason for its malfunction. There have already been reports of crashed drones and other aircraft recovered and reassembled by states like Iran as early as 2011.²⁴ The key component though, the intelligence capabilities, are not available in Iran, rendering the recovered aircraft little more than an overgrown remote-controlled Christmas toy.²⁵ This may not be cause for immediate concern, but should give pause as to the infallibility of technology.

Even with these potential breakdowns, the actual Predator and Reaper are not to fear compared with the aircraft that are in line to follow. The next generation of unmanned weapons will be autonomous, with multiple projects in the works to possess the ability to carry out attacks without human command. This is referred to as man-out-of-the-loop technology and carries with it a much weightier implication of violation of

¹⁹ Mark Bowden, "The Killing Machines," *The Atlantic*. Aug. 2013.

²⁰ Michel Veuthey, in Interview with Author, October 31, 2013.

²¹ Oceane Zubeldia, Interview with author, October 31, 2013.

²² Ibid.

²³ C. J. Chivers, Carlotta Gall, and Andrew W. Lehren, "View Is Bleaker Than Official Portrayal of War in Afghanistan," *The New York Times*. (New York, New York). Jul. 25, 2010.

²⁴ Greg Miller, "Drone belonged to CIA, officials say," *Washington Post*. (Washington D.C.) Dec. 6, 2011.

²⁵ Thom Shanker, "Simple, Low-Cost Surveillance Drones Provide Advantage for U.S. Military" *The New York Times*. Jan. 24, 2013.

existing international laws of war.²⁶ Although the full development of such weapons may still be a ways off until they are acceptably functional,²⁷ a strong reaction to the current use of unmanned drones can lend itself to better precedents and mechanisms for control for weapons to come. To explore just what those mechanisms are or should be, it is necessary to look at the drone policy in place for the country currently leading by example--the United States.

Obama's Drone Doctrine

The official decision of the United States to undertake drones as a methodology for targeted killing begun under George W. Bush with the attack in Yemen in 2002. During both of his terms, President Bush authorized no more than 50 drone strikes.²⁸ In the past 4 years, President Barack Obama has signed off on over 400.²⁹ In 2008, there were 35 attacks, in 2009, 53, in 2010, 117 all in Pakistan alone.³⁰ In that time, The New America Foundation reported that 3,300 jihadist operatives were killed in Pakistan, including over 50 senior officers.³¹ Important to note is that these numbers are widely disputed, but best represent the argument for the use of drones.

The rise and relative military success of drones represents the shifting global dimension as well as the rapid rise of technology.³² Drones give the authority of the President and a select few including John Brennan, former adviser on Counterterrorism

²⁶ Nils Melzer, "Human Rights Implications of the Usage of Drones and Unmanned Robots in Warfare," Directorate-General for External Policies of the Union, as Requested by the European Parliament. May 2013.

²⁷ Ibid.

²⁸ Daniel Byman, "Why Drones Work," *Foreign Affairs*, Jul/Aug2013, Vol. 92 Issue 4.

²⁹ Ibid.

³⁰ Bill Roggio and Alexander Mayer, "Charting the data for US airstrikes in Pakistan, 2004-2013," The Long War Journal. Accessed Nov. 19, 2013. <http://www.longwarjournal.org/pakistan-strikes.php>.

³¹ Daniel Byman, "Why Drones Work," *Foreign Affairs*, Jul/Aug2013, Vol. 92 Issue 4.

³² Mohammad-Mahmoud Mohamedou, interview by author, November 7, 2013.

and current head of the CIA, the power to curate a list of suspected terrorist operatives to hunt down and kill individually.³³ The list consists of three levels: high value targets, imminent threats, and signature strikes.³⁴ High value targets are defined as high-level Al-Qaeda operatives. Imminent threats include examples like a truck of bombs moving towards the Afghan border.³⁵ Signature strikes are the most controversial, defined as attacks on suspicious activities in enemy territory.³⁶ In this practice, all male casualties deemed to be militant-aged are counted as combatant casualties for official numbers.³⁷

The meetings for determining the “kill list” are often highly contentious and include representatives from the Pentagon, CIA, State Department, National Counterterrorism Center, and occasionally the Justice Department.³⁸ The criterion for determining who was on the list is threefold.³⁹ First, the legality needs to be affirmed by assuring that the target is partaking in terrorist activities.⁴⁰ Second, the person must be deemed to be carrying out an action that constitutes an imminent threat to the United States.⁴¹ Third, it must be deemed that capture is not possible and there is near certainty

³³ Jo Becker and Scott Shane, “Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will,” *The New York Times*, (New York, New York), May 29, 2012.

³⁴ Mark Bowden, “The Killing Machines,” *The Atlantic*. Aug. 2013.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Nils Melzer, “Human Rights Implications of the Usage of Drones and Unmanned Robots in Warfare,” Directorate-General for External Policies of the Union, as Requested by the European Parliament. May 2013.

³⁸ *Ibid.*

³⁹ “Fact Sheet: U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities,” *whitehouse.gov*, May 23, 2013. <http://www.whitehouse.gov/the-press-office/2013/05/23/fact-sheet-us-policy-standards-and-procedures-use-force-counterterrorism>.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

of no civilian casualties.⁴² Who makes the final decision whether or not someone can be targeted is unclear.

The precedent for this practice under the Obama administration was put into place directly after the Sept. 11 attacks, with the Authorization to Use Military Force (AUMF). AUMF was approved on Sept. 14, 2001 and allows all “necessary and appropriate force” against those operatives who planned the attack as well as those helping to harbor them.⁴³ Whether or not AUMF still applies is a legal question, and its legitimacy is one that even the President himself doubts,⁴⁴ but certainly the power the act granted to the president himself was unprecedented. The direct involvement of the President of a major world power to handpick individuals to kill, on paper, sounds like a prudent and controlled alternative to war. Controversy comes in with the secrecy with which this process is taking place and the lack of oversight the U.S. government has over it as well as the amount of information released publicly.⁴⁵ That and, of course, whether or not the president should have this authority in the first place.

The Drone Doctrine is not the same across the board for all countries it currently operates in the jurisdiction of. Examples of drone use in Libya and Afghanistan are much different than those carried out in Yemen and Pakistan, where it is unclear whether or not they have legal permission to operate. Besides that, because of the secrecy with which drones are used in Yemen and Pakistan, it is difficult to assess the extent and details that differentiate the two. What is known is that the use in Pakistan is almost all under the

⁴² Ibid.

⁴³ “107th Congress Public Law 40” Sept. 18, 2001. <http://www.gpo.gov/fdsys/pkg/PLAW-107publ40/html/PLAW-107publ40.htm>

⁴⁴ “Remarks by the President at the National Defense University,” *Whitehouse.gov*. May 23, 2013.

⁴⁵ Mark Bowden, “The Killing Machines,” *The Atlantic*. Aug. 2013.

control of the CIA.⁴⁶ In Yemen, however, strikes are conducted by the CIA as well as the U.S. Navy.⁴⁷ There is also cooperation with Saudi Arabia for the training of troops, though again, the extent of their involvement with drones is unsure.⁴⁸ This is important, because even with the limited information available, some judgments can be made as far as the status of combatants, state of conflict, and ultimately, the actual legality of U.S. drone strikes in these two countries. It is doubly important to note the information that is necessary to make complete judgments on how drone programs should look going into the future.

Existing Legal Frameworks

To understand how this shift in global politics affects the regulation of drones, it is important to understand the legal frameworks that do already exist. The first body of law to be considered is International Humanitarian Law, or the laws of war that are focused on protecting civilians in conflict zones.⁴⁹ To a certain extent, civilian death is unavoidable in times of conflict. In order to minimize the harm done, IHL has worked to establish guidelines of when and how civilian casualties are acceptable. Attacks are illegal which target civilians, do not discriminate between civilians and combatants, or cause civilian loss that is excessive compared to the anticipated military gain.⁵⁰

The question then becomes, how do transnational terrorist organizations like Al-Qaeda fit into this description? It is obvious that, by definition, terrorist organizations are in direct violation of these rules and therefore should have to endure international

⁴⁶ “License to Kill: Why the American Drone War on Yemen Violates International Law,” *Al Karama*. October 17, 2013.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ “International Humanitarian Law and International Human Rights Law: Similarities and Differences,” *International Committee of the Red Cross*. Accessed Nov. 18, 2013.

⁵⁰ “Between a Drone and Al-Qaeda” *Human Rights Watch*. October 2013.

retribution. Because of the current lack of organization in the current incarnations of Al-Qaeda and its affiliates, it is nearly impossible to capture one figurehead and bring them to justice, or have the organization make monetary reparations as has been the traditional route of dealing with war crimes. The rise of such groups, as discussed earlier, happened much after the original rules and conventions of IHL were written. That does not necessarily mean the rules are outdated, instead, the vague language allows for more interpretation over time in action. What is important now is how new thinking is applied in the actions taken internationally to the challenges presented by both Al-Qaeda and the U.S.'s continued use of drones against them.

Under the Geneva Conventions, Al-Qaeda operates as a sort of Fourth Generation Warfare. This is a new development in the latter part of the twentieth century that is characterized by a much weaker opponent utilizing tactics that are in clear violation of IHL against much stronger opponents.⁵¹ This creates a vastly asymmetrical style of warfare, with the advent of technology tilting this balance even more. However, it is important to note that these groups utilizing Fourth Generation Warfare can defeat their stronger opponents because of their violations of IHL, specific to low-cost, high-impact attacks against civilians.⁵² Although there are extraordinary manners used by Al-Qaeda and the Taliban in their terror attacks, there is no precedent yet for an extraordinary response. Instead, IHL should remain in place and reciprocating stronger states like the U.S. should better harness their technological advances for military victory. Here, a correct usage of drones can play an essential part in military strategy.

⁵¹ Roger Barnett, "Asymmetric warfare: Today's Challenges to US Military Power," 2002

⁵² Ibid.

A larger with issue with IHL and drones is determining whether or not the people who are living in areas where they are used in the Middle East are living in conflict zones. If the level of violence caused by Al-Qaeda and their affiliates constitutes a conflict zone, then the group can be classified as combatants who can be targeted, making approved U.S. targeted attacks against them are perfectly legal.⁵³ However, if terrorists in Yemen and Pakistan are not combatants in an armed conflict, then to target and kill them extra judicially would be a war crime worthy of international examination in a criminal court.⁵⁴

It is obvious that terrorists cause violence, but the international legal definition of combatants is more expansive than sporadic acts of terror. Certainly in Afghanistan, a state in which the U.S. has officially declared a war against Al-Qaeda operatives, civilians there are living in an armed conflict and are therefore protected by International Humanitarian Law.⁵⁵ However, the incidents of terrorism in Pakistan, Yemen, and even Somalia all vary in intensity and frequency. The International Criminal Tribunal for the Former Yugoslavia deemed an armed conflict to exist between a state and an organized group featuring protracted violence.⁵⁶ However, the organization of Al-Qaeda has been largely dismantled, breaking down its structure and centralized organization.

Autonomous groups have sprung up, identifying themselves as being part of Al-Qaeda,

⁵³ Alexandre Vautravers, Interview with Author, October 30, 2013.

⁵⁴ Akbar Nasir Khan, "Legality of Targeted Killings by Drone Attacks in Pakistan," *Pakistan Institute for Peace Studies*. February 2011.

⁵⁵ Susan Breau, Marie Aronsson, and Rachel Joyce, "Discussion Paper 2: Drone Attacks, International Law, and the Recording for Civilian Casualties of Armed Conflict," Oxford Research Group. June 2011.

⁵⁶ Helen Duffy, "The 'War on Terror' and the Framework of International Law," (2005).

which does not exist as a hierarchical organization with centralized control over all of these groups anymore.⁵⁷

The Taliban is a different example. The Northwestern territories of Waziristan in Pakistan can be recognized as a non-international conflict zone.⁵⁸ This is the area largely under the control of the Taliban and is experiencing frequent and contracted violence.⁵⁹ Yemen and the rest of Pakistan, though violent and unstable areas, do not seem yet to meet this constitution. The ongoing security concerns in Yemen can be traced to four separate local entities each fighting for a different cause, in a different region, though often economically motivated.⁶⁰ This would point away from the definition of an organized structure committing contracted violence. However, these conclusions are far from final, and fostering international discussion over what more specifically constitutes a conflict zone is needed. If Yemen and Pakistan are not conflict zones, then the only way to enforce counterterrorism is through the governments in place there, the ramifications of which are discussed later.

Even in the view that Yemen and the entirety of Pakistan are areas of conflict, and therefore covered by IHL, one issue that immediately arises with the use of drones is the process by which combatants have been identified from civilians. Civilians are defined in a negative sense as not being combatants. Combatants are defined as members of armed groups taking a direct part in hostilities.⁶¹ It is legal to target those deemed to be

⁵⁷ “License to Kill: Why the American Drone War on Yemen Violates International Law,” *Al Karama*. October 17, 2013.

⁵⁸ Susan Breau, Marie Aronsson, and Rachel Joyce, “Discussion Paper 2: Drone Attacks, International Law, and the Recording for Civilian Casualties of Armed Conflict,” Oxford Research Group. June 2011.

⁵⁹ *Ibid.*

⁶⁰ Alexandra Lewis, “Violence in Yemen: Thinking About Violence in Fragile States Beyond the Confines of Conflict and Terrorism,” *Stability: International Journal of Security & Development*. May 14, 2013.

⁶¹ “Between a Drone and Al-Qaeda” *Human Rights Watch*. October 2013.

combatants or other military personnel during a time of conflict, as long as the rules of proportionality apply.⁶² Civilians, on the other hand, are never allowed to be targeted in times of peace or war. In attacks that may involve the death of civilians to bring about combatant deaths or other strategic measures, the rules of proportionality and precaution work to strike a balance between military necessity and humanity.⁶³ This provision allows for much situational interpretation.

In the case of drone policy, this interpretation is much looser than it ought to be. The practice for determining the identities of targets as either combatants or civilians is especially legally dubious in the use of signature strikes.⁶⁴ This has an interesting root in traditional warfare. Before the advent of targeted killing, it was common practice to open fire on those in Nazi uniforms in World War II and the Vietcong in Vietnam.⁶⁵ Al-Qaeda is not physically distinguishable from civilians. Though signature strikes have killed leaders unexpectedly who just happened to be there, they are highly contentious under IHL. Opening fire on a group of people who look like terrorists--or under the U.S. standards, a military aged man—is most certainly in violation with the principle of distinction.

Another pertinent caveat is that of the Hague Regulations of 1907, which made targeting a combatant who had laid down their weapon or surrendered a war crime.⁶⁶ Of course, there is no chance of surrender with drones, as death happens in seconds from

⁶² Nils Melzer, “Human Rights Implications of the Usage of Drones and Unmanned Robots in Warfare,” Directorate-General for External Policies of the Union, as Requested by the European Parliament. May 2013.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Daniel Byman, “Why Drones Work,” *Foreign Affairs*, Jul/Aug2013, Vol. 92 Issue 4.

⁶⁶ Nils Melzer, “Targeted killing in international law,” (Oxford, England: Oxford University Press, 2008).

above.⁶⁷ The opportunity for surrender, unlike due process, is still a right that is afforded to combatants,⁶⁸ so regardless of how terrorist groups in Pakistan and Yemen are classified, they ought to have the opportunity to surrender to prevent what could be called indiscriminate killings. This does not mean that given the opportunity, every combatant would surrender. It doesn't even mean any of them have to. However, killing suspected terrorists without any chance for defense, while not a blatant violation of this regulation, certainly does not pass it with flying ethical muster.⁶⁹

In short, while the principles of IHL still ought to be regarded as good guides for appropriate behavior in warfare, there is discord over whether the United States has any obligation to follow these and the Geneva Conventions in the situation of drones. That still does not jettison their actions into a realm of legal vacuum. Whether or not the terrorists acts in these regions constitute conflicts, in its attacks, the United States certainly must follow the conventions of human rights.

This leads to the second body of law to consider, International Human Rights Law, which applies to the protection of human rights universally both in times in conflict and peace.⁷⁰ IHRL regulates the proportionality of killings as well as the duty to minimize harm.⁷¹ The use of force is to be used as a last resort, when capture is not

⁶⁷ Mark Bowden, "The Killing Machines," *The Atlantic*. Aug. 2013.

⁶⁸ Nils Melzer, "Human Rights Implications of the Usage of Drones and Unmanned Robots in Warfare," Directorate-General for External Policies of the Union, as Requested by the European Parliament. May 2013.

⁶⁹ Mark Bowden, "The Killing Machines," *The Atlantic*. Aug. 2013.

⁷⁰ "International Humanitarian Law and International Human Rights Law: Similarities and Differences," *International Committee of the Red Cross*. Accessed Nov. 18, 2013.

⁷¹ *Ibid.*

possible and an imminent threat is posed. These laws can be deviated from only in a time of immediate crisis, when the life of a state is threatened.⁷²

Here is where the argument inevitably turns more subjective if for no other reason than a lack of information. John Brennan contends that there were zero collateral casualties in 2011.⁷³ Of course, the practice of counting all military-aged men as operatives casts doubt on that claim.⁷⁴ The Government of the United States officially has acknowledged 4,700⁷⁵ deaths as a result of drones, although the location of the targets as well as their status as combatants is unclear. The Bureau of Investigative Journalism estimates that in Pakistan, anywhere from 2,065-3,613 combatants have been killed, as well as anywhere from 153-926 civilians in 348-374 strikes.⁷⁶ Human Rights Watch released a report this year that took a look at these numbers in Yemen, where an estimated 80 attacks have happened since the drone program was reinstated in 2009.⁷⁷ The report considers only six of these attacks, which resulted in 82 casualties, 57 of whom were civilians.⁷⁸ Although these six cases represent only a small portion of the whole, there is something clearly indiscriminate about a civilian casualty rate of 70%.

Regardless of whether the laws of IHL apply to these indiscretions, the rules of IHRL certainly cover the same jurisdiction for the discrepancies in casualties.⁷⁹ The two

⁷² “International Humanitarian Law and International Human Rights Law: Similarities and Differences,” *International Committee of the Red Cross*. Accessed Nov. 18, 2013.

⁷³ Rahul Radhakrishnan, “Lack of transparency in US drone killings muddies legal status, says UN,” *Al Jazeera*, Oct. 18, 2013.

⁷⁴ *Ibid.*

⁷⁵ “‘Will I Be Next?’: US Drone Strikes in Pakistan,” Amnesty International, October 2013.

⁷⁶ *Ibid.*

⁷⁷ “Between a Drone and Al-Qaeda” *Human Rights Watch*. October 2013.

⁷⁸ *Ibid.*

⁷⁹ Nils Melzer, “Human Rights Implications of the Usage of Drones and Unmanned Robots in Warfare,” Directorate-General for External Policies of the Union, as Requested by the European Parliament. May 2013.

legal bodies work together to cover these gaps that may occur, in this case, with the involvement of non-state actors and sporadic violence. This is important because it determines the forum for discussion as well as punitive measures that can be taken. If outcry by civil society for U.S. reporting of casualties becomes widespread enough, three things can happen. In the first situation, the actions by the U.S. in at least some of their targeted killings are deemed egregious and crimes against humanity. Then, monetary and political reparations are paid to the families of the victims, and drones move towards becoming a more carefully regulated weapon. In the second, and less likely scenario, the use of drones by the U.S. in these examples is deemed to be within their legal bounds, and nothing changes in the use of drones except perhaps slightly more accountability.

It is the third route that is the most legally confounding. One major part of these bodies of law is the idea of consent. If it is the case that the violence only concerns the imminent security of Yemen and not the U.S., then the U.S. would have no legal grounds for any targeted killing in Yemen short of government permission.⁸⁰ If a country has the consent of another state's government to intervene in that state, it is legitimate.⁸¹ This is problematic for the issue of drones because it is officially ambiguous if the United States has permission from the governments of Pakistan and Yemen to operate on their territories in taking out terrorist operatives. The government of Pakistan has been open in condemning the involvement of Americans, especially in the widely unpopular use of drone strikes, which only 17% of the population supported in June of 2012.⁸² Contrary to these claims, prominent American news sources including *The New York Times* and *The*

⁸⁰ William Boothby, In Interview with Author, Nov. 4, 2013.

⁸¹ Ibid.

⁸² "Little Support in Pakistan for American Drone Strikes Targeting Extremist Leaders," *Pew Research Center*. Jun. 29, 2012

Washington Post have published numerous articles stating in no unclear language that the governments of Pakistan and Yemen both have agreements that allow the United States to operate drones over their territories.⁸³

This is one of the reasons such ambiguity exists on the legal interpretations of the drone policy of the United States, because little to no official information is available to the public on how they are planned or carried out. The U.S. first acknowledged that it was even carrying out direct strikes in Yemen in 2012, 10 years after the first strike there and 3 years after the program had been re-vamped.⁸⁴ Even then, this acknowledgment by the U.S. mentioned only direct action taken by the military, not the CIA who were in charge of the drone strikes at the time.⁸⁵

What this lack of transparency means on a larger scale is that it serves as a method to thwart public debate as well as to enshrine a covert government operation. Because NGO's are not aware of the mechanisms in place to determine when and against whom targeted killings are launched, there can be no debate over their effectiveness or legality. This leads to discord within a civil society movement that ought to be unified in order to bring about the legal action they desire. Some organizations like Amnesty International and Human Rights Watch take a more conservative route and advocate only for better accountability before making further judgments on the drone program as a whole.⁸⁶ On the other hand, UN Special Rapporteur Christof Heyns⁸⁷ and Middle Eastern advocacy groups like Al Karama, HOOD, and The Pakistan Institute for Peace push for

⁸³ Greg Miller and Bob Woodward, "Secret memos reveal explicit nature of U.S., Pakistan agreement on drones," *The Washington Post*. Oct. 24, 2013.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Karim Sayad, in interview with author, November 14, 2013.

⁸⁷ "Drone attacks: UN rights experts express concern about the potential illegal use of armed drones," *OHCHR*. Oct. 25, 2013.

more hardline international disapproval, arguing that not only does IHL not apply, but even if it did, most strikes would be illegal.⁸⁸

One side being right in this argument does not signify the incorrectness of the other. What is at stake is the efficiency and effectiveness of the discourse that needs to take place in agreeing on an acceptable usage of drones. If this second school of thought is correct, the lack of transparency decried by the first becomes even more problematic. As time moves on and the current practice of targeted killing continues largely unopposed between world powers, the less likely it is that those practices will change simply because more states will begin using the technology in the precedent that is now being set. And if this second school of thought is correct, and the way the majority of current drone strikes are being carried out is illegal. That sets an incredibly dangerous precedent of use for the rest of the world, all the while, keeping the military and executive processes behind closed doors.

Outside of violations within IHL and IHRL, the third looming question is over the legality of the United State's intervention in Pakistan and Yemen in the first place. The right of a country to wage war and intervene on another state's territory, *Jus Ad Bellum*, originates from the UN Charter.⁸⁹ The international justification for war lays in Article 51 of the Charter, which authorizes forces as a means of self-defense against an imminent threat.⁹⁰ Whether or not twelve years after the September 11th attacks, Al-Qaeda and its affiliates are still a direct and imminent threat to the security of the United States is unclear. Not since the writing of the original UN Charter has a rebel group incited a

⁸⁸ "Drone attacks: UN rights experts express concern about the potential illegal use of armed drones," *OHCHR*. Oct. 25, 2013.

⁸⁹ Michel Veuthey, in interview with author, October 31, 2013.

⁹⁰ Article 51 of the Charter of the United Nations. Oct. 24, 1945.
http://www.nato.int/cps/en/natolive/official_texts_16937.htm

quasi-global war such as the one unfolding throughout the Middle East. Since no precedent exists for waging such a war, the United States taking action is a way of forming their own unilateral legal interpretation.⁹¹ With the disposal of many of the world's forefront legal experts, the United States has formulated a hardline defense of their war against Al-Qaeda, vehemently arguing for their need for self-defense. This does not make it an infallible position. Major human rights groups, including Human Rights Watch and Amnesty International, call into question the extent that violence in the states of Yemen and Pakistan that actually affects the U.S. instead of just those country's autonomous governments.⁹²

If the original intervention of the United States does pass legal standards, perhaps that only suggests shortcomings not of the international laws, but of the United States' most recent interpretations of them.⁹³ One of the largest issues is the position this has put the United States in as acting internationally however they deem to be acceptable without much concern for global approval. In taking direct action, the U.S. has already put into play military and executive interpretations of the laws of war that may or may not be legal. These interpretations and specifically the decision to use targeted killings, though difficult to decipher their final consequences, are an example of the complexity that comes with working out international law in the changing face of warfare. Despite these legal and ethical questions that come with the policies of targeted killing, to go through a more traditional legal route may have proven to be more difficult challenging in achieving their end goals.

⁹¹ Mohammad-Mahmoud Mohamedou, interview by author, November 7, 2013.

⁹² "Between a Drone and Al-Qaeda" *Human Rights Watch*. October 2013.

⁹³ Nils Melzer, "Human Rights Implications of the Usage of Drones and Unmanned Robots in Warfare," Directorate-General for External Policies of the Union, as Requested by the European Parliament. May 2013.

If the United States had deemed that the threats against their national security were not urgent enough to wage a war, their course of action would have proven to be convoluted to say the least. If the threat of Al-Qaeda was not deemed imminent, cooperation through the state governments of Pakistan and Yemen would have been necessary. This would have dictated a state of law enforcement cooperation with the home countries, not military action.⁹⁴ Of course, in Pakistan, and especially Yemen, the governments in place have little to no law enforcement power over the terrorist groups that reside there, one of the main problems that allowed for the rise of terrorist organizations in these regions in the first place. Both country's political systems are different, but it is important to understand their shortcomings to see both how terrorists gained such influence over them and why the military response of drones, even if legally executed, can only cover a small portion of the issues currently facing Yemen and Pakistan.

Why Drone Policy Is Incomplete

The increase of American interest in Yemen in 2009 is no coincidence. Al-Qaeda in the Arabian Peninsula (AQAP), currently identified by the U.S. as its most dangerous current incarnation, officially announced its existence early in that year.⁹⁵ Even before this declaration, Yemen has existed in a protracted state of instability, with civil wars in 1994 and 2011.⁹⁶ Pakistan is a different example. The most imminent threat in Pakistan remains the Taliban, who have occupied much of the border region of the country since

⁹⁴ Thomas Michael McDonnell, "Sow what you reap? Using predator and reaper drones to carry out assassinations or targeted killings of suspected Islamic terrorists," *George Washington International Law Review* 44, no. 2 (2012).

⁹⁵ "License to Kill: Why the American Drone War on Yemen Violates International Law," *Al Karama*. October 17, 2013.

⁹⁶ Alexandra Lewis, "Violence in Yemen: Thinking About Violence in Fragile States Beyond the Confines of Conflict and Terrorism," *Stability: International Journal of Security & Development*. May 14, 2013.

2001.⁹⁷ These regions occupied by terrorist organizations are ones with weak jurisdiction that are also physically difficult to reach and to patrol. Because of the situation, drones may seem a reasonable military strategy, debate over their usage aside. The infrastructure does not exist to send domestic troops into these areas to properly tackle the issues facing them.⁹⁸ That has created a seemingly better alternative of reliance on drones that has left other options unexplored. Unlike state building, which proved to be a failure when attempted in Iraq, targeted military killings are a strategy the United States both understands and can execute with efficiency.⁹⁹ It can be seen in the light of the analogy of the hammer and nail, where to those who hold the hammer, everything looks like a nail. However, despite years of deploying military force against the Taliban and Al-Qaeda, problems continually persist with terrorism in the Middle East, meaning it may be time for the United States to utilize a different toolbox.

One of the signs that the continued military action in fighting terrorism has become ineffective is the growing disdain for it in Pakistan and Yemen. A 2012 Pew survey estimates that around 74% of Pakistanis view the U.S. as the enemy.¹⁰⁰ This should cast severe doubt on the methods the U.S. is currently employing in Pakistan, which of course calls into question its counterterrorism policy as a whole. At the same time, from a military perspective, it is impossible to imagine a successful policy that does not include taking out the key strategic terrorist leaders.¹⁰¹ Because this balance has been so misconstrued through civilian casualties and a lack of information, the public opinion

⁹⁷ "Analysis: Pakistan's tribal frontiers," *BBC News*, Dec. 14, 2001.

⁹⁸ Alexandra Lewis, "Violence in Yemen: Thinking About Violence in Fragile States Beyond the Confines of Conflict and Terrorism," *Stability: International Journal of Security & Development*. May 14, 2013.

⁹⁹ David Atwood, In Interview with Author, October 31, 2013.

¹⁰⁰ "Pakistani Public Opinion Ever More Critical of U.S." *Pew Research*. Jun. 27, 2012.
<http://www.pewglobal.org/2012/06/27/pakistani-public-opinion-ever-more-critical-of-u-s/>

¹⁰¹ Marc Finaud, in Interview with Author, November 5, 2013.

has turned against the United States in a way that is both immensely problematic and at the same time nearly impossible to fix.¹⁰² The issue stems from the United States' own secrecy, but is then propagated through the local governments and even now at a national level by the governments, especially of Pakistan. At this point in time, in both Yemen and Pakistan, there is a widespread belief that the current methods used for fighting terrorism serve only to create more terrorists.¹⁰³

Here is one anecdotal example to illustrate this idea in action.¹⁰⁴ Take a man killed in a drone strike, either civilian or combatant. In Yemen, a country where polygamy is legal, this leaves possibly multiple wives and young children without any method at all to support themselves. No state relief exists to aid them, so if a group like Al-Qaeda steps into that void to fulfill those needs, that have created a whole small network of supporters. This example does not necessarily mean the U.S. should step in and support the widows and children of people they have deemed to be terrorists, but it goes to illustrate just how void Yemen is of government influence, and how the uprooting of AQAP is much more difficult than simply killing off their leaders.

To stop terrorism at its roots is a much deeper social project, but because of the current failure of military efforts, attention should be shifted to the underlying problems that targeted killings only exacerbate instead of cure. As shown in the example above, the reason terrorism is growing is two-pronged. The first thing to understand is why these terrorist organizations are still gaining support from the people, especially in Yemen.¹⁰⁵

There, the group is not seen as a political one, and their popular support does not come

¹⁰² Karim Sayad, in Interview with Author, November 14, 2013.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Gregory D. Johnsen, "The Last Refuge: Yemen, Al-Qaeda, and America's War in Arabia," (W.W. Norton & Company, 2012).

from the desire for them to take over the government.¹⁰⁶ Instead, AQAP gains interest because they are viewed as the only viable alternative to the Western influences. Many Al-Qaeda operatives were prominent people in villages and society before joining the group, a factor that lends itself to popular support and helps propagate the position that Al-Qaeda is the only option for defense against imperial powers like Saudi Arabia and the United States.¹⁰⁷ For the people to who drones are an early death constantly flying above, there are very choices for defense besides the continued support of terrorist groups.

The other reason AQAP has continued to rise in prominence despite drone attacks is the lack of state that allowed it to form so strongly in the first place.¹⁰⁸ There are still vast problems of underdevelopment and absence of state in South Yemen, which has been plagued by decades of civil war.¹⁰⁹ In Al-Qaeda, there is a chance for security for those who the state is unable to reach or does not have the power to. In this way, terrorism becomes a vicious cycle of rising from state destabilization, and then through recruitment and promises made on fixing failing governments, further causes a decentralization of the state. This cycle, made worse by the current drone policy, also works to thwart the U.S.'s interests in creating a democratic state. If the drone policy continues, popular opinion shows no signs of changing favorably for the U.S. If popular opinion continues against the U.S., eventually elected leaders will reflect the people's

¹⁰⁶ Karim Sayad, in Interview with Author, November 14, 2013.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

will, creating more of an issue of a valid state government selected by the people who are opposed to American interests.¹¹⁰

Again, how is it possible to stop this cycle? Military action has reached a state of being counterproductive, but when weighed against the deeper issues in Yemen and Pakistan, other options can seem to be a futile undertaking. One suggestion is the idea of negotiation with AQAP, which has traditionally been seen as negative in giving recognition and authenticity to groups whose existence is threatening. However, in negotiating, terrorist organizations may have more at stake than the U.S. Historically, groups like the Taliban, Al-Qaeda, and even the Muslim Brotherhood have had more success and popular support when they were more radical and marginalized.¹¹¹ By attempting to bring them closer to the center and taking away their status as radical, Al-Qaeda groups will either be seen as less powerful, or if they refuse to negotiate, as more part of the problem than the answer.¹¹² Another issue that plays into the radicalization of Al-Qaeda and the Taliban is the targeting of their leadership. Although it is a necessary step in destabilizing the groups, often less experienced and more radical members fill in these positions.¹¹³ Though this may be an unavoidable side effect, it is still important to note that radicalization will not be gotten rid of through targeted killing alone.

Another point to look into is the reallocation of funds. A Reaper drone costs, on average, \$12.5 million, on its own, not counting ammunition, pilots, intelligence, surveillance, and data connections.¹¹⁴ In a state where many towns are still lacking roads

¹¹⁰ Karim Sayad, in Interview with Author, November 14, 2013.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Marc Finaud, in Interview with Author, November 5, 2013.

¹¹⁴ "How Much Does the MQ-9 Reaper Drone Cost?" *Time Magazine*. Nov. 6, 2012.

and basic facilities, these numbers seem disproportionate. Instead, those resources could be invested into longer-term projects, including improving education, infrastructure, better native police training, and societal de-radicalization.¹¹⁵ The government of the U.S. is already the largest global contributor to Yemen, donating more than \$1 billion since 2007, about half of which was designated towards training.¹¹⁶ Saudi Arabia is another partner in this effort¹¹⁷ and much of the actual training takes place there. The military policies usually enrolled by Yemen and Pakistan involves questionable tactics at the best, including torture, indiscriminate bombings, and scorched earth policies.¹¹⁸

Once again, the lack of infrastructure within Yemen makes it very difficult to assess the amount this money has worked to change.¹¹⁹ That does not designate the country as a black hole of investment. It does complicate even the most benevolent and well-meaning investment strategies. As most changes happening from this money are still taking root right now, it is difficult to determine just what the outcomes of the plans will be. In the worst possible scenario, if another civil war were to happen, which is not altogether unlikely, even in investing in well-meaning social projects like the training of the police force, the U.S. could be seen as choosing sides and therefore alienating itself further from the populations there.¹²⁰

With even the best and most peaceful-seeming options given the possibility to further unrest and destabilization, is there any hope for creating lasting security away

¹¹⁵ Mohammad-Mahmoud Mohamedou, interview by author, November 7, 2013.

¹¹⁶ “Between a Drone and Al-Qaeda” *Human Rights Watch*. October 2013.

¹¹⁷ “License to Kill: Why the American Drone War on Yemen Violates International Law,” *Al Karama*. October 17, 2013.

¹¹⁸ Daniel Byman, “Why Drones Work,” *Foreign Affairs*, Jul/Aug2013, Vol. 92 Issue 4.

¹¹⁹ “Between a Drone and Al-Qaeda” *Human Rights Watch*. October 2013.

¹²⁰ Karim Sayad, in Interview with Author, November 14, 2013.

from terrorist influence in Yemen and Pakistan? Concretely, it has yet to be seen. Drones certainly have run their course in long-term usefulness as any further use would constitute and even steepen the already massive amount of domestic disapproval for the practice. Investments may not bring about significant enough change to keep warring forces at bay and provide for the gaps and basic needs of the population. However, they remain the best option moving forward. In empowering local groups and police forces with proper training and tactics, the governments of Yemen and Pakistan can remain preferable options to terror. If in the national mentality, the option of Al-Qaeda does not provide for their needs as well as the current government does, the group's popular support will wane.¹²¹ If drones continually attack and reforms seem far off and ineffective, the issues that create terrorism will only worsen.

Geopolitics

The last thing to consider within the current use of drones is the relationship that it is creating between countries. Already, there are debates across the U.S. about the alleged relationship between the governments of Pakistan and Yemen in condoning U.S. strikes over their territories, as previously mentioned. While the legal implications of this were explored, it was left unopened as to why the government of Pakistan especially would deny so strongly its cooperation with the U.S. It has been established that many of the strikes were carried out in a way that was harmful to the reputation of the U.S., and it is obvious why it would be against the interest of the governments of Pakistan and Yemen to take even partial responsibility for a program that is widely unpopular. Also, admitting the U.S. is responsible for strikes against terrorists under their jurisdiction has

¹²¹ Karim Sayad, in Interview with Author, November 14, 2013.

poor political implications. First of all, it becomes an open admission that they are not powerful enough on their own to defend their states' security interests from the organizations residing there, further damaging their legitimacy.¹²² Even beyond damaging their own projection of power, admitting to cooperation with the U.S. could make them appear as a puppet government, operating only for Western interests and completely undermining any claim they have of representing their own populations' interests.¹²³

As much as the governments of Yemen and Pakistan cannot afford to be associated with the U.S. drone strikes as a result of how they've been carried out, they also cannot afford to have terrorist organizations run wild in their territories, and lack the military power alone to stop them.¹²⁴ If the U.S. thinks these same groups are an imminent threat and is willing to carry out the battle for them, what real choice does that leave the governments of Yemen and Pakistan?

Although currently the U.S. is one of the few countries in the world that has the capacity to utilize drone technology for targeted killings at such a long range,¹²⁵ it must be recognized that eventually this type of technology will spread. The affect that eventual proliferation of drone technology will have on the relationship between states may be the only real impetus to bring about change.¹²⁶ To create a rudimentary drone is not difficult, and could be done by states and non-state actors alike that the United States would prefer

¹²² Alexandre Vautravers, in Interview with Author, October 30, 2013.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Oceane Zubeldia, in Interview with Author, October 31, 2013.

¹²⁶ Michel Veuthey, in Interview with Author, October 31, 2013.

to not possess this capability, including Iran, Hezbollah, and Hamas.¹²⁷ It is already reported that Iran has flown unmanned drones over Israel, which were promptly shot down.¹²⁸

The U.S. has reportedly sold drones to both France and Germany; allies whose interests it is unlikely will clash with their own.¹²⁹ This may actually serve in the benefit of the U.S., taking international pressure off of their drone program as the only one utilizing targeted killings. However, the culture of use in other countries that possess this technology is much different from the U.S., and it is unlikely that France will utilize their drones for anything other than surveillance before it is clear how the international community will react to the practice of targeted killing.¹³⁰ Europe, though it utilizes a great deal of soft power, could potentially greatly benefit from the use of drones in its militaries. As its leading countries are strong economically and technologically advanced, the use of drones can play into its perceived current military weakness and can serve as a quick fix for national security and a greater stake in protection of its interests abroad. The intervention in Libya in 2011 would be a good example of this use. The difficulty comes in finding an acceptable use for the union as a whole when each country will inevitably be divided on a policy as their security interests vary greatly.¹³¹

In the case of countries the U.S. is less inclined to work with, there are other economic and technological powers, including possibly China and Russia, whose markets

¹²⁷ Oceane Zubeldia, in Interview with Author, October 31, 2013.

¹²⁸ Geoffrey Ingersoll, "Hezbollah Drone Shot Down Over Israeli Skies," *Business Insider*. Apr. 25, 2013.

¹²⁹ Agence France Presse, "U.S. Readies Sale Of Reaper Drones To France," *Huffington Post*. Jul. 15, 2013.

¹³⁰ Oceane Zubeldia, in Interview with Author, October 31, 2013.

¹³¹ *Ibid.*

may cover that gap.¹³² Though much of this is still in the phase of speculation, it is reasonable to assume that the same technology being utilized against Al-Qaeda may one day be possessed by them. It may not be until that day comes that real legal change will be enacted to improve regulations and transparency, but at that point it may be too late¹³³. Realizing the possibility that the tools of fighting terrorism can be turned around against the U.S. is vital in inciting urgency in assessing the current procedures in place for the operation of drones in targeted killing.

The last idea to look at, the one pervading every argument about the fairness of targeted killing, is the idea that it is inherently unfair. Drone strikes have become the ultimate reinforcement of the disparity in power between states.¹³⁴ The United States cannot be faulted for being the most technologically advanced country in the world when it comes to its military. At the same time, this great divide between the distributions of global power must be recognized as exacerbating anger against the faceless enemy the United States has become in so many regions of Yemen and Pakistan through its use of robots.¹³⁵ Regardless of legal and even ethical arguments, in the scheme of globalization, drones can be seen as another example of a careless expansion of Western power without regard to the everyday lives of those living in countries that are less developed. The policy of enacting whatever is to the greatest benefit to the U.S. and the U.S. alone must be analyzed in order to fix so many of the root problems laying at the unrest and inequality currently consuming countries like Yemen and Pakistan.

¹³² Alec MacGillis, "Don't Fear the Reaper: Here Comes the Drone Lobby," *The New Republic*. Mar. 11, 2013

¹³³ Michel Veuthey, in Interview with Author, October 31, 2013.

¹³⁴ Gabriella Blum and Phillip B. Heymann, "Laws, Outlaws, and Terrorists: Lessons from the War on Terrorism." (Cambridge: The MIT Press, 2010).

¹³⁵ Mark Bowden, "The Killing Machines," *The Atlantic*. Aug. 2013.

Conclusion

There is a time and a place for drones, and for that reason, they are not going anywhere. Used within the correct legal context of war, with proportionality and discretion, it is possible to have a war focused on high-value targets alone, minimizing civilian casualties. Unfortunately, the U.S.'s use of drones in greater Pakistan and Yemen does not fall under this category. The high numbers, proportionally, of civilian casualties would suggest that the vague lines of the Obama Administration's criteria for selection of targets have been crossed. This repeated action has created a toxic atmosphere in both Pakistan and Yemen where any further use of drones will prove to be counterproductive in the long-term, no matter the number of Taliban or Al-Qaeda operatives who are killed.

It is almost certain the United States is carrying out these attacks with the permission of both the Pakistani and Yemeni governments. This does not justify this policy. Instead, it avoids answering the question of the level of conflict in both countries as to whether they constitute conflict zones. It also avoids answering the level of direct danger that violence presents to the United States in determining their involvement in the first place. In answering these two difficult questions, it would appear that the time for U.S. military intervention against Al-Qaeda and its associates is nearly over, as the threat level may no longer be imminent. As military action becomes counterproductive, it is necessary to focus on tactics of local empowerment, law enforcement training, and the building of infrastructure to strengthen the societies of Pakistan and Yemen instead of working only to tear terrorist groups down.

Living in a world where a Noble Peace Prize winning President keeps a list of operatives for remotely controlled aircraft to hunt and kill is unsettling. Even more

unsettling is having an enemy country turn around and have the same policy. In order to prevent this proliferation from happening in a dangerous cycle, accountability and transparency need to happen now. Even if this President and his administration prove trustworthy, there are many who will not. The time is now to put in place clear and publically articulated guidelines for the use of drones. It is time to publish the exact numbers of casualties of both combatants and civilians. Politics aside, it is essential to recognize those mistakes made in civilian casualties, provide reparations for their families, and endure necessary legal action that follows to make the world safer going forward. It may prove to be a process both painful and embarrassing for the United States, but given the alternatives, it is the only responsible course of action.

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