

Here to Stay:
Guidelines for a Legal and Balanced Compromise on the Use of
Drones

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Introduction

On September 11, 2001, members of the Islamist extremist group, al-Qaeda, attacked the United States. In response to these vicious attacks, members of congress enacted the Authorization for Use of Military Force (AUMF), which provides the President with the power to use any “necessary and appropriate force” against people who he believes had anything to do with the attacks, from planning the onslaught to assisting those who were involved (Rozenshtein, 2012). Over a decade has passed since the attacks; however, the “War on Terror” remains one of the government’s top priorities. According to the legality report distributed by Stanford Law School (2012), the American government continues to use the AUMF in order to “support their position that the country is at ‘war’ not only with al-Qaeda and the Taliban, but also with all alleged affiliated groups, wherever they may operate, and at any point when they emerge” (4). This mindset has caused many people throughout the world to question exactly how far the United States will go in order to retaliate against the attacks from 9/11.

Each year, the United States of America spends more money on national security and defense than the rest of the world combined. During his speech on drone policy, President Obama claimed that the United States has spent over one trillion dollars on war alone in the past decade (2013). According to the Friends Committee on National Legislation (2013), nearly one trillion dollars alone was spent on the Pentagon in 2012, covering the “base Pentagon budget, Overseas Contingency Operations costs, nuclear weapons, and ‘military related’ programs in other agencies” (2). However, this figure does not take into account the budget for Veteran’s Affairs. In order to demonstrate exactly how much money the government has spent on defense, the report explains that

the Department of Defense was scheduled to experience a multi-billion dollar cut in 2013; however, even if a similar cut was made every year for the next ten years, “the Pentagon will still be spending ‘7 percent above the average funding since 1980,’ near spending levels at the height of the Cold War (2013, 1).

Part of the enormous budget provided to the Department of Defense has gone towards technological advancements. Even though their budget is being cut, the sequestration will hardly affect the machinery and technology being used (Neguse, 2013). In the past decade, a large portion of taxpayers’ dollars has gone into creating and expanding the nation’s drone program. Since the start of the program, unmanned aircrafts have become an essential part of the military’s actions against members of al-Qaeda and their affiliated groups. According to a report issued by Amnesty International (2013), titled *Will I Be Next?*, President Barack Obama has greatly expanded the drone program from when he first took office in 2009. According to Foreign Affairs journalist, Daniel Byman (2013), the Bush Administration conducted less than fifty drone strikes in total, while the Obama Administration has allowed for over four hundred in the span of a single term. Compared to the Bush Administration, which “generally targeted only specific, known individuals on a ‘kill list,’” Amnesty International claims that the Obama Administration has used drone technology in a careless and unacceptable manner through the use of “signature strikes” (12)¹. Consequently, within the course of 11 years, the amount of drones being used by the United States has increased from fifty to seventy-five hundred, adding one hundred and fifty times as many machines since the start of the program. Out of the seventy-five hundred drones, “approximately 5 percent can be

¹ Kill lists, signature strikes, and other common terms used in the debate on drones will be defined in the next section of this paper.

armed,” leaving the government with about three hundred and seventy-five assault crafts (Zenko, 2013, 3).

Advocates for the program claim that drone technology is not only safer for military personnel and civilians living in war zones, but that it also provides more efficient means of surveillance, tracking, and elimination where necessary. The use of drones keeps American soldiers out of extremely dangerous zones while still allowing for the use of lethal force in order to protect U.S. citizens as well as the local population. Drones are also said to be more accurate than other forms of air attack, causing the number of suspected civilian casualties to be as low as possible.

Despite the number of positive claims made by drone supporters, a vast amount of people within the United States, and around the world, are opposed to drones, what they can do, and what they mean for the rest of the world. These people feel as though there is no rhyme or reason behind any of the killings, criticizing the government for haphazardly targeting suspects. Furthering these claims is the American government’s secrecy about the program, keeping hidden who they target and why, and in some cases refusing to acknowledge that strikes have even occurred. On numerous occasions, many journalists, locals, and human rights advocates have claimed that militants are not the only people being targeted by the drone attacks. Instead of merely targeting potentially dangerous people, eyewitnesses argue that the government has blatantly targeted and attacked harmless civilians, including women and children. In hopes of ending the drone program completely, many opponents of the program call for transparency from the government, retribution for victims, and a general end to the use of signature strikes.

Advocates and critics of the drone program are both able to make compelling arguments as to why the use of drones is either beneficial or harmful. Unfortunately, the discussion between these two groups has gone on for far too long without any reasonable compromise being made. Although these arguments have endured for over a decade, the drone program is still relatively new, and it can therefore be assumed that the government will not have any intention of completely abolishing it any time soon. Instead of allowing this debate to continue without any progress, many scholars feel that a compromise needs to be reached in order to decrease any current and future dangers.

The increasing ease of access to technology, aided by globalization, has allowed for drones to become more common throughout the world and has increased the amount of armed drones that are available. Because of the immense impact that the drone program has and will have on the world, it is essential that the issue be discussed from a global studies point of view. This paper will provide guidelines for the use of drones internationally, offering suggestions for how the program should be conducted so that it is in accordance with all relevant laws.

Structure and Methodology

This paper will look at the various legal issues that surround the use of drones, endeavoring to create a compromise between advocates and critics that will appease concerns. In order to provide readers with a thorough understanding of the topic at hand, the paper will begin with a definition section, which will provide information on the key terms that will be used throughout the discussion. The topics of discussion will be: the different types of drones and what they can do, “kill lists”, “signature strikes”, the Central

Intelligence Agency and the Joint Special Operations Command, “armed conflict”, and the International Committee of the Red Cross.

Following the definitions, there will be a literature review, which will discuss materials and claims from advocates and opponents of the drone program. Due to the immense controversy behind how data is collected, especially in action zones, the statistical information from both sides can be extremely varied, and will therefore only be mentioned in order to explain that particular view’s reasoning behind their argument.

Finally, this paper will take an in-depth look at the applicable laws that affect the use of drones. Domestic law will be examined in order to discuss the protection of American citizens. The discussion of international law will provide information on armed conflict and non-active zones and what military action is permitted in these areas. After each of these laws are explained, the controversy over which ones are followed and which ones are not shall be discussed from the view point of what government officials say compared to what human rights activists claim.

After examining the multitude of arguments and laws, this paper shall create a list of restrictions and regulations that must be followed in order for the drone program to continue to operate. These restrictions will provide a balanced compromise between the two opposing parties so that both may be appeased. The paper will then conclude with remarks about what could potentially happen if strict guidelines are not set and followed. Please note that the policies suggested in this paper are to help create a discussion about the possibilities of change and are not expected to be implemented by current legislators. The arguments and discussions are for the general public, so that they can see a middle ground in this controversial debate.

Definitions

Drones

Unmanned aerial vehicles (UAVs), also known as “drones” are the terms used to describe any aircraft that can be controlled remotely. This means that the entire vessel can be controlled from miles away simply by using buttons on a switchboard. Drones can be anything from a toy helicopter, to a life-sized fighter jet. Essentially, “if it flies and it’s controlled by a pilot on the ground, it fits under the everyday-language definition of drone” (Atherton, 2013, 1).

Although UAVs can be controlled from miles away, someone who is on the opposite end of the world cannot control them. In order to ensure full remote control of its drones, the United States has bases throughout the Middle East in areas, such as Afghanistan, that allow the aircrafts to be stationed and launch attacks from within their borders.

The drones that will be discussed in this paper are those solely used for military purposes by the CIA, JSOC, Air Force, Army, and Marines; however, it is important to distinguish between some different types of military drones and the actions that they can perform.

Predator and Reaper. The Predator drone and Reaper drone models are the most common drones used for drone strikes (Atherton, 2013). The Predator is capable of reaching speeds up to 135 mph at altitudes of up to 25,000 feet, placing it into the category of a medium-altitude, long-range aircraft. Equipped with some of the most sophisticated technology available, the RQ-1 Predator can be used for gathering useful

military information as well as surveillance. It can also provide military personnel with “real-time imagery of the enemy position...well before the first troops or vehicles arrive,” giving those with drones ample time to prepare for any attack. When the camera is replaced with a Multispectral Targeting System (MTS), the Predator is transformed into the MQ-1 Predator, also known as the Hunter/Killer. This model is equipped with two Hellfire missiles, which can be deployed at any moment, targeting specific individuals or locations, referred to as stealthy aerial assassinations (Valdes, 2004). The Reaper, which is seen as the updated version of the Predator, is more commonly used for data collection because of its extended amount of loiter time and wide-range sensors. This model is “larger and more powerful than the MQ-1 Predator,” and can be used for “intelligence, surveillance, reconnaissance, close air support, combat search and rescue, precision strike, buddy-laser, convoy/raid overwatch, route clearance, target development, and terminal air guidance” (U.S. Air Force, 2010).

Global Hawk. The Global Hawk is the largest, most-powerful drone in use by the United States. The Global Hawk is capable of reaching speeds of 357 mph at altitudes of up to 60,000 feet. Because it is a high-altitude, long-endurance drone, the Hawk’s main objective is to “provide a broad spectrum of ISR [intelligence, surveillance, reconnaissance] collection capability to support joint combatant forces in worldwide peacetime, contingency and wartime operations,” using its integrated sensor suite to collect high-resolution, real-time images (U.S. Air Force, 2008).

Kill Lists

The term “kill list” is fairly self-explanatory. A list of targets used to be created during a Pentagon-run interagency meeting in which high-ranked officials would discuss who should be placed on the list and why. In order for these persons to be officially added to the list, the President would have to officially approve the target. These days, the lists can be generated at regular interagency meetings at the National Counterterrorism Center. The lists are then sent to a panel of National Security Council officials, which, after approved, are then sent to the White House for final approval by the counterterror adviser to the President (Currier, 2013).

Kill lists and the use of them can be seen as the “better” choice for targeting who drones will strike because they “generally target only specific, known individuals” (Amnesty International, 2013, 12). These lists are discussed and debated in great detail because they concern people’s greatest natural right: the right to life. Names that are placed on the lists are believed to be “high-level terrorists.” United States officials also claim that the lists contain a limited number of names that decreases every time a successful strike occurs, providing hope that the program will eventually come to a close (Entous & Gorman, 2014).

Signature Strikes

The most recent policy behind drone attacks is known as the use of “signature strikes.” Opposite from kill lists, signature strikes enable the military to target people whose identities are unknown to the United States. The reason that these people are targeted is because they are believed to be militants who pose a threat to American

security (Currier, 2013). According to the ProPublica article *Everything We Know So Far About Drone Strikes* (2013), “the policy, reportedly begun by Bush in Pakistan in 2008, is now allowed in Yemen, under stricter criteria” (1).

Many human rights organizations, including Amnesty International (2013) and Human Rights Watch (2013) believe that signature strikes completely violate a person’s right to life. Victims are targeted simply because they seem suspicious, not because they are actually planning or aiding in any terrorist attacks. The Special Rapporteur of the United Nations notes a few different legal complications that can arise from the use of signature strikes:

The legality of such strikes depends on what the signatures are. In some cases, people may be targeted without their identities being known, based on insignia or conduct. The legal test remains whether there is sufficient evidence that a person is targetable under international humanitarian law...by virtue of having a continuous combat function or directly participating in hostilities, and if there is doubt States must refrain from targeting (Heyns, 2013).

This presents numerous questions about how the targets of signature strikes are chosen, as well as whether or not the United States military has any authority to target and subsequently attack these people. The use of signature strikes, aside from causing international controversy, may also enable the drone program to continue indefinitely, increasing the already heightened tension between drone advocates and their opponents. Unfortunately, the exact percentage of drone strikes that are signature strikes is unknown.

The Joint Special Operations Command and the Central Intelligence Agency

Both the Joint Special Operations Command and the Central Intelligence Agency play major roles in the use of drones abroad. These two groups operate completely

separate from one another, yet they maintain a similar sense of power and secrecy. In mere moments, they are able to distinguish individuals, or even groups, with relations to terrorist groups. In those same moments, they are capable of pushing a button, which sends a Hellfire missile directly at their desired target, all without letting the world know the who, what, and why of the attack.

The Joint Special Operations Command (JSOC) is a secretive and elite branch of the United States' Department of Defense. They are mostly known for carrying out the Osama Bin Laden raid, as well as their use of the drone program in Yemen and Somalia (Currier, 2013). The strikes conducted by this organization “fall under the command of the regional combatant commander,” allowing for dual decision making on the use of drones to be made between the group and the local U.S. ambassador residing in the area of action (Zenko, 2013, 9).

The strikes that are conducted by JSOC are reported to Congress twice a year, instead of a case-by-case basis to relevant military committees. In recent years, under President Obama, the Department of Defense has become more transparent to the public about their dealings with targeted killings, officially acknowledging their existence in April 2012 (Zenko, 2013).

The Central Intelligence Agency (CIA) is one of the most well known organizations that utilize drones. This organization has played a major roll in the creation of kill lists and in the carrying out of strikes against those named. According to Cora Currier (2013), the CIA does not require approval from the White House in order to carry out their drone strikes. Instead, the director of the CIA can “green-light strikes in Pakistan,” and presumably other nations in which the United States uses drones (2).

The CIA has always had a penchant for keeping their operations secret from the public. Although the Obama Administration has officially acknowledged targeted killings, strikes by the CIA, which acts as an independent body from the Department of Defense, remain covert (Zenko, 2013). According to Amnesty International (2013), when it comes to drone strikes, “[the CIA] refuses to even officially acknowledge its drone programs anywhere in the world” (49). Because the program technically does not exist in their eyes, the CIA uses its own discretion when applying rules and procedures for various attacks, allowing official results and statistics to remain unknown; however, according to Senator Dianne Feinstein, the CIA “meets its ‘fully and currently informed’ legal obligations through ‘monthly in-depth oversight meetings to review strike records and question every aspect of the program’” (Zenko, 2013, 15).

Despite these reviews, many government officials in action zones are objecting to the drone strikes that are carried out by the CIA, mainly due to the amount of civilian casualties believed to result from the attacks (Zenko, 2013). Pakistani officials have called for an “immediate freeze in drone strikes” (Entous & Gorman, 2014)². Subsequently, Afghani officials, who have allowed the United States to house drones within their borders, have declared that they will cancel the long-term security agreement that had been reached between Afghanistan and the United States “if there was one more raid that killed civilians,” whether it be by drone or special operations forces (Nordland, 2013, 1).

² The issue of a deal between Pakistan and the United States will be discussed later in this paper in the Arguments section of the United Nations Charter under the International Law Analysis.

Armed Conflict

Armed conflicts can take on many different forms; however, only one form is relevant for the scope of this paper: non-international armed conflict. In order to distinguish one form of conflict from another, one must understand that international armed conflict is used to define combat between two sovereign nations. Non-international armed conflict has been used to describe “violence between government authorities and organized armed groups or between such groups within a State,” meaning that, although the conflict may occur across international borders, it is not necessarily considered international because the fighting is not between two governmental bodies, but rather between a government and a non-state actor, or simply between two separate organized groups. In order to qualify as a non-state actor, the armed group must be sufficiently organized and have some form of a chain of command. It must also either have a base or an efficient way of communicating with its members to effectively “plan and carry out military operations.” The violence between the State and the armed group must surpass the maximum level of intensity that can be attributed to typical internal conflict (Heyns, 2013, 12-13). Even though the United States has targeted multiple members of the same organizations in different nations, the Special Rapporteur of the United Nations, Christof Heyns (2013) feels that they should all be grouped within the same conflict, turning it into a “transnational non-international armed conflict” (13).

The International Committee of the Red Cross (ICRC)

“The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the

lives and dignity of victims of armed conflict and other situations of violence” (The mandate and mission of the ICRC, 2014). This organization has been responsible for outlining many of the rules that apply to the use of drones and drone strikes. Human Rights Watch outlines a few of the conditions for an armed conflict between a state and a group that were set forth by the ICRC, including a minimal level of hostility and the possession of organized armed forces by the nongovernmental group (Tayler, 2013). The ICRC also calls for a case-by-case analysis of the legal aspects of every drone strike to ensure all legal qualifications have been made and the civilians in the area of conflict are being protected (Heyns, 2013). Many of the policies set forth and suggested by the ICRC are used in legal analyses of the United States’ use of drones abroad.

Literature Review

The term “drones” has become a major topic of discussion within the past decade. Each day, it seems as though many new articles are being released from all angles about the program. Because of the amount of secrecy that the government has about drone strikes, most of the literature comes from an oppositional view; however, there are many works that give praise to drones and what they are capable of. The claims of both sides are supported by numerous statistics and testimonies. The following section provides reasons behind the argument for or against the drone program.

Advocates of the Drone Program

Better Technology. The drone program was first and foremost created in order to aid the United States armed forces in their mission to protect the people of America.

Drones have been shown to be more effective under certain conditions than the use of manned aircrafts have ever been. Some models are capable of loitering while carrying weapons for up to 14 hours with the potential to remain aloft for up to 36 hours while gathering intelligence information (Kreps, 2013). Because one does not need to worry about on-board pilots becoming fatigued, drones are much more adept at performing “sustained persistence over potential targets,” allowing officials to monitor a suspect’s actions before carrying out a command. Another action that drones are capable of performing is “near-instantaneous responsiveness.” As soon as someone in the command base gives the “OK,” a button can be pushed that causes the drone to immediately fire a missile travelling at the speed of sound. Because the attacks happen so quickly, targets are often hit before they can hear the shot coming, preventing them from evading it; however, these missiles “can be diverted at the last moment if noncombatants enter the likely blast radius,” preventing unnecessary casualties (Zenko, 2013, 6). By eliminating potential threats before they have a chance to attack American soil, drone strikes prevent American citizens from being attacked on their homeland.

Through the use of drones, the American military has been able to make substantial progress on the government’s “War on Terror.” John Brennan, White House senior counterterrorism adviser, states that the “objective of the U.S. counterterrorism strategy is to destroy and eliminate al-Qaeda from ‘Afghanistan, Pakistan, Yemen, Africa, and other areas’” (Zenko, 2013, 9). The technology used in drones has proven to be more effective for the task of carrying out targeted killings than the usual man-operated missions. Since the start of President Obama’s first term, the New American Foundation has reported that, “U.S. drones have killed an estimated 3,300 al-Qaeda,

Taliban, and other jihadist operatives in Pakistan and Yemen,” included in this figure are over 50 senior leaders of the groups (Byman, 2013, 2). In December 2011, President Obama reported that, “twenty-two out of thirty top al-Qaeda leaders [have] been taken off the battlefield” (Zenko, 2013, 9). In the last two years, the number of drone strikes carried out by the CIA has been drastically declining. Officials claim that one of the reasons behind the reduction in attacks is the “decline in the number of al-Qaeda targets” (Entous & Gorman, 2014, 3). By eliminating high-ranked members of these organizations, the military is able to cut off the chain of command, leaving those left behind to struggle for direction. Furthermore, reports have shown that militant groups have had a difficult time attempting to communicate with one another and train new recruits because they are trying to avoid being noticed by drones, serving as proof that the program works as a way of preventing terrorist operations (Byman, 2013).

Advocates for the use of unmanned aerial vehicles often boast about the aircrafts’ precision. The technology that drones use in order to target an individual is free from human error, allowing them to be “more discriminating than any alternative” (Kreps, 2013). When compared to other alternatives, such as simply dropping a bomb on a region, the missiles used by drones “create smaller, more precise blast zones,” decreasing the risk of killing or injuring any innocent civilians in the area. The precision strikes that drones are able to carry out allow United States officials to report that the program has produced hardly any civilian casualties, making it a more viable option for completing attacks (Byman, 2013).

Protection. One of the main praises for the use of drones is their ability to be sent into highly dangerous zones where it would be extremely unsafe to send soldiers. By

allowing drones to go into these areas unmanned, the American citizens serving in the military are protected from immensely dangerous and lethal conditions. “Drones seem to offer a way to kill bad guys without producing American casualties” (Kreps, 2013, 1-2). Removing people who wish to cause harm to the world while protecting others from losing their lives in the crossfire is a concept that, in theory, almost every person can agree on. Because drones can go into areas that are too dangerous for “manned missions,” they provide the military with an upper hand for attack. “[Drones] can carry out important missions that would otherwise be too difficult or dangerous.” Areas, which were previously left untouched or had foot soldiers risking their lives, can now be monitored through the use of drones. “The Pentagon is generally more willing to send them into threatening situations than soldiers.” Aside from simply monitoring, drones are also able to destroy any potential threat that emerges from these areas before they have a chance to cause any harm, allowing for the armed forces to continue their mission of protection while not shouldering any personal risk (Kreps, 2013, 2).

Another group of people that is said to be better protected under the use of drones is the civilians who are living in areas of action. The North Waziristan region in Pakistan is a tribal area that shares a border with Afghanistan. For over a decade, this area has become a refuge for militants, including members of al-Qaeda and Taliban. The estimated 840,000 innocent civilians residing in this area are under constant fear of being killed by these armed militants, as well as by other groups (Amnesty International, 2013). Many of the Taliban members who reside in this region are not necessarily interested in targeting the United States, but are rather more interested “in creating domestic turmoil within Pakistan” (Kreps, 2013, 2). By using drones to target and attack these hostile

militants, the U.S. armed forces are, in effect, protecting the lives of the innocent civilians from becoming attacked by members of the Taliban, al-Qaeda, or other armed groups.

Opponents of the Drone Program

Reckless Behavior. Drones allow people to find, target, and attack others from miles away, keeping them shielded from seeing the carnage that results. By allowing drones to go into action zones without providing any risk for American soldiers, “the United States has fewer incentives to exercise restraint” (Kreps, 2013, 2). This could mean that the government is more willing to allow its armed forces to use lethal force without thoroughly weighing the consequences. Instead of attempting to destroy machinery or weapons, or even divert a group’s movements or capture a leader, the people sitting at the switchboard controlling the drones are much more willing to use lethal force, changing the program into what is referred to as “remote-control repression” (Cronin, 2013).

In order to examine the effects of remote-control repression, one can compare it to the playing of violent video games. Countless studies have been done of the effects of violent video games and how they can alter a person’s view of aggressive and violent acts. One of the main issues concerning psychologists on the effects of playing violent video games is the possibility of desensitizing an individual to violent acts. This desensitization could cause a person to either become more aggressive, because they do not see their behavior as aggressive, or they can become detached, lacking any form of emotional distress upon seeing extremely violent behavior. “Desensitization to violence

is a subtle, almost incidental process which may occur as a result of repeated exposure to real-life violence, as well as from exposure to media violence” (Funk, Baldacci, Pasold, & Baumgardner, 2004). An experiment conducted by Engelhardt, Bartholow, Kerr, and Bushman (2011) showed that exposure to violent video games “caused a reduction in the brain’s response to depictions of real-life violence, and this reduction, in turn, predicted an increase in aggression.” The use of drones creates a disconnect between the individual controlling the machine and the actions that they tell it to perform (Zenko, 2013).

Although no studies have been performed on the connection between drones and how they compare to the use of violent video games, it can be assumed that the distance between the operator and the action, as well as the fact that they view everything the drone does via a computer monitor or television screen, can serve as a simulator for a very realistic video game. By examining the two studies mentioned above, one can predict that the individuals controlling the drones will experience a similar effect of desensitization to violence, causing them to be more aggressive towards those who they are attacking, and much less concerned about the consequences and severity of their violent acts.

On the other hand, instead of becoming desensitized, it has also been shown that drone operatives have experienced symptoms of Post Traumatic Stress Disorder (PTSD). Those who argue against the use of drones see this as another negative aspect of the program because, although it may not be putting the pilots in physical jeopardy, it is putting them in psychological danger. Slim, an Air Force retiree and ex drone operative, claims that, “distance does nothing to numb the emotional impact of taking a life” (Chow, 2013; 1). Instead of being desensitized to the taking of a life, some operatives would

argue that they are more inclined to be affected by the attacks that they launch. Often, drone operatives will spend weeks at a time performing surveillance on a particular target, learning intricate details about his or her life. Furthermore, whereas pilots on the front lines are able to fly away and not see the damage that their attack caused, drone operatives will have to continue surveillance on the attack zone, “exposing themselves to the often-grisly aftermath” (Chow, 2013).

Instead of charging in and using the greatest amount of force possible, opponents of the drone program argue that there are better alternatives than simply blasting everyone in sight. Instead of killing high-ranked officials, the government should be creating ways of capturing and detaining them in order to gain information on what the group is actually planning. Not only will this action cause less bloodshed, but it will also help American armed forces retrieve invaluable information about potential threats, allowing them to create ways to thwart attacks more efficiently (Byman, 2013).

Civilian Casualties. Advocates for the drone program argue that the technology used by the aircrafts is much more advanced than human capabilities; therefore, allowing them to attack targets in a more precise way, reducing the amount of civilian casualties. While this may sound good in theory, opponents of the strikes see a completely different result in practice. Yemen’s former president, as well as his replacement, Abdu Rabbu Mansour Hadi, have praised the use of drones, noting only one major flaw: “they pinpoint the target and have zero margin of error, if you know what target you’re aiming at” (Byman, 2013, 5). That uncertainty, the risk of not being 100% positive that you are targeting the correct person or group, is what creates such uproar from activists throughout the world as well as civilians living in countries of action.

One of the main problems with drones is that their activity is based on information coming from various human sources. Many U.S. officials have people within the government of the country of action who inform them of the goings-on in certain regions, as well as civilians reporting suspicious activities. Sarah Kreps (2013) reports that half of the targets between 2008 and 2010 were, in-fact, Taliban members; however, they were not the high-ranked officials that the government claims to target, nor did they have much interest in attacking the United States. Instead of solving the issue at hand, the U.S. “risks being dragged further into internal armed struggles.” Although the people that were targeted were militants and not civilians, the United States has no place “intervening on behalf of the government” of another nation (Zenko, 2013, 10).

Another problem, seen in the reporting of civilian casualties, lies within the American government’s definition of who a civilian is and who a militant is. When the Authorization for Use of Military Force (AUMF) was first drafted, the language that was used to describe potential threats was deliberately written vaguely in order to account for terrorist groups changing their names. Because of the way this act was worded, the “United States can conceivably justify an attack on any individual or group with some plausible link to al-Qaeda” (Cronin, 2013, 4). The use of signature strikes instead of kill lists has allowed the United States to target suspicious looking groups or individuals. According to officials, only militants and those affiliated with terrorist groups are to be targeted in signature strikes. The government’s definition of a militant or combatant, however, is much different from what an average person might think: “The U.S. government assumes that all military-age males in the blast area of a drone strike are combatants – unless it can determine after the fact that they were innocent” (Byman,

2013, 4). So the government is not only targeting suspicious individuals, instead they are targeting any male who meets the age requirement. They also do not focus on gathering sufficient information to prove whether or not a particular target is, in fact, a combatant, leaving room for innocent civilians to become victims of the attacks without any justification.

There is an immense discrepancy between the amount of civilian casualties reported by the American government and the amount reported by the media and governments of other nations, such as Pakistan and Yemen. The United States government maintains that there have been almost no civilian casualties as a result of drone strikes (Byman, 2013). On the other hand, activist groups Amnesty International and Human Rights Watch have released reports within the past year that claim the exact opposite.

Civilian casualties – Pakistan. In October 2013, Amnesty International released a report entitled *Will I Be Next?*, with information on various drone strikes that have taken place in Pakistan, mainly within the North Waziristan region. Two specific strikes, one occurring in July 2012 the other in October of the same year, are outlined with eyewitness testimony claiming that the United States had specifically targeted innocent civilians.

On 6 July 2012, a group of about 18 laborers had gathered under a tent at dusk after returning from the day's work. This behavior was nothing out of the ordinary for the workers, they had often retreated to this location in order to escape the summer's heat and discuss aspects of their daily lives with one another. According to eyewitnesses, "the sound of multiple missiles could be heard piercing the sky, hitting the tent and killing at

least eight people instantly” (24). These missiles were said to be fired from four different drones that had been seen hovering overhead just before the strike. Many people in the surrounding areas rushed to the scene in order to see what had happened, only to be met with the bloody sight of body parts scattered everywhere. Moments later, “another series of missiles” was fired to the same location, “targeting those who had come to the scene.” (24). In this second round of attack, at least six people died instantly, with two more dying shortly thereafter due to the severity of their wounds. Witnesses of the drone strike reported to Amnesty International that a total of 18 people were killed during the attack and at least 22 were injured, “including an eight-year-old girl” (Amnesty International, 2013).

The area in which this attack occurred is a known route for Taliban fighters to travel to and from Pakistan. While there are some civilians residing in the region that are sympathetic towards al-Qaeda, as well as the Taliban, not all of the people residing there have ties with the armed groups, nor do they have hostile feelings towards the United States. Witnesses of the strike who were interviewed argue that “all of those killed in the strikes were ordinary villagers, not fighters, and that none had engaged in attacks against the U.S. or Pakistani forces” (26). They were innocent civilians who were falsely attacked. Even today, the American government has still refused to explain why this group of people was attacked and why a follow-up strike was deemed necessary. As far as the Pakistani people and members of Amnesty International are concerned, this was an arbitrary attack on the innocent civilians of Pakistan (Amnesty International, 2013).

In a similar fashion, on 24 October 2012, a 68-year-old grandmother named Mamana Bibi was tending her garden when two Hellfire missiles were fired directly at

her, killing her instantly. Members of Mamana's family, who were working in various locations on the property, generally within a 100ft radius, were thrown by the explosion. Four of the family members received shrapnel injuries and a three-year-old boy fell from a roof, fracturing bones in his chest and shoulders. Once they were able to recover themselves, the family members ran to the location where Mamana had been working, only to find her body in pieces, thrown a significant distance from where the blast had occurred. Moments later, as what happened with the drone strike in July, a second round of missiles were fired into the area. The missile had struck about "9ft from where Mamana Bibi was killed" (20). Luckily, the family had fled from the area, causing the missile to hit nothing but a vacant area; however, shrapnel from the blast was able to travel and strike one more member of the family, breaking his leg. During this strike, one individual, Mamana Bibi, was killed and nine people, eight of whom were children, were injured, all while performing daily tasks necessary in order to gather food to prepare dinner (Amnesty International, 2013).

The two strikes that were reported by Amnesty International both involved situations where children were injured. According to the United State's definition of a combatant - any adult-aged male within a combat zone - these children should not have been in any form of harms way, especially since they were too young to even be considered militants. In both cases, the American government has failed to release any information on the strikes, from reasons behind why the people were targeted to civilian casualty counts. These eyewitness accounts are only two instances in which innocent civilian were harmed by drone strikes, occurring within months of each other. This raises

immense concerns for the amount of civilian damage that has been caused in the past decade in which the drone program has been active in targeted killings.

Civilian casualties – Yemen. In October 2013, at the same time that Amnesty International released its report, the organization Human Rights Watch released their report, *Between a Drone and al-Qaeda*, examining the effects of drone strikes within the nation of Yemen. This report focuses on 2 specific cases in which civilian casualties, which could have been avoided, occurred.

Three children and one pregnant woman were among 12 passengers in a Toyota Land Cruiser that were killed during an airstrike in central Yemen on 2 September 2012. In total, the car was carrying 14 passengers, two of whom were severely burned. Saba, the nation's official news agency, reported that, "the 12 people killed were civilians." The Land Cruiser in which the victims were travelling had served as a transportation shuttle between two major cities in the region. Flour and sugar could be found scattered in the debris surrounding the victims' bodies, indicating that they had been on their way back from doing necessary shopping. Witnesses who ran to the scene were able to produce a video for Human Rights Watch journalists that showed people exclaiming that a warplane "launched or dropped munitions at the vehicle while other aircraft were circling." Intelligence reports later explained that they had been attempting to target a local al-Qaeda leader who had been rumored to be in the area (Tayler, 2013, 55).

The second instance reported in which a large amount of civilian casualties occurred took place on 17 December 2009. During this attack, in which a U.S. Navy vessel launched the missiles, 14 alleged al-Qaeda combatants were killed, as well as at least 41 civilians. Of the civilians killed, nine were women, five of whom were pregnant,

and 21 were children. These figures were reported by Yemen's parliament, and were accepted as reliable data by the Yemeni government within a year of the attack, meaning that the Yemeni government believes that a large number of civilian casualties and injuries occurred due to drone activity within its borders. The missiles were shot at two adjacent sets of huts in the early hours of the morning when most of the inhabitants were still sleeping. The families that resided within the huts were average Yemeni citizens who tended bees, sheep, and goats. Although 14 people who were killed in the strike were seen as members of al-Qaeda, the attack should not have been conducted in such a way as to affect so many innocent lives. The amount of lethal force that was used in order to carry out the attack was far more than necessary and requires immense investigation by the United States government (Tayler, 2013).

Both of the reports made by Amnesty International and Human Rights Watch indicated specific instances in which the United States government blatantly killed innocent civilians and greatly endangered the lives of many others. The government has failed to provide reasons as to why these attacks were conducted in such brutal and reckless manners in order to produce as many casualties reported. Furthermore, U.S. officials have not disclosed their reasons behind targeting specific individuals. The reports also speak to the notion that drones, in fact, are not precise enough to reduce civilian casualties, rather they cause military officials to become more daring and willing to risk the lives of innocent civilians residing in areas of action.

Creating New Enemies. Although the drone program has shown that it is capable of taking out high-ranked leaders from the Taliban and al-Qaeda, it does not prevent others from rising up the ranks and replacing them. Drones also cannot prevent average

citizens from becoming enraged after having friends and loved ones arbitrarily killed as civilian casualties. Because of this, opponents of the drone program argue that the strikes increase the number of people who have hostile feelings towards the United States rather than decrease it. In many countries of action, the drone program is seen as “shortsighted: that it kills today’s enemies but creates tomorrow’s in the process” (Byman, 2013, 5).

One of the ways in which the drone program increases the number of combatants is through the elimination of high-ranked leaders. While these top officials are not easily replaced, their absence does not prevent smaller scale missions from occurring. These smaller missions create more problems within the country because they are often poorly executed and result in an exorbitant amount of damage. “When experienced leaders are eliminated, the result is ‘the rise of lower leaders who are not as experienced as the former leaders’ and who are prone to errors and miscalculations,” often leading to further unrest within the area (Byman, 2013, 2). This chain reaction causes more and more members to feel as though they can rise through the ranks and take on a position of power, making a position within the organization appear more appealing than it had been in the past.

The other main way that the government has been able to increase hostilities towards the United States is by planning strikes that have targeted innocent civilians. Many eyewitnesses to strikes have claimed that victims of the attacks were nothing more than average civilians attempting to go about their daily lives. Micah Zenko (2013) explains the concept of “blow-back,” and how the killing of civilians, and even suspected militants, can lead locals to sympathize with the targeted terrorist groups. He reports “there appears to be a strong correlation in Yemen between increased targeted killings

since December 2009 and heightened anger toward the United States and sympathy with or allegiance to al-Qaeda in the Arabian Peninsula (AQAP)’’ (10-11). Although a correlation does not prove that the increase in drone strikes caused the increase in sympathy, an argument can be made for a relationship between the two events. Instead of eliminating threats to U.S. security, the increase in drone strikes has helped to create feelings of outrage and unrest over the drone program, causing even more issues for the American military to deal with (Cronin, 2013).

Legal Analysis

The following section shall describe the different laws and legislature that apply to the use of drones abroad. After each concept is described, any arguments or confusion over the interpretation of the language shall be expressed, followed by a suggested resolution, which includes guidelines for new legislation pertaining to that particular topic. For international statutes, a compromise shall be created in terms of the United States drone program and what must be done with it in order to remain within the legal parameters of international laws. Although the suggested compromises might not fully appease the concerns from both sides, they set out to find a middle ground so that neither adversary feels slighted.

Domestic Law

The domestic laws pertaining to drones within the boundaries of the United States have constantly been changing with time. As with any new technology, many different

laws and regulations must be reviewed before any specific ones can be made regarding the particular machinery, in this case, drones. Even today, the Federal Aviation Administration (FAA) does not have many legal guidelines for the use of drones by civilians or military personnel within the United States. Issues such as flight restrictions and Americans' right to privacy are top issues that domestic legislature needs to address before any regulations can be made.

Although the FAA has put some domestic restrictions into place, they do not pertain to the scope of this paper. Instead, the focus of domestic law shall be placed on those laws that enable the United States government and armed forces to use military action abroad.

Executive Order 12333. A United States ban on foreign assassination has existed since the mid-1970s. During each of their presidencies, Gerald Ford, Jimmy Carter, and Ronald Reagan have all issued Executive Orders that dealt with American intelligence agencies as well as a ban on American citizens', including members of intelligence organizations, participation in assassination. President Ford's order was established during a time when the United States was under great scrutiny from other nations who believed that Americans were involved in assassination plots against foreign leaders. Although the order does not explicitly prohibit assassination, he indicates that he would "support legislation making it a crime to assassinate or attempt or conspire to assassinate a foreign official in peacetime." Building upon this notion, President Carter also briefly referenced the assassination ban in his Executive Order, reiterating the government's position that no American citizen shall legally participate in the assassination of a foreign official (Bazan, 2002, 2).

President Reagan issued Executive Order 12333 on “United States Intelligence Activities” in December of 1981. Section 2.11 of this order specifically states, “No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.” Although the Order does not specifically state what qualifies as an “assassination”, Elizabeth Bazan, a legislative attorney of the American Law Division, believes that it can be “viewed as an intentional killing of a targeted individual committed for political purposes” (2002, 1-2s).

Arguments. As with most legislation, the arguments for either side are based upon how one interprets the language of the order. Some people believe that the Orders were mainly created in response to pressure from other nations about the killing of foreign officials; therefore, they only apply to foreign officials and do not refer to the killing of others abroad. On the other hand, people have interpreted the Executive Orders in a much more generalized fashion, claiming that the Orders extend to any foreign individual whose assassination was motivated by political agendas (Bazan, 2002).

There is also some controversy over when the legislature behind Executive Order 12333 should apply. In President Ford’s initial Order, the assassination ban only applied to times of peace, while the Order carried out by President Reagan does not specify when the ban is enforced. This has caused many people to argue that Executive Order 12333 does not apply to the United States’ current mission of targeted killing abroad because the nation is acting in self-defense and that it is currently at war with the terrorist groups who committed the attacks on 11 September 2001 (Bazan, 2002).

Recommendations. In order to settle the controversy over what Executive Order 12333 actually applies to, current President Barack Obama must create a new Order. This new Order should:

- Indicate exactly what the term “assassination” applies to in order to prevent any confusion over what the act entails. The definition should be as specific as possible while not signaling out any specific individual or nation, allowing it to be applicable to all foreign persons.
- Describe who is protected by the assassination ban. Framework must be laid out in order to express whether or not the ban applies only to foreign officials or to any foreign person. If the ban only applies to officials, descriptions and characteristics of an “official” should be determined within the legislature.
- Indicate when the assassination ban applies, whether it is during wartime or peacetime or both. If the ban only applies to a particular time, war or peace, a definition of both must be provided in order to separate the two and firmly indicate what circumstances change from one to another.
- Provide legislature that applies to advances in technology, including the use of drones and how they pertain to such attacks. The order should explain that using a drone, or any other emerging technology, still constitutes as an attack by the person controlling the machinery, making them liable under the law.

The Authorization for the Use of Military Force (AUMF). The Authorization for the Use of Military Force was passed through both houses of Congress one week after the attacks on 11 September 2001 and has served as the rationale behind American drone

strikes abroad ever since. This piece of legislature gives the President of the United States full authority 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 (Stanford Law School, 2012; Zenko, 2013, 16).

This policy does not impose any restrictions on who to target and where, meaning that potential targets can be members of al-Qaeda or the Taliban or simply sympathizers. They can also be targeted in action zones, such as Afghanistan, as well as non-action areas. The targets must pose “an imminent threat of violent attack against the United States” in order to be chosen, whether it be for a kill list or a signature strike (Zenko, 2013, 16). In a post-9/11 context, Stanford Law School (2012) explains that the power granted to the President through the AUMF, as well as Article II of the U.S. Constitution, which provides the President with wartime powers, has given him significant authority over the use of force in questions of national security.

Arguments. The American government maintains that it is still in an ongoing conflict with the same, if not similar, terrorist groups and “associated forces” that were involved in the attacks on American soil in 2001, meaning that the United States is still fighting against the same members of al-Qaeda, the Taliban, and other armed forces that are sympathetic towards the two former groups that carried out the attacks on 9/11. Because the government views the conflict as a threat to its citizens, officials are able to use the AUMF as a form of national self-defense, arguing that the strikes are necessary in order to protect the people of the country (Tayler, 2013). Officials have used the

terminology of the AUMF in order to demonstrate that the United States “is at ‘war’ not only with al-Qaeda and the Taliban, but also with all alleged affiliated groups, wherever they may operate, and at any point when they emerge,” allowing them to maintain the “authority” to use legal force during strikes (Stanford Law School, 2012, 4).

In the 12 years that the AUMF has been part of American policy, the nation’s global “War on Terror” has changed drastically. The armed forces, combined with drone strikes, have been able to eliminate many high-ranked militant leaders, as well as disrupt communications between groups, causing many of the organizations to become confused and chaotic (Byman, 2013). On 2 May 2011, al-Qaeda leader Osama bin Laden was killed by a group of Navy SEAL operatives, seen by many as an immense victory for the United States and its War on Terror. The death of bin Laden, as well as the subsequent “decimation of al-Qaeda,” has led many legal scholars to believe that a change in the AUMF is needed, especially where nations such as Yemen and Somalia are concerned (Zenko, 2013).

In May of 2013, President Obama gave a speech addressing the United States’ drone program. During this address, the President referred to the AUMF and claimed that, in retaliation for the attacks on 9/11, “the U.S. is at war with al Qaeda, the Taliban, and their associated forces,” and that the current War on Terror “is a just war – a war waged proportionately, in last resort, and in self-defense” (Obama, 2013). In this speech, President Obama acknowledges the drone program and its victories; however, he also addresses the concerns that have arisen around the amount of civilian casualties. He claims that the United States holds its drone program to “the highest standards” when it comes to targeting individuals and ensuring that the least amount of civilian casualties,

injuries, and damage to property will occur while at the same time paying homage to those civilians who have lost their lives and their families in the cross-fire. He argues that, although the loss of life is regrettable, the use of drones in the elimination of al Qaeda leaders is far better than the alternative. According to the President, the leaders that are targeted by the drones would have created far more civilian casualties than those that occur during strikes. If left unchecked, the attacks that could be launched by terrorist groups, such as al Qaeda and the Taliban, would directly target civilians both within the United States and abroad (Obama, 2013).

The great power that the AUMF provides to the President allows the American armed forces to bypass many forms of legislature and protocol necessary to justify the use of lethal force, as long as the President provides them with the “OK” to do so. The newfound authority allotted to the President also gives him license to expand on any CIA missions “beyond the parameters of Congressional authorization” within the boundaries of other conflicting laws. Many of the orders given to intelligence agencies, such as the CIA are highly classified, prohibiting any information on the missions to be released to the public (Stanford Law School, 2013, 4). Many opponents of the drone program cite this as one of their major concerns regarding targeted killings. They feel that, if the government is willing to take a human life, it should also be willing to provide reasons why (Amnesty International, 2013; Tayler, 2013; Chamberlain, 2013).

Recommendations. Because the Authorization of the Use of Military Force has been around for so long and is used to defend many different positions, politicians in Congress are reluctant to pass any new law that would affect or amend the article. It is for these exact reasons, however, that the legislation must be changed. The world and the

position that the United States is in are vastly different from when the law was enacted over 12 years ago. Consequently, there are too many controversies that surround the AUMF in order to allow it to continue unchecked. Whether it is by an amendment to the article or creating an entirely new law that supplants it, the AUMF must be changed in order to settle some of the concerns of its opponents. The new legislation should:

- Include a clause that provides instructions for a “capture when possible” policy. Because the AUMF allowed military forces to use “all necessary force,” many opponents see that as giving the military the “OK” to simply go out and use lethal force against armed groups, even when capture was plausible. Additionally, the capture of many of the officials who are targeted could potentially lead to gaining essential information on future attacks, making them a much more valuable resource while alive than dead. The “capture when possible” policy should only be infringed when the target in question is posing an immediate threat to human life. Within this clause should also be a very specific explanation of what an immediate threat includes so that those who are merely talking about an action, rather than carrying it out, are not stripped of their lives. If a target is creating plans for attack, they should be detained and cut off from communications with other militants, instead of instantly killed. If the target poses too great of a threat to life, and there is no possibility of capture, only then may lethal force be used.
- Reestablish exactly who the United States is in combat with and who falls under that category. The language used should not allow for a perpetual conflict by using a generalized term to define combatants. Instead, if new

assailants arise, new legislature should be created that specifically relates to the new group(s).

- Order military personnel to seek congressional approval before conducting any drone strikes or targeted killings (Zenko, 2013).
- Allow for a yearly review of the strikes that have been completed. Although there are some instances in which covert operations must remain concealed in order to protect the mission, a panel of three U.S. Court of Appeals judges ruled that it is not “legal or plausible” for the CIA to continue to deny having performed any strikes at the same time that the White House is publically applauding it. Government officials have acknowledged the existence of the drone program; therefore, the CIA should not insult the American people by pretending that it does not exist (Chamberlain, 2013). Under this law, ongoing investigations and surveillance can still remain classified; however, when a strike occurs and a life is lost, it must be reported to Congress no later than six months after it occurred. The six-month time span enables the intelligence agency to reassess the situation and organize any subsequent surveillance that needs to happen in the area of the attack. After these six months, the CIA must provide a report on its attack, including who the target was and why and the damage that was inflicted on the surrounding area, including civilian casualties and injuries. Once the report is submitted to Congress, the CIA can then put in a request to keep the information classified if and only if it is relevant to an ongoing investigation. If Congress agrees to the request then the file shall remain concealed until the related strike is carried out, then both

reports shall be entered into the record. Any American citizen should be granted access to the files one month after they are added to the record. By placing this specification within the new legislation, the CIA is still able to maintain its secrecy where necessary while still providing the public with information on what its government and intelligence agencies are doing.

International Law

Geneva Conventions. On 12 August 1949 the leaders of the world powers put various treaties into place. These agreements, known as the Geneva Conventions, provide the legal framework for armed conflicts. Within these conventions are international agreements on “the treatment of civilians, prisoners of war, and soldiers who are otherwise rendered incapable of fighting” (Cornell University Law School). These treaties also provide specific protection for the rights of civilians and others who are “not taking part in the hostilities” (The Geneva Conventions of 1949 and their additional protocols, 2014).

Currently, four versions of the 1949 Conventions, as well as two additional Protocols are in force. As defined by Cornell University Law School, the first Convention protects wounded soldiers and medical personnel from any form of attack while also providing them with the right to obtain proper medical care. The second Convention offers special protections for shipwrecked soldiers, naval forces, and medical aid ships. The treaties also provided a definition for what a Prisoner of War is “and accorded them proper and humane treatment.” The fourth Convention that is in place offers protection and prevents the wrongful treatment of civilians and those not involved in the attacks,

specifically placing orders of protection on civilian hospitals and other medical zones (Cornell University Law School).

The first Protocol listed in the Geneva Conventions creates more specific guidelines for the treatment of civilians and other “protected persons.” It also includes a framework for the proper “treatment of the deceased, cultural artifacts, and dangerous targets.” The second Protocol defines exactly what constitutes as “humane treatment,” along with enumerated rights of the imprisoned individual. This section also provides further details for the rights of civilians in action zones (Cornell University Law School). Together, these Conventions and Protocols provide the overall guidelines from which all subsequent international laws pertaining to armed conflict have drawn (Tayler, 2013). Each nation that ratifies the Geneva Conventions is then bound to its laws and restrictions. According to Cornell University Law School, the United States has ratified all of the Conventions, but not the two Protocols.

The United Nations Charter. Article 2 of the United Nations Charter provides rules for engaging in armed conflict against another State. The primary purpose of this legislature is to protect the rights of a sovereign nation and its citizens, while also controlling the geographical area of a conflict (Heyns, 2013). This Article “prohibits the threat or use of force by one state against another” (Stanford Law School, 2012, 1). The only two exceptions to this law are: if the host nation permits the other to use force within its borders, or if a nation is acting in self-defense (Heyns, 2013). If a State manages to use force in another sovereign nation’s territory without the consent of the host nation or without operating in self-defense, the acting state is immediately placed in violation of Article 2 and the rules of inter-state force (Alston, 2010).

In order to obtain consent to use force inside the boundaries of another nation, permission must be granted by top-ranked officials. Whatever judgment the highest authority makes is the ruling that must be adhered to. Furthermore, when a nation does give consent to another's use of force, the parameters of the active nation's attack must be established before any action arises. Under no circumstances is the host nation allowed to agree to violations of international human rights law or international humanitarian law within its lands. Finally, if the host nation rescinds its consent to the other's use of force, the acting nation must immediately halt all attacks and stop any more missions from occurring (Alston, 2010; Heyns, 2013).

Necessary and proportionate force used by a State is acceptable under international law if and only if it is in response to an armed attack (Alston, 2010). Article 51 of the United Nations Charter protects each nation's right to self-defense, even when consent from a host nation is not provided:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security (Bazan, 2002).

The language provided in Article 51 indicates that a State can take action in the form of self-defense only until the Security Council has been able to make a decision and take action in order to ensure international peace. It is unknown how long it might take for the Council to establish and carry out a plan of action against armed forces, leaving ample time for a defending nation to carry out full blown military attacks.

Under Article 51, in order for a nation to claim that it is acting in self-defense, certain criteria must be met; primarily, an armed attack must have occurred or is imminent. The actions taken by a defending state must be seen as proportional to the initial attack incurred on it, confining the level of violence within maximum level of severity. This further indicates that “self-defense must not be retaliatory or punitive; the aim should be to halt and repel an attack,” and any actions taken in self-defense must serve only as a way to prevent or fend off an attack. In order to halt an attack, certain objectives and priorities may be established, which, once achieved, are able to indicate that the act of self-defense has been completed; “however, States are not entitled to continue to act in self-defense until the absolute destruction of the enemy is achieved,” they can only act until the threat is averted (Heyns, 2013, 18-19). In addition to not exceeding the severity threshold, Article 51 rules that a State does not have the right to use lethal force if it is “not necessary to accomplish the purpose of defense and/or the purpose cannot be accomplished without a disproportionate cost in civilian lives and property,” meaning that, if hostile parties can be captured, or if plans for an attack can be thwarted without the taking of a life, then every possible action must be taken in order to prevent the use of lethal force. Furthermore, in order to protect the people in the surrounding area, if an attack carried out by a defending state runs the risk of creating more civilian casualties than targeted ones, the attack cannot legally be carried out (O’Connell, 2010, 4).

Arguments. In the past few years, there has been immense controversy over the United States’ use of drones in Pakistan and Yemen as to whether or not their government officials have provided the American government with permission to carry

out targeted killings on their territories. In the past, Pakistani officials were fairly willing to consent to the United States' use of drones on their land. "During the Bush and Obama administrations, Pakistan has even periodically hosted U.S. drone facilities and has been told about strikes in advance" (Byman, 2013, 5). These governments have become concerned, however, with the self-perpetuating kill lists and continual drone strikes that do not seem to be stopping in the foreseeable future.

During meetings with the White House, Pakistani officials expressed their desire to have drones removed from their borders, which the United States claims shall happen within two years. Although the Pakistani government requested an immediate suspension of the drone program, American officials argued that such a feat was not possible but "we're continuing to try to be more tailored and sensitive to your needs" (Entous & Gorman, 2014, 4). Many people argue that the United States, by remaining in Pakistan and continuing to carry out drone strikes, which the Pakistani government has expressly shown discontent with, is in direct violation of Article 2 of the United Nations Charter and infringes upon Pakistan's rights as a sovereign nation.

As a response to the attacks on 11 September 2001, the United States government has targeted members of the Taliban, al-Qaeda, and other associated groups in order to protect the American people from future terrorist attacks. The targeted killings conducted by Americans has led to the elimination of many leaders of these armed groups, disrupting the chain of command and organization of each group. While the United States maintains its position that it is fighting a global "War on Terror" in order to prevent any terrorist attacks in the future, many other nations feel that the scope of the war has gone beyond the limits of self-defense.

By exceeding the scope of self-defense, many scholars feel that the force used by the United States also exceeds the level of severity necessary in order to prevent attacks from occurring (Alston, 2010). The report issued by Human Rights Watch (2013) listed at least three separate instances in which the capture of a suspected target was possible, yet the armed forces carried out an execution. Additionally, the self-perpetuating kill lists and continuing number of signature strikes that have concerned Pakistani officials are now beginning to concern the rest of the world. As Special Rapporteur, Christof Hynes (2013) noted, a State cannot simply continue to target a group until it is eliminated; however, it would appear that that is exactly what the United States government is trying to achieve with the Taliban and al-Qaeda. Article 51 of the United Nations Charter was created in order to protect nations from unwarranted and unlawful attack; it should not be used in order to justify similar violence used in retaliation.

Recommendations. The United States' "War on Terror" is the longest war in American history. Although it may have begun with just intentions, the beast that it has morphed into is no longer acceptable, especially when it comes to the use of drones in foreign nations. In order to comply with Articles 2 and 51 of the United Nations Charter, the United States must:

- Renew its agreement with Pakistan and any other nations in which drone strikes occur, that give consent to the U.S. armed forces to use lethal force within these nations' boundaries. Within these agreements, specific guidelines should be created that specifically state the type of missions that can be carried out by the military. By doing this, the American government will ensure the legality of its operations abroad while respecting the sovereignty of

the countries of action. If Pakistan and the other nations refuse to grant the United States permission to use lethal force within their territories, then the United States must immediately stop all current and future missions until the countries of action permit them to do otherwise.

- Define what constitutes as an “imminent” threat. The current language used in Article 51 of the UN Charter does not provide any criteria for determining an imminent threat, so under the current legislation, imminent could mean that day, within a week, within a month, or even within a year. If a threat is imminent, it should be set to occur within a week’s time. This would give officials enough time to determine the severity of the attack as well as exhaust different options to see if the attack can be prevented or the persons planning the attack to be detained.
- Narrow its scope of targets. In order to be considered self-defense, the United States’ actions abroad must be carried out in order to prevent future attacks from occurring, not to destroy every member of an armed group. By using signature strikes to eliminate “potential” threats, the American military has allowed its list of targets to grow to an amount that far exceeds what can be deemed as acceptable for self-defense. Targets must only be chosen if the military has concrete proof that the person in question has conspired, or is conspiring, to execute an attack on American citizens or territories. Furthermore, restrictions must be put in place to enforce a “capture first” policy so that the use of lethal force is not abused.

International Humanitarian Law. International Humanitarian Law (IHL) is the international law that regulates the management and conduct of armed conflict. According to Hynes (2013), “If a drone strike occurs in a situation where a non-international armed conflict exists, the protection afforded to the right to life is commonly interpreted in accordance with the rules of international humanitarian law” (11). Any attack, including targeted killings, cannot be arbitrary and must “serve a legitimate military objective.” The result of the attack must also not present a risk to civilians that is greater than the importance of achieving the military goal (Stanford Law School, 2012). In other terms, “any military advantage is considered in light of the expected harm to civilians in the vicinity.” Targets of drone strikes and other targeted killings are “only lawful when the target is a ‘combatant’ or ‘fighter’” (Alston, 2010, 10).

Under IHL, civilian populations and other people who are in the area of conflict but have no part in the violence that is occurring are not permitted to be “objects of attack.” If a civilian participates in any of the hostilities taking place, they automatically lose the protection accorded to them. According to the International Committee of the Red Cross, in order for an action to be considered part of the violence, “the act committed must adversely and directly affect the opposing party in a concrete manner or lead to the loss of life or property as part of a campaign in support of one party to a conflict” (Stanford Law School, 2012, 2).

In order to ensure that civilians are protected from getting caught in the crossfire, IHL indicates that the warring parties must distinguish themselves from the civilian population, they must abide by the “principle of distinction” (Amnesty International, 2013). Military forces must take any precautions that will help to minimize cost to

civilians, including: avoiding crowded areas, removing civilians from areas where action must take place, and not using civilians as a form of protection. Additionally, in terms of targeted attacks, the attacking forces must verify whether or not their target is a civilian or a militant, before initiating the attack (Tayler, 2013).

Arguments. One of the main problems of applying international humanitarian law to targeted killings by drones is the designation of whether or not there is an armed conflict. The United States government maintains that they are in a transnational non-international armed conflict with the terrorist forces that played a part in the attacks of 9/11. Heyns (2013) notes that some people view a State's use of force in terms of self-defense, which is what the American government is claiming, as an armed conflict "because the use of force is also against the territorial State" and thus falls under all relevant laws.

Opponents of the drone program argue that the U.S. armed forces are not adhering to the restrictions expressed in international humanitarian law, especially where civilian casualties are concerned. Both Amnesty International (2013) and Human Rights Watch (2013) released reports detailing instances in which eyewitnesses claim that, after an initial drone strike - while people in the surrounding area rushed to the scene in order to help the victims of the attack - a second round of missiles was fired, aimed directly at those trying to aid the wounded. Other eyewitness accounts report that Hellfire missiles from U.S. drones were fired directly at civilians, such as Mamana Bibi and her family, who did not even fit the military's description of a combatant. The discrepancy between the number of civilian casualties reported by the U.S. government and the number reported by Pakistani officials and journalists is immense. Whereas the United States

claims next to no casualties, other reports suggest that the number could be in the hundreds (Cronin, 2013). If the eyewitness accounts prove to be true, the U.S. military and government will be in direct violation of the protection of civilians clause within international humanitarian law.

Another issue that opponents have stated is the failure of the armed forces to abide by the “principle of distinction.” Many scholars have noted the United States’ extremely broad definition of the terms “militant” and “combatant,” claiming that the vague definition includes nearly every military-aged person, 18 or older, in a combat zone except for women and children (Tayler, 2013; Zenko, 2013; Currier, 2013; Amnesty International, 2013; Cronin, 2013). In some cases, children are not even exempt because there is no way of checking a person’s age without conducting a background check. If a 14-year old child appears to look 18 from surveillance, they can be accidentally targeted. Consequently, the United States has been accused of failing to determine whether or not an individual is a civilian before initiating an attack. “Unless there is explicit intelligence posthumously proving them innocent,” the targeted individuals are assumed to be combatants (Zenko, 2013, 12). In this sense, the U.S. armed forces act before they think. Instead of ensuring a person’s innocence, they wait until that person has already been killed before conducting the proper investigations, blatantly violating the constraints of International Humanitarian Law.

Recommendations. Before any framework can be put in place, the International Court of Justice and the United Nations must agree on whether or not the United States’ drone strikes on members of al-Qaeda and its associated forces are considered to be part of an armed conflict or not. Without this distinction, it is unclear as to what rules must be

adhered to. If it is found that the United States is, in fact, engaged in an armed conflict, the following measures must be taken:

- An official count of all civilian casualties must be taken by three separate agencies for all drone strikes: one agency must be part of the United Nations, for example the office of the Special Rapporteur; one agency from the American government's choosing, whether it is the CIA and JSOC or other official organizations; and one agency from the host country. The civilian counts from all three groups must be dually submitted to the United States Congress and the United Nations. If any discrepancy occurs, a complete investigation of that particular strike shall commence. If the data from the drone strikes is still being used in other missions, the United States can request that the reports remain classified until the other related strikes are carried out. By holding the United States accountable for maintaining precise records of its civilian casualties, and by having these numbers measured against those obtained by a third party, the U.S. military can finally report accurate data on the civilian toll.
- A public response must be made in relation to the accusations of eyewitness accounts claiming that missiles were fired directly at those trying to provide medical aid to the wounded. Whether or not these second rounds were intentional must be established. If the second firing was intentional, specific details must be explained as to why these people were targeted and how they posed an imminent threat. It must also include information as to how the second attack was warranted given the amount of civilians in the surrounding

area that rushed to the blast zone. If the second firings were not intentional, or missed their intended target, a report must be issued as to why this occurred.

Because drones are glorified as being more accurate and precise, an investigation as to how such a misguided strike occurred must ensue and its findings released to the United States government and military so that they can fix the malfunction.

- An internationally accepted definition of the terms “militant” and “combatant” must be agreed upon so that every nation, and its people, understand what actions cause people to be placed into those categories. The current definitions that are being used are too broad and leave too much room for error; therefore, they must be narrowed down to signal out specific groups or individuals.
- Before any drone strike is ordered or carried out, a complete investigation, conducted by the organization carrying out the mission on the targeted individual must occur and be submitted to the UN as an assurance that it was completed. The investigation may remain confidential until after the mission is finished. If this investigation shows that the individual is a combatant and is involved in plans of attack against the United States, then the armed forces are within their right to target him. If, on the other hand, the investigation does not provide any information that suggests that the individual is engaging in plots with armed groups, then the person has to be assumed to be a civilian and is therefore protected by international humanitarian law. It is unacceptable for victims of drone strikes to be proven innocent after their deaths have already occurred. The United States must do everything in its power to ensure

that the victims of its strikes are actually armed combatants and not innocent civilians.

International Covenant on Civil and Political Rights. Article 6 of the International Covenant on Civil and Political Rights states, “every human being has the inherent right to life. No one shall be arbitrarily deprived of his life” (Amnesty International, 2013, 43). Because this is an inherent right, it exists independently from any laws and is a rule of *jus cogens*, meaning that it cannot be ignored or disregarded, regardless of whether it is a time of peace or war (Heyns, 2013). The distinction of what constitutes as an arbitrary deprivation of life lies within the context of international humanitarian law. If there is absolutely no other alternative, and the target in question is posing an imminent threat to the lives of others, then the killing of said person is not believed to be arbitrary. Consequently, because they are seen as casualties of war, “not all attacks that cause civilian deaths violate the laws of war, only those that [directly] target civilians” (Tayler, 2013, 6, 85). This Covenant can be violated during times of war when innocent civilians, who are not partaking in any hostilities, are blatantly targeted. It can also be violated in situations where capture is feasible, yet lethal force is still used (Amnesty International, 2013; Tayler, 2013).

Arguments. Opponents of the drone program and human rights activists are strongly opposed to the United States’ claim that very few civilian casualties have occurred. In instances where civilians have been said to be specifically targeted, the United States either refuses to acknowledge that the attack ever occurred, or it does not provide any explanation for why those persons were targeted. Human rights organizations argue that the government should be completely willing to provide information about

targeted victims, including why they were targeted and the reasons behind why a strike was necessary, in order to ensure that these people were not wrongfully stripped of their lives. If the attack truly was justifiable to carry out, then the government should not have any reason to keep its arguments classified (Amnesty International, 2013). As previously mentioned in this paper, the government and the CIA have had instances in which they have claimed that confidentiality was absolutely necessary in order to ensure the success of related missions. Activists dispute this claim by arguing that hardly any information at all has come from the intelligence agency, and that there is no viable way that every single attack in the past 12 years has been related. They argue that there must be at least some cases in which no further investigation is taking place.

Recommendations. In the recommendations for the United States on adhering to international human law, guidelines were presented in order to establish civilian count as well as to determine whether or not the targets were civilians or combatants. In the case of the International Covenant on Civil and Political Rights, the only further recommendation that can be made is this:

- The United States must acknowledge all completed drone strikes that are not related to sensitive ongoing missions. These acknowledgements must include civilian casualty count, a description of who the intended target was, and the reasons for targeting that person. Also provided in the report should be any information regarding capture of the targeted person and why it was not possible.

International Human Rights Law. During times of armed conflict, international human rights law is meant to help govern the actions of armed forces against civilians

alongside the provisions dictated by international humanitarian law. In the context of an attack outside of an armed conflict, international humanitarian law holds no sway; instead, international human rights law governs all actions taken by the state (Alston, 2010). In instances where outside forces are operating within another nation, a State cannot allow another acting party to violate the terms of international human rights law; it must first and foremost protect its citizens. Additionally, any State is forced to comply with, and ensure the protection of, peoples right to life, whether its actions are within its own borders or in another's territory (Heyns, 2013).

“As a general rule, human rights treaties state that any deprivation of life must be non-arbitrary” (Heyns, 2013, 7). International human rights law states that intentional lethal force can only be used as a last resort and only if it is absolutely necessary in order to protect life (Heyns, 2013; Stanford Law School, 2012). As seen in the case law of *McCann and others v. United Kingdom of Great Britain and Northern Ireland* (1988), if a target is able to be apprehended, then that is the action that must be taken, they cannot be intentionally killed if capture is plausible (Heyns, 2013). In regards to drones, “the weaponry used by the aircrafts hold too much firepower in order to be permitted in law enforcement efforts.” In situations where a target is threatening the lives of others, especially in hostage situations, dropping bombs or missiles would be counter-productive. When civilian lives are at risk, smaller weapons, such as rifles and side arms, must be used in order to prevent an unnecessary amount of civilian casualties (O’Connell, 2010, 2-3).

Arguments. As with the International Covenant on Civil and Political rights, many human rights activists feel that the United States is in violation of international

human rights law by arbitrarily stripping innocent people of their lives. Under the protection of international human rights law, the policy of carrying out targeted killings in areas outside of conflict zones is seen as illegal by a vast majority of people. Because these strikes literally signal people out before an attack is made, they are seen as “intentional and premeditated.” International human rights law states that in order for lethal force to be permitted, immediate threat to life must occur. This cannot be the case if people were placed on a kill list months or years before they were attacked (Stanford Law School, 2012). Even if an individual is found to be guilty of past crimes, they cannot legally be killed unless they are currently threatening the lives and well-being of others (Tayler, 2013). Within the parameters of this law, “it is never permissible for killing to be the sole objective of an operation,” because that would constitute as a deliberate violation to an individual’s right to life: capture must always be the first and most important means of attack (Alston, 2010, 11).

In some instances where unarmed civilians were targeted, the members of Human Rights Watch feel that unnecessary lethal force was used. In regards to the bombing of an inter-city transport in Yemen, the armed forces could have set up some form of road block that would allow them to capture the targets aboard the bus instead of blasting it to pieces, leaving men, women, and children dead (Tayler, 2013). Amnesty International (2013) further argues that in situations where drone strikes were used outside of armed conflict, the United States must provide the details of each strike, indicating how and why lethal force was “strictly unavoidable to protect life,” and therefore used in lieu of less extreme measures.

Recommendations. Regardless of whether or not the United States is considered to be in an armed conflict with terrorist groups, the regulations provided by international human rights laws must be followed.

- If it is ruled that there is no armed conflict, then the policy of targeted killings must immediately stop. The United States cannot lawfully target people to be killed before any imminent threat is expressed. Although the targeted killings must stop, it would not mean that the drone program has to be completely dismantled. Instead of carrying out targeted killings, drones can continue to perform reconnaissance missions. Furthermore, the current weaponry in drones can be altered to include less-destructive weapons, such as the rifles that O'Connell (2010) suggested, instead of the heavy artillery that they currently carry. The new weapons that would be added to the drones would allow them to take action in the event that a target under surveillance posed an imminent threat to life and prevention or capture were not possible.
- The legal concerns brought up by international human rights law reaffirm the need for guidelines for capturing a target and only using lethal force when absolutely necessary. In order for the drone program to function effectively and legally, it must adhere to strict, internationally agreed upon rules that govern how targets are chosen, who can be considered a target, and when the use of lethal force is permissible.

Conclusions

The debate over the United States drone program has gone on for far too long without much progress being made for either side. During his speech addressing the drone program in 2013, President Obama made an attempt to not only acknowledge the program, but to also recognize its strengths and weaknesses. He realizes that the program is not perfect and that there are some issues that need to be addressed based on the controversy surrounding the strikes, especially concerning civilian casualties; however, he also defends the program and how it has proven to be an effective way of eliminating dangerous high-ranked terrorist leaders (Obama, 2013). Advocates and opponents of the strikes are both able to make compelling arguments as to why the program should or should not remain active. The legal debate, however, places the arguments into a much more concerning standoff. Both sides seem to claim that the drone program is doing the exact opposite of what the other reports. If a human rights group claims that the government is not adhering to a particular law, the government will retort with all the various ways that they are being compliant. Although this back and forth routine might not appear to have much of an impact, the implications that it creates can be devastating.

Almost every recent news article pertaining to the drone program has included the same underlying theme: the use of drones must be restricted and stringent guidelines for their use must be created and followed. Many scholars are concerned about what the current American drone program will mean for the rest of the world in the future. With more and more countries gaining access to drone technology, the need for regulation has never been more urgent.

Primarily, because the United States is one of the few nations that currently have armed drones, a precedent must be set for others to follow (Zenko, 2013). “When the U.S. government violates international law, that sets a precedent and provides an excuse for the rest of the world to do the same” (Byman, 2013, 7). There are no circumstances in which it is acceptable to deliberately violate international law, and the United States must remain firm in its stance that any violations will not be tolerated. This means that the American government and military must adhere to all relevant laws during their employment of the drone program. In his acceptance speech of the Nobel Peace Prize in 2009, President Barack Obama had these words to say, “America – in fact, no nation – can insist that others follow the rules of the road if we refuse to follow them ourselves. For when we don’t, our actions appear arbitrary and undercut the legitimacy of future interventions, no matter how justified.” The words he spoke could not have been more true. The United States must serve as a guide in this matter. In order to do so, the drone program must be considered legal in every sense of the word. It cannot allow for skepticism and concern over whether or not human rights, and even States’ rights, are being violated. Disregarding the rules, and keeping so many aspects of the strikes secret only paves the way for other nations to follow suit.

As times and technology change, the laws that govern the use of drones will change too. In order to keep up with the ever-changing laws, the components of the drone program must constantly be examined and reviewed to ensure that they remain within the necessary legal boundaries. As it stands, the United States appears to be involved in the drone program for the long haul. It is a program, which in theory can greatly enhance the

ways in which armed conflicts are handled; all it needs is guidance and a kick in the right direction.

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