

The Impact of CIA Drone Strikes and the Shifting Paradigm of U.S. Counterterrorism Strategy

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Abstract

The growing reliance on drone strikes in US counterterrorism operations has made them the tactical centerpiece in confronting an increasingly decentralized and metastasizing threat from al-Qaeda and its affiliates. This move, whether by accident or design, has resulted in a shift in the paradigm of U.S. counterterrorism operations. Drone strikes act as a force multiplier for the military and intelligence community, providing them with an ability to quickly locate and decisively engage terrorist networks on a global scale, effectively blunting their development in key regions, eroding operational capabilities, and denying them safe haven. They have allowed the U.S. to project significant military power into inhospitable regions, and avoid the need to commit significant military resources on the ground. The growing prominence of drone strikes operations has not come without a price. Profound legal and moral questions have been raised regarding the nature of drone strikes operations, including accusations of extra-judiciary executions, violation of international humanitarian law, circumventing the right to due process, and mounting civilian casualties. However, regardless of its detractors the U.S. must not abandon its use of drone strikes. Instead the U.S. must focus on increasing the visibility of drone strike operations, by clearly defining their mission and objectives, as well as, requiring a stricter criterion for drone strike deployment. U.S. drone strikes remain an indispensable tactical option in US counterterrorism operations and an integral strategic component in achieving broader U.S. goals. Incorporating these elements into existing US counterterrorism operations can help to mitigate the negative impact of U.S. drone strikes, while further bolstering its positive impact in combating terrorist networks.

Key Words: Drone, Force Multiplier, Safe Haven, Authorization for the Use of Military Force, U.S. National Counterterrorism Strategy

Introduction

The surge in the use of unmanned aerial vehicles (UAV), commonly referred to as drones, to conduct strikes against al-Qaeda and its affiliates has granted U.S. counterterrorism operations unprecedented power and reach against a highly decentralized and fragmented terrorist network. Al-Qaeda and its affiliates are not burdened by the rules and regulations of a sovereign state, they can move freely between borders, and operate in regions that allow them to plan and execute their goals and objectives. This freedom of mobility has historically given terrorist networks an important advantage over sovereign states. The advent and fervent adaptation of drones into the broader repertoire of U.S. counterterrorism operations has been a direct response to the terrorist

threat from al-Qaeda and its affiliates, and has been successful in diminishing this strategic advantage afforded to terrorist networks. Drone strikes give the U.S. military and intelligence community the ability to quickly and decisively confront terrorist networks on a global scale, effectively blunting their development in key regions, eroding operational capabilities, and denying them a safe haven to operate. This push toward utilizing drone strikes to combat al-Qaeda and its affiliates has forced the U.S. to adapt new policies that have altered the paradigm of U.S. counterterrorism operations. The first and most profound shift has been the growing reliance on the Central Intelligence Agency (CIA) to conduct drone strikes outside of designated battlefields. This shift in operational command has marginalized the presence of the Joint Special Operations Command (JSOC) and by extension the Department of Defense (DOD), who historically organized and executed U.S. counterterrorism operations. Due to the ease, and relatively diminutive cost in conducting these operations U.S. officials have found it difficult to resist capitalizing on actionable intelligence, and have grown more comfortable ordering the deployment of drone strikes outside designated battlefields.

The advancements in drone technology have acted as a force multiplier for the U.S. military and intelligence community, allowing them to project significant military power into inhospitable regions. In the past, combating these terrorist networks would have required the commitment of significant military resources, a cost in both blood and treasure that in this sensitive domestic political environment comes at a premium. In recognizing the complex domestic and international realities of combating the highly infectious and metastasizing threat of al-Qaeda ideology and affiliated networks, a commitment from two consecutive U.S. administrations has propelled drone strikes to the forefront of U.S. counterterrorism operations, making them not just the weapon of choice (Byman 2013, 32) but a weapon of necessity; and an integral tactical component of counterterrorism operations moving forward.

While drone strikes have become a vital component in U.S. counterterrorism operations, U.S. drone policy has raised a number of contentious moral and legal questions. Domestic and international observers have decried U.S. drone strike policy for circumventing the right to due process by carrying out extra-judiciary executions, violating international humanitarian law in its scope of counterterrorism operations and mounting civilian casualties. The growing prominence of drone strikes operations has complicated the development of strategic partnerships in regions where it is critical to nurture and cultivate strong partnerships. Often times U.S. drone policy forces potential partners to clash with harsh internal political realities that negatively impact the perception of drone strike operations and foster misconceptions about their deployment and purpose; further alienating the U.S. as it attempts to combat the spread of al-Qaeda and the radical Islamic ideology that fuels its appeal.

However, regardless of its detractors drone strikes must not abandon. Instead the U.S. must focus on increasing the visibility of drone strike operations, by clearly defining their mission and objectives, as well as requiring a stricter criterion for drone strike deployment. Due to the highly secretive nature of many drone strike operations accomplishing such a task may require a reversal in the aforementioned paradigm shift, which would see drone strike command moved away from the CIA and back under the oversight of the DOD. While this may diminish some aspects of drone strike effectiveness, it is vital these drone strikes remain an indispensable tactical option in US counterterrorism operations. Incorporating these elements into existing US counterterrorism strategy can help to mitigate the negative impact in drone strike operations, by reversing misconceptions regarding their deployments, and instill confidence in our strategic partnerships. This in turn will further bolster the effectiveness in combating al-Qaeda and its affiliated terrorist networks.

Dual Drone Programs

U.S. drone strike operations are not a single homogeneous program. The U.S. currently operates two separate and distinct drone programs. Each is tasked with combating the same threat, namely al-Qaeda and its affiliates; however, the scope and parameters of these two programs is quite different (Bradley C., Goldsmith J. 2005, 2049). The existence of two drone strike programs running parallel to one another complicates the formation of a cohesive identity in what drone strike operations are intended to accomplish. The first U.S. drone program is conducted, overseen, and approved by the Department of Defense. This program uses a wide spectrum of drone capabilities to conduct not only missile strikes, but also reconnaissance and surveillance missions. In these operations the U.S. Air Force utilizes trained operators that adhere to strict rules that govern engagement during wartime. The most important distinction of the U.S. military drone program is *overt*, meaning its guidelines, missions, and scope are subject to review, and actions taken by officers and soldiers are held to a standard of accountability that must answer to congressional oversight (Ofek 2010). Under the DOD the scope and parameters are fixed and relatively confined to designated battlefields. In each of these battlefields, all DOD operations are required under U.S. law to report activities to congress, which is responsible for oversight and accountability of U.S. military actions (Zenko, 2013). Over the last decade the U.S. military has utilized drone strikes to great effect. During the initial engagements in Operation Enduring Freedom drones played a critical role in developing a clear picture of the battlefield and effectively linked U.S. air power directly to the small contingent of U.S. special operation forces, and CIA officers combating al-Qaeda and Taliban forces on the ground (RAND, 2005, 2). This quick synchronization of air power and ground forces added a new dimension to the already formidable tactical advantage enjoyed by the U.S., the impact of which was no doubt felt by al-Qaeda and Taliban forces. Drones provided the U.S. an ability to remain actively engaged with potential targets, by *loitering* over target areas for long periods of time, effectively enabling the U.S. to quickly respond to intelligence within minutes, significantly improving the *find-fix-finish* acquisition loop (Zenko, 2013, 6).

Operation Enduring Freedom was the first official deployment of drones into an active battlefield, and thanks in large part to the impact of drone strikes, within months the U.S. was able to force a massive retreat by al-Qaeda and its Taliban compatriots (Richter, A. 2005, 16). As fast as U.S. military operations were able to push al-Qaeda and its affiliates out of Afghanistan, they quickly reconstituted their networks within the tribal region of North Waziristan in Pakistan. The ability for al-Qaeda and Taliban forces to move freely between Afghanistan and Pakistan provided them with a critical safe haven in which they could temporarily escape U.S. forces by taking refuge and protection in the lawless tribal region. This tactic became an increasingly dangerous and costly annoyance for U.S. military operations in Afghanistan. The safe haven inside Pakistan being provided for al-Qaeda by their Taliban patriarchs presented a significant problem for the U.S. military. They were not authorized to engage in operations inside Pakistan, and the U.S. needed a way of responding to the extensive support network operating inside Pakistan, without engaging in exhaustive and costly ground operations that would no doubt be vehemently opposed by the Pakistani government.

Disrupting and Disabling the Network

U.S. counterterrorism operations have made significant progress in disrupting and degrading the operational capabilities of al-Qaeda and its affiliates. The use of drone strikes against

al-Qaeda and Taliban targets in North Waziristan, Yemen, and Somalia have altered the way al-Qaeda and its affiliates operate. Drone strikes have pushed members in leadership positions further underground. In order to limit exposure to U.S. targeted drone strikes, al-Qaeda instructs its lieutenants to limit their public presence and communications to prevent U.S. eavesdropping from circling drones overhead. Lieutenants have been instructed to scale back on the number of people they associate with to prevent contact with possible spies. While these operational security precautions may reduce the risk of targeted drone strikes, it will inevitably compromise leadership effectiveness and severely degrade long-term operational capabilities (Byman, D. 2011, 4). Less than 2 percent of al-Qaeda and its affiliates reported killed by drone strikes were identified as holding leadership positions (Bergen, P., Tiedmann, K. 2011, 12). However, despite this relatively low number, al-Qaeda has had increasing difficulty filling leadership positions. Clearly, al-Qaeda lacks a deep enough reservoir of skilled and experienced individuals among the rank and file, which it can tap to fill leadership positions (Byman, D. 2011, 4). Daniel Byman, when speaking about the impact of targeted drone strikes on al-Qaeda operations capabilities accurately points out that, "Without bomb-makers, passport-forgers and leaders to direct actions, they are often reduced to menacing bumbling, easier to disrupt and often more a danger to themselves than to their enemies" (Byman, D. 2011, 5). The exponential increase in targeted drone strikes by the Obama administration has profoundly degraded the operational capabilities of al-Qaeda's central leadership structure and has killed scores of lower-ranking members.

A critical and overarching goal in the U.S. counterterrorism strategy has been an emphasis and focus on denying and eliminating al-Qaeda and its affiliates from gaining access to, as stated in the June 2011 National Strategy for Counterterrorism "the physical sanctuary of ungoverned or poorly governed territories, where the absence of state control permits terrorist to travel, train, and engage in plotting" (NSC, 2011, 8). Al-Qaeda and its affiliates demonstrated need to obtain and utilize safe havens have been a consistent theme throughout their development, from Sudan to Afghanistan al-Qaeda has historically sought out safe havens, and due to the growing diversification of their networks across the Arabian Peninsula and Africa, al-Qaeda will require multiple areas that it can utilize as safe havens, if it hopes to maintain and project its terrorist threat across the globe (O'Neill B. 2005, 148). To their credit U.S. drone strikes have proven incredibly effective in marginalizing the effective use of sanctuaries, by pursuing and engaging al-Qaeda and its affiliates wherever they have chosen to take refuge. The Federally Administered Tribal Areas (FATA) has been the most active safe haven from which al-Qaeda and its affiliates have planned, trained, recruited, and coordinated terrorist attacks against not just U.S. military operations in Afghanistan, but also civilian targets inside the U.S., most notably the failed New York City Times Square bombing in 2010. Yemen has been an effective safe have for Al-Qaeda in the Arabian Peninsula (AQAP) since the mid-90s, and has been responsible for multiple attacks against U.S. interests throughout the world. Somalia has recently seen the spread of al-Shabaab's terrorist organization across the Horn of Africa, and while their ambitions have been limited to domestic issues inside Somalia, they have voiced ideological support for al-Qaeda's objectives and could easily expand their operations beyond Somalia (Williams-Bridgers, J. 2011, 6). For the onset, FATA has been the primary focus of U.S. targeted drone strike operations. Data assembled by New America Foundation (2012), estimates that since 2004 the U.S. has conducted 298 targeted drone strikes inside Pakistan (New American Foundation, 2012). The impact of these operations on al-Qaeda and the Taliban has no doubt been felt. In an exposé with Taliban and al-Qaeda members, Pir Zubair Shah (2012) describes the dramatic impact the presence of drones has had on the FATA safe haven. Shah describes Al-Qaeda and Taliban fighter that must go out of their way to avoid gathering in large groups, even when attending mosque or pray. "We don't even sit together to chat anymore" one Taliban fighter told Shah; their life in the tribal region of Pakistan has become

increasingly more difficult and restrictive, "We can't sleep in the jungle our whole lives" one member went on to say, making it clear that the perpetual uncertainty of targeted drone strikes has created a lifestyle, that even for the notoriously rugged al-Qaeda and Taliban fighters, is becoming increasingly difficult to cope with (Shah, P. 2012 57-58). David Rohde, a New York Times reporter who was taken hostage by the Taliban for several months, described the ominous environment in which al-Qaeda and its affiliates have been forced to operate. Rohde said that key militant leader would often sleep outside under trees in order to avoid detection from drones circling overhead. Militants lived in constant fear that conspirators from inside their organization would compromise their positions, al-Qaeda and Taliban militants would regularly execute those suspected of giving information to the U.S. (Bergen P., Tiedemann K. 2010, 5). Oddly enough, letters collected from Osama bin-Laden's Abbottabad describe in detail his instructions to al-Qaeda affiliates in Algeria's Islamic Maghreb, for them to start planting trees in order to provide cover from drones that might be flying overhead (Rausnitz, 2012). One can debate the logic behind these instructions, but it is clear that the specter of targeted drone strikes had forced even Osama bin-Laden to rethink how al-Qaeda approached conducting terrorist operations. Many of Osama bin-Laden's Abbottabad letters, gleaned insight into the impact of U.S. targeted drone strikes. In 2010, Osama bin-Laden contemplated changes in al-Qaeda's strategic operations, lamenting the significant loss of senior leadership that al-Qaeda had suffered, and the increasingly dangerous environment inside FATA; going so far as to recommend that key operational members be evacuated from the region, or brought to a more safe location (Lahoud, N., Caudill S., et al 2012, 16-17).

Political and Legal Considerations

An important component of U.S. counterterrorism strategy is the development of strategic partnerships. In order for the U.S. to effectively conduct many of its drone strike operations it requires the permission, however tacit or enthusiastic it may be, to operate within their borders. In this regard, there are few partnerships more critical than the relationship between the U.S. and Pakistan. Pakistan rests on one of, if not the most important border in terms of U.S. strategic interests. Situated next to Afghanistan its border is not only porous and geographically isolated, but is also home to an autonomous tribal region that encompasses nearly its entire northern border with Afghanistan, and is controlled by the Pakistani Taliban (Javaid, U. 2011, 88). The partnership between the U.S. and Pakistan has a tumultuous and storied history, each with their fair share of highs and lows. However, the impact the use of targeted drone strikes have had on U.S. - Pakistan relations has been a marked departure from anything that has been seen in the past. The free movement of al-Qaeda and its affiliate between Afghanistan and Pakistan required an immediate U.S. response, and as was highlighted previously, the use of drone strikes was the only feasible method of adequately addressing this threat. Drone strikes in Pakistan have the tacit approval of the government, but this support has inflamed animosity between the Taliban and Pakistani government, resulting in increased domestic terrorist activity and in turn significant pressure from the public to address the rising violence sweeping across the country (Javaid, U. 2011, 88). From the U.S. perspective Pakistan is simply not moving fast enough to address the lawless tribal region that continues to offer safe haven to al-Qaeda and its affiliates, so as the U.S. ratchets up drone strike operations, the Taliban inside Pakistan ratchet up the violence against the government, a self-perpetuating cycle that seems to offer no easy solutions for either side. To complicate matters, the U.S. has become more vocal in its suspicions that elements within the Inter-Intelligence Services (ISI) have been secretly supporting elements of the Taliban. In reality, it is less of a suspicion than an observation of history, where the links between the ISI and Mujahedeen are well documented

during the Soviet-Afghan war, and we should know we encouraged the relationship (Siddique, Q. 2011, 18). Nevertheless, this growing suspicion has led the U.S. to question from an operational security perspective, the logic behind coordinating and sharing information with the Pakistani military and ISI. These suspicions factored into the decision by the U.S. to not notify any element of the Pakistani government before conducting the special operation mission that ultimately discovered and killed Osama bin-Laden while he was living in a cement fortress in Abbottabad, Pakistan. Although discovering Osama bin-Laden in Pakistan was a profound revelation putting further tension on the relationship, it was only one episode in a string of incidents that was beginning to reveal the strains on the U.S. - Pakistani partnership. On more than one occasion the Pakistani government has demanded the U.S. cease its targeted drone strike operations inside Pakistan, more often than not the U.S. pretends like it doesn't hear them, and on a few occasions the U.S. has complied, but eventually the U.S. resumes its operations (Rollins, J. 2011, 6-7). The ramifications of drone strike operations have significantly exacerbated the growing rift within the U.S. - Pakistan partnership, but it's a partnership that neither side can afford to let fail. Even after the U.S. ends ground operations in Afghanistan the need to maintain a functioning relationship with Pakistan will be central to the broader U.S. counterterrorism strategy. The threat posed by al-Qaeda and its affiliates will remain ever present and the growing tide of radical Islamic ideology it is pouring out of the region will have a profound impact on the stability of not just Pakistan and Afghanistan, but the broader region as a whole.

The genesis of the CIA drone strike program emerged following the recognition that the U.S. needed to immediately address the threat from al-Qaeda emanating out of Pakistan. The U.S. needed to quickly adapt to the evolving threat from al-Qaeda and its affiliates, and in doing so initiated a second drone strike program; one geared toward "hunter-killer" missions, and looked to the CIA to spearhead its operation (Orr, A. 2011, 730-732). The evolution in the threat presented by al-Qaeda operatives and Taliban militants required the U.S. to develop a multipronged approach to combating not just a resilient insurgency in Afghanistan; but also address the decentralized terrorist networks that had proliferated into the Af-Pak region. In order to properly address these threats the U.S. could not rely on traditional military operations, as they were bound by a strict and inflexible system of international and domestic laws. The U.S. instead chose to give the CIA a broad new series of objectives, focused on locating and eliminating terrorist networks wherever they are operating. The sheer scope and magnitude of conducting such operations dwarfed anything U.S. counterterrorism operations had previously tried to accomplish. "Many of the highest priority terrorists are in some of the remotest, most inaccessible, parts of our planet - you've got two choices - kill or capture" said an Obama administration official commenting on the nature of the threat posed by al-Qaeda (Entous A. 2010, 3). And looking at the topography of the Federal Administered Tribal Area (FATA) inside Pakistan, one can appreciate the truth in this statement and the sheer magnitude of the challenge facing U.S. counterterrorism operations. The tribal area inside Pakistan encompasses miles of rugged mountainous terrain and covers 27,500 square kilometers that is populated with over 3.5 million Pashtuns. The tribal region in Pakistan has been a training ground and operational center for al-Qaeda since the Soviet-Afghan war. The region has long been the epicenter for militancy and Islamic extremism, the very definition of inhospitable, representing a tactical nightmare for those contemplating ground operations (Nawaz, S., Borchgrave, A. 2009, 1-7). Deploying drones over Pakistan's tribal region was the only feasible choice, if the U.S. wanted to directly combat al-Qaeda and its affiliates operating outside designated battlefields. The CIA drone strike program effectively extended the power and reach of U.S. operations in Afghanistan. The Bush administration recognized the potential for the CIA to bypass traditional restrictions on military operations, and quickly moved to develop the means for the CIA to broaden its scope beyond al-Qaeda and the Taliban, giving them

carte blanche to target individuals and organizations far outside the confines of the initial engagement (Gregory, 2011). The CIA, an agency primarily focused on gathering and analyzing intelligence, seemingly overnight was transformed into a paramilitary entity, geared toward conducting counterterrorism operations against al-Qaeda and Taliban networks. The success of the CIA drone strike program demonstrated the incredible power these operations could bring to bear against terrorist networks operating outside the reach of U.S. military operations. Historically, the CIA is an agency that is accustomed to engaging in clandestine operations in inhospitable enemy territory, it's a mantra they have perfected across the globe, making them well suited to the task of identifying al-Qaeda targets and effectively engaging them in places like Pakistan. On June 18th 2004, the CIA drone strike program demonstrated just how effective it could be during an operation that eliminated Nek Mohammed, an infamous Pakistani Taliban leader and the former head of an al-Qaeda training camp near Kabul. Nek Mohammed and his Pakistani Taliban were located deep inside South Waziristan, a tribal region that had proved to be nearly impregnable to ground operations. Following two failed assassination attempts against President Pervez Musharraf by his organization, the Pakistani army attempted to enter the tribal area to apprehend Nek Mohammed and sweep out the Taliban militants that had taken over the region. Unfortunately, the Taliban stronghold lived up to its reputation and the ensuing offensive by 5,000 Pakistani troops and helicopter gunships resulted in heavy casualties, forcing the Pakistani Army to withdraw and broker a ceasefire with the militants (Ahmad, M. 2010, 37). However, within hours of the ceasefire an MQ-1 Predator successfully targeted and eliminated Nek Mohammad. Where the vast resources of the Pakistani Army failed, one MQ-1 predator succeeded. The success of these operations in Pakistan resulted in an expansion of the CIA drone strike program beyond Pakistan, and into places like Somalia and Yemen, where radical Islamic terrorist networks affiliated with al-Qaeda have been on the rise. The ability for the CIA to deploy such incredible power and reach, at a fraction of the cost of traditional counterterrorism methods (i.e. JSOC operations, cruise missile strikes) provided the Bush and now the Obama administrations the means and capability to carry out its Global War on Terror (Gregory, 2011).

The operational elements of the CIA targeted drone strike programs have raised serious questions in the policy and legal field. Richard Murphy a Law professor at Texas Tech University and John Radsan of William Mitchell College of Law (2009) published a paper where they highlighted some significant consideration that needed to be made if the Obama Administration and future U.S. administrations wish to continue authorizing CIA drone strike operations. Murphy and Radsan (2009) point out that the President, by endowing the CIA with the authority to launch drone strikes against suspected terrorist targets, past and present U.S. administration have effectively removed the power duly elected to the executive branch of government to a second, third, or even fourth party, far removed from the duties, responsibilities, and rights given to the Commander-in-Chief. In many of these missions the CIA is launching drone strikes into sovereign nations, an action that can be viewed as an act of war by foreign government, which is also a power reserved for the President and Congress. These operations are being conducted in territories far removed from current military operations, specifically in the case of operations being conducted in the Horn of Africa, which is another continent entirely. These questions regarding who possesses "trigger authority" are at the center of many of the debates surrounding the legality of CIA targeted drone strike operations. Murphy and Radsan (2009) hypothesize that if for reasons of needing a speedy response to real-time threats in the field, trigger authority was delegated to individuals outside the executive branch, and into perhaps the hands of the CIA's Counterterrorist Director, then these men, who were not confirmed by Congress, outside the Pentagon's chain-of-command, and are not subject to the laws that govern the Department of Defense, effectively possess powers only endowed to the President. It doesn't require an individual with a law degree to

see that some profound issues might arise from a system operating in this fashion. Perhaps the most alarming aspect of the legal debate surrounding the CIA targeted drone strike program is the secretive nature of its operations. When given little to no information regarding a program that possesses such broad and extraordinary authority, it is easy to feel apprehensive about the lack of perceived oversight and accountability. It is difficult to debate that the CIA targeted drone strike program has not been effective. Its operations have eliminated top terrorist and militant leadership, dismantled their operational and logistic networks, and marginalized the tactical advantage of safe havens in close proximity to active battlefields. These are elements of a broader counterterrorism strategy that are difficult to quantify, but they can only be felt on the ground with the men and women operating in these hostile regions.

Derek Gregory (2011) views this unprecedented expansion in military and paramilitary conflict as the beginnings of the "everywhere war," a conflict that possesses such broad and far-reaching parameters that it has the potential to expand into any region across the planet. Gregory (2011) explains that since the first targeted drone strike took place on June 18, 2004 the CIA drone strike program has witnessed a systematic expansion from two consecutive U.S. administrations, where at the end of 2008 there had been 46 drone strikes into Pakistan, then following the election of President Obama to the end of 2010 there were 180 strikes, the most notable success of which killed Baitullah Mehsud, the commander of the Pakistani Taliban. Gregory (2011) goes on to discuss the legality in the expansion of drone strikes into regions beyond those of the original conflict, here he specifically cites Pakistan, and that the justification the U.S. uses for its expansion into the FATA region follows short for several reasons. First Gregory (2011) says that although the U.S. military may be involved in these operations it has become primarily a CIA operation, a civilian agency that does not operate under the rules of military conduct and outside the chain of command. A civilian agency is operating sophisticated and highly lethal military equipment inside a region not designated as being at war with the U.S., it is a precarious position for a civilian intelligence agency to find itself in, and is a radical departure from traditional CIA operations. The divisions of labor between the CIA and the military are growing more difficult to discern, and over the last decade this has helped to transform the CIA from an intelligence agency into an agency focused on conducting counter-terrorism operations utilizing paramilitary forces (Gregory 2011). There are those within the legal community that view the evolution in CIA operations with marked caution, and while they aren't condemning its actions they have yet to fully support them either. Shane Harris (2010) in an article for National Journal cites John Radsan who acted as assistant general counsel at the CIA while the targeted drone strike program was still in its infancy. According to Radsan, the CIA has developed an organized and strictly adhered to series of guidelines that govern the acquisition and engagement of designated terrorist targets, always remaining mindful of minimizing civilian casualties and ensuring the proper target had been acquired, but even though this system is in place it doesn't mean it is successful. There is an additional element to the growing scope of CIA targeted drone strikes that some might overlook. In an article for The New Yorker magazine Jane Mayer (2009) writes that while some legal experts are satisfied with the legal foundation for using CIA targeted drone strikes in regions like the FATA in Pakistan, they are nonetheless still troubled by the broadening scope of drone targets. Mayer (2009) says that many of the targets being acquired by CIA drone strikes are those designated by the Pakistani military, most of our drone strikes have shifted away from al-Qaeda and have now been focused on various elements of Pakistani Taliban from low-level guys to senior leadership, but most of the time its guys at the bottom. In essence the CIA in some instances are acting as errand boys for the Pakistani military, by eliminating elements of the Pakistani Taliban that have perhaps fallen out of favor with the Pakistani military command. Following this trend and the expansion of the CIA targeted drone strike programs into Yemen and Somalia it is not difficult

to surmise that operations in those states could be moving in a similar direction. Mayer (2009) also points out that the drone strike missions in Afghanistan are also increasing in scope, where a vast majority of targets on the Joint Integrated Prioritized Target List – which is the approved list of terrorist targets formed by the Pentagon, contained fifty Afghan drug lords. These individuals according to a Senate Foreign Relations Report are a step removed from al-Qaeda and are not clear priority for targeted drone strike focus. However they could be seen as a priority to Hamid Karazi whose running mate is seen as having links to narcotic networks in Afghanistan. It is these types of departures in mission parameters and expansions in scope that could result in profound blowback for CIA targeted drone strike operations.

Discussing the CIA drone strike program the issue of targeted killings is always at center stage, and it remains the most divisive issue when discussing the legality of drone strike policy. In the years before September 11th the U.S. maintained a clear policy on its position regarding targeted killings, and it was highlighted by comments in July 2001 by then American Ambassador to Israel, Martin Indyk, when he said, “The United States government is very clearly on record as against targeted assassinations...they are extra-judicial killings, and we do not support them” (Mayer 2009). Not two months after that comment the U.S. was implementing the single largest and most sophisticated targeted killing campaign in history. According to John Anderson (2009) in a paper published through the Brookings Institute, he states that according to customary international law and outlined in the Common Article 3 of the Geneva Convention, the necessary parameters needed to met the definition of “armed conflict” have not been met in the current engagement, because militants and terrorist networks are not in sustained and persistent fighting, especially those located in Pakistan, a nation that the U.S. is not at war with. Anderson (2009) also highlights that critics skeptical about the legality of drone strikes, take specific issue with them being conducted by the CIA. Matthew Waxman (2010) contributes to this line of reasoning by stating that the U.S. is diluting themselves, if they think that a strict adherence to International Humanitarian Law (IHL), with its clear and straight forward definitions of the characteristics that constitute a “combatant” will keep them in good legal standing when implementing targeted killing policies. The reality Waxman (2010) says is that the majority of the international community rejects such labels. The nature of the threat facing US counterterrorism operations is highly decentralized, and ever evolving, yet the strict definitions and inflexible nature of IHL restricts U.S. maneuverability and forces targeted drone strike operations into a narrow cross section of lawful targets, that must be clearly labeled “al-Qaeda” and once the U.S. begins to deviate from those designated targets then they will be in violation of IHL. In an article for *The New Yorker* magazine Jane Mayer (2009) cites that during the early days of the Afghanistan War, the *Wall Street Journal* reported the Bush Administration was considering the creation of “hit squads”, possibly with private contractor help (i.e. Blackwater) to capture or kill al-Qaeda operatives. Mayer (2009) said the uproar over this was widespread and many legal observers said if these squads were to go operational they would have been in direct violation of a 1976 executive order enacted by President Gerald R. Ford, specifically banning U.S. intelligence services from engaging in assassinations. Mayer (2009) wrote that it is difficult to understand how, if the creation of hit squads were in violation of the 1976 executive order, would not the same rule apply to the CIA conducting targeting killings using drone strikes. We see here that officials close to these programs maybe turning a blind eye to some of the difficult legal questions that arise when conducting these types of operations. Former CIA lawyer, now a professor at the U.S. Naval Academy, said, “People are a lot more comfortable with a Predator strike that kills many people than with a throat slitting that kills one.” In the end “mechanized killing is still killing” (Mayer 2009). Seen in this light the policy of CIA targeted killings remains a questionable tactic in U.S. counterterrorism strategy, and marks a dramatic shift in the nature and fundamental mission of the CIA. The

secretive nature of these operations makes it difficult to determine exactly how they are being conducted, and contribute to the apprehension by some to whole-heartedly support this tactic, and although some give CIA drone strikes tacit support the ambiguous nature of these operations continues to attract significant legal criticisms.

Examining the questions relating to the legal impact CIA drone strikes have on US due process rights, it is beneficial to first examine the legal precedents set in a number of U.S. detention cases brought before the Supreme Court. Richard Murphy and John Radsan (2009) examine two landmark U.S. Supreme Court cases, the first is *Hamdi v. Rumsfeld* and the second is *Boumediene v. Bush*. In these two cases the Supreme Court examined the right of the Executive Branch under the auspicious of the AUMF had the right to detain American citizens labeled enemy combatants indefinitely, stripping them of the right to due process. While the *Hamdi* ruling supported the individual's right to due process, it fell short of condemning the power of the executive for stripping away individual due process rights under habeas corpus, even if that individual is captured in combat zones. The Supreme Court did however follow up *Hamdi* with a much stronger rebuke of Executive power in *Boumediene v. Bush*, which extended the statutory right of habeas corpus to Guantanamo, effectively saying that regardless of where an individual is in the world they are still endowed with the constitutional right to due process. Congress went on to pass several pieces of legislation that tipped the balance of power in detentions back in favor of the executive branch, by passing the Detainee Treatment Act of 2005, and Military Commissions Act of 2006, but the damage had already been done. These Guantanamo detention cases, and the policy of targeted killing, each revolve around the central issue of due process. When the executive branch engages in targeted killing operations it strips an individual of due process rights under habeas corpus, cutting them off from the opportunity for judicial review. Murphy and Radsan (2009) state that the executive branch has an inherent responsibility to uphold due process rights as part of the Constitution they have sworn to uphold, and they have an obligation to ensure that when they invoke such powers to proceed in a fair and reasonable way, and limit to whatever extent possible the need to strip individuals of basic civil rights. President Obama himself in a recent speech at the National Defense University said when speaking about actions taken after the attack on 9/11, that the U.S. "compromised our basic values...in detaining individuals that ran counter to the rule of law." What runs against the principals laid out for the justification in detaining individuals at Guantanamo should also hold true for killings utilizing targeted drone strikes. The Supreme court decision to extend due process laws overseas is an important element to the arguments regarding the legality of targeted killing, because unlike the issue regarding the detention of enemy combatants, those that operate and oversee CIA drone strikes do not get a "do over", there is no chance to correct potential mistakes once you have killed someone. The absolute nature of this policy should caution policy makers to tread lightly into these types of operations and take the utmost care in their conduct.

The targeted killing of Anwar al-Aulaqi presents the most serious challenge for the U.S. when justifying the legality of CIA targeted drone strike operations. While it may be easy for U.S. administrations to side step the "paper tiger" of international law, it is much more difficult for the U.S. to circumvent its own domestic laws when conducting these types of operations. In an article published in the Louisiana Law Review Philip Dore (2011) asserts that due to the killing of Anwar al-Aulaqi by CIA targeted drone strikes is illegal under 18 § 1119, referred to as the foreign-murder statute, which supersedes the U.S. government's legal justification under the AUMF. Dore (2011) supports his position by first citing *Medellin v. Texas* a Supreme court ruling that examined the effect international treaties have on the U.S. domestic law, namely whether these agreements are self-executing, which in this Supreme Court ruling were deemed non-self executing. Dore (2011) goes on to reference Article 4 of the 1949 Geneva Convention III, which demonstrates the U.S did

not intend for international treaties to have an effect on domestic law, unless it was separately adapted through domestic legislation. Dore (2011) concludes that it is unlikely that Article 4 was incorporated in the AUMF, and so the President may not invoke the intentional laws of war to justify his actions domestically. Thus, the targeted drone strike used in the CIA operations to kill Anwar al-Aulaqi amounted to murder, as seen under the foreign-murder statute. Here Dore (2011) presents an interesting perspective regarding the legality of CIA drone strikes in targeted killings, which deserves consideration within the framework of this paper, and when devising future U.S. targeted drone strike policy.

For all the critics of the CIA targeted drone strike program, there are just as many that believe these operations are not only legally justified, but also strategically important to the broader scope of counterterrorism operations. The Obama administration, who has been responsible for the largest expansion in CIA targeted drone strike operations, has consistently supported the legal foundation for their deployment, and dispatched government representatives to address any concerns regarding their legality. Hillel Ofek (2010) in his article in *The New Atlantic* mentions a speech given by State Department Legal Advisor Harold Koh, where he reiterates the Bush era justification that targeted drone strikes against al-Qaeda and the Taliban are justified under the guidelines set forth in the international laws of "armed conflict." Ofek (2010) also mentions that the Obama administration takes its legal justification for targeted drone strikes one step further by adding the additional element of "self defense," a much broader definition that does not depend on a sustained and persistent combat environment. This point is one Kenneth Anderson (2009) believes should be the legal foundation for justifying CIA targeted drone strike operations. In his article published by the Brookings Institute, Anderson contends that as the threats migrate into the periphery of the initial engagement, then the legal foundations for targeted killings in an "armed conflict" become much more difficult to justify. The issue, Anderson says, lies in the ambiguous interpretation of what it means to be in an "armed conflict," a definition that international lawyers have trouble agreeing upon. Anderson goes on to state that the legal position of "self-defense" while it may be the most contentious issue of international law; it remains the best option for justifying the use of targeted killings by CIA drone strikes. The concept of "self-defense" is broad, which is suitable because the actions undertaken by CIA targeted drone strikes have grown increasing more broad in its scope and frequency of deployment. Anderson points out that this concept has been a mainstay in U.S. foreign policy since the 1980s, and remains a sound legal justification for 21st century administration to address the evolving threats of transnational terrorist networks. Anderson (2009) believes that as long as these terrorist networks continues to pose an ongoing threat to the safety of U.S. citizens, and the national security interests of the U.S., then these guiding principles of "self-defense" should be acceptable as a legal justification for the use of drone strikes in targeted killing operations. We see here that U.S. administrations that needed to use increasingly cleverer legal maneuvering when trying to provide a legal framework for justifying CIA targeted drone strike operations. There is however another option that the U.S. must consider undertaking, one that would not require the use of ambiguous international and domestic statutes and purposefully misleading legal arguments.

Conclusion

It is clear that drone strikes are here to stay, and moving forward they will only grow in both power and presence. They have become, not only the weapon choice of for U.S. counterterrorism operations, but also a weapon of necessity; and despite widespread criticism regarding the legality of their deployment consecutive U.S. administrations have continued to expand their prevalence and scope. Moving forward, the U.S. must not ignore the questionable

and, in some aspects, flimsy arguments that provide the legal framework for targeted drone strike operations. In order to ensure targeted drone strikes remain a viable tactical option for U.S. counterterrorism operations, an immediate and fundamental restructuring of the procedures, guidelines, and institutions governing their operation must be implemented. In order to strengthen the legal and moral justification regarding the use of targeted drone strikes, the President and Congress must begin to devise a series of concrete rules and standards regulating the way that targeted drone strikes are deployed. Because of the unprecedented nature of this new weapons technology, the guidelines governing these programs must be uniquely crafted and tailor-made to support their deployment. Current domestic and international law simply lacks the appropriate legal language necessary to address the complex diffusion of terrorist networks across the globe. The U.S. has an opportunity to establish a standard of behavior that will build the foundation for international and domestic norms, which will serve as a guiding rubric for countries contemplating the deployment of drone technology. If the U.S. does not act responsibly in its use of drones then it will be difficult in the future, when more countries begin to adopt this technology for the U.S. to hold their actions to a higher moral or legal standard.

At the core of U.S. legal arguments for targeted drone strike operations is the AUMF, a document that was forged in the highly emotional and chaotic period immediately following the aftermath of the September 11th attacks. This joint resolution is now more than 10 years old and much of the original bases for which it was formed have significantly changed. The dynamic of the current terrorist threat posed by al-Qaeda and the Taliban is now far removed from the original perpetrators of the September 11th attacks, yes the threat from al-Qaeda still exists but it is no longer network it once was in 2001. While the network responsible for the September 11th attacks have been mostly dismantled, the ideology that motivates al-Qaeda and its affiliates has metastasized across western Asia into the Middle East and Africa where the conflict between Islamic groups and western backed democratic government continues to unfold. The AUMF must be revised and reexamined to ensure that its legal language and policy direction are still in lock step with the current direction of the broader U.S. counterterrorism strategy by correctly reflecting the nature of the terrorist threat facing the U.S. and its allies. President Obama, while speaking at the National Defense Institute accurately summarized the direction U.S. policy must move when he said, "We (the U.S.) have to recognize that the threat has shifted and evolved, from the one that come to our shores on 9/11. With a decade of experience now to draw from, this is the moment to ask ourselves the hard questions about the nature of today's threats and how to confront them."

If the U.S. wishes to continue conducting targeted drone strike operations in Pakistan, Yemen, Somalia or anywhere else outside current U.S. military deployments, then President Obama must embrace his own words and draft new, more robust and detailed joint resolution that specifically address the nature of the current terrorist threat, and provide concrete language that will define the nature and scope of U.S. counterterrorism strategy abroad, with specific emphasis on targeted drone strike operations, as they have become the most prominent and prolific weapon in combating global terrorist networks. Moving forward the U.S. must provide the CIA with a more defined and narrow target priority list. Currently, the CIA is given carte blanche to engage in targeted drone strikes against any individuals suspected of being, or acting in a manner reminiscent of individuals affiliated with terrorist networks, or militant group. This scope is far too broad and must be realigned to focus on high priority targets with an emphasis on senior leadership, and individuals situated in critical command and control positions. Targeted drone strikes are an incredibly powerful and destructive weapon; as such a profound degree of discretion must be utilized when choosing to deployment these weapon systems. Reserving deployment for high value targets, instead of so-called signature strikes against a broad spectrum of difficult to identity individuals, will go a long way to marginalizing civilian casualties and ensure valuable

assets and intelligence is not wasted on low value targets. Consecutive U.S. administrations have been reticent to divulge information regarding the procedures and guidelines of targeted drone strike operations. The secretive nature of these operations, leaves the public free to speculate how and why the CIA chooses particular targets, will inevitably lead to questions regarding those being held accountable when news headlines report incidences of civilian casualties. Congress has a duty and responsibility ensure targeted drone strict operations receive the proper degree of oversight, especially when civilian casualties are reported. If a system is put into place that requires the operational leadership of targeted drone strike missions to answer questions about specific missions, it will go a long way to ensuring proper protocol is followed and individuals are held to a high standard of accountability. Nothing less should be expected of the U.S.

The complex challenges that the United States faces in the War on Terrorism has required an evolution in U.S. counterterrorism tactics, and a recognition that its broader strategy must adopt to the complex challenges facing the U.S. from non-state terrorist networks. The terrorist threat facing the U.S. has no nation to call home, it wears no uniform, its face is that of many cultures and nationalities, and its leadership is compartmentalized, often far detached from the orders given to its operatives, and decentralized from any form of linear leadership structure. In this sense CIA targeted drone strike operations has become the tactical apex in combating transnational terrorist networks. Although there are a number of legal issues both international and domestic, these concerns can be easily managed with if the U.S. implements the swift and wide ranging policies that have been prescribed. It is critical that targeted drone strike program must continue to remain a viable tactical option for U.S. military operations.

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Drone Strikes and the Shifting Paradigm

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The United States, with its unique ability to build partnerships and project power, will lead the fight against terrorist organizations of global reach. By striking constantly and ensuring that terrorists have no place to hide, we will compress their scope and reduce the capability of these organizations. By adapting old alliances and creating new partnerships, we will facilitate regional solutions that further isolate the spread of terrorism. Concurrently, as the scope of terrorism becomes more localized, unorganized and relegated to the criminal domain, we will rely upon and assist other states. UNSCR 1373 and the 12 UN counterterrorism conventions and protocols establish high standards that we and our NATO allies must meet. Because the CIA drone strikes are secret and the U.S. government will not officially confirm them, there is no way for outsiders to gauge their frequency or effectiveness. In recent years, officials say, the pace of CIA drone strikes has declined as the military has conducted most of the drone strikes in nearly every country in which they are occurring, including Afghanistan, Iraq, Syria and Yemen. But that also means it is not possible for outside groups to determine how many CIA strikes have occurred. The Central Intelligence Agency (CIA) and the Joint Special Operations Command (JSOC) jointly administer the current drone programme.[27] The targets of drone strikes are scrutinised and catalogued under a single, continually evolving database called a "Disposition Matrix"™ that was created by the National Counterterrorism Center (NCTC). Has the psychological damage as a result of drone strikes caused certain populations in Pakistan to turn to violence in response to Pakistani and American attacks? Throughout this study, it will be shown that both themes are significantly important and have policy ramifications on how the U.S. should continue its counter-terrorism operation in Pakistan. The next two chapters will discuss these two themes in greater depth.