

# THE US DRONE POLICY UNDER THE OBAMA ADMINISTRATION: A CRITICAL APPRAISAL

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*The use of drones has increased exponentially under the Obama administration and now forms an integral part of the US government's counterterrorism policy. However, the President's extensive use of drones has been controversial and generated extensive debate and discussion in the US and abroad. This paper examines the factors that have propelled the Obama administration to use this strategy and its implications for American and international law as well as American foreign policy.*

## Introduction

The Obama administration's controversial plan to escalate the use of drone strikes throughout the Middle East and the Horn of Africa has generated extensive debate and discussion. Drone strikes and their resultant "collateral damage" have increased exponentially under the Obama administration to become the US' dominant counterterrorism instrument. The most controversial aspect of the drone program is the decision to target and kill American citizens living abroad. There are many unanswered questions about the legality and efficacy of the program. This paper will examine the Obama administration's drone policy including its origins, the patterns of its use, its impact on countries where the drones have been and are used, and the implications these have had for America's relations with these countries and for American foreign policy in general. The paper will conclude by making a case against drones. It will be argued that the US should abandon this policy. It is essential that a country based on the rule of law, accountability, and transparency set a responsible and legally sound global precedent.

## The Emergence of the US Drone Policy and Specifics

### *Technical Aspects of Drones*

There are two integral models of drones (UAVs: Unmanned Aerial Vehicles) that are currently in service by the US military. According to the US Department of Defense, a drone (UAV) is an “aircraft or balloon that does not carry a human operator and is capable of flight under remote control or autonomous programming.”<sup>1</sup> These unmanned aircraft are used for armed attacks, search and rescue, and aerial surveillance. The two types of lethal drones that are predominantly used by the US include the MQ-1B Predator and the MQ-9 Reaper. The MQ-1B Predator was the world’s first-ever weaponized unmanned aircraft system and is equipped with AGM-114 Hellfire missiles.<sup>2</sup> This potent creation of human engineering can spend over twenty-four hours in the air and is relatively inexpensive compared to the Air Force’s other aircraft. The MQ-9 Reaper “is larger and more powerful than the MQ-1B Predator and is designed to prosecute time-sensitive targets with persistence and precision, and destroy or disable those targets.”<sup>3</sup> The MQ-9 Reaper is widely considered the world’s deadliest drone and strikes fear in those who are in its vicinity. The blast radius from the Hellfire missiles attached to these drones can extend anywhere from 15-20 meters,<sup>4</sup> and expel considerable quantities of debris that can also be potentially lethal.

### *Emergence of Drones as an Instrument of Counterterrorism*

The use of drones by the US as a strategic counterterrorism policy emerged after the terrorist attacks on September 11, 2001. Before the wars in Iraq and Afghanistan, the Pentagon operated fewer than 50 aerial drones,<sup>5</sup> and they were primarily used for reconnaissance missions. Today, drones form an integral part of the US government’s counterterrorism policy and allow the US military to kill from afar without putting American lives at risk. According to *The New York Times*, the Pentagon now has about 7,000 aerial drones

1 US Department of Defense, *Dictionary of Military and Associated Terms*, 331 Joint Publication 1-02, (Washington, DC: US Joint Chiefs of Staff, 2010), as amended through July 15, 2012.

2 P.W. Singer, *Wired For War* (Penguin Books, 2009), 32-33.

3 “MQ-9 Reaper Factsheet,” United States Air Force, <http://www.af.mil/information/factsheets/factsheet.asp?id=6405> (accessed March 11, 2013).

4 Thomas Gillespie, Katrina Laygo, Noel Rayo and Erin Garcia, “Drone Bombings in the Federally Administered Tribal Areas: Public Remote Sensing Applications for Security Monitoring,” *Journal of Geographical Information Systems* 4, (2012), 136-139.

5 Elisabeth Bumiller and Thom Shanker, “War Evolves with Drones, Some Tiny as Bugs,” *New York Times*, June 19, 2011, [http://www.nytimes.com/2011/06/20/world/20drones.html?\\_r=0](http://www.nytimes.com/2011/06/20/world/20drones.html?_r=0) (accessed March 12, 2013).

and has asked Congress for nearly US \$5 billion for drones in the 2012 budget.<sup>6</sup> After the tragic, horrifying, and psychologically disturbing events of 9/11, Congress passed the Authorization for Use of Military Force (AUMF) to expand the President's power. The AUMF gives the President authority to "use all necessary and appropriate force against those who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons."<sup>7</sup>

### *Expansion of "Targeted Killings" Under the Bush Administration*

The subsequent steps taken by the Bush administration after the September 11, 2001 attacks, initiated a campaign of "targeted killings" against suspected members of Al Qaeda and other armed groups,<sup>8</sup> sanctioned by the AUMF. This action marked the beginning of an era in US foreign policy epitomized by advanced technological unmanned weapons systems. The controversy surrounding this precedential policy began with the CIA's expansion of their UAV program in countries that the US is not actively engaged in militarily. For example, on November 3, 2002, US officials operating a drone reportedly hit and killed six men traveling in a vehicle in an area of Yemen.<sup>9</sup> This strike in Yemen set the precedent for the evolution of a full-scale drone program of targeted killings throughout the Middle East. The US drone policy did not emerge overnight, but moreover, after a series of world events which set the wheels in motion for the development of a contentious policy.

## **Policy Expansion under President Barack Obama**

### *Proliferation of Strikes under the Obama Administration*

The US drone policy has expanded exponentially under President Barack Obama. When President George W. Bush left office at the end of 2008, "the US had carried out at least 45 drone strikes in Pakistan,"<sup>10</sup> according to the New America Foundation. Since President Barack Obama entered office in

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6 Ibid.

7 United States Congressional Bill, *Authorization for Use of Military Force*, Pub. L. No. 107-40, §2(a), 115 Stat. 224, 224 (2001) (codified at 50 U.S.C. §1541 (2006)).

8 "Q & A: US Targeted Killings and International Law," Human Rights Watch, December 19, 2011, <http://www.hrw.org/news/2011/12/19/q-us-targeted-killings-and-international-law>, (accessed March 12, 2013).

9 Doyle McManus, "A US License to Kill," *Los Angeles Times*, January 11, 2003, <http://articles.latimes.com/2003/jan/11/world/fg-predator11>, (accessed March 13, 2013).

10 Peter Bergen and Katherine Tiedemann, "The Year of the Drone: An Analysis of US Drone Strikes in Pakistan, 2004-2010," New America Foundation, February 24, 2010, [http://www.newamerica.net/publications/policy/the\\_year\\_of\\_the\\_drone](http://www.newamerica.net/publications/policy/the_year_of_the_drone) (accessed March 12, 2013).

January 2009, his administration has reportedly authorized more than 292 strikes in Pakistan alone.<sup>11</sup> This is six times more than the number of strikes under the Bush administration, and Obama's escalation of drone strikes has replaced Guantanamo Bay and Abu Ghraib prison as the recruitment propaganda of choice for militants. These covert strikes have become one of President Obama's key national security policies. According to Peter Bergen, "while Bush sought to decapitate the leadership ranks of al Qaeda, Obama seems to be aiming also to collapse the entire network of allied groups, such as the Pakistani Taliban."<sup>12</sup> President Obama and his administration have surrounded the program in a shroud of secrecy. The only details to emerge about the specifics of the program have been government leaked. Michael J. Boyle does an excellent job highlighting the Obama and Bush administration's policies. Boyle states, "while President Bush issued a call to arms to defend 'civilization' against the threat of terrorism, President Obama has waged his war on terror in the shadows, using drone strikes, special operations, and sophisticated surveillance to fight a brutal covert war against Al-Qaeda and other Islamist networks."<sup>13</sup> In other words, Obama's campaign promise to end the "war on terror" and improve the global perception and reputation of the US was merely a fallacy. He has been just as ruthless and indifferent to the stability and legality of the international system as his predecessor.

### *The Contributions of Drones on the "War on Terror"*

In support of President Obama, the escalation of drone strikes in the Middle East has also contributed to many of the successes on the "War on Terror." Drones are progressively becoming more effective and precise as the technology continues to develop and improve. This will result in fewer civilian casualties and will help control the blast radius in future strikes. An important political facet of Obama's drone policy is that by expanding the number of drone strikes, the US does not have to commit American troops to the front lines. The "boots on the ground" scenario is extremely unpopular after the wars in Afghanistan and Iraq. Troop reduction is possible with the

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11 "Covert War on Terror - The Data," The Bureau of Investigative Journalism, August 10, 2011, <http://www.thebureauinvestigates.com/2011/08/10/the-bush-years-2004-2009> (accessed March 10, 2013).

12 Peter Bergen, "Drone is Obama's Weapon of Choice," *CNN*, November 19, 2012, <http://www.cnn.com/2012/09/05/opinion/bergen-obama-drone> (accessed March 9, 2013).

13 Michael J. Boyle, "The Cost and Consequences of Drone Warfare," *International Affairs* 89, no. 1 (January 15, 2013), 2.

escalation of drone strikes and looks favorable in the eyes of the American public.

### *Effectiveness of Drone Strikes against Terrorist Organizations*

“Osama bin Laden himself recognized the devastation that the drones were inflicting on his organization, writing a lengthy memo about the issue in October 2010 that was later recovered in the compound in Abbottabad, Pakistan, where he was killed.”<sup>14</sup> In this memo, Osama bin Laden advocated for his men to leave the tribal regions of Pakistan and head to remote parts of neighboring countries to prevent themselves from being targeted by drone strikes. Recent studies published in *International Security* have concluded that drone strikes help kill terrorist leaders and in the process destroy the organizations. According to the study’s author, Bryan C. Price, “of the 131 groups whose leaders were killed or captured, 70 percent are no longer in existence [and] when the leadership of a terrorist group were decapitated, they ended sooner by a significant margin.”<sup>15</sup> Based on the findings from this study, drone strikes can be highly effective when terrorist leaders are taken out. However, this requires dependable intelligence about the individual to ensure that the drone operators have an accurate target.

### *The Development of “Signature Strikes” and the Continued Escalation of Strikes*

The escalation of drone strikes under President Obama has led to the development of essential features for targeting suspects and the expansion of strikes. These so-called “signature strikes” have created a certain criteria based on established characteristics with terrorist activities. This has created a “profile” and “pattern of life” analysis<sup>16</sup> outlook for pinpointing suspected Islamic extremists. The US is now actively using drones strikes to kill suspected terrorists in at least four states including: Afghanistan, Pakistan, Yemen, and Somalia. Many critics argue that Obama has exceeded the executive’s constitutional power of war by expanding the operation and conduction of drone strikes, as well as limiting the release of the neces-

14 Peter Bergen, “Drone is Obama’s Weapon of Choice,” CNN, November 19, 2012, <http://www.cnn.com/2012/09/05/opinion/bergen-obama-drone> (accessed March 9, 2013).

15 Bryan C. Price, “Targeting Top Terrorists: How Leadership Decapitation Contributes to Counterterrorism,” *International Security* 4, no. 36 (Spring 2012), 9-46.

16 Daniel Klaidman, “Drones: How Obama Learned to Kill,” *Daily Beast*, excerpt from Daniel Klaidman, *Kill or Capture: The War on Terror and The Soul of The Obama Presidency*, May 28, 2012, <http://www.thedailybeast.com/newsweek/2012/05/27/drones-the-silent-killers.html>, (accessed March 15, 2013).

sary and mandated facts about the specifics of the program. The majority of Americans are oblivious to the damage to the international legal norms and rules resulting from the escalation of drone strikes since they are “out-of-sight, out-of-mind” from the public’s perception.

### **An Analysis of the Positive and Negative Aspects**

#### *Positive and Negative Aspects of the US’ Drone Policy*

The US drone policy is riddled with positive and negative aspects, ranging from the economic benefit of drones to the anti-American sentiment they generate to the legality of strikes. There are strong arguments to be made on both sides of the spectrum for the continuation of drone strikes and their impact on the geopolitical system. Those in favor of the current policy advocate the economic benefit of using drones, the precision from afar, the disruption caused to terrorist organizations, and that drone warfare is more accurate than other forms of aerial combat. Those in opposition to drone warfare advocate the cost of civilian lives, the generation of anti-American sentiment (alienation of the Islamic world), the evidence suggesting that our drone strikes facilitate militant recruitment, and the fact that a substantial number of actual confirmed militant casualties are low level insurgents. These are all valid points and will be explored further.

#### *The Economic Support for Drones*

The economic benefit of drone warfare is immense compared to other forms of aerial warfare. Drones cost significantly less than the F-16 Fighting Falcon, B-52 Stratofortress, and other aircraft used by the US Air Force. According to the US Air Force, an MQ-9 Reaper drone costs roughly US \$12.5 million, compared to the price tag of US \$53.4 million of a B-52 Stratofortress, and US \$18.8 million of F-16 Fighting Falcon.<sup>17</sup> By relying more heavily on drones, the US government is able to save a significant amount of money that can be funneled into other ventures. Since the recent economic downturn, many citizens have been advocating for the government to decrease military spending. With drones, the government is able to save considerable economic resources while not decreasing the strength of its armed forces.

#### *Drones and the Increase in Anti-American Sentiment*

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17 United States Air Force, “F-16 Fighting Falcon, MQ-9 Reaper Drone, and B-52 Stratofortress Factsheets,” 2012, <http://www.af.mil/information/factsheets/> (accessed March 8, 2013).

Opponents of the current US drone policy expound the anti-American sentiment generated and the alienation of the Islamic world from these strikes. Recent studies conducted in Pakistan and other parts of the Islamic world indicate that although the US is not “technically at war with” these countries, civilians believe that their sovereignty has been violated and the escalation of strikes has resulted in a visceral opposition across a broad spectrum of peoples. For example, a Pew Research Poll in 2012 “found only 17 percent of Pakistanis favor the US conducting drone strikes against leaders of extremist groups, even if they are conducted in conjunction with the Pakistani government.”<sup>18</sup> The same poll also found that roughly three in four Pakistanis now view the US as an enemy. This arguably provides validity to the viewpoint that drone strikes have indeed generated substantial anti-Americanism in the Islamic world and alienated the populations of these countries. However, it is highly unlikely that ending drone strikes would significantly reduce anti-American sentiment and win the hearts of the Islamic world.

#### *Successes of Drones in Combat and the Reduction in US Military Casualties*

Drone warfare enables the US to conduct lethal aerial assaults from thousands of miles away from the battlefield, which protects the lives of American soldiers. As previously stated, drones prevent American ground troops from having to be sent into hostile territory and eliminates the sacrifice of American lives. This type of warfare is a political savvy move by politicians. It keeps public opinion high and minimizes the publicity of the “war on terror” by only highlighting the great victories such as the assassination of Osama bin Laden. Furthermore, drone warfare is more accurate than other forms of aerial combat. According to Bradley Jay Strawser, “empirical evidence shows that drones are more accurate and allow drone [operators] to be more capable at discriminating between combatants and civilians than alternative means.”<sup>19</sup> Drone operators can pinpoint exact targets, use tracers to lock onto the target, and can remain in the sky for an extended period of time. The B-52 Stratofortress on the other hand, can carry out bombing of large swathes of land, but are less accurate and run the risk of excessive collateral damage. For example, it is plausible that the firebombing of Dresden dur-

18 “Pakistani Public Opinion Ever More Critical of US,” Pew Research Center, June 27, 2012, <http://www.pewglobal.org/2012/06/27/pakistani-public-opinion-ever-more-critical-of-u-s/> (accessed March 10, 2013).

19 Bradley Jay Strawser, “The Morality of Actual Use,” *New York Times*, September 26, 2012, <http://www.nytimes.com/roomfordebate/2012/09/25/do-drone-attacks-do-more-harm-than-good/coming-to-terms-with-how-drones-are-used> (accessed March 12, 2013).



ing World War II would not have occurred if armed drones existed and could have specifically targeted the industrial infrastructure. However, due to the fact that drone strikes are classified, we cannot fully know the statistics and casualty figures behind each strike.

### *Collateral Damage*

Another negative aspect of the US' drone policy that critics assail is the cost of civilian lives in strikes and the evidence that these casualties facilitate terrorist recruitment. For instance, there is the widely controversial practice of "double strikes." These strikes target the area of the first attack to ensure that the target was killed. Unfortunately, they also kill the first responders who are attempting to rescue the innocent bystanders. In 2009, the US launched a drone strike on a funeral procession in the city of Makeen, Pakistan. The attack targeted Baitullah Mehsud, one of the leaders of the Taliban who was believed to be behind the assassination of former Pakistani Prime Minister Benazir Bhutto. This attack resulted in the death of at least 60 innocent civilians and some sources claimed up to 83 people were killed.<sup>20</sup> The loss of civilian lives is a valid argument by critics and the US government should be held responsible for the excessive collateral damage resulting from such strikes. It is morally unacceptable to target a funeral procession consisting of a majority of civilians in an attempt to kill one individual. There are more efficient and less costly ways of targeting and killing a terrorist. These attacks often result in individuals, whose families were obliterated in these strikes to reach out to the Taliban, Al-Qaeda, and other affiliated groups to join their ranks.

### *The Disruption of Terror Networks and the Elimination of Senior Leadership*

Some evidence suggests that drone strikes significantly disrupt and weaken Al-Qaida and the Taliban. This in turn protects American lives and enhances domestic security and therefore justifies the continuation of attacks in some proponent's eyes. Numerous leaders of Al-Qaida have reportedly been killed by drone strikes throughout the Middle East in recent years. In June 2012, a missile fired from a drone reportedly killed Al-Qaida's second-in command, Abu Yahya al-Libi in a remote region of Pakistan.<sup>21</sup> Patrick Johnston, a mem-

20 Pir Zubair Shah and Salman Masood, "U.S. Drone Strike Said to Kill 60 in Pakistan," *New York Times* June 23, 2009, <http://www.nytimes.com/2009/06/24/world/asia/24pstan.html> (accessed March 12, 2013).

21 Sean M. Lynn-Jones, "Do Drone Strikes on Al-Qaida Make Us Safer?," *The Diplomat*, July 20, 2012, <http://thediplomat.com/flashpoints-blog/2012/07/20/do-drone-strikes-on-al-qaida-make-us>



ber of the RAND Corporation, recently conducted a study and found that “removing the leaders of militant groups enables governments to defeat insurgencies more frequently.”<sup>22</sup> In this sense, drone strikes that target terrorist leaders are immensely beneficial to the US and help promote international security and stability.

### *Repudiation of Drones Strikes Significantly Disrupting Terrorist Networks*

However, critics point out that an overwhelming majority of the terrorists killed are low-level militants and not high-ranking officials. A recent joint-study by New York University School of Law and Stanford Law School found that, “the vast majority of the “militants” targeted have been low-level insurgents, killed in circumstances where there is little or no public evidence that they had the means or access to pose a serious threat to the US.”<sup>23</sup> This sufficiently refutes the claim made by proponents for the success behind the elimination of copious numbers of terrorist leaders. The report also found that “the number of high-level targets killed as a percentage of total casualties is extremely low estimated at just two percent.”<sup>24</sup> Two percent of “high-level” targets are disheartening, considering that the government vocally advocates for its successful policy.

## **A Psychological and Sociological Perspective**

### *Psychological Effects of Drones Strikes*

A recent study, *Living Under Drones*, provides extensive research into the psychological and sociological impact of strikes in Pakistan and their broader implications. The escalation of drone strikes has had a profound psychological impact on both the people living in the affected areas and the people operating the drones. Drones are ubiquitous. They patrol the skies around the clock, monitor the daily activities, and then occasionally reign down terror when they strike. People in the communities where drones are present have begun to change their lives to account for this intrusion in their daily routines. Parents might refrain from sending their children to school in

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safer/ (March 14, 2013).

22 Patrick B. Johnston, “Does Decapitation Work? Assessing the Effectiveness of Leadership Targeting in Counterinsurgency Campaigns,” *International Security* 37, no. 4 (Spring 2012), 47-79. <http://belfercenter.ksg.harvard.edu/files/Johnston.pdf> (accessed March 17, 2013).

23 International Human Rights and Conflict Resolution Clinic at Stanford Law School and Global Justice Clinic at NYU School of Law, *Living Under Drones: Death, Injury, and Trauma to Civilians From US Drone Practices in Pakistan* (Stanford Law School, September 25, 2012), 129.

24 *Ibid.*, VII.

fear of a strike against a potential target located in the school's vicinity. The constant noise overhead prevents many from achieving a peaceful night of sleep. But more importantly, sociologically, people might refrain from going to the local mosque because of the perpetual fear of it being targeted. The *Living Under Drones* study found that the constant noise overhead makes people experience extreme bouts of emotional trauma and severe symptoms of anxiety. "Medical practitioners have asserted that these anxiety-related disorders amongst the people of Waziristan [Tribal region in Pakistan] often manifest themselves in the form of physical illness, ranging from headaches to heart attacks, even suicides."<sup>25</sup> Drones produce what some mental health professionals describe as anticipatory anxiety. According to the *Diagnostic Statistical Manual (DSM-IV)*, anticipatory anxiety is a form of generalized anxiety disorder and is described as an episode of incredibly intense fear or apprehension that is of sudden onset.<sup>26</sup> Also, studies on drone operators, based hundreds of thousands of miles away from the front lines of combat, have been found to still suffer from post-traumatic stress disorder (PTSD). The study was conducted by the Air Force School of Aerospace Medicine and determined that roughly four percent of operators (in this particular sample) were found to be at high-risk for developing PTSD, and about 40 percent of operators in general were termed "high operational stress."<sup>27</sup> This study shows that operators who are out of harm still suffer from elevated levels of stress and accentuates the importance of governmental support for veterans and active duty servicemen.

### *Sociological Implications of Drone Strikes*

The perpetual presence of drones overhead has torn at the fabric of the societies where they are present. "Drone strikes have an invidious and subtle effect on the social fabric of the societies where they occur,"<sup>28</sup> states Michael J. Boyle. These societies are religious and rely on companionship and trust of their local communities. The suspicion generated from drones circling

25 Taylor Owen, "Drones don't just kill. Their Psychological Effects are Creating Enemies," *The Globe and Mail*, March 13, 2013, <http://www.theglobeandmail.com/commentary/drones-dont-just-kill-their-psychological-effects-are-creating-enemies/article9707992/?cmpid=rss1> (accessed March 10, 2013).

26 "Generalized Anxiety Disorder (DSM-IV-TR #300.02)," Brown University, [http://www.brown.edu/Courses/BI\\_278/Other/Clerkship/Didactics/Readings/gad.pdf](http://www.brown.edu/Courses/BI_278/Other/Clerkship/Didactics/Readings/gad.pdf) (accessed March 14, 2013).

27 Elisabeth Bumiller, "Air Force Drone Operators Report High Levels of Stress," *New York Times*, December 18, 2011, <http://www.nytimes.com/2011/12/19/world/asia/air-force-drone-operators-show-high-levels-of-stress.html> (accessed March 12, 2013).

28 Michael J. Boyle, "The Cost and Consequences of Drone Warfare," *International Affairs* 89, no. 1 (January 15, 2013), 21.

overhead has resulted in the erosion of these social frameworks. This has resulted in extreme forms of communal mistrust, to the point where people do not know if their neighbors are reporting them as terrorists to receive money from the US government. These multidimensional issues that are tearing at the fabrics of these Islamic societies has led to the precipitation of hostilities toward the US, which provides terrorist groups with a steady flow of new recruits.

## **The Legality of Policy in the US Legal System**

### *The Question of Legality*

The most controversial issue surrounding the current US drone policy is whether or not it is legal and constitutional. The jurisprudence for US drone policy falls into several legal categories. These categories include international law as well as domestic law. It also calls into question the legality of the US' violation of state sovereignty in countries such as Pakistan. The US government's reluctance to release substantial information surrounding its drone policy has prevented a thorough debate and analysis from occurring. The government has also not provided the public with an in-depth legal memorandum to outline its rationale for its decisions. There are compelling arguments on both sides of this controversial debate regarding the legality of drone strikes in domestic and international law.

### *The Targeting of US Citizens Abroad*

The US government maintains that the current drone policy of targeting citizens abroad is legal under the Constitution. The US Constitution states under Article II that the President (Commander-in-Chief) has the right to significant amounts of executive power over questions of national security.<sup>29</sup> According to current information for the justification of drone strikes against suspected terrorists, this Article enables the President to terminate any "imminent threats" to national security. Suspected terrorists are viewed as imminent threats to the US under the government's current rationale, and there are no exceptions to this. The wartime powers given to the President under Article II of the Constitution grants him permission to use lethal force against anyone the country is at war with. This power has typically been applied to state actors, but since terrorists are non-state actors in a highly volatile international system, they bear the brunt of this lethal force. Presi-

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29 US Constitution, art. II, sec. 2., [http://www.archives.gov/exhibits/charters/constitution\\_transcript.html](http://www.archives.gov/exhibits/charters/constitution_transcript.html) (accessed March 14, 2013).

dent Obama has used his executive power to from the legal basis for the escalation of drone strikes in the Middle East.

### *The Legal Basis for the Policy*

The AUMF resolution forms the principal legislative basis for the legality of drone strikes under domestic law. It empowers the President 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.”<sup>30</sup> The AUMF forms the legal basis for the “War on Terror” and the use of drones to combat terrorists throughout the world. The broad jargon of the AUMF makes it highly subjective when initiating strikes against suspected terrorists. It is important to note that the AUMF does limit the war-making ability of the President substantially, by only authorizing the use of force against those who were responsible for the attacks on 9/11.

### *Obama’s Use of the CIA to Circumvent Congress*

The President has the legal authority to authorize the CIA to use preemptive drone strikes against terrorist groups, which goes beyond the parameters of congressional authority. The Obama administration’s justification for this is that the CIA can take action in self-defense to protect the US from any potential imminent threats that might arise, while bypassing the lengthy Congressional process of approval. “The express purpose of the CIA is to safeguard vital national interests by means of covert action that may go beyond the parameters of the law.”<sup>31</sup> The CIA cannot directly violate the Constitution or any US statute for that matter, but they can legally engage in controversial tactics to combat terrorism.

### *Placing the Legality of the Policy into Context*

The opponents of current US drone policy, who advocate that these strikes are illegal, argue that the President has overreached his executive authority, that the policies violate the Constitution, and that no comprehensive legal memorandum explicitly laying out the government’s basis for strikes has

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30 United States Congressional Bill, “Authorization for Use of Military Force,” Pub. L. No. 107-40, §2(a), 115 Stat. 224, 224 (2001) (codified at 50 U.S.C. §1541 (2006)).

31 Kathryn Stone, “All Necessary Means” Employing CIA Operatives in a Warfighting Role Alongside Special Operations Forces,” (US Army War College Strategy Research Project #0704-0188, April 7, 2003), quoted *Living Under Drones: Death, Injury, and Trauma to Civilians From US Drone Practices in Pakistan*, 121.

been released. Many of the arguments dealing with legality consist of one side trying to directly refute the other. There are many similarities, and it is evident that there is room for a mutual agreement to be reached. Human rights groups and numerous other organizations have promulgated that President Obama has vastly overreached his executive authority by carrying out drone strikes. According to Robert Taylor, “the president has the power to order extrajudicial killings if an “informed, high-level official” deems a suspect a “continuing” and “imminent” threat to the country.”<sup>32</sup> The definition of “imminent” and “continuing” is purposely vague, so in essence, the President can hide behind this legal façade while targeting anyone that his administration deems as a terrorist with lethal force. This broad interpretation prevents the necessary restrictions from being in place to ensure that the murders are justifiable, transparent, and not being conducted in a shroud of secrecy. Another major component of Obama’s excessive use of executive power is that “the administration claims that limits on its power are simply not enforceable in court...”<sup>33</sup> This accentuates the problem of legality and transparency by the administration flaunting its self-proclaimed authority in the face of the country. The prevention of judicial oversight of the administration’s policies upsets the balance of power in Washington D.C. and renders the system of checks and balances useless. Without the full legal justification for these extrajudicial killings, the legality of the US policy will continue to be called into question.

### *Constitutionality of Drone Strikes against American Citizens*

The question of constitutionality regarding the use of drone strikes against American citizens living abroad has come to the forefront of the debate in recent months. According to a memo released by the Justice Department, it is legally justifiable for a US citizen to be killed if: he or she is a “senior operational leader of Al-Qaida or an associated force;” a “high-level official” determines that they are a threat to US security; if capture is “infeasible;” and if it is conducted “in a manner consistent with the applicable law of war principles.”<sup>34</sup> This directly violates the constitutional right of due process un-

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32 Robert Taylor, “Find Out What The Constitution Really Says About Obama’s Drone Strikes,” *PolicyMic*, February 12, 2013, <http://www.policymic.com/articles/25382/find-out-what-the-constitution-really-says-about-obama-s-drone-strikes> (accessed March 12, 2013).

33 Robert Taylor, “Find Out What The Constitution Really Says About Obama’s Drone Strikes,” *PolicyMic*, February 12, 2013, <http://www.policymic.com/articles/25382/find-out-what-the-constitution-really-says-about-obama-s-drone-strikes> (accessed March 12, 2013).

34 Carl Schreck, “Legality of Drone Strikes, Assassinations Under Fire in US,” *Ria Novosti*, February 6, 2013, [http://en.rian.ru/military\\_news/20130207/179269245.html](http://en.rian.ru/military_news/20130207/179269245.html) (accessed March 13, 2013).

der the law. It is plausible that it would be more efficient and cost-effective for the US government to use a drone to carry out an assassination rather than using ground troops to detain the suspect. The unchecked authority of the government and its affiliated groups will result in widespread abuses that will deny the right to due process for many Americans living abroad. In the case of young (16-year-old) Abdulrahman Al-Aulaqi, an American citizen living abroad in Yemen, the right to life and due process were despairingly eradicated when the CIA decided to kill him while he ate dinner. To this day, no direct connection between terrorism and Al-Aulaqi has been established. The American Civil Liberties Union (ACLU) stated that Al-Aulaqi was “killed in violation of the Constitution’s fundamental guarantee against the deprivation of life without due process of law.”<sup>35</sup> The brief filed by the ACLU also states that “the Executive has the unilateral authority to carry out the targeted killing of Americans it deems terrorism suspects—even if those suspects do not present any truly imminent threat, even if they are located far away from any recognized battlefield, and even if they have never been convicted (or even charged) with a crime.”<sup>36</sup> What dangerous precedent will be set if it becomes socially and legally acceptable for the US to execute its own citizens? This subverts everything the US has advocated for and will cause instability in the international system.

#### *The Lack of Transparency and the Difficulty of Interpreting the Legal Basis*

The US has not released a comprehensive legal memorandum explicitly outlining its legal justifications for its drone policy. The legality of the US’ drone policy will continue to be called into question until substantial information materializes. The US government’s reluctance to be transparent and provide the legal basis for its drone program “has impeded [a] much-needed democratic debate about the legality and wisdom of US policies and practices [from occurring], and stymied [the] understanding about their actual impacts.”<sup>37</sup> If the current drone policy is legal, the US government should actively pursue public discourse to increase its perception in the world’s eye as well as its transparency. The US has refused to answer questions posed in litigation, by journalists, or anyone for that matter. Releasing the legal justifications for executing drone strikes will not pose any significant risk to

35 Noa Yachot, “ACLU Court Filing Argues for Judicial Review of U.S. Targeted Killings of Americans,” *ACLU*, February 6, 2013, <http://www.aclu.org/blog/national-security/aclu-court-filing-argues-judicial-review-us-targeted-killings-americans> (accessed March 13, 2013).

36 *Ibid.*

37 *Living Under Drones: Death, Injury, and Trauma to Civilians From US Drone Practices in Pakistan*, 104.

national security and the government can easily release a redacted form of the memorandum without releasing classified material.

### **The Legality of Drone Strikes under International Law**

#### *The Justification for Drone Strikes under International Law*

Drone strikes against terrorist organizations in foreign countries pose many legal challenges under international law. The same questions that have been addressed under domestic law are also applicable to the case of legality under international law. The jargon of most international laws and norms are conspicuously vague and border on the verge of vacuous. A compendium of international agreements and understandings are invoked to justify the current policy in the US. One of the predominant agreements used is the United Nations Charter. According to Article 51, states have the right to self-defense, but only “if an armed attack [has] [occurred].”<sup>38</sup> This clause is used to justify strikes against non-state actors (terrorists) in sovereign nations by the US government. The attacks on September 11, 2001, give the US reason to invoke Article 51 and legally conduct strikes. A key component of understanding the justification under Article 51 is that states interpret it accordingly. The invocation of Article 51 is exorbitantly controversial in the current multi-polar international system. This controversy stems from the question of whether or not this clause can be invoked after an actual attack or merely out of anticipation. According to Kurt Larson and Zachary Malamud, “the US is finding legal justification for the employment of drones in Pakistan, using self-defense as its basis – the *Jus ad Bellum* concept.”<sup>39</sup> However, the long-term continuation of drone strikes in these sovereign nations will eventually become illegal. The US will be forced to address this issue in the coming years to justify the legality under this basis.

#### *The Power of the President and the Ability to Withdraw from Legal Obligations*

Another legal justification for drone strikes under the context of international law is that the President of the US has the power to withdraw from international legal obligations. Michael Paulsen has stated that under the Constitution, the President has the ability to freely abandon or suspend in-

38 United Nations, “Chapter VII: Action With Respect to Threats to The Peace, Breaches of The Peace, And Acts of Aggression, Article 51,” *Charter of the United Nations*, <http://www.un.org/en/documents/charter/chapter7.shtml> (accessed March 13, 2013).

39 Kurt Larson and Zachary Malamud, “The United States, Pakistan, The Law of War and The Legality of The Drone Attacks,” *Journal of International Business & Law* 10, no. 1 (March 30, 2011), 5-6.



ternational legal obligations, even if domestic laws protect them.<sup>40</sup> The basis for this is grounded on the principle that the US is a sovereign power and sovereignty outweighs international obligations. This ensures “international law’s existence by reducing incentives for nations to withdraw from a regime they might otherwise regard as too restrictive.”<sup>41</sup> The negative aspect of reducing incentives is that it limits the power of international law to solve complex disputes. Thus, President Obama has the legal right to withdraw from certain agreements that stand in opposition to his drone policy. This complicates matters due to the basis that the US is violating international law by selectively pulling out of certain agreements. It has the potential to set a dangerous precedent in the global system by countries manipulating international agreements.

### *International Law and the Issue of State Sovereignty*

The fundamental question of the US drone policy in international law is whether it violates state sovereignty. The United Nations Charter explicitly states the prohibition of use or threats of force between states in Article 2(4).<sup>42</sup> Article 51, and its implication in regards to self-defense offers a loophole to this clause. However, “legal experts, including the current UN Special Rapporteur on extrajudicial, summary, or arbitrary executions, Christof Heyns, have questioned whether the killing carried out in 2012 can be justified as a response to [events] in 2001...”<sup>43</sup> The US has been following this clause to justify their actions for nearly 12 years. This cannot lawfully continue under any circumstance, and the US will have to revise its current policy. For example, drone strikes occur in Pakistan, a sovereign nation that the US is not at war with, on a daily basis. The US government claims that this is necessary since Pakistan’s government is incapable of capturing or stymieing terrorists and their operations in the vast tribal regions. However, the Pakistani believe that the US is violating their sovereignty and disrespecting national sentiment. Two other nations that have also felt the impact of US drone strikes include Yemen and Somalia. The US has progressively continued to break almost every international agreement by violat-

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40 Michael Paulsen, “The Constitutional Power To Interpret International Law,” *Yale Law Journal* 118, no. 8 (June 2009), 1800-1804.

41 Afsheen John Radsan and Richard Murphy, “The Evolution of Law and Policy for CIA Targeted Killing,” *Journal of National Security Law and Policy* 5, (January 19, 2012), 447.

42 United Nations, “Chapter I: Purposes And Principles, Article 2, Paragraph 4,” *Charter of United Nations*, <http://www.un.org/en/documents/charter/chapter1.shtml> (accessed March 14, 2013).

43 *Living Under Drones: Death, Injury, and Trauma to Civilians From US Drone Practices in Pakistan*, 107.

ing the sovereignty of these countries. President Obama's war on Al-Qaida and its affiliated terror groups "has been used as an excuse to assassinate anyone anywhere in the world whenever the president gives the order."<sup>44</sup> Even if the Obama administration identifies a terrorist living in one of these sovereign territories, the US cannot legally justify military strikes against the individual since the US is not actively at war with the state. The US bellicose rhetoric will have to change alongside its policy if it wants to be viewed as a global leader for good.

### The Dubious Nature of the CIA's Drone Program

#### *The Secrecy Surrounding the CIA's Program*

One of the more controversial aspects of the US' drone policy (established under Bush and continued by Obama) is that the CIA has free reign over their own program. This program has come under immense scrutiny in recent years, due to the lack of oversight and the shroud of secrecy surrounding the program. "Critics [contend] that drone strikes might constitute crimes in the countries which they occur, [due] to the violations of [these] foreign nation's laws..."<sup>45</sup> The CIA has publicly refused to release any official documentation or memorandum laying out the legality of their program and contends that by doing so would be a breach of national security. Even in court, the CIA refuses to acknowledge that their drone program exists. According to Jameel Jaffer and Nathan Freed Wessler, "the agency's argument [for refusing to acknowledge the existence of their program] is based on a 35-year-old judicial doctrine called Glomar, which allows government agencies to respond to requests under the Freedom of Information Act, or FOIA, by refusing to confirm or deny the existence of the records that have been requested."<sup>46</sup> The American Civil Liberties Union (ACLU) and *The New York Times* have both filed cases against the CIA demanding that they acknowledge the existence of their program and provide the legal basis for its conduction. The Obama administration must require the CIA to improve its transparency by acknowledging the existence of its program and releasing the legal memorandums

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44 Marjorie Cohn, "Killer Drone Attacks Illegal, Counter-Productive," *Huffington Post*, June 25, 2012, [http://www.huffingtonpost.com/marjorie-cohn/killer-drone-attacks-ille\\_b\\_1623065.html](http://www.huffingtonpost.com/marjorie-cohn/killer-drone-attacks-ille_b_1623065.html) (accessed March 15, 2013).

45 Mary Ellen O'Connell, William C. Banks, David Glazier, and Kenneth Anderson, "Legality of Unmanned Targeting, Hearing before the Subcommittee on National Security and Foreign Affairs of the House Committee on Oversight and Government reform," 111th Congress, 2d Session, (2010).

46 Jameel Jaffer and Nathan Freed Wessler, "The C.I.A.'s Misuse of Secrecy," *New York Times*, April 29, 2012, [http://www.nytimes.com/2012/04/30/opinion/the-cias-misuse-of-secrecy.html?\\_r=0](http://www.nytimes.com/2012/04/30/opinion/the-cias-misuse-of-secrecy.html?_r=0) (accessed March 14, 2013).

that authorize the program. The agency should also provide evidence to justify their strikes against American citizens living abroad who have been victimized by drone strikes in Yemen and elsewhere. President Obama and his administration must hold the CIA accountable for their actions.

### *Violations Committed by the CIA*

The legal standing of the CIA's program is much more difficult to analyze conclusively due to the nature of how the espionage world operates. According to Afsheen John Radsan, "the CIA habitually violates the laws of other countries – and arguably international law – as it conducts espionage around the world."<sup>47</sup> To operate effectively and protect American interests, the CIA is expected to violate other nations' laws.<sup>48</sup> However, giving unrestricted control of a tremendously lethal program to an agency with a checkered history is unnerving and unscrupulous. The CIA has proven time and time again that it is prone to abusing power and believes that it has no obligation to follow the long-standing rules of military engagement. It is apparent that the CIA's targeted killing program might constitute crimes in the countries in which they occur,<sup>49</sup> but there is no legal basis to prosecute those responsible for conducting their job as an intelligence agency.

## **Reformation and Potential Solutions**

### *Reformation of the Policy is Essential*

The US drone policy needs to be reformed. If the current policy continues, the US will alienate its allies and set a dangerous global precedent. Increasing the transparency of the program by providing oversight and releasing the legal justification can reform the current policy. A second essential aspect for reforming policy is to eliminate the CIA program and place all drone operations under the direct control of the US military. Reformation of this pernicious policy will enable drone strikes to become legal, transparent, more efficient, and uncommon.

### *Increasing Governmental Transparency and Potential Solutions*

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47 Afsheen John Radsan, "The Unresolved Equation of Espionage and International Law," *Michigan Journal of International Law* 28, no. 597 (2007), 595-596.

48 Afsheen John Radsan and Richard Murphy, "The Evolution of Law and Policy for CIA Targeted Killing," *Journal of National Security Law and Policy* 5, (January 19, 2012), 446.

49 Mary Ellen O'Connell, "Unlawful Killing with Combat Drones: A Case Study of Pakistan, 2004-2009," *Notre Dame Legal Studies Research Paper* no. 09-43 (July 2010), 1.

It is essential to increase the transparency of the US drone policy and eradicate its negative implications. The US government needs to be held accountable for strikes and the only way this can be achieved is to institute an effective oversight body. A non-governmental organization can be set up to conduct thorough investigations into controversial strikes. This would be similar to the Congressional Oversight Panel, but would have more prosecutorial authority. The only way oversight can be conducted effectively is if the government releases the legal justification for strikes. A much needed academic debate will ensue, and a comprehensive legal analysis can finally determine the legality of the drone program. Public discourse will hold the government accountable and initiate the reformation of policies. It is also essential for the Obama administration to release the accurate casualty figures and discontinue the “practice of counting all dead males of military age as militants.”<sup>50</sup> Accurate casualty figures in the hands of the public will also contribute to holding the US government accountable. Lastly, transparency will enhance the global perception of the US, guarantee the legality of strikes, and ensure that they are used infrequently.

## US Domestic Implications of Drones

### *The Intrusion of Drones into US Domestic Life*

The current drone policy in the US will have a profound impact on domestic policy and the everyday lives of American citizens in the coming years. According to the Federal Aviation Administration, 10,000 drones could potentially be in US airspace by 2020.<sup>51</sup> These drones will not be armed with Hellfire missiles or serve a military purpose, but moreover, provide technical assistance to local authorities as well as surveillance for federal agencies. This intrusion of drones into the everyday lives of American citizens has struck terror into the hearts of millions and called the role of government into question. George Orwell’s novel *1984* comes to mind when envisioning life with drones hovering overhead and monitoring every second of our lives. It brings to mind the concept of “Big Brother” watching our every move for dissent. Drones that monitor our daily lives violate the right to privacy that is protected by the Constitution. In theory, if this occurs, when will the

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50 Conor Friedersdorf, “Let’s Make Drone Strikes Safe, Legal, and Rare,” *The Atlantic*, March 27, 2013, <http://www.theatlantic.com/politics/archive/2013/03/lets-make-drone-strikes-safe-legal-and-rare/274399/> (accessed March 11, 2013).

51 Brian Bennett and Joel Rubin, “Drones are taking to the skies in the US,” *Los Angeles Times*, February 15, 2013, <http://articles.latimes.com/2013/feb/15/nation/la-na-domestic-drones-20130216> (accessed March 12, 2013).

government intrude upon our other constitutional liberties? Certain “guidelines” have been made in an attempt to limit the role of drones in domestic airspace. Some of these guidelines include obtaining a search warrant prior to launching drones in the sky to conduct surveillance. The American Civil Liberties Union stated, “We don’t think these recommendations go far enough to ensure true protection of privacy from drones... privacy protections [need] to be enshrined in law, not merely promulgated by the police themselves.”<sup>52</sup> It is apparent that judicial oversight needs to be ensured as well as legislation to regulate the government’s use of drones. Chris Calabrese from the ACLU said, “Unmanned drones must not become a perpetual presence in our lives, hovering over us, following us and recording our every move.”<sup>53</sup> The government operating 10,000 unregulated drones in domestic airspace is irrational, unjust, repressive, and despotic.

### **Precedential Nature and Potential Repercussions**

#### *Potential Repercussions of the Precedent the US is Setting*

The current drone policy will also have a profound impact on the international system and set a dangerous global precedent. Leon Panetta, the former Secretary of Defense and head of the Central Intelligence Agency has stated that the US will reduce the size and scope of its conventional forces. Instead, the US will expand the role and place an additional emphasis on its Special Forces and the development of advanced technological warfare systems. The success of covert military operations, such as the SEAL Team 6 raid in Abbottabad has played an integral role in the US militaries use of drones. However, the precedent the US is setting with its use of drones has many experts horrified. Jon Frosch, a prominent journalist with experience covering the use of drones, emphasizes this point in stating “how a nation uses its weapons reflects on how others will use them.”<sup>54</sup> In other words, by carrying out extrajudicial killings and violating the national sovereignty of countries, the US is encouraging other states to follow its example in the future. What will stop Russia or China from using a drone strike to eradicate a dissident

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52 Kevin Johnson, “Even The Leaders of US Police Departments Want to Restrict Domestic Drone Use,” *Business Insider*, September 10, 2012, <http://www.businessinsider.com/chiefs-of-police-urge-restraint-in-domestic-drone-use-2012-9> (accessed March 12, 2013).

53 American Civil Liberties Union, “ACLU Supports Bipartisan Domestic Drone Bill,” *ACLU*, February 14, 2013, <http://www.aclu.org/national-security/aclu-supports-bipartisan-domestic-drone-bill> (accessed March 13, 2013).

54 Jon Frosch, “The Risks and Rewards of Obama’s Drone Policy,” *France 24*, February 26, 2013, <http://www.france24.com/en/20130225-risks-rewards-obamas-drone-policy> (accessed March 13, 2013).

living in refuge in the US? The answer is nothing. This is the problem with the precedent being set by the US. The US government cannot kill hundreds of people in Yemen, Somalia, or Pakistan and then not expect another nation to do the same to the US. We live in a global world that has condensed societies and made geography no longer an obstacle. The most advanced countries in the international system are currently developing their own sophisticated drone programs and the US will soon see its monopoly on drones disappear. Once this monopoly has disappeared, the precedent set by the US will come to the forefront and dictate the course for the next several decades. This is precisely why policy reform is of the utmost importance. The US needs to address these pressing issues, and by doing so, can change the course of history for the betterment of the world.

### **Conclusion**

The ongoing debate of the current US drone policy will continue to garner international attention as the proliferation of strikes progresses. The recent expansion of the drone program by the Obama administration has generated copious amounts of controversy, especially in regard to the targeting of American citizens living abroad. The CIA's drone program needs to be eliminated and all drones for military purposes need to be placed under the direct control of the US military. Recent comprehensive studies have shown the negative implications that drone strikes have on the psychological well-being of people living in the areas of strikes. These studies have also conclusively analyzed the sociological impact of strikes and concluded that they are tearing at the fabric of Islamic societies by generating widespread mistrust and interrupting every aspect of daily life. Furthermore, the US government needs to release the legal justification for strikes to increase the transparency of the program and prove that their actions are in fact legal. Drone policy in the US need immediate attention. The first step toward reforming policy is to provide oversight of the program and increase the transparency by releasing essential information. The future of the world is in the hands of the US and we can avoid setting dangerous precedents to create a more stable and transparent world. The US has the ability to carry the torch of freedom while increasing world perception. **Y**