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## MASTER OF MILITARY STUDIES

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**How effective are unilateral, targeted kill/capture operations as part of United States Counterterrorism (CT) strategy against Al Qaeda (AQ) and its affiliates?**

SUBMITTED IN PARTIAL FULFILLMENT  
OF THE REQUIREMENTS FOR THE DEGREE OF  
MASTER OF MILITARY STUDIES

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## *Preface*

I have always held an interest in the activities of United States Special Operations Forces, and personal exposure to them during operations in Afghanistan consolidated that interest. Like many of my colleagues, the events of September 11, 2001, shaped the formative years of my military career and the fight against Al Qaeda and like-minded terrorist organizations is likely to endure for many years to come.

The breadth and reach of US covert military activity is unparalleled, yet AQ and its' affiliates remain a threat, albeit one that has metastasized in the last decade from the organization that planned and conducted 9/11. The unrelenting pursuit of AQ operatives, chiefly through the tactic of targeted kill/capture operations, has done much to contain the threat. The tactic is a cost-effective, less risky military option that appears to satisfy US political and public demands for the use of force against terrorist organizations. However, despite short-term positives, the tactic appears to be causing longer-term harm to the US strategic objective of defeating AQ and its' affiliates, and to US international reputation, through second-order effects such as collateral damage, the blurring of international legal boundaries, and dangerous precedents concerning the use of drones.

I have experienced an alternative approach to countering terrorist threats, that of discrete capacity building of an indigenous partner, and I wanted to analyze the efficacy of targeted kill/capture operations as a core component of US counterterrorism strategy, seemingly at the expense of other options. I believe there are a number of adaptations and alternatives that may improve the longer-term effects of the use of force to counter AQ and similar organizations.

Considerable thanks must go to my loving and long-suffering wife for her support in this endeavor and for managing the 'homefront' often single-handedly. I am also indebted to Dr Rebecca Johnson for her guidance, support, and unremitting attention to detail, and to Professor Michael Lewis for challenging my often-simplistic thoughts.

## *Executive Summary*

**Title:** How effective are unilateral, targeted kill/capture operations as part of United States Counterterrorism (CT) strategy against Al Qaeda (AQ) and its affiliates?

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**Thesis:** Unilateral U.S. kill/capture operations have successfully disrupted Al Qaeda and its affiliates' ability to conduct large-scale attacks against U.S. interests in the short-term, but the negative perceptions of kill/capture operations by local Muslim populations in target countries jeopardize the longer-term aims of U.S. counterterrorism (CT) strategy and perpetuate AQ as a threat to U.S. interests.

**Discussion:** A key component of U.S. CT strategy since the AQ attacks against America on September 11, 2001 has been the use of targeted kill/capture operations. These operations take place globally and utilize Special Operations Forces (SOF) and drone strikes to target members of AQ and its affiliates. These operations have had a negative effect on the AQ network's ability to plan and conduct large-scale terrorist attacks against U.S. interests by denying terrorist leaders the ability to plan at the operational level. Consequently, AQ Core leadership has had to rely on dispersed affiliates and the radicalization of individual homegrown terrorists through the Internet to prosecute attacks. These have been poorly organized and have resulted in far fewer deaths in the U.S. since 9/11; yet, the tactic of targeted kill/capture operations has proven to be controversial with those who reject the U.S. notion of an armed conflict with AQ. These critics argue that operations to disrupt AQ should be conducted according to International Human Rights Law rather than the more liberal International Humanitarian Law. Criticism has arisen over the secrecy surrounding the targeted kill/capture program and lack of accountability of the tactic. Civilian deaths and the unilateral nature of these operations polarize local populations in countries such as Pakistan and Yemen, undermine the credibility of those nations' governments, and potentially act as a source of recruits for AQ. The blurring of international treaty law and the expansion of the tactic of targeted killings has tarnished the U.S.'s international reputation as an upholder of the rule of law. The use of drones in particular sets dangerous precedents that other states may emulate, to the possible detriment of U.S. security.

**Conclusion:** The use of targeted kill/capture operations has had a short-term, positive impact on U.S. efforts to undermine AQ and its affiliates by disrupting the networks ability to plan and conduct large-scale terrorist attacks. But the threat from AQ persists and in places like Yemen, has developed due to a narrow focus on targeted kill/capture operations over wider diplomatic, informational, and economic measures. A narrow, self-serving interpretation of international law and an opaque kill/capture program that too often results in civilian casualties has tarnished the U.S. international standing. To achieve the longer term national security aims of defeating AQ, the U.S. should: recalibrate and refocus efforts on diplomatic, informational, and economic responses to the threat; declare an end to the 'war' against AQ and prosecute future disrupt operations against AQ under IHRL; consider unilateral kill/capture operations as a last resort against clear and imminent threats under the notion of self-defense; focus SOF on capacity building partner nations' CT capabilities; and formalize international rules on the use of drones.

## **Introduction**

The United States (U.S.) has prosecuted unilateral targeted kill/capture operations as part of a whole-of-government integrated Counterterrorist (CT) strategy to defeat, dismantle, and disrupt Al Qaeda (AQ) and its affiliates following the attacks on the U.S. homeland on September 11, 2001 (9/11). The vast majority of targeted kill/capture operations against AQ leadership took place within Iraq and Afghanistan under rules governed by the laws of armed conflict. However, using the Authorization for Military Force (AUMF) that President Bush signed shortly after 9/11, the U.S. began to broaden the geographical scope of these targeted operations to countries that it was not officially at war with. The more contentious tactic of drone strikes has often overshadowed the use of Special Operations Forces (SOF) to prosecute kill/capture missions but more recent operations indicate a preference for capture for trial, over the killing of suspects.

The unilateral use of force in sovereign states that the U.S. is not at war with, often without the permission or knowledge of the host nation government, challenges international law and ethical norms and potentially further radicalizes an already disenfranchised Muslim youth population. However, advocates of targeted operations defend the tactic as a precise instrument that is more discriminate and humane than large-scale military interventions, reduces the risk to U.S. military forces, and is more cost-effective than lengthy military campaigns. Additionally, these operations violate other state's sovereignty to a much lesser degree, and are more politically and publically acceptable when compared to recent operations in Iraq and Afghanistan.<sup>1</sup> This paper will explore the growth of targeted kill/capture operations as part of U.S. CT strategy, how these operations challenge international legal frameworks, the tactical and operational effect these operations have had against AQ, and the broader strategic effects of targeted kill/capture operations. Unilateral U.S. kill/capture operations have successfully

disrupted AQ and its affiliates' ability to conduct large-scale attacks against U.S. interests in the short-term, but the negative perceptions of kill/capture operations by local Muslim populations in target countries jeopardize the longer-term aims of U.S. CT strategy and perpetuate AQ as a threat to U.S. interests.

## **Background**

The use of unilateral kill/capture operations as part of U.S. CT strategy evolved post-9/11 and developed from a template of high-tempo SOF operations conducted in Iraq during Operation Iraqi Freedom (OIF). The success of these operations led to U.S. Special Operations Command (SOCOM) becoming the lead agency for the prosecution of CT targets. In 2004, a Presidential Directive led to the expansion of kill/capture missions outside of the declared battlefields of Iraq and Afghanistan, into countries where AQ and its affiliates operated; subsequently the U.S. began conducting unilateral strikes in countries such as Pakistan, Yemen, and Somalia. Operations in Pakistan and Yemen were one element of a broader CT strategy that encompassed military aid and civilian development activities.<sup>2</sup> However, the political and security dynamics within Pakistan and Yemen often stymied non-military initiatives, which resulted in targeted killings becoming perceived by local populations as the focus of U.S. effort.

The U.S. expanded targeted kill/capture operations globally through the growth of a particular part of SOCOM and the development of a more networked form of warfare. The emergence of the Joint Special Operations Command (JSOC) as an “autonomous, networked command”<sup>3</sup> in Iraq allowed the U.S. to counter insurgent networks with a networked agency of its own.<sup>4</sup> JSOC had significant effect against AQ in Iraq (AQI) and in 2006 killed its leader, Abu Musab Zarqawi.<sup>5</sup> In 2008 the JSOC model, which in Iraq had reached ‘industrial’ scale kill/capture operations, was replicated in Afghanistan.<sup>6</sup> The perceived success of the JSOC

model by the Bush administration in disrupting and dismantling AQI convinced the U.S. government to increase funding of JSOC activity and led to the tactic of targeted kill/capture operations becoming *the* popular and legitimate model to counter global terrorism.

The U.S. conducted operations in Pakistan and Yemen through a global SOF network, within which targeted kill/capture operations continue to be prosecuted. The U.S., through its National CT strategy, has created a “permanent policing operation” of targeted operations as part of an integrated comprehensive approach to address the wider underlying social and political causes of extremism in areas such as the Middle East and Africa.<sup>7</sup> However, political and security limitations in many target countries limit the ability to prosecute effective civilian development initiatives, which results in military activity often becoming the decisive activity. In 2010, the military effort was the best funded of all U.S. approaches to countering CT, with 94 per cent of the \$1.121 trillion allocated to the DoD.<sup>8</sup>

In 2009, the Obama administration ordered drone strikes in Pakistan to target AQ personnel deemed as a threat. The U.S. conducted 53 drone strikes in 2009, 114 in 2010, and 64 in 2011.<sup>9</sup> These operations were conducted as part of an ongoing broader approach to CT that encompassed military and developmental aid. The U.S. has gifted over \$10 billion of aid to Pakistan since 9/11 but the vast majority of this has gone to the military.<sup>10</sup> This monopoly of U.S. aid reflects the domination of the army in wider Pakistani society and the weakness of Pakistani political institutions, which are riven by “corruption and hyperpartisanship.”<sup>11</sup> The Pakistani army devises and leads CT efforts, and military operations are easier than addressing the longer-term causes and narrative that drives militancy.<sup>12</sup> U.S. policy in Pakistan is aimed at placating the army and maintaining Pakistani goodwill to conduct unilateral drone strikes.<sup>13</sup> The policy is also driven in part by Pakistan’s unwillingness to decisively deal with Islamist militant

groups, some of whom have close ties to the army and intelligence service. This unwillingness results from Pakistan's historic use of militant proxy groups as a foreign policy tool,<sup>14</sup> high levels of societal support for these groups,<sup>15</sup> and a difference in perception between Pakistan and the U.S. over the nature of the threat. Pamela Constable states, "Where Washington sees a global terrorist menace, Islamabad... see[s] a containable problem, a potentially reusable proxy..."<sup>16</sup> Furthermore, the disinterest of Pakistan in funding socioeconomic development and the primacy of the army resulted in less than ten percent of U.S. aid being spent on development and humanitarian assistance.<sup>17</sup> This disinterest is exacerbated by poor security on the ground in areas where aid is most needed, which restricts the freedom of movement of organizations such as U.S. AID,<sup>18</sup> and a damaging trust deficit that exists between the U.S. and Pakistan.<sup>19</sup> These obstacles to the U.S. desire for a broad CT approach in Pakistan were also present in Yemen.

The first publicly confirmed targeted killing outside of declared battlefields by the U.S. took place in Yemen, in November 2002, with the killing of Abu Ali al-Harithi, who was involved in the attack on the USS Cole.<sup>20</sup> The U.S. Ambassador at the time, Edmund Hull, sought a more comprehensive approach to countering AQ, based on aid and development, but these efforts were overshadowed by the focus on military capacity building and targeted operations to counter the AQ threat. Development aid to Yemen reduced following the al-Harithi strike (due to the perception that AQ in Yemen had been defeated) and remained low until AQ in the Arabian Peninsula (AQAP) became a threat to U.S. interests from 2007.<sup>21</sup> The growing threat from AQAP led to an increase in U.S. military activity in Yemen, principally in the form of capacity building and drone strikes. By the beginning of 2010, "JSOC had been involved with more than two dozen raids in Yemen" against AQAP.<sup>22</sup> The U.S. focused on a military approach over one of socioeconomic development and viewed "Yemen through the prism of al Qaeda

instead of al Qaeda through the prism of Yemen.”<sup>23</sup> A lack of government authority and poor security in outlying provinces created barriers to the distribution of development aid in Yemen, which AQAP exploited.<sup>24</sup>

As in Pakistan, U.S. policy towards Yemen aspired to a broad, integrated CT approach to counter AQAP. The overarching policy goal is “to create a stable and secure state” through the twin-track approach of military aid and civilian development.<sup>25</sup> Between 2007-2011 the U.S. donated \$642m in aid, split almost equally between military aid and development activity.<sup>26</sup> Yet, similarly to Pakistan, the political and security situation within Yemen stymied development initiatives. Military aid largely “benefited [the President’s] relatives and allies in the military...that kept his regime intact.”<sup>27</sup> Worsening security dynamics on the ground in Yemen in 2011 caused a reduction in civilian development aid and resulted in projects being confined to the larger, relatively secure urban areas (where AQAP was largely not present).<sup>28</sup>

The use of targeted covert operations as a key military activity within a broader, whole-of-government U.S. CT strategy continues today and is reflected both in the current National Security Strategy and the levels of funding apportioned to the DoD and specifically SOCOM.<sup>29</sup> These operations reflect a progressive, realist foreign policy that favors a reduced military footprint in the form of surgical SOF and drone strikes.<sup>30</sup> Targeted operations are also cheaper and more politically and publicly palatable than large-scale commitments of U.S. ground forces. The current National Strategy for CT aims at “disrupting, dismantling, and eventually defeating al Qa’ida and its affiliates and adherents.”<sup>31</sup> This strategic end state vindicates the existence of a global SOF network in order to maintain the pressure on AQ core and its key affiliates. Despite the strategy encompassing a holistic approach that utilizes diplomatic, informational, military, and economic (DIME) measures, the preponderance of effort and funding over the last decade

has been on the military, and specifically SOF, line of effort. In Pakistan and Yemen, this reflects the challenges of conducting non-military development activity in areas of poor governance and security; on a wider conceptual level, it reflects the U.S. government's preference for what it perceives as a cost-effective, discreet, and successful tactic, borne out of the effectiveness of JSOC operations in Iraq and Afghanistan. The U.S.'s narrow interpretation of international law in conducting targeted operations also exacerbates negative perceptions associated with a perceived sole focus on military activity.

### **Targeted Kill/Capture Operations and International Law**

International law does not define targeted killing but it is accepted as the “intentional, premeditated and deliberate use of lethal force, by States or their agents acting under color of law...against a specific individual who is not in the physical custody of the perpetrator.”<sup>32</sup>

Whether terrorism is defined as a criminal act or an act within the confines of armed conflict determines views on the legality of targeted operations.<sup>33</sup> Many commentators regard the use of targeted operations by the U.S. as controversial and illegal within the parameters of international law, particularly when the tactic results in civilian deaths.<sup>34</sup> In order to understand the controversy aroused by the use of targeted operations, it is necessary to review International Humanitarian Law (IHL) and International Human Rights Law (IHRL), explain the U.S. justification for the use of the tactic within the boundaries of IHL, and explore the main criticisms of the tactic. The U.S. tactic of targeted killings has blurred and expanded the boundaries of applicable legal frameworks concerning the use of force, particularly those of IHL and IHRL. This tactic exploits a lack of international consensus on a definition of terrorism, international law provisions to deal with terrorism, and a lack of an accepted definition of what constitutes armed conflict, and undermines the overall U.S. long-term CT strategy.

IHL is the international law that governs the conduct of armed conflict (*jus in bello*), which can be either international (state versus state) or non-international (state versus internal non-state actor). IHL seeks to distinguish between combatants and non-combatants, and parties to a conflict must abide by the four key principles of proportionality, distinction, military necessity, and humane treatment.<sup>35</sup> In non-international armed conflict, states can target civilians who take part in hostilities under the rule of “Direct Participation in Hostilities” (DPH) or that are deemed to hold a “Continuous Combat Function” (CCF).<sup>36</sup> These criteria cater to the use of force in internal state conflicts, such as civil war, where civilians may be part of insurgent groups and partake in hostilities to a greater or lesser degree. There is ambiguity in what DPH actually comprises and what roles are deemed to constitute CCF. In this regard, IHL does not cater to transnational terrorism and leaves the criteria for DPH and CCF open to individual states’ interpretation. Neither does IHL define exactly what an armed conflict is, which results in the ability of states to interpret whether an attack against them is an act of aggression that justifies an appropriate military response. Some commentators doubt whether attacks by transnational terrorist groups such as AQ constitute an armed conflict.<sup>37</sup>

IHRL governs the use of force in situations other than armed conflict, most commonly law-enforcement operations. At the heart of IHRL is the protection of every individuals’ basic right to life, and the use of lethal force is only legal if all other options to prevent a threat (for example detention) have failed and there is an imminent threat to life. Those who reject the notion of an armed conflict between the U.S. and AQ view the struggle as one of law-enforcement against a pernicious criminal element, and as such, IHRL should govern targeted operations outside of declared battlefields.<sup>38</sup> By this logic, the conduct of targeted killing operations constitutes extra-judicial murder, and the U.S. should instead prosecute operations to

capture, vice kill, and subject terrorist suspects to the rule of law.<sup>39</sup> However, IHRL does not take into account the global nature of the AQ threat and constrains states' ability to respond to it.<sup>40</sup>

The key issue is that neither IHL nor IHRL adequately govern the threat posed by transnational terrorism or the CT responses required to counter it.<sup>41</sup>

The U.S. justifies its use of targeted kill/capture operations by framing the struggle against AQ and its affiliates as an armed conflict.<sup>42</sup> The U.S. response to 9/11 and the decision to launch military operations in Afghanistan was an act of self-defense under Article 51 of the UN Charter. The U.S. responded to AQ aggression by targeting both the terrorist organization and the State (Afghanistan) that supported and enabled AQ attacks on the U.S. a week after 9/11. President George W. Bush signed into law the Authorization for the Use of Military Force (AUMF), which sanctioned the Executive branch:

to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.<sup>43</sup>

The U.S. used the AUMF as justification to target AQ operatives and members of affiliates or allies outside of the declared battlefields of Iraq and Afghanistan, which allowed the U.S. to expand the use of targeted kill/capture operations to states such as Pakistan, Yemen, and Somalia. This includes the right to pursue targets unilaterally in states without their prior consent if that state is unable or unwilling to take action. By declaring these operations as being within an armed conflict, IHL governs targeted operations rather than the more restrictive law-enforcement rules pertaining to IHRL.

The Obama administration asserts that it is still in a global armed conflict with AQ and that the AUMF, despite being over a decade old, still stands as the legal basis for operations

against AQ and its affiliates, "without a geographic limitation, [including] belligerents who also happen to be U.S. citizens."<sup>44</sup> The latter issue sparked controversy following the targeted killing of U.S. born cleric Anwar al Awlaki, in Yemen in 2011. The U.S. justifies the targeting of U.S. citizens abroad if they present an imminent danger, capture is not feasible, and the operation observes the laws of war, criteria that President Obama's CT Chief, John Brennan, outlined in a policy speech in 2012.<sup>45</sup> The current administration continues to assert that self-defense is a justifiable basis for military operations against AQ and its affiliates, and negotiates the requirement for immediacy by use of the "active defense" view of anticipatory self-defense, which justifies the pre-emptive use of force.<sup>46</sup> U.S. use of pre-emptive targeted operations draws much criticism from those who reject the notion that the U.S. is engaged in an armed conflict with AQ governed by the rules of IHL.<sup>47</sup> Jordan Paust contends that operations by the U.S. against AQ cannot "amount to war or an armed conflict, and therefore, cannot trigger application of the laws of war" because AQ has no semblance of a government, lacks an organized military force with which to conduct operations, and doesn't control territory.<sup>48</sup>

Some commentators argue that AQ today does not represent the same threat that it did in 2001 when President Bush signed the AUMF into law.<sup>49</sup> If the nature and immanency of the threat has changed then the pre-emptive use of self-defense by the U.S. does not stand up to the scrutiny that it did immediately after 9/11. Some have questioned the legality of justifying the operation that killed Osama Bin Laden under the argument of self-defense and IHL, claiming that "it is hard to see how considerations of military necessity could have supported the killing of bin Laden if capture would have been feasible."<sup>50</sup> Many argue with the immanency of the threat bin Laden posed when the operation took place and whether he was still effectively planning attacks against the U.S. The international laws of war and the notion of self-defense,

cornerstones of U.S. justification for military operations against AQ, are intended to apply in “limited, extraordinary circumstances;” yet, the U.S. “claims the authority to apply these rules globally and indefinitely in carrying out a...killing program that has been escalating for years.”<sup>51</sup> The use of the AUMF, which the international community does not recognize, justifies the U.S. to conduct operations in other states if it deduces that a state is unwilling or unable to take action against terrorist suspects. This not only endangers the principle of state sovereignty but also damages U.S. relations with international CT partners and undermines international efforts to counter AQ. Yet the inability of the international community to collectively define terrorism and the “inability of the international legal community to establish clear and generally recognized margins of lawfulness for...targeted killing” allows the U.S. to interpret the threat and respond as it sees fit.<sup>52</sup> The U.S. may face criticism from the international community over this practice, but there is no mechanism currently by which to hold the U.S. to account over its actions regarding targeted killings. This ability to expand the boundaries of targeted operations within international law, coupled with the cost-effective nature of the tactic, reinforces its utility in the eyes of U.S. administrations.

Yet with particular regard to U.S. targeted operations in Pakistan and Yemen, claims that unilateral targeted operations violate the sovereignty of these states are perhaps not entirely accurate. The Pakistani government has responded with ambivalence and inconsistency to U.S. drone strikes in the tribal areas of Pakistan, at times condemning attacks that result in civilian casualties, to privately celebrating when a key member of a terrorist group is killed.<sup>53</sup> The Pakistani government secretly allows drone strikes against terrorist networks that threaten the state and granted permission for U.S. drones to use sovereign airbases.<sup>54</sup> President Zardari secretly supports the strikes but frequently criticizes them in public, which plays to Pakistani

public anti-U.S. sentiment and reflects the hypocritical, fractious relationship between the U.S. and Pakistan.<sup>55</sup> Although Pakistan's permission for U.S. drone strikes is not public and resounding, and the U.S. rarely informs the Pakistani government prior to strikes, the operations do not violate Pakistani sovereignty.<sup>56</sup> Similarly in Yemen, the Yemeni government consented to U.S. targeted operations as part of a wider strategy to build the capacity of the Yemeni military and encourage development projects.<sup>57</sup> By striking and disrupting AQAP targets in Yemen, the U.S. does benefit from a reduced threat to U.S. interests. Yet despite strikes in Pakistan and Yemen having the permission of the host nation government, controversy still plagues the use of targeted operations due to violations of the IHL principle of distinction.

Criticism of U.S. targeting results from a lack of distinction and civilian casualties.<sup>58</sup> This criticism extends to the U.S. interpretation of whom it classifies as a combatant, through either DPH or holding a CCF.<sup>59</sup> A lack of U.S. government accountability following these strikes, and a lack of detail regarding who the target was, why they were targeted, and considerations taken to minimize collateral damage invites criticism. Kebriaei states that with regards to DPH, the administration "casts a far wider net than the law allows" and violates the principle of distinction.<sup>60</sup> In a wider regard concerning distinction, it is far from clear that the cobelligerents of AQ mentioned in the AUMF are "sufficiently organized and 'associated'" to AQ to render them cobelligerents under IHL. As such they should be pursued under IHRL as the laws of war do not apply to them.<sup>61</sup>

Criticism also often arises from the U.S. decision to kill rather than attempt to detain.<sup>62</sup> In response to the killing of Haitham al-Yemeni in Pakistan in 2005, Amnesty International declared the act "an extrajudicial execution, in violation of international law" and stated that the U.S. and Pakistan should have cooperated to arrest Haitham al-Yemeni rather than kill him."<sup>63</sup>

The U.S. government claims that the location and inaccessibility of the target and the risks of putting forces on the ground to capture a specific terrorist influence the decision to kill. Yet the resort to lethal force in places such as Yemen, where the U.S. trains and mentors a capable counterterrorism force that would be able to capture, seems to undermine the use of lethal force as a first resort.<sup>64</sup> The operation to kill/capture Osama bin Laden raised concerns over issues of military necessity and more recent operations hint at a renewed focus on capture, vice kill, of terrorist suspects.<sup>65</sup>

Even if some members of the international community and organizations such as the ICRC and UN did not dispute the existence of an armed conflict between the U.S. and AQ, it does not necessarily follow that the laws of IHL would apply to the conflict.<sup>66</sup> A certain threshold of violence triggers IHL, and in a non-international armed conflict this level of violence needs to be persistent, widespread, and organized.<sup>67</sup> It is debatable that AQ in its current form, with a reliance on less than competent and committed homegrown terrorists, reaches this threshold. What the U.S. regards as a legitimate counterterrorism response to AQ, within the confines of “lawful armed conflict might well be regarded by...the rest of the world as something close to...murder.... Targeted killing against a non-state actor by either the armed forces of a state or its civilian agents does not automatically, by reason of the use of force alone, trigger the application of IHL.”<sup>68</sup> The threat from AQAP may be sufficient to trigger the threshold for IHL, and given the U.S. conducts targeted operations in Yemen in support of the Yemeni government, these operations are permissible under IHL. Yet this is not so clear against elements of AQ in Pakistan and AQ and affiliates’ in areas such as North Africa and Somalia, where the threat is not as severe.

The U.S. also violates IHRL through the use of targeted killings, in particular the International Covenant on Civil and Political Rights (ICCPR). In 1992 the U.S. ratified the ICCPR but with a number of exceptions, notably that the ICCPR does not apply extraterritorially. Amnesty International and the UN do not share this interpretation, and both have voiced concern over a number of U.S. targeted operations.<sup>69</sup> Other sovereign states have also criticized targeted killings by the U.S.<sup>70</sup> The legal analysis by Amnesty International and the UN of targeted operations holds that IHRL applies at all times, whether an armed conflict is in effect or not and governments should always seek to detain rather than kill.<sup>71</sup> Killing is the easier option, which removes the need for governments to prove a suspected terrorist's guilt.

It is clear that whilst differences of opinion remain in defining terrorism and armed conflicts, and for as long as international treaty law does not account for transnational terrorism, the U.S. declaration of war with AQ and the use of targeted operations will spark controversy. Much of the international community regards the legal grounds that the centerpiece of U.S. CT strategy rests on, as illegal. The U.S. has blurred and expanded the boundaries of the applicable legal frameworks concerning the use of force through exploitation of broad and ill-defined international treaty law. In the absence of internationally accepted norms regarding terrorism, Philip Alston argues that the starting point to assess the legality of U.S. actions must be the policies and practices of the "vast majority of states" rather than the few that have chosen the policy of targeted killings.<sup>72</sup> In this respect:

the international law community does not accept targeted killings even against al Qaeda, even in a struggle directly devolving from September 11, even when that struggle is backed by U.N. Security Council resolutions authorizing force, even in the presence of a near-declaration of war by Congress in the form of the AUMF, and even given the widespread agreement that the U.S. was both within its inherent rights and authorized to undertake military action against the perpetrators of the attacks.<sup>73</sup>

Whilst the U.S. continues to exploit the ambiguity of international law for its own benefit, which results in violations of other states' sovereignty, civilian casualties through the application of broad targeting criteria, and encourages the preference to kill vice capture terrorist suspects, significant controversy and condemnation will remain surrounding the tactic of targeted kill/capture operations. Despite this controversy, it is clear that the use of this tactic has had a positive effect on U.S. efforts to disrupt AQ and its affiliates' at the tactical and operational level.

### **The Tactical and Operational Effects of Targeted Operations against AQ since 9/11**

Unilateral U.S. kill/capture operations since 9/11 have denied AQ and its affiliates the time and space to plan effective terrorist attacks against U.S. interests and have successfully disrupted the organization at the operational level, causing AQ-Core (AQC) to rely on affiliates and radicalized individuals.<sup>74</sup> Continuous targeted strikes against its leadership have hollowed out AQC. Targeted operations forced the organization out of Afghanistan and dispersed its training camps. Governments in Indonesia, Tunisia, Egypt, Morocco, Saudi Arabia, Jordan, and Turkey have all countered AQ affiliates within their borders. The U.S. has killed or captured the architects of 9/11, killed the organization's leader, and is systematically hunting the remaining leadership members.<sup>75</sup> AQ's self-defeating attacks on Muslim populations and increased intelligence cooperation internationally have also disrupted the core organization.<sup>76</sup> Continual attacks against AQC have forced it to metastasize, a process that has prompted it to become a more decentralized, "diffuse and amorphous phenomenon" that is increasingly reliant on its affiliates, allies, and homegrown terrorists.<sup>77</sup>

AQ, overall, "is in decline, although not finished."<sup>78</sup> The organization has a strong periphery and has switched its focus to encouraging "individual jihad and do-it-yourself

terrorism,”<sup>79</sup> resulting in the “emergence of new, smaller, more dispersed terrorist entities with a more fluid membership that easily gravitates between and among groups that have little or no established modus operandi.”<sup>80</sup> AQ has developed strong relationships with affiliates such as AQAP and AQ in the Islamic Maghreb (AQIM) and allies such as Al Shabaab (AS), and the AQ ideology continues to inspire affiliates, allies, and individuals. According to Audrey Kurth Cronin, “Even if al Qaeda has become less lethal and efficient, its public relations campaigns still allow it to reach potential supporters, threaten potential victims, and project strength.”<sup>81</sup> Yet although AQ remains “resilient and opportunistic” it has been unable to repeat a terrorist attack of the magnitude of 9/11.<sup>82</sup> In order to assess the disruptive effect that targeted kill/capture operations have had on AQ since 9/11, it is necessary to consider the numbers of casualties caused by AQ planned or inspired attacks since September 11, 2001, the metastasizing of the core organization into a more diffuse network that is reliant on affiliates (with the main threat to U.S. interest coming from AQAP), and the evolving threat of homegrown jihadists. The reliance on individual, radicalized homegrown terrorists creates threats that are harder to identify but that are more diffuse and less destructive.

The effect of constant kill/capture operations has been to deny AQ the time and space to plan large-scale terrorist attacks and force reliance upon less capable and determined terrorist operatives. Plans are cruder and more rushed, and thus easier to identify and thwart. The U.S. has not experienced a major terrorist attack for over a decade, the longest period since the 1960s.<sup>83</sup> A crude but obvious measure of effect of the success of kill/capture missions against AQ is the number of U.S. casualties that terrorism has caused since 9/11. The inability of AQ to repeat an attack of the scale of 9/11 and the fact that the U.S. has suffered fewer casualties due to terrorism after 9/11 than before, indicates that U.S. policy towards AQ and its affiliates, of which targeted

kill/capture operations are a key part, has been effective at disrupting the organizations' ability to prosecute successful attacks.<sup>84</sup> Despite this, the lingering psychological effects of 9/11 in the minds of U.S. citizens, combined with AQ's ability to exploit global multimedia,<sup>85</sup> appears to make the threat from Islamist terrorism far more pervasive and dangerous than it actually is.

Despite being operationally degraded, AQC has demonstrated resilience and the ability to maintain its ideology through the growth of affiliates and allies. According to Bruce Hoffman, AQ as a movement has expanded more than 50 percent since 2008, largely due to the emergence or existence of failed states in the Middle East and East Africa. AQ has demonstrated a greater ability to evolve and mobilize more effectively and has exploited the effects of the Arab Spring to increase capacity and longevity.<sup>86</sup> As well as links to AQAP, AQIM, and allies such as AS, AQC has also influenced Pakistani terrorist groups such as Lashkar-e-Taiba (LeT) and the Tehrik-e-Taliban (TTP) to adopt a more global, anti-U.S. agenda. Of all the AQ affiliates and allies, the U.S. considers AQAP to be the most dangerous to national security.<sup>87</sup>

AQAP has the stated intent to plan and implement attacks against the U.S. and has come close to succeeding with plots inside the country twice.<sup>88</sup> A divided tribal society, weak central government rule over the provinces, and the self-serving actions of former Yemeni President, Ali Abdullah Saleh, have seen the movement flourish in Yemen. Combined U.S. and Yemeni security forces' semi-military activity has disrupted AQAP and forced it periodically underground.<sup>89</sup> Targeted operations have killed four senior AQAP members, including the U.S. born cleric Anwar al Awlaki.<sup>90</sup> The use of drone strikes has been at the heart of U.S. tactics towards AQAP, within a broader strategy of military capacity building and civilian development projects.<sup>91</sup> The inaccessibility of targets in remote and dangerous locations has often been used to justify this reliance on drones. As President Obama stated, "Our preference has always been to

capture when we can because we can gather intelligence. But...the most dangerous [terrorist networks] operate in very remote regions and it's very difficult to capture them."<sup>92</sup> However, *difficulty* as a reason to kill over attempts to capture or delay in the use of force until capture is feasible, is not a viable, internationally recognized criterion, particularly if the threat to U.S. interests is not imminent or credible. Targeted operations against AQAP also disrupt the organization in the near-term to allow military and political development to take root. Yet, the use of drones, and the often concomitant civilian casualties, has polarized Yemeni society and created local support for AQAP. The very tactic used to disrupt the terrorist organization results in high anti-U.S. feelings and fuels AQAP's existence. The number of these strikes has increased from a reported one in 2002 to 47 by May 2011; yet, there has been a consistent lack of publicly available accountability regarding targeting criteria and civilian casualties.<sup>93</sup> Despite the tactical disruption caused by drone strikes, AQAP has demonstrated resilience, launching two spectacular attacks against Yemeni security forces in September 2013 and reestablishing control over major provinces, such as Shabwa.<sup>94</sup>

The unrelenting pressure of targeted kill/capture operations has degraded AQ operationally, and increased international intelligence cooperation has created a more dangerous operating environment for the movement. Yet the intent to attack the U.S. remains, and evidence recovered from the Osama Bin Laden raid suggested the AQ leader continued to plan and motivate until his final days. Yet he was communicating to a more decentralized following and had become more reliant on "local recruits to plan and carry out attacks."<sup>95</sup> Between 11 September 2001 and the end of 2011 there were 82 cases of homegrown U.S. terrorists involving 32 plots (69 per cent of which involved a single individual). Two of these cases resulted in jihadist inspired individuals killing U.S. civilians.<sup>96</sup> AQC, AQAP, AS, and the Pakistani groups

LeT and TTP have provided the impetus, direction, and motivation for many of these attempted attacks, which have grown in number throughout the decade since 9/11.<sup>97</sup> Between 2002 and 2010 the U.S. government arrested or indicted more than one-quarter of the 176 individuals connected to recruiting volunteers to send abroad to fight for terrorist groups such as AQAP and AS.<sup>98</sup> This presents a second order homegrown threat if, having received training and radicalization abroad, the individuals return to the U.S. The 2012 Times Square bomber, Faizel Shazad, received training from TTP in Pakistan before returning to the U.S. to conduct his failed attack.<sup>99</sup> These homegrown terrorists are a threat, but they are small in number, incompetent, and lack the same zeal as more experienced foreign terrorists.

Targeted operations have forced AQ to rely upon the Internet more to inspire and radicalize recruits. The number of failed attacks by homegrown terrorists in the U.S. “illustrates the need for terrorists to be physically connected in order to gain competence.”<sup>100</sup> U.S. kill/capture operations have denied AQ this ability to physically connect with recruits sufficiently to present a credible threat. U.S. homegrown terrorists have proven hitherto to lack the competence to be credible “lone wolf” terrorists. Rather, as Brian Jenkins states, it is more apt to refer to them as “stray dogs,” who “may be found alone or in packs, estranged from but dependent on society, streetwise but lacking social skills, barking defiantly, and potentially dangerous but...suspicious, fearful, skittish.”<sup>101</sup>

Despite the seemingly reduced and more disparate threat from radicalized individuals, AQ maintains an advantage in that even one relatively minor successful attack against the U.S. will have a disproportionate effect on U.S. public opinion, and amplify the danger from AQ. One problem in reassuring the U.S. public of the reduced threat from AQ is that it is difficult to measure with any certainty the effect a particular tactic has on a terrorist organization. With AQ

in particular, the problem is also one of diametrically opposed perspectives. Whilst U.S. authorities seek the destruction of AQ and would point to the lack of a major terrorist attack since 9/11 as vindication of their CT strategy and success in defeating AQ, the terrorist organization would view the last decade of U.S. kill/capture operations as a minor tactical inconvenience (with potential strategic benefits) in a perpetual, long-term war with the West that stretches back hundreds of years, and will continue for hundreds more. AQ would list 9/11 and U.S. withdrawal from Iraq and Afghanistan as victories, with the U.S. subsequently “overstretched, weary, and in economic crisis.”<sup>102</sup> AQ determination appears undiminished, but it is difficult to measure the motivation of AQ senior leaders and local recruits. Despite the short-term success of targeted operations against AQ at the tactical and operational level, the perception of the wider Muslim population towards U.S. targeted operations often diminish the effect at the strategic level.

### **The Strategic Effects of Targeted Kill/Capture Operations**

The use of targeted kill/capture operations, whether through drone strikes or SOF raids, has undoubtedly had a positive effect against disrupting AQ threats to the U.S. at the operational level but opinion remains divided over how substantial this effect has been and whether these types of operations should be the centerpiece of U.S. CT strategy. Proponents of the tactic uphold the fact that terrorists can be pursued in inaccessible places, that targeted operations are more precise and thus reduce collateral damage, that they reduce risk (both political and military) by requiring a minimal footprint on the ground, and that they can dismantle a terrorist group’s leadership, which reduces its operational effectiveness.<sup>103</sup> Critics decry the tactic for the longer-term damage that can develop, such as the corrosion of stability within the countries that targeted operations take place, the negative impact they have on perceptions of the U.S., the potential for

increasing the targeted terrorist groups' ability to recruit, and that the use of drones creates a drones arms race between developed countries, with concomitant risk to the norms of IHL and IHRL.<sup>104</sup> U.S. targeted kill/capture operations may have positive short-term disruptive effects against AQ and its affiliates, but the tactic is causing long-term strategic harm, through the undermining of international CT partner nations' credibility, the alienation of local Muslim populations in those countries, the lack of transparency and accountability, and the proliferation of drone technology and its use in targeted killing operations.

The use of targeted operations against terrorist networks by the U.S. is not unique. Israel has a tradition of using targeted killings to bring Arab terrorists to justice because Arab states often protect their targets, which makes capture a risky or often impossible aspiration. Between 2000-2005 the Israeli Defense Force (IDF) targeted 203 Palestinian terrorists, killing them all but causing 114 non-terrorist deaths in the process.<sup>105</sup> In looking at these IDF operations, Daniel Byman has concluded that military action, including the use of targeted kill/capture operations, can only achieve success against terrorist organizations in conjunction with wider social and economic measures. He also concludes that targeted operations are much less successful against established, decentralized terrorist groups, a category that AQ falls into.<sup>106</sup> In "Why Drones Fail," Audrey Kurth Cronin highlights the limited effect of targeted killings against AQ because of its non-hierarchical organizational resilience.<sup>107</sup> Patrick Johnston echoes the need for military activity to be part of a wider campaign to combat the underlying causes of terrorism and describes targeted operations as "game of chance" in which more fail than succeed.<sup>108</sup> Killing can be more effective than capture against high-value individual leaders, but the effect on the wider group depends on the nature of the organization and how much influence leaders have over their followers.<sup>109</sup>

A RAND Research paper titled *How Terrorist Groups End* considered 648 groups between 1968-2006 and concluded that most ended due to police and intelligence efforts, with only seven percent ending due to military force.<sup>110</sup> Price believes, “The violent, clandestine, and values-based nature of terrorist groups makes them particularly susceptible to leadership decapitation” and that decapitation leads to a higher terrorist group mortality rate.<sup>111</sup> Yet there is no guarantee that this mortality will be immediate, only that decapitation has a much greater effect in the early life of a terrorist group. Johnston and Sarbahi claim that drone strikes have “succeeded in curbing deadly terrorist attacks within the targeted territory in Pakistan” by reducing the rate and lethality of attacks but acknowledge that this is only a short-term phenomenon.<sup>112</sup> Smith and Walsh, in using propaganda output of AQ as a metric of operational capacity, argue that there is no clear linkage between the tactic and a reduced operational output.<sup>113</sup> Most analysts accept the short-term benefits that targeted operations have against terrorist groups in reducing operational output. But the efficacy of the tactic would appear limited against terrorist groups that are well established and decentralized, such as AQ, particularly when pursued in isolation from wider social and economic measures.

In parallel with the disputed long-term effects targeted operations have on AQ and its affiliates, the tactic undermines the U.S. strategic relationship with key partner CT nations and alienates the U.S. from the local populations who suffer the effects of targeted operations.<sup>114</sup> This has a possible benefit for terrorist groups in terms of recruiting disenfranchised local Muslims. U.S. targeted operations in Pakistan, Yemen, and Somalia all appear to have had detrimental effects on the local populations of those countries, and in Yemen may have accounted for the three-fold rise in numbers of AQAP.<sup>115</sup> The cause of much of the local population’s hostility towards the U.S. is due to collateral damage. In the context of U.S. targeted operations, collateral

damage refers to the number of “civilians killed in proportion to numbers of combatants killed.”<sup>116</sup> While multiple estimates exist, no irrefutable public data has been collected on the number of drone strikes conducted by the U.S. in the war against terror or the number of civilian casualties that have resulted. This is due to the secrecy surrounding the program but also due to the inaccessibility of the areas where most of the strikes take place and the U.S. government classification of all military aged males in a strike area as militants. The New America Foundation claims that between 2004 and 2012, the U.S. conducted 343 drone strikes in Pakistan and caused 2,698 deaths (10.5 percent of whom were civilians).<sup>117</sup> The Bureau of Investigative Journalism (TBIJ) claims there were 346 strikes in the same period, with between 2,570 and 3,337 deaths (18-26 percent of whom were militants). TBIJ claims that between 2002 and 2012 there were 40-50 targeted strikes in Yemen that caused between 357 and 1,026 deaths (16 percent of whom were civilians).<sup>118</sup> Other monitoring bodies have collected similar data for strikes in Pakistan and Yemen.<sup>119</sup> Part of the reason for civilian casualties appears to be a shift in targeting focus to lower-level terrorists, many of whom are often from local tribes in Yemen or Pakistan, and whose deaths trigger notions of honor and revenge from family members. Targeted operations no longer target just high-value targets (HVTs) – the 49 HVTs killed since 2004 amount to only two percent of the total number of deaths.<sup>120</sup>

According to Michael Boyle, Pakistan has become “more divided and unstable” due to drone strikes, which have created popular hostility against the Pakistani government.<sup>121</sup> The broader targeting of non-AQ groups in the tribal areas of Pakistan has also increased levels of recruitment for Pakistani militant groups in response to civilian casualties and Pakistani government complicity in the use of drones. It has also caused these groups, such as the TTP, to adopt a broader outlook and directly target the Pakistani government and the U.S. – TTP-trained

Faisal Shazad's attempt to bomb Times Square was "blowback from president Obama's embrace of a drones-first counterterrorism policy."<sup>122</sup>

Strategically, drone strikes and SOF raids such as the one that killed bin Laden have undermined the capacity and credibility of Pakistan as a U.S. partner in the global CT framework. The tactic undermines the perception that governments can say no to U.S. strikes and results in violations of state sovereignty. Targeted operations create negative social effects, producing a "wave of terror" locally and "anticipatory anxiety" from the inhabitants of areas subject to targeted killings. This results in inhibited local social and economic activity within areas subjected to drone strikes.<sup>123</sup> Psychologically, to those on the ground, drone strikes are "profoundly arrogant, the act of an enemy so distant and superior that he is untouchable." The tactic emphasizes the gulf in power between the U.S. and AQ and "reinforces popular support for the terrorists, who are seen as David fighting Goliath."<sup>124</sup> According to Mark Bowden, "Arguably the strongest force driving lone-wolf terror attacks...throughout the Western world has been anger over drone strikes."<sup>125</sup> Actual civilian casualties may be much lower than reported, but the perception amongst Pakistani civilians of high civilian casualty figures counts for more.

In Yemen, targeted kill/capture operations have "generated hostility towards the United States and undermined public confidence in the Yemeni government."<sup>126</sup> As in Pakistan, civilian casualties may be the cause of increased recruitment for AQAP, though in Yemen this is more acute as AQAP has woven itself more deeply into Yemeni tribal society than Arab AQ fighters in Pakistan. Members of AQAP are mainly Yemeni, so targeted killings, particularly if focused on lower-level operatives, draw Yemenis to AQAP out of hatred of the U.S. and desire for revenge, or 'thar,' rather than ideological support of AQAP.<sup>127</sup> The accidental targeting of

civilians makes Yemenis “feel like both the Yemeni government and the U.S. government are our enemies.”<sup>128</sup> U.S. targeted operations “are strengthening AQAP’s standing and undercutting U.S. security...AQAP recruits and retains power through its ideology, which relies in large part on the Yemeni people believing that America is at war with them.”<sup>129</sup> These operations destabilize the already unstable Yemeni government, draw international condemnation, and result in reduced international CT cooperation.<sup>130</sup> Many locals do not understand why Yemeni security forces cannot capture U.S. CT targets.<sup>131</sup> U.S. unilateralism has angered moderate tribal leaders who could have checked AQAP but now see duplicity in U.S. actions. As one tribal elder stated, “The U.S. sees AQ as terrorism, and we consider the drones terrorism.”<sup>132</sup> U.S. policy towards Yemen has created an acceptance of AQAP amongst Yemenis and, whilst it may disrupt AQAP’s ability to attack the U.S. in the short-term, it is causing dangerous societal and cultural effects that will make the defeat of AQAP almost impossible.

Much of the controversy surrounding targeted operations exists because of the secret nature of the program. The risks of compromising tactics and intelligence sources often means that covert operations, enabled by classified intelligence, cannot be disclosed to the public. Yet the Obama administration has admitted to the existence of a targeted kill/capture program and takes a rather incongruous approach regarding transparency. Government officials, including President Obama, have acknowledged that the U.S. “conducts targeted strikes against specific al-Qaida terrorists, sometimes using...drones,” but in legal challenges regarding freedom of information requests, the Department of Justice, Department of Defense, and CIA neither confirm nor deny the policy.<sup>133</sup> Pardiss Kebriaei, Senior Staff Attorney at the Center for Constitutional Rights argues that the government “can make...self-serving claims about the legality and legitimacy of the program without drawing the public scrutiny that would ordinarily

follow from fuller disclosures.”<sup>134</sup> Invoking secrecy blocks public and judicial scrutiny over the legality of specific operations, and the internal legal review of the process by administration lawyers does little to dampen the controversy, particularly in light of civilian casualties. The lack of oversight in the selection of individuals as targets and the targeting criteria used against them, combined with little or no accountability when drone strikes or SOF raids cause collateral damage, weaken the U.S. government’s justification for the tactic in the eyes of the international community, who perceive it as taking place in an “accountability vacuum.”<sup>135</sup> One such example that causes controversy is the use of “signature targeting,” which authorizes strikes based on patterns of behavior rather than concrete positive identification of an individual. This can result in a violation of the principle of distinction and cause increased collateral damage.<sup>136</sup>

Despite the current administration advocating the use of targeted kill/capture operations due to their precise, more humane, and tangibly effective nature,<sup>137</sup> the focus on the use of the tactic at the expense of addressing the underlying root causes of terrorism is ineffective in the long-term. Strategically, unilateral and joint targeted operations damage U.S. relationships with key international CT partners and can undermine those host nation governments in the eyes of their domestic electorates. Drone strikes alienate and polarize local communities due to the physical and psychological fear induced by the use of invisible remotely piloted vehicles; civilian casualties exacerbate this polarization, which may also result in greater support for terrorist organizations and aid their recruitment. The lack of accountability and transparency from successive U.S. administrations reinforces the controversy over the use of the tactic, and widespread use of drone strikes enabled by exploitation of weak international treaty law governing targeted killing may encourage current and future U.S. state adversaries to emulate the use of the tactic.

## Conclusion and Recommendations

The prosecution of a global war against AQ defies the notion that war should be a “finite, extraordinary and unnatural state of affairs [that] violates the natural order of things...Peace must be regarded as the norm.”<sup>138</sup> The use of force should be the last, not first resort and enacted by Congress after public debate, for a limited period against a defined threat. As stated by Daskal and Vladeck, creating a constant state of armed conflict with terrorist groups “undermines the important distinction between war and peace...[and changes] the default from peace to war.”<sup>139</sup> The international community disputes the U.S. justification that an armed conflict exists with AQ, particularly as this justification is based on an authorization to use force that is over a decade old.

This is not to say that targeted kill/capture operations do not have an important place in U.S. CT strategy, but the proclivity to use unilateral force in the face of challenges to wider, non-military socioeconomic and political development initiatives must be revised. *The U.S. must maintain its current CT strategy that encompasses a broader DIME approach but renew focus on addressing the underlying causes of terrorism whilst judiciously using targeted kill/capture operations as a last resort.*<sup>140</sup> The U.S. should review engagement strategies with countries such as Pakistan and Yemen and impose stricter control over how aid in those countries is spent. The promise of aid and training should be tied to measurable outputs in political and socioeconomic initiatives. How aid money is spent, and by whom, should also be strictly overseen. According to A.K. Cronin, the current lack of a balanced strategy has resulted in an over-emphasis on tactics at the expense of sustainable, comprehensive solutions – the U.S. has made notable gains, but even if AQ appears to be losing, the U.S. is not winning.<sup>141</sup>

Linked to a more balanced strategy, *the U.S. should also declare an end to the ‘War on Terror.’* An open society like the U.S. will never be completely secure, so the ‘war’ cannot ever end in total victory, especially if by victory the U.S. means to kill or capture all individuals that call themselves AQ and that can attack the U.S. By declaring an end to the war, the U.S. would de-legitimize AQ and alter the domestic perception that AQ still presents a credible threat. The U.S. government cannot eradicate fear, but the de-legitimization of the threat, coupled with a strengthened U.S. resilience to absorb the small terrorist attacks that AQ is still able to prosecute, would go a long way to undermining AQ and its affiliates.<sup>142</sup> Establishing a realistic definition of normality with regard to the terrorist threat would help build a culture of resilience.

Declaring an end to the war against AQ would also force the U.S. to prosecute targeted operations within a law-enforcement paradigm, as IHL would no longer justify the use of force. The U.S. could still prosecute kill/capture operations, but should only do so against high-value targets, rather than against lower level operatives; high-value targets in this context would be strategic or operational leaders of AQ and its’ affiliates, the killing or capturing of whom would have demonstrable effect against the organization’s capacity to plan. These operations should be with the consent of the nation in which the target is based (preferably as a joint operation), or if issues of operational security exist, unilaterally but in accordance with IHRL, with an emphasis on capture. Only where capture is not feasible *and* the target presents a clear and *imminent* threat, should the U.S. prosecute targeted killings, under the pretext of self-defense and in strict accordance with IHL. Revoking the existing AUMF and replacing it with the right of self-defense, in conjunction with law-enforcement operations and partner nation capacity building initiatives, will cater for both the long-term disruption of AQ affiliates and imminent threats in a manner that is more congruent with international law; additionally, disruption operations

conducted by host nation security forces will reduce negative perceptions of the U.S. from local Muslim populations (which may reduce AQ's ability to recruit but will not stop it). If and when the U.S. government prosecutes targeted kill/capture operations, it must do so with greater transparency and accountability regarding the reasons for the operations, the means and criteria used and justify collateral damage within international law criteria.

Greater emphasis should be given to building partner nations' capabilities and capacities, through funding and training. The focus of SOF use should switch from surgical strike operations to Special Warfare, which encompasses Foreign Internal Defense (FID), Preparation of the Environment (PE), and Unconventional Warfare. A "persistent, Special Warfare global engagement campaign" that focuses on upstream threat prevention through capacity building should replace the preference to use force as a first resort with kill/capture operations, except in situations of imminent threat.<sup>143</sup> SOCOM resources should be reapportioned to favor those units that specialize in Special Warfare over the existing preference to fund Special Mission Units within JSOC.<sup>144</sup> These should return to their traditional role of high-end contingency CT, such as providing for hostage rescue, with a stand-by task to provide unilateral surgical kill/capture if the threat from terrorists warrants this response. This institutional switch of focus within SOCOM to capacity building will be challenging for an organization that has feasted on well-resourced kill/capture operations for a decade, but capacity building efforts will build trust, provide peacetime and contingency access, and legitimize host governments in their pursuit of AQ and its affiliates.<sup>145</sup>

The use of drones as a crucial part of the U.S. tactic of targeted operations is also setting potentially dangerous precedents for future conflict, and is an area that warrants further research. The possibility that other major states, such as Russia and China, will emulate the U.S.

propensity for targeted killings through a narrow interpretation of international law, concerns many commentators.<sup>146</sup> China reportedly has 25 drone programs underway, and Iran has also developed its own drone, which it has allegedly supplied to both the Assad regime in Syria and Hezbollah.<sup>147</sup> Drone technology is much cheaper than conventional military aircraft, and China, Israel, and Russia are all aggressively selling the technology on the international market, creating a drone arms race.<sup>148</sup> The possibility of states such as Russia copying the U.S. tactic of targeted killing, both internally and externally, to target dissidents, spies, or even journalists, is a worrying spectacle and would signal the erosion of the norms governing the use of force. There may be a temptation for states with internal grievances to use drones against their own populations, which would erode individual rights and challenge IHRL.<sup>149</sup> Cronin points to the U.S. dependency on low-cost drone technology as a risk, given that it takes away from funding of more conventional platforms and drone usage would be limited against a more sophisticated state adversary, such as China, Russia, or North Korea.<sup>150</sup> *The U.S. should lead on the formulation of international rules governing the use of drones in order to prevent the proliferation of drone use that blurs the boundaries of international legal norms.* By adhering to strict rules in the use of force, whether through drones or SOF operations, the U.S., as the global superpower, is in a position to set the standard and regulate other international actors. The current use of targeted kill/capture operations by the U.S., which exploit a lack of definition in international treaty law, sets dangerous precedents that other states, such as China and Russia, may emulate. The U.S. has an important role to play in leading on the international regulation of the use of force and drone proliferation, but must first set the example if it is seen to be credible.

The use of targeted kill/capture operations by the U.S. since 9/11 as part of the strategy to disrupt, defeat, and dismantle AQ and its associates has had a short-term, positive impact by

disrupting the networks operational ability to plan and conduct large-scale, mass-casualty terrorist attacks. Targeted strikes, on a global scale, have forced a reliance on less capable affiliates, allies, and homegrown individual terrorists. Yet the threat from AQ persists and in places like Yemen, has developed due to a narrow focus on one particular military tactic, often a reflection of the difficulties in implementing wider diplomatic, informational, and economic measures. U.S. international standing as an upholder of the rule of law has been tarnished by a narrow, self-serving interpretation of international law and an opaque kill/capture program that too often results in civilian casualties. This sets a dangerous precedent for other states to copy.<sup>151</sup>

The widespread U.S. use of targeted kill/capture operations blurs the boundaries of international legal norms and creates blowback in the form of polarized local communities and radicalized individuals. The unilateral use of force in other states by the U.S. undermines the ambition of creating an international CT framework of partner nations. Civilian casualties also turn local Muslim populations against the U.S., may contribute to AQ's ability to recruit, and in extreme cases have been directly linked to attempts to target the U.S. homeland. To achieve the longer term national security aims of defeating AQ, the U.S. should recalibrate its use of targeted operations and adopt a more precise, judicious use of force *as the last resort*, whilst redoubling efforts on wider diplomatic, informational, and economic initiatives to counter the threat. Partner nations should be leveraged to provide local solutions to security threats; with the use of U.S. unilateral force reserved for specific and imminent threats after all other options have been exhausted.

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<sup>1</sup> Mark Bowden, "The Killing Machines," *Atlantic* 312, No. 2 (September 2013): 61, <http://search.ebscohost.com/>; Daniel Byman, "Why Drones Work," *Foreign Affairs* 92, no. 4 (July/August 2013), <http://search.ebscohost.com/>.

<sup>2</sup> This paper will not discuss operations in Somalia due to the limited number of strikes conducted there compared to Pakistan and Yemen. Broader U.S. CT initiatives were also

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hampered by the lack of an officially recognized Somali government (the U.S. only recognized the Federal Government of Somalia on 17 January, 2013

[[www.state.gov/r/pa/prs/ps/2013/05/209062.htm](http://www.state.gov/r/pa/prs/ps/2013/05/209062.htm)]).

<sup>3</sup> Steve Niva, “Disappearing Violence: JSOC and the Pentagon’s New Cartography of Networked Warfare,” *Security Dialogue* 44, no. 3 (2013): 185.

<http://sdi.sagepub.com/content/44/3/185>

<sup>4</sup> Schmitt and Shanker cited in Niva, “Disappearing Violence,” 188.

<sup>5</sup> Jeremy Scahill, *Dirty Wars* (London: Serpent’s Tail, 2014), 179.

<sup>6</sup> Niva, “Disappearing Violence,” 193. By 2005, JSOC was conducting approximately 300 raids per month.

<sup>7</sup> Niva, “Disappearing Violence,” 185.

<sup>8</sup> Audrey Kurth Cronin, “U.S. Grand Strategy and Counterterrorism,” *Orbis* (Spring 2012): 13.

<http://search.ebscohost.com/>.

<sup>9</sup> Niva, “Disappearing Violence,” 196.

<sup>10</sup> Craig Cohen and Derek Chollet, “When \$10 Billion Is Not Enough: Rethinking U.S. Strategy toward Pakistan,” *The Washington Quarterly* (Spring 2007): 9,

<http://search.ebscohost.com/>.

<sup>11</sup> Pamela Constable, *Playing with Fire* (New York: Random House, 2011), 98-99.

<sup>12</sup> Ayesha Siddiq, “Pakistan’s Counterterrorism Strategy: Separating Friends from Enemies,” *The Washington Quarterly* (Winter 2011): 150, <http://search.ebscohost.com/>.

<sup>13</sup> Michael Spangler, “Pakistan’s Changing Counterterrorism Strategy: A Window of Opportunity?,” *Parameters* 44, no.1 (Spring 2014): 38, <http://search.ebscohost.com/>.

<sup>14</sup> C. Christine Fair, “The Militant Challenge in Pakistan,” *Asia Policy*, Issue 11 (Jan 2011): 107, <http://search.ebscohost.com/>.

<sup>15</sup> Laila Bokhari, “Radicalization, Political Violence, and Militancy,” in Stephen P. Cohen and others, *The Future of Pakistan* (Washington, D.C: Brookings Institution Press, 2011), 87; Constable, *Playing with Fire*, 124.

<sup>16</sup> Constable, *Playing with Fire*, 238.

<sup>17</sup> Cohen and Chollet, “When \$10 Billion Is Not Enough,” 12.

<sup>18</sup> Cohen and Chollet, “When \$10 Billion Is Not Enough,” 14.

<sup>19</sup> The U.S.-Pakistan relationship is plagued by deep-seated suspicions, by Pakistan that the U.S. is not committed in the long-term to the region and is out to “destroy their religion, trample on their sovereignty, and seize their nuclear arsenal;” and by the U.S. over Pakistan’s selective support of “friendly” militant groups as a proxy foreign policy tool against India. Constable, *Playing with Fire*, 238; Siddiq, “Pakistan’s Counterterrorism Strategy,” 152.

<sup>20</sup> Jeremy Scahill, “The Dangerous Game in Yemen,” *The Nation* (April 2011): 15, <http://search.ebscohost.com/>.

<sup>21</sup> Christina Hellmich, “Fighting Al Qaeda in Yemen? Rethinking the Nature of the Islamist Threat and the Effectiveness of U.S. Counterterrorism Strategy,” *Studies in Conflict and Terrorism* 35 (2012): 626, <http://search.ebscohost.com/>; Eva Sohlman, “Al Qaeda in Yemen Pushed Back, but Terrorism Threat Remains Strong,” *American Foreign Policy Interests* 34 (2012): 253, <http://search.ebscohost.com/>; Gregory Johnsen, *The Last Refuge: Yemen, Al-Qaeda, and the Battle for Arabia* (New York, NY: W. W. Norton and Company, Inc., 2013), 186, Kindle edition.

<sup>22</sup> Scahill, “The Dangerous Game in Yemen,” 17.

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<sup>23</sup> Gregory Johnsen cited in Sohlman, "Al Qaeda in Yemen," 253.

<sup>24</sup> Hellmich, "Fighting Al Qaeda in Yemen?," 623. Yemen is "an amalgamation of disparate territories that lacks strong institutions to run the affairs of the state and to provide services to its citizens."

<sup>25</sup> Government Accountability Office, *Uncertain Political and Security Situation Challenges: U.S. Efforts to Implement a Comprehensive Strategy in Yemen* (Washington, DC: Government Accountability Office, February 2012): 2, <http://search.ebscohost.com/>.

<sup>26</sup> Government Accountability Office, *Uncertain Political and Security Situation Challenges*, 2. \$326m donated to security reform and \$316m donated to civilian assistance.

<sup>27</sup> Johnsen, *The Last Refuge*, 179.

<sup>28</sup> Government Accountability Office, *Uncertain Political and Security Situation Challenges*, 2.

<sup>29</sup> Ismail Khan, "U.S. Drone Strike in Pakistan Is Said to Have Killed 6 Militants," *The New York Times*, January 4, 2015, [http://www.nytimes.com/2015/01/05/world/asia/us-drone-strike-pakistan.html?\\_r=0](http://www.nytimes.com/2015/01/05/world/asia/us-drone-strike-pakistan.html?_r=0); Bill Roggio and Oren Adaki, "US drone strike kills 20 AQAP fighters in Yemen," *The Long War Journal*, November 4, 2014,

[http://www.longwarjournal.org/archives/2014/11/us\\_drone\\_strike\\_kill\\_33.php](http://www.longwarjournal.org/archives/2014/11/us_drone_strike_kill_33.php); "Drone strike kills one of al-Shabab's top leaders," *CBS News*, December 30, 2014, <http://www.cbsnews.com/news/drone-strike-targeted-an-al-shabab-leader/>.

<sup>30</sup> Gabby Sewing, "In Search of Monsters to Destroy: Counterterrorism Policy and the use of Special Forces in the Obama Administration," *St. Edwards University* (2014): 11, [https://sites.stedwards.edu/pangaea/files/2014/07/Pangaea\\_Submission\\_Gabby\\_Sewing-2f3nylg.pdf](https://sites.stedwards.edu/pangaea/files/2014/07/Pangaea_Submission_Gabby_Sewing-2f3nylg.pdf).

<sup>31</sup> The White House, *National Strategy for Counterterrorism* (Washington, DC: Office of the President of the United States, June 2011): 1, [http://www.whitehouse.gov/sites/default/files/counterterrorism\\_strategy.pdf](http://www.whitehouse.gov/sites/default/files/counterterrorism_strategy.pdf)

<sup>32</sup> Philip Alston, "Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions," *United Nations General Assembly Human Rights Council* (May 2010), 3.

<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=category&category=COI&publisher=&type=&coi=PHL&docid=4a0932280&skip=0>.

<sup>33</sup> Jeff McMahan, "Targeted Killing: Murder, Combat or Law Enforcement?," in Claire Finkelstein, Jens David Ohlin, and Andrew Altman, ed., *Targeted Killings: Law and Morality in an Asymmetrical World* (Oxford: Oxford University Press, 2012): 142. According to McMahan there is "legitimate scope for choice" in defining a terrorist as a criminal or combatant due to the inability of the international community to define terrorism and the lack of international treaty law dealing with the threat of transnational, non-state actor terrorism. If terrorists are classed as criminals, then they must be detained and tried in a court of law; hunting and killing them would amount to extra-judicial killing. If they are classed as combatants then a recognized state of war between a state and non-state actor is essential for the activation of IHL.

<sup>34</sup> Kenneth Anderson, "Targeted Killing in US Counterterrorism Strategy and Law," *Legislating the War on Terror: An Agenda for Reform* (Washington, DC: Brookings Institution Press, 2009). <http://scholar.google.com>; Daniel Byman, "Do Targeted Killings Work?," *Foreign Affairs* 85, no. 2 (Mar-Apr 2006). <http://search.ebscohost.com/>; Audrey Kurth Cronin, "The 'War on Terrorism': What Does it Mean to Win?," *The Journal of Strategic Studies* 37, No. 2176 (2014). <http://search.ebscohost.com/>; Pardiss Kebriaei, "The Distance between Principle and Practice in

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the Obama Administration's Targeted Killing Program: A Response to Jeh Johnson," *Yale Law and Policy Review* 31, no. 151 (2012). <http://scholar.google.com>.

<sup>35</sup> "Overview of International Humanitarian Law," *Governance, Social Development, Humanitarian, Conflict Applied Knowledge Services*, accessed December 23, 2014, <http://www.gsdrc.org/go/topic-guides/international-legal-frameworks-for-humanitarian-action/concepts/-principles-and-legal-provisions/overview-of-international-humanitarian-law>.

<sup>36</sup> Nils Melzer. *Interpretive Guidance on the notion of Direct Participation in Hostilities under International Humanitarian Law* (Geneva, International Committee of the Red Cross, 2009): 70, <https://www.icrc.org/eng/assets/files/other/icrc-002-0990.pdf>. "According to treaty and customary IHL applicable in international and non-international armed conflict, civilians enjoy protection against direct attack "unless and for such time" as they take a direct part in hostilities. Civilians directly participating in hostilities do not cease to be part of the civilian population, but their protection against direct attack is temporarily suspended."

<sup>37</sup> Anderson, "Targeted Killing in US Counterterrorism Strategy and Law," 10.

<sup>38</sup> Alston, "Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions;" Jennifer Daskal and Stephen I. Vladeck, "After the AUMF," *Harvard National Security Journal* 5 (2014): 1. <http://harvardnsj.org/wp-content/uploads/2014/01/Daskal-Vladeck-Final1.pdf>.

<sup>39</sup> Vincent-Joel Proulx, "If the Hat Fits, Wear It, If the Turban Fits, Run for Your Life: Reflections on the Indefinite Detention and Targeted Killing of Suspected Terrorists," *Hastings Law Journal* 56, no. 5 (2005): 887, [http://papers.ssrn.com/sol3/Papers.cfm?abstract\\_id=877226](http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=877226); Nils Melzer, *Targeted Killing in International Law* (Oxford: Oxford University Press, 2008): xiii. "Any state-sponsored targeted killing other than those directed against legitimate military targets during the conduct of hostilities must be governed by the international normative paradigm of law enforcement."

<sup>40</sup> Jennifer C. Daskal, "The Geography of the Battlefield: A Framework for detention and Targeting outside the "Hot" Conflict Zone," *University of Pennsylvania Law Review* 161, no. 5 (April 2013): 1233, <http://scholar.google.com>. IHL "confines the conflict to a limited geographic region, ignores the potentially global nature of the threat and unduly constrains the state's ability to respond."

<sup>41</sup> David Kretzmer, "Targeted Killing of Suspected Terrorists: Extra-Judicial Executions or Legitimate means of Defense?," *European Journal of International Law* 16, no. 2 (2005): 201, <http://ejil.oxfordjournals.org/content/16/2/171.short>; Proulx, "If the Hat Fits, Wear It, If the Turban Fits, Run for Your Life," 804.

<sup>42</sup> Ved P. Nanda, "International Law Implications of the United States' 'War on Terror'," *Denver Journal of International Law and Policy* 37 (2009): 513, <http://scholar.google.com>.

<sup>43</sup> Daskal and Vladeck, "After the AUMF," 115.

<sup>44</sup> Defense Department General Counsel [Jeh Johnson](#) in 2012, cited in Masters, "Targeted killings," 3.

<sup>45</sup> Masters, "Targeted killings," 3. These include: confirming that the target presents a significant risk to U.S. interests; cognizance of state sovereignty issues; a high confidence in target identification; a high confidence of low collateral damage; and an additional review if the target is a U.S. citizen.

<sup>46</sup> This uses the past actions of an enemy as evidence of a recurring threat.

<sup>47</sup> Daskal and Vladeck, "After the AUMF," 119.

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<sup>48</sup> Jordan J. Paust, Propriety of Self-Defense Targeting of Members of Al Qaeda and Applicable Principles of Distinction and Proportionality,” *ILSA Journal of International & Comparative Law* 18, no. 2 (Spring 2012): 568, <http://search.ebscohost.com/>.

<sup>49</sup> Daskal and Vladeck, “After the AUMF,” 116. “...the Taliban regime in Afghanistan—behind which al Qaeda had taken refuge—has been removed from power; Osama bin Laden has been killed; the remaining masterminds of 9/11 are either deceased or in U.S. custody; and, perhaps most importantly, the “ranks” of al Qaeda have been “decimated,” such that it no longer poses the threat that it did in the weeks and months before and after September 11.”

<sup>50</sup> Luis E. Chiesa and Alexander K.A. Greenawalt, “Beyond War: Bin Laden, Escobar, and the Justification of Targeted Killing,” *Washington & Lee Law Review* 69 (2012): 1418.

<http://scholar.google.com>.

<sup>51</sup> Kebriaei, “The Distance between Principle and Practice in the Obama Administration's Targeted Killing Program,” 157.

<sup>52</sup> Melzer, *Targeted Killing in International Law*, xii.

<sup>53</sup> Michael J. Boyle, “The Costs and Consequences of Drone Warfare,” *International Affairs* 89, no. 1 (2013): 15, <http://search.ebscohost.com/>.

<sup>54</sup> Brian Glyn Williams, “The CIA’s Covert Predator Drone War in Pakistan, 2004-2010: The History of an Assassination Campaign,” *Studies in Conflict & Terrorism* 33 (2010): 882-883, <http://www.brianglynwilliams.com/pdfs/69327091-7.pdf>.

<sup>55</sup> Jeanne Park, “Interview: Drone Politics in Pakistan”, *Council on Foreign Relations*, 12 October 12, 2012, <http://www.cfr.org/pakistan/drone-politics-pakistan/p29259>, accessed March 21, 2015.

<sup>56</sup> Marty Lederman, “The U.S. Perspectives on the Legal Basis for the bin Laden Operation,” *Opinio Juris*, May 24, 2011, <http://www.opiniojuris.org/tag/bin-laden-killing>. The raid by U.S. SOF to kill Osama bin Laden did violate Pakistani sovereignty but, under the premise of self-defense, the U.S. felt justified in unilaterally conducting the operation as Pakistan was unable or unwilling to “ameliorate the threat from bin Laden...[and]...tipping off the Pakistani officials would have posed a significant risk of compromising any prospect of incapacitating him.”

<sup>57</sup> Johnsen, *The Last Refuge*, 260.

<sup>58</sup> Accurate figures for civilian casualties remain difficult to obtain. A number of tracking organizations such as The Long War Journal, The Bureau of Investigative Journalism, and the New America Foundation compile statistics of civilian casualties, but gaining fidelity on exact figures remains challenging. There are numerous cases of collateral damage caused by targeted kill/capture operations, two of which are listed: Human Rights Watch Report, *Between a Drone and Al-Qaeda: The Civilian Cost of US Targeted Killings in Yemen* (New York, NY: Human Rights Watch, 2013), 5. <http://www.hrw.org/node/119909/section/1>. A strike by the U.S. on a suspected AQ training camp in Majalah, Yemen, in 2002, killed 41 civilians and included the use of cluster munitions; “Naming the Dead,” *The Bureau of Investigative Journalism*, accessed December 29, 2014, <http://www.thebureauinvestigates.com/namingthedead/strikes/b6/?lang=en>. A drone strike in Bajuar Agency, Pakistan, in Oct 2006 targeting Ayman al-Zawahiri resulted in the deaths of between 81 and 83 people, 59 of whom were children 16 years old or younger.

<sup>59</sup> Human Rights Watch Report, *Between a Drone and Al-Qaeda*, 87. “US statements and actions indicate that US forces are applying an overly broad definition of “combatant” in targeted attacks, for example by designating persons as lawful targets based on their merely being members, rather than having military operational roles, in the armed group.”

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<sup>60</sup> Kebriyai, "The Distance between Principle and Practice in the Obama Administration's Targeted Killing Program," 166.

<sup>61</sup> Kebriyai, "The Distance between Principle and Practice in the Obama Administration's Targeted Killing Program," 158.

<sup>62</sup> Human Rights Watch Report, *Between a Drone and Al-Qaeda*, 4. Specifically the strikes against Hamid al-Radmi and Adnan al-Qadhi in Yemen.

<sup>63</sup> Amnesty International USA, "An Extrajudicial Execution by the CIA?" cited in Anderson, "Targeted Killing in US Counterterrorism Strategy and Law," 15.

<sup>64</sup> Johnsen, *The Last Refuge*, 179.

<sup>65</sup> Michael P. Noonan, "Terrorists Can Run, But Can They Hide?," *US News* October 11, 2013, <http://www.usnews.com/opinion/blogs/world-report/2013/10/11/libya-somalia-and-the-shift-toward-special-operations-forces>; James Kitfield, "5 Takeaways from the U.S. Special Ops Raids in Somalia and Libya," *Defense One*, October 8, 2013, <http://www.defenseone.com/management/2013/10/five-takeaways-us-special-forces-raids-somalia-and-libya/71576/>. Two SOF raids in October 2013 provide an indication of the preference to capture over kill. The first was conducted in Libya and resulted in the apprehension of Abu Anas Al-Liby, who was implicated in the 1998 AQ embassy bombings in Kenya and Tanzania. This was a joint JSOC-law enforcement operation aimed at detaining an individual who it was believed was trying to develop AQ North Africa cells. The second raid, conducted on the same day, saw an attempt to capture a key Al Shabaab commander in Somalia. The operation was aborted after heavy resistance forced the SOF operators to withdraw in order to prevent collateral damage, as it was deemed too difficult to secure the target alive.

<sup>66</sup> Kebriyai, "The Distance between Principle and Practice in the Obama Administration's Targeted Killing Program," 171.

<sup>67</sup> Anderson, "Targeted Killing in US Counterterrorism Strategy and Law," 11.

<sup>68</sup> Anderson, "Targeted Killing in US Counterterrorism Strategy and Law," 12.

<sup>69</sup> Amnesty International USA, "An Extrajudicial Execution by the CIA?" *Amnesty International* cited in Anderson, "Targeted Killing in US Counterterrorism Strategy and Law," 14. Amnesty International, in response to the drone killing of Haitham al-Yemeni in Pakistan, in 2005, stated that the "USA had carried out an extrajudicial killing, in violation of International Law." The U.S. and Pakistan should have cooperated to arrest Al-Yemeni; Asma Jahangi, "Report of the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, Addendum: Summary of Cases Transmitted to Governments and Replies Received," *UN Economic and Social Council, Commission on Human Rights*, March 24, 2004 cited in Anderson, "Targeted Killing in US Counterterrorism Strategy and Law," 15. In response to the killing of AQ member Ali Qaed Senyan al-Harhi in Yemen, in November 2002, the UN Special Rapporteur called the drone strike a "clear case of extrajudicial killing."

<sup>70</sup> Anderson, "Targeted Killing in US Counterterrorism Strategy and Law," 15. Swedish Foreign Minister Anna Lindh criticized the drone strike that killed an AQ operative and five unknown males in Yemen, in November 2002, stating, "Even terrorists must be treated according to international law. Otherwise, any country can start executing those whom they consider terrorists."

<sup>71</sup> Anderson, "Targeted Killing in US Counterterrorism Strategy and Law," 15.

<sup>72</sup> Alston, "Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions," 3.

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- <sup>73</sup> Anderson, "Targeted Killing in US Counterterrorism Strategy and Law," 16.
- <sup>74</sup> Jenkins, *Stray Dogs and Virtual Armies: Radicalization and Recruitment to Jihadist Terrorism in the United States Since 9/11* (Arlington, VA: RAND Corporation, 2011): vii, <http://grc04w.grc.usmcu.edu/iii/encore/search/>.
- <sup>75</sup> Daskal and Vladeck, "After the AUMF," 116.
- <sup>76</sup> Brian M. Jenkins, *Al Qaeda in Its Third Decade* (Arlington, VA: RAND Corporation, 2012), 2.
- <sup>77</sup> Bruce Hoffman, "The Changing Face of Al Qaeda and the Global War on Terrorism," *Studies in Conflict and Terrorism* 27, no. 6 (November / December 2004): 556, <http://search.ebscohost.com/>.
- <sup>78</sup> Jenkins, *Al Qaeda in Its Third Decade*, viii.
- <sup>79</sup> Jenkins, *Stray Dogs and Virtual Armies*, vii.
- <sup>80</sup> Bruce Hoffman, "Al Qaeda's Uncertain Future," *Studies in Conflict & Terrorism* 36, no. 8 (August 2013): 647, <http://search.ebscohost.com/>.
- <sup>81</sup> Audrey Kurth Cronin, "Why Drones Fail," *Foreign Affairs* 92, No. 4 (July/August 2013), <http://search.ebscohost.com/>.
- <sup>82</sup> Jenkins, *Al Qaeda in Its Third Decade*, viii.
- <sup>83</sup> Jenkins, *Al Qaeda in Its Third Decade*, 6.
- <sup>84</sup> "Terrorist attacks and related incidents in the United States," Robert Johnston, *Johnston Archive*, last modified 21 December 2014, <http://www.johnstonsarchive.net/terrorism/wrjp255a.html>. In the decade preceding 9/11, the U.S. suffered 233 casualties as a result of Islamist terrorist attacks. If the casualties from 9/11 are included, the total is 3,216. Since 9/11, the U.S. has suffered just 28 deaths related to Islamist terrorism.
- <sup>85</sup> A sophisticated online messaging strategy, manifest in an online magazine (*INSPIRE*), and regular anti-western messages on popular channels such as YouTube, enable AQAP to attract support.
- <sup>86</sup> Bruce Hoffman cited in Christopher M. Faulkner, "The Emergence of Al Qaeda in the Arabian Peninsula (AQAP) and the Effectiveness of US Counterterrorism Efforts," *Global Security Studies* Vol. 5, no. 2 (Winter 2014): 2, <http://search.ebscohost.com/>.
- <sup>87</sup> Rowan Scarborough, "Terrorists Adapting to Avoid U.S. Drones," *The Washington Times*, January 4, 2015.
- <sup>88</sup> "Al Qa'ida in the Arabian Peninsula (AQAP)," *The National Counterterrorism Center*, accessed 23 December 2014. <http://www.nctc.gov/site/groups/aqap.html>. The first of these was on 25 December 2009 when Umar Farouk Abdulmutallab attempted to detonate explosives aboard a Northwest Airlines flight. The second incident occurred in October 2010 and involved explosive packages (ink cartridges) being sent to the U.S.
- <sup>89</sup> Faulkner, "The Emergence of Al Qaeda in the Arabian Peninsula," 8. "Semi-military" means the use of drones as an alternative to conventional military activity.
- <sup>90</sup> Faulkner, "The Emergence of Al Qaeda in the Arabian Peninsula," 6.
- <sup>91</sup> John O. Brennan, "U.S. Policy toward Yemen," *Council on Foreign Relations*, August 8, 2012, <http://www.cfr.org/united-states/us-policy-toward-yemen/p28794>. "These are the pillars of our comprehensive approach to Yemen: supporting the transition, strengthening governance and institutions, providing humanitarian relief, encouraging economic reform and development, and improving security and combatting AQAP."

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- <sup>92</sup> President Barack Obama interview with CNN in Chris Woods, “Obama’s Five Rules for Covert Drone Strikes,” *The Bureau of Investigative Journalism*, 6 September 2012. <http://www.thebureauinvestigates.com/2012/09/06/obamas-five-rules-for-covert-drone-strikes/>
- <sup>93</sup> Faulkner, “The Emergence of Al Qaeda in the Arabian Peninsula,” 10.
- <sup>94</sup> Faulkner, “The Emergence of Al Qaeda in the Arabian Peninsula,” 11-12.
- <sup>95</sup> Jenkins, “Stray Dogs and Virtual Armies,” 1.
- <sup>96</sup> Joseph Abrams, “Little Rock Shooting Suspect Joins Growing List of Muslim Converts Accused of Targeting U.S.,” *Fox News*, 02 June 2009, <http://www.foxnews.com/story/2009/06/02/little-rock-shooting-suspect-joins-growing-list-muslim-converts-accused/>. Private William Long was killed by Abdulhakim Muhammed in retaliation for U.S. involvement in Iraq and Afghanistan; Manny Fernandez and Alan Blinder, “At Fort Hood, Wrestling With Label of Terrorism,” *The New York Times*, 8 April 2014. [http://www.nytimes.com/2014/04/09/us/at-fort-hood-wrestling-with-label-of-terrorism.html?\\_r=0](http://www.nytimes.com/2014/04/09/us/at-fort-hood-wrestling-with-label-of-terrorism.html?_r=0). Major Nidal Hasan killed 12 U.S. servicemen and 1 civilian at Fort Hood, Texas. This was in response to U.S. involvement in wars against Muslims. Hasan had sent emails to the U.S. born AQAP cleric, Anwar al Awlaki in the days prior to the shooting.
- <sup>97</sup> Jenkins, “Stray Dogs and Virtual Armies,” 6. There were six cases in 2002, rising to 20 in 2010, with a total number of 176 individuals involved in terrorist plots against the U.S. in the same period.
- <sup>98</sup> Jenkins, “Stray Dogs and Virtual Armies,” 13.
- <sup>99</sup> Jenkins, “Stray Dogs and Virtual Armies,” 12.
- <sup>100</sup> Jenkins, “Stray Dogs and Virtual Armies,” 21.
- <sup>101</sup> Jenkins, “Stray Dogs and Virtual Armies,” 22.
- <sup>102</sup> Jenkins, *Al Qaeda in Its Third Decade*, ix.
- <sup>103</sup> Boyle, “The Costs and Consequences of Drone Warfare,” 4.
- <sup>104</sup> Boyle, “The Costs and Consequences of Drone Warfare,” 3.
- <sup>105</sup> Byman, “Do Targeted Killings Work?,” 3.
- <sup>106</sup> Byman, “Do Targeted Killings Work?,” 7-8.
- <sup>107</sup> Cronin, “Why Drones Fail.”
- <sup>108</sup> Patrick B. Johnston, “Does Decapitation Work? Assessing the Effectiveness of Leadership Targeting in Counterinsurgency Campaigns,” *International Security* 36, No. 4 (Spring 2012), 66. [http://www.mitpressjournals.org/doi/abs/10.1162/ISEC\\_a\\_00076#.VKIZh1rpgyE](http://www.mitpressjournals.org/doi/abs/10.1162/ISEC_a_00076#.VKIZh1rpgyE).
- <sup>109</sup> Johnston, “Does Decapitation Work?,” 66.
- <sup>110</sup> RAND Corporation, *How Terrorist Groups End* (Santa Monica, CA: RAND Corporation, 2008), 2. [www.RAND.org](http://www.RAND.org).
- <sup>111</sup> Bryan C. Price, “Targeting Top Terrorists: How Leadership Decapitation Contributes to Counterterrorism,” *International Security* 36, No. 4 (Spring 2012): 23, <http://search.ebscohost.com/>.
- <sup>112</sup> Patrick Johnston and Anoop K. Sarbahi, “The Impact of US Drone Strikes on Terrorism in Pakistan and Afghanistan,” *Unpublished Manuscript* (2013): 3, <http://scholar.google.com>.
- <sup>113</sup> Megan Smith and James Igoe Walsh, “Do Drone Strikes Degrade Al Qaeda? Evidence from Propaganda Output,” *Terrorism and Political Violence* 25, no. 2 (2013): 325, <http://scholar.google.com>.

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<sup>114</sup> Boyle, “The Costs and Consequences of Drone Warfare,” 27; Cronin, “Why Drones Fail;” Daskal and Vladeck, “After the AUMF,” 140; Faulkner, “The Emergence of Al Qaeda in the Arabian Peninsula,” 9.

<sup>115</sup> Micah Zenko, “The Seven Deadly Sins of John Brennan” cited in Boyle, “The Costs and Consequences of Drone Warfare,” 20; Ibrahim Mothana, “How Drones Help Al Qaeda,” *The New York Times*, June 13, 2012. [http://www.nytimes.com/2012/06/14/opinion/how-drones-help-al-qaeda.html?\\_r=2&:](http://www.nytimes.com/2012/06/14/opinion/how-drones-help-al-qaeda.html?_r=2&:) “In 2009, A.Q.A.P. had only a few hundred members and controlled no territory; today it has, along with Ansar al-Sharia, at least 1,000 members.”

<sup>116</sup> Paust, Propriety of Self-Defense Targeting of Members of Al Qaeda,” 577.

<sup>117</sup> “Drone Wars Pakistan: Analysis,” *New America International Data Security Site*, accessed February 5, 2015, <http://securitydata.newamerica.net/drones/pakistan/analysis>.

<sup>118</sup> Boyle, “The Costs and Consequences of Drone Warfare,” 6-7; Human Rights Watch Report, *Between a Drone and Al-Qaeda*, 24. Interview with Gregory Johnsen, 24.

<sup>119</sup> “Charts on U.S. Strikes,” *The Long War Journal*, last modified December 26, 2014, <http://www.longwarjournal.org>. The Long War Journal cites a total of 326 drone strikes in Pakistan between 2004-2012, with 2,593 casualties (6% civilian) and 58 strikes in Yemen between 2002-2012, with 383 casualties (21% civilian).

<sup>120</sup> Boyle, “The Costs and Consequences of Drone Warfare,” 9. “The remaining 98 per cent of drone strikes have been directed against lower-ranking operatives, only some of whom are engaged in direct hostilities against the United States, and civilians.”

<sup>121</sup> Boyle, “The Costs and Consequences of Drone Warfare,” 16.

<sup>122</sup> Boyle, “The Costs and Consequences of Drone Warfare,” 1; Daniel Klaidman, *Kill or Capture* (Boston, NY: Houghton Mifflin Harcourt, 2012), 119.

<sup>123</sup> Boyle, “The Costs and Consequences of Drone Warfare,” 21.

<sup>124</sup> Bowden, “The Killing Machines,” 61

<sup>125</sup> Bowden, “The Killing Machines,” 61; Cronin, “Why Drones Fail;” Boyle, “The Costs and Consequences of Drone Warfare,” 1.

<sup>126</sup> Human Rights Watch Report, *Between a Drone and Al-Qaeda*, 24.

<sup>127</sup> Gregory D. Johnsen, “How We Lost Yemen,” *Foreign Policy* (August 2013): 2, [http://www.foreignpolicy.com/articles/2013/08/06/how\\_we\\_lost\\_yemen\\_al\\_qaeda](http://www.foreignpolicy.com/articles/2013/08/06/how_we_lost_yemen_al_qaeda).

<sup>128</sup> Human Rights Watch Report, *Between a Drone and Al-Qaeda*, 60. HRW interview with Abd al-Aziz Muhammad Ali.

<sup>129</sup> Daskal and Vladeck, “After the AUMF,” 139; Farea al-Muslimi cited in Daskal and Vladeck, “After the AUMF,” 141.

<sup>130</sup> Daskal and Vladeck, “After the AUMF,” 141. In 2011 Germany restricted intelligence to the U.S. based on a fear that it would be used for targeted killings.

<sup>131</sup> Human Rights Watch Report, *Between a Drone and Al-Qaeda*, 32-33, 48. In at least 2 of the 6 targeted killing operations reviewed by HRW, the targets were well known to local government and security officials and followed predictable routes and patterns of activity. (Hamid al Radmi and Adnan al Qadhi).

<sup>132</sup> Sheik Ali Abdullah Abdulsalam, cited in Jeremy Scahill, “Target: Yemen,” *The Nation* (March 2012): 18, <http://search.ebscohost.com/>.

<sup>133</sup> John Brennan cited in Kebriaei, “The Distance between Principle and Practice in the Obama Administration's Targeted Killing Program,” 167; The New York Times Company, Charlie Savage, Scott Shane, American Civil Liberties Union versus U.S. Department of Justice,

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Department of Defense, Central Intelligence Agency, 13-422 (U.S. Court of Appeals 2014). [https://www.aclu.org/sites/default/files/assets/targeted\\_killing\\_foia\\_appeal\\_ruling.pdf](https://www.aclu.org/sites/default/files/assets/targeted_killing_foia_appeal_ruling.pdf). Freedom Of Information Act request by ACLU and NY Times journalists. A “Glomer” response was put forward by the CIA, which neither confirms nor denies the existence of documents relating to the targeting of Anwar al-Awlaki, in the interests of national security.

<sup>134</sup> Kebriyai, “The Distance between Principle and Practice in the Obama Administration's Targeted Killing Program,” 68.

<sup>135</sup> Alston, “Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions,” 3.

<sup>136</sup> Kebriyai, “The Distance between Principle and Practice in the Obama Administration's Targeted Killing Program,” 166; Masters, “Targeted killings,” 8.

<sup>137</sup> Michael J. Boyle, “Is the US Drone War Effective?,” *Current History* 113, no. 762 (April 2014): 140.

<sup>138</sup> Daskal and Vladeck, “After the AUMF,” 118.

<sup>139</sup> Daskal and Vladeck, “After the AUMF,” 129-130.

<sup>140</sup> In this context, last resort would entail a threat that is clearly highlighted by multi-source intelligence to be imminent, credible, and where the threat individual or group is located in an area where capture is unfeasible (due to risk to ground forces, inaccessibility due to terrain, or lack of a partner nation’s willingness or capacity to act).

<sup>141</sup> Cronin, “The ‘War on Terrorism’: What Does it Mean to Win?,” 176.

<sup>142</sup> Cronin, “The ‘War on Terrorism’: What Does it Mean to Win?,” 191; Jenkins, *Al Qaeda in Its Third Decade*, 18.

<sup>143</sup> Alan J. Shumate, “Employing U.S. Army Special Forces to Defeat America’s Emerging Threats,” *U.S. Army War College* (April 2013): 4, <http://search.ebscohost.com/>.

<sup>144</sup> Such as US Army Special Forces (Green Berets) and US Marine Corps Special Operations Command (MARSOC).

<sup>145</sup> To host nation infrastructure and intelligence.

<sup>146</sup> Cronin, “Why Drones Fail,” Boyle, “The Costs and Consequences of Drone Warfare,” Daskal and Vladeck, “After the AUMF.”

<sup>147</sup> Boyle, “The Costs and Consequences of Drone Warfare,” 22.

<sup>148</sup> Boyle, “The Costs and Consequences of Drone Warfare,” 22.

<sup>149</sup> Boyle, “The Costs and Consequences of Drone Warfare,” 22-26.

<sup>150</sup> Cronin, “Why Drones Fail,” 7.

<sup>151</sup> Byman, “Do Targeted Killings Work?,” 8.

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