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**THE DRONE DILEMMA: INVESTIGATING THE CAUSES
OF CONTROVERSY BETWEEN THE UNITED STATES
AND PAKISTAN**

by

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December 2014

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BETWEEN THE UNITED STATES AND PAKISTAN**

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ABSTRACT

The thesis examines the effects of U.S. drone strikes on Pakistan's politics, internal security, and relationship with the United States. It analyzes the perspectives of the United States and Pakistan within the realm of national interests, legal framework, and ethical aspects, as well as considers short-term benefits and long-term consequences. Whatever the tactical efficacy of drone strikes may be, they have contributed to anti-American feelings and a growing trust deficit between the United States and Pakistan, and adversely affected the actual cause of fighting terrorism.

The thesis concludes that drones have not achieved significant success in the war on terror. The attacks have achieved tactical successes at a very heavy cost for Pakistan—and possibly to the detriment of the global war on terror. Drone operations have supplemented terrorist recruitment and resolve, pumped up anti-U.S. feeling in Pakistan and across the globe, and have set up dangerous precedents for countries potentially possessing other countries. The study offers a number of recommendations that are not new, but if followed can promote improvement at every tier.

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LIST OF ACRONYMS AND ABBREVIATIONS

AUMF	Authorization for Use of Military Force
CCF	Continuous Combatant Function
CIA	Central Intelligence Agency
COIN	Counterinsurgency operations
EO	Executive Order
EU	European Union
FATA	Federally Administered Tribal Areas
GWOT	global war on terror
HVT	high-value targets
ICJ	International Court of Justice
IDP	internally displaced person
IHL	International Humanitarian Law
IHRL	International Human Right Law
ISI	Inter Services Intelligence
LEAs	Law Enforcement Agencies
LTTE	Liberation Tigers of Tamil Eelam
NATO	North Atlantic Treaty Organization
PPG	Presidential Policy Guidelines
TTP	Tehreek-e-Taliban Pakistan
U.S.	United States
USAF	United States Air Force

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I. THE DRONE DILEMMA: INVESTIGATING THE CAUSES OF CONTROVERSY BETWEEN THE UNITED STATES AND PAKISTAN

This thesis analyzes the stance of both the United States and Pakistan on drone strikes through the lenses of mutual interests, legality, and strategic consequences. Although the United States and Pakistan are close allies with a common goal in the global war on terror (GWOT), the two nations diverge on the strategic reasons and protocols for drone strikes inside Pakistan. This disparity not only puts pressure on the relationship between the United States and its long-standing ally in South Asia, but it also has serious implications in international politics—in the region and in the world—in terms of the violation of national sovereignty and human rights, as well as international law. The fundamental issue at the heart of this thesis is why and how the United States and Pakistan disagree on drone strikes. In light of this disagreement, how does the United States' use of drones undermine its long-term interests in Pakistan and in the GWOT?

A. SIGNIFICANCE

The relationship between the United States and Pakistan is often described as “three marriages and two divorces.”¹ The pattern of the relationship—and its cyclical high points and low points—suggest common goals, but different priorities, and its regional dynamics have always had a profound impact on the relationship of both countries; however, after 9/11, the relationship

¹Janani Ramachandran, “Determinants of Anti-Americanism in Pakistan” (undergraduate thesis, Center for Democracy, Development, and Rule of Law, Stanford University, 2014), 24. The three marriages referred to are Pakistan's entry into Cold War in the 1950s, General Zia and the Afghan War of 1979, and the alliance after the GWOT. The divorces are the 1965 War arms sanctions, and Soviet withdrawal and American sudden exit from the region; Mark N. Katz, “Pakistan and the ‘War on Terror’: War on Terror in Perspective,” Middle East Policy Council, <http://www.mepc.org/articles-commentary/commentary/pakistan-and-war-terror?print>.

reached its lowest ebb in almost 60 years of alliance.² U.S. drone strikes in Pakistan have much to do with this development.

B. THE U.S.-PAKISTAN RELATIONSHIP

After independence in 1947, Pakistan's security and economic interests coincided with the U.S. urge to check the spread of communism in Asia; hence Pakistan became an American protégé.³ Nonetheless, the relationship always faced turbulence due to both countries' divergent interests on China and India—Pakistan's principal concern. Historic events like the trade sanctions and arms embargo on Pakistan after the 1965 Pakistan-India War, the dismemberment of Pakistan in 1971, and the abrupt disengagement of the United States from the region after the 1979 Soviet-Afghan War have adversely affected the relationship.⁴

Until 9/11, Pakistan was under two layers of sanctions: one set barred U.S. military and economic assistance to Pakistan due to 1998 nuclear tests, and a second set imposed in 1999 due to the removal of the democratic government by General Pervez Musharraf.

The legacy of this important phase of U.S.-Pakistan relations is characterized by a “trust deficit”—and it persisted even after the old allies

² Danial S. Markey, “The Future of U.S.-Pakistan Relations in an Asian Context,” Council on Foreign Relations, July 14, 2011, <http://www.cfr.org/projects/world/the-future-of-us-pakistan-relations-in-an-asian-context/pr1553>.

³ Stephen Cohen, *The Pakistan Army* (Karachi, Pakistan: Oxford University Press, 1988), 64.

⁴ “A Realistic Approach to U.S.-Pakistan Relations,” Centre of National Interest, [www.cftni.org/8-22%20Summary%20\(Final\).pdf](http://www.cftni.org/8-22%20Summary%20(Final).pdf); Alex Wagner, “Bush Waives Nuclear-related Sanctions on India, Pakistan,” Arms Control Association, http://www.armscontrol.org/act/2001_10/sanctionsoct01. Though the nuclear sanctions were waived and the relationship improved after 9/11 events, the relationship soured drastically on the drone issue, particularly after 2009. The thesis will specifically focus on the drone controversy that affected the relationship while fighting the GWOT. The GWOT after 9/11 offered the United States and Pakistan the chance to redefine their relationship, which had been characterized by tension, turbulence, and recrimination since Pakistan's nuclear tests in 1998.

rediscovered each other in the necessity of battling the Taliban in Afghanistan.⁵ The United States believes that Pakistan is involved in a double game—allied with the United States in Afghanistan, but supporting U.S. enemies in Pakistan, and thus is reluctant to take stern action against pro-Pakistan militant groups like the Haqqani network and its affiliates,⁶ who, in their turn, support al-Qaeda. Indeed, in June 2011 the U.S. “National Strategy for Counterterrorism” specifically identified the locus of al-Qaeda’s “core leadership” and organization as “Afghanistan and Pakistan,” lumping Pakistan in the enemy category by association. The document also characterized Pakistan’s Federally Administered Tribal Areas (FATA) as al-Qaeda’s “base for operation” and a “safe haven.”⁷

Pakistan denies these charges and continues to provide vital support to the coalition forces in Afghanistan. U.S. strategists do acknowledge Pakistan’s assistance—the same document, “National Security for Counterterrorism,” refers to Pakistan as a “partner” and identifies U.S. efforts as undertaken “in conjunction with the government of Pakistan.”⁸ Pakistan’s perceived unwillingness in the initial years of the GWOT to act against the al-Qaeda leadership and Haqqani network prompted the United States to authorize drone strikes in Pakistan-sovereign territory of FATA, which has created unintended consequences for both countries.

The United States views drones as one of the most effective instruments in its counterterrorism arsenal, sparing precious blood and treasure on all sides of the conflict by pinpointing and eliminating terrorists hiding, often in plain sight,

⁵ David O. Smith, “Facing Up to the Trust Deficit: The Key to an Enhanced U.S.-Pakistan Defense Relationship,” *Strategic Insight* VI, no. 4 (June 2007): 8–11, <https://www.hsdl.org/?view&did=474939>; “U.S.-Pakistan Trust Deficit,” Council on Foreign Relations, October 15, 2009, <http://www.cfr.org/pakistan/us-pakistan-trust-deficit/p20411>.

⁶ Jalal ud din Haqqani was founder of the network, who was once the blue-eyed boy of the United States during 1979 Afghan War. Presently, based in the tribal area of North Waziristan in Pakistan, the network has been carrying out violent activities against the coalition forces in east Afghanistan, mainly in Paktika, Ghazni, Khost, and even Kabul. They are pro-Pakistan and are suspected of being supported by the intelligence agencies of Pakistan.

⁷ The White House, *National Strategy for Counterterrorism, 2011* (Washington, DC: GPO, 2011), 9–13, http://www.whitehouse.gov/sites/default/files/counterterrorism_strategy.pdf.

⁸ *Ibid.*, 13.

among a noncombatant population.⁹ The problem is that this population is in the sovereign and allied state of Pakistan, and the targeting is not always so accurate, nor the devastation so circumscribed. The Pakistani public was not consulted and did not approve of these tactics. The drone strikes continued, now couched in terms that paint the entire human landscape as “the enemy.” These strikes have fomented a crisis of the greatest gravity.

Internally, the democratic governments that succeeded Musharraf—whose dictatorial regime confronted few problems over drone strikes—have faced serious domestic and political outrage over drone strikes. Internationally, the policy threatens permanent harm to U.S.-Pakistan relations, to say nothing of international law. The implications have led to critical problems: repercussions for the long-standing alliance, costs of undermining international principles, and a preference for tactical benefits vis-à-vis strategic consequences.

C. THE CHANGING VIEW FROM PAKISTAN

Before 9/11, Pakistan had a measure of control in Afghanistan through the Taliban; however, after 9/11, when the Taliban failed to hand over Osama bin Laden, Pakistan had to choose between the Taliban and the U.S.-led coalition. Moreover, it reconciled itself to the loss of Afghanistan in exchange for the lifting of American sanctions and financial support from the international community. The hope was that it would lead to more collaboration with the United States and an increased supply of arms. Moreover, amid waning popular support, President Pervez Musharraf’s authoritarian regime also required legitimacy from the United States to establish him as a “good dictator.” Washington, however, did not see

⁹ Patrick B. Johnston and Anoop K. Sarbahi, “The Impact of U.S. Drone Strikes on Terrorism in Pakistan and Afghanistan,” February 11, 2014, 1–3, <http://patrickjohnston.info/materials/drones.pdf>.

this alliance in the same context. It re-established military cooperation on its own terms, but was not inclined to meet Pakistan's demand.¹⁰

In Pakistan, there is a genuine lack of popular support for the GWOT because it is seen as an American war being fought by Pakistan.¹¹ Pakistan sees the sacrifices that it has made in the name of GWOT and its long-standing, if only sporadically requited, relationship with the United States. As the war progressed, Pakistan authorities discovered the heavy strategic cost that they had to pay for taking a side in the GWOT.¹²

The strategic cost is attributed to two factors: repercussions and backlash from extremist elements for fighting America's war, and the Taliban going out of complete control despite years of investment. Due to the GWOT, almost 5,000 Pakistan military personnel have lost their lives; the death toll for civilians is around 45,000.¹³ Foreign investment dropped significantly and Pakistan's economy has suffered almost \$100 in billion losses in the 12 years of the GWOT.¹⁴ Pakistan deployed thousands of troops along the western frontiers bordering Afghanistan and provided logistical support to U.S. and North Atlantic Treaty Organization (NATO) forces, including the bases for air and drone strikes in Afghanistan.¹⁵ Meanwhile, the United States has expanded drone strikes into

¹⁰Christophe Jaffrelot, *The History of Pakistan and Its Origins* (London: Wimbledon Publishing Company, 2002), 278–279; Musarrat Jabben, "Either You Are with Us or Against Us," *South Asian Studies* 24, no.2 (July–December 2009): 177, <http://pu.edu.pk/images/journal/csas/PDF/1-Mussarat%20Jabeen.pdf>.

¹¹Sikander Ahmed Shah, "War on Terrorism: Self Defense, Operation Enduring Freedom, and the Legality of U.S. Drone Attacks in Pakistan," *Washington University Global Studies Law Review* 9, no. 1 (2010): 84, http://openscholarship.wustl.edu/law_globalstudies/vol9/iss1/4/; Dawn Staff, "Is Pakistan Army Fighting own War?" *Dawn*, July 17, 2003.

¹² Ahmed Rashid, *Descent into Chaos: The U.S. and the Disaster in Pakistan, Afghanistan, and Central Asia* (London: Penguin Books, 2009), 115.

¹³ Institute for Conflict Management, "Fatalities in Terrorist Violence in Pakistan 2003–2014," South Asia Terrorism Portal, <http://www.satp.org/satporgtp/countries/pakistan/database/casualties.htm>.

¹⁴ Dawn Staff, "12-year War on Terror Cost \$100 Billion," *Dawn*, December 13, 2013, <http://www.dawn.com/news/1072098>.

¹⁵ Pervez Musharraf, *In the Line of Fire: A Memoir* (New York: Simon & Schuster, 2006), 199–208.

Pakistan's territory, with the implication that Pakistan is somehow part of the problem, rather than the solution.¹⁶ The sole reason behind this perception is that "Pakistan has not yet succeeded in tackling the problem of insurgency in Afghanistan and in dealing with the rise of 'Talibanisation' in its tribal areas."¹⁷

Pakistan's security calculus has also changed. The extremist threat from within has to be balanced against the traditional concerns with India.¹⁸ Militancy spiked due to repressive measures against homegrown terrorists, coupled with the policy reversal on the Taliban and Kashmir issue.¹⁹ Overnight, Taliban and Kashmiri mujahedeens were disowned, haunting Pakistan to this day. Focus shifted from the external threat—India—to the threat from within, namely from homegrown terrorists.

Resource constraints mark another issue for Pakistan, which, in turn, affects the operational priorities. Guarding the 2500-kilometer-long porous Pak-Afghan border against terrorists crossing from Afghanistan and denying them safe heavens in the treacherous terrain of the FATA is extremely difficult. Moreover, the internal security challenges in the form of religious intolerance, sectarianism, and extremism have complicated the situation for political and military authorities.²⁰

¹⁶ Rick Francona, "Pakistan - Part of the Problem, Not the Solution," *Middle East Perspectives*, November 29, 2011, <http://francona.blogspot.com/2011/11/pakistan-part-of-problem-not-solution.html>.

¹⁷ Rasa Jukneviene, "Pakistan: A Crucial Player in Stability of the Region," NATO Parliamentary Assembly Report, 2007, <http://www.nato-pa.int/default.asp?SHORTCUT=1174>.

¹⁸ Express Tribune Staff, "New Doctrine: Army Identifies 'Homegrown Militancy' as Biggest Threat," *Express Tribune*, January 3, 2013, <http://tribune.com.pk/story/488362/new-doctrine-army-identifies-homegrown-militancy-as-biggest-threat/>.

¹⁹ Smruti Pattanaik, "War on Terror and Its Impact on Pakistan Kashmir Policy," *Institute of Defense Studies and Analysis* 32, no. 3 (May 2008), http://www.idsa.in/strategicanalysis/WaronTerroranditsImpactonPakistanKashmirPolicy_sspattanaik_0508.

²⁰ Umbareen Javed, "Partnership in War on Terror and Mounting Militant Extremism in Pakistan," *South Asian Studies* 26, no. 2 (2011), http://pu.edu.pk/images/journal/csas/PDF/V_26_No_2_1Dr.%20Umbreen%20Javaid.pdf.

Despite all the sacrifice and support from Pakistan, the United States remains attached to the policy of “do more.”²¹ This policy demands that Pakistan extend military operations in the North Waziristan Agency of the FATA region, with an aim to flush out terrorists established over decades. The specific demand was to take on the Haqqani Tribe and its affiliates, whom they support.²² The Haqqani network, once secretly supported by the United States during the Soviet resistance, joined hands with al-Qaeda and became a nemesis after 9/11. The network is considered to be in close contact with Pakistan’s spy agency, the Inter Services Intelligence (ISI), which historically employs non-state actors against India and elsewhere if required.²³ The U.S. priority of engaging targets and fighting the war on its own terms could not match Pakistan’s operational planning, which affected the smooth cooperation between both allies. Hence, it is important to understand why the U.S. drone strikes are causing mutual recrimination between allies.

D. THE TROUBLE WITH DRONES

The United States conducted the first drone attack in 2004 in FATA, and the rate increased significantly over the decade. According to the latest data, the United States has carried out 300 to 374 strikes within Pakistan’s borders between 2004 and 2012; the casualty count varies from 400 to 900, with 600 people seriously injured.²⁴

²¹ Farhana Ali, “Pakistan: On or Off? Examining the Future of U.S. – Pakistan Relations in the War on Terror and Beyond,” *Criterion Quarterly* 2, no 3 (October 2013), <http://www.criterion-quarterly.com/pakistan-on-or-off-examining-the-future-of-u-s-pakistan-relations-in-the-war-on-terror-and-beyond/>.

²² Ashley J. Tillis, “Pakistan and the War on Terror: Conflicted Goals, Compromised Performance,” Carnegie Endowment, http://carnegieendowment.org/files/tellis_pakistan_final.pdf.

²³ C. Christine Fair, *Fighting to the End: The Pakistan Army’s Way of War* (New York: Oxford University Press, 2014), 17; Deccan Herald Staff, “ISI Has Links with Haqqani Network: U.S. General,” *Deccan Herald*, April 16, 2013, <http://www.deccanherald.com/content/326528/isi-has-links-haqqani-network.html>.

²⁴ Amnesty International Report, “Living Under Drones,” October 22, 2013, <http://www.amnestyusa.org/research/report/will-i-be-next-us-drone-strikes-in-pakistan>.

From the U.S. perspective, drones save human efforts, time, and do not place human lives—soldiers—at risk by taking on the high value targets (HVTs).²⁵ Drone strikes reflect the divergent strategic view of the GWOT and its players. The United States can focus only on short-term interests—eliminating immediate threats in the person of terrorists; however, Pakistan has to balance short-term interests against the long-term consequences.

In principle, both countries agree on the use of drones against terrorists in ungoverned areas of the Pakistan tribal region being an effective counterterrorism weapon; however, there are serious issues over drone deployment and strike protocols.²⁶ The fundamental issue, however, is not the employment of drones in Pakistan's territory but its operational control—strike protocols—that form the real bone of contention. For the present, the United States controls the drones, and selects the target following its own protocols—without consulting Pakistan.²⁷ The United States believes that sharing classified information on potential targets with Pakistan is likely to jeopardize the mission—a claim seemingly borne out of initial setbacks of HVTs' escape through sharing of information with Pakistan, and further substantiated by Osama bin Laden's presence in Pakistan.²⁸ The United States still suspects Pakistan of making a distinction between the terrorists as good and bad Taliban.²⁹ The implication is that Pakistan drags its feet or even actively obstructs when Taliban figures in the "good" category are involved. However, in the course of the GWOT, Pakistani

²⁵ Ibid.

²⁶ James Igoe Walsh, "Lawfare: The Effectiveness of Drone Strikes in Counterinsurgency and Counterterrorism Campaigns," Council on Foreign Relations, September 2013, <http://www.cfr.org/united-states/lawfare-effectiveness-drone-strikes-counterinsurgency-counterterrorism-campaigns/p31701>.

²⁷ "Protocols for the Use of Unmanned Aircraft Systems (UAS) by Law-Enforcement Agencies," Virginia Department of Criminal Justice Services, October 7, 2013, <http://www.dcjs.virginia.gov/cple/documents/UAS%20Protocols%20GA.pdf>.

²⁸ Karen De Young and Karin Brulliard, "U.S. Presses Pakistan for Information on Osama bin Laden Compound," *Washington Post*, May 4, 2011, http://www.washingtonpost.com/world/pakistan-defends-role-condemns-unilateral-us-action/2011/05/03/AFrZ4lgF_story.html.

²⁹ Khaled Ahmed, "The Fiction of 'Good' and 'Bad' Taliban," *Friday Times*, November 9, 2012, <http://www.thefridaytimes.com/beta3/tft/article.php?issue=20121109&page=2>.

agencies have apprehended more than 600 top al-Qaeda terrorists, of whom many have been handed over to U.S. authorities.³⁰

The distinction between al-Qaeda and Taliban terrorists—“our enemy and their enemy”—is a complicated issue between the United States and Pakistan. Pakistan’s declared terrorists are somehow low in priority on the U.S. hit list; however, those adjudged by the United States as terrorists are Pakistan’s—so-called—assets, and are priority targets for drones. The problem does not relate to drones, it relates to target selection.³¹

Pakistan finds itself in a precarious situation by becoming a front-line ally in the GWOT, but unable to protect its innocent citizens against the drone strikes due to ineffective intelligence. Pakistan desires partial, if not complete operational control of the drones, which would be more acceptable to the government at least, rather than the indiscriminate U.S. killings on Pakistan’s soil from afar.³² Such an arrangement would entail intelligence sharing on potential or suspected targets, and the time of engagement—the one thing that American officials seem entirely unwilling even to consider. If considered by the United States, it will help prevent accidental targeting of religious and traditional gatherings in FATA that has invited immense criticism worldwide in the past.

According to Riaz Mohammad Khan, “Friction and mistrust [characterize] the post-9/11 cooperation between the U.S. and Pakistan,” and have led to competing interests in the GWOT.³³ Disagreement over the drone issue has

³⁰ Kim Barker and Noreen S. Ahmedullah, “Pakistan Touts its Terror Arrests,” *Chicago Tribune*, August 5, 2004, http://articles.chicagotribune.com/2004-08-05/news/0408050257_1_terror-arrests-al-qaeda-hayyat.

³¹ Qaiser Farooq Gondal, “Pakistan Uses Militants as Strategic Assets,” *Washington Times*, January 12, 2012, <http://communities.washingtontimes.com/neighborhood/letters-pakistan/2012/jan/12/pakistan-uses-militants-strategic-assets/>; Ismail Khan, “Analysis: Our Enemy and Their Enemy,” *Dawn*, September 29, 2014, <http://www.dawn.com/news/1135225/analysis-our-enemy-their-enemy>.

³² Sara Sorcher, “Pakistan Wants Drones, and It Doesn’t Need America’s Permission to Get Them,” *National Journal*, May 15, 2014, <http://www.nationaljournal.com/magazine/pakistan-wants-drones-and-it-doesn-t-need-america-s-permission-to-get-them-20140515>.

³³ Riaz Mohammad Khan, *Afghanistan and Pakistan: Conflict, Extremism, and Resistance to Modernity* (Washington, DC: Wilson Woodrow Centre Press, 2011), 11.

further stoked the anti-Americanism that directly affects the U.S. long-term interests in Pakistan.³⁴ The pages that follow show that the trust deficit that leads to competing self-interests is the primary cause of the controversy over the U.S. drone strikes in Pakistan territory. Competing self-interests stem from varying beliefs, perceptions, and needs on both sides. On the one hand, drone strikes cause disruption and degradation of terrorist organizations; however, they also breed recruitment, incite extremism, and feed into political revulsions.³⁵

E. LITERATURE REVIEW

Since 9/11, scores of books, policy papers, and articles have been written on terrorism. Pakistan figures prominently in such literature, typically blamed directly or indirectly as the epicenter for terrorism.³⁶ Many writers have criticized Washington's friendly policies toward Pakistan; as Carlotta Gall stated, "... Pakistan, supposedly an ally, has proved to be perfidious, driving the violence in Afghanistan for its own cynical, hegemonic reasons.... Pakistan, not Afghanistan, has been the true enemy."³⁷ The U.S. State Department has a different view—diplomats are interested in promoting a comprehensive partnership beyond the energy sector and cooperation in the GWOT, because a nuclear-unstable Pakistan has the capacity to affect peace in the region.³⁸ To this end, Anatol Lieven also writes that Pakistan is not only relevant in the Afghanistan equation but also important to the region and the West.³⁹

³⁴ Janani, "Determinants of Anti-Americanism in Pakistan," 17.

³⁵ Johnston and Sarbahi, "The Impact of U.S. Drone Strikes."

³⁶ Imtiaz Gul, *The Most Dangerous Place: Pakistan's Lawless Frontier* (New York: Penguin Group (USA), 2009), 11–21 and 147–87.

³⁷ Carlotta Gall, *The Wrong Enemy: America in Afghanistan 2001 – 2014* (Boston: Houghton Mifflin Harcourt, 2014), xiv.

³⁸ U.S. Department of State Fact Sheet, "U.S. Relations with Pakistan," September 10, 2014, <http://www.state.gov/r/pa/ei/bgn/3453.htm>; Nancy J. Powell, "U.S. Foreign Policy towards Pakistan" (speech, Karachi Council on Foreign Relations in Pakistan, November 13, 2003), Archive of U.S. Department of State, <http://2001-2009.state.gov/p/sca/rls/rm/26277.htm>.

³⁹ Anatol Lieven, *Pakistan: A Hard Country* (New York: Perseus Book Club, 2011), 11–21.

There is little literature on the U.S. policies that consider Pakistan's challenges in the GWOT—internally due to extremism and externally due to its geo-strategic location. However, President Barack Obama's famous response to an Indian that "Pakistan is a strategically important country not just for the U.S., but also for the world," is a stark reminder of this fact.⁴⁰ Even so, a few writers, such as T. V. Paul, have described the geostrategic location of Pakistan as a curse and the main impediment towards progress.⁴¹ Literature on strong anti-American sentiments in Pakistan exists, and the latest in the series is *No Exit from Pakistan: America's Tortured Relationship with Islamabad* by Daniel S. Markey,⁴² but how to transform this strong anti-American sentiment into strong support to achieve success in the GWOT has not been explored much. The willingness of Pakistanis to confront the GWOT head on is vital to the ultimate outcome of this war.

1. U.S.-Pakistan Relations: A History of Alliance and Interests

Hussain Haqqani writes, "The foundation of the U.S.-Pakistan relationship was laid on faulty assumptions: few shared interests and different political needs."⁴³ However, it has served the interests of both countries over a period of 60 years. The alliance has successes and failures, but has sustained the test of

⁴⁰ Sheryle Gay Stolberg, "Obama Pointedly Questioned by Students in India," *New York Times*, November 7, 2010, <http://www.nytimes.com/2010/11/08/world/asia/08prexy.html>; Rahi Gekwad, "Stable Pakistan Good for India: Obama," *Hindustan Times*, November 8, 2010, <http://www.thehindu.com/todays-paper/stable-pakistan-good-for-india-obama/article873238.ece>.

⁴¹ T. V. Paul, *The Warrior State* (New York: Oxford University Press, 2014), 94–126.

⁴² Daniel S. Markey, *No Exit from Pakistan: America's Tortured Relationship with Islamabad* (New York: Cambridge University Press, 2013).

⁴³ Husain Haqqani, *Magnificent Delusions: Pakistan, the United States, and an Epic History of Misunderstanding* (New York: Perseus Book Club, 2013), 350; Husain Haqqani was a journalist, and a political advisor with two of Pakistan's premiers. He has served as an Ambassador of Pakistan to Sri Lanka (1992–1993) and the United States (2008–2011). A controversial figure, who was exiled in 1999 for criticizing President Musharraf's regime. In 2011, he was forced to resign for his anti establishment (Army) agenda, famously known as Momogate controversy. His other books are *Pakistan: Between Mosque to Military*, and *India and Pakistan: Is Peace Real this Time*. Presently, he is Director of the Center of International Relations and a Professor of the Practice of International Relations at Boston University.

time despite serious grievances.⁴⁴ Both countries have faced challenges that are common, linked or shared, but have differences in handling these challenges.⁴⁵

Pakistan was considered the strongest ally of the United States, “as President Ayub [1958–1969] put in his autobiography, *Friends Not Masters*, Pakistan had become America’s most allied ally in Asia.”⁴⁶ However, Richard Nixon who had visited Pakistan as vice-president and who remained grateful to Pakistan for its role in opening China also noted that “... it is sometimes better to be an enemy of the United States than to be a friend,” suggesting that the relationship and cooperation has never reflected continuity and shared vision.⁴⁷

The relationship mostly remained restricted to the military establishment, especially in Pakistan, because the political class does not control the foreign policy completely.⁴⁸ Consequently, the relationship is devoid of strategic consensus and public support on both sides.⁴⁹ Both countries blame each other for the failures and that has created a trust deficit between them.

Former ambassador Hussain Haqqani states that “Pakistan and the United States are not allies in a real sense; America is interested in the privileges from a country they distrust, whereas Pakistani elites [and military establishment]

⁴⁴ Ibid., 2–4.

⁴⁵ Touqir Hussain, “The U.S.-Pakistan Relations: a Historical Review,” *Criterion Quarterly* 8, no. 4 (October 2013), <http://www.criterion-quarterly.com/the-us-pakistan-relations—an-historical-review/>.

⁴⁶ Dennis Kux, *The United States and Pakistan 1947–2000* (Washington: Woodrow Wilson Center Press, 2001), 74.

⁴⁷ Richard Nixon, *Leaders: Profiles and Reminiscences of Men who have Shaped the Modern World* (New York: Simon and Schuster, 1990), 131.

⁴⁸ Frédéric Grare, “Pakistan’s Foreign and Security Policies after the 2013 General Election: the Judge, the Politician and the Military,” *International Affairs* 89, no. 4 (2013): 993–994, http://www.chathamhouse.org/sites/files/chathamhouse/public/International%20Affairs/2013/89_4/89_4_10_Grare.pdf; Dr Tariq Rahman, “Who Controls the Foreign Policy in Pakistan,” *Express Tribune*, April 9, 2012, <http://tribune.com.pk/story/362049/who-controls-foreign-policy-in-pakistan/>.

⁴⁹ Ibid.

are interested in American aid by exploiting and fuelling anti Americanism.”⁵⁰ He strongly suggests that the relationship should be based on reality in order to reduce the expectations from each other. On the other hand, Congressman Gary Ackerman took a critical view of the relationship as mentioned in Daniel Markey’s book: “Pakistan is like a black hole for American aid. Our tax dollars go in ... Our prayers go in. Nothing good ever comes out.”⁵¹

Throughout the decade of the 1990s, Pakistan was beset with the problems of fundamentalism and extremism that made it almost isolated from the international community. Economically, it was in dire straits—facing nuclear sanctions after nuclear tests in 1998. The complicated situation was further compounded in 1999, when Pervez Musharraf, a military dictator, seized power in a bloodless coup.

Then 9/11 happened and Afghanistan became the focal point once again. The strategic mistake of the 1979 Afghan War boomeranged, but this time the United States has to fight against those elements that Washington previously had supported. The United States returned to Pakistan for the third time; its proximity to Afghanistan and historic influence over various governments made Pakistan an important ally. Ironically, both the United States and Pakistan found themselves fighting against an enemy that was their own creation during the Afghan War in 1979.⁵²

On several occasions, Pakistan, with an eye toward its alliance with the United States, embarked on policies that favored U.S. interests—for example, the provision of the base in 1957 for U2 surveillance aircraft against the erstwhile

⁵⁰ Sara Carter, “Pakistan is No Ally of the U.S. and the Toxic Relationship Threatens National Security: Former Pakistani Ambassador,” *Blaze*, December 2, 2013, <http://www.theblaze.com/stories/2013/12/02/pakistan-is-no-ally-of-the-u-s-and-the-toxic-relationship-threatens-national-security-former-pakistani-ambassador/>.

⁵¹ Markey, *No Exit from Pakistan: America’s Tortured Relationship with Islamabad*, 4.

⁵² Dr Hidayat Khan, “Pakistan’s Contribution to Global War on Terror after 9/11,” *IPRI* XIII, no. 1 (2013): 38, www.ipripak.org/journal/winter%202013/art3.pdf; Michael Moran, “Bin Laden Comes Home to Roost,” *NBC News*, August 24, 1998, <http://www.nbcnews.com/id/3340101/t/bin-laden-comes-home-roost/#.VFcY9irluoA>; Seth Jones and Christine Fair, *Counterinsurgency in Pakistan* (Santa Monica, CA: Rand Corp., 2010), 33–41.

Soviet Union, the 1979 Afghan War, and the GWOT.⁵³ These decisions may or may not have advanced Pakistan's short- or long-term priorities and they resulted in a mixed bag of U.S. responses.

In South Asia, Pakistan is an important ally, vital for security interests of the United States. Long-term U.S. interests in Pakistan are "related to regional and global terrorism; efforts to stabilize neighboring Afghanistan; nuclear weapons proliferation; links between Pakistan and indigenous American terrorism; Pakistan-India tensions and conflict; democratization and human rights protection; and economic development."⁵⁴ To look after these interests, the United States has been supporting Pakistan economically. In total Pakistan has received \$67 billion from 1951 to 2011, and \$7.5 billion between 2010 and 2014 as part of the Kerry-Lugar Bill.⁵⁵ Despite the economic assistance, the drone issue coupled with on-and-off U.S.-Pakistan cooperation has stoked the anti-American sentiments affecting the long-term U.S. interests.⁵⁶

2. The World after 9/11

Richard Haass states that not only the Iraq wars, but also the war in Afghanistan, are wars of choice. The United States could have avoided them; neither war was completely winnable.⁵⁷ But the GWOT presented another chance for Pakistan to resurrect itself as a relevant and responsible state in international community. To deal with al-Qaeda and the Taliban, the United States required Pakistan's assistance and support, which was provided once

⁵³ Bruce Riedel, *Deadly Embrace: Pakistan, America, and the Future of the Global Jihad* (Washington, DC: The Brookings Institution, 2011), 1–16, http://www.brookings.edu/~media/press/books/2012/deadlyembracerevised/deadlyembrace_chapter.pdf.

⁵⁴ K. Allan Kronstadt, *Pakistan – U.S. Relations* (CRS Report No. R41832) (Washington, DC: Congressional Research Service, 2012), 5, <http://www.fas.org/srgp/crs/row/R41832.pdf>.

⁵⁵ "Aid to Pakistan by the Numbers," Center For Global Development, <http://www.cgdev.org/page/aid-pakistan-numbers>.

⁵⁶ Markey, *No Exit from Pakistan America's Tortured Relationship with Islamabad*, 1–29.

⁵⁷ Richard N. Haass, *War of Necessity and War of Choice* (New York: Simon and Schuster, 2009), 11.

again—probably under duress.⁵⁸ Also, this time “the U.S. motive for seeking Pakistani alliance has been different from Pakistan’s reasons for accepting it.”⁵⁹ America wanted a stable Afghanistan after the elimination of such terrorist elements as al-Qaeda and the Taliban. Pakistan, on the other hand, had its own issues with the GWOT; the army saw the increased Indian influence in its neighborhood—Afghanistan—as a great threat to its national security.⁶⁰

After 9/11, Pakistan made a strategic shift by joining the GWOT against the Taliban. This shift was not endorsed by the local and foreign Talibans, who challenged the writ of the government in almost every corner of the country.⁶¹ Extremism and sectarianism, which are the main drivers of terrorism in Pakistan, also flourished, increasing security challenges many times over.⁶² Despite all these challenges, Pakistan extended its full support to the coalition in the GWOT. Pakistan offered air bases for combat missions in Afghanistan, logistics support, and intelligence sharing with U.S. agencies.⁶³ In 2009, President Obama said, “... Our success in Afghanistan is linked to our partnership with Pakistan.”⁶⁴

⁵⁸ Musharraf, *In the Line of Fire*, 199–208; Suzanne Goldenburg, “Bush Threatens to Bomb Pakistan,” *Guardian*, September 21, 2006, <http://www.theguardian.com/world/2006/sep/22/pakistan.usa>.

⁵⁹ Haqqani, *Magnificent Delusions*, 3.

⁶⁰ Tuba Aslam Khan, “India-Pakistan’s Power Play in Afghanistan a Recipe for Disaster,” *Afghan Zariza*, January 1, 2014, <http://www.afghanzariza.com/2014/01/30/indiapakistans-powerplay-in-afghanistan-a-recipe-for-disaster#sthash.3ufFEkRI.dpuf>.

⁶¹ Musharraf, *In the Line of Fire*, 222–37.

⁶² Saima Afzal, Hamid Iqbal, and Mavara Inayat, “Sectarianism and its Implications for Pakistan Security: Policy Recommendations Using Exploratory Study,” *Journal of Humanities and Social Science* 4, no. 4 (December 2012): 5–8, <http://www.iosrjournals.org/iosr-jhss/papers/Vol4-issue4/D0441926.pdf>; Saima Afzal, Hamid Iqbal, and Mavara Inayat, “Terrorism and Extremism as a Non-Traditional Security Threat Post 9/11: Implications for Pakistan’s Security” *International Journal of Business and Social Science* 3, no. 24 (December 2012): 197, http://ijbssnet.com/journals/Vol_3_No_24_Special_Issue_December_2012/21.pdf; Huma Yousaf, “Sectarian Violence: Pakistan’s greatest Security Threat? Norwegian Peace Building Resource Center (NOREF), July 9, 2012, 5–6, http://www.peacebuilding.no/var/ezflow_site/storage/original/application/949e7f9b2db9f947c95656e5b54e389e.pdf.

⁶³ Khan, “Pakistan’s Contribution to Global War on Terror,” 41–43.

⁶⁴ The White House, “Address to the Nation on the Way Forward in Afghanistan and Pakistan,” Office of the Press Secretary New York, December 2009, <http://www.whitehouse.gov/the-press-office/remarks-president-address-nation-way-forward-afghanistan-and-pakistan>.

Five years earlier the U.S. government had commenced the first-known drone strikes within Pakistan's sovereign territorial boundaries at South Waziristan. The United States extended the program of targeted killing of Taliban and al-Qaeda members well beyond the battlefields of Afghanistan. The reason, as stated by Hussain Haqqani, from America's perspective, Pakistan has transformed its status from a friend to an ally to an epicenter of terror. From Pakistan's perspective, the United States has been instrumental in security and economic assistance, looking for its own opportunities and interests through military dictators, and ironically, is now a threat to national security.⁶⁵

Throughout the U.S.-Pakistan relationship, officials on both sides have misunderstood the priorities and limitations of the other side. To describe the relationship, it is said that. "Pakistan has often benefitted from the American tendency to ignore history and focus only on immediate goals, Americans have often assumed that building up ... military and economic capacity provides them leverage even after periodically finding out the limits of U.S. influence."⁶⁶ The relationship between the United States and Pakistan can only move forward once it is redefined by accepting each other's divergent interests and mutual mistrust.⁶⁷

3. Legal Perspectives

In President Pervez Musharraf's authoritarian regime (1999–2008), the government did not reveal anything publicly about drone policy. On April 12, 2013—after Musharraf had been voted out of office—the ex-president in an interview on CNN, acknowledged that there was an understanding on drone strikes, but they were to be used "only on a few occasions, when a target was

⁶⁵ Haqqani, *Magnificent Delusions*, 1–56.

⁶⁶ *Ibid.*, 2.

⁶⁷ *Ibid.*, 350.

absolutely isolated and [there was] no chance of collateral damage.”⁶⁸ This understanding over drone strikes suggests that Pakistan has policy issues that were not revealed openly in public due to its classified nature, and out of concern for its political consequences as the opposition to drones is debated extensively in Pakistan. The secretive stance by the Pakistan government has led to the complexity of the drone issue.

In international politics, powerful countries interpret the international law to their own benefit. Still, in the case of drone strikes, customary law, and UN resolutions are relevant. The United States and Pakistan—along with much of the rest of the world—take divergent views of the legality of drone strikes. The United States insists that its targeted attacks against al-Qaeda leaders—wherever they are—comport with international law on two related points. First, as the 2001 Authorization for Use of Military Force (AUMF) declares, the nation is at war with al-Qaeda “and its associated forces, and [the U.S.] Congress has authorized the president to use all necessary and appropriate force against those entities.”⁶⁹ Pakistan, on the other hand, terms drone strikes as a violation of its sovereignty, also endorsed by the UN.⁷⁰

The legal issue rests on three factors: self-defense, the violation of state sovereignty, and human rights. Because all al-Qaeda or affiliated leaders represent a threat of violent attack against the United States, the United States

⁶⁸ Jon Boone, “Pervez Musharraf Admits ‘a few’ U.S. Drone Strikes in Pakistan,” *Guardian*, April 12, 2013, <http://www.theguardian.com/world/2013/apr/12/musharraf-admits-permitting-drone-strikes>.

⁶⁹ U.S. Department of Justice, “White Paper: The Lawfulness of a Lethal Operation Directed against a U.S. Citizen who is a Senior Operational Leader of Al-Qa’ida or an Associated Force,” undated (summarizing a 2010 memorandum), 2, http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf. The quoted passage refers to the Authorization for Use of Military Force (AUMF), Pub. L. No. 107–40, §2a, 115 Stat. 224, 224 (2001). To be sure, the white paper concerns itself with the question of the legality, under U.S. law, of the U.S. government targeting a U.S. citizen in a drone strike or other similar attack. The legal basis begins with the same premises as for any targeted killing, however.

⁷⁰ Louis Charbonneau, “U.S. Drone Strikes Violate Pakistan’s Sovereignty: UN,” *Reuters*, March 15, 2013, <http://www.reuters.com/article/2013/03/15/us-un-drones-idUSBRE92E0Y320130315>.

may use force against them as a matter of national self-defense.⁷¹ Such a strike counts as preemptive because the subject may not be engaged in active warfare against the United States at a given moment. According to leading international law scholar, Anthony Arend, under the established system of “customary international law that developed before the UN Charter was adopted, it was accepted that the pre-emptive use of force was permissible in self-defense [if the threat were imminent].”⁷² This logic is written into the UN Charter, as well.⁷³

Article 51 of the UN Charter enshrines the right to self-defense but only when an armed attack has occurred.⁷⁴ This formulation has divided law experts in two groups. One says it would be unlawful to engage in preemptive strikes, whereas the other goes in favor of preemptive strikes.⁷⁵

However, two criteria for permissible self-defense merit consideration: necessity and proportionality, both of which are prerequisites for preemptive action.⁷⁶ For necessity, the state would be required to establish that the use of force by the other state was imminent, and that forcible action had the potential to forestall an attack.⁷⁷ For proportionality, the Additional Protocol of Article 51 focuses on “the protection of civilian population[s],” which suggests that if a legitimate target is identified, the presence of a large number of civilians in such a space makes the strike disproportionately threatening.⁷⁸

⁷¹ U.S. Department of Justice, “White Paper,” 3.

⁷² Anthony Clark Arend, “International Law and the Preemptive use of Military Force,” *Washington Quarterly*, 26, no. 2 (2003): 90, http://www.cfr.org/content/publications/attachments/highlight/03spring_arend.pdf.

⁷³ Ibid.

⁷⁴ William R. Slomanson, *Fundamental Perspective on International Law*, 5th ed. (United States: Thomson Wadsworth, 2007), 456.

⁷⁵ Arend, “International Law,” 90.

⁷⁶ Louis-Philippe Rouillard, “The Caroline Case: Anticipatory Self Defense in Contemporary International Law,” *Miskolc Journal of International Law*, 1, no. 2 (2004): 104, <http://www.uni-miskolc.hu/~wwwdrint/20042rouillard1.htm>.

⁷⁷ Ibid., 104–20.

⁷⁸ International Committee of Red Cross, Protocol additional to Geneva Convention of 12 August 1949, and relating to the Protections of Victims of International Armed Conflicts (Protocol 1), June 8, 1977, <http://www.icrc.org/ihl/Web ART/ 470 -750065>.

The so-called Bush Doctrine held that the United States will “make no distinction between terrorists and the nations that harbor them, and hold both to account.”⁷⁹ The doctrine of state responsibility holds that every state is responsible for its territory—not to be used knowingly (by non-state actors) against another state. Thus, harboring terrorists constitutes violation of international law.⁸⁰ The logic underlines the U.S. justifications for violating Pakistan’s territorial sovereignty with every drone strike.

The United States points to two important caveats in Article 51 of the UN Charter: consent of the host state (in this case, to carry out drone strikes) and the unwillingness or inability of the host state to take appropriate action.⁸¹ The Musharraf regime was presumed to have given at least tacit approval of U.S. drone strikes, but the new democratic governments have strongly opposed drone strikes. As regards this “unwillingness,” Pakistan has a mixed record of response to terrorism. At times Pakistan has failed to take decisive actions against non-state actors, but at other times, Pakistan has taken out such “high-value” figures as Khalid Shiekh Muhammad, the mastermind behind 9/11, and Umar Patek, involved in Bali bombings.⁸² The Article 51 issue, then, is clearly under dispute.

International law also addresses “collateral damage,” in which innocent civilians are killed. Targeted killings within the context of armed conflict and outside armed conflict have legal implications. The United States claims that the

⁷⁹ Washington Post Staff, “Decision points, by Pres. George W. Bush: on Foreign Policy,” *Washington Post*, December 21, 2006, http://www.ontheissues.org/Archive/Decision_Points_Foreign_Policy.htm.

⁸⁰ Sean D. Murphy, *Principles of International Law* (Washington, DC: Thomson West, 2006), 113; International Court of Justice, “Cases: Corfu Channel Case (UK of Great Britain and Northern Ireland v. Albania.” <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&case=1&p3=4>.

⁸¹ International Human Rights and Conflict Resolution Clinic at Stanford law School and Global Justice Clinic at NYC School of Law, “Living Under Drones: Death, Injury, and Trauma to Civilians from U.S. Drone Practices in Pakistan,” 2002, <http://www.livingunderdrones.org/download-report/>.

⁸² Terry Mc Dermott and Josh Mayer, “Inside the Mission to Catch Khalid Sheikh Mohammed,” *Atlantic*, April 2, 2012, <http://www.theatlantic.com/international/archive/2012/04/inside-the-mission-to-catch-khalid-sheikh-mohammed/255319/>; Adam Goldman and Niniek Karmini, “Bali Bombing Suspect Captured in Pakistan,” *NBC News*, March 2011, http://www.nbcnews.com/id/42323417/ns/us_news-security/t/bali-bombings-suspect-captured-pakistan/#.VCEGXyrluoA.

GWOT is a non-international armed conflict and as a result the officials have applied international humanitarian law (IHL), without establishing its requisite threshold. In fact, in the absence of an armed conflict International Human Right Law (IHRL) is invoked, which makes the killing of innocent civilians a war crime. There also is the real question of whether the United States is in armed conflict with everyone who has been targeted.⁸³

4. Strategic Consequences

Bruce O. Riedel argues that historically, American presidents have pursued policies of “short-term interests in Pakistan that contributed to instability.”⁸⁴ After 9/11, the United States and Pakistan have faced common challenges in the GWOT that are either shared or linked, and hence the blowback is not limited to Pakistan only. The failed Times Square bombing by a Pakistani-born U.S. citizen in 2010 was the first shock for the United States; defendant Faisal Shahzad responded to a judge that he justified his act because the U.S. kills innocents through drones.⁸⁵

The differences in the handling of such challenges by both allies have raised the cost for Pakistan. The United States is only focused on hunting down terrorists in the GWOT in its own way, disregarding the consequences. It considers drone strikes as an effective counterterrorism tool, however, “If the price of [the] drone campaign that increasingly kills only low-level Taliban is alienating 180 million Pakistanis—that is too high a price to pay.”⁸⁶ The fact is that the United States considers drones strikes “necessary to make the U.S. safer by disrupting militant activity.”⁸⁷ Another linked issue is that the United

⁸³ “Living Under Drones,” 110–15.

⁸⁴ Riedel, *Deadly Embrace*, 30–70.

⁸⁵ Michael J. Boyle, “The Cost and Consequences of Drone Warfare,” *International Affairs* 89, no. 1 (2013), http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/2013/89_1/89_1Boyle.pdf.

⁸⁶ “Living Under Drones,” 132.

⁸⁷ *Ibid.*, 125.

States has not laid the foundation of enduring stability in Afghanistan, hence making it a potential hideout for rogue elements, which can threaten the global and U.S. security in future.⁸⁸

On the other hand, Pakistan faced dire strategic consequences because of drone strikes in the form of political unrest and polarization of the masses. Moreover, extremism also increased many times over; al-Qaeda and its affiliates took up arms against the Pakistan military as the drone strikes played a major role in forming the perception that Pakistan is fighting America's war.⁸⁹ Unstable Afghanistan is another security and economic problem for Pakistan. Pakistan has a limited capacity to take on these challenges.

Drone strikes portend a rift—if not a rupture—in the relationship between the United States and Pakistan. They are interdependent on each other because of mutual interests; however, they cannot afford to part ways. The United States is more focused on India in the region as a counterweight to China; however, Pakistan is a nuclear state that remains vulnerable to its internal challenges.⁹⁰

5. The Moral Aspect

Finally, morality and ethics are an important factor in international politics. The drones are mainly employed in signature strikes as well as personality strikes. Personality strikes are pinpoint targets and are not morally problematic provided adequate scrutiny is utilized in ascertaining the target's identity. The problem lies with signature strikes, which are authorized against an individual who fits in a peculiar behavior profile. In FATA, culturally, everyone carries a weapon and would become a potential target as they fit the description, so to speak. The difference between combatant and non-combatant gets blurred in

⁸⁸ Hussain, "The U.S. Pakistan Relations."

⁸⁹ Syed Salem Shehzad, *Inside al-Qaeda and Taliban: Beyond Bin Laden and 9/11* (New York: Palgrave MacMillan, 2011), 82–83.

⁹⁰ Farhana Ali, "Pakistan: On or Off."

counterterror operations but the principle of distinction is a moral (and legal) requirement according to the Geneva Convention.⁹¹

Still a range of opinion exists. On the one hand, Bradley Strawser, the main proponent of the use of armed drones, argues that in counterterrorism operations, the United States has a moral duty to use drones.⁹² In his book *Killing by Remote Control*, he concludes: "Using drones to go after terrorists not only [is] ethically permissible but also might be ethically obligatory, because of their advantages in identifying targets and striking with precision."⁹³ According to a U.S. field manual on counterinsurgency operations (COIN), "Strict adherence to ethics is vital to the outcome of COIN as tactical actions in such operations can have strategic impact."⁹⁴

The collection of scholarly articles, "Ethical and Legal Aspects of Unmanned Systems—Interviews," argues that due to the principle of distinction and proportionality drones are against the spirit of the Geneva Convention. The machine cannot distinguish between combatant and innocent. Moreover, drones cannot measure the proportionality by comparing military advantage gained vis-à-vis number of civilian deaths. Though the pragmatic reasons for drone strikes are understandable, they cannot morally justify the death of innocents who are not at war with the aggressor state. Setting up wrong precedents has ramifications in international politics.⁹⁵

⁹¹ Bradley Jay Strawser, *Killing by Remote Control: The Ethics of an Unmanned Military* (New York: Oxford University Press, 2013), 161–70; John Brennan, "The Efficacy and Ethics of U.S. Counterterrorism Strategy," Woodrow Wilson Center, April 30, 2012, <http://www.wilsoncenter.org/event/the-efficacy-and-ethics-us-counterterrorism-strategy>.

⁹² Bradley Jay Strawser, "Moral Predators: The Duty to Employ Uninhabited Aerial Vehicles," *Journal of Military Ethics* 9, no. 4 (December 2010): 367, <http://www.bradleystrawser.com/pub/Strawser%20Moral%20Predators%20JME.pdf>.

⁹³ Scott Shane, "The Moral Case for Drones," *New York Times Sunday Review*, July 14, 2012, <http://www.nytimes.com/2012/07/15/sunday-review/the-moral-case-for-drones.html>.

⁹⁴ Department of Army, *U.S. Counter Insurgency* (FM 3–24) (Washington, DC: Marine Corps War Fighting Publication, 2014), 45.

⁹⁵ Gerhard Dabringer, "Ethical and Legal Aspects of Unmanned Systems: Interviews," Academia.edu, 2010, http://www.academia.edu/420529/Gerhard_Dabringer_Hg._Ethica_Themen_Ethical_and_Legal_Aspects_of_Unmanned_Systems._Interviews_Wien_2010.

F. METHODS AND SOURCES

This thesis adopts an analytical approach by taking historical and contemporary perspectives of the three players involved in the issue: the United States, Pakistan, and International community. The study begins with the analysis of such primary sources as declassified documents of the U.S. Department of Justice as well as secondary sources like books, official statements, reports, and newspaper editorials of both the United States and Pakistan. Moreover, the opinion of various think tanks including The Pakistan Institute of International Affairs, American Society of International Law, and Criterion Quarterly, followed by study groups such as Stanford, further bolster the analysis. Views expressed by experts of both countries on the subject in the form of books and papers authored and edited by Pervez Musharraf, Bradley Jay Strawser, Carlotta Gall, Theresa Reinold, Christine Fair, Bruce Riedel, and Touqir Hussain provide an essential foundation for the study. Gall and Strawser came up with some novel revelations and forceful arguments in their books: *Fighting the Wrong Enemy* and *Killing by Remote Control*, respectively, that will make the research intriguing.

To analyze the trust deficit between United States and Pakistan, all events and issues that have marred the relationship over a period of time are taken into account. Books written by Hussain Haqqani and Dennis Kux in this regard help to identify whether the relationship was issue based or interest based provide a base for the research. On the legality issue of drone strikes, all angles, and perspectives afford a rational, legitimate, and legal view. The issues of the trust deficit, which degenerates into self-serving interests, followed by legal and moral aspects that are widely debated not only in these two countries but the world over for its impact on international politics and relations, are examined. The view point of United Nations, International Criminal Court (ICC), and the legal experts, as published or telecast in form of an official statement from time to time, is taken into account to enlarge the canvas for arriving at a balanced solution.

G. THESIS OVERVIEW

Chapter II reflects on the historical context of the drone and its evolution. It follows the explanation for drone strikes inside Pakistan.

Chapter III deals with the legal perspective of the drone issue. All dimensions of customary and contemporary international law are explored in view of different legal positions by both countries. The caveats in international law and past case studies bring the issue to a realistic comparison. Finally, the implications of violating international law and the impact on world politics are highlighted.

Chapter IV contains the cost-benefit analysis of the drone issue that has brought two long-standing allies to the saturation point. All the benefits and consequences for both the countries receive detailed attention.

Chapter V concludes the thesis. It reflects upon ethical and moral issues of drone strategy, which has set dangerous precedents for the future. It follows with recommendations for the policy makers of both countries as well as the international community to tread a balanced path that does not adversely affect the allies or their interests. It also proposes standards for the international community on drone operations.

II. TARGETED KILLINGS AND DRONE EVOLUTION

The United States has deployed armed drones for targeted killings “as the weapon of choice” in the GWOT; however, the drone is not the only weapon used by the U.S. forces to neutralize targets from afar. Other such weapons include the AC-130 Gunship, and Tomahawk cruise missile. Used initially in Vietnam, the AC-130 also was used in 2007 and 2009 in Somalia against al-Qaeda leaders. In 1998, the Clinton Administration used the Tomahawk in Afghanistan against al-Qaeda. Despite the employment of these killer weapons, terrorism has increased and none of the proclaimed terrorist organizations has been eliminated; indeed, new organizations have emerged on the world scene.⁹⁶

A. HISTORICAL CONTEXT OF TARGETED KILLINGS

Intelligence agencies are used principally for gathering intelligence, which is in line with the international law. Their involvement in targeted killing⁹⁷ has increased over time, which is against international as well as U.S. domestic law.⁹⁸ However, countries use agencies for covert operations—political assassinations and targeted killings—as an effective measure to handle issues in a safe and speedy manner.⁹⁹ The KGB—a security agency of the erstwhile Soviet Union—was notorious for its “mastery of resorting to abductions and

⁹⁶ Kelsey D. Atherton, “Stop Calling it the Drone Memo,” *Popular Science*, 2013, <http://www.popsci.com/technology/article/2013-02/drone-memo-about-more-just-drones>; Jackie Northam, “As Drone Strikes Increase, So Do Concerns Over Use,” *NPR News*, June 12, 2012, <http://www.npr.org/2012/06/12/154812235/as-drone-strikes-grow-so-do-concerns-over-use>.

⁹⁷ Jonathan Masters in his article “Targeted killings” defines this phenomenon in the light of UN Special reports “Targeted killings are premeditated acts of lethal force employed by states in times of peace or during armed conflict to eliminate specific individuals outside their custody. ‘Targeted killing’ is not a term distinctly defined under international law, but gained currency in 2000 after Israel made public a policy of targeting alleged terrorists in the Palestinian territories,” <http://www.cfr.org/counterterrorism/targeted-killings/p9627>.

⁹⁸ “Intelligence Services and Democracy,” Geneva Centre for the Democratic Control of Armed Forces (DCAF), Working Paper no. 13, April 2002, http://www.iskran.ru/cd_data/disk2/rr/006.pdf; Karolis Kupcikas, “The Importance of Intelligence to International Security,” *E-International Relations Students*, November 8, 2013, <http://www.e-ir.info/2013/11/08/importance-of-intelligence-to-international-security/>.

⁹⁹ Center for Study of Intelligence, “Soviet Use of Assassination and Kidnapping,” Central Intelligence Agency, May 8, 2007, <https://www.cia.gov/index.html>.

conducting murders of those targets which were considered to be potential threats to the Soviet regime.”¹⁰⁰ All these actions were executed inside and outside the country against compatriots and foreigners; however, after Stalin, the trend of targeted killings declined due to a lack of volunteers who would kill unnecessarily, and on foreign soil.¹⁰¹ Another such example is Israel’s Mossad, which is still engaged in such practices; killing a top Hamas official in Dubai in 2010 is a case in point.¹⁰² Mossad is very proficient in targeted killings of those who—in their assessment—would be a threat to Israel’s national security.¹⁰³

Targeted killing done mostly through intelligence agencies has a precedent in the United States. They eliminate the real and perceived threat through a process that is efficient, precise, and covert, as manifested by the Central Intelligence Agency (CIA) in the past.¹⁰⁴ The same fact is corroborated by Steve Coll:

Putting such theory into practice was the role of CIA, and the agency’s tally of top leftists, nationalists, or otherwise unreliable leaders is well known, from Mohammad Mosaddegh of Iran in 1953, and Jacob Guzman of Guatemala in 1954, to Ngo Diem of South Vietnam in 1963, and Salvador Allende, of Chile in 1973.¹⁰⁵

These schemes of assassinations and targeted killings did not go according to plan. The killing of Patrice Lumumba, in which the Americans were

¹⁰⁰ Ibid.

¹⁰¹ S. G. Wheatcroft, “Towards Explaining the Changing levels of Stalinists Repression in the 1930s: Mass Killings,” Academia. edu, 113–16, http://www.academia.edu/5955352/Towards_Explaining_the_Changing_Levels_of_Stalinist_Repression_in_the_1930s_Mass_Killing_s.

¹⁰² CNN Staff, “Slaying of Hamas Leader in Dubai is International Murder Mystery,” *CNN*, March 23, 2010, <http://www.cnn.com/2010/WORLD/meast/02/16/dubai.hamas.killing/>.

¹⁰³ Denis Eisenburg, Uri Dan, and Eli Landau, *The Mossad Inside Stories: Israel’s Secret Intelligence Service* (London: Paddington Press, 1978), 41.

¹⁰⁴ Ibid.

¹⁰⁵ Steve Coll, “Remote Control: Our Drone Delusion,” *New Yorker*, May 6, 2013, <http://www.newyorker.com/magazine/2013/05/06/remote-control>.

indirectly involved, brought to power pro-American dictator Joseph Mobutu, who pushed Congo into deep chaos that persists to date.¹⁰⁶

Because of this troubling record of covert operations, the policy of targeted killings for national interests was contested and extensively debated in Congress in the 1970s.¹⁰⁷ A Congressional committee condemned such killings: “[W]e condemn assassination and reject it as an instrument of American policy.”¹⁰⁸ This committee and its work led to a change in policy, culminating in the Executive Order (EO) of President Gerald Ford—EO 11905 in 1976—which banned all kinds of political assassination.¹⁰⁹ Successive presidents upheld the EO as assassinations undermined the rule of law, democracy, and human rights.¹¹⁰

The post-Cold War environment brought asymmetric threats to the fore, and consequently the moral politics of targeted killing policy was replaced with realpolitische considerations—i.e., national interests trump all moral considerations. In 1993, an attack on the World Trade Center by Ramzi Yousef and his cohorts prompted the signing of EO 12947 in 1995, which permitted the creation of a terrorist list by U.S. authorities. In 1998, the Clinton Administration, using Article 2, Section 2 of the U.S. Constitution, authorized the use of lethal force against Osama bin Laden and his associates. After the Twin Tower attacks on U.S. soil, a joint senate resolution on September 14, 2001—ultimately codified

¹⁰⁶ Tim Ripely, *Air War Afghanistan: U.S. and NATO Air Operations from 2001* (Yorkshire, UK: Pen & Sword Books, 2011), 153; Coll, “Remote Control.”

¹⁰⁷ Elizabeth B. Bazan, *Assassination Ban: Brief Summary* (CRS Report No. RS21037) updated January 4, 2002, <http://www.fas.org/irp/crs/RS21037.pdf>.

¹⁰⁸ Claire Finkelstein, Jens David Ohlin, and Andrew Altman, *Targeted Killings: Law and Morality in Asymmetrical World* (United Kingdom: Oxford University Press, 2012), 34.

¹⁰⁹ *Ibid.*, 34–35; History of Executive Orders (EO) to ban Assassinations – Jimmy Carter EO 12306 in 1978, Ronald Reagan EO 12333 in 1981, Bill Clinton EO 12947 in 1995, and in 2001, Senate Joint Resolution 23 granted President George W. Bush to use all possible force against those involved in 9/11 attacks.

¹¹⁰ *Ibid.*

as the Authorization for the Use of Military Force (AUMF)¹¹¹—granted President George W. Bush the power to use all “necessary and appropriate force,” against those involved directly or indirectly in 9/11 attacks.¹¹² Since then, targeted killing became lawful in the U.S. legal system that authorized the offensive deployment of armed drones.

B. THE DRONE ERA

The evolution of drones happened in three stages. The first phase was from World War 1 to the 1950s, when drones were utilized as targets to train anti-aircraft gunners and pilots. The second phase ranged from the 1960s to the 1990s, when drones were transformed to a powerful aerial sensor, and mainly used for reconnaissance, employed against Vietnam and Cuba. The third and most important phase began in 2000 and continues today, when drones have been used as a weapon, and these flying platforms have become deadly weapons and are effectively used in the GWOT.¹¹³

The Predator drone first came to light in 1994 when it was deployed for surveillance against the Serbs in the Balkans. In 1998, Osama bin Laden unleashed a reign of terror against American and Jewish interests, which included Israel and the Western countries that support it, by issuing a fatwa. This pronouncement prompted the bombing of two U.S. embassies in Tanzania and Kenya, which, in turn, led to retaliation from the United States through Tomahawk cruise missiles in Afghanistan. Osama bin Laden escaped the strikes but the search continued and led to discussion on targeted assassination. To this end, in 1998, President Clinton in a Memorandum of Notification relaxed the

¹¹¹ Public Law 107–40, “Joint Resolution,” September 18, 2001, <http://www.gpo.gov/fdsys/pkg/PLAW-107publ40/pdf/PLAW-107publ40.pdf>.

¹¹² Gordon L. Bowen, “Targeted Killings: Timeline of U.S. Policy Concerning Covert Operations Involving Assassination,” Global Research, March 2013, <http://www.globalresearch.ca/targeted-killings-timeline-of-u-s-policy-concerning-covert-operations-involving-assassination/5326095>.

¹¹³ Ian G. R. Shaw, “The Rise of the Predator Empire: Tracing the History of U.S. Drones,” Understanding Empire, 2013, <http://understandingempire.wordpress.com/2-0-a-brief-history-of-u-s-drones/>.

assassination ban on the agencies that allowed the use of lethal force against U.S. enemies in Afghanistan.¹¹⁴

Reaper, the advanced version of drones came to light in 2001 after the General Atomics, the manufacturer, developed a more lethal unmanned aerial platform with extra payload.¹¹⁵ During the same period the issue of targeted killings came under discussion in the U.S. Senate. On 9/11, when the United States was attacked and its security interests inside and abroad were threatened by al-Qaeda, the targeted killing policy changed overnight. In the same month, President George W. Bush signed a directive delegating blanket powers to the CIA for a targeted killing campaign against suspected terrorists of al-Qaeda and its affiliates.¹¹⁶ Cofer Black, who was the counterterrorism coordinator in the Bush Administration, best described this shift: “With the approval of the directive, the gloves come off.”¹¹⁷ From this point, the operation of targeted killings spread to Pakistan, Yemen, Philippines, Libya, Iraq, and Afghanistan.¹¹⁸

The irony was that in July 2001, the United States denounced the targeted assassination policy of Israel and described it as extra-judicial killing. But in September, subsequent to the CIA security brief to the president about the Bin Laden impending mission of striking against the U.S. assets, a decision was made to activate the armed drone program. Consequently, after 9/11, the armed drone program was activated and the first batch of Predators reached Afghanistan on September 16, 2001, for reconnaissance against the HVTs, followed by the armed Predators that reached on October 7, 2001.¹¹⁹

¹¹⁴ Shaw, “The Rise of the Predator Empire.”

¹¹⁵ John Sifton, “A Brief History of Drones,” *Nation*, February 7, 2013, <http://www.thenation.com/article/166124/brief-history-drones>.

¹¹⁶ “Living Under Drones,” 24.

¹¹⁷ Intelligence Resource Program, “Testimony to Cofer Black,” Federation of American Scientist, 1–12, September 2002, http://fas.org/irp/congress/2002_hr/092602black.html.

¹¹⁸ Doyle McManus, “The Drone Warfare Drawbacks,” *Los Angeles Times*, July 5, 2014, <http://touch.latimes.com/#section/-1/article/p2p-80714452/>; “Drone Warfare,” Child Victim of War, <http://childvictimsofwar.org.uk/get-informed/drone-warfare/>.

¹¹⁹ Shaw, “The Rise of the Predator Empire.”

In 2002, at Zhawar kili in Afghanistan, the first drone strike took place killing three innocents who were collecting scrap. The operation had been conceived to hunt down bin Laden, and the targets were chosen because one of the suspects bore a resemblance to him.¹²⁰ Initially, it was claimed that the strike was appropriate, and later on, while the administration acknowledged that the suspect was not Osama bin Laden, it insisted that the target was legitimate.¹²¹ In November of the same year, the targeted killing campaign was shifted to Yemen where a drone targeted a car carrying six suspected terrorists, killing all on the spot. Qaed Sinan was one of them, wanted by the United States for his involvement in the attack on the USS Cole in 2000.¹²²

Until 2002, there was no official record of any protest in Pakistan about the killings of innocent civilians through drone strikes and Tomahawks in Afghanistan and elsewhere in the world. In 1998, Pakistan did protest to the United States over the violation of its airspace and the killing of a few civilians through Tomahawks that landed on Pakistani soil; however, Pakistan retracted the latter part of the statement.¹²³ The reason for retracting the earlier claim was that Pakistani forces recovered a few unexploded Tomahawks missiles from Baluchistan, which it denied to the United States resulting in a soured relationship.¹²⁴

These events of targeted killings set up the precedent for drone strikes in Pakistan. After 9/11, most of the al-Qaeda and its affiliate commanders crossed over to the tribal region of Pakistan. The United States had no choice but to target these terrorist elements seeking refuge in the hideouts in highly treacherous terrain, which is inaccessible and inhospitable. Boots on the ground

¹²⁰“Living Under Drones,” 24.

¹²¹ Ibid.

¹²² Ibid., 25.

¹²³ CNN Staff, “Pakistan Lodges Protest over U.S. Missile Strikes,” *CNN*, August 23, 1998, <http://www.cnn.com/US/9808/21/air.strikes.02/>.

¹²⁴ Feroz Hassan Khan, *Eating Grass: The Making of the Pakistani Bomb* (California: Stanford University Press, 2012), 248.

was not a favorable option, as evaluated by the United States for its international repercussions and severe blowback from the locals. From 2002 to 2004, drones were used for surveillance over these hideouts and safe havens in the tribal region of Pakistan. Eventually, in June 2004, the first drone strike took place in Pakistan targeting Nek Muhammad—Taliban Commander—who was a staunch supporter of al-Qaeda.¹²⁵

Complete mystery surrounded the first drone strike in Pakistan. Both the U.S. and Pakistan militaries claimed this successful strike. The United States claimed it for obvious reasons as it operated and controlled the drones, whereas Pakistan wanted to take the credit in order to blanket the tacit understanding with the administration and possible backlash over drone strikes.¹²⁶ The drone strikes kept increasing with every passing year. During the Bush Administration from 2004 to 2009, 45–52 drone strikes were carried out in Pakistan sovereign territory.¹²⁷ As President Obama assumed power, the strikes increased many times over, and within five years of his Administration (2009–2014) the strikes increased up to 335 with an estimated 2,310–3,743 killed.¹²⁸ This unprecedented increase has resulted in “escalating tensions between the United States and Pakistan, as well as continued questions about the efficacy and accuracy of such strikes.”¹²⁹ If at all Pakistan has consented discreetly to drone strikes in the past, it was restricted to certain conditions, which the ex- president of Pakistan

¹²⁵ Ibid.

¹²⁶“Charting Drone Strikes: In Sight, In Mind,” *Economist Blog*, March 25, 2013, <http://www.economist.com/blogs/graphicdetail/2013/03/charting-drone-strikes>.

¹²⁷ Peter Bergen and Katherine Tiedemann, “The Year of the Drone: An Analysis of U.S. Drone Strikes in Pakistan, 2004–2010,” New America Foundation, February 24, 2010, mentioned in Joint Study Report “Living under Drones,” 26, http://www.newamerica.net/publications/policy/the_year_of_the_drone.

¹²⁸ Jack Serle, “Only 4% of Drone Victims in Pakistan Named as al Qaeda Members,” *Bureau of Investigative Journalism*, October 16, 2014, <http://www.thebureauinvestigates.com/category/projects/drones/>.

¹²⁹“Living Under Drones,” 26.

revealed in 2013 saying as “only on a few occasions, when a target was absolutely isolated and [there was] no chance of collateral damage.”¹³⁰

In 2009, the Prime Minister of Pakistan Yousaf Raza Gillani asked for drone technology “to avoid the public outcry that regularly follows attacks by U.S. unmanned aircraft.”¹³¹ Pakistan’s policy dilemma came to light: whether to condemn the drone strike or the one who is behind the drone strike. Pakistan chose to oscillate between both, but would stress more on the latter due to common perception that “Pakistan is fighting [America’s] some else’s war,”¹³² and consequently asked for the transfer of drone technology.

C. REASONS FOR DRONE STRIKES INSIDE PAKISTAN

The resumption—the third time in history—and subsequent fluctuation in U.S.-Pakistan relations after 9/11 provide a better understanding of drone strikes inside Pakistan. After 9/11, the United States nominated Pakistan as its frontline ally in GWOT, much to the shock of India, in particular, and other states in general. However, the hidden cost was not perceived; Pakistan never expected that it had to deliver more than required with a heavy strategic cost. The terrorists who took refuge in FATA after fleeing Afghanistan had to be flushed out; moreover, a full-scale operation in North Waziristan against the Haqqani network was one of the specific demands by the United States.¹³³

Initially, the U.S. administration was satisfied with Pakistan’s cooperation in the GWOT due to meaningful intelligence sharing between the CIA and ISI.

¹³⁰ John Boone and Peter Beaumont, “Pervez Musharraf Admits Permitting ‘a few’ U.S. Drone Strikes in Pakistan,” *Guardian*, April 12, 2013, <http://www.theguardian.com/world/2013/apr/12/musharraf-admits-permitting-drone-strikes>.

¹³¹ Joshua Partlow, “Pakistan’s Gillani Asks U.S. for Drone Technology, Other Military Aid,” *Washington Post*, July 23, 2009, <http://www.washingtonpost.com/wp-yn/content/article/2009/07/22/AR2009072202224.html>.

¹³² Asad Munir, “Whose War Are We Fighting? *Express Tribune* with *International New York Times*, November 26, 2013, <http://tribune.com.pk/story/636909/whose-war-are-we-fighting/>; Ayaz Amir, “Fighting Someone else’s War,” *Dawn*, August 17, 2007, <http://www.dawn.com/news/1073347>.

¹³³ Rashid, *Descent into Chaos*, 115.

Many HVTs of al-Qaeda were either apprehended or neutralized by combined operations. To this end, then U.S. President George Bush acknowledged the effort in the following words, “[thanks] to the effective border security measures and law enforcement cooperation throughout [Pakistan], and ... to the leadership of President Pervez Musharraf.”¹³⁴ However, the opinion changed after almost four years as a result of al-Qaeda’s rise in operation capacity in FATA. According to the U.S. assessment “al-Qaeda has protected or regenerated key elements of its homeland attack capability, including: a safe haven in the Pakistan Federally Administered Tribal Areas (FATA), operational lieutenants, and its top leadership.”¹³⁵

The change in opinion toward Pakistan did not occur due to competing interests only but the overall emerging scenario during that time. All the developments in the region had a profound linkage to the insecurities of Pakistan. Indian influence in Afghanistan, the past relationship between the Taliban and the spy agency-ISI during the Afghan War of 1979, and finally the lack of capacity to launch a full-scale operation at a time when almost 120,000 troops were fighting and deployed in FATA. Launching an operation would entail social problems in the form of thousands of internally displaced persons (IDPs) and the ensuing repercussions in the form of a reprisal and support for terrorism.¹³⁶

The United States had its own priorities in fighting the GWOT, in which Pakistan inaction against the terrorists in FATA was a big void. The U.S. belief narrowed down to the fact that either Pakistan was unable or unwilling to take action against the militants’ safe havens in FATA.¹³⁷ On the other hand, the

¹³⁴ Ashley J. Tellis, “Pakistan and the War on Terror: Conflict, Goals, Compromised Performance,” Carnegie Endowment for International Peace, 2008, http://carnegieendowment.org/files/tellis_pakistan_final.pdf.

¹³⁵ Ibid.

¹³⁶ Shuja Nawaz, “FATA – A Most Dangerous Place: Meeting the Challenges of Militancy and Terror in Federally Administered Tribal Areas of Pakistan,” Centre for Strategic and International Studies, January 2009, 14–17.

¹³⁷ Ibid., 15.

dilemma for Pakistan was complicated, which the United States could not comprehend. The creation of Tehreek-e-Taliban Pakistan (TTP) in 2007—the sworn enemies of the Pakistan military—were on a rampage before they seized Swat, a city perilously close to the capital of Pakistan.¹³⁸ It changed the priorities of Pakistan armed forces in the GWOT, and Swat became the focal point of the counterterrorism operation.¹³⁹ For its own compelling reason, Pakistan remained consistently unwilling to flush out the terrorists, especially of Haqqani network, which frustrated the United States and led to the drone strikes.¹⁴⁰ *The New York Times* has quoted one of Pakistan's Army generals putting across Pakistan's perspective:

Pakistan has done some serious fighting in terrorist strongholds and shed a lot of blood. Over the past two years forces have been enlarged to 147,000 soldiers, mainly by relocating more than 50,000 from the Indian border. They have largely controlled militant activities in the Swat Valley, for example, which entailed two hard offensives with major casualties. But they have steadfastly declined to mount a major assault against North Waziristan—a mountainous region of terrorist deadwoods populated by battle-toughened outlaws.¹⁴¹

The target selection choice was yet another point of the drone controversy between the United States and Pakistan that continues to date.¹⁴² Another issue is in regard to sealing off the porous border between Afghanistan and Pakistan. It requires huge resources and efforts to seal the border of almost 1400 miles

¹³⁸ Justine Fleischner, "Governance and Militancy in Swat Valley," Center for Strategic and International Studies, October 2011, http://csis.org/files/publication/111014_Fleischner_SwatValley_0.pdf.

¹³⁹ Ibid.

¹⁴⁰ Lisa Curtis, "Pakistan makes Drone Necessary," *National Interest*, July 15, 2013, <http://nationalinterest.org/commentary/pakistan-makes-drones-necessary-8725>.

¹⁴¹ Bill Keller, "The Pakistanis have a Point," *New York Times*, December 14, 2011, <http://www.nytimes.com/2011/12/18/magazine/bill-keller-pakistan.html?pagewanted=all>.

¹⁴² Daniel Markey, "A New Drone Deal for Pakistan," *Foreign Affairs*, September 9, 2014, <http://www.foreignaffairs.com/articles/139584/daniel-markey/a-new-drone-deal-for-pakistan>.

meandering across the most treacherous terrain in the world.¹⁴³ It is easier said than done to seal a border. For example, despite technology and resources, the United States is unable to stem the flow of illegal immigrants across the Mexican border.¹⁴⁴ Making FATA the core issue by the U.S. in affecting the overall success of GWOT is a claim—unfounded—that can only be judged by time.¹⁴⁵ Finally, the issue of Pakistan's agreements with the terrorists from time to time does not sit well with the U.S. administration. The United States wanted elimination of all terrorists who were on its hit list; however, Pakistan would go into agreement with some of them.¹⁴⁶ None of the agreements has lasted for long—six months at most—due to the absence of an enforcement mechanism, but Pakistan would do it for its operational convenience as it did in Swat.¹⁴⁷ The difference in operational priorities, coupled with the United States' exaggerated demands vis-à-vis Pakistan's limitations in GWOT, has affected the relationship between the two allies. The lack of mutual trust led to the unilateral drone strikes in FATA and surgical strike, as in the case of Osama bin Laden.¹⁴⁸

To conclude, targeted killing and assassination have different connotations in international law. Assassination violates international law and is against U.S. domestic law as enforced through the 1976 executive order. Moreover, targeted killings, carried out against irregular combatants as determined by legal, accountable, and open process "is acceptable under the

¹⁴³ Feroz Hassan Khan, "The Durand Line: Tribal Politics and Pakistan-Afghanistan Relations," in the *Culture, Conflict, and Counterinsurgency*, ed. Thomas Johnson and Barry Scott Zellen (Stanford, CA: Stanford University Press, 2013).

¹⁴⁴ "Illegal Immigration from Mexico," U.S. Immigration Support, <http://www.usimmigrationsupport.org/illegal-immigration-from-mexico.html>.

¹⁴⁵ U.S. Department of State, *Terrorist Safe Havens – 5.1.a – 5.1.b Strategies, Tactics, and Tools for Disrupting or Eliminating Safe Havens*, July 31, 2012, <http://www.state.gov/j/ct/rls/crt/2011/195549.htm>; Lisa Curtis, "Denying Terrorists Safe Haven in Pakistan," *Heritage Foundation*, October 26, 2006, <http://www.heritage.org/research/reports/2006/10/denying-terrorists-safe-haven-in-pakistan>.

¹⁴⁶ Fleischner "Governance and Militancy in Swat Valley."

¹⁴⁷ Fleischner, "Governance and Militancy in Swat Valley; Seth Jones and Christine Fair, *Counterinsurgency in Pakistan* (Santa Monica, CA: Rand Corp., 2010), 34.

¹⁴⁸ CNN Staff, "How U.S. Forces Killed Osama bin Laden," *CNN World- U.S. Edition*, May 3, 2011, <http://www.cnn.com/2011/WORLD/asiapcf/05/02/bin.laden.rai>.

international law governing warfare.”¹⁴⁹ Mainly after 9/11, the CIA has shifted its focus to targeted killings in Pakistan to eliminate the terrorists hiding in its tribal areas.¹⁵⁰ This issue has serious repercussions in international politics, notwithstanding the ambivalent stance of Pakistan over drone operations.

¹⁴⁹ Steven R. Davis, “Israel’s Policy of Targeted Killing,” *Carnegie Council on Ethics and International Affairs* 17, no. 1 (2003): 111, <https://www.law.upenn.edu/institutes/cerl/conferences/targetedkilling/papers/DavidIsraelPolicy.pdf>.

¹⁵⁰ Greg Miller and Julie Tate, “CIA Shifts Focus to Killing Targets,” *Washington Post*, September 1, 2011, http://www.washingtonpost.com/world/national-security/cia-shifts-focus-to-killing-targets/2011/08/30/gIQA7MZGvJ_story.html.

III. THE DRONE STRIKES: A LEGAL PERSPECTIVE

After 9/11, the cooperation between the United States and Pakistan helped in the capture and elimination of terrorist elements; however, the common interests in the GWOT have been overshadowed by the divergence on how to tackle this scourge.¹⁵¹ Drone strikes inside Pakistan's sovereign territory—specifically FATA—and the surgical strike against Osama bin Laden in the garrison city of Abbottabad, remain controversial, and inspire severe local opposition.¹⁵² The United States, on the other hand, considers drones as an effective instrument against terrorism.¹⁵³

It is increasingly alone in this estimation. Opposition to the drone strikes is not limited to Pakistan. In a recent survey conducted by the Pew Research Centre, 31 out of 39 countries oppose U.S. drone strikes.¹⁵⁴ Even within the United States, doubts have been raised over its legality and judicial accountability.¹⁵⁵

¹⁵¹ Maria Syed, "Drone Strikes: Developing an Accord," *News International*, November 13, 2013, <http://www.ipripk.org/drone-strikes-developing-an-accord/#sthash.S1zO5Kc5.dpuf>.

¹⁵² Air Commodore Khalid Iqbal, "Drones under UN Scrutiny," Islamabad Policy Research Institute, December 27, 2013, <http://ipripak.org/articles/latest/duus.pdf>. Earlier it was presumed that the authorities in Pakistan had given tacit approval to drone strikes, but of late, Pakistan has shed its ambiguous stance, and has opposed these strikes at every forum.

¹⁵³ James Igoe Walsh, "The Effectiveness of Drone Strikes in Counterinsurgency and Counterterrorism Campaign," Strategic Studies Institute, September 2013, 9, <http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB1167.pdf>.

¹⁵⁴ Bruce Drake, "Report Questions Drone Use, Widely Unpopular Globally, But Not in the U.S.," PEW Research Center, October 23, 2013, <http://www.pewresearch.org/fact-tank/2013/10/23/report-questions-drone-use-widely-unpopular-globally-but-not-in-the-u-s/>.

¹⁵⁵ Syed, "Drone Strikes."

A. HISTORICAL PERSPECTIVE: SELF-DEFENSE

The use of preemptive force in self-defense is not a new phenomenon; it took root in the customary international law¹⁵⁶ that existed long before the adoption of the UN Charter.¹⁵⁷ The famous Caroline affair¹⁵⁸—a diplomatic incident between the United States and Britain in 1837—laid the foundation of customary rules for (and subsequent efforts to codify) national for self-defense.¹⁵⁹ The Case takes its name from a steam ship, the *Caroline*, which the British charged was used by Americans to aid an anti-crown insurgency in Canada. (In the event, the Canadian rebels had declared an independent Republic of Canada while they hid on an island in Lake Ontario. The *Caroline* brought supplies and money while the insurgents regrouped.) British and loyal Canadian forces raided the ship one night as it was docked in American water. The crew was chased off the vessel—though one American was killed on the dock as the party boarded—and the *Caroline* was set on fire. A Royal Navy ship then towed the *Caroline* into the current and let the flaming wreckage drift over Niagara Falls. The American public, roused by the lurid and exaggerated newspaper reports, was outraged. The United States initiated a diplomatic exchange with London, demanding apologies and compensation, but the British took a stance of (self-) defense of Canada.¹⁶⁰

¹⁵⁶ Customary international law refers to international obligations arising from established state practice, as opposed to obligations arising from formal written international treaties. Customary international law results from a general and consistent practice of states that they follow from a sense of legal obligation; Law Information Institute, http://www.law.cornell.edu/wex/customary_international_law.

¹⁵⁷ Arend, “International Law,” 90.

¹⁵⁸ Hunter Miller, “British-American Diplomacy the *Caroline* Case,” Lillian Goldman Law Library of Yale Law School, 2008, http://avalon.law.yale.edu/19th_century/br-1842d.asp; John E. Noyes, “The *Caroline*: International Law Limits on Resort to Force,” in *International Law Stories*, eds. John E. Noyes, Laura A. Dickinson, and Mark W. Janis (New York: Thomson West, 2007), 263–270.

¹⁵⁹ Colonel Steven L. Kenney, “The National Security Strategy Under the United Nations and International law,” USAWC Strategy Research Project, March 19, 2004, 7, <http://www.dtic.mil/get-tr-doc/pdf?AD=ADA423785>.

¹⁶⁰ Noyes, “The *Caroline*,” 263–70.

The Caroline case can be correlated to the drone issue. The American supporters of the Canadian insurgency acted like “Good Taliban” because they were creating problems for the British Empire by supporting and harboring the Canadian insurgents. The British acted in self-defense by attacking the Caroline in U.S. territorial waters, much like the present-day drone strikes in Pakistan.

In the Caroline case, the United States argued that even if the Canadian rebels were supported by the United States, the violators should have been tried—national law—by the U.S. courts. Moreover, an attack on a neutral country for self-defense must not be permitted under ordinary circumstances like routine defense, retaliation, and convenience. The British regretted overstepping into the U.S. territory, but argued that the destruction of the Caroline was necessary because the United States was fomenting insurgency in Canada and certainly aiding the enemy. Moreover, the British also suspected that the United States would have been unable to take action against the rebels.¹⁶¹

The U.S. view prevailed and the Caroline incident, in fact, completely transformed the right of self-defense from a “political excuse to legal doctrine.”¹⁶² It also established some strict criteria for the claim: a state can exercise the right of self-defense only if the “necessity of that self-defense is instant, overwhelming, and leaving no choice of means and no moments for deliberation.”¹⁶³ Otherwise, the sovereignty of the third state is deemed to be sacrosanct. The convenience of preemptive action was not accepted as suitable reason to intrude on it.

1. Necessity, Immediacy, and Proportionality

From the Caroline case, three fundamental factors set the criteria for self-defense: necessity, immediacy—commonly referred to as imminence—and

¹⁶¹ Ibid.

¹⁶² R. Y. Jennings, “The Caroline and McLeod Cases,” *American Journal of International Law* 32, no.1 (January 1938): 82, JSTORE (21105096705933) <http://www.jstor.org/discover/10.2307/2190632?uid=3739560&uid=2129&uid=2&uid=70&uid=4&uid=3739256&sid=21105096705933>.

¹⁶³ William R. Slomanson, *Fundamental Perspective on International Law*, 5th ed. (United States: Thomson Wadsworth, 2007), 458.

proportionality.¹⁶⁴ Necessity is the first prerequisite for using force in self-defense. In simple words, a state should establish that “the use of force by the other state was imminent, and that there was essentially nothing but forcible action that would forestall such attack.”¹⁶⁵ Moreover, “[n]ecessity can only be met when alternative peaceful means of resolving the dispute have been exhausted.”¹⁶⁶ All other reasonable measures must be taken before the necessity requirement is fulfilled.

Immediacy is the second requirement, which is closely linked to necessity. The immediacy of the threat should be fairly demonstrated so that the action in self-defense becomes a necessity. By the language of the Caroline exchange, the triggering act must pose an urgent threat, leaving no other recourse. By the same token, the longer a government has to reflect on or plan a response, the less immediate the threat becomes.¹⁶⁷

Proportionality is the third requirement: the threat and the use of force should be proportional to each other. In simple words, “exercise of anticipatory self-defense should be proportional to the provocation.”¹⁶⁸ Response by the attacker should be proportional to the losses suffered; moreover, the force employed should not be excessively disproportionate to achieve the objective.¹⁶⁹ In present times, out of these three key variables, application of proportionality is more complicated than necessity because the latter can be determined with relative ease in the decision-making process.¹⁷⁰

¹⁶⁴ Louis-Philippe Rouillard, “The Caroline Case: Anticipatory Self-Defense in Contemporary International Law,” *Miskolc Journal of International Law*, 1, no. 2 (2004): 104–120, <http://www.uni-miskolc.hu/~wwwdrint/20042rouillard1.htm>.

¹⁶⁵ Rouillard, “The Caroline Case,” 107.

¹⁶⁶ Sikander Ahmed Shah, “War on Terrorism: Self Defense, Operation Enduring Freedom, and the Legality of Drone Strikes inside Pakistan,” *Washington University Global Studies Law Review* 9, no. 1 (2010): 93, <http://digitalcommons.law.wustl.edu/cgi/viewcontent.cgi?article=1041&context=globalstudies>.

¹⁶⁷ Rouillard, “The Caroline Case.”

¹⁶⁸ *Ibid.*, 109.

¹⁶⁹ Shah, “War on Terrorism,” 93.

¹⁷⁰ Slomanson, *International law*, 458; Shah, “War on Terrorism,” 93.

The right—or the claim—of self-defense has been used and misused many times since the Caroline affair; sometimes lawfully, mostly as an excuse for aggressive action like in the invasion of Denmark and Norway during the Second World War.¹⁷¹ Denmark and Norway both declared their neutrality in the war, through a non-aggression pact; however, Denmark was invaded by Germany for military necessity.¹⁷² As regards the invasion of Norway, the Germans claimed they acted in self-defense—secured bases—for fear of the landing of British and French expeditionary forces, which was in violation of Norway’s neutrality and could have affected German war plans. Both the justifications were rejected by the tribunal investigating the case.¹⁷³

Another important factor related to self-defense is state responsibility, and the Corfu channel case (1949) is a case in point. In October 1944, in Albanian territorial waters, two British destroyers, H.M.S Saumarez and H.M.S Volage, hit mines that resulted in the loss of lives and damage to the ships. The British charged the Albanian government of either laying the mine or knowing about the presence of mines, but failing to inform the British of the danger, which is against international law.¹⁷⁴ The Albanian government contested both charges, but the International Court of Justice (ICJ) states that “[its] every state’s responsibility not to allow knowingly its territory to be used for acts contrary to the rights of other states.”¹⁷⁵ This suggests that a state territory cannot be used for unlawful acts—such as harboring terrorists—against another state.

¹⁷¹ Rouillard, “The Caroline Case,” 110.

¹⁷² *Historical Review of Developments Relating to Aggression* (New York: United Nations Publications, 2003), 107–109, <http://www.un.org/law/books/HistoricalReview-Aggression.pdf>.

¹⁷³ Ibid.

¹⁷⁴ International Court of Justice, “Cases: Corfu Channel (UK of Great Britain and Northern Ireland v. Albania),” 12–14, <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&case=1&p3=4>.

¹⁷⁵ Ibid.

2. Redefining Imminent Threat

In international law, imminent threat became the standard criterion, after the Caroline affair. The diplomatic exchange between the United States and Britain defined an imminent threat as: “instant, overwhelming, and leaving no choice of means, and no moment of deliberations.”¹⁷⁶ In the original conception, imminent threat was related to certain visible, provocative acts like mobilization of troops and equipment or massing of forces on a state border. The assumption was that such a menace would be perpetrated by one sovereign state against another and that the evidence of this violent intention would be visible *and physical*.¹⁷⁷ The prospect of an immediate attack also justifies the use of preemptive force in self-defense without a state first having to withstand the attack. Particularly once the nuclear age dawned, the notion of a pre-emptive strike was generally accepted though not clearly defined.¹⁷⁸

In the 2002 U.S. National Security Strategy (NSS), prevention features prominently; indeed, two of the eight broad themes or ambitions that structure this document include “prevent” in their programmatic titles.¹⁷⁹ In both cases, this prevention refers specifically to the terrorist threat, which the strategy identifies as emanating from “[t]housands of trained terrorists ... with cells in North America, South American, Europe, Africa, the Middle East, and across Asia.”¹⁸⁰ In the name of prevention, the NSS document promulgates what has since become known as the Bush Doctrine: “While the United States will constantly strive to enlist support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self-defense by acting preemptively

¹⁷⁶ Rouillard, “The Caroline Case.”

¹⁷⁷ Ben Fritz, “Sorting out the ‘Imminent Threat’ Debate,” Spin Sanity, November 3, 2003, <http://www.spinsanity.org/columns/20031103.html>; Dan Darling, “Special Analysis: The Imminent Threat,” Winds of Change, September 4, 2003, <http://windsofchange.net/archives/003991.html>.

¹⁷⁸ Arend, “International Law,” 90.

¹⁷⁹ The White House, *National Strategy for Counterterrorism, 2002* (Washington, DC: GPO, 2002), 1–2, www.whitehouse.gov/nsc/nss.html, and <http://georgewbush-whitehouse.archives.gov/nsc/nss/2002/>.

¹⁸⁰ *Ibid.*, 5.

against such terrorists, to prevent them from doing harm against our people and our country.”¹⁸¹

The 2010 NSS does not include the word “preempt” in any form. It invokes prevention in connection with deterrence, which is a rather more conventional understanding of how armed prevention should work under the law.¹⁸² With the change of administration came a rethinking of the ambitious aspects of the Bush Doctrine, which shows that even the United States came to be a little uncomfortable with the full program of preemption. Drone strikes are a modality of the heyday of the Bush Doctrine, but they do not seem to have been rethought quite so extensively.¹⁸³

3. The Effect of the UN Charter

In present times even in the presence of Article 51 of the UN Charter, the Caroline affair is often cited in disputes that revolve around pre-emptive strikes because Article 51 of the UN Charter is not explicitly clear on the question of when the right of self-defense begins.¹⁸⁴ Article 51 states that, “the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security,”¹⁸⁵ posits a strong condition—armed attack—before a state can act in self-defense. In contrast, the

¹⁸¹ Ibid., 6.

¹⁸² The White House, *National Strategy for Counterterrorism, 2010* (Washington, DC: GPO, 2010), http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf.

¹⁸³ Ibid.

¹⁸⁴ Article 51 states that “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.” Mentioned in Chapter VII of the UN Charter: Actions with Respect to Peace, Breaches of the Peace, and Acts of Aggression, <http://www.un.org/en/documents/charter/chapter7.shtml>.

¹⁸⁵ Rouillard, “The Caroline Case,” 110–11.

Caroline case does not place a threshold of an armed attack on a state prior to acting in self-defense.

In its outline, Article 51 provides a clear direction, but it also reflects a slight deviation from the customary right of anticipatory self-defense. The deviation relates to the clarity, in broad and narrow interpretation, of “determining the scope of the right to use force in self-defense” by customary international law and the UN Charter, respectively. The deviation has divided the experts into two groups. The first group, the so-called restrictionists, claims that, “the intent of Article 51 was explicitly to limit the use of force in self-defense to those situations in which an armed attack has actually occurred.” This view would suggest that a likely victim is helpless by law to act in self-defense unless and until it is attacked first; thus, preemptive actions are unlawful.¹⁸⁶

The second group—“counter-restrictionists”—of scholars, however, rejects this narrow interpretation. According to them, the reference to the “inherent right” in Article 51 reflects a continuation rather than a limitation of the pre-existing customary international law on anticipatory self-defense. The requirement of an armed attack is one of the circumstances—not the only circumstance—in which self-defense becomes permissible.¹⁸⁷ The Bush Doctrine clearly subscribes to the counter-restrictionist viewpoint and, in fact, pushes it even further to the issue of harboring non-state actors.

The fundamental issue in international law is between the right of self-defense and the right to anticipatory self-defense, which rejects the requirements of immediacy. Both are recognized, but the latter has issues with interpretation. Either way, the UN Charter explicitly states that the use of force is limited to two instances: Individual and collective self-defense after an armed attack has occurred under Article 51, and in the restoration of peace and security through

¹⁸⁶ Arend, “International Law,” 92; Kenney, “The National Security Strategy,” 5; Corinne Lewis, “Don’t Stop Now: The Development of the International Law, Right to use Force in Self-Defense,” *Journal of International Law & Policy* IV, no. 1 (June 2007): 6–7, https://www.law.upenn.edu/journals/jil/jilp/articles/4-1_Lewis_Corinne.pdf.

¹⁸⁷ Ibid.

collective measures under Article 42. However, a few states, by claiming to remain within their right of self-defense, still resort to anticipatory self-defense in order to prevent an armed attack.¹⁸⁸

B. THE U.S. PERSPECTIVE

In aftermath of the 9/11 incident, then-President George W. Bush declared: “We will make no distinction between the terrorists who committed these acts and those who harbor them.”¹⁸⁹ This statement became part of the foundation of the Bush Doctrine. The Bush Doctrine consists of four prongs: 1) “Take the fight to the enemy overseas before they can attack us again here at home”; 2) “Confront threats before they fully materialize”; 3) “Advance liberty and hope as an alternative to the enemy’s ideology of repression and fear”; and 4) “Make no distinction between terrorists and the nations that harbor them, and hold both to account.”¹⁹⁰ The policy provided the legal basis for preemptive strikes, in Afghanistan, and tribal areas of Pakistan.

Endorsing the Bush Doctrine, the Obama Administration in a Department of Justice White Paper, states: “The condition that operational leaders present an imminent threat of violent attack against the United States does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future.”¹⁹¹ Accordingly, the present administration still uses drones to kill suspected terrorists on foreign soil “who pose a continuing, and imminent threat to the American people.”¹⁹² The only

¹⁸⁸ Rouillard, “The Caroline Case,” 114.

¹⁸⁹ Frontline Staff, “The Evolution of the Bush doctrine,” *Frontline*, 2003, <http://www.pbs.org/wgbh/pages/frontline/shows/iraq/etc/cron.html>.

¹⁹⁰ Washington Post Staff, “Decision Points, by Pres. George W. Bush: on Foreign Policy,” *Washington Post*, December 21, 2006, http://www.ontheissues.org/Archive/Decision_Points_Foreign_Policy.htm.

¹⁹¹ “Department of Justice White Paper,” *NBC News*, http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf.

¹⁹² Marc A. Thiessen, “The Obama-Bush Doctrine,” *Washington Post*, May 31, 2012, http://www.washingtonpost.com/opinions/the-obama-bush-doctrine/2012/05/31/gJQAGZmM4U_story.html.

change is handing over the baton from CIA to the U.S. Department of Defence (DOD).

The Obama Administration argues that Pakistan has important (if not dispositive) links with the non-state actors, even if there is no evidence of authorization of operation to the non-state actors.¹⁹³ The Administration further insists that the cross-border attacks on its forces, with complicity of ISI, are committed by the Taliban and al-Qaeda, which have safe havens in Pakistani territory.¹⁹⁴

1. Preemption and Prevention: The Bush Doctrine

The 2002 NSS is often cited as the definitive statement of the Bush Doctrine, which has evolved significantly.¹⁹⁵ It initially focused on deterrence, followed by the policy of containment, and finally arrived at first strike against rogue states and terrorists.¹⁹⁶ It contends that “[t]he greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy’s attack.”¹⁹⁷ The strategy focuses on predicting the future intentions of states and non-state actors—unilaterally—making it convenient for the use of force.¹⁹⁸

The 2002 NSS argued that the concept of imminent threat should be redefined after the 9/11 incident so as to afford more flexibility in acting to prevent a potential and cataclysmic threat, particularly one authored by rogue

¹⁹³“Living Under Drones,” 112.

¹⁹⁴ Ahmed Bilal Soofi, “Does International Law Permit U.S. Strikes inside Pakistan?” *News International*, October 7, 2011, <http://www.thenews.com.pk/OpinionWriters.aspx?ID=a>.

¹⁹⁵ New York Times Staff, “Aftermath; the Bush Doctrine,” *New York Times*, April 13, 2003, <http://www.nytimes.com/2003/04/13/opinion/aftermath-the-bush-doctrine.html>.

¹⁹⁶ Chris J. Dolan, “The Bush Doctrine and U.S. Intervention,” *Foreign Services Dispatches and Periodic Reports on the U.S. Diplomacy*, June 2004, http://www.unc.edu/depts/diplomat/archives_roll/2004_04-06/dolan_bush/dolan_bush.html.

¹⁹⁷ Arend, “International Law,” 96–98.

¹⁹⁸ Dolan, “The Bush Doctrine.”

states or non-state actors. Pre-emption gave way to prevention in this document, which came to be known as the Bush Doctrine. The modified concept was meant to offset the limitations imposed by Article 51 of the UN Charter, which are occurrence of an armed attack followed by approval of the Security Council for any action. Moreover, the procedural requirements of Article 51, which required going through the Security Council for adopting certain measures before use of force in self-defense, were considered an inconvenience by the administration and dodged conveniently.¹⁹⁹

The distinctive feature of the Bush Doctrine is its relaxation of the vital factor of necessity while using force against potential threats. The 2002 NSS specifically adhered to the concept of imminent threat by stating: "We must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries." In other words, the administration interpreted the law in a way that does not require the element of necessity, as it makes no sense with the new form of enemy, the terrorist. It may be too late for a response, if the threat is recognized through the imminent qualification.²⁰⁰

International law scholars disagree. Arend states: "Although traditional international law would not require certainty regarding time and place, it would suggest near certainty. If an attack is imminent, it is almost certain that the attack will occur," suggesting that the Bush Doctrine, as some scholars say, is not in consonance with international law.²⁰¹

There is a problem in balancing between imminent threat and preemptive strike. The presence of al-Qaeda, with a historical record of attacks against the United States does give leverage in establishing imminence. The terrorists can strike U.S. interests anywhere and at any time. However, according to Bush

¹⁹⁹ *The National Security Strategy of the United States 2002*; Fritz, "Imminent Threat," Darling, "Special Analysis."

²⁰⁰ *The National Security Strategy, September 2002*; Archives, "Prevent Our Enemies from Threatening Us, Our Allies, and Our Friends with Weapons of Mass Destruction," U.S. Department of State, 2002, <http://georgewbush-whitehouse.archives.gov/nsc/nss/2002/nss5.html>.

²⁰¹ Arend, "International Law," 96–97.

Doctrine, “America is not going to wait until the last minute before acting, but rather would neutralize threats well before they became imminent.” The United States follows the standard self-defense rules against any threat in order to preempt rather than to prevent and contain.²⁰²

The United States has used preemptive force without UN authorization, including air strikes against Libya and missile strikes against El-Shifa chemical plants in Sudan, mistakenly targeted as a weapons factory, which were illegal under International law. The problem is aggravated when a group is likely to attack but has not committed an action. In such a scenario when would a state lawfully go for preemption? Here is the blurred boundary line, which has yet to address the use of force preemptively in self-defense against terrorism.²⁰³

2. U.S. Domestic Law

U.S. domestic law must allow drone strikes on foreign soil. The president wields significant authority on the use of force through Article II of the U.S. Constitution.²⁰⁴ Moreover, a joint resolution—the AUMF—passed shortly after the 9/11 terror attacks,²⁰⁵ authorizes the president, as commander-in-chief, “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

²⁰² Dore Gold, “U.S. Policy on Preventive Military Action against Iran,” *Jerusalem Center for Public Affairs* 12, no. 3 (March 2012), <http://jcpa.org/article/u-s-policy-on-preventive-military-action-against-iran/>; Arend, “International Law,” 98–99.

²⁰³ Ibid.

²⁰⁴ Richard F. Grimmett, *Authorization for Use of Military Force in Response to the 9/11 Attacks* (P.L. 107–40): Legislative History (CRS Report No 22357) (Washington, DC: Congressional Research Service, 2007), 3–5, <http://fas.org/sgp/crs/natsec/RS22357.pdf>.

²⁰⁵ “Living Under Drones,” 118–19.

persons.”²⁰⁶ The White House argues that the AMUF, backed by the U.S. Constitution justifies drone strikes on foreign soil.²⁰⁷

U.S. officials argue that the fight in the GWOT is not against al Qaeda, but all the affiliated groups that support them—associated forces—all over the world, whenever they become known.²⁰⁸ This language used in the AMUF suggests that legally the United States can strike against Al Qaeda, and its affiliates like the Taliban who unleashed their reign of terror against U.S. interests and personnel. The World Trade Center attack in 1993, suicide bombing of the U.S. embassies in Kenya, Tanzania, and Nairobi in 1998, the attack on the USS Cole in 2000, and the 9/11 attacks are among the most notable.²⁰⁹ However, the Pakistani Taliban and Haqqani network are not the associated forces because they are not involved in any of these attacks. Still, they are targeted by drone strikes, which arguably is not fair under the AUMF.²¹⁰

The AUMF has no time limit and provides the legal authority for executives to misuse power by killing, kidnapping, and torturing. According to Barbara Lee, a congresswoman, the AUMF is “a blank check for endless war ... that gives any president the nearly unlimited authority to wage limitless war at anytime, anywhere, for any reason, in perpetuity,” and suggests that the unlimited and

²⁰⁶ Authorization of Use of Military Force, Pub.L.No. 107–40, & 2(a), 115 stat. 224, 224 (September 18, 2001) (reported as a note to 50 U.S.C.A & 1541). Emphasis added.

²⁰⁷ The White Paper cites the concurrence by Justice Jackson in the seminal *Youngtown Sheet & Tube* case, which posits that the president acts as the “zenith” of this power when he acts in accordance with a congressional grant of authority, in this case, the AMUF. *Youngtown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635–38 (1952) (Jackson, J., concurring).

²⁰⁸ Jeh C. Johnson, on “National Security Law, Lawyers and Lawyering in the Obama Administration,” Council on Foreign Relations, February 22, 2012, at Yale law School, <http://www.cfr.org/defense-and-security/jeh-johnsons-speech-national-security-law-lawyers-lawyering-obama-administration/p27448>.

²⁰⁹ Robert Windrem, “Al-Qaeda Timeline : Plots and Attacks,” *NBC News*, http://www.nbcnews.com/id/4677978/ns/world_news-hunt_for_al_qaida/t/al-qaida-timeline-plots-attacks/#.U_zbYirluoA.

²¹⁰ “Living Under Drones,” 120.

unchecked power needs congressional oversight, which so far has not been done.²¹¹

Once al-Qaeda is degraded, and the United States reaches a tipping point, responsibility would pass from the military to other law enforcement agencies.²¹² The authorities vested in the president by the AUMF through Congress will no longer be applicable to justify the use of force. Jeh Johnson, then senior lawyer in the Obama Administration, and presently U.S. Secretary of Homeland Security, has said that the United States “will not be able to say ... that our efforts should no longer be considered an armed conflict against al-Qaida and its affiliates.”²¹³ No one knows how and when it would happen; notwithstanding the oft-repeated U.S. claims that al-Qaeda has been made ineffective.²¹⁴

Another related issue is the involvement of the CIA in drone operations inside Pakistan. Whether the CIA can operate beyond the parameters of congressional authority is still debatable; however, with the AUMF in place, the “President has the authority to issue findings to authorize CIA action beyond the parameters of Congressional authorization as long as such action does not otherwise violate domestic law.”²¹⁵ The United States should provide legal basis for such actions because “individual strikes could constitute acts of illegal extra judicial assassination, and assassinations have long been condemned in the US.”²¹⁶ However, according to the white paper issued by the Department of

²¹¹ Credo Staff, “Tell Congress: No Blank Check for Endless War,” CREDO Action, 2014, http://act.credoaction.com/sign/lee_aumf_2014/.

²¹² Nick, Hopkins, “U.S. heading for Point when Military Pursuit of al-Qaida Should End,” *Guardian*, November 30, 2012, <http://www.theguardian.com/world/2012/nov/30/us-war-against-al-qaida>.

²¹³ Ibid.

²¹⁴ Greg Miller, “Al-Qaeda Targets Dwindle as Group Shrinks,” *Washington Post*, November 22, 2011, http://www.washingtonpost.com/world/national-security/al-qaeda-targets-dwindle-as-group-shrinks/2011/11/22/gIQAAbXJNmN_story.html; ABC News Staff, “Sources: Al Qaeda Fractured, Ineffective,” *ABC News*, <http://abcnews.go.com/US/story?id=90662>.

²¹⁵ “Living Under Drones,” 121.

²¹⁶ Ibid.

Justice, “[a] lawful killing in self defense is not an assassination,” as it would not violate the assassination ban.²¹⁷

C. THE INTERNATIONAL LAW: ANOTHER PERSPECTIVE

Pakistan has neither the capacity nor the intention to attack the United States directly or indirectly. Pakistan certainly is not at war with the United States. Thus, by the standards of international law, the United States has no right to carry out drone and surgical strikes inside Pakistan—each a violation of its territorial integrity.

Relying on established International law, Pakistan raises several issues: violation of its territorial integrity; the question of jus ad bellum; the lawful and unlawful targeting of individuals (collateral damage).²¹⁸

1. State Support to Non-state Actors

The ICJ has articulated the laws—in different cases—that help clarify the drone issue. These cases are *Nicaragua vs. U.S.* (1986), the *Tadic Judgment* (1996), and *Uganda vs. Congo* (2005). These three cases define different aspects of state support, broadly defined to non-state actors.²¹⁹

In the first case, the United States justified its attack as collective self-defense against Nicaragua for its alleged support of the insurgents in El Salvador. Despite the fact that evidence of ‘state support’ was found, the ICJ ruled in favor of Nicaragua for the reason that the sabotage acts are independent and individual, which cannot be attributed to Nicaragua as the supporting state.²²⁰ The judgment states that the evidence in extension of support to insurgents does not provide sufficient grounds for an armed attack against

²¹⁷ “Department of Justice White Paper,” 15.

²¹⁸ Maria, “Drone Strikes,” 2.

²¹⁹ Soofi, “Does International Law Permit?”

²²⁰ Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. U.S.), International Court of Justice (Judgment of June 27, 1986), <http://www.scribd.com/doc/166882773/Nicaragua-vs-US> and http://www.princeton.edu/~achaney/tmve/wiki100k/docs/Nicaragua_v._United_States.html.

Nicaragua.²²¹ The ICJ held that “for a state to be responsible for the activities of contras [non-state actors], it would have to be proved that state had effective control of the military or paramilitary operations in the course of which the alleged violations were committed.”²²² Likewise, in the drone case, the United States, without establishing that the terror acts of the Haqqani network in Afghanistan are clearly attributed to Pakistan, it is unlawful to carry out an armed attack in the form of drone strikes. Pakistan can be blamed for “state tolerance” of the Taliban, but the issue of “effective control,” as stated in the Nicaragua case, cannot be made with certainty.

The second case is the *Prosecutor vs. Tadic* case. Dusko Tadic was a Bosnian Serb, a paramilitary official who committed extreme crimes against humanity at Prejidor and detention camps in Bosnia. The tribunal declared that his criminal acts were “acts of de facto state organs regardless of any specific instruction by the state,” as the court focused on the “subordination of the group to the overall control of the state.”²²³ The court held that “to be a de facto organ of the state, overall control over such outfit would suffice.”²²⁴ Pakistan does not have “overall control” of the Haqqani and Taliban network, which is also corroborated by the statements made no less than by U.S. President Obama, former Secretary of State Hillary Clinton, and Admiral Mike Mullen. Although the United States has evidence of Pakistan’s “contacts” with Taliban—which other states have as well, there is no evidence of “authorization or approval” of any unlawful action by the Pakistan government.²²⁵

The third case relates to the Ugandan attack on Congo. On the pretext that rebels based in Congo were responsible for carrying out attacks in Uganda, the Ugandan government launched an armed attack against the rebels inside the

²²¹ Soofi, “Does International Law Permit?”

²²² Shah, “War on Terrorism,” 94.

²²³ Yoram Dinstein, *War, Aggression, and Self-defense*, 3rd ed. (New York: Cambridge Press, 2001), 183.

²²⁴ Shah, “War on Terrorism,” 93.

²²⁵ Soofi, “Does International Law Permit?”

sovereign territory of Congo. The ICJ determined that a state cannot carry out an armed attack in self-defense against non-state actors by violating the territorial integrity of another state. Moreover, there is no evidence that the state—Congo—sponsored the attack from its land.²²⁶

These three cases highlight two important factors: maintaining contacts with non-state actors and nationality. In the Nicaragua and Congo cases, “maintaining contacts” does not come within the realm of state responsibility, so the United States, making this precedent the basis for using force in self-defense is unlawful. Moreover, nationality cannot be made the basis of state responsibility—international law—unless the unlawful acts of that particular national points to the state itself as in the Tadic case. On the contrary, Taliban are neither the agent nor affiliated with Pakistan Government. By this analogy the U.S. drone strikes in self-defense are hard to explain by international law.²²⁷

Two exceptions in Article 2(4) of the UN Charter are relevant in the present scenario that provides a legal cover for the drone strikes. First, “when the use of force is carried out with the consent of host state,” and, second, the use of force is allowed “where the host state is unwilling or unable to take appropriate action.” As regards the first point, some analysts suspect that Pakistani authorities had tacitly supported the drone strikes. However, repeated public statements by the government officials about the illegality of the U.S. drone strikes cast doubt on the issue of consent notwithstanding the political expediency involved in it. As regards the second point, Pakistan has a mixed record of response. At times, leaders have turned a blind eye to violent non-state actors, but at times took out HVTs like Khalid Sheikh Muhammad.²²⁸

The caveats in international law of “state consent and unwillingness” do not rise to the level of state support for non-state actors as brought out in the

²²⁶ Ibid.

²²⁷ Ibid.

²²⁸ “Living Under Drones,” 133.

related three cases decided by the ICJ. However, they provide sufficient legal cover to the drone strikes.

2. Collateral Damage and Targeted Killings: A Dilemma

Drones rely on intelligence, which at times can be flawed. Consequently, drone strikes have resulted in much higher numbers of civilian casualties than the militants. Targeted killings within the context of an armed conflict or outside armed conflict have legal implications. Due to the involvement of non-state actors, the United States claims it as a non-international armed conflict governed by IHL, without meeting the legal criteria.²²⁹ Interestingly, in the absence of an armed conflict, only IHRL applies. Targeted killings are not lawful under IHRL because during armed conflict, IHL (commonly known as the law of war) supersedes it.²³⁰

IHRL is found in the UN Basic Principles on the use of force and firearms, which states that “intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life,” giving legal cover to the use of firearms only in self-defense. Under these restrictions “individuals cannot be targeted for lethal attack merely because of past unlawful behavior, but only for imminent or other grave threats to life when arrest is not a reasonable possibility.”²³¹ In Pakistan, the drone strikes are contested because “they are unnecessary, as other, peaceful means of facing the threat have not been exhausted given the time parameters involved.”²³²

²²⁹ Both IHL and IHRL strive to protect the lives, health and dignity of individuals, albeit from a different angle. International Humanitarian law (IHL) aims to protect people who do not or are no longer taking part in hostilities. The rules embodied in IHL impose duties on all parties to a conflict. International Human rights law (IHRL), being tailored primarily for peacetime, apply to everyone. Their principal goal is to protect individuals from arbitrary behavior by their own governments. IHRL does not deal with the conduct of hostilities. ICRC Resource Center, <http://www.icrc.org/eng/resources/documents/misc/5kzmuy.htm>.

²³⁰ Human Right Watch Staff, “Q&A: U.S. Targeted Killings and International Law,” Human Right Watch, December 19, 2011, <http://www.hrw.org/news/2011/12/19/q-us-targeted-killings-and-international-law>.

²³¹ Ibid.

²³² Shah, “War on Terrorism,” 123.

If there is an armed conflict—which the United States claims to be a non-international armed conflict—then the drone strikes are evaluated in accordance with IHL. The U.S. administration has argued that targeted killings are justified as a self-defense measure; the application of IHL is adhered to in principle, which should be determined on a case-by-case basis under varying circumstances. However, the definition of associated forces and the legal points are not clarified by the U.S. administration, undermining the International legal framework.²³³

The killing of Anwar al-Awlaki, a U.S. citizen of Yemen descent, in September 2011, is a case in point. He was never charged with any crime, but the U.S. administration claimed that he was al-Qaeda's international propagandist and operation planner.²³⁴ Being a propagandist is not a valid charge, but being an operation planner qualifies Awlaki as a military target only if he was implicated in the past with the same charge.²³⁵ The rationale behind the attack is still not clear. The application of IHL dictates the legality of drone strikes through the principles of distinction and proportionality.²³⁶

The U.S. administration argues that drones only target the members of armed groups through signature strikes.²³⁷ But the data collected by a non-governmental organization and Pakistani sources show that the United States carried out 300–374 strikes between 2004 and 2012. The tally of deaths of innocents range from 400 to 900, with an additional 600 people seriously injured.²³⁸ These deaths occurred because of drone strikes targeting social gatherings; noncombatants who had come to the aid of survivors would be

²³³ University of Geneva, "Qualification of Armed Conflicts," Rule of Law in Armed Conflicts Project, http://www.geneva-academy.ch/RULAC/qualification_of_armed_conflict.php; Joint Study, "Living under Drones," 111–14.

²³⁴ "Q&A: U.S. Targeted Killings."

²³⁵ Ibid.

²³⁶ "Living Under Drones," 126.

²³⁷ Ibid., 111–14.

²³⁸ Amnesty International Report, "Will I be Next? U.S. Drone Strikes in Pakistan," October 22, 2013, <http://www.amnestyusa.org/research/reports/will-i-be-next-us-drone-strikes-in-pakistan>.

engaged again with the second drone strike presuming them to be terrorists helping terrorists.

Article 57 of the additional protocol to the Geneva Convention reflects on the “precautions in attack and specifies that the civilian population shall not be the object of attack.”²³⁹ The International Committee of the Red Cross has made a clean distinction between civilians who participate in unambiguous activity and those who keep a continuous combatant function; however, concerns about the strike’s safeguard remain an issue in view of back-to-back strikes with no confirmation whether the target is legitimate or otherwise.²⁴⁰

According to Bureau of Investigative Journalism, “the CIA’s drone campaign in Pakistan has killed dozens of civilians who had gone to help rescue victims ... specifically at least 50 civilians were killed in follow-up strikes when they had gone to help victims.”²⁴¹ To this end, Christof Heyns states, “If civilians ‘rescuers’ are indeed being intentionally targeted, there is no doubt about the law: those strikes are war crimes.”²⁴² But, in the tribal environment of Pakistan, distinction between an innocent and a terrorist is a complicated and challenging issue, making it difficult for signature strikes.²⁴³ Militants seeking refuge in tribal areas do not wear any kind of uniform that make them discernible. Moreover, in tribal culture everyone carries a weapon, which makes it difficult for the drones to distinguish between the innocents and militants.

²³⁹ International Committee of the Red Cross, Protocol additional to the Geneva Convention of August 12, 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1), June 8, 1977, <http://www.icrc.org/ihl/4e473c7bc8854f2ec12563f60039c738/50fb5579fb098faac12563cd0>.

²⁴⁰“Living Under Drones,” 113–14.

²⁴¹ Glen Greenwald, “U.S. Drone Strikes Target Rescuers in Pakistan – and the West Stays Silent,” *Guardian*, August 20, 2012, <http://www.theguardian.com/commentisfree/2012/aug/20/us-drones-strikes-target-rescuers-pakistan>.

²⁴² Jack Serle, “U.N. Expert Labels CIA Tactic Exposed by Bureau ‘a War Crime,’” *Bureau of Investigative Journalism*, June 21, 2012, <http://www.thebureauinvestigates.com/2012/06/21/un-expert-labels-cia-tactic-exposed-by-bureau-a-war-crime/>.

²⁴³“Living Under Drones,” 112.

Thus, it becomes an issue of proportionality. Drone operations are also in violation to Article 51 of the additional protocol requiring “the protection of civilian population.”²⁴⁴ Evidence suggests that mostly the civilian rescue workers, marriage ceremonies, and religious places are targeted.²⁴⁵ Even if the legitimate target is identified, the large presence of innocent civilians in such a space makes the strike disproportionate.²⁴⁶ If these civilians are intentionally targeted, the strikes legally constitute war crimes.

3. The UN Perspective

Article 2(4) prohibits use of force by a state against another. A problem comes up with the interpretation of two exceptions: “Consent” and “Unwillingness and Inability” of a state to control terrorist and unlawful activities from its land. In a complicated issue like drone strikes, it is very difficult to draw the definitive red line. Drawing inferences by disregarding the ground realities, real intentions, and capabilities of a state are always fraught with ambiguity.²⁴⁷

In 2013, the United Nations General Assembly unanimously passed a resolution on the “Protection of Human Rights and Fundamental Freedom while countering Terrorism,” which was against the employment of drones in foreign territories. The resolution clearly defines the limits on measures and means employed—including drones—against terrorism. Every counterterrorism act has to comply—international law, IHL, IHRL—and respect the principles of

²⁴⁴ International Committee of the Red Cross, Protocol additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1), June 8, 1977, <http://www.icrc.org/ihl/Web ART/470-750065>.

²⁴⁵ Chris Woods and Christina Lamb, “CIA Tactics in Pakistan include Targeting Rescuers and Funerals,” *The Bureau of Investigative Journalism*, February 4, 2012, <http://www.thebureauinvestigates.com/2012/02/04/obama-terror-drones-cia-tactics-in-pakistan-include-targeting-rescuers-and-funerals/>.

²⁴⁶ Daily Times Staff, “UN calls for Drone Strikes to Comply with International Laws,” *Daily Times*, December 20, 2013, <http://www.dailytimes.com.pk/foreign/20-Dec-2013/un-calls-for-drone-strikes-to-comply-with-international-laws>.

²⁴⁷ Theresa, “State Weakness,” 246.

proportionality and distinction. Lately, the European Union has also passed a resolution against the drone strikes.²⁴⁸

D. CONCLUSION

Many in the U.S administration are of the opinion that customary international law, which provides a broader right to act in self-defense—including against non-state actors—cannot be replaced by Article 51 of the UN Charter.²⁴⁹ Upon invoking a robust self-defense doctrine, no other legal framework such as IHL would apply to the targeted killings; moreover, the policy permits preemptive self- defense even if the threat is not imminent.²⁵⁰

Initially, Pakistan had an ambiguous stance on drones, and used to celebrate the killings of HVTs.²⁵¹ But this stance changed over time due to internal political dynamics of the country. In 2013 the Prime Minister of Pakistan Nawaz Sharif discussed the drone issue with President Obama as a violation of “territorial integrity, and a major irritant in [mutual] relations.”²⁵² Even in the presence of consent, international law should not be used to evade human rights.²⁵³

Pakistan has apprehended HVTs, including Khalid Sheikh Mohammad and Abu Zubaydah, in the past, and also continues to help the United States by

²⁴⁸ Iqbal, “Drones under UN Scrutiny.”

²⁴⁹ Corinne Lewis, “Don’t Stop Now: The Development of the International Law Right to Use Force in Self-defense,” *Journal of International Law & Policy* IV, (2007): 7, https://www.law.upenn.edu/journals/jil/jilp/articles/4-1_Lewis_Corinne.pdf.

²⁵⁰ Philip Alston, “Study on Targeted Killings,” Special Rapporteur, May 28, 2010, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf>.

²⁵¹ Amnesty International Report, “Will I be the Next: U.S. Drone Strikes in Pakistan.”

²⁵² Ayaz Gul, “Pakistani PM Urges Stop to U.S. Drone Strikes,” *Voice of America*, October 22, 2013, <http://www.voanews.com/content/us-accused-of-unlawful-killings-pakistan-drone-strikes/1774276.html>.

²⁵³ Ashley S. Deeks, “Consent to the Use of Force and International Law Supremacy,” *Harvard International Law Journal* 54, no 1 (February 2013), <http://www.harvardilj.org/wp-content/uploads/2013/03/HLI101.pdf>.

providing actionable intelligence.²⁵⁴ The thorny issue is of inability, where the argument of a weak state comes up. In the article “Adapting American’s Security Paradigm and Security Agenda,” the author writes, “Some states are weak because they cannot control parts of their territories.”²⁵⁵ Though it is true that Pakistan still faces problems in its tribal areas, some 150,000 troops have been deployed to control the situation.²⁵⁶ Nonetheless, the inability of a state raises serious questions about the irregular forces—non-state actors—using its territory against another state. Theresa Reinold states that “the criteria for engaging non-state actors on foreign soil must reconcile the victim state’s vital security interests with the harboring state’s sovereignty.”²⁵⁷ Moreover, she further argues that “the notion that sovereignty implies responsibility for effective territorial control has been used to support a more expansive interpretation of the right to self-defense in response to irregular warfare.”²⁵⁸

The United States has refused accountability and transparency on its policies of targeted killings, which is in violation of the international legal framework.²⁵⁹ In his famous “cross roads” speech, President Obama defined a time-bound policy for finishing the weapon-related employment of drones, and, thereafter would restrict drone usage to surveillance.²⁶⁰ Given the divergent national security interests of both countries, it seems unlikely that the United States would re-evaluate its drone policies.

²⁵⁴ Rory McCarthy and Jason Burke, “Top 9/11 Suspect Seized in Pakistan,” *Guardian and Observer*, March 1, 2003, <http://www.theguardian.com/world/2003/mar/02/alqaida.terrorism>.

²⁵⁵ National Strategy Information Center, “Adopting American’s Security Paradigm and Security Agenda,” 2010, 2, http://www.strategycenter.org/wp-content/uploads/2011/01/adapting_the_paradigm.pdf.

²⁵⁶ Zulfiqar Ali Bhatti, “The Pakistan Army’s Operations in the Tribal Areas,” International Institute for Strategic Studies (IISS), February 19, 2014, <http://www.iiiss.org/en/events/events/archive/2014-0f13/february-e91c/operations-in-the-tribal-areas-96f1>.

²⁵⁷ Reinold, “State Weakness,” 245.

²⁵⁸ *Ibid.*, 246.

²⁵⁹ *Ibid.*, 122.

²⁶⁰ Lucy Madison, “Obama: America at Cross Roads in Fighting Terrorism,” *CBS News*, May 23, 2013, <http://www.cbsnews.com/news/obama-america-at-a-crossroads-in-fighting-terrorism/>.

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IV. DRONE OPERATIONS: COST BENEFIT ANALYSIS

Although both the United States and Pakistan are fighting the GWOT to achieve their respective national security objectives, the benefits of drone strikes by and large are reaped by the United States, whereas the costs are more evident in Pakistan.²⁶¹ To focus only on drone effectiveness in terms of killing more terrorists or civilians “lacks strategic framing and context.”²⁶² The U.S. drone operations—and targeted killing policy—should focus on the effectiveness to promote stability, de-escalate conflicts, and stop the growth and influence of terrorist organizations.²⁶³ This framework will afford comprehensive cost-benefit analysis. However, the complicated protocols and secrecy involved in the use of drones has affected U.S. Congressional oversight of drone deployment to carry out an objective appraisal in military, political, technological, and economic spheres.²⁶⁴

A successful drone policy should be effective, transparent, and well controlled. Even the Obama White House agrees, noting in the 2010 Presidential Policy Guidelines (PPG): “We will uphold our laws and values and will share as much information as possible with the American people and the Congress, consistent with our national security needs and the proper functioning of the Executive Branch.”²⁶⁵ The PPG, which provides control and clear rules of

²⁶¹ Joshua Foust and Ashley S. Boyle, “The Strategic Context of Lethal Drones: A Framework for Discussion,” American Security Project, August 16, 2012, 1–8, <http://www.americansecurityproject.org/the-strategic-context-of-lethal-drones-a-framework-for-discussion/>.

²⁶² ASP Staff, “The Strategic Effects of a Lethal drone Policy: Understanding Drones in a Broader Context,” American Security Project, <http://www.americansecurityproject.org/asymmetric-operations/the-strategic-effects-of-a-lethal-drones-policy/>.

²⁶³ Trevor Schenk, “America’s Drone War: A Cost Benefit Analysis,” NATO Council of Canada, July 28, 2014, <http://natocouncil.ca/americas-drone-war-a-cost-benefit-analysis/>.

²⁶⁴ James Lee Harper, “U.S. Drone Strikes Sets Dangerous Precedents,” *Newsweek Pakistan*, June 27, 2014, <http://newsweekpakistan.com/u-s-drone-strikes-set-dangerous-precedent/>.

²⁶⁵ PPG is the “U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations outside the United States and areas of Active Hostilities,” http://www.whitehouse.gov/sites/default/files/uploads/2013.05.23_fact_sheet_on_ppg.pdf.

engagement for drones, mark a tentative first step towards applying these criteria to U.S. drone strikes.²⁶⁶ In the meantime, drone strikes have considerably decreased after 2010, amid domestic and international criticism, much of which demands a new accounting.

A. WHY DRONES ARE PREFERRED IN MODERN WARFARE

It is pertinent to mention briefly something about the preference for using drones over fighter aircraft in the recent history of warfare. Drones are the combined production of United States Air Force (USAF) and CIA that has distinctive features. First, the drone is unmanned but controlled by a pilot sitting far away from the combat zone, reducing the mental and physical stress of the battlefield. The crew can be rotated during the operation. Second, drones can support flights of long duration and can carry out surveillance of targets for approximately 24 hours. This affords a chance for the crew to obtain detailed reconnaissance of the target area to reduce collateral damage once it strikes. Third, drones have strong cameras installed in them that can identify the target from well above 15,000 feet. A computer system can store the collected data, and can give complete details of the suspect's movement spread over a number of days and in some cases even months. This enables the pilots to get familiar with their targets. In brief, the drones are less expensive, more accurate, and more useful than manned aircraft as drones can fly slowly and low due to their unmanned nature.²⁶⁷

Two overriding factors make the drone a better option than aircraft and precision guided munitions. First, drone operations are risk-free missions; the U.S. military personnel are safe from any kind of battlefield harm and its

²⁶⁶ Ibid.

²⁶⁷ Michael W. Lewis, "Drones: Actually the Most Humane Form of Warfare Ever," *Atlantic*, August 21, 2013, <http://www.theatlantic.com/international/archive/2013/08/drones-actually-the-most-humane-form-of-warfare-ever/278746/>.

associated psychological effects. Second, a drone can collect detailed data about the target and at the same time can engage the target with precision.²⁶⁸

In carrying out a comparison of collateral damage between regular air warfare and drone strikes, William Saletan states that

In Vietnam, aerial bombing killed more than 50,000 North Vietnamese civilians by 1969. Each year of that war, the least discriminate weapons—bombs, shells, mines, mortars—caused more civilian injuries than guns and grenades. In Kosovo, the munitions were more precise, and NATO tried to be careful. But according to a postwar report by the International Criminal Tribunal for the former Yugoslavia, NATO's insistence on flying its planes no lower than 15,000 feet—a rule adopted 'to minimize the risk of casualties to itself—may have meant the target could not be verified with the naked eye.²⁶⁹

It proves the point that pilot's safety took precedence over the collateral damage resulting in the killings of large number of civilians. In recent past, Israel's conflict with Hezbollah and Hamas, the Russian-Chechen War of 1999, and the issue of the Liberation Tigers of Tamil Eelam in Sri Lanka killed more civilians than the fighters.²⁷⁰ In Afghanistan, the manned aircraft have inflicted more civilian casualties than drone strikes during 2011–2013; consequently drone strikes increased due to the low ratio of civilian casualties.²⁷¹

Drones, however, have few weaknesses. Command of complete airspace is vital for drone operation because these aerial platforms are susceptible to jamming, and relatively easier to shoot down because of their slow speed and

²⁶⁸ James Igoe Walsh, "The Effects of Drone Strikes in Counterinsurgency and Counterterrorism Campaigns," Strategic Studies Institute, September 26, 2013, <http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB1167.pdf>.

²⁶⁹ William Saletan, "In Defense of Drones," *Slate*, February 19, 2013, http://www.slate.com/articles/health_and_science/human_nature/2013/02/drones_war_and_civilian_casualties_how_unmanned_aircraft_reduce_collateral.html; <http://books.google.com/books?id=LtDuflAplzkC&printsec=frontcover&dq=lewy+%22America+in+Vietnam%22&hl=en&sa=X&ei=4jQiUfj4M6vD0AG54YHwBA&ved=0CDAQ6AEwAA#v=onepage&q=civilian%20casualties&f=false>.

²⁷⁰ Lewis, "Drones."

²⁷¹ Saletan, "In Defense of Drones."

noise. Countries where drones are used should meet two criteria: tacit approval of their governments; USAF complete command of the sky over the battle zone to guard against interference by anyone.²⁷²

1. Benefits: Drone Operations in the GWOT

Militarily, drones have proven to be an effective tool in counterinsurgency operations. In Pakistan, from 2004 until July 2014, drone strikes that varied in number between 376 and 393 killed up to 3,490 personnel.²⁷³ The strength of the terrorists killed from different tiers of the organization varied between 1,670 and 2,849; civilian casualties varied between 258 and 307, and the remaining casualties were unknown.²⁷⁴ Nek Mohammad, Baitullah Mehsud, and Hakimullah Mehsud who succeeded each other as head of the Taliban chapter in Pakistan were amongst the terrorists who were killed by drones since 2006.²⁷⁵

Drones are a means to achieve U.S. goals in the GWOT by “ensuring that al-Qaeda can never again use Afghanistan to launch attacks against America.”²⁷⁶ Drones reduce the collateral damage and neutralize terrorists in treacherous terrain along the Pak-Afghan border.²⁷⁷ It is widely believed that killing top terrorists helps dismantle the terrorist sanctuaries.²⁷⁸ In Pakistan, mostly, drones have carried out targeted killings—signature and personality strikes—by killing “at least 94 top leaders and operatives of al-Qaeda and

²⁷² Ibid.

²⁷³ International Security, “Drone Wars Pakistan: Analysis,” New America, <http://securitydata.newamerica.net/drones/pakistan/analysis>; Larry Lewis, “Drone Strikes in Pakistan: Reasons to Assess Civilian Casualties,” CNA Report, April 2014, <http://www.cna.org/sites/default/files/research/COP-2014-U-007345-Final.pdf>.

²⁷⁴ Ibid.

²⁷⁵ Bill Roggio and Alexander Mayer, “Senior al-Qaeda and Taliban Leaders Killed in U.S. Airstrikes in Pakistan, 2004–2011,” *The Long War Journal*, October 28, 2011, <http://www.longwarjournal.org/pakistan-strikes-hvts.php>.

²⁷⁶ Tolo News Staff, “U.S. goals in Afghanistan within Reach,” *Tolo News*, January 13, 2013, <http://www.tolonews.com/afghanistan/9054-us-goal-in-afghanistan-within-reach-obama>.

²⁷⁷ William Saletan, “In Defense of Drones.”

²⁷⁸ Clifford D. May and Bill Roggio, “Drone Drama,” *The Long War Journal*, November 1, 2013, http://www.longwarjournal.org/archives/2013/11/drone_drama.php; http://www.longwarjournal.org/archives/2013/11/drone_drama.php#ixzz3AbeMUIE2.

affiliated groups in Pakistan.”²⁷⁹ Leon Panetta, former CIA director, once deemed drones as the “most important weapons in the fight against terrorism.”²⁸⁰

Economically, the cost incurred by drone operations proves quite lower as compared to that for strike fighters. The MQ Reaper drone cost \$9.48 million including the operational cost, whereas the F-35 fighter costs \$91 million, excluding the operation expenditures. Similarly, soldiers prove even more costly than drones as each soldier in Afghanistan costs \$2.1 million; soldiers’ survival would entail more expenditure on their war injuries, rehabilitations, and welfare in the long term. In terms of monetary cost, the drone is a preferred option for U.S. policy makers.²⁸¹

Technologically, the U.S. DOD argues that “UAVs [drones] amount to safer, cheaper, and more effective warfare in the U.S. fight against terrorism,” but this view completely misses the point of civilian casualties, especially in Pakistan, that have resulted from drone strikes.²⁸² Up until 2014, 85 percent of casualties in 393 drone strikes were militants; the remaining casualties were either civilians or unknown.²⁸³ Drone technology conserves human efforts and precious lives. In FATA, apart from the logistics costs and threats during the movement of troops, Pakistan military fatalities crossed the 5,000 mark in 2014.²⁸⁴

²⁷⁹ Ibid.

²⁸⁰ Targeted killings are premeditated acts of lethal force employed by states in times of peace or during armed conflicts to eliminate specific individuals outside their custody. “Reports of the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions,” *United Nations General Assembly*, <http://www.ohchr.org/en/issues/executions/pages/srexecutionsindex.aspx>; Gregor Peter Schmitz, “The Debate on Push-Button War: Are Drones Worth their Drawbacks?” *Spiegel International*, March 12, 2010, <http://www.spiegel.de/international/world/the-debate-on-push-button-war-are-drones-worth-their-drawbacks-a-682645.html>.

²⁸¹ Wayne McLean, “Drones are Cheap, Soldiers are Not: A Cost-benefit Analysis of War,” *Conversation*, June 26, 2014, <http://theconversation.com/drones-are-cheap-soldiers-are-not-a-cost-benefit-analysis-of-war-27924>.

²⁸² Brianna Lee, “Five Things You Need to Know about Drones,” PBS, December 15, 2001, <http://www.pbs.org/wnet/need-to-know/five-things/drones/12659/>.

²⁸³ Boyle, “The Cost and Consequences of Drone Warfare.”

²⁸⁴ Shuja Nawaz, “The Pakistan Army and its Role in FATA,” Combating Terrorism Center, January 15, 2009, <https://www.ctc.usma.edu/v2/wp-content/uploads/2010/06/Vol2Iss1-Art7.pdf>; Institute of Conflict Management, “Fatalities in Terrorists Violence.”

In the absence of any credible data that could define the number of terrorists killed versus the soldiers martyred in a conventional battle in FATA, the author has a personal experience to quote from. In a sector where the author commanded a battalion, it took almost 10–15 soldiers for every terrorist killed, which indeed is a very high ratio. Unconventional means like drones really helped in targeted killing of Taliban leadership that was extremely difficult to achieve through conventional means in more restive agencies of FATA, such as North and South Waziristan.

Politically, the drone strikes helped Pakistan's weak political government to challenge the terrorists and to show a brave face to the public. As Christine Fair states drones have overcome the administration's "inability to provide for the security and prosperity of its own [Pakistan] people."²⁸⁵ After joining the GWOT, the terrorists attacked—at will—Pakistan's military and civilian targets with impunity; law enforcement agencies (LEAs) were unable to counter the terrorist threat due to lack of capacity, capability, and a weak legal system.²⁸⁶ The insecurity created problems for the political leadership as well as for the investment community.

U.S. drone operations in Pakistan have contributed directly and indirectly to restoring public confidence in political institutions and LEAs by targeting many high profile terrorists (i.e., killing successive Taliban top leadership from 2004 to 2013). Any kind of lull or decrease in the drone strikes has helped terrorists to regroup by striking ruthlessly against all kinds of targets; the strikes dropped from 122 in 2010 to 26 in 2014.²⁸⁷

²⁸⁵ C. Christine Fair, "Addressing Pakistan's Sovereign Deficit," German Marshall Fund of the United States, June 27, 2013, http://www.gmfus.org/galleries/ct_publication_attachments/fair_sovereigntydeficit_jun11.pdf.

²⁸⁶ Ibid.

²⁸⁷ Eric Schmitt, "Lull in Strikes by U.S. Drones Aids Militants in Pakistan," *New York Times*, January 7, 2012, <http://www.nytimes.com/2012/01/08/world/asia/lull-in-us-drone-strikes-aids-pakistan-militants.html?pagewanted=all>; International Security, "Drone Wars."

B. COSTS AND CONSEQUENCES FOR PAKISTAN

In Pakistan, drone operation is a complicated issue for a variety of reasons. First, the population does not measure drone strikes in terms of effectiveness, but by civilian casualties and sovereignty violations. Thus, these operations are not fully endorsed by the public.²⁸⁸ Second, intelligence and military authorities are not on board to verify the targets—"pre-authorized targets"²⁸⁹—and to discuss the time of strike. Third, it is not clear how a terrorist can be targeted if he is hiding behind a human shield. Providing shelter to a HVT or any terrorist is neither lawful nor justified; however, the definition and interpretation of a terrorist is a complex issue. According to the tribal code anyone who seeks protection or Nanawatai, which means asylum, should be offered protection at all costs, which makes the entire process of targeted killing very complicated.²⁹⁰ These issues have created serious dilemmas for Pakistan.

1. Pakistan's Dilemma

The terrorist organizations equated the Pakistan military with the U.S. forces—against whom jihad is justified—when Pakistan aligned itself with the entire world in the U.S.-led GWOT. The dangerous ideological perception helped terrorists win the sympathies of locals, who in turn facilitated the terrorists—suicide volunteers—against the state and armed forces of Pakistan. The terrorist-tribal nexus believed that Pakistan was fighting American's war. To this end, Hina Rabbani Khar, a former Pakistan foreign minister stated, "This has to be our war. We are the one who has to fight against them. As the drone flies over the territory of Pakistan, it becomes an American war again. And this whole logic

²⁸⁸ Telegraph Staff, "Pakistan 'Secretly Endorsed Drone Strikes,'" *Telegraph*, October 24, 2013, <http://www.telegraph.co.uk/news/worldnews/asia/pakistan/10401109/Pakistan-secretly-endorsed-drone-strikes.html>.

²⁸⁹ Markey, "A New Drone Deal for Pakistan."

²⁹⁰ Feroz Hassan Khan, "Rough Neighbors: Afghanistan and Pakistan," *Strategic Insight*, January 10, 2003, <https://www.hsdl.org/?view&did=444485>; There are as many as ten principles that signify Pashtunwali—ethical code—in FATA. Amongst all, the four main principles, namely Melmastia (hospitality), Nanawatai (asylum), Badal (justice), and Ghayat (honor), respect and courage are quite significant.

of this being our fight, in our own interest is immediately put aside and again it is war which is imposed on us.”²⁹¹

In counterinsurgency operations, the direct approach focuses primarily on the use of military force while the indirect approach focuses more on winning the hearts and minds of the population, which keeps them away from the insurgents. Increasing the gulf between the insurgents and population is an essential element in restoring peace and order in the affected areas. However, drone strikes cast a negative impact on the population. The killing of the innocent by drone strikes due to incorrect intelligence enabled insurgents to exploit the victims’ grief and legitimize the terrorists’ cause. The insurgents justify their violence as a reaction to drone strikes; ironically, it is not the terrorists only who react to drones, but “they are even loathed by them [common man] who despise the extremists.”²⁹²

On the political front, on the one hand, the Pakistani government celebrates the killing of terrorists by drone strikes, and claims that the wanted terrorists are on the run, whereas the government faces huge anti-drone protests, which suggests that the leadership struggles with legitimacy. In fact, drone operations have corroded the legitimacy and stability of local governments of Pervez Musharraf, and successive political governments of President Asif Ali Zardari and Prime Minister Nawaz Sharif.²⁹³

2. Root Cause of Extremism

For the United States, drones are an effective counterterrorism tool in modern warfare and force multipliers to the ground operations. Moreover, they

²⁹¹ Shehzad, *Inside Al-Qaeda and Taliban*, 82–83; Boyle, “The Cost and Consequences of Drone Warfare,” 17.

²⁹² Danial L. Byman, “Do Target Killings Work,” Brookings, July 14, 2009, <http://www.brookings.edu/research/opinions/2009/07/14-targeted-killings-byman>; Jason Rhineheart, “Counterterrorism and Counterinsurgency,” *Perspective on Terrorism* 4, no.5 (2010):42, <http://www.terrorismanalysts.com/pt/index.php/pot/article/view/122>; Murtaza Haider, “Murder By Drone: Where is the Cost Benefit Analysis,” *Dawn*, July 10, 2014, <http://www.dawn.com/news/1118103>.

²⁹³ Boyle, “Cost and Consequences of Drone Strikes,” 2.

have reduced the civilian casualties in counterinsurgency operations.²⁹⁴ For Pakistan, the main issue relates to the killing of innocent civilians; the number of casualties hardly makes any difference. Drone strikes that kill innocent civilians result in recruitment of impressionable angry youth, which unfortunately brings the terrorists and civilians closer together.²⁹⁵ Terrorists exploit the public anger against drones, notwithstanding the politicizing of the issue by politicians for personal gain and mileage. This exploitation by the terrorists empowers them, which provides them the space to move and survive.²⁹⁶

The Pakistani Taliban exploits the collateral damage issue and recruits hundreds of volunteers for suicide bombing and other terrorist activities in Pakistan.²⁹⁷ The tactical effects of drone strikes have unintended consequences; terrorists instead of decreasing have increased manifold. As Gregory Johnson, a scholar at Princeton University once said, “U.S. strikes and particularly those that kill civilians be they men or women are sowing the seeds of a future generation of terrorists.”²⁹⁸ Similarly, Michael Morrell, a former deputy director of the CIA has stated that the drone program is counterproductive if it kills other than the terrorists who threaten U.S. security interests and plan terror attacks on its mainland.²⁹⁹

The tribal sentiment of “badal means revenge” is exploited by the terrorists in recruiting any distressed party whose relatives have died in drone strikes. The rise in terrorist attacks in Pakistan is more or less proportional to the drone

²⁹⁴ Lewis, “Drones.”

²⁹⁵ Johnson and Sarbahi, “The Impact of Drones Strikes,” 4–5.

²⁹⁶ Hassan Abbas, “How Drone Creates more Terrorists,” *Atlantic*, August 23, 2013, <http://www.theatlantic.com/international/archive/2013/08/how-drones-create-more-terrorists/278743/>.

²⁹⁷ Owais Tohid, “Pakistani Teen Tells of his Recruitment, Training as Suicide Bomber,” *Christian Science Monitor*, June 16, 2011, <http://www.csmonitor.com/World/Asia-South-Central/2011/0616/Pakistani-teen-tells-of-his-recruitment-training-as-suicide-bomber>.

²⁹⁸ Marc Bowden, “The Killing Machines: How to Think about Drones,” *Atlantic*, September 2013, <http://www.theatlantic.com/magazine/archive/2013/09/the-killing-machines-how-to-think-about-drones/309434/>.

²⁹⁹ Ibid.

strikes in any specified period. For instance, in 2010, 117 drone strikes were carried out in Pakistan; consequently, the terrorists also unleashed suicide bombers in every corner of the country, killing almost 300 innocent civilians, including three Americans. Fatalities through planned attacks, improvised explosives, and targeted killings are not included.³⁰⁰

3. Problems for the Elected Government

Drone operations create legitimacy problems for the elected government, which has serious political repercussions. Unabated drone strikes suggest strongly to the public that the country cannot defend its territorial integrity and sovereignty.³⁰¹ This policy is in contradiction to the U.S. long-term strategy and interests in “increasing the legitimacy and capacity of the government in Islamabad.”³⁰² In simple words, the short-term gains from killing wanted terrorists through drone strikes result in strategic consequences by compounding the trust deficit between two historic allies. This, in turn, affects the U.S. policy—peace and stability—in nuclear Pakistan.³⁰³ To this end, the U.S. ambassador to Pakistan, Cameron Munter, appealed to Leon Panetta, then CIA chief, to disallow the drone strikes, but to no avail.³⁰⁴ It is true that on the one hand drone strikes have benefited Pakistan by killing the wanted terrorists, who have killed a number of civilians and military personnel, but, on the other hand, absence of political or military endorsement creates severe problems for the government.³⁰⁵

³⁰⁰ Bill Roggio, “Charting the Data for U.S. Airstrikes in Pakistan, 2004–2014,” *The Long War Journal*, <http://www.longwarjournal.org/pakistan-strikes.php>; Imran Khan, *Pakistan: A Personal History* (London: TransWorld Publishers, 2011), 270–78; Palwasha Kakar, “Tribal Law of Pashtunwali and Women’s Legislative Authority,” Islamic Legal Studies Program, 2005, <http://www.law.harvard.edu/programs/ilsp/research/kakar.pdf>; Laura Roberts, “Pakistan: Timeline of Suicide Bomb Attacks 2007–2011,” *Telegraphs*, May 13, 2011, <http://www.telegraph.co.uk/news/worldnews/asia/pakistan/8511518/Pakistan-timeline-of-suicide-bomb-attacks-2007-2011.html>.

³⁰¹ Boyle, “The Cost and Consequences of Drone Strikes,” 12–13.

³⁰² *Ibid.*, 14.

³⁰³ Bowden, “The Killing Machines.”

³⁰⁴ *Ibid.*

³⁰⁵ Curtis, “Pakistan Makes Drone Necessary.”

In the current circumstances, the government cannot provide anti-Taliban and pro-American narrative in the wake of drone operations. The Taliban after every suicide and armed attack in Pakistan claims it is in retaliation for drone strikes that killed innocent civilians. The claim does appeal to the public in a way that they stand divided and perplexed. Although politicians have gained political mileage from the drone issue, at the same time successive governments have registered their reservations over this issue. President Asif Ali Zardari (2008–2013) has stated, “We feel strikes are an invasion on our sovereignty, which is not appreciated by most of our people, as the first aspect of war is to win hearts and minds.” Similarly, the sitting Prime Minister Nawaz Sharif is more critical than his predecessors and has highlighted the issue a number of times.³⁰⁶

The social view on the drone strikes adds another perspective to the issue. Public opinion and all kinds of media reports reflect opposition to drone strikes inside Pakistan. In their assessment, the GWOT fought for over almost a decade has not achieved significant success in Pakistan; instead, it has felled radicalism in youths and polarization in the society. There is an imbalance between the use of force and winning public support to fight against the terrorist elements. This imbalance has led to the rise in anti-Americanism and support for the terrorist organization affecting the relationship.³⁰⁷

4. Spread of Violence from FATA to Main Cities of Pakistan

In Pakistan, the drone strikes have killed many HVTs and al-Qaeda operatives, resulting in the degradation of militant organizations and leadership decapitation.³⁰⁸ This tactic puts restrictions on the free movement of the terrorists in ungoverned areas of Pakistan-FATA. In response, the terrorists moved to rural

³⁰⁶ Rehman, “Impact of Drone Attack,” 22.

³⁰⁷ Ibid., 23.

³⁰⁸ Peter Bergen and Katherine Tiedemann, “The Year of the Drone: An Analysis of U.S. Drone Strikes in Pakistan, 2004–2010,” New America Foundation, February 24, 2010, http://www.newamerica.net/publications/policy/the_year_of_the_drone, mentioned in Patrick B. Johnson and Anoop K. Sarbahi, “The Impact of Drones Strikes.”

and urban areas for protection and to generate violent activities.³⁰⁹ The spread of violence in settled areas of Pakistan put an extra strain on its resources by creating new security challenges for the government. Osama bin Laden is a case in point; he was found and killed in Abbottabad, a garrison city of Pakistan, in 2011.³¹⁰

5. Social Effects

Drone strikes have serious effects on the social fabric of the tribal society. They generate suspicion and fear in phenomenal ways. The locals of FATA have become psychological patients due to the excessive fear of becoming a drone's victim. They refuse to help the wounded and collect the remains of dead for burial after a drone strike. An atmosphere of mistrust prevails as everyone is suspicious of others for providing information to the enemy—the United States—and for placing a chip at their houses or vehicles in order to facilitate the drone strike. Due to their excessive uncertainty and fear of becoming an accidental target, people avoid going to schools, hospitals, and public places. The tribal culture of trust, joint family system, and social ties has been eroded by the disruption of the daily life activities.³¹¹

The drone strikes have affected the willingness of locals to help the victims with medical assistance and rescue work. They fear the follow-up strikes will kill them as well. The double drone strike has legal and moral issues. It not only deters the locals from helping the victims, but it also deters humanitarian groups from providing medical coverage. The double drone strikes could lead to war crimes.³¹²

³⁰⁹ Ibid., 10.

³¹⁰ CNN Staff, "Death of Osama Bin Laden Fast Facts," *CNN*, September 9, 2013; Craig Whitlock and Barton Gellman, "To hunt Osama bin Laden, Satellites Watched over Abbottabad, Pakistan, and Navy SEALs," *Washington Post*, August 29, 2013, http://www.washingtonpost.com/world/national-security/to-hunt-osama-bin-laden-satellites-watched-over-abbottabad-pakistan-and-navy-seals/2013/08/29/8d32c1d6-10d5-11e3-b4cb-fd7ce041d814_story.html.

³¹¹ Boyle, "The Cost and Consequences of Drone Strikes," 21.

³¹² "Living Under Drones," 75–76.

Multiple issues related to drone strikes have made a profound impact on the society of tribal areas. By killing the breadwinner of a family and causing property damage, drone strikes have had a severe economic implication. Education, which is already a weak link in tribal areas of Pakistan, has been the main casualty in drone strikes. The old custom of attending a funeral in masses, celebrating a marriage in great numbers, and attending a Jirga—the gathering of notables to resolve issues—has been curtailed extensively.³¹³

C. U.S. RESPONSE TO PAKISTAN'S CONCERNS

1. Drone: Cure not Cause of Extremism

Andrew Cullam states that drones have the capability to “find, fix and finish” the expected targets in counterinsurgency operations, keeping collateral damage to the minimum.³¹⁴ The U.S. administration maintains the same line of argument on the advantages and gains of drone strikes: killing HVTs, degradation of militant organizations, reducing collateral damage, and realizing benefits of drone operations in relation to ground operations.³¹⁵ Drones have killed many HVTs, operational leaders, in Pakistan, which is the primary objective of these covert operations.³¹⁶ An argument is that removing the top militant leaders from the battle zone or elsewhere in Pakistan will result in disruption of activities and degradation of the TTP and al-Qaeda organizations. Moreover, it reduces the terrorists’ ability to strike with the same lethality.³¹⁷

The repercussions of drone strikes are reflected in two forms. After killing the top militant leader, a blowback effect is likely to continue for a brief period,

³¹³ Ibid., 95–98.

³¹⁴ Andrew Callam, “Drone Wars: Armed Unmanned Aerial Vehicles,” *International Affairs Review* XVIII, no. 3 (2010), <http://www.iar-gwu.org/node/144>.

³¹⁵ Boyle, “The Cost and Consequences of Drone Strikes,” 4.

³¹⁶ The White House Office of the Press Secretary, “Remarks by the President of United States at the National Defense University,” Speech Delivered at National Defense University, May 23, 2013, <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>.

³¹⁷ Patrick B. Johnson and Anoop K. Sarbahi, “The Impact of Drones Strikes,” 7.

but will die down because of inexperienced and less charismatic replacement leadership, and terrorists are likely to shift their bases to safe and settled areas for hiding in civil societies creating further challenges.³¹⁸ Brian C. Price argues that

decapitation is an effective counterterrorism strategy; terrorist groups are susceptible to decapitation because they have unique organizational characteristics (they are violent, clandestine, and values-based organizations) that amplify the importance of leaders and make leadership succession difficult.³¹⁹

2. Better Option than Ground Forces

Another compelling argument in favor of drones assumes the advantages in relation to deployment of ground forces. Many allied and Pakistani troops would have been victims of the terrorist attack in the GWOT if the HVTs had not been killed in the strikes; which disrupted the militant activities. Pakistan lay outside the theatre of war, and ground attack by the United States in FATA—Pakistan's sovereign territory—has implications. The alternative choices range from covert operations to capacity building or putting diplomatic pressure on Pakistan. Everything has been done, but not to the utmost satisfaction of the United States. Eventually, drones were and are the only option to go against the terrorists in ungoverned areas of Pakistan.³²⁰

In regards to collateral damage, many experts argue that drones may not be very effective, but they are morally required because the strikes result in fewer casualties than air or ground operations. The data has already been highlighted earlier in comparison with air warfare in past operations and wars. However, one of the CIA senior officials has asserted that, “drones are morally superior, even

³¹⁸ Ibid., 8.

³¹⁹ Brian C. Price, “Targeting Top Terrorists: How Leadership Decapitation Contributes to Counterterrorism,” *MIT Press Journal of International Security* 4, no. 36 (2012): 43, http://www.mitpressjournals.org/doi/abs/10.1162/ISEC_a_00075#.VFW6hirluoA.

³²⁰ Boyle, “The Cost and Consequences of Drone Strikes,” 13.

humane, form of warfare,” neglecting the related effects of drone strikes in terms of alienation and desire for revenge amongst victims.³²¹

Finally, the United States, in the initial stages of the drone operation inside Pakistan, shared information with Pakistan intelligence and military authorities about the suspected targets; leaked documents have revealed the complicity of Pakistan as stated in *The Washington Post*:

‘Top-secret CIA documents and Pakistani diplomatic memos’ it has obtained show that ‘top officials in Pakistan’s government have for years secretly endorsed the program and routinely received classified briefings on strikes and casualty counts.’³²²

Over time, the sharing of information proved costly, as it helped the targets in making a successful escape. The U.S. administration squarely blames the Pakistan intelligence agency, ISI, for the leaks to suspected targets; however, Pakistan denies this charge outright.³²³

D. AN APPRAISAL: REFUTING U.S. CLAIMS

The United States believes that drones kills terrorist and disrupt the organization, but no network has been eliminated since 9/11, instead they have swelled and spread over the globe. For every terrorist killed, there emerges a band of new, lethal, and more radicalized terrorists; consequently, al-Qaeda has morphed into new movements since 9/11.³²⁴ Similarly, Jenna Jordan’s study reveals that decapitation is a misguided strategy and states that, “decapitation is more likely to have counterproductive effects in larger, older, religious, and

³²¹ Ibid., 12–13.

³²² Greg Miller and Bob Woodward, “Secret Memos Reveal Explicit Nature of US, Pakistan Agreement on Drones,” *Washington Post*, October 24, 2013, http://www.washingtonpost.com/world/national-security/top-pakistani-leaders-secretly-backed-cia-drone-campaign-secret-documents-show/2013/10/23/15e6b0d8-3beb-11e3-b6a9-da62c264f40e_story.html.

³²³ Paul D. Shinkman, “Leaked Drone Documents Show Two-Faced U.S.-Pakistan Relationship,” *U.S. News and World Report*, October 24, 2013, <http://www.usnews.com/news/articles/2013/10/24/leaked-drone-documents-show-two-faced-us-pakistan-relationship>.

³²⁴ Oren Dorell, “al-Qaeda 13 Years Later,” *USA Today*, September 10, 2014, <http://www.usatoday.com/story/news/world/2014/09/09/arab-states-mobilizing-to-stop-al-qaeda-spread/15342155/>.

separatist organizations. In these cases decapitation not only has a much lower rate of success, the marginal value is, in fact, negative.”³²⁵

Economically, drones are cheap, but have they have wrought a tremendous amount of damage by destroying vehicles, health units, and madrassas, religious schools.³²⁶ Even the domestic buildings, commonly known as compounds, are not spared. Approximately 132 buildings have been destroyed in about 390 drone strikes.³²⁷ The existing infrastructure of FATA has been turned into ruins. Besides human loss, the strikes result in high economic loss.

With the latest camera technology and extended surveillance capability, drones are considered to be safe weapons in regard to collateral damage, but hundreds of civilians—400 to 900, including 200 children—have been killed, many of them in the process of celebrating marriages, funerals, or other basic human occasions.³²⁸ In fact, the definition of non-combatant varies, which makes the civilian casualty data highly controversial. The data of civilian casualties varies from 3 percent to 74 percent of the entire death toll.³²⁹ Moreover, drone technology has helped in recruiting more pilots at a faster rate, making this recruitment more cost effective than that for fighter jet pilots, who might have shown their inability or unwillingness to undertake targeted killings.³³⁰

³²⁵ Jenna Jordan, “When Heads Roll: Assessing the Effectiveness of Leadership Decapitation,” *Security Studies* 18, no. 4 (2009): 723, <http://d3qi0qp55mx5f5.cloudfront.net/cpost/i/docs/Jordan-When-Heads-Roll.pdf>.

³²⁶ Alice K. Ross and Jack Serle, “Most U.S. Drone Strikes in Pakistan Attack Houses,” Global Research, May 24, 2014, <http://www.globalresearch.ca/most-us-drone-strikes-in-pakistan-attack-houses/5383635>.

³²⁷ Ibid.

³²⁸ Alyssa Figueroa, “10 Ways You Can Join the Fight Against Drone Warfare,” Global Drone Watch, October 2013, <http://droneswatch.org/category/protests/>.

³²⁹ Gareth Porter, “Cover-Up of Civilian Drone Deaths Revealed by New Evidence,” *Truthhour*, August 17, 2012, <http://truth-out.org/news/item/10907-cover-up-of-civilian-drone-deaths-revealed-by-new-evidence>; James Joyner, “Drone Strikes and Civilian Casualties: Only One Statistic Matters,” *Outside the Beltway*, May 29, 2010, http://www.outsidethebeltway.com/drone_strikes_and_civilian_casualties_only_one_statistic_matters/.

³³⁰ Rachel Martin, “Drone Pilots: The Future of Aerial Warfare,” *NPR*, November 29, 2011, <http://www.npr.org/2011/11/29/142858358/drone-pilots-the-future-of-aerial-warfare>.

E. INTERNATIONAL POLITICS AND RAMIFICATIONS

Historically, covert operations have not served the long-term interests of the United States and its NSS. During the Vietnam War in the 1960s, organizing Air America to target the communist guerilla fighters in the north was a case in point. However, it is said that for great powers, “Foreign policy is not a game of risk. Great nations achieve lasting influence and security not by bloody gambits but through economic growth, scientific innovation, military deterrence, and the power of ideas.” This view negates the idea of targeted killings and covert operations.³³¹

In terms of strategic cost, drone operation sets a dangerous precedent for other countries that will trigger more wars, affecting peace and order in the world. Countries like China, India, and Russia, which are in the development stage of sophisticated armed drones, would make use of this technology against adversaries when required.³³² To support this point Scott Shane has stated:

If China, for instance, sends killer drones into Kazakhstan to hunt minority Uighur Muslims it accuses of plotting terrorism, what will the United States say? What if India uses remotely controlled craft to hit terrorism suspects in Kashmir, or Russia sends drones after militants in the Caucasus? American officials who protest will likely find their own example thrown back at them.³³³

Apart from the legal and ethical issues, the U.S. drone policy projects a violent image of American foreign policy.³³⁴ The widespread perception that the United States acts unilaterally disregarding other countries’ sovereignty and

³³¹ Coll, “Remote Control: Our Drone Delusion”; Tim Ripely, *Air War Afghanistan*, 153.

³³² RT Staff, “All Countries will have Drone Kill Technology in 10 years – Report,” *RT*, May 7, 2014, <http://rt.com/news/157340-us-drones-military-defense/>.

³³³ Scott Shane, “Coming Soon: The Drone Arms Race,” *New York Times*, October 8, 2011, <http://www.nytimes.com/2011/10/09/sunday-review/coming-soon-the-drone-arms-race.html?pagewanted=all>.

³³⁴ New York Times Staff, “The Trouble With Drones,” *New York Times*, April 7, 2013, <http://www.nytimes.com/2013/04/08/opinion/the-trouble-with-drones.html>.

interests has kept its image low.³³⁵ By merciless killings in the name of national security reflects arrogance and self-righteousness by the U.S. administration.³³⁶ It has affected the relationship with the people and governments of other countries such as Pakistan, which has no other option but to assent.³³⁷ The flawed drone policy has achieved immediate success by killing key terrorist elements in Pakistan's territory; however, it has led to social and political blowback in the form of anti Americanism.³³⁸ The U.S. drone policy coupled with a monopoly on drones at present has given the United States a short-term advantage, but drones are cheap asymmetric weapons, which will spread to other countries and non-state actors.³³⁹ The legitimizing of drone warfare for others in the long run will change the short-term advantage into a long-term disadvantage for the United States.³⁴⁰

F. ANALYSIS

Steve Coll identified that the technological leap has transformed the assassins from humans to machines and drones have taken the lead.³⁴¹ The negative impact of the U.S. drone strategy in Pakistan has resulted in increased anti-American sentiment coupled with backlash from the militants; media has played a major role in transforming public opinion. To this end, General

³³⁵ PEW Research Staff, "Global Opinion of Obama Slips, International Policies Faulted: Drone Strikes Widely Opposed," PEW Research, June 13, 2012, <http://www.pewglobal.org/2012/06/13/global-opinion-of-obama-slips-international-policies-faulted/>.

³³⁶ David P. Gushee, "The Moral Hazards of U.S. Drone Policy," *Faithstreet Blog*, February 3, 2013, <http://www.faithstreet.com/onfaith/2013/02/07/the-moral-hazards-of-us-drone-policy/15419>.

³³⁷ Ibid.

³³⁸ Joshua Foust and Ashley S. Boyle, "The Strategic Context of Lethal Drones: A Framework for Discussion," Scribd, August 16, 2012, <https://www.scribd.com/doc/102744195/The-Strategic-Context-of-Lethal-Drones>.

³³⁹ Conor Friedersdorf, "Lethal Drones: Coming Soon to Every Country that Wants Them: America has Failed to Prepare for Proliferation," *Atlantic*, May 7, 2014, <http://www.theatlantic.com/politics/archive/2014/05/lethal-drones-coming-soon-to-every-country-that-wants-them/361838/>.

³⁴⁰ Ibid.

³⁴¹ Coll, "Remote Control."

McChrystal has said that, “drone strikes create a perception of American arrogance that says well we can fly where we want, we can shoot where we want, because we can;”³⁴² however, the drone strikes continue.

For the present, U.S.-Pakistan relations are far from a breaking point, but they have deteriorated alarmingly. Drone operations have affected the political legitimacy of the government by suggesting that it is not the Pakistan government “who controls [Pakistan] and who exactly can protect them [the public] from domestic and external threats.”³⁴³ This may not auger well for the transitional democracy in the country, which ultimately will affect the overall relationship with the United States. As Stephen Taniel has warned that, “a further deterioration in relations could seriously compromise counterterrorism and nonproliferation interests, not to mention the regional diplomatic initiatives, especially in Afghanistan.”³⁴⁴

The arguments for drone operations by the United States in military, economic, technological, political, and strategic spheres may afford short-term benefits, but for the world in general and Pakistan, in particular, these operations have dangerous consequences. It is said that continued drone operation in Pakistan “essentially amounts to state-sanctioned execution without clear rules,” suggesting that drone strikes affect stability. They can result in an increase in terrorist activities and erode the legitimacy of the political leadership, as well as fuel the anti-Americanism sentiment in Pakistan.³⁴⁵ In other words, the United States loses, too, over the long term.

³⁴² Haider, “Murder by Drones”; William C. Harrop, “Remarks by the President at the National Defense University,” (Speech at National Defense University, July 18, 2013) http://www.unc.edu/depts/diplomat/item/2013/0608/sw/sp07_harrop.html.

³⁴³ Fair, “Addressing Pakistan’s Sovereign Deficit.”

³⁴⁴ Stephen Taniel, “A Pakistan-Based Terrorist Attack on the U.S. Homeland,” *Council on Foreign Relations*, August 2011, http://i.cfr.org/content/publications/attachments/CPA_contingencymemo_13.pdf.

³⁴⁵ Gregor Peter Schmitz, “The Debate on Push-Button War: Are Drones Worth their Drawbacks?” *Spiegel International*, March 12, 2010, <http://www.spiegel.de/international/world/the-debate-on-push-button-war-are-drones-worth-their-drawbacks-a-682645.html>.

Drone operations have resulted in a desensitization of strategic thinkers to warfare because of their cost effectiveness and the U.S. legal precedents. Whether drones have helped in achieving the national security objectives of the United States or not, they have not terminated any conflict in the GWOT around the globe. As Susan Brooks has pointed out, “[Drones] will not reduce conflicts. Their very ease of use will tempt—our very own included—engaging in automated conflicts.”³⁴⁶ P.W. Stinger in his book *Wired for Wars* revealed that at least 43 nations are developing drone technology, including the United Kingdom, Israel, and Pakistan, with Chinese assistance.³⁴⁷ Ultimately, in future, the United States might face a terrorist group with the same technology. In the same book, Stinger quotes Steven Metz’s prediction: “We will see if not identical technologies, then parallel technologies being developed particularly because of the off-the-shelf nature of this all ... the bad guys do not need to develop it; instead they can just buy it.” This observation clearly suggests that international peace and order is likely to be affected.³⁴⁸

The drone operations have claimed counterterrorism victories; however, they have also received criticism from international community on political, legal, and moral grounds.³⁴⁹ The established precedent of U.S. drone operation by disregarding international norms is likely to pose a long-term security dilemma for the United States.³⁵⁰ In GWOT, despite the short-term benefits of drone operations, the way these strikes are perceived by other countries has negative

³⁴⁶ Susan Brooks Thistlethwaite, “Drone Wars: The Temptation of Automated Conflicts,” *Washington Post*, December 5, 2011, http://www.washingtonpost.com/blog/guest-voices/post/drone-wars-the-temptation-of-automatedconflicts/2011/12/05/glQA1rilWO_blog.html?wpss=guess-voices.

³⁴⁷ P. W. Stinger, *Wired For Wars: The Robotic Revolution and Conflict in the 21st Century* (New York: Penguin Group, 2009) 241–50; Laura Lynch, “Pakistan Building its Own Drone,” *PRI’s The World*, April 13, 2012, <http://www.pri.org/stories/2012-04-13/pakistan-building-its-own-drones>.

³⁴⁸ Ibid.

³⁴⁹ Jonathan Masters, “Targeted Killings,” Council on Foreign Relations, May 23, 2013, <http://www.cfr.org/counterterrorism/targeted-killings/p9627>.

³⁵⁰ Sara Birkenthal, “U.S. Drone Strikes in Pakistan: A Strategic Analysis,” Claremont McKenna College, 2011–2012, 2, <https://www.claremontmckenna.edu/keck/student/Birkenthal%20Fellowship%20Paper.pdf>.

consequences for the United States in the long run.³⁵¹ Anti-Americanism, local and regional instability, eroded legitimacy for the Pakistani elected governments, and ever increasing terrorist recruitment rates are a few of the consequences.³⁵²

To conclude, asymmetric advantages over adversaries always decide the outcome of wars, as it is said that “winning is about unfair advantage at four levels—political, strategic, theatre, and tactical—of any conflict.”³⁵³ The United States exploits all these four essential aspects of victory. Being an influential super power of the world, the United States conveniently controls the political fallout of drone operations at every forum. Moreover, drones provide a unique asymmetric advantage at the strategic, operational, and tactical level in Afghanistan, which prevents the Taliban from attacking in strength, carrying out counter attacks, or holding an important location.³⁵⁴

The weapon may have achieved tactical and strategic gains for the United States in the GWOT; however, in drone operations, the complicity of Pakistan, effectiveness of drones in counterterrorism operations, their tactical and strategic gains have to be measured against the human values and loss of innocent human lives.

³⁵¹ Ibid., 18.

³⁵² Ibid.

³⁵³ Ejaz Haider, “Drones: Choosing Between Droning on and Understanding,” *Dawn News*, August 2014, printed in a detailed report on, “Unfair advantage of death and drones,” <http://www.dawn.com/in-depth/unfair-advantage-of-death-and-drones/>.

³⁵⁴ Montgomery C. Meigs, “Unorthodox Thoughts about Asymmetric Warfare,” *Parameters: U.S. Army War College* 33, no 2 (2003): 7, <http://strategicstudiesinstitute.army.mil/pubs/parameters/Articles/03summer/meigs.pdf>.

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V. CONCLUSIONS AND RECOMMENDATIONS

U.S. drone strikes have achieved tactical military success by killing HVTs, but they have also killed many innocent civilians as collateral damage while violating the territorial sovereignty of Pakistan. Consequently, it helped recruitment in terrorist organizations, increased anti-American sentiments, and cast a pall on U.S.-Pakistan relations. Moreover, the drone strategy, which mostly is in violation of international law and the ethics of warfare, has invited condemnation from all over the world.³⁵⁵

The United States has the oldest democracy in the world, and has famously supported the consideration of ethics and morals in international politics. These universal values are widely shared by freedom loving countries of the world. It is expected that the United States should not trade off ethical and moral values for national security interests; instead, these values should find a significant place in U.S. foreign policy and actions abroad. A battle between moral and practical concerns often creates a dilemma for states, but in the end, a balance has to be struck.³⁵⁶

A. THE ETHICAL ASPECT OF DRONE STRIKES

Moral and ethical arguments provide a new dimension to the drone issue. Drones keep the U.S. troops safer at the cost of increasing the risk to non-combatants.³⁵⁷ The loss of innocent lives through drones, and the indifferent U.S. reaction—no inquiry, no condolences, and no compensation to the

³⁵⁵ Abdul-Rehman, "Impact of Drone Attack in Pakistan and the War on Terror" (Special Study, Department of Global Political Studies, Malmo University, October 2013), 31–34, <http://muep.mah.se/bitstream/handle/2043/16281/Drone%20attacks%20%26%20war%20on%20terror.pdf?sequence=2>.

³⁵⁶ Leslie H. Gelb and Justine A. Rosenthal, "The Rise of Ethics in Foreign Policy: Reaching a Values Consensus," *Foreign Affairs*, June 2003, <http://www.foreignaffairs.com/articles/58968/leslie-h-gelb-and-justine-a-rosenthal/the-rise-of-ethics-in-foreign-policy-reaching-a-values-consensus>.

³⁵⁷ Jonathan Shine, "The Ethics of Unmanned Drones in Modern Warfare," *The Center for Public Justice*, February 25, 2011, <http://www.capitalcommentary.org/just-war/ethics-unmanned-drones-modern-warfare>.

aggrieved families—remains an ethical question.³⁵⁸ Moreover, traumatic stress, which the local population of FATA suffers through every day, is another ethical issue that remains unaddressed.³⁵⁹

The moral context also overlaps with the legal issues of drone strikes. Signature and personality strikes are the case in point. It becomes very difficult to cross match the behavior pattern of a terrorist in FATA of Pakistan due to cultural affinity and human—drone operator—error. The terrorists do not wear uniforms, remain dressed up in local clothes, and mingle with innocent civilians. In such a situation a few analysts have blamed the innocent civilians who have “rendered themselves human shields of the terrorists.”³⁶⁰ On the contrary, the civilian casualties in drone strikes demonstrate that innocents were killed instead of the real targets. No one is held accountable for the lapse because nobody (except perhaps the CIA) actually knows who the main actor behind the strike is; the pilot, the data collector, or the one who ordered it.³⁶¹

John Brennan, counterterrorism advisor, has defended the drone operations as “legal, wise, and ethical.”³⁶² Likewise, Machiavelli³⁶³ said: “Nations are not bound by any moral structures, and that a nation exists only to serve itself,” clearly sidelining the moral factors in international politics.³⁶⁴ The point further implies that power politics is coercive and results-oriented.³⁶⁵ In such an

³⁵⁸ Medea Benjamin, “10 Ways to Reduce the Threat of Terrorist Attacks on Americans,” *Mondoweiss*, August 6, 2013, <http://mondoweiss.net/2013/08/10-ways-to-reduce-the-threat-of-terrorist-attacks-on-americans#sthash.IDyY87uc.dpuf>.

³⁵⁹ Shine, “The Ethics of Unmanned Drones.”

³⁶⁰ Strawser, *Killing by Remote Control*, 65.

³⁶¹ Professor David Luban, “Drones: the Law and Ethics of Drone Strikes,” September 8, 2013, <http://podacademy.org/podcasts/drones-the-law-and-ethics-of-drone-strikes/>.

³⁶² Charlie Savage, “Top U.S. Security Official Says ‘Rigorous Standards’ Are Used for Drone Strikes,” *New York Times*, April 30, 2012, <http://www.nytimes.com/2012/05/01/world/obamas-counterterrorism-aide-defends-drone-strikes.html>.

³⁶³ Machiavelli was an Italian Philosopher and historian in 16th Century.

³⁶⁴ Mohammad Ashraf Chaudhry, “History: Its Lessons & the Price for their Disregard – 2,” *Pakistan Link*, September 2012, <http://pakistanlink.org/Opinion/2012/Sep12/28/06.HTM>.

³⁶⁵ *Ibid*.

amoral context, drone strikes in sovereign third countries have a certain cold logic. However, to justify the use of drones through the legal lens would leave an unresolved issue; human values in the sense of moral priorities merits consideration.

The ethics of drone strikes are articulated by two broad groups: those who support drone deployment as ethically essential, and those who deem it ethically destructive. Matthew Hallgarth, a former U.S. Air Force official who is one of the proponents of drone operations, states that humans kill humans; guns do not kill humans. He further states that there is no difference between a knife and a drone.³⁶⁶ Similarly, Asa Kasher, a former Israeli defense force official, argues that those who object to drone operation reflect a, “disrespect for the human life and dignity of people in military uniform.”³⁶⁷ By contrast, David Whetham, an opponent to drone strikes, states that the ethical and moral dimensions have to be considered in all forms of warfare—*jus ad bellum* and *jus in bello*—as without ethics, “war is nothing more than the application of brute force, logically indistinguishable from mass murder.”³⁶⁸

Bradley J. Strawser is one of the main proponents of drone operations and justifies drone deployment in the GWOT. He argues that in pursuance of justified goals, it is required to protect the soldiers from an undue risk on the battlefield, so the use of drones is ethically correct. First, he takes on the failure of drones to differentiate between combatants and non-combatants, which is a technical weakness of the weapon. He puts out certain data that reveals that the drones are far more accurate—17:1 civilian targets to military death—in determining the combatants from non-combatants as compared to other conventional weapons—

³⁶⁶ Strawser, *Killing by Remote Control*, 61.

³⁶⁷ *Ibid.*, 65.

³⁶⁸ David Whetham, *Ethics, Law, and Military Operations* (London: Palgrave MacMillan, 2010), 11–15.

4:1—and operations of the Pakistan Army. The drone technology relies on “fire and observe” rather than on “fire and forget.”³⁶⁹

The second issue relates to the targeted killings in a non-combat zone through an unmanned aerial platform, which some consider to be cowardly. Strawser justifies it by equating drones with high-range artillery shells fired across a border violating the sovereignty of a state or a missile fired from F-15 fighter aircraft. The moral question is “who that missile is going to hit, and why—not the platform from which it was delivered.” The hostile response was also visible in the past when the atomic bombs were dropped from B-52s. The hostility is not toward the platform, but the legality of attack and legitimacy of target.³⁷⁰

The third issue relates to the asymmetry in combat, making the drone an unfair instrument that should not be deployed morally. Strawser rejects the notion of equality in combat by quoting Jeff McMahan:

The warrior fighting for just cause is morally justified to take the life of the enemy combatant, whereas the unjust fighter is not justified, even if they follow the traditional principles of *jus in bello* such as only targeting combatants and the like, to kill the justified fighter.³⁷¹

Finally, he brushes aside the idea of war as a frequent activity by lowering its threshold through unmanned platforms. He terms this kind of warfare as the safest, which is free of all risks facilitating the just warrior. He further states that, “if using UAV does not incur a significant loss of capability ... there is an ethical obligation to use them.”³⁷²

³⁶⁹ Bradley J. Strawser, “Moral Predators: The Duty to Employ Uninhibited Aerial Vehicle,” *Journal of Military Ethics* 9, no.4 (December 2010), 342–68, http://www3.nd.edu/~dimmerma/teaching/20402-03/locked%20PDFs/Strawser10_MoralPredators.pdf.

³⁷⁰ Strawser, *Killing by Remote Control*, xviii; Strawser, “Moral Predators,” 356.

³⁷¹ Ibid.

³⁷² Strawser, “Moral Predators,” 361.

B. PROBLEMS RELATED TO THE UNITED STATES

Drones pose moral problems for the United States beyond Strawser's reading of the battle ethics. The problem relates to the excessive loss of innocent civilians lives, violations of *jus in bello*, the failure to provide a chance to the victims to surrender, and finally the uneven asymmetry in the GWOT between the United States and terrorists, which is unfair. Besides the blowback effect of drone strikes that does more harm to U.S. security, drone strikes set a wrong precedent for the future.³⁷³

1. Accountability and Transparency: Democratic Norms

The U.S. official data on civilian casualties does not match with the ground realities. The variation in civilian casualty data increased during President Obama's Administration with the increase in drone strikes. Two factors explain the variation in casualty data: to prevent democratic accountability and independent inquiry.³⁷⁴

Democratic accountability is undermined because drone strikes afford a better option to safeguard the lives of U.S. troops as compared to the political fallout due to soldier casualties. Battle casualties always become a source of concern and are often debated in consolidated democracies. In 1993, in Somalia, the famous Black Hawk Down incident, in which 18 U.S. soldiers were killed and their bodies desecrated, put the sitting government under a lot of pressure.³⁷⁵ In ten years of fighting the GWOT, the United States forces have suffered almost 2,343 fatal casualties, which by far is less than the Vietnam War—almost 58,000

³⁷³ Steven P. Lee, "Ethical Drones?" Center for Ethics University of Toronto, 2013, http://www.search.ask.com/web?l=dis&q=Steven+P.+Lee%2C+%E2%80%9CEthical+Drones%3F%E2%80%9D&o=APN10645&apn_dtid=^BND406^YY^US&shad=s_0042&apn_uid=8723220533404137&gct=ds&apn_ptnr s=^AG6&d=406-120&lang=en&atb=sysid%3D406%3Aappid%3D120%3Auid%3Dcc7e3adbc47cd313%3Auc2%3D460%3Atypekbn%3Dr13653%3Asrc%3Dffb%3Ao%3DAPN10645&p2=^AG6^BND406^YY^US.

³⁷⁴ "Living Under Drones," vi.

³⁷⁵ Dominic Tierney, "Black Hawk Up: The Forgotten American Success Story in Somalia," *Atlantic*, December 2, 2010, <http://www.theatlantic.com/international/archive/2010/12/black-hawk-up-the-forgotten-american-success-story-in-somalia/67305/>.

deaths.³⁷⁶ Since then, besides better planning and revolution in military affairs, drones have played a major role in reducing the casualties on the battlefield, providing a political safeguard to the sitting government.

In regard to independent inquiry, states are bound to investigate the civilian casualties in wars.³⁷⁷ The United Nations Human Rights Council has called for an independent inquiry over the civilian deaths, but that has not yet been completed.³⁷⁸ The inquiry will also take into account the deliberate targeting of funerals and civilian gatherings in Pakistan.³⁷⁹ Failure to hold an independent inquiry by the United States resulted in the UN investigation; however, the investigation will get nowhere if the United States does not provide full support, including drone footage, to the investigating team.³⁸⁰ The truth cannot be established without the availability of drone footage. Mr. Emmerson, UN Special Rapporteur on Human Rights, said that the issue of civilian deaths “remain[s] at the top of the UN political agenda until some consensus and transparency has been achieved,” but it seems quite unlikely to reach any conclusion on this issue as it would lead to war crimes.³⁸¹

2. Selective Application of Drone Strikes

The scourge of terrorism has spread throughout the world. Saudi Arabia is one of the countries that are fighting hard to overcome terrorism. Besides huge

³⁷⁶“Operation Enduring Freedom Fatalities Data,” iCasualties,” 2014, <http://icasualties.org/oef/>; Michael Ip, “Looking Back: The End of the Vietnam War,” *ABC News*, March 29, 2013, <http://abcnews.go.com/blogs/headlines/2013/03/looking-back-the-end-of-the-vietnam-war/>.

³⁷⁷ Even MacAskill and Owen Bowcott, “UN Report calls for Independent Investigations of Drone Attacks,” *Guardian*, March 10, 2014, <http://www.theguardian.com/world/2014/mar/10/un-report-independent-investigations-drone-attacks>.

³⁷⁸ Ibid.

³⁷⁹ Chris Woods and Alice K Ross, “Covert Drone Wars: UN Launches Major Investigation into Civilian Drone Deaths,” *Bureau of Investigative Journalism*, January 24, 2013, <http://www.thebureauinvestigates.com/2013/01/24/un-launches-major-investigation-into-civilian-drone-deaths/>.

³⁸⁰ Terri Judd, “U.S. ‘Should Hand over Footage of Drone Strikes or Face UN Inquiry,’” *Independent*, August 20, 2012, <http://www.independent.co.uk/news/world/asia/us-should-hand-over-footage-of-drone-strikes-or-face-un-inquiry-8061504.html>.

³⁸¹ Ibid.

oil reserves, Saudi Arabia has the 13th largest economy and 25th largest (and accordingly well equipped) military in the world.³⁸² If, in the future, any terrorist that poses imminent threat to the United States is found within the geographical boundaries of Saudi Arabia, would the terrorist be neutralized by drone strike or not? This is a difficult decision to make by the United States for its ultimate repercussions. The same scenario can be applied to any European country that has no meaningful military apparatus to handle terrorism. The United States is not likely to use drones in such scenarios for the sake of its long-term interests and international order. Deploying drones in Pakistan implies two things: first, Pakistan is a weak state and is not part of any strong alliance like NATO; second, it can shoot down drones but does not to avoid confrontation with the United States being dependant on it.

3. Harboring Terrorists: Major Reason for Drone Strikes

Lately Pakistan has launched operation Zarb-e-Azb in North Waziristan against the good and bad Taliban in accord with the strategic aspirations of the United States.³⁸³ The United States has often cited Pakistan's unwillingness to neutralize the terrorists in North Waziristan to justify the drone strikes. However, despite the military operation across the board in North Waziristan, the drone strikes continue unabated. The unilateral actions of the United States to achieve its objectives set wrong and dangerous precedents. Drone strikes can be used as a force multiplier in a support role to the ground operation—Zarb-e-Azb—that is likely to address the concerns of Pakistani authorities.

C. PROBLEMS RELATED TO PAKISTAN

Drones have polarized the Pakistani society. The moral position of the government is not clear. On the one side, the ruling elite used to condemn the

³⁸² GFP Staff, "Saudi Arabia Military Strength," GFP, Updated March 27, 2014, http://www.globalfirepower.com/country-military-strength-detail.asp?country_id=saudi-arabia; 2014 Index of Economic Freedom, <http://www.heritage.org/index/country/saudi-arabia>.

³⁸³ Judd, "U.S. Should Hand over Footage."

United States for its drone operations, and on the other hand, it continues to allow—discreetly and unofficially—targeting of the wanted terrorists. The authorities can neither confront the United States nor the Pakistani public.

1. Sovereignty Issue

Pakistan authorities often decry violation of sovereignty when any drone strike takes place inside its territory. Ironically, the issue of sovereignty violation never came up in the case of foreign fighters—Uzbeks, and Arabs—who have taken refuge in FATA. The foreign fighters have been committing this violation since the start of the GWOT, in 2001. Pakistan authorities, politicians, media, and even the public never took up this matter. Therefore, raising the sovereignty issue against the drone operations and debarring the foreign fighter's presence in FATA sends mixed signals to the international community.

2. Collateral Damage

In regard to collateral damage, Pakistan has launched a number of military operations in FATA. During these operations, the military exercised optimum caution while using Arty and air bombardment. However, the possibility of collateral damage cannot be ruled out. There are few unconfirmed reports of civilian deaths, these reports never made headlines. Since the military had the constitutional blanket and government consent, the issue of collateral damage—if any—will not appear on media radar. As Christine Fair stated: “In their [Pakistanis] universe, the loss of innocents are only worth bemoaning if an American drone kills them ... the U.S. drone program never caused massive internal displacements of persons like the various Pakistani operations have.”³⁸⁴ Collateral damage is part of every military operation of such intensity, but the absence of Pakistan's involvement in drone operations made it a contentious

³⁸⁴ C. Christine Fair, “The Pakistan Army's Foray into North Waziristan: Get Used to Disappointment,” *War on the Rocks*, July 7, 2014, http://warontherocks.com/2014/07/the-pakistan-armys-foray-into-north-waziristan-get-used-to-disappointment/#_.

issue. Involvement of Pakistan in the operational planning of drone strikes is likely to diminish the controversy to some extent.

D. RECOMMENDATIONS

Drone operations have achieved mixed results; they have killed HVTs of the al-Qaeda and Taliban network alongside disproportionate collateral damage that has caused serious problems for Pakistan. The strategy has tactical benefits, but it lacks strategic impact. It would be unfair to state that drone strikes in Pakistan are the sole reason for its sore relationship with the United States, the rise in terrorism in FATA, and political instability with regard to state authority; however, drone operations have contributed significantly to all these issues. The disagreement over drone strikes between the United States and Pakistan can be resolved through a mutually agreed upon strategy that has a long-term solution to terrorism, the sovereignty issue, and mutual interests.

1. Considerations for the United States

The United States and Pakistan should understand that mutual interests serve better than competing interests. Competing interests stem from varying beliefs, perceptions, and needs on both sides, and these issues need to be resolved quickly. In the GWOT, the United States drone policy should take into consideration its long-term interests in Pakistan. To this end, the following is recommended:

1. Establish a long-term relationship with Pakistan in which the national interests of both countries should merge at the strategic level. Dealing with Pakistan on a requirement basis might solve the problems at hand, but it will not serve the long-term interests of both states.
2. Address Pakistan's insecurities, which can be achieved by a long-term solution to Afghanistan's instability and making Pakistan relevant in the U.S.-India strategic calculus.
3. Find some alternative strategy to drone operations. This demands sincere cooperation of intelligence agencies on both sides. Through

joint collaboration in intelligence, covert operations could be launched against the terrorist networks.

4. Make the policy—pre- and post-drone strike—on targeted killings transparent, and those who follow it should be made accountable in case of any transgression. This will set a precedent for future drone operations by any country, and is likely to gain legitimacy with regard to respecting state sovereignty.

2. Considerations for Pakistan

1. Acknowledge problems. It is said that recognizing the problem is part of the solution. The existence of non-state actors is a reality, which if recognized by Pakistan authorities without classifying these non-state actors as good and bad will definitely help towards a long lasting solution. A multi-prong approach of negotiations and development in FATA, especially in the education sector, should be carried out with the tribal people. This will reduce terrorist sympathizers by keeping them at a distance from the on-state actors and will win their hearts and minds. Force should be used as a last resort.
2. Evolve and use the domestic legal system effectively to take on the terrorists instead leaving them to outside force for punitive actions. This will establish the rule of law, strengthen the legal system, and also decrease the inter-state conflicts.
3. Clarify roles and responsibilities. The complicated relationship among the government, armed forces, intelligence agencies, and non-state actors has a profound impact on the overall strategy of fighting terrorism. To safeguard the national interest every organ of the state should play its effective, legitimate, and constitutional role in concert with all stakeholders.
4. Be straightforward in partnerships and international relations. Pakistan should act consistently, instead of playing a double game with its ally. In present times, one cannot afford to “run with the hare and hunt with the hound” because of obvious repercussions. A dual policy on drone operations by protesting in public and complaining about sovereignty violations while celebrating the killings of HVTs is not an affordable option.
5. Generate a counter-narrative and mobilize the media by openly declaring the Taliban as state enemies and proclaiming that we are fighting our own war; it is not an American war. The Americans are helping us in this war. This will reduce the anti-American feelings.

6. Address the perception that Pakistan is unwilling and unable to track down the terrorists, which is the fundamental cause of drone operations in Pakistan. This perception should be addressed diligently in coordination with the United States.
3. **Considerations for the International Community**
 1. The mere factor of the necessity to use force in self-defense has been stretched too far by powerful states to legitimize their military actions. The UN should enforce a legal framework in line with its Charter and customary international law to ensure correct application of “necessity.”
 2. Sovereignty belongs to strong as well as weak states. In pursuance of national objectives, the strong state should not be allowed to violate the territorial sovereignty of a weak state. All states should enforce and conform to peaceful modes of redress instead of using force. A framework comprising dialogue, diplomacy, and compromise will help resolve the issues.
 3. Procedural safeguards must be kept in mind while carrying out targeted killings through drones. Even if the strikes are carried out with the consent of a weak state, the basis of its consent should be clarified publicly.³⁸⁵

These recommendations are not new and in one way or another have been oft repeated at different times since the start of the GWOT. Unfortunately, not a single recommendation has been followed according to the letter or spirit. Consequently, the U.S.-Pakistan relationship is deteriorating by the day. The common perception is that for now, Pakistan is becoming irrelevant in the region for the United States. This is a dangerous scenario, which contributes to a weak economy, rise in extremism, and growing insecurities regarding India, which is well stocked with nuclear weapons. The White House should not allow Pakistan to slip down the wrong path.

³⁸⁵ Dawood I. Ahmed, “Defending Weak States Against the ‘Unwilling or Unable’ Doctrine of Self-Defense,” *Journal of International Law and International Relations* (March 2013): 4–6, http://www.jilir.org/docs/issues/volume_9/9_2_AHMED_FINAL.pdf.

E. REFLECTIONS

States normally do not pay attention to international obligations, but demand that the rest of the world should think and act to their satisfaction. This is detrimental to the collective cause of fighting terrorism. Sovereignty entails the discharge of certain responsibilities, which if not fulfilled due to lack of capacity, capability, or due to national interests can have serious repercussions. Denying safe havens to irregular forces and providing security to its people are the duties of a sovereign state. Failure to do so will initiate the right for self-defense by other states.³⁸⁶

However, the criteria for self-defense remain uncertain with regard to two fundamental requirements: necessity and proportionality. The threshold for these two factors is interpreted differently by states and remains controversial in international law. This leads toward a lack of clarity in the application of self-defense. Activating the right to self-defense by disregarding the legal framework will set wrong precedents for other states who either possess or are in the process of developing drone capability. However, “the use of force ultimately affects individuals and their rights and should be a concern for everyone.”³⁸⁷

The tactical advantages and lethality of drones have masked the ethical aspect of these deadly weapons. The killings of civilians commonly referred to as summary execution has strategic consequences on the outcome of the GWOT; it is not fighting the war on terror instead feeding terrorism.³⁸⁸ In addition, for its

³⁸⁶ Theresa Reinold, “State Weakness, Irregular Warfare, and the Right to Self-Defense Post-9/11,” *American Journal of International Law* 105, no. 2 (April 2011): 244, <http://www.jstor.org/discover/10.5305/amerjintelaw.105.2.0244?uid=3739560&uid=2129&uid=2&uid=70&uid=4&uid=3739256&sid=21105070860923>.

³⁸⁷ Corinne Lewis “Don’t Stop Now: The Development of the International Law, Right to Use Force in Self-Defense,” *Journal of International Law and Policy* IV, no. 3 (June 2007), https://www.law.upenn.edu/journals/jil/jilp/articles/4-1_Lewis_Corinne.pdf; Reinold, “State Weakness,” 284.

³⁸⁸ Seamas Milne, “America’s Murderous Drone Campaign is Fuelling Terror,” *Guardian*, May 29, 2013, <http://www.theguardian.com/commentisfree/2012/may/29/americas-drone-campaign-terror>.

own safety, the United States should not spread fear at other places unlawfully through the use of force.

It is said that “like all other weapons platforms, drones are morally neutral; the policy to use them requires debate—and no policy is perfect,” provides the right direction towards some acceptable solution.³⁸⁹ Highlighting successes and failures of drone operations will not solve the problem; deliberate planning, good coordination between the stakeholders, and their deployment within the bounds of international law will reduce the civilian casualties to large extent making the drone an effective weapon against terrorism in present times.³⁹⁰

³⁸⁹ Foust, “The Strategic Context.”

³⁹⁰ Ibid.

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