

# Remote Warfare: The Consequences and Implications of Counterterrorism Efforts in Yemen

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## I. Introduction:

Popular wisdom claims that "war never changes"<sup>1</sup>, but in November of 2001 the United States Central Intelligence Agency launched an attack that changed the face of modern warfare. Manning the controls from a remote location, an American pilot guided an armed predator through Afghan skies, launching a missile that killed al-Qaeda commander Mohammed Atef and five other assumed members of al-Qaeda in his company.<sup>2</sup> The new technology gave the United States the power to wage war at lower costs without putting soldiers in harm's way. In addition, it also allowed for an increase in military activity while minimizing the public backlash often provoked by harm inflicted on United States armed service members. According to data collected by the New America Foundation, the Bush administration carried out 48 drone strikes in Pakistan alone through two terms of office. President Obama drastically increased the frequency of drone strikes, ordering 353 attacks during his eight years in office.<sup>3</sup> During that time, drone activity in Pakistan saw a decline; however, President Obama ordered an additional 163 drone strikes in Yemen, as compared to a single strike ordered under President Bush. President Trump is currently following the trend of an exponential increase in drone usage, having himself authorized 24 drone strikes in Yemen during his first months in office.<sup>4</sup>

In the early years of the drone program, most information regarding the strikes remained confidential. After President Obama took office, years passed before the administration acknowledged their use publically. On May 2, 2010 President Obama took the stage at the White

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<sup>1</sup> Quote traditionally credited to Ulysses S. Grant.

<sup>2</sup> Miller, Judith, and Eric Schmitt. "Ugly Duckling Turns Out to Be Formidable In the Air." *The New York Times*. November 22, 2001. Accessed June 08, 2017.

<sup>3</sup> Pete Bergen et al., "Drone Strikes: Pakistan," New America, accessed June 09, 2017, web. For information on the New America Foundation's methodology, see <https://www.newamerica.org/in-depth/americas-counterterrorism-wars/methodology/>.

<sup>4</sup> Pete Bergen et al., "Drone Wars Yemen," New America, accessed June 09, 2017, web.

House Correspondents Dinner. Addressing the crowd during the annual night of political comedy roasts celebrating the role of the press in American democracy, he took a jab at the pop-music trio the Jonas Brothers, saying, "[the] Jonas Brothers are here, they're out there somewhere. Sasha and Malia are huge fans, but boys, don't get any ideas. Two words for you: predator drones. You will never see it coming. You think I'm joking?"<sup>5</sup> The joke marked the first time President Obama publicly acknowledged the existence of the drone strike program.<sup>6</sup> While the jest drew laughs, it undermined the severity of the implications for using such an impersonal means of engaging in armed conflict abroad.

The Obama administration's proliferation of the lethal drone program and continued execution of "signature strikes" against al-Qaeda in the Arabian Peninsula (AQAP) in Yemen undermines the democratic responsibility of the United States citizenry to hold elected officials accountable for their actions by shielding the American public from the traditional human costs of war. The strikes furthermore violate international law on the basis of distinction and proportionality. On the ground level, the strikes foster sympathies for AQAP amongst Yemeni civilians, counteracting the United States' stated goals for conducting the strikes. Though the Obama administration in its final year took action with the stated intent of increasing the transparency of the drone program by passing executive order *United States Policy on Pre- and Post-Strike Measures to Address Civilian Casualties in U.S. Operations Involving the Use of Force*, reports from the Department of Justice (DoJ) and the Department of the Director of National Security (DNI) on strike procedure, legal defence for drone operations, and questionable casualty numbers from the drone strikes indicate an abuse of power both on the

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<sup>5</sup> Rachel Weiner, *The Washington Post*, May 3, 2010, accessed June 09, 2017, <http://voices.washingtonpost.com/44/2010/05/obama-drone-joke-was-it-offens.html>.

<sup>6</sup> Trevor McCrisken, "Obama's Drone War," *Survival* 55 no. 2, May 2013, 98.

international stage, taking advantage of the geopolitical influence of the United States as a predominant world power to circumvent international agreements concerning conduct in war, and on the domestic front by downplaying the human costs of U.S. drone strikes abroad.

## II. Overview of Drone Use by the United States

Two United States organizations deploy drones as an operational tool: the military and the Central Intelligence Agency. In the early days of their use in the 1990s, these organizations deployed unarmed drones as sensor aircraft in areas such as Bosnia, Kosovo, and Iraq.<sup>7</sup> Before long, the idea emerged of arming these drones. Both the military and the CIA expressed great interest in this possibility, though some seemed wary of the idea. Former CIA director George Tenet, first appointed by President Clinton, called weaponized drones "a terrible mistake" that no Director of the Central Intelligence Agency should deploy;<sup>8</sup> however, opinion quickly changed in the aftermath of the September 11th terrorist attacks on the United States, when the government increased the abilities of the CIA to target terrorists abroad with the passing of the Patriot Act.<sup>9</sup> In just a matter of months, the agency got the opportunity to test the effectiveness of the new technology in the field.

The first use of a drone in combat by the United States took place in November of 2001, when the CIA deployed an RQ-1 Predator to eliminate al-Qaeda commander Mohammed Atef in Afghanistan.<sup>10</sup> The strike marked the beginning of a shift into a new age of advanced warfare, revolutionizing the way in which the United States conducts war. In the nationalistic fervor

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<sup>7</sup> Kaag, John and Sarah Kreps. *Drone Warfare* (Cambridge, UK: Polity Press, 2014), 4.

<sup>8</sup> Quoted in Jane Mayer, "The Predator War," *New Yorker*, October 26, 2009.

<sup>9</sup> Kaag, John and Sarah Kreps. *Drone Warfare* (Cambridge, UK: Polity Press, 2014), 5.

<sup>10</sup> Judith Miller and Eric Schmitt, "Ugly Duckling Turns Out to Be Formidable In the Air," *The New York Times*, November 22, 2001, accessed June 09, 2017, <http://www.nytimes.com/2001/11/23/world/nation-challenged-battle-ugly-duckling-turns-be-formidable-air.html>.

following the September 11th attacks on the World Trade Center and the Pentagon, both conservative and liberal U.S. news outlets praised the strike. Fox News published an article the Sunday following the attack romanticizing the night of the operation:

There was no moonlight in Afghanistan on Wednesday night. The new moon, marking the beginning of Ramadan, had yet to appear. Invisible under the stars, an unmanned American spy plane circled inaudibly over a stretch of dark landscape, transmitting grainy images back to the United States.<sup>11</sup>

The article continues on to describe the attack, delighting in the details while conveying a sense of awe at the technological development. Even the *New York Times*, reporting on the same strike, limited its criticism of the attack to highlighting the shortcomings of the new technology, such as its frequent breakdowns, dependence on daylight and fair weather, limited range, difficulty to fly, and vulnerability to icing.<sup>12</sup> Operational obstacles should come as no surprise in the first generation of any technology, be it drone or smart phone. What both news outlets failed to recognize in their coverage were the moral implications of waging remote warfare from overseas, where a pilot could execute a target and make it home to their wife and kids by the end of the day.

On November 4, 2002, just a year after the strike that killed Mohammed Atef, the CIA conducted its first drone strike outside of an area of active hostilities, or rather in an area where the United States had not officially declared war. The strike targeted Qaed Salim Sinan al-Harethi in Yemen, an al-Qaeda operative linked to the 2000 bombing of the USS Cole that claimed the lives of 17 United States sailors. The strike killed al-Harethi and five others traveling

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<sup>11</sup>"U.S. Kills Al Qaeda Leaders by Remote Control." Fox News. November 19, 2001. Accessed June 09, 2017. <http://www.foxnews.com/story/2001/11/19/us-kills-al-qaeda-leaders-by-remote-control.html>.

<sup>12</sup>Judith Miller and Eric Schmitt, "Ugly Duckling Turns Out to Be Formidable In the Air," *The New York Times*, November 22, 2001, accessed June 09, 2017, <http://www.nytimes.com/2001/11/23/world/nation-challenged-battle-ugly-duckling-turns-be-formidable-air.html>.

in his company also considered active members of the al-Qaeda terrorist network.<sup>13</sup> Initially, the Yemeni president at the time, Ali Abdullah Saleh, claimed that Yemeni forces bore responsibility for the attack; however, leaks later confirmed U.S. involvement, sparking foreign criticism.<sup>14</sup> CBS news, writing on the fallout, quoted Swedish Foreign Minister Anna Lindh as condemning the strike as "a summary execution that violates human rights," and going on to state that "even terrorists must be treated according to international law. Otherwise, any country can start executing those whom they consider terrorists."<sup>15</sup> Strikes in Yemen would not resume until President Obama took office, but the CIA expanded its drone program in Pakistan in 2004 at the end of the first term of the Bush administration, where, "because of the rise of the Pakistani Taliban and the failure of the Pakistani military, the CIA was granted access to conduct surveillance and targeted killing across Pakistan's Federally Administered Tribal Areas... [where] it has since conducted hundreds of such strikes."<sup>16</sup> While the escalation of drone strikes by the United States sparked condemnation abroad, an examination of public response on the domestic front reveals that the general U.S. population gave little thought to this troubling new tactic.

### **III. Public Response to Drone Strikes in the United States**

Speaking on the topic of drones and democracy, Sarah Kreps and John Kaag emphasize that "In democracies, the populace bears the burden of war [in terms of both financial and human costs], creating a strong incentive to depress the costs of conflicts. Democratic leaders, who are

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<sup>13</sup>Bootie Cosgrove-Mather, "Remote-Controlled Spy Planes," CBS News, November 06, 2002, accessed June 09, 2017, <http://www.cbsnews.com/news/remote-controlled-spy-planes/>.

<sup>14</sup> Kaag, John and Sarah Kreps. *Drone Warfare* (Cambridge, UK: Polity Press, 2014), 5.

<sup>15</sup> Bootie Cosgrove-Mather, "Remote-Controlled Spy Planes," CBS News, November 06, 2002.

<sup>16</sup> Kaag, John and Sarah Kreps. *Drone Warfare* (Cambridge, UK: Polity Press, 2014), 5.

held to account by votes, must consider this incentive when creating foreign policy”.<sup>17</sup> The rise and proliferation of armed predator strikes as the preferred mode of counter-terrorism efforts undermines this check on power by concealing the human cost of war from the American public.

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The widespread use of UAVs marks the realization of a trend towards favoring technological solutions to minimize the bloodshed of American troops, a process that began in the wake of the Vietnam war when the United States shifted from a conscripted to voluntary military force.<sup>19</sup> While the protection of American troops must fall under serious consideration when planning any military action abroad, the heavy-handed use of UAVs in counterterrorism efforts beginning under the Bush administration, escalating exponentially under the Obama administration, and continuing under the Trump administration implicates elected officials in circumventing public input on foreign policy decision making while simultaneously increasing military engagement abroad. This practice further implicates the American public at large for embracing an “America first” mentality, and conceding its influence on foreign policy in exchange for the illusion of peace on the domestic front.

At the inception of the CIA drone program, the agency mostly deployed predators in Afghanistan; however, the emphasis remained on their controversial detention and interrogation program. The focus shifted towards the use of drones when their practices faced public and legal backlash in 2004.<sup>20</sup> Amidst this controversy the CIA carried out its first lethal drone strike in

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<sup>17</sup> Kaag, John and Sarah Kreps. *Drone Warfare* (Cambridge, UK: Polity Press, 2014), 53.

<sup>18</sup> *Ibid.*

<sup>19</sup> Kaag, John and Sarah Kreps. *Drone Warfare* (Cambridge, UK: Polity Press, 2014), 59.

<sup>20</sup> Jack Goldsmith, "How Obama Undermined the War on Terror," *New Republic*, May 01, 2013, accessed June 09, 2017, <https://newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism>.

Pakistan. Quoting an interview with *New York Times* investigative journalist Mark Mazzetti, Jack Goldsmith asserts that from that point forward “the CIA ‘began to see its future: not as the long-term jailers of America’s enemies but as a military organization that could erase them’ ... [so that] by the last year of the Bush administration, the CIA was effectively out of the detention and interrogation business but was conducting more drone strikes than ever in Afghanistan and Pakistan”.<sup>21</sup> This development served as a boon for President Obama, who sought to strike more aggressively against Al-Qaeda’s leadership, having criticized Bush for not doing enough during the 2008 presidential campaign. Having also promised to close Guantanamo bay, a continuation of interrogation and detention was off the table. Going back to Mazetti, “the ‘political conditions were set for an escalation of the secret wars’ ... because interrogation and detention were so controversial, and because no prominent Democrat had opposed drone strikes and the Republicans wouldn’t oppose Obama ‘for fighting *too* aggressive a campaign against terrorists.’”

<sup>22</sup> Both the Democrats and the Republicans, dead fixed on perpetuating publically favorable political messaging, placed the image of their respective parties above the moral mandate to uphold just warfare practices laid out in international law.<sup>23</sup> It took a strike targeting a U.S. citizen to draw the issue into the public eye.

Anwar al-Awlaki, born in 1971 in New Mexico to Yemeni parents, lived in the U.S. until the age of 7, when his family moved back to Yemen. Awlaki studied Islam in his teens, and returned to the US in 1994 where he earned a degree in civil engineering from Colorado State University as well as a master's degree in education from San Diego State University. Following his graduation, Awlaki served as imam at the the Denver Islamic Society, a mosque in Fort

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<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> See Section III, "Targeting Practices and International Law".



Collins, CO, Masjid Ar-Ribat al-Islami mosque in San Diego, as well as Dar al-Hijra mosque in Falls Church, Virginia. During his tenure at these locations, 9/11 hijackers Khalid al-Midhar, Nawaf al-Hazmi, and Hani Hanjour attended his sermons and spoke at length with al-Awlaki in private meetings. al-Awlaki moved to the United Kingdom in 2002 before returning to Yemen in 2004 when he took on a lecturing position at al-Imam University, a Sunni school run by Abdul-Majid al-Zindani, who the US and UN labeled as an extremist with connections to al-Qaeda. In his later years, Awlaki advocated for violence as a legitimate means of religious struggle, and used the internet to recruit members for al-Qaeda in the Arabian Peninsula. US officials believed that al-Awlaki served as a leading member of AQAP and link him to several global terrorist attacks, including the 9/11 attacks, the 2009 Fort Hood shooting, as well as Umar Farouk Abdulmutallab's attempt to set off a bomb on a Detroit bound flight.<sup>24</sup> On September 30, 2011, President Obama authorized the CIA to conduct a strike executing al-Awlaki.

In 2009, a newly elected President Obama faced growing Taliban activity in Afghanistan. Facing the dilemma of maintaining operations in the country while upholding his promise to alleviate the costs of war on the American people, the President in his first term of office ordered six times the number of drone strikes conducted during both terms of the Bush administration.<sup>25</sup> Polls conducted on drone usage gauged public opinion of the strikes. According to a survey conducted by Fairleigh Dickinson University's *PublicMind*,<sup>26</sup> at the end of Obama's first term, when asked, "In general, do you approve or disapprove of the U.S. Military using drones to carry out attacks abroad on people and other targets deemed a threat to the U.S.?", 75% of voting U.S.

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<sup>24</sup> "Obituary: Anwar al-Awlaki," BBC News, September 30, 2011, accessed June 09, 2017, <http://www.bbc.com/news/world-middle-east-11658920>.

<sup>25</sup> Kaag, John and Sarah Kreps. *Drone Warfare* (Cambridge, UK: Polity Press, 2014), 60.

<sup>26</sup> *PublicMind* has been conducting surveys on public issues since 2001. For more see [view2.fdu.edu/publicmind/](http://view2.fdu.edu/publicmind/).

citizens approved of drones strikes by the military, 13% disapproved, and 12% were unsure or had mixed feelings about the issue. When asked, “in general, do you approve or disapprove of the C.I.A. using drones to carry out attacks abroad on people and other targets deemed a threat to the U.S.?”<sup>27</sup>, 65% expressed their approval, 21% disapproved, 13% were unsure, and 1% chose not to respond.<sup>27</sup> This data is consistent with data from polling between 2011 and 2013 on support for drone strikes from the likes of Pew Research, and Gallup.<sup>28</sup> These results suggest a general apathy on the part of the American people concerning the use of drones abroad; however, the strike against al-Awlaki, an American citizen, flagged the attention of the American public. When asked, “To the best of your knowledge, can the U.S. target U.S. citizens living in other countries with drones, or is that illegal?”<sup>29</sup>, 48% responded that this is illegal, 24% said that the U.S. can do this, and 28% were unsure.<sup>29</sup> An examination of the United States' target identification practices viewed within the context of international law implicates the U.S. government of abusing international treaties stipulating just conduct during military engagements in it's pursuit of national security.

### **III. Targeting Practices and International Law**

The debate surrounding the legality of United States drone strikes under International Law revolves around whether or not the use of drones by the United States remains true to the commitment to uphold *jus ad bellum*<sup>30</sup> and *jus in bello*<sup>31</sup>. That is to say, whether or not drone strikes conducted in territories outside areas of active hostilities where the United States has

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<sup>27</sup> "Public Says It's Illegal to Target Americans Abroad As Some Question CIA Drone Attacks," PublicMind Poll, February 7, 2013, accessed June 09, 2017, <http://publicmind.fdu.edu/2013/drone/>.

<sup>28</sup> Kaag, John and Sarah Kreps. *Drone Warfare* (Cambridge, UK: Polity Press, 2014), 62.

<sup>29</sup> "Public Says It's Illegal to Target Americans Abroad As Some Question CIA Drone Attacks," PublicMind Poll, February 7, 2013.

<sup>30</sup> Latin for "right to war"

<sup>31</sup> Latin for "justice in war"

officially declared war hold true to the guidelines dictating the right to use force under international law, and whether or not the use of drones adheres to the rules of war once a conflict begins.<sup>32</sup> A discussion of *jus ad bellum* lies outside the scope of this paper; however, the discourse surrounding *jus ad bello*, specifically concerning the principles of distinction and proportionality, make up the bulk of the United States' justification for the legality of drones in warfare. The defense offered by the United States for its action abroad internally and publically obfuscates the concepts of international law, revealing an abuse of international agreements by a prominent party of the Geneva Conventions.

International law calls for parties involved in a military conflict to make a proper distinction between combatants and civilians. Article 4 of the Third Geneva Convention states that individuals fall under the category of combatant so long as they meet the four following conditions:

- a) That of being commanded by a person responsible for his subordinates
- b) That of having a fixed distinctive emblem recognizable at a distance;
- c) That of carrying arms openly; and
- d) That of conducting their operations in accordance with the laws and customs of war.<sup>33</sup>

The Third Geneva Convention met in the wake of World War II, when combatants generally wore distinct uniforms and emblems identifying themselves as participants in military operations. This did not remain the case for future U.S. armed conflicts. The International committee of the Red Cross (ICRC) in 1977 deemed a Protocol Additional (AP I, 1977) to the

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<sup>32</sup> Kaag, John and Sarah Kreps. *Drone Warfare* (Cambridge, UK: Polity Press, 2014), 79.

<sup>33</sup> International Committee of the Red Cross, "Convention (III) Relative to the Treatment of Prisoners of War," *International Humanitarian Law - Treaties and Documents*, 1949. Available at [icrc.org/](http://icrc.org/), last accessed June 9, 2017.

Geneva Conventions necessary, in light of the guerilla warfare seen during the Vietnam War, expanding upon the distinction between combatants and civilians.<sup>34</sup> Article 48, paragraph 3 of AP I, 1977 elaborates on this point, stating that:

In order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. Recognizing, however, that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly:

- (a) during each military engagement, and
- (b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate.<sup>35</sup>

This addition helps clarify the definition of combatant amongst members of state forces; however, it fails to recognize the issue of "armed conflicts not of an international character waged between government forces and organized non-State armed groups," such as AQAP, who often do not follow stipulations for military engagement under international law.<sup>36</sup> The unconventional combat style of extremist groups integrated within civilian populations, such as AQAP in Yemen, complicates the ability of the United States to distinguish between civilians and combatants. The issues with identification that accompany unconventional warfare call for the use of a careful analytical framework to separate combatants from civilians. The current practice of "signature strikes" on the part of the United States, viewed in conjunction with their

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<sup>34</sup> Levie, Howard S. "Prisoners of War Under the 1977 Protocol I", *Akron Law Review*, Summer, 1989, Vol. 23:1, 58.

<sup>35</sup> International Committee of the Red Cross, "Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to Protection of Victims of International Armed Conflicts (Protocol I)," 8 June 1977, *International Humanitarian Law - Treaties and Documents*, 1949. Available at [icrc.org/](http://icrc.org/), last accessed June 9, 2017.

<sup>36</sup> Nils Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law*, Geneva: International committee of the Red Cross, 2009.

published, vague justifications for the way in which the U.S. government authorizes drone operations, connotes a prioritization of perceived strategic advantage above the responsibility to safeguard civilians as laid out in AP I, 1977.

The United States utilizes two different strike methods when targeting AQAP militants: targeted killings and signature strikes. When the U.S. executes a targeted killing, they go after a specific figure in the organization. For the bulk of his two terms, President Bush only authorized the use of targeted killings; however, in 2008 he approved the use of signature strikes<sup>37</sup> against anonymous targets suspected of fighting for groups like al-Qaeda and the Taliban who merely "[bore] the characteristics of [al-Qaeda] or Taliban leaders on the run."<sup>38</sup> Upon taking office, President Obama continued the practice in Yemen and expanded it to include "all military-age males in a strike zone as combatants... unless there is explicit intelligence posthumously proving them innocent."<sup>39</sup> In addition, leaks obtained by *The Intercept* in 2015 from an anonymous member of the intelligence community involved with drone operations reveal that the United States tracks the SIM cards of individuals associated with terrorism to locate and target them, meaning that should the SIM card of a suspected terrorist fall into the hands of a civilian, they

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<sup>37</sup> "Targeted killings and signature strikes have always been in the repertoire of military planners, but never, in the history of warfare, have they cost so little to use. Historically, there have been significant risks associated with these types of military activities. First, a nation-state had to risk its soldiers or operatives. And if it risked the lives of soldiers, it risked public censure if these individuals were killed or captured. And if such a strike was successful and publicly endorsed, there was still the risk of retribution. Drones have allowed some governments to obviate most, if not all, of these costly risks. As US military forces acquire more autonomous drones and hire private security firms to operate them, these killings will become even less expensive for the American citizenry. This is a trend that soldiers and the citizens who support them have to confront head on." - Kaag, John and Sarah Kreps. *Drone Warfare*, 2015, 109.

<sup>38</sup> Eric Schmitt and David E. Sanger, "Pakistan Shift Could Curtail Drone Strikes," *New York Times*, February 22, 2008.

<sup>39</sup> Adam Entous, Siobhan Gorman, and Julian E. Barnes, "U.S. Relaxes Drone Rules," *Wall Street Journal*, April 26, 2012.

may find their self at the wrong end of a signature strike.<sup>40</sup> Another anonymous government official claimed that "You don't necessarily need to Know the guy's name. You don't have to have a ten-sheet dossier on him. But you have to know the activities this person has been engaged in"<sup>41</sup> The determination of guilt by association on the part of the United States puts civilians at unnecessary risk. The subsequent military action as a result of the government's flawed criteria as to what actions amount to that of a combatant, constitutes a disproportionate response in violation of the concept of proportionality under international law.

Article 50 of the AP I, 1977 defines "civilian" as the following:

1. A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.
2. The civilian population comprises all persons who are civilians.
3. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.<sup>42</sup>

Building on this, Article 57 of AP I, 1977 lays out safeguards for civilians as defined by article 50, stating that:

(a) those who plan or decide upon an attack shall:

(i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of Article 52 [ Link ] and that it is not prohibited by the provisions of this Protocol to attack them;

(ii) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects;

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<sup>40</sup> Scahill, Jeremy, "The Assassination Complex: Secret Military Documents Expose the Inner Workings of Obama's Drone Wars," *The Intercept*, October 15, 2015, Accessed 9 June 2017. <https://theintercept.com/drone-papers/>

<sup>41</sup> Avishai Margalit and Michael Walzer, "Israel: Civilians and Combatants," *The New York Review of Books*, May 14, 2009.

<sup>42</sup> AP I, 1977.

(iii) refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(b) an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(c) effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit.<sup>43</sup>

Attacks such as the one carried out against a civilian wedding party in Yemen in 2013, detail in section IV, "al-Qaeda in the Arabian Peninsula", reveal a disregard by the United States for the duty to do everything in its power to safeguard civilian populations as directed in AP I, 1977. Additionally, government documents defending and expounding upon the United States' process of identifying targets and executing strikes points to an obfuscation of these principles. These documents furthermore elucidate the government's downplay of civilian casualties, instead placing the emphasis on the large number of "combatants" killed as a result of drone strikes to influence public perception on drone operations.

On February 4, 2013, NBC news acquired a white paper published by the Department of Justice (DoJ), titled *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*, laying out the legal framework for "considering the circumstances in which the U.S. government could use lethal force in a foreign country outside the area of active hostilities,"<sup>44</sup> or rather, wherever the U.S. is not

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<sup>43</sup> *Ibid.*

<sup>44</sup> Department of Justice White Paper, 2011, "Lawfulness of a Lethal Operation Directed Against a US Citizen Who is a Senior Operational Leader of al-Qa'ida or An Associated Force," NBC News, 2013.

officially at war. The DoJ white paper focuses on the justifications of targeting a U.S. citizen in the aftermath of the targeted killing of U.S. citizen and high-ranking AQAP member Ansar al-Awlaki; however, the case presented also offers a valuable insight into the government's thought process on how they evaluate foreign national targets.

The White Paper opens with three conditions that the Department of Justice argues legitimize a targeted strike:

- 1) an informed, high level official of the U.S. government has determined that the targeted individual poses an imminent threat of violent attack against the United States
- 2) capture is infeasible, and the United States continues to monitor whether capture becomes feasible
- 3) the operation would be conducted in a manner consistent with applicable law of war principles.<sup>45</sup>

Key to these stipulations is the definition of "imminent". In the White Paper, an internal document, the government admits that, "the condition that an operational leader 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." This admission undermines the first condition legitimizing strikes described in the very same document and leaves the government to come up with its own definition.

Drawing from the example of the September 11th terrorist attacks on the United States, the White Paper argues that should the government wait until such time as the planning of a terrorist attack reaches completion, it would likely prove too late to act on the threat. They therefore claim the right to attack any al-Qaeda leader or associated member continually involved in the planning of a terrorist attack; furthermore, they reserve the right to target those involved recently in the planning of attacks so long as "there is no evidence suggesting that he has renounced or

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<sup>45</sup> *Ibid.*



abandoned such activities."<sup>46</sup> While the planning of terrorist attacks may at face value seemingly justify lethal action, the United States' means of identifying "combatants" who pose an "imminent threat" revealed by leaks of the details of signature strikes, which the Obama Administration never publicly addressed.

In 2016, the DNI released a report titled, *Summary of Information Regarding U.S. Counterterrorism Strikes Outside Areas of Active Hostilities*. The report, in accordance with the executive order<sup>47</sup> signed by President Obama in 2015, released the number of civilian and combatant casualties from January 20, 2009 to December 31, 2015. Figure 1 shows the

*Figure 1*<sup>48</sup>:

<b>Summary of U.S. Counterterrorism Strikes Outside Areas of Active Hostilities between January 20, 2009 and December 31, 2015</b>	
Total Number of Strikes Against Terrorist Targets Outside Areas of Active Hostilities	473
Combatant Deaths	2372-2581
Non-Combatant Deaths	64-116

government's estimations. The data comprises of all attacks conducted "outside areas of Active hostilities", meaning anywhere the United States has not officially declared war. The numbers therefore include strikes conducted in Pakistan, Yemen, and Somalia. The low number of

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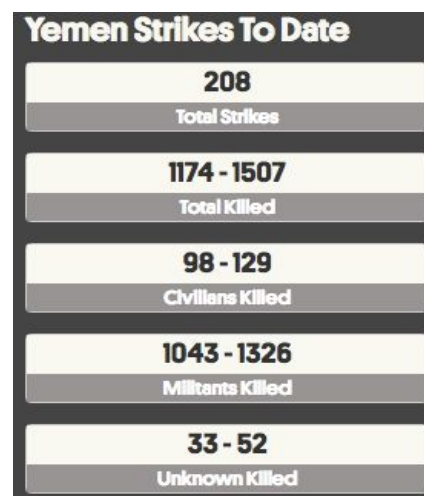
<sup>46</sup> *Ibid.*

<sup>47</sup> *United States Policy on Pre- and Post-Strike Measures to Address Civilian Casualties in U.S. Operations Involving the Use of Force*, Department of the Director of National Intelligence, 2016.

<sup>48</sup> *Ibid.*

combatant deaths immediately raises concern. Figure 2 shows the number of combatant and civilian deaths estimated by the New America Foundation in Yemen alone.<sup>49</sup> The number of civilians killed in Yemen alone estimated by the New America Foundation falls within a larger number than the estimation of the DNI across all areas outside of active hostilities. The failure of the DNI to provide their methodology used in the report as well as their failure to define "combatant" implicates the United States of overestimating the *Figure 2:*<sup>50</sup>

success of the majority of their strikes, putting forth a misleading portrait of the success rate of the strikes. Turning now to Yemen, an examination of U.S. strategy in the war-torn country juxtaposed with the realities of the effects of the drone strikes on the ground level show that the drone strikes foster sympathies for AQAP amongst Yemeni civilians, counteracting the expressed goal of the strikes. While the Yemeni population



suffers under the strain of war, famine, and U.S. drone operations that put civilians in the crosshairs, the United States falsely perpetuates the legality of its actions to the international community and the American public.

#### IV. al-Qaeda in the Arabian Peninsula

Like many of the extremist groups plaguing the Middle East today, AQAP traces its origins to the Cold War, when President Saleh repatriated Yemeni mujahideen fighters upon their return from war with the Soviet Union in Afghanistan.<sup>51</sup> Following the United State's lead<sup>52</sup>,

<sup>49</sup> Pete Bergen, David Sternman, Alyssa Sims, and Albert Ford. "Drone Wars Yemen." New America. Accessed June 09, 2017. <http://securitydata.newamerica.net/drones/yemen-analysis.html>

<sup>50</sup> *ibid.*

<sup>51</sup> "Al-Qaeda in the Arabian Peninsula (AQAP) | Council on Foreign Relations," Council on Foreign Relations, Accessed June 10, 2017, <https://www.cfr.org/background/al-qaeda-arabian-peninsula-aqap>.

President Saleh utilized these mujahideen to fight the Soviet-backed Marxist government that ran South Yemen at the time. The group soon grew in number, bolstered by other Afghanistan veterans, most notably Osama bin Laden. In 1990, under bin Laden's leadership, the militants formed a group by the name of Islamic Jihad in Yemen. The group was just one of many predecessors to AQAP, including the Army of Aden Abyan (1994-1998) and al-Qaeda in Yemen (1998-2003). By 2003, the group underwent a significant decline after operations conducted by the Yemeni government and the United States, but a fateful day in 2006 breathed life back into the organization.<sup>53</sup>

In February 2016, 23 men escaped a Yemeni prison through a tunnel leading into a neighboring Mosque. The group included Jamal Badawi, one of the masterminds between the bombing of the USS Cole in Aden, Yemen in 2000, and Fawaz al-Rabe'ie, one of the leaders responsible for an attack on a French oil tanker in 2002.<sup>54</sup> Seven months after the prison break, a group lead by several of the prison escapees under the name al-Qa'ida in the Land of Yemen launched coordinated suicide attacks on Western oil operations in Marib and Hadramawt.<sup>55</sup> The group launched a series of attacks in subsequent years, including the 2008 attack on the US embassy in Sana'a, attacks on the British and Italian embassies, suicide bombings directed at Belgian tourist in 2008 and Korean tourists in 2009, and the 2008 bombing of a Japanese oil

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<sup>52</sup> Speaking to United States' utilization of the Mujahideen's religious extremism to work in favor of its own ulterior motives during the war between the Afghanistan and the Soviet Union..

<sup>53</sup> "Al-Qaeda in the Arabian Peninsula (AQAP) | Council on Foreign Relations," Council on Foreign Relations, Accessed June 10, 2017.

<sup>54</sup>Roggio, Bill, "Al Qaeda Jailbreak in Yemen," FDD's Long War Journal, February 8, 2006, Accessed June 10, 2017, [http://www.longwarjournal.org/archives/2006/02/alqaeda\\_jailbreak\\_in.php](http://www.longwarjournal.org/archives/2006/02/alqaeda_jailbreak_in.php).

<sup>55</sup> Gabriel Koehler-Derrick, *A False Foundation? AQAP, Tribes and Ungoverned Spaces in Yemen*, The Combating Terrorism Center at West Point (September 2011), 36.

tanker.<sup>56</sup> In 2009, al-Qaeda in the Land of Yemen merged with al-Qaeda's Saudi Arabian branch to form al-Qaeda in the Arabian Peninsula.<sup>57</sup>

In September of 2011, the Combating Terrorism Center at West Point (CTC) released an extensive report on AQAP seeking to "disaggregate the threat posed by [AQAP] from the sources of instability surrounding it."<sup>58</sup> The report criticizes scholarly commentary for "[conflating] combating AQAP's threat to the U.S. homeland with addressing Yemen's numerous political, economic and environmental challenges."<sup>59</sup> On the subject of drones, rather than reevaluating their use in the region the report insists that the United States must respond to the backlash amongst the Yemeni population against the use of drones by "[redoubling] its effort to publically establish the guilt of those targeted."<sup>60</sup> This points to a manipulation of Yemeni public. A look at the messaging of AQAP and Yemeni responses to U.S. drone strikes furthermore undermines the expressed goal of the strikes.

Yemen specialist Gregory Johnsen of Princeton University identifies two main goals of al-Qaeda:

al-Qaeda doesn't see itself primarily as a terrorist organization, but it sees itself rather as an organization that uses terrorism tactics in order to bring about its goals. And so al-Qaeda has always been about fighting the United States, fighting the corrupt dictators in the Arab world, but it's also attempting to build its organization. It's attempting to make outreach to tribes. It's attempting to eventually get enough support that it can actually hold territory and that it can administer that territory.<sup>61</sup>

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<sup>56</sup> "Al-Qaeda in the Arabian Peninsula (AQAP) | Council on Foreign Relations," Council on Foreign Relations, Accessed June 10, 2017.

<sup>57</sup> HRW 13

<sup>58</sup> Gabriel Koehler-Derrick, *A False Foundation? AQAP, Tribes and Ungoverned Spaces in Yemen*, The Combating Terrorism Center at West Point (September 2011), 9.

<sup>59</sup> Gabriel Koehler-Derrick, *A False Foundation? AQAP, Tribes and Ungoverned Spaces in Yemen*, The Combating Terrorism Center at West Point (September 2011), 14.

<sup>60</sup> Gabriel Koehler-Derrick, *A False Foundation? AQAP, Tribes and Ungoverned Spaces in Yemen*, The Combating Terrorism Center at West Point (September 2011), 154.

<sup>61</sup> *Al-Qaeda is alive and thriving in Yemen: TERROR Episode 1*, By Suroosh Alvi, VICE News, 2016, <https://www.youtube.com/watch?v=XnOpV72YBt8&t=1585s>.

In recent years, AQAP has honed in on the domestic side of its two-pronged strategy, placing less focus on their international aspirations. Vice News journalist Suroosh Alvi interviewed a senior member of AQAP in 2016, under the condition that his name and face remain anonymous. Midway through the interview Alvi asks him to explain al-Qaeda's strategy, to which he responds:

al-Qaeda nowadays has changed. al-Qaeda is not focusing on destroying the West. The problem is with injustice, regardless if it's by the Western world, or the Islamic world. So it started to care about its popularity and Islamic supporters, by engaging in their problems and businesses, and through services.<sup>62</sup>

Alvi follows up by asking what prompted this shift in focus, to which the man replied:

When al-Qaeda realized that the media attack was brutal, and only focusing on its militant image, and distorting its image amongst the people, it realized that it should go back to its people and meet with them, so that they could hear them out, and to show them the actions they don't see on the media. This way, people will be more receptive to its mission.<sup>63</sup>

AQAP's actions in recent years support this claim. In 2013, AQAP attacked Yemen's Ministry of Defense complex in Sana'a leaving 50 Yemenis dead.<sup>64</sup> AQAP, realizing the brutality of the attack, issued an apology to the families of the victims.<sup>65</sup> The week following the attack, the United States hit a wedding procession with a drone strike, killing 12 and wounding 15 others. Witnesses and relatives of the victims claimed that all members of the party were civilians. Human Rights Watch confirmed that the convoy was indeed a wedding procession, and that though it is possible a few of the deceased may have been members of AQAP, it remains

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<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> Bill Roggio, "AQAP launches suicide assault on Yemeni defense ministry complex," FDD's Long War Journal, December 5, 2013, , accessed June 10, 2017, [http://www.longwarjournal.org/archives/2013/12/aqap\\_launches\\_suicid.php](http://www.longwarjournal.org/archives/2013/12/aqap_launches_suicid.php).

<sup>65</sup> *Al-Qaeda is alive and thriving in Yemen: TERROR Episode 1*, By Suroosh Alvi, VICE News, 2016.

unclear, and reports suggest that "some, if not all those killed and wounded were civilians."<sup>66</sup>

Following the attack, angry civilians displayed the bodies of the victims, blocking off a busy road in Rad'a. The United States never issued an apology for the attack.<sup>67</sup>

While the United States continued to hit Yemen with drone strikes following the attack on the wedding party, AQAP took on a focused on establishing a good relationship with the community. In 2015, AQAP captured the port town of Mukalla along the southern coast of Yemen and set up its own mini-state. They took on a governing mindset, running the port and taking care of tasks such as spraying for mosquitos. It "[became] a political actor, fighting with the government for legitimacy."<sup>68</sup> Faced with continued attacks from the United States who defines "combatant" as all men of fighting age on one side, and a depleted Yemeni government in a nation crippled by civil war on the other, many young Yemeni men see joining AQAP as their only means of asserting some control over a seemingly hopeless situation. Former FBI investigator Ali Soufan describes the situation:

There are incubating factors that allows a rhetoric and narrative like al-Qaeda to be popular in places like Yemen... a lot of youth that [have been] disappointed whether it be with their life, divisions inside of their country, they started to listen more to al-Qaeda and they started to be accessible to al-Qaeda's narrative. Their answer was the only answer that existed out there.<sup>69</sup>

As these men join AQAP and drone strike continued, one can understand how Yemeni civilians have come to see the United States as the true enemy.

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<sup>66</sup>"A Wedding That Became a Funeral," Human Rights Watch, February 19, 2014, accessed June 10, 2017, <https://www.hrw.org/report/2014/02/19/wedding-became-funeral/us-drone-attack-marriage-procession-yemen>.

<sup>67</sup> *Al-Qaeda is alive and thriving in Yemen: TERROR Episode 1*, By Suroosh Alvi, VICE News, 2016.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

During his time in Yemen, Vice journalist Suroosh Alvi sat down with Abdulhakim Mohammed, the father of two sons killed in separate drone strikes by the United States. During the course of their conversation, Alvi asked the grieving father, "What do people think of America here?". Mohammed responds by saying "America is an imperialist country. It's looking out for its interests, for oil and gas, that's all. They don't have respect for people, tradition, or religion. What gave America the right to kill them [his sons]? It was a crime, [the United States] is committing war crimes. " The father goes on to deny his son's involvement with AQAP. Alvi follows up by asking, "Do you think when innocent Yemenis get killed by American drone strikes, it creates so much anger that then the young men will go and join groups like [AQAP]?" Mohammed responds, "Indeed, this is what's happening now. America is now reaping what it cultivated." The United States' circumvention of international law and public opinion in the pursuit of national security interests hinged on a flawed understanding of the impact of the strikes on AQAP elucidates a largely unchecked abuse of power both internationally and domestically.

## **V. Conclusion**

The advent of the armed predator ushered in a new era of warfare. As of 2014, the United States, Great Britain, and Israel stood as the only states to have used drones in combat;<sup>70</sup> however, an increasing number of state actors have acquired access to the technology. On March 26, 2017, *South China Morning Post* reported that Saudi Arabia's King Abdulaziz City for Science and Technology (KACST) agreed to a partnership with Chinese drone manufacturer Aerospace Science and Technology Corporation (CASC) bringing the production of China's

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<sup>70</sup> Kaag, John and Sarah Kreps. *Drone Warfare* (Cambridge, UK: Polity Press, 2014), 41.

CH-4 drone to Saudi Arabia. The factory will mark the first of its kind in the Middle East and signifies the increasing accessibility of the technology.<sup>71</sup> With the acquisition of armed predators by non-state actors, i.e. AQAP, looming over the horizon, the onus falls on the United States to set a just precedent for the regulation of their use. The dramatic increase of drone usage under the Trump administration in the first months of President Trump's first term in office facilitated by the Obama administration's disconcerting obfuscation of international law and public opinion has set a dangerous precedent for other state and non-state actors to follow. Going forward the United States must further increase the transparency of the drone program by releasing detailed reports on their methodology for identifying "combatants" and ensuring the safety of civilian populations so that both the international community and the American public may hold the U.S. government accountable for its actions abroad.

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<sup>71</sup> Wong, Catherine, "Chinese drone factory in Saudi Arabia first in Middle East," South China Morning Post, March 26, 2017, Accessed June 10, 2017, <http://www.scmp.com/news/china/diplomacy-defence/article/2081869/chinese-drone-factory-saudi-arabia-first-middle-east>.



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