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# Lessons Learned From Pakistan: A Dissertation on the Bush-Obama Drone Doctrine

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*Lessons Learned From Pakistan: A Dissertation on the Bush-Obama Drone Doctrine*

School for International Training (SIT)

An Independent Research Project

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May 10, 2013

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## Abstract

The first use of the modern day attack drone by the United States was in Afghanistan in mid 2002, and for the past 11 years attack drones have been used by the United States in as many countries as Pakistan, Yemen and Somalia. When considering the alternatives to using drones, such as sending marines on the ground to complete a mission or flying a piloted jet over enemy territory to gather intelligence, as well as the military power that the use of these vehicles projects, the attack drone has become the weapon of choice in the war on terror for both the Bush and the Obama administrations. The continuous use of these attack drones for the past 11 years can be defined as the Bush-Obama drone doctrine, a doctrine that has become an important part of US foreign policy, and thus, has had international repercussions. To explore and examine these international repercussions, and apply the lessons learned from reoccurring drone strikes in Pakistan, is the purpose of this paper.

As pilotless drone attacks are a relatively new phenomena, the topic of drone attacks and reviews of the drone doctrine are relatively new to the academic community. That being said, there have been several important works discussing the legality and morality of the drone policy.<sup>1</sup> Yet, the majority of works, including the aforementioned, have analyzed the policy either from a United States domestic perspective, a bilateral perspective between a state and a transnational non-state actor, or by case study. In sum, there has been little work in the academic field addressing the drone policy from a truly international perspective.

This paper approaches the Drone Doctrine from an international perspective, and does so by incorporating several international legal principles and customary norms, the reports and statements of international organizations such as the International Committee of the Red Cross and the United Nations High Commission of Human Rights, as well as present and past members from these organizations, and other experts and scholars across the international community. The Drone Doctrine itself is an international policy, affecting the whole international community, and thus, to fully understand the doctrine, it is advantageous for it to be viewed from an international vantage point.

## Preface

As a member of the college democrats at my home university, and a ranking member in our school's debate team, I had the distinct opportunity to work with many intelligent and interesting people from all across the country, and I became very close with the professor who is the faculty advisor for the debate team. One of the things he mentioned to while we were talking

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<sup>1</sup> See Daniel Statman's essay *Can Just War Theory Justify Targeted Killing?*, Jeff McMahan's essay *Targeted Killing: Murder, Combat or Law Enforcement?*, and Andre Altman's book *Targeted Killings: Law and Morality in an Asymmetrical World*.

one time was the US use of drones in war. I had never heard of this before, and the idea, novel as it was, appealed to me. He showed me a page on the *New York Times* website that was a debate board, where an individual from anywhere in the world could post their arguments for or against the US' use of drones. I read this almost religiously and began to read many publications about drones and realized the importance of this topic.

That was really what initially sparked my own personal interest in attack drones. Upon deciding to come and study in Geneva, I knew that there would be opportunities to speak with experts all across the field of international relations, but I had initially wanted to explore this issue of drones from the private sector. In other words, I wanted to understand the relationship between private drone contractors and governments in the United States and why it is important to understand that relationship. To this point I reached out to several military contractors not only within Geneva but across Europe. I waited two weeks and received 0 replies. Contemplating the difficulties of talking to people in the private sector, I readjusted the perspective of my paper to that of international public law and customary norms; namely IHL and IHRL. I quickly found that there are a plethora of experts working on those topics here in Geneva, especially in the ICRC and the UNHCHR.

Upon further reviewing the literature involving drones, I found myself continuously reading similar arguments, and they all shared one thing in common: regardless of their ethical or legal conclusions, they were considering a hypothetical drone strike, an isolated occurrence, one that hasn't occurred yet. This was befuddling to me, for we now have 11 years of empirical data on which we can evaluate strikes that have already happened. To this point, I had initially wanted to empirically analyze the effects and consequences of drone attacks in Afghanistan, Pakistan, Yemen and Somalia, but I quickly found, that due to the very limited information available about strikes in these countries, and given the purpose of this paper, that would be impossible. I was able to meet with an expert in Pakistan-American relations, and concluded that it would be more realistic to focus on one country in particular, Pakistan, rather than trying to include all the countries. Thus, this is why the report is focusing on Pakistan.

Finally, this paper confronts the moral and legal crisis that is happening in Pakistan right now through a human lens and a legal lens. I remember very early on in the course of this report reflecting on the age old proverb: "Do unto others as you would have them do unto you." And when I began researching the effects and consequences of the doctrine, I began to think: what if

Pakistan was doing what America is doing in their country in our country? What if the Pakistani government had a drone doctrine it has been applying for 11 years in America? What if, despite the public outcry, our government was incapable or unwilling of stopping this? These questions made me ask if any country in the world should be able to depart from the laws of combat, if any country in the world should be able to disregard the principles of sovereignty and neutrality, or if any country in the world should be allowed to undermine IHL and IHRL customary norms, for, are not all countries equal under the law? These questions are what guide this paper throughout.

Moreover, it is important to note where the empirical evidence that is going to support my claim comes from. There are many different places that one can find statistics on drone strikes. Yet, after review of much of the the literature, I noticed that many journals used the *Bureau of Investigative Journalism*. I searched further and concluded that this was the most reliable place to receive the data from. Thus, that is why these statistics are used.

## **Acknowledgments**

First and foremost, I would like to thank my parents, Michael and Ann Marie. They have been my role models my whole life, and without their constant support and their continual love, I would not be where I am today. They have provided me with this incredible opportunity to study in Geneva, Switzerland. I would also like to thank the rest of my family, my three sisters Alex, Brittany and Janie, and my four brothers, David, John Paul, Luke and Mark, for being exemplars of love and support.

I would like to acknowledge and thank the School for International Training (SIT) for hosting this program. The Academic Directors, Dr. Lambert and Dr. Csurgai; The Academic Coordinator, Aline Dunant; The Homestay Coordinator, Cristina Cornes; and countless others who made this semester's program possible. Thank you to those who helped make my research possible and advanced my understanding of this fascinating field. Thank you to my academic

advisor, Dr. Alexandre Vautravers, whose guidance proved critical to the completion of this paper. Thank you to those who spent moments of their valuable time to allow me to interview them about a whole range of topics. Without their expertise, this paper would lack a deep understanding of the issue.

Thank you to my homestay family for making my time in Switzerland such a wonderful experience. But more importantly, thank you for putting up with me through this semester and making this time truly a remarkable experience.

I would also like to acknowledge my fellow classmates who embarked on this journey with me, for without them, I do not think I would still be sane. They have reminded me that not all life is work, and that a little fun (not too much of course) can go a long way.

Finally, to the countless others who are not mentioned above who made this semester possible: thank you.

## I. Introduction

*“Do the United States and its people really want to tell those of us who live in the rest of the world that President Obama can sign off on a decision to kill us with less worry about judicial scrutiny than if the target is an American? Would your Supreme Court really want to tell humankind that we, like the slave Dred Scott in the 19th century, are not as human as you are? ”*

*-Archbishop Desmond Tutu in a letter to the New York Times, February 2013.<sup>2</sup>*

*“I think its a good program and I don’t disagree with the basic policy that the Obama administration is pursuing now in that regards.”*

*-Former Vice President Dick Cheney, on CBS’ “This Morning.” -January 2012.<sup>3</sup>*

Through the 20th and 21st centuries, the nature of war has changed dramatically. As the nature of war changed, the people affected by wars changed; shifting from primarily soldiers and

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<sup>2</sup> Tutu, Desmond. “A Call to Civility.” *New York Times*, 12 February 2013. Accessed 24 April 2013.

<sup>3</sup> Cheney, Dick. The Morning Show. CBS. January 2012. *Youtube*. Accessed 24 April 2013.

armed combatants to innocent civilians and children.<sup>4</sup> In a new battlefield, a new weapon, the attack drone, has contributed to the changing nature of warfare because the people that it impacts, excessively, are civilians and children. As such, the evolved attack drones are effectively weapons of war; that, in present times, are being used by the United States government to carry out extrajudicial assassinations of high value military targets all over the world.

To this point, this paper is comprehensive. It examines the Drone Doctrine through an international legal lens and demonstrates the doctrine has been inconsistent with principles of the law of armed conflict and IHL and IHRL customary norms. It documents the effects of the doctrine through a human lens by magnifying the consequences on innocent and unarmed civilians in the nation of Pakistan, and indicates, through empirical evidence, that the innocence lost has outweighed the benefits gained. It authenticates the claim that the drone doctrine in itself is counterproductive to US strategic and military interests. And finally, it calls on the US to be more accountable in its application of the doctrine, severely limit the amount of drone attacks in the future, and make changes and adjustments to the Drone Doctrine that are more respective of the fundamental and most basic rights international law protects.

## **II: The Evolution of Pilotless Flying Aircrafts and the Development of Attack Drones**

### ***2.0 Introduction***

This section explores the evolution of pilotless flying vehicles to the development of modern day attack drones. This is important to note because it demonstrates that pilotless flying vehicles were born out of war and were to be used in war. Even since the first manifestation of this idea into a reality, these have been weapons of war. The historical relevance of this section is that it provides a lens through which to view present day drone attacks.

### ***2.1 Balloons Over Venice***

The military practice of using drones in war is not new. It traces its lineage all the way back to the 19th century.<sup>5</sup> In August of 1849, the then mighty Austrian empire, already in control of much of modern day Italy, set its sights on conquering the city of Venice. Austrian artillery general and

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<sup>4</sup> International Committee for the Red Cross. "A Brief Introduction to International Humanitarian Law." ICRC Headquarters. *School for International Training*. Lecture. Geneva, Switzerland. 26 February 2013.

<sup>5</sup> Veuthey, Michael. Personal Interview. April 29 2013. WMO headquarters. Geneva, Switzerland.

famed inventor, Franz von Uchatius, realized, that when considering the topography and geography of the city of Venice, laying a siege on the city would be particularly difficult and cost too much; militarily and fiscally.<sup>6</sup> As necessity is the mother of invention, Uchatius had an innovative solution: use unmanned balloons to remotely fly over the city and bombard the enemy<sup>7</sup>, thereby minimizing Austrian losses while maximizing Venetian losses. The Scientific American reported Uchatius' plans in March of 1849:

*"Venice is to be bombarded by five balloons, each twenty-three feet in diameter. . . in a favorable wind, and the balloons will be launched and directed as near to Venice as possible, and on their being brought to vertical positions over the town, they will be fired by electro magnetism by means of a long isolated copper wire. . . the bomb falls perpendicularly, and explodes on reaching the ground."<sup>8</sup>*

Unfortunately, an unexpected shift of the wind drove some of the balloons back to the Austrian camp, and consequently, after that, their use was abandoned.<sup>9</sup> Despite the failure, this event is important because it marked for the first time in recorded history the use of unmanned flying vessels as a weapon in war, and the idea lived on, for once winged aircraft was invented, using unmanned winged aircraft for military purposes would soon follow, and eventually be realized.

## **2.2 Target Practice**

After the first successful wireless transmission in 1896 and then the first successful flight of the airplane in 1908, the idea of developing unmanned aircraft, and then, subsequently, using the aircraft in war, was reborn. Although dramatically different than flying balloons, with the outset of the first World War reaching the United States in 1916, inventors, scientists and military men all over the country revisited the idea of pilotless bombing machines. On September 12, 1916, the Hewitt-Sperry Automatic Airplane, or the "flying bomb," made its first successful flight, demonstrating that the once abstract idea was now a palpable reality.<sup>10</sup> One year later, in November of 1917, after news of this flying bomb gained media attention, it was

<sup>6</sup> McDaid Hugh and Barton Strong. "Remote Piloted Aerial Vehicles: An Anthology." *RPAV: Remote Piloted Aerial Vehicles*. Aviation and Aeromodelling-Interdependent Evolutions and Histories, 02 February 2003.

<sup>7</sup> See picture below: *Uchatius Design*

<sup>8</sup> "More About Balloons." *The Scientific American*. March 1849, pg 3. As Reported in the *Presse of Vienna, Austria*, March 1849..

<sup>9</sup> McDaid Hugh and Barton Strong.

<sup>10</sup> Pearson, Lee. "Developing the Flying Bomb." *Encyclopedia of World Aircraft* (2004): *History.navy*. Naval Air Systems Command, 04 September 2004.

flown for representatives of the United States army.<sup>11</sup> Intrigued at the technological sophistication of this machine, and contemplating the military advantage to be gained from it, the army of the United States commissioned these scientists to build an “aerial torpedo,”<sup>12</sup> which resulted in the Kettering Bug-the earliest predecessor to present day cruise missiles.<sup>13</sup> Although the Kettering Bug was successfully flown and capable of striking ground targets up to 75 miles away, it was not completed until after the first World War was already over<sup>14</sup>, and thus never saw the field of battle.

During the years between the interwar period, the British and American governments continued to show interest in developing pilotless target aircraft.<sup>15</sup> But it wasn't until the outbreak of the Second World War that unmanned aircrafts would be produced on a mass scale. Originally from Great Britain, Reginald Denny, an inventor and a scientist, moved to the United States during the 1930's and created an initial, low cost remote control aircraft. Successively, he and his partners started a business which would eventually become “Radioplane Company,” and spent 10 years adjusting and correcting his original prototypes. Eventually in 1940, after a successful demonstration of the flying aircraft to the US army, Denny and his company were awarded a bountiful contract with the United States army to produce remote controlled airplanes that would be used in target practice for anti aircraft weapons.<sup>16</sup> Indeed, throughout the Second World War, Denny and his company produced nearly fifteen thousand drones that were purchased by the United States army.<sup>17</sup> The creation of these remote controlled flying machines, coined as “Dennymites,” and the purchasing of the invention by a public entity, in this case the United States army,<sup>18</sup> represents the important and intricate relationship between private individuals and private military manufacturers and governments, a reality, which, like remote controlled flying bombers, would continue to evolve and develop alongside history.

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<sup>11</sup> *ibid.*

<sup>12</sup> *ibid.*

<sup>13</sup> *ibid.*

<sup>14</sup> Cornelisse, Diana G. *Splendid Vision, Unswerving Purpose: Developing Air Power for the United States Air Force During the First Century of Powered Flight*. Wright-Patterson Air Force Base, Ohio: U.S. Air Force Publications, 2002.

<sup>15</sup> Donald, David, edition 12. *Encyclopedia of World Aircraft*, Chapter 36: *Standard Aircraft*. Etobicoke, Ontario. Prospero Books, 1997, pg.854.

<sup>16</sup> CTIE: Reginald Denny (1891-1967), *The “Dennyplane” RPAV: Remote Piloted Aerial Vehicles*. Aviation and Aeromodelling-Interdependent Evolutions and Histories, 04 July 2003.

<sup>17</sup> *ibid.*

<sup>18</sup> *ibid.*

### 2.3 Reconnaissance Drones



As the Second World War officially ended in late 1945, the United States' strategic focus in the world shifted; and so did the strategic use and purpose of unmanned flying drones. Moving away from simply using the drones for target practice, the United States army and air force wanted the pilotless flying vehicles to be used for reconnaissance purposes to spy on their enemies.<sup>19</sup> In many ways, the reconnaissance drones that were built during this time period were similar to their eventual successors, weaponized drones, however, they had a vee tail and were about twice as heavy.<sup>20</sup> Furthermore, several models, such as the Ryan Model 147 Lighting Bug in 1953<sup>21</sup> and the Aerojet-General MQM-58 Overseer in 1964, were successfully converted to reconnaissance drones, and were used by the United States army to spy and gather information on as many countries as the USSR, North Vietnam, Communist China, and North Korea throughout the 1960s and 1970s.<sup>22</sup> This is an essential development in the history of pilotless flying drones, because the desire for pilotless flying drones was born from fears of human pilots being captured or shot down while conducting intelligence missions over hostile territories; a fear which was realized in the infamous case of U-2 pilot Francis Gary Powers, who was shot down and captured while flying over the USSR. Historian John Regianle points out, "The U-2 Incident left the Americans humiliated politically and technologically. . . with the Soviets now able to bring down the high flying spy planes, the

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<sup>19</sup> Donald, David, pg 867.

<sup>20</sup> *ibid*, pg. 855.

<sup>21</sup> See attached picture entitled *Lighting Bug*.

<sup>22</sup> Goebel, Greg. "Air Vectors: Chapter 3: The Lighting Bug Reconnaissance Drones." ed., 2.0.0., United States, March 2008.

West had to turn to other means of intelligence gathering.<sup>23</sup> When weighing the military options and the human security risks, and considering geopolitical strategic interests, the US government concluded that it is better to have an unmanned aircraft fly over hostile enemy zones than it is for manned aircraft to, granted the unmanned aircraft is sophisticated enough to conduct its missions without being noticed by the enemy. This became a key proponent in the logic for using unmanned reconnaissance aircrafts to gather information; and as unmanned aircrafts themselves developed into attack drones, proponents of this argument would be applied in the modern era to justify weaponized drone strikes.

## **2.4 Attack Drones**

The modern era<sup>24</sup> brought with it many dramatic changes to the application and construction of pilotless flying aircraft, but perhaps most noteworthy, it began the transition from strictly flying reconnaissance vehicles to fully militarized drones. One of the first jet-propelled targets, and one of the most widespread unmanned flying aircrafts ever used for reconnaissance but capable of firing fatal missiles, is the Teledyne-Ryan Firebee, or the BQM-34A.<sup>25</sup> Although production ended in 1982, the production line was reopened in 1986 and would continue to develop all the way into the 1990s. The Firebee is a simple, reliable and somewhat sophisticated target vehicle that has the capability to fire heat-seeking missiles aimed from the wingtips, and, although it is rarely used in the field of battle, has proven remarkably successful in intelligence gathering missions.<sup>26</sup> Indeed, this particular model is still in operation with the US Navy, it has been used by the Canadian Air Force and the Japanese Self-Defense forces, as well as a small number supplied to NATO, and thus, is an internationally used drone.<sup>27</sup> Despite the initial success of the BQM-34A, and the incredible technological sophistication of the vehicle for the time, during the end of the 1980's, the United States government seemed disinterested in further pursuing pilotless vehicles. By 1991, the Pentagon was forced to consolidate its UAV research into a single Joint Program Office, which had little financial autonomy and virtually no budget.<sup>28</sup>

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<sup>23</sup> Regianle, John. "Biography of Francis Gary Powers." *National Cold War Database*. Royal Air Force, 05 July 2012.

<sup>24</sup> In the context of this report, we can define the modern era as 1980-present day.

<sup>25</sup> Donald, David, pg 959.

<sup>26</sup> *ibid*; pg. 859.

<sup>27</sup> Goebel, Greg. "Air Vectors Chapter 4: Modern US Target Drones". ed., 2.0.0, United States. March 2008..

<sup>28</sup> *ibid*.

When the Bosnian wars hit the former Yugoslav peninsula in 1992, where hundreds of thousands of lives were lost, in accordance with NATO and UN peacekeeping forces, the US government issued a statement pledging continual support to its allies by taking various steps, that among them the advancement of reconnaissance drones, or UAVs.<sup>29</sup> Because of the Congressional budget cuts and the consolidation of the drone program years earlier, the Central Intelligence Agency (CIA), who was frustrated at the incoherent and unreliable information it was receiving from UAVs flying over Bosnia, was able to circumvent a legal loophole and effectively take control of the drone program, a program they would continue to control for the next decade.<sup>30</sup> As such, by 1995, the inefficiency of the GNAT-750 and the outdated BQM-34A, coupled with the CIA's desire to have more reliable intelligence from more reliable UAVs, gave rise to the creation of the infamous Predator Drone, a weapon which would be used in hundreds of reconnaissance missions by the CIA and the US government for several years.<sup>31</sup> The Predator Drone had several important upgrades from the GNAT-750 and the BQM-34A such as a "deicing" system, reinforced wings, and a laser guided targeting system;<sup>32</sup> all of which would play crucial roles in the development of attack drones in the coming years.

After the terrorist attacks of 11 September 2001, the drone program, like United States foreign policy, took a dramatic turn. A rather ecstatic Bush administration, at the recommendation of the CIA, decided it an important strategic priority to quicken and complete the transition from reconnaissance and early predator drones into fully armed and militarized drone weapons, which would be capable of remotely firing missiles accurately and repetitively at military targets abroad.<sup>33</sup> To these ends, the president constructed a secret list of High Value Targets (HVTs) that the CIA was authorized to kill by way of targeted drone assassinations; further officially transferring the responsibility and jurisdiction of drone strikes away from elected officials of the government and to the Central Intelligence Agency of the United States.<sup>34</sup> This relationship between the CIA and the US government is an essential part of the Bush-Obama drone doctrine; and the results of this relationship were on full display from the first ever

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<sup>29</sup> *ibid.*

<sup>30</sup> Shaw, Ian. "The Rise of the Predator Empire: Tracing the History of U.S. Drones", Student Research Database., January 2013.

<sup>31</sup> *ibid.*

<sup>32</sup> Clode, George. "Predator Drone Specifications." *Military History Monthly* 12 (2012): 1-12. *Student Research Guide.*

<sup>33</sup> Shaw, Ian.

<sup>34</sup> *ibid.*; pg. 2.

drone strike that occurred near the city of Khost, Afghanistan on February 4, 2002. The CIA believed to have intelligence that a man walking down a street, who was surrounded by several armed guards, was none other than Osama Bin Laden himself.<sup>35</sup> Of course, the man was not Bin Laden, nor was he even a high level military target.<sup>36</sup> Nonetheless, because Osama was on the kill list, and thus had congressional and executive approval, the strike was issued, and the price to pay from this faulty information was catastrophic; taking the life of 29 innocent and unarmed civilians.<sup>37</sup> This event marked for the first time in United States history that a targeted military drone was used as an attack weapon in war; for one sovereign state, the United States, flew a weapon into another sovereign state, Afghanistan, and proceeded to use this weapon to kill innocent and unarmed citizens who, in reality, demonstrated no active hostilities or posed imminent threats to the security of the United States.<sup>38</sup> These attacks, which mustn't be mistaken as acts of peace, rather understood as acts of war, have been and are continually used by the US against sovereign and independent nations; and today, they are being used in states where there is not officially declared war. This is dangerous because accountability is limited enough in the case of declared war; in an undeclared war, it all but disappears.<sup>39</sup> Because the decision to strike was made by an entity of the government, its Central Intelligence Agency, a dangerous doctrine began to form, a doctrine which would have severe international repercussions, especially with strikes being continued in Pakistan, Yemen and Somalia in the years to come.

## **2.5 Conclusion**

In conclusion, the evolution of unmanned flying aircrafts stretched over two centuries; from remotely fired balloons in the late 19th century to unmanned vehicles like the Kettering Bug used by the US army for target practice in the middle of the 20th century, up to intelligence and reconnaissance spying aircrafts, such as the Dennykite, through the end of the 20th century, all the way to the weaponized attack drones in the early 21st century. The historical relevance of the development of attack drones is that it provides a context through which to view present day drone strikes, and analyze the applied doctrine. All in all, although the types of flying unmanned

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<sup>35</sup> *ibid*; pg. 3.

<sup>36</sup> Gobel, Greg.

<sup>37</sup> Miller, Greg, and Julie Tate. "CIA Shifts Focus to Killing Targets." *Washington Post*. The Washington Post, 03 Sept. 2011.

<sup>38</sup> Was this a mistake, a result of human error? Even it was just a mistake, are not mistakes still crimes?

<sup>39</sup> Mohamedou, Mohamed Mahmoud Ould. Personal Interview. *GCSP Headquarters*, Geneva, Switzerland. April 26, 2013.

aircrafts vary according to the time period they were used, and the specs and capabilities have dramatically changed throughout the centuries, one single strain of truth remains constant throughout: these are weapons of war. And these weapons of war are now being used to carry out extrajudicial assassinations that are “targeted” and “surgical.” What have been the results and consequences of these new weapons attacking suspected perpetrators abroad?

### **III: Drone Doctrine Applied in Pakistan**

#### **3.0 Introduction**

Before the legality of the doctrine can be considered, or the international nature of the attacks can be discussed on a unilateral scale, the attacks that have transpired since 2004 and that are continually transpiring, particularly in the independent nation of Pakistan, should first be understood. To this point, this section approaches the drone doctrine of the United States in two different perspectives: 1) the nation affected, Pakistan, and 2) the nation affecting, the United States, and shows that not only have the attacks repeatedly damaged innocent civilians, or non-combatants, in Pakistan, but the drone doctrine applied in Pakistan has been counterproductive for the United States. In order to do this, the relationship between the US and Pakistan since its birth in 1947 is discussed, noting the progression of the relationship before 9/11, and the relationship in a post 9/11 world. It then examines the history of United States drone attacks in Pakistan, and outlines, with the best available data, the frequency at which the strikes have been employed. It explores the repercussions the strikes have had on the fragile and at times non-existent relationship between the two states, the growing unlikelihood of future bilateral diplomatic cooperation between the two governments and the human repercussions the application of the drone doctrine has on ordinary citizens; physically and psychologically.

#### **3.1 US-Pakistan Bilateral Relations**

To begin, after the creation of Pakistan in 1947, the new nation, led by its foremost founding father, Muhammad Ali Jinnah, sought US financial assistance, and thus reached out to US leaders.<sup>40</sup> Jinnah told the American government that having an ally in Pakistan was important because it was a geostrategic pivot zone and an armed buffer zone between major opposing powers.<sup>41</sup> The new leader also warned that Soviet involvement in the region would be

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<sup>40</sup> Haqqani, Husain. "A Realistic Approach to US-Pakistani Relations." *Center for the National Interest*. (2012): *Student Research Center*. pg. 1.

<sup>41</sup> *ibid*; pg. 1.

detrimental to US global interests, and asked the American government for two billion dollars worth of aid.<sup>42</sup> Although the United States did extend aid to the new country, it was far short of what Jinnah had asked, a measly sum of ten million dollars.<sup>43</sup> This was an important event in the relationship between the two countries because it effectively represents the strained relationship between Pakistan and the US; a strain that would follow them through the next century.<sup>44</sup>

In the 1950s, relations between the two states officially entered the “alliance” phase after India rebuffed the Eisenhower administration's attempt to enter into an anti-communist alliance.<sup>45</sup> The United States then turned to Pakistan, entering into a mutual defense pact against communist aggression.<sup>46</sup> However, when the Indo-Pakistani war broke out in 1965, the United States cut aid to both belligerents, and this infuriated Islamabad.<sup>47</sup> In 1980, nearly 15 years later, the two states cooperated in the attempts to expel the Soviets from Afghanistan; yet, because the interests for each state were different-the US wanted to fend off a communist advance, while Pakistan wanted to thwart an Indian aligned country<sup>48</sup>-the cooperation in the aftermath of the Afghanistan intervention was severely limited.<sup>49</sup> The same was the case in the post 9/11 era, in Afghanistan again, for as a result of different geopolitical and strategic interests in the area, namely that the US wanted to eliminate the Taliban and Al Qaeda, and Pakistan wanted to expel Indian influence, contributed to and helped foster future mutual distrust between the two states.<sup>50</sup> Although the United States, in recent years, has given billions of dollars in aid to Pakistan and has declared Pakistan a friend in the region,<sup>51</sup> according to a recent Pew poll, 74% of Pakistanis view the United States as an enemy.<sup>52</sup> The true root of this is the unfulfilled expectations of an alliance that lacks deep convergence of interests;<sup>53</sup> and undoubtedly, the recent drone attacks

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<sup>42</sup> *ibid*; pg. 1.

<sup>43</sup> *ibid*; pg. 1.

<sup>44</sup> Asbjornsen, Stee. Personal Interview. *OHCHR headquarters*. Geneva, Switzerland. April 24, 2013.

<sup>45</sup> Haqqani, Husain.

<sup>46</sup> Asbjornsen, Stee.

<sup>47</sup> Haqqani, Husain; pg. 2.

<sup>48</sup> *ibid*; pg. 2.

<sup>49</sup> Kronstadt, Alan K. "Pakistan-US Relations." *CRS Issue Brief For Congress* OB94041 (2005): 10-49. *Foreign Affairs, Defense and Trade Division*.

<sup>50</sup> Haqqani, Husain, pg. 4.

<sup>51</sup> Kronstadt, Alan K.

<sup>52</sup> Pew Research Center, *Pakistani Public Opinion Ever More Critical of the US: 74% Call America an Enemy*. (March 2012). Web.

<sup>53</sup> Asbjornsen, Stee.

have contributed to the dislike of the United States.<sup>54</sup> In sum, the United States and Pakistan have had a strained relationship from its very conception in 1947, and since then, different geopolitical and strategic interests between the two countries have left Americans and Pakistanis alike in a state of mutual distrust of each other. And adding to the already complex relationship have been the constant drone attacks in Pakistan, which began in 2004.

### **3.2 Drone Attacks in Pakistan Since 2004**

In recent years, Pakistan has become the single largest recipient of US drone attacks and extrajudicial killings in the world.<sup>55</sup> According to the Bureau of Investigative Journalism (TBIJ), who, due to the United States government's and the CIA's attempts to keep drone strike statistics confidential and classified,<sup>56</sup> is the best available public aggregate database on drone attacks, there were 52 CIA issued drone attacks in Pakistan from 2004-2009, which killed 416-599 people, resulting in as many as 292 civilian deaths and 123 child deaths.<sup>57</sup> Since the Obama administration took power in early 2009, there has been no stoppage of the policy, in fact, in 2009 alone, the CIA, under the Obama administration, issued more drone attacks in Pakistan, 53, than the Bush administration did in 4 years, 52;<sup>58</sup> strikes which left as many as 729 Pakistanis were killed, with as many as 207 civilian deaths and 41 child deaths.<sup>59</sup> From 2010-2013, the drone policy of targeted assassinations and extrajudicial killings continued in Pakistan, with 95 total drone attacks being issued, leaving an estimated 1,094 Pakistanis dead; 292 civilians and 29 children.<sup>60</sup> In sum, the TBIJ reports, that from June 2004 through mid March 2013, drone strikes killed 2,562-3,325 people in Pakistan, of whom 474-881 were civilians, including 176 children<sup>61</sup> According to this data, one thing is clear: US drone strikes have repeatedly occurred in Pakistan; and show no sign of slowing in the years to come.

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<sup>54</sup> Haqqani, Husain, pg. 5.

<sup>55</sup> The Bureau. "Pakistan Strikes." *The Bureau of Investigative Journalism*. Covert War on Terror-the Database, 10 Apr. 2011.

<sup>56</sup> Siobhan Gorman and Evan Perez. *Obama Relents on Secret Drone Memo*. The Wall Street Journal. Accessed Online. 6 Feb 2013.

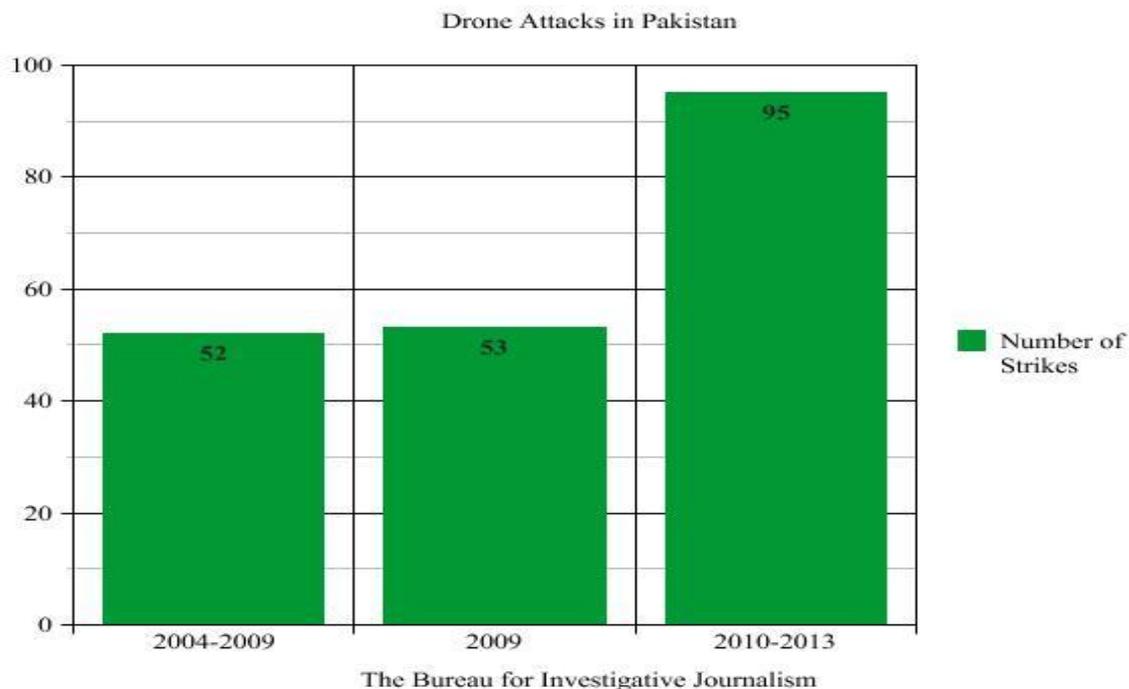
<sup>57</sup> *ibid.*

<sup>58</sup> The Bureau. "Obama 2009 Pakistan Strikes." *The Bureau of Investigative Journalism*. Covert War on Terror-the Database, 10 Apr. 2011.

<sup>59</sup> The Bureau. "Obama 2011, 2012, 2013 Pakistan Strikes." *The Bureau of Investigative Journalism*. Covert War on Terror-the Database, 10 Apr. 2011.

<sup>60</sup> *ibid.*

<sup>61</sup> The Bureau. "Obama's Covert War." *The Bureau of Investigative Journalism*. Covert War on Terror-the Database, 10 Apr. 2011.



### 3.3 Consequences

The official stance of the US government is that little or no civilian lives are taken from drone strikes; and moreover, the US government claims that the strikes are “targeted” and “surgical,” and impact only those people who have been classified as high level enemy combatants.<sup>62</sup> But is this the case? Is what is being officially reported representative of reality? In September of 2012, two researchers, one from New York University and one from Stanford University, traveled to Pakistan for nine months to complete an in-depth and on the ground case study on the effects of drone strikes on local communities; seeking to answer the aforementioned questions. The resulting case study, entitled *Living Under Drones: Death, Injury and Trauma to Civilians From Drone Practices in Pakistan*, is an essential source to anybody seriously examining US drone doctrine. The researchers criticize the US drone doctrine by presenting an in depth case study that documents the horrific reality for the those who live under drones in Pakistan.

<sup>62</sup> *Obama Administration Counterterrorism Strategy* (C-Span television), originally broadcasted on June 29, 2011. Youtube. Accessed 24 April 2013.

Firstly, according to the researchers, the effects of drone strikes in Pakistan, includes severe damage to infrastructure, immense civilian casualties and what's not reported,<sup>63</sup> is that they threaten the sanity and safety entire communities.<sup>64</sup> They explain: “Drones hover twenty-four hours a day over communities in northwest Pakistan, striking homes, vehicles, and public spaces without warning. . . Their presence terrorizes men, women and children, giving rise to anxiety and psychological trauma among civilian communities.”<sup>65</sup> Hence, according to these researchers, the Pakistani people who live under drones have a constant worry, from the moment they wake up to the moment they go to sleep, that at any moment and without warning, a drone may strike them and their loved ones; and they have to live with the fact that they are powerless to do anything to protect and/or defend themselves.<sup>66</sup> Secondly, the official information that is being released to the American public and the international community about the effectiveness of drone strikes in Pakistan, namely that the strikes are disrupting and destroying members of Al-Qaeda with minimal civilian “blowback,”<sup>67</sup> is a claim that is far from the truth, the researchers argue.<sup>68</sup> Moreover, this claim has been indeed reported to be false by several major news outlets, academic peer reviewed publications and national newspapers. For instance, Peter Bergen and Megan Barun of CNN reported in 2012 that “the number of high level targets killed in drone strikes as a percentage of total casualties is extremely low-estimated at just 2%.”<sup>69</sup> In addition, this report also raises a key point, that is, viewing the effects through just numbers of people who are killed from the attacks is not necessarily representative of the complete reality; for there are countless number of people who are physiologically affected and induced into living in a state of fear who do show up in statistics.<sup>70</sup> Moreover, not only are the attacks inefficient, but the counterproductivity of drone strikes must be seriously considered as well, namely that the strikes facilitate recruitment to violent and non-state armed groups and motivate further violent attacks

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<sup>63</sup> International Human Rights and Conflict Resolution Clinic; pg 9.

<sup>64</sup> The claim that the consequences of drone strikes in Pakistan threaten the very sanity and safety of ordinary citizens was supported with data they received by conducting 131 interviews with Pakistani citizens in Islamabad, Peshawar, Lahore and Rawalpindi, and twice, being in North Waziristan while a drone strike happened.

<sup>65</sup> International Human Rights and Conflict Resolution Clinic; pg 9.

<sup>66</sup> *ibid*; pg. 9.

<sup>67</sup> A term invented in 1973 by the Central Intelligence Agency, meaning, according to the Department of Defense, “unforeseen and unwanted effects, results, or set of repercussions.” See *The Illegality of Blowback*. Found in The Nation. Chalmers Johnson, *id* 19, November of 2002.

<sup>68</sup> International Human Rights and Conflict Resolution Clinic; pg.21.

<sup>69</sup> Peter Bergen and Megan Braun, *Drone is Obama’s Weapon of Choice*, CNN. Sept 6, 2012. Accessed April 24, 2013.

<sup>70</sup> International Human Rights and Conflict Resolution Clinic; pg 13.

against the United States. Such points have begun to be raised by many across the academic community.<sup>71</sup> Indeed, and rather ironically, the *New York Times* reported in 2012, that “drones have replaced Guantanamo as the recruiting tool of choice for militants in Pakistan.”<sup>72</sup>

### **3.4 Conclusion**

In conclusion, drone attacks in Pakistan, and the continuation of the attacks through the codification of doctrine by the United States government and its Central Intelligence agency, have been inefficient, counterproductive, and highly damaging. They are inefficient because they kill far more innocent people that pose no imminent threat to the United States than they do high level military enemy combatants who have violently attacked the United States. This claim is supported by the statistics and reporting done by the Bureau of Investigative Journalism. They are counterproductive because with each innocent mother, father, daughter and brother killed by a drone strike, a sentiment of hate and distrust may grow towards the perpetrator, the United States. Thus, rather than discouraging acts of terror against the United States, the United States is giving the people its trying to discourage all the more reasons to do exactly the opposite of what it wants. This claim is supported by a public survey poll of Pakistani people, in which 74% of the people viewed America as an enemy. Finally, they are highly damaging, in two respects. First, they destroy houses, roads and grocery stores, obliterate entire areas of land and living spaces, and kill innocent people. Second, they inflict huge amounts of suffering that goes beyond infrastructure damage and physical death, leaving civilians anxious, scared, and psychologically damaged. This claim is supported by a case study done by researchers at Stanford and NYU. If the application of the Drone Doctrine has excessively injured and severely killed innocent people, then where does the justification, legally, to continue applying the doctrine, come from?

## **IV. United States Legal Argument Supporting the Drone Doctrine**

### **4.0 Introduction**

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<sup>71</sup> *ibid*; pg. 22.

<sup>72</sup> Jo Becker and Scott Shane, *A Measure of Change: Secret Kill List Proves a Test of Obama's Principles and Will*. The New York Times, May 12, 2012.

Two things have been established so far in this report: 1) Unmanned flying vehicles have dramatically evolved over the past two hundred years, and today, militarized and weaponized flying drones are capable of repeatedly and remotely firing lethal missiles which kill targets abroad; 2) Since 2002, the US government, in coordination with the CIA, has issued countless drone attacks, more than half of which occurring in the independent nation of Pakistan, and, when considering US strategic interests and the human consequences of drone strikes for Pakistani people, the attacks have been inefficient, counterproductive and highly damaging. Moving forward, the US legal justification for the continuation of the strikes will be thoroughly described, as so the Drone Doctrine may be understood and, in the second half of this paper, clearly compared and analyzed under the principles of international humanitarian law and customary international norms, and eventually demonstrated to be inconsistent with these legal frameworks. Thus, the immediately following section is primarily descriptive.<sup>73</sup>

#### **4.1 Self-Defense**

The Department of Justice (DOJ) argues in this report that the president of the United States has the authority to respond to the imminent threat posed by Al-Qa'ida and its associated forces; that “targeting a member of an enemy force who poses an imminent threat of violent attack to the United States is not unlawful. . . it is a lawful act of self-defense.<sup>74</sup>” Moreover, “a lethal operation in a foreign nation would be consistent with international legal principles of sovereignty and neutrality<sup>75</sup>” The United States, argues the DOJ, is presently engaged in an armed conflict with Al-Qa'ida and its associated forces,<sup>76</sup> and during this armed conflict, and necessarily only because of this conflict, the president of the United States has the authority to protect the nation because of the inherent right to national self-defense;<sup>77</sup> the basis of which, the DOJ cites, can be found in the United Nations Charter, article 51, which states:

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<sup>73</sup> The basis of the information to be reviewed comes from a long awaited Department of Justice memorandum that was recently obtained by the press and is now available to the public, see *n* 72.

<sup>74</sup> United States. The Department of Justice. *Lawfulness of a Lethal Operation Directed Against A US Citizen Who Is Known to Be a Senior Operational Leader of Al-Qa'ida or an Associated Force*. Washington, DC: Department of Justice, 2012. *NBC Media*. MSNBC Media, 20 Jan. 2012. Web. 26 Apr. 2013. pg. 1.

<sup>75</sup> *ibid*; pg. 1.

<sup>76</sup> An associated force of Al-Qa'ida includes a group that would qualify as a co-belligerent under the laws of war. See *Hamlily v. Obama*, 616 F. Supp. 2D 63, 74-75 (D.D.C. 2009).

<sup>77</sup> United States. The Department of Justice. pg., 2.

*Nothing in the present Charter shall impair the inherent right of individual or collective self-defence 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-defence 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.*<sup>78</sup>

It is rather ironic that the DOJ uses this particular article as its basis for justifying the strikes as acts of national self defense; for the article clearly states that states do have an inherent right to national self defense, but it also states that in the execution of this right, the actions must be *immediately* reported to the Security Council, something the US has clearly neglected. Has the US not picked and chosen what parts of the charter to adhere to? Does this not undermine the legitimacy and authority of the charter itself?

Subsequently, the report argues that the “like the imposition of military detention, the use of lethal force against such enemy forces is an important incident of war.”<sup>79</sup> Moreover, they make the claim that military necessity, a key principle in the law of armed conflict and thus international humanitarian law, “admits of all destruction of life or limb of armed enemies.”<sup>80</sup> Continually, the DOJ argues that “those who take up arms [against the United States] may be targeted at any time.”<sup>81</sup> Finally, the DOJ makes it clear that “when a person takes up arms or merely dons a uniform as a member of the armed forces, he automatically exposes himself to an enemy attack.”<sup>82</sup> In sum, the DOJ, in an official United States memorandum justifying the use of lethal force on enemy combatants through drone strikes, argues that because the US is currently involved in an armed conflict with Al-Qaida, any person who shows active hostilities towards the US, or even wears a military uniform, can be targeted and killed by a drone attack that has been authorized by the president of the United States; and that this authorization gains its legitimacy from the inherent right to national self-defense found in the United Nations Charter,

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<sup>78</sup> "Charter, United Nations, Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression." *UN News Center*. UN, n.d. Web. 26 Apr. 2013.

<sup>79</sup> Thomas J Hamdi, 542 U.S. 507, 518 (2004), (plurality opinion); *id* at 587, 597.

<sup>80</sup> United States. The Department of Justice, pg. 3.

<sup>81</sup> *ibid*; pg 3.

<sup>82</sup> *ibid*; pg 4.

article 51. In other words, a drone attack, according to the DOJ, is an act of national self-defense by the United States against the enemy they are presently involved in an armed conflict with.

#### **4.2 A Non-International Conflict**

It is important to consider the nature of the conflict because there are different applicable laws, both internationally and domestically, depending on how the conflict is classified. Hence, the fundamental question becomes: what is the nature of this armed conflict? The DOJ describes the nature of the armed conflict the United States is currently involved in as “non-international,<sup>83</sup>” meaning that it is a conflict between a nation and a transnational non-state actor, occurring outside of a nation’s territory, and thus, because it is not a clash between nations,<sup>84</sup> any US operation would be part of this non-international armed conflict, even if it were to occur outside the zone of active hostilities.<sup>85</sup> In essence, a drone strike can occur anywhere in the world, close to a “hot” zone of hostilities or not,<sup>86</sup> so long as reliable information has been received that the targeted person targeted is planning to attack the United States. Effectively, there are no geographical limits to where a drone strike can occur. This type of armed conflict, between a nation and a transnational non-state actor, is a relatively new type of conflict, and like such, there is little judicial or other authoritative precedent, that speaks directly to the question of the geographic scope of a non-international conflict, argues the DOJ.<sup>87</sup> In transition, this does not restrict the United States from using deadly force on individuals who are planning active hostilities against the US in certain countries; rather, if:

*An operation of the kind discussed in this paper were to occur in a location where al-Qaeda or an associated force has a significant and organized presence and from which Al-Qaeda or an associated force, including its senior operational leaders, plan attacks against US person and interests, the operation would be part of the non-international conflict between the United States and Al-Qaida, and thus within the scope of the law.<sup>88</sup>*

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<sup>83</sup> *ibid*; pg 4.

<sup>84</sup> *ibid*; pg 3.

<sup>85</sup> *ibid*; pg 4.

<sup>86</sup> John O. Brennan, current CIA director, Remarks at the Program on Law and Security, Harvard Law School: Strengthening Our Security by Adhering to Our Values and Laws. 16 September 2011.

<sup>87</sup> United States. The Department of Justice. pg., 4.

<sup>88</sup> *ibid*; pg 5.

In conclusion, if it is determined, through reliable intelligence, that members of Al-Qaida, including high level senior operational leaders, are actively planning to inflict violence on the United States, then, because the US is presently engaged in an armed conflict with Al-Qaida, in conjunction with the national right to self-defense, it is legally consistent to issue a drone attack on members of this group; notwithstanding the geographic location.

### **4.3 Conclusion**

The United States justification for drone attacks abroad hinges on two key principles: the national right to self defense, and the non-international nature of the conflict it is currently engaged in with Al-Qaida. In other words, according to the DOJ, a drone attack is an act of self defense that can occur anywhere in the world at any time if it has been reasonably established that a high level member of Al-Qaida is currently planning to violently attack the United States.

Yet, the weakness of this argument is that it is entirely hypothetical in that it effectively argues for the legality and legitimacy of a single drone strike on a high-level senior operational leader of Al-Qaida. Because we now have more than a decade of the strikes being issued and thus empirical evidence on which we can evaluate the consequences and consider the repercussions of all the strikes, not one isolated hypothetical strike, it seems superfluous to continue debating whether or not a single strike is or is legal and/or effective, but rather consider the evidence, which effectively has become the Bush-Obama Drone Doctrine, and question whether or not the doctrine has been consistent with IHL and IHRL norms and the fundamental principles of the law of armed conflict. Considering this, if one accepts that a drone attack on a foreign citizen in a foreign nation is an act of self-defense, (and not an act of aggression) and the location of an individual who poses an imminent threat to the security of the United States has reasonably been established, the issuing of a drone attack on that individual would seem to be in the scope of war and thus consistent with the laws of war. But when considering the human consequences of drone attacks and the immense damage that *has already been* caused by the drone doctrine, can the doctrine, when considered as a whole, still be legitimate under the principles of international humanitarian law and customary law?

## **V. Drone Doctrine Under International Law**

### **5.0 Introduction**

Several things have been established in the course of this paper: the history and evolution of pilotless flying vehicles began two centuries ago and evolved into present day attack drones, these drones have been used for attacks issued by the CIA in accordance with the US government and taken the lives of thousands of innocent civilians in the sovereign nation of Pakistan and have further weakened the fragile relationship between the two states, and the United States Department of Justice argues that the drone attacks are legal acts of national self defense against a transnational non-state group with whom it is presently engaged in an armed conflict. Moving forward, the drone doctrine will be considered under international law. In order to do this, terms must be defined, namely an armed conflict and the nature of the conflict. This will help to determine what international laws and principles are applicable to the drone doctrine, and allows for a lens by which the drone doctrine can be examined under.

### **5.1 Terms Defined**

International Humanitarian Law is the branch of public international law which regulates armed conflict by protecting those who are not directly taking place in hostilities and limits the method and means of warfare.<sup>89</sup> The fundamental question then is the US currently engaged in an armed conflict according to the international community and thus subject to IHL and customary norms of IL?

The United States government,<sup>90</sup> congress,<sup>91</sup> and courts<sup>92</sup> consider the global war on terror an armed conflict; and that has already been established. But what acts of violence constitute an armed conflict in the eyes of the international community? It is clear that acts of isolated violence, such as rioting or acts of banditry, do not cross the threshold for an armed conflict.<sup>93</sup> Therefore, for violence to qualify as an armed conflict, the attacks should not be sporadic or isolated, but protracted. In order for protracted violence to exist, and thus an armed conflict to exist, the violence must cause significant number of deaths.<sup>94</sup> Although not all across

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<sup>89</sup> Veuthey, Michael. Personal Interview. *WMO Headquarters*. Geneva, Switzerland. 02 May 2013.

<sup>90</sup> See Department of Justice (citation 45).

<sup>91</sup> Executive Order No. 13234, 66 Fed. Reg. 221 (Nov. 9, 2001); Executive Order No. 13239, 66 Fed. Reg. 241 (Dec. 12,

<sup>91</sup>2001); Military Order, 66 Fed. Reg. 222 (Nov. 13, 2001).

<sup>92</sup> *Boumediene v Bush* 553 US 723 (2008); *Hamdan v Rumsfeld* 548 US 557 (2006); *Hamdan v Rumsfeld* 542 US 507 (2004); *Gherebi v Obama* 609 US 55 (2009).

<sup>93</sup> Vautravers, Alexandre. Personal Interview. *Webster University*. Geneva, Switzerland. 05 May 2013.

<sup>94</sup> *Prosecutor v Hardinaj and ors Judgment (Trial Chamber) IT-04-84-T ICTY* (3 April 2008)49; *Prosecutor v Limaj Judgment (Trial Chamber) IT-03-66-T ICTY* (30 November 2005)90.

the academic community view the US global war on terror to be a legitimate armed conflict,<sup>95</sup> this is clear: the US targeted drone killings have been conducted over a period of time and carried out in a systematic way,<sup>96</sup> and US targeted drone kills have been issued by the CIA, an entity, and thus a representative, of the US government.<sup>97</sup> Moreover, the United Nations security council's categorisation of the September 11 attacks as a "threat to peace" indicated to the international community that the global war on terror is intense and qualifies as an armed conflict;<sup>98</sup> therefore internationally classifying the war on terror as an armed conflict and justifying the existence of US drone doctrine. Thus, both domestic and international authorities consider the US to be presently engaged in an armed conflict with Al-Qaeda and its associated forces,<sup>99</sup> making the conflict not only legitimate, but making it, and the weapons used in it, subject to the basic principles of the law of armed conflict—a branch of international humanitarian law.

## ***5.2 The Principles of Law of Armed Conflict***

As it has been determined that the United States is presently engaged in an armed conflict, international humanitarian law, namely the law of armed conflict, is indeed necessarily applicable. There are several principles that govern the law of armed conflict, that are oftentimes referred to as the backbone of IHL.<sup>100</sup> The purpose of this section is to outline these four basic principles, and consider how the use of drones during this conflict, not individual, hypothetical drone attacks, has adhered to or has violated these basic principles. Once again, it is essential to note that these principles are not hypothetically considered, but through empirical data, reflective of actual past realities, and thus considered in light of such evidence.

### ***5.2.1 Military Necessity***

The first principle to be considered is military necessity. This principle effectively permits a state engaged in an armed conflict to use only that degree and kind of force, not

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<sup>95</sup> *supra*, n 25.

<sup>96</sup> Murphy, Dale. "Terrorism and the concept of an armed attack in Article 51 of the UN charter" (2002) 41 *Harvard International Law Journal* 47-50.

<sup>97</sup> Veuthey, Michael.

<sup>98</sup> United Nations Security Council, 4370th Meeting, "Unanimously Adopting Resolution 1368 (2001), Council Calls on All States to Bring Perpetrators to Justice." Article 3, Line 5.

<sup>99</sup> See citation 65 for definition of associated forces.

<sup>100</sup> Veuthey, Michael.

otherwise prohibited by the law of armed conflict, that is required in order to achieve the legitimate purpose of the conflict, namely the complete or partial submission of the enemy at the earliest possible moment with the minimum expenditure of life and resources.<sup>101</sup> This principle is not a new concept<sup>102</sup> and has its roots in the Lieber Code article 14 which states that it is legal for a party to a conflict to use “those measures which are indispensable for securing the ends of war, and which are lawful according to the modern law and usages of war.”<sup>103</sup> It has been argued that in times of emergency, in times of crisis, a leader of an armed force or an individual within an armed force could depart from the laws of war if it was essential for victory,<sup>104</sup> however this argument is now obsolete, for it is clear, that the means to achieve military victory are not unlimited.<sup>105</sup>

Has the US drone doctrine adhered to the principle of military necessity? A reasonable argument may be made that drone strikes, coupled with the counterterrorism efforts from the United States, have in fact led to the partial submission of Al-Qaeda, for it is true that in recent years Al-Qaeda and the threat of terrorism have been significantly decreased.<sup>106</sup> That being said, this did not occur with the minimum expenditure of life (when we consider human casualties just in the case of Pakistan since the drone strikes began in 2004, or the estimated 225,000 total casualties since the war on terror began<sup>107</sup>) or of resources (the war on terror has cost the United States 4 trillion dollars<sup>108</sup>). However, more specifically, in accordance with the principle of military necessity, it may be argued that the drone doctrine was needed to fight the war on terror, and maybe, even perhaps, helped the United States win the war on terror. Yet, at what cost? Even if it is said that the war on terror is winding down, the cost of the war, both human and fiscal, was far too high,<sup>109</sup> and although Barack Obama has officially ended the wars in Iraq and Afghanistan, and was awarded a Nobel Peace Prize for his peaceful politics, has in fact not ended the war on terror, and his weapon of choice, is and has been the attack drone.

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<sup>101</sup> The Manual of the Law of Armed Conflict. Oxford, pg 22 Section 2.2 “Military Necessity.”

<sup>102</sup> Veuthey, Michael.

<sup>103</sup> Lieber Code, Article 14.

<sup>104</sup> Arguments advanced by German theorists such as Lueder:, “the purpose of war overrides its usages.”

<sup>105</sup> Veuthey, Michael.

<sup>106</sup> Mohamedou, Mohamed Mahmoud Ould.

<sup>107</sup> Baum, Deborah. "Estimated Cost of Post 9/11 Wars: 225,000 Lives, up to \$4 Trillion." *Brown University*. Costs of War Project, 29 June 2012.

<sup>108</sup> *ibid.*

<sup>109</sup> *ibid.*

### 5.2.2 *Humanity*

The second principle to be considered is the principle of humanity. This principle effectively forbids the infliction of suffering, injury or destruction not actually necessary for the accomplishment of legitimate military purposes.<sup>110</sup> The principle of humanity is based on the notion that once a military purpose is achieved, the further infliction of suffering is unnecessary.<sup>111</sup> This principle protects civilians by confirming the basic immunity of civilian objects and civilian populations because civilians and civilian objects make no direct contribution to war.<sup>112</sup> In other words, once a military purpose has been achieved, such as putting a combatant out of action, the infliction of further suffering by attacking him further is prohibited by the concept of humanity.<sup>113</sup>

This is particularly hard to take into context in its relation to the war on terror, because of the very nature of the war, namely its opponent. Terrorism can never be completely eliminated from society, it has always existed and it always will, the most one can do is diminish its occurrences.<sup>114</sup> Essentially, one can always make the argument, and always have a somewhat valid point, that continuing drone strikes and the drone doctrine itself is necessary for the accomplishment of eliminating terrorism, a legitimate military purpose. Yet, one thing remains clear, even a legitimate military purpose, such as this apparent *terrorist genocide* the US is undertaking, can never justify severe civilian casualties or a departure from the law. It is, however, important to note, that this principle nor IHL itself sees some sort of utopian world where civilians aren't impacted by war; indeed the mark of war is that it affects all in a society, guilty or innocent, armed or unarmed.<sup>115</sup> Yet as it has been clearly discussed in a previous section, the continuation of suffering on local communities, namely the infliction of severe psychological suffering, resulting from continuing drone attacks, does nothing to accomplish the legitimate military purposes of the United States. In fact, if anything, by fostering an attitude of hate for the United States, it does the opposite.<sup>116</sup> In sum, the drone doctrine has indeed proven to

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<sup>110</sup> The Manual of the Law of Armed Conflict, pg. 23.

<sup>111</sup> Milzer, Nils. Personal Interview., *GCSP Headquarters*. Geneva, Switzerland. 30 April 2013.

<sup>112</sup> *ibid.*

<sup>113</sup> *ibid.*

<sup>114</sup> Mohamedou, Mohamed Mahmoud Ould.

<sup>115</sup> Milzer, Nils.

<sup>116</sup> International Human Rights and Conflict Resolution Clinic, pg. 11.

inflict unnecessary destruction, injury and suffering on civilians who are not military combatants, and thus, in turn, has not adhered to the principle of humanity.

### 5.2.3 *Distinction*

The third principle to be considered in this section is that of distinction. This principle is another mechanism that protects civilians, for as military operations are only conducted against the enemies armed forces, there must be a clear distinction between the armed forces and civilians,<sup>117</sup> or between combatants and noncombatants.<sup>118</sup> This principle is only logical, and basically argues, that because civilians do not take a direct part in hostilities, and, so long as they refrain from doing so, they are protected from attack.<sup>119</sup> An important point of this principle has to do with intelligence and with information.<sup>120</sup> Namely, that this obligation to distinguish between civilians and combatants is dependent on the quality of the information available to the commander at the time he makes the decisions.<sup>121</sup> As such, if the person in charge of issuing the attack receives information, reviews it honestly and without discrimination, and concludes, with all the intelligence available to him, that he is attacking a legitimate military target, then he does not automatically violate the principle of distinction.<sup>122</sup> Therefore, the principle of distinction demands a protection of civilians and an obligation of commanders to clearly distinguish between a legitimate military target, a combatant and civilians, or noncombatants.<sup>123</sup> But, if this principle is adhered to and a drone attack is issued, like the attack on Khost, Afghanistan in 2002, and then afterwards it is clearly shown to be absent distinction because the attack ends up killing civilians and/or civilian objects, where does the fault lie? Surely, if this principle is only considered before the attack is issued, and thus, on a hypothetical level, then one can make the argument that because of the technological sophistication of drones and the weapons they have, a single drone attack is actually more discriminatory than other means of warfare.<sup>124</sup> However, this paper is not considering a single, hypothetical drone attack, it is considering the drone doctrine on the whole, and the compilation of the attacks, when taken together, and when considered with

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<sup>117</sup> Veuthey, Michael.

<sup>118</sup> The Manual of the Law of Armed Conflict, pg. 24.

<sup>119</sup> Milzer, Nils.

<sup>120</sup> *ibid*

<sup>121</sup> *ibid*

<sup>122</sup> The Manual of the Law of Armed Conflict. pg. 24.

<sup>123</sup> *ibid*; pg 24.

<sup>124</sup> Vautravers, Alexandre.

the best available empirical evidence,<sup>125</sup> the fact that the drone doctrine has indeed not been discriminatory to citizens becomes clear.

#### **5.2.4 Proportionality**

Finally, the last principle to be discussed in this section that is a key proponent in the law of armed conflict is the principle of proportionality. This principle requires that the losses resulting from a military action should not be excessive in relation to the expected military advantage.<sup>126</sup> This principle of proportionality first appeared in Additional Protocol I, which states “an 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, is strictly prohibited.”<sup>127</sup> In essence, if a drone attack does more damage to civilians who are not actively engaged in combat than it accomplishes the military objective of the conflict as a whole, the attack is in violation of the principle of proportionality. As such, it has been demonstrated through empirical data that drone attacks in the nation of Pakistan have done far more damage to civilians and civilian objects than they have damaged military targets,<sup>128</sup> and thus, have been in violation of the principle of proportionality.

The expected military advantage can be considered by weighing the different possible military options, such as sending in ground troops or flying over the hostile zone with piloted aircraft,<sup>129</sup> and discerning whether or not the use of a drone, on the area being considered, will do more benefit to one's army and one's strategic interests than it will do harm to the local community. This is a difficult thing to balance, for it is not necessarily possible to predict the future, and there will always be “blowback” and loss of civilian life, as well as many other variables at play that one could not possibly know before hand. So why leave the issuing of a drone attack to predictive events in the future that are all but impossible to know? Why not instead use the data from drone attacks already issued as a guidepost for predicting future

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<sup>125</sup> See the *Bureau of Investigative Journalism*, (c 44-49)

<sup>126</sup> Milzer, Nilz..

<sup>127</sup> Additional Protocol, Article 51(5)(b).

<sup>128</sup> See the *Bureau of Investigative Journalism* (c 44-49) and a CNN story which reported that 98% of all damage done by drone attacks in Pakistan have been sustained by civilians and people other than those who were targeted, c 56.

<sup>129</sup> Vautravers, Alexandre.

attacks? For if this data was considered, then drones would be used sparingly, and with great hesitation, for the past has taught us that with each drone strike that is issued, a disproportionate amount of civilians will be affected.

### ***5.3 IHRL Norms and Customary Law***

One of the most basic IHRL and IHL norms that enjoys the status of customary international law is the right to life.<sup>130</sup> This right is protected on the international level<sup>131</sup> the regional level<sup>132</sup> and the national level.<sup>133</sup> The right to life is thus not only a fundamental human right, but a deeply held right that is protected in times of peace and war.<sup>134</sup> In transition, life can not be taken by arbitrary means, nor can it be taken inappropriately, unjustly, or with a lack of predictability; and any life that is taken by these means is strictly prohibited under IHRL and IHL customary law.<sup>135</sup> The ICRC confirms the protection of this right to life, and notes that given the obvious risk to life during an armed conflict, a great deal of IHL is dedicated to protecting the right to life, thus having a reinforcing, if not beneficial, effect on the right to life itself.<sup>136</sup> The issue of targeted killings was considered by the United Nations Human Rights Committee in its review of a report submitted by Israel. The committee was very explicit and clear:

*The State Party should not use “targeted killings” as a deterrent or punishment. The State party should ensure that the utmost consideration is given to the principle of proportionality in all its responses to terrorist threats and activities. State policy in this respect should be spelled out clearly in guidelines to regional military commanders, and complaints about disproportionate use of force should be investigated promptly by an independent body. Before resorting to the use of deadly force, all measures to arrest a person suspected of being in the process of committing acts of terror must be exhausted.*<sup>137</sup>

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<sup>130</sup> Veuthey, Michael.

<sup>131</sup> Article 3 of the Universal Declaration of Human Rights

<sup>132</sup> Article 4 of African Charter on Human and Peoples Rights, Article 4 of American Charter on Human Rights, Article 2 of European Charter on Human Rights.

<sup>133</sup> Almost all constitutions of civilized nations protects the right to life.

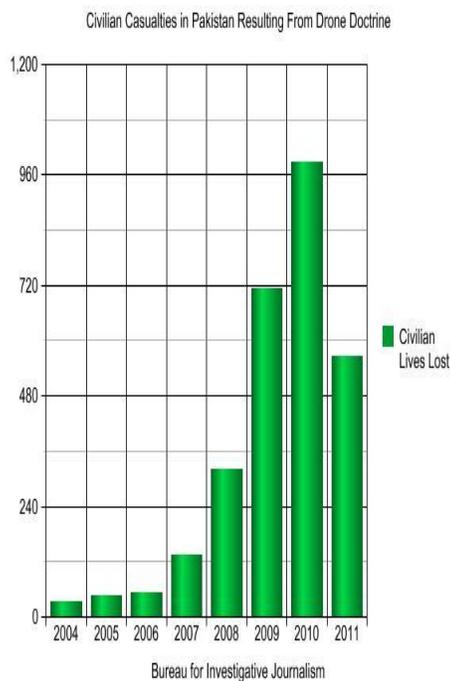
<sup>134</sup> Veuthey, Michael.

<sup>135</sup> UN Human Rights Committee Comment Number 305/1988 UN Doc CCPR/C/39/D/305/1998 (15 August 1990). Paragraph 5.8.

<sup>136</sup> Louise Doswald-Beck and Sylvain Vité International Humanitarian Law and Human Rights Law. Document Number 30-04-1993 Article, International Review of the Red Cross, No. 293.

<sup>137</sup> Concluding Observations of the Human Rights Committee: Israel, 21 August 2003, UN Doc. CCPR/

This is an important statement to consider, for it recognizes the fundamental right to life and reaffirms the international communities protection of it, by insuring that not only are strikes to be proportionate, but issued only as a last resort. Consequently, the question becomes: has the drone doctrine of the United States respected the internationally held right to life by taking life non-arbitrarily, appropriately, justly and predictably?



Life is taken arbitrarily when due process is not followed and when it is not done in terms sanctioned by the law.<sup>138</sup> This right to due process and a fair trial, which together are included with the right to life, is in line with IHRL norms.<sup>139</sup> Yet, when an individual is merely suspected of being a terrorist, and suspected to be actively planning hostilities against the United States, and then targeted and killed by a drone, has not this right to due process of law been undermined? Granted, there are situations where due process may be impossible, and thus, circumstances where life may be taken arbitrarily but still remain in the confines of the law.<sup>140</sup> These circumstances are where state agents kill in order to preserve the rights of others; and are essentially taking life in order to protect life. But even these

<sup>137</sup> CO/78/ISR, 1, April 24 2013.

<sup>138</sup> Article 2 of European Convention on Human Rights.

<sup>139</sup> Kretzmer, John. 'Targeted killing of suspected terrorists' (2005) *European Journal of International Law* 178

<sup>140</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials UN Doc A/CONF 144/28/Rev 1 112 para 9 (1990). Accessed April 24, 2013.

circumstances are strictly regulated by IHRL and IHL norms.<sup>141</sup> For instance, the individuals life that is being taken must pose an immediate threat to the life of others therefore making his elimination an absolute necessity; and in order for it to be lawfully considered a necessity for his life to be taken, the threat should be “instant, overwhelming, and leaving no choice of means, and no moment of deliberation.”<sup>142</sup> Considering this, it becomes clear that the main purpose of the IHRL framework which guarantees the right to life is to strictly monitor and review any use of force whose sole purpose is to deprive life and make sure it is within the confines of the law.<sup>143</sup> When the right to a fair trial is sacrificed for the greater good and the immediate protection of life, and thus an individual is determined guilty without due process or a fair trial, and is targeted by a US drone, a legitimate argument may be made that this individual, if he poses an instant, overwhelming and immediate threat to the security and safety of others, can be lawfully targeted and killed. There still is debate within the academic community as to the legitimacy of this argument, and has even been disputed by some.<sup>144</sup> Yet, even if we accept that in certain circumstances an individual may lose his right to due process and his most fundamental right to life if his existence poses an immediate threat to the life of others, if the means of killing this individual, namely a drone attack, has been empirically proven to take a disproportionate amount of civilian life in the attack, then the loss of life and forfeiting of the right to life for civilians that results from a drone attack cannot be reasonably remain within the scope of the law. In sum the right to life is strictly prohibited from being taken arbitrarily, and considering the sheer amount of lives that have been taken arbitrarily in drone attacks in Pakistan since 2004,<sup>145</sup> the drone doctrine has not respected the internationally held right to life by taking lives arbitrarily, and for this reason, among others, must be revisited, reviewed, and readjusted.

## VI: Conclusions

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<sup>141</sup> Thompson Chengeta. Are US Drone Targeted Killings Within the Confines of the Law? *The International Criminal Court, The Hague, Netherlands*. 31 October 2011. Accessed April 24, 2013. 29.

<sup>142</sup> *ibid*; 30.

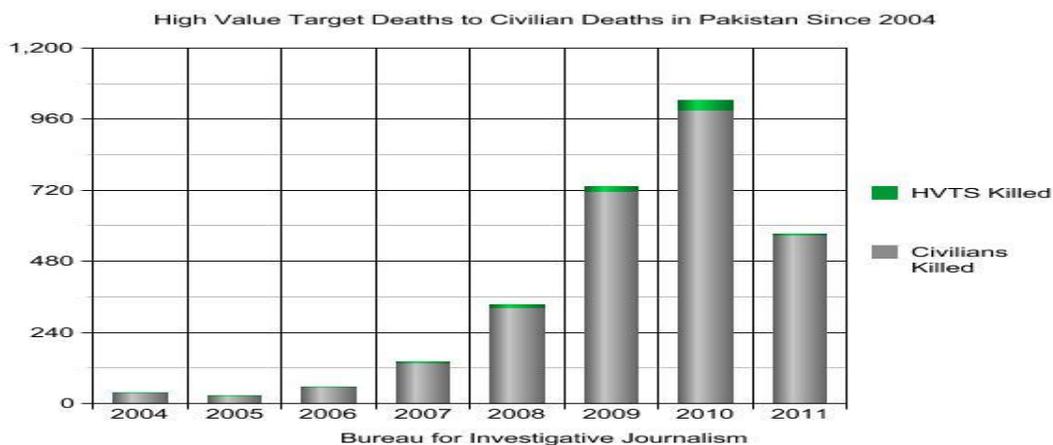
<sup>143</sup> *ibid*; 30.

<sup>144</sup> G S Corn et al ‘America's longest held prisoner of war: lessons learned from the capture, prosecution, and extradition of General Manuel Noriega’ (2011)71 *Louisiana Law Review* 1112.

<sup>144</sup>

<sup>145</sup> See Picture Above: Civilian Casualties in Pakistan

The Bush-Obama drone doctrine has been defined as the use of attack drones to extrajudicially target and kill suspected or known high level members of terrorist organization Al-Qaeda; irrespective of their geographic location. The United States has applied this doctrine in as many countries as Afghanistan, Yemen, Somalia and Pakistan since 2001; and three important lessons have been noted from their use, and mustn't be overlooked. These should be taken into consideration as the United States contemplates the use of drones as weapons in war in other countries in the future. Firstly, they are inefficient, and thus, disproportionate, because they affect untargeted targets more than they do high value targets (HVTS), or senior leaders of Al-Qaeda:



Secondly, they are counterproductive to US military and strategic interests. And thirdly, the US drone doctrine as applied in Pakistan has been highly damaging, to infrastructure and to civilians, and has induced many in Pakistan into a distrust of the US and caused them to live in a state of fear. These three lessons have been learned from Pakistan through research done in a case study and an analysis of that case study, and by compiling empirical evidence to support these claims. In sum, the lessons learned from Pakistan should be a way to move forward and amend the doctrine; for perhaps in the early years of this policy, the continuation could be excused, for it was a brand new, and a rather exciting idea. However, now that we have 11 years of empirical evidence that clearly allows us to see the effects of drone doctrine as it has been applied, there can be no more excuses for unwarranted injury and trauma being inflicted on innocent people all over the world, and especially in Pakistan.

Realistically, adjusting and amending this doctrine in the future will not be easy. Yet, it is presently important to consider the strengths and weaknesses of continuously using attack drones

in the field of war. There are undeniable strengths in using drones, that include, but are not limited to: a projection of power, lower risk to US military personnel, more precise than other weapons, technologically sophisticated, and hypothetically consistent with the laws of war and the principles of the law of armed conflict. These strengths are what make the use of drones so appealing to the US. Realizing this, it is only a matter of time until other countries in the world develop this technology, and that is why it is so important to consider the effects of these weapons as they have already been used by the US through careful consideration of empirical evidence, so that precedents that are consistent with the rule of law and protective of civilians are set; both internationally and domestically.

Indeed, that is the importance of this topic, for as the world becomes more technologically advanced, the nature of war will continue to change, and the weapons used in war will continue to change. There is somewhat of a consensus across the academic community that war and its weapons are becoming more robotic and automated, and as attack drones are really the first weapon of its kind, they are just the tip of the iceberg. Yet, as the nature of war will undoubtedly change, and the weapons used in war will inevitably change, the basic principles of law and the rights they guarantee, they cannot change. We must understand the sophistication of this weapon, and realize its differences to older and traditional weapons, but not lose sight of the rule of law, and the people the law and the adherence to it protects. Noting this, we must understand the weaknesses of the drone doctrine and the use of drones, that include, but are not limited to: more damaging to non targeted people than targeted people, counterproductive to US interests, limited accountability for resulting damage, empirically inconsistent with principles and norms of international law, no due process of law or fair trial for those targeted and killed, and the undermining of the rule of law. Thus, noting these distressing realities, there are several steps the US can take, as well as the international community, to readjust the doctrine, and set a precedent for the use of drones and weapons like them in the future.

First of all, the US must be more accountable. One of the fundamental steps to good governance and to progress itself is accountability, and how does a government be accountable? By being transparent. Thus, the US government should release their official information of the effects and usages of drones, and transfer back responsibility from the CIA, an agency who infamously works in covert and secretive ways, and back to the US government, and thus, the people of the US, entirely. Second of all, the US should respect and observe IHRL norms and

IHL principles in its struggle against terrorism by being thorough in gathering information on which decisions to target are made and targeting only individuals who are legitimate targets in terms of the law. Moreover, this requires that the US distinguish civilians from legitimate targets in a way that is more empirically acceptable and that severely limits the collateral damage, making it acceptable to the principle of proportionality. Finally, the international community, specifically the United Nations and international organizations such as the United Nations High Commission on Human Rights and the International Committee on the Red Cross, should continue to censure and discourage the manner in which the US is conducting its use of drones. Like such, these organizations should call on the US to release its official data on the use of drones to the international community, and thus, be more accountable to the international community. After all, the drone doctrine is an international policy, and has repercussions on the whole of the international community, so not only is there domestic action that must be taken to improve the doctrine, but perhaps more importantly, there is international action that must be taken and conceivably without which any further improvement to the policy would not be possible. All in all, it is a dangerous thing for the US to continue playing judge, jury and executioner, and if the international community does not take notice soon, the Bush-Obama Drone Doctrine will continue to be used and codified in the coming years; and the lessons learned from Pakistan will become seemingly irrelevant.

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