TRUTH WITHIN THE RUBBLE: UNDERSTANDING THE EXPANSION OF THE

U.S. TARGETED KILLING PROGRAM

by

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THESIS ABSTRACT

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Between 2001 and 2008 the U.S. launched approximately 50 lethal strikes using unmanned aerial vehicles, (UAVs) in Pakistan, Yemen, and Somalia. In contrast, the Obama administration has launched over 417 strikes since taking office in 2009. Some analysts have stated that the increase is the inevitable result of President Obama's decision to eliminate extrajudicial detention. They argue that the Obama administration painted itself into a corner of "no-quarters" warfare wherein enemy combatants outside of a declared war zone are no longer eligible for capture. However, this view fails to recognize that the expansion of the U.S. targeted killing program was already gaining momentum prior to President Obama's inauguration. The rapid expansion of the U.S. targeted killing program after 2008 has been primarily contingent on three factors: The development and availability of UAVs, the Executive's evolving approach to terror suspects, and the context of each strike decision.

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we left behind in Operation Iraqi Freedom between December 2005 and December 2006

Deeds Not Words!

Specialist William S. Hayes III	February 05, 2006
Private First Class Sean D. Tharp	March 28, 2006
Specialist Ron Gebur	May 13, 2006
Corporal Bobby R. West	May 30, 2006
Sergeant Louis A. Montes	September 07, 2006
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Corporal Russell G. Culbertson III	October 17, 2006
Corporal David M. Unger	October 17, 2006
Corporal Joseph C. Dumas Jr.	October 17, 2006
Specialist Nathaniel A. Aguirre	October 22, 2006
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CHAPTER I

INTRODUCTION

There are terrorists holed up in those mountains who murdered 3,000 Americans. They are plotting to strike again. It was a terrible mistake to fail to act when we had a chance to take out an al-Qaida leadership meeting in 2005. If we have actionable intelligence about high-value terrorist targets and President Musharraf will not act, we will.[1]

In the early morning hours of January 23, 2009 multiple hellfire missiles launched from an Unmanned Aerial Vehicle, (UAV)[2] slammed into two remote villages of Pakistan's Waziristan provinces killing approximately four suspected militants and as many as eleven civilians.[3] Less than 24-hours earlier, a freshly-minted President Obama had signed two executive orders effectively ending the practice of extrajudicial detention at Guantanamo Bay naval base and CIA black sites.[4] Now, with the focus of the international community on him President Obama convened his first National Security Council meeting on Pakistan and Afghanistan to craft the administration's strategy in the region. Although he had previously hinted at a willingness to take decisive action against

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[1] .Senator Barack Obama (2007, August 1). Speech at Woodrow Wilson Center. Retrieved at http://www.cfr.org/elections/obamas-speech-woodrow-wilson-center/p13974

[2] The term "Unmanned Aerial Vehicle" or UAV is the official military classification for group of vehicles collectively known as "Drones." The United Nations places UAVs within a larger category including ground platforms known as "Lethal Autonomous Robotics," or LARS.

[3] Smith, J. & Rondeaux, C. (2009, January 24). 2 U.S. Airstrikes Offer a Concrete Sign of Obama's Pakistan Policy, The Washington Post. Retrieved at http://www.washingtonpost.com/wpdyn/content/article/2009/01/23/AR2009012304189.html

[4] (2009, January 22). Executive Order -- Review And Disposition Of Individuals Detained At The Guantánamo Bay Naval Base And Closure Of Detention Facilities. Retrieved at http://www.whitehouse.gov/the-press-office/closure-guantanamo-detention-facilities (2009, January 22). Executive Order 13491 -- Ensuring Lawful Interrogations. Retrieved at http://www.whitehouse.gov/the_press_office/EnsuringLawfulInterrogations

terrorists in the region,[5] few of Obama's supporters would have guessed what came next. Rather than curtail and limit the circumstances under which UAVs could be used to kill suspected terrorists, Obama doubled-down on the tactic. From 2009 to 2014, the Obama administration would oversee approximately 417 lethal strikes in Pakistan, Yemen, and Somalia representing a 600% increase in their usage from 2001 to 2008. The magnitude of the increase in such strikes has sent journalists and academics alike scrambling for superlatives to describe it, while igniting a fierce debate on the legality, morality, and efficacy of targeted killing as a state policy.

This policy has shocked many in the public, but some analysts have stated that it is the inevitable result of President Obama's executive order to close Guantanamo, all CIA black sites, and to severely constrain extraordinary rendition. In his 2012 book *Kill or Capture*, author Daniel Klaidman makes a startling assertion when he writes "the inability to detain terror suspects was creating perverse incentives that favored killing or releasing suspected terrorists over capturing them."[6] The argument is that the Obama administration painted itself into a corner of "no-quarters" warfare wherein enemy combatants outside of a declared war zone are simply no longer eligible for capture. [7] Journalists, authors, and academics have adopted this theory when attempting to explain

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[5] See intro quote.

[6] Klaidman, D. (2012). *Kill or capture: The war on terror and the soul of the Obama presidency*. Boston: Houghton Mifflin Harcourt.

[7] Klaidman claims that the best example of this new lethal policy can be found in the September 14, 2009 targeting of Somali AQ leader Saleh Ali Saleh Nabhani. The president, after being briefed on an opportunity to target Nabhani ordered that he should be killed by a manned U.S. strike team. His generals informed him that such a mission could potentially violate U.S. adherence to international humanitarian law or the laws of land warfare which dictate that after an enemy combatant has been rendered defenseless, he or she is considered a prisoner of war and must be rendered first aid and accorded food, shelter, and protection. The general's concerns were noted, and the raid went ahead as directed killing Nabhani and several other members of the Al Shabab network. (Klaidman p. 126)

the unprecedented expansion of the U.S. targeted killing program after 2008; but is it correct?

The Obama administration's rationale for the increased use of targeted killing is simple. First and foremost it is effective. In his 2012 speech on drone policy, John Brennan highlights a number of high-profile strikes and alludes to documents seized during the 2011 Bin Laden raid that reflect Al-Qaeda's increasingly desperate leadership vacuum.[8] Next, Brennan argues that precision drone strikes minimize the risk of civilian casualties making it morally more agreeable than the alternative of conventional bombs or ground invasion, and finally that they allow the United States to seek out its disparate enemies in parts of the world where its soldiers, and the soldiers of the host country, are unable or unwilling to reach. In defending the legality of the practice President Obama put it succinctly in his watershed speech on drones in May, 2013: "…America's actions are legal. We were attacked on 9/11. Within a week, Congress overwhelmingly authorized the use of force. Under domestic law, and international law, the United States

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[8] "Remotely piloted aircraft in particular can be a wise choice because of geography, with their ability to fly hundreds of miles over the most treacherous terrain, strike their targets with astonishing precision, and then return to base. They can be a wise choice because of time, when windows of opportunity can close quickly and there may be just minutes to act. They can be a wise choice because they dramatically reduce the danger to U.S. personnel, even eliminating the danger altogether. Yet they are also a wise choice because they dramatically reduce the danger technology and with the safety of distance—might actually have a clearer picture of the target and its surroundings, including the presence of innocent civilians. It's this surgical precision—the ability, with laser-like focus, to eliminate the cancerous tumor called an al-Qa'ida terrorist while limiting damage to the tissue around it—that makes this counterterrorism tool so essential. There's another reason that targeted strikes can be a wise choice—the strategic consequences that inevitably come with the use of force. As we've seen, deploying large armies abroad won't always be our best offense. Countries typically don't want foreign soldiers in their cities and towns. In fact, large, intrusive military deployments risk playing into al-Qa'ida's strategy of trying to draw us into long, costly wars that drain us financially, inflame anti-American resentment and inspire the next generation of terrorists. In comparison, there is the precision of targeted strikes." Brennan, J. Assistant to the President for Homeland Security and Counterterrorism (2012, April 30) As Prepared for Delivery, Woodrow Wilson International Center for Scholars

is at war with al Qaeda, the Taliban, and their associated forces."[9] The Obama administration clearly believes that its use of targeted killing is legal, moral, and most importantly a very effective tool against Al-Qaeda and its associates.

  However, the current administration's enthusiasm for the practice does not on its own explain why the number of strikes has increased so dramatically in the last five years. Former Bush administration officials have made remarks that they support the practice of targeted killing, implying that they would not approach the problem differently.[10] In fact the record suggests that the Bush administration was already embracing the tactic during its last year in office. After authorizing only 18 instances of targeted killing outside of Iraq and Afghanistan from 2001 to 2007, President Bush oversaw 37 such strikes in 2008 alone.[11] The forces driving the expansion of the U.S. targeted killing program were already gaining momentum prior to President Obama's inauguration.

Providing a deeper understanding of these forces is the aim of this thesis. It will argue that the rapid expansion of the U.S. targeted killing program after 2008 has been primarily contingent on three factors:

(1) The development and availability of UAVs.

(2) The legal status of the targeted individual(s)

(3) The context of each strike decision

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[9] Obama, B. President of the United States (2013, May 23). As Prepared for Delivery, National Defense University

[10] Cheney, D. (2013, February 11). CBS This Morning. Retrieved at http://www.huffingtonpost.com/2013/02/12/dick-cheney-obama-drone_n_2668511.html

[11] New America Foundation, Analysis: Pakistan Drone Strikes – Obama v. Bush, last updated June 8, 2013, viewable at http://natsec.newamerica.net/drones/pakistan/analysis

Understanding the interaction of these three factors will give the reader a holistic view of how the U.S. targeted killing program has evolved to become what Kevin Heller aptly describes as "one hell of a killing machine."[12]

The remainder of chapter one includes a rundown of competing theories on the subject. Chapter two quickly frames the larger debate on the legality, morality, and efficacy of targeted killing. Chapter three enters into the heart of the thesis with a discussion on the evolution of UAVs as the preferred targeted killing platform, and the logistical challenges presented by actually getting them to the target. Chapter four examines the impact of the executive branches' legal approach to terror suspects on the decision to kill or capture. Chapter five uses context as a tool to understand why the number of strikes vacillated significantly on a month-to-month basis in Yemen and Somalia. Chapter six goes from macro to micro by examining three case studies. Finally, chapter seven concludes with a discussion about where the U.S. may next employ UAVs in a lethal role, as well as the potential impact of U.S. actions on the development of international norms.

What Have Others Said?

If an increase in the level of support for the policy of targeted killing from one presidential administration to the next is not sufficient to explain the U.S. expansion of its targeted killing program, what do other researchers and journalists have to say?

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[12] Heller, K. J. (February 15, 2013). 'One Hell of a Killing Machine': Signature Strikes and International Law. *Journal of International Criminal Justice, 11,* 1, 89-119.

Blum and Heymann make a similar observation to Klaidman in their 2010 book

Laws, Outlaws, and Terrorists when they state, "The more complicated detention has

become, the more attractive targeted killing seems to be,"[13] and in 2013 noted drone

journalist Craig Whitlock wrote

> The administration and Congress have not reached agreement on a consistent
> legal pathway for apprehending terrorism suspects overseas and bringing them to
> justice. The impasse and lack of detention options, critics say, have led to a de
> facto policy under which the administration finds it easier to kill terrorism
> suspects, a key reason for the surge of U.S. drone strikes in Pakistan, Yemen and
> Somalia.[14]

Jointly these statements paint a picture of a president handcuffed by the law, and forced

to choose between either killing dangerous individuals, or simply allowing them to

continue operating with impunity.

The notion that the U.S. is operating under such a condition is potentially

explosive as it directly challenges the president's stated policy that "America does not

take strikes when we have the ability to capture individual terrorists; our preference is

always to detain, interrogate, and prosecute."[15] On the surface the numbers seem to

support Klaidman's argument. The Bush administration detained 779 enemy fighters at

its extrajudicial facility in Guantanamo, and another 136 through extraordinary rendition

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[13] Gabriella Blum & Phillip Heymann: *Laws, Outlaws, and Terrorists, Lessons from the War on Terrorism,* MIT Press, MA, 2010.

[14] Whitlock, C. (2013, January 1). Renditions continue under Obama, despite due-process concerns, Washington Post. Retrieved at http://www.washingtonpost.com/world/national-security/renditions-continue-under-obama-despite-due-process-concerns/2013/01/01/4e593aa0-5102-11e2-984e-f1de82a7c98a_story.html

[15] Obama, B. (2013, May 23). Remarks by the President at the National Defense University. White House Press Office. Retrieved at http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university

to third-party nations,[16] while claiming responsibility for approximately 50 UAV strikes in Pakistan and Yemen from 2002-2008. Strikes under the Bush administration are estimated to have killed approximately 470 militants and civilians.[17] In contrast, the Obama administration ended detention at Guantanamo and other CIA-run sites, and has captured only 10 foreign terrorists.[18] As the number of detentions dropped under Obama, the administration launched 417 UAV strikes in Pakistan, Yemen, and Somalia, which have killed between 2,400 and 3,000 militants and civilians. [19]

Klaidman's argument does have its flaws. It fails to explain why the Bush administration increased its use of targeted killing in 2008 prior to the closure of Guantanamo, and is not particularly helpful when applied at the individual level. However, the argument continues to surface as an explanation when people attempt to explain the expansion of the U.S. targeted killing program. Therefore, Klaidman will serve as the primary foil for the arguments laid forth in this thesis.

Strikes Protect the Right Flank and Are More Popular than Detention / Invasion

Another potential argument is that Obama's expansion of the targeted killing is attributable to the executive's historic need to appear tough on threats to national security. The imperative for democratic presidents to protect the so-called "right flank"

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[16] Amrit Singh, Globalizing Torture: CIA Secret Detention and Extraordinary Rendition, Open Society Foundations, p. 8, NY, 2013.

[17] New America Foundation, Analysis: Pakistan Drone Strikes – Obama v. Bush, last updated June 8, 2013, viewable at http://natsec.newamerica.net/drones/pakistan/analysis

[18] Singh, A. (2013). *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition*, Open Society Foundations, p. 21, NY.

[19] "The number of estimated deaths from the Obama administration's drone strikes is more than four times what is was during the bush administration." Bergen, P. (2012, September 19). Drone is Obama's Weapon of Choice. Retrieved at http://www.cnn.com/2012/09/05/opinion/bergen-obama-drone/

is often cited as a driving force behind tough foreign policy moves that bolster an image of presidential resolve.[20] Klaidman's book recounts an interchange between counter-terror advisor Richard Clarke and then-senator Obama:

> Clarke stated a simple fact. 'As president you kill people.' He wasn't just talking about sending troops into battle – in shadow wars, presidents know the names and addresses of people they have killed. Obama stared back at Clarke for several seconds. 'I know that,' he said quietly. 'He didn't flinch,' Clarke later recalled.[21]

Following the Bin Laden raid, Obama's approval rating rose twelve points with Republicans, nine points with independents, and no points with democrats, resulting in an aggregate gain of six points overall.[22] However, Obama has continued his use of targeted killing well-after tea-party Republicans forged an unlikely alliance with groups like to ACLU to oppose the drone strikes against American citizens fighting the U.S. from abroad.[23]

Richard Neustadt's theory that presidential popularity translates into presidential power suggests that both Bush and Obama would go with the policy that is most popular in order to horde political capital for their top priorities.[24] If one were to believe an argument that targeted killings are more popular than long-term extrajudicial detention or a conventional force occupation, this argument has some explanatory power. In 2012 Jack Goldsmith predicted that the controversy over the use of drones would force the

[20] Junod, T. (2013, May 23). The Lethal Presidency of Barack Obama, Esquire. Retrieved at http://www.esquire.com/features/obama-lethal-presidency-0812-4

[21] Klaidman p. 58

[22] Jones, J. (2011, May 5). Obama Approval Rallies Six Points to 52% After Bin Laden Death, Gallup. Retrieved at http://www.gallup.com/poll/147437/obama-approval-rallies-six-points-bin-laden-death.aspx

[23] Bolton, A. (2014, May 5). Paul starts a new drone war, The Hill. Retrieved at http://thehill.com/homenews/senate/205105-paul-starts-new-drone-war

[24] Neustadt, R. E. (1960). *Presidential power, the politics of leadership*. New York: Wiley.

presidency to curtail the program in the face of internal bureaucratic resistance, and

pressure from external forces such as the press, social media, and civil rights groups.

This prediction seemed to be coming true with President Obama's May 23, 2013 speech

on the curtailment of the drone program and the subsequent decline in the number of

strikes in Pakistan, Yemen, and Somalia. [25]

However, while the argument is appealing it may not be so straightforward. For

example, while polls at the end of the Bush administration showed little support for the

occupation of Iraq,[26] support for Guantanamo remained high.[27] Despite this, the Bush

administration sharply curtailed its use of extrajudicial detention, adding only one

additional detainee in 2008 while at the same time rapidly expanding its use of lethal

strikes.[28] In addition, polling evidence taken as recently as 2013 suggests that Americans

are equally accepting of both targeted killing and extrajudicial detention. In separate

polls conducted by the Pew Research Center, 56% supported the use of drones to kill

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[25] Goldsmith takes a position that is runs counter to much of the accepted thought on the seemingly inexorable expansion of presidential war powers. The majority of scholars on the subject have argued that presidential powers have expanded with each major U.S. conflict and although they contract afterward, vestiges of that expanded power remain and create a net increase in the power of the executive branch. Proponents of this theory have been particularly alarmed by the U.S. "War on Terrorism" as it represents a major conflict seemingly without end and would therefore justify a permanent expansion of presidential war powers. Goldsmith is less concerned about this as he argues that the executive is in many ways more constrained today than it was prior to the attacks of 9/11. Goldsmith argues that the modern executive is constrained by traditional constitutional checks and balances, by internal bureaucratic resistance, and by external forces such as the press, social media, and civil rights groups. Perhaps the most interesting part of his argument is his discussion of the bureaucratic resistance of military commanders and military lawyers conditioned not to violate international norms of the laws of land warfare and the treatment of enemy detainees/POWs. Goldsmith argues that in the aftermath of the Vietnam War and the resultant blowback from incidents such as My Lai, the military inculcated a culture of accountability to the laws of war into every aspect of its operation. Goldsmith, J. L. (2012). Power and constraint: The accountable presidency after 9/11. New York: W. W. Norton & Co.

[26] (2008, March 13). Majority of Americans Seek Iraq Withdrawal. Gallup. Retrieved at http://www.gallup.com/video/104944/Majority-Americans-Want-Troops.aspx

[27] (2009, January 21). Americans Lean Against Closing Guantanamo. Gallup. Retrieved at http://www.gallup.com/video/113896/Americans-Lean-Against-Closing-Guantanamo.aspx

[28] (2013, March 14). The Guantanamo Docket, *The New York Times*. Retrieved at http://projects.nytimes.com/guantanamo

terrorist suspects and 70% responded favorably to the idea of keeping terror suspects in Guantanamo indefinitely.[29] Therefore, any argument that presidential policy on the matter of targeted killing is wholly driven by its popularity with the American public is likely flawed.

Of the two competing theories presented here, Klaidman's has the most substantive support and bears additional scrutiny. In the next chapter we will examine the larger debate on the legality, morality, and efficacy of targeted killing before moving into the heart of the argument put forth in this thesis.

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[29] (2013, February 11). Continued Support for U.S. Drone Strikes, Pew Research Center. Retrieved at http://www.people-press.org/2013/02/11/continued-support-for-u-s-drone-strikes/

Tyson, A. (2013, May 29). Should Guantanamo be open or closed? Either way, Democrats have stuck with Obama, Pew Research Center. Retrieved at http://www.pewresearch.org/fact-tank/2013/05/29/should-guantanamo-be-open-or-closed-either-way-democrats-have-stuck-with-obama/

CHAPTER II

CAN LETHAL TARGETING BE JUSTIFIED?

To say a military tactic is legal, or even effective, is not to say it is wise or moral in every instance. For the same human progress that gives us the technology to strike half a world away also demands the discipline to constrain that power -- or risk abusing it.[30]

Before we go deeper into answering why the U.S. has expanded its targeted

killing program, it is important to acknowledge a much larger debate over whether the

U.S. should be doing so in the first place. The issue of whether the U.S. should engage in

the practice of targeted killing revolves around three main questions: First, is it legal,

second is it moral, and third is it effective? Hitting the high points of this debate will

help to frame the overall issue, and provide context for the reader. It would be difficult to

understand the reasons behind the expansion of the U.S. targeted killing program without

first understanding the opposing views on these questions.

Is It Legal?

In 2011, the U.S. Department of Justice responded to a request by the administration

for a defined legal argument supporting its decision to target U.S. citizen Anwar Alwaki.

In its response, the DOJ laid out the legal foundation for the U.S. policy of targeted

killing:

> The President has authority to respond to the imminent threat posed by al-Qa'ida and
> its associated forces, arising from his constitutional responsibility to protect the
> country, the inherent right of the United States to national self-defense under
> international law, Congress's authorization of the use of all necessary and appropriate

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military force against this enemy, and the existence of an armed conflict with al-Qa'ida under international law.[31]

This statement makes it clear that the U.S. rests its defense of lethal targeting on three main pillars: First, that the U.S. is in a state of war with Al-Qaeda and its associated forces, next owing to that state of war, the U.S. has an inherent right to self-defense recognized in article 51 of the U.N. Charter,[32] and finally that Congress has given its approval for lethal targeting under the provisions of the Authorization for the Use of Military Force that passed in the days following the attacks of September 11, 2001.[33] Given this set of circumstances, the U.S. argues that the only restrictions governing the use of lethal force against terrorists are those laid out in International Humanitarian Law, (IHL) more commonly known as the "laws of war." With a basis in the amalgamated tradition of "Just War Theory," specifically *Jus in Bello,*[34] IHL places a number of

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[31] Department of Justice, (2011, November 6). White Paper, Lawfulness of a Lethal Operation Directed against a U.S. Citizen who is a Senior Operational Leader of Al-Qa'aida or an Associated Force.

[32] "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security." Article 51, Charter of the United Nations

[33] "IN GENERAL- That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons." Joint Resolution U.S. Congress (2001, September 14). Authorization for Use of Military Force against Terrorists.

[34] Just War Theory is broken into three parts: *Jus ad Bellum* refers to the decision about whether to start a war, while *Jus in Bello* refers to how the war is fought once it begins, (targeting etc.). Finally, *Jus post Bellum*, is a framework for how to prosecute the peace in most interpretations. Just War Theory has its roots in medieval religious philosophy when it entrenched the notion that legal justification is required for the legitimate use of force. Whereas natural law suggests that war is just only in self-defense, this notion was gradually expanded by proponents of international law who argued that war could be justified to prevent the development of future threats and punish past attacks. The theory served as the basis for the development of Hague conventions, the League of Nations, and ultimately the U.N. charter. However, Article 51 of the U.N. charter is considerably more restrictive than the medieval notion. The modern doctrine of self-defense does not permit the use of force to prevent the development of potential future threats, or to punish past attacks. The Article does allow for self-defense in the event of imminent armed attack known as "anticipatory self-defense." Differing state notions of what constitutes an "imminent armed attack" creates maneuvering room for states that seek to exercise a broader interpretation of it (i.e.

restrictions on the conduct of states engaging in armed combat which can be synthesized into six general tenants: (1) Obey all international laws on weapons probation, (i.e. no chemical weapons) (2) Discrimination and non-combatant immunity, (don't kill civilians) (3) Proportionality, (don't drop a 2,000 lb. bomb in a neighborhood to kill a sniper) (4) Benevolent quarantine of prisoners of war, (if the enemy surrenders you must take him prisoner and treat him humanely) (5) No means *Mala in Se* (Soldiers may not use weapons or methods that are inherently evil), (6) No reprisals (if someone breaks the rules, it doesn't mean you can too).[35] The U.S. states that it adheres strictly to the laws of war, and is therefore justified in its prosecution of the war against Al-Qaeda and associated forces.

Although the U.S. claims to stand on firm legal footing with its use of lethal targeting, there are dissenting voices who say that the U.S. is not really at war with Al-Qaeda. Proponents of the law enforcement mode of combating terrorism argue that nation states do not go to war with non-state actors, and therefore the state's pursuit of a terrorist organization should not be considered within state of war framework. They emphasize that there is no provision within article 51 of the U.N. charter that allows one nation state to attack non-state actors within the borders of another state without it being

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the U.S. and Israel). The primary defense of targeted killing under *Jus ad Bello* is that killing of a terrorist who claims a license to kill others he considers himself to be at war with, yet claims civilian status when the military is looking for him is the functional equivalent of killing an enemy combatant. Thus the state may kill known terrorists on sight just as they would kill enemy soldiers in a conventional war. For more reading on Just War Theory, IHL, and Targeted Killing See: Walzer, M. (1977). *Just and unjust wars: A moral argument with historical illustrations*. New York: Basic Books. Orend, B. (2006). *The morality of war*. Peterborough, Ont: Broadview Press. Finkelstein, C. O., Ohlin, J. D., & Altman, A. (2012). *Targeted killings: Law and morality in an asymmetrical world*. Oxford: Oxford University Press. Melzer, N. (2008). *Targeted killing in international law*. Oxford: Oxford University Press.

[35] Orend, Brian, "War", *The Stanford Encyclopedia of Philosophy* (Fall 2008 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2008/entries/war/>.

viewed as an attack on the host-nation itself. [36] Thus, any action against non-state actors (who cannot be considered enemy combatants) must be coordinated through the host-nation government, with an emphasis on capture and prosecution. Proponents of the law enforcement approach point to the Geneva Convention position on non-combatants which states "the lawfulness of deprivation of life for punitive (or pre-emptive) purposes is inconceivable without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples"[37] as evidence that a state cannot kill an individual without some form of qualified judicial review.

According to law enforcement proponents the only time that the use of extra-judicial lethal force is authorized under the rule of law paradigm is when the risk to other lives is at its most imminent. In order to be lawful under the normative paradigm of law enforcement, a particular targeted killing must, cumulatively: (1) Have sufficient legal basis in domestic law, which regulates the use of lethal force in accordance with the international normative paradigm of law enforcement. (2) Not be punitive but exclusively preventative in nature. (3) Aim exclusively at protecting human life from unlawful attack. (4) Be absolutely necessary in qualitative, quantitative, and temporal terms for the achievement of this purpose. (5) Be the undesired *ultima ratio*, and not the actual aim, of an operation which is planned, prepared and conducted so as to minimize to the greatest extent possible the recourse of lethal force.[38] For example, an armed gunman in a

[36] Craig Martin, Chapter 8, Targeted Killing, Self Defense, and the Jus Ad Bellum Regime, Targeted Killings, edited by Claire Finkelstein, Jens Ohlin, and Andrew Altman, Oxford Press, 2012,

[37] Geneva Conventions (1949, August 12). Convention (IV), Art 3(1) relative to the Protection of Civilian Persons in Time of War.

[38] Nils Melzer, Targeted Killing in International Law, p. 239, Oxford NY, 2008.

confrontation with police who have complete control of the perimeter is not subject to targeted killing unless he is physically in the mode of pointing his weapon at an officer or another civilian (i.e a hostage situation). From this point of view the state use of lethal targeting against terrorists who have in the past carried out attacks or are engaged only in the planning an attack is illegal.

While the debate about the legality of lethal targeting continues within academic and legal circles, so long as the U.S. does not grossly violate the tenants of IHL, it seems unlikely that it will face any form of international condemnation for its actions.[39][40] Therefore, we must conclude that in its current form the U.S. lethal targeting program is legal and move on.

Is It Moral?

While legal scholars continue the debate over whether targeted killing of non-state actors is permissible under international law, moralists have begun to argue that limited actions like targeted killing actually represent a new category of just war theory known as *jus ad vim* (the just use of force). Just war theorist Michael Walzer states that

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[39] A Possible example of such a violation would be the purported use of so-called "double tap" strikes, or follow-up strikes targeting the compatriots of those hit in the initial attack. Such strikes are well-outside the lines of IHL which provides strong protections for individuals rendering first aid to the wounded. When asked about the practice, Christof Heyns the U.N. Special Rapporteur on extrajudicial, summary, or arbitrary executions stated that *"secondary strikes on rescuers who are helping (the injured) after an initial drone attack, those further attacks are a war crime."* The U.S. does not acknowledge that it engages in this practice, but any strongly-backed evidence that it does would likely lead to widespread international condemnation. Bowcott, O. (2012, June 21). Drone strikes threaten 50 years of international law, says UN rapporteur, The Guardian. Retrieved at http://www.theguardian.com/world/2012/jun/21/drone-strikes-international-law-un

[40] Kevin Heller also argues that there are a number of situations where the U.S. employment of signature strikes can and should be considered "legally inadequate." These include, targeting of military age males in an area of known terrorist activity, consorting with known militants, armed men traveling in trucks in AQAP-controlled areas, and suspicious camps in AQ controlled areas. Heller, K. J. (February 15, 2013). 'One Hell of a Killing Machine': Signature Strikes and International Law. *Journal of International Criminal Justice, 11,* 1, 89-119.

jus ad vim defined as actions involving the limited use of force short of war, is

characterized by "a diminished risk to one's own troops, a destructive outcome that is

more predictable and smaller in scale, a lower risk of civilian casualties, and a lower

economic and military burden."[41] The Obama administration clearly believes that it is

operating under this paradigm when John Brennan argues that

> They (UAVs) can be a wise choice because they dramatically reduce the danger
> to U.S. personnel, even eliminating the danger altogether. They are also a wise
> choice because they dramatically reduce the danger and with the safety of
> distance--might actually have a clearer picture of the target and its surroundings,
> including the presence of innocent civilians.[42]

However, under Walzer's framework, this limited application of force must be evaluated

under the same umbrella of moral justification as full-scale war.[43] This would mean that

the U.S. could be morally justified in its use of targeted killing only as a means of last

resort. In their 2013 article Daniel Brunstetter, and Megan Braun challenge this notion

by arguing that *jus ad vim* is morally distinctive, and not merely a set of actions which

ultimately lead to war. Rather it represents "an alternative set of options to the large

quantum force associated with war."[44] They argue that the moral bar within *jus ad bellum*

to use force only as a method of last resort is lowered under *jus ad vim* to allow force

when an imminent threat exists, and conditions preclude the option of policing measures.

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[41] Walzer, M. (1977). *Just and unjust wars: A moral argument with historical illustrations*. New York: Basic Books

[42] Brennan, J. Assistant to the President for Homeland Security and Counterterrorism (2012, April 30) As Prepared for Delivery, Woodrow Wilson International Center for Scholars

[43] During wartime, targeted killing of terrorists, defined as (a) someone who does not identify himself as a combatant, (b) uses immoral violent means (as in the deliberate killing of civilians, and (c) pursues an unjust political cause is deemed to be morally permissible and no different than the killing of enemy combatant soldiers. Fernando Teson, Chapter 15, Targeted Killing in War and Peace: A Philosophical Analysis, Targeted Killing, edited by Claire Finkelstein, Jens Ohlin, and Andrew Altman, Oxford Press, 2012.

[44] Brunstetter, D., & Braun, M. (March 14, 2013). From Jus ad Bellum to Jus ad Vim: Recalibrating Our Understanding of the Moral Use of Force. *Ethics & International Affairs, 27,* 1, 87-106.

In addition, some argue that it is morally preferable to employ targeted killing rather than to physically invade a country in order to root out terrorists. They note that the former option inevitably leads to widespread human misery and the deaths of many who are minimally (if at all) involved in terrorism.[45] In this view, the administration's use of targeted killing as a limited response to terrorism is morally acceptable.

Brunstetter and Braun do however note a number of reasons why this view is problematic. First, they point out the argument that the reliance on technology to decrease the risk to U.S. soldiers often transfers the risk to noncombatants.[46] This is certainly applicable in the case of UAV strikes where U.S. personnel face no risk, while risking civilian lives in every event. In addition they point out the realistic possibility that the "technology that permits jus ad vim actions, if not governed appropriately, empowers strong states to use force in ways to further their own security and interests, while placing weak states at their sufferance."[47] In this view, the ability to carry out operations under jus ad vim conditions serves only to further the interests of strong states and is ultimately destabilizing to notions of international order. Finally, the authors note the danger that states may be tempted to discard any pretense of using targeted killing as a means of last resort, instead utilizing it as the default tactic and "Thus the use of jus ad vim as a means to enhance a state's capacity to act on just cause proportionately and discriminately may lead to its propensity to do the opposite."[48] They point out that the U.S. employment of signature strikes against individuals and groups based on a

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[45] Statman, D. (January 01, 2004). Targeted Killing. *Theoretical Inquiries in Law, 5,* 1, 179-198.

[46] Shaw, M. (December 01, 2002). Risk-Transfer Militarism, Small Massacres and the Historic Legitimacy of War. *International Relations, 16,* 3, 343-359.

[47] Brunstetter, D., & Braun, M. Supra 43. p. 92

[48] Brunstetter, D., & Braun, M. Supra 43. p. 95

suspicious pattern of behavior is an example of such an expansion, and is the most morally problematic feature of the U.S. targeted killing program.

It seems therefore that the U.S. use of targeted killing can be found morally permissible, particularly when viewed as an alternative to full-scale invasion. However, the recent turn to signature strikes is less acceptable as any claims as to the intent of the targeted individual would be dubious at best.

Is It Effective?

Noted realism theorist Kenneth Waltz would argue that questions of legality and morality have little importance when compared to the question of efficacy. In a world characterized by anarchy, realists argue that states must evaluate policy decisions on their relative ability to increase the state's security.[49] The question of whether the policy of lethal targeting increases or decreases or has no effect on state security is the most hotly debated of the three questions on the issue. As with most questions of this nature, the answer is complicated and may depend on who is being targeted. Much of the debate

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[49] A realist in the tradition of Thucydides, Machiavelli, and Hobbes would not engage the discussion of under what circumstances state sponsored targeted killing is justified. Rather, the realist would argue that international law and moralism are moot, and that strong states are going to take the action they perceive to be in their best interest to include the targeted killing of individuals regarded as hostile and dangerous. A normative realist operates under the basic assumption that although it may be nice to be nice, the world is inherently dangerous and nice states (or individual actors) often lose. Therefore, the state has no choice but to ignore moral or legal constraints when dealing with perceived threats. From an analytical standpoint, despite the promise of collective security offered under by the U.N. and international law, the majority of states are unwilling to trust their security to others. Therefore, as Alan James argues, "the U.N. is fundamentally nothing more than an association of sovereign states; each member will, (should) be trying to use the U.N. to further its own interests." For further reading on realist thought see: Waltz, K. N. (1979). *Theory of international politics*. New York: Random House. John Mearshimer, The False Promise of International Institutions, in Michael Brown, et al, eds, The Perils of Anarchy: Contemporary Realism and International Security, Cambridge MIT Press, 1995. pp. 356 Alan James, The Secretary General as an Independent Political Actor, in Benjamin Rivlin and Leon Gordenker, eds., The Challenging Role of the UN Secretary General: "Making the Most Impossible Job in the World Possible, Westport Conn, Praeger, 1993, p. 24

centers on the lethal targeting of High Value Individuals, (HVIs) who represent the senior leadership of terrorist organizations. Some have argued convincingly that the mortality rate of terrorist organizations increases significantly when the leadership is killed within the first two years of a terrorist group's formation; [50] while others contend that so-called "decapitation strikes" are counterproductive[51] and actually increase the intensity of terrorist activity.[52]

As the debate over the lethal targeting of HVIs continues, there is also growing discord over the U.S. practice of targeting unidentified militants based on their patterns of behavior and associates.[53] Commonly referred to as "signature strikes," these attacks are

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[50] Price, B. C. (January 01, 2012). Targeting Top Terrorists: How Leadership Decapitation Contributes to Counterterrorism. *International Security, 36,* 4, 9-46. Johnston, P. B. (January 01, 2012). Does Decapitation Work? Assessing the Effectiveness of Leadership Targeting in Counterinsurgency Campaigns. *International Security, 36,* 4, 47-79. Both Price and Johnston argue against the academic consensus that targeted decapitation of terrorist leaders does not work and may in some cases be counterproductive. In separate articles Price and Johnston take academia to task for employing inappropriate research methods that result in questionable assertions about the ineffectiveness of targeted decapitation strikes. Using statistical analysis, both Price and Johnston arrive at a similar conclusion: decapitation strikes against terrorist organizations and in particular strikes against religious terrorist organizations can be very effective. Price argues that due to the unique nature of the leader of a terrorist organization (i.e. sole interpreter of the religious justifications, failure to share command responsibilities with subordinates for fear of being killed and replaced, etc.) a decapitation strike particularly within the first two years of a terrorist organization's existence can increase that organization's mortality rate by almost 80%. Both Price and Johnston acknowledge that decapitation strikes are not "silver bullets" and must be considered only as one tool in the belt of governments engaging in counter-terror operations. However, they conclude with the unavoidable finding that these strikes can be shown to be effective, and as a result are likely to be continued.

[51] Retired General Stanley McChrystal who led the U.S. military in Afghanistan has stated: "The resentment created by American use of unmanned strikes ... is much greater than the average American appreciates. They are hated on a visceral level, even by people who've never seen one or seen the effects of one." Alexander, D. (2013, January 7). Retired general cautions against overuse of "hated" drones. Reuters. Retrieved at http://www.reuters.com/article/2013/01/07/us-usa-afghanistan-mcchrystal-idUSBRE90608O20130107

[52] Pape, R. A. (2005). *Dying to win: The strategic logic of suicide terrorism*. New York: Random House. Kaplan, E., Mintz, A., & Mishal, S. (October 01, 2005). What happened to suicide bombings in Israel? Insights from a terror stock model. *Peace Research Abstracts Journal, 42,* 5.)

[53] Although considered common knowledge by those familiar with the topic of lethal strikes, the U.S. does not officially acknowledge that it employs this tactic.

seen alternatively as either key to gains in Afghanistan and Yemen[54] or ineffective, and

setting a dangerous precedent that will cause future problems for the U.S.[55]

While questions about the legality, morality, and effectiveness of targeted killings

remain, the U.S. has categorically embraced them as essential to the fight against Al-

Qaeda and its associated forces. Is this due, as Klaidman and others argue to the closure

of Guantanamo and resultant lack of detention options?   Or, as with most things in the

world is the answer considerably more complex?

Next we will examine the evolution of UAVs as the preferred targeted killing

platform, and the logistical challenges presented by actually getting them to the target.

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[54] "Clearly, one of the main obstacles to US success is the support for the Afghan Taliban that continues to flow out of Pakistan's FATA and surrounding districts. Thus, in President Obama's words at the end of his 60-day review of US policy in the region: 'The core goal of U.S. must be to disrupt, dismantle, and defeat al-Qaeda and its safe havens in Pakistan.' The drones are the only viable direct and immediate means he has to attack the safe havens. So there are powerful reasons to expand the strikes, both intensifying the rate of attacks and broadening the targets." Plaw, A., & Fricker, M. S. (November 01, 2012). *Tracking the Predators: Evaluating the US Drone Campaign in Pakistan. International Studies Perspectives, 13, 4, 344-365.* Shane, S. (2012, September 29). Yemen's Leader Praises U.S. Drone Strikes, The New York Times. Retrieved at http://www.nytimes.com/2012/09/29/world/middleeast/yemens-leader-president-hadi-praises-us-drone-strikes.html?_r=0

[55] "The current trajectory of U.S. drone strike policies is unsustainable. Without reform from within, drones risk becoming an unregulated, unaccountable vehicle for states to deploy lethal force with impunity. Consequently, the United States should more fully explain and reform aspects of its policies on drone strikes in non-battlefield settings by ending the controversial practice of "signature strikes"; limiting targeted killings to leaders of transnational terrorist organizations and individuals with direct involvement in past or ongoing plots against the United States and its allies; and clarifying rules of the road for drone strikes in non-battlefield settings."
Zenko, M. (2013, January). Reforming U.S. Drone Strike Policies, Council on Foreign Relations, Special Report No. 65. Retrieved at
http://upstatedroneaction.org/documents/Reports/Thinktank/Drones_CSR65.pdf   Boyle, M. J. (January 01, 2013). The costs and consequences of drone warfare.*International Affairs, 89,* 1, 1-29.

CHAPTER III

IMPACT OF UAV AVAILABILITY ON TARGETED KILLING

There were not enough assets in this half of the galaxy for what they were asking for in
Iraq. If we'd had 2,000 Predators, there were enough people asking for Predator time in
Iraq that they could have used all 2,000. It was insane.[56]

In this chapter we will see that the lack of hellfire-capable UAVS or "birds" and

bases for operations in Pakistan, Yemen, and Somalia placed significant constraints on

U.S. policy-makers prior to 2008. In other words U.S. policy-makers likely wanted to

increase the use of targeted killing in Pakistan, Yemen, and Somalia prior to 2008, but

lacked the military resources to do so. After 2008, a number of factors combined to

sharply increase the availability of UAVs for the purposes of targeted killing. These

factors included an increase in the supply of UAVs, a drop in demand, an increase in the

capabilities of UAVs, and an increase in the number of available bases.

Birds

The Beginning, Kind of

On August 7, 1998 two al-Qaeda truck bombs exploded in front of the U.S.

embassies in Nairobi and Dar es Salaam, killing 224 people. On August 20, 1998 the

U.S. launched over 70 cruise missiles at al-Qaeda bases in Sudan and Afghanistan. The

strikes were ineffective as the camps were almost completely empty when the missiles

hit. This impotency led CIA and military leaders to call for real-time surveillance

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[56] Naylor, S. (2011, November 8). Lack of Human Intel Hampered AQ Hunt in Horn of Africa, *The Air Force Times*. Retrieved from http://www.armytimes.com/article/20111114/NEWS/111140317/Clandestine-Somalia-missions-yield-AQ-targets

capability in Afghanistan to track Bin Laden's movements and coordinate an effective strike. The Predator surveillance UAV, first used in the Balkans[57] emerged as the most effective option.

On September 7, 2000 the CIA utilized a Predator on loan from the Air Force to conduct its first surveillance flight over Afghanistan known as operation "Afghan Eyes." According to testimony provided to the 9/11 commission, Counter-Terror Czar Richard Clarke, CIA Counter-Terrorism Center Director Cofer Black, and CIA Assistant Director of Intelligence Collection Charles Allen were all enthusiastic about the imagery this and follow-on flights gathered.[58] Predator flights may have spotted Bin Laden on two occasions, but neither was a suitable chance for a cruise missile strike. These missed opportunities prompted a call to arm the Predator in order to act on real-time surveillance. As it happened, a small Air Force weapons development and acquisition team known as "Big Safari" was already working to do this. Air Force General John Jumper gave Big Safari "three months and $3 million" to fast-track the program, which produced a working prototype on February 16, 2001.[59] However, the operation was grounded on concerns about the potential for a public relations mess if the Taliban downed a Predator, coupled with questions about the legality of using it for targeted killing, and whether the

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[57] Becker, E. (1999, June 3). Crisis in the Balkans: The Drones; they're unmanned, they fly low, and they get the picture, The New York Times.

[58] National Commission on Terrorist Attacks upon the United States., Kean, T. H., & Hamilton, L. (2004). *The 9/11 Commission report: Final report of the National Commission on Terrorist Attacks upon the United States*. Washington, D.C.: National Commission on Terrorist Attacks upon the United States. p. 190

[59] Boyne, W. (2009, July). How the Predator Grew Teeth. Air Force Magazine. Retrieved at http://www.airforcemag.com/MagazineArchive/Pages/2009/July%202009/0709predator.aspx

CIA or the DOD should bear the cost.[60] All of these concerns evaporated with the attacks of September 11, 2001 and the armed Predator program was given new life.

On November 3, 2002 Lt General Michael DeLong sat on a conference call with CIA director George Tenant. The subject of that call was the real-time imagery flowing into the CENTCOM tactical operations center (TOC) in Tampa, Florida of an SUV traveling along a dusty road 8,000 miles away in Yemen. Tenant confirmed that the occupants of the SUV were Qa'id Salim Sinan al-Harithi one of the masterminds behind the October 2000 attack on the U.S.S. Cole, and American citizen Abu Ahmad al-Hijazi also known as Kamal Darwish, suspected of recruiting the members of the "Lackawana six" terror cell in Buffalo, New York.   Both leaders had watched real-time imagery before, but this time the experimental MQ-1 Predator supplying it had a Hellfire missile attached. DeLong gave the order to shoot, and watched as the missile struck the vehicle killing all six occupants. [61] Five days later a visibly pleased Deputy Secretary of Defense Wolfowitz admitted to the strike saying

> It's a very successful tactical operation, and one hopes each time you get a success like that, not only to have gotten rid of somebody dangerous, but to have imposed changes in their tactics and operations and procedures. And sometimes when people are changing, they expose themselves in new ways.[62]

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[60] National Commission on Terrorist Attacks upon the United States., Kean, T. H., & Hamilton, L. (2004). *The 9/11 Commission report: Final report of the National Commission on Terrorist Attacks upon the United States*. Washington, D.C.: National Commission on Terrorist Attacks upon the United States. p. 211

[61] Johnston, D. & Sanger, D. (2002, November 6).   Threats and Responses: Hunt for Suspects; Fatal Strike in Yemen Was Based on Rules Set Out by Bush. The New York Times. Retrieved from http://www.nytimes.com/2002/11/06/world/threats-responses-hunt-for-suspects-fatal-strike-yemen-was-based-rules-set-bush.html?pagewanted=all&src=pm

[62] Ressa, M. (2002, November 5). Interview with Deputy Secretary of Defense Paul Wolfowitz. CNN International. Retrieved at http://www.defense.gov/transcripts/transcript.aspx?transcriptid=3264

The strike was the first recorded use of a UAV to conduct a targeted killing and was a herald of things to come.[63]

Military leaders and policy makers alike were immediately taken with the tactical and strategic possibilities of UAVs. Military leaders, stymied for years by the practical limits of cruise missiles, envisioned a future when they would no longer have to account for things like flight time to target or guidance system failures. Instead of being forced to rely on notoriously inaccurate human or satellite intelligence to confirm a target's location in a fixed position before launching a strike, military leaders could now continually observe the target over a period of days before striking at the time and place of their choosing; preferably when the target was within the enclosed space of a vehicle. Policy makers were also excited by the possibilities. Less than a decade removed from the failed mission to Somalia, civilian leaders were keen to avoid sending troops into situations where escalation with local populations was a possibility. In addition, when compared with the nearly $100 million price tag of the 75 cruise missiles launched at empty terrorist training camps in Afghanistan in August of 1998, the relatively modest $4 million cost of a reusable Predator UAV equipped with a $50,000 hellfire seemed like a godsend for lawmakers eager to appear fiscally responsible. Everyone was on-board the UAV train and ready to move full-steam ahead. There was just one problem: the Predators weren't really ready to go.

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[63] While many account the Harithi strike as the first use of a UAV as a targeted killing platform, others including Chris Woods at the Bureau of Investigative Journalism argue that the first strike actually occurred in Afghanistan around November 8, 2001. Regardless, these early strikes represent a time when the technology was still in its nascence. Woods, C. (2011, November 21). Ten years since first deadly drone strike, industry gathers in London, TBIJ. Retrieved at http://www.thebureauinvestigates.com/2011/11/21/drone-manufacturers-in-london-on-10th-anniversary-of-1st-strike/

As it turns out, the November 2002 strike was more of a proof of concept for the weaponized UAV than a coming-out party. In fact, by December 2002, the U.S. had just 22 UAVs theoretically capable of mounting, transporting, and launching a 100lb. Hellfire missile. To the uninitiated this number seems like a lot. However, a quick lesson in military logistics will help clarify the issue.

Of the 22 UAVs in the U.S. fleet by December 2002, an undefined number were already configured and dedicated to non-lethal Intelligence, Surveillance, and Reconnaissance (ISR) missions, further reducing the potential pool. Then there was the issue of reliability. At this early point in its development, the Predator's "Class A" mishap rate, defined as the number of accidents resulting in significant damage or total loss per 100,000 hours of flight time, was 32 times higher than the average for manned military aircraft.[64] Perhaps most damning are the Department of Defense's own statistics that show the Predator's average Mission Available Rate (MAR) hovering around 40%. The MAR is a measure of how often a system is in an operable and committable state when the mission is called for at an unknown time. A MAR of 40% is well below the Air Force average of 77%,[65] and means that out of the initial population of 22 Predators capable of delivering Hellfires to a target, a maximum of 9 could be expected to actually take-off, (let alone land safely) at any given time. Adding to the shortage one must also consider that an individual Predator UAV is not a stand-alone

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[64] A number 32 times greater is exceptionally high when you consider that the rate of mishap for manned military aircraft is already 100 times higher than the average for commercial airlines!

[65] Everstine, B. (2013, October 2). Readiness declines in aging, overworked fleet, *Military Times*. Retrieved from http://www.militarytimes.com/article/20131002/NEWS04/310020026/Readiness-declines-aging-overworked-fleet

system. Unlike manned-aircraft, the Predator system is actually comprised of four aircraft and a ground station necessary to maintain 24-hr coverage of a designated area of responsibility known as a Combat Air Patrol (CAP).[66] The idea is that each aircraft flies a 6-hr patrol followed by 18-hrs for refueling and scheduled and unscheduled maintenance. In this manner the entire system is able to maintain "eyes-on" a given target, while maximizing the system's lifespan and reliability. The result of all these factors can actually be placed into an equation that is familiar to military officers charged with the logistics of warfare:

(Total Vehicles x Mission Available Rate) – (Flight Hrs x Mishap Rate) ÷ Number of Vehicles per System = Total Combat Air Patrols (CAPs)

In this case the number of Hellfire capable Predator UAVs available for action in December 2002 is calculated as:

(22 Predators x 40% Mission Available Rate) – (~1000 Flight Hrs x 32/100K) ÷ (4 Aircraft per System) = 2 CAPs

To reiterate, this means that in December 2002 the U.S. had the ability to place a *maximum* of 2 Predator UAVs in the air at any given time. This assumes that the U.S. got lucky and did not experience any "Class A" mishaps that would have reduced the number even further. Recognizing this reality, the agency charged with overseeing the Predator's development, the Office of the Under Secretary of Defense for Acquisitions, Technology, and Logistics estimated in 2002 that it would field its first operational armed

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[66] A 24-hr Combat Air Patrol or CAP is how the Air Force calculates its available air-power in theatre.

Predator squadron in 2008. [67] If military and civilian leaders wanted this technology any sooner they were going to have to pay for it.

Supply and Demand

Predictably money was not an issue. In 2002 forecast outlays for Predator Research Development Testing and Evaluation, (RDT&E) Procurement, (PROC) and Operations and Maintenance (O&M) between fiscal years (FY) 2005 to 2008 was estimated at approximately $1 billion. By 2005 the same budget forecast for Predator development and procurement between FY 05-08 called for spending of $1.365 billion, or an increase of 36%. The additional investment paid-off as the Predator was named Initial Operational Capable, (IOC) defined as when a system reaches its minimally useful deployable form (i.e. personnel are trained to operate it, it can be maintained, etc.) in February 2005. In addition, the Predator's mishap rate had dropped to a mere 20 times the average for manned military aircraft, and its Mission Available Rate had improved to 93%. However with the U.S. now fighting two wars, supply was not keeping up with demand. Despite the improvements, the number of Hellfire-capable UAVs stood at no more than 70. [68] Plugging this number into our battlefield logistics equation yields:

(70 Predators x 93% Mission Available Rate) – (~10k Flight hrs x 20/100k Mishap Rate) ÷ (4 Aircraft per System) = 14 CAPs

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[67] Office of the Under Secretary of Defense for Acquisitions, Technology, and Logistics, 2002-2027 DoD Unmanned Systems Integrated Roadmap

[68] Office of the Under Secretary of Defense for Acquisitions, Technology, and Logistics, 2005-2030 DoD Unmanned Systems Integrated Roadmap

Our equation still lacks one more variable: namely how many are actually deployed to a theater of operations outside of the U.S. Despite being unmanned, UAVs still require pilots to fly them and mechanics to maintain them. Therefore, UAVs are tied to the personnel who make them work. Those personnel require time outside of combat operations for things like training and leave. Therefore it is impossible to assume 100% utilization of all available systems at any given time. While the number of Predator squadrons deployed in 2005 is unavailable, the author feels safe in assuming that no more than 70% of available UAV units were running combat operations at any given time. Adding this variable to the equation yields the following:

(70 Predators x 93% Mission Available rate) x (70% Forward Deployed) – (~10k Flight hrs x 20/100k Mishap Rate) ÷ (4 Aircraft per System) = 11 CAPs

While 11 birds were enough to do some damage had they been employed outside of Iraq and Afghanistan, there was no way that was going to happen. Due to their obvious utility in a counterinsurgency fight, Predators had quickly become the new "it bag"[69] for combatant commanders. Another phenomenon that may not be readily apparent to the uninitiated is the fierce competition for combat enablers that occurs within a theater of operations. In order to adjudicate this competition, a pecking order called the "priority of fires" (POF) is established. The POF is meant to ensure that the highest priority missions receive all of the support that they need to be successful. With an average of two Corps-level and four division-level commands deployed to Iraq and Afghanistan between 2005 and 2008, POF for Predators went something like this: 1.

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[69] "It Bag" is a colloquial term from the fashion industry used in the 1990s and 2000s to describe a brand or type of high-priced designer handbag by makers such as Chanel, Hermès or Fendi that becomes a popular best-seller.

Iraq, 2. Afghanistan, 3. Anywhere in CENTCOM Area of Responsibility outside of Iraq and Afghanistan. In light of this reality it is not surprising to read the complaints of a targeting officer stationed with Combined Joint Task Force-Horn of Africa (CJTF-HOA) in 2006 when he states

> If we'd had 2,000 Predators, there were enough people asking for Predator time in Iraq that they could have used all 2,000. It was insane. And so … unless you could come up with this driving piece of information that said, absolutely, no kidding, this is going to give me something [in Somalia], the answer was, 'I've got a higher priority in Iraq.' So all sorts of assets kept getting sucked into the black hole of Iraq.[70]

As with any finite resource, it never helps to be third in line to receive it.

By 2007 the number of hellfire-capable UAVs had doubled to approximately 140, (See fig 3.1) Mission Availability Rates remained between 90 and 93%, and the mishap rate continued to drop to approximately 15 times the average of manned military aircraft.[71] Once again, let's apply our knowledge of battlefield logistics to see how many were actually available:

(140 Predators/Reapers x 93% Mission Available Rate) x (70% Forward Deployed) – (~80k Flight hrs x 15/100k Mishap Rate) ÷ (4 Aircraft per System) = 20 CAPs

Once again, although the number of CAPs was steadily increasing, so too was the demand. By 2007, the U.S. had over 172,000 troops on the ground in Iraq and Afghanistan and was facing the most lethal year of the Iraq War.

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[70] Naylor, S. (2011, November 8). Lack of Human Intel Hampered AQ Hunt in Horn of Africa, *The Air Force Times*. Retrieved from http://www.armytimes.com/article/20111114/NEWS/111140317/Clandestine-Somalia-missions-yield-AQ-targets

[71] Office of the Under Secretary of Defense for Acquisitions, Technology, and Logistics, 2007-2032 DoD Unmanned Systems Integrated Roadmap
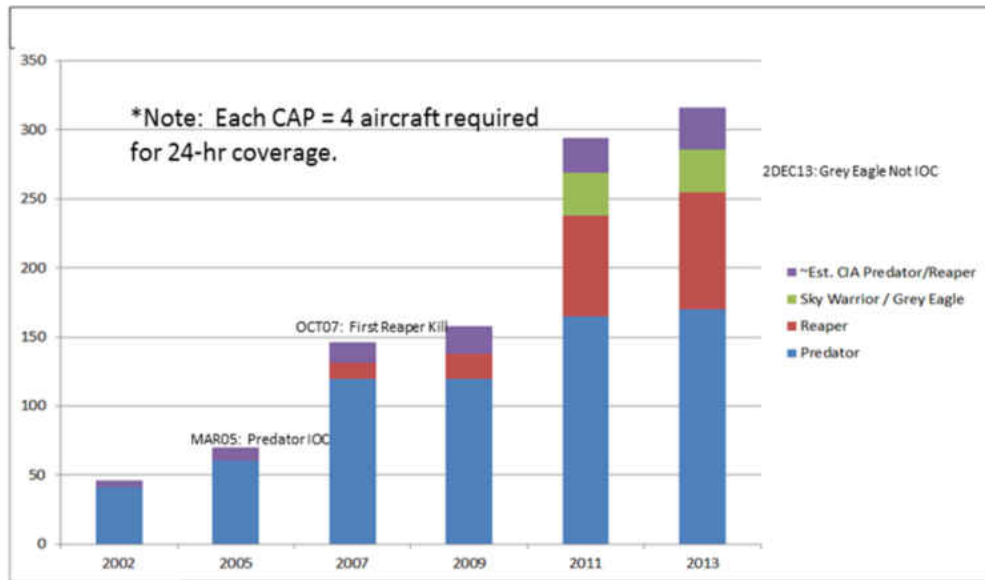
Figure 3.1. DOD & CIA Strike-Capable UAV Inventory 2002-2013
Source: DOD Unmanned Systems Integrated Roadmap 2002-2013.

By 2009 the supply was tipping in favor of those wanting to utilize armed UAVs outside of Iraq and Afghanistan. The Iraq war was beginning its draw-down following the "Surge," of 2007-2008 and troops there were given significantly more restrictive rules of engagement, limiting the utility of armed UAVs. In addition, there were now over 150 munition-capable UAVs in the DoD and CIA inventories with dramatically improved MAR rates flying approximately 25 CAPs.[72] The timing could not have been better for President Obama. Faced with the challenge of how to bring the Taliban to the table on U.S. terms, Obama made UAVs the focus of a campaign targeting enemy fighters in the mountainous region of Waziristan.[73] With the shift in focus away from Iraq, the Priority of Fires shifted to reflect President Obama's policy pivot. Now the POF list for

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[72] (150 Predators/Reapers x 93% Mission Available Rate) x (70% Forward Deployed) – (~100k Flight hrs x 5/100k Mishap Rate) ÷ (4 Aircraft per System) = 25 CAPs. Assuming previously identified 70% forward deployment rate, and 90% operational readiness rate. Office of the Under Secretary of Defense for Acquisitions, Technology, and Logistics, 2009-2034 DoD Unmanned Systems Integrated Roadmap

[73] Plaw, A., & Fricker, M. S. (November 01, 2012). Tracking the Predators: Evaluating the US Drone Campaign in Pakistan. *International Studies Perspectives, 13,* 4, 344-365.

Predator/Reaper variants read: 1. Afghanistan 2. Pakistan 3. Yemen & Somalia. This shift in targeting priority had an immediate effect as the U.S. launched approximately 54 strikes in Pakistan in 2009, doubling the total from 2008.

Finally, by 2011 the game had completely changed. Between the Air Force, Army, and CIA there were now almost 300 munition-capable UAVs in the U.S. arsenal capable of flying 47 simultaneous CAPs.[74] The U.S. had completely withdrawn its forces from Iraq, and by any measure the number of strikes in Pakistan, Somalia, and Yemen were up dramatically.

Bases

Cruising Radius

Having told the story on birds, let's turn to another critical factor in understanding the limitations imposed on UAV implementation prior to 2008. The story of bases is a further limiting condition to the increase in lethal strikes. The first generation hellfire-capable Predator UAV had a limited flight radius of approximately 500 nautical miles, and could not be launched from the deck of an aircraft carrier. Given these limitations, up until late 2007 there were only three bases where U.S. drones could have been stationed in order to reach targets in Yemen and Somalia. In addition, drawing a 500 nautical mile radius atop the available bases from 2001-2007, (see fig 3.2) makes it immediately clear that there were large areas of both Yemen and Somalia that simply

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[74] Under Secretary of Defense for Acquisitions, Technology, and Logistics, 2011-2036 DoD Unmanned Systems Integrated Roadmap
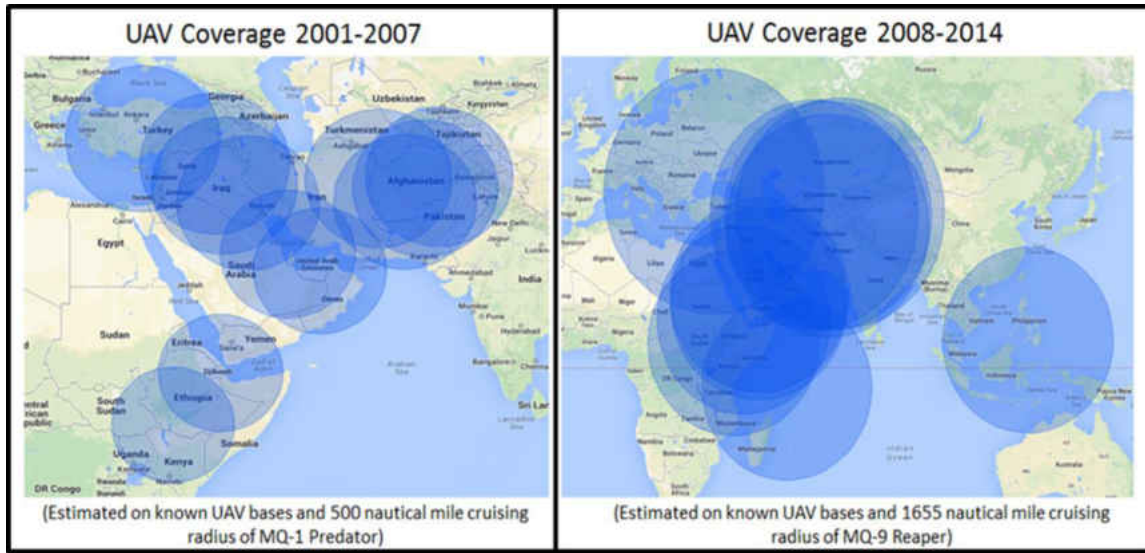
Figure 3.2. Comparative UAV Coverage 2001-2007 vs. 2008-2014

Source: DOD Unmanned Systems Integrated Roadmap 2002-2013.
Zenko M., & Welch E. (2012, May 29). Where the Drones Are, Foreign Policy

could not be covered by armed UAVs during this period.[75] In October 2007 the new

hellfire-capable UAV known as the "Reaper" registered its first kill. The Reaper

represented a marked upgrade, tripling the flight radius to 1,655 nautical miles, and the

weapons payload from 500 lbs. to 3,750lbs.[76]

This increase in payload meant that the Reaper could carry a wide array of both

lethal munitions and non-lethal sensor equipment on the same bird. This eliminated the

need to compartmentalize lethal vs. non-lethal missions by configuring the UAV

beforehand.   The upgrade in capability combined with more bases from which to operate

made the availability of armed UAVs much more likely to be seen as a suitable, feasible,

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[75] Zenko M., & Welch E. (2012, May 29). Where the Drones Are. Foreign Policy Magazine.
http://www.foreignpolicy.com/articles/2012/05/29/where_the_drones_are

[76] Office of the Under Secretary of Defense for Acquisitions, Technology, and Logistics. (2009). 2009-
2034 DoD Unmanned Systems Integrated Roadmap.

and acceptable military solution (as opposed to cruise missiles or manned raids) to the problem of al-Qaeda (AQ) affiliate operations in the region. [77]

Weather

In addition to the issues of base availability and the limited range of first-generation UAVs, weather and issues of territorial sovereignty were also important factors completely limiting the use of UAVs. Both Yemen and Somalia are subject to high-intensity dust storms commonly known as "Shamals" or "Haboobs." These storms frequently ground even the most dedicated U.S. air-assets in the region including UAVs.[78] Although they increase in intensity in the spring and summer months, these storms occur throughout the year, and are a frequent obstacle to U.S. flight operations. One way to overcome the issue of the storms is to have multiple locations from which to launch and recover aircraft. From 2001-2007 there were only three such base locations. By 2011, the U.S. had seven bases available, greatly increasing flexibility to overcome the limiting effects of local environmental factors.

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[77] According to Army Commander and Staff Officer Guide, "military leaders use screening criteria to ensure solutions they consider can solve the problem. Screening criteria defines the limits of an acceptable solution. They are tools to establish the baseline products for analysis. Leaders may reject a solution based solely on the application of screening criteria. Leaders commonly ask five questions of screening criteria to test a possible solution: **Is it suitable?**—Does it solve the problem and is it legal and ethical? **Is it feasible?**—Does it fit within available resources? **Is it acceptable?**—Is it worth the cost or risk? **Is it distinguishable?**—Does it differ significantly from other solutions? **Is it complete?**—Does it contain the critical aspects of solving the problem from start to finish? Headquarters, Department of the Army, (2011, September 14). ATTP 5-0.1 Commander and Staff Officer Guide, Retrieved from http://armypubs.army.mil/doctrine/DR_pubs/dr_a/pdf/attp5_0x1.pdf

[78] Predictably these assets are helicopters dedicated to Air Medical Evacuation (MEDEVAC) of casualties. These flights are known to take-off in hazardous conditions that would ground any civilian flight along with combat patrols. However, during the wars in Iraq and Afghanistan the catastrophic effects of sand and dust on both visibility and equipment would routinely place MEDEVAC aircraft in a no-fly or "Red" status, forcing troops to evacuate casualties via ground transportation.

Host Nation Concerns

Further, issues of territorial sovereignty can greatly limit military flexibility. In February 2007, after reports surfaced that the U.S. had launched at least two attacks on Somali militants from its airbase at Arba Minch, the Ethiopian government expelled the U.S. forces.[79] The closure severely curtailed U.S. overflight capability in Somalia, and required nearly four years of careful diplomacy before the U.S. was allowed to return. Today the U.S. uses the Arba Minch airbase as a primary launching point for UAV flights into Somalia, but the incident underscores another potential constraint on UAV operations in the region. In addition the continued presence of U.S. UAV's in countries like Seychelles, and the Philippines is contingent upon their use for *surveillance* operations only. Should it come out that an armed operation took place from one of these countries, it is likely that the U.S. would lose access to these bases.

Host nation concerns about the safety of the UAVs can also play a role. Between 2011 and 2014 there were seven crashes involving Predator and Reaper variant drones flying from airbases in Djibouti and the Seychelles. These crashes had a real effect on U.S. operations. All UAV flights in the Seychelles were grounded in November 2012 after two Reapers crashed there in five months.[80] Then, in September 2013 U.S. forces

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[79] It is highly likely that the Ethiopian government was well-aware and even welcomed U.S. combat flights operating from within its borders in support of the Ethiopian invasion of Somalia in late 2006. However, the public revelation that the U.S. was launching lethal strikes from within Ethiopian borders likely required the expulsion to maintain internal credibility. Gordon, M. & Mazzetti, M. (2007, February 22). U.S. used bases in Ethiopia to hunt Al Qaeda in Africa - Africa & Middle East, The New York Times. Retrieved at http://www.nytimes.com/2007/02/23/world/africa/23iht-web-0223somalia.4695638.html?pagewanted=all

[80] Whitlock, C. (2012, November 30). Drone crashes mount at civilian airports, *The Washington Post*. Retrieved at http://www.washingtonpost.com/world/national-security/drone-crashes-mount-at-civilian-airports-overseas/2012/11/30/e75a13e4-3a39-11e2-83f9-fb7ac9b29fad_story.html

were forced to relocate drone operations in Djibouti to a remote airstrip away from civilian population after five crashes in a two-year period.[81]

UAV limitations, environmental disruptions, and changeable host-nation support for operations all help to explain why the U.S. was limited in its ability to conduct lethal strikes using UAVs out of the three bases it operated in the region prior to 2008. These factors also help to explain why the U.S. continues to expand its UAV basing options despite achieving what appears to be redundant coverage in the region by 2012.[82]

Conclusion

This chapter has shown that the lack of hellfire-capable UAVs and bases for operations in Pakistan, Yemen, and Somalia placed significant constraints on U.S. policy-makers prior to 2008. It then showed that the increase in availability of UAVs after 2008 allowed for a rapid expansion of the U.S. targeted killing program. Therefore, we have additional evidence that the surge in targeted killings beginning in 2008 was not a function as Klaidman argues of a policy change, but rather of a lack of opportunity prior to 2008, and an increase in opportunity thereafter. In the next chapter we will examine how evolving legal treatment of terror suspects steadily increased the lethality of the U.S. approach.

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[81] Whitlock, C. & Miller, G. (2013, September 24). U.S. moves drone fleet from Camp Lemonnier to ease Djibouti's safety concerns, *The Washington Post*. Retrieved at http://www.washingtonpost.com/world/national-security/drone-safety-concerns-force-us-to-move-large-fleet-from-camp-lemonnier-in-djibouti/2013/09/24/955518c4-213c-11e3-a03d-abbedc3a047c_story.html

[82] In 2013 the U.S. announced that it would open a new UAV base in Niamy, Niger in order to support French-led operations against AQ affiliated militants in Mali. The base gives the U.S. capability to expand UAV coverage into the majority of western Africa. Schmitt, E. (2013, February 22). New Drone Base in Niger Builds U.S. Presence in Africa, The New York Times. Retrieved from http://www.nytimes.com/2013/02/23/world/africa/in-niger-us-troops-set-up-drone-base.html?pagewanted=all&_r=0.

CHAPTER IV

THE EXECUTIVE'S EVOLVING LEGAL APPROACH TO TERROR SUSPECTS &

THE INCREASE IN LETHALITY

> After the chaos and carnage of September the 11th, it is not enough to serve our enemies with legal papers. The terrorists and their supporters declared war on the United States. And war is what they got[83].

On February 26, 1993 Ramzi Yousef, the nephew of Khalid Sheikh Mohammed parked a van laden with explosives in the parking garage below New York's World Trade Center. The explosion killed six, wounded over 1,000 and marked the beginning of United States' long and challenging struggle with Al-Qaeda and its associates. The U.S. response to Al-Qaeda and its affiliates can be broken into three distinct epochs that are characterized by shifting views within the executive branch on the best legal way to treat terror suspects: The law enforcement epoch which lasted from 1993 until the attacks of September 11, 2001, the interrogation epoch from 2001 until 2007, and the drone war epoch from 2008 until the present day. This chapter will argue that the relatively small increase in targeted killing during the interrogation epoch can be explained by the focus on interrogation, coupled with the lag in UAV availability. Furthermore, it will argue that the drone war epoch began with the legal defeat of the Bush administration's detention and interrogation programs, combined with a surge in UAV availability. We will see that the drone war epoch has been characterized by an increase in the frequency of personality strikes, and the massive expansion of signature strikes. Finally it will

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[83] United States., & Bush, G. W. (2005). *State of the union message: Message from the President of the United States transmitting a report on the state of the union*. Washington: U.S. G.P.O.

highlight the continued relevance of the U.S. criminal court system, and the Department of Justice's attempts to increase its ability to try both domestic and international terrorists.

The Law Enforcement Epoch (1993-2000)

The response to the 1993 World Trade Center bombing was categorically different than the attacks that brought the same buildings down less than a decade later. In the immediate aftermath of the attacks, a massive response from local, state, federal, and international law enforcement began the search for the individuals responsible for the attack. Within two weeks, the FBI had arrested four out of eight total identified conspirators within U.S. borders. From there the hunt went international. With cooperation from local intelligence and law enforcement personnel, the U.S. secured the capture and extradition of three additional conspirators from Egypt, Pakistan, and Jordan. Every defendant in the case was found guilty and sentenced to 240 years in prison.[84]

The response to this attack is hailed by proponents of the law-enforcement paradigm as an example of the effectiveness of U.S. civilian law-enforcement and international cooperation. However, the attacks and plots kept coming. In 1995 the Philippine National Police disrupted an Al-Qaeda plot to bomb 11 U.S. airliners and crash another into the CIA headquarters. In 1998 Al-Qaeda bombed the U.S. embassy buildings in Kenya and Tanzania killing 240 people. The U.S. response to this attack included the launching of over 70 cruise missiles at Al-Qaeda bases in Sudan and Afghanistan. The missile attacks were largely ineffective and seen more as a show of

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[84] (2014, April 5). 1993 World Trade Center Bombing Fast Facts, CNN. Retrieved at:
http://www.cnn.com/2013/11/05/us/1993-world-trade-center-bombing-fast-facts/

force, but were a signal that the U.S. was willing to entertain military options to extend its reach into territory outside the control of cooperative governments. In 1999 authorities in the U.S. and Jordan stopped a plot to attack Americans at millennial activities in Jordan and at Los Angeles International Airport. Finally, in October, 2000 al-Qaeda operatives attacked the U.S.S. Cole while at port in Aden. In total the U.S. brought indictments against approximately 40 members of Al-Qaeda in connection with these attacks and plots, and was able to capture and secure convictions on 20 of them prior to September 11, 2001 (see Table 4.1).

Table 4.1. Status of Al-Qaeda Terrorists Indicted for Crimes 1993-2000					
Terror Suspects for AQ Crimes '93-'00	Arrested	Convicted	Guantanamo	Killed	At Large as of 9/10/01
40	20	20	0	0	20

With the exception of the 1998 cruise missile attacks the U.S. largely eschewed the use of targeted killing during this epoch as a means of dealing with Al-Qaeda and its affiliates. Instead, America's demonstrated preference was to deal with each terrorist on a case-by-case basis through civilian law-enforcement and partner nation relationships. Less than a year after the attack on the U.S.S. Cole, that would begin to change.

The Interrogation Epoch (2001-2007)

The attacks of 9/11 marked the shift from the law-enforcement to the interrogation epoch. By 2007, two of the 20 individuals who had escaped capture and trial for crimes committed during the law enforcement epoch would be held in

extrajudicial detention in Guantanamo, and another four would be dead as a result of

direct action with U.S. forces or targeted strikes (see Table 4.2).

Table 4.2. Status of Al-Qaeda Terrorists Indicted for Crimes 1993-2000					
Terror Suspects for AQ Crimes '93-'00	Arrested	Convicted	Guantanamo	Killed	At Large as of 12/31/07
40	20	20	2	5	13

Viewing law-enforcement as inadequate to combat the threat President Bush remarked in

his 2005 state of the union address:

> I know that some people question if America is really in a war at all. They view
> terrorism more as a crime, a problem to be solved mainly with law enforcement
> and indictments. After the World Trade Center was first attacked in 1993, some
> of the guilty were indicted and tried and convicted and sent to prison. But the
> matter was not settled. The terrorists were still training and plotting in other
> nations and drawing up more ambitious plans. After the chaos and carnage of
> September the 11th, it is not enough to serve our enemies with legal papers. The
> terrorists and their supporters declared war on the United States. And war is what
> they got.[85]

Within 72 hours of the attack, Congress passed the "Joint resolution to authorize the use

of the United States Armed Forces against those responsible for the recent attacks

launched against the United States." More commonly known as the Authorization for the

Use of Military Force, (AUMF) the document gave the Presidency broad powers to

declare a "War on Terrorism," and bring the military into the fight against Al-Qaeda and

its associates. Now, in addition to civilian law enforcement options, the U.S. had

authorized itself to capture and hold Al-Qaeda fighters in military detention facilities as

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[85] United States., & Bush, G. W. (2005). *State of the union message: Message from the President of the United States transmitting a report on the state of the union*. Washington: U.S. G.P.O.

well as to kill them upon identification consistent with the laws of land warfare.   This

shift from a peacetime legal footing to a wartime stance marked the beginning of the U.S.

targeted killing program, but did not open the floodgates in the way that many outside

observers of the Bush administration may have guessed it would.

The reason for this relative lack of lethality was intelligence. After 9/11, U.S.

military and civilian leadership realized that it had very little in the way of knowledge

about the global workings of Al-Qaeda. As the 9/11 Commission Report states:

> The intelligence community struggled throughout the 1990s and up to 9/11 to
> collect intelligence on and analyze the phenomenon of transnational terrorism.
> The combination of an overwhelming number of priorities, flat budgets, an
> outmoded structure, and bureaucratic rivalries resulted in an insufficient response
> to this new challenge.[86]

The most direct route to gain that knowledge was to capture and interrogate members of

al-Qaeda. In order to do this the U.S. military established an extensive network of

detention centers in Iraq, Afghanistan, and Guantanamo Bay, while the CIA established

multiple so-called "black-sites" around the world. The military detention centers in Iraq

and Afghanistan primarily housed members of the respective nation's insurgent

population or the al-Qaeda in Iraq affiliate, and were required to act in accordance with

all applicable laws of war. By 2005, following an overhaul of the military's detention

system after the Abu Ghuraib torture scandal, all detainees in Iraq and Afghanistan were

subject to a two-week legal review after which time the individual was either charged

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[86] National Commission on Terrorist Attacks upon the United States., Kean, T. H., & Hamilton, L. (2004). *The 9/11 Commission report: Final report of the National Commission on Terrorist Attacks upon the United States*. Washington, D.C.: National Commission on Terrorist Attacks upon the United States.

with a crime under the host-nation's laws or released.[87] This system allowed for the

eventual transfer of all detainees in U.S. custody to the host nation. This process was

complete in Iraq by December 2011, and is ongoing in Afghanistan.

Whereas detention centers in Iraq and Afghanistan were meant to combat the

insurgencies in Iraq and Afghanistan, Guantanamo and the CIA black-sites were reserved

for members of Al-Qaeda's international enterprise. Within these extrajudicial facilities,

military and CIA interrogators conducted aggressive "enhanced" interrogations approved

by the Office of Legal Counsel (OLC) and the Secretary of Defense aimed at gathering

intelligence to capture top Al-Qaeda leaders and prevent future attacks.[88]

However, a series of Supreme Court decisions eroded the administration's claim

that Guantanamo was an extraterritorial facility and not subject to U.S. law. In 2004 the

court ruled in Rasul v. Bush that Guantanamo detainees could legally challenge their

detention in a court of law. In response, the administration instituted the Combatant

Status Review Tribunal (CRST) process wherein each case was internally reviewed on a

yearly basis, but blocked access to attorney representation and allowed evidence obtained

under interrogation. In the 2006 decision Hamadan v. Rumsfeld, the court ruled that the

administration's planned military commissions violated U.S. and international law. In

addition, it agreed with the plaintiffs that that the protections of the Geneva Conventions

applied to Guantánamo detainees. Finally in the June 2008 ruling Boumediene v. Bush,

the court rejected the CRST process, and again asserted that the detainees must be

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[87] The author spent six months as the administrator of a division-level detention center at Camp Liberty, Iraq from December 2005 until June 2006.

[88] Cole, D., & Sands, P. (2009). *The torture memos: Rationalizing the unthinkable*. New York, N.Y: New Press.

accorded the right to challenge their detention in a real court before a neutral judge.[89]

These landmark decisions would effectively end the use of Guantanamo, with the last

detainee arriving in March 2008.

In addition to the challenges presented by the Supreme Court decisions, the Bush

administration faced growing controversy over whether the "enhanced" interrogation

techniques used on the detainees amounted to torture under U.S. and international law.

By the summer of 2008, a significant minority within Congress was calling for the

appointment of a special prosecutor to investigate the practice, and the acting head of the

OLC issued a memo wherein he stated:

> The federal prohibition on torture, 18 U.S.C. §§ 2340-2340A, is constitutional, and I believe it does apply as a general matter to the subject of detention and interrogation of detainees conducted pursuant to the President's Commander in Chief authority. The statement to the contrary from the August 1, 2002, memorandum, quoted above, has been withdrawn and superseded, along with the entirety of the memorandum, and in any event I do not find that statement persuasive. The President, like all officers of the Government, is not above the law. He has a sworn duty to preserve, protect, and defend the Constitution and to execute the laws of the United States faithfully, in accordance with the Constitution.[90]

The memo was essentially a repudiation of the interrogation practices of the previous

seven years, and effectively marked the end of their use by military and CIA

interrogators.

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[89] (2008, June 12). Boumediene v. Bush / Al Odah v. United States, Center for Constitutional Rights. Retrieved from https://www.ccrjustice.org/ourcases/current-cases/al-odah-v.-united-states

[90] Bradbury, S. (2009, January 15). Re: Status of Certain OLC opinions Issued in the Aftermath of the Terrorist Attacks of September 11, 2001, U.S. Department of Justice. Retrieved at http://www.justice.gov/opa/documents/memostatusolcopinions01152009.pdf

As a result of the focus on intelligence gathering between 2001 and 2007, the Bush administration detained 779 individuals at Guantanamo,[91] and another 136 through extraordinary rendition to black-sites in third party nations.[92] During the same period, the administration authorized a relatively meager 18 targeted strikes, killing approximately 5 HVIs and 216 of their associates.[93] Meanwhile the Department of Justice indicted and tried 194 individuals on federal terrorism charges, securing 62 convictions with an average sentence of 206 months.[94] The numbers reveal that despite a demonstrated willingness to use lethal force against terrorists in Afghanistan and Iraq, the Bush administration's policies resulted in a relatively small expansion of the targeted killing program between 2001 and 2007. 2008 would be different, and marks the transition to the third and final epoch.

The Drone War Epoch (2008-Present)

At the end of 2007 there were 13 remaining suspects who were still at large for crimes committed during the law enforcement epoch. By April, 2014 only four remained. Nine had been killed, and one captured (see table 4.3).

Table 4.3. Status of Al-Qaeda Terrorists Indicted for Crimes 1993-2000					
Terror Suspects for AQ Crimes '93-'00	Arrested	Convicted	GTMO	KIA	At Large as of 4/30/14
40	20	20	2	14	4

[91] Leonard Cutler, Bush vs. Obama Detainee Policy Post-9/11, Strategic Studies Quarterly, pp. 63-87, Summer 2010

[92] Amrit Singh, Globalizing Torture: CIA Secret Detention and Extraordinary Rendition, Open Society Foundations, p. 8, NY, 2013.

[93] Yemen (1), Somalia (7), Pakistan (10)

[94] Greenburg, K. (2007, October). Terrorist Trials, 2001-2007: Lessons Learned. NYU Center on Law and Security. Retrieved at http://www.lawandsecurity.org/Portals/0/documents/08_TTRC2007Update1.pdf

While these individuals represent a small fraction of the total, their deaths are representative of a larger trend towards greater lethality.

Klaidman and others claim that the expansion of targeted killing program has its roots in the closure of Guantanamo and CIA black sites which left no viable detention option for enemy combatants outside of Iraq and Afghanistan. This argument has a flaw. It assumes that the U.S. would have had an interest in capturing and interrogating the majority of the individuals it killed after 2008. There is no doubt that targeted killing of HVIs, (who the U.S. presumably would have liked to detain and interrogate) increased after the closure of Guantanamo. Between 2001 and 2007, the U.S. killed seven HVIs. Since 2008, the U.S. has killed 82 HVIs. What Klaidman *et al* do not account for is that this number is a small fraction of the overall expansion. The majority of those killed since 2008 have not been HVIs. Unknown, low-level militants are not likely to possess much in the way of actionable intelligence, and were simply ignored outside of Iraq and Afghanistan prior to 2008, but were not so fortunate after. Between January 2008 and December 2013, the U.S. killed approximately 887 individuals in targeted strikes in Somalia and Yemen. Of those, 688 or 70% are listed as either "unknown" or "militant."[95] This means that instead of simply killing those it would have captured prior to 2008; the U.S. was now killing many who never would have rated capture to begin with. Why was the U.S. doing this, and how was it justifying it?

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[95] Derived by the author from database aggregation of New America Foundation and Bureau of Investigative Journalism drone strikes.

In January 2008, stung by the failures of its extrajudicial detention and interrogation programs, and buoyed by the increase in the availability of UAVs, the Bush administration quietly negotiated an agreement with Pakistan to increase the intensity of strikes against suspected terrorists operating along the border with Afghanistan. Included within the agreement was the understanding that the U.S. would begin targeting anonymous individuals or groups "that bear the characteristics of al-Qaeda or Taliban leaders on the run." [96] The birth of so-called "signature strikes" marked the true beginning of the expansion of the U.S. targeted killing program. Now, instead of waiting for days or months at a time to identify an individual known to be a terrorist leader, UAV operators and intelligence analysts could nominate a target based solely on his pattern of life. This controversial targeting methodology exponentially increased the number of possible targets, and inevitably led to a rapid increase in the number of lethal strikes.

While the U.S. has never officially acknowledged its use of signature strikes, it has quietly laid some of the groundwork for a legal defense of them. In his May 2013 speech on drones President Obama stated:

> America does not take strikes to punish individuals; we act against terrorists who pose a continuing and imminent threat to the American people, and when there are no other governments capable of effectively addressing the threat. And before any strike is taken, there must be near-certainty that no civilians will be killed or injured -- the highest standard we can set.[97]

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[96] Schmitt, E. & Sanger, D. (2008, February 22). Pakistan Shift Could Curtail Drone Strikes, New York Times. Retrieved at http://www.nytimes.com/2008/02/22/washington/22policy.html

[97] "Obama, B. (2013, May 23). Remarks by the President at the National Defense University. White House Press Office. Retrieved at http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university

The specific language used in this passage is important. First, the use of the term 'imminent and continuing threat' provides the legal foundation for all targeted killing under the self-defense clause of Article 51 of the U.N. Charter. [98] The question of who actually constitutes an imminent threat is critical to the justification of signature strikes, and is answered in the same sentence. That every individual purposefully killed via targeted killing has represented an imminent and continuing threat to *Americans* is a deliberate move to avoid setting boundaries such as "the U.S. homeland." This distinction allows the administration to argue for example that U.S. signature strikes in Pakistan are targeting groups of armed men who represent an "imminent threat" to American troops in Afghanistan.

The DOJ Holds Its Own: Material Support for Terrorism Statute

Although the majority of focus since 2008 has been on those killed in targeted strikes, it is important to note that the U.S. has also quietly continued prosecuting terrorists within the civilian law enforcement system. Despite fits and stutters like the November 2009 failed attempt to try 9/11 mastermind Khalid Sheikh Mohammed in New

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[98] If an individual in another country is engaged in planning acts of terrorism against the U.S., according to international conventions the U.S. must rely on the host-nation to take action against that individual, or seek permission to do so itself. The U.S. is only allowed to take unilateral action if the host-nation is either unable or unwilling to assist. In this case, the host-nation could consider a unilateral incursion as an act of war. Although it has received permission to execute lethal strikes from the governments of Pakistan, Yemen, and Somalia, the U.S. reserves the right to take unilateral action against an individual who poses an "imminent threat" to national security without the permission of the host-state under Article 51 of the U.N. Charter. This argument was challenged in 2013 in a report by the UN Special Rapporteur on extrajudicial, summary, or arbitrary executions which states: The view that mere past involvement in planning attacks is sufficient to render an individual targetable even where there is no evidence of a specific and immediate attack distorts the requirements established in international human rights law. Despite challenges to the legality of its lethal targeting program under international law, the U.S. has been able to continue strikes without significant impediment. In this sense, killing known or suspected terrorists on foreign soil is not particularly difficult. By the same logic, as long as the administration is willing to accept the inherent risk, a unilateral operation to capture a known or suspected terrorist could also be similarly classified.

York, the U.S. Department of Justice has secured terrorist convictions on approximately 150 individuals since 2008.[99] Many of these convictions reflect a willingness on the part of the DOJ to push the envelope of U.S. jurisdiction over terror-related crimes.

Due to the case-by-case nature of the law, there is no catch-all that allows the U.S. to simply capture and try every individual it considers a terrorist in U.S. court. If federal prosecutors are unable to prove that a suspected terrorist's crimes had a U.S. nexus, that individual is not subject to U.S. law, and cannot not have civilian charges levied against him. This makes pre-emptive prosecution particularly problematic as it is difficult to prove the intent of the individual. As a result, the majority of high-profile prosecutions of international terrorists such as those of Abu Ghaith, the son-in-law of Osama Bin Laden, and Anas al-Libi come against individuals who were investigated and indicted for their participation in previous attacks against the U.S.

Perhaps in a bid to overcome some of the difficulty associated with pre-emptive prosecution of terrorists, prosecutors have increasingly cited violations of the "Material Support for Terrorism" Statute 18 USC 2339B of 1996 which makes it unlawful, within the United States, or for any person who is subject to the jurisdiction of the United States anywhere, to knowingly provide material support to a foreign terrorist organization that has been designated by the Secretary of State.[100] As the NYU center for law and security explains it, "material support can range from raising $300 for al-Shabab to attempting to

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[99] The number 150 is extrapolated as a low-side estimate of the total number convicted of jihadist crimes between 2008 and 2014. The last definitive study of the subject conducted by the NYU center for law and security only provides conviction numbers through 2011. In 2011 the number of terror related convictions between 2008 and 2011 stood at 115. Assuming a low-side conviction number of approximately 12 per year, yields a total of 150.

[100] Key to the wording of this statute is that it that it only applies to individuals who are subject to the jurisdiction of the United States, requiring an expansion of that criteria.

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provide anti-aircraft missiles for Al-Qaeda and have included the provision of personnel, communications, technical assistance, and the defendant's person and services."[101] Since 2008 over 80% of terrorism cases have included a material support charge. The use of this statute is significant as it does not require proof of the defendant's intent that the material support go to illegal activities. While most applications of 18 USC 2339B have come against U.S. citizens and permanent residents, usually of Somali origin, there has been one conviction and three pending cases of international terrorists.

On March 8 2010, Mohamed Ibrahim Ahmed was arrested in Nigeria and sent to New York where he was charged with providing and conspiring to provide material support to the militant Somali group, al-Shabab. In March 2013, Ahmed was convicted and sentenced to 9 years in federal prison despite his lawyer's argument that his support for al-Shabab "had nothing to do with the United States."[102] Additionally, on December 21, 2012 three men, Ali Yasin Ahmed, Mahdi Hashi, Mohamed Yusuf were detained by authorities in Djibouti en-route to Yemen.[103] These cases are interesting in that their only link to U.S. jurisdiction is their participation in al-Shabab training, and have ignited a minor controversy over the limits of U.S. jurisdiction and the material support statute. After the men's indictment the U.S. attorney for the Eastern District of New York stated, "We will use every tool at our disposal to combat terrorist groups, deter terrorist activity

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[101] New York University. (2011). *Terrorist trial Report Card: 10 Year Review*. New York, NY: Center on Law & Security, NYU School of Law.

[102] Weiser, B. (2013, March 27). In U.S. Court, a Familiar Argument Over Intentions in Joining a Terrorist Group, The New York Times. Retrieved at: http://www.nytimes.com/2013/03/28/nyregion/mohamed-ibrahim-ahmed-sentenced-in-terrorism-case.html

[103] Whitlock, C. (2013, January 1). Renditions continue under Obama, despite due-process concerns. The Washington Post. Retrieved at http://www.washingtonpost.com/world/national-security/renditions-continue-under-obama-despite-due-process-concerns/2013/01/01/4e593aa0-5102-11e2-984e-f1de82a7c98a_story.html

and incapacitate individual terrorists."[104] Convictions in these cases would further

strengthen the case law of the material support statute. However, while the concept of

broad power to try terrorists may be attractive on the surface, the practicality of such an

approach can certainly be questioned as the attorney for Mohamed Yusuf argues *"the last*

thing in the world we really need to do is apprehend and lock-up 10,000 al-Shabab

fighters or bring them into the court system."[105] Therefore, while the DOJ continues to

seek terrorism convictions, its focus will likely remain on domestic issues, allowing the

DOD and CIA to lead the fight overseas.

Conclusion

The U.S. response to Al-Qaeda and its affiliates has been characterized by a shift

from a sole reliance on law enforcement, to extrajudicial detention and interrogation, and

finally to large-scale targeted killing. The next chapter will examine why the expansion

of the U.S. targeted killing program has not followed a steady upward curve, but instead

has been a story of spikes and troughs.

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[104] Loretta Lynch, U.S. Attorney for Eastern District of New York after indictment of 3 Somali men detained in Djibouti en-route to Yemen with no apparent ties to the United States.

[105] Whitlock, C. (2013, January 1). Renditions continue under Obama, despite due-process concerns. *The Washington Post*. Retrieved at http://www.washingtonpost.com/world/national-security/renditions-continue-under-obama-despite-due-process-concerns/2013/01/01/4e593aa0-5102-11e2-984e-f1de82a7c98a_story.html

CHAPTER V

CONTEXT MATTERS

The elevated threat expanded the scope of people we could go after in Yemen. Before, we couldn't necessarily go after a driver for the organization; it'd have to be an operations director. Now that driver becomes fair game because he's providing direct support to the plot.[106]

UAVs Don't Kill People, People Do

The availability of UAVs and the executive branches' evolving legal approach to terror suspects, explain a great deal about the expansion of the U.S. targeted killing program after 2008. One cannot however, simply extrapolate upon the findings chapters III and IV. If one did, the expectation would be to see a steady upward trend in the number of targeted killings in line with the increase in capacity and increasingly permissive targeting environment (see fig 5.1).

The reality is more nuanced. This chapter argues that UAV availability and the legal approach to terror suspects must be superimposed upon an understanding of current and past events that influence the decision-maker's choice of whether or not to launch a given strike. In other words, each strike is a discrete event. The individual tasked with final authorization for that strike is heavily influenced by both past and current events. As a result, the number of strikes rise and fall as decision-makers are continually influenced by the context they operate within.

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[106] Anonymous DOD Official. Schmitt, E. (2013, August 11). Embassies Open, but Yemen Stays on Terror Watch, *The New York Times*. Retrieved from http://www.nytimes.com/2013/08/12/world/embassies-open-but-yemen-stays-on-terror-watch.html
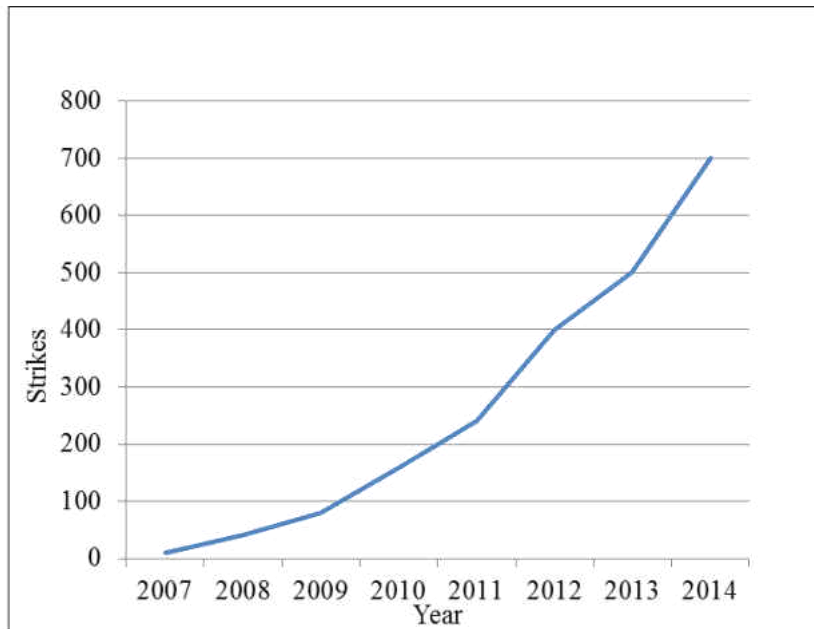
Figure 5.1. Number of U.S. Strikes by Year (Theoretical)

At first glance, the most authoritative charts used by journalists, scholars, and think tanks to chronicle the number of strikes in Pakistan, Yemen, and Somalia tell a familiar story: From 2008 to 2010, the number of strikes in Pakistan rises sharply while strikes in Yemen and Somalia remain sparse. In 2011, the strikes begin to shift away from Pakistan towards Yemen which ends up with the majority in 2012 (See fig 5.2 for a good example).[107] While such charts are useful in to paint the aggregate picture of UAV strikes, there has been little work done to qualitatively analyze them alongside the events that drive them. What follows is an attempt to apply such analysis to the pattern of lethal strikes in the two countries that have received far less attention academic attention than Pakistan: Yemen and Somalia.

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[107] Nearly every chart references an aggregation of the New America Foundation and Bureau of Investigative Journalism drone strike databases. They are considered the most authoritative on the subject. This chart is taken from Rueters.
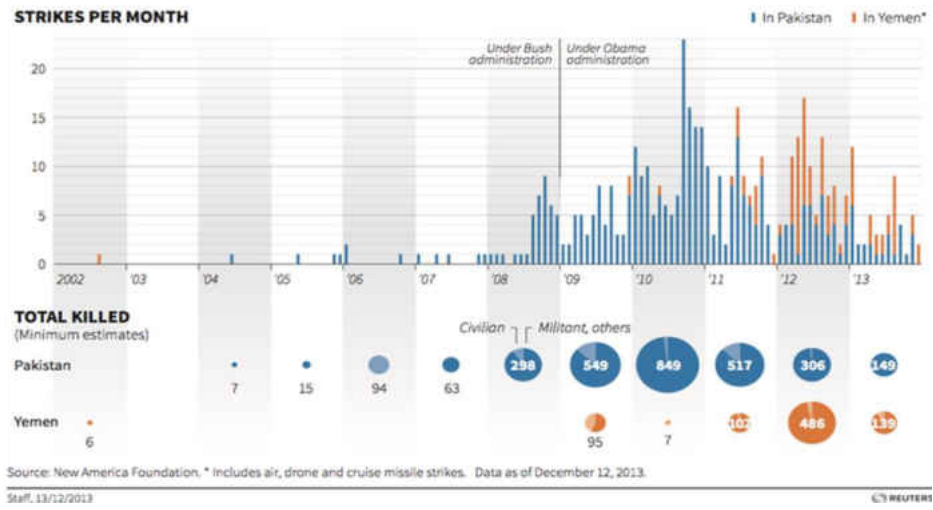
Figure 5.2. U.S. Drone Strikes
Source: Reuters

Yemen

Let us first examine the lethal strike record of Yemen on a month-to-month basis.

Pulling data from the two most respected databases of known and suspected U.S. UAV

strikes,[108] it is immediately apparent that the aggregate increase after 2008 is actually the

result of several discrete spikes (See fig 5.3).

Yemen Spike I: August to October 2011

The first spike in lethal strikes occurred from August to October 2011. During

this three-month period, the U.S. launched eleven strikes, equal to all previous lethal

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[108] The New America Foundation and the Bureau of Investigative Journalism.

strikes in the country combined. Clearly something happened to influence this spike, but

what?
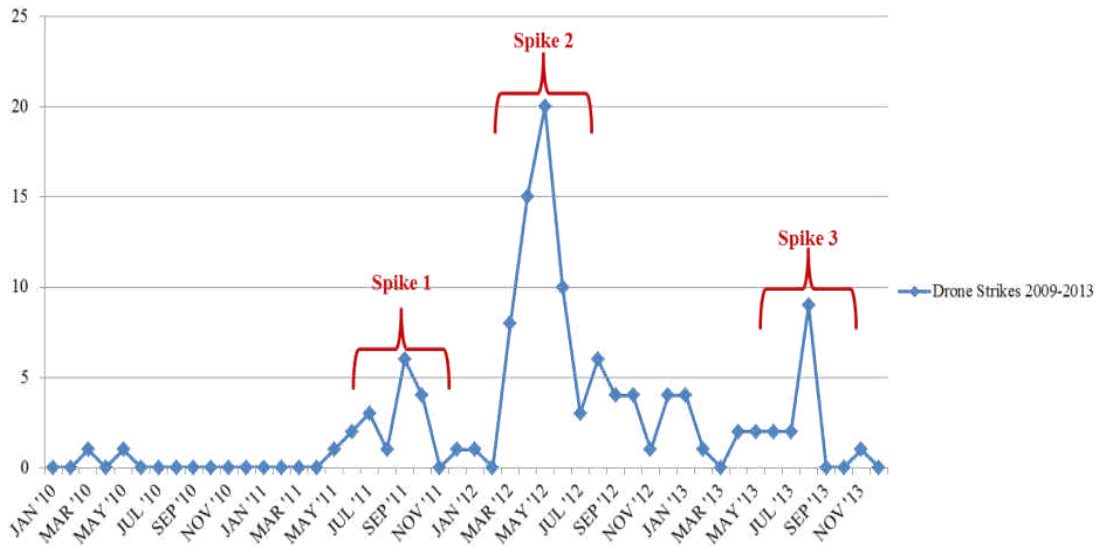
Figure 5.3. U.S. Strikes in Yemen 2009-2013
Source: New America Foundation & Bureau of Investigative Journalism.

In order to understand the real world events that influenced this spike, one must

begin almost eleven years prior, to the October 12, 2000 attack on the U.S.S. Cole. The

Al-Qaeda plot used a small boat laden with explosives to bomb the U.S.S. Cole, a Navy

Destroyer while it rested at anchor in the Yemen port city of Aden. The attack killed 17

sailors and placed Yemen firmly into the consciousness of U.S. decision-makers and

counterterrorism experts. With the assistance of U.S. law-enforcement, the Yemeni

government rounded up two of the alleged perpetrators Nasir Ahmad Nasir al-Bahri, and

Jamel Ahmed Mohammed Ali Al-Badawi. Their trial in Yemen and the resulting

sentences marked the beginning of a long-string of U.S. frustration with the Yemen

government's inability or unwillingness to take decisive action against members of Al-

Qaeda operating within its borders. Of the seven U.S.S. Cole suspects, four were

captured and eventually given full-pardons by the Yemeni government, while an

additional three remained at large until they were killed by U.S. drone strikes. (See table

5.1).

Table 5.1. Disposition of U.S.S. Cole Suspects October 2000 – Present	
Nasir Ahmad Nasir al-Bahri	Captured 2000 by Yemeni authorities. Participated in Jihadist rehab program and released in 2002. **Given a full pardon** and still living in Yemen.
Jamel Ahmed Mohammed Ali Al-Badawi	Captured by Yemeni authorities in 2000 and sentenced to 15 years in prison. Escaped in April 2003 with 10 others including U.S.S. Cole co-conspirator Fahd Mohammed Ahmed al-Quso. He was recaptured later that year and sentenced to death in 2004. On February 2006 Al-Badawi was one of 23 Al-Qaeda fighters who escaped Sana'a prison. In 2007 Al-Badawi surrendered to the Yemeni authorities, and despite an existing $5 million reward offered by the U.S. department of Justice, was **given a full pardon** in exchange for a pledge to renounce terrorist activities.
Jaber El Baneh	Convicted for his role in the attack in 2004. Escaped in 2006 with several co-conspirators. Turned himself in May 2007 and **given full pardon.** Continues to live in Yemen.
Fahd Mohammed Ahmed al-Quso	Captured in 2000. Escaped in April 2003 with 10 others including U.S.S. Cole co-conspirator Jamel Ahmed Mohammed al-Badawi. Recaptured and sentenced to 10 years by Yemeni authorities on September 29th, 2004. Released in 2007. Implicated in the 2009 Underwear Bombing Attack. **Killed by U.S. Drone Strike May 6, 2012.**
Qaed Salim Sinan al-Harethi	Remained at large until **killed in the first lethal drone strike in Yemen on November 3, 2002** along with American citizen Kamel Derwish.
Abdul Mun'im Salim al-Fatahani	Remained at large until **killed by a drone strike in Yemen on February 3, 2012.**
Midhat Mursi	Remained at large until **killed by a drone strike in Pakistan on August 3, 2008.**

The story of the U.S.S. Cole suspects and the resulting lack of faith on the part of

U.S. policy-makers in the Yemeni justice system is the first influencing factor leading to

the U.S.'s 2011 spike in UAV strikes on Yemen targets. After the attacks of September

11, 2001 and the resulting pivot of U.S. interest to the wars in Afghanistan and Iraq, there is little that occurs to influence the spike until September 17, 2008 when Al-Qaeda in Yemen launched a complex attack against the U.S. embassy in Sana'a, Yemen. The attack killed 18 including one American, and was later called 'a wake-up call for all of Washington' by the U.S. Ambassador to Yemen, Edward Hull.[109]

Then, on January 24, 2009 a revitalized Al-Qaeda in the Arabian Peninsula (AQAP) released an online video entitled "From Here We Begin and at Al-Aqsa We Meet." The video announced the merger of the Saudi and Yemeni branches of AQAP under the leadership of Abu Basir Nasir al-Wuhayshi along with former Guantanamo detainee Saeed Ali al-Shihri, and vowed continued action against oil facilities, tourists, and security forces.[110] The video brought Yemen and AQAP back to the forefront of concern of U.S. intelligence and policy-makers.

In response, top U.S. counter-terrorism leaders including CENTCOM Commander General David Petraeus, and Obama administration counter-terrorism czar John Brennan met several times between June and September 2009 with Yemeni president Ali Abdullah Saleh to discuss increased U.S. support for Yemeni counter-terrorism efforts. These meetings ended with the U.S. receiving approval to operate independently within Yemen to pursue AQAP.

Next, on November 5, 2009 U.S. Army MAJ Nidal Malik Hasan entered a pre-deployment medical screening at Ft. Hood, Texas and opened fire killing 13 and wounding 30. In the immediate aftermath it was revealed that Hasan had engaged in

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[109] Hull, E. J., & Grossman, M. (2011). *High-value target: Countering al Qaeda in Yemen*. Washington, D.C: Potomac Books. p. 117

[110] For more detailed information on this see Case Study #1: Saeed Al-Shihri (AKA: Abu Sufyan al-Azdi)

extensive email correspondence with the radical cleric and naturalized U.S. citizen Anwar al-Awlaki. Al-Awlaki had been hiding in Yemen after fleeing the U.S. in 2007 and was at the time of the Ft. Hood shootings considered to be the senior spiritual leader of AQAP.

Quickly on the heels of the Ft. Hood shooting, the U.S. launched an attack using cruise missiles at a suspected AQAP training camp. The attack killed nearly 60 people including at least 44 civilians, and was a diplomatic debacle. Although the Yemeni government took responsibility for the attack, State Department cables released by *wikileaks* would later reveal that this was a covering measure, and President Saleh requested that future strikes be carried out by precision platforms like UAVs in order to minimize civilian casualties. The use of cruise missiles in this instance is an excellent indicator that the general lack of availability of UAVs was still playing a major role in limiting the number of targeted killings outside of Iraq and Afghanistan. Remember from chapter III, that there were only 20 Combat Air Patrols available in 2007 with over 170,000 troops deployed to Iraq and Afghanistan. As a result, Yemen was still relatively low on the Priority of Fire (POF) pecking order at the time; forcing military decision-makers to use less-reliable technology with disastrous consequences. The strike marks the last time cruise missiles were used in Yemen.

On December 25, 2009, 23-year old Nigerian Umar Farouk Abdulmutallab attempted to bring-down Northwest Airlines Flight 253 with a bomb concealed in his underwear. AQAP claimed credit for the failed attempt and hailed it as a success as western governments scrambled to update their airline passenger screening process. [111]

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[111] In his book Intel Wars: The Secret History of the Fight Against Terror, Matthew Aid states that within 72-hours of the 2009 Christmas-Day bombing attempt "more than two dozen CIA and military clandestine

The U.S. specifically tied the attack to al-Awlaki, and in April 2010 placed him on the Joint Prioritized Effects List or JPEL populated by over 2,000 individuals considered to be directly engaged in planning, resourcing, or executing terrorist attacks against the United States.[112] Al-Awlaki's addition to the list meant that he could now be lethally targeted. In May 2010, a UAV under the control of the U.S. Joint Special Operations Command (JSOC) launched a disastrous strike against regional AQAP leader Mohammed Saeed Jardan. The strike missed its target and instead killed Jaber al-Shawbani the deputy governor of the Marib province who was attempting to reconcile Jardan to the Yemeni government. The botched strike caused a massive backlash, particularly in Marib province of Yemen where it sparked an anti-government uprising,[113] and the U.S. did not launch another lethal strike in Yemen for a year.

On October 29, 2010 two packages with bomb material hidden in toner-cartridges were found on separate UPS flights bound from Yemen to the U.S. AQAP quickly claimed responsibility for the attempted bombings and for the crash of UPS Airlines Flight 6. Although the latter claim was never substantiated, the attempted attack added to the sense of urgency within the U.S. counter-terrorism apparatus.

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intelligence officers, SIGINT collectors, and intelligence analysts were put on planes to beef up the CIA station in Sana'a. NSA and its SIGINT partners in Great Britain and Australia immediately began intercepting all international telephone calls going into or coming out of Yemen. The Saleh government gave the CIA permission to conduct daily Predator drone missions over the southern part of the country from Camp Lemonnier in Djibouti, and the U.S. Navy was allowed to begin flying manned reconnaissance missions over southern Yemen from warships stationed offshore. There was also a dramatic influx of Green Berets from the 5th Special Forces Group to intensify the training of Yemeni counterterrorist units at a special training camp in Dhamar Province south of Sana'a." Aid, Matthew M. 2012. *Intel wars: the secret history of the fight against terror*. New York: Bloomsbury Press. (p. 149).

[112] Becker, J. (2012, May 29). Secret 'Kill List' Proves a Test of Obama's Principles and Will, *New York Times*. Retrieved at http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-al-qaeda.html?pagewanted=all&_r=0

[113] Scott, S. & Mazzetti, M. (2010, August 14). Secret Assault on Terrorism Widens on Two Continents. *The New York Times*. Retrieved at www.newyorktimes.com/2010/08/15/world/15shadowwar.html

In the three months prior to our August-October 2011 spike, the U.S. executed six attacks under the control of the Joint Special Operations Command (JSOC). As the strikes were under the control of the DOD, they were subject to a number of legal restrictions including the law of war and the status of forces agreement with Yemen governing U.S. military personnel. At least one of these strikes on May 5, 2011 appears to have been an attempt to lethally target al-Awlaki, but the rest appear to have focused on local AQAP militants fighting against the Yemeni regime rather than internationally known terrorists.

By July 2011, AQAP had exploited instability related to the Arab Spring to seize control of the majority of eastern Yemen (See fig 5.4). As the Obama administration became increasingly concerned that President Saleh would lose control of the country or cede power to a government hostile to the U.S., it took steps to ensure continued UAV access. Key amongst these steps was the decision announced in June 2011 to authorize the CIA to conduct lethal strikes in the country.
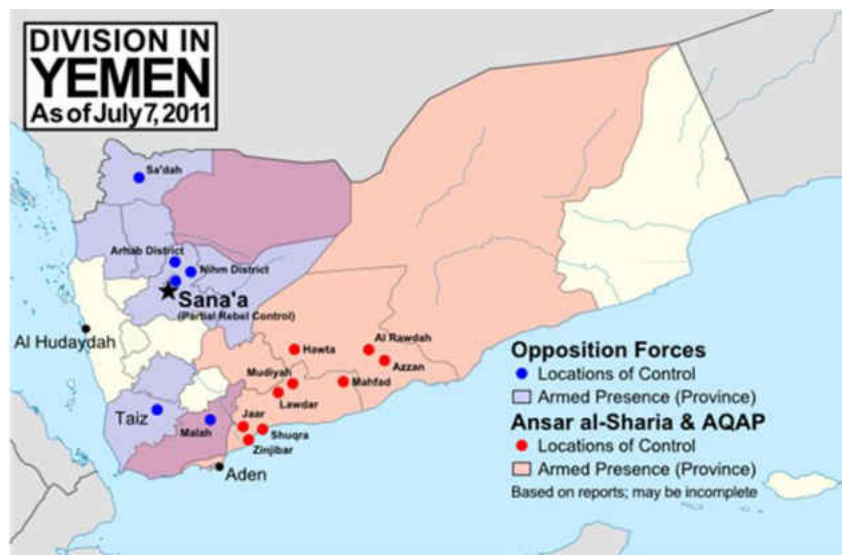
Figure 5.4. Division in Yemen as of July 7, 2011
Source: Political Geography Now

At this point, the U.S. had also completed an additional UAV base in the desert of southern Saudi Arabia from which to launch strikes if its access to Yemen was cut-off.[114] The shift to CIA-led strikes marked a significant change in policy. Previous strikes undertaken by the DOD had to be approved by the Yemeni government and only after ground intelligence confirmed the presence of a named target. The CIA was expected to bring its "pattern of life" targeting philosophy which was first used in Pakistan and targeted individuals and groups based on their behavior over a period of persistent surveillance which was deemed to meet the profile of Al-Qaeda or affiliated militants.[115]

This then is context in sequence. At the beginning of August 2011 U.S. decision-makers faced a resurgent AQAP whose previous actions left no question of its intent to strike U.S. targets. Due to previous mishaps with conventional munitions, those same decision-makers knew that anything but precision strikes would be unacceptable. In addition, they were handed a permissive operating environment as the Saleh government fought to maintain power and welcomed strikes against AQAP as assistance in a civil war. These factors all led to an inevitable conclusion: in the very near future the U.S. was going to use drones to kill a lot more people in Yemen.

Yemen Spike II: March to August 2012

This first spike in strikes culminated in the September 30, 2011 strike which killed Anwar al-Awlaki and fellow U.S. citizen Samir Khan. It was only the beginning.

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[114] Tomlinson, H. & Craig, I. (2011, July 26). Secret drone bases mark latest shift in US attacks on al-Qaeda. *The Times of London.* Retrieved at http://www.thetimes.co.uk/tto/news/world/americas/article3105002.ece

[115] Gorman, S. & Entous, A. (2011, June 14). CIA Plans Yemen Drone Strikes, *The Wall Street Journal*. Retrieved at www.online.wsj.com

By February 27, 2012 popular opposition to President Ali Abdullah Saleh reached a

tipping point and he was forced to cede power to his deputy Abdrabbuh Mansour Hadi

after 33 years of rule.[116] Upon assuming power, President Hadi's first order of business

was to regain territory lost to AQAP. In March 2012 the government offensive began,

marking the second spike in our sequence. In support of Yemeni military operations, the

U.S. launched 62 strikes from March to August 2012 killing over 400. Amongst those

killed were key AQAP figures like Mohammed Al-Umda, the fourth most wanted

terrorist in Yemen, Muhammed Fazi al-Harasheh the nephew of Abu Musab al-Zarqawi,

Fahd al-Quso, a key U.S.S. Cole suspect, and Abdulrahman al-Wuhayshi, the younger

brother of AQAP's leader. Despite these high-profile deaths, this spike is interesting for

the number of strikes on individuals who were more a threat to the Yemeni government

than to the U.S. The U.S. has never admitted to targeting anyone at the request of

another government. However, the New York Times recently revealed that the U.S.

targeted individuals in Pakistan in order to gain access for its own strikes. Mark Mazzetti

writes:

> The target was not a top operative of Al Qaeda, but a Pakistani ally of the
> Taliban who led a tribal rebellion and was marked by Pakistan as an enemy of the
> state. In a secret deal, the C.I.A. had agreed to kill him in exchange for access to
> airspace it had long sought so it could use drones to hunt down its own
> enemies.[117]

This revelation, when combined with an analysis of all 62 strikes in the second Yemen

spike reveals what Micha Zenko puts bluntly when he states: "We don't say that we're

[116] (2012, February 27). Yemen's president Ali Abdullah Saleh cedes power, *BBC News*. Retrieved at
http://www.bbc.co.uk/news/world-middle-east-17177720

[117] Mazzetti, M. (2013, April 6). A Secret Deal on Drones, Sealed in Blood, The New York Times.
Retrieved at http://www.nytimes.com/2013/04/07/world/asia/origins-of-cias-not-so-secret-drone-war-in-
pakistan.html?pagewanted=all&_r=0

the counterinsurgency air force of Pakistan, Yemen and Somalia, but we are."[118] In short, the U.S. has engaged its UAV fleet to kill not only its direct enemies, but also those of its host nation partners. Whether done to gain or maintain access, or support regimes friendly to U.S. counter-terror policies, this action represents a significant factor in the increase in strikes since 2008. In addition, the policy weakens the moral defense of U.S. targeted killing program, as it is more complicated, (although not impossible) to argue that fighting other people's wars is an act of self-defense.

Yemen Spike III: July to August 2013

On September 11, 2012 over 100 Islamic militants launched a series of attacks against the U.S. Temporary Mission Facility and CIA Annex in Benghazi, Libya. The attacks took place over 8 hours and left four Americans including the U.S. Ambassador to Libya dead. Although this attack did not take place in Yemen, and was not the work of AQAP, a quick look at the third spike in Yemen may reveal the importance of this event.

On May 29th, 2013 in response to gathering outcry against drone strikes and reports of mounting civilian casualties, President Obama delivered an address at the National Defense University signaling a change in policy which would significantly curtail the use of targeted killing, stating that the U.S. would not carry out strikes when capture is an available option.[119]

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[118] Shane, S. (2012, November 24). Election Spurred a Move to Codify U.S. Drone Policy, The New York Times. Retrieved at http://www.nytimes.com/2012/11/25/world/white-house-presses-for-drone-rule-book.html?pagewanted=all

[119] "America does not take strikes when we have the ability to capture individual terrorists; our preference is always to detain, interrogate, and prosecute. America cannot take strikes wherever we choose; our

This shift in policy seems to have curtailed the number of strikes in Yemen significantly until the third and final spike from late July to late August 2013 when the U.S. launched ten additional lethal strikes including six within a 72-hr period. The so called "terror threat strikes" were a response to an intercepted communication between Al-Qaeda leader Ayman al Zawahiri and AQAP's leader Nasir al-Wuhayshi wherein the former exhorted the latter to "do something big."[120] U.S. intelligence interpreted this threat as a danger to U.S. interests in the region and took the unprecedented step of closing 19 embassies across the Middle East and North Africa for over a week.

The strikes revealed that the Obama administration reserves the right to loosen its own restrictions on when lethal force would be authorized. In fact, a senior U.S. intelligence official was quoted as stating the elevated threat had "expanded the scope of people we could go after in Yemen," and "Before, we couldn't necessarily go after a driver for the organization; it'd have to be an operations director. Now that driver becomes fair game because he's providing direct support to the plot."[121] Reports later surfaced that AQAP attempted to attack Yemen's oil infrastructure but was foiled by Yemeni security forces. The massive increase in strikes and the closure of embassies may seem incongruous given the lack of specificity in the intercepted intelligence, and their location in a region where U.S. interests are perennially under threat. However,

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actions are bound by consultations with partners, and respect for state sovereignty." President Obama, Address to the National Defense University, Washington D.C., May 23, 2013.

[120] Miller, G. & Gearan A. (2013, August 7). Obama administration authorized recent drone strikes in Yemen, *The Washington Post*. Retrieved at http://www.washingtonpost.com/world/national-security/us-personnel-evacuated-from-yemen-after-al-qaeda-order-to-attack-is-revealed/2013/08/06/2c984300-fe88-11e2-96a8-d3b921c0924a_story_1.html

[121] Schmitt, E. (2013, August 11). Embassies Open, but Yemen Stays on Terror Watch, *The New York Times*. Retrieved from http://www.nytimes.com/2013/08/12/world/embassies-open-but-yemen-stays-on-terror-watch.html

when one understands the context of these decisions it is easy to believe that the lingering effects of the Benghazi attack less than a year prior influenced the actions of U.S. policy-makers.

Somalia

An examination of the strike pattern in Somalia reveals two spikes from January to October 2007, and March to August 2011, separated by a three-year trough during which the U.S. launched virtually no strikes at all (See fig 5.5). This strike pattern is the result of the U.S.'s prior experience in Somalia, the status of that country as a relative backwater in the war on terrorism, and the variable availability of bases from which to launch strikes.
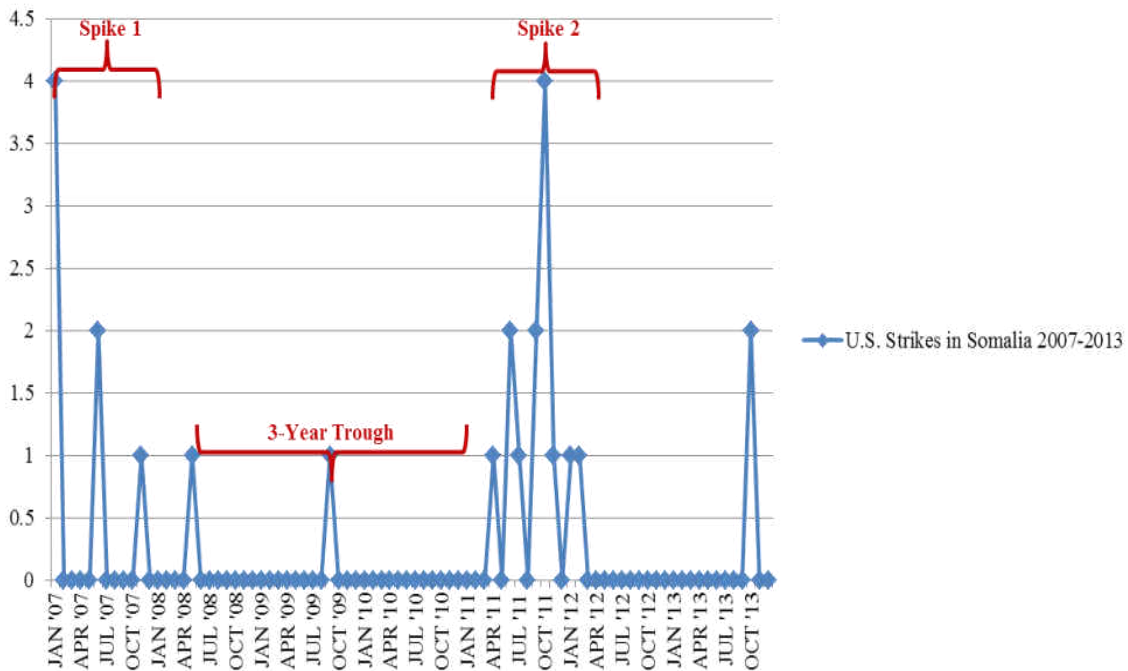
Figure 5.5. U.S. Strikes in Somalia 2007-2013
Source: New America Foundation & Bureau of Investigative Journalism

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As with all things Somalia, the inevitable starting point is Mogadishu on Sunday, October 3, 1993. Late that afternoon 120 members of the U.S. Army's elite Rangers and Delta Force fast-roped into a busy market neighborhood of Mogadishu intent on capturing key lieutenants of Somali warlord Mohammed Farrah Aidid. What followed is known in Somalia as *Ma'alinti Rangers*, or "Day of the Rangers." In the U.S. it is known simply as Black Hawk Down. While this battle is one of the most highly documented and analyzed in U.S. military history, the key takeaways for our purposes are as follows: 18 U.S. Soldiers were killed, 73 were wounded, and one was taken captive. Video footage of deceased U.S. servicemen being dragged through the streets by an angry mob played on a loop on every major news outlet in the world. The day after the failed raid, President Bill Clinton canceled the U.S. involvement in the hunt for Aidid, and ordered a full withdrawal of all U.S. troops by March, 1994.[122]

The withdrawal marked the end of the U.S. involvement in the horn of Africa until the attacks of September 11, 2001. At the time of the 9/11 attacks, the U.S. suspected that Al-Qaeda operated in some capacity within Somalia as it continued to investigate the attacks against U.S. embassies in Nairobi and Dar es Salaam in August 1998. Somalia certainly represented the epitome of the kind of failed state that Al-Qaeda would use as a sanctuary from western reprisals, and there were allegations that Al-Qaeda was planning to relocate its base of operations there after losing Afghanistan. In December 2001, U.S. Secretary of Defense Donald Rumsfeld stated that "Somalia has

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[122] For an outstanding rundown of that day's events see: Bowden, M. (1999). *Black Hawk down: A story of modern war*. New York: Atlantic Monthly Press.

been a place that has harbored al-Qaeda and, to my knowledge, still is."[123] However, as a result of its complete disengagement from the region in the 1990's, the U.S. had little to no ground intelligence on the structure of Al-Qaeda's operations there.[124]

With little intelligence to go on, the U.S. increased the number of ships and surveillance aircraft patrolling the waters and skies of Somalia and sent approximately 100 Special Forces soldiers back into the country. In January 2002, the Bush administration nearly authorized lethal action against several individuals thought to be Al-Qaeda associates, but subsequent investigation by Special Forces operators were unable to find any tangible link. [125] When Ras Komboni, a camp at the southern tip of the country and thought to be a major terrorist training facility was found abandoned, the U.S. shifted its focus.[126]

After finding no quickly-actionable targets in Somalia, the U.S. switched tactics towards building the security capacity of regional allies. In 2002 the U.S. established the Combined Joint Task Force–Horn of Africa (CJTF–HOA) at Camp Lemonier, Djibouti. At the time of its inception, the 500 Special Forces troops stationed there were responsible for both surveillance operations over Somalia and regional training requirements associated with the 2003 East Africa Counter-Terrorism Initiative (EACTI)

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[123] Astill, J. (2001, December 3) Wrong Target, *The Guardian*. Retrieved at http://www.theguardian.com/world/2001/dec/04/afghanistan.jamesastill

[124] Then U.S. undersecretary of state for Africa, Walter Kansteiner described U.S. policy towards Somalia after the 1994 pull-out as one of "total benign neglect." Astill, J. (2001, December 3) Wrong Target, The Guardian. Retrieved at http://www.theguardian.com/world/2001/dec/04/afghanistan.jamesastill

[125] Menkhaus, K 2004. Somalia: state of collapse and the threat of terrorism. International Institute for Strategic Studies Adelphi Report 364. Oxford: Oxford University Press.

[126] De Waal, A and Salam, AHA 2004. Africa, Islamism and America's 'War on Terror'. In A De Waal (ed), Islamism and its enemies in the Horn of Africa. London: Hurst and Company, pp 231–257

aimed at improving border security.[127] The two countries that benefited most from this multi-billion dollar windfall, Ethiopia and Kenya would later feature prominently in our Somalia sequence.[128]

From 2003 until 2006, the U.S. adopted a policy of paying Somali warlords like Mohammed Afrah Qanyare, Bashir Raghe, Mohamed Nur Galal, and Ahmed Hili'ow Addow to track, detain, and occasionally kill key individuals suspected of being Al-Qaeda operatives.[129] The CIA also provided warlords on its payroll with detailed targeting packages on high-profile terrorists like Fazul Abdullah Mohammed, one of the alleged masterminds of the 1998 embassy bombings and Saleh Ali Saleh al-Nabhani, suspected in the 2002 Paradise Hotel bombing. Although this tactic failed to produce either Fazul or Nabhani, it did create a strong incentive for warlords to profile and kidnap anyone who they thought could possibly have radical Islamist sympathies. This tactic resulted in the brazen capture and rendition of Mohammed Ali Isse in late 2003 from his safe-house in Mogadishu. A minor Islamic radical wanted for masterminding the killings of four foreign aid workers, Isse was captured by the warlord Qanyare[130] and rendered to

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[127] "Ethiopia has received significantly increased US military assistance and training. From 2002 to 2005, Ethiopia received $16 billion in foreign military financing, more than twice the amount received during the previous 11 years. Furthermore, the Ethiopian military has been a key beneficiary of trainings conducted by CJTF–HOA, including at least three new anti-terrorism battalions." Quaranto, P. (2008, May). Building States While Fighting Terror: Contradictions in United States Strategy in Somalia from 2001 to 2007, ISS Monograph Series, No. 143.

[128] The Pentagon is priming regional allies to lead in crisis response and counter-terrorism operations. The stated purpose of CJTF–HOA is to 'conduct operations and training to assist host nations to combat terrorism in order to establish a secure environment and enable regional stability'. Thus far, the bulk of its work has been training national militaries in the region, particularly those of Djibouti, Ethiopia and Kenya. Shinn, D 2004a. Fighting terrorism in East Africa and the Horn. Foreign Service Journal, September: 36-42.

[129] Scahill, J. (2013). *Dirty wars: The world is a battlefield*. New York : Nation Books

[130] "I captured Isse for the Americans…The Americans contracted us to do certain things, and we did them. Isse put up resistance so we shot him. But he survived." Salopek, P. (2008, November 24). Nobody is

a U.S. warship where he received medical treatment for wounds sustained during his capture and was continually interrogated during his recovery. From the warship, Isse was transported to Camp Lemonier, Djibouti and ultimately rendered to Ethiopia where he was subjected to torture[131] and further interrogation before ultimately being returned to Somali authorities who sentenced him to life in Berbera prison. The tactic of supporting and relying on warlords for such missions yielded little in the way of actionable intelligence to the U.S., and ended up serving as a boon to Islamic extremists in the country. In 2004, the two senior foreign Al-Qaeda figures in the country Fazul and Nabhani developed a partnership with Al-Shabab founder Aden Hashi Farah Ayro, who allegedly received training at Al-Qaeda camps in Afghanistan, and Hassan Dahir Aweys, the military commander of Al Itihaad al-Islamiya (AIAI). Through Aweys, Al-Shabab and Al-Qaeda influence were able to enter into an alliance with the emerging anti-warlord uprising formally known as the Islamic Courts Union (ICU).

The ICU began in 2000 as a response to the pervasive lawlessness that dominated the power vacuum which followed the collapse of the AIAI by Ethiopia in 1997. Initially an unconnected system of 11 autonomous courts which implemented Shariah law at the clan level, the ICU unified in 2004 in order to enforce judgments across clan lines. Sheikh Dahir Aweys, (the former leader of AIAI) and Sheik Ali Dheere led the Shariah Implementation Council which was responsible for uniting the courts under Islamic

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Watching, *The Chicago Tribune*. Retrieved at http://www.chicagotribune.com/news/nationworld/chi-shadow_war2nov24,0,4720127.story?page=1

[131] According to the Open Society Justice Initiative, after being rendered to a clandestine prison in Addis Ababa, Ethiopia, Isse claimed that he was tortured by Ethiopian security officials with electric shocks. Amrit Singh, (2013). Globalizing Torture: CIA Secret Detention and Extraordinary Rendition, Open Society Foundations, New York.

law.[132] However, a relative moderate Sharif Sheik Ahmed was named the consolidated organization's leader. Under Sharif's leadership the ICU gained popular local support for its pan-Somali rhetoric and its ability to provide a sense of security and justice. By 2005 the ICU was in direct conflict with the U.S.-backed warlords and by extension the Transitional Federal Government (TFG).[133] Bolstered by arms shipments from Eritrea, the ICU declared war on the warlords in February 2006. In response Qanyare and other warlords on the U.S. payroll announced the creation of the Alliance for the Restoration of Peace and Counterterrorism in order to provide a united resistance to the ICU. In March 2006, the U.S. officially endorsed the warlords with a statement by State Department spokesman Sean McCormack that the U.S. strategy was to "work with responsible individuals... in fighting terror. It's a real concern of ours—terror taking root in the Horn of Africa. We don't want to see another safe haven for terrorists created. Our interest is purely in seeing Somalia achieve a better day."[134] This endorsement would prove to be ill-fated.

On the coattails of this statement the ICU began its campaign to drive the warlords out of Mogadishu. To the dismay of U.S. policy-makers, the ICU enjoyed a groundswell of popular support from a civilian population tired of the warlord's

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[132] Stanford University, Mapping Militant Organizations: Islamic Courts Union. Retrieved at https://www.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/107

[133] The TFG was very weak and in some cases its ministers were the very same warlords who failed to recognize its legitimacy.

[134] Wax, E. & Deyoung, K. (2006, May 17). U.S. Secretly Backing Warlords in Somalia, Washington Post. Retrieved at http://www.washingtonpost.com/wp-dyn/content/article/2006/05/16/AR2006051601625.html

ineffective and violent rule.[135] By June, 2006 the warlords were defeated and the ICU

was consolidating its control of Mogadishu and the rest of Somalia. Sharif Sheik Ahmed

immediately reached out to the international community for recognition of the new

Somali government and denied that the ICU had any connection to terrorists. Citing the

ICU's alliance with Harakat al-Shabab against the warlords as clear evidence that the

ICU was at best neutral on the subject of Al-Qaeda and at worst tacitly supportive of the

group and its goals, the U.S. opposed the ICU and continued its support of the

Transitional Federal Government in exile. Rebuffed by the west, Sharif's attempts at

engagement also cost him credibility with the extremist elements within the ICU and he

was demoted and replaced by the hardline Aweys. Sharif's demotion seemed to confirm

the U.S.'s concerns, and it turned to its regional partners Ethiopia and Kenya.

Somalia Spike I: January to October 2007

    With a long history of animosity in mind, Ethiopia was keenly interested in the re-

installation of the TFG Somalia as a weak but pliant satellite government. By November

2006, Ethiopia had massed troops on the Somali border and on December 24, 2006 it

invaded. Although publicly denied, several sources including Ali Mohammed Ghedi, the

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[135] Scahill writes, "But it wasn't simply a religious cause. The warlords had been a disaster for business in Mogadishu. The "killing [of] prayer leaders and imams in local neighborhoods, and school teachers, really sparked a much-needed anger," said Abdirahman "Aynte" Ali, the Somali terrorism scholar. But, from a financial perspective, he said, the warlords "had been holding Mogadishu hostage for sixteen years. They failed to open the airport, the seaport; they all had small airstrips beside their houses—literally, their houses. And so they were holding people hostage." In late 2005, businessmen had begun funneling money to the ICU to buy heavy weapons to take on the CIA warlords. Somalis from all walks of life began signing up to fight alongside the ICU. "People would leave their jobs at 5 pm at the Bakaara Market, take their weapon and join the fight against the warlords," recalled Aynte. "And the next morning they would report back to their shop, or whatever. I mean, it was stunning." Scahill, J. (2013). *Dirty wars: The world is a battlefield*. New York : Nation Books

prime minister of the TFG, admit that the U.S. backed the invasion with logistical, intelligence, and air support.[136]

The Ethiopian invasion and subsequent occupation marks the high-water mark of lethal U.S. strikes in Somalia. From January to October 2007 the U.S. launched seven lethal strikes using AC-130 gunships all aimed at killing key players in the Al-Qaeda/Al-Shabab/ICU nexus. The first strike on January 7, 2007 targeted Al-Shabab leader Aden Hashi Farah Ayro who was wounded but ultimately escaped. At least two of the strikes targeted embassy bombing mastermind Fazul Abdullah Mohammed but succeeded only in killing his companions. Another strike aimed at ICU military commander Ahmed Madobe ended when he was wounded and detained.[137] Finally two additional U.S. strikes killed Al-Qaeda figures Abdullah Sudi Arale, a courier, and Abu Talha al-Sudani, the financier of the 1998 embassy bombings.

Three-Year Trough: 2008 to 2010

The strikes ended in November 2007 when the Ethiopian government suspended U.S. access to its airbase in response to reports from February of that year that the U.S. was using Ethiopian infrastructure and air corridors to launch the strikes. The loss of the use of the Ethiopian airbase at Arba Minch severely curtailed U.S. strike capability in the region. This curtailment helps to explain the targeting method used in the only two lethal

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[136] Scahill, J. (2013). *Dirty wars: The world is a battlefield*. New York : Nation Books

[137] On January 23, 2007 an AC-130 attacked Madobe and a group of his followers as they fled towards the Kenyan border region of Ras Kamboni. Madobe was wounded and captured by U.S. forces who interrogated him before he was rendered into Ethiopian custody. Madobe would spend nearly two years in prison in Ethiopia before his release and repatriation to Somalia. He was elected president of Jubaland, and is considered a leading reconciliation figure in the region. (2013, August 28). Somalia: Semiautonomous State to Ally Itself With Government, The New York Times. Retrieved at http://www.nytimes.com/2013/08/29/world/africa/somalia-semiautonomous-state-to-ally-itself-with-government.html?_r=0

strikes in 2008. Utilizing cruise missiles in both instances, the U.S. first tried

unsuccessfully to target Saleh Nabhani on March 2 at his compound in Dobley, before

killing the leader of Al-Shabab, Aden Hashi Farah Ayro in Dhusa Mareb.[138] Achieving

success using cruise missiles is much more complex than a simple airstrike. The strike

was on Ayro was reportedly the result of several weeks of surveillance and tracking

which ensured that Ayro was on location and would not move for the approximately 30

minute delay from launch to detonation. Such intensive surveillance and intelligence

gathering requires manpower. At a time when military and intelligence resources were

strained by the wars in Iraq and Afghanistan, it is not surprising that the U.S. was only

able to mount one or two such operations per year.

At the time of Ayro's killing or "martyrdom," Al-Shabab had grown beyond the

point of being seriously damaged by his death. The new head of the U.S. and Ethiopian

backed TFG was none other than Sharif Sheikh Ahmed, the former "moderate" head of

the ICU who had negotiated safe passage out of Somalia in the early days of the

Ethiopian invasion. The splintering within the former ICU caused by Sharif's defection

to the TFG allowed Al-Shabab to gain a great deal of influence and credibility with

groups opposed to the Ethiopian occupation. Al-Shabab seized the opportunity and

waged a punitive insurgency against the Ethiopian occupation force using manpower,

technical expertise, and tactical know-how imported by the group's Al-Qaeda liaisons,

Fazul and Nabhani.

Recognizing in Al-Shabab the Al-Qaeda connection it had long dreaded in

Somalia, the U.S. focused all available intelligence assets in the horn of Africa on the

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[138] (2008, May 1). Air raid kills Somali militants. BBC News. Retrieved at
http://news.bbc.co.uk/2/hi/africa/7376760.stm

tracking and surveillance of Fazul and Nabhani. In May 2009, shortly after the Obama

administration assumed power, an opportunity to lethally target Nabhani arrived. After a

lengthy debate over whether to kill or capture Nabhani, a lethal raid using helicopter

gunships launched from ships off the coast of Somalia killing Nabhani. Special

operations forces then landed to collect his body for DNA identification.[139] The raid was

the first lethal strike in Somalia under the Obama administration. After the death of

Nabhani, Fazul consolidated control of Al-Qaeda's operations in Somalia and continued

to work alongside Al-Shabab in its fight against the TFG and the new peacekeeping force

known as the African Union Mission in Somalia (AMISOM) headed by Uganda and

Burundi. In retaliation for the attack on Nahban, Al-Shabab carried out a complex

suicide bombing on AMISOM's headquarters in Mogadishu which killed over 20

members of AMISOM including its deputy commander. While the U.S. would not

launch another lethal strike in Somalia until 2011, it continued to build capacity in the

region; arming and equipping regional partners Kenya, Ethiopia, and Djibouti while

expanding Camp Lemonier and opening new UAV-capable airfields in southern Ethiopia

and the Seychelles.

Somalia Spike II: March to August 2011

From the perspective of tracking lethal strikes, 2011 was a complicated year.

While there were only two confirmed U.S. strikes, the total is likely closer to ten;

marking a significant spike in our sequence. Again, a look at context can assist us in the

process of making an educated guess. In April 2011 a battle took place between Al-

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[139] See case study #2 within this thesis for a more detailed accounting of the Nabhani killing.

Shabab and Somali security forces in the town of Dhobley. The battle ended with an

airstrike on al-Shabab positions which killed a regional commander Jabreel Malik

Muhammed. June 23, 2011 marks the first known use of a UAV to launch a lethal strike

in Somalia. The strike's location in Kismayo, at the far southern tip of Somalia is

telling.[140] With a direct line distance of over 850 miles from Camp Lemonier, Kismayo

is beyond the 500-mile flight radius of the Predator UAV and is pushing the upper limits

of the more capable Reaper. However, we also know from our analysis of *bases* that the

U.S. regained access to its airbase at Arba Minch in mid to late 2011. Using Arba Minch

as a launching point opens up southern Somalia to both Predator and Reaper variants,

making it much more feasible to serve as the base of choice for the kind of 24-hr

surveillance coverage needed when undertaking lethal UAV strike operations. Of the

remaining eight suspected strikes in 2011, *all* were located in the far-southern region of

Somalia where forces of the Somali TFG backed by AMISOM were pushing into

territory controlled by al-Shabab. In addition, a look at what was going on in Yemen and

Pakistan during the same time period, reveals a significant increase in strikes in Yemen

and the second deadliest year on record in Pakistan. This data, coupled with John

Brennan's May 1, 2012 speech defending the practice and ethics of targeted killing,

which highlighted recent success in the region only increases the likelihood of such a

significant increase in Somalia being true. In this case, using our knowledge of context

allows for an educated guess: namely, that the majority of the *suspected* U.S. strikes in

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[140] Also in June, 2011 another significant blow to Al-Qaeda in eastern Africa took place with the killing of 1998 Embassy bombing mastermind Fazul Abdullah Mohammed. Traveling with a fake South African passport identifying him as Daniel Robinson, Fazul was killed by Somali security forces at a security checkpoint in Mogadishu when he failed to comply with the instructions of the guards. A detailed account of the incident can be found in the Jeremy Scahill book *Dirty Wars*.

2011 were *actual* U.S. strikes marking a massive escalation of lethal targeting in that country.

Al-Shabab Pledges Allegiance to Al-Qaeda

In October 2011, at the same time the U.S. was increasing the intensity of its lethal strike campaign, Kenya sent 2,000 troops, (interestingly a force equivalent in size to the three counter-terrorism battalions trained and equipped by the U.S. beginning in 2007) into southern Somalia with the mission of destroying Al-Shabab in the region in order to prevent the spread of the conflict into Kenyan territory. The resulting occupation of southern Somalia would add a degree of murkiness to future airstrikes as the Kenyan air force launched multiple unilateral strikes in 2012 in support of ground operations.

In February 2012, Ahmed Abdi Godane, the leader of Al-Shabab confirmed what U.S. intelligence already knew and formally pledged Al-Shabab to Al-Qaeda. In a video statement to Al-Qaeda leader Ayman Zawahiri Godane states:

> O our beloved Emir, on behalf of my brothers in al Shabaab al Mujahideen Movement, commanders and soldiers, I say: We give allegiance to you to follow the Book of Allah and the Sunnah [traditions] of His Messenger, to listen and obey in good and bad, to have altruism and not dispute with people in their fields except when we see clear unbelief that is proven in the revelation from Allah as much as we can.[141]

In response to the formal joining of the two groups, the U.S. continued its campaign launching two lethal strikes in early 2012, both targeting Al-Shabab leaders. 2012 also marked a continuation of the Kenyan occupation of southern Somalia and the hand-over

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[141] Thomas, J. & Roggio, B. (2012, February 9). Shabaab formally joins al-Qaeda. *Long War Journal*. Retrieved at http://www.longwarjournal.org/archives/2012/02/shabaab_formally_joi.php

of power from the TFG and Sharif Sheikh Ahmed to the Federal Government of Somalia presided over by Hassan Sheikh Mohamud.

On September 21, 2013 a group of Al-Shabab militants attacked the Westgate shopping center in Nairobi, Kenya. The attack and subsequent siege lasted nearly four days and killed 67 people.[142] The attacks were a response to Kenya's 2011 incursion into the Kismayo region, and a reminder that Al-Shabab still possessed the capability to strike outside the borders of Somalia. On October 5, 2013, U.S. special operations forces launched a ground raid in Barawe Somalia targeted at capturing Abdulkadir Mohamed, the lead planner of the mall attack. The attack failed to capture Abdulkadir, but did result in the death of two senior Al-Shabab members Abdi Qadar and Awab al-Uquba.[143] The only confirmed lethal drone strike by the U.S. in 2013 occurred on October 28 when senior Al-Shabab figure Ibrahim ali Abdi, and leading bomb-maker was killed while traveling by vehicle to Barawe.[144]

Finally, on January 26, 2014 the U.S. again targeted Al-Shabab leader Ahmed Abdi Godane, but succeeded instead in killing Godane's close friend Sahal Iskudhuq, a leader within Al-Shabab's intelligence unit Amniyat.[145] The attack marks the latest U.S. strike in Somalia, but will by no means be the last. Unless the U.S. changes a strategy developed over the last six years, and shifts tactical responsibility for Somalia away from

[142] Howden, D. (2013, October 4). Terror in Nairobi: the full story behind al-Shabaab's mall attack, The Guardian. Retrieved at: http://www.theguardian.com/world/2013/oct/04/westgate-mall-attacks-kenya

[143] Pflanz, M. (2013, October 6). Two al-Shabaab Fighters killed in US Somalia raid, The Telegraph. Retrieved at: http://www.telegraph.co.uk/news/worldnews/africaandindianocean/somalia/10359457/Two-al-Shabaab-fighters-killed-in-US-Somalia-raid.html

[144] (2013, October 29). Somalia's al-Shabab commanders 'killed' in strike, BBC News. Retrieved at: http://www.bbc.com/news/world-africa-24717220 \

[145] Starr, B. (2014, January 28). Military Strike in Somalia Targeted Al-Shabaab Leader, U.S. Officials say, CNN. Retrieved at http://www.cnn.com/2014/01/28/world/africa/somalia-us-airstrike/ or http://www.bbc.com/news/world-africa-25908343

JSOC to the CIA, we are unlikely to see the mass strikes and casualties associated with the CIA's "signature" strikes in Pakistan and Yemen. Rather, given our understanding of the sequencing of Somalia, we should expect to see a pattern of 1 to 2 strikes per year on senior Al-Shabab/Al-Qaeda figures. As shown, this pattern may be interspersed by an occasional spike should Al-Shabab make significant progress in its fight against the Somali Federal Government or one of the U.S.'s regional partners. Thus, it is likely that U.S. operations in Somalia will always be a kind of "also-ran" operation in the background of whatever the more pressing security concerns dominate the day.

CHAPTER VI

CASE STUDIES

We bring the Islamic Ummah the glad tidings of the martyrdom of the Commander Sheikh Abu Yusif Salih Ali Salih al-Nabhani, alongside a group of his brothers. This took place late Monday morning, the 24th of Ramadhan 1430. A crusader war plane with assistance from the military fleets off the coast of Muslim Somalia targeted the Commander Sheikh Salih Ali Salih al-Nabhani, also known as Abu Yusif, as well as some of his companions - may Allâh have mercy on them - as they were traveling through areas of the Islamic Region of Lower Shabelle.[146]

After reviewing existing arguments on the underlying causes of the increase in lethal targeting, and searching for greater depth and precision at the macro-level, it is useful to examine the same issue at the micro-level. Specifically, let us examine the cases of three individuals, Saeed al-Shihri, Saleh ali-Nabhani, and Anas al-Libi. All three individuals are or were self-avowed members of Al-Qaeda, and they have all planned or perpetrated terrorist attacks against the U.S. or its citizens abroad.[147] However, the U.S. response to each of these individuals reveals much about the variable nature of U.S. counter-terrorism efforts across time and space. One received political asylum in the west while being a member of a known Islamist fighting group; another spent six years in Guantanamo, while the third was lethally targeted by two presidents. Today two are dead, killed in lethal U.S. strikes, and the third is awaiting a civilian trial in the U.S.

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[146] Anzalone, C. (2009, September 16). Somalia's Harakat Harakat al-Shabab Announce the 'Martyrdom' of AQC Operative Ali Salah al-Nabhanii. Retrieved from http://occident.blogspot.com/2009/09/somali-harakat-Harakat al-Shabab-announce.html

[147] Nabhani and al-Libi are both named in the U.S. v. Usama Bin Laden et al indictment dated November 1998 for the attacks on the U.S. embassies in Kenya and Tanzania.

We will use these cases to further examine Klaidman's theory that the increase in lethal strikes comes as a result of a lack of detainment options, or if the U.S. response to these individuals can be explained by the interaction of UAV availability, the evolving legal approach to terror suspects, and the impact of events in time and space.

Case Study No. 1: Saeed Al-Shihri (AKA: Abu Sufyan al-Azdi)

Saeed Ali Jabir Al Khathim Al-Shihri born 21 September, 1973 in Riyadh Saudi Arabia did not complete high-school. In 1991 Shihri volunteered for the Saudi Arabian Internal Security Force and rose to the rank of First Lieutenant prior to being removed by the Mabahith.[148][149] It appears that Shihri may have then worked at a furniture store in Riyadh until he travelled to Afghanistan in 2000 where he may have begun his association with the Al-Qaeda-associated NGO al-Wafa. In 2001 he is identified on an Al-Qaeda training document under the admitted alias Salah al-Deen as having attended a jihadist urban warfare training session at the so-called "Libyan Camp" located north of

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[148] The Mabahith is the secret police agency of the Ministry of Interior in Saudi Arabia also known as the Directorate of General Investigations. Human Rights Watch reports that "Mabahith agents operate with impunity and have been responsible for a wide range of human rights abuses, including arbitrary arrest, incommunicado detention, and torture." See: www.hrc.org/legacy/backgrounder/mena/saudi /

[149] There is no explanation in Pentagon documents for why the Mabahith removed Shihri. The report does make mention of the fact that Shihri's father and two brothers both worked for the same agency. In interrogation, Shihri states only that he "volunteered for the Saudi military in 1991 but was never activated." In fact, this is where the Pentagon's assessment of Shihri's timeline diverges sharply from what he admits to during interrogation. Shihri states that he worked from 1991-1996 under an unidentified Saudi named Heraj Bin Gazum before opening a furniture store in Riyadh. Shihri then states that he ran the furniture store until the attacks of September 11. After the attacks, Shihri states that he was sent as a representative of several local businesses to provide financial support to the Red Crescent operations in Pakistan and Afghanistan. Once in Pakistan, Shihri's account is that he volunteered with the Red Crescent and travelled to Quetta and ultimately on to Spin Boldak, Afghanistan where he was wounded in a U.S. airstrike and taken back to Quetta for medical aid. Shihri states that the Pakistani authorities then rendered him into U.S. custody at the Quetta airport. The Pentagon interrogation summary casts significant doubt on Shihri's account as it aligns too closely with the accounts of several additional detainees captured under similar circumstances. http://projects.nytimes.com/guantanamo/detainees/372-said-ali-al-shihri/documents/11

Kabul in 2001. In addition, Shihri admitted to providing material support and advice to additional jihadists interested in travelling to Afghanistan via Iran during the same time period.[150] It is assessed that Shihri was wounded in a U.S. airstrike near Kundoz Afghanistan in December 2001 and was transported to Quetta, Pakistan for medical care. In late January 2002, while still receiving medical care, Pakistani authorities identified Shihri as a member of Al-Qaeda and rendered him into U.S. custody and transport to detention in Guantanamo.

While in detention at Guantanamo, Shihri was interrogated multiple times in order to gain intelligence on AQ recruitment in Saudi Arabia, AQ travel facilitation through Iran, AQ and Al-Wafa cooperation, and the potential for ties between the Saudi Red Crescent and terrorist organizations. His detention was reviewed annually between 2004 and 2007 under the auspices of the DOD's Combatant Status Review Tribunal.[151]

In November 2007, despite strong circumstantial evidence that Shihri was an active member of Al-Qaeda and over the recommendation for continued detention by the Guantanamo Task Force Commander, Shihri was released to the Saudi Arabian

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[150] JTF-GTMO Assessment, p. 3 http://projects.nytimes.com/guantanamo/detainees/372-said-ali-al-shihri/documents/11

[151] Initially the Bush Administration asserted that is could withhold the protections of the Geneva Conventions from the captives of the War on Terror. However, the Supreme Court rulings in Hamdi v. Rumsfeld and Rasul v. Bush forced the administration to acknowledge the need for a competent tribunal to determine the status of the detainees. In response the DOD initiated the Combatant Status Review Tribunal (CRST) which reviewed the status of every detainee in Guantanamo on a yearly basis. Critics of the CRST process argued that the minimal legal protections offered to the defendants made them untenable as a basis for continued long-term detention. Shihri had three such reviews prior to his release in November 2007. On June 12, 2008 the Supreme Court ruled in Boumediene v. Bush that Guantanamo detainees were entitled access to the U.S. justice system, with the majority opinion stating that the CRSTs were "inadequate."

authorities for repatriation and participation in the Saudi rehabilitation program for jihadi-takfiris.[152][153]

In 2008, Shihri fled Saudi Arabia and remained under the radar until he surfaced in a 2009 in an online video released by AQAP's media outlet Al-Malahim Media Foundation entitled "From Here We Begin and at Al-Aqsa We Meet."[154] The video featuring the new AQAP leadership included the group's Amir Abu Basir Nasir al-Wuhayshi, and identified Shihri as his deputy.[155] The subsequent increase in violent activity by AQAP brought the organization to the forefront of the consciousness of the U.S. security community. On December 25, 2009, 23-year old Nigerian Umar Farouk Abdulmutallab attempted to bring-down Northwest Airlines Flight 253 with a bomb concealed in his underwear. At the time the bombing attempt was tied to the senior AQAP figure Anwar Al-Awlaki, but it later became clear that Shihri was key to the

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[152] Named after the Saudi interior minister, Prince Mohammed bin Nayef, the Saudi jihadi-takfiri rehab program has five low-security facilities complete with Olympic-size pools, saunas, art rooms, etc., which house and seek to re-educate over 1000 jihadists on the peaceful tenants of Islam. The Saudi authorities claim the program has a 90% success rate in preventing recidivism and has influenced subsequent rehab programs in Asia and Europe. www.blosgs.wsj.com/middleeast/2013/04/24/saudi-rehab-center-aims-to-shape-life-after-jihad/

[153] According to author Mark Hamm, it was Shihri's detention in Guantanamo and subsequent time in the Saudi rehabilitation program that radicalized him. However, this conclusion is derived from an intelligence report citing a *family* interview attributing Shihri's radicalization to his detention in Guantanamo, (p. ix). In addition Hamm cherry-picks information from Shihri's CRST memo dated June 5, 2007 which lists several factors that favor Shihri's release including his repeated denial of any involvement in terrorist activity and states that he was released because no ties to terrorism could be found. However, the same memo also lists several reasons for continuing his detention. Hamm, Mark S. The Spectacular Few : Prisoner Radicalization and the Evolving Terrorist Threat. New York: NYU Press, 2013. http://orbis.eblib.com/patron/FullRecord.aspx?p=1126719 (accessed March 03, 2014)

[154] Al-Aqsa in this case likely references the Al-Aqsa mosque in Jerusalem.

[155] His official title was "Secretary General of the Al-Qaeda Organization in Saudi Arabia." Hamm also claims that Shihri played a role in the September 2008 bombing of the U.S. embassy in Sana, Yemen as well as the killing of six Christian missionaries. (Hamm p. 71).

planning of the operation.[156] On October 29, 2010 two packages with bomb material hidden in toner-cartridges were found on separate UPS flights bound from Yemen to the U.S. AQAP quickly claimed responsibility for the attempted bombings and for the crash of UPS Airlines Flight 6.[157] Through the first half of 2011, instability related to the Arab Spring provided an opportunity for AQAP to take control of large areas of southern Yemen. The Obama administration, increasingly alarmed by the potential rise of another safe-haven for Al-Qaeda, responded by launching nearly 20 lethal strikes between May and December of that year including the September 30, 2011 strike that killed Al-Awlaki and fellow American Samir Khan. In 2012, the Yemeni government launched an offensive to regain ground lost to AQAP. American UAVs provided close air support for the operation and the number of lethal strikes carried-out by U.S. forces increased dramatically to well over 70 in 2012 alone. In September 2012 Yemeni officials announced that Shihri had been killed in a U.S. airstrike. However, in an October, 22, 2012 audio recording, Shihri denounced the report of his death. He was subsequently wounded, (this time mortally) in a U.S. strike on October 28, 2012. Shihri is said to have died of his wounds on or about January 24, 2013.[158]

The case of Saeed Al-Shihri is interesting in that it spans almost the entire "war on terror," and two administrations. The U.S. response to Shihri included everything from extrajudicial detention to rehabilitation, before finally ending with lethal targeting.

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[156] In February, 2010 Shihri released an audio recording to counter recent reports of his capture and detention. According to the Yemen Post, Shihri claimed credit for the failed underwear bombing attempt. "Saeed Al-Shihri, prisoner No. 327 at Guantanamo bay: No. 2 of Al-Qaeda Organization…Guantanamo: creating the most dangerous enemies of America". Yemen Post. 22 February 2010.

[157] This was never publicly substantiated.

[158] It is a good bet to assume that information gleaned from Shihri's audio recording played a role in his lethal targeting only six days later.

Evaluation vs. Klaidman

First we must evaluate whether Shihri's lethal targeting came as a result of the lack of viable detention options after the closure of Guantanamo as suggested by Klaidman. On the surface there does seem to be some evidence to support this argument. After-all, Shihri was detained in Guantanamo for six years. Would it not follow that upon his recidivism to terrorist activities he would be returned there if such an option still existed? However, making this argument ignores a key factor: there *were* viable detention options for Shihri at the time of his death. After Shihri's own admission of his involvement in the Christmas day and UPS bombing plots, he could have been indicted, captured, and faced civilian trial in the U.S. Additionally, Shihri could have faced civilian trial and detention in either Yemen or his home nation Saudi Arabia. Why then was he killed instead?

Evaluation vs. Thesis

Let us turn to an evaluation of his targeted killing within the context of UAV availability, legal status, and event context. As Shihri was detained from 2002 to 2008, it does not make sense to evaluate whether the lack of birds and bases prior to 2008 prevented his lethal targeting during that period. However, by 2013, the U.S. had well over 50 UAV Combat Air Patrols (CAPs) in theater and multiple redundancies in bases from which to launch them. In addition, his role as the deputy commander of AQAP

certainly qualified him as an imminent and continuing threat to the U.S. under the standards laid out in the president's May, 2013 speech.

It is also important to emphasize the contextual background of the 2013 strike. At the time of his capture in 2002, Shihri was a relative bit-player for Al-Qaeda. Had he died in the tactical airstrike that wounded him in late 2001 it would not have registered with U.S. intelligence as significant.[159] Interrogations during his subsequent detention in Guantanamo corroborated his relative low-importance which eventually led to his release to the Saudi rehabilitation program.

The general lack of interest in locating Shihri after his disappearance from the rehab program only serves to emphasize his relative unimportance at this point. It was where he went, and what he did after leaving rehab that ultimately led to his being lethally targeted. By parlaying his Guantanamo street-cred into a senior-leader position within AQAP in 2009, Shihri jumped back into the consciousness of the U.S. counter-terrorism community. Shihri's subsequent participation in the planning and nearly successful execution of two bombing plots against U.S. aircraft made him one of several AQAP leaders who were considered nearly on-par with the core AQ leadership operating in Pakistan at the time.

Shihri's location in Yemen was also a problem. The Yemeni government's tenuous grasp on power then and now precluded the option of bringing Shihri to justice within civilian courts in either Yemen or the United States. Between 2003 and 2014 there were four major prison breaks in Yemen which freed nearly 200 convicted Al-Qaeda fighters. Included within this number are individuals like Jamel Ahmed

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[159] This strike was not targeted specifically at Shihri, who was unknown, but at a group of AQ fighters engaged in battle with U.S. Special Operations Forces.

Mohammed Ali Al-Badawi, a key conspirator in the October, 2000 bombing of the U.S.S. Cole. Al-Badawi was captured by Yemeni authorities in the immediate aftermath of the bombing and was sentenced to 15 years in prison. In April 2003 Al-Badawi escaped with 10 others including U.S.S. Cole co-conspirator Fahd Mohammed Ahmed al-Quso. He was recaptured later that year and sentenced to death in 2004. However, in February 2006 Al-Badawi was one of 23 Al-Qaeda fighters who escaped Sana'a prison through a 300 meter underground tunnel beneath the Al-Awkaf Mosque. In 2007 Al-Badawi surrendered to the Yemeni authorities, and despite an existing $5 million reward offered by the U.S. department of Justice, was given a full pardon in exchange for a pledge to renounce terrorist activities.

Given this history, the U.S. had(s) little confidence in the ability of the Yemeni criminal justice system to enforce appropriate anti-terrorism measures. In addition, the Yemeni regime has allied itself with the U.S. in the war on terror, a position that is deeply unpopular with the majority of its population. Yemen's status as the base of operations for AQAP made it imperative that the U.S. not engage in operations that exacerbated the fragility of the Yemeni government. While the Yemeni government routinely takes credit for U.S. airstrikes within its borders,[160] it would be hard-pressed to explain away the presence of U.S. ground forces conducting raids to capture individuals like Shihri and Badawi. Shihri's death is a prime example of the confluence of UAV availability, a permissive legal environment, and context. Shihri's previous detention in Guantanamo, his increasing international profile, coupled with a history of ineffectiveness by the

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[160] A leaked cable from January, 2010 reveals that then Yemeni President Ali Abdullah Saleh told Gen David Petraeus, then commander of US forces in the Middle East, that: "We'll continue saying the bombs are ours, not yours." Allen N. (2010, November 28). Yemen covered up US drone strikes, The Telegraph. Retrieved from http://www.telegraph.co.uk/news/worldnews/middleeast/yemen/8166610/WikiLeaks-Yemen-covered-up-US-drone-strikes.html

Yemeni government to maintain civilian detention, and reticence by U.S. to jeopardize a

key ally in the war on terror ultimately led to Shihri being lethally targeted.

Case Study No. 2: Saleh Ali Saleh al-Nabhani

Saleh Ali Saleh al-Nabhani was born April 4, 1979 in Mombasa Kenya.

According to the BBC Nabhani grew up within the city's Majengo slum amongst other

Swahili Arabs. In the late 1980's he dropped out of secondary school and began

attending a local Madrasa. From there Nabhani is believed to have moved to the Middle

East before returning to Mombasa in the late 1990's where his mother states that he sold

fruit juice and cell phone accessories for a living. In early 2002 Nabhani abruptly left his

family, leaving behind a nine-month-old daughter. In November 2002 Nabhani assisted

in the execution of simultaneous attacks in Mombasa against the Israeli-owned Paradise

Resort Hotel killing 15, and for the attempted shoot down of an Arkia Israel

Airliner.[161][162] Later linked to the 1998 U.S. embassy bombings in Nairobi and Tanzania

which killed more than 200 people,[163] Nabhani first came to the attention of CIA agents

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[161] Kenya Police Homepage, Saleh Ali Saleh al-Nabhani, Retrieved at
http://www.kenyapolice.go.ke/wanted_saleh.asp

[162] Bennet J. (2002, November 28). In Kenya, 3 Suicide Bombers Attack Hotel Owned by Israelis; Missiles Fired at Passenger Jet, *The New York Times*. Retrieved from
http://www.nytimes.com/2002/11/28/international/middleeast/28CND-KENYA.html

[163] Nabhani's connection to the 1998 embassy attacks is minimal. Several reports came out following the Bush administration's attempt to target Nabhani with cruise missiles in 2008 that linked Nabhani to the attacks.
(2008, March 4). U.S. strike kills terrorist, *The Washington Times*. Retrieved from
http://www.washingtontimes.com/news/2008/mar/4/us-strike-kills-terrorist/?page=all   However, Nabhani is not named in the indictment. At best, Nabhani's possible association with AQ member Fazul Mohammed who *was* indicted for the attacks serves as the linkage. Starr, B. (2008, March 3). Official: Missile aimed at FBI target in Somalia, CNN. Retrieved from
http://www.cnn.com/2008/WORLD/africa/03/04/somalia.us.index.html?iref=24hours

cooperating with Somali warlords in 2004. At the time, Nabhani and Al-Qaeda co-conspirator Fazul Abdullah Mohammed are said to have developed a partnership with Al-Shabab founder Aden Hashi Farah Ayro, who allegedly received training at Al-Qaeda camps in Afghanistan, and Hassan Dahir Aweys, the military commander of Al Itihaad al-Islamiya (AIAI). In February 2006 the FBI identified him as a person of interest after it was discovered that he owned the vehicle used in the bombing of the Paradise Hotel. During the 2006 ICU uprising against the U.S.-backed warlords Nabhani remained in Somalia where it is likely that he served as a commander within Harakat al-Shabab's military wing known as Jaysh al-'Usrah, or "Army of Hardship."

In March 2008, the Bush Administration attempted to kill Nabhani when it fired two cruise missiles at his residence in Dobley Somalia.[164] The strike failed to kill Nabhani and instead killed nearly two-dozen civilians, outraging local Somalis who considered the strike an act of war. On September 14, 2009 the president, after being briefed on an opportunity to target Nabhani, ordered that he should be killed by a manned U.S. strike team. His generals informed him that such a mission could potentially violate U.S. adherence to international humanitarian law or the laws of land warfare which dictate that after an enemy combatant has been rendered defenseless, he or she is considered a prisoner of war and must be rendered first aid and accorded food, shelter, and protection. The general's concerns were noted, and the raid went ahead as directed killing Nabhani and several other members of the Harakat al-Shabab network.[165]

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[164] Griffin, J. (2008, March 3). Notorious Al-Qaeda Operative the Target in U.S. Strike in Somalia, Fox News. Retrieved at: http://www.foxnews.com/story/2008/03/03/notorious-al-qaeda-operative-target-in-us-strike-in-somalia/

[165] Nabhani's official "martyrdom" statement released by Harakat al-Shabab on September 15, 2009 describes the events as follows: "We bring the Islamic Ummah the glad tidings of the martyrdom of the Commander Sheikh Abu Yusif Salih Ali Salih al-Nabhani, alongside a group of his brothers. This took

Evaluation vs. Klaidman

Klaidman leans heavily on the 2009 raid by U.S. Special Forces to kill Saleh Ali Nabhani as evidence that due to the executive order to close Guantanamo, the Obama Administration was less interested in capturing terrorists for which it had no legal recourse and instead preferred that they be lethally targeted. However, he fails to explain why Nabhani was lethally targeted *prior* to Obama's executive order to close Guantanamo. As evidenced by the Bush administration's 2008 strike attempt, Obama's decision to lethally target Nabhani was more of a continuation of Bush-era policies than a departure from them.

Evaluation vs. Thesis

While the lethal targeting of Saleh Nabhani does not support Klaidman's theory that Obama was lethally targeting a terrorist who would have previously been subject to capture, neither is it perfectly explained by this thesis. It is interesting for example that the U.S. targeted Nabhani twice in 2008 and 2009, despite the lack of available UAV coverage in southern Somalia prior to the re-opening of the Arba Minch airbase in 2011.

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place late Monday morning, the 24th of Ramadhan 1430, corresponding to September 14, 2009. A crusader war plane with assistance from the military fleets off the coast of Muslim Somalia targeted the Commander Sheikh Salih Ali Salih al-Nabhani, also known as Abu Yusif, as well as some of his companions - may Allâh have mercy on them - as they were traveling through areas of the Islamic Region of Lower Shabelle. The crusader enemies hovered and then raided the car that was carrying the Commander Abu Yusif and his brothers - may Allâh accept them. Six helicopters participated in the attack, which began with heavy shooting in a focused manner, targeting the brothers' car. Two of the helicopters then began a quick descent thinking that they had subdued the brothers. But the Lions, despite their small numbers and their simple weapons, were able - by the grace of Allah - to respond to the enemy and resist them. The engagement there lasted for nearly one hour, until the four other planes intervened to reinforce the first batch of the enemy. It was by the will of Allâh that the Commander Sheikh Abu Yusif became a martyr with a group of his companions. The enemy rushed to the scene to seize the bodies of the brothers, and we do not yet know the extent of the losses suffered by the enemy during the confrontation." Anzalone, C. (2009, September 16). Somalia's Harakat Harakat al-Shabab Announce the 'Martyrdom' of AQC Operative Ali Salah al-Nabhanii. Retrieved from http://occident.blogspot.com/2009/09/somali-harakat-Harakat al-Shabab-announce.html

As a result, the first attempt to kill Nabhani relied on cruise missiles, while the second utilized attack helicopters launched from a U.S. ship off-shore. Thus, understanding the availability of UAVs helps to explain the *method* used to target Nabhani, but does little to explain why he was lethally killed rather than captured.

Nabhani's legal status has a little more to say about the reasons behind his lethal targeting. Although consistently linked by journalistic accounts to the 1998 U.S. embassy bombings, his connection to those attacks remains vague. A much stronger case can be built for his involvement in the 2002 Mombassa attacks.[166] However, as those attacks were solely aimed at Israeli interests, he would likely have to have been extradited to Israel for trial. For obvious reasons, the transfer of a high-profile U.S. terror-suspect to Israel was likely not high on either Bush or Obama's list of options. Nabhani certainly met the administrations' kill criteria of as an imminent and continuing threat to the U.S. However, Nabhani's status as a legal kill is not sufficient to explain why the U.S. took the actions it did. We must therefore examine the context of the decision by two different presidents to kill him.

The reader will remember from chapter five that from 2003 until 2006, the U.S. espoused a policy of paying Somali warlords like Mohammed Afrah Qanyare, Bashir Raghe, Mohamed Nur Galal, and Ahmed Hili'ow Addow to capture suspected Al-Qaeda militants and render them to the CIA. The policy failed to yield any high value targets like Nabhani. The fall of the warlords to the Al-Qaeda-friendly Islamic Courts Union (ICU) in 2006 effectively ended the U.S. rendition program in Somalia.

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[166] Fighel, J. (2011, June 16). Al-Qaeda – Mombassa Attacks 28 November, 2002, The Meir Amit Intelligence and Terrorism Information Center. Retrieved at http://www.terrorism-info.org.il/data/pdf/PDF_19300_2.pdf

After the rise of the ICU in 2006, the U.S. attempted to limit its direct imprint on Somali affairs by encouraging allies Ethiopia, Kenya, and Burundi to take the lead in driving-out the ICU and providing support the internationally recognized Transitional Federal Government (TFG). While these interventions were successful in deposing the ICU, they sparked popular insurgencies led by Al-Shabab and effectively limited the scope of TFG control to Mogadishu until late 2011. This lack of control meant that the U.S. could not rely on the TFG to capture, try, and imprison influential leaders like Nabhani. As a result, U.S. actions after the fall of the ICU reveal a decreased interest in detention, and an increased emphasis on lethal action against the senior leadership of al-Qaeda and al-Shabab.

In addition to an increased emphasis on lethal targeting, Nabhani's location in the al-Shabab dominated southern region of Somalia also played a role. The region is notoriously difficult to penetrate, with a local population largely sympathetic to Al-Shabab. These difficulties were in evidence during the October 2013 U.S. Special Forces ground raid in Barawe which attempted to capture Abdulkadir Mohamed, the lead planner of the Nairobi Westgate mall attack. After coming under heavy fire U.S. forces were forced to withdraw without capturing Abdulkadir.[167]

With context in mind, the factors influencing the U.S. decision to lethally target rather than capture Nabhani are as follows: 1) the catastrophic failure of a U.S. program utilizing warlords to detain high-priority targets, 2) the unwillingness and subsequent inability of successive Somali governments to capture and try high-priority targets, and 3) the demonstrated difficulty and danger to U.S. troops of unilateral capture operations in

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[167] Ahmed, A. & Ackerman, S. (2013, October 9). How the U.S. raid on al-Shabab in Somalia went wrong, *The Guardian*. Retrieved at http://www.theguardian.com/world/2013/oct/09/us-raid-al-shabaab-somalia-navy-seals

Southern Somalia. Taking all of this into account, it comes as little surprise that the U.S.

chose to lethally target Nabhani in 2008 and 2009 rather than attempt to capture him.

Case Study No. 3: Nazih Abd al Hamid al Ruqhay AKA "Anas al-Libi"

Born March 30, 1964 in Tripoli, Nazih Abd al Hamid al Ruqhay, (hereafter

referred to as Anas al-Libi) studied computer programming and systems before being

driven-out of the country in a late 1980's campaign by Muammar Qaddafi against Islamic

fundamentalists who were seen as a potential rallying point for opponents of the regime.

In 1988, al-Libi travelled to Afghanistan where he is believed to have met Osama Bin

Laden and joined Al-Qaeda. In 1991, al-Libi was among those who travelled with Bin

Laden to Sudan at the invitation of the Sudanese National Islamic front. Al-Qaeda used

the opportunity to conduct training and economic consolidation operations.[168] In 1993,

al-Libi was accused of conducting video and photographic surveillance on the U.S.

embassy in Nairobi, Kenya as a member of the Al-Qaeda conspiracy to strike the

embassy in retaliation for the U.S. involvement in Somalia.[169][170][171] In 1994, al-Libi was

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[168] In 1991, Sudan's National Islamic Front, an Islamist group that had recently gained power, invited al-Qaeda to move operations to Sudan. For several years, al-Qaeda operated several businesses (including import/export, farm, and construction firms) in what might be considered a period of financial consolidation. The group built a major 1200-km (845-mi) highway connecting the capital Khartoum with Port Sudan. However, they also ran a number of camps where they trained operatives in the use of firearms and explosives. In 1996, Osama bin Laden was asked to leave Sudan after the United States put the regime under extreme pressure to expel him, citing possible connections to the 1994 attempted assassination of Egyptian President Hosni Mubarak while his motorcade was in Addis Ababa, Ethiopia.

[169] Al Libi was implicated in the plot by co-conspirator turned government witness Jamal al-Fadl. Al-Fadl testified before a New York judge that Al-Libi had begun conducting "photographic surveillance of the US Embassy in Nairobi" in late 1993, as part of a plot to attack it, according to Jamal al-Fadl, an al-Qaeda member turned US government witness. His photographs were processed in a makeshift dark room in the apartment of L'Houssaine Kherchtou, a Moroccan al-Qaeda fighter and once Bin Laden's pilot, al-Fadl said. Later, "Bin Laden looked at the picture of the American embassy and pointed to where a truck could go as a suicide bomber," al-Fadl told a judge. file:///C:/Users/PoliSci%20GTF/Downloads/binladen20601tt.pdf (Reported by John Swain, *Al-Libi al-Libi, al Qaeda kingpin caught in Libya, was released by British police before going on the run*, The Telegraphy, October 6, 2013).

further accused of reviewing files concerning possible terrorist attacks against U.S., British, French, and Israeli targets in Nairobi, Kenya. Also in 1994, Al-Qaeda orchestrated an attack on the motorcade of then-Egyptian president Hosni Mubarak during an official visit to Addis Ababa, Ethiopia. Al-Libi remained in Sudan until leaving for Great Britain in 1995 at the direction of Osama Bin Laden. Sudan was facing mounting international pressure to expel al-Qaeda for the attempted assassination of Mubarak, and Bin Laden gave key lieutenants like al-Libi financial resources to relocate prior to his departure with 200 followers to Jalalabad Afghanistan.

Upon arrival in Great Britain, al-Libi traveled to Manchester, a known base for the Al-Qaeda-linked Libyan Islamic Fighting Group[172] where he requested and was granted asylum based on his fear of reprisal from the Qaddafi regime for his connection to Islamic fundamentalists. In 1998, al-Libi was named in the indictment against Osama Bin Laden and Al-Qaeda[173] for the August 7, 1998 bombing of U.S. embassies in Nairobi, Kenya and Dar Es Salaam, Tanzania which killed 224 civilians and wounded more than 4,000. In 1999 British police raided al-Libi's Manchester apartment and

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[170] A copy of the indictment can be viewed at http://cns.miis.edu/reports/pdfs/binladen/indict.pdf

[171] The reasons behind Al-Qaeda's decision to target the embassies at this time are controversial. The *U.S. v. Usama Bin Laden, et al* indictment lists the U.S. invasion of Somalia as the motivation for the attacks while others point out that the eventual date of the attack marked the 8th anniversary of the U.S. military presence in Saudi Arabia. In his book *Looming Tower: Al Qaeda and the Road to 9/11*, Lawrence Wright argues that the justifications were largely immaterial as Bin Laden's ultimate goal was to lure the U.S. into a ground conflict in Afghanistan. Wright, L. (2006) *The Looming Tower: Al Qaeda and the Road to 9/11.* Random House.

[172] Swaine, J. (2013, October 6). Al-Qaeda kingpin caught in Libya, was released by British police before going on the run, The Telegraph. Retrieved at http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/10359319/Abu-Anas-al-Libi-al-Qaeda-kingpin-caught-in-Libya-was-released-by-British-police-before-going-on-the-run.html

[173] Indictment: United States of America v. Usama Bin Laden, et-al http://cns.miis.edu/reports/pdfs/binladen/indict.pdf

arrested him for questioning. However, British authorities were unable to find sufficient

evidence to hold al-Libi and released him.[174] An FBI task force later arrived to assist

with evidence processing, and the joint team discovered a book later described as the

"Manchester Manual" on al-Libi's computer which reads like a military manual for

members of Al-Qaeda.[175]   By the time of the discovery of the Manchester Manual, al-

Libi had fled Great Britain with his family and was placed on the FBI's Most Wanted list

with a $5 million reward on his head. According to al-Libi's son, Abdullah al-Ruqai, the

family then travelled to Kabul, Afghanistan where they remained until the attacks of

September 11, 2001.

　　　After the attacks, Ruqai claims that al-Libi attempted to flee Afghanistan through

Iran, but that the entire family was detained by Iranian intelligence along with members

of Bin Laden's extended family.[176] According to the same report, al-Libi and family

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[174] Here is where things get a bit strange. According to former MI5 agent Mark Shayler, Al-Libi was one of several members of the Islamic Fighting Group who received payments from MI5 to assassinate Muammar Gadaffi in 1996. Shayler alleges that the plot to place a bomb under Qaddafi's car ultimately failed and resulted in the death of several civilians in Sirte. French journalists Guillaume Dasquié and Jean-Charles Brisard argue that British and U.S. intelligence agencies disregarded an international arrest warrant for Al-Libi for the killing of two German anti-terrorism experts that was issued five months before the embassy bombings took place. While the British government denies Shayler's claims about Al-Libi as "pure fantasy," some of his other claims including a planted story about Gadaffi's son running a currency counterfeiting operation were later proven true. Certainly the timing of his asylum, arrest, and ultimate flight from the country lead to questions of competence if not possible complicity. For further reading on the subject see: Hollingsworth, M., & Fielding, N. (1999). *Defending the realm: MI5 and the Shayler affair*. London: André Deutsch. Brisard, J.-C., & Dasquié, G. (2002).
Forbidden truth: U.S.-Taliban secret oil diplomacy and the failed hunt for Bin Laden. New York City: Thunder's Mouth Press. Spencer, R. (2013, October 6). British MPs to ask why al-Qaeda kingpin Al-Libi al-Libi was given asylum in the UK, The Telegraph. Retrieved from
http://www.telegraph.co.uk/news/10359484/British-MPs-to-ask-why-al-Qaeda-kingpin-Abu-Anas-al-Libi-was-given-asylum-in-the-UK.html

[175] UK Law Enforcement Translation, The Al-Qaeda Manual, Retrieved at
http://www.justice.gov/ag/manualpart1_1.pdf

[176] While Al-Libi and his family may very well have been in Iran at this time, Ruqai's contention that they were detained and tortured by Iranian intelligence is undermined by the March, 2014 trial of Osama Bin Laden's son-in-law Sulaiman Abu Ghaith. Ghaith has admitted to living in Iran for several years following the attacks of the September 11, 2001. Ruqai claims that his family was detained alongside relatives of Bin Laden, putting their stories at odds. Katersky, A. (2014, March 5). Prosecutor: Osama Bin Laden's Kin

were held until sometime in late 2010 when they were released and smuggled out of the

country. Ruqai states that al-Libi's family returned to Tripoli in 2010 and that he

returned in 2011 as the uprising against Qaddafi began.[177] After the fall of the Qaddafi

regime al-Libi's relatives state that he lived openly in Tripoli with no ties to Al-Qaeda.

However, an August 2012 report from the Library of Congress on Al-Qaeda in Libya

counts al-Libi as an active facilitator between Al-Qaeda Senior Leadership (AQSL) and

jihadists in Libya.[178]

On September 11, 2012 over 100 Islamic militants launched a series of attacks

against the U.S. Temporary Mission Facility and CIA Annex in Benghazi, Libya. The

attacks took place over 8 hours and left four Americans including the U.S. Ambassador to

Libya dead. In August, 2013 the U.S. filed sealed criminal charges against leaders of

Ansar al-Sharia, including former Guantanamo detainee Abu Sufian bin Qumu,[179] Ahmed

Abu Khattalah, and Seif Allah bin Hassine.[180] Although al-Libi was never implicated in

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'Confessed' to FBI on Secret Flight, ABC News. Retrieved from
http://abcnews.go.com/Blotter/prosecutor-osama-bin-ladens-kin-confessed-fbi-secret/story?id=22786595

[177] Carlotta, G. (2013, October 7). After Years on Run, Libyan Was Found With Family, The New York
Times. Retrieved from http://www.nytimes.com/2013/10/08/world/africa/libya.html?_r=0

[178] According to the report, "Al-Qaeda has tried to exploit the Arab Awakening in North Africa for its own
purposes during the past year. Al-Qaeda Senior Leadership (AQSL), based in Pakistan, is likely seeking to
build a clandestine network in Libya as it pursues its strategy of reinforcing its presence in North Africa
and the Middle East, taking advantage of the Arab Awakening that has disrupted existing counterterrorism
capabilities. Although AQSL's previous attempt to co-opt the Libyan Islamic Fighting Group (LIFG) was
inconclusive, the Libyan Revolution may have created an environment conducive to jihad and empowered
the large and active community of Libyan jihadists, which is known to be well connected to international
jihad."
 Federal Research Division, Library of Congress, (2012, August). Al-Qaeda in Libya: A Profile. Retrieved
from https://www.fas.org/irp/world/para/aq-libya-loc.pdf

[179] Qumu was captured in April 2002 by Pakistani ISI before being turned-over to U.S. authorities in May.
He was released from Guantanamo in 2007 and repatriated to Libya. He was detained by the Qaddafi
government before playing an active role in the 2011 overthrow.

[180] Goldman, A. (2014, January 7). Former Guantanamo detainee implicated in Benghazi Attack. The
Washington Post. Retrieved from http://www.washingtonpost.com/world/national-security/former-

the attacks, his purported role as a go-between AQSL and Islamic militant groups like Ansar Al-Sharia would have made him a person of great interest to U.S. intelligence agents attempting to establish whether there was any link between Al-Qaeda and the Benghazi attack.

On October 5, 2013 al-Libi was captured by U.S. Special Forces in front of his home in Tripoli and spirited-away to a ship waiting off-shore. The al-Libi raid was meant to the first of two in Libya, with the second planned operation to capture the aforementioned Khattalah.[181] However, reaction on the ground in Tripoli was severe. In fact the Libyan prime minister president Ali Zeidan was briefly kidnapped by militants in the immediate aftermath of the attack, and the Libyan government was forced to issue a strong rebuke to the U.S. calling the raid a "kidnapping."[182] After a week aboard a U.S. warship, al-Libi was transported to the Southern Court of New York City where he was charged for his role in the 1998 embassy bombings.[183] He remains in custody there while he awaits trial after pleading not guilty to the charges against him.[184]

guantanamo-detainee-implicated-in-benghazi-attack/2014/01/07/c73fdf78-77d5-11e3-8963-b4b654bcc9b2_story.html

[181] Star, B. (2013, October 29). US commandos were poised for raid to capture Benghazi suspect, *CNN*. Retrieved from http://security.blogs.cnn.com/2013/10/29/first-on-cnn-us-commandos-were-poised-for-raid-to-capture-benghazi-suspect/

[182] Robertson, N. (2013, October 11). Gunmen seize Libyan PM Ali Zeidan before dawn, free him hours later, *CNN*. Retrieved from http://www.cnn.com/2013/10/10/world/africa/libya-pm-escorted-away/

[183] Feyerick, D. (2013, October 15). Alleged al Qaeda operative Abu Anas al Libi pleads not guilty, *CNN*. Retrieved from http://www.cnn.com/2013/10/15/justice/al-Libi-case/

[184] As of October 23, 2013, the Prosecutor has requested that Al-Libi be tried jointly with fellow embassy bombing suspects Adel Abdel Bary, and Khalid Al Fawwaz. Burkholder A. (2013, October 23). U.S. gov't requests joint terror trial with al Liby, *CBS*. Retrieved from http://www.cbsnews.com/news/us-govt-requests-joint-terror-trial-with-al-liby/

Evaluation vs. Klaidman

The al-Libi case is somewhat unique as it ends with the capture of a high-profile suspect rather than his death. In this aspect, the al-Libi case seems to be in contradiction to the Klaidman supposition that such captures would no longer occur after the closure of Guantanamo. However, al-Libi was already under federal indictment for the 1998 U.S. embassy bombings, and has been found eligible for trial in a U.S. court. Thus, the administration was allowed a capture option in this case. Interestingly, al-Libi's post-capture transport to a U.S. warship waiting in the Mediterranean for transport and interrogation exactly echoes Klaidman's account of General "Hoss" Cartwright's 2009 argument for a capture option of Saleh Nabhani to president Obama.

Evaluation vs. Thesis

If Klaidman is not satisfactory to explain al-Libi's capture, how do the theories posited by this thesis stand-up? First up is UAV availability. Is there any chance that al-Libi was not lethally targeted due to a lack of armed UAV coverage? In a word: No. As part of its military assistance package to NATO and rebel forces fighting the Gaddafi regime in 2011, the U.S. deployed armed Predator drones to provide close air-support (CAS) to forces fighting on the ground.[185] According to some estimates, the U.S. launched as many as 105 drone strikes against Gaddafi loyalist forces in 2011 alone (see fig 6.1).[186]

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[185] At the time of the deployment of the UAVs, SECDEF Gates is quoted as stating ""I think this is a very limited additional role on our part, but it does provide some additional capabilities to NATO. And if we can make a modest contribution with these armed Predators, we'll do it. ... I don't think any of us see that as mission creep." Cloud, D. (2011, April 22). U.S. begins using Predator drones in Libya, *Los Angeles Times*. Retrieved from http://articles.latimes.com/2011/apr/22/world/la-fg-gates-libya-20110422

[186] Woods, C. & Ross, A. (2012, December 4). Revealed: US and Britain launched 1,200 drone strikes in recent wars, *The Bureau of Investigative Journalism*. Retrieved from

In addition, the Senate Intelligence Committee after-action report on Benghazi mentions that a U.S. drone was diverted from other intelligence surveillance and reconnaissance (ISR) operations elsewhere in Libya in order to provide an "eyes-on" view of actions on the ground.[187] Therefore, any argument that al-Libi was captured because there wasn't a UAV available to kill him is a non-starter. Birds and Bases have nothing to do with the decision to capture rather than kill al-Libi.
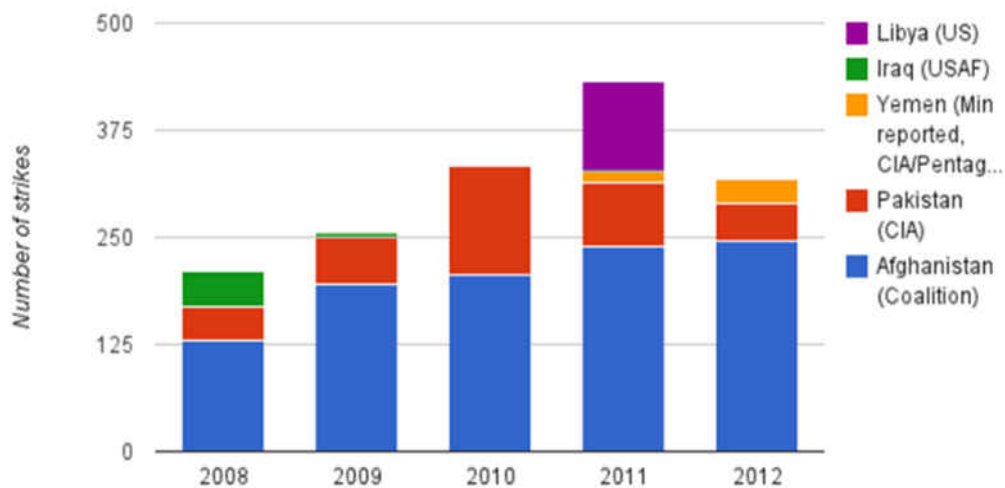
Figure 6.1. Five Years of Drone Strikes
Source: The Bureau of Investigative Journalism

While the availability of UAVs did not influence the decision to capture him, al-Libi's status as one of the few high-profile terrorists at large and under indictment made

http://www.thebureauinvestigates.com/2012/12/04/revealed-us-and-britain-launched-1200-drone-strikes-in-recent-wars/

[187] Citing a DOD timeline of its response to the attacks, the report states: "At approximately 11: 10 p.m. Benghazi time, an unarmed, unmanned DoD Predator surveillance aircraft, which had been diverted approximately one hour earlier by U.S. Africa Command (AFRICOM) from another intelligence collection mission in eastern Libya, arrived over the Mission compound and soon after detected a roadblock several blocks east of the Mission facility." U.S. Select Committee on Intelligence, *Review of the Terrorist Attacks on U.S. Facilities in Benghazi, Libya, September 11-12, 2012.* (2014, January 15). Retrieved from http://www.intelligence.senate.gov/benghazi2014/benghazi.pdf

him an ideal candidate for capture and trial in the U.S. However, as previous strikes have shown, simply being eligible for civilian trial by no means guarantees exemption from targeted killing. As a supposed go-between for AQSL and Ansar al-Sharia, al-Libi also met the administration's criteria as an imminent and continuing threat and a legal kill. Therefore, al-Libi's legal status served as an influencing factor in his capture but is not sufficient to completely explain it.

Once again, at the individual level context is king. Why was Al-Libi captured on October 7, 2013 and not killed or captured prior to that? First, it seems clear that al-Libi's position as a prominent anti-Gaddafi militant gave him some protection from western intelligence and law-enforcement up until he was linked to the 1998 embassy bombings. The strongest evidence for this is that he was granted asylum in Britain *after* spending several years in the company of Osama Bin Laden. From the point of his flight in 1999 until he re-emerged in 2011, al-Libi was essentially beyond the reach of the U.S. first in Afghanistan, and subsequently in Iran. From there is gets more complicated. Assuming that the U.S. knew of al-Libi's return to Libya,[188] why was he not targeted by one of over 100 lethal strikes that the U.S. executed during the 2011 air campaign against Gaddafi loyalist forces? There are three possibilities: First, the U.S. simply did not know that he had returned. Second, at the time the U.S. was more interested in the fall of the Gaddafi regime and al-Libi's utility as an anti-Gaddafi leader was useful. Third, the U.S. wanted to capture al-Libi alive and would have been unable to do so in the middle of a civil war. As is so often the case, the answer likely lies somewhere near the confluence of all three. These reasons may explain why al-Libi remained free and alive prior to

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[188] This is a big assumption and a bit of a stretch. However, if western intelligence was actively monitoring for signs of Al-Libi, the return of his family to Tripoli would have set-off alarm bells.

October, 2013. How then to explain his sudden capture? First, al-Libi's capture was a relatively low-risk operation. U.S. intelligence was able to track al-Libi's exact location. Conducting a raid at his residence in relatively tranquil Tripoli did not present the same level of tactical risk that an operation into the jihadist stronghold of Benghazi or southern Somalia would have presented. Finally, although not expressly linked by the government, the timing of al-Libi's capture in the aftermath of the Benghazi attacks cannot be ignored. The fact that the al-Libi raid was originally phase one of a two-phase operation to capture him and Abu Khattalah, the prime suspect in the Benghazi attacks, strongly suggests that the administration was keen to interrogate al-Libi both. Given al-Libi's suspected role as a go-between AQSL and Libyan jihadist groups like Ansar Al-Sharia, his capture may have been seen as a potential gold-mine of intelligence information on the role of AQ in Libya, and its influence on groups like that which perpetrated the Benghazi attacks.

Conclusions

The case studies of Saeed al-Shihri, Saleh ali-Nabhani, and Anas al-Libi provide an interesting real-world test of both Klaidman's theory and those posited by this thesis. It seems clear that Klaidman's theory while not entirely untrue, is simply too narrow to serve as the explanation for why each individual terrorist is killed or captured.   In fact, it seems clear that any single variable taken outside of the overall context is not particularly useful. UAV availability may have been an influencing factor in Shihri's targeted killing, but it only explains the method of killing Nabhani, and is a non-factor in the al-Libi case. Al-Shihri's legal status left open the option for capture but he was killed as a legitimate enemy combatant.   Nabhani's legal status was somewhat murky but was likely less

important in the decision to kill him than his location in lawless southern Somalia.

Finally, al-Libi's legal status absolutely played into the decision to capture him, but it is

clear that there were other influencing factors as well.   So what exactly have we learned?

Most importantly we have learned that the decision to kill or capture a high-profile target

is a deliberative one that simply cannot be divorced from past and present context.

CHAPTER VII

WHERE WILL UAVs STRIKE NEXT & WHAT ARE THE

IMPLICATIONS FOR INTERNATIONAL NORMS?

It's very likely that we're going to confront more terrorists here in this country; it's very likely they are going to be American citizens. And if, in fact, this is an effective technology, why wouldn't you use this technology to eliminate this threat?[189]

Where Will the U.S. Strike Next?

The four countries where the U.S. admits to executing lethal UAV strikes, (Afghanistan, Pakistan, Yemen, and Somalia) represent too small a sample to make a statistically predictive model about the larger population of nations. However, looking at the _why_ of strikes quickly reveals a number of shared attributes between these countries. In each of the countries where the U.S. has employed lethal strikes the following conditions have existed: 1) the U.S. had multiple UAV bases within the cruising radius of its weapon-capable drones, 2) there were enough UAVs in the U.S. available to provide 24-hr coverage over the country, 3) each country had an Al-Qaeda or affiliated insurgency placing pressure on the regime, 4) each country lacked the military capability to launch precision strikes on its own, and 5) each nation authorized the U.S. to launch lethal strikes within its territory.[190]

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[189] Former U.S. Attorney General Alberto Gonzales. Cohen, T. & Watkins, T. (2014, February 11). Another U.S. citizen a potential drone target, CNN. Retrieved at http://www.cnn.com/2014/02/11/justice/drones----targeting-americans/

[190] Miller, G. & Woodward B. (2013, October 23). Secret memos reveal explicit nature of U.S., Pakistan agreement on drones, The Washington Post. Retrieved at http://www.washingtonpost.com/world/national-security/top-pakistani-leaders-secretly-backed-cia-drone-campaign-secret-documents-show/2013/10/23/15e6b0d8-3beb-11e3-b6a9-da62c264f40e_story.html?hpid=z4

Given these conditions the next logical step is to evaluate where the U.S. is likely to launch lethal strikes in the future. A side-by-side comparison reveals five interesting possibilities in Syria, the Philippines, Iraq, Mali, and Turkey (See Table 7.1). We can eliminate Syria as a potential recipient of U.S. air support for now, and Turkey lacks an Al-Qaeda-based insurgency. The Philippines and Mali on have already authorized U.S. surveillance flights, but remain opposed to strikes, despite a 2006 New York Times report that the U.S. conducted a strike in the Philippines aimed at killing Abu Sayef leader Umar Patek.[191]

Table 7.1. Current and Potential Locations for U.S. Strikes					
COUNTRY	Base Available?	UAVs Available?	AQ Affiliate Insurgency Placing Pressure on Regime?	Does Host Nation Lack Precision Strike Capability?	Has Host Nation Authorized Strikes?
Afghanistan	Y	Y	Y	Y	Y
Pakistan	Y	Y	Y	Y	Y
Yemen	Y	Y	Y	Y	Y
Somalia	Y	Y	Y	Y	Y
Syria	Y	Y	Y	Y	N
Mali	Y	Y	Y	Y	N
Philippines	Y	Y	Y	Y	N
Iraq	Y	Y	Y	Y	N
Turkey	Y	Y	N	Y	N

This leaves Iraq. Recent events in Iraq reveal it to be the most likely location for future U.S. strikes. In January, 2014 al-Qaeda affiliate al-Qaeda in Iraq (AQI) asserted

Scott, S. (2012, September 29). Yemen's Leader Praises U.S. Drone Strikes. The New York Times. Retrieved at http://www.nytimes.com/2012/09/29/world/middleeast/yemens-leader-president-hadi-praises-us-drone-strikes.html?_r=0

Rice, X. (2007, January 9). 'Many dead' in US air strikes on Somalia. The Guardian. Retrieved at http://www.theguardian.com/world/2007/jan/09/usa

[191] Mazetti, M. (2012, July 6). The Drone Zone, *The New York Times*. Retrieved at http://www.nytimes.com/2012/07/08/magazine/the-drone-zone.html?pagewanted=all&_r=1&

its control of Fallujah.[192] At the same time the Iraqi government formally requested

authorization to purchase ten Scan Eagle surveillance UAVs, and 75 hellfire missiles.[193]

Finally in May, 2014, the Iraqi government requested armed UAVs, and has indicated

that it may be willing to allow U.S. operators in order to gain access to UAVs trike

capability.[194] Therefore it appears that the only thing precluding a lethal UAV campaign

Iraq is for the Iraqi government to authorize U.S. operators to return on U.S. terms.

What then might the pattern of strikes in Iraq look like should this occur? First,

we know that there would be very little lag between the initial political authorization, and

operational readiness to launch strikes. The U.S. already has several UAV bases within

easy striking range of targets in Iraq, and could easily re-occupy air bases in Baghdad and

Balad that would serve as excellent launch and recovery sites. In addition, the U.S.

already considers itself at war with Al-Qaeda in Iraq (AQI), precluding any protracted

debate over the legality of killing its members. With these two factors accounted for, the

only wild-card remains the context within which U.S. decision-makers will operate.   In

this instance, context may end up being a limiting factor.

Although AQI was one of the primary adversaries facing U.S. forces during its

occupation of Iraq from 2004-2011, AQI's recent activities have had little to do with the

U.S. Instead AQI has focused on destabilizing the Iraqi government, and facilitating

cross-border incursions with Jabhat al-Nusra, another Sunni terrorist organization

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[192] Sly, L. (2014, January 4). Al-Qaeda-linked force captures Fallujah amid rise in violence in Iraq, The Washington Post. Retrieved at http://www.washingtonpost.com/world/al-qaeda-force-captures-fallujah-amid-rise-in-violence-in-iraq/2014/01/03/8abaeb2a-74aa-11e3-8def-a33011492df2_story.html

[193] Metzler, R. (2013, December 26). U.S. Selling Missiles, Drones to Iraq Amid Spreading Violence, Reuters. Retrieved at http://www.reuters.com/article/2013/12/26/us-iraq-violence-usa-idUSBRE9BP0HM20131226

[194] Lubold, G. & Sobel, N. (2014, May 9). Iraqis want attack drones; Anbar rages. Foreign Policy: Situation Report. Retrieved at http://www.foreignpolicy.com/

fighting in the Syrian civil war.[195] As such, the U.S. would be hard-pressed to argue that

UAV strikes in Iraq would target only individuals who represented an imminent and

continuing threat to the U.S. While U.S. has shown willingness to strike targets at the

behest of the Pakistani and Yemeni governments, it has always been within the context of

gaining or maintaining access to prominent U.S. targets in those countries. This would

not be the case in Iraq. If the U.S. decides to move forward with lethal strikes in Iraq, it

will be a watershed moment. Going forward it would be clear that the U.S. was willing

to utilize UAVs to kill not only individuals who threaten its own security, but also those

who threaten to topple governments who share U.S. security interests.

Looking Ahead: Impact on International Norms & Potential for Change

If the U.S. expands its use of UAVs to conduct lethal strikes into countries like

Iraq and the Philippines, it will reinforce the international norm of lethal state action

against non-state actors already being shaped by U.S. operations in Pakistan, Yemen, and

Somalia. Although Israel was the first to employ the strategy of lethally targeting known

terrorist leaders using so-called "personality strikes," the U.S has pioneered a massive

expansion of the practice.[196] Key to this expansion is the employment of UAVs to target

low-level fighters who although unknown to U.S. decision makers, are engaged in

activities that suggest they are directly involved in a terrorist organization. The practice

of employing such "signature strikes" greatly increases the number of viable targets and

consequently the aggregate body-count. The use of signature strikes is controversial

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[195] Ashish, K. (2013, August 8). Al Qaeda drives Iraq toward chaos; U.S. withdrawal left door open to sectarian battle for power, the Washington Times. Retrieved at: http://www.washingtontimes.com/news/2013/aug/8/al-qaeda-drives-iraq-toward-chaos/#ixzz32MugaVst

[196] David, S. R. (April 01, 2003). Israel's Policy of Targeted Killing. *Ethics & International Affairs, 17,* 1.)

particularly amongst academics and policy-makers who are concerned about the precedent they set and the potential for other nations to employ the tactic against either their own citizens or groups they deem to be terrorist organizations operating in another state.

The Obama administration is keenly aware of the long-term implications of its actions with the President acknowledging in 2012 that "creating a legal structure, processes, with oversight checks on how we use unmanned weapons, is going to be a challenge for me and my successors for some time to come."[197] In seeking to accomplish this, the administration has little in the way of an international precedent to build upon. There is no international treaty that specifically regulates the development and subsequent employment of UAVs. Currently the only international body tracking the proliferation of UAV technology is the Missile Technology Control Regime (MTCR). As an informal non-treaty association of states, the MTCR lacks regulatory teeth and is not recognized by nations aggressively developing UAV technology like China, India, Iran, and North Korea. Lacking an international monitoring infrastructure like the International Atomic Energy Agency, (IAEA) or even an industry cooperative agreement like the Nuclear Suppliers Group, (NSG) the manufacture and sale of UAVs is today something of a free-for-all.[198] Due to its extreme cost and physical infrastructure

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[197] Bowden, M. (2012). *The finish: The killing of Osama Bin Laden*. New York: Atlantic Monthly Press.

[198] According to a 2013 Council on Foreign Relations report, "the U.S. has limited the export of so-called "munition capable" drones citing their classification as Category I items, or capable of moving a 500KG payload 300 kilometers." However, in July, 2013 the Defense Security Cooperation Agency (DSCA) announced that it had received Congressional approval to move forward with the sale of 12 "Reaper" class UAVs to France. In addition, a report by the British newspaper The Guardian in February 2014 revealed that British pilots had launched at least 39 lethal strikes against targets in Afghanistan using UAVs "borrowed" from the U.S. military.

requirements, the proliferation of nuclear technology has been relatively easy to track and police. This is not the case with UAVs. Adding complexity to the issue is the relatively low-cost and simplicity of developing a UAV platform capable of delivering an explosive payload.

Total U.S. spending on UAVs including Research and Development Evaluation and Testing (RDT&E), Procurement (PROC), and Operations and Maintenance (O&M) for fiscal year 2013 (FY13) was estimated to be $2.6 billion.[199] While not an insignificant amount, it represents only 3% of the $80.5 billion the U.S. Air Force spent on total RDT&E, PROC, and O&M in FY13 (See fig 7.1).[200] A single Predator UAV costs $4.5 million. Even when you consider the added cost of building a complete UAV system consisting of 4 Predators and the associated ground control station, the total is

Zenko, M. (2013, January). Reforming U.S. Drone Strike Policies, Council on Foreign Relations, Special Report No. 65. Retrieved at
http://upstatedroneaction.org/documents/Reports/Thinktank/Drones_CSR65.pdf

Agence France-Presse (2013, July 15). US Readies Sale of Reaper Drones to France. *Defense News*. Retrieved at http://www.defensenews.com/article/20130715/DEFREG02/307150013/US-Readies-Sale-Reaper-Drones-France

Hopkins, N. (2014, February 9). RAF has fired missiles in Afghanistan using US drones, MoD reveals. The Guardian. Retrieved at http://www.theguardian.com/uk-news/2014/feb/09/raf-british-crews-missiles-afghanistan-us-drones-mod

[199] This total includes expenditures on the grossly over- budget RQ-4 Global Hawk surveillance UAV. In FY13 the Air Force spent roughly $890 million on 6 RQ-4's or roughly $140.9 million per aircraft. Spending on the Global Hawk has triggered two Nunn-McCurdy breaches (unforeseen budget growth in excess of 15%) in April 2005, and April 2011. Gertler, J. (2012, January 3). U.S. Unmanned Aerial Systems, Congressional Research Service Report R42136. Retrieved at http://www.fas.org/sgp/crs/natsec/R42136.pdf

[200] (2012, February 3). United States Air Force FY 2013 Budget Overview. RefID: C-480AE32. Retrieved at http://www.saffm.hq.af.mil/shared/media/document/AFD-120209-052.pdf
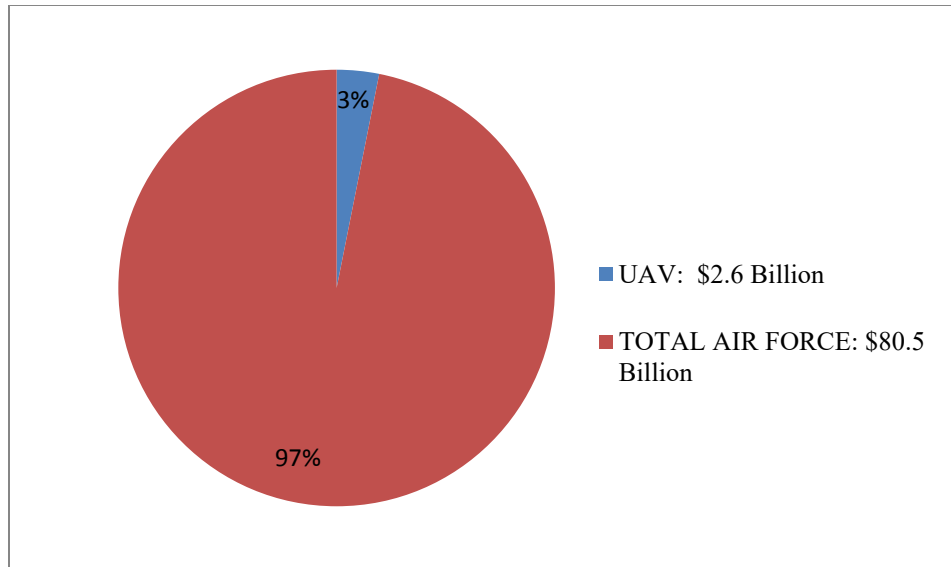
Figure 7.1. Air Force FY13 Spending: RDT&E, PROC, O&M
Source: U.S. Air Force FY13 Budget Overview

roughly $20 million.[201] When compared to an entry-model price tag for the F-35 Joint

Strike Fighter of $188.5 million, the Predator is a bargain.[202] Or, put another way the

U.S. could afford to purchase nine complete predator systems with a total of 36 birds for

the price of one F-35. For this reason, UAVs are considered "expendable" and are not

designed with countermeasures to prevent them being shot down. When one considers

that $719 million or 28% of the total FY13 UAV cost was attributable to RDT&E, it is

easy to imagine a country like China reverse-engineering and producing these systems for

considerably less.[203]

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[201] Gertler, J. (2012, January 3). U.S. Unmanned Aerial Systems, Congressional Research Service Report R42136. Retrieved at http://www.fas.org/sgp/crs/natsec/R42136.pdf

[202] Wheeler, W. (2013, June 7). On Final Approach to Fighter Fiscal Sanity, *Time*. Retrieved at http://nation.time.com/2013/06/07/on-final-approach-to-fighter-fiscal-sanity/

[203] Marcus, J. (2013, November 22). China 'flies first stealth drone,' BBC News. Retrieved at http://www.bbc.com/news/world-asia-china-25033155

While other nations have yet to match the payload and cruising range capabilities of the U.S. Reaper, there is already evidence that the technology could be employed by lesser powers or non-state actors to achieve the same kind of asymmetric advantages that plagued the U.S. occupations of Iraq and Afghanistan.[204] The most obvious example of this phenomenon is the struggle by U.S. forces to respond to the threat of Improvised Explosive Devices, (IEDs) the insurgent's asymmetric weapon of choice. By 2005, U.S forces in Iraq were under siege, encountering over 3,000 IEDs per year which killed an average of 75 Soldiers per month.[205] In response, the military launched the Joint Improvised Explosive Device Defeat Organization (JIEDDO) made up of over 1,900 military personnel and contractors with expertise in countering the IED threat. Faced with a dizzying array of IED threats which were only limited by the talent and vicious creativity of the bomb-maker, JIEDDO applied a full-spectrum response to the problem including training, counter-measures, and steadily increasing the amount of armor on troop vehicles. However, by 2010 the U.S. had spent over $41 billion combating IEDs with little to show for it.[206] The IEDs were still accounting for nearly 60% of all U.S.

[204] Although the term "Asymmetric Warfare" refers to any conflict where there is a significant disparity in the relative military strength of the two belligerents, in this case the term refers to the insurgencies in Iraq and Afghanistan leveraging their strengths against the weaknesses of the U.S. and allied occupation forces.

[205] Roggio, B. (2007, December 17). Iraq by the numbers: Graphing the decrease in violence, The Long War Journal. Retrieved at http://www.longwarjournal.org/archives/2007/12/iraq_by_the_numbers.php

(2014, April 15). Iraq Coalition Casualty Count. Retrieved at http://icasualties.org/Iraq/index.aspx

[206] $17 billion to JIEDDO, $1.5 billion on countermeasures, and $22.7 billion on Mine Resistant Ambush Protected Vehicles (MRAPs). United States Government Accountability Office, (2010, July). Actions Needed to Improve the Joint Improvised Explosive Device Defeat Organization's System of Internal Control. GAO-10-660. Retrieved at
http://www.gao.gov/assets/310/306400.pdf

casualties, and aggregate decreases in troop deaths were credited to the co-option by U.S. forces of large portions of the Sunni-based insurgency into the "Sons of Iraq."[207]

U.S. struggles with asymmetric threats did not go unnoticed by the rest of the world. Recognizing the asymmetric potential of UAVs, states like Iran began to develop and ship them to regional surrogates like Hezbollah.[208] Using these UAVs, Hezbollah flew at least four flights over northern Israel between 2004 and 2006. In 2005, the aircraft were revealed to be the Iranian-made surveillance UAV, the Misrad-1.[209] Then, in 2006 the IDF shot-down two additional Hezbollah UAVs during the Israeli Lebanon war which were identified as the Iranian Ababil.[210] The shoot-downs were impressive as the Ababil like most UAVs flies very low and has virtually no infrared or radar signature. However, these victories were only accomplished by dedicating several aircraft within the IAF to the interdiction mission.[211] This is a classic example of asymmetry wherein the outmatched opponent forces the more powerful to dedicate crucial military and financial resources to combat a threat that is relatively cheap to manufacture and employ. The Ababil boasts amongst its capabilities, the ability to carry an 88lb explosive over a distance of 150 miles. Although fears that Hezbollah could use this capability to launch

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[207] Sterling, J. (2008, December 30). U.S. Deaths in Iraq down 66 percent from last year, CNN. Retrieved at http://www.cnn.com/2008/WORLD/meast/12/30/iraq.main/

[208] Of note, Iran is also accused of manufacturing and providing the most lethal form of IED known as an Explosively Formed Projectile (EFP) to insurgents operating in both Iraq and Afghanistan. Setrakian, L. (2009, December 16). Petraeus Accuses Iran of Aiding Afghan Taliban, ABC News. Retrieved at http://abcnews.go.com/Politics/Afghanistan/gen-petraeus-iran-backing-iraq-militias-afghan-taliban/story?id=9346173

[209] (2004, November 7). Hezbollah drone flies over Israel, BBC News. Retrieved at http://news.bbc.co.uk/2/hi/middle_east/3990773.stm

[210] Ababil is translated as "Swallow" from Farsi.

[211] Lambeth, B. (2011) "Air Operations in Israel's War Against Hezbollah," RAND Corporation, pp. 110–126.

precision strikes or even disperse chemical/biological weapons have not been realized, its appearance on the battlefield is a signal that the U.S. and its allies are not the only ones capable of realizing relative military advantage through UAV technology.

The problem of unwanted aircraft does not belong to Israel alone. In 2010 a Mexican surveillance UAV crash landed in an El Paso residential area.[212] As technology improves, costs fall, and payload capacity and cruising range increase, the U.S. will be forced to monitor for the possibility of a hostile air incursion, presumably by a non-state actor operating from anywhere within the cruising radius of the UAV in question. Figure 7.2 below highlights areas potentially vulnerable assuming a relatively modest cruising radius of 350 miles.

Figure 7.2. Areas Vulnerable to UAV Threat Assuming Cruising Radius of 350 nautical miles

Analysts are worried about the rapid proliferation of UAV technology combined with the precedents for its use being set by U.S. actions in Pakistan, Yemen, and Somalia.

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[212] Dwyer, D. (2010, December 17). Mexican Surveillance Drone Crashes in El Paso Backyard, ABC News. Retrieved at http://abcnews.go.com/US/mexican-drone-crashes-el-paso-backyard-ntsb-investigating/story?id=12421782

They wonder what will happen at the inevitable moment when the U.S. and its allies no longer have a monopoly on the application of lethal force using this platform.[213] The U.S. must lay-out and follow clear self-limiting guidelines governing its use of UAVs for lethal purposes. Failing this, it will lack the necessary moral authority to lead the effort to create the international organizations and legal regimes capable of preventing a future where targeted killing is employed with impunity against anyone deemed an "imminent threat."[214] As Scott Shane of the New York Times points out:

> If China, for instance, sends killer drones into Kazakhstan to hunt minority Uighur Muslims it accuses of plotting terrorism, what will the United States say? What if India uses remotely controlled craft to hit terrorism suspects in Kashmir, or Russia sends drones after militants in the Caucasus? American officials who protest will likely find their own example thrown back at them.[215]

An example of the potential for this problem can be found in the Russian invasion and annexation of Crimea in March, 2014. When the Obama administration condemned the move as a blatant violation of international law and norms, Russian president Vladimir Putin was quick to throw-back U.S. actions like its unsanctioned 2003 invasion of Iraq as a counter-argument.[216]

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[213] "The Obama administration recognizes that UAVs are a distinct platform that has destabilizing possibilities," he said. Given the rapid evolution of drone technology, the United States "has a shrinking window to shape international norms."

[214] A U.N. Special Rapporteur report on extrajudicial killing emphasizes this without specifically naming the U.S. "The expansive use of armed drones by the first States to acquire them, if not challenged, can do structural damage to the cornerstones of international security and set precedents that undermine the protection of life across the globe in the longer term." Heyns, C. (2013, September 13). Extrajudicial, Summary or Arbitrary Executions. United Nations General Assembly. Retrieved at http://justsecurity.org/wp-content/uploads/2013/10/UN-Special-Rapporteur-Extrajudicial-Christof-Heyns-Report-Drones.pdf

[215] Shane, S. (2011, October 8). Coming Soon: The Drone Arms Race, *The New York Times*. Retrieved at https://agriculturedefensecoalition.org/~agricum4/sites/default/files/file/drones_517/517K_2_2011_Coming_Soon_The_Drone_Arms_Race_October_8_2011_NYTimes.pdf

[216] In an interview Putin states *"We are often told our actions are illegitimate, but when I ask, 'Do you think everything you do is legitimate?' they say 'yes.' Then, I have to recall the actions of the United States in Afghanistan, Iraq and Libya, where they either acted without any U.N. sanction or completely distorted

Recognizing the precariousness of the U.S. position, there is a considerable push amongst academics and politicians to curtail the expansiveness of the U.S. lethal targeting program by amending or ending the Authorization for the Use of Military Force (AUMF), increasing transparency of the targeting process, and ultimately for the U.S. to lead the effort to establish an international treaty defining the lawful development and use of UAVs.[217] In fact, in his so called "drone speech," President Obama stated "I look forward to engaging Congress and the American people in efforts to refine, and ultimately repeal, the AUMF's mandate, and I will not sign laws designed to expand this mandate further."[218] However, after nearly a year no such dialogue has occurred, and is not likely to. As long as support for the practice of targeted killing remains popular or not likely to have a negative effect on re-election chances, the U.S. administration and lawmakers will have a vested interest in not limiting the reach of the AUMF. Should either party take the lead in repealing or limiting the scope of the AUMF, they will make themselves vulnerable to voter backlash when the inevitable next terrorist attack occurs. Thus, the U.S. has the proverbial tiger by the tail; unable to relinquish its grip on lethal strikes for fear of being bitten by another terrorist attack.

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the content of such resolutions, as was the case with Libya. Americans always clearly formulate their own geopolitical and state interests and follow them with persistence. Then, using the principle 'You're either with us or against us' they draw the whole world in. And those who do not join in get beaten until they do." Bershidsky, L. (2014, March 18). The Czar's Speech: Putin Takes Crimea, Bloomberg View. Retrieved at http://www.bloombergview.com/articles/2014-03-18/the-czar-s-speech-putin-takes-crimea

[217] Beginning on page 26 of a special report for the Council on Foreign Relations, Michah Zenko succinctly captures the breadth of recommendations from across the academic, military, and legal communities. Zenko, M. (2013, January). Reforming U.S. Drone Strike Policies, Council on Foreign Relations, Special Report No. 65. Retrieved at http://upstatedroneaction.org/documents/Reports/Thinktank/Drones_CSR65.pdf

[218] "Obama, B. (2013, May 23). Remarks by the President at the National Defense University. White House Press Office. Retrieved at http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university

Coming Soon: Lethal Strikes on U.S. Soil

While the U.S. wrestles with the idea of imposing unilateral constraints on its use of lethal targeting abroad, the next frontier may be very much closer to home.   During the 2013 confirmation hearings for John Brennan as CIA Director, Senator Rand Paul sent a letter to the nominee asking a number of pointed questions including the potential for the lethal use of UAVs against U.S. citizens on U.S. soil.[219] Although Mr. Brennan responded that the CIA did not have the authority, and would not engage in the lethal targeting of U.S. citizens on U.S. soil, Senator Paul did receive an additional response from U.S. Attorney General Eric Holder. The response denied that the administration had any plans to engage in domestic lethal targeting, but held the door open for future strikes on U.S. soil stating "It is possible, I suppose to imagine an extraordinary circumstance in which it would be necessary and appropriate under the Constitution and applicable laws of the United States for the President to authorize the military to use lethal force within the territory of the United States." While Holder's response does not specifically reference the possibility of targeting U.S. citizens, an interview of former U.S. Attorney General Alberto Gonzales reveals that such a strike is not outside the realm of possibility. Gonzales argues "It's very likely that we're going to confront more terrorists here in this country; it's very likely they are going to be American citizens. And

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[219] The letter asked amongst other things: "Do you believe that the president has the power to authorize lethal force, such as a drone strike, against a U.S. citizen on U.S. soil? What about the use of lethal force against a non-U.S. person on U.S. soil? Do you believe that the prohibition on CIA participation in domestic law enforcement, first established by the National Security Act of 1947, would apply to the use of lethal force, especially lethal force directed at an individual on a targeting list, if a U.S. citizen on a targeting list was found to be operating on U.S. soil? What if the individual on the targeting list was a non-U.S. person but found to be operating on U.S. soil? Do you consider such an operation to be domestic law enforcement, or would it only be subject to the president's wartime powers?" Paul, R. (2013, February 12). Letter to John O. Brennan, presidential nominee for Director of the CIA. Retrieved at http://www.paul.senate.gov/files/documents/Brennan2.pdf

if, in fact, this is an effective technology, why wouldn't you use this technology to eliminate this threat?"[220]

While this rhetoric seems to trample on the constitutional protection of due process, the real question will be how future administrations define the term imminent threat. U.S. law-enforcement has always been within its rights to kill a U.S. citizen if there is no other way to stop that individual from harming others (i.e. an active shooter, terrorist with finger on the detonator, etc.).[221] However, any lethal action taken when capture or containment of the threat is possible is categorized as a violation of an individual's natural right to life. If U.S. law-enforcement maintains the same stance to lethal force as in the past, it could be argued that a UAV is little different than a sniper rifle in application and end-result. However, critics of this stance would argue that there is an issue of proportionality. A UAV firing a hellfire missile into a building or moving vehicle greatly reduces the chances of the target surviving the strike, and violates international norms of proportionality and restraint in the application of deadly force. In addition, the ability of UAVs to reduce the risk to law-enforcement personnel, (i.e. no need to send in a SWAT team) may prove to be too great a temptation for field commanders concerned about sending their men and women into harm's way. President Obama acknowledges this phenomenon when he states: "There's a remoteness to it [ordering a drone strike] that makes it tempting to think that somehow we can, without

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[220] Cohen, T. & Watkins, T. (2014, February 11). Another U.S. citizen a potential drone target, CNN. Retrieved at http://www.cnn.com/2014/02/11/justice/drones----targeting-americans/

[221] "Law enforcement agents may use deadly force only if they reasonably believe that killing a suspect is necessary to prevent him from causing immediate physical harm to the agents or to others, or to keep him from escaping in an area where he is likely to cause physical harm in the future." Idaho v. Horiuchi, 253 .3d 359 (9th Cir, 2001), vacated as moot, 266 F.3d 979 (9th Cir. 2001).

any mess on our hands, solve vexing security problems."[222] Partly in anticipation of these

fears, private industry is developing UAV variants capable of delivering less-than-lethal

force including a man-portable UAV with a deployable Taser. One can imagine the use

of such a device to remotely incapacitate a belligerent without direct confrontation.[223]

While the debate continues on what if any role UAVs are acceptable for in

domestic law enforcement, in the absence of restrictive guidance several agencies are

moving ahead with employing the technology. In response to an inquiry from Senator

Paul, the FBI acknowledged that it has already used UAVs in at least 10

circumstances.[224] The U.S. Border Patrol operates an independent fleet of 10 Predators

outside of DoD control, and used this fleet to support missions by other agencies

including the Coast Guard, the DEA, and local law enforcement a total of 687 times

between 2010 and 2012.[225] Finally, an April 2014 announcement from AG Holder

confirmed that the ATF is pursuing the procurement of its own UAV fleet.[226] Given

these facts, it is unlikely that the UAV genie will be stuffed back into the bottle. And,

[222] Shane, S. (2012, November 24). Election Spurred a Move to Codify U.S. Drone Policy, The New York Times. Retrieved at http://www.nytimes.com/2012/11/25/world/white-house-presses-for-drone-rule-book.html?pagewanted=all

[223] Kim, S. (2014, March 10). Texas Start-Up Tasers Intern Via Stun-Copter to Spark Discussion About Tech at SXSW, ABC News. Retrieved at http://abcnews.go.com/Business/intern-tasered-drone-sxsw-explains-feels-zapped/story?id=22848505

[224] Paul, R. (2013, July 19). Letter to Senator Rand Paul from U.S. Department of Justice, Federal Bureau of Investigation. Retrieved at http://www.paul.senate.gov/files/documents/071913FBIresponse.pdf

[225] Whitlock, C. (2013, January 14). Border-patrol drones being borrowed by other agencies more often than previously known, The Washington Post. Retrieved at http://www.washingtonpost.com/world/national-security/border-patrol-drones-being-borrowed-by-other-agencies-more-often-than-previously-known/2014/01/14/5f987af0-7d49-11e3-9556-4a4bf7bcbd84_story.html

[226] Fearnow, B. (2014, April 9). Holder: ATF 'In Process' Of Planning, Using Domestic Drones, CBS News. Retrieved at http://washington.cbslocal.com/2014/04/09/holder-atf-in-process-of-planning-using-domestic-drones/

while policy-makers have already expressed the potential for utilizing them in a lethal role, the question will remain: who represents an imminent threat?

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